

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE
HO-CHUNK NATION TRIAL COURT**

MELISSA SUE DECORAH,

ORDER (Granting Dismissal)

Plaintiff,

vs.

**HO-CHUNK NATION
ENROLLMENT COMMITTEE & NANCY SMITH,**

Case No.: **CV 99-14**

Defendant.

FACTS AND PROCEDURAL HISTORY

This case arises out of a challenge to the plaintiff’s status as an enrolled member of the Ho-Chunk Nation. Challengers to the plaintiff’s enrollment status asserted that she did not possess the requisite blood quantum required under HCN CONSTITUTION ART. II §1 (b). Investigating this challenge, the Enrollment Committee ordered DNA analysis of the plaintiff and the purported source of her blood quantum.¹ The analysis revealed that there was less than a 0.002% chance that the alleged source of the plaintiff’s blood quantum was related to the plaintiff. Acting on this information, the Enrollment Committee ruled the plaintiff ineligible for membership in the Ho-Chunk Nation and voted to remove her from the Tribal Rolls.

Following this ruling, the plaintiff brought the action at bar, claiming that “there were several errors made during this process [the removal proceedings] in favor of the proponent of my removal and that the decision of the enrollment committee was therefore in error.” *Plaintiff’s Complaint* & 4. The

¹ The Enrollment Committee took this action pursuant to section 5.03(iii) of the Ho-Chunk Nation Ineligible Tribal Enrollment Resolution.

1 plaintiff provided little clarification of this claim, only adding that

2 “the errors . . . include but are not limited to the following: Errors made in sections
3 1.02 and 1.03 [of the Ho-Chunk Nation Ineligible Tribal Enrollment Resolution],
4 *Submission of Challenge*
5 Errors made in the *Conduct of Appeals Hearing*, section 4.06 (ii)
6 Errors made in *Rules of Evidence*, section 4.08
7 Errors made in *Official Notice*, section 4.10
8 Errors made in *Timeline for Decision*, section 6.03
9 Errors made in *Testing Results*, section 6.03

10 *Id.*

11 After receiving the plaintiff’s *Complaint*, the defendants’, by and through their counsel at the
12 Ho-Chunk Nation Department of Justice, filed an *Answer* and then subsequently a *Motion for a More*
13 *Particular Pleading*, seeking a more detailed statement of the Nation’s alleged statutory violations.
14 Before either the Court or the plaintiff could respond to this *Motion*, defendant’s counsel filed a *Motion*
15 *to Dismiss*. Due to the gravity of the proceedings and a change in the plaintiff’s representation, the
16 Court granted the plaintiff an additional thirty (30) days in which to respond to the *Motion for a More*
17 *Particular Pleading*, and the *Motion to Dismiss*.² The plaintiff filed a *More Particular Pleading* within
18 the required time, but this document merely recounted the facts of the case, offering no details of the
19 defendants’ alleged illegal behavior. After receiving this document and waiting in vain for a response to
20 the *Motion to Dismiss*, the defendants filed a *Motion for Summary Judgment*,³ renewing, and adding to
21 the arguments made in their earlier *Motion to Dismiss*.

22 APPLICABLE LAW

23
24
25
26
27 ² Under Rule 19(A) of the Ho-Chunk Nation Rules of Civil Procedure, a party is only allowed 10 days to respond to a
Motion from an opposing party.

28 ³ The defendants filed this motion on June 4, 1999.
i:\CV99-14a Order (Granting Dismissal)

1 *Ho-Chunk Nation Rules of Civil Procedure*

2 **Rule 19. Filing and Responding to Motions.**

3 (A) *Motion*. *Motions* may be filed by a party with any pleading or at any time after their first pleading
4 has been filed. A copy of all written *Motions* shall be delivered or mailed to other parties at least five (5)
5 calendar days before the time specified for a hearing on the *Motion*. A *Response* to a written *Motion*
6 must be filed at least one day before the hearing. If no hearing is scheduled, the *Response* must be filed
7 with the Court and served on the other parties within ten (10) calendar days of the date the *Motion* was
8 filed. The party filing the *Motion* must file any *Reply* within three (3) calendar days.

