

SMSD Court file:
783-14

4. XKM

DISTRICT COURT

LYNN K. McDONALD
CLERK OF COURT

FIRST JUDICIAL DISTRICT
FAMILY COURT DIVISION

COURT FILE NO.: 70-FA-14-3740
CASE TYPE: Dissolution Without Children

**SECOND AFFIDAVIT OF
CYNDY STADE-LIESKE**

and

Cyndy Stadel-Lieske,

Respondent.

COUNTY OF HENNEPIN)

1. I am the Respondent in the above-referenced matter. I make this second affidavit to clarify an issue with my first affidavit.

Petitioner and I cohabitated off the Reservation from approximately November 1993 until late summer 1994 because my then husband was living in my home on the Reservation and we were involved in a divorce. Petitioner and I lived in my mother's home on the Reservation for a period of time starting in late summer of 1994. We then moved into my home on the Reservation because my divorce was finalized and my former husband had moved out. Petitioner and I married on June 25, 1996 and have continued to live on the Reservation in my home until Petitioner moved out in February 2014 when we separated. He moved into my daughter's home on the Reservation in February 2014 and I believe he continues to live there. Thus, from the time we lived in my mother's home to the present, we have lived on the Reservation for over 19 years.

I provide this information to avoid any misunderstanding resulting from my prior affidavit.

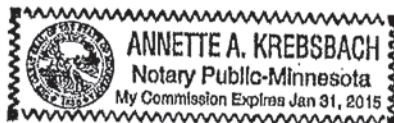
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Cyndy Stade-Lieske
Cyndy Stade-Lieske

SWORN TO BEFORE ME this
25th day of March, 2014.

Annette A. Krebsbach
Notary Public

2476631v1



SMSDC Court File!
783-14

FILED MAR 26 2014

STATE OF MINNESOTA
COUNTY OF SCOTT

LYNN K. McDONALD
CLERK OF COURT

DISTRICT COURT
FIRST JUDICIAL DISTRICT
FAMILY COURT DIVISION

In Re the Marriage of:

COURT FILE NO. 70-FA-14-3740

Joseph Stephen Lieske,

Petitioner,

and

Cyndy Stade-Lieske,

Respondent.

**RESPONDENT'S SUPPLEMENTAL
MEMORANDUM OF LAW ON
JURISDICTION**

Respondent submits this Supplemental Memorandum of Law on Jurisdiction in support of her request that the court dismiss this Scott County marital dissolution case.

ARGUMENT

I. THE TRIBAL COURT HAS JURISDICTION OVER THIS MARRIAGE DISSOLUTION ACTION.

The Shakopee Mdewakanton Sioux (Dakota) Community Domestic Relations Code provides: "The Community shall have jurisdiction over all persons who have resided on its Reservation . . . 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." SMS(D)C Domestic Relations Code, Ch. 3 § 1. Both parties resided on the Community Reservation for 19 years prior to commencement of this action. Therefore, the Tribal Court has jurisdiction over this marital dissolution action.

II. THE TRIBAL COURT MUST DETERMINE ITS JURISDICTION IN THE FIRST INSTANCE.

When a tribal court's jurisdiction is being challenged, the question of whether the tribal court should exercise jurisdiction is properly answered by the tribal court itself. Federal courts have repeatedly announced this policy, and it remains a sound one. See, e.g., *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856 (1985) ("We believe that examination [of tribal court jurisdiction] should be conducted in the first instance in the Tribal Court itself.").

In *Prescott v. Little Six, Inc.*, 897 F. Supp. 1217, 1221 (D. Minn. 1995), employees of a tribal casino brought claims under the Employment Retirement Income Security Act of 1974 ("ERISA") against the casino. The casino argued that jurisdiction properly lay in the tribal court and the federal court should stay the action pending the exhaustion of tribal court remedies. The *Prescott* court agreed, explaining that the tribal court's duty to determine its own jurisdiction is integral to the federal policies of encouraging tribal self-government and the development of tribal courts. The court said:

The Supreme Court and the Eighth Circuit have repeatedly emphasized that tribal courts play a "vital role" in tribal self-governance, and that "because a federal court's exercise of jurisdiction over matters relating to reservation affairs can impair the authority of tribal courts, as a matter of comity, the examination of tribal sovereignty and jurisdiction should be conducted in the first instance by the tribe itself."

Prescott, 897 F. Supp. at 1221 (quoting *Duncan Energy Co. v. Three Affiliated Tribes*, 27 F.3d 1294, 1299 (8th Cir. 1994)). Even in a case such as *Prescott*, where the court considered an ERISA issue over which jurisdiction was presumptively exclusive to federal courts, the court insisted that it was necessary for the tribal court to consider its own jurisdiction first. *Prescott*, 897 F. Supp. at 1222 ("Under the law in this Circuit, however, tribal court jurisdiction is to be decided in the first instance by the tribal court, not the federal court, and federal courts must defer to a tribal court's interpretation of its law.").

