

into temporary custody. J.C., an enrolled member of the Pascua Yaqui Tribe, is named as the father in the Arizona dependency petition. On September 2, 2004, the Pascua Yaqui Tribe filed a Motion to Intervene in the Arizona case under the ICWA, 25 U.S.C. § 1911(c), by alleging J.C. as the father. Pursuant to 25 U.S.C. § 1911(b) the Pascua Yaqui Tribe also filed a Motion to Transfer jurisdiction to the Pascua Yaqui Juvenile Court. On September 16, 2004, the Arizona superior court ordered transfer of the case to the Pascua Yaqui Juvenile Court. On August 25, 2004 the Pascua Yaqui Juvenile Court had also signed an Order Exercising Jurisdiction And Accepting Transfer From State Court.

On May 17, 2005, the Pascua Yaqui Tribe (Tribe) filed a “Dependency Petition” in the Pascua Yaqui Juvenile Court, requesting that Pascua Yaqui social services assume guardianship of the child. By this time the child was placed with J.C.’s mother. J.C. was incarcerated, and the mother's last known address was in Prescott, Arizona. On June 3, 2005, the Juvenile Court assumed jurisdiction over the “Dependency Petition” and declared the child a ward of the court. The Court established its jurisdiction after finding that “the father and the minor are enrolled members of the Pascua Yaqui Tribe.” *In the matter of T.C.*, No. CW-04-019 (Pascua Yaqui Juv. Ct., Order of June 3, 2005). A hearing was held on July 29, 2005 where the “mother appeared telephonically” and the “father . . . failed to appear.” Order (July 29, 2005). The Court retained jurisdiction of the case and set an initial hearing for the father on September 15, 2005.

On September 15, 2005, J.C. appeared for his initial hearing and the mother did not appear. The Juvenile Court refused to proceed in the absence of the mother but did make a finding that paternity has not been established and set a paternity hearing for October 6, 2005. Order (Sept. 15, 2005). At the October 6, 2005 hearing, J.C. appeared but the mother did not appear because she could not be located. The Juvenile Court again refused to proceed with the paternity hearing by stating that because this is an ICWA case, the mother’s presence is required in court. Trans. at 2 (Oct. 6, 2005). The Tribe asked to proceed with the hearing without the mother present by arguing that J.C. is listed on the

child's birth certificate as the father, the state court had treated J.C. as the father, and in earlier proceedings, the Pascua Yaqui Juvenile Court had also treated J.C. as the father, the Tribe's enrollment office had verified the child for enrollment, and neither mother nor J.C. had disputed that J.C. is the father. The juvenile court judge continued to insist on the mother's presence in court. Trans. at 1, 2 (Oct. 6, 2005). J.C. then offered to "do a DNA test or something to establish paternity," but the Juvenile Court said the mother would need to do the test also. Trans. at 3. The Juvenile Court then entered an order refusing to proceed with the paternity hearing because the mother was not in court. Order (Oct. 6, 2005). The Tribe appealed the October 6, 2005 Order on October 19, 2005.

II

We review the Juvenile Court's October 6, 2005 order refusing to hold the paternity hearing without the mother present using an abuse of discretion standard. The Juvenile Court has broad discretion over the conduct of its hearings and we will reverse a discretionary ruling only for an abuse of discretion. A trial court abuses its discretion when the reasons for "its action are clearly untenable, legally incorrect, or amount to a denial of justice." *State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983). Furthermore, "a discretionary act which reaches an end or purpose not justified by, and clearly against, reason and evidence" amounts to an abuse of discretion. *Id.*

There is no law in the Pascua Yaqui Tribal Code that requires mother and alleged father to be present at a paternity hearing for a child born out of wedlock. In Arizona, where this case originated, paternity can be established by means other than court proceedings. *Stephenson v. Nastro*, 192 Ariz. 475, 967 P.2d 616 (Ariz. Ct. App. Div. I, 1998). A birth certificate "signed by the mother and father of a child born out of wedlock" creates a presumption that the male listed on the birth certificate is the father. A.R.S. § 25-814(A)(3) (2006). Apparently, because J.C. is listed as the father on the child's birth certificate, the Arizona court treated him as such. The Tribe submits that according to Arizona law the father has to acknowledge paternity before his name is listed on the birth certificate.

Likewise, we believe that a man's written acknowledgment of paternity should have probative value. We now establish the rule that a man's written acknowledgment of paternity creates a presumption that he is the father of a child born out of wedlock. A man who denies paternity ordinarily would not voluntarily sign a statement claiming to be a child's father. This presumption can be overcome with clear evidence that the man claiming to be the father is not the father or that another man is the father.

The Juvenile Court refused to hear the paternity action solely because the mother was not present, but this fact alone should not have been determinative when substantial relevant evidence bearing on paternity existed in the court's own record. The Arizona Department of Economic Security and the Maricopa County Superior Court, State of Arizona, recognized J.C. as the child's father and supported transfer of the case to the Pascua Yaqui Juvenile Court who accepted transfer of the case. It is at the time of transfer the issue of paternity should be raised. Otherwise a case is left in a legal quandary especially in cases, such as this, when transfer is based on the father's membership with the Tribe.

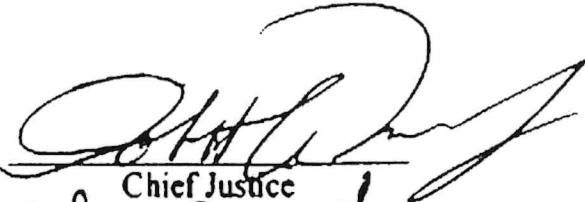
According to the Tribe, neither the mother nor J.C. objected to claims in either the state court or the Juvenile Court that J.C. is the child's father. The Tribe contends that the child is now enrolled in the Pascua Yaqui Tribe. Up to the time when the Juvenile Court raised the issue of J.C.'s paternity *sua sponte* (Order dated Sept. 15, 2005), everyone involved (the court, mother, J.C., social services, and J.C.'s mother) treated J.C. as the child's father. The Pascua Yaqui Juvenile Court orders dated April 11, 2005, June 3, 2005, and July 29, 2005 refer to J. C. as the child's father.

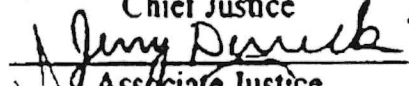
The record shows that sufficient relevant evidence bearing on paternity existed in the records of the Pascua Yaqui courts which should have allowed the Juvenile Court to proceed with the paternity hearing even though the mother was absent. In addition, J.C. offered to establish paternity through DNA testing or by other means. The Juvenile Court should have let him testify on the paternity issue. Moreover, the Juvenile Court's statement that the ICWA requires the presence of the mother at a hearing to establish paternity is legally

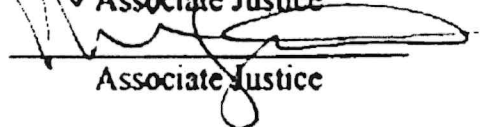
incorrect because the ICWA does not contain such a provision. Trans. at 2 (Oct. 6, 2005). Furthermore, once an ICWA case is transferred from state court to tribal court, the tribe is not restricted by the ICWA and is free to use its own laws to adjudicate the case, unless of course the Tribe adopts ICWA. The Juvenile Court's refusal to hear the paternity action without the mother present, in spite of the existence of ample, relevant evidence bearing on paternity, is an abuse of discretion. The Juvenile Court's decision is clearly against reason and evidence, legally incorrect, and a denial of justice.

Accordingly, we reverse the October 6, 2005 Order of the Pascua Yaqui Juvenile Court and remand for a paternity hearing to determine whether J.C. is the child's father.

