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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DANIEL MARTINEZ,

Plaintiff,

v.

HELEN MARTINEZ and THE SUQUAMISH  
TRIBE,

Defendant.

Case No. C08-5503 FDB

ORDER DENYING DEFENDANTS'  
MOTIONS TO DISMISS AND GRANTING  
PLAINTIFF DECLARATORY AND  
INJUNCTIVE RELIEF

This matter comes before the Court on motions of Defendants Helen Martinez and the Suquamish Tribe to dismiss Plaintiff's complaint for declaratory and injunctive relief. The Defendants assert that because Plaintiff has failed to exhaust tribal court remedies this Court lacks jurisdiction to determine whether the Suquamish Tribe has jurisdiction to enter an order of protection against Plaintiff and to act upon a dissolution petition filed by Defendant Helen Martinez. For the reasons stated below, this Court denies the motion to dismiss and finds that the Suquamish Tribe lacks jurisdiction to enter protective orders and act upon the dissolution petition regarding these non-members of the Suquamish Tribe.

**Introduction and Background**

The undisputed material facts are as follows: Daniel and Helen Martinez are married and have two children. Plaintiff Daniel Martinez is a non-Indian and not a member of the Suquamish Tribe. Defendant Helen Martinez is an Alaska Native and she and her children are members of the Native Village of Savoonga. Ms. Martinez and her children are not members of the Suquamish Tribe. The family resides on fee land owned by a non-Indian located within the Suquamish Reservation.

The parties have appeared before the Suquamish Tribal Court in the past seeking domestic relations protection orders. In July of 2007, Daniel Martinez petitioned for and obtained a temporary protection order restraining Helen Martinez from her husband and children. By agreement of the parties this order was dismissed in August of 2007. Thereafter, Helen Martinez filed a petition for dissolution of marriage with the Tribal Court. This petition was also dismissed by stipulation of the parties.

On February 28, 2008, Helen Martinez initiated a new action in the Tribal Court seeking a domestic violence order of protection against her husband. A temporary order was issued on that date prohibiting Mr. Martinez from contacting his wife or children and from going to their home. Daniel Martinez was served with the temporary protection order and notice of a March 27, 2008 hearing on a permanent order of protection. Mr. Martinez appeared at the hearing. The Court entered a final order of protection which Mr. Martinez signed in court. This order of protection prohibits Mr. Martinez from contacting his wife or children and from going to their home until July 28, 2010.

On March 4, 2008, Ms. Martinez filed for dissolution of marriage and custody of their children in the Tribal Court and moved for temporary orders. Mr. Martinez responded by filing a proposed parenting plan and a financial declaration. The Tribal Court entered a temporary order on April 29, 2008. The Tribal Court set a trial date for dissolution of the marriage for February 27, 2009.

1 On May 14, 2008, counsel for Mr. Martinez filed a notice of appearance in both matters  
2 asserting lack of subject matter jurisdiction. The Tribal Court denied counsel's written request for a  
3 copy of the record of the domestic violence protective order case on the basis that the case was  
4 closed.

5 This complaint for declaratory and injunctive relief followed.

### 6 **Subject Matter Jurisdiction**

7 Non-Indians may bring a federal common law cause of action under 28 U.S.C. § 1331 to  
8 challenge tribal court jurisdiction. Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S.  
9 845, 850-53(1985); Boozer v. Wilder, 381 F.3d 931, 934 (9<sup>th</sup> Cir. 2004). Federal law defines the  
10 outer boundaries of an Indian tribe's power over non-Indians, and the question whether an Indian  
11 tribe retains the power to compel a non-Indian to submit to the civil jurisdiction of a tribal court is  
12 one that must be answered by reference to federal law and is a federal question under 28 U.S.C. §  
13 1331. Crow Tribe of Indians, at 852; Boozer, at 934. "Whether a tribal court has adjudicative  
14 authority over nonmembers is a federal question." Plains Commerce Bank v. Long Family Land &  
15 Cattle Co., Inc., \_\_\_ U.S. \_\_\_, 128 S.Ct. 2709, 2716-17, 171 L.Ed.2d 457 (2008). Because Daniel  
16 Martinez is non-Indian, § 1331 provides subject matter jurisdiction over his federal common law  
17 challenge to the tribal court's jurisdiction to enter the protection order and adjudicate his dissolution.

### 18 **Exhaustion of Tribal Remedies**

19 Defendants move to dismiss Plaintiff's complaint pursuant to Rule 12(b)(1) and (6) on the  
20 ground Plaintiff did not properly exhaust the requisite tribal court remedies prior to bringing the  
21 instant action.

