TRIBAL COURT
OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT **STATE OF MINNESOTA**

TO:

Petitioner:
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CLERK'S NOTICE OF ORDER

Re: **In Re the Marriage Of: Cyndy Stade-Lieske, Petitioner, vs. Joseph Stephen Lieske, Respondent.**
Court File No. 783-14

You are hereby notified that an **Memorandum Opinion and Order** has been issued on **May 15, 2014**, in regard to the above-referenced matter. A copy is attached.

Dated: May 15, 2014

Lynn K. McDonald
Clerk of Court

TRIBAL COURT
OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

SCOTT COUNTY

STATE OF MINNESOTA

In Re the Marriage of:

Cyndy Stade-Lieske,

Petitioner,

And

Joseph Stephen Lieske,

Respondent.

Court File No. 783-14

MEMORANDUM OPINION AND ORDER

The above-entitled matter came before the Honorable Henry M. Buffalo, Jr., Judge of the above named Court, on the 8th of May, 2014 pursuant to a motion to dismiss filed by Respondent Joseph Stephen Lieske. Anne Tuttle, Esq., appeared on behalf of Respondent who also was present at the hearing. Edward Winer, Esq. and Joseph Vedder, Esq., appeared on behalf of Petitioner who was also present at the hearing.

In this motion Respondent (Husband) seeks dismissal of this case so that proceedings on the dissolution of the marriage would be heard instead by the First Judicial District Court in Scott County, Minnesota. Petitioner (Wife) opposes this motion.

FACTS

On February 28, 2014, Husband filed and served an action against Wife in the District Court for the First Judicial District in Scott County, Minnesota, for dissolution of the marriage. That case has been docketed in that court as Court File No: 70-FA-14-3740.

On March 7, 2014, Wife initiated this action against Husband for dissolution of the marriage and Husband was served on March 8, 2014.

On March 18, 2014, Wife filed, in the Scott County District Court action, a motion to dismiss that action or to have that action transferred to this Court in light of the proceeding before this Court. A hearing before Scott County District Court Judge Christian S. Wilton was scheduled for and held on April 1, 2014.

On April 23, 2014, Husband filed a motion in this Court to dismiss this action. On May 2, 2014, Wife filed a response in opposition to that motion. On May 8, 2014, this Court held a hearing on that motion.

At the end of March and prior to the April 1, 2014 hearing in the Scott County District Court, Judge Wilton and Tribal Court Judge Buffalo conferred with each other about the pendency of these proceedings in both courts, the anticipated schedule of proceedings in both courts on the jurisdictional issues being raised, and agreed to confer further once briefing and hearings on the jurisdictional issues occurred in both courts. Transcript of May 8, 2014 Hearing (Tr.) at 5-9. Both Judge Wilton and Judge Buffalo advised the parties of their discussions and were aware of the respective schedule of proceedings in the two cases. *Id.* On May 6, 2014, Judge Wilton and Judge Buffalo conferred again about the pending cases, and Judge Buffalo anticipated that they would further confer following the May 8 hearing in this Court. *Id.* at 6-8. However, on May 7, 2014 Judge Wilton issued a decision denying Wife's motion to dismiss or transfer the Scott County

District Court case. On May 8, 2014, this Court proceeded with the hearing on the jurisdictional issues as had been scheduled.

The material facts relevant to the issue presented on the motion to dismiss are not disputed. Wife is an enrolled member of the Shakopee Mdewakanton Sioux (Dakota) Community. Husband is not an enrolled member of the Community or of any Indian tribe. Husband's Memorandum of Law re Jurisdiction and Venue at 1 (April 23, 2014); Affidavit of Wife, Cyndy Stade-Lieske at ¶2 (May 1, 2014).

The parties were married on June 25, 1996 in Las Vegas, Nevada. Beginning in the summer of 1994, prior to their marriage and while Wife was waiting for her divorce from her former husband to be finalized, they lived together on the Reservation in the home of Wife's mother. Affidavit of Wife at ¶2. Thereafter, and throughout their marriage Husband and Wife lived together in the Wife's home on the Shakopee Mdewakanton Sioux Community Reservation at 2211 Sioux Trail NW, Prior Lake, Minnesota, until February 2014 when the parties separated. Husband's Memorandum of Law at 1; Affidavit of Wife at ¶3. They resided together on the Reservation for a period of 19 years. *See* Tr. at 31. Upon separation, Husband moved out of Wife's home, but then lived on the Reservation at least temporarily in the home of Wife's daughter from her prior marriage. Husband's Memorandum of Law at 2; Affidavit of Wife at ¶4.

There are no minor children of this marriage. Husband's Memorandum of Law at 1; Wife's Petition for Dissolution of Marriage at ¶ 13.

The only interest in real property held by either party is a homestead held by the Wife which is located on the Reservation. Affidavit of Wife at ¶5. The parties do not jointly own any land outside the Reservation. Tr. at 31.

The primary source of income during the marriage was the monthly per capita payments that the Community makes to enrolled Community members and which have been paid by the Community to Wife. Husband's Memorandum of Law at 10; Wife's Petition for Dissolution of Marriage ¶ 14.

Neither Husband nor Wife was employed during the marriage. Affidavit of Husband, Joseph S. Lieske, at ¶ 10 (April 15, 2014); Tr. at 33. Husband worked and supported himself prior to their marriage. *Id.* Recently, Husband obtained employment outside the Reservation. Tr. at 33. Since the parties separated, Wife has also begun to sell purses for nominal income. Wife's Petition for Dissolution of Marriage ¶ 14.

The parties claim interests in various items of personal property located on the Reservation during the marriage. Wife's Petition for Dissolution of Marriage ¶ 16; Affidavit of Husband, Joseph S. Lieske, at ¶ 10.

Wife alleges that the parties individually and joint have incurred indebtedness to various creditors. Wife's Petition for Dissolution of Marriage ¶ 17. Wife further alleges that the parties own other assets including bank accounts, retirement accounts, investment accounts and life insurance. Wife's Petition for Dissolution of Marriage ¶ 19. The parties primarily used South Metro Federal Credit Union, located on the Reservation, for banking. Tr. at 32.

On February 28, 2014, the Shakopee Mdewakanton Sioux (Dakota) Community issued a Notice prohibiting Husband from trespassing on Reservation lands, except to allow him to continue to reside with Wife's daughter on the Reservation where he was then living. That Notice was further clarified on April 2 to confirm that it did not affect Husband's right and ability to appear in Tribal Court. The Notice as amended on April 2, was served on Husband.

LEGAL DISCUSSION

Chapter III of the Shakopee Mdewakanton Sioux Community's Domestic Relations Code governs divorce. Section 1 of Chapter III establishes the Community's jurisdiction over marriage dissolution proceedings as follows:

> The Shakopee Mdewakanton Sioux (Dakota) Community shall have jurisdiction over all persons who have resided on its Reservation or on any allotted or tribally purchased lands, or any public domain land designated for Tribal use, for at least 90 days prior to commencing any action for the dissolution of a marriage before the Courts of the Shakopee Mdewakanton Sioux (Dakota) Community.

This provision of the Code gives the Court jurisdiction over "all persons," members and non-members, who are parties to a divorce proceeding, and who meet the section's residency requirement. Since the adoption of the Domestic Relations Code, this Court routinely has applied the Code to non-members who have met the Code's residency requirements, in the context of marriage dissolutions and other domestic relations proceedings. *See, e.g., Crooks-Bathel v. Bathel*, 6 Shak T.C.1 (Feb. 17, 2010) (citing *Welch v. Welch,* 5 Shak. T.C. 127 (Aug. 18, 2008)), *aff'd in part and rev'd in part Welch v. Welch*, 2 Shak A.C. 11 (April 15, 2009) *(plurality opinion); Brooks v. Corwin,* 5 Shak. T.C. 83 (Oct. 15, 2007), *aff'd Brooks v. Corwin*, 2 Shak. A.C. 5 (Aug. 4, 2008); *Cannon v. Prescott,* 4 Shak. T.C. 144 (Nov. 25, 2002).

The parties agree that this Court has jurisdiction over the parties and over the subject matter of this proceeding. Affidavit of Husband, Joseph S. Lieske, at ¶ 8; Wife's Petition for Dissolution of Marriage at ¶10.

The parties further agree that where proceedings involving the same parties and same cause of action are pending in both a tribal court and a state court, a determination of which court should proceed with the matter should be addressed under principles of comity based on the factors set out in *Teague v. Bad River Band*, 665 N.W.2d 899 (Wis. 2003) and *Teague v. Bad River Band*, 612

N.W.2d 709 (Wis. 2000). *See* Husband's Memorandum of Law re Jurisdiction and Venue (April 23, 2014) at 4-6. Wife's Memorandum of Law on Tribal Court Jurisdiction at 5-12 (May 2, 2014).

In *Teague*, the Court first described the general principles of comity, stating:

> Comity is based on respect for the proceedings of another system of government and a spirit of cooperation. Comity endorses the principle of mutual respect between legal systems, recognizing the sovereignty and sovereign interests of each governmental system and the unique features of each legal system. It is a doctrine that recognizes, accepts, and respects differences in process. The doctrine of comity "is neither a matter of absolute obligation nor of mere courtesy and good will, but is recognition which one state allows within its territory to legislative, executive, or judicial acts of another, having due regard to duty and convenience and to rights of its own citizens."

