

IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION

DEC 17 2014

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MUSCOGEE (CREEK) NATION,)
)
 Plaintiff-Appellant,)
)
 v.)
)
 STITH, Shawn,)
)
 Defendant-Respondent.)

COURT CLERK
MUSCOGEE (CREEK) NATION

Case No. **SC 14-04**
(District Court Case No. CF 2012-39)

Appeal from District Court, Okmulgee District, Muscogee Nation.

Chad C. Harsha, Assistant Attorney General, Muscogee Nation, for Plaintiff-Appellant.

Michael E. Yeksavich, Attorney at Law, Tulsa, Oklahoma, for Defendant-Respondent.

ORDER OF AFFIRMANCE

**MVSKOKVLKE FVTCECKV CUKO HVLWAT VKERRICKV HVYAKAT OKETV
YVNKE VHAKV HAKATEN ACAKKAYEN MOMEN ENTENFVTCETV, HVTVM
MVSKOKE ETVLWVKE ETEHVLVTKE VHAKV EMPVTAKV.¹**

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

PER CURIAM.

Order of the District Court affirmed.

¹ “The Muscogee (Creek) Nation Supreme Court, after due deliberation, makes known the following decision based on traditional and modern Mvskoke law.”

PER CURIAM.

Respondent timely raised non-Indian status as a defect to personal jurisdiction during the underlying disposition hearing held on March 24, 2014. Appellant was subsequently allowed time to prepare a response and provide evidence of Respondent's Indian status. We have previously held

[a] defendant's failure to timely raise non-Indian status as a defect to personal jurisdiction prior to trial or entry of a 'guilty' or 'nolo contendere' plea may be deemed to constitute waiver of the defect. If raised prior to trial or entry of a trial-precluding plea, however, the issue of whether a defendant is Indian presents a question of fact that must be proven beyond a reasonable doubt by the prosecution in order for the case to proceed. If the prosecution is unable to prove defendant's Indian status beyond a reasonable doubt, the District Court is obligated to dismiss the case for lack of jurisdiction.²

Here, the District Court properly granted Respondent's motion to dismiss because Appellant failed to prove Respondent's Indian status beyond a reasonable doubt at the subsequent motion hearing held on March 31, 2014.

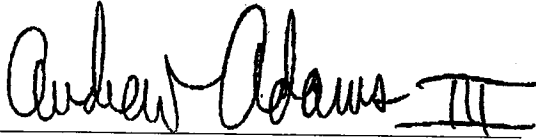
Under Muscogee law, M(C)NCA Title 14, § 2-113(W) controls any determination of personal jurisdiction as a component of Muscogee Nation criminal jurisdiction.³ It is unnecessary for this Court to reach Respondent's challenges to the validity of § 2-113(W), because Appellant has yet to meet its evidentiary burden to sustain jurisdiction in this case.

IT IS HEREBY ORDERED that the *Order* of the District Court entered April 22, 2014, granting Respondent's motion to dismiss for lack of personal jurisdiction is unanimously **AFFIRMED**.

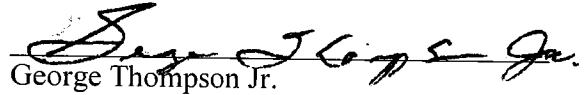
FILED AND ENTERED: December 17, 2014

² SC 11-12, *Muscogee (Creek) Nation v. Lee* 10 (August 15, 2013).

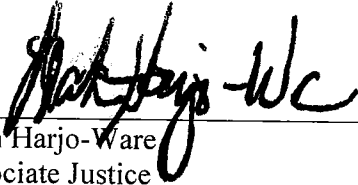
³ M(C)NCA Title 14, § 2-113(W) ("Person' means a human being who is a member of a federally [-] recognized Indian Tribe or a human being who is eligible to be a member of a federally [-] recognized Indian Tribe.").



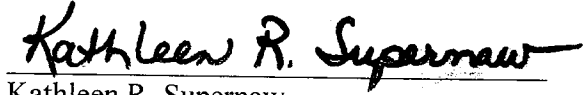
Andrew Adams III
Chief Justice



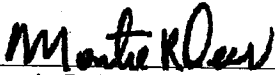
George Thompson Jr.
Vice-Chief Justice



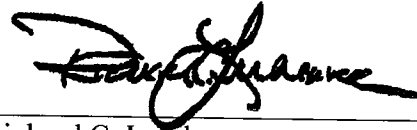
Leah Harjo-Ware
Associate Justice



Kathleen R. Supernaw
Associate Justice



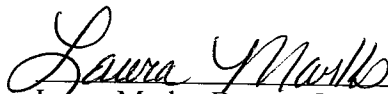
Montie R. Deer
Associate Justice



Richard C. Lerblance
Associate Justice

CERTIFICATE OF MAILING

I hereby certify that on December 17, 2014, I mailed a true and correct copy of the foregoing Order of Affirmance with proper postage prepaid to each of the following: Michael E. Yeksavich, 7122 S. Sheridan, Ste. #2-353, Tulsa, OK, 74133; and Chad C. Harsha, Assistant Attorney General, Muscogee (Creek) Nation, Office of the Attorney General, P.O. Box 580, Okmulgee, OK 74447. A true and correct copy was also hand-delivered to: Donna Beaver, Clerk of the Muscogee (Creek) Nation District Court.



Laura Marks, Deputy Court Clerk