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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0256**

United States ex rel., Raymond Auginaush, individually and on behalf of all other
enrolled members, intervenor plaintiff,
Respondent,

White Earth Reservation Committee a/k/a White Earth Tribal Council d/b/a Shooting Star
Casino; et al.,
Respondents,

vs.

Angelo Medure, et al.,
Appellants.

**Filed December 3, 2012
Affirmed
Collins, Judge***

Becker County District Court
File No. 03-CV-10-2895

Zenas Baer, Zenas Baer Law Office, Hawley, Minnesota (for respondents)

Robert G. Manly, Vogel Law Firm, Moorhead, Minnesota (for appellants)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Collins,
Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COLLINS, Judge

Appellants challenge the district court's decision to recognize a tribal court judgment, contending that: (1) the case should be remanded for the district court to consider the decision of the tribal court of appeals that reversed aspects of the recognized tribal court judgment; and (2) the district court abused its discretion when it recognized the tribal court judgment. We affirm.

FACTS

This case has a protracted procedural history dating back to a 1992 contract governing the construction and management of the Shooting Star Casino in Mahanomen. Appellant Gaming World International (GWI) is a closely held corporation, owned solely by appellant Angelo Medure and specializing in operating casinos. Respondent White Earth Reservation Committee a/k/a White Earth Tribal Council (the band) is a federally recognized Indian tribe. We briefly outline some relevant history to provide context for this appeal.

In 1996, convictions were obtained on indictments issued in 1995 against certain tribal leaders for conspiracy to defraud the band in relation to their involvement in the original contract negotiations. The band then terminated its management contract with GWI and ended Medure's employment with the casino. Litigation followed in both tribal and federal courts. In November 2000, the band filed a qui-tam action in tribal court seeking a declaration that the 1992 management contract was null and void. GWI responded by filing an action in federal court seeking to compel arbitration of the dispute

pursuant to provisions of the challenged contract. Despite the band's request to allow the tribal court to rule on the contract's validity, the federal court ordered arbitration. In December 2001, following several days of testimony, the federal arbitration panel awarded damages to the band based on findings that appellants had engaged in a conspiracy to defraud by unlawful means. The United States Court of Appeals for the Eighth Circuit later reversed the order compelling arbitration and remanded the case to the federal district court with instructions to stay the action or to dismiss the action without prejudice until the parties exhausted tribal court remedies.¹

Simultaneous to the federal action, the qui-tam action proceeded in tribal court. The tribal court adopted the arbitration transcript as the official record of its proceeding. This transcript included testimony from Medure. In August 2009 the tribal court ruled that the 1992 contract was null and void. In November 2010 the tribal court issued an order and judgment in favor of the band awarding all amounts paid under the contract, amounting to more than \$18.5 million with interest accruing at the daily rate of \$1,669.12.²

The band sought recognition and enforcement of the tribal court judgment in state district court, pursuant to Minn. R. Gen. Pract. 10.02, because appellants are not members of the band. Following a hearing, the district court issued a 14-page order detailing its consideration of the factors of rule 10.02 and concluding that the tribal court judgment

¹ The Eighth Circuit opinion details the procedural history and facts of this case in much greater detail. See *Gaming World Int'l, Ltd. v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 842-47 (8th Cir. 2003).

² When the state district court issued its recognition order, the total amount owed had increased to \$19,081,895 with interest continuing to accrue.

should be recognized and enforced. Thereafter, the tribal court of appeals issued a decision affirming the tribal court judgment on all grounds not related to the qui-tam action. The tribal court judgment, as recognized by the district court, was not materially affected by the decision of the tribal court of appeals. This appeal followed.

DECISION

I.

Appellants contend that a remand is necessary for the district court to consider the impact of the decision of the tribal court of appeals issued after the district court recognized the tribal court judgment. Appellants argue that they should be allowed to seek supplementation of the record, vacation of the judgment based on newly discovered evidence, or a new trial on remand. We disagree, concluding that remand is neither required nor appropriate.

