

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 22-0615

LORI MONROE and REBECCA ROSENBERGER,

Petitioners,

v.

TRA BOGGS,

Respondent and Appellant.

TRA BOGGS, on behalf of himself and his
minor children, C.D.B and T.J.B.

Counterclaimant,

v.

LORI MONROE, REBECCA ROSENBERGER
and DAVID GORDON,Counterclaim Defendants
and Appellees.

APPELLEES' BRIEF

On Appeal from the Montana Ninth Judicial District, Glacier County, the
Honorable Robert G. Olson, Presiding.

Appearances:Brian J. Miller
Morrison, Sherwood, Wilson, and Deola PLLP
401 North Last Chance Gulch
P.O. Box 557
Helena, MT 59624-0557
(406) 442-3261
bmiller@mswdlaw.com
*Attorney for Appellant*Dawn Gray, Esq.
Law Office of Dawn Gray, LLC.
306 5th Avenue SE
Cut Bank, MT 59427
Dawngray2003@gmail.com
Attorney for Appellees

TABLE OF CONTENTS

| | |
|---|-----|
| TABLE OF AUTHORITIES | iii |
| STATEMENT OF THE ISSUE..... | 1 |
| STATEMENT OF THE CASE | 1 |
| STATEMENT OF THE FACTS | 1 |
| SUMMARY OF THE ARGUMENTS..... | 3 |
| STANDARD OF REVIEW | 4 |
| ARGUMENT | 5 |
| I. THE DISTRICT COURT PROPERLY DISMISSED APPELLANT’S COUNTERCLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION | 5 |
| A. Appellees Monroe and Rosenberger’s Award of Child Custody in the Blackfeet Tribal Court is not Deceit within the meaning of the Statute and is not within Subject Matter Jurisdiction of the District Court..... | 6 |
| B. Appellee Gordon is not liable for Attorney Deceit and is not within Subject Matter Jurisdiction of the District Court..... | 7 |
| CONCLUSION..... | 8 |
| CERTIFICATE OF COMPLIANCE..... | 9 |
| APPENDIX..... | 10 |

TABLE OF AUTHORITIES

CASES

United States Supreme Court

| | |
|---|---|
| <i>Williams v. Lee</i> , 358 U.S. 217, 79 S.Ct. 269 (1959) | 5 |
|---|---|

Montana Supreme Court

| | |
|---|-----|
| <i>In re the Estate of Big Spring</i> 2011 MT 109, 360 Mont. 370, 255 P.3d 121 | 4,5 |
| <i>Flowers v. Board of Personnel Appeals, Montana Department of Fish, Wildlife and Parks</i> , 2020 400 Mont. 238..... | 4 |
| <i>Stowe v. Big Sky Vacation Rentals, Inc.</i> , 2019 MT 288, 398 Mont. 91, 454 P.3d 655 | 4 |
| <i>Schuster v. Northwestern Energy Co.</i> 2018 Mont 363, 373 Mont. 54, 314 P.3d 650 | 4 |
| <i>Gottlob v. DesRosier</i> , 2020 MT 210, 401 Mont. 50, 470 P.3d 188 | 5 |
| <i>In re Estate of Kindsfather</i> 2005 326 Mont. 192, 197 108 P.3d 487 | 6 |
| <i>Spoja v. White</i> 2015 373 Mont. 269, 317 P.3d 153, 158 | 7 |
| <i>Lafontaine v. State Farm Mut. Auto. Ins. Co.</i> 1985 215 Mont. 402, 698 P.2d 410 | 7 |

MONTANA CONSTITUTION

Article VII § 4(1) 5

STATUTORY AUTHORITIES

Montana Code Annotated

29-9-504, MCA..... 1

37-61-406, MCA..... 2,4,7

27-1-712, MCA..... 2,3,6

OTHER AUTHORITIES

Montana Rules of Civil Procedure

Rule 12(b)(1) 5

STATEMENT OF THE ISSUE

1. Whether the District Court erred in dismissing Appellant's Counterclaims for lack of subject matter jurisdiction.

STATEMENT OF THE CASE

This case involves the dismissal by the District Court of Appellant's counterclaims based upon the lack of subject matter jurisdiction. (D.C. Doc. 20). This order was issued out of legal proceedings related to the Appellees "Petition for Recognition of Filing Foreign Judgment Pursuant to Section 25-9-504" (D.C. Doc. 1)

Appellant's Opening Brief was filed on January 18, 2023 and Appellees Answer Brief was timely filed.

STATEMENT OF THE FACTS

Appellees-Rosenberger and Monroe were granted custody of the named children on April 6, 2021 by the Blackfeet Tribal Court (D.C. Doc 1 Attached Order). Appellees Rosenberger and Monroe were able to retrieve the children from the Appellant's mother in Cut Bank, MT with the assistance of Cut Bank City Police, from the home of the Appellant's mother Robin Corby on April 7, 2021. The Tribal Court issued further orders on September 21, 2021 and December 22, 2021 providing for weekend visitation and drug testing of the Appellant.

