

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 16-1636

Annette Nawls and Adrian Nawls,

Plaintiffs-Appellants,

vs.

Shakopee Mdewakanton Sioux Community Gaming
Enterprise-Mystic Lake Casino,

Defendant- Appellee.

Appeal from the United States District Court for the District of
Minnesota, the Honorable Judge Anne D. Montgomery

Appellant's Reply Brief

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REPLY OF SUMMERY OF THE CASE

Annette Nawls was working a private event in the VIP suite at the Shakopee Mdewakanton Sioux Community, also known as Mystic Lake Casino. The VIP room consisted of: board members of the tribal community, their family members, and friends. Timothy Scott McCaffrey was invited by one of the board members to attend the event/concert. Mr. McCaffrey did not show up on his own, he was escorted by the security as a guest in the VIP suite.

Testimony from Annette Nawls: "I was a signed to work at that night. Mr. McCaffrey came in with alcohol in the plastic glass, he was clearly intoxicated. He ordered a beer from me, and sexually assaulted me. It began when he slapped me on the buttocks and started groping me."

Ms. Nawls asked Mr. McCaffrey to please stop and informed the manager on duty, John Vantura, that he had restrictions on his driver's license, stating that he was not allowed to drink alcohol. Ms. Nawls knows that the rules at Mystic Lake are to not card anyone that looks over 40 years. After she reported this to her manager, John, he went to speak with Mr. McCaffrey. Then went to the bar station to fix another drink, and forced Ms. Nawls to serve Mr. McCaffrey.

When the event was over, everyone was escorted out of the VIP suite by security, except for Annette Nawls. Security told Ms. Nawls that the room was clear and ready to be cleaned. Nawls started to clean the first room, room "D". Then proceeded to room "C" the first room was "D", Nawls then proceeded to room "C". Nawls started to clean, this is when Mr. McCaffrey put his hands on Ms. Nawls, sexual assaulted Nawls, kissed Nawls on lips, and attempted to rape Nawls. Nawls began fighting and screaming at him. The lights in the concert room were all off, except for the room and hallway where Nawls was cleaning. Ms. Nawls' co-worker Jonathan not only stopped the assault, but he saved Nawls from being raped and killed by Mr. McCaffrey. Nawls and McCaffrey were the only people on the floor that this occurred on. He threatened Ms. Nawls that if she kept fighting he would push her over the balcony. Ms. Nawls had to use her hands to wave Jonathan, her co-worker, over. This was very lucky being that if Nawls were to yell, she was terrified that the attacker would throw her over the balcony where he had her pinned. Jonathan went downstairs to call security and brought the bingo manager as well as security up to rescue her. Mr. McCaffrey was then escorted out of the VIP suite, and Nawls called the Prior Lake Police. Mr. McCaffrey was found guilty in the court of Scott County.

Ms. Nawls hired an attorney in September 2013, to help Nawls. Nawls was being harassed by the casino manager and human resources, to turn in the pants

that she was wearing during the assault. Mystic kept calling Nawls to come to work, while Nawls was in the hospital for attempted suicide, panic attacks, flashbacks and nightmares. Every time Nawls closed her eyes, she would see the man attacking her. Nawls lives in constant fear. She sees a psychiatrist and a therapist, for ongoing psychological issues. Mystic Lake has done nothing to support Ms. Nawls while the incident occurred at her place of work.

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REPLY OF JURISDICTIONAL STATEMENT

1. An employer may also be responsible for the acts of non-employees with respect to sexual assault of employees in the workplace, where the employer (or it's agent or supervisory employees) knows or should have known of the conduct and fails to take immediately and appropriate corrective action. Code of Federal Regulations. 29 C.F.R. 1604.11. Title 29. Labor subtitle B. Regulations Relating to Labor Chapter XIV. Equal Employment Opportunity Commission part 1604. Guideline
2. Different jurisdictional rules often apply depending on whether a claim arises inside or outside of tribe's Indian country, and a tribe's power is typically at its height on trust land. This was a crime that occurred at an Indian Casino at Mystic Lake. The federal government should have jurisdiction on the employees that works at Mystic lake. This incident did not happen to an individual that went on Indian reservation to gamble, but it occurred on the casino employee who was working to make a living and paying state and federal taxes. This case has been ignored by Mystic lake casino even before the event was over on 8/9/2013. If state and federal government lack jurisdiction in this case, then who is responsible, and who has jurisdiction over the crimes that are occurring

to individuals who are employed on reservation? Id.,368 U.S., 79,82 S.Ct.,203.

