

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
COURT OF APPEALS

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in the SSM Chippewa Tribal
Court of Appeals

Nancy Hatch v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians

APP-2023-09

Decided: June 5, 2024

BEFORE: BIRON, BUTTS, CORBIERE, DIETZ, and DEMOORE Appellate Judges.

Opinion and Order

Biron, Karrie Chief Appellate Judge, who is joined by Appellate Judges Butts, Corbiere, Dietz, and DeMoore.

For the reasons explained below, the Sault Ste. Marie Tribe of Chippewa Indians Emergency Election Committee’s (“Election Committee”) November 30, 2023¹ order dismissing the Appellant’s November 22, 2023 Contest (“*Election Committee Decision*”) is hereby affirmed and the Appellant’s appeal is dismissed.

Facts and Procedural History

On November 20, 2023, the Election Committee under its authority grant by Tribal Resolution 2023-302 conducted a Referendum Election (“Election”) on Tribal Resolution 2023-261: Tribal Roll Opening. Unofficial results of the Election reflected that 35.1% of the eligible voters cast ballots in the Election meeting the requirements of STC § 12.109.²

On November 22, 2023, Appellant Nancy Hatch submitted an Election Contest (“*Election Contest*”) pursuant to STC § 12.108 alleging (1) issues related to the eligible voter list used during the Election, specifically that (a) Tribal members under age 18 received ballots, (b) Tribal members who previously received ballots did not get ballots, (c) deceased Tribal members got ballots and (d) the eligible roster used for the Election was incorrect; (2) a failure of the Board of Directors through the Election Committee to provide a means for Tribal members to remedy missing ballots and/or improperly received ballots; (3) that certain Directors of the Board of Directors used “undue influence and false information” to sway the Election result; (4) Resolution 2023-261 violated the Sault Ste. Marie Tribal Constitution and is therefore an illegal resolution and, finally, (5) the Election Committee did not provide Tribal members with information regarding Election Committee contacts, remedies if they did not receive a ballot and/or with instructions on how to report improperly received ballots. Hatch also asserts in her *Election Contest* that because “the resolution passed by the Board is illegal and the Referendum process was corrupted...Resolution 2023-261 needs to be voided.” *Election Contest* at 1-2.

¹ The *Election Committee Decision* was issued without title and contains the date of November 30, 2023 at 1 and November 29, 2023 at 4.

² STC § 12.109 sets forth that “[t]he result of any referendum election in which at least thirty percent (30%) of the eligible voters cast [sic] ballots shall be valid and binding and conclusive upon the Tribe.”

On or about November 30, 2023, the Election Committee issued the *Election Committee Decision* pursuant to STC § 10.120 (2)(c) “dismissing the contests as being without merit, lacking jurisdiction, and for improper venue.” (*Election Committee Decision* at 1). In its analysis, the *Election Committee Decision* sets forth that, despite a lack of supporting evidence, it initiated a review of the Appellant’s allegations and found, as follows:

1. The voter registration list used in the Election was created pursuant to STC § 12.104 (2) and (3);
2. Use of the 2022 General Election voter registration list was prescribed by STC § 12.104;
3. Exempting all deceased, disenrolled, and members with bad addresses is standard practice;
4. Use of the Enrollment database pursuant to STC § 10.109 filters underage members; therefore, the Election Committee characterized the receipt of a ballot by an underage Tribal member as an impossibility; and
5. “Tribal Code Chapter 11 was amended by a prior Board of Directors pursuant to Constitution Article III Sec.2 and the time period to request a referendum on this action has long since lapsed.”

(*Election Committee Decision* at 1-3).

As it relates to Appellant Hatch’s *Election Contest*, the *Election Committee Decision* briefly provides an overview of the actions taken by the Election Committee to inform Tribal members about the Election and explains that:

1. “Tribal Codes are always available online which fully informs [sic] the members of their rights to contests [sic] elections as well as the clearly defined timelines to do so” (*Id.* at 2);
2. The allegations directed at Directors LaPlaunt and McKechnie were not within the jurisdiction of the Committee; and,
3. The allegations related to the Board’s decision to allow enrollment of Mackinac Band were also not within the jurisdiction of the Committee.

