

CAYUGA NATION COURT OF APPEALS
CAYUGA NATION

DUSTIN PARKER, individually, and
DUSTIN PARKER, d/b/a PIPEKEEPERS,

Petitioners-Appellants,

v.

CLINT HALFTOWN, in his official capacity of the
Cayuga Nation's Federal Representative, and
THE CAYUGA NATION COUNCIL,

Respondents.

**MEMORANDUM AND
ORDER**

Index No. CV-23-001

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Cayuga Nation Tribal Court

By Daniel J. Hurteau, for Appellants

By Lee Alcott, Michael E. Nicholson, and David G. Burch, Jr., for Respondents

E. CARNI, CHIEF JUDGE OF THE CAYUGA NATION COURT OF APPEALS

This is an appeal from a Decision and Order of Judge Joseph Fahey, Judge of the Cayuga Nation Tribal Court, Cayuga Nation Civil Court ("Lower Court"), entered on September 25, 2023 which granted Respondents' motion to dismiss Appellants' Petition for Writ of Habeas Corpus (the "Petition").

In early 2023, Respondents commenced proceedings against Mr. Parker under the Nation's Banishment Ordinance. Appellants filed the Petition on June 16, 2023 to challenge the banishment proceedings and Respondents' alleged denial of due process. Appellants filed the Petition pursuant to Rule 31 of the Cayuga Nation Rules of Civil Procedure, which provides in relevant part: "Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise restrained of his liberty." The Council issued a Notice of Total Banishment dated August 3, 2023 and served on Appellants on August 9, 2023 (R.109-10; SR.980). On August 18, 2023, Appellants filed an Order to Show Cause for Preliminary Injunction and Restraining Order seeking to enjoin Respondents from, inter alia, executing the Notice of Total Banishment. The Lower Court held oral argument and subsequently requested from the parties additional materials relating to the banishment proceedings (SR.46), before issuing its Decision and Order dismissing the Petition.

On appeal, Appellants first contend that Mr. Parker's banishment constitutes a detention for purposes of the writ of habeas corpus because application of the writ extends beyond physical detention to other restraints on liberty. Respondents contend that the Petition—which was filed before the Notice of Total Banishment was issued—does not allege a cognizable detention for

habeas corpus relief and that Mr. Parker's banishment, even if considered, does not fall within the purview of the writ.

As an initial matter, the Court finds that because the Lower Court requested and considered materials outside the Petition, with no objection from counsel, the Lower Court in essence amended the Petition to include these materials. Under these circumstances, this Court is not precluded from considering the entire record before the Lower Court, including the Notice of Total Banishment. Second, this Court must determine whether the Nation's exclusion of a member through banishment constitutes an imprisonment or restraint of liberty under Rule 31. Although Appellants point to *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2d Cir. 1996), that case is both inapposite and not binding on this Court. Under the circumstances here, the Court is unwilling to extend application of the writ of habeas corpus under Rule 31 to Mr. Parker's banishment. Therefore, Appellants' application for a writ of habeas corpus was properly dismissed.

Appellants next contend that the Lower Court improperly dismissed the Petition because they adequately pleaded five causes of action for violations of the Indian Civil Rights Act, 25 U.S.C. § 1302.¹ To the extent these causes of action were asserted as bases on which habeas relief might be granted, they form part of the application for a writ of habeas corpus and were properly dismissed in accordance with the Court's holding above. In the alternative, to the extent Appellants assert these five causes of action as claims separate and distinct from the application for a writ of habeas corpus, such claims are barred by sovereign immunity. It is well-settled that the Nation possesses sovereign immunity from suit except where Congress has abrogated that immunity or the Nation has waived its immunity. Although Appellants argue that habeas corpus falls outside the purview of sovereign immunity, this argument is immaterial in light of the Court's determination that the instant proceeding does not fall within the scope of habeas corpus. The Nation has not waived its immunity from suit; nor has Congress abrogated that immunity with respect to claims for alleged violations of the Indian Civil Rights Act. *See* Cayuga Nation Judiciary Law § 14 ("The Nation does not by enacting this Law waive in any respect its sovereign immunity, or that of its agents or officers, in any manner, under any law, for any purpose, or in any place."). Thus, any standalone causes of action asserted in the Petition are barred by sovereign immunity and were properly dismissed.

Finally, Appellants contend that the Lower Court erred in failing to rule on or address their order to show cause seeking preliminary injunctive relief. The Court concludes that Appellants' order to show cause is deemed denied by the Lower Court's failure to expressly rule on the application. Further, because the Petition was properly dismissed, it follows that Appellants were not entitled to preliminary injunctive relief in any event. Reversal or modification is therefore not warranted.

I have reviewed Appellants' remaining contentions and conclude none warrants modification or reversal.

¹ The Petition asserts five causes of action for: (1) deprivation of liberty without due process of law, (2) deprivation of property without due process of law, (3) taking of private property for public use without just compensation, (4) unreasonable search and seizure, and (5) passage of a bill of attainder/*ex post facto* law.

I find no reason to disturb the Lower Court's granting Respondents' motion to dismiss the Petition.

It is hereby ORDERED that the Decision and Order dated September 25, 2023 (Fahey, J.) is AFFIRMED.

Dated: February 20, 2024

A handwritten signature in black ink, reading "Edward D. Carni". The signature is fluid and cursive, with the first name "Edward" and last name "Carni" clearly legible. The middle initial "D." is written in a smaller, more compact style.

Edward D. Carni, Chief Judge of the Cayuga
Nation Court of Appeals