

FEB 04 1994

IN THE COURT OF THE
 SHAKOPEE MDEWAKANTON SIOUX COMMUNITY
 COUNTY OF SCOTT STATE OF MINNESOTA

Sunny Day Welch,

Plaintiff,

vs.

Shakopee Mdewakanton Sioux
 Community; Stanley Crooks,
 Chairman; Kenneth Anderson,
 Vice-Chairman; and Darlene
 Matta, Secretary-Treasurer.

Defendants.

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Court File No. 036-94

MEMORANDUM AND ORDER

Before Associate Judge John E. Jacobson.

This matter came on for hearing by telephone conference call on February 4, 1994, on the Plaintiff's motion for "temporary relief". The Court interpreted the motion as one for a Temporary Restraining Order. The Plaintiff was represented by Herbert A. Becker, Esq.; the Defendants were represented by Vanya Hogen-Kind, Esq. and Andrew Small, Esq..

At the conclusion of the hearing, the Court denied the Plaintiff's Motion. This Memorandum and Order memorializes that decision.

In his Complaint, Plaintiff maintains that he was disenrolled

from the Shakopee Mdewakanton Sioux Community ("the Community"), without notice and in violation of the Constitution and laws of the Community, and in contravention of the Indian Civil Rights Act of 1968. He sought preliminary relief to permit him to participate in the Community's distribution of gaming revenues. In support of his Motion, he submitted a Memorandum but only one document--the agenda for a meeting of the Community's General Council held on January 11, 1994--and no supporting affidavits.

The Community responded by arguing that although the Plaintiff in the past has participated in the distribution of gaming revenues, he has never been an enrolled member of the Community--that his eligibility to thus participate ended not because of any disenrollment but because of a change in the Community's gaming revenue allocation ordinance, effected in late 1993.


The Court denied the Plaintiff's motion on the grounds that, whatever may be the Plaintiff's likely success on the merits, he has not demonstrated that irreparable harm will be worked upon him absent preliminary relief. This Court consistently has adopted the generally accepted view that in most cases the mere payment or non-payment of money generally does not create the possibility of irreparable harm. In cases where we have concluded, upon hearing the merits of a case, that gaming revenue should in fact have been paid in the past to litigants, we have fashioned relief that has made the litigants whole. Ross v. Shakopee Mdewakanton Sioux Community, No. 013-91 (Decided June 3, 1993).

This matter is not different: if the Plaintiff prevails, he can be recompensed for any monies which should have been paid to him.

ORDER

For the foregoing reasons, the Plaintiff's Motion for a Temporary Restraining Order is denied.

February 4, 1994



John E. Jacobson
Associate Judge

086-36