On November 30, 2023, Hatch timely filed a Notice of Appeal pursuant to STC §§82.201 and 10.120 (7) appealing the *Election Committee Decision*. Hatch argues in her Notice of Appeal that “the decision of the Election Committee ...was arbitrary and failed to fully address [her] [c]ontests.” She further asserts that the “[Election] Committee did not conduct a hearing, did not engage in an investigation although that was their charge per the [Ordinance] and gave superficial and incomplete rationales for the dismissal.”

On December 7, 2023, this Court issued an Order to Appellee to Prepare/Produce Record within five (5) days from the date of the Order.

On December 11, 2023, the Election Committee, by and through legal counsel, submitted the following to this Court as the administrative record: (1) the original Referendum *Election*

Contest, (2) the response containing the *Election Committee Decision*, and (3) the *Election Committee Decision*.

On January 5, 2024, this Court issued a Notice of Expedited Briefing Schedule allowing for the matter to be briefed by the parties.

On January 19, 2024, the Appellant filed her “Statement of Issues Submitted to the Court of Appeals” (“*Appellant’s Brief*”). The *Appellant’s Brief* alleges that the *Election Committee Decision* “was superficial, avoided the substance of the *Election Contest*, [was] arbitrary and denied [her] due process rights. She argues that:

1. The membership roster used by the Election Committee to send ballots was faulty and therefore not all tribal members were given the opportunity to vote, and some votes may have been compromised by inappropriate ballots being sent. Several members complained of not receiving ballots, ballots were sent to deceased members, as observed during the count, and underage voters received ballots. This resulted in an inaccurate count of votes and compromised the election results.
2. The Tribal Board, through its Election Committee, failed to provide members any contact information or remedies for not receiving ballots or a means to report any improper received ballots (underage or deceased members). The only contact information was provided on the actual ballot sent so if one did not get a ballot one had no contact information. Thus again members were denied the right to vote in the Referendum Election.
3. Tribal Board members exerted undue influence and false information to persuade voters to vote to ‘Approve’ Referendum 2023-261 ‘Tribal Roll Opening’.
 - a. Tyler LaPlaut and Isaac McKechnie, sponsors of Resolution 2023-261, stated in their Tribal Paper unit reports and during Zoomed/taped Board meetings that ‘we are all related’ and all our brothers and sisters should be allowed to join the tribe. The premise being that members who voted to ‘Disapprove’ were keeping their relations out of the tribe.
 - b. Tyler LaPlaut and Isaac McKechnie, sponsors of Resolution 2023-261, stated in their Tribal Paper Unit Reports that those who opposed opening the rolls were engage in ‘Lateral Racism’. Tyler LaPlaut also made that statement in a public meeting.
 - c. There is no way that one can separate the actions of the Board from the Election Committee or sponsored Referendums. The Board controls the Election Committee. They select the members, the Chair, and approve all by laws and have authority to override Election Committee decisions.
4. In voting to approve Resolution 2023-261 [the] Board continued violating our Tribal Constitution. Thus it is not a legal resolution or

referendum. Our Constitution states our six Historical Bands eligible for membership. In 1978, with no input from the Membership, the Board of Directors arbitrarily added the Mackinaw Band to the Membership Ordinance via a Tribal Code change. This was an overstep of board authority in that it represented a substantive change in our Constitution. Opening the rolls now will allow individuals to enroll outside the Constitution [sic] requirements for membership in our tribe. (*Appellant's Brief* at 1-2).

Additionally, Appellant raises arguments not previously addressed in her initiating *Election Contest* (1) questioning the validity of the voter roster used during the Election in light of Resolution 2023-233 passed on July 11, 2023, which called for the automatic registration of all members who were 18 years of age for elections and referenda that were not unit specific and (2) citing the improper publication of the *Election Committee Decision* before all appeals in this matter were exhausted. Appellant states she submitted a complaint regarding improper publication of the *Election Committee Decision* but that she received no response from the Election Committee; however, the referenced *Election Committee Decision* was subsequently removed from the Election Committee's website. *Id.* at 3.

