

**NON-REMOVABLE MILLE LACS BAND OF OJIBWE INDIANS
COURT OF APPEALS**

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District of Nay-Ah-Shing

IN THE COURT OF APPEALS

Melanie Benjamin, Chief Executive

08-APP 07

Appellant

vs.

Herb Weyaus, in his official and
Individual capacity,
Sandra Blake, in her official and
Individual capacity,
Harry Davis, in his official and
Individual capacity,
Marvin Bruneau, in his official and
Individual capacity.

ORDER

Mille Lacs Band Assembly.

Appellees.

On October 14, 2008 this Court entered its order in this case vacating a temporary stay entered by the Chief Justice and affirming the decision of the lower court, Special Magistrate Joseph Plumer presiding, finding that the action filed by the former Chief Executive against the Band Assembly involved a political issue not subject to the Court's jurisdiction to address. This Court also refused to hold the Appellees in contempt of Court for holding a removal hearing in violation of this Court's stay on the ground that the stay had been improvidently granted and therefore void. However, this Court did find that the Appellees had violated the Court's stay and entered a fine against the Appellees

in the amount of \$500. The Appellees requested reconsideration of that order contending that because this Court lacked subject matter jurisdiction over the complaint filed by the Appellant, and because the stay granted by the Chief Justice was ultimately vacated, this Court lacked the necessary jurisdiction over the Appellees to impose a penalty for violating a court order.

Oral argument was scheduled before the Court on the 20th day of November 2008 with the Appellees appearing through Solicitor General Rjay Brunkow. After reviewing the entire file in this case and considering the arguments made by the Solicitor General, this Court denies the request for reconsideration and reaffirms its previous decision that the Appellees violated a court order and should be subject to sanctions in the amount of \$500.

The Court is not going to rehash the facts of the underlying litigation brought by former Chief Executive Benjamin that resulted in this Court imposing sanctions against the Appellees herein. Suffice it to say Benjamin sought judicial intervention to prevent the Appellees from removing her as the Chief Executive of the Band and the Band Assembly and the Solicitor General's office consistently argued both in the proceedings before the Court of Central Jurisdiction and this Court that the Court lacked jurisdiction to consider Benjamin's request. After Special Magistrate Plumer denied the request for an injunction against removal proceedings going forward, Benjamin appealed to this Court and sought a stay of the removal proceedings by filing a stay request with the Chief Justice of this Court. In that stay request Benjamin also asserted that the appeal would require this Court to rule upon the constitutionality of removal procedures that were created by the Band Assembly to remove her and that such was within the authority of

this Court under Court Order #008. This Court ultimately found that Court Order #008 had nothing to do with the appeal. However, Chief Justice Aubele granted the stay of the removal proceedings pending the appeal. Despite knowledge of the stay, the Band Assembly proceeded to hold a removal hearing on Benjamin on October 8, 2008. Benjamin, in reliance on the Chief Justice's stay, opted not to participate in the removal hearing. There is no doubt but that the Appellees in this case had knowledge of the stay and knowingly opted to disregard it based upon their belief that the Chief Justice had erred in granting the stay. It was this action that resulted in this Court imposing sanctions upon the Appellees for knowingly acting in contravention of a court order.

Even if a Court acts without appropriate jurisdiction, the orders of that Court are entitled to deference until proven incorrect. A party, including a governmental entity, is not entitled to ignore a court order even if the government believes the Court is in error. In this case the Appellees argue that they cannot be subjected to a sanction because they were immune from the suit Benjamin brought and the Court had no authority to enter any type of order against it. This Court disagrees. Benjamin was entitled to appeal from the order of Magistrate Plumer dismissing her lawsuit against the Band Assembly and the Chief Justice was empowered under 24 MLBSA §2505 to grant a stay in order to preserve the jurisdiction of the Court of Appeals. Although this Court ultimately found that the stay was granted based upon an erroneous assertion by Benjamin that the appeal implicated the constitutionality of a Band statute, this does not change the fact that the Appellees knew there was a court order and consciously decided to ignore it. The fact that the Band Assembly was correct in its prediction that the entire Court would not sustain the stay does not excuse the willful violation of a Court order.

