

SMSDC Tribal Court File:
783-14

FILED MAY 08 2014 JKM

DISTRICT COURT
LYNN K. McDONALD
CLERK OF COURT

STATE OF MINNESOTA

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

In re the Marriage of:

Joseph Stephen Lieske,

Court File No.: 70-FA-14-3740

Petitioner,

and

Cyndy Stade-Lieske,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Respondent.

INTRODUCTION

The above-entitled matter came before the Honorable Christian S. Wilton, Judge of District Court, at the Scott County Justice Center, Shakopee, Minnesota, on April 1, 2014 for a Motion Hearing. Anne Heimkes Tuttle, Esq., appeared on behalf of Petitioner. James J. Vedder, Esq., appeared on behalf of Respondent.

Based on all files, records and proceedings herein, the Court hereby makes the following:

FINDINGS OF FACT

1. Petitioner and Respondent were married on June 25, 1996, in Las Vegas, Nevada.
2. The parties have no minor children from the marriage.
3. Respondent is a member of the Shakopee Mdewakanton Sioux (Dakota) Community (hereinafter "Tribal Community"). Petitioner is not a member of the Tribal Community.
4. During the marriage the parties resided at 2211 Sioux Trail NW, Prior Lake, Scott County, Minnesota, which is within the Tribal Community.

CONCLUSIONS OF LAW

I. This Court has Jurisdiction over this matter.

Judicial jurisdiction over matters involving Indians or Indian tribes is a function both of territory, where the matters arise, and of subject matter, the nature of the claim. Gavle v. Little Six Inc., 555 N.W.2d 284, 289 (Minn. 1996), pet. for cert. filed, 65 USLW (Jan. 29, 1997). "A court's jurisdiction may depend not only on the location of events but also on the race of the parties or the subject matter of the case." Id. citing Felix S. Cohen, *Handbook of Federal Indian Law*, 49 (1982 ed.). Jurisdiction of state courts over both civil and criminal matters involving Indians is governed by federal statute or case law, given the pervasive sweep of federal law in Indian matters. Id. Absent a grant of federal authority, state courts have no jurisdiction over Indians, Indian tribes, or other Indian entities. Id. at 289.

Congress has granted Minnesota state court criminal jurisdiction for matters occurring within Indian country, 18 U.S.C. § 1162 (2012), as well as civil jurisdiction in actions to which Indians are parties. 28 U.S.C. § 1360(a) (2012). The latter statute provides as follows:

[Minnesota] shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country¹...to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State.

Id. Because 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 jurisdictions. Thus, this Court does have jurisdiction and the issue is one of concurrent jurisdiction.

¹ 28 U.S.C. § 1360(a) excepts the Red Lake Reservation from the application of this statute.

II. This Court has priority because the action was first commenced in Scott County.

Minnesota state courts and tribal courts have concurrent jurisdiction over some causes of action, even over some that arise in Indian country. Lemke v. Brooks, 614 N.W.2d 242, 244-45 (Minn. Ct. App. 2000). 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. Gavle, 555 N.W.2d at 290 (citing *Black's Law Dictionary* 291 (6th ed. 1990)).

Instead of employing the abstention doctrine, a “narrow exception to the duty of a District Court to adjudicate a controversy properly before it,” which is appropriate only in limited circumstances, we will look to comity as a framework for our discussion. The general rule, which rests on comity, is that: “Where two actions between the same parties, on the same subject, and to test the same rights, are brought in different courts having concurrent jurisdiction, the court which first acquires jurisdiction may dispose of the whole controversy.” Id.

In applying the applicable law as stated above, it is clear that this Court maintains the same jurisdiction over the parties’ dissolution proceeding as the Tribal Court. In this case, Petitioner served upon Respondent and filed his Summons and Petition for Dissolution with Scott County district court on February 27, 2014, thereby initiating the parties’ dissolution proceeding and choosing the forum he wished to hear and decide the proceedings. Petitioner had within his right to file the dissolution action in Tribal Court; he chose not to do so. Respondent could have, but did not, serve upon Petitioner and file the parties’ dissolution action in Tribal Court before Petitioner served and filed this action. Rather, Respondent waited until March 7, 2014 to file with the Tribal Court of the Shakopee Mdewakanton Sioux (Dakota) Community her

Petition for Dissolution of Marriage. Through application of the law, this Court has jurisdiction over the matter and may dispose of the whole controversy.

