STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1929
A10-1991

In the Matter of the Welfare
of the Child of:
C. L. and T. A.-M., Parents.

Filed April 19, 2011
Affirmed
Klaphake, Judge

Traverse County District Court
File Nos. 78-JV-10-6, 78-JV-10-159

Matthew P. Franzese, Traverse County Attorney, Alexandria, Minnesota (for appellant Traverse County)

Mark D. Fiddler, Fiddler Law Office, P.A., Minneapolis, Minnesota (for appellant guardian ad litem Dawn Krump)

Kenneth L. Hamrum, Morris, Minnesota (for respondent C.L.)

Jessica L. Kramer Ryan, Bluedog Paulson & Small, PLLP, Bloomington, Minnesota; and

Shaun M. Eastman, SWO Tribal Attorney, Agency Village, South Dakota (for respondent Sisseton-Wahpeton Oyate Tribe)

T.A.-M., Browns Valley, Minnesota (pro se respondent)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Appellants Traverse County and the guardian ad litem of O.L. challenge the district court's transfer of jurisdiction over this termination-of-parental-rights (TPR) proceeding to the Sisseton-Wahpeton Oyate Tribal Court, pursuant to the Indian Child Welfare Act (ICWA). Appellants argue that res judicata barred the tribe's motion to transfer jurisdiction. Alternatively, appellants contend that the "advanced stage" of the proceeding constitutes "good cause" to deny the transfer. Because res judicata did not apply and because the proceeding was not at an "advanced stage," we affirm.

D E C I S I O N

Res Judicata

"Res judicata is a finality doctrine that mandates that there be an end to litigation." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). The doctrine bars a subsequent claim when four prongs are met: "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter." *Id.* But res judicata is a "flexible doctrine" that "must be applied in light of the facts of each individual case" so its application does not "work an injustice on the party against whom estoppel is urged." *R.W. v. T.F.*, 528 N.W.2d 869, 872 n.3 (Minn. 1995). "We review de novo whether the doctrine of res judicata can apply to a given set of facts." *Erickson v. Comm'r of Dept. of Human Servs.*, 494

N.W.2d 58, 61 (Minn. App. 1992). "If the doctrine applies, the decision whether to actually apply it is left to the discretion of the trial court." *Id.*

Appellants argue that the district court erred by granting the motion by the Sisseton-Wahpeton Oyate Tribe (the tribe) to transfer jurisdiction over the TPR proceeding pursuant to ICWA, 25 U.S.C. §§ 1901-1963 (2010), because the motion was barred by res judicata. Appellants point to an earlier district court order that granted the county's motion to remove the tribe as a party in the child in need of protection or other services (CHIPS) proceeding. The order stated that ICWA did not apply. Therefore, appellants argue that ICWA does not apply in the TPR proceeding, and the tribe's motion to transfer jurisdiction is barred by res judicata.

The record indicates that appellants argued to the district court that res judicata applied to bar the tribe's motion to transfer jurisdiction. Although the district court's order does not explicitly address res judicata, we conclude that the court implicitly rejected the county's argument that the doctrine applied to bar the tribe's motion. We review the district court's decision not to apply res judicata for abuse of discretion. *Erickson*, 494 N.W.2d at 61. Under this record, we conclude that the district court did not abuse its discretion.

The goals and objectives behind a CHIPS proceeding and a TPR proceeding differ greatly. In a CHIPS proceeding, the goal is to reunite the child and the parents. *In re Children of Vasquez*, 658 N.W.2d 249, 252 (Minn. App. 2003). In a TPR proceeding, the objective is to sever the parent-child relationship after reunification attempts have failed. *See id.* at 252-53. Applying res judicata to prevent the tribe from intervening in the TPR

proceeding would amount to an improper, rigid application of the doctrine that would work an injustice on the tribe. *See R.W.*, 528 N.W.2d at 872 n.3.

Further, application of res judicata in this case would contravene Congress' statement that ICWA should promote "the stability and security of Indian tribes and families." 25 U.S.C. § 1902. The district court's order stated that granting the tribe's motion to transfer jurisdiction was necessary to "maintain the purposes of IWCA" and to "determine the best interests of [O.L.] pursuant to ICWA standards." This language suggests that the court was aware of the policy objectives of the ICWA. The application of res judicata would frustrate ICWA's express policy of promoting stability and security for tribes and Indian families and children because O.L.'s welfare would be not be determined by the tribal court.

Two other reasons support our conclusion that the district court did not abuse its discretion. First, the district court addressed the application of ICWA in only an indirect fashion during the CHIPS proceeding by granting the motion to remove the tribe as a party. Second, the record indicates that the tribe acted promptly to intervene in the TPR proceeding after it learned that O.L. was eligible for tribal membership. Under these facts, we believe that applying res judicata to prevent the tribe from intervening in the TPR proceeding would be inequitable. *See R.W.*, 528 N.W.2d at 872 n.3 (stating that "res judicata is an equitable doctrine that must be applied in light of the facts of each individual case."). Therefore, the district court did not abuse its discretion by declining to apply res judicata.

