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Case No.: **SC-2021-04**

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(District Court Case No.: AD-2021-03)

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A.C.T., A MINOR CHILD

3) SUPREME COURT
FILED

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

FEB 28 2022

██████████, Appellant, *Pro Se*.

 COURT CLERK
MUSCOGEE (CREEK) NATION

_____; for the Respondents,

ORDER AND OPINION

**MVSKOKVLKE FVTCECKV CUKO HVLWAT VKERRICKV HVIYAKAT OKETV
YVNKE VHAKV HAKATEN ACAKKAYEN MOMEN ENTENFVTCETV, HVTVM
MVSKOKE ETVLWVKE ETEHVLVTKE VHAKV EMPVTAKV¹**

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

PER CURIAM.

Order 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.

██████████ (hereinafter, the “Appellant”) submits a final order appeal of a July 16, 2021, *Order Terminating the Rights of the Natural Father and Finding Best Interest to Adopt* issued by the Muscogee (Creek) Nation District Court. The Appellant asserts (1) that previous guardianship proceedings over the minor child held within the jurisdiction of the State of Oklahoma were improper, and (2) that the Muscogee (Creek) Nation District Court improperly considered orders issued by the State of Oklahoma in the previous guardianship proceedings. On the record presented, and for the reasons set forth below, we affirm the July 16, 2021, *Order* of the Muscogee (Creek) Nation District Court.

BACKGROUND

On January 6, 2017, minor child A.C.T. was born to natural parents ██████████. Natural Mother ██████████ is an enrolled citizen of the Cherokee Nation, as is minor child A.C.T..²

In 2018, the maternal grandparents of the minor child filed a guardianship action in the Rogers County District Court, State of Oklahoma, following an investigation by the Oklahoma Department of Human Services. A hearing was conducted on January 7, 2019, for the appointment of the maternal grandparents as General Guardians over the minor child, in which the Appellant appeared *Pro Se*. *Letters of Guardianship* were issued by the Rogers County District Court that same day to the maternal grandparents, and on January 16, 2019, the Rogers County District Court issued its final *Order Appointing General Guardian of the Person and Estate of Minor Child* finding it in the best interest of minor child A.C.T. to appoint the maternal grandparents as General Guardians. The Rogers County District Court also approved supervised visitation for both natural

² As verified by the Cherokee Nation Roll numbers provided to the Court.

parents and ordered each parent to pay \$100.00 per month to the General Guardians as child support.

On June 25, 2020, the Rogers County District Court issued *Letters of Guardianship*, transferring guardianship of the minor child from the maternal grandparents to the Respondents; the maternal aunt and uncle of the minor child. Child support was also increased at this time to \$222.50 per month.

On March 2, 2021, the Respondents filed a *Petition for Adoption and Application to Terminate the Rights of Natural Parents* in the Muscogee (Creek) Nation District Court pursuant to M(C)NCA Title 6 § 1-301 and M(C)NCA Title 6 § 1-901 (B)(2)(c) and (4), seeking to terminate the parental rights of the Appellant and to adopt minor child A.C.T.

On July 16, 2021, a Trial was conducted in the Muscogee (Creek) Nation District Court on Respondents' *Application to Terminate the Rights of Natural Parents* (specifically, the rights of the Appellant – natural father. The natural mother had previously executed a consent to adoption). The Muscogee (Creek) Nation District Court, taking judicial notice of the above-referenced *Orders* filed by the Rogers County District Court, as well as considering M(C)NCA Title 6 § 1-301 and M(C)NCA Title 6 § 1-901 (B)(2)(c) and (4), concluded that the Muscogee (Creek) Nation has concurrent jurisdiction to conduct adoption and termination matters over “any Indian child that lives within the Nation’s reservation.”³ The Court also found that (1) the minor child is an enrolled member of the Cherokee Nation, (2) that the Respondents and the minor child did then reside within the boundaries of the Muscogee (Creek) Nation reservation, (3) that the Appellant, “by his own testimony” failed to maintain a relationship with the minor child through visitation or communication for a period of six (6) consecutive months out of the last fourteen (14) months

³ Transcript of July 16, 2021 Proceedings, Pg. 4, Ln. 22-23.

preceding the *Application* for termination of rights⁴, and (4) that, pursuant to the full-faith-and-credit given to Court Orders emanating from the State of Oklahoma, the Appellant failed to contribute to the support of the minor child, as ordered by the Rogers County District Court.⁵ As such, the Muscogee (Creek) Nation District Court found it to be in the best interest of minor child A.C.T. to terminate the parental rights of the Appellant. An *Order Terminating the Rights of the Natural Father and Finding Best Interest to Adopt* was filed on July 16, 2021.

