

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Kristin Ann Tix,
n/k/a Kristin Ann McGowan,

Plaintiff,

V.

Robert William Tix,

Defendant.

Case No. 24-cv-1824

COMPLAINT AND PRAYER FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF THE CASE

1. This is an action for Declaratory and Injunctive Relief challenging the jurisdiction of a tribal court under 28 U.S.C.S. § 2201.

2. As alleged with greater particularity below, Kristin Ann Tix alleges that that the Prairie Island Indian Community’s judgment against her, entered July 21, 2023, is null and void because the Tribal Court lacked jurisdiction over her as a nonmember.

JURISDICTION AND VENUE

3. This court has jurisdiction to determine whether a tribal court has exceeded the lawful limits of its jurisdiction pursuant to 28 U.S.C. § 1331, federal question jurisdiction and this court's inherent equitable powers. Whether a tribal court has adjudicative authority over nonmembers is a federal question. *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 324, 128 S. Ct. 2709, 2716 (2008); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15, 107 S. Ct. 971, 94 L. Ed. 2d 10 (1987); *National*

Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845, 852-853, 105 S. Ct. 2447, 85 L. Ed. 2d 818 (1985).

4. The tribal court in this action has ruled on the merits of the case and all appellate options have been exhausted.

5. Venue is appropriate in this District as Plaintiff and Defendant reside in Minnesota and the Tribal Court's assertion of jurisdiction over Plaintiff was within the jurisdiction of the United States District Court for the District of Minnesota.

PARTIES

6. Kristin Tix¹ is and has been a resident of Hennepin County, Minnesota, at all relevant times.

7. Robert Tix has been a resident of Hennepin County, Minnesota, at all relevant times.

FACTUAL BACKGROUND

8. On July 21, 2023, the Prairie Island Indian Community (PIIC) trial court issued a final court order authored by the Honorable B.J. Jones which included findings of fact, conclusions of law, and order for judgment and decree. The trial court order followed a four-day trial in May 2023. This matter was timely appealed to the PIIC Court of Appeals. The PIIC Court of Appeals held its oral argument on December 12, 2023, and issued its order affirming the trial court's order on January 26, 2024.

¹ Plaintiff goes by the last name of Tix (not McGowan, her maiden name), only because she contests the legality of the tribal court order purporting to change her name, not out of affection for the name itself.

9. The PIIC Court of Appeals is the Prairie Island Indian Community Tribal Court's court of last resort.

10. Plaintiff Kristin McGowan and Defendant Robert Tix were married on September 27, 2008, in Minneapolis, Minnesota, where their marriage license was obtained and recorded. They have three joint children: R.R.T., age 14; P.C.T., age 12; and G.M.M.T., age 6.

11. Defendant and the minor joint children are enrolled members of the Prairie Island Mdewakanton Dakota Indian Community. Plaintiff is not an enrolled member of the Prairie Island Mdewakanton Dakota Indian Community or any other recognized American Indian Tribe, nor is she eligible for enrollment with any such Tribe.

12. The parties have never lived on the reservation. Both parties, and all their children, resided in Edina, Minnesota for more than 180 days prior to the simultaneous dissolution filings, a factor which establishes exclusive jurisdiction of the state over their divorce.

13. Plaintiff was a stay-at-home parent for almost the entire marriage—from shortly after the youngest child's birth while Defendant continued his education and advanced his career as a PA in the medical field.

14. On February 9, 2022, Plaintiff filed a summons and petition for dissolution with children in Hennepin County District Court, State of Minnesota, Court File No. 27-FA-22-739. That same day, Defendant filed a summons and petition for dissolution of marriage in Tribal Court. In attempting to serve Defendant with the Hennepin County pleadings, the process server reported difficulties serving Defendant, he reported that:

- i. We spoke with Roberts (*sic*) father who said that Robert has some problems with the law and that he can't have him here. Our server identified himself, said he had some documents and asked where we could find him. His father said he is on the “run” and last he heard, he was staying in a hotel or motel down in Rochester.

