STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1052

Larissa Pauline Fineday,
Respondent,

vs.

Andy Joseph Roy,
Appellant.

Filed August 19, 2008
Affirmed
Johnson, Judge

Becker County District Court
File No. F3-03-985

Larissa Pauline Fineday, 33962 Mary Yellowhead Road, Ogema, MN 56569-9577 (pro se respondent)

Frank W. Bibeau, Anishinabe Legal Services, 411 First Street, P.O. Box 157, Cass Lake, MN 56633 (for appellant)

Michael Fritz, Becker County Attorney, Tammy L. Merkins, Assistant County Attorney, P.O. Box 476, Detroit Lakes, MN 56502-0476 (for respondent Becker County)

Considered and decided by Toussaint, Chief Judge; Johnson, Judge; and Collins, Judge.[*]

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Andy Joseph Roy is an enrolled member of the White Earth Band of Indians. He and Larissa Pauline Fineday have two children and live on the White Earth reservation. Fineday receives public assistance from the state. The county commenced an action to enforce Roy's child-support obligation as a means of obtaining reimbursement for the public-assistance benefits. Roy moved to dismiss the action for lack of subject-matter jurisdiction, but the district court denied the motion. We conclude that the district court had subject-matter jurisdiction over the county's action and, therefore, affirm.

FACTS

Roy and Fineday are the parents of two children, who were born in 1998 and 2003. Roy is an enrolled member of the White Earth Band of Indians. Roy and Fineday signed a "recognition of parentage" (ROP) document with respect to each child shortly after each was born and filed the document with the state registrar of vital statistics. Each document reflects that Fineday and Roy shared the same address on the White Earth reservation.

In 2003, Roy was earning $5.15 per hour, and Fineday was unemployed. Fineday was receiving Minnesota Family Investment Program (MFIP) cash payments and Medical Assistance. Because she was receiving MFIP assistance, Fineday was required to assign, and did assign, to the state her right to receive child support from Roy. *See* Minn. Stat. § 256.741, subd. 2 (2006).

In July 2003, three months after Roy and Fineday signed the ROP for the second child, Becker County commenced this action against Roy under Minn. Stat. § 256.87 (2006), to enforce Roy's child-support obligation and thereby obtain reimbursement of the public-assistance payments that the state had provided to Fineday. Although Fineday was the nominal plaintiff, Becker County described itself in the complaint as the "initiating party."

Neither Roy nor Fineday responded to the summons and complaint. In August 2003, the district court entered a default judgment that required Roy to pay the county a total of $218 per month, which included both past-due and ongoing child-support obligations. As of November 2006, Roy had made only five monthly payments and had failed to make 35 monthly payments. Thus, the county moved the district court to order Roy to show cause why he should not be held in contempt of the August 2003 order. The district court granted the motion and scheduled a show-cause hearing for January 30, 2007.

On the day of the scheduled hearing, Roy filed a pro se response in which he argued that the district court lacked subject-matter jurisdiction over the case because he is an enrolled member of the White Earth Band and was living on the White Earth reservation. The district court denied Roy's motion to dismiss. After obtaining counsel, Roy brought a second motion to dismiss in which he raised the same issue. The district court again denied Roy's motion, reasoning that the action fell within the scope of jurisdiction conferred upon Minnesota state courts by Public Law 280. Roy appeals.

D E C I S I O N

Roy argues that the district court erred by concluding that it had jurisdiction over the county's action. This court reviews jurisdictional issues de novo. *State v. R.M.H.*, 617 N.W.2d 55, 58 (Minn. 2000).

The jurisdiction of a state court over Indians is governed by federal statutes. *Id.* at 58; *State v. Stone*, 572 N.W.2d 725, 728 (Minn. 1997). The United States Supreme Court has "consistently recognized that Indian tribes retain attributes of sovereignty over both their members and their territory and that tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 107 S. Ct. 1083, 1087 (1987) (quotation and citation omitted). Accordingly, "state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided." *Id.*

Congress made such an express grant of jurisdiction in what is commonly known as Public Law 280. *See* Act of Aug. 15, 1953, Pub. L. No. 280, 67 Stat. 588-89 (codified as amended at 18 U.S.C. § 1162 (2000), 28 U.S.C. § 1360 (2000)); *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g, P.C.*, 467 U.S. 138, 143, 104 S. Ct. 2267, 2271 (1984). Public Law 280 was a response to two policy concerns: first, "lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement" and, second, a "lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens." *Bryan v. Itasca County*, 426 U.S. 373, 379, 383, 96 S. Ct. 2102, 2106, 2108 (1976).

