

DEC 23 1994

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JUDICIAL COURT OF THE  
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Barry Welch, Stacie D. Welch,  
Stephanie Sioux Welch, Brenda (Welch) Wilt,  
Joseph M. (Welch) Wilt, Thomas W. (Welch) Wilt, and  
Violet A. (Welch) Wilt,

Court File No. 023-92

Plaintiffs,

v.

MEMORANDUM  
OF LAW

Shakopee Mdewakanton Sioux Community:  
Stanley Crooks, Chairman; Kenneth Anderson,  
Vice Chairman; and Darlene Matta, Secretary-Treasurer,

Defendants.

## I.

This matter involves claims by the various Plaintiffs that they wrongfully have been denied per capita payments and various economic assistance offered by the tribe to its enrolled members. The Plaintiffs contend that this denial is based on the tribes incorrect conclusion that they are not enrolled members.

This case involves numerous complex issues. However, two fundamental issues are dispositive of this case. First, whether the tribal Constitution or Enrollment Ordinance are self-executing and provide for "automatic enrollment"; Second, whether the Plaintiffs failed to exhaust tribal remedies.



## II.

### AUTOMATIC ENROLLMENT

Membership in the Shakopee Mdewakanton Sioux (Dakota) Community is governed by Article II, Sections (a), (b), and (c) of the Community's Constitution and the Community Enrollment Ordinance #7-4-16-83 (the Ordinance). Article II governs standards for membership and the Ordinance governs procedures to be followed in obtaining membership.

Article II, Section 1(a) provides that the Community enrolled "Charter Members." Those members' names appeared on the 1969 census of the Mdewakanton Sioux residents of the Prior Lake Reservation, which was prepared for the purpose of organizing the Shakopee Mdewakanton Sioux Tribe. Article II, Section 1(b) and (c) govern membership of all other prospective members. Article II, Section 1(b) provides that membership of the Community shall consist of all children of at least one-fourth degree Mdewakanton Sioux Indian blood born to an enrolled member of the Shakopee Mdewakanton Sioux Community and Article II, Section 1(c) provides that membership shall consist of all descendants of at least one-fourth ( $\frac{1}{4}$ ) degree Mdewakanton Sioux Indian blood who can trace their Mdewakanton Sioux Indian blood to the Mdewakanton Sioux Indians who resided in Minnesota on May 20, 1886, provided, they apply for membership and are found qualified by the governing body, and provided further, they are not enrolled as members of some other tribe or band of Indians.<sup>1</sup>

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<sup>1</sup> Article II, Section 1(a), (b) & (c) states as follows:

#### ARTICLE II - MEMBERSHIP

Section 1. The membership of the Shakopee Mdewakanton Sioux Community shall consist of:

- (a) All persons of Mdewakanton Sioux Indian blood, not members of any other Indian tribe, band or group, whose names appear on the 1969 census roll of Mdewakanton Sioux



Article II, Section 2 also provides that the governing body shall have the power to pass resolutions and ordinances to govern future membership, adoption and loss of membership. Pursuant to this authority the Community passed the Enrollment Ordinance. Sections 6 and 7 of the Enrollment Ordinance provide the procedures which must be followed in applying for membership.<sup>2</sup>

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residents of the Prior Lake Reservation, Minnesota, prepared specifically for the purpose of organizing the Shakopee Mdewakanton Sioux Community and approved by the Secretary of the Interior.

- (b) All children of at least one-fourth ( $\frac{1}{4}$ ) degree Mdewakanton Sioux Indian blood born to an enrolled member of the Shakopee Mdewakanton Sioux Community.
- (c) All descendants of at least one-fourth ( $\frac{1}{4}$ ) degree Mdewakanton Sioux Indian blood who can trace their Mdewakanton Sioux Indian blood to the Mdewakanton Sioux Indians who resided in Minnesota on May 20, 1886, Provided, they apply for membership and are found qualified by the governing body, and provided further, they are not enrolled as members of some other tribe or band of Indians.

<sup>2</sup>

Sections 6 and 7 of the Enrollment Ordinance state as follows:

Section 6 - Filing and processing applications - Applications for enrollment in the Shakopee Mdewakanton Sioux Community shall be a form approved by the General Council. The Enrollment Officer shall respond to requests for applications. Applications shall be filed with the Enrollment Office. Upon receipt of the applications in the Enrollment Office, they shall be assigned an identifying number and stamped with the date of receipt. Applications shall be accompanied by a Birth Certificate or other evidence acceptable to the Enrollment Committee as to date of birth and parentage. Applications for minors or mental incompetents or others unable to complete the form may be filed by a parent or legal guardian, next of kin or the Enrollment Officer. The Enrollment Officer shall assist applicants in completing [sic] the form or obtaining necessary documents. However, the burden of proof is on the applicant to establish eligibility for membership.

