MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS
TRIBAL COURT

JODIE PALMER and TOMIE WILLIAMSON,

Petitioners,

Case No. Civ-2016-001

Michael Petoskey, Chief Judge

v.

MATCH-E-BE-NASH-SHE-WISH BAND
OF POTTWATOMI INDIANS TRIBAL COUNCIL, *et al.*,

Respondents.
____/

FILED
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GUN LAKE TRIBAL COURT

Pro Se Petitioners:

Jodie Palmer

and

Tomie Williamson

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OPINION ON RESPONDENTS' MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION

This Court heard Oral Argument on Respondents' *Motion to Dismiss for Lack of Subject Matter Jurisdiction* in the present action on Tuesday, March 15, 2016. Respondents' attorney, Conly Schulte, presented three (3) separate arguments in support of the *Motion*. Only one of the two tribal member Petitioners appeared. Ms. Palmer responded to the arguments made by Respondents and was able to express her concerns to the Court. Ms. Williamson did not appear. The Court waited for her in the event she was delayed as a matter of courtesy, but she made no contact with the Court even though Ms. Palmer tried to contact her several times.

Respondents, through their counsel (hereinafter "Respondents") argued that there are three (3) separate and distinct reasons why this Court lacks jurisdiction (has no authority) over the instant suit. Furthermore, Respondents argued that each of the three is equally fatal to Petitioners' suit. In short, Respondents' three legal arguments are as follows: (1) Petitioners lack **standing** to sue; (2) Respondents are immune from suit based upon **tribal sovereign immunity**; and (3) this Court has **no jurisdiction over enrollment matters**. Each of these arguments is detailed in Respondents' *Motion to Dismiss for Lack of Subject Matter Jurisdiction*.

Judicial decision-making is at its best when courts limit opinion writing to what is only necessary to decide the matter pending before them. Although it might be tempting to opine or pontificate, such creates dicta (verbiage that is unnecessary to the result of a case) which in turn sometimes obscures why a court decided the way that it did (the actual holding of a case). For the above reason, this Court will proceed in such a manner.

Respondents have stepped forward with the defense of tribal sovereign immunity. Petitioners carry the burden of demonstrating that tribal sovereign immunity from suit does not deprive this Court of authority to entertain this action. In an effort to carry their burden, Petitioners presented two (2) separate waiver theories both provided in the common law (judicially-created law through court opinions). They argue the first waiver is pursuant to this Tribe's common law. The second waiver, they argue, is pursuant to federal common law.

First for purposes of this *Opinion*, Petitioners point to this Court's written opinion in *Bailey v. Match-E-Be-Nash-She Wish Band of Pottawatomi Indians*, No. CIV-2011-027 (2012). Specifically, they argue that *Bailey* stands for the proposition that Article III of the MPBI Constitution provides a limited waiver of the Tribe's sovereign immunity in the Tribal Court to the extent necessary for this Court to protect tribal members' rights. This Court did suggest, in dicta, that the language in that Article that "opens" the judicial process of the MBPI to every member of the Tribe "could" operate as a waiver of immunity for tribal members to sue the

Tribe. However, the instant action squarely presents that precise issue for the Court's close examination. *Bailey* did not present the precise issue that is present in this case, as the Petitioners in *Bailey* were not tribal members. Thus, this Court's language in *Bailey* is pure dicta and not substantive law because such language was not part of the holding. Both federal common law and this Tribe's written law require that waivers of tribal sovereign immunity cannot be implied but must be unequivocally expressed. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) and MBPI *Judicial Ordinance*, Chapter II, Section 4(c). In the hierarchy of laws, tribal statutes, or in this Tribe's case, trump any actual or perceived law developed by its courts. Petitioners were unable to produce "**a formal resolution**" waiving tribal sovereign immunity as strictly required by this Tribe's own statutory law and this Court is unware of any such waivers by formal resolution.

In closing, Petitioners' argument that the federal common law doctrine of *Ex Parte Young*, 209 U.S. 123 (1908) creates a waiver of tribal sovereign immunity for this present action fails for the foregoing and because that case merely involved a federal law violation matter against a State official. See *Ex Parte Young* at p. 160. Such is not the case here. The instant action is a tribal matter involving tribal officials.

There can be no doubt that Respondents are immune from suit because they are protected by tribal sovereign immunity and that this Court lacks subject matter jurisdiction. When the law is clear that the Court has no authority, it has no authority.

WHEREFORE, BASED UPON ALL OF THE FOREGOING, THE RESPONDENTS' MOTION TO DISMSS BASED FOR LACK OF SUBJECT MATTER JURISDICTION IS GRANTED.

03/22/16
Date

Michael Petoskey
Chief Judge