

IN THE COURT OF APPEALS
FOR THE
ROSEBUD SIOUX TRIBE

THE PEOPLE OF THE ROSEBUD SIOUX)
TRIBE IN THE INTEREST OF)
J.E., Minor Child,)
AND CONCERNING)
THERESA EAGLE aka EASTMAN.)

CASE # CC 89-25

APPEAL FROM THE CHILDREN'S COURT
FOR THE
ROSEBUD SIOUX TRIBE

THE HONORABLE JANEL Y. SULLY
TRIBAL COURT JUDGE

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BEFORE

JUSTICES GREY EAGLE, POMMERSHEIM, AND ROUBIDEAUX

FILED
In the

ROSEBUD SIOUX TRIBAL COURT OF APPEALS

The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the docket in the above-entitled action by this Court on the 11th day of June, 1992.

Denita Marshall

CASE # CC 89-25
Pommersheim, Chief Justice

I. INTRODUCTION

The minor child, J.E., who is the subject of this action, was born on June 5, 1989 in Minneapolis, Minnesota. Theresa Eagle, the Defendant/Appellee herein, is a member of the Rosebud Sioux Tribe and the natural mother of J.E. She left J.E. with Catholic Charities in Minneapolis shortly after he was born.

On or about July 28, 1989, the Rosebud Sioux Tribal Court received notification from Catholic Charities that J.E. had been placed in its custody by the Appellee and that the agency was working with Appellee to voluntarily terminate her parental rights to J.E. In October, 1989, Tribal Court Judge Janel Sully filed a petition to transfer jurisdiction of the minor child from the Hennepin County Court in Minneapolis to the Rosebud Sioux Tribal Court. This petition was subsequently granted and J.E. was returned to the Rosebud Sioux Reservation.

Upon J.E.'s return to the reservation, the Rosebud Sioux Tribe's Child and Family Services program filed an application in tribal court for temporary emergency custody. The application was immediately granted on the next day, October 30, 1989. J.E. was placed by the Rosebud Sioux Tribe's Child and Family Services Program with Anita Emery, the Appellant herein. Ms. Emery is (apparently) related to J.E. through Appellee's father, Andrew Eastman. It is also urged that according to Lakota culture and tradition, Ms. Emery is considered the child's grandmother. J.E.

has been raised by the Appellant, Anita Emery, and her husband Duane Randall since he was approximately four months old.

Almost two years later, on September 10, 1991, the Rosebud Sioux Tribe filed a petition for adjudication and termination of parental rights of the Appellee as the natural mother of J.E. The hearing was continued several times and was finally held on November 19, 1991. The Appellee was present and represented by counsel, as was the guardian-ad-litem appointed to represent J.E.. The Tribal presenting officer was present in her role as the petitioner. The Appellant, Anita Emery, was not notified of the hearing. She was present, however, but she was not allowed to participate in the proceeding.

Pursuant to the Appellee's motion, the trial judge dismissed the petition and essentially left the custody decision up to the Appellee. The Appellee subsequently appointed the Appellant as the temporary guardian of J.E.. On November 27, 1991, the Appellant filed a motion to stay the trial court's order dismissing the petition to terminate Appellee's parental rights, a petition for temporary custody, and a notice of appeal with this Court. The trial judge granted the stay and awarded temporary custody of J.E. to the Appellant pending this appeal.

II. ISSUES

This appeal raises two significant issues. They are:

(1) Whether the trial court erred by not allowing Appellant the opportunity to participate in the proceedings concerning the

minor child, J.E.

(2) Whether the trial court erred by dismissing the petition for the adjudication and termination of Appellee's parental rights to the minor child J.E.

III. DISCUSSION

Each issue will be discussed in turn.

A. Appellant's standing and right to participate in proceedings concerning the minor child J.E.

The trial court did not explicitly discuss or hold that the Appellant could not participate in the proceedings concerning the minor child J.E. It rather did so implicitly by not requiring notice or service on the Appellant and by barring her from participating in the November 19, 1991 hearing despite Appellant's presence and willingness to participate at the time and place set for the hearing. This action by the trial court appears to be essentially inexplicable, particularly in light of the lack of any written explanation in the record. Such a decision is clearly contrary to the Indian Child Welfare Act of 1978, 25 USC § 1901 *et. seq.* (1984) (hereinafter ICWA), this Court's decision in the case of In the Matter of J.R.B., E.A.B., L.W.B., E.M.B., E.R.B., and F.M.B., Minor Children, 16 ILR 6137 (1988), and Lakota tradition and custom.

The Appellant claims to be related to the minor child through the Appellee's (the natural mother) father, Andrew Eastman. It is further asserted that according to Lakota

genealogy and relational custom, the Appellant is considered J.E.'s grandmother. These assertions,¹ if true, clearly confirm Appellant's standing and bring her within the ambit of the ICWA of 1968.² The ICWA provides at 25 U.S.C. § 1911(c) that "in any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child . . . shall have the right to intervene at any point in the proceeding."³ (emphasis added) It clearly follows that if an Indian custodian may intervene at any point in a state proceeding, such a right to participate in a tribal court proceeding (particularly in a matter that has been transferred to tribal court from state court) is axiomatic. The statutory scheme of the ICWA appropriately endorses the right of Indian custodians to participate in child custody determinations

¹ These assertions do not find support (or refutation) in the record, because the Appellant was barred from the trial court proceedings. On remand, however, the Appellant will have the burden of proof to establish these claims by a preponderance of the evidence.

