

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

COURT OF THE SHAKOPEE MDEWAKANTON
SIOUX (DAKOTA) COMMUNITY

FILED

JUN. 09 2008

COUNTY OF SCOTT

LYNNEA A. FERCELLO
CLERK OF COURT
STATE OF MINNESOTA

Shakopee Mdewakanton Sioux Community
Gaming Enterprise,

Plaintiff,

vs.

Court File No. 436-00

Leonard Prescott,

Defendant.

Memorandum Decision

This matter came on for a hearing before the undersigned Judge on May 8, 2008, on Plaintiff's motion to hold Defendant in contempt for failure to pay a judgment entered by this Court on October 27, 2008.¹ For the reasons set forth below, the Plaintiff's motion is denied.

As an initial matter, the Court notes that it addressed in a separate Memorandum Decision, dated May 8, 2008, the Defendant's arguments regarding recusal. Per that decision, I will not and cannot recuse myself from hearing the motion at issue, given the facts that Defendant could make the same or similar arguments about either of the other

¹ Plaintiff styled its motion as one for an order to show cause why Defendant should not be held in contempt for failure to pay a judgment. However, at the hearing, Plaintiff agreed with the Court that this Court's Rules of Civil Procedure do not contemplate an order to show cause, and that the Court should treat the proceeding simply as a motion to hold the Defendant in contempt.

two Judges of this Court, and that the Judges of this Court do not have the power to appoint additional or ancillary judges. See generally, In re: Leonard Louis Prescott, Appeal from July 1, 1994 Gaming Commission Final Order, and Prescott v. Shakopee Mdewakanton Sioux (Dakota) Community Business Council, 1 Shak. A.C. 11, at 15-17 (1995). But I reiterate that, for the sake of appearances, I would happily recuse myself if I could and if recusal would satisfy Defendant's concerns. But inasmuch as recusal is neither possible nor helpful, I will simply state again for the record that I have no bias toward or against any party in this matter, I have no financial or other interest in this matter, and I have not participated as legal counsel with respect to any aspect of this matter.

Turning, then, to the motion at hand: On October 26, 2005, this Court ordered that judgment be entered on the Plaintiff's action to recover legal fees and costs expended by Plaintiff for defense of Defendant's gaming license. Section 67 of the Community's Business Corporation Ordinance shifts fees and costs to the losing party in cases such as this, and consequently this Court held that the judgment also included Plaintiff's reasonable attorney's fees and costs expended in seeking the judgment. The Court's judgment was duly entered on October 27, 2005. Defendant appealed the judgment to the full Tribal Court of Appeals, which eventually affirmed, Shakopee Mdewakanton Sioux Community Gaming Enterprise v. Prescott, No. 032-05 (Shakopee Ct. App. 2006). Meanwhile, during the time that the Defendant's appeal to the Tribal Court of Appeals was in progress, the Plaintiff registered the judgment in the Scott County District Court, seeking collection; and in response, the Defendant filed a motion, in the District Court, for relief from the judgment. The District Court denied that motion, Shakopee

Mdewakanton Sioux Community Gaming Enterprise v. Prescott, No. 70-CV-05-25680 (D. Minn. Scott County 1995), and the Minnesota Court of Appeals subsequently affirmed the denial. Shakopee Mdewakanton Sioux Community Gaming Enterprise v. Prescott, No. A06-1880 (Minn. Ct. App. 2006). The Plaintiff's collection action therefore is again pending before the Scott County District Court, and the Defendant evidently continues to resist that action. But now the Plaintiff has returned to this Court and, with the instant motion, asks that the Defendant be held in contempt for having failed to pay the judgment.

Plaintiff clearly has the right to seek execution of its money judgment in proceedings in the Courts of the State of Minnesota. Minn. Ct. C.P.R. 10.02; Minn. R. Civ. P. 69. But doing so initiates a distinct and separate action in a distinct and separate forum, and in that forum the Defendant has the right to resist the Plaintiff's action under the laws of the State of Minnesota. The Courts of the Community and the Courts of the State of Minnesota were created by separate sovereigns, and one cannot intervene in a matter that is pending in front of the other. See e.g., Thorstenson v. Norton, 440 F.3d 1059, 1064 (8th Cir. 2006) (holding that plaintiff who sought to enforce judgment from state court in pending tribal court action did so without any force of law); see generally Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 14-16, 107 S.Ct. 971, 975-77 (1987)

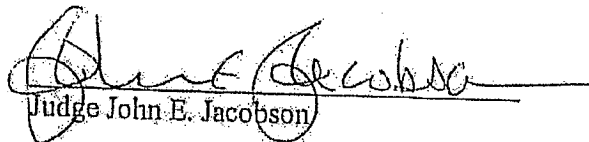
Let it be clear: this Court believes its judgment is entirely valid. The record in this protracted, painful matter is public, the decisions that led to the judgment are published, and the judgment has been affirmed and is final. But courts have considerable discretion in determining contempt issues. See Erickson v. Erickson, 385 N.W.2d 301, 304 (Minn. 1986); and Cf. Barnes v. Bosley, 828 F.2d 1253, 1259 (8th Cir. 1987);

Mower County Human Servs. v. Swancutt, 551 N.W.2d 219, 222 (Minn. 1996). And, exercising that discretion in this matter, I do not consider that the Defendant's resistance to the Plaintiff's collection efforts in the Courts of the State of Minnesota constitutes contempt of this Court. Further, I view the motion for contempt penalties as a mechanism that, if granted, would simply extend the cost and time of the proceedings. The parties are well aware of the rules of procedure which govern these courts – rules which must not be used to harass litigants or prolong proceedings.

The underlying controversy between the parties is now over fourteen years old. It has brought, and continues to bring, disruption and cost to the litigants and to the Community as a whole. It should come to an end. The judgment should be paid or should be the subject of a reasonable compromise. But the Defendant's resistance to the Plaintiff's collection efforts in the Minnesota District Court does not merit a finding of contempt in this Court – a finding that in all likelihood would give further life to a matter that should be laid to rest.

For the foregoing reasons, and based upon all the files, records and proceedings herein, the Plaintiff's motion is DENIED.

June 9, 2008


Judge John E. Jacobson