
**FORT PECK TRIBAL COURT OF APPEALS
FORT PECK INDIAN RESERVATION
ASSINIBOINE AND SIOUX TRIBES
POPLAR, MONTANA**

RESA A. TODD, as Personal Representative
in Intestacy of the Estate of Kenneth E. Todd,
Deceased; and RESA A. TODD, KARA
TODD, a minor, KENNETH TODD JR., a
minor
KENDRA TODD, a minor, survivors of
Kenneth E. Todd, Deceased

Plaintiffs and Appellees,

Appeal No. 215

vs.

GENERAL MOTORS CORPORATION,
a Delaware Corporation,

Defendant and Appellant.

OPINION

This appeal arises from an initial Order Accepting Jurisdiction issued by the Honorable Leland Spotted Bird on March 23, 1994 and a subsequent Order denying defendant/appellant's Motion to Dismiss issued by the Honorable A. T. Stafne on June 23, 1994. Richard A. Bowman, Esq., Robert K. Miller, Esq., George W. Soule, Esq. (argued) and Jacqueline M. Moen, Esq. (appeared but did not argue) of BOWMAN AND BROOKE, Minneapolis, Minnesota and Laura Christoffersen, Esq. (argued) of CHRISTOFFERSEN AND KNIERIM appearing on behalf of Defendant and Appellant General Motors Corporation (hereafter "GMC") and Robert W. Gabriel, Esq. of Great Falls, Montana, Donald Ostrem, Esq. of GREYBILL, OSTREM, CROTTY of Great Falls, Montana and Philip E. Roy, Esq. of Great Falls, Montana, all of whom appeared and argued on behalf of Plaintiffs and Appellees Resa A. Todd, et.al.

Justice Sullivan writes the following opinion for the court.

FACTUAL OVERVIEW

On October 29, 1990, the decedent, Kenneth E. Todd (hereafter "Kenneth"), was traveling in his 1986 Chevrolet Pickup Truck eastbound on Highway 2 west of Wolf Point, Montana, when he, for reasons unknown, crossed over the centerline of this two lane highway and collided with a Freightliner semi-tractor trailer. Either immediately on impact, or shortly thereafter, the pickup truck caught fire. Kenneth was pronounced dead at the scene of the accident.

STATEMENT OF THE CASE

On October 14, 1993, Kenneth's widow, Resa A. Todd, on behalf of herself and their three minor children (hereafter referred to collectively as "Plaintiffs"), filed a Complaint¹ in the United States District Court for the District of Montana, Great Falls Division, seeking relief for the alleged wrongful death of her husband. On January 14, 1994, the Federal District Court filed a scheduling order and each party timely complied by serving pre-trial statements and disclosed pre-discovery statements, which included factual and expert witnesses.

On January 21, 1994, Plaintiffs filed a Petition with the Fort Peck Tribal Court, Assiniboine and Sioux Tribes, Wolf Point, Montana, to have the Tribal Court determine whether the pre-requisites for their assumption of jurisdiction were present and whether the Court would assume jurisdiction over the matter of their claims against GMC as set forth in their October 14, 1993 Federal District Court complaint. A Show Cause Hearing was set for February 14, 1994. The Petition and Show Cause Order was served timely on Curtis G. Thompson, Esq., one of the attorneys representing GMC in the Federal District Court action.

