

IN THE TRIBAL COURT OF THE  
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

FILED FEB 10 2014

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COUNTY OF SCOTT

LYNN K. McDONALD  
STATE OF MINNESOTA COURT

In Re the Marriage of:

Kenneth Jo Thomas,

Court File No. 778-13

Petitioner,

**MEMORANDUM OPINION,  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

and

Sheryl Rae Lightfoot

Respondent.

**Memorandum Opinion**

In the December 26, 2013 Opinion filed in this matter, the Court rejected several arguments made by the Respondent in support of her motion to dismiss, but concluded that an evidentiary hearing should be held with respect to whether the Respondent meets the "residency" requirement that is established by Chapter III, section 1 of the Shakopee Mdewakanton Sioux Community's Domestic Relations Code. That hearing was held on January 31, 2014,<sup>1</sup> and today the Court concludes that while the Respondent is both a domiciliary and a resident of Vancouver, British Columbia, she also was, at the time of the filing of this matter and for more than ninety days preceding the filing, a resident of the Shakopee Mdewakanton Sioux Reservation.

The Court therefore denies the Respondent's motion to dismiss. But, given the pendency of parallel proceedings in the Supreme Court of British Columbia, the Court will stay these proceedings for the time being to ensure, insofar as possible, an orderly and coordinated process in both court systems

<sup>1</sup> The Respondent, her counsel, and a number of her witnesses, participated in the hearing by telephone connection from a site in Vancouver, British Columbia, while the Court, with the Petitioner, his counsel additional counsel for the Respondent, and other witnesses, convened in Courtroom No. 1 in the United States Courthouse in St. Paul, Minnesota. That arrangement, which enormously assisted the process because of the Courtroom's superior sound system, was made possible by the courtesy and generosity of United States District Judge Donovan Frank, and by the technical expertise assiduous planning of Judge Frank's Calendar Clerk, Ms. Brenda Schaffer. The Court is deeply grateful to Judge Frank and Ms. Schaffer..

going forward. In particular, it seems clear, from all the evidence, that the parties' children are, and for more than four years have been, living primarily in British Columbia, where they have attended school and spent the majority of their free time. Therefore, if the British Columbia Supreme Court concludes that it has jurisdiction to hear the matter that is before it, this Court would be deeply loathe to engage in any process relating to the physical or legal custody of the children. And it may be that many, or perhaps all, other issues between the parties should not be decided by this Court. Prudence therefore dictates that this Court should await the jurisdictional decision of the British Columbia Court; and, if that Court concludes that it does have jurisdiction, it would seem appropriate for the two forums then to engage in discussion to seek an orderly way forward.

The basis for this Court's decision with respect to its jurisdiction rests on the legal distinction between domicile and residence. As the United States Supreme Court has observed, a person "can reside in one place but be domiciled in another". Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 43 (1989). "Domicile" denotes a person's permanent, established home, as distinguished from a temporary, although actual, place of residence. Domicile is the place where a person intends to remain permanently, or for an indefinite length of time. A person may have more than one residence, but can have only one domicile. Atasi v. Atasi, 451 S.E. 2d 371, 374 (N.C. Ct. of App. 1995).

Here, as is set out in detail in the Findings of Fact below, the Respondent has two residences, one in British Columbia, where she is domiciled, and another on the Shakopee Mdewakanton Sioux Reservation. She is employed on a full-time basis as a Professor in the University of British Columbia; in 2012 her appointment, which is a "tenure track" arrangement, was renewed, and she recently was awarded a Canada Research Chair, a highly prestigious position that has a five-year term. Since moving to Vancouver in the summer of 2009, she has spent the large majority of her time in British Columbia, and there is no evidence that she intends to leave. But, again as set forth in the Findings of Fact, throughout her time in Vancouver, the Respondent also has regularly spent time – Christmas holidays, summer holidays, and other times – in a home ("the Reservation Home") on the Reservation of the Shakopee Mdewakanton Sioux Community. She was most recently there in August, 2013. At the time of the filing of the instant proceedings she kept a large closet full of clothes, and a very considerable number of books, in the Reservation Home. And during her recuperation from breast cancer surgery she stayed in the Reservation Home from September, 2012 through the end of February, 2013.

Hence, though the Reservation Home is not the Respondent's domicile (though it clearly is the Petitioner's), it is a residence of the Respondent's; and it is to residence, not to domicile, that Chapter III, section 1 of the Shakopee Community's Domestic Relations Code speaks. Accordingly, as under that section, I conclude that this Court has jurisdiction over both the parties and their marriage.

