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Adoptive Couple v. Baby Girl

A Summary

By Carrie E. Garrow and Michelle E. Hollebeke

On June 25, 2013, the U.S. Supreme Court handed down its decision in *Adoptive Couple v. Baby Girl*, only the second decision interpreting the Indian Child Welfare Act. The Court, by a 5-4 majority, held the Act did not bar the termination of the Indian father's paternal rights.

The Facts

Baby Girl's non-Indian mother and Cherokee father were engaged one month prior to the pregnancy. The father attempted to move up the wedding date, but the mother refused. The couple's relationship deteriorated and the engagement was broken off. Prior to the birth of Baby Girl, the mother sent the father a text message asking if he would rather pay child support or relinquish his parental rights. He responded, indicating that he relinquished his rights. The mother decided to put the baby up for adoption without informing the father. She and her attorney arranged a private adoption with a couple in South Carolina. The attorney contacted the Cherokee Nation regarding Biological Father's citizenship in the Nation, misspelling his first name and erroneously indicating his date of birth (despite the mother having known the father since she was 14). The Nation was unable to identify the father with the information given.

With the help of an adoption agency, the mother found Adoptive Couple, who supported the mother throughout her pregnancy. Baby Girl was placed with Adoptive Couple at birth, and an adoption petition was filed a few days later. Biological Father had no contact with the mother or Baby Girl throughout the pregnancy or after Baby Girl's birth. The father was served with the adoption petition by a process server and he signed the papers. Biological Father believed he was signing his parental rights to the birth mother and did not know Baby Girl had been placed for adoption. He later testified that if he had known about the adoption, he would not have relinquished his rights. When he discovered this was not the case, he retained an attorney, filed a challenge to the adoption and for custody, and sought a stay of the proceedings as he was being deployed to Iraq.

Procedural History

The South Carolina Family Court denied Adoptive Couple's petition for adoption because they had not proven that Baby Girl would suffer serious emotional or physical damage if Biological Father was awarded custody, as is required by § 1912(f) of the Indian Child Welfare Act (ICWA).[1] On appeal, the South Carolina Supreme Court affirmed the Family Court's ruling and also held that Adoptive Couple had not shown that efforts to provide remedial services and programs designed to prevent the breakup of the Indian family had been made, as per § 1912(d) of the ICWA.

The Supreme Court's Majority Opinion

In his majority opinion, Justice Samuel Alito first assumed that Biological Father is a "parent" as defined by the ICWA.[2] The Court then focused on the provisions of ICWA §§ 1912(f) and (d) and 1915(a). ICWA § 1912(f) requires "[n]o termination of parental rights may be ordered in such proceeding in the absence of 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 to the child." The Court stated that the word "continued" indicates a pre-existing state and, therefore, "continued custody" refers to custody that the parent already has. According to the Court, since Biological Father never had pre-existing custody, § 1912(f) does not apply to him. Examining ICWA's purpose, the Court reasoned that since the goal of the ICWA was to counteract unwarranted removal of Indian children from intact Indian families, this situation does not fail to achieve this goal as the Indian child's adoption is voluntarily and lawfully initiated by a non-Indian parent with sole custodial rights. A finding of serious emotional or physical damage to the child, the Court reasoned, can be found only where there is a pre-existing, physical custody that can be evaluated. For these reasons, the Court found that § 1912(f) does not bar termination of Biological Father's parental rights.

Section 1912(d) requires that any party seeking to terminate an Indian parent's rights make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to prove that these efforts were unsuccessful. The Court found that since Biological Father had relinquished his parental rights prior to the birth of Baby Girl, there would be no relationship to terminate, and the breakup of the Indian family had long since occurred, making § 1912(d) inapplicable in this case. The Court noted, "[I]f prospective adoptive parents were required to engage in the bizarre undertaking of 'stimulat[ing]' a biological father's 'desire to be a parent,' it would surely dissuade some of them from seeking to adopt Indian children."[3]

Last, the Court turned to § 1915(a) of the ICWA, relating to the placement preferences for adoption of Indian children. Preference is to be given, in the absence of good cause, to a member of the child's extended family, other members of the Indian child's family, or other Indian families. The Court reasoned that this section was inapplicable in this instance because no alternative party had formally sought to adopt Baby Girl. Since Biological Father, another Indian guardian, or the Cherokee Nation did not attempt to adopt Baby Girl, § 1915(a) of the ICWA did not apply here to protect the interests of the biological father.