Filed this 9 day of March, 2007.



Chief Justice


Associate Justice


Associate Justice

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PASCUA YAQUI TRIBAL COURT
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DOCKET NO. CA-06-001
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IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

In the Matter of :)	Case No. CA-06-001
)	
T. M. CORONADO)	MOTION TO SUPPLEMENT
)	THE RECORD ON APPEAL
A person under 18 years of age.)	
)	(Appeal from CW-04-019)
PASCUA YAQUI TRIBE,)	
)	
Appellant.)	
)	
v.)	
)	
THE HONORABLE CORNELIA))	
CRUZ, JUDGE OF THE)	
PASCUA YAQUI JUVENILE)	
COURT,)	
)	
Appellee.)	
_____)	

The Pascua Yaqui Tribe, by and through its attorney, Tamara R. Walters, Assistant Attorney General of the Pascua Yaqui Tribe, hereby brings this Motion to Supplement the Record on Appeal for the following reasons.

PYTC, Title 11, Appellate Procedure, Section 1.19 provides that upon the completion of the transcript, if one has been produced, or within ten (10) calendar days of

the receipt of the Notice of Appeal, the Clerk of the Court of Appeals is to convene a meeting with the Appellant and Appellee to determine whether the appropriate documentation and evidence is contained within the record. Upon inclusion of appropriate documents and evidence, the Clerk shall certify the record complete and shall forward the record to the Court of Appeals. Thereafter, nothing may be added to the record. Upon information and belief, a meeting to determine what documentation and evidence should be contained in the record did not take place, nor was there a certification that the record was complete and forwarded to the Court of Appeals. If in fact the record was completed and forwarded to the Court of Appeals, Appellant requests that it be supplemented if the documents requested below were not included.

Appellant is filing its Brief on Appeal this date so it is timely filed. Appellant has referenced in the Brief, as well as attached as Exhibits, various Pleadings and Minute Entries that were filed in the Tribal Court File that are necessary to present and decide the issue presented on appeal. It is therefore requested that the Record on Appeal contain all of the Pleadings and Minute Entries from both the Superior Court File (JD-505197) that was transferred to Tribal Court as well as the Tribal Court File (CW-04-019). In addition, Appellant requested a copy of the October 6, 2005 hearing, from which decision of the Court the appeal was taken, and is requesting that the transcript of that proceeding, which is attached hereto, also be included in the Record on Appeal if it hasn't already been submitted.

This Motion is being made in good faith and in the interest of a just resolution of this matter.

RESPECTFULLY SUBMITTED this 9th day of November, 2005.

OFFICE OF THE ATTORNEY GENERAL
PASCUA YAQUI TRIBE



TAMARA R. WALTERS
Assistant Attorney General
Attorney for the Tribe

Original and four copies of Appellant's Motion
to Supplement the Record on Appeal
filed with The Pascua Yaqui Tribe
Court of Appeals on November 9, 2005

By: 

Copy of Appellant's Motion to Supplement
Record on Appeal hand delivered to:

The Honorable Cornelia Cruz
Chief Judge
Pascua Yaqui Tribe Juvenile Court
Appellee

Micah Schmit
Chief Prosecutor/Presenting Juvenile Officer
Pascua Yaqui Tribe Prosecutor's Office

BY: 

PASCUA YAQUI TRIBAL COURT
OCTOBER 6, 2005

In the matter of: CORONADO, TRINITY
 CW-04-019
JUDGE: Cornelia V. Cruz
TRIBE: Nikki DiCampli
SOCIAL SERVICES Julia Chavez
ALLEDGED FATHER Joseph Coronado
Clerk
Bailiff

Judge: The Pascua Yaqui Tribal Court, I'm sorry, the Pascua Yaqui Juvenile Court is now in session. In the matter of Trinity Coronado, docket number, CW-04-019. Julia Chavez appears for the Social Services Department, Nikki DeCampli appears for the Tribe and the father is present with, putative father without legal counsel. This the date and time set for paternity hearing and initial hearing if paternity is established and where is the mother?

Tribe: Your honor we have no idea where the mom is? I was looking at my notes, the last interaction I've had with her was she appeared telephonically on the 29th of July uhm but caseworker has been looking for her. The address we had for her was with her mom. I think you spoke with the mom and she hasn't seen her in quite a while.

SS: Right.

Tribe: Uhm, since the report was submitted I, in talking to the case worker, I understand she has been going to RTC for her, for her drug testing and the last test she did was on September 29. I've asked the caseworker to insure that RTC tries to get an address from her next time she shows up. We have no idea where she is at.

Judge: Okay, we need to established paternity in this matter

Tribe: Your honor, the Tribes position is that Mr. Coronado is in fact the father. His name is on the birth certificate and has been treated as the father in state court. When both parents were there as well as the tribal court treated him in the very beginning of this case as if he is the father.

Judge: Let me take a brief recess and, and let me research this and then I will be back.

Tribe: Okay, thank you Judge.

Bailiff: All rise

Judge: Court is back in session in the matter of Trinity Coronado. At this time it looks like the court cannot proceed with matter without the parent being present. We do need the other parent to be present in order to give her an opportunity to contest whether the alleged father is the father.

Tribe: Your honor if you don't find an issue that we have jurisdiction, cause jurisdiction is based on Mr. Cordova, and we don't have a right to...

Judge: Mr. Cordova?

Tribe: I'm sorry, I apologize, on this gentleman as Trinity's father. We took jurisdiction based on him being her father. If we don't recognize him as the father, we don't have jurisdiction over Trinity.

Judge: And that's the issue that your going to have to, your office is going to have to address.

Tribe: It might be a transfer back to state court.

Judge: Exactly

Tribe: Okay

Judge: With that information that you have given me, that now we may lose jurisdiction.

Tribe: All right as long as you understand the Tribes position was that he is fact the father...he is on the birth certificate...

Judge: I understand that...

Tribe: Okay

Judge: ...but, but I asked the other judge and it's an ICWA case and the mother has to be present.

Tribe: To establish paternity for you.

Judge: In order for paternity to be established.

J.C. Your honor...

Tribe: The Court will not accept his name on the birth certificate as satisfactory?

Judge: No, it...

Tribe: Okay

Judge: It has to be the way we discussed that last time it has to be done through a, a court, and it has never been done before.

Tribe: And the court will not accept an at all you said last week without the mother being here.

Judge: Exactly

Tribe: Okay

J.C. Your honor?

Judge: Yes, Mr. Coronado?

J.C. Could we just do a DNA test or something to establish paternity?

Judge: We can however uhm.. we still need the mother to do that.

Tribe: Well the problem I see, your honor, and I understand your position and I don't mean to be disrespectful, I'm just articulating what our problem is. This is only an ICWA case because of the father...

Judge: Right

Tribe: We may immediately have to transfer this case back to state court because we don't even have jurisdiction in this matter, the child welfare case matter.

Judge: Mmmh Mmh

Tribe: As to the father,

Judge: Exactly.

Tribe: And so I don't think we can order anyone to do a DNA test or, or, or...

Judge: Right

Tribe: ...or do anything. I do want to make my record though is that enrollment has accepted her, they have approved her, she just has not appeared on the council list for approval, but they also accept that, he is in fact her father and were ready to enroll her.

Judge: I guess enrollment has a different criteria than...

Tribe: Okay

Judge: than the Court has...

Tribe: All right.

Judge: And you will need to move on this as soon as possible then.

Tribe: Thank you Judge

Judge: At this time we cannot hold the hearing. We will however, based on what the Tribe is going to do now with the information they have just given the Court we don't know if further proceedings will take place in this jurisdiction or in another jurisdiction, but at this time we can not proceed without the mother. Okay.

