**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-1220**

Rosemary Shepherd,
Respondent,

vs.

Melinda Stade, f/k/a Melinda Zander,
Appellant.

**Filed June 3, 2008**
**Affirmed**
**Connolly, Judge**

Scott County District Court
File No. 70-CV-07-6059

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Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Connolly, Judge.

## U N P U B L I S H E D  O P I N I O N

**CONNOLLY,** Judge

Appellant challenges the district court's denial of her motion to dismiss respondent's complaint on the ground that it is barred by the doctrine of sovereign immunity. Appellant asserts that the Shakopee Mdewakanton Sioux Community (the tribe) is an indispensable party to the suit and that, because the tribe cannot be joined, the suit must be dismissed. We conclude that the tribe is neither a necessary nor an indispensable party and therefore affirm the district court's decision.

## FACTS

Appellant Melinda Stade is an enrolled member of the tribe. Respondent Rosemary Shepherd, who is of Native American descent but is not a member of the tribe, was employed by Mystic Lake Casino, a business owned by the tribe. Shepherd's employment was terminated when the tribe issued a no-trespass order against her, which precluded her from reporting to work and has also prevented her from accessing free health care on the reservation.

Shepherd initiated a civil action against Stade in district court, alleging that statements made by Stade led to the tribe's issuance of the no-trespass order and asserting claims of tortious interference with contract; tortious interference with prospective contractual relations; tortious interference with health care and physician-client relationship; and defamation. Shepherd has not named the tribe as a defendant to this action.

In her complaint, Shepherd alleges that Stade dated Shepherd's adult son and that, when the relationship ended, Stade harbored anger toward the entire Shepherd family. Shepherd claims that Stade went to Shepherd's supervisors at Mystic Lake Casino and falsely claimed that Shepherd was "monitoring [Stade's] gaming habits through the casino's computer system in an effort to claim that [Stade] was spending too much time at the casino and not enough time with her children." Shepherd alleges that, as a result of Stade's statements, the tribe issued a no-trespass order to Shepherd, stating that she "presented a threat to the life, health, safety and general welfare of the community, its members, other residents and guests." And Shepherd alleges that Stade intended her statements to cause Shepherd's loss of employment and access to free health care.

## D E C I S I O N

### I.

An appeal generally is not available from the denial of a motion to dismiss. *See* Minn. R. App. P. 103.03 (identifying appealable orders). But orders denying dismissal based on immunity or jurisdictional grounds are collateral orders subject to immediate review because they fall within "'that small class which finally determine claims of right, separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.'" *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 524-25, 105 S. Ct. 2806, 2814 (1985)). For similar reasons, orders denying dismissal based on indispensable-party determinations under Minn. R. Civ. P. 19 are also subject to

immediate review. *See Hunt v. Nev. State Bank*, 285 Minn. 77, 90, 172 N.W.2d 292, 301 (1969) (explaining that the "considerations in weighing a motion based upon failure to join an indispensable party are quite similar to those presented by a motion to dismiss for lack of jurisdiction").

Stade requests that we also review the district court's determination that Shepherd has stated a viable claim for tortious interference with the physician-patient relationship, which claim Stade urges has not been recognized by the Minnesota courts. Because this issue is unrelated to the court's indispensable-party determination, interlocutory review is not available under the collateral-order doctrine. *See Meier v. City of Columbia Heights*, 686 N.W.2d 858, 863 (Minn. App. 2004) (citing *Swint v. Chambers County Comm'n*, 514 U.S. 35, 50-51, 115 S. Ct. 1203, 1212 (1995)) (noting that we decline to provide interlocutory review to additional issues unless they are inextricably intertwined with the appealable issue). Nor do we find that review will serve the interests of justice. *See* Minn. R. App. P. 103.04 (allowing review of matters in the interest of justice). Thus, we decline review of this issue.

**II.**

We review the denial of a motion to dismiss under rule 19 for abuse of discretion. *See Hoyt Props., Inc. v. Prod. Res. Group, L.L.C.*, 716 N.W.2d 365, 377 (Minn. App. 2006). Joinder analysis under the rule involves a two-part inquiry. Minn. R. Civ. P. 19.01, 19.02; s*ee U.S. ex rel. Hall v. Tribal Dev. Corp.*, 100 F.3d 476, 478-79 (7th Cir. 1996) (describing bifurcated analysis). First, the court must determine the existence of a person or entity to be joined if feasible, sometimes referred to as a "necessary party."

