

MAR 30 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:20-cv-00005

Hand-Delivered

APRIL LEDFORD,

Plaintiff,

vs.

EASTERN BAND OF CHEROKEE
INDIANS,

Defendant.

MEMORANDUM OF LAW IN
IN SUPPORT OF PLAINTIFF'S
RESPONSE TO DEFENDANT'S
MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT

Pursuant to 12(b)(1) and 12(b)(6) and Local Rule 7.1(c), Plaintiff April Ledford ("Plaintiff") submits this memorandum in support of the Plaintiff's Response contemporaneously filed with Motion to Deny Defendant's Motion to Dismiss Plaintiff's Amended Complaint.

As Plaintiff stated previously, Plaintiff more than agrees with Defendant's statements regarding Rule 12(b)(1), Rule 12(b)(6), and Local Rule 7.1(c).

Plaintiff's "Amended Complaint" presents a claim that contains "factual matter.... to state a claim to relief that is plausible on its face". Plaintiff has presented a "A claim [that] has facial plausibility [and] ... the Plaintiff pleads factual content that allows the Court to draw the reasonable inference that the Defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678, (2009) (Citing Twombly, 550 U.S., at 557, 127 S.Ct. 1955).

When considering Plaintiff's Amended Complaint and relevant Motions, perhaps it is worthy to note that Plaintiff is pleading "Pro Se" and lacks the experience that Defendant's

attorneys possess. This does not signify that Plaintiff can be "careless" and should be "given a break", but rather, it means that, despite her lack of experience, legal expertise, and skills in legal writing, Plaintiff must make her best effort in presenting her claims. The most important issue is that the Claim itself must contain important, relevant facts and arguments that are not frivolous or misleading. Plaintiff believes her Claim is an important one that includes several issues that the Eastern Band of Cherokee Indians (EBCI) should address. Plaintiff, in the end, believes she has submitted pleadings that "do substantial justice", not only for her, but for the Tribe (and for future non-enrolled members married to enrolled members of the EBCI).

(Please see notes regarding pro se responses to Rule 7.1 in Puckett v. Cox, where it was held that a pro-se complaint requires a "less stringent reading" than one drafted by a lawyer (456 F.2d 233 (1972) Sixth Circuit USCA). Also, Justice Black in Conley v. Gibson, 355 U.S. 41 at 48(1957), said, "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP, all pleadings shall be construed to do substantial justice.")

Defendants have stated that Plaintiff has failed to state a claim under Rule 12(b)(6). "In assessing a complaint for failure to state a claim, [a court] must construe the complaint in the light most favorable to the plaintiff, accept all well pled factual allegations as true, and determine whether the complaint 'contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" Dudenhoefer v. Fifth Third Bancorp, 692 F.3d 410, 416 (6th Cir. 2012) (alteration in original) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

Plaintiff has stated a claim that contains allegations that are true and factual and matters that support a request for relief that is plausible on its face. Plaintiff's claim is supported by relevant sources (written statements, videos, articles, and pleadings).

PLAINTIFF'S RELEVANT BACKGROUND

Defendant rightly states Plaintiff is "not an enrolled member of the Eastern Band of Cherokee Indians (EBCI)", but it is important to note that she was married to Bill J Ledford, an Very well-respected enrolled member, for 13 years (together 16 years). (Note: Plaintiff is of Catawba descent, but has always been considered "white" by members of the EBCI, something that comes into play when Plaintiff alleges herein discrimination by the EBCI.) Significantly, Plaintiff was also Mr. Ledford's "Caretaker" for the last years of her beloved husband's life.

(As additional background: Plaintiff is a US Army veteran who served as an Arabic linguist with a Top Security Clearance in the First Gulf War. Plaintiff is also a licensed Spanish Teacher. Plaintiff met Bill J Ledford in 1997 after graduating from UCLA with a degree in history. The two found they had much in common. Bill J Ledford was a veteran of the Korean War who was well-respected in his community and who served the Tribe in many roles, including Council Member, Police Chief, and Vice Chief. He was lucid and independent until the day he walked on.)