We first address the argument that remand is required to allow supplementation of the record. Minn. R. Civ. App. P. 110.05 provides, in relevant part: “If anything material to either party is omitted from the record *by error or accident* or is misstated in it, the parties by stipulation, or the trial court . . . or the appellate court . . . may direct that the omission or misstatement be corrected.” (Emphasis added.) Appellants point to no misstatement or omission by error or accident. The tribal appellate decision was not omitted by error or accident. Rather, it was released after the district court’s order recognizing the tribal court judgment, although the district court was aware of its pendency. Moreover, we are able to take judicial notice of the tribal appellate decision, rendering a remand unnecessary and inefficient. *See Bernhardt v. State*, 684 N.W.2d

465, 483 (Minn. 2004) (appellate courts can take judicial notice of appellate decisions relating to action not before the district court). Minn. R. Civ. App. P. 110.05 is inapplicable and no supplementation of the record is appropriate.

Next, we find appellants' argument that a remand is necessary to present new evidence unclear. We are unaware of what "new evidence" appellants would provide but presume it would be the tribal appellate decision. However, the district court was aware that the tribal court judgment was on appeal when it issued its decision. Even if the contents of the tribal appellate decision constituted new evidence, the fact that we can take judicial notice of the decision renders a remand unnecessary.

Finally, appellants' desire for a rehearing arises from arguments that would collaterally attack the decision of the tribal court of appeals. Appellants contend that the tribal court of appeals erred in its discussion of fraudulent inducement and in calculating damages. In their assertion that the tribal court of appeals erred, appellants point to Minnesota caselaw addressing these issues. However, we have expressly held that a state court cannot independently review the merits of a tribal court judgment "before deciding whether to recognize it," and a state court acts improperly by conducting an independent review of a tribal court's application of controlling legal principles. *Shakopee Mdewakanton Sioux (Dakota) Gaming Enter. v. Prescott*, 779 N.W.2d 320, 326-27 (Minn. App. 2010). Indeed, "state courts do not have jurisdiction to conduct even limited review of tribal court decisions." *Id.* at 327 (quoting *Lemke ex rel. Teta v. Brooks*, 614 N.W.2d 242, 245 (Minn. App. 2000)), review denied (Minn. Sept. 27, 2000).

We reject appellants' argument that instructing the district court to reconsider how the tribal courts applied and interpreted fraudulent inducement and the calculation of damages would not amount to an independent review of the merits.³ In our view, a remand, based on these arguments, would signal to the district court that it should consider Minnesota principles of law and compare them to the actions of the tribal court. On these facts, *Prescott* precludes such remand. *See id.*

II.

Appellants next argue that the district court abused its discretion by recognizing the tribal court judgment for enforcement. Minn. R. Gen. Pract. 10.02 outlines the discretionary factors the district court applies when deciding whether to recognize a tribal court judgment. We will reverse a district court determination under rule 10.02 only when the district court abused its discretion in applying the applicable law. *See Prescott*, 779 N.W.2d at 324-25.

Rule 10.02 provides:

(a) Factors. In cases other than those governed by Rule 10.01(a), enforcement of a tribal court order or judgment is discretionary with the court. In exercising this discretion, the court may consider the following factors:

(1) whether the party against whom the order or judgment will be used has been given notice and an opportunity to be heard or, in the case of matters properly considered *ex parte*, whether the respondent will be given notice and an opportunity to be heard within a reasonable time;

³ Appellants also suggest that the way damages were calculated violated their due-process rights. We discuss this argument when considering the district court's application of rule 10.02.

(2) whether the order or judgment appears valid on its face and, if possible to determine, whether it remains in effect;

(3) whether the tribal court possessed subject-matter jurisdiction and jurisdiction over the person of the parties;

(4) whether the issuing tribal court was a court of record;

(5) whether the order or judgment was obtained by fraud, duress, or coercion;

(6) whether the order or judgment was obtained through a process that afforded fair notice, the right to appear and compel attendance of witnesses, and a fair hearing before an independent magistrate;

(7) whether the order or judgment contravenes the public policy of this state;

(8) whether the order or judgment is final under the laws and procedures of the rendering court, unless the order is a non-criminal order for the protection or apprehension of an adult, juvenile or child, or another type of temporary, emergency order;

(9) whether the tribal court reciprocally provides for recognition and implementation of orders, judgments and decrees of the courts of this state; and

(10) any other factors the court deems appropriate in the interests of justice.

