In the United States Claims Court

No. 102-63

(FILED MAY 14, 1987)

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THIS OPINION WILL NOT BE PUBLISHED IN THE U. S. CLAIMS COURT REPORTER BECAUSE IT DOES NOT ADD SIGNIFICANTLY TO THE BODY OF LAW AND IS NOT OF WIDESPREAD INTEREST.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

MARGOLIS, Judge.

QUALIFICATION OF MARY CARPENTER, NO. 3399,
AND EMMA HAILSTONE MCBATH, NO. 3369,
UNDER THE MANIFEST INJUSTICE EXCEPTION,
AND ALBERT FRANKLIN HAILSTONE (DECEASED), No. 3538,
UNDER STANDARDS B, C, OR THE
MANIFEST INJUSTICE EXCEPTION

Mary Carpenter, Emma Hailstone McBath, and Albert Franklin Hailstone seek qualification as Indians of the Hoopa Valley Reservation (Reservation). Trial was held in San Francisco, California from March 30, 1987 through April 4, 1987 to determine plaintiffs' qualification.

The defendant United States and the defendant-intervenor Hoopa Valley Tribe assert that plaintiffs' connections to the Hoopa Valley Reservation are minimal and do not warrant qualification under manifest injustice. The defendants further argue that Albert Hailstone fails to meet the requirements of Standards B or C. The plaintiffs are members of the Hailstone family group composed of fifteen (15) Short plaintiffs. Certain factual issues presented by the three plaintiffs at trial are shared by members of the Hailstone family. Findings regarding common factual issues addressed in this opinion will apply to those remaining Hailstone family plaintiffs who have not yet qualified.

The court has considered the claims of the three plaintiffs and concludes that they have failed to establish a sufficient nexus with the Hoopa Valley Reservation to qualify as Indians of the Reservation. Albert Hailstone has also failed to establish entitlement under Standards B and C. Consequently, since plaintiffs cannot qualify under Standards A - E, and their exclusion from recovery does not constitute manifest injustice, plaintiffs' claims must be dismissed.

DISCUSSION

Mary Carpenter, Emma McBath, and Albert Hailstone seek qualification under the manifest injustice exception to the A - E Standards based upon their personal and ancestral connections to the Hoopa Valley Reservation. Plaintiffs assert that they each possess 1/8 Yurok or Hoopa blood, plus an additional 1/8 Yurok blood, for a total of 1/4 Indian blood. The defendant and defendant-intervenor argue that the plaintiffs possess only a total of 1/8 Indian blood of the Wintun Tribe, citing Applications for Enrollment with the Indians for the State of California (1928 Applications) of several of plaintiffs' ancestors and U.S. and Hoopa Valley Reservation censuses.

The primary disputed factual issue is the identity of plaintiffs' great-grandfather: specifically, whether he was Pinder Francis Bussell, a white man, or an Indian named Weitchpec Ned. If the latter individual was plaintiffs' ancestor, they would possess a total of 1/4, rather than 1/8 Indian blood. The plaintiffs argue that

they derive 1/8 Yurok or Hoopa Blood from their full-blood Indian great-grandmother Hettie Clark Bussell plus an additional 1/8 Yurok Indian blood from their claimed great-grandfather Weitchpec Ned. The defendants do not dispute the fact that Hettie Bussell was a full blood Indian, but argue that she was Wintun, not Yurok or Hoopa. Defendants' further contend that plaintiffs' great-grandfather was Pinder Bussell, a non-Indian, not Weitchpec Ned.

Plaintiffs offer the 1982 affidavit of George Nelson as proof of their claim of descent from Weitchpec Ned. Mr. Nelson indicated in his affidavit that he knew Weitchpec Ned and stated that Weitchpec Ned married an Indian girl by Indian custom, and had a daughter by her who later married a man named John Hailstone. Mr. Nelson indicated that this child was Nancy Hailstone, and plaintiffs offer this affidavit as sufficient proof to establish that she was a full blood Indian and the daughter of Weitchpec Ned. George Nelson signed the affidavit on January 22, 1982 when he was 96 years old, which would indicate that his birthdate was approximately 1886.

Gordon Lester Bussell, Short plaintiff no. 368, also testified at trial that his deceased grandfather told him that his ancestor Hettie Bussell was Hoopa, although Gordon Bussell also testified that she died several years before his grandfather was born. Gordon Bussell testified that in 1969 other deceased Hoopa Indian elders, Hiram Lack and Frank Colegrove, had told him that Hettie Bussell had a child by a Yurok man and subsequently married Pinder Bussell. The information contained in the recently completed Nelson affidavit and Gordon Bussell's testimony conflicts with numerous other written documents which consistently show that Pinder Bussell, a non-Indian, was plaintiffs' great-grandfather and that Nancy Hailstone, plaintiffs' grandmother, was 1/2 Indian, not a full blood.

