TRIBAL COURT
OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

SCOTT COUNTY **STATE OF MINNESOTA**

In Re the Marriage of:

Cheri Lynn Crooks-Bathel ,

Petitioner, Court File No. 651-09

and

David Ernest Bathel,

Respondent.

OPINION AND ORDER

The Respondent has moved to dismiss these proceedings or, in the alternative, for a stay pending the resolution of matters presently before the United States District Court for the District of Minnesota. For the reasons set forth below, I deny both motions.

Summary of the Proceedings

The Petitioner asks this Court to dissolve her marriage. She is a member of the Shakopee Mdewakanton Sioux (Dakota) Community ("the Shakopee Community"); the Respondent is not. In affidavits supporting various motions, the Petitioner asserts that the parties have resided on a Community land assignment on the Shakopee Reservation for the twenty-three years of their marriage; that for the last fifteen years the Respondent has worked for a business the parties own on the Reservation; that the Petitioner has worked for the Shakopee Community's government for the last sixteen years; and that the parties have raised two children to adulthood on the Reservation. The Petitioner filed her petition on November 30, 2009, and a summons was issued on that date, but the Petitioner's process server was unable to effect service on the Respondent until December 7, 2009. In the meantime, the Respondent, having been informed by the Petitioner of the existence of these proceedings, on December 2, 2009 filed a marriage dissolution petition in the District Court for Minnesota's First Judicial District and, on the same day, served a summons for that proceeding on the Petitioner.

There followed a flurry of filings.

On December 8, 2009, citing no rule in this Court's Rules of Civil Procedure, the Petitioner filed a motion styled "Motion for Jurisdiction Order", with a supporting memorandum, asking that this Court declare that it had jurisdiction to hear her Petition. On December 15, 2009, the Respondent, also citing no rule, filed a motion styled "Responsive Motion in Opposition to Jurisdiction", in which the Respondent asserted that he was making –

> a limited appearance in this matter as to the issue of jurisdiction of this Court and requests that this Court deny Petitioner's motion for lack of jurisdiction. This responsive motion in no way affirms that Respondent consents to the jurisdiction of this Court in the above matter.

Then, notwithstanding what appeared to be a special appearance, on the following day the Respondent filed an Answer.

Thereafter, the Petitioner filed a second motion, also captioned "Motion for Jurisdiction Order", on December 23, 2009; and December 31, 2009, the Shakopee Community moved for an order permitting it to file what effectively is an *amicus curiae* brief supporting the Petitioner's position with respect to this Court's jurisdiction[1].

Filings during this period were not limited to those made in this Court. In mid-December, the Petitioner removed the Respondent's State court proceeding to the United States District Court for the District of Minnesota.

In an attempt to put some structure on the filings in this Court, a hearing was held on January 6, 2010, where the Court informed the parties that it was unclear how the Petitioner's motions fit within this Court's rules, but that the Respondent's December 15, 2009 filing would be treated as a motion to dismiss under our Rule 12(b). A briefing schedule was established for that motion; the Respondent then filed a brief in support of the motion; the Petitioner timely filed a response; and the Respondent chose to file no reply. That brings the case to where it is today.

This Court's Jurisdiction under the Domestic Relations Code

In his memorandum, the Respondent argues that dismissal of this proceeding is appropriate because, in his view, the text of the Community's Domestic Relations Code does not give the Court personal or subject matter jurisdiction over non-members in marriage dissolution proceedings. He also argues that, even if this Court does have jurisdiction, the Court should refrain from exercising its jurisdiction in light of his filing parallel proceedings in Minnesota State court – the proceedings which have been removed by the Petitioner to the United States District Court.

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[1] At the hearing on this matter held on January 6th, neither party objected to the submission of that brief, so the Community's motion is granted, and the brief is accepted into the record.

In considering a motion to dismiss under our Rule 12(b), this Court assumes all the facts alleged in a petition or complaint to be true, and views the allegations therein in the light most favorable to the Petitioner. Crooks v. SMS(D)C, 4 Shak. T.C. 92, 93 (Oct. 31, 2000); Welch v. SMS(D)C, 2 Shak. T.C. 112, 115 (Feb. 7, 1996), *affirmed*, Welch v. SMS(D)C, 1 Shak. A.C. 35 (Oct. 14, 1996). A case may be dismissed under our rules only if it appears beyond a reasonable doubt that the pleader can prove no set of facts in support of the claim that would entitle her to relief. Crooks v. SMS(D)C, 4 Shak. T.C. 92, 93 (Oct. 31, 2000); Welch v. SMS(D)C, 2 Shak. T.C. 112, 115 (Feb. 7, 1996), *affirmed*, Welch v. SMS(D)C, 1 Shak. A.C. 35 (Oct. 14, 1996).

