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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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2020 ND 147

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Lawrence Lavallie,

Plaintiff and Appellee

v.

Lorne Jay,

Defendant and Appellant

and

Michael Charette,

Defendant

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No. 20190402

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Appeal from the District Court of Rolette County, Northeast Judicial District,  
the Honorable Anthony S. Benson, Judge.

REMANDED.

Opinion of the Court by VandeWalle, Justice.

Rheider W. McCormick (argued) and Jason R. Vendsel (appeared), Minot, ND,  
for plaintiff and appellee.

Lorne Jay, self-represented, St. John, ND, defendant and appellant.

**Lavallie v. Jay**  
**No. 20190402**

**VandeWalle, Justice.**

[¶1] Lorne Jay appealed from a district court judgment ordering Jay pay Lawrence Lavallie \$946,421.76. We remand to the district court.

I

[¶2] Lawrence Lavallie commenced this personal injury action against Lorne Jay and Michael Charette after the parties were involved in a motor vehicle accident. We summarize the facts of the incident as found by the district court. The accident occurred on the night of December 26, 2016, on County Road 43 in Rolette County. Lavallie was driving a snowmobile on the roadway followed by Charette who was driving a GMC Yukon automobile. The weather was unfavorable with blowing snow and poor visibility. Lavallie approached Jay’s residence located along County Road 43. Jay was operating a tractor and in the process of blowing snow from his driveway. When Lavallie came upon Jay operating the tractor, the tractor was located in the middle of the roadway and did not have any lights or reflectors. Concerned that Charette would not be able to see the tractor in the roadway because it was dark and snowing and because the tractor did not have any lights or reflectors, Lavallie stopped the snowmobile alongside the tractor and tried to get Jay’s attention for him to move the tractor off of the road. While Lavallie was on the parked snowmobile trying to get Jay’s attention, Charette struck the snowmobile with the Yukon. Lavallie was thrown from the snowmobile and sustained leg injuries. First responders arrived at the accident scene and transported Lavallie to the Rolla hospital. Lavallie was transferred to Grand Forks where part of his leg was amputated.

[¶3] Lavallie commenced suit against Jay and Charette. Without filing an answer, Jay filed a motion to dismiss for lack of subject matter jurisdiction. Jay argued the district court lacked subject matter jurisdiction because the accident occurred on land owned by the Turtle Mountain Band of Chippewa Indians (“the Tribe”) and because all of the parties involved were enrolled

members of the Tribe. Jay supported his contentions with two documents. Jay submitted a map indicating County Road 43 where the accident occurred is located on land held in trust for the Tribe. Jay also submitted a copy of the lease of his property from the Tribe. Lavallie opposed Jay's motion and submitted maps indicating County Road 43 is located outside the external boundaries of the Turtle Mountain Reservation. The district court denied Jay's motion concluding Jay failed to file a brief or affidavits in support. The court also concluded Jay's motion should be denied on its merits finding County Road 43 in Rolette County is located outside the external boundaries of the Turtle Mountain Reservation.

[¶4] After a bench trial, the district court issued written findings of fact and conclusions of law and ordered judgment. The court found Jay 50% at fault, Charette 25% at fault, and Lavallie 25% at fault for Lavallie's injuries. The court found Lavallie's economic and noneconomic damages totaled \$1,892,843.04. The court entered judgment against Jay in the amount of \$946,421.76 and Charette, who did not appear at any point in the proceedings, in the amount of \$473,210.76.

## II

[¶5] Jay argues the district court erred in denying his motion to dismiss for lack of subject matter jurisdiction. "Issues related to subject matter jurisdiction can be raised at any time and cannot be waived." *Ellis v. N.D. State Univ.*, 2010 ND 114, ¶ 8, 783 N.W.2d 825 (citing *Lee v. Lee*, 2007 ND 147, ¶ 8, 738 N.W.2d 479). "[C]hallenges to a district court's subject matter jurisdiction are reviewed de novo when the jurisdictional facts are not in dispute." *Schirado v. Foote*, 2010 ND 136, ¶ 7, 785 N.W.2d 235 (citing *Harshberger v. Harshberger*, 2006 ND 245, ¶ 16, 724 N.W.2d 148). "When jurisdictional facts are disputed, the district court's decision on subject matter jurisdiction necessarily involves findings of fact and conclusions of law." *Id.* Therefore, when jurisdictional facts are in dispute, we are presented with a mixed question of law and fact. *Id.* (citing *Escobar v. Reisinger*, 133 N.M. 487, 64 P.3d 514, 516 (N.M. Ct. App. 2003)). Under this standard, we review questions of law de novo, and findings

of fact are subject to the clearly erroneous standard of review. *Id.* (quoting *Wigginton v. Wigginton*, 2005 ND 31, ¶ 13, 692 N.W.2d 108).

