

IN THE DISTRICT COURT IN AND FOR MCINTOSH COUNTY
STATE OF OKLAHOMA

Andrea Sue Miline,

Plaintiff,

v.

Howard Jeffrees Hudson,

Defendant.

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Case No. PO-2020-78

FILED
MAR 16 2021

LISA RODEBUSH, Court Clerk
McINTOSH COUNTY
By Deputy

ORDER DENYING RESPONDENT'S
MOTION TO DISMISS FOR LACK OF JURISDICTION AND BRIEF IN
SUPPORT

Now on this the 15th day of March, 2021, the Court addresses Respondent's *Motion to Dismiss for Lack of Jurisdiction and Brief in Support* in addition to the merits of the Petitioner's claim for an Order of Protection under the *Oklahoma Protection from Domestic Abuse Act*. Being fully advised this Court FINDS and ORDERS as follows:

The Court finds the substance of Respondent's jurisdictional claim is without merit. The Court makes this finding assuming, in the light most favorable to Respondent, Respondent is an Indian and the alleged acts in support of an order for protection occurred within the historical boundaries of the Creek Nation. As *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) states "the Legislature wields significant constitutional authority when it comes to tribal relations." *Id.* at 2462. One of the main issues in *McGirt* is the intention, or lack thereof, of Congress to have disestablished the historical boundaries of the Creek Nation as it relates to claims brought under the *Major Crimes Act* (MCA), 18 U.S.C.A. § 1153. As the recent decision of *Bosse v. State of Oklahoma*, 2021 OK CR 3 states:

The General Crimes Act [GCA] and the Major Crimes Act give federal courts jurisdiction over crimes committed by or against Indians in Indian Country. 18 U.S.C. §§ 1152, 1153. Congress provides that crimes committed in certain locations or under some specific circumstances are within the sole and exclusive jurisdiction of the United States. Section 1152, the General Crimes Act, brings crimes committed in Indian Country within that jurisdiction, unless they lie within the jurisdiction of tribal courts or jurisdiction is otherwise expressly provided by federal law. 18 U.S.C. § 1152; see also 18 U.S.C. § 1153 (Major Crimes Act). This gives federal courts jurisdiction over Indians and non-Indians who commit crimes against Indians in Indian Country. By explicitly noting that it may expressly provide otherwise, Congress has preempted jurisdiction over these crimes in state courts.

Id. at ¶ 23. In light of the guidance of *Bosse*, Oklahoma's ability to exercise criminal jurisdiction over an Indian in Indian Country is doubtful due to the federal government's preemption in the MCA and GCA.

Nevertheless, the current proceeding does not involve an attempt to exercise criminal jurisdiction. For this reason, the Court finds neither the GCA nor MCA applicable to the matters before the Court. Having found these congressional acts inapplicable, the Court must next determine if there is any other congressional act which preempts or speaks to the general jurisdiction of an Oklahoma District Court to hear under the *Oklahoma Protection from Domestic Abuse Act*. The Respondent urges this can be found in the *Indian Civil Rights Act* of 1968 (ICRA). The Court does not agree and, in fact, finds the ICRA expressly allows circumstances under which all applicable sovereigns can have concurrent jurisdiction. This is found in the provision in ICRA § 1304 (b) (2) which states: "CONCURRENT JURISDICTION. —The exercise of special domestic violence criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both."

Id. Clearly, this provision is careful to articulate jurisdiction under the ICRA is concurrent with the State and Federal government. The Court finds this intent is dispositive of the jurisdictional claims before this Court in absence of any further congressional acts, none of which Respondent cites.

For the above reasons this Court DENIES the Respondent's *Motion to Dismiss for Lack of Jurisdiction and Brief in Support*. In denying said motion, the Court proceeds to hear the merits of Petitioner's claim.

IT IS SO ORDERED.



JUDGE OF THE DISTRICT COURT

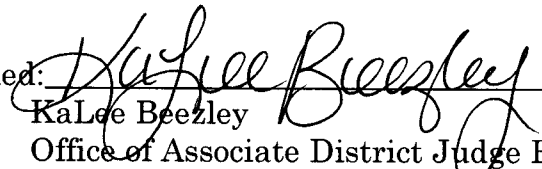
CERTIFICATE OF MAILING

I hereby certify on the 16th day of March, 2021, I mailed a true and correct copy of the foregoing document to the following:

Andrea Milne at 304 McGee Avenue, Eufaula, OK 74432

Heather Cook at 220 East Eufaula Street, Norman, OK 73069

Signed: _____


KaLee Beezley
Office of Associate District Judge Brendon
Bridges McIntosh County