STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1622

Margaret Mary Nason,
Respondent,

vs.

1991 Buick, Plate No. VXL501/MN, VIN 1G4EZ13LXMU408829,
Appellant.

Filed February 9, 2010
Reversed
Halbrooks, Judge

Mille Lacs County District Court
File No. 48-CV-08-1327

Christopher Allery, Frank Bibeau, Anishinabe Legal Services, Cass Lake, Minnesota (for respondent)

Janice S. Kolb, Mille Lacs County Attorney, Mark J. Herzing, Assistant County Attorney, Courthouse Square, Milaca, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Toussaint, Chief Judge; and Halbrooks, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the district court's dismissal of a civil forfeiture proceeding on the ground that it lacks subject-matter jurisdiction. Because we conclude, based on

the holding in *State v. Davis*, 773 N.W.2d 66 (Minn. 2009), that the district court has subject-matter jurisdiction over the forfeiture proceeding, we reverse.

FACTS

Appellant Mille Lacs County seized respondent Margaret M. Nason's 1991 Buick (vehicle) after the vehicle's operator, Matthew J. Hvezda, was arrested for second-degree test refusal in violation of Minn. Stat. §§ 169A.20, subd. 2, .25, subd. 1(b) (2006). Both the incident leading to Hvezda's charge and the subsequent seizure of respondent's vehicle occurred on Nay Ah Shing Drive, which is located on land held in trust by the federal government for the Mille Lacs Band of Ojibwe Indians, or on "Indian Country" as defined by 18 U.S.C. § 1151 (2006). Respondent, the registered owner of the vehicle, was served with a notice of seizure and intent to forfeit vehicle; she was not involved in the incident leading to the charge and was not a defendant in the criminal case. Respondent is an enrolled member of the Fond du Lac Band but is not enrolled in the Mille Lacs Band. Both the Fond du Lac Band and the Mille Lacs Band are member bands of the Minnesota Chippewa Tribe, a federally recognized Indian tribe.

Respondent filed a claim in Mille Lacs County conciliation court, arguing that she is entitled to the return of her vehicle because the State of Minnesota lacks subject-matter jurisdiction to seize and forfeit the vehicle. Respondent based this argument on the facts that the incident and seizure occurred on the Mille Lacs Reservation and that respondent is an enrolled member of the Minnesota Chippewa Tribe. Appellant moved for summary judgment, arguing that the state has subject-matter jurisdiction over the forfeiture proceeding. Because respondent's sole challenge to the forfeiture was the state court's

lack of subject-matter jurisdiction, appellant argued that it was entitled to summary judgment on the ground that the forfeiture was properly in state court.

Respondent moved to dismiss the forfeiture action arguing that the state court lacks subject-matter jurisdiction. Respondent maintained that Congress did not grant the state jurisdiction over civil/regulatory proceedings involving Indians, and thus the state is without the power to seize and forfeit her vehicle based on conduct that occurred on the Mille Lacs Reservation. The conciliation court granted respondent's motion to dismiss, concluding that the state court "lacks subject matter jurisdiction over this civil forfeiture matter because [respondent] is an enrolled member of the Minnesota Chippewa Tribe and the [site] of the incident was within Indian Country as defined by Public Law 280."

Appellant demanded removal to the district court, contending that the district court has subject-matter jurisdiction to order the forfeiture of the vehicle. Appellant argued in part that the jurisdiction granted by Public Law 280 encompasses this civil forfeiture because state jurisdiction would not interfere with a tribal interest in self-governance. The district court dismissed the forfeiture action for lack of subject-matter jurisdiction, reasoning that the forfeiture statute is civil/regulatory, and thus the proceeding is not within the scope of jurisdiction granted to the state under Public Law 280. Appellant moved for amended findings to include the fact that respondent is enrolled in the Fond du Lac Band, that respondent is not enrolled in the Mille Lacs Band, and that Nay Ah Shing Drive is located in "Indian Country" as defined by federal law. Appellant cited but did not request reconsideration based on *State v. R.M.H.*, 617 N.W.2d 55 (Minn. 2000), which held that the district court has subject-matter jurisdiction over civil/regulatory

offenses that occur in Indian Country when the individual is not enrolled in the tribe associated with the reservation where the offense occurred. The district court granted the motion for amended findings without addressing *R.M.H.*

Appellant filed a notice of appeal, challenging the district court's dismissal based on the holding in *R.M.H.* Following oral arguments, we stayed resolution of this matter pending the outcome of *State v. Davis*, 773 N.W.2d 66 (Minn. 2009). In light of *Davis*, we now address the issue raised by appellant.

