

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: BABYGIRL C.
A/K/A M.J.C.,

No. 52283

CLARK COUNTY THROUGH ONE OF
ITS DEPARTMENTS, CLARK COUNTY
DEPARTMENT OF FAMILY SERVICES,
Appellant,

vs.

THE NAVAJO NATION,
Respondent.

FILED

APR 06 2009
FRANK K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order transferring jurisdiction in a child protection matter to The Navajo Nation family court and dismissing the district court action. Eighth Judicial District Court, Family Court Division, Clark County; Steven E. Jones, Judge.

The child, Babygirl C., was born in February 2007, at which time she was placed in the protective custody of appellant Clark County Department of Family Services (CCDFS), based on tests indicating that she had amphetamine and methamphetamine in her system and the birth mother's admission to illegal drug use.¹ Since the child's birth mother was a member of the Navajo tribe and the child was therefore eligible for tribal enrollment, CCDFS notified respondent Navajo Nation's Children and Family Services Department on March 6, 2007, that the child was in

¹No father was listed on the child's birth certificate, and the district court later determined that the father was unknown and, thus, that no person was presumed to be the child's father.

CCDFS's protective custody. Respondent declined to intervene at that time, indicating that it instead wished to follow the progress of the case, which at the time included a case plan aimed at reunification with the birth mother. The child was placed in foster care through CCDFS on March 13, 2007.

In December 2007, after the birth mother failed to complete any part of her case plan, CCDFS requested to change the case plan goal from reunification to termination of parental rights, to be followed by the child's adoption. Respondent, in the meantime, identified the child's maternal grandmother in New Mexico as a possible placement option. CCDFS apparently requested a home study of the maternal grandmother in accordance with Interstate Compact for the Placement of Children (ICPC) procedures. Following the ICPC study, the New Mexico Department of Child and Family Services determined that placement with the grandmother was not suitable, and CCDFS notified respondent of the results of the study in January 2008. Shortly thereafter, respondent informed CCDFS that it planned on intervening for the purpose of taking jurisdiction over the child. The transcript of the termination of parental rights proceeding confirms that, in response, CCDFS asked respondent to wait to intervene until after the termination of parental rights hearing to avoid delays.

In the meantime, respondent investigated other potential Navajo placement options and identified the birth mother's cousin and his wife as a possible placement in March 2008. At the May 12, 2008, termination of parental rights hearing, CCDFS acknowledged that a hearing on respondent's motion to transfer jurisdiction was set for two days later, on May 14, 2008, and that CCDFS intended on going forward

with the termination of parental rights proceeding “to help benefit the tribe so that they [will not] have to re-file everything.” Following the hearing, the district court entered an order terminating the parental rights of the birth mother and any person who might claim paternity.

On May 14, a hearing master presided over respondent’s motion, filed in open court, seeking to transfer jurisdiction of the child custody proceeding to The Navajo Nation family court in New Mexico. Respondent explained that it had identified a suitable adoptive home with the birth mother’s cousin in New Mexico. The attorney for the child’s foster parents indicated that the foster parents wished to adopt the child. When the hearing master questioned whether due process rights would be protected by allowing respondent to file in open court a motion to transfer jurisdiction, CCDFS stated that the foster parents did not have standing to oppose the motion and that the tribe could take jurisdiction under the Indian Child Welfare Act (ICWA). Thus, CCDFS did not oppose the motion. The district court granted the motion, and CCDFS appeals.

On appeal, CCDFS argues that the State of Nevada had concurrent jurisdiction over the child and that the district court was not required to transfer jurisdiction. CCDFS asserts that after parental rights were terminated, the matter was no longer a “child custody proceeding” under the ICWA and, even if it was, the district court should have found that there was “good cause” to deny the jurisdiction transfer under the applicable ICWA provision. CCDFS asserts that respondent had no basis for asserting its jurisdiction and requesting the transfer because the parental rights of the birth mother and any person who might claim paternity of the child had been terminated, and the proceedings leading up

to the termination of parental rights were conducted in compliance with the ICWA.