22 Under the doctrine of exhaustion of tribal court remedies, relief may not be sought in federal  
23 court until appellate review of a pending matter in a tribal court is complete. Iowa Mut. Ins. Co. v.  
24 LaPlante, 480 U.S. 9, 17 (1987); Atwood v. Fort Peck Tribal Court Assiniboine, 513 F.3d 943, 948  
25 (9<sup>th</sup> Cir. 2008). The exhaustion rule is prudential, it is required as a matter of comity, not as a



1 564.

2 The Defendants assert that Tribal Court jurisdiction exist by way of a positive grant of  
3 jurisdiction through federal statute and/or through the application of the exceptions for inherent tribal  
4 authority.

5 **Legislative Grant of Jurisdiction**

6 Both Defendants the Suquamish Tribe and Helen Martinez assert that there exist a federal  
7 grant of tribal jurisdiction under the Violence Against Women Act (VAWA). The Defendants  
8 reference the provisions of the VAWA governing enforcement of protection orders. Under the  
9 VAWA a tribal court protection order is entitled to full faith and credit in state courts “provided the  
10 tribal court has jurisdiction over the parties and matter under the laws of that tribe,” and reasonable  
11 notice and opportunity to be heard is given to the person against whom the order is sought sufficient  
12 to protect that person’s right to due process. 18 U.S.C. § 2265(b). The VAWA sets for the grant of  
13 tribal jurisdiction at 18 U.S.C. § 2265(e):

14 Tribal court jurisdiction.--For purposes of this section, a tribal court shall have full  
15 civil jurisdiction to enforce protection orders, including authority to enforce any  
16 orders through civil contempt proceedings, exclusion of violators from Indian lands,  
and other appropriate mechanisms, in matters arising within the authority of the tribe.

17 Defendants then point to tribal law providing that any person may petition the tribal court for an  
18 order of protection by filing a petition alleging he or she has been the victim of domestic violence  
19 committed by the respondent. Suquamish Tribal Code § 7.28.2.

20 The Court does not construe the provisions of the VAWA as a grant of jurisdiction to the  
21 Suquamish Tribe to enter domestic violence protection orders as between two non-members of the  
22 Tribe that reside on fee land within the reservation. There is nothing in this language that explicitly  
23 confers upon the Tribe jurisdiction to regulate non-tribal member domestic relations. The grant of  
24 authority simply provides jurisdiction “in matters arising within the authority of the tribe.”

25 Tribal jurisdiction over non-members is highly disfavored and there exists a presumption

1 against tribal jurisdiction. There must exist “express authorization” by federal statute of tribal  
2 jurisdiction over the conduct of non-members. Bugenig v. Hoopa Valley Tribe, 229 F.3d 1210,  
3 1215, 1217 (9<sup>th</sup> Cir. 2000); Strate v. A-1 Contractors, 520 U.S. 438, 445 (1997). For there to be an  
4 express delegation of jurisdiction over non-members there must be a “clear statement” of express  
5 delegation of jurisdiction. Bugenig, 1218-19.

6 The VAWA provisions provide that tribal protection orders are entitled to full faith and  
7 credit only where the tribal court has jurisdiction over the parties and matter under the laws of the  
8 tribe. This provision is simply a recognition of existing tribal jurisdiction over the welfare of the Tribe  
9 and its members. It is not clear statement of express grant of expanded jurisdiction over non-  
10 members that has not been previously recognized by the courts and Congress. There is no express  
11 congressional authorization to enter protective orders (or entertain dissolution proceedings) against  
12 non-tribal members pursuant to the VAWA. Accordingly, there is no tribal jurisdiction pursuant to  
13 legislative grant.

#### 14 **Inherent Tribal Authority**

15 The Defendants next assert that Tribal Court jurisdiction arises from the inherent sovereign  
16 powers of the Tribe. The sovereignty of Indian tribes is of a unique and limited character. It centers  
17 on the land held by the tribe and on tribal members within the reservation. Plains Commerce Bank v.  
18 Long Family Land & Cattle Co., Inc., \_\_\_ U.S. \_\_\_, 128 S.Ct. 2709, 2718, 171 L.Ed.2d 457 (2008).  
19 The Supreme Court has stated that “the inherent sovereign powers of an Indian tribe do not extend  
20 to the activities of nonmembers of the tribe.” Id., at 2718-19; United States v. Montana, 450 U.S.  
21 544, 565 (1981). This general rule restricts tribal authority over nonmember activities taking place  
22 on the reservation, and is particularly strong when the nonmember's activity occurs on non-Indian fee  
23 land.” Plains Commerce Bank, at 2719; Strate v. A-1 Contractors, 520 U.S. 438, 446 (1997).

