

Wilson v. Grand Traverse Band of Ottawa and Chippewa..., --- Am. Tribal Law ----...

--- Am. Tribal Law ----, 2006

WL 6295938 (Grand Traverse)

Only the Westlaw citation is currently available.

Grand Traverse Band of Ottawa and  
Chippewa Indians Tribal Appellate Court.

Donna Lou **WILSON**, Plaintiff–Appellant,  
v.

**GRAND TRAVERSE BAND** OF OTTAWA  
AND CHIPPEWA INDIANS ECONOMIC  
DEVELOPMENT CORPORATION; Chris  
Bussey, Assistant Executive Officer, In his  
Individual and Official Capacities, and Ron Olson,  
Chief Executive Officer, In his Individual and  
Official Capacities, Defendants–Respondents.

No. 04–08–566–CV–AP. | April 19, 2006.

## Synopsis

**Background:** Terminated employee of Grand Traverse Band Economic Development Corporation appealed decision of Employee Termination Review Board which upheld her termination. The Tribal Court, Wilson D. Brott, J., — [Am. Tribal Law](#) —, 2004 WL 5714968, granted tribe's motion to dismiss finding sovereign immunity. Employee appealed.

**[Holding:]** The Tribal Appellate Court held that Grand Traverse Band Economic Development Corporation was subject to suit in the tribal court system by tribal members for purpose of enforcing rights and duties established by tribe's Constitution, ordinances, and resolutions.

Reversed and remanded.

## Opinion

PER CURIAM.

### I. PROCEDURAL POSTURE

\*1 Appellant/Plaintiff Wilson is a member of the Grand Traverse Band of Ottawa and Chippewa Indians (“Grand Traverse Band”) and was an employee of Appellee/Defendant Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corporation (“Grand Traverse Band Economic Development Corporation”) from April 10, 1990 until March 5, 2003. On March 5, 2003, Appellant

Wilson's employment was terminated for disclosure of confidential information of the Grand Traverse Band Economic Development Corporation to her non-employee sister. Appellant Wilson requested a review of her termination by the Employee Termination Review Board. The Employee Termination Review Board after a hearing on the matter upheld the termination of Appellant Wilson's employment. Appellant Wilson appealed the decision of the Employee Termination Review Board to the Grand Traverse Band Tribal Court. The Grand Traverse Band Economic Development Corporation filed a Motion to Dismiss Appellant Wilson's Complaint based on the sovereign immunity of the Grand Traverse Band Economic Development Corporation. The Grand Traverse Band Tribal Court granted Appellee Grand Traverse Band Economic Development Corporation's Motion to Dismiss finding that sovereign immunity barred Appellant Wilson's lawsuit. Appellant Wilson appeals the Tribal Court's dismissal of her Complaint to this Court.

### II. JURISDICTION

Jurisdiction of this matter is vested in the Grand Traverse Band Appellate Court by the Grand Traverse Band Constitution Article V, Sections 1 and 2; Article XIII Sections 1 and 2(a).

Article V, Section 1 provides:

“Judicial Power Vested. The judicial power of the Grand Traverse Band shall be vested in a tribal court system....”

Article V, Section 2, provides:

“Jurisdiction. The judicial power shall extend to all cases arising under this Constitution, ordinances, regulations, and/or judicial decisions of the Grand Traverse Band and shall be exercised to the fullest extent consistent with self-determination and the sovereign power of the Tribe.”

Article XIII, Section 1 provides:

“The Tribal Council shall not waive or limit the right of the Grand Traverse Band to be immune from suit, except as authorized by this Article or in furtherance of tribal business enterprises upon a resolution

Wilson v. Grand Traverse Band of Ottawa and Chippewa..., --- Am. Tribal Law ----...

approved by an affirmative vote of five (5) of the seven (7) members of the Tribal Council.”

Article XIII Section 2(a) provides:

“The Grand Traverse Band and the Tribal Council members, in their official capacities, shall be subject to suit in the tribal court system by tribal members for the purpose of enforcing rights and duties established by the Constitution and by the ordinances and resolutions of the Tribe.”

Article XIII Section 2(b) provides:

“Tribal members shall not be entitled to an award of damages, as a form of relief, against the Grand Traverse Band or its Tribal Council members in their official capacities; ...”

### III. STANDARD OF REVIEW

\*2 The standard of review is *de novo* pursuant to Appellate Rule 9.401(E).