Minnesota state courts have similarly recognized the strength of the federal policy favoring tribal court determination of its own jurisdiction. *In v. Lower Sioux Convenience Store*, 535 N.W.2d 379 (Minn. Ct. App. 1995), a customer of a tribal business brought suit to recover for property damage in state court. The tribal business moved to dismiss on the basis of sovereign immunity and comity, arguing that the tribal court must hear the matter first. *Id.* at 379. Despite the fact that no action had yet been filed in tribal court, the appellate court referred to federal policy and determined that "the policy of supporting tribal self-government and self-determination favors a rule that will provide the tribal court, whose jurisdiction is being challenged, the first opportunity to evaluate the factual and legal bases for that challenge, even when . . . no action is yet pending in tribal court." *Id.* at 381. The court further stated that "unconditional access to state court would similarly [to federal court] impair the tribal court's authority," and thus "[w]hether or not there is concurrent jurisdiction, the law still requires that a party first seek and exhaust remedies in tribal court." *Id.* at 381, 383.

Whether the Tribal Court properly has jurisdiction over the instant matter must be determined by the Tribal Court in the first instance.

III. ALTHOUGH THERE IS CONCURRENT JURISDICTION BETWEEN STATE COURT AND THE TRIBAL COURT, THE TRIBAL COURT SHOULD EXERCISE JURISDICTION OVER THIS ACTION.

The Tribal Court and state court have concurrent jurisdiction over marriage dissolution actions. See 28 U.S.C. § 1360(a) (2007). But even where concurrent jurisdiction exists, federal policy requires that tribal remedies be exhausted and the state court abstains from asserting jurisdiction. See *Cohen v. Little Six, Inc.*, 543 N.W.2d 376, 371 n. 3 (Minn. Ct. App. 1996) ("Even if the trial court had concurrent subject matter jurisdiction over this

dispute, federal policy would *require* it to abstain from acting with regard to the matter until after its final resolution in tribal court"); *Klammer*, 535 N.W.2d at 383 ("Whether or not there is concurrent jurisdiction here, the law still requires that a party first seek and exhaust remedies in tribal court."). Moreover, as a matter of comity, the tribal court is the proper jurisdiction in which this matter should be heard.

A. Federal Policy Requires Tribal Court Jurisdiction Over This Matter.

Federal policy requires that tribal courts assume jurisdiction over tribal issues such as those present here. See *Prescott*, 897 F. Stipp. at 1221 ("The Eighth Circuit has interpreted *National Farmers Union* and *Iowa Mutual* to *require* exhaustion of tribal court remedies *before* a case may be considered by a federal district court." (citation omitted)). Indeed, even in cases such as this where one party is a non-Indian, when the matter arises on Community property, it should be resolved by the Tribal Court. See *id.* (citing *Iowa Mut. Ins. Co. v. La Plante*, 480 U.S. 9, 18 (1987)) ("Civil jurisdiction over the activities of non-Indians on reservation lands is an important part of tribal sovereignty that presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or by federal statute."). As discussed more fully below, this case arose on Community property and involves important tribal issues. Accordingly, federal policy dictates that this Court should exercise jurisdiction over this action.

B. The Tribal Court Should Assert Jurisdiction As A Matter Of Comity.

Comity requires that the Tribal Court exercise jurisdiction over this action. When two courts have concurrent jurisdiction, the doctrine of comity provides a framework in which a court can determine which of the two courts is the more appropriate forum. "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 v. Bad River Band of the Lake Superior Tribe of Chippewa Indians*, 665 N.W.2d 899, 917 (Wis. 2003).

Courts have identified various factors to be considered in determining whether to assert or abstain from asserting jurisdiction over a particular matter. In the context of a domestic relations case where the question is one of tribal court-state court comity, these factors include: 1) whether the case implicates tribal sovereignty, 2) whether the case involves traditional tribal issues, 3) whether the action requires application of tribal law, 4) the relative institutional interests of each court, 5) whether material events or property involved in the case is located on tribal land, 6) the tribal membership status of the parties, 7) the convenience of the parties 8) whether the alternate forum is adequate or may prejudice a party's rights, and 9) where the action was first commenced and the progress of each action. See *Teague*, 665 N.W.2d at 917-18 (listing comity factors); see also *Moses H. Cone Mem 'l Hasp. v. Mercury Constr. Corp.*, 460 U.S. 1, 19-26 (1983); *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 818-19 (1976); *White Earth Band of Chippewa Indians v. County of Mahnomen*, 605 F. Supp. 2d 1034, 1045 (D. Minn. 2009); *Parry v. Haendiges*, 458 F. Supp. 2d 90, 97-98 (W.D.N.Y. 2006) (applying *Teague* factors). Because virtually all of these factors weigh heavily in favor of the Tribal Court, the State Court should dismiss the marital dissolution proceeding commenced by Petitioner so that the parties can proceed in Tribal Court.

