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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

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| SHANNON DOTSON,<br>Plaintiff | CIVIL DOCKET NO. 1:18-CV-00885 |
| VERSUS | JUDGE DRELL |
| TUNICA-BILOXI GAMING COMMISSION, *ET AL.*,<br>Defendants | MAGISTRATE JUDGE PEREZ-MONTES |

## MEMORANDUM ORDER

On August 22, 2019, Plaintiff Shannon Dotson ("Dotson") filed a Motion for Extension of Time to Serve by Publication (Doc. 63). As a consequence of the ongoing confusion surrounding Dotson's request for relief regarding service, the Court granted the motion in error (Doc. 64).

To the best of the Court's understanding, Dotson seeks to serve presently-unidentified individuals by "publication." It is unclear whether this request is limited to individuals identified in the Complaint, or may extend to individuals unmentioned to date. In either event, the Court gathers that these unidentified individuals would be persons, not corporate entities, and would likely be employees of, or affiliated with, the principal Defendant, the Tunica-Biloxi Gaming Commission.

Service of process is governed, in relevant part, by Rule 4 of the Federal Rules of Civil Procedure. No provision of Rule 4 – or any applicable state law referenced in Rule 4 – would allow Dotson to serve unidentified individuals by "publication." Of course, the Court has no concept of whether any unidentified individuals would be

proper parties to the litigation in the first place. But if they were, Dotson would be required to identify those individuals by name – likely through the discovery process – and then seek leave to amend to add them to the complaint. At this juncture, absent identities, Dotson cannot serve any unidentified defendants, by publication or otherwise. An extension to do so is therefore, clearly, not warranted.

Moreover, Defendants Piazza and Vocarro filed a Motion to Dismiss (Doc. 52), arguing service upon them was inadequate. Service issues will be addressed in the Court's ruling as to that motion as well.

IT IS ORDERED that the Court's Electronic Order Granting (63) Motion for Extension (Doc. 64) is hereby RESCINDED and WITHDRAWN.

IT IS FURTHER ORDERED that the Motion for Extension (Doc. 63) is hereby DENIED.

THUS DONE AND SIGNED in Alexandria, Louisiana, on this 27th day of August 2019.

JOSEPH H.L. PEREZ-MONTES
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

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|---|---|
| **SHANNON DOTSON** | **CASE NO. 1:18-CV-00885** |
| **VERSUS** | **JUDGE DRELL** |
| **TUNICA-BILOXI GAMING COMMISSION** | **MAGISTRATE JUDGE PEREZ-MONTES** |

JUDGMENT

For the reasons expressed in the Report and Recommendations of the Magistrate Judge filed previously herein and after independent (de novo) review of the entire record in this case, including the objections filed by plaintiff, the court ADOPTS the proposed findings and it is hereby

ORDERED that defendants' motions to dismiss (Doc. 51, 52) are GRANTED. Defendant's alternative motion for more definite statement (Doc. 51) is DENIED as MOOT. Accordingly, it is further

ORDERED, ADJUDGED and DECREED that all claims by plaintiff against defendants Tunica-Biloxi Gaming Commission, Lori Piazza and Vocarro in the instant suit are DENIED AND DISMISSED with prejudice. It is further

ORDERED that plaintiff's pending motion for issuance of subpoena duces tecum (Doc. 71) is DENIED as MOOT. Similarly, the motion to quash (Doc. 74) filed thereafter by defendant is DENIED as MOOT.

THUS DONE AND SIGNED this 26th day of March, 2020 at Alexandria, Louisiana.

DEE D. DRELL, JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

| | |
|---|---|
| **SHANNON DOTSON** | **CASE NO. 1:18-CV-00885** |
| **VERSUS** | **JUDGE DRELL** |
| **TUNICA-BILOXI GAMING COMMISSION** | **MAGISTRATE JUDGE PEREZ-MONTES** |

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JUDGMENT

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ORDERED, ADJUDGED and DECREED that all claims by plaintiff against defendants Tunica-Biloxi Gaming Commission, Lori Piazza and Vocarro in the instant suit are DENIED AND DISMISSED with prejudice. It is further

ORDERED that plaintiff's pending motion for issuance of subpoena duces tecum (Doc. 71) is DENIED as MOOT. Similarly, the motion to quash (Doc. 74) filed thereafter by defendant is DENIED as MOOT.

