

M.L.B. Court of  
Original Jurisdiction  
FILED  
EBW  
2008 NOV -2 11 2:26

**NON-REMOVABLE MILLE LACS BAND OF OJIBWE INDIANS  
COURT OF APPEALS**

District of Nay-Ah-Shing

---

**IN THE COURT OF APPEALS**

---

Mushkooub,

**Case No. 08APP08**

Plaintiff

vs.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

General Election Board of  
The Mille Lacs Band of Ojibwe  
Defendant

---

The Court of Appeals, in an exercise of its original jurisdiction,<sup>1</sup> convened on the 31<sup>st</sup> day of December 2008 to hear the election contest of the Plaintiff to the results of the recent Special Primary Election to fill the seat of the Chief Executive of the Band that had been vacated by the removal of Melanie Benjamin. That election resulted in one candidate, Marjorie Anderson, receiving a majority of the eligible votes case thereby avoiding the need for a General Election for the position. The Plaintiff finished second in that primary election and timely filed his challenges to the election results on December 23, 2008. As a result of the written challenges filed by the Plaintiff, the Court held a session on December 31, 2008 to hear from the interested Parties. The Plaintiff appeared

---

<sup>1</sup> It should be noted that the Mille Lacs Band, by Joint Resolution 12-04-134-08, dated December 11, 2007 opted out of the MCT's method of resolving election disputes and affirmatively vested this Court with the original jurisdiction to hear election contests.

to represent himself and the Solicitor's office, through Rjay Brunkow, appeared for the Defendants.

Based upon the Court's review of the matter it enters the following findings of fact:

1. That on December 16 a Special Primary Election was held on the Mille Lacs Indian reservation and urban centers to fill the vacated position of Chief Executive;
2. That Plaintiff was one of the candidates who ran in the Primary;
3. The Primary Election was run by Marjorie Anderson who garnered a majority of the "votes counted" thereby winning the election as Chief Executive of the Band;
4. That although Anderson won a majority of the "votes counted" she did not win a majority of the votes cast because a substantial number of votes were spoiled - either because of the intent of the voter was not clear or because the voter attempted to submit a write-in candidate's name, a process that is not permitted by the Minnesota Chippewa Tribe's Election Ordinance;
5. That under the MCT's Election Ordinance #10 the majority pertains to those votes that are counted and not those which are cast. Chapter I, Section 1(B);
6. That under Band law the burden of proof is upon the Plaintiff to demonstrate by clear and convincing evidence that due to irregularities in the Primary Election the election results should be rejected. In this case because of the majority won by Anderson the Plaintiff must demonstrate that the alleged irregularities resulted in Anderson receiving 14 votes she should not have received or he not receiving 14 votes he should have received;

7. The Plaintiff's challenge to the determination that Anderson received a majority of the votes in the Primary is rejected because spoiled ballots do not count as votes counted. The Plaintiff failed to offer any evidence that the ballots that were spoiled were wrongfully spoiled
8. The Plaintiff's challenge to the removal of the former Chief Executive and alleged wrongdoing by the Band Assembly is beyond the scope of this case and not subject to this Court's jurisdiction;
9. The Plaintiff's challenge to the composition of the Election Board and its alleged biases because of relationships to other candidates is rejected as the Plaintiff failed to demonstrate that the Board was wrongfully appointed or that the mere fact that several members of it have served for years on the Board affected the Primary Election results;
10. The Plaintiff's challenge to the alleged failure to get voters to the polls because of inclement weather is rejected because the Board has no control over the weather and has no affirmative obligation to get Band members to the polls;
11. The Plaintiff's challenge to the alleged improper hours at two polling stations is rejected because he did not prove that such hours, if they were irregular, resulted in his losing votes;
12. The Plaintiff's challenge to the alleged failure of the MCT to provide technical assistance and election services is rejected as beyond the authority of the Court and the Board;

13. The Plaintiff's challenge to two urban polling places allegedly staying open for two additional hours is rejected as he provided no proof that such tainted the election results;

14. The Plaintiff's challenge to voters being denied access to observe the open ballot box is denied on the ground that the Plaintiff failed to show that such, if it did occur, affected the election;

15. The Plaintiff's challenge to Herb Weyaus allegedly entering counting room unsupervised is rejected for lack of proof and lack of any impact on election.

Based upon the foregoing findings of fact this Court concludes that the Plaintiff has failed to demonstrate by clear and convincing evidence that any irregularities occurred in the December 16, 2008 Special primary election to fill the vacated position of Chief Executive and therefore it is hereby

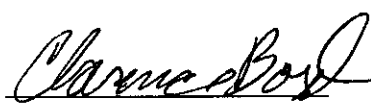
ORDERED, ADJUDGED, AND DECREED that the election contest filed by the Plaintiff to the results of the December 16, 2008 Primary Election to fill the Chief Executive position is hereby DENIED.

So ordered this 2<sup>nd</sup> day of January 2009.

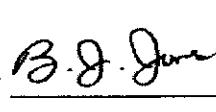
BY ORDER OF THE COURT:



Chief Justice



Associate Justice



Special Magistrate

ATTEST:

