

received additional imprisonment in a pending Court action; certain negative actions relating to his prison term; and losing his employment.

Mr. Lyons feels that Ms. Holland should not have reported this to police. He states that Ms. Holland should not have considered the alleged statement as a threat because his wife had mental problems and/or had motive to fabricate based on their marital problems, and said alleged threat was made in a private conversation. He asserts that Defendant, Ann Holland, was not acting under any duties within the scope of her employment.

Thus, Plaintiff Michael Lyons filed this case alleging the following tortious acts:

Count I—Defamation or defamation per se

Count II—Invasion of privacy/false light

Count III—Intentional/negligent infliction of emotional distress

Count IV—intentional/negligent misrepresentation

Count V---Conspiracy

Damages were requested for the additional period of imprisonment Plaintiff received which resulted in loss of future wages and benefits; inability to find future employment; harm to personal reputation; loss of consortium with family and friends, damages for resulting PTSD and depression; recovery for property lost in the subsequent divorce, and associated cost and interest for the Court action.

The Defendant Ann Holland, through counsel, has filed two distinct motions for summary disposition/dismissal. The first motion has two separate claims for dismissal-- Defendant states that the case should be dismissed because the Court does not have subject matter jurisdiction. Further, should the Tribal Court find jurisdiction, the case should be dismissed on the basis of Tribal Sovereign Immunity.

The second motion for Dismissal/Summary Disposition responds to each alleged tortious act delineated in the plaintiff's complaint, requesting dismissal as a matter of law relative to each Count.

DECISION

The Court has diligently considered the claims put forth in the Complaint and the answers and responses thereto as well as the requests for summary disposition/dismissal. The pleadings have been exhaustively researched and annotated by the parties, involving Tribal Law and Procedure, as well as Federal and State Law and Procedure.

Based upon the facts as set forth by the parties, and the application of the law as fully set forth below, the Court rules that the Tribal Court has subject matter jurisdiction over this matter. However, the Court further finds that the Defendant, Ann Holland is entitled to sovereign immunity based upon her relationship with the Tribe and was acting within her duties and scope of authority and there being no genuine issues of material fact the case will be dismissed as a matter of law.

Because of the foregoing ruling, the Court will not consider the Second Alternative Motion for Dismissal and/or Summary Disposition.

DISCUSSION

DISMISSAL OF ACTIONS

In considering requests by a party for dismissal of an action, the Court relies upon LTBB Rules of Civil Procedure, i.e. Rules XVI and XVII. In this regard, the Defendant specifically references Rules XVI (b)(1)(2) and/or (6) and/or Rule XVII.

First, this Court considers Rules XVI (b)(1) and (2) when examining the request for dismissal for lack of subject matter jurisdiction as set forth below.

Second, this Court finds the directive of Rule XVI (b)(6) appropriate when ruling on the issue of Sovereign Immunity...

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, *the motion shall be treated as one for summary disposition and disposed of as provided in Rule*, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule . (Emphasis added)

Based on that provision, the Court will allow and examine all matters presented outside the pleadings under Rule XVII -- Summary Disposition. Further, and as directed by the LTBB appellate court in *Carey v. Victorias Casino et al* A-004-0606 (Footnote 3), this Court shall consider "...all the filings and statements of the parties". (Compare also Rule 12(b) and Rule 56 Federal Rules of Civil Procedure.)

Thus, in this motion for summary judgment, the court utilizes the statements and documents presented by the parties to the Court. These include: the original Complaint; the Answer of Defendant; the Defendant's motions for Summary disposition; the plaintiff's Replies thereto; and any clarification from oral argument based on the record.

Included in the Plaintiff's filings/pleadings was a formal letter/Affidavit to the Court of Sharon L. Sierzputowski, retired LTBB Health Director.

Included with Defendant's filings/pleadings were the following:

Motion to amend Bond; Exhibit A

Department of Corrections biographical information of Michael L. Lyons; Exhibit B

Affidavit of Complaining Witness in 90th District Court-*People v. Michael Laverne Lyons*; Exhibit C

Complaint LTBB Tribal Court C-221-0416; Exhibit D

Public Health Code MCL 333.18107 Professional Counselor license; qualifications; Exhibit E

Sentencing transcript 57th Circuit County of Emmet *People v. Michael Lyons* case no. 15-4126; Exhibit F

Reporting Officer Narrative Charlevoix Sheriff Department report of Ann Holland/Interview Amy Lyons; Exhibit G

Order to Amend Bond prohibiting contact between Defendant Michael Lyons and Judge Richard Pajtas(case no. 15-4126); Exhibit H

Opinion on resentencing 15-4126 FH; Exhibit I

Michigan Court of Appeals Order Leave to Appeal Denied docket 332308 LC No. 15-004126; Exhibit J

Job description LTBB Masters Level Counselor. Exhibit K

SUBJECT MATTER JURISDICTION

The Defendant, Ann Holland, seeks dismissal of the case asserting the Little Traverse Bay Bands of Odawa Indians (LTBB) Tribal Court does not have subject matter jurisdiction to resolve the claims made by Plaintiff, Michael Lyons.