24 At first blush it would appear that the Tribal Court lacks inherent sovereign powers  
25 jurisdiction over the conduct of Plaintiff, as he is a non-member of the Tribe. In fact, Helen Martinez

1 is an Alaska Native Indian, and for the purposes of determining the tribal jurisdiction of the  
2 Suquamish Tribal Courts, she also is not a member. See, Smith v. Salish Kootenai College, 434 F.3d  
3 1127, 1132-33 (9<sup>th</sup> Cir. 2006). Further, the parties reside not on Indian land, but fee property owned  
4 by a non-member of the Suquamish Tribe.

5 The principle that the inherent sovereign powers of an Indian tribe do not extend to the  
6 activities of nonmembers of the tribe is subject to two exceptions. The first exception relates to non-  
7 members who enter consensual relationships with the tribe or its members; the second concerns  
8 activity that directly affects the tribe's political integrity, economic security, health, or welfare.”  
9 Strate v. A-1 Contractors, 520 U.S. 438, 446 (1997); Smith, 434 F.3d at 1131. The U.S. Supreme  
10 Court first identified these two exceptions in Montana. The first exception is that a tribe may  
11 regulate through taxation, licensing, or other means, “the activities of nonmembers who enter  
12 consensual relationships with the tribe or its members, through commercial dealing, contracts, leases  
13 or other arrangements.” Montana, 450 U.S., at 565. The second exception is that a tribe “may also  
14 retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within  
15 its reservation when that conduct threatens or has some direct effect on the political integrity, the  
16 economic security, or the health or welfare of the tribe.” Id. at 566.

17 These exceptions are limited, and cannot be construed in a manner that would swallow the  
18 rule, or severely shrink it. Plains Commerce Bank, at 128 S.Ct. 2720. Efforts by a tribe to regulate  
19 non-members, especially on non-Indian fee land, are presumptively invalid. The burden rests on the  
20 tribe to establish that one of the two Montana exceptions is satisfied. Id.; Atkinson Trading Co. v.  
21 Shirley, 532 U.S. 645, 654, 659 (2001).

### 22 **Consensual Relationship Exception**

23 The Tribe and Ms. Martinez assert that Mr. Martinez has entered into a consensual  
24 relationship with the Suquamish Tribe by having availed himself of the Tribal Courts in prior actions  
25 concerning his relationship with his wife, Helen Martinez.

1 The Court finds this argument unpersuasive. Mr. Martinez is not engaged in any of the  
2 illustrative “consensual relationships” described in Montana: “commercial dealing, contracts, leases,  
3 or other arrangements.” See United States v. Montana, 450 U.S. 544, 565 (1981). The analysis of  
4 Montana, and subsequent cases, expressly or implicitly recognize tribes limited authority over activity  
5 occurring within the reservation and tribes lack of authority to determine external relations. Montana,  
6 at 564. As Montana emphasizes, “exercise of tribal power beyond what is necessary to protect tribal  
7 self-government or to control internal relations is inconsistent with the dependent status of the tribes,  
8 and so cannot survive without express Congressional delegation.” Id. The unifying principle behind  
9 both of the Montana exceptions is that, absent express congressional delegation, a tribe has civil  
10 authority over non-Indians only where such authority is “necessary to protect tribal self-government  
11 or to control internal relations.” Id. at 564. Although Montana specifically addressed the regulatory  
12 rather than the adjudicatory jurisdiction of tribes, there is nevertheless a presumption that if a tribe has  
13 authority under Montana to regulate the activities of a non-member, jurisdiction over disputes arising  
14 out of those activities exists in the tribal courts. Strate, 520 U.S. at 453. Absent regulatory authority,  
15 there is no adjudicatory jurisdiction. The exercise of tribal power beyond what is necessary to protect  
16 tribal self-government or to control internal relations within the Tribe is inconsistent with the  
17 dependent status of the tribes, and so cannot survive without express congressional delegation. South  
18 Dakota v. Bourland, 508 U.S. 679, 694-95 (1993). “As to nonmembers ... a tribe's adjudicative  
19 jurisdiction does not exceed its legislative jurisdiction....” Strate v. A-1 Contractors, 520 U.S. 438,  
20 453 (1997); Nevada v. Hicks, 533 U.S. 353, 357-58 (2001).

21 Consensual relation cases that have been recognized by the courts involve either direct  
22 regulation by a tribe of non-Indian activity on the reservation or lawsuits between a private party and  
23 the tribe or tribal members arising from an on-reservation transaction or agreement. See Smith v.  
24 Salish Kootenai College, 434 F.3d 1127 (9<sup>th</sup> Cir. 2006)(non-member plaintiff brought suit in tribal  
25 court against tribal entity); Williams v. Lee, 358 U.S. 217 (1959)(non-member plaintiff brought action

1 in tribal court against tribal member). Here, as in Strate, there is no consensual relationship and thus,  
2 no tribal jurisdiction where the dispute is distinctly non-tribal in nature and arises between two non-  
3 Indians on fee land within the reservation. See Strate, 520 U.S., at 457.

