

FILED

NOV 14 2001

IN THE COURT OF THE SHAKOPEE
MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

JEANNE A. KRIEGER
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

Sylvia Blue,)
)
 Plaintiff,)
)
 vs.)
)
 Shakopee Mdewakanton Sioux)
 (Dakota) Community)
)
 Defendant.)

Court File No. 467-00

Memorandum Opinion and Order

Summary

The Plaintiff seeks General Assistance payments and a land assignment, under programs established by the Defendant Shakopee Mdewakanton Sioux (Dakota) Community ("the Community"). She asks this Court for a declaratory judgment with respect to her entitlement to receive both sets of benefits, and asks for an order directing the Community to make past and future General Assistance payments to her. The Community has moved to dismiss her Complaint for failure to state a claim upon which relief may be granted, under Rule 12(b)(6) of the Rules of Civil Procedure of this Court. For the reasons set forth below, I believe the Defendant's motion must be granted.

At the center of the Plaintiff's case are two assertions. In her Complaint, she alleges that

she "is entitled to receive" General Assistance from the Community (Complaint, ¶13); and she alleges that she also "is entitled to receive" a Community land assignment (Complaint ¶14). If there were a legal possibility that she were correct with respect to either or both of those allegations, then her Complaint might state a claim that could survive a motion to dismiss: this Court has been given broad legal and equitable power to redress deprivation of legal rights of members and non-members of the Community.

But I believe that it is clear, as a matter of law, that the Plaintiff does not have the "entitlements" that she claims. She is not possessed of a legal right either to receive money from the General Assistance program or to receive a land assignment from the Community; and the structure of the two programs does not offend the Community's Constitution, the Indian Civil Rights Act, 25 U.S.C. §1302 (2000), or any other applicable law. Therefore, the Plaintiff has not stated a claim upon which relief may be granted.

1. The Plaintiff, and the Programs at Issue.

The Plaintiff is 3/16 degree Mdewakanton Sioux (Dakota), but is not a member of the Community. For most of her adult life she was a member of the Lower Sioux Indian Community ("Lower Sioux"), but on September 2, 1996, she voluntarily relinquished her Lower Sioux membership. She is the daughter of a Community member, Rosella Larsen Enyart, and four of her five siblings also are members of the Community. Her fifth sibling presently receives General Assistance from the Community. The materials attached to the Complaint indicate that she moved to the Shakopee Reservation in 1994, to assist in caring for her mother, and that she applied for a land assignment in the Community on January 13, 1994. Letters attached to her Complaint indicate that she requested General Assistance in 1996 and 1997. To

date, the Plaintiff has not received either General Assistance or a land assignment.

The Community's General Assistance program was established by General Council Resolution No. 3-12-92-007. The program operates under Guidelines that were attached as Exhibit A to that Resolution. The Guidelines establish certain eligibility requirements, and then state:

Any person who meets the requirements described herein, may be added to the General Assistance Program distribution list by a unanimous vote of the Business Council, and in the event the Business Council cannot unanimously approve the addition, then by a simple majority vote of the entire eligible voting membership of the General Council at a Special General Council meeting for that purpose.

General Assistance Guidelines, ¶3.

The Land Assignment program is differently structured; and at present, in fact, it is not functioning. Citing a shortage of available land, the General Council voted in March, 2001 to suspend the making of further land assignments, pending the results of an aggressive land development program. Presumably, the suspension will be temporary. The underlying program has evolved over a period of time. It was initially established in July, 1985, by General Council Resolution No. 7-3-85-001. That Resolution established two priorities for land assignments: the first priority was given to the children of voting members who were residing on the Shakopee Reservation on July 3, 1985, and the second priority was given to children of voting members who were not residing on the Reservation on that date. Within that second group, priority was established "by date of application". In 1992, in Resolution No. 3-12-92-010, the General Council adopted specific lists, reflecting the rank order of priority for both groups; and in 1997, the General Council adopted Resolution No. 11-14-97-001, giving first priority, above

all other categories, to members of the Community. That amended system of priorities remains in place, although the actual issuance of land assignments was suspended as aforesaid.

2. Discussion.

Dismissal of a Complaint pursuant to Rule 12(b)(6) of the Rules of Civil Procedure of the Shakopee Mdewakanton Sioux (Dakota) Community is appropriate when "there is no reasonable view of the facts alleged in the Complaint which would support the Plaintiffs' claim." Smith v. Shakopee Mdewakanton Sioux (Dakota) Community Business Council, No. 011-96 (SMS(D)C Ct. App., Aug. 7, 1997), at 3. Here, the Complaint alleges the Plaintiff's Mdewakanton lineage; it alleges that she properly applied for General Assistance and for a land assignment; it alleges that she has received neither; and it alleges that all of her siblings have been treated differently than she. That is the sum and substance of the Complaint.

In my view, there is no set of facts that can be proven in support of these allegations that supports would lead to a conclusion that the Plaintiff is "entitled to" receive General Assistance or a land assignment, or that the Community's denial of those benefits violated the Indian Civil Rights Act, the Constitution of the Community¹, and other unspecified laws of the Community. Accordingly, her Complaint must be dismissed.

¹ There was discussion during the briefing and oral argument of this case with respect to whether the Constitution of the Community, as it is presently written, affords guarantees of equal protection or due process of law to persons who are not members of the Community; and there was some confusion with respect to the effectiveness of a provision that evidently was cited by Judge Buffalo in an opinion in David Gregory Crooks v. Shakopee Mdewakanton Sioux (Dakota) Community, No. 468-00. In my view, the question as to whether the Community's Constitution presently affords such protections is moot, because the Indian Civil Rights Act clearly does afford them, and the General Council of the Community has expressly given this Court jurisdiction to hear cases brought under that Act. SMS(D)C Ordinance No. 02-13-88-01, Section II.

