

A-15-1080 In re Adoption of Micah H., a minor child. Daniel H. and Linda H. (Appellants) v. Tyler R.

Original trial court: Saunders County Court, Judge Patrick R. McDermott

Civil Case Type: Adoption – applicability of the Indian Child Welfare Act (ICWA)

Proceedings in the trial court: The county court found that ICWA applied and denied the complaint for adoption.

Issues: Appellants argue on appeal that the county court erred in finding that ICWA applied at the request of the non-Indian father, who had abandoned the family, where neither the Indian tribe nor the Indian mother requested its application. Appellants claim that as a result of erroneously applying ICWA, the court erred in applying a higher burden of proof and in finding that appellants failed to show abandonment by the father.

Background: Allison H., a member of the Oglala Sioux Tribe, and Tyler R., a non-Indian, are the parents of Micah H., who was born in September 2007. Appellants are the adoptive parents of Allison. A July 2, 2010, decree of paternity, custody, and child support awarded custody of Micah to Allison, provided Tyler with supervised parenting time, and ordered Tyler to pay child support of \$100 per month.

In February 2012, Tyler entered the Nebraska State Penitentiary to serve a sentence for motor vehicle homicide. During this incarceration, Tyler’s mother has sent money to pay Tyler’s child support obligation and has facilitated “telephone visits” between Tyler and Micah.

In April 2012, appellants were appointed the joint guardians of Micah. In September 2014, they filed a “Complaint for Adoption and for Termination of Parental Rights” seeking to adopt Micah. Appellants alleged that Allison gave her consent to the adoption of Micah and that Tyler’s parental rights should be terminated. In an answer, Tyler asserted that Micah was an Indian child and that appellants had failed to comply with requirements under ICWA.

Ultimately, the county court determined that ICWA applied and denied the complaint for adoption. The county court reasoned that ICWA applied because Micah was an Indian child due to Allison’s being an enrolled member of the Oglala Sioux Tribe. The court stated: “By nearly any other standard the court would not hesitate to grant adoption but under the unique requirements of ICWA and the burden of proof beyond a reasonable doubt that Court is compelled to deny the petition.” The court stated that it was unable to find beyond a reasonable doubt that Tyler had abandoned the child. The county court explained that determining whether ICWA should apply was a difficult decision as it required looking at the concept of:

...“existing Indian family[,”] which has been adopted in some States as an exception to the application of ICWA. Nebraska has not explicitly adopted that approach nor has it been explicitly rejected. The range of decisions throughout the United States is from a few states which have declared ICWA unconstitutional, to states which have adopted a variety of exceptions to the act, to strict conformist states. Any attempt to determine a majority rule is fruitless.

Appellants appealed the county court’s order denying the adoption. Under Neb. Rev. Stat. 24-1106(3), the Supreme Court may remove any case from the Court of Appeals and place the case on its docket for argument and decision.

Attorneys: John H. Sohl (for Appellants)— Jennifer D. Joakim (for Tyler R.)