

**Daniel D. Tavares (a.k.a. Eagle Feather) v. Mashpee Wampanoag Tribal Council**

**CV-16-001**

This synopsis was prepared following a review of an order by District Court Judge Jeffrey Madison, dated September 28, 2016.

Synopsis:

Plaintiff filed a complaint against the Mashpee Wampanoag Tribe to compel the Tribe to file suit against various entities for the return of all lands within the Town of Mashpee. The Tribe filed a motion to dismiss asserting lack of jurisdiction based on tribal sovereign immunity.

The Plaintiff's complaint named the Mashpee Wampanoag Tribal Council, Inc. (the "Corporation") as the defendant. However, the motion to dismiss was filed by the Mashpee Wampanoag Tribe (the "Tribe").

The issues before the court:

1. Whether sovereign immunity of the Tribe extends to actions of the Corporation?
2. Is the Mashpee Wampanoag Tribe's sovereign immunity a defense from a third party claim to compel the Tribe to file suit?

Holding:

The Tribe is assumed to be a successor in interest to the Corporation, as defendant in this case. The Tribe has sovereign immunity pursuant to the Tribal Constitution.

Tribal sovereign immunity bars the Plaintiff's claim unless there is an express or specific waiver by the Tribe. A sovereign has the right and power to state when and how it may be sued and must be free from interference from unconsented litigation. This immunity extends to claims of declaratory and injunctive relief. The Tribe has not consented to waive its sovereign immunity that would allow the Tribal Court to adjudicate the claim. Without a waiver the Tribal Court lacks jurisdiction over this case.

Plaintiffs' complaint was dismissed with prejudice.

**Daniel D. Tavares (a.k.a. Eagle Feather) v. Mashpee Wampanoag Tribal Council**

**CV-16-001-APP**

This synopsis was prepared following a review of an order by the Mashpee Wampanoag Supreme Court Judge Terri Yellowhammer with concurrence from Judge Robert Mills and Judge Matthew Fletcher, dated December 14, 2016.

Synopsis:

Plaintiff sought any order to compel the Mashpee Wampanoag Tribal Council to file suit in the United States Federal Court for the return of lands in Mashpee, Massachusetts. The District Court heard the case and decided that the Tribe had not waived its sovereign immunity and therefore lacked subject matter jurisdiction to consider the merits of the case. The case was dismissed with prejudice and the Plaintiff appealed.

Issue:

Whether the District Court erred in finding a lack of subject matter jurisdiction based on a non-waiver of sovereign immunity?

Holding:

The Plaintiff did not submit evidence or arguments to rebut the Tribe's defense of sovereign immunity. Without evidence or arguments to support his claim, the Plaintiff failed to meet the burden of proof to show the claim falls within the Tribe's waiver of immunity.

The decision of the District Court was affirmed.

**Jonathan Parra-Tobey v. Mashpee Wampanoag Tribal Enrollment Committee.**

**CV-16-002**

This synopsis was prepared following a review of the Decision on Defendant's Motion to Exclude and Motion for Summary Judgment by District Judge Jeffrey Madison, dated November 1, 2016.

Synopsis:

The Plaintiff foster parent filed a complaint on behalf of her foster son after the minor was denied enrollment by the Defendant Enrollment Committee. The Defendant denied enrollment because the Plaintiff's application failed to meet certain criteria required pursuant to Enrollment Ordinance 2012-ORD-006, Sec. 4(c) and 4(d). Section 4(c) requires an applicant to "have lived in or near Mashpee, Massachusetts, or have had family members actively involved in tribal community affairs who have lived in or near Mashpee, Massachusetts for at least 20 years." Section 4(d) requires an applicant to demonstrate tribal community involvement as set forth in the Ordinance.

The Defendant provided the Plaintiff an opportunity to submit additional evidence after the initial application was denied. The Plaintiff provided additional information, but it was insufficient to meet the requirements of Sections 4(c) and 4(d) of the Ordinance. The Defendant issued a final decision denying the Plaintiff's enrollment application. The Plaintiff appealed the decision.

Holding:

The Defendant Enrollment Committee reviewed the Plaintiff's application and determined it was insufficient to meet the requirements for enrollment. The Tribal Court is required to determine whether the Defendant's decision was arbitrary and capricious and, absent such a finding, must accept the Defendant Enrollment Committee's decision.

Defendant's Motion for Summary judgment was allowed and the case dismissed, without prejudice.

**Milan M., a minor by Imara Young, his father v. Mashpee Wampanoag Tribal Enrollment Committee.**

**CV-16-003**

The synopsis was prepared following a review of the Decision on Defendant's Motion to Amend or Modify and Motion to Dismiss by District Judge Jeffery Madison, dated November 1, 2016.

