ORIGINAL

2025 OK 48

106219441 0

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
JUL - 1 2025
JOHN D. HADDEN
CLERK

IN THE MATTER OF THE INCOME TAX PROTEST OF ALICIA STROBLE,

ALICIA STROBLE,

Protestant/Appellant,

v.

OKLAHOMA TAX COMMISSION,

Respondent/Appellee.

FOR OFFICIAL PUBLICATION

No. 120,806

Rec'd (date) 7-1-25
Posted PE
Mailed PE
Distrib PE
Publish Y yes ___ no

KUEHN, V.C.J., CONCURRING SPECIALLY:

¶ 1 The *per curiam* opinion holds that Stroble is not exempt from payment of Oklahoma income tax. I also find Stroble is not exempt. I would acknowledge the *McGirt* ruling regarding reservation status but find that it does not resolve the issue before this Court.

¶ 2 I suggest we simply apply existing law to the issue before us: does the *McGirt* pronouncement of reservation status apply when one is determining whether a member of a federally recognized tribe living on a federally created reservation must make an income tax payment. *McGirt's* ruling regarding reservation status must inform our analysis of Stroble's claim. *Milne v. Hudson*, 2022 OK 84, ¶ 6, 519 P.3d 511, 513. In *Milne* we reaffirmed the unremarkable principle of federal Indian law that "the federal statutory

definition of Indian Country in 18 U.S.C. § 1151 applies in both civil and criminal contexts." *Id.*, ¶ 11, 519 P.3d at 513-14. But as we demonstrated in *Milne*, that provides a starting place for analysis, not a resolution. When faced with a question involving Indian Country, reservation status governs the law we apply, but it does not dictate the remedy.

¶ 3 To argue otherwise, as Stroble does, is to significantly misunderstand the scope of *McGirt*. *McGirt* applied settled law to conclude that the Muscogee (Creek) reservation was not disestablished. In practice, this (and subsequent decisions flowing from it) significantly expanded the land which constitutes Indian Country in Oklahoma. But no case arises in a vacuum. *McGirt* was concerned with criminal jurisdiction in Indian Country, so the United States Supreme Court looked to settled federal Indian law to determine the remedy. The consequence of reservation status was that the federal government and the tribes, but not the State, had jurisdiction to prosecute in Indian Country. The remedy—lack of jurisdiction—was a consequence of reservation status *in that context*. But remedies will differ depending on the area of law.

¶ 4 We followed this formula in *Milne*. We began with reservation status, then reviewed the applicable federal law to see whether exclusive jurisdiction over civil protection orders had been reserved to the tribe. Applying the facts to that law, we determined that each sovereign had concurrent jurisdiction over civil protection orders. *Milne*, ¶ 21, 519 P.3d at 516. Had we reflexively

concluded that, since the Section 1151 definition of Indian Country applied in this civil context, we must apply the *McGirt* remedy, the holding would be different: we could not have, as we did, conclude that under the law concurrent jurisdiction existed in the context of protection orders. If our only concern was whether Section 1151 removed State action if applied in both civil and criminal cases, the particular legal context would not have mattered at all.

¶ 5 Stroble's claim arises in yet another legal context and in a different procedural posture. Everyone agrees that generally, federal Indian law provides that tribal members working for the tribe and living on reservation land are exempt from state taxation on that income. That is, to loosely continue the *McGirt* factual analogy, the State doesn't have jurisdiction to impose that income tax. Recognizing this general federal law, the Oklahoma Tax Commission promulgated a rule which explains that exemption, defining Indian Country in a way consistent with federal case law and in language similar to Section 1151; it subsequently determined that Stroble does not fall within this exemption.

¶ 6 Stroble essentially argues that this Court must apply the *McGirt* remedy to this civil tax issue and determine that the State can't tax her—that the State doesn't have jurisdiction to impose that tax. But federal Indian law regarding civil taxation is considerably less cut-and-dried than is the comparable law on criminal jurisdiction. The United States Supreme Court has

held that under some circumstances a state may impose a tax on parcels of land within reservation boundaries. *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197, 220-21 (2005). I would apply that law here.

¶ 7 *McGirt* concerned criminal jurisdiction to prosecute crimes under the federal Major Crimes Act. *McGirt*, 140 S.Ct. at 2459-60. The Supreme Court explicitly limited its discussion of the *particular effects*—the consequences—the remedy—of its conclusion regarding reservation status to those jurisdictional issues. *Id.* at 2480; *Oklahoma v. Castro-Huerta,* 597 U.S. 629, 639-40 (refusing to apply *McGirt* analysis to the federal General Crimes Act, 18 U.S.C. § 1153). As both parties concede, there is no case in which the Supreme Court has applied the *McGirt* holding or remedy to civil law. That is what Stroble asks us to do. It is not this Court's place to extend a doctrine beyond the boundaries clearly set by the Supreme Court in *McGirt* itself. But, it is this Court's place to determine whether or not the holding extends to civil law matters in the State of Oklahoma under Oklahoma law.

¶ 8 Let me be clear. I believe the question of reservation status is settled. But this Court neither can nor should apply the *McGirt* criminal remedy—lack of jurisdiction requiring dismissal—to any Oklahoma civil cases. *McGirt* applied that remedy in a criminal law context only. The Oklahoma Supreme Court has the authority to rule that we will not wholesale extend that remedy to civil law matters. Otherwise, we will need to continue our practice

of reviewing every civil law matter from here to eternity to discern whether reservation status alone requires Oklahoma courts to apply a remedy dictated by a federal criminal case. I would not continue to do so and find that the remedy does not apply to civil matters. And I note that the doctrines of latches, acquiescence, and impossibility "protect those who have reasonably labored under a mistaken understanding of the law." *McGirt*, 591 U.S. at 936 (internal citation omitted).

¶ 9 Again, Stroble wants this Court to find that *McGirt*, not *Sherrill* or similar Indian taxation cases, controls, apply the *McGirt* remedy to this civil taxation issue, and divest the State of its ability to subject her to state income tax. But how would that work? We would have to apply a remedy designed for a specific issue of criminal law to a very different issue of civil law. I believe *McGirt* itself prohibits us from taking this leap. I concur in the decision to uphold the Oklahoma Tax Commission's decision.