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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Keith Ellington,

Plaintiff-Respondent,

v.

Michelle Haskins,

Defendant-Respondent,

The Lac Courte Oreilles Band of Lake Superior Chippewa Indians,

Appellant.

Appeal Case No. 2024AP002017
Circuit Court Case No.: 2023-CV-120

Appeal from the Circuit Court for Price County
The Honorable Anthony J. Stella, Jr.
Circuit Court Judge Presiding

BRIEF OF PLAINTIFF-RESPONDENT KEITH ELLINGTON

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STATEMENT OF THE ISSUES

The Plaintiff-Respondent, Keith Ellington, a non-tribal member, filed an unjust enrichment claim against the Defendant-Respondent, Michelle Haskins, in Sawyer County Circuit Court seeking a money judgment. Michelle Haskins resides on land held in trust for the Lac Courte Oreilles Band of Lake Superior Chippewa Indian. The Tribe filed a motion for mandatory intervention and discretionary transfer to Tribal Court. The issue presented is whether the Tribe has a right of intervention in a suit between two private citizens, one of whom is a non-tribal member, in which the Plaintiff seeks purely a money judgment.

STATEMENT OF THE CASE

1. The Keith Ellington ("Ellington"), is not an enrolled member of any Tribe. (R. 2; P. 3).
2. Michelle Haskins ("Haskins"), is an enrolled member of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians ("Tribe"). (R. 2; P. 3)
3. The Ellington and the Haskins maintained a co-habituated from approximately 1998 through 2022, but never married. (R. 2; P. 3).
4. The Haskins has maintained a lease for a property located at 13217 W. Gurno Lake Road in Hayward, Wisconsin 54843 with the Tribe on or around April 16, 2007. (R. 2; P. 3).

5. The Tribe alleges that a resolution was passed pursuant to certain tribal codes and that authorized Haskins's lease. (Brief of Petitioner, P. 8)
6. On October 12, 2023, Ellington filed an unjust enrichment claim against the Haskins in Sawyer County Circuit Court, requesting a money-only judgment in an amount to be determined, which case was filed as 23-CV-120. (R. 2; P. 3).
7. On January 29, 2024, counsel for Ellington filed a *Motion for Discretionary Transfer of a Civil Action to Tribal Court.* (R.14).
8. The *Motion for Discretionary Transfer* was denied on March 19, 2024, and a written *Order* denying the motion on March 20, 2024. (R. 24)
9. On May 3, 2024, the Tribe filed a *Notice of Appearance and Notice of Motion & Motion to Intervene and Motion for Discretionary Transfer of Civil Action to Tribal Court.* (R. 30).
10. A motion hearing was held on the Tribe's motions on June 24, 2024, at which time the Court denied the Tribe's motions. (R. 44)
11. The Court executed an *Order* denying the *Motion to Intervene and Motion for Discretionary Transfer* on September 13, 2024. (R.35).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Plaintiffs-Respondents do not believe oral arguments are needed in this case. Publication is not necessary because there are no new unique issues or facts that would further clarify the legal issues presented in this matter.

STANDARD OF REVIEW

The grant or denial of a motion to intervene as of right is reviewed "independently of the circuit court" but "benefitting from the analyses of each court." Helgeland v. Wisconsin Municipalities, 2008 WI 9, ¶ 41, 307 Wis. 2d 1, 24, 745 N.W.2d 1, 11. "Despite its nomenclature, intervention 'as of right' usually turns on judgment calls and fact assessments that a reviewing court is unlikely to disturb except for clear mistakes." *Id.* citing Daggett v. Comm'n on Governmental Ethics & Election Practices, 172 F.3d 104, 113–14 (1st Cir.1999). In ruling on a motion to intervene, the Court must be cognizant of the public policy that "the original parties to a lawsuit should be allowed to conduct and conclude their own lawsuit….." State ex rel. Bilder v. Twp. of Delavan, 112 Wis.2d 539, 548, 334 N.W.2d 252 (1983).

