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MONTANA EIGHTEENTH JUDICIAL COURT
GALLATIN COUNTY

IN RE THE MARRIAGE OF: KAREN LYNN MAYBEE, Petitioner, vs. SCOTT BRYON MAYBEE, Respondent.	Cause No. ~~DR-21-349C~~ BY SB DEPUTY Hon. John Brown **Findings of Fact, Conclusions of Law, and Order (Subject Matter Jurisdiction)**

On December 18, 2025, the Court heard oral argument in this case regarding subject matter jurisdiction. The hearing started at approximately 1:45 P.M., and continued until approximately 5:00 P.M.

Petitioner Karen Maybee ("Karen") was present along with her attorneys, Robert Baldwin and Caitlin Pabst. Respondent Scott Maybee ("Scott") was present with his attorney, Pierce Teeuwen. His attorneys Charles Cook and Sherine Blackford joined via Zoom.

At the hearing, the Court heard argument concerning this Court's subject matter jurisdiction over certain assets that Scott contends are beyond the power of this Court to distribute or to even consider as part of its equitable distribution, and the parties' competing motions addressing these issues. In addition to receiving that argument, the Court has reviewed the following documents:

- *Respondent's Motion to Enforce a Foreign Judgment and Dismiss Partial Subject Matter Jurisdiction Over Nation-Sourced Assets* (Doc. 214, hereafter "Scott's Mot.");
- *Petitioner's First Motion for Partial Summary Judgment* (Doc. 222) and *Karen's*

Combined Brief in Support of her Motion for Partial Summary Judgment and in Opposition to Scott's Motion to Dismiss Subject Matter Jurisdiction (Docs. 222 and 223, hereafter "Karen's Mot.");

- Declarations of Sarah Hussey (Doc. 224, the "Hussey Decl."), Charles Ritter (Doc. 225, the "Ritter Decl."); and Karen Maybee (Doc. 226, "Karen's Decl.");
- Scott's *Response and Incorporated Brief in Support to Petitioner's Motion for Partial Summary Judgment and Reply in Support of Motion to Dismiss Assets for Lack of Subject Matter Jurisdiction* (Doc. 235);
- Declaration of Michael J. Williams (Doc. 236); and
- Karen's *Reply in Support of Petitioner's Motion for Partial Summary Judgment* (Doc. 242).

The Court has also reviewed Karen's three motions for judicial notice (Docs. 219, 220, and 221), and the briefing on those motions. The Court addresses those motions in a separate order.

During the hearing, the Court took judicial notice of written testimony of Robert Odawi Porter submitted to the United States House of Representatives Subcommittee on Indian and Alaska Native Affairs of the Committee on Natural Resources for a February 7, 2022, legislative hearing on H.R. 3532, The American Indian Empowerment Act of 2011. Mr. Teeuwen did not object to the Court taking judicial notice of the testimony.

Based upon the evidence in the record, the Court's review of the motions and briefs, the arguments of counsel, and the entire record in the case, the Court is fully apprised, and enters the following findings of fact, conclusions of law, and order.

PROCEDURAL BACKGROUND

Karen commenced this dissolution action by a verified petition filed in September 2021.

Doc. 3. Scott answered. Doc. 17. The case proceeded as a normal dissolution action, with the parties: mediating three times (*see, e.g.,* Docs. 29, 30, 123, and 169); stipulating to a scheduling order (Doc. 31); conducting discovery (*see, e.g.*, Docs. 32, 37, and 39); participating in parenting workshops (*see* Docs. 18 through 24); exchanging lay witness and exhibit lists (Docs. 33, 34 and 35); disclosing experts (Docs. 48, 49, 41, and 52); filing motions (*e.g.*, Docs. 86 (Petitioner's Motion to Compel), 87 (Petitioner's Motion for Contempt, Sanctions, and Request for Hearing, and 132 (Respondent's Motion to Stay Proceedings)); and otherwise.

On November 8, 2023, Scott moved to stay these proceedings because he had filed a petition in the Peacemakers Court[1] of the Seneca Nation of Indians ("SNI"). Doc. 132. Over Karen's objection (Doc. 133) this Court, acting through its former Standing Master, stayed these proceedings. Doc. 135. In January 2024, Scott filed a notice that the Tribal Court had issued a declaratory judgment. Doc. 140. In March 2024, Scott moved to enforce that judgment (Doc. 144), while Karen moved to set aside the order staying this case (Doc. 145). The Standing Master reserved ruling on both motions until the Tribal Court had finally addressed Karen's appeal from the judgment of the Peacemakers Court. Doc. 154.

Ultimately, the Tribal Court process terminated after the SNI Court of Appeals modified and affirmed the Peacemakers Court judgment and the SNI Tribal Council denied Karen's request for permission to appeal the Modified Judgment of the Court of Appeals. *See* Docs. 146, 184, 186, and 198.

Scott sought permission in this Court to supplement the briefing on his prior request for enforcement of the Tribal Court Judgment. Doc. 210. The parties then stipulated and this Court

[1] The Court will refer to the Seneca Nation of Indians Peacemakers Court and its Court of Appeals generally as the "Tribal Court," and the Modified Declaratory Judgment that resulted from the proceedings in those courts as the "Tribal Court Judgment."

ordered[2] that the parties would brief anew the effect of the Tribal Court Judgment, and that the prior briefing on that issue—Docs. 144, 149, 150, and 151—"shall be "deemed superseded such that the Court need not consider those motions…." Docs. 212 and 213. Thereafter, Scott filed his motion (Doc. 214), Karen cross-moved (Docs. 222 and 223), and both motions were fully briefed and supported by various other filings (Docs. 224, 225, 226, 235, 236, and 242).

The parties invoked different procedures. Scotts' Motion invokes Rule 12(b)(1), M.R.Civ.P. *See* Scott's Motion (Doc. 214), p. 13. That Rule, of course, authorizes a motion to raise a defense of "lack of subject-matter jurisdiction…." Indeed, Scott asked this Court to "dismiss partial subject matter jurisdiction…." Doc. 214, p. 1; *see also*, *id.* pp. 13 (Heading IV, arguing that the "Court Must Dismiss" for want of subject matter jurisdiction); *id.* ("this court must dismiss … pursuant to Rule 12(b)(1)), 17 ("this Court must dismiss subject matter jurisdiction"); 22 ("this Court should dismiss subject matter jurisdiction"); and 26 (conclusion seeking dismissal). Karen, however, invoked Rule 56(c). Doc. 222 and 223. In fact, she affirmatively argues that Scott erroneously relied upon Rule 12(b)(1) instead of Rule 56. Doc. 223, p. 9.

The Court's role under the two rules differs. Under Rule 56, of course, the Court may "not make findings of fact, weigh the evidence, choose one disputed fact over another, or assess the credibility of witnesses." *Hanson v. Town of Fort Peck*, 2023 MT 208, ¶ 35, 414 Mont. 1, 538 P.3d 404. In the context of a Rule 12(b)(1) motion, the Court may rely on evidence outside the pleadings and can hold an evidentiary hearing and make factual findings. *Harrington v. Energy W. Inc.*, 2015 MT 233, ¶ 10, 380 Mont. 298, 356 P.3d 441; *In re Marriage of Sampley*,

[2] The Standing Master had retired, and, on unopposed motion, this Court had withdrawn the reference to the Standing Master. Docs. 163 and 164.

2015 MT 121, ¶ 12, 379 Mont. 131, 347 P.3d 1281. When the "jurisdictional issue is separable from the merits of a case, a court applies Rule 12(b)(1)'s standards and is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, and make findings of fact concerning the existence of jurisdiction." *See Acevedo v. C & S Plaza Ltd. Liab. Co.*, No. 20-56318, 2021 U.S. App. LEXIS 31839, at *2 (9th Cir. Oct. 22, 2021); *see also* Rule 43(c), M.R.Civ.P. ("When a motion relies on facts outside the record, the court may hear the matter on affidavits…"); *Broidy Capital Mgmt. LLC v. Benomar*, 944 F.3d 436, 441 (2d Cir. 2019) ("[T]he district court can refer to evidence outside the pleadings" on a motion to dismiss under Rule 12(b)(1), and such "evidentiary matter[s] may be presented by affidavit or otherwise").

As one court explained:

> [W]hen considering a Rule 12(b)(1) motion to dismiss, the court may weigh the evidence and make factual findings. *See Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995) ("When reviewing a factual attack on subject matter jurisdiction, a district court may not presume the truthfulness of the complaint's factual allegations. A court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1)).

Los Alamos Study Grp. v. United States DOE, 692 F.3d 1057, 1063-64 (10th Cir. 2012).

The limit on the Court's ability to find facts is that it may not do so if the jurisdictional facts are "intertwined with the merits of the case." *Id.*; *see also Acevedo*, *2 ("a court may not decide genuinely disputed facts where 'the question of jurisdiction is dependent on the resolution of factual issues going to the merits.'").

