

SAINT REGIS MOHAWK TRIBAL APPELLATE COURT

The Community Governance Committee,
Hattie Hart, et al.

Appellants,

v.

Saint Regis Mohawk Tribe, and
Saint Regis Mohawk Tribe Election Board,
Appellees.

DECISION AND ORDER

Case No. 19-cv-00013

Opinion by: Montour, *Associate Appellate Judge*

Jurisdiction

This case comes before the Court of Appeals on appeal from a decision issued by the Tribal Court signed by Hon. Barbara R. Potter on August 26, 2019. While the Court of Appeals possess “jurisdiction to hear all appeals from the Tribal Court,” (SRMT Tribal Court and Judiciary Code, Section V.2.) the Tribal Courts, including this Court, lack jurisdiction to hear this case pursuant to SRMT Election and Referendum Ordinance, as amended by TCR 2019-03 (the “SRMT Election and Referendum Ordinance”).

Procedural History

This case arises out of Appellant Committee Member Hattie Hart’s complaint before the SRMT Election Board, dated June 4, 2019, in which Ms. Hart raised issues concerning the June 1, 2019 election of the Saint Regis Mohawk Tribe (the “Tribe”) and the composition of the SRMT Election Board pursuant to SRMT Election and Referendum Ordinance.

Pursuant to SRMT Election and Referendum Ordinance Section XIV.A.4., the SRMT Election Board conducted a hearing to address Ms. Hart’s appeal on June 10, 2019. The SRMT Election Board notice of appeal decision, dated June 11, 2019, and SRMT Tribal Court transcript indicate that Ms. Hart initially appeared for the hearing but departed soon thereafter and did not participate in the hearing. *See* Tribal Court Recording, at 18:30.¹ The SRMT Election Board proceeded in addressing Ms. Hart’s appeal and issuing a decision dismissing such appeal. In its “Report of Finding from Election Board Record of Decisions”, dated June 12, 2019 (hereinafter referred to as “SMRT Election Board Decision”), the SRMT Election Board, reviewed its customary practices with respect to quorum, composition, and manner of operating. The SRMT Election Board concluded that:

¹ Pursuant to this Court’s Administrative Order of the Court – Audio Recording Permitted in Lieu of Transcript, dated July 17, 2019, this Court will accept the recording of the Tribal Court hearing for purposes of this appeal.

[T]here is a quorum for the Election Board to carry out its functions as determined through customary practice. As with other boards of the Tribe, the Election Board utilizes Robert's Rules of Order for its functioning. Having three (3) members plus one (1) alternate is sufficient for it to function since it meets the requirements of a quorum. The actual operation of the Election Board from 1999-2019 supports the continued operation of the Election Board to discharge its responsibilities under the Election and Referendum Ordinance...Additionally, the Election Board provided notice to the community at the February 2019 Monthly Tribal Meeting that it would proceed with conducting business (e.g., 2019 Tribal General Election and Referendum) with the composition being three (3) Election Board members and one (1) alternate. SRMT Election Board Decision, at 3.

Accordingly, the SRMT Election Board concluded that it “may continue to carry on business as prescribed by the Election and Referendum Ordinance, consistent with past practice of the board.” *Id.*

On June 13, 2019, Appellants filed their Complaint with the Tribal Court in which Appellants requested that the Tribal Court issue an “injunction barring the [SRMT] Election Board from certifying the unofficial results of the June 1, 2019 election...” Compl., at 2. At the Tribal Court, Appellants argued that the SRMT Election Board was not properly constituted pursuant to the SRMT Election and Referendum Ordinance and that the Tribal Council should have delayed the election pending full appointment of the SRMT Election Board. *Id.* In the Complaint, Appellants state that “this matter is being brought due to a violation of Tribal Law, therefore, the Court has the jurisdiction and responsibility to address this gross failure of the Saint Regis Mohawk Tribal Council and the Saint Regis Mohawk Tribe Election Board to follow the written laws of the Saint Regis Mohawk Tribe.” *Id.*

On July 2, 2019, Appellees filed a Motion to Dismiss with the SRMT Tribal Court, in which Appellees argued that the Tribal Court should dismiss the Complaint for several reasons: (1) the Complaint is barred by the sovereign immunity of the Tribe and the SRMT Election Board; (2) that Tribal courts lack jurisdiction over this matter under the SRMT Election and Referendum Ordinance; (3) the Appellants lack standing as an unincorporated association of members that have not demonstrated injury by the SRMT Election Board's conduct in this case; and (4) the SRMT Election Board was properly constituted and had the authority to act. *See* Appellees Mot. to Dismiss, at 4; *see also* Appellees Resp. Br. 7-16. Accordingly, Appellees argue that the Tribal courts have “no authority to hear any election dispute” and that “[t]he decision below should be affirmed.” Appellees Resp. Br. 9, 17.

