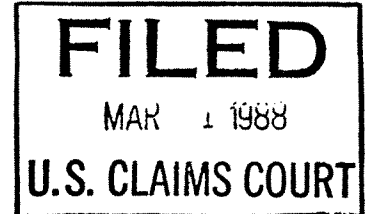


In the United States Claims Court

No. 102-63
(FILED MARCH 1, 1988)



JESSIE SHORT, ET AL.,)
)
 Plaintiffs,)
)
 v.)
)
 THE UNITED STATES,)
)
 Defendant,)
)
 and)
)
 THE HOOPA VALLEY TRIBE OF INDIANS,)
)
 Defendant-Intervenor.)

O R D E R

Pursuant to this court's order of July 29, 1987, the parties have filed tabular lists of certain plaintiffs seeking entitlement under the manifest injustice exception. To qualify under the manifest injustice exception, a plaintiff must adequately demonstrate all of the following:

- 1) a significant degree of Indian blood, and
- 2) personal connections to the Reservation shown through a substantial period of residence on the Reservation, and
- 3) personal ties to the land of the Reservation, and/or ties to the land through a lineal ancestor.

In this court's unpublished opinions of May 14, 1987, the court stated: "The manifest injustice exception will provide recovery only in a small number of cases, where strict application of the A - E Standards would be fundamentally unfair. Similarly, the manifest injustice exception will not provide for recovery for the plaintiffs with tenuous ties to the Reservation. . . ." Jessie Short v. United States, No. 102-63, Opinion One at 4 (May 14, 1987). The court's prior opinions also indicate that the manifest injustice exception requires a plaintiff to possess at least 1/4 Indian blood, nearly ten years of residence on the Reservation, and ties to the land. In borderline cases, the court will also take into account a plaintiff's use of Reservation resources, participation in Indian cultural activities, and similar contacts with the Reservation.

By its very nature and in fairness to other qualified plaintiffs and interested parties, the manifest injustice exception properly applies to only a small percentage of plaintiffs. A plaintiff with less than 1/4 Indian blood cannot qualify under the manifest injustice exception. Similarly, a plaintiff with little or no residence on the Reservation will not qualify, even if that plaintiff has substantial Indian blood. The residence element may be satisfied by a combination of permanent residence on the Reservation and the accumulation of a number of temporary periods of residence on the Reservation. A plaintiff who lives near the Reservation and has worked on the Reservation on a daily basis for a long period of time might satisfy the residence element.

To determine whether plaintiffs qualify under the manifest injustice exception, the court has used all three of the tabular lists submitted by the parties, relying primarily on the factual assertions made by the plaintiffs. After a careful review of these lists, it became evident that very few plaintiffs would qualify, and for those few that might qualify under the manifest injustice exception, there exist questions of fact that preclude a conclusive determination of eligibility. Material questions of fact must be resolved for the following plaintiffs, listed by motion group and identified by plaintiff number and name:

1. ALLOTTEE DESCENDANTS MOTION
 2676 Schwenk, Eric Darrell A.
 3667 Myers, Melissa S.
2. CENSUS ENROLLEE MOTION
 0946 Green, Verla
 0958 Griffin, Seeley Lane
 2373 Pitt, William Peter
 3523 Gray, Vivian
3. EXHIBIT 1 MOTION
 1900 Mattz, Emery T. Sr.
 2332 Pete, Lenora M.
 2333 Pete, Linda Elaine
 2723 Seymour, Roy
4. BUSSELL TRIAL FAMILY
 0365 Bussell, Anita Lyn
 0366 Bussell, Clemard Isaac Jr.
 0370 Bussell, Oswald Noel
 0371 Bussell, Timothy
 2614 Rowe, Karen Denise
 2615 Rowe, Yvonne Faye Ferris
 3176 Whitehurst, Deanna Russell
5. CAMPBELL TRIAL FAMILY
 0369 Bussell, Neta M. Dartt
 1590 McClellan, Duane K.

The tabular lists indicate that no plaintiffs claim to possess sufficient blood degree or residence to qualify under the manifest injustice exception in the Brown, Ruben, Hailstone, Kidd, and Swanson families.

Appended to this order is a copy of the plaintiffs' tabular list. The court has indicated on this list for each plaintiff, in the left margin, whether or not the plaintiff qualifies under the manifest injustice exception. An "X" in the margin next to the plaintiff's number indicates that the plaintiff does not qualify. An "F" indicates that material questions of fact concerning blood degree, residence, or land ties of that plaintiff must be resolved before a determination of eligibility can be made. A "Q" indicates that the plaintiff qualifies. However, due to the existence of questions of material fact, this court was not able to conclusively qualify any plaintiffs under the manifest injustice exception.

Accordingly, it is

ORDERED, that those plaintiffs with an "X" next to the plaintiff's number do not qualify under the manifest injustice exception and for those plaintiffs with an "F" next to their number, the court will need further detailed information, or their cases will be set for trial.

Lawrence S. Margolis

LAWRENCE S. MARGOLIS
Judge, U.S. Claims Court

Attachment