

IN THE SUPREME COURT OF THE CHEROKEE NATION

In Re: Effect of *Cherokee Nation v. Nash*
and *Vann v. Zinke*, District Court for the
District of Columbia, Case No. 13-01313
(TFH) and Petition for Writ of Mandamus
Requiring the Cherokee Nation Registrar to
Begin Processing Citizenship Applications

CASE NO.: SC-2017-07

2018 MAY 16 PM 2:29
CHEROKEE NATION
SUPREME COURT
CLERK

FILED

OPINION

Petitioners:

Todd Hembree for the Cherokee Nation
Chrissi Nimmo
Courtney Jordan
Office of the Attorney General
Cherokee Nation
P.O. Box 948
Tahlequah, OK 74465
todd-hembree@cherokee.org

Interveners:

John E. Parris for Randy White, Marcus Thompson, Norman Crowe, Vicki Bratton,
Kathy Robinson, Councilman Harley Buzzard, and Councilman David Walkingstick
220 A. East 2nd St
Sand Springs, Ok 74063-7902
jeparris@gmail.com

Stephen P. Gray
Stephen P. Gray & Associates
3103 North Hemlock Circle, Suite 112
Broken Arrow, Ok 74012
steve@lawspg.com

Before:

John C. Garrett, Chief Justice
James G. Wilcoxon, Justice
Angela Jones, Justice
Lynn Burris, Justice
Mark L. Dobbins, Justice

On September 1, 2017, Cherokee Nation Attorney General, Todd Hembree petitioned this Court to enter a preliminary Order declaring that the memorandum opinion issued by the District Court for the District of Columbia in combined case no 13-01313 on August 30, 2017, to be valid and binding against the Cherokee Nation, its Governmental branches, and its offices, including the Cherokee Nation Registrar, until further order of the Court.

Prior to entering into the federal case, on March 16, 2009, the Cherokee Tribal Council, passed Resolution 22-09, Ratifying the litigation in Cherokee Nation v. Nash, et al., Case No. 09 CV-052 and acknowledged that it was desired that the federal court determine rights of the freedmen and that the Cherokee Nation would be bound by the decision of the federal court.¹ Cherokee Nation voluntarily entered this litigation and agreed to be bound by the decision, therefore, this Court granted the request of the Attorney General and entered a Preliminary Order Granting Declaratory Action and Petition for Writ of Mandamus.

¹ Resolution No. 22-09 COUNCIL OF THE CHEROKEE NATION A RESOLUTION RATIFYING LITIGATION IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA WHEREAS, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in relationship with the United States of America; WHEREAS, the Cherokee Nation is a federally recognized Indian nation with a historic and continual government to government relationship with the United States of America; WHEREAS, Legislative Act 07-01 provides that litigation brought on behalf of Cherokee Nation and involving substantial assets or sovereignty of the Nation be authorized by the Principal Chief and ratified by the Council; WHEREAS, in Vann v. Kempthorne, 534 F.3d 741, (D.C.Cir. 2008) the Court of Appeals for the Federal Circuit ruled that the Cherokee nation must be dismissed in the Vann case filed in the United States District Court for the District of Columbia (Case No. 1:03CV01711); WHEREAS, it is desirable for a federal court to determine the narrow issue of construction of the 1866 Treaty language and any federal law affecting that treaty regarding federal rights, if any, of freedmen and their descendants; WHEREAS, such a federal ruling would be binding upon both parties to the Treaty of 1866; WHEREAS, it is determined that it is in the best interest of the Nation to affirmatively file a federal action in the Northern District of Oklahoma on these matters. BE IT RESOLVED BY THE CHEROKEE NATION, that litigation is hereby ratified in Cherokee Nation v. Nash, et al., Case No. 09 CV-052 (TCK) in the U.S. District Court for the Northern District of Oklahoma, and that the Attorney General is authorized to take such action as necessary to pursue such litigation and ensure that the Nation's interest are fully represented. CERTIFICATION the foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 16th day of March, 2009, having 17 members present, constituting a quorum, by the vote of 17 yeas; 0 nays; 0 abstaining.

