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

FILED
APR 24 2002

JEANNE A. KRIEGER
CLERK OF COURT

IN THE TRIAL COURT OF
THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT STATE OF MINNESOTA

David Gregory Crooks Plaintiff, v. 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.	)	Case No. 468-00

MEMORANDUM OPINION AND ORDER

In this case, Plaintiff claims he has satisfied the requirements for Community membership and should be made a member. The Defendants largely agree with his factual allegations, but argue that the General Council's decision to reject his membership application may not be reviewed by this Court. Since I conclude that Community law does not provide this Court with the power to issue the relief the Plaintiff seeks, I conclude that the Defendants are entitled to a judgment as a matter of law.

I. FACTUAL BACKGROUND

Plaintiff claims to qualify for membership under Art. II, Sec. 1 of the SMS(D)C Constitution, which states:

> All descendants of at least one-fourth (1/4) degree Mdewakanton Sioux Indian blood who can trace their Mdewakanton Sioux Indian blood to the Mdewakanton Sioux Indians who resided in Minnesota on May 20, 1886, Provided, they apply for membership and are found qualified by the governing body, and provided further, they are not enrolled members of some other tribe or band of Indians.

Complaint ¶ 9. Plaintiff specifically alleges that he is at least ¼ Mdewankanton Sioux, that he is a lineal descendant of Amos Crooks, George Crooks, and Alice Crooks, that all of these individuals were living in Minnesota on May 20, 1886, and that all these individuals were listed as Mdewakanton Sioux residents on the Henton Census Roll. Complaint ¶ 11. Plaintiff also alleges that he is not presently enrolled in any other tribe or band of Indians. Complaint ¶12.

Plaintiff alleges that he filed an application for membership in October 1994, and that after a substantial delay, the Community's Enrollment Committee recommended that he be granted membership in July of 1996. Complaint ¶ 13, ¶ 24. Plaintiff also alleges that there were three challenges to his membership application by Community members, each of which were denied. Complaint ¶ 25. Nonetheless, despite the recommendation of the Enrollment Committee and the rejection of all challenges against his application, the General Council voted to deny Plaintiff's application. Complaint ¶ 25. Plaintiff alleges that to date he has never received an explanation of why his application was rejected. Complaint ¶ 25.

The Defendants filed a motion to dismiss the Complaint that was denied. See Crooks v. SMS(D)C, No. 468-00 (SMS(D)C Tr. Ct. Oct. 31, 2000). Without an answer to the allegation from the Plaintiff, the Court concluded that the Plaintiff had stated a claim upon which relief may be granted and that the Court could not say there was no set of facts to support those claims. The Defendants then spent considerable efforts attempting to appeal or reverse that non-final order. Those efforts were denied and the Defendants were ordered to file an Answer. See Crooks v. SMS(D)C, No. 468-00 (SMS(D)C Tr. Ct. Dec. 27, 2001).

The Defendants filed an Answer on January 17, 2002, in which they largely admit most of the Plaintiff's allegations. The Defendants admit that the Plaintiff is at least ¼ Mdewankanton Sioux, that he is a lineal descendant of individuals who were living in

Minnesota on May 20, 1886, and that those descendants were listed as Mdewakanton Sioux residents on the Henton Census Roll. Answer ¶ 1. Defendants also admit that the Plaintiff is not presently enrolled in any other tribe or band of Indians. Answer ¶ 1.

Defendants admit that Plaintiff filed an application for membership, and that after some delay, the Community's Enrollment Committee recommended that he be granted membership. Answer ¶ 18; Memorandum in Support of Motion for Judgment on the Pleadings, at 2. Defendants also admit that there were three challenges to Plaintiff's application and each was denied. Answer ¶ 19. Nonetheless, despite the recommendation of the Enrollment Committee and the rejection of all challenges against his application, Defendants admit the General Council voted to deny Plaintiff's application. Answer ¶ 19. Plaintiff alleges that to date he has never received an explanation of why his application was rejected, and the Defendants do not refute this allegation. Answer ¶ 19.

Defendants then filed a motion for judgement on the pleadings, arguing that since the factual elements of this case were largely undisputed, the Defendants were entitled to judgement as a matter of law.

II. LEGAL DISCUSSION

As stated in the Court's October 31, 2001 order, the Plaintiff has not failed to state a claim in this case. He raises claims under the Indian Civil Rights Act, and the ICRA applies to non-members of this Community. Blue v. SMS(D)C, No. 467-00 (Tr. Ct. Nov. 11, 2001) at n.1 (noting that ICRA applies to non-members and jurisdictional statute allows this Court to entertain ICRA claims).

