

St. Croix Chippewa Indians of Wisconsin

Webster, Wisconsin

SETH T. STOPLMAN, BRADY S. LOWE, JORDAN R. LOWE  
 ANTHONY D. AMMANN and BROOKE M. AMMANN )  
 Petitioners-Appellants, )  
 v. )  
 ST. CROIX CHIPPEWA INDIANS OF WISCONSIN TRIBAL )  
 COUNCIL )  
 Respondent-Appellee. )

Case Nos. 16-CV-500, 501, 502, 503 and 504

DECISION

Appeal from St. Croix Tribal Council Resolution Vacating Enrollment. Opinion by Des Armo Coury, J. *Reversed.*

JURISDICTION

By their attorney, the appeal for each of the petitioners was appropriately filed in the St. Croix Tribal Court (COURT) pursuant to §102 A and D (3) of the St. Croix Tribal Code and, furthermore, in accordance with § IX APPEALS A-D of the Enrollment Ordinance,<sup>1</sup> for persons “rejected...disenrolled... shall be eligible to file an appeal.” Thus, cases as outlined in the Enrollment Ordinance, §VIII B LOSS OF MEMBERSHIP due to disenrollment are properly before this COURT.

INTRODUCTION

Petitioners filed individual appeals from final decisions made by the elected governing members of the St. Croix Chippewa Indians of Wisconsin’s Tribal Council (COUNCIL) which voted on March 18, 2016<sup>2</sup> to vacate its predecessor COUNCIL’s decision to enroll the petitioner’s as members of the St. Croix Chippewa Indians of Wisconsin tribal nation, effectively disenrolling all five appellants.<sup>3</sup>

Each of the five appellants is represented by Attorney Joseph M. Paiement of Paiement Law Office, LLC (Paiement), Stillwater, MN. Seth T. Stoplman filed a timely appeal on or about April 8, 2016; Brady S. Lowe filed a timely appeal on or about April 8, 2016; Jordan R. Lowe

<sup>1</sup>The St. Croix Chippewa Indians of Wisconsin’s Enrollment Ordinance was adopted and passed by Resolution No. 3.22.02.1.

<sup>2</sup> The St. Croix Chippewa Indians of Wisconsin whose headquarters is located at 24663 Angeline Avenue, Webster, WI 54893 is comprised of 5 elected council members, *currently* including: Chairman Lewis Taylor (Sand Lake), Vice-Chair Crystal Peterson (Danbury), Secretary-Treasurer Stuart Bearheart (Maple Plain), Representative Carmen Bugg (Round Lake) and Representative Elmer J. Emery (Sand Lake).

<sup>3</sup> Seth T. Stoplman was disenrolled by Resolution No. 16.03.18.09; Brady S. Lowe was disenrolled by Resolution No. 16.03.18.04; Jordan R. Lowe was disenrolled by Resolution No. 16.03.1805; Anthony D. Ammann was disenrolled by Resolution No. 16.03.18.01; and Brooke N. Ammann was disenrolled by Resolution No. 16.03.18.02.

filed a timely appeal on or about April 8, 2016; Anthony D. Ammann filed a timely appeal on or about April 15, 2016; and Brooke M. Ammann filed a timely appeal on or about April 15, 2016.

Respondent COUNCIL is represented by Attorney Shawn Frank of the Jacobson Law Group, Jacobson-Magnuson-Anderson & Halloran P.C., St. Paul, MN who filed a notice of appearance on or about May 11, 2016 and by its General Counsel, Jeffrey A. Cornell.

#### *MOTION FOR CONSOLIDATION*

On May 12, 2016, Respondent COUNCIL filed a written motion with the COURT to consolidate the petitions filed by Mr. Seth Stoplman, Mr. Brady Lowe, Mr. Jordan Lowe, Mr. Anthony Ammann and Ms. Brooke Ammann and Ms. Linda LaVeau Taylor. On May 17, 2016 at 9:00 A.M., the Court held a pre-hearing telephonic conference. The five petitioners as identified above appeared by Attorney Paiement; the Respondent COUNCIL appeared by its counsel, Attorney Frank. Ms. LaVeau Taylor also appeared pro se, although she subsequently withdrew her appeal on or about May 31, 2016. Following a review and discussion of the motion to consolidate, the COURT sustained the motion, with stipulation and without objection.

#### *HISTORICAL BACKGROUND*

A Scheduling Order was established at the May 12, 2016 telephonic hearing; however, it was later modified at a telephonic conference on June 9, 2016 because of a conflict with the judge's calendar. The trial dates were rescheduled to July 20, 2016 for the Stoplman, Lowe and Lowe witnesses; and July 25, 2016 for the Amman and Ammann witnesses.

On July 20, 2016, testimony was taken from 2013 COUNCIL member Ms. Aimee Awonohopy who appeared telephonically since she is now residing in Albuquerque, New Mexico; followed by former 2013 Enrollment Director Ms. Sunshine Crowe; then former 2013 COUNCIL member and grandmother of Petitioners Stoplman, Lowe and Lowe, Ms. Phyllis Lowe testified; and testimony was taken from Ms. Terry Lowe, former 2013 Enrollment Clerk who is also the daughter of Ms. Phyllis Lowe. Petitioners also called Ms. Shelly Lowe, non-tribal member and mother of the Lowe brothers and wife of Mr. Scott D. Lowe who also gave testimony as the final witness called by Attorney Paiement for the Stoplman/Lowe petitioners. Attorney Frank called former 2013 COUNCIL member Ms. Beverly Benjamin; and Ms. Carmen Bugg who is currently serving as a 2015 COUNCIL member and who previously worked as an Enrollment Clerk.

At the July 25, 2016 hearing, testimony was taken from Petitioners Ammann and Ammann. The COUNCIL rested its case on the testimony of Ms. Beverly Benjamin and Ms. Carmen Bugg which was given at the July 20, 2016 hearing. There were no rebuttal witnesses called by either side.

