IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO L.D.G., A MINOR.

CHEROKEE NATION,
Appellant,
vs.
A CHILD'S DREAM OF NEVADA,
Respondent.

No. 52055

ORDER OF AFFIRMANCE

This is an appeal from a district court post-judgment order denying a motion to invalidate and dismiss proceedings concerning the relinquishment of parental rights and adoption. Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, Judge.[1]

This appeal concerns appellant Cherokee Nation's assertion that the district court lacked subject matter jurisdiction to adjudicate a child custody proceeding involving an Indian child. Specifically, this case arises from a district court order denying Cherokee Nation's motion to invalidate and dismiss the termination of parental rights proceedings. We briefly recount the facts that are necessary to our disposition.

In January 2007, Deziray G., a registered citizen of the Cherokee Nation, gave birth to a minor child, L.D.G., in Las Vegas,

[1]This case was assigned to Judge Schumacher. Although Judge Schumacher signed the order from which Cherokee Nation now appeals, Senior Judge Scott Jordan presided over the hearing and rendered the oral decision.

Nevada. L.D.G.'s paternity has not been established. After L.D.G. was born, Deziray appeared before the district court and drafted a written relinquishment of her parental rights in order to place L.D.G. up for adoption. Deziray relinquished her parental rights to respondent A Child's Dream of Nevada with the desire that L.D.G. be permanently placed with a family Deziray had selected.

After the district court certified the termination of Deziray's parental rights, A Child's Dream filed a petition to terminate the parental rights of the putative father. Respondent Cherokee Nation intervened under the Indian Child Welfare Act (ICWA) in order to ensure that the child custody proceedings conformed to the adoptive placement preferences under the ICWA. Cherokee Nation then filed a motion to invalidate the proceedings and dismiss the case, arguing that the case should be transferred to the tribal court because the district court did not have subject matter jurisdiction. The district court denied Cherokee Nation's motion, finding that Deziray's objection to the transfer of jurisdiction precluded the court from transferring the case to the tribal court.

On appeal, Cherokee Nation argues that the district court erred for three reasons: (1) the tribal court has exclusive jurisdiction over the case; (2) even if the tribal court does not have exclusive jurisdiction, it has presumptive concurrent jurisdiction and Deziray did not have standing to object to the transfer; and (3) the district court failed to follow the adoptive preferences set forth in 25 U.S.C. § 1915. For the following reasons, we conclude that each of Cherokee Nation's arguments lacks merit. Accordingly, we affirm the judgment of the district court.

Standard of review

This court will not disturb a district court's findings of fact if they are supported by substantial evidence. Matter of Petition of Phillip A.C., 122 Nev. 1284, 1293, 149 P.3d 51, 57 (2006). Conclusions of law are reviewed de novo. Id.

Whether the tribal court had exclusive jurisdiction under 25 U.S.C. § 1911(a)

25 U.S.C. § 1911(a) provides the occasions where a tribal court has exclusive jurisdiction over child custody proceedings. Under section 1911(a), the Indian tribe has exclusive jurisdiction over all proceedings related to an Indian child who is a ward of a tribal court, or who resides or is domiciled on the Indian reservation. 25 U.S.C. § 1911(a) (2006). In this case, it is undisputed that L.D.G. is an "Indian child," and that the relevant proceeding was a "child custody proceeding." See Mississippi Choctaw Indian Band v. Holyfield, 490 U.S. 30, 42 (1989). The parties do not contend that L.D.G. is a ward of a tribal court. Therefore, this case turns on whether L.D.G. was domiciled or resided within the Cherokee Nation reservation.

In Holyfield, the United States Supreme Court determined that, for the purpose of the ICWA, "domicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there." 490 U.S. at 48. Because minor children are not capable of establishing domicile, their domicile is based on that of their parents. Id. In the case of a child born out of wedlock, the child's domicile has traditionally followed the mother. Id.