### IV. OPINION

The Grand Traverse Band Economic Development Corporation is a federally chartered corporation. The Grand Traverse Band Economic Development Corporation was chartered by the Grand Traverse Band pursuant to Section 17 of the Indian Reorganization Act. (25 USC § 477). The federal charter for the Grand Traverse Band Economic Development Corporation is codified in 15 GTBC § 101 *et seq* and seeks to establish that the Grand Traverse Band Economic Development Corporation is a separate and distinct entity from the Grand Traverse Band as shown by the following:

The Grand Traverse Band Economic Development Corporation is a federally chartered Indian business corporation and any powers and immunities it may have are granted under the laws of the United. See 15 GTBC § 202.

“This (Grand Traverse Band Economic Development Corporation) is a distinct legal entity ... and its corporate activities, transactions, obligations, liabilities and property are not those of the Tribe.” 15 GTBC § 203.

“The (Grand Traverse Band Economic Development Corporation) is a legal entity ... distinct and separate from the (Grand Traverse Band).” 15 GTBC § 206(a).

“The activities, transactions, obligations, liabilities, and properties of the (Grand Traverse Band Economic Development Corporation) are not those of the (Grand Traverse Band)”. 15 GTBC § 206(b).

Despite the great lengths the federal charter goes to differentiate the Grand Traverse Band from the Grand Traverse Band Economic Development Corporation, the Grand Traverse Band is closely tied to the Grand Traverse Band Economic Development Corporation. The Grand Traverse Band is the sole shareholder of the Grand Traverse Band Economic Development Corporation and as such wholly owns the corporation. (15 GTBC § 219). As the sole shareholder, the Grand Traverse Band through its Tribal Council has the right to appoint all of the members of the Board. (15 GTBC § 226(A)). The Board members must be members of the Grand Traverse Band. (15 GTBC § 228(a)). Appellant Wilson alleges that the members of the Board of Directors appointed by the Grand Traverse Band were also all members of the Grand Traverse Band Tribal Council. The Board of Directors manages the general affairs and business of the Grand Traverse Band Economic Development Corporation. (15 GTBC § 229(a)). Some of the purposes of the Grand Traverse Band Economic Development Corporation are: to engage in business; to promote the economic development of the Grand Traverse Band; to provide for the utilization of the resources of the Grand Traverse Band in a manner which protects the long-term interests of the Grand Traverse Band and provides income to the Grand Traverse Band. (15 GTBC § 205). Furthermore, the Grand Traverse Band has provided the Grand Traverse Band Economic Development Corporation with a level of protection that private corporations do not possess since the Grand Traverse Band Economic Development Corporation enjoys the same sovereign immunity from suit as the Grand Traverse Band. (15 GTBC § 216(a)).

\*3 [1] [2] Appellant Wilson argues that the Grand Traverse Band Economic Development Corporation is subject to the Indian Civil Rights Act, 25 USC 1301 *et seq*, (“ICRA”) and therefore is subject to suit for violation of any of the provisions of the ICRA. Suits against Indian tribes, however, are barred by sovereign immunity absent a clear and

Wilson v. Grand Traverse Band of Ottawa and Chippewa..., --- Am. Tribal Law ----...

unequivocal waiver by the tribe or congressional abrogation. *Oklahoma Tax Comm. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 509, 111 S.Ct. 905, 112 L.Ed.2d 1112 (1991); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978). The Grand Traverse Band's sovereign immunity from suit in any state, federal or Tribal Court has been extended to the Grand Traverse Band Economic Development Corporation. 15 GTBC § 216(a). The Court in *Santa Clara Pueblo v. Martinez* addressed the application of the ICRA in federal court in the context of a petition for habeas corpus and stated "Nothing on the face of Title I of the ICRA purports to subject tribes to the jurisdiction of the federal courts in civil actions for injunctive or declaratory relief. Moreover, since the respondent in a habeas corpus action is the individual custodian of the prisoner, see, e.g., 28 U.S.C. 2243, the provisions of 1303 can hardly be read as a general waiver of the tribe's sovereign immunity. In the absence here of any unequivocal expression of contrary legislative intent, we conclude that suits against the tribe under the ICRA are barred by its sovereign immunity from suit." *Santa Clara*, *supra*, at 58 and 59, 98 S.Ct. 1670. The ICRA, likewise, contains no explicit waiver of tribal sovereign immunity for suit in tribal courts. We conclude, therefore, that suits against the Grand Traverse Band Economic Development Corporation under the ICRA are barred by the extension of tribal sovereign immunity to the Grand Traverse Band Economic Development Corporation.

