

Little Traverse Bay Bands of Odawa Indians

Tribal Court

Court Mailing Address: 7500 Odawa Circle, Harbor Springs, MI 49740

Telephone No. (231) 242-1462

Fax No. (231) 242-1470



Fred Kiogima & Debbie DeLeon)
Plaintiffs,)

v.)

LTBB Election Board)
Merle Carson, Chairperson)
Alice Hughes, Vice-Chairperson)
Carol Quinones, Secretary/Treasurer)
Jon Shawa, Board Member)
Christine A. Shomin, Board Member)

Defendants.)

Case No. C-205-1214
Honorable Judge Patrick Shannon

Wilson D. Brott (P51446)
Attorney for Plaintiffs
Brott, Settles & Brott, P.C.
5168 US 31 North, P.O. Box 300
Acme, MI 49610
(231) 938-1000

Carlos Alvarado-Jorquera (P68004)
Attorney for Defendants
Carlos Alvarado Law, PC
202 South Harrison Street
Ludington, MI 49431
(231) 425-4444

ORDER OF DISMISSAL

The Honorable Patrick Shannon presiding,

This case involves a challenge to the November 7, 2014 recall election of former LTBB Chairman Fred Kiogima and Vice Chair Debbie DeLeon. The Court has had several months to examine this case. Following the hearing on July 24th, 2015, the Court has now had an opportunity to hear and speak with witnesses, to read the complaints, challenges, and responses, and to review exhibits while listening to testimony. Rather than further belabor the case and issue an order retrospectively, the Court,

in order to move forward and close this case, issued an opinion from the bench dismissing the case. This Order is given to give a corporeal form to that oral order.

Jurisdiction

This Court has jurisdiction to hear this case under Section IX(C)(1) of the LTBB Constitution, which gives the Tribal Court jurisdiction to hear “all civil and criminal cases arising under (the) Tribal Constitution, statutes, regulations or judicial decisions of the Little Traverse Bay Bands of Odawa Indians.”

Statement of Facts

During oral arguments the Court was able to hear testimony from several witnesses. First, Mr. Ed Nephler, webmaster of the LTBB website, testified that as far as he remembered there were no notices of the recall posted in the Odawa Register. However, other testimony and exhibits were presented to show that notices were posted on other portions of the website.

Ms. Dawn Sineway-Nephler testified that her ballot had come to her house late, however she was still able to vote due to word of mouth notices of the election.

Ms. Pauline Boulton, an LTBB staff member in charge of enrollment, testified about the way that voter information was sent to the company in charge of distributing ballots.

Ms. Carol Quiones, a member of the election board for 15 years as the Secretary/Treasurer, testified as to her understanding of how documents are to be recorded on the website. Ms. Quiones also gave testimony in regards to the cause of action in regards to her Facebook activity.

Ms. Dollie Keway testified as to several problems she found in the petitions to recall. However, on cross examination, Ms. Keway testified that there was likely only one issue, that being a signature that may have been counted twice on Ms. DeLeon’s petition.

Merle Carson, Chairman of the Election Board, testified about the hand delivery of ballots, and as to whether or not he believed it to be outside the purview of tribal law.

Mr. Kiogima and Ms. DeLeon also testified before the Court.

Analysis

In order for the Court to find in favor of the Plaintiff, it must be moved to the point where it feels cause to set aside the election. In this case, the standard for the challenge is to find cause by a preponderance of the evidence, with the remedy being to set aside the recall election. In this case, the Court does not find that the standard of cause by preponderance is met, and dismisses the challenge.

There are five counts alleged by the Plaintiff. The first count is for a public records violation. This has been acknowledged by the Defendant, as it is part of another case in this Court before Judge Fabry. This violation, codified under WOS §6.1911, requires a showing of malice or reckless indifference on the part of the Election Board. At this time, this Court will not consider whether or not there was malice or reckless indifference, as it would only improperly impact the Court in the other case, no matter what this Court's order. There is still a remedy here and potential relief here for Plaintiff, that being the damages currently being discussed before Judge Fabry. The Court finds it important to acknowledge that the Plaintiffs have shown that there are issues in the election process, and the Court leaves it to tribal leadership to correct and cure these failures. However, Count 1 is dismissed.

Count two is for a failure to post deadlines of petitions and meeting notices on the Odawa Register, as required under §IX of the Tribal Election Regulations. On this count, neither side clearly presented evidence or testimony to the Court. While Mr. Nephler testified that he had never seen the notice, other testimony and exhibits existed to show that the posting was seen elsewhere on the Tribal website, and in the Tribal newsletter. On this count, the Court is not persuaded to find cause by a preponderance of the evidence to overturn the recall election.

Count three of the initial complaint was dropped by the Plaintiffs.

Count four claims an irregularity in the distribution of ballots under Section X(B) of the Tribal Election Regulations. While there does seem to be adequate testimony that the hand delivery of ballots did occur, it is the Court's opinion that the Board was doing the best it could to ensure that every citizen had the opportunity to vote. On this count, the Court does not find enough cause by a preponderance of the evidence to overturn the recall election.

Count five claims a violation of the neutrality requirement under WOS 2012-020, specifically Section III(C)(2). The Plaintiffs have argued that the Facebook "Like" by Ms. Quiones on the page entitled "Remove Kiogima/DeLeon" amounted to a violation of the neutrality requirement. The Court is not moved that there was a violation of neutrality in this case. Whether or not Ms. Quiones understands

Facebook or not is unimportant, as the Court is not impressed with the allegations and does not find enough cause to overturn the election.

The Court finds it important here to look at the order from Judge Fabry in case number C-204-1014, dated January 9th, 2015, which deals with a complaint for damages for violations of the public document statute. In that case, the Plaintiff's requested both preliminary and permanent injunctions to prevent the collection and counting of recall election ballots. The order denying a preliminary injunction was given just two days before the election. The Court in that case stated that it was conscious of the fact that, in effect, the denial of the preliminary injunction was also a denial of the permanent injunction as the recall election was permitted to proceed, with ballots collected and counted and the results certified. Because of this counting and collection, the permanent injunction request was rendered moot, and the claim dismissed. Judge Fabry, in essence, has ruled that the election was proper, and for this Court to rule in favor of the Plaintiffs runs afoul of the Fabry decision.

CONCLUSION

Factually, based on the testimony heard today, the Court is not moved to upset and unwind an election that occurred on November 7th, 2014. The Plaintiffs have relief before Judge Fabry, and as she has reserved the public documents claim for damages, this Court will honor that, and that case will continue to go forward, with this case not rendering any decision that will impact those proceedings whatsoever. The Plaintiff is left with relief and damages claims against the Board.

The Challenge is Dismissed.

IT IS SO ORDERED.

July 28, 2015

Date

Honorable Patrick Shannon, Judge Pro-Tem

Certification of Service

I certify that a copy of the Order of Dismissal was served upon the following parties:

-By Email

Attorney for Plaintiffs

Wilson Brott (P51446)
Brott, Settles & Brott, P.C. 5168 U.S. 31 North, P.O. Box
300
Acme, MI 49610-0300

Attorney for Defendants

Carlos Alvarado-Jorquera (P68004)
Carlos Alvarado Law, P.C. 202 S. Harrison St.
Ludington, MI 49431

On 7/28/2015 3:21:51 PM

Chiole Stead, Court Clerk