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JEANNE A. SZULIM
CLERK OF COURT

IN THE TRIAL COURT OF
THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

David Gregory Crooks)	
)	
Plaintiff,)	
)	
v.)	Case No. 468-00
)	
The Shakopee Mdewakanton Dakota)	
(Sioux) Community; the Shakopee)	
Mdewakanton Dakota (Sioux) Community)	
Business Council; the Shakopee)	
Mdewakanton Dakota (Sioux) Community)	
Enrollment Committee; Certain Unknown)	
Members of the SMS(D)C Business Council)	
and Enrollment Committee,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

INTRODUCTION

In this case, Plaintiff alleges that he is qualified for membership in the Community, and that the Community and/or its officers erred in how it handled his application for membership. See Complaint at ¶¶ 10-26. The Community did not file an answer, but instead filed a motion to dismiss, arguing that under Community law the Plaintiff has failed to state a claim upon which relief may be granted. Because I conclude that this Court has jurisdiction to hear this type of claim, and because I cannot say at this early stage that there is no set of facts under which Plaintiff would be entitled to relief, I deny the motion to dismiss.

FACTUAL BACKGROUND

Plaintiff claims to qualify for membership under Art. II, Sec. 1 of the SMS(D)C Constitution, which states:

All descendant of at least one-fourth (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 members of some other tribe or band of Indians.

Complaint ¶ 9. Plaintiff specifically alleges that he is at least ¼ Mdewakanton Sioux, that he is a lineal descendant of Amos Crooks, George Crooks, and Alice Crooks, that all of these individuals were living in Minnesota on May 20, 1886, and that all these individuals were listed as Mdewakanton Sioux residents on the Henton Census Roll. Complaint ¶ 11. Plaintiff also alleges that he is not presently enrolled in any other tribe or band of Indians. Complaint ¶12.

Plaintiff alleges that he filed an application for membership in October 1994, and that after a substantial delay, the Community's Enrollment Committee recommended that he be granted membership in July of 1996. Complaint ¶ 13, ¶ 24. Plaintiff also alleges that there were three challenges to his membership application by Community members, each of which were denied. Complaint ¶ 25. Nonetheless, despite the recommendation of the Enrollment Committee and the rejection of all challenges against his application, the General Council voted to deny Plaintiff's application. Complaint ¶ 25. Plaintiff alleges that to date he has never received an explanation of why his application was rejected. Complaint ¶ 25.

STANDARD OF REIVEW

Dismissal for failure to state a claim is not favored. Welch et al. v. SMS(D)C, No. 059-95 (SMS(D)C Tr. Ct. Feb. 7, 1996), *affirmed*, Welch et al. v. SMS(D)C, No. 009-96 (SMS(D)C Ct. App. Oct. 14, 1996). A case may be dismissed if it appears beyond a reasonable doubt that the pleader can prove no set of facts in support of the claim that would entitle him to relief. Id. In considering a motion to dismiss, the Court assumes all the facts alleged in the complaint are true and views the allegations in the light most favorable to the plaintiff. Id.

JURISDICTION

As an initial matter, it seems clear this Court has jurisdiction to hear this matter. Section II of Ordinance 02-13-88-01 states:

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 . . . 3 – the procedures employed by the General Council, the Business Council, the Committees of the Community or the Officers of the Community in performance of their duties. 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.

A review of the Complaint shows that this is clearly a matter that (a) involves membership, (b) involves the procedures employed by the General Council and Officers of the Community, and (c) involves allegations under the Indian Civil Rights Act. This Court has entertained claims related to membership issues and allegations of wrongdoing by officers of the Community in the past. Smith et al. v. SMS(D)C et al., No. 011-96 (SMS(D)C Ct. App. Aug. 7, 1997) (deciding membership question); Prescott and Johnson v. Little Six, Inc., No. 017-97 & 018-97 (SMS(D)C Ct. App. Apr. 17, 1998) (Community official may be held liable for violation of Community Constitution, statute, or common law). In addition, by its plain language Article VII, Sec. 2 of the Community Constitution makes available to non-members the protections of the ICRA. Cf. Art. VI, Sec. 1 (limiting distribution of Community resources to members). Therefore, this Court can see no reason why it should not accept jurisdiction to hear the claims brought in this case.

WHETHER PLAINTIFF HAS STATED A CLAIM

The real issue is whether Plaintiff's Complaint states a claim that this Court can remedy. Plaintiff's Complaint claims that the way in which the Defendants handled his application from 1996 to 1999 violated the Community's Enrollment Ordinance, violated the Community's Constitution, and failed to follow the Community's own enrollment procedures. Complaint ¶ 18-27. Plaintiff claims these actions violate his rights to Due Process and Equal Protection rights, and he has asked this Court to make a determination about his eligibility for membership. Complaint ¶¶ 27-28.

It may make more sense to begin by describing what this Court cannot do in response to Plaintiff's claims. This Court has held in the past that it will not make an independent determination of an individual's claim to membership. It is up to the Community, not this Court, to decide who meets the requirements for membership. There is no automatic or self-enrollment under Article II, Sec. (b) or (c) of the Community's Constitution for people who claim they meet the membership requirements -- applications for membership must be approved by the appropriate Community officials under standards established in accordance with the Constitution and the Enrollment Ordinance. Clifford Crooks, Sr. v. SMS(D)C, No. 016-97 (SMS(D)C Ct. App. Jan. 30, 1998).

