

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

FILED FEB 10 1997

CARRIE L. SVENDAHL

Clerk of Court  
Court File Number 085-95

Vance Gillette,

Plaintiffs,

v.

Karen Anderson, Barbara Anderson,  
and Keith Anderson,

Defendants.

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MEMORANDUM

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INTRODUCTION

This matter is before the Court to resolve a dispute between the parties over the amount of attorney's fees owed to the Plaintiff, Vance Gillette, by the Defendants, Barbara, Karen and Keith Anderson, which shall hereinafter be referred to respectively as the Plaintiff or the Defendants. The basis of the dispute goes to the meaning of the contingency fee clause contained in the attorney-client agreement regarding Plaintiff's representation of the Defendants. The Plaintiff's representation involved establishing a right to per capita payments and receiving compensation back to 1988 on the Defendants' behalf. In return, the parties agreed that the Plaintiff would be entitled to recover 30% of any initial benefits and back pay should that be recovered. The Defendants terminated the attorney client relationship in March of 1995.



Both parties have submitted Motions for Summary Judgment. The Court having heard the matter on oral argument and in consideration of the pleadings, affidavits, motions, arguments, and memoranda of law in support of the parties respective positions issues the following:

#### STATEMENT OF ISSUES

What is the plain meaning of the "contingency fee agreement" between the parties which states in part that the Plaintiff would receive thirty percent 30% of any "gross recovery"? "Gross recovery" is defined in a subsequent agreement to mean "30% of any initial benefits, and back pay should back pay be recovered."

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In May of 1993 the parties entered into an attorney - client agreement which stated the purpose of the representation and provided for a contingency fee arrangement which included terms such as thirty (30%) percent of all recovery. The amount of thirty percent (30%) of recovery was to be applied to "...any initial benefits, and back pay should back pay be recovered in tribal ct. (sic) suit."
2. The Plaintiff filed suit against the Community alleging a violation of the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302 (8) had been committed against the Defendants for having been excluded from the list of per capita recipients. The Plaintiff's suit did not seek membership on behalf of the Defendants but only per capita benefits from 1988 to 1993.
3. In the meantime, other lawsuits were filed against the Community in an attempt to force per capita payments for other individuals.



4. The Community had to contend with the issues and holdings in Maxam v. Lower Sioux Indian Community, 829 F. Supp. 277 (D. Minn. 1993 ), wherein portions of per capita payments were enjoined because of non-compliance with the Indian Gaming Regulatory Act of 1988.
5. The Community in an attempt to provide per capita payments to those entitled to such under the 1988 Business Proceeds Distribution Ordinance (hereinafter 1988 Ordinance) but who were disqualified by Bureau of Indian Affairs guidelines enacted the Adoption Ordinance 10-27-93-001 on October 27, 1993. The Defendants were included on this list of adoptees.
6. Adoption Ordinance 10-27-93-001 was rejected for approval by the Bureau of Indian Affairs.
7. The Community enacted a second Adoption Ordinance, Ordinance No. 11-30-93-002, which also allowed for the Defendants eligibility for per capita benefits as lineal descendants of Community members. This second Adoption Ordinance was also rejected for approval by the Bureau of Indian Affairs. The matter was appealed by the Community to the Interior Board of Indian Appeals.
8. The Plaintiff filed a supplemental complaint dated December 13, 1993, on behalf of the Defendants seeking "back pay with interest for denial of benefits" for payments the Defendants would have received between 1988 and 1993 had they been eligible to receive per capita distributions under the 1988 Ordinance.
9. Finally on January 11, 1994, the Defendants were voted in as members of the Community by the Community's General Council and as a result each Defendant received



his or her initial benefit in the form of a per capita check each in the amount of \$7,779.53 on February 16, 1994.

10. The issue of the Defendants and others receiving per capita benefits was contested in the case of Smith v. SMSC, Shakopee Mdewakanton Sioux Community Tribal Court File No. 038-94. On March 15, 1994, the Court enjoined per capita payments to persons voted into membership on January 11, 1994.

