

IN THE SUPREME COURT OF THE STATE OF NEVADA

NORMAN THOMAS,
Petitioner,

vs.

THE FOURTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF ELKO,
THE HONORABLE J. MICHAEL
MEMEO, DISTRICT JUDGE; AND
ELKO COUNTY DISTRICT
ATTORNEY,
Respondents,
and
HEATHER LAWRENCE,
Real Party in Interest.

No. 49964

FILED

JUL 16 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of prohibition challenging a district court order that denied a motion to dismiss an action concerning child support.¹

In this petition, we consider whether a state district court has subject matter jurisdiction over a child support action where both parents live on an Indian reservation, the child was conceived on the Indian reservation, one parent and the child are tribal members, and the tribal member parent contested state court jurisdiction and subsequently filed

¹The Honorable Nancy M. Saitta, Justice, did not participate in the decision of this petition.

an action in the tribal court.² The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

NRS 41.430(4), federal Indian law principles, and Indian sovereignty mandate that a Nevada state court does not have subject matter jurisdiction over a civil action between an Indian and a non-Indian concerning an occurrence in Indian country or on Indian land if the Indian tribe that occupies that territory has not consented to such jurisdiction.³ In Snooks v. District Court, this court noted that the tribe in that case had expressly reserved jurisdiction in civil actions because it had “enacted a broad regulatory scheme” and had explicitly recognized the specific cause of action that was asserted in the district court.⁴ Accordingly, as the tribe in Snooks had not consented to the state court’s exercise of jurisdiction, this court concluded that the district court lacked subject matter jurisdiction to hear the underlying civil action.⁵

NRS 41.430(4) and Snooks apply because this case involves an action brought by a non-Indian, real party in interest Heather Lawrence, against an Indian, petitioner Norman Thomas, involving an occurrence on Indian land, as the child was conceived on the reservation, the child has

²We may issue a writ of prohibition to arrest the proceedings of the district court when a district court exercises its judicial functions in excess of its jurisdiction. NRS 34.320.

³Snooks v. District Court, 112 Nev. 798, 799-800, 919 P.2d 1064, 1065 (1996).

⁴Id. at 802, 919 P.2d at 1066-67.

⁵Id. at 801, 919 P.2d at 1066.

lived his entire life on the reservation, and both parents live on the reservation. Contrary to Elko County's asserted distinction of Snooks, we conclude that where Mr. Thomas was served is irrelevant to the district court's subject matter jurisdiction because the relevant inquiry is whether the Shoshone-Paiute Tribes of the Duck Valley Reservation (the Tribes) have consented to state court jurisdiction.

Here, similar to the tribe in Snooks, the Tribes reserved subject matter jurisdiction over child support actions arising on the reservation under tribal law. The record reveals that the Tribes' Constitution extends jurisdiction to the territory within the reservation;⁶ its Judiciary Code provides that the Tribes have subject matter jurisdiction over "all matters arising under Tribal law, consistent with federal law;"⁷ and its Law and Order Code specifically provides that the Tribes "shall have jurisdiction of all suits brought . . . to obtain a judgement [sic] for the support of [a] child."⁸ We conclude that the state's exercise of jurisdiction over this child support action would violate tribal rights of self-government and federal Indian law principles because the Tribes have clearly reserved jurisdiction and have not consented to state

⁶Shoshone-Paiute Tribes of the Duck Valley Reservation Constitution and Bylaws art. I, § 2.

⁷Shoshone-Paiute Tribes of the Duck Valley Reservation Judiciary Code ch. 6, § 4.06.010 (2003).

⁸Shoshone-Paiute Tribes of the Duck Valley Reservation Law and Order Code ch. 3, § 4.

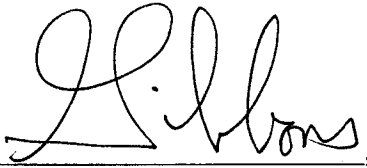
jurisdiction over this type of dispute.⁹ Therefore, under Snooks, we conclude that the district court lacked subject matter jurisdiction to resolve the underlying case. Therefore, the underlying case should be dismissed. However, we conclude that Mr. Thomas has failed to fulfill his burden to demonstrate why the district court child support proceeding should be dismissed with prejudice.¹⁰ Accordingly, we

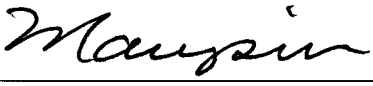
ORDER this petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION instructing the

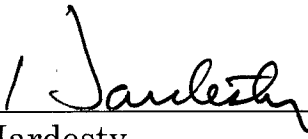
⁹See Snooks v. District Court, 112 Nev. 798, 803, 919 P.2d 1064, 1067 (1996); see also Williams v. Lee, 358 U.S. 217, 223 (1959).

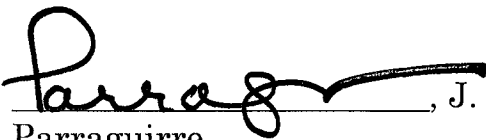
¹⁰See NRAP 21(a) (requiring the petitioner to state the reasons why this court should grant the writ); Pan v. Dist. Ct., 120 Nev. 222, 228-29, 88 P.3d 840, 844 (2004). We have considered the parties' remaining arguments and conclude that we need not address them. Therefore, in this order we do not address whether (1) Nevada's Uniform Interstate Family Support Act prohibits the district court from exercising subject matter jurisdiction, which depends on whether (a) the Tribes qualify as a "state," (b) Mr. Thomas filed a pleading in the tribal court before a responsive pleading was required in the district court, (c) he objected to jurisdiction in a timely manner, and (d) the reservation is the child's home state; (2) the district court had personal jurisdiction over Mr. Thomas based on service of process; (4) Nevada's law conferring personal jurisdiction based on engaging in sexual intercourse in this state confers jurisdiction on a person having sexual intercourse on a reservation; (5) Mr. Thomas waived any objection to personal jurisdiction when he appeared telephonically; and (6) Mr. Thomas had sufficient minimum contacts with the State of Nevada.

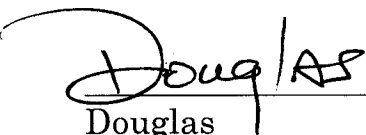
district court to grant Mr. Thomas's motion to dismiss the case, but without prejudice.¹¹

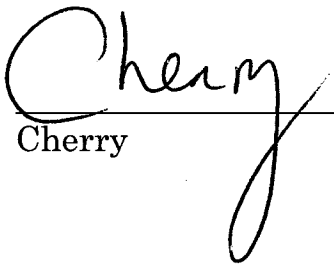

_____, C.J.
Gibbons


_____, J.
Maupin


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. J. Michael Memeo, District Judge
Nevada Legal Services/Carson City
Elko County District Attorney
Law Offices of Wes Williams Jr.
Elko County Clerk

¹¹Additionally, we lift our previously imposed stay of the proceedings in District Court Case No. DRU10785.