

IN THE HOOPA VALLEY TRIBAL
COURT OF APPEALS
FOR THE HOOPA VALLEY TRIBE

FILED
IN MY OFFICE THIS
JUL 19 2017


CLERK, HOOPA VALLEY TRIBAL COURT

HOOPA VALLEY TRIBE,

Appellant,

CASE NO. A-17-001

(underlying case no: C-16-007)

vs.

DECISION AND ORDER

RYAN BERNARDO,

Respondent.

This matter came before the Court for oral argument on June 29, 2017, Chief Justice Lisa L. Atkinson, Associate Justice Matthew M. Fletcher, and Associate Justice Thomas E. Weathers, presiding.

Attorney Thomas Schlosser appeared for Appellant Hoopa Valley Tribe.

Respondent Ryan Bernardo appeared on his own behalf.

The Court now enters the following Decision and Order.

Fletcher, J., for the Court.

Summary

The Hoopa Valley Tribe (Tribe) and Ryan Bernardo (Bernardo) entered into a separation agreement in which the Hoopa Valley Tribe apparently consented to suit in one paragraph but then in the next paragraph the parties agreed nothing in the agreement waived immunity. We hold that the tribe is immune from suit and that this matter must be dismissed.

Factual Background

We take the facts as alleged by the Bernardo, in his complaint.¹ Tribe and Bernardo entered into an agreement titled “Dissolution Agreement” on April 12, 2016. The purpose of the Dissolution Agreement was to terminate an Employment Contract between the Tribe and Bernardo. Under the Dissolution Agreement, the Employment Contract was to be terminated on July 22, 2016. However, according to Bernardo, the Tribe terminated the Employment Contract on May 23, 2016. The Tribe issued a final check to Bernardo that included the wages owed through May 23, but not the full amount that would have been due under the Dissolution Agreement. Bernardo claims money damages in the amount of \$29,655.38 and prejudgment interest. The Tribe moves to dismiss on the ground of sovereign immunity.

Section 9 of the Dissolution Agreement provided as follows:

This Agreement is entered in on the Hoopa Valley Indian Reservation, Hoopa[,] California and its requirements shall for all purposes be governed and construed according to the laws of the Hoopa Valley Tribe, and the Hoopa Valley Tribal Court shall have jurisdiction over this Agreement. The Hoopa Valley Tribe consents to suit before the Hoopa Valley Tribal Court only for the express and limited purpose of enforcing this Agreement.

Section 10 of the Dissolution Agreement provided: “Nothing in this Agreement shall be deemed or construed to be a waiver of the sovereign immunity of the Hoopa Valley Tribe, their officials, entities, or employees acting within their official or individual capacities.”

Standard of Review

The denial of a motion to dismiss based on sovereign immunity, as well as the interpretation of ambiguous contract terms, are questions of law we review *de novo*. HVTC § 2.6.18(a) (“Questions of law will be decided with no deference granted to the tribal court decision.”); *Hostler v. Hoopa Valley Tribe*, 10 NICS App. 14, 15 (Hoopa Valley Tribal Court of Appeals 2011) (reviewing *de novo* an appeal from the denial of a motion to dismiss based on

¹ The trial court converted the tribe’s motion to dismiss, trial court docket number 13, into a motion for summary judgment. We see no reason to do so, and will treat this matter as an appeal of a denial of the tribe’s motion to dismiss.

sovereign immunity); *Atkinson v. Northwestern National Insurance Co.*, 4 Am. Tribal Law 286, 287-88 (Fort Peck Court of Appeals 2003) (reviewing *de novo* an appeal from a trial court's interpretation of a contract).²

