

APR 11 1995

Carmel S. S. S.
Clerk of CourtIN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Raymond L. Cermak, Sr., Stanley Cermak, Sr.,
Raymond L. Cermak, Jr., Stanley F. Musiak,
Bradley W. Peterson, Stanley F. Peterson III,
Eleanor F. Krohn, David J. Collins, Bernice T.
Collins, Darlene M. Church, and Lorie Beerling,

Court File No. 039-94

Plaintiffs,

v.

MEMORANDUM
OF LAW

Shakopee Mdewakanton Band of Sioux Indians,
d/b/a "Mystic Lake Casino and Dakota Country
Casino," Little Six, Inc., The Mdewakanton Band
of Sioux Council and its former officers:
Chairperson Leonard Prescott, its Vice-Chair
Stanley Crooks, and its Secretary-Treasurer
Allene Ross; and current officers: Chairperson
Stanley Crooks, its Vice-Chair Kenneth Anderson,
and its Secretary-Treasurer Darlene McNeal,

Defendants.

I.

This suit involves claims by the Plaintiffs that: (1) they are members of the Shakopee Mdewakanton Sioux (Dakota) Community (the Community); (2) that they wrongfully have been denied, and are being denied, the right to vote for tribal officials at biannual elections; and, (3) that they wrongfully have been denied, and are being denied per capita distributions of profits from the Community's casino.

The Plaintiffs presented numerous claims for relief, including a violation of the Community's "Corporate Charter," a violation of the Indian Civil Rights Act, a violation of the

Indian Reorganization Act, a violation of the Community's Constitution, and a violation of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* (1988). However, all claims presented by the Plaintiffs depend on the assumption that they are enrolled members of the Shakopee Mdewakanton Sioux Community, or that they have applied to the Enrollment Committee for membership, pursuant to the requirements of Community law.

The record clearly demonstrates that the Plaintiffs are not enrolled members of the Community nor have they made application for membership which is required by the Community's laws. Further the Plaintiffs do not contend that they are Charter members of the Community. Accordingly, the Plaintiffs fail to state a claim upon which this Court can grant relief.

Further, the Community has established an Enrollment Ordinance, which details specific processes which must be observed by individuals seeking membership in the Community. Those requirements are not self-executing. As a result, the Plaintiffs have a duty to exhaust administrative remedies before seeking redress in this forum. They have failed to do so and their case has been, for this reason as well, dismissed.

II.

PROCESS FOR ENROLLMENT IN THE SHAKOPEE MDEWAKANTON SIOUX DAKOTA COMMUNITY

Membership in the Shakopee Mdewakanton Sioux (Dakota) Community is governed by Article II, Sections (a), (b) and (c) of the Community's Constitution, and the Community Enrollment Ordinance #7-4-16-83 (the Enrollment Ordinance). Article II governs standards for membership and the Enrollment Ordinance governs procedures to be followed in seeking membership.

Article II, Section 1(a) notes that the Community enrolled "Charter Members" of the Community. Those Members' names appeared on the 1969 census of the Mdewakanton Sioux residents of the Prior Lake Reservation, which was prepared for the purpose of organizing the Shakopee Mdewakanton Sioux Tribe. Article II, Sections 1(b) and (c) govern the standards of membership for all other persons. Article II, Section 1(b) provides that membership of the Community shall consist of all children of at least one-fourth ($\frac{1}{4}$) degree Mdewakanton Sioux Indian blood born to an enrolled member of the Shakopee Mdewakanton Sioux Community, and Article II, Section 1(c) provides that membership shall consist of all descendants of at least one-fourth ($\frac{1}{4}$) 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 as members of some other tribe or band of Indians.¹

¹ Article II, Section 1(a), (b) & (c) states as follows:

ARTICLE II - MEMBERSHIP

Section 1. The membership of the Shakopee Mdewakanton Sioux Community shall consist of:

- (a) All persons of Mdewakanton Sioux Indian blood, not members of any other Indian tribe, band or group, whose names appear on the 1969 census roll of Mdewakanton Sioux residents of the Prior Lake Reservation, Minnesota, prepared specifically for the purpose of organizing the Shakopee Mdewakanton Sioux Community and approved by the Secretary of the Interior.
- (b) All children of at least one-fourth ($\frac{1}{4}$) degree Mdewakanton Sioux Indian blood born to an enrolled member of the Shakopee Mdewakanton Sioux Community.
- (c) All descendants of at least one-fourth ($\frac{1}{4}$) 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 as members of some other tribe or band of Indians.

