Sixth Circuit Case No. 18-2174

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOY SPURR,

Plaintiff-Appellant,

-V.-

MELISSA L. POPE, CHIEF JUDGE, TRIBAL COURT OF THE NOTTAWASEPPI HURON BAND OF POTAWATOMI;

THE SUPREME COURT FOR THE NOTTAWASEPPI HURON BAND OF POTAWATOMI;

THE NOTTAWASEPPI HURON BAND OF POTAWATOMI,

Defendants-Appellees.

On Appeal from the United States District Court
For the Western District of Michigan
Case No. 1:17-cv-01083

BRIEF OF PLAINTIFF-APPELLANT

Stephen J. Spurr, P76898, Counsel for Plaintiff-Appellant,

1114 Beaconsfield Ave., Grosse Pointe Park, MI 48230 Phone: 313.331.2902

TABLE OF CONTENTS **PAGE** 2

1. TABLE OF AUTHORITIES 3, 4

2. JURISDICTIONAL STATEMENT 5

3. STATEMENT OF THE ISSUES 5

4. STATEMENT OF THE CASE 6

A. Litigation in NHBP Tribal Courts 7

B. Litigation in U.S. District Court 14

5. SUMMARY OF THE ARGUMENT 15

A. If a Permanent Protection Order Against "Stalking" is a Criminal Sanction, The NHBP Trial Court did not have Jurisdiction to Issue It Against the Appellant Under United States Law.

B. If a Permanent Protection Order Against "Stalking" is a Civil Sanction, The NHBP Trial Court did not have Jurisdiction to Issue It Against the Appellant Under United States Law.

C. U.S.C. Sections 1304 and 2265 are Complementary

6. STANDARD OF REVIEW 17

7. ARGUMENT 17

8. CONCLUSION 29

9. ADDENDUM I: COMPARISON OF 25 U.S.C. 1304(B)(4)(B) AND 18 U.S.C.2265(E) WITH ORIGINAL BILLS INTRODUCED IN CONGRESS 32

10. ADDENDUM II: APPLICABLE NHBP STATUTES 33

11. ADDENDUM III: MRS. SPURR'S RESPONSE TO THE ALLEGATIONS IN THE AFFIDAVIT OF NATHANIEL SPURR FILED IN THE NHBP TRIAL COURT 40

12. ADDENDUM IV: EFFECTS OF THE LITIGATION IN THE NHBP TRIBAL COURT 41

APPENDIX: Certain Orders Issued by the NHBP Trial Court (as attachments)

I. Ex Parte Temporary Personal Protection Order issued by the NHBP Trial Court on February 3, 2017.
II. Order Regarding Pleadings issued by the NHBP Trial court on March 14, 2017
III. Opinion and Order on Respondent's Motion for Reconsideration or Modification issued by NHBP Trial Court on July 21, 2017

TABLE OF AUTHORITIES

A. Cases Cited Page

Duro v. Reina, 495 U.S. 676 (1990)……..15, 18, 29

First Am. Title Co. v. Devaugh, 480 F.3d 438, 443 (6th Cir. 2007)…….16

Montana v. United States, 450 U.S. 544 (1981)……..…15, 21,22,23,27,29

Nat'l Hockey League Players Ass'n v. Plymouth Whalers Hockey Club, 419 F.3d 462, 468 (6th Cir. 2005)……17

Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978)…..15,17,18,27,29

Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316 (2008)……...….23

Strate v. A-1 Contractors, 520 U.S. 438, 441 (1997)……22

Total Benefits Planning Agency, Inc., et al., v. Anthem Blue Cross and Blue Shield, et al., (6th Cir. 2008)……16

B. Constitutions and Statutes Cited

Fifth and Fourteenth Amendments to the U.S. Constitution…….4,11,12

NHBPI Tribal Code Chapter 7.4 Domestic Violence, Article XII: Criminal Protection Orders, Harassment, concerning "special domestic violence criminal jurisdiction": 7.4:……..…..9,11,12,17,21,25

The Violence Against Women Reauthorization Act, 18 U.S.C. Sec. 2265 ……...…16,23,24,25,26,29,30,31,33

The Violence Against Women Reauthorization Act, 25 U.S.C. Sec. 1304 (2013)..……..6,9,12,15,18,19,21,25,26,29,30,32

The Indian Civil Rights Act, 25 U.S.C. Secs. 1302 through 1304 (2013)…….…..…11,12,25

Section 7.4-11 of the NHBP Code, concerning "special domestic violence criminal jurisdiction."……..…..…25,33

Section 7.4-12 of the NHBP Code……..…..35

Section 7.4-52 A. of the NHBP Tribal Code…….38

Section 7.4-54, Chapter 7.4, NHBP Domestic Violence Code…….39

EX.7 RE 23-1, Page ID#323-328

Sec. 7-4-75(B) of the NHBP Domestic Violence Code...

Section 7.4-76(D) of the NHBP Domestic Violence Code,

Section 7.4-76, Chapter 7.4, Domestic Violence Code

Sections 7.4-71 -- 7.4-76 of NHBP Chapter 7.4 on Domestic Violence

C. Legislative History

H.R. 4154 and S. 1763 Stand Against Violence and Empower Native Women Act (H.R.757)……Addendum I, 27, 32,33

D. Treatises Cited

Cohen's Handbook of Federal Indian Law, Section 9.04 at 765 (2012)..…17

Matthew Fletcher, *Federal Indian Law*, 343-364 (West Academic Publishing, 2016)…….17

JURISDICTIONAL STATEMENT

The District Court had subject matter over this case pursuant to 28 U.S.C. Sec. 1331. Joy Spurr (hereinafter Mrs. Spurr) contends that under the U.S. Constitution, federal common law and federal statutory law, the Nottawaseppi Huron Band of Pottawatomi Indians Trial Court and Supreme Court did not have jurisdiction to issue a personal protection order against the Plaintiff Mrs. Spurr, a nontribal member, non-American Indian who had no ties to the NHBP Tribe that would support a claim of jurisdiction.

The Court of Appeals has subject matter jurisdiction over this case pursuant to 28 U.S.C. Sec. 1291. On September 27, 2018, the District Court entered a final order and judgment dismissing Mrs. Spurr's Complaint and all the parties' claims. RE 33, Page ID#1-13; RE 34, Page ID#1. On October 10, 2018, Mrs. Spurr filed a timely Notice of Appeal with the District Court.

STATEMENT OF THE ISSUES

This case involves a single issue of law: whether the Nottawaseppi Huron Band of Pottawatomi Tribal Court (hereinafter "NHBP") had jurisdiction under federal law to issue a personal protection order against the Plaintiff-Appellant Mrs. Spurr, and to have the order entered into the Michigan Law Enforcement Information Network.

