
**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

NO. 21-1570

MIRIAM C. MONTILEAUX, CHARLES T. MONTILEAUX, SR., individually
and as special administrator of the estate of Cheryl Montileaux and Charles T.
Montileaux, Jr., NAOMI MONTILEAUX, CHERYL MONTILEAUX, Deceased,
and CHARLES T. MONTILEAUX, JR., Deceased,

Appellants,

vs.

THE DIOCESE OF SOUTH DAKOTA, Episcopal, CHAPTER OF CALVARY
CATHEDRAL, Holding Company for Diocese, JONATHAN FOLTS, The Right
Reverend, RANDY REINARTZ, Bishop, TRUSTEE FIRST NATIONAL BANK,
in Sioux Falls, South Dakota, TOM BENZ, Employee, ALAN MEYERS, of
Wealth Management Dept., BOB BAKER, President of Bank, and CHRIS
EKSTRUM,

Appellees.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION
HONORABLE KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE**

**BRIEF OF APPELLEES EPISCOPAL DIOCESE OF SOUTH DAKOTA,
CHAPTER OF CALVARY CATHEDRAL, BISHOP JONATHAN FOLTS,
and RANDY REINARTZ**

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SUMMARY OF CASE

Appellants Montileauxs filed suit in U.S. District Court against the Episcopal Diocese of South Dakota, Chapter of Calvary Cathedral, Bishop Folts, and Randy Reinartz (hereinafter “Diocese et al.”), among others, asserting that the Diocese appellees had engaged in criminal conduct related to the death of Cheryl Montileaux and the distribution or use of funds from a settlement involving Cheryl Montileaux. Many of the allegations relate to conduct by attorney Robert Maule, who is now deceased, and is not a party to this case.

Montileauxs allegations were brought pursuant to the 1868 Ft. Laramie Treaty. Although the allegations against all of the Diocese appellees are not entirely clear, Appellants did seek \$40 million in punitive damages. The District Court dismissed the case for lack of subject matter jurisdiction and informed Montileauxs that a claim under the Ft. Laramie Treaty should be brought in the federal claims court against the United States, rather than the individuals and companies named in this case. The District Court did not err in its determination that it lacked subject matter jurisdiction.

STATEMENT REGARDING ORAL ARGUMENT

Appellees Diocese, et al. agree to submission of this appeal on briefs. However, if oral argument is allowed, the Diocese appellees request equal time to that granted to Appellants.

CORPORATE DISCLOSURE STATEMENT

The Diocese of South Dakota is a South Dakota nonprofit religious corporation and serves as a diocese of the Episcopal Church of the United States of America. The Chapter of Calvary Cathedral is a South Dakota nonprofit religious corporation that serves as the property holding company for the Diocese. Neither entity has owners or shareholders, and no publicly-held corporation owns more than ten percent (10%) of its stock.

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STATEMENT OF JURISDICTION

The District Court had jurisdiction over a federal question related to treaties, pursuant to 28 U.S.C. § 1331. On February 24, 2021, the District Court issued a final judgment disposing of all of Plaintiffs/Appellants Montileauxs' claims. The Montileauxs timely filed a Notice of Appeal on March 10, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF ISSUES

ISSUE ONE: DID THE DISTRICT COURT PROPERLY DISMISS MONTILEAUXS' CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION?

This issue was raised in the trial court through the Appellees Diocese et al. Motions to Dismiss. (App. 21-26.)¹ The District Court granted the motion to dismiss. (Add. 8.) The issue was preserved for appeal by Appellant's notice of appeal.

Apposite Authority:

Treaty of Fort Laramie of 1868

Cheyenne & Arapaho Tribes v. United States, 151 Fed. Cl. 511 (2020)

Hernandez v. United States, 93 Fed. Cl. 193 (2010)

¹ Citations to the Appendix filed by Appellees First National Bank, et al. will be cited as "App. ____." Citations to the Addendum filed by Appellees First National Bank, et al. will be cited as "Add. ____."

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY AND RULINGS.

Appellants Montileauxs served a Summons and Complaint on Appellees Bishop Folts and Randy Reinartz. Appellants did not serve a Summons and Complaint on Appellees Diocese of South Dakota or Chapter of Calvary Cathedral. The Diocese and Chapter moved to dismiss this case pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(4), 12(b)(5), and 12(b)(6). (App. 25-26.) Bishop Folts and Mr. Reinartz moved to dismiss this case pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(c). (App. 21-24.)

The District Court reviewed the briefs and other documents submitted by the parties and granted the motions to dismiss based upon lack of subject matter jurisdiction. (Add. 2-8.) The Court did not reach other issues. (Add. 8.)