Article II, Section 2 provides that the governing body shall have the power to pass resolutions and ordinances to govern future membership, adoption and loss of membership. Pursuant to this authority the Community passed the Enrollment Ordinance. Sections 6 and 7 of the Enrollment Ordinance provide the procedures which must be followed when applying for membership.²

²

Sections 6 and 7 of the Enrollment Ordinance state as follows:

Section 6 - Filing and processing applications - Applications for enrollment in the Shakopee Mdewakanton Sioux Community shall be a form approved by the General Council. The Enrollment Officer shall respond to requests for applications. Applications shall be filed with the Enrollment Office. Upon receipt of the applications in the Enrollment Office, they shall be assigned an identifying number and stamped with the date of receipt. Applications shall be accompanied by a Birth Certificate or other evidence acceptable to the Enrollment Committee as to date of birth and parentage. Applications for minors or mental incompetents or others unable to complete the form may be filed by a parent or legal guardian, next of kin or the Enrollment Officer. The Enrollment Officer shall assist applicants in completing [sic] the form or obtaining necessary documents. However, the burden of proof is on the applicant to establish eligibility for membership.

The Enrollment Officer shall verify the data shown on the application and the supporting documentation and recommend in writing acceptance or rejection of the application to the Enrollment Committee.

The Enrollment Committee shall approve or reject all enrollment applications based on the record presented and other evidence deemed acceptable by said committee.

The Enrollment Officer shall notify all applicants in writing of the action of the Enrollment Committee and post the names of the approved applicants for ten calendar days. Notice to reject applicants shall be by certified mail and shall state the grounds for rejection and the right of the applicant to appeal as set out in Section 7.

Section 7 - Appeals - Any person rejected for membership may appeal to the General Council by filing an appeal in writing along with supporting evidence with the Enrollment Office within 20 days of receipt of notice of rejection. Persons outside the continental United States shall have 40 days within which to file such an appeal. An extension of 14 days may be granted the appellant by the Enrollment Committee.

The Enrollment Officer shall present the appeal along with the complete record to the Enrollment Committee who shall review the record and recommend in writing to the General Council acceptance, denial or dismissal of the appeal. The decision [sic] of the General Council shall be final and conclusive on the Shakopee Mdewakanton Sioux Community. However, such decision does not foreclose refiling an application if new or additional information is obtained by the appellant.

Written notice of the decision of the General Council shall be sent to the appellant by the Enrollment Officer, if the appeal is denied or dismissed, the reasons therefore shall be stated in the notice.

Approvals: Any Shakopee Mdewakanton Sioux Community Member may challenge the approval of an application for enrollment by the Enrollment Committee by filing a challenge along with supporting evidence with the Enrollment Officer within ten days of posting of the list of approved applicants. The person whose approved application is challenged shall be notified in writing of the challenge and the evidence presented, and shall be given ten days within which to rebut such evidence.

The Enrollment Officer shall present the entire record of the application to the Enrollment Committee which

The Plaintiffs' action (as set out in its Amended Complaint) seeks relief alleging that they are members of the Shakopee Mdewakanton Sioux Dakota Community. The Plaintiffs allege in paragraph 1 under the section entitled "the parties" that "Plaintiffs are more than 21 years of age and each is an enrolled member of the Shakopee Mdewakanton Band [sic] of Sioux Indian Community in Minnesota." The Plaintiffs' membership in the Community is apparently based on their claim at paragraph 28 of the Amended Complaint that Article 3, Section 1(c) of the Community Constitution provides that "members shall consist of all children of any member who is a resident of the Mdewakanton Sioux Reservation at the time of the birth of said children." Article 3 does not govern membership nor does it contain a Section 1(c). Further, the language cited by the Plaintiff is inconsistent with the actual language of the Constitution which deals with membership. In addition Article II, Section 1(c) clearly states that any person seeking membership thereunder must "apply for membership" and be "found qualified by the governing body". Finally, Article 2, Section 2 provides that the governing body may pass resolutions to govern future membership -- which it has done. The procedures to be followed by applicants are set out in pertinent part in footnote 2, *supra*.

shall review the same and reconsider its approval. If the Enrollment Committee accepts the challenge, the Enrollment Officer shall notify the applicant as set forth in Section 6. If the Enrollment Committee rejects the challenge, the Enrollment Committee shall inform the General Council in writing of its reasons therefor and transmit the entire record to the General Council.