## STATEMENT OF FACTS

The five petitioners in this matter were simultaneously approved for membership in the St. Croix Chippewa Indians of Wisconsin by Tribal Council Resolution No. 08.05.13.02.<sup>4</sup> Tribal Council members voting unanimously (allegedly) in the affirmative for enrollment on August 5, 2013, included: Mr. Lewis Taylor, Ms. Phyllis Lowe, Mr. Elmer J. Emery, Ms. Aimee Awonohopay and Ms. Beverly Benjamin.<sup>5</sup> The COURT notes, that Ms. Benjamin vociferously denied that she voted in favor of enrollment and insists that both she and Ms. Awonohopay voted against the resolution. Thus, *it was argued that the decision to enroll was not a unanimous action.* The Enrollment Ordinance requires that all matters related to enrollment be unanimous.

Nonetheless, membership cards were distributed to each of the petitioners; hunting, gathering and fishing privileges were extended to those who filed the necessary no-cost permit requests; per capita distributions were made to those aged 18 and older beginning in or about September 2013 and continuing until March 15, 2016 approximately. And, the current COUNCIL has disenrolled the petitioners<sup>6</sup> beginning with a Notice of Disenrollment sent by certified mail on or about March 18, 2016. That document is part of the appellate file, but was not formally admitted into evidence. It is noted, that *the Notice of Disenrollment was signed by only four of the five COUNCIL members, and thus, it does not appear to be a unanimous action.*

Petitioners Seth Stoplman, Brady and Jordan Lowe are the sons of Rodney T. and Scott D. Lowe, two brothers. Rodney and Scott Lowe are the sons of Richard and Phyllis Lowe. These three petitioner-appellants provided the COURT with copies of a St. Croix Chippewa Indians of Wisconsin Tribal Roll for those with St. Croix blood of one half degree and over. The document was date stamped on June 16, 1975 by the Great Lakes Agency,<sup>7</sup> presumably the BIA.

COUNCIL submitted Respondent's Exhibits 4, 5 and 6 which is the St. Croix Tribal Enrollment People Edit Sheet, dated August 8, 2013. The edit sheets showed that the total blood quantum for Petitioners Stoplman, Brady and Jordan Lowe is, however, less than half with a 29/64 blood quantum.

Petitioners Anthony and Brooke Ammann are brother and sister; and the children of Dora Mae Moose (Mosay) who is reportedly the full-blooded daughter of Stella Wakemeup Moose. Stella Wakemeup Moose was the daughter of Henry Wakemeup and Mary Bonnine Wakemeup.

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<sup>4</sup> Tribal Council members allegedly voting in the affirmative for enrollment on August 5, 2013, included: Lewis Taylor, Phyllis Lowe, Elmer "Jay" Emery, Aimee Awonohopay and Beverly Benjamin, although Ms. Benjamin disputes such.

<sup>5</sup> Ms. Benjamin challenges the vote and insists that she did not vote in favor of the Resolution.

<sup>6</sup> See Petitioners Exhibit 4A Resolution 16.03.18.02; Exhibit 5A Resolution 16.03.18.01; Exhibit 6A Resolution 16.03.18.09; Exhibit 7A Resolution 16.03.18.04 and Exhibit 8A Resolution 16.03.18.05.

<sup>7</sup> See Petitioner's Exhibit 6C, 7C and 8C. Brothers Rodney T. and Scott D. Lowe are each recorded on this document as "Full" Degree of St. Croix Blood.

Petitioner Ammann and Ammann testified that each had been enrolled in the St. Croix Chippewa Indians of Wisconsin tribe as children. They were subsequently disenrolled as children and thus, the March 2016 disenrollment action is, reportedly, the second adversarial action, by yet, a different COUNCIL.

According to a single page, Petitioner's Exhibits 4C and 5C from a Tribal Roll<sup>8</sup> which is undated, Anthony and Brooke Ammann are both reported as having a one half degree St. Croix blood quantum. It appears from a review of all of the petitioner's exhibits that the single Tribal Roll page is from the same Tribal Roll that was provided to the Court in Exhibits by the Stoplman and Lowe petitioners as noted above.<sup>9</sup> Again, that document was date stamped on June 16, 1975 by the Great Lakes Agency, presumably of the BIA.

Additionally, in her "Application For Registration As An Indian" with the St. Croix Chippewa Indians of Wisconsin, Stella Wakemeup Moose, reported by sworn affidavit that she is a full blood and that her children, including Dora Mae Moose whose date of birth is February 1941 is also reported as a "full blood."<sup>10</sup> The affidavit was signed by Stella Wakemeup (Anthony and Brooke Ammann's maternal grandmother) on June 6, 1945. COUNCIL submitted Respondent's Exhibits 2 and 3 which is the St. Croix Tribal Enrollment People Edit Sheet. Each is dated, August 8, 2013 and signed by Sunshine Rae Crowe and reports that the blood quantum for Anthony and Brooke Ammann is 13/32 which is less than the half Indian blood that is constitutionally required for membership in the St. Croix Chippewa Indians of Wisconsin.

According to § VIII.B. "The burden of proof in disenrollment actions rests with the Tribe."

#### QUESTIONS PRESENTED

1. WHETHER THE ACTION TAKEN BY THE TRIBAL COUNCIL ON AUGUST 5, 2013 TO ENROLL THE PETITIONERS AS ST. CROIX TRIBAL MEMBERS WAS PROPER?

SHORT ANSWER: YES. COUNCIL has the authority under the St. Croix Constitution and the Enrollment Ordinance to determine enrollment eligibility provided certain criterion is met.

2. WHETHER THE ACTION TAKEN BY THE TRIBAL COUNCIL ON MARCH 18, 2016 TO DISENROLL THE PETITIONERS AS ST. CROIX TRIBAL MEMBERS WAS PROPER?

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<sup>8</sup> See Petitioners Exhibits Tabs 4B & 5B.

<sup>9</sup> See Petitioners Exhibits 6C, 7C and 8C.

<sup>10</sup> See Petitioners Exhibits Tabs 4C and 5C.

SHORT ANSWER: NO. Basic tenets of fairness and justice require that COUNCIL be bound by timeline restrictions, similar to those imposed on the individual seeking to appeal unfavorable enrollment decisions. Clearly, the tribe has a right to disenroll individuals who have been erroneously enrolled, but citizens of the St. Croix Chippewa Indians of Wisconsin must be entitled to a sense of security in their tribal membership.

