

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Case No. DA 22-0345

LEONIE CANDICE WEBB,

Respondent/Appellant,

-VS-

JAYLENE CECELIA PHILLIPS,

Petitioner/Appellee.

APPELLEE'S RESPONSE BRIEF

Appeal from the Seventh Judicial District Court of the
State of Montana, in and for the County of Phillips

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TABLE OF CONTENTS

Statement of the Issue	1
Statement of the Case	1
Statement of Facts	1
Standard of Review	7
Summary of Argument	7
Argument	8
Conclusion	11
Certification of Compliance	12
Certificate of Service	13

APPENDIX

Exhibit 1 – Appellee’s District Court Response to Motion to Dismiss	3
Exhibit 2 – District Court’s Order on Motion to Dismiss for Lack of Subject Matter Jurisdiction	5
Exhibit 3 – Appellant’s Brief in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction	6

TABLE OF CASES AND OTHER AUTHORITY

CASES

<i>Big Spring v. Conway</i> (In re Estate of Big Spring), 2011 MT 109, ¶20, ¶29, ¶54, 360 Mont. 370, 255 P.3d 121.	1, 7, 8, 9, 10
<i>Jud. Stnds Comm'n v. Not Afraid</i> , 2010 MT 285, ¶11, 358 Mont. 532, 245 P.3d 1116.	8, 9
<i>Zempel v. Liberty</i> , 2006 MT 220, ¶22, ¶27 333 Mont. 417, 143 P.3d 123.	9, 10

STATUTES

M.C.A. 45-5-301(2021)	3
M.C.A. 45-5-203(2021)	4
M.C.A. 45-5-201(2021)	4

STATEMENT OF THE ISSUE

Should this Appellate Court expand the holding in *Big Spring v. Conway* to include non-probate activities occurring *off* reservations and involving *non-members* of the reservation?

STATEMENT OF THE CASE

The Montana Seventeenth Judicial District Court granted Appellee an Order of Protection against Appellant after hearing on October 27, 2021, due to Appellant's activities occurring off the Fort Belknap Indian Reservation on May 21, 2021, and another later incident in Billings, Montana. Appellant and Appellee are also non-members of the Fort Belknap Indian Reservation. As such, the Fort Belknap Tribal Court lacks jurisdiction. Appellant's reliance on *Big Spring v. Conway* is misplaced and *Big Spring* is actually contrary to Appellant's Tribal Jurisdiction argument.

STATEMENT OF FACTS

The parties agree that on May 21, 2021, Appellee traveled from Billings, Montana, to Frank Webb's home that is located on the Fort Belknap Indian Reservation and the Webb family ranch. Frank Webb is Appellant's son. Frank Webb began assaulting Appellee at his home shortly after Appellee arrived at his

home. Frank Webb and Appellee planned on attending their daughter's kindergarten graduation later that afternoon at the girls' school in Dodson, Montana. Appellee intended to help the girls get ready for the graduation beforehand at Frank Webb's home.

The parties further agree that the plan for the day included that Appellant would drive Frank Webb, Appellee, their daughters and another child, off the Reservation to the girl's non-tribal school that is located off the Reservation in Dodson, Montana. Frank Webb started abusing Appellee before the parties left his home. Frank's abuse lasted approximately two and a half hours. Frank's assault of Appellee began on the Reservation at the Webb family's ranch and continued until the parties arrived at the girls' school in Dodson, Montana.

The parties apparently disagree about the point at which Appellant became involved in the assault. Appellant's involvement in the assault occurred off any Indian reservation as outlined below. The whole assault was recorded by Appellee. The recording clearly identifies when the parties reached Dodson, Montana, and Appellant's subsequent coordination and exacerbation of the assault against Appellee while Appellant drove the parties around Dodson, Montana.

Appellant filed her Motion to Dismiss for Lack of Subject Matter Jurisdiction on or about May 10, 2022. Appellee filed her Response to Motion to Dismiss with the District Court on or about May 20, 2022. (Ex. 1.) Appellant

misstates a number of facts regarding the District Court proceedings in her Opening Brief.

First, Appellant's unlawful conduct off the Reservation is what resulted in the issuance of the Order of Protection by the District Court. While Frank Webb's prolonged, brutal assault of Appellee occurred both on the Reservation and off the Reservation, Appellant's involvement occurred almost exclusively off the Reservation.

Appellee disputed Appellant's false account of events in her Response to Motion to Dismiss. (Id. at 3:6-8.) Appellee asserted in her brief that clear evidence was presented at hearing that she was subjected to Frank Webb and Appellant's coordinated abuse for more than 20 minutes in Dodson, Montana, while Appellant refused to let Appellee out of her car prolonging the assault. (Id. at 3:8-11.)