1. This matter raises issues of tribal sovereignty.

Clearly, this dissolution is a tribal issue. This matter involves the marriage between an enrolled member of the Community and a non-Indian, both of whom lived on Community property for the last 19 years, including Respondent who raised her children on Community property, whose sole real property is on Community property, and whose assets are nearly all located on Community property or were purchased through the use of per capita funds distributed by the Community government. The power to regulate domestic relations is critical to tribal sovereignty—the power to regulate a marital dissolution such as this one that implicates so many tribal issues is essential to the Community's sovereignty and self-government.

The Community expressly recognizes the importance of its inherent power to regulate the domestic relations of its members in its Domestic Relations Code:

The Shakopee Mdewakanton Sioux (Dakota) Community has the inherent sovereign power to regulate the domestic relations of its members. ***No more important power is exercised by Indian Tribes than the power to protect and govern the domestic relations of their members.*** The purpose of this Code is to inform Shakopee Mdewakanton Sioux (Dakota) Community members of that inherent sovereign authority and enable them to use their own Tribal forum for resolution of domestic relations issues.

SMS(D)C Domestic Relations Code, Introduction § I (emphasis added). State courts have similarly acknowledged that in matters implicating the integrity of the tribal family unit, it is vital that the tribal court assert its jurisdiction. ***See In re Custody of K.K.S.***, 508 N.W.2d 813, 815-16 (Minn. Ct. App. 1993) (affirming state court's dismissal of case upon assertion of tribal court jurisdiction in family law matter); *In re Marriage of Skillen*, 956 P.2d 1, 16 (Mont. 1998) ("Any exercise of state court jurisdiction over reservation Indians in a domestic matter, which is already recognized by this court as uniquely tribal in nature, . . . would

clearly infringe on the tribe's sovereign power to govern itself and its right to keep its internal relations free from state authority."). In a case such as this involving tribal family law issues, the Tribal Court should and will likely assert jurisdiction and the state court should abstain.

This case also involves issues related to the potential alienation of Community assets—including the wife's homestead on reservation property and wife's per capita distributions over which the Tribe has inherent control. See *Montana v. United States*, 450 U.S. 544, 566 (1981) ("A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."); cf *Cohen*, 543 N.W.2d at 379 ("Raising revenue and redistributing it for the welfare of a sovereign nation is manifestly a governmental purpose."). As part of the marital dissolution process, the court hearing this case will be called upon to characterize the parties' assets as marital and non-marital property and to distribute those assets accordingly. Because the Community has an interest in some of the parties' assets, and because alienation of Community assets directly implicates the sovereignty of the Community, it is essential that the Tribal Court adjudicate the dissolution. This factor weighs heavily in favor of Tribal Court jurisdiction.

2. This case involves traditional tribal issues.

Nearly all incidents of the parties' marriage in this case have occurred on Community property—the parties resided on Community property for 19 years, Respondent's children were born, raised, and live on Community property, and Wife's only real estate property is on Community property. In addition, the vast majority of the parties'

assets are either located on Community property or were purchased with per capita payments. Because nearly all aspects of the parties' marriage have occurred on Community property and under tribal law, this marital dissolution is a tribal *matter*. See *In re Custody of K.K.S.*, 508 N.W.2d at 816 (acknowledging that matters involving the integrity of the tribal family unit are properly heard by the tribal court). This factor also weighs in favor of Tribal Court jurisdiction.

3. This action requires the application of tribal law.

This matter involves important issues of tribal law regarding the treatment of per capita payments as non-marital property. The Community clearly expressed in its Domestic Relations Code that per capita payments are *not* marital property. See SMS (D)C Domestic Relations Code, Ch. 2 § 1 ("Per capita payments *shall not* be defined as marital property.") (emphasis added); Ch. 3 § 5(e) ("Per capita payments from the Shakopee Mdewakanton Sioux (Dakota) Community to its eligible members are the *separate property* of the person to whom they are issued.") (emphasis added). It is important that the Tribal Court retain the sovereignty to interpret and apply the Community's laws and misapplication of tribal law clearly undermines the Community's right to create and enforce its laws and to control the distribution of its property. See *Iowa Mutual Ins. Co. v. La Plante*, 480 U.S. 9, 16 (1987) ("Adjudication of [reservation] matters by any nontribal court also infringes upon tribal lawmaking authority, because tribal courts are best qualified to interpret and apply tribal law.").

