

1 THE HONORABLE JOHN C. COUGHENOUR
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 DAVID WILLIAM TURPEN,
14 Plaintiff,

15 v.

16 KATHERINE DENISE ARQUETTE
17 TURPEN, MUCKLESHOOT TRIBAL
18 COURT, HONORABLE GARY F.
19 BASS, Trial Court Judge,
20 HONORABLE JERRY R. FORD, Chief
21 Judge, HONORABLE MICHELLE
22 SHELDON, Associate Judge, and
23 HONORABLE LISA VANDERFORD-
24 ANDERSON, Associate Judge,
25 Defendants.

No: 2:22-cv-00496

MOTION FOR SUMMARY
JUDGMENT

ORAL ARGUMENT REQUESTED

NOTE ON MOTION CALENDAR:
April 7, 2023

22 I. RELIEF REQUESTED

23 Grant summary judgment on the relief requested in the complaint:

24 1. Vacate tribal court order for lack of subject matter jurisdiction over the
25 cause;

Mot. for Summ. J.

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Law Office of O. Yale Lewis III
11515 36th Ave. NE
Seattle, WA 98125
Tel: (206) 223-0840
Fax: (206) 686-9444
E-Mail: yale@yalelewislaw.com

2. Vacate tribal court order for lack of personal jurisdiction over Plaintiff¹;
3. Enjoin tribal court from asserting jurisdiction over the dissolution and
4. directing the parties to litigate the dissolution already filed and served in
King County Superior Court;
5. Award attorney's fees and costs; and
6. Grant any additional relief that the Court deems just.

II. STATEMENT OF THE FACTS

1. The parties were married in Auburn, WA, off the Reservation, in 2014.
10 They subsequently bought a house together, which was also in Auburn,
11 WA, off the Reservation. They lived together in the house until the day of
separation in 2021;
2. The parties have no children together or otherwise;
- 14 3. Ms. Turpen is an enrolled member of the Muckleshoot Indian Tribe. Said
15 tribe is a federally recognize Indian Tribe located in South King County,
WA;
- 16 4. Plaintiff identifies as "white" and is not an enrolled or enrollable member
17 of Muckleshoot, or any other federally recognized Indian Tribe;
- 18 5. The parties bought the family home together. The down payment was from
19 a grant from the Tribe, based on both parties' respective income. His
20 income came from his paycheck. Her income came from social security,
disability, tribal per capita payments, and tribal elder payments. The
21 installment payments on the mortgage were drawn from Plaintiff's
individual account;
- 22 6. The mortgage is secured by a deed of trust. The Security Instrument that

¹ Consistent with this Court's order on Dec. 14, 2022 (Dkt #19), David William Turpen is referred to as "Plaintiff," and Katherine Denise Arquette Turpen is referred to as "Ms. Turpen."

1 governs the Deed of Trust identifies the Grantors as “Katherine Arquette
2 and David W Turpen a married couple,” “Grantee #1 (Beneficiary)” as
3 “MUCKLESHOOT HOUSING AUTHORITY,” and Grantee # 2 (Trustee)
as First American Title;

4

5 7. The security instrument also identifies Katherine Arquette as the
6 “borrower,” David Turpen as the “co-borrower,” and the Muckleshoot
Housing Authority as the “Lender”; and

7 8. The security instrument contains the following provision regarding
8 jurisdiction and venue:

9 If the land encumbered by the Security Instrument is located
10 within the Muckleshoot Indian Reservation, (i) this Security
11 Instrument will be governed by the laws of the Muckleshoot
12 Indian tribe, or, if no tribal law exists on an issue, the laws of
13 the State of Washington, and (ii) the Muckleshoot Tribal Court
14 will have exclusive jurisdiction to hear and decide any dispute
15 regarding this Security Instrument. [However,] if the land
16 encumbered by the Security Instrument is located *outside*
17 [emphasis added] the Muckleshoot Indian Reservation, (i) this
18 Security Instrument will be governed by the laws of the State of
19 Washington, and (ii) the Superior Court of the county in which
20 the land is located will have jurisdiction to hear and decide any
21 dispute regarding this Security Instrument.

