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Lewis v. Clarke

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***Lewis v. Clarke*, 135 A.3d 677 (Conn. 2016)**

Lillian M. Alvernaz

The nation to nation relationship between tribes and the federal government is unique. Within that relationship, the federal government acknowledges and respects tribal sovereignty. An important aspect of sovereignty is sovereign immunity. *Lewis v. Clarke* confronts the applicability of sovereign immunity through an extension of tribal sovereignty over an employee defendant.¹ After having heard oral argument, the United States Supreme Court could either reaffirm or severely limit the applicability of tribal sovereign immunity to “arms” of a tribe.² While the lower court analyzed tribal sovereign immunity by considering the damages sought, the Supreme Court opinion portends to extend far beyond just this negligence claim.³

I. INTRODUCTION

Reversing the lower court’s analysis, the Supreme Court of Connecticut extended tribal sovereign immunity to an individual defendant employed by the tribe, rejecting the plaintiff’s attempt to seek damages against the defendant in an individual capacity.⁴ While driving a vehicle on behalf of the Mohegan Tribal Gaming Authority (“MTGA”), the defendant collided with the plaintiff’s car, injuring the plaintiffs.⁵ Both parties agree that the MTGA is an arm of the Tribe.⁶ In an attempt to bypass tribal sovereign immunity, the plaintiffs assert that by naming the defendant in an individual capacity and seeking damages in such capacity, the doctrine of tribal sovereign immunity does not reach the defendant.⁷ In response, the defendant asserts he was acting within the scope of his employment and his employer is an “arm” of the tribe, thereby extending tribal sovereign immunity over his action.⁸

The doctrine of tribal sovereign immunity is well established.⁹ It is a long acknowledged principle that the doctrine of tribal sovereign immunity encompasses individual “tribal officials” who act in their “representative capacity and within the scope of their authority.”¹⁰ Only when a tribal official acts outside, or beyond, the scope of their authority

1. *Lewis v. Clarke* (Clarke I), 135 A.3d 677 (Conn. 2016).
2. *Lewis v. Clarke* (Clarke II), 132 S. Ct. 416 (2016).
3. Clarke I, 135 A.3d at 678.
4. *Id.* at 685.
5. *Id.* at 678.
6. *Id.* at 680.
7. *Id.* at 679.
8. *Id.* at 680.
9. *Id.* at 682 (citing *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 476 U.S. 877 (1986)).
10. *Id.* at 683 (quoting *Romanella v. Hayward*, 114 F.3d 15 (2d Cir. 1997)).

to act on behalf of the tribe,¹¹ will the court consider a claim against a tribal official in an individual capacity.¹²

The trial court agreed with the plaintiff's argument limiting tribal sovereign immunity for damages sought from the defendant in his individual capacity.¹³ The defendant appealed, and the Supreme Court of Connecticut reversed.¹⁴ Plaintiffs, now petitioners, successfully petitioned for a writ of certiorari to the Supreme Court of the United States.¹⁵

II. FACTUAL AND PROCEDURAL BACKGROUND

On October 22, 2011, the plaintiffs were traveling southbound on Interstate 95 in Norwalk, Connecticut.¹⁶ The defendant was following the plaintiffs in a limousine owned by the MTGA.¹⁷ While following the plaintiffs, the defendant unexpectedly drove the limousine into the rear end of the plaintiffs' vehicle, causing their vehicle to crash and come to rest on the concrete highway barrier.¹⁸ The plaintiffs were injured.¹⁹ Both the injuries sustained by the plaintiffs and the wreck itself were negligently caused by the defendant.²⁰

The plaintiffs filed a complaint against the defendant claiming their injuries from the collision were due to the defendant's negligence and carelessness.²¹ The defendant motioned to dismiss the complaint and asserted the trial court lacked subject matter jurisdiction because the doctrine of tribal immunity extended to protect him from liability.²² The defendant also filed an affidavit from the MTGA director of transportation, Michael Hamilton, to support his motion.²³

The plaintiffs disagreed with the defendant's motion and claimed tribal sovereign immunity did not extend to the defendant's actions.²⁴ Specifically, the plaintiffs asserted the trial court had subject matter jurisdiction because the defendant was named in his individual capacity and damages were sought against him, not the tribe.²⁵ The trial court

11. *Id.* (quoting *Basset Mashantucket Pequot Museum & Research Center, Inc.*, 221 F. Supp. 2d 271, 280 (D. Conn. 2002); *see Garcia v. Akwesasne Housing Authority*, 105 F. Supp. 2d 12, 18 (N.D.N.Y. 2000) (holding that an individual capacity claim against a tribal official claim may proceed if the tribal official acted outside their scope of delegated authority)).

