In the United States Claims Court

No. 102-63

(FILED JULY 31, 1989)

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

O R D E R

DENIAL OF QUALIFICATION OF MEMBERS OF THE MCCLUNG, BIGBY AND DELILAH CHARLEY FAMILIES AS ALLOTTEE DESCENDANTS

On September 1, 1987, the defendant United States moved for summary judgment with respect to certain plaintiffs listed for trial on March 30, 1987. The defendant-intervenor, Hoopa Valley Tribe (Tribe) filed a brief urging the court to grant defendant's motion. The plaintiffs oppose the motion. Plaintiffs include members of the McClung, Bigby and Delilah Charley family groups. The court has found that no genuine issues of material fact exist with respect to any of the plaintiffs' claims. Accordingly, the defendant's motion for summary judgment is granted.

DISCUSSION

Plaintiffs claim entitlement under eligibility standards A-E as lineal descendants of allotted ancestors. All three family groups contend that they are the lineal descendants of Mary Big Prairie, who they

allege was an allottee on the Hoopa Valley Reservation. Forty-seven of the Bigby plaintiffs also claim eligibility as the lineal descendants of Annie Crescent George, Allottee No. 237-H. The Delilah Charley plaintiffs claim eligibility through Pecwan Colonel, Allottee No. 262-H, and certain Delilah Charley plaintiffs also claim eligibility through Sally Starwin. The plaintiffs are listed by family group on the attached tables which were filed by the parties.

A. Standards Governing Summary Judgment

The defendant filed a motion for summary judgment under Rule 56 of the United States Claims Court contending that there are no genuine issues of material fact as to any of the plaintiffs' allegations that would warrant a trial and that the defendant is entitled to judgment as a matter of law. Plaintiffs oppose the motion maintaining that there are genuine triable issues with respect to the ancestral claims of each of the family groups.

The policies underlying Rule 56 emphasize the use of the procedure "to secure the just, speedy, and inexpensive determination of every action." Rule 1(a), RUSCC. Rule 56 is an integral part of the framework of the Rules and is intended to foster the prompt elimination of factually unsupported claims and defenses. See Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). The court finds the policies behind the rule particularly compelling in this case where the original complaint was filed over 25 years ago and a seemingly endless number of plaintiffs have come forward claiming entitlement to recover. The court is cognizant of the need to move the case forward to a final resolution. This case has substantially burdened judicial resources and the rights of qualified claimants have remained in limbo far too long. More than 400 plaintiffs who have already been judged qualified have died during the pendency of this protracted litigation. This determination should not be viewed, however, as an unwarranted procedural shortcut. The court has found that the plaintiffs' claims, standing alone, are wholly insufficient to withstand defendant's motion for summary judgment.

The central issue presented by the defendant's motion is whether the plaintiffs are in fact descended from certain allottees. It is clear that this issue is material to plaintiffs' entitlement. The inquiry must then proceed to whether there exists a genuine factual dispute over this issue. In determining whether to grant a motion for summary judgment, the court must assess the proof offered by the non-moving party independently

to determine whether a genuine issue exists for trial. As the Advisory Committee stated, "[t]he very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for a trial." Advisory Committee Notes to Rule 56. The court must not weigh the evidence. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

It is generally agreed that an issue is genuine if reasonable persons could disagree. If the evidence presented is such that only a single conclusion could reasonably be drawn from it, there is no need for a trial on the issue. Aydin Corp. v. Loral Corp., 718 F.2d 897, 902 (9th Cir. 1983). Rule 56 also requires that the moving party demonstrate that it is entitled to judgment as a matter of law. Liberty Lobby, 477 U.S. at 250. This showing has been held to be the same as that which would require a directed verdict under Rule 50(a) of the Federal Rules of Civil Procedure. Id. If the moving party's showing, independently, entitles it to judgment as a matter of law, the burden then shifts under 56(f) to the opposing party to "set forth facts showing that there is genuine issue for trial"--facts which, standing alone, would support the inferences urged by the opponent and preclude a directed verdict. RUSCC 56(f). The court must resolve any reasonable doubts against the moving party. Housing Corp. of America v. United States, 199 Ct. Cl. 705, 710, 468 F.2d 922, 924 (1972).

