FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA
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FORT PECK TRIBAL EXECUTIVE BOARD,
Defendants/Appellant,

v. **APPEAL No. 018**

WILLIAM WEEKS, et al.,
Plaintiffs/Appellees.

Appeal from the Fort Peck Tribal Court, Fort Peck Indian Reservation, Poplar, Montana, Judge William McClammy.

For Appellant: SONOSKY, CHAMBERS & SACHSE
1050 31st Street, N.W.
Washington, D.C. 20007

For Appellee: GERALD LaFOUNTAIN
208 N. 29th St. Suite 228
Billings, Montana 59101

A Brief was filed by Kevin Griffin of Sonosky, Chambers & Sachse, on behalf of the Appellant. No Brief was filed by counsel for the Appellee within the allotted time. No oral argument was set in this matter.

Opinion by a unanimous Court comprised of Chief Justice Ralph J. Patch, Associate Justice Terry Boyd and Associate Justice William Lumpkin. Vacated.

Mr. Justice Boyd delivered the opinion of the Court.

This is an appeal from the Fort Peck Tribal Court Order dated May 10, 1985, by which the Tribal Executive Board was restrained from further proceeding in regard to a Lawyer Judge. The Order further demanded that a certified copy of the Tribal Attorney Contract be entered into the record and that the Lawyer Judge position be advertised in the Herald News, Poplar

Shopper, and Wotanin for thirty (30) days with Indian preference in the week of June 3rd through the 7th of 1985. On May 23, 1985 this Court issued a Order staying any enforcement of the above Order pending the appeal.

The Appellant filed *a* timely petition for review to which the Appellee's counsel made no response and the petition for review was granted on the 4th day of June, 1985.

The following issues were presented to this Court in the Appellant's brief:

1. Is the Fort Peck Tribal Executive Board, as a governing body of the Tribes, immune from suit?

2. Did the Tribal Court err by failing to apply Title I of the Code of Justice to the appointment of a Lawyer Judge?

3. Did the Tribal Court err in requiring advertising and Indian preference to fill the Lawyer Judge position?

4. Did the Tribal Court err in directing the Tribes to file a copy of the Tribal Attorney Contract?

5. Should Chief Judge McClammy have disqualified himself?

A unanimous Court holds that as to the first issue, that the Fort Peck Tribal Executive Board is , immune from lawsuit in Tribal Court. By holding so, the other issues presented to the Court need not be answered at this time. However, it is of extreme importance that this Court address the issue of whether or not Judge McClammy should have disqualified himself and after disposing of the principal issue of Tribal immunity will do so.

This Court is unaware of any Federal case which specifically addresses the issue of whether or not a duly elected Tribal Executive Board is immune from a lawsuit brought by a member of the Tribe in Tribal Court. The Federal cases which have been decided, make it clear that in no set of circumstances may a Tribal member bring an action in Federal Court against the Tribe or its governing body. The principal case appears to be Santa Clara Pueblo vs. Julia Martinez et al., 436 US 49, 56 L Ed 2d 106, 98 S Ct 1670 (1978), in that case, the Court analyzed provisions on the Indian Civil Rights Act and de-termined that it could not be read to authorize an action by a Tribal member against the Tribe or its governing board in a Federal Court. The Court did point out that individual members of the Tribal Board could well be enjoined from various actions in a Federal Court. However, a decision as to that particular point was not made in the case.

In Santa Clara Pueblo it was pointed out that Tribal forums are available to vindicate rights created by the Indian Civil Rights Act, and Section 1302 of the Indian Civil Rights Act has the

Substantial and intended effect of changing the law which these forums are obligated to apply. This Court believes that Santa Clara Pueblo does not sanction or give blanket approval to Tribal members attempting to restrain a Tribal Board in front of the Tribal Court. The Appellee has brought no cases to the attention of this Court to bolster its original petition for an order seeking to restrain the Tribal Board and its actions. The Appellee's counsel made vague allusions to the Indian Civil Rights Act in his oral argument on May 10, 1985, but in no other way directly addressed the problem at hand.

This Court believes that we can decide this case by looking to and reading what the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation sets forth regarding Tribal immunity from suit.

In Title I of the Comprehensive Code of Justice of the Assini-boine and Sioux Tribes of the Fort Peck Indian Reservation, Chapter 1, Sections 110 and 111 read as follows:

Sec. 110. Tribes immune from suit.

> The Tribes shall be immune from suit. Nothing in the Code shall be construed as consent of the Tribes to be sued.

Sec. 111. Suits against Tribal officials.

> The Court shall have jurisdiction over all suits in which Tribal officials or employees are Defendants, except habeas corpus proceedings authorized by 25 U. S.C. Sec. 1303.
>
> (a) Suits for money damages. No elected official or Judge of the Tribes shall be subject to suit for any action taken in the course of his or her official duties, or in the reasonable belief that such action was within the scope of his or her official duties.
>
> (b) No employee of the Tribes shall be subject to suit for money damages for any action taken in the course of his or her official duties, or in the reasonable belief that such action was within the scope of his or her official duties, unless it is clearly established that such action was taken with malicious intent and in bad faith. The Court shall have jurisdiction over actions seeking declaratory and equitable relief against Tribal employees, but the Court shall not grant any relief against Tribal Employees except after service of process has been made as prescribed in this Code and proof of service has been received by the Court.