The decision of the General Council on the challenge shall be final and conclusive upon the Shakopee Mdewakanton Sioux Community. The Enrollment Officer shall notify the applicant and the challenger in writing of the decision of the General Council.

The Plaintiffs offer no evidence establishing either their membership or application. Rather, they apparently contend that membership or enrollment in the Community is self-executing, or "automatic." The allegation in their Complaint implies that merely because they allege to have the proper genealogy for membership they are members of the Community *Ipsa facto*. This Court has previously determined that neither the Constitution nor the Enrollment Ordinance provide for "automatic enrollment" or "self enrollment." See Barry Welch, et al. v. Shakopee Mdewakanton Sioux Community, et al., No. 023-92 at p. 4. In the Welch decision, this Court held that--

finding automatic enrollment would contradict the clear language of the Constitution and the Ordinance, would render the application procedures in the Enrollment Ordinance meaningless and would contravene the Community's inherent sovereign right to determine its own membership. This Court will not entertain an interpretation of the Constitution and Enrollment Ordinance which would contravene a tribal right which has long been held to be "central" to the existence of an independent sovereign nation.

Welch at p. 6. See also Santa Clara Pueblo v. Martinez, 436 U.S. 71, 73, note 32 (1978), citing Roff v. Burney, 168 U.S. 218 (1897), Cherokee Intermarriage Cases, 203 U.S. 76 (1906).

The Plaintiffs' Complaint is based on an allegation that they are members. The Court, however, finds that they have not proved their membership or an application for membership and holds that they, therefore, have failed to state a claim upon which this Court may grant relief. Accordingly, their suit must be dismissed with prejudice pursuant to Rule 12(b)(6) of the Rules of Civil Procedure for the Shakopee Mdewakanton Sioux Community.

II.

EXHAUSTION OF TRIBAL REMEDIES

The Court further notes that the Plaintiffs' suit must be dismissed because they have failed to exhaust tribal administrative remedies. Procedures for obtaining membership in the Community are set out in the Community's Enrollment Ordinance.³ This Court repeatedly has stressed the importance of litigants complying with the Community's administrative procedures. See, e.g., Ronald Welch, et al. v. Norman Crooks, et al., No. 033-88, Judicial Court of the Shakopee Mdewakanton Sioux Community (December 16, 1988) Barry Welch, et al. v. Shakopee Mdewakanton Sioux Community, et al., No. 023-92, Judicial Court of the Shakopee Mdewakanton Sioux Community (December 23, 1994). Furthermore this Court has ruled that there is no situation in which that importance would be greater than where membership in the Community is at stake. Smith, et al. v. Shakopee Mdewakanton Sioux Community Business Council, et al., No. 038-94, Judicial Court of the Shakopee Mdewakanton Sioux Community (June 10, 1994), Welch, et al. v. Shakopee Mdewakanton Sioux Community, et al., No. 023-92, Judicial Court of the Shakopee Mdewakanton Sioux Community (December 23, 1994) and, accordingly, has cautioned that it will not allow litigants to circumvent the Community's procedures. Id.

The Ordinance generally requires that the party seeking membership make application to the Community Enrollment Committee. The Committee must then review the application and, upon approval, must post notice to Community members of the application for membership and its approval. Subsequent to that posting, enrolled members of the Community are allowed 10

³ See footnote 2, *supra*.

days to challenge the proposed membership. After the challenge period, the parties approved for membership then must present themselves to the General Council which either votes to confirm or deny their membership.

The Plaintiffs do not contend that they followed the procedures set out in the Enrollment Ordinance. This Court therefore concludes that the Plaintiffs have failed to exhaust their administrative remedies and until they exhaust those remedies this Court cannot provide them redress.

A handwritten signature in black ink, appearing to be the initials 'HMB', is written over a circular stamp or mark.

