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**IN THE TRIAL COURT OF
THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY**

**JEANNE A. KRIEGER
CLERK OF COURT**

COUNTY OF SCOTT

STATE OF MINNESOTA

IN RE: Conservatorship of Dean Brooks)
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Case No. 401-99

MEMORANDUM OPINION AND ORDER

In this action, Conservator Larry Nerison requests this Court to overturn the Business Council's rejection of a privately negotiated Settlement Agreement in a state court wrongful death proceeding. Because the Settlement Agreement requires the approval of the Community and such approval was not obtained, no enforceable contract exists and thus, the Community can not be compelled to fund the agreement. Accordingly, Nerison's Approval Petition is denied. In addition, since the trust created by the Community to hold per capita funds for Dean Brooks was established under the Community's Gaming Revenue Allocation Amendments to Business Proceeds Distribution Ordinance, both the Community's request for relief pursuant to Rule 60 and Conservator Nerison's request for a competency hearing are unnecessary and are both denied.

BACKGROUND

Dean L. Brooks (Brooks) is an adult enrolled member of the Shakopee Mdewakanton Sioux (Dakota) Community (Community). Brooks and Kinscem Teta (Teta) are the parents of a minor child, ██████████ (Child). In December 1997, Brooks shot and killed Teta on the Shakopee reservation. In November 1998, Brooks pled guilty to second-degree murder in Scott County District Court and was sentenced to 36 years in prison. Brooks petitioned for post-conviction relief, contending that he was incompetent to stand trial and enter a guilty plea by reason of mental illness.

In February 1999, Teta's mother, Wanda Lemke (Lemke) acting as trustee for the heirs and next of kin of Teta, initiated a wrongful death action in Hennepin County District Court to recover damages against Teta's wrongful death.

On October 21, 1999, Brooks' father, Larry Nerison (Nerison), petitioned this Court for the appointment of a conservator of Brooks' estate (Conservator Petition). Nerison alleged that Brooks' was an incapacitated person due to his mental illness and chemical dependency and thus, was unable to make or communicate responsible decisions concerning his financial affairs or estate. The Court entered an Order on November 12, 1999, naming Nerison as special conservator pending a hearing to be held on December 13, 1999.

On December 13, 1999, the Community, by and through its Business Council (Business Council or Community Council), filed a Motion to Intervene in the conservator proceeding. The Business Council stated that the Community had an interest in protecting the per capita payments of its members who are declared incompetent by a court of competent jurisdiction. The Community then stated that the protection of that

interest was mandated by the *Gaming Revenue Allocation Amendments to Business Proceeds Distribution Ordinance*, No. 10-127-93-2002, Section 14.5 (D)(1) (Ordinance), to establish a trust for any adjudicated incompetent.

The Court held a hearing on December 13, 1999, to address Nerison's Conservator Petition and the Community's Motion to Intervene. On December 20, 1999, the Court entered an Order Appointing Conservator Over the Financial Estate of Dean Brooks (Conservator Order), which granted the Community's Motion to Intervene and concluded that Brooks was an incapacitated person lacking the ability to make financial decisions and that a limited conservator should be appointed. The Court, through its Order, appointed Nerison and the Community as joint co-conservators with Nerison controlling a limited monthly sum and the Community, through its Business Council, controlling the balance of any monthly payments made to Brooks. The Court also appointed Brooks' mother, Mary Brooks, as an alternate conservator in the event of Nerison's incapacitation.

On January 5, 2000, the Community, as co-conservator, enacted Business Council Resolution 01-05-00-001, Authorization to Establish Dean Brooks Trust Fund pursuant to the Court's December 20 Conservator Order. On April 5, 2000, Nerison petitioned the Court for an allocation of funds beyond those entrusted to Nerison under the Conservator Order and an order compelling the Business Council to distribute funds (First Allocation Request) for Brooks' attorneys' fees. The Community's April 10, 2002, response stated that the Community had no objection to this request being presented to the Court for its decision and that the Community believed a decision and order from the Court was necessary to remove the funds protected in the trust account. On April 20, 2000, the

Court denied the First Allocation Request for failure to provide adequate notice to alternate conservator Mary Brooks and failure to provide sufficient background information in justification of any disbursements. Nerison filed a Revised Petition for Allocation of Trust Funds (Revised Petition) on May 12, 2000. The Court granted the Revised Petition on June 8, 2000, authorizing the expenditure of funds, and ordering the Community Council to make the necessary distribution.