Appellee further asserted in her Response that her recording memorializes when the parties reached Dodson, Montana by asserting "Ms. Phillips can be heard on the recording at 2:04:55 saying 'can you take me to Grandma's around the corner.'" (Id. at 2:13-14.) Appellee's Grandmother lives in Dodson, Montana, approximately one block from the girls' school. (Id.) The recording also memorializes Appellant's repeated refusals to let Appellee out of the car as they drove around Dodson and how the unlawful restraint in violation of M.C.A. 45-5-

301 prolonged the coordinated attacks and abuse by Appellant and her son for over 20 minutes. (Id. at 2:14-16.)

Appellee's Response also explained that while Appellant was unlawfully restraining Appellee the Appellant "is clearly heard on the recording at 2:07:20 stating 'We can't have you accessing a phone'". (Id. at 2:18.) Appellee also recounts in her Response brief how Appellant tried to intimidate her from returning to see her kids "at 2:10:03 when [Appellant] said 'and don't you ever come back, ever, ever' in violation of M.C.A. 45-5-203." (Id. at 2:19-20.) Appellant also caused Appellee to be in reasonable apprehension of bodily injury in violation of M.C.A. 45-5-201 when Appellant yelled at Appellee on the recording at 2:11:00 "Get the fucking [unintelligible] face before I slap her myself" as set forth in Appellee's Response. (Id. at 21-22.) All these statements and acts are clearly audible on Appellee's recording of the incident and occurred off the Reservation in Dodson, Montana.

Appellee's Response also included reference to the Court's finding from the hearing that after the assault Appellant also stalked Appellee at the domestic violence shelter she stayed at in Billings, Montana. (Id. at 3:1-3.) Appellee was forced to call law enforcement to get Appellant to leave. (Id.) Dodson and Billings Montana are not located within any Native American Reservations.

The District Court reasonably determined these acts occurred off the Fort Belknap Indian Reservation and constituted substantial activities involving significant contacts with the state. Accordingly, the District Court Ordered:

Here, much of Candy's violent and abusive conduct occurred in the Dodson area and in Dodson and Billings all of which are located outside the exterior boundaries of the Fort Belknap Indian Reservation and within the State of Montana. This Court clearly has subject matter jurisdiction.

Ex. 2 4:4-8.

The District Court record established that Frank Webb's brutal assault of Appellee on May 21, 2021, began on the Fort Belknap Indian Reservation and continued for nearly 2 hours and 30 minutes. The assault included at least 20 minutes of abuse off the Reservation in Dodson and the area immediately surrounding Dodson. Appellant's direct involvement in the attack only occurred after her car arrived in Dodson, Montana, and she refused to let Appellee out of her car.

Appellant's specific acts against Appellee that occurred in Dodson, Montana, included but were not limited to: Appellant refused to let Appellee out of her car aiding in her son's brutal assault of Appellee (Id. at 3:3-6.); Appellant tried to keep Appellee from accessing a telephone due to Appellant's fear that Appellee would contact law enforcement; Appellant attempted to intimidate Appellee into never returning to see her kids; and, Appellant threatened to slap Appellee as Appellant's son was beating Appellee less than two feet away.

The Order of Protection was also granted because Appellant went to Billings, Montana, and waited outside the domestic violence shelter where Appellee was staying until law enforcement made Appellant leave. (Id. at 3:7-12.)

Appellant also misreports Appellee's tribal enrollment status in her Opening Brief. To the best of Appellee's knowledge, she is not eligible for enrollment in any tribe nor was Appellee's eligibility established during the District Court's briefing as Appellant contends. Appellant's assertion that during the District Court briefing on Appellant's Motion to Dismiss "it came to light that Jaylene is eligible for enrollment with the FMIC" is completely wrong and misleading. Appellant's Opening Brief pg. 11.

In fact, Appellant stated in her Brief in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction that Appellee and her children were merely "descendants" of the Fort Belknap Tribe. (Ex. 3 pg. 4:12-14.) Appellant went on to state "Jaylene Phillips is a descendant of the Fort Belknap Tribe, and so are Frank's and Jaylene's children." (Id.) At no time was it "established" in the District Court proceeding that Appellee was enrollable in any tribe. Appellee believes her blood quantum is lower than what is required for enrollment in any Indian tribe.

Appellant also concedes in her Opening Brief on page 2, that she too is a non-member of the Fort Belknap Indian Reservation. Appellant asserts without

any supporting documentation that she is a member of a tribe in Washington State and only “eligible” for membership in the Little Shell Chippewa Cree Tribe. As such, she is also a non-member of the Fort Belknap Indian Reservation.

STANDARD OF REVIEW

The Montana Supreme Court reviews de novo a district court's ruling on a motion to dismiss for lack of subject matter jurisdiction. (citations omitted). A district court must determine whether the complaint states facts that, if true, would vest the court with subject matter jurisdiction. (citations omitted). This determination by a district court is a conclusion of law that we review for correctness. (citations omitted).

