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COURT OF THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Kathy Welch, Ron Welch,)
Pat Welch and other persons)
similarly situated,)

Plaintiffs,)

vs.)

Case No. 019-91

Enrollment Committee of)
the Shakopee Mdewakanton)
Sioux Community,)

Defendants.)

MEMORANDUM AND ORDER FOR PRELIMINARY INJUNCTION

Before Associate Judge John E. Jacobson

This matter came on for hearing at 1:30 p.m. on January 3, 1992, on motions by the Plaintiffs and the Plaintiff-Intervenors for a Preliminary Injunction. Herbert A. Becker, Esq. and Dorothy M. Firecloud, Esq., appeared representing the Plaintiffs; Kurt V. Bluedog, Esq., appeared on behalf of Plaintiff Intervenors; and Terry L. Janis, Esq., appeared on behalf of the Defendant Enrollment Committee of the Shakopee Mdewakanton Sioux Community. At the conclusion of the hearing, the Court read into the record an order, preliminarily enjoining the Defendants from taking certain actions. This Memorandum and Order reflect and memorialize that oral Order.

Based upon the testimony and exhibits presented during the January 3, 1992 hearing, the Court found that there was

insufficient evidence to justify the grant of any preliminary injunctive relief with respect to the so-called "per capita payments" which are made on a periodic basis by the Shakopee Mdewakanton Sioux Community to various persons. The Court noted that the record did not reflect what, if any, role the Defendant Enrollment Committee plays in the distribution of such payments. The Court also noted that it was apparent, from the limited amount of material presented to the Court respecting per capita payments, that the distribution of such payments was based on a system of some intricacy, the nature of which has not been the subject of evidence sufficient to justify the extraordinary remedy of a preliminary injunction.

However, the Court ruled that the evidence presented during the hearing did warrant the grant of a preliminary injunction, during pre-trial proceedings, to protect certain groups of the Plaintiffs from prejudicial action by the Enrollment Committee, both as to the groups' right to participate and vote in the Community's political affairs, and to receive payments made under Docket No. 363 of the Indian Claims Commission.

The groups of persons who are the subject of the Court's protection are determined by the appearance of their names on one or more lists. The first such list is attached to Resolution No. 4-30-90-006 of the General Council of the Shakopee Mdewakanton Sioux Community. The Court determined that the probability was great that the Plaintiffs would be able to establish, at trial, that Resolution 4-30-90-006 is

part of the governing law of the Community, and that therefore the seventy-five persons listed thereon would be determined to be members of the Community.

The second list was a Reconstructed Base Roll of the Shakopee Mdewakanton Sioux Community, which was the subject of a May 27, 1983 letter of approval by the Area Director of the Minneapolis Area Office, Bureau of Indian Affairs (admitted as Plaintiff's Exhibit A during the January 3, 1992 hearing). The Court noted that there were a number of unusual, and perhaps suspicious, circumstances concerning that Roll in the record of the General Council of the Shakopee Mdewakanton Sioux Community. For example, the numbering of the Resolution which approves the Roll is not obviously consistent with the enumeration contained in the Minutes of the General Council meeting where it was supposed to have been passed. And the Enrollment Ordinance, which apparently was passed at the same meeting, makes no reference to an existing Roll, but instead directs the Enrollment Committee to construct one. Still, the undisputed fact is that the Area Director of the Minneapolis Area Office of the Bureau of Indian Affairs approved that Roll nearly nine years ago and, despite the fact that the approval has been commonly known for many years, no appeal from it was filed under the provisions of Title 25 of the Code of Federal Regulations. Therefore, the Court believes it is very probable that, at trial, the Roll will be held to be effective, and that the persons listed thereon will be held to be members of the Community.

Next there is the list of persons who received payment under Docket 363, by virtue of the provisions of the Act of October 25, 1972, 86 Stat. 1168. Under that statute, a Roll was prepared of the members of the Shakopee Mdewakanton Sioux Community who were lineal descendants of the Mdewakanton and Wahpakoota Tribes. The Enrollment Committee argued, during the hearing on this matter, that that Roll was prepared by the Bureau of Indian Affairs, and that therefore it had never been formally adopted or accepted by the Shakopee Mdewakanton Sioux Community. But the plain language of the statute makes it clear that the truth is otherwise: Section 101(a) of the statute provides that--

The Lower Sioux Indian Community at Morton, Minnesota, the Prairie Island Indian Community at Welch, Minnesota, and the Shakopee Mdewakanton Sioux Community of Minnesota shall prepare rolls of their members...and such rolls shall be subject to approval of the Secretary of the Interior.

In other words, the Roll that was prepared under this provision clearly was a statement, by the Shakopee Mdewakanton Sioux Community to the United States government, of the Community's view of its membership. Therefore, in the view of the Court, it is altogether likely that once that Roll was approved by the Secretary of the Interior--as it clearly was, inasmuch as payments were made under it--the persons whose names appeared on the Roll became vested with the rights of members of the Community, if they had not been thus vested before.

The Enrollment Committee argued, however, that whatever the effect of the Act of October 25, 1972, might otherwise have

been, and whatever rights might otherwise have been vested under it, everything was changed by the passage of the Act of October 28, 1985, 99 Stat. 549. The Enrollment Committee contended that that statute required the Community to examine anew all persons within the Community, to determine whether each qualified as a member, to receive the final payment under Docket 363.

