COURT OF THE SHAKOPEE MDEWAKANTON
SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT STATE OF MINNESOTA

Kimberly Amundsen, et al. Plaintiffs, vs. The Shakopee Mdewakanton Sioux (Dakota) Community Enrollment Committee, et al., Defendants.	)	File No. 049-94

MEMORANDUM AND ORDER

On September 16, 1996, at the end of a long procedural history, I decided this case: I granted in part and denied in part both the Plaintiffs' and the Defendants' motions for summary judgment. In doing so, I decided, one way or another, all the claims in the Plaintiffs' Complaint. I granted the Plaintiffs prayer for an order of mandamus to the Enrollment Officer ("the Enrollment Officer") of the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community"), and I directed the Enrollment Officer to verify the data in each of the Plaintiffs' applications for membership in the Community, and to recommend in writing acceptance or rejection of each application within thirty days of my Order. I then denied all other aspects of

the Plaintiffs' motion for summary judgment, and granted the Defendants' motion for summary judgment as to all other aspects of the Plaintiffs' Complaint, holding that "neither the provisions of the 1993 Enrollment Ordinance [of the Community] nor any other applicable law creates anything like the clear, nondiscretionary duty, for [those other officers and entities] which would justify mandamus".

Thereafter, the Enrollment Officer complied with my mandamus order; and neither the Plaintiffs nor the Defendants appealed any aspect of my September 16, 1996 Order.

But beginning nine months after my decision, the Plaintiffs began the filing of what has become a series of post-judgment motions, sometimes supplemented by letters to the Court, urging that my September 16, 1996 Order be revisited and this case be reopened. In fairness, it must be said that many of the Plaintiffs' filings and letters have been prompted by an extremely slow set of Community processes; but it also must be said that there is nothing in the Community's Enrollment Ordinance or in any other positive law which imposes any speedier process. And clearly, none of these filings meets the requirements of Rule 28 of our Rules of Civil Procedure, which incorporates and adopts the stringent requirements of Rules 59 and 60 of the Federal Rules of Civil Procedure, relating to relief from a judgment or order.

Rule 59(e) of the Federal Rules of Civil Procedure requires that any motion to alter or amend a judgment be filed "no later than 10 days after entry of the judgment". Rule 60(b) of the Federal Rules of Civil Procedure provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud

> (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or its is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. ...
>
> (Emphasis added).

The first of the Plaintiffs' filings was received by the Court on June 17, 1997, when the Plaintiffs filed an "Emergency Motion to Reopen, Amend Order, and Enforce Judgment", reciting that, after the Enrollment Officer had made her recommendations in accordance with the mandamus order, the Community's other governmental arms (the Enrollment Committee, the Business Council, and the General Council) had taken no action on the applications. Shortly after that motion was filed (and perhaps prompted by the filing), the Enrollment Committee met and considered the Plaintiffs' applications. The Community responded to the Plaintiff's Emergency Motion by pointing out that nothing in the law of the Community required that the Plaintiffs' applications be processed within any timeframe. Nonetheless, and perhaps foolishly -- being concerned with the time that was being consumed by the Community's processes, and thinking that Court process might move things along -- I held a hearing on the July 15, 1997, and on July 28, 1997 issued a Memorandum and Order. During the hearing, I observed that there was no time frame established by the Community's ordinances, within which the Enrollment Committee was required to act, although "it seems probable that the [Enrollment] Committee is obliged to act within some reasonable time"; but I concluded that the fact that the Enrollment Committee had met and acted, whatever the root cause of their action might be,

mooted the Plaintiffs' motion.

Then, more than a year after that hearing, and nearly two years after my summary judgment order, the Plaintiffs filed another "Emergency Motion to Reopen, Amend Order, Show Cause and Enforce Judgment", on August 13, 1998, asserting that the Business Council had wrongly delayed placing the Plaintiffs' applications for membership before the General Council for a vote. The Plaintiffs asked for wide-ranging and radical relief: they asked the Court to take control of the Community's consideration of the Plaintiffs applications for membership by, inter alia, directing the General Council to vote on them, and requiring the General Council, when it considered the applications, to consider only certain specific criteria. After both sides filed briefs, I held a hearing on this motion, on September 14, 1998. During that hearing, I expressed the view, again, that none of the applicable law specified any particular timeframe for action, by the General Council, upon enrollment applications, but I thought, nonetheless, that it was likely that there was some requirement that the General Council would vote, one way or another, on all enrollment applications, at some point in time. I also noted that a representation had been made to the Court, by the Community's counsel, during the proceedings in July, 1997, to the effect that the General Council would consider the Plaintiffs' applications -- which struck me as a commitment to do so within some reasonable period of time. I therefore expressed the hope that the General Council would fulfill the commitment made by its counsel and take up the Plaintiffs' applications before it; and I took the Plaintiffs' motion under advisement, observing, as I did so, that--

> I will say this much: Indeed most of what the defendants say about the court's rules and the appositeness of the motions that are made here are questionable. Our rules, it seems to me, absolutely require respect and require people to follow them. I am not sure that there is much in this motion that comes

close to our rules.

