

IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION

THLOPTHLOCCO TRIBAL TOWN, a)
federally-recognized Indian Tribe,)

Plaintiff-Appellant,)

v.)

Nathan 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 concert and)
joint participation with them,)

Defendants-Appellees,)

v.)

George Scott, Ron Barnett, Vernon Yarholar,)
Brent Brown, Ryan Morrow, Janna Dickey,)
Tracey Hill, Celeste Johnson, Barbara)
Canard-Welborn,)

Cross-Defendants-Appellants.)

SUPREME COURT
FILED

MAR 09 2012 lm

CONNIE DEARMAN
DEPUTY COURT CLERK
MUSCOGEE (CREEK) NATION

Case No. SC 2009-07
(District Court Case No. CV 07-39)

OPINION AND ORDER OF DENIAL OF INTERLOCUTORY APPEAL

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

Cross-Defendants-Appellants (Appellants) seek a writ of mandamus and prohibition or, in the alternative, interlocutory collateral order review based on sovereign immunity and lack of subject matter jurisdiction. Under the approach adopted by this Court in *Brown & Williamson v.*

Muscogee (Creek) Nation,¹ mandamus is not proper if other remedies for appeal are available. Here, Appellants simultaneously petition for writ of mandamus while also seeking interlocutory review of the District Court's preliminary order. Availability of interlocutory review in this instance necessarily renders the issuance of an extraordinary writ inappropriate because other remedies short of mandamus are potentially available via the interlocutory process. Appellants' Application is merely a standard interlocutory appeal and will be treated as such.

Appellants seek interlocutory review of the District Court's denial of Appellants' Conditional Motion to Dismiss. Appellants' Conditional Motion primarily argues that, after submitting to the jurisdiction of Muscogee (Creek) Nation courts via a purported limited waiver of sovereign immunity, Appellants may also subsequently withdraw the limited waiver. Such withdrawal, according to Appellants, would necessarily bar Defendants-Appellees' claims and remove subject matter jurisdiction from Muscogee (Creek) Nation courts.

We find no compelling reason to alter our previous holding on the relationship between the Muscogee (Creek) Nation and Thlopthlocco Tribal Town.

The relationship between Thlopthlocco and the federal government is different from the relationship between Thlopthlocco and the Muscogee (Creek) Nation. Under federal law, Thlopthlocco is a reorganized Indian tribe; under tribal law, Thlopthlocco is a Muscogee (Creek) tribal town. The Tribal Town Constitution affects neither the status of tribal town members as citizens of the Muscogee (Creek) Nation nor the relationship of the Tribal Town to the Muscogee Nation which remains analogous to a city/state government or state/federal government relationship.²

We hold that any appeal in the instant matter is unripe until sufficient fact-finding is conducted and final judgment rendered by the District Court.

¹ 4 Mvs. L. Rep. 164 (1998).

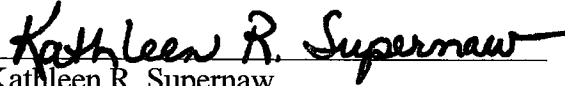
² SC 07-01, *Thlopthlocco Tribal Town v. Anderson*, Order and Opinion, 3-4 (Oct. 26, 2007) (citation omitted).

IT IS HEREBY ORDERED that Defendants' Application for Writ of Prohibition/Mandamus and/or Alternative Application for Interlocutory Collateral Order Appeal is unanimously **DENIED**.

IT IS FURTHER ORDERED that all previously granted stays of District Court proceedings issued in this matter are hereby **LIFTED**.

IT IS FURTHER ORDERED that the District Court will hear and rule on the merits of the instant matter and take any and all actions necessary, including remand if appropriate.

DELIVERED AND FILED: March 9, 2012.

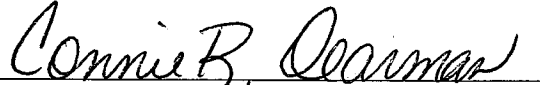

Kathleen R. Supernaw
Chief Justice

CERTIFICATE OF MAILING/DELIVERY

I, Connie Dearman, Deputy Court Clerk for the Muscogee (Creek) Nation Supreme Court, do hereby certify that on this 9th day of March, 2012, I faxed and mailed a true and correct copy of the foregoing Supreme Court's **Opinion and Order of Denial of Interlocutory Appeal** with proper postage prepaid to the following:

Michael Salem
Salem Law Offices
101 East Gray, Suite C
Norman, Oklahoma 73069
Fax: 405-366-8329

Jonathan T. Velie
Velie Law Firm, PLLC
401 East Main, Suite 310
Norman, Oklahoma 73069
Fax: 405-310-4334


Connie R. Dearman, Deputy Court Clerk