FOR PUBLICATION

IN THE COURT OF APPEALS
FOR THE RINCON BAND OF LUISEÑO INDIANS

Case No. AP-0001-23

RIKKI MAZZETTI, ET AL.,

Plaintiffs/Appellants,

v.

KATERI KOLB, ET AL.,

Defendants/Appellees.

ORDER AND OPINION AFTER ORAL ARGUMENT

Appeal from the Intertribal Court of Southern California
Rincon Band of Luiseño Indians
No. CVR-2022-0002-GC
Judge Pro Tem Kathryn A. Ogas

Argued and Submitted December 13, 2023

Filed January 31, 2024

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Before: Matthew Fletcher, Arthur Gajarsa, and Deanell Tacha, Appellate Judges

Opinion of the Court Filed by Judge Fletcher

We AFFIRM the decisions of the trial court dismissing the complaint and denying a motion to amend the complaint. We REMAND this matter to the trial court for proceedings consistent with this opinion.

Procedural History and Factual Background

Appellants brought a complaint against Appellees on April 14, 2022, seeking injunctive relief and money damages.

Appellants are Rikki Mazetti, Jerri Mazetti (both enrolled members of the Band), Sky Mazetti, Rikki K.J. Mazzetti, Joseph Q. Mazetti, Emily Mazetti, Dana de Vally Pizza, and Raymond de Vally III (who are children of enrolled members of the Band). Complaint 1-2, 3-ER-114-115. Appellees are the defendants to the action, Kateri Kolb, Teresa Viveros, Michael Turner, Mylyn Sass, and Unadel Turner, named in their personal capacities. Each of the Appellees are officers of the Rincon Band of Luiseño Indians ("Band") Enrollment Committee ("Committee"). *Id.,* 3-ER-114-115. Rikki and Jerri Mazetti are enrolled members of the Band and requested reevaluation of blood degree in or about January 2019. *Id.* at 1, 3-ER-114. Jayde Sky Mazetti, Rikki K.J. Mazzetti, Joseph Mazzetti, Emily J. Mazzetti, Dana de Vally, and Raymond de Vally applied for tribal enrollment in late January 2019. *Id.*, at 2-3, 3-ER-115-116. The reevaluation of blood degree was sought to amend an allegedly incorrect blood degree evaluation of the Appellants' common ancestor, Georgia Calac Mazzetti. *Id.*, at 3, 3-ER-116. Increasing the blood degree for Georgia Calac Mazzetti would result in the non-member Appellants' blood degree increasing, and therefore making them eligible for tribal enrollment. *Id*.

Appellants claim that the Band's Enrollment Committee as constituted in 2019 (Gilbert Parada, Kateri Kolb, Annmarie Silva, and John Constantino with Bruce Calac as the Alternate) met to discuss Appellants' application to modify their blood quantum. *Id.*, at 3, 3-ER-116. Appellants alleged that the 2019 Committee then affirmatively voted to make a blood degree correction for Georgia Calac Mazzetti and recommend blood degree and enrollment corrections to the BIA. *Id.*

Appellees disagree that this vote ever occurred. Memorandum in Support of Respondents' Motion to Dismiss ("Motion to Dismiss") at 11-12, 3-ER-167-168. The Chairman of the 2019 Enrollment Committee, Gilbert Parada, later resigned from the committee on or about June 14, 2019. Complaint at 3, 3-ER-116. After Parada's resignation, the new Committee was composed of Kateri Kolb (Chairperson), Annmarie Siva (Secretary), Bruce Calac (Committee Member), and Mylyn Sass (Alternate). *Id*. In 2020, a new committee was elected, consisting of Teresa Viveros (Chairperson), Kateri Kolb (Secretary), Bruce Calac (Member at Large), Mylyn Sass (Alternate), and Michael Turner (Alternate). *Id*. at 5, 3-ER-118. Appellants further allege that on April 22, 2020, the Committee voted for the second time to approve the blood degree increase for Appellants. *Id*. at 6, 3-ER-119. The Appellees asserted below that the document was not signed, not certified by the Committee, and is not on "an official form with Band letterhead." Motion to Dismiss at 11, 3-ER-167.

