

In The Iowa District Court for Tama County
Magistrate Division

Edward R. Janss,
Plaintiffs,

Vs.

Sac & Fox Tribe of the
Mississippi aka Meskwaki Bingo
And Casino aka Sac and Fox
Tribe Defendants.

}
} Small Claim Number SCSC011994
}

Order

FILED
2011 APR 20 PM 2:56
CLERK OF DISTRICT COURT
TAMA COUNTY, IOWA

This small claims case was heard by the undersigned on February 8, 2011, at the Tama County Courthouse. Plaintiff represented himself, appeared pro se, and offered testimony and evidence. The Defendant appeared for the purpose of objecting to the jurisdiction of the Court but did not further participate once the Motion to Dismiss was presented, argued and denied.

History of the Case

This case was originally filed with the Clerk of Court on September 27, 2010 by the Plaintiff and named the Sac and Fox Tribe and Sac and Fox Tribe and Casino as the Defendant. On October 27, 2010 the defendant filed a Motion to Dismiss alleging lack of jurisdiction. On November 22, 2010, the undersigned denied the Motion to Dismiss and permitted the Petitioner to correctly the name the Defendant based upon the understanding of the undersigned that small claims are to be heard and processed somewhat informally with the goal that justice be served and that form, not substance, take precedence. An amended Complaint was filed on November 29, 2010. On December 6, 2010, the Defendant filed an Answer, Brief and Application for Interlocutory Appeal regarding the undersigned's denial of the Motion to Dismiss. On December 21, 2010, the District Court denied the interlocutory appeal and gave the Defendant additional time to cite authority in support of its position. On January 5, 2011, the Defendant filed another pleading which essentially acknowledged that the defendant had no additional authority for its attempted interlocutory appeal. On January 10, 2011, the matter was scheduled for trial.

At the time of trial, the Tribe's attorney provided the Court with a copy of the Iowa Supreme Court's decision in Meier v. Sac and Fox Indian Tribe along with two Tama County case files captioned Blanche McPherson vs. Sac and Fox tribe of the Mississippi in Iowa and Bernard Coghenour vs. Sac and Fox Tribe etal. Review of these files, as well as other written materials, including William Canby Jr.'s book American Indian Law, referred to in Iowa Supreme Court decisions, consumed a significant period of time and energy of the undersigned which accounts for the undersigned's delay in issuing this decision.



Facts of the Case

The Plaintiff, Edward R. Janss, of Belle Plaine, Iowa, worked at the Meskwaki Casino for 17 years. On or about June 22, 2010, the Plaintiff was terminated without good cause. The Plaintiff applied for and received unemployment benefits from the State; presumably the Tribe has been paying into the fund administered by the State of Iowa which administers such payments. A copy of the termination letter and decision of Iowa Workforce Insurance was filed by the Plaintiff and is a part of the file in this case.

The Plaintiff filed suit for accrued and unpaid vacation and PTO benefits in the amount of \$2505.10. The Plaintiff supported his Complaint and documents through testimony and evidence offered during the course of the trial which the Defendant chose to not participate in.

The Plaintiff established by a preponderance of the evidence that he is owed \$2505.10; indeed, the evidence established a finding in favor of the Plaintiff beyond a reasonable doubt.

Conclusions and Decision

Judgment is entered in favor of the Plaintiff in the amount of \$2505.20.

This judgment shall draw interest at the rate of 2.26 per cent effective September 27, 2010. The Defendant is responsible for all costs which shall be paid to the Clerk of Court within 30 days. The Defendant shall pay the judgment of \$2505.10 directly to the Plaintiff and not through the Clerk of Court. Both parties shall document the payment of all sums pursuant to this Order and Plaintiff shall file a release and satisfaction when the defendant has been all sums due.

The parties are advised of their right to appeal. An appeal must be filed in writing with the Clerk of Court within 20 days. Appeal bond is \$2500.0.

The essence of the dispute case is not the merits of the Plaintiff's claim which is essentially conceded by the Defendant. The fighting issue is the Defendant's claim that this Court, and indeed any state court in the State of Iowa, lacks jurisdiction because of what is generally described as "sovereign immunity".

One of the claims made by the Tribe in asserting the Court's lack of jurisdiction is that the Plaintiff should have availed himself of relief in the Meskwaki tribal Court system. This claim is rejected out of hand by the undersigned. To require a litigant to pursue this claim in a forum operated and funded by the adverse party, with all decision makers employed by the Defendant, is ludicrous and would give the Plaintiff no reasonable basis for concluding that his claim received a fair hearing. It is the opinion of the undersigned such a requirement would deprive the Plaintiff of his rights, particularly his right to due process and equal protection of the law, pursuant to the Constitutions of the United States and the State of Iowa, most notably the 14th amendment to the United States Constitution.

The Defendant's claim of sovereignty must be examined in light of prior decisions of state courts in Iowa and, indeed, across the United States including the United State Supreme Court.

The beginning of any such analysis must hearken back to the opinion of Chief Justice Marshall of the U. S. Supreme Court in Cherokee Nation v Georgia, 30 U.S. (5 Pet.) 1 (1831). In that decision, Justice Marshall characterized Indian tribes and "domestic dependent nations"; he did not refer to the various tribes as "sovereign" entities.

This description was expanded upon more than 50 years later when the U.S. Supreme Court, in the cases of United States v. Kagama, 118 U.S. 375, 384-85 (1886) and later in United States v. Sandoval, 231 U.S. 28 (1913). In Kagama the Court opined, in part: " These Indian tribes are the wards of the nation. They are communities *dependent* (emphasis not added by the undersigned) on the United States, – dependent largely for their daily food; dependent for their political rights...From their very weakness and helplessness... there rises the duty of protection, and with it the power."

