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Summary of In re Parental Rights as to S.M.M.D, 128 Nev. Adv. Op. No. 2

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In re Parental Rights as to S.M.M.D, 128 Nev. Adv. Op. No. 2 (Jan. 26, 2012)[1]

INDIAN LAW & FAMILY LAW – PARENTAL RIGHTS

Summary

The Court considered an appeal from a district court order denying a petition to vacate an earlier certification of relinquishment of parental rights.

Disposition/Outcome

The Court concluded that state and tribal social services adequately complied with the applicable Indian Child Welfare Act ("ICWA") provisions on concurrent jurisdiction in child custody termination proceedings. Accordingly, the Court affirmed the district court's order denying the petition.

Factual and Procedural History

In September 2002, Fallon Paiute Shoshone Tribe ("the tribe") Social Services division removed two children on an emergency basis from their mother, Raena, a tribe member who lived on the reservation. The tribe later returned the children, but removed them again in December 2003 following a joint investigation by tribe social services and the Nevada Department of Child and Family Services ("DCFS"). The children were placed in the custody of DCFS because they did not meet blood requirements for membership in the tribe.

DCFS returned the children, but then removed them for a third time in December 2004, following a second joint investigation. In January 2005, the district court placed the children with foster parents and created a case plan for Raena. During periodic reviews of the case the following year, the district court concluded the Indian Child Welfare Act did not apply because the children were not members of the tribe.

At some point before January 2006, the tribe changed its blood requirements, rendering the children eligible for membership. As a result, the district court held the children were "Indian children" subject to the ICWA.[2] The district court also found Raena had failed to make the necessary adjustments. DCFS began to pursue termination of her parental rights and invited tribe social services to intervene. The tribe responded by expressing its desire for the termination process to continue. In February 2006, the tribal court declared the children wards of the tribe but that "legal and physical custody" was concurrent with the State of Nevada and DCFS.

In December 2006, DCFS petitioned the district court for termination of Raena's parental rights. The following month, the tribal court determined that concurrent custody over the children was appropriate and approved the termination petition in state court. In March 2007, Raena appeared in state court, with counsel, and voluntarily elected to relinquish parental rights. The district court questioned Raena to ensure her relinquishment was knowing, voluntary, and

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[2] 25 U.S.C. §§ 1901-1963 (2006).

free of undue influence. It then accepted the relinquishment, terminated the father's parental rights, and placed the children with DCFS.

In June 2007, the district court ordered that custody of the children be returned to the Fallon Paiute Shoshone Tribal Social Services. Afterward, the tribal court accepted jurisdiction. In March 2008, the tribal court ordered adoption of the children to the respondents, who were not the foster parents. Raena had assumed the children's foster parents would become the adoptive parents and, disappointed they did not, asked the court to vacate her relinquishment under the ICWA.[3] She argued that the state court did not have jurisdiction to accept her relinquishment.

The district court denied the petition, holding that tribal social services and DCFS agreed that termination of parental rights should proceed in state court, and that placement of the children would proceed in tribal court. Raena appealed the district court's denial of her petition. She argued that: 1) the tribe had exclusive jurisdiction under the ICWA; 2) tribal jurisdiction cannot be shared with the state; and 3) the district court's proceeding did not meet the notice requirements in the ICWA and the NRS.

Discussion

Justice Pickering wrote for the unanimous Court, hearing en banc. The State and the adoptive parents (collectively, "the State") made two arguments. First, the Court lacked jurisdiction to hear the appeal because the district court already transferred jurisdiction to the tribal court. The Court dismissed this argument, upholding the "truism that a court always has jurisdiction to determine its own jurisdiction."[4]

The State also argued that the district court's termination proceeding was a continuation of the 2005 child dependency proceedings and, therefore not subject to the ICWA. The Court dismissed this argument because the status of the children as members of the tribe is up to the tribe alone,[5] and the tribe extended membership status before the termination hearing. Therefore, because the children became "Indian children" before the termination, custody proceedings were subject to the ICWA.[6]

After addressing the State's threshold arguments, the Court next turned its attention to Raena's arguments. Raena first argued that ICWA vested exclusive jurisdiction in the custody proceedings to the tribe once the children were eligible for tribal membership.[7] The Court pointed out that section 1919(a) authorizes states and tribes to enter jurisdictional agreements in custody proceedings, including agreements for concurrent jurisdiction. Because the record showed that DCFS and tribal social services collaborated for several years and agreed to share jurisdiction, the Court rejected Raena's first argument.

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[3] § 1914.
[4] *See* Rosado v. Wymann, 397 U.S. 397, 403 n.3 (1970).
[5] *See* Matter of Petition of Phillip A.C., 122 Nev. 1284, 1291, 149 P.3d 51, 56 (2006).
[6] § 1903(1)(ii).
[7] § 1911(a) .

Raena's second argument was that concurrent jurisdiction agreements are only valid when shared jurisdiction already exists under section 1911(b). The Court concluded that this interpretation would render some of the statutory language meaningless. Furthermore, a reading of the statute's legislative history led the Court to conclude that upholding a tribe's right to yield to state jurisdiction preserves tribal sovereignty. Thus, because the tribe determined that Nevada courts were an appropriate forum for the termination proceeding, the Court upheld the district court's jurisdiction.

Raena's final argument was that neither Raena, nor the tribe received proper notice of the termination proceeding. According to the ICWA, notice must be "by registered mail with return receipt requested" to the parent and the tribe.[8] The Court rejected this argument because Raena participated in the proceeding and the tribe approved it. Therefore, the Court held that both parties had actual notice of the proceeding, satisfying the ICWA's notice requirement.[9]

Conclusion

The ICWA, in keeping with the principles of tribal autonomy, allows for concurrent jurisdiction agreements between a tribe and the state even when the tribe would have exclusive jurisdiction absent an agreement. Since section 1919 of the ICWA authorizes the tribe to determine the proper forum for termination proceedings, and the tribe in the instant case determined that the Nevada courts were an appropriate forum to exercise such jurisdiction, the Court affirmed the district court's order.

[8] § 1912.
[9] *See Restatement (Second) of Judgments* § 3 (1982); Matter of B.J.E., 422 N.W.2d 597, 599-600 (S.D. 1988) Matter of L.A.M., 727 P.2d 1057, 1060-61 (Ak. 1986).