

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause DA 22-0615

LORI MONROE, REBECCA ROSENBERGER, and DAVID GORDON

Petitioners/Appellee/Counter Defendants

v.

TRA BOGGS

Respondent/Appellant/Counterclaimant

APPELLANT'S OPENING BRIEF

From the Montana Ninth Judicial District Court, Glacier County
District Court Case DR-2022-014
Honorable Robert G. Olson, Presiding

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Issue Presented

Did the Glacier County District Court err in concluding that it lacked subject matter jurisdiction over Appellant Tra Boggs' claims for abuse of process and attorney deceit against private actors when damages for tortuous conduct accrued off the Blackfeet Indian reservation?

Statement of Case

On May 10, 2022, Appellees Lori Monroe and Rebecca Rosenberger filed a Petition for Recognition of Foreign Judgment in Glacier County District Court. [District Court Record 1]. On June 8, 2022, Appellant Tra Boggs filed an Answer to the Petition and a Counterclaim against Monroe, Rosenberger, and David Gordon for abuse of process and deceit. [D.C.R. 7]. On October 7, 2022, the District Court dismissed Appellant's Counterclaims for lack of subject matter jurisdiction. [D.C.R. 20]. This timely appeal followed.

Statement of Facts

Appellant Tra Boggs is a member of the Blackfeet Indian Nation and the natural father of C.D.B. and T.J.B. and has been parenting them their entire life along with their mother, Chelsea Rosenberger. *Answer to Petition*, ¶ 11. In 2020, the children were living with Mr. Boggs at his parents' residence in Cut Bank, Montana. *Id.* Unfortunately, Chelsea Rosenberger is now deceased. *Id.*

Lori Rosenberger Monroe is Chelsea Rosenberger's aunt and Rebecca Rosenberger is Chelsea's grandmother. *Answer to Petition*, ¶ 12. Both are also members of the Blackfeet Indian Nation. The two of them have had virtually no involvement in the lives of C.D.B. and T.J.B. *Id.* In the fall of 2020, they asked if they could have some visitation with the children. *Id.* Mr. Boggs agreed and they spent one weekend with Lori and Rebecca at their residence in Browning. *Id.* When the children returned, they said they did not want to return for another visitation. *Id.*

On January 11, 2021, Lori and Rebecca filed a petition seeking custody of C.D.B. and T.J.B. in Blackfeet Tribal Family Court. *Answer to Petition*, ¶ 13. The proceeding is absurd on its face, as Lori had no standing to seek custody, and there were no proceedings initiated by any state or tribal agency regarding the fitness of Mr. Boggs to parent. *Id.* Although he did not have any obligation to respond to such a filing, Mr. Boggs did so and opposed it. *Id.* Chelsea was still alive at the time and was never made a party to the proceedings. *Id.*

Although it is crystal clear that the legal proceedings were a farce and should not proceed any further, the Blackfeet Tribal Family Court set a hearing on the petition for April 6, 2021. *Answer to Petition*, ¶ 14. Mr. Boggs requested a continuance of the proceedings on April 5, 2021, by phone, and the attorney for

Lori, David Gordon, did not inform Mr. Boggs that he opposed the continuance.

Mr. Boggs believed a continuance had been granted. *Id.*

On April 6, 2021, the Blackfeet Tribal Family Court proceeded on the matter even though Mr. Boggs was not present and even though Mrs. Chelsea Rosenberger (the children’s mother) was never even named as a party. *Answer to Petition, Exhibit B*, pp. 3-4. On that same day, the Blackfeet Tribal Family Court entered an order granting “full, primary, and permanent custody of both children” to Lori. *Answer to Petition, Exhibit B*, pp. 14-16. This order is absurd and non-sensical. Lori is the aunt of the children and has no legal basis to seek any custody at all. *Answer to Petition, ¶ 15*. The order limits Mr. Boggs and Chelsea Rosenberger’s contact with the children to “supervised visitation” for no rhyme or reason. *Id.* There is no finding of neglect, abuse, or lack of fitness to parent. *Id.*

The next day, April 7, 2021, the Cut Bank Police went to the residence where the children were living at the home of Robert Corby (Mr. Boggs’ mother) in Cut Bank, forcibly entered the home without a warrant, took the children, and handed them over to Lori and Rebecca. *Answer to Petition, ¶ 17*.