It should be emphasized in outlining these standards that general principles are difficult to articulate because factual circumstances vary so widely from case to case. A mere dispute over the facts will not, by necessity, preclude summary judgment. The legal question before the court is whether the factual issue is genuine--whether an inference adverse to the moving party, based on the opponent's showing is reasonable and sufficiently plausible to preclude judgment for the movant as a matter of law. In this regard, the court must be especially mindful of disputes involving the credibility of witnesses. The courts have long recognized that summary judgment is inappropriate where credibility presents a genuine issue. See SEC v. Koracorp Industries, Inc., 575 F.2d 692, 699 (9th Cir.), cert. denied, 439 U.S. 953 (1978). Where, however, credibility is irrelevant, and nothing could be gained by assessing the demeanor and veracity of the non-moving party's witnesses, summary judgment may be granted.

1. The Mary Big Prairie Ancestral Claims

All three family groups contend that they are the lineal descendants of Mary Big Prairie. The plaintiffs claim that Mary Big Prairie was the mother of three of their undisputed ancestors. The McClung plaintiffs claim descendancy through Nancy Wilson, the Bigby plaintiffs through Dree-qua-neh, and the Delilah Charley plaintiffs through Ellen Legion. The defendant and the Tribe assert that Mary Big Prairie died without issue and thus did not have any children through which the plaintiffs can claim descendancy. The defendant and Tribe also raise other questions, including whether Mary Big Prairie was an allottee in fact on the reservation because in 1901 she relinquished her reservation allotment, Turpin Patent No. 124, to receive an allotment on the public domain. It is unnecessary, however, to address these issues because the court has determined that no genuine issue exists requiring a trial on the question of whether Mary Big Prairie in fact had any children.

The defendant and Tribe have set forth evidence sufficient to establish that Mary Big Prairie died without issue as a matter of law. The defendant has produced numerous documentary records all confirming that Mary Big Prairie had no children. These records include documents and transcripts of testimony created during probate proceedings that consistently state that Mary Big Prairie died in 1905, the wife of one Big Prairie Charlie, and that the couple had no children. The Bureau of Indian Affairs (BIA) probated her estate in 1912 and determined that she died without issue. The probate was reopened in 1928 and it was again determined that she had no children. The probate proceedings of her husband, Big Prairie Charlie, reached the same conclusion. No children or grandchildren came forward at any of these proceedings to claim a share in Mary Big Prairie's estate, even though the persons plaintiffs allege to be her heirs were alive at the time. In addition, the geneological report of Bruce D. Thompson concludes that Mary Big Prairie was not the mother of the plaintiffs' ancestors.

This strong evidence, the court concludes is more than sufficient to entitle the defendant to judgment as a matter of law on plaintiffs' ancestral claims. The court's inquiry must now focus on the plaintiffs' showing to determine if the proffered evidence, standing alone, is sufficient to warrant a trial. The only evidence offered by the plaintiffs is "oral family history." The plaintiffs do not provide a shed of documentary proof, reliable or otherwise, to substantiate their

claims that the allottee Mary Big Prairie was the mother of their undisputed lineal ancestors.

Although the court acknowledges that "oral family history" may be admitted at a trial under the rules of evidence--admissibility is not the question at hand. The plaintiffs' completely self-serving, unsupported and frequently inconsistent statements are simply insufficient to persuade the court that a trial is necessary on this issue. Where, as here, the moving party's showing so overwhelmingly supports its factual contentions, the credibility and demeanor of the opposing party's witnesses becomes irrelevant. The court has concluded that a trial could serve no useful purpose and would unduly burden judicial resources already strained by this litigation. Accordingly, defendant's motion for summary judgment with respect to plaintiffs' claims to be the lineal descendants of Mary Big Prairie is granted.

2. The Bigby Claim to Eligibility Through Annie Crescent George

Forty-seven of the Bigby plaintiffs also claim eligibility as the lineal descendants of Allottee No. 237-H, Annie Crescent George. Plaintiffs base this contention on the testimony of Joseph T. Martin who claims that Annie Crescent George was the mother of Lewis Moorehead, their undisputed lineal ancestor. The defendant and the Tribe contend that Annie Crescent George was not the mother of Lewis Moorehead. The defendant and the Tribe acknowledge that Annie Crescent George gave birth to thirteen children, but allege that none of them was Lewis Moorehead. One of Annie Crescent George's children, Peter Crescent, was apparently also known by the name of "Louis." The defendant and Tribe contend, however, that Peter Crescent died at the age of 21 without issue some 25 years before the person known as Lewis Moorehead died and that the two persons are not the same.

