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

Lucille Peterson Holen
Plaintiff/Appellee

vs.

Appeal No. 289

Rick Stahl, dba Stahl Auction, and
Karen Holen Lyda,
Defendants/Appellants

OPINION

This appeal arises from a default **Judgment and Order** in favor of **Lucille Peterson Holen** (hereafter "**Lucille**") issued by **The Honorable Leland Spotted Bird**, on **October 6, 1997**. **Melissa Buckles.**, appearing on behalf on plaintiff/appellee. **Ralph J. Patch**, appearing on behalf of defendants/appellants.

BRIEF FACTUAL OVERVIEW AND PROCEDURAL HISTORY

On March 17, 1988, **Lloyd Holen** (hereafter "**Lloyd**") obtained a loan in the amount of \$146,000 from the **Interstate Production Credit Association** and its successor, **Northwest Farm Credit Services** (hereafter "**Creditor**"). The loan was secured by various items of personal property and certain parcels of real property. This loan was modified on several occasions. According to appellants, none of these modifications freed the collateral or allowed for the transfer of property secured thereunder.

On January 6, 1996, Lloyd, who was not a member of the Fort Peck Tribes, appeared before the Fort Peck Tribal Executive Board's "Land Committee" for the purpose of securing a 'hay baling' permit in the name of his daughter-in-law, **Lucille**. **Lucille** is a member of the Fort Peck Tribes and is married to decedent's son, **Richard Holen**, who, like his father, is a non-Indian. In making his presentation before the Land Committee, Lloyd made certain representations as to the ownership of various items of personal property. These items were said to belong to **Lucille**, ostensibly to enhance her chances of obtaining the permit. The permit was granted on the same day. Although the record is not clear, we

assume for the purposes of this opinion that some, or all, of the personal property collateralized by **Creditor's** loan was represented to the Land Committee as belonging to **Lucille**, and further, that some or all of the personal property that **Lucille** is claiming herein, was previously collateralized by **Creditor's** loan¹.

On January 9, 1997, **Lloyd** died, leaving his entire estate, by will, to his daughter, **Karen Holen Lyda** ("**Karen**"). On January 15, 1997, letters testamentary were issued to **Karen** by the Fifteenth Judicial District for the State of Montana.

On June 16, 1997, **Lucille**² filed a complaint in the Fort Peck Tribal Court, alleging that certain items of personal property belonging to **Lucille** and her husband, Richard, had been converted by the defendants and were being held for auction. The auction was to be held on June 20, 1997, by defendant/appellant **Rick Stahl**, doing business as **Rick Stahl Auction**, (herein collectively referred to as "**Stahl**") on real property owned by **Lloyd's** estate. **Lucille** prayed for a temporary restraining order against the defendants, citing irreparable injury if the auction were to go forward. The Tribal Court issued a TRO on June 16, 1997, restraining the defendants from selling the subject personal property items at the auction. On June 18, 1997, the Fifteenth Judicial District Court of Montana issued a Temporary Restraining Order against Richard, Robert, Doris and James Holen, restraining each of them from interfering with **Karen** in her gathering of assets for the auction to be held on June 20, 1997. The Montana District Court went on to find that it had original and exclusive jurisdiction over the assets of the estate and that any claims regarding those assets must be heard in that Court. Defendants filed their response to plaintiff's Tribal Court complaint and also filed a Motion to Dissolve the TRO and a Motion to Dismiss the entire complaint for failure to state a cause of action.

A hearing on **Lucille's** TRO was initially scheduled for June 26, 1997³ but was ultimately held on July 7, 1997, at which time the Tribal Court dissolved the TRO. Further, the Tribal Court scheduled a hearing pursuant to **Title IV CCOJ, Section 103**⁴ for August 29, 1997. This hearing was continued, apparently at the request of the appellants to October 6, 1997. On October 6, 1997, appellants prepared a written response to the **Section 103** hearing, reinforcing their objections which had been stated in earlier filings on June 18, 1997 and June 26, 1997. However, defendants failed to appear at the October 6, 1997 **Section 103** hearing. The record does not tell us whether the Tribal Court was in receipt of this latest written response, however, upon motion of plaintiff's attorney, the Tribal Court did issue its default Judgment and Order in favor of **Lucille** on the same date. It is from this order that appellants seek our review.