On the other hand, Appellants argued at the trial court level that: (1) the Tribe specifically waived sovereign immunity in this case through adoption of the Civil Code in 2008, which grants the Tribal courts jurisdiction over certain matters, including under the Indian Civil Rights Act and for provisions of equitable relief; and (2) SRMT Tribal Council Resolution 2012-13 grants the tribal court original jurisdiction over “all cases...arising under and as may be limited by the laws, ordinances...of the Tribe.” *See* Compl. and Tribal Court Recording, at 7:45 – 12:30. Appellants also argue that the Tribal Court has the power to issue writs of mandamus, certiorari, and

prohibition, which “explicitly gives the Court jurisdiction over matters such as these.” *See* Appellants Br. 7.²

More specifically, Appellants argue that, under the SRMT Election and Referendum Ordinance, Section IV.A., the Tribal Council was required to appoint five (5) members to the SRMT Election Board. Appellants argue that the Tribal Council’s failure to appoint the required number of members to the SRMT Election Board means that the SRMT Election Board was not properly constituted and lacked authority to act and hear Ms. Hart’s appeal. *See* Appellants Br. 5. Overall, Appellants argue that the SRMT Election Board was not properly constituted under the laws of the Tribe, and therefore could not act to oversee and carry out the June 2019 Tribal election, and that “this is the type of case that the Tribal Council wanted brought before this Court.” *See* Tribal Court Recording, at 13:10 – 13:57; *see also* Appellants Br. 5. Accordingly, Appellants “request that this Court reverse the [d]ecision of the [Tribal Court] and remand these matters to the Tribal Court for a substantive review.” Appellants Br. 8.

Analysis

This Court will exercise plenary review over the Tribal Court’s decision. The Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure (SRMT Civ. App. R.) govern all appellate proceedings before this Court. SRMT Civ. App. R., Section II(A). Where the SRMT rules are silent, the Court will use the Federal Rules of Appellate Procedure in its inquiry. *See id.* at Section II(B).

- a. The Plain Language of the SRMT Election and Referendum Ordinance Dictates that Tribal Courts Lack Jurisdiction over this Matter.

The determining issue in this case is whether the Tribal courts possess jurisdiction to hear this case under Tribal law. The Tribal Court and Judiciary Code (the “SRMT Judiciary Code”), Section V.1. states: “The Tribal Court shall have original jurisdiction extending to all cases, matters or controversies arising under and as may be limited by the laws, ordinances, regulations, customs and judicial decisions of the Tribe.” (emphasis added). The SRMT Judiciary Code, Section V.1. addresses the jurisdiction of this Court:

The Court of Appeals shall have both original and appellate jurisdiction. The Court of Appeals shall have jurisdiction to hear all appeals from the Tribal Court. Decisions of the Court of Appeals on all matters within its appellate jurisdiction shall be final. (emphasis added).

The SRMT Judiciary Code, Section VI states: “The Courts of the Tribe shall have the power to...[i]nterpret, construe and apply the laws and regulations of the Tribe.” Additionally, the SRMT

² Pursuant to SRMT Civ. App. R., Section XXVII, Appellants have not satisfied the procedural requirements for requesting a writ of mandamus or prohibition, which involve: “fil[ing] a petition and the appropriate fee with the Clerk of the Appellate Court. The petition shall contain a statement of the facts necessary for an understanding of the issues presented; a statement of issues presented; an argument with respect to the issues presented; a statement of relief sought; and copies of any order, or opinion, or parts of the record which is necessary for an understanding of the matters set forth in the petition.”

Election and Referendum Ordinance, Section XIV.A.4. provides that: “All decisions made by the Election Board shall be final and there shall be no appeals to Tribal Court.” (emphasis added).

In making its decision, the Court reads the plain language of the statutory text of the SRMT Judiciary Code, Section V.1. together with the SRMT Judiciary Code, Section VI.1. and the SRMT Election and Referendum Ordinance, Section XIV. The Court does not read these respective Tribal laws in a vacuum. When looking to the plain language of each of these respective laws, it is clear that Tribal Courts do not have jurisdiction over elections appeals that fall within the ambit of the SRMT Election and Referendum Ordinance, as currently drafted. Specifically, the SRMT Judiciary Code, Section V.1. provides that the Tribal courts’ jurisdiction is “limited by the...ordinances...of the Tribe.” (emphasis added). The SRMT Election and Referendum Ordinance explicitly precludes appeals to the Tribal courts, stating that SRMT Election Board decisions are final. SRMT Election and Referendum Ordinance, Section XIV.A.4.

b. The SRMT Election and Referendum Ordinance’s Detailed Appeal and Hearing Procedures Demonstrate the Objective that SRMT Election Board Decision be Final.