The Enrollment Officer shall verify the data shown on the application and the supporting documentation and recommend in writing acceptance or rejection of the application to the Enrollment Committee.

The Enrollment Committee shall approve or reject all enrollment applications based on the record presented and other evidence deemed acceptable by said committee.

The Enrollment Officer shall notify all applicants in writing of the action of the Enrollment Committee and post the names of the approved applicants for ten calendar days. Notice to reject applicants shall be by certified mail and shall state the grounds for rejection and the right of the applicant to appeal as set out in Section 7.

Section 7 - Appeals - Any person rejected for membership may appeal to the General Council by filing an appeal in writing along with supporting evidence with the Enrollment Office within 20 days of receipt of notice of rejection. Persons outside the continental United States shall have 40 days within which to file such an appeal. An extension of 14 days may be granted the appellant by the Enrollment Committee.

The Enrollment Officer shall present the appeal along with the complete record to the Enrollment Committee who shall review the record and recommend in writing to the General Council acceptance, denial or dismissal of the



The Plaintiffs seek membership pursuant to Article II, Section 1(b) and (c). It is not disputed that the Plaintiffs have not followed the procedures set out in Sections 6 and 7 of the Enrollment Ordinance. Rather, the Plaintiffs contend that Article II, Section 1(b) and (c) are self-executing and the Enrollment Ordinance provides for self-enrollment. The Court finds that neither of these documents provides that a person may attain membership in the Shakopee Mdewakanton Sioux (Dakota) Community automatically. Finding automatic enrollment would contradict the clear language of the Constitution and the Ordinance would render the application procedures in the Enrollment Ordinance meaningless, and would contravene the Community's inherent sovereign right to determine its own membership.

Article II of the Community Constitution contains no automatic enrollment provision. Likewise the Enrollment Ordinance contains no provision for self-enrollment. The Plaintiffs' interpretation of the Constitution and Enrollment Ordinance therefore urges the Court to imply

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appeal. The decision [sic] of the General Council shall be final and conclusive on the Shakopee Mdewakanton Sioux Community. However, such decision does not foreclose refiling an application if new or additional information is obtained by the appellant.

Written notice of the decision of the General Council shall be sent to the appellant by the Enrollment Officer, if the appeal is denied or dismissed, the reasons therefore shall be stated in the notice.

Approvals: Any Shakopee Mdewakanton Sioux Community Member may challenge the approval of an application for enrollment by the Enrollment Committee by filing a challenge along with supporting evidence with the Enrollment Officer within ten days of posting of the list of approved applicants. The person whose approved application is challenged shall be notified in writing of the challenge and the evidence presented, and shall be given ten days within which to rebut such evidence.

The Enrollment Officer shall present the entire record of the application to the Enrollment Committee which shall review the same and reconsider its approval. If the Enrollment Committee accepts the challenge, the Enrollment Officer shall notify the applicant as set forth in Section 6. If the Enrollment Committee rejects the challenge, the Enrollment Committee shall inform the General Council in writing of its reasons therefor and transmit the entire record to the General Council.

The decision of the General Council on the challenge shall be final and conclusive upon the Shakopee Mdewakanton Sioux Community. The Enrollment Officer shall notify the applicant and the challenger in writing of the decision of the General Council.



self-executing provisions. This Court will not imply terms which are not expressed in a document where that document is clear.

The Court finds the Constitution and Ordinance clear. The Constitution provides the standards which govern membership applications. It does not purport to address procedural rules such as automatic enrollment. Accordingly, implying a self-executing provision would be contrary to the plain meaning of Article II. Procedures to be followed by persons applying for membership are set out in the Enrollment Ordinance. The Ordinance is clear in its provisions and does not provide for self-enrollment.

