

STATE OF MINNESOTA

COUNTY OF SCOTT

Joseph Stephen Lieske,

Petitioner,

and

Cyndy Stade-Lieske,

Respondent.

DISTRICT COURT

FIRST JUDICIAL DISTRICT

FAMILY COURT DIVISION

Case Type: Dissolution Without Children

COURT FILE NO. 70-FA-14-3740

RESPONDENT'S MEMORANDUM OF

LAW ON JURISDICTION/VENUE

Respondent (hereinafter "Wife") submits this Memorandum of Law in support of her Motion to Dismiss the Marital Dissolution Petition of Petitioner (hereinafter "Husband") due to lack of jurisdiction and improper venue. This divorce case should be determined by the Tribal Court of the Shakopee Mdewakanton Sioux (Dakota Community). Wife is a resident of the Mdewakanton Sioux who resides on the Reservation. Husband is not a member of the Mdewakanton Sioux, but currently resides on the reservation and did so throughout the parties' nineteen (19) year marriage. The parties availed themselves of the benefits of the tribal community and should have their marriage dissolved pursuant to the Tribal Code.

STATEMENT OF THE FACTS

In the interests of brevity, please see the Affidavit of Wife dated March 7, 2014 as and for a complete statement of the facts.

ARGUMENT

Husband's marital dissolution proceeding should be dismissed because it impinges on the rights of the Mdewakanton Sioux to make their own laws and be ruled by them. Wife has lived on the Reservation her entire life. Husband has lived on the Reservation for the last nineteen (19) years. Further, venue is appropriate on the Reservation based on both parties residing on the Reservation. The Tribal Code should be applied to these two individuals who reside on the Reservation.

I. THE EXERCISE OF STATE JURISDICTION OVER THE PARTIES' MARITAL DISSOLUTION PROCEEDING IMPINGES ON THE RIGHT OF THE MDEWAKANTON SIOUX TO MAKE THEIR OWN LAWS AND BE GOVERNED BY THEM.

The marital rights and obligations of two residents of the Mdewakanton Sioux Community, one a member and one not a member, should be determined by the laws of the Community. The parties in this case have resided together on the reservation for the last nineteen (19) years. Wife has lived on the Reservation throughout her entire life. All of the parties' property is held on the Reservation.

The exercise of state jurisdiction over the tribes and tribe members depends ultimately on "whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." Williams v. Lee, 358 U.S. 217, 220, 79 S.Ct. 269, 271 (1959). The rule articulated by the Supreme Court is that "[s]tate jurisdiction is preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the State interests at stake are sufficient to justify the assertion of State authority." *Id.*; see also California v. Cabazon Band of Mission Indians, 480 U.S. 202, 216, 107 S.Ct. 1083, 1092 (1987). In Minnesota a three-factor test was adopted to determine whether exercising jurisdiction involving a tribal member infringes on a tribe's self governance, which is as follows:

1. The parties' status as "Indian" or "non-Indian";
2. "Whether the cause of action arose on the reservation; and
3. "The relative interests of the parties."

Anderson v. Beaulieu, 555 N.W.2d 537, 540 (Minn.App. 1996).

A. Wife is a member of the Community and Husband is not a member of the Community.

There is no dispute that Wife is a member of the Mdewakanton Sioux and that Husband is not a member. However, both parties have resided on the Reservation for the last nineteen (19) years.

B. The cause of action arose on the Reservation.

The parties lived and resided on the Reservation throughout the entirety of their marriage. Husband continues to live on the Reservation. Wife has lived on the Reservation for the last forty-three (43) years. The real property owned by the parties is located on the Reservation. The parties' personalty is located on the Reservation. The primary source of Wife's income is the per capita payments she receives from the Community. Husband does not work. Wife's bank is on the Reservation. All of the parties' ties are to the Reservation.

C. The relative interests to the parties pertain to the per capita payments.

The parties' interests are significant in this case given the different ways that Minnesota law and Tribal law treat Wife's per capita payments. Tribal law provides that the per capita payments are not to be divided between the parties. Minnesota law provides that the per capita payments can be considered for spousal maintenance purposes. Given the amount of the per capita payments, where the case proceeds will have significant impacts on the parties' through the marital dissolution proceeding.

The case should proceed in Tribal Court. The parties have resided on the Reservation throughout their marriage and both continue to reside there. The primary issue at stake here is Wife's per capita payments, which she only receives by virtue of being a member of the Mdewakanton Sioux. Husband has accepted the benefits of living on the Reservation for the last nineteen (19) years. Husband is forum shopping by having the case venued in State Court when the parties have not resided outside of the Reservation throughout their marriage.

II. THE CASE SHOULD BE VENUED IN TRIBAL COURT.

The parties reside on the Reservation. "A proceeding for dissolution or legal separation may be brought by either or both spouses and shall be commenced by personal service of the summons and petition venued in the county where either spouse resides." Minn. Stat. § 518.09. Residence is defined as "the place where a party has established a permanent home from which the party has no present intention of moving." Minn. Stat. § 518.003, subd. 9.

Husband's Petition alleges that both parties reside on the Reservation. Husband's Petition lists his address as 2211 Sioux Trail NW, Prior Lake, MN 55372, which is on the Reservation. Husband is currently living with Wife's daughter at 2937 Dakota Trail South, Prior Lake, MN 55372, which is on the Reservation. Husband's Petition lists Wife's address as 2211 Sioux Trail NW, Prior Lake, MN 55372, which is also on the Reservation.

This case should be venued in Tribal Court where both parties currently reside and have resided throughout their marriage. The parties have established permanent homes on the Reservation. For the last nineteen years neither party has moved off of the Reservation.

CONCLUSION

The parties' divorce proceeding in Scott County should be dismissed so that it can continue to proceed in Tribal Court. Wife has filed her Petition in Tribal Court and that case will

continue to move forward. Tribal Court is the appropriate venue to resolve the parties' disputes given the residence there, property owned there and all interests there.

Dated: 3-17, 2014

MOSS & BARNETT
A Professional Association

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AFFIDAVIT OF SERVICE BY FACSIMILE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Court File No.: 27-FA-14-3740

Tamara L. Serna, being first duly sworn, deposes and states that she served the attached

- 1. Notice of Motion and Motion for Dismissal;**
- 2. Affidavit of Cyndy Stade-Lieske; and**
- 3. Respondent's Memorandum of Law on Jurisdiction/Venue**

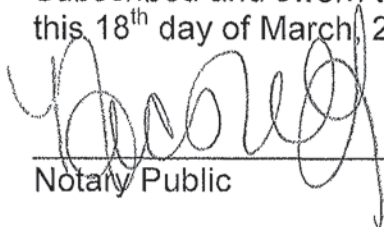
on the following individual on the 18th day of March, 2014, by faxing the attached document to the following individual as follows:

Anne Heimkes Tuttle, Esq.
Tuttle & Bergeson
125 Ramsey Street, Suite 600
Shakopee, MN 55379
Fax: (952) 746-2353



Tamara L. Serna

Subscribed and sworn to before me
this 18th day of March, 2014.



Notary Public

