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TRIBAL COURT CLERK



FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

In the Matter of:)	Case No.: EC-0001-2022
JUNE 14, 2022 GENERAL ELECTION)	
CONTEST OF DISTRICT II SAWYER)	FINAL DECISION
REPRESENTATIVE,)	
)	
NAOMI NORTHRUP,)	
Contester.)	

This matter was heard on June 27, 2022. The following persons appeared for the hearing:

- Naomi Northrup – Contester
- Andrew Adams III – Attorney for the FDL General Reservation Election Board
- Lorenzo Guidino– Attorney for the FDL General Reservation Election Board
- Lisa Shabaiash – Chair, FDL General Reservation Election Board
- Carol Wuollet - Witness
- Sherry LaFave – Witness
- Bradley “Raff” Blacketter – District II Candidate

On June 21, 2022, Ms. Northrup timely filed a Notice of Contest with Mr. Gary Frazer, Executive Director of the Minnesota Chippewa Tribe, and the Election Contest Judge as required by MCT Election Ordinance (Revised 12/14/2021). Ms. Northrup alleged that the FDL General Reservation Election Board (“Board”) violated the MCT Election Ordinance in its actions related to the June 14, 2022, FDL General Election when:

1. Ballots were not received by the General Election Board in accordance with the Election Calendar;
2. Absentee voters were not required to sign an Absentee Ballot Request form in violation of MCT Election Ordinance Sec. 2.2(B)(1);
3. In person voters were not properly instructed on voting procedure in violation of MCT Election Ordinance 2.2(A)(1);
4. Voters did not vote in privacy and the voting office was not properly staffed on election day in violation of MCT Election Ordinance Sec. 2.2(A)(5);
5. Ballot boxes were not properly secured, and the closing of voting procedures were not properly followed in violation of MCT Election Ordinance Sec. 2.2(A)(3);

FINAL DECISION

Fond du Lac Reservation
Office of the Election Contest Judge
Mailing Address: 1720 Big Lake Road Cloquet, MN 55720
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6. The General Election Board only permitted first time voters to complete an “At-Large” ballot and did not allow voters to change their districts in violation of MCT Election Ordinance Sec. 2.2(B)(1);
7. There was confusion surrounding the MCT Referendum vote;
8. The General Reservation Election Board Chair violated her duty and obligations as the chair in violation of MCT Election Ordinance Sec. 1.7(A);
9. The Absentee voting box was not properly locked during the voting process in violation of MCT Election Ordinance Sec. 2.1(A)(2);
10. Eligible in-person absentee voters were not given proper voting documents in violation of MCT Election Ordinance Sec. 2.2(B)(1);
11. Eligible in-person absentee voters were not required to complete their voting documents as required in violation of MCT Election Ordinance Sec. 2.2(B)(3); and
12. The Sawyer Election Board did not properly secure the ballots or properly transport the ballot box or follow close of tally procedures in violation of MCT election ordinance 2.3(D).

The Court heard the testimony of Ms. Northrup, Contester; Lisa Shabaiash, Chair, FDL General Reservation Election Board; Carol Wuollet, General Election Clerk and witness for Ms. Northrup; and Sherry LaFave, District III Election Board Clerk and witness for Ms. Northrup.

The following exhibits were offered and accepted by the Court, without objection:

Board’s Exhibit #1 – February 10, 2022, Fond du Lac Reservation Business Committee Letter to MCT Executive Director;

Board’s Exhibit #3 – Fond du Lac Reservation General Election June 14, 2022, Official Results;

Board’s Exhibit #5 – A copy of the MCT Election Ordinance (Revised 12/14/2021); and

Board’s Exhibit #6 – A sign that says: “No Pictures allowed in the Election office. Thank you Election Staff.”

PROCEDURAL HISTORY

1. Within her Notice of Contest, Ms. Northrup sought discovery of certain documents held by the FDL General Election Board (“Board”).

