

LOWER BRULE SIOUX TRIBAL COURT)
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LOWER BRULE SIOUX TRIBE JURISDICTION)

IN TRIBAL COURT
CIVIL DIVISION

ORVILLE LANDEAU JR.,
JOHN MCCAULEY,
Plaintiffs-Intervenors

CIV-14-12-0119

vs.

KEVIN WRIGHT, SONNY ZIEGLER,
AND DESIREE LAROCHE,
Defendants.

ORDER

After this Court granted leave to the intervenors to file an amended complaint to add additional claims the Defendants filed several motions with the Lower Brule Court of Appeals asking for intermediate relief. On May 20, 2015 the Court of Appeals issued an order remanding this matter back to this Court for a reexamination of the Court's jurisdiction in light of the Court's dismissal of the Tribe as a proper Plaintiff in the original case. The Court of Appeals is questioning whether this Court continues to have jurisdiction over this matter in light of the dismissal of the original Plaintiff's complaint. The Court permitted all parties to brief the issue and a brief from the Plaintiffs-Intervenors was filed. For the reasons stated herein this Court finds that because the original lawsuit filed by the Lower Brule Sioux Tribe was not dismissed due to lack of jurisdiction, but instead due to a failure of the original Plaintiff to obtain permission from the tribal government to commence the suit, the claims of the Intervenors after they were permitted to intervene remain viable claims.

This action was originally commenced by the Lower Brule Sioux Tribe against three of its elected leaders asserting that they were acting in excess of their authority by taking actions purporting to remove the former Tribal Chairman, now deceased, from office. The Defendants moved to dismiss that action on several grounds including sovereign immunity, failure to state claims and failure to follow tribal law in obtaining governmental consent to commence the lawsuit. After the Defendants filed their motion to dismiss, the other three elected tribal leaders, including former Chairman Jandreau who is now deceased- intervenors in this case- filed their motion to intervene to join the Tribe in its claims against the other three elected leaders. In this Court's order of February 13, 2015 granting in part and denying in part the motions to dismiss, this Court addressed the issue of whether the Lower Brule Sioux Tribe had standing to bring the original lawsuit against the three Defendants. The Court ruled that the Tribe has standing to bring a lawsuit on behalf of its membership, but requested clarification from the Tribe and its legal counsel on what the Tribe's governmental protocol was to bring a lawsuit in the Tribe's name. The Defendants were asserting that a quorum of the Tribal Council had to approve of the Tribe commencing a lawsuit and that since the Tribal Council had effectively not met since the most recent elections in the fall of 2014 that the Tribal Council never approved of this lawsuit being filed. The Court directed the Tribe and its attorney to respond to that argument. When no response was filed this Court dismissed the claims of the original Plaintiff- the Tribe- for failure to demonstrate compliance with tribal law in commencing the original suit.

The Court of Appeals has asked this Court to examine whether the dismissal of the original Plaintiff and its claims thus negates the subsequent claims of intervenors. The

Intervenors point out that the general rule is that a complaint filed by intervenors survives a deficient jurisdictional complaint filed by an original party as long as the intervention motion is made prior to some dispositive motion being filed by the Defendants. That general rule seems inapposite here however because the Defendants did file a dispositive motion prior to the intervention motion being filed. However, this Court did not fault the Tribe's original complaint for a jurisdictional defect, but instead for a technical deficiency. Had this Court ruled that the Tribe lacked standing to bring the original lawsuit that jurisdictional defect would have doomed the subsequent complaints of the intervenors because the Court's jurisdiction has to be determined as of the date of the filing of the original action. See *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 827, 109 S. Ct. 2218, 104 L. Ed. 2d 893 (1989).

The issue presented is therefore whether the failure of the original Plaintiff- the Tribe- to follow protocol in obtaining Council consent to commence the lawsuit was a jurisdictional defect or a procedural defect that does not impact jurisdiction. The Court finds that it is the latter. Neither party has pointed this Court to any case law that holds that the failure of a governmental entity to follow its internal procedures to file a lawsuit constitutes a jurisdictional bar to a lawsuit. When a government commences a lawsuit it is not generally the role of the judicial branch to delve into whether the lawsuit is approved of by the elected leaders of the Tribe.

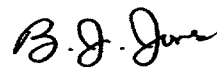
This case is distinguishable from *Raines v. Byrd*, 521 U.S.. 811 (1997) holding that individual members of Congress could not file suit against the President to challenge his right to issue line-item vetos because there the Court held that individual members of Congress lacked standing to bring such a lawsuit because they could not point to

individual concrete harms they would suffer. In this case in finding that the Tribe had standing to bring the original lawsuit this Court pointed out that the members of the Lower Brule Sioux Tribe are being harmed by this impasse in tribal government and that their government has standing to address this harm through a lawsuit. The Court does not know why the Tribe chose not to respond to this Court's order that it provide documentation that it had complied with the Tribal law or protocol in commencing the original lawsuit. However, due to this Court's ruling on standing, which the Lower Brule Court of Appeals did not question in its remand order, this Court feels that the dismissal of the original Plaintiff's suit does not foreclose this Court from addressing the intervenors' complaints.

WHEREFORE it is hereby

ORDERED, ADJUDGED, AND DECREED that this Court finds that it has continuing jurisdiction over the original and amended claims of the intervenors in this case and hearing shall proceed on June 11, 2015 at 9 AM.

So ordered this 10th day of June 2015.



B.J. Jones
Lower Brule Sioux Tribe
Special Judge

ATTEST: _____