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The Cherokee Supreme Court

Eastern Band of Cherokee Indians
Qualla Boundary, Cherokee, North Carolina

FILED

STEVEN FRANCIS BECK,)	
)	
APPELLANT,)	
)	CSC-20-02
V.)	
)	OPINION
EASTERN BAND OF CHEROKEE INDIANS;)	
TRIBAL COUNCIL CHAIRMAN ADAM)	
WACHACHA, IN HIS OFFICAL CAPACITY)	
ONLY; COUNCIL MEMBER DAVID)	
WOLFE, IN HIS OFFICIAL CAPACITY)	
ONLY; COUNCIL MEMBER RICHARD)	
FRENCH, IN HIS OFFICIAL CAPACITY)	
ONLY; COUNCIL MEMBER ROBERT "BO")	
CROWE, IN HIS OFFICIAL CAPACITY)	
ONLY; COUNCIL MEMBER TOMMYE)	
SAUNOOKE, IN HER OFFICIAL CAPACITY)	
ONLY; COUNCIL MEMBER ALBERT D.)	
ROSE, IN HIS OFFICIAL CAPACITY ONLY;)	
COUNCIL MEMBER LISA TAYLOR, IN)	
HER OFFICIAL CAPACITY ONLY;)	
COUNCIL MEMBER BOYD OWLE, IN HIS)	
OFFICIAL CAPACITY ONLY; COUNCIL)	
MEMBER TOM WAHNETAH, IN HIS)	
OFFICIAL CAPACITY ONLY; COUNCIL)	
MEMBER PERRY SHELL, IN HIS)	
OFFICIAL CAPACITY ONLY; COUNCIL)	
MEMBER BUCKY BROWN, IN HIS)	
OFFICIAL CAPACITY ONLY; AND)	
COUNCIL MEMBER JEREMY WILSON,)	
IN HIS OFFICIAL CAPACITY ONLY,)	
)	
APPELLEES.)	

David A. Sawyer, for Appellant Steven Francis Beck.

Van Winkle, Buck, Wall, Starnes and Davis, P.A., by Dale A. Curriden and Nevin Wisnoski, for Appellees Eastern Band of Cherokee Indians and Elected Members of the Tribal Council.

Opinion of the Court

Presiding Chief Justice PIPESTEM, B. TOINEETA, on behalf of the Court.

Plaintiff-Appellant Steven Francis Beck (Plaintiff) appeals pursuant to Cherokee Code (C.C.) § 7-2(e) from the order entered by Judge Randle L. Jones dismissing all purported claims alleged in Plaintiff's complaint with prejudice. Defendants-Appellees are the Eastern Band of Cherokee Indians (EBCI or the Tribe) and Tribal Council representatives, sued only in their official capacity (collectively, Defendants).

The complaint filed by Plaintiff in the Cherokee Court (trial court) seeks (1) a declaratory judgment “recognizing and acknowledging that Plaintiff is the owner or holder of the ‘use rights’ to Painttown Parcel # 90, [(Parcel 90),] in full, and declaring and describing the meaning and extent of the ‘use rights,’” and (2) damages stemming from construction activities undertaken by or on behalf of the Tribe in 2016, which he contends substantially interfered with and deprived him of his alleged rights — possessory interests and “use rights” — in Parcel 90 as the devisee of his father, Samuel F. Beck. More specifically, with respect to his requests for damages, Plaintiff's complaint contends that the Tribe's construction activities constituted (1) a trespass on his alleged rights in Parcel 90, (2) an inverse condemnation or implied taking of said alleged rights in Parcel 90 without compensation, and (3) a deprivation of said alleged rights in Parcel 90 without due process of law in violation of the Indian Civil Rights Act (ICRA), 25 U.S.C. §§ 1301-1304 (2019), specifically *id.* § 1302(a)(5) (providing that “[n]o Indian tribe in exercising powers of self-government shall . . . take any private property for a public use without just compensation”) and *id.* § 1302(a)(8) (providing, in pertinent part, that “[n]o Indian tribe in exercising powers of self-government shall . . . deprive any person of . . . property without due process of law”).