² This case is covered by the ICWA. The child is apparently an 'Indian child' pursuant to 25 U.S.C. 1903(4) (there is no evidence as such in the record, but such an assumption is not contested by any party to this action) and this is a 'child custody proceeding' pursuant to 25 U.S.C. § 1903(1)(iii) because it involves "the termination of the parent-child relationship." In addition, the case was transferred to the Rosebud Sioux Tribal Court by the Minnesota State Court based, it would seem, on the applicability of the ICWA.

³ The Appellant clearly meets the definitional requirement of an "Indian custodian" in that she is an "Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child," 25 U.S.C. § 1903(6) (1984).

involving Indian children as a necessary condition to achieve and "to protect the best interests of Indian children."⁴

This reading of the ICWA is further reinforced by this Court's decision In the Matter of J.R.B., E.A.B., L.W.B., E.M.B., E.R.B. and F.M.B., Minor Children. In that case which involved, in part, a similar issue relative to the standing of maternal grandparents to participate in a dependency and neglect proceeding involving their grandchildren, this Court stated:

As members of the extended family of these children and as 'Indian custodians' under the ICWA, the Appellants must be afforded a full and complete opportunity to participate in any hearing relative to the placement of the children and the adjudicatory disposition of the dependency and neglect petition. Recognition of such a right is in full accord with the thrust of the ICWA to maximize participation of members of the Indian family, as well as the traditional custom of Lakota people to respect the rights of members of the extended family." 16 ILR at 6140.

The holding and rationale of this Court In the Matter of J.R.B. et al. is directly on point and absolutely dispositive on the 'standing' issue. As noted in the above quoted excerpt, such recognition of standing is also in accord with Lakota tribal and custom. However, in light of the paucity of information contained in record in the case, the Court emphasizes the importance of adducing the necessary evidence on remand to firmly establish the Appellant's cultural relation to the minor child J.E., as well as providing the appropriate evidence of Lakota tradition and custom on this question. The relevant findings should be made at the trial level subject to appropriate

⁴ 25 U.S.C. § 1902 (1984).

appellate review. These issues should not be raised for the first time in appeal.

B. The Dismissal of the Petition for the Adjudication and Termination of Appellee's Parental Rights

The order⁵ providing for the dismissal of the petition for the adjudication and termination of Appellee's parental rights provides no findings of fact or conclusions of law or any other memorandum explanation for the trial court's decision. Therefore, the record on appeal is impossible to review for adequacy as a matter of fact or law. The absence of findings of fact and conclusions of law or any other memorandum discussion clearly violates Rule 41(c)⁶ of the Rosebud Sioux Rules of Civil Procedure and therefore requires that the decision of the trial court be reversed. See also Stanton v. Saks, 303 N.W.2d 819 (SD 1981), McCook County National Bank v. Dupris (Chey. Riv. Sioux Tr. App. # 89-015-A).

On remand, the Appellee may renew her motion to dismiss, but

⁵ This order is apparently based on Appellee's motion to dismiss based on allegations of the denial of due process. The specifics of this alleged denial of due process are not set out in the motion or order.

⁶ Rule 41(c) provides in applicable part that "After the plaintiff in an action tried to the Court has completed presentation of his case, the Defendant may move for dismissal on the grounds that upon the facts presented or the law, the Plaintiff has shown no right to relief. The Court may rule on the motion at that time or may decline to rule on the motion until the close of all the evidence. If the Court renders Judgment on the motion against the Plaintiff, the Court shall enter findings of fact and Conclusions of law establishing the reason for his ruling."

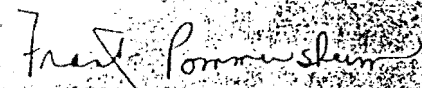
the trial court must hold a hearing on the matter, permit the Appellant to participate, and provide the necessary findings of fact and conclusions of law in its ruling.

IV. CONCLUSION

Based on all of the foregoing, the case is hereby reversed and remanded to the trial court for an immediate hearing on the original petition for adjudication and termination of the parental rights of the Appellee. This shall be done as expeditiously as possible in light of the lengthy period of time that J.E. has been placed with the Appellant and in order to promptly achieve an adjudication that is in the "best interests of the Indian child." In addition, the custody of J.E. shall remain with the Appellant during the pendency of this action.

IT IS SO ORDERED.

Justices Grey Eagle and Roubideaux concur.



Frank Pommersheim
Chief Justice

Dated June 4, 1992

Custody
- standing

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The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the docket in the above-entitled action by this Court on the 14th day of June, 1992.

Deita Marshall
Clerk of Appeals

CA 91-06
CASE # CC 89-25
Sommersheim, Chief Justice

I. INTRODUCTION

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IT IS SO ORDERED.

Justices Grey Eagle and Roubideaux concur.

Frank Pommersheim

Frank Pommersheim
Chief Justice

Dated June 4, 1992


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IT IS SO ORDERED.

Robert Grey Eagle
Associate Justice


Frank Pommersheim
Chief Justice

Ramon Roubideaux
Associate Justice

Dated June 4, 1992