JURISDICTION, SCOPE, AND STANDARD OF REVIEW

Appellate jurisdiction is proper under M(C)NCA Title 27, § 1-101 (C).⁶ This Court will review issues of law *de novo* and issues of fact for clear error.⁷ Each respective question will be addressed based on its applicable standard of review.

ISSUES PRESENTED

1. May the Courts of the Muscogee (Creek) Nation take judicial notice of court orders emanating from the State of Oklahoma?
2. Does the Muscogee (Creek) Nation have jurisdiction over termination and adoption proceedings relating to minor child A.C.T.?

⁴ Satisfying M(C)NCA Title 6 § 1-901 (B)(2)(c).

⁵ Satisfying M(C)NCA Title 6 § 1-901 (B)(4).

⁶ 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.

⁷ 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. Muscogee (Creek) Nation*, SC 93-02, 4 Mvs. L.R. 124 (October 13, 1994); *McIntosh v. Muscogee (Creek) Nation*, SC 86-01, 4 Mvs. L.R. 28 (January 24, 1987); *Lisa K. Deere v. Joyce C. Deere*, SC 17-02 at 5, ___ Mvs. L.R. ___ (May 17, 2018); *Muscogee (Creek) Nation v. Bim Stephen Bruner*, SC 18-03 at 5, ___ Mvs. ___ (September 6, 2018); *Derek Huddleston v. Muscogee (Creek) Nation*, SC 18-02 at 3, ___ Mvs. ___ (October 4, 2018); *Bim Stephen Bruner v. Muscogee (Creek) Nation*, SC 18-04 at 4, ___ Mvs. ___ (May 13, 2019).

DISCUSSION

Part 1: Admissibility of Oklahoma State Court Orders

The above-styled appeal follows in the wake of the seminal 2020 decision issued by the United States Supreme Court in McGirt v. Oklahoma, which found that, for purposes of establishing criminal jurisdiction, the Creek reservation has never been disestablished by act of the United States Congress.⁸ The Appellant, relying on this decision, asserts that the Rogers County District Court for the State of Oklahoma never possessed jurisdiction in the guardianship action over minor child A.C.T. (who, at the time of the initial guardianship action resided within the boundaries of the Cherokee Nation); that the State of Oklahoma “acted beyond [the] scope of [its] jurisdiction on tribal lands of the Cherokee Nation, where Congress never disestablished tribal Nations.”⁹

M(C)NCA Title 27, § 2-108, provides that, “in the absence of any express Muscogee (Creek) Nation law governing evidence in any specific type of proceeding...the Muscogee (Creek) Nation District Courts shall apply the Federal Rules of Evidence prescribed by 28 U.S.C. § 2072...” Taking this provision to its next logical step, Rule 201 of the Federal Rules of Evidence provides that a court “may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned.” It is generally accepted that court orders may be judicially noticed under Federal Rule of Evidence 201(b)(2).¹⁰ Further, this Court has established its own precedent concerning the use of judicial notice

⁸ In Hogner v. State, 2021 OK CR 4, at 6 (March 11, 2021), the Oklahoma Court of Criminal Appeals applied the United States Supreme Court’s ruling in McGirt to the Cherokee Reservation and found “that no evidence was presented showing that Congress explicitly erased or disestablished the boundaries of the Cherokee Reservation...”

⁹ See, Brief of the Appellant, filed on July 26, 2021, at Pg. 3.

¹⁰ See, In the Matter of Lisse, 905 F.3d 495 (7th Cir. 2018) under Rule 201, federal courts may take judicial notice of public records, such as state court orders; U.S. ex rel. Osheroff v. Humana Inc., 776 F.3d 805, 811 (11th Cir.

within the Courts of the Muscogee (Creek) Nation.¹¹ Based on this precedent is clear that “Judicial Notice can be taken at any stage of any legal proceeding.”¹² Also, that this notice can extend to sources in foreign jurisdictions whose accuracy cannot be reasonably questioned.¹³ As such, the District Court did not violate Muscogee (Creek) Nation law by taking judicial notice of guardianship orders issued by the Rogers County District Court, for the State of Oklahoma.

