

IN THE SUPREME COURT  
OF THE  
STANDING ROCK SIOUX TRIBE

APL-06-011/012

LORRIE MINER and )  
)  
LESLIE WHITE TEMPLE – GIPP, )  
)  
Plaintiffs/Appellants, )  
vs. )  
)  
RON HIS HORSE IS THUNDER, )  
ARCHIE FOOL BEAR, JOE WHITE )  
MOUNTAIN, SR., FRANK WHITE )  
BULL, MATT LOPEZ, MILTON )  
BROWN OTTER, AND JOE STRONG- )  
HEART, SR., AND AVIS LITTLE )  
EAGLE, in their individual capacities, )  
)  
Defendants/Appellees. )

**MEMORANDUM  
OPINION AND ORDER**

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**PER CURIAM** (Before Chief Justice Lee and Associate Justices Hanks and Koch)

This matter is before the Court on the appeals of Lorrie Miner, former Chief Judge of the Standing Rock Sioux Tribe and Leslie White Temple-Gipp, former Associate Judge of the Standing Rock Sioux Tribe.

Appellants appeal from an **ADMINISTRATIVE ORDER FOR DISMISSAL** entered on October 3, 2006, by Associate Judge William P. Zuger of the Standing Rock Sioux Tribal Court. Appellant Miner and Appellant White Temple-Gipp filed separate complaints in the trial court and both Appellants base their appeals on identical legal issues. For the convenience of the court the two cases are consolidated for review.

**BACKGROUND**

This case stems from a contract dispute between the Appellants and officials of the Standing Rock Sioux Tribe. Ron His Horse Is Thunder is the Chairman of the Standing Rock Sioux Tribe, Avis Little Eagle is the Secretary of the Standing Rock Sioux Tribe, and the remaining Appellees are members of the Standing Rock Sioux Tribal Council. The Appellants had been employed as tribal judges by the Standing Rock Sioux Tribe since September, 2001, when they were retained in their judicial positions by the voters

of the Standing Rock Sioux Indian Reservation. Their appointments by election were ratified by contracts entered between the Standing Rock Sioux Tribe and Appellants in April, 2002. The Appellants' terms expired in September, 2005, and they were again retained in their positions by the tribal voters. Following re-election in the fall of 2005, the Appellants were contacted by tribal officials for the purpose of renegotiating their contracts and in effect reducing the rate of compensation and eliminating cost of living expenses. Offers made by the Tribe were rejected by the Appellants. Several meetings were held between Appellants and the Standing Rock Sioux Tribal Council through the winter and spring of 2006. The exact dates of contract and meetings with Appellant Gipp differs slightly from the negotiation dates of Appellant Miner. Previously, on September 29, 2004, former Tribal Chairman Charles Murphy notified Appellant Gipp that she was relieved of her duties due to lack of funding. Appellant Gipp commenced legal action in tribal court following notice of her removal from office and continued to serve pursuant to a Temporary Restraining Order issued by a special Judge, B.J. Jones. In February and March of 2006, the Tribal Council passed a formal motion to the effect that negotiations with the Appellants had failed to materialize in contracts and that those individuals performing professional services for the Tribe without a contract would not be paid after March 17, 2006. The action effectively removed the Appellants from office for failure to negotiate terms of their employment contracts.

The Appellants commenced legal action on April 3, 2006, against the current Tribal Chairman Ron His Horse Is Thunder and all Tribal Council members who voted in favor of removing them from office. The complaints were dismissed by Special Judge William Hodny for procedural irregularities, primarily because the complaints had not been verified. The Appellants reinstituted their lawsuits by filing verified complaints on September 6, 2006.

Shortly after filing their verified complaints, Appellants filed a pretrial Request For Disqualification of Special Judge William Hodny. As grounds for disqualification the Appellants raised the fact that Defendant Ron His Horse Is Thunder appointed Judge Hodny to hear the case in which he, Ron His Horse Is Thunder, is a litigant. The appearance of impropriety issue led to Judge Hodny's resignation from the case.