The state and federal government have an obligation to prevent, protect against, and punish offenders who create violence against women, no matter who is suspect. State and federal have a responsibility to uphold standards of due diligence and take steps to fulfil their responsibility to protect the rights of individuals. Yet such violence and crimes are often ignored on the reservation. Most cases that are held in tribal court never get judged fairly including Ms. Nawls' claim, because the tribal elder decision is made concerning and protecting their tribe. Too often no one is held accountable for these crimes.

The District courts shall have original jurisdiction on all civil actions arising under the Constitution, laws, or treaties of the United States. (1) Federal statutes (2) Federal common law. Gaines v. Ski Apache, C.A. 10(N.M.) 1993,8F 3d 726.

REPLY OF STATEMENT OF ISSUES

1. The district court was asked by Mystic Lake to dismiss Nawls' case. Just based on SMSC tribal sovereignty! But also the defendant was asked by Judge Ann D. to go back and look into Indian tort claim remedies to find a solution. The same day after the hearing on Feb 12, 2016, Mr. Greg Paulson approached Mr. and Ms. Nawls and said that he would speak with his clients and then call the Nawls to discuss the tort claim in tribal court. Mr. Greg Paulson never called Ms. Nawls. Nawls called him after two weeks, and left a message. After the third call, Nawls left the messages with the secretary and the secretary said to Ms. Nawls that Greg said he will call you back. Nawls explained that time was running out, and needed to see what decision he had come up with. Mr. Greg Paulson never returned a call to the Nawls. Nawls ended up filling an appeal on March 9th, 2016. This was NOT the first time, that Mystic Lake would not work things out with Nawls. This is the fourth time in which Mystic Lake did not support Nawls. Mystic Lake has turned a blind eye to Nawls, and this is where we are today.

3. Defendant claims that this is exempted from Title VII.

Policy Statement on Indian preference under Title VII. Although applicable judicial precedent defining “near” is lacking, a definition of that term is found in regulations issued by the Office of Federal Contract Compliance Programs (OFCCP) of the department of Labor. 41 C.F.R. 60-1.1 et seq. (1987). The regulation, which apply to federal contractors, define “near” with reference to an Indian preference to provision similar to that contained in section (i) of Title VII. The regulations provide pertinent part: **Work on or near reservations**. It shall not be a violation of the equal opportunity clause for a construction or no construction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of word “near” would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

Burns v. Mayer 175. Supp.2d 1259 2001 WL 1557459

4. Defendant claims that the case was time barred? Title VII.

The Nawls case had been violated by Mystic Lake casino by mistreating Nawls and claiming that the case is time barred. The incident occurred on August 8, 2013, the first attorney Nawls hired was September of 2013 and Mystic Lake kept saying until Mr. McCaffrey is found guilty. Well Mr. McCaffrey was found guilty and after June 8, 2015, their excuse changed to “immune to be sued.” The Nawls’ case is not the only employee claim, that has never been considered or treated time barred. Nawls might not be a Native woman for federal to have jurisdiction on this case but she is a woman like every other woman, she is married and has a family.

New Jersey. Feb 22, 1988, 680 F. Supp. 150. 1988 WL 14633

(45 FR 74677. Nov.10.1980; 64 FR 58334, Oct.29, 1999)

Authority: sec. 713(b),78 Stat. 265, U.S.C.2000e-12

REPLY OF STATEMENT OF THE CASE

A. Factual Background

In 2013, Ms. Nawls was employed as a server at Mystic lake casino Gaming Enterprise from April 2007 through October 2, 2015 after being terminated. Mr. Nawls worked for Mystic Lake Casino Gaming Enterprises from May of 2005 to Jan of 2014.

