

FILED FEB 10 1997

TRIBAL COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

CARRIE L. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

Clifford S. Crooks Sr.

Court File Number 054-95

Plaintiff,

v.

Shakopee Mdewakanton Sioux
(Dakota) Community,

Defendant.

MEMORANDUM

INTRODUCTION

This matter is before the Court to resolve the remaining issue as to whether or not the Plaintiff, Clifford S. Crooks Sr., is entitled to an award of damages from the Defendant, Community, for allegedly violating his rights under the due process and equal protection clauses of the Indian Civil Rights Act of 1968 and the Community's Constitution by intentionally preventing timely consideration of his enrollment application thereby denying his membership and the rights of membership including voting rights and community benefits for a ten month period. The Defendant, has submitted its Motion to Dismiss under Rule 12(b) (6). This matter was previously before the Court on a related matter wherein the Plaintiff, filed suit against the Defendant asking the Court to either "recognize" his membership in the Community or to make him a member of the

Community by order of the Court. The Trial Court in that matter dismissed the Plaintiff's motion finding the Plaintiff had not exhausted tribal administrative remedies in the form of the Community's Enrollment Ordinance. The dismissal was appealed and the Community's Court of Appeals reversed and remanded the issue for consideration of the case under the Community's 1993 Enrollment Ordinance, No. 06-08-93-001, which is in effect. The issue as to whether the Plaintiff should be a member of the Community has been rendered moot vis- -vis the Community's Enrollment process. The Community has since, through their General Council, voted the Plaintiff into membership on June 20, 1996. The Plaintiff now asserts that he is entitled to retroactive payments. The reasoning put forth by the Plaintiff is that had the Community acted sooner he would have been entitled to membership and the rights of membership sooner. The Plaintiff further asserts that the Community intentionally deprived him of his membership and membership rights and as a result he is entitled to damages equivalent to the amount of per capita payments covering the time period when he felt the Community should have acted on his enrollment application. The Court having heard the matter on oral argument and having reviewed the file and the pleadings contained therein hereby issues the following:

MEMORANDUM

The Court must weigh the arguments put forth by both the Plaintiff and the Defendant in light of the Motion to Dismiss filed by the Defendant, Community pursuant to Rule 12 (b) (6) of the Community Rules of Civil Procedure. In so doing, the Court must examine whether the Plaintiff has in fact stated a claim for relief upon which the Court can grant the relief requested. The Plaintiff's status has changed from mere

enrollment applicant to being an enrolled member with certain vested rights such as entitlement to participate in the Community's financial programs, and can now vote on Community matters and so forth. With the change of status from enrollment applicant to membership does not mean his membership rights are retroactive to the time of application or any other time other than the actual time when he was voted into membership under the Community's Enrollment Ordinance.

Prior to being actually voted into membership the Plaintiff's status was that of enrollment applicant. Enrollment applicants certainly can not participate as actual members of the Community by receiving per capita payments, voting and having membership rights in the Community. It is the Courts understanding that an integral component of the enrollment process is the vote of the Community's General Council on qualified enrollment applicants into membership. As discussed and elaborated upon in F.Cohen, Handbook of Federal Indian Law (1982) at pg. 20, "Tribal Power to Determine Membership", the Courts have consistently held that Indian Tribes' most basic and paramount power is their ability to establish their membership requirements and define their membership. F.Cohen, supra, further cites Santa Clara Pueblo v. Martinez, 436 U.S. 49, at 72 n. 32, wherein the Court held "[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence....[t]he judiciary should not rush to create causes of action that would intrude on these delicate matters."

Even if the Community had acted on the Plaintiff's enrollment application in accordance with his wishes, there was no guarantee the Community's General Council would have voted him into membership at that time. In fact in support of this statement

the Court looks to the Affidavit of Stanley Crooks at 2. which states, "I was present at and presided over a General Council meeting on February 13, 1996, during which the General Council voted to reject Clifford S. Crooks Sr.'s application for enrollment." The same Affidavit later states at 4., "Clifford S. Crooks Sr.'s enrollment application was again presented to the General Council on June 20, 1996. I was present at and presided over that meeting and know that Clifford S. Crooks Sr. was accepted into membership by the General Council on that date." The Court can not and will not dictate to the Community General Council as to how they should vote on any given enrollment application. Therefore the Court cannot conclude that had the Plaintiff's enrollment application been processed sooner it would have been voted on favorable to him by the General Council. That is pure speculation.

Awarding damages on what the Plaintiff thinks might have happened on his enrollment application had it been processed sooner is beyond the purview of this Court to even consider. There is no guaranting that had the application been processed sooner, the General Council would have voted him in sooner. In fact, the General Council voted to reject his application first and then subsequently voted him in at a later meeting.

