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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GRANT CHARLES, in his official capacity as attorney for Roosevelt City, Utah, Plaintiff, v. UTE INDIAN TRIBE OF THE UINTAH and OURAY RESERVATION; BUSINESS COMMITTEE FOR THE UTE TRIBE OF THE UINTAH and OURAY RESERVATION; TRIBAL COURT FOR THE UTE TRIBE OF THE UINTAH and OURAY RESERVATION; WILLIAM L. REYNOLDS in his official capacity as Chief Judge of the Ute Tribal Court; and RICHITA HACKFORD, Defendants.	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO TRIBAL DEFENDANTS MOTION TO DISMISS FOR ALLEGED LACK OF JURISDICTION** Case No. 2:17-cv-00321-DN Judge David O. Nuffer

Plaintiff Grant Charles ("Plaintiff") submits this *Memorandum in Opposition* to the *Motion to Dismiss for Lack of Jurisdiction* filed by Defendants Ute Indian Tribe of the Uintah and Ouray Reservation; the Business Committee for the Ute Tribe of the Uintah and Ouray Reservation; the Tribal Court for the Ute Tribe of the Uintah and Ouray

Reservation; and William L. Reynolds in his official capacity as Chief Judge of the Ute Tribal Court (collectively "Tribal Defendants").[1]

BACKGROUND

Defendant Rachita Hackford ("Hackford") is not a member of a federally recognized tribe, which means that she is not an Indian. Hackford also lives in Roosevelt City, Utah, which this Court has declared is not Indian country. Hackford receives her culinary water from Roosevelt City, Utah. Roosevelt City disconnected or shut-off Hackford's water because of her refusal to pay her water bill.

Plaintiff is the City Attorney for Roosevelt City, Utah and a Deputy Duchesne County Attorney. In August of 2016, Hackford sued Plaintiff in the Ute Tribal Court ("*Hackford* case") seeking an order essentially requiring Plaintiff to restore her water service. Plaintiff, however, has no authority to order Hackford's water to be restored or turned back-on. Roosevelt City, Utah was not a party to that Ute Tribal Court lawsuit.

INTRODUCTION

This is an action for declaratory and injunctive relief. Plaintiff is seeking to have this Court review the question of the Ute Tribal Court's jurisdiction and lawful authority over him and other municipal and county officials/employees who, while acting in their official capacities and while attempting to discharge their official duties outside of Indian

[1] Dkt. No. 44.

country, are constantly being summoned into the Ute Tribal Court in response to frivolous and harassing lawsuits brought against them by members of the Ute Tribe and/or other persons claiming to be "Indian". Specifically, Plaintiff is asking for a declaratory judgment to the effect that the Ute Tribal Court lacks subject matter jurisdiction to hear the claims being brought in the Ute Tribal Court against Plaintiff and other municipal and county officials/employees arising out of the discharge of their official duties outside of the Ute Reservation and, based upon that ruling, for an *Order* enjoining the prosecution of those claims in the Ute Tribal Court.

During the pendency of this action, the Ute Tribal Court dismissed Hackford's *Complaint*. As a consequence of that dismissal, the Tribal Defendants have now moved to dismiss the instant action for an alleged lack of jurisdiction based upon the Tribal Court's order dismissing Hackford's *Complaint*. According to Tribal Defendants, Plaintiff's claims in this action are now moot but, as Plaintiff is prepared to show, they are not moot.

