

IN THE UTAH COURT OF APPEALS

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In the interest of C.B.M. and J.R.T., persons under eighteen years of age.)	MEMORANDUM DECISION
_____)	(Not For Official Publication)
)	Case No. 20090807-CA
J.F. and D.F.,)	
)	F I L E D
Petitioners and Appellants,)	(November 19, 2009)
)	2009 UT App 342
v.)	
)	
E.M.,)	
)	
Respondent and Appellee.)	

Third District Juvenile, West Jordan Department, 1020380
The Honorable James R. Michie Jr.

Attorneys: Aaron M. Waite and Heather J. Carter-Jenkins, West
Jordan, for Appellants
Cheri M. Stringham, Salt Lake City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

J.F. and D.F. (Petitioners) appeal the juvenile court's order transferring the case to the Northern Cheyenne Tribal Court. We agree that the tribal court has jurisdiction, but we remand to modify the order, finding that the case should have been dismissed rather than transferred.

Petitioners, E.M. (Mother), and the children are all enrolled members of the Northern Cheyenne Tribe. Mother resides within the reservation in Montana. Although the circumstances are disputed, Mother arranged for the children to visit Petitioners in Utah, dropping the children off in January 2009. According to Mother, when Petitioners did not return the children, she obtained a custody order in the Northern Cheyenne Tribal Court. At about the same time, Petitioners filed a petition to terminate Mother's parental rights in the Utah Third District Juvenile court in June 2009.

After the petition was filed in the third district juvenile court, Mother and the Northern Cheyenne Tribe moved the court to dismiss the proceeding under the Indian Child Welfare Act (ICWA), see 25 U.S.C. 21 §§ 1901-1923 (2006). Under ICWA, an Indian tribe "shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe." 25 U.S.C. 21 § 1911(a). After a hearing, the juvenile court found that the tribe, having exercised jurisdiction over the children previously, had continuing jurisdiction. The juvenile court transferred the case to the tribal court.

Petitioners argue that the juvenile court inappropriately transferred the case because there was good cause to retain jurisdiction under section 1911(b). That section provides that in custody proceedings involving Indian children not domiciled within the reservation, on motion of a parent or tribe, the trial court, "in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe." Id. § 1911(b). However, for the transfer section to apply, the children must not be domiciled within the reservation. See id.

The juvenile court did not find that the children were domiciled in Utah. The record shows that the domicile of the children was with Mother. Accordingly, the exclusive jurisdiction provision applies. As a result, the Northern Cheyenne Tribal Court retains exclusive jurisdiction over the child custody proceedings involving these children.

The juvenile court did not err in determining that the tribal court had jurisdiction over the proceedings. However, because the tribal court had exclusive jurisdiction, the juvenile court should have dismissed the petition rather than transfer it. Accordingly, we vacate the juvenile court's transfer order and remand for the entry of an order dismissing the petition.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge