SUPREME COURT
FILED
OCT 0 5 2023
CONNIE DEARMAN
MUSCOGEE (CREEK) NATION
COURT CLERK

IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

IN RE: THE MATTER OF THE ADOPTION OF:

T.J.S., A MINOR CHILD

Case No.: **SC-2023-01**
(District Court Case No.: AD-2022-17)

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

[redacted], Tulsa, Oklahoma for the Appellants, [redacted].

[redacted], Tulsa, Oklahoma, for the Respondents, [redacted].

ORDER AND OPINION

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

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

█████████████████████████ (hereinafter, the "Appellants") submit an interlocutory appeal of a March 7, 2023, *Decision* of the Muscogee (Creek) Nation District Court. The Appellants assert that the District Court erred in ruling that the Respondents have standing to seek the adoption of minor child T.J.S. without the consent of the natural parents, as, it is argued, Mvskoke law only authorizes (1) a consenting parent, (2) a legal guardian, or (3) a person having legal custody of the child to bring an adoption action where consent of the natural parents has not been granted, or termination of parental rights has not been previously obtained. Additionally, the Appellants assert that full-faith-and-credit should be granted to a Tulsa County permanent guardianship order establishing the Appellants as permanent legal guardians over the minor child. On the record presented, and for the reasons set forth below, we reverse and remand the March 7, 2023, *Decision* of the Muscogee (Creek) Nation District Court.

BACKGROUND

On August 18, 2020, an action was filed in the Tulsa County District Court – ████ ██████████████████████, seeking a judicial determination to adjudicate minor child T.J.S. as deprived, and further, to make the minor child a ward of the Court. Following two years of litigation, in which the Muscogee (Creek) Nation participated as a party to the case, this State Court action ultimately resulted in a July 6, 2022, *Order* establishing the Appellants as permanent legal guardians of the minor child. The guardianship *Order* was entered with the consent of the Natural Mother. Though, the Natural Mother's parental rights were never extinguished by implementation of the permanent guardianship. The Natural Father predeceased the State guardianship action, but was an enrolled member of the Muscogee (Creek) Nation. Minor Child T.J.S., it is asserted, is also eligible for membership with the Muscogee (Creek) Nation.

On June 7, 2022, (a month and one day prior to the filing of the State permanent guardianship *Order*) [redacted], the paternal great aunt and great uncle of minor child T.J.S. (hereinafter, the "Respondents"), filed a *Petition and Application for Adoption* in the Muscogee (Creek) Nation District Court (case number AD-2022-17). On July 20, 2022, a *Motion to Dismiss Petition for Adoption* was filed by the Appellants. Briefs were later submitted by both parties specifically addressing whether the Respondents have standing to pursue the adoption in the Muscogee (Creek) Nation courts under M(C)NCA Title 6 § 1-1004 (A)(1) and M(C)NCA Title 6 § 1-1007 (B).

On March 7, 2023, after reviewing the briefs submitted by the parties, the District Court issued its *Decision* on the issue of standing, finding that:

> …pursuant to M(C)NCA Title 6, 1-1004 (A)(1), the [Respondents] have standing to pursue their adoption. Although the title of the [Respondents'] Petition is "*Petition for Adoption*", the body clearly identifies a Petition for Adoption without Consent. The Court orders the [Respondents] to submit an Order Setting Hearing for Adoption without Consent."

On March 15, 2023, the Appellants filed an *Application for Permission to Proceed with Interlocutory Appeal pursuant to Rule 3 of the Muscogee (Creek) Nation Supreme Court's Appellate Rules of Procedure* seeking an Order from this Court finding that "the trial court erred when it held that the [Respondents] in an adoption matter have standing to seek termination of a Natural Parent's parental rights..."

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. Does a filing party in an action for adoption without consent have standing to sue if they satisfy the adoption eligibility requirements of M(C)NCA Title 6, § 1-1004 (A), but do not satisfy the filing-party requirements of M(C)NCA Title 6, § 1-1007 (B) in an associated action to terminate parental rights?
2. Does a prior State Court order granting permanent legal guardianship of the minor child to the Appellants limit the availability of an adoption action in the Muscogee (Creek) Nation Courts?

DISCUSSION

Part 1. Standing

As this Court has previously stated, "[o]nly "justiciable" matters may be properly adjudicated by our Nation's courts."[4] The Court defines "justiciability" as "a group of legal concepts used as criteria to assess whether adjudication may adequately resolve any given cause

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[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).

