

SUPREME COURT OF WASHINGTON

In re Interest of Natasha Mahaney and Jesse Mahaney, 146 Wash. 2d 878

51 P.3d 776 (2002) · No. No. 71022-8 · Decided July 25, 2002

SUMMARY

The Supreme Court of Washington held that the Indian Child Welfare Act (ICWA) applied to a nonparent custody proceeding involving two Indian children placed with their grandmother. The court concluded that ICWA did not displace Washington's best-interests standard, but required clear and convincing evidence, including qualified-expert testimony, to support the foster-care placement. It affirmed the grandmother's custody award but remanded for transfer to juvenile court for permanency planning and services under ICWA and Washington's Juvenile Court Act.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Ireland, J.; Alexander, C.J.; Smith, J.; Madsen, J.; Sanders, J.; Bridge, J.; Owens, J.; Chambers, J.; Johnson, J.
JURISDICTION	Washington
DECIDED	July 25, 2002
DOCKET	No. 71022-8
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Washington Supreme Court granted review of a Court of Appeals decision reversing a nonparent custody award to the children's grandmother under chapter 26.10 RCW. The Supreme Court reversed the Court of Appeals and remanded for transfer to juvenile court for dependency-like proceedings and services under the Indian Child Welfare Act and chapter 13.34 RCW.
STANDARD OF REVIEW	Questions concerning the interrelationship between ICWA and Washington's nonparent-custody and juvenile statutes, and the applicable evidentiary standard, are reviewed de novo. Sufficiency of the evidence is reviewed under whether the record contains sufficient evidence to persuade a rational, fair-minded person of the truth of the premise. Trial courts receive broad discretion and great deference in child-welfare and custody proceedings.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Erika Mahaney v. Mark S. Mahaney, Rebecca Johnston

TOPICS

indian child welfare act child custody statutory interpretation appellate procedure standard of review

PRACTICE AREAS

family law Indian child welfare child custody statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Whether a nonparent custody proceeding under RCW 26.10 is governed by Washington's best-interests-of-the-child standard when the custody award constitutes foster-care placement under ICWA.
2. Whether ICWA requires a showing of present parental unfitness, rather than allowing consideration of prior parental unfitness and the children's current special needs and relationships.
3. Whether the evidence, including testimony from experts who lacked specialized knowledge of Indian culture, satisfied ICWA's clear-and-convincing-evidence requirement.
4. Whether the matter should be transferred to juvenile court for services and permanency-planning proceedings.

HOLDINGS

1. ICWA applies to a nonparent custody proceeding when an Indian child is placed with a nonparent and the parent cannot have the child returned upon demand. ICWA does not replace Washington's best-interests-of-the-child standard; it adds the requirement that the foster-care placement be supported by clear and convincing evidence under 25 U.S.C. § 1912(e).
2. ICWA does not limit the required inquiry to present parental unfitness. Even without a showing of present unfitness, a court may consider emotional and psychological damage caused by prior parental unfitness, the children's current special needs, the absence of a bond with the parent, and the children's bond with the nonparent caregiver in determining best interests and whether continued placement is justified.
3. The trial court could rely on expert testimony concerning the children's medical, psychological, and special needs even though the experts lacked specialized knowledge of or sensitivity to Indian culture, where the testimony did not inject cultural bias and addressed the relevant risks to the children.
4. Because the children were in foster placement under ICWA and required services, reunification planning, counsel, and permanency planning, the matter should be transferred from the superior court's nonparent-custody proceeding to juvenile court for proceedings consistent with dependency under RCW 13.34.020 and foster care under ICWA.