Big Spring v. Conway (In re Estate of Big Spring), 2011 MT 109, ¶ 20, 360 Mont. 370, 378, 255 P.3d 121, 126.

SUMMARY OF ARGUMENT

Appellant falsely argues that her involvement in the attacks on Appellee occurred exclusively on the Fort Belknap Indian Reservation. Appellant tries to conceal that the portion of the attack she engaged in actually occurred off the Reservation as proved by Appellee’s recording of the attack. Appellant’s unlawful acts occurred in Dodson, Montana and Billings, Montana, not on the Fort Belknap Indian Reservation.

The analysis in the immediate case does not have to go any further than the long-standing rule that “when substantial activities occur off the reservation, the state may generally assume jurisdiction.” *Jud. Stnds Comm’n v. Not Afraid*, 2010 MT 285, ¶ 11, 358 Mont. 532, 245 P.3d 1116. Montana courts have jurisdiction over even tribal members whose actions involve significant contacts with the state outside reservation boundaries. (citations omitted). *Id.*

Appellant’s lengthy arguments relying upon the *Williams* test and asking this Court to apply her flawed interpretation of *Big Spring v. Conway* are misplaced. Even if Appellant’s participation in the assault against Appellee had occurred on the Fort Benton Indian Reservation, Appellant and Appellee are non-members of the Reservation and the State Court would still have subject matter jurisdiction over these non-member parties.

ARGUMENT

When substantial activities occur off the reservation, the state may generally assume jurisdiction.” *Jud. Stnds Comm’n v. Not Afraid*, 2010 MT 285, ¶ 11, 358 Mont. 532, 245 P.3d 1116. Montana courts have jurisdiction over tribal members whose actions involve significant contacts with the state outside reservation boundaries. (citations omitted). *Id.*

Appellant refers to the incorrect portion of the *Big Spring* decision regarding the analysis of the status of the parties. Appellant refers to paragraph 29 of the

opinion, when the correct analysis of tribal membership and Jurisdiction is discussed at paragraph 54 of the opinion. Paragraph 54 of the opinion states in relevant part:

As we have previously held, the term "Indian" is not interchangeable with "tribal member," and "the relevant distinction in a determination of inherent tribal civil jurisdiction, with respect to the status of individuals, is between tribal member and nonmember." *Zempel*, ¶ 27 (citing *Hicks*, 533 U.S. at 377, n. 2, 121 S. Ct. at 2319, n. 2). Therefore, Indians residing on an Indian reservation of a tribe other than their own are considered nonmembers for purposes of civil jurisdiction. *Zempel*, ¶ 27. Unlike Big Spring, an enrolled member of the Blackfeet Tribe whose estate property was located within the exterior boundaries of the Blackfeet Reservation at the time of his death, Standing Bear was not an enrolled member of the Chippewa-Cree of Montana (whose reservation is the Rocky Boy's Reservation), rendering our decision in *Estate of Standing Bear* inapposite and the District Court's reliance on it in error.

Big Spring v. Conway, 2011 MT 109, ¶ 54, 360 Mont. 370, 255 P.3d 121 (emphasis added).

The Zempel Court "enunciated the 'general proposition' that 'the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.'" *Zempel v. Liberty*, 2006 MT 220, ¶ 22, 333 Mont. 417, 425, 143

P.3d 123, 130. The Court in Zempel continued on to further explain:

Before proceeding, we must specify the meaning of a critical term in this analysis. Although the *Montana* Court referred to "nonmembers" and "non-Indians" interchangeably, the relevant distinction in a determination of inherent tribal civil jurisdiction, with respect to the status of individuals, is between tribal members and nonmembers. *Hicks*, 533 U.S. at 377, n.2, 121 S. Ct. at 2319, n.2 (Souter, J., concurring, joined by Kennedy, J., and Thomas, J.) ("the relevant distinction, as we implicitly acknowledged in *Strate*, is between members and nonmembers of the tribe."). Indians may be tribal members or nonmembers. Thus, for the purposes of a tribal civil jurisdiction analysis, the term "non-member" encompasses anyone who is not a member of the tribe at issue, including Indians who are members of a

different tribe, as well as Indians who are not members of any tribe. Accordingly, we do not employ the terms "Indian" and "non-Indian" to describe an individual's personal status for the purposes of our jurisdictional analysis.

Zempel v. Liberty, 2006 MT 220, ¶ 27, 333 Mont. 417, 428, 143 P.3d 123, 132 (emphasis added).

Appellant and Appellee clearly fail the *Big Spring* “Status of the Parties” test when the correct analysis is used. This Court does not use the terms Indian and non-Indian to describe a person’s status for jurisdictional determinations. This Court only considers whether the individuals are members or non-members of the tribe at issue as set forth in the *Big Springs* and *Zempel* decision.

