Rabang v. Gilliland, ___ P.3d ___, 2022 WL 13763261 (Wash. Ct. App. Div. 1 Oct. 19, 2022)

- **Holding:** Although a state court had Public Law 280 jurisdiction over tort claims by a husband and wife for damages arising from allegedly unlawful eviction proceedings brought against various tribal officials, the latter possessed immunity from suit because their conduct was within the scope of their tribal authority.
- **Summary:** Plaintiff Rabangs were evicted in 2016 from their off-reservation home located on trust land held for the benefit of Nooksack Indian Tribe. The eviction sparked a series of tribal, federal and state court lawsuits by the Rabangs against tribal officials. The last of these suits, a claim for damages based upon a tort claims for negligent infliction of emotional distress in connection with the eviction process, was filed in state superior court. Like the other actions, it proved unsuccessful, with the trial court dismissing the complaint on the ground that it lacked subject-matter jurisdiction because "a state court would necessarily pass judgment on the Plaintiff's right to possession of real property belonging to the Nooksack Indian Tribe and held in trust by the United States. Such jurisdiction is flatly prohibited by RCW 37.12.060. It is for the Nooksack Tribe, not this Court, to resolve these claims." The Rabangs appealed and again lost, but for a reason not relied upon by the superior court.

  After discussing the controversy's factual background, the court of appeals turned to the rationale offered by the lower court for its decision: Washington State's Public 280 statutes. The central provision in this regard is Rev. Code Wash. § 37.12.010 that reads in part: "The State of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians, and Indian territory, reservations, country, and lands within this state in accordance with [Public Law 280][.]" This statute continues on with a proviso excluding from the jurisdictional assumption application to Indians "when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States" except for eight specified types of proceedings. Because the Rabangs' home was concededly off reservation, the general Public Law 280 jurisdictional assumption accordingly applied.

  The panel next addressed the statute cited by the superior court—Rev. Code Wash. § 37.12.060. It provides: "'Nothing in this chapter ... shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property [belonging to any Indian tribe that is held in trust by the United States] or any interest therein.'" The Rabangs argued that their tort claims did not request any ownership or right-to-possession determination, and the panel agreed. "While the Rabangs' tortious claims do stem from the eviction proceedings, the merit of their claims is not dependent on the court assessing the validity of the tribe's eviction or property ownership proceedings."

  But one issue remained that was not addressed by the superior court: Defendant tribal officials' potential immunity from suit. On this shoal, the Rabangs' suit foundered: "The Rabangs contend that sovereign immunity 'does not apply to these personal capacity claims against four non-members.' But the court looks to the activity, not the pleaded defendant. And here, the activities complained of—issuing and enforcing eviction orders—are squarely official in their scope." The panel also rejected the Rabangs' contention that one Defendant, the chief tribal judge, was not entitled to immunity because his appointment had been improper, observing that "[d]etermining whether a

tribal official 'had general authority to act on behalf of the tribe in a governmental capacity [is a] pure question[] of tribal law, beyond the purview of the federal agencies and the federal courts.'" It further rejected their reliance on a 2016 Department of the Interior letter "stat[ing] that any actions taken by the tribal court after March 2016 were 'not valid for purposes of Federal services and funding.'" In the panel's view, "[t]he Department's decision to not recognize specific acts by the tribe should not be misinterpreted as a final ruling that 'reverses' all preceding tribal actions" and thus did "not have the effect of stripping Judge Dodge and the other tribal employees of their status as officials of the Nooksack tribe acting in their official capacity."

- **Relevant (2022) Deskbook Sections:** 6:12 n.26; 7:11 n.9; 7:21 n.14
- **Comment:** The panel's disposition of the immunity-from-suit issue is incorrect because the tort claims were brought against Defendants in their personal capacity. *See Lewis v. Clarke*, 137 S. Ct. 1285, 1291 (2017) ("Defendants in an official-capacity action may assert sovereign immunity. ... An officer in an individual-capacity action, on the other hand, may be able to assert personal immunity defenses, such as, for example, absolute prosecutorial immunity in certain circumstances. ... But sovereign immunity 'does not erect a barrier against suits to impose individual and personal liability.'"). Given the Rabangs' prior persistence, it seems likely they will seek review by the Washington supreme court. One further observation: As with the Defendant chief tribal judge, personal immunities may exist, but that is a discrete issue which, given the panel's sovereign immunity conclusion, was not addressed.