The defendant has demonstrated that Peter Crescent was not in fact Lewis Moorehead, and that the Bigbys are not descended from Annie Crescent George as a matter of law. The defendant and the Tribe have offered overwhelming evidence in support of their position on this issue. This includes the 1916 BIA probate records of Peter "Louis" Crescent. The probate records list Peter's siblings--none is named Lewis. The probate records of Peter Crescent contain the testimony of several individuals, including his mother Annie Crescent George, each

verifying that Peter Crescent died in 1908 without issue.

In addition, the voluminous probate records of Annie Crescent George and her husband Lagoon George substantiate the defendant's position. Annie Crescent George and Lagoon George were not the parents of Lewis Moorehead. Lauretta Moorehead Martin's 1976 form declaration names Lewis Moorehead as her father and states that Lewis Moorehead died in 1933. It is beyond dispute, however, that Peter Crescent died long before then in 1908 and without children. That same form declaration lists Annie Crescent George not as a lineal ancestor, but as a "second cousin." The probate records of Annie Crescent George's mother, Mary Crescent, and her sister, Emma Crescent all lead to the same conclusion--Lewis Moorehead was not the son of Annie Crescent George. This evidence, the court is convinced, is more than sufficient to entitle the defendant to judgment as a matter of law on the Bigbys' ancestral claim.

Turning now to the plaintiff's evidence, the court finds the record completely wanting of proof demonstrating the need for a trial. Standing alone, the plaintiff's "oral family history"--consisting for the most part of the recent testimony of Joseph T. Martin--fails even to raise a plausible inference that the facts are as the plaintiffs suggest. Their story is based on self-serving amateur geneological research that is filled with contradictions of plaintiffs' own statements. Plaintiffs have not produced a single document to support their claim. The court has, therefore, concluded that a trial to determine whether Peter Crescent and Lewis Moorehead were the same person would be a wholly unwarranted waste of judicial resources. Accordingly, defendant's motion for summary judgment on the Bigby plaintiffs' claim to eligibility through Annie Crescent George is granted.

3. The Delilah Charley Claim to Eligibility Through Pecwan Colonel and Sally Starwin

Finally, the Delilah Charley plaintiffs claim eligibility as the lineal descendants of Allottee No. 262-H, Pecwan Colonel. Certain Delilah Charley plaintiffs also claim eligibility through Sally Starwin. Plaintiffs' first claim is based on the allegation that Delilah Charley's stepfather, Frank Colonel, was the same person as the allottee known as Pecwan Colonel. Plaintiffs assert that Sally Starwin was the mother of their undisputed ancestor Willie Scott. The plaintiffs

base these claims primarily on "oral family history" as recounted by Eunice Brommelyn, Loren Brommelyn and Betty Green. The defendant and the Tribe contend that Frank Colonel and Pecwan Colonel were two completely different persons. Frank Colonel, defendant alleges, died in 1899, while Pecwan Colonel died sixteen years later in 1915 and without children. The Tribe did not address the issue of whether certain Delilah Charley plaintiffs are descended from Sally Starwin. The defendant contends that Sally Starwin died without issue in 1904 and was not the mother of Willie Scott.

Regarding the claim of descent from Pecwan Colonel, the defendant has demonstrated that it is entitled to judgment as a matter of law. The defendant and Tribe have submitted overwhelming documentary proof establishing that Frank Colonel and Pecwan Colonel were not the same individual, and that the Delilah Charley plaintiffs are not descended from the allottee Pecwan Colonel. In support of this position, the defendant and Tribe submitted the probate records of Pecwan Colonel who died in 1915. These records indicate that Pecwan Colonel died without issue. It was determined that Pecwan Colonel's sole heirs were his niece, Jennie James, and two nephews, Henry Jack and Harry Waukell. Pecwan Colonel's probate records included the testimony of several individuals all verifying that Pecwan Colonel died in 1915 and had no children. Neither Delilah Charley nor any of her siblings claimed an interest in his estate.

