

**No. 17-35755**

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

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COEUR D' ALENE TRIBE, A FEDERALLY RECOGNIZED INDIAN TRIBE

*Plaintiff-Appellant,*

v.

STEVE W. HAWKS; DEANNE A. HAWKS

*Defendant-Appellees.*

On Appeal from the United States District Court  
For the District of Idaho  
No. 2:16-cv-00366-BLW  
Hon. B. Lynn Winmill

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**APPELLEE'S BRIEF**

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## **I. JURISDICTIONAL STATEMENT**

There was no basis for the district court's subject matter jurisdiction. The district court held it did not have jurisdiction, and that holding constitutes the issue on appeal.

## **II. ISSUE PRESENTED**

Whether the district court erred by dismissing the Complaint for lack of subject matter jurisdiction where the sole alleged basis for federal question jurisdiction is the existence of a tribal judgment.

## **III. STATEMENT OF THE CASE**

The Hawks own real property along the St. Joe River within the Coeur d'Alene Reservation, although the Hawks are not members of the Coeur d'Alene Tribe. *See* Appellant Coeur d'Alene Tribe's Excerpts of Record ("ER"), pp. 008-009. The Tribe sued the Hawks for violation of certain tribal codes in the Tribal Court of the Coeur d'Alene Tribe. ER p. 008. The Hawks did not appear in the Tribal Court. ER p. 010. The Tribe obtained a default judgment from the Tribal Court allowing for removal of certain encroachments (an issue to be handled by tribal authorities on lands purportedly subject to the jurisdiction of the Tribe), and a civil penalty in the amount of \$3,900. ER pp. 013-014. On August 12, 2016, the Tribe filed a complaint in the U.S. District Court for the District of Idaho for

recognition and enforcement of the default judgment in the amount of \$3,900 entered by the Tribal Court. ER pp. 008-011.

The Hawks filed a motion to dismiss the Tribe's complaint because the federal district court lacked subject matter jurisdiction. ER pp. 004-007. The district court dismissed the complaint because there was no federal statute or law in dispute that could be used to create a federal question. *Id.* The district court did not have jurisdiction. *Id.*

#### **IV. SUMMARY OF THE ARGUMENT**

Because federal courts are courts of limited jurisdiction, the Tribe must articulate a statutory or Constitutional basis for a federal court's jurisdiction to domesticate its \$3,900 default judgment against the Hawks in Idaho. The Tribe incorrectly asserts that the district court has federal question jurisdiction because federal law governs certain presently undisputed questions—specifically the tribal court's jurisdiction to issue the judgment and the application of the judicial doctrine of comity. The presence of such undisputed federal issues does not alone confer federal question jurisdiction. The district court did not err in dismissing the Complaint.

## **V. ARGUMENT**

### **A. Standard of Review**

This Court reviews a dismissal for lack of subject matter jurisdiction *de novo*. *Prather v. AT&T, Inc.*, 847 F.3d 1097, 1102 (9th Cir. 2017). A district court's factual findings relevant to subject matter jurisdiction, however, will be accepted unless they are clearly erroneous. *Id.*

### **B. Federal Courts are Courts of Limited Jurisdiction.**

“It is a fundamental principle that federal courts are courts of limited jurisdiction.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989) (quoting *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374, 98 S.Ct. 2396, 2403, 57 L.Ed.2d 274 (1978)). They possess “only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc.*, 873 F.2d at 1225 (citing *California ex rel. Younger v. Andrus*, 608 F.2d 1247, 1249 (9th Cir. 1979)).

In this case, there is no basis for the federal court's jurisdiction. The Tribe seeks to domesticate a foreign judgment in Idaho, relying upon 28 U.S.C. § 1331 to afford the federal district court jurisdiction. Section 1331 provides for “federal

question jurisdiction” and states that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. There is no Constitutional provision, statute or treaty creating original jurisdiction for federal courts to rule upon the domestication of the foreign judgment at issue in this case—a tribal judgment issued by the Coeur d’Alene Tribal Court. The district court did not err in dismissing the Complaint.

**C. The Tribe’s Reliance Upon *Wilson v. Marchington* to Support Federal Question Jurisdiction in this Case is Misplaced.**

As grounds for the district court’s jurisdiction, the Tribe cites *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997) . It relies upon *Marchington* for the proposition that federal courts can recognize and enforce tribal judgments under the doctrine of comity. *See id.* at 812-13.

Whether federal courts can recognize and enforce tribal judgments under the doctrine of comity is not the narrow question before this Court. Clearly, they can. The question before this Court is whether the district court in this case had jurisdiction to recognize and enforce a tribal judgment when the exclusive basis for Section 1331 jurisdiction is the bare existence of such tribal judgment.

In *Marchington*, a plaintiff in tribal court was awarded a judgment, and thereafter sought recognition and enforcement in federal court. The “principle issue” presented to the federal district court “was whether the Blackfeet Tribal

Court was vested with subject matter jurisdiction to adjudicate the underlying controversy.” *Wilson v. Marchington*, 934 F.Supp. 1187 (D. Mont. 1996) . A “correlative issue” was whether the tribal judgment was entitled to full faith and credit. *Id.* The Ninth Circuit held that the recognition of a tribal judgment was a question of comity, not full faith and credit, and ultimately determined that the tribal court did not have jurisdiction. 127 F.3d at 809, 812-15.

This case does not present the issues in dispute in *Marchington* to the district court. In this case, the Tribe simply seeks to domesticate a foreign judgment for a \$3,900 civil penalty obtained by default. ER pp. 008-011. There is no disputed issue presented in the Tribe’s Complaint about whether a tribal judgment is to be recognized under full faith and credit or the doctrine of comity. *Id.* There is no disputed issue presented in the Tribe’s Complaint about the jurisdiction of the tribal court. *Id.* This is, as the district court held, merely a case involving the domestication of a foreign judgment in Idaho. ER p. 005.