The Shakopee Community adopted its Domestic Relations Code in 1995, pursuant both to its inherent sovereign authority and to the specific authority granted by the Community's Constitution. Resolution No. 05-23-95-002 para. 4. The resolution by which the Shakopee Community adopted the Code granted this Court the authority and responsibility to hear and resolve domestic issues. Resolution No. 05-23-95-002 para. 7. The Shakopee Community notes, in its *amicus curiae* filing, that because the Domestic Relations Code was intended to apply to persons who are not members of the Community, the Community was required, under its Constitution, to obtain the approval of the Department of Interior before implementing the Code, see Community's Motion for Permission to File Statement on Jurisdiction, page 2. That approval was sought and was given. Id.

Chapter III of the Community's Domestic Relations Code governs divorce. Section 1 of Chapter III establishes the Community's jurisdiction over marriage dissolution proceedings:

> The Shakopee Mdewakanton Sioux (Dakota) Community shall have jurisdiction over all persons who have resided on its Reservation or on any allotted or tribally purchased lands, or any public domain land designated for Tribal use, for at least 90 days prior to commencing any action for the dissolution of a marriage before the Courts of the Shakopee Mdewakanton Sioux (Dakota) Community.

On its face, this provision, coupled with the delegation to this Court worked by Resolution No. 05-23-95-002, gives the Court jurisdiction over "all persons", members and non-members, who are parties to a divorce proceeding and who meet the section's residency requirement.

The Respondent, however, disagrees. He focuses on language in Chapter I, Section 1 of the Code, which describes this Court's jurisdiction over the domestic relations of the Community's "members", and from this focus he argues that the Code was not meant to apply to non-members. But in the Court's view the Respondent is reading from the wrong chapter of the Code. Chapter I of the Domestic Relations Code, from which he argues, sets forth the rules and requirements regarding the creation of a valid marriage under Community law. The Petitioner here is not questioning the validity

of the parties' marriage; she is seeking the Court to dissolve the marriage. This proceeding, therefore, is governed by Chapter III of the Domestic Relations Code, not Chapter I; and Chapter III, Section 1 establishes this Court's jurisdiction over "all persons" involved in a marriage dissolution proceeding, so long as they meet the section's 90 day residency requirement.

But even if the Respondent was correct that Chapter I, Section 1 of the Domestic Relations Code applied to marriage dissolutions, his reading of that section is too narrow. His argument centers on this language in the section:

> The Shakopee Mdewakanton Sioux (Dakota) Community shall have jurisdiction over all marriages licensed and performed on its Reservation or on any allotted or tribally purchased lands or any public domain lands designated for Tribal use. The Community shall have original jurisdiction over the domestic relations of its members. All persons must be residents of the Community as defined by Community law.

The Respondent focuses on the second sentence of this section which uses the term "members". But he fails to discuss the next sentence of Chapter I, Section 1, which uses the term "all persons" in referring to the parties to a domestic relations dispute. If the Code were not intended to apply to non-members, surely its drafters would have used the term "members" consistently, rather than employing the more inclusive phrase "all persons". In this Court's view, there is no way to read the phrase "all persons" to exclude persons who are not members of the Shakopee Community. So, the natural way to read Chapter I, Section 1, and Chapter III, Section 1, is that the Domestic Relations Code gives this Court jurisdiction over the marriages of the Shakopee Community's members, together with their non-member spouses, if all parties meet the residency requirements set out by the Code.

This reading of the Code comports with the reality of the Shakopee Community. The Community is small, both in terms of the numbers of its members and the size of its land base, and it is common knowledge that the great majority of marriages within the Community are between a member and a non-member. In the Court's view, it is appropriate to take judicial notice of that fact; and, given that fact, it would have made little sense for the Community to have drafted, passed, and successfully sought Secretarial approval of a Code that did not apply to non-members who were residents of the Shakopee Reservation.