Mr. Boggs appeared in the Blackfeet Tribal Court matter and attempted to get contact with his children, but only had very limited visitation with his children after April 7, 2021. *Answer to Petition, Exhibit A*, pp. 8-12. On February 19, 2022, Mr. Boggs was able to spend some time with his children—at that time, he

had barely seen his children at all in over 10 months. Mr. Boggs refused to return his children to Rosenberger and filed a federal lawsuit against the City of Cut Bank, the Blackfeet Indian Reservation, and Lori Monroe. *Answer to Petition*, ¶ 18 **(Exhibit A)**.

Dave Gordon previously served as counsel for Quintin Boggs (Tra Boggs' father) and Roberta Corby (Tra Boggs' father), as well as their family-owned bail bonds company, 1st Eagle Bail Bonds. *Counterclaim*, ¶ 1. At the time that Gordon served as counsel for Monroe and Rosenberger, the Boggs' had an attorney-client relationship with Gordon as their personal counsel and corporate counsel for their business. *Counterclaim*, ¶ 2. Mr. Boggs raised the issue of a conflict of interest in Gordon's representation of Monroe and Rosenberg. Gordon improperly denied there was a conflict of interest. *Counterclaim*, ¶ 3.

Throughout Gordon's prior representation of Quintin, Roberta, and 1st Eagle, there were many times when hearings or other proceedings were pending and continuances would be granted. *Counterclaim*, ¶ 5. On all of those occasions, when continuances were discussed and requested by the Boggs' family for one reason or another, Gordon would obtain a continuance and not call the Boggs back to let them know that a continuance had been granted. *Id.* Thus, the practice established between Gordon and the Boggs' family was that if he did not inform them otherwise, it was understood a continuance had been granted. *Id.*

Prior to the April 6, 2021, hearing, the Boggs had requested a continuance from Gordon because they did not have counsel. *Counterclaim*, ¶ 6. Gordon was well aware of this, as he was their regular counsel at that time. *Id.* The Boggs requested a continuance of the hearing so that they could obtain counsel. *Id.* This was communicated to Gordon. Gordon told the Boggs that he would call them back. *Id.*

Gordon did not call the Boggs' back to inform them that no continuance would be granted, or that he opposed a continuance. *Counterclaim*, ¶ 7. Based on Gordon's conduct and behavior, in light of the previous pattern that he had established while serving as their counsel, the Boggs believed that a continuance had been granted, and reasonably expected that Gordon would inform them if a continuance had not been granted. *Counterclaim*, ¶ 8.

Because of Gordon's conduct and statements, the Boggs assumed that their request for continuance had been granted. *Counterclaim*, ¶ 9. As a direct result of Gordon's conduct, they did not attend the April 6, 2021, hearing. *Counterclaim*, ¶ 9. As a result, they were not present when the order against Mr. Boggs was entered. *Counterclaim*, ¶ 10 But for Gordon's conduct, Tra Boggs would have appeared at the hearing. *Counterclaim*, ¶ 11.

Lori Monroe, Rebecca Rosenberger, and their counsel, David Gordon, made numerous misrepresentations about Tra Boggs' fitness as a parent in court filings

made in the Blackfeet Tribal Court, including at the hearing on April 6, 2021.

Counterclaim, ¶ 12. All of these individuals knew that Mr. Boggs was a fit parent, that he loved his children, and that they were living in a safe, and protected environment. *Id.*

After obtaining the tribal court order, Monroe, Rosenberger, and Gordon, were somehow able to get the City of Cut Bank Police Department to take the order and unlawfully enforce it by going into Roberta Corby's house in Cut Bank and taking Mr. Boggs' children from his custody, care, and control. *Counterclaim*, ¶ 13. This conduct was intentionally malicious and in bad faith. *Counterclaim*, ¶ 14. Rosenberger and Monroe then took C.D.B. and T.J.B. into their custody and control with the unlawful assistance of the Cut Bank Police. *Counterclaim*, ¶ 15.

