COURT OF THE SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

Vernice Walker Weber and Barbara Jean Maxwell,	)	
Plaintiffs,	)	
v.	)	File No. 364-99
Shakopee Mdewakanton Sioux Community; Shakopee Mdewakanton Sioux Community Enrollment Committee; and Anita Wentland, Susan Totenhagen, Cherie Crooks-Bathel, Lanny Ross and Darlene McNeal, individually and as members of the Shakopee Enrollment Committee,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the Defendant's motion to dismiss, under Rule 12(b)(6) of our Rules of Civil Procedure. In their Complaint, the Plaintiffs alleged that they filed applications for enrollment to the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community"); that on June 15, 1997 they received notices ("the Notices") from the Defendant Anita Wentland, Acting Enrollment Officer of the Community, stating that the Defendant Enrollment Committee had rejected their membership applications; that the Notices did not state a reason for the rejections; that the Plaintiffs appealed their rejections to the Community's General Council ("the General Council"), but that their appeal rights were rendered meaningless

because of their ignorance of the grounds of the Enrollment Committee's decision; and that on October 30, 1998, the General Council voted to deny their appeal.

In pertinent part, the Enrollment Ordinance provides that the notices which are sent to rejected applicants "shall state the grounds for rejection". Section 6, Ordinance No. 6-08-93-001. The Notices which the Plaintiffs received, informing them that the Enrollment Committee had rejected their applications, said simply--

> The applicant has failed to meet her/his burden of proving eligibility for enrollment under Article II, Section 1(c) of the Community Constitution, as required by Section 6 of Enrollment Ordinance No. 6-08-93-001.

The Plaintiffs assert that this conclusory statement in the Notices violated both the due process provisions of the Indian Civil Rights Act, 25 U.S.C. §1302 (1994) ("the ICRA") and the requirements of the Enrollment Ordinance itself. They contend that their right of appeal to the Community's General Council was rendered meaningless, because they could not know what defects the Enrollment Committee saw in their applications. As relief, they seek a writ of mandamus compelling the Defendants to notify the Plaintiffs of the reasons for the Enrollment Committee's decision, and permitting the Plaintiffs a reasonable amount of time to appeal the Enrollment Committee's decision, once such new notices are issued.

The Defendants respond that the Plaintiffs' action should be dismissed because the Complaint has not alleged and cannot allege a property or liberty interest in enrollment which would trigger the protections of the ICRA; that the breadth of discretion given to the Enrollment Committee under the Enrollment Ordinance precludes the issuance of a writ of mandamus; and that, since the General Council now has acted in this matter, and since the General Council's decisions in this regard are not reviewable by this Court, the matter essentially is moot.

There is force to each of the arguments the Defendants make: it is clear that applicants for enrollment in the Community do not have a liberty or property interest in enrollment. Crooks v. Shakopee Mdewakanton Sioux (Dakota) Community, No. 016-07 (SMS(D)C Ct. App. Nov. 4, 1998). Hence the due process requirements of the Indian Civil Rights Act have no applicability to the processing of enrollment applications. It also is clear that the Enrollment Committee makes a decision with respect to an enrollment application, its discretion is very broad; and when the General Council makes a decision on an appeal, its discretion is unreviewable and its decision is final. Feezor v. Shakopee Mdewakanton Sioux (Dakota) Community, No. 311-98 (SMS(D)C Tr. CT. May 19, 1999). For this latter reason, the Court agrees with the Defendants that the Plaintiffs' Complaint should be dismissed as being moot: the Plaintiffs completed their appeal to the General Council, the General Council acted upon the appeal, and there remain no active enrollment applications before any body of the Community. This Court cannot second guess or review the decision of the General Council on any enrollment application.

However, the General Council of the Community has by ordinance created procedures which the Enrollment Committee must follow; and if in a given case such procedures have been mandated by the General Council and have not been followed by the Enrollment Committee, an applicant for enrollment can, at least under certain circumstances, maintain an action in this Court to correct the procedural deficiencies. Amundsen v. SMS(D)C Enrollment Committee, No. 049-94 (SMS(D)C Tr. Ct. Apr. 14, 1995). When the General Council adopted Section 6 of the Enrollment Ordinance, it specifically required that the notice which unsuccessful applicants receive "shall state the grounds for rejection". That language is mandatory, and in

the view of the Court it creates a duty upon the Enrollment Committee and the Enrollment Officer to provide something more than a mere statement that the applicant has been rejected.

The Community argues that in this case the notices which the Plaintiffs received did, in fact, provide something more: the Community points out that, had the notices simply said they Plaintiffs were rejected then the Plaintiffs would not have known whether there (a) could not qualify for enrollment under any circumstances -- that there was nothing they could submit or attempt to prove which could change things, or (b) had simply failed to meet an evidentiary burden -- which was apparently the case for the applications here at issue.

This can be conceded. But in the view of the Court, the tiny amount of information that is conveyed by notifying an applicant that his or her application "has not met the burden" is not sufficient to state "grounds" under Section 6 of the Enrollment Ordinance. In the view of the Court, the language used by the General Council in Section 6 requires that the notices give an unsuccessful applicant at least some basic idea of the areas in which his or her application has been found deficient. It is not necessary that the applicant be given an extended or detailed review of an application's defects; but an indication should be given as to whether, for example, there is question whether the ancestor(s) to whom the applicants trace their lineage were indeed Mdewakantons residing in Minnesota on May 20, 1886; or whether the applicants attempt to trace their lineage to a Mdewakanton who concededly resided in Minnesota on May 20, 1886 does not provide a clear genealogical linkage to that person. In short, an unsuccessful applicant should be given some idea of how he or she might add to or amend an application to be more likely to meet the burden which the General Council has established.

At bottom, of course, the actual decisions which are made on enrollment applications are

for the Community alone to make. A person who clearly traces his or her lineage to a Mdewakanton who clearly resided in Minnesota on May 20, 1886 is not entitled, as a matter or right, to membership in the Community. He or she can be rejected by the General Council on any basis the General Council deems appropriate. But the language of Section 6 of the Enrollment Ordinance which the General Council adopted does, in the Court's view, require that before the General Council considers any appeal from an Enrollment Committee rejection, the applicant be given some real idea of the basis for the Enrollment Committee's actions.

The Enrollment Ordinance provides that unsuccessful applicants for enrollment in the Community can reapply for membership at any time. Therefore, if the Plaintiffs reapply for membership, and if they are again rejected by the Enrollment Committee, such rejection should convey more information about the Enrollment Committee's views than did the previous rejections. At present, however, inasmuch as the Plaintiffs have no presently pending enrollment applications before the Community, this matter must be dismissed.

ORDER

For the foregoing reasons, and based on all the pleadings and materials filed herein, this matter is DISMISSED.

December 22, 1999

Judge John E. Jacobson