UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOY SPURR,

Plaintiff,

v.

MELISSA L. POPE, et al.,

Defendants.
_____/

Case No. 1:17-cv-1083

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff Joy Spurr, represented by her husband, Stephen Spurr, initiated this case against Melissa L. Pope, identified as the Chief Judge of Tribal Court of Nottawaseppi Huron Band of the Potawatomi; the Supreme Court for the Nottawaseppi Huron Band of Potawatomi; and the Nottawaseppi Huron Band of Potawatomi Indians (ECF No. 1). The matter is before the Court on Defendants' Joint Motion to Dismiss (ECF No. 29), seeking dismissal of Plaintiff's Complaint for lack of subject-matter jurisdiction and failure to state a claim on which relief can be granted. *See* FED. R. CIV. P. 12(b)(1), (6). Having considered the parties' submissions, the Court concludes that oral argument is unnecessary to resolve the issues presented. *See* W.D. Mich. LCivR 7.2(d). For the reasons that follow, the Court grants Defendants' motion.

I. BACKGROUND

Neither Plaintiff nor Stephen Spurr is a member of the Nottawaseppi Huron Band of Potawatomi Indians ("the Tribe") (ECF No. 1-1 at PageID.7-9). They do not live on the reservation (ECF No. 1-4 at PageID.34). However, Stephen Spurr was previously married to a Tribe member, Laura Spurr (ECF No. 1-1 at PageID.7-9). Stephen Spurr has an adult son,

Nathaniel Spurr, who lives on the reservation (ECF No. 1-4 at PageID.32, 34). This case arises from the February 17, 2017 issuance of a Non-Domestic Personal Protection Order (PPO) by the Nottawaseppi Huron Band of Potawatomi (NHBP) Tribal Court ("the Tribal Court") against Plaintiff as respondent in NHBP Case No. 17-046-PPO/ND (ECF No. 1-3). The PPO prohibited Plaintiff from "stalking" Nathaniel Spurr, the petitioner (*id.*). Plaintiff moved for reversal by the Supreme Court for the Nottawaseppi Huron Band of Potawatomi, which was denied on December 6, 2017 (ECF No. 1-10 at PageID.101).

On December 11, 2017, Plaintiff filed a four-page "Complaint for Declaratory Judgment and Injunctive Relief" (ECF No. 1) in this Court, as well as a 26-page "Brief in Support" (ECF Nos. 1-1 & 1-2). Plaintiff's Complaint does not delineate any counts, but her brief includes a "Statement of the Legal Issues," as follows:

> A. Did the Evidence Before the Trial Court Support the Court's Findings that the Plaintiff was engaged in "Stalking" as defined under the NHBP Domestic Violence Code?
>
> B. Putting Aside the Issue of Jurisdiction, Should the Trial Court Have Issued a Permanent Personal Protection Order Against the Plaintiff Based on the Evidence Before the Court?
>
> C. If a Permanent Protection Order Against "Stalking" is considered a Criminal Sanction, Did the Trial Court have Jurisdiction to Issue It Against the Plaintiff Under NHBP Tribal Law or United States Law?
>
> D. If a Permanent Protection Order Against "Stalking" is considered a Civil Sanction, Did the Trial Court have Jurisdiction to Issue It Against the Plaintiff Under NHBP Tribal Law or United States Law?
>
> E. If the Trial Court did not Have Jurisdiction to Issue its Permanent Protection Order Against the Plaintiff, Was the Trial Court Justified in Submitting its Order to the Michigan Law Enforcement Information Network?
>
> F. Would the Plaintiff suffer a Continuing, Irreparable Harm in the Absence of Preliminary Injunctive Relief?

G. Has the Plaintiff Exhausted Her Remedies, by Challenging the Tribal Court's Jurisdiction in Federal Court?

(ECF No. 1-1 at PageID.11-12).

Plaintiff also included an "Appendix" with three more "Related Procedural Issues," as follows:

H. Was it Appropriate for the Trial Court to Suggest to the Petitioner that his Personal Protection Order could be renewed annually, unless the Plaintiff could prove she had not harassed him?

I. What are Other Consequences of Entering a Permanent Protection Order into the Michigan Law Enforcement Information Network?