Nerison filed a second Petition for Allocation of Trust Funds (Second Allocation Request) requesting additional funds for attorneys' fees and expert witnesses on January 26, 2001. The Community did not object to this request and the Court granted the Second Allocation Request, authorizing the expenditure of funds and ordering the Community Council to make the necessary distribution.

Nerison filed a third Petition for Allocation of Trust Funds (Third Allocation Request) requesting additional funds for attorneys' fees and expert witnesses on October 5, 2001. The Community did not object to this request and the Court granted the Third Allocation Request on October 17, 2001, authorizing the expenditure of funds and ordering the Community Council to make the necessary disbursement.

While the conservator proceedings continued before this Court, the wrongful death action proceeded in Hennepin County District Court. In the fall of 2001, Lemke and Nerison, as the representative for Brooks, agreed to binding mediation with retired Hennepin County Judge Richard Solum. The mediation continued through the winter of 2001-2002 and culminated in the parties executing a Binding Mediation Settlement Agreement on March 18, 2002. The parties next negotiated a more thoroughly detailed settlement agreement with Nerison and Lemke executing the Settlement Agreement of

April 16 and 17, 2002, respectively. The Hennepin County District Court approved the Settlement Agreement on April 18, 2002. On that same day, Nerison filed a Motion asking this Court to approve the Settlement Agreement and for an order for the distribution of funds. There is no indication that this Motion was served on all interested parties. Notwithstanding, the Court approved the Settlement Agreement on April 18, 2002.

On May 8, 2002, Nerison filed a Petition for Allocation of Trust Funds (Approval Petition I) with the Court requesting that the Business Council approve the Settlement Agreement and allocate trust funds as outlined in the Settlement Agreement. In his Approval Petition I, Nerison noted that he should have presented this petition for Business Council approval prior to asking the Court to enter an order domesticating the Settlement Agreement. On May 8, 2002, the Business Community denied Nerison's approval request and rejected the Settlement Agreement, determining that the use of the monies entrusted to the Community did not comply with the Ordinance's limitation on expenditures.

Because the Community denied Nerison's request to fund the Settlement Agreement, there were no funds available for Nerison to make any payments under the Settlement Agreement. On May 17, 2002, Lemke served a Notice of Default on Brooks and Nerison.

On May 28, 2002, Nerison again filed a Petition to Approve Settlement of the Wrongful Death Case (Approval Petition II) wherein he requested judicial review of the Business Council's adverse determination not to allocate trust funds pursuant to the Settlement Agreement.

On May 31, 2002, Lemke filed a Motion for Right of Trustee to Appear and Right to Intervene to Protect Interests (Lemke Motion to Intervene). Lemke alleged that this Court's consideration of Nerison's Approval Petition II seeking to overturn the Business Council's decision might adversely affect her interest in the Settlement Agreement. The Community filed two responses on June 3, 2002: 1) a Response to Motion to Appear and to Intervene (Response to Lemke Motion to Intervene); and 2) a Response to "Petition to Approve Settlement" (Response to Approval Petition II). In the Response to Lemke Motion to Intervene, the Community argued that Lemke has not demonstrated how Nerison is unable to adequately protect her interest in the Settlement Agreement. In the Response to Approval Petition II, the Community argues that the petition does not provide adequate notice of the issues presented, the Community is immune from judicial review, and does not demonstrate an abuse of discretion by the Business Council.

At the June 4, 2002, hearing, Nerison withdrew his Approval Petition II and subsequently, Lemke withdrew her Motion to Intervene. The Court granted both motions for withdrawal of the respective parties.

On September 10, 2002, Lemke filed an Affidavit of Default, Identification, Non-Military Status and Amount Due (Affidavit of Default) in Hennepin County District Court. Lemke alleged that Nerison was in default of the Settlement Agreement, had failed to cure said default, and sought judgment against Brooks. Brooks filed Defendant's Motion to Strike Plaintiff's Affidavit of Default and Stay Any Proceedings to Enforce Default Judgment (Motion to Strike Affidavit of Default) in Hennepin County on September 12, 2002. The Motion to Strike Affidavit of Default alleged that the

Settlement Agreement was unenforceable due to failure to meet a condition precedent, impossibility, and frustration of purpose.