**Findings of Fact.**

1. The Petitioner, Kenneth Jo Thomas, is a member of the Shakopee Mdewakanton Sioux Community, a federally recognized Indian tribe.
2. The Respondent, Sheryl Rae Lightfoot, is a member of the Keweenaw Bay Indian Community, also a federally recognized Indian tribe.
3. Both parties are citizens of the United States of America.
4. The parties were married on August 21, 1996, on the Reservation of the Shakopee Mdewakanton Sioux Community, under the authority of a marriage license issued pursuant to Chapter I, section 4.a. of the Shakopee Mdewakanton Sioux Community Domestic Relations Code.
5. The parties jointly own two homes, one at 12585 Riverview Road, Eden Prairie, Minnesota 55347 ("the Eden Prairie Home"), and the other at 4123; Causeway Vista Drive, Tampa, Florida 33615 ("the Tampa Home"). Both the Eden Prairie Home and the Tampa Home presently are being rented to third parties. The Petitioner, Kenneth Thomas, owns a third home at 15215 Dakota Trail West, Prior Lake, Minnesota 55372 ("the Reservation Home"), on lands held in trust by the United States of America within the Shakopee Mdewakanton Sioux Community Reservation.
6. The parties do not own real property in Canada. The Respondent and the parties' children live in a rented home located at 4520 Woodgreen Drive, West Vancouver, British Columbia V7s 2V1.
7. On September 5, 2008, the Respondent signed a letter addressed "To Whom it May Concern" summarizing the status of the parties' three homes, saying "We occupy and divide our time between all three properties".
8. On April 7, 2009, the Respondent entered into a contract with the University of British Columbia pursuant to which she became an Assistant Professor in the University's First Nations Studies Program and its Department of Political Science. The contract created a "tenure track" position, and it was renewed for a second three-year period on January 31, 2012.
9. During the January 31, 2014 evidentiary hearing in this matter, the Respondent testified that when, in 2009, she accepted the appointment to the faculty of the University of British Columbia, it was her intention to move her family to British Columbia. The Court finds this testimony to be credible. The parties and their children moved to Vancouver, British Columbia in July, 2009.
10. During the January 31, 2014 evidentiary hearing in this matter, the Petitioner testified that in 2009 he believed that the family's relocation to Vancouver, British Columbia was a temporary move to facilitate the Respondent's career. The Court finds this testimony also to be credible.
11. During the January 31, 2014 evidentiary hearing in this matter, the Respondent testified that although the University of British Columbia's policy states that "Full-time UBC faculty members

with tenured or tenure-track appointments who are not citizens or permanent residents of Canada are expected to apply for and obtain a Permanent Resident Visa (PRV) in order to maintain their employment in Canada”, she continues to work Canada under a temporary work permit, and has not yet applied for Permanent Resident Status in Canada. Her current temporary work permit will expire on June 30, 2015.

12. During the January 31, 2014 evidentiary hearing in this matter, the Petitioner submitted tables prepared by the Respondent summarizing the number of days, including partial days, that each party spent at the Reservation Home, from March 16, 2013 through October 16, 2013. According to the charts, during that period the Petitioner spent 155 days at the Reservation Home and the Respondent spent 34 days at the Reservation Home. .
13. Since the autumn of 2009, the parties’ two children have attended school in Vancouver, British Columbia. The Exhibits presented by the parties during the January 31, 2014 hearing establish that when the children have stayed staying at the Reservation Home they have participated in activities with friends, but that the great majority of their out-of-school activities, since the autumn of 2009, have taken place in British Columbia.
14. From the summer of 2009 through some time in 2011, both parties and their children primarily lived in homes that the parties rented in Vancouver, British Columbia. Thereafter, the Petitioner has lived primarily in the Reservation Home, and has visited the Respondent and the children in Vancouver, while the Respondent and the parties’ children have primarily lived in Vancouver and have periodically stayed at the Reservation Home.
15. From the summer of 2009 until the commencement of these proceedings the parties and their children regularly spent Christmas holidays, and at least some summer vacation time, at the Reservation Home.
16. From the summer of 2009 through the summer of 2013, when the parties’ children were present in the Reservation Home they periodically utilized the services of the Shakopee Mdewakanton Dakota Medical Clinic and Dental Clinic.
17. During the January 31, 2014 evidentiary hearing in this matter, both parties testified that during September, 2012, while they were staying at the Reservation Home, the Respondent was diagnosed with breast cancer. She therefore took a medical leave of absence from the University of British Columbia and underwent three surgeries in Minnesota. During her recovery period, from September, 2012 through February, 2013, she remained at the Reservation Home.
18. In September, 2012, following the Respondent’s first surgery, the Petitioner, at the request of the Respondent, travelled to Vancouver, British Columbia with the parties’ children, in order that the children could continue their education at the school they had attended since the autumn of 2009.