Appellant consented to jurisdiction of the Tribal Court and never appealed any of the Tribal Court orders.

Appellant absconded with the children to Cut Bank, MT on February 19, 2022 and was found in contempt by the Blackfeet Tribal Court on February 23, 2022.

Appellees-Rosenberger and Monroe subsequently filed a “Petition to Recognize a Foreign Judgment” on May 10, 2022 (D.C. Doc 1); and, “Amended Petition” on May 19, 2022 (D.C. Doc 2) with District Court of the April 21, 2021 of the Tribal Court order, based upon Appellant’s disobedience of the Tribal Court custody order.

On June 8, 2022 the Appellant filed “Answer to Petition for Recognition of Foreign Judgment and Counterclaim and Demand for Jury Trial”. (D.C. Doc 7) The Counterclaim alleges Appellee-Gordon committed attorney deceit *MCA 37-61-406*; and, that Appellees Rosenberg and Monroe committed deceit under *MCA 27-1-712*. These counterclaims are based on activity occurring solely within the Blackfeet Tribal Court proceedings. (D.C. Doc 7 PP 10-15, ¶¶ 1-27)

On August 10, 2022, the Appellant filed a “Response in Opposition to Motion for Recognition of Foreign Judgment”. (D.C. Doc 15) The Appellees-Rosenberger and Monroe filed a “Response to Response to Recognize Foreign

Judgment and Counterclaims” on August 29, 2022 (D.C. Doc 16), which requested dismissal of the counterclaims.

The District Court denied the Petition to recognize a Foreign Judgment on September 23, 2022. (D.C. Doc. 18) The District Court then dismissed the Appellant’s Counterclaims on October 7, 2022 (D.C. Doc 20) for lack of subject matter jurisdiction, which is the subject of this appeal.

SUMMARY OF THE ARGUMENTS

The District Court properly dismissed the Appellant’s counterclaims as a matter of law for lack of subject matter jurisdiction. Appellants facts allege deceit by the Appellees for conduct occurring entirely within the jurisdiction of the Blackfeet Tribe. Honorable District Court Olsen properly ruled the District Court lacked subject matter over the Counterclaims.

Appellant’s Counterclaims relate to the custody proceedings on the Blackfeet Reservation within the jurisdiction of the Blackfeet Tribal Court. Appellant untimely raises the issue of Appellees Monroe and Rosenberger presentation of the Tribal Court order to Cut Bank City Police for the return of the children on April 7, 2021 as a basis for deception. (D.C. Doc. 7)

MCA 27-1-712 requires specific elements to be met based upon the state of mind by the deceiver to achieve an outcome based upon false information. The allegations made by Appellant relate to legal proceedings in the Blackfeet Tribal

Court. Appellees Monroe and Rosenberger at all times acted within reason to follow the orders of the Tribal Court.

MCA 37-61-406 is a remedy which is made available once an attorney is found liable or guilty of attorney deceit. There are no findings of fact or elements to establish that Appellee Gordon is subject to such remedy. Further, all allegations made against Appellee Gordon are squarely within his practice at the Blackfeet Tribal Court.

The District Court lacks jurisdiction to make findings about whether the elements of deceit were met under the Blackfeet Tribal Court proceedings.

STANDARD OF REVIEW

The Supreme Court reviews de novo a district court's grant of a motion to dismiss for lack of subject matter jurisdiction. *Flowers v. Board of Personnel Appeals, Montana Department of Fish, Wildlife and Parks*, 400 Mont. 238, ¶6, 2020, citing *Stowe v. Big Sky Vacation Rentals, Inc.*, 2019 MT 288, ¶12, 398 Mont. 91, 454 P.3d 655, and *Shuster v. Northwestern Energy Co*, 2018 MT 364, ¶6, 373 Mont. 54, 314 P.3d 650 (citation omitted).

As a preliminary matter, motions to dismiss for lack of subject matter jurisdiction may be raised at any time by any party or by the court, and once a court determines that it lacks subject matter jurisdiction, it must dismiss the action. *In re Estate of Big Spring*, 360 Mont. 370 ¶23, 255 P.3d 121, 2011 MT 109 (2011).

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED APPELLANT'S COUNTERCLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION.

