In the Judicial Court of the Tohono O'odham Nation
County of Pima, In the State of Arizona
Court of Appeals

FILED
WITHIN THE
TOHONO O'ODHAM JUDICIARY
2022 MAY 25 | A 8:28
Frances Reis
JUDICIARY SERVICE CLERK

GLORIA CHAVEZ,
Appellant,
Vs.

SELLS COMMUNITY LAND COMMITTEE, the regulatory body Overseeing land assignments in Sells District; OLGA ARMENTA, LARRY WILSON, MARILYN IGNACIO, LOUELLA MARTINEZ, CATHERINE WHITMAN. In their official capacities as Sells Community Land Committees Members; and John Doe and Jane Doe 1-20; and other John Doe Entities 1-10, All whose names are unknown.
Appellee.

Case No.: AP2021-0002
(Ref: AV2019-0091)

Opinion

Margaret Hirchak, Counsel for Appellant.

Katosha Nakai and William E. Strickland Jr., Counsel for Appellee.[1]

Before Judges Kyle Fields, Joseph Hardy Jr., and Rachael Frazier Johnson:

Under Tohono O'odham law, a district may assign homesites in unallotted lands to individuals under various conditions with one condition being that it cannot be an unending perpetual assignment. All other control and management of the Nation's unalloted lands, being held in common as a national public resource, are vested in the Tohono O'odham Council. Here, Gloria Chavez, Appellant, asserts that she has a vested property interest in unallotted land occupied

[1] Counsel entered a limited appearance to challenge jurisdiction and raise the issue of sovereign immunity.

by her relatives, and in which her deceased mother had an assigned homesite. We must decide whether Gloria Chavez, as an heir, has a protected property right to challenge the Sells Community Land Committee's decision to reclaim her mother's assigned homesite.

Background

Sells District Parcel 335 ("the Lot") is a parcel of unallotted land within the Tohono O'odham Nation. Gloria Chavez traces her relatives' occupation of the Lot to at least the 1940's when Julianna Garcia Pino lived on the Lot. When Ms. Pino passed away, she left the house on the Lot to her grandson, Ramon Jose Garcia. Mr. Garcia eventually passed away. Sometime later, the Sells District assigned the Lot to Melissa Chavez, Mr. Garcia's aunt. During a probate of Mr. Garcia's estate, the Court awarded the house to Ella Garcia, Mr. Garcia's surviving spouse. The Court gave Ella Garcia ten months to remove the house from the Lot or turn over the house to Melissa Chavez. Eventually, Melissa Chavez lived in the house on the Lot with her husband, Ivan Chavez, and children, Gloria Chavez and Ira Chavez.

In November 1976, Melissa Chavez signed a designation of beneficiary form, which named Ivan Chavez and Ira Chavez as beneficiaries "to have and hold all developments upon my property pertaining to this land assignment[.]" Aff. of Gloria Chavez in Supp. of Ex Parte Appl. for TRO and Compl. for Decl. and Inj. Relief, Ex. F.[2] Ivan Chavez passed away. Sometime later, Melissa Chavez passed away without a will. No one opened a probate case for Melissa Chavez's estate.

In September 2017, the Sells Community Land Committee ("the Committee") mailed Gloria Chavez a notice stating that the Committee intended to reclaim the Lot in order to re-assign the homesite to someone else.[3] Gloria Chavez appealed, and the Committee set a meeting. But at the meeting, the Committee did not allow Gloria Chavez to speak. The Committee reasoned that it

---

[2] On appeal, Gloria Chavez asserts that the trial court erred by considering the designation of beneficiary form because it was not properly authenticated. This argument, lack of authentication, was not raised in the trial court. Therefore, it is waived. *See Hawkins v. Allstate Ins. Co.*, 733 P.2d 1073, 1086 (Ariz. 1987) (stating "an appellate court will not consider issues not raised in the trial court").

[3] As noted by the trial court, the Sells Community Land Committee operates from a delegation of authority from the Sells District.

should notify Ira Chavez because he was on the designation of beneficiary form. In June 2018, the Committee notified Ira Chavez about the potential reclamation. Ira Chavez appealed, and the Committee met.

At the meeting, the Committee did not allow Ira Chavez or his attorney to speak or present any evidence. During the meeting, the Committee stated that a person must be a Sells District member to be eligible for a land assignment. Ira Chavez and Gloria Chavez are members of the Chukut Kuk District. After the meeting, the Committee issued a resolution, which gave Ira Chavez one year to improve the Lot and to apply for land assignment. Ira Chavez did not apply for a land assignment. Three months before the deadline, Ira Chavez passed away without a will. No one opened a probate case for Ira Chavez's estate. Gloria Chavez did not apply for a land assignment.

In July 2019, Gloria Chavez and Ira Chavez's children filed a complaint asking the trial court to find that the Committee violated their constitutional rights to due process, equal protection, and right to live and beneficially use land in any district regardless of district boundaries. A few months later, the plaintiffs amended the complaint adding a fourth count, alleging that the Committee lacked regulatory authority because the Lot was in a BIA reserve.

The Committee filed a motion to dismiss, which the trial court granted to the claim that the Lot was in a BIA reserve. The trial court also dismissed all the other plaintiffs, except Gloria Chavez, for lack of standing and capacity.

After asking for additional briefing, the trial court converted the motion to dismiss to a motion for summary judgment because the parties were presenting information outside the pleadings. The trial court ordered Gloria Chavez to notify the Tohono O'odham Nation and the Tohono O'odham Legislative Council.

Sometime later, Gloria Chavez asked the Court to reconsider dismissing the count that the Lot was in a BIA reserve. In April 2021, the Court restored the count. The trial court held oral argument, and entered judgment for the Committee on the grounds of sovereign immunity, lack of standing, the political question doctrine, and failure to join an indispensable party. Gloria Chavez appealed. The other Plaintiffs did not appeal.

Standard of Review

The Court of Appeals reviews a trial court's grant of summary judgment *de novo*, and the Court examines the record and all reasonable inferences in the light most favorable to the non-moving party. *See Tohono O'odham Council v. Garcia*, 1 TOR3d 10, 15 (T.O. Ct. App. 1989); *Smith v. Nation*, 2021 TOR Supp. 75, 77 (T.O. Ct. App. 2020).

Analysis

Gloria Chavez asserts that the trial court erred in ruling that she does not have standing. We disagree.

Standing

Standing is a requirement under the Tohono O'odham Constitution Article VIII, Section 2, which provides: "The judicial power of the Tohono O'odham Judiciary shall extend to all cases and matters in law and equity[.]" Standing "serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 407 (2013). The plaintiff, as the party invoking the court's jurisdiction, bears the burden of establishing standing. *See FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990). To prove standing, a plaintiff must show:

> 1. The plaintiff suffered an injury in fact—an invasion of a legally protected interest that is: (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;
>
> 2. There is a causal connection between the injury and the alleged conduct; and
>
> 3. It is likely, as opposed to merely speculative, that a favorable decision will redress the injury.

See In Re: Petition of the Judicial Branch, 3 TOR3d 105, 122 (T.O. Tr. Ct., Oct. 22, 2010); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Here, all of Gloria Chavez's claims are based on the premise of having a vested substantial property interest in the Lot and a right to maintain the Lot. *See* Am. Compl. at 12 ¶¶ 82–84; 13 ¶¶

95–97; 14 ¶¶ 104–05; 15 ¶¶ 111–13. To establish standing, Gloria Chavez must show that she has a legally protected interest in the Lot.

Does Gloria Chavez have a legally protected interest in the Lot?

It is undisputed that the Lot sits on unallotted lands of the Tohono O'odham Nation. Section 1 of the Tohono O'odham Constitution provides that "[t]he unallotted lands of the Tohono O'odham Nation . . . are a valuable public resource and shall be held as national lands forever." T.O. Const. Art. XVI, § 1.[4]

The Constitution further provides that "Control and management [of the unallotted lands of the Tohono O'odham Nation] are vested in the Tohono O'odham Council, which may enact laws governing the use, assignment, permit, lease, or other disposition of lands, interests in land and resources of the nation consistent with Federal law." *Id.* at § 1.

While the Constitution vests in the Tohono O'odham Council this broadest authority over the use, assignment, and other disposition of unallotted lands, and interests in those lands, the Constitution also vests some authority in the districts. The districts may assign homesites to individual members "under the customary procedures of their respective communities[.]" *Id.* at § 4(a). The Constitution also limits districts' power to make assignments. The district must make the assignment to a member of the nation. *Id.* at § 4. The assignment must be for "beneficial use and occupancy[.]" *Id.* at § 4(a). Finally, the district cannot grant an unending perpetual property interest in unallotted lands. *Throssell v. Throssell*, 1 TOR3d 34 (T.O. Ct. App. 1992).

Notably, the Constitution distinguishes between assignments of land and the developments on lands of the Tohono O'odham Nation. Under Article XVI, Section 6, of the Tohono O'odham Constitution, all individual developments, such as water developments, farms, and homes, on land of the Tohono O'odham Nation are personal property, which are "subject to disposal in accordance

---

[4] Allotted lands are treated differently. *See* T.O. Const. Art. XVI, § 2; *see generally* Cohen's Handbook of Federal Indian Law §§ 16.01–16.05, at 1068–1104 (discussing the history and differences between allotted lands and unallotted lands).

with the customary procedures of the district council[.]" T.O. Const. Art. XVI, § 6.[5] This distinction is important because it implies that developments on the assigned land are inheritable; whereas, the land assignments are not. *See State v. Roscoe*, 912 P.2d 1297, 1299 (Ariz. 1996) (discussing the rule of statutory construction that the expression of one thing is the exclusion of another); *see generally* Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 107–11 (discussing the Negative-Implication Canon).

In this case, Gloria Chavez argues that she has an interest in the Lot because, under the traditions and customs of the nation, her ancestors occupied the Lot since at least the 1940's and that she may now therefore inherit the Lot from Melissa Chavez's estate. Unfortunately, this argument: (a) conflates the constitutional distinction between a land assignment with the ownership of developments on the assigned land; and (b) places her claimed interest—based on custom and tradition—above the Constitution.

The record shows a long-running distinction between the land assignment and the developments on the land:

- Julianna Garcia Pino's Will: leaving "my house" to Ramon Jose Garcia. Aff. Of Gloria Chavez in Supp. Of Ex Parte Appl. For TRO and Compl. For Decl. and Inj. Relief, Ex. A.
- Ramon Jose Garcia's Letter: stating that he wants Melissa Chavez to get "my house." *Id.* at Ex. B.
- *In re: Ramon Jose Garcia*, Case No. 2438 (T.O. Tr. Ct. Jan. 23, 1976): awarding the house to Ella Garcia, but giving Ms. Garcia ten months to remove the house from the Lot. While the order identifies the Lot as the "lot of Melissa Chavez," the order does

[5] As such for unalloted lands, Tohono O'odham law does not adopt the common-law doctrines of fixtures or similar doctrines that convert personal property to real property when it is attached to the land. *See generally* 35A Am. Jur. 2d Fixtures § 2 (discussing fixtures and improvements to land).

not specifically award the Lot to Melissa Chavez.[6] Aff. Of Gloria Chavez in Supp. Of Ex Parte Appl. For TRO and Compl. For Decl. and Inj. Relief, Ex. B.

- Melissa Chavez's Designation of Beneficiary: stating "to have and hold *all developments* upon my property pertaining to this land assignment pursuant to Land Assignment Code[.]" *Id.* at Ex. F (emphasis added). Notably, the form does not attempt to pass the Lot *assignment* with those developments.