STATEMENT OF THE CASE

This case basically involves a single issue: whether on the facts of this case, the NHBP Tribal Court had personal and subject matter jurisdiction under federal law to issue a personal protection order against the Plaintiff-Appellant Mrs. Spurr, and to have the order entered into the Michigan Law Enforcement Information Network. The petition for the protection order against Mrs. Spurr was filed in NHBP Trial Court (hereinafter the "Trial Court") by Nathaniel W. Spurr (hereinafter Nathaniel), who is a member of NHBP, a federally recognized American Indian Tribe. RE 1.1, Page ID#8. As our Argument will show, it becomes important to know whether Mrs. Spurr fits into any of certain specified categories, because if she did, that might provide support for a claim of subject matter jurisdiction under 25 U.S.C. 1304(b)(4)(B). The categories in question apply to a person who:

> (i) resides in the Indian Country of NHBP;
> (ii) is employed in the Indian Country of NHBP; or
> (iii) is a spouse, intimate partner, or dating partner of
> (I) a member of NHBP; or
> (II) an Indian who resides in the Indian country of NHBP.

It is undisputed by the parties that none of these categories applies to Mrs. Spurr.

Mrs. Spurr is married to Stephen J. Spurr, who is also not a Tribal member. However, Stephen was married to Nathaniel's mother, Laura Wesley Spurr, for 38 years. Laura Spurr served as Tribal Chair of the NHBP from 2000-2001, as

Treasurer from 2001-2003 and again as Tribal Chair from 2003 until she suffered a fatal heart attack on February 19, 2010. RE 1-1, Page ID#7-8.

Mrs. Spurr had a friendly and supportive relationship with Nathaniel until about May 2014, after which the relationship began to deteriorate. Mrs. Spurr expressed concerns about certain of Nathaniel's actions, in particular behavior related to his drinking, violence and dishonesty. The consequence of the cooling of the relationship was less contact between them. RE 1.1, Page ID#8.

A. Litigation in NHBP Tribal Courts

On December 22, 2016, Nathaniel first moved onto the NHBP Indian reservation. Six weeks later, on February 2, 2017, Nathaniel filed a petition for a personal protection order against Mrs. Spurr in the NHBP Trial Court. RE 1.1, Page ID#8. The petition included a supporting affidavit by Nathaniel and three documents introduced as exhibits: (1) an email dated 2/10/2013 from Stephen Spurr, (2) an undated, unsigned memo, and (3) a letter complaining about the behavior of Nathaniel Spurr written and signed by Mary Wesley, an aunt of Nathaniel, and sent to Nathaniel's lawyer Angela Sherigan. More information about the evidence introduced by both parties is provided in Addendum II**.**

On February 3, 2017 the NHBP Trial Court issued an ex parte temporary Personal Protection Stalking Order against Mrs. Spurr, prohibiting her from "stalking" Nathaniel. APPENDIX: I Ex Parte Order. The prohibition referred to

stalking as defined under the NHBP Domestic Violence Code. The Order stated, in paragraph 9, that it was effective and enforceable immediately, and would remain in effect until February 17, 2017.

The NHBP Trial Court stated that it issued the ex parte order of February 3 without hearing any testimony. RE 1.1, Page ID#13. APPENDIX: II The Trial Court's Order of March 14, 2017 states (Page#4, par.19, see also Page#6-7, par. 36):

> The Court noted that there was no hearing on the petition for ex parte personal protection order as petitions for ex parte personal protection orders are granted or denied on the petition, including attachments, only.

The February 3 Order was issued by the Court without prior notice of any kind to Mrs. Spurr, who did not learn of the order until February 8, 2017. The Order stated that a hearing on a permanent personal protection order would be held on February 16, 2017. Mrs. Spurr's residence is 156 miles from the NHBP reservation. It takes three hours by car to get from her residence to the NHBP Trial Court. Since the hearing was scheduled one week after she learned about it, Mrs. Spurr wrote and faxed the Court on February 12, 2017 requesting a postponement of the hearing because of a conflicting traffic court appearance in Detroit, and to give her time to prepare a defense. Since she had not heard from the Court by February 15, 2017, she asked and faxed again on that date. The NHBP Trial Court refused Mrs. Spurr's request for a postponement. On February 17, 2017, one day after the

hearing, this Court issued a permanent Personal Protection Order, RE 1-3, Page ID#31, against Mrs. Spurr, identical in its terms to the temporary protection order. The Order of February 17, like the Order of February 3, stated that

> Violation of this order subjects the respondent to immediate arrest and to the civil and criminal contempt powers of the court. If found guilty, the respondent *shall be imprisoned* for not more than 90 days and/or may be fined not more than $1000. [emphasis supplied].

Paragraph 12 of the Trial Court Order of February 17 noted that the Trial Court would enter the Order into the Michigan Law Enforcement Information Network.

On March 5, 2017, Mrs. Spurr filed a motion contending (1) that Nathaniel had failed to present evidence that she had engaged in the activities alleged in his petition, and (2) that the NHBP Trial Court lacked civil or criminal jurisdiction to issue a personal protection order against Mrs. Spurr as a nonmember of the Tribe without any of the ties specified above under 25 U.S.C. 1304(b)(4)(B). RE 1.1 Page ID#9. On July 21, 2017 the Trial Court issued an order denying the motion and affirming the permanent personal protection order. RE 1.1, Page ID#9-10. In this order the Trial Court changed the characterization of its original personal protection order from "Stalking" to "Permanent Harassment Protection Order." Harassment Protection Orders are authorized in Sections 7.4-71 through 7.4-76 of NHBP Chapter 7.4 on Domestic Violence under the heading: Article XII: Criminal Protection Orders. RE 23-1, Page ID#324-328.

On July 22, 2017 Mrs. Spurr filed with the NHBP Supreme Court a notice of appeal, and a request for a stay of the permanent protection order pending the outcome of her appeal. Complaint, RE 1-6, Page ID #46-59. On July 28, 2017 and on December 6, 2017 the NHBP Supreme Court specifically rejected requests by Mrs. Spurr to stay the proceedings of the Trial Court pending appeal, and upheld the position of the Trial Court that it could proceed with a hearing to determine whether Mrs. Spurr was guilty of contempt, and then impose whatever penalties, including possible incarceration for 90 days and a fine of $1000, that the Trial Court considered appropriate. RE 1-10, Page ID#101-102.

