Case No. 21-3735

IN THE

United States Court Of Appeals

FOR THE EIGHTH CIRCUIT

James Nguyen, Appellant

Patricia Foley ET AL., Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

BRIEF OF APPELLANT

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March 20, 2022

SUMMARY OF THE CASE

Appellant is father to A.J.N., his seven-year-old daughter. A.J.N is an Indian child and member of the Shakopee Mdewakanton Sioux Community ("SMSC"). Appellant is not a member of the SMSC. As a result, Appellant has been webbed in years of unjust, biased and abusive tribal administrative process.

Defendants are operators in concert of a cloaked system designed to protect adult members of the SMSC and punish any in opposition regardless the cost, even children of their community. The facts are not relevant within the realm of this sovereign nation.

This case illustrates the standard operating procedure of the SMSC against nonmember parents. First, alienation by way of "no trespass orders" as this case begins by reason of Appellant's order for protection for what was to be first of many felony assault charges that led to convictions of the tribal parent. Second, fraudulent tribal child welfare proceedings to influence jurisdictional conflicts, harass and intimidate nonmember parents ultimately resulting in the standard declaration of "ward of the court" to improperly secure exclusive jurisdiction of children and prohibits A.J.N. from equal protection of state welfare services, endangering her well-being. Third, unvirtuous and lawless custody proceedings riddled with false narratives severely limiting Appellant's parental rights.

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JURISDICTIONAL STATEMENT

This appeal is from the District Court's order entered October 27, 2021, adopting the Report and Recommendation of the Magistrate Judge and granting motion to dismiss to Appellees, and from the final judgment on the order. (R. Doc. 42) Appellant timely filed a notice of appeal on December 8, 2022. (R. Doc. 57.) This Court has appellate jurisdiction under 28 U.S.C. § 1291.

Appellant alleged federal law claims. The District Court had subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1367.

STATEMENT OF ISSUES

1. Whether there is a violation of Supremacy Clause when a Public Law 280 tribal court deems a child a "ward of the court' effectively activating exclusive jurisdiction without the parents losing their parental rights otherwise deemed unfit.

   Apposite cases: *Troxel v. Granville*, 530 U.S. 57 (2000)

   Apposite constitutional provisions, statutes and regulations: U.S. Constitution, Art. VI, cl. 2, Supremacy Clause

2. Whether former Commissioner Cal Ludeman had the authority to enter into an agreement in the Tribal/State Indian Child Welfare Agreement as amended in 2007 to give the Minnesota Public Law 280 tribes exclusive jurisdiction over child welfare matters.

   Apposite cases: *Doe v. Mann*, 415 F.3d 1038 (9th Cir. 2005)

   Apposite constitutional provisions, statutes and regulations: U.S. Constitution, Art. VI, cl. 2, Supremacy Clause, Public Law 280

STATEMENT OF THE CASE

On April 14, 2021, Appellant filed a civil rights case claiming that officers of the SMSC, violated his parental rights, the rights of his daughter to equal protection and other tort claims. (R. Doc. 4) In the Complaint, Appellant brought claims under the Fourteenth Amendment Substantive Due Process Rights, Fourteenth Amendment Procedural Due Process Rights, Violation of Indian Civil Rights Act, Violation of the Stored Communications Act, Abuse of Process, and Intentional Infliction of Emotional Distress. (R. Doc. 4)

Appellant and Ms. Gustafson are parents to A.J.N. a seven-year-old little girl. Here the tribal parent has a long history of chronic drug abuse through the present, felony convictions of drugs, felony convictions of assault of the appellant and what's classified as a severe and persistent mental illness. The appellant has no history of any of these issues. (R. Doc. 4 at 6)

Ms. Gustafson's drug chronic drug use from adolescence has been a problem to this day and has caused significant harm to A.J.N. (Ex. A003-A004;R. Doc. 65 at 3-4)(R. Doc. 66-1)