Per the foregoing, this Court may, and does, make factual findings on matters that pertain only to the jurisdictional issues, but not if those "facts" go to the merits of the case. Here, the Court perceives very little overlap or "intertwin[ing]" between the facts regarding this Court's subject matter jurisdiction and the facts that will have to be decided in the parties' divorce. And, in any event, as explained below, there is very little that is genuinely disputed regarding the jurisdictional facts. Notably, those facts Scott disputes are his own conclusory statements rather than evidence contrary to the facts contained in the record.

Thus, based on the record in this case, the Court makes the following factual findings and legal conclusions.

FINDINGS OF FACT

I. THE PARTIES: MARRIAGE, DISSOLUTION, AND DOMICILE.

1. Scott is a member of the Seneca Nation of Indians ("SNI") located in upstate New York. Karen is not.

2. Karen and Scott married in October 2001 in St. Marteen. Karen's petition (Doc. 3), p. 2, ¶ 2; Scott' answer (Doc. 17), p. 1, ¶ 2.

3. Karen and Scott lived in New York until 2011 when they moved to Montana. Karen's Decl., p. 2, ¶ 7; Scott's answer (Doc. 17), p. 1, ¶¶ 2-3. During their marriage, Karen and Scott never lived on the reservation. Karen's Decl., pp. 1-2, ¶¶ 3, 5, 7, 10; Scott's California Notice of Removal (Doc. 220, Ex. 2), p. 3, ¶ 12 (Scott representing that "at all relevant times" he has "been, a resident of and domiciled in the state of Montana").

4. The parties' tax returns show that they have lived off the reservation during their entire marriage. *See* Hussey Decl., pp. 5-6, ¶¶ 9-13, and associated exhibits.

5. Scott has had a Montana driver's license since 2011 or 2012. Karen's Decl., p. 2, ¶ 12.

II. THE TRIBAL COURT PROCEEDING.

A. Generally.

6. The parties litigated in this Court from September of 2021 until December 2023.

See Clerk's Register of Action.

7. On December 13, 2023, Karen was served with a petition Scott had filed in the SNI Peacemaker Court. Karen's Decl., ¶ 18; Scott's Mot., Exs. A (Scott's Tribal Court Petition) and J (Tribal Court Aff. of Service).

8. At that time, Karen was required to spend significant time caring for the parties' oldest son who was recovering from serious surgery and required constant care and assistance, constraining her ability to quickly react to the tribal court action. Karen's Decl., ¶ 19.

9. In January 2024, Scott served upon Karen a Tribal Court order requiring her to appear in the SNI court just 19 days later. Scott's Mot., Exs. C (Order to Show Cause) and Exhibit J, p. 2 (showing that Karen was served on January 4, 2024). While continuing to care for the parties' child, who was in a full leg brace for 8 weeks, Karen had to react to Scott's Tribal Court filing, including finding counsel licensed to practice in the SNI courts. Karen's Decl., ¶¶ 19-21.

B. Karen contested the Tribal Court's personal jurisdiction over her.

10. Through counsel, Karen objected to the authority of the Tribal Court to exercise personal jurisdiction over her. *See* Ritter Decl., ¶¶ 3-4, 8, Exs. 2, 3 and 4 thereto. She asked the Tribal Court to dismiss on that basis, but it refused. *Id.*

11. Karen is not a member of the Senaca Nation of Indians. She never lived on the SNI reservation.

12. There has been no suggestion or proof that Karen has engaged in business activity on the SNI reservation, owns property on the SNI reservation, committed a tort or civil offense on the reservation, or otherwise had meaningful contacts with the SNI reservation.

C. Karen did not have time to meaningfully prepare for the Tribal Court hearing.

13. The Peacemaker Court Civil Procedure Rules (Doc. 214, Exhibit C, hereafter

"Tribal Court Rules") recognize the importance of pre-hearing discovery. They require "full disclosure of all evidence, and anything relevant which may lead to evidence, and necessary documents in the prosecution or defense of an action, including matrimonial actions regardless of the burden of proof…." Tribal Court Rules, § 1-101. The Rules contemplate the production of documents from a party (§§ 9-102.a and 9-107) and from non-parties (§ 9-104); depositions (§ 9-106); and interrogatories (§ 9-111). Disclosure is so important that non-compliance can lead to a preclusion order or default judgment. *Id.*, § 9-112.

14. Karen asked for time to prepare, including the right to conduct discovery. Ritter Decl., ¶ 8. The Tribal Court denied that request. *Id.*

15. Scott faults Karen for not conducting discovery during the 19 days between when she was notified of the hearing and the hearing date. Scott's Reply (Doc. 235), p. 5. Karen did not, however, have sufficient time to get up to speed and meaningfully conduct discovery. *See, e.g.,* Tribal Court Rules, §§ 9-106 (leave of court needed to take deposition within 20 days of service, and then a minimum of 10-days' notice is required); 9-110(c) (parties have 20 days to respond to requests for admissions); 9-111(b)(3)(c) (party has 15 days to answer Interrogatories). Karen could not have meaningfully prepared for the hearing by using the discovery tools nominally available under the Tribal Court Rules.

D. The hearing.

16. The Tribal Court hearing occurred on January 23, 2024, lasting approximately an hour. Ritter Decl., ¶ 7. Exhibit 5 to the Ritter declaration is a true and correct copy of the transcript of that hearing. Ritter Decl., ¶ 3. The transcript shows that:

a. The court "reject[ed]" Karen's motion to dismiss; *id.*, p. 11:26;

b. The court brushed aside Karen's plea for "some degree of due process to gather" relevant information, i.e., "an opportunity to go through the legal process of discovery and some notice before a ... hearing so that we can present those issues in a meaningful way to the panel," with the glib assertion that, "we are custom and tradition here. Reservation property cannot be evaluated. A long-standing rule of thumb within tribal country," *id.*, pp. 7, 12;

c. When Karen's counsel inquired about where that apparently-dispositive "custom and tradition" could be found, the tribal court explained that it "is basically an unspoken oral tradition and it's something that we learned at a young age .... So, ***in your world, you can't do it***," *id.*, p. 14 (emphasis added);

d. The court took scant evidence, with Scott only making a few comments interspersed throughout the 14½ page transcript, *id.*, *passim*; and

e. The only exhibits received in evidence were: an order from this Court; Scott's supplemental expert disclosure in this case; and a business valuation report Scott's attorneys had obtained from Brisbane Consulting Group, LLC ("Brisbane") for use in this case. *Id.*, p. 14:23-27.

f. Scott claimed that he was not attempting to divest this Court of jurisdiction over this divorce action; the tribal court action was only "to discuss the valuation [sic] and distribution of [Scott's] nation's sourced assets." *Id.*, p. 2:16-18, *see also* Modified Decl. Jud. (Scott's Mot., Ex. G), p. 1 ("Peacemaker Court accepted only jurisdiction over ... Seneca Nation-sourced assets").

E. The tribal court judgment.

17. Six days later, the SNI Peacemakers Court issued its declaratory judgment. Scott's Mot., Ex. D. After appeal, the SNI Court of Appeals modified the judgment. Scott's Mot., Ex. G.

18. The Appeals Court defined the issue as the "Nation-sourced assets." *Id.*, p. 1. It

did not cite to any statute, code, rule, case, or other authority defining that term. *Id.*

19. Neither the SNI Constitution, the SNI business code, nor the Peacemaker court rules define—or even contain—the term "Nation-sourced." *See* Doc. 223, Exs., A, B, and C.

20. Scott has argued that the term was not "invented for this litigation," but, instead, is embedded in certain provisions of the SNI Business Code. *See* Doc. 235, p. 2. In response, Karen quoted, in full, the code provisions that Scott cited. *See* Doc. 242, pp. 10-11. The Court has examined those sections and finds no definition of that term or any instance of its use.

21. The Tribal Court seems to have coined that term for the first time in this case, referencing "Scott Maybee's ... land within the Seneca Nation, businesses formed under the Seneca Nation Laws, and the income and assets derived from these sources" before lumping them together under the "Seneca Nation-sourced assets" rubric. Modified Decl. Judgment, p. 2.

22. It then ruled all such assets to be off-limits to Karen and this Court. *Id.* Thus, according to the Tribal Court, this Court may not even consider or value those "Nation-sourced assets." *Id.* This Court is allegedly subject to contempt if it considers those assets. *Id.*

23. The Tribal Court relied upon "longstanding customs and traditions" in both the original and modified judgments. However, those "customs and traditions" were not accessible to Karen. *See supra* (Peacemaker Court judge informing Karen's counsel that she cannot find that custom and tradition).

24. Michael Williams, one of the attorneys who represented Scott in the Tribal Court action, submitted a declaration claiming that one can discover the "custom and traditions" from various sources. *See* Doc. 235. Yet even he does not cite to any source that used, much less defined, the term "Nation-sourced assets" prior to the judgments in the Tribal Court action in this case.

III. THE BUSINESS ASSETS AT ISSUE.

25. The Tribal Court did not specify what assets it believed fell within the "Nation-source" rubric. *See* Modified Decl. Judgment.

A. Real estate.

26. Scott has referenced real estate on the reservation, suggesting that it is Indian trust land. *See, e.g.*, Scott's Mot. 16 (referencing the polices behind "federal land trusts for tribal reservations"); 24 (arguing the "strong tribal and federal interest" prohibiting state court adjudication of "Indian trust land." In fact, the SNI reservation involves no such trust land. *See* Tana Fitzpatrick, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, CRS Report No. R46647 (July 21, 2021), pp. 10-13; *see also* testimony of Robert Odawi Porter of which this Court took notice at the hearing, as described above.

