

OFFICE OF  
APPELLATE COURTS

No. A06-804

SEP 18 2008

**FILED**

STATE OF MINNESOTA

IN SUPREME COURT

Buddie Greene,

Appellant,

vs.

Commissioner of the Minnesota Department of Human Services,  
and Aitkin County Health and Human Services,

Respondents.

**COMMISSIONER OF THE MINNESOTA DEPARTMENT OF HUMAN SERVICES  
ANSWER TO PETITION FOR REHEARING**

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STATE OF MINNESOTA  
IN SUPREME COURT

Buddie Greene,

Appellant,

vs.

**COMMISSIONER OF THE MINNESOTA  
DEPARTMENT OF HUMAN SERVICES  
ANSWER TO PETITION FOR  
REHEARING**

Commissioner of the Minnesota  
Department of Human Services, and  
Aitkin County Health and Human  
Services,

Appellate Court Case No. A06-804

Date of Filing of Court of Appeals Decision:  
August 28, 2008

Respondents.

TO: The Supreme Court of the State of Minnesota:

Pursuant to Minnesota Rule of Civil Appellate Procedure 140.02, Respondent Commissioner of the Minnesota Department of Human Services ("Commissioner") hereby answers Appellant's Petition for Rehearing as follows:

1. Appellant contends that the Court failed to consider her status as a United States citizen. Neither the Court nor the parties have ever questioned Greene's status as a U.S. citizen, but status as a U.S. citizen does not bestow upon a person untemperable rights. The extent to which those rights can be tempered was the subject of this Court's equal protection analysis. The Court undertook a thorough analysis of Greene's rights as a U.S. citizen and a member of the Minnesota Chippewa Tribes ("MCT") and correctly concluded that Greene's rights were not infringed by Minnesota Statutes section 256J.645 or the Commissioner's implementation of the statute.

2. This Court did not address Appellant's present argument that the contract between MCT and the Minnesota Department of Human Services violates Minnesota Statutes section 256J.645, subdivision 2. The Court need not do so now because the argument was not

raised before this Court prior to Appellant's Petition for Rehearing. Although Appellant made cursory mention of this issue in the Court of Appeals, she failed to develop or argue the issue before this Court and should be precluded from raising the issue now.

3. Appellant believes that the Court's analysis of the good cause provision in Minnesota Statutes section 256J.46, subdivision 1, was an attempt to dismiss her equal protection challenge. Appellant is mistaken. The Court *correctly* reviewed the good cause provision in Minnesota Statutes section 256J.46, subdivision 1, to dismiss Greene's argument that Minnesota Statutes section 256J.645 infringes on her fundamental right to travel. The Court noted that Greene raised this issue for the first time before *this* Court and failed to make a record in lower forums. The Court nonetheless conducted a thorough analysis of the equal protection claims in Section II of its Opinion and dismissed her claims.

4. The Court correctly concluded that the classification used by Minnesota Statutes section 256J.645 is political, not racial, and did so with full support of the law. The Court expressly distinguished *Jefferson v. Comm'r of Revenue*, 631 N.W.2d 391 (Minn. 2001), stating "*Jefferson* did not involve a comprehensive scheme of state benefits that provides tribes with access to state and federal funds to implement state programs for their members." For the same reason, *Brun v. Comm'r of Revenue*, 549 N.W.2d 91, 92 (Minn. 1996), another state taxation case, was also distinguishable and did not direct the ruling in this case.

Further, the Court's conclusion does not run contrary to *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973), which states, "*Absent express federal law to the contrary*, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State." *Mescalero*, 411 U.S. at 149-50 (emphasis added). The Court discussed at length the underpinnings of the

Minnesota Family Investment Program (“MFIP”) in the Personal Responsibility & Work Opportunity Reconciliation Act of 1996 (“PRWORA”) and the resulting Temporary Assistance for Needy Families (“TANF”) federal block grant program. The Court carefully noted that PRWORA allows federally recognized tribes to create and administer their own TANF programs, and the practical barriers that preclude many tribes from taking advantage of this option. The Court also noted that PRWORA offers states great flexibility in developing TANF programs and permits Minnesota’s MFIP program to include a provision that requires the state to “cooperate with tribal governments in the implementation of MFIP.” Minn. Stat. § 256J.315. MFIP, with its underlying foundation in PRWORA and the federal TANF program, is mandated to involve tribal governments. The MFIP scheme, including contracts under Minnesota Statutes section 256J.645, falls squarely within the *Mescalero* exception of a federally permissible state law that may impact tribal members living off the reservation differently from other Minnesota residents.

Appellant contends that the “error” of this Court is compounded by the Court’s decision in *State v. R.M.H.*, 617 N.W.2d 55, 66 (Minn. 2000), which Appellant claims violates Congress’ 1990 amendments to the Indian Civil Rights Act. The 1990 amendments are sometimes referred to as the *Duro* fix because they were enacted by Congress in response to *Duro v. Reina*, 495 U.S. 676 (1990), to restore tribal criminal jurisdiction over nonmember Indians. Appellant offers no legal authority for her position on this issue.

5. The Court relied on *United States v. Antelope*, 430 U.S. 641, 646 (1977), and *Fisher v. Dist. Ct. of the Sixteenth Jud. Dist. of Mont.*, 424 U.S. 382, 390-91 (1976), to adopt the U.S. Supreme Court’s position that state laws affecting members of a federally recognized tribe may pass constitutional muster even though the law may impart a disability, rather than a

preference, on certain class members when the law “directly promot[es] Indian interests in self-government.” Nothing in the U.S. Supreme Court’s holdings in *Antelope* and *Fisher* limit this Court’s ability to affirm laws that may result in a disability to individual tribal members when the laws promote tribal self-governance. Nothing in the U.S. Supreme Court’s holdings in *Antelope* and *Fisher* require this Court to convert a political classification into a suspect racial classification for the sole reason that the classification may work a hardship on a particular individual when the classification is intended to promote self-governance.

6. Appellant’s third party beneficiary contract argument is not properly before this Court because it is raised for the first time in Appellant’s Petition for Rehearing. Although Appellant made cursory mention of this issue at the district court, she failed to develop or argue the issue before any court and should be precluded from raising the issue before this Court at this time.

7. Appellant makes no argument that warrants review by this Court.

8. Appellant makes no argument that warrants review by this Court.

## CONCLUSION

The Commissioner respectfully requests that this Court deny Appellant's Petition for Rehearing. The matters raised in this petition that were briefed and argued to this Court were carefully considered by this Court prior to issuance of its Opinion. The matters raised in this petition that were *not* briefed and argued before this Court cannot be given a forum at this stage. Appellant's Petition should therefore be denied.

Dated: September 18, 2008.

Respectfully submitted,

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