11. On April 15, 1994, the Plaintiff filed a second supplemental complaint seeking a declaratory judgment stating that the Andersons were eligible for benefits as lineal descendants under the November 1993 Adoption Ordinance, an issue that was not in dispute. No claim was made for back pay nor did the complaint seek payment for moneys owed to the Andersons under the 1988 Ordinance. A Motion for Stay was filed that same day recognizing that if the Interior Board of Appeals upheld the Adoption Ordinance the Andersons would be entitled to the per capita benefits.

12. On March 15, 1994, the Tribal Court ordered these payments into escrow until the Interior Board of Indian Appeals ruled on the Adoption Ordinance or the Community passed a Constitutional Amendment regarding membership. The Defendants' per capita payments were placed into escrow from April 1994 to June 1995.

13. The Interior Board of Indian Appeals upheld the Adoption Ordinance on February 22, 1995. The Defendants were then recognized as fully enrolled members of the Community entitled to receive per capita payments going forward and entitled to the per capita payments placed into escrow by the Court.



14. The Defendants terminated their attorney - client relationship with the Plaintiff on March 24, 1995, when the Plaintiff requested payment of fees from the escrowed amounts ordered by the Court.

15. The Plaintiffs representation of the Defendants in regard to this matter can be described as a limited suit for "back pay" under the 1988 Ordinance as evidenced by the pleadings filed on behalf of the Defendants. This is what the Plaintiff and the Defendants understood "back pay" to mean. Back pay meaning payments under the 1988 Ordinance from 1988 to 1993. The Defendants have never received moneys for the years 1988 to 1993 and in fact the only form of per capita payments received by the Defendants was based on the Community's General Council vote taken on January 1994 and the Courts Order in a related matter of March 15, 1994. The moneys received by the Defendants cannot be construed as a direct result of the Plaintiff's representation for "back pay" nor was it money actually recovered by the Plaintiff. The Plaintiff's actual representation for back pay never resulted in moneys to the Defendants.

#### MEMORANDUM

The Court of the Shakopee Mdewakanton Sioux (Dakota) Community has adopted and incorporated Rule 56 (c) Summary Judgment of the Federal Rules of Civil Procedure. Summary Judgment is proper when the Court finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. A trial court may enter an order for summary judgment on liability questions. The matter before the Court is clearly undisputed as to the facts that lead up to the meaning of the language



contained in the contingent fee agreement. Therefore, the Court may ascertain the meaning of the contingency fee agreement between the parties. It is the actual amount owed to the Plaintiff by the Defendants that is in controversy. The amount is in controversy because the parties have differing points of view as to the meaning of the language "30% of any recovery" and in a subsequent agreement "gross recovery" is explained to be "any initial benefits and backpay".

The Defendants have conceded the Plaintiff's terms of the contingent fee agreement should be enforced. Enforcement of the contingent fee agreement should be in accordance with the principle elucidated in N.L.R.B. v. Superior Forwarding, Inc., 762 F.2d 695 (8th Cir. 1985) which held essentially that contract terms which are unambiguous must be given their plain, ordinary meanings. The terms "initial" and "back pay" are unambiguous in the context of the Community's per capita distribution nomenclature. The Plaintiff's representation in the filing a claim for "back pay" payments from 1988 to 1993 is construed as the mutual understanding by the parties. This was the intent of the parties at the time the contingency fee agreement was drafted and executed between the parties. In construing a contract the Court may ascertain the intent of the parties by looking into the circumstances surrounding its execution in accordance with Deauville Corp. v. Federated Dept. Stores, Inc. 756 F.2d 1183 (5th Cir. 1985). On March 15, 1994, the Court ordered the Defendants' per capita be placed in escrow until the IBIA or the Community Constitutionally reconciled the matter in accordance with federal and tribal laws. This created a different sum of moneys which cannot by any stretch of ordinary or plain meaning be considered "back pay" as agreed upon earlier by the



