IN THE SUPREME COURT OF THE STATE OF MONTANA
No. OP-___-_____

Karen Lynn Maybee,

Petitioner

v.

Montana Eighteenth Judicial District Court, Gallatin County,
Hon. John C. Brown, Presiding

Respondent

PETITION FOR WRIT OF SUPERVISORY CONTROL

Original Proceeding arising from
Montana Eighteenth Judicial District Court, Gallatin County
In Re Marriage of: Karen L. Maybee and Scott B. Maybee,
Cause No.: DR-21-349C, Honorable John C. Brown, Presiding

Appearances:

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INTRODUCTION

Karen Maybee ("Karen") requests a writ of supervisory control, directing the Montana Eighteenth Judicial District Court to lift the stay of this marital dissolution action so that Karen can seek relief from the district court to protect herself and the parties' minor child from immediate and irreparable harm. The two orders at issue are Exs. 7 and 13 hereto.

FACTS

Scott and Karen married in 2001. They have two children, ages 14 and 15, at filing. Karen filed her petition for dissolution in 2021 (Ex. 1)[1] and Scott responded (Ex. 2), admitting they had both resided in Montana for more than 90 days. Ex. 1, ¶ 1; Ex. 2, ¶ 1. Scott requested the district court to "equitably and fairly divide all of the property and debts of the parties" pursuant to M.C.A. § 40-4-202. Ex. 2, p. 2, ¶ 7 and p. 3, ¶ 2.

Karen, a stay-at-home mother who is financially dependent upon Scott, petitioned for maintenance, payment of attorney fees, and child support, both temporary and permanent. Ex. 1, pp. 2-3, ¶¶ 10-12, 15. Scott responded by denying the need for maintenance and attorney fee payments because "the parties are currently operating financially out of a joint bank account, and the Respondent proposes that the parties continue to utilize such account for living and other

[1] Karen simultaneously sought and obtained an order of protection due to Scott's substantial history of sexual, physical, and emotional abuse.

expenses." Ex. 2, p. 2, ¶¶ 10, 12.

As he saw the divorce approaching, Scott had pulled $1.72 million out of the equity in the marital and vacation homes by way of cash-out refinancing, placing the funds into that joint account. And Scott continued to deposit some earnings into that joint account. By all appearances, Karen had access to sufficient funds to care for herself and the minor children. It seemed reasonable for Karen to forego temporary orders, and so she did. She could not, however, anticipate later developments.

First, Scott, who is an enrolled member of the Seneca Nation of Indians (the "tribe") filed a petition in the tribal court (the "Peacemakers Court") in New York, asking it to declare that it had sole jurisdiction over certain assets and issues. Ex. 3. Scott claimed to have initiated that action to "safeguard [his] rights to [his] real property and business interest located within the Nation […]." *Id*., ¶ 2. He alleged that the Montana dissolution proceedings "threaten to interfere with the sovereign authority of the Nation […] to determine the ownership and valuation of Nation land and business interests …." *Id*., ¶ 15. He requested a ruling that the tribal court has exclusive jurisdiction to value certain assets and income streams involved in this dissolution action. *Id*., ¶ 16.

Two years elapsed between Karen's initiation of this case and Scott's filing in tribal court. *Compare* Exs. 1 and 3. Having been lulled into a sense of complacency, Karen had not sought any temporary orders. Once he was ready,

however, Scott sprung his trap. Shortly after filing in tribal court, Scott asked the district court to stay this dissolution case, citing, without serious discussion, "***potential*** issues of tribal sovereignty, the doctrine of comity, and the ***possibility*** of conflicting judgments…." Ex. 4 (emphasis added); *see also* Exs. 5 and 6 (respectively, Karen's response and Scott's reply).

On December 6, 2023, apparently based solely on the strength of the tribal court filing (no judgment had been entered yet), the district court[2] issued its Order Staying Proceedings as a matter of "judicial efficiency," ordering that "the parties' dissolution proceedings are stayed until the Peacemakers Court […] issues a declaratory judgment stating its jurisdiction, or lack thereof, ***over this dissolution***." Ex. 7 (emphasis added).

