

IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

SUPREME COURT
FILED

LISA K. DEERE,)
)
 Appellant,)
)
 v.)
)
 JOYCE C. DEERE,)
)
 Respondent.)

MAY 17 2018

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MUSCOGEE (CREEK) NATION

Case No.: SC 17-02
(District Court Case No. PO-2017-26)

Appeal from District Court, Okmulgee District, Muscogee (Creek) Nation.

O. Joseph Williams; O. Joseph Williams Law Office, PLLC; Okmulgee, Oklahoma; for Appellant.

Roger F. Wiley; Roger Wiley Law Firm, PLLC; McAlester, Oklahoma; for Respondent.

ORDER AND OPINION

**MVSKOKVLKE FVTCECKV CUKO HVLWAT VKERRICKV HVIYAKAT OKETV
YVNKE VHAKV HAKATEN ACAKKAYEN MOMEN ENTENFVTCETV, HVTVM
MVSKOKE ETVLWVKE ETEHVLVTKE VHAKV EMPVTAKV.¹**

Before: ADAMS, C.J.; LERBLANCE, HARJO-WARE, SUPERNAW, DEER, and MCNAC, JJ.

THOMPSON, V.C.J., recused and not participating in the decision.

PER CURIAM.

Order and judgment of the District Court affirmed.

¹ "The Muscogee (Creek) Nation Supreme Court, after due deliberation, makes known the following decision based on traditional and modern Mvskoke law."

PER CURIAM.

Lisa K. Deere (hereinafter, the “Appellant”) appeals the District Court’s November 3, 2017, *Protection Order*, granted to Joyce C. Deere (hereinafter, the “Respondent”). The Appellant asserts that the District Court erred in finding the parties to be “Family or household Members[,]” as those terms are defined by the Protection from Domestic and Family Violence Act (hereinafter, the “Act”).² As such, the Appellant claims the District Court lacked subject matter jurisdiction to hear the Respondent’s case. Additionally, the Appellant argues the District Court erred in finding the statutory elements establishing harassment had been met. Specifically, the Appellant asserts that the facts do not establish a “knowing and willful course or pattern of conduct[,]” that the Respondent was not seriously harmed or annoyed, and, even if the Court concludes otherwise, the Appellant’s actions were based on a “legitimate purpose[,]” and thus are statutorily excluded by the Act.³ On the record presented, and for the reasons set forth herein, we affirm the order and judgment of the District Court.

² “Family or household Member” is defined in M(C)NCA Title 6, Chapter 3, § 3-103 (G) as follows:

1. Persons who are or have been related by blood, marriage or adoption;
2. Minor children who are part of the household; or
3. Persons who reside or have resided together in the past who have never been intimate partners.

(NCA 16-038, March 28, 2016)

³ “Harassment” is defined in M(C)NCA Title 6, Chapter 3, § 3-103 (J) as follows:

“Harassment” means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor thirteen (13) years of age or older, directed at a specific person which seriously harms or annoys the person, and which serves no legitimate purpose. The course of conduct shall be such as would cause a reasonable person to suffer emotional distress, and shall actually cause substantial distress to the person. “Harassment” shall include, but not be limited to, harassing or obscene telephone calls.

(NCA 16-038, March 28, 2016)

BACKGROUND

In January of 2011, Lyle Deere, the spouse of the Respondent and brother of the Appellant, died intestate. A probate action was initiated in September of 2011, in Muskogee County District Court, State of Oklahoma, and completed in August of 2012, wherein the deceased's heirs at law were determined and property was distributed according to Oklahoma law. Over four (4) years passed following the conclusion of Mr. Deere's Oklahoma probate action with no apparent dispute arising between the Appellant and the Respondent.

