

OCT 30 2023

CONNIE DEARMAN *lm*  
MUSCOGEE (CREEK) NATION  
COURT CLERK

IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

MUSCOGEE (CREEK) NATION, )  
Plaintiff- Appellant, )  
 )  
vs. )  
 )  
HOPKINS: Paul Michael )  
Defendant- Respondent. )

CASE NO.: SC-2023-08

Appeal from the District Court of  
the Muscogee (Creek) Nation,  
Okmulgee District.  
Case No.: CF-2021-127

**RESPONDENT’S BRIEF IN CHIEF**

COMES NOW Respondent, Paul Michael Hopkins (hereafter referred to as “Respondent”), by and through undersigned counsel, submits this *RESPONDENT’S BRIEF IN CHIEF* in opposition and response to the *BRIEF IN CHIEF OF THE MUSCOGEE CREEK NATION*. For the reasons presented, we pray this Court will affirm the dismissal granted by the District Court in the above-captioned case.

**ISSUES PRESENTED ON APPEAL**

**First Issue:** The District Court correctly utilized its discretion when it dismissed the action without allowing the Nation an opportunity to respond in writing.

**Second Issue:** The District Court’s dismissal with prejudice was proper and within its discretion.

**STATEMENT OF THE CASE**

The Nation filed the Criminal Complaint and Information (“CCI”) on February 23, 2021, with the Muscogee Creek Nation District Court. Arraignment occurred on July 27, 2021, and the case proceeded through Disposition to Pre-Trial Conferences from October 26, 2021, through March 11, 2022. The Court set Disposition on April 28, 2022, and pre-trial conferences resumed July 15<sup>th</sup>, 2022. Respondent waived speedy trial on July 15, 2022, and once again on November 16, 2022. The Court progressed the case to Sounding Docket on January 18, 2023, but again passed to the April 12, 2023. Finally, this case came on for Sounding Docket on July 12, 2023; the Court officially set the case for trial and deadlines ordered. On July 31, 2023, Respondent filed a Motion to Dismiss and/or Motion to Exclude Witnesses. The Nation

filed a Motion to Continue requesting time to reply in writing, and the Court denied the motion the same day.

When the case came on August 1<sup>st</sup>, 2023, the Nation renewed its request, orally, to continue and allow the Nation an opportunity to respond. The District Court allowed oral arguments from both sides. The District Court denied the Nation's request and ordered the case dismissed with prejudice and on August 9, 2023, filed a written order stating as such.

#### **STANDARD OF REVIEW**

M(C)NCA Title 27, § 1-101(C) grants this court exclusive jurisdiction to review final orders of the Muscogee (Creek) Nation District Court. This Court reviews challenges to District Court jurisdiction *de novo*. *Muscogee (Creek) Nation v. Lee*, SC 11-12, (Aug. 15, 2013); *Muscogee (Creek) Nation v. Johnson*, SC 11-13, (Aug. 15, 2013).

#### **ARGUMENT AND AUTHORITY**

- I. **The District Court correctly utilized its discretion when it dismissed the action without allowing the Nation an opportunity to respond in writing.**

The Appellant correctly cites Title 14 §1-301(C) to provide this Court with general guidelines as to legislature's goal in drafting Title 14. Specifically, §1-301(C) states:

"This Title is intended to provide for the just determination of every criminal proceeding. It shall be construed to *secure simplicity in procedure, fairness in administration of justice, and the elimination of unjustifiable expense and delay.*" (emphasis added).

With no specific provisions in Title 14, Title 14 §1-301(D) provides, in part, that:

"If no provisions addressing such procedural issues are contained in the Judicial Code or other applicable law of the Nation, the Court may proceed in a lawful fashion consistent with

Muscogee (Creek) Nation laws, the Constitution of the Nation, and the federal Indian Civil Rights Act, *subject always to the due process rights of the defendant and the fundamental fairness of the proceedings.*" (emphasis added).

Title 14 grants to the District Court Judge significant discretion in determining how to proceed in a case when Title 14 is silent as to how to proceed. This rule is limited, in part, by the requirement to protect the due process rights of Defendant and the fairness of the process. The Nation points to the emphasis given to the concept of "fairness" in the statutes above. This standard of fairness extends to all parties. However, §1-301(C) also underscores the importance of simplicity in the procedure and eliminating unjustifiable expense or delay.