2. Within her Notice of Contest, Ms. Northrup included a discovery request and attached certain documents as exhibits. The documents either did not include a date, or were dated prior to the April 5, 2022, primary election, and, therefore are not relevant to this General Election Contest. Furthermore, the documents were not offered as exhibits nor was any testimony received to authenticate the documents during the Contest. The documents were not considered by the Court.
3. On June 23, 2022, the Court entered a Notice and Order Setting Election Contest Hearing Date for June 27, 2022, at 1:00 p.m.
4. On June 24, 2022, the Board filed its Response and Affidavit of Lisa Shabaiash in Support of Fond du Lac General Reservation Election Board's Response.
5. On June 24, 2022, the Court entered and served on all parties its Discovery Order. This Order denied Ms. Northrup's discovery request because Ms. Northrup did not provide the Court with any reasoning to show that the discovery she requested would materially assist in making a decision on the outcome of the Contest. The Order required the parties to meet and confer regarding Ms. Northrup's request for discovery. The Order also set forth a schedule for any remaining discovery motions.
6. On June 27, 2022, at 8:57 AM, the Board filed its Motion to Deny Discovery and Brief in Support of Motion to Deny Discovery.
7. On June 27, 2022, at 9:38 AM, Ms. Northrup filed her Response. Ms. Northrup included certain documents as exhibits with her Response. The documents either did not include a date, or were dated prior to the April 5, 2022, primary election, and, therefore are not relevant to this General Election Contest. Furthermore, the documents were not offered as exhibits nor was any testimony received to authenticate the documents during the Contest. These documents were also not considered by the Court.
8. At the hearing on June 27, 2022, Ms. Northrup appeared without the assistance of counsel or an advocate and was given appropriate leeway in presenting her case as a pro se litigant.
9. At the hearing, several MCT Tribal Members and individuals of the public appeared to observe the proceedings. The Board moved to close the hearing to the general public, with the exception of Fond du Lac Band Members being permitted to observe. The Board argued that the nature of hearings and privacy of the Band's election process required the hearing to be closed to the general public. Ms. Northrup argued that the MCT Election Ordinance is applicable to all Minnesota Chippewa Tribal Members. The Court denied the Board's motion to close the hearing to the public because the Fond du Lac Tribal Court holds public hearings in its civil matters and other MCT Tribal Members have an interest in hearing matters related to the MCT Election Ordinance.

10. District II Candidate Brad (Raff) Blacketter was present throughout the hearing but did not request to provide an offer of proof or otherwise respond to the allegations in the Notice of Contest.
11. The parties agreed that individuals who may be called as witnesses should be sequestered so as not to be swayed by the testimony of other witnesses. The parties identified individuals who were anticipated to be called as witnesses to vacate the Courtroom until called to testify, with the exception of Ms. Shabaiash who was present in her official capacity as Chair of the Board and a party in the proceedings.
12. At the onset of the hearing, discovery issues remained open. The Court construed this as Ms. Northrup renewing her motion for discovery. The Court heard arguments on the cross-motions for discovery. Ms. Northrup identified the remaining documents she was seeking in her discovery request. Ms. Northrup argued that the 306 absentee votes in the at large contest would show patterns of inconsistency and disregard by the Board Chair and that the actual counts of those numbers would affect the outcome of the election. The Board confirmed that some of the discovery documents had been provided to Ms. Northrup in the Board's Response, additional discovery documents were provided during the parties meet and confer e-mail conference on June 24, 2022, and additional discovery was provided to Ms. Northrup by the Board at the outset of the hearing. The Board argued that the remaining discovery sought by Ms. Northrup was privileged and not related to her District II Contest, and therefore, not material to this election contest. Specifically, the Board argued that the 306 absentee votes in the at large contest had not declared a district and were unable to vote for District II, and therefore, were irrelevant. the Board further argued that the 306 at large absentee votes are irrelevant because they will not prove the tendency to make more or less probable the outcome of the District II election. Finally, the Board argued that the discovery requested by Ms. Northrup was irrelevant to Northrup's District II contest and would not materially assist the Court in making a decision on the Contest. The Court found the arguments of the Board persuasive and denied Ms. Northrup's discovery request and granted the Board's motion to deny discovery.
13. Testimony during the hearing was limited to the issues material to Ms. Northrup's candidacy and the operations of the Board, both specifically related to the District II General Election on June 14, 2022. Therefore, testimony and arguments related to the MCT referendum were not heard due to being outside the scope of the proceedings before the Court.