THUS DONE AND SIGNED this 26th day of March, 2020 at Alexandria, Louisiana.

DEE D. DRELL, JUDGE
UNITED STATES DISTRICT COURT

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

| | |
|---|---|
| SHANNON DOTSON,<br>Plaintiff | CIVIL DOCKET NO. 1:18-CV-00885 |
| VERSUS | JUDGE DRELL |
| TUNICA BILOXI GAMING COMMISSION,<br>Defendants | MAGISTRATE JUDGE PEREZ-MONTES |

## REPORT AND RECOMMENDATION

Before the Court are two Motions to Dismiss filed by Defendants, alleging tribal immunity and failure to effect service of process. ECF Nos. 51, 52. Because the Tunica-Biloxi Gaming Commission has sovereign immunity, its Motion to Dismiss should be GRANTED. Because Plaintiff failed to serve process on the other Defendants, the Motion to Dismiss pursuant to Fed. R. Civ. P. rule 4(m) should be GRANTED as to all other Defendants.

### I. Background.

Plaintiff Shannon Dotson ("Dotson") filed a *pro se* complaint pursuant to 42 U.S.C. § 1983; § 706 of the Civil Rights Act of 1964; 18 U.S.C. § 1964 (civil RICO); *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971); the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680; and the "eggshell skull rule." ECF Nos. 1, 11, 40. The named Defendants are the Tunica-Biloxi Gaming Commission ("Gaming Commission"), Sheila Augustine ("Augustine"), Lori Piazza ("Piazza"), Ms. Vocarro ("Vocarro"), Ms. Camilla, Commissioner Newman

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("Newman"), Commissioner Bobby Pierite ("Pierite"), Catherine Pierite ("Catherine Pierite"), and Cheryl Barby ("Barby").[1]

Dotson alleges Defendants conspired to steal her slot machine jackpot of $20,500,000. ECF No. 40 at 4. Dotson contends that, when her slot machine stopped, it showed at the bottom "20 5". ECF No. 40 at 7. Dotson contends she was entitled to another free spin, but the machine would not spin, so she hit the service button. ECF No. 40 at 7. Defendant Piazza arrived, told Dotson she had not won, cashed Dotson out on the machine, moved the "reel," and took Dotson's "ticket." ECF No. 40 at 7. Piazza's supervisors, Pierite and Vocarro, then arrived. ECF No. 40 at 7. Pierite could not find a code "20 5" in the manual and said there was no such code. ECF No. 40 at 7. When they ran a code scan, no code with "20 5" showed up. ECF No. 40 at 7.

Augustine, a Gaming Commission representative, showed Dotson a video of herself and Piazza. ECF No. 40 at 9. The video showed an error code of 20 5, stating it was a jammed coin and printer error. ECF No. 40 at 9. Dotson contends she had not put coins in the machine. ECF No. 40 at 9. The Gaming Commission ruled against Dotson. ECF No. 40 at 9. Dotson contends Defendants deprived her of a jackpot worth "20 5," or (according to Dotson) $20,500,000.[2] ECF No. 40 at 7. Dotson contends Defendants violated gaming regulations and laws, fabricated evidence, falsified documents "in a federal establishment," defamed her, lied under oath before

[1] Dotson also names an "unnamed supervisor" and an "unnamed manager." Dotson has never provided any names.

[2] Dotson has not explained why she believes there should be five zeros after "20 5".

the gaming commissioners, and falsified the error codes in the slot machine. ECF No. 40 at 15. Dotson alleges claims of theft, defamation, negligence, "tort act," breach of contract, misconduct, abuse of discretion, abuse of process, and excessive force (among others). Dotson asks for treble damages and a jury trial.