The tribal court held a hearing on Scott's Petition in January 2024. Karen, who denies the tribal court's jurisdiction over her, did not personally attend but was represented by counsel.[3] Scott attended the hearing personally and through counsel. Scott presented testimony, but no supporting documents other than a copy of the district court's order staying this case. Ex. 8. Scott admitted that (1) any income derived from his businesses during the marriage constituted marital income

[2] At the time of the two orders of which Karen complains, Standing Master Magdalena Bowen presided over the case. She has since retired.

[3] Karen had to hire New York counsel, incurring significant additional fees, even as this case remains shut down so she cannot seek temporary orders regarding support or payment of her attorney fees.

and/or property, and (2) that issues of parenting, child support, spousal support, and distribution of all "non-tribal" property should be adjudicated by the Montana district court. *Id.*, p. 8, lns. 26-29; p. 2, lns. 16-21. His counsel explained that "Scott is in no way trying to remove the divorce action from the Montana courts" and that the district court's order deferring to tribal court was "broader that the relief that we were seeking." *Id*. Ex. 8, p. 2. Thus, even Scott conceded that the district court's order deferring to the tribal court proceeding was too broad.

The Peacemakers Court promptly issued its Declaratory Judgment. Ex. 9. Though it was broad, even it purported to address "*[o]nly* the issue of [Scott's] tribal business assets and real property within the exclusive jurisdiction of the Seneca Nation…." *Id.*, p. 1.

On February 27, 2024, Karen appealed the Declaratory Judgment to the tribal court of appeals. Ex. 10. Shortly thereafter, Scott moved the Montana district court to enforce the tribal court judgment (Ex. 9) and to disclaim jurisdiction over matters that the tribal court had declared to be within its sole authority. Ex. 11. Karen moved to set aside the prior order (Ex. 6) which had stayed the case. Ex. 12. Both motions were fully briefed.

On April 25, 2024, the district court issued an Order "reserving ruling" on those two motions "until the Peacemaker's [sic] appeal is finalized" and vacating all previously scheduled hearings. Ex. 13. The continued stay also left unresolved many other motions, including Karen's motions:

- To compel (Dkts #86 and 176);
- For contempt (Dkt #87);
- To strike (Dkt #108); and
- For possession of certain property.[4]

Recently, the tribal appellate court issued its "modified declaratory judgment." Ex. 14. That modified judgment reiterated that the lower tribal court had purported to "accept [] only jurisdiction over…Scott's…Seneca Nation-sourced assets," *id*., p. 1, without defining what that means. The appellate court explained, however, that it modified the judgment to "preclude[] further attempts to circumvent the judgment before foreign tribunals," presumably the Montana district court. *Id*., p. 2. The decree claimed that the tribal courts have "sole and exclusive jurisdiction" over, not only the ownership of land within the reservation, but also the "valuation and ownership of business interests" owned by Scott. It decreed that those business interests, and all "income and assets derived from" them, "may not be alienated" to Karen by the Montana court. *Id*.

Moreover, according to the tribal court, Montana courts may not even consider Scott's ownership of those other assets when "calculating the equitable distribution of marital estate and assets or for the purposes of support and-or

[4] It also left unresolved several of Scott's motions, including his motions for a scheduling order (Dkt #109); to exclude (Dkt #119); and to quash (Dkt #160).

maintenance." *Id*. In fact, Scott's "Seneca Nation-sourced assets" cannot be "subject to any…valuations…by…foreign jurisdictions." *Id*. Valuation can only be conducted by the tribal court, although, "no such valuation is necessary" because it declared all such assets, undefined though they are, to be Scott's "separate assets distinct from the marital estate and not subject to consideration, valuation, or distribution for any purpose…." *Id*. The tribal court went so far as to declare that a prior valuation that Scott had obtained and exchanged as his expert report in the Montana district court action "**MAY NOT AND CANNOT** be used for independent valuation/assessment outside of the Seneca Nation." *Id*. And, it threatened contempt proceedings against anyone who dares violate that decree, including, presumably, Karen and the Montana courts. *Id*.