On June 20, 2022, Appellees moved to dismiss the complaint. Appellants filed an opposition on August 15, 2022. Appellees filed a reply brief on August 26, 2022. On September 7, 2022, Appellants moved to amend their complaint to add a defendant, remove claims for attorney fees and costs, and reiterate that the complaint was directed at individual defendants, not the tribe. On October 25, 2022, the trial court (Judge Pro Tem. Kathryn A. Ogas of the Intertribal Court of Southern California (ICSC)) denied the motion to amend. Governed by the ICSC's Code of Civil Procedure and Rules of Court, Judge Ogas determined that amendment of the complaint was (1) futile and unlikely to survive the motion to dismiss stage, and (2) would cause the opposing party undue delay and undue prejudice. On November 15, 2022, the tribal court held a hearing on the motion to dismiss. On December 6, 2022, the trial court dismissed the complaint. Judge Ogas determined that the relief demanded by the Appellants would necessarily involve the tribal government, which enjoys immunity from suit. Judge Ogas also held that the Appellants had failed to exhaust their tribal administrative remedies.

We now address the appeal.

Standard of Review and Governing Law

Rincon Band appellate courts do not defer to trial court conclusions of law, instead we apply the *de novo* standard of review. *Donius v. Rincon Band of Luiseño Indians*, No. AP-0205-19, at 13 (Rincon Band of Luiseño Indians Ct. App., April 2,

2020). As this appeal arises from the dismissal of the complaint and denial of a motion to amend the complaint, primarily on sovereign immunity and administrative exhaustion grounds, we employ the *de novo* standard.

Rincon Band courts must apply Tribal Law or, if Tribal Law is silent, applicable federal or state law. Rincon Band Tribal Code § 3.803(b). *See also* § 2.2004 (describing tribal laws in order of precedence).

Discussion

I. The Trial Court Correctly Dismissed the Complaint for Money Damages Due to Tribal Sovereign Immunity

A. Tribal Law Forecloses Suits Against Tribal Officials for Money Damages

We conclude that the Appellees are entitled to dismissal of the complaint's demand for money damages by virtue of tribal law on sovereign immunity. We begin with Rincon Band law on sovereign immunity, codified in the Limited Waiver of Sovereign Immunity Ordinance, Rincon Band Tribal Code § 2.100 *et seq*.

Officials of the Rincon Band acting in the scope of their official capacities enjoy immunity from suit absent a waiver of that immunity by the Rincon Band Tribal Council. Tribal law extends tribal sovereign immunity to "the Tribe itself, to agencies, arms, entities and enterprises of the Tribe as well as to *employees*, *officers*, agents acting on behalf of the Tribe and within the scope of their authority." § 2.100 (emphasis added). *See also* § 2.104(c) ("Tribal employees, *Officers* and agents shall be generally immune from suit or action while acting within the scope of their authority, and while carrying out their job responsibilities, to the same extent as the Tribe.") (emphasis added). Under tribal law, "the Tribe, its agencies, arms, entities and enterprises and its employees, *officers* and agents cannot be sued in any court without the Tribe's express consent. . . ." *Id*. (emphasis added). See also § 2.104(c) ("No action or suit shall be brought or maintained against tribal employees, *Officers* or agents in their individual capacity, for actions taken as part of their job responsibilities and within the scope of their authority, and any relief pursuant to any such action or suit shall be for prospective injunctive relief only.") (emphasis added).

Further, we can conclude that Appellees are officials of the tribe — tribal law makes it so. Appellees are all members of the Rincon Band Enrollment Committee.

Complaint at 2, 3-ER-115. According to the Rincon Band Committee Policy Ordinance, members of the enrollment committee are all elected officials. Rincon Band Tribal Code. § 2.625 ("All committees shall be considered agencies of the Band, and *committee members shall be considered to be officers or agents of the Band*.") (emphasis added). *See also* Rincon Band Rincon Band Ordinance No. 3, § 2 (providing that enrollment committee members are elected).