ARGUMENT: THIS MATTER IS NOT MOOT

Mootness is an argument that Tribal Defendants frequently raise in these types of cases. In fact, Tribal Defendants have a history of aiding and abetting the filing of lawsuits in the Ute Tribal Court against county and municipal officials by tribal members

and others claiming to be "Indian."[2] When those county and municipal officials bring an action in federal court challenging the Ute Tribal Court's jurisdiction, Tribal Defendants routinely dismiss the Tribal Court cases and then contend, based upon that dismissal, that the federal action is moot. A good example is the *Poulson* case,[3] in which this Court, faced with such a case history involving the dismissal of Tribal Court cases and subsequent claim of mootness, rejected Tribal Defendants mootness argument noting that: "**there is a likelihood that Plaintiffs will continue to be subject to suit in the Ute Tribal Court**."[4] That is exactly what Tribal Defendants have done in this case, and now seek, through their latest *Motion to Dismiss*, to avoid the possibility of an injunction from this Court against such continuing course of harassing conduct, by arguing that the dismissal of the Tribal Court case renders this case moot, thereby depriving this Court of jurisdiction. In the context of this case, the dismissal itself is an integral part of the improper actions for which this suit seeks redress. As such, Plaintiffs' claims are not moot.

The Tribal Defendants also fail to address the exception to mootness, whereby a claim is not moot when the underlying dispute is "capable of repetition yet evading

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[2] *See, e.g.*, Exhibits 1 through 4 hereto.

[3] *See, e.g., Poulson v. Ute Indian Tribe*, District of Utah Case 2:12-cv-00497.

[4] *Id.* Dkt. 162, Exhibit 5 hereto (emphasis added).

review."[5] This exception to the mootness doctrine applies "if (1) the duration of the challenged action [is] too short to be fully litigated prior to its cessation or expiration; and (2) there [is a] reasonable expectation that the same complaining party will be subjected to the same action again."[6] And both elements for this exception to the mootness doctrine apply in this case.

The first element of this exception is met because the duration of the challenged actions (Tribal court cases) is much too short for a federal case challenging jurisdiction to be litigated. Each time these county and municipal officials are sued in the Ute Tribal Court, the Tribal Court case is resolved before the federal court case can run its course. It is, therefore, clearly evident from the instant case, as well as from other cases that Tribal Defendants have dismissed in an effort to prevent this Court's review of their unlawful assertion of jurisdiction over local officials who were performing their official duties beyond the boundaries of the Ute Reservation,[7] that the proceedings in Ute Tribal Court are much too short for the federal proceedings to play out. Indeed, the Tribal Defendants' awareness of that disconnect is an essential element for their cynical litigation strategy of harassment of city and county officials for off-reservation conduct.

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[5] *Buchheit v. Green*, 705 F.3d 1157, 1160 (10th Cir. 2012) (quoting *Turner v. Rogers*, [564 U.S. 431, 439-40,] 131 S. Ct. 2507, 2514-15, 180 L. Ed. 2d 452 (2011)).

[6] *Id*. (quoting *Hain v. Mullin*, 327 F.3d 1177, 1180 (10th Cir. 2003) (en banc)).

[7] *See, e.g.,* Exhibit 6 hereto.

The second element of the mootness exception, an expectation that the same Plaintiff will again be subjected to suit in the Ute Tribal Court, is likewise met. Consider, for example, not only Tribal Defendants' history of this tactic of dismissing Tribal Court complaints when the defendant county or municipal official mounts a challenge in federal court to the Tribal Court's jurisdiction, but also the fact that the Ute Tribal Court entered into a *Consent Decree* in *Poulson v. Ute Indian Tribe*, which provided that the Ute Tribal Court would not accept complaints brought against "the State, a county or municipality, or against an official or employee of the State, a county or municipality" unless and until a law-trained judge had determined that there was a colorable basis for the existence of jurisdiction over the governmental defendants in the Ute Tribal Court.[8]

In the instant case, there was no basis for the Ute Tribal Court to believe that it had jurisdiction over Plaintiff because Hackford was not a member of a federally recognized tribe, and because Roosevelt City was not even within the exterior boundaries of the Ute Reservation. Yet, Judge Pechota of the Ute Tribal Court summarily certified that there was a colorable basis for that Court to exercise jurisdiction over the *Hackford* case.[9] By allowing the *Hackford* case to proceed in the Ute Trial Court, Tribal Court Defendants were looking for a case in which to rule that Roosevelt City was in fact within the Ute

[8] *See Consent Decree,* Exhibit 7 hereto.

