

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

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COURT OF APPEALS

in the SSM Chippewa Tribal

Robert L. McRorie v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians

APP-2023-10

Decided: June 5, 2024

BEFORE: BIRON, BUTTS, CORBIERE, DIETZ, and DEMOORE Appellate Judges.

Opinion and Order

Biron, Karrie Chief Appellate Judge, who is joined by Appellate Judges Butts, Corbiere, Dietz, and DeMoore.

For the reasons explained below, the Sault Ste. Marie Tribe of Chippewa Indians Emergency Election Committee's ("Election Committee") November 30, 2023¹ order dismissing the Appellant's November 23, 2023 Contest ("*Election Committee Decision*") is hereby affirmed and the Appellant's appeal is dismissed.

Facts and Procedural History

On November 20, 2023, the Election Committee under its authority grant by Tribal Resolution 2023-302 conducted a Referendum Election ("Election") on Tribal Resolution 2023-261: Tribal Roll Opening. Unofficial results of the Election reflected that 35.1% of the eligible voters cast ballots in the Election meeting the requirements of STC § 12.109.²

On November 23, 2023, the Appellant, Robert L. McRorie, submitted an Election Contest ("*Election Contest*") pursuant to STC § 12.108 contesting the Election alleging "that there were many major flaws within the process of conducting this [E]lection as well as to call into question the constitutionality of the resolution of which this...Election was conducted on." (*Election Contest* at 2.) Appellant asserts that "Resolution 2023-261...is an illegal resolution and is a violation of the Constitution of the Sault Ste. Marie Tribe of Chippewa Indians" as the "Constitution clearly identifies the 6 Historical Bands of Ojibwe Indians that are Sault Tribe Members...." *Id.* at 2-3. He claims that "[t]he Board of Directors acted outside of their constitutional authority by voting to add additional Bands to the Membership Ordinance, without consent of the Membership."³ *Id.* at 3. The Appellant further alleges that the Election Committee

¹ The *Election Committee Decision* was issued without title and contains the date of November 30, 2023 at 1 and November 29, 2023 at 4.

² STC § 12.109 sets forth that "[t]he result of any referendum election in which at least thirty percent (30%) of the eligible voters case [sic] ballots shall be valid and binding and conclusive upon the Tribe."

³ This Court is without information regarding exactly when or how the Membership Ordinance was revised as Appellant suggests but Appellee proffers that "Tribal Code Chapter 11 was very clearly amended by a prior Board of Directors pursuant to Constitution Article III Sec. 2 and the time period to challenge this action has long since lapsed." *Appellee's Brief* at 16.

used an improper voter roster in that: (1) “Many of the members who reported that they did not receive a ballot had received ballots for the previous two [R]eferendum [E]lections.” *Id.* at 5. (2) “During the ballot count of the Referendum Election, it was also discovered that ballots were mailed to members who have been deceased.” *Id.* at 6. (3) “It was also reported that multiple members, who are not yet 18 years of age, received ballots to vote....” *Id.* (4) “The comparable numbers used from the previous general election to this referendum indicates that the voter roster has not been properly maintained or updated to ensure that all constitutionally eligible voters had the opportunity to exercise their right to vote.” *Id.* Finally, Appellant argues that “the Referendum Election conducted on November 20, 2023...was conducted in violation and out of compliance with Resolution 2023-233 ‘Equal Protections in Sault Tribe Voter Registrations.’” *Id.* at 7.

On or about November 30, 2023, the Election Committee issued the *Election Committee Decision* pursuant STC § 10.120 (2)(c) “dismissing the contests as being without merit, lacking jurisdiction, and for improper venue.” (*Election Committee Decision* at 1). In its analysis, the Election Committee Decision sets forth that, despite a lack of supporting evidence, it initiated a review of the Appellant’s allegations and found, as follows:

1. The voter registration list used in the Election was created pursuant to STC § 12.104 (2) and (3);
2. Use of the 2022 General Election voter registration list was prescribed by STC § 12.104;
3. Exempting all deceased, disenrolled, and members with bad addresses is standard practice;
4. Use of the Enrollment database pursuant to STC § 10.109 filters underage members; therefore, the Election Committee characterized the receipt of a ballot by an underage Tribal member as an impossibility; and
5. “Tribal Code Chapter 11 was amended by a prior Board of Directors pursuant to Constitution Article III Sec. 2 and the time period to request a referendum on this action has long since lapsed.”

(*Election Committee Decision* at 1-3).

On December 5, 2023, McRorie timely filed a Notice of Appeal pursuant to STC §§ 82.201 and 10.120 (7) appealing the *Election Committee Decision*. McRorie argues in his Notice of Appeal (“*Notice of Appeal*”) that “the decision of the Election Committee...was arbitrary and failed to fully address [his] Contests.” He further asserts that the “Election Committee did not conduct a hearing, did not engage in an investigation although that is their charge per the [Ordinance], and gave superficial and incomplete rationales for the dismissal.” (*Notice of Appeal*).

On December 8, 2023, this Court issued an Order to Appellee to Prepare/Produce Record within five (5) days from the date of the Order.

On December 11, 2023, the Election Committee, by and through legal counsel, submitted the following to this Court as the administrative record: (1) the original Referendum *Election*

Contest, (2) the response containing the *Election Committee Decision*, and (3) the *Election Committee Decision*.

On January 5, 2024, this Court issued a Notice of Expedited Briefing Schedule allowing for the matter to be briefed by the parties.

On January 22, 2024, the Appellant filed his “Briefing to the Sault Ste. Marie Tribe of Chippewa Indians Appellate Court” (“*Appellant’s Brief*”). The *Appellant’s Brief*, almost verbatim, repeated the arguments raised in his *Election Contest* discussed above.

On February 6, 2024, the Appellee Election Committee filed Appellee’s Brief on Appeal. (“*Appellee’s Brief*”). The Appellee submits that the issues before this Court include:

1. Does Appellant Director McRorie have standing to bring this appeal?
2. Was the voter registration list used by the Election Committee used in error?
3. Did the Emergency Election Committee abuse its discretion in dismissing the contest filed by Dir. McRorie for lack of jurisdiction, improper venue, and [overall] as being without merit?
4. Is the issue of the Constitutionality of enrolling members that trace lineage to Mackinac Band properly before the Court? *Id.* at 5.

The Appellee argues that the Appellant lacks standing as threshold issue as he has presented no evidence regarding a personalized injury or violation of law that would allow his standing in this case pursuant to STC § 82.201 and that no violation of law has occurred. *Id.* at 8-9.

To support his standing argument, Appellee submits that Appellant McRorie “fails to make an argument that the Emergency Election Committee failed to follow the controlling law (Chapter 12) when administering the [Election].” *Id.* at 9. Further, Appellee asserts that Appellant “attempts to conflate an alleged violation of Tribal Resolution 2023-233 Equal Protection in Sault Tribe Voter Registration as a violation of Tribal Code Chapter 10 while failing to acknowledge that eligibility to vote in a referendum was followed as dictated by Tribal Code Chapter 12.104....” *Id.* In support, Appellee cites Tribal Code Chapter 12.104, as follows:

(2) ‘Election unit’ or ‘unit’ means one of the five Tribal election units employed **for the immediately preceding Tribal general** election in accordance with Article V, Section 1 of the Tribal Constitution and the Election Ordinance, Tribal Code Chapter 10.

(3) ‘Eligible Voter’ or ‘those entitled to vote’ means any enrolled member of the Tribe eighteen years of age or older who meets either of the following criteria:

(a) Is shown upon the Tribal membership roll to be a resident of an election unit; or

(b) Registered as a voter residing outside of any election unit **for the immediately preceding Tribal general election** pursuant to Article V, Section 5 of the Tribal Constitution and the Election Ordinance, Tribal Code Chapter 10.