J. Should the Trial Court Have Granted the Plaintiff's Request to Postpone the Hearing to a Date Later than February 16, 2017?

(ECF No. 1-2 at PageID.26-29).

Plaintiff seeks a declaratory judgment "that (1) the Defendants do not have personal or subject matter jurisdiction to issue against the Plaintiff the temporary and permanent personal protection orders that have been issued by the Defendant … Judge Pope; and (2) the Defendants are legally required to withdraw the permanent protection order from the Michigan Law Enforcement Information Network [LEIN]" (ECF No. 1 at PageID.3). Plaintiff also seeks preliminary injunctive relief in the form of an injunction "to prevent the Defendants from unlawfully pursuing proceedings against the Plaintiff based on the permanent Personal Protection order, and from maintaining the Order on the Michigan Law Enforcement Information Network" (*id.*). Last, although not included in its title, Plaintiff's "Complaint for Declaratory Judgment and Injunctive Relief" seeks "damages against the Defendants, jointly and severally" (*id.*).

On January 25, 2018, Defendants jointly moved for a Pre-Motion Conference, proposing to file a motion to dismiss (ECF No. 13). On January 30, 2018, the Court noticed a Pre-Motion Conference for March 12, 2018 (ECF No. 18). On January 31, 2018, Plaintiff filed in this Court

an "Emergency Motion for a Temporary Restraining Order and for Scheduling a Hearing on a Preliminary Injunction" (ECF No. 19). This Court denied Plaintiff's request for a TRO and indicated that the Court would address the topic of preliminary injunctive relief at the scheduled proceeding on March 12, 2018 (Order, ECF No. 20).

Following the combined Pre-Motion Conference and Motion Hearing on March 12, 2018, this Court issued an Order denying Plaintiff's request for a Preliminary Injunction for the reasons stated on the record and setting forth a briefing schedule on Defendants' proposed motion to dismiss (Order, ECF No. 26). In May 2018, Defendants filed their Motion to Dismiss (ECF No. 29). Plaintiff filed a response in opposition (ECF No. 31), and Defendants filed a Reply (ECF No. 32).

II. ANALYSIS

A. Motion Standards

Defendants move to dismiss this case under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Rule 12(b)(1) permits dismissal for a lack of subject-matter jurisdiction. FED. R. CIV. P. 12(b)(1). "When the defendant challenges subject matter jurisdiction through a motion to dismiss, the plaintiff bears the burden of establishing jurisdiction." *Angel v. Kentucky*, 314 F.3d 262, 264 (6th Cir. 2002) (quoting *Hedgepeth v. Tennessee*, 215 F.3d 608, 611 (6th Cir. 2000)). *See also Moir v. Greater Cleveland Regional Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990). Motions to dismiss for lack of subject-matter jurisdiction take one of two forms: (1) facial attacks and (2) factual attacks. *United States v. A.D. Roe Co., Inc.*, 186 F.3d 717, 721-22 (6th Cir. 1999). If the jurisdictional attack is facial, then the court must accept the allegations in the complaint as true and construe them in a light most favorable to the non-moving party. *Id.* If the attack is factual, however, then the court may look to material outside the pleadings and make

factual findings. *Id.* *See also Nichols v. Muskingum Coll.*, 318 F.3d 674, 677 (6th Cir. 2003) ("In reviewing a 12(b)(1) motion, the court may consider evidence outside the pleadings to resolve factual disputes concerning jurisdiction, and both parties are free to supplement the record by affidavits."); *Ohio Nat'l Life Ins. Co. v. U.S.*, 922 F.2d 320, 325 (6th Cir. 1990) ("The court has wide discretion to consider material outside the complaint in assessing the validity of its jurisdiction.").

Federal Rule of Civil Procedure 12(b)(6) authorizes the court to dismiss a complaint if it "fail[s] to state a claim upon which relief can be granted[.]" FED. R. CIV. P. 12(b)(6). In deciding a motion to dismiss for failure to state a claim, the court must construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded factual allegations in the complaint as true. *Thompson v. Bank of Am., N.A.*, 773 F.3d 741, 750 (6th Cir. 2014). To survive a motion to dismiss, the complaint must present "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557, 570 (2007). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *See also Commercial Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327, 335-36 (6th Cir. 2007) ("When a document is referred to in the pleadings and is integral to the claims, it may be considered without converting a motion to dismiss into one for summary judgment.").