On May 11, 2017, a hearing concerning an oil and gas lease formerly owned by Melissa Long (the deceased grandmother of Lyle Deere and the Appellant) was conducted in Hughes County, State of Oklahoma. Following Melissa Long's death, both Lyle Deere and the Appellant inherited portions of the Long property. The Respondent subsequently inherited Lyle Deere's portion following his death in 2011. Both the Appellant and the Respondent were in attendance at the May 11, 2017, hearing, where, at the conclusion of the hearing the Respondent approached the Appellant and initiated a conversation. It was at this time that the Appellant allegedly first advised the Respondent that she sought the transfer of Respondent's inherited portion of the Long property back to the Appellant's family. According to the Respondent, the conversation ended and the parties dispersed. Sometime during the Respondent's return home from the May 11, 2017, hearing, she received her first unsolicited communication from the Appellant concerning the Long property. This communication came in the form of a text message. The Appellant stated:

To say that I've "strong armed" you is wrong. I've never asked for any of Lyle's things. I only want my dads little bow and arrows and a box of pictures mom gave Lyle and to get this land out of your name and into anyone in my family @ this point.

I seriously doubt you'll sign it over to me now, just because you'd be that way.

Following receipt of the May 11, 2017, text message, the Respondent ceased all communication with the Appellant.

The record reflects that nearly three (3) months passed in which no further communications were made between the Respondent and the Appellant. Then, on August 4, 2017, a second unsolicited text message was sent by the Appellant to the Respondent's Muscogee (Creek) Nation, National Council phone in which the Appellant states:

Now that you have collected all the money from the oil & gas leases we've recently made, I give you 3 months, Joyce, to do right by Lyle and do what you told him AND me, you were going to do.

If my grandmas land/minerals, the few things I want of my mom & dads and \$600.00 for the burial plat are not turned over & paid to me/us, you leave me no choice but to cut our losses on losing my grandmas land and begin litigation for back taxes, those personal effects of my mom and dad's and remove your headstone from Lyle's grave.

If you do not respond to this text, I will email this message to your National Council email address and cc the Speaker. I will also email your kids and let it be known how you accused me & Lyle of being perverted, swindled Bud Moore out of 100k (I know this 1st hand from Randy Moore, POA of Bud Moore's estate & the Moore family) and how you are trying to swindle your Choctaw family out of your grandmas house and property in Smithville. (I know this from one of your own family member's). That's not being Indian or a Deere, Joyce. You do all that for the love of money regardless of who you hurt. Its called greed! Shame on you! I will do this for the love of my kids, grandkids & nieces.

Again, the Respondent did not reply to the text message.

Two (2) more months passed in which the parties did not communicate. Then, on October 2, 2017, the Appellant appeared at a monthly meeting of the Muscogee Indian Community in which the Respondent was in attendance in her capacity as a Muscogee (Creek) Nation, National Council Member. The Appellant approached the Respondent's table with a utility bill and attempted to initiate a conversation with the Respondent regarding the utility bill, taxes, and the

disputed Long property. The Respondent asked the Appellant to leave her alone and ultimately felt it necessary to excuse herself from the Muscogee Indian Community meeting prior to its start.

No other communications were held between the parties. The Respondent filed her *Petition for Protection Order* with the Muscogee (Creek) Nation District Court on October 12, 2017. An *Emergency Protection Order and Notice of Hearing on Petition* was entered in favor of the Respondent on October 12, 2017, and the matter was set for hearing. A *Show-Cause Hearing* was conducted on November 3, 2017. Both parties were present and represented by counsel. The District Court, after hearing the testimony of both parties, their witnesses, and arguments of counsel, entered a *Protection Order* in favor of the Respondent for a period of five (5) years.

JURISDICTION, SCOPE AND STANDARD OF REVIEW

Appellate jurisdiction is proper under Muscogee (Creek) Nation Code, Title 27, § 1-101 (C).⁴ This Court will review issues of law *de novo* and issues of fact for clear error.⁵ The instant case presents both questions of law (whether the District Court lacked subject matter jurisdiction over the parties) and fact (whether the facts support a finding of harassment). Each respective question will be addressed based on its applicable standard of review.

ISSUES PRESENTED

Part I. Under M(C)NCA Title 6, § 3-103 (G), are parties who were formerly related through the marriage of a now deceased spouse considered “Family or household Members” for purposes of the Act?

⁴ M(C)NCA Title 27, § 1-101 (C), vests this Court with exclusive jurisdiction to review final orders of the Muscogee (Creek) Nation District Court.