Teague, 665 N.W.2d at 917. Significantly, however, the Court then described how those principles of comity should be applied in the context of state-tribal relations and the importance of giving deference to tribal court proceedings. As the Court explained:

> In the context of state-tribal relations, principles of comity must be applied with an understanding that the federal government is, and the state courts should be, fostering tribal self-government and tribal self-determination. Through principles of comity, federal and state governments can develop an increased understanding of tribal sovereignty, encourage deference to and support for tribal courts, and advance cooperation, communication, respect and understanding in interacting with tribal courts. "Central to tribal sovereignty is the capacity for self-government through tribal justice mechanisms.... [T]ribal justice systems are 'essential to the maintenance of the culture and identity of Indian tribes.'"

Id. (citations omitted).

The *Teague* Court then identified factors that courts and scholars have identified should help determine which of two courts should proceed to judgment and which court should abstain, as follows:

> 1. Where the action was first filed and the extent to which the case has proceeded in the first court.
>
> 2. The parties' and courts' expenditures of time and resources in each court, and the extent to which the parties have complied with any applicable provisions of either court's scheduling orders.

3. The relative burdens on the parties, including cost, access to and admissibility of evidence and matters of process, practice, and procedure, including whether the action will be decided most expeditiously in tribal or state court.

4. Whether the nature of the action implicates tribal sovereignty, including but not limited to subject matter of the litigation and identities and potential immunities of the parties.

5. Whether the issues in the case require application and interpretation of a tribe's law or state law.

6. Whether the case involves traditional or cultural matters of the tribe.

7. Whether the location of material events giving rise to the litigation is on tribal or state land.

8. The relative institutional or administrative interests of each court.

9. The tribal membership status of the parties.

10. The parties' choice of forum by contract.

11. The parties' choice of law by contract.

12. Whether each court has jurisdiction over the dispute and the parties and has determined its own jurisdiction, and

13. Whether either jurisdiction has entered a final judgment that conflicts with another judgment that is entitled to recognition.

655 N.W.2d at 917-18.

This Court has applied the *Teague* factors in another case in which a proceeding between the parties involving the dissolution of a marriage was also pending in state court. *See Crooks-Bathel v. Bathel*, 6 Shak T.C. 1, 8-11 (Feb, 17, 2010). As the Court there stated: "Not all of the *Teague* factors will apply in every case, and no one factor probably will be considered determinative, but the factors, taken as whole, give a valuable, workable framework for reaching an equitable decision." *Id.* at 9.

The parties here, in their briefs and during the hearing, agreed that this matter should be considered under the *Teague* factors. As Husband plainly noted, these factors "offer a model for state-tribal relations in Minnesota." Husband's Memorandum of Law re Jurisdiction and Venue at 5. Both parties presented their respective positions on each of the *Teague* factors and the Court accordingly considers this case in light of those factors and the parties' respective arguments, as follows:

1. Where the action was first filed and the extent to which the case has proceeded in the first court.

The two actions were filed within 8 days of each other. Husband filed his action in State Court on February 27, 2014 while Wife filed her action in Tribal Court on March 7, 2014. The only proceedings that have occurred in each case to date are the proceedings on motions to dismiss. While the Scott County District Court heard oral argument on April 1, the Scott County District Court was aware that the Tribal Court had scheduled a hearing on the motion to dismiss pending before the Tribal Court to occur on May 8 and had expressed an intent to defer ruling on the motion pending in the state court until after the briefing and hearings were concluded in both cases and the Judges had an opportunity to confer. *See* Tr. at 5-9. Nevertheless, the Scott County District Court issued an order on May 7 denying the Wife's motion to dismiss. The Scott County District Court has not yet held an Initial Case Management Conference (ICMC) nor have any other proceedings occurred in that case to date. Tr. at 53. As a result, while the first factor might be said to tip slightly in the Husband's favor, the difference in the timing of the filing of the two proceedings is *de minimus*. The same is true of the difference in the timing by which the two courts heard and ruled on the pending motions to dismiss. Accordingly, overall, this factor is neutral. It does not favor either party or either forum.

2. The parties' and courts' expenditures of time and resources in each court, and the extent to which the parties have complied with any applicable provisions of either court's scheduling orders.

This factor too does not favor either party or either forum. Both parties and both Courts have spent time and incurred costs submitting and reviewing briefs, appearing at and holding hearings and, for the courts, evaluating the record and issuing decisions on the jurisdictional issue. The Courts' respective rulings on the motions to dismiss were issued within only 8 days of each other. No other proceedings have yet occurred in either case.