Lemke responded by filing: 1) a Notice of Motion and Cross-Motion to Enforce Settlement; and 2) Plaintiff's Memorandum in Opposition to Defendant's Motion to Strike Affidavit of Default and in Support of Motion to Enforce Settlement, on October 21, 2002 in Hennepin County. Lemke alleged that all conditions precedent have been satisfied, Brooks' performance is not impossible, and there has been no frustration of purpose. Brooks in turn filed Defendant's Reply Memorandum in Support of Defendant's Motion to Strike Plaintiff's Affidavit of Default and Reply Memorandum in Opposition to Plaintiff's Motion to Enforce Settlement on October 24, 2002 in Hennepin County.

While the state court action progressed in Hennepin County, Nerison filed a Notice of Motion and Motion for Expedited Hearing, and Other Relief (Approval Petition III) asking this Court to override the Business Council's adverse determination not to allocate trust funds pursuant to the Settlement Agreement. The Community responded to Approval Petition III on November 25, 2002, by renewing their earlier Response to Approval Petition II and arguing that the petition does not provide adequate notice of the issues presented, does not demonstrate an abuse of discretion by the Business Council, and the Community is immune from judicial review.

On November 26, 2003, Nerison filed a Petition to Approve Settlement of the Wrongful Death Case (Approval Petition IV) asking the Court to approve the Settlement Agreement and overrule the Business Council's adverse determination.

On December 3, 2002, the Court held a hearing to address Nerison's Approval Petitions III and IV, which essentially request the same remedy – overturning the Business Council's decision. At the hearing, the Court noted that entry of the April 18, 2002, Order approving the Settlement Agreement occurred before the Court could undertake a full analysis of the legal status of the Settlement Agreement itself, and the Community's input on its role under the Settlement Agreement. The Court entered an Order the same day rescinding the April 18, 2002, approval of the Settlement Agreement and ordered briefing by the parties on issues with respect to paragraph 7's contingency language requiring Community approval and the appropriateness of the Settlement Agreement terms and conditions.

On December 20, 2002, Nerison filed a Memorandum in Support of his Approval Petition. Alternate conservator Mary Brooks filed her Response of Co-Conservator Mary Brooks to Motion to Approve Wrongful Death Settlement and Distribution of Funds (Mary Brooks' Response) on January 3, 2003.¹ The Mary Brooks' Response argued that Approval Petition IV should not be granted due, in part, to the failure to meet a condition precedent. On January 15, 2003, the Court set a hearing on this matter for January 29, 2003, to consider the Approval Petitions and to provide the parties with an opportunity to present any additional arguments not contained within their December briefings.

The Court held a hearing on January 29, 2003 to consider this matter, and after the hearing, on January 31, 2003, the Community filed a Motion for Relief From Order with the Court for an order changing the Conservator Order language from

¹ The Court entertains Ms. Brooks' objections because as Brooks' mother, she is an interested party in this matter. Ms. Brooks, however, is not a co-conservator. The Conservator Order named Ms. Brooks as an alternate conservator in the event Nerison is unable to continue functioning in that capacity. To date, Nerison continues to act a co-conservator and Ms. Brooks remains an alternate.

“incapacitated” to “incompetent.” The Community argues that such an order would conform the language to the actual evidence provided at the initial conservatorship hearing, the necessary examination of the nature of the conservatorship would constitute an undue examination of the intent of the Community’s laws, and this examination would disturb the sovereign’s good faith attempt at cooperation with the Court. Nerison filed a Notice of Motion and Motion requesting a formal hearing on the issue of Brooks’ incompetence. The Community responded to the Nerison motion on February 5, 2003.

DECISION

I. Nature of the Conservatorship

On December 20, 1999, this Court ordered the Community to establish a trust for Dean Brooks, and that a limited amount of trust funds go to a conservator each month for the care of Mr. Brooks. The Court appointed Larry Nerison as conservator, and Mary Brooks as an alternate conservator. The Court also permitted the Community to intervene in this action because of its interest in safeguarding the per capita payments of the conservatee under the Ordinance.