On October 2, 2017 Nathaniel filed with the Trial Court a motion to show cause why Mrs. Spurr should not be held in contempt of Court. RE 1.1, Page ID#10. The grounds for this motion were that in another case before the Trial Court involving a proposal to probate the estate of Irene Wesley[1], the Court had solicited written objections from any interested persons as to why Nathaniel should not be appointed to manage the probate case. Mrs. Spurr filed a written response with the Trial Court contending that Nathaniel should not be appointed, attaching

[1] Irene Wesley, whom Mrs. Spurr knew well, is Nathaniel's grandmother. As the wife of Stephen J. Spurr, Mrs. Spurr came into contact with Irene Wesley, Mary Wesley and her three children Sarah, Brad, and Robbie. Irene Wesley passed away on February 15, 2017. Joy and Stephen Spurr visited Irene Wesley's household during holidays, birthdays, and family functions. Mrs. Spurr had a close relationship with all members of the household.

supporting exhibits as evidence. On October 2, 2017 Mrs. Spurr filed a Reply Brief to the Motion to Show Cause. RE 1-1, Page ID#10.

On October 6, 2017 The NHBP Trial Court ordered Mrs. Spurr to appear for a hearing to show cause why she should not be held in contempt for violating the personal protection order. RE 1-1, Page ID#10. Mrs. Spurr did not appear for the hearing on December 13, 2017 but was represented by her lawyer Stephen Spurr. After a subsequent hearing on January 31, 2018, attended by Mrs. Spurr and her lawyer, the NHBP Trial Court ordered sanctions imposed on Mrs. Spurr for her alleged violation of the personal protection order, namely a fine of $518.95 to be paid to Nathaniel's lawyer, and community service at the Capuchin Soup Kitchen. In this hearing the NHBP Trial Judge also found Mrs. Spurr to be in civil contempt for a failure to appear at the hearing on December 13,2017 and imposed a fine of $200 to cover court costs. RE 23-2, Page ID#330-333

On January 25, 2018 the NHBP Supreme Court filed its opinion, denying Mrs. Spurr's Appeal in every respect.

Moreover, there would be no end in sight for this litigation if this Court should affirm the decision of the District Court. In its opinion of July 21, 2017, the NHBP Trial Court made the extraordinary suggestion that if Nathaniel wished to renew the Personal Protection Order pursuant to Section 7.4-76(D) of the NHBP Domestic Violence Code,

> "the Court [upon a hearing] shall grant the motion for renewal unless the respondent proves by preponderance of evidence that he [sic] will not resume harassment of the petitioner when the order expires. The Court may renew the harassment protection order for another fixed period or may enter a permanent order." (Page# 30-31) APPENDIX: III

This amounted to an invitation to Nathaniel that he may renew his Personal Protection Order. This raises serious questions whether these provisions violate the Indian Civil Rights Act and the United States Constitution. In addition, NHBP Section 7.4-76, Chapter 7.4, Domestic Violence Code provides that:

> B. An order issued under this article shall be effective for not more than one (1) year unless the Court finds that any future contact with the petitioner would result in the harm from which the petitioner originally sought protection. If the Court so finds, the Court may enter an order to a fixed time exceeding one (1) year.
>
> D. At any time within three (3) months prior to the expiration of the order, the petitioner may apply for a renewal of the order by filing a motion for renewal with the Court. The motion for renewal shall state the reasons why he or she seeks to renew the order. Upon receipt of the motion for renewal, the Court shall order a hearing which shall be held within fourteen (14) days from the date of motion. *The Court shall grant the motion for renewal unless the respondent proves by preponderance of evidence that he will not resume harassment of the petitioner when the order expires.* The Court may renew the harassment protection order for another fixed period or may enter a permanent order. [emphasis supplied]

Section D raises serious constitutional issues under 25 U.S.C. 1302-1304, the Indian Civil Rights Act, and the U.S. Constitution. This provision puts the burden of proof on Mrs. Spurr to show that she has *not* been harassing Nathaniel; if Mrs.

Spurr cannot prove that she has not been harassing Nathaniel, she is deemed guilty of harassment.[2]

On January 31, 2018, Nathaniel Spurr responded to the NHBP Trial Court's invitation, filing a notice to the Trial Court that he was requesting renewal of the personal protection order for another year. On February 13, 2018 the Tribal Trial Judge issued a new personal protection order to remain in effect until February 14, 2019. RE 23-4, Page ID#339. There is a high probability that the personal protection order will be renewed again and again, on into the indefinite future unless and until this Court addresses the fact that the NHBP Trial Court lacked jurisdiction.

Mrs. Spurr and her attorney have had to devote hundreds of hours of time and thousands of dollars (not counting the value of her attorney's time) defending the case against her brought by the NHBP Trial Court Petitioner Nathaniel Spurr. The litigation involved a great deal of stress, inconvenience and disruption of the lives of Mrs. Spurr and her husband.[3] More information on this is provided in Addendum III

---

[2] In other words, Mrs. Spurr is guilty until proven innocent. This is a clear violation of due process of law, which is guaranteed by the Indian Civil Rights Act and by Amendments V and XIV of the United States Constitution. Due process is also required by 18 USC 2265(b)(2) as a requirement for a personal protection order issued under the Violence Against Women Reauthorization Act.

[3] The NHBP Trial Court Judge ordered the Respondent to appear for numerous hearings without consideration of what dates were convenient for the Respondent

B. Litigation in U.S. District Court

On December 11, 2017 Mrs. Spurr filed a Complaint For Declaratory Judgment and Injunctive Relief in U.S. District Court in the Western District of Michigan. Complaint, RE 1**.** On January 31, 2018 Mrs. Spurr filed with the District Court an emergency motion requesting a Temporary Restraining Order and requesting a hearing on her request for a Preliminary Injunction. Motion, RE 19. On the same day the District Court denied the emergency motion and scheduled a hearing on the request for a Preliminary Injunction on March 12, 2018. Order, RE 20. On April 9, 2018 the Defendants filed a joint motion to dismiss the Complaint for lack of subject matter jurisdiction. On March 12, 2018 the District Court entered a pre-motion conference order set forth a briefing schedule, ordering that the briefs be limited to two issues: whether the Defendants had sovereign immunity, and whether the District Court had subject matter jurisdiction to hear the case. Pre-Motion Order, RE 26. On September 27, 2018, the District Court entered a final order and judgment dismissing Mrs. Spurr's Complaint and all the parties' claims. Opinion, RE 33; Judgment, RE 34. On October 10, 2018, Mrs. Spurr filed a timely notice of appeal with the District Court. Notice of Appeal, RE 35.

---

or her attorney; when the Respondent informed the NHBP Court administrator informally of her preferences for hearing dates, the Trial Court informed her that any request for an alternative date would have to be in the form of a motion. When the Respondent submitted a motion, it was denied by the Trial Court.

