

No. 36592-8

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STATE
BY 

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

BENITO J. MENDOZA,

Plaintiff/Appellant,

v.

NEUDORFER ENGINEERS, INC., a Washington corporation,
and MATT CHARTERS, an individual,

Defendants/Appellees

BRIEF OF APPELLANT

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I. INTRODUCTION

Benito Mendoza, a civilian King County resident, was injured by the alleged negligence of other civilian King County residents while constructing a building on Fort Lewis, located in Pierce County. Mendoza sued the alleged tortfeasors in state court. The trial court dismissed his claim under CR 12(b)(1), holding that state courts lack subject matter jurisdiction over torts that occur on federal land. This ruling was erroneous. Settled law holds that personal injury claims, being transitory in nature, may be brought in any jurisdiction where the defendant can be found. At the trial court, defendants Neudorfer Engineers, Inc. and Matt Charters (collectively “Neudorfer”) argued that because the United States has “exclusive jurisdiction” over Fort Lewis, only a federal court could adjudicate the case. This argument confuses *political* jurisdiction with *judicial* jurisdiction. Clear precedent holds that exclusive federal political jurisdiction does not preclude state judicial jurisdiction. The state court had jurisdiction to hear and decide Mendoza’s case. The trial court’s order to the contrary should be reversed, and the case should be remanded for trial.

II. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred by dismissing Mendoza's case for lack of subject matter jurisdiction.

Issues Pertaining to Assignments of Error

1. Did the Washington State Superior Court for Pierce County have subject matter jurisdiction over Mendoza's personal injury claim against Neudorfer for negligence committed on Fort Lewis?

III. STATEMENT OF THE CASE

This case arises from personal injuries Mendoza suffered while working on a project at Fort Lewis as a laborer for Osborne Construction Co., a Washington corporation. CP 2. Mendoza was injured when Matt Charters, working for Neudorfer Engineers, Inc., a Washington corporation, dropped a tool onto Mendoza's back. CP 3. Mendoza sued Charters and Neudorfer for negligence in Pierce County Superior Court. CP 1-4. Charters and Neudorfer moved to dismiss pursuant to CR 12(b)(1), claiming that Washington State courts lacked subject matter jurisdiction over torts committed on

federal land. CP 5-8. The trial court granted the motion. CP 20-21. This timely appeal followed.

IV. ARGUMENT

A. Standard Of Review

A court's subject matter jurisdiction is a question of law, which is reviewed *de novo*. *City of Medina v. Primm*, 160 Wn.2d 268, 273, 157 P.3d 379 (2007).

B. Washington State Courts Have Jurisdiction Over Mendoza's Claim Because Personal Injury Claims Can Be Brought Wherever A Defendant Can Be Found

It is well settled law that because claims for personal injury are transitory in nature, they may be brought in any jurisdiction in which the defendant can be found.¹ *Ohio River Contract Co. v. Gordon*, 244 U.S. 68, 37 S. Ct. 599, 61 L. Ed. 997 (1917); *Mater v. Holley*, 200 F.2d 123, 123 (5th Cir. 1952); *Madden v. Arnold*, 47 N.Y.S. 757 (App. Div. 1897); *Norfolk & P.B.L.R. Co. v. Parker*, 147 S.E. 461 (Va. 1929); *Red Top Cab Co. v. Capps*, 270 S.W. 2d 273,

¹ Personal injury claims are transitory in nature because the defendant's liability does not depend on where the injury took place, but on his or her negligence. See *Madden v. Arnold*, 47 N.Y.S. 757, 762 (1897).

274 (Tex. Civ. App. 1954); *Hansford v. District of Columbia*, 617 A.2d 1057 (Md. 1993). As the highest court in Maryland has stated:

The courts have uniformly upheld a state court's exercise of jurisdiction over personal injury and wrongful death actions arising from activities occurring on federal enclaves under the "exclusive" jurisdiction of the federal government.

Hansford v. District of Columbia, 617 A.2d 1057, 1065 (Md. 1993).
See also, Mater, 200 F.2d at 123 ("The Supreme Court has held that an action for personal injuries suffered on a reservation under the exclusive jurisdiction of the United States, being transitory, may be maintained in a state court which has personal jurisdiction of the defendant." (citing *Ohio River Contract Co.*, 244 U.S. 68)).