While C.D.B. and T.J.B., were in the control and custody of Monroe and Rosenberger, they suffered forms of neglect and mental and emotional abuse. While they were in the control of Monroe and Rosenberger, their mother died and they were not permitted to attend her funeral and missed spending any time with her before she passed. *Counterclaim*, ¶ 17. Additionally, Mr. Boggs was deprived of the custody of his children due to the false and malicious representations of Gordon, Monroe, and Rosenberger, and suffered emotional and mental distress. *Counterclaim*, ¶ 18.

After Mr. Boggs had returned his children to his care, and had filed a federal lawsuit against the City of Cut Bank and other defendants concerning the events and occurrences described herein, Monroe and Rosenberger filed a case in Glacier County seeking to have the Blackfeet Tribal Family Court Order enforced against Mr. Boggs in Glacier County. [D.C.R. 1]. In response, Mr. Boggs answered and filed a counterclaim against the Appellees alleging abuse of process and deceit. *Counterclaim*, ¶¶ 19-27. Rosenberger and Monroe's efforts to have the Blackfeet Tribal Family Court Order enforced in Glacier County were denied by the District Court on September 23, 2022. [D.C.R. 18].

Paragraphs 20-22 of the Counterclaim against Appellees Rosenberger, Monroe, and Gordon, allege that they willfully used the process of the Blackfeet family tribal court not to serve the legitimate best interests of C.D.B. and T. J.B., but so that Monroe and Rosenberger could claim tribal benefits for having the children in their case and enrich themselves from the benefits, that they acted with an ulterior motive in so doing, and that they damaged Mr. Boggs and his children. *Counterclaim*, ¶ 20. The counterclaim alleges that Rosenberger, Monroe, and Gordon acted at all times contrary to the best interests of C.D.B. and T.J.B. and damaged them by using the processes of the Blackfeet Tribal Court to take them from their natural parents and place them under Rosenberger's and Monroe's care. *Counterclaim*, ¶ 21. It further alleges that Rosenberger and Monroe were

neglectful and abusive towards C.D.B and T.J.B. while the children were in their care. *Counterclaim*, ¶ 21. While the purpose of family law proceedings is to ensure the best interests of the children are protected and promoted, Rosenberger, Monroe, and Gordon used the proceedings to help Rosenberger and Monroe to obtain control of the children to claim and take their Blackfeet Tribal benefits. *Counterclaim*, ¶ 22. This constituted an ulterior motive. *Counterclaim*, ¶ 22. Based on these facts, Appellant Tra Boggs seeks to hold these individuals accountable for abuse of process in Glacier County State District Court.

Count II is attorney deceit against Appellee Gordon under Section 37-61-406, MCA, and statutory deceit against Rosenberger and Monroe under Section 27-1-712, MCA. *Counterclaim*, ¶ 24. In Count II it is alleged that Gordon engaged in attorney deceit pursuant to Section 37-61-406, MCA, when he led Mr. Boggs to believe that a continuance on the April 6, 2021, hearing had been granted. *Counterclaim*, ¶ 25. It is further alleged that Gordon in engaged in collusion and deceit with the intent to deceive Mr. Boggs and the Blackfeet Tribal Court in his various court filings against Mr. Boggs in the Blackfeet Tribal Court family law case, implying and arguing that the best interests of the children would be served by placing them in the care of C.D.B. and T.J.B. and depriving them of the care and custody of their natural parents, and arguing and implying that Mr. Boggs was an unfit parent without any evidence to support such an outlandish and outrageous

assertion, and creating the false impression that the April 6, 2021, hearing had been continued. *Answer and Counterclaim*, ¶ 25.

