

IN THE SUPREME COURT OF THE  
MUSCOGEE (CREEK) NATION

SUPREME COURT  
FILED

PERRY BEAVER, Principal Chief of )  
the Muscogee (Creek) Nation, )  
James Pratt, Controller, )  
Mike Factor, Tax Commissioner, )  
Jana Danker, Okmulgee Travel Plaza )  
Manager, )  
and their employees and agents in )  
their official capacities, )  
Appellants, )  
v. )  
OKMULGEE INDIAN COMMUNITY, )  
Appellee. )

SEP 01 1999

NANCY JUKICH, COURT CLERK  
MUSCOGEE (CREEK) NATION

SC 99-03

**ORDER DENYING  
MOTION TO RECONSIDER**

¶1 On August 19, 1999, this Court issued an Opinion vacating the Writ of Mandamus issued by the District Court on May 27, 1999,<sup>1</sup> directed to Mike Factor, Tax Commissioner, and remanded proceedings in Case CV-99-07 to the District Court for Hearing on Appellee's Petition for Writ of Mandamus. On August 20, 1999, Appellee filed in this Court a Motion to Reconsider and, on August 26, 1999, Appellant filed Objections to the Motion to Reconsider.

¶2 This Court hereby denies the Motion to Reconsider.

¶3 In its Motion to Reconsider Appellee states that this Court did not properly consider the second sentence of the second paragraph of Court Rule 8, Subsection Filing times for

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<sup>1</sup> The District Court issued the Writ of Mandamus on May 27, 1999, which was filed with the Court Clerk on June 1, 1999. The Writ of Mandamus was Stayed by this Court by Order issued June 2, 1999, which was filed with the Court Clerk on June 3, 1999.

Original Actions, of the Tribal Courts Rules and Procedures law, NCA 88-69, Section 207, which prescribes that:

"Hearings on injunctions, restraints, mandamus, will be heard within ten (10) days from filing and service."

¶4 This Court recognizes that under this Section a Hearing is required on mandamus actions "within ten (10) days from filing and service." However, this Court believes that not only due process of law under the Muscogee (Creek) Nation Constitution,<sup>2</sup> but also fairness under Muscogee (Creek) Nation customs, requires Appellants be given 20 days to answer the Petition of Appellee.

¶5 During oral arguments on August 18, 1999, and in their briefs before this Court, and in their Objections to Motion to Reconsider, Appellants state they did not have ample opportunity to challenge the validity of NCA 98-02 (providing for revenue sharing from tribal operated travel plazas) and to raise defenses prior to issuance of the Writ of Mandamus. Specifically, Appellants state they should have been entitled to 20 days from March 2, 1999, to answer Appellee's Petition. Only 14 days had elapsed before the District Court issued its Order for Stay in CV-99-07 on March 16, 1999. That Stay was issued because SC 99-02, In re Constitutionality of NCA 98-02, was then pending in this Court, which involved many of the same issues as would be addressed in CV-99-07. On May 3, 1999, Appellants filed in CV-99-07 a Motion to Modify Stay to Allow Payment of Funds Into Court. Appellee then filed an Objection to Appellants' Motion and a Motion to Lift Stay. A Hearing was held on May 27, 1999. Following the Hearing, the District Court issued the Writ of Mandamus to the Tax Commissioner. This Court, after staying that Writ, Ordered payment of all funds which might

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<sup>2</sup> See Art. VII, Section 3, Muscogee (Creek) Constitution

be due Appellee to be paid into the Court Clerk's fund.

¶6 This Court issued its Opinion in SC-99-02 on August 19, 1999, not assuming original jurisdiction, and also its Opinion in this case vacating its Stay issued June 2, 1999, for which reconsideration is requested.

¶7 The record reflects that on March 2, 1999, Appellee had issued a Summons, which stated:

". . . you are directed to file a written answer to the attached petition in the court . . . within twenty (20) days after service of this summons upon you, exclusive of the day of service."

The Lighthouse served the Summons on all Appellants on March 2, 1999.

¶8 This Court did not decide in its August 19, 1999 Order that everyone must be given 20 days to answer to a pleading styled "Petition", when, in fact, it is simply a "Motion". It only reasoned that once a litigant has invoked the powers of the tribal judiciary to summons someone to Court, and the Summons says their answer is due "within twenty (20) days after service", they must be given that amount of time to answer.

¶9 The transcript of the May 27, 1999, Hearing at the District Court was not part of the Record on Appeal transmitted to this Court, and no rulings by the District Court on Appellants' or Appellee's motions appeared in the record. However, even assuming the District Court formally denied Appellants' Motion to Modify the Stay issued March 16, 1999, and lifted the Stay, Appellant did not have any additional time to answer Appellee's Petition for Writ of Mandamus before the Writ was issued.

¶10 Traditionally, when a dispute exists between Muscogee citizens, the *mekko* and the *tvstvnvke* of the citizens' tribal towns meet, and give everyone involved a *full* opportunity to present *all* of their arguments, in a civil manner. This tradition was recorded long before

Removal when General James Oglethorpe of Georgia observed that Creek leaders, when discussing disputed issues, gave everyone the "liberty to give their opinions".<sup>3</sup>

¶11 While many aspects of the Anglo system of adversarial jurisprudence are used by the Muscogee (Creek) Nation courts today, this Court supports the tradition that tribal courts should let litigants present their opinions, as freely as possible, consistent with fairness and civility. Of course there must be time-frames established for responsive pleadings. But should there be differences of opinion regarding Court Rules, fairness to all parties requires that they be able to at least present their arguments to the Court. Rule 1 of the Judicial Appeals Tribunal Rules for the Cherokee Nation says that its rules "shall be liberally construed".<sup>4</sup> This court believes this concept is sound because the purpose of the Muscogee (Creek) Nation Courts is to decide conflicts on the basis of fairness to all litigants.

Done at Okmulgee, Creek Nation, this 31<sup>st</sup> day of August, 1999.

  
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Michael Flud, Chief Justice

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Richard Lerblance, Vice-Chief Justice

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<sup>3</sup> Collections Georgia Historical Society, II, 60, cited in David H. Corkran, The Creek Frontier, 1540-1783, 12 (Univ. Okla. Press:Norman, 1967).

<sup>4</sup> Title 20, Chapter 2 Appendix, Cherokee Nation Code 1993

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Roger Wiley, Justice

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Amos McNac, Justice

A handwritten signature in black ink, appearing to read "Houston Shirley", written over a horizontal line.

Houston Shirley, Justice

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Larry L. Oliver, Justice