Appellant’s incorrect and overly complicated analysis of Appellant and Appellee’s non-membership in the Fort Belknap Reservation is misleading and not relevant to the jurisdictional determination before the Court. Neither Appellant nor Appellee are members of Fort Belknap Indian Reservation. As such, they are considered non-members for jurisdictional purposes and the Fort Belknap Tribal Court does not have jurisdiction over either Appellant or Appellee.

The “Status of the Land” test also fails Appellant’s appeal. Appellant goes to great lengths to confuse the matter of where Appellant’s involvement in the assault occurred. Appellant’s abusive behavior towards Appellee occurred almost exclusively off the Fort Belknap Indian Reservation for obvious reason.

Appellant’s unlawful restraint of Appellee began when Appellant refused to let Appellee out of her car when they reached Dodson and Appellee asked to be

dropped off at her Grandmother's home. Appellee's request is clearly recorded on her recording. After Appellant began unlawfully detaining Appellee, Appellant also committed additional unlawful acts in Dodson by threatening to slap Appellee as she was beaten by Appellant's son; detaining Appellee so she could not call law enforcement to report the assault; and, trying to intimidate Appellee into not returning to see her children in the future.

The District Court also determined that Appellant stalked Appellee by going to the domestic violence shelter in Billings where Appellee was staying and trying to further intimidate Appellee until law enforcement made Appellant leave. The assault and stalking happened on two separate occasions hundreds of miles apart. Appellant's arguments that Appellant's unlawful acts towards Appellee occurred on the Reservation have no merit and are not supported by the obvious facts of this case.

CONCLUSION

The facts of the immediate case clearly establish that Fort Belknap Tribal Court does not have jurisdiction over this case. Appellee and Appellant are non-members of the Fort Belknap Reservation and Appellant's acts against Appellee occurred off the Fort Belknap Reservation. Appellant is trying to avoid responsibility for her actions by getting the Order of Protection dismissed out of State Court only to have the Tribal Court decline jurisdiction because the acts

occurred off the Reservation and the parties are non-members of the Fort Belknap Indian Reservation. The District Court correctly decided Appellant's Motion to Dismiss and as such, Appellant's appeal should be denied.

DATED this 7th day of November, 2022.



Craig Wahl, Attorney for Petitioner/Appellee
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27, M.R.App.P., I certify that this Brief is printed with a proportionally spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Word, is not more than 10,000 words, not averaging more than 280 words per page, excluding Certificate of Service and Certificate of Compliance.

DATED this 7th day of November, 2022.



Craig Wahl, Attorney for Petitioner/Appellee
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that I have filed a true and accurate copy of the foregoing Appellee's Response Brief with the Clerk of the Montana Supreme Court; and that I have served a true and accurate copy of the foregoing Appellee's Response Brief upon the Clerk of the District Court and each attorney of record as follows:

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DATED this 7th day of November, 2022.



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APPENDIX

EXHIBIT 1

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Tami R. Christofferson
Clerk of District Court

MAY 20 2022

Jami R. Christofferson
Phillips County

8 MONTANA SEVENTEENTH JUDICIAL DISTRICT COURT, PHILLIPS COUNTY

9 JAYLENE CECELIA PHILLIPS,

11 Petitioner,

12 vs.

13 LEONIE CANDICE WEBB,

14 Respondent.

Cause No: DR 21-018

RESPONSE TO MOTION TO DISMISS

16 COMES NOW, the Petitioner, Jaylene Phillips, through her attorney of record, Craig Wahl,
17 pursuant to the immediate Response to Motion to Dismiss. Respondent's Motion to Dismiss is fatally
18 flawed and should be denied without hearing.

19 **BRIEF IN SUPPORT**

20 As a preliminary technical matter, Mr. Johnson is not Ms. Webb's attorney of record and as such
21 his Motion to Dismiss is not duly before the Court and should be stricken from the Court record.

22 Secondly, Ms. Webb's motion misrepresents the clear, undisputed facts of this case as presented
23 at hearing on October 27, 2021. At hearing it was clearly presented that at least 20 minutes of the brutal
24 attack on Ms. Phillips occurred in the town of Dodson, Montana and the area immediately adjacent to
25 Dodson. Ms. Webb was present at the hearing, represented by counsel and had the opportunity to

1 present her side of the May 21, 2021 assault. At no time before the immediate Motion has Ms. Webb
2 tried to argue the May 21, 2021, assault occurred exclusively on the Fort Belknap Reservation. At
3 hearing it was undisputed that the assault began at the Webb ranch and ended in Dodson, Montana with
4 Leonie Webb driving the parties around Dodson for more than 20 minutes while Ms. Phillips was
5 brutally assaulted in front of her children.

