

Appellate Court
Fort Peck Indian Reservation
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Fort Peck Tribal Court
of Appeals

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

TERRY BOYD, Appellant, vs. A.T. STAFNE, JOSE F. FIGUEROA, JR., and KENNETH TROTTIER, Individually and in their capacities as Tribal Officers and Employees, Appellees	CAUSE NO. AP # 667 OPINION AFFIRMING LOWER COURT
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Appeal from the Fort Peck Tribal Court, Special Judge Tracy Labin Rhodes
Appellant Terry Boyd represented by attorney David Irving
Appellees A.J. Stafne, Jose F. Figueiroa, Jr. and Kenneth Trottier represented by
attorney Ryan Rusche
Before Smith, Chief Justice, and Shanley, Associate Justice.

¶1 This matter comes before this court on a Petition for Review filed on June 24, 2014
challenging the lower court's June 9, 2014 order dismissing Appellant's action. This Court
granted review on July 21, 2014. The matter was fully briefed by the parties on October
27, 2014. Due to a change in the appellate justices, on August 12, 2016 the parties were

directed to provide this Court with a status update. Both parties filed a status update on or before September 26, 2016.

BACKGROUND

¶2 This appeal arises from the lower court's June 9, 2014 order, whereby the Court dismissed Appellant's complaint challenging termination of his employment contract with the Fort Peck Tribes. Appellant's complaint alleged that his discharge violated the Tribes' Personnel Policy and that the Fort Peck Tribes maliciously breached its contract with him. Appellees moved to dismiss the action based on Appellant's failure to exhaust administrative remedies and the Fort Peck Tribes' sovereign immunity.

STATEMENT OF JURISDICTION

¶3 The Fort Peck Appellate Court has jurisdiction to review all final orders from the Fort Peck Tribal Court when a timely appeal is made. 2 CCOJ § 202. The order signed and dated June 9, 2014 is a final order. Although this Court is not required to automatically review civil matters, this appeal was deemed timely filed permissive review was granted on July 21, 2014. 2 CCOJ §207 (b).

STANDARD OF REVIEW

¶4 The Court of Appeals reviews *de novo* all determinations of the lower court on matters of law. 2 CCOJ §202. Whether this action is barred by tribal sovereign immunity is a legal determination and will be reviewed *de novo*. *Reddoor v Wetsit, et. al. FPCOA No. 95 (1990)*.

DISCUSSION

As a sovereign nation, the doctrine of sovereign immunity provides the Tribes with a fundamental right not to be sued in any court unless they waive their sovereign immunity. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978). It is a well-

established principle, both in this Court and under federal law, that the Fort Peck Tribes are immune from suit unless Congress has authorized the suit or the Tribes have taken some action that would constitute a clear waiver of their immunity. See *Gourneau v FPHA*, FPCOA No. 666 (2015); *Gourneau v Azure, et. al.*, FPCOA No. 654 (2013); *DeCouteau v Tribes*, FPCOA No. 363 (2002); *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998); *Michigan v. Bay Mills Indian Cmty*, 134 S. Ct. 2024, 2030 (2014) and *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). A waiver of tribal sovereign immunity cannot be implied, but instead must be unequivocally expressed. *Santa Clara Pueblo* at 58. In an absence of an express and unequivocal waiver of sovereign immunity by the Tribe or Congressional authorization, the Tribal Court lacks subject matter jurisdiction to hear a suit against the Tribe or its agencies.

¶5 Suing the Appellees' in both their individual and official capacity does not eliminate the affirmative defense of sovereign immunity when the named individuals are acting within the scope of their authority as tribal officials and employees. *DeCouteau v Tribes*, FPCOA No. 363 referencing *Santa Clara Pueblo*. The lower court correctly analyzed the applicable tribal law, as well as the language contained in the settlement agreement and employment contract. The lower court's determination that the actions taken by the appellees were within the scope of their official authority, as either elected officials or employees of the Fort Peck Tribes, supports the legal conclusion that in reality the Fort Peck Tribes are the actual party in interest in this matter with a recognized right to raise sovereign immunity as a defense.

¶6 Consistent with Rule 12(b) of the Federal Rule of Civil Procedure, the Tribes' motion to dismiss was an appropriate responsive pleading for raising sovereign immunity. The lower courts determination that the Tribes' immunity had not been waived

operated as a jurisdictional bar to it considering any of the allegations in the complaint. Although generally considered quasi-jurisdictional, this court adopts the principle that Tribal sovereign immunity "is an immunity from suit rather than a mere defense to liability". *Burlington N. & Santa Fe Ry. v. Vaughn*, 509 F.3d 1085, 1090 (9th Cir.2007). Thus when the Fort Peck Tribes invokes sovereign immunity in an appropriate manner and is entitled to such immunity, the court may not exercise jurisdiction over the action.

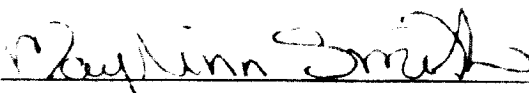
ORDER

¶7 Based on the above reasons, this Court holds that the Appellees were acting in their official capacities on behalf of the Fort Peck Tribes. This Court further concludes the Fort Peck Tribes did not waive their sovereign immunity. This Court, hereby, **AFFIRMS** the lower court's dismissal of this action because the Tribal Court lacked subject matter jurisdiction to hear a suit against the Tribe or its Agencies absent a clear waiver of sovereign immunity.

Dated this 4th day of October 2017.

FORT PECK COURT OF APPEALS

BY


Maylinn Smith, Chief Justice


Erin Shanley, Associate Justice