

IN THE TRIBAL COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

FILED **APR 23 2014** **SEP**

SCOTT COUNTY

LYNN K. McDONALD
CLERK OF COURT
STATE OF MINNESOTA

Court File No. 783-14

In Re the Marriage of:

Cyndy Stade-Lieske,

Petitioner,

and

Joseph Stephen Lieske,

Respondent.

**NOTICE OF MOTION AND MOTION
TO DISMISS FOR LACK OF JURISDICTION**

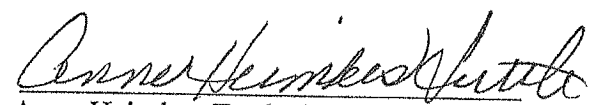
TO: CYNDY STADE-LIESKE, BY AND THROUGH HER ATTORNEY, EDWARD L. WINER, 4800 WELLS FARGO CENTER, 90 SOUTH SEVENTH STREET, MINNEAPOLIS, MN 55402.:

YOU WILL PLEASE TAKE NOTICE that on the 8th day of May, 2014, at 1:00 p.m. or as soon thereafter as counsel can be heard, before a Judge of Tribal Court, at the Shakopee Mdewakanton Sioux (Dakota) Community Court, the Respondent will ask the Court to make an Order as follows:

1. Dismissing Petitioner's Petition for Dissolution.
2. For such other and further relief as the Court deems just and equitable.

Said Motion will be made on the attached Affidavit of Joseph Lieske, Respondent's Memorandum of Law and on all the files, records and proceedings herein and the Domestic Relations Code of the Shakopee Mdewakanton Sioux (Dakota) Community.

Dated: 4/23/2014



Anne Heimkes Tuttle (216872)

TUTTLE BERGESON, P.A.

1275 Ramsey Street, Suite 600

Shakopee, MN 55379

(952) 746-2350

Attorney for Petitioner

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Court File No. 783-14

In Re the Marriage of:

Cyndy Stade-Lieske,

Petitioner,

and

AFFIDAVIT OF JOSEPH S. LIESKE

Joseph Stephen Lieske,

Respondent.

STATE OF MINNESOTA)
) SS:
COUNTY OF SCOTT)

Joseph S. Lieske, after having been duly sworn upon oath, deposes and states as follows:

1. I am the Respondent in this matter. I am submitting this Affidavit in support of my motion seeking dismissal of the marriage dissolution proceeding in this Court in order that it may proceed in Scott County District Court.
2. I retained Attorney Melissa J. Chawla from Walling, Berg & Debele, P.A. to start a divorce proceeding. Upon her advice and counsel, the Summons and Petition for Dissolution were drawn up placing the matter in Scott County District Court. Petitioner Stade-Lieske was served with the Summons and Petition for Dissolution on February 27, 2014 and filed with Scott County District Court on the same date with the Affidavit of Service being filed on February 28, 2014.

3. On or about that same date I was served with a Notice of No Trespass on the on the Shakopee Mdewakanton Sioux Community (hereinafter referred to as SMSC) for the reason given that I had taken property from our home located at 2211 Sioux Trail. (See Attached Exhibit I).
4. Shortly thereafter, I was notified by my attorney that she had to withdraw as she had a conflict of interest. I retained my current attorney, Ms. Tuttle on March 5, 2014.
5. On March 8, 2014 I was personally served with a Summons and Petition for Dissolution of Marriage for a Tribal Court proceeding. My attorney was also notified that a hearing date had been set in Scott County District Court contesting jurisdiction and venue of that Court and requesting dismissal of that action.
6. A hearing was held in Scott County District Court on April 1, 2014 before the Hon. Christian S. Wilton, Judge of the District Court. Judge Wilton told us at that hearing that he had received a telephone call from the Hon. Judge Buffalo in regard to the jurisdictional issues. My understanding was that the two judges were going to speak again in regard to this matter.
7. I am attaching for this Court's review, and request that it be incorporated into this Affidavit, the Affidavit I submitted to Scott County District Court in regard to the issue of jurisdiction and venue. (See Attached Exhibit II). I would like to emphasize that the Petitioner and I do not have minor children subject to the UCCJEA which would require jurisdiction within the Tribal Court. Both Petitioner and I agreed in our arguments and pleadings that both Courts have jurisdiction over this matter and it must be decided between the two Courts as to how to proceed. I have already been informed by Petitioner's attorney that they will appeal any ruling to retain jurisdiction by Judge Wilton.
8. I believe that it is important to note that I believe that both Courts have jurisdiction in this matter and that the Court's will apply their respective statutory and caselaw fairly. The reality of