[4] *See*, Muscogee (Creek) Nation National Council v. George Tiger, SC-2011-06 at 8, ___Mvs. L.R. ___ (February 14, 2014).

of action. These judicially-imposed criteria include ripeness, mootness, standing, and a general restriction against judicial intervention in purely political questions or requests for advisory opinions."[5] The justiciability concept of "ripeness" has been found by this Court to be a "threshold requirement necessary to warrant the exercise of judicial authority[,]"[6] and the Court has explained that:

> "Ripeness" requires our Nation's courts to limit adjudication to actual, existing cases or controversies, rather than permitting claims based on hypothetical, uncertain or contingent future possibilities. Ripeness relates to the timing of judicial review. A claim becomes "ripe" for adjudication once the underlying facts of the claim have matured into an imminent, substantial controversy from which a party may properly seek judicial intervention. When considering a ripeness issue, two factors must generally be addressed: first, whether the relevant issues are sufficiently focused to permit judicial resolution without further factual development; and second, whether the parties would suffer any hardship by postponement of judicial intervention.[7]

In the above-styled action, the Appellants argue that the District Court erred by ruling that the Respondents have standing to pursue their adoption pursuant to M(C)NCA Title 6, § 1-1004 (A)(1).[8] The Appellants contend that the Respondents lack standing in the adoption action, not because they fail to satisfy § 1-1004, but because the Respondents (it is alleged) do not fall within one of three (3) statutory categories of individuals described in M(C)NCA Title 6, § 1-1007 (B) authorized to bring an action to terminate parental rights of a natural parent.[9] That statute provides in its entirety:

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[5] *Id.* at footnote 29.
[6] *Id.* at 9.
[7] *Id.*
[8] M(C)NCA Title 6, § 1-1004(A)(1) provides: "(A) The following persons are eligible to adopt a child pursuant to statutory law, subject to the placement preferences of § 1-811 of this Title: (1) A husband and wife jointly…"
[9] *See* Appellants' March 15, 2023, *Application for Permission to Proceed with Interlocutory Appeal Pursuant to Rule 3 of the Muscogee (Creek) Nation Supreme Court's Appellate Rules of Procedure*, in which the Appellants argue that "[p]ursuant to Title 6, § 1-1007(B) of the Code of Laws for the Muscogee (Creek) Nation, a condition precedent necessary for a party to seek the involuntary termination of parental rights is that the party be of one of the following varieties of individuals: (a) a parent, (b) a legal guardian, or (c) a person having other legal rights to custody. Respondents do not fit into any of these statutorily required categories and as a result lack standing to proceed."

> Adoption of a child may be decreed without parental consent if a consenting parent, legal guardian or person having legal custody of the child to be adopted secures termination of parental rights by filing a separate application for termination of parental rights in the adoption proceeding based on the grounds of abandonment set forth in paragraph 2 of subsection B of Title 6, § 1-901 or based on the grounds of failure to contribute to support as set forth in paragraph 4 of subsection B of Title 6, § 1-901.

Pursuant to this statute, a party may seek termination of parental rights without consent of the natural parents "by filing **a separate application** ...**in the adoption proceeding**..." [Emphasis Added]. This language is unambiguous. It clearly sets out that an action to terminate the parental rights of a natural parent without their consent, while undeniably connected to an adoption action, is something all its own. The statute requires that a "separate application" be filed with the Court, thus delineating an adoption action from a termination action. Upon review of the Record-on-Appeal, the Court notes that the Appellants have not yet submitted an *Application for Termination of Parental Rights* with the District Court in the adoption case. In fact, based on the Respondents' statements to the Court during its August 11, 2023, Oral Argument, there is no guarantee that such an *Application* will ever be filed, as the Respondents acknowledged to the Court that they would not fall into any of the categories listed in § 1-1007 (B).[10] Additionally, the Respondents asserted that there may be alternatives to § 1-1007 (B) that would provide them standing to seek adoption of the minor child. Essentially, the Appellants have submitted their interlocutory appeal too early.

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[10] *See*, Transcript of August 11, 2023, Oral Argument, Pg. 29, Ln. 6-25, and Pg. 30, Ln. 1.

Justice Adams: So, [redacted], my – my reading of Title 6-1-104, and – and in this given circumstance, Title 6-1-1007, is that you have to read them together. And where I'm having some intellectual challenges following your argument is under Title 6-1-1007, Sub B, where it lists out a consenting parent, a legal guardian, or a person having legal custody of a child to be adopted secures termination of parental rights by filing a separate application for termination.

So I read that to mean that the only folks under Muscogee Nation law that have standing to pursue that termination of parental rights is a consenting parent, a legal guardian, or a person having legal custody.

Are – are your clients – do they fit into one of those three classes of individuals?