Cherokee Nation argues that because Deziray was domiciled on the Cherokee Nation reservation, L.D.G. was also domiciled on the reservation. However, in her written statement relinquishing her

parental rights, Deziray expressly stated that she did not reside nor was she domiciled on the reservation. Cherokee Nation did not contest Deziray's affidavit.

Therefore, absent evidence and facts to support Cherokee Nation's assertion that Deziray was domiciled on the Cherokee Nation reservation, we conclude that the district court did not err by finding that the tribal court did not have exclusive jurisdiction over the termination of parental rights as to L.D.G.'s putative father.

Whether the district court erred by declining to transfer the case to the tribal court under 25 U.S.C. § 1911(b)

Where a child custody proceeding involves an Indian child not domiciled on a reservation, 25 U.S.C. § 1911(b) gives tribal courts presumptive concurrent jurisdiction for child custody proceedings unless the trial court finds an absence of good cause, or either parent objects to the transfer.

The right of a parent to object to the transfer has been referred to as an "absolute veto." Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67584, 67591 (Nov. 26, 1979) (concluding that "[s]ince the [ICWA] gives the parents . . . an absolute veto over transfers, there is no need for any adversary proceedings if the parents . . . oppose[ ] transfer"); Maricopa County Juvenile Action No. JD-6982, 922 P.2d 319, 322 (Ariz. Ct. App. 1996). Therefore, if a parent has objected to the transfer, the trial court has been found to have erred in transferring the proceedings to the tribal court. See Maricopa County Juvenile Action No. JD-6982, 922 P.2d at 322; Matter of S.Z., 325 N.W.2d 53, 56 (S.D. 1982).

For purposes of this appeal, we must resolve whether Deziray's preemptive objection to transfer was nevertheless effective as an

"absolute veto" despite the fact that her parental rights had been terminated when A Child's Dream filed its petition to terminate the parental rights of the putative father. Here, Deziray drafted the written statement relinquishing her parental rights on January 24, 2007. Within the statement, she declared, "I oppose any attempt to transfer jurisdiction of this adoption from state court to tribal court." Nevertheless, when the district court ruled on A Child's Dream's petition to terminate the putative father's rights, filed on February 6, 2007, Deziray was no longer technically a "parent,"[2] under the ICWA. See 25 U.S.C. § 1903(9) (2006). Thus, Cherokee Nation argues that because Deziray was not a "parent" under the ICWA after January 24, 2007, she did not have standing to object to the transfer, and the tribal court had concurrent jurisdiction over the child custody proceedings.

In People In re K.D., the Supreme Court of South Dakota considered whether the termination of parental rights voids or otherwise makes a parent's objection to the transfer of jurisdiction ineffective. 630 N.W.2d 492 (S.D. 2001). After considering Congress' intent behind 25 U.S.C. § 1911(b), the Supreme Court of South Dakota held that, "[t]he Indian Child Welfare Act gives either parent the absolute right to object to a transfer and keep the case in state court. The mere fact that the parental rights were subsequently terminated in no way affects a parent's objection to transfer." Id. at 494.

---

[2]"'[P]arent' means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child . . . . It does not include the unwed father where paternity has not been acknowledged or established." 25 U.S.C. § 1903(9) (2006).

We agree with the reasoning employed by the court in People In re K.D. Thus, we conclude that Deziray's objection to the transfer of jurisdiction was valid despite the fact that the petition for termination of the putative father's parental rights was filed after she relinquished her parental rights. The purpose of the ICWA is to protect Indian children, Indian families, and Indian tribes from unnecessary and unwarranted separation. Nonetheless, Congress has also evidenced its intent to honor the desires of the Indian child's parents.

Accordingly, we conclude that the district court did not err by giving effect to Deziray's preferences and not transferring the case to the tribal court.

