

THREE AFFILIATED TRIBES
FORT BERTHOLD RESERVATION

IN SUPREME COURT
NEW TOWN, ND 58763

Wilbur D. Wilkinson,
Petitioner,

vs.

Ervin J. Lee,
Respondent.

NOTICE OF OPINION
Civil No. 2010-0673

State of North Dakota)
) SS.
County of Mountrail)

**CERTIFICATE OF SERVICE
BY MAIL**

COMES NOW, Carolyn Spotted Horse, and states the following:

1. That the **Notice of Opinion, and Opinion** in the above captioned matter was mailed by me on the following individuals by placing true and correct copies of such documents in envelopes addressed as follows and depositing the same in the U.S. mails (~~by certified mail~~), postage prepaid, in New Town, North Dakota on September 1st, 2015,


PETITIONER

Pringle & Herigstad
Reed Soderstrom
PO Box 1000
Minot, ND 58702-1000

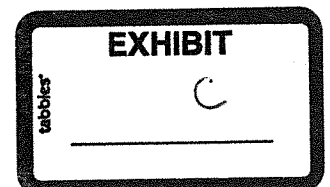
RESPONDENT

Ervin Lee
5510 52nd St. SW
Lake Tschida
Glen Ullin, North Dakota 58631

2. That the undersigned further certifies that she is over eighteen years of age and is not a party to this action.


Clerk of Court

Dated this 1st day of September, 2015



THREE AFFILIATED TRIBES

SUPREME COURT

FORT BERTHOLD RESERVATION

NEW TOWN, ND 58763

Wilbur D. Wilkinson,
Petitioner,

vs.

Ervin J. Lee,
Respondent.

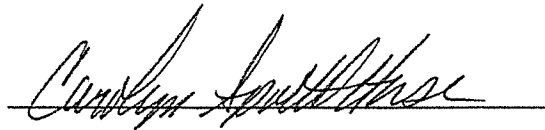
)
)
)
)
)
)
)

NOTICE OF OPINION
Civil No. 2010-0673

You are hereby notified that the MHA Nation Supreme Court has issued the attached Opinion in the above-captioned matter. All Judgment in the MHA Nation Supreme Court are final unless the Court grants a reconsideration under Rule 12 of the MHA Nation Rules of Appellate Procedure.

In accordance with Rule 12 of the MHA Nation Rules of Appellate Procedure you have 20 days from the Issuance of the final order, decision or opinion, issued by the Court to file a Motion for Reconsideration.

(SEAL)



CLERK OF COURT
MHA NATION SUPREME COURT

OFFICE OR CLERK OF COURTS FORT BERTHOLD DISTRICT COURT,
I hereby certify that I have compared the *MHA SC*
within instrument with the original Case No. *CV 2010-673*
now on file in my office, and that it is a true
copy of the same, and the above is a true copy of the filing
thereon.
Dated at New Town, North Dakota this *1st*
day of *September*
Carolyn Smith-Henderson
Clerk of Court

FILED
8-31-15

THREE AFFILIATED TRIBES

SUPREME COURT

FORT BERTHOLD RESERVATION

NEW TOWN, ND 58763

Wilbur D. Wilkinson,
 Petitioner,

)

OPINION

)

Civil No. 2010-0673

)

vs.

)

Ervin J. Lee,

)

Respondent.

)

Before Chief Justice Michelle Rivard Parks, Justice Thomas Dickson, and Alternate Justice William Woods. This case was decided upon briefs filed by Ervin Lee, attorney for Respondent, and Reed Soderstrom, attorney for Petitioner.

The issue presented in this appeal is whether the District Court of the Three Affiliated Tribes of the Mandan Hidatsa & Arikara Nation (hereinafter "MHA Nation"), has personal and subject matter jurisdiction over a dispute arising between the parties relating to the provision of attorney services and attorney's fees resulting therefrom. The Respondent filed a Motion to Dismiss for lack of jurisdiction in the MHA Nation Tribal Court and hearing was held on said Motion on May 22, 2014. On January 28, 2015 the honorable Joel D. Medd did, in relevant part, deny the Respondents Motion to Dismiss for lack of jurisdiction.¹ The Respondent appealed the Memorandum Decision and Order Denying Defendant's Motions to Dismiss and for Summary Judgment and Plaintiff's Motion for Partial Summary Judgment. We affirm the Tribal Court decision.

I. Background

The cause of action was filed in Tribal Court by the Petitioner, Wilkinson against his former attorney, Respondent, Lee. Wilkinson, a tribal member had been involved in complex

¹ See Memorandum Decision and Order Denying Defendant's Motions to Dismiss and for Summary Judgment and Plaintiff's Motion for Partial Summary Judgment (January 28, 2015).

