

NON-REMOVABLE MILLE LACS BAND OF OJIBWE

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DISTRICT OF NAY-AH-SHING

IN THE COURT OF APPEALS

Melanie Benjamin,

Case No. 09APP01

Appellant,

vs.

Joint Session of the Mille Lacs Band,
Interim Acting Chief Executive Herb Weyaus,
Interim Acting Secretary Treasurer Sandra Blake,
District III Representative Harry Davis,
District II Representative Marvin Bruneau,
All in their Official Capacities,

ORDER

Respondents.

The above-entitled matter came before the Court of Appeals on June 18, 2009,¹ upon the Motion of Respondents above-named to vacate the Memorandum Order of this Court dated March 17, 2009; and upon the Motion of Ms. Marge Anderson to vacate the same March 17, 2009 Memorandum Order, and to dismiss the proceedings.

Barb Cole, Deputy Solicitor General, appeared on behalf of Respondents above-named. Jeff Rasmussen, Attorney at Law, appeared on behalf of Ms. Marge Anderson.

I. INTRODUCTION

The present dispute initially arose when Appellant Melanie Benjamin filed a challenge on December 19, 2008 in the Court of Central Jurisdiction with respect to the

¹ By motion dated June 17, 2009, the Deputy Solicitor General moved for the recusal of Chief Justice Aubele from participation in the present appeal. In order to avoid any appearance of impropriety, Chief Justice Aubele decided to recuse herself from participation in the present matter.

decision of the Mille Lacs Joint Session not to certify her as a candidate for the Special Election to fill the vacant Chief Executive position. Appellant Benjamin argued before the Court of Central Jurisdiction that she met all qualifications for candidacy specified in the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe. The Joint Session argued that Appellant Benjamin was not eligible to be certified as a candidate because she was previously removed from office pursuant to the removal provisions included in Article X of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, and because she failed to answer the charges against her at the removal hearing. At the time she filed her complaint in the Court of Central Jurisdiction, Appellant Benjamin argued that the reason specified by the Joint Session for not certifying her as a candidate was inadequate; and that she had not even been charged with a criminal offense, let alone convicted of a felony or some other lesser crime against a tribe or tribal organization.

By order dated January 2, 2009, Special Magistrate B.J. Jones found that Appellant Benjamin received written notice on November 13, 2008, of the decision of the Band Assembly not to certify her as a candidate for the Primary Election scheduled to take place December 16, 2008. Despite her receipt of such notice, Appellant Benjamin did not file her request for emergency relief until December 19, 2008, three days after the Primary Election had taken place. Relying on the equitable doctrine of laches, Special Magistrate Jones ultimately concluded that Appellant Benjamin unreasonably delayed the assertion of her known right, which would make the grant of the requested relief prejudicial to the Joint Session, the Band membership and Ms. Marge Anderson, the prevailing candidate.

Appellant Benjamin then appealed to the Court of Appeals seeking relief from the decision of the Band Assembly not to certify her as a candidate. By Order dated March 17, 2009, the Court of Appeals concluded that Appellant Benjamin's claims were in the nature of election disputes pursuant to the Minnesota Chippewa Tribal Election Ordinance, and that the jurisdictional provisions of Mille Lacs Band Statutes provided for original jurisdiction over such disputes in the Court of Appeals.

The prior order of the Court of Appeals dated March 17, 2009 provided that:

1) The results of the Special Election held on December 16, 2008 are hereby invalidated.

2) A new election is ordered for the position of Chief Executive.

3) Appellant Melanie Benjamin shall be certified as a candidate in the new Special Election.

4) The prevailing candidate in the December 16, 2008 Special Election, Marge Anderson, shall maintain her position as Chief Executive on an interim basis until the successful candidate is seated following the new Special Election.