27. This case may involve restricted fee lands on the SNI reservation, although Scott has not presented proof of any specific parcels of land he claims on the reservation or how it is owned.

B. Businesses.

28. Scott owns interests in multiple businesses. *See* Hussey Decl., ¶¶ 14-30.

29. Scott's business activities range far beyond the SNI reservation. For instance, Scott has been sued in state and federal courts for his business activities in Oregon, Maine, Idaho, Nevada, New York, and California. *See, e.g., State v. Maybee*, 235 Or. App. 292, 232 P.3d 970 (2010); *HHS v. Maybee*, 2009 ME 15, 965 A.2d 55; *State v. Maybee*, 148 Idaho 520, 224 P.3d 1109 (2010); *Nevada ex rel. Masto v. Maybee,* 2010 Nev. Dist. LEXIS 2 (Nev. 2nd Jud. Dist. Ct. June 29, 2010); *Day Wholesale, Inc. v. State of N.Y.*, 2008 NY Slip Op 4179, 51 A.D.3d 38; *Sanden v. Heron,* No. 8:16-cv-00570-JLS-FFM, U.S. Dist. Ct, C.D. Cal. (2016).

30. Scott's businesses engage in very significant sales off the reservation. For

example, "Defendant [Scott Maybee] conceded that he sells cigarettes to Oregon consumers" via internet orders and USPS shipments. *See State v. Maybee*, 235 Or. App. 292, 295, 232 P.3d 970, 972 (2010). Although Scott contended he was not subject to jurisdiction in Oregon because his business was "on" the Seneca reservation, the Oregon court disagreed, noting that "defendant's activities reach beyond the reservation boundaries and into Oregon." *Id.*, 232 P.3d at 973. Likewise, "Maybee has sold over 2,500,000 cigarettes ... to consumers located within Idaho." *State v. Maybee*, 148 Idaho at 526, 224 P.3d at 1115.

31. In fact, Scott swore under oath in 2006 that "[a]pproximately 75% of my retail sales are to out-of-state purchasers," i.e., outside of New York. *See* Affidavit of Scott Maybee (August 6, 2006), Ex. 1 to Karen's First Motion for Judicial Notice. Those "out-of-state shipments of cigarettes" are "sales [that] are completed" in those other states. *Id.*

32. Additional evidence confirms that Scott's businesses are not confined to the reservation, either in the sense that they are organized under and governed by tribal law or that they operate solely on the reservation. For instance:

a. In removing a California state court action to the United States District Court for the Central District of California Scott alleged that "Scott Maybee ... believe[s] ... that ... GTS Enterprises, Inc. now is, and at all relevant times has been, a corporation existing under the laws of the state of New York with its principal place of business being located in the state of New York." *See* Karen's Second Motion for Judicial Notice (Doc. 220), Ex. 2, p. 4, ¶ 14 (Scott's Notice of Removal).

b. Likewise, in the Civil Cover Sheet he submitted to the federal court, Scott described GTS Enterprises as "a New York corporation." *Id.*, Doc. 220, Ex. 3, p. 1.

33. Also, and even with limited (or no) discovery on these issues, it is apparent that Scott's businesses are registered in other states. *See* Doc. 152, p. 3; Ex. A thereto (Scott's businesses registered in other states, such as New York and Delaware). His businesses have registered trademarks with the USPTO, showing that GTS Enterprises is a partnership organized under New York law. *See* Karen's Third Motion for Judicial Notice (Doc. 221); Exhibits 1-7 thereto.

34. In 2023, Scott's attorney in this case obtained and disclosed a valuation from Brisbane Consulting Group, LLC ("Brisbane"). Karen's Decl., ¶ 18 and Ex. 17 thereto. That report valued Scott's "ownership interest" in GTS Enterprises ("GTSE"), Allegany Capital Enterprises, LLC, Redhouse, LLC, and Red Oak Group, LLC. *Id.*, pp. 2-3 (highlighting added). It had been prepared to "be used in the matrimonial action," *i.e.*, this very case. *Id.*, p. 3 (highlighting added). It explained that GTSE siphons off all of the profits from its subsidiaries in the form of "an annual management fee…" Thus, although Scott claims to have alienated these interests, "the transfer has not precluded Mr. Maybee from receiving annual distributions and benefits from GTSE, which derives its income from the performance of the Subsidiaries." *Id.* (highlighting added).

35. The Tribal Court purports to forbid mention of the Brisbane report. *See* Modified Decl. Jud., p. 2 (Brisbane report "**MAY NOT AND CANNOT** be used … outside the Seneca Nation." *Id.* (emphasis in original).

36. When Scott's lawyers retained Brisbane, they focused upon four businesses: GTSE, Allegany Capital, Redhouse LLC, and Red Oak Group LLC. *See, supra.* Scott's Tribal Court petition explained that his significant income-producing businesses had been pulled

together under the GTSE umbrella. Doc. 214, Ex. A, p. 3, ¶¶ 14.g-i.

37. The "joint operating agreement" that Scott describes as having accomplished that consolidation provides:

> **11. Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without consideration of the conflicts of laws principles thereof. The Parties hereby agree that in no event shall the laws of the Seneca Nation govern the relationship of the Parties or the interpretation of this Agreement. The Parties irrevocably waive any right or remedy that they may have under such laws and agree that the courts of the Seneca Nation shall have no jurisdiction with respect to any matter relating hereto, it being understood that the Parties submit to the exclusive jurisdiction of the courts of the State of New York and, if applicable, the United States federal courts located therein.

Karen's Decl., ¶ 19; Ex. 18 thereto, p. 4. Scott specified that SNI law does not apply and SNI courts have no jurisdiction. The Partnership Agreement establishing this business provides likewise. *See* Karen's Decl., ¶ 20; Ex. 19 thereto, pp. 4-5, ¶ 12.

38. As to the other businesses under the GTSE umbrella, Scott provided for application of Wyoming law—not some "custom and tradition"—to fill gaps in the law of the SNI. *See,* Karen's Decl., ¶ 21 and Exs. 20-22 (operating agreements).

C. What the tax returns show.

39. The parties have filed income tax returns for each year during their marriage. Each year they filed taxes, the parties listed their address. At no point in time, on any of their state or federal tax returns from the years 2001 to the present, have the parties listed an address on SNI reservation. *See* Hussey Decl., ¶¶ 4-7, 9-13. To the contrary, for the years 2001 through 2010, Scott and Karen listed a New York state address on their federal and state returns and for the years 2011 to 2023, they listed a Montana address. *Id.*, ¶¶ 10-13.

40. In the early years of their marriage, the parties' tax returns showed income earned on the SNI reservation. Hussey Decl., ¶ 14, and Ex. 29 thereto. Commencing in 2008, the tax

returns have shown no deduction for on-reservation income. *See* Hussey Decl., ¶¶ 15-18; and, *e.g.*, Exs. 31, 32 thereto.

41. Those tax returns also reveal information about the nature and commencement date of certain businesses. For example, Schedule C reports various business ventures. Early in the marriage, the returns showed on Exhibit C that they earned income from a business known as Injun Enterprises, LLC. *See* Hussey Decl., ¶¶ 19-30 and exhibits cited therein. Starting with the 2007 return, however, the parties no longer reported income from Injun Enterprises but from a bevy of new businesses. *Id.*

42. The IRS requires that a taxpayer provide, for each business, a taxpayer identification number ("TIN") and a North American Industry Classification System, (or a "NAICS") code number, categorizing the business by type. Hussey Decl., ¶¶ 19-20.

43. The parties' returns for 2000 through 2006 assigned to Injun Enterprises a TIN of 16-1590554 and a NAICS code of 561490. *See* Hussey Decl., ¶ 21; Exs. 2-5, 7, and 8 thereto. That NAICS code indicates that the business of Injun Enterprises was "Other Business Support Services." Such services include address bar coding, bar code imprinting, court reporting, fundraising organization services on a contract or a fee basis, mail presorting, close captioning, and repossession services. Hussey Decl., ¶ 21.

44. The new businesses that started appearing on the tax returns in 2002 were of a different nature. None of them used the TIN that had been applied to Injun Enterprises. Hussey Decl., ¶¶ 22-27. And the NAICS codes that Scott and Karen applied to the new businesses indicate that they engaged in activities different from Scott's pre-martial business services business, including gasoline stations, electronic/mail order shopping; and freight/trucking. Hussey Decl., ¶ 27; Exs. 4, 5, 7, 8, 9, 10, and 16 thereto.

45. It is difficult to assess whether any particular business interest is or is not "Nation-sourced." With no definition of that term, and no clear statement from Scott about what assets fall within or without that category, the Court would have to guess. Thus, Scott's "nation-sourced assets" concept is impossible of proof or disproof.

46. But, Scott's Tribal Court petition suggests that he parlayed his premarital, reservation-based assets to start new businesses, leading to his tremendous wealth and earning capacity, meaning that all of that is now off limits, and beyond the reach of this Court to even consider. Notably, however, there is no tracing analysis. There is no proof other than Scott's conclusory statements. More fundamentally, however, two points demonstrate how untenable this theory is.

47. First, Scott admits his current businesses started after the parties' marriage. Doc. 214, Ex. A (Petition), ¶ 14 (tracing the evolution of Scott's business interests, commencing in 2003, after the 2001 marriage. *See also* Hussey Decl., ¶¶ 21-28 (demonstrating that his business interests first appeared on the parties' tax returns during their marriage). Moreover, it is clear that post-marriage businesses were of an entirely different type than the pre-marital business. Hussey Decl., ¶¶ 27, 30. The business interests at stake were started after the marriage and differ in type from Scott's pre-marriage enterprise.

48. Second, although Scott claims the businesses are on the reservation, in fact, they generate the huge bulk of their revenue from sales off the reservation. *See, supra.* 75% of Scott's sales occurred outside of New York. *See* Scott's Affidavit. Of the 25% of sales that occurred in New York, raw probabilities suggest the huge majority were off the reservation.

49. And, as explained above, it is not true that his businesses are exclusively governed by SNI law.

IV. ALLEGED ORAL PRENUPTIAL "UNDERSTANDING."

50. In 2021, Scott affirmatively alleged that this "Court should equitably and fairly divide all of the parties' property and debts after taking into consideration all of the factors set forth in §40-4-202 MCA and the law as it pertains to separate, premarital, gifted and inherited property of each party." Scott's Resp. to Petition, Doc. 17, ¶ 7.

51. In his Tribal Court petition, however, Scott claimed a verbal understanding with Karen that, as a non-Indian, she would never have any ownership interest in the business interests; she would have to "walk away." Scott's Mot., Ex. A, p. 2, ¶¶ 9-10. He claimed her request for equitable distribution violated "our understanding over the last 22 years." *Id.*, ¶ 13. Scott concedes this "understanding" did not predate the marriage, i.e., was not a "premarital" agreement, but occurred throughout the marriage as he was building the businesses. *Id.* The Tribal Court found "credibility in [Scott's] statement that [Karen] was always made aware that she could never make claim on his tribally owned business assets…." Scott's Mot., Ex. D, p. 2 of

52. The parties did not sign a prenuptial agreement. *See* Transcript of Tribal Court Hearing (Doc. 225, Ex. 5), p. 9, ln. 7 (Scott testifying "there's never been a prenup…"); Karen's Decl., p. 2, ¶ 13.

V. THE RELATIONSHIPS BETWEEN SCOTT, HIS FAMILY, AND THE TRIBAL JUDICIAL OFFICERS INVOLVED.

53. Scott is well-connected within the tribe, with his sister being married to the tribal president, J. Conrad Seneca. Karen's Decl., ¶ 31. Scott and his family have a close relationship with Darlene Lay, one of the Peacemaker judges who ruled in Scott's favor. *Id.*, ¶¶ 40-43. Scott's mother, Jean Maybee, spoke at Judge Lay's wedding and posts how she loves Judge Lay, who commented on Scott's Facebook page that she wishes she could be with him at Scott and Karen's Hebgen Lake home. *Id.*, ¶ 41.

54. Judge Sandra Gonzales is one of the appellate court level judges who affirmed the judgment in Scott's favor. She is Facebook friends with Scott's mother, Judge Darlene Lay, and the wife of Scott's attorney. Karen's Decl., ¶¶ 44-46.

55. One of Scott's business partners is Gary Sanden. *See* Doc. 214, Ex. A, ¶¶ 2 and 14; Karen's Decl., ¶ 34. Mr. Sanden's aunt is Odie Brant Porter. *Id.*, ¶ 34. Ms. Porter is one of the members of the Council that denied Karen's appeal. *Id.*, ¶¶ 33-34. She is a former owner of one of the businesses involved. *Id.*, ¶ 38; Ex. 22 thereto. Her husband, Robert Odawi Porter, was one of Scott's attorneys in the tribal court matter and was disclosed as an expert witness in this matter. *Id.*, ¶ 36. They are both close friends with Peacemaker Court Judge Darlene Lay. *Id.*, ¶ 35. They are all friends with Scott's mother. *Id.*, ¶ 37. Scott's mother is also friends with the other members of the Council who denied Karen's appeal. *Id.*, ¶ 39.

56. In addition to the foregoing, any factual finding that contained in the following conclusions of law is hereby adopted in these findings.

CONCLUSIONS OF LAW

1. Any conclusion of law contained in the foregoing factual findings is hereby incorporated into these legal conclusions.

2. The limit on the Court's ability to find facts is that it may not do so if the jurisdictional facts are "intertwined with the merits of the case." *Los Alamos Study Grp. v. United States DOE*, 692 F.3d 1057, 1063-64 (10th Cir. 2012); *see also Acevedo v. C & S Plaza Ltd. Liab. Co.*, No. 20-56318, 2021 U.S. App. LEXIS 31839, at *2 (9th Cir. Oct. 22, 2021 ("a court may not decide genuinely disputed facts where 'the question of jurisdiction is dependent on the resolution of factual issues going to the merits.'"). This Court may, and does, make factual findings on matters that pertain only to the jurisdictional issues

I. THIS COURT HAS SUBJECT MATTER JURISDICTION.

3. Scott is domiciled in Montana. Domicile is "[t]hat place in which a man has voluntarily fixed the habitation of himself and family, not for mere special or temporary purpose, but with the present intention of making a permanent home ...." Black's Law Dictionary (11th ed. 2019). Scott affirmed in his response to the petition for dissolution that he resides in West Yellowstone, he resided in Gallatin County for more than 90 days prior to the commencement of this action. Doc. 17. He has a Montana driver's license, and his tax returns for the past 14 years list a Montana address.

4. The Court has subject matter jurisdiction over this dissolution of marriage. "[D]omestic relations are preeminently matters of state law...." *Mansell v. Mansell*, 490 U.S. 581, 587 (1989). "The district court has original jurisdiction in ... all civil matters and cases...." Mont. Const. art. VII, § 4(1). M.C.A. § 40-4-104, says that the "district court shall enter a decree of dissolution of marriage if...." *Id.* (emphasis added).

5. Scott advances two arguments by which this Court must defer to the decision of the SNI courts. First, he contends that federal court preempts this Court's jurisdiction in favor of the tribal courts. Second, Scott contends that even if this Court has jurisdiction, it should, under principles of comity, defer to the Tribal Court Judgment. This Court disagrees with both arguments.

II. FEDERAL LAW DOES NOT PREEMPT THIS COURT'S EXERCISE OF JURISDICTION.

6. The United States Supreme Court has:

> frequently noted ... that the "sovereignty that the Indian tribes retain is of a ***unique and limited character***." It ***centers on the land*** held by the tribe and on tribal members within the reservation.

Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316, 327 (2008) (quoting *United States v. Wheeler*, 435 U.S. 313, 322-323 (1978)) (emphasis added).

7. *Plains Commerce* is very instructive. That case involved fee land within a

reservation that a bank sold to a third party rather than to a tribal member. The tribal member obtained a tribal court judgment against the bank for having sold the property to a non-Indian on more favorable terms than it was willing to offer the member. The bank challenged the tribal court's jurisdiction. Reversing the Eight Circuit, the Supreme Court held the tribe had no jurisdiction over such a claim.

8. After noting the "limited character" of tribal sovereignty, focusing on land and tribal members within the reservation, *supra*, the Court explained that, as "part of their residual sovereignty," tribes retain authority to legislate and tax activities on the reservation, "including certain activities by nonmembers...."[3] *Plains Commerce*, at 327.

9. Although they have the power to "regulate domestic relations among members," "tribes do not, as a general matter, possess authority over non-Indians who come within their borders." *Id.* at 327-328. "[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Id.* at 328 (quoting *Montana v. United States*, 45 U.S. 544, 565 (1980)). By their incorporation into the American republic, tribes surrendered "the right of governing...person[s] within their limits except themselves." *Id.* (quoting *Oliphant v. Suquamish Tribe*, 435 U.S. 191, 209 (1978)).

10. "This general rule restricts tribal authority over nonmember activities taking place on the reservation...." *Id.*; *see also Dolgencorp, Inc. v. Miss. Band of Choctaw Indians*, 746 F.3d 167, 176 n.7 (5th Cir. 2014) (tribes have no power to regulate nonmember conduct off the reservation) (citing cases).

11. There are "two exceptions...in which tribes may exercise 'civil jurisdiction over

[3] The discussion of tribes' authority to regulate also delineates the limit of their power to adjudicate because "a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction." *Plains Commerce*, at 330 (quoting *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997)).

non-Indians ***on their reservations*** . . . .'" *Id.* at 329 (quoting *Montana*, 450 U.S. at 565) (emphasis added). First, the tribe can regulate "activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing. . . ." *Id.* (quoting *Montana*, 450 U.S. 565). Second, the tribe can exercise "civil authority" over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Id.* at 329-330 (quoting *Montana*, 450 U.S. at 566).

12. Importantly, *Plains Commerce* explained that the *Montana* exceptions to the general rule—that tribes have no authority over nonmembers even for activities on the reservation—concern ***activities or conduct on the reservation***.

