

IN THE SUPREME COURT
CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA

CHEYENNE-ARAPAHO
SUPREME COURTS OF OKLA.
FILED
IN THE SUPREME COURT

AUG 15 2007

DOCKET CIV PAGE 1844
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Patty Bell COURT CLERK
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RACHEL LYNN,)
Tribal Council Coordinator)
Plaintiff/Appellant,)

vs.)

Case No: CNA-SC-07-04

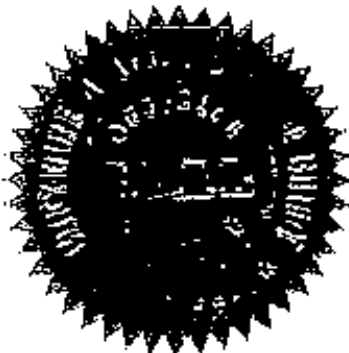
DAVID BEARSHIELD)
Defendant/Appellee,)

BEFORE: Chief Justice Ryland L. Rivas, Associate Justice Dennis W. Arrow,
Special Justice Karen Eby, and Special Justice Lindsay G. Robertson

JUDGMENT VACATING DECISION OF THE DISTRICT COURT
OF THE CHEYENNE AND ARAPAHO TRIBES

NOW COMES, the Court Clerk for the Supreme Court, Patty Bell, pursuant to Section 461 of the Appellate Procedure Code of the Cheyenne and Arapaho Tribes of Oklahoma, and hereby enters judgment in this action in accordance with the decision of the Cheyenne and Arapaho Supreme Court filed August 15, 2007.

DONE this 15th day of August, 2007.



Patty Bell
Patty Bell
Court Clerk
Cheyenne and Arapaho Supreme Court

CHEYENNE-ARAPAHO
SUPREME COURTS OF OKLA.
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In the Supreme Court
of the Cheyenne and Arapaho Tribes
CONCHO, OKLAHOMA

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Rachel LYNN, Tribal
Council Coordinator,

Plaintiff/Appellant,

v.

David BEARSHIELD,

Defendant/Appellee,

Case No. CNA-SC-07-04

ON APPEAL FROM THE MARCH 2, 2007 ORDER OF THE
TRIAL COURT IN CASE NO. CNA-CIV-07-19

OPINION AND ORDER

BEFORE: Chief Justice Ryland L. Rivas
Associate Justice Dennis W. Arrow
Special Justice Karen Eby
Special Justice Lindsay G. Robertson

PER CURIAM.

I.

A.

At the annual Tribal Council meeting conducted at Concho on October 7, 2006 (the validity of which is unchallenged herein), the Tribal Council elected Plaintiff/Appellant Rachel N. Lynn to the newly-created position of Coordinator for the Office of the Tribal Council.

B.

At a special Tribal Council meeting conducted on November 18, 2006 (the validity of which is also unchallenged herein¹), the Council first resolved that constitutionally-prescribed procedures had been followed by the Council in the October 7 selection of Ms. Lynn. Invoking its power to establish "terms and conditions" for the service of the Council Coordinator, *see* CHEY. & ARAP. CONST. art. V, § 5(b), the Council also resolved that the "[s]uggested term of service should be indefinite limited to ability and performance," and that "[t]he Tribal Council appoints Rachel N. Lynn for a two-year term." *See* TRIBAL COUNCIL RES. NO. 111806STC-002 (Nov. 18, 2006). At the same meeting, pursuant to its power to "establish its own rules of order and procedure," *see* CHEY. & ARAP. CONST. art. V, § 2(d), the Council adopted a Resolution adopting (and declaring that it "shall ... follow") eleven² "rules of order and procedure for enacting all [future] resolutions." *See* TRIBAL COUNCIL RESOLUTION No. 111806STC-001 (hereinafter: "TRIBAL COUNCIL RULES OF PROCEDURE").³

C.

¹ We take judicial notice of the fact that on July 16, 2007, the Trial Court held an absence-of-quorum grounds that the November 18, 2006 special Tribal Council meeting was invalid with respect to some actions but valid with respect to others. *See In re Validity of Special Tribal Council Meeting*, No. CNA-CIV-06-89, 10 Okla. Trib. _____ (Chey. & Arap. Trial Ct. 2007), *appeal docketed*, No. CNA-SC-07-19 (Cheyenne & Arapaho S.Ct., July 17, 2007), *second appeal docketed*, No. CNA-SC-07-10 (Cheyenne & Arapaho S.Ct., Aug. 6, 2007). Because of the basis for our decision herein, however, *see infra* at 4-6, we need not determine whether the November 18 Council meeting was valid to resolve the appeal now before us. The Opinion and Order we issue today reserves judgment on that matter for our forthcoming decision in No. CNA-SC-07-10.