On February 6, 2024, the Appellee Election Committee filed Appellee's Brief on Appeal. (*Appellee's Brief*). The Appellee submits that the issues before this Court include:

1. Does the Appellant Hatch have standing to bring this appeal?
2. Was the voter registration list used by the Election Committee used in error?
3. Did the Emergency Election Committee abuse its discretion in dismissing the contest filed by Ms. Hatch for lack of jurisdiction, improper venue [and, overall, as] being without merit?
4. Is the issue of the Constitutionality of enrolling members that trace lineage to Mackinac Band properly before the Court? *Id.* at 6.

The Appellee argues that the Appellant lacks standing as threshold issue as she has presented no evidence regarding a personalized injury or violation of law that would allow her standing in this case pursuant to STC § 82.201. *Id.* at 8.

The Appellee went on to address Hatch's arguments in turn proffering that Appellant does not base her argument related to the Election Committee's use of a "faulty election roster" on specific Election Committee conduct inconsistent with Tribal law but, instead, maintains that "Tribal Law itself runs contrary to the Tribal Constitution."³ *Id.* at 12. Appellee asserts that "nothing in Tribal Resolution 2023-233 modifies or amends the language in Tribal Code Chapter 12.104," which sets forth the requirements for eligible voters in a referendum election as follows:

³ Appellant "points to the language in Tribal Resolution 2023-233 which now automatically registers all Tribal members 18 years and older to vote. (*Appellee's Brief* at 12).

(2) “Election Unit” or “Unit” means one of the five tribal election units employed for the immediately preceding Tribal general election in accordance with Article V, Section 1 of the Tribal Constitution and the Election Ordinance, Tribal Code Chapter 10.

(3) “Eligible Voter” or “those entitled to vote means any enrolled member of the Tribe eighteen years of age or older who meets either of the following criteria:

(a) Is shown upon the Tribal Membership roll to be a resident of an election unit; or

(b) Registered as a voter residing outside of any election unit for the immediately preceding Tribal general election pursuant to Article V, Section 5 of the Tribal Constitution and the Election Ordinance, Tribal Code Chapter 10.

Id.

Appellee argues that “an ‘election unit’ and an ‘eligible voter’ clearly refer back to the ‘immediately preceding Tribal general election’ in this case, the 2022 General Election.” *Id.* at 13. Appellee further argues that the Election Committee “found [in the *Election Committee Decision*] that the provisions of Tribal Code Chapter 12: Referendum Ordinance [were] followed, that the committee, using prior practice and procedure, exempted all deceased members, disenrolled members, and members with bad addresses.” *Id.* Appellee goes on to state that the Election Committee found that “619 members were exempted from the rolls for either being deceased, being disenrolled, or for having a bad address and that the voter registration is created using the Enrollment database pursuant to Tribal Code 10.109 and automatically filters out all members under 18 years of age so it was not possible that a member, under 18 years of age, received a ballot.” *Id.* at 13-14.⁴

Next, Appellee argues that it did not abuse its discretion in dismissing the *Election Contest* filed by the Appellant for lack of jurisdiction, improper venue and overall, as being without merit. Regarding the Appellant’s allegation of an improper voter registration list, Appellee notes that Hatch’s argument on appeal, as above described, was different than in her initial *Election Contest*, where she argued that the “Committee used an invalid Voter Registration Roll that was erroneously based off the 2022 Election.” *Id.* at 15. Appellee asserts that, in accordance with Tribal law, the Election Committee “held a meeting to review the allegations and after determining they had no merit, dismissed them in a written decision. *Id.* Appellee notes that Tribal law does not demand that an investigation be done, as Appellant suggests, and that Appellant “makes no argument in her brief that the committee acted in an arbitrary manner, does not state that they

⁴ At oral argument, the Appellee further clarified that STC § 12.103 governs the interpretation of eligible voter list for this Election and that, therefore, nothing in Tribal Resolution 2023-233 modifies the required use of the 2022 General Election eligible voter list to conduct the Election on Resolution 2023-261.

misapplied the law, nor proffers any argument that the committee decision runs counter to the facts before it.” *Id.* at 16.