[redacted]: No, my clients don't, and hundreds and hundreds of – of Muscogee Nation citizens who seek to adopt do not fall under that category as well.

The District Court has not been presented with a request by the Respondents to terminate the Natural Mother's parental rights without consent pursuant to § 1-1007 (B). No facts have been presented to the District Court on a § 1-1007 (B) termination claim, and no record has been developed. As it stands, the issue of termination of the Natural Mother's parental rights without consent is not ripe for review.

With this in mind, the Court finds that the March 7, 2023 *Decision* of the District Court should be reversed and remanded. The *Decision* "orders the [Respondents] to submit an Order Setting Hearing for the Adoption without Consent." The Court finds this to be in error, as M(C)NCA Title 6, § 1-1007 (B) would first require the filing of a "separate application" for a termination without consent action. An *Application* requesting termination without consent must be filed by the Respondents before a hearing may be set by the District Court.

Part 2. Impact of Oklahoma State Court Guardianship Order

The Appellants also argue that a permanent guardianship order issued by the Tulsa County District Court, State of Oklahoma, should be afforded full-faith-and-credit in the Courts of the Muscogee (Creek) Nation. The Appellants assert that, if full-faith-and-credit is authorized, then requests for termination of the permanent guardianship may only be brought in accordance with Oklahoma state law by (1) the permanent guardian(s), (2) the child, or (3) the district attorney.[11]

Shortly after the passage of M(C)NCA Title 27, § 7-101,[12] this Court issued an August 4, 1993 *Order Adopting Standards for Recognition of Judicial Proceedings of Other Sovereigns in*

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[11] *See*, June 5, 2023, *Appellants' Reply Brief*, at 4, wherein the Appellants cite 10A O.S. § 1-4-711 (A) as the applicable Oklahoma state court authority.

[12] M(C)NCA Title 27, § 7-101 provides: "(A) The Supreme Court of the Muscogee (Creek) Nation shall have the authority to issue standards for extending full faith and credit to the records and judicial proceedings of any court of any federally recognized Indian Nation, band or political subdivision thereof, including the Courts of Indian Offenses, which act as Tribal Courts for certain Nations, and of any state, territory or other political subdivision of the United States of America. (B) In issuing any such standards, the Supreme Court of the Muscogee (Creek) Nation may extend such recognition in whole or in part to same type or types of judgments of other jurisdictions that said courts of other

the Muscogee (Creek) Nation Courts – Full Faith and Credit. This *Order* provides that "[t]he Courts of the Muscogee (Creek) Nation shall grant full faith and credit and cause to be enforced therein any foreign judgment provided that the Federal, State, or Tribal Court that issued such judgment grants reciprocity to judgments of the Courts of the Muscogee (Creek) Nation." Further, the *Order* provides two (2) pathways for foreign judgments to be authenticated and enforced within the Nation's Courts.[13] The first pathway is described in subsections C through G of the *Order*. These subsections provide specific procedures for filing the foreign judgment with the Clerk of the Muscogee (Creek) Nation District Court, notice requirements for the filing party (which, notably include provisions for the Muscogee (Creek) Nation Courts to "make a minimal inquiry into the due process afforded in the foreign jurisdiction."), provisions for parties against whom the judgment was rendered to object to the foreign judgment's enforcement, as well as costs and fees associated with the filing. The second pathway for enforcement of a foreign judgment is described in subsection H, which states that "[t]he right of any party obtaining the judgment to bring an

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jurisdictions agree to grant reciprocity of judgments of the Courts of the Muscogee (Creek) Nation, and may negotiate with other jurisdictions the degree or reciprocity to be given and received."

[13] The Court notes that this approach represents an expansion to the analysis described in SC-2021-04, In Re: The Matter of A.C.T., a Minor Child. In that action, the Court was presented with a specific set of facts in which the District Court had already taken judicial notice of a Rogers County, State of Oklahoma, child support order. The Appellant in that matter argued solely that, due to the recent decision by the United States Supreme Court in McGirt v. Oklahoma, the State of Oklahoma did not have jurisdiction to issue any orders related to the minor child. No arguments were presented to the Court concerning its 1993 Full-Faith-and-Credit Administrative Order, or the proper method in which to domesticate foreign orders within the Mvskoke courts. As such, the Court focused its analysis primarily on the District Court's act of taking judicial notice; finding that, pursuant to M(C)NCA Title 27, § 2-108, the Mvskoke courts are authorized to apply the Federal Rules of Evidence in the absence of any express Mvskoke law on the subject. Therefore, the Court posited, the District Court was authorized to take judicial notice of the Rogers County child support order pursuant to Rule 201 of the Federal Rules of Evidence. The Court included a brief reference to the 1993 Full-Faith-and-Credit Administrative Order in its *Opinion* in A.C.T., but only as secondary support for the notation that, in certain circumstances, the Mvskoke courts are authorized to take notice of orders emanating from foreign jurisdictions. In the current matter, the record does not reflect that the lower court has taken judicial notice of the Tulsa Couty Permanent Guardianship Order. As such, judicial notice has not been the primary focus of this Court's analysis. Additionally, the Court has been presented with a much more refined argument concerning the proper method of domesticating a foreign order within the Mvskoke courts. As a result, the Court's analysis is sharply focused on the 1993 Full-Faith-and-Credit Administrative Order, and the proper process in which to domesticate a foreign order within the Mvskoke courts.

