In the United States Court of Federal Claims

No. 06-158L
(Filed September 1, 2006)
(Not for Publication)

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CHEROKEE OF LAWRENCE COUNTY, TENNESSEE,	*
Plaintiff,	*
v.	*
THE UNITED STATES,	*
Defendant.	*

* *

MEMORANDUM OPINION AND ORDER STRIKING COMPLAINT

WILLIAMS, Judge.

Chief Joe Sitting Owl White filed this action on behalf of the Cherokee of Lawrence County, Tennessee (CLC). Plaintiff filed an application to proceed in forma pauperis to pursue a takings claim against the United States challenging the alleged failure of the Government to deliver clear title and deed to the 1806 Congressional Reservation, including the Smoky Mountain National Park and the Cherokee National Forest.[1]

The matter comes before the Court on Defendant's motion to strike and/or dismiss Plaintiff's complaint. For the purpose of resolving Defendant's motion to strike and/or dismiss Plaintiff's complaint, Plaintiff's motion to proceed in forma pauperis is granted. Because Chief White is not an attorney and is not admitted to practice before this Court, Defendant's motion to strike Plaintiff's complaint is granted.

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[1] According to Plaintiff, the 1806 Congressional Reservation consists of land in Tennessee that the Cherokees originally inhabited, but from which they were relocated after signing a treaty with the United States. Compl. ¶ 3.

Background[2]

The Cherokee of Lawrence County are described as a "'Lost Tribe of Israel' proven by scientific DNA as Ashkenazi." Compl. ¶ 10. CLC avers that the United States illegally took land and a grinding mill from "the inhabitants of the 1806 Congressional Reservation," and that a treaty with the United States, the 1806 Congressional Reservation Treaty, entitles the CLC to the property. CLC also claims it has suffered myriad injuries including "Civil, Religious, Constitutional Rights" violations, mismanagement of a trust, and genocide. As relief, CLC seeks clear title to the property, "Judicial Recognition as a Tribe of Cherokee," and an unspecified amount of monetary damages.[3] Compl. ¶¶ 1-4, 7-10, 14-15.

Plaintiff is not listed on the federal government's list of federally recognized tribes. 70 Fed. Reg. 71194-01 (Nov. 25, 2005). Plaintiff admits in its Complaint that it is not federally recognized but indicates that it is seeking recognition by the Bureau of Indian Affairs "as a Tribe of Cherokee, including the title of Cherokee Nation[4] as intended by the treaty." Compl. ¶ 6.[5]

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[2] This background is derived from Plaintiff's Complaint and motion to proceed in forma pauperis, Defendant's response to Plaintiff's motion, Plaintiff's response to Defendant's opposition, Defendant's motion to strike and/or dismiss Plaintiff's complaint, Plaintiff's objection to Defendant's Motion, and Plaintiff's objection to Defendant's reply in support of Defendant's motion to strike and/or dismiss.

[3] Plaintiff also invites Israelites and New Yorkers to occupy the reservation alleging that "Israel will be overrun and likely become a nuclear wasteland and New York City completely destroyed." Compl. ¶ 13.

[4] Cherokee Nation is a federally recognized tribe. See 70 Fed. Reg. 71194-01 (Nov. 25, 2005).

[5] The Department of the Interior, Bureau of Indian Affairs is responsible for reviewing petitions for federal acknowledgment of Indian tribes. 25 C.F.R. § 83. Federal acknowledgment provides tribes with various protections, services, and benefits, including immunities and privileges stemming from a "government-to-government" relationship with the United States. Id. § 83.2. The Department of the Interior, Office of Federal Acknowledgement (OFA) reviews each petitioning group, requiring each group to fulfill seven mandatory criteria before becoming a federally acknowledged Indian tribe. See id. § 83.7(a)-(g). According to the declaration of Rita E. Souther, an OFA genealogical researcher, the Cherokee of Lawrence County are currently in the technical assistance review phase, a "preliminary review for the purpose of providing the petitioner an opportunity to supplement or revise the documented petition prior to active consideration." Id. § 83.10. If the technical assistance review indicates the need for further supplementation, the CLC will have an opportunity to respond. Souther Decl. ¶ 16. After the OFA receives the necessary supplementation, the application can proceed to the "ready, waiting for active consideration list," or the "Ready List." Id. The next phase of review is "active consideration." See Id. ¶ 17. Active consideration petitions take precedence over Ready List reviews and technical assistance reviews. 25 C.F.R. § 83.10(b)(1). Currently, there are 10 pending active consideration petitions, nine pending

Plaintiff alleges that the BIA lied to several federal and local government officials, shredded documents, and estimates the BIA will take 40 years to resolve its petition for federal acknowledgment. Pl.'s Obj. to Def.'s Reply in Supp. of Def.'s Mot. at 1-2; Pl.'s Obj. to Def.'s Mot.; Compl. ¶ 6. Consequently, Plaintiff asks this Court to "immediately grant [the CLC] 'Judicial Recognition as a Tribe of Cherokee' and order the BIA to treat [the CLC] the same as all federally recognized tribes are treated," with all the accompanying benefits." Pl.'s Obj. to Def.'s Reply in Supp. of Def.'s Mot. at 2; see also Compl. ¶ 6.