On Aug 9, 2013, Nawls was working a private event in the VIP suite at the Shakopee Mdewakanton Sioux Community also known as Mystic Lake Casino. The event considered of board members of the tribal community, their family members and friends. Mr. McCaffrey was invited by one of board members to attend the event. Mr. McCaffrey was escorted in the VIP suite by the security around 7pm with alcohol in a plastic glass, he was clearly intoxicated. He assaulted Ms. Nawls by slapping her on the buttocks more than once. Ms. Nawls also reported this to the manager John Vantura, instead the Manager fixed another drink and forced Ms. Nawls to keep serving the guest because he was brought by board members. This man did not attack Nawls on the casino floor, but in the VIP suite for the owners and committee members floor. Only Nawls and McCaffrey were left there even though Nawls reported McCaffrey to the manager. The co-

worker save Nawls from been raped. Nawls pants were ripped off, she was kissed and threatened to be thrown over the balcony. Nawls also has had surgery on her back from the assault, from when he had her pinned over the balcony ready to push her off.

The defendant alleged that Mr. Adrian Nawls was repeatedly failing to show up at work:

On November 26, 2013, Mr. Nawls was told by the Dr. Osadi, at Riverside Hospital in Minneapolis to take medical leave off work, to take care of Ms. Nawls. He went to speak with Tiffany in human resources at the casino. Tiffany gave Mr. Nawls paperwork to bring to the doctor for the doctor to fill out and sign. Dr. Osadi filled it out, signed it and Mr. Nawls returned the paperwork back to Tiffany. This was about the incident that occurred at Mystic Lake on Aug.9 2013. They accepted it, and Ms. Nawls was discharged from the hospital under Mr. Nawls' watch. After only few a day's Mr. Nawls was called back to work, even though Mr. Nawls was supposed to have at least a couple weeks off to care for Ms. Nawls. Mr. Nawls was not able to leave Ms. Nawls alone, Mr. Nawls kept calling to report that he could not come in, he could not leave his wife alone. Under doctor orders! Their excuse was that it was during the holidays and Mr. Nawls cannot take days off.

On October 2, 2015, Mystic lake casino resigned Ms Nawls employment, because Ms. Nawls failed to work. While Ms. Nawls was having ongoing panic attacks, suicidal thoughts, and flashbacks 3-4 times a day. Nawls never receive any support from Mystic Lake Casino, and the incident occurred during her duty.

B. Procedural Background.

The Nawls requested of the tribe for workers' compensation benefits because on January 2, 2017 her husband Adrian Nawls was fired from Mystic Lake Casino. The insurance that Ms. Nawls was using was under Mr. Nawls, being that Mr. Nawls was a full time 10-year employee with the Mystic Lake Casino. The Nawls called MnSure and Dakota county for medical assistance. They asked where did the accident happened, the Nawls explained that it occurred at work, at Mystic Lake. The county gave Ms. Nawls the form to fill out that's when the workers' compensation came in. Still to this day, Nawls has not received any support whatsoever from Mystic Lake.

On July 16, 2014, the defendant Mystic Lake Casino denied the workers' compensation claiming that Nawls did not receive injuries from Mr. McCaffrey during the ATTACK and that the law does not cover emotion and mental injuries.

On August 21, 2014, Ms. Nawls Appealed the Mystic Lake and Worker's Compensation Hearing Examiner pursuant to Tribal law denial. Mystic Lake denied every appeal that Ms. Nawls tried in tribal court/counsel. The claim was excluded and called it (C.3.M) and was denied again, the same time that I needed medication.

