

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Darrel Gustafson,

Plaintiff and Appellee

v.

**Raymond Poitra, Linus Poitra, and
all other persons unknown claiming
an estate or interest in, or lien or
encumbrance upon, the property
described in the Complaint,**

Defendants and Appellants

Supreme Court Case No. 20170423

District Court Civil

File No: 40-2016-CV-00100

**APPEAL FROM JUDGMENT BY
THE DISTRICT COURT NORTHEAST
JUDICIAL DISTRICT, ROLETTE
COUNTY, NORTH DAKOTA**

**HONORABLE ANTHONY SWAIN
BENSON
DISTRICT JUDGE**

**DELMORE LAW FIRM
William J. Delmore, #03212**

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Attorney for Appellants Raymond Poitra,
Linus Poitra et al

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I. Statement of the Issues

1. Whether the district court erred in finding subject jurisdiction over the matter in lieu of tribal jurisdiction of the Turtle Mountain Band of Chippewa Indians Tribal Court.
2. Whether the district court erred in finding that the subject matter of this action did not meet the sufficient requirements of Montana v. United States 450 U.S. 544(1981) to establish tribal jurisdiction over the matter.

II. Statement of the Case

¶1 The background of the case was as referenced by the District Court in its Memorandum Opinion and Order for Judgment:

¶2 A bench trial was held on March 30, 2017 in the Rolette County Courthouse, Rolla, ND on a Complaint filed by the Plaintiff, seeking to quiet title to certain real estate, located within the boundaries of the Turtle Mountain Band of Chippewa Indians Reservation. The Plaintiff Darrell Gustafson (hereinafter sometimes referred to as “Gustafson”) appeared with his attorney, Reed Soderstrom. The Defendants (hereinafter sometimes referred to as “Poitra”) appeared with their attorney, William Delmore. At the hearing, the Plaintiff testified and introduced certain exhibits. Following the presentation of the Plaintiff’s case, one of the Defendants, Raymond Poitra, testified and introduced certain exhibits. At the conclusion of the hearing, the Court asked the parties to file post hearing briefs.

¶3 The case came to the Court by way of a complaint seeking to quiet title to certain land, described as follows:

Parcel 1: That part of the NW1/4NW1/4, Section 29, Township 162 N., Range 70 W., 5th P.M., described as commencing at the Common Sections Corners of Section 19, 20, 29 and 30, Township 162 N., Range 70 W., thence South 89°58’ East on the Section line between Sections 20 and 29 a distance of 1320.0 feet; thence South 0°04’ East a distance of 530.0 feet to the South right of way line of State Highway No. 2 and 281 being the point of beginning; thence South 0°04’

East a distance of 875.05 feet to the Southeast Corner of said NW1/4NW1/4; thence North 89°58' West a distance of 550 feet; thence North 0°04' West a distance of 510.05 feet to the South right of way line of State Highway No. 5 and 281; thence North 55°52' East a distance of 660.0 feet along the State Highway 5 and 281 right of way line back to the point of beginning, comprising 10.0 acres more or less.

Parcel 2: A parcel of land lying in the NW1/4NW1/4, Section 29, Township 162 N., Range 70 W., described as follows: Beginning at the SW Corner of said NW1/4NW1/4 thence East on forty-line to a point which is 550 feet West of the East line of said NW1/4NW1/4, thence North to intersection with the South right-of-way line of State Highway No. 5, thence Southwesterly along said highway right-of-way line to intersection with the West line of said NW1/4NW1/4, thence South on forty-line to said point of beginning, subject to all valid outstanding easements and rights-of-way of record.

(Parcel 1 and Parcel 1, taken together, are also known as that part of the NW1/4NW1/4 lying South of the highway Right of Way of State Highway Number 5.) (Herein referred to as "The Property" or "Property"). (App. 3, Court's Memorandum, page 2.)

[¶4] Gustafson argued that he is entitled to a judgment quieting title to this property, as well as damages resulting from a "lessor's lien" Poitra's filed against the property and mailed to Gustafson's bank, while Poitra argued that the state court lacks jurisdiction over this matter, and that the Turtle Mountain Tribal Court is the proper court to hear and determine this action.

[¶5] The Plaintiff is a non-Indian record title fee owner of the described property, having obtained title by way of a sheriff's deed. This sheriff's deed arose out of a judgment and decree of foreclosure entered on September 18, 2007. The Plaintiff first obtained a sheriff's certificate of sale, dated November 16, 2007. He thereafter obtained a sheriff's deed, dated November 17, 2008, which deed was filed in the Rolette County Recorder's Office as Document No. 56802 on November 17, 2008. This foreclosure judgment was appealed to the North Dakota Supreme Court by the Defendants, and the

North Dakota Supreme Court affirmed the foreclosure judgment. Gustafson v. Poitra, 2008 ND 159.

III. Summary of Argument

[¶6] As indicated in the Court's Memorandum, the Supreme Court had affirmed a foreclosure judgment Gustafson v. Poitra, 2008 ND 159. The Court did footnote that the Defendants (hereinafter Poitra) did raise jurisdictional issues in that action but did not raise them in the Appellate Court *infra*. In this brief, Poitra will demonstrate that they were summarily prevented from raising such jurisdictional issues by the District Court.