6 At hearing Ms. Phillips relived the horrible day of May 21, 2021, and testified that she was
7 brutally beaten by Frank Webb, Respondent's son, in Respondent's vehicle as Respondent drove the
8 vehicle with Ms. Phillips and Frank Webb's children in the car witnessing the prolonged assault. In
9 addition to Ms. Phillips' testimony, a recording of the assault was admitted into evidence at hearing and
10 portions of the recording were played in court.

11 Ms. Phillips testified and audio evidence was presented at hearing that the parties left the Fort
12 Belknap Reservation and arrived in Dodson by at least around the 2 hour 4 minute mark of the
13 recording. Ms. Phillips can be heard on the recording at 2:04:55 saying "can you take me to grandma's
14 around the corner." Ms. Phillips' grandmother lives in Dodson, Montana. Ms. Phillips asked repeatedly
15 to be let out of the vehicle and Ms. Webb refused to let out Ms. Phillips out of the vehicle resulting in
16 Ms. Phillips being unlawfully restrained in violation of MCA 45-5-301 and subjected to Frank and
17 Leonie Webb's continued coordinated abuse. Ms. Webb also is clearly heard on the recording at
18 2:07:20 stating "We can't have you accessing a phone" and Ms. Webb further tries to intimidate Ms.
19 Phillips into never returning to the reservation at 2:10:03 when she said "and don't you ever come back,
20 ever, ever" in violation of Montana's intimidation statute at MCA 45-5-203. Ms. Webb also says at
21 2:11:00 "Get the fucking [unintelligible] face before I slap her myself" in violation of Montana's assault
22 statute at MCA 45-5-201. Ms. Phillips testified she was driven around Dodson for at least 20 minutes
23 while she was being physically assaulted by Frank Webb and verbally assaulted by Leonie Webb.

1 Testimony was also presented that Ms. Webb stalked Ms. Phillips in Billings, Montana and Ms.
2 Webb appeared at the domestic violence shelter where Ms. Phillips was staying and refused to leave
3 until law enforcement arrived and made Ms. Webb leave.

4 Ms. Webb falsely asserts in her latest legal filings “[t]he alleged abuse by Frank and Candy
5 occurred exclusively within the exterior boundaries of the Fort Belknap Reservation.” See Respondent’s
6 Brief in Support at pg. 2 lns. 7-8. Ms. Webb’s insistence that State Court lacks subject matter
7 jurisdiction over this matter because the assault occurred exclusively on the reservation ignores and
8 misrepresents the clear record presented at hearing. Ms. Phillips was subjected to more than twenty
9 minutes of abuse in a coordinated assault by Leonie and Frank Webb in Dodson, Montana and the area
10 immediately adjacent to Dodson. This portion of the assault did not occur within the Fort Belknap
11 Reservation.

12 Ms. Webb’s Motion to Dismiss is the Webb family’s latest effort to harass and intimidate Ms.
13 Phillips. Ms. Webb’s Motion to Dismiss is another desperate attempt to avoid responsibility for her
14 participation in the May 21, 2021 brutal assault of Ms. Phillips. Ms. Webb’s arguments of tribal
15 jurisdiction are a red herring completely irrelevant to the immediate case. Leonie and Frank Webb
16 engaged in a horrific, coordinated assault of Ms. Phillips that began on the Fort Belknap Reservation and
17 continued off the reservation for at least 20 minutes. Ms. Phillips is not required to acquiesce to her
18 abusers’ chosen forum. Such an argument is completely nonsensical and insulting to the victims of
19 domestic violence.

20 Ms. Webb’s attempts to mislead this Court and further victimize Ms. Phillips should not be
21 tolerated. Ms. Phillips respectfully requests that in addition to denying Ms. Webb’s Motion to Dismiss
22 that she also be awarded her reasonable attorney’s fees in responding to Ms. Webb’s attempts to mislead
23 the Court and her continued abusive legal tactics.

24 ////

25 ////

1 ///

2 DATED this 20th day of May, 2022.

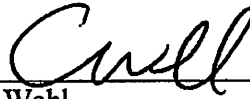


Craig Wahl, Attorney for Jaylene Phillips

3
4
5 **CERTIFICATE OF SERVICE**

6 The undersigned certifies that on the 20th day of May, 2022, a true and correct copy of the
7 immediate filing was mailed to:

8 Patrick Flaherty, PO Box 1968, Great Falls, MT 59403
9 Thane Johnson, PO Box 3038, Kalispell, MT 59903-3038



10 Craig Wahl

EXHIBIT 2

JUN 03 2022

by 
Phillips County, Deputy

Hon. Yvonne Laird
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MONTANA SEVENTEENTH JUDICIAL DISTRICT, PHILLIPS COUNTY

JAYLENE CECILIA PHILLIPS, Petitioner, vs. LEONIE CANDICE WEBB, Respondent.	No. DR-2021-18 ORDER ON MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION
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Before the Court is Respondent Leonie Candice Webb's ("Candy") *Motion to Dismiss for Lack of Subject Matter Jurisdiction* filed on May 10, 2022. Petitioner Jaylene Cecelia Phillips ("Jaylene") filed her response on May 20, 2022. Candy filed her reply on May 31, 2022.