Defendants argued that Plaintiff's complaint warranted dismissal pursuant to Rule 12(b)(1) and/or Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. The trial court dismissed

Opinion of the Court

Plaintiff's claims pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted under Cherokee law. Plaintiff appealed to this Court.

At the outset, careful examination of the parties' briefs, the record on appeal, and relevant Cherokee laws¹ has revealed to this Court the need to answer a foundational question regarding justiciability of Plaintiff's alleged claims, which this Court raises sua sponte pursuant to Rule 12(b)(1). Ultimately, as discussed below, the Court concludes that Plaintiff's complaint must be dismissed for lack of justiciability based on the political question doctrine.

BACKGROUND

The complaint here frames Plaintiff's lawsuit as rooted in contract (as allegedly recognized by the Tribal Lands Committee and referenced in Resolution No. 91 (2003)), and in tort in relation to 2016 construction activities undertaken by or on behalf of the Tribe, which allegedly harmed or interfered with his alleged interests in Parcel 90.² Importantly, however, Plaintiff ignores Tribal Council's enactment of Resolution No. 766 (2009), which approved the division of Parcel 90 (hereinafter, former Parcel 90).³ Specifically, this 2009 resolution approved the division and assignment of interests in former Parcel 90, which consisted of a 40% possessory interest in the

¹ Cherokee laws reviewed by the Court consisted of (1) the Tribe's Charter and Governing Document, (2) the Cherokee Code, and (3) the Resolutions enacted by Tribal Council, ratified by the Tribe's Principal Chief, and signed by the Secretary of the United States Department of Interior (or the Secretary's official designee) as required by federal and Tribal law in regard to the assignment or encumbrance of Tribal lands, specifically in regard to the parcels at issue.

² Plaintiff's complaint asserts that the Cherokee courts have jurisdiction over his alleged claims based on his allegations of fact pertaining to the contract and tort framework that he advances under C.C. § 1-2(a) (2024) (providing that "[t]he Cherokee Court shall have jurisdiction over all persons, businesses, corporations or other legal entities in civil suits which arise on the Cherokee Indian Reservation"), *id.* § 1-2(d) (stating that "[t]he Cherokee Court . . . shall exercise jurisdiction over disputes involving any contract that is negotiated or executed on Indian trust land, or involves any interest in Cherokee trust lands and contractual right of the Tribe"), and *id.* § 1-2(g)(1) (providing, in pertinent part that "[t]he Cherokee Court . . . shall exercise jurisdiction over actions against the [EBCI] seeking . . . a declaratory judgment concerning individual rights guaranteed by the [ICRA]"). While the Tribe has provided a limited waiver of sovereign immunity that allows a party to seek a declaratory judgment with respect to the ICRA under C.C. § 1-2(g)(1), said waiver does not allow a plaintiff to seek a declaratory judgment regarding nonjusticiable political questions. As such, the Court does not further recount Plaintiff's allegations herein.

³ Tribal Council enacted Resolution No. 91 (2003) which directed the Lands Committee to assist in dividing Parcel 90 among the heirs of Sarah Beck and Samuel F. Beck.

Opinion of the Court

undivided whole of former Parcel 90 assigned to the heirs of Sarah Sneed Beck (not including Plaintiff) and a 60% possessory interest in the undivided whole of former Parcel 90 assigned to Plaintiff, into two new separate Tribal land parcels — (1) Parcel 90-A, consisting of 40% of the land in former Parcel 90, assigned to the Sarah Sneed Beck heirs, and (2) Parcel 90-B, consisting of 60% of the land in former Parcel 90, assigned to Plaintiff. Res. No. 766 (2009). Hence, Plaintiff's complaint seeks to adjudicate claims in the Cherokee courts pertaining to a parcel of Tribal property (former Parcel 90) that has not legally existed since 2009. The true gravamen of Plaintiff's lawsuit is an attempt to challenge the Tribe's 2009 actions to approve the 40-60 partition and division of former Parcel 90 into Parcel 90-A and Parcel 90-B and the resulting assignments of those possessory interests described above, which he contends adversely impacted his alleged rights in the whole of former Parcel 90.