The Court made specific factual findings that Dean Brooks “suffers from a major mental illness, schizophrenia, with mixed paranoid and disorganized features and suffers the effects of long term chronic alcohol and drug abuse”, and that he “is incapable of exercising his rights and powers to possess and manage his estate, collect all debts and claims in his favor or compromise them, to invest all funds not needed for current debts and charges.”

At the request of counsel for Dean Brooks, the Court used the word “incapacitated” to refer to Mr. Brooks, rather than “incompetent” so as not to impact his criminal proceedings in state court.

Despite the use of the word “incapacitated” rather than “incompetent” all parties understood that the trust formed as a result of that order would be under the terms of the Ordinance. At the conservator hearing, attorney Tyler, representing Brooks, stated that Brooks had no objection to “the funds being held in trust under sort of the same conditions that they would have been if he had been declared incompetent.” December 13, 1999 Hearing Transcript at 7. Moreover, Attorney Small, representing the Community, stated that “[e]ssentially [the Community would] be following the ordinance in Section D-1, which allows for the tribe to set up the trust. Obviously, there wouldn’t be a declaration of incompetency, but if the court were to order the tribal government to do that, they would do that and set it up as they do minor trusts or anything else to protect the money.” *Id.* at 15-16. After the order entered, no party filed an appeal challenging the nature or basis of that trust.

The trust established by the Community was under the Ordinance. The payment of per capita payments is carefully regulated by the Community and under federal law. The parties have not brought to the Court’s attention any other body of law that would permit this Court to order the Community to pay out its per capita payments outside of the context of a properly approved revenue allocation plan. In addition, the record is clear that every party to the hearing that resulted in the December 20, 1999 order understood that the Community’s interest in this matter was pursuant to the Ordinance, and that the resulting trust would be a creature of that statute.

The Community has requested that the Court substitute the word "incompetent" for "incapacitated" in its December 20, 1999 order. This Court's holding that this per capita trust was formed under the Community's Gaming Revenue Allocation Ordinance mitigates a need for the relief the Community requests. Its motion is denied.

Nerison, on the other hand, has moved for a formal competency hearing over three years after the trust was created. However, at the December 13, 1999 hearing, it was Nerison himself who requested that this Court refrain from entering a formal order of incompetency in order to assist Mr. Brooks with his criminal proceeding. The Court and the Community acquiesced in Nerison's request. He is now estopped from challenging the formation of the trust, and his motion for a competency hearing is denied.

II. Condition Precedent to the Settlement Agreement

Nerison has asked that this Court enforce the settlement agreement he agreed to in state court by overturning the Business Council's decision to not approve the settlement agreement. Putting aside the issue of the Business Council's decision for a moment, the settlement agreement in this case is not enforceable in this Court.

A settlement agreement is contractual in nature and subject to the principles of contract law. Beach v. Anderson, 417 N.W.2d 709, 711-712 (Minn. App. 1988). The Minnesota Supreme Court has defined a condition precedent as follows:

A condition precedent, as known in the law, is one which is to be performed before the agreement of the parties becomes operative. A condition precedent calls for the performance of some act or the happening of some event after the contract is entered into, and upon the performance or happening of which its obligation is made to depend.

Lake Co. v. Molan, 269 Minn. 490, 498-99 (1964) (quoting Chambers v. Northwestern Mutual Life Ins. Co., 64 Minn. 495 (1896). When a contract contains a condition precedent, a party to the contract does not acquire any rights under the contract unless the condition occurs. Aslakson v. Home Savings Association, 416 N.W. 2d 786, 789 (Minn. Ct. App. 1987).

Furthermore, a breach of contract does not occur when a contract is conditioned on third-party approval and the approval is not received. If the event required by the condition does not occur, there can be no breach of contract, since the contract is unenforceable. Id.

The Settlement Agreement provides at paragraph 7:

Approval: The foregoing settlement is contingent upon approval of the Community and approval of the District Court. ... The parties will use their best efforts to obtain such approvals on or before April 17, 2002.

The Settlement Agreement further provides at paragraph 12:

Entire Agreement: This Agreement, including the foregoing "Whereas" clauses and Exhibits hereto, contain the entire understanding of the parties hereto in respect of the transactions contemplated hereby and supersedes all prior agreements and understanding between the parties with respect to such matters.

The Community approval provision of the Settlement Agreement injects a condition precedent. Cf. Hehl v. Estate of Klotter, 277 N.W. 2d 660, 662-63 (Minn. 1979) (stating use of language "subject to" indicates condition precedent).

