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IN THE COURT OF APPEALS

MILLE LACS BAND COURT OF
GENERAL JURISDICTION

IN RE:

Diane Gibbs,

Case No. 02CV713

Plaintiff,

vs.

FINDINGS OF FACT,
CONCLUSIONS OF
LAW AND ORDER

Mille Lacs Band Election Board,

Defendant.

PROCEDURAL HISTORY

Diane Gibbs, Plaintiff herein, was a candidate for the position of District III Representative to the Mille Lacs Band Assembly in the June 11, 2002 General Election. Her opponent was the incumbent, Harry Davis. Following the closing of the polls on June 11, 2002, the votes for the District III Representative position were counted and the results were certified. Plaintiff received 84 votes, and Harry Davis received 101 votes. Following certification of the results, Plaintiff filed a timely request for a recount with the General Election Judge of the Mille Lacs Election Board. A recount was conducted with respect to the votes cast for the position of District III Representative, and the results were certified. Plaintiff received 90 votes, and Harry Davis received 102 votes. Following certification of the results of the recount, Plaintiff filed a Notice of Election Contest. Plaintiff requests that the results of the General Election with respect to the District III Representative position be invalidated, and that a new election be ordered.

LEGAL STANDARD

The Minnesota Chippewa Tribe Election Ordinance #8 (hereafter "Election Ordinance") at Chapter III, Section 2 (B) establishes the burden in an election contest:

1. The burden of proof of irregularities alleged rests with the contester.

2. The contestor will proceed first in any hearing and must present relevant and material evidence demonstrating how any irregularities, alleged and proven, affected the outcome of the election.

ISSUES RAISED IN PLAINTIFF'S PETITION

1. Rosalie Shabaiash was eligible to vote in the General Election, and her request for absentee ballot was not honored.
2. A number of unidentified constituents requested, but did not receive absentee ballots.
3. The District III Precinct Election Board was not neutral, and unidentified members of the Board intimidated District III Band members who had Plaintiff's campaign signs in their yards.
4. Unidentified District III Precinct Election Board members campaigned for Plaintiff's opponent prior to the General Election.
5. An unidentified District III Band member who lives in Brainerd was not permitted to vote for the District III Representative position.
6. An unidentified District III Band member who voted absentee the week prior to the General Election did not have his name documented on a sign-in list.
7. Erasable ink pens were allowed to be used by voters during the Primary Election on April 16, 2002.
8. The Lake Lena Precinct Election Board that was ratified by the Joint Session on March 6, 2002 was not the Precinct Election Board that presided at the Primary and General Elections.

FINDINGS OF FACT

1. Plaintiff failed to prove by clear and convincing evidence that Rosalie Shabaiash was denied the right to vote in the General Election.
2. Plaintiff failed to prove by clear and convincing evidence that any other Band members eligible to vote for the District III Representative position were denied the right to vote, either absentee or in person.
3. Plaintiff failed to prove by clear and convincing evidence that the District III Precinct Election Board was biased against her, or that the members of the District III Precinct Election Board intimidated her supporters.

4. Plaintiff failed to prove by clear and convincing evidence that any member of the District III Precinct Election Board campaigned for her opponent.
5. Plaintiff failed to prove by clear and convincing evidence that any Band member living in Brainerd and eligible to vote for the District III Representative position was denied the right to vote.
6. Plaintiff failed to prove by clear and convincing evidence that any Band member who voted absentee the week prior to the General Election did not have his or her name documented on a sign-in list.
7. Plaintiff failed to establish by clear and convincing evidence that erasable ink pens were used by voters during the Primary election.
8. Evidence disclosed at the hearing in this matter proved by clear and convincing evidence that the Lake Lena Precinct Election Board originally named was later amended and ratified by the Joint Session on March 26, 2002 so that the two first cousins of Plaintiff's opponent would not participate on the Lake Lena Precinct Election Board during the Primary and General Elections.

CONCLUSION OF LAW

Plaintiff has failed to prove by clear and convincing evidence that any irregularities occurred during the General Election for the District III Representative position. Furthermore, Plaintiff has failed to show that any irregularities actually affected the outcome of the General Election with respect to the District III Representative position.

ORDER

Plaintiff's request that the results of the General Election with respect to the District III Representative position be invalidated, and that a new election be ordered, is hereby DENIED.

BY THE COURT:

Dated: 7-8-02

Dorothy Sam
Dorothy Sam
Chief Appellate Judge

Dated: 7-8-02

Alvina Aubele
Alvina Aubele
Appellate Judge

Dated: 7/7/02

Joseph Plumer
Joseph Plumer
Special Appellate Judge