ARGUMENT

At the Tribe accurately identifies, in ruling on a motion to intervene the Court must determine whether

a) the motion is timely

b) the movant claims an interest sufficiently related to the subject of the action

c) the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and

d) the existing parties do not adequately represent the movant's interest.

Helgeland v. Wisconsin Municipalities, 2008 WI 9, ¶ 38, 307 Wis. 2d 1, 25, 745 N.W.2d 1, 12.

In ruling on a motion to intervene, the Court must be cognizant of the public policy that "the original parties to a lawsuit should be allowed to conduct and conclude their own lawsuit….." State ex rel. Bilder v. Twp. of Delavan, 112 Wis.2d 539, 548, 334 N.W.2d 252 (1983).

As to the interest test, "there must be some sense in which the interest is 'of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment'." Helgeland v. Wisconsin Municipalities, supra, at ¶ 45, citing (44).

I. THE PETITION FAILS BECAUSE IT DOES NOT MEET ANY OF THE FOUR ELEMENTS NECESSARY TO PERMIT INTERVENTION.

A. Timeliness.

Ultimately, the Tribe's intent in intervening in this case is to transfer the case to Tribal court. That matter was litigated before the Tribe sought to intervene with a motion filed by the Defendant in January of 2024, followed by briefing and a hearing in March of 2024. The Tribe waited until that motion was fully litigated (and Defendant's motion was denied), before seeking to intervene in May of 2024 to essentially re-litigate the same issue. "Whether a movant's motion to intervene is timely is left to the discretion of the circuit court. Braun v. Vote.org, 2024 WI App 42, ¶ 16, 413 Wis. 2d 88, 103, 11 N.W.3d 106, 114, review denied, 2025 WI 1, ¶ 16

Allowing the Tribe to intervene and be heard on a discretionary transfer, which has already been litigated, prejudices the Plaintiff-Respondent, who already prepared for and defeated a motion for discretionary transfer. He is now forced to re-litigate the same issue merely because the Tribe waited to intervene until after the motion was denied and the timeline to appeal for the Defendant had lapsed. In that respect, it is untimely and the Tribe offers no explanation for why it waited for Defendant's motion to fail before attempting to intervene in this case.

B. Movant's Interest is not related to subject of the action.

This is the element of intervention that is probably the weakest for the Tribe. "[W]hen considering whether a movant has a sufficiently related interest, courts employ a broad, pragmatic approach under which the interest sufficient to allow the intervention is viewed practically rather than technically." (internal citations omitted) Braun at ¶ 18. "[T]here must be some sense in which the interest is of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment. Id.

This is a case where one half of a romantic couple seeks a money judgment from the other half of that couple. The Tribe offers no explanation for how, if a money judgment as sought is entered against the Defendant, that has anything at all to do with the Tribe. The closest the Tribe gets is to argue that a money judgment may become a lien against real estate you own." (See Petitioner's Brief, pp. 7-8). However, the Tribe repeatedly notes that this real estate is owned by the Tribe, not the defendant. The Tribe is not a defendant

so the Plaintiff would have no measure by which he could put a lien against property owned by the Tribe. It is a red herring.

The subject of the action is a money judgment. Repeatedly, the Tribe (and the defendant in her motion that was denied in March of 2024) try to make this case about a lease of tribal land. The Plaintiff-Respondent has never sought or suggested that he has a right to lease tribal land.

The Tribe spends significant time on the matter of a Tribal lease issued to the Defendant and rules on Trespass. The Plaintiff-Respondent has never sought so much as the right to temporarily enter Tribal land in this suit, let alone any right to a lease with the Tribe. The Tribe also notes some tribal regulations pertaining to appraisal of tribal real estate. The Plaintiff-Respondent has never the right to send an appraiser on Tribal land. He seeks one thing: a money judgment against the Defendant. He seeks nothing from the Tribe nor any right related to any property owned by the Tribe.

