

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

Herb Weyaus,

Plaintiff

Case No. 2010-App-0002

vs.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

General Election Board of
The Mille Lacs Band of Ojibwe
Defendant

The Court of Appeals, in an exercise of its original jurisdiction,¹ convened on the 25th day of June 2010 to hear the election contest of the Plaintiff to the results of the recent General Election of the Band that resulted in his loss in the election for Secretary-Treasurer to Curt Kalk by 99 votes. The Plaintiff appeared to represent himself and the Solicitor's office, through Barbara Cole, appeared for the Defendants. Candidate Kalk also appeared in person and through his attorney, Kevin Quigley. The Court heard argument from all Parties and also gave the parties the opportunity to call witnesses. No party called witnesses but instead opted to rely upon oral argument. Mr. Kalk submitted a legal memorandum of law that the Court has also considered.

¹ It should be noted that the Mille Lacs Band, by Joint Resolution 12-04-134-08, dated December 11, 2007 opted out of the MCT's method of resolving election disputes and affirmatively vested this Court with the original jurisdiction to hear election contests.

Initially the Court must address the Plaintiff's arguments that he was denied due process because he was only apprised of the hearing date on June 24, 2010. The Court reviewed the file and concludes that the Plaintiff was on travel when the Court set the hearing for June 25, 2010 on June 21, 2010 but that he was notified by cell phone by the Court process server of the date and he asked the process server to serve the paperwork upon the Band Assembly Parliamentarian, Sylvia Billebrun, and that request was honored. The Court therefore finds that the Plaintiff had sufficient notice of the hearing set for the 25th of June, 2010. This Court has to act in accordance with the election timelines and therefore had no discretion to continue the hearing to a later date.

Based upon the Court's review of the matter it enters the following findings of fact:

1. That on June 8, 2010 the Mille Lacs Band of Ojibwe Indians conducted a general election in accordance with MCT Uniform Election Ordinance 10;
2. That Plaintiff was one of the candidates for the position of Secretary-Treasurer along with candidate Curt Kalk;
3. That the Band recently changed the process for absentee voting so as to require all absentee voters wishing to cast a ballot in person to come and vote in District 1 instead of the other Districts, as was allowed in the past;
4. That Candidate Weyaus asserts that there was no process to assure that Band members could not vote both at their District and to vote absentee at District 1. Although he did not provide evidence to show that any Band members did vote twice in this way, he argued that he heard that at least one Band member had voted twice. He provided no proof of this at hearing;

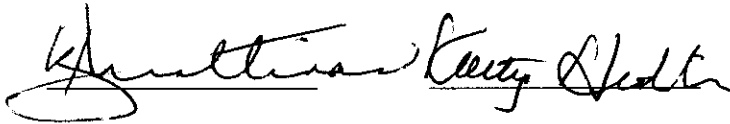
5. That the Plaintiff did not request a recount of the absentee ballots with the General Reservation Election Board within 3 days of the election as required by Chapter III, Section 1 of the MCT Uniform Election Ordinance #10, thus the only issue before the Court at the hearing was whether there were election irregularities that impacted the result;
6. That under Band law the burden of proof is upon the Plaintiff to demonstrate by clear and convincing evidence that due to irregularities in the General Election the election results should be rejected. In this case the Plaintiff has failed to carry this burden because he failed to show that there were any election irregularities in the process of absentee voting. That even had he shown some irregularity such would not have resulted in a 99 vote shift in his favor;
7. The Plaintiff's challenge to the process of absentee voting, even if it is not barred by his failure to ask for a recount of the votes, is not sufficient to overturn the results of the election for the Secretary-Treasurer of the Band;
8. The Plaintiff was not denied due process of law when he was notified on June 21, 2010 of the hearing date because he was travelling to Rapid City, South Dakota for the NCAI mid-year conference.

Based upon the foregoing findings of fact this Court concludes that the Plaintiff has failed to demonstrate by clear and convincing evidence that any irregularities occurred in the June 8, 2010 Band General election and therefore it is hereby

ORDERED, ADJUDGED, AND DECREED that the election contest filed by the Plaintiff to the results of the June 8, 2010 General Election for Secretary-Treasurer is hereby DENIED.

So ordered this 25th day of June 2010.

BY ORDER OF THE COURT:

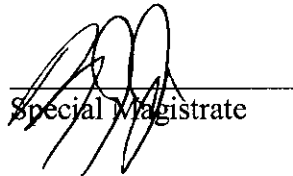


Chief Justice

Associate Justice



Associate Justice


Special Magistrate

ATTEST: 
Clerk of Courts