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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.

Appellate Case #: 2024AP002017

Sawyer County Case #: 23CV120

REPLY BRIEF OF APPELLANT

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

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ARGUMENT

The Lac Courte Oreilles Band of Lake Superior Chippewa Indians ("Tribe") reasserts its arguments as in the Tribe's Appellant Brief. The Tribe, however, adds these additional arguments in response to the Briefs of the Plaintiff-Respondent and Defendant-Respondent.

The Tribe in this matter is appealing the Court's decision to deny the Tribe's *Motion to Intervene*. Although, the Tribe concurrently submitted to the trial court a *Motion to Transfer to Tribal Court*, the factors the Tribe used in the *Motion to Intervene* are drawn from Wis. Stat. §803.09 and must be met before for any further consideration of the *Motion to Transfer*. The Court denied both the *Motion to Intervene* and the *Motion to Transfer* based upon Wisconsin law. This Court does not need to consider the factors considered in *Montana v. United States*, 450 U.S. 544 (1981) as asserted by the Plaintiff Defendant, as they are not the controlling law in regard to whether the Court should grant the Tribe's *Motion to Intervene*. Here, the Tribe agrees that Wis. Stat. §803.09 and *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, 307 Wis. 2d. N.W. 2d 1 are controlling in this matter.

III. The Tribe's *Motion to Intervene* should be granted as the Tribe has met all requirements of Wis. Stat. §803.09.

The Tribe previously asserted that the Tribe's motion is timely, that the Tribe has as an interest in the legal matter, that the Tribe's involvement is necessary for the successful resolution of the matter, and the Tribe's interests are not adequately represented by either the Plaintiff-Respondent or Defendant-Respondent.

The Plaintiff-Respondent repeats that the only remedy requested is a money judgment against the Defendant-Respondent and as such, the Tribe has no interest in this matter. However, the Tribe again reasserts that its interest in the matter satisfies Wis. Stat. §803.09(2) & (3). The Plaintiff-Respondent's *Summons* expressly states that "[a] judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property." Any attempt to put a lien or seizure against tribal trust land, including improvements to the property, requires the involvement of the Tribe. Any money judgment or similar remedy in this matter would be based upon "improvements" of tribal

property on tribal trust land. As the remedy requested in this mattery involves an action against the Tribe, then such a remedy mandates the Tribe be involved in the Court proceedings.

Plaintiff-Respondent asserts that the Tribe does not have a direct and immediate interest in this matter. This is inaccurate. The Tribe may suffer harm by the nature of any judgment or order that involves its property. As discussed by briefs submitted to this Court, the Plaintiff-Respondent is stating he is entitled to a money judgment for improvements made on tribal trust land. Any such improvements were made on tribal trust land and remains the property of the Tribe. Such improvements may increase or decrease the value of the property. To determine the value of such improvements an appraiser is required to determine the value of the work completed by the Plaintiff-Respondent. As stated in the Appellant's brief, the Tribe must perform the appraisal of any property and must approve a methodology that is in the "Best Interest of the Tribe." PRP.10.3.140(b). This is very important as the valuation of tribal property has a direct economic interest to the Tribe because any property valuation affects the valuation of surrounding comparable tribal properties.

Finally, the involvement of the Tribe is necessary as any money judgment against the Defendant-Respondent would need to be registered as a foreign judgment with the Lac Courte Oreilles Tribal Court pursuant to Lac Courte Oreille Tribal Code of Law ("LCOTCL") TCT.2.13.020(a). The LCO Clerk of Court then "shall treat the foreign judgment in the same matter as a judgment of the tribal court." TCT.2.13.020(b). However, according to the LCOTCL certain property is exempt from execution including "[a]ll interests in property held in trust by the United States;" and "[a]ll assets of the Tribe, unless specifically pledged." TCT.2.12.040(a) &(b).