ARGUMENT:

Plaintiff presents an **unprecedented** case in Native American Law because:

1. It describes an **unconscionable** action – tampering or changing a deceased, Tribal enrolled member's valid will;
2. There is no previous documentation of cases similar to the one contained in Plaintiff's claim;
3. The EBCI went against "Public Policy" when it changed the contents of Bill Ledford's valid will and last wishes because it goes against one of the most sacred values found in humanity: Respect for a deceased person's last wishes and dignity. Members of the EBCI would not condone such an action against their own loved ones and would find it despicable to know someone would change their own wills;
4. The EBCI broke their own laws and misused their own laws to mislead the Plaintiff and others (the EBCI improperly used Cherokee Code Chapter 28 – a chapter describing inheritance procedures in situations involving intestate decedents and misused Chapter 47(g)(2) of the Cherokee Code AND DELETED it after this case); and
5. The EBCI waived its Sovereign Immunity when it misused and broke its own laws, when it discriminated against Plaintiff, when it allowed Council to go beyond its scope of authority, by practicing Bad Faith,

**I. DEFENDANTS WAIVED SOVEREIGN IMMUNITY WHEN THEY
MISUSED AND BROKE THEIR OWN LAWS**

Resolution 470(See Resolution 470, Exhibition #1.) (, which was passed by Eastern Band of Cherokee Indians (EBCI) Tribal Council on the 12th of January 2017, states that Cherokee Code, EBCI on 12 January 2016, stated that Cherokee Code, Chapter 47(g)(4) allows enrolled members of the EBCI to grant a life estate to their non-enrolled spouses (at Tribal Council's discretion). However, Chapter 47 of the Cherokee Code applied only to improvements: Rule 47(g)(2)

“Any improvements placed on the land are considered the personal property of the possessory holder in which the Tribe has no interest. They may be bequeathed by will, or absent a will, shall be distributed to the next of kin in the manner provided by the laws of the State of North Carolina.”

(See , Cherokee Code, Chapter 47, 1992, Exhibit # 19).

Interestingly, after the hearing on January 2020, Chapter 47(g)(2) mysteriously disappeared. By intentionally misusing and then removing that part of the Code, the EBCI intentionally broke its own laws.

**II. DEFENDANT WAIVED SOVEREIGN IMMUNITY BY
DISCRIMINATING AGAINST PLAINTIFF**

By singling out Bill Ledford's spouse, April Ledford, because she was non-enrolled and non-Cherokee; and by taking her home and leaving her homeless, is discrimination and violates her constitutional rights according to the United States Constitution, which. (See U.S. Constitution.)

**III. DEFENDANT WAIVED SOVEREIGN IMMUNITY
BY GOING BEYOND ITS SCOPE OF AUTHORITY
AND BY PRACTICING BAD FAITH**

A. The Eastern Band of Cherokee Indians waived its sovereign immunity when they allowed Tribal Council to go beyond its scope of authority and allowed Tribal Council to violate EBCI laws.

1. Tribal Council overturned EBCI Tribal Court's decision that Bill J Ledford's 2007 will was valid.

2. Tribal Council unlawfully intruded upon the exclusive jurisdiction that the Tribal Probate Court has in the matters of Wills and Estates.

3. Tribal Council illegally tampered with a legal document validated by tribal and state courts.

A will is a legal document, one that should not be altered; only the testator can change his/her will. According to Tribal and North Carolina laws, in order for a will to be valid, it must be signed by a competent testator in the presence of two witnesses, who then signs the documents. Bill Ledford's will, created in 2007, met the requirements needed to be a valid will in North Carolina and in EBCI Court:

"It is adjudged that the paper-writing and every part thereof is the Last Will and Testament or codicil(s) thereto of the decedent, and the same is ordered admitted to probate." (Signed by Jack Gloyne, the Clerk of the Superior Court of Cherokee, 9 December 2013.) (See Exhibit # 2 Certificate of Probate.)