On February 14, 1994, the parties, through their respective counsels, appeared in the Fort Peck Tribal Court, Wolf Point, Montana. Mr. Thompson advised the Court that he was appearing specially on behalf of GMC to challenge the jurisdiction of the Tribal Court and further, to require the Plaintiffs to file the action in the form of a Complaint rather than a Petition and Order to Show Cause. As a result of this hearing, and ostensibly in compliance with the Court's ensuing order, Plaintiffs filed in the Fort Peck Tribal Court, essentially the same Complaint, based upon the same fact pattern as their Federal District Court action. In its' February 16, 1994 order, the Fort Peck Tribal Court ordered GMC to file an answer to Plaintiffs' complaint by March 21, 1994 and further, to appear at 1:30 p.m. on March 21, 1994 and show cause, if any there be, why the Tribal Court should not assume jurisdiction over the claims for relief prayed for in Plaintiffs' complaint. GMC was served and appeared in the action in a timely fashion. On March 21, 1994 the Show Cause Hearing was held and on March 23, 1994 the Tribal Court, per the Honorable Leland Spotted Bird, issued its' Order Assuming Jurisdiction of the matter.

On April 8, 1994, GMC filed and served a Motion to Dismiss Plaintiffs' complaint, citing four separate grounds upon which dismissal was required: 1) That plaintiffs' complaint is barred by the three-year statute of limitations per **Title IV, CCOJ Section 601**; 2) That plaintiffs' have not verified their Native American status, and, therefore, the Court lacks subject matter jurisdiction over plaintiffs' cause of action; 3) That plaintiffs' complaint fails to state a claim upon which relief may be granted in that "wrongful death and survival claims" are not authorized by Tribal Law; and 4) That the systematic

exclusion of non-Indians from the jury violates defendant's right to a jury composed of a fair cross-section of the community. These issues were briefed and argued by both sides on June 9, 1994, before the Honorable A. T. Stafne, Chief Judge of the Fort Peck Tribal Court. On June 23, 1994, the Tribal Court, per Chief Judge Stafne, issued its Order denying GMC's motion to dismiss, stating specifically that the action was not barred by **Title IV, CCOJ Section 601** and applying Montana Law **Section 27-2-407 M.C.A.** GMC appeals citing error by the Tribal Court in accepting jurisdiction and further, error by the Tribal Court in denying its' Motion to Dismiss.

ISSUES PRESENTED BY APPELLANT

Appellant set forth three questions for this Court to address:

1. Whether Plaintiffs' complaint is expressly and unequivocally barred by **Title IV CCOJ Section 601**?
2. Whether **Mont. Code Ann. Section 27-2-407** (commonly referred to as the "renewal" or "saving" statute) is inapplicable?
3. Whether the Tribal Court incorrectly compared Plaintiffs' filing of their complaint in Federal District Court and their subsequent filing of the identical complaint in Tribal Court as analogous to "removal" as provided by **28 U.S.C. Section 1441**?

For the reasons set forth below, we hold that **Title IV CCOJ Section 601** does not bar the filing of Plaintiffs' complaint in Tribal Court and therefore we find it unnecessary to reach Appellant's remaining issues.

STANDARD OF REVIEW AND APPLICABLE LAW

This appeal presents questions of law only. **Title II CCOJ Section 201** provides for **de novo** review by this Court on questions of law.

Today, in reviewing the Tribal Court's order, we must travel the well beaten path of civil jurisdiction in Indian Country. The Federal, State and Tribal Courts throughout our land have journeyed down this path leaving us with decisions touching on a myriad of issues, both adjudicatory and regulatory. Most often the theme of civil jurisdiction is played by a defendant seeking to get out of Federal or State Court, seeking relief in a Tribal Court. The facts in the case before us present a variation on that theme: a group of plaintiffs who filed their complaint in Federal District Court now seek their relief in Tribal Court. An additional difficulty arises when this action, timely filed in District Court, comes to the Tribal Court three months and eighteen days after the three year period provided for by the limitations statute found in **Title IV CCOJ, Section 601**. The defendant/appellant states that the plaintiffs chose and made their judicial beds in Federal District Court and should not now be allowed to "forum shop" at this late date, particularly in view of the fact that their case comes to Tribal Court beyond the three years provided as a limitations period by the Tribal Code. On the other hand, the plaintiffs state that the Tribal Court is the most proper forum and concede that their case should have been filed there initially. The plaintiffs further state that the defendant has not been prejudiced by their initial filing in District

Court inasmuch as the spirit of the statute of limitations, that is to give timely notice of their claim, was satisfied in that the initial filing in District Court was within the three year limitation period.

