

U.S. District Court  
District of Columbia  
Case No. 23-1111  
FEB 09 2023  
*EJ*

**IN THE DISTRICT COURT OF THE  
PONCA TRIBE OF OKLAHOMA  
WHITE EAGLE, OKLAHOMA**

CARLA CARNEY, )  
Ponca Business Committee Member, )  
Plaintiff, )  
  
vs )  
  
PONCA BUSINESS COMMITTEE, )  
OLIVER LITTLECOOK, SR., )  
Chairman, )  
  
OLIVER LITTLECOOK, SR., )  
Individually and as Ponca Business )  
Committee Member, )  
  
ROBERT COLLINS, )  
Individually and as Ponca Business )  
Committee Member, )  
  
MATILDA DELAGARZA, )  
Individually and as Ponca Business )  
Committee Member, )  
  
DEBORAH MARGERUM, )  
Individually and as Ponca Business )  
Committee Member, )  
  
LEOTA WHITE, )  
Individually and as Ponca Business )  
Committee Member, )  
  
EARL TREY HOWE III, )  
Individually and as Ponca Business )  
Committee Member, )  
Defendants. )

Case No. CIV-2023-024

**ORDER**

NOW on this 6th day of February, 2024, this matter comes before the undersigned Chief Judge upon the Defendants' Motion to Dismiss. Being advised in the premises, and having reviewed the pleadings and considered the arguments of counsel, the Court does hereby FIND and ORDER as follows:

**FACTUAL AND PROCEDURAL HISTORY**

The undisputed factual history of this case is that the Plaintiff was elected to her second four-year term on the Ponca Business Committee in 2021. Subsequent to the election and within the Constitutional authority granted them, the Ponca Business Committee, as a body, designated the Plaintiff to serve as the Secretary-Treasurer of the Business Committee. Plaintiff remained in the position of Secretary-Treasurer until October 16, 2023 when she was notified by the Chairman of the Business Committee that she had been relieved of her position as the Secretary-Treasurer. On or about November 7, 2023, the Business Committee caused a letter to be sent via U.S. Mail giving notice to the Plaintiff that the Business Committee had declared her seat vacated, effective November 6, 2023. Although the Parties are in dispute as to the accuracy, they do agree the basis of the Committee's letter was a finding that the Plaintiff had missed at least three consecutive Business Committee meetings.

This action was initiated on or about November 28, 2023 by the filing of a Complaint and Verified Emergency Application for Temporary Restraining Order and for Temporary Injunction by the Plaintiff seeking an Order enjoining the Defendants from declaring Plaintiff's officer and Business Committee seat vacant. The Court denied the Emergency but set the matter for a hearing to be held on December 6, 2023. The Defendant, Ponca Tribe, filed a Response in Opposition to Plaintiff's Motion for Temporary Restraining Order on December 5, 2023. At the

December 6, 2023 hearing, the Court heard testimony from several witnesses and heard arguments from counsel as to the merits of the Application for Temporary Restraining Order and Temporary Injunction. At the conclusion of the hearing, the Court ordered that counsel could further brief the matter and both indicated a desire to do so.