The 1928 Application of William A. Bussell indicates that his mother Hettie Bussell was a full blood Wintun Indian, not Hoopa or Yurok, as plaintiffs maintain. The 1928 Application of Zachariah Hailstone, plaintiffs' own father, also indicates that Nancy Hailstone had 1/2 Wintun Indian blood from her mother Hettie Bussell, and it also states that Nancy had 1/2 white blood from her father, Pinder Bussell. The 1928 Application of Marrisa Hailstone Platz, plaintiffs' aunt, similarly shows that Nancy Hailstone was 1/2 Wintun Indian, not a full blood Hoopa or Yurok as plaintiffs maintain.

While the 1860 U.S. census indicated that Nancy Hailstone was "Indian," and the designation "H.B." or half-blood, which appeared on some census entries, was not used for her, later censuses suggest that she was not a full blood. The U.S. censuses for the years 1860 and 1870 indicate that Nancy Hailstone lived in the household of Hettie and Pinder Bussell, a non-Indian from Maine. The 1860 census shows that Nancy was three years old at that time, indicating that her birthdate was about 1857. Although no familial relationships are explicitly stated on the 1860 and 1870 censuses, the censuses for 1880 and 1900 show that Nancy Hailstone's father was from Maine, supporting the conclusion that her father was Pinder Bussell. The 1900 census also indicates that Nancy, and each of her children were under the designation "quattobreed Indian."

The defendant and defendant-intervenor argue that Weitchpec Ned (aka Ned Henderson or Ned Adams or Ned Hansen), was born about 1869, according to his 1953 Probate records, and therefore could not have been the father of Nancy Hailstone, who was born years earlier in 1857. Plaintiffs offer the 1914 Marriage License of Ned Henderson with an entry showing Ned Henderson's father's name as "Ned Weitchpec" and suggest that this second, older Weitchpec Ned was actually Nancy Hailstone's father. However, the 1928 Application of Ned Henderson (the younger Weitchpec Ned) indicates that his father died in about 1885. Thus, it is doubtful that George Nelson, himself born about 1886, could have been referring to this older Weitchpec Ned in his 1982 affidavit since the older Weitchpec Ned died at about the same time he was born. In sum, the weight of the evidence shows that plaintiffs' possess only 1/8 Wintun Indian blood, derived from Nancy Hailstone, a 1/2 Wintun Indian. This conclusion is further confirmed by the Indian Census Rolls of the Hoopa Valley Reservation from 1935 which list plaintiffs as possessing 1/8 Wintun blood.

To qualify as an Indian of the Reservation under the manifest injustice exception, a plaintiff must adequately demonstrate connections to the Hoopa Valley Reservation evidenced by:

1) a significant degree of Indian blood,

2) personal connections to the Reservation shown through a substantial period of residence thereon, and

3) personal ties to the land of the Reservation, and/or ties to the land through a lineal ancestor.

Weighing these factors together for each plaintiff, the denial of qualification of Mary Carpenter, Emma Hailstone McBath, and Albert Franklin Hailstone as Indians of the Reservation would not constitute manifest injustice. Although all three plaintiffs have lived near the Reservation for a substantial period of time, only Albert Hailstone actually lived on the Reservation. Mary Carpenter and Emma McBath's personal ties to the land of the Reservation are minimal, and none of plaintiffs' lineal ancestors were original allottees or assignees, or have demonstrated equivalent close ties to the land of the Reservation. Furthermore, as discussed above, all three plaintiffs possess only 1/8 Wintun Indian blood. Although Albert Hailstone resided on the Reservation for over thirty years, his blood degree is insufficient to allow qualification.

Albert Hailstone's claim under Standard C is also without merit since he possesses only 1/8 Reservation blood, rather than the 1/4 required by Standard C. See Short III, 719 F.2d at 1144. The remaining claim under Standard B also does not permit Albert Hailstone to qualify as an Indian of the Reservation since he has not adequately established that he was eligible for an allotment, was assigned land, or had other close ties to Reservation land.

The plaintiffs offer schooling on the Reservation, visits to the Reservation, utilization of natural resources, use of Reservation medical facilities, and an interest in their Indian cultural traditions to support their connection to the Reservation. These factors are not as significant as the objective criteria of blood, residence, and ties to the land, which constitute the matrix of the A - E Standards. Weighing together these primary factors of Indian blood, residence, and ties to the land of the Reservation does not justify plaintiffs' qualification under the manifest injustice exception.

CONCLUSION

Plaintiffs have failed to establish a sufficient nexus to the Hoopa Valley Reservation to qualify under the manifest injustice exception to the A - E Standards. Accordingly, since plaintiffs do not qualify as Indians of the Reservation under Standards B and C and exclusion from recovery would not be manifestly unjust, plaintiffs' claims are dismissed.

Lawrence S. Margolis

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

May 14, 1987