12. *Id.*

13. *Id.* at 677.

14. *Id.*

15. *Clarke II*, 137 S. Ct. 416.

16. *Clarke I*, 135 A.3d. at 678.

17. *Id.* at 679.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

subsequently denied the defendant's motion to dismiss, and found it had jurisdiction under the doctrine of tribal sovereign immunity because the plaintiffs' claims sought money damages against the defendant in his individual capacity, not from the MTGA.²⁶

The defendant appealed, claiming that the trial court improperly denied his motion to dismiss.²⁷ The defendant asserted the trial court improperly denied extending tribal sovereign immunity.²⁸ Further, the defendant asserted: (1) he was acting within the scope of his employment with the MTGA, an arm of the Mohegan Tribe; and (2) tribal sovereign immunity prohibits the plaintiffs' claims against him.²⁹

Plaintiffs contended the trial court was correct to deny the defendant's motion to dismiss.³⁰ The plaintiffs specifically asserted that the remedy sought would not affect the tribe because the damages were sought against the defendant in his individual capacity.³¹ The plaintiffs further alleged tribal sovereign immunity should not reach their claim and deprive the trial court of subject matter jurisdiction.³²

The Supreme Court of Connecticut found the undisputed facts to show the defendant was an employee of the tribe and was acting within his scope of employment when the collision occurred.³³ Thus, the Court concluded that the doctrine of tribal sovereign immunity reached the plaintiffs' claims against the defendant.³⁴ The Court agreed with the United States District Court for the District of Connecticut's determination that the plaintiffs may not avoid the doctrine of tribal sovereign immunity by naming the tribal employee defendant in an individual capacity when he was acting within the scope of his employment.³⁵ The Court held the trial court's finding that the doctrine of tribal sovereign immunity did not reach the defendant's actions was an improper determination.³⁶ Thus, the Court found the trial court's denial of the defendant's motion to dismiss the plaintiffs complaint improper.³⁷ The Court reversed the lower court's judgment and remanded with instruction to grant the defendant's motion to dismiss.³⁸ The United States Supreme Court subsequently granted the plaintiff's petition for certiorari.³⁹

III. ANALYSIS

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26. *Id.*
27. *Id.*
28. *Id.* at 680.
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.* at 685.
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.* at 686.
38. *Id.*
39. *Clarke II*, 137 S. Ct. 416.

A. Trial Court's Denial of the Defendant's Motion to Dismiss

Generally, denial of a motion to dismiss is not a final judgment that may be appealed because it is an interlocutory ruling.⁴⁰ Though, when the denial of a motion to dismiss contains a colorable claim of sovereign immunity, such action is an immediately appealable final judgment “because the order or action so concludes the rights of the parties that further proceedings cannot affect them.”⁴¹ Further, a motion to dismiss based on tribal sovereign immunity, filed by tribal employees, is a final judgment for purposes of an appeal.⁴² Here, the defendant’s motion was final because of the tribal sovereign immunity claim.⁴³ The Supreme Court of Connecticut found the denial of the defendant’s motion to dismiss appealable.⁴⁴

B. Trial Court's Dismissal of Jurisdictional Challenge

Since the defendant’s appeal was proper, the Court then examined the trial court’s subject matter jurisdiction.⁴⁵ Defendant asserted that the plaintiffs’ claims were prohibited because the defendant was acting within the scope of his employment for the Mohegan Tribe when the incident occurred.⁴⁶ The defendant further contended that the Court should grant his motion to dismiss for lack of subject matter jurisdiction due to the tribal sovereign immunity implicated from his employment with the Mohegan Tribe.⁴⁷ The Court’s standard of review is *de novo* because of the review of the lower court’s “ultimate legal conclusion.”⁴⁸

Prior to the defendant filing his motion to dismiss, the plaintiff dropped the MTGA as a defendant.⁴⁹ The Supreme Court of Connecticut found that the only issue for the trial court to decide regarding the motion to dismiss, was whether the doctrine of tribal sovereign immunity prohibited the plaintiffs’ claims against the defendant in his individual capacity.⁵⁰

C. Sovereign Immunity is Foundational for Tribal Sovereignty

40. Clarke I, 135 A.3d at 680 (quoting *Sullins v. Rodriguez*, 281 A.2d 128 (Conn. 2007)).

41. *Id.* (quoting *Sullins v. Rodriguez*, 281 A.2d 128 (Conn. 2007)).