the situation is that Minnesota Statute §518 and the Domestic Relations Code have differences which have prompted these “dueling” petitions. Petitioner is asking that this Court take priority over Scott County District Court because she believes that she will have a “leg up” on me with the application of the Domestic Relations Code.

9. I am not a Tribal member and I am not allowed by Petitioner’s actions to come on SMSC property. I do not live on the reservation nor will I be able to in the future. Tribal Court and Scott County District Court lie within the same community and are minutes apart.

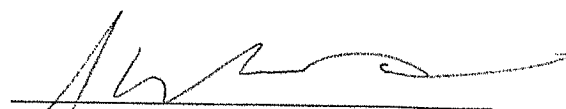
10. Petitioner and I have been married for over 17 years. I worked and supported myself prior to our marriage. Once we married Petitioner did not want me to work. I was primarily responsible for caring for our home. I contributed to our marriage in ways that were not financial but did save us money by not having to hire things done. Petitioner had me excluded for taking limited personal items from our home; personal property that I need to be able to find employment and move forward with my life. I have no financial resources other than family from whom I can borrow money.

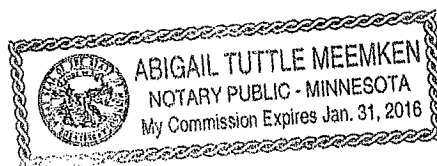
11. It is with no disrespect to this Court that I request that this matter continue in Scott County District Court and that the Summons and Petition for Dissolution of Marriage filed with this Court be dismissed.

FURTHER YOUR AFFIANT SAYETH NOT.

Subscribed and sworn to before
me this 15th day of April, 2014.


Notary Public


Joseph S. Lieske



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**MEMORANDUM OF LAW
RE JURISDICTION AND VENUE**

Respondent ("Husband") submits this Memorandum of Law in support of his Motion seeking dismissal of this action in the Shakopee Mdewakanton Sioux (Dakota) Community Tribal Court, (hereinafter referred to as "Tribal Court.") Scott County District Court has jurisdiction in this matter and is the appropriate venue for this dissolution proceeding.

STATEMENT OF THE FACTS

The parties in this matter were married on June 25, 1996, in Las Vegas, Nevada. The parties have no minor children of said marriage. Petitioner ("Wife") is a member of the Shakopee Mdewakanton Sioux (Dakota) Community, (hereinafter referred to as "Tribal Community"). Husband is not a member of the Tribal Community. During the marriage the parties resided at 2211 Sioux Trail NW, Prior Lake, Scott County, Minnesota, which is also within the Tribal Community. Upon service of the Summons and Petition for Dissolution, the Wife sought and obtained a No Trespass Order, without notice to Husband, barring him from traveling on any

land within the Tribal Community, except for a temporary exemption allowing him to “temporarily stay” at his step-daughter’s residence. Since that time, Husband has obtained temporary housing outside the SMSC Community.

Husband left the family homestead with little or no financial resources and a few items of personal property that he has listed in his affidavit. Additional facts supporting Husband’s counter motion are included in the Affidavit of Joseph Lieske.

