

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

A.D. ELLIS, in his official capacity as)
Principal Chief of the Muscogee (Creek))
Nation,)
))
Plaintiff-Appellee,)
))
v.)
))
Bristow Muscogee Indian Community,)
Checotah Muscogee Indian Community,)
Duck Creek Indian Community,)
Eufaula Indian Community,)
Holdenville Creek Indian Community, and)
Okemah Indian Community, Chartered)
Communities of the Muscogee (Creek) Nation,)
))
Defendants-Appellants.)

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CONNIE DEARMAN *CD*
DEPUTY COURT CLERK

Case Nos. **SC 09-02**
SC 09-03
SC 09-04
SC 09-05

(District Court Case No. CV 09-33)

MEMORANDUM ORDER¹

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

In the interest of closing open matters on the Court’s docket, this Memorandum Order is issued for the purpose of finalizing denial of interlocutory review in the above-captioned appeals. Oral argument was held on May 8, 2009, regarding the matters presented by SC 09-02, -03, and -04. Defendant-Appellants sought interlocutory review of a District Court order which granted injunctive relief in favor of Plaintiff-Appellee. At the conclusion of oral argument, this Court declined to extend jurisdiction.² The Court denied interlocutory review based on lack of exigent

¹ At the conclusion of oral argument, this Court unanimously denied interlocutory review in the appeals presented by SC 09-02, -03, and -04. SC 09-03 and -04 were denied interlocutory review pursuant to a 5-0 vote. After recusal of one Justice, SC 09-02 was denied interlocutory review pursuant to a 4-0 vote. In the weeks following conclusion of oral argument, SC 09-05 was also unanimously denied interlocutory review, 5-0. The Justices remaining on the Court who deliberated and voted on the instant matter provide this explanatory footnote solely to inform the parties to the litigation.

² Hrg. Transcr. 48:9-11 (May 8, 2009).

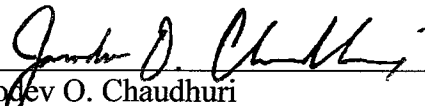
circumstances sufficient to warrant a judicial exception to the final order rule.³ The final order rule generally requires this Court to view an appeal as ripe only after the District Court has issued a final ruling, judgment, or order.⁴

Likewise, regarding SC 09-05,⁵ the Court again applied the final order rule and declined to consider arguments under M(C)NCA Title 27, App. 2, Rule 2, that the District Court both erred as a matter of law and abused its discretion by refusing to certify Defendant-Appellants' request for interlocutory appeal. Defendant-Appellants sought to invoke Rule 2 based on the District Court determination that interlocutory review was improper; however, under the circumstances of this case, the District Court determination of interlocutory merit, alone, failed to constitute a final order sufficient to overcome the final order rule.

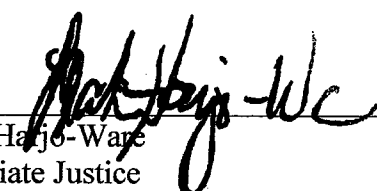
IT IS HEREBY ORDERED that Defendant-Appellants' Application for Leave to File Interlocutory Appeal in SC 09-02, -03, and -04 is **DENIED**.

IT IS FURTHER ORDERED that Defendant-Appellants' Joint Notice of Intent to Appeal in SC 09-05 is also **DENIED**.

DELIVERED AND FILED: March 30, 2012.



Jonodev O. Chaudhuri
Associate Justice



Leah Harjo-Ware
Associate Justice

³ *Id.* at 48:13 to 49:11.

⁴ *Brown & Williamson v. Muscogee (Creek) Nation*, 4 Mvs. L. Rep. 164, 170 (1998).

⁵ In the weeks following conclusion of oral argument in SC 09-02, -03, and -04, Defendant-Appellants Checotah, Duck Creek, Holdenville, and Okemah Communities filed with this Court a Joint Notice of Intent to Appeal and an Opening Brief in SC 09-05. Defendant-Appellants purported to seek final order appeal from the District Court's determination that the appeal lacked interlocutory merit. The Court unanimously denied interlocutory review, 5-0.

CERTIFICATE OF MAILING/DELIVERY

I, Connie Dearman, Supreme Court Deputy Clerk for the Muscogee (Creek) Nation, do hereby certify that on this 30th day of March, 2012, I faxed and mailed a true and correct copy of the foregoing Supreme Court's **Memorandum Order** with proper postage prepaid to the following:

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