



***Dollar General Stores v. Mississippi Band of Choctaw Indians***

**Supreme Court Summary and Analysis**

Sandra Tibbetts Murphy

July 2016

The Battered Women's Justice Project

1801 Nicollet Ave South, Suite 102 Minneapolis MN 55403

[technicalassistance@bwjp.org](mailto:technicalassistance@bwjp.org)

800-903-0111, prompt 1

Funding for this project was made available through the US Department of Health and Human Services, Grant #90EV0375. The viewpoints contained in this document are solely the responsibility of the author(s) and do not represent the official views or policies of the department and do not in any way constitute an endorsement by the Department of Health and Human Services.

## ***Dollar General Stores v. Mississippi Band of Choctaw Indians, et al.,*** **\_\_\_ U.S. \_\_\_ (2016)**

The Supreme Court failed to reach a decision, issuing a 4-4 ruling, despite the long time period between argument and ruling. Thus, the prior ruling in the case from the 5<sup>th</sup> Circuit Court of Appeals stands.

### **The Facts**

Through a lease agreement and business license with the Mississippi Band of Choctaw Indians, Dollar General operates a retail store on trust land within the tribal reservation. Through its store manager, Dollar General agreed to participate in the tribe's youth job training program and several teenage tribal members were assigned internship-like positions with the retail store. Although the lease agreement included provisions in which Dollar General consented to tribal jurisdiction as part of its commercial venture, their participation in the jobs program did not specify any such consent. One of these young teenagers – labeled John Doe in the filings – accused the store manager of various acts of sexual molestation during his work assignment and, through his parents, filed a tort claim against Dollar General in tribal court. Dollar General challenged the jurisdiction of the tribal court given their nonmember status and, in addition, the lack of connection between the accusations and Dollar General's operation of its retail store.

### **The Supreme Court Ruling**

The case presented both narrow and larger legal questions about tribal civil jurisdiction over nonmembers. [Tribal criminal jurisdiction over nonmembers is essentially prohibited, *Oliphant v. Suquamish*, 431 U.S. 191 (1978).] The Supreme Court could have spelled out what suffices for "consent" such that a tribe has civil jurisdiction over a nonmember. Additionally, the case presented the opportunity to determine if such consent applies to tribal judicial authority (as well as regulatory power) and whether the operations and procedures in tribal court provide sufficient protections and due process to nonmembers. However, with an evenly-divided court, the Supreme Court issued no ruling in this case. Therefore, the ruling of the 5<sup>th</sup> Circuit Court of Appeals stands as the final determination on the specific issues presented at this portion of the case.

### **Back to the 5<sup>th</sup> Circuit Court of Appeals Ruling**

Tribal court civil jurisdiction over non-Native individuals and entities is very limited. Under the ruling in *Montana v. U.S.*, 450 U.S. 544 (1981), however, a tribe can have regulatory power over non-Natives when that party consents to tribal jurisdiction. As the Supreme Court stated in the *Montana* ruling, the sovereign powers of tribes generally do not extend to the activities of non-tribal members; however, if that individual or entity enters in a consensual relationship with

the tribe or any of its members, tribal jurisdiction applies. Such consensual relationships may occur through commercial dealings, contracts, leases or other arrangements. Dollar General argued that even the “other arrangements” must be commercial in nature, and the tort claim does not qualify as commercial activity.

In its ruling, the 5<sup>th</sup> Circuit emphasized that tribes are independent sovereign communities, although some aspects of that sovereignty has been lost. However, the court recognized that the tribe’s ability to regulate the working conditions of its members employed on its reservation lands is central to its power of self-government. Thus, the tribe’s regulatory authority to insist “that a child working for a local business not be sexually assaulted by employees” clearly exists. The 5<sup>th</sup> Circuit found that the tribe and teenager, in pursuing the tort claim in tribal court, were acting within their regulatory authority to have civil jurisdiction over nonmember Dollar General [having authority to regulate a nonmember’s activities, civil jurisdiction over any dispute arising out of those activities is presumed to rest within the tribal courts, *Strafe v. A-1 Contractors*, 520 U.S. 438, 453 (1997).]

Furthermore, the Court of Appeals found that Dollar General’s conduct of placing the store manager in its store on tribal lands – a manager who is later accused of sexual assault by a tribal member – is connected to Dollar General’s participation in the job training program. Thus, Dollar General’s consent in their lease agreement is sufficient to include consent to tribal jurisdiction over the tort claim, in accordance with the standards set forth in the *Montana* case.

## **Conclusion**

With no majority decision, the Supreme Court could not provide any additional insight or guidance for the country’s federal courts on the basic question of consent and tribal jurisdiction, nor the other questions of tribal civil jurisdiction over nonmembers and whether tribal courts provide sufficient due process protections for nonmembers in civil matters. This case will return to the tribal court, where the teenager and his family will try to establish that Dollar General, through its store manager, violated a duty towards the teenager and should be held liable.