On December 15, 2023 the Defendant, Ponca Tribe, filed a Motion to Dismiss Complaint and Application for Emergency Restraining Order. On December 18, 2023, the Defendant, Ponca Tribe, filed a Motion to Pause Briefing Schedule Pending Ruling on the Tribe's Motion to Dismiss. On the same day, the Plaintiff filed an Addendum to Briefing In Support of Application for Temporary Restraining Order and For Temporary Injunction. The Court issued an Order sustaining the Tribe's Motion to Pause Briefing on December 19, 2023. On January 3, 2024, the Plaintiff filed a Response to Defendant Ponca Business Committee's Motion to Dismiss. Simultaneously, the Plaintiff filed a Motion for Default Judgment as to the individual Defendants on the basis that they had failed to file an answer within 20 days. The Ponca Tribe responded by filing an Opposition to Plaintiff's Motion for Default Judgment on January 9, 2024. On the same day, the Defendants, individual members of the Committee, filed a Motion to Dismiss Complaint and Application for Emergency Restraining Order. Also on January 9, 2024, the Defendant, Ponca Tribe, filed a Reply in Support of its Motion to Dismiss. The Court issued an Order on January 17, 2024 in which it found the individual Defendants had cured the default issue. The Plaintiff filed her Response to Defendants Littlecook, Collins, Delagarza, Margerum, White and Howe's Motion to Dismiss on January 23, 2024. The Defendants jointly filed a Motion to Invoke Formal Rules of Civil Procedure on January 26, 2024. The Plaintiff filed an Emergency Application for Order to Take Deposition on January 29, 2024 and on January 30, 2024, the

Defendants filed a Motion to Stay Discovery Pending Ruling on the Motion to Dismiss. The Court Sustained the Defendants' Motion to Stay Discovery and Denied the Plaintiff's Application for Emergency Order to Take Deposition on January 31, 2024. The Ponca Tribe Individual Officials filed a Reply in Support of Its Motion to Dismiss on February 1, 2024. The Court held a motion hearing on February 5, 2024 and heard the arguments of counsel as to the Defendants' Motions to Dismiss

Based upon the foregoing briefings and the arguments of counsel, the Court now considers the Defendants' Motions to Dismiss and does hereby FIND and ORDER:

#### **DECISION**

The Ponca Tribe of Oklahoma has a long and rich history as a people with a functioning government that is organized through a Constitution ratified by a vote of the Ponca membership in 1950. The Tribe is not structured as a three-branch government. It vests all authority in a seven member Business Committee elected by a vote of the adult membership. It is from the Supreme law provided in the Constitution and the singular body of elected officials that all powers are delineated, including the authority granted the Ponca Tribal District Court, and all other programs and services offered by the Tribe

The Defendants have asserted there is a lack of subject matter jurisdiction for the Court to hear this matter. The Defendants argue the Business Committee has reserved all matters relating to that body to remain within its own exclusive jurisdiction through a resolution passed in December 1983, identified as Business Committee Resolution, No. 14 FY 1984. The Plaintiff insists this argument has been previously rejected by both the Court of Indian Appeals, sitting as the Appellate Court for the Ponca Tribe, and the Ponca District Court. In support of her position,

the Plaintiff points to two election cases, to wit: *Ponca Tribal Election Board, Jones and Crain v. Snake and Lieb*, 1988WL 521355, Okla. Trib. 209 (1988) and *Arkeketa v. Ponca Tribal Election Board*, CIV-2013-25 (2014). However, neither of these cases pertain to matters relating to the Business Committee but rather are election disputes involving the Ponca Tribe's Election Ordinance. Nonetheless, the Court gives due consideration to the analysis employed in the *Snake* decision. Because the Arkeketa Order provides little substantive analysis, this Court will rely instead on the Ponca Tribal Constitution and the *Snake* decision.

Like *Snake*, the instant matter involves an intra-tribal dispute and before this Court may assume jurisdiction, it must consider whether the laws of the Ponca Tribe allow for this Court to hear an intra-tribal dispute involving the Business Committee. Article VIII of the Ponca Tribal Constitution provides the explicit jurisdiction and powers for the Ponca Business Committee.

*The Ponca Business Committee shall be authorized to exercise all executive, legislative, and judicial powers of the Tribe including such powers as may in the future be restored or granted by any laws of the United States or other authority. The Ponca Business Committee may, if it deems appropriate, establish a Tribal judicial system to which may delegate some or all the judicial power of the tribe.* Article VIII, Section 2A of the Constitution of the Ponca Tribe.

Clearly, the foregoing provision contemplated that the Business Committee may retain any or all of the judicial powers which would customarily be delineated to a tribal judicial system. Although, the Ponca Tribe has created a judicial system, it is not a second or equal branch of government, but rather its authority is directly granted and authorized by laws and ordinances enacted by the Business Committee.