B. Discussion

"Federal courts are courts of limited jurisdiction." *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982). "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to

exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 7 Wall. 506, 514; 19 L. Ed. 264 (1868)). Indeed, the Court has an obligation to dismiss an action "at any time" it decides that "it lacks subject-matter jurisdiction." FED. R. CIV. P. 12(h)(3).

Plaintiff alleges this Court has jurisdiction over the subject matter of her Complaint pursuant to the Indian Civil Rights Act, 25 U.S.C. § 1302; the Declaratory Judgment Act, 28 U.S.C. § 2201; and the federal-question statute, 28 U.S.C. § 1331 (ECF No. 1 at PageID.2). The Court will consider the parties' arguments under each of these three alleged jurisdictional bases, in turn.[1]

1. **The Indian Civil Rights Act**

Defendants argue that the Indian Civil Rights Act (ICRA), 25 U.S.C. §§ 1301–1303, does not provide this Court with subject matter jurisdiction over Plaintiff's Complaint (ECF No. 30 at PageID.360-361). Despite including the ICRA in the jurisdictional statement of her Complaint, Plaintiff does not address its applicability in her response to Defendants' motion to dismiss.

Defendants' argument has merit.

With the passage of the ICRA, Congress imposed "certain restrictions upon tribal governments similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57 (1978). "[Section] 1302 does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers." *Id.* at 72. "In 25 U.S.C. § 1303, the only remedial provision expressly supplied by Congress, the 'privilege of the writ of habeas corpus' is made 'available to any person, in a court

[1] Given its conclusions herein, the Court does not reach Defendants' alternative argument that this Court should dismiss the claims against Defendants NHBP and the NHBP on the basis of sovereign immunity.

of the United States, to test the legality of his detention by order of an Indian tribe.'" *Id.* at 58. *See also LaBeau v. Dakota*, 815 F. Supp. 1074, 1076 (W.D. Mich. 1993) ("Congress did not provide a private right of action in the Indian Civil Rights Act…"). Therefore, even assuming arguendo that Plaintiff has not waived this claimed basis for jurisdiction, the Court agrees with Defendants that the ICRA does not provide the Court with subject matter jurisdiction in this case.

2. **The Declaratory Judgment Act**

Defendants argue that the Declaratory Judgment Act, 8 U.S.C. § 2201, likewise fails to confer this Court with subject matter jurisdiction in this case (ECF No. 30 at PageID.361-362). Again, despite including the Declaratory Judgment Act in the jurisdictional statement of her Complaint, Plaintiff does not address its applicability in her response to Defendants' motion to dismiss.

Defendants' argument has merit.

"[T]he operation of the Declaratory Judgment Act is procedural only." *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950) (citation omitted). "Congress enlarged the range of remedies available in the federal courts but did not extend their jurisdiction." *Id.* Hence, "[t]he plaintiff's claim itself must present a federal question." *Id.* Therefore, assuming arguendo that Plaintiff has not also waived this claimed basis for jurisdiction, the Court agrees with Defendants that the Declaratory Judgment Act does not provide the Court with subject matter jurisdiction.

3. **The Federal-Question Statute**

Similarly, the federal-question statute, 28 U.S.C. § 1331, does not, in and of itself, supply a substantive basis for federal jurisdiction. Section 1331 provides 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. In other words, § 1331 merely gives the federal district court

jurisdiction when a federal question arises based on other federal law. *See Gully v. First Nat'l Bank*, 299 U.S. 109, 112 (1936) ("To bring a case within [§ 1331], a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action.").