While our interpretation of Section 601 is dispositive of the issue, our decision will be best understood after a thorough examination of the history of civil jurisdiction in Indian Country.

1. Brief Historical Overview of Civil Jurisdiction in Indian Country²

During the Colonial period, Indian Tribes were recognized as sovereign nations invested with full authority over their internal and external affairs. After the United States became a sovereign nation, John Marshall, the first Chief Justice of the Supreme Court, in a series of decisions sometimes referred to as the "Cherokee cases" or the "Marshall decisions", confirmed the sovereign nature of the tribal governments, subject only to the powers of the US Congress.³

During the early period of U.S. history, various Indian Tribes entered into treaties with the U.S. Government. Through these treaties, Indian Tribes retained all of their rights which had not been expressly granted to the United States. When conflicts arose, these treaties were the supreme law of the land and took precedence over even the police powers of the various states. All such treaties were expressly ratified by the U.S. Congress in 1871⁴. In 1899 the U.S. Supreme Court ruled that the treaties with Indian Tribes were to be interpreted and construed as the Indians would have understood them, with emphasis given to the Tribes' history, culture and traditions⁵ and in 1908 the same Court held that any ambiguities found in the treaties would be construed to the benefit of the Indians.

Thus, before the United States became a sovereign nation, and during the first one-hundred and twenty years of its history, Indian Tribes have been recognized as sovereign nations subject only to the plenary power of the U.S. Congress.⁶

2. Present Status of Civil Jurisdiction in Indian Country

Inasmuch as Indian Tribes are sovereign nations, they enjoy various immunities to state and federal jurisdiction. Unless expressly waived, Indian Tribes retain sovereign immunity. **Oklahoma Tax Commission v. Citizen Band of Potawatomi Indians, 498 U.S. 505 (1991); Pan American Company v. Sycuan Band of Mission Indians, 884 F. 2d 416 (9th Cir. 1989).**

In a recent case regarding jurisdiction in Indian Country, the U.S. Supreme Court ruled that Tribal Court remedies must be exhausted before the federal courts could review a Tribal Court Order. **National Farmers Union Insurance Company v. Crow Tribe of Indians, 471 U.S. 845 (1985).** In this landmark case, the Supreme Court stated:

"...the existence and extent of the tribal court's jurisdiction will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant

statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions." **Id. at 855-856.**

Regarding this "careful examination" of Tribal sovereignty, the Court went on to state:

"We believe that examination should be conducted in the first instance in the Tribal Court itself. Our cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge. Moreover, the orderly administration of justice in the federal court will be served by allowing a full record to be developed in the Tribal Court before either the merits or any question concerning appropriate relief is addressed. The risks of the kind of "procedural nightmare" that has allegedly developed in this case will be minimized if the federal court stays its hand until after the Tribal Court has had a full opportunity to determine its own jurisdiction and to rectify any errors it may have made. Exhaustion of tribal court remedies, moreover, will encourage tribal courts to explain to the parties the precise basis for accepting jurisdiction, and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review: (Footnotes omitted.) **Id. at 856-857.**

DISCUSSION

In resolving the question of the correctness of the court's order, the Tribal Council's intent and policy in prescribing a period of limitation for the commencement of actions, must be borne in mind. It has been said, "The statute of limitations is a statute of repose, enacted as a matter of public policy to fix a limit within which an action must be brought, or the obligation is presumed to have been paid, and is intended to run against those who are neglectful of their rights, and who fail to use reasonable and proper diligence in the enforcement thereof. These statutes are declared to be among the most beneficial to be found...(in that)...they rest upon sound policy and tend to the peace and welfare of society;' . . . The underlying purpose of statutes of limitation is to prevent the unexpected enforcement of stale claims concerning which persons interested have been thrown off their guard by want of prosecution." (**1 Wood, Limitations, pp. 8-9.**)

Thus, the Tribal Council's policy embodied in the statute of limitations is 'to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and further, the right to be free of stale claims in time should prevail over the right to prosecute them **Order**

of Railroad Telegraphers v. Railway Express Agency (1944) 321 U.S. 342, 348; 88 L.Ed. 788, 792; 64 S.Ct. 582.)

