

<b>Supreme Court Case No.: 18-144-APP</b>		<b>Tribal Court Case No.: 16-0496-PPO-ND</b>	
<b>PETITIONER/APPELLEE</b>		<b>RESPONDENT/APPELLANT</b>	
<b>NATHANIEL WESLEY SPURR</b>	<b>v.</b>	<b>JOY LYNN SPURR</b>	
Angela Sherigan Attorney for Appellee 56804 Mound Road Shelby Township, MI 48316		Joy Lynn Spurr, <i>pro se</i> 1114 Beaconsfield Avenue Grosse Pointe Park, MI 48230	

**SUMMARY OPINION OF THE SUPREME COURT FOR THE  
NOTTAWASEPPI HURON BAND OF THE POTAWATOMI**

**Before:**

Hon. Gregory D. Smith, Chief Justice  
Hon. Matthew L.M. Fletcher, Associate Justice  
Hon. Holly T. Bird, Associate Justice

**FILED**

OCT 4 2018

**Opinion by Smith, C.J.**

**NHBP TRIBAL COURT**

**RELEVANT FACTS**

On January 25, 2018, this Court handed down a decision involving these same parties in *Spurr v. Spurr, Appeal No. 17-287-APP* that found the Nottawaseppi Huron Band of the Potawatomi Tribal Court had subject matter jurisdiction to order a Permanent Protection Order, (PPO), against Appellant, Joy Lynn Spurr to stay away from Appellee, her stepson, Nathaniel Wesley Spurr. *Spurr v. Spurr, Appeal No. 17-287-APP (NHBP Sup. Ct. 1/25/2018), at pages 8-22*. Ironically, if left alone, the PPO involving Appellant would have expired February 17, 2018. *See, Spurr order of Tribal Court<sup>1</sup> dated 10/6/2017, at page 1, Trial Record page 754.*

On January 31, 2018, a hearing for contempt was held before the Tribal Court and Appellant failed to appear to contest the claimed contempt. *See, Spurr order of Tribal Court dated 2/13/2018, at page 1, Trial Record page 797.* Appellant was held in civil

<sup>1</sup> The Tribal Court hearing in this matter was before Chief Judge Melissa L. Pope, hereinafter “Tribal Court.”

contempt for violating the PPO. *See, Spurr order of Tribal Court dated 2/13/2008, at page 4, point 27, Tribal Record page 800.*

On February 13, 2018, a hearing on the merits of whether the PPO should be extended for another year was held in front of the Tribal Court and testimony was taken from Appellant, Appellee and one witness. *See, Supplemental Appellate Record at 1-2.* The transcript of this hearing is 141 pages. Following proof being presented, the Tribal Court extended the pending PPO to February 14, 2019. *See, Supplemental Appellate Record at pages 134-136 and Spurr order of Tribal Court dated 2/13/2018, Trial Record page 802.* Appellant appealed this order to this Honorable Court.

A point that is extremely relevant to the case at hand is that the only issue currently on appeal is whether the Tribal Court has subject matter jurisdiction to order a PPO against Appellant, a non-Indian. *Appellant's brief at pages 15-18.* Said question was the centerpiece issue in the earlier appeal of these same parties in *Spurr v Spurr, Appeal No. 17-287-APP (NHBP Sup. Ct. 1/25/2018)*. Appellant acknowledged this issue had already been ruled on in the February 13, 2018 hearing on extending the PPO. *See Supplemental Appellate Record at pages 17-20.* This Court believes the doctrines of *res judicata* and “law of the case” control the decision in the pending appeal.

### **ANALYSIS**

The U.S. Supreme Court once defined the concept of *res judicata* as follows:

*Res judicata* ensures the finality of decisions. Under *res judicata*, “a final judgment on the merits bars further claims by parties or their privies based on the same cause of action...*Res judicata* thus encourages reliance on judicial decisions, bars vexatious litigation, and frees the courts to resolve other disputes.

*Brown v. Felson*, 442 U.S. 127, 131 (1979), *internal citations omitted*. The theory of *res judicata* exists in federal, state and tribal courts.<sup>2</sup> *Res judicata* applies in the Nottawaseppi Huron Band of the Potawatomi tribal court system.

A legal concept closely related to *res judicata* is the “law of the case doctrine.” The U.S. Supreme Court, speaking through legendary Justice Oliver Wendell Holmes, Jr., explained the law of the case doctrine as follows:

In absence of statute the phrase, “law of the case,”...merely expresses the practice of courts generally to refuse to reopen what has been decided, not limit their power.

*Messenger v. Anderson*, 225 U.S. 436, 444 (1912). The law of the case doctrine also enjoys a strong following in federal, state and tribal courts.<sup>3</sup>

Appellant admitted in her appellate brief that she knew the issue of subject matter jurisdiction was decided in her prior appeal. *See Appellant's brief at page 17*. Appellant further acknowledged at the February 13, 2018 hearing that the issue of subject matter jurisdiction was previously addressed and ruled on by this Honorable Court. *See Supplemental Appellate Record at pages 19-20*. This Court acknowledges that lack of subject matter jurisdiction can be raised at any point in a proceeding. *See, Mansfield C. & L.M. Ry. Co. v. Swan*, 111 U.S. 379, 382 (1884) and *Crow v. Parker*, Case No. CV-07-246 (E. Band Cherokee Tribal Ct. 10/17/2007), *at Discussion*. The problem here is that the question of subject matter jurisdiction for the NHBP Tribal Court to issue a PPO against Appellant, who is a non-Indian, was already asked and answered. A much-

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<sup>2</sup> *See e.g., Buck v. Thomas M. Cooley Law School*, 597 F.3d 812, 816-817 (6<sup>th</sup> Cir. 2010); *Gregory Marina, Inc. v. City of Detroit*, 144 N.W.2d 503, 506 (Mich. 1966); and *Austin v. Austin*, Appeal No. A-CV-47-91 (Navajo Sup. Ct. 3/31/1993), at part III.

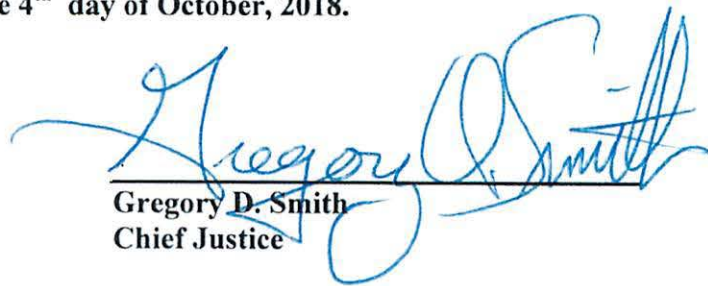
<sup>3</sup> *See e.g., Bowling v. Pfizer, Inc.*, 132 F.3d 1147, 1150 (6<sup>th</sup> Cir. 1998); *Freeman v. DEC Intern., Inc.*, 536 N.W.2d 815, 817 (Mich. App. 1995); and *Piotra v. Gustafon*, Appeal No. 00-10128 (Turtle Mtn. Ct. App. 3/1/2005), at page 2.

aggrieved litigant simply repeating the question does not change our answer.

**WHEREFORE,**

**IT IS ORDERED that** the decision of the Tribal Court is **affirmed** for the reasons set forth in *Spurr v. Spurr*, Appeal No. 17-287-APP (NHBP Sup. Ct. 1/25/2018). Costs are assessed against Appellant.

This is the 4<sup>th</sup> day of October, 2018.



Gregory D. Smith  
Chief Justice

**Bird and Fletcher, Justices, concur**