III. The principles of comity favor this Court over the Tribal Court.

Respondent, citing dicta in Prescott v. Little Six, Inc., 897 F. Supp. 1217 (D. Minn. 1995), asserts that federal policy requires that tribal remedies be exhausted and the state court abstain from asserting jurisdiction. However, this Court finds that argument to be misplaced. Prescott is not settled law in regard to dissolution matters but was specific to the issues raised by the court in Prescott. In addition, the “tribal exhaustion rule” requires federal courts to abstain from hearing certain claims, not state courts. 41 Am. Jur. 2d *Indians* § 145 (2014). Finally, the exhaustion requirement concerns comity rather than subject-matter jurisdiction. Lemke v. Brooks, 613 N.W. 2d 242 (Minn. Ct. App. 2000) (citing Klammer, 535 N.W.2d at 380). Thus, the exhaustion rule does not apply here and does not affect this Court’s jurisdiction.

Respondent next suggests that in cases where courts have concurrent jurisdiction, the doctrine of comity provides a framework to determine which court is the more appropriate forum. As discussed above, “comity” is a rule of courtesy by which one court defers to the noncomitant jurisdiction of another. Judicial comity is not a rule of law, but one of practical convenience and expediency based on the theory that a court which 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. Respondent cites to Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians for application of nine factors to consider in determining whether to assert or abstain from asserting jurisdiction. 665 N.W.2d 899 (Wis. 2003). Prior to listing the factors to consider, the court in Teague points out that comity is discretionary and highly fact specific. Id. at 917.

The factors discussed in Teague are listed in the following order: (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, (4) whether the nature of the action implicates tribal sovereignty, (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 by contract, if any, of a forum in the event of dispute, (11) the parties' choice by contract, if any, of the law to be applied in the event of a dispute, (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. As factors ten, eleven, and thirteen are not applicable, this Court will not address them below. Factor twelve has already been discussed above in the concurrent jurisdiction discussion and thus will not be included below.

A. Where the action was first filed

As was discussed above, Petitioner brought this action first and filed on February 27, 2014 in Scott County district court. Both parties have submitted motions, memorandums, and affidavits prior to the first hearing. An Initial Case Management Conference was scheduled for April 1, 2014. This matter was continued to a later date to hear the motions present before this Court. This factor weighs in favor of Petitioner to maintain jurisdiction in state district court.

B. The parties' and courts' expenditures of time and resources in each court

As mentioned above, the parties have expended more time in state district court than they have in Tribal Court. The parties made appearances on April 1, 2014 to hear motions and have filed multiple documents in the Scott County Courts. The parties have not as of yet appeared in Tribal Court.² To date, the time and resources expended in state district court outweigh that spent in Tribal Court.

C. The relative burdens on the parties

Respondent lives in Prior Lake, Minnesota, on the Shakopee Mdewakanton Sioux (Dakota) Community Reservation. She does not live far from the Scott County Courthouse and nothing indicates it would be a burden to come to the Scott County Courthouse. Respondent has already made an appearance and did not indicate it was unduly burdensome for her. Petitioner also lives in Prior Lake and on the Reservation. However, he lives with Respondent's daughter in an attempt to diffuse the current situation. After receiving Petitioner's Summons and Petition for Dissolution, Respondent demanded that the Tribal Council ban Petitioner from being on Tribal Land. Petitioner received a Notice of No Trespass and has identified his name as being among the list of individuals excluded from the Tribal Community. Although this ban can potentially be lifted, it is an additional burden on Petitioner that is not present with Respondent in Scott County. Accordingly, this Court finds that with the Notice of No Trespass, this factor weighs in favor of Petitioner.