15. On February 18, 2022, the Hennepin County District Court issued an Order for Service by Alternate Means authorizing service by U.S. Mail. That same date, Defendant was served with Plaintiff’s pleadings by U.S. Mail.

16. On February 17, 2022, Plaintiff also filed a petition for an Order for Protection (“OFP”) against Defendant for herself and on behalf of the three minor children in Hennepin County District Court (District Court File No. 27-DA-FA-22-877). An *ex parte* Order for Protection was issued that same day granting Plaintiff temporary custody of all three minor children. Plaintiff testified that she feared for herself and the children, given Defendant’s history of erratic anger responses, verbal and physical abuse, and the information from the process server about Clayton Tix’s report that Defendant was “on the run.” An evidentiary hearing was set for May 24, 2022. Defendant never moved to contest state jurisdiction in that proceeding.

17. On March 9, 2022, the Hennepin County District Court held an Initial Case Management Conference (“ICMC”) in the dissolution matter, 27-FA-22-739. At the ICMC, the court, counsel, and the parties discussed the issue of jurisdiction in the District Court and the Tribal Court. On March 16, 2022, Defendant filed a notice of motion and motion requesting: (1) dismissal and/or a stay of Plaintiff’s petition for dissolution of marriage in Hennepin County and (2) dismissal of the parties’ children from the OFP.

18. While this motion was pending, a petition for children in need of protective services was filed against Plaintiff by Prairie Island Family Services (“PIFS”) in the Tribal Court on March 23, 2022 (Tribal Court File No. CC-0323-22). An admit/deny hearing on that issue was scheduled in the Tribal Court for April 20, 2022. The parties participated in a facilitated settlement conference with PIFS Services on March 23, 2022 and March 29, 2022 and agreed Defendant would have supervised visits on Mondays, Wednesdays, Fridays, and Saturdays, with PIFS coordinating the supervision.

19. On March 30, 2022, Plaintiff filed a responsive notice of motion and motion requesting denial of Defendant’s March 16 motion. On April 4, 2022, the Tribal Court issued an order denying Mother’s motion to dismiss the dissolution proceeding in Tribal Court. The Tribal Court determined it had jurisdiction over all issues in the dissolution, despite the fact that Plaintiff is not an Indian, not a member of the Tribe, and had never resided on Tribal lands. It further asserted jurisdiction over the ongoing child protection proceedings. The Tribal court declined to enforce the *ex parte* OFP issued on behalf of the children in Hennepin County, finding that the delay from February 17, 2022 to May 24, 2022 to hear the matter was not in accordance with Minnesota law and that the procedure was irregular under due process of law with regard to denying the father *any contact* with his children and thus not entitled to full faith and credit under federal law. This despite the fact that regular visitation for Defendant under the agreement referenced in the above paragraph had been agreed to by the parties after the OFP had been issued.

20. Following a hearing held on April 6, 2022, the State District Court entered an order on the parties' motions filed in Hennepin County. In its order, the district court concluded that Minnesota, not the Prairie Island Mdewakanton Dakota Community, was the "home state" for the minor children under Minn. Stat. §518D.201(a)(1), and that accordingly, the State District Court had jurisdiction to make an initial custody determination at the commencement of the proceedings under Minn. Stat. §518D.201(b). The district court also concluded that the Indian Child Welfare Act did not apply to these proceedings under 25 U.S.C. §1903(1). The District Court then deferred jurisdiction to the Tribal Court, issuing a stay of the dissolution matter filed by Plaintiff in that court pending resolution of the dissolution and custody proceeding in the Tribal Court.

21. Plaintiff filed two appeals of the state court order transferring jurisdiction to the Minnesota Court of Appeals (May 11, 2022 and October 12, 2022), which were ultimately dismissed by the court as non-final and nonappealable orders owing to the stay entered by the District Court.

