

IN THE NOOKSACK TRIBAL COURT OF APPEALS
NOOKSACK INDIAN TRIBE
DEMING, WASHINGTON

SONIA LOMELI; TERRY ST. GERMAIN;
NORMA ALDREDGE; RAENNA
RABANG; ROBLEY CARR, individually
on behalf of his minor son, LEE CARR,
enrolled member of the Nooksack Indian
Tribe,

Plaintiffs/Appellants.

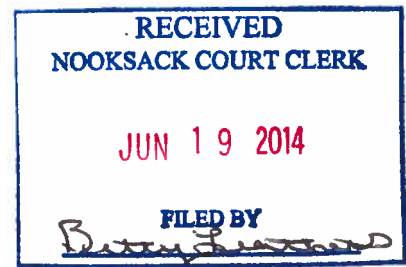
v.

ROBERT KELLY, RICK D. GEORGE,
AGRIPINA SMITH, BOB SOLOMON,
KATHERINE CANETE, LONA
JOHNSON, JEWELL JEFFERSON, AND
ROY BAILEY,

Defendants/Appellees.

NO. 2014-CI-APL-001

OPINION



Before: Eric Nielsen, Chief Judge; Douglas Nash, Judge; Mark W. Pouley, Judge.

Appearances: Gabriel S. Galanda, Anthony S. Broadman, and Ryan D. Dreveskracht of Galanda Broadman PLLC, for Appellants; Thomas P. Schlosser and Rebecca JCH Jackson of Morisset Schlosser, Jozwiak & Somerville, and Grett Hurley and Rickie Armstrong, Nooksack Office of Tribal Attorney, for Appellees.

Per curiam:

In early 2013 a majority of the Nooksack Tribal Council voted to initiate disenrollment proceedings affecting approximately 300 tribal members. The Plaintiffs below, who are the Appellants in this appeal, filed a petition in the Nooksack Tribal Court to enjoin the Council from conducting the disenrollment proceedings. The trial court dismissed the petition and we affirmed the dismissal in *Lomeli v. Kelly*, 12 NICS App. 1 (Nooksack Tribal Ct. App. 2014) (hereinafter *Lomeli I*).

This appeal is from a denial of a motion brought in that case. The facts are detailed in *Lomeli I* and will not be repeated here. The following additional facts are relevant to this appeal.

While the case was pending, the parties entered into and the trial court accepted a stipulation. That stipulation is the subject of this current appeal (hereinafter referred to as "the stipulation"). The stipulation reads in pertinent part:

1. On or before April 13, 2013, Galenda Broadman [plaintiffs counsel] will furnish a list of those individuals for whom they are then authorized to act in this matter and in the related proceedings regarding disenrollment of certain Nooksack Tribal Members pursuant to Title 63. Defendant will treat Mr. Galanda's letter of March 15, 2013 to Chairman Kelly regarding the Notice of Intent to Disenroll as a timely request for a meeting ... before the Tribal Council for the individuals identified on that list.

2. No person will be disenrolled prior to completion of the meetings before the Tribal Council, regardless of whether that individual has requested a meeting with the Tribal Council.

Under paragraph 1 of the stipulation, on April 12, 2013, Galenda Broadman furnished a "Representation List." The list included the six named plaintiffs in the case and approximately 270 other individuals that counsel claimed authority to represent in any disenrollment proceedings.

On August 7, 2013, the trial court dismissed the petition. On August 8, 2013, following the trial court's dismissal, the Tribal Council convened a Special Meeting and passed resolutions to disenroll Nadine Rapada, Rose Hernandez, Cody Narte, and Kristal Trainor. Those four are not the six plaintiffs in this case nor are they included on the April 12, 2013 "Representation List" submitted by counsel.¹

On August 14, 2013 we accepted the appeal from the trial court's order dismissing the petition (*Lomeli I*). We also ruled, "disenrollment proceedings authorized by the order and judgment shall be stayed pending this Court's final decision." *Order Accepting Appeal*. That ruling set off a series of cross motions for clarification where it was brought to our attention the existence of the stipulation. While the appeal was pending, we ordered the trial court to conduct a hearing and enter findings and conclusions on the limited question of who are the plaintiffs in the case. We consolidated that issue with the appeal from the order dismissing the petition. *Lomeli I* at 16. In that order we also expressly stated "... there is no legal basis for this Court to prevent the Tribe from proceeding with disenrollment proceedings in regards to any Tribal member who is not a plaintiff in this suit." *Order on Motion for Clarification or Relief from Stay of Proceedings*, August 20, 2013.

