

In the United States Claims Court

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No. 102-63

(FILED MAY 14, 1987)

PIRTLE, MORISSET
SCHLOSSER & AYER

JESSIE SHORT, ET AL.,)
)
 Plaintiffs,)
)
 v.)
)
 THE UNITED STATES,)
)
 Defendant,)
)
 and)
)
 THE HOOPA VALLEY TRIBE OF INDIANS,)
)
 Defendant-Intervenor.)

THIS OPINION WILL NOT
 BE PUBLISHED IN THE
 U. S. CLAIMS COURT
 REPORTER BECAUSE IT
 DOES NOT ADD SIGNIFI-
 CANTLY TO THE BODY
 OF LAW AND IS NOT OF
 WIDESPREAD INTEREST.

William C. Wunsch, Ida O. Abbott, and Michael S. Greenberg, San Francisco, California, attorneys for the plaintiffs.

Pamela S. West, Harry H. Kelso, and Laura R. Ouverson, Washington, D.C., with whom was Assistant Attorney General F. Henry Habicht II, for the defendant.

Thomas P. Schlosser and Glenn W. Kadish, Seattle, Washington, attorneys for The Hoopa Valley Tribe of Indians.

OPINION ONE OF FIVE

MARGOLIS, Judge.

QUALIFICATION OF IRENE MAY FULTON STICKNEY, NO. 825,
 AND AUDREY SWANSON MELLO, NO. 1924,
 UNDER ELIGIBILITY STANDARDS A, B, OR THE
 MANIFEST INJUSTICE EXCEPTION

Irene May Fulton Stickney and Audrey Swanson Mello seek qualification as Indians of the Reservation to recover damages for breaches of trust arising from discriminatory per capita distribution of the unallotted resources of the Hoopa Valley Reservation. See Jessie Short, et al. v. United States, 719 F.2d 1133, 1137-38 (Fed. Cir. 1983), cert. denied, 467 U.S. 1256 (1984) (Short III). The defendant United States and the defendant-intervenor Hoopa Valley Tribe oppose plaintiffs' qualification, arguing that plaintiffs have no allottee ancestors, no ancestors eligible to receive an allotment, and insufficient ties to the Hoopa Valley Reservation. Trial was held in San Francisco, California from March 30, 1987 to April 4, 1987 to consider plaintiffs' qualification claims.

Irene Stickney argues that she qualifies under Standard A, Standard B, or the manifest injustice exception, and Audrey Mello asserts that she qualifies under Standard A or the manifest injustice exception. Both plaintiffs are members of the Swanson family, composed of thirty-eight (38) Short plaintiffs. Certain disputed factual issues presented by the two plaintiffs at trial are shared by other plaintiff members of the Swanson family. Thus, findings regarding these common factual issues will apply to other Swanson family plaintiffs who have not yet qualified.

The court concludes that Irene Stickney does qualify under Standard B and that Audrey Mello fails to qualify as an Indian of the Reservation.

DISCUSSION

Both plaintiffs claim that they qualify under Standard A based upon descent from a claimed allottee ancestor, Minerva Soctish. Standard A requires a plaintiff to have been alive on October 1, 1949 and be an allottee or lineal descendant of an allottee of the Hoopa Valley Reservation. Short III, 719 F.2d at 1143. Although plaintiffs were born within the relevant time period, they have failed to adequately prove lineal descent from Minerva Soctish or any allottee ancestor, and therefore their claim under Standard A fails.

Although Irene Stickney testified that Isabelle Soctish was a lineal ancestor, she first learned of this relationship approximately one week before trial. This claim is not supported by reliable evidence, nor is it contained in the voluminous documents collected

over the past two decades, or independently supported by consistent testimony. In sum, plaintiffs have failed to prove descent from Minerva Soctish by a preponderance of the evidence. Moreover, even if lineal descent through Isabelle Soctish was shown, Minerva Soctish's name appears on the unapproved Turpin Allotment Schedule. Without her receipt of an allotment in fact, she may not be considered an allottee within the meaning of Standard A.

