

**IN THE SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIBAL COURT**  
**COURT OF APPEALS**

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Sac and Fox Tribe of the Mississippi in Iowa,  
Appellee,

Case No(s): CR-2023-0143  
APP-2024-0003

v.

**Order (Reversing and  
Remanding)**

Krystle Tyon,  
Appellant.

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**INTRODUCTION**

Appellant Krystle Tyon, by and through Meskwaki Public Defender Cynthia Tofflemire, filed this discretionary appeal in response to a denial of a Motion to Dismiss. Appellant argues that the powwow grounds are not included in the language of the Exclusion Order issued on November 16, 2022. The Court of Appeals, comprised of Associate Justice Todd R. Matha, Associate Justice Chad M. Gordon and Chief Justice Tricia A. Zunker, reviewed the record in its entirety, deliberated and reverse the Trial Court’s order denying the Motion to Dismiss.

**FACTUAL AND PROCEDURAL HISTORY**

On November 2, 2022, the Tribal Council of the Sac and Fox Tribe of the Mississippi in Iowa (hereinafter “Tribal Council”) convened a hearing as noticed in the Notice of Exclusion dated September 22, 2022, and served on appellant. The purpose of the Tribal Council hearing was to determine the level of exclusion of the appellant, if any, from the Settlement and Tribal lands. On November 16, 2022, the Tribal Council issued a Findings of Fact, Conclusions of Law and Determination/Final Order (hereinafter “Exclusion Order”). The Exclusion Order identifies that appellant is not an enrolled tribal

member, that she resided on the Settlement and that she had admitted guilt to vandalism of the Tribal Center.

The Tribal Council issued the following order pursuant to its authority under the Constitution and under section 22-1103 of the EXCLUSION CODE:

Beginning on Saturday December 17<sup>th</sup>, 2022 the Examinee shall be excluded from maintaining residence on any lands of the Meskwaki Settlement and all Sac & Fox Tribe of the Mississippi in Iowa Tribal Lands for a period of five years. Additionally, beginning on the above mentioned date the Examinee shall be excluded from all tribal government and departmental facilities, the Meskwaki Bingo Casino Hotel, and the Travel Plaza for a period of five years. The Examinee shall not be excluded from visiting the health clinic for services.

Exclusion Order at 3.

Executive Director Rachelle Perks sent appellant a letter dated August 8, 2023, stating in pertinent part:

I am writing to remind you of the terms of your final order of exclusion dated November 16, 2022. . . . I find it prudent to remind you of the terms of your exclusion and to clarify which areas are a part of your exclusion. . . . Additionally the powwow grounds are maintained and a facility of the tribal government and are included in your exclusion. . . . Please refer to your order of exclusion and ask if a location is included if in doubt.

Letter from Rachelle Perks, Exec. Dir., to Krystle Tyon (Aug. 8, 2023) at 1.

On August 12, 2023, appellant attended the annual Meskwaki powwow. She was arrested and charged with the criminal offense of Trespass after Exclusion. Appellant pled not guilty to the charge. Appellant's counsel filed a Motion to Dismiss, arguing that powwow grounds are not included within the meaning of facilities in the Exclusion Order. The Trial Court denied the motion. Appellant filed a discretionary appeal. The Court of Appeals determined that the matter involved a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order

may materially advance the ultimate termination of the proceeding. SAC & FOX TR. OF MISS. CODE § 5-4401(b)(1). Consequently, the Court accepted the discretionary appeal. The Court of Appeals established a scheduling order, including a deadline of September 16, 2024, for appellant's initial brief. Appellant, however, did not file a brief.<sup>1</sup> Order (Denying Mot. to Cont.; Granting Req. for Written Transcripts), APP-2024-0003 (SF App. Ct. Sept. 20, 2024). Appellee also opted not to file a brief. The Court of Appeals determined not to convene oral argument and to render a decision based on review of the Trial Court record and appellate filings.

### ISSUE PRESENTED

The Court must determine whether the Meskwaki powwow grounds are “facilities” included in the Exclusion Order issued by Tribal Council.