SUMMARY OF THE ARGUMENT

The sole issue in this case is whether the NHBP Tribal Courts had subject matter jurisdiction to issue and enforce a personal protection order against Mrs. Spurr. Federal common law imposes severe limits on both the criminal and civil jurisdiction of a tribal court over non-Tribal members. See, e.g., *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), *Duro v. Reina*, 495 U.S. 676 (1990), and *Montana v. United States*, 450 U.S. 544 (1981). The reason given by the Supreme Court for these limitations is that non-tribal members should not be subject to trial by "political bodies that do not include them." 495 U.S. at 693. Congress, through 25 U.S.C. 1304, granted additional jurisdiction to Tribal Courts in 2013, but the scope of the new jurisdiction over personal protection orders, *whether civil or criminal*, was severely limited with respect to non-tribal members who are nonIndians, applicable only if they had the ties specified in Section1304(b)(4)(B). This is clear from the statute's legislative history (see Addendum I) and the statute itself. It is undisputed that Mrs. Spurr had no such ties to the Tribe. The point that Section 1304(a)(5) applies to both civil and criminal protection orders is crucial, because the decision of the District Court was based entirely on the assumption that this statute applied only to criminal orders. 25 U.S.C. 1304(5) defines the term "protection order" broadly to include "any . . . order issued by a civil or criminal court . . ." This section of the statute was

designed to prevent exactly the sort of end run that Defendants want to make – an argument that Section 1304 applies only to criminal protection orders, and that the NHBP Trial Court's order is "only" a civil protection order.

The Defendants' argument for jurisdiction is based on 18 U.S.C. Section 2265(e), which was enacted on exactly the same day and same time as 25 U.S. 1304, on March 7, 2013, as part of the same bill. Section 2265(e) concerns "full faith and credit given to protection orders." Defendants contend that this section actually grants a Tribal Court plenary jurisdiction to issue and enforce personal protection orders against anyone, whether or not they have any connection with the Tribe. However, the legislative history of this section describes it as a "narrow technical fix" that "does not in any way alter, diminish or expand tribal criminal jurisdiction." To accept the Defendants' argument, this Court would have to believe that the same committees of Congress passed two sections of the statute on the same day, one of which, under the title "Jurisdiction," explicitly denied tribal courts jurisdiction to issue personal protection orders (whether criminal or civil) against non-Indians without specified ties to the Tribe, and the other granting them an unlimited right to do so. The legislative history (Addendum I), which was not referred to by the District Court, strongly confirms the Appellant's interpretation, and provides no support whatsoever for the Defendants' construction.

STANDARD OF REVIEW

The standard of appellate review for a motion to dismiss pursuant to Rule 12(b)(6) is de novo. *Total Benefits Planning Agency, Inc., et al., v. Anthem Blue Cross and Blue Shield*, et al., (6th Cir. 2008); *First Am. Title Co. v. Devaugh*, 480 F.3d 438, 443 (6th Cir. 2007); *Nat'l Hockey League Players Ass'n v. Plymouth Whalers Hockey Club*, 419 F.3d 462, 468 (6th Cir. 2005).

ARGUMENT

A. If a Permanent Protection Order Against "Stalking" is a Criminal Sanction, The NHBP Trial Court did not have Jurisdiction to Issue It Against the Appellant Under United States Law.

In its order of July 21, 2017, APPENDIX: III, the NHBP Trial Court stated that its order against Mrs. Spurr is a "Permanent Harassment Protection Order." Harassment Protection Orders are authorized in Sections 7.4-71 through 7.4-76 of NHBP Chapter 7.4 on Domestic Violence under the heading: Article XII: Criminal Protection Orders. The criminal jurisdiction of Tribal Courts over non-Tribal members who are not American Indians is very different from their jurisdiction over Tribal members, especially when it comes to acts committed outside Indian lands. See Matthew Fletcher, *Federal Indian Law*, 343-364 (West Academic Publishing, 2016). " . . . tribal authority to prosecute non-Indians is sharply restricted." Another well-known treatise states that

> Tribes lack most criminal jurisdiction over non-Indian defendants as a result of the Supreme Court's 1978 decision in Oliphant v. Suquamish Indian Tribe. *Cohen's Handbook of Federal Indian Law*, Section 9.04 at 765 (2012), citing *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

In *Oliphant* the U.S. Supreme Court held that the "history of Indian treaties. . . is consistent with the principle that Indian tribes may not assume criminal jurisdiction over non-Indians without the permission of Congress.'" 437 U.S. 197 at n.8. This principle was confirmed by the U.S. Supreme Court in *Duro v. Reina*, 495 U.S. 676 (1990):

> Criminal trial and punishment is so serious an intrusion on personal liberty that its exercise over non-Indian citizens was a power necessarily surrendered by the tribes . . . . We hesitate to adopt a view of tribal sovereignty that would single out another group of citizens, nonmember Indians, for trial by political bodies that do not include them. . . . A tribe's additional authority comes from the consent of its members, and so, in the criminal sphere, membership marks the bounds of tribal authority. 495 U.S. at 693.

The remaining question is whether the issuance of a personal protection order by the NHBP trial court against Mrs. Spurr has "the permission of Congress." In the proceedings in NHBP Tribal Court, Nathaniel's lawyer and the Tribal Court claimed that Congress had granted such permission, because of a federal statute, The Violence Against Women Reauthorization Act, 25 U.S.C. Sec. 1304 (2013). As to what new criminal jurisdiction is made available to tribes under Section

1304, Section 1304(c) is entitled "Tribal jurisdiction over crimes of domestic violence." It allows tribes to exercise jurisdiction over certain types of criminal conduct, including "Violations of protection orders." The term "protection order" is defined broadly to include violations of civil or criminal protection orders. 25 U.S.C. 1304(a)(5) provides that:

The term "protection order"

(A) means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;

(B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

Finally, Section 1304(b)(4) indicates that there are "Exceptions" (A) and (B) to the additional new domestic violence criminal jurisdiction. These exceptions are as follows:

(A) Victim and defendant are both non-Indians. . . .

(B) Defendant lacks ties to the Indian tribe. A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant

(i) resides in the Indian Country of the participating tribe;

(ii) is employed in the Indian Country of the participating tribe; or

(iii) is a spouse, intimate partner, or dating partner of

(I) a member of the participating tribe; or

(II) an Indian who resides in the Indian country of the participating tribe.