This reading of the Domestic Relations Code also is consistent with long-standing federal policy and case law that supports tribal jurisdiction over domestic matters. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55-56 (1976) ("[Indians] remain a separate people, with the power of regulating their internal and social relations. They have the power to make their own substantive law in internal matters and to enforce that law in their own forums (citations omitted).") Federal cases have long noted that tribes may exercise jurisdiction over non-members, even on non-member-owned fee land, when those persons have entered into consensual relations with a tribe or its members. U.S. v.

Montana, 450 U.S. 544, 565-66 (1981). ("To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe). The Petitioner here alleges that she and the Respondent have been married and living on tribal land within the Reservation for twenty-three years. See Affidavit of Cherie Crooks Bathel, ¶ 5, attached to Petitioner's Memorandum of Law in Support of Jurisdictional Determination. In this Court's view, marriage and residency on Community lands within the Reservation clearly meet the requirement of a consensual relationship under Montana; and the governance of domestic relations of the Community's members and their spouses on the lands of the Shakopee Reservation plainly is central to the health and welfare of the tribe.

Finally, this reading of the Domestic Relations Code is consistent with case law of this Court during the last fifteen years. In the years since the adoption of the Domestic Relations Code, this Court routinely has applied the Code to non-members who have met the Code's residency requirements, in the context of marriage dissolutions and other domestic relations proceedings, and several of the decisions reflecting that reality appear in our reporters. See, e.g., Welch v. Welch, 5 Shak. T.C. 127 (Aug. 18, 2008), *aff'd in part and rev'd in part* Welch v. Welch, 2 Shak A.C. 11 (April 15, 2009) (*plurality opinion*); Brooks v. Corwin, 5 Shak. T.C. 83 (Oct. 15, 2007), *aff'd* Brooks v. Corwin, 2 Shak. A.C. 5 (Aug. 4, 2008); Cannon v. Prescott, 4 Shak. T.C. 144 (Nov. 25, 2002).

In short, in the Court's view, the Shakopee Community's Domestic Relations Code gives us subject matter jurisdiction over a marriage dissolution proceeding between a member and a non-member who have resided on the Shakopee Reservation for more than ninety days. And, reading the Petitioner's allegations in the light most favorable to her, she clearly has alleged facts that establish the requisite ninety-day residency period. See Petition for Dissolution of Marriage ¶¶ 1, 10-12; Affidavit of Cherie Crooks Bathel, ¶ 5, Attached to Petitioner's Memorandum of Law in Support of Jurisdictional Determination.

The Respondent does not deny that his residence on the Shakopee Reservation meets the required period; but, in his memorandum supporting his motion to dismiss, he does make what appear to be two separate residence-related arguments. He asserts, first, that the Code cannot apply him and his marriage because his marriage occurred before the Code was made applicable to the residents of the Shakopee Reservation. He also argues that because his nuptials took place in the State of Nevada the Domestic Relations Code does not apply to the marriage. But, again, this is a marriage dissolution proceeding brought under Chapter III of the Code, not a proceeding to solemnize a marriage under the Chapter I. Under Chapter I of the Code, a requirement for entering into a marriage under Community law is that the marriage ceremony take place on the

Reservation. See Domestic Relations Code, Chapter I, Section 1. In a marriage dissolution proceeding, however, Chapter III, Section 1 of the Code gives this Court jurisdiction over "all persons" in a marriage if they have resided within the reservation for at least ninety days prior to the action's filing, regardless of when the marriage was solemnized, or where it was solemnized.

Before turning to the Respondent's contention that, if the Court has jurisdiction here, that jurisdiction should not be exercised, the matter of personal jurisdiction should be touched upon. The Respondent has not argued the point, but nonetheless it should be noted that, from the record, it is apparent this Court has personal jurisdiction over the parties. Our precedents establish that the Court's personal jurisdiction over non-Indians may be exercised if the minimum contacts requirements set forth in International Shoe v. Washington, 326 U.S. 310, 316 (1945), are met. LSI v. Prescott and Johnson, 2 Shak. T.C. 152, 158 (July 1, 1996). Under that test, a factor that the Court may consider is whether the Respondent is alleged to have purposely availed himself of the benefits of the tribal community. International Shoe, 326 U.S. at 319. Here, the Petitioner alleges that she and the Respondent have a homestead located on the Reservation, that they have been married and living on the Reservation for the twenty-three years, that they jointly own a business located on the reservation, that the Respondent has been employed by that business for the past 15 years, that the parties share medical insurance provided by the Community, and that their children – who are Community members themselves – were born and raised in the Community and presently hold homestead land assignments on the Reservation. See Petition for Dissolution of Marriage ¶¶ 1, 10-12; Affidavit of Cherie Crooks Bathel, ¶ 5, Attached to Petitioner's Memorandum of Law in Support of Jurisdictional Determination. If these facts are true, the Respondent clearly has, for years, purposely availed himself of the benefits the Community's laws and society. His status as a Shakopee Community member, or as an Indian or non-Indian, is irrelevant: the Petitioner has alleged contacts that support jurisdiction under our precedents. LSI v. Prescott and Johnson, 1 Shak. A.C. 48, 56-58 (Dec. 31, 1996); Barrientez v. SMS(D)C, 1 Shak. T.C. 61, 71 (June 17, 1991).

