IN THE COURT OF APPEALS OF IOWA

No. 1999-419 (9-672) / 98-1325
Filed December 27, 1999

FILED
DEC 27 1999
CLERK SUPREME COURT

IN THE INTEREST OF Y.M.V.,
Minor Child,

L.V., Mother,
Appellant,

WINNEBAGO TRIBE OF NEBRASKA,
Appellant.

Appeal from the Iowa District Court for County, Woodbury, Robert J. Dull, District Associate Judge.

Mother appeals from a juvenile court order terminating her parental rights. She contends that the Indian Child Welfare Act applies to the proceedings and the district court should have transferred the proceedings regarding the child to the tribal court under 25 U.S.C. §1911(b). **AFFIRMED.**

Theresa A. O'Brien, Sioux City, for appellant-mother.

Christine A. Stolarskyj, Winnebago, Nebraska, for appellant-Winnebago Tribe of Nebraska.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Dewey Sloan, Assistant County Attorney, for appellee.

Lesley Rynell, Sioux City, guardian ad litem, for minor child.

Considered by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

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VAITHESWARAN, J.

[redacted] mother of Yvonne, and the tribe to which her daughter belongs, appeal a juvenile court order denying the tribe's motion to transfer jurisdiction to the tribal courts. We affirm.

I. Background Facts and Proceedings

Yvonne was born to Linda and Ronald on June 18, 1991. She is an enrolled member of the Winnebago Tribe of Nebraska. She lived with her mother until she was five years old.

Linda has a long history of alcohol abuse and unsuccessful treatment. On August 16, 1996, police went to Linda's home and discerned she was highly intoxicated. Her adult daughter, Justina, arrived at approximately the same time and advised the police she feared for Yvonne's well being, in light of Linda's constant drunkenness. Justina took Yvonne to her own home.

On August 28, 1996, the State sought to have Yvonne adjudicated a child in need of assistance. The court granted the State's petition and granted the Tribe's motion to intervene in the proceedings. Yvonne was subsequently placed in foster care.

On March 5, 1998, the State filed a petition to terminate Linda's parental rights. On April 17, 1998, the Tribe moved to transfer jurisdiction to the tribal courts. The juvenile court denied the Tribe's motion. In a subsequent ruling, the court terminated the parental rights of Linda and Ronald. Linda and the Tribe appealed. The Tribe's motion to join in Linda's brief was granted.

II. Standard of Review

We review proceedings to terminate a parent-child relationship de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). Where a child is a tribal member, the Indian Child Welfare Act (ICWA) modifies Iowa law. *In re B.M.*, 532 N.W.2d 504, 506 (Iowa App. 1995).

III. Mother's Right to Appeal

On appeal, Linda does not challenge the termination of her parental rights. Rather, she challenges the interlocutory order denying the Tribe's motion to transfer jurisdiction to the tribal courts. Therefore, the order terminating her rights is final and Linda has relinquished any interest she might have had to challenge other aspects of the CINA or termination proceedings. *See In re D.B.*, 483 N.W.2d 344, 346 (Iowa App. 1992). Because Linda did not challenge the termination of her rights, we will not consider her appeal of the transfer of jurisdiction ruling. We will, however, review the issue because the Tribe joined in Linda's brief.

IV. Transfer of Jurisdiction

Under the ICWA a tribe has the right to seek a transfer of jurisdiction to the tribal courts. 25 U.S.C. § 1911(b) (1994). A juvenile court is required to transfer the case in the absence of good cause to deny the motion. *Id.*; *In re J.R.H.*, 358 N.W 2d 311, 317 (Iowa 1984). Good cause is not defined in the ICWA. The Bureau of Indian Affairs (BIA), however, has issued non-binding guidelines for determining whether good cause exists. *Id.* Under the guidelines good cause may exist when "the 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." *Id.*

The burden of establishing good cause is on the party opposing transfer, in this case the State. *Id.* We have previously applied the guidelines in deciding whether good cause exists not to transfer jurisdiction to tribal courts. *See In re J.W.*, 528 N.W.2d 657, 660 (Iowa App. 1995). Ultimately, the determination "is made on a case-by-case basis, after a careful consideration of all the circumstances of the case." *Id.*

The Tribe contends the juvenile court improperly denied its transfer motion because the motion was filed promptly after the State filed its termination petition. We disagree. The Tribe filed its motion twenty-one months after Yvonne was removed from Linda's home. By that time, the proceedings had reached an advanced stage. Yvonne had been adjudicated a child in need of assistance and was placed in foster care and Linda had received substantial treatment services.

It is true the Tribe moved to intervene shortly after the CINA petition was filed and it participated in certain hearings. The Tribe's worker conceded, however, she never attempted to work with Linda and, after July 1997, did not discuss Linda's situation with service providers. In addition, the Tribe's worker acknowledged she did not talk to Linda about participating in the Tribe's alcohol treatment program, and the State's case plan did not prohibit Linda from participating in the Tribe's program. Indeed, she was unaware that Linda had already participated in the Tribe's alcohol treatment program in July 1996, and years earlier. The worker also stated she did not

consult with Yvonne, her teachers, or her therapist, and did not attended any supervised visits with Linda.

At the transfer hearing, another person affiliated with the Tribe stated he would have preferred Yvonne remain with her family. Nevertheless, he conceded he was unfamiliar with the proceedings to date, had not been approached by the Tribe to address Linda's specific problems, was unfamiliar with the extent of Linda's tribal contacts, and had never met Yvonne.

We conclude good cause existed not to transfer jurisdiction to the Tribe and we affirm the ruling of the juvenile court.

AFFIRMED.