The opinion in *Zander v. Zander*, 720 N.W.2d 360 (Minn. Ct. App. 2006), clearly illustrates the danger in permitting a state court to exercise jurisdiction over this matter. In *Zander*, the Minnesota Court of Appeals held in a two-to-one decision that a Minnesota

state court may disregard tribal law and deem per capita payments to be marital property subject to division in a marital dissolution action. *See Zander*, 720 N.W.2d at 369-70. This result highlights the fact that the Tribal Court should be the court that decides issues of tribal law.¹ In order to ensure that tribal laws are properly applied, it is essential that the Tribal Court assume jurisdiction in this matter.

4. The Tribal Court has an institutional interest in adjudicating this dispute.

Because, as stated above, this matter involves tribal issues related to the tribal family unit and Community property, and requires interpretation of tribal law, the Tribal Court has an institutional interest in adjudicating this marital dissolution. *See Teague*, 665 N.W.2d at 919 (finding that tribal court had institutional interest in adjudicating matter involving contract between Indians and non-Indians that related to tribal business). This factor favors Tribal Court jurisdiction.

5. Material events and property involved in this case are located on Community property.

The parties both resided on Community property throughout their 19 years of living in the Community. In addition, this case involves significant property located on Community property, including the wife's homestead, the motor vehicles, and several bank accounts. Because the vast majority of material events and property involved in this case are located on Community property, this factor weighs in favor of Tribal Court jurisdiction.

6. This case involves an enrolled member of the Community and an individual who lived on Community property for 19 years.

Respondent is an enrolled member of the Community. Although Petitioner is not a member, he entered into marriage with a member of the Community and lived on

¹ It is important to note that *Zander* did not implicate tribal court jurisdiction because both parties voluntarily submitted to state court jurisdiction. *See Zander*, 720 N.W.2d at 364.

Community property for the past 19 years. By these actions, Petitioner voluntarily submitted to the authority of the Community. *See In re Custody of CKS.*, 508 N.W.2d at 816 (finding that non-Indian defendant "subjected himself to the authority of the tribal court when he chose to live on the reservation" with his Indian wife). Because Respondent is a member of the Community, and Petitioner has lived under Community authority for the past 19 years, this factor weighs in favor of Tribal Court jurisdiction.

7. The Tribal Court is the most convenient forum for the parties.

As previously noted, the parties reside on Community property and the majority of events and property at issue are located on Community property. Thus, the Tribal Court is the most convenient forum for the parties, weighing in favor of Tribal Court jurisdiction.

8. The Tribal Court is an adequate forum and the state court may prejudice a party's rights.

Federal policy recognizes the adequacy of tribal courts and encourages their development. Indeed, the United States Supreme Court has said, "Tribal courts play a vital role in tribal self-government, and the Federal Government has consistently encouraged their development." *Iowa Mutual Ins. Co. v. La Plante*, 480 U.S. 9, 14-15 (1987) (internal citation omitted). On the other hand, *the Zander* decision suggests that the very Minnesota state court in which Petitioner filed his action may refuse to apply tribal law, thereby prejudicing the rights of tribal members in state court to be governed and protected by tribal law. This factor weighs heavily in favor of Tribal Court jurisdiction.

9. Where the action was first commenced is in dispute and the Tribal Court action is more developed than the state court action.

Of the comity factors, only one weighs in favor of the state court exercising jurisdiction; that the Scott County action was commenced first. However, a race to the Court should not determine where jurisdiction lies.

Further, the other factors so outweigh this factor that the Tribal Court should assert jurisdiction. Indeed, in *Teague* the court found that the tribal court should assert jurisdiction, despite far fewer factors weighing in its favor:

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. Consequently, the significance of the plaintiff's choice of a forum and the application and interpretation of state law are outweighed by the fact that the litigation involves tribal sovereignty and the interpretation of tribal law, and that the material events occurred on tribal land. Moreover, the fact that the circuit court had conducted significant proceedings before the tribal court even began to hear the case is outweighed by the tribal court's institutional interest in determining the validity of contracts made with the tribe.

Teague, 665 N.W.2d at 919. Considering all of the comity factors discussed above, it is clear that the Tribal Court should assert jurisdiction over this action.

CONCLUSION

In the interests of fairness and justice the State Court should dismiss Petitioner's marital dissolution case so that the parties can proceed in Tribal Court. The parties have availed themselves of the benefits of the Community for the last 19 years. It is only fair that the same forum that the parties have chosen to live their lives during their marriage now decide the dissolution of their marriage.

MOSS & BARNETT
A Professional Association

Dated: March 26, 2014

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