

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

**Lawrence LaVallie,
Plaintiff/Appellee**

v.

**Lorne Jay,
Defendant/Appellant**

And

**Michael Charette,
Defendant**

**Supreme Court No.
20190402**

**District Court No.
40-2018-CV-00050**

SUPPLEMENTAL APPELLANT’S BRIEF

**Appeal from Civil Judgment entered on October 23, 2019 by the Northeast Judicial District,
Rolette County District Court, State of North Dakota, The Honorable Anthony Benson
presiding.**

ORAL ARGUMENTS REQUESTED

Lorne Jay-Defendant/Appellant
3650 County Road 43
St. John, North Dakota 58369
lornej@yahoo.com

TABLE OF CONTENTS

STATEMENT OF ISSUES.....	¶ 2
ORAL ARGUMENT JUSTIFICATION.....	¶ 5
STATEMENT OF FACTS.....	¶ 7
ARGUMENT.....	¶ 11
CONCLUSION.....	¶ 17

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Appeal from Civil Judgment Entered on October 23, 2019 by the Northeast Judicial District, Rolette County District Court, State of North Dakota, The Honorable Anthony Benson Presiding.

[¶ 2] STATEMENT OF THE ISSUES

[¶ 3] Whether the district court committed reversible error by refusing to accept Defendant’s evidentiary submission of a Federal Government ‘Title Status Report’ proving the land in question is held in trust by the United States Government for the Turtle Mountain Band of Chippewa?

[¶ 4] Whether the District Court erred by allowing Plaintiff's Attorney to object to the Defendant's evidence of a Tribal Court complaint signed by Mr. Lawrence LaVallie stating he is an enrolled member of the Turtle Mountain Band of Chippewa without being an attorney of record on the Tribal Court complaint?

[¶ 5] ORAL ARGUMENT JUSTIFICATION

[¶ 6] This case comes before the Supreme Court as an unusual case, it involves 3 enrolled members of an American Indian Tribe and an accident that took place on land held in trust by the United States for the Turtle Mountain Tribe. Subject matter jurisdiction was raised by a Defendant along with hearsay. The Supreme Court remanded back to District Court to determine jurisdiction and enrollment. Evidentiary hearings were held, and this Court is faced with reviewing appellant questions from the Evidentiary hearings. Oral arguments are critical in this complex case that involves tribal jurisdiction.

[¶ 7] STATEMENT OF THE FACTS

[¶ 8] Upon remand from the North Dakota Supreme Court, the Rolette County District Court scheduled an Evidentiary hearing on August 10, 2020 for the purpose of receiving evidence as to the issue of subject matter jurisdiction. Defendant Mr. Jay requested a continuance to obtain evidence. The court granted the continuance, next hearing was scheduled for September 14, 2020. On September 10, 2020 Defendant Mr. Jay requested additional time to attempt to get official records from the Bureau of Indian Affairs to prove tribal enrollment of Plaintiff Lawrence LaVallie and Defendant Michael Charette. The court denied the second request.

[¶ 9] During the September 14, 2020 Evidentiary hearing Defendant Mr. Jay presented a document mailed to him from the United States Department of the Interior. A Title Status Report (TSR) is an official report certifying the land in question is held by the United States of America in trust for the Turtle Mountain Tribe. The document is time-stamped (June 9, 2020) the time printed was 12:45:15pm with the REQUESTOR being JOLSON. The envelope the document was mailed in was also provided, dated 9/01/2020. Plaintiff's counsel objected to the admission of the document, the court granted the objection and would not admit the federal land document as evidence.

[¶ 10] The second element to the remand was to prove tribal membership of Plaintiff Lawrence LaVallie and Defendant Michael Charette. Mr. Jay provided the court with a Tribal Court complaint filed and signed by Plaintiff Lawrence LaVallie. The court allowed the document to be admitted as evidence, with the Judge saying he would not use it in his decision. The Tribal Court Summons and Complaint are filed in the Turtle Mountain Tribal Civil Division, Civil No. 19-10113, accepted by a Tribal Court Clerk on December 19, 2019 at 11:02 am. Plaintiff's legal counsel Attorney Vendsel argued his office prepared the document and he stated "he was not sure if Mr. LaVallie was an enrolled member of the Turtle Mountain Tribe".

[¶ 11] ARGUMENT

[¶ 12] A. The legal document filed in Tribal Court states the Plaintiff is an enrolled member of the Turtle Mountain Tribe and should have been considered.

[¶ 13] Mr. Jay argues that the document he presented to the District Court is a Tribal Court complaint that was filed by Plaintiff in the Turtle Mountain Tribal Court on the 19th day of December 2019, two months after the district court issued the order against Mr. Jay and Mr.