[9] *See* Exhibit 8 hereto.

Reservation so as to assert a "plausible" basis for jurisdiction over Plaintiff as well as other county and municipal officials in future cases.

However, when Plaintiff brought this federal court action challenging the jurisdiction of the Ute Tribal Court over him, Tribal Defendants quickly dismissed the *Hackford* case and then went looking for another case in which to attempt to extend their jurisdiction over Roosevelt City, Utah. And Tribal Defendants recently found such a case: *In The Matter Of The Estate Of Maxie E. Chapoose, Sr,*[10] which was decided by the Ute Tribal Court on August 23, 2017.

In the *Chapoose* case, the Ute Tribal Court REJECTED this Court's ruling in *Ute Indian Tribe* v. *State of Utah* that, for purposes of the Ute Tribe's jurisdiction/authority, Roosevelt City, Utah was not part of the Ute Reservation.[11] In fact, the *Chapoose* Court held that:

> While true that the City of Roosevelt is no longer considered Indian country for federal purposes pursuant to diminishment of the Reservation by Congress, the Tribe still considers the City of Roosevelt to be part of the Reservation. *See Hagen v. Utah*, 510 U.S. 399, 421 (1994)(noting diminishment) . . . . **Therefore, for purpose of tribal law, the City of Roosevelt is part of the Reservation**.[12]

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[10] *See* Exhibit 9 hereto.

[11] Civ. No. 2:75-cf-00408-BSJ & 2:13-cv-00276-TS (D. Utah, Oct. 3, 2014) (order dismissing claims against Roosevelt City). *See* Exhibit 10 hereto.

[12] *Chapoose*, Exh. 9, p. 3(emphasis added).

That ruling by the Ute Tribal Court flies in the face of this Court's October 3, 2014 finding that, for purposes of both the Ute Tribal Court and State of Utah's respective jurisdiction, "**[c]ounsel for the tribe conceded there was no evidence supporting a claim that 'Indian country' existed within the boundaries of Roosevelt City**" and that "**it is undisputed that lands within the boundaries of Roosevelt City . . . are not within [the] Reservation**."[13]

The Tribal Court's ruling that Roosevelt City is part of the Ute Reservation "**for purpose of tribal law**," is significant for two reasons. First, it exhibits a contempt for the decisions of this Court in particular and federal courts in general that define and/or limit the jurisdiction and authority of tribal governments. Second, the *Chapoose* decision clearly shows that both the Ute Tribe and the Ute Tribal Court are attempting to expand the Tribe's governmental and judicial reach into Roosevelt City. As a consequence, Plaintiff expects to see many more frivolous and harassing claims being brought in the Ute Tribal Court against him and other local officials, which brings this case squarely within the "capable of repetition yet evading review" exception to the mootness doctrine that was recognized by the Tenth Circuit in the *Buchheit* decision.[14]

In *Buchheit* plaintiff Charles Buchheit sued Carol G. Green, Clerk of the

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[13] *See* Exh. 10, p. 2 (emphasis added).

[14] 705 F.3d 1157 (10th Cir. 2012).

Appellate Courts State of Kansas, and a state judge under the *Equal Access to Justice Act* for denying him *in forma pauperis status* and for refusing to docket his appeal. Before the United States District Court, a Magistrate Judge granted Buchheit's motion to proceed *in forma pauperis*, and Ms. Green objected to the Magistrate Judge's decision contending that the Magistrate had failed to screen Buchheit's complaint for merit as required by 28 U.S.C. § 1915(e)(2). The District Court overruled Ms. Green's objection but dismissed Buchheit's complaint on the basis of *Eleventh Amendment* sovereign immunity. Both Buchheit and Ms. Green appealed to the Tenth Circuit. On appeal, the Tenth Circuit affirmed the District Court's dismissal of Buchheit's complaint and then addressed the question of whether that affirmance rendered Ms. Green's cross appeal moot.