Pursuant to these two provisions, it also is clear that the Rincon Band intends to cloak Enrollment Committee members with tribal sovereign immunity, so long as the officials or employees are acting within the scope of committee duties. We must respect that intent. The Rincon Band is a sovereign government with the power to define the scope of legal action in its own courts. *See generally* Rincon Band Articles of Association § 6(c) (enumerated power to enact ordinances); Rincon Government Organization Ordinance, Rincon Band Tribal Code § 2.2003(c)(3) (declaring the tribal legislature's power to establish a court system). The Rincon Band legislature has exercised its powers and clarified the jurisdiction of the tribal court by issuing the tribal sovereign immunity ordinance. The purpose of the ordinance is "to protect and preserve the sovereign immunity of the Tribe, to define the entities and individuals entitled to the protection of such immunity, and to specify the manner in which such immunity may be waived." Rincon Band Tribal Code § 2.100. Finally, the tribal legislature expressly protected tribal committee members by providing that they may not be "held liable for any official action taken by a duly authorized committee." Rincon Committee Policy Ordinance, Rincon Band Tribal Code § 2.625. As a consequence, under tribal law at least, tribal officials like Enrollment Committee members are immune from suit when acting within the scope of committee duties.

The Complaint does not allege that the Appellees were acting outside of their scope of duties. The Complaint alleges that the Appellees performed their official duties incorrectly or incompletely. Every relevant factual allegation involves official duties of the members of the Enrollment Committee as set out in Section 5 of the Enrollment Ordinance: the members met as a committee; the members discussed the Appellants' application for modification of their blood quantum; the members allegedly voted favorably once or twice on the blood quantum application; the members allegedly failed to take action they were supposed to pursue, that is, to complete the process of deciding to grant the application by referring the alleged decision to the Bureau of Indian Affairs; and, finally, the members did not formally vote to approve or disapprove the application upon return of information from the

federal government. There are certainly conclusory allegations that the Appellees' actions or omissions were constituted "politically motivated misconduct," Complaint at 6, 3-ER-1126, and that the committee has gone "rogue," Appellant's Opening Brief at 1, but those allegations are irrelevant to this analysis. Under tribal law, Enrollment Committee members acting within the scope of their authority are not to be held liable for official actions. Rincon Band Tribal Code § 2.625.

The amended complaint fails to correct its legal deficiencies. Appellants moved the trial court for leave to amend the complaint making clearer that their claims were for money damages only and only against individual committee members. The proposed amendment deletes the demand for injunctive relief, which is the limited relief allowed under tribal law.[1] We must therefore conclude that, *under tribal law*, that the Appellees as tribal officers are immune from suit for money damages under the facts alleged in either the complaint or the proposed amended complaint.

As the tribe's ordinances on tribal sovereign immunity and committee policy expressly state, Appellees, as tribal officers, are immune from suit for money damages. The trial court correctly dismissed the complaint.

B. Federal Law Also Compels Dismissal of the Suit

Appellants also contend that a suit against the Appellees in their individual capacities for money damages is not barred by tribal sovereign immunity, premising their argument on the United States Supreme Court's decision in *Lewis v. Clarke*, 581 U.S. 155 (2017), and similar Ninth Circuit decisions, *Acres Bonusing, Inc. v. Marston*, 17 F.4th 901 (9th Cir. 2021), *Pistor v. Garcia*, 791 F.3d 1104 (9th Cir. 2015), and *Maxwell v. County of San Diego*, 708 F.3d 1075 (9th Cir. 2013). Under the *Lewis v. Clarke* rubric, "in a suit brought against a tribal employee in his individual capacity, the employee, not the tribe, is the real party in interest and the tribe's sovereign immunity is not implicated." 581 U.S. at 158. Appellants' primary

[1] We conclude that Appellees, as tribal officials, likely could be sued for prospective injunctive relief for unlawful actions taken in their official capacities. Section 2.104(c) provides in relevant part:

> No action or suit shall be brought or maintained against tribal employees, Officers or agents in their individual capacity, for actions taken as part of their job responsibilities and within the scope of their authority, and *any relief pursuant to any such action or suit shall be for prospective injunctive relief only*. [emphasis added]

theory of this case is that the Appellees seeks money damages against Appellees in their individual capacities, which is allowed under these federal precedents.

We disagree with that conclusion.