#### REVIEW OF WITNESS TESTIMONY

##### *AIMEE AWONOHOPAY*

Based upon the sworn testimony of Ms. Aimee Awonohopay, 2013 COUNCIL member, present at the August 5, 2013 enrollment meeting, she stated that following discussion, a verbal, non-poll vote<sup>11</sup> was taken. She testified that COUNCIL talked about the Lowes and the moratorium; and COUNCILMAN Emery subsequently made a motion to approve the enrollment of the five petitioners and COUNCILWOMAN Lowe seconded that motion. A verbal, non-poll vote was taken. Ms. Awonohopay testified that she heard three in favor. She testified that neither she nor COUNCILWOMAN Benjamin verbalized a vote in favor of enrollment. However, there was no opposition voiced by either. Ms. Awonohopay stated that the Chair confirmed a successful motion, without objection. She further testified that she witnessed COUNCILWOMAN Benjamin sign the enrollment resolution after the vote was taken.

On cross-examination, Ms. Awonohopay swore under oath that her silence on the vote was to allow the resolution to pass and that if a poll vote had been taken, that she then would have said "Yes." Ms. Awonohopay was asked about a Facebook media post in which she wrote a message to Carmen (Bugg) in which she stated that she was one of two people who did not vote in favor of the 2013 enrollment motion.<sup>12</sup> Ms. Awonohopay reiterated that she did not vote in favor (verbally); however, it was her intention that the motion would pass.

Ms. Awonohopay also testified that her mother and Ms. Carmen Bugg are first cousins; and that she considers Ms. Bugg as an aunt. The two had numerous informal discussions about the enrollment matters. It caused a rift in their relationship. Initially, Ms. Awonohopay testified that in or about April 2015, the Enrollment Committee by Ms. Bugg (reinstalled in the Enrollment Office since July 2014) brought a disenrollment resolution to the COUNCIL. Following discussion and a COUNCIL vote, the resolution failed. On cross-examination, Ms. Awonohopay was asked if the proposed disenrollment action could have been brought before the COUNCIL in August 2014; and Ms. Awonohopay answered affirmatively. She stated that she recalls the circumstances of these two issues because they were such an issue during her term; that Carmen Bugg as the newly installed Enrollment Director (since her re-hire in July 2014) did bring a

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<sup>11</sup> Sworn testimony from Ms. Aimee Awonohopay

<sup>12</sup> See Respondent's Exhibit 9.

disenrollment resolution to the 2013 COUNCIL in or about August 2014, but it failed to pass. In fact, the 2013 Council failed to come to a unanimous decision and thus, its original enrollment decision which passed by Resolution No. 08.05.13.02 was not overturned in August 2014.

*SUNSHINE RAE CROWE*

Enrollment Director Crowe essentially testified likewise. She, too, was in attendance at the August 2013 meeting. She testified that the Enrollment Committee made a recommendation to approve the applicants; and that packets were given to each COUNCIL member; it was reviewed and discussed; Emery made a pitch to enroll; a vote was taken—3 approved and 2 remained silent. The COUNCIL Chair confirmed the vote as a unanimous decision; and she, Sunshine Crowe, witnessed COUNCILWOMAN Benjamin “absolutely” sign the resolution. According to Ms. Crowe’s written documentation, the petitioners “were passed through due to a lack of good record keeping.” However, was also noted that the “People Edit Sheet(s)”<sup>13</sup> were not included as part of the packet for COUNCIL’s review, per Ms. Crowe. The Edit sheets were prepared by Ms. Crowe and dated August 8, 2013. Per the Edit Sheet, the Ammann’s were both reportedly recorded as having 13/32 Indian blood; and Stoplman, Lowe and Lowe were recorded as 29/64 in blood quantum.<sup>14</sup>

It is noted that the People Edit Sheet(s) and the reported blood quantum calculation contradicts the evidence provided to the COURT by the petitioners which documents that each is of one half degree Indian blood.

*PHYLLIS LOWE*

Former COUNCILWOMAN Lowe testified that she was elected to represent all of the St. Croix people, and therefore, she did not remove herself from the enrollment discussion and vote on August 5, 2013. Ms. Lowe concurred with Ms. Awonohopay and Ms. Crowe, that “Bev and Aimee” were both silent when the vote was taken. That said, Ms. Lowe understood the vote was approved and that there was no doubt in her mind of it. Ms. Lowe testified that if a COUNCIL member was silent, that there was a custom and tradition that it was an assumption of approval; if you opposed it, you stated such. Ms. Lowe also testified that she saw Ms. Benjamin sign the resolution.

Under cross-examination, Ms. Lowe testified that 6 months ago, she tried to pull all their information and there was nothing in the files. She testified under oath that she had given documentation, factual new evidence to the Enrollment Department that established that her

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<sup>13</sup> Respondent’s Exhibits 3-7.

<sup>14</sup> Id.

parents were both full bloods, that she is a full blood, that her children are full bloods and that her grandchildren should be enrolled.

Respondent's attorney made an inquiry as to the previous Enrollment Director, Joyce Long. Ms. Lowe testified that Ms. Long had opposed her family's enrollment for years, but that she was terminated because she gave a tribal identification card to someone who was not eligible for it.

Ms. Lowe was not reelected to COUNCIL in 2015.

*TERRY LOWE*

Testimony was taken from Ms. Terry Lowe, daughter of Ms. Phyllis Lowe. She testified that the Enrollment Committee, including: Margie Lument, Scott Lowe, Doris Emery, Francis Songetay and Joe Holmes were "picked" by COUNCIL. It was this Committee that made the recommendation to enroll or not. Ms. Lowe stated that it was Mr. Francis Songetay who supported enrollment, and it was Mr. Songetay who later initiated the disenrollment action.

Ms. Lowe testified that she was replaced by COUNCIL as Assistant Director of Enrollment.

*SHELLEY LOWE*

Petitioners called Ms. Shelley Lowe who testified that she and her husband had been trying to get their sons, Brady and Jordan enrolled since 1999; and whenever they sought a status of their applications, they were then told they were missing information. Three times they had to resubmit original copies of their son's birth certificates. Ms. Lowe stated that in a March 2013 meeting at Turtle Lake, she was told by Phyllis Lowe, Lewis Taylor, Stuart Bearheart, Elmer Jay Emery and Nancy Matrious that they were going to pass a resolution. It was not done. She testified that when it comes to your boys, you never stop fighting for their identity.