On October of 2014, attorney Michael O'Neil, suggested to Ms. Nawls to get another attorney who practices in Worker Compensation and Employment Law. The attorney Michael and Linda, got another attorney to present Nawls. On December 23, 2014, Mystic Lake gave Mr. Antonio paperwork and demanded that Ms. Nawls needed to sign it to Resign her position employment with the Mystic Lake casino before they would approve Nawls claim but, it was NOT guaranteed. MS. Nawls did not sign the paperwork, because Nawls was just discharged from the hospital and having lots of panic attack and suicidal thoughts. Nawls asked for more time to make a decision. On December 24, 2014, Ms. Nawls received a letter in the mail saying the claim is denied again. The Question is how many times were Nawls to appeal the same claim in the tribal court to receive justice, when the attack occurred at work at Shakopee Mdewakanton Sioux also known as Mystic Lake casino because of their negligence?

The truth of the matter is that Ms. Nawls Appealed Shakopee Sioux decision a few times and Shakopee Sioux denied the Appeal over and over, rejecting Nawls' claim saying tribal court will not do anything, because Tribal law does not cover emotion and mental injuries. Mystic lake did not hire Ms. Nawls while she was suffering from mental injuries. The tribe court did not direct Ms. Nawls to another recourse for help or support Nawls in any other way at all as an employee who have worked for Mystic lake casino for over 9 years.

On January 27, 2015, Nawls had an attorney Mr. Cottrell, who had practice in tribal law who was informed Nawls that he will be able to bring the lawsuit against Mystic Lake casino. The Mystic lake still turned him down and told Mr. Cottrell there is no chances in tribal and neutral court for this case. The tribe is immune to suit because they are a sovereign nation.

The Nawls had an attorney throughout this process, and still spoke to more than 6 attorneys,” And none of them had opportunities to negotiate if remedies would be guaranteed! After been told by Shakopee Sioux Mystic Lake casino that **Tribal law does not cover emotion and mental injuries**, there were no remedies guaranteed before or after.

C. Reply The District Court's Decision

On Jun 22, 2015, the Nawls filed a pro se civil action in the District of Minnesota, after Nawls' attorney Mr. Cottrell dropped the case, because Mystic Lake Casino had not given him any chance to pursue this case at all and Scott County where Mr. McCaffrey was found guilty refused to provide Ms. Nawls and McCaffrey's file to Mr. Cottrell. Mr. Cottrell was told the case was sealed and only Ms. Nawls can pick up the files. Nawls requested the file which was never provided at that time. The Nawls medical assistant had been on and off while Ms. Nawls needed medical attention, because of the incident that occurred at work at Mystic Lake Casino.

The defendant Shakopee Sioux demanded the District court to dismiss the case. Nawls is a victim that has had a number of attorneys and spoke to more than 6 attorneys and nothing was done in tribal court.

REPLY TO SUMMERY OF THE ARGUMENT

The defendant alleged in the summery arguments; that the federal government lacks jurisdiction over Nawls' over the Nawls case, defendant knows that tribal court and their council determined that Nawls claim does not exist in the tribal law, and cannot provide any remedies because mental and emotion traumatically, occurred Nawls' duty on reservation is not covered under the tribal law. Also defendant phrased that SMSC Gaming Enterprise, is immune from suit. Nawls disagrees that the fact that Nawls was attacked at work at SMSC Mystic Lake Casino in VIP private event not on the Casino floor, the tribe should waive their sovereign immunity and be responsible and accountable for Ms. Nawls' attack. Fed. Rules 56(a), 28 U.S.C.A. 1983. 42 U.S.C.A. 1983.

REPLY ARGUMENT

1. The defendant argued that the District Court did not rule on whether the Nawls deserve to exhaust remedies under the Tribal law, both parties were encouraged by judge Anne D. Montgomery to pursue any available remedies in the tribal court. After the court hearing, Mr. Greg Paulson defendant's attorneys', approached Mr. and Ms. Nawls and said that he would speak with his clients and then call the Nawls to discuss the possibilities. Mr. Greg Paulson never called and never answered the phone. The defendant never attempted to resolve the issue from the beginning, but handled this matter like it did not exist.
2. The Nawls respectively understand that federal government recognizes Indian sovereign immunity from suit, but federal government does not give Indian Gaming casinos permission to violate the right of the citizens that are employed on reservation. Because of this Nawls request with respect to the Congress of the United State to reconsider in Nawls' case to waive the sovereign immunity, so justice can be served in this case.

