

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

COURT OF APPEALS

IN THE MATTER OF: LEONARD SCOTT NICKABOINE, D.O.B.:4/29/1978

APP 17-03

Decided October 23, 2017

BEFORE: JUMP, WICHTMAN, FINCH, DIETZ and CORBIERE Appellate Judges.

DISCUSSION AND ORDER

Finch and Wichtman on behalf of the Court, who are joined by the other Appellate Judges.

For the reasons spelled out below, the decision of the tribal court is affirmed.

Facts and Procedural History

On February 15, 2017 the Honorable Jocelyn K. Fabry, Chief Judge of the Sault Ste. Marie Chippewa Tribal Court entered an *ex parte* order (“Order”) barring Appellant Leonard Scott Nickaboine from entering on any tribal lands pursuant to Chapter 61 of the Sault Tribe Code. *See* STC §61.101 et seq. A hearing on the Order was subsequently held on March 2, 2017 wherein the Tribal Court concluded that the Appellant posed a grave risk to the general quality of life within the Sault Tribe Community. Specifically, the Tribal Court found that there were sufficient statutory grounds to conclude that the Appellant had engaged in two or more instances of domestic violence, stalking, harassment, or other domestic disturbances that breached the peace, or threatened the peace, health, safety, morals, general welfare or environmental quality of life on Tribal lands. Appellant was barred from all Tribal lands until February 15, 2018. Appellant is not a member of the Sault Ste. Marie Tribe of Chippewa Indians. Appellant filed a timely appeal of the Order. The Sault Ste. Marie Tribe of Chippewa Indians Court of Appeals heard oral argument on August 10, 2017.

Jurisdiction and Standard of Review

Under Tribal Code Section 61.109, this court possesses exclusive jurisdiction to review the decisions of the Tribal Court in matters where individuals are barred from Tribal lands. The clearly erroneous standard shall be used in reviewing the findings of the trial court on appeal. “In applying the clearly erroneous standard of review, the court will determine whether it is left with a ‘definite and firm conviction’ that the trial court made an error in its findings of fact.” *Rex Smith v. Sault Ste. Marie Tribe of Chippewa Indians*, APP-08-02, 3 (August 4, 2008). Because this appeal involves a conclusion of law, this Court’s standard of review is *de novo*. STC § 82.124(5).

Discussion

On appeal, there is one fundamental question presented by this case. Did the Tribal Court have sufficient evidence to support a finding that Appellant should be barred from Tribal lands?

Sufficiency of the Evidence

Sinsobezoowin, or banishment is a valid custom and cultural form of justice. It is a mechanism to restore balance to a tribal community. The Sault Ste. Marie Tribe of Chippewa Indians has codified when an individual may be excluded from tribal lands in Chapter 61 of the Tribe's Code. The Tribe has a very strong and codified interest in protecting the welfare and safety of its members and those who reside on tribal lands as set forth in the Tribal Code:

The Sault Ste. Marie Tribe of Chippewa Indians hereby finds and determines that it is necessary to provide a means whereby the Tribe can protect itself, its members, and other persons living on Tribal Lands, from people whose presence on Tribal Lands is harmful to, or threatens harm to, the peace, health, safety, morals, general welfare or environmental quality of life on Tribal Lands. Such action is deemed necessary as a result of the Tribe's interest in maintaining the aforementioned interests free from harm, to protect the cultural identity of the Tribe, and to protect those residents of Tribal Lands who may be imposed upon, harmed or otherwise disadvantaged. The procedures outlined herein are intended to provide procedural fairness to persons affected by these provisions while at the same time recognizing the need, in appropriate situations, to act immediately to remedy actual or threatened harm.

STC § 61.101.

