

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF:

Name _____
DOB xx/xx/____ A male female

Case No. _____

Name _____
DOB xx/xx/____ A male female

Case No. _____

Name _____
DOB xx/xx/____ A male female

Case No. _____

INDIAN CHILD WELFARE ACT
ORDER TRANSFERRING JURISDICTION,
RELEASING CHILD FROM SRS CUSTODY,
AND TERMINATING COURT JURISDICTION

Pursuant to K.S.A. 38-2203(a) and 25 U.S.C. § 1901 *et seq.*

NOW, on this ____ day of _____, _____, this matter comes on before the above-named Court, Judge _____ presiding, for consideration of the Petition for Transfer of Jurisdiction filed by the _____ Tribe. The Court finds that the Tribe has filed its notice and order accepting transfer of jurisdiction.

THEREUPON, having reviewed the records and files and being otherwise fully informed, the Court releases the child from the care, custody and control of the Secretary, Kansas Department of Social and Rehabilitation Services and simultaneously terminates this Court's jurisdiction effective at _____ a.m. p.m., on _____, _____ or upon the tribe taking custody of the child.

IT IS SO ORDERED.

Judge of the District Court

Approved:

_____, # _____
 County/District Attorney Assistant

 Guardian *ad litem*

 Attorney for Mother

 Attorney for Father

 Attorney/Representative for Tribe

Authority

K.S.A. 38-2203(a) and 25 U.S.C. § 1901 *et seq.*

Notes on Use

Either parent, the Indian custodian or the tribe may request that the proceedings be transferred to the tribal court. ICWA does permit an oral request, which the court should make a part of the record and file. The request should be made promptly after the tribe receives notice, but may be made at any point in the proceeding.

The court shall grant the petition to transfer unless either parent objects, the tribal court declines jurisdiction, or the court determines that good cause exists to deny the transfer. Any party, or the court, may object to transfer on the basis of good cause. A hearing must be held upon the filing of an objection to the petition for transfer if the objection is made by other than a parent or the tribe.

Good cause to deny transfer may lie in: the absence of a tribal court for the tribe; the advanced stage of the proceedings when the petition was received, and the petition to transfer was not filed promptly after the tribe received notice of the proceedings, particularly if the delay is a result of negligence or obstructionist tactics; the child is over 12 years of age and objects to the transfer; a transfer would present a great hardship to the parties or witnesses in presenting the case; or the child is over five years of age and the parents are not available and the child has had little or no contact with the tribe or members of the tribe. Socio-economic conditions and the perceived adequacy of tribal social services or judicial system may not be considered in the determination of good cause. ICWA codifies the policy of preferring tribal control over custody decisions affecting tribal members, and the burden of proving that an exception ought to be made to that policy rests on the party objecting to the transfer.

Source: Department of the Interior, BIA Guidelines for State Courts, Indian Child Custody Proceedings.

Comments

The purpose and intent of ICWA are discussed, and the meaning of “domicile” clarified in this case. *Mississippi Choctaw Indian Band v. Holyfield*, 490 U.S. 30, 109 S.Ct. 1597 (1989).

Once a transfer of jurisdiction has been requested, in order to comply with ICWA, the trial court must obtain a declination of jurisdiction from the tribal court (not the tribe or counsel for the tribe) or make a finding that good cause exists not to transfer the case to the tribal court before proceeding to exercise jurisdiction over an Indian child. *In re C.Y.*, 22 Kan. App. 2d 941, 925 P.2d 447 (1996).

The state may show good cause for not transferring a termination of parental rights case involving an Indian child to the tribal court. *In re A.P.*, 26 Kan. App. 2d 268, 961 P.2d 706 (1998).