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United States Court of Appeals
Tenth Circuit

July 3, 2023

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

STATE OF KANSAS, EX REL. KRIS KOBACH, Attorney General; THE SUMNER COUNTY, KANSAS, BOARD OF COMMISSIONERS; CITY OF MULVANE, KANSAS; SAC AND FOX NATION OF MISSOURI IN KANSAS AND NEBRASKA; IOWA TRIBE OF KANSAS AND NEBRASKA,

Plaintiffs - Appellants,

v.

UNITED STATES DEPARTMENT OF INTERIOR; UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS,

Defendants - Appellees.

No. 21-3097

Appeal from the United States District Court
for the District of Kansas
(D.C. No. 2:20-CV-02386-HLT-GEB)

Mark S. Gunnison of Payne & Jones, Chartered, Overland Park, Kansas (Derek Schmidt, Attorney General; Jeffrey A. Chanay; Stephen Phillips; and Brant M. Laue, Attorneys, Office of Kansas Attorney General, Topeka, Kansas; Christopher J. Sherman, Stephen D. McGiffert, and Anna E. Wolf of Payne & Jones, Chartered, Overland Park, Kansas; David R. Cooper of Fisher Patterson Sayler & Smith, LLP, Topeka, Kansas; James A. Walker and Tyler E. Heffron of Triplett Woolf Garretson, LLC, Wichita, Kansas; Christopher C. Halbert of Halbert Law, L.L.C., Hiawatha, Kansas, with him on the briefs) for Plaintiffs-Appellants.

Tamara Rountree, Attorney, U.S. Department of Justice, Environmental & Natural Resources Division (Todd Kim, Assistant Attorney General, with her on the brief) for Defendants-Appellees.

Before **BACHARACH**, **PHILLIPS**, and **EID**, Circuit Judges.

PHILLIPS, Circuit Judge.

A congressional command to compensate the Wyandotte Tribe for its claimed loss of millions of acres in the Ohio River Valley has morphed into a thirty-year dispute over ten acres in a Wichita suburb. In the 1700s, as settlers began occupying their land, the Wyandot people agreed to a series of treaties that removed them to present-day Kansas and then later to Oklahoma. In 1951, the Wyandotte Tribe sought compensation in the Indian Claims Commission. In the late 1970s, the Commission agreed that the treaties rested on "unconscionable" consideration and awarded the Wyandotte Tribe about $3 million in damages. In 1984, Congress distributed the awarded funds, earmarking $100,000 for the Wyandotte Tribe to purchase lands for the Secretary of the Interior to take into trust.

In 1992, eight years after Congress's enacted remedy, the Tribe used $25,000 of those funds to buy a ten-acre lot in Kansas called the Park City Parcel. The next year, the Tribe applied for trust status on the Park City Parcel under Congress's 1984 enactment, but the Secretary denied the application. The Tribe tried again in 2008, reapplying for trust status on the Park City Parcel

under Congress's 1984 enactment. The Tribe wished to set up gaming operations on the Park City Parcel once the Secretary approved the lot for federal trust status.

Since then, the State of Kansas has opposed the Tribe's efforts to conduct gaming on the Park City Parcel. The State has disputed the Tribe's claim that its purchase came from the allocated $100,000 in congressional funds. And the State has argued that no exception to the Indian Gaming Regulatory Act (IGRA) authorizes the Tribe to operate gaming on the lot.

In 2020, the Secretary rejected the State's arguments, approving the Tribe's trust application and ruling that the Tribe could conduct gaming operations on the Park City Parcel. The district court agreed. And so do we. We affirm the ruling that the Secretary was statutorily bound to take the Park City Parcel into trust and to allow a gaming operation there under IGRA's settlement-of-a-land-claim exception.

BACKGROUND

I. Legal Background

In the early 1700s, the Iroquois Confederacy displaced the Wyandot people from their ancestral homes in present-day Ontario. The Wyandot migrated to lands in southeastern Michigan, northern Ohio, and western Pennsylvania. But near the end of the 1700s, American settlers began occupying these lands. To head off conflict, the United States entered a series of treaties with the Wyandot people, which ceded this land to the United States.

Under an 1842 treaty, the Wyandot people ceded millions of acres in the Ohio River Valley to the United States in exchange for lands west of the Mississippi River. Per the treaty's terms, the United States funded the Wyandot's acquisition of about 23,000 acres in present-day Wyandotte County, Kansas. But in 1855, the Wyandot agreed to dissolve and cede back to the United States all their Kansas holdings (except a tribal cemetery). Some Wyandot opposed the dissolution, and the United States soon after removed the dissenters to present-day Oklahoma. In 1867, Congress recognized those few dissenters as the Wyandotte Tribe, today known as the Wyandotte Nation.[1]

A. The Indian Claims Commission Act

Nearly a century later, Congress passed the Indian Claims Commission Act, Pub. L. No. 79-726, 60 Stat. 1049 (1946) (ICCA). The ICCA created the Indian Claims Commission (ICC), "a quasi-judicial body to hear and determine all tribal claims against the United States that accrued before August 13, 1946." *Navajo Tribe of Indians v. New Mexico*, 809 F.2d 1455, 1460 (10th Cir. 1987). Congress authorized the ICC to adjudicate "claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration,

[1] We refer to the Wyandotte Nation as "the Tribe." We note that the record reflects that the spelling of the Tribe's name has changed over the years from "Wyandot" to "Wyandotte."

mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity." § 2(3), 60 Stat. at 1050.

As an Article I court and agent of Congress, the ICC adjudicated Native American land claims for the U.S. government. Until then, "Indian tribes had to petition Congress for special jurisdictional acts authorizing the Court of Claims to hear their grievances against the United States." *Pueblo of Jemez v. United States*, 790 F.3d 1143, 1152 (10th Cir. 2015) (cleaned up). The "chief purpose" of the ICCA was "to dispose of the Indian claims problem with finality." H.R. Rep. No. 1466, at 10 (1945). "A final determination against a claimant . . . shall forever bar any further claim or demand against the United States arising out of the matter involved in the controversy." § 22(b), 60 Stat. at 1055.[2]

Early on, the ICC "construed the ICCA as limiting the available relief 'to that which is compensable' in money." *Navajo Tribe*, 809 F.2d at 1461 (citations omitted); § 2, 60 Stat. at 1050. The ICC interpreted the ICCA as "reflect[ing] a congressional policy that tribes with valid claims would be paid in money" and that "[n]o lands would be returned to a tribe." *Navajo Tribe*, 809 F.2d at 1461 (citing *Authorizing Appropriations for the Indian Claims Commission for Fiscal Year 1977: Hearing on H.R. 11909 Before the Subcomm.*

[2] Indeed, the ICCA directs that ICC judgments become final when filed with Congress. *Id.* § 22(a), 60 Stat. at 1055; *see also United States v. Dann*, 470 U.S. 39, 46-47 (1985) (surveying legislative history to conclude that § 22(a) of ICCA meant that the ICC "should, unless reversed [by the Court of Claims], have the same finality as judgments of the Court of Claims" (alteration in original) (quoting H.R. Rep. No. 2693, at 8 (1946) (Conf. Rep.)).

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