> By their terms, the exceptions concern regulation of "the *activities* of nonmembers" or "the *conduct* of non-Indians on fee land."

Id. at 330 (emphasis in original).

13. Because these are exceptions to the general rule that "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe," any assertion of jurisdiction to do so are "presumptively invalid," and the "burden rests on the tribe to establish one of the exceptions to *Montana's* general rule." *Id.*

14. *Plains Commerce* held that "*Montana* does not permit Indian tribes to regulate the sale of non-Indian fee land." *Id.* at 332. Any legitimate tribal interest could be vindicated by regulating *activity* on the land, not regulating its sale. *Id.* at 336. It had no legitimate interest in restraining the alienation of the land. *Id.* at 337. Likewise, here, the SNI has no legitimate interest in regulating whether this Court awards business interests to Karen—even interests in businesses engaging in activities on the reservation. Instead, it can vindicate its legitimate interest by regulating the activities of those businesses on lands within the reservation, regardless

of whether this Court awards any of those business interests to Karen or considers the value of those businesses.

15. Scott cites no authority stating that tribal courts may adjudicate, much less that they have exclusive jurisdiction over, marital dissolution proceedings involving one who, like Karen, is a non-member and who has never lived on the reservation. Instead, Scott seeks to extend the tribal court exclusivity over title to trust lands to also reach businesses having a connection to the reservation, arguing that "sentiments" about Indian trust land should be applied to protect "business and income filtered through the Nation." Scott's Motion, p. 19. According to Scott, there is nothing left; no "residual jurisdiction" within which this Court may act. *Id.* at 20-22. Scott has not cited any case that has held that the exclusivity of tribal court jurisdiction over Indian trust lands should be extended to apply to ownership in businesses or other personal property.

16. Scott would thus place the burden on Karen to show jurisdiction is not preempted because "[t]he issues, presumptively, rest in the tribal court." Scott's Mot. 14 (citing *Marriage of Wellman*, 258 Mont.131, 137, 858 P.2d 559, 563 (1993) and *Agri West v. Koyama Farms, Inc.*, 281 Mont. 167, 171, 933 P.2d 808, 811 (1997).[4] Those cases, however, clearly apply that presumption to "jurisdiction over activities ... ***on reservation lands***...." *Wellman*, 258 Mont. at 137, 858 P.2d at 563 (emphasis added); *see also Agri West*, 281 Mont. at 171, 933 P.2d at 811. There is no general presumption of preemption. No such presumption applies here because no one asks this Court to exercise jurisdiction over activities on reservation lands. To the contrary, the SNI's assertion of jurisdiction to adjudicate the marital distribution in this case is

[4] That Montana has not obtained consent under 28 U.S.C. § 1332(a) to exercise jurisdiction over actions "which arise in the areas of Indian country," Scott's Mot. 17, means the "presumption" applies to cases arising from on-reservation conduct; an issue this case does not present.

"presumptively invalid." *Plains Commerce,* at 330.

17. Moreover, even were Scott correct about a "presumption" in favor of the tribal court—and he is not—Karen would only need to "show that state jurisdiction is not 'preempted by federal statute or treaty and does not unlawfully infringe on the right of reservation Indians to make their own laws and be ruled by those laws.'" *Big Spring v. Conway*, 2011 MT 109, ¶ 48, 360 Mont. 370, 255 P.3d 121(quoting *Wellman*, 258 Mont. at 137, 852 P.2d at 563).

18. No federal statute or treaty preempts this Court's jurisdiction. Nor would it infringe on the right of the SNI to govern itself if this Court were to take cognizance of the real property Scott may own on the reservation, or distribute or evaluate the parties' business interests. To apply this test, this Court must evaluate: 1) the status of the parties; 2) the status of the property where the dispute arose or took place; 3) and whether the matter is criminal or civil. *Big Spring v. Conway (In re Estate of Big Spring)*, 2011 MT 109, ¶ 28, 360 Mont. 370, 255 P.3d 121.

19. Regarding the status of the parties, Karen is a non-Indian while Scott claims SNI member status. This case does not involve "on-reservation conduct involving only Indians," where "state law is generally inapplicable ... and the federal interest in encouraging tribal self-government is at its strongest." *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980) (emphasis added). Instead, this case is about a non-Indian and an Indian, living and divorcing off the reservation, concerning off-reservation businesses, income and assets.

20. Scott suggests that Court must analyze the parties' status through a "particularized inquiry," Scott's Mot. 15-17, which examines the "nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law." *Bracker*, 448 U.S. at 144. But that test only applies "where

… a State asserts authority over the conduct of non-Indians engaging in activity on the reservation." *Id.* This is not such a case. Regardless, if this Court makes its equitable distribution with awareness of the reservation land and business interests that the parties own, even if those interests have some connection with the reservation, the SNI will still be able to govern itself.

21. The "status of the property" test concerns the "status of the property ***where the dispute arose or took place***…." *See Big Springs*, ¶¶ 28, 30 (emphasis added). This focuses on the place where the operative events occurred because the entire inquiry concerns "jurisdiction over activities … on reservation lands…." *See Wellman, supra.* The test does not apply and, even if it did, jurisdiction is proper.

22. As to the business interests, Scott claims they are "conducted within" the Seneca reservation. Scott's Mot. 10:7, 18:20. While it is true that some of the businesses have some connection with the reservation, it is not true that their business activities are confined to the reservation. *See supra.* One court has refused to allow Scott to "'play fast and loose' by taking a different position [on this issue] to take advantage" in different cases. *See Idaho v. Maybee*, 2007 Ida. Dist. LEXIS 27, *9 (Fourth Jud. Dist. Ct. of Idaho, Ada County, Oct. 31, 2007) (Scott seeking to avoid Idaho regulation by arguing that the sales all occurred in New York while avoiding New York taxation by arguing the sales occurred in the purchasers' home states).

23. Nor, as a legal matter, are Scott's interests in those businesses "located" where the businesses are sited. Scott's business interests are intangible personal property, with a situs in Montana where he lives. *See Latipac, Inc. v. Gen. Tire & Rubber Co.*, 347 F. Supp. 1043, 1047 (N.D. Cal. 1971) ("it is generally held that the situs of intangible personal property is the domicile of its owner."); *see also Hawley v. Malden*, 232 U.S. 1, 9 (1914) ("When we are dealing with the intangible interest of the shareholder, there is manifestly no question of physical

situs, so far as this distinct property right is concerned, and the jurisdiction to tax it is not dependent upon the location of the lands and chattels of the corporation."). *Hawley* dealt with the power of a State to tax intangible business interests. The analysis applies even more strongly regarding the State's power to consider such intangible rights in a divorce. Scott and the tribal court are simply incorrect to conclude that Scott's business interests exist on the reservation.

24. Scott argues that various statutes apply to preclude this Court's exercise of jurisdiction. This Court disagrees. 25 U.S.C. §§ 1322, 1326 and 28 U.S.C. § 1360 all concern instances where tribes consent to jurisdiction over actions "between Indians," "arising within such Indian country," or concern land "held in trust by the United States." These statutes are inapplicable to the current dissolution of marriage. The action is not between Indians, the parties lived off the reservation and are divorcing off the reservation, and the martial estate is comprised of off-reservation businesses, income, and assets. Furthermore, the SNI reservation does not have any Indian trust land over which its courts would have exclusive jurisdiction.

III. REGARDLESS, THIS COURT CAN CONSIDER THE VALUE OF ALL ASSETS OF THE PARTIES.

25. The thrust of Scott's argument is that this Court is without jurisdiction to either: ***distribute*** what he and the Tribal Court termed "Nation-sourced" assets; or to even ***consider*** them as part of its equitable distribution.

26. Other than as to Indian trust land or restricted fee land on the reservation, this Court disagrees with Scott's first proposition for the reasons stated above.

27. As to the second proposition, the Court finds that, even if federal law unambiguously forbade this Court from awarding various "Nation-sourced assets" as part of the divorce, the Court can, and must, consider those assets in making its equitable distribution.

28. Montana law requires this Court to "finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and

whether the title to the property and assets is in the name of the husband or wife or both." M.C.A. § 40-4-202(1). This statute was enacted to:

> promote the amicable settlement of disputes that have arisen between parties to a marriage; mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage; . . . and . . . make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience ....

Buck v. Buck, 2014 MT 344, ¶ 22, 377 Mont. 393, 340 P.3d 546 (quoting M.C.A. § 40-4-101). Those goals are "best served" when a district court proceeds to exercise its jurisdiction. *Id.*

29. The Supreme Court has further explained:

> The overarching premise of the statute is this: "In a proceeding for dissolution of marriage . . . the court . . . shall . . . finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both." Taken literally, this language means ***the court has the ultimate authority to distribute all property of both spouses; it is not required to subtract premarital assets*** or inheritances from the marital estate before dividing it, nor is it limited in its authority to determine how such assets are to be divided. To be sure, the statute does specify the particular matters to be considered in dividing pre-acquired, gifted or inherited property, but it nowhere provides that these "considerations" constitute a constraint on the district court's essential mandate, which is to equitably divide all assets of the parties, however and whenever acquired.