Appellee further argues that Appellant’s argument that Appellee failed to provide Tribal members with notice of contest information and of the procedure to contest the election is not a requirement of Tribal law and was appropriately dismissed without merit. *Id.*

Appellee then asserts that Appellant’s reliance on Chapter 10.108(6) as support for her allegation that Tribal Board Directors LaPlaunt and McKechnie exerted undue influence on the election is misplaced as that provision imposes an obligation on the Election Committee, not the Board of Directors and, therefore, that dismissal of such allegations as without merit was proper. *Id.* at 17.

Finally, Appellee argues that “the issue of the Constitutionality of enrolling members that trace lineage to the Mackinac Band is not properly before this Court.” *Id.* at 18. Appellee argues that “the time period to request a referendum to challenge [Board action that amended Tribal Code Chapter 11] has long since lapsed.” *Id.* Appellee further argues that the Election Committee’s authority extends to violations of Tribal Code Chapters 10 and 12, and that dismissal for lack of jurisdiction, improper venue and [lack of] merit was appropriate as the Committee is without “authority to determine constitutionality of Mackinac Band membership....” *Id.* Likewise, the Appellee asserts that, because the Election Committee was without jurisdiction to hear and decide such matters, the issue of Constitutionality of enrolling Mackinac Band members is not properly before this Court. *Id.*

On February 19, 2024, this Court issued a Notice of Oral Argument.

On March 14, 2024, oral arguments were held at which both Appellant and Appellee, by and through its legal counsel, were present.

Jurisdiction and Standard of Review

Tribal Code § 10.120(7) allows for direct appeal, to this Court in limited original circumstances. Under Tribal Code § 10.120(7) written decisions of the Election Committee “issued pursuant to subsection (2)(c) may be appealed to the Sault Tribe Chippewa Tribal Court of Appeals pursuant to Chapter 82.”

Chapter 82 “establishe[s] the procedures by which appeals are taken from decisions of . . . the Election Committee.” (STC § 82.101). Section 82.201 also establishes who may appeal the decision of the Election Committee and the limitations of such an appeal: (1) A challenge to the decision of the Election Committee must allege that the Election Committee acted in a manner not consistent with Tribal law; and (2) the challenge must be personal to Appellant and not a generalized grievance. Section 82.202 sets forth that an appeal is proper before this Court if it “concerns a final decision of the Election Committee rendered pursuant to Tribal Code Chapter 10

at Section 10.120(c).” Accordingly, this Court has limited jurisdiction to hear appeals where an Appellant has filed a proper challenge or contest in accordance with § 10.118(1) and the Election Committee has rendered a decision in writing in accordance with § 10.120. (STC § 10.120(2)(c)).

“This Court will not substitute its judgment for the judgment of the Election Committee, unless the Election Committee’s actions were arbitrary or unreasonable.” *Catherine Hollowell v. Sault Ste. Marie Tribe of Chippewa Indians Election Committee*, APP 14-02 at 2 (May 28, 2014) and result “in an Appellant being unfairly denied a substantial right or being caused to suffer an unjust result.” (STC § 82.210). Furthermore, this Court will not entertain arguments that were not first the subject of an election contest from which a written decision resulted. *Isaac McKechnie v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-16-05 (July 15, 2016).

In every matter before this Court, our Anishinaabe teachings of *nibwaakaawin* (wisdom-use of good sense), *zaagi’idiwin* (practice absolute kindness), *minadendmowin*, (respect – act without harm) as well as *ayaangwaamizi* (careful and cautious consideration) must guide this Court’s decision-making. *Payment v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-2022-02 (December 5, 2022).

Discussion

Jurisdictional Limitations

At the outset, this Court feels compelled to address its limited jurisdiction and its ability to address the Constitutionality of Board of Directors’ actions in the context of an appeal from an Election Committee decision. In its brief and at oral argument, the Appellee contends that, as to the actions of the Board of Directors, no such jurisdiction exists in Tribal law. While the Appellant alleges otherwise, when asked by this Court at oral argument, the Appellant could point to no authority that would allow this Court to review and decide matters of a Constitutional nature in this context.