⁵ See *A.D. Ellis v. Checotah Muscogee Creek Indian Community, et al.*, SC 10-01 at 3, ___ Mvs. L.R. ___ (May 22, 2013); *In the Matter of J.S. v. MCN*, SC 93-02, 4 Mvs. L.R. 124 (October 13, 1994); *McIntosh v MCN*, SC 86-01, 4 Mvs. L.R. 28 (January 24, 1987).

Part II. Pursuant to M(C)NCA Title 6, § 3-103 (J), did the District Court err in concluding that the statutory elements of harassment had been met?

DISCUSSION

Part I. Muscogee (Creek) Nation Protective Order Jurisdiction

As a matter of law, the courts of the Muscogee (Creek) Nation are courts of broad civil jurisdiction.⁶ As such, they possess both inherent and treaty based authority to hear a wide range of civil matters.⁷ However, while the courts may possess inherent civil jurisdiction, the Nation's Code may place statutory limitations that effect how that jurisdiction is applied.⁸ M(C)NCA Title 6 § 3-401 authorizes the District Court to exercise civil jurisdiction over protective order matters, but limits this jurisdiction to matters pertaining to "domestic, dating or family violence[.]"⁹ Thus,

⁶ M(C)NCA Title 27 § 1-102 (B) ("The Muscogee (Creek) Nation courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Muscogee (Creek) Nation including the Muscogee or Yuchi Common Law, which arise within the Muscogee (Creek) Nation Indian country, regardless of the Indian or non-Indian status of the parties. Personal jurisdiction shall exist over all defendants, regardless of the Indian or non-Indian status of said defendants, in cases arising from any action or event within the Muscogee (Creek) Nation Indian country and in any other cases in which the defendant has established contacts with Muscogee (Creek) Nation Indian country sufficient to establish personal jurisdiction over said defendant. Personal jurisdiction shall also exist over all persons consenting to such jurisdiction. Residing, conducting business, using roadways or engaging in any other activity within the Muscogee (Creek) Nation Indian Country is deemed consent to Muscogee (Creek) Nation jurisdiction. All contracts between the Nation or its citizens and any other party entered into within the Muscogee (Creek) Nation Indian Country is deemed as consent to Muscogee (Creek) Nation jurisdiction by the parties. The act of entry upon the Muscogee (Creek) Nation Indian Country by any extraterritorial seller or merchant, or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of courts of the Muscogee (Creek) Nation for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered or took place. The Muscogee Courts shall have probate jurisdiction as described by law of the Muscogee (Creek) Nation in Title 47 of the Code of Laws of the Muscogee (Creek) Nation. The Muscogee Courts shall have jurisdiction over proceedings involving family relations, including without limitation, child custody and divorce proceedings, as described by law of the Muscogee (Creek) Nation, including any such law codified in Title 6 of the Code of laws of the Muscogee (Creek) Nation. The Muscogee Courts shall exercise such other civil jurisdiction as described by any other laws of the Muscogee (Creek) Nation.").

⁷ M(C)NCA Title 27 § 1-101 (A)(1).

⁸ See *Muscogee (Creek) Nation v. Lee*, SC 11-12, ___ Mvs. L.R. ___ (August 15, 2013), ("Although the Muscogee (Creek) Nation exercises general criminal jurisdiction inherently, the Nation's Code incorporates a significant statutory limitation that impacts how general jurisdiction is exercised.").

⁹ M(C)NCA Title 6 § 3-401 ("The District Court has full civil jurisdiction to issue protection orders if either the petitioner or respondent currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction, if the respondent currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction or if the domestic, dating or family violence occurred in the Muscogee (Creek) Nation territorial jurisdiction or on other land under the authority of the Muscogee (Creek) Nation: provided that such civil jurisdiction may be exercised regardless of the Indian or non-Indian status of petitioner and respondents. There is no minimum requirement of residency to petition the District Court for an Order for protection. In accordance with 18 U.S.C. 2265 (e), the District Court shall have full

in order for the District Court of this Nation to assert jurisdiction over a protective order matter, a prospective petitioner must fall within one or more of the limited categories authorized under M(C)NCA Title 6 § 3-401.