The appropriateness of this Court as the forum for these proceedings.

The Respondent argues that, even if this Court has jurisdiction, it should not exercise its jurisdiction. He forwards three arguments in this regard. First, he suggests that jurisdiction should not be exercised because both parties agree there are federal issues to be resolved in this case. Second, he argues that a stay is appropriate here because the United States District Court will decide the pertinent jurisdictional issues, and for this Court to render a decision on the same issues would be unfair and duplicative. Finally, he asserts that the State of Minnesota's "first to file" rule should apply here, and – because he served process in his case before the Petitioner served him – this case should be stayed and the District Court for the First District should be allowed to take its case to judgment.

Respondent's first argument can be addressed succinctly. He states, in his memorandum of law:

> The parties agree the Tribal Court should not assert jurisdiction because there are federal issues present that the U.S. District Court must address first before the Tribal Court case can proceed.

Respondent's Memorandum of Law Regarding Tribal Court Jurisdiction, page 13.

But his statement clearly does not reflect the actual position of the parties. The Petitioner has been very clear that she believes jurisdiction properly lies with this Court, and this Court has received no request from her to stay these proceedings pending the outcome in the United States District Court. See, e.g., Petitioner's Memorandum in Response to Respondent's Motion to Dismiss for Lack of Tribal Court Jurisdiction, pp. 3-4. So, this Court has before it two parties who disagree about the Court's jurisdiction, there is a live controversy, and this Court should, and today does, resolve it.[2]

The Respondent cites no law to support his second argument, and in this Court's view there is none. An affidavit filed by the Respondent makes it clear that, prior to filing and serving notice of his state court action, the Respondent knew that this case had been filed and that the Petitioner was attempting to perfect service on him. See Affidavit of David Bathel, ¶ 4, *attached to* Respondent's Notice of Motion and Responsive Motion in Opposition to Jurisdiction (acknowledging he received a voicemail from Petitioner's process server trying to locate him before he filed in state court). So, it is he who bears the primary responsibility for the present state of affairs: he chose to commence a second action after he knew that this proceeding had been initiated. If he had preferred to litigate in only one forum he should not have filed a case in a second forum.

In support of his third argument – the "first to file" argument – the Respondent cites a case where the same litigation had been filed in two different Minnesota state district courts. See Minn. Mut. Ins. v. Anderson, 410 N.W.2d 80, 82 (1987). Clearly, that is not the present case. Here, although this Court and the Minnesota courts may have concurrent jurisdiction, we are courts of different sovereigns. This Court is not part of the Minnesota State judicial system; the First Judicial District of the State of Minnesota is not part of the Shakopee Community's court system. It would make little sense for either of the two courts to apply a first to file rule in a context where neither has the power to

[2] The Respondent also argues that it would be an error for this Court to exercise jurisdiction because to do so would interfere with his right to have access to courts under the United States and Minnesota Constitutions. To support this argument, Respondent cites only Bounds v. Smith, 430 U.S. 817 (1977), a case that addresses the extent to which prisoners must be allowed to use law libraries in order to make their federal right to access the courts meaningful. This Court notes that the Respondent, who is ably represented by counsel, and who has appeared in three different forums for this case, does not appear to have a problem with accessing the courts, but rather is concerned about obtaining a specific jurisdictional ruling. But it is not the place of this Court to delineate the nature of the Respondent's federal or state constitutional rights. If the Respondent believes his federal or state constitutional rights have been interfered with, he must seek redress in a more appropriate forum, presumably either a federal or state court.

enforce their orders. If this Court applied a "first to file rule" in this case, and concluded that the Petitioner actually had succeeded in filing this case first, this Court is unaware of any authority that would allow it to stay the subsequently-filed Minnesota court proceeding.

