

IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

SUPREME COURT
FILED

MUSCOGEE (CREEK) NATION,)
)
Appellant,)
)
v.)
)
PAUL MICHAEL HOPKINS,)
)
Respondent.)

APR 10 2024

Case No.: SC-2023-08
(District Court Case No.: CF-2021-127)

CONNIE DEARMAN
MUSCOGEE (CREEK) NATION
COURT CLERK



Appeal from District Court, Okmulgee District, Muscogee (Creek) Nation

Jeremy Pittman, Muscogee (Creek) Nation, Office of the Attorney General, Okmulgee,

OK, for the Appellant, the Muscogee (Creek) Nation.

Carla Stinnett, Sapulpa, OK, for the Respondent, Paul Michael Hopkins.

ORDER AND OPINION

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

Before: ADAMS, C.J.; LERBLANCE, V.C.J.; DEER, HARJO-WARE, MCNAC, SUPERNAW,

THOMPSON, JJ.

PER CURIAM

Order of the District Court reversed and remanded.

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

Per Curiam

The Muscogee (Creek) Nation (hereinafter “Appellant”) submits its appeal pursuant to M(C)NCA Title 14, § 1-701 (B)(1), seeking review of a Muscogee (Creek) Nation District Court *Order Dismissing Case*, entered on August 1, 2023. The Appellant asserts that the District Court erred in dismissing case number CF-2021-127, with prejudice, and further, that the District Court erred in ruling on a written motion (filed after the Court’s motion deadline) without providing the opposing party adequate time to respond or to secure necessary witnesses for hearing. On the record presented, and for the reasons set forth below, we reverse the Muscogee (Creek) Nation District Court’s August 1, 2023, *Order of Dismissal*, and remand the matter back to the District Court for further consideration.

BACKGROUND

On July 12, 2023, the District Court held its Sounding Docket in Case Number CF-2021-127, wherein the Court issued the following scheduling order:

District Court Judge: Okay counsel, everybody in the room. If you are an attorney, you need to know these dates. July 26th, the Nation will need to propose their jury instructions. Defense Counsel, if you have additional or alternative jury instructions those need to be submitted by July 31st. And we will have a court session on August 1st at 2:00 p.m., to argue any jury instructions or additional motions. *Any additional motions that need to be filed need to be in by the 28th of July*. So, the important dates for the Nation are July 26th, jury instructions. Defense counsel jury instructions on July 31st. *Any additional motions for the Court’s consideration, July 28th*. And then August 2nd, I’m sorry, August 1st, at 2:00 p.m., will be motion hearings, and if we have any jury instructions we need to take up. Okay? Alright.

[Emphasis Added]

On July 31, 2023, three (3) days after the District Court’s July 28th cut-off date, Paul Michael Hopkins (hereinafter, “Respondent”) filed his *Motion to Dismiss and/or Motion to Exclude Witnesses*. In response, the Nation filed a *Motion to Continue* that same day, asserting that certain key witnesses would be unavailable on August 1, 2023, to argue the Respondent’s recently filed

(and untimely) *Motion to Dismiss*. The Nation asserts in its *Brief in Chief* that its *Motion to Continue* was denied on July 31, 2023.

The parties appeared for the August 1, 2023, hearing and the Nation reasserted its request to continue the matter, and also requested that it be given sufficient time to respond to the Respondent's *Motion to Dismiss*. The Court again denied the Nation's request and ordered case number CF-2021-127 dismissed with prejudice (a related misdemeanor action was passed to the next jury trial sounding docket). A written *Order Dismissing Case* was subsequently filed on August 9, 2023. On August 16, 2023, the Appellant submitted its *Notice of Intent to Appeal*.

JURISDICTION, SCOPE, AND STANDARD OF REVIEW

Appellate jurisdiction is proper under M(C)NCA Title 27, § 1-101 (C).² This Court will review issues of law *de novo* and issues of fact for clear error.³ Each respective question will be addressed based on its applicable standard of review.