After the Summons and Petition for Dissolution were served and filed with the Scott County Court, Wife served Husband with a Summons and Petition for Dissolution claiming jurisdiction and venue in Tribal Court. Their motion seeking dismissal of the Scott County District Court matter followed. The issue of jurisdiction of Scott County Court’s was heard before Hon. Christian S. Wilton, Judge of District Court, on April 1, 2014. Judge Wilton noted at the hearing that he had received a call from the Hon. Judge Henry Buffalo, Judge of Tribal Court, in regard to the issue of jurisdiction. This matter is currently pending before Scott County District Court.

ARGUMENT

The Motion to Dismiss for Lack of Jurisdiction in this matter should be granted. Concurrent jurisdiction exists and the doctrine of comity, along with several factors that should be considered in state-tribal relations, suggests that this Court should defer to Scott County District Court. This matter should continue in Scott County District Court as it retains proper jurisdiction and venue.

- I. Concurrent jurisdiction exists between the Tribal Court and the District Court, and by the doctrine of comity, this Court should grant Husband’s motion seeking dismissal.**

Concurrent jurisdiction involves two or more tribunals that are authorized to hear and dispose of a matter and the choice of which tribunal is up to the person bringing the matter to court. *Black's Law Dictionary* 291 (6th ed. 1990). Minnesota state courts and tribal courts have concurrent jurisdiction over some causes of action, even over some that arise in Indian country. *Lemke ex rel. Teta v. Brooks*, 614 N.W.2d 242, 244-45 (Minn. Ct. App. 2000). In fact, “[t]here are few instances of a state court deferring to the jurisdiction of a tribal court, where they shared concurrent jurisdiction.” *Gayle v. Little Six, Inc.*, 555 N.W.2d 284, 292 (Minn. 1996). Public Law 280¹ finds that state civil laws of “general application to private persons,” including marriage and divorce, have the same force and effect throughout the state, in both Indian and non-Indian country. 28 U.S.C. 1360(a). Furthermore, “[a] divorce proceeding in state court between an Indian and a non-Indian does not infringe on the right of self-government of Indians residing on the reservation Thus, tribal consent is not required to confer state jurisdiction over dissolution of marriage actions.” 42 C.J.S. Indians § 153 (March 2014). A state court may also distribute property located on a reservation. *Id.*

It has already been established and recognized by both parties, as well as Scott County District Court, that concurrent jurisdiction exists in this matter. Accordingly, the law acknowledges that even in cases where property exists on the reservation, as in the present case, the state court has the authority to distribute said property. Husband has established that although he has lived within the Tribal Community, he has not given up his right as a citizen of the State of Minnesota or the County of Scott.

“Comity” is a rule of courtesy by which one court defers to the concomitant jurisdiction of another. Judicial comity is not a rule of law, but one of practical convenience and expediency

¹ What has become referred to as Public Law 280 is codified as 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1324, and 28 U.S.C. § 1360.

based on the theory that a court that first asserts jurisdiction will not be interfered with in the continuance of its assertion by another court . . . unless it is desirable that one give way to the other. *Mast, Foos, & Co. v. Stover Mfg. Co.*, 177 U.S. 485, 488. The standard to be considered where comity exists is found in the concurring opinion written by the Chief Justice of the Wisconsin Supreme Court in *Teague v. Bad River Band of the Lake Superior Tribe of Chippewa Indians*, 265 N.W.2d 899, 917 (Wis. 2003). “Comity is based on respect for the proceedings of another system of government and spirit of cooperation . . . [it] endorses the principle of mutual respect between legal systems, recognizing sovereignty and sovereign interest of each governmental system and the unique features of each legal system.” *Id.* Comity is a doctrine that emphasizes courts recognizing, accepting, and respecting different processes. *Id.*

Husband does believe that both the District Court and the Tribal Court will offer fair and just analyses of the respective laws that each are governed by. There are differences between the Domestic Relations Code and Minnesota Statutes §518. Additionally, because Husband has been banned from the Tribal Community premises, it would be unreasonable for the Tribal Court to retain jurisdiction in this dissolution proceeding as Husband is not even allowed on the Tribal Court premises. This Court should defer to Scott County District Court and grant the motion to dismiss.

