

LETTER OPINION
2000-L-25

March 1, 2000

Mr. Wade G. Enget
Mountrail County State's Attorney
PO Box 369
Stanley, ND 58784-0369

Dear Mr. Enget:

Thank you for your letter requesting my opinion on whether a creditor holding a state court judgment against an enrolled member of the Three Affiliated Tribes can garnish the debtor's wages from an on-reservation employer.

"Long ago the Court departed from Mr. Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries." White Mt. Apache Tribe v. Bracker, 448 U.S. 136, 141 (1980). See also Rolette County v. Eltobgi, 221 N.W.2d 645, 648 (N.D. 1974) ("Restrictions on the authority of State courts on Indian reservations are not total"). Nonetheless, there are two significant obstacles to the application of state law to tribal members on their reservation. The first is preemption by operation of federal law and the second is impermissible infringement on the right of tribal members to make and be governed by their own laws. White Mt. Apache Tribe, 448 U.S. at 142; Williams v. Lee, 358 U.S. 217, 220 (1959).

Congress hasn't addressed the on-reservation application of state garnishment laws. Therefore, their use against tribal members depends upon an examination and balancing of the state, federal, and tribal interests at stake. State law will not apply on the reservation if, on balance, it interferes more with federal and tribal interests than it furthers state interests. California v. Cabazon Band of Mission Indians, 480 U.S. 202, 219 (1987); New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 334 (1983); Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 156 (1980).

The state has an interest in the integrity of its judicial decisions. Its exercise of jurisdiction over a dispute involving a tribal member will usually mean that the dispute arose off the reservation. Courts recognize that the reservation should not shield responsibility for off-reservation activities. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148-49 (1973); State v. Medina, 549 N.W.2d 507, 510 (Iowa 1996); Landerman v. Martin, 530 N.W.2d 62, 65 (Wis. Ct. App. 1995); State Securities, Inc. v. Anderson, 506 P.2d 786, 789 (N.M. 1973).

Mr. Wade G. Enget
March 1, 2000
Page 2

The applicability of state garnishment laws on a reservation has been addressed in a handful of decisions but never by the North Dakota Supreme Court. A majority of the decisions don't allow judgment creditors to garnish an Indian's wages from on-reservation employers, but some do.

The leading case limiting state sovereignty is Joe v. Marcum, 621 F.2d 358 (10th Cir. 1980). Tom Joe was a Navajo who borrowed money from USLife Credit Corp. Id. at 360. The loan occurred off the Navajo Reservation. Id. Joe didn't repay the loan and USLife acquired a state court judgment against him. Id. It then obtained a writ of garnishment from the state court naming Utah International, Joe's employer, as garnishee. Id. Utah International was a Delaware corporation operating a mine on the reservation. Id.

Joe sought relief in federal court. The court found that the Navajo tribal code did not provide for garnishment but did provide other means to enforce judgments. Id. at 362. Allowing the state garnishment action to proceed "would thwart the Navajo policy not to allow garnishment. Such impinges upon tribal sovereignty." Id.

The court noted the argument that tribal members should not be allowed to use the reservation as a sanctuary to insulate themselves from state court actions arising from their off-reservation transactions. Id. at 361. It also recognized that a garnishment is ancillary to the underlying action over which the state court has jurisdiction. Id. at 362. Nonetheless, it found the interests of tribal sovereignty paramount.

An Arizona court followed the reasoning of Joe v. Marcum and concluded that state courts may not garnish the wages of an Indian who lives and works on a reservation. Begay v. Roberts, 807 P.2d 1111 (Ariz. Ct. App. 1990). It noted that the tribal code did not authorize garnishments but provided other means by which money judgments might be collected. Id. at 1116-17. The court in United States v. Morris, 754 F.Supp. 185, 186 (D.N.M. 1991), also relied on Joe v. Marcum to rule that "the state has no authority to garnish wages 'located' on an Indian reservation."

On the more general question of enforcing state court judgments on reservations, a federal court has stated that state officials do not have the power to do so. Annis v. Dewey County Bank, 335 F.Supp. 133, 136 (D.S.D. 1971). Minnesota and South Dakota courts have stated, in dicta, that state court judgments cannot be enforced on a reservation against Indian judgment debtors. Bradley v. Deloria, 587 N.W.2d 591, 593 (S.D. 1998); Commissioner of Taxation v. Brun, 174 N.W.2d 120, 126

Mr. Wade G. Enget
March 1, 2000
Page 3

(Minn. 1970); County of Beltrami v. County of Hennepin, 119 N.W.2d 25, 32 (Minn. 1963); Jordan v. O'Brien, 18 N.W.2d 30, 33 (S.D. 1945).¹

A Montana decision, however, favors state interests over tribal interests and allows reservation wages to be garnished under state law. In Little Horn State Bank v. Stops, 555 P.2d 211 (Mont. 1976), Stops, an Indian, lived on the reservation but borrowed money from an off-reservation bank, failed to repay the loan, and had a state court judgment taken against him. The bank sought to garnish Stops' wages from his on-reservation employer. Id. at 211-12.