ISSUES PRESENTED

1. May the District Court dismiss a criminal matter with prejudice to refile?
2. Must a party in a criminal matter (Plaintiff and/or Defendant) be afforded sufficient time to respond to a written motion and/or time to secure necessary witnesses for hearing before the District Court may issue a ruling on the matter?

² M(C)NCA Title 27, § 1-101 (C), vests this court with exclusive jurisdiction to review final orders of the Muscogee (Creek) Nation District Court.

³ See A.D. Ellis v. Checotah Muscogee Creek Indian Community, et al., SC 2010-01 at 3, ___ Mvs. L.R. ___ (May 22, 2013); In the Matter of J.S. v. Muscogee (Creek) Nation, SC 1993-02, 4 Mvs. L.R. 124 (October 13, 1994); McIntosh v. Muscogee (Creek) Nation, SC 1986-01, 4 Mvs. L.R. 28 (January 24, 1987); Lisa K. Deere v. Joyce C. Deere, SC 2017-02 at 5, ___ Mvs. L.R. ___ (May 17, 2018); Muscogee (Creek) Nation v. Bim Stephen Bruner, SC 2018-03 at 5, ___ Mvs. ___ (September 6, 2018); Derek Huddleston v. Muscogee (Creek) Nation, SC 2018-02 at 3, ___ Mvs. ___ (October 4, 2018); Bim Stephen Bruner v. Muscogee (Creek) Nation, SC 2018-04 at 4, ___ Mvs. ___ (May 13, 2019).

DISCUSSION

Part 1. Dismissal with Prejudice

M(C)NCA Title 14, § 1-401 (G) provides that “[t]he Court, for furtherance of justice, may either on its own motion or upon the application of the prosecuting attorney, order an action be dismissed. An order for the dismissal of the action shall not be a bar to any prosecution for the same offense.” With respect to statutory interpretation, this Court has continually followed the guiding principle that “[w]hen a statutory provision is unambiguous, we presume the National Council intended the resulting impact of the unambiguous provision and apply the statute according to the plain meaning of its terms. Use of the “plain-meaning rule” is both an appropriate judicial deference to the National Council’s constitutional law-making authority and an analytical hurdle which limits unnecessary judicial encroachment into the law-making functions.”⁴

When examining the plain meaning of section 1-401 (G), the Court finds the second sentence of particular importance. This sentence provides that “[a]n order for the dismissal of the action shall not be a bar to prosecution for the same offense.” [Emphasis Added]. The statute clearly instructs that the District Court “shall not” issue an order of dismissal in a criminal matter that bars prosecution for the same offense. In the law, use of the word “shall” is considered to be an imperative command, usually indicating that the action in question is mandatory. This is distinguished from the word “may[,]” which is permissive, and usually indicates some level of discretion. Based on the National Council’s decision to include mandatory language, it is clear to the Court that its unambiguous intention was for this statute to prevent an order of dismissal being filed in a criminal action that would bar prosecution (including potential future prosecution) of the same offense. A dismissal with prejudice, filed in a criminal action, prohibits the prosecutor from

⁴ Cox v. Kamp, SC 1991-03, 4 Mvs. L.R. 75, 79 (June 27, 1991).

refiling a case concerning the same offense. As such, we find that such a dismissal violates M(C)NCA Title 14, § 1-401 (G).

Part 2. Response Time

On July 12, 2023, the parties appeared before the Court for a Sounding Docket. At this time, case number CF-2021-127 was set for jury trial, and the Court advised the parties that all motions were to be filed on or before July 28, 2023, with a final hearing set for August 1, 2023, to resolve any pending motions prior to trial. On July 31, 2023, the Respondent filed his *Motion to Dismiss and/or Motion to Exclude Witnesses*. This motion was submitted three (3) days after the Court's motion deadline, and one (1) day before the Court's final motion hearing. The record reflects that the Appellant filed a *Motion to Continue* less than four (4) hours after the Respondent's *Motion* was submitted to the District Court Clerk for filing, advising the Court that certain necessary witnesses would not be available to address the Respondent's *Motion*.

