

No. 08-3277

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SAC & FOX NATION OF MISSOURI, IOWA TRIBE OF KANSAS &
NEBRASKA, and KATHLEEN SEBELIUS, Governor of the State of Kansas,

Plaintiffs-Appellants,

-v.-

KENNETH LEE SALAZAR,^{*/} Secretary of the Interior, et al.,

Defendants-Appellees,

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
(Hon. Richard D. Rogers)*

**FEDERAL DEFENDANTS-APPELLEES' UNOPPOSED REQUEST
TO TAKE JUDICIAL NOTICE OF WARRANTY DEED**

Pursuant to Fed. R. Evid. 201(d), the Federal Defendants-Appellees request this Court to take judicial notice of the warranty deed dated July 15, 1996, executed by Chief Leaford Bearskin of the Wyandotte Tribe of Oklahoma conveying certain real property located in Kansas City, Kansas – known in this proceeding as the “Shriner

^{*/}Pursuant to Fed. R. App. P. 43(c)(2), we have substituted the name of the current officeholder for his predecessor, Dirk Kempthorne, in the caption of this case.

Tract” – unto the United States of America in trust for the benefit of the Wyandotte Tribe of Oklahoma. A certified copy of that deed obtained from the Register of Deeds of Wyandotte County, Kansas is attached to this request.

In their reply brief, Plaintiffs state that “[t]he Secretary purportedly holds the Shriner Tract in trust status, though the Secretary has not proffered or identified any deed evidencing that the Shriner Tract is in trust status.” Pl. Reply Br. at 10. Before this statement, the United States’ claim to the Shriner Tract never has been disputed and, in fact, has been recognized in opinions of this Court. *See Governor of Kansas v. Kempthorne*, 516 F.3d 833, 838 (10th Cir. 2008); *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1250 (10th Cir. 2006); *Sac & Fox Nation v. Norton*, 240 F.3d 1250, 1257 (10th Cir. 2001). Nevertheless, in order to eliminate any doubt that may exist as to the United States’ claim to the Shriner Tract, the Federal Defendants-Appellees request this Court to take judicial notice of the existence of the attached warranty deed conveying the Shriner Tract to the United States in trust for the benefit of the Wyandotte Tribe. Plaintiffs do not oppose this request.

“Judicial notice may be taken at any time, including on appeal.” *United States v. Burch*, 169 F.3d 666, 671 (10th Cir. 1999); *see also* Fed. R. Evid. 201(f). A fact may be judicially noticed if it is not subject to reasonable dispute because it is either “(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *Id.* (quoting Fed. R. Evid. 201(b)). As a publically available document held by the Register of Deeds of Wyandotte County, Kansas, the

existence of the warranty deed which is the subject of this request for judicial notice fits squarely within the category of facts that are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”

Indeed, this Court recently recognized that it was appropriate to take judicial notice of a warranty deed to inform its general understanding of the case. *See McKay v. United States*, 516 F.3d 848, 849 (10th Cir. 2008). In fact, the existence of a deed is a classic example of a fact for which it is appropriate to take judicial notice. As the D.C. Circuit has held, if a someone can determine a fact by running to the office of the recorder of deeds and finding the fact recorded there in less than ten minutes, judicial notice is properly taken. *See Reiner v. Washington Plate Glass Co., Inc.*, 711 F.2d 414, 416, (D.C. Cir.1983). Accordingly, the Federal Defendants-Appellees respectfully request that this Court take judicial notice of the existence of the attached warranty deed conveying the Shriner Tract unto the United States in trust for the benefit of the Wyandotte Tribe.

Respectfully Submitted,

/s/ ALLEN M. BRABENDER
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Washington, DC 20026-5307
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MAY 2009
DJ # 90-6-21-5C

CERTIFICATE OF DIGITAL SUBMISSION

Pursuant to 10th Circuit Emergency General Order, October 20, 2004, as amended August 10, 2007, I certify that:

(a) all required privacy redactions have been made (none were necessary) and, with the exception of those redactions, every document submitted in Digital Form or scanned PDF format is an exact copy of the written document filed with the Clerk; and
(b) the digital submissions have been scanned for viruses with the most recent version of Microsoft Forefront Client Security, version 1.57.775.0, updated through May 3, 2009 at 12:19 pm, and, according to the program, are free of viruses.

