American Indian Law Review

Volume 22 | Number 2

1-1-1998

Cases

UNITED STATES SUPREME COURT

JURISDICTION: Tribal Adjudicatory Authority Does Not Extend to Non-tribal Members

Strate v. A-1 Contractors, 1127 S. Ct. 1404 (1997)

In *Strate v. A-1 Contractors*,[1] an automobile, driven by an allegedly negligent driver (Fredericks), collided with a gravel truck driven by an employee of A-1 Contractors (the Contractor) on a North Dakota state highway running through the Fort Berthold Indian Reservation. None of the parties were members of the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara). However, some ties to the Indian community existed. Fredericks was the widow of a former Tribal member with adult children who are Tribal members. The Contractor subcontracted with a wholly owned Indian corporation for landscaping. Fredericks sued in tribal court; Contractor appealed and thereafter filed proceedings in district court.

The tribal court and the district court of North Dakota determined that the tribal court had jurisdiction to hear the matter. On review, the court of appeals found that no subject matter jurisdiction existed for hearing by the tribal court. Certiorari was granted, and in a unanimous decision, the Supreme Court upheld the Eighth Circuit Court of Appeals decision that non-tribal members cannot be hauled into tribal court when an accident occurs on a public highway maintained by state funds under a federally granted right-of-way across an Indian reservation.[2] Any litigation regarding such accident should be brought in state or federal court.[3]

The Eighth Circuit based its ruling on the decision in *Montana v. United States*[4] that the "inherent sovereign powers of an Indian tribe . . . do not extend to the activities of nonmembers of the tribe."[5] Yet in certain circumstances, the *Montana* Court explained, nonmembers may fall under the civil jurisdiction of the tribal court.[6] Such instances include taxation, licensing or other activities in which a consensual relationship with an Indian tribe exists.[7] The Supreme Court recognizing *Montana* as the controlling

1. 117 S. Ct. 1404 (1997).
2. *Id.* at 1408.
3. *Id.*
4. 450 U.S. 544 (1981).
5. *Strate*, 117 S. Ct. at 1409 (quoting Montana v. United States, 450 U.S. at 1258).
6. *Id.*
7. *Id.*

decision for the issue at hand, explained that for Petitioners to succeed in their challenge, they must show that the tribal court action against nonmembers falls within one of the two exceptions set out in *Montana*.[8]

The Court explained that the first exception to the Montana rule involves consensual commercial activities between nonmembers and the tribe.[9] A traffic accident between nonmembers does not fit within this exception. The second exception pertains to threatening conduct against the political integrity, security, health or welfare of the tribe.[10] The Court stated that this second exception can be misinterpreted, and the key to its proper application lies with restriction of the tribe's inherent power.[11] That power extends only to what is necessary for the protection of tribal self-government and its internal relations, e.g. the tribe may regulate its members, its domestic affairs, and issues which do reach beyond those boundaries.[12] Even though the accident took place on a right-of-way across an Indian reservation, the accident was between nonmembers and did not interfere with the tribe's self-government. Therefore, the Court held that the Montana rule applies, and the tribal court has no subject matter jurisdiction to adjudicate the matter.[13]

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JURISDICTION: Allocation of Sovereign Powers

Akins v. Penobscot Nation, No. 97-1644, 1997 U.S. App. WL 702789 (1st Cir. Nov. 17, 1997)

The court of appeals in *Akins v. Penobscot Nation*[14] decided that tribal laws govern the issuance of a permit to harvest natural resources on those lands acquired by the Penobscot Nation (the Nation). The Plaintiff, Andrew Akins, was a member of the Penobscot Nation. He sued for violation of his due process rights because his permit was canceled without a hearing by the Nation after a policy change. After reviewing the matter, the district court accepted a Magistrate Judge's report.[15] The court held that the natural resource permit policy was an internal tribal matter, and dismissed the case because of failure to state a claim and for lack of subject matter jurisdiction.[16]

In a case of first impression regarding the allocation of sovereign powers between the Penobscot Nation and the State of Maine (the State), the court of

8. *Id.* at 1414.
9. *Id.* at 1415.
10. *Id.*
11. *Id.* at 1416.
12. *Id.*
13. *Id.*
14. No. 97-1644, 1997 U.S. App. WL 702789 (1st Cir. Nov. 12, 1997).
15. *Id.* at *2.
16. *Id.* at *1.

appeals reviewed the unique relationship between the Nation and the State. The Nation acquired title to its lands through a settlement agreement with the State in exchange for confirmation of its tribal status and the power of self-government.[17] However, the Nation agreed, with very limited exceptions, to subject itself and its members to state laws.

