ORIGINAL

2022 OK 84

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ANDREA SUE MILNE
Plaintiff/Appellee,
v.
HOWARD JEFFREES HUDSON, JR.,
Defendant/Appellant.

No. 119,498

Appeal from the District Court of McIntosh County
Honorable Brendon Bridges, Trial Judge

¶0 Plaintiff/Appellee Milne applied for a civil protection order against Defendant/Appellant Hudson in the District Court of McIntosh County. Hudson objected, claiming that the district court had no jurisdiction to enter the order. Hudson argued that because McIntosh County is within the boundaries of the Muscogee Reservation, Milne is a member of the Muscogee Nation, and Hudson is a member of the Cherokee Nation, the McIntosh District Court had no jurisdiction to enter a civil protective order against him. The trial court denied the objection and entered the civil protection order. We affirm the trial court's decision.

APPEAL PREVIOUSLY RETAINED;
ORDER OF THE DISTRICT COURT AFFIRMED

Heather Cook, Norman, Oklahoma, Heather Cook P.L.L.C., for Defendant/Appellant;
No appearance for Plaintiff/Appellee.

KUEHN, J.:

¶1 Appellee Andrea Sue Milne dated Appellant Howard Hudson. During an argument, Hudson became violent with Milne. Milne applied to the District Court of McIntosh County for a civil protection order, as the couple dated in in Eufaula, Oklahoma. She stated in her application, and testified at a hearing, that Hudson first attacked her in a car, slamming her head into the

dashboard. When they got to her house, he hit her and threw her across her yard. Finally, he pushed his way into her house, grabbed some of his belongings, and struck her in front of her children. When the children came to her aid, he absconded, but returned later and threatened to burn the house down. Milne testified that after the afternoon of violent acts, he stalked her at home, around town, and at her workplace. This application and testimony, though not tested by investigation or cross-examination, were certainly enough to justify an order of protection.

¶2 It is in this context that we approach the narrow issue presented: did the District Court of McIntosh County have jurisdiction to issue a civil protection order?

¶3 It is important to emphasize what this case is not about. We are not concerned with the enforcement of an existing protection order. We are also not concerned with any possibility of Hudson's criminal prosecution based on Milne's allegations. We focus only on whether a state district court has jurisdiction to issue a civil order, protecting an Oklahoma citizen from violence, at the citizen's request, where both parties are also citizens of sovereign Indian Nations and the violent acts occurred within the boundaries of both the State of Oklahoma and the Muscogee Nation.

PROCEDURAL HISTORY

¶4 Milne filed a petition for civil protection order against Hudson with the Court Clerk of McIntosh County on October 21, 2020. The District Court

issued an emergency protection order, and then, after a hearing, issued an interim order of protection and continued the evidentiary hearing to March 15, 2021. Prior to the evidentiary hearing, Hudson filed a motion to dismiss for lack of jurisdiction. The trial court heard argument on this motion, orally denied it, and filed a written order denying the motion. On March 15, the trial court also issued a final order of protection to remain in effect for five years from the date of issue. Hudson timely filed this Petition in Error, and this Court retained the appeal. Hudson filed a brief in support of his appeal on December 14, 2021. Despite direction from this Court, Milne did not file a brief in response, and the case was submitted for consideration based on the filings submitted by Hudson.

STANDARD OF REVIEW

¶5 While this case involves a civil protection order, the issue is whether the district court had jurisdiction. This is a question of law, reviewed *de novo*; we conduct "a plenary, independent, and non-deferential examination of the trial court's rulings of law." *Sheffer v. Buffalo Run Casino, PTE, Inc.*, 2013 OK 77, ¶ 3, 315 P.3d 359, 361; *see also Mustang Production Co. v. Harrison*, 94 F.3d 1382, 1384 (10th Cir. 1996) (federal courts will review tribal court's decision regarding jurisdiction in Indian Country *de novo*).

McGIRT v. OKLAHOMA DOES NOT RESOLVE THIS CLAIM

¶6 Hudson argues the outcome of this case is determined by the decision in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). He is mistaken. While

that decision sets the stage for our analysis, its outcome is not controlling. Its holding – that the State cannot prosecute a crime committed by a tribal citizen, against a tribal citizen, in Indian Country – cannot control the analysis or outcome of the civil-law issues raised in this case.