Mrs. Spurr does not fit within any of the designated categories (i) through (iii), so she "lacks ties to the Indian tribe," and falls within exception (B). Thus the Tribal Court has no jurisdiction to issue a personal protection order against her. The legislative history of Section 1304 clearly indicates that the scope of the new criminal jurisdiction for Tribal Courts is strictly limited:

Second, it covers only those non-Indians with significant ties to the prosecuting tribe: those who reside in the Indian country of the prosecuting tribe, or are either the spouse or intimate partner of a member of the prosecuting tribe. The jurisdiction does not cover non-Indians who commit any offense other than domestic violence, dating violence, or violation of a protection order, and it only covers those offenses when they occur in Indian country and the defendant has a significant connection to the tribe. . . Although an important change from the current limit on tribal authority, *this jurisdictional expansion is narrowly crafted* and satisfies a clearly identified need. . . . *Extending that jurisdiction in a very narrow set of cases over non-Indians who voluntarily and knowingly established significant ties to the tribe is consistent with that approach* . . . . Senate Report 112-153. [emphasis supplied]

B. If a Permanent Protection Order Against "Stalking" is a Civil Sanction, The NHBP Trial Court did not have Jurisdiction to Issue It Against the Appellant Under United States Law.

Defendants argue that a personal protection order is a civil, not a criminal sanction, and thus is not subject to the severe restrictions on criminal jurisdiction

of Tribal Courts over non-Tribal members who are not American Indians. However, the argument that a stalking or harassment protection order is merely civil, and not criminal, is contradicted by a glance at the personal protection order itself, which places severe restrictions on Mrs. Spurr's freedom of movement and communication, and states that "Violation of this order subjects the respondent to immediate arrest and to the civil and criminal contempt powers of the court. If found guilty, the respondent shall be imprisoned for not more than 90 days and/or may be fined not more than $1000." The argument that a stalking or harassment protection order is not criminal is also contradicted by the NHBP laws, which defines "stalking" as a crime in Section 7.4-42 (A) of the Tribe's Domestic Violence Code (either a misdemeanor or felony, depending on the circumstances) and indicate in 7.4-42(e) that one who "harasses" another may be stalking that person, and lists a "harassment protection order" in Section 7.4-72 under the heading of "Criminal Protection Orders" in Article XII.

Suppose, however, we accept *arguendo* that the permanent personal protection order is only a civil sanction. This will not save it, because, as noted above, 25 U.S.C. 1304(5) defines the term "protection order" broadly to include "any . . . order issued by a civil or criminal court . . ." Apart from the statute, there are severe limits on the civil jurisdiction of a tribal court over non-Tribal members parallel to the limits on a tribal court's criminal jurisdiction. These

restrictions were set forth by the United States Supreme Court in In *Montana v. United States*, 450 U.S. 544 (1981). The Court stated that in general, Indian Tribes lack civil authority over the conduct of nonmembers, subject to two exceptions, which have come to be known as the "Montana exceptions":

> (1) A tribe may regulate, through taxation, licensing or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements [citing cases].
>
> (2). 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 and welfare of the tribe. Fisher v. District Court, 424 U.S. 382, 386; Williams v. Lee, 358 U.S. 217, 219-220; Montana Catholic Missions v. Missoula County, 200 U.S. 118, 128-129; Thomas v. Gay, 169 U.S. 264, 273.
>
> 450 U.S. at 565-566.

Any attempt to support the claim that the NHBP Trial Court had jurisdiction to issue the personal protection order at issue here would have to be based on the second exception. With regard to this exception, the U.S. Supreme Court stated in 1997 that:

> Montana's second exception, concerning conduct that "threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe" 450 U.S. at 566, is also inapplicable. The cases cited by Montana as stating this exception each raised the question whether a State's (or Territory's) exercise of authority would trench unduly

> on tribal self-government. [citing cases]. *Strate v. A-1 Contractors*, 520 U.S. 438, 441 (1997).

The scope of the second Montana exception was also addressed in *Plains Commerce Bank v. Long Family Land & Cattle Co*., 554 U.S. 316 (2008), in which the U.S. Supreme Court held that a Tribal Court did not have jurisdiction of a claim of discrimination brought by an Indian couple against a non-Indian bank. The Court stated that:

> **(**c) Because the second Montana exception stems from the same sovereign interests giving rise to the first, it is also inapplicable here. The "conduct" covered by that exception must do more than injure a tribe; it must "imperil the subsistence" of the tribal community. *Montana*, 450 U.S., at 566.

Now let us consider the argument being made by the Defendants, that was accepted by the District Court. They contend that all one needs to do to decide whether the tribal court has jurisdiction is to look to 18 U.S.C. Section 2265(e). That subsection provides

> "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 . . . . in matters arising anywhere in the Indian country of the Indian tribe . . . or otherwise *within the authority* of the Indian tribe." [emphasis supplied]

Defendants argue as follows: "This statute says the tribal court has civil jurisdiction over any person. That includes everyone, whether or not they have any ties to the tribe. Therefore the tribal court has jurisdiction!"

What's wrong with that analysis? What's wrong is that 2265 is about "full faith and credit given to protection orders," not jurisdiction. This section was motivated by a concern that a valid personal protection order issued by a Tribal Court under the new statute might not be taken seriously by other jurisdictions and non-Tribal courts. The legislative history notes that

> Section 905 of the legislation [the predecessor of Section 2265] is a *narrow technical fix to clarify* Congress's intent to recognize that tribal courts have full civil jurisdiction to issue and enforce protection orders involving any person, Indian or non-Indian. At least one Federal district court has misinterpreted 18 U.S.C. 2265(e) and held that tribes lack civil jurisdiction to issue and enforce protection orders against certain nonIndians who reside within the reservation . . . Section 905 corrects this error. *It does not in any way alter, diminish or expand tribal criminal jurisdiction or existing tribal authority to exclude individuals from Indian land.* Senate Report 112-153 on the Violence against Women Reauthorization Act of 2011, March 12, 2012, p. 11. [emphasis supplied]

In other words, 2265 is not a statute that *grants* jurisdiction; the section that grants (or in this case, fails to grant) jurisdiction is Section 1304, which is entitled "Tribal Jurisdiction over crimes of domestic violence." And that statute clearly states that a Tribal Court does not have jurisdiction to issue a personal protection order if Mrs. Spurr falls within one of the designated exceptions,[4] which she does, because she lacks the required ties to the Indian tribe.

[4] 25 USC 1304. Exceptions.

C. Sections 1304 and 2265 are complementary

It should also be noted that Section 1304 refers to Section 2265 in a way that makes it clear that there is no conflict between the two sections, and that indeed they complement each other. 25 U.S.C. 1304(c) states that

> A participating tribe may exercise . . . jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:
> . . .
> (2) Violations of protection orders. An Act that
> (A) occurs in the Indian Country of the participating tribe; and
> (B) . . .
> (iv) is consistent with section 2265(b) of title 18, United States Code.

