IN THE COURT OF THE
LOWER SIOUX COMMUNITY IN MINNESOTA

LOWER SIOUX INDIAN RESERVATION STATE OF MINNESOTA

| | |
|---|---|
| Carrie L. Morse, as Mother and Natural Guardian of Anthony James Morse and Michael Merland Morse, Minors,<br><br>Plaintiffs,<br><br>vs.<br><br>The Community Council of the Lower Sioux Indian Reservation,<br><br>Defendant. | Case No. CIV-218-98<br><br>**MEMORANDUM OPINION, ORDER FOR JUDGMENT, JUDGMENT AND DECREE** |

**Summary of Facts**

Plaintiff Carrie L. Morse, on behalf of her minor sons, Anthony James Morse and Michael Merland Morse, seeks an order from this Court compelling the Defendant, the Community Council of the Lower Sioux Indian Reservation, to adopt her minor sons as members of the Lower Sioux Community. In March of 1990, Carrie L. Morse, an enrolled member of the Lower Sioux Indian Community, submitted an Application for Enrollment on behalf of Anthony and Michael Morse. The law then governing enrollment and adoption was the Lower Sioux Community Enrollment Ordinance No. 1, enacted in 1982 (1982 Enrollment Ordinance). Ms. Morse filed her sons' applications while the family resided in San Pedro, California. In December of 1990, the Morse family moved to Redwood Falls, Minnesota, and then six months later to Franklin, Minnesota. Before Ms. Morse's applications were acted on, the Community Council (with subsequent approval of the Community

membership) imposed a moratorium on adoptions. This moratorium extended from 1991 until the enactment of the current adoption ordinance in March of 1996.[1]

In June of 1997, pursuant to sections 1.4 and 1.5 of the 1996 Adoption Ordinance, the Membership Committee and the Community Council considered and denied Ms. Morse's adoption applications. This denial was premised on the Council's findings that neither Anthony nor Michael Morse met the requirements for adoption.[2] On February 11, 1998, Ms. Morse filed this action alleging that the

---

[1] See Affidavit of Roger Prescott.

[2]The 1996 Adoption Ordinance, Section 1.3 Requirements for Adoption Reads:

> No person shall be adopted into the Lower Sioux Indian Community unless such person shall meet all of the following requirements. The Applicant for Adoption shall have the burden of proof in all matter relating to these requirements.
>
> A. The person shall have a blood quantum which is one fourth (1/4) or greater Lower Sioux Mdewakanton Indian.
>
> 1. The blood quantum required by this ordinance may be demonstrated by presenting the Membership Committee with records of the United States Bureau of Indian Affairs that reasonably demonstrate the necessary quantum.
>
> 2. The blood quantum required by the Ordinance may also be proved by other documentary evidence, if such evidence reasonably demonstrates the necessary quantum. A person may also use other documentary evidence to demonstrate that the records of the United States Bureau of Indian Affairs are in error. Affidavits shall not be considered to be documentary evidence as required by this section.
>
> 3. In all cases, the evidence used to demonstrate blood quantum shall be presented to the Community Council by the Membership Committee. The Community Council shall review the evidence, and determine in its discretion whether it reasonably demonstrates the necessary blood quantum. After its review, the Community Council shall forward the evidence to the United States Bureau of Indian Affairs for its

(continued...)

Community Council "arbitrarily and wrongfully failed to act [on her] . . . applications and has refused to accept [her children] . . . as members of the community [sic], and as a result of such arbitrary and capricious action . . . [her children] have been prejudiced through denial of membership in the community [sic]." (Complaint, ¶ 7). On February 13, 1998, in a vote conducted in accordance with 1996 Adoption Ordinance 1.6, the Lower Sioux Community membership voted against the adoption of either Anthony or Michael Morse.[3] The Defendant, the Community Council of the Lower Sioux Indian Reservation, now moves for dismissal or summary judgment based upon the argument that this Court does not have the jurisdiction to grant the relief requested, and further that even if this Court did have the necessary jurisdiction to grant adoptions of the Morse children, neither of them meet the necessary statutory requirements.