4. Tribal Council unlawfully overturned the rightful decision of the Probate Court and that of enrolled member Jack Gloyne, the Clerk of the Superior Court of Cherokee, on 9 December 2013.

Council does not have jurisdiction in the probate of wills and the administration of estates. Such jurisdiction belongs exclusively to the Cherokee Court. "The Court in the exercise of its jurisdiction in the probate of wills and the administration of estates, and upon application of the fiduciary, has adjudged legally sufficient the qualification of the fiduciary named below and orders that the Letters be issued in the above estate." Jack Gloyne, Clerk of Superior Court, Eastern Band of Cherokee Indians Dec 9 2013. (See Exhibit # 3, Ancillary Letters.)

5. Tribal Council unconscionably changed the last wishes of an enrolled member, an unheard-of act that violated Bill Ledford's rights as an enrolled member, even though deceased;

6. Tribal Council illegally twisted the meaning of Cherokee Code, Chapter 28,

to support their decision to change Bill Ledford's Last Wishes. Note: Chapter 28 of the Cherokee Code applies to situations when a valid will is not present. (*Note: In 2019 Chapter 28 was amended and Section 28-6 clarified that "Tribal Council shall give effect to lawful wills".*)

*Sec. 28-1. - Inheritance laws of North Carolina adopted.

(a) For purposes of determining the identity of the lawful heirs of Tribal members for the inheritance of both personal and real property, the Tribe does hereby adopt the laws of intestate succession of the State of North Carolina and that state's laws governing the making of wills and the legal validity of wills; provided, however, that the state laws adopted herein are subject to and modified by the provisions of this chapter, and in case of conflict between the Cherokee Code and state law, the Cherokee Code shall prevail. Further exception to North Carolina inheritance law: the Tribe follows "per stirpes" distribution rather than the North Carolina rule of per capita distribution.

*Cherokee Code, Chapter 28 (a) **"Tribal Council shall give effect to lawful wills"**

Tribal Council's assignment and distribution of a possessory holding that is part of the estate of a deceased Tribal member is proper if: (1) the action is consistent with Tribal law; and (2) the action is consistent with the scheme of distribution provided by the testator in his or her lawful, governing will, if such a will exists and is presented to Tribal Council.

(b) If an enrolled member of the Tribe dies intestate, the Tribe shall apply the law of intestate succession as adopted and modified by this chapter, to determine the proper assignment and distribution of the deceased's possessory interests in Tribal trust lands.

(c) In this chapter, the terms possessory interest and possessory holding are used interchangeably, and include the improvements located thereon.

7. Tribal Council allowed one Tribal Council Member, Teresa McCoy, to move to change Bill Ledford's will **in bad faith** after allowing family members to come forth and produce misinformation about Plaintiff on national TV -- when Plaintiff was not given due process to attend the hearing and present her defense.

Council Member McCoy also falsely claimed Plaintiff had abandoned Plaintiff's home when the opposite was true. (Plaintiff told Council on 12 Jan 2016 that she was residing at her home on 140 Greybeard Hill, Birdtown, Cherokee; was working at the Harrah's Cherokee Casino, was paying insurance on the home, and paying the electric and water bills, as well as for upkeep.)

Also, Council Member McCoy, on national TV, announced misinformation about Plaintiff and on 12 January 2020, told Jason and Damin Ledford that their grandfather (Bill Ledford) would have "begged" Council to do what they had done (changed his will to remove Plaintiff from Plaintiff's home).

8. Tribal Council inexplicably allowed family members to come before Council to contest the will when the proper venue, Tribal Court, was ignored (family members had not contested the will before tribal court within the three-year period allowed after Bill's passing);

9. Tribal Council mysteriously allowed Cherokee Code, Chapter 47 -- specifically Chapter 47-4(g)(2) -- to DISAPPEAR after 12 January 2017.