She testified that they were ignored because of politics. She knew that her children were on the COUNCIL's August 5, 2013 agenda—but did not know they would be recommended for approval because there had been the earlier time in March 2013 when she was led to believe a resolution was forthcoming and it did not. But, August 5, 2013 was different; she personally got a copy of the signed resolution from Ms. Crowe a couple of days later. Then, her minor sons received written notice of the intent to disenroll them. According to Shelly Lowe, her husband Scott Lowe had no knowledge of the proposed action even though he served on the Enrollment Committee.

*SCOTT D. LOWE*

On examination, Scott Lowe testified that he quit the Enrollment Committee when the disenrollment action was initiated against his sons, without his knowledge, particularly because

he served on the Committee from 2012 until 2015. Mr. Lowe testified that he believed that Mr. Francis Songetay switched his position for political reasons.

*BEVERLY BENJAMIN*

Beverly Benjamin was sworn and testified that she has been involved with the COUNCIL for about fourteen years; she never served as the Chair, but did serve several terms as the Secretary. Ms. Benjamin testified that a Minutes Book is not kept, but rather the minutes are handwritten and kept in a file. She believes her notes from the August 5, 2013 meeting were given to Howard Bichler.<sup>15</sup> Ms. Benjamin stated that certifications of resolutions were executed after the meeting, yet when questioned (on cross-examination) if the certification is done during the meeting, she answered it would probably be during the meeting after the vote was taken; the resolution would have to be signed.

Ms. Benjamin also testified that there was a list of maybe seven names of minors; then there was a second list with two minor Lowes names. Ms. Benjamin testified that she and Ms. Awonohopay stated they should hold off on the approval for enrollment until the letter came, but that Jay Emery made the motion to approve. Phyllis Lowe seconded the motion and Lewis Taylor agreed –“so that was three.” Ms. Benjamin testified that a vote only took place on two of the names and that she cannot now truthfully testify as to how the list of names grew to nine. Ms. Benjamin then stated that after the two boys were accepted, that she then made the statement that “What is fair for one should be fair for all.” Ms. Benjamin stated that Angie Merrill had been trying to get her children on for years; and a small percentage short and right after that the list went to nine. Ms. Benjamin testified that “We voted to wait until the letter came in” to show that they were qualified.

When asked if she expressed that she was not in support, Ms. Benjamin answered, “They knew.” Ms. Benjamin stated that when the vote was called for, the Chair should have asked “Why are you abstaining from the vote?” Petitioner’s Exhibit No. 2 was shown to Ms. Benjamin who reported that she probably saw the list of names, but it was not presented at the meeting or she would have said three for and two against; she also stated that there were only two names under consideration; the other seven names were not and she does not know who prepared the resolution.

Ms. Benjamin testified under direct examination that she did not sign the resolution. She testified that if the resolution came before them, including seven adults that she “still would have said no.” She would not have agreed to those who are not half Indian and adults because they would

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<sup>15</sup> Howard Bichler served as General Counsel for St. Croix in August 2013. And this statement raises a question about Ms. Benjamin’s credibility, i.e. where is her copy of the minutes from that meeting? Why not keep a copy of such this long and controversial discussion?



have been barred by the moratorium. Ms. Benjamin stated that Enrollment should have reviewed this. "They fought for years to show their Indian blood went up," but nothing was shown and if they were eligible, she would have still voted against it. As to the BIA and its involvement, the BIA no longer does a background search; the tribe took that away from it. So, if it was approved by COUNCIL and Enrollment, BIA just adds the names to the eligibility list.

On cross, Ms. Benjamin testified that the resolution could have been brought to COUNCIL when she was not there; she reported that there was no Enrollment Committee, but that Sunshine Crowe made the recommendation for enrollment; and she stated that maybe Aimee (Awonohopay) did not come right out and say that she did not agree; and when Petitioner's Exhibit 2 was shown to her with the signature page, Ms. Benjamin answered, "That's mine." When asked what she did about the alleged fraudulent enrollments when she learned these nine individuals were getting benefits, Ms. Benjamin stated that she went in and talked to the COUNCIL Chair because someone took the signature from the first resolution and substituted it for the second resolution. She testified that someone forged her signature and that she had even gone to the judge to report it.

The Court notes that there are many inconsistencies in the testimony given by Ms. Benjamin. She insists the second resolution was for the two minor Lowe boys; she states that she never voted to support the Enrollment Ordinance No. 08.05.13.02. She testified that she did not sign the resolution; she testified that both she and Ms. Awonohopay argued against the enrollment and said they should hold off until the letter comes in to prove the blood quantum should be changed. The problem is that there is little to no corroboration of her testimony by others witnesses.

Ms. Benjamin stated that she and Ms. Awonohopay voted against it. Ms. Awonohopay agreed there was not a verbal approval. Ms. Benjamin stated that she did not sign the Resolution. Ms. Awonohopay, Ms. Crowe, Ms. Phyllis Lowe stated with certainty that they witnessed Ms. Benjamin sign the Enrollment Resolution. The Court must reconcile the opposing recollections.

Ms. Benjamin stated that only two minors were under consideration on the second resolution, but could not really explain how the list grew to nine, except to say, she stated that "What is fair for one should be fair for all." And, somehow the resolution included all nine. The other witnesses testified that all nine were up for consideration at the outset.

Ms. Benjamin's recollection of the August 5, 2013 meeting, discussion and vote is subject question.

*CARMEN BUGG*

Ms. Carmen Bugg was elected to COUNCIL in 2015 and previously worked as the Enrollment Clerk for about eight years until she was terminated on July 19, 2013. Ms. Bugg stated that she was terminated as staff clerk because “they were not enrolling Phyllis Lowe’s grandchildren because they did not meet the one-half degree blood requirement.” She was reinstated in July 2014 after she went to a General Council meeting and questioned why she was terminated.

Ms. Bugg testified to the enrollment process and stated: an application for enrollment is submitted; a file created; a check of blood quantum or research is done to determine if the applicant is one half Indian; the Enrollment Committee reviews and either approves or rejects the application. Per Ms. Bugg, applications are kept pending in enrollment; on file in the cases where there is inadequate support for enrollment.

