
IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

SUPREME COURT
FILED

MUSCOGEE (CREEK) NATION, APPELLANT

SEP 29 2023

v.

CONNIE DEARMAN 
MUSCOGEE (CREEK) NATION
COURT CLERK

PAUL MICHAEL HOPKINS, APPELLEE

APPELLANT'S BRIEF IN CHIEF

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Muscogee (Creek) Nation

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ATTORNEY FOR APPELLEE

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IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

MUSCOGEE (CREEK) NATION,)	
Plaintiff - Appellant,)	Case No.: SC-2023-08
)	
vs.)	Appeal from the District Court of
)	the Muscogee (Creek) Nation,
HOPKINS: Paul Michael)	Okmulgee, District
Defendant - Respondent.)	Case No.: CF-2021-127

**BRIEF IN CHIEF OF
THE MUSCOGEE (CREEK) NATION**

COMES NOW Appellant, the Muscogee (Creek) Nation (hereinafter “Muscogee Nation” or “Nation”), by and through Jeremy Pittman, Assistant Attorney General, and hereby submits the following *Brief in Chief* in support of its appeal of the Muscogee (Creek) Nation District Court’s dismissal of the above captioned case for want of jurisdiction.

ISSUES PRESENTED ON APPEAL

- First Issue: The District Court erred in failing to allow time for the Muscogee (Creek) Nation respond in writing to a Motion to Dismiss that was filed out of time and ruled on by the Court.

- Second Issue: The District Court erred in granting defendant’s Motion to Dismiss and Ordering that the Case be dismissed “with prejudice”.

STATEMENT OF THE CASE

The issue presented in this case are procedural in nature and the underlying allegations against the Defendant have no bearing. Procedurally the Court set and conducted a jury sounding docket on July 6th, 2023, with numerous cases being announced ready for trial. Deadlines were set with the Nation’s jury instructions due by July 26th and any final motions due by July 28th, 2023. The Court set the final hearing on all Motions and Instructions for August 1st, 2023 at 2:00 P.M. 23 Defendants and the elected cases were set for August 1st, 2023.

In full disclosure, towards the end of the week of July 24th, the defense attorney, Carla Stinnett advised that she would be filing a Motion to Dismiss. That motion was filed on July 31st at 8:55 A.M. with a copy being dropped off at the Office of the Attorney General. This left a very short time frame for a response in writing. Upon receiving the motion to dismiss a Motion for Continuance was filed and denied by the Court at 4:29 P.M. the same day.

At the setting on August 1st, 2023 the Nation orally moved for additional time to respond to the motion to dismiss in writing. The Court denied this motion and after hearing arguments of counsel Ordered the Case dismissed *With Prejudice*. The Court did not give a reason for the dismissal with prejudice, neither orally at the conclusion of the hearing, nor in the written order filed on August 9th, 2023.

From that Order the Nation now appeals the decision of the District Court.

STANDARD OF REVIEW

Jurisdiction over this case is proper under M(C)NCA Title 27, § 1-101(C), which grants this court with exclusive jurisdiction to review final orders of the Muscogee (Creek) Nation District Court. Challenges to District Court jurisdiction are reviewed by this Court *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 erred in failing to allow time for the Muscogee (Creek) Nation to respond in writing to a Motion to Dismiss that was filed out of time and ruled on by the Court.**

Consistent with its inherent sovereignty, the Muscogee (Creek) Nation has enacted the Muscogee Nation Criminal Code, which vests criminal adjudicative authority to the Muscogee (Creek) Nation Courts. Procedurally, Title 14 is lacking in specific procedures regarding motions

but instead provides a general framework regarding procedures. Title 14 §1-301(C) provides the general tone of the title and reads:

“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 (emphasis added)*** and the elimination of unjustifiable expense and delay.”

Additionally, when no procedures are applicable Title 14 §1-301(D) provides direction and reads:

“In any case wherein provisions which would govern specific procedural issues are not contained in this chapter, the District Court may resort to the Judicial Code or other applicable law of the Nation, ***subject always to the due process rights of the defendant and the fundamental fairness of the proceedings. (emphasis added)*** 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)*** provided, that nothing in this section shall be construed as authorizing the applicability of any state or federal procedural or substantive law or statute to criminal proceedings in the Muscogee (Creek) Nation courts.”