The grounds for exclusion and removal are as follows:

Any real or artificial person subject to exclusion and removal as provided herein may be excluded or removed from property within the jurisdiction of the Sault Ste. Marie Tribe of Chippewa Indians upon any one or more of the following grounds:

- (1) Violations of the Sault Ste. Marie Tribe of Chippewa Indian's Tribal code, any provision of Federal or State law, or the law, rule or ordinance of any corresponding local unit of government, that threatens the peace, health, safety, morals, general welfare or environmental quality of life of Tribal Lands including, but not limited to, violations of law committed by non-Indians which would be a violation of Tribal law if committed by an Indian on Tribal Lands.
- (2) One or more instances of domestic violence, stalking, harassment or domestic disturbances that breach the peace, or threatens the peace, health, safety, morals, general welfare or environmental quality of life of Tribal Lands.

(3) Trading or conducting business upon Tribal Lands in violation of Tribal, State or Federal laws or regulations.

(4) Committing frauds, confidence games, or usury against persons residing on Tribal Lands, or inducing them to enter into grossly unfavorable contracts of any kind;

(5) Doing or threatening to do any act upon Tribal Lands which seriously threatens the peace, health, safety, morals or general welfare of the Tribe, its members, or other persons living on Tribal Lands; or

(6) Doing or threatening to do any act upon Tribal Lands which seriously threatens the environment of the land, water, natural resources, air, or any other natural land or topographical feature on Tribal Lands or which would in any way threaten the environmental quality of life for the Tribe, its members, or other persons living on Tribal Lands.

(7) Breach of the peace or repeated public drunkenness.

(8) Violation of any law, rule, regulation or minimum internal control standard promulgated by the Sault Tribe Gaming Commission.

STC § 61.104.

It is clear to this Court that at the time of the hearing on this matter the following facts were not in dispute:

1. Appellant had previously been convicted of domestic violence on three occasions.
2. Two of these occasions were in 2007 and 2008 in Tribal Court and a subsequent third conviction in federal court as a habitual offender arising out of a 2009 incident.
3. The federal conviction resulted in Appellant being incarcerated for a period of 41 months followed by three years of supervised probation.
4. Appellant was released from federal jurisdiction in May of 2016.

Within months of his release from federal jurisdiction Appellant was arrested again for domestic violence though he was later acquitted of those charges in July of 2016.

We find it persuasive to note that the Tribal Code does not necessarily require convictions of domestic violence in order for the actions of the Appellant to be considered by the Tribal Court. There must merely be a showing of “instances” of domestic violence. STC § 61.104(2). Furthermore STC §61.107(3) offers guidance as to the procedures to be followed by the Tribal Court in arriving at its decision, in pertinent part:

(3) The Tribal Court shall hear the evidence presented and upon a showing of clear and convincing evidence establishing that one or more of the grounds contained in STC §61.104 exist, **shall, if appropriate,** order the exclusion and/or removal of the real or artificial person. If the real or artificial person is not present at such hearing, or if a decision thereon is not rendered until after the hearing, appropriate notice shall be served on the real or artificial person in the manner provided above, informing them

of the action of the Tribal Court and shall include a copy of any order of exclusion and/or removal which affects such real or artificial person. The Tribal Court may limit, modify or set other conditions upon the exclusion or removal. (emphasis added).

We find that the Tribal Court did properly follow STC §61.107(3), that there was a clear and convincing evidence to establish the grounds in STC §61.104 and that the Tribal Court did not act erroneously. Appellant Nickaboine had been involved in more than two instances of serious domestic violence and under the facts offered at the hearing it was appropriate for to the Tribal Court to order him excluded from Tribal lands.

As a side note, we do not feel it is necessary as requested by Appellant's Counsel to set forth guidelines for the Tribal Court as to what form of evidence "previous instances" must take and further find that it was not improper for the Tribal Court to review past police reports. Counsel for the Appellant was not deprived of his ability to present evidence to the contrary.

Finally, we further note that we are unable to modify the Order of the Tribal Court as this Court only has the ability to stay such exclusion orders and not modify them pursuant to STC §61.109(2). Only the Tribal Court may limit, modify or set other conditions upon an exclusion or removal order. STC §61.107(3).

ORDER

For the foregoing reasons, the arguments of Appellants are rejected, and the Tribal Court's decision is affirmed.

IT IS SO ORDERED.