Ms. Bugg further testified that the BIA contacted her back in July or August 2014 and Ms. Corbine (from BIA) wanted to know what the tribe was going to do about the packets for individuals because they did not meet the blood quantum requirement. Ms. Bugg stated there was a letter in the file from Ms. Corbine and the Bureau sent the enrollment packets back which had been sent to that agency. The whole Enrollment Committee reexamined the files again, and it directed Ms. Bugg to draft a disenrollment resolution. She did so.

On direct examination, *Ms. Bugg answered affirmatively that when the BIA contacted her, it was the first time that she was aware that people had gained membership.* According to Respondent’s Exhibit 7, the BIA did send Ms. Bugg a letter dated July 25, 2014 stating that it was returning the enclosed enrollment documents for sixteen individuals, including the five petitioners. The letter was signed by the BIA Superintendent, Ed Oliphant and it listed the names of 16 people whose files were being returned to the tribe, “*As you have requested in your email message received on July 24, 2014....*” Ms. Bugg was further advised that any questions should be directed to Ms. Laura Corbine in the Branch of Tribal Operations.

Following Ms. Bugg’s election to COUNCIL in July 2015, there was discussion about the enrollment of the nine individuals –maybe four to five months later; the Enrollment Director asked what they were going to do with this criterion that they did not meet. It was then that the talks began. Prior to that, Ms. Bugg reported that the COUNCIL did not act because they were not agreeing on anything.

The COURT recognizes two problems with the testimony given by Ms. Bugg. First, Ms. Bugg responded to the COURT’s direct inquiry saying that it was the BIA who made contact with her about the enrollment files. The correspondence from the BIA contradicts that stating that it was

returning the files in accordance with her request.<sup>16</sup> Ms. Bugg testified that she prepared the disenrollment resolution because the Enrollment Committee directed her to do so, but why would this Committee who took no action toward disenrollment suddenly care enough to consider disenrollment. Ms. Bugg's testimony appears to be disingenuous.

*BROOKE M. AMMANN*

On day two of the trial, Petitioner Brooke Ammann took the witness stand and reported that she has a Masters in Public Education from Harvard University School. She is employed at the Ojibwe Language Institute on the Lac Courte Oreilles reservation near Hayward, Wisconsin. She stated that Anthony Ammann is her brother and Dora Mae Mosay (also known as Moose) is her mother. Dora Mae Mosay is the daughter of Stella Wakemeup; and the granddaughter of Henry Wakemeup.

Ms. Ammann stated that she was first enrolled at St. Croix as a child; her application was filed in 1980 and approved in 1983, but subsequently removed from the rolls for unknown reasons. She stated that her grandmother is one of seven children and all her siblings had their blood quantum reduced and that action took half of the Round Lake community off of the Rolls. Attorney Paiement referred Ms. Ammann to Petitioner's Exhibit 4B which is the Roll of Indians of Wisconsin. Ms. Ammann states that her name is listed and it is noted that she is one half degreed. In review of Exhibit C, it is noted as her grandmother, Stella Wakemeup's application by affidavit for enrollment; and that document reports that Ms. Wakemeup is a full blood; and that her daughter Dora Mae Wakemeup (Mother of Brooke and Anthony Ammann) is also reported as a full blood in that sworn affidavit.

Ms. Ammann reapplied for St. Croix enrollment in 2007. She worked for St. Croix at the time, and had regular communication with the COUNCIL and members of the tribe; but, she never received a response to her application. She understood that the Enrollment Committee considered her application in 2013 based upon her reapplication in 2012. Ms. Ammann reported that she and her mother were involved in ceremony at Round Lake when her relative, Thomas Seros notified her. She was happy that she was enrolled. She received her membership card; she began receiving per capita payments; she was able to go out and gather ginseng, bark, small game and to enjoy camping on the Apostle Islands. She stated the hunting and gathering was a part of her Anishinabe life. And then, in 2016, she received notice that the tribe was attempting to disenroll her; and this has caused her emotional harm, trust issues, feelings of betrayal. She believes a personal vendetta is the cause for all of the questioning.

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<sup>16</sup> See Respondent's Exhibit No. 8.

*ANTHONY D. AMMANN*

Anthony Amman was called forward to testify. He swore under oath, that the testimony given by his sister matches his knowledge. They were enrolled and he thinks it was back in 1983. His mother, Dora Mae Mosay would have assisted him in his application. He was disenrolled in 1985 approximately and he was given notice in 1986 that he had to return his identification card. He does not recall being given any explanation and he did not inquire. And then he was reenrolled in 2013 and he was happy. He received his tribal identification card, uninterrupted per cap payments from September 2013 to March 2016. This process has left him angry, disappointed, mistrustful of the leadership and resentful towards one individual for these petty decisions.

Both sides rested.

DISCUSSION

The St. Croix Chippewa Indians of Wisconsin adopted its Enrollment Ordinance pursuant to its Constitution at Article III, Section 2(b). Members include:

1. All St. Croix Indians listed on the 1938 roll approved by the Commissioner of Indian Affairs in 1938; and
2. All children of one-half or more Indian blood born since November 10, 1938 to members residing on the St. Croix reservation; and
3. Those St. Croix Indians listed on the 1938 roll and living off the reservation when Constitution was adopted, shall file an application for membership, which “... *Council shall ...be added to the ...roll...*”; and
4. For others, governing membership, COUNCIL shall adopt appropriate ordinances governing the admission of others of one half degree or more Indian and who apply.

The Enrollment Ordinance was adopted in 2002 by Resolution No. 3.22.02.1 and it states under §V that open or closed periods of enrollment shall be determined by resolution by a unanimous COUNCIL vote. In fact, any “... Tribal Council decisions concerning enrollment matters shall be made by a unanimous vote of the full Council.”<sup>17</sup> Accordingly, the membership approval of the five petitioners at issue in this case was made by COUNCIL, pursuant to Resolution No. 08.05.13.02.<sup>18</sup> The Enrollment Director Sunshine Crowe testified that she presented Resolution

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<sup>17</sup>The full and unanimous COUNCIL mandate for all enrollment matters is “defined” Under Sec. 3(T) in the “Definitions” section of the Enrollment Ordinance.

