

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Darrel Gustafson,

Plaintiff and Appellee,

v.

Linus Poitra, Raymond Poitra,
and any and all others in possession
of the Property described in the
Complaint,

Defendants and Appellants.

Supreme Court No. 20190230

District Court Civil

File No. 40-2019-CV-00104

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

HONORABLE ANTHONY SWAIN
BENSON
DISTRICT JUDGE

BRIEF OF APPELLANTS LINUS POITRA, RAYMOND POITRA,
AND ANY AND ALL OTHERS IN POSSESSION OF THE
PROPERTY DESCRIBED IN THE COMPLAINT

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Linus Poitra et al

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Judgment entered June 10, 2019

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Letter from Rolette County State’s Attorney dated June 10, 2015

Select pages from Transcript on Appeal dated June 20, 2019

TABLE OF AUTHORITIES

Cases:

Davis v. O’Keefe, 283 N.W.2d 73 (N.D. 1979) ¶9

Gustafson v. Poitra, 2008 N.D. 159, 755 N.W.2d 479 ¶2

Gustafson v. Poitra, 2018 N.D. 916 N.W.2d 804 ¶2

Montana v. United States, 450 U.S. 544 (1981) ¶1, 3, 5, 12

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Indian Civil Rights Act, Title IV, Act of April 11, 1968, Pub. L. No. 90-284, § 401,
et seq., 82 Stat. 78, 25 USCA 13231, et seq. (1979) ¶9

Other:

Letter from Rolette County State’s Attorney dated June 10, 2015..... ¶ 10

I. Statement of the Issues

- ¶1 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 subject matter of this action meets the sufficient requirements of Montana v. United States 450 U.S. 544 (1981) to establish Tribal Jurisdiction over the matter.
3. Whether the Defendants Raymond and Linus Poitra raised the issue of Tribal Jurisdiction at the District Court level.

II. Statement of the Case

¶2 The background of this case has a long and varied history. Originally, in the prior foreclosure action, the Tribal Jurisdiction was raised but not heard at the District Court level and was not raised in the Appeal to the Supreme Court. Gustafson v. Poitra, 2008 N.D. 159, 755 N.W.2d 479. Later, in an appeal from a judgement quieting title in two parcels of land which are involved in the subject matter of this action, the Supreme Court affirmed the judgment of the District Court quieting such title. Gustafson v Poitra, 2018 N.D. 916 N.W.2d 804.

¶3 Plaintiffs contend that this eviction action is just a continuance of the prior foreclosure action. However, the Defendants Poitra claim that the sending of a law enforcement officer from a foreign outside jurisdiction onto a reservation to evict tribal members is not just a continuance of the prior foreclosure action but a clear violation of the exceptions listed in Montana v. United States, 450 U.S. 544 (1981).

III. Summary of Argument

¶4 As referenced above, the Defendants contend that the eviction action would and should have been brought in the Turtle Mountain Tribal Court. Raymond and Linus

Poitras are enrolled members of the Turtle Mountain Band of Chippewa Indians. In this matter they raised the jurisdictional issue at the hearing in District Court. See transcript pages 4, 5, 22, 23, 24, 30, 32, 33, 34, 35, and 38.

[¶5] Montana best describes exceptions under which a Tribe may regulate the activities of nonmembers on its land. In specific:

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 concurrency 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 limites 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 nonmember’s 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.]

[¶6] In this instance, the Poitras are not challenging the quiet title action nor the foreclosure action, but are challenging the jurisdiction in which the enforcement of the eviction action should be brought.

[¶7] The utilization of a nonfederal law enforcement official from a foreign jurisdiction to enforce the eviction action certainly appears to challenge the political integrity and the health and welfare of the Tribe.

[¶8] Turtle Mountain Band of Chippewa Indians Tribal Court has full ability to hear the eviction action and to order the appropriate steps be taken within its Reservation boundaries. The action involves land, some of which still remains the Poitra's land, and the rest which was their land prior to the action. Utilization of a foreign law enforcement officer to enforce the foreclosure eviction, when the Tribe has clear authority to hear such action and enforce same, appears to be a clear violation of Tribal sovereignty.

[¶9] 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 of the 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.]

[¶10] Further, a letter opinion from the Rolette County State's Attorney regarding a similar question indicated no county authority over land within Tribal jurisdiction.

VI. Appeal to the Supreme Court

[¶11] The judgment which was entered on June 10, 2019, in Rolette County was appealed to the Supreme Court on August 1, 2019.

VII. Conclusion

[¶12] Poitras contend that eviction of Tribal Members from land within the Turtle Mountain Tribal Reservation by a foreign law enforcement authority would be a violation of Tribal sovereignty and the exceptions references in Montana. This is especially true given that the Tribe has both the ability to hear the eviction action and to enforce any order resulting from such action.

Respectfully,

Dated September 18, 2019..

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Darrel Gustafson,)	Supreme Court No. 20190230
)	District Court Civil
Plaintiff and Appellee,)	File No. 40-2019-CV-00104
)	
vs.)	CERTIFICATE OF COMPLIANCE
)	
Linus Poitra, Raymond Poitra, and any)	
and all others in possession of the)	
Property described in the Complaint,)	
)	
Defendants and Appellants.)	

The undersigned certifies that the Appellant’s Brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure the Brief contains 7 pages.

Dated September 25, 2019.

/s/ William J. Delmore
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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20190230
Rolette Co. Court No. 40-2019-CV-00104

Darrel Gustafson,)	
)	
Plaintiff and Appellee,)	
)	
vs.)	CERTIFICATE OF SERVICE
)	
Linus Poitra, Raymond Poitra, and any)	
and all others in possession of the)	
Property described in the Complaint,)	
)	
Defendants and Appellants.)	

[¶1] I hereby certify that on the 18th day of September, 2019, I, Bonnie Banks, served the party named below with the documents also described below by electronically filing the documents with the North Dakota Supreme Court Clerk of Court. The email address of the party is the last known email address.

[¶2] Documents Served:

1. Appeal from Judgment by the District Court Northeast Judicial District, Rolette County, North Dakota
2. Appendix to Appeal from Judgment by the District Court Northeast Judicial District, Rolette County, North Dakota
3. Certificate of Service

[¶] Party Served:

David J. Smith, dsmith@smithporsborg.com

/s/ Bonnie A. Banks
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Darrel Gustafson,)	Supreme Court No. 20190230
)	District Court Civil
Plaintiff and Appellee,)	File No. 40-2019-CV-00104
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)	CERTIFICATE OF SERVICE
Linus Poitra, Raymond Poitra, and any)	
and all others in possession of the)	
Property described in the Complaint,)	
)	
Defendants and Appellants.)	

¶1] I hereby certify that on the 25th day of September, 2019, the following documents were filed with the Clerk of the North Dakota Supreme Court:

1. Appeal from Judgment by the District Court Northeast Judicial District, Rolette County, North Dakota – with non-substantive corrections
2. Appendix to Appeal from Judgment by the District Court Northeast Judicial District, Rolette County, North Dakota– with non-substantive corrections
3. Certificate of Service

¶2] Copies of these documents were served electronically to Appellee’s attorney: David J. Smith, dsmith@smithporsborg.com.

/s/ William J. Delmore

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