

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Americans for Tribal Court Equality,
James Nguyen, individually and on
behalf of his minor child A.N., and
Michelle Steinhoff, individually and
on behalf of her minor child T.J.,

Plaintiffs,

vs.

Emily Piper, in her official capacity as
Commissioner of the Minnesota Department
of Human Services, and Scott County,

Defendants.

Case No. 17-cv-04597 (ADM/KMM)

**DEFENDANT SCOTT
COUNTY'S MEMORANDUM OF
LAW IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

INTRODUCTION

Plaintiffs' motion for partial summary judgment is less a traditional motion for summary judgment – stating undisputed facts and arguing a point from those facts – than merely an argument as to why the Indian Child Welfare Manual of the Minnesota Department of Human Services that Scott County is obligated to follow is “expressly and implicitly preempted” by the Indian Child Welfare Act” (“ICWA”) and its regulations.

In short, this motion is nothing more than a maneuver by Plaintiffs to go on the offensive with respect to Defendants' motions to dismiss.

However, the undisputed facts show that Plaintiffs may not succeed in their motion for partial summary judgment and, in fact, their case should be dismissed.

Moreover, as Commissioner Piper has stated in her legal memoranda (“Defendant’s Response In Opposition To Plaintiffs’ Motion for Partial Summary Judgment”), Plaintiffs’ legal arguments are incorrect.

Accordingly, Plaintiffs’ motion for summary judgment should be denied.

I. THE UNDISPUTED FACTS AUGER TOWARDS DISMISSAL.

The crux of Plaintiffs’ argument is that Scott County should refer any proposed child custody proceeding involving an Indian child to a tribal social services agency, in this case, the Shakopee Mdewakanton Sioux Community (“SMSC”). Plaintiffs’ entire argument is such a referral violates ICWA.

The problem with Plaintiffs’ case, however, is that no such referral was ever made nor needed to be made.¹

A. Plaintiff Nguyen and A.N.

In October 2015 and September 2016, Scott County Department of Human Services received reports regarding possible child protection issues regarding A.N. Scott County DHS workers reviewed those reports. Affidavit of James R. Andreen (Andreen

¹ Scott County would prefer to provide the documents which show the investigations of these two families. However, these documents are private data pursuant to the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.46, and filing them with the Court would cause the County to violate the MGDPA, which it has no intention of doing. Therefore, Scott County will bring a motion to allow filing of these materials. However, in the present instance, counsel for Scott County has provided an Affidavit pursuant to Fed. R. Civ. P. 56(c)(1) which provides a summary of the private data without the identifying private information. *See* Affidavit of James R. Andreen. Defendant Scott County requests the Court grant its motion to produce this data under seal in response to Plaintiffs’ motion for partial summary judgment.

Aff.) at ¶ 5. Those matters were referred to Hennepin County as the family appeared to live in Bloomington, Minnesota at the time. *Id.* No action other than that was taken by Scott County. *Id.*

It is important to note that it is undisputed that Plaintiff Nguyen and his child were residing in Hennepin County at the time of these investigations and any subsequent action that needed to be taken should have been taken by either Hennepin County or the SMSC. Scott County did not proceed any further with A.N.

This is logical since according to the Complaint the various allegations of abuse or neglect occurred either in Bloomington, Minnesota, in Hennepin County, or, for that matter, in California. In fact, Plaintiffs' Complaint states that Hennepin County Child Protection Services and Humboldt County Child Protection Services were contacted by Plaintiff Nguyen's aunt. Plaintiffs' Amended Complaint, Doc. 12 at ¶ 65. Plaintiff Nguyen's interactions have apparently been with those entities or the SMSC.²

² Plaintiff Nguyen does state that he received an order for protection from the Scott County district court. Plaintiffs' Amended Complaint, Doc 12, at ¶¶ 25 and 26, but was withdrawn. *Id.* at 48. However, that did not involve the Scott County Department of Human Services. Plaintiff Nguyen also references a divorce proceeding in Scott County, however, no discussion of any "referral" or activities of the Scott County DHS are discussed. *Id.* at 29. Finally, Plaintiff Nguyen states that his wife used drugs while she was pregnant with A.N. *Id.* at 16. However, since A.N. was not yet born, no child protection action could or did occur. Andreen Aff. at ¶ 5.

B. Plaintiff Steinhoff and T.J.

In Plaintiff Steinhoff's case, on June 11, 2013, a report was made to Scott County DHS regarding T.J. A child protection investigation was done by Scott County. A report dated June 21, 2013, concluded that there was no neglect or maltreatment of T.J. and, thus, no referral to any other entity was made. Andreen Aff. at ¶ 6.

While Plaintiff Steinhoff vaguely suggest she "begged" Scott County to open a case (Am. Complaint at ¶ 106), during her home visit by a Scott County child protection worker, she evinced no concern that T.J. would be physically or sexually abused. Andreen Aff. at ¶ 6. Moreover, since she and T.J. lived in Dakota County, it would be that county who would pursue the matter, once Scott County closed its case. In fact, Scott County sent the original report to Dakota County. *Id.* No referral for further action was made. *Id.*

C. Since There Was No Referral, No Case Lies That The Indian Child Welfare Manual Conflicts With ICWA.

Thus, while Plaintiffs may make an argument as to why ICWA may supersede the Indian Child Welfare Manual – an argument that both Scott County and Minnesota Department of Human Services Commissioner Piper strongly disagree with – the facts in this case show that the "referral" that is the crux of Plaintiffs' argument simply does not exist. In fact, there was no referral to the SMSC.

Accordingly, Plaintiffs cannot prevail on their motion for partial summary judgment simply because the operative facts do not allow it. Accordingly, their motion for partial summary judgment should be denied.

The Court may, however, grant summary judgment to Defendant Scott County because of these facts.

Summary judgment may be granted *sua sponte* to a defendant who shows through its response that a plaintiff cannot maintain the action it brings. *See Lester v. Wildwood Financial Group, Ltd.*, 205 F.3d 1346 (8th Cir. 2000). In *Lester*, the plaintiff claimed he was an employee and, thus was covered by the Fair Labor Standards Act. Plaintiff brought a motion for summary judgment and defendant argued that plaintiff was an independent contractor and, accordingly, was not covered by the FLSA. The district court found plaintiff was an independent contractor and granted summary judgment *sua sponte* to the defendant. The Eighth Circuit affirmed.

In this case, not only should Plaintiffs' motion for partial summary judgment be denied, because it is clear that no "referral" was made, Plaintiffs' argument – again, that both Commissioner Piper and Scott County disagree with – simply cannot exist. Accordingly, Scott County should be granted summary judgment but, at the very least, Plaintiffs' motion for partial summary judgment should be denied.

**II. SCOTT COUNTY ADOPTS COMMISSIONER PIPER'S
ARGUMENT AS TO WHY THE INDIAN CHILD WELFARE
MANUAL DOES NOT CONFLICT WITH ICWA.**

Rather than repeat Commissioner Piper's fine legal argument as to why there is no conflict between ICWA and The Indian Child Welfare Manual, Scott County simply

adopts that argument from her responsive memorandum, “Defendant’s Response In Opposition To Plaintiffs’ Motion for Partial Summary Judgment,” Doc 31 at 10 and “Defendant’s Memorandum of Law Supporting her Motion to Dismiss,” Doc. 15 at 8-12 which shows why Plaintiffs’ argument is not supported by a reading of the statute or the policy.

CONCLUSION

For the reasons set forth above, Defendant Scott County requests that Plaintiffs’ motion for partial summary judgment be denied and that the Court grant summary judgment to it.

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