<sup>18</sup> See Petitioner’s Exhibit No. 2

No. 08.05.13.02 to the COUNCIL for its consideration based upon the recommendation from the Enrollment Committee that the petitioners and others should be approved.<sup>19</sup>

In summation, Attorney Paiement asked the Court to reinstate the Lowe and Ammann families stating that the Tribe has the burden to show that they were erroneously enrolled and that it has not met its burden. The Tribe must show by a clear preponderance of the evidence that there is fraud or mistake. He argued that the evidence is overwhelming that COUNCIL intended to enroll these families. Enrollment Director Sunshine Crowe had a recommendation from the Enrollment Committee and she was satisfied that these individuals were eligible for enrollment.

Ms. Crowe stated all five COUNCIL members were at the meeting and they took action to enroll the petitioners and that she witnessed Ms. Benjamin sign the resolution. Ms. Aimee Awonohopay who did not expressly vote yes acknowledged under oath that her silence on the vote meant the resolution would pass; it did and that was her intention. She acknowledged that Ms. Benjamin did not vocalize a vote in favor of the resolution; nor did Ms. Benjamin vocalize any objection. She too witnessed Ms. Benjamin sign the certification of the resolution.

Attorney Frank in closing remarks stated that the petitioners did not become legal members:

1. There was no unanimous vote by the COUNCIL.
2. The documentation supporting one half degree Indian blood was insufficient and not in support of a membership finding.
3. There was an adult moratorium that prevented Petitioners from becoming members even if they had one half Indian blood.

Attorney Frank stated that it is an issue of a rule of law, did a vote occur and was it a unanimous vote. Ms. Benjamin and Ms. Bugg attempted in 2014 to get the enrollment decision overturned, but those efforts were unsuccessful because COUNCIL would not revisit the matter.

#### *ANALYSIS*

There is no dispute as to the authority of the governing body to determine eligibility for enrollment in the St. Croix Chippewa Indians of Wisconsin tribal nation.

Parties agree that membership of the St. Croix Chippewa Indians of Wisconsin is addressed under Article III of the St. Croix Constitution which was ratified by a majority vote of eligible members and became effective as of July 20, 1942, pursuant to an Order, approved by the Assistant Secretary of the Interior on July 20, 1942 and adopted on August 29, 1942 by a vote of sixteen in favor of and zero against.

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<sup>19</sup> See Petitioners Exhibit No 2.

Membership may be lost by relinquishment or disenrollment or by death. In the case of disenrollment, according to the Enrollment Ordinance which was adopted by Resolution No. 3.22.02.1 at § VIII. B. The burden is on the Tribe and the "...member shall be disenrolled when: 1) The Enrollment Committee discovers the ... member was erroneously enrolled which may have been from fraudulent submission, mistake in blood quantum computations or inadequate research."

The five members of the St. Croix Indians of Wisconsin Tribal Council will make the final determination about an applicant's eligibility for membership with the Constitutional requirement that members must be one half Indian. The application is filed along with an original birth certificate, social security card and supporting documentation, including a family tree to prove that the applicant is one half degree Indian. That information is given to the Enrollment Committee who reviews and makes a recommendation in support of membership if documentation supports it; the Committee's recommendation is then given to the Enrollment Director who performs a secondary review and, if in agreement, then that person prepares to pass the information onto the Tribal Council for its consideration and ultimate vote, either in support of or against enrollment of the applicant.

If the applicant cannot establish that he/she is at least half Indian, then notice should be given to the applicant detailing the documentation deficiency and setting a timeframe for the return of the additional written support. Based upon the testimony from Ms. Carmen Bugg, the applications are kept pending on file. The Enrollment Ordinance details the Application Procedure under §VI for documentation that is needed for a completed application and under §VII for the processing of applications which has very precise timeframes in which the Enrollment Director, Enrollment Committee and Tribal Council must act on applications for enrollment that have been filed.

Enrollment officials appear to have modified these procedures in some cases; or failed to follow the procedures in some cases and this opens the door for the selective processing, selective approvals and/or selective administration of enrollment applications which leads the public to assert they cannot get their applications approved or sometimes even reviewed "for those political reasons."

### FINDINGS

In the matters of Seth Stoplman, Brady and Jordan Lowe, the Court reviewed conflicting blood quantum documentation. The People Edit Sheets show these three people have less than one half Indian blood. And, in the matters of Ammann and Ammann, the Court reviewed conflicting blood quantum documentation. The People Edit Sheets show that this brother and sister have a 13/32 Indian blood quantum. However, there is written documentation in the Exhibits, the St. Croix Tribal Rolls that have the Great Lakes Agency stamp affixed to it. It is dated June 16,

1975 which reports that that Anthony D. Ammann and Brooke M. Ammann are both one-half degree Indian blood. And, Rodney T. Lowe (DOB March 29, 1967) and Scott D. Lowe (DOB July 15, 1969) are both full-blooded. This would mean that their sons, Seth Stoplman, Brady and Jordan Lowe are one half degree Indian blood.

In the matter as it relates to Stoplman and the two Lowe brothers, the Court finds as follows:

- 1) (Multiple) Applications were filed with the St. Croix Enrollment Office.
- 2) That the 2013 Enrollment Committee issued a recommendation for the enrollment of Seth T. Stoplman, Brady S. Lowe and Jordan R. Lowe.
- 3) That the Enrollment Director, Ms. Sunshine Crowe reviewed the recommendation and concurred with the Committee.
- 4) That the enrollment packets with Resolution No. 08.05.13.02 were presented to a full COUNCIL.
- 5) That the COUNCIL met, discussed, entertained a motion with a second, and that a non-poll vote unanimously passing the resolution took place on August 5, 2013.
- 6) That Ms. Beverly Benjamin failed to file any sort of timely objection to the passing of the Resolution enrolling these three applicants for enrollment.
- 7) That the action by COUNCIL to pass Resolution 08.05.13.02 effectively suspended the adult moratorium on membership, albeit temporarily.
- 8) The COURT finds that the 1975 document, St. Croix Tribal Roll from the BIA Great Lakes Agency has a greater probative value than the People Edit Sheets showing the blood quantum of Seth T. Stoplman, Brady S. and Jordan R. Lowe with a 29/64 blood quantum.