Scott immediately submitted that modified declaratory judgment to the Montana court. Doc. 15. Karen intends to seek permission to appeal to the Seneca Nation of Indians Supreme Court.

The third prong of Scott's triad has been to deplete the non-tribal assets over which the tribal court has "permitted" the Montana district court to exercise jurisdiction.

- **Scott is not making current earnings available to pay for the support of Karen, the children, or the marital home/assets.** Although Scott continues to deposit some of his owner's draws into the parties' joint account, his traceable discretionary spending out of the joint account has

largely matched his deposits. And, since he obtained a stay of this proceeding, his spending has accelerated. The result is that, while he has deposited some funds into the account available to Karen, he has spent that money to support only his own lifestyle; not Karen or the children. His deposits to the joint account, therefore, do not pay for joint marital expenses, including the mortgage payments, utility bills, upkeep of the marital properties, substantial insurance premiums, food/groceries, and other living expenses for Karen or the children. Rather, the borrowed home equity, plus certain distributions from the marital investment accounts, have supported the marital properties, Karen and two teen children.

- **Scott's conduct has forced Karen to deplete the equity from the marital home just to support herself, the children, and the marital assets.** As noted, Scott raided the equity in the parties' homes, creating a fund of $1.72 million in the parties' joint account. But, because he has diverted other income and used what he did deposit for his own personal expenses, Karen has had to use those borrowed funds to support herself and the children. This includes paying some $30,000 to $35,000 monthly in marital expenses, including over $10,000 per month ($425,000 during this proceeding) just to pay the interest on the mortgages Scott placed on the family homes. The result is that the pool of money that Scott has

made available to Karen is almost depleted.

- **Scott is also depleting the other marital assets while starving Karen into submission.** Since at least 2016, the parties used $24,500 per month from investment accounts to partially cover living expenses. At present, these investment accounts total approximately $5 Million and are the only liquid funds currently declared and available to both parties. But in January 2025, Scott unilaterally directed $12,000 of the $24,500 to be deposited into a new account in his name only. He has also declared his intention to deposit his future owners draws into his new separate bank account. Thus, he intends to deposit at least $51,000 monthly into his own account, plus another $40,000-50,000 a month into his "Tax Account", and let Karen receive $12,500 a month from an investment account.
- **In the meantime, however, Scott is hiding and diverting his income.**
    - Before (and in anticipation of) separation, Scott began depositing 55-60% of his monthly draws from his businesses into a so-called "Tax Account" that Karen cannot access. The accumulated amounts, $300,000+, far exceed any reasonably anticipated tax liability.
    - Similarly, since separation, Scott has paid excessive estimated tax payments, rolling over each year, cumulating some

$100,000.

- Business records also suggest that, early in these proceedings, Scott received substantial owners' draws, over $120,000, that used to be deposited into the parties' joint account but which he has now diverted to some account that Scott has not disclosed and which Karen obviously cannot access.
- Documents also suggest that Scott has been receiving significant cash income, perhaps $400,000 to $1,000,000 annually, which he does not declare or deposit into any account known to Karen.

In summary, Scott convinced Karen not to seek temporary orders, so that she has no promise of continued support for herself or the parties' minor children (one of whom is still a minor) during the pendency of this matter, and no influx of funds to pay professional fees. He then convinced the district court, out of deference to the tribal court, to disallow any further proceedings in this case, so that Karen cannot even ask the district court for that relief. In the meantime, he is doing his best to deplete the marital assets—those that are unquestionably beyond the reach of the tribal court—so that if and when the district court does open the "[c]ourts of justice" to her, *see* Mont. Const. art. II, § 16, there will be few non-tribal assets left for the district court to distribute.

ANTICIPATED LEGAL QUESTIONS AND ISSUES

Karen's petition raises the following legal issues.