While it is true, the Ponca District Court has jurisdiction to hear civil matters, there is no provision in the law which grants jurisdiction for the Court to hear an intra-tribal dispute

involving the Business Committee. To the contrary, the Constitution grants judicial authority to the Business Committee and the Business Committee has specifically retained jurisdiction for civil disputes against the Business Committee. *Ponca Business Committee Resolution No. 14 FY 1984*.

The Plaintiff relies on the Court of Indian Appeals decision in *Ponca Tribal Election Board, Jones and Crain v. Snake and Lieb*, p. 12, 1988WL 521355, Okla. Trib. 209 (1988) to argue the premise of the Business Committee retaining jurisdiction of specific matters cannot deny the Court jurisdiction, this Court FINDS the Plaintiff is misguided in her interpretation of the holding of the *Snake* case. The Court in *Snake* failed to analyze Article VIII, Section 2A of the Constitution of the Ponca Tribe. The *Snake* Court failed to acknowledge the Constitution which vests all judicial power in the Business Committee. The Business Committee resolution didn't divest the Tribal Court's authority, but retained jurisdiction. Thus consistent with the *Snake* Court's analysis that "a Business Committee resolution, alone, could divest or eliminate all jurisdiction of the Court of Indian Offenses," this Court finds that the Constitution reserved judicial authority to the Business Committee. *Snake*, p. 12. In the instant matter, there is a tribal forum for the resolution of this dispute. The Plaintiff should have petitioned the Business Committee itself for a hearing or reconsideration of the Business Committee's decision. It is evident that people chose, as reflected by the Constitution at Article V, Section 2, for the Business Committee to serve as its own forum for these sorts of disputes.

This Court FINDS that it lacks jurisdiction pursuant to the Constitution at Article V, Section 2 and the reservation in Ponca Business Committee Resolution No. 14 FY 1984.

The Court further FINDS that jurisdiction is properly before the Business Committee itself and as such the Plaintiff's cause of action as to the Ponca Business Committee is hereby DISMISSED for lack of subject matter jurisdiction.

The Court will now turn to the issue as to whether jurisdiction is proper for the Plaintiff to pursue a cause against individual members of the Business Committee under the proposition that they acted *ultra vires*.

The Defendants argue the Plaintiff's action should be dismissed as "unnecessarily duplicative and redundant" because the individual members comprise the Ponca Business Committee and it is the function of the Ponca Business Committee as a governing body to remove or suspend its own members. Moreover, it is unclear what relief this Court could provide by issuing an injunction against the Defendants as Plaintiff has already been removed. Defendants further argue the Plaintiff would have to show the individual Defendants acted *ultra vires* and that the Plaintiff failed to plead facts sufficient to state a claim for relief against individual Defendants in their individual capacity.

For her cause, the Plaintiff argues the individual Defendants did act *ultra vires* in contravention of any authority granted under the Ponca Constitution, and in contravention of Ponca and Federal law. See Plaintiff's Response to Defendants Littlecook, Collins, Delagarza, Margerum, White and Howe's Motion to Dismiss at p. 3. Plaintiff alleges that the individual Defendants acted outside the scope of their duties as Business Committee members when they removed the Plaintiff from her position as Secretary-Treasurer.

Again, this issue directly involves a civil dispute with respect to the Business Committee which jurisdiction is reserved by the Business Committee. As explained above, this Court lacks

jurisdiction to determine whether the members of the Business Committee acted *ultra vires*. This Court cannot do indirectly what it cannot do directly.

For the foregoing reasons, the Court FINDS the Plaintiff's claims against the individual Defendants must be and are hereby DISMISSED for failure to state a claim for lack of jurisdiction

**IT IS SO ORDERED.**



MARSHA HARLAN, CHIEF JUDGE