Synopsis:

The Plaintiff Tribal Member filed a complaint seeking judicial review from the Tribal Court on behalf of his three-and-a-half-year-old son after the minor was denied enrollment by the Defendant Enrollment Committee. The Defendant denied membership because the Plaintiff did not establish the residency requirements and tribal community involvement in his application pursuant to Sections 4(c) and 4(d), respectively, of Enrollment Ordinance 2012-ORD-006. Thereafter, the Defendant granted the Plaintiff thirty days to provide additional evidence to support his son's enrollment application. Plaintiff's father failed to respond within thirty days and the Defendant made its final decision denying the Plaintiff's application for membership.

Three months after the expiration of the appeal period prescribed in Enrollment Ordinance 2012-ORD-006, Sec. 8(a), the Plaintiff filed a complaint and a Motion to Request Extension of Time Limit for Good Cause. The complaint sought judicial review of the Defendant's decision denying Plaintiff's membership application. The request for time extension sought additional time to submit evidence supporting the Plaintiff's application. In response, the Defendant filed a Motion to Dismiss. The Tribal Court remanded the case back to the Defendant Enrollment Committee for reconsideration based on the Plaintiff's reasons for missing the deadlines imposed by Tribal Law. Thereafter, the Defendant filed a Motion to Amend or Modify in response to the Tribal Court's order to remand. The Tribal Court then requested, and received, supplemental briefs from both parties.

The issues before the court:

1. Whether the Order and Remand is allowed under tribal law; and
2. Whether the case should be dismissed.

Holding:

The Court's Order was meant to determine whether the Defendant would be willing to reconsider the Plaintiff's reason for not submitting additional evidence within the time limits. The decision is up to the Defendant Enrollment Committee and the Tribal Court cannot substitute its judgment in place of the authority granted to the Defendant Enrollment Committee by the Ordinance. The Defendant Enrollment Committee's actions denying Plaintiff's application for enrollment is appropriate under the Ordinance.

1. The Defendant's Motion to Amend or Modify was allowed;
2. The Defendant's Motion to Dismiss is granted; and

3. The case is dismissed without prejudice.

**Melanie Mulvey v. Tribal Enrollment Committee**

**CV-16-005**

This synopsis was prepared following a review of the Defendant's Motion to Dismiss dated June 7, 2016 and the Tribal Court's response to Plaintiff's Request to Dismiss by Judge Jeffrey Madison, dated June 30, 2016.

Synopsis:

Plaintiff filed a complaint seeking reversal or reconsideration of the Defendant Enrollment Committee's decision denying her enrollment application. Plaintiff's enrollment application was denied by the Defendant Enrollment Committee because Plaintiff did not offer sufficient evidence to show the "live in" or "near" Mashpee requirement and Tribal Community involvement pursuant to Sections 4(c) and 4(d), respectively, of Enrollment Ordinance 2012-ORD-006. The Defendant filed a Motion to Dismiss pursuant to MWDC R. Civ. P. 12(a)(3) and 12(a)(4). The Plaintiff then filed a Request to Dismiss the complaint seeking dismissal without prejudice and to move the case to the Peacemaker Court.

Holding:

Plaintiff's Request to Dismiss was allowed.

## **Jonathan C. Lopes v. Mashpee Wampanoag Enrollment Department**

**CV-16-006**

This synopsis was prepared following a review of: (1) Plaintiff's Complaint dated June 20, 2016; (2) Defendant's Motion to Dismiss dated August 8, 2016; (3) Plaintiff's Response to Motion to Dismiss dated July 30, 2016; (4) Defendant's Motion to Amend or Modify dated September 13, 2016; and (5) Decision and Order on Defendant's Motion to Amend or Modify by District Judge Jeffrey Madison dated November 3, 2016.

Synopsis:

Pro se Plaintiff filed a complaint appealing the Defendant Enrollment Committee's final decision denying the Plaintiff's enrollment application. The Defendant Enrollment Committee denied the Plaintiff's enrollment application because Plaintiff did not provide sufficient evidence showing tribal community involvement pursuant to Section 4(d) of the Enrollment Ordinance 2012-ORD-006. The Plaintiff responded to the Defendant's Motion to Dismiss by offering additional evidence, in the form of a letter from a Tribe member to the Defendant Enrollment Committee, describing the Plaintiff's tribal community involvement. The letter offered by the Plaintiff was not part of the administrative record and was considered extrinsic evidence. In response, the Defendant filed a Motion to Strike. Following a hearing, the Tribal Court allowed the Defendant's Motion to Strike the extrinsic evidence, but denied the Defendant's Motion to Dismiss because the Defendant did not appear at the hearing and there were material facts in dispute. The Defendant then filed a Motion to Amend or Modify the Tribal Court's decision pursuant to MWDC R. Civ. P. 36(d). The Tribal Court ordered a hearing to determine the merits of the Defendant's Motion to Amend or Modify.