In the matter as it relates to Anthony and Brooke Ammann, the COURT finds as follows:

- 1) (Multiple) Applications were filed with the St. Croix Enrollment Office.
- 2) That the 2013 Enrollment Committee issued a recommendation for the enrollment of Anthony D. and Brooke M. Ammann.
- 3) That the Enrollment Director, Ms. Sunshine Crowe reviewed the recommendation and concurred with the Committee.
- 4) That the enrollment packets with Resolution No. 08.05.13.02 were presented to a full COUNCIL.
- 5) That the COUNCIL met, discussed, entertained a motion with a second, and that a non-poll vote unanimously passing the resolution took place on August 5, 2013.
- 6) That Ms. Beverly Benjamin failed to file any sort of timely objection to the passing of the Resolution enrolling these two applicants for enrollment.

- 7) That the action by COUNCIL to pass Resolution 08.05.13.02 effectively suspended the adult moratorium on membership, albeit temporarily.
- 8) The COURT finds that the 1975 document, St. Croix Tribal Roll from the BIA Great Lakes Agency has a greater probative value than the People Edit Sheets showing the blood quantum of Anthony D. and Brooke M. Ammann with a 13/32 blood quantum.

The COURT finds that on August 5, 2013, Ms. Beverly Benjamin fully participated in the review of and enrollment of Seth Stoplman, Brady Lowe, Jordan Lowe, Anthony Ammann and Brooke Ammann. She expressed her desire to “hold off” on a vote until additional documentation was received, but other COUNCIL members declined to do so. The matter was put to a vote; and Ms. Aimee Awonohopay concurred in silence; and she confirmed that Ms. Benjamin did the same. The COURT believes and finds that based on the record, all of the testimony, and resolving issues of credibility that Ms. Benjamin spoke her mind; she did not vote in the negative; she did not dispute the Chair when he announced the resolution has passed. Rather, the vote was called for and the COURT, herein finds, that COUNCILWOMAN Benjamin acquiesced then, with subsequent regret.

#### *CREDIBILITY ISSUE*

Much of Ms. Benjamin’s testimony was inconsistent with that of the other witnesses which raises questions regarding her credibility particularly as it relates to discrepancies noted in the testimony, particularly in comparison to the testimony from COUNCILWOMAN Aimee Awonohopay and Enrollment Director Sunshine Crowe.

Aimee Awonohopay, Phyllis Lowe, Terry Lowe, and Sunshine Crowe were all present at the August 5, 2013 meeting. Each listened and heard the discussion and the vote; and each witnessed Ms. Benjamin sign Resolution 08.05.13.02 enrolling the five petitioner’s in this case. A fraudulent act of either signing Ms. Benjamin’s name or substituting signature pages has not been established to the COURT’s satisfaction. As mentioned, Ms. Benjamin’s testimony is inconsistent with that of the other witnesses, including the non-interested third parties of Aimee Awonohopay and Sunshine Crowe. Fraud is not established based upon the preponderance of the evidence.

Furthermore, Section VIII. B 1) states that a person may be disenrolled when there is a mistake in blood degree computations or inadequate research. In the petitions of Seth Stoplman, Brady and Jordan Lowe and Anthony and Brooke Ammann, arguably there is not a mistake in the blood degree, although there is a conflict in the evidence. Stoplman and the Lowes have produced a 1976 Great Lakes Agency St. Croix Tribal Roll that is dated June 16, 1975 that reports their fathers Rodney T. and Scott D. Lowe are full blooded under the degree of St. Croix Blood; that



same record reports that Anthony and Brooke Ammann are one half degree St. Croix Chippewa Indian.

Again, on August 5, 2013, the seated COUNCIL members discussed the enrollment of these five individuals; and it subsequently took a vote and by a unanimous vote, each was approved for enrollment.

COUNCIL reportedly based its approval (in part) because of its own shoddy record-keeping on the ancestors.<sup>20</sup>

#### *COUNCIL'S ENROLLMENT ACTION*

As noted, all five petitioners were enrolled in August 2013; they received tribal identification cards; some received hunting, fishing and gathering permits; they received per capita payments and in general were extended the same rights, privileges and responsibilities extended to most any citizen of the United States. The COUNCIL approved the resolution based upon shoddy record-keeping as is noted in the People Edit Sheets "Under special reasons the council voted to allow enrollment due to lack of record keeping on the ancestors. With many documentations showing full blood status they (sic) council voted and passed that (so and so...) be enrolled."

Ms. Benjamin testified that when she learned the new members were enrolled, that she went to the Tribal Chair--perhaps five or six months later, but COUNCIL took no steps; and there were others who reportedly tried to come in and meet with COUNCIL; but COUNCIL members would walk out and not meet on the matter; they were unable to get a quorum to address the issue; thus, no action was or could be taken. Ms. Benjamin stated that she was called before the Enrollment Committee and questioned as to why she said she disagreed with the Enrollment decision since it had a resolution with a 5-0 certification.

#### IN SUMMARY, THE COURT FINDS:

1. That COUNCIL met and considered each of the five petitioners for enrollment.
2. That COUNCIL unanimously voted for the enrollment of each of the five petitioners.
3. That while there is conflicting evidence of the blood quantum, there is evidence to show 100 per cent Indian blood for their parents which qualifies the petitioners as half degree Indian.
4. That COUNCIL'S decision to act on the applications and to approve them by resolution effectively suspended the adult moratorium, on a temporary basis and that such an action need not be by proclamation.

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<sup>20</sup> See Respondent's Exhibits 2-6, People Edit Sheet

### *DISENROLLMENT ACTION*

The action to vacate the enrollment of the five petitioners is unconscionable and violates the basic tenets of justice and fairness.

