

IN THE TRIBAL COURT OF THE
LOWER SIOUX COMMUNITY IN MINNESOTA

LOWER SIOUX INDIAN RESERVATION

STATE OF MINNESOTA

Chaské Francis LaBlanc,

Case No. CIV-11-036

Petitioner,

vs.

Lower Sioux Community Council,

**FINDINGS OF FACT, MEMORANDUM
OF DECISION AND ORDER**

Respondent.

Petitioner Chaské LaBlanc filed an appeal pursuant to Section 5.9 of the Lower Sioux Indian Community Enrollment and Membership Privilege Ordinance (the "Enrollment Ordinance"), challenging Lower Sioux Indian Community Resolution No. 10-167, whereby the Community Council found he had ceased to maintain residency within the Community Area for a period of two consecutive years and is no longer a Qualified Member of the Lower Sioux Indian Community.

The Court held hearings in this matter on August 26, 2011, September 21, 2011, and October 26, 2011. These hearings were necessitated by procedural irregularities in the proceedings before the Enrollment Committee and Community Council, as well as questions concerning whether the Court has jurisdiction to hear LaBlanc's appeal. For purposes of this opinion, the Court will focus mainly on the final hearing, which resolved the jurisdictional question and also reached the merits of the case.

At the hearing on October 26, 2011, LaBlanc appeared pro se, along with his mother, Joyce Pendleton.¹ Sarah Van Norman appeared on behalf of the Community Council. After Ms.

¹ Although Pendleton is the Enrollment Committee Chair, she was not appearing in that capacity, and did in fact recuse herself from the relevant deliberations.

Van Norman walked the Court through the contents of Lower Sioux Indian Community Resolution No. 11-93,² both of the parties informed the Court that they intended to rest on the record in this matter. At the conclusion of the hearing, the Court took the matter under advisement.

The Court now issues the following Findings of Fact, Memorandum of Decision, and Order:

Findings of Fact

1. On June 4, 2010, the Clerk of the Enrollment Committee sent a letter to LaBlanc, the entire text of which stated as follows:

The Enrollment Committee has some questions about your residency status; they would like to meet with you on July 21, 2010 at 3:45 p.m. This will be your chance to submit any evidence regarding your residency for the past two (2) years. Feel free to contact me at the Enrollment Office 507-697-6185 if you have any questions.

2. The June 4, 2010 letter was followed by two other letters from the Enrollment Committee to LaBlanc (dated July 14, 2010, and August 6, 2010, respectively), in which the Enrollment Committee rescheduled the hearing date and again advised him to bring any information he had concerning his residency for the past two years.

² Ms. Van Norman explained that Resolution No. 11-93 detailed the chronology of the case, rescinded Resolution No. 10-167, found by a preponderance of the evidence (after having reviewed the entire record) that LaBlanc has ceased to maintain residency for a period of two consecutive years and is no longer a qualified member, that due to procedural irregularities LaBlanc's appeal will be considered timely even though it was filed outside of the 30 day window in the Enrollment Ordinance, that the Court has jurisdiction to hear the appeal, and that LaBlanc need not take any further action to perfect his appeal of Resolution No. 11-93 rescinding his membership privileges.

3. When LaBlanc met with the Enrollment Committee on September 15, 2010, he submitted the following:

- A Memo from the Community Council to the Powwow Committee dated 6/4/10, which specifically listed LaBlanc as a member of the Committee, explaining that the request for hotel rooms for Committee members had been denied because "you are all Community members that live in the area;" and
- The front page of the April 24, 2010 Albuquerque Journal, displaying a picture of LaBlanc at the 27th annual Gathering of Nations Powwow, with a caption indicating he is from Lower Sioux in Minnesota;

4. In a memo to the Community Council dated September 15, 2010, the Enrollment Committee recommended "that because of no proof shown at the meeting, Chaské be removed from membership privileges."

5. In Lower Sioux Indian Community Resolution No. 10-167 dated November 8, 2010, the Community Council, without citing to any specific evidence, found that a preponderance of the evidence supported the conclusion that LaBlanc had failed to maintain residency for a period of two consecutive years.