Concurring Opinions

In his concurring opinion, Justice Clarence Thomas approached the case through a lens of constitutional avoidance. The ICWA asserts that the Indian Commerce Clause gives Congress plenary power over Indian affairs. Since the case concerns a contested state-court adoption proceeding, a subject matter typically reserved for the states, the Indian Commerce Clause, which covers commercial interactions with tribes, does not allow Congress to override the jurisdiction of the states. Likewise, Congress's sole power to manage affairs with the Indians applies only where states do not exercise jurisdiction. From his reading of the Constitution, Thomas concluded that "the ratifiers of the Constitution understood the Indian Commerce Clause to confer [nothing] resembling plenary power over Indian affairs."[4]

Thomas went on to note that placement of Indian children in non-Indian homes has nothing to do with commerce, the power that Congress holds over Indian affairs. With respect to this, "[n]othing in the Indian Commerce Clause permits Congress to enact special laws applicable to Birth Father merely because of his status as an Indian."[5] Since the Constitution does not allow Congress to override state law, application of the ICWA would be unconstitutional in these proceedings. But since the majority opinion avoids application of ICWA, he concurred with its decision.

Justice Stephen Breyer's concurrence set forth three observations. "First, the statute does not directly explain how to treat an absentee Indian father who had next-to-no involvement with his child in the first few months of her life."[6] Next, Breyer said that the Court should not decide any more than is necessary, namely the application of the ICWA to fathers in differing circumstances from Biological Father. Last, he noted that "other statutory provisions not now before us may nonetheless prove relevant in cases of this kind."[7]

Dissenting Opinions

Justice Antonin Scalia's dissent rejected the Court's interpretation of the word "continued" within the context of the ICWA. Scalia maintained that "continued custody" should refer to custody in the future, since under the ICWA, the determination needs to be made while considering if the Indian child will suffer emotional or

physical harm with continued custody. By finding this, Scalia believed the Court should "respect the entitlement of those who bring a child into the world to raise that child."[8] Since Biological Father wants to raise his daughter, the statute should protect his right to do so in this instance.

Justice Sonia Sotomayor's dissent took issue with the majority's neglect of the ICWA's purpose and, thus, its narrow interpretations of the Act's provisions. She argued that the majority's opinion has force only when a birth father has had physical or recognized custody of the Indian child, thus going against Congress's intent in enacting the statute. First, she pointed out, the ICWA defines "parent" broadly, thus qualifying Biological Father as a parent. Since ICWA provides uniform federal standards, applying this broad definition over a narrow, state-constructed one serves the ICWA's purpose. Second, the ICWA deals with all child custody proceedings, including termination of parental rights and, therefore, Biological Father is protected by the Act. To this end, the voluntary consent Biological Father gave to Baby Girl's adoption must be in writing and executed before a judge in order to be valid. Likewise, he had the right to revoke the consent until the final decree of adoption was granted. Additionally, Biological Father had the right to be at the proceeding that terminated his parental rights. Since these protections of the ICWA were not afforded to Biological Father, the majority applies the ICWA only to a specific subset of parents, namely, those who have had physical custody of their child. Another point Sotomayor raised is that the parent-child relationship should be preserved if possible; however, the Court found that the relationship between Biological Father and Baby Girl did not rise to the level of warranting the effort to preserve it. Although the Court was willing to assume that Biological Father was a parent under the ICWA, the Court neglected to provide him the protections he deserved with respect to the custody proceedings relating to Baby Girl.

Another of Sotomayor's criticisms dealt with the patchwork effect that the outcome has on application of the ICWA. She noted that Congress's intent surely was not to use state law to interpret the ICWA because that would lead to it being applied differently based on where a child custody proceeding took place. With respect to making efforts to preserve the relationship between Biological Father and Baby Girl, required by § 1912(d), Sotomayor noted that this provision of the ICWA does not require Adoptive Couple to affirmatively act but, rather, just to show that such efforts have taken place. That being said, the Family Court found that Biological Father was a fit and proper person to take custody of Baby Girl; therefore, no rehabilitation would be needed. Although the laws protecting a biological father's parental rights may lead to harsh outcomes, "these rules recognize that biological fathers have a valid interest in a relationship with their child."[9] Sotomayor noted that the majority is concerned about their result interfering with the adoption of Indian children; however, the manner in which the Court interprets the ICWA goes against the wishes and aims of Congress in enacting it. Since Congress created the statute to sweep broadly, the Court cannot go against the construction that Congress enacted in the ICWA. Sotomayor also criticized the majority for its questioning the membership of Baby Girl in the Cherokee Nation, pointing out that it is not for Congress or the Court to tamper with the membership laws of the Nations, because that would raise unnecessary constitutional issues. Sotomayor concluded by saying that if Baby Girl's paternal grandparents or another member of the tribe seek adoption, they will be given the preference established in § 1915 of the ICWA because, as an Indian child, Baby Girl is undoubtedly protected by the Act. ■

1. 25 U.S.C. §§ 1901 *et seq.*
2. 25 U.S.C. § 1903(9).
3. *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552, 2563–64 (2013).
4. *Id.* at 2569.
5. *Id.* at 2570.
6. *Id.* at 2571.
7. *Id.*
8. *Id.* at 2572.
9. *Id.* at 2582.