

**LITTLE RIVER BAND OF OTTAW INDIANS
TRIBAL COURT**

PLAINTIFF:

NITUMIGAABOW RYAN CHAMPAGNE

CASE NO. 21046EB

V.

HONORABLE ALLIE MALDONADO

DEFENDANT:

KAREN LOVE, ELECTION BOARD MEMBER and
LRBOI ELECTION BOARD

NITUMIGAABOW RYAN CHAMPAGNE

Pro se

1080 Red Apple Road
Manistee, MI 49660

KAREN LOVE, ELECTION BOARD
MEMBER and LITTLE RIVER BAND OF
INDIANS ELECTION BOARD

Attorneys for Defendant

Steven D. Sandven

Jo Anne M. Ybaben

Law Office of Steven D. Sandven, PC.

11294 Gold Mountain Loop

Hill City, SD 57745

Phone: 605-206-7400

Email: sdsandven@gmail.com

History of the Case

This case was filed by the Plaintiff on February 23, 2021 with the Little River Band of Ottawa Indians ("LRBOI") Tribal Court alleging that Respondent Election Board member, Karen Love, violated Election Board Regulations, Chapter 14, titled Ethical Standards. The Plaintiff invoked Article IX Section 4(c) of the LRBOI Constitution which allows the Tribal Court to settle the matter. For relief, the Plaintiff requested the Court: make a finding of fact that Election Board member Karen Love willfully violated Election Board ethical standards; make a finding of fact that Defendant Karen Love made a defamatory statement against the Plaintiff and such action was done with malice; and remand the matter to the Election Board to start the removal process.

The Respondent filed a motion to dismiss based on LRBOI Civil Procedure rule Chapter 4.116 on the grounds that the Plaintiff failed to state a claim for which relief can be granted and/or that Defendant is entitled to a judgment as a matter of law.

At the outset of the hearing, the Plaintiff made a motion on the record objecting to the jurisdiction of the LRBOI Trial Court to hear the matter. After hearing arguments by both parties and an examination of the LRBOI Constitution the Court found it had jurisdiction to hear the case.

Next the Plaintiff made a motion on the record objecting to the Election Board attorney representing the Defendant Karen Love contending that it was a conflict of interest. After hearing arguments from both sides, the Court found that the Election Board is a necessary party under 4.205 of the Court Civil Rules of Procedure with aligned interests at this phase of the dispute, joined them to the litigation and denied the Plaintiff's motion.

The Court then addressed the Defendants' Motion to Dismiss. Both parties were given ample opportunity to be heard. After listening carefully to the arguments of both parties the Court ruled to dismiss the matter.

This opinion details the reasoning of the Court.

(A second case, 21047EB, was filed by the Plaintiff on February 25, 2021 challenging a decision by the Election Board to deny what the Plaintiff described as an "Election Challenge" seeking declaratory and injunctive relief.

Although these are separate matters, because they involve the same parties and potentially impact the same upcoming election, the Court heard both cases separately, but in the same hearing, one after the other. However, for clarity each case will have its own separate opinion.)

JURISDICTION

At the outset of the hearing, the Plaintiff made a motion objecting to the jurisdiction of the LRBOI Trial Court to hear the matter. Whether a Court has jurisdiction to hear a case is a fundamental question that every court must answer at the outset of a proceeding. Therefore, the Court heard arguments from both parties on this important issue before considering the motion to dismiss.

The Plaintiff argued that the Tribal judiciary as a whole had the authority to hear allegations of impropriety by the Election Board and its members, not the LRBOI Trial Court alone. He anticipated a panel consisting of the judges of both the LRBOI Trial Court and the Appellate Court would be hearing his case. He based his assumption on the following language of the Constitution of the LRBOI in Article IX, Section 4(c):

"Allegations of impropriety by the Election Board shall be settled by the Tribal Judiciary."

The Plaintiff argued that the plain language meaning of "Tribal Judiciary" should be interpreted to require a panel including all members of the LRBOI judiciary. Furthermore, the Plaintiff argued that when the LRBOI judiciary handles ethics complaints against its own

members, those complaints are heard by a panel made up of all the members of the LRBOI judiciary.

The Defendant disagreed, pointing the Court to Article VI of the Constitution which establishes the Tribal Court. Section 1 reads as follows:

“The judicial power of the Little River Band shall be invested in a Tribal judiciary, which shall consist of the Tribal Court, a Court of Appeals, and such inferior courts as the Tribal Council may from time to time ordain and establish.”