II. In determining which of the two courts should proceed in this matter, several factors known as the *Teague* Protocol, when reviewed in light of the procedural history of this case, compel this Court to defer jurisdiction to District Court.

With respect to the principles of comity, Chief Justice Abrahamson, from the Wisconsin Supreme Court, developed a standard involving various factors to consider when determining which court should exercise jurisdiction in a concurrent jurisdiction situation. *See Teague*, 265

N.W.2d at 101. Although there is no precedential standard for deciding such issues in Tribal Court or Minnesota State Courts, the *Teague* Protocol has been adopted by courts in Wisconsin, and would offer a model for state-tribal relations in Minnesota. See Robert A. Blaesner and Andrea L. Martin, *Engendering Tribal Court/State Court Cooperation*, 63 Minnesota Bench and Bar (December 2006) (describing what the *Teague* Protocol is, its success in Wisconsin, and why Minnesota should adopt the standard). The *Teague* Protocol was designed based on the principles of comity. It recommends that judges in concurrent jurisdiction cases should meet and consider thirteen factors and decide which court should proceed. In any case, the factors would offer ample guidance for this Court in considering which jurisdiction should prevail.

Husband contends that a review of these factors, while considering the history of this case, would compel this Court to dismiss the dissolution proceeding in Tribal Court and revert to Scott County District Court.

The thirteen factors to be considered include the following: (1) where the action was first filed and the extent to which the case has proceeded in the first court; (2) the parties' and court's expenditure of time and resources in each court; (3) the relative burden on the parties including cost, access to and admissibility of evidence, and matters of process; (4) whether the nature of the action implicates tribal sovereignty, including but not limited to the subject matter and identities and immunities of the parties; (5) whether the issues in the case require application of state or tribal law; (6) whether the case involves traditional or cultural matters of the tribe; (7) whether the location of events giving rise to litigation is one 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; (13) whether either jurisdiction has entered a final judgment that conflict with another judgment. *Teague*, 265 N.W. 2d at 101.

In applying the *Teague* standard the facts of this case, the Court will find the following:

(1) where the action was first filed and the extent to which the case has proceeded in the first court;

It is undisputed that the Scott County proceeding was served on Wife first in this matter. The Summons and Petition for Dissolution with Scott County District Court was filed on February 28, 2014. On March 8, 2014 Husband was served with a Summons and Petition for Dissolution of Marriage venued in the Tribal Court. Scott County District Court set the matter on for hearing on the issue of jurisdiction and venue. This matter was heard on April 1, 2014 after submission by the parties of Motions, Affidavits of the parties, and Memorandums of Law in regard to this issue. The decision of the Court is pending at this time.

(2) the parties' and court's expenditure of time and resources in each court;

Scott County District Court has received extensive pleadings and Memorandums of Law from both parties along with hearing the matter in court on the issue of jurisdiction and venue. A decision in this matter is currently pending before the Hon. Christian Wilton, Judge of District Court. Judge Wilton noted that he would be conferring with the Hon. Henry Buffalo in regard to this matter.

Husband, who has little or no financial resources, has already expended a significant amount of attorney's fees and costs in his efforts to have Scott County District Court retain jurisdiction in this matter. In addition, if this Court and the Scott County District Court cannot resolve this issue, Wife has already indicated her intent to appeal this matter to the Minnesota Court of Appeals, incurring yet more legal fees and costs. Any delay in resolving this matter

and allowing it to move forward will have a severe detrimental financial impact upon Husband. Wife has the requisite financial resources to protect her interests in either Court setting.

(3) the relative burden on the parties including cost, access to and admissibility of evidence, and matters of process;

Neither party would be burdened by having to appear in Scott County District Court as opposed to Tribal Court, since both courts are located within a few miles of each other. What would be burdensome would be the difficulty of Husband in regard to appearing in Tribal Court which is located within the Tribal Community, a place from which he is barred due to the No Trespass Order obtained by Wife. Wife's actions are intimidating as she has shown a willingness to be unreasonably punitive toward Husband due to her anger over his initiation of the dissolution proceeding.