Minn. R. Civ. P. 19.01; *see Tribal Dev. Corp.*, 100 F.3d at 478 (equating "necessary party" with a person to be joined if feasible). A party is "necessary" if (1) complete relief cannot be accorded without joining that party or (2) disposition of the action in that party's absence will impair that party's ability to protect an interest or subject other parties to a substantial risk of inconsistent obligations in relation to that interest. Minn. R. Civ. P. 19.02.

The court's identification of a necessary party, however, does not end the inquiry. *Tribal Dev. Corp.*, 100 F.3d at 479. If a necessary party is subject to the court's jurisdiction, that party must be joined in the action. *See* Minn. R. Civ. P. 19.01. Most rule 19 issues, however, arise in the context of identification of necessary parties who are not subject to the court's jurisdiction. When a necessary party cannot be joined, the court must determine whether that party is indispensable. *Id.*

An indispensable party is a party "'without whom the action could not proceed in equity and good conscience.'" *Hoyt*, 716 N.W.2d at 377 (quoting *Murray v. Harvey Hansen-Lake Nokomis, Inc.*, 360 N.W.2d 658, 661 (Minn. App. 1985)); *see* Minn. R. Civ. P. 19.02. In determining whether a party is indispensable, the court should consider factors including

> (a) to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;
>
> (b) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

> (c) whether a judgment rendered in the person's absence will be adequate; and
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> (d) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Minn. R. Civ. P. 19.02; *see Hoyt*, 716 N.W.2d at 377.

Applying these factors, the district court concluded that the tribe was not an indispensable party, noting that Shepherd's claims against Stade are "separate and distinct" from any claim that she may have against the tribe and that she is not claiming a breach of contract or defamation by the tribe. The court rejected Stade's assertion that disposition of the action would impede the tribe's ability to protect its interests and expressed skepticism of Stade's assertion that Shepherd has an adequate remedy in tribal court. The district court did not expressly distinguish between the necessary-party analysis of rule 19.01 and the indispensable-party analysis of rule 19.02. The court's written decision, however, suggests in its conclusion that the tribe was neither necessary nor indispensable. We agree.

Stade asserts that the tribe is a necessary party because the district court cannot grant complete relief in this case without joining the tribe as a party. And the tribe, appearing as amicus curiae, echoes this concern. But neither Stade nor the tribe is able to offer any support for their assertions. As the district court found, Shepherd seeks only money damages and only from Stade, an individual member of the tribe. Thus, the district court can grant all relief requested.

Stade and the tribe next assert that the tribe's interests are implicated by the litigation because "[t]he no-trespass order issued by the Tribe is the sole cause of

Respondent's employment termination, and that decision by the Tribe cannot be challenged in district court." The tribe focuses much attention on its sovereign right to exclude individuals from tribal property. But Shepherd does not challenge the tribe's right to enter the no-trespass order, nor does she seek reinstatement of her employment or any other type of relief from the tribe.

With respect to Shepherd's tortious-interference-with-contract claim, Stade asserts that the tribe will be prejudiced if not joined because the claim requires a determination that the tribe breached a contract with Shepherd. Shepherd cites *Ente Nazionale Idrocarburi v. Prudential Sec. Group, Inc.*, 744 F. Supp. 450 (S.D.N.Y. 1990) (*ENI*). In that case, the court found that it would be compelled to determine whether an absent party had breached a contract and thus held that that party was indispensable under Fed. R. Civ. P. 19. *Id.* at 454. But there is ample contrary authority. *See Ark. v. Tex.*, 74 S. Ct. 109, 110, 346 U.S. 368, 370 (1953) (rejecting argument that parties to contract are indispensable parties under Fed. R. Civ. P. 19: "the controversy is between Arkansas and Texas—the issue being whether Texas is interfering unlawfully with Arkansas' contract"); *Salton, Inc. v. Philips Domestic Appliances & Pers. Care B. V.*, 391 F.3d 871, 880 (7th Cir. 2004) (stating that "there is no rule that you cannot sue the interferer without also suing the party to your contract whom the defendant inveigled into breaking the contract"); *cf. Kisch v. Skow*, 305 Minn. 328, 331, 233 N.W.2d 732, 734 (1975) (holding that a plaintiff may sue "one, all, or any number of joint tortfeasors without violation of Rule 19.01"). And as even the *ENI* court acknowledges, joinder analysis under rule 19 turns on the specific facts of each case. *ENI*, 744 F. Supp. at 456 (citing

*Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 118, 88 S. Ct. 733, 742 (1968)).

