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Citation: 698 F.2d 1323

698 F.2d 1323, *; 1983 U.S. App. LEXIS 31048, **

STATE OF WISCONSIN, Plaintiff-Appellee, Cross-Appellant, v. ODRIC BAKER, et al.,
Defendants-Appellants, Cross-Appellees

Nos. 81-2868, 81-2916

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

698 F.2d 1323; 1983 U.S. App. LEXIS 31048

September 14, 1982, Argued
January 26, 1983, Decided

PRIOR HISTORY: [**1]

Appeal from the United States District Court for the Western District of Wisconsin. No. 76-C-359 -- James E. Doyle, Judge.

DISPOSITION: Affirmed as modified.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant tribal officials appealed from a judgment entered in the United States District Court for the Western District of Wisconsin, that upheld plaintiff state's claim and granted declaratory and injunctive relief against defendants. Plaintiff cross-appealed from findings in the district court's opinion.

OVERVIEW: The court found that the 1854 treaty between the United States the Chippewa Indians of Lake Superior and the Mississippi River did not expressly reserve exclusive rights in the navigable waters in question and, moreover, circumstances in 1854 were not such to justify an inference that the United States intended to reserve such rights. The court held that it agreed with the district court that the 1854 treaty did not convey sovereignty over navigable waters within the reservation to the Indian Band, and that exclusive sovereignty over them was vested in the state. With regard to the state's cross-appeal, which contended that the district court erroneously found that the outer boundaries of the Indian Band's reservation encompassed navigable lakes, the court found there was no need for it to decide the issue because the Indian Band lacked jurisdiction to restrict public fishing and hunting on them, regardless. Therefore, the court vacated the district court's finding on that issue and ordered that the district court's appended judgment be modified.

OUTCOME: The court affirmed the district court's judgment.

CORE TERMS: band, fishing, hunting, treaty, lake, navigable, tribe, reservation, immunity, navigable waters, sovereign immunity, federal law, sovereignty, outer, water, governing board, waive, non-members, sovereign, confer, original jurisdiction, preclusive effect, conferred, convey, patent, property rights, federal claim, vacate, lying, fish

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