Despite being filed in February of 2021, this case did not come on for trial until August 1, 2023. Over two years passed while this case was pending. When Respondent filed the Motion to Dismiss and/or Exclude Witnesses on July 31, 2023, the Nation filed a Motion to Continue to allow them time to respond in writing. The Court denied this request. The Nation contends the idea of fairness was violated by the Court's denial of their Motion to Continue. However, as stated by the Nation in their *Brief in Chief*, both parties were allowed to argue for and against the continuance. The District Judge heard both sides, and rather than allowing for what could amount to more delay in the case and to, I'd argue, "secure the simplicity of the procedure", and out of fairness the Judge denied the oral request and dismissed the case. No statute or case law requires the Judge to allow the Nation an opportunity to respond, in writing or otherwise once the Judge decides to dismiss a case. The Nation can only point to the generalized concept of "fairness" but "fairness" is only one third of the test and "fairness" is implicated by both sides. However, the concept of "simplicity in procedure" would fall to the Respondent as the Judge determined twice, once denying the written Motion to Continue on July 31, 2023, and again after brief oral arguments on the issue of the continuance on August 1, 2023. Simplicity would not require the Nation a chance to respond when the Judge has already determined

that a dismissal is warranted. Simplicity instead leans toward the Respondent that once the District Court Judge has found enough basis exists to justify a dismissal, simplicity would encourage the Judge to dismiss the case thereby.

Finally, although the District Court Judge did not elucidate the specific reasons for his decision, it is more than possible the nearly two-year delay in the processing of this case, “expense and delay” played, at least in part, a role in his decision.

With fairness concerns present for both sides, a reversal based upon fairness is not warranted. Further, simplicity in procedure and the elimination of unjustifiable expense and delay fall toward the Respondent. We therefore request this Court find the District Court’s denial of the Nation’s request to respond in writing was proper and affirm the decision.

**II. The District Court’s dismissal with prejudice was proper and within its discretion.**

Statutes grant The District Court Judge wide authority to dismiss a case by Title 14. Title 14 §1-401(G) states:

*“The Court, for the furtherance of justice, may either on its own motion or upon the application of the prosecuting attorney, order an action be dismissed. (emphasis added) An order for the dismissal of the action shall not be a bar to any other prosecution for the same offense.”*

The Court is allowed to dismiss the case out of furtherance of justice and may do so on its own without the prosecuting attorney’s consent, request, or approval. While this language explicitly allows for the Attorney General to apply to dismiss an action, the Nation would read that this is an exclusive list of individuals granted the authority to request dismissal from the Court. If the legislature intended for the list to be exhaustive, they could have included language specifically barring the Respondent, the only remaining party to the action, from requesting a dismissal. However, when examining Title 14 in its full context we return to the concept of fairness and to find that defendant’s do not have the right to motion for a dismissal would violate the most basic notions of fairness within our legal system. Such a

finding would leave any defendant without a path for recourse when violations have occurred but are not yet formally brought to the attention of the Court.

Further, such a reading of §1-401(G) to wholly deny any defendant the right to motion for dismissal would likely violate constitutional due process protections afforded to the Respondent in the United States Constitution.

Finally, the District Court dismissed the criminal case with prejudice. Again, the District Court relied upon its discretion when it made this decision and dismissed the case. Reading and interpreting the second part of §G to insist the District Court does not have the authority to dismiss a case with prejudice would be a gross overestimation of the legislature's intent. To wholly deny the District Courts the right to dismiss a case with prejudice again files in the face of fairness and due process rights of the Respondent and every other defendant in the Muscogee Creek Nation. Instead, a proper reading and interpretation of §G would be that any dismissals based upon an application by the prosecuting attorney would be without prejudice. However, the District Court must have the authority to dismiss with prejudice. Any interpretation otherwise would establish a revolving mechanism for the Nation to refile ANY case the Court deems appropriate to dismiss, regardless of the Courts reason.

### **CONCLUSION**

With fairness concerns at the heart of the argument for both sides, a look at the remaining verbiage in 1-301(C), 1-301(D), and 1-401(G) is necessary. Such a look reveals an overarching structure that grants the District Court Judge broad discretion and authority in dismissing a case. It does not require the Nation to be given a chance to respond, either orally or in writing, before making such a decision. Further, the dismissal with prejudice was proper in that reading and interpreting 1-401(G) to wholly deny the court the authority to dismiss any action with prejudice would establish a system where the Nation can file and refile cases ad infinitum. The Respondent requests this Honorable Court to affirm the Order of Dismissal granted by the District Court Judge in this above captioned case.

Respectfully submitted,



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Carla R. Stinnett, MCN #967  
B.B. Boyer, MCN #  
Jonathan Casey, MCN #1287  
STINNETT LAW  
404 East Dewey Avenue, Suite No. 100  
Sapulpa, Oklahoma 74066  
Telephone: (918) 227-1177  
Facsimile: (918) 227-1197  
Email: [carla@stinnettlaw.com](mailto:carla@stinnettlaw.com)  
**ATTORNEY FOR RESPONDENT**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of Oct, 2023, a true and complete copy of the above and foregoing *Respondent's Brief in Cheif* was served by being deposited in the U.S. mail, with proper postage affixed thereon, and/or hand-delivered to the following:

Jeremy Pittman, Esq. on behalf of the  
Muscogee (Creek) Nation  
P.O. Box 580  
Okmulgee, OK 74447



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Carla R. Stinnett, *Attorney for Defendant/Respondent*