

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF:

Name _____ Case No. _____
DOB xx/xx/___ A male female

Name _____ Case No. _____
DOB xx/xx/___ A male female

Name _____ Case No. _____
DOB xx/xx/___ A male female

INDIAN CHILD WELFARE ACT SUPPLEMENTAL ORDER

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

Now on this _____ day of _____, _____, the above-captioned matter comes on for _____ hearing before Judge _____.

The Court finds:

- 1. A journal entry reciting appearances and the Court's findings and orders is attached.
2. The child(ren) named above is an Indian child.
3. The _____ Tribe has been notified of these proceedings and has has not intervened.
4. Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have been unsuccessful. (Specify basis for finding for each child.) _____

or

- Active efforts have not been made.
5. Clear and convincing evidence exists, based upon the testimony of a qualified expert witness and the evidence presented, that the continued custody of the child(ren) by a parent or Indian custodian is likely to result in serious emotional or physical damage to the child(ren). (Specify basis for finding for each child.) _____

6. The placement of the child(ren) is:
- The least restrictive setting which most approximates a family
 - Within reasonable proximity to the child(ren)'s home
 - Appropriate to the child(ren)'s special needs
7. The Court has considered ICWA placement preferences, in order of preference, as follows:
- Placement with extended family (*List considered placements or efforts to identify placements.*) _____
 - Foster home licensed, approved or specified by the Tribe (*List considered placements or efforts to identify placements.*) _____
 - Indian foster home licensed by non-Indian authority (*List considered placements or efforts to identify placements.*) _____
 - Placement approved by Tribe or operated by Indian organization (*List considered placements or efforts to identify placements.*) _____
8. Good cause exists not to follow the placement preference: (*Specify basis for finding for each child.*) _____

IT IS SO ORDERED THIS _____ day of _____, _____.

Judge of the District Court

Authority

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

Notes on Use

When the court has reason to believe that a child is an Indian child, this form may be used to accompany any of the Supreme Court Administrative Order 155 forms not designed specifically for ICWA, in lieu of using Forms 215 – 219. See the Notes on Use for the form to be used. This form satisfies the requirements of ICWA which serve to preserve Indian families, culture and heritage to the greatest extent possible, while not threatening the safety and wellbeing of the child.

Compliance with ICWA is jurisdictional. Failure to comply with ICWA may render orders devoid of authority.

Comments

ICWA did not apply to adoption proceeding involving non-Indian mother's illegitimate child, who had never been in care or custody of putative father, who was duly enrolled as a member of the Kiowa Tribe. *In re Baby Boy L.*, 231 Kan. 199, 643 P.2d 168 (1982).

When the court has reasonable grounds to believe a child involved in the proceeding is or may be an Indian child, the court must comply with ICWA. *In re H.D.*, 11 Kan. App. 2d 531, 729 P.2d 1234 (1986).

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).

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 O.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).

On the facts specific to this case, if the provisions of ICWA are not initially followed, subsequent remedial acts may bring the case into compliance with the act, such as the tribe's intervention and participation in the case. *In re H.A.M.*, 25 Kan. App. 2d 289, 961 P.2d 716 (1998).

Once a court is faced with evidence that the child is an Indian child, the court is bound to apply ICWA, and to comply with its requirements. *In re S.M.H.*, 33 Kan. App. 2d 424, 103 P.3d 976 (2005).

In a case involving an Indian child, ICWA dictates placement preferences, in the absence of good cause to the contrary. The best interest of the child remains the paramount consideration and good cause can be based on parental preference. *In the Matter of the Adoption of B.G.J.*, 281 Kan. 552, 133 P.3d 1 (2006).