The Respondent returned to her Vancouver home from the Reservation Home at the end of February, 2013, and shortly thereafter the Petitioner returned to the Reservation Home.

19. During the January 31, 2014 evidentiary hearing in this matter, Professor Allan Tupper, the Head of the Department of Political Science at the University of British Columbia, testified that the Respondent is a permanent, full-time member of the faculty of the University of British Columbia, and that her employment contract obliges her to be present at the University twelve months per year, save only for a one-month authorized leave, and for medical leave. Professor Tupper testified that during the period from August, 2013 through October, 2013 he had normal, daily interaction with the Respondent on the University's campus. Professor Tupper also testified that he did not know where the Respondent spent her holidays. The Court finds this testimony to be credible.
20. During the January 31, 2014 evidentiary hearing in this matter, Professor Glen Coulthard, an Assistant Professor in the First Nations Studies and Political Science Departments of the University of British Columbia, testified that during the period from August, 2013 through October, 2013 he saw the Respondent daily on the University's campus. Professor Coulthard also testified that he was unaware of where the Respondent spent her holidays. The Court finds this testimony to be credible.
21. During the January 31, 2014 evidentiary hearing in this matter, Professor Linc Kesler, the Senior Advisor to the President on Aboriginal Affairs and Director of the First Nations House of Learning at the University of British Columbia, testified that the Respondent had recently been awarded a Canada Research Chair, as a result of her very high level of performance at the University. The award involves a five-year commitment. Professor Kesler also testified that the Respondent was obliged to be present at the University twelve months a year; that he had seen the Respondent on the University campus routinely during the period from August, 2013 through October, 2013; and that he expected the Respondent to apply for permanent resident status in Canada. The Court finds this testimony to be credible.
22. During the January 31, 2014 evidentiary hearing in this matter, Professors Dory Nason and Daniel Heath Justice, each of whom teach in the First Nations Studies Program of the University of British Columbia, testified that they had regular contact with the Respondent during the period from August, 2013 through October, 2013; and Professor Justice, who is the head of the First Nations Studies Program, testified that it is very likely that the Respondent ultimately will be given tenure at the University. The Court finds this testimony to be credible.

23. The Petitioner and the Respondent voted in the 2012 federal and state elections at the polling place in Prior Lake, Minnesota that serves the residents of the Shakopee Mdewakanton Sioux Reservation. In the prior two federal and state elections the Respondent voted by absentee ballot.
24. As of October, 2013, the Respondent had a substantial amount of clothing in closets at the Reservation Home, and a large number of books on shelves in an office in the Reservation Home.
25. Both parties testified that during the term of their marriage, the Respondent prepared the parties' tax returns and was in charge of the parties' finances. The Court finds this testimony to be credible.
26. The parties jointly filed income tax returns for the calendar years 1996 through 2012. On the tax returns filed from 1996 through 2005, the parties stated that their home address was 15162 Dakota Trail North, Prior Lake, Minnesota 55372. That home lies on the Reservation of the Shakopee Mdewakanton Sioux Community, and was a predecessor to the Reservation Home. On the tax returns filed from 2006 through 2012, the parties stated that the Reservation Home was their home.
27. With the parties' United States income tax return for 2012, the Respondent filed an Internal Revenue Service Form 2555 "Foreign Earned Income", on which she stated that her foreign address was 4520 Woodgreen Drive, West Vancouver, British Columbia, Canada V7S 2V1. On the Form 2555 the Respondent stated that during 2012 she had been present in the United States for twenty-six days; on line 15d of the form, in response to the question "Did you maintain a home in the United States while living abroad?," the Respondent answered "Yes"; and on line 15e of the form, which says "If 'Yes', enter address of your home, whether it was rented, the names of the occupants, and their relationship to you", the Respondent entered "15215 Dakota Tr W Prior Lake MN 55372 Kenneth Thomas Spouse".
28. During the January 31, 2014 evidentiary hearing in this matter, the Respondent testified that her use of the Reservation Home on the tax returns that the parties filed with the State of Minnesota and the United States government was merely as "a mailing address". In light of the not inconsiderable connection, both in terms of the time she spent there and in terms of the property that she kept within the Reservation Home, the Court does not find that testimony to be credible.
29. On August 25, 2013, the Petitioner signed a letter addressed to the Canada Revenue Agency, stating that "I am the father of [REDACTED] ... and [REDACTED]. I share custody of both children with Sheryl R. Lightfoot. I currently live at [15215 Dakota Trail West, Prior Lake, Minnesota 55372] in the United States. The children reside with their mother at 4520 Woodgreen Dr, West Vancouver BC V7s 2V1. Sheryl R. Lightfoot is entitled to claim both daughters as her dependants [sic] on her Canadian Income Tax and Benefit Return." That letter

was prepared by the Respondent, and was signed by the Petitioner, while the Respondent was visiting the Reservation Home.