¶7 However, in *McGirt*, the United States Supreme Court held that the Muscogee Nation reservation was never disestablished and continues to be Indian Country. *McGirt*, 140 S.Ct. at 2468. With that finding, activity supporting the protection order in this case occurred in Indian Country; neither party disputed this fact below, and the trial court accepted it when considering the jurisdictional question. Our analysis thus focuses on the issue of civil jurisdiction in Indian Country. And we do not undertake this analysis in a vacuum. Decades of settled law, both state and federal, inform our decision. *McGirt* expanded the popular understanding of the extent of Indian Country in Oklahoma. This necessarily expands the law we may consider and apply in cases raising Indian Country issues. But *McGirt* did not itself change the applicable civil law.

THE INDIAN CIVIL RIGHTS ACT DOES NOT RESOLVE THIS CLAIM

¶8 First, we address the trial court's findings. The trial court relied on a portion of the Indian Civil Rights Act of 1968, 25 U.S.C § 1304(b)(2), to deny Appellant's motion – understandably, since the parties referred to that

statute.[1] At first glance, Section 1304(b)(2) appears to govern here, because it explicitly provides for the possibility of concurrent jurisdiction in domestic violence cases among tribal, state and federal courts under certain circumstances.[2] However, Section 1304 provides for tribal criminal jurisdiction over domestic and dating violence. In the protective order context, Section 1304 is restricted to enforcement. It explicitly grants tribal courts authority to exercise criminal jurisdiction over violations of existing civil or criminal protection orders. 25 U.S.C. §§ 1304(a)(5), 1304(c)(2).

¶9 In relying on this statute, the trial court put the cart before the horse. The question was whether the trial court could issue a civil protection order at all. It is clear from Section 1304(b)(2) that, after an order is issued, the state district court would have had authority to enforce it. But Section 1304 does not address under what circumstances any sovereign court may issue such an order.

THE DISTRICT COURT HAD JURISDICTION TO ISSUE THE CIVIL PROTECTION ORDER

¶10 Hudson primarily argues that the tribal court had jurisdiction to issue a protection order against him. We agree. Federal law clearly gives tribal courts full civil jurisdiction to issue and enforce protection orders involving any

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[1] This statute was amended, effective October 2022. The amended provisions are substantially similar or identical to the provisions discussed here.

[2] "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." 25 U.S.C. § 1304(b)(2).

person. However, that does not resolve the issue before this Court. Hudson claims that *only* a tribal court could have exercised jurisdiction over him to issue a protection order. This is not the case.

The Tribal Court Does Not Have Exclusive Jurisdiction

¶11 Generally speaking, and depending on the Indian status of the parties, Indian tribes have civil jurisdiction over cases occurring within Indian Country. It is well established that the federal statutory definition of Indian Country in 18 U.S.C. § 1151 applies in both civil and criminal contexts. *See Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 (1998); *DeCoteau v. District County Court for Tenth Judicial Dist.*, 420 U.S. 425, 427 n.2 (1975); *Mustang*, 94 F.3d at 1385.

¶12 However, this jurisdiction is not necessarily exclusive. The United States Supreme Court has observed that an "exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation." *Montana v. U.S.*, 450 U.S. 544, 564 (1981). *Montana* was concerned with the extension of a tribe's authority over non-tribal citizens and discussed the limited nature of tribal sovereign authority in that context. Tribes may regulate the activities of nonmembers who enter consensual relationships "through commercial dealing, contracts, leases, or other arrangements" with the tribe or tribal members. *Montana*, 450 U.S. at 565; *United States v. Cooley*, 141 S.Ct. 1638,

1642-43 (2021). And tribes may exercise civil authority over the conduct of non-Indians when the "conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 405 U.S. at 565; *Cooley*, 141 S.Ct. at 1642-43. Where a reservation lies within state boundaries, that fact does not automatically exclude all state regulatory authority; "an Indian reservation is considered part of the territory of the State." *Nevada v. Hicks*, 533 U.S. 353, 361-62 (2001) (*quoting* U.S. Dept. of Interior, Federal Indian Law 510 and n.1 (1958)).

