

DolgenCorp, Inc. v. Miss. Band of Choctaw Indians¹

732 F.3d 409 (5th Cir. 2013)

By Shane Hill

In *DolgenCorp, Inc. v. Miss. Band of Choctaw Indians*,² the Fifth Circuit Court of Appeals affirmed the United States District Court for the Southern District of Mississippi, Jackson Division's grant of summary judgment in favor of the tribal defendants.³ The Fifth Circuit held that DolgenCorp's consensual relationship with tribal plaintiff, John Doe, gave rise to tribal court jurisdiction over Doe's claims⁴ under *Montana v. United States*.⁵ This case is significant because the Fifth Circuit's interpretation and application of *Montana* and *Plains Commerce Bank v. Long Family Land and Cattle Co., Inc.*⁶ provide Indian tribes with more ground to assert jurisdiction over the activities of nonmembers, which in turn increases tribal sovereignty.

In *Montana*, the Supreme Court recognized that the powers of an Indian tribe do not generally extend to activities of nonmembers of the tribe.⁷ However, the Supreme Court created a consensual relationship exception for "the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements"⁸ and allowed tribes to regulate those activities "through taxation, licensing, or other means. . . ."⁹ The Supreme Court later described the *Montana* consensual relationship exception as only applying when "the regulation . . . stem[s] from the tribe's inherent sovereign

¹ 732 F.3d 409 (5th Cir. 2013).

² *Id.*

³ *Id.* at 411.

⁴ *Id.* at 411, 416-19.

⁵ 450 U.S. 544, 564-66 (1981).

⁶ 554 U.S. 316 (2008).

⁷ *Montana*, 450 U.S. at 565.

⁸ *Id.*

⁹ *Id.*

authority to set conditions on entry, preserve tribal self-government, or control internal relations."¹⁰

In *DolgenCorp, Inc.*, DolgenCorp operated a Dollar General store on land held in trust for the Mississippi Band of Choctaw Indians.¹¹ The tribe operates a job training program for youth, which places young tribe members in short-term, unpaid positions.¹² In the spring of 2003, Dale Townsend, the store's manager, agreed to participate in the job training program.¹³ Through this program, John Doe, a thirteen-year-old tribe member, was assigned to the Dollar General store.¹⁴ John Doe alleges that Mr. Townsend sexually molested him while he was working at the store.¹⁵

In January 2005, the young teen sued DolgenCorp and Mr. Townsend in tribal court, alleging that DolgenCorp was vicariously liable.¹⁶ DolgenCorp and Mr. Townsend filed motions to dismiss in the tribal court based on lack of subject-matter jurisdiction, but these motions were denied.¹⁷ Both parties petitioned the Choctaw Supreme Court for interlocutory review, and that court held that subject-matter jurisdiction existed before remanding it to the lower court.¹⁸

DolgenCorp and Mr. Townsend next filed an action in the United States District Court for the Southern District of Mississippi against the tribal defendants in March 2008.¹⁹ In this action, they alleged that the tribal court lacked jurisdiction and sought to enjoin the prosecution of Doe's suit in tribal court and each filed a subsequent motion for a temporary restraining order and a

¹⁰ *Plains Commerce Bank*, 554 U.S. at 337.

¹¹ *DolgenCorp, Inc. v. Miss. Band of Choctaw Indians*, 732 F.3d 409, 411 (5th Cir. 2013).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

preliminary injunction.²⁰ The district court granted Townsend's motion, but denied Dolgencorp's motion.²¹ Dolgencorp and the tribal defendants later filed cross motions for summary judgment,²² and the district court granted the tribal defendants' motion while denying Dolgencorp's motion.²³ The district court found that *Plains Commerce* did not require an additional showing to *Montana*'s consensual relationship exception and that the tribal court therefore had jurisdiction under *Montana*.²⁴

The Fifth Circuit began its analysis by providing the background of *Montana* and its consensual relationship exception as well as a look into the other cases that have interpreted the contours of *Montana*.²⁵ The Fifth Circuit then rejected Dolgencorp's argument that the consensual relationship exception of *Montana* required a commercial relationship, declining to impose such a requirement and mentioning that it would find a commercial relationship even if one were required.²⁶ Next, the Fifth Circuit found a nexus between Dolgencorp's participation in the job training program and John Doe's tort claims.²⁷ The Fifth Circuit then considered the impact of *Plains Commerce* on *Montana*, finding that *Plains Commerce* could be interpreted with a high level of generality²⁸ and agreeing with the district court that "disputes arising from member-nonmember or tribe-nonmember consensual relationships are deemed as a matter of law to impact tribal rights of self-government sufficient to permit the exercise of tribal court

²⁰ *Id.*

²¹ *Dolgen Corp., Inc. v. Miss. Band of Choctaw Indians*, No. 4:08CV22, 2008 WL 5381906, at *5-7 (S.D. Miss. Dec. 19, 2008).

²² *Dolgencorp, Inc.*, 732 F.3d at 412.

²³ *Dolgencorp, Inc. v. Miss. Band of Choctaw Indians*, 846 F.Supp.2d 646, 650-54 (S.D. Miss. 2011).

²⁴ *Id.* at 652-54.

²⁵ *Dolgencorp, Inc.*, 732 F.3d at 413-15.

²⁶ *Id.* at 415.

²⁷ *Id.* at 415-16.

²⁸ *Id.* at 416.

jurisdiction to adjudicate such disputes."²⁹ The Fifth Circuit then rejected an attempt by Dolgencorp to introduce an argument about the conduct being off-reservation for the first time on appeal, noting that "a federal court has no independent obligation to 'correct' a tribal court's lack of subject-matter jurisdiction over another case."³⁰ Finally, the Fifth Circuit ruled that the availability of punitive damages has no effect on the tribal court's jurisdiction.³¹

This case is significant because of its interpretation of how *Plains Commerce* affects the consensual relationship exception of *Montana*. The Fifth Circuit advanced an interpretation of *Plains Commerce* that limits its potential to drastically alter the contours of the *Montana* exceptions. Rather than reading *Plains Commerce* to impose an additional showing on plaintiffs seeking to invoke tribal jurisdiction or consideration of *Plains Commerce*'s language in a highly specific sense, the Fifth Circuit instead blessed reading *Plains Commerce* generally while also imposing a presumption that consensual relationships between nonmembers and tribes or tribal members impact tribal rights of self-government as a matter of law. As a result, the Fifth Circuit has essentially acted to protect the assertion of tribal jurisdiction over the conduct of nonmembers under *Montana*'s consensual relationship exception.

²⁹ *Dolgencorp, Inc.*, 846 F.Supp.2d at 653.

³⁰ *Dolgencorp, Inc.*, 732 F.3d at 418.

³¹ *Id.* at 418-419.