In *Red Top Cab Co. v. Capps*, 270 S.W.2d 273 (Tex. Civ. App. 1954), the plaintiff sued in state court for personal injuries from car accident on a military base. *Id.* at 274. The defendants claimed that the state court lacked jurisdiction because the plaintiff's injuries were caused on "an area over which the United States Government has exclusive jurisdiction." *Id.* The court rejected the argument and held:

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The cause of action asserted here is of a transitory nature and, as a general rule, such transitory actions may be entertained wherever jurisdiction of the parties can be maintained.^[2] [citation and footnote omitted]. That the transitory cause of action may have arisen from an event which happened on territory within the exclusive jurisdiction of the United States Government does not change the rule.

Id.

Similar to *Red Top Cab*, Mendoza filed suit in state court for the personal injuries he suffered on Fort Lewis, which is located in Pierce County. As the court held in *Red Top Cab*, since personal injury claims are transitory in nature, state courts can exercise subject matter jurisdiction over them. The fact the injuries occurred on federal land did not oust the court from subject matter jurisdiction.

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² It is undisputed that Washington courts have personal jurisdiction over Defendants Neudorfer Engineers, Inc. and Matt Charters, who are both King County residents. Moreover, Washington's cession of Fort Lewis to the United States expressly reserved the power of our courts to exercise personal jurisdiction over defendants who are found there. The cession states, "That all *civil process* issued from the courts of this state ... may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made." *State v. Lane*, 112 Wn.2d 464, 469, 771 P.2d 150 (1989) (emphasis added).

C. Nothing Inherent In Federal Sovereignty Over Land Precludes State Courts From Adjudicating Negligence Claims Arising From Conduct On That Land

In ruling that state courts lack subject matter jurisdiction over personal injury claims arising from conduct on federal land, the trial court confused *political* jurisdiction with *judicial* jurisdiction. In the motion to dismiss, Neudorfer relied almost exclusively on language from a criminal case in which the court stated that Washington State ceded “exclusive jurisdiction” over Fort Lewis to the United States. *See* CP 15 (citing *State v. Lane*, 112 Wn.2d 464, 771 P.2d 1150 (1989)).

The phrase “exclusive jurisdiction,” as used in *Lane*, means *political* jurisdiction, not *judicial* jurisdiction. When a state cedes land to the United States, the terms of the cession determine the scope of the United States’ political sovereignty (*i.e.*, jurisdiction) over such land. *Lane*, 112 Wn.2d at 469 (citing *Bowen v. Johnston*, 306 U.S. 19, 23, 59 S. Ct. 442, 83 L. Ed. 455 (1939)). Here, Washington ceded Fort Lewis to the United States in 1919. *Lane*, 112 Wn.2d at 469. The cession stated:

[T]he consent of the State of Washington is hereby given to the exercise by the congress of the United States of *exclusive legislation* in all cases whatsoever over such tracts or parcels of land so conveyed.

Id. (emphasis added). “Exclusive ‘legislation’ has been construed to mean exclusive ‘jurisdiction’ *in the sense of exclusive sovereignty.*” *Mater v. Holley*, 200 F.2d 123 (5th Cir. 1952) (citing *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652, 50 S. Ct. 455, 74 L. Ed. 1091 (1930) (emphasis added)). Where “a cession of jurisdiction is made by a state to the Federal government, it is necessarily one of *political* power and leaves no authority in the state government thereafter to *legislate* over the ceded territory.” *State v. Rainier Nat’l Park Co.*, 192 Wash. 592, 594, 74 P.2d 464 (1937) (emphasis added). Political sovereignty does not inherently limit judicial jurisdiction. Indeed, the Washington Constitution states, “[t]he superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other *court.*” Const. art. IV, § 6 (emphasis added). *See also*, RCW 2.08.010 (same).

In *Gulf Offshore Co. v. Mobile Oil Corp.*, 453 U.S. 473, 101 S. Ct. 2870, 69 L. Ed. 2d 784 (1981), the United States Supreme

Court rejected the same argument that resulted in the dismissal of Mendoza’s case. In *Gulf Offshore*, the plaintiff suffered personal injuries while engaging in oil drilling work on the Outer Continental Shelf (“Shelf”). *Id.* at 475-76. The Shelf is federal land subject to the “exclusive jurisdiction” of the United States. *Id.* at 479, 483. The plaintiff sued in state court. *Id.* 475-76. Gulf Offshore argued that since the United States had “exclusive jurisdiction” over the Shelf, state courts could not exercise *judicial* jurisdiction over the plaintiff’s claim. *Id.* at 480.