In addition to the clear and plain language limiting Tribal court review, the detailed appeal and hearing procedures that the Tribal Council built into the SRMT Election and Referendum Ordinance demonstrate the Council’s intent that SRMT Election Board decisions, such as the decision in this case, be final. Such procedure creates a robust appeal mechanism to allow a complainant’s concerns to be heard. The SRMT Election and Referendum Ordinance appeal mechanism contemplates the timing, structure, and hearing of appeals, permits SRMT Election Board complainants to be represented by counsel, present evidence, and question witnesses. Within this structure, the SRMT Election Board is granted the responsibility to regulate the conduct of hearings and to issue decisions. *See* SRMT Election and Referendum Ordinance, Sections XIV.A.4, XIV.B.6, 9.

Specifically, the SRMT Election and Referendum Ordinance provides a detailed procedure for any election-related appeals to be heard before the Election Board: “Any appeals of the Election or Referendums results must be in writing and addressed to the Board within five (5) business days immediately following the Election or Referendum.” SRMT Election and Referendum Ordinance, Section XIV.A.2. The SRMT Election and Referendum Ordinance sets forth that the SRMT Election Board may only hear appeals requesting overturning of Election and Referendum results in limited circumstances: “a. The Election Board finds that a person declared elected was not qualified to be a candidate; b. The Election Board finds that there was a violation of this Ordinance in the conduct of the Referendum or Election that may have changed the result; or c. The Election Board finds that there was corrupt or fraudulent practice in relation to the Ordinance, on the part of elected officials, Election Board members, or Candidates.” SRMT Election and Referendum Ordinance, Section XIV.A.5.

Before a hearing, a complainant is given the opportunity to examine relevant public documents at the Tribal Clerk’s office. *See* SRMT Election and Referendum Ordinance, Section XIV.B.3. And, the complainant has the right to present evidence and question any witnesses. *See* SRMT Election and Referendum Ordinance, Section XIV.B.8. The SRMT Election and Referendum Ordinance contemplates the form and formality of hearings, and states that “[a]ll

hearings shall be conducted informally, and both oral and documentary evidence pertinent to the facts and issues raised may be received.” SRMT Election and Referendum Ordinance, Section XIV.B.9. At the appeal, the SRMT Election and Referendum Ordinance provides the SRMT Election Board with the authority to address and decide appeals and determine the course of action taken on the appeal. *See* SRMT Election and Referendum Ordinance, Section XIV.A.3. And, the SRMT Election and Referendum Ordinance grants the Election Board sole authority to “conduct a hearing, if requested” and “issue a final decision within five (5) business days of receiving an appeal.” SRMT Election and Referendum Ordinance, Section XIV.A.4. The detailed appeal procedures support the plain language of the SRMT Election and Referendum ordinance that “[a]ll decisions made by the Election Board shall be final and there shall be no appeals to Tribal Court.” *Id.* (emphasis added).

Here, the plain language of the SRMT Judiciary Code and the plain language of the SRMT Election and Referendum Ordinance, as currently drafted, require the conclusion that the Tribal Courts lack jurisdiction over this matter. Although the Tribal Courts generally have jurisdiction over cases, matters, or controversies arising under Tribal law, the SRMT Election and Referendum Ordinance specifically limits the Tribal courts’ jurisdiction over election-related matters within the scope of the SRMT Election and Referendum Ordinance, as currently drafted, when it states: “All decisions made by the Election Board shall be final and there shall be no appeals to Tribal Court.” *See* SRMT Judiciary Code, Section V.1.; SRMT Election and Referendum Ordinance, Section XIV.A.4. (emphasis added). Likewise, SRMT Election and Referendum Ordinance, Section XIV.A.4. indicates that Election Board decisions are final when it states that, “The Election Board shall conduct a hearing...and shall issue a final decision within five (5) business days of receiving an appeal.” *Id.* (emphasis added). Appellants’ claims generally appeal and request an injunction against the results of the 2019 Tribal Election as those results relate to the constitution of the SRMT Election Board. Such claims are election-related matters and fall within the scope of the SRMT Election and Referendum Ordinance and the exclusive jurisdiction of the SRMT Election Board.

c. The Tribal Council Provided the SRMT Election Board with Exclusive Authority over Election Matters.