Under the circumstances presented here, we conclude that the tribe is not a necessary party to Shepherd's claim for tortious interference with contract. The Minnesota Supreme Court has recognized a claim for tortious interference with an at-will employment contract, reasoning that "[t]he at-will employment subsists at the will of the employer and employee, not at the will of a third party meddler who wrongfully interferes with the contractual relations of others." *Nordling v. N. States Power Co.*, 478 N.W.2d 498, 505 (Minn. 1991). The Restatement compares the action to one for interference with prospective contractual relations because the interest protected is "primarily an interest in future relations between the parties." Restatement (Second) of Torts § 766 cmt. g (1977). Accordingly, Shepherd need not prove that the tribe breached her at-will employment contract, but rather that the tribe repudiated future contractual relations with her, a fact that is not in dispute.

Stade argues that her own interests will be prejudiced by her inability to join the tribe as a third party. It is unclear, however, what third-party claims Stade believes that she has against the tribe. Although she acknowledges that such claims must be based on indemnity, contribution, warranty, or other substantive right, *Koenigs v. Travis*, 75 N.W.2d 478, 481 (Minn. 1956), Stade has been unable to articulate a theory under which the tribe would be liable to her.[1] Moreover, Minn. R. Civ. P. 14, on which Stade relies,

[1] At oral argument, Stade suggested that indemnification would provide a basis for third-party liability, but she has not provided a basis for finding that the tribe is a joint

merely provides the procedural mechanism for bringing a third-party claim. It does not provide a substantive right to have such a claim heard in the same proceeding, much less to assert a claim against a party over whom the court has no jurisdiction. *See Grothe v. Shaffer*, 305 Minn. 17, 25, 232 N.W.2d 227, 233 (1975) (explaining that rule "merely permits joinder; it does not necessarily create a substantive right to implead another party"); *cf.* Minn. R. Civ. P. 42.02 (providing that a district court may order separate trials on third-party claims).

With respect to the factors relevant to determining indispensable-party status, Stade and the tribe primarily reargue the claims of prejudice addressed above. They also assert that the district court cannot provide an adequate remedy because the parties cannot prove their claims and defenses without the assistance of the tribe. But the district court correctly concluded that issues related to the sufficiency or availability of evidence are not relevant to a motion to dismiss. Parties routinely litigate claims without access to all possible evidence. Whether Shepherd can present enough evidence in support of her claims to survive summary judgment is an issue for another day.

Stade and the tribe object to the district court's conclusion that Shepherd did not have an adequate alternative forum for her claims in tribal court. The tribe asserts that, despite the no-trespass order, Shepherd would be allowed to pursue her claims in tribal court and that the district court acted prejudicially in concluding that Shepherd could not receive a fair trial before that tribunal.

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tortfeasor, much less one from whom Stade is entitled to indemnity. *See, e.g.*, *Tolbert v. Gerber Indus., Inc.*, 255 N.W.2d 362, 366 (Minn. 1977) (identifying limited circumstances in which indemnity is allowed between joint tortfeasors).

We agree that the district court's comments are troubling. "'Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians.'" *St. Pierre v. Norton*, 498 F. Supp. 2d 214, 221 (D.D.C. 2007) (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65-66, 98 S. Ct. 1670, 1680-81 (1978)); *see also Lewis v. Norton*, 424 F.3d 959, 962 (9th Cir. 2005) ("The issue is not whether the plaintiffs' claims would be successful in these tribal forums, but only whether tribal forums exist that could potentially resolve the plaintiffs' claims."). The district court's suggestion that the tribal courts could not provide an adequate alternative forum for Shepherd's claims lacks foundation. The fact that Shepherd is the subject of a no-trespass order by the tribe does not necessarily mean that she cannot receive a fair trial of her claims against Stade in tribal court.

While we do not endorse the district court's comments regarding tribal courts, we find that any error by the district court in this regard was harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). Because complete relief can be granted without the tribe's presence, and because the tribe has no interest that will be prejudiced by the litigation, the tribe is neither a necessary nor an indispensable party. Accordingly, the district court did not abuse its discretion in denying Stade's motion to dismiss.

**Affirmed.**