The Court rejected this argument and said that Gulf Offshore “confuse[d] [] *political* jurisdiction” with “*judicial* jurisdiction.” *Id.* at 482 (emphasis added). The Court stated that there is “nothing inherent in exclusive federal sovereignty over a territory [that] precludes a state court from entertaining a personal injury suit concerning events occurring in the territory and governed by federal law.”³ *Id.* at 481. Indeed, “State courts routinely exercise subject-

³ Title 16 U.S.C. § 457 declares that state law will govern a claim for personal injuries occurring on federal land:

In the case of death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior

matter jurisdiction over civil cases arising from events in other States and governed by the other States' laws." *Id.* See, e.g., *Rice v. Dow Chem. Co.*, 124 Wn.2d 205, 875 P.2d 1213 (1994) (cause of action arising in Oregon was adjudicated by a Washington State court); see also, *Madden v. Arnold*, 47 N.Y.S. 757, 759 (App. Div. 1897) ("[A]lthough the injury to recover damages for which the plaintiff brought this action was sustained on land over which the national government had exclusive jurisdiction, it had no more

boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be.

(Emphasis added). Some courts have treated 16 U.S.C. § 457 as a choice of law statute. See *Hansford v. District of Columbia*, 617 A.2d 1057, 1066 (Md. 1993). At least two courts have held that the statute gives rise to a federal claim. See *Stokes v. Adair*, 265 F.2d 662, 666 (4th Cir. 1959); *Mater v. Holley*, 200 F.2d 123, 125 (5th Cir. 1952). Notably, these two courts expressly stated that federal jurisdiction under 16 U.S.C. § 457 is not exclusive:

This decision does not mean that an action for personal injuries inflicted on a federal reservation may not be tried in state court. On the contrary it is settled that actions for personal injuries being transitory in nature may be brought in any jurisdiction in which the defendant may be impleaded.

Stokes, 265 F.2d at 666; see also, *Mater*, 200 F.2d at 125 ("Existing federal jurisdiction [under 16 U.S.C. § 457] is not affected by concurrent jurisdiction in state courts."). Thus, state courts have concurrent jurisdiction to adjudicate claims under 16 U.S.C. § 457.

exclusive jurisdiction over such territory than the respective legislatures of the neighboring states of Massachusetts, Pennsylvania, or Ohio have over their respective territories.”). Had Mendoza’s injuries been caused in Oregon or Idaho, there would be no question that Washington State courts could exercise subject matter jurisdiction over his claim. “That the location of the event giving rise to the suit is in an area of exclusive federal jurisdiction rather than another State, does not introduce any new limitation on the forum State’s subject-matter jurisdiction.” *Gulf Offshore Co.*, 453 U.S. at 481-82. Accordingly, the fact that Mendoza’s injuries were inflicted while he was on Fort Lewis does not limit Washington State courts’ subject matter jurisdiction. The trial court’s order to the contrary should be reversed.

V. CONCLUSION

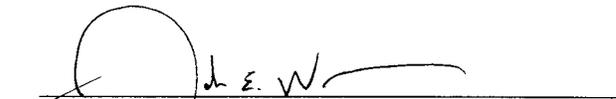
Although the United States has exclusive *political* jurisdiction over Fort Lewis, Washington State courts may exercise *judicial* jurisdiction over personal injury claims arising from conduct there. Accordingly, the trial court’s dismissal of Mendoza’s suit for lack of

subject matter jurisdiction should be reversed, and the case should be remanded for trial.

DATED this 4th day of October 2007.

Respectfully submitted,

RUMBAUGH RIDEOUT BARNETT & ADKINS



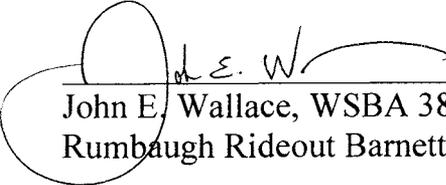
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CERTIFICATE OF SERVICE

I certify that on the date entered below, I sent via legal messenger a copy of this brief to:

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DATED this 4th day of October 2007.



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