Our holding is governed by tribal law, not federal decisions, which govern this court only where tribal law is silent. *See* Rincon Band Tribal Code § 3.803(b). Here, tribal law is not silent – the Rincon Band ordinance on tribal sovereign immunity governs. As we noted above in subpart A, the relevant provision of the ordinance is conclusive:

> No action or suit shall be brought or maintained against tribal employees, Officers or agents in their individual capacity, for actions taken as part of their job responsibilities and within the scope of their authority, and any relief pursuant to any such action or suit shall be for prospective injunctive relief only. [Rincon Band Tribal Code § 2.104(c).]

We reach the same conclusion under federal and state precedents. We note that federal precedents provide that tribal employees sued in their individual capacities where the relief sought runs against the employee are not immune from suit. *Lewis*, 581 U.S. at 158 (suit against tribal limo driver); *Acres Bonusing*, 17 F.4th at 909 (suit against tribal casino employees and lawyers, but not tribal judges or court staff). *See also Pistor*, 791 F.3d at 1108, 1113 (pre-*Lewis* decision allowing individual capacity suit against tribal law enforcement employees); *Maxwell*, 708 F.3d at 1087 (pre-*Lewis* decision allowing suit against tribal ambulance employees). The *Lewis* Court held that the remedy sought, not the type of action or omission taken by the individual, controls the analysis:

> [C]ourts should look to whether the sovereign is the real party in interest to determine whether sovereign immunity bars the suit. . . . In making this assessment, courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign. [581 U.S. at 161-62 (citations omitted).]

The Court added that whether the remedy sought was "truly against the sovereign" depended on whether the claim was an individual or official capacity suit:

> The distinction between individual- and official-capacity suits is paramount here. In an official-capacity claim, the relief sought is only

> nominally against the official and in fact is against the official's office and thus the sovereign itself. This is why, when officials sued in their official capacities leave office, their successors automatically assume their role in the litigation. The real party in interest is the government entity, not the named official. Personal-capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law. [O]fficers sued in their personal capacity come to court as individuals, and the real party in interest is the individual, not the sovereign. [*Id*. at 162-62 (cleaned up, citations and quotation marks omitted).]

Appellants argue that these cases allow an end-run around tribal sovereign immunity merely by naming tribal officials in their individual capacities and demanding money damages exclusively from those individuals, even if the tribal government has agreed to indemnify them. Appellant's Opening Brief at 18-19. There is inferential support in the *Lewis* Court's opinion that the analysis is rooted solely in the remedy sought. In Appellant's view, "[p]ersonal-capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law." *Lewis*, 581 U.S. at 162 (citation omitted). However, in a post-*Lewis* decision, the Ninth Circuit held that "[s]uits that seek to recover funds from tribal coffers or establish vicarious liability of a tribe for damages, on the other hand, are barred by tribal sovereign immunity even when nominally styled as against individual officers." *Jamul Action Committee v. Simermyer*, 974 F.3d 984, 994 (9th Cir. 2020). We appreciate these competing statements in the post-*Lewis* universe create a dialectic tension. We, however, do not need to parse through those precedents to decide which side of the line this suit arises.

We conclude that the federal and state precedents also grant the Enrollment Committee members acting in the official capacity the personal defense of absolute immunity. The *Lewis* Court and lower court precedents note that officials such as prosecutors, court officials, or tribal legislators sued in their individual capacities can still assert absolute immunity as a personal defense. *E.g.*, *Lewis*, 581 U.S. at 163 (suggesting in dicta that tribal prosecutors retain personal immunities); *Acres Bonusing*, 17 F.4th at 915 (holding tribal judicial officers are immune). Federal, state, and tribal court decisions have uniformly affirmed the absolute immunity of tribal legislators and judges. *E.g.*, *Penn v. United States*, 335 F.3d 786, 788-89 (8th Cir. 2003) (tribal judge immune, even if exercising judicial power in excess of the court's jurisdiction); *Runs After v. United States*, 766 F.2d 347, 354-55 (8th Cir.