The Court further notes that implying an automatic enrollment provision in Article II, Section 1(b) and (c) would cause the Constitution to be inconsistent with the application procedures found in the Enrollment Ordinance. The Court presumes that the General Council did not intend to enact meaningless procedures for membership application when it passed the Enrollment Ordinance. And where possible this Court must interpret two validly enacted provisions so as to give both effect. Stade v. Shakopee Mdewakanton Sioux Community, No. 002-88, Judicial Court of the Shakopee Mdewakanton Sioux Community (April 13, 1989). These documents both may be given effect if the Court does not imply an automatic enrollment provision in the Constitution. The contrary is true if the Court implies an automatic enrollment provision. Accordingly, the Court will not imply an automatic enrollment provision for this reason as well.

Finally, the Plaintiffs' automatic enrollment theory would contravene the Community's right to govern its own membership. A tribe's right to define its own membership long has been held to be "central" to its existence as an independent sovereign nation. Santa Clara Pueblo v.



Martinez, 436 U.S. 71, 73, n.32 (1978), citing Roff v. Burney, 168 U.S. 218 (1897), Cherokee Intermarriage Cases, 203 U.S. 76 (1906). This right is one of the tribes retained original natural rights over matters of local self-government. Worcester v. Georgia, 6 Pet. 515, 8 L.Ed. 483 (1832), U.S. v. Mazurie, 419 U.S. 544 (1975), F. Cohen, Handbook of Federal Indian law, 20-24 (1982), and the use of its Constitution and tribal laws to govern membership decisions is central to a tribe's right to make its own laws and be governed by them. Roff v. Burney, supra, U.S. v. Wheeler, 435 U.S. 313 (1978).

In the exercise of its sovereign right to define its membership the Community adopted Article II of the Constitution and the Enrollment Ordinance. The Plaintiffs' automatic enrollment theory, if adopted, would usurp the Community's authority to determine its membership and, ironically, would place that authority with those who seek to be -- but are not yet -- members. This would be an absurd result which this Court will not encourage or condone.

### III.

#### EXHAUSTION OF TRIBAL REMEDIES

Procedures for obtaining membership in the Community are set out in the Community's Enrollment Ordinance.<sup>3</sup> This Court repeatedly has stressed the importance of litigants complying with the Community's administrative procedures. See, e.g., Ronald Welch, et al v. Norman Crooks, et al., No. 033-88, Judicial Court of the Shakopee Mdewakanton Sioux Community (December 16, 1988). Furthermore this Court has ruled that there is no situation in which that importance would be greater than where membership in the Community is at stake.

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<sup>3</sup> See footnote 2, supra.



Smith, et al. v. Shakopee Mdewakanton Sioux Community Business Council, et al., No. 038-94, Judicial Court of the Shakopee Mdewakanton Sioux Community (June 10, 1994), and, accordingly, has cautioned that it will not allow litigants to circumvent the Community's procedures. Id.

The Ordinance generally requires that the party seeking membership make application to the Community Enrollment Committee. The Committee must then review the application and, upon approval, must post notice to Community members of the application for membership and its approval. Subsequent to that posting, enrolled members of the Community are allowed 10 days to challenge the proposed membership. After the challenge period, the parties approved for membership then must present themselves to the General Council which either votes to confirm or deny their membership.

The Plaintiffs do not contend that they followed the procedures set out in the Enrollment Ordinance. Rather, the record reflects that the Plaintiffs were aware of the procedures and chose not to pursue them.<sup>4</sup> This Court therefore concludes that the Plaintiffs have failed to exhaust their Community provided remedies and until they exhaust those remedies this Court cannot provide them redress. The Court further notes that the Enrollment Committee -- and not this Court -- is best suited to interpret, in the first instance, genealogical information.

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<sup>4</sup> The Plaintiffs' contend that they were automatically enrolled. This argument has been rejected by the Court.

Accordingly this Court expressly does not pass on the merits of the Plaintiffs' membership applications.<sup>5</sup>

HMB

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<sup>5</sup> However, it is the conclusion of this Court, after having considered the evidence presented from both sides, that the enrollment cards and certificates in the Plaintiff's possession are not evidence of the Plaintiffs' membership in the Community. The enrollment cards were unexecuted and were prepared by the aunt and sister of the various Plaintiffs. The Enrollment Certificates, which bore the signature of former Chairman Leonard Prescott, likewise are not evidence of membership. The members of the Welch family are the only persons in the Community which hold such certificates, and the record demonstrated that the certificates were not used by the Community to evidence membership. Furthermore, the Plaintiffs offered no evidence which demonstrated that the General Council had approved the use of these certificates as records of membership.