Moreover, 18 U.S.C. 2265 also requires compliance with Section 1304. Section 2265(b)(1) states that

> A protection order issued by a . . . tribal . . . court is consistent with this subsection if—
> (1) Such court has jurisdiction over the parties and matter under the law of such . . . Indian tribe . . .;

As shown below, the law of the Indian tribe in question, NHBP, clearly indicates that a Trial Court has no jurisdiction to issue a personal protection order unless such order complies with 25 U.S.C. 1304. Section 7.4-11 of the NHBP Codes states that

> C. In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Title VIII, Chapter 8, Criminal Procedure shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. Secs. 1302 through 1304 (2013) to all defendants. *Should there be any inconsistency between*

> *Title VIII, Chapter 8, Criminal Procedure and U.S.C. Secs. 1302 through 1304, those of 25 U.S.C. Secs. 1302 through 1304 (2013) shall apply.*] . . . .
>
> E. The NHBP hereby declares its special domestic violence criminal jurisdiction over any person *only* if he or she:
>
> (1) Resides within the Indian Country of the NHBP; or
> (2) is employed within the Indian Country of the NHBP; or
> (3) is a spouse, intimate partner, or dating partner of
> (a) a member of the NHBP;
> (b) a member of another federally recognized Indian tribe who resides within the Indian country of the NHBP. [emphasis supplied]

Thus 25 U.S.C. 1304 requires that the Trial Court have jurisdiction under Tribal law to issue a personal protection order, and 18 U.S.C. 2265(b)(1), when combined with NHBP law, requires that any nonresident subject to the order must have the ties to the Tribe specified by Section 1304.

The Defendants would argue that Section 2265 is not only a full faith and credit statute; it is also a jurisdiction-granting statute, even though the word "jurisdiction" does not appear in its title, and the legislative history clearly states that it does not "alter" or "expand" tribal criminal jurisdiction. Moreover if we accept the Defendants' argument, then sec. 1304(b)(4) of the "Tribal Jurisdiction" statute that provides "exceptions" to tribal special criminal jurisdiction of protection orders means absolutely nothing. What exceptions? According to the Defendants, there are none. This is a tortured and manifestly unconvincing interpretation of the statute.

Section 2265 was enacted at exactly the same time as Section 1304, on March 7, 2013.[5] It was enacted because of a concern that valid personal protection orders issued by a tribal court would not be honored by outside jurisdictions. The purpose of section 2265(e) is to explain that if an order is "otherwise within the authority of the Indian tribe" then the tribal court can use the customary judicial mechanisms to enforce an otherwise valid protection order, such as civil contempt proceedings, excluding violators from Indian land, and the like, and that courts from other jurisdictions should give full faith and credit to all such methods of enforcement. But a personal protection order against a person who is excluded from the tribal court's jurisdiction by section 1304 is certainly not "within the authority" of the Indian Tribe. If we accept the Defendants' argument, Section 2265(e) by itself gives a tribal court jurisdiction to issue a protection order against any person for any reason. But this would have been a huge departure from the settled federal common law of *Oliphant v. Suquamish Indian Tribe* (if we view the personal protection order as a criminal sanction) or *Montana v. United States*, 450 U.S. 544 (1981) (if we view the personal protection order as a civil sanction). There is no indication whatsoever in the legislative history that a seismic change of this

[5] Both sections, with virtually identical wording (see Addendum I) appear in H.R. 4154, introduced on March 7, 2012, and H.R. 757, introduced on February 15, 2013, and both were enacted on March 7, 2013 as part of P.L. 113-4, Title IX.

magnitude was intended by Congress; on the contrary, the legislative history says that the section 2265(e) was "a narrow technical fix" intended to "clarify" tribal civil jurisdiction rather than to "expand" or redefine it.[6] And again, if the Defendants' argument is correct, why did Section 1304, regarding "Tribal Jurisdiction over crimes of domestic violence," go to such great length to spell out the circumstances under which personal protection orders (whether criminal or civil) may and may not be issued? The fact that the Defendants' interpretation of the statutes would make Section 1304 completely impotent shows that it is absolutely wrong.

Defendants argue that a personal protection order is a civil, not a criminal sanction, and therefore the Tribal court has an independent basis for jurisdiction under 2265(e). But this again pretends that Section 1304, which was enacted with 2265(e) in the same bill on the same day under the same title, does not exist. Recall that Section 1304 defines "protection order" to mean "any injunction, restraining order, or other order issued by a civil or criminal court . . . ." The proposed distinction between "civil protection orders" and "criminal protection orders" that do the same thing is found nowhere in the federal statutes nor anywhere else; it is entirely fictitious, an invention of the Defendants. Both Sections 1304 and 2265 speak only of "protection orders."

[6] H.R. REP. NO. 106-939, at 104 (2001).

CONCLUSION

The sole issue in this case is whether the NHBP Tribal Courts had subject matter jurisdiction to issue a personal protection order against Mrs. Spurr. Federal common law imposes severe limits on both the criminal and civil jurisdiction of a tribal court over non-Tribal members. See, e.g., *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), *Duro v. Reina*, 495 U.S. 676 (1990), and *Montana v. United States*, 450 U.S. 544 (1981). The reason given by the Supreme Court for these limitations is that non-tribal members should not be subject to trial by "political bodies that do not include them." 495 U.S. at 693. Congress, through 25 U.S.C. 1304, granted additional jurisdiction to Tribal Courts in 2013, but the scope of the new jurisdiction over personal protection orders, *whether civil or criminal*, was severely limited with respect to nonIndians, applicable only if they had the ties specified in Section1304(b)(4)(B). This is clear from the statute's legislative history and the statute itself. It is undisputed that Mrs. Spurr had no such ties to the Tribe.

The Defendants' argument for jurisdiction is based on 18 U.S.C. Section 2265(e), which was enacted on exactly the same day and the same time as 25 U.S. 1304, on March 7, 2013, as part of the same bill. Section 2265(e) concerns "full faith and credit given to protection orders." Defendants, ignoring the clear language of 25 U.S.C. 1304, contend that this section actually grants a Tribal Court

plenary jurisdiction to issue and enforce personal protection orders against anyone, whether or not they have any connection with the Tribe. However, the legislative history of this statute describes this section as a "narrow technical fix" that "does not in any way alter, diminish or expand tribal criminal jurisdiction." To accept the Defendants' argument, this Court would have to believe that the same committees of Congress passed two sections of the statute on the same day, one of which, under the title with the word "Jurisdiction," explicitly denied tribal courts jurisdiction to issue personal protection orders against non-Indians, and the other granting them that right. The legislative history, which was not referred to by the District Court, strongly confirms the Appellant's interpretation, and provides utterly no support for the Defendants' construction.

The basis for the decision by the District Court was that 25 U.S.C. 1304 applied only to criminal jurisdiction, whereas 18 U.S.C. 2265 applied to civil jurisdiction. The District Court stated that "The two statutes govern two different subject areas." Since, in the District Court's view, this was merely a civil protection order, Section 2265 was applicable, so the Trial Court had jurisdiction.