In re Funk, 2012 MT 14, ¶ 16, 363 Mont. 352, 270 P.3d 39 (emphasis added). The statute:

> obligates a court to equitably apportion ... all assets and property of either or both spouses, regardless of by whom and when acquired. This directive applies to all assets, including pre-acquired property and assets acquired by gift, bequest, devise or descent.

Id., ¶ 19.

30. Scott is entitled to claim ownership of certain property, and "is entitled to argue that it would be equitable to award him ... the entirety of such property." *Id.* But, that is "not [a] limitation[] on the court's obligation and authority to equitably apportion all assets and property

of either or both spouses, based upon the unique factors of each case." *Id.*

31. Nonetheless, Scott relies upon *Wellman* to argue that this Court is not only barred from distributing trust land (or anything else "filtered" through the reservation), but also cannot even consider those assets when making an equitable award. Even if Scott were right that federal law preempts this Court's right to adjudicate ownership of undefined "Nation-sourced" assets, he is wrong that it means this Court must pretend those assets do not exist.

32. *Wellman* involved 4,000 acres of Indian trust land within the Blackfeet Reservation. *Id.*, 258 Mont. at 133, 852 P.2d at 560. The issue was whether the Montana district court could "adjudicate the disposition of Indian trust land in a marital dissolution action filed...by a member of the Blackfeet Tribe...." *Id.*, 258 Mont. at 134, 852 P.2d at 561. Because trust land was their "most significant asset," and "neither party holds legal title in trust property," 258 Mont. at 134, 138, 852 P.2d at 561, 563, the district court could not order it sold and divide the proceeds or make a monetary award to the other spouse equal to his "equitable share" of the value of the trust land. *Id.* 258 Mont. at 139, 852 P.2d at 564. A few years later, the Montana Supreme Court, without a full opinion, relied upon *Wellman* to reverse a district court's order requiring an Indian divorce participant to obtain a valuation of his trust land from the Bureau of Indian Affairs. *See Smith v. McKeon (In re Smith)*, 284 Mont. 528, 531, 946 P.2d 117, 118 (1997).

33. Scott's attempt to extend *Wellman's* "sentiments" to non-trust land, personal property, and "income streams," in short, all assets, "business and income filtered through the Nation...," Scott's Motion, p. 19, is an overreach. He cites no cases for that proposition.

34. Moreover, since *Wellman* and *Smith*, the Montana Supreme Court has refined its thoughts on the propriety of taking into account the value of federally-protected assets when

making an equitable distribution in a divorce. *See Strong v. Strong,* 2000 MT 178, ¶ 35, 300 Mont. 331, 8 P.3d 763. Years after *Wellman* and *Smith, Strong* reversed a divorce decree that attempted to equalize the marital estate to account for the husband's exempt veteran's disability benefits. *Id.* ¶ 12. Per Congressional action and United Supreme Court decision, such benefits were beyond the power of state courts to divide in a divorce. *Id.*, ¶¶ 11-13, 18-27 (citing 10 U.S.C. § 1408, 38 U.S.C. § 5301(a), and *Mansell v. Mansell*, 490 U.S. 581 (1989)).

> Congress has positively required by direct enactment that state courts be preempted from including VA disability benefits in a marital estate. The property division dictates of § 40-4-202, MCA, must yield to federal law, for to allow inclusion of VA disability benefits in a marital estate would do major damage to clear and substantial federal objectives.

Strong, ¶ 27. Thus, the court reversed and remanded for a new decree. *Id.*, ¶ 28.

35. If *Wellman* and *Smith* represented the Court's thinking on the relevance of federally exempt assets to an equitable dissolution, i.e., if Scott were correct, then the *Strong* court would have simply reversed and remanded with instructions to pretend the exempt disability assets did not exist. *Strong* did just the opposite, inserting the heading "VA Disability May be Considered as a Financial Circumstance of the Parties." *Id.*, ¶¶ 28-29. Noting Montana's preference for a property settlement over maintenance, the court held that:

> consistent with both state and federal law, a district court may consider VA disability benefits in the same way it considers each party's ability to earn income post-dissolution as an important factor in achieving an equitable property division, thus avoiding the need to award spousal maintenance. Such an approach is consistent with Montana law to the extent that it furthers our policy of favoring property distribution over maintenance. It is also consistent with federal law in that it provides a disabled veteran sole possession of his or her disability benefits both in law and in fact.

Strong, ¶¶ 30, 34.[5] *See, also, In re Marriage of Seyler*, 2002 Wash. App. LEXIS 2594.

36. In *Seyler*, the husband/tribal member argued that the trial court had erroneously used maintenance to circumvent its inability to divide Indian trust land. The appellate court recognized that, although the lower court lacked authority to divide that land, it could still consider "the economic circumstances of each party in arriving at a just and equitable distribution of the marital estate…." *Id.* at 5 (citations omitted). *Seyler,* at 9.

37. Scott would distinguish *Strong* on the theory that the court in that case "had subject matter jurisdiction over the VA disability benefits" whereas this Court lacks jurisdiction over his "Nation-sourced assets." *See* Doc. 235, p. 17. That argument, however, presupposes its own conclusion, i.e., that this Court lacks jurisdiction to consider the parties' assets because Scott characterizes them as "Nation-sourced." This Court has rejected that argument.

38. Second, Scott's contention that *Strong* is different because the court there had jurisdiction over the VA disability benefits is also wrong. "[F]ederal law preempts state courts from exercising jurisdiction in a dissolution proceeding over" the benefits at issue in *Strong*. *Strong*, ¶ 23 (citing *Mansell* and 10 U.S.C. § 1408(a)(4)(B)). Nonetheless, "consistent with both state and federal law, a district court may consider VA disability benefits in the same way it considers" other assets "as an important factor in achieving an equitable property division…." *Strong*, ¶ 34.

39. Like military disability pay, any assets that are beyond this Court's power to award, whether because they are Indian trust land or restricted fee land on the reservation or because of the "Nation-sourced assets" analysis, they must still be factored into the equitable

[5] But, the court cautioned, district courts should not do "indirectly what they may not do directly," i.e., a direct offset. *Id.*, ¶ 35.

distribution that this Court is required to make.

40. The Court's decision that it may ***consider*** assets even if it is preempted from awarding them as part of the divorce is bolstered by many other cases. *See, e.g., Jackson v. Sollie*, 141 A.3d 1122 (MD App. 2016) (although federal law preempts state court award of social security benefits, or the social security component of Civil Service Retirement System pension, state court presiding over divorce was required to consider those benefits as a relevant factor in making an equitable distribution); *In re: Marriage of Boyer*, 538 N.W. 2d 293, 295 (Iowa 1995) (notwithstanding federal preemption prohibiting state courts from distributing social security benefits in the divorce, the Court could consider it); *Neville v. Neville*, 791 N.E. 2d 434, 437 (Ohio 2003) (although federal law prohibits state court from dividing social security benefits, a state court may consider social security benefits as a factor in making an equitable distribution).

41. Boyer cogently explained that a "state court is not required to pretend to be oblivious of the fact that one party expects benefits that will not be enjoyed by the other." *Id.* at 293-294. And:

> We do not think the federal preemption legislation requires state courts under the circumstances to purge so obvious an economic reality in its assessment.

Id. at 296.

IV. THIS COURT DECLINES TO EXTEND COMITY TO THE TRIBAL COURT JUDGMENT.

A. Comity, not Full Faith and Credit, applies.

42. The Constitution's Full Faith and Credit Clause applies to State courts, not tribal court judgments. *Wilson v. Marchington*, 127 F.3d 805, 808 (9th Cir. 1997). Whether to enforce tribal court judgments is a matter of comity. *Id.* at 809. Montana law is the same. *See Wippert v.*

Blackfeet Tribe, 201 Mont. 299, 654 P.2d 512 (1982) (comity, not full faith and credit); *Day v. State*, 272 Mont. 170, 900 P.2d 296 (1995) (same); *see also* Scott's Mot. p. 7 (citing *Wilson*).

43. Comity is not a rule, but a discretionary exercise, to be withheld in certain situations:

> Comity is the basis for ***voluntary*** enforcement or recognition by one state of the judicial proceedings of a sister state.... Comity is not a binding obligation on the forum state, but a ***courtesy voluntarily extended*** to another state for reasons of 'practice, convenience and expediency.' ***Deference is not offered, however, when*** it would contravene the public or judicial policy of the forum state. Thus, application of comity involves an examination by the Court of both the public policy of the forum state and the impact on that policy of enforcing the foreign proceeding.

Kane v. Kane, 198 Mont. 335, 338, 646 P.2d 505, 507 (1982) (emphasis added) (internal citations and quotations omitted, citing and quoting *Mast Foos & Co. v. Stoerer Mfg. Co.*, 177 U.S. 485, 488-489 (1900)).