The Court finds this reading of the Act of October 28, 1985, unpersuasive. Section 6 of the Act merely states:

The [remaining unpaid] share [of Docket 363] of the Shakopee Mdewakanton Sioux Community shall be used and distributed as follows:

(a) Eighty per centum of the funds shall be invested by the Secretary for a Tribal Investment Fund designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared...

Nothing in this language suggests that the Community or the Bureau of Indian Affairs were mandated or authorized to revisit their earlier membership determinations. The Court was confirmed in its belief, in this regard, by a passage in a letter sent from the Minneapolis Area Office of the Bureau of Indian Affairs to the Chairman of the Community on March 12, 1991 (which letter was Plaintiff's Exhibit C at the hearing). The letter reviewed various correspondence which the Bureau of Indian Affairs had received from the Enrollment Committee respecting persons seeking eligibility for Docket 363 payments, and it noted:

The applications of individuals listed on the Shakopee Mdewakanton Membership/Per Capita Payment Roll, prepared pursuant to the Act of October 25, 1972, as of April 23, 1981, were not reviewed since

it was previously determined that the individuals whose names appeared on that roll met the criteria for enrollment to share in the distribution of judgment funds as members of the Shakopee Mdewakanton Sioux Community. Other than the effective date for eligibility, the enrollment criteria is the same.

Accordingly, the Court believes it is altogether likely at trial that all persons who received initial payments under Docket 363 will be held to be entitled to receive ongoing payments under the foregoing section.

Finally, there is the group of persons who, in 1991, were added to the pre-existing lists of persons eligible to receive Docket 363 payments. The above-quoted March 12, 1991 letter from the Minneapolis Area Office of the Bureau of Indian Affairs went on to state that--

Our office has completed the review of the Shakopee Mdewakanton Roll which will be used to determine the proportionate share of Docket 363 funds to which the Shakopee Mdewakanton Community is entitled. A copy of this listing is enclosed, which consists of 92 persons eligible to share in the distribution of Docket 363 funds to the Shakopee Mdewakanton Sioux Tribe.

It is our understanding that you notified Central Office, Tribal Enrollment Services to hold up on the determination of the pending appeals in their office until further notice. We note that the boxes contain files for some of the appellants. It is our recommendation that you forward this information to Central Office for inclusion in the appellant's file.

From this, the Court concluded that as of March 12, 1991, the Minneapolis Area Office had made a final determination as to the Shakopee Community members eligible to receive Docket 363 funds, subject only to appeals that had been timely filed with the Central Office of the Bureau of Indian Affairs. And at the hearing, the evidence was uncontroverted that the only

appeals which had been filed were appeals of persons who had been excluded, not appeals aiming to remove persons who had been determined to be eligible. Therefore, the Court concluded that, at the trial in this matter, the likelihood would be that any person whose name appeared on the list of persons referred to in the March 12, 1991 letter from the Minneapolis Area Office had been, at that time, the subject of a final determination, which had not been the subject of a timely appeal, and therefore such persons would have acquired a vested right to participate in Docket 363.

The Court reviewed the other factors which, under its Rules, must be weighed in considering a motion for a preliminary injunction. Those factors--irreparable injury to the movant, absent the relief; the injury which the relief, if granted, would work to the Defendants; and the public interest--all operate in a straightforward fashion here. The denial of voting rights, and the denial of access to payments from the sort of fund that Docket 363 presents, clearly are irreparable injury. And, given the foregoing discussion of the probability of success on the merits, the Enrollment Committee suffers little injury by the grant of preliminary relief, particularly if this matter is tried in an expeditious manner. The public interest is simply in having justice done, in an expeditious a manner possible.

Therefore, based on the pleadings and files herein, and the evidence and argument of the parties during the January 3, 1992 hearing, it is hereby ORDERED that until the trial of this

matter is complete, or until further order of this Court:

1. The Enrollment Committee of the Shakopee Mdewakanton Sioux Community shall not take any action to interfere with the rights to vote of those Plaintiffs who either (a) appear on the list of persons attached to Resolution No. 4-30-90-006 of the General Council of the Shakopee Mdewakanton Sioux Community, and/or (b) appear on the Reconstructed Base Roll of the Shakopee Mdewakanton Sioux Community that was approved by the Bureau of Indian Affairs, U.S. Department of the Interior on May 27, 1983; and

2. The Enrollment Committee of the Shakopee Mdewakanton Sioux Community shall not take any action to interfere with the right to participate in payments, under Indian Claims Commission Docket No. 363, of any person who either (a) received payments as members of the Shakopee Mdewakanton Sioux Community under the provisions of the Act of October 25, 1972, 86 Stat. 1168, or (b) was listed as eligible to receive such payments by the March 12, 1991 letter of the Area Director, Minneapolis Area Office, Bureau of Indian Affairs to the Chairman of the Shakopee Mdewakanton Sioux Community; and

3. Counsel for all parties will participate in a pre-hearing telephone scheduling conference, to be initiated by the Court at 10:30 a.m. CST on Friday, January 17, 1992. In advance of such conference, counsel will confer among themselves with respect to the possibility of settlement in this matter, and with respect to the matters which they expect

can be the subject of a stipulation, if trial is necessary.

January 7, 1992

For the Court:



Associate Judge John E.
Jacobson