DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JEFF O., KAREN O.; THE NAVAJO NATION,

Appellants,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, CYNTHIA B., JOHN B., CHARNAE C., OLEDA O., DAVIN O.,

Appellees.

1 CA-JV 11-0019

DEPARTMENT E

MEMORANDUM DECISION
(Not for Publication – Ariz.R.P.Juv.Ct. 103(G); ARCAP 28)

Appeal from the Superior Court in Coconino County

Cause No. MD 2007-0014

The Honorable Margaret A. McCullough, Judge

AFFIRMED

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I R V I N E, Judge

¶1 Jeff O. and Karen O., husband and wife, and the Navajo Nation (collectively, "Appellants") appeal the superior court's finding of good cause to depart from the adoptive preferences of the Indian Child Welfare Act of 1978 ("ICWA") in the placement for adoption of three Navajo children by their non-Indian foster parents. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In February 2007, the Arizona Department of Economic Security ("ADES") alleged that four children: Kendrick (aged sixteen), Charnae (aged twelve), Oleda (aged three), and Davin (aged two) were dependant as to their biological parents. The children are all members of the Navajo Nation and subject to the provisions of ICWA.

¶3 Kendrick and Charnae were placed with a maternal relative on the reservation. Oleda and Davin were placed with a different maternal relative for a short period, then with a

paternal relative living on the reservation. In March, they were placed with another paternal relative on the reservation. For a few days while the relative went on vacation, Oleda and Davin stayed at a foster home. In April, the relative notified ADES that she could no longer care for them. ADES placed Oleda and Davin with J.B. and C.B. ("foster parents"), where they have remained since. In the previous two months, Davin and Oleda had been moved six times.

¶4 In August 2007, upon Charnae's request to be reunited with Davin and Oleda, she was moved to the foster parents' home, where she has remained since. In December 2007, Kendrick made the same request and joined his siblings. Although not among the listed ICWA placement preferences, the foster parents' home was in Page, close to the biological parents and numerous members of the extended family who lived on or near the reservation. During this time, the biological mother and members of both the maternal and paternal extended family visited the children frequently.

¶5 At review hearings that followed, the trial court consistently found good cause to deviate from the placement preferences of ICWA. The court explained "there is good cause to deviate from the placement preferences so the children can be in closer proximity with their parents, the placement is working

very hard to preserve the children's Navajo culture and the children are very comfortable in their placement."

¶6 Meanwhile, ADES continued to search for an ICWA-compliant placement. In May 2008, the biological father suggested to ADES that his brother, Jeff, was a possible placement option. Jeff has three children, however, and could not accommodate another four at the time. Consequently, Jeff offered to take only Davin and Oleda "as a last option." Jeff's wife provided the names of two paternal relatives with whom ADES had already tried to place Davin and Oleda. In October 2008, Jeff indicated that he was still unable to take all the children. By November, he had not responded to the Navajo Nation's request to place the children with him.

¶7 The trial court continued to find good cause to deviate from ICWA placement preferences. When Kendrick reached the age of majority, the dependency petition as to him was dismissed. In March 2009, the biological parents' rights were terminated as to Charnae, Oleda and Davin. The severance of those rights is not at issue in this case.

¶8 After termination, the foster parents continued to allow the biological parents frequent contact and visitation with the children. The foster parents also welcomed visits from Kendrick and other family members from the nearby Navajo reservation. Through the biological mother, aunts and Charnae,

Oleda and Davin were learning Navajo language and culture. Because of the proximity of the foster parents' home to the reservation, Charnae attended a ceremony and the children stayed overnight when visiting cousins, aunts and uncles on the reservation.

¶9 In June 2009, a comprehensive home evaluation was completed, and Jeff was approved as a placement. Because Jeff lived in Glendale, however, moving would have meant splitting the children. Fearful of being separated from Davin and Oleda, Charnae resorted to cutting herself.

¶10 In July 2009, the trial court determined there was

> good cause to deviate from the placement preferences pursuant to ICWA requirements based on: 1) the children should be kept together; 2) Charnae does not want to reside with the paternal uncle; 3) the children are stable in their placement and have been there approximately two years and are very bonded to the placement; 4) the placement has allowed continued contact with the family.

The Court emphasized "that the placement has allowed amazing contact with the family."

¶11 That same month, ADES sought to change the case plan to adoption by the foster parents. On July 27, 2009, the Navajo Nation informed ADES that it supports "continued placement/adoption of Charnae with her non Native placement." It requested, however, that Davin and Oleda be placed with Jeff. In

October 2009, the trial court granted the Navajo Nation's motion to intervene.