**Dismissal**

---

[2](...continued)

information.

B. The person shall be of good moral character.

C. Adoption of the person will be in the best interest of the Community.

D. The person, if enrolled in another Indian tribe or community, certifies in writing that he/she will relinquish such enrollment within thirty (30) days of a final decision approving adoption in accordance with the provisions of this Ordinance.

[3] Under 1996 Adoption Ordinance 1.6 E, a party whose application for adoption had been denied by the Community Council may seek a vote by the full Community. The party has a right to this vote upon presentation of a petition containing the signatures of 90 Qualified Members of the Community. This petition must be filed within 60 days of the posting of Public Notice of the Community Council's denial.

Dismissal is proper when the plaintiff "can prove no set of facts which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In the case at bar, Ms. Morse asks this Court to grant her two children adoption into the Lower Sioux Indian Community. (Complaint, ¶ 8). In support of her request, however, Ms. Morse points to no law granting this Court authority to effect this adoption. Further, this Court's own investigations revealed no law granting this authority.

Tribal courts are entities created by Tribal law, and as such have only the jurisdiction the law grants them. Ms. Morse asks this Court to order the adoption of her two children. There are three sources of law that could potentially establish the power for this Court to grant the adoption of the Morse children: The Constitution and By laws of the Lower Sioux Indian Community in Minnesota (the Constitution); the Judicial Code of the Lower Sioux Indian Community in Minnesota (the Judicial Code); and the Ordinance(s) of the Lower Sioux Indian Community governing adoption.

The Constitution

Article III, section 2 of the Constitution pertains to procurement of membership through adoption. It states that application for adoption shall be made "to a Membership Committee whose decision shall be subject to the approval of the Community Council," and that "the decision of the Community Council shall be subject to a popular vote . . . ." Section 4 grants the Community Council the authority to "make ordinances governing the acquisition and loss of membership . . . ." Neither Article III, nor any other portion of the Constitution makes reference to a court. Thus, *a fortiori*, the Constitution establishes no jurisdiction (let alone the power to grant adoption) for the Court of the Lower Sioux Indian Community.

The Judicial Code

Title 1, Chapters II and III of the Judicial Code address the jurisdiction of the Court of the Lower Sioux Indian Community. In Ms. Morse's Memorandum in Opposition to Defendant's Motion for Dismissal or, in the Alternative for Summary Judgment (Opposition Memorandum), she argues that this Court possesses jurisdiction over the matter at bar based on the language of Chapter II section 1(e), which grants the Tribal Court "exclusive original and appellate jurisdiction in all matters in which the Lower Sioux Community in Minnesota, and any tribal entity or subdivision, whether governmental or commercial in nature, or its officers, or its employees are parties in their official capacities." Whether Chapter II sec. 1(e) grants jurisdiction[4] is immaterial, however, as it does not give this Court unlimited power to grant any relief it deems appropriate. In fact, this Court is specifically precluded from granting adoptions by the Constitution, which vests final authority over adoptions in the popular vote of the Community Membership.[5]

---

[4]Although Chapter II § 1(e) does, upon first impression, appear to grant this Court personal and subject matter jurisdiction, further investigation reveals that this is not true. The appearance of Chapter II sec. 1 (e) is misleading because its general grant of jurisdiction is limited by the 1996 Adoption Ordinance, which specifically withholds the authority for this Court to review discretionary decisions regarding adoptions. It is widely accepted that a legislative branch of government may withhold jurisdiction from a court in certain classes of cases. See Sheldon et ex v. Sill, 49 U.S. 441, 448 (1850). It is also widely accepted that "[c]ourts cannot entertain jurisdiction in an area where Congress has specified that judicial review is unavailable." Asbestec Const. Services v. U.S.E.P.A., 849, F.2d 765, 766 (2d Cir. 1988).