“Whether ‘good cause’ exists to deny a petition to transfer jurisdiction to a tribal court is a mixed question of law and fact.” In re Welfare of Children of R.M.B., 735 N.W.2d 348, 351 (Minn. Ct. App. 2007). In that regard, when facts are essentially undisputed, the application of a statute is a question of law that this court reviews de novo. See County of Clark v. Upchurch, 114 Nev. 749, 753, 961 P.2d 754, 757 (1998) (providing that “construction of a statute is a question of law”); Earth Island Institute v. Hogarth, 494 F.3d 757, 765 (9th Cir. 2007) (stating that “interpretation or application of a statute is a question of law reviewed de novo”). When the law was correctly applied and the district court’s factual findings are supported by substantial evidence, this court will not overturn the district court’s decision. Martinez v. Maruszczak, 123 Nev. ___, 168 P.3d 720 (2007).

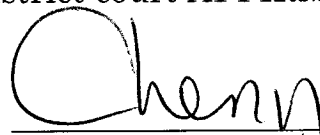
The ICWA provides that, “in the absence of good cause to the contrary,” a district court must grant a petition to transfer to the tribal court jurisdiction of a child protection proceeding involving a Native American child when the child is not domiciled on or residing within his or her tribe’s reservation. 25 U.S.C. § 1911(b) (2006). Although the ICWA does not define what is necessary to demonstrate “good cause” to deny a petition to transfer jurisdiction, the regulations governing child and family service programs under the ICWA provide that “[g]ood cause not to transfer the proceeding may exist if . . . [t]he proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing.” See 44 Fed. Reg. 67,591 (Nov. 26, 1979).

Here, CCDFS acquiesced in respondent's efforts to transfer jurisdiction, first by asking respondent to wait until the termination of parental rights proceeding was complete before intervening, and later by not objecting when respondent moved to transfer jurisdiction. Thus, arguably, CCDFS waived any appellate challenge to the district court's decision to grant the motion to transfer jurisdiction. See State of Washington v. Bagley, 114 Nev. 788, 792, 963 P.2d 498, 501 (1998) (pointing out that, when a party fails to raise an argument in the trial court, that party is precluded from raising it on appeal); Landmark Hotel v. Moore, 104 Nev. 297, 299, 757 P.2d 361, 362 (1988) (indicating that when a party fails to object to a district court's decision, the objection is waived).

Moreover, we perceive no error in the district court's decision to grant respondent's motion to transfer jurisdiction and dismiss the district court matter. Although CCDFS argues that the proceeding was not a child custody proceeding, the ICWA defines a "child custody proceeding" to include foster care placement, termination of parental rights, preadoptive placement, and adoptive placement. 25 U.S.C. § 1903(1) (2006). The jurisdiction transfer was requested during the termination of parental rights proceeding and accomplished two days later, after the hearing on respondent's request. As the matter progressed in the district court, respondent agreed that termination of parental rights was appropriate and, in that regard, it was working to identify a suitable Navajo placement for the child. While respondent waited to intervene until the termination proceeding, the ICWA's purpose is to promote the "stability and security of Indian tribes and families," see 25 U.S.C. § 1902 (2006), and that purpose may not have been implicated to the same degree

at an earlier stage in the child protection proceeding. See In re Welfare of Children of R.M.B., 735 N.W.2d at 354. Thus, the district court's decision to transfer jurisdiction is supported by substantial evidence and was made in accordance with the ICWA transfer statute, 25 U.S.C. § 1911(b), under which the party opposing transfer must demonstrate "good cause," such as the proceeding's advanced stage, to deny the transfer. No such demonstration was made here, and, accordingly, we


ORDER the judgment of the district court AFFIRMED.

 _____, J.

Cherry

 _____, J.

Saitta

 _____, J.

Gibbons

cc: Hon. Steven E. Jones, District Judge, Family Court Division
Clark County District Attorney David J. Roger/Civil Division
Mastin Law Office
Eighth District Court Clerk