J.C. Okay

Tribe: Your honor do you want to set a status conference just to let the, the...I can tell the court what is happening.

Judge: Yes, sure.

Tribe: Maybe a couple of weeks, that works.

Judge: See the other thing is maybe if enrollment had passed the child as, had passed the resolution enrolling the child we would probably, would retain jurisdiction, but that hasn't been done, so that also leaves the child in limbo.

Tribe: Well let me ask the Court then, if she makes it on the next months approval list and they approve her enrollment and I come back to the Court and say" Here's her enrollment number" would you accept that as paternity having been established?

Judge: No, not as paternity having been established but...

Tribe: Jurisdiction

Judge: Jurisdiction

Tribe: Okay

Judge: But not as paternity we still need the parent to be here.

Tribe: That's kind of a strange conunderment because her enrollment is based on his enrollment. So you would accept her enrollment, but not that he's the father?

Judge: But because we accept jurisdiction over the child, because the law and order code

...

Tribe: Native American...

Judge: allows us to accept jurisdiction over any child.

Tribe: Okay

Judge: Within the jurisdiction of this either pending transferring to the state or remaining here.

Tribe: All right. Thank you Judge.

Judge: Okay, let me have a hearing date

Clerk: October 21, 2005 at 10:30 in the morning.

Judge: At this time we will hold a status hearing on October 21, 2005 at 10:30 in the morning. I don't know Ms. Uhm...

Tribe: We will try to find here your honor.

Judge: The mother, that's what I was trying to get at uhm and that would speed up things really quick if the mother was present.

Tribe: If I, if I, if I get information, that gives court jurisdiction I will vacate the hearing and file a motion.

Judge: Okay, that will be fine.

Tribe: Okay

Judge: Court is adjourned

Tribe: Thank you Judge.

Bailiff: All rise.

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PASCUA YAQUI TRIBAL COURT
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DOCKET NO. CA 06-001
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IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

In the Matter of :)
)
 T. M. CORONADO)
)
 A person under 18 years of age.)
)
 PASCUA YAQUI TRIBE,)
)
 Appellant.)
)
 v.)
)
 THE HONORABLE CORNELIA)
 CRUZ, JUDGE OF THE)
 PASCUA YAQUI JUVENILE)
 COURT,)
)
 Appellee.)
 _____)

Case No. CA-06-001
 APPELLANT'S BRIEF ON
 APPEAL
 (Appeal from CW-04-019)

I. ISSUE ON APPEAL.

The Pascua Yaqui Tribe, by and through its attorney, Tamara R. Walters, Assistant Attorney General of the Pascua Yaqui Tribe, hereby brings this appeal contesting the Order of the Trial Court made October 6, 2005 (Exhibit A) that in the dependency case the mother had to be present in court in order to establish paternity, and without the

mother being present, Joe Coronado would not be recognized as the child's father or be permitted to participate in the dependency case even though he is named on the child's birth certificate as the father, the mother appeared in court and did not deny that Joe Coronado was the child's father, the father appeared in court and acknowledged that he was the child's father and offered to take a blood test, the Tribe's Enrollment Department enrolled the child as a member of the Tribe through the father because his name is on the birth certificate, and the State Court recognized Joe Coronado as the father because he is on the birth certificate and ordered that the Indian Child Welfare Act applied.

II. JURISDICTION

This Court of Appeals has jurisdiction to hear all appeals from any Order of the Trial Court, and nothing shall limit the power of the Court of Appeals to review an Order of the Trial Court. Court of Appeals Procedures, Section 1.12(A) and (B). An "Order" shall mean any decision, judgment, decree, or ruling of the Trial Court. Section 1.10. Furthermore, the Tribal Court of Appeals shall have exclusive appellate jurisdiction to construe the meaning of Tribal laws. PYTC, Title 20, Civil Actions, Section 101(J). The issue brought before the Court of Appeals not only effects this case, but this Court's decision will impact other matters before the Trial Court where paternity is at issue.

III. FACTS OF THE CASE AND THE LAW APPLIED.

Dependency Petition No. JD-505197 (Exhibit B) was filed in the Superior Court, State of Arizona, County of Maricopa, on August 24, 2004 in regards to the minor child T. M. Coronado. Monique Pratt was named as the mother and Joe Coronado was named as the father (See pages 2, 3.) The Arizona Department of Economic Security (ADES) alleged that Joe Coronado has established his paternity of T. M. Coronado (See page 4,

lines 6 and 7.) John Doe was also alleged to be a possible father. John Doe is alleged as a father whenever the identity and whereabouts of the father is unknown; whenever paternity is in question or has not been established by marriage, birth certificate or a court order; or when there are multiple alleged fathers. (See page 4, lines 17 – 23.) However, in this case, Joe Coronado’s name is on the birth certificate, his identity and whereabouts are known, paternity is not in question, and no other father has been alleged by the mother.

Furthermore, ADES alleges it is entitled to incorporate a paternity action pursuant to A.R.S. Sections 25-801 through 25-817, as the child was born out of wedlock, because the mother alleges that during the time period of conception she had sexual intercourse with Joe Coronado and that he is the biological father of T. M. Coronado. (See page 5, lines 1 – 6.)

In the State of Arizona, if a mother and father who are not married to each other at the time of birth and were not married to each other in the ten months before the birth voluntarily acknowledge paternity pursuant to A.R.S. Section 25-812, the name of the father acknowledging paternity shall be stated on the birth certificate. A.R.S. Sec. 36-334(C)(2). A.R.S. Sec. 25-812(A)(1) provides that a parent of a child born out of wedlock may voluntarily acknowledge paternity by filing with the clerk of the superior court, the department of economic security or the department of health services a notarized or witnessed statement(s) signed by both parents acknowledging paternity, to establish paternity. This voluntary acknowledgment of paternity is a determination of paternity and has the same force and effect as a superior court judgment. A.R.S. Sec. 25-812(B) and (D). The voluntary acknowledgment forms must be signed by the parents

before the father's name can be put on the birth certificate. This can be done at the hospital where the child is born. It can therefore be presumed that if the father's name is on the birth certificate that both parents have signed an acknowledgment of paternity and paternity is therefore established without an order of the court. Because Joe Coronado is named on T. M. Coronado's birth certificate, Joe Coronado has established paternity.

A man is presumed to be the father of the child if a birth certificate is signed by the mother and father of a child born out of wedlock. This statutory presumption of paternity can be rebutted by clear and convincing evidence. A.R.S. Sec. 25-814(A)(3) and (C). A birth certificate is prima facie evidence of the facts therein stated, but if an alleged father of a child is not the husband of the mother, the certificate shall not be prima facie evidence of paternity if that fact is controverted by the alleged father. A.R.S. Sec. 12-2264. Neither parent has controverted Joe Coronado's parentage of T. M. Coronado. He is presumed by law to be her father.

The law provides an easier way to establish parentage by filing a paternity petition. A default order of paternity shall immediately be entered if the father fails to appear or answer, or admits parentage. A.R.S. Sec. 25-806(D). Joe Coronado has admitted in open court that he is the father of T. M.

