

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

7

DUSTIN LEE MACLEOD,
Plaintiff,

No. 5:18-cv-11653-JEL-MKM

v.

HON. JUDITH E. LEVY
MAG. MONA K. MAJZOUB

WILLIAM MORITZ,
Proposed Defendant-Intervenee

WADE HAMILTON,
Proposed Defendant-Intervenee

STEVE MILFORD,
Proposed Defendant-Intervenee

SCOTT WHITCOMB,
Proposed Defendant-Intervenee

RICK McDONALD,
Proposed Defendant-Intervenee

DENNIS KNAPP,
Proposed Defendant-Intervenee

PHIL BELLFY, PhD
Proposed Plaintiff-Intervenor,
in Pro Per

Dustin Lee Macleod, Prisoner #956261
Plaintiff in Pro Per
Parnell Correctional Facility
1780 East Parnell Street
Jackson, MI 49201

Nathan A. Gambill (P75506)
Assistant Attorney General

FILED
OCT 04 2018
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DETROIT

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**INTERVENOR'S NOTICE OF MOTION, AND MOTION TO INTERVENE IN THE
PROSPECTIVE RELIEF CLAIMS AGAINST THE PROPOSED DEFENDANTS-
INTERVENEES IN THEIR OFFICIAL CAPACITY,
WITH MEMORANDUM OF POINTS AND AUTHORITIES**

The Prospective Intervenor, Dr. Phil Bellfy, respectfully moves pursuant to Federal Rule of Civil Procedure 24 to intervene as a plaintiff in this action. Intervention is warranted as of right because his interest in enforcing the 2007 Inland Consent Decree ("Decree") cannot be fully represented or protected by plaintiff Dustin Lee MacLeod, and this interest will be impaired if Dr. Bellfy is not permitted to intervene. See Fed. R. Civ. P. 24(a)(2).

In the alternative, Dr. Bellfy should be granted leave to intervene because: (1) Mr. MacLeod's claims against the Defendants share with this action common questions of law and fact; and (2) this action involves the interpretation of the 2007 Inland Consent Decree, a Court Order that came into force with the express mandate that the federal courts will enforce it. See Fed. R. Civ. P. 24(b)(1), (2).

Dr. Bellfy does move this Court to permit him to intervene in this matter in order to protect and defend his "usual privileges of occupancy" right to "engage in historic traditional activities such as the construction and use of a sweat lodge" (Decree, VI(2)(a)) in a manner consistent with his moral convictions and to exercise his Human, Treaty, and Constitutional Rights free from the morally reprehensible interference with those rights evidenced by the arbitrary, capricious, willful, knowing, and malicious destruction of Sacred Structures by the Defendants.

If this Honorable Court rules that the MDNR officials and employees can destroy Sacred Structures (including, but not limited to Sweat Lodges) located on public state forest land ("1836 Ceded

Territory” – Decree, 3.1) that would, without question, violate Dr. Bellfy's “usual privilege of occupancy” Rights rights recognized, affirmed, and secured to him by the 1836 Treaty of Washington and its attendant 2007 Inland Consent Decree (1836 Treaty of Washington, Article XIII).

Proposed Defendant-Intervenor Dr. Bellfy, pursuant to Federal Rule of Civil Procedure 24, seeks intervention as of right, or in the alternative, permissive intervention. Plaintiff MacLeod has stated that he welcomes Dr. Bellfy’s intervention at this time, while Defendants have taken no position on it.

Proposed Intervenor is an individual Tribal member (an enrolled member of the federally-recognized White Earth Band of Minnesota Chippewa), resident of the 1836 Ceded Territory as delineated by the Decree, residing in Soo Township, Chippewa County. Dr. Bellfy possesses substantial interests in this litigation, which will determine whether the actions of the Defendants, if not addressed by this civil rights litigation, will result in a deprivation of his and other Tribal Members individuals' Human, Treaty, and Constitutional rights, and will determine whether or not the protections against the Defendants' discriminatory acts “freely, fairly, fully, equitably, and conclusively” determined by the Decree the Proposed Intervenor and others now enjoy will be nullified throughout the Ceded Territory and precluded elsewhere throughout the entire State of Michigan.

The Proposed Intervenor seeks to intervene now because it has only recently been determined that the Human, Treaty, and Constitutional questions affecting all Tribal Members residing throughout the 1836 Ceded Territory, and throughout the State of Michigan, will be affected by this litigation. Given that the outcome of this litigation will directly and personally affect the Proposed Intervenor (and others similarly situated) he should not be left on the sidelines while the question of his ability to fully exercise his Human, Treaty, and Constitutional Rights throughout the State of Michigan are being decided.

