

FILED JAN 24 1996

COURT OF THE  
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY  
COUNTY OF SCOTT  
DARRIE L. SVENDAHL  
CLERK OF COURT  
STATE OF MINNESOTA

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Clifford S. Crooks, Sr.,	)	
	)	
Appellant,	)	
	)	
vs.	)	Case No. APP. 007-95
	)	
Shakopee Mdewakanton Sioux	)	
(Dakota) Community,	)	
	)	
Respondent.	)	

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OPINION AND ORDER

Procedural History

This is an appeal from a July 17, 1995 decision by Judge Grey Eagle, dismissing the Plaintiff's Complaint.

In his Complaint, the Plaintiff alleged that he is "fully qualified as a member" of the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community"); he alleged that he has followed the procedures mandated by the Community's Ordinance 6-08-93-001 ("the 1993 Enrollment Ordinance"); and he alleged that the Community's Enrollment Officer and Enrollment Committee had not processed his application in accordance with the requirements of the 1993 Enrollment Ordinance. He sought an Order from this Court declaring that he is a member of the Community, or requiring the Community's Enrollment Committee to act on his application; and he sought damages, in the form of retroactive "per capita" payments, for the

period during which he contended that the Enrollment Committee improperly had failed to process his application.

The Community moved to dismiss, on the grounds that the Plaintiff did not state a claim upon which relief can be granted, and on the grounds that the Plaintiff had failed to exhaust his administrative remedies. The Community asserted that the applicable law was Community Ordinance No. 12-28-94-001 ("the 1994 Enrollment Ordinance"); that the Plaintiff's application was being processed by the Enrollment Committee; and that the Court had no authority either to declare that the Plaintiff was a member of the Community or to require the General Council of the Community to make him a member of the Community.

Judge Grey Eagle granted the Community's motion to dismiss, Crooks v. Shakopee Mdewakanton Sioux (Dakota) Community, No. 054-95 (decided July 17, 1995), and this appeal followed. Apparently, after the Community's motion to dismiss was granted, the Enrollment Committee voted to recommend that Mr. Crooks' application be approved. The record does not reflect what if any action was taken thereafter by the Community.

#### Discussion

This Court's role in the enrollment processes of the Community is a limited one. We have repeatedly held that applicants for enrollment cannot use this forum as a mechanism for circumventing the Community's procedures. Welch v. Shakopee Mdewakanton Sioux (Dakota) Community, No. 023-92 (decided December 23, 1994). Absent

an affirmative vote of the General Council of the Community, no person can simply declare himself or herself to be a member of the Community, regardless of his or her lineage or personal history. And absent a patent violation of the Indian Civil Rights Act, 25 U.S.C. §1302 (1994), the General Council of the Community is the entity which decides whether a person who is seeking membership in the Community will become a member of the Community. Therefore, the Plaintiff's contention, in his Complaint, that he is "fully qualified as a member" of the Community, is clearly incorrect, since, by the Plaintiff's own admission, he had not been the subject of an affirmative vote of the Community's General Council (at least at the time this matter was argued on appeal).

Likewise, this Court's authority to award the sort of relief which the Plaintiff seeks is very limited. In cases where persons have been "voted in" as members, and have alleged that their admission has been improperly delayed, the award of retroactive per capita payments by this Court has been a rare and extraordinary remedy. Ross v. Shakopee Mdewakanton Sioux Community, No. 013-91 (decided June 3, 1993). (The Community has contended that any authority which this Court had to make such an award was withdrawn by an amendment to the Community's Business Proceeds Distribution Ordinance which were passed on October 27, 1993; Judge Jacobson recently has held that, in fact, that purported withdrawal was ineffective, because it was adopted by a vote which was insufficient, under the terms of the Ordinance which created this Court, Campbell v. Shakopee Mdewakanton Sioux (Dakota) Community,

No. 033-93 (decided December 5, 1995), appeal filed December 20, 1995; and Barrientez v. Shakopee Mdewakanton Sioux (Dakota) Community, No. 033-93 (decided December 5, 1995), appeal filed December 20, 1995; and that decision has been appealed to this Court. Because of our resolution of this matter on other grounds, we are not obliged here to opine on that question.)

Given the foregoing, we likely would affirm Judge Grey Eagle's dismissal of the Plaintiff's Complaint, save for one fact: we must take judicial notice that the text of the 1994 Enrollment Ordinance which was adopted by the Community's General Council differed, in small but nonetheless substantive and significant ways, from the text of the 1994 Enrollment Ordinance which was presented to the Area Director of the Minneapolis Area Office, Bureau of Indian Affairs, for approval, under the provisions of Article V, Section 2 of the Community's Constitution. See generally, the discussion of the differences in text in Amundsen v. Shakopee Mdewakanton Sioux (Dakota) Community Enrollment Committee, No. 049-94 (decided January 17, 1996).

Judge Grey Eagle's decision dismissing this matter was based on his belief that the 1994 Enrollment Ordinance was the law of the Community; but, given the textual differences just described, we are of the view that, in fact, the 1993 Enrollment Ordinance is the law which presently governs enrollment decisions of the Community.


It may well be that no difference in result may be warranted in this case; but we are of the view that the matter should be remanded to Judge Grey Eagle for that determination.

Order

For the foregoing reasons, the decision of Judge Grey Eagle dismissing this matter is reversed, and the matter is remanded to him for a determination as to whether the requirements of the 1993 Enrollment Ordinance would dictate a different result in this case.

January 24, 1996

  
John E. Jacobson,  
Judge

  
Henry M. Buffalo, Jr.  
Judge

Robert Grey Eagle,  
Judge

Order

For the foregoing reasons, the decision of Judge Grey Eagle dismissing this matter is reversed, and the matter is remanded to him for a determination as to whether the requirements of the 1993 Enrollment Ordinance would dictate a different result in this case.

January 24, 1996

John E. Jacobson,  
Judge

Henry M. Buffalo, Jr.  
Judge

Robert Grey Eagle  
Robert Grey Eagle,  
Judge

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