C. Disposition of the Action will not impair nor impede the Tribe's ability to protect its interests.

The Tribe speculates that there would be some need for someone to enter upon Tribal land. It is unclear when or who, since that is not something Plaintiff-Respondent is seeking or has sought in this suit. However, allowing this suit for a money judgment to proceed would in no way stop the Tribe from refusing to allow someone on Tribal land (if someone were trying to access it, although who would be doing so is unknown to Plaintiff-Respondent).

If the Tribe is able to intervene in this case, it would essentially result in a ruling that the Tribe can and should be a party in any case where a non-tribal member sues a tribal member for money. This would fly in the face of Montana v. United States, 450 U.S. 544, 565 (1981), which clearly states that "the inherent sovereign powers of an Indian tribe do not extend to the activities of non-members of the tribe." Even if the Tribe could have jurisdiction over a non-member bringing a cause of action against a member for a money judgment, that does not mean the Tribe itself is a party, much less a party permitted to intervene as of right.

It is absolutely clear in this case that the Tribe has no "direct and immediate" interest such that the Tribe will "either gain or lose by the direct operation of the judgment." Helgeland v. Wisconsin Municipalities, supra, at ¶ 45, citing (44). If a money judgment is entered against the Defendant, the Tribe gains or loses nothing.

D. The existing parties adequately represent the movant's interest.

The only interest identified by the Tribe is the right to control who enters tribal boundaries and to "manage and lease" its interest in land held in trust. Those rights are immaterial to this case. The Tribe suggests that "without its interests being heard, the court could violate the Tribe's right to regulate its real and personal property." Brief, P. 11. This presumes that someone has sought, or is seeking, some right of ownership or interest in something belonging to the Tribe. To the contrary, the suit seeks only a money judgment against an individual Defendant. This is a case that cries out for the Court to uphold the public policy that "the original parties to a lawsuit should be allowed to

conduct and conclude their own lawsuit….” State ex rel. Bilder v. Twp. of Delavan, 112 Wis.2d 539, 548, 334 N.W.2d 252 (1983).

CONCLUSION

The Court should uphold the ruling of the Circuit Court that the Tribe may not intervene in this action as of right. The Tribe has identified no tribal property that is at issue in this suit. To wit: the Tribe freely acknowledges that the Plaintiff-Respondent seeks only a money judgment. No one has asserted that a money judgment could operate as a lien against property owned by the Tribe (a non-party). The Plaintiff-Respondent has sought no ownership of, control over, or access to leased property. Thus, the very foundation of the Tribe’s claimed interest is non-existent. To accept the Tribe’s logic, the Court would in essence have to find that any time a tribal member who lives on leased land is sued for money, the Tribe of which they are a member becomes a party in interest. This is nonsensical, and runs completely afoul to the mandate of Montana v. United States.

Dated this 14th day of January, 2025.

Respectfully submitted,
SPEARS, CARLSON & COLEMAN S.C.
By: *electronically signed by Linda I. Coleman*
Linda I. Coleman, SBN 1088532
Attorneys for Plaintiff-Respondent

CERTIFICATE OF COMPLIANCE WITH
RULE § 809.19(8)(b) and (c)

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief produced using the following font: I hereby certify that this brief produced with a proportional serif font. The length of this brief is 8 pages and 1933 words from Statement of the Issues through Conclusion.

Dated this 14th day of January, 2025.

SPEARS, CARLSON & COLEMAN S.C.

By: *electronically signed by Linda I. Coleman*

Linda I. Coleman, SBN 1088532
Attorneys for Plaintiff-Respondent

CERTIFICATE OF E-FILE COMPLIANCE

I hereby certify that a true and accurate copy of this brief has been contemporaneously e-filed with the Court of Appeals.

Dated this 14th day of January, 2025.

SPEARS, CARLSON & COLEMAN S.C.

By: *electronically signed by Linda I. Coleman*

Linda I. Coleman, SBN 1088532
Attorneys for Plaintiff-Respondent