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OCT 14 2009

**CHOCTAW SUPREME COURT
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**IN THE SUPREME COURT
OF THE
MISSISSIPPI BAND OF CHOCTAW INDIANS**

Mississippi Band of
Choctaw Indians,
Petitioner-Defendant

SC-2008-05

OPINION AND ORDER

vs.

Lee R. Peeples,
Respondent-Plaintiff

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**Attorney General's Office
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DATE OF JUDGMENT: 10/06/09
TRIAL JUDGE: Jeffrey T. Webb
COURT OF ORIGIN: Choctaw Tribal Civil Court
ATTORNEY FOR APPELLANT: Melissa Carleton
ATTORNEY FOR APPELLEE: Michael D. Cooke
NATURE OF THE CASE: Jurisdiction
TRIAL COURT DISPOSITION: 08/29/07

BEFORE: Chief Justice Hilda F. Nickey, Associate Justice Robert Jones and
Associate Justice Brenda T. Pipestem.

FOR THE COURT: ASSOCIATE JUSTICE BRENDA T. PIPESTEM

This case is before this Court on interlocutory appeal from an order of the Tribal Civil Court denying the Mississippi Band of Choctaw Indians' ("MBCI" or "Tribe") Cross-Motion for Summary Judgment due to its failure to adhere to the court's scheduling order.

We reverse the trial court and hold that the Tribe's Cross-Motion for Summary Judgment based on tribal sovereign immunity is granted.

FACTS

Lee R. Peeples, Jr., filed a civil suit against the MBCI in the Chancery Court of Neshoba County, Mississippi, for wrongful termination of employment seeking, inter alia, monetary and punitive damages, reasonable attorney's fees, and reinstatement to his prior position as assistant principal at Pearl River Elementary School. This suit was transferred to the Civil Division of the Mississippi Band of Choctaw Indians' Tribal Court upon joint motion of the parties. In tribal court, Mr. Peeples alleged due process violations under the Indian Civil Rights Act, 25 U.S.C. §1302(a) and the Mississippi Band of Choctaw Indians' Constitution, Article X §1(h).

The MBCI Tribal School hired Mr. Peeples in October 2000 under an academic year contract as an assistant principal of Pearl River Elementary School. Mr. Peeples continued to work under academic year contracts as the assistant principal at Pearl River Elementary School until his contract from July 12, 2004, to June 24, 2005, was not renewed. The employment relationship between Mr. Peeples and the MBCI is governed by the Tribe's Administrative Personnel Policy and MBCI Resolution CHO 41-91, which requires the Tribe to provide written notice of non-employment to principals by March 15 of such year that a contract will not to be renewed. The Pearl River Elementary School Principal gave verbal notice to Mr. Peeples on June 24, 2005, that his contract would not be recommended for renewal in the 2005-06 school year. On September 13, 2005, the Tribe issued Mr. Peeples a written Personnel Action of termination based on non-renewal of contract with an effective date of June 24, 2005.

After filing his initial complaint, Mr. Peeples abandoned his claim for equitable relief on August 29, 2007, by stating that he no longer sought reinstatement to his

position as assistant principal at Pearl River Elementary School. (Peeples' Deposition, August 29, 2007, at 30-31).

In its Order in CV No. 1518-2006, dated May 13, 2008, the trial court denied the Tribe's Cross-Motion for Summary Judgment based on the finding that the MBCI filed its Summary Judgment motion two months after the court's amended scheduling deadline. In addition, the court relied on an earlier Order denying the MBCI Motion to dismiss for lack of subject matter jurisdiction without further review of the Tribe's defense of sovereign immunity.

DISCUSSION

A review of the record reveals that the MBCI filed a timely response in opposition to Plaintiff's Motion for Partial Summary Judgment on Liability and a Cross-Motion for Summary Judgment in the same document. In both the response and in the motion for summary judgment, the MBCI raised sovereign immunity as a jurisdictional bar to "unconsented civil suits seeking monetary relief or money damages."¹

Choctaw Tort Claims Act

Under MBCI law and well settled federal law, the MBCI retains immunity from suit absent a waiver of sovereign immunity by Congress or the MBCI itself.² The Choctaw Tribal Code (C.T.C.) §1-5-4 expressly provides:

Except as expressly abrogated by act of Congress, or as specifically waived by resolution or ordinance of the Tribal Council specifically referring to such, the Tribe shall be immune from suit in any civil action, and its officers and employees immune from suit for any liability arising from the performance of their official duties.

¹ Defendant's Response in Opposition to Plaintiff's Motion for Partial Summary Judgment on Liability and Plaintiff's [sic] Cross-Motion for Summary Judgment, December 21, 2007, page 3.

² For federal law, see e.g., *Kiowa Tribe v. Manufacturing Technologies*, 523 US 751, 754 (1998).

