

Exhibit B

**IN THE DISTRICT COURT OF THE NAVAJO NATION
JUDICIAL DISTRICT OF WINDOW ROCK, ARIZONA**

BN,
Plaintiff,

No. WR-CV-74-16

v.

**ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS--JURISDICTION**

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATER-DAY SAINTS, a Utah corporation;
LDS FAMILY SERVICES, a Utah corporation,
Defendants.

THIS MATTER is before the Court on Defendants' Motion to Dismiss hereafter "Motion" pursuant to Nav. R. Civ. P 12(b)(1) filed on October 23, 2017. The Plaintiffs responded to the Motion on February 16, 2018 and a Reply was filed on March 2, 2018. The parties stipulated to stay this case for several months causing the delay between the Motion and the response. In the Defendants' Motion, they moved to dismiss for inconvenient forum but later withdrew that argument. A hearing on the Motion occurred on April 9, 2018 in the Window Rock District Court. Legal counsel appeared on behalf of the Plaintiffs and Defendants. Based upon review of the record; the law and the arguments presented, this Court finds It has proper personal and subject matter jurisdiction over the above stated case.

A Complaint was filed in this Court on May 31, 2016. The causes of action in the complaint are childhood sexual abuse, assault and battery, negligence, negligent supervision/failure to warn, intentional infliction of emotional distress, violations of Navajo Common Law and claims for injunctive and equitable relief.

The primary argument of the Defendants is that this Court lacks jurisdiction over them because they are not members of the Navajo Nation and the allegations of sexual abuse giving rise to the Plaintiffs' case occurred in the state of Utah or outside the Navajo Nation. The Plaintiffs argue that this Court has jurisdiction because their claims and causes of action result from and arise out of a relationship and agreement formed with the Lamanite (or Indian) Student Placement Program hereafter "Program." The Program was created and operated on the Navajo Nation and at all times a functioning arm of the Corporation and Church of Jesus Christ of Latter-Day Saints. Both parties agree that application of the Montana Test determines this

Court's civil jurisdiction. This Court finds jurisdiction based on the Treaty of 1868, Navajo Nation laws, and application of the Montana Test.

Aside from the Montana Test and contrary to the Defendants' argument, this Court will not begin its analysis on jurisdiction starting in Utah where the alleged injury occurred because but for the Program, the allegations of sexual abuse, negligence, and injunctive relief would not have been filed against these Defendants. Moreover, it is the best interest and wellbeing of a Navajo child that is the paramount issue in this case. *Barber v. Barber*, 5 Nav. R. 9, 12 (Nav. Ct. App. 1984). There is a fundamental Navajo belief that children are wanted and must not be mistreated in any way. *In re J.J.S.*, 4 Nav. R. 192, 194 (Window Rock D. Ct. 1983). This Court's decision to assert jurisdiction is made in the best interest of Navajo children because in our culture children are viewed as the future, ensuring the existence and survival of the Navajo people in perpetuity. Furthermore, it is the duty of this Court to protect the Navajo Nation's sovereignty including customary laws and our sacred land.

This Court's jurisdiction is firmly bedded in the Treaty of 1868 and 7 N.N.C. § 253a(B—C) & (F). As part of reviewing this Court's adjudicative authority in this case, it begins first with an analysis of the Navajo Nation's ability to regulate and maintain jurisdiction over actions concerning Navajo children. In *Sahar Nouri v. Crownpoint Family Court and Concerning Kyle Dennison*, the Navajo Nation Supreme Court reaffirmed that jurisdiction over matters concerning Navajo children who live outside the Navajo Nation is provided by 7 N.N.C. § 253a(F) as arising from the inherent sovereign right to watch over the upbringing of tribal children as a matter of the health, safety and welfare of the Nation as a whole and in keeping with *Diné bi beenahaz'áanii*, which teaches that our children occupy a space in Navajo culture that can best be described as holy or sacred. No. SC-CV-41-14, slip op. at 3 (Nav. Sup. Ct. July 22, 2014). Furthermore, in *Doe v. Diocese* the Navajo Nation Supreme Court held, Navajo courts have a duty, in *parens patriae*, to ensure allegations of harm to Navajo children are fully heard and not dismissed on mere technicalities and in that case the Court traced psychological and mental injuries back to the act of abuse. No. SC-CV-06-10, (Nav. Sup. Ct. September 9, 2011). Although not directly applicable to this case, federal law through the Indian Child Welfare Act also recognizes the significance of tribal jurisdiction over matters involving American Indian children residing off the reservation.

Next, this Court finds that the actions alleging child sexual abuse, negligent placement, failure to supervise, and failure to report abuse meet the consensual relationship exception of the

Montana Test. This Court has subject matter jurisdiction over the non-Indian conduct because the Plaintiffs' claims meet the consensual relationship exception under the Montana Test. *Montana v. U.S.*, 450 U.S. 544 (1981). The consensual relationship exception states: Tribes may exercise jurisdiction over non-Indians when the non-Indians enter consensual relationships, such as "commercial dealing[s], contracts, leases, or other arrangements" with the tribe or tribal members. *Montana* at 565—566. To gain a good perspective of the consensual relationships and minimum contacts for purposes of evaluating jurisdiction in this case an examination must begin pre-Lamanite (or Indian) Student Placement Program, formally LDS Social Services¹. The Defendants devised a plan and engaged in recruitment and selection of participants for their Program. This Program was erected within the Church of Latter-Day Saints religious organization. Units or stakes were established on the Navajo Nation to assist in furthering the mission of the organization as well as to facilitate and recruit Navajo members into the Program. Once a Navajo individual enters the program with the consent of his or her parent they were then placed with a family in Utah.

This Court finds that a contract was established between the Defendants and the Plaintiffs when the parents or legal guardians agreed to and permitted the participation of their Navajo children into the Program. In other words, the parties formed a consensual relationship and agreement upon accepting the offer of the Program to provide safe and suitable homes for the Plaintiffs in fulfillment of their mission.

This Court's subject matter jurisdiction is based on contracts formed through the Program at the various LDS stakes located on the Navajo Nation between the parties when members of the Program provided applications to families and through meetings engaged in agreements to place Navajo children in Program homes located in Utah. It is a basic tenet of contract law that a contract is formed upon offer and acceptance. The consensual relationship and contract formed by the parties in this case meet the first Montana exception because of the nexus formed beginning at the planning stages of the Program continuing on through this litigation.

In *PacifiCorp, dba Utah Power Light Co. v. Mobil Oil Co.*, the Supreme Court held that in situations where a contract has a sufficient nexus to activity on tribal land within the Navajo Nation, the cause of action arises there for purposes of the Navajo Nation's jurisdiction. No SC-CV-27-01, slip op. at 6 (Nav. Sup. Ct. November 24, 2003). During the time of the alleged injury

¹ See Depo of H. Brown, taken 1/11/18, p. 19.

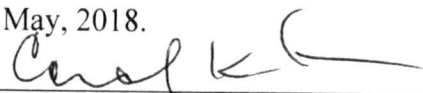
the Defendants (Utah host home placements, recruiters, and the church itself) were agents of the Program. In addition, ongoing contacts which strengthened the nexus occurred when the Program case workers for the Plaintiffs went to the Navajo Nation during the school year and summer to provide the families with information about their children and take information back to the children from their families. This Court finds It has jurisdiction over the named Defendants and the recruiters of the Program through minimum contacts because their continuous actions establish an adequate nexus to this forum. While the alleged sexual abusers or those who allegedly failed to report instances of abuse may have never visited the Navajo Nation, this Court asserts jurisdiction because they have voluntarily participated in the Program by accepting Navajo children into their Utah homes—thus acting as agents and parties to the contract.

The Court rejects the Plaintiffs' analysis of the second Montana exception because the parties have not established facts as to which or what conduct occurred on fee lands within the Navajo Nation. The second Montana exception states: Tribes may exercise jurisdiction over "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." *Montana v. U.S.*, 450 U.S. 544, 565—566 (1981). While the Court rejects the Plaintiffs' analysis of the second Montana exception, it is through this exception and Navajo Nation laws that the Court finds adjudicatory and regulatory jurisdiction over the Plaintiffs' claims for relief over non-Indian actions occurring on fee lands within the Navajo Nation. It is also through the second Montana exception that the standing issue raised by the Defendants is met. Hence the Court finds It has proper personal and subject matter jurisdiction over each of the Plaintiffs' causes of action and claims in their complaint.

IT IS THEREFORE ORDERED that the Defendants' Motion to Dismiss for Lack of Jurisdiction is hereby DENIED.

IT IS FURTHER ORDERED that this Court has proper personal and subject matter jurisdiction over this case.

SO ORDERED this th 25 day of May, 2018.



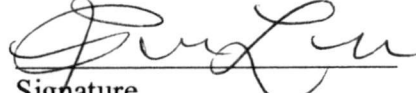
Judge, District Court of the Navajo Nation

*****CERTIFICATE OF SERVICE*****

A copy of this Order was served by Clerk to: **William R. Keeler (Counsel for Plaintiff)** by:

U.S.P.S. first-class mail to: 108 East Aztec Avenue, Gallup, NM 87301

May 25, 2018
Date

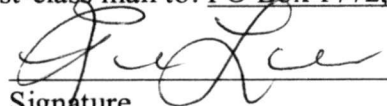

Signature

Ronda Lewis
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A copy of this Order was served by Clerk to: **Thomas Lynn Isaacson (Counsel for Defendants)** by:

U.S.P.S. first-class mail to: PO Box 1772, Gallup, NM 87305

May 25, 2018
Date


Signature

Ronda Lewis
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