

FILED DEC 16 1996

IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

CARRIE L. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

Court File No. 060-95

Louise B. Smith, Winifred S. Freezor
Cecelia M. Stout, Alan M. Prescott,
Cynthia L. Prescott, Leonard L.
Prescott, and Patricia A. Prescott,

Plaintiffs,

v.

**ORDER
FOR DISMISSAL
WITHOUT PREJUDICE**

The Shakopee Mdewakanton Sioux
(Dakota) Community Business Council,
Stanley R. Crooks, Kenneth Anderson,
and Darlene McNeal, in their official
positions as members of the Shakopee
Mdewakanton Sioux (Dakota) Community
Business Council and individually,
Shawn Bielke, James Bigley, Robert
Bigley, Anthony Brewer,
Teresa Coulter, Cheryl Crooks, Clarence
Enyart, Stephen Florez, David Matta,
Don Matta, Elizabeth Totenhagen, Robert
Totenhagen, Barbara Anderson, James
Anderson, Keith Anderson, Karen Anderson,
Kenneth Anderson, Jr., Lesli Beaulieu,
Lisa Beaulieu, Lori Beaulieu, Walter
Brewer, Jennifer Brewer, Roberta Doughty,
Selena Mahoney, Lori Ann Stovern, Linda
Welch, and Maxine Woody,

Defendants.

The above-encaptioned matter came on for hearing before the undersigned Judge of Tribal Court on the 19th day of June, 1996, at 2330 Sioux Trail Northwest in the City of Prior Lake, County of Scott, State of Minnesota, pursuant to the Defendants' Motion to Dismiss.

The Plaintiffs were represented by James H. Cohen and the Defendants were represented by Vanya S. Hogen-Kind.

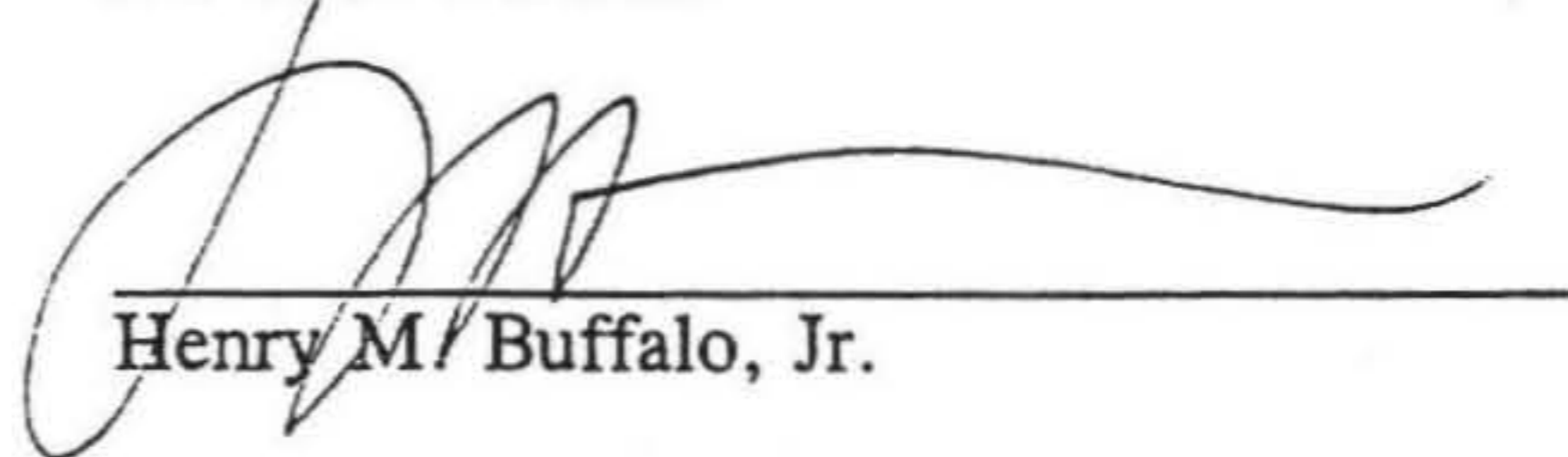
At the time of the hearing in this matter, the Court considered and denied the Plaintiffs' Motion to Reinstate Oral Argument, dated June 12, 1996, and the Plaintiffs' Motion to Amend or Clarify the Court's June 12, 1996 Order. The Court also considered the Defendants' Motion to Dismiss for Failure to State a Claim upon which relief can be granted.