Ms. Benjamin testified that she had no less than fourteen years of service with the tribe and much of that was in service as a COUNCIL member. When the resolution 08.05.13.02 came before the COUNCIL for a vote, Ms. Benjamin needed:

- To verbalize and thereby cast a negative vote against enrollment of these five individuals and the resolution would have failed. Ms. Benjamin failed to take that simple action.
- Ms. Benjamin could have asked for a poll vote at the conclusion of the verbal vote and the resolution would have failed; but she failed to take that simple action.
- When her efforts to discuss the enrollment matters with the COUNCIL Chair failed, she might have filed for judicial intervention at that time seeking an Injunction, suspending the enrollment actions, pending judicial review of the matter. Again, Ms. Benjamin failed to take that action.
- Or, Ms. Benjamin could have asked the Enrollment Committee to reconsider its recommendation. There is no evidence in the file that Ms. Benjamin or anyone else attempted to take that action until July 2014 when Ms. Carmen Bugg was rehired in the Enrollment Office as the Enrollment Director: a year later.
- Or, in October 2014—more than a year later—when Francis Songetay asked COUNCIL for an update on its action related to Resolution 08.05.13.02.<sup>21</sup>

It took from one to two and a half years to disenroll these tribal members, people, citizens of the St. Croix Chippewa Indians of Wisconsin Nation. The 2013 COUNCIL enrolled them and it refused to disenroll them. It appears that after Ms. Bugg was reinstated into the Enrollment Office in 2014, that she quickly began working through the Enrollment Committee to undo the enrollment actions of the 2013 COUNCIL. Those efforts did not work.

She then ran for COUNCIL and it appears that she is now able to assert different influence, hence, the political argument. The 2015 COUNCIL agreed to issue a Notice of Intent to Vacate Enrollment; followed by the individual Resolutions effectively terminating the petitioner's membership in the St. Croix Chippewa Indians of Wisconsin Tribe. Was this appropriate action under the St. Croix Code of Law?

To begin, we look to the timeliness issue. Timeliness is an issue according to the St. Croix code. Persons wishing to appeal denials of enrollment or disenrollment have 30 days to file their Notice of Intent to Appeal. Timeliness cannot in all fairness be a one-sided matter making it a

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<sup>21</sup> See Respondent's Exhibit No.8.

requirement for petitioner's only; The COURT finds that the decision to disenroll these individuals some two and a half years later to be fundamentally unfair. The agent(s) of the tribe had their kick at the can when they brought a disenrollment resolution before the COUNCIL in or about July 2014. To allow ongoing and repeated attacks is unconscionable.

The Tribe failed to meet its burden by a preponderance of the evidence. The COURT finds that the 2013 enrollment decision was not erroneous. The Tribe supported an enrollment action and the COURT concurs with the petitioners that was what it intended to do. There was no fraudulent submission; there was no mistake in the blood quantum and there is sufficient evidence to support a finding that the five petitioners in this case are one half degree Indian blood. The Court finds that the St. Croix Tribal Roll as presented in the Petitioners Exhibits support a finding of one half Indian blood for Anthony and Brooke Ammann and full blood for Rodney and Scott Lowe which makes their sons eligible for enrollment as half Indian.

The St. Croix Indians of Wisconsin 2016 Tribal Council has failed to meet its burden in its decision to disenroll the five petitioners in this case by a clear preponderance of the evidence. Witness credibility was a problem. It may have been helpful to get the testimony from Chairman Lewis Talor, Elmer J. Emery and Francis Songetay. As presented, the burden was not met.

Tribal governments and their administrative bodies must be bound to bring their causes of action in a timely manner; because an orderly and efficient operation of the tribal government requires it. To do otherwise will cause chaos, mistrust, rivalry and political in-fighting. The result will be that one legislative body will continually undo the acts of other legislative bodies. The Ammanns were enrolled by a Council in or about 1983. They were disenrolled by a Council in 1985 or 1986. They were then reenrolled in 2013 and then disenrolled by another Council in 2016. Clearly, there would be no end to this matter without this ruling by the COURT.

#### CONCLUSION

The COURT concludes that, as a general rule, enrollment decisions are properly left to the St. Croix Tribal Council to decide; and that deference should be given to the COUNCIL's decision, unless the COUNCIL'S decision is erroneous based upon the preponderance of the evidence.

The 2013 COUNCIL reviewed the enrollment files, had discussion with obvious debate; entertained a motion for enrollment, effectively set aside its Moratorium on Adult Enrollments by resolution; with a unanimous vote favorable to the enrollment of the petitioners, including: Seth T. Stoplman, Brady S. Lowe, Jordan R. Lowe, Anthony D. Ammann and Brooke M. Ammann.

In the instant cases, there was conflicting evidence presented as to the degree of the appellant's Indian blood. While the COUNCIL has provided copies of edit sheets that were prepared

showing a discrepancy in the degree of Indian blood, that is, that the petitioners are less than one half Indian, the COURT must then weigh the evidence. The five appellants have provided the COURT with supporting documentation, that when accepted on its face, supports a finding that each of the petitioners is eligible for enrollment in the St. Croix Indians of Wisconsin tribe because each is one half Indian.

It is the opinion of this COURT that the supporting documents submitted by the appellants dating back to 1945 and 1976 have a greater probative value than the more recently prepared People Edit Sheet(s). Those records support a finding of half degree Indian blood for each of the petitioner-appellants.

DISPOSITION AND INSTRUCTIONS

The COURT reverses the decision of the 2015 St. Croix Tribal Council to vacate Resolution 08.05.13.02. The COURT directs the COUNCIL:

- 1) To reinstate the tribal enrollment of Seth T. Stoplman, Brady S. Lowe, Jordan R. Lowe, Anthony D. Ammann and Brooke M. Ammann retroactively to March 2016; and
- 2) To reinstate retroactively to March, 2016 any and all benefits enjoyed by all other tribal members; and
- 3) To record each of the appellants appropriately as St. Croix Chippewa Indians of Wisconsin with one-half degree Indian blood.

IT IS SO ORDERED. Dated this 11<sup>th</sup> day of August, 2016.

BY:

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Candace Des Armo Coury  
Judge, Pro Tempore

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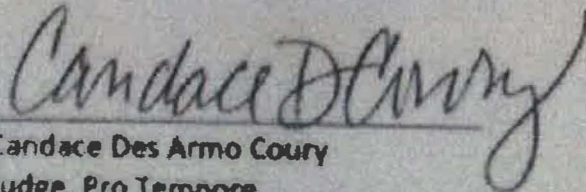
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