¶12 In February 2010, Jeff wrote a letter to the superior court indicating that he intended to adopt only Davin and Oleda because they were related to him by blood. The next month, the trial court granted Jeff's motion to intervene.

¶13 In June 2010, both biological parents signed affidavits attesting an unequivocal desire to have the children permanently placed with the foster parents. They stated they knew about ICWA's adoptive preferences, but requested that the court find a good cause exception based on their choice. The biological parents reiterated this request at trial.

¶14 After a lengthy trial, the trial court found good cause to deviate from the adoptive preferences and allowed the children to remain with the foster parents. In a thirty-two page decision, the trial court set forth detailed factual findings and gave the following reasons:

> 1. Charnae's desire to remain with the Baileys.
> 2. Charnae's desire to have her siblings remain with the Baileys.
> 3. [Biological mother]'s desire to have her three children remain with the Baileys.
> 4. [Biological father]'s desire to have his children, Davin and Oleda, remain with the Baileys.
> 5. Kendrick[']s desire to have his siblings remain with the Baileys.

6. The extraordinary emotional need and/or symptoms of extraordinary needs of the children.
7. The risk of significant emotional trauma to the children if removed.
8. The very close sibling bond.
9. The significant exposure and more importantly, a strong connection to the Navajo culture in the current placement.
10. The open adoption/relationship between the placement and biological parents and extended family.
11. The bond of the children with their current placement.
12. The lack of relationship with the proposed ICWA placement and the untimeliness of their request to be a placement.
13. The lack of knowledge regarding the children on the part of the proposed ICWA placement.
14. The questionable background of [Jeff].

¶15 Appellants timely appeal.

DISCUSSION

1. Good Cause

¶16 Appellants do not contest the trial court's factual findings. They argue that the trial court erroneously concluded there was good cause to deviate from the adoptive preferences by relying on improper evidence and giving improper weight to certain factors in considering the best interests of the children. Reviewing the totality of the circumstances, we cannot find that the trial court erred.

¶17 We review the trial court's determination of good cause in an ICWA custody proceeding for an abuse of discretion.

Maricopa County Juv. Action No. A-25525, 136 Ariz. 528, 533, 667 P.2d 228, 233 (App. 1983) (holding that this Court will not substitute its judgment for that of the trial court and will affirm its findings unless unsupported by the evidence). We do not reweigh the evidence, but defer to the fact-finder's resolution of conflicting testimony. *Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, 257, ¶ 22, 159 P.3d 562, 567 (App. 2007). We interpret the provisions of ICWA de novo and give effect to the will of Congress. *Brenda O. v. Ariz. Dep't of Econ. Sec.*, 226 Ariz. 137, 140, ¶ 13, 244 P.3d 574, 577 (App. 2010). Where Congress has used "reasonably plain terms, the language must ordinarily be regarded as conclusive." *Id.*

¶18 The Indian and Child Welfare Act of 1978 was adopted in response to inequities in child custody proceedings that resulted in an alarmingly high rate of Indian children being removed from their families and placed in non-Indian homes, based largely on ignorance or misunderstanding of "the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." 25 U.S.C. § 1901(4), (5) (2006); *see generally* 25 U.S.C. §§ 1901-1963 (2006). "Contributing to this problem [was] the failure of state officials, agencies, and procedures to take into account the special problems and circumstances of Indian Families and the legitimate interest of the Indian tribe in preserving and

protecting the Indian family as the wellspring of its own future." H.Rep. 95-1386, at 11 (1978).

¶19 Recognizing "no resource that is more vital to the continued existence and integrity of Indian tribes than their children," 25 U.S.C. § 1901(3), Congress declared a policy

> [T]o protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes.

25 U.S.C. § 1902. Congress's primary concern was to protect Indian children and preserve their family and tribal ties. H. Rep. 95-1386, at 11 (explaining no legislative desire or intent "to oust the states of their traditional jurisdiction over Indian children falling within their geographic limits, [but] to establish minimum federal standards and procedural safeguards . . . designed to protect the rights of the child as an Indian, the Indian family and the Indian tribe.").

¶20 In furtherance of that policy, Congress required that in the adoption of an Indian child preferential consideration be given to: "(1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families." 25 U.S.C. § 1915(a). Congress explained that, "where possible, an Indian child should remain in the Indian Community,

but [the statute] is not to be read as precluding the placement of an Indian child with a non-Indian family." H.Rep. 95-1386, at 15.