1. Whether this Court should accept jurisdiction and issue the writ, including:
    a. Whether emergency factors make a normal appeal inadequate; and
    b. Whether the case involves purely legal questions.
2. Whether it was a mistake of law for the district court to implement and maintain a stay of these proceedings pending resolution of the tribal court proceedings, including whether the district court:
    a. Is bound by the tribal court judgment; and
    b. If not, what effect must it afford the tribal court judgment.
3. Whether Karen is suffering a gross injustice.

SUMMARY STATEMENT OF ARGUMENT

As directed, *see* Rule 14(5)(b)(iii), Karen provides the following summary of the argument.

I. THIS IS A PROPER CASE TO EXERCISE SUPERVISORY CONTROL.

This Court has general supervisory control over all other courts and may supervise another court by way of a writ. Mont. Const. art. VII, §2(2); Rule 14(3), M.R.App.P.; *see also Lamb v. Dist. Court of the Fourth Judicial Dist. of Mont.*, 2010 MT 141, ¶ 1, 356 Mont. 534, 234 P.3d 893. "[S]upervisory control is appropriate where the district court is proceeding under a mistake of law, and in so doing is

causing a gross injustice." *Potter v. Dist. Court*, 266 Mont. 384, 388, 880 P.2d 1319, 1322 (1994).

Supervisory control is considered an extraordinary remedy, to which this Court resorts only in certain situations. Rule 14(3).

A. Emergency factors make a normal appeal inadequate.

This divorce is in its fourth year, with no end in sight. There are no temporary orders providing for temporary child support or spousal maintenance and no orders for Scott to help Karen pay for the litigation he has multiplied. Scott is depleting the assets available to Karen, both in the interim and for final equitable distribution. But the district court has forbidden Karen from seeking relief.

Karen cannot, however, appeal because an order staying proceedings is not appealable. Rule 6(3), M.R.App.P.; *Lamb*, 2010 MT 141, ¶ 11.

Karen's right of access to the court is fundamental under both the federal and state constitutions. *See Tennessee v. Lane*, 541 U.S. 509, 533-34, 124 S. Ct. 1978, 1994 (2004) (referencing the "fundamental right of access to the courts"); *Deschamps v. Mont. Twenty-First Jud. Dist. Court*, 2024 MT 15, ¶ 14, 415 Mont. 94, 542 P.3d 392 ("Montanans' right of access to courts is enshrined in our Constitution."); *McLaughlin v. Mont. State Legislature*, 2021 MT 120, ¶ 10, 404 Mont. 166, 489 P.3d 482 (Article II, Section 16, "guarantees … a fundamental right…").

Deprivation of a fundamental right is, ipso facto, irreparable. *Cross v. State*,

2024 MT 303, ¶ 48, 419 Mont. 290, 560 P.3d 637.

And, as a matter of real-world effect, a stay for an indeterminate amount of time (i.e., where the stay is contingent on the resolution of an underlying or related claim or action) is prejudicial when it places the litigant "at significant disadvantage in litigating the merits of the case." *Id.*

In short, Karen and the parties' minor child are at Scott's mercy, with no temporary orders for child support, spousal maintenance, or payment of attorney's fees, and they are locked out of court. Meanwhile, Scott is depleting the marital assets while hoarding and preserving those assets which he believes the tribal court has placed beyond the reach of Karen or the Montana district court.

It is not adequate to force Karen and the minor child to simply wait while Scott has his way. An eventual appeal would be an inadequate remedy.

B. The case involves purely legal questions.

The question of jurisdiction is one of law. *Buck v. Buck*, 2014 MT 344, ¶ 12, 377 Mont. 393, 340 P.3d 546 ("A district court's determination of whether it lacks subject-matter jurisdiction is a conclusion of law, which we review for correctness.").

To be sure, this case involves factual questions. This petition, however, presents the ***threshold legal question*** of whether the district court, in misguided deference to the tribal court, has mistakenly refused to allow this case to proceed.

This petition, therefore, "involves a purely legal question…." *See Lamb*, ¶ 12.

