

SUPREME COURT OF ALASKA

Ebert v. Bruce L.

340 P.3d 1048 (Alaska 2014) · No. Supreme Court Nos. S-15130/15219 (Consolidated) · Decided December 26, 2014

SUMMARY

The Alaska Supreme Court affirmed the denial of an adoption petition filed by William and Holly Ebert and biological mother Connie J. The court held that the Indian Child Welfare Act did not preempt Alaska's adoption-consent statute and that Bruce L.'s consent was required because the petitioners failed to prove by clear and convincing evidence that his failure to support the child lacked justifiable cause. The court also dismissed the appeal of an interim custody and visitation order as nonfinal.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Bolger, Justice; Fabe, Chief Justice; Winfree, Justice; Stowers, Justice; Maassen, Justice
JURISDICTION	Alaska
DECIDED	December 26, 2014
DOCKET	Supreme Court Nos. S-15130/15219 (Consolidated)
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Eberts and Connie J. appealed the superior court's denial of the Eberts' petition to adopt Timothy over Bruce L.'s objection. They also appealed an interim custody order granting Bruce supervised visitation in related custody litigation.
STANDARD OF REVIEW	Questions of law are reviewed de novo. Whether a parent's failure to communicate with or support a child was without justifiable cause is reviewed for clear error. Factual findings are clearly erroneous only when review of the entire record leaves the court with a definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	published
PARTIES	William Ebert, Holly Ebert, Connie J. v. Bruce L.

TOPICS

adoption

indian child welfare act

statutory interpretation

appellate jurisdiction

final judgment rule

PRACTICE AREAS

family law

adoption

Indian Child Welfare Act

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statutory interpretation

QUESTIONS PRESENTED

1. Whether the Indian Child Welfare Act preempted Alaska Statute 25.23.050(a)(2)(B), which excuses the consent requirement for adoption when a noncustodial parent unjustifiably fails to provide support.
2. Whether Bruce was a parent whose consent was required under Alaska Statutes 25.23.040 and 25.23.050.
3. Whether the superior court clearly erred in finding that Bruce's failure to support Timothy was justifiable.
4. Whether the Supreme Court had appellate jurisdiction to review the superior court's interim custody and visitation order.

HOLDINGS

1. ICWA does not preempt AS 25.23.050(a)(2)(B). The state statute merely creates an exception to the parental-consent requirement and does not automatically authorize adoption of an Indian child; other state adoption requirements and ICWA protections remain applicable.
2. Bruce was a parent for purposes of AS 25.23.040 and .050 because he established paternity before entry of the adoption decree. His consent was therefore required unless excused under the adoption statute.
3. The superior court did not clearly err in finding that Bruce's failure to provide child support was justified. The Eberts and Connie therefore failed to establish by clear and convincing evidence that Bruce's consent was excused under AS 25.23.050(a)(2)(B), and his consent was required before the adoption could proceed.
4. The appeal from the superior court's interim custody and visitation order was dismissed because the order was not final and no special circumstances justified interlocutory review.

KEY QUOTATIONS

"We see no such conflict here." (at 1049)

"The long-established and continuing rule in Alaska is that absent the element of willfulness, a parent does not lose the right to consent under AS 25.23.050(a)(2)." (at 1051)

"We therefore dismiss the appeal of the interim custody order." (at 1053)

FACTUAL BACKGROUND

Bruce L. and Connie J. had a child, Timothy, in July 2007. The Eberts took custody of Timothy immediately and sought to adopt him, while Bruce opposed the adoption and sought custody and visitation. Bruce did not pay child support before the superior court ordered him to pay \$50 per month in December 2008, although he later

made payments and presented evidence of limited income, unemployment, education-related expenses, and an asserted lack of awareness of a support obligation. Timothy was stipulated to be an Indian child for purposes of ICWA during the second trial.

PROCEDURAL HISTORY

The superior court initially granted the adoption, but the Alaska Supreme Court vacated the termination of Bruce's parental rights and the adoption decree in *Bruce L. v. W.E.*, 247 P.3d 966 (Alaska 2011), and remanded for consideration of ICWA issues and whether Bruce's failure to support Timothy was justified. After a second trial, the superior court denied the adoption, concluded that ICWA's active-efforts and beyond-a-reasonable-doubt requirements had not been satisfied, and alternatively found that Bruce's failure to provide support was justifiable. The Supreme Court affirmed the denial of adoption and dismissed the appeal from the interim custody order as premature.

DISPOSITION

affirmed

CASES CITED

- *Jones v. Bowie Indus., Inc.*, 282 P.3d 316, 325 (Alaska 2012)
- *Marcia V. v. State, Office of Children's Servs.*, 201 P.3d 496, 502 (Alaska 2009)
- *Allen v. State, Dep't of Health & Soc. Servs., Div. of Pub. Assistance*, 203 P.3d 1155, 1162 (Alaska 2009)
- *Native Vill. of Tununak v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 334 P.3d 165, 180 n.17 (Alaska 2014)
- *In re Adoption of L.A.H.*, 597 P.2d 513, 517 (Alaska 1979)
- *Beal v. Beal*, 209 P.3d 1012, 1016-17 (Alaska 2009)
- *In re Adoption of J.M.F.*, 881 P.2d 1116, 1118 (Alaska 1994)
- *In re J.J.J.*, 718 P.2d 948, 953 (Alaska 1986)
- *David S. v. Jared H.*, 308 P.3d 862, 869-70 (Alaska 2013)
- *Bruce L. v. W.E.*, 247 P.3d 966 (Alaska 2011)
- *D.L.M. v. M.W.*, 941 P.2d 900, 903 (Alaska 1997)
- *Conservatorship Estate of K.H. v. Cont'l Ins. Co.*, 73 P.3d 588, 595 (Alaska 2003)
- *Glasen v. Glasen*, 13 P.3d 719, 723 (Alaska 2000)
- *Nevitt v. Provost*, Mem. Op. & J. No. 1201, 2005 WL 327219, at *2 (Alaska Feb. 9, 2005)
- *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013)