Transcript of proceedings, Sept. 14, 1999, at 44.

Thereafter, in a later dated October 28, 1998, counsel for the Community informed the Court that on October 27, 1998 the General Council indeed did take action on each of the Plaintiffs' enrollment applications. But in a letter also written on October 28, 1998, counsel for the Plaintiffs wrote the Court stating that the General Council could not possibly have taken action because "non-qualified and illegally adopted individuals" took part in the vote. (Letter from James H. Cohen, Oct. 28, 1998, at 1.) The Plaintiffs then filed an "Amended Emergency Motion to Reopen, Amend Order, Show Cause, and Enforce Judgment and/or to Amend Judgment" on November 13, 1999, contending that the delays which had attended the consideration of their applications, through various stages of the Community's process, was inconsistent with the Community's Constitution, the Community's 1993 Enrollment Ordinance, the Indian Civil Rights Act, and the United States Constitution, and that the applications had been rejected without legal basis. The Plaintiffs asked me to review the entire record relating to the applications in camera to ascertain the basis for their rejection, and if I found there "to be no ... substantial and credible evidence controverting the membership eligibility" of the Plaintiffs, or that there was "bad faith" in the Community's rejection of the Plaintiffs, that I award the Plaintiffs retroactive per capita payments from the Community and direct the Defendants to show cause why they should not be held in contempt of court. Thereafter, Plaintiffs' counsel sent the Court a letter, dated January 18, 1999, discussing the adoption of persons into the Community whom the Plaintiffs consider to be "unqualified" for Community membership. On January 22, 1999, Defendants' counsel sent the Court a letter asking that I

disregard that letter submission and deny the Plaintiffs' Emergency Motion and its Amended Emergency Motion. Finally, on July 2, 1999, Plaintiffs' counsel sent the Court another letter requesting a ruling on their earlier motions; the Defendants on the same day filed a request for a scheduling order, to permit briefing of the motions; and on July 12, 1999 the Plaintiffs filed a Response, arguing that there is no need for further briefing on the motions, and that additional delay would be caused thereby.

As I indicated during the September 14, 1998 hearing, I do not believe that the Plaintiff's Emergency Motion to Reopen, Amend Order, Show Cause, and Enforce Judgment in any way complies with Rule 28 this Court's Rules of Civil Procedure. To the extent it relates at all to the relief requested in the original Complaint, it was not filed within the time contemplated by Rule 60(b) of the Federal Rules of Civil Procedure; and the Amended Emergency Motion to Reopen, Amend Order, Show Cause, and Enforce Judgment, filed on November 13, 1998, is even more defective in this regard. As a consequence, I do not believe that either motion actually is in a posture that requires a decision of the Court. But by filing this Memorandum and Order today, I hope to bring some closure to this: this case was decided nearly three years ago, and it was not appealed. Nothing even approaching the showing required by our Rule 28 and Rule 60 of the Federal Rules of Civil Procedure has been submitted to justify its reopening. The materials which the Plaintiffs have submitted in their three motions and accompanying letters recite processing delays which, although they are unfortunate, are in no way inconsistent with applicable law or with my September 16, 1996 Order. The post-trial submissions also make allegations relating to "unqualified" persons voting in the Community's General Council; but those allegations do not in any way relate to the matters which the Plaintiffs put at issue

when they filed this lawsuit. They are utterly outside the scope of this case.

I held the two post-trial hearings in this matter because I was personally concerned about the delays in processing the Plaintiffs' applications. Perhaps this was error. Perhaps I simply should have directed the Clerk of Court to return the motions as they were received. In any case, I now intend to leave no doubt: this case was closed in 1996, and no showing has been made since that time which would justify its being reopened.

ORDER

To the extent that the Plaintiffs' Emergency Motion to Reopen, Amend Order, and Enforce Judgment and Amended Emergency Motion to Reopen, Amend Order, Show Cause, and Enforce Judgment and/or to Amend Judgment may be deemed to be pending before this Court, they are DENIED.

July 19, 1999

John E. Jacobson
Judge