The Plaintiff argues that his claim is distinguishable from the claims asserted in the Amundsen v. SMS(D)C Enrollment Committee, Case No. 049-94, (September 16, 1996), and Amundsen v. SMS(D)C Enrollment Committee, Case No. 049-94, (April 14, 1995), in that Plaintiff asserts as a factual distinction he was never a member of another tribe such as the Plaintiffs in the Amundsen case were members of other tribes. What is not distinguishable and what is important in this matter is that both the Plaintiff here in this

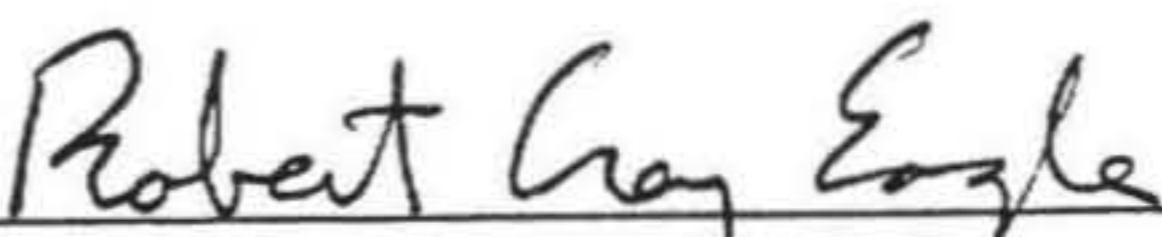
case and the Plaintiffs in the Amundsen case allege had the enrollment officer acted sooner they would have been enrolled members. The status of the Plaintiffs may have been different as to their membership elsewhere but their cause of action is similar and legally indistinguishable from the case at hand. The holding of this case therefore applies in that the Court is unable to compensate the enrollment applicant for not having their applications acted on sooner.

The status of being a mere enrollment applicant as opposed to being a member with vested rights is comparatively held in the same light as to applicants for benefits anywhere else as discussed in the pleadings filed in this matter and by the Supreme Court in its holding that it has "never held that applicants for benefits, as distinct from those already having them, have a legitimate claim for entitlement protected by the Due Process Clause of the Fifth and Fourteenth Amendment." Lyng. v. Payne, 476 U.S. 926,942 (1986) citing Walters v. National Assn. Of Radiation Survivors, 473 U.S. 305, 320 n. * (1985). An enrollment applicant does not have a property or liberty interest to protect. Therefore, the Court need not further examine whether a due process right had been violated. Therefore, the Court concludes that there is no violation of the Indian Civil Rights Act 25 U.S.C. § 1302 that can be ascertained upon an examination of the legal status of the Plaintiff when he was an enrollment applicant. This is consistent with the holding of Kentucky Dept. of Corrections v. Thompson, 590 U.S. 454, 460 (1989) wherein the holding was if there was a liberty or property interest found to exist then the Court could go to the second stage of examination on whether procedures attendant upon the deprivation were constitutionally sufficient."

CONCLUSION OF LAW

The plaintiff in his prior capacity as an enrollment applicant did not have a legal claim compensable by this Court and any award for damages would be entirely speculative.

Date: February 10, 1997


Robert A. Grey Eagle, Judge,
Tribal Court

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Shakopee Mdewakanton Sioux (Dakota)
Community,

Defendant.

ORDER AND MEMORANDUM

The above-entitled matter came on for hearing before the undersigned Judge of Tribal Court on the 12th day of November, 1996, at 2330 Sioux Trail Northwest in the City of Prior Lake, County of Scott, State of Minnesota, pursuant to the Defendant's Motion to Dismiss.

Larry B. Leventhal, Esq. appeared on behalf of the Plaintiff. Vanya S. Hogenkind, Esq. appeared on behalf of the Defendants.

The Court being fully advised of the premises, and based on the files, records and evidence herein, as well as the arguments of counsel for both parties,

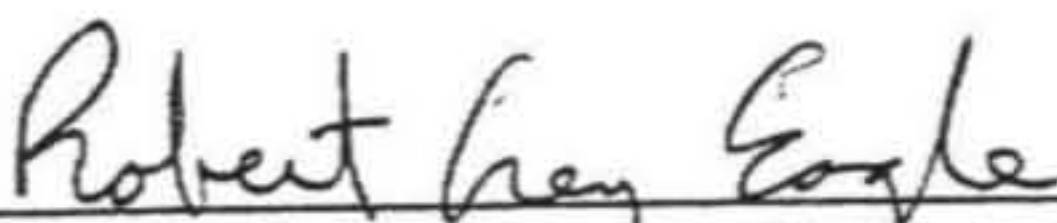
IT IS HEREBY ORDERED,

1. That the Defendant's Motion to Dismiss be, and hereby is, GRANTED;

and,

2. That the attached Memorandum of Law be, and hereby is INCORPORATED into, and made a part of this Order.

Date: February 10, 1997



Robert A. Grey Eagle, Judge