7 **Rule 20. Hearings on Motions.**

8 A hearing on a *Motion* may be held in the discretion of the Court. A party requesting a hearing must (a)
9 schedule the hearing with the Court and (b) deliver or mail notice of the hearing to other parties at least
10 five (5) calendar days prior to the hearing. If the trial is scheduled to begin within the time allowed for a
11 hearing, all responses shall be made by the time scheduled for commencement of the trial. *Motions* made
12 within fourteen (14) calendar days of trial may be dismissed and costs and fees assessed against the
13 moving party if the Court finds no good cause exists for failing to file the *Motion* more than fourteen
14 (14) calendar days in advance of the trial.

14 **CONSTITUTION OF THE HO-CHUNK NATION**

15 **ARTICLE II - MEMBERSHIP**

16 Section 1. Requirements. The following persons shall be eligible for membership in the Ho-
17 Chunk Nation, provided, that such persons are not enrolled members of any other Indian nation:

18 (a) All persons of Ho-Chunk blood whose names appear or are entitled to appear on
19 the official census roll prepared pursuant to the Act of January 18, 1881 (21 Stat. 315), or the
20 Wisconsin Winnebago Annuity Payroll for the year one thousand nine hundred and one (1901);
or the Act of January 20, 1910 (36 Stat. 873), or the Act of July 1, 1912 (37 Stat. 187); or

21 (b) All descendants of persons listed in Section 1 (a), provided, that such persons are
22 at least one fourth (1/4) Ho-Chunk blood.

23 Section 6. Appeals. Any person who has been rejected for enrollment or who has been removed
24 from the tribal roll shall have the right to appeal to the Judiciary for a remedy in equity consistent with
25 this Constitution.

25 **Ineligible Tribal Member Removal Resolution**

26 1.02 Affidavit Requirement

27 The Office of Tribal Enrollment shall request that the individual making the allegation, the
28 proponent, submit an affidavit to the Office of Tribal Enrollment in support of the allegation. The Office
of Tribal Enrollment shall also inform the proponent of the requirement that at least two (2) other

1 individuals submit affidavits to the Office of Tribal Enrollment, substantiating the factual contentions
2 within the proponent's allegation. The proponent and any other individual submitting affidavits, the
affiants, must be tribal members.

3 1.03 Form and Content of Affidavit

4 The affidavits shall state with particularity the grounds for the allegation, and be signed in the
5 presence of a notary public. Formal rules of evidence shall not serve as a bar to considering any
assertions contained within the affidavits.

6 4.06 Conduct of Appeals Hearing The hearing shall be conducted as follows:

7 (i) The Enrollment Officer and/or his or her designated staff shall present the evidence in
documentary form or through witnesses.

8 (ii) The affected member shall then be given adequate opportunity to present evidence in
documentary form or through witnesses, and confront the affiants.

9 (iii) The Enrollment Officer or his or her designee or Attorney shall be provided with the
10 opportunity to rebut any evidence presented by the affected member.

11 4.08 Rules of Evidence

12 Formal rules of evidence shall not apply at the hearing, but evidence which is irrelevant,
13 cumulative or which would be unfair or prejudicial may be excluded by the Chairperson or may be
admitted by the Chairperson under special conditions or stipulations. Basic rules of relevancy,
materiality and probative force shall be used by the Chairperson as a guide to admissibility.

14 4.10 Official Notice

15 The Committee on Tribal Enrollment may take official notice of generally recognized facts or
16 any established technical or scientific facts provided that it informs the Office of Tribal Enrollment, the
affected member and the affiants of such matters and provides them with the opportunity to rebut any
17 fact officially noticed.

18 5.01 Timeline for Decision

19 The Committee on Tribal Enrollment shall deliver a decision at the hearing after the conclusion
of the proceedings, and subsequently mail/deliver a written copy of the decision to the Office of Tribal
20 Enrollment, the affected member and the affiants within two (2) days of the hearing.

21 6.03 Testing Results

22 The DNA analysis results shall be delivered upon completion to the Committee on Tribal
Enrollment from the independent testing laboratory. The Committee on Tribal Enrollment shall render a
23 decision by majority vote in accordance with Section 5.02 based on the results within ten (10) days after
receipt. The Committee on Tribal Enrollment shall mail/deliver a written copy of the decision to the
24 Office of Tribal Enrollment, the affected member and the affiants within two (2) days of the decision.
Such decision shall be deemed final for purposes of judicial review.

