St. Regis Mohawk Tribal Appellate Court

Andrew Thomas,	)	
Appellant	)	**DECISION AND ORDER**
	)	
-V-	)	**Case No.: 15-APP-00001**
	)	
St. Regis Mohawk Tribe,	)	
St. Regis Mohawk Tribe Police Commission,	)	
Appellee	)	

Jurisdiction

The case comes before the Court of Appeals on appeal from a decision issued by the Tribal Court on March 2, 2015. The Court of Appeals possesses "jurisdiction to hear all appeals from the Tribal Court."[1]

Procedural History

On September 24, 2014, Andrew Thomas filed a complaint with the St. Regis Mohawk Tribal Court naming the Saint Regis Mohawk Tribal Council and Saint Regis Mohawk Tribal Police Department Commissioners as defendants.[2] His lawsuit requested the following relief: (1) that his termination by the St. Regis Mohawk Tribal Police Commission and St. Regis Mohawk Tribal Council be vacated and annulled; (2) that he be paid $1882 in damages for wages withheld from his last paycheck; and (3) that he be awarded $50,000 in general monetary damages together with costs and disbursements of the action.

Defendants filed a Motion to Dismiss on October 21, 2014. On October 28, 2014, Plaintiff filed a cross motion seeking dismissal of defendants' motion and a default judgment in his favor. Plaintiff filed a Supplemental Affidavit on November 3, 2014. The Tribe responded to the cross motion on November 5, 2014. The Tribe filed a response to the Supplemental Affidavit on November 19, 2014. Plaintiff filed a responsive affidavit on November 20, 2014.

The Tribal Court heard oral arguments on January 16, 2015, and issued a decision on March 2, 2015. The Tribal Court dismissed plaintiff's motion for default judgment stating the following conclusions:

- The defendants had not waived sovereign immunity under New York Indian Law Section 114, the SRMT Civil Code, or the Indian Civil Rights Act of 1968;

[1] Saint Regis Mohawk Tribal Court and Judiciary Code, Section V. 3. (Amended May 8, 2012).

[2] Plaintiff Andrew Thomas is referred to as "Plaintiff" or "Appellant" in this Order. Defendant Saint Regis Mohawk Tribal Council is referred to as SRMT, Tribe, Defendant, or Appellee in this Order. Defendant SRMT Police Department Board of Commissioners is referred to as Defendant, "the Commission" or Appellee in this Order. Collectively, the two defendants are referred to either as Appellees or Defendants in this Order.

- Sovereign immunity of the SRMT extended to the SRMT Police Commission;
- The SRMT Court lacked jurisdiction over the Tribe and the Police Commission to award monetary relief due to sovereign immunity;
- The SRMT Court lacked jurisdiction to vacate or annul the Final Decision and Order of the SRMT Police Commission, which is deemed final under the SRMT Police Commission Act of 2014;
- The SRMT Police Commission Act provides all due process procedure required prior to an employee's termination;
- Thomas was not denied his Constitutional right to due process under the Indian Civil Rights Act of 1968;
- Thomas failed to state a claim for which relief could be granted;

Mr. Thomas subsequently filed this appeal with the SRMT Court of Appeals on March 16, 2015.

Each party timely filed briefs. Oral argument was held before SRMT Court of Appeals on August 26, 2015.

Appellant's Argument

Appellant argues that according to tribal principles of justice, fairness, tribal culture, and custom and tradition that the Tribe has waived sovereign immunity for equitable relief. Appellant further argues equitable relief may be available because, he reasons, if "equitable treatment is disregarded, this court has the inherent affirmative obligation and duty to rectify any injustice perpetrated."[3] In other words, Appellant makes the argument that despite his request for monetary damages, the Court can grant equitable relief based on tribal culture, custom and tradition. Appellant also argues that the termination process lacked fairness because the Tribe's General Counsel was involved in the investigation and hearing, and that this lack of fairness is exacerbated by the fact that the Commission refused to provide Appellant with a transcript of his hearing.[4] Appellant also argues that this Court should not give weight to federal law regarding termination of employees which allow minimal termination procedures, given that federal law has continually been disrespectful toward Indian nations and tribal sovereignty.[5]

Appellee's Arguments

Appellee argues the Tribe's Civil Code, Section IV.D., requires a specific waiver of sovereign immunity by the Tribe. The Tribe's Civil Code grants a limited waiver of immunity related to ICRA,[6] but only for equitable relief.[7] Appellee argues that the Appellant's request for monetary relief exceeds Tribal Court jurisdiction due to the fact the Tribe has not waived sovereignty immunity for ICRA claims requesting monetary damages or non-equitable relief.

