

FILED OCT 14 1996

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IN THE COURT OF APPEALS OF
THE SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY
MARTIN SVENDAHL
CLERK OF COURT

DOCKET NO. CT. APP. 008-95

ANITA GAIL BARRIENTEZ &
SCOTT CLARENCE CAMPBELL

RESPONDENTS,

V.

SHAKOPEE MDEWAKANTON SIOUX
(DAKOTA) COMMUNITY,

APPELLANT.

MEMORANDUM OPINION AND ORDER

SUMMARY

This matter is before the Court of Appeals on appeal from the Trial Court's denial of Appellant's Motion to Dismiss for lack of subject matter jurisdiction. The Respondents asserted a claim for retroactive per capita distributions at the Trial Court level to which the Appellants responded by moving to dismiss the claim for lack of subject matter jurisdiction and in support of their argument the Appellants claim the 1993 Business Proceeds Distribution Ordinance Amendments (hereinafter referred to as BPDO) rescinded jurisdiction of the Court to grant retroactive relief. The Trial Court determined Ordinance No. 02-13-88-01 which has come to be known as "the Court Ordinance" requires, in order to diminish the scope of the Court's jurisdiction, as in the issue before the Court, an absolute three-fourths majority of all enrolled and eligible voting members of

the Community is required. The Appellants cannot then rely on passage of a subsequent enactment such as the BPDO as a diminishment of the Court's scope of jurisdiction without such an enactment having first satisfied the "supermajority voting requirements". The argument on appeal therefore is not so much whether the Respondents are entitled to retroactive per capita distributions. The Trial Court will have to decide that question as it deems proper. The question is whether the BPDO effectively rescinded the Court's scope of jurisdiction as authorized by the Court Ordinance. The Trial Court concluded it did not. The Court of Appeals panel affirms.

DISCUSSION

The Trial Court in this matter concluded Ordinance No. 02-13-88-01 ("the Court Ordinance").. gave this Court a very broad and serious mandate to protect the rights of the members of the Community under the Community's laws. ... and ... [i]f the power to grant remedies for wrongs is withdrawn, then the most fundamental principles of justice, which the Community sought to protect with the Court Ordinance is endangered. And if, by a simple majority vote, the Court can be deprived of its jurisdiction to hear claims of retroactive money damages, then a similar vote presumably could deprive Community members of the right to seek injunctions in illegal actions" .

The Trial Court held that it was not the Community's intention that the Court's jurisdiction could be diminished by a simple majority vote acting directly on the Court Ordinance itself or by subsequent separate enactment operating to diminish the scope of jurisdiction granted by the Court Ordinance.

The Community when first establishing their Tribal Court required a three-fourths vote as set forth in the Court Ordinance in order to diminish the scope of the court's jurisdiction.

The reasoning being it is both important and necessary to the Community in having a Court with adequate and appropriate jurisdiction, and that jurisdiction being fundamental to the structure of the Community's government and in addition it being essential for this Court to retain the full range of powers to award relief to Community members who may have claims for protections of tribal law and the Indian Civil Rights Act for the Shakopee Mdewakanton Sioux Community.

It is not every matter requiring a supermajority vote but only those matters which fall under the Prescott v. Shakopee Mdewakanton Sioux (Dakota) Community Business Council, No. 040-94 (Decided July 31, 1995) analysis which "is limited to matters like the Bylaws--matters which are fundamental to the structure of the Community's government." In the matter before the Court of Appeals now is the jurisdiction of the Court as originally provided in the Court Ordinance and how that jurisdiction may be amended or diminished. The Court is an institution of Community government and therefore fundamental to the structure of the Community's government. The Court and the Court's jurisdiction are virtually synonymous. The Community enacted, the Court Ordinance, Ordinance No. 02-

13-88-01 which under Section II provides for the range and scope of the Court's jurisdiction as follows:

"The Shakopee Mdewakanton Sioux Tribal Court shall have original and exclusive jurisdiction to hear and decide all controversies arising out of the Shakopee Mdewakanton Sioux Community Constitution, its By-laws, Ordinances, Resolutions, other actions of the General Council, Business Council or its Officers or the Committees of the Community pertaining to: 1- membership; 2-the eligibility of persons to vote in the Community or Community elections; 3-the procedures employed by the General Council, the Business Council, the Committees of the Community or the Officers of the Community in the performance of their duty. The Tribal Court shall have jurisdiction to hear and decide all controversies arising out of actual or alleged violations of the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301, et seq.. The Tribal Court shall have the authority to formulate appropriate equitable and legal remedies to secure the protections of tribal law and the Indian Civil Rights Act for the Shakopee Mdewakanton Sioux Community and other Indians within its jurisdiction..."