In the narrowly crafted decision, the appellate court determined that the Nation and its members hold the land and natural resources in trust for the benefit of the tribe.[18] According to the Settlement Agreement, Maine Statutes and the Nation's natural resource harvesting policy, the interests of non-tribal members are not at issue. Additionally, the policy controls commercial use of the lands acquired by the Nation, and regulates the harvesting of natural resources from the Nation's land.[19] The court explained that the Nation's policy fails to implicate any state interests and is consistent with previous understandings that the matter is an internal tribal matter.[20] The court determined that the considerations summarized above "resolve the question in favor of this being an internal tribal matter."[21]

MICHIGAN DISTRICT COURT

TAXATION: Indian Ownership of a Corporation

Baraga Products v. Commissioner of Revenue, 971 F. Supp. 294 (W.D. Mich. 1997)

The district court in *Baraga Products v. Commissioner of Revenue*[22] determined that a Michigan corporation owned by Indian shareholders is not exempt from state taxes. The Plaintiff argued that the Single Business Tax (SBT) was levied and collected from the company in opposition to current law exempting Native Americans from payment of state taxes. The issue decided by the court was whether a Michigan corporation owned by Indian shareholders is exempt from state taxes.

Baraga Products was incorporated with a mixture of Indian and non-Indian shareholders in 1984; however, at the time this suit was filed, all shares were held by an enrolled member of the Keweenaw Bay Indian Community. The court explained that the corporation cannot emulate the shareholder's standing in order to reduce its tax liability.[23] The Supreme Court in *McClanahan v. State Tax Comm'n of Arizona*[24] held that an Indian may be immune from

17. *Id.* at *4 (citing 25 U.S.C. § 1724; ME. REV. STAT. ANN. tit. 30, § 6205).
18. *Id.* at *8.
19. *Id.* at *4.
20. *Id.*
21. *Id.* at *6.
22. 971 F. Supp. 294 (W.D. Mich. 1997).
23. *Id.* at 296.
24. 411 U.S. 164 (1973).

state taxes only when the income is "(1) earned on an Indian reservation, (2) by an enrolled member of an Indian tribe, (3) who lives on the tribal reservation in which the member is enrolled."[25]

Although a corporation incorporated by Indian shareholders and organized under tribal laws may be immune from state taxation, its purposes must be governmental.[26] Therefore, the court held that "a corporation owned solely by an Indian shareholder can be subject to state taxation is not inconsistent with the ruling . . . that a sole proprietorship of a qualified Native American Indian was not subject to [state taxation]."[27]

HO-CHUNK NATION TRIAL COURT

COMITY: Enforcement of Order for Child Support from Another Jurisdiction

Wells v. Brockhaus, 24 Indian L. Rep. 6174 (Ho-Chunk Trial Ct. 1996)

The Ho-Chunk Nation (HCN) Trial Court enforced a child support order presented by the Plaintiff, a non-tribal member, under the Recognition of Foreign Child Support Orders Ordinance[28] recently passed by the HCN Legislature. The court stressed that each member of the Ho-Chunk Nation must be accountable and accept responsibility for the care and maintenance of his or her children. Towards this end, the court stated that it will recognize a child support order of another tribe, a state or other foreign jurisdiction if properly presented under said Ordinance.[29]

The Defendant, who previously acknowledged paternity, failed to defend or make an appearance. Therefore, the court held that the Plaintiff was entitled to approximately $19,900 in child support.[30] The court also determined that Defendant owed the child support and that he had failed to make any payments.[31] The court took judicial notice of the Record of Payment and Account Activity Report filed by the Milwaukee County Clerk of Circuit Courts.[32] Because Defendant made no effort to pay child support and failed to appear, the court stated that child support payments would be paid directly to the Plaintiff, through the Milwaukee County Circuit Court Clerk, and the money would be deducted from the Defendant's per capita distribution.[33]

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25. *Supra* at note 23 (citing McClanahan v. State Tax Comm'n of Arizona, 411 U.S. 164 (1973)).

26. *Id.*

27. *Id.* at 297.

28. HO-CHUNK NATION, RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE § 105 (1996).

29. Wells v. Brockhaus, 24 Indian L. Rep. 6174 (Ho-Chunk Trial Ct. 1996).

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*