



**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COURT OF APPEALS**

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**DENA GOLDBERG A/K/A DEENA
GOLDBERG and J. DOE GOLDBERG;
JESSICA SMITH and J. DOE SMITH;
LONNY CAUDLE and KATHY CAUDLE;
JOHN DOES I - X and XYZ
PARTNERSHIPS I - X,**

Appellants,

-V-

**EVERETTE BELONE, SR. and
AARON BELONE,**

Appellees,

Case No. : **APC-17-0007**

OPINION AND ORDER

STATEMENT

On January 20, 2015, the Salt River Pima-Maricopa Community Court entered a default judgment and awarded damages of \$52,600 against Appellants Dena Goldberg, Jessica Smith, and Lonnie and Kathy Caudle. This is an appeal from a denial of a Motion to Set Aside Default Judgment filed by the Appellants. Appellants assert that the Salt River Pima-Maricopa Indian Community Court lacks jurisdiction in this matter. Appellants also claim that several procedural defects, including the failure of the Community Court to conduct a hearing regarding damages, require reversal. We hold that the Salt River Pima-Maricopa Indian Community Court properly exercised jurisdiction. We also hold that the interests of justice will best be served by conducting an appropriate hearing before determining the amount of damages. We therefore reverse the lower court's ruling regarding the amount of damages and remand this case for a hearing on that issue.

FACTUAL BACKGROUND

On December 28, 2011, at approximately 2:33 a.m., at the intersection of Longmore Road and Chaparral Road, within the exterior boundaries of the reservation, a 1999 Chevrolet

Silverado in which Appellants Jessica Smith and Dena Goldberg were riding, and which was owned by Appellants Lonny and Kathy Caudle, collided with a Nissan truck which Appellee Aaron Belone was driving. Smith and Goldberg told the Salt River Pima-Maricopa Community Police that they had allowed an unknown male to drive the Silverado, and that he had fled the scene after the accident. Belone suffered injuries and was transported to Scottsdale Healthcare Osborn. Aaron Belone and Everett Belone, Sr., Plaintiffs/Appellees are members of the Salt River Pima-Maricopa Indian Community. None of the Appellants are members of the Community.

APPELLEES' REPLY BRIEF IS STRICKEN FROM THE RECORD

On April 3, 2016, Appellees filed a Reply Brief. Under Rule 12.1(c)(4), Rules of Civil Appellate Procedure, an Appellee is permitted to file a Reply brief when Appellee has filed a cross appeal. No such cross appeal has been filed. This Court strikes Appellees Reply Brief in its entirety.

DISCUSSION

The Salt River Pima-Maricopa Indian Community Court properly exercised jurisdiction over the case at bar because the intersection of Longmore Road and Chaparral Road is an intersection of two tribal roads within the boundaries of the Salt River Pima-Maricopa Indian Community. The intersection is not "non-Indian fee land," nor has the Salt River Pima-Maricopa Indian Community relinquished its "gatekeeping" rights – its rights as a landowner to occupy and exclude.¹

Neither *Montana v. United States*, 450 U.S. 544 (1981), or *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), are to the contrary. Tribes maintain significant authority over the conduct of persons on Indian land. *McDonald v. Means*, 309 F.3d 530, 536 (9th Cir. 2002). That authority is limited when the conduct takes place on "non-Indian fee lands," *Montana*, 450 U.S. at 565-66, 101 S.Ct. 1245, i.e., "reservation land acquired in fee simple by non-Indian owners." *Strate*, 520

¹ See *McDonald v. Means*, 309 F.2d 530, 538-39 (9th Cir. 2002)(citing *Strate v. A-1 Contractors*, 520 U.S. 438, 455-56, 117 S.Ct. 1404, 1414 (1997)).

U.S. at 446, 117 S.Ct. 1404. The intersection of Longmore Road and Chaparral Road is not "non-Indian fee land." The intersection is within the boundaries of the Salt River Pima-Maricopa Indian Community, and there is no allegation or evidence that suggests it has been acquired in fee simple by non-Indian owners. *Montana* therefore does not control this case.