[5]Ms Morse argues in her Opposition Memorandum that this Court possesses jurisdiction over the case at bar under the same principles by which it possessed the jurisdiction to issue a General Order for the reacquisition of membership dated August 23, 1993. Ms. Morse's argument, however, turns a blind eye to the fact that, while Art. III, sec 4 of the Constitution allows this Court to assume jurisdiction over the acquisition and loss of membership if it is so enabled by the Community Council, there is no analogous constitutional provision relating to adoptions.

Ms. Morse also argues that this Court is implicitly given jurisdiction by Chapter II,

(continued...)

Adoption Ordinance

To determine whether the Lower Sioux Community's adoption ordinance(s) grant this Court the power to order the requested relief, it must first be decided whether Ms. Morse's application is appropriately considered under the 1982 Enrollment Ordinance or the 1996 Adoption Ordinance. Ms. Morse's Opposition Memorandum seems to imply that she seeks redress under the 1982 Enrollment Ordinance, alleging that it was legal error for the Community Council to act on her application in 1998, under the 1996 Adoption Ordinance.[6] Courts have recognized, however, that when a statute is amended, it is as if the old statute is repealed , and a new one has taken its place. Kaup v. Western Cas & Sur. Co., 432 F. Supp. 922 (D. Mont. 1977) As the Eighth Circuit Court of Appeals has stated, "[n]ew statutes are usually interpreted not to apply retroactively, but the general rule is otherwise with respect to new enactments changing procedural or jurisdictional rules. If a case is still pending when the new statute is passed, new procedural or jurisdictional rules will usually be applied to it." In re Resolution Trust Corp., 888 F.2d 57, 58 (8th Cir. 1989). The 1996 Adoption Ordinance does not change the nature of adoption into the Community as defined by the Constitution and the 1982 Enrollment Ordinance. The 1996 Adoption Ordinance simply alters procedural requirements and delineates

---

[5](...continued)
section 3 (d) of the Judicial Code, which waives the Lower Sioux Community's sovereign immunity for purposes of determining eligibility for per capita payments. This argument, however, ignores the uniqueness of adoption proceedings, and the basic fact that a determination of eligibility for per capita payments is not the equivalent of an adoption proceeding.

[6]Ms. Morse's Opposition Memorandum states, "[f]or most of the eight (8) years since the applications for adoption were filed, the Defendant ignored them, and when it finally determined to act, it did so under authority which was adopted after the fact." (Opposition Memorandum, at 1).

the jurisdiction of the Community Court. Thus, Ms. Morse's application should properly be considered under the 1996 Adoption Ordinance.

Section 1.9 of the 1996 Adoption Ordinance addresses the jurisdiction of this Court in matters of adoption. Section 1.9A states that "[t]here shall be no right of appeal from discretionary decisions of the Community Council under this Ordinance. Except as specifically provided in Section 1.9B . . . , the vote of the Community pursuant to this Ordinance shall be final and there shall be no right of appeal from such vote." Section 1.9B states that "[t]he Court of the Lower Sioux Community shall have jurisdiction to adjudicate allegations of substantial and material procedural errors in the conduct of the vote of the Community under this Ordinance, and to adjudicate allegations of a alleged violations of the non-discretionary duties of any party under this Ordinance."

Although Ms. Morse does not allege with specificity the law violated by Community Council, she does state that "Plaintiff's sons are entitled to adoption . . . [because] the Defendant, through its agents, either intentionally or inadvertently failed to act upon Plaintiffs' applications for adoption." (Opposition Memorandum, at 1-2). Ms. Morse acknowledges that neither the 1982 Enrollment Ordinance nor the 1996 Adoption Ordinance establish a timetable for the consideration of applications, and that any decision of when to act is thus, by nature, discretionary.[7]

---

[7]The delay that Ms. Morse complains of can also be viewed as the result of the Community Council's (and Membership Committee's) compliance with a non-discretionary duty. Beginning in 1991 the Community Council established a moratorium on adoptions for a period extending from 1991 until the enactment of the current adoption ordinance in 1996. The moratorium was ratified by advisory referendum votes of the Community membership in 1993 and 1995. Viewing the Community Council's actions from this perspective does not, however, strengthen Ms. Morse's position. This perspective shows that the Community Council was adhering to, rather than neglecting, a non-discretionary duty. Even though the (continued...)

