IN THE COURT OF APPEALS OF IOWA

No. 2-1048 / 12-1839
Filed December 12, 2012

IN THE INTEREST OF E.D.,
Minor Child,

E.D., Minor Child,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

The guardian ad litem for the minor child appeals the dismissal of the child-in-need-of-assistance proceedings and the granting of the tribe's motion to transfer jurisdiction. **AFFIRMED.**

James N. Daane of Buckmeier & Daane Lawyers, P.C., Sioux City, for appellant minor child.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, for appellee State.

Wayne Morris, Winnebago, Nebraska, pro se.

Joseph Kertels of Juvenile Law Center, Sioux City, for appellee mother.

Rosalynd J. Koob of Heidman Law Firm, L.L.P., Sioux City, for appellee Omaha Tribe of Nebraska.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

POTTERFIELD, P.J.

The guardian ad litem for the minor child, E.D., appeals from the district court's ruling transferring these child-in-need-of-assistance proceedings to the Omaha Tribe of Nebraska and dismissing the child from the jurisdiction of the Woodbury County Juvenile Court.

The guardian ad litem first asks us to reverse *In re A.W.*, 741 N.W.2d 793, 802 (Iowa 2007), wherein the Iowa Supreme Court rejected a county attorney's claim that the county attorney, rather than the attorney general, should be allowed to represent the state's interest in opposition to the Department of Human Services.[1] It is not for this court to grant the requested relief. *See McElroy v. State*, 703 N.W.2d 385, 393 (Iowa 2005) (noting court of appeals "understandably . . . has declined to tinker with [supreme court] precedents"); *State v. Eichler*, 83 N.W.2d 576, 578 (Iowa 1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves.").

The guardian ad litem next argues the Federal Indian Child Welfare Act was "not triggered" by these child-in-need-of-assistance proceedings, since the proceedings did not involve foster care or the termination of parental rights. Iowa Code § 232.2B.3(4) (2011). However, we will not address this claim because it was not raised in the juvenile court where the parties stipulated to the applicability of the Iowa and Federal Indian Child Welfare Acts. *See In re C.M.*,

[1] *Cf. Minor v. State*, 819 N.W.2d 383, 398 (Iowa 2012) ("[W]e have stated a county attorney has a duty to advocate for the position of DHS and may not "'assert his [independent] vision of the state interest.'" (quoting *A.W.,* 741 N.W.2d at 803 (citation omitted)).

526 N.W.2d 562, 566 (Iowa Ct. App. 1994) ("As a general rule, an issue not presented in the juvenile court may not be raised for the first time on appeal.").

The guardian ad litem next asks, "Does ICWA jurisdiction apply where the mother and the affected child remain in the jurisdiction of the Iowa District Court." We answer that question in the affirmative. *See* Iowa Code §§ 232B.2 (noting dual purpose of chapter and noting it is policy of state to "cooperate fully" with Indian tribes), .4(1) ("This chapter applies to child custody proceedings involving an Indian child whether the child is in the physical or legal custody of an Indian parent, Indian custodian, or an Indian extended family member or another person at the commencement of the proceedings or whether the child has resided or domiciled on or off an Indian reservation."); .5(10) (mandating transfer to tribal court upon petition from the persons listed); *see also In re N.V.*, 744 N.W.2d 634, 637 (Iowa 2008).

Finally, the guardian ad litem argues that E.D.'s best interests are not served by a transfer to the Omaha Tribal Court, which allegedly lacks the authority to enforce its own judgment outside the boundaries of its reservation. Rather, the guardian ad litem asserts the juvenile court proceedings should be continued to provide the child with services by providers who are aware of the family history, which includes the mother's chronic alcoholism, dependency on abusive men, lack of effort to take advantage of offered assistance, lack of candor, lack of family support, and inability to provide for herself and her children.

The ICWA has a dual purpose—to protect the best interests of a child and preserve the Indian culture. *See In re J.L.*, 779 N.W.2d 481, 492 (Iowa Ct. App. 2009). The ICWA must be applied, even where there is no evidence the child

has been raised in an Indian culture. Iowa Code § 232B.5(2) ("A state court does not have discretion to determine the applicability of . . . this chapter to a child custody proceeding based upon whether an Indian child is part of an existing Indian family."); *see In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). The provisions of the ICWA are to be strictly construed, though "the paramount interest remains the protection of the best interests of the child." *D.S.*, 806 N.W.2d at 465.

In *J.L.*, this court concluded Iowa ICWA's "narrow definition of good cause prohibiting the children from objecting to the motion to transfer based upon their best interests and introducing evidence of their best interests violates their substantive due process rights." 779 N.W.2d at 492. Consequently, if a child objects to the transfer of jurisdiction to the tribe, the court must determine whether good cause, including the child's best interests, exists to deny the petition to transfer. Iowa Code § 232B.5(10), (13); *J.L.*, 779 N.W.2d at 492.

> Good cause to deny transfer of the proceedings to the tribal court may arise from geographical obstacles. In determining good cause, we may consider the circumstances when the "evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship of the parties or the witnesses."

In re J.R.H., 358 N.W.2d 311, 317 (Iowa 1984) (quoting Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67,591 (1979)); *see also* Iowa Code § 232B.5(13) (stating good cause to deny petition may be found if objection to transfer is entered; if the tribal court declines transfer of jurisdiction, or is without subject matter jurisdiction under the laws of the tribe or federal law; or if "[c]ircumstances exist in which the evidence necessary to decide the case

cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.").

After a hearing, the juvenile court concluded there was not good cause to deny the motion to transfer. We agree. The tribe has not declined transfer. And as noted by the tribe, the guardian ad litem has made generalized complaints about the inconvenience of the proceeding in the tribal court. However, the Department of Human Services and the mother were in agreement with the transfer—neither contends the transfer would impose an undue hardship. And, as stated by the tribe, "[e]vidence of prior proceedings is easily presented by records of those proceedings." Upon our de novo review, *see In re N.N.E.*, 752 N.W.2d 1, 6 (Iowa 2008), we agree with the juvenile court that there is not good cause to deny transfer of jurisdiction to the tribal court.

We affirm.

AFFIRMED.