

DEC 05 1995

*Camille Stendahl  
Clerk of Court*

COURT OF THE SHAKOPEE  
MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Scott Clarence Campbell, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Shakopee Mdewakanton Sioux )  
 (Dakota) Community, )  
 )  
 Defendant. )

Court File No. ~~033-93~~ *034-93 clt*

Anita Gail Barrientez, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Shakopee Mdewakanton Sioux )  
 (Dakota) Community, )  
 )  
 Defendant. )

Court File No. ~~034-93~~ *033-93 clt*

MEMORANDUM OPINION AND ORDER

Summary

These two cases arise from virtually identical factual backgrounds, and were consolidated for purposes of hearing the motions which are the subject of this Memorandum Opinion and Order.

The Plaintiffs are brother and sister, and from the record before the Court it appears that the history of their status in the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community") is virtually identical. Each Plaintiff's case was filed on July 29,



1993; and thereafter the cases have evolved in a similar fashion. When the cases were filed, the Plaintiffs each claimed membership in the Community, and claimed that the Community had improperly denied them per capita payments from the revenues which the Community derives from its businesses. In its Answers, the Community admitted the Plaintiffs' membership in the Community, but denied that they improperly had been denied per capita payments. From the record it appears that, beginning in 1994, each Plaintiff began to receive per capita payments. Therefore, the only issues now presented by each case relate to whether this Court has the power, under the Community's law, to award retroactive per capita payments, and whether the Plaintiffs qualify for such payments, if the Court does have that power.

Each case is the subject of an extensive stipulation of facts, and each stipulation incorporates a large number of documents; but each stipulation suggests that additional facts or documents may exist, which are not before the Court, and which may be relevant to the cases. The cases now are before the Court on the Defendant's motions to dismiss on the grounds that the Court is without subject matter jurisdiction to hear award retroactive payments, and on the Plaintiffs' motions for summary judgment.

For the reasons articulated below, the Court herewith denies both sets of motions.

#### Factual Background

Each person's life is unique, but the two Plaintiffs here share what appears to be a common history within the Community; and



their histories are, at least in some respects, unlike the history of any other person who is a member of the Community.

The Plaintiffs' status within the Community has been the subject of discussion at least since 1988. They were the subject of a special provision in section 13 of the Business Proceeds Distribution Ordinance which was adopted by the Community in 1988 ("the 1988 BPDO"), Ordinance No. 12-29-88-002:

Nothing in this Ordinance shall impair the jurisdiction of the Judicial Court of the Shakopee Mdewakanton Sioux Community to adjudicate the claims of Scott Campbell and Anita Barrientez to receive per capita payments.

Each of the Plaintiffs, for reasons which are the subject of considerable debate and discussion in the briefs herein, claimed membership in the Prairie Island Indian Community ("Prairie Island") from at least 1988 through the middle of 1993, when each was "voted in" as a member of the Community. And each Plaintiff maintains that it any relationship they had with Prairie Island followed from actions erroneously taken by the Community's government, and that such relationship should not eliminate eligibility for a retroactive award of per capita payments from the Community.

#### The Community's Motion to Dismiss

The Community maintains, in its motion to dismiss, that the Plaintiffs' claims are immaterial. The Community asserts, this Court has been deprived of jurisdiction to hear any claim against the Community for the damages which the Plaintiffs seek. In this regard, the Community relies on amendments to its Business Proceeds Distribution Ordinance, which were passed on October 27, 1993 ("the



BPDO Amendments"), and which were approved by the Area Director of the Bureau of Indian Affairs on November 11, 1993. Section 14.5(B) of the BPDO Amendments provides:

[The Community] waives its immunity from suit for the limited purpose of allowing judicial review of any determination relating to the prospective eligibility of applicants to receive per capita payments pursuant to this section. The waiver shall not include authority for the Tribal Court to enter any order other than a declaration of eligibility and shall specifically exclude the issuance of all other relief.

(Emphasis added).

Section 14.1 of the BPDO Amendments provides that all prior inconsistent law of the Community, including particularly the 1988 BPDO, are "repealed and rescinded".

In light of these provisions, the Community argues that the Court has been deprived of any authority it previously possessed to award damages, in cases where the Court has determined that a member of the Community has wrongfully been deprived of the economic benefits of membership.

It is the view of the undersigned, however, that the Community's position cannot stand, in light of the provisions of the Ordinance which created this Court, Ordinance No. 02-13-88-01 ("the Court Ordinance"). The Court Ordinance gave this Court a very broad and serious mandate to protect the rights of the members of the Community under the Community's laws. Section II of the Court Ordinance, which specifies the Court's jurisdiction, provides:

The Shakopee Mdewakanton Sioux Tribal Court shall have original and exclusive jurisdiction to hear and decide all controversies arising out of the Shakopee



Mdewakanton Sioux Community Constitution, its By-laws, Ordinances, Resolutions, other actions of the General Council, Business Council or its Officers or the Committees of the Community pertaining to: 1- membership; 2 -the eligibility of persons to vote in the Community or in Community elections; 3- the procedures employed by the General Council, the Business Council, the Committees of the Community or the Officers of the Community in the performance of their duty. The Tribal Court shall also have jurisdiction to hear and decide all controversies arising out of actual or alleged violations of the Indian Civil Rights Act of 1968, 25 U.S.C. §1301, et seq. The Tribal Court shall have the authority to formulate appropriate equitable and legal remedies to secure the protections of tribal law and the Indian Civil Rights Act for the Shakopee Mdewakanton Sioux Community and other Indians within its jurisdiction. ...

(Emphasis added).