FILED  
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COUNTY OF SCOTT

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Barry Welch, Stacie D. Welch,  
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Joseph M. (Welch) Wilt, Thomas W. (Welch) Wilt, and  
Violet A. (Welch) Wilt,

Court File No. 023-92

Plaintiffs,

v.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER FOR JUDGMENT**

Shakopee Mdewakanton Sioux Community:  
Stanley Crooks, Chairman; Kenneth Anderson,  
Vice Chairman; and Darlene Matta, Secretary-Treasurer,

Defendants.

The above entitled matter came on for trial before the undersigned Judge of Tribal Court on the 23rd day of May, 1994, at 2330 Sioux Trail Northwest in the city of Prior Lake, County of Scott, State of Minnesota.

Herbert Becker, Esquire and Dorothy Firecloud, Esquire, appeared on behalf of the Plaintiffs. Andrew Small, Esquire and Vanya Hogen-Kind, Esquire, 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 makes the following:

**FINDINGS OF FACT**

1. The Plaintiffs' seek membership in the Shakopee Mdewakanton Sioux (Dakota) Community under Article II, Section 1(b) of the Community Constitution.



2. Article II of the Shakopee Mdewakanton Sioux (Dakota) Community Constitution governs membership in the Community.
3. Article II, Section 1, subd. (a) provides that Article II, Section 1(a) addresses base enrollees in the Community and does not require either a minimum blood quantum or approval by the General Council for eligibility.
4. Those persons appearing on the 1969 Roll of the Community are base enrollees.
5. Article II, Section 1(b) and (c) governs membership of all potential members who are not base enrollees.
6. Article II, Section 1, subd. (b) provides that the membership of the Community shall consist of all children of at least one-fourth ( $\frac{1}{4}$ ) degree Mdewakanton Sioux Indian blood born to an enrolled member of the Shakopee Mdewakanton Sioux (Dakota) Community.
7. Article II, Section 1, subd. (c) provides that the membership of the Community shall consist of all descendants of at least one-fourth ( $\frac{1}{4}$ ) degree Mdewakanton Sioux Indian blood who can trace their Mdewakanton Sioux Indian blood to the Mdewakanton Sioux Indians who resided in Minnesota on May 20, 1886, provided, they apply for membership and are found qualified by the governing body, and provided further, they are not enrolled as members of some other tribe or band of Indians.
8. Article II, Section 2 grants the governing body of the Community the authority to pass resolutions and ordinances governing future membership, adoption and loss of membership.
9. In 1983 the Community adopted Resolution 7-4-13-83 (the Enrollment Ordinance), which governs procedures to be followed by parties seeking membership in the Shakopee Mdewakanton Sioux (Dakota) Community.
10. Sections 6 and 7 of the Enrollment Ordinance provides that prospective members must submit applications to the Enrollment Committee, that the Committee approves or rejects the application, that approved applications are subject to challenge by the enrolled members of the Community. Members approved by the Committee are subject to a confirmation vote of the General Council.
11. The Plaintiffs' contend that they are entitled to a judicial determination of membership and need not make application to the Community's Enrollment Committee because Article II, Section 1(b) is self executing and that the Enrollment Ordinance provides for self enrollment.



12. In 1968 Congress approved payment of damages awarded by the Indian Claims Commission to a number of tribes including the Shakopee Mdewakanton Sioux (Dakota) Community.
13. In 1972 Congress directed the tribes which were entitled to a portion of the damages to prepare rolls of their members.
14. The damages awarded under the Claims Commission are commonly referred to as Docket 363 payments because it reflects the Docket number of the claims Commission case which awarded the damages.
15. The Plaintiffs' applied for Docket 363 payments.
16. The first Docket 363 payment was to be made to members of the Shakopee Mdewakanton Sioux (Dakota) Community and their lineal descendants.
17. The Plaintiffs received the first Docket 363 payment.
18. The second Docket 363 payment was to be made to all persons possessing one-fourth ( $\frac{1}{4}$ ) degree Mdewakanton Sioux blood.
19. The Bureau of Indian Affairs ruled all of the Plaintiffs ineligible to receive the second Docket 363 payment.
20. The Plaintiffs appealed the Bureau of Indian Affairs determination of ineligibility to receive the second Docket 363 payments and the appeal is still pending.
21. In 1985 Congress announced that the final distribution of Docket 363 funds was to be made.
22. The Enrollment Committee determined that the Plaintiffs were not yet members and accordingly were not entitled to Docket 363 payments.
23. As of the time of trial, the Plaintiffs have not submitted an application for membership to the Enrollment Committee, appeared before the Enrollment Committee, or appeared before the Tribal Council.
24. Each of the Plaintiffs possess, or at one time possessed enrollment cards.
25. Kathy Welch Downwind, sister and aunt to the Plaintiffs, worked with the then Secretary-Treasurer of the Community for one year.
26. Kathy Welch Downwind prepared all of the Plaintiffs' enrollment cards while she was employed by the Business Council of the Community.