Whether the district court failed to follow the adoptive preferences set forth in 25 U.S.C. § 1915

The ICWA mandates that adoption placement preferences be given when an Indian child is being considered for adoption. See 25 U.S.C. § 1915 (2006). 25 U.S.C. § 1915 provides, in pertinent part, that "a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families." Id. § 1915(a). The statute also provides that in appropriate circumstances, a court should consider the preferences of the Indian child's parent. Id. § 1915(c). And, a court should give weight to a consenting parent's desire for anonymity. Id.

The party seeking exception to the preference priorities set forth in 25 U.S.C. § 1915(a) bears the burden of proof to show that good cause exists to deviate from the standards. Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,595 (Nov. 26, 1979). Nonetheless, the Bureau of Indian Affairs' publication, Guidelines

for State Courts; Indian Child Custody Proceedings, provides that "the term 'good cause' was designed to provide state courts with flexibility in determining the disposition of a placement proceeding involving an Indian child." Id. at 67584. The guidelines also provide that while a court should give preference to the child's extended family and tribe, a parent's desire for anonymity and confidentiality presides over attempts to place the child within the preference framework. Id. Therefore, a court should base its finding of good cause on at least one of the following three factors: (1) "[t]he request of the biological parents,"[3] (2) if relevant, the child's special physical and emotional needs, and (3) the unavailability of adoptive families meeting the preference standards. Id. at 67594.

We will review a district court's finding of good cause to deviate from the ICWA's adoptive placement preferences for an abuse of discretion. See In re Adoption of B.G.J., 111 P.3d 651, 655-56 (Kan. Ct. App. 2005); Matter of Adoption of F.H., 851 P.2d 1361, 1363 (Alaska 1993).

Cherokee Nation argues that the district court abused its discretion and violated the ICWA by not complying with the adoptive placement preferences and granting custody to an adoption agency that intends to place L.D.G. with a non-Indian family. It further argues that L.D.G.'s maternal grandmother is willing to be L.D.G.'s foster care parent. On the other hand, A Child's Dream asserts that the district court

---

[3]Other jurisdictions have found that a mother's selection of the adoptive family constitutes good cause to deviate from 25 U.S.C. § 1915's preferences. In re Adoption of B.G.J., 111 P.3d 651, 658 (Kan. Ct. App. 2005) ("[T]he preferences of the parent are of prime importance."); Matter of Baby Boy Doe, 902 P.2d 477, 487 (Idaho 1995); Matter of Adoption of F.H., 851 P.2d 1361, 1364 (Alaska 1993).

properly considered both Deziray's desire for anonymity and confidentiality, and her choice for the adoptive family.

We conclude that the district court did not abuse its discretion when it determined that good cause existed to deviate from the adoption preferences standards set forth in the ICWA. Although the purpose behind the ICWA is to keep Indian families and Indian tribes together, Congress also evidenced its intent to honor the desires of the biological parents. In this case, Deziray voluntarily relinquished her parental rights to A Child's Dream with the understanding that A Child's Dream would place L.D.G. with the adoptive family that she selected. She stated that "it is my express desire, if at all possible, that my child be adopted by CHRISTINE [V.] AND JOHN [V.], husband and wife." Similarly, Deziray acknowledged her understanding of the ICWA adoption placement preferences but expressly stated that she would prefer that they be waived so that L.D.G. could be placed with the adoptive family. Lastly, Deziray expressly requested that she remain anonymous and that the proceedings related to the relinquishment of her parental rights remain confidential.

Accordingly, we conclude that the district court acted within its discretion by considering Deziray's preference for anonymity and confidentiality, along with her selection of an adoptive family. These considerations constituted "good cause" for the district court to deviate from the adoption preference framework set forth in 25 U.S.C. § 1915. We therefore,

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

_____, J.
Pickering

cc: Chief Judge, Second Judicial District
Hon. Deborah Schumacher, District Judge, Family Court Division
Hon. Scott Jordan, Senior Judge, Family Court Division
Jerry Collier Lane
Eric A. Stovall
Washoe District Court Clerk