As further support for the proposition that foreign court judgments can hold weight within the Courts of the Muscogee (Creek) Nation, M(C)NCA Title 27, § 7-101 authorizes the Muscogee (Creek) Nation Supreme Court to create standards for extending full-faith-and-credit to courts of foreign jurisdiction, stating:

- A. The Supreme Court of the Muscogee (Creek) Nation shall have the authority to issue standards for extending full faith and credit to the records and judicial proceedings of any court of any federally recognized Indian Nation, band or political subdivision thereof, including the Courts of Indian Offenses, which act as Tribal Courts for certain Nations, and of any state, territory or other political subdivision of the United States of America.
- B. In issuing any such standards, the Supreme Court of the Muscogee (Creek) Nation may extend such recognition in whole or in part to same type or types of judgments of other jurisdictions that said courts of other jurisdictions agree to grant reciprocity of judgments of the Courts of the Muscogee (Creek) Nation, and may negotiate with other jurisdictions the degree of reciprocity to be given and received.

2015) documents filed in state court litigation; Rosales-Martinez v. Palmer, 753 F.3d 890, 894 (9th Cir. 2014) the court can take judicial notice of proceedings in any court; Fletcher v. Menard Correctional Center, 623 F.3d 1171, 1173 (7th Cir. 2010) court can take judicial notice of other proceedings in a case involving the same litigant; U.S. v. Mattox, 402 Fed. Appx. 507, 509 n.5 (11th Cir. 2010) court may take judicial notice of its own records and those of inferior courts; Horne v. Potter, 392 Fed. Appx. 800, 802 (11th Cir. 2010) court could properly take judicial notice of records in first case in ruling of issue of res judicata; Aguilar v. U.S. Immigration and Customs Enforcement Div. of Dept. of Homeland Sec., 510 F.3d 1, 8 n. 1 (1st Cir. 2007) records of immigration proceedings; Levy v. Ohl, C.A.8th, 2007, 477 F.3d 988, 991 records of Missouri court to show that malicious prosecution claim was barred by statute of limitations.

¹¹ See, Bruner v. Muscogee (Creek) Nation, SC-1986-03, at 4, 4 Mvs. L. Rep. 29, 34 (March 7, 1987), “the Court may take judicial notice of the laws and official records of the Muscogee (Creek) Nation[;]” Cox v. Kamp, SC-1991-03, at 1, 4 Mvs. L. Rep. 84, 85 (October 3, 1991), where the Court took judicial notice of National Council proceedings; and Reynolds v. Skaggs, SC-1994-01, at 5, 4 Mvs. L. Rep. 116, 120 (May 12, 1994), where the Court took judicial notice of Oklahoma State Court statutes.

¹² See, Reynolds v. Skaggs, SC-1994-01, at 5, 4 Mvs. L. Rep. 116, 120 (May 12, 1994).

¹³ *Id.*, where the Court took judicial notice of Title 12, Section 2202 of the Oklahoma Statutes.

On August 4, 1993, shortly after passage of M(C)NCA Title 27, § 7-101, the Justices of the Muscogee (Creek) Nation Supreme Court issued their *Order Adopting Standards for Recognition of Judicial Proceedings of Other Sovereigns in the Muscogee (Creek) Nation Courts - Full Faith and Credit*, wherein the Court provided:

The Courts of the Muscogee (Creek) Nation shall grant full faith and credit and cause to be enforced therein any foreign judgment provided that the Federal, State or Tribal Court that issued such judgment grants reciprocity to judgments of the Courts of the Muscogee (Creek) Nation.¹⁴

Pursuant to this *Order*, the courts of the Muscogee (Creek) Nation and the State of Oklahoma have granted reciprocity of each jurisdiction's court orders since June 21, 1994.¹⁵

Anticipating the possibility that a foreign judgment might be in dispute within the foreign jurisdiction's courts at the same time that a party seeks enforcement of that judgment in the Muscogee (Creek) Nation Courts, this Court instituted the following protective provision in its *Order Adopting Standards for Recognition of Judicial Proceedings of Other Sovereigns in the Muscogee (Creek) Nation Courts - Full Faith and Credit*, stating:

If the party against whose interest the foreign judgment is rendered files an objection with the Court Clerk indicating that either (1) an appeal to a Federal, State or Tribal Appellate Court of the trial judgment is pending, or that (2) a stay of execution has been granted, the Muscogee (Creek) Nation Court shall stay enforcement of the foreign judgment until such appeal is concluded, or until the stay of execution expires or is vacated, upon proof that the party against whom the foreign judgment was taken has furnished the security for the satisfaction thereof.¹⁶

This provision recognizes the fact that it is not the role of the Muscogee Courts to act as an appellate court for foreign jurisdictions; and, while the concept of "judicial notice" is not entirely

¹⁴ See sub-section "B" of the August 4, 1993, *Order Adopting Standards for Recognition of Judicial Proceedings of Other Sovereigns in the Muscogee (Creek) Nation Courts Full Faith and Credit*.