¶13 We recognize that the *Montana* test refers to tribal authority over non-Indians. However, in *Lewis v. Sac and Fox Tribe of Oklahoma Housing Authority*, this Court applied a very similar test to the question of state jurisdiction over disputes where both parties are Indian. *Lewis v. Sac and Fox Tribe of Oklahoma Housing Authority*, 1994 OK 20, 896 P.2d 503, *cert. denied*, 516 U.S. 975 (1995). There, the Sac and Fox Housing Authority entered into an agreement with Indian buyers to convey a fee simple estate, including mineral rights. The Sac and Fox Nation had established its Housing Authority pursuant to federal regulations.[3] The Housing Authority was organized both under an authorizing state law which made it a state agency,[4] and under tribal

[3] The federal Department of Housing and Urban Development authorized Indian tribes to establish Indian Housing Authorities using a framework of either tribal or state law. 24 C.F.R. §§ 905.101–905.950 (1990).
[4] 63 O.S. §§ 1051 *et seq.*

law.[5] The Authority had acquired fee simple title to the property, which was in Indian Country. By agreement with the Lewises, it built their home on the property, with title passing to the Lewises after the home was paid off. However, eventually the warranty deed conveyed to the Lewises included only surface rights. The Lewises sued the Authority in state court for specific performance of the agreement, plus an accounting for oil and gas revenues. The Authority objected, claiming that the state court had no jurisdiction.

¶14 This Court disagreed. We first noted the longstanding federal policy, recognized by the United States Supreme Court, of fostering tribal autonomy and self-government. *Lewis*, 1994 OK 20, ¶ 8, 896 P.2d at 507-08. However, we determined that Supreme Court precedent does "not divest state courts of cognizance over all disputes among Indians. Where, as here, state law is implicated, governs the transaction and is invoked, and there is no infringement upon tribal self-government, there can be no barrier to state cognizance." *Id.* at ¶ 10, 896 P.2d at 508 (emphasis omitted). We concluded that, to determine whether state courts have jurisdiction where Indian interests are concerned, we must discover whether Congress has explicitly

[5] Sac and Fox Housing Authority Act of 1983, Resolution SF-83-25. At the time of trial, the Authority was reorganized under tribal law but had not yet received federal approval to operate under that law, so was still operating as a state agency.

withdrawn state court jurisdiction, or whether the interest infringes on tribal self-government.[6] *Id.* at ¶ 12, 508-09.

Congress Did Not Restrict Exclusive Jurisdiction to Tribal Courts

¶15 Congress has clearly authorized tribal courts to issue civil protection orders.

> For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in Section 1151) or otherwise within the authority of the Indian tribe.

18 U.S.C. § 2265(e). However, the plain language of this statute does not confer exclusive civil jurisdiction. Where Congress intends to give exclusive jurisdiction to federal and/or tribal courts, and to remove state jurisdiction, it has done so explicitly. 18 U.S.C. § 1153 (granting "exclusive jurisdiction" in certain Indian Country cases to tribes or the federal government).[7] And where Congress has determined that tribes may consent to enter an arrangement

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[6] In reaching this conclusion, *Lewis* rejected previous Oklahoma case law which had held Indian nations had exclusive jurisdiction over all civil matters arising among Indian parties in Indian county, effectively overruling *Housing Authority of the Seminole Nation v. Harjo*, 1990 OK 35, 790 P.2d 1098, and *Ahboah v. Housing Authority of Kiowa Tribe of Indians*, 1983 OK 20, 660 P.2d 625.

[7] *See also Oklahoma v. Castro-Huerta*, No. 21-429 (U.S. June 29, 2022) 597 U.S. __, 142 S.Ct. 2486 (absent explicit direction otherwise, states have concurrent jurisdiction to prosecute non-Indians for crimes committed in Indian Country).

offering concurrent state jurisdiction over cases which would normally be exclusive to tribal or federal courts, it has done so explicitly.[8]

¶16 Section 2265(e) does not explicitly refer to exclusive tribal court jurisdiction. Moreover, the language does not imply exclusive jurisdiction. Rather, it includes tribal courts within the list of sovereigns which may issue civil protection orders. The statute is entitled "Full faith and credit given to protection orders", and its first clause ensures that the courts of each sovereign (tribal, federal, territory or state) will give full faith and credit to a civil or criminal protection order, no matter where it was issued. 18 U.S.C. § 2265(a). Thus, Section 2265 is not a bar to exercise of state district court jurisdiction to enter civil protection orders.