In fact, this Court has previously noted that Tribal Court and Court of Appeals authority is derived specifically from Tribal law. *DJ Hoffman v. Sault Ste. Marie Tribe of Chippewa Indians et. al.*, APP 2022-05 (December 7, 2022). Unlike other tribes whose constitutions expressly create co-equal branches of government in which decisions of each branch are subject to the review authority of the other in certain circumstances, the Sault Ste. Marie Tribe of Chippewa Indians is not such a tribe. It is a one branch government that created a “reservation court” and specifically defined the jurisdiction of that court within the confines of Tribal law. The Tribal Code currently provides the Tribal Court with jurisdiction to hear the following types of cases: criminal, child welfare, juvenile delinquency, landlord-tenant disputes, guardianship matters, civil garnishments, adoptions, conservation matters, torts, workers compensation matters, traffic cases, civil infractions, enforcement of foreign court judgments, civil contempt matters, emancipation, general civil matters, personal protection matters. *Hoffman, supra*. The jurisdiction of the Court of Appeals is limited to those matters delineated in STC Chapter 82.

Specifically, since this matter comes to this Court on an appeal from a decision of the Election Committee pursuant to STC § 10.120(7), the scope of our review pursuant STC §§ 82.203 and 82.210 only extends to Constitutionality issues within that purview. Here, Resolution 2023-

261 and the Constitutionality of the Board of Directors' addition of the Mackinac Band to STC Chapter 11 in 1978 is beyond that scope and not within the purview of this Court. The Court understands that this portends the possibility that the governing body in a one branch government could face a crisis of community confidence if a transparent system is not in place to independently determine the constitutionality of the governing body's actions. But, contrary to the arguments of the Appellant, under the current state of Tribal law, and these particular circumstances, for now, we are without such authority to act.

Thus, this Court is without authority to address whether Resolution 2023-261 violated the Sault Ste. Marie Tribal Constitution and whether it is an illegal resolution. Likewise, this Court is without jurisdiction to address the actions of certain Directors of the Board of Directors allegedly using "undue influence and false information" to sway the Election result. Further, absent evidence to substantiate such claims, allegations related to the actions of the individual Directors are mere conjecture and, in any event, could raise First Amendment issues not necessary to the Court's decision making on the present facts.

Standing

An additional threshold matter advanced by the Appellee's Brief and Oral Argument is the issue of standing. While this was not a part of the *Election Committee Decision*, it is a jurisdictional issue and, hence will be addressed by the Court. Under Tribal law related to Election matters, standing requires that an appeal from an Election Committee decision be personal to Appellant and not a generalized grievance "shared in equal measure by all or a large class of similarly situated parties." (STC § 82.201). Standing has been previously addressed by this Court, finding that, in the context of Tribal Elections, there is nothing more personal or individual in nature to a Tribal Member than to cast their ballot for their candidate of choice and have that vote counted in a fair and impartial election. *William Joseph Perault v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa*, APP-2023-06 (December 29, 2023).

We have further found that Tribal members should be allowed to challenge the decisions of the Election Committee when there are blatant violations of Tribal law. *Perault, supra*, citing *Liedel and Freiheit v. SMTCI Election Committee*, APP-08-05 (March 25, 2008) and *Berger, supra* at 4. However, unlike *Perault, supra*, this Court can find no violation of law within its authorized scope of review and Appellant has advanced no argument that she, herself, did not receive a ballot or any evidence that her right to vote was specifically affected. Therefore, the Anishinaabe teaching of *ayaangwaamizi* (careful and cautious consideration) guides this Court to find that the Appellant lacks standing to bring forth the arguments related to the use of a faulty election roster as well as arguments related to lack of contact information for Tribal members to report missing or improperly received ballots as a denial of a Tribal members' right to vote. Without evidence that such issues are clearly personal to her and her right to vote in the Election, and not otherwise a generalized grievance "shared in equal measure by all or a large class of similarly situated parties," standing of the Appellant, under the current state of the law, does not exist.

