

**THREE AFFILIATED TRIBES
FORT BERTHOLD RESERVATION**

**SUPREME COURT
NEW TOWN, NORTH DAKOTA**

Carol Good Bear, Terrance Fredericks, Todd Hall, Patti Jo Hall, Kelly Hosie, and Edward S. “Tyke” Danks,

Appellees,

vs.

Mark N. Fox, as Three Affiliated Tribes’ Tribal Chairman, Cory Spotted Bear, as Three Affiliated Tribes’ Vice-Chairman, Fred Fox, as Three Affiliated Tribes’ Executive Secretary, Mervin Packineau, as Three Affiliated Tribes’ Treasurer, Robert White, as Three Affiliated Tribes’ Councilman, Sherry Turner-Lone Fight, as Three Affiliated Tribes’ Councilwoman, Monica Mayer, as Three Affiliated Tribes’ Councilwoman, and The Three Affiliated Tribes’ Tribal Business Council,

Appellants.

AP-2024-002
Case No. CV-2023-0469

**APPELLANTS’ MOTION FOR
RECONSIDERATION**

Appellants respectfully move for reconsideration of the Court’s January 17, 2024, Opinion and Order dismissing Appellants’ appeal. This motion is supported by the memorandum of law filed with this motion.

Dated: February 3, 2025

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**APPELLANTS’ MEMORANDUM IN
SUPPORT OF THE MOTION FOR
RECONSIDERATION**

INTRODUCTION

On January 17, 2025, this Court dismissed Appellants’ appeal of the Trial Court’s May 9, 2024, order partially dismissing Plaintiffs-Appellees’ claims. The Court found that the Trial Court’s order was an interlocutory order. But an order denying a motion to dismiss based on sovereign immunity is immediately appealable as an exception to the general rule requiring an appeal only from a final judgment. Appellants respectfully request the Court reconsider its Order dismissing Appellants’ appeal and review the appeal on the merits.

STANDARD

Section 1-5-12(a) of the MHA Nation Tribal Code states that “[t]he Supreme Court shall entertain Motions for Reconsideration of any final order, decision, or opinion, issued by the Court, provided that the Motion is made within twenty (20) days of issuance of the order, decision, or opinion.”

A motion for reconsideration is an “extraordinary remedy that can only be granted for compelling reasons.” *See* MHA Nation Tribal Code § 1-5-12(b). Such reasons are:

- i. That some fact, material to the decision, or some question or law decisive of the case substituted by counsel, was overlooked by the Court;
- ii. the presence of new and material facts (e.g. juror misconduct., etc.) which were fraudulently withheld or could not have been reasonably known to the aggrieved party during the pendency of the appeal proceedings;
- iii. 3) that the decision is in direct conflict with the Code, other tribal ordinances or resolutions, controlling case law, applicable federal statutes, or fundamental principles of federal Indian law; or
- iv. 4) that the court employed inappropriate procedures, considered facts outside the record on appeal, or failed to issue an opinion in accordance with Section 1-5-15.

Id. Here, the Court should reconsider its January 17, 2025, Order and review the merits of the appeal because it is settled law that a party may obtain immediate appellate review of an order denying a motion to dismiss based on sovereign immunity even though that order is not a final judgment.

ARGUMENT

Courts have routinely found that, pursuant to the collateral order doctrine, an order denying sovereign immunity is immediately appealable. *See Fant v. City of Ferguson, Missouri*, 913 F.3d 757, 759 (8th Cir. 2019) (“The City invokes the well-established principle that an order denying a claim of sovereign immunity is subject to interlocutory appeal under the collateral order

doctrine.”); *Myers v. Iowa Board of Regents*, 30 F.4th 705, 707 (8th Cir. 2022); *Monroe v. Arkansas State University*, 495 F.3d 591, 593 (8th Cir. 2007) (collecting cases); *Rein v. Socialist People’s Libyan Arab Jamahiriya*, 162 F.3d 748, 756 (2d Cir. 1998); *La Reunion Aerienne v. Socialist People’s Libyan Arab Jamahiriya*, 533 F.3d 837, 843 (D.C. Cir. 2008); *Root v. Liberty Emergency Physicians, Inc.*, 68 F.Supp.2d 1086, 1089-90 (W.D. Mo. 1999).¹

A motion to dismiss denying sovereign immunity must be immediately appealable because “immunity is effectively lost if a case is erroneously permitted to go to trial.” *Argonaut Great Cent. Ins. Co. v. Audrain Cnty. Joint Commc’ns*, 781 F.3d 925, 929 (8th Cir. 2015) (quoting *Van Wyhe v. Reisch*, 581 F.3d 639, 647-48 (8th Cir. 2009)). Part of the protection provided by sovereign immunity, other than immunity from trial, is immunity from “the attendant burdens of litigation[.]” *La Reunion Aerienne*, 533 F.3d at 843. “A sovereign that is required to litigate a case on the merits before it can appeal the assertion of jurisdiction over it has not been afforded the benefit of the immunity to which it is entitled.” *Rein*, 162 F.3d at 756. The issue of whether Appellants are entitled to sovereign immunity must be decided at the outset, not at the end of the litigation when the protections of immunity have been lost.

The Court cited two cases in its January 17, 2025 Order—*Johnson v. Pierce* and *Fredericks v. Fredericks*—that stand for the general proposition that interlocutory orders are not immediately appealable. Both cases are inapposite. Neither case involved claims of sovereign immunity—a crucial difference to the instant matter. Those cases simply recognize the general rule that an appeal lies only from a final judgment or order. Neither addressed the question of whether a motion

¹ Plaintiffs did not argue that this Court lacked jurisdiction to hear Defendants’ appeal. In fact, Plaintiffs conceded that de novo review applies to questions of sovereign immunity, implicitly acknowledging appellate jurisdiction over this appeal. See Principal Brief of Appellees-Plaintiffs at 4.

denying a sovereign immunity defense is immediately appealable under the collateral order doctrine.

Here, the Trial Court rejected, in part, Appellants' motion to dismiss based on sovereign immunity. Because that order is immediately appealable under the collateral order doctrine, this Court has jurisdiction to consider this appeal.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that the Court reconsider its January 17, 2025, Order dismissing this appeal and consider the appeal on the merits.

Dated: February 3, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 3, 2025, a true and correct copy of **Appellants’ Motion for Reconsideration** and **Appellants’ Memorandum in Support of the Motion for Reconsideration** was filed with the Court by U.S. Mail and Email at the following addresses:

Clarine DeGroot
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and served by U.S. Mail and Email on Appellees' counsel at the following address:

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Dated: February 3, 2025

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