FINDINGS OF FACT

1. Naomi Northrup was a candidate in the June 14, 2022, FDL General Election for District II (Sawyer) and was therefore qualified to contest this election.
2. Naomi Northrup timely filed her Notice of Contest at the Office of the FDL Reservation Election Judge on June 22, 2022.

3. Naomi Northrup timely filed her Notice of Contest with the Executive Director of the Minnesota Chippewa Tribe on June 22, 2022.
4. At the hearing, the testimony and arguments focused on the absentee voting process; the management of the District II election office on the day of the election; the election day close out process at District II; and transportation of the District II ballots.
5. The Fond du Lac Reservation Business Committee (“RBC”) conducted their lottery for the ballot listing of candidate names on May 11, 2022. Shabaiash Affidavit at Para 4. The Election Board received the general election ballots on May 17, 2022. Shabaiash Affidavit at Para 5. The Election Board began processing in-person absentee ballots on May 18, 2022. Shabaiash Affidavit at Para 5.
6. Voters were permitted to request mail-in absentee votes from the Election Board by emailing, faxing, or mailing in their signed written request forms. Shabaiash Affidavit at Para 6. If the Election Board received a request for an absentee ballot to be mailed to a voter, then an absentee ballot was mailed to that voter. Shabaiash Affidavit at Para 6.
7. Voters who appeared in-person to request an absentee ballot were required to cast their ballot with the General Reservation Election Board on the same day. The Election Board required these “in-person absentee voters” to electronically sign the Election Board’s election iPad as their signed written request for an absentee ballot. Shabaiash Affidavit at Para 6. The Election Board accepted the voter’s digital signature on the iPad as the physically signed written request delivered by electronic means for in-person absentee voters. The “in-person absentee voters” were given neither an inner envelope, nor a pre-addressed outer envelope with space for an affidavit, in which to place their ballot in.
8. There was only one “in-person absentee voter” allowed to vote at a time. Testimony of C. Wuollet.
9. The election office had pens and pencils available for use by the voters to complete their election ballots. Testimony of L. Shabaiash; and Shabaiash affidavit at Para 7. The ballot machine was capable of reading ballots marked in either pen or pencil. Shabaiash testimony; and Shabaiash affidavit at Para 7.
10. When a voter had questions on how to use the ballot machine an Election Board Member would show the voter how to use the machine. Testimony of C. Wuollet. The Election Board Member would then walk away so as to provide privacy for the voter when using the machine. Testimony of C. Wuollet.
11. The majority of the “in-person absentee voters” were for to the General Election. A total of 306 of the 309 total absentee ballots were cast for the Secretary/Treasurer election and not relevant to the District II contest. Naomi Northrup Contester Response [to the Boards Motion to Deny Discovery]; Board’s Ex. 3.

12. A couple of times during “in-person absentee” voting, a voter’s district was incorrectly listed on the iPad. Testimony of LaFave. During these times, the General Election Chair directed the Election Board not to change the district that the voter was to vote in. Testimony of LaFave. No one could testify with certainty whether or not any voter from District II had an incorrect district listed as their voting district when they appeared for “in-person absentee” voting.
13. On June 14, 2022, District II Election Board Chair Jason Ojibway, and District II Election Board Members Juanita Fineday, Ryan Barney and Jean Dufault were present at the District II polling location in Sawyer, MN. Later that morning, District II Election Board Chair Jason Ojibway left the election office for the day due to illness. Testimony of L. Shabaiash. The only time an Election Board member would leave the polling site was for a cigarette break. Testimony of Wuollet.
14. At the close of the election at 8:00 p.m. on June 14, 2022, members of the District II Election Board completed the counting of votes at the District II polling site in Sawyer. Testimony of L. Shabaiash and C. Wuollet. The tally of votes was completed by District II Election Board Members Ryan Barney and Juanita Fineday and General Election Board members Lisa Shabaiash and Carol Wuollet. Testimony of L. Shabaiash. At the completion of the counts, Barney, Fineday, Shabaiash and Wuollet signed the tally of votes and placed it in a secure locked box with zip ties on bins. Testimony of C. Wuollet and L. Shabaiash. The zip ties had identification numbers printed on them for security purposes. Testimony of L. Shabaiash. Juanita Fineday, Lisa Shabaiash, and an officer transported the locked ballot boxes to the General Reservation Election office. Testimony of L. Shabaiash.
15. Ms. Northrup received 77 of a total 142 votes cast in the District II election, or 36.49% of the vote. Shabaiash Affidavit Ex. 3. Of those 77 votes, 40 were either “in-person absentee” or absentee votes; whereas, the successful District II candidate only received 27 total “in-person absentee” or absentee votes. *Id.*

DISCUSSION

The provisions of MCT Election Ordinance (Revised 12/14/2021) govern the contest of the June 14, 2022, Fond du Lac Reservation General Election.

