

# In re Guardianship of Eliza W.

**Caselaw No.**

No. S-18-1141

**Filed on**

Friday, February 7, 2020

**Summary:**

In this case Eliza's grandmother, Susan, sought to establish a guardianship over the objection of Eliza's mother. There was evidence given at the trial court level that Eliza was either a member of a Native American tribe or was eligible to become a member. Eliza's mother, Tara, argued to the trial court that ICWA and NICWA applied to this case. In its decision to establish the guardianship with Eliza's grandmother the trial court made no mention of ICWA or NICWA in its order granting the grandmother guardianship. Tara also requested court appointed counsel from the trial court arguing that she was entitled due to ICWA and NICWA applying in the case at bar. The trial court never did make ruling on her request for court appointed counsel and Tara was never appointed counsel. Tara appealed the decision of the trial court arguing, among other things, that ICWA and NICWA did apply in the guardianship case and that the circumstances of Eliza's placement with her grandparents fell into the definition of foster care as stated in 25 U.S.C. Section 1903(1)(i). Tara also argued that the grandmother did not comply with the requirements of ICWA and NICWA namely having a qualified expert witness testify at the proceeding. The grandmother disagreed that ICWA and NICWA applied to this case, stating that neither law applied since this was a family dispute and also stating that Eliza was not an Indian child even though her husband, the grandfather, testified that he was a member of a Native American Tribe and that it was through his lineage that Eliza qualified. Susan also argues in her brief that if the Court finds that ICWA does apply then Tara herself qualified as an expert.

The Supreme Court reversed the trial court decision and remanded with directions. In its decision the Court held that the provisions of ICWA apply to private child guardianship disputes (and not just removals by the state). The Court relied on the definition of "foster care disputes" in 25 U.S.C. Section 1903 (1)(i) as including "any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated." In its decision the Court briefly discusses the difference between statutory policy language versus a statute's operative language; citing a recent U.S. Supreme Court decision based on statutory statements of purpose, explaining that such provisions, "by their nature" cannot override [a statute's] operative language." *Sturgeon v. Frost*, \_\_\_ U.S. \_\_\_, 139 S. Ct. 1066, 1086, 203 L. Ed. 2d 453 (2019), quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 220 (2012). The Court further their discussion of their rules of statutory interpretation stating they strive, if possible, to give effect to all parts of a statute such that no sentence, clause, or word is rendered meaningless. See *State v. Clemens*, 300 Neb. 601, 915 N.W.2d 550 (2018).

Since the record was unclear as to why the trial court did not appoint counsel for Tara and because the Court had found that Susan had not meet the heightened standard of proof

imposed by ICWA and NICWA the Court decided it was unnecessary for them to sort that issue out.

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