ICWA Cases pending before the California Supreme Court

#14-102 In re Abbigail A., S220187. (C074264; 226 Cal.App.4th 1450; Sacramento County Superior Court; JD232871.)

During dependency proceedings, the father of the two minors informed the juvenile court that his grandmother was Native American. Following ICWA notice, the Cherokee Nation confirmed that the minors were descendants of tribal members and were eligible for enrollment. However, the Cherokee Nation declined to intervene until father or the minors completed application forms. DHHS argued that the court did not need to apply ICWA protections because the minors were not enrolled members. The juvenile court held that it was required to treat the minors as Indian children, and directed the Department to make efforts to enroll them. DHHS appealed, and the appellate court reversed the judgment. Rules 5.482(c) and 5.484(c)(2) are inconsistent with state law and could authorize the application of ICWA in the present proceedings to minors who are not Indian children within the meaning of ICWA. The judgment was reversed with directions to enter a judgment that does not direct the application of ICWA provisions to the minors until such time as they qualify as Indian children under the ICWA and California definitions.

Petition for review after the Court of Appeal reversed orders in a dependency proceeding. This case presents the following issue: Do rules 5.482(c) and 5.484(c)(2) of the California Rules of Court conflict with Welfare and Institutions Code section 224.1, subdivision (a), by requiring the juvenile court to apply the provision of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) to a child found by a tribe to be eligible for tribal membership if the child has not yet obtained formal enrollment?

#14-123 In re Isaiah W., S221263. (B250231; 228 Cal.App.4th 981; Los Angeles County Superior Court; CK91018.) **.** Mother claimed Indian ancestry but after what mother claimed was inadequate inquiry, court concluded that ICWA did not apply. Over a year later, following termination of her parental rights, mother contended on appeal that the juvenile court erred in finding that it had no "reason to know" the minor was an Indian child, and in failing to order the Department to comply with ICWA at the dispositional hearing. The appellate court rejected the argument and affirmed. Mother had the right to appeal the juvenile court's order at the dispositional hearing. She did not do so, but appealed one and a half years later after the court terminated parental rights. Citing *In re Pedro N.*, the appellate court held that Mother forfeited her right to raise a challenge to the juvenile court's finding that ICWA did not apply.

Petition for review after the Court of Appeal affirmed an order terminating parental rights. This case presents the following issue: Does a parent’s failure to appeal from a juvenile court order finding that notice under the Indian Child Welfare Act was unnecessary preclude the parent from

subsequently challenging that finding more than a year later in the course of appealing an order terminating parental rights?

Other significant ICWA Cases to watch

Oglala Sioux v. Van Hunnik --- F.Supp.3d ----, 2015 WL 1466067 D.S.D.,2015. March 30, 2015

This is a class action suit brought in federal court by the ACLU on behalf of several tribes and Indian parents in South Dakota who had their children removed from them against state court judge, county attorney, secretary of state department of social services, and department employees, alleging that defendants' policies, practices, and procedures relating to the removal of Indian children from their homes during state court 48–hour hearings violated Indian Child Welfare Act (ICWA) and the Due Process Clause of the Fourteenth Amendment. Partial summary judgment for the plaintiffs.