

This aspect of tribal sovereignty, like all others, is subject to the superior and plenary control of Congress. But ‘without congressional authorization,’ the ‘Indian Nations are exempt from suit’.

... In the absence here of any unequivocal expression of contrary legislative intent, we conclude that suits against the tribe under the ICRA are barred by its sovereign immunity from suit.

Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58-59 (1978).

Further, alleging that Defendant broke its own laws is legally insufficient to plead waiver of sovereign immunity in Federal Court, or to state a claim upon which relief can be granted. As such, Plaintiff’s claims should be dismissed.

II. PERMITTING PLAINTIFF’S CLAIMS WOULD CREATE AN IMPERMISSIBLE BACK DOOR AROUND TRIBAL REMEDIES, SELF-DETERMINATION, AND SELF-GOVERNMENT.

Allowing Plaintiff to sidestep Tribal legislative and judicial remedies would fly contrary to longstanding Federal public policy¹. The Tribe has a civil statutory scheme, under Cherokee

¹ See, e.g., President Richard Nixon, Special Message to Congress on Indian Affairs, July 8, 1970:

The first Americans - the Indians - are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement - employment, income, education, health - the condition of the Indian people ranks at the bottom.

This condition is the heritage of centuries of injustice. From the time of their first contact with European settlers, the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny. Even the Federal programs which are intended to meet their needs have frequently proved to be ineffective and demeaning.

...

Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered.

This, then, must be the goal of any new national policy toward the Indian people to strengthen the Indian’s sense of autonomy without threatening this sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntary from the tribal group. And we must make it

Code §117-40, by which anyone whose personal property interests will be directly adversely affected by a decision of Tribal Council can “protest” that decision. Plaintiff allowed the time period to elapse for an appeal by right as an interested party. She claims to have submitted a late appeal under Cherokee Code §117-40(e)(1), which requires that the “interested party provides **significant** new evidence that the Tribal Council Chairman determines was not available and could not have been reasonably obtained at the time of the prior hearing.” (emphasis added). She cited her homelessness as the “significant new evidence”; however, no protest hearing was scheduled.

On June 5, 2017, Cherokee Court Chief Judge Cochran signed an eviction order against Plaintiff. (Doc. 20, Exhibit 11). Plaintiff had thirty days to seek counsel or otherwise appeal the matter to the Cherokee Supreme Court, per Appellate Procedure Rule 3(b). Plaintiff alleges that on June 23, 2017, she wrote a letter intended as an appeal of her eviction. (Doc. 20, Exhibit 12). She claims her appeal was effectively rejected for failure to pay a filing fee. Plaintiff does not allege making any inquiry or application to file her appeal in forma pauperis, available pursuant to Rule 5(b) of the Cherokee Supreme Court Rules of Appellate Procedure. Plaintiff does not allege any other attempt to appeal her eviction or obtain free filing privileges, before or after her thirty-day deadline to appeal expired.

Plaintiff should not be given a free pass to Federal jurisdiction because she failed to timely apply for Tribal remedies, failed to provide significant new evidence for her late protest, and failed to timely appeal her eviction or apply for in forma pauperis status. Allowing plaintiffs to avoid or wait out Tribal legislative and judicial remedies would create an exception to the exhaustion of

clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support.

Tribal remedies that would swallow the rule. Litigants would be incentivized to simply not be responsive to statutory deadlines, only to later plead in Federal Court that they lack Tribal remedies to exhaust. Such an option would deflate the widely accepted purposes that compel exhaustion of Tribal remedies.

III. NEW CONCLUSORY ALLEGATIONS IN PLAINTIFF'S RESPONSE FAIL TO STATE OR SUPPORT A VALID CLAIM.

Plaintiff argues that a lower standard should apply to her due to her pro se status; however,

a pro se complaint still must ‘present factual allegations that ‘state a claim to relief that is plausible on its face.’’ As the Fourth Circuit has explained, ‘[t]hough these litigants cannot, of course, be expected to frame legal issues with the clarity and precision ideally evident in the work of those trained in law, neither can district courts be required to conjure up and decide issues never fairly presented to them.’

Skillings v. Knott, 251 F. Supp. 3d 998, 1001–02 (E.D. Va. 2017) (citations omitted).

Plaintiff further argues that the Tribe “allowed false pretenses and defamation [of the Plaintiff]” during a Council hearing. (Doc. 20, at 15). However, all alleged statements appear to have been made or adopted by William John Ledford, who is notably not a defendant here nor were his actions alleged to be done as an agent of the Tribe. At no point does Plaintiff reasonably articulate a plausible claim that the Tribe engaged in defamatory behavior. Such claims against William John Ledford are wholly irrelevant here and legally insufficient to make out any new claim against the Tribe. Even if valid, such claims would also be subject to the Tribe’s sovereign immunity from suit.

CONCLUSION

WHEREFORE, the Tribe requests that this Motion to Dismiss be granted, that Plaintiffs’ claims be dismissed in their entirety, and that the Tribe be awarded such other and further relief as the Court may deem just and proper.

This 6th day of April, 2020.

/s/ Dale A. Curriden

Dale A. Curriden

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CERTIFICATE OF SERVICE

I certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification to Plaintiff. I am also serving a copy of the foregoing on Plaintiff by depositing same in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service and addressed as follows:

April Ledford
PO Box 2150
Bryson City, NC 28713

THIS 6th day of April, 2020.

/s/ Dale A. Curriden

Dale A. Curriden