Analysis

The law of tribal sovereign immunity is well developed in this jurisdiction. “The doctrine of sovereign immunity protects the Hoopa Valley Tribe from suit unless the Tribe consents to the suit. . . .” *Hostler*, 10 NICS App. at 16. “Indian tribes can waive sovereign immunity; however, such waiver may not be implied, but must be expressed unequivocally.” *Rowland d/b/a Hoopa Valley Ready Mix v. Hoopa Valley Tribe*, 2 NICS App. 185, 186 (Hoopa Valley Tribal Court of Appeals 1992). *Cf. Hostler*, 10 NICS App. at 16 (“It is a canon of sovereign immunity that where the issue is the scope or extent of a waiver of sovereign immunity any ambiguities in the statutory text must be strictly construed in favor of the sovereign.”) (citation omitted). “Tribal sovereign immunity is a jurisdictional issue and, therefore, must be resolved before any substantive issues are resolved.” *Rowland*, 2 NICS App. at 186. “The purpose of sovereign immunity is to preserve the autonomous political existence of the tribes and tribal assets.” *Rowland*, 2 NICS App. at 186.³

Here, the parties entered into an agreement that very specifically and forcefully bars the court from “deem[ing] or constru[ing]” any provision in the Dissolution Agreement as a waiver of tribal sovereign immunity. According to the terms of Section 10 of the Dissolution Agreement, no suit may proceed against the tribe, “their officials, entities, or employees acting within their official and individual capacities.” Section 10 effectively strips this court of jurisdiction over the tribe for any purpose under the Dissolution Agreement. *Rowland*, 2 NICS App. at 186. That language is dispositive, and Bernardo’s suit against the tribe cannot proceed.

² The trial court converted the Tribe’s motion to dismiss into a motion for summary judgment. Denials of motions for summary judgment are also reviewed *de novo*. *Atkinson*, 4 Am. Tribal Law at 287-88.

³ We deny Bernardo’s motion to dismiss the tribe’s appeal. “[D]enial of a motion to dismiss, where the motion pleads sovereign immunity, is a final judgment as to that defense and will therefore ordinarily be appealable. . . .” *Risling v. Hoopa Valley Tribe*, 12 NICS App. 66, 67 (Hoopa Valley Tribal Court of Appeals 2014). *See also Hoopa Valley Tribal Council v. Marshall*, 10 NICS App. 1, 2 (Hoopa Valley Tribal Court of Appeals 2011) (“The appellate court’s authority to entertain an interlocutory appeal from a denial of a motion to dismiss on grounds of sovereign immunity is therefore 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. . . . Since the privilege of immunity would be lost if a case went to trial . . . , we hold that the denial of the motion to dismiss on grounds of sovereign immunity is an interlocutory order subject to appeal.”).

Bernardo argues that Section 9 operates as a waiver of tribal immunity. In Section 9, the tribe “consents to suit before the Hoopa Valley Tribal Court” for the purpose of “enforcing” the Dissolution Agreement. There is no doubt that Section 9 is in flat contradiction to Section 10. Section 9 looks like a waiver of sovereign immunity, but Section 10 takes it away. Even if this Court concluded that the contradiction between Section 9’s apparent waiver and Section 10’s reassertion of immunity created an ambiguity in the contract, “any ambiguities in the . . . text must be strictly construed in favor of the sovereign.” *Hostler*, 10 NICS App. at 16. Section 9’s apparent waiver is rendered a nullity in Section 10.

Assuming the facts alleged to be true, the Hoopa Valley Tribe did violate its promise not to terminate Bernardo’s Employment Agreement until July 22, 2016 and further violated its promise to pay Bernardo a sum of \$29,655.38. However, Section 10 of the Dissolution Agreement bars this court from enforcing the terms of the Dissolution Agreement, despite whatever inequities might have resulted from this outcome. *Cooper v. Hoopa Valley Tribal Council*, 8 NICS App. 35, 38 (Hoopa Valley Tribal Court of Appeals 2007).

Conclusion

This matter is remanded back to the trial court for entry of an Order dismissing the case on the grounds of lack of subject matter jurisdiction.

SO ORDERED THIS 18th day of July, 2017.

For the Panel:

A handwritten signature in blue ink, reading "Matthew M. Fletcher", written over a horizontal line.

Justice Matthew M. Fletcher

I CERTIFY THAT ON JUL 19 2017
I PROPERLY MAILED A COPY OF THIS DOCUMENT
ADDRESSED TO EACH OF THE FOLLOWING
NAMED PERSONS, AT THE ADDRESSES LISTED
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SUPAHA McCOVEY 07-19-17
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