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[3] Appellant's Brief, 3.
[4] Appellant's Brief, 3.
[5] Appellant's Brief, 6.
[6] ICRA refers to the Indian Civil Rights Act, codified at 25 U.S.C. § 1301-1304.
[7] Appellee's Brief 10.

Appellee also argues the Court has no authority to annul the Commission's decision because the Police Commission Act states disciplinary decisions of the Commission are final.[8] Finally, Appellee argues the Tribal Court correctly determined that the requirements of due process were met.[9]

Analysis

The SRMT Civil Code[10] defines the Tribe's sovereign immunity and its waivers. Sovereign immunity is an "essential element of self-determination and self-government"[11] and any waivers of sovereign immunity must be "clear, explicit and in writing."[12] Moreover, the Court is required to interpret any waivers "narrowly and limited to the explicit terms of the waiver; and ...shall not by implication or interpretation be extended in any manner or fashion beyond their narrow, explicit terms."[13]

The Tribal Court correctly noted that the Tribe's sovereign immunity extends to the Commission: as sovereign governments, Tribes have the right to extend its immunity to Tribal officials and employees.[14] The question before the Court is whether there is a waiver of the Tribe's sovereign immunity for ICRA claims against the Tribe and the Commission. The Civil Code grants the Court jurisdiction over:

> Claims against the Saint Regis Mohawk Tribe (but not against individual Indians, Officials, Officers, employees or agents of the Tribe) under the federal Indian Civil Rights Act, in which case the Court may grant equitable relief only (injunctive or declaratory remedies, excluding monetary damage or monetary relief of any kind);[15]

The Civil Code unambiguously states that the Tribe does NOT assert its sovereign immunity against claims for equitable relief brought in Mohawk Court under the Indian Civil Rights Act. Thus, the Tribe has given a limited waiver of its sovereign immunity only for claims seeking equitable relief. The Commission is a governmental body or agency acting on behalf of the Tribe, not an individual. Thus, the waiver of sovereign immunity granted by the Tribe for an ICRA claim includes the Commission, as it is a governmental body.

Next, we examine whether Appellant's claims against the Tribe and Commission falls within the limited waiver of sovereign immunity granted by the Tribe in the language of the Civil Code for ICRA claims. We must determine what claims can be

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[8] Appellee's Brief, 11.
[9] Appellee's Brief,
[10] All references to the "Code", "Civil Code" mean the SRMT Civil Code unless otherwise noted.
[11] SRMT Civil Code § IV.D.
[12] *Id.*
[13] *Id.*
[14] *Wood v. Terrance*, 11-CIV-00019 (2011), 8.
[15] SRMT Civil Code § II. E.

made under equitable relief and whether Appellant's requests for relief fall within that definition

Appellant argues that this Court has the authority under Mohawk justice, culture, and custom and tradition to determine that his monetary request falls within an equitable remedy. However, the SRMT Civil Code makes clear which laws the Court is to apply and the order in which those laws must be applied.

> Civil disputes over which the Tribal Court has jurisdiction shall be decided by the Court in accordance with and by applying the following principles of law in the priority and precedence in which the principles of law are first identified below (higher priority and precedence being accorded those identified earliest in the list, so that in the event of inconsistency or conflict between principles of law, the principle of law identified earlier in the list shall be relied upon as the controlling principle for deciding the dispute).[16]

The Code then goes on to list the applicable laws in the order that they are to be applied, which are: portions of the Constitution of the United States and federal law clearly applicable in Mohawk Indian Country; written Mohawk laws adopted by the Tribe; and subsequently unwritten Mohawk laws.[17] The Civil Code requires the Court to apply written law adopted by the Tribe prior to an unwritten Mohawk laws or custom and tradition. Thus, the Court must turn first to the Civil Code before examining any unwritten Mohawk laws or custom and tradition, as the Appellant is requesting.