There are many problems with this analysis. We will cite only three of them: (1) As noted above, it is simply not true that Section 1304 applies only to criminal jurisdiction. 25 U.S.C. 1304(a)(5) defines the term "protection order" broadly to include violations of civil or criminal protection orders.

(2) Section 2265 comes under the title "full faith and credit given to protection orders." The legislative history states that this section is a "narrow technical fix" and that it "does not in any way alter, diminish or expand tribal criminal jurisdiction."

(3) Finally, and most fundamentally, why would Congress go to great lengths to carefully restrict the jurisdiction of Tribal Courts over non-tribal members in Section 1304, but then in another section give those courts unlimited jurisdiction over everyone in the world to do the same thing?

Accordingly, we respectfully request that this honorable Court find that the NHBP Tribal Courts had no jurisdiction to issue or enforce these personal protection orders and order the NHBP Trial Court to remove the protection order from the Michigan Law Enforcement Information Network.

Dated this 11th day of November 2018.

Respectfully submitted by,

/s/Stephen J. Spurr P76898
Counsel for Plaintiff-Appellant Joy Spurr,
1114 Beaconsfield Ave., Grosse Pointe Park, MI 48230 Phone: 313.331.2902
sspurr@wayne.edu

ADDENDUM I: COMPARISON OF 25 U.S.C. 1304(B)(4)(B) AND 18 U.S.C. 2265(E) WITH ORIGINAL BILLS INTRODUCED IN CONGRESS

H.R. 4154, in Section 204. Tribal Jurisdiction over Crimes of Domestic Violence, provides in Section (d) Dismissal of Certain Cases, the following in subsection (3) Ties to Indian Tribe, the following at p. 13:

> (3) TIES TO INDIAN TRIBE. In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the case shall be dismissed if-
>
> (B) the prosecuting tribe fails to prove that the defendant or the alleged victim-
>
> (i) resides in the Indian Country of the participating tribe;
>
> (ii) is employed in the Indian Country of the participating tribe; or
>
> (iii) is a spouse or intimate partner of a member of the participating tribe.

This language is essentially identical to that of 25 U.S.C. 1304(b)(4)(B):

> (B) Defendant lacks ties to the Indian tribe. A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant
>
> (i) resides in the Indian Country of the participating tribe;
>
> (ii) is employed in the Indian Country of the participating tribe; or
>
> (iii) is a spouse, intimate partner, or dating partner of
>
> (I) a member of the participating tribe; or
>
> (II) an Indian who resides in the Indian country of the participating tribe.

In section 6. Tribal Protection Orders, subsection (e) on Tribal Court Jurisdiction, provides in paragraph (1) the following at p. 17:

> Except as provided in paragraph (2), 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.

Paragraph (2), on pp. 17-18, states that paragraph (1) shall not apply to certain specified Indian Tribes in Alaska.

This language is essentially identical to that of 18 U.S.C. 2265(e):

> 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.

H.R. 757 has exactly the same language as H.R. 4154, with the same titles of sections, subsections and paragraphs, on p. 13 and p. 17 respectively.

ADDENDUM II: APPLICABLE NHBP STATUTES

ADDENDUM II: Applicable NHBP Statutes

§ 7.4-11**Special domestic violence criminal jurisdiction.**

A. The NHBP hereby exercises special domestic violence criminal jurisdiction as a participating tribe, as defined within 25 U.S.C. §§ 1302 through 1304 (2013), subject to applicable exceptions defined therein, in the NHBP Domestic Violence Court.

B.

Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by 25 U.S.C. §§ 1302 through 1304, the powers of self-government of NHBP include the inherent power to exercise special domestic violence criminal jurisdiction over all persons.

C.

In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Title VIII, Chapter 8, Criminal Procedure, shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. §§ 1302 through 1304 (2013), to all defendants. Should there be any inconsistency between Title VIII, Chapter 8, Criminal Procedure, and 25 U.S.C. §§ 1302 through 1304, those of 25 U.S.C. §§ 1302 through 1304 (2013) shall apply.

D.

Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the NHBP and may petition the Court to stay further detention pending the habeas proceeding.

(1)

A Court shall grant a stay if the Court:

(a)

Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(b)

After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the Court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

E.

The NHBP hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

(1)

Resides within the Indian country of the NHBP; or

(2)

Is employed within the Indian country of the NHBP; or

(3)

Is a spouse, intimate partner, or dating partner of:

(a) A member of the NHBP; or

(b)

A member of another federally recognized Indian tribe who resides within the Indian country of the NHBP.

§ 7.4-12**Special jurisdiction; criminal conduct applicable.**

The NHBP exercises the special domestic violence criminal jurisdiction of a defendant for criminal conduct that falls into one or more of the following categories:

A.

Domestic violence. An act of domestic violence that occurs within the Indian country of the NHBP against Native American victims.

B.

Violations of protection orders. An act that occurs within the Indian country of the NHBP, and:

(1)

Violates the portion of a protection order that:

(a)

Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;

(b)

Was issued against the defendant;

(c)

Is enforceable by the NHBP; and

(d)

Is consistent with 18 U.S.C. § 2265(b).

§ 7.4-41**Violation of domestic violence protection order; penalties.**

A.

A police officer shall arrest without a warrant and take into custody any person who the police officer has probable cause to believe has willfully violated an order issued under this chapter and specifically, § 7.4-49, Civil protection order; purpose.

B.

All provisions of an order issued under § 7.4-49, Civil protection order; purpose, shall remain in full force and effect until the order terminates or is modified by the Court.

C. Violation of any domestic violence protection order subjects the respondent to criminal penalties under this chapter. Any respondent who is found guilty of violating the terms of a domestic violence protection order may also, subject to the

Court's discretion, be held in contempt of court, and the Court may impose such sanctions as it deems appropriate.

(1)

Violation of a domestic violence protection order is a Class B misdemeanor.

(2)

A second or subsequent violation of a domestic violence protection order is a Class A misdemeanor.

(3)

Consent by the victim is not a defense to a violation of a domestic violence protection order.

§ 7.4-42**Crime of stalking.**

A.

A person commits the crime of stalking if, without lawful authority:

(1)

He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(2)

The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The fear must be one that a reasonable person would experience under the same circumstances; and

(3)

The stalker either:

(a)

Intends to frighten, intimidate, or harass the person; or

(b)

Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

B.

It is not a defense to the crime of stalking:

(1)

Under Subsection **A(3)(a)** of this section, that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; or

(2)

Under Subsection **A(3)(b)** of this section, that the stalker did not intend to frighten, intimidate, or harass the person.