Background

This proceeding concerns Jaylene's petition for a temporary order of protection ("Petition") filed on August 23, 2021. On August 27, 2021, the Court issued a *Temporary Order of Protection* which was later converted to a *Permanent Order of Protection* on December 15, 2021. The Court's *Permanent Order of Protection* ("Order") requires Candy to stay at least 1500 feet away from Jaylene and her minor children, K.W. and O.W. Candy is the paternal grandmother of K.W. and O.W. As it pertains to Jaylene and Candy, the Court's

1 Order is effective for the next five (5) years until October 26, 2026, unless Jaylene files a
2 motion to extend it. The Order is effective for one (1) year until October 26, 2022 as it
3 pertains to K.W., O.W., and Candy, unless a motion to extend is granted.
4

5 Jaylene filed her Petition in response to a series of violent and abusive acts perpetrated
6 by Candy and her son Frank Webb ("Frank"). In May 2021, K.W. and O.W. had been residing
7 with Frank who is the girls' father. Frank's home is located within the exterior boundaries of
8 the Fort Belknap Indian Reservation, near Lodge Pole in Blaine County, Montana. Candy also
9 resides within the reservation boundaries, a short distance away from Frank's home.
10

11 On May 21, 2021, Jaylene went to Frank's house to fix the girls' hair for kindergarten
12 graduation, which was scheduled to take place later that day in Dodson, Phillips County,
13 Montana. Upon arriving at Frank's house, Jaylene noted that his demeanor was irritated and
14 agitated, and roughly ten to fifteen minutes thereafter he confronted her with his concerns
15 about her personal relationship with another man. Frank had apparently received a text
16 message from a person claiming to have a romantic relationship with Jaylene. Jaylene
17 attempted to de-escalate the situation to no avail. She eventually grew concerned for her
18 safety and went into the bathroom where she downloaded a recording app onto her phone. She
19 then proceeded to make an audio recording of the events which transpired ("Recording"). The
20 Recording was entered into evidence at the hearing on Jaylene's Petition.
21
22

23 At hearing, the Recording and Jaylene's testimony established that a short time after
24 the Recording was commenced Frank, Candy, K.W., O.W., and Jaylene traveled together in
25 the same vehicle from Frank's residence to Dodson which is located outside the boundaries of
26 the reservation within Phillips County. During the trip Jaylene was physically and verbally
27 abused by Frank: including being strangled at one point and told she would be thrown off a
28

1 "fucking bridge." Candy drove the vehicle and verbally abused Jaylene. Upon reaching
2 Dodson, Candy drove the vehicle around town for 20 minutes and continued to verbally abuse.
3 Jaylene while Frank physically assaulted her in front of her children. Jaylene asked repeatedly
4 to be let out of the vehicle, but Candy refused to let her out. As a result, Jaylene suffered
5 physical restraint and continued physical abuse by Frank.
6

7 Sometime thereafter, Candy came to the domestic violence shelter where Jaylene was
8 staying in Billings, Montana, and parked outside. Jaylene was forced to contact local law
9 enforcement who responded and advised Candy to leave, or Candy would be cited for
10 trespassing. Like Dodson, Billings is located outside the exterior boundaries of the reservation
11 and within the territorial boundaries of the State of Montana.
12

13 Discussion

14 Candy argues that the Court lacks subject matter jurisdiction because Jaylene, Frank,
15 and Candy all qualify as Indians under applicable law, and the violent and abusive acts which
16 gave rise to the Petition occurred "almost exclusively within the exterior boundaries of the
17 Fort. Belknap Reservation." This argument has no merit.
18

19 While "the exercise of state jurisdiction over activities occurring entirely on Indian
20 lands is an infringement on inherent tribal authority and is contrary to principles of self-
21 government and tribal sovereignty," it is well established that state courts may assume
22 jurisdiction over an Indian party who has engaged in "substantial activities. . . off the
23 reservation" or actions involving "significant contacts with the state." *Judicial Stds. Comm'n*
24 *v. Not Afraid*, 2010 MT 285, ¶¶ 11-12, 358 Mont. 532, 245 P. 3d 1116; *Crawford v. Roy*, 176
25 Mont. 227, 230, 577 P. 2d 392, 393-94 (1978). An Indian party has engaged in activities
26 having substantial contacts with the State of Montana if the conduct giving rise to an action
27
28

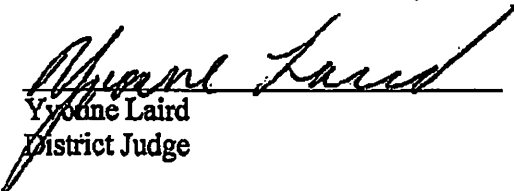
1 occurred at least in part outside the exterior boundaries of the reservation and within the
2 territorial boundaries of the state. *Crawford*, 176 Mont. at 230, 577 P. 2d at 393-94; *Not*
3 *Afraid*, ¶¶ 3-4, 11-12.

