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IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY
CARRIE J. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

_____, a minor, by Allene Ross,
her mother and natural guardian, and
_____, a minor, by Allene Ross,
her mother and natural guardian,

Court File 059-95

Plaintiffs,

MEMORANDUM OF LAW

v.

The Shakopee Mdewakanton Sioux (Dakota)
Community,

Defendant.

I.

This lawsuit was initiated on August 31, 1995. The Plaintiffs seek a declaratory judgment enrolling the Plaintiffs as members of the Shakopee Mdewakanton Sioux (Dakota) Community and awarding them past, present and future proceeds of per capita distribution and penalties, interest, and damages on those distributions that the Defendant allegedly failed to make, and costs, disbursements and attorney fees.

The Defendant seeks a Motion to Dismiss pursuant to Rule 12(b)(6), failure to state a claim upon which relief can be granted, failure to exhaust tribal administrative remedies and Rule 12(b)(1), lack of subject matter jurisdiction.

Argument on the Motion to Dismiss was held on November 9, 1995, and was taken under advisement.

II.

The Plaintiffs, [REDACTED] and [REDACTED], minors, are the daughters of Allene Ross, an enrolled member of the Shakopee Mdewakanton Sioux (Dakota) Community, and Alan Welch, also an enrolled member of the Shakopee Mdewakanton Sioux (Dakota) Community. The Plaintiffs assert that they are "enrolled minor members of the Community pursuant to Section 1(b) of the Community Constitution". Complaint, Paragraph 12. They also claim that they had been receiving proceeds of per capita distributions that, for minors, are placed in trust and that these payments abruptly ceased without notice on or about December 1, 1994. It is unclear from the Complaint as to how long the Plaintiffs had been receiving the distributions.

The Plaintiffs argue that Article VI, the Bill of Rights, of the Shakopee Mdewakanton Sioux (Dakota) Community Constitution provides that "[a]ll members of the Community shall be accorded equal opportunities to participate in the economic resources and activities of the Community". Complaint, Paragraph 14. And therefore, as enrolled members, they should continue to receive the distributions.

The Plaintiffs also assert that the discontinuance of the payment of per capita distributions effectively amounts to a disenrollment and as such the Defendant is required to comply with the disenrollment procedures found in Section 8 of the Business Proceeds Distribution Ordinance, No. 12-29-88-002.

The Defendants assert that the Plaintiffs are not enrolled members of the Shakopee Mdewakanton Sioux (Dakota) Community. Further that although the Plaintiffs may be eligible for enrollment they must still comply with Community procedures and apply for enrollment. That the Plaintiffs offer several documents which purport to prove their enrollment and further

that under Article II §1(b) they are automatically enrolled. However, the bottom line is that none of these documents rise to the level of proving enrollment and that the theory of "automatic" enrollment has been rejected by this Court.

III.

Discussion

This Court at the outset rejects the Defendant's claim that it is without jurisdiction to hear membership claims. As we have said in Hove v. Stade, No. 001-88 (July 15, 1988), this Court has "original and exclusive jurisdiction to hear and decide all controversies arising out of . . . actions of the General Council. . . or the Committees of the Community pertaining to (1) membership. . .". This language does not inherently prohibit this Court from also dealing with inaction of the General Council or a Committee of the General Council in dealing with membership issues.

In reviewing the Complaint the Court is convinced that the entire matter turns on the question of "automatic" enrollment. As such, I am bound to follow the rule of the Court in Cermak, et al. v. Shakopee Mdewakanton Sioux (Dakota) Community, Case Number 039-94, Memorandum Opinion and Order (April 11, 1995), and deny the Plaintiffs request to declare that they are enrolled members. Also see Ronald Welch v. Crooks, Case Number 003-88, Memorandum and Opinion (December 16, 1988); Smith, et al. v. Shakopee Mdewakanton Sioux (Dakota) Community, Case Number 038-94, Memorandum Opinion (June 10, 1994); Barry Welch, et al. v. Shakopee Mdewakanton Sioux (Dakota) Community, Case Number 023-92, Memorandum and Order (December 23, 1994).

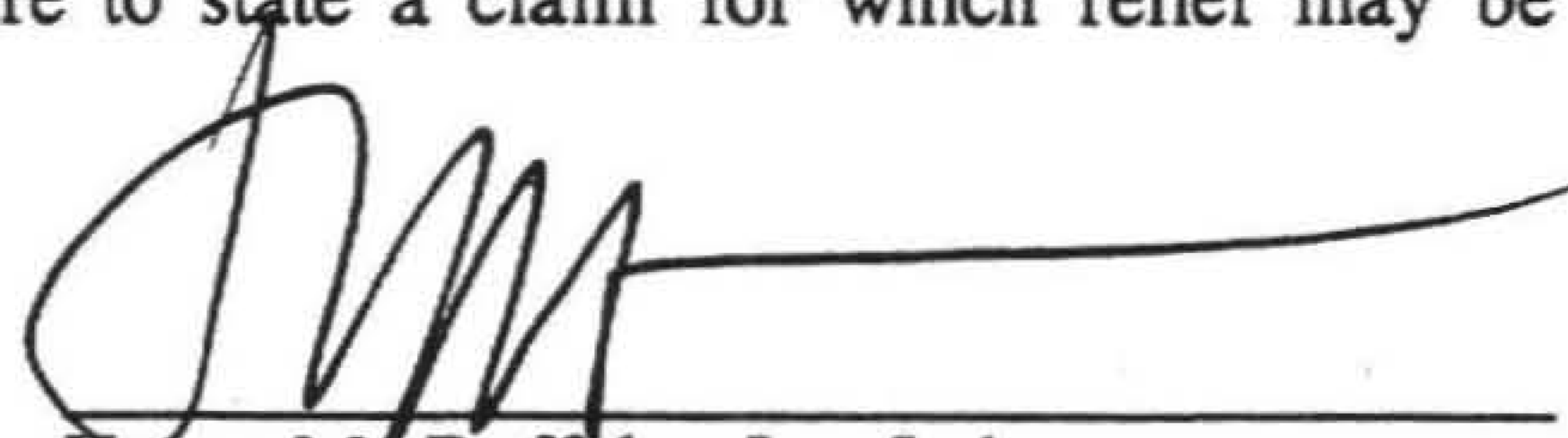
It appears for the record that there are only two steps left for Plaintiffs to follow to complete the enrollment procedures set forth in Enrollment Ordinance Number 6-08-93-001. See Amundsen, et al. v. Shakopee Mdewakanton Sioux (Dakota) Community Enrollment Committee, et al., Case Number 049-94 (January 17, 1996). The Court hopes Plaintiffs will avail themselves of the opportunity to complete the enrollment process.