ISSUES PRESENTED

On October 10, 1997, defendants/appellants filed a Petition for Review citing numerous jurisdictional issues:

- 1) Whether the Tribal Court lacked subject matter jurisdiction over the property in question;
- 2) Whether the Tribal Court lacked in personam jurisdiction over the 'owner' of the subject property; and
- 3) Whether the Tribal Court lacked authority to order the Tribal Police to enforce one of 'its orders

with respect to fee property or a non-Indian person or property held by the estate of a non-Indian person or property held by the estate of a non-Indian person on fee land'.

STANDARD OF REVIEW

Title I CCOJ Section 201 provides: "The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review *de novo* all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence."

Whether the Tribal Court has subject matter jurisdiction, in personam jurisdiction, or lacked authority to enforce one of its orders, are all matters of law and thus, we review each of them *de novo*⁵.

DISCUSSION

Did the Tribal Court have subject matter jurisdiction over the items of personal property claimed by the plaintiff/appellee?

Subject matter jurisdiction relates to the inherent authority of the court involved to deal with the matter and or issues before it. Thus when a court issues a judgment or order without having subject matter jurisdiction, it is void. An attack on a void judgment can be made at any time inasmuch as no valid rights accrue under it. Our appellants adamantly contend that the Tribal Court did not have subject matter jurisdiction of the subject property herein. If this contention is sustained, the entire judgment and order is void and must be set aside as a nullity.

While it is not entirely clear, we assume that appellants challenge the Tribal Court's subject matter jurisdiction on two counts: 1) the subject property was owned by **Lloyd's** estate and was being probated by a Montana District Court, and 2) the subject property was situated on alienated fee simple land that lies within the exterior boundaries of the Ft Peck Indian Reservation.

Appellant's first contention *assumes* that the property is owned by **Lloyd's** estate. Our Tribal Court does not have the luxury of such an assumption. It must deal with the allegations in the plaintiff's complaint, which alleged that the subject property belonged to plaintiff and her husband. It would be a dereliction of it's duty for our Tribal Court to dismiss plaintiff's complaint simply because someone else claimed ownership. We understand appellant's contention that *if* it was conclusively shown that the Fifteenth Judicial District of Montana had already taken jurisdiction of the subject property, then, in that event, the Tribal Court *could have* deferred to the State court. However, that option fails because the appellants did not present an inventory and/or appraisal of the property being probated in **Lloyd's** estate. Without such proof that the ownership of the subject property was already being adjudicated in a State court, our Tribal Court must go forward with its responsibilities to adjudicate plaintiff's claims.

The fact that the subject *personal* property was located on alienated fee simple land owned by **Lloyd's** estate does not, in and of itself, oust jurisdiction from the Tribal Court. If the 'subject property' was 'real property' and that real property was alienated fee simple land within the boundaries of the Ft

Peck Indian Reservation, then we might agree that a rebuttable presumption would be raised against the Tribal Court's subject matter jurisdiction (See **Strate v. A-1 Contractors, (1997) 520 U.S. 438; 117 S. Ct. 1404; 117 S. Ct. 1404, 1409**) and might very well require an analysis as to whether one of the exceptions in **Montana v. US, (1981) 450 U.S. 544; 101 S. Ct. 1245**, would apply. However, regarding personal property, our Tribal Court is competent to determine ownership claimed by members of the Ft Peck Tribes and, if such personal property is located in a foreign jurisdiction, then the judgment creditor named in the Tribal Court's order would necessarily need to present the order in a Court within the foreign jurisdiction, seeking either full faith and credit or comity. Under the facts recited above, we hold that our Tribal Court had subject matter jurisdiction.

