FILED
01-21-2025
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

KEITH ELLINGTON,

Plaintiff-Respondent, Appeal Case No. 2024AP002017

Sawyer County Circuit Court Case No. 23 CV 120

vs.

MICHELLE HASKINS,

Defendant-Respondent,

THE LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS,

Appellant.

APPEAL FROM THE CIRCUIT COURT FOR SAWYER COUNTY,
THE HONORABLE ANTHONY J. STELLA, JR., PRESIDING

BRIEF OF DEFENDANT-RESPONDENT, MICHELLE HASKINS

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STATEMENT OF THE ISSUES

Plaintiff-Respondent, Keith Ellington ("Ellington"), a non-tribal member, filed an unjust enrichment claim against Defendant-Respondent, Michelle Haskins ("Haskins"), in Sawyer County Circuit Court. Haskins is an enrolled member of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians ("Tribe"). Ellington is seeking a money judgment against Haskins including one-half of the value of the interest in the residence the parties previously resided in which is held in trust by the Tribe located on the Tribe's reservation. Haskins holds a valid fifty-year lease from the Tribe for the land and residence on which the land is built. The issue is whether the circuit court erred when it denied the Tribe its right to intervene in this matter to protect its interests pursuant to Wis. Stat. §803.09.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Haskins does not believe that either oral argument or publication are necessary in this case.

STATEMENT OF THE CASE

1. Ellington is not an enrolled member of any Tribe. (R. 2.)
2. Haskins is an enrolled member of the Tribe. (R. 2.)
3. On June 27, 2007, Haskins signed a fifty-year lease with the Tribe for a residence located on federal trust land within the boundaries of the Tribe's reservation. (R. 21.)
4. The lease was in Haskins' name only. (R. 21.).
5. Ellington lived with Haskins at the leased property until 2022. (R. 2.)
6. Haskins has continued to live at the property under the lease. (R. 21.)
7. On October 12, 2023, Ellington filed an unjust enrichment claim against Haskins in Sawyer County Circuit Court Case 23 CV 120. (R. 2.)
8. Ellington is alleging that he conferred benefits on Haskins during their relationship, including by assisting her "in obtaining, paying for, renovating and improving the Residence". (R. 2.)
9. Ellington is alleging that "it would be inequitable" for Haskins "to retain all interest in Residence". (R. 2.)
10. Ellington is seeking a money judgment against Haskins to include "one half of the value of the interest in the Residence". (R. 2.)
11. On January 29, 2024, Haskins filed a Motion for Discretionary Transfer to Tribal Court. (R. 14.)
12. On March 20, 2024, Judge Stella signed an Order Denying Motion for Discretionary Transfer which acknowledged that there was concurrent jurisdiction between the Circuit Court and Tribal Court. (R. 24.)
13. On May 3, 2024, the Tribe filed a Motion to Intervene & Motion for Discretionary Transfer. (R. 29.)
14. On September 13, 2024, Judge Stella signed an Order Denying Motion to Intervene and for discretionary transfer to Tribal Court. (R. 25.)

ARGUMENT

Haskins was in support of the Tribe's Motion to Intervene and Motion for Discretionary Transfer at the circuit court level. Haskins is in support of the Tribe's appeal of the circuit court's denial of the Tribe's Motion to Intervene and Motion for Discretionary Transfer. All arguments below reflect Haskins' support of the Tribe's position.

I. Standard of Review

Whether the circuit court erred in denying the Tribe its right to intervene is a question of law this Court reviews de novo. *See Yacht Club at Sister Bay Condo. Ass'n, Inc. v. Vill.* of *Sister Bay,* 2019 WI 4, ¶ 18, 385 Wis. 2d 158, 922 N.W.2d 95.

II. The Trial Court Erred When it Denied the Tribe Its Right to Intervene

Under Wis. Stat. §803.09, a party may be permitted to intervene if the party, meets the following criteria:

(1) The motion is timely;
(2) The party has an interest sufficiently related to the subject of the action;
(3) The party can show that the disposition of the action may impair or impede the party's ability to protect that interest; and
(4) The existing parties cannot adequately represent the movant's interest.

"A movant must meet each of these four criteria to claim a right of intervention." *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶ 39, 307 Wis. 2d 1, 745 N.W.2d 1. "At the same time, the criteria need not be analyzed in isolation from one another, and a movant's strong showing with respect to one requirement may contribute to the movant's ability to meet other requirements as well…there is interplay between the requirements; the requirements must be blended and balanced..". *Id.* "Courts have no precise formula for determining whether a potential intervenor meets the requirements of § 803.09(1). The analysis is holistic, flexible, and highly fact specific." *Id.* at ¶ 40.