In fact, Ms. Morse states "the cornerstone of this proceeding [is] the abuse of discretion by Defendant and its representatives." (Opposition Memorandum, at 1). This Court has no jurisdiction over the alleged abuse of discretion by failure to act. Section 1.9A of the Adoption Ordinance clearly states that "[t]here shall be no right of appeal from discretionary decisions of the Community Council under this Ordinance."

The 1996 Adoption Ordinance grants this Court jurisdiction only over "allegations of substantial and material procedural errors in the conduct of the vote of the Community under this Ordinance, and . . . alleged violations of the non-discretionary duties of any party under this [the 1996] Ordinance." Ms. Morse's complaint alleges no errors in the process followed by the Community Council in 1997 when it denied her adoption applications. Anthony and Michael Morse were denied adoption solely on the basis of their failure to meet the requirements of the 1996 Adoption Ordinance.[8] Thus, the 1996 Adoption Ordinance does not grant this Court jurisdiction over this suit, let alone, the power to order adoption in to the Community.[9]

---

[7](...continued)
advisory referendum votes might not be technically binding upon the actions of the Community Council, they show the required deference to the Constitutional requirement of Article III, Section 2, that adoption decisions be subject to a popular vote.

[8] See infra summary judgment discussion.

[9]Even if Ms. Morse's allegations of abuse of discretion by undue delay is viewed as a procedural defect (thus allowing this Court to assume jurisdiction), this does not allow this Court to grant the adoption of her two sons. There exists no authority for this Court to overturn a vote of the Community Membership which is mandated by the Constitution and deemed final by the 1996 Adoption Ordinance. If Ms. Morse's Complaint of undue delay is couched in terms of a procedural error, the appropriate remedy would be the prompt consideration of the applications. This remedy has already been realized; on February 13, 1998 the Community Membership voted, by popular ballot, against the adoption of either
(continued...)

As demonstrated by this discussion of the 1996 Adoption Ordinance, and by the previous discussions of the Constitution and the Judicial Code, there exists no grant of jurisdiction or power that would allow this Court to order the adoptions requested by Ms. Morse. Thus, under the Conoly v. Gibson standard for dismissal, there exists no set of facts which would entitle Ms. Morse to the relief requested.

**Summary Judgment**

Even if one disregards this Court's lack of jurisdiction or power to grant adoption, and examines Ms. Morse's claims under the established standards of summary judgment, it is clear that she presents no facts entitling her to the relief requested. Both this Court, and the United States Supreme Court have emphasized that "'[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules.'" Lamote v. Lothert, No. CIV-053, slip op. at 2-3 (L.S.C. Ct. Nov.7, 1997) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986)). For a party to prevail on a motion of summary judgment, it must appear to the court "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 30, LSCRCP. A genuine issue exists only where the evidence could permit a reasonable jury to find in favor of the non-moving party on an issue that arises in relation to "material facts . . . that would affect the outcome of the suit under governing law." Lamote v. Lothert, slip op. at 3-4 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)). Additionally, in consideration of a summary judgment motion the court must view all facts and inferences in the light most

---

[9](...continued)
Anthony or Michael Morse.

favorable to the non-moving party. 60 Ivy Street Corp. v. Alexander, 822 F.2d 1432, (6th Cir. 1987).