Chapter III, Section 3 of the MCT Election Ordinance (Revised 12/14/2021) provides in relevant part, as follows:

* * *

3.2(B)(1) The burden of proof rests with the contester who must show by clear and convincing evidence the alleged violations of this Ordinance. There shall be a presumption of correctness in favor of the General Reservation Election Board and the election results until the contester has met his or her burden of proof.

3.2(B)(2) The contester * * * must present relevant and material evidence demonstrating how any violations of the Ordinance, alleged and proven, affected the outcome of the election.

* * *

MCT Election Ordinance (Revised 12/14/2021) Chapter III, Section 3.2(B)(1); 3.2(B)(2).

“Clear and convincing evidence” is a higher standard of proof than a mere preponderance, and is generally understood to mean evidence “that the thing to be proved is highly probable or reasonably certain.” *See* Final Decision of Primary Election Contest of District II, Bruce M. Savage, Case # EC-002-14.

Only once did Ms. Northrup allege that any of the violations of the MCT Election Ordinance would affect the outcome of the election. Northrup Discovery Argument. That allegation was merely a blanket statement that the 306 absentee votes would affect the outcome, with no evidence to support how they could affect the outcome of the election.

Ms. Northrup did not present any witnesses or witness affidavits stating that the alleged violations prevented anyone from voting for the candidate (or the Dist. II Representative) which could have resulted in a change in the outcome of the election.

Ms. Northrup argued that a new election should be held because the manner in which in-person absentee votes were collected was in violation of the procedure outlined in the Ordinance. However, Ms. Northrup did not allege or present any evidence that the absentee votes that were received and counted were in anyway at all inaccurate.

The MCT Election Ordinance sets forth the procedures for absentee ballot voting at section 2.2(B)(1) and states in relevant part:

The General Reservation Election Board must give or mail ballots for absentee voting to eligible voters upon receipt of a signed written request from such voters. If an eligible voter does not and has not previously designated a district, that eligible voter shall receive an absentee ballot that includes only the at-large positions up for election. The General Reservation Election Board may accept physically signed written requests by hand delivery, by mail or by fax or other electronic means, such as electronic mail.

[A]ny eligible voter who requests and receives an absentee ballot in person must be required to cast the ballot with the General Reservation Election Board on the same day. Documents which must be given or mailed to the voter requesting an absentee ballot under this section must include: a) the absentee ballot; b) an inner envelope, bearing on the outside the words “Absentee Ballot” and;

c) a pre-addressed outer envelope which, on the reverse side of which there must appear an affidavit as described in Appendix II of this Ordinance.

The Election Board did not give eligible voters who appeared in person to request an absentee ballot the inner envelop marked "Absentee Ballot" or the pre-addressed outer envelope in violation of Section 2.2(B)(1) of the MCT Election Ordinance. However, those in person eligible absentee voters were given an absentee ballot and required to cast the ballot with the General Reservation Election Board on that same day in accordance with the MCT Election Ordinance. While it may be frustrating and unfortunate that the process for casting "in-person absentee" votes in this election deviated from the ordinance; it may also be that the process of collecting an affidavit and mailing envelope as outlined in the election ordinance for in-person absentee voting is cumbersome and antiquated considering modern technical advances and early voting practices available for adoption by the Minnesota Chippewa Tribe.

CONCLUSIONS OF LAW

For the reasons set out above, Contester failed to meet her burden to prove by clear and convincing evidence that a violation of the Ordinance occurred that affected the outcome of this election.

NOW THEREFORE, IT IS ORDERED: The results of the June 14, 2022, general election in District II (Sawyer) are **AFFIRMED**.

Dated this 30th day of June, 2022



Shauna L. Coons
Fond du Lac Election Contest Judge
June 14, 2022 General Election