The Choctaw Tort Claims Act set out at Title XXV of the C.T.C. provides a limited waiver of sovereign immunity for a narrow range of tort claims asserted against the MBCI. The Choctaw Tort Claims Act §25-1-2(1) provides in part:

[T]he Tribe is not now, has never been, and shall not be liable, and is, always has been, and shall continue to be immune from suit at law or in equity on account of any wrongful or tortuous act or omission or breach of an implied or express term or condition of any warranty or *contract*, including but not limited to libel, slander, defamation, or any other tort, or *any other claim sounding in contract, or any such act, omission, or break (sic) by any employee of the Tribe....* (Emphasis added).

In *Wanda Sharp v. Mississippi Band of Choctaw Indians*, Choctaw Supreme Court/Mississippi Band of Choctaw Indians, SC 2002-02 (Sept. 3, 2004), this Court held that absent specific waiver of the Tribe's sovereign immunity, the Tort Claims Act is not a waiver for contract claims. Therefore, since Peeples' claims for compensatory and punitive damages for wrongful discharge are contractual in nature, they are expressly barred by the Choctaw Tort Claims Act.

The Appellee does not allege that Congress or MBCI has waived the Tribe's immunity from suit for monetary damages. In fact, Appellee's only challenge to the Tribe's interlocutory appeal focuses on the procedural timetable in the amended scheduling order and does not address the claim of sovereign immunity as the basis of the Tribe's motion for summary judgment.

Administrative Due Process

There is no time bar to the court's responsibility to ensure that it has jurisdiction.

Rule 12 of the Choctaw Tribal Code (C.T.C.) §12(h)(3) expressly states:

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action or transfer the action to the court of proper jurisdiction.

In fact, even without a party raising sovereign immunity, the court is responsible for determining whether or not it has subject matter jurisdiction.

Peeples dropped his claim for equitable relief of reinstatement to his former position of assistant principal at Pearl River Elementary School on August 29, 2007. However, the trial court without review of the Tribe's sovereign immunity defense relied on its Order dated May 24, 2007, denying the Tribe's Motion to Dismiss for lack of subject matter jurisdiction as being premature. Although the trial court relied upon this Court's holding in *Wanda Sharp* to keep the court's door open for potential due process claims, Peeples abandoned his only claim of relief available for alleged ICRA violations when he dropped his claim for reinstatement as assistant principal.³ *Jackson v. Kehgagab*, Saginaw Chippewa Indian Tribe Appellate Court, No. AC-1014 (Aug. 11, 2003) ("Court holds that tribal sovereign immunity does *not* bar actions brought against the Tribe by tribal citizens for alleged ICRA violations. This does not mean however that the Plaintiff/Appellant automatically prevails on the substance of her claims for that is an entirely separate issue. The relief available in such lawsuits is also limited to declaratory and prospective injunctive relief *not* money damages unless there is express tribal legislation authorizing the award of damages.") The trial court's reliance on its May 24, 2007, Order without further review of the Tribe's claim of sovereign immunity was in

³ In *Sharp*, the Tribe raised the defense of sovereign immunity in response to Plaintiff's assertion of wrongful termination. After the case was dismissed by the lower court, the Choctaw Supreme Court cautioned that the requirements of due process recognized in the *Mississippi Band of Choctaw Indians Constitution* at Art. X, Sec. 1(h), and the *Indian Civil Rights Act* at 25 U.S.C. §1302(a) should be considered rather than basing a dismissal on the Tribe's initial reliance on the 'overarching doctrine of sovereign immunity.'

Order, Choctaw Tribal Court/Mississippi Band of Choctaw Indians, CV-1518-2006 (May 24, 2007) (citing *Sharp*, at 5).

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error. See, *Fletcher v. United States*, 116 F.3d 1315 (10th Cir. 1997) (reversing the district court because it "proceeded without subject matter jurisdiction in light of the Osage Tribe's sovereign immunity" which the tribe raised "at every critical stage of the proceedings").

Peebles' remaining money damage claims for due process violations under the Indian Civil Rights Act, 25 U.S.C. §1302(a) and the Mississippi Band of Choctaw Indians' Constitution, Article X §1(h) are barred by Tribal sovereign immunity. See, *Santa Clara Pueblo v. Martinez*, 436 US 49 (1978) (finding no waiver of sovereign immunity for money damage claims under the Indian Civil Rights Act).

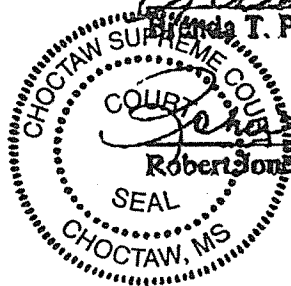
CONCLUSION

This Court holds that the Tribe's sovereign immunity is a complete defense to Appellee's monetary damage claims and a jurisdictional bar to suit. The Tribe's Cross-Motion for Summary Judgment on the basis of lack of jurisdiction due to the Tribe's sovereign immunity is granted and the case dismissed. The lower court order is reversed and rendered.

IT IS SO ORDERED, this 14th day of October, 2009.

Hilda Nickey
Hilda Nickey, Chief Justice

Blenda T. Pipestem
Blenda T. Pipestem, Associate Justice



Robert Jones
Robert Jones, Associate Justice