The Community further addressed how the range and scope of the Court's jurisdiction could be amended or diminished by adopting the following language:

[e]xcept as hereinafter provided this Ordinance may only be rescinded or amended by an absolute three-fourths majority of all of the enrolled and eligible voting members of the [community]. Amendments which add to but do not diminish the scope of jurisdiction of the Tribal Court may be passed by a majority of the members of the General Council; other amendments may be similarly passed by a majority of the General Council, but only after such amendments have first unanimously approved by the Chairman and a majority of the sitting Judges of the[Court].

We view the Court Ordinance, Ordinance No. 02-13-88-01 in requiring a "super majority vote" to diminish the Court's jurisdiction as entirely appropriate since the Court

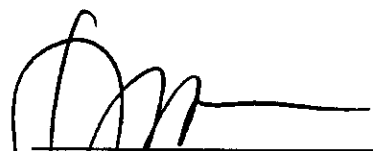
and the Court's jurisdiction is fundamental to the structure of Community government. It lends to stability to have added protection in an area as significant as the Courts jurisdiction. The Court's jurisdiction should not be subjected to whimsical winds of change that could easily derive from simple majority votes on diminishing the Court's jurisdiction. The so called super majority vote lends to stability.

We find it important to discuss briefly the Appellant's concern that the Community will have to overcome insurmountable supermajority voting requirements in even adopting mundane provisions of law. We cannot speculate at this point what the outcome will be over present hypotheticals except to say a super majority vote is required only on those matters which are fundamental to the structure of Community government. The underlying thought here is analogous to the discussions surrounding "separation of powers" doctrines and "checks and balances" in how the various entities and branches of government relate to one another. Further it is not so much the actual case at hand and whether the Respondents are even entitled to retroactive payments but rather the precedential value placed on legislation that diminishes the Courts jurisdiction. While it is important that the legislative component of government not infringe on the judicial branch it is equally important in the vice versa. As to future legislation regarding diminishment of Court jurisdiction, the Court will apply the Prescott analysis, as well as necessarily now that the question has been posed, doctrinal arguments on balancing the roles of Community government and what that means as to legislating within the parameters of law, and adjudicating matters within the law, and perhaps even to the extent of discussing

enforcement of the law. What is clear to the Court is that the case we now consider on appeal is subject to the Prescott analysis.

The super majority voting requirement is neither insurmountable nor an impossibility but rather an added protection and found in other areas of the government proceedings such as but not limited to certain constitutional amendment petition signing requirements, overriding presidential vetoes, number of votes required in impeachment of officials proceedings of which we view the area of the Court's jurisdictional base as important and should be afforded the added protection as was originally intended by the Community in first establishing the Court. Otherwise the Court would be a Court in name only without jurisdictional authority to fully adjudicate issues as was originally intended with the passage of the Court Ordinance, parties could argue futility and seek to find an off reservation forum to adjudicate their matters. The inherent disadvantage in off-reservation forums adjudicating Community matters is their having only rudimentary understandings of the Community's unique long-standing historical and legal relationship with the federal government as sovereigns on a government to government basis, the applicability and interpretation of Community enacted laws, and other attributes of self-governance. An adequate and appropriate jurisdictional base is fundamental to the structure of Community government and as such worthy of the added protection of the three-fourths vote as espoused by the Trial Court in this matter. We therefore affirm the Trial Court decision in this regard.

October 14, 1996



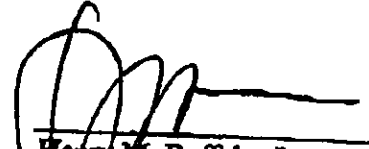
Henry M. Buffalo, Jr.
Judge




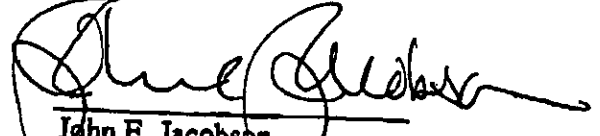
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