### STANDARD OF REVIEW

The Court reviews *de novo* the Trial Court's legal conclusions, including subject matter jurisdiction and the doctrine of sovereign immunity. *Sac & Fox Tr. of the Miss. in Iowa v. Attorney's Process & Investigation Servs., Inc.*, APP-2008-02-124, at 7 (SF App. Ct. Dec. 23, 2008) (citing *Mallet v. Bowersox*, 160 F. 3d 456, 459 (8th Cir. 1998)). In employing *de novo* review, the Court reviews the matter anew without any deference to the lower court's decisions, though the Court may still refer to the lower court's factual record and review findings of fact for clear error where necessary. *Id.* (citing S.F.R. App. P. A-7);

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<sup>1</sup> In some jurisdictions, failure to file a timely initial brief may result in a dismissal of the appeal. *See, e.g.*, HCN R. App. P. 13(b), available at <https://ho-chunknation.com/wp-content/uploads/2024/09/Rules-of-Appellate-Procedure-1.pdf>; see also Iowa R. App. P. 6.1202, available at <https://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/6.pdf>. Neither substantive law nor procedural rule dictate that result here.

*cf.* Fed. R. Civ. P. 52(a)(6). This appeal presents a question of law; consequently, we employ *de novo* review.

## DECISION

The Tribal Council has the authority to exclude non-members from the Settlement and Tribal land. SAC & FOX TR. OF MISS. CODE § 22-1203(a). In determining the scope of an exclusion order, the Tribunal<sup>2</sup> may conclude that the non-member shall be excluded from the Settlement and all Tribal land, or from part of the Settlement and/or Tribal land, or may permit such person to remain upon the Settlement and Tribal land with or without conditions as the Tribunal sees fit. *Id.* § 22-1207(e). Here, in addition to banning residence on the Settlement, the Exclusion Order explicitly identified a number of sites for exclusion, specifically “all tribal government and departmental facilities, the Meskwaki Bingo Casino Hotel, and the Travel Plaza.” Exclusion Order at 3. The Exclusion Order further provided an exception from one departmental facility, permitting appellant’s use of health clinic services during the exclusion period.<sup>3</sup>

The Tribal Council could have simply stated that appellant shall be excluded from all Tribal lands.<sup>4</sup> This language would have certainly included the powwow grounds. But

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<sup>2</sup> “Tribunal” means the Tribal Council sitting in its capacity as an adjudicatory body under the authority of the Sac and Fox Tribe of the Mississippi in Iowa Constitution and Bylaws. SAC & FOX TR. OF MISS. CODE § 22-1101(i).

<sup>3</sup> The Court observes appellee afforded appellant the ability to secure health care services as permitted in the Exclusion Order. Powwow grounds have a unique and distinct purpose, which is to host a gathering of singers, dancers and spectators who assemble together in a positive way. Dancing and singing can be healing, whether one is an active participant or a spectator. *See, e.g., Powwow: A Way of Healing*, INSIDE UNC CHARLOTTE, Dec. 8, 2022, available at <https://inside.charlotte.edu/news-features/2022-12-08/powwow-way-healing/>; see also Brendan Baptiste, *Empowerment and Healing: The Power of Powwows in Women’s Prisons*, WASH. STATE DEP’T OF CORRS., (Sept. 20, 2023), available at <https://www.doc.wa.gov/news/2023/09202023.htm>.

<sup>4</sup> “Tribal land” means all trust and fee land owned by the Tribe. SAC & FOX TR. OF MISS. CODE § 22-1101(i).

they did not. They identified various sites explicitly. Furthermore, an e-mail from Chief Deputy Attorney General to Public Defender Tofflemire dated February 28, 2024, states: “The council has not made any determinations on departmental facilities. The executive director made the determination in regards to the powwow grounds.” E-mail from Joshua Canterbury, Chief Deputy Attorney General, to Cynthia Tofflemire, Public Defender (Feb. 28, 2024, 16:49 CST). Consequently, it appears that the Tribal Council had not considered whether the powwow grounds were intended as an excluded site at the time the Exclusion Order was issued.

### **Plain Meaning Interpretation**

Words and phrases shall be construed according to their common and approved meaning and use within the Settlement and nearby surrounding communities. SAC & FOX TR. OF MISS. CODE § 1-2104(a). The parties and Trial Court focused on the definition of facilities. That approach is not determinative here where we are tasked with ascertaining whether grounds and facilities may be used interchangeably, demonstrating a common and approved use. Grounds and facilities may have overlapping characteristics,<sup>5</sup> but they are not synonymous.<sup>6</sup> For example, referring to health care facilities or recreation center facilities is common parlance; referring to powwow facilities is not a common phrase, and indeed is rather awkward. There is very specific language to describe the outdoor area

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<sup>5</sup> The Trial Court order denying the motion to dismiss and appellee’s resistance to the discretionary appeal focus on the presence of electricity, buildings, shelters and bleachers in concluding that powwow grounds are facilities. Order on Mot. to Dismiss, CR-2023-0143, at 2 (SF. Tr. Ct. July 1, 2024); Tr. Resistance to Not. of App., APP-2024-0003, at 2 (SF App. Ct. Aug. 6. 2024). These same amenities may be present at athletic stadiums and public parks, yet “facilities” may or may not be commonly used to describe them.

