

Appellant filed a petition in April 2002, but the trial court simply returned the petition without a hearing and without an order. In December 2002, Appellant re-filed. The trial court issued a written order ruling that it has no jurisdiction over the adoption of a non-Indian child. We hereby reverse, and hold that the trial court has jurisdiction over the adoption of a non-Indian child when the non-biological petitioner parent is an enrolled member and both petitioner and child reside within the territory of the Pascua Yaqui Nation, particularly where the biological parent with legal custody has voluntarily submitted to the court's jurisdiction and no other jurisdiction has proceedings pending affecting the matter.

PYTC §1.1(E) states that "[a]ny person entering within the boundaries of this Reservation becomes subject to the Law and Regulations of the Reservation." Further, PYTC § 9.1 provides that "[p]resence, domicile, or residence on the Reservation is a basis for personal jurisdiction.

PYTC Title 2, § 2.1(A)(5) provides the juvenile court with "exclusive original jurisdiction of all proceedings arising under this Code ... (5) for the adoption of a juvenile." PYTC 2 defines "juvenile" as a "person under eighteen (18) years of age," without regard to member status. Indeed, the Code contains a separate definition for "Yaqui Indian child." Therefore, the definition of "juvenile" does not preclude a non-Indian child. And, of course, there need not be a specially established "juvenile court"; rather, the trial court, sitting on juvenile matters, is a juvenile court for purposes of the statute. PYTC Title 2, § 2.1 gives the tribal court "jurisdiction over non-Pascua Yaqui child custody matters arising within the boundaries of Pascua Yaqui Indian country when the best interests of the juvenile require." The definition of "custody matter" includes


adoptions. Further, PYTC Title 1, § 9.1(A) provides a general statement of jurisdiction over such matters where one of the parties is a member. PYTC Title 1, § 9.1(G)(2)(d) provides that the court "may exercise jurisdiction to grant a custody order with respect to a child ... (d) who is present on the reservation." PYTC § 10.17(A)(1) provides jurisdiction if "this community is the domicile of the child."

One case from another jurisdiction of particular relevance is *LeBeau v. Lakota*, 815 F. Supp. 1074 (W.D. Mich. 1993). In *LeBeau* the state court stayed its hand and recognizing tribe court jurisdiction over a non-Indian child custody matter because the non-Indian guardian had voluntarily submitted to the court's jurisdiction. This is analogous to this matter where the non-Indian biological mother with legal custody has voluntarily submitted to the trial court's jurisdiction.

Therefore, the trial court is ordered to exercise jurisdiction and enter an order consistent with this order and opinion.

IT IS SO ORDERED,


Richard Monette, Chief Justice


Carolyn Alberta, Associate Justice

Dated this 8th day of August, 2003

Dated this 11th day of August, 2003



PASCUA YAQUI TRIBE

OFFICE OF THE ATTORNEY GENERAL

PASCUA YAQUI TRIBAL COURT
JUDICIAL DEPARTMENT

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DOCKET NO. CA 03-001

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May 9, 2003

Chief Justice Monette:

At this time, the Office of the Attorney General must respectfully decline to brief the jurisdictional issues before the Court *In the Matter of C.M., DOB 8/23/85* as requested by the Court in its April 23, 2003 preliminary order.

While the Tribe has a significant interest in protecting the jurisdiction the Tribal Court exercises, in this case, the Constitution and Tribal Code provide ample support for the Court's jurisdiction over the adoption of a non-Indian minor by a member of the Tribe when both reside on the Reservation. This is the position argued by the Appellant and sole party to the case.

Without exhaustively reviewing the many relevant Code provisions, the Tribe notes that the Tribal Court may exercise jurisdiction in a case, such as this, in which one of the parties is a member. (P.Y.T.C. Title 1, § 9.1(A)) The Court "may exercise jurisdiction to grant a custody order with respect to a child . . . (d) who is present on the Reservation" without regard to Indian status. (P.Y.T.C. Title 1, § 9.1(G)(2)(d)) The Juvenile Court likewise has "exclusive original jurisdiction of all proceedings arising under this Code . . . (5) For the adoption of a juvenile." (P.Y.T.C. Title 2, § 2.1(A)(5))

Many of these supporting citations and others have previously been provided to the Court in the Appellant's brief.

While the Tribe fully appreciates the importance of the Court's decision in this case, the Tribe is declining to file a brief or appear, in part, to preserve its sovereignty and the separation of powers between the governmental branches.