¶21 In effect, ICWA created a presumption that an Indian child's best interests is furthered by placement that ensures continued ties with the child's Indian extended family, tribe or community. Because placement with a non-Indian family is not precluded, however, these preferences do not apply where there is "good cause to the contrary." 25 U.S.C. § 1915(a).

¶22 In this case, the biological parents unequivocally requested that the children remain with the foster parents for adoption. Kendrick and Charnae expressed this same desire. Relying heavily on their wishes, the trial court found good cause to deviate from the order of preferences outlined under § 1915, and supported that with additional findings based on the best interests of the children. The trial court was within its discretion to do so.

¶23 ICWA neither defines "good cause" nor describes the factors a court should consider in determining whether good cause exists. In deviating from the order of preferences, however, ICWA states: "Where appropriate, the preference of the Indian child or parent shall be considered." *Id.* at § 1915(c). The legislative history of § 1915 explains that this "is not meant to outweigh the basic right of the child as an Indian."

H.Rep. 95-1386, at 15. Consistent with this, Arizona adheres to the policy that the child's best interests in an adoption is a primary concern that supports a finding of good cause and may, in some instances, override the family or Indian tribe's interest. *Juv. Action No. A-25525*, 136 Ariz. at 534, 667 P.2d at 234. "Of course, the need to maintain an Indian child's ties to his or her tribe is not to be ignored where the ICWA is applicable." *Id.*

¶24 The Bureau of Indian Affairs has published "Guidelines for State Courts; Indian Child Custody Proceedings." Section F.3(a) (Good Cause to Modify Preferences), provides that "good cause" may be based on one or more of the following considerations:

> (i) The request of the biological parents or the child when the child is of sufficient age
>
> (ii) The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness
>
> (iii) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.

44 Fed.Reg. 67584 (Nov. 26, 1979). Although the Guidelines are not binding on the courts, Arizona courts have looked to them for guidance. *Brenda O.*, 226 Ariz. at 140, ¶ 14, 244 P.3d at 577.

¶25 Appellants contend that the biological parents' preferences should have been disregarded because it only applies when the parents have requested confidentiality, which was not the case here. They also argue that the preferences do not apply because the biological parents' parental rights had already been terminated. We disagree.

¶26 Although the statute itself is silent, the House Report of the legislation shows that § 1915 "contemplates those instances where the parental rights of the Indian parent *has already been terminated*." H.Rep. 95-1386, at 15 (emphasis added). While a tribe must consider a parent's request for anonymity when applying the order of preferences, nothing in the Guidelines or ICWA precludes a court from considering the biological parent's preference when no such request for confidentiality has been made. *See* 44 Fed.Reg. 67584.

¶27 More importantly, the reasons the biological parents and older siblings gave for their requests are consistent with Congress's intent to protect the mutual interests of the Indian child and his or her tribe by preventing the breakup of the Indian family and continuing the child's ties to the Navajo nation and culture. *See* 25 U.S.C. § 1902. Each biological parent's affidavit stated, in relevant part:

> *My reasons for this preference are that I want my children to continue to live near their family on the Navajo Reservation; I*

> *want them to be able to stay in the same schools they are in now and the same home they have been in for several years.* I don't want my children to have to experience the trauma of moving to another home. I want my children to be able to stay together with the [foster parents].
>
> *I am aware of the placement preferences of the Indian Child Welfare Act. I want the placement preferences of the Indian Child Welfare Act to be waived and I ask the Court to enter a finding, based on my request, that there is good cause to allow the adoption of my children by [the foster parents].*

(Emphasis added.)

¶28 Throughout the eleven day trial, the State presented substantial evidence that the children would continue to have ties with the family and to the Navajo Nation at the foster parents' home. Both before and after the biological parents' rights were terminated, they maintained frequent contact with the children there. After Kendrick became an adult and moved out, he was welcome to visit his siblings any time. Because the foster parent's home was close to the Navajo reservation, where the biological mother had a large extended family, many relatives visited. The biological mother and an aunt continued to teach Charnae about the Navajo language and culture. Charnae in turn tried to pass this knowledge on to Davin and Oleda. Charnae also attended a ceremony at the reservation, and the children stayed overnight when visiting cousins, aunts and

uncles on the reservation. The record showed that the children have identified with the maternal relatives since birth, and that moving them from Page would result in separation, not only from these relatives, but also from the biological parents, who had no car.

