

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES DEAN DENOMIE,

Defendant-Appellant.

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UNPUBLISHED

December 26, 2000

No. 223921

Marquette Circuit Court

LC No. 98-034943-AR

Before: Gribbs, P.J., and Kelly and Hoekstra, JJ.

PER CURIAM.

Defendant is a licensed Keweenaw Bay Indian Community fisher who was charged by the Department of Natural Resources (DNR) with a misdemeanor for failing under state law to have a sufficient number of personal flotation devices on his fishing vessel. The district denied defendant's motion to dismiss for lack of jurisdiction and both the circuit court and this Court denied defendant's subsequent applications for leave to appeal. This matter has been remanded by our Supreme Court as on leave granted for consideration whether enforcement of the state requirement concerning flotation devices on watercraft is preempted by a similar tribal regulation and whether enforcement of the flotation device requirement against a defendant who is exercising tribal fishing rights is violative of the guidelines set forth in *People v LeBlanc*, 399 Mich 31; 248 NW2d 199 (1976). *People v Denomie*, 461 Mich 924 (1999).

The parties are not in dispute about the facts or the controlling principles of law. Plaintiff concedes that under the United States Constitution "any treaty is superior to state law." *People v Jondreau*, 384 Mich 539, 548; 185 NW2d 375 (1971). Plaintiff also concedes that the treaty rights must be liberally construed in favor of defendant. *Grand Traverse Band of Ottawa and Chippewa Indians v Michigan Dep't of Natural Resources*, 141 F3d 635, 639 (CA6 1998). See also *People v Bennett*, 195 Mich App 455, 458; 491 NW2d 866 (1992).

This case involves rights established by the treaties of 1842 and 1854. It is well settled that the "Indian" treaties gave Native American treaty fishers, such as defendant, the right to fish for subsistence and commercially in the Great Lakes region. *United States v Michigan*, 471 F. Supp. 192, 216 (WD Mich 1979). This right cannot be burdened or abridged by the State of Michigan. *Id.* at 270. In *LeBlanc*, *supra* at 36, our Supreme Court held that :

Specifically, with regard to the state's authority to regulate off-reservation fishing rights, the state regulation is valid only if:

(1) it is necessary for the preservation of the fish protected by the regulation;

(2) the application of the regulation to the Indians holding the off-reservation fishing right is necessary for the preservation of the fish protected;

(3) and the regulation does not discriminate against the treaty Indians.

It is well settled that courts are bound to construe treaties liberally in favor of Native Americans, in a way to "reserve to the Tribes all rights necessary to effectuate the purpose of the Treaty." *Grand Traverse Band, supra* at 639; *Swim v Bergland*, 696 F2d 712, 716 (CA 9 1983). So far as possible, treaties are to be interpreted as the Native Americans would have understood them. *LeBlanc, supra* at 40.

Further, state regulation of tribal fishing rights, which are secured by the treaties and implemented by Federal and tribal regulations, is preempted. *US v Mich, supra*, at 274.

In this case, plaintiff wants to make a distinction between regulations that involve the *method* of fishing and regulations, such as are at issue here, that involve *safety* while fishing. Plaintiff concedes that there is a tribal regulation that is similar to the state regulation at issue here. Plaintiff argues that the state regulation is not preempted, however, because it does not impinge on defendant's tribal fishing rights. We do not agree.

Keeping in mind the broad deference given to the historic view of the Native Americans and the liberal construction required in treaty cases, we find that the state flotation device regulation is preempted by the existence of a tribal regulation covering the same subject. *US v Mich, supra*, at 270, 274. We also agree with defendant that, broadly interpreted, the state regulation regarding flotation devices on watercraft impinges on defendant's tribal rights, as those rights would have been understood by the original Tribes. *LeBlanc, supra* at 40. Because the state regulation is not necessary for the protection or preservation of fish, it is not necessary to consider the remaining factors in *LeBlanc, id.* at 36.

Reversed.

/s/ Roman S. Gribbs

/s/ Michael J. Kelly

/s/ Joel P. Hoekstra