The State and Tribe Have the Same Interest in Civil Protection Orders

¶17 As a rule, Oklahoma's interests and the interests of a tribal sovereign nation may run parallel but will not completely coincide. State laws and tribal laws may resemble one another, but the jurisdictions may impose different resolutions of conflict, or consequences for behavior, or procedures for redress. And, as noted above, a tribe may have exclusive civil jurisdiction, including over non-Indians, where conduct threatens its political integrity,

[8] 25 U.S.C. §§ 1321, 1322, 1326; Public Law 280, Act of August 15, 1953, Ch. 505, 67 Stat. 588, amended by Public Law 90-284, Act of April 11, 1968, 82 Stat. 80. Public Law 280 was originally limited to six named states, not including Oklahoma. 18 U.S.C. § 1162; 28 U.S.C. 1360. Under Sections 1321 and 1322, a state not named in Public Law 280 may, with tribal consent, enact legislation to support concurrent criminal and civil jurisdiction. Oklahoma never attempted to assume jurisdiction under Public Law 280.

economic security, or the health and welfare of its citizens. *Cooley*, 141 S.Ct. at 1643.

¶18 However, civil protection orders are different. They are individually tailored and narrowly designed with a single goal – to protect the victim of abuse. Universally, they are recognized in sister courts no matter their court of origin. Tribal governments clearly have a strong interest in protecting their citizens from the violence, threats, stalking, harassment and other behavior which may be covered by a civil protection order. The State of Oklahoma shares those exact same interests in protecting its citizens. The conduct giving rise to civil protection orders identically threatens the health and welfare of citizens of both the Muscogee Nation and the State of Oklahoma. And each one has chosen the same legal vehicle in response.

¶19 Most importantly for our analysis, the Tribe and the State here have an identical goal: to provide each individual citizen a swift path to safety, with the combined weight of all the involved sovereigns ready to enforce it. The point of a civil protection order is the promise of immediate action on the individual's behalf. A terrified person may be trying to escape physical or sexual violence. They may be trying to go home or to work or school or church – to go about the everyday business of living – unmolested, without being under surveillance and disruption from a persistent stalker. They may be beset by constant, disturbing, unwelcome communications. The swiftest and surest path to aid is to find the closest avenue for legal protection. Maybe the tribal

courthouse is nearby. Maybe it is in another county – another part of the state, even – but a county courthouse is near to hand. The most effective way to achieve the combined tribal and State goal here is to give that scared victim every option to find their swift path to safety.

¶20 Milne, the person seeking a civil protection order, is a citizen of both the State and the Muscogee Nation. And, within the geographic boundaries of both the State and the Muscogee Reservation, the Tribe's and State interests are the same. Milne needed protection from violent behavior and stalking. She went to the nearest venue of her choice as a citizen, her county courthouse, for swift relief, and it was granted. Federal law does not prohibit that grant of relief, and equity compelled its issuance. This is that instance in which the exercise of State jurisdiction does not infringe on the interests of a tribal government but serves as an additional safeguard to those interests.

CONCLUSION

¶21 Our holding is narrow. As we said in *Lewis*, "Today's pronouncement is not to be understood as a broad declaration that *all* litigation of Indian rights lies within the inherent constitutional cognizance of Oklahoma state courts." *Lewis*, 1994 OK 20, ¶ 19, 896 P.2d at 512. Here, the Tribe's interest in its citizens' health, safety and welfare exactly coincides with the State's interests. Where jurisdiction is otherwise proper, a citizen of

Oklahoma may seek a civil protection order in a tribal court or in state district court.

¶22 The Order of the District Court is affirmed.

CONCUR: KANE, V.C.J., and KAUGER, WINCHESTER, EDMONDSON, COMBS (by separate writing), ROWE and KUEHN, JJ.

CONCUR IN RESULT: DARBY, C.J. (by separate writing).

CONCUR IN JUDGMENT: GURICH, J. (by separate writing)