In reconsidering the earlier decision of the Court of Appeals, this Court recognizes that the arguments of the parties raise issues involving *inter alia*, whether this Court lacked subject matter jurisdiction to order the relief included in the March 17, 2009 Order; whether the interest of Ms. Anderson as the winning candidate in the Special Election required her participation in the dispute as a necessary and indispensable party; whether Appellant Benjamin's claims were timely filed according to applicable law; whether this Court should vacate its March 17, 2009 Order; and whether the suit upon which the March 17, 2009 Order was based should be dismissed.

I. SUBJECT MATTER JURISDICTION

By its Order of March 17, 2009, the Court of Appeals concluded that Appellant Benjamin's claims were in the nature of election disputes, and that 5 MLBSA Section 111 (f) provides for original jurisdiction in the Mille Lacs Band Court of Appeals for resolution of such disputes.

Respondent Joint Session of the Mille Lacs Band ("Joint Session") argues that the jurisdiction accorded by 5 MLBSA Section 111 (f) is limited to disputes brought by *candidates* for elections conducted pursuant to the Minnesota Chippewa Tribe Election Ordinance. The Joint Session argues that because Appellant Benjamin was not a *candidate* for the Special Election that this Court erred by exercising jurisdiction pursuant to 5 MLBSA Section 111 (f) as the Court of *original jurisdiction*. The Joint Session argues further that Appellant's claim that she was improperly denied certification as a candidate for the Special Election, was a final and unappealable decision (even though the decision to deny her certification as a candidate did not comport with the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe and the Minnesota Chippewa Tribe Election Ordinance #10). The Joint Session argues that Appellant Benjamin's non-certification was properly reviewed by the Court of Central Jurisdiction, and that this Court's role was limited to reviewing the findings and conclusions of the Court of Central Jurisdiction. The Joint Session argues that because this Court's Order of March 17, 2009 was outside of the powers granted by 5 MLBSA Section 111 (f), that the Order is void.

Ms. Anderson argues that Appellant Benjamin's claims, if categorized as an election contest, could have been brought in either the Court of Central Jurisdiction or in this Court because the two courts have concurrent jurisdiction over such a dispute. Ms.

Anderson further argues that Appellant Benjamin's choice to file her claim in the Court of Central Jurisdiction is binding upon her, and that this Court erred in its interpretation of the jurisdiction included in 5 MLBSA Section 111 (f) as a grant of original and exclusive jurisdiction in the Mille Lacs Band Court of Appeals for election disputes.

Ms. Anderson also argues that the review permitted by 5 MLBSA Section 111 (f) is limited to alleged violations of the Minnesota Chippewa Tribal Election Ordinance that have been specified in a notice of election contest, and that no new allegations will be considered. Ms. Anderson further argues that the remedies available following an Election Contest are limited to either affirming the election or ordering a new election, and that a new election is available only if the contestant demonstrates violations of the Election Ordinance which changes who was the winning candidate. Ms. Anderson argues that because Appellant Benjamin has neither alleged nor proved that Ms. Anderson won the Special Election because of a violation of the Election Ordinance, that this Court exceeded its authority by ordering a new election.

Proper consideration of the jurisdictional arguments of the Joint Session and Ms. Anderson requires analysis of the subject matter jurisdiction provisions found in Section 111 of Mille Lacs Band Statutes.

The pertinent statutory provisions provide:

(d)(1) The Court of Central Jurisdiction shall have jurisdiction over all civil matters in which the Non-Removable Mille Lacs Band of Chippewa Indians, any of its political subdivisions or entities, or its officers, appointees or employees are parties in their official capacity. Nothing herein shall be construed as a waiver of sovereign immunity of the Band unless specifically authorized in accordance with Band law or by specific Band Statute.

(2) The Court of Central Jurisdiction has exclusive jurisdiction over all suits in which the Band officials are defendants where declaratory and equitable relief is sought.

(f) The Court of Appeals shall have original jurisdiction over election disputes pursuant to the Minnesota Chippewa Tribal Election Ordinance...