4
5 Here, much of Candy's violent and abusive conduct occurred in the Dodson area and
6 in Dodson and Billings all of which are located outside the exterior boundaries of the Fort
7 Belknap Indian Reservation and within the State of Montana. This Court clearly has subject
8 matter jurisdiction.

9 Based on the forgoing, **IT IS HEREBY ORDERED** that:

- 10
11 1. Respondent's *Motion to Dismiss for Lack of Subject Matter Jurisdiction* is
12 **DENIED.**
13 2. The Clerk shall send a copy of this Order to counsel of record.

14 Dated this 3rd day of June 2022.

15
16 
17 Yvonne Laird
18 District Judge
19

20 p/phillips.motiontodismiss
21
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27
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EXHIBIT 3



COPY

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MONTANA SEVENTEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF PHILLIPS

JAYLENE CECELIA PHILLIPS,

Petitioner,

vs.

LEONIE CANDICE WEBB,

Respondent.

Cause No. DR-2021-0018

**BRIEF IN SUPPORT OF MOTION TO
DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION**

COMES NOW Leonie Candice Webb, Respondent above named, by and through her counsel of record, Thane Johnson of Johnson, Berg & Saxby, PLLP, and respectfully submits her Brief in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction.

ISSUE

I. WHETHER THIS COURT HAS SUBJECT MATTER JURISDICTION OVER A TEMPORARY ORDER OF PROTECTION PROCEEDING CONCERNING AN INDIAN AND ACTS OCCURRING ALMOST EXCLUSIVELY WITHIN THE EXTERIOR BOUNDARIES OF FORT BELKNAP RESERVATION?

STATEMENT OF FACTS

Webb incorporates by reference all of the stated facts in the Permanent Order of Protection dated December 15, 2021 and further asserts Candy Webb is a member of the Lummi Tribe in Washington and is also eligible for membership in the Little Shell Chippewa Cree Tribe. Frank, the natural father of K.L.W. and O.T.W. is a descendent of the Fort

1 Belknap Reservation and is eligible for membership in the Little Shell Chippewa Cree Tribe.
2 Frank's father and Candy's husband, Dennis Webb, is a member of the Fort Belknap Tribe.
3 Jaylene Phillips is a descendent of the Fort Belknap Tribe.
4

5 All relevant acts for the Order of Protection began in or near Lodge Pole within Blaine
6 County and at the southern portion within the exterior boundaries of the Fort Belknap
7 Reservation. The alleged abuse by Frank and Candy occurred exclusively within the exterior
8 boundaries of the Fort Belknap Reservation. The vehicle in question barely drove off of the
9 Reservation on its way to Dodson.

10 **THIS COURT MUST DISMISS THIS ACTION FOR LACK OF SUBJECT MATTER**
11 **JURISDICTION.**

12 An Indian is defined for purposes of inheritance as follows:

13 Any person who is a member of any Indian Tribe, is eligible to become a
14 member of any Indian Tribe . . .

15 25 U.S.C., Sec. 2201(2)(a).

16 For purposes of criminal jurisdiction, an Indian is defined as follows:

17 To be considered an Indian, a person must have some degree of Indian blood,
18 and must be recognized as an Indian. You may consider such factors as
19 whether a person is recognized as an Indian by an Indian Tribe, or society of
20 Indians. When the person is recognized as an Indian by the federal
21 government, whether the person resides on an Indian Reservation, and
22 whether a person holds himself out as an Indian. It is not necessary that all of
these factors be present, rather U.S. Juris. must consider the totality of the
circumstances and determine as a factual matter whether each defendant is an
Indian.

23 *United States v. Torres*, 733 F.2d 449, 456 (7th Cir. 1983); *see also*, *United States v.*
24 *Broncheau*, 597 F.2d 1260, 1262-1263 (9th Cir. 1979).

25 The United States Supreme Court stated that tribal jurisdiction does not vary between
26 fee lands and trust allotments. *Moe v. Confederated Salish & Kootenai Tribes of the Flathead*
27 *Reservation*, 425 U.S. 463, 478, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976). It cannot be denied that
28 the Blackfeet Nation constitutes an independent political community that has been defined as a

1 domestic dependent nation. *See, Cherokee Nation v. Georgia*, 5 Pet. 1, 16-17, 8 L.Ed. 25
2 (1831). *See also, Worcester v. Georgia*, 6 Pet. 515, 559, 8 L.Ed. 483 (1832). Obviously,
3 Indian tribes no longer possess the full attributes of sovereignty, but they have not given up
4 their full sovereignty. *U.S. v. Wheeler*, 435 U.S. 313, 323 (1978).

