

FILED

FEB 26 2001

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.)

ORDER

On October 31, 2000 this Court denied the Defendants Motion to Dismiss. On November 27, 2000 the Defendant timely filed a Notice of Appeal seeking this Courts Certification of this matter pursuant to Section VII of Community Ordinance No. 2-13-88-01. On December 4, 2000 the Plaintiff filed a Notice of Motion and Motion seeking to force the Defendant to file its Answer and to Vacate the Notice of Appeal on the basis that the Order the Defendant seeks to Appeal is not an "appeallable Order".

In the filing of an appeal a party must follow SMS(D)C Rule of Civil Procedure 31 which states as follows:

“In any action before the Court of the Shakopee Mdewakanton Sioux Community where a three-Judge panel has not heard the matter, a party may appeal *any decision of the assigned Judge that would be appealable if the decision had been made by a judge of a United States District Court*” emphasis added.

The Court of Appeals in Little Six Inc. Board of Directors, et al. V. L.B. Smith, et al., No. 010-97(SMS(D)C Ct. App. May 28, 1998) , held that Rule 31 incorporates the substantive requirements of finality embodied in 28 U.S.C. §1292, however the Court also cautioned that Rule 31 does not incorporate the procedural requirements of §1292 nor are the requirements imposed on tribal litigants. Here the Community Ordinance referenced by the Defendants in their Notice of Appeal clearly requires that upon motion by any party a matter *may be certified for appeal*. SMS(D)C Ordinance No. 2-13-88-01 §VII. In my view this language places great discretion and responsibility on the trial court judge in his decision to certify while keeping in mind the Court of Appeals concern with respect to finality. I must therefore engage a process which requires the party's to inform the Court as to the arguments which necessitate an appeal of this Order.

IT IS ORDERED

1. That the party's submit briefs on the question of why this court's Order of October 31, 2000 should be certified for appeal pursuant to the following schedule:

- a. Defendant Brief due on March 30, 2001
- b. Plaintiff response brief due on April 30, 2001
- c. Defendant Reply brief due on May 15, 2001
- d. Oral argument is not required.

2. Plaintiff's motion to compel Answer is **DENIED**

3. Plaintiffs motion to Vacate the Notice of Appeal is **DENIED**

Dated: February 26, 2001



Henry M. Buffalo, Jr.
Judge