Reading the language of Article IX, Section 4(c) in a vacuum, it is understandable that the Plaintiff believed that a panel should hear his case instead of the trial court. However, statutory construction requires that laws not be read in a vacuum, but rather the document containing laws must be read as a whole and similar language must be read consistently whenever possible. Statutory interpretation starts by examining the plain language of the statute and apply their usual and ordinary meanings.

If after examining the statute’s plain language the meaning is still uncertain, courts must try and infer the intent of the legislature by looking at legislative history and other related sources. Courts should avoid interpretation creating an absurd result which the legislature did not intend. With these rules in mind, this Court first looks at the plain language of the LRBOI Constitution in forming the judiciary.

Webster’s online dictionary defines “consist” as follows:

“...lie, reside...or...to be composed or made up...”

Since the plain language of the LRBOI Constitution makes it clear that the Trial Court is within the Tribal judiciary, the Trial Court may hear a case of this nature under the authority of Article XI.

There is other support in the LRBOI Constitution for the LRBOI Trial Court hearing this case. The Constitution gives the Tribal Court broad jurisdiction over conflicts and matters that are addressed by LRBOI laws:

Article VI, Section 8 — Powers of the Tribal Court

(a) The judicial powers of the Little River Band shall extend to all cases and matters in law and equity arising under this Constitution, the laws, and ordinances of or applicable to the Little River Band including but not limited to:

1. To adjudicate all civil and criminal matters arising within the jurisdiction of the Tribe or to which the Tribe or an enrolled member of the Tribe is a party.

2. To review ordinances and resolutions of the Tribal Council or General Membership to ensure they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution.

This Court has jurisdiction as the Plaintiff is a Tribal citizen, the Defendant is the LRBOI Election Board, and an Election Board member and the matter involves the election for the LRBOI Tribal Council. **Therefore, the COURT FINDS that both Article IV, VI and IX of the LRBOI Constitution gives the LRBOI Trial Court jurisdiction to hear this case.**

As to the Plaintiff's comparison that the Tribal judiciary ethics complaints are heard by a full panel of all members of the Tribal judiciary that is based on language quite distinct from the language at issue here. Article VI, Section 6(b) of the LRBOI Constitution makes it clear that judicial removal is heard by a panel:

"A Tribal Judge may only be removed by a vote of seven (7) of the nine (9) Tribal Council members following recommendation of removal *by a majority of the remaining Tribal Judges.*" (Emphasis added.)

Here, this unambiguous language requires an ethics complaint regarding of a fellow member of the Tribal judiciary, to be heard by the full judiciary (minus only the member in question). Handling of an ethics complaint by a panel is undoubtedly how the LRBOI Constitution anticipates handling ethics complaints against the Tribal judiciary, but nothing suggests the same procedure controls how other ethics complaints should be handled in other branches of government.

CONFLICT OF INTEREST AND JOINDER

Next the Plaintiff made a motion on the record objecting to the Election Board attorney representing the Plaintiff contending that it was a conflict of interest. He argued that since the Election Board is the same body that would be responsible for removing Ms. Love should she be guilty of violating Election Board Ethical standards, he objected to both their participation in the case and the use of the Board's attorney for Ms. Love's defense. Finally, the Plaintiff told of his personal knowledge of past practices in other types of litigation against individuals for ethics violations and he considered that as precedent for not allowing Defendant Karen Love the use of the Election Board attorney here. The Plaintiff was not able to offer the Court any support in law for his positions and the Court could find none.

The Defendant challenged the motion and asked the Court to consider the Election Board as a party to the litigation. The Defendant's first argument was that the Election Board thought the matter impugned their character as a body because only action taken by Election Board members in their official capacity could be heard by this court. The Defendant's second argument was that the Board voted to have their attorney represent both of them in the litigation. Finally, the Defendant's last argument was to concede that if the Court found Ms. Love guilty of violating the Election Board's Ethical Standards, the Election Board would be required to remove Ms. Love from the Board and would do their duty without hesitation.

