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

2012 JUL -6 PM 4: 20

District of Nay-Ah-Shing

IN THE COURT OF APPEALS

Herb Weyaus,

Case No. 2012-APP-01

Plaintiff

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

General Reservation 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 28th day of June 2012 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 Chief Executive to Melanie Benjamin. The Plaintiff appeared to represent himself and the Solicitor's office appeared for the Defendants. Darcie Big Bear from the Election Board also appeared in person. The Defendant moved this Court to deny the appeal as being untimely under the Minnesota Chippewa Tribe's Election Ordinance #10 (revised 12/19/2011). That Ordinance requires a candidate challenging the results of his own election to file by "mail, personal delivery or facsimile with both the Reservation

¹ It should be noted that the Mille Lacs Band, by Joint Resolution 14-04-96-12, dated January 5, 2012 opted out of the MCT's method of resolving election disputes and affirmatively vested this Court with the original jurisdiction to hear election contests.

Election Contest Judge, at the judge's office and the Executive Director or his designee, at the offices of the MCT by 4:30 PM of the seventh day following the day of the election." The latter provision- requiring a simultaneous filing with the MCT- was apparently added since 2009 because the version of this ordinance did not contain the requirement of filing with the MCT until 2011.

It is undisputed that the contestor did not file with this Court until June 20, 2012- one day late. In addition, Brian Brunelle, Director of Administration for the MCT, has submitted a letter to this Court indicating that the contestor did not e-mail his challenge to the MCT until June 20, 2012 at 11:30 AM. The election was held on June 12 and the Election Calendar, provided to all candidates, indicated that June 19, 2012 is the last day to file a contest of the General Election Results.

The contestor contended that he is not a lawyer and that he did file with Ms. Big Bear on June 19, 2012 before 4:30 and that she did not advise him that he was filing in the wrong place. He also indicated he called the MCT offices and attempted to communicate with Gary Frazier, the Executive Director, on the 19th but did not glean any helpful information from that call. He contends that he did not have access to a fax machine on the 19th to fax his contest to the MCT. He also insinuates that it makes no sense for this Court to be designated as the Contest court for election disputes because this Court only hears appeals from final decisions of the lower court.

This Court finds that the contest is untimely and must be denied. Because Joint Resolution 14-04-96-12 constitutes a limited waiver of the Band's immunity from suit, it must be construed strictly and its adherence rigidly enforced. Under this standard the contestor did not file his contest timely with either with which he was charged with filing

- this Court or the MCT. The fact that he did file it with Darcie Big Bear, a member of the Defendant General Reservation Election Board, does not substitute for a filing with this Court or the MCT. Ms. Big Bear stated that she was not aware whether the contestor was filing the document with this Court or the MCT when she was hand-delivered the contest some 4 minutes before it was due with this Court and the MCT. Even if Ms. Big Bear was an agent of this Court, there is no way she could have processed the filing through this Court on the 19th by 4:30. In addition, she certainly could not be considered an agent of the MCT, thus the simultaneous filing requirement was not met under the revised Election Ordinance #10.

This Court also rejects the argument that this Court of Appeals cannot serve as the Election Contest Court for election contests. It has already been determined that each Band of the MCT has the ultimate authority to determine which entity shall serve as the Reservation Election Contest Judge and this determination is binding upon the MCT. The Plaintiff in this case should be familiar with this as he acknowledged he was aware that the Band had, by resolution, appointed this Court as the Reservation Election Contest "Judge" for purposes of hearing election contests. In fact, in 2010 this Court heard an election contest from Mr. Weyaus regarding his candidacy for Secretary-Treasurer in 2010. The Court therefore finds that there is no irregularity in Band Joint Resolution 14-04-96-12.

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

1. That on June 12, 2012 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 Executive Director along with candidate Melanie Benjamin;
3. That all candidates were provided with the Election Calendar showing that under Minnesota Chippewa Tribe Election Ordinance #10, as revised on December 19, 2011, the deadline for filing a contest with the Election Contest Judge and the MCT was June 19, 2012 by 4:30 PM;
4. That on June 19, 2012 at approximately 4:26 PM the Plaintiff delivered to Election Board member Darcie Big Bear his election contest to the General Election results for Executive Director laying out several grounds for his contest;
5. That Darcie Big Bear is not an employee of this Court and was not charged with the responsibility of taking filings with this Court;
6. That the Plaintiff did not file his election contest with this Court until June 20, 2012 and did not file with the MCT until June 20, 2012 by e-mail;
7. That the Band Assembly acted legally by its enactment of Joint Resolution 14-04-96-12, designating this Court as the Election Contest Judge on the Mille Lacs reservation.

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 12, 2012 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 12, 2012 General Election for Chief Executive is hereby DENIED.

So ordered this 29th day of June 2012.

BY ORDER OF THE COURT:

K. Churchill

Chief Justice

Clarence Boyd

Appellate Justice

B. J. Jones

Special Magistrate

ATTEST:

Gilda E. Bush
Clerk of Courts