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Sault Ste. Marie
Chippewa Tribal Court Appeals

SAULT STE. MARIE CHIPPEWA TRIBAL COURT OF APPEALS

JANET LIEDEL,
Appellant,

-vs-

Case No. APP 21-02

**THE ELECTION COMMITTEE OF THE
SAULT STE. MARIE TRIBE OF CHIPPEWA
INDIANS,**

Appellee.

Before: Feleppa, Corbiere, Dietz, Jump, and Wichtman, Appellate Judges. /

Decided January 18, 2022

OPINION AND ORDER

Feleppa, Appellant Judge, who is joined by Appellate Judges Corbiere, Dietz, Jump, and Wichtman. This Court heard oral arguments for this matter on October 1, 2021, through a hybrid zoom and in-person.

As explained more fully in the discussion below, this Court affirms the Election Committee's Decisions dated July 15, 2021 and July 20, 2021.

FACTS & PROCEDURAL BACKGROUND

Appellant Janet Liedel filed four complaints with the Election Committee, largely concerning social media posts. In two cases, the Election Committee found violations involving social media posts that had not been removed from the immediately prior election cycle. The remedy ordered was removal of old campaign materials. The remaining two complaints and Election Committee Decisions dated July 15, 2021 and July 20, 2021 are the subject of this appeal.

The first complaint dated June 14, 2021 alleges that Aaron Payment (as Chairperson of the Sault Tribe) is campaigning outside of an election cycle prior to the Notice of Election. Appellant attached photocopies alleging to be Mr. Payment's Facebook as the alleged violations:

- a. "Supporting At Large Members is not only something you say, it's something YOU DO. Election Day next year is 6/23/2022"
- b. "We sure could use someone like George Parrish on our Board right now who would treat all members equally" next to a photograph of Mr. Payment along with Mr. Parish.
- c. A June 15, 2021 board agenda with action items outlining two proposals differentiating as either a \$1,000 or \$2,000 for distribution and identification of which current board members support either proposal and their election status in 2022.
- d. An October 21, 2020 Representative Report of Chairman Payment, which states in bold print, "For 'AT LARGE' MEMBERS TO BE HEARD & REPRESENTED – REGISTER TO VOTE: 1-800-251-6597."
- e. Facebook posts of Isaac McKechnie regarding distributions to at-large members with Mr. Payment responding, "This is just awesome. It gives me hope. In less than a year, we can be out with the old and in with the new. It is refreshing to see a statement of caring and equality."

The second complaint dated July 7, 2021 alleges that Chairman Payment is campaigning in violation of the Election Ordinance by directing individuals to his private Facebook account in his Unit Reports section, Tribal Radio Ads, and various advertisements in local newspapers. Additional allegations related to Election Ordinance violations included:

- a. Campaigning on behalf of George Parrish;
- b. Social media posts of the Mr. Payment including "EQUALITY = ME & YOU; NOT ME BUT NOT YOU. Remember this on ST Election Day 6/23/2022;
- c. Encouraging tribal members to register to vote;
- d. Materials being presented to the board to expand purchase and referred services area to include Emmet and Cheboygan counties; and
- e. Social media posting(s) concerning the distribution of COVID-19 Cares Act and related emergency funding and how to distribute to tribal members not residing within the service area.

Pursuant to STC § 10.120 (2)(c), the Election Committee convened to discuss the Appellant's June 14, 2021 allegations on June 22, 2021 and found by written order issued July 15, 2021, that the literature published by Mr. Payment did not amount to "campaigning" as defined by the Election Ordinance. The Election Committee further held that Mr. Payment was instead a proffering of his "philosophical views" and a get-out-the-vote effort.

On a date certain, after the filing of a supplemental complaint dated July 7, 2021 by the Appellant, the Election Committee reconvened and by written order dated July 20, 2021 held that no violations occurred. However, the Election Committee went further and included an additional warning that the Chairman was “cautioned” about his postings on social media and that some of his statements were transitioning from philosophical views into campaigning statements. The Chairman was encouraged by the Election Committee’s Order to, “recognize the difference and lead by example.”

Finding no violations, no sanctions were levied by the Election Committee. Appellant filed a Notice of Appeal dated July 22, 2021. On August 2, 2021, Appellee filed a Motion to Dismiss arguing that the Appellant lacked the requisite standing under STC § 82.201. This Court took the Appellees Motion under advisement, Appellant did not respond. Despite an opportunity to supplement her Notice of Appeal, Appellant stood on her original filing without supplement but did request oral argument. Appellee filed its brief on September 2, 2021. Appellant did not respond. Oral argument was held by this Court on October 1, 2021. After oral argument, following deliberation by the Court, Judge Feleppa orally delivered the opinion of the Court consistent with this Opinion and Order.