It is clear to us that the intent of our Tribal Council has been fully and completely met by the Tribal Court's order accepting jurisdiction. The claim was timely filed in Federal District Court, thus the same claim with the same facts and between the same parties, having been subsequently filed in Tribal Court, could not have "surprised" the defendant with a "stale claim" wherein "evidence has been lost, memories faded and witnesses disappeared". We have failed to find, and defendant has failed to cite, any prejudice whatsoever that will result from the Tribal Court assuming jurisdiction of this matter.

The only remaining question is whether the plain language in Section 601 "expressly and unequivocally bars" this action. **Title IV CCOJ Section 601** states:

"Limitation of actions. The Court shall have no jurisdiction over any action brought more than three (3) years after the cause of action arose, except that no statute of limitation shall bar an action commenced by the Tribes".

Defendant assumes that the word "brought" necessarily means "in the Tribal Court." This is a fair assumption and we can understand defendant's construction of the statute based upon that assumption. It should be noted that in order to make that assumption, however, those preferring such a construction must **imply** the words "in the Tribal Court" immediately following the word "brought".

Defendant must concede that there is yet another plausible construction of this statute. If we were to assume that "brought" means "in any court of competent jurisdiction", then the Tribal Court's order accepting jurisdiction must be affirmed. This construction of the statute requires that the words "in any court of competent jurisdiction" be implied immediately after the word "brought".

We are of the opinion that either construction cited above would be fair and just, **provided that** the Tribal Council's intent and purpose has been carried out **and** the decision comports with the vast body of law cited above dealing with civil jurisdiction in Indian Country. It is our conviction that only the construction that we have adopted, that is, "brought" in any court of competent jurisdiction, accomplishes fairness while complying with the doctrine of "deference to Tribal Courts" mandated by the Federal Courts.

We should also point out that there are other compelling factors in reaching this decision. The decedent was an enrolled member of the Fort Peck Tribes, all of the plaintiffs are enrolled members of the Fort Peck Tribes, and the accident occurred within the exterior boundaries of the Fort Peck Indian Reservation.

When taken all together, the facts and the law, compel us to affirm the Tribal Court's order accepting jurisdiction. IT IS SO ORDERED.

Entered this _____ day of October, 1995.

BY THE COURT OF APPEALS

Gary M. Beaudry, Chief Justice

Gerald M. Schuster, Associate Justice

Gary P. Sullivan, Associate Justice

¹The complaint alleges four separate counts for recovery, namely: 1) Strict Liability of General Motors; 2) General Motors' Fraudulent Concealment of Defect and Wrongful Refusal to Recall; 3) Negligent Design by General Motors; and 4) Breach of Express/Implied Warranties by General Motors.-

²We have drawn heavily upon the excellent outline presented to the Indian Law Section of the Montana State Bar on August 25, 1995 by John B. Carter, Esq., Tribal Attorney for the Confederated Salish and Kootenai Tribes of the Flathead Nation. Our thanks and gratitude are extended to Mr. Carter for his fine work.-

³It should also be noted that the Commerce Clause of the U.S. Constitution confirms the sovereign status of the Indian Tribes: "To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.-

⁴25 U.S.C. Sec. 71.-

⁵Jones v. Meehan, 175 U.S. 1 (1899)-

⁶Inasmuch as the treaties granted express rights to the U.S. Congress, some view the status of Indian Tribes as "quasi-sovereign" nations.
