Pueblo of Pojoaque v. Wilson, ___ F. Supp. 3d ___, 2022 WL 3139089 (D.N.M. Aug. 5, 2022)

- **Holding:** Tribe was entitled to declaratory judgment that the Indian Gaming Regulatory Act does not authorize the allocation of jurisdiction to a state court under a class III gaming compact over a slip-and-fall claim by a casino patron.
- **Summary:** Defendant Wilson was injured in the Cities of Gold Casino operated under a class III gaming compact between the Pueblo of Pojoaque and the State of New Mexico. The injury occurred as he was walking across the casino to an ATM to obtain more money for gaming purposes. The compact provides that "visitors" to the casino "may bring a claim for bodily injury: 'in state district court, including claims arising on tribal land, unless it is finally determined by a state or federal court that the IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.'" Relying on this provision, Defendant filed a personal injury suit in state district court against the Pueblo and other Pueblo-controlled entities. After the state court denied a motion for summary judgment filed by the Pueblo defendants arguing that it lacked subject-matter jurisdiction, they sued Defendant Wilson and the district court judge in federal district court seeking a declaratory judgment to that effect.

  The magistrate judge, sitting as the district court, granted summary judgment to Plaintiffs. As the magistrate judge explained:

  > The difficulty in this case arises from contradictory rulings by the Tenth Circuit Court of Appeals and the New Mexico Supreme Court. First, in *Doe v. Santa Clara Pueblo*, the New Mexico Supreme Court held that "state courts have jurisdiction over personal injury actions filed against Pueblos arising from negligent acts alleged against casinos owned and operated by the Pueblos and occurring on pueblo lands." 154 P.3d 644, 646 (N.M. 2007). Under this interpretation, New Mexico's courts clearly have jurisdiction over Mr. Martinez's claims. Subsequently, however, in *Navajo Nation v. Dalley*, the Tenth Circuit held that the IGRA does not authorize tribes to shift jurisdiction over slip-and-fall tort claims to state courts unless those claims arise from "the actual playing of Class III games." 896 F.3d 1196, 1216 (10th Cir. 2018). Quoting Supreme Court precedent, the Tenth Circuit concluded this was limited to "the stuff involved in playing class III games," i.e., "each roll of the dice and spin of the wheel." ... Under this construction, the Pueblo contends, New Mexico's courts have no jurisdiction over Mr. Martinez's claims.

  Because *Dalley* controlled in Tenth Circuit federal district courts, the question became whether the court should exercise its discretion to issue declaratory relief. In resolving this question, the judge applied the five-factor test adopted in *State Farm Fire & Casualty Co. v. Mhoon*, 31 F.3d 979 (10th Cir. 1994), for "deciding whether to hear claims for declaratory relief where duplicative state proceedings exist." *Id.* at 983 ("[1] whether a declaratory action would settle the controversy; [2] whether it would serve a useful purpose in clarifying the legal relations at issue; [3] whether the declaratory remedy is being used merely for the purpose of 'procedural fencing or 'to provide an arena for a race to res judicata'; [4] whether use of a declaratory action would increase friction between our federal and state courts and improperly encroach upon state jurisdiction; and [5] whether there is an alternative remedy which is better or more effective").

  In the magistrate judge's view, each factor weighed in favor of declaratory relief:

- Factor 1: "A declaratory judgment by this Court would settle completely the controversy of whether Mr. Martinez's claims can proceed in state court."
- Factor 2: "It would serve a useful purpose by relieving the Pueblo of its burden to defend against claims in a court without jurisdiction. An Indian tribe, with its sovereign status, should not be compelled to expend time and effort on litigation in a court that does not have jurisdiction." (Cleaned up.)
- Factor 3: "Although the Court need not and does not settle the issue here, the Pueblo offers a reasonable, good faith argument that removal was unavailable because neither diversity of citizenship nor a federal question exists on the face of Mr. Martinez's complaint. ... The Pueblo is ... obliged to expend time and effort on litigating Mr. Martinez's claims despite the state courts' lack of subject matter jurisdiction. The Court is satisfied that the Pueblo did not file in federal court merely for the purpose of procedural fencing."
- Factor 4: "The Court is reluctant, as a general matter, to interfere with judicial action of the state courts. However, the Court is also cognizant that the Tenth Circuit has repeatedly interceded in cases where state courts lack jurisdiction over claims arising on Indian land—including, notably, in *Dalley*. ... It is precisely because the state court lacks jurisdiction that the interference, in this context, is minimal."
- Factor 5: "To be sure, a determination by the New Mexico Supreme Court that accords with *Dalley*—or any determination by the United States Supreme Court—is the surest way to prevent this conflict from occurring in future. But with respect to the instant case, specifically, it does not appear that a state court appeal will give better or more effective relief than the federal court's declaratory judgment."

As to the merits, the magistrate judge found the involved facts comparable to those in *Dalley*, which arose from a slip-and-fall in a casino restroom. "Mr. Martinez did not sustain his injury in the course of 'the betting of chips, the folding of a hand, or suchlike.' ... His injury occurred when he was 'in proximity to' these Class III gaming activities but was not 'actually involved in the playing of the game.'" Under these circumstances, *Dalley* compelled the conclusion that "IGRA does not permit the shifting of jurisdiction over Mr. Martinez's claims to the state courts."

Finally, the magistrate judge denied Defendants' request for attorney's fees and costs attendant to both district court proceedings "[b]ecause the Declaratory Judgment Act does not independently authorize an award of attorney fees or costs and because the Pueblo identifies no other authority" for such award. The judge also denied, at this time, to "'authorize'" Defendants "to seek future injunctive relief if the state court action proceeds [sic]."

- **Relevant (2022) Deskbook Sections:** 12:45 n.8; 14:17 n.6