

JUN. 28 1995

IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA
*Paula Sullivan
Clerk of Court*

Todd Brooks, Winifred S. Feezor,
Mary Jo Gustafson, Tina Hove, Alan
M. Prescott, Cynthia Prescott, Leonard
L. Prescott, Patricia A. Prescott, Rose
Prescott, Louise B. Smith, Cecilia M.
Stout,

Court File 057-95

Plaintiffs,

v.

The Shakopee Mdewakanton Dakota (Sioux)
Community, the Shakopee Mdewakanton Dakota
(Sioux) Business Council, Stanley R. Crooks,
Kenneth Anderson, and Darlene McNeal,
individually and jointly, the Shakopee
Mdewakanton Dakota (Sioux) Community
Enrollment Committee, Anita Barrientez
(Campbell), Susan Totenhagen, and Cherie
Crooks-Bathel, individually and jointly,

Defendants.

MEMORANDUM OPINION AND ORDER

The Complaint in this matter was received by the Court after 5:00 p.m., on June 27, 1995. The Clerk of Court therefore filed the matter as of June 28, 1995. However, the materials received by the Court included a Motion for a Temporary Restraining Order that related to a meeting of the General Council ("the General Council") of the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community") that was to take place at 7:00 p.m., June 27, 1995. Therefore, on June 27, beginning at 6:30 p.m., the undersigned conducted

a hearing on that Motion.

The hearing was conducted on the record, by telephone conference call. The Plaintiffs were in the process of telefaxing to the Defendants' counsel their Complaint and Motion papers as the hearing took place; and, the Court telefaxed to the Defendants' counsel the materials submitted by Defendants, during the hearing. The Plaintiffs were represented by James Cohen, Esq. and Arnie Frishman, Esq.; the Defendants were represented by Kurt V. BlueDog, Esq., Vanya Hogen-Kind, Esq., and Andrew Small, Esq..

In their Complaint, the Plaintiffs allege, and the Defendants' counsel during the hearing did not deny, that a Special Meeting of the General Council was called for 7:00 p.m. on June 27, 1995 to consider the adoption into the Community of twenty named persons. The Plaintiffs sought a Temporary Restraining Order to prevent the General Council from taking any action with respect to such adoptions, contending that the General Council likely would be composed of a number of persons who would not be qualified, under the Community's Constitution, to vote as members of the Community; and that the Community's Enrollment Committee had not followed the provisions of the Community's Adoption Ordinance, Ordinance No. 11-30-93-002, when it processed the applications for adoption of the twenty persons at issue.

The Defendants, in response, submitted by telefax an affidavit executed by Ms. Darlene McNeal, the Community's Vice-Chair, outlining the manner in which the Enrollment Committee of the Community and the other organs of the Community's government had dealt with the applications for adoption under the Adoption Ordinance.

On the basis of the materials submitted by counsel for the parties, I concluded that the Motion for Temporary Restraining Order should be denied; and by this Memorandum and Order

I am memorializing that decision.

As I stated to the parties at the conclusion of the hearing, I believe there are several independent reasons why a Temporary Restraining Order would have been inappropriate, under the circumstances.

First and foremost, the Plaintiffs were in the position of asking the Court to order the General Council to refrain from even considering the recommendations of the Enrollment Committee. The Court was asked to intervene and to decide both who was likely going to attend the General Council meeting, and to decide that those attendees, or a significant number of them, would not be qualified to vote, under the Community's Constitution.


When it was created, this Court was given broad authority by the General Council; but, to date, each time we have been asked to grant preliminary relief in a matter, to prevent the General Council from considering a matter, we have refrained from doing so, because in our view, in virtually all circumstances, the General Council, as the legislative arm of the Community, clearly should be permitted to fully debate and freely decide the matters that come before it. If, thereafter, a claim can be made that procedures were inappropriate, or that a decision was inconsistent with the Community's Constitution or other applicable law, that claim can be heard and, if valid, remedied, in an orderly fashion in accordance with our rules.

In addition, it seemed to me that, based on the record that was before the Court at the time of the hearing, the Plaintiffs were unable to demonstrate a strong likelihood that they will succeed on the merits. The Adoption Ordinance under which the Plaintiffs allege the General Council would proceed had been approved by the Secretary of the United States Department of the Interior or his delegee. And the affidavit of Vice-Chair McNeal suggests that the procedures

which the Enrollment Committee and the other arms of the Community's government have followed comport with that Ordinance. Assuming that is so, then the Plaintiffs' sole claim would be that some members of the General Council who allegedly would vote on the adoptions were, in fact, not qualified to vote, under the Community's Constitution. And that very issue was what this Court announced its intention to address, in an expedited fashion, in Smith v. Shakopee Mdewakanton Sioux (Dakota) Community, No. 038-94. Until last week, a preliminary injunction, issued by the undersigned in March, 1994, had been in place which had prevented the implementation of a January, 1994 decision of the General Council, respecting the membership of the same twenty persons who are the subject of the Plaintiffs' new Complaint. But last week the Plaintiffs in that matter, most of whom are the Plaintiffs in this matter, voluntarily dismissed their Complaint, thereby terminating this Court's review of their allegations concerning the validity of the composition of the General Council. It seemed to me, therefore, that in considering the equities of the matter, and the burden imposed by last-minute filing of litigation, by similar parties, seeking a similar injunction, after their earlier voluntary dismissal, smacked of unclean hands, and would itself justify the denial of the requested Restraining Order.

For the foregoing reasons, the Plaintiffs' Temporary Restraining Order was DENIED.

Dated: June 28, 1995


John E. Jacobson, Judge