Based on the files and records herein, as well as the arguments of counsel and in written confirmation of the Court's June 19, 1996 Order, IT IS HEREBY ORDERED:

1. That the Plaintiffs' Motion to Reinstate Oral Argument be, and hereby is, DENIED;
2. That the Plaintiffs' Motion to Amend or Clarify the Court's June 12, 1996 Order be, and hereby is, DENIED;
3. That the Court's June 12, 1996 Order disallowing the Plaintiffs' oral argument on this Motion also disallowed Plaintiffs' from filing additional briefing on the Motion;
4. That the Defendants' Motion to Dismiss for Failure to State a Claim be, and hereby is, GRANTED; and,
5. That the attached Memorandum be, and hereby is, incorporated into, and made a part of, this Order.

Date: June 16, 1996

BY THE COURT


Henry M. Buffalo, Jr.

MEMORANDUM

I.

This matter came before the Court pursuant to the Defendants' Motion to Dismiss the action alleged in the Plaintiffs' Amended Complaint.

The Plaintiffs' moved for a clarification of the Court's June 12, 1996 Order as it related to their ability to file a written response to the Motion to Dismiss. The Court has denied the Plaintiffs' motion and has granted the Defendant's Motion to Dismiss. Some procedural background is illuminating of these decisions.

II.

The original Complaint in this matter was filed on October 18, 1995, and the Defendant's moved to dismiss on November 10, 1995. On January 9, 1996, the Plaintiffs' filed an Amended Complaint and two days later the Defendants filed their Motion to Dismiss the Amended Complaint and their Memorandum in support of that Motion. On February 5, 1996 the Defendant's filed a Motion to Continue this matter for six weeks while the parties discussed settlement. That Motion was granted on February 9, 1996.

Settlement discussions were unsuccessful, and so a hearing on the Defendant's Motion to Dismiss was set for June 19, 1996. Pursuant to Rule 33 of the Court's Rules of Civil Procedure, the Plaintiffs' Responsive Brief was due on June 10, 1996. On June 10, 1996 the Defendants filed a Motion for Extension of Time. That motion was denied by Order dated June 11, 1996. In that Order, the Court also ruled that the Plaintiffs would not be allowed to present oral argument because they had failed to file their Brief by the established deadline. On June 12, 1996 the Plaintiffs moved to reinstate oral argument. That Motion was denied on June 12,

1996. Two hours before the June 19, 1996 hearing was to begin, the Plaintiffs filed a Motion to "Clarify" the Court's June 12, 1996 Order.

III.

The Court will not again revisit its Order of June 11, 1996. That Order clearly denied an extension of time in which to file the Plaintiffs' Brief (paragraph 2) and struck the Plaintiffs oral argument (paragraph 3). Nothing in that Order was opaque. The Plaintiffs' Motion to Clarify does not speak to the Courts June 11, 1996 Order, nor does it create a lack of clarity in either the June 11 or 12, 1996 Orders simply by having made. The Plaintiffs had the Defendants Brief in Support of Summary Judgement for over five months. The Court finds incredible and insufficient the Plaintiffs explanation that a 20 minute overrun in an 8th Circuit oral argument the day before the briefing deadline justifies an extension in time.

IV.

The Defendants' Motion to Dismiss is controlled by previous decisions of this Court. As to the Complaint against the Business Council officials for "knowingly and willfully" distributing proceeds to individuals who are not members, this Court previously has ruled that the Business Council has no discretion in determining who receives payments under either the 1988 Business Proceeds Distribution Ordinance, No. 12-29-88-002 (BPDO) or the 1993 Amendment thereto, Ordinance No. 10-27-93-002. Welch v. Shakopee Mdewakanton Sioux County Case No. 022-92 (June 3, 1993). The Business Council officials may not be held liable for payments made as required by those laws.

As to the non-Business Council defendants, the Plaintiffs only could state a claim against them if they demonstrated that those individuals were not eligible to receive proceeds to wit, are

not members of the Community. The Complaint fails to state a claim as to Defendants Cheryl Crooks, Walter Brewer and Linda Welch, inasmuch as they are not receiving funds under the BPDO, but rather under the Non-Gaming Program Allowance Ordinance No. 10-27-93-003, which allows for such payments. The Complaint fails to state a claim as to Defendants Shawn Bielke, James Bigley, Robert Bigley, Anthony Brewer, Theresa Coulter, Clarence Enyart, Stephen Florez, David Matta, Don Matta, Elizabeth Totenhagen, Barbara Anderson, James Anderson, Keith Anderson, Karen Anderson, Kenneth Anderson, Jr., Lesli Beaulieu, Lori Beaulieu, Jennifer Brewer, Robert Doughty, Selena Mahoney, Lori Ann Stovern and Maxine Woody, inasmuch as they are "qualified enrolled members" within the meaning of the BPDO (e.g. they are enrolled members of the Community). See In Re: Election Ordinance, 11-14-95-004 (Jan. 5, 1996).

Accordingly, the Court has concluded that the Plaintiffs' Amended Complaint, as a whole, fails to state a claim upon which this Court may grant relief. The Defendants' Motion to Dismiss, thus, has been granted.

HMB