The court allowed the garnishment. The decision was supported by three rationales. One, since the state court had jurisdiction to render judgment it must have the power to enforce the judgment. Id. at 212. Two, tribal law did not provide for recognizing state court judgments. "Until the Crow Tribe has provided a means of such enforcement or acted in some manner within this area, we fail to see how tribal self-government is interfered with by assuring that reservation Indians pay for their debts incurred off the reservation." Id. at 214. Three, an Indian engaged in an off-reservation transaction elects to be governed by state law and cannot use the reservation as a sanctuary from state law. Id. at 214-15.

The second decision allowing an on-reservation state garnishment is Cherokee Nation v. Nations Bank, N.A., 67 F.Supp.2d 1303 (E.D. Okla. 1999), but its facts are unique. The garnishment action was approved because the state court judgment was entitled to full faith and credit under Cherokee law and the Cherokee courts had adopted Oklahoma statutes governing enforcement of judgments, including garnishment proceedings. Id. at 1305-06. Under these circumstances the court found no undue interference with tribal sovereignty.

I suggest the following procedure for a judgment creditor who wants to enforce on the Ft. Berthold Reservation a state court judgment against a member of the Three Affiliated Tribes. The judgment creditor should

¹ If the garnishee is the tribe itself, another hurdle arises. Unless waived, tribes have immunity from suit. Their sovereign immunity extends to garnishment actions. North Sea Products, Ltd. v. Clipper Seafoods Co., 595 P.2d 938, 940-41 (Wash. 1979); Maryland Casualty Co. v. Citizens Nat'l Bank, 361 F.2d 517, 522 (5th Cir. 1966). If, however, the judgment creditor is the United States, then the tribe may be sued as a garnishee because Congress, in the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, removed tribal immunity for this limited purpose. United States v. Weddell, 12 F.Supp.2d 999, 1000 (D.S.D. 1998).

Mr. Wade G. Enget
March 1, 2000
Page 4

first file a petition with the tribal court and ask that it recognize the state court judgment. The tribal code does not require that the tribal court do so, but the court likely has inherent authority to recognize, under the rules of comity, a state court judgment.²

After the tribal court recognizes the state court judgment, the judgment creditor can then use tribal code provisions that provide for collecting judgments.³ The tribal code contains a section entitled "Repossession Procedure." Code of Law of the Three Affiliated Tribes, Title II, Civil Rules, Ch. 2 §§ 1-4 (Supp.). It also contains a chapter entitled "Judgment and Execution" with provisions on writs of execution and replevin. Code of Law of the Three Affiliated Tribes, Ch. 9.

The tribal code also gives the tribal court broad authority to enforce its judgments.

In enforcing its decisions, the Court may either command a party to perform that which the decision requires him to do or it may command an officer of the court or a police officer to take such action as necessary to enforce the decision. The method of enforcing the decision shall be at the option of the Court.

Id. at Ch. II, § 1(c). Presumably this broad grant of authority allows the tribal court to order garnishment of wages. One tribal court has ruled that it can provide appropriate remedies in the absence of tribal council action. Descheenie v. Mariano, 15 Ind. L. Rptr. 6039, 6039-40 (Nav. Sup. Ct. 1988). The Ft. Berthold Tribal Court also has contempt powers should someone disobey its orders. Code of Law of the Three Affiliated Tribes, Ch. II, § 9(a)(3).

If the tribal court refuses to recognize a state court judgment, or refuses to assist in effectively satisfying a judgment it recognizes,

² State courts may grant full faith and credit to tribal court judgments without legislative authorization. Fredericks v. Eide-Kirschmann Ford, 462 N.W.2d 164, 171 (N.D. 1990) (VandeWalle, J., concurring). North Dakota law provides for recognition of tribal court judgments. N.D. Rules of Court 7.2.

³ Recognition of a state court judgment by the tribal court does not mean that the tribal court recognizes or is obligated to apply state law remedies to enforce the judgment. Sun Oil Co. v. Wortman, 486 U.S. 717, 735 (1988) (Brennan, J., concurring); Crider v. Zurich Ins. Co., 380 U.S. 39, 41-42 (1965).

Mr. Wade G. Enget
March 1, 2000
Page 5

the tribal and state interests at stake may be reassessed. At that point I would recommend bringing the matter to the Supreme Court's Committee on Tribal and State Court Affairs.

I hope this information is helpful as you review your situation.

Sincerely,

Heidi Heitkamp
Attorney General

cmc/pg