In short, Plaintiff seeks to adjudicate a challenge to Tribal Council's decisions assigning interests in Tribal land (former Parcel 90) and requests relief that would require this Court to substantially interfere with and effectively overturn the Tribe's decision about former Parcel 90, thereby circumventing the authority reserved to the Tribal Council. As discussed further below, Cherokee law is clear that Tribal Council is the branch of government that has the exclusive authority over all decisions relating to Tribal lands; accordingly, Plaintiff's claims and requests for relief are nonjusticiable.

DISCUSSION

I. Justiciability

"Justiciability is a threshold issue, and courts have an independent obligation to evaluate whether a case is justiciable before reaching the merits, even when the issue is not originally raised by the parties." *Blankenship v. E. Band of Cherokee Indians*, 16 Am. Tribal Law 30, 36 (E.

Opinion of the Court

Cherokee Sup. Ct. 2019) (per curiam) (citing *Dep't of Com. v. U.S. House of Representatives*, 525 U.S. 316, 328, 119 S. Ct. 765, 772 (1999); *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 808, 123 S. Ct. 2026, 2030 (2003)). “[J]usticiability determines whether a controversy is proper to come before a tribunal for decision or, in other words, whether it is appropriate for judicial inquiry.” *Blankenship*, 16 Am. Tribal Law at 35 (citations omitted). “It instructs the courts, especially in dealing with cases challenging the validity of government action, to refuse to issue advisory opinions, to decline to determine political questions, and to observe the constraints of standing, ripeness and mootness.” *Blankenship*, 16 Am. Tribal Law at 35 (citing *United States v. Richardson*, 418 U.S. 166, 171-72, 94 S. Ct. 2940, 2943-44 (1974); *Flast v. Cohen*, 392 U.S. 83, 95, 88 S. Ct. 1942, 1950 (1968)).

Hence, even though the Tribe’s judicial power is vested in the Cherokee Judicial Branch, C.C. § 7-3 (2024), and the Cherokee Court has “original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Charter, laws, customs, and traditions of the [EBCI], including cases in which the [EBCI], or its officials and employees, shall be a party,” *id.* § 7-2(b), this Court has recognized that “[i]t is the duty of the Cherokee [c]ourts to hear and decide *justiciable* cases and controversies,” *Blankenship*, 16 Am. Tribal Law at 35 (emphasis added). As discussed below, this Court has consistently refused to adjudicate cases (or claims) that involve nonjusticiable political questions. *Bird v. E. Band of Cherokee Indians*, No. CSC-20-01, slip op. at 8-11, 2025 WL 101855, at *4-5 (E. Cherokee Sup. Ct. Jan. 13, 2025); *Blankenship*, 16 Am. Tribal Law at 35-40; *E. Band of Cherokee Indians ex rel. Enrolled Members v. Lambert*, 15 Am. Tribal Law 55, 62-63 (E. Cherokee Sup. Ct. 2018).

Opinion of the Court

II. Political Question Doctrine

“The political question doctrine distinguishes between matters that are exclusively committed to the province of a separate branch of government and are not appropriate for judicial inquiry, and those matters that require adjudication in a court of law.” *Bird*, No. CSC-20-01, slip op. at 8, 2025 WL 101855, at *4 (citing *Lambert*, 15 Am. Tribal Law at 62-63; *Blankenship*, 16 Am. Tribal Law at 35-40; *Nixon v. United States*, 506 U.S. 224, 234-38, 113 S. Ct. 732, 738-40 (1993)). Said “doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations” committed to a specific branch of government within a governing and founding document, such as the Charter and Governing Document of the EBCI (Charter). *Lambert*, 15 Am. Tribal Law at 62 (quoting *Japan Whaling Ass’n v. Am. Cetacean Soc’y*, 478 U.S. 221, 230, 106 S. Ct. 2860, 2866 (1986)). It is well-settled in this jurisdiction that the Cherokee courts do not adjudicate political questions and should avoid interfering with the exclusive functions assigned to the EBCI legislative branch – Tribal Council. *See Bird*, No. CSC-20-01, slip op. at 8-11, 2025 WL 101855, at *4-5; *Blankenship*, 16 Am. Tribal Law at 35-40; *Lambert*, 15 Am. Tribal Law 62-63.