Did our Tribal Court have personal jurisdiction over the owner of the subject property? The analysis regarding this question is similar to the analysis on subject matter jurisdiction above. The central issue raised by **Lucille's** lawsuit was the ownership of the subject personal property. As mentioned above, our Tribal Court cannot make that determination before hearing and viewing the evidence. Moreover, we found nothing conclusive in the file that would indicate that each and every one of the items claimed by **Lucille** were, in fact, already being litigated in the probate action in the Fifteenth Judicial District. Thus, given the allegations in **Lucille's** complaint, it would have been improper for the Tribal Court to presume ownership of the subject property. To suggest that **Lloyd's** estate owned the property, presupposes the answer to the central question in **Lucille's** lawsuit and would place the Tribal Court in an improper position of deciding the case without benefit of the witnesses and the evidence.

Perhaps the better question placed before this Court would be: **Did our Tribal Court have personal jurisdiction over defendants Karen and Stahl?** (This question *does not* assume ownership of the subject property.) Initially we note that our code, **Title II, Sections 107 and 108** state:

Sec. 107. Civil jurisdiction of the Court.

The Court shall have jurisdiction over any action where one party to the action shall be an Indian, or a corporation or entity owned in whole or in substantial part by an Indian or the Tribes or a corporation or entity chartered by the Tribes; and

- (a) the cause of action arises under the Constitution or laws of the Tribes; or
- (b) an Indian party to the action resides on the Fort Peck Reservation.

Sec. 108. Jurisdiction over persons outside Reservation.

In a case where it otherwise has jurisdiction, the Court may exercise personal jurisdiction over any person who does not reside on the Fort Peck Indian Reservation if such person,

personally or through an agent:
(a) transacts any business on the Reservation,
or contracts or agrees anywhere to supply
goods or services to persons or corporations
on the Reservation; or
(b) commits an act on the Reservation that
causes injury.

Thus, **§§ 107 and 108** and the allegations in **Lucille's** complaint, on their face, gave the Tribal Court a presumption of personal jurisdiction over **Karen** and **Stahl**. It was then up to those defendants to make a general appearance in the Tribal Court and contest the allegations in the complaint, or, alternatively, to make a special appearance in the Tribal Court objecting to the Court's personal jurisdiction. We note that there were objections to the Court's jurisdiction over them, however, it appears to us from the record, that the defendants also made a general appearance. In any case, the opportunity to argue against both subject matter and personal jurisdiction would have been at the **Section 103**, even if it were belated at that time. However, for reasons not disclosed in the record, our defendants chose not to attend that hearing. Their failure to appear and object to the Tribal Court's jurisdiction led to the Court's default Order and Judgment. Unlike subject matter jurisdiction, objections to personal jurisdiction can be waived and defendants' failure to appear provided just such a waiver. In spite of the written objections by the defendants, when they did not appear to object, our Tribal Court had the right to interpret such failure as an acquiescence to plaintiff's allegations and a repudiation of their previously filed written objections. Thus, we find that, due to defendants failure to appear at the **§103** hearing, they waived any defect that might have otherwise existed regarding the Court's personal jurisdiction over them.

Finally, we review defendants' contention that our Tribal Court exceeded its' jurisdiction when it provided in its' order that our Tribal police should enforce one of its orders with respect to alienated non-Indian fee property, or a non-Indian person or property held by the estate of a non-Indian person or property held by the estate of a non-Indian person on fee land'. Paragraph two of the Court's order states:

"2) Plaintiff and her husband shall have the right to the use of a full line of equipment of Lloyd Holen's Estate, without interference and the immediate return thereof by the defendants, a partial list as follows:
(list of personal property, not including the subject property follows)..."