The records associated with Frank Colonel also indicate that he was not the person known as Pecwan Colonel. The probate records of Frank Colonel's son, Henry Frank, indicate that Frank Colonel died in 1899 with one living son, John Frank. The records indicate that Delilah Charley was Henry Frank's half-sister--making Frank Colonel the stepfather of Delilah Charley, not Pecwan Colonel. Delilah Charley herself testified at the probate hearings of her half-brother, Henry Frank, and stated that her mother was Mary Colonel, that her natural father was unknown to her, and that Frank Colonel was her stepfather. Delilah Charley also filled out a 1928 BIA roll application on which she stated that she did not know her father. The same records also establish that the man known as Frank Colonel was never allotted any land, while Pecwan Colonel was, of course, an allottee. Thus, the overwhelming documentary proof submitted by the defendant and the Tribe indicates that the Delilah Charley plaintiffs are not descended from the allottee Pecwan Colonel.

The plaintiffs have not submitted evidence sufficient to convince the court that a trial is necessary on this issue. Once again the evidence submitted does not even rise to the level of creating a plausible inference that the facts are truly as plaintiffs allege. The only evidence tending to add any substance to their clearly self-serving and contradictory accounts is a March 18, 1976 letter from Barbara Ferris, a BIA Realty Officer to Chester Scott, one of the listed plaintiffs in the Delilah Charley plaintiff group. Apparently, the letter was sent as a response to a written request by Chester Scott for allotment information concerning several individuals Scott had identified. On the first page, the letter identified "Pecwan Colonel" as an allottee. On the second page, however, Ferris wrote: "Frank Colonel, aka Pecwan Colonel, died on December 22, 1915." Based on the evidence, this letter suggests either that Ferris erroneously believed, or was led to believe by Scott, that Frank Colonel and Pecwan Colonel were the same person. The date of death indicates that the allottee in question was in fact Pecwan Colonel. Frank Colonel died in 1899, not 1915, and had not received an allotment.

The remainder of the Delilah Charley plaintiffs' "oral family history," even combined with the March 18, 1976 letter, fails to convince the court that a trial is necessary. Accordingly, the defendant's motion for summary judgment on the Delilah Charley plaintiffs' claims to eligibility through the allottee Pecwan Colonel is granted.

Regarding the claim of descent from Sally Starwin, the defendant has likewise demonstrated that it is entitled to judgment as a matter of law. The documentary evidence indicates that Sally Starwin died intestate about 1904 with no issue. Any claim that Willie Scott was the son of Frank Yonkocket and Polly aka Sally Starwin aka Sallie Olds aka Sallie Old has no merit and does not present a triable issue. The probate files of Sallie Old, Allottee 342-H, reveal that she died intestate in 1909 having had one young son who predeceased her and leaving one daughter, Nancy Tewrup as her sole heir. Sallie Old, therefore, was not the mother of Willie Scott.

Plaintiffs' oral family history, contrary to and completely inconsistent with the documentary evidence, does not present a triable issue. Loren Brommelyn alleges that his aunt Laura Coleman told him that Sally Starwin was the mother of Willie Scott. Eunice Brommelyn

claims she knows the same from family history. Betty Green alleges that certain "old folks" in her family and Jimmy Hoppell told her that Sally Starwin was the mother of Willie Scott. While Betty Green alleges that Sally Starwin was known as Polly within the family, Loren Brommelyn alleges that Sally Starwin was known variously as Chundienah, Gerap, Polly Scott, Polly Starwin or Sallie Olds.

The Delilah Charley plaintiffs failed to establish that a genuine triable issue exists regarding their descendancy from Sally Starwin. The documentary evidence submitted by the defendant on this issue entitles it to judgment as a matter of law.

CONCLUSION

The court has determined that no genuine issues of material fact exist that would warrant a trial on the ancestral claims of the McClung, Bigby or Delilah Charley plaintiff groups as the lineal descendants of Mary Big Prairie. Nor do genuine issues exist on the Bigbys' descendancy claim through Annie Crescent George or on the Delilah Charley plaintiffs' descendancy claim through Pecwan Colonel and Sally Starwin. Accordingly, the defendant's motion for summary judgment on these issues is granted. The court has attached a tabular list prepared by the parties and filed with the court on November 18, 1988 naming the plaintiffs affected by this order. Plaintiffs' claims to entitlement under eligibility standards A-E are denied.