10. EBCI COUNCIL CHAIRMAN BILL TAYLOR BIASED

Chairman Bill Taylor clearly was biased (he appeared alongside William John Ledford before Judge Cochran on June 5, 2016 -- at the initial Eviction Hearing).

a. It was Chairman Bill Taylor's duty to answer yay or nay to Plaintiff's Request for Time -- "Resolution/Ordinance Request Form" -- but he refused to do so.

b. Chairman Bill Taylor threatened to call the police and charge Plaintiff for harassment if she tried to reach him again via email regarding my case.

c. Chairman Bill Taylor falsely stated (on national TV) there was a criminal investigation against Plaintiff because she had my husband cremated in

d. June of 2016. This was a part of an Email thread in June of 2016. Up to this point I had never received any answers or correspondence from Chairman Bill Taylor, although he was the one "in charge" of Council, thus the one I was supposed to contact and hear from:

Dennis (Bill) E. Taylor dennis@tribaltribe.com

Teresa Brandon Adam Alan Albert Anita Travis Patrick Marie Richard Richard Bo Tommye

From here on out you can contact me through the attorney generals office any further contact will be considered harassment.

Sent from my iPhone

As explained, exhaustion of tribal remedies is not required in this case. "Exhaustion is not required where (1) an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith (see *Iowa Mut.*, 480 U.S. at 19 n. 12; (2) (3) exhaustion would be futile because of the lack of adequate opportunity to challenge the court's jurisdiction (*Johnson v. Gila River Indian Community*, 174 F.3d 1032, 1036 (9th Cir. 1999)

"There are exceptions to the rule. The four recognized exceptions to the requirement for exhaustion of tribal court remedies are: (1) (citations omitted).an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith; (2) the action is patently violative of express jurisdictional prohibitions; (3) exhaustion would be futile because of the lack of adequate opportunity to challenge the court's jurisdiction; or (4) it is plain that tribal court jurisdiction is lacking. *Burlington Northern R.R. v. Red Wolf*, 196 F.3d 1059, 1065 (9th Cir. Mont. 1999)"

(See "Why Exhausting Tribal Remedies is Typically Required Prior to Challenging Jurisdiction in an Alternative Court", 27 February 2017, by Marisa R. Chaves, Senior Counsel with the law firm of Vasquez Estrada & Conway LLP in San Rafael, CA.)

IV. PLAINTIFF EXHAUSTED TRIBAL REMEDIES

1. According to Cherokee Code, an interested party is allowed to be heard by Council after the deadline of a decision when there is ***SIGNIFICANT NEW EVIDENCE. (See Exhibit # 13, Cherokee Code, Section 117-40(e)(1) -- The interested party provides significant new evidence to Tribal Council.]** Plaintiff presented Significant New Evidence -- that Plaintiff did not have another home -- but Tribal Council ignored it. (See Exhibit # 8, Foreclosure Notice from the North Carolina State Employees' Credit Union.)

*Also, under 117-4 an interested party is allowed to ask the Chief to veto Council's decision (within 30 days of passage by the Council). On 5 May 2016, after Council's decision to revoke Plaintiff's life estate, she asked Chief Patrick Lambert if he could do anything about their decision. Chief Lambert replied that there was nothing he could do to change their decision. Although it was well past the required 30 days of Council's decision, Plaintiff wrote a letter to Chief Lambert regarding her concerns about Council's but she did not receive an answer. (See Exhibit # , Plaintiff's Letter to Principal Chief Lambert, June 1, 2016.)

3. Plaintiff submitted a Request for Time ("Resolution/Ordinance Request Form") but Chairman Bill Taylor ignored that (According to Cherokee Code, the Chairman was to answer either a "yay" or "nay" response). (See Exhibit # 14, Resolution/Ordinance Request Form.)

4. June 2017 -- Plaintiff submitted an APPEAL after Judge Cochran's decision to evict her from my home on June 5, 2017 (See Appeal, Exhibit #12). Plaintiff was told that \$500.00 was required to file an appeal. Later Plaintiff found out the actual fee was \$300.00, but either amount was unaffordable. The important take-away from this was a consistent lack of concern for Plaintiff's rights, (a pattern worth noting since Plaintiff's interaction with certain members of her husband's family from the early 2000s). Judge Cochran did not allow Plaintiff to defend

herself in court.