<sup>6</sup> Compare “grounds,” MERRIAM-WEBSTER THESAURUS, available at <https://www.merriam-webster.com/thesaurus/grounds>, with “facility,” MERRIAM-WEBSTER THESAURUS, available at <https://www.merriam-webster.com/thesaurus/facility>.

where a powwow occurs – the powwow grounds. That the grounds are maintained by tribal operations does not render it a government building or facility. Certainly, the Exclusion Order could have listed the powwow grounds explicitly, but the Tribal Council chose not to do so.

### **Effect of Executive Director’s Letter**

The Exclusion Order by its own terms is a final order.<sup>7</sup> The terms of the order must be clear on its face so that a reasonable person has notice of prohibited areas and permissible areas.<sup>8</sup> The language of the exclusion provision must be able to stand on its own, independent from subsequent clarification. The scope of a final order cannot later be modified or expanded by the Executive Director.

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<sup>7</sup> “THIS ORDER IS A FINAL ORDER OF THE TRIBAL COUNCIL . . . .” Exclusion Order at 1.

<sup>8</sup> It is a well-settled principle of criminal law that a defendant must know that intended conduct is illegal, meaning a law cannot be so vague or ambiguous that a reasonable person could not understand what actions are prohibited; this principle is known as the “void for vagueness” doctrine, which ensures fair notice under the law and prevents arbitrary enforcement. *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926); *cf.* SAC & FOX TR. OF MISS. CODE § 1-2101(b) (allowing resort to external persuasive authority). Here, appellant testified that she contacted law enforcement prior to attending any powwows.

A: I called the police to see if it was okay. And it’s, this, they said, “I don’t see why not?”

Q: And they were aware of your exclusion order?

A: Yeah, they’re aware.

Q: And did you attend any powwows?

A: Yes.

Q: Which ones?

A: [inaudible] graduation powwow. [inaudible] graduation day or proclamation powwow and the [inaudible] welcoming powwow.

Q: And were there any issues with that?

A: No.

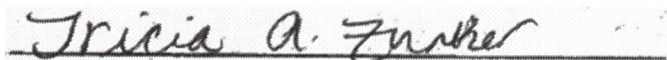
*Tr. of H’rg: Sac & Fox Tr. of the Miss. in Iowa v. Krystle Tyon* at 2:7-2:22, April 23, 2024. It is troubling that the agency charged with enforcement was also unclear on the scope of the exclusion and that appellant attended several powwows prior to the annual powwow without incident. This is exactly the discriminatory enforcement and discriminatory prosecution the void for vagueness doctrine seeks to prevent.

The subsequent letter from the Executive Director could be interpreted two different ways, neither of which are a persuasive argument for appellee. On the one hand, the Executive Director cannot change or modify the terms of a final order. On the other hand, if the Executive Director felt compelled to clarify the terms of the order, this suggests an awareness that the terms of the order may not be clear to a reasonable person. However, as we resolve above, powwow grounds and facilities do not share a common meaning and use.


### CONCLUSION

Powwows are a central part of Indigenous culture; indeed, the annual Meskwaki powwow is one of the oldest powwows in the United States and the only event of its kind in Iowa.<sup>9</sup> The Tribal Council had the authority to exclude appellant from the powwow grounds, but the language of the order does not contain that exclusion explicitly. Consequently, the Court REVERSES and REMANDS the case to the Trial Court for a decision consistent with this opinion.

IT IS SO ORDERED. Dated this 27<sup>th</sup> of November 2024.



Hon. Tricia A. Zunker, Chief Justice  
Meskwaki Court of Appeals



Hon. Chad M. Gordon, Associate Justice Pro Tempore  
Meskwaki Court of Appeals



Hon. Todd R. Matha, Associate Justice Pro Tempore  
Meskwaki Court of Appeals

<sup>9</sup>*Origins of the Powwow*, MESKWAKI ANNUAL POWWOW, available at <https://meskwakipowwow.com/powwow-origins>.