Nor is it correct, as the Solicitor General contended at hearing, that a sovereign could violate a court order with impunity if it is ultimately demonstrated that the sovereign was not subject to suit. If that were the law the sovereign could disregard court discovery or pre-trial orders and could never orderly administer a case involving a sovereign. Numerous courts have upheld sanctions against governments that are entitled to invoke immunity for violations of court orders, even when the government ultimately succeeded in the litigation. For example, neither the United States, nor the Department of Justice is immune from sanctions under the federal rules. *Adamson v. Bowen*, 855 F.2d 668, 670-671 (10th Cir. 1988) ("the United States is liable for attorney's fees 'to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.'") (quoting the Equal Access to Justice Act, 28 U.S.C. § 2412 (1981)); *Bradley v. United States*, 866 F.2d 120, 126 (5th Cir. 1989) ("All parties are expected to conform their conduct to these rules, or face sanctions for their failure to do so; this is even more true for the federal government, a party that regularly appears before the federal courts, knows the rules by which they operate, and is even at times a special beneficiary of those rules.")

There is precedent for the imposition of sanctions upon the Band in this Court. In Altman v. Mille Lacs Band of Ojibwe Indians, Case No. 00CV715 a Special Magistrate imposed sanctions upon the Band for failing to comply with discovery orders in a suit brought by the former Solicitor General of the Band against the Band for failing to pay severance pay he claimed he was entitled to. That decision was affirmed by the Court of Central Jurisdiction and not appealed by the Band to this Court.

Band law, at 24 MLBSA §1210, provides that any person who violates an order of

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this Court may be subjected to prosecution for contempt and a fine of \$500 assessed. Although this Court acknowledges that Band Assembly members are not criminally prosecuted for actions taken in their official capacities, the sanction available in that section should be used as a benchmark for determining appropriate civil penalties when the Band government knowingly violates a court order. It is difficult for this Court to understand how and why Band members and others who appear before this Court should be held accountable for abiding by court orders, yet the government is content that created this Court cannot be subject to penalties. This brings the Court into disrepute in the eyes of Band members and others. The fact that the Band Assembly created this Court, and as the Solicitor suggested at hearing has the authority to abolish it, does not persuade this Court that it lacks authority to impose a penalty upon the Appellees.

For the reasons stated herein this Court denies the Appellees' request for reconsideration. The Appellees shall have 10 days from the date of this order to pay the \$500 sanction as previously ordered.

Date: this 24th day of November 2008.

Alvin A. White
CHIEF JUSTICE

Kathy Hester
ASSOCIATE JUSTICE

Charmaine Boyd
ASSOCIATE JUSTICE

B. J. J.
SPECIAL ASSOCIATE

this Court may be subjected to prosecution for contempt and a fine of \$500 assessed. Although this Court acknowledges that Band Assembly members cannot be criminally prosecuted for actions taken in their official capacities, the sanctions available in that section should be used as a benchmark for determining appropriate fiscal penalties when the Band government knowingly violates a court order. It is difficult for this Court to understand how and why Band members and others who appear before this Court should be held accountable for abiding by court orders, yet the governmental entity that created this Court cannot be subject to penalties. This brings the Court into disrepute in the eyes of Band members and others. The fact that the Band Assembly created this Court, and as the Solicitor suggested at hearing has the authority to abolish it, does not persuade this Court that it lacks authority to impose a penalty upon the Appellees.

For the reasons stated herein this Court denies the Appellees' request for reconsideration. The Appellees shall have 10 days from the date of this order to pay the \$500 sanctions previously ordered.

Dated this 24th day of November 2008.

CHIEF JUSTICE

ASSOCIATE JUSTICE

Clarence Boyd

ASSOCIATE JUSTICE

B.J. Jones

SPECIAL ASSOCIATE

ATTEST: EBW