While M(C)NCA Title 14, Subchapter 3, (containing the Nations's "General Procedural Provisions" for criminal matters) does not provide specific timing provisions that authorize a set number of days to file a response to a party's motion, M(C)NCA Title 14, § 1-301 (D) does provide the following:

In any case wherein provisions which would govern specific procedural issues are not contained in this chapter, the District Court may resort to the Judicial Code or other applicable law of the Nation, subject always to the due process rights of the defendant *and the fundamental fairness of the proceedings*. If no provisions addressing such procedural issues are contained in the Judicial Code or other applicable law of the Nation, the Court may proceed in a lawful fashion consistent with Muscogee (Creek) Nation laws, the Constitution of the Nation, and the federal Indian Civil Rights Act, subject always to the due process rights of the defendant *and the fundamental fairness of the proceedings*; provided, that nothing in this section shall be construed as authorizing the applicability of any state or federal procedural or substantive law or statute to criminal proceedings in the Muscogee (Creek) Nation courts.

[Emphasis Added]

The District Court set a motion deadline for July 28, 2023, and the Respondent submitted an untimely motion. The Court is not prohibited from considering this motion, if it wishes. However, this Court finds that it violates fundamental fairness in the proceedings for the District Court to allow consideration of an untimely motion while, at the same time, electing not to extend similar consideration to the opposing party requesting additional time to respond and/or additional time to secure the availability of necessary witnesses to address the untimely claims.

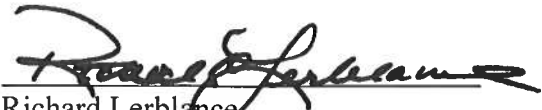
CONCLUSION

We hold that M(C)NCA Title 14, § 1-401 (G) prohibits the District Court from issuing a dismissal with prejudice to refiling in a criminal action if that dismissal would bar prosecution of the same offense(s). Further, we find that the District Court's denial of the Appellant's July 31, 2023, *Motion to Continue* violates fundamental fairness in the proceedings, as provided by M(C)NCA Title 14, § 1-301 (D) and as detailed above. For these reasons, we reverse the District Court's August 9, 2023, *Order Dismissing Case* and remand the matter back to the District Court for further consideration.

FILED AND ENTERED: April 10, 2024



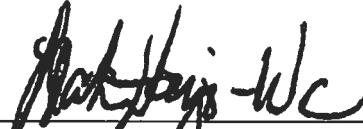
Andrew Adams, III
Chief Justice



Richard Lerblance
Vice-Chief Justice



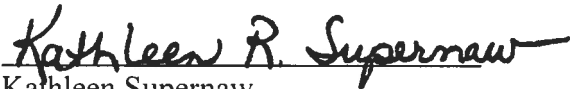
Montie Deer
Associate Justice



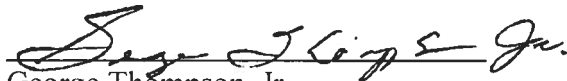
Leah Harjo-Ware
Associate Justice



Amos McNac
Associate Justice



Kathleen Supernaw
Associate Justice



George Thompson, Jr.
Associate Justice

CERTIFICATE OF MAILING

I hereby certify that on April 10, 2024, I mailed a true and correct copy of the foregoing Order and Opinion with proper postage prepaid to each of the following: Geri Wisner and Jeremy Pittman, Muscogee (Creek) Nation, Office of the Attorney General, P.O. Box 580, Okmulgee, OK 74447; Carla Stinnett, MCN Tribal Defender, 404 E. Dewey Ave., Ste. 100, Sapulpa, OK 74066. A true and correct copy was also hand-delivered to: The Office of the Muscogee (Creek) Nation District Court.



Connie Dearman, Court Clerk