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ADOPTIVE COUPLE V. BABY GIRL (“BABY VERONICA CASE”) WHAT IT MIGHT MEAN FOR ALASKA

Baby Veronica was born in Oklahoma to a non-Native mother and Native American father. The parents had split up during the pregnancy, and without the father’s knowledge the mother found non-Native adoptive parents through an agency. The adoptive parents were present at Veronica’s birth, and took baby home with them to South Carolina. When Veronica was four months old, the adoptive parents filed an adoption case in South Carolina. The father contested the adoption and asked for custody of Veronica. Two years later — due to court delays — the state judge held that ICWA prohibited the termination of the father’s rights and awarded father custody of Veronica. The adoptive couple appealed all the way to the U.S. Supreme Court. The U.S. Supreme Court disagreed with the state court about how to apply ICWA and sent the case back to South Carolina to reconsider its decision.

WHAT THE UNITED STATES SUPREME COURT DECIDED:

The Court ruled on three different parts of ICWA:

1. Section 1915(a): In private adoption cases — not Child in Need of Aid (CINA) cases — ICWA’s placement preferences do not apply if there are not competing petitions to adopt a Native child. In Veronica’s case, since only the adoptive parents asked to adopt, that placement was the only option the Court could consider, so ICWA’s placement preferences did not apply.
2. Section 1915(d): Normally, “active efforts” must be provided to prevent the breakup of a Native family, before the court can terminate a parent’s rights. The Court decided that there is an exception to this rule for a father who has abandoned his child before birth and has never had physical or legal custody of his child at any time.
3. Section 1915(f): Before a court can terminate the parental rights of a Native parent, it must find that the “continued custody of the child by the parent...is likely to result in serious emotional or physical damage to the child.” The Supreme Court held that this section does not apply in situations where a father has never had physical or legal custody of his child.

WHAT THE UNITED STATES SUPREME COURT DID NOT DO:

Some lawyers asked the Court to throw ICWA out all together. The Court rejected that argument. It decided that **ICWA is still valid law, and is still important today.**

The case did not change Alaska state law. The adoption and CINA laws of our state remain the same.

HOW THIS DECISION AFFECTS ALASKA TRIBES AND TRIBAL MEMBERS:

This case will not likely have a much of an effect in Alaska.

- **This was not a CINA case.** Baby Veronica’s mother tried to voluntarily adopt her out at birth. This is *very different* than a case where the state takes custody due to alleged abuse or neglect.
- **OCS still must comply with ICWA.** According to the Supreme Court, the stricter standards for terminating parents’ rights in ICWA cases still apply to a state social worker who might be “too quick to remove Indian children from their Indian families.”
- **Foster care placements remain the same.** The Supreme Court only addressed placement preferences in *adoption* proceedings (ICWA 1915(a)). It did not discuss placement preferences in *pre-adoptive* placements or *foster care* placements (ICWA 1915(b)). So, in cases where the state takes custody of a child and places the child with a foster family, the placement preferences still must be followed.
- **Tribes untouched.** The rights of *Tribes* in ICWA cases were never an issue in the Baby Veronica case. The rights of Tribes have not changed.
- **“Deadbeat dads?”** It is unclear how the new ICWA exceptions for “deadbeat dads” in adoption cases will affect CINA cases. However, Alaska law treats children who were born out of wedlock *very* differently than South Carolina—where Baby Veronica’s case was decided. So the new ICWA exceptions probably won’t affect many CINA cases in Alaska, if any.

PRACTICE TIPS FOR ICWA WORKERS

Remember: it’s business as usual. The Baby Veronica case should not have a major impact on your CINA cases. If it does, contact us!

If the Tribe disagrees with a proposed state court adoption and knows an ICWA-compliant family who wants to adopt, help them file a petition to adopt with the state court ASAP.

The best way to enforce ICWA is to find Native placements early on in CINA cases. Encourage family members not to wait to ask for placement.

To avoid state court entirely: transfer cases into Tribal Court.

Get legal help if you are having trouble getting active efforts for dads who have not established paternity.

To ensure that unwed fathers are a priority for placement, Tribes may include them as a placement preference by resolution. The state court must follow that resolution.