² Those rules, respectively, address the following topics: (1) the annual Council meeting; (2) calling special Council meetings; (3) posting and publishing Resolutions; (4) notice of meetings; (5) introducing Resolutions; (6) the order of business at meetings; (7) meeting procedures; (8) voting at meetings; (9) contents of proposed Resolutions; (10) petitions for special meetings; and (11) maintaining order at meetings.

³ We are aware that in *In re Validity of Special Tribal Council Meeting*, No. CNA-CIV-06-86, slip op. nt (unnumbered) 7, 10 Okla. Trib. _____ (Chey. & Arap. Trial Ct. 2007), now on appeal to this Court, *see supra* at fn.1, the Trial Court held those Rules to have been invalidly adopted at the November 18, 2006 special Tribal Council meeting. We find it unnecessary to rule today on the validity *vel non* of those Rules, explicitly reserving judgment on that issue (as well as all others stemming from actions taken at the November 18, 2006 Council meeting) for our forthcoming decision in No. CNA-SC-07-10.

In an action also unchallenged in this appeal, on January 18, 2007 the First Legislature of the Cheyenne and Arapaho Tribes called a special Tribal Council meeting for 11:00 a.m. on February 24, 2007, at the Clinton Frisco Center in Clinton, Oklahoma.⁴ The purposes of the special meeting called for by the Legislature included the removal of Plaintiff/Appellant from her Council Coordinator position.⁵

D.

Plaintiff/Appellant Lynn attended the January 18, 2007 meeting of the Tribal Legislature, and represented to the Legislature that the special Tribal Council meeting would have to be held on March 3, 2007 rather than February 24, 2007 for applicable notice-of-meeting requirements to be met.⁶ Her suggestion was rejected at that meeting, with the Legislature hand-delivering the call for meeting and accompanying Resolutions to the Office of the Tribal Council late on the afternoon of January 18.

On January 22, 2007, Ms. Lynn wrote a memorandum to the Clerk of the First Legislature stating that publishing a special edition of the tribal newspaper to timely publish the notice of the February 24 meeting and its purpose would not be possible, and again requesting a postponement of the date of the contemplated Council meeting, but early the morning of January 22, the tribal newspaper had apparently moved the deadline for its February 1 edition back to January 25.

⁴ See generally CHEY. & ARAP. CONST. art. V, § 3(b) ("Special Meetings of the Tribal Council may be called by five members of the Legislature or by petition signed by one hundred fifty Members of the Tribes."); RULE 2(a), TRIBAL COUNCIL RULES OF PROCEDURE (same); CHEY. & ARAP. CONST. art. VI, § 5(a) ("All actions by the Legislature shall be embodied in a written law or resolution.").

⁵ See generally CHEY. & ARAP. CONST. art. V, § 3(b) ("The purpose of the Special Meeting shall be indicated in the request for the Special Meeting and no other business shall be conducted at the Special Meeting.").

⁶ See generally CHEY. & ARAP. CONST. art. V, § 3(b) ("All requests for a Special Meeting of the Tribal Council shall be submitted to the Coordinator of the Office of the Tribal Council. Upon receipt . . . the Coordinator . . . shall call the Special Meeting."); *id.* § 3(c) ("The Coordinator . . . shall provide notice of all Regular Meetings and Special Meetings of the Tribal Council at least fifteen days before such meeting."); RULE 4, TRIBAL COUNCIL RULES OF PROCEDURE ("Notice of all . . . Special Meetings . . . should be published in the *C & A Tribal, Watonga Republican, Thomas, Elk City, Selling, Woodward, Canon, Clinton, El Reno, Geary, Kingfisher, and Weatherford* newspapers."); *id.* ("Specific posting sites should include Cheyenne & Arapaho website, Cheyenne & Arapaho website [sic; probably should read 'newspaper'], Concho Community Hall, Concho Tribal Complex, IHS, and BIA Agency."); CHEY. & ARAP. CONST. art. V, § 4(c):

All decisions of the Tribal Council shall be embodied in a written Resolution. All proposed Resolutions shall be submitted to the Office of the Tribal Council in accord with the requirements of this Constitution. The Coordinator shall accept proposed resolutions at least thirty days before any Annual Meeting or Special Meeting of the Tribal Council . . . §

RULE 3, TRIBAL COUNCIL RULES OF PROCEDURE ("All proposed Resolutions shall be posted by the Office of Tribal Council thirty days prior to Annual or Special Meetings. Specific posting sites should include: Cheyenne & Arapaho website, C & A newspaper, Concho Community Hall, Concho Tribal Complex, IHS and BIA Agency.").

Sometime after January 22, 2007, Ida Hoffman, Speaker of the First Legislature, replied to Ms. Lynn that "there will be no date change on Special Tribal Council meeting," and renewed the Legislature's demand that Ms. Lynn immediately publish the notice of meeting and the proposed Tribal Council Resolutions (including the one calling for her ouster) in sufficient time for the special Council meeting to proceed on February 24. Ms. Hoffman further reminded Ms. Lynn that Article V, Section 4(e) of the Constitution requires the Coordinator to accept proposed Resolutions at least thirty days prior to any Council meeting, to publish them in a timely manner,⁷ and to place them on the agenda for that meeting. Ms. Hoffman concluded her letter of sometime after January 22⁸ with the declaration that because Ms. Lynn had (in Ms. Hoffman's view) "refus[ed] to do [her] job duties and violat[ed] the Tribal Council⁹ constitutional rights to call for a special Tribal Council meeting," the Legislature would perform Ms. Lynn's duties for her by arranging for publication and posting in various of the fora listed in Rules 3 and 4 of the *Tribal Council Rules of Procedure*. We assume *arguendo* that that was done.

E.

As the Legislature had originally directed, the Tribal Council met on February 24, 2007, and the persons present voted to replace Plaintiff/Appellant Lynn with Defendant/Appellee Bearshield as Tribal Council Coordinator. On Monday, February 26, 2007, Mr. Bearshield entered the Office of Tribal Council Coordinator and changed the locks. Ms. Lynn sought an emergency temporary restraining order ["ETRO"] against Mr. Bearshield on February 27, 2007 seeking to restrain Mr. Bearshield from acting in the Council Coordinator capacity, and directing him to return all property of the Coordinator's Office and any property belonging to Ms. Lynn.

The Trial Court denied Ms. Lynn's request for ETRO on March 2, 2007, and set the case for hearing on the merits on May 4, 2007. On March 6, 2007, Ms. Lynn brought an interlocutory appeal, *see generally* CHEY. & ARAP. App. P. CODE § 103(e), in which she restated her objections to the validity of the Tribal Council meeting at which the persons present had removed her in favor of Mr. Bearshield. Additionally, on the basis of alleged noncompliance with the constitutionally-prescribed

⁷ The letter referred to herein is dated January 20, 2007, but that letter refers to Ms. Lynn's January 22 memorandum and states that that memorandum was received by the Legislature on January 22.

⁸ *See generally* *infra* at 4 n.12.

⁹ *See supra* at 3 n.7.

¹⁰ Probably should read "Tribal Legislature's."

Coordinator-selection procedures,¹¹ she challenged the validity of Mr. Bearshield's selection even if her own removal had been valid.

The completed record was filed in this Court on March 13, 2007. The time for briefing has now expired without the filing of briefs by either party. See generally CHAY. & ARAP, APP. P. CODE §§ 426 (establishing briefing deadlines). The case is therefore submitted.

II.

A.

We have carefully reviewed the record, and have conducted an independent examination of all relevant constitutional provisions and the *Tribal Council Rules of Procedure*. Although we find many subtle and intriguing questions latent in those sources (and their interplay),¹² for the reasons described below, we need resolve only one legal issue to decide the appeal now before us.

B.

We decide this appeal on the basis of a principle of law both easily understood and applied: when Ms. Hoffman (arguably speaking for the Legislative Branch as a whole) took it upon herself to perform the "notification" functions that Article V, Section 4(c) of the Constitution assigns with unmistakable clarity to the Tribal Council Coordinator (and irrespective of whether Ms. Lynn was "refusing to do [her] duties" as Ms. Hoffman viewed them), Ms. Hoffman (and, if she acted on its behalf, the Legislature) violated Article V, Section 4(c) and the separation-of-powers principles

¹¹ See generally CHAY. & ARAP, CONST. art. V, § 5(a):

A Coordinator for the Office of the Tribal Council shall be selected by the Tribal Council at the Annual Meeting of the Tribal Council or at a Special Meeting of the Tribal Council as needed. Members of the Tribes interested in serving in the position of Coordinator shall submit an application at least thirty days prior to the Tribal Council Meeting. All applications for Coordinator shall be published at least thirty days prior to the Tribal Council Meeting.

¹² To take just one example, we note that the fourth sentence of Article V, Section 4(c) of the Constitution — which states that "The Coordinator shall publish all proposed resolutions which are submitted at least thirty days before the meeting, and all such Resolutions shall be placed on the agenda of the Tribal Council Meeting" — is susceptible of two quite different interpretations. On the one hand, it could be read as if the phrase "proposed Resolutions which are submitted at least thirty days before the meeting" were a single concept, or it could be read as if "all proposed Resolutions which are submitted" were a single concept. Under the former interpretation, Article V, Section 4(c) would *not* itself require the posting of thirty days' notice of the proposed Resolution (since "at least thirty days before the meeting" would describe the date of submission, not the notice), while under the latter, it would (since the "thirty days" clause would then describe the notice). (The word "such" in the clause mandating placement on the agenda might also vary in meaning depending on how the above-described interpretive issue is resolved.) As a further consequence, which of the two interpretations of Article V, Section 4(c) is selected might also have "spill-over" consequences regarding RULE 3 of the *Tribal Council Rules of Procedure* (assuming, *arguendo*, their validity). See *supra* at 2 n.5 (quoting RULE 3).

established by the tribal Constitution, *see* CHEY. & ARAP. CONST. art. II, § 3 ("No official of any branch of Government shall exercise any power granted in this Constitution or properly delegated by law to any other branch of Government except as expressly directed or permitted by this Constitution." (emphasis added)). Proper notice, which is essential to due process of law, is a very serious matter, *see, e.g., Flyingman v. Election Comm'n*, No. CNA-SC-07-09, 10 Okla. Trib. ___ (Cheyenne & Arapaho 2007), and the tribal Constitution often specifies the precise methods by which it is to be provided. Those requirements must be followed with great fidelity.

The Tribal Council is an independent Branch of tribal government, *see id.* art. II, § 2, and the Tribal Council Coordinator is an officer of the Tribal Council, *see, e.g., id.* art. V, §§ 3(c), 4(b), 4(c), 5. The Tribal Council Coordinator, not the Speaker of the Tribal Legislature, must therefore perform functions assigned to the Tribal Council Coordinator by the tribal Constitution.

This does not leave the Speaker of the Legislature (or for that matter, officials of other Branches) without a remedy in the event they perceive the Tribal Council Coordinator (or for that matter, an official of any other Branch) to be remiss in performing the duties of his or her office.¹³ Tribal citizens may well imagine the chaos that would result if one Branch (or official) of tribal government were authorized to perform the functions of another Branch (or official) whenever the former deemed the latter to be shirking its (or his or her) duties. Both the separation-of-powers provisions of the Cheyenne and Arapaho Constitution and the explicit constitutional grants of authority to identified branches and/or officials prevent such a result from occurring. In the event of perceived nonfeasance or malfeasance, the remedy contemplated by Article X, Section 3 of the Constitution is not unilateral action, but relief from the tribal Courts.

In consequence, the February 24, 2007 Tribal Council meeting, at which the persons present selected Mr. Bearshield to replace Ms. Lynn, was an invalid Council meeting under Article V, Section 4(c) and Article II, Section 3 of the Cheyenne and Arapaho Constitution. Plaintiff/Appellant Lynn was therefore entitled to retain the Council Coordinator position that she secured on October 7, 2006 past February 24, 2007.

C.

Taking judicial notice (as we may) of documents filed in other cases pending before this Court, we note that at the special Tribal Council meeting held on March 31, 2007 (the validity of which is not challenged in *this* appeal), Agenda Item No. 5 was captioned: "Remove Tribal Council Coordinator," and Agenda Item No. 6 was captioned: "Tribal Council Coordinator Acting." *See Southwest's Response to Governor Flyingman's Emergency Motion, Exh. K1, In re Execution of*

¹³ *See* CHEY. & ARAP. CONST. art. X, § 3:

The Tribes and its Officials and Employees acting in their official capacity or within the scope of their authority shall be immune from suit except for suits in equity filed exclusively in the Courts of the Tribes by any party subject to the Jurisdiction of the Tribes to enforce rights and duties established by law or this Constitution. Any Member of the Tribes may bring a suit exclusively in the Judicial Branch to enforce the terms of this Constitution. Sovereign Immunity shall not extend to Officials and Employees acting outside their official capacity or beyond the scope of their authority.