5 MLBSA Section 111 (emphasis added).

Ordinarily, the sovereign immunity of a tribal government shields the tribal government, its individual members and its employees from suits if the challenged conduct took place in the official capacity of the action. The above-referenced jurisdictional provisions provide for limited waivers of the Mille Lacs Band's sovereign immunity so long as the mandates of the jurisdictional provisions are followed.

Appellant Benjamin's Complaint in the Court of Central Jurisdiction dated December 19, 2008, requested declaratory and equitable relief in the form of a temporary restraining order. Appellant Benjamin sought to enjoin the effect of the Primary Election which had already taken place. Mille Lacs Band statutes at 5 MLBSA Section 111 (d) (2) provides that: "The Court of Central Jurisdiction has exclusive jurisdiction over all suits in which Band officials are defendants where declaratory and equitable relief is sought". Because Appellant Benjamin's complaint named as Defendants the Joint Session of the Mille Lacs Band as well as each individual Joint Session member, and because Appellant Benjamin sought declaratory and equitable relief, the complaint was properly before the Court of Central Jurisdiction pursuant to 5 MLBSA Section 111 (d) (2).

This Court's earlier Order of March 17, 2009 concluded that original jurisdiction over Appellant Benjamin's claims was properly before the Court of Appeals pursuant to 5 MLBSA Section 111 (f) because the controversy arose as an alleged violation of the procedures included in the Minnesota Chippewa Tribal Election Ordinance. After

reconsidering this conclusion with respect to the issue of jurisdiction in our March 17, 2009 Order, the Court of Appeals now concludes that consistent with the jurisdictional statutes above-referenced, Appellant Benjamin's election-related claims for declaratory and equitable relief could have been brought in either the Court of Appeals or the Court of Central Jurisdiction. The original jurisdiction in the Court of Appeals over election-related disputes pursuant to 5 MLBSA Section 111 (f) is not exclusive to the Court of Appeals. Instead, the original jurisdiction in the Court of Appeals for election-related disputes is concurrent with the original jurisdiction in the Court of Central Jurisdiction for disputes seeking declaratory and equitable relief against Band officials pursuant to 5 MLBSA Section 111 (d) (2). Appellant Benjamin's election-related claims seek as a remedy declaratory and equitable relief against Band officials.

After reconsidering the Order dated March 17, 2009, this Court now concludes that the Court of Appeals should have been exercising jurisdiction as a reviewing court, and should not have considered Appellant Benjamin's claims as a court of original jurisdiction. Because there was concurrent jurisdiction in the Court of Appeals and in the Court of Central Jurisdiction over the election-related claims where Appellant Benjamin sought declaratory and equitable relief, and because Appellant Benjamin chose her forum by filing her claims in the Court of Central Jurisdiction, the Court of Appeals should have proceeded as a reviewing court. The Court of Appeals should have reviewed the January 2, 2009 decision of the Court of Central Jurisdiction as a reviewing Court. This Court erred when it considered the claims of Appellant Benjamin as a court of original jurisdiction.

II. NECESSARY AND INDISPENSIBLE PARTY

Ms. Marge Anderson was the prevailing candidate in the Mille Lacs Band's Special Election held on December 16, 2008, for the purpose of filling the vacant position of Chief Executive. Ms. Anderson was not joined as a party in the lawsuit commenced by Appellant Benjamin in the Court of Central Jurisdiction, which sought injunctive relief and an invalidation of the results of the Special Election. After reconsidering its decision of March 17, 2009 in light of the arguments of the parties, this Court agrees with Ms. Anderson that she was a necessary party in the suit commenced by Appellant Benjamin.