In connection with this factor, Husband also alleges (without submitting evidence and without regard to the fact that he is now employed, *see* Tr. at 33), that he "has little or no financial resources, has already expended a significant amount on attorney's fees and costs in his efforts to have the Scott County District Court retain jurisdiction," and further alleges that Wife "has the requisite financial resources to protect her interest in either Court setting." Husband's Memorandum of Law at 6-7. However, the respective financial resources of each party, as well as their choices about what issues to litigate, are not relevant to this factor. The consideration here is the relative progress of the two proceedings.

3. The relative burdens on the parties, including cost, access to and admissibility of evidence and matters of process, practice, and procedure, including whether the action will be decided most expeditiously in tribal or state court.

This factor weighs in favor of this Court going forward. If one were to consider only the geography of the Reservation and Scott County, the burdens on each party of appearing in this Court and in the District Court for the First District are about equal.

However, geography is not the only consideration. Here both parties lived for 19 years on the Reservation. The property at issue in these dissolution proceedings is located on the Reservation. The parties primarily maintained bank accounts with the South Metro Federal Credit Union which

is located on Community lands. Tr. at 32; Affidavit of Wife at ¶ 5. In addition, during the course of their marriage, as residents of the Reservation, they have had access to and received services provided on the Reservation including health care (medical and dental). Tr. at 31. Husband continued to live on the Reservation with Wife's daughter at least temporarily following the parties' separation. In response to the Court's questions about the parties' specific activities off-reservation, Husband's counsel confirmed that the parties did not have any jointly owned property outside the Reservation, had not been employed outside the Reservation during the marriage, had received health care (medical and dental) on-Reservation, and had relied principally on the per capita payments provided by the Community to the Wife as a Community member. Tr. at 31-38. The parties accordingly have substantial ties to the Shakopee Community and, as result, if there are evidentiary questions bearing on the dissolution of the marriage, witnesses and records relevant to those issues are likely to be located on the Reservation, making this Court a more convenient forum.

Husband argued that he would be burdened if this case were to continue in Tribal Court because of the No Trespass Notice that had been issued against him. Husband's Memorandum of Law at 7. But the No Trespass Notice was clarified on April 2, 2014 and promptly served on the Husband. Tr. at 44. That Notice has been inapplicable to Husband's ability to reside with his Wife's Daughter on the Reservation. And, as clarified on April 2, the No Trespass Notice has no application to the Husband's right or ability to appear in the Tribal Court. Consistent with the April 2 modification, in this Court's experience, No Trespass Notices of this kind have not been construed by the Tribe to preclude an individual from seeking to engage in matters with the Tribal government, including the Tribal Court.

Finally on this factor, Husband also argues that the Scott County District Court would not only encourage, but require, the parties to pursue alternative dispute resolution which may allow

parties to resolve these matters more cost-effectively. Husband's Memorandum of Law at 7. The Tribal Court likewise encourages parties to resolve disputes through agreement. The Tribal Court has seen parties in marriage dissolution proceedings resolve by agreement many (and sometimes all) issues in such proceedings, and stands ready to facilitate settlement efforts. The potential use of alternative means for resolving disputes, available in both courts, does not alter the conclusion that the third factor weighs in favor of continued proceedings in Tribal Court.

4. Whether the nature of the action implicates tribal sovereignty, including but not limited to subject matter of the litigation and identities and potential immunities of the parties.

The fourth factor weighs heavily in favor of this Court going forward. As the Tribal Court has previously found in a similar case, if the Husband's arguments here were correct — if the Community were to lose jurisdiction over non-members who marry members and who live on the Reservation — the impact on the Community's sovereignty and its ability to govern the domestic relations of its members would, for all practical purposes, be eliminated. See *Crooks-Bathel v. Bathel*, 6 Shak. T.C.1, 10 (Feb, 17, 2010). Non-members who marry into the Community and elect to live within the Reservation, maintain an on-Reservation residence for years and establish ties to the Community, would nonetheless be able to divest the Tribal Court of its ability to address important interests in domestic relations affecting Tribal members, merely by filing suit first in a state court.

In addition, the issues in this case may implicate Community assets and programs. The parties, during their marriage, resided in the Wife's home which is on Community land. The Wife's per capita payments from the Community's government are clearly at issue. It is also possible other assistance provided by the Community or through Community programs, such as health care, may be, relevant to these proceedings as well.

The State court does not have a comparable interest here. To be sure, the State courts are a forum in which Indians and non-Indians may avail themselves to resolve civil disputes. But where a party marries a tribal member, and husband and wife choose to live together within the boundaries of an Indian reservation, have done so for a long period of time, with the benefit of the infrastructure, programs, services, and resources made available by the Tribe to Tribal members and their families residing on the Reservation, the Tribe has a substantial interest in the application of tribal law to the dissolution of the marriage. The State interest in the dissolution of a marriage is far less.