6. The Enrollment Committee subsequently granted LaBlanc a second hearing on May 4, 2011, at which time he submitted the following additional evidence in support of his residency:

- Automobile Policy declarations from Mendakota Insurance Company for the periods of May 2008 through May 2011, showing LaBlanc as the insured, with an address in Morton, Minnesota, and that the vehicles in question were also garaged in Morton, Minnesota;
- Three of LaBlanc's 2010 1099-MISC forms representing winnings from various powwows, listing an address in Morton, MN;
- A report showing LaBlanc's prescription refills for the period 1/20/08 - 5/03/11 from Sward-Kemp Pharmacy in Redwood Falls, listing an address for LaBlanc in Redwood Falls, Minnesota;

- Various Minnesota Insurance Identification Cards representing the time period of 5/29/09 through 11/29/11, listing LaBlanc as the insured, with an address in Morton, Minnesota;
- Two invoices (dated 7/31/09 and 11/30/09) from Sward-Kemp Pharmacy, listing LaBlanc's address in Redwood Falls, Minnesota;
- Various records from the Springfield Medical Center/Clinic from April 2009, listing LaBlanc as the patient, with an address in Morton, Minnesota;
- An email from Andrew Schmidt, Lower Sioux P.D. Chief, stating that LaBlanc used an address in Morton, Minnesota when he received a ticket in Ramsey County in 2009;
- Documentation related to 2009 DFI Emergency Winter Energy assistance, to include LaBlanc's application listing an address in Morton, Minnesota, as well as an invoice listing the same;
- Three of LaBlanc's 1099-MISC forms from the Lower Sioux Indian Community (2008-2010), listing an address in Morton, MN; and
- A W-9 Form for LaBlanc, dated 11/30/08, listing an address in Morton, Minnesota.

7. In a memo dated May 25, 2011, the Enrollment Committee notified the Community Council that after reviewing the new information provided by LaBlanc it "feels that Chaské should take his case to the Lower Sioux Tribal Court."

8. LaBlanc filed his Notice of Appeal of Loss of Membership Privileges on June 8, 2011.

9. On October 18, 2011, the Enrollment Committee revisited the issue of LaBlanc's membership privileges, and the new vote was 3-2 in favor of reinstatement. The Enrollment Committee informed the Community Council of this new vote on a memo dated as of the same date.

10. In Lower Sioux Indian Community Resolution No. 11-93, the Community Council, without citing to any specific evidence, found that a preponderance of the evidence supported the conclusion that LaBlanc has ceased to maintain residency within the Community Area for a period of two consecutive years and is therefore no longer a Qualified Member.

11. Resolution No. 11-193 provides in relevant part:

In recognition of the procedural irregularities on the side of the Council and Committee to date, the Council believes that Mr. LaBlanc should not have to file a new notice or take other action in order to perfect his appeal of this resolution, and so the Council will therefore consider his June 2011 notice of appeal to serve as a timely appeal of this resolution as required by Section 5.9 of the Enrollment Ordinance.

Memorandum of Decision

I. Timeliness of Appeal.

The Enrollment Ordinance provides this Court with only limited jurisdiction to hear appeals of Community Council decisions to remove membership privileges from a qualified member. Specifically, the Enrollment Ordinance provides in relevant part:

The decision of the Community Council to remove membership privileges from a Qualified Member may be appealed by the affected member to the Community Court. Jurisdiction is hereby granted to such court to consider the appeal, and the Community's sovereign immunity is waived for the limited purpose of the Court's review of the Council's decision; no monetary relief is allowed.

Any appeal must be filed with the Court within thirty days of the decision of the Community Council, provided that any person appealing from a decision of the Community Council that was rendered before July 1, 2010 shall have the greater of ninety days from the decision of the Community Council, or thirty days from his or her receipt of a copy of this amended Enrollment Ordinance, in which to appeal the Community Council decision.

Section 5.9.

In the instant case, LaBlanc filed his Notice of Appeal well beyond the deadline set forth above. However, as evidenced by Resolution No. 11-93, the Community Council has made the determination that due to "irregularities" with this case, it will allow LaBlanc's appeal to go forward nonetheless. The Court therefore finds it has proper jurisdiction to hear the merits of this case, despite the seemingly late filing of the Notice of Appeal.

II. Burden of Proof.

In this appeal, LaBlanc bears the burden of proof to rebut by clear and convincing evidence, the presumption that he had ceased to maintained residency within the Community Area for two consecutive years and is thus no longer entitled to membership privileges. See Enrollment Ordinance at Section 5.9 (person appealing has the burden of demonstrating decision of the Community Council was clearly erroneous).