In this Court's view, a far more instructive rule than "first to file", when there is a potential conflict between a tribal court proceeding and a state court proceeding, is the rule laid out in Teague v. Bad River Band, 665 N.W.2d 899 (Wis. 2003) and Teague v. Bad River Band, 612 N.W.2d 709 (Wis. 2000). That case involved a contract dispute between a non-member employee and a tribe. The employee filed a contract action in a state court; thereafter the tribe filed an action in its tribal court. The tribal court reached its judgment first, and the tribal party moved the state court to dismiss its action. The state trial court declined to dismiss, based in part on the "first to file" rule, reasoning that since it had acquired jurisdiction first it should proceed to judgment and the tribal court should have dismissed its case. Presented with these facts, the Wisconsin Supreme Court noted that the typical "first to file" rules do not apply where the engaged courts are of different sovereigns, as are tribal courts and state courts. 612 N.W.2d at 717-18. And, in a subsequent appeal of the same case, the court concluded that tribal-state court conflicts in Wisconsin should be resolved on the principles of comity, based on a number of factors. Teague v. Bad River Band, 665 N.W.2d 899, 917-18 (Wis. 2003). In the Wisconsin Supreme Court's view, those factors are:

> (1) where the action was first filed and the extent to which the case has proceeded in the first court;
>
> (2) the parties' and courts' expenditures of time and resources in each court, and the extent to which the parties have complied with any applicable provisions of either court's scheduling orders;
>
> (3) the relative burdens on the parties, including cost, access to and admissibility of evidence and matters of process, practice, and procedure, including whether the action will be decided most expeditiously in tribal or state court;
>
> (4) whether the nature of the action implicates tribal sovereignty, including but not limited to subject matter of the litigation and identities and potential immunities of the parties;
>
> (5) whether the issues in the case require application and interpretation of a tribe's law or state law;
>
> (6) whether the case involves traditional or cultural matters of the tribe;
>
> (7) whether the location of material events giving rise to the litigation is on tribal or state land;

(8) the relative institutional or administrative interests of each court;

(9) the tribal membership status of the parties;

(10) the parties' choice of law by contract;

(11) the parties' choice of forum by contract;

(12) whether each court has jurisdiction over the dispute and the parties and has determined its own jurisdiction; and

(13) whether either jurisdiction has entered a final judgment that conflicts with another judgment that is entitled to recognition.

655 N.W.2d at 917-18.

I think this approach, rather than a "first to file" rule, offers a better way to resolve the sorts of problems that are presented by cases of the type here at issue. Not all of the Teague factors will apply in every case, and no one factor probably will be considered determinative, but the factors, taken as whole, give a valuable, workable framework for reaching an equitable decision, and I adopt them.

Here, the first and second factors weigh slightly in favor of this Court's exercising its jurisdiction. The parties filed and served their parallel cases within a nine-day period,[3] but it appears that the State court proceeding is stayed pending the resolution of the removal notice filed by the Petitioner. This Court now has had a hearing, an exchange of briefs, and today is rendering a decision on its jurisdiction. So, this Court has proceeded further – at least slightly further – at this point.

The third factor also seems to weigh in favor of this Court's going forward. Given the geography of the Reservation and Scott County, the burdens on each party of appearing in this Court and in the District Court for the First District are likely to be about equal. But it appears that much of the parties' real property, personal property, and their joint business, are located on the Shakopee Reservation. Their employment histories and their access to health care also appear tied into the Shakopee Community. So, it seems likely that, to the extent there are evidentiary questions in this proceeding, this Court will provide a more convenient forum. It also seems reasonable to believe that the docket in this Court is lighter than that in the Minnesota's First District, making it more likely that this Court will be able to resolve the parties' dispute more expeditiously.

[3] Since this Court does not view this factor as a strict "first to file" question, it will not address the parties' arguments with respect to who precisely "filed first". The Court is aware that the Petitioner filed her Petition first but did not perfect service until after the Respondent had served and filed his state case. The Court is also cognizant of the Petitioner's equitable arguments that the Respondent intentionally avoided service. But, for the purpose of these Teague factors, the Court views these circumstances as essentially a tie, since all pertinent events took place within a nine day time period.

