

No. 834568

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MARGRETTY RABANG, and ROBERT RABANG,

Plaintiffs-Appellants,

vs.

RORY GILLILAND, MICHAEL ASHBY, ANDY GARCIA,
RAYMOND DODGE, and JOHN DOES 1-10,

Defendants-Appellees,

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

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I. INTRODUCTION

The Rabangs’ emotional distress claims arise from Appellees’ efforts to evict them from their home—that they leased to own for nearly twenty years—three days before Christmas Sunday in 2016. CP 008. The Rabangs attempted to contest their eviction but were denied their right to legal counsel, at the direction of Appellee Ray Dodge. CP 131–32 (a “REJECTED” appearance notice of Galanda Broadman, PLLC) (original emphasis); *see also id.* at 118–119, 131–132; SCP 004–05; *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (holding that the “fundamental requisite of due process of law is the opportunity to be heard,” which “would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel”). Appellees persisted with their holiday eviction efforts—even going so far as to threaten the Rabangs with contempt of court—despite the U.S. Department of the Interior’s “extraordinary” repudiation of the eviction and any

“so-called tribal court actions and orders” at that time. CP 231-32; SCP 004–05.

The illegality of Appellees’ December 2016 eviction efforts is established, according to the Federal Government. *Id.* This Court need not reach that issue to affirm subject matter jurisdiction over the Rabangs’ distress claims. Appellees’ efforts are akin to evictions in violation of governmental eviction moratoria. Those illegal acts can and do sound in tort, particularly emotional distress. *See Bly v. Field Asset Services*, No. 14-cv-0254, 2014 WL 2452755 (W.D. Wash. June 2, 2014) (recognizing emotional distress claims arising from illegal eviction efforts). Appellees’ cruel and inhumane acts shock the conscience, and the superior courts of the state of Washington possess jurisdiction to adjudicate the Rabangs’ resulting tort claims.¹

¹ Much like what the Rabangs endured in 2016, twenty other Nooksack lease-to-own households were threatened with eviction this past Christmas. Mike Baker, “A Tribe’s Bitter

II. THE EXERCISE OF JURISDICTION WOULD NOT VIOLATE TRIBAL SELF-RULE.

Appellees argue that jurisdiction is improper because the exercise of state authority would violate principles of tribal self-government. *See* Dodge Br. at 5–8; Tribe Br. at 22–28.

“There are very few limitations on the subject matter jurisdiction of superior courts in Washington.” *Outsource Services Management, LLC v. Nooksack Business Corp.*, 181 Wash. 2d 272, 276 (2014). And the United States Supreme Court has recognized that “suits by Indians against outsiders in state courts” are permitted. *Williams v. Lee*, 358 U.S. 217, 219

Purge Brings an Unusual Request: Federal Intervention,” *The New York Times*, Jan. 2, 2022, at A1. These latest human rights violations at Nooksack are so shocking that not only did the U.S. Interior Department deplore the evictions but the United Nations Human Rights Council also intervened, imploring the U.S. State Department to prevent the evictions. United Nations, *USA: Evictions of indigenous Nooksack must stop*, <https://www.ohchr.org/en/press-releases/2022/02/usa-evictions-indigenous-nooksack-must-stop-un-experts> (last visited May 19, 2022); *see also* Daniel Beekman, “U.N. monitors call on U.S. government to stop evictions by Nooksack Indian Tribe,” *Seattle Times*, Feb. 3, 2022, at A1.

(1959). In fact, only in “matters arising on Indian reservations” should a court consider the question of whether a state’s exercise of jurisdiction violates the “rights of Indians to ‘make their own laws and be ruled by them.’” *Outsource Services Management*, 181 Wash. 2d at 277 (quoting *Williams*, 358 U.S. at 220).

As the superior court recognized, this case arises on tribal trust land, not a reservation. *See* CP at 166. Thus, the relevant question is not whether the State’s exercise of jurisdiction violates the “rights of Indians to make their own laws and be ruled by them.” *Outsource Services Management*, 181 Wash. 2d at 277 (quoting *Williams*, 358 U.S. at 220). Because this is a suit arising off-reservation, “by Indians against outsiders in state court[],” *see* CP at 1–2, jurisdiction is proper. *Williams*, 358 U.S. at 219.

In sum, subjecting this off-reservation State tort claim to State jurisdiction would not interfere with tribal self-governance.

III. RCW 37.12.060 DOES NOT BAR STATE JURISDICTION HERE.

Even if the exercise of jurisdiction here would infringe upon the Nooksack Tribe's right to make its own laws and be ruled on them, jurisdiction is still proper if the limitation on jurisdiction found in RCW 37.12.060 does not apply. *See Outsources Services Management*, 181 Wash. 2d at 276–77 (“Washington State courts generally have jurisdiction over civil disputes in Indian country if *either* (1) the State has assumed jurisdiction pursuant to Public Law 280 *or* (2) asserting jurisdiction would not infringe on the rights of the tribe to make its own laws and be ruled by them.”) (emphases added and footnote omitted).

Appellees do not argue that the State of Washington has not assumed jurisdiction over this matter under RCW 37.12. *See* Tribe Br. at 11; Dodge Br. at 8. Instead, they argue that the limitation found in RCW 37.12.060 to the State's assumption of jurisdiction applies. *See* Tribe Br. at 11; Dodge Br. at 9.

Because that statute is inapplicable, the trial court's dismissal for lack of jurisdiction should be reversed.

Nothing in the text of RCW 37.12.060 bars jurisdiction over the Rabangs' state emotional distress tort claims. *See* RCW 37.12.060. Dodge argues that the Rabangs seek to avoid RCW 37.12.060 by "recharacteriz[ing] their claims" as state emotional distress torts. Dodge Br. at 10–11. There has been no recharacterization; that is how the Rabangs pleaded their claims. *See* CP 1–13 (complaint for intentional and negligent infliction of emotional distress). RCW 37.12.060 does not alter the jurisdiction of Washington courts over state emotional distress tort claims such as these.

Dodge's argument rests entirely on the fact that RCW 37.12 does not "confer jurisdiction upon the state to adjudicate . . . the ownership or right to possession of such property or any interest therein." *See* Dodge Br. at 9 (quoting RCW 37.12.060). That is not what the Rabangs have asked the trial court to adjudicate. *See* CP 1–13; *see also* Opening Br. at 10. They seek

an adjudication of whether state tort claims have been committed against them. Dodge suggests those claims would somehow inherently include an adjudication of the right to possession of real property. *See* Dodge Br. at 11. But the elements of the tort of intentional infliction of emotional distress are: “(1) extreme and outrageous conduct; (2) intentional or reckless infliction of emotional distress; and (3) actual result to the plaintiff of severe emotional distress.” *Rice v. Janovich*, 109 Wash. 2d 48, 61 (1987). Dodge does not explain which of those elements inherently includes an adjudication of the right to possession of real property, or why he should be permitted to plead the Rabangs’ claims for them. *See Hayes v. USAA Cas. Ins. Co.*, 185 Wash. App. 1055 (Div. 1 2015) (unpublished opinion) (noting plaintiffs are “masters of their own complaint”).

The Tribe accuses the Rabangs of artfully pleading state law claims that are preempted by federal law without explaining how the Rabangs’ claims are preempted. *See* Tribe

Br. at 22. Neither of the orders from which the Rabangs appeal found their claims preempted. *See* CP 84, 166. The Rabangs’ emotional distress claims are not preempted by federal law, nor is that issue before the Court. The issue instead is whether the trial court erred in finding state jurisdiction is prohibited under RCW 37.12.060. *See id.* The Court should answer that question in the affirmative.

IV. SOVEREIGN IMMUNITY DOES NOT APPLY.

The Tribe also argues sovereign immunity bars the Rabangs’ claims, even though the superior court did not rule on those grounds. *See* Tribe Br. at 28. Sovereign immunity does not apply to these personal capacity claims against four non-members. In *Lewis v. Clarke*, the U.S. Supreme Court held that “[t]he protection offered by tribal sovereign immunity” does not bar a state court’s subject matter jurisdiction over state common law tort suits brought against tribal employees in their personal capacities. 137 S. Ct. 1285, 1292 (2017); *see also Wright v. Colville Tribal Enter. Corp.*, 159 Wn. 2d 108, 116

(2006) (en banc). Thus, sovereign immunity does not block the Rabangs' claims.

V. CONCLUSION

The trial court erred when it dismissed this case for lack of subject matter jurisdiction and denied Appellants' motion for reconsideration. This Court should reverse and remand.

I certify that the number of words contained in this document, exclusive of words contained in the appendices, title sheet, table of contents, table of authorities, certificate of service, signature block and this certificate of compliance, is 1367.

Respectfully submitted this 20th day of May 2022.



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CERTIFICATE OF SERVICE

I, Alice Hall, declare as follows:

1. I am now and at all times herein mentioned a legal and permanent resident of the United States and the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to testify as a witness.
2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35th Avenue NE, Ste. L1, Seattle, WA 98115.
3. Today I served the foregoing document via the court's CM/ECF filing system on counsel of record.

The foregoing Statement is made under penalty of perjury and under the laws of the State of Washington and is true and correct.

Signed at Seattle, Washington, on May 20, 2022.

s/Alice Hall

Alice Hall

GALANDA BROADMAN

May 20, 2022 - 3:10 PM

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