



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**GILA RIVER INDIAN COMMUNITY v. DEPARTMENT OF CHILD  
SAFETY, SARAH H., JEREMY H., A.D.,  
240 Ariz. 386, 379 P.3d 1016 (“Op.”)  
CV-16-0220-PR**

**PARTIES:**

*Petitioner/Appellant:* Gila River Indian Community (“the Community”)

*Respondents/Appellees:* Sarah H. and Jeremy H. (“foster parents” or “preadoptive parents”)

**FACTS:**

At the time of A.D.’s birth in 2014, both she and her biological mother (“M.D.”) tested positive for amphetamines and opiates. Approximately one week later, the Department of Child Safety (“DCS”) removed her from the hospital and placed her with foster parents S.H. and J.H (also referred to herein as “preadoptive parents”), with whom she has since remained.

On August 27, 2014, DCS filed a dependency petition on behalf of A.D. The Community was provided notice of the dependency proceedings, and on October 3, 2014, formally moved to intervene pursuant to the Indian Child Welfare Act (“ICWA”), 25 United States Code (“U.S.C.”) § 1911(c), which provides that “[i]n any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have a right to intervene at any point in the proceeding.” The juvenile court granted the motion to intervene, and the Community continued to be involved throughout the case.

On February 20, 2015, the juvenile court found A.D. dependent. Pursuant to DCS’s request, the juvenile court ordered a case plan of severance and adoption, and on March 4, 2015, DCS moved for termination of the parent-child relationship. The Community received notice of the motion for termination.

On March 18, 2015, the juvenile court terminated the parental rights of A.D.’s biological parents. At that time, the court found the foster parents were an adoptive placement meeting all of A.D.’s needs. The court also found the foster parents had demonstrated a willingness to honor A.D.’s cultural heritage, including by making arrangements to ensure her continued exposure to the Community’s culture. The Community had not provided an alternative ICWA-compliant

placement and agreed that good cause existed to deviate from the ICWA placement preferences. DCS, as the legal guardian of A.D., was granted authority by the juvenile court to consent to her adoption. No objection or notice of appeal was filed challenging termination of the biological parents' parental rights.

On June 2, 2015, the foster parents moved to intervene under Rule 24, Ariz. R. Civ. P., and expressed a desire to adopt A.D. At a June 5 Report and Review hearing, the Community requested additional time to respond in writing to the motion to intervene, but failed to file a response, and the juvenile court granted the foster parents' motion to intervene. Soon thereafter, the foster parents filed a petition to adopt A.D., and although adoption hearings were scheduled, the juvenile court granted the Community's motion to stay the adoption proceedings.

On August 18, 2015, the Community moved to transfer jurisdiction of the remaining proceedings to the Community's Children's Court pursuant to 25 U.S.C. § 1911(b). In its motion, the Community noted that the State of Arizona, through DCS, supported the motion, but the foster parents and A.D.'s guardian ad litem ("GAL") objected to the motion. The GAL filed a written objection to the motion to transfer on September 11, 2015, and, pursuant to the juvenile court's minute entry order issued after the September 29 Report and Review hearing, the foster parents filed a response to the motion to transfer on October 13, 2015.

On December 9, 2015, and January 5, 2016, the juvenile court heard testimony on whether good cause existed to deny the Community's motion to transfer jurisdiction. Both sides offered evidence regarding several factors, including whether the Community's Children's Court was a convenient forum, the degree to which A.D. had bonded with her foster family, and the possible effects of a potential change in placement for A.D., after which the court took the matter under advisement.

On January 21, 2016, four of A.D.'s siblings were added to the dependency case and have since been transferred to the Community's Children's Court.

In a ruling filed January 29, 2016, the juvenile court denied the Community's motion to transfer jurisdiction as to A.D. after concluding the GAL and foster parents had established good cause to deny the motion by clear and convincing evidence. The court based its ruling in part on the possible harmful effects of a potential change in placement for A.D. The Community filed a timely notice of appeal.

In an opinion filed August 11, 2016, the court of appeals affirmed. Based on a "plain language" analysis, the court held that 25 U.S.C. § 1911(b) of ICWA, which the Community argues requires transfer, does not allow jurisdiction to be transferred *after* parental rights have been terminated because "under § 1911(b), ICWA provides only for transfer of state juvenile court

proceedings before termination of parental rights, and not for post-termination preadoptive and adoptive placements.” Op. ¶ 17, citing *In re A.P.*, 962 P.2d 1186, 1189 ¶ 20 (Mont. 1998). In the case at hand, neither A.D.’s biological parents nor the Community sought to transfer the proceedings from the juvenile court to the Community’s Children’s Court before termination of parental rights.

**ISSUE PRESENTED FOR REVIEW:**

ICWA was enacted to protect Indian tribes and tribal families by establishing minimum federal standards for Indian child custody proceedings in state courts. 1911(b) permits an Indian tribe to transfer a state court proceeding, which is characterized by foster care placement or termination of parental rights, to tribal court. Although a dependency case in Arizona may have several overlapping actions, the COA limited the interpretation of 1911(b) to prohibit transfer after parental rights are terminated. Did the COA err in holding that the plain language of 1911(b) prohibits transfer of a dependency case after parental rights have been terminated?

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