However, prior to the October 31, 2001 order from this Court, the Defendants had not filed an Answer in this case, so the development of a factual record was in its infancy. The Defendants have now filed an Answer that largely admits the allegations made by the Plaintiff. Now, the Defendants do not argue that the Plaintiff has failed to state a claim in his Complaint, but rather that given the facts alleged and admitted, the Defendants are entitled to judgement as a matter of law on the pleadings under Rule 12. Because I conclude that under Community law there is no relief that this Court can grant the Plaintiff, Defendants are entitled to judgment as a matter of law.

In discussing the requirements for membership under Article II, Section 1 of the Community's Constitution, the Defendants make a distinction between eligibility and qualification. Defendants argue that although Plaintiff has met all the eligibility requirements in Article II, Section 1, he is not qualified for membership because the General Council did not vote to accept him as a member. The Defendants argue that because the language of Article II, Section 1 states that an applicant for membership must be "found qualified by the governing body", this means that the General Council must vote on each membership application, and if this vote is adverse to an applicant, he or she cannot be made a member. See Ordinance No. 6-08-93-001, Sec. II.

The problem with the Defendants' argument is that reading Art. II, Sec. 1 to create a General Council vote requirement for each applicant means that a determination of who is qualified is completely subjective and is not based on any articulated standards. According to the Defendant's position, a person, such as the Plaintiff, can meet every objective standard for membership under the Constitution, but he or she can still be rejected by the General Council for no reason at all, or because the person is not popular or good looking or smart enough for the tastes of the Community's membership.

The Court is very sympathetic to the Plaintiff's arguments that Resolution No. 6-08-93-001, which adopts an interpretation of Art. II, Sec. 1 permitting the General Council vote, may be rife with substantive due process or equal protection problems. For example, under the Defendants' interpretation of Art. II, Sec. 1, two people could meet all the objective requirements for membership, they could even be biological twins, and yet one could be found "qualified" by a General Council vote and the other found not qualified. From the briefing to date, the Court is unable to determine how such a distinction could be supported by a rational basis in law.

However, the Defendants do appear to be correct when they state this Court is not able to offer Plaintiff the relief he requests. No matter how the Plaintiff cuts it, his Complaint clearly states that he is requesting that this Court:

> 1. Enter an Order determining Plaintiff's eligibility for membership in to the Community and granting Plaintiff membership in the Community, and determining Plaintiff's eligibility for membership benefits from the date of the Plaintiff's submission of his application for membership in the Community, including per-capita payments payable to Plaintiff and all other social and economic benefits attendant thereto.

Complaint, at 8.

The Plaintiff has failed to put forward any persuasive theory of Community law that grants this Court the power to do as he requests. To put it quite simply, there does not appear to be any provision of Community law that allows this Court to make someone a member after the General Council has voted to deny that same person membership.[1]

Precedent from this Court supports this conclusion. The Court of Appeals has concluded that there is no automatic or self-enrollment under Article II, Sec. 1(b) or 1(c) of the Community's Constitution for people who claim they meet the membership requirements -- applications for membership must be approved by the appropriate Community officials under standards established in accordance with the Constitution and the Enrollment Ordinance. Clifford Crooks, Sr. v. SMS(D)C, No. 016-97 (SMS(D)C Ct. App. Jan. 30, 1998). Although arguably dicta, the Trial Court stated in Weber v. SMS(D)C et al, No. 364-99 (SMS(D)C Tr. Ct. Dec. 22, 1999) that:

> [T]he actual decisions which are made on enrollment applications are for the Community alone to make. A person who clearly traces his or her lineage to a Mdewakanton who clearly resided in Minnesota on May 20, 1886 is not entitled, as a matter of right, to membership in the Community. He or she can be rejected by the General Council on any basis the General Council deems appropriate.

The Community admits that the Enrollment Director did in fact delay the handling of the Plaintiff's application for membership. But the Court of Appeals has held in the past that there is nothing in the Constitution or Enrollment Ordinance requires the Enrollment Committee or General Council to approve or disapprove an application within a certain time frame. Clifford Crooks, Sr. v. SMS(D)C, No. 016-97 (SMS(D)C Ct. App. Jan. 30, 1998). Although Plaintiff's allegation involve the Enrollment Director, even if binding precedent did not call into question the viability of Plaintiff's claim regarding delay, the remedy for such a delay would not be for this Court to admit him to

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[1] The Community did, however, represent to this Court at oral argument that there is no limit on the number of times the Plaintiff may return to the General Council for reconsideration of his qualification for membership.

membership. At most, an appropriate remedy might be for the Court to order the processing of his application. However, Plaintiff acknowledges that even though there was a delay in processing his application, the Enrollment Committee did, eventually, recommend his application for membership. His claim based on delay, therefore, appears to be moot.

ORDER

Because Community law does not permit this Court to provide the relief the Plaintiff seeks, Defendants are entitled to judgment as a matter of law.

Dated: April 23, 2002

Henry M. Buffalo, Jr.
Judge