D E C I S I O N

Appellant contends that the district court erred by granting respondent's motion to dismiss based on lack of subject-matter jurisdiction. Appellant argues that, under *R.M.H.*, the state has jurisdiction over the forfeiture proceeding because the vehicle was seized on the Mille Lacs Reservation and respondent is enrolled in the Fond du Lac Band. Generally, issues not raised to the district court will not be addressed on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But this is not an "ironclad rule," *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002), and appellant did raise the issue of subject-matter jurisdiction to the district court, albeit under a different legal theory. Because subject-matter jurisdiction cannot be waived, we address appellant's arguments. *See* Minn. R. Civ. App. P. 103.04 (noting that appellate courts may address issues as justice requires); *Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 907 (Minn. 1998) ("[I]t is blackletter law that subject matter jurisdiction may not be waived." (footnote omitted)). "Subject-matter jurisdiction is a court's power to hear and determine cases that are presented to the court." *State v. Losh*, 755 N.W.2d 736, 739 (Minn. 2008). "State

jurisdiction over Indians is governed by federal statutes or case law." *R.M.H.*, 617 N.W.2d at 58. We review issues of jurisdiction de novo. *Davis*, 773 N.W.2d at 68.

Public Law 280 expressly grants the State of Minnesota broad criminal jurisdiction "over offenses committed by or against Indians in the areas of Indian country . . . to the same extent that [the state] has jurisdiction over offenses committed elsewhere within the [s]tate." 18 U.S.C. § 1162 (2006). But the state's civil jurisdiction is limited and applies only to "private civil litigation involving reservation Indians in state court." *Bryan v. Itasca County*, 426 U.S. 373, 385, 96 S. Ct. 2102, 2109 (1976); *see also* 28 U.S.C. § 1360(a) (2006) (addressing the states' limited jurisdiction over civil causes of action involving Indians). The state's civil jurisdiction does not confer general civil regulatory powers to the states over Indians. *Bryan*, 426 U.S. at 390, 96 S. Ct. at 2111-12. In examining the vehicle forfeiture law found in Minn. Stat. § 169A.63 (2006), this court has held that the statute is civil/regulatory as opposed to criminal/prohibitory. *Morgan v. 2000 Volkswagen*, 754 N.W.2d 587, 595 (Minn. App. 2008). Because this is a regulatory civil case and not a private civil case or a criminal case, the state does not have jurisdiction under the authority granted by Public Law 280 to entertain vehicle forfeiture cases involving Indians. *Id.* But the inapplicability of Public Law 280 does not end our analysis.

In the absence of jurisdiction expressly provided by Congress, we engage in a preemption analysis to determine whether the state has subject-matter jurisdiction. "State jurisdiction is preempted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify

the assertion of state authority." *R.M.H.*, 617 N.W.2d at 60 (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334, 103 S. Ct. 2378, 2386 (1983)).

As noted, respondent is enrolled in the Fond du Lac Band of the Minnesota Chippewa Tribe. But the incident that gave rise to the forfeiture proceeding occurred on the Mille Lacs Reservation. The Minnesota Supreme Court recently considered a similar issue regarding the ability of the state to assert subject-matter jurisdiction over an offense by a member of the Leech Lake Band that occurred on the Mille Lacs Reservation. *Davis*, 773 N.W.2d at 68. Like respondent here, Davis argued that the district court lacked subject-matter jurisdiction over his traffic offense because he is "an Indian who committed an offense in Indian Country." *Id.* Because speeding offenses are also civil/regulatory offenses, *R.M.H.*, 617 N.W.2d at 60, the court in *Davis* engaged in a preemption analysis to determine whether the state had subject-matter jurisdiction. *Id.* at 72-74.