Count II also alleges that Rosenberger and Monroe committed deceit, pursuant Section 27-1-712, MCA, against Mr. Boggs in the Blackfeet Tribal family law case by implying and arguing that the best interests of the children would be served by placing them in control of C.D.B. and T.J.B. and depriving the children of the care and custody of their natural parents, and arguing and implying that Appellant was an unfit parent without any evidence to support such an outlandish and outrageous assertion. *Counterclaim*, ¶ 25.

On October 7, 2022, the District Court dismissed these counterclaims for lack of subject matter jurisdiction. In its order, the District Court concluded that assuming jurisdiction would be “improper” because it did not have “jurisdiction over torts that occurred entirely on the Blackfeet Indian Reservation.” *Order*, pg. 3.

STANDARD OF REVIEW

“Subject matter jurisdiction is subject to challenge or review at any time on motion, or *sua sponte* by the court, and cannot be established or maintained by consent or waiver of the parties. An asserted claim for relief is thus subject to dismissal due to lack of subject matter jurisdiction over that type of claim. M. R. Civ. P. 12(b)(1). Under Rule 12(b)(1), the court must generally take all well-pled factual assertions as true in the light most favorable to the claimant

and then dismiss only if the claim, as pled, is not of a type or within a class of claims the court has threshold authority to consider and adjudicate.” *Gottlob v. DesRosier*, 2020 MT 210, ¶ 7 (internal citations omitted). “A state court's exercise of jurisdiction is improper if it is preempted by federal law or if it infringes on tribal self-government.” *In re Estate of Gopher*, 2013 MT 264, ¶ 12 (citation omitted).

SUMMARY OF ARGUMENT

While Mr. Boggs understands and respects the reluctance of the District Court to entertain a case that might impinge upon tribal sovereignty, it nevertheless erred in concluding that it lacked subject matter jurisdiction in this case. For starters, the torts in this case did not occur entirely on the Blackfeet Reservation. While it is true that the Appellees made false and misleading representations to the Blackfeet Tribal Court in order to obtain an order depriving Mr. Boggs of the custody and control of his children, they then took that order and got it enforced in Cut Bank, Montana with the help of local law enforcement. Thus, one cannot say that the tortuous conduct occurred *entirely* on the reservation because the acts that gave rise to the damages—depriving Mr. Boggs of the care and custody of his children—occurred in Cut Bank, Montana.

Second, it would not infringe on the tribal sovereignty of the Blackfeet Nation to hold private actors accountable for their wrongful conduct in abusing the

process of the tribal court system to cause harm to Mr. Boggs and his children when this tortuous conduct is brought to fruition off the reservation. Thus, the policy concerns implicit in declining the exercise of subject matter jurisdiction over cases that actually impinge on exercise of the governmental capacity of tribal sovereignty are simply not present here.

For these reasons, the District Court's decision dismissing the Mr. Boggs counterclaims for lack of subject matter jurisdiction constituted an error of law and should be reversed.

ARGUMENT

In its Order, the District Court cited to *Big Spring v. Conway (In re Estate of Big Spring)*, 2011 MT 109, to determine whether it should exercise subject-matter jurisdiction. Two factors are at play in this determination: first, whether the exercise of jurisdiction is preempted by federal law; second, whether the exercise of jurisdiction would "infringe of tribal self-government". *Big Spring*, ¶ 46. In this case, only the second fact is at issue.

In *Big Spring*, this Court conducted a thorough review of the case law governing State Court jurisdiction over tribal matters and affirmed the validity of the test from *Williams v. Lee*, 358 U.S. 217 (1959), to guide the analysis.

The United States Supreme Court and this Court have recognized that the method for determining whether a state has subject matter jurisdiction continues to be the test articulated in *Williams* (*see supra* ¶ 35) which states that "[e]ssentially, absent governing Acts of

Congress, the question has always been whether the state action infringed on the right of the reservation Indians to make their own laws and be ruled by them. Further, the United State Supreme Court has expressly stated that "[t]he federal policy favoring tribal self-government operates *even in areas where state control has not been affirmatively preempted by federal statute*.

