

FILED

SEP 23 1994

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JUDICIAL COURT
OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

Kenneth J. Thomas,
Plaintiff,
v.

Case No.: 027-93

Shakopee Mdewakanton Sioux
Community,
Defendant.

Constance P. Borchert,
Plaintiff,
v.

Case No.: 028-93

Shakopee Mdewakanton Sioux
Community,
Defendant.

Kimberly Ann Mullenberg,
Plaintiff,
v.

Case No.: 029-93

Shakopee Mdewakanton Sioux
Community,
Defendant.

Delores E. Walker,
Plaintiff,
v.

Case No.: 030-93

Shakopee Mdewakanton Sioux
Community,
Defendant.

AMENDED ORDER

The above-captioned matters, consolidated for the purposes of hearings on pending motions, came on for hearing before the Honorable Henry M. Buffalo, Jr., Judge of the Shakopee Mdewakanton Sioux (Dakota) Community, on September 7, 1994 at 10:00 a.m. Plaintiffs are each members of the Community, similarly situated. The Court heard argument of counsel upon Plaintiffs' Motion for Summary Judgment, and upon Defendants Motion for Dismissal on grounds asserting that the Court lacked jurisdiction. Plaintiffs were represented by Attorneys Larry B. Leventhal, Esquire, and Michael C. Hager, Esquire, Suite 420 - Sexton Building, 529 South 7th Street, Minneapolis, Minnesota 55415. Defendant was represented by Attorneys Vanya Hogen-Kind, Esquire, and Andrew Small, Esquire, BlueDog Law Office P.A., Suite 670 - Southgate Office Plaza, 5001 West 80th Street, Bloomington, Minnesota 55431.

On September 19, 1994, the Court issued its Findings of Fact, Conclusions of Law, and Order in this matter. The parties requested clarification as to the sum total of monies to be paid by Defendant to the respective Plaintiffs under said Order. The Court received submittals from each party on this issue, and reconvened the parties through a telephone conference call to receive limited argument by counsel. Said conference call was held on September 22, 1994, commencing at 10:15 a.m., with appearances being made by each of the aforementioned attorneys.

The Court having heard the argument of counsel and having considered the written submittals, and upon all the records and files submitted, and upon review of the Court's original Order in

this matter dated September 19, 1994, makes the following Amended Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. This case was filed by Plaintiffs on April 29, 1993.
2. The Plaintiffs, in these actions, are each enrolled adult members of the Shakopee Mdewakanton Sioux (Dakota) Community, whose membership each respectively predates the enactment of the Community's Business Proceeds Distribution Ordinance (Ordinance No. 12-29-88-002), on December 29, 1988.
3. None of the four Plaintiffs received per capita payments of business proceeds distribution until January 14, 1994, subsequent to the enactment by the Community on October 27, 1993 of the Gaming Revenue Allocation Amendments to Business Proceeds Distribution Ordinance (Ordinance No. 10-27-93-002). Each Plaintiff has since that time, received regular distributions of per capita business proceeds.
4. The Plaintiffs herein, submitted their Motion for Summary Judgment on September 29, 1993, seeking an expedited hearing on the basis that the Community was considering an Amendment to the jurisdiction of this Court which Plaintiffs feared the Defendant would argue divested this Court of jurisdiction. The Community in its partial response to Motions to Summary Judgment on October 5, 1993 assured this Court that "no such statement or intent is contained in any proposed amendment to the Business Proceeds Distribution Ordinance."

5. The Plaintiffs have respectively submitted their individual names to a referendum vote by the General Council of the Community for approval to be placed on the Roll of Adults authorized to receive per capita distributions. The General Council denied their respective petitions.

6. On January 5, 1993, the parties jointly submitted Stipulations to this Court providing, in part, that this Court has jurisdiction over the matters at issue pursuant to Community Ordinance No. 02-13-88-01, that Plaintiffs are eligible for distributions under the Amended Ordinance, that Plaintiffs are each respectively enrolled members of the Community and have held such membership since prior to December 29, 1988, that each Plaintiff is of Mdewakanton blood and has not at any time been a member of any other Indian tribe other than for the Shakopee Mdewakanton Sioux (Dakota) Community, that Plaintiffs names did not appear on the Roll of Adults of the 1988 Distribution Ordinance, and that the Amended Business Distribution Ordinance established and rendered moot the eligibility of Plaintiffs for current and future per capita payments. The respective Stipulations of the parties are accepted by this Court and are incorporated herein.

7. The parties within the aforementioned Stipulations provided at paragraph 7, that "the issue of Plaintiff's eligibility for retroactive per capita payments remains to be resolved by this court."

8. Along with the Stipulations of the parties submitted to the Court on January 5, 1994, the parties submitted a Motion that

this Court declare that actions by Tribal officials providing for future per capita payments to the Plaintiffs, while the Gaming Revenue Allocation Amendments to the Business Proceeds Distribution Act were on appeal, were reasonable and that such actions would not subject those serving on the Business Council to sanctions. The Honorable John E. Jacobson, Associate Judge of this Court, issued the Court's Order on January 9, 1993, accepting the Stipulations and providing the requested declaration.

9. Defendant on August 31, 1994, filed its Motion to Dismiss on the grounds of jurisdiction. Defendant acknowledged its previous position that the Court had jurisdiction to consider Plaintiffs' request for an Order that they be distributed per capita benefits retroactive to the date that distributions to them commenced, but presented the view that the language of Section 14.5(B) of the Amended Ordinance deprived this Court of jurisdiction to award anything other than prospective relief.