26 **DECISION**

27 The defendant's *Motion to Dismiss* is based on an assertion that the plaintiff lacks standing to

1 sue. This argument is intertwined with the defendant's *Motion for Summary Judgment* claim that the
2 case should be dismissed due to the plaintiff's failure to state a cause of action upon which relief can be
3 granted. The claims are intertwined because plaintiff's standing argument is premised on grounds of
4 redressability;⁴ if the plaintiff's claim cannot be redressed by the Court, then they state no cause of
5 action upon which relief can be granted. These charges (that the plaintiff lacks standing and fails to
6 state a claim upon which relief can be granted) are erroneous in fact and contradicted by law.
7

8 The defendants' claims are erroneous in fact because their perspective is that the only relief
9 sought by the plaintiff is an order for re-enrollment, and that due to the blood quantum requirement of
10 the Constitution,⁵ this relief is unavailable. This view is mistaken, however, in that one of plaintiff's
11 claims is based on the *Ineligible Tribal Member Removal Procedures*, Section 6.03 Testing Results, and
12 that the Court could order a re-testing of the relevant parties without violating the Constitution.
13

14 The defendants' claim is erroneous in law because the HCN CONSTITUTION clearly confers
15 standing on the plaintiff through Article 2, Section 6, which states that "[a]ny person who has been
16 rejected for enrollment or who has been removed from the Membership Roll *shall have the right to*
17 *appeal to the Judiciary for a remedy in equity consistent with this Constitution.*" HCN CONST. Art II, §
18 6 (emphasis added).
19

20 In addition to the above arguments, the defendants' also seek dismissal/summary judgment based
21 on the plaintiff's failure to respond to the *Motion to Dismiss*. Under *HCN Rules of Civ. P., Rule 19*, "[a]
22 response to a written Motion must be filed with the Court and served on the other parties within ten (10)
23 calendar days of the date the Motion was filed." The defendants filed a *Motion to Dismiss* on March 21,
24 1999. In a *Hearing* held on March 31, 1999, the Court granted the plaintiff's *Motion for Enlargement of*
25

26 ⁴ Proof of standing consists of three elements: Injury in fact, causation, and redressability. A plaintiff must show all
27 three to possess standing. See *Steve B. Funmaker v. JoAnn Jones, et al.*, CV 97-92 (HCN Tr. Ct., Nov. 26, 1997).

⁵ Article II, section 1 of the CONSTITUTION OF THE HO-CHUNK NATION states that all enrolled tribal members must

1 *Time*, allowing her until April 30, 1999, (an additional thirty (30) days) in which to respond to the
2 *Motion to Dismiss*.⁶ Under *HCN Rules of Civil P., Rule 56*, “[a] *Motion to Dismiss* may be granted [with
3 prejudice]. . . if a party substantially fails to comply with these rules. . . .” As of the date of this *Order*,
4 neither the defendants nor the Court has received the plaintiff’s response to the *Motion to Dismiss*. The
5 Court finds that the plaintiff’s disregard of the April 30, 1999, response deadline constitutes substantial
6 failure to comply with the *HCN Rules of Civ. P.*, and therefore **ORDERS** that the plaintiff’s claim be
7 **DISMISSED**.
8

9 All parties have the right to appeal a final judgement or order of the Trial Court. If either party is
10 dissatisfied with the decision rendered by this Court, they may file a *Notice of Appeal* with the Ho-
11 Chunk Supreme Court within thirty (30) calendar days from the date such final judgement or order is
12 rendered and follow all applicable appellate rules of the HCN Supreme Court.
13

14 **IT IS SO ORDERED** this 9th day of August, 1999 from within the sovereign lands of the Ho-
15 Chunk Nation.
16

17
18 _____
19 Hon. Mark Butterfield
20 HCN Chief Trial Judge
21
22
23
24
25
26

27 possess at least one-fourth (¼) Ho-Chunk Blood.

28 ⁶ The Court verbally granted this *Motion* in the March 31, 1999 hearing. Only later, on April 21, 1999, was the *Order* set
in written form.