Accordingly, Public Law 280 grants jurisdiction to state courts in two respects. First, the law grants states broad criminal jurisdiction over "offenses committed by or against Indians" in all Indian country in Minnesota, except the Red Lake Reservation. 18 U.S.C. § 1162(a). Although Roy was ordered to show cause why he should not be held in contempt for failure to pay child support, the county contends that this is not a criminal case because Roy was threatened with civil contempt rather than criminal contempt. *See* Minn. Stat. § 518A.72, subd. 1 (2006) (allowing district court to hold obligor in contempt for failure to comply with child-support order); *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001) ("Minnesota courts have statutory authority to enforce maintenance and child-support obligations using civil contempt proceedings."), *review denied* (Minn. Oct. 16, 2001). We agree that this is not a criminal matter.

Public Law 280 also grants states limited jurisdiction over civil matters involving tribes and tribal members:

> [The states listed below] shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:
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> . . . .
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> Minnesota . . . All Indian country within the State, except the Red Lake Reservation.

28 U.S.C. § 1360(a). "Indian country" is defined broadly to include, among other places, "all land within the limits of any Indian reservation under the jurisdiction of the United States Government." 18 U.S.C. § 1151 (2000). The White Earth Band of the Minnesota Chippewa Tribe is a federally recognized tribe. *Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 72 Fed. Reg. 13648, 13649 (Mar. 22, 2007).

Analyzed under Public Law 280 and the related body of caselaw, this case presents the following questions: First, did the matter "arise" on the White Earth reservation and, thus, within "Indian country," as that term is used by Congress, and, if so, does the matter concern a "private civil" law or a "civil/regulatory" law? Roy argues that the dispute arose on the White Earth reservation and that concerns a "civil/regulatory" law, which more narrowly restricts the situations in which a state court may exercise jurisdiction. Second, does the state action in question infringe on the tribe's self-governance? Roy argues that it does unduly infringe such that the Minnesota state courts do not have jurisdiction. We address each question in turn.

A. Type of Action

Roy argues that this case is "civil/regulatory" in nature (not "private civil") and, therefore, outside the district court's jurisdiction. The county, however, raises a threshold issue as to whether the matter arose "off" the reservation, arguing that the district court could have jurisdiction over the action without regard for whether it is characterized as "civil/regulatory" or "private civil." We will address both of these issues.

1. Arising in Indian Country?

Members of Indian tribes are subject to the jurisdiction of the state courts of Minnesota "with respect to activities occurring within the territorial limits of Minnesota and without the territorial boundaries of the reservation." *Red Lake Band of Chippewa Indians v. State*, 311 Minn. 241, 247, 248 N.W.2d 722, 726 (1976) (emphasis omitted) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S. Ct. 1267 (1973)); *see also Stone*, 572 N.W.2d at 729 (noting that Public Law 280, section 4(a), codified as amended at 28 U.S.C. § 1360, "grants Minnesota jurisdiction over private civil litigation involving reservation Indians and arising out of Indian country"). Thus, Minnesota has jurisdiction over matters involving tribal members that arise off the reservation. Although the statement from the *Red Lake Band* case pertains to the Red Lake Band, which has unique status under Public Law 280, that statement would be no less true of members of other tribes. Red Lake members are different from members of other tribes within Minnesota only in that Red Lake members never are subject to state jurisdiction for matters arising within the reservation. 28 U.S.C. § 1360(a).

Here, it is undisputed that Roy lives on the reservation. But the county argues that the matter did not arise on the reservation because Roy invoked the jurisdiction of the state when he signed the ROP. In *Anderson v. Beaulieu*, 555 N.W.2d 537 (Minn. App. 1996), a child-support obligor who was an enrolled tribal member living on the reservation argued that the state lacked jurisdiction to adjudicate his child-support obligation. *Id.* at 540. This court disagreed, concluding that Beaulieu "subjected himself to state jurisdiction" by, among other acts, "voluntarily agree[ing] to a paternity blood

test thereby complying with state jurisdiction." *Id.* The *Beaulieu* court relied on *Desjarlait v. Desjarlait*, 379 N.W.2d 139 (Minn. App. 1985), *review denied* (Minn. Jan. 31, 1986), in which the court of appeals held, under facts similar to those in *Beaulieu*, that the child-support obligor "voluntarily invoked the jurisdiction of the county court when he filed his petition for dissolution." *Id.* at 142.

Applying *Desjarlait* and *Beaulieu*, it is appropriate to conclude that the present dispute arose off the White Earth reservation because Roy invoked the jurisdiction of the State of Minnesota when he signed and filed an ROP. The purpose of an ROP is for a "mother and father [who are not married and] . . . wish to be recognized as the biological parents" to establish the parent-child relationship. Minn. Stat. § 257.75, subd. 1 (2006). There is no indication in the record or allegation in the briefs that Roy's signature of the ROP was coerced. For similar reasons, this court in *Beaulieu* and *Desjarlait* concluded that the state had jurisdiction over the obligors, even though they lived on the reservation, because both obligors had taken voluntary actions to invoke the authority of the state government.