¶29 Under these circumstances, we cannot say that the trial court clearly erred in weighing the children's loss of these ties to their existing family and Navajo culture against the presumptive benefits of being adopted by a blood relative who lived further away.

¶30 We also find no error in the trial court's consideration of Charnae's preference to be adopted by the foster parents. The Guidelines specifically state that the request of the child shall be considered when, as here, "the child is of sufficient age." 44 Fed.Reg. 67584. Appellant's objection is based merely on the assumption that she will leave the home in two years to attend college. Charnae's preference is significant because the record shows the younger children have a very strong bond with her due to the trauma they shared. The proper weight to be given to Charnae's preference is ultimately for the trial court, as trier of fact, to decide. *Vanessa H.*, 215 Ariz. at 257, ¶ 22, 159 P.3d at 567.

¶31 Sufficient evidence supports the trial court's finding of good cause based on the preference of the biological parents

and Charnae. The Guidelines only requires one of the three enumerated reasons to justify good cause. 44 Fed. Reg. at 67,594. In this case, the requests of the biological parents, combined with the children's continuing contacts with Navajo relatives and culture, were sufficient to sustain the trial court's rulings. Nevertheless, because Appellants also challenge other grounds addressed by the trial court, we will also address them.

2. Emotional Harm

¶32 Appellants contend that the trial court erred in concluding that the children had extraordinary emotional needs. Assuming without deciding that the Guidelines require a higher showing of a specialized need than the evidence presented, we find no error because the trial court did not find good cause solely on this ground. Because the biological parents' request was sufficient to establish good cause to deviate from ICWA placement preferences, the trial court could properly consider evidence of the children's emotional needs as part of its best interests determination.

¶33 The evidence supports, and Appellants do not dispute, the trial court's finding that the children had emotional needs "due to prior exposure to substance abuse in the home and neglect in the home, multiple placements and the losses they have all suffered." Therefore, we find no abuse of discretion.

3. Bonding

¶34 Appellants next contend that the trial court should not consider the fact that the children have bonded with the foster parents because emotional bonding alone does not support a finding of good cause. Appellants rely on a Montana case, *Matter of C.H.*, 997 P.2d 776 (Mont. 2000). That case is inapposite because the Montana Supreme Court has held that the best interests of the child "is an unnecessary and inappropriate analysis under the ICWA." *Adoption of Riffle*, 922 P.2d 510, 515 (Mont. 1996); *accord In re S.E.G.*, 521 N.W.2d 357, 362 (Minn. 1994). This is contrary to Arizona law.

¶35 In *Maricopa County Juv. Action No. A-25525*, 136 Ariz. at 534, 667 P.2d at 234, evidence of an Indian child's bonding and the "psychological damage" that removal would cause was relevant to determining good cause. Arizona is thus consistent with other jurisdictions that consider the best interests of a child relevant. *See*, *e.g.*, *Adoption of F.H.*, 851 P.2d 1361 (Alaska 1993) (considering the bonding with non-Indian parent, need for permanency and openness of the adoption in addition to parental preference); *Adoption of M.*, 832 P.2d 518, 522 (Wash. App. 1992) (noting that good cause is a matter of discretion taking into account many factors including, but not limited to, the best interests of the child, wishes of the biological parents, suitability of preferred placements and ties to the

tribe); *In re A.E., J.E., S.E., X.E.*, 572 N.W.2d 579, 585 (Iowa 1997) ("We favor the position of the Washington and Alaska courts as the sounder approach. We think the 'good cause' for deviating from the § 1915(b) preferences depends on a fact determinative analysis . . . .").

¶36 Appellants argue that the bonding of the children to the foster parents cannot be considered because it resulted from ADES's violations of the "requirements" of ICWA. Jeff cites to *In re Desiree F.*, 99 Cal. Rptr.2d 688 (Cal. App. 2000). In that case, the state agency failed to properly notify the Tribe about severance proceedings, rejected the Tribe's subsequent attempts to intervene and, without good cause, ignored the express desires of the relatives to adopt the child. *Id.* at 693-94, 700. The California Court of Appeal found the agency committed a "flagrant violation of ICWA" and remanded with instructions that bonding not be considered as good cause to deviate from the placement preferences. *Id.* at 700-01.