Appellee argues that “[r]eferendum voter lists are clearly defined in code as under the immediately preceding general election, in this case the 2022 [G]eneral [Election].”⁴ *Id.* at 10. Appellee asserts that “the statutory history of Chapter 12 will show that this language of eligible voter [sic] has been in place since at least July 5, 1995 and is well beyond the time limit from which a Tribal member could request a referendum challenging that language.” *Id.* Likewise, Appellee further argues “that the heart of [Appellant McRorie’s] appeal lies in her [sic] assertion that the Board of Directors has acted contrary to the Tribe’s Constitution by allowing Mackinac Band members to enroll.” *Id.* at 10-11. Appellee proffers that:

[w]hile [Appellant] McRorie disagrees with the state of the Tribe’s law, this appeal is not the avenue with which he can address those grievances. Tribal Code Chapter 82.201 states, ‘An Appellant may challenge a decision of the Election Committee where the Appellant alleges that the **Election Committee** acted in a manner not consistent with applicable tribal law.’ *Id.*

Next, Appellee argues that the voter registration list used by the Election Committee was in line with Tribal Code. *Id.* at 11. Appellee states that “an ‘election unit’ and an ‘eligible voter’ clearly refer back to the ‘immediately preceding Tribal general election’ and that the Election Committee” found [in the *Election Committee Decision*] that the provisions of Tribal Code Chapter 12: Referendum Ordinance [were] followed, that the committee, using prior practice and procedure, exempted out all deceased members, disenrolled members, and members with bad addresses.” *Id.* at 12. Appellee states that the Election Committee found that “619 members were exempted from the voter rolls for either being deceased, being disenrolled, or for having a bad address and that the voter registration is created using the Enrollment database pursuant to Tribal Code 10.109 and automatically filters out all members under 18 years of age so it was not possible that a member, under 18 years of age, received a ballot.” *Id.* at 13.

Further, Appellee argues that it did not abuse its discretion in dismissing the *Election Contest* filed by the Appellant for lack of jurisdiction, improper venue and overall, as being without merit. Appellee states that, in accordance with Tribal Code Chapter 10.120, “the Emergency Election Committee held a meeting on November 27, 2023 to review the issues [in Appellant’s November 23, 2024 Contest]...and rendered a decision under 10.120(2)(c)” regarding Appellant’s allegations of an improper voter registration list and violations related to Tribal Resolution 2023-233. *Id.* at 14-15. Regarding the improper voter registration allegation, Appellee maintains that “the voter list was properly populated in accordance with Tribal Code Chapter 12....” *Id.* at 15. Appellee further argues that “[if] there were underage members receiving ballots, deceased members receiving ballots, or a substantial issue with registered voters missing ballots those members could have come forward, contracted Tribal Administration, or even filed contests of their own.” *Id.* at 15. Appellee notes that no such contests were filed. *Id.* Furthermore, Appellee argues that automatic voter registration contemplated under Tribal Resolution 2023-233 “does not modify, rescind, or otherwise change the eligibility for voting in a referendum election as defined

⁴ At oral argument, the Appellee further clarified that STC § 12.103 governs the interpretation of eligible voter list for this Election and that, therefore, nothing in Tribal Resolution 2023-233 modifies the required use of the 2022 General Election eligible voter list to conduct the Election on Resolution 2023-261.

