

TRIBAL COURT  
OF THE  
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

SCOTT COUNTY

STATE OF MINNESOTA

---

File No. 475-01

Wade Donald LaDoux,

Plaintiff,

v.

Little Six, Inc., a foreign corporation,  
d/b/a Mystic Lake Casino,

Defendant.

---

**MEMORANDUM AND ORDER**

---

The purpose of this Memorandum and Order is to clarify the status of this case, in light of the Order to Dismiss, entered by the Court on September 3, 2002, and in light of correspondence sent to the Court by counsel for the Defendant, following the Order's entry.

Because the issue raised by the Defendant's letter is controlled by the pleadings that were filed in this matter, it will be helpful to briefly summarize those filings. The Plaintiff initiated this matter on March 30, 2001 by filing a Complaint, alleging that, while he was on premises owned by the Defendant, he had been injured as a consequence of the Defendant's negligence. The Defendant did not file an Answer or a Motion for Summary Judgment, but on July 1, 2002 instead filed a Motion to Dismiss, together with supporting materials, and scheduled a hearing on its Motion for September 5, 2002. Then, on August 21, 2001, the Plaintiff filed a Notice of Dismissal; and, on September 3, 2002, stating that it was acting pursuant to that Notice, the Court entered its Order to Dismiss. Thereafter, by letter, counsel for the Defendant advised the



Court that, unless the Dismissal was with prejudice, the Defendant would object and would seek a hearing on its Motion to Dismiss. In response, counsel for the Plaintiff orally informed the Court Administrator that in the Plaintiff's view the dismissal should be without prejudice.

Upon review of this Court's Rules of Civil Procedure, it is clear that the Plaintiff's position is correct, and that the Court erred in entering its Order to Dismiss. This Court's Rule 26 incorporates verbatim the provisions of Rule 41 of the Federal Rules of Civil Procedure; and which provides:

**(a) Voluntary Dismissal: Effect Thereof.**

- (1) *By Plaintiff; By Stipulation.* Subject to the provisions of Rule 23(e) [relating to dismissal of class actions], of Rule 66 [relating to receivers], and of any statute of the United States, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state any action based on or including the same claim.

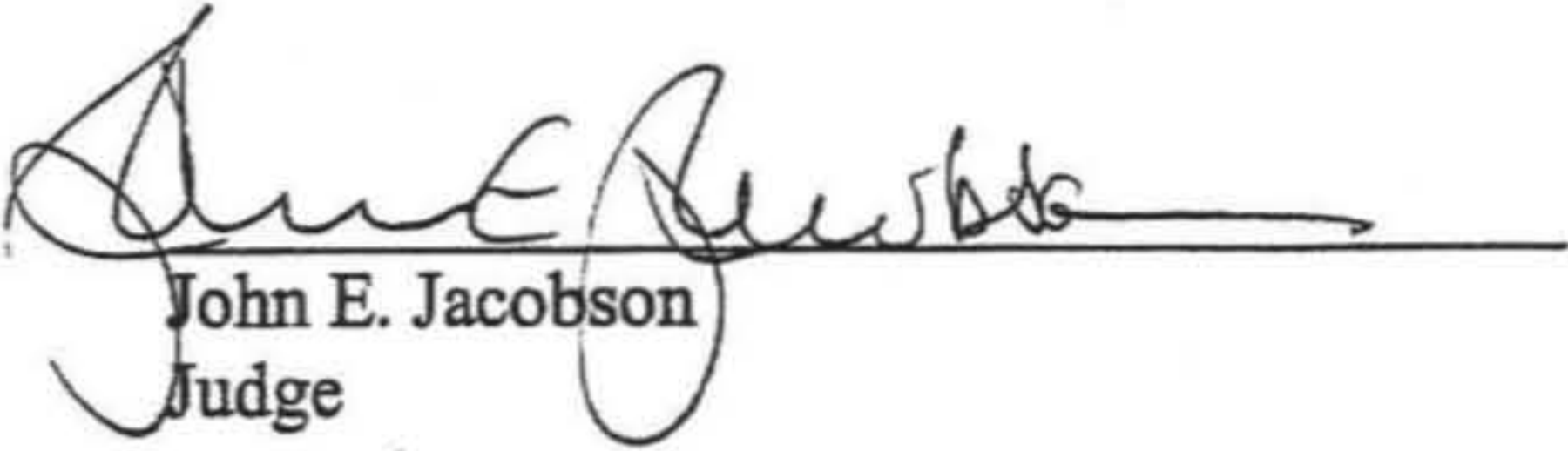
(Emphasis added).

Clearly, it was this provision which the Plaintiff invoked with his Notice of Dismissal; and since the Defendant had filed neither an Answer nor a Motion for Summary Judgment, the Plaintiff was entitled to do so, and was entitled to a dismissal without prejudice. The Court's Order to Dismiss was, in fact, a nullity. The Rule clearly entitled the Plaintiff to dismiss "without order of court", so the effect of the filing of the Plaintiff's Notice was to terminate the action as of the date of the filing. There was, then, no live action remaining, after that date, upon which the Order to Dismiss could operate.

Accordingly, since this Court's jurisdiction over the Plaintiff's action ended on August 21, 2002, it is **ORDERED:**

That the September 3, 2002 Order to Dismiss in this matter is herewith withdrawn.

Dated: September 4, 2002

  
John E. Jacobson  
Judge