Further, the Tribal Court "may, after notice and hearing upon its own motion or motion of a party, have the right to review and modify any foreign order for the enforcement of a judgment, including but not limited to garnishment orders." TCT.2.13.020(c). The LCOTCL has codified the ability of the Lac Courte Oreilles Tribal Court to modify any judgment or order that may be determined by the trial court in this matter. If the Tribe's laws and property interests are ignored in this matter, the Tribe may then motion the Tribal Court to consider an amendment and or modification of any judgment or order to then comply with LCOTCL and federal law. Such an action by the Tribe prolongs any actual resolution in this matter for both the Plaintiff and the

Defendant. Involvement of the Tribe at this stage will provide a more efficient and congruent judgment or order in this matter.

The Tribe's *Motion to Intervene* should be granted as the Tribe has met all the factors of Wis. Stat. §803.09. The Tribe's involvement in this matter is also necessary, even beyond the factors of Wis. Stat. §803.09, because any judgment or order would require the cooperation and input from the Tribe to ensure any remedy complies with all the applicable federal and Tribal laws.

IV. Even if *Montana v. United States* were to be applied in this matter, the Tribe would prevail as the activities by the Plaintiff-Respondent may be regulated by the Tribe.

The Plaintiff Respondent states that allowing the Tribe to intervene in this matter would "fly in the face of Montanta v. United States." The Plaintiff Respondent relies upon the statement in *Montana* that the "inherent sovereign powers of an Indian Tribe do not extend to the activities of non-members of the tribe" as the complete holding in the case. This is inaccurate. The Plaintiff Respondent does not discuss the actual holding of *Montana*, which does not prohibit a tribe from regulating activities of nonmembers. Further, the Plaintiff-Respondent does not discuss why *Montana* is the applicable law in this matter, instead of Wis. Stat. §803.09 or any other Wisconsin case law.

The Court, in *Montana*, held that a tribe does not have the power to regulate the activity of nonmembers with *two exceptions*. The Court held that "[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter a consensual relationship with the tribe or its members, through commercial dealing, contracts, *leases*, or other arraignments." *Montana*, 450 U.S. at 566. The second exception is "[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economy security, or the health of welfare of the tribe." *Id*.

If the *Montana* exceptions were applied in this matter, the Tribe could regulate the activity of the Plaintiff-Respondent. The Tribe has codified its own laws that govern the activities of non-members within the boundaries of the Lac Courte Oreilles Reservation pursuant to the LCOTCL. Additionally, the Plaintiff-Respondent entered the Reservation, resided for decades on tribal trust land within the Reservation boundaries, and improved the

property in compliance with the tribal lease and building permits. These voluntary actions show that Plaintiff-Respondent consented Tribe's jurisdiction.

If the second exception was applied in this situation, the Tribe could still exercise its regulatory jurisdiction as the subject of this litigation is about improvements made on tribal trust land which is solely governed by LCOTCL and federal regulations. Improvements to tribal trust land, and the benefits or detriments of such improvements, affect the valuation of tribal property. Any valuation of tribal property is directly related to the economic security of the Tribe. Further, ignoring the necessity of having the Tribe included in this litigation discards the Tribe's sovereign authority to govern. The Tribe, as a sovereign, has laws that speak directly to the subject matter of this litigation.

CONCLUSION

The Tribe reasserts its requests for the Court to grant the Tribe's *Motion to Intervene* as the Tribe has reasonably complied with the factors in Wis. Stat. §803.09. Most importantly, the Tribe has a perpetual interest in any and all improvements and actions that occur on tribal trust land. Any legal action that its primary focus is regarding tribal trust property requires the Tribe to be a party in the legal action to ensure its property interests are considered.

Signed and Dated this 5th day of February, 2025.

/s/Dena Welden

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FORM AND LENGTH CERTIFICATION

I hereby 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 this reply brief is 6 pages and the wordcount 1,461 words.

Signed and Dated this 5th day of February 2025
Electronically signed by Dena Welden
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