Over three months after this Court entered its Order, A Motion to Intervene, for Writ of Mandamus, and to set Aside Preliminary Order was filed on December 11, 2017, by eight Cherokee Nation Citizens. The Motion requested that the Court withdraw its Preliminary Order and issue a Writ of Mandamus to Attorney General, Todd Hembree directing him to file an appeal of the federal court's ruling.

On December 29, 2017, Cherokee Nation and Attorney General Todd Hembree entered a Special Limited Entry of Appearance and Objection wherein they opposed the Motion to Intervene, moved to dismiss the Petition for Writ of Mandamus and opposed the Motion to set a side this Court's Preliminary Order.

On April 19, 2018, this Court heard oral arguments of the parties.

The Court, after examining the file and records herein, and hearing Oral Argument, enters the following findings and Orders:

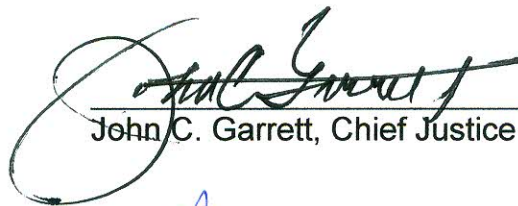
The Court denies the requested relief by the Movants and dismisses their Motion to Intervene, For Writ of Mandamus, and To Set Aside Preliminary Order. The Movants are individual Cherokee Citizens who disagree with the outcome of the federal case and disagree with the way the Nation and the Attorney General's office handled the case. The ruling of the Federal Court has no effect on the citizenship status of the Movants. The Movants lack standing, they have no legally protected interest sufficient to establish standing. They have failed to demonstrate any concrete injury in fact sufficient to establish standing to bring this suit. To have standing, Movants must have suffered an injury in fact—an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, not conjecture or hypothetical. See *Mayes v.*

Thompson, et al., JAT-95-15-(1995)² Because the Court is dismissing the Movants Motions based on Lack of Standing there is no need to discuss any other issues.

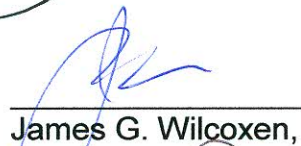
The Preliminary Order of this Court is to remain in effect as written and Movant's Motions are hereby dismissed.

IT IS THEREFORD ORDERED.

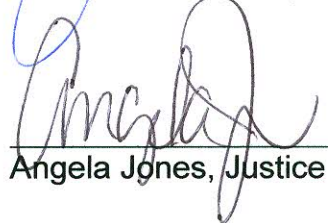
Dated this 14 day of May, 2018.



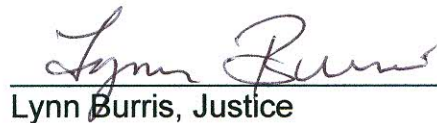
John C. Garrett, Chief Justice



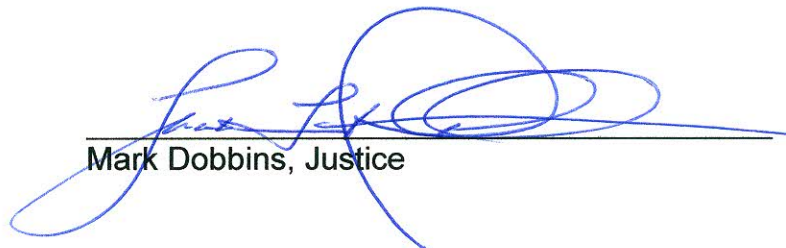
James G. Wilcoxon,



Angela Jones, Justice



Lynn Burris, Justice



Mark Dobbins, Justice

² A party only has standing if they can demonstrate a stake in the outcome" and "[t]he injury in fact must be an actual or imminent, and cannot be too remote or speculative." *Mayes v. Thompson, et al.*, JAT-95-15, 10 (19950

Certificate of Mailing

I, Kendall Bird, certify that on the 11 day of May, 2018, I mailed, emailed and/or faxed a true copy of the above and foregoing to the following:

Todd Hembree, todd-hembree@cherokee.org
Chrissi Nimmo chrissi-nimmo@cherokee.org
Courtney Jordan, courtney-jordan@cherokee.org
John E. Parris, jeparris@gmail.com
Stephen P. Gray, steve@lawspg.com



Kendall Bird, Court Clerk