

**NON-REMOVABLE MILLE LACS BAND OF OJIBWE**

**DISTRICT OF NAY-AH-SHING**

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**COURT OF APPEALS**

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Wanetta Thompson:

Contester,

Court File No.: 2016-APP-04

v.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND FINAL DECISION**

General Reservation Election Board,

Respondent.

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A Notice of Contest was filed on April 8, 2016. An election contest hearing was held on May 2, 2016, before this Court pursuant to the Minnesota Chippewa Tribe Election Ordinance (as amended to 11/09/15) and Mille Lacs Band Statutes. Appearing at the hearing and challenging the election was Wanetta Thompson, the contester. The General Reservation Election Board ("Election Board") was represented by Todd Matha, Solicitor General. Also present was Deanna Sam, Chair of the Election Board.

The MCT Election Ordinance (as amended 11/09/15) ("MCT Election Ordinance") is the law applicable to this election contest. Pursuant to MCT Election Ordinance, Section 3.2(B)(1), the burden of proof rests with the contester who must show by clear and convincing evidence that violations of the Election Ordinance by Election Board members occurred. MCT Election Ordinance, Section 3.2(B)(1) further provides that there is a presumption of correctness in favor of the Election Board. MCT Election Ordinance, Section 3.2(B)(8) requires that the contester demonstrate violations of the Election Ordinance that change who was the winning candidate in the election. These provisions set a very high bar for a contester to prevail.

Pursuant to the MCT Election Ordinance”, Section 3.2(B)(9), the Court now makes the following findings of fact and conclusions of law and final decision:

**FINDINGS OF FACT**

1. Wanetta Thompson (“Contester”) was a candidate for the Chief Executive position in the primary election held on April 5, 2016.

**Absentee Ballots**

2. In her notice of contest the contester raised issues associated with the administration of absentee ballots. She alleges that some District III voters were provided District I ballots in response to their request for an absentee ballot. In the April 5, 2016 primary election, only District I has the District Representative position on the the ballot, in addition to the Chief Executive position. All other District voters, should have properly voted for only the Chief Executive position.

3. Shelly Day, tribal member, voted absentee on April 1, 2016. She is registered as a District III voter. In response to her request for an absentee ballot, she received a District I ballot, which included both the Chief Executive and District I candidates on the ballot. Ms. Day brought this discrepancy to the attention of the Election Board. Ms. Day testified that she voted for both the Chief Executive and District I races and she returned her ballot to the Election Board.

4. Dylan Aubid, tribal member, testified that he is registered as a District II voter, and that he has never voted in District I in the past. Mr. Aubid requested an absentee ballot; and he received a District I ballot, which included candidates for both the Chief Executive and District I Representative positions. Mr. Aubid testified that he voted for both races.

5. Laikora Thompson, tribal member and daughter of the contestee, testified by telephone from Florida where she is attending college. Laikora Thompson testified that she declared District III as her voting District, and that she requested an absentee ballot. She received a District III ballot, which included only the Chief Executive candidates. Laikora Thompson did not vote the absentee ballot; but instead presented herself in person at Mille Lacs and requested a District III ballot. Laikora Thompson received a District 1 ballot, which included candidates for both the Chief Executive position and the District I Representative position. Laikora Thompson testified that she voted for a Chief Executive candidate, as well as a District I Representative candidate.

**Identification Required to Vote**

6. Lisa Ballinger, tribal member, testified that she previously served as a member of the Mille Lacs Band Election Board. Ms. Ballinger testified as to her understanding of the proper procedures that Election Board members should follow. She testified voters should have been permitted to vote for the District I Representative position only if they reside in District I or if they declare District I as their District for voting purposes if they are not a Reservation resident. She testified that voters are permitted to vote in a different District if they present proof that they resided in a new district for at least 30 days immediately preceding the election.

7. Karen Harrington, tribal member, testified that she served as an alternate Election Board member in the current primary election. Ms. Harrington testified that approximately ten voters were not permitted to vote at the precinct where she worked because they did not have identification deemed appropriate by the Election Board. Ms. Harrington also testified that the ballots and other election materials were accounted for after the election, but she was not aware that such accounting was conducted before the election.

8. Alicia Skinaway, tribal member, testified that the first time she went to the voting precinct to vote on April 5 she was not permitted to vote because she did not have proper identification. Ms. Skinaway testified that later on election day she went back to the precinct with proper identification, and she was permitted to vote.

9. No person testified that they did not vote because he or she did not have identification required by the Election Board or precinct site.

**Notarizing Affidavits**

10. Contester argues that her aunt, Cynthia Beaulieu, notarized absentee ballots during the primary election; and because the MCT Election Ordinance prohibits immediate family members of a candidate from notarizing affidavits associated with the absentee ballot process that all ballots notarized by Cynthia Beaulieu should be spoiled.

11. Cynthia Beaulieu did not appear to testify at the election contest hearing. The Court did not permit contester to view all absentee ballots to determine the number of absentee ballot affidavits that were notarized by Cynthia Beaulieu. Counsel for the Election Board asserted that the Election Board did inspect all absentee ballot materials, and determined that Cynthia Beaulieu notarized a total of four absentee ballot affidavits.

**CONCLUSIONS OF LAW**

12. The contester possesses standing to contest this election pursuant to MCT Election Ordinance, Section 3.2(A)(1).

13. Because contester was a candidate for the Chief Executive position; and because MCT Election Ordinance, Section 3.2(A)(1) permits a contester to challenge only the election for the position for which she was a candidate, contester is not permitted to challenge the absentee balloting process pertaining to the District I Representative position.

14. Contester has not demonstrated that the violations of the MCT Election Ordinance which permitted non-District I voters to vote for the District I Representative position had any impact on the race for the Chief Executive position.

15. Because district election boards are permitted to require proof of a voter's identify pursuant to MCT Election Ordinance, Section 2.2(A)(4); and because no person testified that he or she was denied the right to vote for the Chief Executive position because they did not have proper identification, the contester has failed to carry her burden of proving that any voter was improperly denied the right to vote for the Chief Executive position.

16. Contester did not prove by clear and convincing evidence that Cynthia Beaulieu's action of notarizing absentee ballot affidavits altered the outcome of the election for the Chief Executive position. MCT Election Ordinance, Section 2.2(B)(2) was not violated when Cynthia Beaulieu, contester's aunt, notarized four absentee ballot affidavits.

17. Because this Court has jurisdiction over this election contest pursuant to MCT Election Ordinance, Sections 1.7(D), 3.2(B)(1) and 3.2(B)(2); and because these provisions limit the Court to reviewing alleged violations of the MCT Election Ordinance, any alleged violations of the Indian Civil Rights Act (25 U.S.C. Section 1301) and the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Article XIII are non-justiciable issues before this Court.

### **FINAL DECISION**

While contester demonstrated that three non-District I voters were permitted to vote for the District I Representative position, she did not establish by clear and convincing evidence that these violations together with any other violations, changed who was the winning candidate for

the Chief Executive position. As a result, in accordance with MCT Election Ordinance, Section 3.2(B)(8), the results of the primary election are affirmed.

BY THE COURT:

Dated: May 9, 2016

Brenda Moose  
Justice Brenda Moose

Clarence R. Boyd  
Justice Clarence Boyd

Joseph Plumer JMT.  
Special Justice Joseph Plumer