

**SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS**

**COURT OF APPEALS**

In the Matter of     B. T.    

APP-13-01

Decided September 18, 2013

BEFORE: FINCH, HARPER, KRONK WARNER, JUMP, and MCKERCHIE Appellate Judges.

**OPINION AND ORDER**

Kronk Warner, Appellate Judge, who is joined by Appellate Judges Finch, Harper, Jump and McKerchie.

As explained more fully in the discussion below, this Court affirms the decision of the tribal court. Moreover, the Court provides guidance on the jurisdictional standard applicable in juvenile matters.

**Factual and Procedure Background**

In a petition filed on December 20, 2012, Appellant accused     B.T.     (a minor), Appellee, of violating Tribal Code Section 71.706 (Harassment). Specifically, it was alleged that Appellee made intimidating verbal threats to another student while on a school bus. Because Appellee is a minor, this is a juvenile matter. Appellee is a citizen of the Sault Ste. Marie Tribe of Chippewa Indians. Neither the petition nor future amended petitions alleged where the incident occurred. On January 30, 2013, Appellee filed a Motion to Dismiss for lack of jurisdiction, arguing that the tribal court did not have jurisdiction given the location of the incident was not alleged in the amended complaint. The tribal court held a hearing on the Appellee's Motion to Dismiss on February 6, 2013. The tribal court entered an Order granting the Appellee's Motion to Dismiss on February 7, 2013. On February 12, 2013, Appellant filed a Notice of Appeal with this Court. Specifically, Appellant appeals the lower court's decision under Tribal Code Section 82.114(2) (e), which allows for appeals to this Court when there has been "an error of law substantially prejudicial to the rights of the appellant." "The Appellant contends that as a matter of law, the Tribe has jurisdiction of its members by virtue of their membership, unless otherwise limited by federal law, case law, or Tribal Code. No such limitations are present in the case at bar and the Tribe has jurisdiction of this case." Notice of Appeal, APP-13-01 (Feb. 12, 2013).

Both Appellant and Appellee submitted written briefs in this matter. This Court heard oral argument in the case on August 12, 2013.

## Standard of Review

Under Tribal Code Section 82.109, this Court possesses exclusive jurisdiction to review the decisions of the tribal court below. The appeal is properly before this Court because it is an appeal from a final decision of the tribal court. Tribal Code Section 82.111. Because this appeal involves a conclusion of law, this Court's standard of review is *de novo*. Tribal Code Section 82.124(5).

## Discussion

Two issues are presently before this Court. First, the Court must decide whether juvenile offenses are either civil or criminal in nature, and, what jurisdictional scheme applies. Once the nature of juvenile offenses and jurisdictional scheme are determined, the Court will next address the legitimacy of the tribal court's decision. Each of these issues will be discussed below.

### **Issue One: Nature of Juvenile Offenses and Applicable Jurisdictional Scheme**

Before the legitimacy of the lower court's decision can be determined, this Court must first determine whether juvenile offenses are civil or criminal in nature. The determination of the nature of juvenile offenses impacts whether the Tribe will be extending its criminal jurisdiction or civil jurisdiction in this matter. As explained below, jurisdictional requirements differ in Indian country depending on whether a tribe is asserting its criminal or civil jurisdiction. Moreover, at oral arguments, counsel for the Sault Ste. Marie Tribe of Chippewa Indians requested guidance on this question given the Tribal Code does not explicitly address this issue.

### *Nature of Juvenile Offenses*

Juvenile offenses are civil offenses. In reaching this determination, the Court first looks to Tribal Code Section 36.208 (the Juvenile Code), which provides that "[n]o adjudication upon the status of any child in the jurisdiction of the Juvenile Division shall be deemed criminal or be deemed a conviction of a crime unless the Juvenile Division transfers jurisdiction to the Tribal Court according to § 36.207 of this Chapter." The Tribal Code therefore contemplates that the majority of juvenile offenses fall under the Tribe's civil power.

This conclusion is consistent with American court decisions and scholarship suggesting that the American juvenile system is based on the United States' civil authority.<sup>1</sup> In *Application of Gault*, 387 U.S. 1, 87 S.Ct. 1428 (1967), the United States Supreme Court considered the nature of juvenile offenses. The Court explained that juvenile offenses are generally considered to be civil in nature. *Id.* at 1438. This is true in part because juvenile offenders are not treated similarly to adult criminal offenders. For example, juvenile offenders are generally not entitled to bail, indictment by grand jury, public trial or trial by jury. *Id.* at 1436-37. Accordingly,

---

<sup>1</sup> Because of the similarities between the Tribe's juvenile system and the American juvenile system, it is appropriate to look to the American system for guidance on the nature of juvenile offenses.

although juvenile offenders may receive some of the protections afforded in the criminal system, juvenile offenses are treated as civil offenses. In addition to the Supreme Court, American scholars also agree that the American juvenile system is based on the United States' civil jurisdiction. *See, e.g., Sarah Ramsey, et al., Children and the Law in a Nutshell* 486 (2d ed. 2003).