In addition to the concerns about accessibility in Tribal Court, Scott County District Court proceedings not only encourage but require parties to a dissolution proceeding to exhaust alternative dispute resolution processes. These measures have afforded parties within the state court system the ability to resolve their dissolution issues at less cost and more quickly. Wife has indicated that her sole purpose in seeking Tribal Court involvement is that she believes that she will have the "upper hand" based on the application of the Domestic Relations Code; this leaves her little incentive to move toward resolution without burdensome litigation.

(4) whether the nature of the action implicates tribal sovereignty, including but not limited to the subject matter and identities and immunities of the parties;

There are no issues implicating tribal sovereignty in this matter. The analysis used in Minnesota State Courts in regard to determining whether tribal sovereignty is implicated is the Court's differentiation between the "tribe" and the "individual." *Lemke v Brooks*, 614 N.W. 2d

242 (Minn. Ct. App. 2000). The Court found that “Lemke does not seek damages against a tribe, tribal official or tribal business, or implicate the sovereign immunity of the tribe.” The Court in *Brooks* also noted that of significance is the subject matter of the law. Under Public Law 280, state civil laws of “general application to private persons” have the same force and effect throughout the state, in both Indian and non-Indian country. *Id.*

Husband is not seeking to interfere with the tribes’ rights, to reduce the Community’s ability to govern itself, or to interfere with the Tribal Court’s jurisdictional claims to actions involving activities exclusive to the reservation. The Tribal Community lies within the State of Minnesota and these individuals moved freely and conducted their daily lives from reservation lands to the state beyond. The parties were not married within the Tribal Community. Divorce is not an action exclusive to the Tribal Community. It does not impair the right of the Tribal Community to make laws governing the reservation or the members therein.

(5) whether the issues in the case require application of state or tribal law;

Congress has granted Minnesota, along with five other states, limited civil jurisdiction over almost all Indian country within the state. Public Law 280² finds that state civil laws of “general application to private persons” have the same force and effect throughout the state, in both Indian and non-Indian country. 28 U.S.C. 1360(a). Civil laws of general application include areas such as “contracts, tort, **marriage, divorce**, insanity, descent, etc.,” but would not include the state’s sovereign powers, such as the power to tax. *Bryan v. Itasca County*, 426 U.S. 373, 384 (1976) (emphasis added).

Wife argues that the marital dissolution of these parties requires application of tribal law due to the fact that their finances are integrally tied to her tribal membership and the resulting

² What has become referred to as Public Law 280 is codified as 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1324, and 28 U.S.C. § 1360.

“per capita” payments that she receives. As in *Brooks*, this argument does not “require” application of tribal law, it is her preference as she believes that the Domestic Relations Code will give her a better outcome than Minnesota §518.

Wife asserted in Scott County District Court that Husband is forum shopping. Husband would assert that Wife is doing exactly this. As indicated in both parties’ affidavits, the law pertaining to spousal maintenance, marital property and attorney’s fees varies between Minnesota Statutes §518 and the Shakopee Mdewakanton Sioux (Dakota) Domestic Relations Code. This is what is driving Wife’s request for the Tribal Court to assert jurisdiction in this matter.

In this case, despite Wife being a member of the Tribal Community, Husband is not. There are no minor children of said dispute that would implicate tribal sovereignty and, as such, require jurisdiction within the Tribal Court.

It is reasonable to assume that the law that applied in this matter is going to be determined by the court that is hearing the particular issues in dispute. However, the issues of this case do not require the application or interpretation of tribal law. In fact, concurrent jurisdiction exists, tribal consent is not required for state jurisdiction to prevail, and a state court may also distribute property located on the reservation. Although there are differences in tribal and state laws regarding the treatment of spousal maintenance and *per capita* payments, both tribal and state courts have authority to determine such. Tribal law is not required for spousal maintenance pertaining to *per capita* payments or for distribution of property, which are the major concerns in this dissolution proceeding.