Despite the Appellant's lack of standing and to advance community understanding, keeping with this Court's practice of applying *nibwaakaawin* (wisdom-use of good sense) and *ayaangwaamizi* (careful and cautious consideration), this Court will briefly address the substance of Appellant's faulty roster arguments and the *Election Committee Decision* regarding the same. Appellant advances an argument that STC § 10.109(6), as amended in July 2023, controls the

eligible voter list or membership roster used in this Election. This Court rejects that argument and finds that Section 12.104 (3) governs the Election roster as it relates to this Election, not the newly amended section of Chapter 10. While this Court understands that such a finding may be confusing to a lay person, STC § 12.103 instructs that, as a matter of law, the provisions of Tribal Code Chapter 12 govern referendum elections, including the Election at issue here.

As indicated in STC § 12.103 below, the provisions of Chapter 10 only apply to referendum elections *if they are not inconsistent with Chapter 12*. Since the amended section of Chapter 10 put forth by Appellant (STC § 10.109(6), as amended in July 2023), is *inconsistent with Chapter 12*, Chapter 12 and, specifically, STC § 12.104, apply to the Election at issue in this case:

12.103 Relation to Election Ordinance

The provisions of this Chapter shall govern the conduct of referendum elections. Referendum elections shall also be governed by the provisions of the Election Ordinance, Tribal Code Chapter 10, to the extent expressly provided in this Chapter and to the extent that the provisions of the Election Ordinance are not inconsistent with the provisions of this Chapter (emphasis added).

12.104 Definitions provides, in pertinent part:

(2) “Election Unit” or “Unit” means one of the five tribal election units employed for the immediately preceding Tribal general election in accordance with Article V, Section 1 of the Tribal Constitution and the Election Ordinance, Tribal Code Chapter 10. (emphasis added).

Therefore, as a matter of law, notwithstanding the Constitutional issues outside of the jurisdiction of this Court discussed above, the Election Committee was correct in its use of the 2022 General Election roster.

Furthermore, the Election Committee found that the Appellant failed to submit any evidence to substantiate claims advanced in her *Election Contest*. During oral argument before this Court, Appellant suggested that she had such evidence but acknowledged she did not submit it.

In her *Notice of Appeal* and at oral argument, the Appellant argues that the Appellee’s lack of investigation and failure to convene a hearing is evidence enough that a violation of law occurred. She further argues that, had the Election Committee held a hearing, she could have submitted evidence to support some of her claims. At the time of this appeal, STC §§ 10.118 and 10.120 are silent on the requirement of written documentation to support a contest or complaint. As an aside, the amended STC § 10.120(1), effective December 19, 2023 (formerly STC § 10.119 (1)), now makes clear that Complainants must supply “written documentation substantiating their allegations.” Similarly, both STC § 10.120 in the form applicable to this case and the newly amended STC § 10.121 make further investigation of the Election Committee or the convening of hearing on the Appellant’s *Election Contest* optional.

This Court notes that the Election Committee did not directly investigate Appellant’s specific claims; however, the Election Committee did undertake an inquiry to ensure that all underage, deceased, disenrolled, and members with bad addresses were exempted to support its findings and decision dismissing the Appellant’s *Election Contest*. While such inquiry may not satisfy the Appellant’s idea of an investigation, *ayaangwaamizi* (careful and cautious

consideration) instructs that this Court “not substitute its judgment for the judgment of the Election Committee, unless the Election Committee’s actions were arbitrary or unreasonable.” *Hollowell, supra*.

Likewise, the failure of the Election Committee to grant a hearing was not a violation of STC § 10.120(2). Having said that, the Court observes that the discretionary nature of STC § 10.121(2), effective December 19, 2023, (formerly STC § 10.120(2)), may, on certain sets of facts, result in due process violations going forward. Ultimately, the Court of Appeals needs evidence to substantiate claims – it is not a fact finder in election matters. Therefore, both parties to an appeal have the responsibility to support their claims, positions, and decisions, respectively. Having no such evidence, this Court has nothing before it on the present facts to find that the Election Committee acted in an arbitrary or unreasonable way resulting in the Appellant being unfairly denied a substantial right or being caused to suffer an unjust result. Therefore, this Court must affirm the *Election Committee Decision* and dismiss the appeal.

ORDER

For the reasons specified above, the Appellee’s *Election Committee Decision* of November 30, 2023 is affirmed and Appellant’s appeal is dismissed.

It is SO ORDERED.