Charette. The summons was signed by Mr. LaVallie and accepted by Mandy Davis, Clerk of Tribal Court. During the district court evidentiary hearing, Plaintiff's attorney, Jason Vendsel argued he prepared the document for his client Mr. LaVallie to protect statute of limitations. Item number one of the complaint states, '*At all relevant times, the Plaintiff, Lawrence LaVallie, was a resident of Rolette County, North Dakota and is an enrolled member of the Turtle Mountain Band of Chippewa Indians.*' The Tribal Court summons and complaint does not indicate a law firm nor Mr. Vendsel as legal counsel. If Mr. Vendsel has prepared the document, he, and his client consent that Mr. LaVallie is in fact an enrolled member of the Turtle Mountain Band of Chippewa. The Tribal Court complaint is signed by Lawrence LaVallie. Defendant, Mr. Jay further argues the district court used a verbal statement from Attorney Vendsel saying he did not know if his client was an enrolled member when the complaint was prepared, versus considering the legal Tribal Court complaint signed by Plaintiff Lawrence LaVallie stating he was an enrolled tribal member.

[¶ 14] B. Providing proof of personal American Indian enrollment records from the United States Bureau of Indian Affairs requires a release of information from the individual.

[¶ 15] Mr. Jay argues the limited amount of time the court allowed him to prove the race of the plaintiff and co-defendant was insufficient and further states the Bureau of Indian Affairs, Enrollment Office prohibits the release of enrollment records to him for other individuals unless they are your children. COVID-19 during 2020 forced many offices to close to the public, federal government employees from the Bureau of Indian Affairs agency were directed to work from home (telework) and as of today, April 12, 2021 only a percentage of employees are back in the office for a few days a week, while the majority continue to work from home. Defendant Mr. Jay requested the Title Status Report in June 2020, the document was printed in June 2020,

however the post mark is dated September 1, 2020 proving how lengthy the time process is to obtain local federal information. Mr. Jay asserts proving blood quantum, tribal enrollment of the individual(s) in an off-reservation court hearing is unobtainable. Both LaVallie and Charette are enrolled members of the Turtle Mountain Band of Chippewa and this can be proven in a tribal court hearing through issuing a subpoena to law enforcement, membership enrollment records or public Tribal voting records.

[¶ 16] C. The United States Bureau of Indian Affairs Title Status Report is a legal document from the Federal Government and should have been admitted as evidence.

Defendant Mr. Jay provided the Title Status Report from the United States Department of the Interior proving the land where the accident happened is land held in trust by the United States for the Turtle Mountain Tribe. In the District Court Supplemental Findings of Fact and Conclusion of Law the court was satisfied with testimony from Defendant Mr. Jay that he is an enrolled member of the Turtle Mountain Band of Chippewa and that that land is held in trust. In the district court physical document(s) was not considered when the BIA is a branch of the Department of Interior that prepares a Title Status Report on land, it is a government record kept in the ordinary course of business a hearsay exception to the Rules of Evidence and the Court should have accepted the exhibit.

[¶ 17] CONCLUSION

[¶ 18] The court's denial to allow the United States Department of the Interior Title Status Report (TSR) to be admitted as evidence, denying Defendant Mr. Jay's request for continuance to obtain proof of enrollment in the midst of COVID-19 and due to the time consuming process to obtain federal records along with the fact the court did not consider the Turtle Mountain Tribal Court complaint signed by Plaintiff Lawrence LaVallie solely without

any legal counsel documented should be remanded to district court for further proceedings. Documentation validity was questioned however verbal testimony from Defendant Jay saying he pays land rent for the property and allowing Attorney Vendsel's statement regarding preparing the Tribal Court complaint raises questions on the validity of the court's decision. The physical evidence provided proof of land in question and enrollment of Plaintiff Lawrence LaVallie.

[¶ 19] Therefore, Mr. Jay respectfully requests this court to remand back to the district court to provide additional documentation now received and/or dismiss the judgment against Defendants Lorne Jay and Michael Charette due to lack of jurisdiction.

Respectfully submitted this 12th day of April 2021.

Lorne Jay, Defendant
3650 County Road 43
St. John, ND 58369

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UNSWORN DECLARATION OF SERVICE

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and

Michael Charette,

Defendant

[¶1] Lorne Jay, states that he is of legal age and that on 4-16-2021, he served the Brief in the above matter electronically as follows:

Supplemental Brief was emailed to:

Jason Vendsel @ jvendsel@mcgeelaw.com and rmccormick@mcgeelaw.com on the 16th day of April, 2021

I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct. Signed on 4-16-2021, at Bismarck, ND, USA. St. John, ND

/s/ Lorne Jay