Based on the foregoing, the Court determines that juvenile offenses fall under the Tribe's civil authority.

### *Applicable Jurisdictional Scheme*

Having now determined that juvenile offenses are civil in nature, the Court considers the jurisdictional scheme applicable to civil matters. In Indian country, both the political status of the individuals involved and the status of the land where the incident occurred are crucial to the determination of whether a tribe will have jurisdiction. Because the federal government has plenary authority in Indian country, *United States v. Kagama*, 118 U.S. 375 (1886), jurisdictional analysis begins with the assumption of tribal jurisdiction but then looks to see whether tribes have been divested of jurisdiction by the federal government. Accordingly, this Court looks to the United States Supreme Court for guidance on tribal civil jurisdictional authority.

Tribes possess exclusive civil authority in matters arising within Indian country that are brought by anyone against a tribal member. *Williams v. Lee*, 358 U.S. 217 (1959). A tribe also has exclusive civil jurisdiction over issues arising between tribal members within the tribe's reservation. *Jones v. Billy*, 798 S0.2d 1238 (Miss. 2001). However, in *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), the United States Supreme Court limited tribal adjudicatory jurisdiction to a tribe's legislative jurisdiction. Accordingly, a tribe has civil jurisdiction where it also has the authority to legislate.

Relatedly, tribal members are generally subject to state law when outside of Indian country, unless federal law says otherwise. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973); *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995). However, this does not necessarily mean that the application of tribal civil jurisdiction and state civil jurisdiction are mutually exclusive. There has been some suggestion that tribes may assert civil jurisdiction over tribal members committing civil offenses off of the reservation when the actions threaten the core of tribal sovereignty. For example, in *John v. Baker*, the Alaska Supreme Court recognized tribal court authority to address an offense going to the "core of sovereignty – a tribe's inherent power to determine membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members." 982 P.2d 738,758 (Alaska 1999).<sup>2</sup>

---

<sup>2</sup> Notably, this is a state court decision and not a federal decision. Accordingly the decision is merely persuasive in this matter. For a fuller discussion a tribe's civil jurisdiction outside of its territory, see *Cohen's Handbook on Federal Indian Law* § 7.02[1][c] (Nell Jessup Newton, et al. LexisNexis 2012).

Accordingly, the civil jurisdictional analysis changes based on whether the issue arose within the tribe's territory or outside of the tribe's territory. Assuming the tribe has regulatory jurisdiction, it would be able to assert jurisdiction over a civil matter involving a citizen within Indian country under *Williams v. Lee*. However, if the civil matter does not arise within Indian country, the tribe would first have to determine: 1) whether it has regulatory jurisdiction over the individual/matter at issue, *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); and, 2) whether the actions of the individual threaten the "core of sovereignty," before it could assert civil jurisdiction. Furthermore, there may be political considerations which obviate against a tribe asserting civil jurisdiction outside of its territory. Accordingly, a tribe's determination of whether or not it has civil jurisdiction in a particular matter turns in large part on both the political status of the individuals involved (i.e. whether they are citizens of the tribal nation asserting jurisdiction) and also where the incident at issue occurred.

**Issue Two: Legitimacy of the Lower Court's Decision**

Appellant challenges the legitimacy of the tribal court's decision granting Appellee's Motion to Dismiss because "as a matter of law, the Tribe has jurisdiction of its members by virtue of their membership, unless otherwise limited by federal law, case law or Tribal Code." Appellant goes on to state that no such limitations on tribal jurisdiction are present in this case and therefore the Motion to Dismiss should have been rejected.

As detailed above, tribal civil jurisdiction is based on more than an individual's political affiliation with a tribe. The status of the land where the incident occurs plays an important role in determining whether the tribe has civil jurisdiction. In matters occurring off of the reservation, a tribal court must determine whether the tribe would have authority to legislate over the matter and whether the matter at issue threatens the core sovereignty of the tribe before asserting jurisdiction. Accordingly, tribal civil jurisdiction is not determined solely on the basis of tribal membership.

Given the tribal court below had no information as to where the incident at issue occurred or whether the incident implicated issues going to the core of tribal sovereignty, it was impossible for the lower court to assert subject matter jurisdiction over the incident at issue here. Accordingly, the tribal court's decision below granting the Motion to Dismiss is affirmed.

**ORDER**

For the reasons explained above, the decision of the tribal court is affirmed.

It is SO ORDERED.