Big Spring, ¶ 41. (internal citations omitted).

In *Big Spring*, the question was whether a State District Court could exercise jurisdiction over a probate of “an enrolled member of the Blackfeet Tribe whose estate property was located within the exterior boundaries of the Blackfeet Indian Reservation at the time of his death.” *Big Spring*, ¶ 1. This Court held that an exercise of jurisdiction would infringe on tribal sovereignty. The activity at issue in *Big Spring* occurred entirely on the reservation and involved a matter of a State Court exercising its powers over tribal property, thus triggering a concern that “the exercise of state jurisdiction over activities occurring entirely on Indian land [would be] an infringement on inherent tribal authority and is contrary to principles of self-government and tribal sovereignty.” *Big Spring*, ¶ 43 (citation omitted). Since the parties in the case were all tribal members, the land at issue was entirely within the bounds of the Blackfeet Reservation, and the case was a matter of probate (which implicates core functions of a tribal government’s right to adjudicate the disposition of tribal land), this Court concluded tribal sovereignty would be infringed if a State Court were to exercise its powers to the exclusion of those of the tribal government. *Big Spring*, ¶ 50.

But the concerns which animated the decision in *Big Spring* are simply not present here. While the parties are all tribal members, the crux of the case concerns an act that occurred in Cut Bank, Montana—namely, use of a tribal court order to take Mr. Boggs’ children from his care. Here, the wrongful act, and the damages, were brought to fruition off the reservation. It would be strange to conclude that a tribal court is a better venue than State Court when the tortious conduct actually accrued off-reservation. Had the Rosenberger and Monroe simply obtained a defective order in the Blackfeet Tribal Court and made no illicit use of it in Glacier County, Montana, there would be no case. But here, the claim actually accrued in Glacier County, and not on the Blackfeet Reservation.

Conversely, if Monroe and Rosenberger had obtained the order without Mr. Boggs’ knowledge, and then lured him and his children back onto the Blackfeet Reservation so that they could serve him with the order and steal his children from him, the exercise of State Court jurisdiction in this case would certainly be more problematic. But that is not the case before the Court today. The case today is one in which the Appellees voluntarily went off the reservation, to Glacier County, Montana, and completed the act of abuse of process by kidnapping Mr. Boggs’ children with the assistance of local law enforcement. Thus, we could say that Glacier County is where the tort accrued and occurred, and that the Appellees made a voluntary decision to subject themselves to the jurisdiction of the Glacier

County Court system. *See, e.g., Tackett v. Duncan*, 2014 MT 253, ¶ 23 (discussing the accrual of tortious conduct in a jurisdiction when the defendant’s voluntary conduct creates sufficient minimum contacts in that jurisdiction). The District Court’s decision is not supported by the facts or legal reasoning of *Big Spring*.

In its Order Dismissing Appellant’s Counterclaims for lack of personal jurisdiction, the District Court, citing *Flat Ctr. Farms, Inc. v. State*, 2002 MT 140, said that “the exercise of state jurisdiction over activities occurring **entirely** on Indian lands is an infringement on inherent tribal authority and is contrary to principles of self-government and tribal sovereignty.” *Order*, pg. 3 (citing *Flat Ctr. Farms*, ¶ 13) (emphasis added). But the facts of *Flat Center Farms* are radically different from this case. In *Flat Center Farms*, the question was whether the State of Montana could impose a “Montana Corporation License Tax on an Indian-owned corporation which does business entirely with the exterior boundaries of the Fort Peck Reservation.” *Flat Ctr. Farms*, ¶ 2. That kind of activity clearly impinges on the functions of tribal self-government and is far different than the prosecution of a tort case against the Appellees where money damages are sought. The fact that the relief sought in this case is directed against private tribal members who engaged in voluntary off-reservation conduct in order to harm Mr. Boggs and his children distinguishes it from *Flat Center Farms* where

the effects on tribal sovereignty from the State's action were obvious and unmistakable.