However, it is equally important to keep in mind that there is a different standard of proof applicable to the proceeding before the Enrollment Committee resulting in a recommendation to the Community Council. *Wabasha v. Lower Sioux Indian Community Council*, Court File No. APP. 10-002 at 10 (LSIC Tr. Ct. App. May 2011). In any challenge to residency under the Enrollment Ordinance, the party challenging residency bears both the burden of production and the burden of persuasion, and the decision of the Enrollment Committee must be supported by a preponderance of the evidence. *Id.* at 10-13.

III. Due Process.

As a general rule, due process requires reasonable notice and a meaningful opportunity to be heard. *In re C.W. Mining Co.*, 625 F.3d 1240, 1244-45 (10th Cir. 2010) (citing *LaChance v. Erickson*, 522 U.S. 262, 266 (1998)). In the context of residency challenges under the

Enrollment Ordinance, this means:

... If the Enrollment Committee believes that it has received credible evidence, either from a petition received by another qualified member or from such other source as the Enrollment Committee considers sufficient, that a Qualified Member has ceased to maintain residency within the Community Area for a period of two consecutive years, then the Enrollment Committee shall investigate the residency of the member. *The Enrollment Committee shall provide written notice to the Member whose residency is being challenged, summarizing the evidence that has prompted the Enrollment Committee's inquiry, and specifying a hearing date, at least thirty days after the date of the notice, at which time the member may provide the Enrollment Committee with any evidence or testimony that the challenged member deems relevant.*

Enrollment Ordinance, Section 5.3 (emphasis added).

In the instant case, there was a failure to meet both the notice requirements and the hearing conduct requirements of the Enrollment Ordinance. This was further exacerbated by the Community Council's finding that a preponderance of the evidence supported removing LaBlanc, when the majority of the Enrollment Committee found to the contrary and when a preponderance of the evidence clearly favored LaBlanc. The problems with the case against LaBlanc are briefly cataloged below.

The Enrollment Committee sent three different letters to LaBlanc, none of which were sufficient to comply with the notice requirements of Section 5.3. The first letter dated June 4, 2010, merely advised LaBlanc that the Enrollment Committee "has some questions about your residency status." The next two letters, dated July 14, 2010 and August 6, 2010, simply informed LaBlanc that the Enrollment Committee "would still like to meet with you to discuss your residency status." The Court of Appeals has made clear that such notices are completely inadequate. *See Wabasha*, Court File No. APP. 10-002 at 5.

The Enrollment Committee's September 15, 2010 recommendation to the Community Council that LaBlanc lose his membership privileges was not supported by any evidence in the record, let alone by a preponderance of the evidence. The Court finds particularly persuasive, the June 4, 2010 letter from the Community Council to LaBlanc informing him that the Council had denied the request from the Powwow Committee for hotel rooms because he was a Community member and lived in the area (as did the other Committee members).

The Community Council's finding in Resolution 10-167 that a preponderance of the evidence is supportive of the conclusion that LaBlanc has not made the Community Area his permanent home is clearly erroneous. There is simply nothing in Resolution 10-167 supportive of this conclusion, and the Community Council does not list even one piece of evidence it relied upon in its decision.

At the appeal hearing before this Court on September 21, 2011, Ms. Van Norman requested that the matter be stayed for a period of thirty days to give the Enrollment Committee and Community Council an opportunity to fix the procedural irregularities that had taken place. The Court granted this request, albeit reluctantly. Although the Enrollment Committee took this opportunity to take another look at the evidence LaBlanc had provided in May 2011 (and changed its recommendation to reinstatement), the Community Council does not seem to have taken full advantage of the opportunity.


Despite significant evidence in the record supportive of LaBlanc, and a complete lack of evidence against him, the Community Council nonetheless decided in Resolution No. 11-93 that a preponderance of the evidence supported his removal. The Court finds this was clearly erroneous.

Order

For all of the reasons set forth above, Petitioner Chaské LaBlanc has met his burden of demonstrating that the decision of the Community Council was clearly erroneous.

It is hereby ORDERED, ADJUDGED and DECREED that LaBlanc's appeal is GRANTED, Lower Sioux Indian Community Resolution No. 11-93 is REVERSED and LaBlanc's membership privileges are REINSTATED. This Order is hereby STAYED for ten (10) days after its entry to allow the Community Council to file an appeal if it so desires.

IT IS SO ORDERED this 17th day of
November, 2011


Kurt V. BlueDog, Chief Judge
Tribal Court of the Lower Sioux
Community in Minnesota

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