KEY QUOTATIONS

“This is not a case where the children are being removed from a parent. Nonetheless, Johnston opposed the custody action and demanded return of the children to her custody.” (146 Wash. 2d at 782)

“Even where there is no showing of present parental unfitness, in determining the best interests of the child the court may take into consideration emotional and psychological damage from prior unfitness of a parent and the child's current special needs for treatment and care.” (146 Wash. 2d at 785)

“Accordingly, this matter should be transferred to juvenile court for provision of services and proceedings as though the children were dependent.” (146 Wash. 2d at 787)

FACTUAL BACKGROUND

Natasha and Jesse Mahaney, whose mother was an enrolled member of the Tlingit-Haida Indian Tribes, began living with their paternal grandmother, Erika Mahaney, in 1992 after their parents' substance-abuse and family problems. The children remained with their grandmother for approximately nine years, developed a parental bond with her, and experienced significant psychological, behavioral, and medical needs, including effects associated with fetal alcohol syndrome and alleged prior abuse and neglect. The mother later claimed to have achieved sobriety and sought return of the children, while the grandmother continued to oppose their return. The trial court found that the parents' prior conduct, the children's special needs, and their established relationship with the grandmother supported continued placement with the grandmother.

PROCEDURAL HISTORY

The Pierce County Superior Court awarded Erika Mahaney residential custody of the two children after a four-day nonparent custody trial, retained jurisdiction, and ordered reunification-related services for Rebecca Johnston. After Johnston invoked ICWA and moved to vacate or return the children, the trial court retroactively applied the clear-and-convincing standard and denied relief. The Court of Appeals reversed, concluding that ICWA required proof of present parental unfitness and that the experts were not qualified under ICWA. The Supreme Court reversed and remanded for transfer to juvenile court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the Court of Appeals and remand to the superior court for transfer to juvenile court for proceedings consistent with dependency under RCW 13.34.020 and foster care under ICWA, including services, counsel, reunification planning, and permanency planning.

CASES CITED

- Huff v. Budbill, 141 Wash. 2d 1, 7, 1 P.3d 1138 (2000)
- Winbun v. Moore, 143 Wash. 2d 206, 213, 18 P.3d 576 (2001)
- Canon, Inc. v. Fed. Ins. Co., 82 Wash. App. 480, 486, 918 P.2d 937 (1996)

- *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 35-36, 58, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989)
- *In re Interest of Mahaney*, 105 Wash. App. 391, 404, 408-409, 20 P.3d 437 (2001)
- *In re Maricopa County Juvenile Action No. A-25525*, 136 Ariz. 528, 667 P.2d 228 (Ariz. Ct. App. 1983)
- *In re Santos Y.*, 92 Cal. App. 4th 1274, 112 Cal. Rptr. 2d 692 (2001)
- *In re TM*, 245 Mich. App. 181, 628 N.W.2d 570 (2001)
- *State v. Ross*, 141 Wash. 2d 304, 309, 4 P.3d 130 (2000)
- *In re Dependency of Roberts*, 46 Wash. App. 748, 752-755, 732 P.2d 528 (1987)
- *State ex rel. Juvenile Dep't of Multnomah County v. Cooke*, 88 Or. App. 176, 744 P.2d 596, 597 (1987)
- *D.A.W. v. State*, 699 P.2d 340, 342 (Alaska 1985)
- *State ex rel. Juvenile Dep't of Lane County v. Tucker*, 76 Or. App. 673, 683-684, 710 P.2d 793 (1985)
- *Roberts v. Atl. Richfield Co.*, 88 Wash. 2d 887, 898, 568 P.2d 764 (1977)
- *D.E.D. v. State*, 704 P.2d 774, 780 n. 10 (Alaska 1985)
- *In re D.S.P.*, 166 Wis. 2d 464, 472-480, 480 N.W.2d 234 (1992)
- *State ex rel. Juvenile Dep't of Multnomah County v. Charles*, 70 Or. App. 10, 17, 688 P.2d 1354 (1984)
- *In re Oscar C., Jr.*, 147 Misc. 2d 761, 763-764, 559 N.Y.S.2d 431 (1990)
- *DeCoteau v. Dist. County Court*, 420 U.S. 425, 465, 95 S. Ct. 1082, 43 L. Ed. 2d 300 (1975)

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