Mille Lacs Band Statutes adopt by reference the Federal Rules of Civil Procedure. Rule 19 of the Federal Rules of Civil Procedure counsel when a party is a necessary and indispensable party in a particular lawsuit. Rule 19 inquiries involve questions of fundamental due process, and require that a necessary and indispensable party be provided with notice and an opportunity to be heard when a significant right impacting that party is at issue. Rule 19 provides that a person is a necessary and indispensable party if:

(1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

When applying the considerations of Rule 19 to the facts and circumstances of the present dispute it is clear that Ms. Marge Anderson was a necessary and indispensable party in this case. Ms. Anderson was the prevailing candidate in the Special Election to

fill the vacant Chief Executive position. In Ms. Anderson's absence complete relief could not be accorded among those already parties. Additionally, Ms. Anderson's absence from the proceeding commenced by Appellant Benjamin impaired her ability to protect that interest. This Court's Order of March 17, 2009, removed Ms. Anderson from her position as Chief Executive even though she did not have an opportunity to be heard on this issue.

This Court concludes that because Ms. Anderson was the prevailing party in the Special Election she was a necessary and indispensable party in the lawsuit commenced by Appellant Benjamin challenging that Special Election. The Court of Appeals erred when it impacted Ms. Anderson's substantial interest in retaining her elected position without joining her as a necessary and indispensable party.

CONCLUSION

In our Order dated March 17, 2009 the Court of Appeals focused in large part on the decision of the Joint Session not to certify Appellant Benjamin as a candidate for the Primary Election to fill the vacant position of Chief Executive. This Court believed that the Joint Session's decision was repugnant to its duty to certify all candidates for elective office who meet the constitutional qualification for candidacy. The Court of Appeals still believes that all applicants for candidacy for Band elective offices who meet the constitutionally- required qualifications should be certified as candidates. Upon the present reconsideration of the March 17, 2009 Order, however, the Court of Appeals now concludes that it is without authority to remedy the failure of the Joint Session to certify Appellant Benjamin as a candidate.

Upon reconsideration, the Court of Appeals now concludes that its role in the present dispute is that of a reviewing Court, where the Court's responsibility is to review the decision of the Court of Central Jurisdiction dated January 2, 2009.

Appellant Benjamin brought her claims in the Court of Central Jurisdiction. The Court of Central Jurisdiction had subject matter jurisdiction over the dispute pursuant to 5 MLBSA Section 111 (d) (2), because the suit was brought against Band officials, and the suit sought declaratory and equitable relief. The Court of Central Jurisdiction concluded that Appellant Benjamin waited too long to challenge the Band Assembly's failure to certify her as a candidate, and that her claims should be dismissed under the equitable doctrine of laches. The Court of Central Jurisdiction did not commit reversible error when it decided that Appellant Benjamin's claims should be dismissed pursuant to the equitable doctrine of laches. Appellant Benjamin received notice from the Band Assembly on November 13, 2008, that she was not certified as a candidate. By waiting until December 19, 2008 to challenge the decision not to certify her, she simply waited too long. The primary election had already been held, and the winning candidate was already named - - Ms. Marge Anderson. To compound the problem Appellant Benjamin did not name Ms. Marge Anderson as a defendant in her challenge before the Court of Central Jurisdiction.

The Court of Central Jurisdiction correctly concluded that Appellant Benjamin's claims are barred by the equitable doctrine of laches.

Upon reconsideration the Court of Appeals hereby Orders and Decrees that:

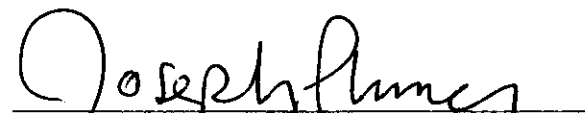
- 1) The Order of the Court of Appeals dated March 17, 2009, is hereby VACATED.
- 2) The decision of the Court of Central Jurisdiction to deny the emergency injunctive relief to Appellant Benjamin on the ground of laches is hereby AFFIRMED.
- 3) The claims of Appellant Benjamin are hereby DISMISSED.

Dated: 8/19/09

BY THE COURT:


Kathy Hedstrom, Associate Justice


Clarence Boyd, Associate Justice


Joseph Plumer, Special Justice