22 III. STATEMENT OF PROCEDURE

23 Tribal Court

24 1. **Petition.** On March 16, 2021, Ms. Turpen filed a petition for dissolution
in Muckleshoot Tribal Court;

25 2. **Restraining Order.** On March 19, 2021, Tribal Court issued an *ex parte*
temporary restraining order. Said order does not have an expiration date,
a return hearing date or location, or any findings regarding jurisdiction or
service. It indicates that the order was issued pursuant to a motion.
However, the court file contains no such motion;

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2 3. **Return of Service.** The court file contains a document entitled
3 “RETURN OF SERVICE,” which alleges that Plaintiff was served with a
4 Petition for Decree of Dissolution, Summons – Decree of Dissolution,
4 and Temporary Restraining Order. However, the method of service is not
5 alleged, and the document is undated and unsigned;

6
7 8 9 4. **Summons.** The court file also contains a document entitled
6 “SUMMONS.” It states, in bold letters, all-caps, “**YOU MUST SERVE**
7 **A WRITTEN RESPONSE ON THE PERSON SIGNING THIS**
8 **SUMMONS.**” However, the summons is unsigned. In fact, it doesn’t
9 even have a signature line. Nor does it have a date of issuance. It does
9 have a filing date;

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14 5. **Actual Notice.** Plaintiff received actual notice of the cause of action
11 when an acquaintance informed him about it via text message. Assuming
12 that the cause of action was in King County Superior Court, Plaintiff then
13 called the clerk of that court and inquired. Based on that conversation, he
13 determined that no dissolution had been filed in that jurisdiction. He then
14 called King County district court and the King County sheriff;

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18 He then contacted the acquaintance. The acquaintance speculated that
15 the cause of action had been filed in Muckleshoot Tribal Court. Plaintiff
16 then called the clerk of said court. The tribal court clerk informed him of
17 the cause of action and the hearing on the restraining order, which
17 happened to be the very next day. He asked her to email the documents.
18 She did so;

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22 6. **Hearing on Restraining Order.** Tribal court held a hearing on the *ex*
20 *parte* restraining order on March 30, 2021. At that hearing, Plaintiff told
21 the court that he was a nonmember, that he did not think tribal court had
21 jurisdiction, and, therefore, objected to tribal court’s jurisdiction, and that
22 he wanted to get divorced in state court.

23
24 The tribal court judge ignored these statements and ordered the parties
23 to Mediation;

25
24 7. **Additional Orders.** After the hearing on the restraining order, tribal
25 court issued a few additional orders, including that the parties attend a

1 second mediation session, despite Plaintiff's assertion that tribal court
2 lacked jurisdiction;

3 8. **Notice of Appearance.** Plaintiff's attorney filed a notice of appearance
4 on April 15, 2021;

5 9. **Motion to Dismiss for Lack of Jurisdiction.** Plaintiff, through Counsel,
6 filed a motion to dismiss for lack of Jurisdiction. The court denied the
7 motion, after briefing and argument; and

8 10. **Appeal.** Plaintiff filed an appeal in tribal court. The court of appeals
9 denied the appeal after briefing and argument. The Muckleshoot Tribal
10 Court of Appeals is the court of last resort in the Muckleshoot system.

11 State Court

12 Plaintiff filed a summons and petition in King County Superior Court on
13 April 23, 2021. He achieved personal service on April 28, 2021. King County
14 Superior Court issued an automatic temporary restraining order and case schedule
15 on April 23, 2021. No further action has been taken in state court.

16 Federal Court

17 Plaintiff filed his complaint April 14, 2022 and subsequently achieved
18 service. The deadline for dispositive motions is April 28, 2023. The trial date is
19 August 7, 2023.

21 IV. STATEMENT OF THE ISSUES

22 1. Whether Muckleshoot Lacks Jurisdiction over the Dissolution of 23 Marriage Because Marriage Is a Legal Status and Legal Status Cannot Be 24 Changed without *In Rem* Jurisdiction;

- 2. Whether Muckleshoot Lacks Subject Matter Jurisdiction over the Dissolution of Marriage Because Neither Party Is Domiciled within the Exterior Boundaries of the Reservation;**
- 3. Whether Muckleshoot Lacks Personal Jurisdiction over the Husband Because He Was Never Served; and**
- 4. Whether Plaintiff Should Be Awarded Attorney's Fees on the Basis of Frivolousness.**

V. ARGUMENT

1. Muckleshoot Lacks Jurisdiction over the Dissolution of Marriage Because Marriage Is a Legal Status and Legal Status Cannot Be Changed Without *In Rem* Jurisdiction

Muckleshoot cannot change the parties' legal status from married to single

because it lacks *in rem* jurisdiction over the marriage. A proceeding for dissolution

of marriage, or change of marital status, is a proceeding in rem. *See Hudson v.*

¹⁰ *Hudson*, 35 Wn. App. 822, 834, 670 P.2d 287 (1983), “A proceeding dissolving

marital bonds is a proceeding in rem." *In re Marriage of Tsarhounopoulos*, 125 Wn.