22. The parties appeared for an evidentiary hearing in District Court on Plaintiff's OFP petition on May 24, 2022. The District Court heard testimony from the parties, including the GAL, and from other witnesses. The District Court found that Plaintiff had not met her burden of proof necessary for an Order for Protection on behalf of the minor children, but the court did find that Plaintiff sufficiently established that domestic abuse as defined by Minn. Stat. § 518B was committed against her by Defendant.

23. The evidentiary hearing on the dissolution in the Tribal Court occurred on May 8, 9, 10, and 12, 2023. The Tribal Court entered its Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree on July 21, 2023. This order reduced Plaintiff's parenting time with her children from a state District Court ordered 50:50 split between her and Defendant to a 65:35 split and denied Plaintiff any spousal maintenance.

24. According to evidence produced at trial, Defendant's *per capita* payments fluctuated, but his 1099s from Prairie Island show he received \$198,573.38 from Prairie Island in 2021 and \$172,068.02 in 2022. Based upon this largely per capita based income, Plaintiff proposed a final order to include a permanent award of spousal maintenance at \$5,000 per month. Instead, the Tribal Court awarded Plaintiff zero spousal maintenance, finding that "tribal law cannot award spousal support to a non-member if said support is to be paid from per capita benefits," citing the tribe's code, which states:

The Court may not consider the distribution of net gaming proceeds made from the Community to qualified Community members under the Community's Gaming Revenue Allocation Ordinance (Per Capita Payments) when establishing or amended an order for maintenance." *Id.* Chapter VI, Section 6(d).

25. By contrast, Minnesota's Family Code does not exclude tribal income from the income counted for any purpose. See Minn. Stat. § 518.552.

26. In sum, the Tribal Court issued two orders, which were both appealed to the Prairie Island Community Court of Appeals: one, an order denying a Motion to Dismiss for lack of jurisdiction (April 4, 2022); and two, the Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree (July 21, 2023).

27. The Prairie Island Indian Community Court of Appeals affirmed both Orders of the Tribal Court, finding, *inter alia*, that the Tribal Court had jurisdiction over Plaintiff because she consented to tribal adjudicatory jurisdiction based upon her consent to marriage to Defendant.

28. The parties lived in Hennepin County their entire marriage. Plaintiff has never lived on any Indian Reservation, including but not limited to the Prairie Island Indian Community. Plaintiff never consented to the jurisdiction of the tribal court, and contested its jurisdiction at all stages.

29. Plaintiff has exhausted her remedies in the tribal court and seeks an injunction and declaratory relief from this court as permitted by federal law.

COUNT I

The Tribal Court exceeded the lawful limits of its jurisdiction

30. Plaintiff restates and realleges paragraphs 1 thorough 29 and incorporates them herein.

31. Defendant's actions as set forth above unlawfully invoked the jurisdiction of the Tribal Court over Plaintiff as a nonmember. The Tribal Court had neither subject matter jurisdiction nor personal jurisdiction over Plaintiff.

WHEREFORE, Plaintiff prays for Judgment against Defendant as follows:

1. Injunctive, declaratory, and equitable relief the Court deems appropriate, including an Order finding that the Tribal Court Orders concerning her are null and void as lacking both subject matter and personal jurisdiction, and barring the Defendant from seeking to enforce them in tribal or state courts.

2. Remanding the parties' dissolution claims to state court.
3. For such other and further relief as the court deems just and equitable.

Dated: May 16, 2024

FIEBIGER LAW, LLC

By: /s/Rolf T. Fiebiger

Rolf T. Fiebiger (#391138)
6800 France Ave S., Suite 190
Edina, MN 55435
Telephone: 612.888.6084
rolf@fiebigerlaw.com

and

Mark D. Fiddler (#197853)
FIDDLER OSBAND FLYNN LLC
12800 Whitewater Drive, Suite 100
Minnetonka, MN 55343
Tel: (612) 822-4095
mark@fiddlerosband.com

Attorneys for Plaintiff
Kristin Ann Tix