independent action to enforce foreign judgment instead of proceeding under these rules remains unimpaired."

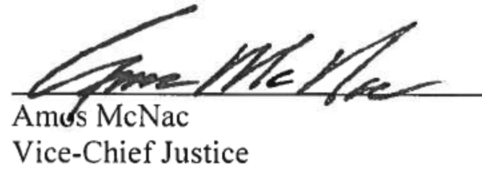
The Record-on-Appeal before the Court does not reflect that the Appellants have elected to pursue either of these two pathways. As such, the Appellants cannot yet claim reciprocity of the foreign jurisdiction's *Order* establishing the Appellants as permanent legal guardians, and it is premature for this Court to make any ruling to that effect when the lower court, and the parties against whom the foreign judgment was rendered have not had an opportunity to review, and potentially object to the execution of the foreign judgment within the Courts of the Muscogee (Creek) Nation in accordance with the provisions of the 1993 *Order* on full-faith-and-credit.

CONCLUSION

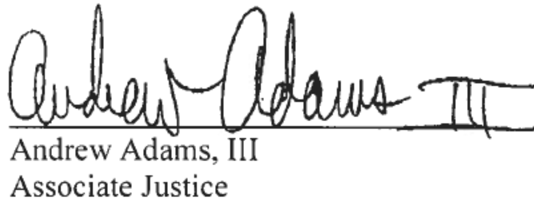
For the reasons stated above, we reverse and remand the District Court's March 7, 2023 *Decision,* finding that the Appellants' arguments concerning standing pursuant to M(C)NCA Title 6, § 1-1007 (B) are unripe for review at this time, and that the District Court's instruction for the Respondents to submit an *Order Setting Hearing for the Adoption without Consent* to be in error. Additionally, for the reasons stated above, we find that the Appellants' arguments for full-faith-and-credit are not ripe for review.

FILED AND ENTERED: October 5, 2023

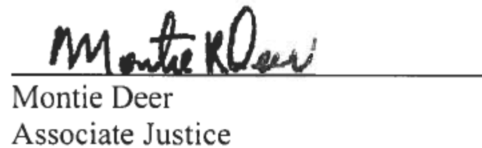
Richard Lerblance
Chief Justice



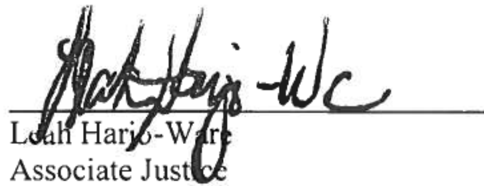
Amos McNac
Vice-Chief Justice



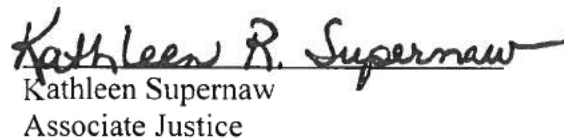
Andrew Adams, III
Associate Justice



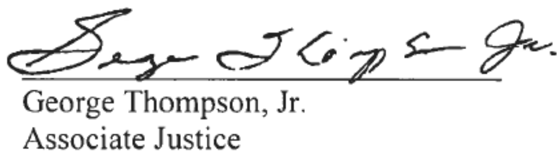
Montie Deer
Associate Justice



Leah Harjo-Ware
Associate Justice



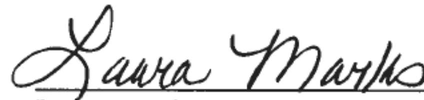
Kathleen Supernaw
Associate Justice



George Thompson, Jr.
Associate Justice

CERTIFICATE OF MAILING

I hereby certify that on October 5, 2023, I mailed a true and correct copy of the foregoing *Order and Opinion* with proper postage prepaid to each of the following: [redacted] A true and correct copy was also hand-delivered to Office of the Muscogee (Creek) Nation District Court.



Laura Marks, Deputy Court Clerk