JURISDICTION AND STANDARD OF REVIEW

Tribal Code § 10.120(7) allows for direct appeal to this Court in limited original circumstances. Under Tribal Code § 10.120(7) decisions of the Election Committee “issued pursuant to subsection (2)(c) may be appealed to the Sault Tribe Chippewa Tribal Court of Appeals pursuant to Chapter 82.” Tribal Code Section 10.120(2)(c) refers to the decisions of the Committee where it will “render a decision in writing and once all appeals have been exhausted according to Subsection (7), publish the decision.” Chapter 82 “establishe[s] the procedures by which appeals are taken” STC § 82.101. Section 82.201 establishes who may appeal the decision of the Election Committee and the limitations of such an appeal: (1) a challenge to the decision of the Election Committee must allege that the Election Committee acted in a manner not consistent with Tribal law that denied an appellant a substantive right or caused them to suffer an unjust result; and (2) the challenge must be personal to Appellant and not a generalized grievance. Section 82.202 sets forth that an appeal is proper before this Court if it “concerns a final decision of the Election Committee rendered pursuant to Tribal Code Chapter 10 at Section 10.120(c).”¹

¹ In rendering its April 18, 2016 Opinion in Michael Jay Lumsden v. Sault Sainte Marie Tribe of Chippewa Indians Board of Directors and Election Committee this Court recognized that Tribal Code Section 82.202 contains a typo as it references Tribal Code Section

Accordingly, this Court has limited jurisdiction to hear appeals where an Appellant has filed a proper challenge or contest in accordance with § 10.118 and the Election Committee meets and renders a decision in writing in accordance with § 10.120. STC § 10.120(2)(c). When such a decision is rendered in accordance with § 10.120(2)(c), the standard of review for this Court “shall be abuse of discretion and shall be defined as the Election Committee acting in an arbitrary or unreasonable way that results in an Appellant being unfairly denied a substantial right or being caused to suffer and unjust result.” STC § 82.210. “This Court will not substitute its judgment for the judgment of the Election Committee, unless the Election Committee’s actions were arbitrary or unreasonable.” *Catherine Hollowell v. Sault Ste. Marie Tribe of Chippewa Indians Election Committee*, APP 14-02, p. 2 (May 28, 2014).

Here, Sault Tribe Code limits this Court’s purpose to determine whether the Election Committee’s decisions relative to Ms. Liedel’s complaints were arbitrary and unreasonable. This Court may affirm, modify, vacate, set aside, reverse, or remand for further proceedings as may be just and equitable only if there was a clear error. This is a more rigorous standard than *de novo* and absent this Court finding a clear error of judgment must allow the Election Committee’s decision to stand and will not substitute our judgment.

DISCUSSION

As threshold matter, the issue of standing was raised by Appellee contending that Appellant does not have the required particularized injury under the Code to allow this Court to hear and decide the matter. STC 82.201 requires a party to suit have an individualized stake or harm that can be addressed in the outcome of a case. This is contrasted to a low threshold for standing to file a complaint with the Election Committee where complaints are permitted from, “Any member”. STC 10.119. Therefore, it was proper for the Appellant to submit her concerns for violation to the Election Committee for review. However, the laws of the tribe are expressly written to permit Appellate Court review of Election Committee decisions in certain instances. This is not one of them.

It is worth noting that thirteen years ago, the question of standing was raised in an appeal, and this Court offered a broad interpretation of standing based on then existing law opining, “It is our understanding that historically the leaders of our Tribe welcomed the feedback from all tribal members on the wisdom of the decisions of tribal leaders. It would therefore be consistent with this tribal custom to allow any tribal member

10.120(c), and there is no such provision of the Tribal Code. This Court interpreted the typo in Tribal Code Section 82.202 to reference Tribal Code Section 10.120(2)(c).

to challenge the decisions of the Election Committee, as decisions of the Election Committee are fundamental to the internal governance of the Tribe.” App 08-05 *Lidel and Freiheit v Election Committee* In 2008, this Court would thus have been permitted to review the Election Committee decisions and exercise its jurisdiction.

However, the duties and powers of the court are set by the governing body. Const. 1975, Article VII Sec. 1(g). In 2011, the governing body exercised that authority and approved Resolution 2011-106 modifying the Subchapter two of STC Chapter 82. The revised subchapter 2 narrows the jurisdiction of this Court to those appeals filed in which the injury is personal to the filing party; thus, narrowing the standing requirements that must be met for a matter to proceed.² STC 82.201.

Appellee correctly points out that Appellant has no specific harm, and any injury is shared by all members of the tribe. At oral argument, Appellant was unable to provide particularized injury from these posts. This Court finds that Appellant cannot overcome the personal injury requirement in STC 82.201 because she has not demonstrated that her complaints are anything but generalized grievances. Further, this Court finds based on record, (1) there is no current election cycle running; (2) No person is a candidate at this time within this meaning of STC 10.103(5), including Mr. Payment; and (3) the Appellant has shown no personal injury as it relates to the standing requirements under the STC 82.201.

Lacking the necessary standing for appeal, this Court cannot further examine the reasonableness of the Election Committee’s decisions. Therefore, the July 15, 2021 and July 20, 2021 Election Committee orders are affirmed.

² The allegation of injury by the Appellant must be personal to said party and may not be a generalized grievance shared in substantially equal measure by all or a large class of similarly situated parties. Emphasis added. STC 82.201