The Commission filed a Motion to Dismiss and, Alternatively, Motion for More Definite Statement. ECF No. 51. The Commission alleges that it has tribal sovereign immunity.

Piazza and Vocarro filed a Motion to Dismiss for failure to effect service pursuant to Fed. R. Civ. P. 4(m). ECF No. 52.

## II. Law and Analysis

### A. The Gaming Commission and its Commissioners (in their official capacities) have tribal immunity.

The Gaming Commission contends it is a tribal agency and an arm of the Tunica-Biloxi Indian Tribe ("the Tribe") and, therefore, has sovereign immunity.

The Tribe is the owner and operator of the Grand Casino Avoyelles. *See Gore v. Grand Casinos of Louisiana, Inc.*, 1998 WL 1990523, at *1 (W.D. La. 1998). The Tribe has been recognized by Congress as a sovereign Indian nation. *See Gore*, 1998 WL 1990523, at *1 (citing *Notice, Final Determination for Federal Acknowledgment of the Tunica–Biloxi Indian Tribe,* 46 Fed. Reg. 38411 (July 27, 1981)). It is therefore immune from suit unless it expressly consents be sued. *See Gore*, 1998 WL 1990523, at *1 (citing *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991)).

Gaming activities under the IGRA do not constitute an express and unequivocal waiver of immunity from suit. *See Havekost v. Grand Casinos of Louisiana*, 2000 WL 33909243, at *1 (W.D. La. 2000) (citing *Florida v. Seminole Tribe of Florida,* 181 F.3d 1237, 1243 (11th Cir. 1999)). Tribal sovereign immunity extends to tribal enterprises, including gaming. *See Havekost*, 2000 WL 33909243, at *1 (citing *World Touch Gaming, Inc. v. Massena Management L.L.C.,* 117 F. Supp. 2d 271 (N.D.N.Y. 2000)). Indian tribal courts have exclusive jurisdiction over actions of non-Indians on reservation lands. *See Havekost*, 2000 WL 33909243, at *1 (citing *Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida,* 999 F.2d 503 (11th Cir. 1993); *Montana v. United States,* 450 U.S. 544 (1981)).

Defendants submitted an affidavit from Rudolph Wambsgans III ("Wambsgans"), the chairman of the Gaming Commission. ECF No. 51-2. Wambsgams states the Gaming Commission is a governmental agency of the Tribe, and the tribal gaming authority with responsibility for regulating gaming activities conducted within the jurisdiction of the Tribe. ECF No.51-2 at 2. The Gaming Commission was established by the Tribe pursuant to tribal law under the Tribe's gaming regulations in accordance with the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701, et seq. ECF No. 51-2 at 2. Wambsgans shows that § 14(A) of the Tribal-State Compact between Louisiana and the Tribe states the Tribe "shall not be deemed to have waived its sovereign immunity from suit with respect to such disputes." ECF No. 51-2 at 2.

As an agency and arm of the Tribe, the Gaming Commission also has sovereign immunity. *See In re Intramta Switched Access Charges Litigation*, 158 F. Supp. 3d 571, 575-764 (N.D. Tex. 2015) (collecting cases); *Havekost*, 2000 WL 33909243, at *1.

Moreover, Defendants sued in their official capacities as tribal officers may assert sovereign immunity. *See Lewis v. Clark*, 137 S. Ct. 1285, 1291 (2017). Accordingly, to the extent Dotson's suit against Commissioner Newman and Commissioner Bobby Pierite is against them in their official capacities, it should be dismissed due to sovereign immunity.[3]

B. Dotson's action against Piazza and Vacarro should be dismissed.

Piazza and Vocarro filed a Motion to Dismiss (ECF NO. 52) for failure to effect service of process.

Bianca Smith, a private process server, stated in an affidavit that she served Piazza and Vocarro through Christy J. Smith. ECF No. 58-1. The service returns show she left the summonses with "Christy J. Smith." ECF No. 41.