Lamb held that a petition for a writ to order the district court to take the case off stay presented "a purely legal question." Likewise, here.

II. THE DISTRICT COURT IS PROCEEDING UNDER A MISTAKE OF LAW.

A. The district court has jurisdiction over the dissolution action.

The district court unquestionably has jurisdiction over the divorce. "Subject-matter jurisdiction is a court's fundamental authority to hear and adjudicate a particular class of cases or proceedings." *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 57, 345 Mont. 12, 192 P.3d 186 (citing *Miller v. District Court*, 2007 MT 149, ¶ 43, 337 Mont. 488, 162 P.3d 121). Such "subject-matter jurisdiction of the district courts is established by the Montana Constitution." *Id.*, ¶ 56 (quoting *Miller*, ¶ 45). That jurisdiction is plenary: "The district court has original jurisdiction in … all civil matters and cases at law and in equity." Mont. Const. art. VII, § 4(1).

M.C.A. § 40-4-104, says that the "district court ***shall*** enter a decree of dissolution of marriage if…." *Id*. (emphasis added). The requisite underlying facts include length of domicile.

B. Public policy dictates that the district court should proceed.

Montana's statutes pertaining to marital dissolution were enacted to:

> promote the amicable settlement of disputes that have arisen between parties to a marriage; mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage; . . . and . . . make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience ….

Buck, ¶ 22 (quoting M.C.A. § 40-4-101).

Those goals are "best served" when a district court proceeds to exercise its jurisdiction so that case can go forward. *Id*. The stay frustrates those goals.

C. The district court mistakenly deferred to the tribal court proceeding.

No authority suggests that the mere fact of a proceeding in a foreign court should stop a dissolution action properly before the district court. The district court apparently believed the tribal court proceeding might bind it, justifying the stay while that case proceeded to final judgment. That was a mistake of law.

1. The tribal court judgment is not entitled to full faith and credit.

The Full Faith and Credit Clause of the U.S. Constitution only applies to the States, and does not afford such treatment to tribal court judgments. *Wilson v. Marchington*, 127 F.3d 805, 808 (9th Cir. 1997). Instead, whether federal courts enforce tribal court judgments is a matter of comity. *Id*. at 809.

2. The comity analysis suggests serious objections to enforcement of the tribal court judgment.

In the Ninth Circuit, the comity analysis involves "two mandatory and six discretionary grounds for non-recognition of foreign judgments." *Id.* at 810.

> [F]ederal courts ***must neither recognize nor enforce*** tribal judgments if:
>
> (1) the tribal court did not have both personal and subject matter jurisdiction; or
>
> (2) the defendant was not afforded due process of law.

Id. (emphasis added). They ***may*** decline enforcement on the grounds of fraud or

conflict with the public policy of the forum. *Id*.

Montana law is the same. *See Wippert v. Blackfeet Tribe*, 201 Mont. 299, 654 P.2d 512 (1982) (comity, not full faith and credit, applies); *Day v. State*, 272 Mont. 170, 900 P.2d 296 (1995) (same).

To enforce such a tribal judgment, Scott cannot register it under the Uniform Enforcement of Foreign Judgments Act, M.C.A. § 25-9-501 *et seq*. Instead, he "must bring an action or special proceeding in District Court." *Day*, 272 Mont. at 177, 900 P.2d at 301 (citing *Wippert* and 44 Op.Att'y Gen. 15 (1991)).

The tribal court judgment is merely presumptive evidence, subject to refutation by "want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." M.C.A. § 26-3-205.[5]

Scott married, lived, and worked off the reservation, including many years in Montana. He now uses his status, and the district court's willingness to defer to the tribal court, to obtain unfair advantage in this dissolution. This Court's comments in another case are apropos:

> The crucial fact of this appeal is that the subject matter jurisdiction lies with the state court, not the tribal court. In this case the tribal members elected to leave the reservation and conduct their affairs within the jurisdiction

[5] Even upon issuance of a writ, it will not be this Court's function to apply those factors in the first instance, but to remand for the district court to lift the stay to apply the law. Accordingly, Karen does not here delve into the multiple arguments, including personal jurisdiction, due process, collusion, and public policy, that weigh against recognition of the Modified Declaratory Judgment.