The Civil Code grants the Tribal Court jurisdiction over claims against only the Tribe and limits this waiver to "[c]laims . . . in which the Court may grant equitable relief only."[18] The Code then defines equitable relief as "injunctive or declaratory remedies, excluding monetary damage or monetary relief of any kind."[19] The Civil Code is a written law adopted by the Tribe, which takes priority over unwritten Mohawk law. The Civil Code is very specific as to the definition of equitable remedies which fall within the waiver. The only claims which fall within the waiver for injunctions or declaratory judgments. The Code excludes claims for monetary damages, such as the request for $1882 withheld from his wages and the $50,000 general monetary damages sought by Appellant. Thus, the Court has no jurisdiction over Appellant's two claims for monetary relief and the Tribal Court properly dismissed Appellant's claims for monetary relief for lack of jurisdiction.

Appellant does request an equitable remedy, as noted by the Tribal Court: reinstatement as Chief of Police, based on a violation of his right to due process under

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[16] SRMT Civil Code § V. A.
[17] SRMT Civil Code § V.A.1-3.
[18] SRMT Civil Code § II.E.
[19] *Id.*

ICRA. Although the Court has no authority to reinstate the Appellant, because the Commission's Decision is final,[20] the Court could award injunctive relief in the form of an order to the Tribe to provide a new hearing. Therefore, the Court will consider Appellant's due process claim.

The Civil Code requires the Court to use portions of federal law that are clearly applicable in Mohawk Indian Country, with weight given to federal Indian law which recognizes Indian sovereignty, self-determination, and self-government.[21] ICRA is included in the Civil Code in other sections: one granting the Court jurisdiction over claims against the Tribe under ICRA[22] and the second waiving the Tribe's sovereign immunity for claims for equitable relief brought in this Court under ICRA.[23] Thus, the Court finds that ICRA is a federal law that is applicable in Mohawk Indian Country. ICRA is to be applied and interpreted according to tribal law.[24]

ICRA states that "no Indian tribe in exercising powers of self-government shall . . . . deprive any person of liberty or property without due process of law."[25] Due process "is defined minimally as the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case."[26] Due process requires that the Commission provide the Appellant with a fair hearing and an opportunity to respond.

Appellant argues that the Commission's hearing was not fair because the Commission assumed the charges were true and placed the burden of disproving them on the Appellant; [27] they failed to provide a specific particularization of charges;[28] the Tribe's General Counsel was involved in Commission's process;[29] the Commission's failed to provide the investigation's report before the hearing;[30] the hearing was the first time the Appellant heard the charges and the evidence was pure speculation;[31] and the Commission failed to provide a copy of the hearing's transcript to the Appellant.[32]

The SRMT Police Commission Act of 2014 (hereinafter "the Act") provides a process for the discipline of the Chief of Police. Written notice of the charges are to be given to the Chief, along with notice of the Commission's hearing regarding the

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[20] SRMT Police Commission Act of 2014 § 13. D.7.
[21] SRMT Civil Code § V. A.1. (2008). *White v. White*, 10-LND-00009 (2012), 33-34.
[22] SRMT Civil Code § II. E.
[23] SRMT Civil Code § IV. F.
[24] *United States v. Doherty*, 126 F.3d 769, 779 (6th Cir. 1997), *cert. denied,* 524 U.S. 917 (1998).
[25] 25 U.S.C. § 1302(a)8.
[26] Oakes v. Edwards, 15-CSUE-00001 (April 27, 2015), 5.
[27] Appellant's Brief, 1.
[28] Appellant's Brief, 2.
[29] Appellant's Brief, 2.
[30] Appellant's Brief, 2.
[31] Appellant's Brief, 2.
[32] Appellant's Brief, 2.

charges.[33] The Commission's letter on July 7, 2014 informed the Appellant that an inquiry was conducted on the practice of the Police Department "to accept only cash for towing and vehicle storage fees imposed by the department."[34] The letter then proceeds to state four disciplinary charges the Commission filed against the Appellant for the Department's practice of accepting only cash for towing and vehicle storage fees. The four charges succinctly list four of the Tribe's policies that were violated by the alleged practice of accepting only cash for towing and storage of vehicles. This Court finds that the letter therefore provided the Chief with the necessary notice. The letter informed him of the practice that was under review and which of the Tribe's policies the alleged practice violated. The letter even identified the specific policies and procedures, so the Appellant could actually look them up and review them prior to the hearing, if he so chose. Therefore, this Court concludes that the letter provided adequate notice of the alleged conduct in question and the policies the conduct violated sufficiently to provide the Appellant with understanding of the nature of the charges and the ability to adequately prepare for the hearing.