Ms. Gustafson's drug use exacerbates the symptoms of her mental illness which has led to a history of hostility and violence. (R. Doc. 1-15) (R. Doc. 4 at 7,8,12, 31) (Ex. A073; R. Doc. 66-7 at 40). This has continued to present day with yet again another granted Order For Protection "OFP" against Ms. Gustafson from her current husband, Mr. Bui who finds himself in an equally unfortunate

circumstances against the SMSC desperately trying to protect his three-year-old daughter. It should be noted that Mr. Bui is a decorated disabled veteran honorably discharged after suffering injury during the service of this country. (R. Doc. 66-2 at 1) (see Scott County case 70-FA-22-1475)

Like other non-members who attempt to escape a dangerous environment for the sake of their children, Appellant has been retaliated with "notices of no-trespass" by the SMSC Business Council despite its knowledge of Gustafson's abusive behavior, criminal record, mental illness and illegal drug use. These notices in part have improperly restricted Appellant's constitutional rights and rights as a father further exampled infra. (R. Doc. 42 at 7-9)

Specifically, the first notice of no-trespass by the Business Council specifically states the reason for the notice was for obtaining a Scott County OFP against Ms. Gustafson. (R. Doc. 1-3 at 4)

In part this case is about ensuring that individual actors with the Community system cannot use tribal mechanisms to harass litigants in its courts or to improperly influence the course of internal litigation. If such individuals are allowed to shield themselves from such liability for such actions, litigants in SMSC courts will always face the potential for collateral attacks by the very Community they are forced to have adjudicate their cases.

For example, I brought disciplinary action against the attorneys of Ms. Gustafson and the SMSC Child and Family Services who knew defendant Foley and Ms. Gustafson had been intercepting my emails with my attorney and did

nothing to inform the court. I also complained that the SMSC attorney withheld information during the ex-parte motion filing. (R. Doc. 25-1 at 60-63). When my attorneys in that matter withdrew and I refused to drop the case, the attorneys I complained about were obligated to acknowledge their knowledge of the unethical actions of their clients. The SMSC Business Council responded with a "Permanent" Notice of No-Trespass as opposed to the typical one-year exclusion. (R. Doc. 1-3 at 1-4)

It appears the SMSC Business Council members may have also blocked a tribal court order in favor of the Appellant. In April of 2017, defendant Charli Vig signed a supplemental filing with the Minnesota Supreme Court Advisory Committee in connection with the Minnesota tribes seeking more power as they petitioned to amend Rule 10. The Advisory Committee then asked for supplemental written materials related to a series of questions. The Advisory Committee then asked for supplemental written materials related to a series of questions. Question 4 is as follows: "To what extent would there be reciprocal recognition for state court orders in tribal courts?" Defendant Vig answers, "If no substantial question appears with respect to the jurisdiction and regularity of the proceedings, the Tribal Court will enter an order enforcing the foreign judgment." (Ex. A006; R. Doc. 66-4 at 2-4)

In November 2019 I was awarded a $200,000 judgment in my favor by Hennepin County District Court. (Ex. A022-A023; R. Doc. 66-5 at 2-3)

After months of painful and expensive litigation in the SMSC tribal court to enforce the order of Hennepin County, ultimately I prevailed.

Specifically, the Order states "The December 3, 2019 judgement entered in Hennepin County District Court in Case Number 27-CV-18-1681 ***shall be enforceable as other judgments of this Court***." (Ex. A032-A033; R. Doc. 66-6 at 9-10)

As a result of the Ms. Gustafson's drug overdose of January 12th, 2022, she was once again placed on conservatorship. As a result, the SMSC has taken control of her finances. The conservators for Ms. Gustafson have refused to communicate with my attorney regarding the judgment and I have not collected one dollar since the tribal enforcement order of 2019. (Ex. A006-A008; R. Doc. 65 at 6-8)

In April of 2017, Prairie Island Indian Community representative Shelly Buck also signed the supplemental filing with the Minnesota Supreme Court Advisory Committee. Regarding question 9. "Are tribal court records public?" She claims, "The Prairie Island Tribal Court civil records are publicly available upon request, except for records from certain types of confidential domestic relations and child protection proceedings." (Ex. A019-A020; R. Doc. 66-4 at 9-10) I found this to be misleading as well. The Prairie Island Tribal Court and the SMSC Tribal Court denied me any access to unsealed court documents on February 12th, 2020, when I was researching for tribal court proceedings at that time. (Ex. A075-A076; R. Doc.66-7 at 42-43)

During the SMSC child welfare proceeding involving the Appellant and A.J.N. Defendant Foley was the child welfare officer. As an officer of the court, Ms. Foley was charged with fairly and impartially investigating and reporting on the parenting abilities and day-to-day environments of the parties. Throughout the investigation, Ms. Foley repeatedly showed bias and prejudice against the Appellant. During the course of the investigation, Ms. Foley and the SMSC improperly relied on the private emails belonging to the Appellant that were illegally obtained by Ms. Gustafson. Information obtained through the intercepted emails between the Appellant and his legal counsel were openly discussed between Ms. Foley and Ms. Gustafson without notifying the Appellant that the communications had been obtained. Attorney Jessica Ryan, in her responsive pleading in SMSC Tribal Court File No. 890-12, admitted knowledge that these communications were intercepted. (R. Doc. 4 at 13-14)

Ms. Foley agreed with Ms. Gustafson to use the Tribal court process to attempt to get a psychological evaluation conducted on the Appellant, though she also admitted that Appellant's therapist reported that the Appellant did not have a current diagnosis to give to Ms. Foley. Ms. Gustafson asked Ms. Foley for advice on how to avoid a mandatory urinary analysis. Ms. Foley obliged with Ms. Gustafson's request. (R. Doc. 4 at 16)

As the OFP was already established in Scott County outlining the parenting time provisions with assigned supervisors, there was no legitimate reason to open the child welfare case. Instead, by way of fraud, on January 21, 2015, Ms. Foley

advises Ms. Gustafson that she would "recommend opening (the child welfare case) ***under the guise*** of providing ongoing support to you." (R. Doc 1-2 at 18)

Per the standard operating procedure, this laid the framework for the court to rely on falsified and biased reports, lacking any evidence whatsoever, that would result in A.J.N. staying a "ward of the tribal court" (R. Doc. 4 at 21-22, Doc. 4-2 at 8)

Appellant had his child improperly deemed a ward of the SMSC tribal court severely limiting Appellant's parental rights and prohibiting A.J.N. from the equal protection of state welfare services endangering her well-being. The tribal trial court ignores their own appellate decisions, SMSC laws and properly filed motions sending a well-known message to non-members. (Ex. A007, A052, A062, A063-A080; R. Doc. 65 at 7, R. Doc 66-7 at 19, R. Doc. 66-7 at 29, R. Doc 66-7 at 30-47)

As a litigant in the SMSC tribal court, it is frequent when false narratives are written regarding the nonmember. For example, video evidence captured an assault of the Appellant by Ms. Gustafson with a fire poker. (R. Doc. 1-15 at 1, R. Doc. 34-2 at 4). This led to three felony assault charges resulting in a plea deal for one felony conviction. As in any plea, Ms. Gustafson admits to the assault which took place in front of A.J.N. This came after police officers, detectives, prosecuting attorneys and a judge acknowledge the crime had taken place. Witnessing this evidence in a tribal court trial for custody, the tribal court opinioned: "Exhibit 26 (Video). The Court views the Respondent as a person who

gladly goads others into arguments, often records the situation, and then gloats about their reactions and behavior in an effort to make them look like the aggressors. He does not accept responsibility for any part he played in the first place." (R. Doc. 25-1 at 139). On August 29th, 2018, Appellant's attorney was instructed by the tribal court clerk to provide discovery to the court absent any order. Attorney Blahnik did not comply with the email from the court clerk. He complied with the court order. (R. Doc. 34-2 at 10-12) In response, post settlement, the tribal court responds with sanctions for complaints prior to settlement. This was later reversed by Appellant's appeal in tribal court before the tribal court judges changed their appellate procedure laws. (R. Doc. 25-1 at 131)

In the SMSC tribal court, when a litigant refuses to forfeit justice, justice is stripped from him/her. Designated attorneys for the tribal members are able to obtain orders complying with their client's wishes with merely an email and without the other party being heard. With the SMSC, those who write their laws are also charged with enforcing their laws within their court system and they have repeatedly ignored their own rules when it suites them. The tribal court of the SMSC have recently changed their laws in the wake of Chief Judge Jacobson's retirement. Appeals of nonmember litigants are now blocked in the SMSC tribal. (Ex. A007, A081-A099; R. Doc. 65 at 8, R. Doc. 66-7 at 48-66)

Prior to January 18th, 2022, the Appellant rarely saw his daughter resulting from the modification of custody order that issued on the Appellant's birthday about eight months after the Final Judgment and Decree which concluded joint

custody by way of settlement. For over two years Appellant was prohibited to any knowledge of A.J.N.'s education or medical records. Efforts by the Appellant to the tribal court has been ignored. On October 12th, 2021, I reported to the SMSC Child and Family services department concerns of my daughter missing school for a week and of her description of what I believed to be a child witnessing the drug overdose of her mother while they were in Florida on what was supposed to be a trip celebrating a little girl's seventh birthday. I gave very specific details in this report and requested a voluntary UA of Ms. Gustafson. I was assured by department's director Lisa Tittle, that someone would get back in touch with me. No one from the SMSC Child and Family services department ever contacted me regarding my report of October 12th, 2021, until January 18th, 2022. (Ex. A002; R. Doc. 65 at 2. R. Doc. 66-1) Given the long history of the tribal parent's chronic drug use and mental illness the SMSC court issued an order blocking me from reports of inevitable maltreatment of my daughter as previously determined by the Scott County Department of Human Services. (R. Doc. 4 at 31) Specifically the order restricts Appellant from any records of protective services of his daughter without the permission of the tribal member parent. (R. Doc. 25-1 at 142-143) A.J.N as a ward of the tribal court is unable to received state protections when the tribal government refuses to conduct a proper investigation into their own members.

Unfortunately, Appellant's fears that led him to reporting to the SMSC Child and Family Services on October 12, 2021, have been affirmed. Instead of going to Disney World for her birthday, A.J.N. witnessed her mother overdose as the

husband and paramedics successfully attempted to her save the life. (Ex. A003; R. Doc. 65 at 3)

Reporting of child abuse, neglect or domestic violence against a tribal member will result in retaliation by the tribe, financial abuse and the loss of your child. Non-member parents underreport maltreatment of their tribal children resulting in a profound achievement gap in education, mental health issues and a sense of entitlement of impunity which perpetuates a tragic on-going cycle for many SMSC members. (R. Doc. 4 at 31) (R. Doc. 66-1 at 3) (R. Doc. 34-2 at 2-4) See also 17-CV-04597 Doc. 1 at 5 (D.Minn filed Oct. 10, 2017)

SUMMARY OF THE ARGUMENT

Senator John Lewis said "When you see something that is not right, not fair, not just, you have to speak up. You have to say something; you have to do something." These words have resonated with me and has brought me before this court today. It applies to what is most precious to me in this world, my little girl, her safety and her future.

The SMSC has declared themselves stewards of the community. The powerful hands that are reaching in their pockets to donate and shake hands with politicians in Minnesota and Washington D.C. are the same unclean hands wearing the gloves of sovereign immunity holding the heads of fit, loving parents and their children under water.

Appellant respectfully asks the Court to reverse the District Court's order dismissing with prejudice Appellants claims for injunctive relief or alternatively declaring it to be unconstitutional that children of parents that have not been found to be unfit cannot be deemed wards of the court offering prospective relief and safety to thousands of Native American children.

ARGUMENT

I. THE DISTRICT COURT ERRED IN FINDING APPELLANT'S CASE IS NO DIFFERENT THAN *SANDMAN v. DAKOTA*.

Minnesota tribes (with the exception of Red Lake Band) have a distinguishable difference then that in the above referenced case. They are all Public Law 280 tribes. The Ninth Circuit's analysis in *Doe v. Mann*, 415 F.3d 1038, 1053-1068 (9th Cir. 2005) is a landmark decision in this regard. The Ninth Circuit analyzed ICWA and Public Law 280 in light of two U.S. Supreme Court cases which had analyzed 28 U.S.C. § 1360 as a stand-alone statute not to support state court jurisdiction on Public Law 280 reservations: *California v. Cabazon Band of Mission Indians,* 480 U.S. 202, 208 (1987) and *Bryan v. Itasca County*, Minnesota, 426 U.S. 373 (1976). After a thorough legal analysis, the Ninth Circuit distinguished the U.S. Supreme Court cases holding the legislative text, legislative history and federal regulations confirm that the ICWA showed that Public Law 280 was incorporated into ICWA so state court jurisdiction would extend to Public Law 280 reservations:

> In short, the explicit reference to Public Law 280 in ICWA, ICWA's clear definition of child custody proceedings, and the statutory structure of ICWA demonstrates that Congress intended Public Law 280 states have jurisdiction over Indian child dependency proceedings unless [Public Law 280] tribes availed themselves of § 1918 in order to obtain exclusive jurisdiction.

II. THE DISTRICT COURT ERRED IN DISMISSING WITH PREJUDICE APPELLANTS' CLAIMS CONCERNING INJUNCTIVE RELIEF.

Appellant's due process rights have been violated regarding his ability to protect his daughter. The overreach of the tribal court to protect the detrimental actions of a violent, mentally ill drug addict has harmed a child. The parent who was the victim of domestic violence again and again of sound mind with no issues of addiction has been restricted to report maltreatment of his daughter by the tribal parent. "[T]he interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court." Troxel v. Granville, 530 U.S. 57, 65 (2000)

III. THE DISTRICT COURT ERRED IN NOT ADDRESSING THE LEGALITY OF MINNESOTA TRIBAL COURTS DEEMING CHILDREN OF FIT PARENTS TO BE WARDS OF THE COURT

In 2007, former Commissioner Cal Ludeman entered into an agreement with the tribes in Minnesota in the Tribal/State Indian Child Welfare Agreement as amended in 2007. In part, this agreement paved the way to give the Minnesota Public Law 280 tribes exclusive jurisdiction over child welfare matters when he did not have the authority to do so. (R. Doc. 25-1 at 16) Here we see the tribes of Minnesota using statutes in one federal law (ICWA) to circumvent statutes of a different federal law (Public Law 280). It is my understanding states have the right to write their own laws so long as it does not conflict with federal laws. The elected officials who represent the people of Minnesota did not give tribes exclusive jurisdiction. It was one man who was appointed to his position. There was no fair debate to consider how this would affect the children of Minnesota. Without such fair debate the Appellant has exampled how harm comes children.

CONCLUSION

Based on the foregoing, Appellant James Van Nguyen respectfully requests that the Court of Appeals reverse the decision of the District Court and remand with directions to permit him to proceed with his claims.

Dated: March 21, 2022

Respectfully submitted,

s/ James Nguyen

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In the
UNITED STATES COURT OF APPEALS
For the Eighth Circuit

JAMES VAN NGUYEN,

Appellant,

No. 21-3735

CERTIFICATE OF SERVICE, COMPLIANCE WITH WORD COUNT LIMIT, AND VIRUS-FREE FILES

v.

PATRICIA FOLEY, et al.

Appellees.

I, James Nguyen, certify as follows:

On March 21, 2022, I electronically filed the **BRIEF OF APPELLANT** with the Clerk of the 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. There are no non-CM/ECF participants.

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,680 words.

This brief has been scanned for viruses and is virus free.

Dated: March 21, 2022

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