> of the state courts. When they do so they are submitting themselves to the laws of this state. They cannot violate those laws and then retreat to the sanctuary of the reservation for protection.

Little Horn State Bank v. Stops, 170 Mont. 510, 515-516, 555 P.2d 211, 214 (1976).

3. The district court acted under a mistake of law by failing to determine its own jurisdiction.

Rather than deferring to the tribal court, the district court should have decided for itself what its jurisdiction is. "Every court has judicial power to hear and determine the question of its own jurisdiction." *Karr v. Karr*, 192 Mont. 388, 407, 628 P.2d 267, 277 (1981) (citing *In re Boehme*, 41 F.Supp. 426 (D. Mont. 1941)). "It is the duty of a court to examine its jurisdiction, whether raised by any party or not, and sua sponte to determine its own jurisdiction." *Endresse v. Van Vleet*, 118 Mont. 533, 539, 169 P.2d 719, 721 (1946).

The district court acted under a mistake of law when it delegated that task to the Seneca Nation tribal court.

III. THE DISTRICT COURT'S MISTAKE HAS CAUSED AND IS CAUSING A GROSS INJUSTICE.

Scott's on-reservation property may be legitimately beyond the Montana district court's power to equitably distribute. Still, Montana law requires the district court to consider those assets when making distribution.

Scott is manipulating that by obtaining a sweeping order from the tribal

court forbidding the Montana court from considering the tribal assets, which it expansively describes without precisely defining or identifying. In the meantime, he has boxed Karen in. She must spend non-tribal marital assets just to live, while Scott is diverting his current earnings, meaning there is less every month from which the Montana district court can ultimately fashion an equitable distribution.

But the district court has stayed this matter, broadly deferring to the tribal court and preventing Karen from seeking relief. Karen will be starved into submission, the marital assets and funds will be exhausted, and Karen will have no further means to support herself, the party's minor child, and this litigation effort.

This court should issue a Writ.

Dated January 31, 2025.

BALDWIN LAW, PLLC

Robert K. Baldwin

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11(4)(d) and 14(9)(b) of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a proportionately spaced Times New Roman typeface of 14 points; is double spaced except for footnotes and for quoted and indented material; and the word count is not more than 4,000 words, excluding table of contents, table of citations, certificate of service, certificate of compliance and any appendix containing statutes, rules, regulations and other pertinent authorities.

Dated this 31st day of January 2025.

BALDWIN LAW, PLLC

Robert K. Baldwin
Attorney for Petitioner

INDEX OF EXHIBITS

Ex.	Date	Court	Description
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2	10/22/21	MT	Scott's Response to Verified Petition for Dissolution
3	10/30/23	Tribal	Scott's Pet. for Relief from Foreign Court Interference
4	11/08/23	MT	Scott's Motion to Stay Proceedings
5	11/22/23	MT	Karen's Response to Motion to Stay Proceedings
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7	12/06/23	MT	Order Staying Proceedings
8	01/23/24	Tribal	Transcript of Hearing on Declaratory Relief
9	01/29/24	Tribal	Declaratory Judgment
10	02/27/24	Tribal	Notice of Appeal
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12	03/01/24	MT	Karen's Motion to Set Aside Order Staying Proceedings
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14	01/22/25	Tribal	Modified Declaratory Judgment
15	01/22/25	MT	Scott's Notice of Modified Declaratory Judgment

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the Honorable Judge John Brown, by the means designated below, on January 31, 2025.

■ U.S. Mail ❒ Federal Express ❒ Hand-Delivery ❒ Via fax: ■ E-mail: jbrown3@mt.gov	Honorable Judge John Brown Gallatin County Justice Center 515 S. 16th Ave., Room 1235 Bozeman, MT 59715

Robert K. Baldwin

CERTIFICATE OF SERVICE

I, Robert K. Baldwin, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 01-31-2025:

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