42. *Id.* (citing *Kizis v. Morse Diesel International, Inc.* 260 A.2d 498 (Conn. 2002)).

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* (citing *Bloom v. Gershon*, 856 A.2d 335 (Conn. 2004) (A determination regarding a trial court’s subject matter jurisdiction is a question of law)).

48. *Id.* (quoting *Gold v. Rowland*, 994 A.2d 106 (Conn. 2010)).

49. *Id.* at 682.

50. *Id.*

Immunity from suit enjoyed by sovereign entities is among the “core aspects of sovereignty that tribes possess.”⁵¹ Tribes exercise inherent sovereign authority as domestic dependent nations.⁵² As dependent nations, tribes are subject to Congressional plenary authority.⁵³ At the same time, tribes “remain separate sovereigns [preexisting] the [c]onstitution.”⁵⁴ For that reason, “unless and until” Congress specifically acts, tribes retain their inherent authority as sovereigns.⁵⁵

Immunity from suit is necessary and essential to tribal sovereignty and self-governance.⁵⁶ Due to Congress’s plenary power over Indian affairs, a tribe’s immunity rests in Congress’s hands.⁵⁷ Because of this, unless Congress specifically expresses an abrogation of such immunity, “courts will not lightly assume that Congress in fact intends to undermine Indian self-government.”⁵⁸

D. The Defendant was Acting Within the Scope of His Employment

A tribal official is only “stripped” of tribal authority, and thus tribal immunity, when the officer acts “manifestly or palpably beyond his authority.”⁵⁹ However, tribal sovereign immunity does extend to individual employees acting within the scope of their employment.⁶⁰ Thus, plaintiffs may not avoid tribal sovereign immunity by naming tribal employees individually for actions by defendants in such capacities.⁶¹

The plaintiffs do not dispute the defendant was employed by the MTGA.⁶² Further, the plaintiffs presented no evidence establishing the defendant’s actions as outside the scope of his employment at the time of the collision.⁶³ The Supreme Court of Connecticut looked to these undisputed facts and found that the defendant was acting within the scope of his employment when he wrecked into the plaintiffs and injured them.⁶⁴

51. *Id.* at 681 (quoting *Three Affiliated Tribes of Fort Berthold Reservation*, 476 U.S. at 877).

52. *Id.* (citing *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991)).

53. *Id.* (see *United States v. Lara*, 541 U.S. 193 (2004) (the constitution grants Congress powers we have consistently described as plenary and exclusive to legislate in respect to Indian tribes)).

54. *Id.* (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978)).

55. *Id.* (see *United States v. Wheeler*, 435 U.S. 313, 323 (1978)).

56. *Id.* at 682 (citing *Three Affiliated Tribes of Fort Berthold Reservation*, 476 U.S. at 877).

57. *Id.*

58. *Id.*

59. *Id.* at 683 (quoting *Bassett v. Mashantucket Pequot Museum & Research Center, Inc.*, 221 F. Supp. 2d 271, 280 (2002)).

60. *Id.* at 682 (citing *Kizis v. Morse Diesel International, Inc.* 260 A.2d 498 (Conn. 2002)).

61. *Id.* (citing *Chayoon v. Chao*, 355 F. 3d 141, 143 (2d Cir. 2004)).

62. *Id.*

63. *Id.*

64. *Id.*

Because the defendant was an employee, acting within the scope of his employment, he is afforded tribal sovereign immunity regardless of the suit being brought against him in his individual capacity.⁶⁵ The Court upheld this interpretation of the law.⁶⁶

IV. CONCLUSION

Lewis v. Clarke is a crucial decision in federal Indian law regarding tribal sovereignty. Because of the nature of federal Indian law, tribes across the nation will be influenced by this tribal sovereign immunity determination. In the era of self-determination, *Clarke* will serve to either undermine the doctrine of tribal sovereign immunity or further entrench the long-standing doctrine as a fundamental aspect of tribal sovereignty.

65. *Id.*

66. *Id.*