In the instant case the Respondent filed a *Petition for Protection Order* with the District Court on October 12, 2017, asserting that the Appellant was the sister of her deceased husband. The question presented to this Court by the Appellant is whether such a relationship falls within the District Court's subject matter jurisdiction. If the relationship does not fall within one of the available categories for District Court jurisdiction, then the Supreme Court lacks subject matter jurisdiction and must reverse the District Court's decision on jurisdictional grounds.¹⁰ Subject matter jurisdiction may not be waived.¹¹

M(C)NCA Title 6 § 3-103 (H) defines "Family Violence" (one of the three (3) categories under which the District Court may assert jurisdiction in protective order matters) as, "the same or similar acts committed in Domestic Violence, but directed towards a *Family or Household* member instead of an intimate partner." [Emphasis Added].

M(C)NCA Title 6 § 3-103 (G) goes on to define "Family or household Member" as:

1. *Persons who are or have been related by blood, marriage or adoption;*
2. *Minor children who are part of the household; or*
3. *Persons who reside or have resided together in the past who have never been intimate partners.*

[Emphasis Added]

As this Court has previously stated, "[w]hen a statutory provision is unambiguous, we presume the National Council intended the resulting impact of the unambiguous provision and

civil jurisdiction to enforce protection orders issued by the District Court and to enforce foreign protection orders pursuant to Title 6, §§ 3-415, 3-416 and 6-3-417.").

¹⁰ See *Muscogee (Creek) Nation v. Lee*, SC 11-12, ___ Mvs. L.R. ___ (August 15, 2013), (citing M(C)NCA Title 27, App. 2, Rule 25 (B)).

¹¹ *Id.*

apply the statute according to the plain meaning of its terms. Use of the “plain-meaning rule” is both an appropriate judicial deference to the National Council’s constitutional law-making authority and an analytical hurdle which limits unnecessary judicial encroachment into the law-making function.”¹² In contrast, when a statutory provision is ambiguous it is not this Court’s duty to merely assign a definition to the term.¹³ It is the role of this Court to examine the ambiguous term and determine, as best as can be ascertained, the intent and scope intended by the National Council.¹⁴

The record reflects that the parties agree they were sisters-in-law throughout the course of the Respondent’s marriage to Lyle Deere. Over six (6) years passed between Mr. Deere’s death and the filing of the Respondent’s October 12, 2017, *Petition for Protection Order*. The Appellant argues that the parties were no longer “related by...marriage” at the filing of the Respondent’s *Petition* due to the prior death of Mr. Deere; essentially, that any statutorily created relationship ended with the passing of Mr. Deere. As such, the Appellant argues that the parties were not “Family or household Members” and thus the District Court lacked jurisdiction. Alternatively, the Appellant argues that the terms “are or have been related by ...marriage[,]” found in M(C)NCA Title 6 § 3-103 (G)(1), effect only current or former *wives*; that the statute does not extend to other individuals now related, or formerly related through the marriage. This Court does not find these arguments persuasive.

Examining the plain meaning of M(C)NCA Title 6 § 3-103 (G)(1), we first look to the terms “*are or have been* related[.]” [Emphasis Added]. These terms clearly express both a current

¹² See *Slay v. Muscogee (Creek) Nation Travel Plaza and Hudson Insurance Company*, SC 14-01, ___ Mvs. L.R. ___ (October 23, 2014), (citing *Cox v. Kamp*, SC 91-03, 4 Mvs. L.R. 75, 79 (June 27, 1991); and *Ellis v. Checotah, et al.*, SC 10-01 at 4, ___ Mvs. L.R. ___ (May 22, 2013)).

¹³ See *Cox v. Kamp*, SC 91-03, 4 Mvs. L.R. 75, 79 (June 27, 1991).