Appellant makes the further argument that actions of the Grand Traverse Band Economic Development Corporation are governmental actions and as a consequence are subject to the Grand Traverse Band Constitution. In support of this argument, Appellant Wilson relies upon *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 115 S.Ct. 961, 130 L.Ed.2d 902 (1995). In *Lebron*, the court addressed a situation where Petitioner Lebron claimed his constitutional right of free speech was violated by the refusal of the National Railroad Passenger Corporation (Amtrak) to display an advertisement because of its political nature. Amtrak claimed that, whatever its relationship with the Federal Government, its charter's disclaimer of agency status prevented it from being considered a Government entity. *Lebron*, *supra*, at 392, 115 S.Ct. 961. The Court in *Lebron* determined that: Amtrak was created by special statute, explicitly for the furtherance of federal governmental goals with six of nine directors appointed directly by the President of the United

States, *Lebron* at 398, 115 S.Ct. 961; and that the Government exerted its control as a policy maker and no provision existed that would automatically terminate control, *Lebron* at 399, 115 S.Ct. 961.

\*4 The similarities in the relationship between the Federal Government and Amtrak in *Lebron* and between the Grand Traverse Band and the Grand Traverse Band Economic Development Corporation in this case are striking. The Grand Traverse Band Economic Development Corporation was created by special federal charter which is codified at 15 GTBC 201 *et seq.* The Tribal Council, as the sole shareholder of the Grand Traverse Band Economic Development Corporation, has the right to appoint all of the directors of the Grand Traverse Band Economic Development Corporation. The Grand Traverse Band Economic Development Corporation was established in furtherance of governmental goals—to promote the economic development of the Grand Traverse Band; to provide for the utilization of the resources of the Grand Traverse Band in a manner which protects the long-term interests of the Grand Traverse Band and provides income to the Grand Traverse Band. In fact, the Grand Traverse Band Economic Development Corporation has raised millions in revenues that allowed the tribal government to provide social services, educational opportunities, health care, and housing. See *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western Dist. Of Mich.*, 198 F.Supp.2d 920, 924 (W.D.Mich.2002), *aff'd*, 369 F.3d 960 (6th Cir.2004). The Grand Traverse Band Economic Development Corporation, however, claims that the declarations that it is separate and distinct from the Grand Traverse Band contained in 15 GTBC § 201 *et seq.* prevent it from being considered a governmental entity.

The Court in *Lebron* observed "That Government-created and —controlled corporations are (for many purposes at least) part of the Government itself has a strong basis, not merely in past practice and understanding, but in reason itself. It surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form." *Lebron*, *supra*, at 397, 115 S.Ct. 961. There can be no question that the Grand Traverse Band Economic Development Corporation was created by the Government. The Grand Traverse Band Economic Development Corporation was created by a federal charter which has been codified into tribal law. There is

Wilson v. Grand Traverse Band of Ottawa and Chippewa..., --- Am. Tribal Law ----...

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also no question that the Grand Traverse Band Economic Development Corporation is controlled by the Government. By law, the Grand Traverse Band is mandated to be the sole shareholder of the Grand Traverse Band Economic Development Corporation and the Tribal Council is granted the authority to appoint the entire Board of Directors. In addition, the revenues generated by the Grand Traverse Band Economic Development Corporation are used by the Grand Traverse Band for governmental purposes—social services, health care, education and housing. We find that the Grand Traverse Band created the Grand Traverse Band Economic Development Corporation to further governmental objectives and controls the operation of the corporation through the appointment of all of its directors.

\*5 [3] We hold, as the court did in *Lebron, supra*, at 400, 115 S.Ct. 961, that when the Grand Traverse Band created the Grand Traverse Band Economic Development Corporation by special law, to further government purposes, and retained the permanent right to appoint all of the directors of the Grand Traverse Band Economic Development Corporation, the

Grand Traverse Band Economic Development Corporation became part of the tribal government for purposes of enforcing the rights and duties established in the Grand Traverse Band Constitution. We hold that the Grand Traverse Band Economic Development Corporation is clothed with the immunity extended to it by 15 GTBC § 216(a) and as such is subject to suit in the tribal court system by tribal members for the purpose of enforcing rights and duties established by the Constitution and by the ordinances and resolutions of the Tribe but is shielded from an award of money damages. We express no opinion as to whether Appellant Wilson's dismissal violated her rights under the Grand Traverse Band Constitution. The judgment of the Tribal Court is reversed and any part of our decision in *Shananaquet v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corporation*, 8 Am. Tribal Law 160, 2009 WL 1635743 (2003) that is inconsistent with this opinion is reversed. The case is remanded for further proceedings consistent with this opinion.

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