1985) (tribal legislators); *Acres v. Marston*, 72 Cal. App. 5th 417, 441 (2021) (tribal judges, law clerks, and other court staff immune, even where tribal judge acted with a conflict of interest); *Quileute Nation v. Jamie*, 2017 Quileute App. LEXIS 2, at 12 (Quileute Tribal Ct. App. 2017) (tribal legislators immune). We would follow these cases and conclude that Rincon Band Enrollment Committee members retain personal immunity.

Rincon Band Enrollment Committee members acting in their official capacity are entitled to personal immunity defenses as elected officials exercising discretionary functions akin to judicial decisionmaking. At Anglo-American common law, judges were entitled to absolute liability for tortious actions. Scott A. Keller, *Qualified and Absolute Immunity at Common Law*, 73 Stan. L. Rev. 1337, 1357 (2021). The public policy behind absolute immunity is to protect the independent discretion of the judges, discretion that would be hampered by tort liability. *Id*. at 1356-57. Of particular concern to common law commentators was that lawsuits would improper inquire into the "motives" of judges. *Id*. The motives of the Enrollment Committee members are exactly the source of the Appellants' complaint.

Federal, state, and tribal precedents support the conclusion that the tribal officers here engage in quasi-judicial activities entitling the officers to absolute immunity. The United States Supreme Court established that "[w]hen judicial immunity is extended to officials other than judges, it is because their judgments are functionally comparable to those of judges—that is, because they, too, exercise a discretionary judgment as a part of their function." *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 436 (1993) (cleaned up). The Court also generated a list of factors to consider holistically in analyzing absolute immunity claims:

> (a) [T]he need to assure that the individual can perform his functions without harassment or intimidation;
>
> (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct;
>
> (c) insulation from political influence;
>
> (d) the importance of precedent;
>
> (e) the adversary nature of the process; and

(f) the correctability of error on appeal. [*Cleavinger v. Saxner*, 474 U.S. 193, 202 (1985).]

Prosecutors and grand jurors are officers of the court that engage in quasi-judicial functions entitling them to absolute immunity. *Butz v. Economou*, 438 U.S. 478, 512 (1978). In dicta, the Ninth Circuit has stated that social workers making a discretionary decision to initiate proceedings to make a child the ward of the state are engaged in quasi-judicial functions entitling them to absolute immunity, *Swift v. California*, 384 F.3d 1184, 1192 (9th Cir. 2004), and parole board officials making a decision to issue an arrest warrant for parole violators are similarly immune, *Fort v. Washington*, 41 F.4th 1141, 1144 (9th Cir. 2022); *Swift*, 384 F.3d at 1192. The Colorado Supreme Court has recognized absolute immunity to the Board of Regents of the state university when making a decision to terminate a professor through an administrative appeal process. *Churchill v. Board of Regents*, 295 P.3d 986, 1006 (Colo. 2012).

We turn to the Rincon Band Enrollment Ordinance to determine whether the functions of the Enrollment Committee are judicial in a manner sufficient to cloak them in absolute immunity. We conclude that the Enrollment Committee's function is quasi-judicial and does entitle them to absolute immunity. First, we note the committee members are elected; they are not mere employees. Enrollment Ordinance § 2. The committee as a whole must review membership applications "and arrive at a preliminary decision as to the eligibility of the applicant, as based upon tribal records, information presented in the application or other reliable sources of information." *Id*. § 5. Then, after the Bureau of Indian Affairs provides information from federal records, the committee must then approve or disapprove the application. *Id*. Later, the committee might also reevaluate its decision if the committee finds that the application provided erroneous information to the committee. *Id.* § 6. Each of these duties involves discretionary functions, most notably the evaluation of evidence in light of the applicable legal standards. These discretionary determinations are quasi-judicial in character. Section 7 provides an appeal process for those applicants denied by the committee. The only duties contained in Section 5 that are not discretionary involve the committee's obligation to refer its preliminary decision to the Bureau of Indian Affairs and, then, ultimately make a decision. These are ministerial functions, but the actual substance of the

preliminary and final decisions are the epitome of discretionary decisionmaking to which liability should not attach.[2]