*Marchington*’s holding that federal courts should generally recognize tribal judgments was not a proclamation that federal question jurisdiction exists every time a party seeks to domesticate a tribal judgment. Rather, it established that a tribal judgment is entitled to recognition if it meets the articulated test for recognition of a foreign judgment pursuant to the well-established judicial doctrine of comity. *See Marchington*, 127 F.3d at 812-13. If the possible applicability of a



Constitutional doctrine such as full faith and credit does not alone create federal question jurisdiction or give rise to an implied federal cause of action, *see Minnesota v. Northern Sec. Co.*, 194 U.S. 48, 71-72, 24 S.Ct. 598, 48 L.Ed. 870 (1904), then the applicability of the doctrine of comity certainly does not either.

The district court did not err in distinguishing this case from *Marchington*. Moreover, the district court's comparison of this case to *Miccosukee Tribe v. Kraus-Anderson Const. Co.*, 607 F.3d 1268, 1275 (11th Cir. 2010), was appropriate in light of the lack of any similarly postured matters in this circuit. Because a simple suit to domesticate a \$3,900 tribal judgment in Idaho does not state a federal claim, federal question jurisdiction does not exist.

**D. The Existence of a Federal Issue Does Not Confer Federal Question Jurisdiction.**

As the Tribe points out, Native American law has a “quintessentially federal character.” *Marchington*, 127 F.3d at 813. However, “federal question jurisdiction does not exist merely because an Indian tribe is a party or the case involves a contract with an Indian tribe. ‘Otherwise the federal courts might become a small claims court for all such disputes.’” *Stock West, Inc.*, 873 F.2d at 1225-26.

There exists no clear statutory authority for the Tribe to seek domestication of a \$3,900 civil penalty against the Hawks in the federal district court of the state of Idaho. Therefore, the Tribe argues that, as a result of *Marchington*, there is

federal question jurisdiction in **every** case involving foreign judgment entered by a tribal court because all such cases involve at least one issue of federal law.

Specifically, the Tribe reasons that federal question jurisdiction exists in **every** state law cause of action for domestication of a tribal judgment because (i) the jurisdiction of the tribal court to enter judgment is a “threshold matter” for domestication thereof,<sup>1</sup> and (ii) under *Marchington* and *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985), the jurisdiction of a tribal court is an issue of federal law.

Well-established precedent holds that more is required to create federal question jurisdiction than the existence of an issue of federal law. “[T]he mere presence of a federal issue in a state cause of action does not automatically confer federal question jurisdiction.” *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 813, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986). “There is federal question jurisdiction over a state-law claim only if it ‘necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Cook Inlet Region, Inc. v. Rude*, 690 F.3d 1127, 1130 (9th Cir. 2012) (quoting *Grable & Sons Metal Products, Inc. v. Darue*

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<sup>1</sup> The question of the issuing court’s jurisdiction is a threshold issue in any state law domestication of judgment, whether by virtue of full faith and credit or comity. *See e.g.* IDAHO CODE §§ 10-1301 *et seq.*; IDAHO CODE §§ 10-1401 *et seq.*

*Engineering & Manufacturing*, 545 U.S. 308, 314, 125 S.Ct. 2363, 162L.Ed.2d 257 (2005)). The term “federal issue” is not “a password opening federal courts to any state action embracing a point of federal law.” *Grable*, 545 U.S. at 314.

As the district court essentially found below, the posture of this case does not involve any “actually disputed and substantial federal issue.” The Hawks did not challenge the tribal court’s jurisdiction to enter the default judgment, nor did the Tribe seek a legal ruling that the tribal court indeed had jurisdiction. ER p. 005. The only other possible federal issue is the applicability of *Marchington*’s comity analysis, and that is likewise neither actually disputed nor substantial. In fact, the comity doctrine outlined in *Marchington* is codified in the Idaho Code. *See* IDAHO CODE § 10-1401 *et seq.* In other words, the *Marchington* comity analysis is applied in Idaho state courts already, meaning there is no actually disputed or substantial federal issue.

Furthermore, the Federal Rules of Civil Procedure state that enforcement of a judgment “must accord with the procedures of the state where the court is located.” FED. R. CIV. P. 69(a)(1). That statement further reflects an acknowledgment by the U.S. Supreme Court pursuant to the Rules Enabling Act, 28 U.S.C. §§ 2071 *et seq.* that, barring an actually disputed and substantial federal issue, the “balance of federal and state judicial responsibilities” to domesticate foreign judgments weighs in favor of the state.

In this case, the Complaint contains no “actually disputed and substantial federal issue,” and the domestication of foreign judgments should be handled by the state judiciary. This case fails to meet the standards for federal question jurisdiction articulated in *Grable*, and the district court did not err in dismissing the Complaint.

## VI. CONCLUSION

For the foregoing reasons, the Hawks respectfully request that this Court uphold the district court’s dismissal of the Complaint to domesticate a foreign civil penalty judgment in the amount of \$3,900 for lack of subject matter jurisdiction.

DATED this 19th day of December, 2017.

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that:

This brief complies with the type-volume limitation of Rule 32(a)(7)(B) because this brief contains 1,935 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word, Version 14.0.7190.5000, Times New Roman 14-point font.

DATED this 19th day of December, 2017.

/s/ Matthew J. McGee  
Matthew J. McGee

### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 19, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Matthew J. McGee  
Matthew J. McGee