¶37 Here, ADES immediately notified the Navajo Nation when it took custody of the children. Before involving the foster parents in April 2007, ADES attempted to comply with ICWA by placing the children with various members of the extended family. Jeff was not named as a possible placement option until over a year later. Although Appellants assert that ADES should have placed the children with him in May 2008, the record does

not support that this was a reasonable option. The Navajo Nation informed ADES in November 2008, that Jeff wanted to be "a last option," and that he had not responded to a request to consider him for placement. When Jeff was ready to adopt, he was only willing to take Davin and Oleda. In a letter to the trial court dated February 2010, Jeff expressed no intent to adopt Charnae. The children, however, did not want to be separated. More importantly, the biological parents requested that the children remain with the foster parents. Under these circumstances, the bonding that occurred with foster parents was not entirely caused by ADES and may be considered under the totality of circumstances.

¶38 Appellants contend that the children are young and capable of re-bonding. They do not deny, however, that the children have already bonded with the foster parents. Moreover, the ability of the younger children to re-bond must be considered in the context of their strong bond with their older sister and the effects of moving her. Under these circumstances, we find no abuse of discretion.

4. Evidentiary Objections

¶39 Appellants contend that the trial court erroneously admitted testimony from Dr. Moe because he is not a "qualified" expert in Navajo culture. We find no error. Nothing in § 1915 requires a qualified expert witness to make a best interest

assessment in an adoption proceeding. Special knowledge of Navajo life is not necessary unless cultural bias is clearly implicated. *Brenda O.*, 226 Ariz. at 140, ¶ 15, 244 P.3d at 577.

¶40 Here, Dr. Moe's testimony about the emotional damage the children would suffer was based on their history of trauma, the significant bond Charnae shared with Davin and Oleda, and the significant bonding that occurred with the foster parents. This testimony went to the children's emotional needs for permanency, an opinion for which Dr. Moe was a qualified expert.

¶41 Additionally, in opining that the children had extensive ties to the Navajo Nation in their current placement, Dr. Moe demonstrated no cultural bias. Dr. Moe testified that he considered having "Navajo culture and heritage integrated into [the children's] lives . . . critical" for historic as well as psychological reasons. He recognized the benefit of being adopted by a blood relative and concluded that Jeff and Karen were great parents. In recommending the foster parents instead, he explained:

> If I had assessed this family and discovered that the [foster parents] were not supportive of the Navajo culture and heritage and family connection and that in fact they were not going to do anything to promote that, and instead raise these kids as Caucasian kids in a middle-class white home, I think that would have been a strong barrier to my thinking about what was in the kids' best interest, that I would have been more inclined to think about their moving to

> [Jeff's home], for example, where they would have as much connection with the Navajo history and heritage and continuing experiences as they would get in that home.

¶42 Moreover, Appellants failed to timely challenge Dr. Moe' testimony. The law is well settled that the failure to object to the admissibility of testimony at the time it is offered waives any objection on appeal. *See State v. Taylor*, 99 Ariz. 151, 153, 407 P.2d 106, 107 (1965). Appellants made no objection when Dr. Moe testified he had experience on a dozen cases dealing precisely with the question of whether "a child should stay with a Caucasian family or go with a Navajo or Indian family member." Appellants also did not object when Dr. Moe testified about the significant contacts the children continued to have with Navajo culture in the current placement through Charnae, the biological mother and other maternal and paternal relatives.

¶43 Appellants also contend that the social worker, C.B., misrepresented that she had "sufficient knowledge of Navajo culture." ADES offered C.B. as "an expert witness in the areas of child abuse and neglect." Without objection, C.B. testified that she was familiar with the Navajo culture, explaining she moved to the Navajo reservation at age three. There, C.B. attended a Navajo school, where she participated in ceremonies and learned the Navajo language. C.B. also testified that she

continued to have extensive contacts with Navajo culture in Page, where Navajo people comprise the majority, and about training and familiarity with ICWA. Appellants never objected to any of this testimony. Because the trial court was given an explanation of her knowledge of Navajo culture and the issues raised by ICWA, it was in the best position to weigh her testimony. This Court will not reweigh that evidence on appeal. *See Vanessa H.*, 215 Ariz. at 257, ¶ 22, 159 P.3d at 567.

¶44 Appellants further contend that the trial court should have given more weight to their expert's testimony because he was a cross-cultural psychologist. At his deposition, however, Dr. Roll testified that he did not consider himself to be an expert in Navajo culture. Because Dr. Roll admitted at the deposition that he did not examine the children or review any other documents, we also find no prejudice in the trial court's limitation of Dr. Roll's testimony to his opinion of Dr. Moe's recommendations.