The Indian Child Welfare Act provides that in any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian child's tribe shall have a right to intervene. 25 U.S.C. Sec. 1911(c). The Act defines an "Indian child" as any unmarried person who is under age eighteen and is either a) a member of an Indian tribe or b) is eligible for membership in an Indian tribe, and is the biological child of a member of an Indian tribe. 25 U.S.C. Sec. 1930(4). "Parent" is

defined as any biological parent or parents of an Indian child. It does not include the unwed father where paternity has not been acknowledged or established. 25 U.S.C. Sec. 1903(9). ICWA does not require the father to file a paternity action or formally seek legal custody to be recognized as a parent. Sufficient evidence to support a finding that the child is an Indian child and the father is the parent can be a verbal acknowledgment of paternity, enrolling the child in the father's tribe, and being named on the birth certificate. *In the matter of Michael J.*, 198 Ariz. 154, 7 P. 3d 960, 325 Ariz.Adv.Rep. 40 (Ariz.App. 2000), (Exhibit C), *Coconino County Juv. Action No. J-10175*, 153 Ariz. 346, 350, 736 P.2d 829, 833 (App. 1987), (Exhibit D).

Pursuant to the Indian Child Welfare Act, 25 U.S.C. Sec. 1911(b) and (c), Article II and Article VIII, Sec. 2 of the Pascua Yaqui Constitution, the Pascua Yaqui Juvenile Code Sec. 2.1(A)(1), and The Pascua Yaqui Tribe Child Welfare Policy Act of 2002, (all of which recognize the Tribe's intent to invoke the provisions of ICWA in state court proceedings), a Motion to Intervene (Exhibit E) and Petition to Transfer Proceedings to State Court (Exhibit F) were filed in the Superior Court on September 2, 2004. The Honorable Cornelia Cruz had on August 24, 2004 signed an Order Exercising Jurisdiction and Accepting Transfer from State Court.

A hearing was held in the Superior Court matter on September 1, 2004. Both parents were present and represented by counsel. The Tribe's Motion to Intervene and Petition to Transfer to Tribal Court were granted. It was stated in the Motions, as well as in open court, that the basis for the Tribe's intervention and jurisdiction was because the father of T. M. was an enrolled member of the tribe and the child was eligible for enrollment through the father. The father's name was on the birth certificate. Neither

parent questioned or contested Joe Coronado's paternity of his daughter. (See 9/1/04 Minute Entry, Exhibit G).

On May 17, 2005, the Juvenile Presenting Officer filed a Dependency Petition No. CW-04-019 in Tribal Court, alleging that Joe Coronado was the father of the child and that he had established paternity. (Exhibit H, Page 1 and 2.) A John Doe was not named as a possible father. On June 3, 2005, the mother appeared for an Initial Hearing. The Court found that it had jurisdiction over the matter in that the father and minor are enrolled members of the Pascua Yaqui Tribe. The mother entered an admission to allegations in the Dependency Petition, never denying the allegation that Joe Coronado was T. M.'s father. In fact, the mother was asked to try to locate the father and "the mother states that the father can be served at his mother's home as he keeps in contact with his mother." The mother was not asked by the Court to establish paternity. (Exhibit I, Minute Entry dated June 3, 2005.) The mother appeared via telephone for the next two hearings on July 1, 2005 and July 29, 2005. Discussions were held regarding the father's current address for service on the father for his Initial Hearing and placement of the child with the paternal grandmother. Once again the mother did not contest paternity nor did the Court ask her to establish paternity. (Exhibit J, Minute Entry dated July 1, 2005. Exhibit K, Minute Entry dated July 29, 2005.)

On September 15, 2005, the father appeared for his Initial Hearing. At this point the case had been in the Tribal Court for one year and Joe Coronado had been recognized as the father to T. M. by everyone involved with the case because paternity had been established by birth certificate. However, the Court *sua sponte* questioned paternity. The Court found that "it appears that paternity has not been established in this matter as the

putative father states that he has never appeared before any Court to establish paternity for this child nor for his other children and states he wants to proceed to establishing paternity today ... that the mother has to be present in order for the Court to establish paternity and that to his knowledge paternity has not been established; that the Tribe states that the putative father has always been treated as the father in all hearings and that his name is on the birth certificate; that the Court will not proceed with the Initial hearing today as paternity has be established first and the Court will set a hearing date for the paternity and if paternity is established, then this matter will proceed to the Initial hearing ...” (Exhibit L, Minute Entry dated September 15, 2005.)

IV. SPECIFIC FINDINGS AND CONCLUSIONS OF LAW APPELLANT CONSIDERS TO BE IN ERROR.

On October 6, 2005, this matter came before the Court for paternity and Initial hearing. The father was present. The mother was not present, however it appears that she was not served or provided notice of the hearing even though she was required to be present to give testimony. Her whereabouts were now unknown. The hearing proceeded as follows, “The Court informs the parties that in order for paternity to be established the mother has to be present; that the Tribe informs the Court that they wish for the record to show that the father’s name appears on the birth certificate and that the enrollment department has accepted the child for enrollment, and the Tribe further informs the Court that child is eligible for enrollment through the father as he is the Tribal member and that without the paternity being established this matter will have to be transferred back to the state ...” (Exhibit A, Minute Entry dated October 6, 2005.) The Court stated “At this time it looks like the court cannot proceed with matter without the parent being present. We do need the other parent to be present in order to give her an opportunity to contest

whether the alleged father is the father.” “I asked the other judge and it’s an ICWA case and the mother has to be present. . . . In order for paternity to be established.” The Court would not accept the birth certificate, the enrollment department’s criteria for enrollment with a birth certificate, an avowal of the father present in court, or order a DNA test.

Even if the child was to be enrolled through her father, the court would still not recognize Joe as the father without the mother being present. (See Transcript of October 6, 2005 proceeding, Exhibit M.)

V. REVIEW OF APPLICABLE LAW.

The Pascua Yaqui Tribal Code does not have any provision specifically addressing the establishment of paternity, let alone the evidence necessary to establish paternity.

The only provisions rendering assistance with this issue are as follows. In the definition section of the Juvenile Code, “parent” includes a natural or adoptive parent but does not include persons whose parental rights have been terminated nor does it include the unwed father whose paternity has not been acknowledged or established. (Like the Indian Child Welfare Act, the terms “acknowledged” and “established” are not defined. ICWA does not require a father to file a paternity action or formally seek legal custody to be recognized as a parent. Other evidence can be used by a parent, such as tribal enrollment, birth certificate, avowal or affidavit of one parent. (See Exhibits C and D.)

A “putative father” is any man not deemed or adjudicated by a court of competent jurisdiction to be the father of genetic origin of a juvenile who claims or is alleged to be the father of genetic origin of such juvenile. The Juvenile Code does not require that paternity be established before a named father can be recognized as the child’s father and participate in dependency proceedings. The only requirement is that the parents’ names,

residences and tribal affiliations be set forth on the petition. PYTC, Chapter 8, Section 8.1(C)(5).

All court rules and procedures not prescribed in the Pascua Yaqui Code shall be adopted in writing by the respective chief judge of the Trial and Appellate Courts in Rules of Court. Such rules and procedures shall not conflict with existing tribal law or the Constitution of the Pascua Yaqui tribe and shall be submitted to the Tribal Council for adoption. PYTC, Title 19, Judicial Ordinance, Section 500. There are no known written court rules or procedures addressing paternity.

In all civil cases the Tribal Court shall apply Pascua Yaqui law, including Yaqui traditions and customs. Where a matter is not addressed by Pascua Yaqui law, the Tribal Court shall apply the applicable laws and regulations of the United States, and may apply the laws of Arizona to the extent they do not conflict with the laws or policies of the Tribe. PYTC, Title 20, Civil Actions, Section 102(D). The Indian Child Welfare Act does not require a formal adjudication of paternity to be recognized as a parent in a dependency case. Federal law provides that paternity can be established by an order of the court or by parents signing voluntary acknowledgements of paternity on forms provided by the state. An unmarried father shall be named on the birth certificate of a child if the mother and father have signed a voluntary acknowledgment of paternity, or there has been an adjudication of paternity. 42 U.S.C. Sec. 666. As previously set forth in Section III. herein, Arizona law recognizes the father's name on the birth certificate to establish paternity.

To become a member of the Pascua Yaqui Tribe, it is only required that an enrollment application be completed and attached thereto an original state issued long

form birth certificate and/or an original baptismal certificate or any other equivalent church document identifying birth parents, or a notarized paternity statement (by the father) if the father is not named on the state issued birth certificate to establish paternity. The Tribal Council approved T. M.s application for membership based upon the Enrollment Department's recommendation that she be enrolled as a direct lineal descendant of her father, Joe Coronado, because he was named as her father on her birth certificate. The Trial Court would not recognize this fact as evidence of paternity.

The Tribal Council clearly intended to preserve and reunify Yaqui families when it enacted the Child Welfare Policy Act of 2002. PYTC, Title II, Chapter 5. The Act requires the Tribal Court to accept jurisdiction over State dependency cases and the Tribe's counsel to file petitions to transfer cases to Tribal Court where appropriate to protect Yaqui children and their families. In the Coronado case, the intent of the Tribal Council has been disregarded. Such a decision prevents transfer of cases to Tribal Court, prevents a parent from reunifying with their child in the Tribal Court and assists in severing parental rights in State court, and prevents placement of children with Yaqui paternal relatives.

Although the Juvenile Court has jurisdiction in all children's matters arising off the Pascua Yaqui Reservation which are referred to under the Indian Child Welfare Act (Title 2 Juvenile Code, Chapter 2, Section 2.1(A)(1)), once the case is transferred to Tribal Court, the proceedings are conducted under the laws of the Pascua Yaqui Tribe. The Tribal Court can enter its own orders regarding paternity in the dependency case using its own laws, such as the Court has already done in this case when it ordered a new Dependency Petition to be filed by the Tribe and started the case over from the

beginning. (See Exhibit N, Minute Entry dated April 11, 2005 as amended April 13, 2005.) The Tribal Code does not require that the mother be present in court in order for paternity to be established, nor does Federal or State law.

VI. CONCLUSION.


Many Yaqui couples who consider themselves to be “married” and have children from their relationships do not have formal marriage ceremonies or marriage licenses. Therefore, many Yaqui children are born out of wedlock. In a majority of the child welfare cases filed in both the State and Tribal Courts, the parents are not married to each other, they have not gotten an adjudication of paternity, they cannot afford the cost of a blood test (approximately \$550.00), and they cannot be located or choose not to come to court hearings. To require that paternity would have to be established by requiring both parents to be at a hearing at the same time to give testimony to establish paternity or request a blood test when both parents are named on the birth certificate and/or the Tribe has enrolled the child through the parent and/or the parents are acknowledging and not disputing paternity, is contrary to the best interest of the children and their families and contrary to the spirit of the Tribal Code and Yaqui tradition and culture.

There is sufficient evidence on the record to establish paternity of T. M. without requiring the mother’s presence. The mother has already appeared and either admitted Joe Coronado was the father or did not deny that he was the father. Joe Coronado is named as the father on the birth certificate. The Tribal Council has recognized Joe Coronado as the father of T. M. and has therefore made her a member of the Tribe. Joe Coronado has appeared in court and verbally acknowledged that he was the father of T. M. and that he wanted to establish paternity.

It is therefore requested that this Court overrule the decision of the Trial Court to not recognize Joe Coronado as the father of T. M. unless and until the mother appears in person to contest paternity, and to order that paternity can be acknowledged and established by means other than a formal adjudication of paternity with both parents present in court, such as with a birth certificate naming the father, tribal enrollment through the father, or other sufficient evidence on the record.

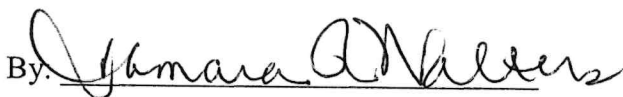
RESPECTFULLY SUBMITTED this 9th day of November, 2005.

OFFICE OF THE ATTORNEY GENERAL
PASCUA YAQUI TRIBE



TAMARA R. WALTERS
Assistant Attorney General
Attorney for the Tribe

Original and four copies of Appellant's Brief
on Appeal filed with The Pascua Yaqui Tribe
Court of Appeals on November 9, 2005

By: 

Copy of Appellant's Brief on Appeal hand
delivered to:

The Honorable Cornelia Cruz
Chief Judge
Pascua Yaqui Tribe Juvenile Court
Appellee

Micah Schmit
Chief Prosecutor/Presenting Juvenile Officer
Pascua Yaqui Tribe Prosecutor's Office

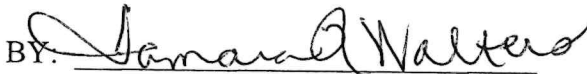
By: 

EXHIBIT A

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IN THE PASCUA YAQUI JUVENILE COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

IN THE MATTER OF;)
) NO. CW-04-019
Coronado Trinity)
D.O.B. 08/17/04) ORDER
Minor child(ren))
_____)

The above matter came before the Court for the paternity and Initial hearing on this 6th day of October, 2005. Nicki DiCampi appeared for the Tribe; Julia Chavez appeared for Tribal Social Services; the putative father appeared without legal counsel and in custody from another jurisdiction; the mother failed to appear.

The Court finds that the Tribe informs the Court that the mother's whereabouts are unknown at this time, that the Social Worker has found out that the mother is no longer residing with her mother, and that the mother has been reporting to her urinalysis testing; that the Court informs the parties that in order for paternity to be established the mother has to be present; that the Tribe informs the Court that they wish for the record to show that the father's name appears on the birth certificate and that the enrollment department has accepted the child for enrollment, and the Tribe further informs the Court that child is eligible for enrollment through the father as he is the Tribal member and that without the paternity being established this matter will have to be transferred back to the state; that the Court informs the Tribe that given that information the Tribe has to act immediately on how they will be proceeding and need to inform the Court immediately; that the Tribe moves for a status report and the Court will set the status report; that the child will remain under Wardship pending further action from the Tribe.

45

IT IS ORDERED THAT the status hearing shall be held on **FRIDAY, OCTOBER 21, 2005 AT 10:30 A.M.** and the minor shall remain under Wardship and in the legal care, custody and control of Tribal Social Services who are authorized to place the child where they deem necessary and in the child's best interest pending the Status hearing and pending the Tribe informing the Court as to how they are going to proceed in this matter.

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

SO ORDERED THIS 6th DAY OF October, 2005.

Cornelia J. S.
Judge, Pascua Yaqui Juvenile Court

Cc:
Date: 10-7-05
 Tribe Parent(s)/Minor Social Worker Other
CM Valenzuela
Clerk

PASCUA YAQUI
received
OCT 7 2005
PROSECUTOR

EXHIBIT B

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TERRY GODDARD
Attorney General
Firm Bar No. 14000

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Mesa, AZ 85201
(480) 834-3775

Attorney for the Arizona Department
of Economic Security

MICHAEL K. JEANES, CLERK
BY *R. Guichetta*
DEP

2004 AUG 24 AM 11:10

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

In the Matter of:

No. JD-JD505197

TRINITY MARIE CORONADO

**DEPENDENCY PETITION AND
PETITION FOR PATERNITY
AND/OR CHILD SUPPORT**

Person under 18 years of age.

Petitioner, the Arizona Department of Economic Security, (ADES),
alleges:

I.
Jurisdiction

The Juvenile Court has exclusive original jurisdiction over dependency matters pursuant to Arizona Revised Statutes (A.R.S.) Section 8-202(B). The Superior Court has original jurisdiction in proceedings to establish paternity and child support pursuant to A.R.S. Sections 25-502 and 25-801.



1 B. Upon information and belief, the following male individual alleged to be the
2 father(s) of the child who is the subject of this Petition:

- 3
- 4 1. JOE CORONADO, whose date of birth is 10-17-75 and whose Social
5 Security Number is 526-89-4832 is the father of TRINITY MARIE
6 CORONADO. His address is 125 W. Broadway #B, Tempe, AZ 85282.
- 7 2. John Doe is a fictitious name used to designate any other male individual
8 claiming to be the father of the child and whose true identity and
9 whereabouts are unknown. John Doe is the father of TRINITY MARIE
10 CORONADO.
11

12

13 V.
Temporary Custody

14 Upon information and belief the child was taken into temporary physical
15 custody on August 19, 2004 at 10:00 a.m.
16

17 VI.
Allegations

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19 A. Upon information and belief, the ADES alleges as to MONIQUE PRATT:

- 20 1. The mother is unable to parent due to ongoing substance abuse issues.
21 The child was born exposed to methamphetamine, and the mother
22 tested positive for methamphetamine at the time of the child's birth. The
23 mother has an ongoing history of substance abuse that inhibits her
24 ability to parent. She has had her rights to five other children previously
25 terminated for neglect and substance abuse related issues.
26 Additionally, the mother made no preparations for the child to be taken
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1 home after her birth. The mother has been offered services through the
2 Pascua Yaqui tribe, but has not been compliant with those services.
3

4 B. Upon information and belief, the ADES alleges as to JOE CORONADO:

- 5 1. JOE CORONADO was never married to MONIQUE PRATT.
- 6 2. JOE CORONADO has established his paternity of TRINITY MARIE
7 CORONADO.
- 8 3. JOE CORONADO does not have an order granting him custody of
9 TRINITY MARIE CORONADO.
- 10 4. The father is unable to parent due to ongoing substance abuse issues
11 that inhibit his ability to parent. The father made no preparations for the
12 child to be taken home after birth. The father has been offered services
13 through the Pascua Yaqui tribe, but has not been compliant with those
14 services.
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17 C. John Doe is alleged as a father whenever the identity and or whereabouts of
18 the father is unknown; whenever paternity is in question or has not been
19 established by marriage, birth certificate or a court order; or when there are
20 multiple alleged fathers. Upon information and belief, John Doe has failed to
21 establish and maintain a normal parental relationship with TRINITY MARIE
22 CORONADO without just cause.
23
24

25 VII.
26 Paternity

27 The ADES, pursuant to A.R.S. Sections 25-803 and 25-806, alleges:
28

- 1 A. The State of Arizona is entitled to bring this action pursuant to A.R.S.
2 Sections 25-801 through 25-817.
3
4 B. Upon information and belief, mother alleges that during the time period of
5 conception she had sexual intercourse with JOE CORONADO and that he
6 is the biological father of TRINITY MARIE CORONADO.
7

VIII.

Facts Supporting "Contrary to the Welfare of the Child" Finding

9 Continuation of the child in the home would be contrary to the child's welfare
10 due to: It is contrary to the child's welfare to place her with the parents. The
11 parents have ongoing substance abuse problems that inhibit their ability to parent,
12 therefore the child would be at risk if placed with them.
13

IX.

Facts Supporting Reasonable Efforts Finding

14
15
16 It is further requested that the Court find based upon the verified allegations
17 of the petition, that it was reasonable to make no efforts to maintain the child in the
18 home.
19

20 This finding is supported by the following facts: It was reasonable for the
21 agency to make no efforts to prevent removal of the child from the parent's
22 custody since the parents have been non-compliant with services through the
23 Pascua Yaqui Tribe, and are unwilling to recognize they have substance abuse
24 issues that would endanger a newborn child.
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X.
Facts Supporting Active Efforts Pursuant to the Indian Child Welfare Act

The ADES made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; however, those efforts have proven unsuccessful. The agency previously made active efforts to prevent the removal of other children from the parent's custody, but the parents did not comply with these services. The parents continue to be non-compliant with services through the Pascua Yaqui Tribe, and will not recognize that their ongoing substance abuse issues inhibit their ability to parent.

XI.
Continued Custody of the Child by the Parent or Indian Custodian is Likely to Result in Serious Emotional or Physical Damage to the Child

Continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child.

XII.
Financial Responsibility for the Support of the Child

The parent(s) should pay an appropriate amount as determined by law for the care, maintenance and support of the child while in care pursuant to A.R.S. Sections 25-501, 25-502, 8-241, 8-243 and 8-243.01.

XIII.
Authority to Consent to Treatment and to Transport

As legal custodian of TRINITY MARIE CORONADO, in furtherance of A.R.S. Section 8-512 and the ADES' obligation, if any, to provide behavioral health or medical services to a child in the ADES' legal custody, the ADES requests court

1 authorization to consent to evaluation and treatment for medical and dental
2 treatments and procedures, including, but not limited to, early periodic screening
3 diagnosis and treatment services, services by health care providers to relieve pain
4 or treat symptoms of common childhood illnesses or conditions, any emergent
5 conditions, and psychiatric or psychological evaluations and treatment, substance
6 abuse evaluation and treatment, general anesthesia, and surgical procedures.
7

8
9 The ADES further requests court authorization to allow a foster parent,
10 group or foster home staff, relative or other person or agency in whose care the
11 child is placed pursuant to Title 8, to consent to evaluation and treatment for
12 routine medical and dental treatments and procedures, including, but not limited
13 to, early periodic screening diagnosis and treatment services, services by health
14 care providers to relieve pain or treat symptoms of common childhood illnesses or
15 conditions, and to evaluation and treatment for non life threatening emergent
16 conditions, consistent with the policies and rules of the ADES. The ADES requests
17 that these individuals and entities be prohibited from consenting to general
18 anesthesia, surgery, HIV testing, blood transfusions or abortions for any child
19 placed in their care by the ADES or a court. The ADES also seeks court
20 authorization for these individuals or entities to transport any child in their care for
21 the purposes of medical, dental, and behavioral health care and treatment.
22
23
24

25 XIV.

26 **Authority to Receive, Use and Share Protected Health Information**

27 With regard to receipt, use and disclosure of protected health information of
28 a child in the ADES' legal custody, the ADES requests that this Court, consistent

1 with the implementing regulations (45 C.F.R 164.502(g)(3)) of the Health
2 Insurance Portability and Accountability Act of 1996 (HIPAA), and A.R.S. Section
3 8-514.05 and in furtherance of the ADES' mandate under 42 U.S.C. 675(5)(D) to
4 obtain and share health information of a child in its care, designate the ADES, the
5 foster parent, group or foster home staff, relative or other person or agency in
6 whose care the child is placed, as the personal representative of TRINITY MARIE
7 CORONADO. As a personal representative of the child, the ADES, the foster
8 parent, group or foster home staff, relative or other person or agency in whose
9 care the child is placed, may share protected health information with others as
10 authorized or required by law.

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14 Additionally the ADES seeks an order of this Court requiring health plans
15 and health care providers to release protected health information as to a child in
16 ADES' legal custody to ADES' attorneys. This includes the release of records or
17 information for pretrial or prehearing interviews.

18
19
20 **XV.**
Education

21 The ADES is required under 42 U.S.C. Section 675 to attempt to obtain
22 education records of a child in its legal custody and to provide them to foster care
23 providers. The ADES herein provides notice under 20 U.S.C. Section
24 1232g(b)(2)(B) of the Family Educational Rights and Privacy Act (FERPA) to the
25 parent(s)/legal guardian(s) of any child named in this Petition, that it will seek
26 consent or a court order to obtain the education (including special education and
27 early intervention) records of each child, and to expedite any necessary transfer of
28

1 such records to a new school in which a child involved in this case is/may be
2 enrolled or to an early intervention provider for the child, as well as the physical
3 custodian of the child.
4

5 The ADES requests that a parent/legal guardian sign a consent to the
6 release of any and all education (including special education and early
7 intervention) records, including, but not limited to, attendance, academic, medical,
8 social, psychological, discipline, developmental, speech-language, achievement
9 test and other records, permitting the ADES to obtain these records. These
10 records will be used to aid the ADES, its attorney, other agents, foster care
11 providers or other person or entities having physical custody of the child(ren), a
12 surrogate parent, and members of any multidisciplinary team working
13 on/implementing a case or service plan to provide developmental, social,
14 psychological, educational and other services to each named child in this Petition.
15 The records will be supplied upon request or as required or authorized by law with
16 a foster parent, foster care provider or relative/stepparent having physical custody
17 of the child pursuant to 42 U.S.C. Section 675.5, and to the Court, Foster Care
18 Review Board, guardian ad litem, Court appointed special advocate and
19 attorney(s) for the child(ren), parent(s)/legal guardian(s) and Citizen Aide
20 Ombudsman as needed and as appropriate. If the parent(s)/guardian(s) does/do
21 not consent, the ADES will ask the Court to order release of these records by a
22 school/school district/others maintaining education records to the ADES. The
23 ADES also will request basic information from the parents(s)/guardian(s) as to
24 each child's educational history.
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1 With regard to possible special education issues of any child named herein,
2 the ADES hereby provides notice that at an appropriate time, a party or a school
3 district/other local education agency may request that the Court consider the issue
4 of who should represent the child's educational interests under Parts B or C of the
5 Individuals with Disabilities Education Act (IDEA), including the possible
6 appointment of a surrogate parent under 20 U.S.C. Sections 1415(b)(2), 1439; 34
7 C.F.R. Sections 300.515 and 303.406; and, for children over age 3, A.R.S. Section
8 15-763.01. The parent or other person approved to serve as a parent in
9 representing the child's educational issues (including a person appointed as a
10 surrogate), would represent a child under age 3 for possible services under
11 Arizona's Early Intervention Program, or a child over 2 years, 9 months of age (up
12 to age 21), who may have/has a disability as defined under the IDEA. The
13 purpose of such representation is to ensure that a child with a suspected/known
14 disability receives prompt assessment and evaluation for eligibility for early
15 intervention services or appropriate educational services, which may include
16 special education and related services designed to meet the child's unique needs.

21 REQUEST FOR RELIEF

22 Based upon the foregoing allegations, immediate action is required.

23 WHEREFORE, the ADES requests this Court find:

- 24 1. The Juvenile Court has jurisdiction over the subject matter and, after proper
25 service on the parents and/or guardians, the persons before this Court;
- 26 2. Venue is proper in this county;
- 27
- 28

- 1 3. Continuation of the child in the home would be contrary to the welfare of the
2 child;
- 3
- 4 4. It was reasonable for the ADES to make no efforts to maintain the child in
5 the home;
- 6 5. The child is an Indian child as defined by the Indian Child Welfare Act, 25
7 U.S.C. Section 1903 (4);
8
9 a. By clear and convincing evidence, the ADES has made active efforts to provide
10 remedial services and rehabilitative programs designed to prevent the breakup
11 of the Indian family and these efforts have proven unsuccessful;
- 12 b. Continued custody by the parent or Indian custodian is likely to result in serious
13 emotional or physical damage to the child.
14
- 15 6. In accordance with A.R.S. Section 25-809 and other applicable law that:
16 a. MONIQUE PRATT is the mother of the child born out of wedlock;
17 b. A determination as to the identity of the child's biological father is
18 necessary to establish paternity for the child born out of wedlock.
19
- 20 7. The ADES and out-of-home caretaker are the personal representatives of
21 the child in their care for purposes of HIPAA.

22 WHEREFORE, the ADES requests this Court enter orders:

- 23 1. Making the child a temporary ward of the Court, placed in the care, custody
24 and control of the ADES;
- 25
- 26 2. Placing the child with a relative;
- 27
- 28

- 1 3. Authorizing ADES and the child's caretaker to consent to medical, dental
2 and behavioral health care and treatment as prayed for herein and as
3 authorized in A.R.S. Section 8-514.05, and social and authorized
4 educational activities for the child;
5
- 6 4. Authorizing ADES and the caretaker, as personal representatives of the
7 child to receive, use and share protected health information regarding the
8 child, consistent with state law, HIPAA and other relevant federal law.
9
- 10 5. Ordering health plans and health care providers to release protected health
11 information to the ADES, caretaker of the child, and the ADES' attorney as
12 requested herein.
13
- 14 6. Setting a Preliminary Protective Hearing pursuant to A.R.S. Section 8-824,
15 an Initial Dependency Hearing pursuant to A.R.S. Sections 8-842 and 8-
16 843, a Publication Hearing, and a Permanency Hearing pursuant to A.R.S.
17 Section 8-862, on this Petition;
18
- 19 7. Assigning the matter to the Court-Appointed Special Advocate (CASA)
20 Program to determine if it is appropriate for the assignment of an advocate;
21
- 22 8. Assigning the matter to the Foster Care Review Board (FCRB) to perform
23 the duties required by statute;
24
- 25 9. Requiring the parents to pay an appropriate amount as determined by law
26 for the care, maintenance, and support of the child while in care and issuing
27 an order of assignment if appropriate;
28

- 1 10. Finding that MONIQUE PRATT is the mother of the child born out of
2 wedlock and entering a judgement and order to that effect.
- 3
4 11. Establishing the identity of the child's biological father and entering a
5 judgment and order to that effect.
- 6 12. After the establishment of paternity, enter an order requiring the Clerk of the
7 Court to send a certified copy of the paternity order for the above-named
8 child, if born in the State of Arizona, to the Office of Vital Records, P.O. Box
9 3887, Phoenix, AZ 85030-3887, which shall establish, pursuant to A.R.S.
10 Section 36-326, a new birth certificate for the child reflecting the name of the
11 father.
12
- 13 13. Authorizing the ADES to consent for the child to leave the jurisdiction of the
14 Court for travel within the United States for a period not to exceed thirty
15 days;
16
- 17 14. Prohibiting any person from removing the child from the State of Arizona
18 without prior written approval of the ADES;
19
- 20 15. Entering such judgment and orders for care, paternity, custody, support, or
21 such other relief, as the child's welfare and the interests of the State may
22 require under the provisions of Title 8 and Title 25 of the Arizona Revised
23 Statutes.
24
- 25 16. Requiring the parent(s) or legal guardian(s) to provide the ADES case
26 manager or its attorney with a recent educational history (including the
27 name(s) and location(s) of the school(s) each child named in the Petition
28 recently attended and the grade in which each child was most recently

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enrolled.) The parent(s) or legal guardian(s) shall also provide or confirm the date of birth of each child named in the Petition.

17. Requiring that the parties explore the willingness of the parent(s) or legal guardian(s) to sign a consent to release each child's education (including special education and early intervention) records, including, but not limited to, any and all attendance, academic, medical, social, psychological, discipline, developmental, speech-language, achievement test and other records, and authorizing release of these records to the ADES or its attorney. The ADES case manager, ADES' attorney, other agents, foster care providers or other persons/entities having physical custody of the child(ren), a surrogate parent, and members of any multidisciplinary team working on or implementing a CPS or other appropriate case or service plan for the child in issue, may receive and review these records to facilitate development of a case or service plan and obtain services which are in the best interests of the child(ren). The education records may also be shared with the Court, the Foster Care Review Board, a guardian ad litem, a Citizen Aide Ombudsman, a Court appointed special advocate(s), attorney(s) for the child(ren), as well as counsel for the parent(s) or legal guardian(s) named herein. Other uses shall be consistent with law.

