

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
TRIBAL COURT

LISA ANN DORTCH,

Plaintiff,

Case No. C-039-0203

v.

Enrollment Appeal Decision

LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS ENROLLMENT OFFICE,

Defendant.

DECISION OF THE COURT

A. Issue Presented:

Whether the Tribe made a clear error denying Plaintiff's second application for membership?

B. Background:

Plaintiff has applied to become a tribal member on two separate occasions. She applied first on April 28, 1996 and again on April 26, 2002. She was denied both times for the reason that she did not meet the $\frac{1}{4}$ minimum blood quantum requirement. It is from the latest denial that she appeals.

C. Findings of Fact:

1. Plaintiff first applied to become a member of the Tribe in 1996. The application was denied for the reason that she did not meet the $\frac{1}{4}$ minimum Indian blood requirement. Plaintiff did not appeal that determination.

2. On May 23, 1999 the Tribal Council enacted WOS 1999005 which included the following provision:

All Persons listed on the Durant Roll who resided within the reservation or areas of residency listed in Section V(B)(1) at the time the payrolls were written shall be considered full Little Traverse. Section III (4).

3. This provision of law was enacted notwithstanding an express requirement in the tribal constitution that the primary roll of the Tribe be the Durant Roll, according to its field notes. See WOTC § 1.104(A)(1).
4. WOS 1999005 did not provide for retroactive effect nor did it require notification of applicants previously denied membership under stricter requirements.
5. It was this statutory provision that provided the opportunity for some of Plaintiff's family members, including at least one brother, to become members of the Tribe.
6. Subsequent to the above-mentioned enrollment of some of the Plaintiff's relatives, the Tribal Council repealed WOS 1999005 and enacted in its place WOS 2001-14. WOS 2001-14 corrected what was believed to be an earlier error. The correction was made in a manner that did not jeopardize the membership rights of those who had enrolled under WOS 1999005. WOS 2001-14 states in pertinent part:

The Enrollment Statute of December 19, 1999, being Waganakising Odawak Statute 1999014, is amended by deleting Sections V(B)(3) and VI, and adding the following new Section V(C):

*The blood quantum of persons whose names appear on the Durant roll will be determined by the notations contained on the roll and accompanying field notes. Provided, solely for purposes of their own Tribal enrollment, the blood quantum of Tribal members who enrolled in reliance of the statutory provision in place from May 23, 1999 [WOS 1999005, Section V(B)(4); WOS 1999014 Section V(B)(3)], and the blood quantum **of persons who submit their enrollment applications by December 31, 2001, shall not be***

effected by this amendment. WOS 2001-14
(emphasis added).

7. WOS 199905 was in effect from May 23, 1999 to December 31, 2001. Thus, it was only in effect for slightly over a year and a half.
8. Plaintiff did not submit her second enrollment application by the statutory deadline to take advantage of the full blood determination of WOS 1999005. Plaintiff's application was dated April 26, 2002 and received by the Enrollment Office on May 04, 2002.
9. Plaintiff's second application was considered under tribal law as it existed when her application was received.
10. Plaintiff's second application was denied for the reason that she did not meet the $\frac{1}{4}$ minimum Indian blood requirement.
11. Both parties agree that the Defendant's Exhibits No. 1-7 constitute the pertinent documents relevant to this appeal.
12. The exhibits clearly establish that Louis Delmas, Durant Roll No. 1791, was only $\frac{1}{2}$ Indian blood because his father was a Frenchman.
13. The family tree tracing from the Durant Roll provides that Plaintiff is indeed less than $\frac{1}{4}$ Indian blood.

D. Conclusions of Law:

1. The beginning points for legal analysis of this appeal are the legal requirements for membership and the standard of review applicable to the instant matter.
2. WOTC § 2.114(C) provides "*The sole purpose of the Appeals Process will be to determine if there has been a **clear error** ... based on the evidence and documentation provided by the applicant to the Enrollment Department. The Tribal Court shall only overrule the declination ... if the evidence cannot reasonably be construed to support the action of the Tribal Council.*" (Bold added for emphasis).
3. Both times Plaintiff applied for tribal membership the membership requirements then in place were $\frac{1}{4}$ minimum Indian blood. Both

applicant to the Enrollment Department. The Tribal Court shall only overrule the declination ... if the evidence cannot reasonably be construed to support the action of the Tribal Council." (Bold added for emphasis).

3. Plaintiff has not demonstrated clear error in the declination of his membership application.
4. The Enrollment Office provided testimony regarding additional documentation that would satisfy the requirement that his eligibility be clearly established.

WHEREFORE, FOR ALL OF THE FOREGOING, this Court denies Plaintiff's appeal and hereby dismisses this matter.

08/08/03
Date

Honorable Michael D. Petoskey
Chief Judge