5. Nov 8, 2019 -- Joe Hayes, friend of Plaintiff and her late husband Bill Ledford, had a phone conversation with Michael McConnell, (who knew Bill J Ledford and worked with him while Bill Ledford was Vice Chief of the EBCI). Mr. McConnell agreed with Joe Hayes that Bill Ledford would not have wanted his wife (Plaintiff) to be homeless.
6. July 2017 -- Plaintiff asked attorney Elizabeth Walker (of Washington DC) to take her case but Ms. Walker told Plaintiff it was too late to sue in Tribal Court.
7. Winter/Spring 2018 -- Plaintiff asked attorney Luke Hyde (of Bryson City) to take her case, but Mr. Hyde told Plaintiff the Statute of Limitations to sue in Tribal Court had passed.
8. Plaintiff wrote a letter to Michael McConnell, Attorney General for the EBCI, requesting to settle this claim out of Court, but Plaintiff received no answer. (See Exhibit #15)
9. Plaintiff wrote a letter to Dale Curriden & Nevin Wisnoski, Defendant's attorneys (with attachments of Smoky Mountain News articles regarding Plaintiff's case) requesting to settle this matter. Plaintiff received no answer. (See Exhibit #15)

V. INDIAN CIVIL RIGHTS ACT DOES PROVIDE AN INDIVIDUAL RIGHT OF ACTION FOR PLAINTIFF'S CLAIM

"The Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C. §§ 1301-1304 (ICRA), provides as follows: § 1302. Constitutional Rights: (a) In general No Indian tribe in exercising powers of self-government shall:

5. take any property for a public use without just compensation;
8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law."

The EBCI took Plaintiff's home illegally and did not give Plaintiff just compensation.

The EBCI denied Plaintiff, who maintained a permanent residence within its jurisdiction at 140 Greybeard Hill, Birdtown, Cherokee, North Carolina 28719, the equal protection of its laws and deprived Plaintiff of her property without due process of law.

Defendant states that it is "settled law that ICRA only provides only one remedy: habeus corpus."

Defendant quotes Santa Clara vs. Martinez, 436 U.S. 49, 61-64, (1978) "holding despite the wording ICRA provides only habeus corpus as a remedy." (Defendant's Memorandum, Page 3.) Plaintiff disagrees and believes the wording of 1302. Why would the writers put in place such wording if they did not mean it? Plaintiff agrees with DISSENTION "The degree of intrusion permitted by a private cause of action to enforce the civil provisions of Sect 1302 would be no greater than that permitted in a habeus corpus proceeding. The federal court's duty would be limited to determining whether the challenged tribal action violated one of the enumerated rights. If found to be in violation, the action would be invalidated; if not it would be allowed to stand." (Page 76.)

EBCI VIOLATED PLAINTIFF'S DUE PROCESS ICRA 1302(5)

The EBCI ignored Plaintiff's several attempts to resolve this issue (See aforementioned descriptions) and refused to allow Plaintiff due process, a right

granted under the United States Constitution and ICRA.

A. On 12 Jan. 2017, while I was out of the state, the EBCI Council passed Resolution 470, wherein they revoked the life estate my husband Bill J. Ledford left me. (See Exhibit #1, Resolution No. 470.)

1. Notice of the Hearing regarding Bill J Ledford's will was MAILED (return receipt) to my address of PO Box 1394, Whittier, NC 28789 from the EBCI on Jan. 5, 2017. *** (See Exhibit #7, Hearing Notice and Envelope from EBCI)

2. Notice was RECEIVED by Whittier NC Post Office Jan. 7, 2017*** (announcing date of council meeting as Jan. 12, 2017).***

3. I was in Arkansas for my mother's funeral (my mother passed away Dec. 29, 2016) and I arrived home in NC on Jan 15, 2017.