Husband's argument, that he is not seeking to interfere with the Community's right to govern itself or "to interfere with the Tribal Court's jurisdictional claims to actions involving activities exclusive to the reservation," Husband's Memorandum of Law at 8, far too narrowly construes the Community's sovereign interest here. When, as in this case, individuals make deliberate choices to reside within a given jurisdiction, avail themselves of the laws and services provided by that government, and do so for a long time, that sovereign has a substantial interest in ensuring that its laws are properly applied. That is clearly true here.

Husband also argues that the "Tribal Community lies within the State of Minnesota and these individuals moved freely. . .from reservation lands to the state beyond." Husband's Memorandum of Law at 8. To be sure, as a matter of geography, all Indian reservations can be said to lie within a state (and within the United States). And Tribal members, like all citizens, have the right to travel freely within the United States and do so. But if such general facts controlled, then any court in any place where the parties might have traveled could be said to have jurisdiction. That is not the law. Principles of comity require a more substantial nexus to support continued exercise

of jurisdiction. Husband fails to establish such a nexus that would justify a preference for State court jurisdiction, as opposed to Tribal court jurisdiction, over the dissolution of the marriage here.

5. Whether the issues in the case require application and interpretation of a tribe's law or state law.

This factor also weighs heavily in favor of this Court's jurisdiction. Here, as in *Crooks-Bathel v. Bathel*, 6 Shak. T.C. 1, the parties recognize that if the proceeding is heard in state court, the state court is not likely to apply tribal law but will likely apply state law to address the allocation of marital property. But, as the parties also recognize, State law and Community law differ in certain key respects. A 2006 state court decision involving the dissolution of a marriage between a Community member and a non-Indian treated per capita payments from the Shakopee Community government as marital property in direct conflict with the express provisions of the Shakopee Community's Domestic Relations Code. *Compare Zander v. Zander*, 720 N.W.2d 360, 369-70 (Minn. Ct. App. 2006) (concluding per capita payments are martial property under Minnesota law despite specific language to the contrary in the Tribe's Domestic Relations Code and despite the fact that even under state law, gifts to one spouse during a marriage are excluded from marital property), *with* SMS(D)C Domestic Relations Code, Chapter II, Section 1 ("Per capita payments shall not be defined as marital property"). As the Court found in *Crooks-Bathel v. Bathel*, 6 Shak. T.C. 1, such "efforts to use a State forum to create a conflict with Community law would neither clarify the application of pre-existing tribal law nor elucidate the rights and duties of people subject to Community law." Rather, the "[a]djudication of [reservation] matters by any non-tribal court . . . infringes upon tribal law-making authority, because tribal courts are best qualified to interpret and apply tribal law." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987). *See also Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 60 (1976) (litigation of matters arising on-reservation in a forum other than the tribe's "cannot help but unsettle a tribal government's ability to maintain authority");

Fisher v. District Court, 424 U.S. 382, 388 (1976) (recognizing the same where a state court asserts jurisdiction over a civil dispute that is otherwise within the tribal court's authority.)

The Community's interest in interpreting and applying Tribal laws are substantial here. The per capita payments that are made by the Community to its enrolled members are distributions of a Tribally-owned resource. These are governed, as an initial matter by federal law, 25 U.S.C. §§2710(b) (3), (d)(1), which requires that the Community have a federally approved plan for the use of the Community's income from its gaming enterprises before making such distributions. The Community's federally approved plan is implemented by Community laws which, among other matters: ensure that per capita payments made for the benefit of Community members who are minors or legally incompetent are protected in appropriate trust accounts, (*see* SMS(D)C Resolution 10-27-93-002 adopting the SMS(D)C Gaming Revenue Allocation Amendments to the Business Proceeds Distribution Ordinance); protect a member's interest in per capita payments while held by the Tribe, from garnishment, attachment or execution, subject to limited exceptions, (*see* SMS(D)C Resolution 9-13-11-016); allow for deductions to be made from a member's per capita payments necessary to meet child support obligations, (*see* SMS(D)C Domestic Relations Code, Chapter III, Section 8.b); and establish that per capita payments, like other gifts or inheritance which might be made to only one spouse and not another, are not treated as martial property (*see* SMS(D)C Domestic Relations Code, Chapter II, Sections 1, 2). Thus, in adopting Tribal laws to authorize per capita distributions of Tribal funds, the Community undertook careful consideration of how to best meet the needs and protect the interests of the Community and its members with regard to the use of these Tribal funds, and carefully balanced those interests. The Tribe has a very substantial interest here in the proper interpretation and application of these important Tribal laws which govern the disposition of Tribal resources.