The LRBOI Constitution gives the Election Board broad authority to, “issue such rules and procedures as may be necessary to carry out tribal elections...” Under this mandate, the Election Board created a set of ethical standards expected of both the Board and individual members. See The Little River Band of Ottawa Indians Election Board Regulations, Chapter 14, “Ethical Standards.” The important job of the Election Board in offering free and fair elections to the Tribal citizens is reflected in the high standards to which all Election Board members are held. Section 1 (B) of the rules reads:

“*While acting in an official capacity* as an Election Board they shall not engage in the following activities:

1. Shall not endorse any Candidate.
2. Announce views in support of or against any Candidate for Elected Office,
3. Participate in any Recall petition drive or Election.
4. Expressing views on behalf of the Election Board during a Membership Meeting
5. Endorsing a particular Candidate over another
6. Campaign for a particular Candidate.
7. Shall not except gifts or favors from any Candidate.
8. Serve as a Principal Sponsor for any petition.
9. Shall not solicit funds for any Candidate.
10. Shall recuse themselves from deliberations or voting on Election Matters:
 - a. Where such involvement may result in personal gain;
 - b. Where a personal bias or prejudice may exist; and
 - c. Where there is a reasonably close family relationship to the individual requesting action by the Election Board.”

(Emphasis added.)

Section 2, Allegations of Impropriety acknowledges that there are prohibited activities in Section 1(B) which could apply to individual members of the Board:

“Complaints. Allegations of Impropriety against *any Election Board Member* shall be settled by the Tribal Court as required under Tribal Constitution, Article IX, Section 4(c).” (Emphasis added.)

Read together, these two sections tell the Court that the only actions the regulations anticipate the Court will consider a violation of the ethical standards are actions taken by individual Election Board members or the Board as a whole *in their official capacity* as members of the Election Board. Thus, any violation by an individual election Board member can only stem from their service on the Board and not in a non-official or personal capacity. Accordingly, having the Election Board attorney represent an Election Board member is not only appropriate, but standard.

Furthermore, because the Plaintiff requested the Court to find Ms. Love willfully violated the ethical standards for members of the Election Board, the relief that he requested if granted

would have bound the Election Board under its regulations to remove her. See Section 3(A), Removal from Office:

“A member of the Election Board *shall be removed* from his or her office for one or more of the following reasons:

1. Willful violation of the ethical standards for Members of the Election Board as set forth under these Regulations...”
(Emphasis added.)

Therefore, the Court FINDS that ethical violations and complaints under Chapter 14 of the Election Board’s Regulations can only occur when the Board or an individual member is acting in their official capacity, making representation of the Board or individual Board Member defendants by the Election Board attorney appropriate. Furthermore, the Court FINDS that because the relief sought by the Plaintiff requires action by the Election Board if the Plaintiff prevails, the Election Board is a necessary party under 4.205 of the Court Civil Rules of Procedure with aligned interests at this phase of the dispute and the Court joins them to the litigation and denied the Plaintiff’s motion.

MOTION TO DISMISS

The Court listened to and considered the thorough oral arguments of both sides before making a judgment on the Defendant’s motion to dismiss.

The Defendant argued that based on the facts alleged in the Plaintiff’s complaint the Court must dismiss the Plaintiff’s case because he failed to state a claim on which relief can be granted and because the Defendant is entitled to judgment as a matter of law.

The Plaintiff told the Court that an elder he respects said that Defendant Love made very serious allegations regarding the Plaintiff’s history in a personal telephone call to the elder. The Plaintiff understandably was concerned about the serious nature of the allegations and he worried that if the allegations were repeated to a large number of people the statements could hurt his career, his personal life, and his current bid for Tribal Council.

Defendant Love denied making the statements. Defendant Love added that even if the statements were made, the facts in the Plaintiff’s complaint show that the alleged conversation in question was a private conversation wherein she was acting in her personal capacity and not engaged in any kind of official Election Board activity.

For the purpose of a motion to dismiss for failure to state a claim upon which relief can be granted, in this case the Court has to ask this question:

“If at a trial the Plaintiff proves that the Defendant made the alleged damaging statements regarding the Plaintiff’s history, would he be entitled to the relief he is requesting?”

This is how the LRBOI Rules of Civil Procedure more formally describes the rule. Chapter 4.116 requires dismissal when a Plaintiff fails to state a claim on which relief can be granted or when a Defendant is entitled to judgment as a matter of law. LRBOI Rules of Civil Procedure Chapter 4.116(C)(8) and (10):

Chapter 4.116 Summary Disposition

(B) Motion.