In a Motion to Dismiss under Rule 12(b)(6) the Court must assume that all facts alleged in the Complaint are true and view the factual allegations in the light most favorable to the Plaintiffs. Albright v. Oliver, ____ U.S. ____, 114 S.Ct. 807, 127 L.Ed. 2d 114 (1994); Scherer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1603, 40 L.Ed. 2d 90 (1974); Kohl v. Casson, 5 F.3d 1141, (8th Cir. 1993).

Further, a dismissal for failing to state a claim is disfavored, and not granted routinely. St. Marine & Son, Inc. v. Hartz Mountain Corp., 414 F. Supp. 71 (D. Minn. 1976); Hall v. City of Santa Barbara, 883 F.2d 1270, 1274 (9th Cir. 1986) cert. denied 485 U.S. 940 (1988).

However, a case may be dismissed under Rule 12(b)(6) if it appears, as it does here, that the pleader can prove no set of facts in support of the claim that would entitle pleader to relief. Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed. 80 (1957). The Plaintiffs seek that which this Court is powerless to give and that is enrollment to the Shakopee Mdewakanton Sioux (Dakota) Community. Therefore this Court must grant the Defendant's Motion to Dismiss without prejudice under Rule 12(b)(6) for failure to state a claim for which relief may be granted.

Dated: February 7, 1996


Henry M. Buffalo, Jr., Judge
Tribal Court

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_____, a minor, by Allene Ross,
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Plaintiffs,

ORDER

v.

The Shakopee Mdewakanton Sioux (Dakota)
Community,

Defendant.

The above-entitled matter came on for hearing before the undersigned Judge of the Tribal Court on the 9th day of November, 1995, at 2330 Sioux Trail NW, in the City of Prior Lake, County of Scott, State of Minnesota, on the Defendants Motion to Dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted and for failure to exhaust tribal remedies.

Andrew Small, Esquire appeared on behalf of the Defendant. Larry Leventhal Esquire, and Michael Hager, Esquire appeared on behalf of the Plaintiff.

The Court being fully advised of the premises and based upon the files, records and evidence herein, as well as the arguments of Counsel for both parties,

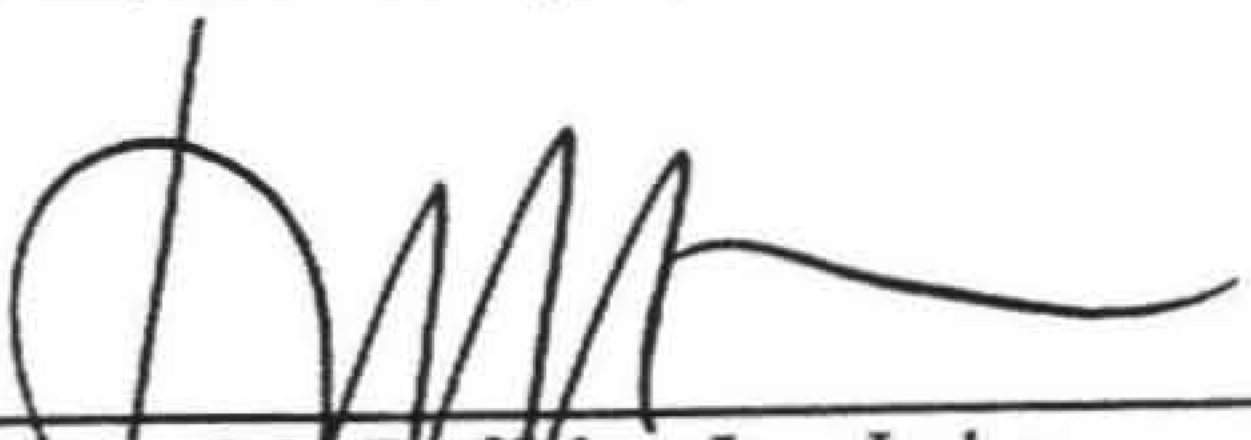
IT IS ORDERED,

1. That the Defendant's Motion to Dismiss be, and hereby is, in all things
GRANTED.

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2. That the attached Memorandum of Law be, and hereby is, INCORPORATED into this Order.

Dated: February 7, 1996



Henry M. Buffalo, Jr., Judge
Tribal Court