Both statutes provide for great leeway for the Court to make decisions regarding procedure and motions practice, however the restrictions can't be ignored. Fairness and due process is of utmost importance. Fairness appears in 301(C) and twice in 301(D). Based on these statutes and the fundamental requirement of fairness the Court's ruling should be Reversed.

This requirement of fairness is equally applicable to both the Nation and Defense. I would think the Court would hold both sides accountable. Is it fair for one side to have as much time as required to research, draft, review, revise and then file a written motion a day prior to the date of hearing. Is it fair for the opposing side to then have to choose, between preparing for all of the assigned cases set for hearing or drop everything to try to get a decent written response filed.

I would argue that even if the Motion to Dismiss had been filed timely by August 28th it would still be patently unfair. Though persuasive only other jurisdictions have specific time allowances for the filing of motions and responses, none are less than 5 days. In the present case the Court should have either enforced the deadline of August 28th and not considered the defense's motion or allowed additional time for a written response. The Court erred in its decision and ignored the fundamental basis of fairness, and its decision should be reversed.

II. The District Court erred in granting defendant's Motion to Dismiss and Ordering that the Case be dismissed "with prejudice".

Title 14 does not have a specific procedure for the filing and responding to a motion to dismiss. It does however provide the following in Title 14 §1-401(G) which reads:

"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. An order for the dismissal of the action shall not be a bar to any other prosecution for the same offense."

The first part of 401(G) is a plain and straightforward. The Court can dismiss a complaint at any time upon its own motion. The Nation can request by motion or application to dismiss at any time. There is no allowance for the Defense to file for a dismissal of a Complaint and therefore the motion to dismiss is void.

This should end the argument but pursuant to 401(G) the Court can dismiss a complaint at any time upon its own motion. If we take the order of dismissal as the Court deciding to dismiss the complaint on its own, part two of 401(G) becomes relevant.

The second aspect of 401(G) is that the Court cannot dismiss a complaint with prejudice. It does not say may and there is no room for interpretation. The plain language is clear. The relevant part:

"An order for dismissal of the action ***shall not (emphasis added)*** be a bar to any other prosecution for the same offense. "

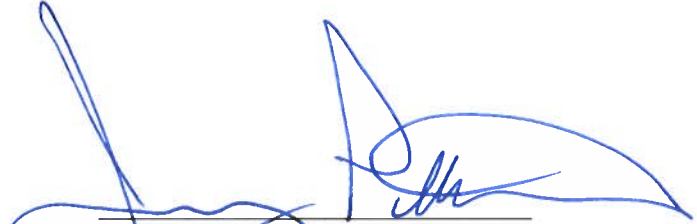
Clearly this allows only for a dismissal of the action without prejudice. Based on this the only instance when a dismissal with prejudice would be allowed is with a mutual agreement from both the prosecution and the defense. There was no agreement in this case.

CONCLUSION

Based on the Code and the facts the Court erred in numerous ways with its decision. The Court erred when it denied the oral motion for additional time to respond in writing. The Court erred when it dismissed the case with prejudice. The Court erred when it considered the motion to dismiss. Finally, the motion to dismiss filed by the defense was a void motion to begin with. The Order of Dismissal issued by the Court should be reversed and remanded.

Respectfully submitted,

**MUSCOGEE (CREEK) NATION
DEPARTMENT OF JUSTICE**

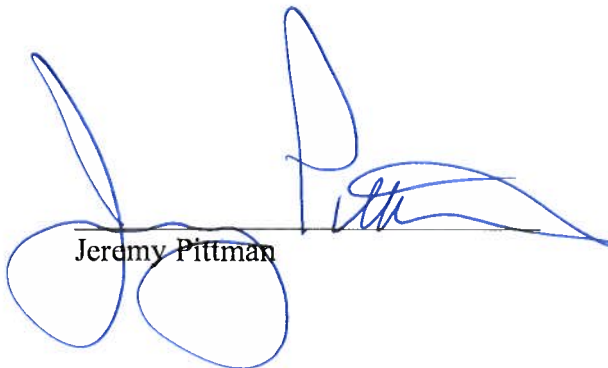


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CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of ~~August~~^{Sept} 2023, a true and correct copy of the foregoing instrument was mailed, postage prepaid, to the undersigned:

Carla Stinnett
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404 East Dewey Ave. Ste. 100
Sapulpa, Oklahoma 74066



Jeremy Pittman