Ms. Morse seeks to have her children enrolled into the Lower Sioux Community. There are three methods by which the Morse children could be enrolled as members of the Lower Sioux Community: enrollment by right under Article III, Sec. 1(c) of the constitution; adoption under the 1982 Enrollment Ordinance; or adoption under the 1996 Adoption Ordinance. The pleadings, however, fail to establish facts which would allow either Anthony or Michael Morse to be enrolled under any of these methods.

Article III, Sec. 1(c) of the Constitution requires that membership in the Lower Sioux Indian Community in the State of Minnesota shall consist of the following . . . "(c) [a]ll children of any member who is a resident of the Lower Sioux Reservation at the time of the birth of said children." Ms. Morse acknowledges that neither Anthony nor Michael Morse were born on the reservation. Ms. Morse thus implicitly acknowledges that neither Anthony nor Michael Morse are "entitled" to membership in the Lower Sioux Community.

As neither Anthony nor Michael Morse are entitled to Membership under the Constitution, they can only be enrolled by adoption. In 1998, the Membership Committee and Community Membership properly considered and rejected Ms. Morse's application for adoption under the 1996 Adoption Ordinance. Ms. Morse's pleadings, however, argue that her applications were not given timely review, and thus when they were denied in 1998 under the 1996 Adoption Ordinance, they

should have properly been considered under the 1982 Enrollment Ordinance.[10] Unfortunately for Ms. Morse, her pleadings fail to allege any facts which would qualify her children for adoption under either Ordinance.

Under the 1982 Enrollment Ordinance, "non-members may be adopted upon submission of a written petition to the Membership Committee, provided the petitioner: 1) possesses Sioux blood; 2) is not dually enrolled; and 3) has maintained physical residence on the reservation for a period of six (6) months . . . . " The enrollment applications submitted by Ms. Morse in 1990 list her family's residence as 743 West 37h St. San Pedro, California. Ms. Morse's Complaint does not allege that either she or her children maintained a physical residence on the reservation for a period of six months prior to her submission of the applications for adoption. In fact, Ms. Morse submitted the applications in March, and she and her children did not become residents of the reservation until they moved to Redwood Falls in December of 1990.[11] Anthony and Michael Morse thus fail to meet the facial criteria necessary for adoption under the 1982 Enrollment Ordinance.

To qualify for adoption under the 1996 Adoption Ordinance, section 1.3, an applicant "shall have a blood quantum which is one fourth (1/4) or greater Lower Sioux Mdewakanton Indian." The Community Council has determined that neither Anthony nor Michael Morse has such a blood quantum. This determination

---

[10] The previous section addressed this argument, determining that the Community Council appropriately applied the 1996 Adoption Ordinance. For the sake of thoroughness, however, this decision will address the Morse Children's failure to qualify for adoption under either the 1982 Enrollment Ordinance or the 1996 Adoption Ordinance.

[11] This failure to establish residency may account for the original delay encountered by Ms. Morse's applications that eventually led to the suspension of their consideration under the adoption moratorium imposed 1991.

disqualified both Anthony and Michael Morse from adoption into the Lower Sioux Community. Ms. Morse's Complaint does not challenge the Community Council's determination regarding the blood quantum of Anthony and Michael Morse, and therefore fails to state a cause of action under the 1996 Adoption Ordinance. This failure, in combination with the Complaint's failure to state a cause of action under the 1982 Enrollment Ordinance, subjects Ms. Morse's Complaint to summary judgment.

IT IS THEREFORE ORDERED: Defendant's motion for summary judgment is granted, and Plaintiffs' Complaint is hereby dismissed with prejudice.

**ORDER FOR JUDGMENT**

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: January 21, 1999

Kurt V. BlueDog

Kurt V. BlueDog, Chief Judge

I hereby certify that the foregoing Order constitutes the JUDGMENT AND DECREE of the Court.

ATTEST: Vanya Hogen-Kind
Clerk of Court
Lower Sioux Community in Minnesota Tribal Court

By: Vanya Hogen-Kind
Clerk of Court