As noted *supra*, Plaintiff did not state her claims in her Complaint as required by Federal Rule of Civil Procedure 10(b), but this Court will consider the ten issues Plaintiff presented in her accompanying brief and appendix to determine if she has identified a federal question for review. Plaintiff's Issues A and B address the sufficiency of the evidence under the NHBP statutory definition of stalking in support the Tribal Court's issuance of the PPO against her (ECF No. 1-1 at PageID.12-18). Plaintiff's Issues C and D concern the Tribal Court's jurisdiction to issue the PPO against her, a non-tribal member, as either a criminal or civil sanction (*id.* at PageID.17-21). In Issue E, Plaintiff challenges the propriety of submitting the PPO on Michigan's LEIN system (*id.* at PageID.21). This Court has already resolved Issue F, Plaintiff's request for a preliminary injunction (*id.* at PageID.21-23). Issue G concerns whether Plaintiff exhausted her remedies in the Tribal system (*id.* at PageID.23-24). And Issues H, I and J are "related procedural issues" concerning how the Tribal Court entered the PPO (ECF No. 1-2 at PageID.26-29).

a. *Tribal-Law Claims*

Defendants argue that with the exception of Plaintiff's challenge to the Tribal Court's jurisdiction, Plaintiff's claims are grounded solely in the asserted requirements of tribal law, not federal law (ECF No. 30 at PageID.359). Defendants conclude that this Court is not empowered to speak on these questions (*id.*).

In her response to Defendants' motion to dismiss, Plaintiff does not dispute that her claims in Issues A, B, E, G, H, I and J do not "aris[e] under the Constitution, laws, or treaties of the United States" for purposes of federal-question jurisdiction under § 1331.

Defendants' argument has merit.

The Court determines it lacks jurisdiction over the subject matter of Plaintiff's tribal-law claims. *See, e.g., Talton v. Mayes*, 163 U.S. 376, 385 (1896) ("[T]he determination of what was the existing law of the Cherokee nation . . . [was] solely [a] matter[] within the jurisdiction of the courts of that nation, and the decision of such a question in itself necessarily involves no infraction of the Constitution of the United States"); *Shelifoe v. Dakota*, 966 F.2d 1454, at *1 (6th Cir. 1992) ("[T]he district court lacks jurisdiction to review a challenge to the propriety or wisdom of a tribal court's decision."); *Lesperance v. Sault Ste. Marie Tribe of Chippewa Indians*, 259 F. Supp. 3d 713, 722 (W.D. Mich. 2017) ("Whether the Tribe correctly interpreted and applied its own ordinance does not present a federal question."). Hence, Plaintiff has not borne her burden of demonstrating any jurisdictional basis for this Court to review her tribal-law claims, and the tribal-law claims are properly dismissed under FED. R. CIV. P. 12(b)(1).

b. *Jurisdictional Claim*

Defendants concede that unlike Plaintiff's tribal-law claims, federal-question jurisdiction lies over her claim that the Tribal Court lacked jurisdiction to issue the PPO as a matter of federal law (ECF No. 30 at PageID.362), i.e., Plaintiff's remaining Issues C and D. Although they concede subject matter jurisdiction exists over the jurisdictional claim, Defendants request that this Court dismiss the claim "against all Defendants under Rule 12(b)(6) because the claim is squarely foreclosed by Congress' unambiguous recognition of tribal jurisdiction in 18 U.S.C. § 2265(e)"

(ECF No. 30 at PageID.362). According to Defendants, the jurisdictional claim turns on a pure question of law and is "not plausible on its face" (*id.*).

In her response, which incorporates some of her earlier briefing on the topic, Plaintiff "agree[s] with the Defendants' statement that Joy Spurr's claim is suitable for disposition without further briefing, apart from the issues of damages, costs and attorney fees" (ECF No. 31 at PageID.374). However, contrary to Defendants' reliance on 18 U.S.C. § 2265(e), Plaintiff contends that 25 U.S.C. § 1304 instead indicates Congress' clear intent to *not* authorize tribal courts to issue PPOs against non-tribal members over crimes of domestic violence (*id.* at PageID.374-375). Plaintiff asserts that § 2265 "is about 'full faith and credit given to protection orders,' not jurisdiction" (ECF No. 23 at PageID.307). According to Plaintiff, if this Court looks to § 1304, then the Court will conclude that the Tribal Court lacked jurisdiction to issue the PPO in this case because Plaintiff "does not fit within any of the designated categories" delineated in § 1304(b)(4)(B) for exercising jurisdiction against a defendant who "lacks ties to the Indian tribe" (*id.* at PageID.306). Plaintiff reiterates her request that the Court issue a declaratory judgment that "the NHBP courts lacked jurisdiction to grant the personal protection order against her, and issue a corresponding permanent injunction against the Defendants, in view of the unambiguous language of 25 U.S.C. 1304" (ECF No. 31 at PageID.375).