B. FACTUAL BACKGROUND.

The facts as alleged in the Complaint provide that: Chapter of Calvary Cathedral is the holding company for the Diocese of South Dakota (Episcopal church). (App. 6-7.) First National Bank in Sioux Falls, on Friday August 16, 2019, allegedly found Miriam Montileaux's name in relation to Chapter of Calvary Cathedral. (App. 6.) Three witnesses to the "Release" signed for the settlement of the 1988 lawsuit were all members of the Episcopal Church. (App. 7.) On March 30, 1988, church officials paid for the funeral of Cheryl Montileaux. (App. 8.) On

March 31, 1988, funeral services were held for Cheryl Montileaux at St. Barnabas Episcopal Church in Kyle, SD. (App. 8.) Bishop Craig B. Anderson ordered immediate burial of Cheryl Montileaux without an autopsy and she was buried within 72 hours of her death. (App. 8.) On April 11, 1988, church attorney Robert Maule had Charles T. Montileaux, Sr. sign documents at his office in Winner, SD. (App. 8.) On April 12, 1988, two names were added to BOND as SURETIES without Mr. Montileaux's knowledge and/or consent. They were Sherillyn Maule (Robert Maule's wife) and Randy Reinartz (Episcopal Church official). (App. 8.) A car insurance policy by Assman Agency (Winner, SD) had an insured/beneficiary as The Chapter of Calvary Cathedral. (App. 8.) Sherrilyn Maule and Randy Reinartz, at the request of Robert Maule, were released as sureties from the bond. (App. 9.) Robert Maule and Judge Gors may have conducted court business without informing Mr. Montileaux or without "our knowledge and or consent." (App. 10.)

The relief requested as to the Diocese is "payment of 40 million dollars in punitive damages to the plaintiffs...by the Episcopal Diocese of So. Dak." (App. 11, ¶ 4.) No specific prayer for relief is made as to the Chapter of Calvary Cathedral, though it appears it is to be held accountable for "crimes" with Bishop Folts. (App. 11, ¶ 2.) The only reference to the Bishop is in the prayer for relief:

@2.) The Episcopal Bishop Jonathan Folts be held accountable for crimes, as he is the president of "CHAPTER OF CALVARY

CATHEDRAL WHO ARE HIDING OUR FUNDS UNDER
CHAPTER OF CALVARY CATHEDRAL, WHEN PLAINTIFFS
LOCATED TRUST FUNDS.

(App. 11.) It appears that Bishop Folts is only a nominal defendant in this action because he is currently the Bishop of the Diocese, even though he had no knowledge or participation in the alleged events which happened approximately thirty years ago. There is no relief requested as to Mr. Reinartz.

Appellants assert additional factual information in their appellate brief filings.

SUMMARY OF THE ARGUMENT

The district court did not err by dismissing the Complaint of Appellants for lack of subject matter jurisdiction. Precedent clearly demonstrates that an action brought pursuant to a treaty between Indians and the United States that alleges crimes by bad men against Indians, must be brought in the Court of Federal Claims against the United States. While the District Court could have dismissed the case for any of the reasons asserted below by Appellees, the cited reason was correct and the Judgment of the District Court should be affirmed.

STANDARD OF REVIEW

This Court's review of a district court's decision to dismiss for lack of subject matter jurisdiction based on the complaint alone, or on the complaint supplemented by undisputed facts evidenced in the record, is "limited to determining whether the district court's application of the law is correct and, if the decision is based on undisputed facts, whether those facts are indeed undisputed." *Osborn v. United States*, 918 F.2d 724, 730 (8th Cir. 1990) (quoting *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981)). In other words, this Court is to review *de novo* the District Court's decision to grant a motion to dismiss for lack of subject matter jurisdiction. *Hastings v. Wilson*, 516 F.3d 1055, 1058 (8th Cir. 2008).

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN DISMISSING THE CASE FOR LACK OF SUBJECT MATTER JURISDICTION

The District Court correctly analyzed the facts and law related to Appellants' claims against Appellees and determined that the essence of the action was a claim against "bad men" under the Fort Laramie Treaty of 1868.

Appellants Montileauxs brought this case as a criminal violation of the 1868 Fort Laramie Treaty signed between the United States government and several Indian tribes, including bands of the Great Sioux Nation.²

"A treaty is essentially a contract between two sovereign nations." *Herrera v. Wyoming*, 139 S.Ct. 1686, 1699 (2019). "The existence of a trust relationship between the United States and an Indian or Indian tribe includes as a fundamental incident the right of an injured beneficiary to sue the trustee for damages resulting from a breach of the trust." *United States v. Mitchell*, 463 U.S. 206, 226 (1983). There is no private right of action for Appellants to bring a criminal claim against Diocese, et al. under the "bad men" provision of the Fort Laramie Treaty of 1868. The treaty clearly describes the process for bringing "bad men" into court for violations under the treaty.

If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the

² "Indian" and "Sioux" are terms used in the text of the Fort Laramie Treaty.

person or property of the Indians, the United States will, upon proof made to the agent, and forwarded to the Commissioner of Indian Affairs at Washington city, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

Art. I, paragraph 2 Treaty of Fort Laramie of 1868.