The trial court subsequently found the only plaintiffs in this case are the six named in the initial complaint. We affirmed the trial court's findings. *Lomeli I* at 16-18.

Following the August 8, 2013 disenrollment, the six plaintiffs brought a Motion and Order to Show Cause asking that the Council be found in contempt for breaching the stipulation by disenrolling the four members. Because the case was before this Court on appeal, the trial

¹ These four names were added to the list in May 13, 2013, which is after the date provided in the stipulation. It does not appear that Appellants are arguing that their addition in May is what brings their disenrollments within the scope of the stipulation.

court declined to rule on the motion and plaintiffs appealed. After we issued our decision in *Lomeli I* we sent the matter back to the trial court for its ruling on the motion. On February 7, 2014 the Nooksack Trial Court denied the motion, finding that the plaintiffs lack standing to challenge the four disenrollments. We now hereby affirm that decision.

Standing is a legal issue subject to de novo review. *Lomeli I* at 23 (citing *Bruce v. United States*, 759 F.2d 755, 758 (9th Cir.1985)). Standing requires that a plaintiff allege a concrete injury, that there is a causal connection between the injury and the conduct complained of, and that the injury will likely be redressed by a favorable decision. *Id.* (citing *United States v. Hays*, 515 U.S. 737, 742–43, 115 S.Ct. 2431, 132 L.Ed.2d 635 (1995); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1995)).²

None of the six plaintiffs in this case were disenrolled. None of the four members disenrolled are included in counsel's April 12, 2013 "Representation List." Nonetheless, Appellants contend the Council violated paragraph 2 of the stipulation that reads "No person shall be disenrolled" They contend that when the four were disenrolled, paragraph 2 of the stipulation prohibited disenrollment of any tribal members. They argue they have standing to challenge the disenrollments on the theory they are parties to the stipulation and "When there is an agreement made between two parties, it is the parties who are principally harmed when the agreement is breached, and it is the parties to the agreement who have the ability to enforce the agreement." *Opening brief* at 1.³

We do not reach the issue of Appellants' standing to bring the contempt motion on their theory they are parties to the stipulation even though they were not parties to the disenrollment. We affirm the trial court's order because Appellants failed to make a prima facie showing the stipulation was violated.

Prima facie generally means "sufficient to establish a fact or raise a presumption unless disproved or rebutted." BLACK'S LAW DICTIONARY, 1209 (7th ed. 1999). Appellants' argument rests on the presumption the four who were disenrolled are included in the stipulation. That presumption, however, is inconsistent with the stipulation, illogical and factually unsupported.

It is unmistakable that the purpose of the stipulation, as identified in its paragraph 1, is to establish the identity of the persons represented by counsel and who are therefore covered by the stipulation. Read in the context of that purpose, paragraph 2's prohibition on disenrollments unambiguously refers only to the six Appellants and those persons named in the "Representation List." It is unreasonable and directly contrary to the intent of the stipulation to interpret

² "[T]he standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted. Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?" *Allen v. Wright*, 468 U.S. 737, 752 (1984).

³ The Appellants claim the disenrollment caused harm to their kin, but they claim no direct injury to themselves. That claimed harm to another, even if the other person is a relative, is too abstract to constitute the necessary concrete injury required to confer on Appellants standing to challenge the disenrollments.

paragraph 2 as referring to all existing tribal members despite their having absolutely no connection with this case, as Appellants contend in their motion and on appeal. Because the four persons who were disenrolled are not covered by the stipulation, even if the Appellants had standing to "enforce the stipulation," there was no prima facia showing of a violation of the stipulation.⁴

For the above reasons, based on the "merits of the case and the interest of justice" the trial court's order denying Appellants' contempt motion is affirmed. NTC 80.09.010.

It is so ordered this 17 day of June, 2014, for the panel:

Douglas Nash, Associate Judge

Mark W. Pouley, Associate Judge


Eric Nielsen, Chief Judge

⁴ We offer no opinion as to whether the Appellants would have standing to bring this action if the four had been included on the "Representation List." Resolution of that issue is not necessary given our ruling there was no prima facia showing of a violation of the stipulation because the four were not included on the list.