Defendants show, in an affidavit by Christy J. Smith ("Smith"), that Smith is the Clerk of Court for the Tunica-Bioloxi Tribal Court. ECF No. 52-2 at 1. In that capacity, Smith receives documents that are requested to be served through the Tribal Police, reviews them for sufficiency, and forwards them to the Tribal Police for service. ECF No. 52-2 at 1. Smith is not an authorized agent for service of process for any of the Defendants. ECF No. 52-2 at 1. Smith determined that Piazza was no longer employed at the Casino and could not be served by the Tribal Police, and

[3] Dotson did not state whether she was suing the individual defendants in their individual or official capacities.

returned that summons to Dotson. ECF No. 52-2 at 2. Smith determined that Vocarro could not be served by the Tribal Police because the summons lacked a first name, so she returned that summons to Dotson, also. ECF No. 52-2 at 2.

Defendants Piazza and Vocarro were never served. ECF Nos. 35, 41, 42, 52-2. Although she has made repeated efforts to effect service,[4] Dotson has not shown good cause for failure to do so in accordance with Fed. R. Civ. P. 4(m). Accordingly, the complaint against Piazza and Vocarro should be dismissed without prejudice for failure to effect service within 90 days, as required by Fed. R. Civ. P. 4(m). *See McGinnis v. Shalala*, 2 F.3d 548, 550 (5th Cir. 1993), cert. den., 510 U.S. 1191 (1994); *Systems Signs Supplies v. U.S. Dept. of Justice*, 903 F.2d 1011, 1013 (5th Cir. 1990); *Kersh v. Derosier*, 851 F.2d 1509, 1512 (5th Cir. 1988).

C. <u>Dotson's complaint against Augustine, Camilla, Newman, Bobby Pierite, Catherine Pierite, and Barby should also be dismissed for lack of service of process.</u>

Dotson's second amended complaint was filed on June 6, 2019. ECF No. 40. Summonses were issued for Augustine, Camilla, Newman, Bobby Pierite, Catherine Pierite, and Barby on June 6, 2019. To date, those Defendants have not been served. Dotson's complaint against Augustine, Camilla, Newman, Bobby Pierite, Catherine Pierite, and Barby should be dismissed without prejudice pursuant to Fed. R. Civ. P. rule 4(m) for failure to effect service within 90 days.

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[4] Dotson tried to mail the summonses (ECF No. 16), tried to deliver them herself (ECF No. 27), tried to effect service through the United States Attorney and United States Attorney General (ECF No. 28), and tried to leave the summonses with someone who was not an agent for service of process (ECF Nos. 35, 41). Also, although summonses were issued (ECF No. 43), there is no evidence of any effort to serve Barby, Newman, or the Pierites.

## III. Conclusion

Because the Commission, Commissioner Newman in his official capacity, and Commissioner Pierite in his official capacity have sovereign immunity, IT IS RECOMMENDED that Defendant's Motion to Dismiss the action against the Tunica-Biloxi Gaming Commission (ECF No. 51) be GRANTED and that Dotson's action against the Gaming Commission, as well as Commissioner Newman and Commissioner Pierite in their official capacities, be DENIED AND DISMISSED WITH PREJUDICE.

Because Dotson failed to effect service within 90 days on any of the individual Defendants, IT IS RECOMMENDED that Defendants' Motion to Dismiss the action against Piazza and Vocarro (ECF No. 52) be GRANTED and that Dotson's action against Piazza and Vocarro, as well as Augustine, Camilla, Newman, Bobby Pierite, Catherine Pierite, and Barby, be DISMISSED WITHOUT PREJUDICE.

Under the provisions of 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b), parties aggrieved by this Report and Recommendation have fourteen (14) calendar days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. No other briefs (such as supplemental objections, reply briefs, etc.) may be filed. Providing a courtesy copy of the objection to the undersigned is neither required nor encouraged. Timely objections will be considered by the District Judge before a final ruling.

Failure to file written objections to the proposed findings, conclusions, and recommendations contained in this Report and Recommendation within fourteen (14) days from the date of its service, or within the time frame authorized by Fed. R. Civ. P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Judge, except upon grounds of plain error.