/s/ Allen M. Brabender

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the FEDERAL DEFENDANTS-APPELLEES' REQUEST TO TAKE JUDICIAL NOTICE OF WARRANTY DEED to be served by regular first class mail, postage prepaid, and electronic mail this 4th day of May 2009, upon the following counsel:

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/s/ ALLEN M. BRABENDER

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mapping

(2)

WARRANTY DEED

BOOK 3830 PAGE 340

That the Wyandotte Tribe of Oklahoma, party of the first part, in consideration of the sum of \$10 and Other Valuable Consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the United States of America in trust for the benefit of the Wyandotte Tribe of Oklahoma, P. O. Box 250, Wyandotte, Oklahoma 74370, said party of the second part, the following described real property and premises, in Wyandotte County, State of Kansas, to-wit:

A tract of land in the Northwest Quarter of Section 10, Township 11, Range 25, in Kansas City, Wyandotte County, Kansas, described as follows: Beginning at the Southwest corner of Huron Place, as shown on the recorded Plat of Wyandotte City, in Kansas City, Kansas, thence North 150 feet; thence East 150 feet; thence South 150 feet; thence West 150 feet to the point of beginning, meaning and intending to describe a tract of land 150 feet square in the Southwest corner of Huron Place as shown on the recorded Plat of Wyandotte City, which is marked "Church Lot" thereon, LESS AND EXCEPT all minerals.

together with all improvements thereon and appurtenances thereunto belonging, and warrant title to the same, subject to any valid, existing lease or right-of-way thereon.

It being understood that the hereinabove described lands are acquired pursuant to the provisions of Public Law 98-602, 98 Stat. 3149 (1984).

To have and to hold said described premises unto the said party of the second part, its successors and assigns, forever free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages, and other liens and encumbrances of whatsoever nature.

Signed and delivered this 15th day of July, 1996. 11:18 p.m.

STATE OF KANSAS, WYANDOTTE COUNTY
Entered in transfer record in my office this

16 Day of July, 1996
Edward J. [Signature] County Clerk
Deputy

[Signature]
Leaford Bearskin, Chief

ACKNOWLEDGMENT

State of OKLAHOMA
County of WYANDOTTE

Before me, the undersigned, a Notary Public, in and for said County and State, on this 15 day of JULY, 1996, personally appeared Leaford Bearskin to me known to be the identical person who executed the foregoing instrument and said grantor acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above set forth.

[Signature]
Notary Public

My Commission Expires 3-22-99

The within deed is hereby accepted under authority delegated by 209 DM 8; Secretary's Order No. 3150 and 3177, and 10 BIAM Bulletin 13 as amended.

July 15, 1996
Date 11:20 p.m.

[Signature]
Acting Area Director
Bureau of Indian Affairs
Muskogee Area Office
Muskogee, OK 74401

GUARANTEE TITLE OF WYANDOTTE COUNTY

T-169736 J.H.

BOOK 3830 PAGE 341

1225200

STATE OF KS.
WYANDOTTE COUNTY
REGISTERED

96 JUL 16 P 4:39 2

THOMAS W GROHEMAN
REGISTER OF DEEDS
BY DEF.

See Co

Michael H. Johnson

INDEXED _____
FILED _____
RECORDED _____
VERIFIED _____

State of Kansas, County of Wyandotte, ss.
I, Barbara Golubski, Register of Deeds
in and for the County and State aforesaid,
do hereby certify that the foregoing is a
true and correct copy of an instrument of
writing filed in this office on the 16 day
of July, 1996 as the same appears of
record in book 3830 at page 340

WITNESS, my hand and seal, this 28 day of April, 2009.

Barbara Golubski
Register of Deeds/Deputy