1 litigation in the state of Texas, federal court and tribal courts as a result of Wilkinson's
2 involvement in oil and gas ventures. According to the record, Wilkinson sought out Lee, a
3 non-Indian attorney, on two separate occasions to represent him in these legal matters.
4 The first request to represent was made by Wilkinson to Lee in late August or early
5 September of 2008 while Lee was on the Fort Berthold reservation representing another
6 client. This request to represent was declined by Lee. The second request to represent was
7 made by Wilkinson to Lee in October of 2008 in Minot, ND. Lee accepted the request to
8 represent although no written agreement was negotiated or signed by the parties.

9
10 The litigation for which Lee agreed to represent Wilkinson included several actions in
11 various courts including the Fort Berthold Tribal Court. Over time the litigation reached
12 settlement and subsequent to the settlement of the litigation a good faith dispute arose
13 between Wilkinson and Lee regarding attorneys fees. Lee was sanctioned by the North
14 Dakota Supreme Court for failing to put a contingent fee agreement in writing, failing to
15 promptly notify Wilkinson of receipt of settlement funds, and improper handling of
16 settlement funds. The North Dakota Supreme Court did not rule on the merits of the case.

17
18 Subsequent to the disciplinary action filed in the North Dakota Supreme Court, Wilkinson
19 filed a cause of action in the MHA Nation Tribal Court to adjudicate the merits of the case in
20 so far as the correct amount of attorney's fees and compensation owed to Lee was
21 concerned. Respondent Lee did file a Motion to Dismiss for Lack of Jurisdiction in the
22 Tribal Court. The Tribal Court heard arguments on the Motion at the Tribal Court on May
23 22, 2014. The Tribal Court did find that, based upon existing federal and tribal law, the
24 Tribal Court did in fact have in personam and subject matter jurisdiction in the above-
25 captioned matter.

26 27 **II. Discussion**

28
29 The jurisdiction of the Tribal Court, with respect to members and non-members, is
30 governed by existing tribal law and subject only the restrictions or limitations of applicable
31 federal law. *Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 852

1 (1985). Federal common law has over the years limited the circumstances under which a
2 tribe may exercise regulatory and adjudicatory authority over non-Indians.

3
4 Whether a tribe may adjudicate a dispute involving a non-Indian has been restricted by the
5 United States Supreme Court in several cases, however the Court has been very clear in
6 finding that a tribe's adjudicatory authority may not exceed its regulatory authority. *Strate*
7 *v. A-1 Contractors*, 520 U.S. 438 (1997). The United States Supreme Court addressed
8 inherent tribal regulatory authority over non-Indians in the case of Montana v. United
9 States. 450 U.S. 544 (1981). In Montana, the United States Supreme Court found that
10 inherent tribal authority to regulate conduct of non-Indians and non-members on tribal or
11 trust lands was not in question and fell within the tribe's inherent authority. *Id. at 557*. The
12 United States Supreme Court went on to address the narrow question of whether a tribe
13 also had inherent regulatory authority over non-Indians on reservation land owned in fee
14 by nonmembers of the Tribe. *Id.* Ultimately the United States Supreme Court determined
15 that "...exercise of tribal power beyond what is necessary to protect tribal self-government
16 or to control internal relations is inconsistent with the dependent status of the tribes, and
17 so cannot survive without express Congressional delegation." *Id. at 564*. Hence the general
18 rule is that tribes lack inherent regulatory authority over non-Indians for conduct arising
19 on non-member owned fee lands on the reservation subject only to two exceptions,
20 namely: 1) that a tribe may regulate the activities of nonmembers and non-Indians who
21 enter consensual relationships with the tribe or its members, through commercial dealings,
22 contracts, leases or other arrangements; or 2) a tribe may also retain inherent power to
23 exercise civil authority over the conduct of non-Indians on fee lands within its reservation
24 when the conduct threatens or has some direct effect on the political integrity, economic
25 security, or health or welfare of the tribe. *Id. at 566*.

26
27 In the case at hand the Respondent challenges Tribal Court authority setting forth, in part,
28 that the circumstances underlying the cause of action do not meet either of the exceptions
29 to the general rule in Montana. This Court is not convinced that the Montana rule applies ✖
30 as it is a very specific rule pertaining to tribal jurisdiction given certain political
31 classifications and land status, however even if this Court applies the Montana rule we find

1 that the circumstances in this case meet the first exception to the general rule. Based upon
 2 the consensual relationship exception to the general rule in Montana, this Court finds that
 3 the Tribal Court does have jurisdiction and therefore tribal adjudicatory authority is not
 4 barred.