We agree with the defendants that paragraph two, quoted above, goes beyond the Court's jurisdiction. Regarding the impact of our Tribal Court acting beyond its jurisdiction, we also agree with the principles set forth in **People v. Ruiz (1990) 217 Cal. App. 3d 574, 265 Cal. Rptr. 886:**

"The consequences of an act beyond the court's jurisdiction in the fundamental sense differ from the consequences of an act in

excess of jurisdiction. An act beyond a court's jurisdiction in the fundamental sense is void; it may be set aside at any time and no valid rights can accrue thereunder. In contrast, an act in excess of jurisdiction is valid until set aside, and parties may be precluded from setting it aside by such things as waiver, estoppel, or the passage of time. [Citations.]" (@p.584)

As previously noted, defendants waived their right to object to the Tribal Court's exercise of personal jurisdiction by their failure to appear at the **§103** hearing. However, we do not think that such waiver prevents defendants from objecting to that portion of the Tribal Court's order which clearly goes beyond its authority. Whether a party who has sought or agreed to an action in excess of a court's jurisdiction is estopped to complain depends on the importance of the irregularity and considerations of public policy. (See People v. Soriano (1992) 4 Cal. App. 4th 781, 785; 6 Cal. Rptr. 2d 138; People v. Ellis (1987) 195 Cal. App. 3d 334, 343-345; 240 Cal. Rptr. 708.)

We find that paragraph two of our Tribal Court's order violates basic tenets of jurisdiction by attempting to intercede into the obvious purview of another Court. The Fifteenth Judicial District of Montana had clearly taken jurisdiction of **Lloyd's** estate and that fact was known to our Court. Our Tribal Court lacked subject matter jurisdiction regarding those assets that were conceded to belong to **Lloyd's** estate and in making a ruling regarding those assets, acted, not in excess of its jurisdiction, but rather, beyond its jurisdiction. As noted in Ruiz, supra, such actions, *beyond the Court's jurisdiction*, are void.

As to paragraph three of the Court's order ("Plaintiffs shall have the assistance of the Tribal Police to see that this Judgment and Order is enforced.") we see no legal problem with our Tribal Court stating that which is already a matter of law, provided that the offensive portion of the Court's order (namely paragraph two) is stricken.

Accordingly, we reverse paragraph two of the Court's order and affirm in all respects, paragraphs one and three. This matter is remanded to our Tribal Court with instructions to re-issue its order, consistent with our opinion as stated herein.

Dated: _____

BY THE COURT OF APPEALS:

Gary P. Sullivan
Chief Justice

CONCUR:

Gary M. Beaudry
Associate Justice

Carroll J. DeCoteau
Associate Justice

¹ Nothing in the lower Court file substantiates the fact that **Lloyd** ever appeared before the Ft Peck Land Committee. This information comes to us in the form of affidavits which were appended to the appellant's brief filed herein. Although there were copies of subpoenas in the lower Court file for each of the affiants, we have no evidence that they ever appeared before the lower Court. Accordingly, we reject the affidavits as furnishing indicia of ownership.

² **Lucille's** husband, Richard, and two of his brothers, filed a complaint in the FiForteenth Judicial District on the same day, essentially making the same allegations as contained in Lucille's tribal court complaint.-

³ The file contains the date of June 27, 1997 as well as June 26, 1997.-

⁴ **Sec. 103. Hearing.**

At the time the verified complaint is filed, the clerk shall schedule a hearing on the claim not less than fiForteen (15) days aForter the complaint is filed. The clerk shall furnish the plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. At the hearing, the presiding judge shall ascertain whether:

(a) The defendant has any defenses to the claim, or wishes to present any counterclaim against the plaintiff or cross-claim against any other party or person concerning the same transaction or occurrence;

(b) Any party wishes to present evidence to the Court concerning the facts of the transaction or occurrence;

(c) The interest of justice require any party to answer written interrogatories, produce any documents or other evidence, or otherwise engage in any pre-trial discovery considered proper by the judge;

(d) Some or all of the issues in dispute can be settled without a formal adjudication; and

(e) The claim is ready for trial:

(1) If the claim is ready for trial, the judge may try it immediately or set a subsequent date for trial.

(2) If the claim is not ready for trial, the judge shall set a subsequent date for trial and order such preparation by the parties as he/she deems necessary-

⁵ At oral argument, counsel for appellants appeared to narrow the issue to that of 'subject matter' jurisdiction. Nonetheless, we examine each issue raised by the Petition for Review
