

FILED

JUL 17 1995
Carrie Svedahl
Clerk of Court

TRIBAL COURT OF THE

SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Clifford S. Crooks, Sr.,

Court File No. 054-95

Plaintiff,

V.

MEMORANDUM
OF LAW

The Shakopee Mdewakanton Sioux (Dakota)
Community,

Defendant.

I.

INTRODUCTION AND SUMMARY OF PROCEEDINGS

The Plaintiff in the above entitled action requests damages and declaratory relief against the Defendant Shakopee Mdewakanton Sioux (Dakota) Community for allegedly violating his constitutional, aboriginal, and statutory rights for Defendant's failure to recognize his membership and membership eligibility.

The Plaintiff has applied for membership in the Shakopee Mdewakanton Sioux (Dakota) Community by submitting his application on May 19, 1994 including his birth certificate showing his parentage together with the 1889 Henton Roll and the 1929 Pipestone Roll and various documents and information in support of his claim.

Plaintiff filed his complaint in this Court on February 2, 1995 which was served on the Defendant on February 7, 1995 requesting damages and declaratory relief. To which the Defendant responded with their Motion to Dismiss under Rule 12 (b)(1) and (6) of Shakopee Mdewakanton Sioux Community Rules of Civil Procedure. The matter was heard on oral arguments in support and opposition to the Motion to Dismiss.

The Court took judicial notice that on the day of the scheduled hearing the Enrollment Committee was to entertain action on the Plaintiff's application for enrollment. The Court asked to be advised on their action which depending on their respective action or inaction or other activity would affect the issues before the Court.

The Court upon hearing both parties on said hearing date ordered further briefing from the parties on the issue of "Judicial Enrollment". The briefs were submitted on May 11, 1995. The Court received in addition to the ordered simultaneous briefs on the issue of Judicial enrollment, correspondence from the Defendant's counsel regarding the Plaintiff's status before the Enrollment Committee and correspondence from the Plaintiff's counsel regarding a secretarial ruling from Assistant Secretary-Indian Affairs Ada Deer.

The latter had the possibility of the most significant impact on the case at hand. In effect the secretarial determination may be interpreted to nullify two previously enacted Enrollment Ordinances identified as the Community Enrollment Ordinances No. 12-28-94-005 and the 1993 amendments in Resolution No. 6-08-93-001.

The Court is unaware of any action taken by the Defendant Community to formally challenge the Assistant Secretary's ruling or to take action within the Community's legal infrastructure to cure the alleged procedural and substantive discrepancies identified by the Assistant Secretary.

The Defendant Community's response through counsel was to in effect challenge the validity of the Assistant Secretary in making a ruling one hundred and forty (140) days after the enactment of the law when the Community's laws require that rescission occur within ninety (90) days after enactment.

II.

MEMBERSHIP PROCESS

The Shakopee Mdewakanton Sioux (Dakota) Community membership is governed without a doubt by Article II, Sections (a)(b) and (c) of their Constitution. Assuming, arguendo, the Community's 1993 and 1994 enrollment ordinances are invalidated the Community would have to rely on their 1983 enrollment ordinance numbered 7-4-16-83. The Constitution and the 1983 Enrollment Ordinance would govern the procedures necessary to effectuate membership in the Community.

Regardless, inherent in each of the enrollment ordinances are found procedures which must be taken and the allowance of the Community through its enrollment officers and committees to render a decision either to reject, accept or require additional information in order to have a complete enrollment package and to make an informed decision as to the status of an individual's application for membership.

The Court issues its determination on the case at hand in light of the Assistant Secretary Ada Deer making a determination as to Community's recently enacted 1993 and 1994 enrollment ordinances as being invalid.

The Court has determined that it does not have to ascertain the validity of the Ordinances in question in order to make a decision on this matter. Whether the Court is controlled by the 1993, 1994, or the 1983 enrollment ordinance their still exist certain basic tenets and principles of procedure which must apply.

The Community is the proper entity to decide the fate of its enrollment ordinances. The Plaintiff has not alleged unconstitutionality of the ordinances in question but rather that his rights under the Constitution and the ordinances have been infringed upon. "... what the law ought to be is for the legislative body, and what the law is, rests with the Court. Stade v. Shakopee Mdewakanton Sioux (Dakota) Community, No. 002-88. The Court is compelled to render judgment not over reaching the length of the prerogatives of the jurisdictional branch.

The legislative branch of tribal government has the task of addressing the legality of their enrollment Ordinances. Until the question is properly before the Court as to the constitutionality of the Ordinances the Court will not entertain the question. The Court is confident the Community will address the question through appropriate legislation to be enacted or approved in final form.