5
 6 A business relationship, as evidenced by an oral or written contract, coupled with on
 7 reservation activity or service related to the oral or written contract is precisely the type of
 8 circumstance that the United States Supreme Court contemplated with respect to the
 9 consensual relationship exception to the rule in Montana. The absence of a contingent fee
 10 agreement specifying choice of forum for disputes between the attorney and client
 11 complicates the questions as to jurisdiction, however based upon the lower court findings
 12 it is clear that the parties did in fact have an oral agreement constituting a contract.
 13 Whether the Settlement Agreement that followed modified said agreement is not an issue
 14 before this Court and is one that has yet to be litigated.² While this Court understands the
 15 legal representation provided by Respondent on the Fort Berthold Indian Reservation
 16 appears to have been minimal, minimum services and contact do not in and of itself deprive
 17 the Tribal Court of adjudicatory authority.

18
 19 As grounds for the assertion of Tribal Court jurisdiction the Tribal Court specifically found
 20 that the Respondent was licensed to practice law in the Tribe's jurisdiction, was providing
 21 legal representation to a tribal member in a complex litigation case arising out of oil leases
 22 within the Tribe's jurisdiction and had met at least once on the reservation.³ The Tribal
 23 Court also found that the initial attorney-client agreement included an understanding that
 24 the Respondent would represent Plaintiff for claims pending in the Tribal Court and on the
 25 reservation.⁴ Based upon the foregoing, the Tribal Court found there existed a consensual
 26 relationship sufficient to support the exercise of tribal adjudicatory authority.⁵ We agree.

² See Reply Brief for Respondent 1 (referring to Exhibit 2); See also Petitioners Brief 1.

³ See Memorandum Decision and Order Denying Defendant's Motions to Dismiss and for Summary Judgment and Plaintiff's Motion for Partial Summary Judgment (January 28, 2015).

⁴ Id.

⁵ Id. at 5.

1
2 The Tribal Court found that at the time the legal services agreement was entered into by
3 and between the parties, there was a strong likelihood that legal representation would
4 require an appearance in the Tribal Court where the property subject to the leases was
5 located.⁶ In fact the Settlement Agreement that the Respondent frequently cites clearly sets
6 forth that there was a pending "Tribal Court Lawsuit" that had been filed in addition to a
7 "TERO/ BIA Complaint".⁷ The Settlement Agreement sought to resolve and settle in full any
8 and all disputes between the parties including those disputes pending in the Tribal
9 Jurisdiction.⁸ These same claims are again mentioned on page 6 of the Settlement
10 Agreement in the section pertaining to Attorney's Fees and Costs.⁹

11
12 In accordance with the consensual relationship, the scope of legal services provided by the
13 Respondent to the Petitioner included services for pending tribal court lawsuits and claims
14 and therefore the non-Indian attorney would be subject to Tribal Court jurisdiction under
15 the first exception to the United State's Supreme Court ruling in Montana. Absent an
16 agreement to the contrary, once an attorney agrees to represent and provides
17 representation on matters pending in the Tribe's jurisdiction and provides legal services
18 under such agreement, it necessarily follows that the attorney avails themselves to the
19 jurisdiction of the Tribe for purposes of licensure and causes of action arising out of the
20 provision of legal services.¹⁰ In complex litigation such as this, the Tribal Court's
21 jurisdiction may not be exclusive, however, the Petitioner, Wilkinson had a choice of
22 forums to file this cause of action given that the Respondents legal services spanned across
23 jurisdictions. In this matter Petitioner chose to file in Tribal Court.
24

⁶ Id. at 2.

⁷ See Reply Brief for Respondent Exhibit 2 p.2.

⁸ Id.

⁹ Id. at 6.

¹⁰ See Resolution of the Governing Body of the Three Affiliated Tribes of the Fort Berthold Reservation, Resolution No 89-235-7L (1989) (setting forth in relevant part that "...The application shall require the attorney license applicant to submit to the jurisdiction of the Courts of the Three Affiliated Tribes, said applicant shall abide by all rules of the court....").

Because this Court finds the Tribal Court does in fact have jurisdiction in accordance with the consensual relationship exception to the Montana test, the Court need not go further in addressing the second exception to the general rule set forth in Montana.

III. Conclusion


We hereby AFFIRM the Memorandum Decision and Order of the Tribal Court. Chief Justice Parks delivered the opinion of the Court with Justice Dickson and Justice Woods concurring.

It is so Ordered this 28th day of August, 2015.

(SEAL)

OFFICE OR CLERK OF COURTS FORT BERTHOLD DISTRICT COURT,
I hereby certify that I have compared the MHA-50
within instrument with the original Case No. CLD 10-673
now on file in my office, and that it is a true
copy of the same, and the above is a true copy of the filing
thereon.

Dated at New Town, North Dakota this 1st
day of September
Christy Amber Bush
Clerk of Court


MICHELLE RIVARD PARKS
CHIEF JUSTICE
MHA NATION SUPREME COURT

THOMAS DICKSON
JUSTICE
MHA NATION SUPREME COURT

WILLIAM WOODS
JUSTICE
MHA NATION SUPREME COURT