Both parties cite *Montana v. United States* 450 US 544 (1981). It is acknowledged that Ms. Holland had an employment relationship with LTBB, serving at the time of the alleged tortious acts, as a Masters Level Counselor in the Substance Abuse/Mental Health Department.

Generally, to invoke Tribal jurisdiction, the party seeking same must establish that the non-Indian/non-member has entered into a consensual relationship with the tribal entity, and the claims have a logical nexus to the relationship itself.

Here, the Defendant clearly had a consensual relationship with the Tribe as an employee within the Substance Abuse/Mental Health Department with essential duties and responsibilities as directed by the Department using her knowledge, skills and abilities, based on her education and experience. The claims made by the Plaintiff arose out of Defendant's employment contract with the Tribe. Thus, there exists a sufficient nexus between the Tribe and the non-Indian/non-member employee, allowing the Court subject matter jurisdiction to decide the claim using appropriate procedures. *See also WOTCL Chapter 12. Naawchigedaa Tort Claims section 11.1103.*

TRIBAL SOVEREIGN IMMUNITY

Having found subject matter jurisdiction, the Court considers the alternative request of the Defendant, that the claims should be dismissed based on Tribal Sovereign Immunity.

The Constitution of the Little Traverse Bay Bands of Odawa Indians sets forth:

Article XVIII Sovereign Immunity

A. Tribal Immunity from Suit

The Little Traverse Bay Bands of Odawa Indians, including all subordinate entities, shall be immune from suit except to the extent that the Tribal Council clearly and expressly waives its sovereign immunity, and officials and employees of the Tribe acting within the scope of their duties or authority shall be immune from suit

B. Suit against Officials and Employees

Officials and employees of the Little Traverse Bay Bands of Odawa Indians who act beyond the scope of their duties and authority shall be subject to suit in Tribal Court for purposes of enforcing rights and duties established by this Constitution or other applicable laws.

Further codification of the above with regard to claims of Tort can be found under **WOTCL Chapter 12. Naawchigedaa Tort Claims (“the Tort Statute”)**

11.1107 DEFENSES (Formerly WOTCL sec 6.5307(F))

F. Sovereign Immunity.

1. Tribal Immunity from Suit. LTBB, including all subordinate entities, officials and employees are immune from suit except to the extent that the Tribal Council clearly and expressly waives its sovereign immunity, provided that the Tribe, subordinate entity, official or employee of the Tribe acting within the scope of their duties or authority. If the Tribe, including any subordinate entity, official or employee of the Tribe, who acts beyond the scope of their duties and authority in which the tortious actions include either acting with malice or with reckless indifference, or both, then the tortious action is not within the sovereign immunity of the Tribe.

(Codified through September 28, 2017 Version 5.3--2017)

The plaintiff, Michael Lyons, has claimed several tortious acts by defendant Ann Holland because of Ms. Holland’s report to the police of an alleged threat against a judge made by Mr. Lyons, based on a statement made within the counseling by Amy Lyons, then wife of the Plaintiff. This report, made to the police, Mr. Lyons claims, was disseminated widely and caused immediate and direct effects upon his reputation and freedom. This action was beyond the scope and her duties and authority, and thus, cannot stand dismissal on Tribal Sovereignty grounds. He

contends it was made with malice or reckless indifference and not within the sovereign immunity of the Tribe.

The defendant, Ann Holland, states that she reported information while providing counseling and was working for the Tribe, and was acting within the scope of her duties and authority, and such was sufficiently connected with her work as a counselor. She also asserts that, even if outside the scope of her duties and authority, there was no malice or reckless indifference involved.

FINDINGS

Based on the pleadings, documents, and exhibits presented and the representations of the parties and Counsel, the Court finds relevance in the following:

That Defendant, Ann Holland, was employed by the Little Traverse Bay Bands of Odawa Indians at the time of the alleged tortious acts, providing a sufficient nexus to subject her to the jurisdiction of Tribal Court. Defendant's Exhibit K.