¹⁵ See Full Faith and Credit of Tribal Courts,
<https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=458214>

¹⁶ See sub-section "E" of the August 4, 1993, *Order Adopting Standards for Recognition of Judicial Proceedings of Other Sovereigns in the Muscogee (Creek) Nation Courts Full Faith and Credit*.

the same as the concept of “full-faith-and-credit” or “enforcement of a foreign judgment,” each concerns the impact a foreign court order might have within the Muscogee (Creek) Nation. If the Appellant had concerns related to the Oklahoma guardianship action (either immediately following issuance of the Rogers County *Order(s)*, or following the United States Supreme Court decision in McGirt), he was free to pursue whatever post-judgment relief was available to him under Oklahoma, Federal or Tribal law. In the above-styled action, the Appellant has made no reference to a pending appeal within the State of Oklahoma (or any other Court) concerning the guardianship action filed in Rogers County, Oklahoma, nor has any evidence been presented to this Court that a stay of execution has been granted by the State of Oklahoma (or any other Court). Again, it is not this Court’s role to act as an appellate court for the State of Oklahoma, and, absent evidence that the Rogers County orders are suspect, or that an appeal is pending, this Court finds no error in the Muscogee (Creek) Nation District Court taking judicial notice of orders filed in the Rogers County guardianship action for purposes of determining whether a parent has failed to contribute support to the minor child under M(C)NCA Title 6, § 1-901 (B)(4).

Part 2: Jurisdiction of the Muscogee (Creek) Nation

On September 1, 2020, (prior to the filing of the Respondents’ *Petition for Adoption and Application to Terminate the Rights of Natural Parents* in the Muscogee (Creek) Nation courts) the State of Oklahoma and the Cherokee Nation entered into an intergovernmental agreement concerning child custody matters involving Cherokee children in order to “create concurrent jurisdiction on the reservation of the Cherokee Nation with the State of Oklahoma and its political subdivisions.”¹⁷ This agreement provides in part:

¹⁷ See Intergovernmental Agreement between the State of Oklahoma and the Cherokee Nation Regarding Jurisdiction over Indian Children within the Nation’s Reservation, Pg. 1 (September 1, 2020).

In guardianships, adoptions, or other child custody proceedings where the State of Oklahoma is not a party and the child is domiciled or located within the reservation of the Tribe, the party initiating the child custody proceeding may file said action in either state or the relevant tribal court. The state or tribal court that makes the first child custody determination concerning a particular child shall retain exclusive, continuing jurisdiction over the child custody proceeding, unless the Tribe seeks to transfer the matter to tribal court...

Because the initial guardianship action was filed in Rogers County District Court, for the State of Oklahoma, this Court must first determine if the Cherokee/Oklahoma intergovernmental agreement establishes “exclusive, continuing jurisdiction” in Rogers County, and thus prohibits a subsequent termination/adoption action from being filed in any Court outside of Rogers County, specifically, within the courts of the Muscogee (Creek) Nation.

To begin, the Court looks to the specific language of the Cherokee/Oklahoma intergovernmental agreement, which requires that the minor child be “domiciled or located within the reservation of the Tribe” prior to filing an action in state or tribal court. The question this Court must answer is, does the “domicile” requirement relate back to the initial guardianship action (when the minor child did reside within the Cherokee reservation), or does the Court treat a subsequent termination/adoption matter as a new and independent child custody action and thus apply the residential address of the minor child at the time the subsequent termination/adoption matter was filed? Because the guardianship action is filed in the Oklahoma court system, we find it particularly instructive to examine how the Oklahoma courts would treat similar matters (i.e. can a petitioner file a termination/adoption proceeding in a different Oklahoma county from the county that initially heard a related guardianship proceeding?). In the case of In re Adoption of B.T.S., the Oklahoma Court of Civil Appeals resolved just such a dispute.¹⁸ In that action, the mother of the minor child argued that the county hearing the minor child’s adoption matter lacked jurisdiction

¹⁸ In re Adoption of B.T.S., 371 P.3d 1145, 2016 OK CIV APP 21, (March 7, 2016).

pursuant to the Oklahoma Uniform Child Custody Jurisdiction and Enforcement Act (Hereinafter, the “UCCJEA”). Instead, the mother argued that the county which heard the initial guardianship action maintained exclusive jurisdiction over all custody matters involving the minor child, including the subsequent adoption action in question.¹⁹ The Oklahoma Court of Civil Appeals looked to 10 Okla. Stat. 7502-1.1, which provides:

Jurisdiction over proceedings to terminate parental rights and proceedings for the adoption of a minor commenced pursuant to the Oklahoma Adoption Code shall be governed by the Uniform Child Custody Jurisdiction and Enforcement Act as provided in Section 551-101 through 551-402 of Title 43 of the Oklahoma Statutes.