The *Desjarlait* and *Beaulieu* cases are applicable to this issue despite the fact that they concerned members of the Red Lake Band. The off-the-reservation principle on which both are based is true of members of all Indian bands. *See Mescalero Apache Tribe*, 411 U.S. at 148-49, 93 S. Ct. at 1270 ("Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State."). More specifically, the state supreme court has held that the state "does have authority to require

that persons subject to the jurisdiction of the Red Lake Band submit to the governing authority of the State of Minnesota with respect to activities occurring within the territorial limits of Minnesota and without the territorial boundaries of the reservation." *Red Lake Band*, 311 Minn. at 247, 248 N.W.2d at 726 (emphasis omitted).

Thus, the child-support dispute between the county and Roy arose off the White Earth reservation.

2. "Private Civil" Law or "Civil/Regulatory" Law?

Having concluded that this matter arose off the White Earth reservation, it is not necessary to analyze whether the law in question is properly categorized as criminal or civil and, if civil, whether it is "civil/regulatory" or "private civil." But because Roy's argument focuses on this issue, we consider it as an alternative ground. Even if the matter arose on the reservation, federal law does not necessarily divest a state court of jurisdiction.

A threshold question is whether the law being applied is criminal in nature or civil in nature:

> [I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation.

Cabazon, 480 U.S. at 209, 107 S. Ct. at 1088. Here, neither party argues that the applicable law is criminal in nature. Thus, the question is whether this is a "civil/regulatory" action or a "private civil" action involving one or more tribal members.

In *Bryan*, the United States Supreme Court considered whether the state had the power to tax the residence of a tribal member located on a reservation. 426 U.S. at 375, 96 S. Ct. at 2104. The Court unanimously concluded that the power to tax tribes and tribal members residing on a reservation is a civil/regulatory power that Congress did not intend to confer upon the states. The Court stated that the phrase in section 1360(a), "civil causes of action between Indians or to which Indians are parties," was intended to cover "legal disputes between reservation Indians, and between Indians and other private citizens." *Id.* at 383, 96 S. Ct. at 2108. The Court therefore reasoned:

> "A fair reading of [section 1360(a)] suggests that Congress never intended 'civil laws' to mean the entire array of state noncriminal laws, but rather that Congress intended 'civil laws' to mean those laws which have to do with private rights and status. Therefore, 'civil laws . . . of general application to private persons or private property' would include the laws of contract, tort, marriage, divorce, insanity, descent, etc., but would not include laws declaring or implementing the states' sovereign powers, such as the power to tax, grant franchises, etc. These are not within the fair meaning of 'private' laws."

Id. at 384 n.10, 96 S. Ct. at 2108-09 n.10 (quoting Daniel H. Israel & Thomas L. Smithson, *Indian Taxation, Tribal Sovereignty and Economic Development*, 49 N.D. L. Rev. 267, 296 (1973)).

Fourteen years later, this court relied on *Bryan* to conclude that Minnesota had jurisdiction to adjudicate a paternity and child-support action in which the alleged father was an enrolled tribal member. *Becker County Welfare Dep't v. Bellcourt*, 453 N.W.2d 543, 544 (Minn. App. 1990), *review denied* (Minn. May 23, 1990). After the birth of the child, Becker County commenced an action against Bellcourt. The county established

that he was the father and obtained an award for unpaid support, expenses, and ongoing child support. *Id.* at 543. On appeal, Bellcourt argued that the county's action to recover Aid to Families with Dependent Children (AFDC) funds was analogous to a tax and therefore regulatory in nature. *Id.* at 544. Relying on *Bryan*, the court recognized that the action "contain[ed] some regulatory aspects" but concluded that the county is "only acting on behalf of a private party who has assigned her rights to establish paternity and recover child support." *Id.* The court of appeals reaffirmed this principle six years later in *Beaulieu*. 555 N.W.2d at 540. There, the court noted that it had already "specifically declined to adopt" the reasoning that recovery of public assistance funds through a child support action constituted a civil/regulatory action. *Id.* at 540 (citing *Bellcourt*, 453 N.W.2d at 544).

Like Bellcourt and Beaulieu, Roy urges the court to adopt the reasoning of *State ex rel. Dep't of Human Servs. v. Whitebreast*, 409 N.W.2d 460 (Iowa 1987), in which the Iowa Supreme Court held that statutes permitting Iowa to seek reimbursement of assistance and future child support were similar to a tax and, therefore, regulatory. *Id.* at 464. But this court has expressly declined to adopt the *Whitebreast* analysis on two prior occasions. *Beaulieu*, 555 N.W.2d at 540; *Bellcourt*, 453 N.W.2d at 544.