Irene Stickney argues that she qualifies under Standard B since she was alive on October 1, 1949 and is a lineal descendant of an ancestor who qualifies under Standard B. Irene Stickney asserts that her great-grandmother Lucy Swanson and her grandfather Almonzo Swanson, a 1/4 blood Indian, were eligible for allotments on the Hoopa Valley Reservation, but failed to receive them. Lucy Swanson died in 1939 and was not alive or living on the Reservation on October 1, 1949, as required by Standard B, and therefore she may not be considered as an ancestor eligible for an allotment under Standard B. Lucy Swanson's eligibility to receive an allotment also is not supported by the evidence, as several letters by Department of Interior officials in 1919 expressed doubts about her rights to Reservation allotted land. The plaintiff has shown that Almonzo Swanson was alive on October 1, 1949, resided on the Hoopa Valley Reservation then, and had received Reservation benefits and services. The plaintiff has adequately demonstrated that Almonzo Swanson had "continuous use and association with a particular parcel" of Reservation land of the type contemplated under Standard B. Jessie Short, et al. v. United States, No. 102-63, Order at 3 (Ct. Cl. June 6, 1986) (Clarification Order - Standard B). Since Almonzo Swanson otherwise satisfies the requirements of Standard B, plaintiff Irene Stickney qualifies as an Indian of the Reservation under Standard B as his lineal descendant, and her manifest injustice claim need not be addressed.

Audrey Mello asserts that she should qualify as an Indian of the Reservation, arguing that strict application of the A - E Standards, to exclude her from recovery, would constitute manifest injustice. See Short III, 719 F.2d at 1138. However, the combination of her 1/8 Hoopa Indian blood ancestry, residence on the Reservation for about seven years, and a connection to the Reservation's land through residence and inherited interests in allotments does not constitute a sufficient nexus with the Hoopa Valley Reservation. To

qualify under the manifest injustice exception, a plaintiff must adequately demonstrate:

- 1) a significant degree of Indian blood,
- 2) personal connections to the Reservation shown through a substantial period of residence on the Reservation, and
- 3) personal ties to the land of the Reservation, and/or ties to the land through a lineal ancestor.

Weighing these three primary factors together will determine whether an individual plaintiff qualifies as an Indian of the Reservation under the manifest injustice exception.

Audrey Swanson Mello also cites visits to the Reservation, use of resources, residence near the Reservation, and participation in cultural activities as proof of her ties to the Reservation. These latter factors are given less weight than the three factors cited above, since "objective criteria are necessary and preferable" in determining which plaintiffs qualify as Indians of the Reservation, to facilitate the qualification process and expedite resolution of this twenty-four year old action. Short III, 719 F.2d at 1142. Although Audrey Mello indicates that her collateral relatives received allotments, and her ancestors were born on and have resided on the Reservation, these factors are not personal to her, and are not of significant weight in establishing a plaintiff's personal connections to the Reservation.

The manifest injustice exception will provide recovery only in a small number of cases, where strict application of the A - E Standards would be fundamentally unfair. Similarly, the manifest injustice exception will not provide for recovery for plaintiffs with tenuous ties to the Reservation, as this would not only be unfair to plaintiffs who have satisfied the more stringent requirements of the A - E Standards, but it would also undermine the entire qualification process. Therefore, although Audrey Swanson Mello has established ties to the land of the Reservation, she has lived on the Reservation for only about seven years, and her Indian blood ancestry is insufficient to establish qualification under the manifest injustice exception. Since she otherwise does not meet the requirements of the A - E Standards, her claim must be dismissed.

CONCLUSION

Plaintiffs' claims under Standard A is not supported by the evidence. Audrey Swanson Mello's connections to the Hoopa Valley Reservation are insufficient to qualify her under the manifest injustice exception, and her claim is dismissed. Plaintiff Irene May Fulton Stickney's lineal descent from Almonzo Swanson, who qualifies under Standard B as being eligible for an allotment, entitles her to qualify as an Indian of the Reservation under Standard B.

Lawrence S. Margolis
LAWRENCE S. MARGOLIS
Judge, U.S. Claims Court

May 14, 1987