

In the United States Claims Court

No. 102-63

(FILED JANUARY 25, 1989)

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PIRTLE, MORISSET
SCHLOSSER & AYER

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

O R D E R

QUALIFICATION OF PLAINTIFFS UNDER ELIGIBILITY STANDARDS
B-E AND THE MANIFEST INJUSTICE EXCEPTION

The following plaintiffs filed motions seeking to qualify as "Indians of the Reservation" under various eligibility standards. The defendant United States and the defendant-intervenor Hoopa Valley Tribe (Tribe) oppose these motions. The plaintiffs are listed below:

<u>Plaintiff</u> <u>Number</u>	<u>Name</u>	<u>Standard</u>
0947	Zelma Bartow Green	B, C, MI
0940	Maxwell Alvin Green	B, MI
1105	Kathleen Eunice Henry	B, MI
0926	Judith Pauline Grant	B, MI
3162	Zelma Green Whipple Miller	B, MI
0943	Richard Green, Sr.	B, MI
3150	Clarence Bennie Whipple, Jr.	D, MI
3161	William Frank Whipple	D, MI
3147	Andrew Richard Whipple	E, MI
0936	Joyce Marie Green	D, MI

DISCUSSION

Plaintiffs, now living, seek entitlement as the lineal descendants of Zelma Bartow Green, deceased. Zelma Bartow Green was not a resident on the Hoopa Valley Reservation on October 1, 1949 as required for entitlement under standard B. Plaintiffs concede that Zelma Bartow Green resided in Eureka, California on that date. She does not, therefore, qualify under standard B. Likewise, Zelma Bartow Green's children, Maxwell Alvin Green, Kathleen Eunice Henry, Judith Pauline Grant, Zelma Green Whipple Miller and Richard Green, Sr., do not qualify under standard B because the court has determined that Zelma Bartow Green does not qualify under that standard. Because Zelma Green Whipple Miller does not qualify under standard B, her children, Clarence Bennie Whipple, Jr. and William Frank Whipple are not entitled to recover under standard D, nor is Andrew Richard Whipple entitled to recover under standard E. */

Zelma Bartow Green's entitlement under standard C and Joyce Marie Green's entitlement under standard D depend on whether Zelma Bartow Green meets all the requirements of standard C. A plaintiff must have been a resident on the reservation for 15 years prior to June 2, 1953 in order to qualify under standard C. Plaintiffs and the Tribe dispute the length of time that Zelma Bartow Green was a resident on the reservation. Plaintiffs allege that Zelma Bartow Green was a resident on the reservation for 18 years--from her birth in 1917 until 1931, and again from 1934 until 1939. The Tribe asserts that Zelma Bartow Green has, at the most, 9 years of residency.

*/ Clarence Bennie Whipple, Jr., William Frank Whipple and Andrew Richard Whipple also claim entitlement under standards D and E through their father, Clarence Whipple, Sr., whom they allege is a lineal descendant of an allottee eligible to recover under standard A. Clarence Whipple, Sr.'s entitlement is awaiting a decision in another set of motions. This decision only concerns the entitlement of Clarence Bennie Whipple, Jr., William Frank Whipple and Andrew Richard Whipple through their mother, Zelma Green Whipple Miller. A ruling on their entitlement through Clarence Whipple, Sr. must be deferred until Clarence Whipple, Sr.'s eligibility is fully determined.

The Tribe disputes the years 1917 to 1925 on the grounds that Zelma Bartow Green was not entered on the reservation school records until 1925 and on the basis of a statement by Zelma Bartow Green's younger sister, Eunice Bartow Marshall, that the family did not move onto the reservation until 1925. The residency period, therefore, could range from 9 to 18 years. Zelma Bartow Green's self-serving declaration, without any other supporting proof, does not convincingly establish that she was a resident on the reservation from 1917 to 1925. However, the school records and the declaration of Eunice Bartow Marshall, relied on by the Tribe, lead the court to conclude that the family did not move to the reservation until 1925. Accordingly, Zelma Bartow Green cannot be credited with residency from 1917 to 1925 and thus does not have the 15 years required to qualify for entitlement under standard C. Zelma Bartow Green's motion for entitlement under standard C and Joyce Marie Green's motion for entitlement under standard D are denied.

Plaintiffs also allege that Zelma Bartow Green is qualified to recover under the manifest injustice exception. In order to qualify under the manifest injustice exception, a plaintiff must have 1/4 Indian blood, approximately 10 years of residency on the reservation and personal ties to the land. While Zelma Bartow Green apparently has sufficient Indian blood and residency, she does not have the requisite personal ties to reservation land or ties to the land through a lineal ancestor. Zelma Bartow Green's periodic use of reservation land and her receipt of reservation benefits are not sufficient ties to qualify under the manifest injustice exception. Zelma Bartow Green's motion for entitlement under the manifest injustice exception is, therefore, denied.

Finally, the children of Zelma Bartow Green--Maxwell Alvin Green, Kathleen Eunice Henry, Judith Pauline Grant, Zelma Green Whipple Miller, Richard Green, Sr., and Joyce Marie Green--and her grandchildren--Clarence Bennie Whipple, Jr., William Frank Whipple and Andrew Richard Whipple--also seek to qualify under the manifest injustice exception. In order to qualify under the manifest injustice exception, a plaintiff must have resided on the reservation for at least 10 years. The plaintiff's initial and supplemental declarations are unconvincing and contradictory on this residency question. The declarations of the Whipple Brothers and Joyce Marie Green

fail to establish the required residency on their face. The remaining five plaintiffs, seek to transform periodic visits to the reservation into residency. This is insufficient. The manifest injustice claims of Maxwell Alvin Green, Kathleen Eunice Henry, Judith Pauline Grant, Zelma Green Whipple Miller, Richard Green, Sr., Joyce Marie Green, Clarence Bennie Whipple, Jr. and William Frank Whipple and Andrew Richard Whipple are, therefore, denied.

Plaintiffs would have this court re-examine and amend the the standards established for applying the manifest injustice exception. This argument underscores the weakness of plaintiffs' claims on these grounds. The standards for applying the exception have been extensively litigated, and the court is satisfied that they are appropriate. Nevertheless, it is too late in the day, and this case has advanced too far to consider amending the standards.

CONCLUSION

Zelma Bartow Green's claims under standards B and C and the manifest injustice exception are denied. The claims of Maxwell Alvin Green, Kathleen Eunice Henry, Judith Pauline Grant, Zelma Green Whipple Miller, Richard Green, Sr., Joyce Marie Green and Clarence Bennie Whipple, Jr., William Frank Whipple, and Andrew Richard Whipple (through their mother Zelma Green Whipple Miller), under standards B-E and the manifest injustice exception are also denied.

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