C.
Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitute prima facie evidence that the stalker intends to intimidate or harass the person.

D.
A person who stalks another person is guilty of a Class A misdemeanor except that the person is guilty of a felony if any of the following applies:

(1)
The stalker has previously been convicted in the Tribal Court under Title VIII, Chapter 6, Part 3, Section 304; convicted in the State of Michigan or any other state of any crime of harassment or under similar statute of another jurisdiction;

(2)
The stalking violates any protective order protecting the person being stalked;

(3)
The stalker has previously been convicted of an offense under this section or of a gross misdemeanor or felony stalking offense under federal or Michigan state law;

(4)
The stalker was armed with a dangerous weapon while stalking the person;

(5)
The stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate or children's advocate, legislator, or community corrections officer, probation officer or staff, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or

(6)
The stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

E.
As used in this section, the following terms shall have the meanings indicated:

FOLLOWS

Deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

HARASSES

For the purpose of this section means engaging in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress and shall actually cause substantial emotional distress to the victim, or, when the course of conduct is contact of a minor child by a person over age 18, that would cause a reasonable parent to fear for the well-being of that child.

PROTECTIVE ORDER

Any temporary or permanent Court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person, including but not limited to a domestic violence civil protection order issued pursuant to § 7.4-49; no-contact order issued pursuant to § 7.4-29B, sexual assault protection order pursuant to §§ 7.4-79 through 7.4-87, or any successor articles to these sections.

REPEATEDLY

Two or more times.

F.

Provisions of Title VIII, Judiciary; Law and Order Code, Section 304, Stalking, shall apply if applicable.

§ 7.4-52**Procedure for issuance of protection order.**

Upon the filing of a petition for a protection order the Court shall evaluate the petition for protection, on protecting the petitioner and any other family members during this initial process; and:

A.

Immediately grant an ex parte protection order without bond if, based on the specific facts stated in the affidavit, the Court has probable cause to believe that the petitioner or the person on whose behalf the petition has been filed is the victim of an act of

domestic violence, family violence, dating violence, or stalking committed by the respondent, and issuance of the ex parte order is necessary to protect the victim from further abuse.

B.
Cause an ex parte protection order, together with notice of hearing, to be made immediately available to the petitioner for service by a police officer, Court Officer, or other authorized person.

C.
The Court may hold the record open and request additional information if the submitted information is insufficient at the time of filing. The record must be completed within seventy-two (72) hours, and at that time the order must be granted or denied.

D.
Hold a hearing within fourteen (14) calendar days after the granting of the ex parte protection order to determine whether the order should be vacated, extended, or modified in any respect.

E.
Once granted the order may not be dismissed without a Court hearing.

F.
If an ex parte order is not granted, serve notice upon both parties to appear in Tribal Court and hold a hearing on the petition for protection order within seventy-two (72) hours after the filing of the petition; if notice of hearing cannot be personally served, notice shall be provided consistent with NHBPCR Chapter 10, Court Rules for Restraining Orders, Section 5, Judicial Review of the Emergency Restraining Order.

§ 7.4-54**Duration of permanent protection order and modification.**

A.
The provisions of the order shall remain in effect for the period of time stated in the order, not to exceed one year unless extended by the Court at the request of any party.

B.
The Court in its discretion may, upon request of either party, modify a protection order:

(1)
By the petitioner. Before the Court may modify or reconsider a protection order at the request of the petitioner, if children live in the home, the Court may require the

petitioner to attend a domestic violence support group, with a session focused on the effects of domestic violence on children.

(2)
By the respondent. Before the Court may modify or reconsider a protection order at the request of the respondent, he or she shall provide the Court with all pertinent documents, affidavits, compliance forms or any other information required by the Court for either reconsideration or modification of protection orders. The Court may require the respondent to attend a domestic violence perpetrator treatment program, with a session focused on the effects of domestic violence on children.

ADDENDUM III: MRS. SPURR'S RESPONSE TO THE ALLEGATIONS IN THE AFFIDAVIT OF NATHANIEL SPURR FILED IN THE NHBP TRIAL COURT

In his affidavit Nathaniel claimed without supporting evidence that Mrs. Spurr had sent him 200-300 letters, along with numerous emails and phone calls. This was vehemently denied by Mrs. Spurr, who testified that she had sent no more than three letters and made no more than 4 calls to Nathaniel in the preceding three years, and had sent no more than 4 emails in 2 years. This communication involved plans for family events. See Mrs. Spurr's Exhibit 2: RE 1-4 Page ID# 32-37 and RE 1-5, Page ID#38-45. Nonetheless the Trial Court adopted the 'allegations' in Nathaniel's affidavit as a finding of fact, and the Tribal Supreme Court cited this finding in its opinion, as evidence to affirm the Trial Court's judgment against Mrs. Spurr.

ADDENDUM IV: EFFECTS OF THE LITIGATION IN THE TRIBAL COURTS

Mrs. Spurr, who has had a successful career as a professional engineer, has no criminal record and has never been in jail. She has experienced great anxiety over the possibility of being incarcerated by the Trial Court, a sanction which was strongly advocated in Nathaniel's lawyer's motions.

Although the Trial Court's permanent protection order was issued on February 17, 2017, it was not properly served on Mrs. Spurr by immediate registered and regular mail as required by Section 39 NHBP court rules, nor did Mrs. Spurr have actual notice of it until February 22, 2017, when she arrived at the NHBP reservation together with her husband Stephen Spurr and Nathaniel's brother Josiah H. Spurr, to attend the memorial service of Irene Wesley who had passed away on February 15, 2017. On February 22, 2017 five Tribal police officers and four Tribal police vehicles surrounded Mrs. Spurr, to inform her that because of the Trial Court order of February 17 she could not attend the memorial service of Irene Wesley, whom she knew well, and with whom she had a close friendship. Tribal police further informed Mrs. Spurr that she would have to leave the NHBP reservation immediately and also would not be allowed to attend the burial ceremony in Burr Oak Cemetery in Athens, Michigan well outside the NHBP Indian Reservation. The family unit of Mrs. Spurr, her husband and Josiah left the reservation immediately. Service of the personal protection order six days

later at the memorial did not comply with the NHBP Section 39 court rule which states if the personal protection order is not served within 48 hours, the order must be dispatched by certified mail with return receipt and regular mail. No such order was ever mailed by the Trial Court as required.

On two occasions the NHBP Trial Court ordered both Mrs. Spurr and her attorney to appear in court on dates that had been set by the Trial Court without previously consulting them, stating that a failure to appear by either of them "may result in a bench warrant being issued for [their] arrest." RE 23-2, Page ID#330-333**,** par.28; and RE 23-3, Page ID#336, par. 16.