Our conclusion is tempered somewhat by the consideration that Section 5 of the Enrollment Ordinance does not provide a fundamentally fair process to the applicants. For example, Section 5 places the Enrollment Committee in a black box where the committee reviews the evidence privately and apparently does not need to explain its decisions to the applicants. Moreover, there is no time limit contained in Section 5 for the committee to act. We understand why the Appellants have claimed the committee has gone "rogue" given the (alleged) lack of transparency in the committee's deliberations, as well as the (alleged) length of time the process has taken. Fortunately, there is an appeal process that can largely cure bad outcomes arising from any procedural inequities created by Section 5. *Cf*. *Churchill*, 295 P.3d at 1005-06 (concluding that an appeal process allowed the terminated employee a chance to reverse the decision). There may also be the right of the Appellants to seek injunctive relief, *see* § 2.104(c), though we leave that question open for now.

In conclude that controlling tribal law bars a suit against tribal officials for money damages. We reach the same conclusion under the applicable federal and state precedents, Appellants' claims before money damages would be barred by absolute immunity.

II. The Trial Court Correctly Dismissed the Complaint's Demand for Injunctive Relief Due to the Failure to Exhaust Administrative Remedies

We conclude that the trial court correctly dismissed the complaint's request for injunctive relief on the basis that the Appellants failed to exhaust their administrative remedies.

Appellants failed to complete the administrative process, necessitating the dismissal of the complaint. The Enrollment Ordinance outlines the administrative process. First, section 4 of the Enrollment Ordinance establishes the process for filing an application. The Appellants alleged in their complaint that they did so. Second, Sections 4 and 5 require the Enrollment Committee to take certain actions leading to a determination that either approves or disapproves the application. Notably, Section 5 does not require the committee to complete its work within a

[2] We reiterate that is exactly the outcome demanded by the Rincon Committee Policy Ordinance. Rincon Band Tribal Code § 2.625.

specific time frame. Appellants alleged the Appellees violated Section 5. Section 6 allows for reevaluation of erroneous information. Section 7 allows for appeals once an application has been denied. The application process here did not complete the latter two steps.

Appellants' prayer for injunctive relief dooms their complaint. Appellants seek "written confirmation that an appropriate blood quantum increase letter be sent to the BIA"; modification of the "base roll [that] reflects said increase"; and delivery of a "Notice of Preliminary Findings of the Rincon Enrollment Committee for Enrollment Application indicating a Preliminary Approval" of enrollment for the currently unenrolled Appellants. Complaint at 7, 3-ER-120. The thrust of the complaint is that the business of the Enrollment Committee has stalled. The complaint alleges with piecemeal, circumstantial proffers of evidence that the committee actually approved their applications, but the only fact we can conclude from this record and the complaint is that the committee simply did not yet complete the process under Section 5. In short, the Enrollment Committee's work under Section 5 remains pending.

Like the aborted marriage ceremony in the *Princess Bride*, Appellants' prayer for relief demands that the court order the Enrollment Committee to stop the deliberative process and "skip to the end."[3] Perhaps the Enrollment Committee's work is too slow, or constitutes "politically motivated misconduct," or committee members have somehow gone "rogue," but nowhere in the complaint do the Appellants allege that the committee has violated any of its actual duties under Section 5. At this time, under the facts alleged in the complaint, we will not order the trial court to step in the shoes of an ongoing, pending enrollment application matter currently before the Enrollment Committee.

We are fully aware that the Enrollment Committee's Section 5 work has been allegedly ongoing since 2019. We leave open the question whether the Enrollment Committee's delay is actionable. We remand this matter to allow the Appellants to amend their complaint to allege specific violations of tribal law before the trial court in the first instance.[4]

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[3] Princess Bride (20th Century Fox 1987).

[4] We decline to address the question of whether the trial court should have ordered a stay pending exhaustion of federal administrative remedies on the ground that the Appellants withdrew that request below. Plaintiffs' Ex Parte Request for Withdrawal of Application of Stay of Plaintiffs'

* * *

We AFFIRM the decisions of the trial court to dismiss the complaint and to deny the motion to amend the complaint. We REMAND to the trial court for proceedings consistent with this opinion.

Instant Tribal Court Action Pending Resolution of Jose Maria Cabrillas and George Mazetti Descendants BIA Appeal [sic], 3-ER-315.