

**IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION**

THLOPTHLOCCO TRIBAL TOWN, )  
a federally recognized Indian Tribe, )  
 )  
Plaintiff-Appellant, )  
 )  
v. )  
 )  
NATHAN E. ANDERSON, BRYAN McGERTT, )  
TIMMY CHEEK, CANDICE (a/k/a KENDIS) )  
ROGERS, INDA McGERTT, FRANK )  
HARJOCHEE, VIRGIL SANDERS, )  
MARY McGERTT, GRACE BUNNER, )  
THELMA JEAN NOON, WESLEY )  
MONTEMEYER, PAULA BARNES-HERROD, )  
MALINDA NOON, and those acting in joint )  
concert and participation with them, )  
 )  
Defendants-Appellees. )

**Case No. SC 2008-01**  
(District Court Case No. CV-2007-39)

**SUPREME COURT  
FILED**

SEP 19 2012 *LM*

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

**OPINION AND ORDER**

Before: SUPERNAW, *C.J.*; DEER, *V.C.J.*; HARJO-WARE, and ADAMS, *JJ.*  
LERBLANCE, *J.*, not participating.

Supernaw, *C.J.*, delivered the opinion of a unanimous Court.

This matter comes before us pursuant to a motion by Plaintiff-Appellant to extend the stay of District Court proceedings and a subsequent filing by Special District Court Judge Gregory Stidham seeking clarification of an order previously issued by this Court which reversed a District Court decision regarding attorney fees. Plaintiff initially sought interlocutory review after the District Court granted Defendant-Appellees' motion for attorney fees to be paid from the Thlopthlocco Tribal Town treasury.<sup>1</sup> The District Court reasoned that, since it was unclear who lawfully represented the Town's governing officials and Defendants would have no method

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<sup>1</sup> Muscogee (Creek) Nation District Court Opinion and Order (Sept. 15, 2008).

to recover attorney fees should they prevail, fees for both parties should be paid from the Town treasury. This Court summarily reversed the District Court order, holding that Defendants' motion for fees was premature and "any attorneys' fees paid from the Thlopthlocco treasury to the Plaintiff's counsel be returned and re-deposited into the treasury" pending conclusion of District Court proceedings.<sup>2</sup> The District Court subsequently ordered Plaintiff's counsel "to return all attorneys' fees paid from the Thlopthlocco treasury with proof of repayment furnished. . . [.]"<sup>3</sup>

Under Title 27, Appendix 1, Rule 5, "[a]ny party entitled to and requesting attorney fees shall within (10) days of the entry of judgment or decree make application for such [before the District Court]."<sup>4</sup> Absent a statutory exception, generally, each litigant bears the cost of his own attorney fees.<sup>5</sup> At the conclusion of proceedings, reasonable attorney fees may be awarded at the discretion of the District Court.<sup>6</sup>

Here, the underlying dispute goes strictly to the issue of which party should be recognized as the Town's lawful governing body. It is, indeed, troublesome that while the District Court has yet to rule for either party, Plaintiff enjoys the benefit of controlling Town funds and has paid Plaintiff's attorney fees from the Town treasury. Defendants do not share the same luxury. It remains entirely possible that Defendants could prevail at the conclusion of

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<sup>2</sup> Muscogee (Creek) Nation Supreme Court Order ¶ 2 (January 16, 2009). Although the text of the Order indicates it was filed and issued on January 16, 2009, the file-stamp erroneously reflects January 16, 2008. January 16, 2009, is clearly the correct filing and issue date because the Order directly addresses both a District Court order filed on September 15, 2008, and a motion by Plaintiff filed on December 10, 2008.

<sup>3</sup> Muscogee (Creek) Nation District Court Order ¶ 2 (February 5, 2009).

<sup>4</sup> M(C)NCA Title 27, App. 1, Rule 5 (2010).

<sup>5</sup> The "American Rule", as set forth in *Astrue v. Ratliff*, 130 S.Ct. 2521, 2125 (2010) (citing *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 602 (2001); see e.g. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975)), appears to be consistent with Muscogee (Creek) traditional notions of fair play and justice.

<sup>6</sup> Rule 5 does not contemplate interim attorney fee awards. Applicants must submit an application "together with an affidavit setting forth all information the applicant wished the Court to consider in determining such fees. All other parties shall file setting forth specific objections and any other matters they wish the Court to consider." M(C)NCA Title 27, App. 1, Rule 5 (2010).

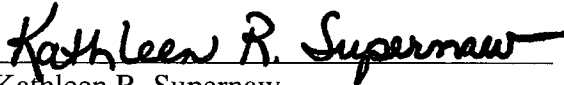
District Court proceedings and be found to lawfully represent the Town's government, yet be faced with the burden of trying to recover Plaintiff's fees paid from Town funds. Nonetheless, the District Court is bound by Rule 5 and may not consider attorney fees until after it renders a decision on the merits.


**IT IS HEREBY ORDERED** that the order previously issued in the above-captioned matter by this Court on January 16, 2009, is **VACATED**.<sup>7</sup>

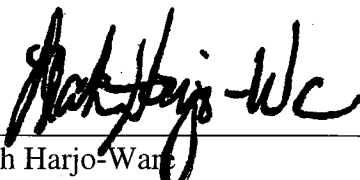
**IT IS FURTHER ORDERED** that the orders previously issued in the above-captioned matter by the District Court on February 5, 2009, and September 15, 2008, are hereby **REVERSED** and **VACATED**. This matter is **REMANDED** to the District Court with instructions to dismiss Defendants' motion for attorney fees without prejudice pursuant to Title 27, Appendix 1, Rule 5, until such time as a final decision is rendered.


**IT IS FURTHER ORDERED** that Plaintiff-Appellant's motion to extend the stay of District Court proceedings on the limited issue of attorney's fees and the District Court's request for clarification are **DISMISSED** as moot.

**DELIVERED AND FILED:** September 19, 2012.

  
Kathleen R. Supernaw  
Chief Justice

  
Montie R. Deer  
Vice-Chief Justice

  
Leah Harjo-War  
Associate Justice

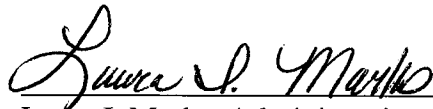
  
Andrew Adams III  
Associate Justice

<sup>7</sup> Additionally, at least as to Appellant's previous counsel, such an outcome is in accord with the preliminary injunctive relief granted by the U.S. District Court, Northern District of Oklahoma, in *Crowe & Dunlevy v. Stidham*, 609 F. Supp. 2d 1211 (N.D. Okla. 2009), *aff'd*, 640 F.3d 1140 (10th Cir. 2011).

**CERTIFICATE OF DELIVERY**

I, Laura I. Marks, Administrative Assistant for the Muscogee (Creek) Nation Supreme Court, do hereby certify that on this 19<sup>th</sup> day of September, 2012, I faxed and mailed a true and correct copy of the foregoing Supreme Court's Opinion and Order with proper postage prepaid to the following: Michael Salem, Salem Law Offices, 101 East Gray, Suite C, Norman, OK 73069, Fax: 405-366-8329; and Jonathan T. Velie, Velie Law Firm, PLLC, 401 East Main, Suite 310, Norman, OK 73069, Fax: 405-310-4334.

A true and correct copy of the foregoing Supreme Court's Opinion and Order was also hand-delivered on this 19<sup>th</sup> day of September, 2012 to: Donna Beaver, Clerk of the Muscogee (Creek) Nation District Court.



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Laura I. Marks, Administrative Assistant