

IN THE COURT OF INDIAN APPEALS  
FOR THE PONCA TRIBE OF INDIANS OF OKLAHOMA  
ANADARKO, OKLAHOMA

COURT OF INDIAN APPEALS  
**FILED** In The  
Office Of The Court Clerk

AUG 07 2009

GEORGINA A. SIMPSON, )  
PLAINTIFF, )  
vs. )  
PONCA TRIBAL ELECTION BOARD, )  
DEFENDANTS. )

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IN JOURNAL ON PAGE  
By MARGARET L. KOMALTY, Court Clerk Deputy

Trial Case No. CIV-09-01  
Appeal Case No. CIV-09-A03P

*Opinion by Cliff Shelling* OPINION

This matter comes before the Appellate Court upon the appeal of the Ponca Tribe of Oklahoma Election Board (Defendants) of an Order filed January 29, 2009, an Order filed June 11, 2009, and a Decision filed June 11, 2009, in the case below styled Georgina A. Simpson (Petitioner) vs. Ponca Tribal Election Board, (Defendants).

On December 20, 2008, the Ponca Tribe of Indians of Oklahoma held a regularly scheduled tribal election to fill four (4) positions on the Tribal Business Committee. On December 23, 2008, Petitioner filed a protest of the election with the Ponca Tribal Election Board. On January 5, 2009, the Ponca Tribal Election Board denied Petitioner's protest and certified the results of the election. On January 6, 2009, Petitioner requested an Emergency Temporary Restraining Order to prevent the successful candidates from the December 20, 2008, election from being sworn in as members of the Ponca Tribal Business Committee. On January 9, 2009, the Honorable Charles H. Tripp denied the request for an Emergency Temporary Restraining Order and set the matter for a hearing on the merits on January 30, 2009. On January 28, 2009, the Judge ordered Defendants to provide Petitioner and the Court with copies of documents that were, according to the Order filed on January 29, 2009, previously ordered by the Court on January 7, 2009, to be submitted to the Court by January 14, 2009. Defendants

dispute this portion of the Order and allege that it was their understanding that the documents were to be produced at the hearing. Because neither Petitioner nor the Court had an opportunity to review the documents, the Court continued the hearing scheduled for January 30, 2009, and ordered Defendants to produce the documents within five (5) days from the date the Order was filed (by February 3, 2009), and further ordered that Defendants would be sanctioned \$100.00 for causing the continuance and in addition if the documents were not submitted by February 3, 2009, Defendants would be sanctioned \$25.00 per day with the sanction period being retroactive to January 15, 2009, and not ending until the documents were submitted.

In the Decision filed on June 11, 2009, the Judge determined that Defendants had not followed the provisions of the Tribal Election Ordinance regarding absentee voting and that the outcome of the election had been affected to a mathematical certainty by the voting irregularities. The Court, therefore voided the election. The Court further ordered that a new election be held on August 8, 2009, and established election rules and procedures to follow for the election. The Court further ordered that the Business Committee members elected on December 20, 2008, should remain in office until a new election was held, the results certified and the successful candidates sworn in as members of the Business Committee.

In the Order filed on June 11, 2009, the Judge ordered Defendants LeClair, Sfagidas, Lay and Sletto to perform 97 hours of community service to pay for their court ordered sanctions.

From these Orders and Decision Defendants appeal.

The Court of Indian Appeals has jurisdiction to hear this matter pursuant to 25 C.F.R. Section 11.118 which provides in part: "(a) A Court of Indian Offenses may not adjudicate an election dispute, take jurisdiction over a suit against a tribe, or adjudicate any internal tribal government dispute, unless the relevant tribal governing body passes a resolution, ordinance, or

referendum granting the court jurisdiction." The relevant governing body for the Ponca Tribe is the Business Committee. See Ponca Tribal Constitution, Article III, Section 1. The Ponca Tribal Business Committee may, if it deems appropriate, establish a Tribal judicial system to which it may delegate some or all of the judicial power of the Tribe. See Ponca Tribal Constitution, Article VIII, Section 2A. The Ponca Business Committee has, pursuant to the above section of the Constitution granted appellate jurisdiction to this Court by Resolution #21-041309.


The decision of the Court below to invalidate the election of December 20, 2008, is not part of this appeal. See Ponca Tribal Constitution, Article IV, Section 5, which provides in part: "In the event protests are not resolved, they shall be referred to the Ponca tribal court, or other forum of competent jurisdiction, which shall conduct a judicial review on the record of the proceedings before the Election Board, and shall render a decision which shall be final and may not be further appealed." The Court properly exercised its authority to conduct a judicial review of the proceedings before the Election Board. However, once it had voided the election of December 20, 2008, it did not have the authority to mandate when an election should occur, what the procedures would be for that election, who could run for office, or who would comprise the members of the Business Committee until a new election could occur. All of these issues are within the province of the powers retained by the Tribe and should be determined by the Tribe pursuant to the Tribal Constitution and Election Ordinance.

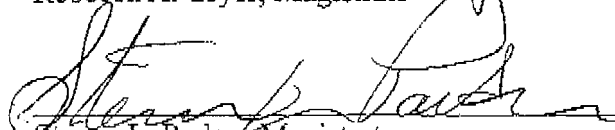
Article IV, Section 4, of the Tribal Constitution provides that all tribal elections shall be conducted pursuant to the Election Ordinance. The Election Ordinance procedures for conducting an election must not, therefore be supplanted by an order of the Court. Article III, Section 2, of the Tribal Constitution provides that the term of a Business Committee member shall be extended until a successor has been duly elected and certified. The Court is without

authority to change the provisions of the Constitution. The Court has limited jurisdiction and must follow the procedures outlined in the Tribal Constitution and Tribal Ordinances. Accordingly, all of the orders contained in the Decision filed June 11, 2009, are vacated except the non-appealable order voiding the election of December 20, 2008.

In the matter of the Orders filed January 29, 2009, and June 11, 2009, the Court finds that the order for sanctions should be remanded to the Court below with instructions to conduct a show cause hearing which will allow Defendants to present any defenses or mitigating circumstances to the Court.

Entered on this 7th day of August, 2009.

  
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Rebecca A. Cryer, Magistrate

  
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Steven L. Parker, Magistrate

  
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Cliff Shilling, Magistrate