Thus, in light of our decision in *Bellcourt*, the law in question is a private civil law.

B. Infringement on Tribal Self-governance?

Roy argues that the state's exercise of jurisdiction in this case would unduly infringe on the self-governance of the White Earth Band. The exercise of state

jurisdiction over tribes or tribe members depends ultimately on "whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 217, 220, 79 S. Ct. 269, 271 (1959). The Supreme Court has cautioned that although the infringement doctrine is related to the federal preemption doctrine, it would be "treacherous" to analyze state jurisdiction over tribe-related matters under traditional notions of preemption because of the "unique historical origins of tribal sovereignty." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334, 103 S. Ct. 2378, 2386 (1983) (quotation omitted). Thus, the rule articulated by the Court is that "[s]tate jurisdiction is preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the State interests at stake are sufficient to justify the assertion of State authority." *Id.*; *see also Cabazon*, 480 U.S. at 216, 107 S. Ct. at 1092.

In *Beaulieu*, this court adopted a three-factor test to determine whether exercising jurisdiction in a child-support matter involving tribal members infringes on a tribe's self-governance. First, the court examined the parties' "status as 'Indian' or 'non-Indian.'" Second, the court asked whether "the cause of action arose on the reservation." And third, the court considered "the relative interests of the parties." 555 N.W.2d at 540 (citing *Jackson County Child Support Enforcement Agency v. Swayney*, 352 S.E.2d 413, 418 (N.C. 1987)). Under the first factor, the court acknowledged that all the parties were members of a tribe but noted that they lived off the reservation. Under the second factor, the court concluded that the action had arisen off the reservation because the mother had applied for public assistance through the AFDC program. Under the third factor, the

court concluded that the tribe's interest in self-governance was outweighed by the state's interest in securing payment from persons liable for child support under the AFDC program. *Id.* at 541. The court then concluded that allowing state-court jurisdiction over the child-support matter would not infringe on tribal self-governance here. *Id.*

This case is fairly similar to *Beaulieu*. With respect to the first factor, Roy is a tribal member living on the reservation. There is no evidence in the record as to whether Fineday is a member of the tribe. With respect to the second factor, the matter must be deemed to have arisen off the reservation, primarily because Fineday applied to the state for public assistance, just as the mother in *Beaulieu* had done. In addition, Roy signed an ROP despite his status as a member of the tribe. With respect to the third factor, the county commenced the action against Roy in order to recover funds for which he was personally liable under the terms of the public assistance program, just as occurred in *Beaulieu*.

Roy attempts to overcome the comparison to *Beaulieu* by arguing that the state's exercise of jurisdiction interferes with the White Earth Band's self-governance because the band has enacted child-support and contempt laws in its judicial code. Roy relies on that part of *Bellcourt* in which this court reasoned that there was jurisdiction because "the constitution of the Minnesota Chippewa tribe does not presently authorize creation of tribal courts to deal with domestic relations matters." 453 N.W.2d at 544. The district court noted that the White Earth Tribal Court "now exists." But the parties disagree as to the scope of its operation. At oral argument, the attorney for the county asserted that when the district court considered the matter, the tribe's child-support system was not "up

and running." Roy's attorney responded by disputing the assertion. The memorandum Roy filed in the district court in support of his motion to dismiss, dated March 8, 2007, lends some support to the county's argument by stating that "the tribal court is in the process of licensing child support officers to implement the provisions in the Tribal Code dealing with child support." Roy has furnished this court with copies of the White Earth Band's Family Relations Code, which includes guidelines for the tribal court to consider when calculating child support in a marital dissolution. Because Roy and Fineday are unmarried, however, it would appear that the band's code would not apply to them. Furthermore, the band's child-support provisions do not appear to have a feature analogous to Minn. Stat. § 256.741, subd. 2, which allows the county to enforce the child-support obligation that Roy owes to Fineday, which she has assigned to the state.

The absence of a comparable provision in the band's Family Relations Code brings us back to the two most important facts of this case: Fineday voluntarily sought public assistance benefits from the state, and Roy voluntarily signed an ROP. Because of Fineday's and Roy's voluntary actions, the state has the right to collect child-support payments from Roy. It does not appear that the state's right to seek money from Roy displaces in any way the operation of the White Earth tribal government.

Thus, we conclude that the district court's exercise of jurisdiction in this matter does not infringe on the White Earth Band's self-governance. *See Beaulieu*, 555 N.W.2d at 541.

Affirmed.