The Court relies on the narrow point of law that proof positive is mandated in any application for membership by requiring the application and application process be followed and completed by all applicants. While an applicant may have the perception of being required to jump through numerous hoops to reach an outcome on their membership application no exceptions can be made even on those seeming self-evident. Exceptions only create precedent which may harm the Community in the long run. Complete applications by all applicants should be the norm.

The procedural and substantive Constitutional provisions and enactment's of the Community all connote process. There is no "automatic enrollment" or "self enrollment" as held in the Barry Welch, et al v. Shakopee Mdewakanton Sioux Community, et al., Case No. 023-92.

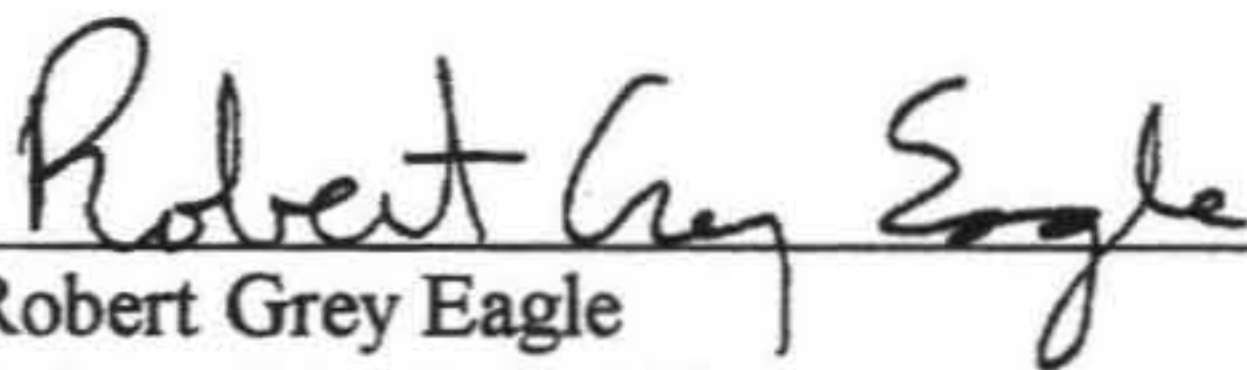
The Court will hold on the narrow issue that the Plaintiff will have to follow the Enrollment Committee's mandate to provide certified documentation establishing his lineage to the 1886 Mdewakanton Sioux Indian residing in Minnesota as provided in Article II - Membership Section 1.(c) of the Community's Constitution.

The parties are instructed to work on compiling a completed application package for the Plaintiff to be processed by the Enrollment Officer and the Enrollment Committee. This matter is therefore dismissed with prejudice based on the foregoing.

In essence, the Plaintiff has failed to state a claim upon which this Court can grant relief and the matter must be dismissed for lack of subject matter for reasons he must first exhaust his administrative remedies. So Ordered.

Date: July 17, 1995

BY THE COURT


Robert Grey Eagle
Judge of the Tribal Court

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TRIBAL COURT OF THE

SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Clifford S. Crooks, Sr.,

Plaintiff,

vs.

Case No. 054-95

The Shakopee Mdewakanton Sioux (Dakota)
Community,

Defendant.

ORDER

The above entitled matter came on for a hearing before the undersigned Judge of the Tribal Court on April 19th, 1995, 10:00 a.m. located 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 and for lack of jurisdiction over the subject matter in accordance with Rule 12 (B)(6) and 12 (b)(1) of the Shakopee Mdewakanton Sioux Community Rules of Civil Procedure. At said hearing the Court ordered simultaneous briefing on the issue of the Court's authority to judicially enroll or to recognize enrollment of individuals which were due and subsequently


submitted and filed on May 11th, 1995. Larry Leventhal, Esq. appeared on behalf of the Plaintiff. Vanya Hogen-Kind, Esq. appeared on behalf of the Defendant.

The Court having been fully advised on the premises, upon due deliberation, having reviewed the files, records, correspondence and evidence contained therein, and having considered the arguments of counsel for both parties issues the following;

IT IS HEREBY ORDERED:

1. The Defendant's Motion to Dismiss based on Rule 12 (b) (1) and (6) of the Shakopee Mdewakanton Sioux Community Rules of Civil Procedure be, and is hereby, in all respects GRANTED;
2. The attached Memorandum of Law be and is hereby, INCORPORATED into and made a part of this Order.

Dated: July 17, 1995



Robert Grey Eagle
Judge of Tribal Court