Moreover, if these proceedings are heard in the Scott County District Court, that Court may not be able to award complete relief. While Husband asserts that "a state court may also distribute property located on the reservation," Husband's Memorandum of Law at 9, that is not entirely correct. To the extent that the Scott County District Court might seek to adjudicate matters regarding the per capita payments made by the Community to Community members, such order cannot be enforced against the Community itself. Apart from allowing deductions from per capita payments for purposes of paying child support, the Community has generally prohibited writs of attachment or garnishment from being issued against the Community for per capita payments that are due but not yet distributed by the Community to Community members. Likewise, because the parties resided in the Wife's home which is located on Tribal trust land within with Reservation, the Scott County District Court has no jurisdiction to adjudicate interests in that property.

6. Whether the case involves traditional or cultural matters of the tribe.

The sixth factor also weighs heavily in favor of exercise of this jurisdiction. As set out in the introduction to the Domestic Relations Code, "No more important power is exercised by Indian Tribes than the power to protect and govern the domestic relations of their members." The maintenance of the Community as a related group of people with a common identity, culture, and heritage is crucial to the Community's continued existence. Domestic relations lie at the heart of this interest. *See, e.g., Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 55-56 (1976) ("[Indians] remain a separate people, with the power of regulating their internal and social relations. They have the power to make their own substantive law in internal matters and to enforce that law in their own forums (citations omitted).")

7. Whether the location of material events giving rise to the litigation is on tribal or state land.

The seventh factor also favors continued proceedings in the Tribal court. There is no dispute that the parties have lived together for nineteen years on Community land and that at the time these cases were filed, continued to live on the Reservation. The property acquired during the marriage and identified to date as at issue in these proceedings, is on the Reservation. Husband's general assertion that the parties "have moved freely from tribal land and beyond in their day to day activities," Husband's Memorandum of Law at 10, is not supported by any specific facts or even specific allegations of any "material events giving rise to the litigation" that occurred outside of Tribal land. During the hearing, this Court specifically asked the parties to identify what off-reservation activity occurred in the parties' relationship that would create an interest in the state court in the dissolution. Tr. at 30-39. The parties offered none beyond the general assertion that the parties moved freely from the Reservation, noting as examples that they went on trips, purchased vehicles and other goods, engaged in hobbies and activities, and voted. Tr. at 34-38. But if such temporary contacts were sufficient to create a nexus to support deference to the courts of another sovereign, then Minnesota courts would have equal interest in adjudicating the dissolution of marriage of the many Wisconsin residents who come to Minnesota to shop free of otherwise applicable Wisconsin sales taxes. In sum, the material events giving rise to this litigation for dissolution of the marriage appear to have primarily (if not exclusively) occurred within the Shakopee Reservation, on Community-owned land.

8. The relative institutional or administrative interests of each court

The eighth factor, the institutional interests of this Court, also are very significant here. If this Court does not have jurisdiction over non-member spouses of Community members after they have lived on the Reservation and as part of the Reservation community, the Tribal Court's ability

to administer the Domestic Relations Code will be undermined. In contrast, the institutional interest in the State court's maintaining jurisdiction here is far less.

Public Law 280, standing alone, simply does not give the state courts the same institutional interests as the tribal courts in cases involving Indians arising in Indian country. Under Public Law 280, 28 U.S.C. §1360, Congress permitted certain state courts, including Minnesota, to exercise jurisdiction over private civil disputes between Indians or to which Indians are parties, *Bryan v. Itasca Cnty.*, 426 U.S. 373, 379-80 (1976). But in examining the *Teague* factors and, in particular the institutional interests of the tribal and state courts in a given proceeding, the limited grant of civil jurisdiction in Public Law 280 must be understood in context. As the Supreme Court explained in *Bryan*, Public Law 280 was enacted in the 1950s, at a time when tribes did not have tribal courts or the related law enforcement institutions needed to effectively address criminal law enforcement. As the Court stated:

> The primary concern of Congress in enacting Pub. L. 280 that emerges from its sparse legislative history was with the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement. See Goldberg, Public Law 280: The Limits of State Jurisdiction over Reservation Indians, 22 U.C.L.A.L.Rev. 535, 541-542 (1975). . . .
>
> "As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves. In many States, tribes are not adequately organized to perform that function; consequently, there has been created a hiatus in law-enforcement authority that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility."

Bryan, 426 U.S. at 379-80 (quoting H.R. Rep. No. 83-848, 5-6 (1953), 1953 U.S. Code Cong. & Admin. News at 2409, 2411-2412 (emphasis added)). The then-lack of tribal institutions similarly informed the limited grant of civil jurisdiction to the state courts. As the Supreme Court noted in discussing Public Law 280's limited provisions on civil jurisdiction, "certain tribal reservations were completely exempted from the provisions of Pub. L. 280 precisely because each had a "'tribal

law-and-order organization that functions in a reasonably satisfactory manner.'" *Byran*, 426 U.S. at 385 (quoting H.R. Rep. No. 83-848, at 7).

