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FOREST COUNTY POTAWATOMI TRIBAL COURT

FOREST COUNTY POTAWATOMI
TRIBAL COURT

LORI CLEEREMAN,
Appellant,

v.

Case No. 11-AP-0123

**FOREST COUNTY
POTAWATOMI COMMUNITY,
JOSEPH DANIELS SR.,
JAMES CRAWFORD,
THOMAS BOELTER,**
Respondents.

APPELLATE DECISION

Ms. Cleereman appeals the trial court's decision, Case No. 11-CV-039, to grant Respondents' Motion to Dismiss on grounds that they possess immunity from suit. We affirm.

JURISDICTION

The Court has jurisdiction over this appeal under Section 2-1.30 of the Tribal Court Code. Under that section, the appellate court is to consist of one Forest County Potawatomi Tribal Judge who was not the trial judge and two judges from other courts approved by the Tribal Council.

We make two comments on the composition of the appellate court. First, although Judge White-Fish is considered the brother of the Joseph Daniels, Sr. and normally would recuse himself from hearing a case where Mr. Daniels is a party, doing so would create an impossible situation because no other Forest County Potawatomi tribal judges are available to hear the appeal. (Judge Perenich was the trial judge.) Therefore, the panel agreed that Judge White-Fish would remain on the panel but not cast a vote in the decision.

Second, although the ordinance calls for two tribal judges from other tribal courts "approved by the Tribal Council," the Executive Council did not get to pick the judges for this appeal. In this and every appellate case, through a form letter provided by the Tribal Court Clerk, the Tribal Chairman requests the Wisconsin Tribal Judges Association to assign two

judges to the case. That occurred in this case and Judge Wigg-Ninham and Judge Ackley were chosen by internal process at WTJA. The Executive Council has no say in the matter and the Chairman's role is purely administrative.

DISCUSSION

We briefly review the facts which appear to be generally not in dispute. (We borrow liberally from the trial court's recitation of the facts.) On January 31, 2010, the Tribal Chairman hired Ms. Cleereman as his personal assistant and she and the Chairman signed a contract governing her employment. Ms. Cleereman's title was Executive Clerical Staff person to the Tribal Chairman.

On November 4, 2010, when FCPC Chairman Gus Frank was out of town, the Executive Council held a special meeting at which several agenda items were addressed. Towards the end of the meeting, Defendant Joseph Daniels, Sr. moved to terminate Lori Cleereman as the Chairman's Assistant for insubordination with a letter of separation. The motion carried 2-1 with no abstentions.

Ms. Cleereman called the Chairman after she received the news. The Chairman told her to go home and he would try to work out the issues. Ms. Cleereman received a letter confirming her termination from employment. Ms. Cleereman was never called back to work.

The following March or April, the Tribe posted the Chairman's Assistant position. Ms. Cleereman applied and was hired.

On April 28, 2011, Ms. Cleereman filed the current law suit.

On her first day on the job in early May, 2011, the Tribe sent her home from work. The Tribe informed her that unless she waived and released all claims against the Executive Council members, she would be terminated. Ms. Cleereman refused and her employment was terminated. Ms. Cleereman amended her complaint on May 31, 2011 to include allegations regarding her second hiring and termination.

On May 31, 2011, Defendants filed a motion to dismiss based on their immunity from suit. On June 29, 2011, Ms. Cleereman filed her response. On July 14, 2011, Defendants filed a Reply.

The Trial Court held oral argument on Defendants' motion on July 18, 2011.

On August 18, 2011 the Trial Court issued its decision to grant the Respondents' Motion to Dismiss. Ms. Cleereman timely appealed on August 25, 2011.

In our view the trial court addressed issues beyond what was necessary to decide this case. Very simply put, the Respondents are immune from suit unless that immunity has been specifically waived by the General Council or the United States. Ms. Cleereman has not provided this Court with evidence of such a waiver. The Tribe's sovereignty and immunity are two of the most important legal aspects of the Tribe. While the Potawatomi Tribe's survival was due to our member's hearts, minds and determination, legally, the Tribe needs its sovereignty and immunity as shields.

The General Council has not waived the Respondents' immunity in any fashion that this panel is aware. As pointed out by the Trial Court, there is no ordinance that addresses the Tribe's sovereign immunity at any length. However, several ordinances state that the Tribe's immunity is not waived through enactment of the ordinance. See Sec. 32 of the Tribal Court Code; Sec. 4-2.6 of the Tribal Tire Dump Ordinance; Sec. 5-3.10 of the Gaming Revenue Ordinance; Sec 5-4.

The existing waivers of immunity are very specific. For example, the Housing Ordinance authorizes the Housing Authority to waive its immunity from suit. Sec. 1-4.6.2. The Garnishment Ordinance states there is no waiver of tribal immunity except to the extent needed for a creditor to reach the wages owed a tribal employee. Sec. 2-3.14. The Gaming Control Ordinance states that if the Gaming Commission, in negotiating a contract, needs a waiver of sovereign immunity, it must have prior approval from the General Council to execute such a contract. Sec. 5-2.8.7(J).

The Tribe's Employee Handbook explicitly states on page two that nothing in the Handbook shall be construed as a waiver of the Tribe's sovereign immunity.

The General Council addressed waivers by enacting Resolution No. GC023-2006. That resolution sets out specific limits and rules under which the Executive Council can waive the Tribe's immunity.

Looking at these various FCP ordinances and resolutions, the panel finds that under FCPC tribal law Respondents possess immunity from suit and there is no evidence that immunity has been waived.

Ms. Cleereman's arguments that alleged problems with the Executive Council meeting created a waiver are unconvincing. There is no resolution, ordinance, rule or other source which waives the Respondents' immunity.

CONCLUSION

For the foregoing reasons, the Court grants the motion to dismiss. This matter is dismissed without prejudice. IT IS SO ORDERED.

Dated this 9th day of NOVEMBER, 2011

_____[NOT VOTING]_____
Hon. Eugene L. White-Fish

Hon. Richard Ackley
Hon. Richard Ackley, Pro Tem

Hon. Leland Wigg-Ninham
Hon. Leland Wigg-Ninham, Pro Tem