THUS ORDERED AND SIGNED in Chambers at Alexandria, Louisiana on this 26th day of February 2020.

Joseph H.L. Perez-Montes
United States Magistrate Judge

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# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
**FILED**
October 28, 2020
Lyle W. Cayce
Clerk

No. 20-30261

SHANNON DEMOND DOTSON,

*Plaintiff—Appellant*,

*versus*

TUNICA-BILOXI GAMING COMMISSION; SHEILA AUGUSTINE; LORI PIAZZA; MS. VOCARRO; UNKNOWN SUPERVISOR, AFRICAN; UNKNOWN MANAGER, 1:30 PM; MS. CAMILLA; COMMISSIONER NEWMAN; COMMISSIONER BOBBY PIERITE; CATHERINE PIERITE; CHERYL BARBY,

*Defendants—Appellees*.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:18-CV-885

Before HAYNES, WILLETT, and HO, *Circuit Judges*.

PER CURIAM:*

Shannon Dotson claims he won a $20,500,000 jackpot while playing the slot machine at the Paragon Casino Resort. Dotson filed this suit pro se

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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that he asked to speak with a manager; Ms. Vocarro and Bobby Pierite, two of Piazza's supervisors, arrived. Dotson claims that Vocarro and Pierite, as well as other casino employees, said they could not find a "20 5" code in the slot machine manual and, when they ran a code scan, no code with "20 5" showed up. Dotson appeared before the Tunica-Biloxi Gaming Board to present his case, and the Board ruled against him.

Dotson then brought this suit pro se under 42 U.S.C. § 1983, § 706 of the Civil Rights Act of 1964, 18 U.S.C. § 1964 (civil RICO), *Bivens*, the Federal Tort Claims Act, and the "eggshell skull rule." Dotson alleges that the Gaming Commission, Piazza, Vocarro, and other defendants violated gaming regulations and laws, fabricated evidence, falsified documents, defamed him, lied under oath, and falsified error codes in the slot machine.[1]

The Gaming Commission filed a motion to dismiss under Rule 12(b)(1), asserting tribal sovereign immunity, or, in the alternative, a motion for a more definite statement. Piazza and Vocarro filed a motion to dismiss for failure to effect service under Federal Rules of Civil Procedure 4(m), 12(b)(5), and 41(b), as well as under Local Rule 41.3. The magistrate judge issued a report and recommendation, finding that the Gaming Commission was an agency and arm of the Tribe and thus entitled to sovereign immunity. The magistrate judge also found that Dotson had not served Piazza and Vocarro and had not shown good cause for his failure to serve them under Rule 4(m). Thus, the magistrate judge recommended that the claim against

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[1] In addition to naming the Gaming Commission, Piazza, and Vocarro as defendants, Dotson also sued an unnamed supervisor, Sheila Augustine, Ms. Camilla, Bobby Pierite, Catherine Pierite, Cheryl Barbry, and Aubery Newman. The magistrate judge recommended dismissing Dotson's action against these defendants for lack of service, but the district court did not specifically mention these defendants in its dismissal. However, on appeal, Dotson does not claim to have effected service on any of these defendants.

the Gaming Commission be dismissed with prejudice and the claim against Piazza and Vocarro be dismissed without prejudice. The district court adopted the magistrate judge's R&R and dismissed with prejudice Dotson's claims against the Gaming Commission, Piazza, and Vocarro.[2] Dotson appealed.

II

We review a district court's dismissal for lack of subject-matter jurisdiction de novo. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). We review a district court's dismissal for failure to timely effect service for abuse of discretion. *Thrasher v. City of Amarillo*, 709 F.3d 509, 511 (5th Cir. 2013).

III

Dotson raises two issues on appeal. First, he claims that the district court erred in granting the Gaming Commission's motion to dismiss based on tribal sovereign immunity. Second, he argues that the district court erred in granting Piazza and Vocarro's motion to dismiss under Rules 4(m), 12(b)(5), and 41(b) and Local Rule 41.3. We address each in turn.

A

Tribes possess "common-law immunity from suit," subject only to Congress's plenary control. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)). This doctrine of tribal sovereign immunity is "settled law." *Id.* at 789 (quoting *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 756 (1998)).

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[2] The district court also denied as moot: The Gaming Commission's alternative motion for a more definite statement; Dotson's motion for issuance of subpoena duces tecum; and the Commission's motion to quash.

against multiple defendants, including the Tunica-Biloxi Gaming Commission, Lori Piazza, and Ms. Vocarro, alleging that they stole his jackpot winnings by fabricating a slot machine error code. The district court dismissed with prejudice Dotson's claims against the Gaming Commission, Piazza, and Vocarro. Dotson appealed, and, for the reasons discussed below, we affirm.

I

The Tunica-Biloxi Tribe of Louisiana is a federally recognized Indian tribe. *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 81 Fed. Reg. 26,826–02, 26,830 (May 4, 2016). The Tribe established the Tunica-Biloxi Gaming Commission under tribal law and in accordance with the Indian Gaming Regulatory Act (IGRA). *See* 25 U.S.C. §§ 2701 *et seq.* The Gaming Commission regulates gaming activities within the jurisdiction of the Tribe, including those at the Tribe-owned Paragon Casino Resort. *See* Tribal-State Compact for the Conduct of Class III Gaming Between the Tunica-Biloxi Indian Tribe of Louisiana and the State of Louisiana, § 8(A); *see also* 66 Fed. Reg. 51,453–03, 51,453 (Oct. 9, 2001). In the Tribal-State Compact between the Tribe and the State of Louisiana, the Tribe expressly reserved its tribal sovereign immunity with respect to patrons' disputes arising from the Paragon Casino's refusal to award or pay alleged winnings. *See* Tribal-State Compact at § 14(A).

* * *

Shannon Dotson was a patron at the Paragon Casino Resort. He alleges that his slot machine stopped and displayed "20 5," which he claims entitled him to a $20,500,000 jackpot. Dotson says that he pressed the machine's service button to claim his winnings; he further asserts that Lori Piazza, a Paragon Casino employee, arrived at his slot machine, told him that he had not won, cashed him out, and then took his ticket. Dotson then avers

Accordingly, absent congressional authorization or waiver, a court must dismiss a suit against a tribe for lack of subject-matter jurisdiction. *Id.* Moreover, tribal sovereign immunity shields not only the tribe itself but also "an arm or instrumentality" of the tribe. *Lewis v. Clarke*, 137 S. Ct. 1285, 1290 (2017) (citation omitted).

Applying these principles to this case, the Tunica-Biloxi Tribe is immune from suit, and the Tribe's immunity extends to the Gaming Commission, an arm of the Tribe. Plus, Congress has not authorized suit, and the Tribe has expressly reserved its immunity from suit in contested-winnings disputes brought by patrons. Thus, the Gaming Commission is shielded from suit, and the district court did not err in dismissing the claims against the Gaming Commission for lack of subject-matter jurisdiction.

Dotson's arguments to the contrary fail. Although Dotson acknowledges that the Tribe is immune from suit, he argues that the Gaming Commission, as an agency of the Tribe, does not enjoy this same immunity. But this argument conflicts with the principle of sovereign immunity that "an arm or instrumentality of the State generally enjoys the same immunity as the sovereign itself." *Lewis*, 137 S. Ct. at 1290 (citation omitted). Dotson also argues that tribal sovereign immunity can be circumvented by seeking an injunction against a specific official: He claims his suit is not against the Tribe but rather against the "Paragon Casino employee that was violating Federal Gaming Regulation Laws." However, the question of the Tribe's—and, by extension, the Gaming Commission's—sovereign immunity is independent of the question of whether individual capacity suits may be brought against

tribal officials. Because only the former is at issue here and the Tribe and Gaming Commission enjoy sovereign immunity, Dotson's argument fails.[3]

B

We next address Dotson's arguments regarding the dismissal of his claims against Piazza and Vocarro for failure to timely effect service of process. Rule 4(m) requires a court to dismiss an action without prejudice if the defendant is not served within 90 days after the complaint is filed. FED. R. CIV. P. 4(m). However, "if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." *Id.* And "[e]ven if the plaintiff lacks good cause, the court has discretion to extend the time for service." *Thrasher*, 709 F.3d at 511.