On reading these two sections, it comes as a matter of some astonishment that any lawyer licensed to practice either be-fore the Tribal Court or within the State of Montana, would

attempt to use these sections-against the Tribal Executive Board, for the language of these two sections clearly in-dicates that a Tribal Court would have jurisdiction in suits where Tribal officials as individuals or as employees are involved and not as the Tribal Executive Board itself. It is not surprising, however, when one realizes that lawsuits are filed over the most trivial and frivolous matters imaginable throughout this land. This lawsuit is no exception to the national trend for frivolous litigation.

The rationale behind the passage of Sections 110 and 111, is practically self-evident. This particular lawsuit is a perfect example of why Tribes choose to remain immune from suit. One does not need a great imagination to realize that if the Tribal Executive Board is not immune from a suit in Tribal Court brought by members of the Tribe, that the government and its sovereignty so sought by the various Tribes would be a meaning-less experiment. If perpetually dissatisfied members of the Tribe were allowed to bring an action in Tribal Court every time they felt that some wrong had been committed, or some right violated, it would not be long before the Tribal government itself would be merely an object of futility and scorn. It is clear that the Tribes do not wish to exchange one stumbling block in the form of Federal intervention for another stumbling block in the form of incessant lawsuits brought by dissatisfied members and their attorneys.

The Tribal Constitution in Article IV, Section 1, provides a remedy for the dissatisfied individual member or members of the Tribe. That remedy is the General Council which may be convened upon petition of at least ten per cent (10%) of the eligible voters of the Tribes. A second and more obvious remedy for the dissatisfied Tribal member is to express his dissatisfaction with the Tribal Executive Board on election day. Aside from those two remedies, the Tribal Code provides for no direct action against the Tribal Executive Board. Further, Tribal members would seem to have no more right to bring an action against their Tribal Executive Board than a non Tribal member would have in bringing an action directly against the United States Congress in an attempt to halt the legislative process.

The only argument brought forth by counsel for the Appellees took place at the May 10, 1985 hearing. This Court read many times the transcript of the proceeding. The argument set forth by counsel for the Appellees was based in his words on what is commonly known as the Indian Civil Rights Act. He vaguely quoted the first paragraph of Section 1302 of 25 U.S.C. to give him and his clients a right to petition the Court for a redress of grievances.

The Indian Civil Rights Act in that particular paragraph reads as follows:

> "No Indian Tribe in exercising powers of self-government shall-
>
> (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances".

One does not need to be a constitutional scholar to realize that a redress of grievances does not ordinarily take place before a Court but takes place before a legislative body. The Federal Courts have placed severe limitations on the rights of individuals attempting to bring actions against Tribes or their executive board. Does that mean that the law-suits prohibited by the Federal Courts in the Federal system may then be brought in spite of sovereign immunity in the Tribal Courts? This Court does not believe that to be the case. If it were the case, then the Tribal Code itself would specifically set out when and where an individual member could sue the Tribe and/or its executive board. Instead, the Tribal Code specifically sets out cases in which individual officials might be brought to task for their actions as in- dividual officials or as employees, but not as the Tribal Executive Board itself.

We are not deciding today whether or not this same case could have been brought against individual members of the Tribal Executive Board. That matter may have to be decided another day. We do decide today, that the petition for in-junctive relief brought by the Appellees was null and void from the very beginning and should have never been brought before the Tribal Court. It is for that reason that we vacate and declare null and void the order issued based upon the petition for injunctive relief. We vacate that order in its entirety.

Although we have decided this case by determining that the sovereign immunity of the Tribes extends to the Tribal Ex-ecutive Board, we would not be doing our duty if we failed to address an additional issue. That issue is whether or not Judge McClammy should have disqualified himself in this matter. It is clear from the motion filed by the Appellants in the Tribal Court asking that Judge McClammy be disqualified that he had a personal interest in the outcome of the case. Although Judge McClammy expressed his own support of a Lawyer Judge it was nevertheless a case in which he should have re-moved himself to avoid the appearance of impartiality. The Tribal Code specifically provides that a Judge shall be dis- qualified whenever he has any interest in the case. By not disqualifying himself, Judge McClammy further brought dis-respect on the Tribal Court by forcing the Tribal Chairman to appear before the Tribal Court in clear violation of the Tribal Code which prohibits a member of the Executive Board from practicing in front of the Tribal Court.

Although not an issue in this case, this Court must also express its dissatisfaction with the type of representation afforded the Appellees in this case. First of all, the counsel for the Appellees did not bother to file a written brief in support of his argument. His argument at the May 10, 1985 hearing consisted mainly in attacks upon the legal representation of the Tribal Executive Board. We note that the Tribal Code in providing for legal representation, whether it be through licensed attorneys or through lay advocacy, does not provide for any standard of conduct for the counsel in this case. We would recommend to the Tribal Executive Board that a study be conducted through which some type of code of ethics could be provided in order to better protect and represent Tribal members in Tribal Court.

DATED this 11th day of July, 1985.

BY THE COURT OF APPEALS:

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Terry Boyd, Associate Justice

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Ralph Patch, Chief Justice

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William Lumpkin, Chief Justice