The letter states: "[t]he severity of these charges unless disproven require that the Commission terminate your appointment as Chief of Police."[35] Appellant argues this resulted in the Commission shifting the burden to Appellant to disprove the charges. The Act does require the Commission to prove the charges, not the Appellant. Despite this sentence, the Commission proceeded to follow the Act's requirement that the Commission prove the evidence by calling witnesses to prove the charges listed in the letter. Thus despite the poorly worded letter, it does not appear that the Commission shifted the burden to the Appellant and required him to disprove the charges. This Court finds that the burden was not shifted to the Appellant.

Appellant also argues the hearing violated his right to due process as he was not prepared to respond. The hearing procedure set forth in the Act requires that the Chief of Police have the opportunity to cross examine witnesses and confront evidence against him, and offer any evidence he wishes to present in order to refute the charges.[36] Due process would require the same. The Commission provided the Appellant with the required hearing, which was his opportunity to provide evidence and cross examine the evidence presented by the Commission. Appellant chose not to present any evidence at the hearing or even cross examine the witnesses or question the evidence presented against him. Appellant argued at the oral argument before this Court that because there was insufficient notice he was not adequately prepared and the evidence was flying by too quickly for him to respond. Yet as noted above, the letter informed the Appellant of the specific practice that was under investigation and what policies he allegedly violated.

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[33] SRMT Police Commission Act of 2014 § 13 D. 1.
[34] SRMT Police Commission Letter of July 7, 2014.
[35] *Id.*
[36] *Id.* at D.4.

Appellant argues due process requires that he be given the investigation's report prior to the hearing to allow him to be prepared for the trial. He requested the report prior to the hearing, but that request was denied because it involved conduct of other employees. Appellant was given a redacted version of the report after the hearing and the Commission gave him an opportunity to provide a written response to the report. The Act itself does not require reports or any evidence be given prior to the hearing, only notice of the charges. Would it have been a better practice to provide the report prior to the hearing? Perhaps, but the Commission rectified that potential problem by providing the report after the hearing AND giving the Appellant ANOTHER opportunity to respond to the evidence by allowing him to submit a written response, which he did. Due process only requires notice of the charges and an opportunity to be heard be provided. It is up to the Appellant to decide whether to be prepared and present evidence. The Appellant not only received the letter which gave notice of the specific practice and policies the practice violated, but received two opportunities to respond to their evidence. Thus, this Court finds that the Appellant's right to due process was not violated by the process employed in conducting the hearing.

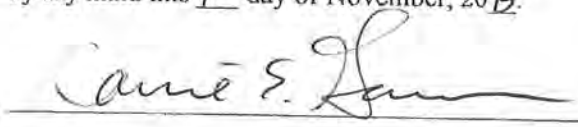
Finally, we consider Appellant's last two arguments that his due process was violated first because the Tribe's General Counsel was involved in the Commission's process, and secondly that that a transcript of the hearing was not provided to the Appellant after the hearing. The Commission is an agency of the Tribe and the General Counsel is an agent of the Tribe. It is of no surprise that one of the Tribe's attorneys be involved in this process, given that a tribal employee's job was at stake. We find the claims that the General Counsel engineered the entire process to be spurious. Appellant offers no evidence to support this claim. Moreover, if he was truly concerned about the General Counsel's alleged bias, he should have raised a motion to exclude her. He failed to do so. Thus, the Court finds no violations of due process because the General Counsel was part of the process.

As for the transcript of the hearing, due process only requires notice and an opportunity to be heard at a hearing, which the Commission provided. The Act does not require the hearing be recorded, nor that a transcript of the hearing be provided

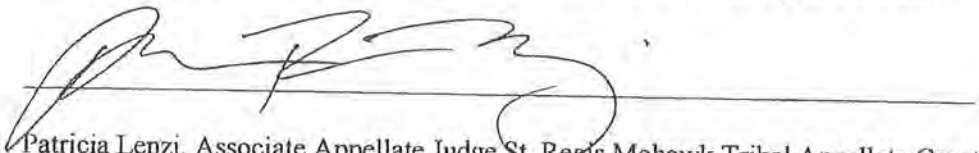
ORDER

Based on the above, this Court dismisses Appellant's claims. The Tribal Court Order dated March 2, 2015, dismissing Appellant's complaint is UPHELD.

Signed by my hand this 9th day of November, 2015.



Carrie Garrow, Chief Appellate Judge St. Regis Mohawk Tribal Appellate Court



Patricia Lenzi, Associate Appellate Judge St. Regis Mohawk Tribal Appellate Court

Dale White, Associate Appellate Judge St. Regis Mohawk Tribal Appellate Court