¹⁰ App. 273, 284, 104 P.3d 692 (2004). "Divorce" concerns an *in rem* action.

affecting the status of the marital relationship. *In re Marriage of Johnston*, 33 Wn.

App. 178, 170, 652 P.2d 1220, 1220 (1982). Where the petitioner resides in the

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1 A state's *in rem* jurisdiction over a res, or subject matter, is predicated upon
 2 the physical presence of the res within the boundaries of the forum state.
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 4 Longstanding precedent anchors *in rem* jurisdiction to the presence of the res
 5 within the jurisdiction of the court. *United States v. Obaid*, 971 F.3d 1095, 1101
 6 (9th Cir. 2020). The basis of *in rem* jurisdiction is the presence of the subject
 7 property within the territorial jurisdiction of the forum State. *Hanson v. Denckla*,
 8 357 U.S. 235, 246, 78 S. Ct. 1228, 1236, 2 L.Ed.2d 1283, 1293 (1958).

9
 10 Here, the res, i.e. the marriage, was not within the forum state i.e. the
 11 exterior boundaries of the Muckleshoot Indian Reservation. Rather, the res was
 12 within the exterior boundaries of the State of Washington. Thus, Washington had
 13 *in rem* jurisdiction. Muckleshoot did not.
 14

15 **2. Muckleshoot Lacks Subject Matter Jurisdiction over the Dissolution of
 16 Marriage Because Neither Party Is Domiciled within the Exterior
 17 Boundaries of the Reservation**

18 Muckleshoot cannot dissolve the parties' marriage because it lacks subject
 19 matter jurisdiction over the same. Subject matter jurisdiction is predicated on
 20 domicile. If the petitioner in a dissolution of marriage is (1) a resident of this state;
 21 or (2) a member of the armed forces and is stationed in this state; or (3) is married
 22 to a party who is a resident of this state or who is a member of the armed forces
 23 and is stationed in this state, then the Courts have subject matter jurisdiction over
 24
 25

1 the dissolution. RCW 26.09.030; *In re Marriage of Robinson*, 159 Wn. App. 162,
 2 167-68, 248 P.3d 532, 534 (2010).

3 Domicile was a jurisdictional necessity for establishing a court's subject
 4 matter jurisdiction over the status of a marriage. *In re Marriage of Buecking*, 179
 5 Wn.2d 438, 451-52, 316 P.3d 999, 1005 (2013). "The indispensable elements
 6 of domicile are residence in fact coupled with the intent to make a place of
 7 residence one's home. *Id.* Simply stated, domicile has two aspects: physical
 8 presence and intent to reside. *Id.* Under our system of law, judicial power to grant
 9 a divorce -- jurisdiction, strictly speaking -- is founded on domicile. *Mapes v.*
 10 *Mapes*, 24 Wn.2d 743, 752, 167 P.2d 405, 409 (1946).

11 Here, Muckleshoot lacks subject matter jurisdiction over the dissolution
 12 because neither party was domiciled on the Reservation. Rather, both parties were
 13 domiciled in the State of Washington.

14 **3. Muckleshoot Lacks Personal Jurisdiction over the Respondent Because
 15 He Was Never Served**

16 Muckleshoot cannot force Respondent to get divorced in Tribal Court because
 17 it lacks personal jurisdiction over him. Personal jurisdiction is predicated on service.
 18 If personal service on respondent of a summons and complaint in a divorce
 19 proceeding never occurs, the court never obtains personal jurisdiction. *In re*
 20 *Marriage of Zadorozny*, 70 Wn. App. 464, 468, 853 P.2d 960, 962 (1993). The
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1 summons must be signed. CR 4(a)(1). The word “must” impose a mandatory
2 requirement. *Sutey v. T26 Corp.*, 13 Wn. App. 2d 737, 749, 466 P.3d 1096, 1102
3 (2020). Likewise, any return of service must be filled out and signed. CR 11.
4

