

IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION

NATHAN ANDERSON, WESLEY)
MONTMAYOR, TIM CHEEK and)
MARIAN BERRYHILL,)

Appellees-Plaintiffs,)

v.)

DOROTHY BURDEN, RACHEL SUMKA,)
BILL CHALAKE, GEORGE SCOTT,)
RYAN MORROW, BRENT BROWN,)
JEFF MCCOY, RON BARNETT,)
CELESTA JOHNSON, BARBARA WELBORN,)
JANNA DICKEY, TRACEY HILL,)
And TONYA SCOTT-WALKER,)

Appellants-Defendants,)

v.)

THE HONORABLE PATRICK MOORE,)
Chief District Judge,)

Respondent.)

SUPREME COURT
FILED

JAN 19 2012

CONNIE DEARMAN
DEPUTY COURT CLERK
MUSCOGEE (CREEK) NATION

Case No. SC 11-11

(District Court Case No. CV-2011-08)

OPINION AND ORDER OF DENIAL OF INTERLOCUTORY APPEAL

Before: SUPERNAW, C.J.; DEER, V.C.J.; and CHAUDHURI, HARJO-WARE, and SHIRLEY, J.J.

PER CURIAM: Defendants 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, Defendants 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 issue of an extraordinary writ inappropriate because other remedies short of

¹ 4 Mvs. L. Rep. 164 (1998).

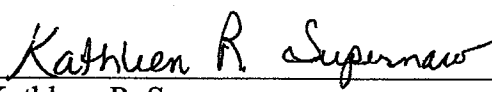
mandamus are potentially available via the interlocutory process. Defendants' Application is merely a standard interlocutory appeal and will be treated as such.

Defendants seek review of an intermediate order issued by the District Court on July 29, 2011. To that end, Defendants filed with this Court an application seeking interlocutory review on August 12, 2011. Under the five day filing period imposed by the Rules of Appellate Procedure, however, Defendants' Application was untimely. The last day to file an application for interlocutory appeal in this matter was August 3, 2011. We base our decision to deny interlocutory appeal solely on the fatal procedural flaw created by Defendants' untimely filing. Defendants in the instant matter also maintain an earlier appeal still pending before this Court, SC 09-07,² which involves identical issues pertaining to subject matter jurisdiction and sovereign immunity. We have yet to rule on the merits of the arguments presented by both parties in SC 09-07. Although we deny Defendants' request for interlocutory review in the instant matter on procedural grounds alone, SC 09-07 remains pending on the merits and will be decided accordingly.

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 the Order to Stay District Court Proceedings issued by this Court on September 22, 2011, will remain in effect until a final order and opinion is issued by this Court in the interlocutory appeal presented by SC 09-07.

DELIVERED AND FILED: January 19, 2012.



Kathleen R. Supernaw
Chief Justice

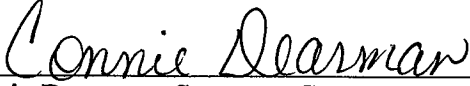
² *Thlopthocco Tribal Town v. Anderson* (SC 2009-07).

CERTIFICATE OF DELIVERY

I, Connie Dearman, Supreme Court Deputy Clerk for the Muscogee (Creek) Nation, do hereby certify that on this 19th day of January, 2012, that 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:

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Connie Dearman, Supreme Court Deputy Clerk