Strate v. A-1 Contractors, 520 U.S. 438 (1997), is also distinguishable from the case before us. *Strate* held that the Three Affiliated Tribes of the Fort Berthold Reservation relinquished their gatekeeping rights when the tribes conveyed a 6.59 mile portion of a road to the state of North Dakota. *Strate*, at 455-56, 117 S.Ct. 1404. The tribes received payment for the state's use of the section for a public highway. *Id.* Further, North Dakota maintained the relevant section of road. *Id.* The *Strate* court expressed "no view on the . . . proper forum when an accident occurs on a tribal road within a reservation." *Id.* At 442, 117 S.Ct. 1404.²

Here, the Salt River Pima-Maricopa Indian Community granted the right of way in the intersection to the Bureau of Indian Affairs.³ As articulated in *McDonald v. Means*, "a BIA road [] is a tribal road expressly reserved from the rule in *Strate*." *McDonald*, 309 F.3d at 537. The *McDonald* court elaborated:

Title 25, Part 170 of the Code of Federal Regulations ("Roads of the Bureau of Indian Affairs") makes clear that a BIA road is considered an "Indian reservation road." This is so even where a road serves both Indian and non-Indian land, and even though BIA roads are generally open to public use. BIA roads . . . are held by the BIA in trust for the benefit of the tribe. . . . An "Indian reservation road" serving Indian land and held in trust for a tribe is a "tribal road." The Supreme Court declined to distinguish between tribal and BIA roads in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 148 n. 14 (1980) (noting, in the context of federal preemption,

² See also *Box v. Long Warrior*, 265 F.3d 771, 775 (9th Cir. 2001) (tribal jurisdiction lacking where right of way granted to the National Park Service "in perpetuity, including . . . the right to construct, maintain and use road")

³ The right of way was transferred back to the Salt River Pima-Maricopa Indian Community in August 2015. See Resolution Number SR-3339-2015, directing that the Community accept from the BIA the Assignment of the Right of Way for Longmore Road between McDowell Road and the Arizona Canal, including the intersection with Chaparral Road. See also, August 3, 2015 Letter from BIA Superintendent George Patton to Salt River Pima-Maricopa Indian Community President Delbert Ray, Sr. stating that the Longmore assignment was approved.

"we see no basis . . . for distinguishing between roads maintained by the Tribe and roads maintained by the Bureau of Indian Affairs.

See also *Allstate v. Stump*, 191 F.3d 1071, 1072 (9th Cir.1999)(in the context of describing an accident, equating a BIA road with a tribal road).

In the case before us, even though the Salt River Pima-Maricopa Indian Community granted a right of way to the Bureau of Indian Affairs that included the intersection in question, the Community has not relinquished its gatekeeping rights over the intersection; the intersection remains a "tribal road." Additionally, the Salt River Pima-Maricopa Indian Community maintains the intersection of Longmore and Chaparral Road, using a combination of funding sources from the Bureau of Indian Affairs and the Salt River Pima-Maricopa Indian Community. See Salt River Pima-Maricopa Indian Community 2010 Long Range Transportation Plan.

Rule 5-16(f)(1) indicates a preference for a hearing regarding damages if the amount of damages is substantial. Here, Appellees claim damages of \$52,600. The interests of justice are best served by a hearing regarding the amount of damages where both parties can present and contest evidence.

ORDER

Jurisdiction is properly before the Salt River Pima-Maricopa Indian Community. The case is remanded for a hearing to determine the amount of damages.

ISSUED this 1st day of September, 2017

Electronically approved September 1, 2017

/s/

Paul Bender, Justice

Electronically approved September 1, 2017

/s/

Judith M. Dworkin, Justice

Electronically approved September 1, 2017.

/s/

Siera Russell, Justice

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