[¶6] Who bears the burden of proving a court's subject matter jurisdiction is a question this Court has not previously answered. North Dakota district courts are courts of general jurisdiction. *See* N.D. Const. art. VI, § 8; N.D.C.C. § 27-05-06; *In re Estate of Brandt*, 2019 ND 87, ¶ 20, 924 N.W.2d 762. State courts of general jurisdiction enjoy a presumption of jurisdiction, and the party challenging subject matter jurisdiction bears the burden of proving the court lacks jurisdiction. *See Nowlin v. United States*, 81 F.Supp.3d 514, 523 (N.D. Miss. 2015); *Calvagno v. Bisbal*, 430 F.Supp.2d 95, 99 (E.D.N.Y. 2006); *Alpine Vill. Co. v. City of McCall*, 303 P.3d 617, 623 (Idaho 2013); *Gruszczka v. Ill. Workers' Comp. Comm'n*, 992 N.E.2d 1234, 1238 (Ill. 2013); *GKN Co. v. Magness*, 744 N.E.2d 397, 403-04 (Ind. 2001); *Credit Acceptance Corp. v. Prevo*, 277 So. 3d 847, 851 (La. Ct. App. 2019); *In re John F.*, 899 A.2d 976, 981 (Md. Ct. Spec. App. 2006); *McGrath v. VRA I Ltd. P'ship*, 244 S.W.3d 220, 224 (Mo. Ct. App. 2008); *Quinlan v. Five-Town Health All., Inc.*, 192 A.3d 390, 398 (Vt. 2018); 13 Charles Alan Wright et al., *Federal Practice & Procedure* § 3522 (3d ed. 2008).

[¶7] Additionally, our rules of procedure do not require a plaintiff to provide a jurisdictional statement at the pleading stage, and a district court is not required to dismiss a cause of action upon the suggestion of a party that the district court lacks jurisdiction. *Compare* N.D.R.Civ.P. 8(a) (requiring no jurisdictional statement in pleadings), *and* N.D.R.Civ.P. 12(h)(3) (stating court must dismiss action if it determines it lacks subject matter jurisdiction), *with* Fed. R. Civ. P. 8(a)(1) (requiring jurisdictional statement in pleadings), *and* Ala. R. Civ. P. 12(h)(3) (stating court shall dismiss action upon suggestion of the parties that the court lacks jurisdiction). Therefore, as a general rule, it is presumed that district courts have subject matter jurisdiction, and the party challenging the court's jurisdiction bears the burden of proving the district court lacks subject matter jurisdiction. Accordingly, Jay bears the burden of proving the district court lacks subject matter jurisdiction.

[¶8] The district court denied Jay’s motion to dismiss for lack of subject matter jurisdiction because Jay did not submit a brief or affidavits in support of the motion. Subject matter jurisdiction may be raised at any time in a proceeding. *Gustafson v. Poitra*, 2018 ND 202, ¶ 9, 916 N.W.2d 804. Jay has raised the issue of subject matter jurisdiction on appeal and has adequately briefed, articulated, and supported his arguments. Therefore, we consider, to the extent possible, the merits of Jay’s arguments relating to subject matter jurisdiction.

[¶9] Under the infringement test of *Williams v. Lee*, 358 U.S. 217 (1959), state court jurisdiction over certain claims involving Indian tribes or tribal members is not allowed if it “would undermine the authority of the tribal courts over reservation affairs and thereby infringe on the right of the Indians to govern themselves.” *Roe v. Doe*, 2002 ND 136, ¶ 7, 649 N.W.2d 566.

There are two categories of claims over which the United States Supreme Court has held tribal courts have exclusive civil jurisdiction under the infringement test. Included in the first category are those claims in which a non-Indian asserts a claim against an Indian for conduct occurring on that Indian’s reservation. *See Williams [v. Lee]*, 358 U.S. 217, 223, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959)]. In the second category, are those claims in which all the parties are members of the same Indian tribe and the claim involves conduct occurring on that tribe’s reservation. *See Fisher v. District Court*, 424 U.S. 382, 387–89, 96 S.Ct. 943, 47 L.Ed.2d 106 (1976) (per curiam).

*Winer v. Penny Enters., Inc.*, 2004 ND 21, ¶ 11, 674 N.W.2d 9 (quoting *Roe*, at ¶ 8). District courts retain jurisdiction over claims between tribal members that arise outside the boundaries of the reservation. *See Roe*, at ¶¶ 8, 28; *cf. Strate v. A-1 Contractors*, 520 U.S. 438 (1997) (holding tribal court lacked jurisdiction over cause of action between nonmembers occurring on state highway located on land held in trust for the Three Affiliated Tribes and their members).

[¶10] Jay concedes the district court was correct in finding the accident involving the parties in this case occurred outside the external boundaries of

the Turtle Mountain Reservation. However, the evidence in the record indicates the accident occurred on a county road located on land held in trust for the Tribe. The question becomes whether district courts maintain subject matter jurisdiction over claims involving conduct between enrolled members of a tribe occurring on county roads located on Indian trust land. The district court did not determine whether the accident occurred on land held in trust for the Tribe. The district court also did not determine whether the parties to this action were enrolled members of the Tribe. Without such findings, we are unable to adequately consider whether the district court had subject matter jurisdiction to adjudicate Lavallie's claims.

### III

[¶11] We remand while retaining jurisdiction under N.D.R.App.P. 35(a)(3) for the district court to make findings on whether the parties to this cause of action were enrolled members of the Tribe and whether the accident occurred on land held in trust for the Tribe. Upon remand, the district court may make the additional findings from the existing record or, in its discretion, may hold additional evidentiary hearings. If the district court finds the parties were enrolled members of the Tribe and the accident occurred on land held in trust for the Tribe, the court must determine whether it has subject matter jurisdiction over claims between enrolled members involving conduct occurring on tribal trust land. Because we remand to the district court for further determination of its subject matter jurisdiction, we do not address the remaining arguments raised by the parties on appeal.

[¶12] Gerald W. Vandewalle  
Jerod E. Tufte  
Daniel J. Crothers  
Jon J. Jensen, C.J.  
Lisa Fair McEvers