FILED

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Carrie Stuedak
Clerk of Court

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Plaintiffs,

v.

ORDER

Shakopee Mdewakanton Band of Sioux Indians,
d/b/a "Mystic Lake Casino and Dakota Country
Casino," Little Six, Inc., The Mdewakanton Band
of Sioux Council and its former officers:
Chairperson Leonard Prescott, its Vice-Chair
Stanley Crooks, and its Secretary-Treasurer
Allene Ross; and current officers: Chairperson
Stanley Crooks, its Vice-Chair Kenneth Anderson,
and its Secretary-Treasurer Darlene McNeal,

Defendants.

The above-entitled matter came on for hearing before the undersigned Judge of Tribal Court on the 15th day of December, 1994, at 2330 Sioux Trail Northwest in the City of Prior Lake, County of Scott, State of Minnesota, pursuant to the Defendant's Motion to Dismiss for failure to state a claim upon which relief can be granted (Rule 12(b)(6) Shakopee Mdewakanton Sioux Community Rules of Civil Procedure) and for failure to exhaust tribal administrative remedies.

Kyle J. Hegna, Esq. and Joseph Golden, Esq. appeared on behalf of the Plaintiffs.
Vanya Hogen-Kind, Esq. and Andrew Small, Esq. appeared on behalf of the Defendants.

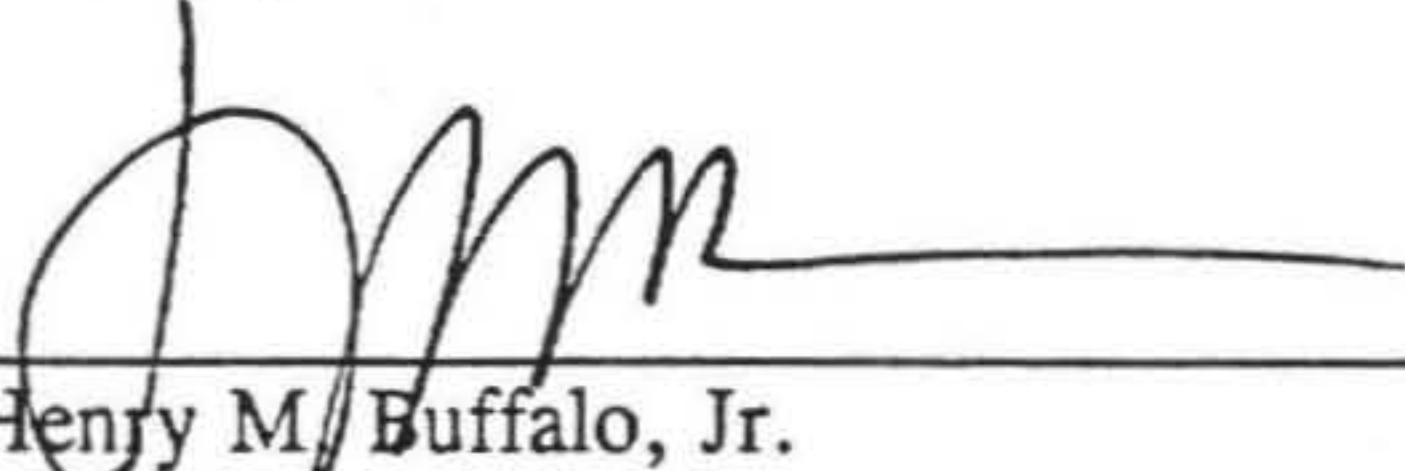
The Court being fully advised of the premises and based on the files, records and evidence herein, as well as the arguments of counsel for both parties,

IT IS HEREBY ORDERED:

1. That the Defendants' Motion to Dismiss based on Rule 12(b)(6) of the Shakopee Mdewakanton Sioux Community Rules of Civil Procedure be, and hereby is, in all things, GRANTED;
2. That the Defendants' Motion to Dismiss based on the Plaintiffs' failure to exhaust tribal administrative remedies be, and hereby is, in all things, GRANTED; and,
3. That the attached Memorandum of Law be, and hereby is, INCORPORATED into and made a part of this Order.

Dated:

April 11, 1995


Henry M. Buffalo, Jr.
Judge of Tribal Court