5
6 As a matter of federal preemption, the State lacks jurisdiction to adjudicate or regulate
7 transactions involving Indians within the exterior boundaries of the Blackfeet Nation.
8 *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 175 (1973). *See also, Warren*
9 *Trading Post Company v. Arizona Tax Commission*, 380 U.S. 685, 687 (1965). *See also,*
10 *Williams v. Lee*, 358 U.S. 217 (1959).

11 When the Court must consider the limitations on state court jurisdiction over matters
12 potentially implicating both State and Tribal interests, the courts have established a clear line
13 that the governing analysis has long been and continues to be the *Williams v. Lee* test. 358
14 U.S. 217 (1959).

15
16 In summary, *Williams* and its progeny stands for the rule that a state may
17 assert jurisdiction over an activity or dispute involving a non-Indian and
18 arising within the boundaries of a Tribal Reservation if:

- 19 1. The state's exercise of authority is not preempted by incompatible federal
20 law; and
- 21 2. The state's exercise of authority does not infringe on the right of
22 Reservation Indians to make their own laws and be ruled by them.

23 *Three Affiliated Tribe of Fort Berthold Reservation v. Wold Eng'g PC*, 467 U.S. 138, 147
24 (1884).

25 In matters involving the regulatory and/or judicatory actions involving Tribes and/or
26 their members occurring within Tribal territory, the state court must determine if the "exercise
27 of jurisdiction by a state court or regulatory body is preempted by federal law." *Big Springs v.*
28 *Conway (In Re Estate of Big Springs)*, 360 Mont. 370, 255 P.3d 121. If the state action is not
preempted, the court must determine if the "action infringes on Tribal self-government." *Id.* If

1 either is present, the state court does not have subject matter jurisdiction. *Crawford v. Couture*,
2 385 Mont. 350, 384 P.3d 1038 (2016). Absent an assumption of civil jurisdiction under Public
3 Law 280 (28 U.S.C., Section 1360), jurisdiction over non-Indians as well as members of the
4 Tribe presumptively lies in Tribal Court. *Fisher v. District Court*, 424 U.S. 382 (1976).
5

6 It cannot be disputed that Candy and Frank are Indians under the definitions stated
7 above. Candy is a member of a Lummi Tribe and is eligible for membership in the Little Shell
8 Tribe. Frank is a descendant of the Fort Belknap Tribe and eligible for membership in the
9 Little Shell Tribe. Frank and Candy reside within the exterior boundaries of the Fort Belknap
10 Reservation. They are recognized as Indians within Fort Belknap. Jaylene Phillips is a
11 descendant of the Fort Belknap Tribe, and so are Frank's and Jaylene's children.
12

13 An examination of a map of Blaine County reveals that all of the alleged acts of abuse
14 occurred by Indians to a descendant exclusively within the Reservation. The course of travel
15 from Lodge Pole to Dodson is almost one hundred percent within the Reservation. Obviously,
16 adjudication of an order of protection is not preempted by federal law, but the state court
17 adjudicating an order of protection involving Indians and descendants for acts that occurred on
18 the Reservation infringes upon Fort Belknap's Tribal self-government. Fort Belknap has its
19 own order of protection laws, and it has its own Tribal Court. In fact, the Tribal Court had
20 already decided the custody issue between Frank and Jaylene. In addition, Tribal Child
21 Protective Services has intervened and placed the minor children. The Tribe wants to govern
22 this entire situation. The state court's intervention into this matter squarely and directly
23 infringes upon the Fort Belknap's rights to govern Indians and their Reservation. For an
24 excellent analysis of the *Williams* test and examples of other state courts using the test, *see*,
25 *C'Hair v. Dist. Court of the Ninth Judicial Dist.*, 357 P.3d 723 (Wy. 2015).
26
27
28

1 WHEREFORE, this Court should grant Respondent's Motion to Dismiss for Lack of
2 Subject Matter Jurisdiction.

3 DATED this 6th day of May, 2022.

4 JOHNSON, BERG & SAXBY, PLLP

5 

6 By: _____
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11
12 CERTIFICATE OF SERVICE

13 The undersigned does hereby certify that on the 6th day of May, 2022, a true and
14 correct copy of the foregoing document was served upon the persons named below, at the
15 addresses set out below their names, either by mailing, hand delivery, or otherwise, as
indicated below.

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19 

20
21 _____
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CERTIFICATE OF SERVICE

I, Craig Wahl, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-07-2022:

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