¶45 Moreover, despite Appellant's assertion to the contrary, the record shows that the trial court did consider Dr. Roll's testimony regarding the significant risk of identity problems that Indian children raised in a non-Indian home generally face and that they are "two or three times more likely to commit suicide." The weight and credibility of that evidence was a question for the trial court. *Id.*

5. Judicial Notice

¶46 Appellants argue the trial court erred by taking judicial notice of reports from the children's therapist and psychologist. When Dr. Moe was called to testify regarding the contents of those reports, ADES sought to admit the reports into evidence. Appellants initially objected because they never received the reports, but agreed that a two-hour recess was sufficient to review them. Dr. Moe's evaluation, which relied on the reports, was then admitted without objection. After the recess, Dr. Moe was allowed to testify regarding the contents of the reports without further objection. Therefore, we find no error or prejudice in the trial court's reliance on the content of the reports. *See Gustafson v. Riggs,* 10 Ariz. App. 74, 76, 456 P.2d 92, 94 (1969) ("The stipulation of evidence into the record . . . waives any error arising from the introduction of the evidence itself.").

6. Motion to Strike

¶47 Appellants contend that the trial court erred in striking a statement by the prosecutor that Jeff was "not Navajo enough" as a placement option because he lived in Phoenix. The prosecutor objected to the statement on the ground of hearsay. She also denied making the statement and argued she could not take the stand to be cross-examined. Jeff argued only on the ground that the statement was not being offered for its truth.

Therefore, he failed to preserve the argument that the evidence is admissible because it shows bias. *See State v. Lopez*, 217 Ariz. 433, 434, ¶ 4, 175 P.3d 682, 683 (App. 2008) (holding an objection on one ground is insufficient to preserve the issue on another ground).

¶48 In addition, we reject Appellants' argument that the prosecutor's motion to strike the statement was untimely because the GAL argued the witness had already answered the question. The transcript shows that the prosecutor immediately objected and moved to strike the response. The trial court took a recess to consider the matter and granted the motion to strike upon reconvening. Therefore, we find no abuse of discretion in admitting this evidence.

7. Other Reasons

¶49 Appellants contend that ADES violated the Intergovernmental Agreement ("IGA") with the Navajo Nation by adopting a position on non-Indian placement because it called the biological mother as a witness to testify about her preference. Appellants did not make this objection below. *See Taylor*, 99 Ariz. at 153, 407 P.2d at 107. Appellants also argue for the first time in their reply brief that the failure of ADES to consult with the Navajo Nation on issues regarding cultural and social norms regarding "familial relationships, clan relationships, or how culture is taught" was a violation of the

IGA. Appellants fail to explain why such violations constitute reversible error. We see no reason why wrongdoing by the State, if any, in this regard should be imputed to the children in a good cause determination. In any case, these arguments have been waived because they are raised for the first time in Appellant's reply brief. *Best v. Edwards*, 217 Ariz. 497, 504 n.7, ¶ 28, 176 P.3d 695, 702 n.7 (App. 2008).

¶50 Appellants next contend that the State failed to make diligent efforts to find a suitable ICWA-compliant home or to place them with Jeff once he was determined to be a qualified placement. C.B. testified, however, that ADES continuously attempted to find a suitable placement by asking relatives, contacting the Navajo Nation's social services offices in Kayenta, Tuba City, and Kaibito, and the Nation's ICWA Unit at least every other month. The Navajo Nation also attempted to find suitable placement during that time. Because we defer to the trial court's resolution of conflicting evidence, we find no error based on this ground. *See Vanessa H.*, 215 Ariz. at 257, ¶ 22, 159 P.3d at 567.

¶51 Jeff argues that the court improperly weighed evidence of the children's contacts with extended family members because it failed to consider that he would have had more contact with the children if not impeded by ADES. Jeff also argues the trial court erroneously found that he lacks a close relationship with

the children, that he lacks basic knowledge of the children, and that there was a "minimal" concern about his history of DUIs. Because sufficient evidence supports each of these findings, however, we again defer to the trial court's resolution of the facts.

CONCLUSION

¶52 The record supports a finding of good cause to deviate from the adoptive preferences of ICWA based on the wishes of the biological parents and older siblings. After reviewing the totality of the circumstances, we find no abuse of discretion. Therefore, we affirm.

/s/
PATRICK IRVINE, Judge

CONCURRING:

/s/
JOHN C. GEMMILL, Presiding Judge

/s/
DONN KESSLER, Judge