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## In re Marriage of Baker

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2010 MT 124, 356 Mont. 363, 234 P.3d 70

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***In re Marriage of Baker*, 2010 MT 124, 356 Mont. 363, 234 P.3d 70.**

**Josh Nichols**

**ABSTRACT**

An individual was allowed to lease tribal land because of her tribal membership. The district court erroneously considered that tribal land an asset in the marriage dissolution proceeding, and the individual appealed. The Montana Supreme Court held that tribal land must be excluded from consideration in such cases because the Tribe owns the land, not the individual. Additionally, a state court does not have authority to allocate tribal property because Indian trust property can only be conveyed with the consent of the Secretary of the Interior.

**I. INTRODUCTION**

The Montana Supreme Court held that district courts do not have the authority to adjudicate Indian trust land in *In re Marriage of Baker*.<sup>308</sup> The Court overturned a district court decision allocating tribal trust land leased by a tribal member spouse in a marriage dissolution proceeding.<sup>309</sup> The Court held that the leased land should not be allocated in the proceeding because it did not belong to either party in the marriage; the land belonged to the Sélísh and Ktunaxa Tribes (Tribes).<sup>310</sup>

**II. FACTUAL AND PROCEDURAL BACKGROUND**

LaMoine Hendrickson, a Sélísh and Ktunaxa tribal member, filed a Petition for Dissolution of Marriage from Michael Baker, who is not a tribal member, on September 30, 2008.<sup>311</sup> A mobile home was the main asset of the marital estate.<sup>312</sup> The couple had purchased the home with a tribal loan, available because of LaMoine's tribal membership, and the title was

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<sup>308</sup>*In re Marriage of Baker*, 2010 MT 124, ¶ 41, 356 Mont. 363, 234 P.3d 70.

<sup>309</sup>*Id.* at ¶ 39.

<sup>310</sup>*Id.* at ¶¶ 15, 39.

<sup>311</sup>*Id.* at ¶¶ 12, 15.

<sup>312</sup>*Id.* at ¶ 15.

solely in her name.<sup>313</sup> The mobile home was on a tribal lease lot, and the couple built a garage on the property using additional money borrowed from the Tribes.<sup>314</sup>

The District Court for the Twentieth Judicial District, Lake County, distributed the parties' marital estate.<sup>315</sup> The court held that even though the land was tribal trust land, it had a \$10,000 value and should be accounted for in the settlement.<sup>316</sup> In all, the court distributed to LaMoine the mobile home, the garage, the tribal trust lease, and other assets for a total of \$63,683.27.<sup>317</sup> Because LaMoine received \$40,000 more than Michael in the settlement, the court concluded that she owed him \$15,000 to make the distribution equal.<sup>318</sup> LaMoine appealed, arguing that that the tribal trust land belonged to the Tribes, not the parties involved in the suit, and therefore should not have been included in LaMoine's share of the marital estate.<sup>319</sup>

### **III. MONTANA SUPREME COURT DECISION**

The Montana Supreme Court overturned the district court's decision distributing the tribal trust land to LaMoine.<sup>320</sup> The Court held that the trust land belonged to the Tribes, not to either party in the dispute.<sup>321</sup>

In dissolution of marriage proceedings, courts must equally distribute property and assets belonging to either or both parties, whether the title of such property is "in the name of the husband or wife or both."<sup>322</sup> As a tribal member, LaMoine was entitled to certain benefits, like Indian Health Services, but her health services were not marital assets that could be divided with

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<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> *Id.* at ¶ 20.

<sup>316</sup> *Id.* at ¶ 39.

<sup>317</sup> *Id.* at ¶ 20.

<sup>318</sup> *Id.*

<sup>319</sup> *Id.* at ¶¶ 21, 38-39.

<sup>320</sup> *Id.* at ¶ 43.

<sup>321</sup> *Id.* at ¶ 39.

<sup>322</sup> *Id.* at ¶ 40 (citing Mont. Code Ann. § 40-4-202 (2009)).

the dissolution of marriage.<sup>323</sup> In this case, LaMoine was entitled to lease the tribal trust land because of her tribal membership, but she did not have title to the land; the Tribes did.<sup>324</sup> LaMoine did not own the land, but instead paid \$25 per month to lease the property from the Tribes.<sup>325</sup> Similarly, because she had the benefit of holding a tribal lease and Michael did not, as he was not a tribal member, the lease should not have been included in the distribution of assets.<sup>326</sup>

The Montana Supreme Court previously held that the United States Secretary of the Interior must consent to any conveyance of Indian trust property.<sup>327</sup> Even though courts must equitably distribute property in marriage dissolution proceedings under the Montana Code Annotated § 40-4-202(1), “strong federal and tribal interests in trust property mandate [the court’s] conclusion that § 40-4-202(1), MCA, cannot be construed to require or allow adjudication of Indian trust land by a state district court.”<sup>328</sup> Simply stated, state courts are prohibited from distributing Indian trust land proceeds because state courts do not have jurisdiction over such land.<sup>329</sup>

#### **IV. CONCLUSION**

The district court erred when it included the leased tribal trust land’s value in LaMoine’s share of the marital estate.<sup>330</sup> The land did not belong to either LaMoine or Michael because the land belonged to the Tribes.<sup>331</sup> The Montana Supreme Court remanded the case to the district court so it could re-evaluate the marital estate and take into account the \$10,000 value it

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<sup>323</sup> App.’s Br., *In re Marriage of Baker*, 2010 WL 620169 at \*\*31, 32 (Feb. 2010).

<sup>324</sup> *Baker*, ¶¶ 39, 40.

<sup>325</sup> App.’s Br., 2010 WL 620169 at \*31.

<sup>326</sup> *Id.* at \*32; *Baker*, ¶ 40.

<sup>327</sup> *Baker*, ¶ 41 (citing *In re Marriage of Wellman*, 258 Mont. 131, 137, 852 P.2d 559, 563 (1993)).

<sup>328</sup> *Id.* (quoting *Wellman*, 258 Mont. at 138, 852 P.2d at 563).

<sup>329</sup> *Id.*

<sup>330</sup> *Id.* at ¶ 42.

<sup>331</sup> *Id.* at ¶ 39.

erroneously assigned to the tribal trust land in its previous decision.<sup>332</sup> In doing so, the Montana Supreme Court acknowledged the sovereignty of Indian tribes within the borders of the state of Montana, and it appropriately limited its own jurisdiction by holding that Montana state courts do not have authority to distribute proceeds from tribal-owned land.

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<sup>332</sup> *Id.* at ¶ 42.