Milne v. Jeffrees, 2022 OK 84, ___ P.3d ___ (Oct. 25, 2022)

- **Holding:** State court had subject-matter jurisdiction over an action for a civil protection order by a Muscogee (Creek) Nation member against a Cherokee Nation member based upon conduct occurring within the boundaries of the Muscogee Nation Reservation.
- **Summary:** After a violent argument, Plaintiff Milne, a member of the Muscogee (Creek) Nation, requested a state district court to enter an order for civil protection against Defendant Jeffree, a Cherokee Nation member. The argument occurred within the historic boundaries of the Muscogee (Creek) Nation Reservation. Defendant unsuccessfully moved to dismiss on jurisdictional grounds, and the court entered the order with a five-year duration. Defendant appealed on jurisdictional grounds.

  The supreme court affirmed, with four of the nine justices filing or joining in separate opinions concurring specially, in the result, or in the judgment.

  The majority opinion first made clear that *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), although expanding the scope of Indian country, "did not itself change the applicable civil law." Turning to the merits, the majority rejected Defendant's position that the Muscogee tribal court had exclusive jurisdiction. It deemed this case comparable to *Lewis v. Sac and Fox Tribe of Oklahoma Housing Authority*, 1994 OK 20, 896 P.2d 503, where it upheld state court jurisdiction over a contract action arising within Indian country by property owners against a tribal housing authority organized under state and tribal law. There, the court "concluded that, to determine whether state courts have jurisdiction where Indian interests are concerned, we must discover whether Congress has explicitly withdrawn state court jurisdiction, or whether the interest infringes on tribal self-government." Here, the majority found no such congressional divestiture, including under 18 U.S.C. § 2265(e) which requires that full faith and credit be given to protection orders and provides that "a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms[.]" In its view, the statute merely "includes tribal courts within the list of sovereigns which may issue civil protection orders" and thus "is not a bar to exercise of state district court jurisdiction to enter civil protection orders."

  The majority nonetheless recognized that "a tribe may have exclusive civil jurisdiction, including over non-Indians, where conduct threatens its political integrity, economic security, or the health and welfare of its citizens." But,

  > civil protection orders are different. They are individually tailored and narrowly designed with a single goal -- to protect the victim of abuse. Universally, they are recognized in sister courts no matter their court of origin. Tribal governments clearly have a strong interest in protecting their citizens from the violence, threats, stalking, harassment and other behavior which may be covered by a civil protection order.

  In short, "the Tribe and the State here have an identical goal: to provide each individual citizen a swift path to safety, with the combined weight of all the involved sovereigns ready to enforce it." Plaintiff in this matter "went to the nearest venue of her choice as a citizen, her county courthouse, for swift relief, and it was granted. Federal law does not prohibit that grant of relief, and equity compelled its issuance."

One justice concurred in the result, reasoning that because "the protective order at issue involves a member Indian and a nonmember Indian, the McIntosh County District Court retains subject matter jurisdiction" under United States Supreme Court precedent. Two justices—who had joined in the majority opinion—concurred specially because both state and Muscogee statutes require "that any party have 'Indian or non-Indian status'; only the location of the domestic violence or of one party's residence matters. Thus, where that location can be classified as *both* state and *tribal* territory, both courts have jurisdiction--that is, *concurrent jurisdiction*--to issue a protective order." A fourth justice concurred in the judgment, arguing that "that the majority gives undue weight to cases such as *Montana v. United States*, 50 U.S. 544, 101 S. Ct. 1245, 67 L. Ed. 2d 493 (1981), *United States v. Cooley*, 593 U.S. ___, 141 S. Ct. 1638, 210 L. Ed. 2d 1 (2021), and *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001)." It reasoned:

> These decisions provide very little guidance to the issue presented in this case because each dealt with whether a tribe lacked jurisdiction to act. There is no dispute in this case--the Muscogee (Creek) Nation clearly had jurisdiction to enter a protective order. Instead, the proper questions for resolution in this case are: (1) whether the exercise of jurisdiction by an Oklahoma state court would infringe on the right of the Muscogee (Creek) Nation to make its own laws and be ruled by them; and (2) was the exercise of jurisdiction in state court preempted by federal law. These two barriers are independent, and either "standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members."

That said, this concurrence agreed with the majority that "the Muscogee (Creek) Nation's interests are aligned with its tribal member obtaining the quickest and most efficient remedy to ensure her safety" and, therefore, concluded that "nothing should preclude an Oklahoma citizen from seeking redress against a nonmember or non-Indian in our state courts, lest they be denied equal protection of the law and/or deprived of access to this State's judicial system."

- **Relevant (2022) Deskbook Sections:** 6:11 n.11; 6:13 n.28
- **Comment:** Notwithstanding the various opinions, this is a straightforward case whose controlling doctrinal principles are most succinctly captured in the last concurrence. The critical considerations were the absence of any express congressional preemption and Defendant's nonmember status. The most relevant precedent are *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877 (1988) (which recognized a tribe's entitlement to sue in state court over a reservation-based contract dispute) and *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980) (which deemed nonmember Indians to be comparable to non-Indians in a civil regulatory context). The court subsequently found the holding here dispositive in *Wren v. Yates*, 2022 OK 88, ___ P.3d ___ (Nov. 8, 2022), with the same justices concurring on the same grounds..