Clearly, the fourth factor weighs heavily in favor of this Court's going forward. The fact that the Shakopee Community has taken the extraordinary step of asking permission to file a brief here indicates the extent to which the Community views this case as potentially affecting its power to govern the affairs of its members. If, for example, the Respondent's jurisdictional arguments here were correct – if the Community had no jurisdiction over non-members who marry members, who live on the Reservation, and who raise children with members of this Community – the impact on the Community's sovereignty and its ability to govern the domestic relations of its members would, for all practical purposes, be eliminated. In addition, this case may implicate Community assets and programs since the parties' land assignments on Community land may be at issue, the Petitioner's per capita payments from the Community's government evidently are at issue, and the parties' health and dental insurance through Community programs may be, as well.

The fifth factor also weighs heavily in favor of this Court's jurisdiction. The Respondent makes no secret of the fact that he is hoping to avail himself of more favorable treatment in the State court proceeding. On page 12 of his Memorandum, he states that he hopes to have his spouse's per capita payments from the Shakopee Community government treated as marital property, by virtue of a State court decision that directly conflicts with the express provisions of the Shakopee Community's Domestic Relations Code. Cf. Zander v. Zander, 720 N.W.2d 360, 369-70 (Minn. Ct. App. 2006) (concluding per capita payments are martial property under Minnesota law despite specific language to the contrary in the Domestic Relations Code), with SMS(D)C Domestic Relations Code, Chapter II, Section 1 ("Per capita payments shall not be defined as marital property"). These efforts to use a State forum to create a conflict with Community law would neither clarify the application of pre-existing tribal law nor elucidate the rights and duties of people subject to Community law. It is for precisely this reason that federal courts have routinely deferred to a tribal court's interpretation of its own laws. Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 16 (1987) ("Adjudication of [reservation] matters by any non-tribal court also infringes upon tribal lawmaking authority, because tribal courts are best qualified to interpret and apply tribal law.")

The sixth factor weighs heavily in favor of exercise of this jurisdiction as well. The maintenance of the Community as a related group of people with a common identity, culture, and heritage is crucial to the Community's continued existence. It is for this reason that the introduction to the Domestic Relations Code states "No more important power is exercised by Indian Tribes than the power to protect and govern the domestic relations of their members."

So, too, with the seventh factor. The Petitioner's alleges that the parties have lived, worked, and raised a family for twenty-three years on Community land. See Petition for Dissolution of Marriage ¶¶ 1, 10-12; Affidavit of Cherie Crooks Bathel, ¶ 5, attached to Petitioner's Memorandum of Law in Support of Jurisdictional Determination. Therefore, the material events giving rise to this litigation appear to have primarily occurred within the Shakopee Reservation, on Community-owned land.

The eighth factor – the institutional interests of this Court – also are significant here. If this Court does not have jurisdiction over non-member spouses of Community members, its ability to administer the Domestic Relations Code will be devastated. In contrast, I believe the institutional interest in the State court's maintaining jurisdiction here, though not absent, is less. See, e.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55-56 (1976) ("[Indians] remain a separate people, with the power of regulating their internal and social relations. They have the power to make their own substantive law in internal matters and to enforce that law in their own forums (citations omitted).")

The ninth factor does not lend weight either to this Court or to the First District Court, since one party here is a Shakopee Community member and one is not; and neither the tenth nor the eleventh factor seems applicable to this case.

The twelfth factor twelve seems to weigh, at least to some extent, in favor of this Court's jurisdiction, because by this decision this Court has determined that facts here, coupled with the Domestic Relations Code and our Court's previous cases, give us subject matter and personal jurisdiction, whereas the First District Court, subject to the stay affected by the removal, has not had the opportunity to conduct an analysis of its jurisdiction.

Finally, neither this case nor First District action has progressed far enough for the thirteenth factor to apply.

Taken together, then, the weight of the Teague factors overwhelmingly supports this Court's exercising the jurisdiction that I have found to exist in this matter. Hence, I decline the Respondent's request to stay these proceedings.

For the foregoing reasons, and based upon all the pleadings and materials filed herein, it is herewith **ORDERED:**

1. The Respondent's motion to dismiss is denied, and

2. The Respondent's motion to stay these proceedings is denied.

Dated: Feb. 17, 2010

John E. Jacobson, Judge