For purposes of Rule 12(b), whether a claim presents a nonjusticiable political question that precludes judicial review is a question of subject matter jurisdiction under Rule 12(b)(1). *Bird*, No. CSC-20-01, slip op. at 7, 2025 WL 101855, at *3; *Blankenship*, 16 Am. Tribal Law at 35-40. This Court reviews Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction de novo, which “means that the appellate court evaluates the materials without needing to pay deference to the lower court’s order.” *Bird*, No. CSC-20-01, slip op. at 7, 2025 WL 101855, at *3 (quoting *Teesateskie v. E. Band of Cherokee Indians Minors Fund*, 13 Am. Tribal Law 180, 185 (E. Cherokee Sup. Ct. 2015) (per curiam)). Moreover, in conducting our review, this Court may

Opinion of the Court

consider matters outside the pleadings. *Bird*, No. CSC-20-01, slip op. at 7, 2025 WL 101855, at *3; *Teesateskie*, 13 Am. Tribal Law at 185; *see also Tubiolo v. Abundant Life Church, Inc.*, 167 N.C. App. 324, 327, 605 S.E.2d 161, 163 (2004) (emphasizing that “[i]n considering a motion to dismiss for lack of subject matter jurisdiction, it is appropriate for the court to consider and weigh matters outside of the pleadings”) (citation omitted), *appeal dismissed and disc. rev. denied*, 359 N.C. 326, 611 S.E.2d 853 (2005).

As noted earlier, although Plaintiff frames his lawsuit as rooted in contract and tort, the adjudication of Plaintiff’s claims would require the Cherokee courts to involve themselves in second guessing Tribal Council’s decisions regarding the division and assignment of property interests in former Parcel 90. The Charter is clear, however, that Tribal Council is the branch of EBCI government with exclusive authority over all decisions related to interests in Tribal lands. *See* Charter §§ 16, 23. The Charter expressly states, in pertinent part, that “[t]he Council of the [EBCI] shall direct the management and control of all property, either real or personal, belonging to the Tribe,” *id.* § 16.⁴ Additionally, the Charter expressly provides that: “The Tribal Council is . . . fully authorized and empowered to . . . govern the management of real . . . property held by the Tribe, and direct and assign among its members thereof, . . . land held by them as a Tribe, and is . . . vested with full power to enforce obedience to such laws and regulations as may be enacted.” *Id.* § 23.

In accord with the Charter, Tribal Council has enacted Tribal ordinances and codified provisions in the Cherokee Code that explicitly reserve for Tribal Council “sole power and

⁴ C.C. § 47B-1 (2024) similarly provides: “The Tribal Council shall direct the management and control of all property, either real or personal belonging to the [EBCI].” We note that, during the pertinent time periods involved in this matter, current C.C. § 47B-1 was previously codified as former C.C. § 47-1; nevertheless, the current provision is substantively identical to the former one. *See* Ord. No. 453 (2019) (reorganizing former C.C. Chapter 47 into multiple chapters dedicated to different subject areas pertaining to real property, specifically Chapters 47A through 47F, recodifying former C.C. § 47-1 as current C.C. § 47B-1, and repealing former Chapter 47).