The *Buchheit* Court commenced its analysis by noting that normally a decision affirming the District Court's dismissal of the plaintiff's complaint would render a cross-appeal "moot".[15] But, the Buchheit Court went on to state that: "[t]here is an exception to the mootness doctrine . . . where the underlying dispute is 'capable of repetition, yet evading review,'"[16] which applied in that case. The *Buchheit* Court reasoned that this exception applied because the same issue had already come up in multiple cases against

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[15] *Id.* at 1159-60.

[16] *Id.* at 1160.(Quoting *Turner v. Rogers*, 564 U.S. 437, 439-40 (2011).

Ms. Green and other Kansas state officials, because Ms. Green and other Kansas state officials continue to be served with these types of complaints, and because the cases often have been dismissed by the District Court after the grant of *in forma pauperis* status, which meant that the issue of whether the district court should screen such cases for merit before the issuance of a summons could not be addressed.[17] Consequently, the Buchheit Court found that "Ms. Green's predicament falls squarely within the 'capable of repetition, yet evading review' exception to our mootness doctrine,"[18] and the same is true for the instant case.

Tribal Defendants have a well-established pattern and practice of allowing, perhaps even encouraging, tribal members and others to bring these type of cases (*i.e.*, suits against local officials arising out of the performance of their official duties in Roosevelt City and on other off-Reservation lands), and then quickly dismissing those cases once the defendant official brings an action in federal court to challenge the jurisdiction of the Ute Tribal Court, thereby attempting to evade this Court's review of the limits of the Ute Tribal Court's jurisdiction. That history is in and of itself sufficient to meet the in the "capable of repetition, yet evading review" standard. But there is more reason to expect repetition, given the Ute Tribal Court's recent ruling in the *Chapoose*

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[17] 705 F.3d at 1160.

[18] *Id.* at 1160.

case that "**the City of Roosevelt is part of the Reservation**"[19] for purposes of that Court's jurisdiction and that of Ute Tribe.[20] That ruling has set the stage for many more lawsuits in the Ute Tribal Court against local officials such as Plaintiff, which can be reasonably expected to occur in the future.

It would be hard to imagine a stronger set of circumstances that justify the application of the exception to the mootness doctrine than is present here. The very existence of this case demonstrates a continuing course of conduct on the part of the Tribal Defendants, even in the face of a prior rejection of their mootness claims in a similar case from this Court, involving wrongful assertion of jurisdiction over off-reservation conduct by non-Indians, including city and county officials.

CONCLUSION

Because this case meets the elements of the "capable of repetition yet evading review" exception to the mootness doctrine, Trial Defendants *Motion to Dismiss* should be denied. That *Motion* should also be denied because this Court has previously

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[19] *Chapoose*, Exh. 9, p. 3.

[20] The jurisdiction of a tribal court and that of the tribe itself are co-extensive. *See Nevada v. Hicks*, 533 U.S. 353, 357-58 (2001)(A tribe's adjudicative jurisdiction over non-members does not exceed its legislative jurisdiction over non-members). Consequently, if the Ute Tribe could not regulate the conduct and/or activities of non-members occurring off-Reservation then the Ute Tribal Court would have no jurisdiction to hear and determine claims arising out of the off-Reservation conduct by non-members. And both the Ute Tribe and the Ute Tribal Court have attempted to plug this hole in their respective legislative and judicial authority with the *Chapoose* decision.

considered and rejected Tribal Defendants' mootness claims in a similar case.[21]

DATED this 27th day of October, 2017.

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[21] See Exhibit 10 hereto.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of October, 2017, I electronically filed the foregoing with the Clerk of the Court using the ECF filing system. In addition, I also served a copy United States Mail, postage prepaid, upon to the following party:

Richita Hackford
820 East 300 North (113-10)
Roosevelt, Utah 84066

/s/ jesse c. trentadue
Jesse C. Trentadue