However, this case does not appear to ask this Court to make an independent analysis of the Plaintiff's membership application. Instead, the Court understands this Complaint to center on a flaw in the enrollment process. The Plaintiff claims to have exhausted his administrative remedies, the appropriate Community officials have recommended his enrollment, all challenges to his application have been defeated, and yet the General Council, without any subsequent explanation, has denied his application. Although this Court cannot make an independent evaluation of Plaintiff's application, it seems appropriate for this Court to entertain Plaintiff's claim that this process itself, or the General Council's actions under this process, are in violation of the Community's Constitution.

Community cases support the notion that there is some relief that this Court can grant in response to these claims. First, it is true that an applicant for membership does not have a property interest sufficient to state a claim for the deprivation of due process. Clifford Crooks, Sr. v. SMS(D)C, No. 016-97 (SMS(D)C Ct. App. Jan. 30, 1998); see also Weber and Maxwell v. SMS(D)C, No. 364-99 (SMS(D)C Tr. Ct. Dec. 22, 1999). However, this does not mean that Community officials or the General Council are free to ignore Community law on enrollment or to act in an arbitrary manner. This Court has made it clear that if Community officials or the General Council disregard community law in the enrollment process, this Court has the power to remedy those deficiencies. Weber and Maxwell v. SMS(D)C, No. 364-99 (SMS(D)C Tr. Ct. Dec. 22, 1999) at 3 (court can correct procedural deficiencies); Stovern et al. v. SMS(D)C, 031-92 (SMS(D)C Tr. Ct. May 30, 1995); Amundsen v. SMS(D)C Enrollment Committee, No. 049-94 (SMS(D)C Tr. Ct. Apr. 14, 1995) at 9. In addition, if some part of the Enrollment Ordinance, or any Community legislation, violated the guarantees in the Community Constitution, this Court

would appear to have the power to invalidate such provisions. See, e.g., Prescott, et al. v. SMS(D)C, No. 040-94 (SMS(D)C Tr. Ct. July 31, 1995) (declaring Community law unconstitutional). Therefore, if Plaintiff can show that Community officials violated community law as it pertains to the enrollment process, or if Plaintiffs can show that some part of the enrollment ordinance itself is unconstitutional, it would appear there is relief this Court may grant.

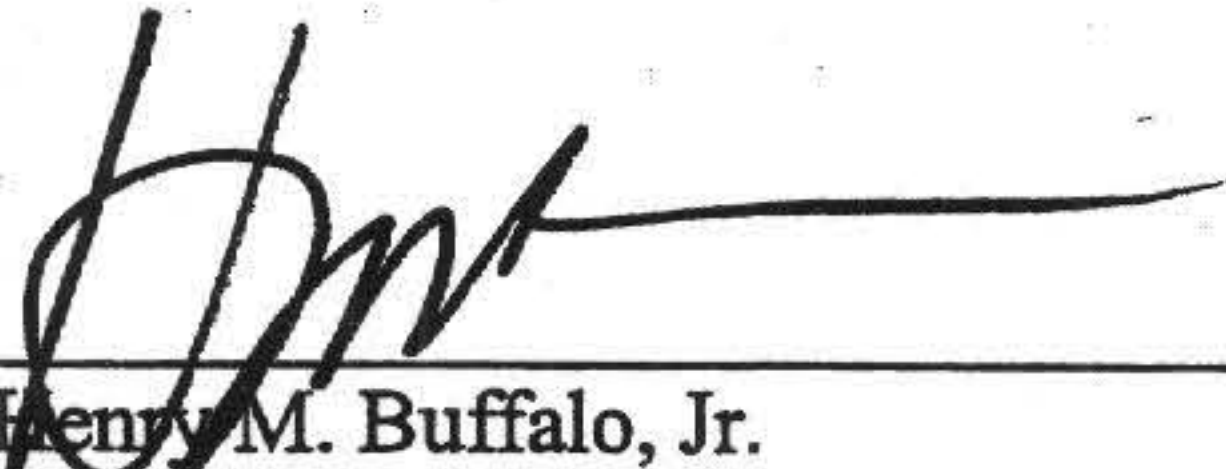
For Plaintiff's equal protection claim, it does not appear necessary that Plaintiff demonstrate a protectable property interest. Instead, Plaintiff only need show that a Community law is based on an impermissible distinction, or that Plaintiff himself was singled out for unequal treatment under an otherwise facially neutral law. See, e.g., Ross v. SMS(D)C, No. 013-91 (SMS(D)C Tr. Ct. July 17, 1992) (analyzing equal protection rights of member under Article VII of SMS(D)C Constitution). If Plaintiff can show either of these results, there may be relief this court can grant as well.

In sum, this Court is not ready at this very early stage to dismiss Plaintiff's Complaint outright. Nothing in this order or opinion should be construed as indicating whether Plaintiff has any chance of succeeding on the merits of his case. This Court is simply convinced that, when reviewing the legal precedents of this Court, that the Complaint states claims upon which relief may be granted. At trial, Plaintiff will need to demonstrate that Community officials violated Community law in processing his application, or that the enrollment process itself somehow denies him a right protected under Community law.

ORDER

For the foregoing reasons, Defendant's Motion to Dismiss is **DENIED**.

Dated: October 31, 2000



Henry M. Buffalo, Jr.
Judge