The Tribe meets all four criteria to intervene in this matter.

(1) The Tribe timely made its motion to intervene

The Tribe filed its motion to intervene a little over three months after Ellington filed his summons and complaint. The case is still in the discovery and negotiation stage. No court trial has been set. Ellington argues that the motion was untimely because it was filed after Haskins had been denied on her motion for discretionary transfer to Tribal Court. Ellington provides no legal authority that filing after another party was denied a motion to transfer makes a motion to intervene untimely. On the other hand, the Tribe filed its motion prior to discovery and prior to a trial date being set. That is early enough in the case to allow for another party to intervene.

(2) The Tribe Has an Interest Sufficiently Related to the Subject of The Action

The main asset that Ellington is looking to split or obtain a money judgment on is the residence under the Tribe's lease. While Ellington states that he is only looking for a money judgment, his complaint states differently. Ellington's complaint specifically states that "it would be inequitable for the Defendant to retain all interest in the Residence.." (R. 2). Ellington specifically requests a money judgment against the Defendant "in an amount sufficient to compensate him for one-half of the value of the assets accumulated by the parties….including, but not limited to, one half of the value of the interest in the Residence." (R. 2.). Neither Ellington nor Haskins are the owners of the property, the Tribe is the lawful owner of the property. (R. 21.) Haskins pays rent to the Tribe and is merely a lessee. (R. 21.) The Tribe has an interest in the property which is one of the assets which Ellington is looking to obtain a money judgment for. Ellington repeatedly states that he is not seeking any right related to any property owned by the Tribe. This is false as he is seeking a right to a money judgment related to any equitable interest he claims to have in the property owned by the Tribe.

(3) Disposition of This Action May Impair or Impede The Tribe's Ability to Protect Its Interests

Ellington cites *Montana v. United States*, 450 U.S. 544, 565 (1981), for its argument under this criteria. This situation is distinguishable from *Montana.* The *Montana* case dealt with non-Indian hunters and fisherman on reservation land owned by non-Tribal members. *Id.* at 545. In contrast, the *Montana* court also stated that the Tribe may prohibit or regulate hunting and fishing by non-members on land owned by the Tribe or in trust for the Tribe. *Id.*

This action involves a tribal member and non-tribal member's actions on land held in trust for the Tribe. The Tribe has jurisdiction over a non-member's actions on trust land. Disposition of this action may impair or impede the Tribe's ability to protect its interests. If a Court finds that a non-member has an equitable interest in property located on the reservation and held in trust for the Tribe, that begins a precedent of non-members being able to claim an interest in the property. Ellington claims he is only seeking a money judgment, but that money judgment will be based on "an interest" in the property and equal to "one half of the value of the interest" in the property, according to his Complaint. (R. 2.). Ellington has no interest in the Tribe's leasehold property yet is trying to get a money judgment for what he considers his "equitable interest" in the property. This could impair or impede the Tribe's ability to protect its interest in the property by setting a precedent that while non-tribal members cannot legally lease the tribal property, they can possess an "equitable interest" in tribal property.

(4) The Existing Parties Cannot Adequately Represent the Tribe's Interest

Haskins joins in the Tribe's appeal of its denial to intervene because Haskins knows that she cannot adequately represent the Tribe's interest in the leasehold property. Haskins does not ultimately own or control the leasehold property. Ellington argues that the Tribe's right to control who enters tribal boundaries and to manage and lease its interest in land held in trust is immaterial to this case. That is

incorrect. Ellington is specifically asking for a money judgment representing "one half" of Haskins' interest in the leasehold property. The value of a tribal member's interest in trust land is at the heart of this case. Any interest, even an equitable interest, a non-member has in Tribal trust land is material to the Tribe's right to manage the property. Ellington argues that he is not seeking an interest in something belonging to the Tribe. Again, Ellington is seeking compensation in the amount of one half of the value of the land that belongs to the Tribe. Even if Ellington is not seeking the money judgment directly from the Tribe, he is seeking a judgment directly related to the value of the lease which can have a precedential effect on future non-member and member's claimed interests in leasehold property.

CONCLUSION

For all of the reasons stated in this brief together with Haskins' filings and arguments at the circuit court level, Haskins joins with the Tribe in asking this Court to reverse the circuit court's order and allow the Tribe to intervene in this case.

Dated: January 20, 2025

ANICH, WICKMAN & LINDSEY, S.C.

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FORM AND LENGTH CERTIFICATION

I certify that this brief conforms to the rules contained in Wis. Stat. §809.19(8)(b) and (c) for a brief produced with proportional serif font. The length of the brief is 1,933 words and 11 pages.

Dated: January 20, 2025

ANICH, WICKMAN & LINDSEY, S.C.

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