12.104 and thus any newly automatically enrolled voters could not, under Tribal Code, be considered eligible voters under 12.104 until after the 2024 general election.” *Id.* Thus, Appellee asserts that because there is no record to substantiate Appellant’s “allegation that an invalid list was used...the decision to dismiss them as without merit was proper.” *Id.* Similarly, Appellee posits that because the “Election Committee properly created the voter registration list for the referendum pursuant to the definition in Chapter 12.104 and the Board of Directors statutory intent is clear, it is appropriate to dismiss as without merit.” *Id.*

Finally, Appellee argues that “the issue of the Constitutionality of enrolling members that trace lineage to [the] Mackinac Band is not properly before the Court.” *Id.* at 16. Appellee argues that “the time period to request a referendum to challenge [Board action that amended Tribal Code Chapter 11] has long since lapsed.” *Id.* Appellee further argues that the Election Committee’s authority extends to violations of Tribal Code Chapters 10 and 12, and that dismissal for lack of jurisdiction, improper venue and [lack of] merit was appropriate as the Committee is without “authority to determine the constitutionality of Mackinac Band membership....” *Id.* Likewise, the Appellee asserts that, because the Election Committee was without jurisdiction to hear and decide such matters, the issue of Constitutionality of enrolling Mackinac Band members is not properly before this Court. *Id.*

On February 19, 2024, this Court issued a Notice of Oral Argument.

On March 14, 2024, oral arguments were held at which both Appellant and Appellee, by and through its legal counsel, were present. At oral argument, Appellant and Appellee agreed to incorporate arguments advanced at the same date/time in *Hatch v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-2023-09, to supplement the record in the instant matter.

Jurisdiction and Standard of Review

Tribal Code § 10.120(7) allows for direct appeal to this Court in limited original circumstances. Under Tribal Code § 10.120(7) written decisions of the Election Committee “issued pursuant to subsection (2)(c) may be appealed to the Sault Tribe Chippewa Tribal Court of Appeals pursuant to Chapter 82.”

Chapter 82 “establishe[s] the procedures by which appeals are taken from decisions of . . . the Election Committee.” (STC § 82.101). Section 82.201 also establishes who may appeal the decision of the Election Committee and the limitations of such an appeal: (1) A challenge to the decision of the Election Committee must allege that the Election Committee acted in a manner not consistent with Tribal law; and (2) the challenge must be personal to Appellant and not a generalized grievance. Section 82.202 sets forth that an appeal is proper before this Court if it “concerns a final decision of the Election Committee rendered pursuant to Tribal Code Chapter 10 at Section 10.120(c).” Accordingly, this Court has limited jurisdiction to hear appeals where an Appellant has filed a proper challenge or contest in accordance with § 10.118(1) and the Election Committee has rendered a decision in writing in accordance with § 10.120. (STC § 10.120(2)(c)).

“This Court will not substitute its judgment for the judgment of the Election Committee, unless the Election Committee’s actions were arbitrary or unreasonable.” *Catherine Hollowell v. Sault Ste. Marie Tribe of Chippewa Indians Election Committee*, APP 14-02 at 2 (May 28, 2014) and result “in an Appellant being unfairly denied a substantial right or being caused to suffer an unjust result.” (STC § 82.210). Furthermore, this Court will not entertain arguments that were not first the subject of an election contest from which a written decision resulted. *Isaac McKechnie v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-16-05 (July 15, 2016).

In every matter before this Court, our Anishinaabe teachings of *nibwaakaawin* (wisdom-use of good sense), *zaagi’idiwin* (practice absolute kindness), *minadendmowin*, (respect – act without harm) as well as *ayaangwaamizi* (careful and cautious consideration) must guide this Court’s decision-making. *Payment v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-2022-02 (December 5, 2022).

Discussion

Jurisdictional Limitations

At the outset, this Court feels compelled to address its limited jurisdiction and its ability to address the Constitutionality of Board of Directors’ actions in the context of an appeal from an Election Committee decision. In its brief and at oral argument, the Appellee contends that, as to the actions of the Board of Directors, no such jurisdiction exists in Tribal law. While the Appellant alleges otherwise, when asked by this Court at oral argument, the Appellant could point to no authority that would allow this Court to review and decide matters of a Constitutional nature in this context.

