

IN THE UTAH COURT OF APPEALS

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Tamara Rowley Mulder,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20061102-CA
v.	)	
	)	F I L E D
	)	(November 29, 2007)
Robert Matthew Mulder,	)	
	)	<span style="border: 1px solid black; padding: 2px;">2007 UT App 384</span>
Defendant and Appellant.	)	

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Fourth District, Provo Department, 054401811  
The Honorable Gary D. Stott

Attorneys: Robert Matthew Mulder, Appellant Pro Se  
            Stephen T. Hard, Murray, for Appellee

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Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Robert Mulder appeals the district court's order finding him guilty of civil contempt.<sup>1</sup> Robert Mulder alleges that the order is void because the district court lacked both subject matter and personal jurisdiction over him. Alternatively, he argues that the district court did not afford him due process.

As a preliminary matter, Tamara Mulder argues that this court does not have jurisdiction to review this appeal because it is taken from a civil contempt order. See Von Hake v. Thomas, 759 P.2d 1162, 1169 (Utah 1988) (holding that, as a general rule, civil contempt orders are not appealable as of right because they are interlocutory orders). However, the civil contempt order in this case is a postjudgment order, i.e., the divorce decree was

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<sup>1</sup>In response to Robert Mulder's Petition to Move this Action to the Court of Original Jurisdiction, this court notes that it has jurisdiction over this matter under Utah Code section 78-2a-3(2)(h). See Utah Code Ann. § 78-2a-3(2)(h) (2002) (stating that Utah Court of Appeals has jurisdiction over appeals from district courts involving domestic relations cases).

previously entered in 2005. Accordingly, if we were to conclude that we did not have jurisdiction to entertain this appeal, there would be no future order or judgment upon which Robert Mulder could base his appeal of this order. As such, this court has jurisdiction to review the civil contempt order on direct appeal. See Cahoon v. Cahoon, 641 P.2d 140, 142 (Utah 1982) (stating that postjudgment orders are independently subject to the requirement of finality, according to "their own substance and effect").

Robert Mulder raises several issues questioning whether the district court had personal jurisdiction over him. However, the law is clear that an individual can waive personal jurisdiction and submit to the jurisdiction of the court. See Barnard v. Wassermann, 855 P.2d 243, 248 (Utah 1993). In this regard, if a person asks for affirmative relief, that party is subject to the court's jurisdiction. See Nunley v. Nunley, 757 P.2d 473, 475 (Utah Ct. App. 1988). Here, Robert Mulder submitted himself to the jurisdiction of the district court, thereby waiving any and all arguments that the district court did not have personal jurisdiction over him. Specifically, Robert Mulder entered into a stipulation, which was filed with the district court, over certain amendments to the default divorce decree. In so doing, Robert Mulder obtained concessions that were not in the original divorce decree. The stipulation also resulted in the cancellation of a hearing in which Tamara Mulder was seeking a permanent protective order against Robert Mulder. Thus, by entering into the stipulation, Robert Mulder obtained affirmative relief and submitted himself to the jurisdiction of the district court.

Robert Mulder asserts that he only entered the stipulation due to the fraudulent and coercive actions of Tamara Mulder. However, Robert Mulder failed to timely appeal either the divorce decree that was entered as a result of the stipulation or the district court's order denying his motion to revoke his signature on the stipulation. Accordingly, this court does not have jurisdiction to review such issues. See Utah R. App. P. 4(a) (stating that a notice of appeal must be filed with the trial court "within 30 days after the date of entry of the judgment or order appealed from"); Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616 (stating that if an appeal is not timely filed, this court lacks jurisdiction to hear the appeal).

Robert Mulder also claims that the district court lacked subject matter jurisdiction over this matter because he is a member of the Pembina Nation Little Shell Band of America. However, Robert Mulder misconstrues tribal sovereign immunity. Tribal immunity inheres in the tribe itself, not in individual tribe members acting in their personal capacity. See Puyallup

Tribe, Inc. v. Department of Game, 433 U.S. 165, 173 (1977) ("[T]ribal sovereign immunity . . . does not impair the authority of the state court to adjudicate the rights of the individual [tribal member] defendants over whom it properly obtained personal jurisdiction."). Thus, Robert Mulder's claim that the district court lacked subject-matter jurisdiction due to his membership in the Pembina group is without merit.<sup>2</sup>

Further, the district court made all the requisite factual findings to support its determination that it had jurisdiction over this divorce case. Such determinations are supported by the record. See Neways, Inc. v. McCausland, 950 P.2d 420, 422 (Utah 1997) ("[T]he plaintiff's factual allegations are accepted as true unless specifically controverted by the defendant's affidavits or by depositions, but any disputes in the documentary evidence are resolved in the plaintiff's favor."). Accordingly, the district court properly asserted jurisdiction over this matter.

Finally, Robert Mulder argues that even if the district court did have jurisdiction over this matter, the district court violated his due process rights by entering the civil contempt order. Specifically, Robert Mulder alleges that his right to due process was violated due to the district court's refusal to answer certain questions concerning the proceeding as well as the district court's failure to provide Robert Mulder with prior notice of the court's intent to impose a contempt order. After reviewing the record, it is clear that Robert Mulder's questioning had nothing to do with the day's proceeding, but instead dealt with issues that had already been resolved by the district court. Further, the record demonstrates that the hearing in question was scheduled as a result of Tamara Mulder's filing of a motion for an order to show cause as to why Robert Mulder should not be found in contempt of the district court's orders. The motion's certificate of service indicated that it was sent to Robert Mulder on November 2, 2006. Robert Mulder appeared at the hearing and at no time did he argue that he did not receive proper notice. Under these circumstances there is

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<sup>2</sup>It must also be noted that the Bureau of Indian Affairs does not recognize this tribe or its courts. See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 65 Fed Reg. 13,298 (Mar. 13, 2000).

simply no evidence that the district court violated Robert Mulder's due process rights.<sup>3</sup>

Affirmed.<sup>4</sup>

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge

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<sup>3</sup>To the extent Robert Mulder's brief could be construed as presenting other arguments not expressly responded to in this memorandum decision, the court has determined such issues to be without merit.

<sup>4</sup>Tamara Mulder's request for attorney fees under rule 33 of the Utah Rules of Appellate Procedure is denied.