Dr. Bellfy, Professor Emeritus of American Indian Studies, Michigan State University, has studied and written extensively about the 1836 Treaty of Washington, and its attendant 2007 Inland Consent Decree, in an effort to bring awareness of Tribal Members' Human, Treaty, and Constitutional

Rights at the Tribal, International, State, and local levels for over 40 years.

MEMORANDUM OF POINTS AND AUTHORITIES

It should be noted, that in addition to the federal government, the five federally-recognized Tribes exercising jurisdiction in the 1836 Ceded Territory in 2007, and the State of Michigan, Members of the Sault Ste. Marie Tribe of Chippewa Indians, through referendum, urged the Sault Tribe Board to accept the terms of the 2007 Inland Consent Decree by a vote of 3,476 for, to 678 against (84% yes), on August 18, 2007. This vote by the Members is important due to the simple fact that it was their Rights that were being “freely, fairly, fully, equitably, and conclusively resolved” by “the parties” to the proposed Decree.

It should also be noted that the 2007 Inland Consent Decree was voluntarily entered into by the Parties due to the simple fact, as expressed by the MDNR at the time, that the State of Michigan had determined that the “risks of litigation were significant.” That is, if the State did not “freely, fairly, fully, equitably, and conclusively resolve” the issues surrounding the extent of Tribal Members' Article XIII “usual privileges of occupancy” Rights they feared that the Courts would recognize rights that were more extensive than those “resolved” by the proposed Decree. So, over 10 years later, we now find ourselves at an unprecedented moment in this nearly 200-year “litigation”: the State of Michigan, despite wishing to avoid “the significant risk of litigation,” finds itself in court defending its “officers and employees,” who, by the State's own admission, have simply returned to the pre-Decree discriminatory actions which gave rise to the Decree in the first place (willfully, knowingly, and maliciously violating the Human, Treaty, and Constitutional Rights of Tribal Members throughout the State of Michigan).

That is, pre-2007, everyone readily admitted that the State of Michigan, through its DNR “officers and employees” routinely violated Tribal Members' Human, Treaty, and Constitutional Rights. Now, post-2007, the State of Michigan is defending the Defendants' routine violations of Tribal

Members' Human, Treaty, and Constitutional rights to “engage in other historically traditional activities (such as the construction and use of sweat lodges)” (Decree, 6.2(a)), by destroying Plaintiff's Sacred Structures that were “constructed and used” on “public land” clearly under the jurisdiction of the Decree [Decree, IV(a)].

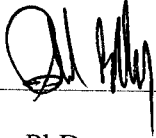
Everyone now agrees, that is, the State, the federal government, the Decree-signatory Tribes, and Tribal Members “in-occupancy-residents” of the 1836 Ceded territory (including this Proposed Intervenor) agree, that the Proposed Defendants-Intervenees did indeed violate the court-ordered mandates of the Decree when they conspired to destroy, and did destroy, Plaintiff's Sacred Structures constructed and used on “public land” within the external boundaries of 1836 Ceded Territory.

For this reason alone --the willful, knowing, and malicious destruction by the Proposed Defendants-Intervenees of Sacred Structures located on public land within the external boundaries of 1836 Ceded Territory; an issue that is not in dispute-- this honorable Court should grant Dr. Bellfy's Motion to Intervene as he readily admits that he has engaged in “the construction and use of sweat lodges” on land located within the external boundaries of 1836 Ceded Territory in the State of Michigan in direct support of the Rights of the Plaintiff and this Proposed Intervenor (and others similarly situated), throughout the State of Michigan. And it should be further noted that the defense of those Rights “shall apply to and be binding upon the [State of Michigan, the signatory-Tribes, and the federal government], their officers, employees, agencies, subdivisions, successors, and assigns and shall remain binding notwithstanding any future rulings or determinations in any jurisdiction that may be inconsistent with the provisions of this Decree.” Decree, II-Parties Bound. See also Article VI, Clause 2, of the US Constitution. See also Fed. R. Civ. P. 24(a)(1)&(2), (b)(1)(a)&(b).

CONCLUSION

For the foregoing reasons, the Motion to Intervene as of Right of Proposed Plaintiff Intervenor, Dr. Bellfy, should be granted. In the alternative, he should be permitted to intervene under Rule 24(b).

RESPECTFULLY SUBMITTED BY:



On October 2, 2018

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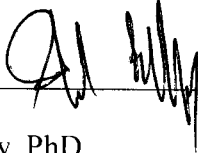
PROOF OF SERVICE

I hereby certify that a copy of the foregoing was sent to Plaintiff, the Court, and the Counsel of Record at the addresses listed below on the 2nd day of October, 2018, by the USPS.

Dustin Lee Macleod, Prisoner #956261
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By: _____ On October 2, 2018

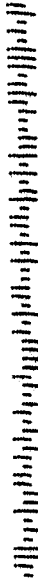
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