

VOLUME NO. 44

OPINION NO. 15

INDIANS - Applicability of Uniform Enforcement of Foreign Judgments Act to tribal court judgments;

JUDGMENTS - Applicability of Uniform Enforcement of Foreign Judgments Act to tribal court judgments;

MONTANA CODE ANNOTATED - Sections 25-9-501 to 25-9-508, 26-3-203;

UNITED STATES CODE - 25 U.S.C. § 1911(d), 28 U.S.C. § 1738;

UNITED STATES CONSTITUTION - Article IV, section 1.

HELD: A judgment, decree, or order of an Indian tribal court may not be filed as a foreign judgment under the provisions of the Uniform Enforcement of Foreign Judgments Act, unless the judgment, decree, or order concerns an Indian child custody proceeding.

July 16, 1991

James C. Nelson
Glacier County Attorney
P.O. Box 428
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Dear Mr. Nelson:

You have requested my opinion on the following question:

May a judgment, decree, or order of an Indian tribal court be filed as a foreign judgment under the provisions of the Uniform Enforcement of Foreign Judgments Act?

In 1989 the Montana Legislature enacted the Uniform Enforcement of Foreign Judgments Act, which is codified at sections 25-9-501 to 508, MCA. The Act provides a procedure for the filing of a foreign judgment with the clerk of the district court and permits the clerk to treat the foreign judgment in the same manner as a judgment of the district court. § 25-9-503, MCA. If a judgment creditor utilizes this registration procedure, the creditor does not need to bring an action or special proceeding under section 26-3-203, MCA, in order to enforce the judgment in Montana.

Your inquiry requires me to determine whether a judgment, decree, or order of an Indian tribal court may be considered a "foreign judgment" as that term is used in the Uniform Enforcement of Foreign Judgments Act. Section 25-9-502, MCA, defines "foreign judgment" for purposes of the Act as "a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." The inquiry thus narrows to the question of whether a tribal court judgment, decree, or order is entitled to full faith and credit in Montana.

The "full faith and credit" that is referred to in section 25-9-502, MCA, is the full faith and credit that is required by the Constitution of the United States, Art. IV, § 1, which provides in pertinent part:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

This clause applies by its own terms only to judicial proceedings of a state and makes no reference to judgments of other entities or jurisdictions. See Multibanco Comermex, S.A. v. Gonzalez, 630 P.2d 1053 (Ariz. Ct. App. 1981).

However, the full faith and credit clause also authorizes Congress to enact laws to implement its provisions, and Congress has legislatively extended the application of the clause to judgments of courts "within the United States and its Territories and Possessions." 28 U.S.C. § 1738. As you have noted in your inquiry, state courts have not agreed on whether an Indian tribe should be viewed as a "territory" or "possession" of the United States for purposes of this federal statute. See Jim v. CIT Financial Services Corp., 533 P.2d 751 (N.M. 1975); In re Buehl, 555 P.2d 1334 (Wash. 1976); Sheppard v. Sheppard, 655 P.2d 895 (Idaho 1982). Cf. Brown v. Babbitt Ford, Inc., 571 P.2d 689 (Ariz. Ct. App. 1977). See also Felix S. Cohen's Handbook of Federal Indian Law 384-85 (R. Strickland ed. 1982); W. Vetter, Of Tribal Courts and "Territories": Is Full Faith and Credit Required?, 23 Cal. W.L. Rev. 219 (1987).

The Montana Supreme Court has not expressly addressed the issue of the application of 28 U.S.C. § 1738 to tribal judgments. However, the Court has observed that a tribe is not the equivalent of a state and that the full faith and credit clause is not applicable to a tribe. Little Horn State Bank v. Stops, 170 Mont. 510, 555 P.2d 211 (1976). Rather, the Court has stated that tribal court judgments are treated with the same deference shown decisions of foreign nations as a matter of comity. Wippert v. Blackfeet Tribe, 201 Mont. 299, 654 P.2d 512 (1982). See also In re Marriage of Limpy, 195 Mont. 314, 636 P.2d 266 (1981).

In view of these statements by the Montana Supreme Court, I conclude that in Montana, tribal court judgments, decrees, and orders may not be filed as "foreign judgments" under the provisions of the Uniform Enforcement of Foreign Judgments Act.

It is generally agreed that judgments of foreign countries cannot be registered under the Uniform Enforcement of Foreign Judgments Act. See Multibanco Comermex, S.A. v. Gonzalez, *supra*; In re Marriage of Agathos, 550 N.E.2d 1161 (Ill. Ct. App. 1990). Since the Montana Supreme Court treats tribal court judgments as decisions of foreign nations, it follows that such judgments are also precluded from utilizing the simplified registration procedures of the Act. However, as you point out, although that simplified process cannot be utilized, the holder of a tribal court judgment still retains the right to bring an action

or special proceeding to enforce the judgment. §§ 25-9-507, 26-3-203, MCA; Wippert v. Blackfeet Tribe, *supra*. Under the principles of comity, the tribal court judgment may be recognized and given effect by the state court in such an action or special proceeding, not as a matter of obligation but out of deference and mutual respect. See Leon v. Numkena, 689 P.2d 566 (Ariz. Ct. App. 1984); Mexican v. Circle Bear, 370 N.W.2d 737 (S.D. 1985); In re Marriage of Red Fox, 542 P.2d 918 (Or. Ct. App. 1975).

My conclusion is subject to one exception created by the Indian Child Welfare Act, which requires the states to give full faith and credit to the "public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity." 25 U.S.C. § 1911(d).

THEREFORE, IT IS MY OPINION:

A judgment, decree, or order of an Indian tribal court may not be filed as a foreign judgment under the provisions of the Uniform Enforcement of Foreign Judgments Act, unless the judgment, decree, or order concerns an Indian child custody proceeding.

Sincerely,

MARC RACICOT
Attorney General