B. I was not allowed to be heard before Judge Cochran at Eviction Court on June 5, 2017.

CHRONOLOGY OF FACTS

The following is a chronology of facts which are supported by documentation and videos:

1. On 19 July 2001 Bill J Ledford, enrolled member and former Vice Chief of the Eastern Band of Cherokee Indians, and I married.
2. On 23 February 2007 Bill hired an attorney to finalize his will. (The will he had saved at the Realty Division of the Bureau of Indian Affairs in Cherokee could not be found. He was advised to have his will done by an attorney not associated with the BIA or the tribe.)
3. 29 Oct. 2013 Sadly, my husband of 13 years passed away. His will of 2007 was deemed valid in Orange County, North Carolina (where he passed away) and by Tribal Court. His will left me a life estate in the home we shared since 1998 at 140 Greybeard Hill, Cherokee North Carolina 28719 – authorized by Cherokee Code Section 47-4 (g) (2). (See Exhibit # 4, Last Will and Testament of Bill J Ledford.) *Note: Bill Ledford left each of his 5 children at least 10 acres while he was alive.
4. 29 Dec. 2016 -- My mother, Barbara Gordon Pickett, passed away in Arkansas. I went to Arkansas to attend her memorial service and to be with family. (See Exhibit # 5, Obituary of Barbara Emma Pickett.)
5. On 12 Jan. 2017, while I was out of the state, the EBCI Council passed Resolution 470, wherein they revoked the life estate my husband Bill J. Ledford left me. (See Exhibit # 6, Resolution No. 470.)
6. ***Notice of the Hearing regarding Bill J Ledford's will was MAILED (return receipt) to my address of PO Box 1394, Whittier, NC 28789 from the EBCI on Jan. 5, 2017. *** (See Exhibit #7, Hearing Notice and Envelope from EBCI)
7. Notice was RECEIVED by Whittier NC Post Office Jan. 7,

2017*** (announcing date of council meeting as Jan. 12, 2017).***

8. As mentioned before, I was in Arkansas for my mother's funeral (my mother passed away Dec. 29, 2016) and I arrived home in NC on Jan 15, 2017.

9. On national television Council was told by Bill Ledford's oldest son, William John Ledford, in a letter read by Jason Ledford (William John Ledford's son) that I was in possession of a home in Chapel Hill, North Carolina. This was not true and William John Ledford knew this was not true (and it was on public record). Our home in Chapel Hill NC was foreclosed upon on November 3, 2016. (See Exhibit #8, Letter from State Employees' Credit Union.)

10. After the aforementioned events I became homeless. (See Exhibit # 9a and #9b, HVRP Verification of Homelessness and Fax from Swain County Veterans' Office to Andy Holland, Asheville Buncombe Community Christian Ministry.)

EVICTED FROM HOME ON JULY 5, 2017

1. On May 5, 2017 Judge Cochran in Tribal Court presided over the Eviction hearing and Chairman Bill Taylor attended. Chairman Taylor was clearly there in support of William John Ledford and Damin Ledford and was talking extensively with them in the hallway after the hearing was over.

2. I did not receive a valid Notice of Eviction. However, I did receive a fraudulent notice created by William John Ledford and delivered to my residence by Jason Ledford and a man in a police uniform (I did not recognize him). It was signed by Jason Ledford and Damin Ledford (See Fraudulent Notice, Exhibit #10.)

3. On June 5, Judge Cochran ruled in Damin Ledford's favor (although Damin Ledford was not mentioned in Bill's will) and gave Plaintiff a deadline of July 5, 2017 to leave her home. (Note: Damin Ledford was intentionally left out of Bill Ledford's will because Bill did not approve of the way his grandson, Damin,

treated his mother and how Damin had dealt in drugs.) (See Eviction Judgment, Exhibit #11.)