Holding:

The Tribal Court found merit in the Defendant's Motion to Amend or Modify because the Plaintiff's complaint did not present sufficient evidence to grant relief and the extrinsic evidence offered by the Plaintiff was outside the administrative record and could not be considered.

1. Defendant's Motion to Amend or Modify was allowed;
2. Defendant's Motion to Dismiss was allowed; and
3. The case was dismissed without prejudice.

**Christopher W. Soliz v. Mashpee Wampanoag Tribal Enrollment Committee**

**CV-16-007**

This synopsis was prepared following a review of: (1) Plaintiff's Complaint dated August 26, 2016; (2) Defendant's Motion to Dismiss with Prejudice Plaintiff's Complaint dated September 30, 2016; and (3) Decision and Order on Defendant's Motion to Dismiss by District Judge Jeffrey Madison dated December 8, 2016.

**Synopsis:**

The pro se Plaintiff filed an appeal on behalf of his minor son after the minor was denied enrollment by the Defendant Enrollment Committee. The Defendant Enrollment Committee denied enrollment because the Plaintiff's application failed to provide sufficient evidence to demonstrate tribal community involvement and the "lived in" or "near" Mashpee requirements pursuant to Sections 4(c) and 4(d), respectively, of Enrollment Ordinance 2012-ORD-006. The Defendant filed a Motion to Dismiss with Prejudice Plaintiff's Complaint based on the Tribal Court's lack of subject and personal jurisdictions because the Plaintiff's Complaint was filed beyond the statutory deadline of sixty-days from the Enrollment Committee decision for an administrative appeal and failure to state a claim upon which relief can be granted.

**Holding:**

The Tribal Court determined the Plaintiff's complaint was timely because it was mailed prior to the sixty-day administrative appeal period. The U.S. Postal Service receipt offered by the Plaintiff was sufficient evidence for the Tribal Court to presume the filing was timely.

The Plaintiff's Complaint failed to allege any violation of Tribal Law by the Defendant Enrollment Committee's decision denying enrollment to the minor Plaintiff.

1. Defendant's Motion to Dismiss is allowed; and
2. Plaintiff's Complaint is dismissed, without prejudice.



**Jacquelyn Quarles v Mashpee Wampanoag Tribal Enrollment Committee**

**CV-16-008**

This synopsis was prepared following a review of an order by District Court Judge Jeffrey Madison, dated August 30, 2017.

**Synopsis:**

The Pro Se Plaintiff Tribal Member filed an appeal on behalf of her three minor children after the minors were denied enrollment by Defendant Enrollment Committee. Plaintiff's complaint alleges that her children have a right to membership, because of her involvement in the Tribe and her belief that a person's location does not define a person's commitment to their community. The Defendant Enrollment Committee filed a Motion to Dismiss claiming that the Plaintiff lacked standing and failed to state a claim upon which relief could be granted.

Subsequently, both parties filed a Join Motion to Stay Litigation Pending Applicable Action By The Tribal Council based on their belief that that Tribal Council would soon be considering possible amendments to the Tribe's Enrollment Ordinance which was at issue in this case. This case was one of four enrollment cases which each presented a similar issue. The parties anticipated that the Tribal Council would soon take up these issues and found it best to await any action of the Tribal Council.

**Holding:**

The parties' Stipulation of Dismissal was granted and the case was dismissed, without prejudice.

**Diane Johnson v. Ramona Peters**

**CV-16-009**

This synopsis is prepared following a review of an order by District Court Judge Jeffery Madison, dated January 28, 2017.

**Synopsis:**

Plaintiff Diane Johnson filed a complaint following a dispute that occurred between the Plaintiff and Defendant Ramona Peters. The Plaintiff requested that the Court impose a penalty in connection with the Defendant's employment. Specifically, the Plaintiff sought an eight-week, unpaid suspension, and requested a written statement on behalf of the Defendant acknowledging that the behavior was unacceptable. In the alternative, the Plaintiff requested the Defendant to pay a fine in the amount of \$5,000 and that the sum of this fine be used towards future training of tribal employees.

**Holding:**

Plaintiff did not adhere to the relevant Rules of Civil Procedure, specifically Rule 10(f), which requires that service be made within sixty (60) days from the date the Summons was issued. The case was dismissed for failure to comply with Rule 10(f) of the Mashpee Wampanoag District Court Rules of Civil Procedure.