(1) A party may move for dismissal of or judgment on all or part of a claim in accordance with this rule. A party against whom a defense is asserted may move under this rule for summary disposition of the defense.

C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based:

**

(8) The opposing party has failed to state a claim on which relief can be granted.

(10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

The Plaintiff’s complaint states that if the allegations are proven true, then Defendant Love is in violation of Election Board ethical standards outlined in Election Board Regulations at Chapter 14, Section 1(b)2. That regulation read as follows:

“While acting in an official capacity as an election board they shall not...Announce views in support of or against any Candidate for Elected Office...”

Under a motion to dismiss like this one, if Defendant Love is not in violation of the regulations cited in the complaint, it does not matter if the claim is true because the Court has no authority to offer relief. The relief the Plaintiff requested would require the Defendant Election Board to

remove Defendant Love. However, without a violation of the regulations there is no action the Court can impose upon Defendant Election Board either.

In analyzing this section of the regulations, the Court again must follow the rules of statutory construction. Therein, the Court consulted the Webster's dictionary online to determine the plain meaning of the regulation's language. Webster's dictionary defines an "official" as "one who holds or is invested with an office: OFFICER...government officials." Webster's defines "capacity" as "legal competency or fitness." Together, the Court reads acting in an "official capacity" as meaning, "while acting as a government official." **Therefore, the Court FINDS that in this case the language, "while acting in an official capacity" as meaning while acting as a member of the Election Board.**

Applying this meaning to the facts in hand, even if the Plaintiff could prove at trial that the Defendant Love made the statements in question, nothing in the Plaintiff's complaint suggests the Defendant Love was acting in an official capacity as a member of the Election Board during the call. On the contrary, the fact she was talking to a relative would undercut such an argument. The Court next looked at the meaning of "announced views."

The meaning of "announce views" provides further grounds for dismissal. Webster's online dictionary defines the word "announce" as meaning, "to make known publicly." Publicly is defined as, "in a manner observable by or in a place accessible to the public." It would be a very unique circumstance where a private telephone conversation could be considered as being made "in a manner observable by or in a place accessible to the public." **Therein, the Court FINDS that in order to be in violation of the language in the Election Board Ethical Standards "announce views," the expression of those views requires support for or against any candidate for office to occur in public.**

In total, the Court FINDS the rule to be as follows when applied to individual Board members: "While acting in their official capacity as a Member of the Election Board, the Board's members must not publicly announce their views in support of or against any candidate for elected office." This rule makes sense and does not in any way conflict with freedom of speech under the Indian Civil Rights Act because it is a narrowly tailored restriction on freedom of speech designed to further the LRBOI's compelling governmental interest in free and fair elections. In order for elections to be free and fair, Election Board members must be very careful not to put their thumb on the scale for or against any candidate in a way that might impact an election. Election board members vote, and certainly have opinions on candidates. Discussing those opinions privately amongst friends and relatives might influence a few votes but announcing those opinions publicly while in their role as an Election Board member could have a powerful impact on the outcome of the election. This is the outcome the regulations seek to avoid.

Now that the rule is clear, the Court must apply it to the facts of this case. The Plaintiff stated in his complaint that the damaging statements occurred on a private phone call between two relatives. The Plaintiff did argue that making private statements to an individual with a great deal of influence was equivalent to making a public statement. The Court did not find this argument persuasive. Furthermore, the Plaintiff's complaint does not allege any special

circumstances regarding the private phone call that could change the character of a private call to public. **With the definition above in mind, the Court FINDS it is impossible for Defendant LOVE to have "announced views" on any topic during this conversation which the Court found to be private. Therefore, even if everything the Plaintiff alleged is true because the law offers no relief for damaging statements made in a private conversation the Court cannot provide the Plaintiff with relief, therefore the Court must DISMISS the complaint as it applies to Defendant Love.**

As relief for his claim, the Plaintiff requested that the Court remand the case to the Election Board so the Board could start the removal process. As the Plaintiff's complaint as to Defendant Love is dismissed, so must the case against the Election Board because without a cause of action the Court cannot compel the Election Board to provide the relief requested. **Therefore, the Court FINDS the matter against the Election Board is also dismissed.**

SO ORDERED:



Judge Pro Tempore Allie Maldonado

4/2/21
Date