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Sault Ste. Marie Tribal Court

SAULT STE. MARIE CHIPPEWA TRIBAL COURT

**PEOPLE OF THE SAULT STE. MARIE
TRIBE OF CHIPPEWA INDIANS,**

Petitioner,

v.

Case No.: BR 17-02

**LEONARD SCOTT NICKABOINE,
d.o.b. 04/29/1978,**

Respondent.

ORDER
Granting Request for Exclusion and Removal After Hearing

Barring, or banishment, has been used by tribes for centuries, not only as a form of punishment, but also as a means for a Tribe to protect its people and property. The inherent and sovereign authority of tribes to banish or bar individuals, whether members of the tribe or not, is well-established. *Duro v. Reina*, 495 U.S. 676, 696-97 (1990); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333 (1983); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 159 (1982); *Ex parte Crow Dog*, 109 U.S. 556 (1883). While tribe's authority to bar individuals is without question, tribes historically have used barring sparingly "when all other customary measures fail to protect the community or reform the individual." Patrice H. Kunesh, *Banishment as Cultural Justice in Contemporary Tribal Legal Systems*, 37 N.M. L. Rev., 85, 91-94 (2007). Recently, however, tribes throughout the country have re-instituted barring practices to address increasing threats on their reservations from drugs, gangs, and violence. Sarah Kershaw and Monica Davey, *Plagued by Drugs, Tribes Revive Ancient Penalty*, N.Y. Times (Jan. 18, 2004), http://www.nytimes.com/2004/01/18/us/plagued-by-drugs-tribes-revive-ancient-penalty.html?_r=0; Andy Mannix, *Mille Lacs Ojibwe Fighting Violent Offenders With Banishment*, City Pages (Nov. 9, 2011) <http://www.citypages.com/news/mille-lacs-ojibwe-fighting-violent-offenders-with-banishment-6753645>.

Tribal Code, Chapter 61: Barring Individuals from Tribal Lands, provides the statutory grounds for which any person may be excluded or removed from Sault Tribal Lands. *Id.* § 61.104. A review of the specific grounds, applicable to both members and nonmembers,

establishes that barring is to occur only when a person conducts himself in such a way that significantly threatens the well-being of the Tribe, as each of the grounds set forth proscribe such conduct. In addition, the stated purpose of the Code is

“to provide a means whereby the Tribe can protect itself, its members, and other persons living on Tribal Lands, from people whose presence on Tribal Lands is harmful to, or threatens harm to, the peace, health, safety, morals, general welfare or environmental quality of life on Tribal Lands. Such action is deemed necessary as a result of the Tribe’s interest in maintaining the aforementioned interests free from harm, to protect the cultural identity of the Tribe, and to protect those residents of Tribal Lands who may be imposed upon, harmed or otherwise disadvantaged...”

Id. at § 61.101. Therefore, the Court must read and apply the Code in light of the Code’s stated purpose.

In this case, evidence was submitted and testimony provided regarding respondent Nickaboine’s three convictions of domestic violence – two in Tribal Court in 2007 and 2008 and the third in federal court as a habitual offender for a 2009 incident. Nickaboine was sentenced to 41 months followed by 3 years supervised release for the 2010 federal conviction. He was released from federal jurisdiction at the conclusion of his sentence in May 2016. He was arrested again for domestic violence, although later acquitted by jury, in July 2016. A review of the incident reports admitted at the hearing from the four events is alarming as to their severity and their consistency. In each case the victim, has reported that Mr. Nickaboine had strangled her, and each time she had red marks consistent with the same on her neck. It was further been reported that he “knocked out” his wife twice during one of the incidents and brandished a hammer during one physical altercation. In addition, two of the reports concerned physical assaults solely on his wife, yet two of the reports also included assaults on Mrs. Nickaboine’s sister and her daughter, with evidence that both of those young women were strangled at the time of the respective incidents. The severity of Mr. Nickaboine’s physical assaults poses a grave danger to those in his presence – particularly when he is consuming alcohol.

Moreover, despite his statement that he is “a changed man,” Mr. Nickaboine presented little by way of evidence to establish the same. He seemed to rest his argument on the fact that he was found not guilty on his most recent charges, and stood firm in his stance that he had “not done anything wrong” since the 2009 incident that gave rise to his federal habitual offender domestic abuse conviction. However, the record indicates that Mr. Nickaboine violated the conditions of his supervised release for repeatedly consuming alcohol – which Mr. Nickaboine himself attributes as the cause of his violence. It’s this Court’s understanding that rather than successfully completing his term of supervised release, he was incarcerated to serve out his prison sentence. He lived on our reservation after completing his sentence for a period of not even three months before his most recent arrest.

His statements at the hearing denying any wrongdoing since 2009 and continuing to blame the Tribe for traumatizing his daughter and tearing him from his family, evidence his lack of personal responsibility for his actions, which echo statements throughout the incident reports admitted into record.

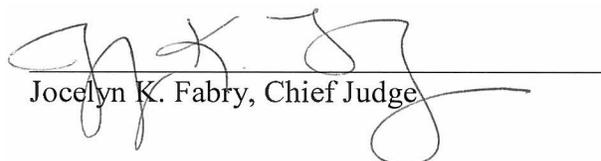
Finally, at the hearing when questioned about statements he made concerning returning to gang involvement if re-incarcerated, he testified "I'll always be a gang member." This statement further evidences the fact that Mr. Nickaboine is not, in fact "a changed man."

The Court is sensitive to the fact that Mr. Nickaboine's wife and children reside on our reservation and that a barring order may result in separating his family from him. However, although not tribal members, Mrs. Nickaboine and her children are members of our Sault Tribe community, and the Court views them as such. The statute tasks this Court with protecting "those residents of Tribal Lands who may be imposed upon, harmed or otherwise disadvantaged." TC § 61.101 In this Court's opinion, the risk of harm Mr. Nickaboine poses to his family and this community outweighs the impact of separating him from his family.

In conclusion, the Court FINDS that Leonard Scott Nickaboine poses a grave risk to the general quality of life within the Sault Tribe community. The petitioner has proven, by clear and convincing evidence, that statutory grounds exist warranting his exclusion. Specifically, he has engaged in (2) one or more instances of domestic violence, stalking, harassment, or domestic disturbances that breach the peace, or threatens the peace, health, safety, morals, general welfare or environmental quality of life of Tribal lands. Therefore, the Court ORDERS the continuation of the ex parte order entered on February 15, 2017 barring him until February 15, 2018. The respondent shall not be permitted to enter onto any Tribal lands as that term is defined under Tribal Code 61.102, and if found upon Tribal lands, shall immediately be removed from such lands by law enforcement. This order is entered specifically to protect our Tribal community from the grave risk of harm respondent Nickaboine poses to the community, to maintain peace, safety, and well-being within the Sault Tribe community and in respect for the laws of the Tribe.

Any person adversely affected by a decision of the Tribal Court in a civil case may file an appeal within 30 days after entry of the written judgment or order in accordance with Tribal Code Chapter 82: Appeals.

IT IS SO ORDERED this 2nd day of March 2017, by the Sault Ste. Marie Chippewa Tribal Court located in Sault Ste. Marie, Michigan within the sovereign land of the Sault Ste. Marie Tribe of Chippewa Indians.


Jocelyn K. Fabry, Chief Judge