4 As recently recognized in Plains Commerce Bank, the first exception is confined to regulation  
5 of non-Indian activities on the reservation that have a discernable effect on the tribe or its members.  
6 Plains Commerce Bank, v. Long Family Land and Cattle Co., \_\_\_ U.S. \_\_\_, 128 S.Ct. 2709, 2721,  
7 171 L.Ed.2d 457 (2008). “The logic of Montana is that certain activities on non-Indian fee land (say,  
8 a business enterprise employing tribal members) or certain uses (say, commercial development) may  
9 intrude on the internal relations of the tribe or threaten tribal self-rule. To the extent they do, such  
10 activities or land uses may be regulated.” Id., at 2723. Where there exist no basis for tribal  
11 governance of non-members’ conduct on fee land, it is equally evident that the tribal courts lack  
12 adjudicatory authority over disputes arising from such conduct. Hornell Brewing Co. v. Rosebud  
13 Sioux Tribal Court, 133 F.3d 1087, 1092 (8<sup>th</sup> Cir. 1998).

14 Neither Mr. Martinez or his wife, Helen Martinez, are members of the Suquamish Tribe and  
15 their domicile is on fee land. Their domestic disputes and dissolution proceeding are distinctly non-  
16 tribal in nature and cannot be considered to have intruded on the internal relations of the Tribe or  
17 threatened tribal self-rule.

18 There is no debatable question or colorable claim as to the application of the first exception.  
19 The fact that the Tribal Court accepted jurisdiction over the conduct of these parties in the past does  
20 not infer Plaintiff’s consent to present jurisdiction. It does, however, evidence a tribal court disregard  
21 for the limits of its jurisdiction. The Suquamish Tribal Court lacks jurisdiction under the first  
22 exception to entertain a dissolution proceeding or to enter protective orders as to these non-Tribal  
23 member parties to this litigation.

#### 24 **Political Integrity, Economic Security, and Health or Welfare Exception**

25 The second exception authorizes the tribe to exercise civil jurisdiction when non-Indians'

1 conduct menaces the political integrity, the economic security, or the health or welfare of the tribe.  
2 Plains Commerce Bank, 128 S.Ct., at 2726; Montana, 450 U.S., at 566. This exception stems from  
3 the same sovereign interests that give rise to the first. Plains Commerce Bank, at 2726. The conduct  
4 must do more than injure the tribe, it must imperil the subsistence of the tribal community. Id.

5 It is a fundamental fact in this litigation that neither party is a member of the Suquamish Tribe.  
6 The dissolution proceeding and domestic relations between these parties does not fall within the rubric  
7 of directly affecting the health and welfare of the Tribe. The domestic relations of non-tribal parties  
8 does not “imperil the subsistence of the tribal community.” The second exception is inapplicable.  
9 The Suquamish Tribal Court lacks jurisdiction to enter protective orders or entertain a dissolution  
10 proceeding as to these two non-members of the Tribe.

### 11 Conclusion

12 For the above stated reasons the Court finds that Plaintiff need not exhaust tribal remedies  
13 before challenging tribal jurisdiction in this Court. Jurisdiction is neither colorable or plausible.  
14 Jurisdiction over non-members of the Tribe domiciled on fee land is plainly lacking and exhaustion  
15 would only serve to delay the proceedings. Lacking jurisdiction, the underlying orders entered by the  
16 Tribal Court are necessarily null and void. The parties may petition the appropriate state court to  
17 resolve their disputes.

18 ACCORDINGLY;

19 IT IS ORDERED:

20 (1) Motion to Dismiss by Defendant Suquamish Tribe [Dkt. # 8] is **DENIED**.

21 (2) Motion to Dismiss by Defendant Helen Martinez [Dkt. #9] is **DENIED**.

22 (3) Plaintiff Daniel Martinez is **GRANTED** declaratory and injunctive relief. The  
23 Suquamish Tribe does not have civil jurisdiction to adjudicate domestic relation  
24 disputes between the non-members of the Tribe, Daniel and Helen Martinez. This  
25 lack of jurisdiction includes petitions for dissolution, child custody, and domestic

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violence protection orders. Orders entered by the Suquamish Tribal Court relating to the domestic relations of Daniel Martinez and Helen Martinez are null and void. The Suquamish Tribal Court is enjoined from issuing or enforcing any said orders.

DATED this 15th day of December, 2008



FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE