

**Matter of Spota v Jackson**

2005 NY Slip Op 30198(U)

November 4, 2005

Suffolk County Ct

Docket Number: 0018000/2005

Judge: C. Randall Hinrichs

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COUNTY COURT: STATE OF NEW YORK  
COUNTY OF SUFFOLK

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In the Matter of the Application of  
THOMAS J. SPOTA, as District Attorney  
of Suffolk County, on behalf of the UNKECHAUG  
INDIAN RESERVATION,

Petitioner,

CV 2005-18000

-against-

November 4, 2005

TINA JACKSON,

Respondent,

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This matter comes on by way of an Order to Show Cause brought by the Suffolk County District Attorney's Office, pursuant to Section 8 of the NYS Indian Law, to remove Tina Jackson from the Unkechaug (also known as, and hereinafter referred to as the Poospatuck) Indian Reservation.

A trial was conducted on October 3, 2005, October 4, 2005 and October 6, 2005. The basic facts are largely agreed upon by both sides. The testimony revealed that Tina Jackson, a non-blood right member of the Poospatuck Indian Nation, is married to George Jackson, a blood right member of the Poospatuck Indian Nation. The couple lived together with their three sons on an allotment on the reservation which is located within Mastic, NY in Suffolk County. In 2002, according to Ms. Jackson's uncontraverted testimony, she paid to have an old trailer removed from the allotment and replaced it with a new trailer. In January 2005, Ms. Jackson obtained a stay away Order of Protection against George Jackson, based upon a domestic incident following a period of marital strife. In February 2005, two Poospatuck Land Trustees approved a transfer of the allotment in question from George Jackson to George's brother Glenn

Jackson. On June 21, 2005, the Tribal Council authorized the Suffolk County District Attorney to initiate removal proceedings pursuant to Section 8 of the NYS Indian Law. Ms. Jackson testified that she first learned of the transfer of the allotment from George Jackson to Glenn Jackson when she was served with the instant Order to Show Cause. Ms. Jackson currently resides on the subject allotment with her three blood right member sons, ages 24, 19 and 18.

The question to be resolved by the Court is whether, within the meaning of the statute, Tina Jackson is an "intruder" on the Poospatuck Reservation. The District Attorney contends that the Tribal Council's determination that Ms. Jackson is an intruder is a political decision made by the council and, therefore, may not be disturbed by the Court. Ms. Jackson contends that the Poospatuck by-laws and customs allow her to reside on George Jackson's allotment as long as they are married. She submits that George Jackson's purported transfer of his allotment to his brother Glenn Jackson was in retaliation for her obtaining an Order of Protection against George and that the transfer should, therefore, be disallowed as a sham.

Initially, the Court notes that the issue of the legitimacy of the transfer from George Jackson to his brother Glenn Jackson is an internal matter entirely within the purview of the Poospatuck Indian nation. The legal status of the transfer is not before the Court. Although the Court has considered the implications which the transfer of the allotment has on the question of whether or not Ms. Jackson is an intruder, the Court makes no rulings or findings as to the legitimacy of the transfer.

The term "intruder" is not specifically defined within Section 8 of the Indian Law. Rather, "intruder" is defined by reference to case law interpretation of the term. A review of the leading cases in this area (many of which are cited within the memoranda of law submitted by opposing counsel here) reveals that deference must be given by the courts to Indian tribes in determining whether or not a person is an intruder. See, for example, *Application of Fischer*, 283 AD 518, 128 NYS2d 886 (3<sup>rd</sup> Dept. 1954.)

However, the cases also make clear that courts must make a legal determination, independent of the Indian nation, as to whether or not a person is an intruder. There would be no need for the statute or this procedure if, as the Plaintiff argues, it is simply an internal matter for the tribe. For example, in *Application of Stakel*, 281 AD 183, 119 NYS2d 133 (4<sup>th</sup> Dept. 1953) *aff'd* at 306 NY 679 (1954) it was held that Carrie Blueye was not an intruder despite a request by the Tonawanda Nation to have her evicted as an intruder. Carrie Blueye, whose father was a member of the Tonawanda Nation, was determined not to be a member of the Tonawanda because her mother was a Seneca Indian. The Appellate Division, Fourth Department in *Stakel* noted that the Indian Law does not define "intruder" and found that based upon Ms. Blueye's heritage and the fact that she resided on the land for more than sixty years that she was, there "not as an intruder thereon but with the tacit approval and acquiescence of the Chief's Council and all others." *Stakel, id* at 184.