Here, instead of providing proof to the agent and Commissioner of Indian Affairs, for prosecution by the United States, Appellants chose to forgo that administrative process and brought a criminal action on their own. By Appellants' failure to follow the process described in the treaty, which requires the United States be the entity to bring the "bad men" into court, the District Court did not have jurisdiction to hear the matter.

Although the Court is to construe treaties liberally, resolving ambiguities in favor of the Indians, the Court cannot rewrite or expand treaties beyond their clear terms to remedy a claimed injustice. *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 432 (1943); *Herrera v. United States*, 39 Fed. Cl. 419, 421 (1997). The "bad men" clause gives Native Americans the right to seek redress directly from the United States for wrongs that are perpetrated by United States citizens against a tribal member while on tribal land. *See Richard v. United States*, 677 F.3d 1141, 1153 (Fed. Cir. 2012); *Elk v. United States*, 87 Fed. Cl. 70, 79 (Fed. Cl. 2009) ("The 1868 Treaty's 'bad men' provision created an individual third-party contractual right through which an individual claimant could directly pursue a suit

against the United States.’’). The right to seek redress is against the United States, not an individual tortfeasor, or as in this case, potential criminal defendant. (*See also Jones v. Norton*, 809 F.3d 564 (10th Cir. 2015) for a discussion of a “bad men” clause providing individual rights against the United States, but not for individual § 1983 claims.)

Here, Appellants did not have the ability to bring a suit against the Diocese or Chapter of Calvary under the Fort Laramie Treaty. The allegations failed to establish that either entity is a “bad man” and there is no allegation they committed any acts on tribal land. Further, neither entity is a person. In *Hernandez v. United States*, 93 Fed. Cl. 193 (2010), the plaintiff brought suit under the Fort Laramie Treaty claiming a court had wronged him and was a “bad man.” The Court stated, “In order to bring action under the Fort Laramie Treaty a Native American must be a victim of an affirmative criminal act, and the person committing the act must be a specific white man or men.” *Id.* at 200. “A court, however, is not a specific white man, and may not qualify as a ‘bad man’ for the purposes of this treaty without extending the Fort Laramie Treaty beyond its intended bounds.” *Id.* Likewise, Appellees Diocese and Chapter of Calvary are not specific white men to qualify as “bad men.”

Generally, the “bad men” clauses in treaties provide that “the wrong in question must be to person or property, and the United States...is to reimburse the

injured person for the loss sustained.” *Cheyenne & Arapaho Tribes v. United States*, 151 Fed. Cl. 511 (2020). The plain language, then, demonstrates that the claim must be brought against the United States, not individuals or other entities.

Because Appellants do not have the ability to bring a suit against Diocese, et al. under the Fort Laramie Treaty, the District Court correctly concluded that the Court lacked subject matter jurisdiction. Additionally, the allegations fail to establish that Randy Reinartz, Bishop Folts, the Episcopal Diocese of South Dakota, and the Chapter of Calvary Cathedral are “bad men” and there is no allegation they committed any acts on tribal land.

Even if the Montileauxs had asserted proper claims under the Fort Laramie Treaty, the District Court still would not have jurisdiction over this matter due to the Tucker Act. The Tucker Act grants exclusive jurisdiction to the United States Court of Federal Claims for any claims against the United States founded upon contract and exceeding \$10,000. 28 U.S.C. § 1491.

The District Court could have granted Diocese et al.’s motions to dismiss for any of the reasons argued below, including insufficient process, insufficient service of process on the Diocese and Chapter of Calvary, failure to state a claim against all of the Diocese defendants/appellees, or res judicata against all of the Diocese defendants/appellees. However, because the District Court correctly dismissed the action for lack of subject matter jurisdiction, it did not reach those issues.

This Court may affirm the judgment of the District Court if dismissal was warranted for any reason. *United States v. Brown*, 915 F.3d 1200, 1202 (8th Cir. 2019) (citing *United States v. Price*, 851 F.3d 824, 826 (8th Cir. 2017)). As evidenced through the facts in this brief and the brief of Appellees First National Bank, in which Appellees Diocese et al. agree, as well as the arguments below, it is apparent that Appellants Montileauxs have failed to state a claim upon which relief can be granted, in addition to bringing the claim in the wrong court. The District Court's Judgment dismissing the action with prejudice should be affirmed.

CONCLUSION

The District Court did not err in dismissing this case for lack of subject matter jurisdiction. The judgment of the District Court should be affirmed.

Dated: May 10, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because this brief contains 2100 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Version 2104 for Microsoft Office 365 with a 14-point Times New Roman font.

3. A digital version of the brief in Portable Document Format (PDF) is being provided to the clerk and to each party separately represented by counsel pursuant to 8th Cr. R. 28A(d).

4. The computer file containing the brief has been scanned for viruses and is virus-free.

Dated at Rapid City, South Dakota, this 10th day of May, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2021, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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