10. Plaintiff Delores Walker has received General Assistance monies in the amount of \$6,000.00 from the Community, subject to repayment to the Community, upon receipt by Plaintiff Delores Walker of an award hereunder.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to consider an award of retroactive per capita payments as to each of the Plaintiffs, pursuant to their respective Complaints and Motions for Summary Judgement. The Community, in the passage of the Gaming Allocation Amendments to the Business Proceeds Distribution Act, must be

presumed to have been aware of the pendency of these cases, and did not expressly state in the amended ordinance whether the Amendments were or were not to have an effect on pending cases. In its silence it must presume the liability of these claims. Further, the Community expressed a contemporaneous representation to the Court that the Amendments did not limit the relief sought by Plaintiffs in these actions. Additionally, the Community stipulated to jurisdiction of these claims before the Court. These claims continue, in light of the fact that they were not resolved in the express language of the Community within the Gaming Revenue Allocation Amendments to the Business Proceeds Distribution Ordinance it adopted in October 1993.

2. As this Court does retain jurisdiction, this would necessarily then require the application of the rules as enunciated in Lanny Ross v. Shakopee Mdewakanton Sioux Community, Case No. 013-91; and in Welch and Vig v. Shakopee Mdewakanton Sioux Community, Case No. 022-92.

3. One of the purposes, and perhaps the fundamental purpose, for the adoption of the amendments of the Community Ordinances dealing with per capita distribution was to lay to rest, once and for all, questions brought forth by the instant cases and several other cases presented to the Court. The purpose was to stabilize this Community. A major step towards achieving that purpose of stability necessarily involves the creation of clear rules and standards under which the Community will treat all its members with

fairness, pursuant to the Constitution. The Amendments, by providing for prospective relief only, addresses this instability.

4. The specifics of these cases do vary from that presented by Ross, Welch and Vig, in that their individual names did not appear on the same list as Ross, Welch and Vig (List C to the 1988 Business Proceeds Distribution Ordinance).

5. This Court maintains discretion to fashion remedies that will be fair to all of the parties.

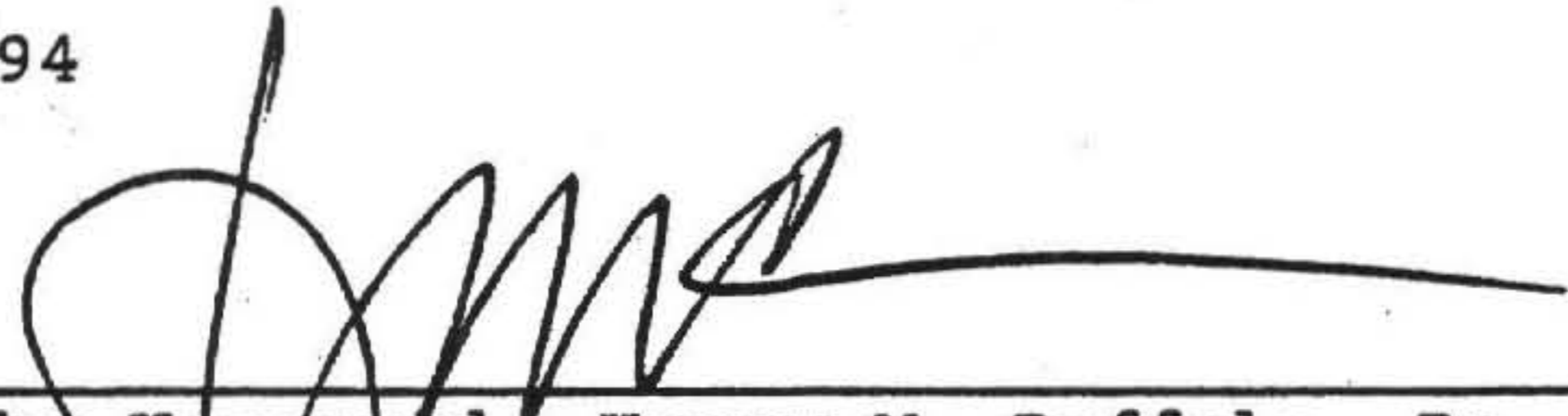
IT IS HEREBY ORDERED:

1. The Motion to Dismiss by Defendant is denied.
2. The respective Motions of each Plaintiff for Summary Judgment are granted in part, and denied in part.
3. Defendant Community is to pay each respective Plaintiff the sum of \$54,269.00, each. Said monies shall be subject to interest as specified in paragraph 4, and in the case of Plaintiff Delores Walker, subject to repayment to the Community of General Assistance monies as specified within paragraph 5.
4. From the above specified monies to be paid by Defendant Community to Plaintiff Delores Walker, the Community is authorized to deduct the sum of \$6,000.00 to repay the Community for General Assistance benefits provided by the Community to Plaintiff Delores Walker, thus submitting payment to Plaintiff Delores Walker in the sum of \$48,269.00, plus applicable interest.
5. Plaintiffs shall receive interest upon the monies specified within paragraph 3 above, at the rate of 3.25% compounded monthly, for the period commencing October 27, 1993 to the date of

final disbursement of said monies. If payment is made by the Community on or before October 3, 1994, the additional interest payment to be paid to Plaintiffs Kenneth J. Thomas, Constance B. Borchert, and Kimberly Ann Mullenberg, each respectively, shall be \$1,703.00. If payment is made by the Community on or before October 3, 1994, the additional interest payment to be paid to Plaintiff Delores E. Walker shall be \$1,352.00.

6. No costs, disbursement or attorney fees are awarded as between the parties.

Dated: September 23rd, 1994



The Honorable Henry M. Buffalo, Jr.
Judge of the Shakopee Mdewakanton Sioux
(Dakota) Community Court