D. Whether the nature of the action implicates tribal sovereignty

This matter does not implicate tribal sovereignty any more than it implicates state sovereignty. The nature of the action is a marital dissolution which has an equal effect on both

² The parties are scheduled to appear on May 8, 2014 in front of Judge Henry M. Buffalo.

parties, one being an Indian individual and one being a non-Indian individual. As such, this Court finds this factor to be neutral.

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

This factor is neutral because both the state and the tribe have an equal interest in the application of its own law.

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

This Court finds this factor to be neutral.

G. Material events giving rise to the litigation

Both parties have resided on Community property during their marriage and have spent the vast majority of their time on Community property. However, the parties were married off of Community property in Las Vegas, Nevada. In addition, there is not one dispositive event that led to the current dissolution. Accordingly, this Court finds this factor to be neutral.

H. The relative institutional or administrative interests of each court

Both Courts have equal institutional and administrative interests in this matter. This Court finds this factor to be neutral.

I. The tribal membership status of the parties

The present dissolution involves a Tribal resident and a non-resident. As the tribal membership status does not favor either party, this factor remains neutral.

"There are few instances of a state court deferring to the jurisdiction of a tribal court, where they shared concurrent jurisdiction." Gavle v. Little Six, Inc., 555 N.W.2d 284, 292 (Minn. 1996). This Court finds that seven of the factors discussed above are neutral in the current dissolution matter. The remaining two factors, where the action was first filed and the

expenditures of time and resources, favor state district court. The 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. Teague, 665 N.W.2d at 919. This ultimate goal is not compromised in the instant matter because tribal sovereignty is not implicated and the application of tribal law is not required. As a matter of comity, the factors require this court to maintain jurisdiction and dispose of the whole controversy.

IV. Petitioner has established the requisite basis for need-based attorney fees.

“The Court *shall* award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding, provided it finds: (1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding...; (2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and (3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.” Minn. Stat. § 518.14, subd. 1 (2012). In other words, need-based fees require the moving party to demonstrate “that an award is necessary for a party to assert his or her rights in an action, that the payor has the financial means to pay the fees, and that the payee lacks the means to pay the fees.” Crosby v. Crosby, 587 N.W.2d 292, 298 (Minn. App. 1998). The party seeking payment of fees bears the burden to produce evidence that he or she lacks the ability to pay the fees.

Moravick v. Moravick, 461 N.W.2d 408, 409 (Minn. App. 1990).

Here, Petitioner has established that need-based fees are necessary for him to be able to assert his rights in this action and contest the issues of jurisdiction and venue for the dissolution proceeding, as well as to resolve the dissolution proceeding itself. The parties have relied on Respondent's income throughout their 19-year marriage. Consequently, Petitioner has no current source of income and therefore no means to pay his attorney fees. Respondent, on the other hand,


receives monthly per capita payments from the Shakopee Mdewakanton Sioux (Dakota) Community in the amount of \$64,706.04. Respondent is capable of paying the attorney fees whereas Petitioner does not have the means. Finally, this Court believes that an award of \$3,000.00 is not excessive and is a reasonable amount to contest the jurisdiction and venue issues herein.

ORDER

1. Respondent's Motion to Dismiss Petitioner's Petition for Dissolution based on inappropriate venue is **DENIED**.
2. Respondent's request that the Court transfer jurisdiction from Scott County to the Tribal Court of the Shakopee Mdewakanton Sioux (Dakota) Community pursuant to Minn. Stat. § 518.09 (2012) is **DENIED**.
3. Petitioner's Motion to Dismiss Respondent's motion in its entirety is **DENIED**.
4. Petitioner's request for need-based attorney fees and costs from Respondent in the amount of \$3,000.00 is **GRANTED**.
5. Scott County District Court is the appropriate venue and will retain jurisdiction over this dissolution matter.

BY THE COURT:

DATED: 5-7-14


Christian S. Wilton
Judge of District Court