B. The comity analysis.

44. Federally, the comity analysis involves "two mandatory and six discretionary grounds for non-recognition of foreign judgments." *Wilson*, at 810. Federal courts "***must neither recognize nor enforce*** tribal judgments" if: (1) the tribal court lacked either personal or subject matter jurisdiction; or (2) the defendant was not afforded due process of law. *Id.* (emphasis added). They ***may*** decline enforcement on the grounds of fraud or conflict with the public policy of the forum. *Id.*

45. State law is also relevant. *DeJoria v. Maghreb Petroleum Exploration, S.A.*, 804 F.3d 373, 386 (5th Cir. 2015) ("Recognition of foreign-country judgments is a matter of state law...." (citing *Hilton v. Guyot*, 159 U.S. 133, 163-64 (1895)). Under Montana law, a tribal court judgment "against a person ... is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title and can only be repelled by evidence of a want of

jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. M.C.A. § 26-3-205.

C. The Tribal Court lacked both subject matter and personal jurisdiction.

46. Under either the federal or state tests, the Tribal Court must have had jurisdiction.

47. The Tribal Court lacked subject matter jurisdiction to decide Karen's rights in assets other than Indian trust land or restricted fee lands.

48. As noted above, tribes may regulate conduct of non-members, even ***on the reservation*** only if certain narrow exceptions apply. *See Plains Commerce, supra.* As to conduct off the reservation, tribes lack inherent authority to regulate it whatsoever. *See Dolgencorp, supra.*

49. Scott relies on *in rem* jurisdiction, citing the tribal court's exclusive jurisdiction over ownership of tribal trust lands. Scott's Mot. 13-20. Karen does not dispute that the SNI has exclusive right to adjudicate ***who owns any*** tribal trust land that might be included in the estate or restricted fee land within the reservation. That does not, however, give that tribal court the power to dictate what this Court does with that decision. Under Montana law, this Court is to consider all assets of either party, but the SNI courts threaten contempt. *In rem* jurisdiction does not support such overreach, but is only "conclusive upon the ***title to the thing***." M.C.A. § 26-3-205(1) (emphasis added).

50. Moreover, the tribal court's decision that business interests are "Nation-sourced assets" is beyond the jurisdiction of the tribal court. Scott incorrectly focuses on the situs of the businesses themselves. But his interests in the businesses, such as his partnership interest in GTS Enterprises or his membership interests in the various limited liability companies, are distinct from the businesses' assets and have a situs in Montana, where Scott lives. *Supra.*

51. Finally, even if intangible business interests were subjected to the purported

"sentiments" afforded Indian trust land, the Tribal Court decision resolves only ownership, not whether this Court may consider that income and those assets when equitably distributing the marital estate.

52. In short, the Tribal Court's jurisdiction to adjudicate ***title*** to real property within the reservation does not give it subject matter jurisdiction over: (1) title to personal property (business interests), particularly those located off the reservation; or (2) the division of property in a divorce between Montana residents pending in this Court.

53. The Tribal Court must have had personal jurisdiction over Karen to be entitled to deference under the comity test. It lacked such jurisdiction over Karen.

54. First, by the tribe's own rules, its courts lack personal jurisdiction over Karen. The Peacemaker Court rules give the tribal court jurisdiction over persons: "[R]esiding, located, or present" on the reservation; Engaged in business or activity within the reservation, but even then, only for claims "arising from such business or activity"; Who own, use, or possess property within the reservation, but only for claims arising from that "ownership, use, or possession"; Persons who commit tortious acts "within the Nation"; and Persons who commit "a civil offense" in violation of a "Nation ordinance...." Tribal Court Rules, § 2-104. None of those apply to Karen.

55. The next section, "Personal jurisdiction by acts of non-domiciliaries," allows for the exercise of jurisdiction over non-tribal residents for claims arising from that nondomiciliary's transaction of business or tortious conduct on the reservation or tortious conduct off the reservation that causes injury on the reservation if the person has certain minimum contacts with the reservation. *Id.*, § 2-105. That specific jurisdiction does not apply because the claims adjudicated by the Tribal Court did not arise from Karen's conduct on the reservation.

56. Finally, the tribe's rules about "Jurisdiction over matrimonial actions" provides for divorce actions "as between Indians residing on the Seneca Nation Reservations...." *Id.*, § 2-110(a). That does not give the court subject matter jurisdiction over matrimonial actions involving non-Indians who, like Karen, have never lived on the reservation, or personal jurisdiction over Karen.

57. In short, the Peacemaker Court's own rules establish its lack of jurisdiction over Karen.

58. Federal "fairness" considerations compel the same conclusion. "[W]hether a tribal court has adjudicative authority over nonmembers is a federal question." *Plains Commerce*, 554 U.S. at 324. When dealing with a foreign court, such authority requires that the defendant was amenable to the exercise of jurisdiction by that court. *See DeJoria*, 804 F.3d at 386.

59. "Amenability to jurisdiction means that a defendant is within the substantive reach of a forum's jurisdiction under applicable law." *DeJoria*, 804 F.3d at 387 (citing *DeMello v. Toche Marine, Inc.*, 711 F.2d 1260, 1264 (5th Cir. 1983).

60. A defendant receives "fair warning" so as to be amenable to jurisdiction of a foreign court where the defendant engages in some purposeful or deliberate activity affecting the forum and where the litigation results from injuries that "arise out of or relate to" those activities. *See State Farm Mut. Auto Ins. Co. v. Estate of Bussell*, 939 F. Supp. 646, 648 (S.D. Ind. 1996) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). This requirement of purposeful conduct or availment "ensures that a defendant will not be hailed [sic] into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' context." *Id.* (citing *Burger King; Hanson v. Denckla;* 357 U.S. 235, 253 (1958); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984); and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 299

(1980)).

61. Karen did not have meaningful contact with or avail herself of the privilege of engaging in activities on the reservation. She and Scott were married and lived outside the reservation boundaries. Karen has no business or legal entanglements with the reservation. Nothing suggests that Karen could reasonably expect to be haled into Peacemaker Court in upstate New York to adjudicate the terms of her divorce.

62. Both the tribe's own rules and fairness considerations foreclose tribal court jurisdiction over Karen. In fact, Scott makes no attempt to argue that the tribal court had personal jurisdiction over Karen, arguing only *in rem* jurisdiction. Scott's Motion, pp. 10-11. That does not support the tribal court judgment beyond adjudicating title to any trust land that may be involved.

63. Karen preserved, and did not waive, her objection to the Tribal Court's exercise of personal jurisdiction over her when she raised that defense in her first appearance in Tribal Court. A "special appearance is no longer required to contest personal jurisdiction, as Rule 12, M.R.Civ.P., abolished the distinction between special and general appearances." *Semenza v. Kniss*, 2005 MT 268, ¶ 17, 329 Mont. 115, 122 P.3d 1203. Instead, a party can "challenge a court's personal jurisdiction simply by raising the issue in its initial response to a claim." *Id.*

64. *Plains Commerce* held that the bank had preserved its objection to the jurisdiction of the tribal court by contending in its tribal court answer that the tribal court lacked jurisdiction. *Id.* at 342. So, too, did Karen in her motion to dismiss for lack of jurisdiction.

D. The Tribal Court did not afford Karen due process.

65. "[F]ederal courts ***must neither recognize nor enforce*** tribal judgments if … the defendant was not afforded due process of law." *Wilson*, 127 F.3d at 810. M.C.A. § 26-3-205's reference to a "want of notice" also necessarily requires "meaningful" notice. "The fundamental

requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation and citation omitted); *see also Montanans v. State*, 2006 MT 277, ¶ 30, 334 Mont. 237, 146 P.3d 759 (same). The concept includes "a 'meaningful' opportunity to prepare a defense." *California v. Trombetta*, 467 U.S. 479, 485 (1984).

66. The Tribal Court proceeding violated Karen's due process rights because she was not able to discover the applicable law. As described above, the tribal court judgment is grounded in oral, unwritten "custom and practice." Yet, when Karen's counsel asked where he could even learn what that "law" was, the court told him candidly that, "in your world, you can't do it...." *See supra*; Transcript, p. 14. It cannot comport with due process to deprive Karen of property rights based on rules of law that she "can't" even know.

67. The tribal court proceeding violated Karen's due process rights because she was not able to discover the relevant facts. *See supra*.

68. The Tribes violation of its own rules may not be a per se due process deprivation, but it may be if the violation "den[ied] a person adequate notice or an opportunity to be heard." *Accord Joe Nathan James v. AG*, 2022 U.S. App. LEXIS 20579, at *23 (11th Cir. July 26, 2022). Here, the Tribal Court rushed to judgment, trampling the requirements of its own rules, along with Karen's due process rights.

E. Circumstances surrounding the Tribal Court proceeding strongly suggest impropriety in the relationship between Scott and the tribunal.

69. "Collusion" is a basis to refuse to enforce the tribal court judgment. The facts in this case raise such concerns. The Tribal Court proceeded in derogation of its own rules regarding subject matter and personal jurisdiction, on unacceptably short notice to Karen, based on substantive law which it acknowledged she "can't" find, disallowing fact discovery, and

issuing a sweeping edict that Karen and this Court are not even allowed to consider or value the assets that fall within the never-before-announced "Nation-sourced assets" category.

70. As detailed above, Scott and his family are fully intertwined with the tribal judicial officers involved. Given the web of relationships, a question arises about whether the Tribal Court process was fairly conducted by a neutral body. This Court is not suggesting malfeasance, but noting the appearance.

