

In the United States Claims Court

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

ZIONTZ, PIRTE, MUKISSET,
ERNSTOFF & CHESTNUT
No. 102-63
(FILED JULY 11, 1986)

ORDER

D & E PLAINTIFFS CLAIMING INDIAN BLOOD FROM
TERMINATED TRIBES

On April 30, 1985, the defendant-intervenor Hoopa Valley Tribe filed a motion for partial summary judgment as to 17 plaintiffs. These plaintiffs claim Indian blood from terminated tribes to establish the 1/4 degree of Indian blood required under Eligibility Standards D and E. The plaintiffs oppose the motion.

For reasons discussed below, the court denies the Hoopa Tribe's motion.

DISCUSSION

The Hoopa Tribe argues that 17 plaintiffs cannot be considered "Indians of the Hoopa Valley Reservation" because, as a matter of law, they lack the 1/4 degree of Indian blood needed to qualify under Eligibility Standards D and E. This is true, the Hoopa Tribe argues, because blood from a tribe terminated by statute cannot be considered "Indian blood" and because each of the plaintiffs has less than 1/4 Indian blood when terminated blood is omitted from their genealogy.

Blood from a terminated tribe refers to blood inherited from a tribe no longer recognized as Indian under federal law. Commencing in 1954, Congress embarked on a program to assimilate Indian tribes into society by selling tribal assets, turning the proceeds over to tribal members, and declaring that the federal government would no longer recognize the tribes or their individual members appearing on the final tribal rolls as "Indians."

Congress' termination program has since fallen into disfavor. Relevant here, however, are the Western Oregon Indians Termination Statute, 25 U.S.C §§ 691-708, and the Klamath Indians Termination Statute, 25 U.S.C. §§ 564-564x. These statutes affect tribes through whom the plaintiffs claim "Indian blood." The language of the Western Oregon Indians Termination Statute is exemplary of both statutes and reads in part:

The purpose of this subchapter is to provide for the termination of Federal supervision over the trust and restricted property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, for the disposition of federally owned property acquired or withdrawn for the administration of the affairs of such Indians, and for a termination of Federal services furnished such Indians because of their status as Indians.

* * * * *

Upon removal of Federal restrictions on the property of each tribe and individual members thereof, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and its members has terminated. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians, excluding statutes that specifically refer to the tribe and its members,

shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

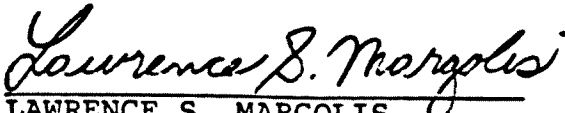
25 U.S.C §§ 691, 703(a) (1982) (emphasis added).

The Hoopa Tribe argues that the plaintiffs here are barred from receiving money judgments because the funds awarded would represent federal services furnished because of the plaintiffs' status as Indians. However, this litigation is not concerned with an award based on the plaintiffs' status as Klamath or Western Oregon Indians; this litigation concerns money to be paid to plaintiffs qualified as Indians of the Hoopa Valley Reservation.

Already established in this case is that affiliation with more than one tribe does not necessarily affect a plaintiff's ability to collect a money judgment or to be determined an Indian of the Reservation. See Short, et al. v. United States, 719 F.2d 1133, 1141 (Fed. Cir. 1983); see also opinion of March 31, 1982 at 45-48. (Schwartz, J.). Hence, plaintiffs can have dual status as members of another tribe and as Indians of the Hoopa Valley Reservation.

Indian status can remain for some purposes even after termination. See Menominee Tribe v. United States, 388 F.2d 998, 1000-01 (Ct. Cl. 1967), aff'd, 391 U.S. 404 (1968). Moreover, given the history and purpose of Standards D and E, the court believes the "¼ degree Indian Blood" as used in this litigation connotes Indian blood in an ethnological, and not in a federal or governmental sense. See Opinion of March 31, 1982 at 45-48.

The Hoopa Tribe's motion for partial summary judgment is denied.


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