In reply, Defendants argue that "the parties' briefing to date demonstrates that Plaintiff has no viable argument to evade Congress's clear mandate in 18 U.S.C. § 2265(e)" (ECF No. 32 at PageID.380).

Defendants' argument has merit.

Although this Court lacks jurisdiction to review a challenge to the "propriety or wisdom" of a tribal court's decision, a remedy may be available to challenge the jurisdiction of the tribal

court. *See Shelifoe,* 966 F.2d at *1 (citing *DeMent v. Oglala Sioux Tribal Court*, 874 F.2d 510, 513 (8th Cir. 1989) ("The question of whether an Indian tribe has the power to compel a non-Indian to submit to the civil jurisdiction of a tribal court is a federal question under 28 U.S.C. § 1331.")).

Specifically, in *Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985), where the petitioners contended that the tribal court had no power to enter a judgment against them, i.e., that "federal law has curtailed the powers of the tribe," the United States Supreme Court decided that "[t]he question whether an Indian tribe retains the power to compel a non-Indian property owner to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law and is a 'federal question' under § 1331." The Supreme Court pointed out that because the petitioners contended that federal law divested the tribe of this aspect of sovereignty, "it is federal law on which they rely as a basis for the asserted right of freedom from Tribal Court interference," and "[t]hey have, therefore, filed an action 'arising under' federal law within the meaning of § 1331. *Id.* at 853. The Supreme Court held that the district court correctly concluded that a federal court may determine under § 1331 whether a tribal court has exceeded the lawful limits of its jurisdiction. *Id. See also Kelsey v. Pope*, 809 F.3d 849, 854 (6th Cir. 2016) (deciding, as a federal question under § 1331, whether the Little River Band of Ottawa Indians properly asserted extraterritorial criminal jurisdiction).

Here, too, the Court determines that it has federal-question jurisdiction under § 1331 to determine whether the Tribal Court exceeded the lawful limits of its jurisdiction in issuing the PPO in this case. Accordingly, the Court turns to the merits of Defendants' argument under Rule 12(b)(6) that Plaintiff has not stated a plausible jurisdictional challenge.

In general, 18 U.S.C. § 2265 provides for "full faith and credit" for protection orders issued by the courts of any "State, Indian tribe, or territory." Defendants correctly rely on subsection (e) in this case, which provides more specifically the following:

> (e) **Tribal court jurisdiction.**—For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.

18 U.S.C. § 2265(e). On its face, the "Personal Protection Order (Non-Domestic) (Stalking)" (ECF No. 1-3) was filed under 18 U.S.C. § 2265, and the plain text of subsection (e) clearly establishes the Tribal Court's "full civil jurisdiction" under federal law to issue the order in this case for the benefit of Nathaniel Spurr.

Plaintiff argues that if this Court instead looks to 25 U.S.C. § 1304 to determine if the Tribal Court exceeded the lawful limits of its jurisdiction, then a different conclusion is compelled. However, Plaintiff's reliance on § 1304 misplaced. Section 1304 provides a participating tribe with "special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories: (1) Domestic violence and dating violence [and] (2) Violations of protection orders." 25 U.S.C. § 1304(c) ("Criminal conduct"). Section 1304 sets forth the limits of a participating tribe's "special domestic violence criminal jurisdiction," whereas § 2265(e) establishes the tribe's "full civil jurisdiction to issue and enforce protection orders involving any person." The two statutes govern two different subject areas. In short, Plaintiff's jurisdictional challenge is not plausible and is properly dismissed under FED. R. CIV. P. 12(b)(6).

III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Defendants' Joint Motion to Dismiss (ECF No. 29) is GRANTED, and Plaintiff's Complaint (ECF No. 1) is DISMISSED.

Because this Opinion and Order resolves all pending claims in this matter, a corresponding Judgment will also enter. *See* FED. R. CIV. P. 58.

Dated: September 27, 2018

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge