

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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MARGRETTY RABANG, and ROBERT RABANG,

Plaintiffs-Appellants,

vs.

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

Defendants-Appellees,

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OPENING BRIEF OF PLAINTIFFS-APPELLANTS

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....II

I. INTRODUCTION.....1

II. ISSUES ON APPEAL.....2

III. STATEMENT OF THE CASE.....2

IV. SUMMARY OF ARGUMENT.....5

V. ARGUMENT.....6

    A. Standard of review.....6

    B. Washington has assumed civil jurisdiction under  
        Public Law 280.....6

    C. RCW 37.12.060 does not apply to  
        emotional distress claims.....9

VI. CONCLUSION.....10

CERTIFICATE OF SERVICE.....12

## TABLE OF AUTHORITIES

### CASES

<i>Bly v. Field Asset Services</i> , No. 14-cv-0254, 2014 WL 2452755 (W.D. Wash. June 2, 2014) .....	10
<i>Cordova v. Holwegner</i> , 93 Wash. App. 955 (Wash. Ct. App. Div. 3 1999) .....	8
<i>Lakeside Industries, Inc. v. Washington State Department of Revenue</i> , 19 Wash. App. 2d 225 (Wash. Ct. App. Div. 1 2021) .....	6
<i>Nooksack Indian Tribe v. Zinke</i> , No. C17-0219-JCC, 2017 WL 1957076 (W.D. Wash. May 11, 2017) .....	4
<i>Outsource Services Management, LLC v. Nooksack Business Corp.</i> , 181 Wash. 2d 272 (2014) .....	6
<i>State v. Cooper</i> , 130 Wn.2d 770 (1996) .....	8
<i>State v. Cooper</i> , 928 P.2d 406 (Wash. 1996) .....	8
<i>Three Affiliated Tribes of the Ft. Berthold Reservation v. Wold Eng’g P.C.</i> , 467 U.S. 138 (1984) .....	6

### STATUTES

26 U.S.C. § 42(h)(6)(B)(ii) .....	10
Public Law 280 .....	7
RCW 37.12.010 .....	7, 8
RCW 37.12.060 .....	1, 2, 5, 9

## I. INTRODUCTION

This case involves Appellees’ infliction of emotional distress upon Appellants through their efforts to evict them from their longtime home on lands outside the Nooksack Indian Reservation. *See* CP 001–13. These efforts are so extreme and outrageous that, earlier this month, United Nations human rights experts called upon the federal government to intervene and keep Appellants in house and home.<sup>1</sup>

The trial court dismissed this case without prejudice on September 8, 2021 (the “September Order”), holding that, because Appellants allege “injury stemming directly from the Nooksack Tribal Court’s issuance of an eviction order and the Nooksack Tribal Police’s execution of the same,” it lacked subject-matter jurisdiction over their state tort claims. CP 084.

Appellants timely moved for reconsideration of the September Order. CP 085–91. The trial court denied the motion on October 26, 2021, finding that RCW 37.12.060 prevented it

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<sup>1</sup> *See* United Nations, USA: Evictions of indigenous Nooksack must stop—UN experts, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28081&LangID=E> (last visited Feb. 7, 2022).

from exercising subject-matter jurisdiction (the “October Order”). CP 166. This appeal ensued. CP 167.

## **II. ISSUES ON APPEAL**

Did the trial court err when it found it lacked subject-matter jurisdiction over Appellants’ state tort claims? Yes.

Did the trial court err when it denied Appellants’ motion for reconsideration, holding that RCW 37.12.060 precludes state jurisdiction? Yes.

## **III. STATEMENT OF THE CASE**

Appellants have resided at 5913 Johnny Drive in Deming, Washington for over twenty years. CP 003. They participate in the U.S. Department of Housing and Urban Development’s Mutual Help lease-to-own program, through which they have regularly made timely payments since 1996. *Id.* Their home is situated on allotted lands outside of the Nooksack Indian Reservation, specifically the Rutsatz housing tract on the Suchanon Allotment. *Id.* at 002.

On October 3, 2016, Appellee Rory Gilliland, the former Nooksack Tribal Police Chief, directed one of the Doe Appellees to serve a notice to vacate on Margretty Rabang at

her home. CP 004. Mrs. Rabang sought relief in tribal court, but her appearance was “REJECTED” at the direction of Appellee Ray Dodge, then an illegitimately installed judge of the Nooksack Tribal Court. CP 138–39; *see also id.* at 125–26; SCP 004–05.<sup>2</sup>

On December 14, 2016, Appellee Dodge ordered Appellants evicted from their home, which was tantamount to a taking due to equity Appellants have accrued in their home since 1996. CP 007; *id.* at 110–11. In the eviction order, Appellee Dodge directed Appellees Gilliland and current Nooksack Police Chief Mike Ashby to evict Appellants from their home by December 28, 2016. *Id.* at 007. On Thursday, December 22, 2016, just three days before Christmas Sunday, Appellee Dodge issued another order directing Appellees

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<sup>2</sup> Not only was Appellee Dodge illegitimately serving as “Chief Judge” but by many contemporaneous judicial accounts, he was openly subverting justice and violating litigants’ due process rights. The National American Indian Court Judges Association rebuked “Mr. Dodge,” explaining to him: “while you have occupied the position of Chief Judge at Nooksack, proceedings do not appear to have been conducted in compliance with the federal [Indian Civil Rights Act] or fundamental tenets of tribal due process at law.” CP 125-126. Whatcom County Superior Court Debora Garrett stated she was “very concerned about this situation including what the Court sees as serious procedural irregularities,” explaining: “Clearly there’s a problem here . . . in [the Court’s] view, the Tribal Court is acting in a way that causes great question about the ability of this – this Tribe in this situation to manage a trial court that is truly fair and truly accords due process to Tribal members.” SCP 039. Whatcom County Superior Court Ira Uhrig refused to “recognize as lawful or carrying any legal effect the actions or decisions of the Nooksack Tribal Court after March 24, 2016.” *Id.* at 038.

Gilliland and Ashby to remove Appellants from their home by December 28, 2016. CP 008.

On Friday, December 23, 2016, the U.S. Department of the Interior invalidated not only Appellee Dodge’s eviction orders against Appellants, but also any “so-called tribal court actions and orders” after March 2016.<sup>3</sup> SCP 004–05.

Appellants filed this lawsuit on January 31, 2017. CP 001. Their complaint includes two causes of action: one for intentional infliction of emotional distress, and one for negligent infliction of emotional distress. CP 009–11. Their complaint did not include any real or personal property claim. *Id.* This tort case was stayed pending the resolution of federal litigation based on related facts. CP 023–24.

On June 21, 2021, Appellees moved to lift the stay and dismiss the case. CP 027. The trial court dismissed Appellees’ tort claims without prejudice on September 8, 2021, holding that, because Appellants allege “injury stemming directly from

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<sup>3</sup> Interior’s determination remains in effect today. *See Nooksack Indian Tribe v. Zinke*, No. C17-0219-JCC, 2017 WL 1957076 (W.D. Wash. May 11, 2017).

the Nooksack Tribal Court's issuance of an eviction order and the Nooksack Tribal Police's execution of the same," it lacked subject-matter jurisdiction. CP 084.

After Appellants timely sought reconsideration of the September Order, the trial court found that RCW 37.12.060 prevented it from exercising subject-matter jurisdiction. CP 166.

#### **IV. SUMMARY OF ARGUMENT**

First, the trial court erred when it granted Appellees' motion to dismiss for want of jurisdiction. The State of Washington has statutorily assumed jurisdiction over off-reservation lands such as those where Appellants' causes of action arose, and the United States Supreme Court has approved of state court jurisdiction over claims by Indians against non-Indians.

Second, the trial court erred when it denied Appellants' motion for reconsideration of the September Order. The trial court relied upon RCW 37.12.060 to find it lacks jurisdiction, but that statute does not prevent a state court from adjudicating state tort claims.



## V. ARGUMENT

### A. STANDARD OF REVIEW

“Whether a court has subject matter jurisdiction is a question of law reviewed de novo.” *Lakeside Industries, Inc. v. Washington State Department of Revenue*, 19 Wash. App. 2d 225, 230–31 (Wash. Ct. App. Div. 1 2021).

### B. WASHINGTON HAS ASSUMED CIVIL JURISDICTION UNDER PUBLIC LAW 280.

The United States Supreme Court “repeatedly has approved the exercise of jurisdiction by state courts over claims by Indians against non-Indians, even when those claims arose in Indian country.” *Three Affiliated Tribes of the Ft. Berthold Reservation v. Wold Eng’g P.C.*, 467 U.S. 138, 148 (1984). “As a general matter, tribal self-government is not impeded when a State allows an Indian to enter its courts on equal terms with other persons to seek relief against a non-Indian concerning a claim arising in Indian country.” *Id.* at 148–49.

Furthermore, “[t]here 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). Indeed, the Supreme

Court of Washington has recognized that “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.” *Id.* at 276–77. Here, the State of Washington has given itself jurisdiction pursuant to a statute commonly known as Public Law 280. RCW 37.12.010. Therefore, the trial court should not have granted dismissal.

RCW 37.12.010 states: “The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83<sup>rd</sup> Congress, 1<sup>st</sup> Session)[.]” RCW 37.12.010. The only scenario the statute gives in which that assumption of jurisdiction “shall not apply” pertains to Indians when on their tribal lands or allotted lands *within an established Indian reservation*[.]” *Id.* (emphasis added). Through the passage of RCW 37.12.010, “[f]ull jurisdiction was thus

extended . . . over all Indian lands outside established Indian reservations.” *Cordova v. Holwegner*, 93 Wash. App. 955, 963 (Wash. Ct. App. Div. 3 1999); *see also State v. Cooper*, 130 Wn.2d 770, 776 (1996) (“Allotted or trust lands are not excluded from full nonconsensual [state] jurisdiction unless they are ‘within an established Indian reservation.’ ”).

Appellants’ emotional distress claims indisputably arose on off-reservation land, specifically the Rutsatz housing tract on the Suchanon Allotment. Their injury did not occur “within an established Indian reservation.” RCW 37.12.010; *State v. Cooper*, 928 P.2d 406, 411 (Wash. 1996) (Rutsatz “is outside the reservation”). Appellants’ tort claims did, however, occur on “Indian territory” and Indian “lands within this state,” and over which the State has “obligate[d] and [bound] itself to assume . . . civil jurisdiction.” *Id.* The trial court therefore possesses jurisdiction.

In dismissing Appellants’ claims, the trial court determined that it lacked jurisdiction because “Plaintiff’s Complaint alleges injury stemming directly from the Nooksack Tribal Court’s issuance of an eviction order and the Nooksack

Tribal Police’s execution of the same.” CP 084. The trial court’s dismissal should be reversed because this is not the correct test for determining jurisdiction. Without citation, the trial court essentially fashioned a rule stripping state courts of jurisdiction in all instances where allegations have some nexus to an Indian tribe. *Id.*

**C. RCW 37.12.060 DOES NOT APPLY TO EMOTIONAL DISTRESS CLAIMS.**

The trial court denied Appellants’ motion for reconsideration of the September Order, finding state court jurisdiction “is flatly prohibited by RCW 37.12.060.” CP 166. This was error, and therefore this Court should reverse the trial court’s denial of Appellants’ motion for reconsideration.

RCW 37.12.060, upon which the trial court relied, states:

Nothing in this chapter shall authorize the alienation, encumbrance, or taxation of any real or personal property . . . belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States . . . or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein[.]

But Appellants did not ask the trial court to “adjudicate . . . the ownership or right to possession of such property or any interest therein.” CP 009–11.

Rather, Appellants sought an adjudication of whether Appellees committed the state tort of intentional and negligent infliction of emotional distress.<sup>4</sup> *Id.* Those claims are not somehow converted into an adjudication of Appellants’ ownership rights to the property simply because the allegations pertain to Appellees’ efforts to evict them. By exercising jurisdiction over Appellants’ claims, the trial court would not be determining the ownership of Appellants’ home, but instead ruling on whether the Appellees have committed state torts through actions taken off the Nooksack Indian Reservation.<sup>5</sup>

## VI. 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.

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<sup>4</sup> In *Bly v. Field Asset Services*, No. 14-cv-0254, 2014 WL 2452755 (W.D. Wash. June 2, 2014), as here, a plaintiff sufficiently pled infliction of emotional distress claims based on a defendant’s illegal efforts to evict him.

<sup>5</sup> State courts *are*, in some situations, able to adjudicate property rights of Indians. *See* 26 U.S.C. § 42(h)(6)(B)(ii).

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 2340.

Respectfully submitted this 8<sup>th</sup> day of March 2022.



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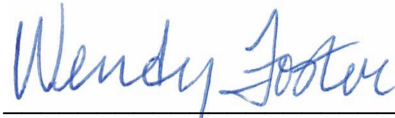
## CERTIFICATE OF SERVICE

I, Wendy Foster, 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 35<sup>th</sup> 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 March 8, 2022.



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Wendy Foster

**GALANDA BROADMAN**

**March 08, 2022 - 9:53 AM**

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**Appellate Court Case Number:** 83456-8  
**Appellate Court Case Title:** Margretty Rabang, et ano, Appellants v. Rory Gilliland, et al, Respondents  
**Superior Court Case Number:** 17-2-00163-1

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