4. Plaintiff submitted an Appeal to the Cherokee Court and that was answered with a voice mail from the clerk's office stating that I had to pay \$500.00 to appeal the decision (Later Plaintiff discovered that an appeal actually cost \$300.00). (See Appeal, Exhibit #12.)

A HEARING ON NATIONAL TV WHERE
EBCI ALLOWED FALSE PRETENSES AND DEFAMATION
LEAVING PLAINTIFF WITH NO DUE PROCESS

On Jan 12, 2017 William John Ledford not only misled Council when he told them Plaintiff had a "dream home" in Chapel Hill, he told them a long list of other untruths that persuaded them to revoke Plaintiff's life estate. And because Plaintiff was not allowed to give her side of the story, Council swiftly chose William John Ledford's account and judged in his favor.

The following are Plaintiff's answers to the untruths that were aired on national TV (some seem trivial, but they help illustrate a larger picture of false pretenses and defamation of my character before the EBCI, Tribal Council, and the Cherokee and surrounding communities as a whole):

1. William John Ledford stated that Bill would never allow cats in his home. Not true. Bill allowed cats in his home, including his favorite cat, Pedro, whom he called "his little dog".
2. Plaintiff asked William John Ledford's sons (Jarin and Damin, ages 38 and 24 respectively) to keep their dog outside, but they ignored Plaintiff's request and ended up blaming Plaintiff's two kittens for an ensuing flea problem.
3. Plaintiff asked Jarin and Damin to leave the door open to the room where the kittens' litter box was but they defied that rule as well and then complained to their father that there was cat feces in the living room!
4. Damin smoked in the house even though Plaintiff asked him not to.

5. William John Ledford inferred that Bill and Plaintiff were about to be evicted in Carrboro NC for not paying our rent – this was absolutely not true (there was a minor dispute with the landlord over access to a storage unit – which was settled in court).

6. William John Ledford told Council that Plaintiff used her husband's pension and social security funds to pay for Plaintiff's "dream home". The fact of the matter was, it was "our" dream home, which we both designed with the help of an architect. [Bill and Plaintiff decided to do this because they wanted to prevent a situation like this dispute with his children and Council.] Plaintiff helped pay for the home with money from her savings and money from her income as a manager and a licensed teacher.

MEMBERS OF COUNCIL VOICED OPPOSITION TO TAMPERING WITH VALID WILLS

EBCI Council Session, 5 May 2016:

Council Member Adam Wachacha of Snowbird Community stated: "I think we need to come up with some kind of process on the contesting of wills. Once it's presented to us, all we're doing is just recognizing the will. Wills that make their way to Council have already been OK'd by the court system."

"I think we're getting ahead of ourselves when we're taking each one of these wills individually and adjusting them on a case-by-case basis," stated Vice Chairman Brandon Jones, of Snowbird. In his view, it was Bill's wish that April [Plaintiff] have the house, and council would be wrong to disregard that wish. Jones said he was "sick to his stomach" as the amendment passed. "It's not for Council to say, 'Well, I knew him better, so I'm going to overturn the will.'"

(Holly Kays, 8 June 2016, Smoky Mountain News
<https://www.smokymountainnews.com/news/item/17796-cherokee-council-considers-revoking-part-of-former-vice-chief-s-will>)

(5 May 2016. [livestream.com/accounts/10717024/events/4687553/videos/122006952](https://www.livestream.com/accounts/10717024/events/4687553/videos/122006952))

EBCI Council Session, 2 June 2016 Session:

Council had a 45-minute closed session to discuss the topic of changing the wills of enrolled members.

Afterward, Council Member Adam Wachacha stated the need for a rule stating that Council should only recognize wills that come to them after validated by the courts.

(Livestream.com/accounts/10717024/events/4687553/videos/124894255)

EBCI Council 7 July 2016:

EBCI Council Vice-Chair Brandon Jones – “I know when I leave a valid last will and testament behind, that’s what my wishes were.... My will... and this is what I want to say to Council: I may go out these doors today and not make it home, but I beg you not sit here and to pretend to know what my last wishes were..... if I took the time to sit down and write out my last will and testament, and go through that process, please don’t sit here and change my will. Not just Bill’s will or anyone’s will.... I can’t support this because it’s been amended. And to me this changes Bill’s last will and testament... and I don’t support changing anyone’s last will and testament... There’s a process in the court system....”