Opinion of the Court

authority to approve assignment and transfer of possessory rights to its lands among its members,” C.C. § 117-10 (2024), and expressly provide that the Cherokee courts “shall not have authority, in deciding any case within [their] lawful jurisdiction, to . . . [g]rant, approve or assign a possessory interest in any Cherokee trust lands to any person,” *id.* § 1-33(a). Additionally, consistent with the Charter, Tribal Council has enacted Tribal ordinances and codified provisions in the Cherokee Code, which explicitly state that when a possessory interest is assigned to a Tribal member, legal title to Tribal land remains vested in the United States of America for the benefit of the Tribe, C.C. § 47B-2(a) (2024), and that the Tribe has reserved specific rights for itself, including, among others, “[t]he power and responsibility to control . . . the transfer of, and the manner and method of inheritance and devise of the possessory holding,” *id.* § 47B-2(b). Further, Tribal Council is vested with exclusive authority to both determine the heirs of deceased enrolled members whose estates hold possessory interests in Tribal lands, *id.* § 28-1(c) (providing, in pertinent part, that Tribal Council makes the final determination regarding heirs of a deceased enrolled member for real property and that Tribal Council’s decision with respect thereto may not be appealed), and resolve disputes concerning Tribal lands, *see id.* § 117-10 (stating, in pertinent part, that Tribal Council “shall have quasi-judicial powers to resolve disputes concerning Tribal lands and properties and other matters authorized by Tribal law”).⁵

These Cherokee Code provisions attest to Tribal Council’s sole power and authority regarding the approval of assignments and transfers of possessory interests in Tribal lands. Moreover, neither the Charter nor the Cherokee Code authorizes the Cherokee courts to hear

⁵ We note that, during the pertinent time periods involved in this matter, current C.C. § 47B-2 was codified as former C.C. § 47-3; nevertheless, the current provision and former provision are substantively identical. *See* Ord. No. 453 (2019) (reorganizing former Chapter 47 into multiple chapters, including, among others, Chapter 47B – Possessory Holdings, Chapter 47D – Leasing, and Chapter 47E – Easements, Permits, and Rights-of-Way, and recodifying former C.C. § 47-3 as current C.C. § 47B-2, and repealing former Chapter 47 – Real Property).

Opinion of the Court

appeals challenging Tribal Council decisions regarding the use, management, or assignment of interests in Tribal lands, including any protests of decisions made by Tribal Council in accordance with C.C. § 117-40 following an appeal of a Tribal Lands Committee decision to the Tribal Council as set out in in C.C. § 117-34(f)(4)(F) (2024), which explicitly provides that “[a]ll decisions of Tribal Council regarding the actions of the Lands Committee are final and not subject to further review or consideration by any other body or forum.”⁶

In view of the above, the Cherokee courts clearly do not possess subject matter jurisdiction to conduct judicial review of Tribal Council decisions when such authority is exclusively vested in Tribal Council. *See Bird*, No. CSC-20-01, slip op. at 8-11, 2025 WL 101855, at *4-5; *Blankenship*, 16 Am. Tribal Law at 35-40; *Lambert*, 15 Am. Tribal Law 62-63. Accordingly, the Court concludes that Plaintiff’s complaint is nonjusticiable under the political question doctrine because the case or controversy between the parties involves decisions regarding interests in Tribal lands, a matter over which the Tribal Council has exclusive power and authority.

CONCLUSION

In sum, for the above reasons, the Court concludes that Plaintiff’s complaint requires dismissal pursuant to Rule 12(b)(1) based on the political question doctrine. Accordingly, we affirm as modified the trial court’s decision to dismiss the complaint with prejudice.

AFFIRMED.

⁶ We note that, during the pertinent time periods involved in this matter, current C.C. § 117-34(f)(4)(F) was codified as former C.C. § 117-34(e)(4)(E); nevertheless, the current provision and the former one are substantively identical. *See* Ord. No. 219 (2022) (amending multiple provisions in C.C. § 117-34 but recodifying former C.C. § 117-34(e)(4)(E) as C.C. § 117-34(f)(4)(F)).



Brenda Toineeta Pipestem
Presiding Chief Justice

3-30-25

Date



Robert Hunter (Mar 30, 2025 22:00 EDT)

Robert C. Hunter
Associate Justice

3-30-25

Date



Sharon Tracey Barrett
Associate Justice Pro Tem

3-30-25

Date