

FILED OCT 14 1996 *clt*

IN THE COURT OF APPEALS OF
THE SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY GARRIE L. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

Aubrey Welch, a minor, by
Allene Ross, her mother and
natural guardian, and
Alison Welch, a minor, by
Allene Ross, her mother
and natural guardian,

Appellants,

vs.

Ct. App. No. 009-96

Shakopee Mdewakanton Sioux
(Dakota) Community,

Respondent

MEMORANDUM OPINION AND ORDER

This is an appeal by Aubrey and Alison Welch, minors, by their mother Allene Ross, from an Order by Judge Buffalo dismissing their Complaint. Their Complaint alleges that both Appellants are enrolled members of the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community"), and that they presently are being denied the benefits to which minor members of the Community are entitled.

On February 7, 1996, Judge Buffalo granted the Community's motion to dismiss for failure to state a claim upon which relief can be granted, under Rule 12(b)(6) of our Rules of Civil Procedure, stating that "the entire matter turns on the question of 'automatic' enrollment". (Opinion of the Trial Court, at 3).

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This appeal is from that Order. The Appellants argue strenuously that the Trial Court read their Complaint erroneously-- that the Complaint nowhere speaks of "automatic" enrollment. They also argue that, although the Trial Court acknowledged consideration of a motion to dismiss under Rule 12(b)(6) requires the Court to assume all facts alleged in the Complaint to be true and view the allegations in the light most favorable to the Plaintiffs, nonetheless the Trial Court actually did not follow that procedure.

Because the questions raised by the appeal are strictly issues of law, we will review the Trial Court's Order de novo.

On the face of things, the Appellants' arguments have some force. Their Complaint in fact does not use the phrase "automatic enrollment". The first paragraph of the Complaint simply states the conclusion that "Aubrey and Alison Welch are each an Enrolled member of the [Community] pursuant to Article II, Section 1(b) of the [Constitution of the Community]," and other paragraphs of the Complaint assert that the Community established trusts for the Appellants, and that for a period of time each trust received distributions of Community resources. The Complaint also asserts that those distributions have been stopped, and that the Community no longer gives the Appellants access to the rights which it affords its minor members.

So, if one did not scrutinize specifics, there would be weight behind the Appellants' assertion, on appeal, that what their Complaint truly is about is a disenrollment that does not comport

with the procedures which the Community has established for such matters (though, in fact, the Complaint does not expressly make that claim). One could agree that, given the benefit of the rules that are applicable to motions under Rule 12(b)(6), the Appellants should be given a chance to conduct discovery on their claims.

But then, when one looks more closely at the Complaint, other things appear. The Complaint does not simply say "Aubrey and Alison Welch are enrolled minor members of the Community, and are improperly being denied the benefits of that membership". It asserts the basis for the alleged membership: "Plaintiffs are enrolled minor members of the Community pursuant to Section 1(b) of the Community Constitution". (Complaint, ¶12). It asserts that "[t]he General Council is authorized to pass ordinances but ordinances may not conflict with Constitutional provisions". (Id., ¶13.) It asserts that both Aubrey and Alison Welch are "identified as minor children who are members of the Community within the Business Proceeds Distribution Ordinance No. 12-29-88-002 Roll of Minors" (Id., ¶17), and it attaches a copy of that Ordinance to the Complaint as Exhibit B. It asserts that both Aubrey and Alison Welch are recognized as "eligible minor members" in trust agreements executed in 1983 and 1985, (Id., ¶19), which agreements also are attached to the Complaint.

But, with these specifics stated, nowhere does the Complaint allege that the government of the Community has taken the necessary formal action, under any Enrollment Ordinance or Adoption Ordinance, to make the Plaintiffs members of the Community. The

list of minors appended to the Business Proceeds Distribution Ordinance does not purport to confer membership. Neither do the two trust instruments. The former simply is a list of minors who, in 1988, were to receive business proceeds from the Community; and although the trusts do say that they were established for "eligible minor members" of the Community, they do not confer such membership or identify formal actions of the Community government which did confer such membership.

Under these circumstances, it was not unreasonable or improper for the Trial Court to conclude that the Complaint alleges that the Plaintiffs' claim of membership arises outside the Community's Enrollment and Adoption Ordinances. Whether such a claim is termed one for "automatic membership" or not, it cannot survive a 12(b)(6) motion in this Court. Cermak v. Shakopee Mdewakanton Sioux (Dakota) Community, No. 039-94 (decided April 11, 1995). The conclusory allegations that the Plaintiffs/Appellants are "enrolled members" do not, in the context of the remainder of their Complaint, suffice to save their Complaint. See e.g., Fernandez-Montes v. Allied Pilots Association, 987 F.2d 278, at 284 (5th Cir. 1993).

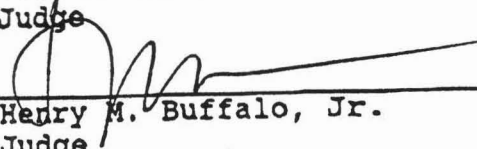
If the Plaintiffs/Appellants contend that some formal action of the Community, under an Enrollment Ordinance or an Adoption Ordinance, in fact conferred membership in the Community upon them, they are free to file a Complaint which alleges that. But absent the ability to make such a claim, this Court has no role to play.

Order

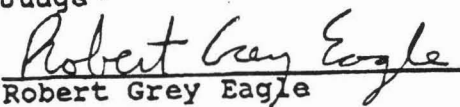
For the foregoing reasons, the Order of the trial court granting the Defendant/Respondent's motion to dismiss, without prejudice, is AFFIRMED.

October 14, 1996

John E. Jacobson
Judge



Henry M. Buffalo, Jr.
Judge



Robert Grey Eagle
Judge

Order

For the foregoing reasons, the Order of the trial court granting the Defendant/Respondent's motion to dismiss, without prejudice, is AFFIRMED.

October 14, 1996



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