But the Court also noted that § 551-103 of the UCCJEA states the following with regards to adoption proceedings:

This act does not apply to an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

[Emphasis Added]

The Oklahoma Court of Civil Appeals ultimately ruled that the trial court had properly exercised jurisdiction over the minor child in the adoption proceeding even though the action was not filed in the same county as the initial guardianship action.

As such, this Court finds it probable that the Oklahoma courts would view the Respondents’ subsequent termination/adoption proceeding in a similar fashion; or more specifically, as a separate action unencumbered by the UCCJEA. Therefore, the Respondents would be permitted to file the subsequent termination/adoption action in the Oklahoma county in which the minor child did then reside, and inversely, would not be required to file the action in Rogers County. Thus, applying this rationale, the Cherokee/Oklahoma intergovernmental agreement would not be applicable, as the minor child (at the time of the termination/adoption

¹⁹ *Id.* at 1156-1157.

proceeding) was not “domiciled or located within the reservation of the Tribe [(the Cherokee Nation).]” The only remaining question is whether the courts of the Muscogee (Creek) Nation have jurisdiction over the matter, or if the matter must be filed elsewhere.

M(C)NCA Title 6, § 1-301 provides that the Muscogee (Creek) Nation has “concurrent jurisdiction with the child’s tribe in all cases involving an Indian child of another tribe domiciled in Indian country within the boundaries of the Muscogee (Creek) Nation, including the following types of proceedings...termination of parental rights... [and] adoptive placements...” The District Court has determined that the minor child currently resides within the boundaries of the Muscogee (Creek) Nation and is a member of the Cherokee Nation; facts which the Appellant has not disputed. Pursuant to the Respondents’ March 2, 2021, *Petition for Adoption*, notice has been provided to the Cherokee Nation advising the Tribe of the pending adoption proceedings.²⁰ No evidence has been presented to this Court that the Cherokee Nation has requested the case be transferred to the Cherokee Nation Courts. The Court finds no clear error in the Muscogee (Creek) Nation District Court’s factual analysis, nor, after *de novo* review of the law, does this Court find any legal inconsistency in the Muscogee (Creek) Nation District Court’s jurisdictional analysis.

CONCLUSION

For the reasons set forth above, we affirm the July 16, 2021, *Order* of the Muscogee (Creek) Nation District Court.

²⁰ On February 9, 2022, this Court issued its *Order for Supplemental Documentation*, directing the Respondents to submit copies of certain pleadings and correspondence showing that notice of the guardianship proceeding before the Rogers County District Court, State of Oklahoma, and the termination and adoption proceedings before the Muscogee (Creek) Nation District Court was sent to the Cherokee Nation. The *Order for Supplemental Documentation* provided a response date of Monday, February 21, 2022. As of the date of this *Order and Opinion*, the Respondents have failed to submit the requested documents to the Court. The Court relies solely on the statements provided in the Respondents’ March 2, 2021, *Petition for Adoption*.

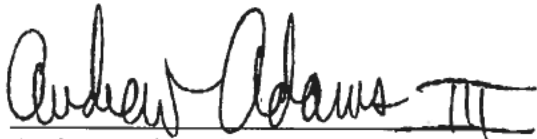
FILED AND ENTERED: February 28, 2022



Richard Loblance
Chief Justice



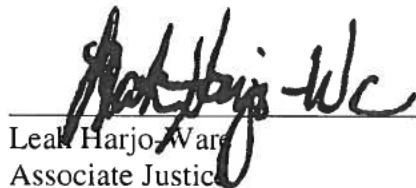
Amos McNac
Vice-Chief Justice



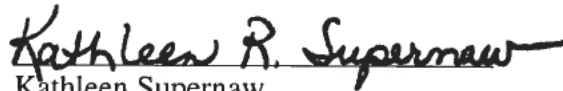
Andrew Adams, III
Associate Justice



Montie Deer
Associate Justice



Leah Harjo Ware
Associate Justice



Kathleen Supernaw
Associate Justice



George Thompson, Jr.
Associate Justice

CERTIFICATE OF MAILING

I hereby certify that on February 28, 2022, I mailed a true and correct copy of the foregoing Order and Opinion with proper postage prepaid to each of the following: [REDACTED]

[REDACTED] A true and correct copy was also hand-delivered to: Jasen Chadwick, Staff Attorney for the Muscogee (Creek) Nation District Court.



Connie Dearman, Court Clerk