



Iowa General Assembly

2013 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

INDIAN CHILD WELFARE ACT'S APPLICATION TO PRIVATE ADOPTION

Filed by the United States Supreme Court

June 25, 2013

Adoptive Couple v. Baby Girl

No. 12-399

http://www.supremecourt.gov/opinions/12pdf/12-399_q86b.pdf

Background Facts and Procedure. The biological father of a female Indian child sought custody of his daughter upon notification that his daughter had been put up for adoption by the child's biological mother. The biological father is a member of the Cherokee Nation. The biological father and the biological mother had been in a relationship and the biological father knew of the pregnancy. After the relationship ended, the biological mother asked the biological father via text message if he wanted to pay child support or relinquish his parental rights, and he responded that he would relinquish his rights. The biological mother placed the baby up for adoption and chose a non-Indian adoptive couple from South Carolina to adopt the baby. The adoptive couple was present at the birth of the child in Oklahoma and took custody of the child after the birth. The biological father did not provide any financial or other assistance during the pregnancy or during the four months prior to receiving notification of the adoption proceedings.

The adoptive couple initiated adoption proceedings in South Carolina, and four months after the birth of the baby, the adoptive couple served the biological father with notice of the pending adoption. After realizing he was not relinquishing his rights to the biological mother, the biological father sought custody of the baby, stated he would not consent to the adoption, and took a paternity test.

The South Carolina Family Court denied the adoptive couple's petition for adoption and awarded custody of the child to the biological father, ruling that the adoptive couple had not met the burden required to involuntarily terminate the parental rights of a parent to an Indian child under the federal Indian Child Welfare Act of 1978 (ICWA). After this ruling, the biological father took custody of the then 27-month old child. The South Carolina Supreme Court affirmed the family court's denial of the adoption and the award of custody to the biological father, holding that two provisions of the ICWA barred termination of the biological father's parental rights.

Issues on Appeal.

1. Whether the ICWA requirement in 25 U.S.C. § 1912(f) that a state court must make a determination supported by evidence beyond a reasonable doubt that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage before allowing an involuntary termination of parental rights to an Indian child applies when the biological parent of the Indian child has never had legal or physical custody of the child.
2. Whether the ICWA requirement in 25 U.S.C. § 1912(d) that a party seeking to involuntarily terminate the parental rights to an Indian child must demonstrate that active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and those efforts have failed applies when the biological parent of an Indian child has never had legal or physical custody of the child or has abandoned the child.

Analysis and Holding. The United States Supreme Court (Court) held in a 5 to 4 decision that 25 U.S.C. § 1912(f) of the ICWA does not apply to bar the termination of parental rights when the biological parent of an Indian child has never had legal or physical custody of the child under state law and 25 U.S.C. § 1912(d) does not apply to bar the termination of parental rights when the biological parent of an Indian child has never had legal or physical custody of the child or has abandoned the child.

Serious Emotional or Physical Harm. Section 1912(f) of the ICWA bars the state from involuntarily terminating the rights of a parent of an Indian child in the absence of a heightened showing that serious harm to the Indian child is likely to

result from the parent's "continued custody" of the child. The Court held that this provision does not apply when that parent never had custody of the child, as the term "continued custody" refers to a preexisting state or a resumption of custody after interruption. Therefore, for this provision to apply, the parent has to currently have custody of the child or has to have had custody of the child in the past. As the biological father in the case had never had physical or legal custody of the child under South Carolina or Oklahoma law, the Court found the father could not invoke this provision of ICWA to bar the termination of his parental rights.

Remedial Services and Rehabilitative Programs. The other ICWA provision concerning termination of parental rights at issue in this case, 25 U.S.C. § 1912(d), requires that a party seeking to involuntarily terminate the parental rights to an Indian child demonstrate that active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and the active efforts were unsuccessful. The Court determined this ICWA provision which conditions the termination of parental rights on a showing of unsuccessful remedial services and rehabilitative programs also does not apply when the parent abandoned the Indian child before birth and never had custody of the child. The Court stated that this provision only applies in cases where an Indian family's "breakup" would be triggered by the termination of parental rights. If the parent has abandoned the child prior to birth and the child has never been in the parent's legal or physical custody, the termination of parental rights would not break up or discontinue the relationship.

The Court stated that the termination of parental rights provisions in ICWA do not create parental rights for unwed fathers where the rights would not otherwise exist. The Court also commented that allowing a biological Indian father to abandon a child and refuse to support the birth mother and then allow ICWA provisions to override the child's best interests and the mother's decision to place the child up for adoption would raise equal protection concerns.

The Court also noted that placement preferences for the adoption of Indian children under the ICWA do not prevent a non-Indian family from adopting an Indian child when, as in this case, no other eligible candidate sought to adopt the child.

Concurrence. Two concurrences were filed in this case. Justice Thomas concurred in the majority's result because the result avoided constitutional issues relating to Congress's plenary power to subsume state child custody proceedings on the basis of ICWA. Justice Breyer concurred in the majority's result, but noted that there is a policy risk that the Court excluded too many fathers because the category of absentee fathers may be too broad. Justice Breyer also noted that the majority's holding does not implicate cases where the father has visitation rights or paid child support, or a case where the biological father was deceived about the existence of a child or was prevented from seeing the child.

Dissent. Two dissents were filed in this case. In his dissent, Justice Scalia argued that the majority misinterpreted the term "continued custody" to require an already existing custodial relationship or a past custodial relationship when "continued custody" could mean that a parent's initial custody in the future is not likely to result in damage to the Indian child and the continued custody beyond that initial custody is also unlikely to result in damage to the child. In the second dissenting opinion, in which Justice Scalia joined, Justice Sotomayor argued that the majority did not interpret the ICWA provisions regarding termination of parental rights as a whole, but instead looked at it piecemeal and focused on the phrases "continued custody" and "breakup of the Indian family," thereby negating Congress's purpose in enacting ICWA, which she states was to preserve familial bonds between Indian parents and their children and the Indian tribes' relationships with future citizens. Justice Sotomayor argued that the definition of "custody" should not be narrowly defined as only a custodial relationship since the rest of the statute and the ICWA as a whole use broad definitions when referring to custody proceedings. Justice Sotomayor also noted that as the majority did not narrowly exclude the fathers for whom certain ICWA provisions do not apply, all noncustodial fathers would be denied protections under the majority's ruling regardless of the father's involvement in the Indian child's life. Justice Sotomayor's dissent would affirm the South Carolina Supreme Court and find that 25 U.S.C. § 1912(d) and (f) bar the termination of the biological father's parental rights.

Impact on Iowa Law. Iowa Code chapter 232B, the Iowa Indian Child Welfare Act, was enacted to clarify state policies and procedures for implementing the federal ICWA. Iowa Code §232B.6 mirrors the federal ICWA provisions at issue in this case. As such, the interpretation of the United States Supreme Court in this case would likely control in Iowa as well. Noncustodial parents or absentee parents likely will not be able to invoke the rights of the Iowa Indian Child Welfare Act to prevent termination of parental rights to an Indian child under federal law or Iowa law. The Breyer concurrence contends the majority's ruling did not foreclose the option that a noncustodial parent who is active in the Indian child's life may still receive ICWA protections against the termination of parental rights, but future state custody cases will need to determine how broadly or narrowly to construe the majority holding from this case.

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