¹⁴ *Id.*

and former nature. It is clear to the Court that the unambiguous intention of the National Council was for this statute to apply to both current and former relations. The next step is to determine which relationships the terms “related by ...marriage” are intended to apply to. The Court again finds that the National Council clearly and unambiguously intended for these terms to apply to all affinal relations, not just spousal relationships. The Court places significant importance on the fact that the National Council has not inserted any terms of limitation in this statute narrowing “related by...marriage” to only spouses or former spouses. It is not this Court’s place to add meaning to unambiguous concepts.¹⁵ Additionally, this Court has but to look to the prior language of M(C)NCA Title 6 § 3-103 for additional confirmation of the National Council’s intent. The previous version of the statute defined “Family or household members” as:

1. *Adults or minors who are current or former spouses;*
2. Adults or minors who live together or who have lived together;
3. Adults or minors who are in a dating relationship or who have been in a dating relationship;
4. Adults or minors who are engaged in or who have engaged in a sexual relationship with each other;
5. Adults or minors who are related by blood or adoption;
6. *Adults or minors who are related or formerly related by marriage;*
7. Persons who have a child in common; and
8. Minor children of a person in a relationship that is described in paragraphs 1 and 2 of this subsection.

[Emphasis Added]¹⁶

This prior version of M(C)NCA Title 6 § 3-103 distinguished “current or former spouses” from those “related or formerly related by marriage[.]” Clearly, at that time, the National Council intended the statute to apply to current or former spouses *and* to current and former individuals related by marriage. Both being two distinct categories. Instead of removing this “related or formerly related by marriage” category altogether, the National Council kept that language and

¹⁵ *Id.*

¹⁶ See NCA 01-157, approved Oct. 7, 2001.

instead, removed all specific reference to spouses. It is clear to the Court that the National Council's intent for the current statute was not to limit application of "Family or household members" to only spouses, but was to merge sub-section 1 with sub-sections 5 and 6 of the earlier statute to create an abbreviated new statute that would still incorporate all of the previously defined categories.

It is this Court's ruling, following a *de novo* review of the law, that the District Court did not err in concluding it possessed proper subject matter jurisdiction to hear this case.

Part II. Statutory Elements of Harassment

The Appellant next argues that the District Court erred in concluding that each statutory element of harassment had been met. M(C)NCA Title 6 § 3-103 (J) provides the Nation's definition for harassment.¹⁷ This definition can be broken down into the following elements:

1. A knowing and willful course or pattern of conduct,
2. By an adult, emancipated minor, or minor thirteen (13) years of age or older,
3. Directed at a specific person
4. Which seriously harms or annoys the person, and,
5. Which serves no legitimate purpose,
6. In which the course of conduct would (objectively) cause a reasonable person to suffer emotional distress, and
7. The person (subjectively) actually suffered substantial distress.

The Appellant's first assertion is that no "willful course or pattern of conduct" can be established in this, or any case based on two (2) text messages and two (2) in-person interactions (the first of which being initiated by the Respondent) occurring over a five (5) month period of time. The Appellant's second contention is that insufficient evidence was presented to the District Court for it to conclude that the Respondent suffered the requisite harm required under the Act for issuance of a protective order. Finally, the Appellant maintains that her various electronic

¹⁷ See footnote 3 for the definition of "Harassment[.]"

communications and face-to-face interactions with the Respondent served a legitimate purpose, thus are beyond the scope of the Nation's harassment law.

Each of the Appellant's arguments concern issues of fact initially reviewed by the District Court Judge sitting as the trier of fact. The Judge weighed the sufficiency of admitted evidence, evaluated the credibility of each witness, considered each witnesses' specific testimony, and heard arguments of counsel. The District Court's November 3, 2017, *Protection Order* stands as the culmination of the Judge's factual analysis. As for the Supreme Court's role in evaluating the determinations made by the trier of fact, our case law is clear that we will review issues of fact for clear error.¹⁸ In applying this standard, it is not the appellate court's position to place itself as the trier of fact or to conduct *de novo* review of the case, even if it would have ruled differently had it sat as the trier of fact. To do so would be to overstep the appellate court's bounds. So long as the District Court's ruling is plausible in light of the record viewed in its entirety, this Court should defer to the trier of fact.

