Recent Cases of Note From Indian Country

Wisconsin Tribal Judges Association
Quarterly Meeting
Indian Springs Lodge
Carter, Wisconsin
July 6-7, 2006

Attorney Paul Stenzel
Stenzel Law Office, LLC
PO Box 11696
Shorewood, WI 53211
paul@paulstenzel.com
414-963-9923
FAX 866-803-3166
www.paulstenzel.com

Kenneth Van Aernam v. Michael Nenno, 06-CV-0053C, (W.D.N.Y, June 9, 2006). Plaintiff, a member of the Seneca Nation in New York, sued New York State Supreme Court Justice Michael Nenno to prevent him from exercising jurisdiction over a divorce action brought by Plaintiff's former wife, Jean Van Aernam. Plaintiff had already obtained a Seneca Peacemakers Court divorce judgment. Plaintiff argued that under the principles of federal Indian law, the state court was precluded from hearing the case. The federal Court granted judgment in favor of the Plaintiff, ordering the state court to cease exercising jurisdiction. The Court found the state and tribal court had concurrent jurisdiction. The Court then stated:

> [T]he ultimate question faced by this court in balancing the equities to determine the propriety of injunctive relief in this case is whether the tribal court or the state court should be allowed to proceed to judgment where both courts have recognized concurrent jurisdiction over the subject matter of the cases presented to them. Faced with similar situations, courts of equity have resorted to principles of comity to determine the appropriate forum for adjudication of the underlying dispute. Perhaps the best example is *Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians*, 265 Wis.2d 64, 665 N.W.2d 899 (2003), which dealt with the question of concurrent state and tribal court jurisdiction over a contract action involving a non-Indian who was once employed as the general manager of a casino owned by the Bad River Band of Lake Superior Tribe of Chippewa Indians.

The Court then applied the Teague factors and found in favor of the Plaintiff.

Walton v. Teseque Pueblo et al., 443 F.3d 1274 (10th Circuit 4/10/2006).
Plaintiff, a non-Indian, brought suit against the Teseque Pueblo and various tribal officials after the tribe revoked his flea market vendor's permit. Plaintiff had litigated in tribal court and lost on sovereign immunity grounds. He then sued in federal court. He brought claims under the Indian Civil Rights Act (ICRA), 25 U.S.C. §§ 1301-1303 as well as contract and tort claims. The district court granted the defendants' motion to dismiss with respect to the ICRA habeas claims but denied with respect to the non-habeas claims, applying the 10th Circuit's exception to tribal sovereign immunity under Dry Creek Lodge v. Arapahoe and Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980). On appeal, the 10th Circuit found that the district court had erred. Plaintiff did not meet the Dry Creek exceptions to tribal sovereign immunity as stated in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). The Dry Creek Lodge exception requires three elements: 1) dispute involves a non-Indian party; 2) a tribal forum is not available; and 3) dispute involves an issue falling outside internal tribal affairs. The Court found the tribal forum was available, even though unfavorable to plaintiff.

Cohen v. Winkleman et al., CIV-05-1388-HE (W.D.Okla. 04/17/2006).
Former terminated employee sued President of Comanche Nation College and the Comanche Nation College for breach of her employment contract with the College seeking in excess of $265,000 in damages. The Court applied the Dry Creek Lodge exception to Santa Clara. Dry Creek Lodge requires three elements: 1) dispute involves a non-Indian party; 2) a tribal forum is not available; and 3) dispute involves an issue falling outside internal tribal affairs. The Court considered the latter two elements.

With respect to whether a tribal forum was available, Plaintiff argued that the Tribe's CFR court was not an available forum because the Tribe had refused to provide a waiver of its immunity. The Court stated that it is not enough to allege there is no waiver. Relief must actually be sought.

With respect to whether the dispute falls outside internal tribal affairs, the Court ruled that the Dry Creek Lodge exception is to be construed narrowly and therefore, the Court concluded, plaintiff had not shown that her employment dispute fell outside the internal affairs of the Tribe.

Bobbi Lamere v. The Superior Court of the County of Riverside, 131 Cal.App.4th 1059, 31 Cal.Rptr. 3d 880 (Cal.App Dist.4 8/8/2005). Petitioners, defendants in the trial court, sought review of a California state trial court decision permitting a law suit over tribal enrollment disputes to go forward in state court. The California Court of Appeals recognized the Petitioners' immunity from suit and ruled in favor of Petitioners, ordering the lower court to vacate its earlier ruling asserting jurisdiction. Temecula Band of Luiseno Mission Indians of the Pechanga Indian Reservation does not have a tribal court. The lack of a tribal court forum arguably contributed to the disenrolled tribal members' decision to seek relief in state court.
(Cert denied by the U.S. Supreme Court on May 22, 2006. (See the Supreme Court docket for the case at: http://www.supremecourtus.gov/docket/05-1189.htm))

State of Washington v. Esquivel, 132 P.2d 751, 132 Wash.App. 316. (March 30, 2006).
Defendant was charged criminally with violating a protection order from the Tribal Court of the Confederated Tribes of the Colville Reservation. The defendant had conceded to the tribal court jurisdiction. However, Washington law requires state court restraining orders to contain certain warnings regarding prosecution. Defendant argued the lack of these warnings in the tribal court order invalidated his prosecution under state law. The Court ruled the Tribal Court was not bound by Washington law to include the warnings and that under the Violence Against Women Act the state court is required to give full faith and credit to tribal court protection orders.

Ralph Koopman and Kathy Koopman v. Forest County Potawatomi Member Benefit Plan et al., No. 06-C-163 (E.D. 6/26/2006).
Plaintiffs brought suit contending the Tribe had terminated Ralph Koopman's health insurance benefits in violation of the federal ERISA and COBRA statutes. The Court granted the Tribe's motion to dismiss because resolving the dispute in federal court is contrary to the tribal court exhaustion doctrine enunciated by the U.S. Supreme Court in National Farmers Union and Iowa Mutual.

State of Minnesota v. Jones, 700 N.W.2d 556 (Minn.App. 7/26/2005)
Minnesota Court of Appeals ruled that Minnesota's predatory-offender registration statute is civil/regulatory in nature and therefore does not apply to Mr. Jones, a tribal member residing on his reservation. Under Minnesota's law, a convicted sex offender must register his or her address with local law enforcement. The Court reasoned people in Minnesota are under no general obligation to register their address with law enforcement. The conduct at issue is generally permissible and therefore falls in the civil/regulatory category rather than the criminal/prohibitory arena. As such, Mr. Jones, a tribal member living on his reservation, is exempt from the law.
(Compare Jones with State v. Burgess, 2003 WI 71, 258 Wis. 2d 548, 654 N.W.2d 81, where the Wisconsin Supreme Court found Wisconsin Chapter 980 governing commitment proceedings for sexually violent persons are criminal/prohibitory in nature and therefore a tribal member living on the reservation was subject to state jurisdiction.)