



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**TAMMY H. AND STEVEN H. v. ARIZONA DEPARTMENT OF  
ECONOMIC SECURITY, ET AL,**  
CV-08-0026-PR

**PARTIES AND COUNSEL:**

*Petitioner/Appellee:* Guardian ad litem, represented by David Goldberg

*Respondent/Appellee:* Arizona Department of Economic Security, represented by Assistant Attorney General William V. Hornung and Dawn R. Williams, Assistant Attorney General – Tucson Office

*Respondents/Appellants:* Tammy H. and Steven H., represented by Jeffrey A. James of Kaiser, James & Wilson, PLLC

**FACTS:**

17-year-old Matthew and 15-year-old Savannah are the biological children of Tammy H. (“Mother”) and the adopted children of Steven H (“Father”). The children are the oldest of eight siblings, and are of Indian descent. Thus, the federal Indian Child Welfare Act (“ICWA”) applies.

Child Protective Services (“CPS”) has interacted with the family for years over issues related to the parents’ physical discipline. In recent years, the juvenile court has adjudicated the children delinquent for various offenses.

In July 2006, the children’s guardian ad litem (“GAL”) filed a petition asking the juvenile court to find Savannah dependent as to her parents. The GAL alleged Savannah was dependent pursuant to A.R.S. § 8-201(13)(a)(i) because she was in need of proper and effective parental care and control and the parents were not willing and capable of exercising such care and control. One month later, the GAL filed a supplemental dependency petition asking the court to declare Matthew dependent for the same reason. At the time of the dependency petitions and eventual dispositions, the children were in out-of-home placements due to their delinquent behavior.

The juvenile court conducted a multiple-day hearing in late 2006 and early 2007. The GAL, the only party who advocated for a finding of dependency, introduced exhibits as well as lay and expert testimony to support his requests. The Arizona Department of Economic Security (“ADES”) argued that although the evidence showed that the family needed services, the GAL had failed to prove that the children were dependent. The children testified and expressed a desire to return home to their parents. They also stated they had either fabricated or exaggerated prior allegations about their parents. Counsel for the children urged the court to deny the dependency petitions. Mother

also testified, outlined efforts made to get help for the children, and expressed a desire to continue parenting them.

In April 2007, the juvenile court ruled that the children were dependent as to their parents. The court found that the parents had emotionally abused the children, had physically abused Savannah, and that the children had “serious emotional and behavioral issues.” The court further found that the parents had failed to provide adequate control of the children, and that “continued custody of the children . . . is likely to result in serious emotional or physical damage to the children.”

The parents timely appealed.

**ISSUE:**

Whether the Court of Appeals misinterpreted the Indian Child Welfare Act (“ICWA”), 25 U.S.C. §§ 1901-1963 (2000) and Rule 55(C), *Arizona Rules of Procedure for Juvenile Court*, as requiring expert testimony on the ultimate issue of fact in a dependency proceeding which is whether continued custody of the child will likely result in serious emotional or physical damage to the child?

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