Casino Gaming Management Contracts, appeal docketed, No. CNA-SC-07-07 (Chey. & Arap. S.Ct., May 21, 2007). It may be that the parties seeking to replace Ms. Lynn with Mr. Bearshield were queasy about the validity of the attempted February 24 replacement for the reasons discussed above. But whatever the motivation for the inclusion of those items on the March 31 Council agenda, the Tribal Council adjourned before it considered those matters at that meeting. *See id.* Exh. D (reproducing the minutes of that meeting). The Council Coordinator status of Ms. Lynn was therefore unaffected by the March 31, 2007 Tribal Council meeting as well.

III.

For the reasons described above, we VACATE the decision of the Trial Court entered on March 2, 2007 in Case No. CNA-CIV-07-19.

We hereby ORDER, ADJUDGE, AND DECREE that Plaintiff/Appellant Rachel N. Lynn is entitled to relief DECLARING that her status as the duly-elected Tribal Council Coordinator was unaffected by the invalid Tribal Council meeting of February 24, 2007, or by the Tribal Council meeting of March 31, 2007 (the validity of which is not challenged in this case).

We further ORDER, ADJUDGE, and DECREE that as of 4:00 p.m. on the first business day after the date of the filing of this Opinion and Order, Defendant/Appellee David Bearshield is ENJOINED from interfering with the performance of Rachel N. Lynn's Tribal Council Coordinator duties and with her full and undisturbed occupancy of the Office of the Tribal Council Coordinator; that Mr. Bearshield is further ordered to relinquish all keys to the relevant offices to Ms. Lynn by that date and time; that Mr. Bearshield is further ordered to remit any property of the Office of the Tribal Council Coordinator to the custody of Ms. Lynn by that date and time; and that Mr. Bearshield is further ordered to remit any of Ms. Lynn's personal property that may be in his custody to Ms. Lynn by that date and time.

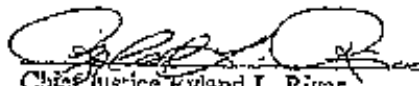
Under the circumstances, and because all ETRO and permanent-injunction issues have now merged on the instant facts, remand will be unnecessary as to any of the aforementioned conclusions and Orders of this Court. In the event that there are any residual issues that are both necessary to complete resolution of this matter and not resolved by this Opinion and Order (and we do not suggest that there are any), we REMAND Case No. CNA-CIV-07-19 to the Trial Court for further proceedings consistent with this Opinion and Order. Any related matters arising *after* the date of the filing of this Opinion and Order may be litigated by filing of a new case in the Trial Court.

Case No. CNA-SC-07-04 is CLOSED.

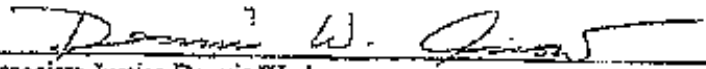
IV.

The Clerk of this Court is directed to provide copies of this Opinion and Order to both parties to this litigation and their attorneys (if any); to the Governor of the Tribes; to all tribal Legislators; and to tribal law-enforcement personnel.

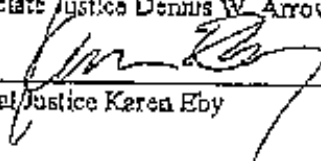
IT IS SO ORDERED.



Chief Justice Kyland L. Rivas



Associate Justice Dennis W. Arrow



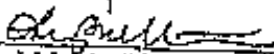
Special Justice Kerea Eby

Special Justice Lindsay G. Robertson

Chief Justice Ryland L. Rivas

Associate Justice Dennis W. Arrow

Special Justice Keren Boy



Special Justice Lindsay G. Robertson

CERTIFICATE OF MAILING

I, Patty Beil, Court Clerk of the Supreme Court for the Cheyenne and Arapaho Tribes do hereby certify that I mailed the following document to those names who appear below in Case No: CNA-CIV-07-19, Rachel Lynn, Tribal Council Coordinator vs. David Bearshield:

SUPREME COURT OPINION AND ORDER FILED AUGUST 15, 2007

via U.S. Regular mail on the 15th day of August, 2007.

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