

IN THE COURT OF APPEALS OF IOWA

No. 7-421 / 07-0648

Filed July 12, 2007

**IN THE INTEREST OF K.K., M.K., S.K., and A.K.,
Minor Children,**

**SAC AND FOX TRIBE OF THE MISSISSIPPI
IN IOWA,**

Intervenor, Appellant.

Appeal from the Iowa District Court for Tama County, Fae Hoover-Grinde,
District Associate Judge.

The Sac and Fox Tribe of the Mississippi in Iowa appeal the district court's
refusal to transfer jurisdiction to the tribe. **AFFIRMED.**

Patrick Wilson of Wilson Law Office, Marshalltown, for intervenor
appellant.

Nancy L. Burk, Toledo, for mother.

Fred Stiefel, Victor, for father.

John Daufeldt of Daufeldt Law Firm, P.L.C., Conroy, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Brent D. Heeren, County Attorney, for appellee State.

John Livingston, Gladbrook, for minor children.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

MAHAN, P.J.

The Sac and Fox Tribe of the Mississippi in Iowa appeal the district court's refusal to transfer jurisdiction to the tribal court. The Tribe argues the district court erred in analyzing whether the mother, Lorinda, would be appointed counsel in her child custody case. We affirm.

I. Background Facts and Proceedings

Lorinda and Chad are the parents of M.K. and K.K., born in December 1994 and June 1997, respectively. Chad, K.K., and M.K. are all enrolled members of the Sac and Fox Tribe of the Mississippi in Iowa. Lorinda and Dean are the parents of A.K. and S.K, born in July 1999 and February 2002, respectively. Dean is an enrolled member of the Sac and Fox Tribe of the Mississippi in Iowa. A.K. and S.K. are eligible for enrollment in the Tribe.

In September 2006 Lorinda was found unconscious after having a seizure. She was taken to a medical facility for testing. She placed all four children in Chad's care and requested police accompany him to her home to get some of the children's things. The police found the home unfit for human habitation. The children were removed by emergency order and placed with Chad. Child-in-need-of-assistance (CINA) proceedings were instituted on behalf of all the children.

The Sac and Fox Tribe of the Mississippi in Iowa intervened. On October 30, 2006, the Tribe filed a motion to have the case transferred to the Sac and Fox Tribal Court. Chad joined in the motion. Lorinda, however, resisted. She argued she had been determined indigent and could not secure legal representation for herself before the tribal court. She did, however, have an

appointed attorney before the state court. The district court, analyzing Sac and Fox Tribal Code section 5-4201(b), determined Lorinda did not have a right to counsel in the tribal court similar to her right pursuant to Iowa Code section 232.113 (2005). As a result, the district court denied the Tribe's motion to transfer. The Tribe appeals.

II. Standard of Review

We review CINA adjudications de novo. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Here, Iowa law must be modified by the provisions of the Indian Child Welfare Act (ICWA). *In re B.M.*, 532 N.W.2d 504, 506 (Iowa Ct. App. 1995). This case, however, does not involve the merits of the CINA adjudication itself. Instead, it is concerned with the statutory provisions by which we transfer CINA cases to a tribal court. Therefore, we review the district court's interpretation of that statute for errors at law. *Reilly v. Anderson*, 727 N.W.2d 102, 105 (Iowa 2006).

III. Merits

According to Iowa Code section 232B.5(10)

Unless either of an Indian child's parents objects, in any child custody proceeding involving an Indian child who is not domiciled or residing within the jurisdiction of the Indian child's tribe, the court shall transfer the proceeding to the jurisdiction of the Indian child's tribe"

Iowa Code § 232B.5(10) (emphasis added). According to section 232B.5(13),

the court shall find good cause to deny the petition only if one or more of the following circumstances are shown to exist:

- a. The tribal court of the child's tribe declines the transfer of jurisdiction.
- b. The tribal court does not have subject matter jurisdiction under the laws of the tribe or federal law.

c. Circumstances 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

d. *An objection to the transfer is entered in accordance with subsection 10.*

Id. § 232B.5(13) (emphasis added). However,

[n]otwithstanding entry of an objection to a transfer of proceedings as described in subsection 10, *the court shall reject any objection that is inconsistent with the purposes of this chapter*, including but not limited to any objection that would prevent maintaining the vital relationship between Indian tribes and the tribes' children and would interfere with the policy that the best interest of an Indian child require that the child be placed in a foster or adoptive home that reflects the unique values of Indian culture.

Id. § 232B.5(11) (emphasis added).

In this case, the mother of the children objects to the transfer of jurisdiction to the tribal court. The reason for her objection is the absence within the Tribal Code of a provision granting appointment of an attorney for indigent parents in a child custody case. The district court analyzed the Tribal Code to determine whether Lorinda would be entitled to an attorney. We, however, decline to analyze this question. Our statute states transfer of jurisdiction shall be denied where (1) a parent objects and (2) that objection is not inconsistent with the purposes of ICWA. Lorinda has affirmatively stated she supports all four children in their knowledge, growth, involvement, and participation in their tribe's heritage, culture, and religion. Further, her objection to the transfer involves her desire to have legal representation. It is not inconsistent with the purposes of ICWA as outlined in Iowa Code section 232B.2. We therefore affirm the district court's ruling denying transfer of jurisdiction to the tribal court.

AFFIRMED.