The plaintiff bears the burden of proving good cause for failure to effect timely service. *Id.* This proof requires "at least as much would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice." *Id.* (quoting *Winters v. Teledyne Movible Offshore, Inc.*, 776 F.2d 1304, 1306 (5th Cir. 1985)). Plus, the plaintiff must also show good faith and "some reasonable basis for noncompliance" with timely service. *Id.* (quoting *Winters*, 776 F.2d at 1306). If the district court exercises its discretion and dismisses an action *with prejudice*, "we must find a delay longer than just a few months; instead, the delay must be characterized by significant periods of total inactivity" to justify this "extreme sanction." *Id.* at 512–13 (cleaned up).

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[3] Dotson also argues that the district court erred in dismissing the claims against the Gaming Commission because he effected service on parties. However, this argument conflates the court's subject-matter jurisdiction with separate jurisdictional issues. Accordingly, this argument also fails.

The district court did not abuse its discretion in concluding that Dotson had failed to show good cause for his failure to effect timely service and in dismissing his action with prejudice. Approximately eight months passed between Dotson's filing of his complaint and the reissuance of summons to Piazza and Vocarro, which were returned unexecuted. During those eight months, Dotson made no effort to serve Piazza or Vocarro. Moreover, during that eight-month period, Dotson was granted an extension of time to effect service and two received two notices of the district court's intent to dismiss his case for failure to prosecute under Local Rule 41.3. After Dotson's suit was dismissed for failure to effect service and then reopened, the district court granted Dotson yet another extension of time to complete service by June 15, 2019. Dotson fails to show good cause for these delays. Both of his arguments that good cause exists—the alleged theft was a "traumatizing experience" and "Cindy or Christy Smith sabotage[d] the summons"—are insufficient proof to meet his burden. Moreover, the district court's decision to impose the extreme sanction of dismissal with prejudice was warranted here because there is a "clear record of delay" that was caused by Dotson himself. *See Thrasher*, 709 F.3d at 514 (considering a clear record of delay plus one of three aggravating factors as grounds for affirming dismissals with prejudice).

Dotson argues that the district court abused its discretion in dismissing his claims against Piazza and Vocarro because he claims that he effectively served them on June 14, 2019. That day, Dotson's process server requested that Christy Smith, the Clerk of Court for the Tunica-Biloxi Tribal Court, serve summons on the Gaming Commission, Piazza, and Vocarro. Smith determined that the summons issued to Piazza could not be served because Piazza was no longer employed at the Paragon Casino Resort and the summons issued to Vocarro could not be served because it lacked the defendant's full name. Both summonses were then returned by mail to

Dotson; neither Piazza nor Vocarro were served. Moreover, Dotson's attempt at service was defective under Rule 4(e) because Smith is not an authorized agent for service for either Piazza or Vocarro.[4] Dotson's argument thus fails.

## IV

For all these reasons, we AFFIRM the district court's dismissal of Dotson's claims against the Gaming Commission, Piazza, and Vocarro.

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[4] As Clerk of Court, Smith receives documents that are requested to be served through the Tribal Police. After reviewing the documents to determine if they are sufficient, she forwards them to the Tribal Police for service.

# *United States Court of Appeals*

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 28, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 20-30261 Shannon Dotson v. Tunica-Biloxi Gaming Cmsn, et al
USDC No. 1:18-CV-885

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5TH Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5TH Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

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Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Whitney M. Jett, Deputy Clerk

Enclosure(s)

Mr. Shannon Demond Dotson
Mr. Douglas Russell Holwadel