Appellant's Counterclaims allege tortious claims against the Appellees for deceit occurring within the legal proceedings in the Blackfeet Tribal Court with regards to the Tribal Court custody order. (D.C. Docs 1 and 7) The District Court lacks subject matter jurisdiction to decide whether deceit was committed in the Tribal Court. Appellant's counterclaims seek to have a District Court make a determination of the proceedings of the Blackfeet Tribal Court, which becomes an infringement on tribal sovereignty. *In Re Estate of Big Spring* 2011 MT 109 ¶ 46, 360 Mont. 370, 255 P.3d 121. Further, allowing the State to decide issues occurring within Tribal Courts, impermissibly infringes on the rights of the Blackfeet Tribe to maintain control over the internal relations of its members and of its members to be governed by their sovereign. *Williams v. Lee*, 358 U.S. 217, 220, 79 S.Ct. 269 (1959) The District Court cites the basis of Montana's District Court subject matter jurisdiction which is "derived Article II, Section 4 of the Montana Constitution which states that district courts have jurisdiction over 'all civil matters and cases at law and in equity.' *Mont. Const. art. VII § 4(1)*, citing *Gottlob v. DesRosier*, 2020 MT 210, ¶ 8, 401 Mont. 50, 470 P.3d 188. *M.R. Civ 12 (b)(1)* allows a claim to be dismissed for a lack of subject matter jurisdiction."

A. Appellees Monroe and Rosenberger’s Award of Child Custody in the Blackfeet Tribal Court is not Deceit within the meaning of the Statute and is not within Subject Matter Jurisdiction within the District Court.

Counterclaim II alleges Appellees Monroe and Rosenberger were liable for deceit under *MCA 27-1-712* by obtaining a custody of the children in the Blackfeet Tribal Court. *MCA 27-1-712*, “Liability for Deceit” states

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 damages 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 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.
3. One who practices a deceit with intent to defraud the public or a particular class of persons is considered to have intended to defraud every individual in that class who is actually misled by the deceit.

Appellees Monroe and Rosenberger obtained a lawful custody order through the Blackfeet Tribal Court. Appellant argues that Appellees unlawfully procured (by deceit) a custody order from the Blackfeet Tribal Court by making misrepresentations to the Court. In this case, Appellees Monroe and Rosenberger had no belief that their custody order was untrue, false or suppressed any information. Appellant’s case also lacks any facts presented to show that the Appellees engaged in deceit against the Appellant in the context of a fraud case. *In re Estate of Kindsfather*, 326 Mont. 192, 197 108 P.3d 487, 491 (2005).

In this case, there is no allegation that Appellees acted with any untrue or suppressed information. There is no finding of fact in the Blackfeet Tribal Court that suggests the Appellees were acting deceitfully and the District Court is without subject matter jurisdiction to do so.

B. Appellee Gordon is not liable for Attorney Deceit and is not within the Subject Matter Jurisdiction of the District Court.

The Appellant complains of Appellee Gordon's former representation of the Appellant and statements made by Appellee Gordon made during the custody proceedings in the Blackfeet Tribal Court. Accordingly, the Appellant claims that Appellee Gordon is liable for Attorney Deceit. *MCA 37-61-406 is the Penalty for Deceit*. It states, "*An attorney who is guilty of deceit or collusion or consents to any deceit or collusion with intent to deceive the court or a party forfeits to the party injured by the deceit or collusion treble damages. The attorney is also guilty of a misdemeanor.*"

In this case, no court has found Appellee Gordon liable or guilty for attorney deceit under the statute. "*Plaintiffs with an attorney deceit claim must prove that an attorney acted deceitfully, with the intent to deceive an adverse party, and that party was damaged as a result of the deceit.*" *Spoja v. White* 373 Mont. 269, 275 317 P.3d 153,158 citing (2015) *Lafontaine v. State Farm Mut. Auto. Ins. Co.*, 215 Mont.402, 406, 698 P.2d 410, 413 (1985). In the course of representation of the Appellant by Appellee Gordon, or the statements made between the two have not

resulted in any finding that Appellee Gordon was guilty of deceit under the statute in order the remedy to be made available. Further, the elements of attorney deceit that are required to be found are alleged to have taken place in the Blackfeet Tribal Court proceedings. As a result, the Blackfeet Tribal Court would be the proper forum to decide any grievances against Appellee Gordon during the course of his representation of the Appellant in the Blackfeet Tribal Court, the District Court lacks subject matter jurisdiction as a matter of law.

CONCLUSION

Appellees respectfully requests this Court AFFIRM the Order of the District Court, for the reasons set forth in this brief.

Respectfully submitted this 15th day of February 2023.

By: /s/ Dawn Gray
Dawn Gray

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material, and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, excluding the table of contents, table of citations, certificate of service, and certificate of compliance.

By: /s/ Dawn Gray
Dawn Gray

APPENDIX

Order Dismissing Counterclaims (Doc.20) Appendix A

CERTIFICATE OF SERVICE

I, Dawn Ann Gray, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 02-15-2023:

Brian James Miller (Attorney)
PO Box 557
Helena MT 59624
Representing: Tra Boggs
Service Method: eService

Electronically Signed By: Dawn Ann Gray
Dated: 02-15-2023