While the developments on the Lot were passed down multiple generations and the Sells District assigned the land to Gloria Chavez's ancestors, those acts do not create a vested property interest in either the land assignment or the land itself that Gloria Chavez, as an heir can assert.[7] Absent a law creating or recognizing such a right, the Court, based on the Constitution, cannot recognize a vested property interest by virtue of being an heir of a person who was granted an assignment or of being a descendent of a family that has occupied the Lot, for any amount of time. *See* T.O. Const. Art. XVI, § 1 (providing that control and management of unallotted lands are vested in the Tohono O'odham Council, which may enact laws governing assignments); *Id.* at § 4(a) (providing that assignments can be made "in accordance with ordinances enacted by the Tohono O'odham Council and approved by district councils"); *see also Clapper*, 568 U.S. at 407 (recognizing that standing "serves to prevent the judicial process from being used to usurp the powers of the political branches").

If the Court adopted Gloria Chavez's position, it could cause all the districts' land assignments to become perpetual. *C.f. Throssell*, 1 TOR3d at 34–38 (discussing that a district cannot grant an unending perpetual assignment). In fact, since Ms. Chavez bases her claimed interest on the custom and tradition of familial land occupation, any other family in a similar situation could also claim a perpetual inheritable interest in unalloted lands, with or without a homesite assignment.

---

[6] The record shows that other parties used loose identifications for the Lot. For instance, the original notice that the Committee gave to Gloria Chavez identified the Lot as the "Chavez Lot in Sells AZ." Aff. of Gloria Chavez in Supp. of Ex Parte Appl. for TRO and Compl. for Decl. and Inj. Relief, Ex. C.

[7] At oral argument, the Committee conceded that a person who was granted an assignment would have a vested protected interest for the purposes of standing.

That would make both the districts' power to assign homesites to individual members, and the Tohono O'odham Council's authority to manage all land dispositions, meaningless. *See* T.O. Const. Art. XVI, § 1 (providing that the lands of the Tohono O'odham Nation are national lands forever); *id.* at § 3 (unallotted lands held in common); *id.* at § 5 (unallotted lands not under district assignment or under other use or disposition authorized by the Tohono O'odham Council may be used for communal pastures or for public purposes). While custom and tradition are important aspects of Tohono O'odham law, Gloria Chavez cannot use them to contradict express terms in both the Constitution and the Nation's laws to create a perpetual private interest in unallotted lands. *See* 4 T.O.C. § 1-102 ("In all civil cases the Tohono O'odham Courts shall apply, in order of precedence, the Tohono O'odham Constitution, the Nation's laws and ordinances, and finally the customs of the Nation."). As a result, Gloria Chavez does not have a vested legally protected interest in the Lot.

Because Gloria Chavez does not have a protected interest, the Court need not consider the two remaining elements for standing. *See In Re: Petition of the Judicial Branch*, 3 TOR3d at 122; *see also Lujan*, 504 U.S. at 560–61. Therefore, Gloria Chavez does not have standing.

Finally, even assuming the Lot was in a "BIA reserve", and such status removed the district's authority to regulate the Lot, Gloria Chavez would not have standing because she would not have a vested legally protected interest in the land by virtue of intestate succession from Melissa Chavez.[8]

Alternative Grounds

Because the Court affirms the trial court's decision that Gloria Chavez lacks standing, the Court declines to address her arguments that the trial court erred granting judgment on the grounds of sovereign immunity, the political question doctrine, and failure to join an indispensable party.

---

[8] The Court specifically notes that it is not ruling on the merits of the claim that the Lot is in a "BIA reserve" or what effects that it would have.

See Hawkins v. State, 900 P.2d 1236, 1239 (Ariz. Ct. App. 1995) (discussing that an appellate court will affirm the entry of summary judgment if it is correct for any of the alternative grounds).

Conclusion

The Court affirms the trial court's judgment that Gloria Chavez lacks standing. The Court also lifts the stay that the trial court entered on October 8, 2021.

DATED: May 25, 2022.

Judge Kyle Fields

Judge Joseph Hardy Jr.

Judge Rachael Frazier Johnson