5 Here, the summons is not signed. In fact, it does not even have a signature
6 block. The return of service is neither filled out nor signed. It is, in fact, a blank
7 form, with only the caption and the documents to be served filled out. Moreover,
8 Plaintiff asserts he was never served. Instead, he called the clerk’s office and the
9 clerk emailed him the documents. While emailing the documents may provide
10 actual notice, it does not provide service.
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12 As it happened, the first hearing was the day after the clerk emailed the
13 documents. At the hearing, Plaintiff stated that he did not think the court had
14 jurisdiction. The Court ignored him and proceeded to grant relief on some
15 personal property issues and ordered him to mediation. This is not personal
16 service. At best, it is putting the cart before the horse. At worst, it is bullying and
17 intimidation.
18

19 Meanwhile, Plaintiff eventually hired an attorney, who perfected service of a
20 property summons and petition in state court before Ms. Turpen perfected service
21 in tribal court.
22

1 **4. Plaintiff Should Be Awarded Attorney's Fees and Costs on the Basis of**
 2 **Frivolousness**

3 Muckleshoot should be required to pay Plaintiff's fees and costs because its
 4 arguments are frivolous. In any civil action, the Court may require the non-
 5 prevailing party to pay reasonable fees and costs to the other party upon written
 6 findings that the non-prevailing party's argument was frivolous and advanced
 7 without reasonable cause. RCW 4.84.185.

9 The frivolous lawsuit statute was enacted to discourage abuse of the legal
 10 system by providing for an award of expenses and legal fees to any party forced to
 11 defend itself against meritless claims. *Suarez v. Newquist*, 70 Wn. App. 827, 832-
 12 33, 855 P.2d 1200, 1204 (1993). A frivolous action is one that cannot be supported
 13 by any rational argument on the law or the facts. *Ahmad v. Town of Springdale*,
 14 178 Wn. App. 333, 344, 314 P.3d 729, 734 (2013).

17 Here, Muckleshoot's theory of subject matter jurisdiction cannot be supported
 18 by any rational argument on the law or the facts. The law is black and white,
 19 unambiguous, and straightforward. Marriage is a legal status. To change the legal
 20 status of a "thing," the court must have *in rem* jurisdiction over said thing. "*In rem*
 21 jurisdiction" means physical presence in the forum state. In the context of a
 22 dissolution, "physical presence" means domicile of the petitioner.

25 The Petitioner in the tribal court action was domiciled in the State of

1 Washington. The fact that she is an enrolled member of a federally recognized
2 Indian Tribe is irrelevant. The fact that the mortgage on the family home was
3 provided through the Muckleshoot Housing Authority is irrelevant. The fact that
4 Petitioner is a tribal elder is irrelevant.

5 Muckleshoot's theory of personal jurisdiction cannot be supported by any
6 rational argument on the law or the facts either. Personal jurisdiction is predicated on
7 personal service of a proper summons and complaint. If the respondent objects to
8 personal service, all court proceedings must cease until service is achieved.

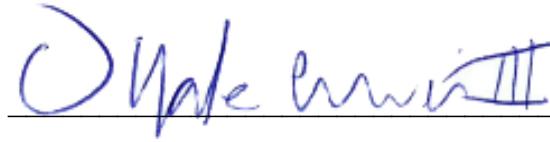
9 Here, Ms. Turpen never obtained a signed summons and never achieved
10 personal service. Plaintiff objected to tribal court's jurisdiction, but the Tribal court
11 simply ignored said objections. Meanwhile Plaintiff filed and served in state court.

12 In sum, Muckleshoot lacks *in rem* jurisdiction and subject matter jurisdiction
13 over the dissolution and personal jurisdiction over Plaintiff. Muckleshoot's defense
14 was frivolous and advanced without reasonable cause. Plaintiff should be awarded
15 fees and costs.

16 I certify that this document contains 2,409 words, in compliance with Local
17 Civil Rules.

18 RESPECTFULLY SUBMITTED in SEATTLE, this 15th day of MARCH, 2023.

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Law Office of O. Yale Lewis III
11515 36th Ave. NE
Seattle, WA 98125
Tel: (206) 223-0840
Fax: (206) 686-9444
E-Mail: yale@yalelewislaw.com

1 O. Yale Lewis III
2 Law Offices of O. Yale Lewis III
3 11515 36th Ave NE
4 Seattle, WA 98125
5 206-223-0840
6 yale@yalelewislaw.com
7 WSBA No. 33768
8 Attorney for Plaintiff David Turpen
9
10
11
12
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