However, in the years since enactment of Public Law 280, Tribes, like the Community here, have developed the laws and established the judicial systems necessary to effectively adjudicate civil disputes. In light of this development, even in cases where a federal or state court may have concurrent jurisdiction with a tribal court, principles of abstention and deference to the tribal court proceedings and the application of tribal law to matters arising on a reservation, have been recognized to be vitally important elements of the comity analysis. The United States Supreme Court so found in establishing a policy of abstention in favor of tribal court jurisdiction where federal and tribal courts otherwise have concurrent jurisdiction. As the Court stated, a civil dispute arising on reservation lands involving Indians (including activities of non-Indians) "*presumptively* lies in the tribal courts." *LaPlante*, 480 U.S. at 18 (emphasis added); *see also National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 855-857 (1985). In Wisconsin, another mandatory Public Law 280 state, the State Supreme Court likewise clearly recognized the importance of tribal self-governance in setting out the factors relevant to the comity analysis in *Teague*, 665 N.W.2d at 917. Thus, while state courts may have concurrent jurisdiction with tribal courts under Public Law 280, that does not, standing alone, give the state courts the same institutional interests as tribal courts over civil disputes involving Indians which arise on Reservation. The development of tribal laws and tribal courts to address on-reservation disputes involving Indians and the interests of tribal sovereignty and self-determination weigh heavily in evaluating a tribal court's institutional interest in such cases.

The state and tribal courts do share certain important institutional interests. Both courts mutually benefit from rules and policies that do not promote a "race to the courthouse," or which

may lead to conflicting adjudications. The institutional interests of both state and tribal courts are best served by seeking to determine what forum is, in fact, the most appropriate forum able to fully and most efficiently resolve the dispute between the parties.

9. The tribal membership status of the parties.

The factor is neutral here since one party here is a Shakopee Community member and the other is not.

10. The parties' choice of forum by contract.

This factor is inapplicable here.

11. The parties' choice of law by contract.

This factor is inapplicable here.

12. Whether each court has jurisdiction over the dispute and the parties and has determined its own jurisdiction.

The parties do not dispute that both this Court and the State court have jurisdiction. However, the Scott County District Court in its May 7, 2014 decision and this Court (as reflected by this decision) have reached contrary conclusions as to which court should exercise jurisdiction.

Before discussing the District Court's May 7 decision, it is important to note that the Court in *Teague* identified not only factors to be considered in addressing parallel proceedings in tribal and state courts, but also established a process by which the Judges assigned to those case would confer on the jurisdictional and comity issues raised, and would try to reach a common understanding of the forum best suited to resolve the matter *before* issuing formal decisions on the jurisdictional questions. This Court and District Court Judge Wilton began such discussions in March 2014, which this Court had expected would lead to a conference after this Court held its May 8 hearing and before either Court issued any decision. The District Court's May 7 decision changed that. Nevertheless, the Courts' rulings do not necessarily preclude the two Courts from further

discussions that might allow for resolution of the jurisdictional questions, and this Court remains open to such discussions.

This Court has carefully reviewed the decision issued by the Scott County District Court on May 7, 2014, and believes that the District Court erred in reaching its conclusion in a number of very significant respects.

First, the District Court asserts that "[b]ecause this case involves both non-Indian individuals as well as Indian individuals and it involves acts both occurring within Indian country and outside, both the tribe and the State could fairly claim an interest in asserting its respective jurisdiction." District Court Op. at 2 (emphasis supplied). But the District Court identifies no specific acts, or evidence of acts, or even allegations of acts, that would be materially relevant to the dissolution of a marriage and which occurred "outside" Indian country. This assumption that the dispute in this case involved acts occurring "outside" Indian country, appears to have lead the District Court to incorrectly assume that "both the [T]ribe and the State could fairly claim an interest" in the proceedings, *id.*, and, later, when addressing the *Teague* factors, to express the view that the Tribe and State courts have equal interests in the application of its own laws and that the sovereign interests of the Tribe were not implicated. *Id.* at 7.

Second, while the District Court undertook to evaluate this matter under principles of comity including the *Teague* factors, the District Court misapplied those principles by applying a "first-to-file" rule and making that the controlling factor. *Id.* at 3-4; *see also id.* at 5, 7-8. To be sure, the time of filing of the suits is a relevant consideration, as reflected by *Teague.* But even apart from *Teague*, under Minnesota law, the time of filing is not a dispositive rule, but one consideration that "'should be applied in a manner serving sound judicial administration.'" *Gavle v. Little Six, Inc.*, 555 N.W.2d 284, 290 (Minn. 1996) (quoting *Orthmann v. Apple River Campground, Inc.*, 765 F.2d

119, 121 (8th Cir.1985)); *see also Green Tree Acceptance, Inc. v. Midwest Fed. Sav. & Loan Ass'n of Minneapolis*, 433 N.W.2d 140, 142 (Minn. Ct. App. 1988). Moreover, application of a "first-to file" rule, especially in a case such as this – where the two suits were filed within only eight days of each other, and the cases only at the initial stage of considering the most appropriate forum – will not serve sound judicial administration. Instead, it will do nothing more than have a court's jurisdiction turn on a race to the courthouse, without consideration of any of the other factors that are so important in a comity analysis (as, for example, whether complete relief can be provided by the forum exercising jurisdiction, and whether there is a risk of duplicative proceedings with potentially inconsistent results).

