

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THIS OPINION WILL NOT
 BE PUBLISHED IN THE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 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 TWO OF FIVE

MARGOLIS, Judge.

QUALIFICATION OF PHYLLIS DARTT JURIN, NO. 1347,
 VIOLET RAILS WARREN, NO. 3108,
 AND VERA KIMSEY WILKINSON, NO. 3216,
 UNDER STANDARD A OR THE MANIFEST INJUSTICE EXCEPTION

Phyllis Dartt Jurin, Violet Rails Warren, and Vera Kimsey Wilkinson seek qualification as Indians of the Hoopa Valley Reservation (Reservation). Qualification will enable plaintiffs to recover damages for breaches of trust arising from discriminatory per capita distribution of unallotted Reservation resources. 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 not proven lineal descent from an allottee ancestor and lack sufficient ties to the Reservation.

The three plaintiffs are members of the Campbell and Campbell/Dartt families, composed of fifty (50) Short plaintiffs. Some factual issues held by the three plaintiffs presented at trial are shared by members of the Campbell and Campbell/Dartt families. Findings regarding common factual issues addressed in this opinion will apply to the remaining Campbell and Campbell/Dartt plaintiffs who have not yet qualified. The court has considered plaintiffs' claims and after trial held from March 30, 1987 through April 4, 1987, concludes that none of the three plaintiffs have adequately proven qualification under Standard A or the manifest injustice exception.

DISCUSSION

The plaintiffs claim that they qualify under Standard A based upon descent from allottee ancestors, Minerva Socktish or Old Woman Jacko. Standard A requires a plaintiff to be a Reservation allottee living on October 1, 1949, or a lineal descendant of an allottee living on October 1, 1949. Short III, 719 F.2d at 1144. The three plaintiffs were living on October 1, 1949. However, plaintiffs have failed to adequately prove lineal descent from Minerva Socktish, Old Woman Jacko, or any other allottee ancestor and therefore cannot qualify under Standard A. This recently developed claim is not supported by a preponderance of the evidence through adequate documentation, nor by consistent testimony. In sum, plaintiffs have failed to carry their burden of proof. Moreover, even if lineal descent from Minerva Socktish or Old Woman Jacko was shown, these names simply appear on the unapproved Turpin Allotment Schedule. Unless an ancestor actually received an allotment, the ancestor may not be considered an allottee within the meaning of Standard A.

The remaining claims under the manifest injustice exception also do not provide for recovery for these three plaintiffs, as their Indian blood ancestry and contacts with the Hoopa Valley Reservation are not sufficiently strong to warrant qualification. To qualify as an Indian of the Reservation under the manifest injustice exception, a plaintiff must adequately show a nexus with the Reservation based upon the following factors:

- 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.

Under this three-part test, plaintiffs Phyllis Dartt Jurin, Violet Rails Warren, and Vera Kimsey Wilkinson, have failed to establish sufficiently strong connections to the Hoopa Valley Reservation to qualify under the manifest injustice exception.

Phyllis Jurin does possess 1/4 Hoopa Indian blood. However, she has lived on the Reservation for only six months. Her personal ties to the land of the Reservation are minimal, and her lineal ancestors were not original allottees or assignees, nor did she demonstrate that she had a lineal ancestor with other strong ties to land on the Reservation. Violet Rails Warren possesses only 1/8 Hoopa Indian blood, has never lived on the Reservation, and has minimal personal or ancestral connections to the land of the Hoopa Valley Reservation.

Vera Wilkinson has proven that she possesses 1/8 Hoopa blood, which is not contested. However, she also claims additional Indian blood of another tribe, but has offered no supportive evidence for this claim, nor could she even identify the tribal affiliation of this additional Indian blood. This unsubstantiated claim to additional Indian blood cannot be adequately verified and will not be considered since the plaintiff has failed to carry her burden of proof. Nonetheless, even assuming that she had a sufficient blood degree, the same result would obtain, since Vera Wilkinson has never lived on the Reservation nor has she adequately demonstrated that her lineal ancestors had strong ties to Reservation land.

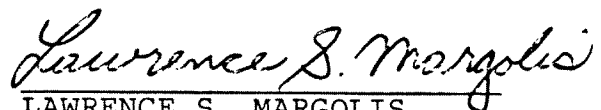
Violet Warren, who possesses 1/8 Hoopa blood and has never resided on the Reservation, also has not made a showing of strong personal ties to Reservation land.

The plaintiffs argue that they have received educational and medical services on the Reservation, have visited the Reservation, have used natural resources, and also cite an interest in their Indian cultural traditions to support their claim. However, 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. Objective factors for qualification are necessary and preferable to more subjective criteria, "to avoid protracted further proceedings in this already too-prolonged litigation." Short III, 719 F.2d at 1142. Consequently, under the three-part manifest injustice test, plaintiffs' have failed to establish a strong connection with the Hoopa Valley Reservation.

This court's determination is limited to the purposes of this litigation and should not otherwise affect a plaintiff's eligibility for membership in any Indian tribe, the rights derived from such membership, or rights otherwise available under federal law.

CONCLUSION

Plaintiffs' claims under Standard A are not supported by the evidence since plaintiffs have failed to adequately demonstrate lineal descent from an allottee ancestor of the Hoopa Valley Reservation. Moreover, 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, their claims must be dismissed.


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

May 14, 1987