In his letter of resignation, Judge Hodny stated that he did not wish to act in a judicial capacity wherein the litigants or their attorney assume his lack of impartiality and assume prejudice. Judge Hodny pointed out that he had never met the Chairman, that he had been contacted by a tribal judge who had previously contacted the North Dakota Chief Justice and inquired about having a North Dakota surrogate judge serving as a special judge in this case. The tribal judge then contacted Judge Hodny which resulted in Judge Hodny's appointment. Judge Hodny pointed out that no tribal member including the Chairman has attempted to contact him and that his only contact with the Court was by telephone with the Court Administrator.

The case was then handled by a tribal court judge, Associate Judge William P. Zuger who entered his ADMINISTRATIVE ORDER FOR DISMISSAL on October 3, 2006, from which this appeal arises

## OPINION

Although the Plaintiffs/Appellants do not characterize the Defendants/Appellees as the Chairman, Secretary and Tribal Council members, the defendants below were sued for actions taken in the performance of their official duties and are in fact being sued in their official capacities. Nevertheless a special judge who was unknown to the defendants was appointed initially to hear the case.

The basis of dismissal is that the Appellants' challenge to any judge appointed by one or more of the Appellees would create an appearance of impropriety. That conclusion arises from the Appellants' move to disqualify the special judge on the grounds that one or more of the litigants in the case appointed the judge. In effect, Appellants prevailed in their initial request for disqualification of the presiding judge based on the method of judicial appointment. Appellants have effectively disqualified any judge from hearing their case because the only manner in which a tribal judge can be appointed is by action of the Tribal Council, of which virtually all are litigants in this case—(See SRST Ordinance 1-302) Appellants suggest that this court can or should appoint a special judge to hear the case. Appellees vehemently oppose such action and point to tribal law which prohibits anyone except the Tribal Council from appointing judges—See SRST Constitution, Article XII which provides that “The Judges of both the Supreme Court and the Tribal Court shall initially be appointed by a two-thirds majority vote of the Tribal Council.” Tribal Ordinance 1-302 provides that “each Judge shall be appointed by a two-thirds vote of the Tribal Council taken by roll call at a meeting at which a quorum is present . . .” Appellees cite no tribal authority for this Court to select a judge or to order that a certain judge be appointed to hear the case.

It is clear that appointment of judges can be made only by the Tribal Council. Appellants' agree that Article XII and Section 1-302, the law of the Standing Rock Sioux Tribe provides no resolution to the present conundrum, and that there appears to be no authority for a judge to preside over these matters who has been appointed by an individual or entity other than the Tribal Council and/or the Tribal Chairman. Appellees point out that the issue of appointment of judges is textually committed in the Tribal Constitution and through Tribal Statute to the Tribal Council. In their Motion To Dismiss Appellees correctly argue that the appointment of a judge presents a political question that this court may not decide because the authority to appoint judges is vested exclusively in the Tribe's Legislative Body and in the Tribal Executive. Appellants suggest that this Court order the parties to jointly agree upon a particular individual to preside over these actions and that the selected individual be automatically approved by the Tribal Council. Such request involves dialog and negotiations of the parties and is not a proper function of this Court. This Court lacks any original jurisdiction.

The jurisdiction of this court is established by Tribal Ordinance 1-202 --JURISDICTION OF THE SUPREME COURT, which provides as follows: “The Supreme Court shall have exclusive jurisdiction of all appeals from final orders and judgments of the Standing Rock Sioux Tribal Court.” Obviously our jurisdiction is limited to reviewing final

orders of the trial court and does not include the authority to supervise the parties or to perform legislative and political functions of the Tribal Council or the Tribal Chairman.

The Plaintiffs/Appellants are in a quagmire of their own making. Their rejection of a specially appointed judge who appeared to be impartial and unbiased resulted in dismissal of their case which is now without a tribal forum. They challenge the structure of tribal government and the system of appointing judges to preside over cases in which members of the tribal government are involved as parties. They have essentially curtailed judicial resolution of their case and we find that dismissal of the case with prejudice was appropriate under the circumstances.


Wherefore it is Ordered that the Administrative Order for Dismissal entered on October 3, 2006, is AFFIRMED. It is further Ordered that Appellants' appeals are Dismissed for the reasons set forth herein.

Done this 16 day of April, 2007.

BY THE COURT:

  
Patrick Lee, Chief Justice

  
Curtis Hanks, Associate Justice

  
Dwight Koch, Associate Justice

ATTEST:   
Clerk

(SEAL)