

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

COURT OF APPEALS

Michael Jay Lumsden v. Sault Ste. Marie Tribe of Chippewa Indians Election Committee

APP-16-03

Decided March 22, 2016

BEFORE: CAUSLEY, DIETZ, FINCH, WARNER and WICHTMAN Appellate Judges.

Order Responding to Motion for Reconsideration

Warner and Wichtman, Appellate Judges, who are joined by Appellate Judges Finch, Dietz and Causley.

For the reasons spelled out below, Appellant's Motion for Reconsideration is denied.

Procedural History

The Constitution and Bylaws of the Sault Ste. Marie Tribe of Chippewa Indians ("Constitution") establishes the criteria to hold office as a member of the governing body of the Tribe. Art. IV, § 3. The Constitution further provides that "[t]he board of directors shall enact appropriate ordinances to implement nominations and the holding of elections." Art. V, § 6. Pursuant to its Constitutional Authority, the board of directors enacted Chapter 10 of the Sault Tribe Code "to establish authority for holding tribal elections." STC § 10.101, Election Ordinance. The Election Ordinance establishes the Election Committee; and, generally, the framework for conducting tribal elections including requirements for candidacy, nomination procedures, and the circumstances under which contests and complaints may be filed. STC §§10.108, 10.110-11, 10.118-120.

The 2016 Notice of Election was posted by the Election Committee on January 29, 2016 establishing the timeline of the election. On or about February 19, 2016 Appellant Lumsden filed a Letter of Intent to run for office pursuant to § 10.111. On or about February 26, 2016, the Respondent sent a letter ("Election Committee Letter") to the Appellant informing him that the Election Committee was statutorily prohibited from certifying him as a candidate. The Appellant filed the instant matter with this Court on March 7, 2016 challenging, for the most part, the constitutionality of § 10.110(1)(j) of the Election Ordinance. In response to Appellant's appeal, Appellee submitted a motion for summary disposition. On March 11, 2016, this Court released its opinion granting the motion for summary disposition, as Appellant's appeal was not ripe at that time nor had he availed himself of the process outlined in the Tribal Code. On March 17, 2016, Appellant filed a *Request for Reconsideration* of this Court's March 11, 2016 decision.

Jurisdiction and Standard of Review

Section 10.120(7) allows for appeal in limited circumstances under 10.120 (2)(c) in which decisions of the Election Committee "may be appealed to the Sault Tribe Chippewa Tribal Court

of Appeals pursuant to Chapter 82. Chapter 82 “established the procedures by which appeals are taken....” STC § 82.101. Chapter 82 establishes when this Court can hear appeals generally. STC § 82.111. Section 82.201 establishes who may appeal the decision of the Election Committee, the limitations of such an appeal (1) challenging the decision of the Election Committee alleging the Election Committee acted in a manner not consistent with Tribal law; 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.” Moreover, Tribal Code Section 82.128 gives this Court authority to consider requests for reconsideration of its decision.

Discussion

In its *Request for Reconsideration*, Appellant essentially makes two arguments. First, Appellant makes several arguments in equity asserting that he will be unfairly treated if this Court does not reverse its previous decision. Second, Appellant makes several arguments based on federal law that the tribal code provision at issue is not constitutional. For the reasons detailed below, Appellant’s arguments are not persuasive.

First, and most importantly, Appellant has offered no new facts, law, or circumstances in his motion that seem to warrant reconsideration. Appellant cites to several federal court decisions. He fails, however, to explain how such decisions are applicable or binding on this Court. Moreover, the *Request for Reconsideration* does not address the rationale presented by this Court in its March 11, 2016 initial order in the matter. For example, a lengthy analysis related to what would be a “final decision” of the Election Committee was not necessary to reach this Court’s result, as it was clear that the courtesy letter did not constitute such a decision. Further, the decision of the Election Committee from which the Appellant claims to be harmed is still prospective as the date for availability of and filing the nomination petitions has not passed.

Second, Appellant’s equitable arguments are unavailing, as Appellant is not without redress. For example, Appellant can wait for the official action of the Election Committee and use the means available in law to dispute that decision and then appeal; or the Appellant can file an original action in Tribal Court to challenge the constitutionality of STC § 10.110(1)(j) under theories raised in his appeal. This Court declines to participate in Appellant’s attempt to use the challenge of a manufactured Election Committee decision to avoid proceedings that would be more properly heard, in the first instance, by the Tribal Court in order to ensure the creation of a proper record.

Finally, Appellant argues that the tribal code requires that this Court grant him oral argument. However, by granting Appellee’s Motion for Summary Disposition, this Court disposed of the case which negated the need for oral argument. The case was no longer pending on the date scheduled for oral argument. To cause the Court to hold arguments in a matter in which it made a determination of justiciability in the first instance flies in the face of notions judicial economy and efficiency.

Additional Clarification Regarding Motions for Reconsideration

Although not binding on this Court, Federal Rule of Civil Procedure (FRCP) 60(b) is persuasive as to when a Request for Reconsideration should be granted. FRCP 60(b) specifies that:

a court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Given that Appellant has failed to explain why any of the above factors applies, denial of the Request for Reconsideration is appropriate.

ORDER

For the reasons specified above, Appellant's *Motion for Reconsideration* is denied.

It is SO ORDERED.