Council Member Tommye Saunooke: “...I certainly did not support that amendment [removing Plaintiff’s life estate on 5 May 2016]... Thank you for your comments, Brandon (Jones)... I agree with you. I don’t like to mess with anybody’s will. When my will comes in here I don’t anybody saying, ‘Well, she didn’t want that,’ because it’s wrong. You don’t know what Bill Ledford was thinking. None of us do. But he had a valid will and it was proved. And that concerns me.”

Jennifer Bainbridge, Attorney for the EBCI: “Caveat not filed yet -- 3 years to file from date of probate. ...Council removed life estate provision ...you are effectively nullifying that term in the will... Under Chapter 47 there is

authority to leave a life estate for a non-enrolled spouse...A court will always read a will to try to give effect to the intent of the decedent as it's written in the will...

We do have a valid will here that's been accepted by both courts..."

(7 July 2016. [livestream.com/accounts/10717024/events/4687553/videos/128982824](https://www.livestream.com/accounts/10717024/events/4687553/videos/128982824)

3:22:41 – 3:32)

A DISCUSSION WITH PRINCIPAL CHIEF RICHARD SNEED

Plaintiff and a friend, Vietnam Veteran and local Veteran Activist Joe Hayes, talked with recently re-elected Principal Chief Richard Sneed (a former Marine) who told Joe and Plaintiff that what happened was wrong. He also stated that this would never happen again. (Veterans Honor Day, 107th Cherokee Indian Fair, Cherokee, North Carolina, 11 October 2020.) Chief Sneed said there was going to be a change in the Cherokee Code and that Council members could not decide the last wishes of a deceased enrolled member. Chief Sneed further stated a lawsuit was necessary for me to gain justice.

Moreover, he said the tribe itself should be sued (not Council). IV. INDIAN CIVIL RIGHTS ACT DOES PROVIDE AN INDIVIDUAL RIGHT OF ACTION FOR PLAINTIFF'S CLAIM

"The Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C. §§ 1301-1304 (ICRA), provides as follows: § 1302. Constitutional Rights: (a) In general No Indian tribe in exercising powers of self-government shall:

5. take any property for a public use without just compensation;
8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law."

The EBCI took Plaintiff's home illegally and did not give Plaintiff just compensation.

The EBCI denied Plaintiff, who maintained a permanent residence within its jurisdiction at 140 Greybeard Hill, Birdtown, Cherokee, North Carolina 28719, the equal protection of its laws and deprived Plaintiff of her property without due process of law.

Defendant states that it is "settled law that ICRA only provides only one

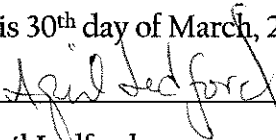
remedy: habeus corpus.”

Defendant quotes Santa Clara vs. Martinez, 436 U.S.49, 61-64, (1978) “holding despite the wording ICRA provides only habeus corpus as a remedy.” (Defendant’s Memorandum, Page 3.) Plaintiff disagrees and believes the wording of 1302. Why would the writers put in place such wording if they did not mean it? Plaintiff agrees with DISSENSION “The degree of intrusion permitted by a private cause of action to enforce the civil provisions of Sect 1302 would be no greater than that permitted in a habeus corpus proceeding. The federal court’s duty would be limited to determining whether the challenged tribal action violated one of the enumerated rights. If found to be in violation, the action would be invalidated; if not it would be allowed to stand.” (Page 76.)

CONCLUSION

WHEREFORE, the Plaintiff requests that the Motion to Dismiss be denied, that Plaintiff's claims be brought before a jury, and that the Tribe award the Plaintiff such relief as the Court may deem just and proper.

This 30th day of March, 2020.



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