Appellants also claim that the SRMT Election and Referendum Ordinance was violated when the SRMT Election Board consisted of three (3) members and one (1) alternate. Again, in the SRMT Election and Referendum Ordinance, as currently drafted, the Tribal Council provided the SRMT Election Board with exclusive jurisdiction over such claims, and provided limited scenarios for overturning an election:

Appeals to the Election Board requesting overturning of Election and Referendum results will only be consider under the following circumstances:

- a. The Election Board finds that a person declared elected was not qualified to be a candidate.
- b. The Election Board finds that there was a violation of this Ordinance in the conduct of the Referendum or Election that may have changed the result.

c. The Election Board finds that there was corrupt or fraudulent practice in relation to the Ordinance, on the part of the elected officials, Election Board members, or Candidates. SRMT Election and Referendum Ordinance, Section XIV.A.5.b.

Here, the Tribal Council provides the Election Board with the authority to interpret the SRMT Election and Referendum Ordinance and find violations thereof. Such authority is also set forth in SRMT Election and Referendum Ordinance, Sections IV.C.7. and 8., which provide the Election Board with the power to administer the SRMT Election and Referendum Ordinance and “maintain records of decisions on which to base future decisions to ensure consistency and uniformity of the law.” However, the SRMT Election and Referendum Ordinance places guardrails around the SRMT Election Board’s authority to overturn an election when it states while the SRMT Election Board can find minor procedural violations or errors that such errors cannot be the basis for overturning election results. *See* SRMT Election and Referendum Ordinance, Section XIV.A.6.

Although the SRMT Election and Referendum Ordinance requires that the Tribal Council appoint five (5) members and up to two (2) alternates to the SRMT Election Board, the SRMT Election and Referendum Ordinance also provides the Election Board with general exclusive jurisdiction to hear and determine appeals of its decisions and election results. *See* SRMT Election and Referendum Ordinance, Section IV.C.; *see also* SRMT Election and Referendum Ordinance, Section XIV.A.1-2. As stated above, the SRMT Election and Referendum Ordinance provides the Election Board with the authority to interpret, review, and determine violations of the SRMT Election and Referendum Ordinance. *See* SRMT Election and Referendum Ordinance, Section XIV.A.5. As currently drafted under the SRMT Election and Referendum Ordinance, such broad authority would presumably include the ability to review the customs, practices, and history of the SRMT Election Board and determine an appropriate composition for the SRMT Election Board. Ultimately, the SRMT Election and Referendum Ordinance is clear that the SRMT Election Board decisions of such appeals are final. There is no clearly expressed legislative intention to the contrary here, so this Court regards the text of the SRMT Election and Referendum Ordinance as conclusive – “there shall be no appeals to Tribal Court.” SRMT Election and Referendum Ordinance, Section XIV.A.4.

Under Tribal Council Resolution 2019-03, the Tribal Council provided that “[t]he powers of the [SRMT Election] Board shall be as set forth in this Ordinance.” The plain language of the SRMT Election and Referendum Ordinance demonstrates that the Tribal Council intended the SRMT Election Board to have exclusive jurisdiction over matters such as those raised in this case. Here, the record indicates that the SRMT Election Board heard Ms. Hart’s complaint, held a hearing, and issued its findings. *See* SRMT Election Board Decision. The SRMT Election and Referendum Ordinance provides the SRMT Election Board with the authority to make such a decision, and explicitly exempts such decision from judicial review.

Conclusion

For the foregoing reasons, we affirm the Tribal Court’s dismissal of Appellants’ claims. The Court also recognizes that the parties have raised issues concerning whether Appellants possess proper standing in this case, and whether the Tribe’s and the SRMT Election Board’s

sovereign immunity bar this matter. The Court acknowledges but will not ~~decide such~~ issues because the Court lacks jurisdiction in this case pursuant to the SRMT Election and Referendum Ordinance.

Finally, this Court may, within its discretion, decide appeals on the basis of the briefs alone and without oral argument. SRMT Civ. App. R., Section XVII.D. Neither party has requested oral argument before this Court. Accordingly, based on the foregoing analysis, this Court will decide this appeal on the parties' briefs.

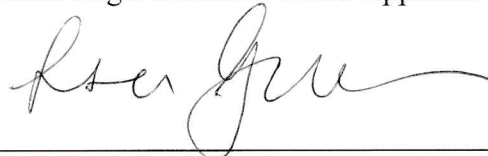
Order

It is hereby ORDERED that, for the reasons stated herein, this appeal is DISMISSED without prejudice. The Tribal Court Order dated August 26, 2019, remains in full force and effect.

Signed by my hand this 5th day of June, 2020.



Patricia Lenzi, Chief Appellate Judge
Saint Regis Mohawk Tribal Appellate Court



Lisa Garabedian, Associate Appellate Judge
Saint Regis Mohawk Tribal Appellate Court



Kyle Montour, Associate Appellate Judge
Saint Regis Mohawk Tribal Appellate Court