In fact, this Court has previously noted that Tribal Court and Court of Appeals authority is derived specifically from Tribal law. *DJ Hoffman v. Sault Ste. Marie Tribe of Chippewa Indians et. al.*, APP 2022-05 (December 7, 2022). Unlike other tribes whose constitutions expressly create co-equal branches of government in which decisions of each branch are subject to the review authority of the other in certain circumstances, the Sault Ste. Marie Tribe of Chippewa Indians is not such a tribe. It is a one branch government that created a “reservation court” and specifically defined the jurisdiction of that court within the confines of Tribal law. The Tribal Code currently provides the Tribal Court with jurisdiction to hear the following types of cases: criminal, child welfare, juvenile delinquency, landlord-tenant disputes, guardianship matters, civil garnishments, adoptions, conservation matters, torts, workers compensation matters, traffic cases, civil infractions, enforcement of foreign court judgments, civil contempt matters, emancipation, general civil matters, personal protection matters. *Hoffman, supra*. The jurisdiction of the Court of Appeals is limited to those matters delineated in STC Chapter 82.

Specifically, since this matter comes to this Court on an appeal from a decision of the Election Committee pursuant to STC § 10.120(7), the scope of our review pursuant STC §§ 82.203 and 82.210 only extends to Constitutionality issues within that purview. Here, Resolution 2023-261 and the Constitutionality of the Board of Directors’ addition of the Mackinac Band to STC Chapter 11 in 1978 is beyond that scope and not within the purview of this Court. The Court understands that this portends the possibility that the governing body in a one branch government

could face a crisis of community confidence if a transparent system is not in place to independently determine the constitutionality of the governing body's actions. But, contrary to the arguments of the Appellant, under the current state of Tribal law, and these particular circumstances, for now, we are without such authority to act.

Thus, this Court is without authority to address whether Resolution 2023-261 violated the Sault Ste. Marie Tribal Constitution and whether it is an illegal resolution.

Standing

An additional threshold matter advanced by the Appellee's Brief and Oral Argument is the issue of standing. While this was not a part of the *Election Committee Decision*, it is a jurisdictional issue and, hence will be addressed by the Court. Under Tribal law related to Election matters, standing requires that an appeal from an Election Committee decision be personal to Appellant and not a generalized grievance "shared in equal measure by all or a large class of similarly situated parties." (STC § 82.201). Standing has been previously addressed by this Court, finding that, in the context of Tribal Elections, there is nothing more personal or individual in nature to a Tribal Member than to cast their ballot for their candidate of choice and have that vote counted in a fair and impartial election. *William Joseph Perault v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa*, APP-2023-06 (December 29, 2023).

We have further found that Tribal members should be allowed to challenge the decisions of the Election Committee when there are blatant violations of Tribal law. *Perault, supra*, citing *Lidel and Freiheit v. SMTCI Election Committee*, APP-08-05 (March 25, 2008) and *Berger, supra* at 4. However, unlike *Perault, supra*, this Court can find no violation of law within its authorized scope of review and Appellant has advanced no argument that he, himself, did not receive a ballot or any evidence that his right to vote was specifically affected. Therefore, the Anishinaabe teaching of *ayaangwaamizi* (careful and cautious consideration) guides this Court to find that the Appellant lacks standing to bring forth the arguments related to the use of a faulty election roster. Without evidence that such issues are clearly personal to him and his right to vote in the Election, and not otherwise a generalized grievance "shared in equal measure by all or a large class of similarly situated parties," standing of the Appellant, under the current state of the law, does not exist.

Despite the Appellant's lack of standing and to advance community understanding, keeping with this Court's practice of applying *nibwaakaawin* (wisdom-use of good sense) and *ayaangwaamizi* (careful and cautious consideration), this Court will briefly address the substance of Appellant's faulty roster arguments and the *Election Committee Decision* regarding the same. Appellant advances an argument that STC § 10.109(6), as amended in July 2023, controls the eligible voter list or membership roster used in this Election. This Court rejects that argument and finds that Section 12.104(3) governs the Election roster as it relates to this Election, not the newly amended section of Chapter 10. While this Court understands that such a finding may be confusing to a lay person, STC § 12.103 instructs that, as a matter of law, the provisions of Tribal Code Chapter 12 govern referendum elections, including the Election at issue here.