3. The Ms. Nawls' case is based on the **ATTACK**, McCaffrey pinned her, sexual assaulted her, kissed her, attempted to rape her, threatened to throw her over the balcony. Even though Nawls reported to manager on duty Mr. John Vantura before this occurred. Which one of these terrifying and life changing incident is considered to be tribal sovereign immune from suit? The Nawls disagree with the defendant phase on p.14. Defendant argue that these case, however, do not involve pro se plaintiffs, such as the Nawls. The law supports Nawls representing herself pro se. What would you do if your wife or your daughter was attacked at her work place, and did not receive support from the employer? The Nawls are still standing. Nawls does NOT want what happened to them to happen to anyone else! This incident is a wakeup call for SMSC, Mystic lake casino. This situation has been turned around against the Nawls, using victim blaming tactics. This is not the Nawls' fault nor did the Nawls asked for this to happen. Ms. Nawls worked for the tribe casino for 9-years and Mr. Nawls for 9-years. This never should have happened. If the manager would have stopped Mr. McCaffrey from having continual alcohol service and had security to escort him out of the VIP suites. Instead the manager fixed another drink and forced Ms. Nawls to serve Mr. Scott McCaffrey, because he was brought by one of the board members. **Ms. Nawls was forced to keep serving Mr. McCaffrey with a**

restricted, no alcohol on driver's license. This is illegal in all restaurants and bars, and they are still immune to be sued? The Nawls lives in fear, cannot be left alone, and still have ongoing treatment with a psychologist and therapist. Nawls' life has been traumatized and destroyed because of the incident that occurred at her place of employment. Nawls' impairment is approved disabled by doctors that Nawls cannot work.

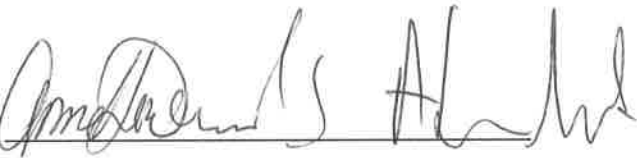
How is this possible? This has been haunting Ms. Nawls since the incident and there is still no resolution. If this were to happen at any other employer work place in the United State of America, it would have been resolved a year ago. The tribe is protecting themselves and not their employees! That is the reason there are concerns of the Tribe's Justice System. The Nawls are asking law makers in the Supreme Court of Appeal to reconsider in the Nawls' case for true and fair justice to be served.

Fed. Rules Civ. Proc. Rule 56(a), 28 U.S.C.A.

CONCLUSION

The Nawls are looking for a fair trial, in a federal court, in their case against Mystic Lake Casino. They are asking Congress to waive the sovereign immunity of the tribe, this is the only possible way. The supreme court needs to reverse the lack of jurisdiction in federal court for her case to be exhausted, since there is no other way.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2016, I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system Pro se (# 41567).

I have mailed the foregoing documents by first- mail, postage prepaid, to the following:

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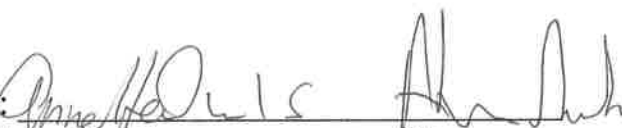
CERTIFICATE OF COMPLIANCE

I hereby certify that this reply brief complies with the requirements of Fed. R. App. P. 24 because it has been prepared in 14 point times, a proportionally spaced font.

I further certify that this brief has been scanned for viruses and that the brief is virus-free.

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R. App. P. 24. Because it contains 4069- words, excluding the parts of the brief exempted under Rule 28. According to the Microsoft word.

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