71. The Montana Supreme Court has exercised supervisory control to address an appearance of impropriety when a judge's son clerked for counsel for one of the parties, the judge socialized with members of that firm, and they met and shared a drink at a football game. *Washington v. Mont. Mining Props.*, 243 Mont. 509, 515-16, 795 P.2d 460, 464 (1990). The facts in this case likewise raise concerns.

F. The Tribal Court Judgment is based on clear mistakes of law and fact.

72. "[C]lear mistake of law or fact" are bases to refuse to give effect to a tribal court judgment. *See* M.C.A. § 26-3-205.

73. The Tribal Court justified its ruling by referencing the application of SNI law to activities on the reservation. The assumptions about the businesses being confined to the reservation are wrong—most of their sales are not even in the same state. *See supra*. Moreover, Scott and his partners have expressly contracted that SNI law does not apply and the SNI courts cannot adjudicate disputes regarding those businesses. The entire premise from which the tribal court would dictate that this Court must ignore Montana law is factually untrue.

74. And the Tribal Court was mistaken legally. Other courts have properly analyzed, and rejected, Scott's attempts to shield himself behind the reservation boundaries. For instance, Scott argued that Idaho could not regulate his "on-reservation" activity. *Idaho v. Maybee*, 224 P.3d at 1122. However, "[a]bsent express federal law to the contrary, Indians going beyond

reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State." *Id.* at 1123 (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973)). And, "[w]hen ... state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land." *Id.* (quoting *Nevada v. Hicks*, 533 U.S. 353, 362 (2001)). The "*Bracker* balancing test does not apply" to conduct off the reservation. *Id.* at 1124 (referring to *White Mountain Apache Tribe v. Bracker*, 448 U.S.136, 143 (1980)).[6] Thus, Idaho could enforce its law notwithstanding the Indian Commerce Clause of the United States Constitution. 224 P.3d at 1124; *see also State v. Maybee*, 232 P.3d 970 (Ore. App. 2010) (rejecting Scott's jurisdictional challenge, because, although his business may be physically located on tribal land, its activities reach beyond it into Oregon, and the "courts of this state have subject matter jurisdiction to adjudicate" the Oregon state laws claims at issue); *Department of Health and Human Services v. Maybee*, 965 A2d 55, ¶ 6 (Maine 2009) (concluding that state court had authority to adjudicate case involving state law claims against Scott because his activity "reaches beyond the reservation..."). As the Nevada court explained in rejecting Scott's subject matter jurisdiction challenge:

> Maybee argues that because his businesses are on the reservation ... his activity is to be deemed to take place within the reservation's boundaries and is therefore, pre-empted. However, Maybee ... engages in activity that reaches beyond the reservation.... Thus, Maybee's argument of pre-emption fails as his customers do not travel to or conduct business within the boundaries of the tribal lands.

Nev. ex rel. Mastro, 2010 Nev. Dis. LEXIS 2, *2-3 (Nev. 2nd Jud. Dist. Ct., June 29, 2010).

G. It would violate Montana's public policy to give effect to the Tribal Court Judgment.

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[6] This point is important given that Scott's entire preemption analysis hinges on application of the *Bracker* test.

75. The comity tests articulated above inquire about the public policy of the state at issue. Thus, for example:

> We declined to relinquish jurisdiction voluntarily under the principle of comity ... when such relinquishment would have violated a firm Montana public policy.

Tenas v. Progressive Preferred Ins. Co., 2008 MT 393, ¶ 21, 347 Mont. 133, 197 P.3d 990 (citing *Oberson v. Federated Mut. Ins. Co.*, 2005 MT 329, ¶ 17, 330 Mont. 1, ¶ 17, 126 P.3d 459, ¶ 17; *see also Brown v. Terrascan Exploration of Mt.*, 2002 ML 989; 2002 Mont. Dist. LEXIS 3293 (Fifteenth Judicial District, Roosevelt County, January 3, 2002) ("[C]omity requires that recognition of the tribal judgment not be repugnant to Montana's public policy."). The principle which determines whether we shall give effect to foreign legislation is that of public policy and, where there is a conflict between our public policy and application of comity, our own sense of justice and equity as embodied in our public policy must prevail…." *Matter of Cayuga Nation v. Parker* (App. Div.), 2024 NY Slip Op 03603, ¶ 2, 229 A.D.3d 1066, 1068, 215 N.Y.S.3d 624, 627. Consideration of the "public policy … of the forum state" is also a part of the federal comity analysis. *See Wilson*, 127 F.3d at 810 (quoted at Scott's Motion, pp. 8-9).

76. Every statute adopted by the Montana Legislature is an expression of the public policy of the State of Montana. *See Phillips v. GMC*, 2000 MT 55, ¶ 75, 298 Mont. 438, 995 P.2d 1002 ("the public policy of a state is simply the rules, as expressed in its legislative enactments and judicial decisions, that it uses to decide controversies" and "every statute duly enacted by the Legislature is an expression of public policy with regard to its subject matter." (quoting *Rothwell v. Allstate Ins. Co.*, 1999 MT 50, ¶ 24, 293 Mont. 393, 976 P.2d 512 (Gray, J., dissenting)).

77. In *Tenas*, the "District Court properly subordinated the discretionary principle of comity to the important public policy implications" of Montana law prohibiting "anti-stacking

provisions in insurance policies…." *Id.*, ¶ 23. That rule "constitutes a … firm public policy under Montana law." *Id.* So, too, does the requirement that a court presiding over a divorce must equitably distribute all of the parties' assets, and cannot be deprived of the power to do so via an alleged oral premarital agreement.

78. Giving effect to the Tribal Court Judgment would eviscerate Montana's public policy requiring an equitable distribution. *See supra.*

79. It would also violate Montana public policy regarding premarital agreements. Montana public policy requires prenuptial agreements to be both written and pre-marital. *See* M.C.A. §§ 40-4-603(1) (must be "made in contemplation of marriage"); and 40-2-604 (writing required). Scott, however, described, and the Tribal Court apparently enforced, some verbal "understanding" reached after the marriage. *See, supra.* Moreover, under Montana law, a premarital agreement may not be enforced if it was not entered voluntarily or if it is unconscionable and there was not adequate disclosure. M.C.A. § 40-2-608. Karen was given no opportunity to raise, conduct discovery about, or to present, these defenses. Giving effect to the tribal court judgment would conflict with Montana's public policy.

H. Fraud also vitiates the tribal court judgment.

80. "[F]raud vitiates all…," *First Nat'l Bank v. Conner*, 85 Mont. 229, 239, 278 P. 143, 146 (1929), including tribal court judgments. *See Wilson*, at 810; M.C.A. § 26-3-205. The evidence cited above supports a finding that Scott is engaging in fraud by falsely representing to the Tribal Court and this Court that he is a reservation domiciliary, his businesses are organized solely under and governed solely by SNI law, and non-members (like Karen) are inherently incapable of owning any interest in his businesses without threatening the very sovereignty of the SNI. And that's not all. Even without discovery, Karen has learned of filings Scott made in federal court in California showing that: Scott is actually domiciled in Montana (not the

reservation); GTSE is a New York (not tribal) corporation; and the businesses can be valued without violating SNI law or sovereignty. *See* Karen's Second Motion for Judicial Notice and exhibits thereto.

81. In summary, the Court finds that it is not required to afford comity for the many reasons discussed herein.

I. Lack of clarity.

82. Although this is not, technically, one of the comity factors, the Court notes the lack of clarity and specificity in the Tribal Court Judgment. It broadly addresses "Scott Maybee's, Seneca Nation-sourced assets," *see, e.g.,* Modified Declaratory Judgment, pp. 1 and 2, but does not list or define what they are.

83. The Court is concerned that, if it were to deem the Tribal Court Judgment to be effective, it would still not know how to apply it to any particular asset beyond the limited category of real estate located on the SNI reservation.

ORDER

Based upon the foregoing, and the record in this case, it is HEREBY ORDERED as follows:

1. The Tribal Court Judgment is determinative only as to title to any Indian trust land that may be involved in this case;
2. The Tribal Court Judgment is not otherwise binding upon either this Court or Karen.
3. The Tribal Court Judgment does not and will not preclude this Court from exercising its jurisdiction in this matter to "finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title to the property and assets is in the name of the husband, or wife, or both," M.C.A. § 40-4-202(1), including considering and valuing any income or assets

of the parties, including those that Scott may own or claim to own separately from the marital estate by reason of being located on the Seneca reservation or otherwise by operation of the law or the Tribal Court Judgment.

4. The Tribal Court Judgment does not and will not preclude the declaration of disclosure requirements pursuant to M.C.A. §§ 40-4-252 and -254, which require the parties to identify "all assets in which the declarant has or may have an interest ... regardless of the characterization."

IT IS SO ORDERED.

Dated this 5th day of May 2026.

Hon. Judge John C. Brown
District Court Judge

cc: Sherine Blackford
Elizabeth Walker
Charles J. Cook
Pierce Tyler Teeuwen
Caitlin Terese Pabst
Robert K. Baldwin