Lemke contends that "the Settlement Agreement was...approved by the Community and the Community's Tribal Court." Aff. of Default at ¶4. Lemke argues that the Settlement Agreement does not require the written approval of the Community's

Business Council and that attorney Hardacker, the Community's counsel, orally approved the Settlement Agreement at the time of execution. Finally, Lemke argues that this Court's approval of the Settlement Agreement satisfies the requirements of paragraph 7.

Brooks alleges that the Settlement Agreement's definition of Community means the Business Council, that the Business Council explicitly disapproved the Settlement Agreement, and that attorney Hardacker did not approve the Settlement Agreement nor did he have authority to find the Community.

As set forth in Settlement Agreement WHEREAS clause 5, "Community" is defined as the Shakopee Mdewakanton Sioux Community. Thus, in order for paragraph 7's contingent approval requirement to be met, the Settlement Agreement must have been approved by the Shakopee Mdewakanton Sioux Community. While Lemke correctly contends that the term "Community" is not defined as the Business Council, she does not provide this Court with an interpretation of what she believes the term Community means. Lemke asserts that the Shakopee Mdewakanton Sioux Community's approval is satisfied by the Tribal Court's approval of the Settlement Agreement and by attorney Hardacker. Nerison argues that the Shakopee Mdewakanton Sioux Community means the Business Council and therefore, it is the Business Council's approval that is necessary, not the Court's or in-house counsel.

A fundamental principle of contract law is that when contract language is reasonably susceptible of more than one interpretation, judged by its language alone and without resort to extrinsic evidence, it is ambiguous. Current Tech. Concepts, Inc. v. Irie Enter., Inc., 530 N.W.2d 539, 543 (Minn. 1995); Metro Office Park Co. v. Control Data Corp., 295 Minn. 348, 351 (1973). The meaning of the "Shakopee Mdewakanton Sioux

Community" at issue here is, at best, ambiguous as to whether "Community" means the entire tribal membership, the delegated governmental body, or the tribal court. In these circumstances, approval could possibly be effectuated by a tribal membership referendum vote, a Business Council resolution, or by order of the Tribal Court. The plain language, however, favors neither party. In attempting to ascertain the meaning of an ambiguous term, the Court is guided by extrinsic evidence and the principle that ambiguous contract terms must be construed against the drafter -- here Lemke. See Deutz & Crow Co. v. Anderson, 354 N.W.2d 482, 486 (Minn. App. 1984). This principle favors the position advanced by Nerison -- that Community means the Business Council. In addition to this principle of construction and interpretation, the Court also finds support for this conclusion in the December 20, 1999, Conservator Order and the Business Council's continued involvement as a co-conservator.

Prior to the Court entering the Conservator Order, the Community, by and through the Business Council, sought to intervene in the conservatorship proceedings in order to safeguard a tribal member's assets. After granting the Community's Motion to Intervene, the Court through its Conservator Order stated that certain funds, particularly those attempting to be reached by the Settlement Agreement, "shall be held in trust by the Shakopee Mdewakanton Sioux (Dakota) Community, *by and through its Business Council ...*" Conservator Order at paragraph 9 (emphasis added). At the time the Court established the conservatorship, it is clear that the Court designated the Business Council as a co-conservator to administer the trust on behalf of the general council's interest. Moreover, in granting Nerison's First, Second, and Third Allocation Requests, the Court specifically ordered the Community Council to make funds available to fulfill the

allocation requests. At all time during the administration of the conservatorship, the Business Council was the entity that ultimately controlled a significant portion of the trust assets. Given the Business Council's pervasive role in administering the trust, it stands to reason that in seeking to access trust assets, the parties would have required the approval of the Business Community, not any other entity. Therefore, the Court resolves the ambiguity by interpreting the phrase "Shakopee Mdewakanton Sioux Tribe" to mean, in this instance, the Business Council. Therefore, in order to have an enforceable Settlement Agreement, Lemke must demonstrate that the Business Council approved the Settlement Agreement.