The supreme court first accepted that the state has a strong interest in "ensuring traffic safety on state highways." *Id.* at 72. The supreme court then concluded that "there is no indication that enforcement of Minnesota traffic laws is inconsistent with federal pronouncements on the topic," and enforcing state laws against Davis in state courts would not interfere with federal or tribal interests. *Id.* at 72-73. Significantly, the supreme court recognized that the usually strong interest in tribal self-governance was not as compelling in *Davis*:

> [I]f Davis were a member of the Mille Lacs Band, the interest in tribal self-governance would be directly served through the Band's enforcement of its laws against one of its members in

> its tribal court for conduct that occurred on the reservation. But Davis is not a member of the Mille Lacs Band and so operation of state law to Davis' on-reservation conduct does not infringe on the Band's self-governance interest to the same extent as in [other cases].[1]

Id. at 74. The supreme court also rejected Davis's argument that the tribal interest in self-governance rests with the entire Minnesota Chippewa Tribe, not just with the individual Band on whose reservation the offense took place. *Id.* "[T]he [Minnesota Chippewa Tribe's] constitution does not possess any apparatus for law enforcement or judicial decision-making. If Davis were to be prosecuted in tribal court, the offense at issue would be governed by a Mille Lacs Band law, and would be tried in a Mille Lacs Band tribal court[.]" *Id.* The supreme court therefore held that the state court had jurisdiction to enforce state traffic laws against Davis. *Id.*

Following the supreme court's analysis in *Davis*, we reach the same conclusion. First, the state has a strong interest in promoting safety on state roads. In *Morgan*, we examined the vehicle forfeiture statute and determined that it is "closely related to the general public policy of promoting safety on the roadways." 754 N.W.2d at 593. Handling the civil forfeiture proceeding in state court will further this strong interest. Second, proceeding with the forfeiture action in state court does not interfere with federal or tribal interests, nor is state jurisdiction incompatible with federal or tribal interests.

[1] The supreme court cited to *State v. Stone*, 572 N.W.2d 725 (Minn. 1997). In *Stone*, the supreme court declined to recognize jurisdiction when the state sought to apply state laws to the conduct of a White Earth Band member that occurred on the White Earth Reservation. 572 N.W.2d at 732. The supreme court found that the state did not show "extraordinary circumstances with which to overcome the right of reservation Indians to make their own laws and be ruled by them." *Id.* (quotation omitted).

Maintaining the forfeiture action will not "interfere with 'the sole source of revenues for the operation of tribal governments,'" and the state forfeiture law is not inconsistent with any federal laws on traffic regulation or enforcement. *Davis*, 773 N.W.2d at 72-73 (quoting *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 218, 107 S. Ct. 1083, 1093 (1987)). Additionally, the tribal interest in self-governance is not as strong in this case because respondent is not a member of the Mille Lacs Band. "Indian sovereignty is at its strongest in the context of self-governance, that is, authority over members of the governing tribe. In contrast, the strength of Indian sovereignty is less with respect to authority over nonmembers of the governing tribe, including nonmember Indians." *R.M.H.*, 617 N.W.2d at 61.

The tribal interest in self-governance rests with the Mille Lacs Band of Ojibwe Indians—both the incident leading to the forfeiture proceeding and the seizure of respondent's vehicle took place on the Mille Lacs Reservation. Because respondent is enrolled in the Fond du Lac Band, the Mille Lacs Band's interest in self-governance is not as strong over respondent. We reject respondent's argument that we should consider the Minnesota Chippewa Tribe as a whole when assessing the strength of the interest in self-governance; that argument was considered and rejected by the supreme court in *Davis*, and we find nothing to distinguish respondent's case from *Davis*.

Based on the state's strong interest of promoting safety on state roads and the weaker tribal interest in self-governance present in this case, we conclude that a forfeiture proceeding against respondent in state court is not preempted by federal or tribal

interests. We therefore conclude that the state has subject-matter jurisdiction to hear the forfeiture action involving respondent's vehicle.

Reversed.