The Court of Appeals Procedures Act of 2000, which is codified as Title 11 of the Tribal Code, provides that the Clerk of the Court of Appeals shall submit copies of the Notice of Appeal to the Justices, parties and to the Attorney General. Section 1.17. Title 11 provides no further role for the Office of the Attorney General, although the notice's purpose presumably would be to give the Office an opportunity to evaluate the Tribe's interests in any appeal and determine whether to file leave to appear as an *amicus curiae*.

In this case, the Office was further provided a "Notice of Hearing" for the April 23, 2003 oral arguments. Although no written order was entered ordering the Tribe to file a brief, argue, or appear, Tribal Court staff indicated as much in telephone calls placed to the Office. While the Justices also discussed their desire to have the Office appear in certain cases on April 22, the Tribe has never been formally joined, moved to intervene or filed for *amicus* status in this case.

COUNCIL MEMBERS

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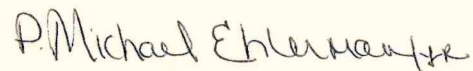
As the Tribe's Attorney General, I am, of course, concerned that our Office was verbally admonished for failing to brief and argue before the Court on April 24, but am unable to identify the order that was violated. Nor is the Court's authority to compel the Tribe to appear in this case readily apparent, although the Tribe concedes that the Court is empowered to adopt amicus procedures pursuant to Title 11, Section 1.29.

While the Tribe wishes to maintain a professional working relationship with the Court of Appeals, and understands that the branches must coordinate to, for example, amend the Tribal Codes and the court procedures embodied therein, the Tribe must also respect the constitutional separation that ensures the Court's independence.

As the Tribe's Attorney General, I can readily foresee cases in which the Tribe will wish to file leave to appear as *amicus*. To that end, I am eager to keep the lines of communication with the Court of Appeals open and hope that the Tribe's decision in this matter will not dissuade the Court from granting *amicus* status when the Tribal leadership determines it is in the Tribe's best interests.

Until that time, however, the Office of the Attorney General must appear only in those cases in which our attorneys are properly authorized.

Sincerely,



P. Michael Ehlerman
Attorney General

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PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME
03 MAY -9 PM 4:39
DOCKET NO. CA-03-001
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IN THE APPELLATE COURT OF THE YAQUI NATION

IN THE MATTER OF:)
)
Miranda, Clara) No. CA-03-001
D.O.B. 08/23/85)
) **APPELLANT'S**
) **SUPPLEMENTAL BRIEF**
(a minor child))
_____)

ARGUMENT

A. THE PASCUA YAQUI TRIBAL CODE ALLOWS THE COURT TO ASSERT JURISDICTION OVER THE ADOPTION OF NON-INDIAN CHILDREN.

The trial court relied on 2 P.Y.T.C. §2.1 to decline jurisdiction. However, there are several other sections within the Pascua Yaqui Tribal Code do allow jurisdiction over non-Indians.

- 1) Other sections within the Pascua Yaqui Tribal Code allow personal jurisdiction over non-Indians.

The Code provides for personal jurisdiction over non-Indians present on the Reservation. PYTC §1.1(E) states that “[a]ny person entering within the boundaries of this Reservation becomes subject to the Law and Regulations of the Reservation.” And PYTC §9.1(B)(1) states that “[p]resence, domicile or residence on the Reservation” is a basis for personal jurisdiction.

2) Other sections within the Pascua Yaqui Tribal Code provide for subject matter jurisdiction over non-Indian children.

The Code provides for subject matter jurisdiction over the custody of non-Indian children. PYTC §9.1(G)(2)(d) states that the tribal court has jurisdiction to issue a custody order with respect to a child “who is present on the Reservation.” PYTC §10.17(A)(1) states that the tribal court has jurisdiction to decide custody if “[t]his community is the domicile of the child.”

3) Definitional sections within the Pascua Yaqui Juvenile Code do not draw a distinction between Indian and non-Indian children.

The Pascua Yaqui Juvenile Code contains two general definitions which do not distinguish between Indian and non-Indian children. The Code defines a “child” as “[a]n individual who is under the age of eighteen (18) years of age.” 2 P.Y.T.C. A “juvenile” is defined as “[a] person under eighteen (18) years of age” or “[a] person under eighteen (18) years of age or older concerning whom proceedings are commenced in Juvenile Court prior to his eighteenth (18) birthday.” Id.¹

4) The specific section of the Pascua Yaqui Juvenile Code that grants jurisdiction over adoptions does not distinguish between Indian and non-Indian children.

The trial court cited P.Y.T.C. §2.1(C) (entitled “TERRITORIAL JURISDICTION”) as authority for declining jurisdiction. That section states that the Tribal Court has “jurisdiction over non-Pascua Yaqui child custody matters arising within the boundaries of Pascua Yaqui Indian country when the best

¹ Note that the Juvenile Code does have a separate definition for “Yaqui Indian Child.” That definition is “[a]ny unmarried person under the age of eighteen (18) years who is a minimum one-fourth Yaqui Indian blood quantum is a member of the Tribe or who is eligible for membership.”

interests of the juvenile require.” However, it does not contain a direct reference to adoption.²

Section 2.1(A) on the other hand, does contain a specific reference to adoption. That section states that “[t]he Juvenile Court shall have exclusive original jurisdiction of all proceedings arising under this Code ... [f]or the adoption of a juvenile.” As mentioned above, the definition of juvenile does not distinguish between Indian and non-Indian.

During oral argument, this Court asked counsel to address the application of sentence number two of §2.1(C) which reads, “[t]he Court may decline jurisdiction in appropriate circumstances where a forum with concurrent jurisdiction is exercising its authority.” Counsel interprets this sentence as applying to solely to sentence number one (involving custody of Yaqui children living off reservation). This interpretation makes sense because the state court would have concurrent jurisdiction over Yaqui children living off the reservation, and because the sentence order indicates that sentence two is a qualifier to sentence one. Also, please note that even if sentence two does apply to sentence three, there is no other court currently exercising jurisdiction over the adoption of Clara Miranda.

This Court also asked counsel to address whether the exhaustion principle set forth in *National Farmers Union Insurance Companies v. Crow Tribe of Indians*³ applies in the instant case. The court in *National* ruled that a party cannot challenge a tribal court’s assertion of jurisdiction until exhausting the

² But see the definition of custody which could encompass adoption. 2 P.Y.T.C. Definitions.

³ 471 U.S. 845 (1985). See also *Iowa Mutual Insurance Company v. LaPlante*, 480 U.S. 9 (1986).

Tribal Court remedies (i.e. review of the trial court's decision by the Tribe's appellate court). **National** does not apply here for two reasons. First, there will be exhaustion once this court issues its ruling. And second, no party to this case has challenged jurisdiction.

B. OTHER COURTS HAVE FOUND JURISDICTION IN SIMILAR SITUATIONS.

In his initial brief, appellant cited three cases dealing with Tribal Court jurisdiction over child custody proceedings.⁴

There are no reported cases dealing directly with adoption of a non-Indian child. However, there is a U.S. Supreme Court case addressing jurisdiction when the child and the parties are Indians. **Fisher v. District Court**.⁵ In **Fisher**, a Tribal Court granted temporary custody of an Indian child to Indian foster parents. The foster parents subsequently filed for adoption in Montana District Court. The Indian mother of the child filed a motion to dismiss for lack of jurisdiction. The U.S. Supreme Court held that the “[s]ince the adoption proceeding is appropriately characterized as litigation arising on the Indian reservation, the jurisdiction of the Tribal Court is exclusive.” *Id.* at 389. The court did not address whether the Tribal Court would have had jurisdiction if the child had been non-Indian. However, the court did state that exclusive jurisdiction of the Tribal Court derived “from the quasi-sovereign status” of the Tribe. *Id.* at 390.

⁴ **Byzewski v. Byzewski**, 429 N.W.2d 394 (N.D. 1988); **Harris v. Young**, 473 N.W.2d 141 (S.D. 1991); and, **LaBeau v. Dakota**, 815 F.Supp. 1074 (W.D.Mich. 1993).

⁵ 424 U.S. 382, (1976).

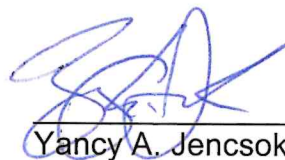
CONCLUSION

Based on the above, Appellant contends that the Pascua Yaqui Tribal Court does have jurisdiction over the adoption of a non-Indian child who resides on the reservation. The Pascua Yaqui Tribal Code grants personal jurisdiction over non-Indians on the reservation. The Code provides for subject matter jurisdiction over the custody of children when they reside on the reservation. And most importantly, the Pascua Yaqui Juvenile Code provides for jurisdiction over adoptions without making a distinction between Indian and non-Indian children.

The one section of the Juvenile Code which brings jurisdiction over non-Indian children into question is §2.1(C). Appellant contends that that section does not apply to adoptions for two reasons. First, the section mentions custody only. It does not specifically mention adoption. And second, such an interpretation would conflict with the clear meaning of §2.1(A) of the Juvenile Code which specifically addresses jurisdiction in adoption cases.

If the Court finds that §2.1(C) is controlling, appellant requests that this case be remanded for a determination of the best interests of the child as no such determination was made by the trial court.

RESPECTFULLY SUBMITTED this 9th day of May, 2003.



Yancy A. Jencsok
Attorney for Appellant

Copy of the foregoing mailed this 9th day of May, 2003, to:

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Leandro Coronado
7609 S. Vatgue
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by 

IN THE APPELLATE COURT OF THE YAQUI NATION

YAQUI TRIBAL COURT
TO DATE AND TIME

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION 23 PM 3:33

DOCKET NO. CA-03-001
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IN THE MATTER OF:)
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Miranda, Clara)
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DOB 08/23/85)
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(a minor))
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No. CA-03-001

PRELIMINARY ORDER

On April 23, 2003, the Appellate Court received oral argument from Counsel for Leandro Coronado, stepfather of Clara Miranda.

Counsel has agreed to submit supplemental briefing by May 9, 2003. This Court also respectfully requests a brief by May 9, 2003, from the Tribe, through the Office of Attorney General, to provide its position on the issues presented, specifically whether the tribal court has jurisdiction over an adoption by a Yaqui member of a non-member juvenile residing within Pascua Yaqui territory.

Upon submission of the brief or briefs, the Court will determine whether additional hearings will be necessary or whether the Court will proceed to rule upon the pleadings.

[Signature]

Chief Justice

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PASCUA YAQUI TRIBAL COURT
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IN THE APPELLATE COURT OF THE YAQUI NATION

IN THE MATTER OF:)
) No. CA-03-001
Miranda, Clara)
D.O.B. 08/23/85) **APPELLANT'S BRIEF**
(a minor child))
_____)

JURISDICTION

Appellant filed a timely appeal of a Pascua Yaqui Tribal Court Order. The appellate court has jurisdiction pursuant to 11 P.Y.T.C. § 1.12.

STATEMENT OF FACTS

Appellant wishes to adopt his seventeen-year-old stepdaughter, Clara Miranda. Clara's biological mother is Griselda Coronado, Appellant's wife.

Appellant, Griselda Coronado, and Clara Miranda have lived together on the reservation for the last several years. Appellant is an enrolled member of the Pascua Yaqui Tribe. Clara Miranda is not a member of any tribe.

In April 2002, Appellant attempted to file a Petition for Adoption with the Pascua Yaqui Tribal Court. The Petition was rejected and returned to Appellant. No written order was issued.

In December 2002, with the help of Counsel, Appellant filed the same Petition for Adoption. The Court accepted the Petition and then issued a written order declining jurisdiction over the adoption of a non-Indian child.

FINDINGS/CONCLUSION APPEALED FROM

Appellant appeals from the Order of the Pascua Yaqui Tribal Court issued on January 2, 2003. That Order declined jurisdiction over the adoption of Clara Miranda. The reason given was that the court did not have jurisdiction over the adoption of a non-Indian child. Appellant believes that this ruling is in error.

ARGUMENT

- A. THE PASCUA YAQUI TRIBAL CODE ALLOWS THE COURT TO ASSERT JURISDICTION OVER THE ADOPTION OF NON-INDIAN CHILDREN.

The adoption statutes of the Pascua Yaqui Tribe are found within the Juvenile Code. The statute which controls jurisdiction is 2 P.Y.T.C. § 2.1. That section gives the Tribal Court “jurisdiction over non-Pascua Yaqui child custody matters arising within the boundaries of Pascua Yaqui Indian country when the best interests of the juvenile require.” (A “custody matter” is one that addresses the “right to have physical possession of the juvenile,” the “right and duty to protect, train and discipline the juvenile,” and the “responsibility to provide the juvenile with food, shelter, education and ordinary medical care, and the authority to consent to surgery or extraordinary care in an emergency.” 2 P.Y.T.C. Definitions. Adoption fits within this definition “custody matter.”)

The trial court indicated in its order that jurisdiction over non-Indian children is exercised only in emergencies pending transfer to state court. This may be a policy of the trial court, but the statute does not require it. Therefore, the trial court should have asserted jurisdiction over Clara's adoption.

B. OTHER COURTS HAVE FOUND JURISDICTION IN SIMILAR SITUATIONS.

With regards to custody matters, several courts have held that tribal courts have jurisdiction over non-Indians. In *Byzewski v. Byzewski*,¹ the state court ruled that it lacked jurisdiction over custody and support matters in a divorce action brought by an off-reservation, non-Indian husband against his reservation wife. The court held that tribal court had exclusive jurisdiction. (The opinion contains no indication of the enrollment status of the children.)

Harris v. Young,² also involved divorce litigation. One spouse was an Indian living on a reservation. The other was a non-Indian living off the reservation. The child of the parties was not an enrolled member of the tribe and it was unclear whether the child was eligible to become enrolled. The court held that the state court and tribal court had concurrent jurisdiction.

Finally, a Federal District Court case dealt with a non-Indian grandmother objecting to the custodial placement of her non-Indian grandson by a tribal court. The grandson was not eligible for enrollment in the tribe. The court stated that the grandmother "voluntarily submitted to the jurisdiction of the Tribal Court until it took an action of which she disapproved. In submitting to the court's jurisdiction

¹ 429 N.W.2d 394 (N.D. 1988).

² 473 N.W.2d 141 (S.D. 1991).

on the issue of custody in the past, she has waived any objection she may now have to the jurisdiction of the Tribal Court. *LaBeau v. Dakota*.³

The above cases show that other courts have wrestled with similar jurisdictional issues to the one presented in the present case. Those courts took a more expansive view of jurisdiction than did the trial court here. Appellant feels that the court should take an equally expansive view of jurisdiction rather than restricting the application of its own laws. The trial court should not issue rulings that unnecessarily limit the jurisdiction of the Tribal Court.

CONCLUSION

The Pascua Yaqui Tribal Code allows the court to assert jurisdiction over the adoption of a non-Indian child when the child lives on the reservation and it is in the best interests of the child. Those are the circumstances in this case.

Other courts have asserted jurisdiction in situations similar to the one in this case.

The court should remand this case to the trial court with instructions to accept jurisdiction over the adoption of Clara Miranda.

RESPECTFULLY SUBMITTED this 14th day of February, 2003.



Yancy A. Jencsok
Attorney for Appellant

³ 815 F.Supp. 1074 (W.D.Mich. 1993).

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PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

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DOCKET NO. CA-03-001

CLERK [Signature]

IN THE APPELLATE COURT OF THE YAQUI NATION

IN THE MATTER OF:)
)
Miranda, Clara) No. CV-03-032
D.O.B. 08/23/85)
(a minor child)) NOTICE OF APPEAL
_____)

1. Notice is hereby given that Appellant, Leandro Coronado, appeals to the Appellate Court of the Yaqui Nation from the judgment entered in this action by the Pascua Yaqui Tribal Court on the 2nd day of January, 2003.

2. Appellant believes that the trial court's refusal to assert jurisdiction over the adoption of a non-enrolled child who resides within the boundaries of the reservation is incorrect.

2. The Appellant requests a one-Justice appellate proceeding.

3. The Appellant requests oral arguments.

Respectfully submitted this 14th day of January, 2003.

Yancy A. Jencsok
Attorney for Appellant

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IN THE PASCUA YAQUI TRIBAL COURT
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

IN THE MATTER OF;)
) No. CV-03-032
)
Miranda Clara)
)
D.O.B. 08/23/85)
)
(a minor child/ren)) **ORDER**
_____)

The petitioner filed a Petition For Adoption in the above matter.

The Court finds that the Court lacks jurisdiction to hear this matter as the minor is not an enrolled member of the Pascua Yaqui Tribe and in that the Court cannot obtain jurisdiction under 2 P.Y. T. C. Section 2.1, Subsection C of the Pascua Yaqui Juvenile Code as this section pertains only to children who are in need of protection because of some form of abuse and who are not enrolled members of the Pascua Yaqui Tribe and who reside within the exterior boundaries of the Pascua Yaqui Indian Reservation and is used in emergencies involving these children pending transfer to state court; that the petitioner will have to file in state court for adoption of the child.

IT IS ORDERED that the Court does not accept the petition for adoption as the Court lacks jurisdiction in this matter due to the enrollment status of the minor.

SO ORDERED THIS 2nd DAY OF January, 2003.

Cornelia P. Cruz

Judge, Pascua Yaqui Tribal Court

Cc:
Date: 1-10-03
 Plaintiff/Petitioner Defendant/Respondent Other
am

Clerk