That Amy Lyons was receiving counseling from the Tribe and Ms. Holland.

That Defendant, Ann Holland, did make a report to the Charlevoix Sheriff Department on April 22, 2015, that the wife of Michael Lyons, Amy Lyons, had reported to her a threat to a Judge Pajtas. Defendant's Exhibit G

That on the same date, after contacting the Judge, the detectives contacted Amy Lyons, who gave further specific information to the detectives. Defendant's Exhibit G.

That, as a result of contact with Ms. Amy Lyons, certain law enforcement action was undertaken by the Reporting Officer. Defendant's Exhibit G.

That said report did modify the Bond of Mr. Lyons prohibiting contact with Judge Pajtas. Defendant's Exhibit H.

That Defendant's report of alleged threat had no perceived impact on the sentencing, or appeals of sentencing that followed. Defendant's Exhibits F, I, and J.

CONCLUSIONS

The following Odawa Appellate Court cases: *LTBB et al. v Harrington and McNamara* A-022-1212; *LTBB GRC v. Roberts* A-018-0811; *Carey v Espinosa and Eckholm* A-011-1008 (Carey III); and *Carey v. Victorias Casino et al.* A-004-0606 (Carey I) are of importance to the Tribe and Tribal Court. These cases reflect the (developing) body of Tribal law as to Regulatory functions as well as Sovereign immunity of officials and employees from suit. And, as noted above, this case is governed by the Immunity provisions of the Tribal Constitution, and specific Tribal Code Tort sections, all to be considered in Tribal Court. (Compare recent U.S. Supreme Court decision in *Lewis v. Clarke* 581 US ____ (2017)) (Tribal Employee in State Court suit)

The facts here are different from the above cases in that this case involves non-Indian Defendant, non-Indian patient/client and non-Tribal police. But the Court concludes that the activity of Ms. Holland flow directly from her position as a Tribal Mental Health Counselor.

The inquiry that arises from the circumstances of this case is: what should a counselor such as Ms. Holland do when confronted with this issue? Can the Court question the Defendant's actions when her patient allegedly had, per the Plaintiff, mental health issues, and may not have reported a genuine threat at all? Or consider the liability of the Tribe should the threat be real and not acted upon?

The Court is aware that the privilege and the responsibility for confidentiality exists between the client/patient and the Counselor and does not apply to a third party such as the Plaintiff. See e.g. *MCL 330.1946*. However, the Court has found that per the Sheriff's report, the

detectives contacted the wife immediately, who affirmed the report of the Defendant. This affirmation indicates that Ms. Holland's actions were within the "scope of duties and authority." Nor is it difficult for the Court to find that, *once affirmed by Ms. Lyons to the Sheriff's detectives*, any further future actions and consequences would rest with law enforcement. These tandem actions, report of Ms. Holland and affirmation by her patient/client, belie the hearsay nature of the claims made.

With respect to the affidavit of Sharon Sierzputoski, former health director for Little Traverse Bay Bands of Odawa Indians: the affidavit included the following claims and comments: breach of confidentiality; unauthorized actions beyond the scope of her authority; endangering, abusing, and committing criminal offenses or civil torts against Tribal citizens. Further, that Ms. Holland was not employed to exercise law enforcement duties; she should not report hearsay statements made in confidential session; all of which were objectionably unreasonable and should subject her to disciplinary actions.

The Court recognizes that these are very difficult and complex issues for counselors, therapists, mental health workers, and social workers to evaluate and act upon. They must use their best professional experience and judgment---failure to do so, such as not reporting a threat, could also negatively impact the Tribe. The above affidavit did not note any specific rule or standard violated, or any indication as to exactly what action or inaction the Health Director as a Counselor would take.

Because the Court can find a duty and actions within the defendant's scope of authority, and that her report to the police was sufficiently connected to her duties as a Tribal Counselor, it will not consider claims of "malice" and "reckless disregard" as found in WOTCL 11.1107(F)

DECISION AND ORDER

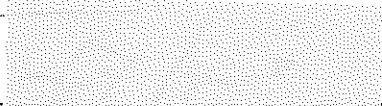
The Court has considered the Complaint, responsive pleadings and answers thereto, briefs filed and oral argument. There is no genuine issue of material fact that the defendant, in her professional, personal, and individual capacity, did act within the scope of her duties and authority and as a matter of Tribal law:

The motion for Summary Disposition is hereby granted and the case dismissed with prejudice.

No costs shall be awarded to either party.

ENTERED:

On this 10 day of October, 2017



Hon. John J. Lemire, LTBB Associate Judge