

NON-REMOVABLE MILLE LACS BAND OF OJIBWE

DISTRICT OF NAY-AH-SHING

2016 MAY -9 PM 1:14

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COURT OF APPEALS

Irene Wade Benjamin,

Contester,

Court File No.: 2016-APP-03

v.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL DECISION**

General Reservation Election Board,

Respondent.

A Notice of Contest was filed on April 8, 2016. An election contest hearing was held on May 2, 2016, before this Court pursuant to the Minnesota Chippewa Tribe Election Ordinance (as amended to 11/09/15) and Mille Lacs Band Statutes. Appearing at the hearing and challenging the election was Irene Wade Benjamin, the contester. The General Reservation Election Board ("Election Board") was represented by Todd Matha, Solicitor General. Also present was Deanna Sam, Chair of the Election Board.

The MCT Election Ordinance (as amended 11/09/15) ("MCT Election Ordinance") is the law applicable to this election contest. Pursuant to MCT Election Ordinance, Section 3.2(B)(1), the burden of proof rests with the contester who must show by clear and convincing evidence that violations of the Election Ordinance by Election Board members occurred. MCT Election Ordinance, Section 3.2(B)(1) further provides that there is a presumption of correctness in favor of the Election Board. MCT Election Ordinance, Section 3.2(B)(8) requires that the contester demonstrate violations of the Election Ordinance that change who was the winning candidate. These provisions set a very high bar for a contester to prevail.

Pursuant to the MCT Election Ordinance, Section 3.2(B)((9), the Court now makes the following findings of fact, conclusions of law and final decision:

FINDINGS OF FACT

1. Irene Wade Benjamin (“Contester”) was a candidate for the District I Representative position in the primary election held on April 5, 2016.

Identification required to vote

2. Contester was not permitted to vote at the District I Community Center when she requested a ballot on primary election day because she did not have the type of identification required by the District I precinct.

3. Contester presented her St. Cloud State University student identification card, which included her picture; but the precinct worker did not accept the identification card as proper identification.

4. Deanna Sam, the Chair of the Election Board testified that instructions to voters were posted on the table where voters sign in, and in each voting cubicle. The instructions listed the requirement that voters produce valid photo identification. While Ms. Sam was not working at the District I precinct on primary election day, she said that if she were she would have permitted contester to vote if she presented her St. Cloud State University photo identification card.

5. When Ms. Sam was trained by the Executive Director of the Minnesota Chippewa Tribe with respect to the MCT Election Ordinance and proper voting procedures she was instructed that if proof of identity were to be a requirement at a particular precinct in order to permit a person to vote, that the proof of identify requirement should be applied across the board to all persons presenting themselves to vote.

6. There is no evidence that the requirement that proper identification be presented was not uniformly applied at the District I voting precinct.

Observing the tally

7. At the election contest hearing, contester showed a video from her cell phone, which verified that she was not permitted to observe the ballot count at the District I precinct at the close of voting on April 5, 2016, at 8:00 p.m.

8. Ms. Sam testified that the doors at the District I precinct were locked at 8:00 p.m. because voting had closed, and no further voting was permitted after 8:00 p.m. Ms. Sam testified that the tally had not yet occurred at the time contester was requested to leave the District I precinct; and that the tally took place once the ballots were received from all other precincts. Ms. Sam said that contester left the premises before the start of the tally of votes.

9. Contester requested a recount of the primary election ballots.

10. Ms. Sam testified that a recount of the primary election ballots was conducted; and the original tally of the primary votes for the District I Representative was verified when the recount of the ballots resulted in the exact same counts as the original tally of the primary votes.

CONCLUSIONS OF LAW

11. The contester possesses standing to contest this election pursuant to MCT Election Ordinance Section 3.2(A)(1).

12. MCT Election Ordinance, Section 2.2(A)(4) provides that voters may be required to provide proof of identify. There is no evidence that contester was treated differently than other voters with respect to the requirement that proof of identify be produced as a condition to voting. However, the fact that contester had been certified as a candidate for the District I Representative position in the current primary election demonstrates that she was eligible to vote in the District I

precinct. Considering the totality of circumstances, contestor has shown by clear and convincing evidence that she was eligible to vote, and that she was not permitted to vote in the primary election.

13. Contestor did not prove by clear and convincing evidence that had she been permitted to vote in the primary election the outcome of the election for the District I Representative position would have been different.

14. No violation of the MCT Election Ordinance occurred when contestor was not permitted to remain at the District I precinct after the close of voting, and before the tally of votes was conducted.

15. Because this Court has jurisdiction over this election contest pursuant to MCT Election Ordinance, Section 1.7(D), 3.2(B)(1) and 3.2 (B)(2); and because these jurisdictional provisions limit the Court to reviewing alleged violations of the MCT Election Ordinance, any alleged violations of the Indian Civil Rights Act (25 U.S.C. Section 1301) and the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Article XIII are non-justiciable issues before this Court.

FINAL DECISION

The contestor did not establish by clear and convincing evidence that violations of the MCT Election Ordinance changed who was the winning candidate for the District I Representative position. As a result, in accordance with MCT Election Ordinance, Section 3.2(B)(8), the results of the primary election are affirmed.

BY THE COURT:

Dated: May 9, 2016

Brenda Moose
Justice Brenda Moose

Clarence R. Boyd
Justice Clarence Boyd

Joseph Plumer / M.T.
Special Justice Joseph Plumer