Fundamentally, I conclude that the Community has the right to do what it has done. Neither the systems it has established for the General Assistance or the land assignment programs, nor the manner in which those programs are alleged to have been administered in this case, violates any applicable law.

As to the General Assistance program, the language of the Guidelines adopted by Resolution 3-12-92-007, establishing the General Assistance program, creates a discretionary program where the Business Council "may" decide to provide benefits by unanimous vote. Obviously, this language vests the Business Council with the right to say either "yes" or "no" to any applicant. Likewise, if an application for General Assistance benefits is brought to the General Council, that body also can say either "yes" or "no". Hence, no applicant for General Assistance benefits has a liberty or property interest in those benefits, and the denial of benefits does not trigger a due process claim under the Indian Civil Rights Act. Clifford Crooks v. Shakopee Mdewakanton Sioux (Dakota) Community, No. 016-97 (SMS(D)C Ct. App., Jan 30, 1998), at 3.

Nor does the General Assistance program violate any guarantee of equal protection of the laws. The program's Guidelines contemplate the weighing of each person individually, by the Business Council and, if the process runs that far, by the General Council. The status of an applicant's siblings or other relatives is irrelevant. No suspect classification is involved in this system, so the equal protection requirements of the Indian Civil Rights Act merely mandate that the system have a "rational basis"; and in my view the very nature of the General Assistance program -- involving consideration of a myriad of personal, historic, and community-based factors -- clearly provides a rational basis for the Guidelines' approach.

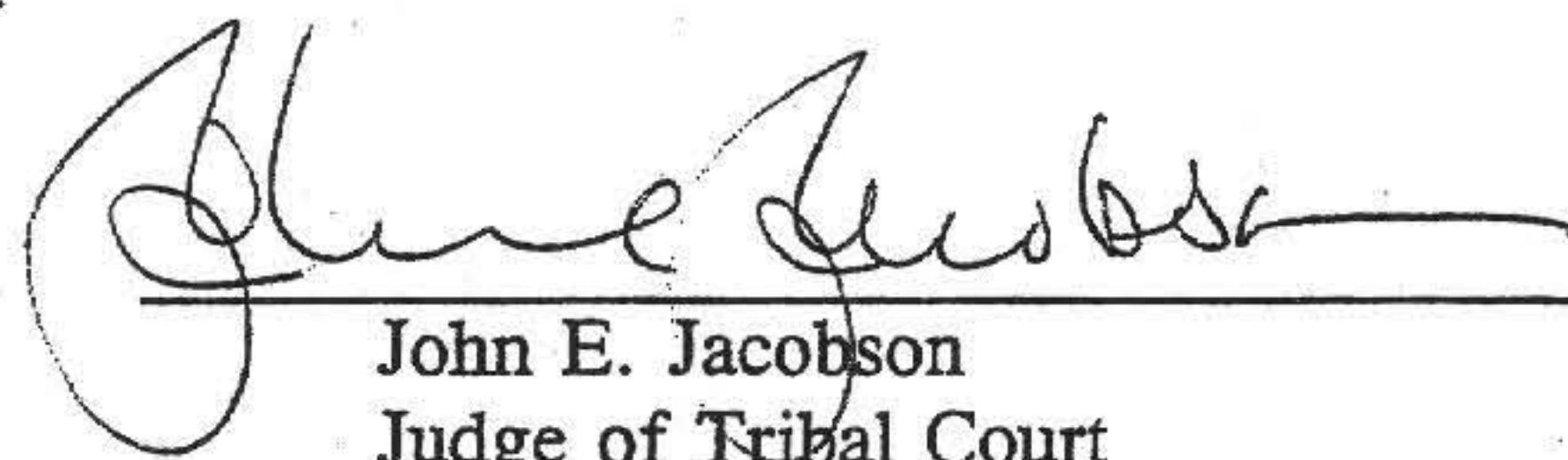
The Land Assignment program likewise does not offend the Indian Civil Rights Act or any other applicable law. It creates a system of priorities, based on membership and residence. Those factors are not suspect classifications, and they have a rational relationship with legitimate governmental purposes of the government of an Indian tribe with a small membership and a small land base. So, the priorities in the Land Assignment Program do not offend the Equal Protection provisions of the Indian Civil Rights Act. And, as with the General Assistance program, although an applicant does have the right to have his or her application processed by the Community's officers in the time and under the requirements contemplated by the law creating the program, Amundsen v. Shakopee Mdewakanton Sioux (Dakota) Community Enrollment Committee, No. 049-94 (SMS(D)C Tr. Ct., Sept. 16, 1996) an applicant does not have a liberty or property interest in receiving the assignment. And nothing in the law requires that, once a governmental program is established, it and the priorities it establishes must remain unchanged for all time: governmental programs under which persons apply for benefits can change without offending the due process rights of applicants. Amundsen v. Shakopee Mdewakanton Sioux (Dakota) Community Enrollment Committee, No. 049-94 (SMS(D)C Tr. Ct., Apr. 14, 1995). Hence, the fact that the Community gave priority to children of members who resided on the Reservation, over children of members not residing on the Reservation is not inconsistent with the Indian Civil Rights Act. Nor is the fact that, during the pendency of the program, the Community adopted a resolution under which all Community members clearly were given priority over all other categories of land assignment applicants.

ORDER

For the foregoing reasons, and based on all of the pleadings and materials filed herein, the

Defendant's Motion to Dismiss is GRANTED.

November 14, 2001



John E. Jacobson
Judge of Tribal Court