Lemke argues that the Community, and ostensibly the Business Council, approved the Settlement Agreement because "the Settlement Agreement was actually approved by counsel to the Community, William Hardacker, at the time it was executed." Pl's. Memo. in Opp. to Def's. Mot. to Strike at 10. In support of this proposition, Lemke offers the affidavit of her attorney, Daniel Boivins (Boivins Affidavit). At no time, however, does the Boivins Affidavit allege that attorney Hardacker actually approved the Settlement Agreement. The Boivins Affidavit states:

During the mediation, the parties called William Hardacker, general counsel for the Mdewakanton Sioux (Dakota) Community ("Community"). The Community, through its semi-monthly payments to its members such as [Brooks], is the sole source of [Brooks'] monies to fund any settlement or satisfy any judgment. The purpose of the call to Mr. Hardacker was to determine the Community's position on the proposed settlement and to determine the amount of monies being held in [Brooks'] trust account to be used as a down payment pursuant to the settlement.

Boivins Affidavit at paragraph 5. The Boivins Affidavit next states that:

During the course of the winter, additional concerns were raised by the parties that needed to be addressed. Mediator Solum was concerned that a formal settlement agreement had not yet been signed so he called for another mediation session which was held on March 18, 2002. Besides the parties and their attorneys, Mr. Hardacker was also present because of the previous settlement condition that the agreement had to be subject to the approval of the Community. Pl's. Memo. in Opp. to Def's. Mot. to Strike at 10.

Id. at paragraph 7. The only other support offered by Lemke regarding attorney Hardacker's approval of the Settlement Agreement is the allegation that "[t]he Community took an active role in the settlement discussions and [Brooks] had every opportunity to discuss the settlement with the Community prior to execution of the same." Lemke attempts to parlay attorney Hardacker's and the Community's active participation in the settlement negotiations, attorney Hardacker's presence at the time Lemke and Nerison executed the Settlement Agreement, and the fact that the Community had ample time to review the Settlement Agreement prior to Lemke and Nerison's execution into approval on behalf of the Business Council. Lemke does not provide this Court any evidence that attorney Hardacker made any express verbal or written statement approving the Settlement Agreement.

III. The Community did not violate the Gaming Revenue Allocation Ordinance in its consideration of the settlement agreement.

Although the settlement agreement is unenforceable due to the failure of a condition precedent, Nerison urges this Court to overturn the Community's decision to not approve the agreement. Presumably, if this Court were to overturn the Community's decision to not approve the settlement agreement the failure of a condition precedent would be remedied. The Community responds that it is immune from suit on this issue,

and that even if it is not immune it complied with the Ordinance and its decision should not be disturbed.

This Court has the power to review the actions of the Business Council under Section 14.5(D)(1). See, e.g., In the petition of Paula Sutton, No. 316-98 (SMS(D)C Tr. Ct. Nov. 5, 1998) Section 14.5D(1) states that the Business Council “shall consider placing into trust the per capita payment of any individual declared incompetent” by a court of competent jurisdiction. Section 14.5(D)(4) states that “[a]ny qualified recipient adversely affected by this paragraph shall have the right to judicial review” in this Court. Section 14.5(D)(5) allows an adversely affected individual (on in this case his legal representative) to seek redress from this Court. Sovereign immunity does not bar judicial review under this section because Section 14.5(D)(5) represents an express and unequivocal waiver of the Community’s immunity, consistent with Section 14.8 of the Ordinance.

However, the actions which this Court can review appear to be limited. Section 14.5(D)(1) only requires that the Business Council “consider” placing funds into trust for an individual declared incompetent. There is nothing in the record that supports the idea that the Business Council failed to consider whether to establish the trust in this case, and Nerison concedes that the Community did in fact consider his request to approve the settlement. See Notice of Motion and Motion for Expedited Hearing and Other Relief (Nov. 15, 2002), Exhibit A. Indeed, as Nerison himself notes, as a result of this Court’s hearing in December, 1999 a trust was in fact established by the Community. See Nerison’s Reply to Mary Brooks’ Memorandum of January 3, 2003 (Jan. 27, 2003).

Therefore, the Court cannot find any error on the Community's part under Section 14.5(D)(1) of the ordinance.

But Nerison wants this Court to go a step further and to review the substance of decisions the Community makes in its role as trustee of trusts created under the Ordinance. The legal basis for this Court to do so is not clear. However, even assuming without deciding that this Court has the power to review discretionary decisions of the Community as trustee under the Ordinance, Nerison has failed to demonstrate that the Community abused its discretion in denying his request to approve the settlement agreement. See, e.g., In re Matter of Campbell's Trust, 258 N.W.2d 856, 866 (Minn. 1977) (actions of trustee reviewed for an abuse of discretion).

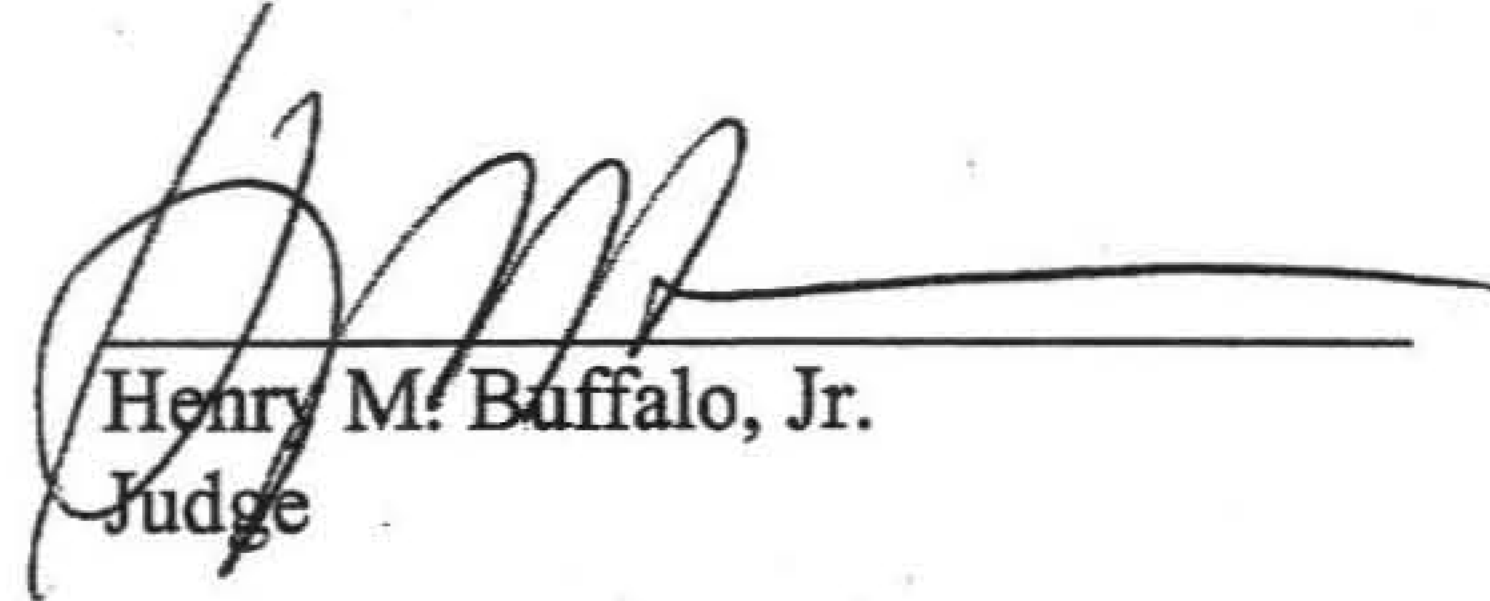
Reasonable people may disagree about whether the terms of the settlement agreement are in the best interests of Dean Brooks. In addition, Nerison seems to acknowledge that given paragraph 7 in the settlement agreement, he should have brought the agreement to the Community before formally agreeing to its terms. Had the Community been involved earlier there may have been a way to fashion an agreement that was acceptable under paragraph 7. But that was not the case, and it was not an abuse of discretion for the Community to decline its approval of the agreement.

Absent some stronger evidence of overt malfeasance or incompetence on the Community's part, the Court is not prepared to overturn the Community's decision. The effect of overturning the Community's decision would be to nullify Section 7 of the settlement agreement by substituting this Court's approval for that of the Community. The Court denies Nerison's petition to overturn the Business Council's decision and to enforce the settlement agreement.

ORDER

Accordingly, Conservator Nerison's Motion for Expedited Hearing and Other Relief and Petition to Approve Settlement of the Wrongful Death Case are denied. The Community's Motion for Relief from Order is denied. Conservator Nerison's Motion and Request for a Hearing is denied.

Dated: April 30, 2003



Henry M. Buffalo, Jr.
Judge