Third, in addressing the second *Teague* factor, the District Court only described the proceedings that had occurred in the state court, even though the District Court was aware of the parallel briefing and hearing on the motion to dismiss in Tribal Court. District Court Op. at 6. As a result, the District Court misapplied that factor.

Fourth, the District Court erroneously concluded that the Tribe's No Trespass Notice would bar the Husband from entering Reservation lands to appear in Tribal Court without reference to or consideration of the April 2 amendment which made clear that the Notice had no such effect. District Court Op at 6. Further this Court, in conference with the District Court Judge on May 6 confirmed the April 2 amendment had been made to the Notice which ensured that Husband would have full access to the Tribal Court. *See* Tr. at 6-8. As a result, the District Court erred in concluding that the Husband would be burdened if proceedings continued in Tribal Court. District Court Op. at 6.

Fifth, in considering whether the location of the material events giving rise to the litigation occurred on tribal or state land, the District Court recognized that the parties resided on Community

property during their marriage and spent the vast majority of their time on Community property. District Court Op. at 7. But the Court then stated that this factor is neutral because 1) the parties were married in Las Vegas, Nevada, and 2) "there is no one dispositive event that led to the current dissolution." *Id.* But the fact that the parties were married years ago, in Nevada, does not establish any basis for a court in Minnesota (as opposed possibly to a court in Nevada) to claim an equal, if not superior interest, in adjudicating the dissolution of the marriage as compared to the courts of the Tribe where the parties lived throughout 19 years of their marriage. And while the District Court stated that "no one dispositive event" led to the dissolution of the marriage, given the uncontroverted fact that the parties continuously resided on the Reservation throughout their marriage, it can only follow that whatever series of events led to the dissolution, those likewise occurred on the Reservation.

Finally, the District Court correctly stated that, as set out in *Teague*, "[t]he principles of comity applicable to state court-tribal court relations are built upon the goal of fostering tribal self-government through recognition of tribal justice mechanisms." District Court Op. at 8. The part that the State Court left out of this reference is equally important: "Through principles of comity, federal and state governments can develop an increased understanding of tribal sovereignty, encourage deference to and support for tribal courts, and advance *cooperation, communication, respect and understanding in interacting with tribal courts*." *Teague*, 665 N.W.2d at 917 (emphasis added). Frankly this Court is deeply troubled by the District Court's rush to issue a decision prior to the hearing in Tribal Court especially after the discussions between the Judges and inconsistent with what that Court had informed the parties. That action undermines the core comity principle of "cooperation, communication, respect and understanding in interacting with tribal courts" as counseled by the *Teague* court. The District Court then errs in concluding that "[t]his ultimate goal

is not compromised in the instant matter because tribal sovereignty is not implicated and the application of tribal law is not required." District Court Op. at 8. In considering this critical issue, and in addressing each of the *Teague* factors regarding the impact on tribal sovereignty, whether the case requires application of tribal or state law, whether the case involves traditional or cultural matters of the Tribe, and the institutional interests of each court, the District Court simply assumed that both the Tribe and State courts have equal interests in the application of their own laws, and that all these factors were neutral. *Id.* at 6-7. But for all the reasons discussed in detail above, that is not the case in the facts of this proceeding.

13. Whether either jurisdiction has entered a final judgment that conflicts with another judgment that is entitled to recognition.

This factor does not apply since neither this Court nor the Scott County District Court has entered a final judgment.

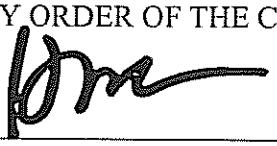
CONCLUSION

Taken together, then, the weight of the *Teague* factors overwhelmingly supports this Court's exercising the jurisdiction in this matter. I therefore deny the Respondent's motion to dismiss these proceedings.

For the foregoing reasons, and based upon the files, proceedings, and argument of counsel, the Court **ORDERS** that the Respondent's motion to dismiss is **DENIED.**

Dated: May 15, 2014

BY ORDER OF THE COURT:



Henry M. Buffalo Jr.
Judge, Shakopee Mdewakanton
Sioux Community Tribal Court