27. Kathy Welch Downwind removed enrollment cards bearing the names of the Plaintiffs' from the Community's offices while she was employed by the Business Council.
28. The Plaintiffs' enrollment cards were never issued by or approved by the General Council.
29. The Plaintiffs' enrollment cards bear no authorizing signature.
30. The Plaintiffs also possess enrollment certificates which are signed by former Chairman Leonard Prescott.
31. Kathy Welch Downwind typed the certificates possessed by Plaintiffs.
32. The only persons in the Community possessing such certificates are the Welch family members.
33. Then tribal Vice-Chairman Stanley Crooks was not aware of the existence of enrollment certificates nor any General Council action authorizing their creation or in any other way legitimizing them as effective Governmental documents.
34. 72 similar certificates were not distributed, but rather remained in the possession of the Community.
35. The Plaintiffs' Enrollment Certificates were never approved by the General Council.
36. The Plaintiffs' name appears on a typewritten list dated September 22, 1986, which was prepared by the Enrollment Committee.
37. The General Council did not formally approve as a list of members of the Shakopee Mdewakanton Sioux Community the typewritten list dated September 22, 1986.

#### CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over the parties to this case.
2. This Court has subject matter jurisdiction over this case.
3. The Constitution and Enrollment Ordinance govern the standards and procedures for membership applications.
4. Article II of the Shakopee Mdewakanton Sioux (Dakota) Community Constitution sets forth membership requirements.
5. Article II, Sections 1(b) and (c) are not self executing.



6. The Community's Enrollment Ordinance requires that prospective members submit an application to the Enrollment Committee, review that the Enrollment Committee approve or reject the application, and post a notice to all voting members of the Community of an application approval.
7. The Enrollment Ordinance further provides an opportunity to every voting member of the Community to challenge the application approval.
8. The Enrollment Ordinance does not provide for self-enrollment or automatic enrollment.
9. The Community's history regarding enrollment of members other than those Charter members enrolled under Article II, Section 1(a) does not demonstrate that automatic enrollment has ever been recognized.
10. The Plaintiffs' have not pursued the enrollment procedures required by the Enrollment Ordinance.
11. The Plaintiffs' enrollment cards and certificates are not competent evidence of their enrollment as members in the Shakopee Mdewakanton Sioux (Dakota) Community.
12. The Plaintiffs are not enrolled members of the Shakopee Mdewakanton Sioux (Dakota) Community.
13. The Plaintiffs have failed to exhaust Community remedies to address their enrollment claims.
14. The Court does not pass on the merits of the Plaintiffs' entitlement to enrollment as that issue must first be addressed by the Enrollment Committee and General Council.

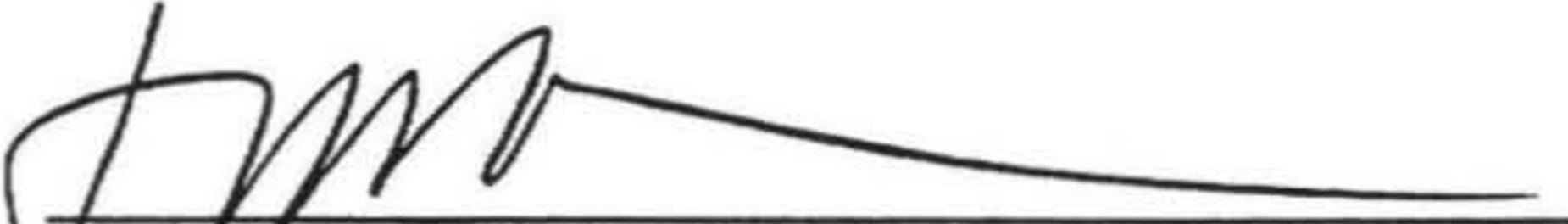
**ORDER FOR JUDGMENT**

NOW, THEREFORE, it is hereby ordered that:

1. The Plaintiffs' requests for relief be, and hereby are, in all things denied;
2. The attached memorandum of law be, and hereby is, incorporated by reference.

Dated:

12/23/94

  
Henry M. Buffalo, Jr.