(b) Procedure. The court shall hold such hearing, if any, as it deems necessary under the circumstances.

Traditionally, adjudications from other jurisdictions are subject to full faith and credit under the United States Constitution. See U.S. Const. art. IV, §1. However, foreign judgments, such as a tribal court judgment, are subject to the doctrine of comity. See *Hilton v. Guyot*, 159 U.S. 113, 202-03, 16 S.Ct 139, 158 (1895). Rule 10.02 is essentially an embodiment of comity principles. “The rule essentially directs the court to apply the standards of comity, a flexible, fundamentally discretionary doctrine to these situations.” 3A David F. Herr, *Minnesota Practice* § 10.3 (2012 ed.) (addressing rule

10.02). With this harmonization in mind, we do not consider comity principles separately and instead rely on the district court's application of rule 10.02.

Arguing that the district court failed to give proper weight to the factors of rule 10.02(a), appellants rely on *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997) (holding that the issues of jurisdiction and due process carry more weight than other factors). However, appellants failed to demonstrate why we should adopt and apply mere persuasive authority over the explicit guidelines of rule 10.02. The rule is discretionary and, in its application, the district court *may* consider *any* of the factors. Minn. R. Gen. Pract. 10.02(a). Also, binding Minnesota case law is in direct contradiction with the proposition that certain rule 10.02 factors should carry more weight. *Prescott* established that none of the factors are independently determinative and a district court need not “make an express determination as to each and every listed factor.” 779 N.W.2d at 324.

In its comprehensive recognition order, the district court clearly analyzed and applied the factors of rule 10.02(a). The district court conducted an independent assessment of jurisdiction before determining that the combination of factors under rule 10.02(a) favored recognition of the tribal court order. The district court discussed in detail appellants' opportunity to be heard throughout the proceedings and due-process considerations. The district court identified five discrete reasons supporting its determination that appellants' opportunity to be heard at the tribal court level was adequate. These reasons included the fact that appellants testified before the arbitration

panel, had the ability to voice objections during the tribal court process, and had the opportunity to submit briefing and arguments on issues under consideration.⁴

As to due process, the district court determined that this particular factor did not weigh for or against recognition. It noted that the adoption of the arbitration transcript appeared to be over appellants' objection but that the substance of appellants' objection stemmed from the argument that Medure was not a party to the arbitration. The district court rejected that assertion, finding that appellants were "one and the same."

Appellants argue that the district court misinterpreted *Prescott's* maxim against independent review of the merits of a tribal court judgment and instead that very limited deference is given to a tribal court's manner of procedure and due process. However, the district court was aware of this tension and took due care to ensure that it followed both *Prescott* and *Hilton*. The district court cited *Hilton* for the guidance that a case should not be tried afresh upon the mere assertion that the judgment was erroneous in law or fact. See *Hilton*, 159 U.S. at 202-03, 16 S.Ct. at 158. We agree and read the district court's decision to conform to both *Prescott* and *Hilton*.

The district court weighed due process neither for nor against recognition. We are aware of no binding authority, and appellants point to none, supporting the contention that the district court must afford the due-process prong more weight than other factors. When an assignment of error is based on a mere assertion not supported by any argument or citation to authority, we will consider the argument only if error is obvious on mere

⁴ Appellants' argument before this court that Medure was not a party at a variety of hearings is unpersuasive. The tribal court had also adopted the arbitration panel's finding that GWI and Medure were "one and the same."

inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). Such error is not apparent here. Rule 10.02 is a discretionary rule allowing the district court freedom to consider some, or all, of its factors when making a decision. Here, the district court considered each factor of rule 10.02 before determining that six of the nine analyzed factors warranted recognition. Of the three factors that did not weigh in favor of recognition, two weighed neither for nor against recognition and the other weighed only slightly against recognition. We conclude that the district court did not abuse its discretion in recognizing the tribal court judgment.

Affirmed.