Discussion

Plaintiff Is Not Represented by Counsel

Joe Sitting Owl White, "Principal Chief" by Order of the Council and Membership, filed the Complaint and application to proceed in forma pauperis on behalf of Plaintiff. Defendant moved to strike Plaintiff's complaint on the ground that Chief White has not presented evidence that he is an attorney, and that he lacks the requisite qualifications to bring suit on behalf of the Cherokee in this forum.[6] Plaintiff responded:

> We, The Cherokee of Lawrence County, TN, Object to 'Plaintiff's Motion to Proceed In Forma Pauperis be denied or stricken', [sic] on the basis [of a] . . . lack of understanding on the Defendant's part, as to the operation, and obligations of The Principal Chief that serves at the privilege of the Council, and Membership of the Tribe, that is considerably more than the whiteman's 'one's immediate family', [sic] the least of which is our Brother, Sister, and Mother . . . .

Pl.'s Obj. to Def.'s Resp. to Pl.'s Mot. to Proceed In Forma Pauperis at 1.

Section 1654 of Title 28 of the United States Code provides that "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654 (2000). The rule governing practice in the Court of Federal Claims provides: "An individual may represent oneself or a member of one's immediate family as a party before the court. Any other party, however, must be represented by an attorney who is admitted to practice in this court. A corporation may only be represented by counsel." RCFC 83.1(c)(8).

Rule 83.1 precludes nonattorneys from representing corporations. See Talasila, Inc. v. United States, 240 F.3d 1064, 1066 (Fed. Cir. 2001) ("The requirement of [former] Rule 81(d)(8) that a corporation be represented by an attorney in the Court of Federal Claims is clear,

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ready list petitions, and "several" petitions, like that of the CLC, awaiting technical assistance reviews. Souther Decl. ¶ 20.

[6] Chief White is not a member of the Court of Federal Claims bar, and, according to Defendant, is not admitted to practice in Tennessee.

unqualified, and . . . does not contemplate exceptions."). Further, under this Court's rule "any party" other than an individual or his immediate family member must be represented by counsel. As such, RCFC 83.1 precludes a nonattorney from representing an Indian tribe (federally acknowledged or nonacknowledged). But see Wolfchild v. United States, 68 Fed. Cl. 779, 799 (2005) (allowing a tribe to appear pro se as amicus curiae under limited circumstances).

Pro se representation of an Indian tribe has been permitted in another court where the tribe was federally acknowledged as a sovereign entity. See Fraass Survival Sys., Inc. v. Absentee Shawnee Economic Dev. Auth., 817 F.Supp. 7 (S.D.N.Y. 1993). In Fraass, the court allowed an agency of the Shawnee Tribal Government to represent the Tribe pro se, while reserving the right to order appearance of counsel, should "pro se conduct [cause] any injustice to the interests of [opposing party] or the Court." Id. at 11. Judge Lowe regarded the tribe's sovereignty and its dependency on the United States as creating an "expectation of responsible interaction with other sovereigns." Id. at 10.[7] However, an acknowledged Indian tribe which is not federally acknowledged is not considered a legal entity by the federal government. See Hopland Band of Pomo Indians, 855 F.2d 1573, 1576 (Fed. Cir. 1988) ("[I]n proper circumstances, Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory."); Kahawaiolaa v. Norton, 386 F.3d 1271, 1273 (9th Cir. 2004) ("[A]s far as the federal government is concerned, an American Indian tribe does not exist as a legal entity unless the federal government decides that it exists."). Because the CLC is not acknowledged to be an Indian tribe by the federal government, Fraass does not support permitting CLC to be represented by a nonattorney or to appear pro se by its Principal Chief in this action.

RCFC 83.1(c)(8) states that "[a]n individual may represent oneself or a member of one's immediate family as a party before the court," but that "[a]ny other party . . . must be represented by an attorney who is admitted to practice in this court." RCFC 83.1(c)(8). Because Chief White is not licensed to practice law, he may only represent himself or a member of his immediate family. Id. In his filing entitled "Plaintiff's Objection to Defendant's Motion dated March 31, 2006," Chief White intimates that the Principal Chief's obligations, and his relationship with CLC members creates a relationship closer than an "immediate family" which should permit him to represent the CLC pro se. See Pl.'s Obj. to Def.'s Resp. to Pl.'s Mot. to Proceed In Forma Pauperis at 1. While the RCFC do not specifically define "immediate family," the term generally is limited to one's "parents, spouse, children, and siblings." Black's Law Dictionary 273 (8th ed. 2004). Here, Chief White filed Plaintiff's complaint on behalf of the CLC -- not himself, nor a member of his immediate family as required by RCFC 83.1.

Because Chief White is not an attorney, he is unqualified to represent Plaintiff in this case. Therefore, the complaint must be stricken. See Lewis v. Lenc-Smith Mfg. Co., 784 F.2d 829, 830-31 (7th Cir. 1986) (Striking appearance and appellate brief filed by non-attorney on behalf of unrepresented litigant.); 7 C.J.S. *Attorney & Client* § 29 (2004) ("Any acts or steps of

[7] The Court in Fraass found that "an Indian tribe's status is a distinctive combination of sovereignty and dependency -- it is at once an independent nation and a ward of the state." 817 F.Supp. at 10.

the unauthorized petitioner will be disregarded and the papers and documents which he or she drafted should be stricken.").

Conclusion

Defendant's motion to strike Plaintiff's complaint is **GRANTED**.

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MARY ELLEN COSTER WILLIAMS
Judge