Lawrence S. Margolis

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

JESSIE SHORT V. USA
THE MARY BIG PRAIRIE MOTION
RIPE FOR RULING REPORT
SUBMITTED TO COURT 11-17-88

MOTION TITLE AND DATES OF FILING, RESPONSES, REPLIES DATE OF RIPENESS	PL	LAST NAME	FIRST NAME	STD MOT	FAMILY
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT FOR PLAINTIFFS LISTED FOR TRIAL ON MARCH 30, 1987. (MC CLUNG, BIGBY AND DELILAH CHARLIE FAMILIES-THE MARY BIG PRAIRIE MOTION)	0063	ALLEN	ELAINE YVONNE	A	DELILAH
	0275	BOMMELYN	EUNICE H.	A	DELILAH
	0276	BOMMELYN	LOREN JAMES	D	DELILAH
	0277	BOMMELYN	SHERYL IONE	D	DELILAH
	0278	BOMMELYN	VICKI LYNN	D	DELILAH
	0279	BOMMELYN	WILLIAM H.	D	DELILAH
	0345	BRUNDIN	KARA LEE	D	DELILAH
	0347	BRUNDIN, III	THOMAS HAYNES	D	DELILAH
	0348	BRUNDIN	ERIC FLOYD	D	DELILAH
	0349	BRUNDIN	LUANNA ELLEN	D	DELILAH
	0350	BRUNDIN	MARTA SUE	D	DELILAH
	0487	COLEMAN	LAURA SCOTT B. HOSTLER	A	DELILAH
	0531	COVEY	MEREDITH MAE RICHARDS	A	DELILAH
	0930	GREEN	BETTY JEAN HOSTLER	A	DELILAH
	0931	GREEN	BRENDA GAYLE	D	DELILAH
	0933	GREEN	DOYLE CARL	D	DELILAH
	0934	GREEN	EVELYN L. HENRY	A	DELILAH
	0935	GREEN	JOHN DOUGLAS	D	DELILAH
	0942	GREEN	NADINE JO ANN HENRY	A	DELILAH
	1175	HOSTLER	CHRIS E.	E	DELILAH
	1176	HOSTLER	ELMER ALVIN	A	DELILAH
	1177	HOSTLER	FRANK HAROLD	A	DELILAH
	1179	HOSTLER	PAMELA RAY	D	DELILAH
	1180	HOSTLER	ROBIN MARLENE	E	DELILAH
	1214	HUSBERG	MYRTLE VELMA	A	DELILAH
	1548	LOPEZ	BARBARA MAXINE RICHARDS	A	DELILAH
	2513	RICHARDS	DARLENE A. HOSTLER	A	DELILAH
	2516	RICHARDS	DEWAYNE	A	DELILAH
	2520	RICHARDS	ETTA MAE	A	DELILAH
	2521	RICHARDS	EUGENE CLYDE	A	DELILAH
	2530	RICHARDS	KIM MAXINE	D	DELILAH
	2536	RICHARDS	MATTIE J.	A	DELILAH
	2542	RICHARDS	VIOLA E. GREEN	A	DELILAH
	2543	RICHARDS, JR.	WALTER	A	DELILAH
	2684	SCOTT, SR.	CHESTER E.	A	DELILAH
	2685	SCOTT, JR.	CHESTER E.	A	DELILAH
	2688	SCOTT	ERNEST	A	DELILAH
	2690	SCOTT, SR.	FRED WILLIAM	A	DELILAH
	2691	SCOTT, JR.	FREDERICK W.	D	DELILAH
	2703	SCOTT	LUCINDA LEE	D	DELILAH
	2706	SCOTT	SHERMAINE	D	DELILAH
	2707	SCOTT	SHERRY LEE	A	DELILAH
	2711	SCOTT	YVONNE	A	DELILAH
	3352	BILLIE	KENNETH G.	A	DELILAH

U.S. MOTION FILED: 02-26-87
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PLTF RESPONSE: 04-05-88
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