This Court is of the opinion that the facts presented in this case made it a prime candidate for the appointment of a Lawmender to attempt mediation of the dispute between the parties to their mutual satisfaction.¹⁹ Such an appointment was left to the discretion of the trial judge, who

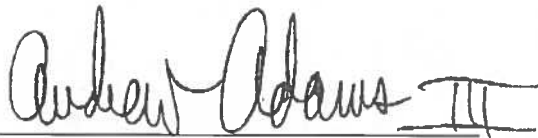
¹⁸ See footnote 5 on the standard of review.

¹⁹ Lawmenders offer a traditional Muscogee means of dispute resolution occurring outside of a conventional courtroom setting, wherein a neutral third party Lawmender is used to facilitate conflict resolution interactions between litigants. Lawmenders offer litigants an opportunity to mutually resolve their dispute(s) without significant court interaction. As a matter of law, this Court is required to "apply the Constitution and duly enacted laws of the Nation, the common law of the Muscogee people as established by customs and usage, and the Treaties and Agreements between the Muscogee (Creek) Nation and the United States." M(C)NCA Title 27 § 1-103 (A) [Emphasis Added]. Lawmenders (known in the Mvskoke language as "vhaka mvherica") are firmly rooted in Muscogee culture and have even been utilized by the District Court in more recent cases (*See, Muscogee (Creek) Nation ex rel, Bill S. Fife v. Eufaula Indian Community*, 1 Mvs. L. Rep. 293, CV-92-18, and *Doty v. Okemah Indian Community Board of Directors*, 2 Mvs. L. Rep. 2, CV-95-33 & CV 95-34). Lawmenders were previously codified in the Nation's laws by NCA 94-67 at M(C)NCA Title 37 Section 112 (E), which was later transferred to M(C)NCA Title 26 § 3-105 and 5-205. All specific reference to Lawmenders was subsequently removed without explanation by NCA 10-111, though this Court finds no statutory authority prohibiting the use of this traditional dispute resolution mechanism by the District Court. Currently, M(C)NCA Title 26 § 4-103 (B)(8)(d) authorizes a judge, "with the consent of the parties, [to] confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the

elected to proceed in accordance with the Protection from Domestic and Family Violence Act, a valid law of this Nation. As such, this Court sees no clear error in the District Court Judge's finding of harassment.

IT IS HEREBY ORDERED that the *Protection Order* entered by the District Court on November 3, 2017, is **AFFIRMED**.

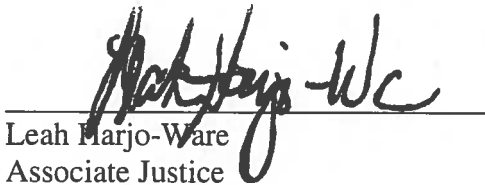
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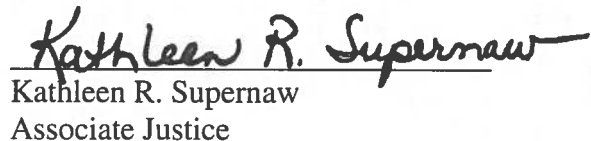
Andrew Adams III
Chief Justice



Richard C. LeBlance
Associate Justice



Leah Marjo-Ware
Associate Justice



Kathleen R. Supernaw
Associate Justice



Montie R. Deer
Associate Justice



Amos McNac
Associate Justice

judge." In the above-styled matter, the parties, through counsel, advised this Court during their March 22, 2018, oral argument that an amicable resolution to the parties' dispute might have been reached had traditional Lawmender tools been employed by the District Court.

CERTIFICATE OF MAILING

I hereby certify that on May 17, 2018, I mailed a true and correct copy of the foregoing Order and Opinion with proper postage prepaid to each of the following: O. Joseph Williams, O. Joseph Williams Law Office, PLLC, The McCullough Building, 114 N. Grand Avenue, Suite 520, P.O. Box 1131, Okmulgee, Oklahoma 74447; Lisa Deere, 8216 S. Date Avenue, Broken Arrow, Oklahoma 74011; Roger Wiley, P.O. Box 1667, McAlester, Oklahoma 74502. A true and correct copy was also hand-delivered to: Donna Beaver, Clerk of the Muscogee (Creek) Nation District Court.



Laura Marks, Deputy Court Clerk