While it is lamentable that the judicial process of the Blackfeet Tribal Court could even be used in the manner which the Appellees have done in this case, it is not the process itself that gives rise to the claim of abuse of process itself—it is the improper use of that process by the Appellees that makes the conduct tortuous. The legal standard for an abuse of process claims was set forth in *Hughes v. Lynch*, 2007 MT 177, as follows. “Essential to proof of abuse of process is (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.” *Hughes*, ¶ 21. “The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, but the use of the process as a threat or a club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort.” *Hughes*, ¶ 21.

The judicial process was put to an improper use in Glacier County, Montana, not on the Blackfeet Reservation itself as the Appellees used the Blackfeet Tribal Court process as a means to kidnap Mr. Boggs' children so that they could claim their tribal benefits. Holding these actors liable in State Court for conduct whose

tortuous nature came to fruit off the reservation, would not impinge on the powers of tribal self-governance.

The same analysis holds true with respect to the claims for deceit.

Regarding attorney deceit, the Court in *Spoja v. White*, 2014 MT 9, this Court stated, “[u]nlike malicious prosecution and abuse of process, attorney deceit does not require that a plaintiff show an absence of probable cause or proper purpose. Instead, plaintiffs in an attorney deceit claim must prove that an attorney acted deceitfully, with the intent to deceive an adverse party, and that the party was damaged as a result of the deceit.” *Spoja*, ¶ 21.

Regarding deceit under Section 27-1-712, MCA, the elements of this offense are as follows:

- (1) One who willfully deceives another with intent to induce that person to alter the person's position to the person's injury or risk is liable for any damage that the person suffers.
- (2) A deceit, within the meaning of subsection (1), is either:
 - (a) the suggestion as a fact of that which is not true by one who does not believe it to be true;
 - (b) the assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true;
 - (c) the suppression of a fact by one who is bound to disclose it or who gives information of other facts that are likely to mislead for want of communication of that fact; or
 - (d) a promise made without any intention of performing it.

While the conduct of deceit did occur entirely on the Blackfeet Reservation in the course of those proceedings, and thus is somewhat different from the abuse of process claim, the damages from the deceit did not accrue until the Appellees actually took Mr. Boggs' children from his care with the help of the Cut Bank Police. Thus, the damages from the tort of deceit, as well as the tort itself, wasn't committed until the final acts occurring off the reservation.

While the proceedings in Blackfeet Tribal Court were a sham and clearly violated Mr. Boggs' rights to due process as well as his fundamental liberty interests in raising his children, the deceit claims against Appellees rest upon their private conduct and are not directed at the sovereignty of the Blackfeet Tribal Court to make decisions or operate. By contrast, allowing the State of Montana to impose a tax on a Indian-owned tribal business (as in *Flat Center Farms*) or interfering with the powers and functions of a Blackfeet Tribal Court to administer the probate of one of its enrolled members (as in *Big Spring*) clearly would constitute an affront to tribal sovereignty. Accordingly, allowing the claim to go forward in State Court would not infringe on the sovereignty of the Blackfeet Nation under *Flat Center Farms* or *Big Spring*.

CONCLUSION

For these reasons, the District Court's order dismissing Appellant Tra Boggs counterclaims for lack of subject-matter jurisdiction should be REVERSED and this matter REMANDED for further proceedings.

DATED this 17th day of January, 2023.

By: /s/ Brian Miller
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2016 for Mac is 4188, not averaging more than 280 words per page, excluding caption, certificate of compliance, and certificate of service.

BY: /s/ Brian J. Miller
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2022, I have filed a true and accurate copy of the foregoing APPELLANTS OPENING BRIEF with the Clerk of the Montana Supreme Court; and that I have served via the Court's electronic filing system true and accurate copies of the foregoing upon each attorney of record.

BY: /s/ Brian J. Miller

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CERTIFICATE OF SERVICE

I, Brian James Miller, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 01-17-2023:

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