(6) whether the case involves traditional or cultural matters of the tribe;

There are no traditional or cultural implications involved in this dissolution proceeding. Marital vs. non-marital assets and the ability to seek attorney's fees and costs of the other party do not implicate these very basic concerns. Traditional and cultural implications are important in regard to the preservation of the tribes and their heritage. There is no issue herein which would impinge on this important consideration.

(7) whether the location of events giving rise to litigation is on tribal or state land;

The parties were married in Las Vegas, Nevada. They have moved freely from tribal land and beyond in their day to day activities. They have entered into contracts with business entities outside the reservation and have participated in activities that take place off reservation lands.

While it is accurate that the parties' have a home located within the tribal community, and have relied on the *per capita* payments throughout their marriage, Husband is not a tribal member and does not currently reside in the Tribal Community. In fact, before the action in Tribal Court was commenced, Husband was served with a Notice of No Trespass on the Tribal Community. Husband is not even allowed to be present on Tribal Community grounds without being arrested.

(8) the relative institutional or administrative interests of each court;

Both this Court and the Scott County District Court have the ability to effectively administer any decisions they would make in regard to these matters.

(9) the tribal membership status of the parties;

While the Wife is a tribal member, Husband is not.

(10) the parties' choice of forum by contract;

(11) the parties' choice of law by contract;

The parties have not made any contractual choice as to the choice of law or the forum in this matter through a antenuptial or postnuptial agreement.

(12) whether each court has jurisdiction over the dispute;

Both parties have acknowledged before Judge Christian Wilton, in Scott County District Court that each court has jurisdiction over this matter;

(13) whether either jurisdiction has entered a final judgment that conflict with another judgment.

At this point in time, no final judgment has been entered by either Court.

Husband believes that when this Court considers and applies the foregoing analysis and determines that through principles of comity, Scott County District Court should exercise jurisdiction over the parties and subject matter of this dispute and should dismiss the Petition for Dissolution of Marriage in Tribal Court.

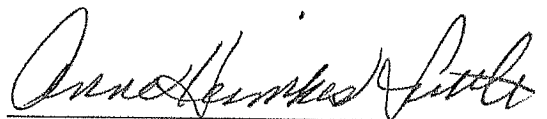
CONCLUSION

The principles of comity are long recognized and offer ample support for determining issues of jurisdiction when concurrent jurisdiction exists. In the present case, the doctrine of comity along with the *Teague* Protocol should be considered in determining which court should proceed with this matter. When viewed in light of the procedural history and facts of this case, the *Teague* Protocol compels this Court to defer jurisdiction. Accordingly, Scott County District Court is the appropriate venue as Husband is a citizen of Scott County and chose the forum for this proceeding. Husband respectfully requests that the Motion to Dismiss for Lack of Jurisdiction in this matter be granted.

Respectfully submitted,

TUTTLE BERGESON, P.A.

Date: 4/23/2014

By: 

Anne Heimkes Tuttle (216872)
Attorney for Respondent
1275 Ramsey Street, Suite 600
Shakopee, MN 55379
952-746-2350

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AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) SS:
COUNTY OF SCOTT)

Abigail Meemken, of the City of Shakopee, County of Scott, State of Minnesota, being duly sworn upon oath, states that on the 23rd day of April, 2014, she served the following documents:

1. Notice of Motion and Motion to Dismiss for Lack of Jurisdiction;
2. Affidavit of Joseph S. Lieske; and
3. Memorandum of Law Re Jurisdiction and Venue

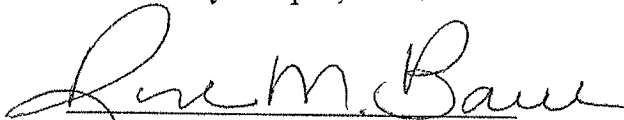
on the following parties:

Mr. Edward L. Winer
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Fax# 612-877-5999

By faxing the same, directed to said person at the fax number listed above.


Abigail Meemken

Subscribed and sworn to before me
this 23rd day of April, 2014.


Notary Public