Clearly, with the advent of increased solicitous attitudes and laws towards Indian Tribes and the advent of highly lucrative non taxed gambling enterprises, the Indian Tribes in the United States are now neither dependent upon the government for their "daily food"; nor are Tribes "helpless" from "their very weakness".

The undersigned considers judicial facts, as the Iowa Supreme Court did in the controversial and recently decided Brien case, in making its decision in this case. These judicially established facts include: (1) the Meskwaki Tribe opened a bingo and gambling establishment in the 1990's which has yearly non taxed revenues in the millions of dollars; (2) the Tribe has participated in the political processes of the United States and the State of Iowa by contributing substantial sums of money to candidates and by hiring numerous lobbyists (including the now notorious Jack Abramoff) to influence federal and state governments (3) the Tribe has received millions of dollars in federal and state funds for the construction and operation of a school system, a health system and, indeed, a tribal law enforcement agency. Moreover, the State of Iowa has expended millions of dollars in constructing roads and interchanges to permit the non Indian public to patronize the Meskwaki Casino.

Further, the Meskwaki Tribe has authorized its police officers to file charges under the Iowa Code to be heard in the state courts of this State, has housed prisoners in the Tama County jail, and receives emergency dispatch services for the Tama County emergency communications center.

Further, during a recent dispute within the Tribe regarding leadership of the Tribal government, both sides availed themselves of the state courts of Iowa in order to gain control over the tribal government and the financial resources which flow from the operation of the Casino.

The Tribe asserts that it is sovereign and yet lacks many, if not all, of the muniments of sovereignty. The Tribe does not have established borders which are strictly controlled (of course, the same may be said of the United States which seems the lack the ability, although there is no question of it "right:, to

maintain its southern border with Mexico); it has no coinage or currency of its own; does not operate a postal system; and there is no military force to maintain the integrity of its borders. At the same time, the Meskwaki Tribe receives millions of dollars each year in grants from the federal and state government; parenthetically, none of these sums are categorized as "foreign aid". Residents of the Settlement receive individual payments and benefits from both the state and federal governments.

The above recitals are but a portion of the facts which demonstrate to the undersigned that the Sac and Fox tribe of the Mississippi in Iowa is not a "sovereign" as that word is commonly defined. Therefore, there can be no valid assertion of sovereignty which would serve to deny this Court of jurisdiction as the tribe urges in its various motions, pleadings and briefs.

It has been urged in various courts in various decisions that the rights of an individual, such as the Plaintiff in this case, must give way to other and larger considerations. This view is rejected by the undersigned in this decision. Justice for all is the result of doing justice for individuals. To deny the Plaintiff relief in this case, given the facts of the case as presented in court, would bring about an unjust result. The undersigned cannot fathom how denying the Plaintiff justice in this small matter would bring about, or even assist in the bringing about, justice in the larger context of our culture and society.

It could be, and has been argued, that any activity by an Indian Tribe enjoys immunity from law suit in the court of this state by virtue of the Tribe's claimed sovereignty. The implications of this argument should be carefully considered. For example, if the Meskwaki Tribe were to undertake an additional business enterprise, such as operating a trucking company, would anyone seriously argue that, in the unfortunate event there was a fatal accident involving the negligent operation of a Meskwaki owned and operated a truck which resulted in the death of a non Indian, the innocent victim would have no redress for grievances in the state courts of Iowa? Can it seriously be argued that such an innocent victim could be or should be required to pursue his or her claim for damages in the tribal court of the Meskwaki Tribe?

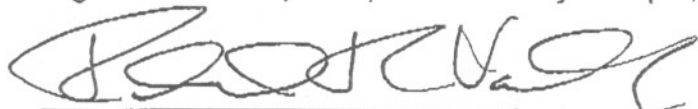
Similarly, if a Meskwaki Tribal police officer were, through negligence or wanton recklessness, to cause the death of an innocent and faultless non tribal member by causing a motor vehicle accident or even discharging a firearm, outside of the Settlement proper, can it seriously be argued that the victim would be without legal recourse or remedy other than bringing the matter to Tribal Court where the merits of the case would be decided by persons in the paid employment of the Defendant tribe? The undersigned thinks not.

Recent legislation has been enacted which purports to require, in certain situations and circumstances, that state court judgments be exported and enforced through the Tribal Court. Similarly, it is the undersigned that the same legislation purports to provide for the export of Tribal Court judgments through the State of Iowa. While the wisdom of such an approach is debatable and dubious at best, this consideration cannot serve and should not serve to deny the Plaintiff in this case the compensation which he is clearly due.

The undersigned fully understands the importance and significance of the rule of stare decisis and the importance of precedent in giving proper obeisance to prior court decisions in Iowa and elsewhere. Nonetheless, those rules for interpretation of the law and Constitution still provide for overruling prior legal decision when the facts and considerations of justice mandate. Otherwise, we would live in a society where Dred Scott is the law of the land and where women are denied the right to vote.

IT IS SO ORDERED.

Signed at Toledo, Iowa, this 20th day of April, 2011.


Richard Vander Mey, Tama County Magistrate

4/21/11 Clerk to notify:
✓ Plaintiff
✓ Defendant

Note: If any of the capitalizations in this Order are incorrect, the undersigned apologizes. Grammar is not the strong suit of the undersigned and no offense is intended or should be taken.