This Court previously has held that, if a member of the Community in the past has been deprived of the economic benefits of membership in contravention of Community law or the Indian Civil Rights Act, then the above-quoted language of the Court Ordinance clearly permits us to award economic relief to remedy those wrongs. Ross v. Shakopee Mdewakanton Sioux Community, No. 013-91 (Decided June 3, 1993). We have discussed in the past some of the circumstances under which it is appropriate, or not appropriate, to award such relief. Welch v. Shakopee Mdewakanton Sioux Community, No. 022-92 (Decided June 3, 1993).

It is the Community's contention that the BPDO Amendments, by "specifically exclud[ing] all other relief", save for determinations as to the eligibility of members for prospective per capita payments, withdrew all authority to award such economic relief.

But the Plaintiffs assert, and the Community agrees, that the



BPDO Amendments were not adopted by an absolute three-fourths majority of all enrolled and eligible voting members of the Community. And Community Resolution No. 02-13-8-01, by which the Court Ordinance was adopted, provides:

[E]xcept as hereinafter provided this Ordinance may only be rescinded or amended by an absolute three-fourths majority of all of the enrolled and eligible voting members of the [Community]. Amendments which add to but do not diminish the scope of jurisdiction of the Tribal Court may be passed by a majority of the members of the General Council; other amendments may be similarly passed by a majority of the General Council, but only after such amendments have first been unanimously approved by the Chairman and a majority of the sitting Judges of the [Court].

(Emphasis added).

The Community has suggested that, in fact, the BPDO Amendments are not an amendment of the Court Ordinance, but rather are an independent withdrawal of jurisdiction from the Court. But the Community, when it adopted the Court Ordinance, surely did not intend that the protections it was granting to its members by the broad grant of jurisdiction to the Court could be so easily thwarted. Clearly, if an action of the Community's government has the effect of limiting the ability of the Court to award the relief which the Court Ordinance intends, that action must be deemed to be an amendment of the Court Ordinance.

So the question reduces to this: is the "supermajority" voting requirement, which the Community imposed on itself when it passed the Court Ordinance, valid? This Court recently has held that "supermajority" requirements do have a legitimate place in the law of the Community--because from the earliest days of the



Community's government, the Community's General Council has used "supermajority" requirements to protect the institutions which are most fundamental to Community government. Prescott v. Shakopee Mdewakanton Sioux (Dakota) Community Business Council, No. 040-94 (Decided July 31, 1995). The Community's Bylaws, for example, were not adopted as part of the Community's Constitution, but instead took the form of an resolution--Resolution No. 3, adopted July 11, 1972--which is protected against facile amendment by a "supermajority" requirement.

However, we also have held that the power of the Community's government to impose supermajority voting requirements on its future actions "is limited to matters like the Bylaws--matters which are fundamental to the structure of the Community's government." Prescott, supra, at 10.

The question thus presented by the withdrawal of this Court's jurisdiction purportedly worked by the BPDO Amendments is: is it "fundamental to the structure of the Community's government" for this Court to retain the full range of powers to award relief to Community members who may have been wronged by the Community's government, which was granted by the Court Ordinance? To the undersigned, the answer clearly is in the affirmative.

This Court was created following years of turmoil within the Community, when first one group and then another claimed that the Community's government was abusing their rights, and when there was in all likelihood no forum with jurisdiction to hear those claims. In the nearly eight years since this Court was created, we have



heard literally dozens of such claims, granting relief to some and denying it to others. This job, which the Community has given us, could be made meaningless if we are prohibited from "formulat[ing] appropriate equitable and legal remedies to secure the protections of tribal law and the Indian Civil Rights Act", as the Court Ordinance contemplates. If the power to grant remedies for wrongs is withdrawn, then the most fundamental principles of justice, which the Community sought to protect with the Court ordinance, may be endangered. And if, by a simple majority vote, the Court can be deprived of its jurisdiction to hear claims for retroactive money damages, then a similar vote presumably could deprive Community members of the right to seek injunctions against illegal actions. This was not the result intended by the General Council which adopted the Court Ordinance. And if it ultimately is the result that is desired by another General Council, that result that must be adopted in accordance with the Court Ordinance.

Inasmuch as such an action has not taken place, I conclude that this Court retains jurisdiction to award retroactive money damages in this matter.

Whether it is appropriate for the Court to do so, however, is altogether another matter.

#### The Plaintiffs' Motions for Summary Judgment

The Plaintiffs contend that if this Court retains jurisdiction to award them the relief they seek--which the Court does--then as a matter of law they should receive that relief. The Community, on the other hand, contends that the state of the record leaves a




number of open factual questions which makes it altogether inappropriate, at this time, to grant the Plaintiffs' motion for summary judgment.

The Court agrees with the Community. In the view of the undersigned, the standard which was articulated in the Ross case, supra, is an evolving one. In Ross, and in Welch, we were confronted with instances where members of the Community had been denied per capita payments from the Community when they were identically situated to members of the Community who had been receiving such payments. In contrast, the factual record here, despite extensive stipulations by the parties, leaves very substantial questions as to the status of the Plaintiffs. Their status within the Prairie Island Community at the very least appears to distinguish them from the Plaintiffs in Ross and Welch. The events which led the Plaintiffs into and out of Prairie Island membership should, in the view of the Court, be the subject of further factual development; and that makes it impossible, at this time, to conclude that the Plaintiffs are entitled to any retroactive relief.

ORDER

For the foregoing reasons, and based on all the pleadings and materials herein, the Defendant's motions to dismiss are DENIED, and the Plaintiffs' motions for summary judgment are DENIED.

December 5, 1995

  
John E. Jacobson  
Judge of the Court of the  
Shakopee Mdewakanton Sioux  
(Dakota) Community