In another case, *Hennessy v Dimmler*, 90 Misc2d 523, 394 NYS2d 786 (County Ct., Onondaga Cnty. 1977) the court ruled that persons who had resided on the reservation for many years were not intruders since they did not force their way onto the reservation "without leave or welcome," relying on the language from *Stakel, id*.

Section IV of the *Tribal Rules, Customs and Regulations* of the Poospatuck Indian Nation (moved into evidence by the District Attorney's Office as Plaintiff's exhibit # 1) provides, in part:

"Land rights of a non-blood right spouse

*Any non-blood right spouse shall have the right to enjoy all privileges of his or her blood right spouse which are customary in maintaining a normal marital life"*

Clearly, if the allotment were still in the name of her blood right member spouse, George Jackson, then Ms. Jackson could not be deemed an intruder by the wording of Section IV of the *Tribal Rules, Customs and Regulations*. The Court must look to other facts and circumstances to determine whether Ms. Jackson is an intruder.

The Court fully credits the testimony of Chief Harry Wallace at the instant hearing. Chief Wallace testified, on the one hand, as to the tribal council's decision to move forward with the instant proceeding to have Ms. Jackson declared an intruder. Chief Wallace also testified unequivocally that, despite the transfer to Glenn Jackson, Ms. Jackson's three children could remain on the allotment in question as long as they desired to live there. If the Court were to grant the tribe's application to have Ms. Jackson declared an intruder, the Court would be ordering a separation of the mother and her three sons, all three of whom are unquestionably blood right members.

In ruling on the instant application, the Court is not addressing the claim raised by Ms. Jackson that the transfer of the allotment to Glenn Jackson violated the three Jackson children's right of first refusal. While there was credible testimony before the Court to that effect, the validity of the transfer to Glenn Jackson and any remedies the children may have in that regard are internal matters for the tribe.

The Court notes that two of Ms. Jackson's children are under the age of twenty-one, eighteen year old Mohamed and nineteen year old Timothy. Certain limited New York statutory provisions extend legal obligations of parents to their children until their children reach the age of twenty-one. For example, New York Domestic Relations Law (DRL) § 240(2) directs that child support, when ordered by the court, must be paid for each child under the age of twenty-one. Similarly, by analogy, New York's Family Court Act § 415 imposes an obligation for a parent of a recipient of public assistance to support their children until age twenty-one. While New York State statutes and case law recognize that the age of eighteen marks the age of majority, clearly a parent continues to bear moral, emotional and social obligations to children beyond the age of eighteen.

In that the law regarding whether someone is an "intruder" vests discretion with the court, the Court finds the de facto separation of a mother from her children, which would occur if the instant application was granted, to be determinative in denying it. Ms. Jackson, like Carrie Blueeye in the *Stakel* case, did not force her way onto the reservation without leave or welcome. She moved onto the reservation twenty years ago by virtue of her marriage to George Jackson. Ms. Jackson has raised and continues to care for three blood right member children, two of whom are under the age of twenty-one. The Court finds that Ms. Jackson has remained on the reservation with the "tacit approval and acquiescence of the Chief's Council and all others." Ms. Jackson is entitled to reside upon the allotment at 165 Poospatuck Ln. as long as the following two circumstances continue to exist: 1) at least one of her blood right member children continues to reside on the allotment; **and** 2) at least one of her children still residing on the allotment is less than twenty-one years of age. The Court finds, based upon all the facts and circumstances as they currently exist, that Ms. Jackson is not an intruder within the meaning of Section 8 of the Indian

Law. Leave is granted for the Poospatuck Tribal Council to renew removal proceedings should either one or both of the aforementioned circumstances no longer exist.

This memorandum constitutes the decision and order of the Court.

C. Randall Hinrichs  
J.C.C.  
s/ C. RANDALL HINRICHS