Appellants cite cases involving ICWA from the Tenth Circuit Court of Appeals to support their argument that res judicata bars the tribe's motion to transfer jurisdiction. Besides being non-binding authority, the cases are factually distinguishable from this case. In *Roman-Nose v. N.M. Dep't of Human Servs.*, the Tenth Circuit summarized its holdings in *Kickapoo Tribe of Okla. v. Rader*, 822 F.2d 1493 (10th Cir. 1987), and *Kiowa Tribe of Okla. v. Lewis*, 777 F.2d 587 (10th Cir. 1985): "[A] state court determination that the Indian Child Welfare Act is not applicable in a particular custody proceeding is res judicata in a subsequent proceeding to invalidate the state action under 25 U.S.C. § 1914." 967 F.2d 435, 438 n.2 (10th Cir. 1992). *Kickapoo Tribe* and *Kiowa Tribe* involved circumstances in which a tribe attempted to avoid a state court decision that the ICWA did not apply by relitigating the matter in a federal court. 822 F.2d at 1500; 777 F.2d at 589-90.

In this case, the tribe did not respond to the county's motion to remove the tribe as a party to the CHIPS proceeding because O.L. was not then known to be an Indian child. After the district court granted the county's motion, the tribe notified the court via a letter that it would affirmatively decline to intervene in the CHIPS proceeding. But later, upon further investigation, the tribe filed a motion to transfer jurisdiction over the TPR proceeding because the tribe had concluded that O.L. was eligible for tribal membership. Thus, the tribe is not attempting to invalidate or circumvent a state court judgment by filing suit in another court, and the Tenth Circuit cases are inapplicable to this case.

"Good Cause" to Deny Transfer of Jurisdiction

ICWA addresses the transfer of proceedings to a tribal court.

> In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, **in the absence of good cause to the contrary**, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

25 U.S.C. § 1911(b) (emphasis added). ICWA does not define "good cause" to deny a motion to transfer jurisdiction. But Minnesota courts have looked to the guidelines provided by the Bureau of Indian Affairs to interpret ICWA, including to define "good cause." *See, e.g.*, *In re Welfare of Children of R.M.B.*, 735 N.W.2d 348, 351 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007). The BIA guidelines state that "good cause" may exist where the "proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving the notice of the hearing." *Id.* (citing BIA Guidelines, 44 Fed. Reg. 67584; 67591 (Nov. 26, 1979)). "Whether 'good cause' exists to deny a petition to transfer jurisdiction to a tribal court is a mixed question of law and fact." *Id.* (citing *In re Welfare of Child of T.T.B.*, 724 N.W.2d 300, 307 (Minn. 2006)). But where there is no factual dispute, we review de novo the district court's application of ICWA. *Id.*

Appellants contend that the district court erred by granting the tribe's motion to transfer jurisdiction to the tribal court because "good cause" existed to deny the motion. They assert that a CHIPS proceeding and a TPR proceeding are a single proceeding under ICWA. Appellants argue that "good cause" existed because the proceeding, which started in January 2010, was at an "advanced stage" when the tribe filed the transfer

motion in August 2010. Therefore, appellants contend, the district court should have denied the tribe's motion to transfer.

The district court rejected appellants' argument that "good cause" existed to deny the tribe's motion to transfer. The district court concluded that the proceeding was not at an "advanced stage" because the CHIPS and TPR proceedings are separate under ICWA. The district court stated that the county filed the TPR petition on August 9, 2010, and the tribe filed the transfer motion on August 24, 2010. Therefore, the proceeding was not at an "advanced stage."

Whether the proceeding was at an "advanced stage" depends on whether the CHIPS proceeding and the TPR proceeding are one continuous proceeding or two separate proceedings under ICWA. We addressed this issue in *R.M.B.* by interpreting ICWA text and examining ICWA caselaw from other jurisdictions. 735 N.W.2d at 352-53. *R.M.B.* states that ICWA separately defines a CHIPS proceeding and a TPR proceeding. *Id.* at 352 (citing 25 U.S.C. § 1903(1)(i), (ii)). *R.M.B.* also cites with approval *In re A.B.*, a case in which the North Dakota Supreme Court held that a foster-care proceeding and a TPR proceeding were separate proceedings under ICWA. *Id.* at 353 (citing *In re A.B.*, 663 N.W.2d 625, 632 (N.D. 2003)). Thus, *R.M.B.* concludes that a CHIPS proceeding and a TPR proceeding "are distinct under the ICWA." *Id.* at 352.

Under *R.M.B.*, the CHIPS proceeding and TPR proceeding in this case are separate. *See id.* Accordingly, the district court did not err by concluding that the TPR proceeding was not at an "advanced stage" when the tribe filed the transfer motion on August 24—just 15 days after the proceeding commenced. Because the TPR proceeding

was not at an "advanced stage," the district court did not err by concluding that "good cause" did not exist to deny the tribe's transfer motion.

Affirmed.