IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT STATE OF MINNESOTA

| | |
|---|---|
| BARRY WELCH, STACIE D. WELCH, STEPHANIE SIOUX WELCH, BRENDA (WELCH) WILT, STEPHEN P. (WELCH) WILT, THOMAS W. (WELCH) WILT, AND VIOLET A. (WELCH) WILT,<br><br>Plaintiffs,<br><br>vs.<br><br>SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, STANLEY CROOKS, CHAIRMAN, KENNETH ANDERSON, VICE CHAIRMAN, AND DARLENE MATTA, SECRETARY TREASURER,<br><br>Defendants. | Court File No. 023-92 |

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the Plaintiffs' Motions for Partial Summary Judgment and for Declaratory Judgment.

The Plaintiffs each allege that they are members of the Shakopee Mdewakanton Sioux Community ("the Community"), and are entitled to receive the benefit of various programs provided by the Community, including particularly the program under which per capita payments are made by the Community to various persons. The Plaintiffs contend that this Court's July 17, 1992 decision in Ross

v. Shakopee Mdewakanton Sioux Community, No. 013-91, mandates their eligibility, and requires that we hold the Community's Business Proceeds Distribution Ordinance, Ordinance No. 12-29-88-002, to be inconsistent with the Community's Constitution, insofar as it requires that certain procedures be followed, in order for a person to establish his or her eligibility for such programs.

The Community has responded by vigorously denying that any of the Plaintiffs presently are eligible to receive per capita payments, and asserting that, unlike the Plaintiff Ross--and, we may note, also unlike the Plaintiffs in Welch and Vig v. Shakopee Mdewakanton Sioux Community, No. 022-92, which we have decided today--the names of none of the Plaintiffs appear on List C of Ordinance 12-29-88-002. The Community also asserts that none of the Plaintiffs have attempted to follow the procedures mandated by Ordinance 12-29-88-002 to establish eligibility for per capita payments.

The Community also strongly argues that the decision of this Court in Ross was a narrow one, limited strictly to the circumstances of the Plaintiff.

We agree with the Community. We did not hold in Ross that Ordinance No. 12-29-88-002 was invalid in its entirety. Rather, we held that when the Community eliminated the residency requirements for per capita payments--which, we said, had been altogether permissible under the circumstances as we understood them--it could not thereafter continue to withhold per capita payments from Mr. Ross, who previously had been denied payments solely because of the residency requirement. Today we are expanding that holding to the

two Plaintiffs in Welch and Vig, because we find that there is no material disputed fact which distinguishes them from Mr. Ross. We have done so after a particularized analysis of the specific way in which Ordinance 12-29-88-002 has operated with respect to those Plaintiffs, based on undisputed facts in the record.

Here, in contrast, it is clear that many material facts are in dispute, which might distinguish these Plaintiffs from Messrs. Ross, Welch, and Vig. Clearly then, granting any of these Plaintiffs partial summary judgment on the basis of the Ross or Welch and Vig would be inappropriate.

So, too, would be the entering a Declaratory Judgment to the effect that all of the procedural requirements of Ordinance No. 12-29-88-002 are invalid under the Community's Constitution. In Ross, and again today in Welch and Vig, we have taken care to make it clear that the Community can establish reasonable procedures, and make reasonable distinctions, with respect to eligibility for its various programs, including its per capita program. And we think it is clear that the Community is entitled to insist that persons who seek to become eligible for its programs utilize the procedures it has established, before seeking the review of this Court.

It may be that, at trial, one or more of these Plaintiffs can establish that he or she is entitled to some relief. But clearly, none now have established by undisputed facts any entitlement either to Summary Judgment, as to their eligibility for programs, or to a Declaratory Judgment that the Community's per capita eligibility procedures are invalid as to them.

During the hearing that was held on the Plaintiffs' motion, on

May 10, 1993, Plaintiffs' counsel suggested that the requirements of section 11 of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2710 (1988) ("the IGRA")may have some bearing on this case--that an action may lie against the Community under the IGRA if the Plaintiffs do not prevail here. But the only issues that are before this Court are those raised in the Plaintiffs' Complaint, relating to the Community's Constitution and the effect of our decision in Ross. Therefore, in our view the Plaintiffs' suggestions are simply immaterial.

During the hearing, there also was colloquy between the Plaintiffs' counsel and the Community's counsel with respect to the validity and effect of certain membership cards bearing certain numbers, copies of which were attached to affidavits filed on behalf of the Plaintiffs. Given our holding today, these issues also are not material. But it seems clear that, as the Community's counsel asserted in a memorandum, the membership documents of the Community are "messy". Many of the cases which have come before this Court in the last five years have turned on issues involving enrollment, heritage, and entitlement, and have had confusing factual histories. Therefore, recognizing the difficulties involved, the Court encourages the Community in any and all efforts to regularize these matters; and, within the limits imposed by its role, the Court will be pleased to assist in such efforts.

ORDER

For all the foregoing reasons, it is hereby ORDERED:

That the Plaintiffs Motions for Partial Summary Judgment and for Declaratory Judgment are DENIED.

Date: June 3, 1993

Kent P. Tupper
Chief Judge

John E. Jacobson
Associate Judge

Henry M. Buffalo, Jr.
Associate Judge

086-23