

LOWER BRULE SIOUX TRIBAL COURT ) IN TRIBAL COURT  
LOWER BRULE SIOUX TRIBE )SS  
LOWER BRULE SIOUX TRIBE JURISDICTION ) CIVIL DIVISION

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ORVILLE RED LANGDEAU JR.,  
JOHN MCCAULEY SR,  
on behalf of themselves and all  
other Tribal members affected by the  
conduct of Defendants  
Plaintiffs

CIV-15-9-0111

vs.

TEMPORARY RESTRAINING  
ORDER

KEVIN WRIGHT, SONNY ZIEGLER,  
AND DESIRÉE LAROCHE, LEWIS GRASSROPE,  
Defendants.

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A hearing was scheduled in this case on the 23<sup>rd</sup> day of October 2015 on the Plaintiffs' motion for a restraining order and for an order invalidating certain actions taken by the Defendants at a Tribal Council meeting held in Rapid City, South Dakota on September 3 and/or 8, 2015. The Defendants' former counsel, Steven Emery, withdrew from representation and counsel Chase Iron Eyes appeared for the Defendants. The Plaintiffs appeared through attorney Terry Pechota. Counsel asked for additional time to submit legal arguments since Mr. Iron Eyes just got involved. The Court indicated it would permit the Parties until October 30 to submit any additional arguments. Both sides submitted briefs.

On October 26, 2015 the Court entered a conditional order that hopefully will resolve the current impasse between these elected leaders and permit the people of the Lower Brule Sioux Tribe to have a Chairman. In the interim, however, the Court needs to rule on the legality of the actions taken by the Defendants at a purported Tribal Council

meeting held in Rapid City, South Dakota, at which time Defendants Wright, Ziegler and LaRoche purported to continue a Council meeting started at Lower Brule on September 2, 2015 from which the Defendants claim the Plaintiffs walked out of in an attempt to destroy the quorum in violation of their duties as elected leaders and an order by this Court.

The Defendants then attempted to either reconvene the meeting, which was never adjourned, in Rapid City with no notice to the Plaintiffs or to hold a Special meeting of the Council on September 3 and or 8, 2015. At that meeting the Defendants purportedly appointed Defendant Grassrope as the Tribal Chairman, appointed Steve Emery as new legal counsel for the Tribe, abolished the Lower Brule Farm Board and appointed three new members, added all Council to the list of approved signatories to the Tribe's bank accounts, hired Frank King Jr., and fired Lee Brannen and Scott Jones.

The Plaintiffs claim that these actions violated the Lower Brule Tribal Constitution and this Court's order in Civil 14-12-0119, currently on appeal, that enjoined these same Defendants, excluding Grassrope, "from taking any action in violation of the Lower Brule Sioux Tribal Constitution and mandating that the Parties meet for regular Tribal Council meetings in compliance with the Lower Brule Sioux Tribal Constitution." The Court acknowledges that the Defendants assert that this Court misconstrued the constitutional requirement of a quorum and the number of votes necessary to sustain legislative action in that case, but this Court notes that it granted all the parties the right to file for interlocutory review of this Court's interpretation of the Constitution and both sides availed themselves of that remedy. Now, it appears that the Defendants through their former counsel may have failed to file a brief on the issues on

appeal and the Plaintiffs have moved the Court of Appeals to deny the appeal. No action has been taken on that motion.

Until that appeal is decided this Court finds that all of these Parties continue to be directed by this Court to comply with the constitutional requirements they swore to uphold when they were elected and sworn in, as interpreted in Civil 14-12-0119. The Court notes that the Defendants assert through their new counsel that the Plaintiffs by walking away from the Tribal Council meeting started at Lower Brule on September 2, 2015 violated this Court's order and that this action permitted them to proceed with the reconvened meeting in Rapid City, where the actions complained of in this lawsuit occurred. The remedy for the Defendants, if they feel the Plaintiffs violated this Court's order in the other matter, is to file a motion to hold the Plaintiffs in contempt of Court, not to take actions that violate the very order that they claim the Plaintiffs violated when they walked away. By holding another meeting- either a reconvened or new meeting at a location off the reservation and without notice to the Plaintiffs- the Defendants violated the prior order of the Court. The Constitution and By-Laws require the Council to meet in Lower Brule and not in Rapid City. This Court has already interpreted the Indian Civil Rights Act as granting to the elected leaders of the Tribe a property right in their offices and that right includes the right to adequate notice of meetings where they exercise the rights of their offices. In addition the actions taken by the three elected Defendants were taken without the requisite 4 votes as required by the Constitution. Those actions were thus in violation of the Lower Brule Sioux Tribal Constitution and must be enjoined.

The Court raised an issue at hearing though that needs further exploration. All of the actions taken by the Defendants at the September 3 and/or 8 meeting in Rapid City

appear to be discretionary actions that the Plaintiffs had a right to be heard on, except one which the Court finds needs further examination. Defendant Wright testified that since his election as Vice-Chairman he and his fellow Defendants have essentially been denied access to the financial records of the Tribe and have not been put on the signature cards at the financial institutions, despite his belief that all prior Councils took action to place all Councilpersons on the financial signature cards as a purely ministerial matter at their first meeting. The Court does not believe that elected leaders have the right to refuse to perform ministerial duties that are self-executing as matter of law. For example, had the two Plaintiffs in this case refused to declare the seat of Chairman vacant, despite the former Chairman's death, this Court feels that judicial intervention may have been necessary to coerce a ministerial act. The Plaintiffs argue in their response that the act of changing signatories to the Tribe's financial accounts is an action of discretion and not a mandatory act. This Court cannot approve of the actions taken in Rapid City since they appear to fall outside the Constitution, but the Court will reserve to the Defendants the right to seek relief from this Court should the Plaintiffs fail to consider taking what appears to be a ministerial action without good cause at a future Council meeting that is lawfully held.

WHEREFORE based upon the stipulation read into the record it is hereby  
ORDERED, ADJUDGED, AND DECREED that this Court invalidates the actions taken by Defendants Wright, Ziegler, and LaRoche at a Tribal Council meeting purportedly held in Rapid City, South Dakota September 3 and/or 8, 2015 as being violative of prior orders of this Court and the Lower Brule Sioux Tribal Constitution.

Nothing herein invalidates this Court's order of October 26, 2015 mandating a special election for Chairman should the Court of Appeals affirm this Court's prior rulings.

Dated this 3<sup>rd</sup> day of November 2015.

*B.J. Jones*

B.J. Jones  
Lower Brule Sioux Tribe  
Special Judge

ATTEST: *Maudie Mungbean*

LOWER BRULE SIOUX TRIBAL COURT }  
LOWER BRULE, SD } ss.  
COUNTY OF LYMAN

I hereby certify that I have carefully examined this within instrument and compared the same with the original now on file and of record in this office and that it is a true and correct copy of the same and the above is a correct copy of the filing thereon.

*M. Mungbean*  
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Clerk of Courts

By \_\_\_\_\_ Deputy