



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**VALERIE M. v. ARIZONA DEPARTMENT OF ECONOMIC
SECURITY, ET AL,
CV-08-0252-PR**

PARTIES AND COUNSEL:

Petitioner/Appellant: Valerie M. (“Mother”), represented by Sandra L. Massetto.

Respondent/Appellee: Arizona Department of Economic Security (“ADES”), represented by Assistant Attorney General Dawn R. Williams.

FACTS:

The children are members of the Cherokee Nation and subject to the federal Indian Child Welfare Act (“ICWA”). On February 25, 2005, the children's paternal grandmother filed a dependency petition alleging that the children were dependent as to Mother. At a mediation hearing held April 1, 2005, ADES requested to substitute for paternal grandmother as petitioner in the dependency proceeding, alleging that the children were dependent as to both Mother and Father. On May 13, 2005, the juvenile court found, by a preponderance of the evidence, that the children were dependent as to Mother and Father. Two months later, the Cherokee Nation intervened in the matter. The juvenile court continued the dependency disposition hearing to receive testimony from an ICWA caseworker. The juvenile court then found the children were dependent as to Mother and Father by the higher standard of clear and convincing evidence as required by ICWA.

On June 7, 2006, ADES filed a motion seeking termination of Mother’s and Father’s parental rights to the children. ADES alleged three statutory bases for termination: (1) Mother and Father were unable to discharge their parental responsibilities because of mental illness, mental deficiency, and/or a history of chronic drug abuse, with reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period pursuant to A.R.S. § 8-533(B)(3); (2) the children had been in an out-of-home placement pursuant to court order for a cumulative period of nine months or longer and Mother and Father had substantially neglected or willfully refused to remedy the circumstances causing the out-of-home placement pursuant to § 8-533(B)(8)(a); and (3) the children had been in an out-of-home placement pursuant to court order for a cumulative period of 15 months or longer and Mother and Father had been unable to remedy the circumstances causing the out-of-home placement and there was a substantial likelihood that they would not be capable of exercising proper and effective parental care and control in the near future pursuant to § 8-533(B)(8)(b).

At her initial severance hearing, Mother entered a denial and requested a jury trial. Father failed to appear at his initial severance hearing and an official from the Cherokee Nation testified that the Nation was in agreement with the plan of severance and adoption. The juvenile court then proceeded with Father's severance trial. After receiving testimony and exhibits, the juvenile court found, beyond a reasonable doubt, that the State proved the statutory bases for termination, that the State made active efforts to prevent the "break-up of the Indian family," that Father's continued custody of the children would likely result in serious emotional or physical damage to the children, and that termination of the parent-child relationship was in the children's best interests. Based on these findings, the juvenile court terminated Father's parental rights.

Before Mother's trial, ADES filed a motion *in limine* regarding the standard of proof applicable to Mother's case, in which it asserted that the "beyond a reasonable doubt" standard applied *only* to the findings required by ICWA (*see* paragraph 3 of the quoted jury instructions, below), that the "clear and convincing evidence" standard applied to the findings on state statutory termination grounds, and that the "preponderance of the evidence" standard applied to the best interests determination. ADES contemporaneously submitted a requested jury instruction incorporating these three differing standards of proof. The juvenile court granted the motion without objection.

Two days later, however, during a mid-trial discussion of the final jury instructions prepared by the juvenile court, Mother's attorney argued that the "beyond a reasonable doubt" standard should apply to all of the jury's findings. The juvenile court overruled Mother's objection and the jury was instructed in relevant part as follows:

To terminate the parental rights of Valerie [M.] relating to [the children] in this case, you must:

1. find by clear and convincing evidence that at least one of the three grounds for termination (those grounds are "mental illness," "nine months time in care," and "fifteen months time in care") have been proven; and
2. find by a preponderance of the evidence that the termination of Valerie [M.'s] parental relationship to [the children] is in the children's best interest; and
3. find that the evidence has been proved beyond a reasonable doubt that:
 - a. the Department of Economic Security's Child Protective Services Division has made active efforts to provide Valerie [M.] with remedial services and rehabilitative programs that were designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful, and
 - b. returning [the children] to the custody of Valerie [M.] would likely result in serious emotional or physical damage to the children, and this finding is supported by the testimony of a qualified expert witness.

The jury found: (1) by clear and convincing evidence that all three grounds for termination had been proven; (2) by a preponderance of the evidence that termination of the parent-child relationship was in each child's best interests; and (3) beyond a reasonable doubt that ADES made active efforts

to provide Mother with remedial services to prevent the break-up of the family and that returning the children to Mother's custody would likely result in serious emotional or physical damage to the children, a finding supported by expert testimony. Based upon the verdict, the juvenile court entered a signed order setting forth the jury's findings and terminating Mother's parental rights to the children. Mother appealed.

In an opinion filed June 17, 2008, the court of appeals affirmed the juvenile court's termination order. The court rejected Mother's argument that the juvenile court's standard-of-proof instructions violated ICWA. Mother filed her petition for review in this Court on August 1, 2008. ADES filed its response on September 4, 2008.

ISSUES:

1. The juvenile court erred by refusing to give jury instructions and form of verdicts stating that the standard of proof is "beyond a reasonable doubt" as to state grounds and best interest requirements in a termination of parental rights case governed by the federal Indian Child Welfare Act.
2. Under the "law of the case" doctrine, the burden of proof of "beyond a reasonable doubt" that was applied to the grounds for termination in father's case should apply to Mother's jury trial.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.