[¶7] Further, in its Memorandum, the Court describes that this case does not meet the tests of Montana, Montana v. United States, 450 U.S. 544 (1981) regarding tribal jurisdiction. The intent of much of brief is to indicate how this matter does meet the tests of Montana *infra* in terms of appropriate tribal jurisdiction.

IV. Defendant's Raising of Jurisdictional Issue

[¶8] Poitra raised the jurisdictional issue to the District Court after the original case was remanded. (Transcript pp. 67-72.) However, Poitra's attempt to raise such issue was summarily dismissed. (App. 2, Defendant's Closing Brief, page 1; App. 3, Court's Memorandum of Opinion page 3.) Poitra did not raise the jurisdictional issue

[¶9] Poitra did not raise the jurisdictional issue originally in District Court because they were not in District Court, but believed such matter was appropriately in tribal court (transcript pp. 67-72). Upon remand, they attempted to raise the jurisdictional issue but were summarily denied.

V. The Subject Matter of This Case Meets the Exceptions Discussed in Montana v. United States, 450 U.S. 544 (1981) To Establish Tribal Jurisdiction Over This Matter.

[¶10] As the District Court in its Memorandum Opinion indicated, *infra* describes in specific the exception under which a tribe may regulate the activities of nonmembers on its land. In specific, Montana v. United States said:

The Court recently applied these general principles in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, rejecting a tribal claim of inherent sovereign authority to exercise criminal jurisdiction over non-Indians. Stressing that Indian tribes cannot exercise power inconsistent with their diminished status as sovereigns, the Court quoted Justice Johnson’s words in his concurrence in *Fletcher v. Peck*, 6 Cranch 87, 147 – the first Indian case to reach this Court – that the Indian tribes have lost any “right of governing every person within their limits except themselves.” 435 U.S., at 209. Though *Oliphant* only determined inherent tribal authority in criminal matters, 14 the principles on which it relied support the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe. To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relations with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. *William v. Lee*, *supra*, at 223; *Morris v. Hitchcock*, 194 U.S. 384; [450 U.S. 544, 566] *Buster v. Wright*, 135 F. 947, 950 (CA*); see *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 152 -154. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. See *Fisher v. District Court*, 424 U.S. 382, 386; *Williams v. Lee*, *supra*, at 220; *Montana Catholic Missions v. Missoula County*, 200 U.S. 188, 128 -129; *Thomas v. Gay*, 169 U.S. 264, 273. [450 U.S. 544, III. B.]

[¶11] In the current case, Gustafson, during cross examination described the consensual nature of his actions in doing business from the subject property on the reservation. (Cite Transcript pp. 47-53.)

[¶12] The Turtle Mountain Band of Chippewa Indians have shown that this action has effect on the political integrity, economic security or health and welfare of the tribe when they undertook authority for “quiet title” actions and held such capacity in the 1990’s. (Appendix 2, Defendant’s Closing Brief, page 1).

[¶13] In addition as referenced in *Davis v. O’Keefe*, 283 N.W.2d 73 (N.D. 1979), neither the Tribe nor the State of North Dakota has taken any action to assume state jurisdiction over Turtle Mountain Reservation land within the context of the Indian Civil Rights Act.

In 1968 Congress severely limited the unilateral state assumption of jurisdiction on reservation by the passage of the Indian Civil Rights Act, Title IV, Act of April 11, 1968. Pub. L. No. 90-284, § 401, et seq., 82 Stat. 78, 25 USCA 1321, et seq. (1979). This statute conditions any assumption of state jurisdiction on the consent of the tribe. To date, neither the Turtle Mountain Tribe nor the State of North Dakota could assume jurisdiction over the Turtle Mountain Indian Reservation. [Footnote page 4.]

VI. Conclusion

[¶14] Poitra firmly believes that the District Court never had jurisdiction over this matter but that the Turtle Mountain Tribal Court should and does have jurisdiction. How can jurisdiction be found when there is none?

Respectfully,

Dated the 12th of March 2018.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Darrell Gustafson,)	
)	Supreme Court Case No.: 20170430
Plaintiff, Appellee)	
)	District Court Civil
v.)	File No: 40-2016-CV-00100
)	
Raymond Poitra, Linus Poitra et al,)	CERTIFICATE OF SERVICE
)	
Defendant, Appellants)	

I hereby certify that I am over 21 years old and served the following documents by email:

1. Certificate of Service
2. Appellant's Brief and Appendix

On the following parties:

1. Penny L. Miller, Clerk of the Supreme Court, supclerkofcourt@ndcourtsd.gov
2. David J. Smith, Attorney for Plaintiff/Appellee, dsmith@smithporsborg.com.

Dated this 12th day of March 2018.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Darrell Gustafson,)	
)	Supreme Court Case No.: 201704230
Plaintiff and Appellee)	
)	District Court Civil
v.)	File No: 40-2016-CV-00100
)	
Raymond Poitra, Linus Poitra, and all other)	CERTIFICATE OF SERVICE
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the property described in the Complaint,)	
)	
Defendants and Appellants)	

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1. Penny L. Miller, Clerk of the Supreme Court, supclerkofcourt@ndcourtsd.gov
2. David J. Smith, Attorney for Plaintiff/Appellee, dsmith@smithporsborg.com.

Dated this 19th day of March 2018.

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