As indicated in STC § 12.103 below, the provisions of Chapter 10 only apply to referendum elections *if they are not inconsistent with Chapter 12*. Since the amended section of Chapter 10

put forth by Appellant (STC § 10.109(6), as amended in July 2023) is *inconsistent with Chapter 12*, Chapter 12 and, specifically, STC§ 12.104, apply to the Election at issue in this case:

12.103 Relation to Election Ordinance

The provisions of this Chapter shall govern the conduct of referendum elections. Referendum elections shall also be governed by the provisions of the Election Ordinance, Tribal Code Chapter 10, to the extent expressly provided in this Chapter and **to the extent that the provisions of the Election Ordinance are not inconsistent with the provisions of this Chapter (emphasis added).**

12.104 Definitions provides, in pertinent part:

(2) “Election Unit” or “Unit” means one of the five tribal election units employed for the immediately preceding Tribal general election in accordance with Article V, Section 1 of the Tribal Constitution and the Election Ordinance, Tribal Code Chapter 10. (emphasis added).

Therefore, as a matter of law, notwithstanding the Constitutional issues outside of the jurisdiction of this Court discussed above, the Election Committee was correct in its use of the 2022 General Election roster.

Furthermore, the Election Committee found that the Appellant failed to submit any evidence to substantiate claims advanced in his *Election Contest*.

In his *Notice of Appeal*, the Appellant argues that the Appellee “did not conduct a hearing, did not engage in an investigation although that is their charge per the [Ordinance]”. As an important aside, Appellant did not raise these issues in his *Election Contest* and provided no further argument related to these issues in his briefing or at oral argument. This Court notes that at the time of this appeal, STC §§ 10.118 and 10.120 are silent on the requirement of written documentation to support a contest or complaint. As an aside, the amended STC § 10.120(1), effective December 19, 2023 (formerly STC § 10.119 (1)), now makes clear that Complainants must supply “written documentation substantiating their allegations.” Similarly, both STC § 10.120 in the form applicable to this case and the newly amended STC § 10.121 make further investigation of the Election Committee or the convening of hearing on the Appellant’s *Election Contest* optional.

This Court further notes that the Election Committee did not directly investigate Appellant’s specific claims; however, the Election Committee did undertake an inquiry to ensure that all underage, deceased, disenrolled, and members with bad addresses were exempted to support its findings and decision dismissing the Appellant’s *Election Contest*. While such inquiry may not satisfy the Appellant’s idea of an investigation, *ayaangwaamizi* (careful and cautious consideration) instructs that this Court “not substitute its judgment for the judgment of the Election Committee, unless the Election Committee’s actions were arbitrary or unreasonable.” *Hollowell, supra*.

Likewise, the failure of the Election Committee to grant a hearing was not a violation of STC § 10.120(2). Having said that, the Court observes that the discretionary nature of STC § 10.121(2), effective December 19, 2023, (formerly STC § 10.120(2)), may, on certain sets

of facts, result in due process violations going forward. Ultimately, the Court of Appeals needs evidence to substantiate claims – it is not a fact finder in election matters. Therefore, both parties to an appeal have the responsibility to support their claims, positions, and decisions, respectively. Having no such evidence, this Court has nothing before it on the present facts to find that the Election Committee acted in an arbitrary or unreasonable way resulting in the Appellant being unfairly denied a substantial right or being caused to suffer an unjust result. Therefore, this Court must affirm the *Election Committee Decision* and dismiss the appeal.

ORDER

For the reasons specified above, the Appellee's *Election Committee Decision* of November 30, 2023 is affirmed and Appellant's appeal is dismissed.

It is SO ORDERED.