30. The Respondent holds a driver's license, issued on April 11, 2013, by the Province of British Columbia.
31. The parties jointly own various saving accounts, checking accounts, and investment accounts in the United States and in Canada.

#### Conclusions of Law

1. In American jurisprudence, a legal distinction exists between the term "Domicile" and the term "Residence". "Domicile" denotes a person's permanent, established home, as distinguished from a temporary, although actual, place of residence. Domicile is the place where a person intends to remain permanently, or for an indefinite length of time. A person may have more than one residence.
2. Chapter III, section 1 of the Shakopee Mdewakanton Sioux Community Domestic Relations Code gives the Community and this Court "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".
3. Marriage and residency on Community lands within the Reservation of the Shakopee Mdewakanton Sioux Community meet the requirement of a consensual relationship under Montana v. United States, 450 U.S. 544 (1981); 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. Jacobs v. Jacobs, 405 N.W.2d 668, 672 (Wis. 1987) , holding that "[d]ivorce, like marriage, is of concern not only to the immediate parties. Both the state and the tribe have interests to be protected."
4. When the General Council of the Shakopee Mdewakanton Sioux Community adopted the Shakopee Mdewakanton Sioux Community Domestic Relations Code in 1995, it deliberately chose the phrase "who have resided on" to describe the persons over whom the Community and this Court could exercise domestic relations jurisdiction. Therefore, in order for this Court to exercise domestic relations jurisdiction over a person, it is not necessary that the Court find that the person intends a residence on the Reservation to be his or her permanent

home. Rather, the Court simply must find that the person has been a resident of the Reservation.

5. The evidence before the Court clearly establishes that the Respondent is, and since the summer of 2009 has been, a resident of and a domiciliary of Vancouver, British Columbia. She intends Vancouver to be her home, and she resides there most of the time. But the evidence also establishes that the Respondent has a residence on the Reservation of the Shakopee Mdewakanton Sioux Community. She regularly has spent time there, including time during the ninety days preceding the filing of this matter; she has availed herself of services there; and she has kept, and still keeps, personal property there. She therefore is a resident of the Shakopee Reservation, as well as of Vancouver, British Columbia.
6. The Petitioner is, and at least since 2011 has been, both a resident and a domiciliary on the Reservation of the Shakopee Mdewakanton Sioux Community.
7. Given the fact that both parties are residents of the Shakopee Reservation, this Court has personal jurisdiction over the parties and subject matter jurisdiction over their marriage.
8. The fact that a Court possesses jurisdiction over parties and a cause of action does not require the Court to exercise all or any of that the jurisdiction. It may well be appropriate for a Court to defer exercise of its jurisdiction over all or part of a cause of action, given the circumstances of a particular case.
9. In this matter, given the strong connection that the children of the parties have to their home in British Columbia, it is plain that if the Courts of the Province of British Columbia conclude that they have jurisdiction over the parties and their marriage, the Court of the Shakopee Mdewakanton Sioux Community should not exercise jurisdiction over questions concerning the physical or legal custody of the children.
10. In this matter, if the Courts of the Province of British Columbia conclude that they have jurisdiction over the parties and their marriage, it may be appropriate for this Court to work with those Courts to allocate the exercise of jurisdiction over other aspects of the issues that are pending between the parties.

### ORDER

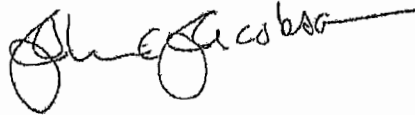
For the foregoing reasons, and based upon all of the pleadings and materials filed herein, it is ORDERED:

1. That the Respondent's motion to dismiss is denied; and
2. That these proceedings are stayed pending a decision, by the Supreme Court of British Columbia



in the proceedings captioned Sheryl Rae Lightfoot, Claimant and Kenneth Jo Thomas, Respondent, concerning that Court's jurisdiction.

Dated: February 10, 2014

A handwritten signature in black ink, appearing to read "John E. Jacobson", with a long horizontal line extending to the right.

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John E. Jacobson, Chief Judge  
Tribal Court of the Shakopee Mdewakanton  
Sioux Community