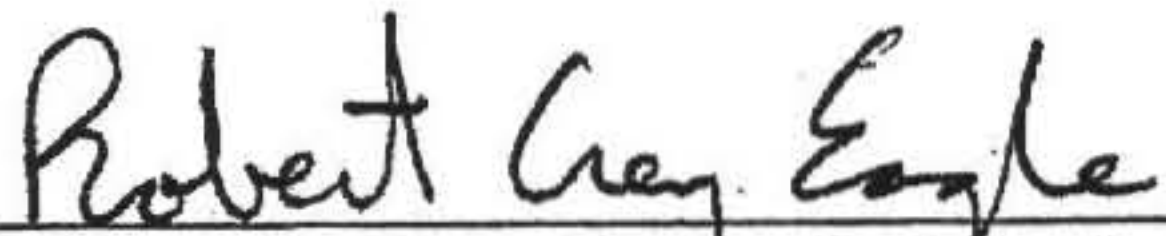
parties in their May and July of 1993 contingency fee agreements because it had not yet occurred. Nor is there any evidence to support that either party even anticipated their receiving per capita payments and then having the Court order said payments into escrow. Although the amount placed into escrow can be said to be a type of back pay it is certainly not the "back pay" sought after in the pleadings filed on Defendants' behalf nor agreed upon to be the focus of the Defendants claim in May and July of 1993. The Court finds the plain and ordinary meaning to term "back pay" are those amounts sought after dating from 1988 to 1993. Since no amounts were received for these time periods, there can be no amount owed to the Plaintiff by the Defendants. Thirty per cent (30%) recovery of back pay equals no amount of money since no back pay was recovered within the meaning of back pay which is payments from 1988 to 1993.

The other disputed term "initial benefits" of which the Plaintiff seeks enforcement is easier to deal with since the term "initial" refers to the first per capita payment received by the Defendants. The meaning is confirmed by the Plaintiff in his correspondence informing the Defendants that the fee agreement provided for payment of "30% of the first check and 30% of any recovery (back pay)." It is clear the meaning of initial benefits meant the first per capita check received by the Defendants. Thirty per cent (30%) of the Defendants first check amounts two thousand three hundred and thirty three dollars and eighty six cents (\$2,333. 86). Each of the Defendants owes the Plaintiff this amount.

ORDER

Defendant's Motion For Summary Judgment is GRANTED and Plaintiff's Motion for Summary Judgment is DENIED. This decision is based on the plain and ordinary meaning of the terms "back pay" and "initial benefits". Since no "back pay" was recovered there is no amount of money owed in that regard. However, the Plaintiff is owed 30% of the initial benefits which equals two thousand three hundred and thirty three dollars and eighty six cents (\$2,333.86) from each Defendant. So ordered.

Date: February 10, 1997

  
Robert A. Grey Eagle, Judge  
Tribal Court



FILED FEB 10 1997 *clh*

IN THE COURT OF THE  
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY  
DANIEL L. SVENDAHL  
CLERK OF COURT

Vance Gillette,

Court File Number 063-96

Plaintiffs,

v.

Karen Anderson, Barbara Anderson,  
and Keith Anderson,

Defendants.

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ORDER AND MEMORANDUM

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The above-entitled matter came on for hearing before the undersigned Judge of the Tribal Court on the 12th day of November, 1996, by telephonic conference-call, pursuant to the Plaintiff's and the Defendants' Motions for Summary Judgment.

Anne M. Lavery, Esq. appeared on behalf of the Plaintiff. Jeannice M. Reding, Esq. appeared on behalf of the Defendants.

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

IT IS HEREBY ORDERED,

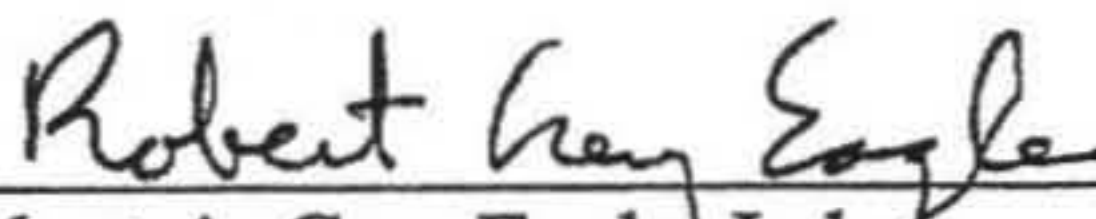
1. That the Plaintiff's Motion for Summary Judgment be, and hereby is, GRANTED; and

2. That the Defendants' Motion for Summary Judgment be, and hereby is, DENIED; and



3. That the attached Memorandum of Law be, and hereby is,  
INCORPORATED into and made a part of this Order.

Date: February 10, 1997

  
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Robert A. Grey Eagle, Judge,  
Tribal Court