1 18. Admonishing the parent, guardian or Indian custodian that the failure
2 to appear without good cause may result in a finding that the parent,
3 guardian or Indian custodian has waived his/her legal rights and
4 admitted the allegations in the dependency petition. In addition,
5 advising that the hearings may go forward in his/her absence and may
6 result in an adjudication of dependency, permanent guardianship or
7 termination of parental rights based upon the record and evidence
8 presented to the Court, as well as an order for child support if
9 paternity has been established.

12 Furthermore, proceedings for permanent guardianship pursuant to
13 A.R.S. Sections 8-871 and 8-872 or proceedings for termination of
14 parental rights pursuant to A.R.S. Section 8-533 may be initiated based
15 upon the grounds set forth in statute or for failure to participate in
16 reunification services.

18 19. Warning that if the parent(s) or legal guardian(s) do not appear, cannot
19 be located or refuse to sign the consent to the release of education
20 records, the Court may at a later date, order any traditional public,
21 public charter or private school/preschool in Arizona, and any medical
22 or other service provider for a child under 3 years of age in this case,
23 to provide education (including special education and early
24 intervention) records, including, but not limited to, attendance,
25 academic, medical, social, psychological, discipline, developmental,
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speech-language, achievement test, and other records of the child to
the ADES or its attorney.

RESPECTFULLY SUBMITTED this 24 day of August, 2004.

TERRY GODDARD
Attorney General



Approving Attorney:
AMY PAUL
Assistant Attorney General

Assigned Attorney:
THOMAS F. STUBBS
Assistant Attorney General

1 Copy of the foregoing mailed
2 this 24th day of August, 2004, to:

3 Foster Care Review Board
4 1501 W. Washington
5 Phoenix, AZ 85207


6 Michelle Yourko
7 Parent Locator
8 Site Code: 105C

9 Talia Valdez
10 Case Manager
11 Site Code 155X

12

13

14



15 Mirna Carlisle

16

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18 T4200
19 8-24-04
20 PCDOC24044

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Amended Yes No

VERIFICATION

STATE OF ARIZONA)
)
County of Maricopa) SS:

Petitioner swears:

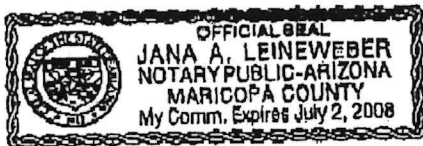
I am an employee of and authorized by petitioner to make this verification. I have read the foregoing Petition and know its contents. The facts contained therein are true and correct to the best of my information and belief.

Talia Valdez

VALDEZ TALIA
CPSS III

(Title)

SUBSCRIBED AND SWORN this 23rd day of August, 2004.



Jana A. Leinweber

Notary Public

My Commission Expires

"Under the Americans with Disabilities Act (ADA), the Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means that if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in a program or activity, because of your disability please let us know of your disability needs in advance if at all possible." This document is available in alternative formats by contacting: (602) 542-3598. Disponible en español en la oficina local.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY
TEMPORARY CUSTODY NOTICE

On (date) 08-19-04, at (time) 11:00 AM, temporary custody of (child's name) Trinity Marie Coronado

was taken at (address) Banner Desert Hosp 1405 Nelson Rd. Mesa AZ CPS

Describe the specific reason(s) temporary custody is necessary baby born substance exposed, no preparations for baby, previous severance of mother's rights, parents substance abuse history

Check the circumstances (imminent risk factor) that most clearly describes the reason temporary custody was necessary:

- Medical or psychological examination required to diagnose abuse or neglect.
- No caregiver is present and the child cannot care for himself or herself or for other children in the household.
- A child has severe or serious non-accidental injuries that require immediate medical treatment.
- A child requires immediate medical treatment for a life-threatening medical condition or a condition likely to result in impairment of bodily functions or disfigurement, and the child's caregiver is not willing or able to obtain treatment.
- A child is suffering from nutritional deprivation that has resulted in malnourishment or dehydration to the extent that the child is at risk of death or permanent physical impairment.
- The physical or mental condition of a child's caregiver endangers a child's health or safety.
- A medical doctor or psychologist determined that a child's caregiver is unable or unwilling to provide minimally adequate care.
- The home environment has conditions that endanger a child's health or safety, such as unsanitary disposal of human waste, animal feces or garbage, exposed wiring, access to dangerous objects, or harmful substances that present a substantial risk of harm to the child.
- A medical doctor or psychologist determined that a child's caregiver has emotionally damaged the child; the child is exhibiting severe anxiety, depression, withdrawal, or aggressive behavior due to the emotional damage; and the caregiver is unwilling or unable to seek treatment for the child.
- The child's caregiver has engaged in sexual conduct with a child, or has allowed the child to participate in sexual activity with others.
- Other circumstances place a child at imminent risk of harm requiring removal (describe specific circumstance). baby born substance exposed, no preparations for baby, previous severance of mother's rights, parents substance abuse history

The Department of Economic Security, Child Protective Services (CPS) must:

- Return your child within 72 hours (not including weekends and holidays) unless CPS files a legal paper, called a petition, with the Juvenile Court. If a petition is filed, your child will be kept in the temporary custody of CPS.
- Return your child within 12 hours if your child was removed to be examined by a medical doctor or psychologist, unless abuse or neglect is diagnosed, and
- Inform you of the right to give a verbal, telephonic or written response to the allegations and have them included in the investigation report. Any documentation you give and what you say or write will be included in the case record and can be used in court proceedings.

A Preliminary Protective Hearing will be held on (date) _____ (time) _____

OR You will be notified if CPS files a petition and a Preliminary Protective Hearing is set. CPS will provide you a written notice of the date, time and location of the hearing within 24 hours after the petition is filed.

If a petition is filed, you have the right to have an attorney represent you. The Juvenile Court will appoint an attorney to represent you if you qualify financially. The court may also appoint an attorney or a guardian ad litem to represent your child's best interest.

Before the Preliminary Protective Hearing, you must meet with your attorney. Prior to the Preliminary Protective Hearing, a meeting will be held to try to reach an agreement about placement of your child, what services should be provided and visitation with your child. The availability of reasonable services will be considered. The child's health and safety will be a main concern at this meeting.

Other people may attend this meeting including: child, relatives, other interested persons with whom the child might be placed, witnesses, advocates or a person who has knowledge of your child or an interest in the welfare of your child.

It is your responsibility to participate in all services determined reasonable and necessary by the court. If you do not, the court may hold further hearings to terminate your rights as a parent. This means your child will never be returned to you.

Services available to parents, guardians and custodians, and agencies to contact for assistance are listed on the back of this form.

CHILD PROTECTIVE SERVICES SPECIALIST'S NAME (Please print) Tina Valdez AREA CODE AND PHONE NO. (480) 756-7276

ARIZONA DEPARTMENT OF ECONOMIC SECURITY'S ADDRESS (No., Street, City, State, ZIP) 5000 S Mill Ave Tempe AZ 85282

CHILD PROTECTIVE SERVICES SUPERVISOR'S NAME (Please print) Christa Morgan AREA CODE AND PHONE NO. (480) 756-2276

METHOD OF NOTICE: On (date) 08-19-04, at (time) 4:30 AM, I served notice to (parent, guardian or custodian) (print name) Joe Coronado

Method used: given directly left at residence verbal Date: 08/19/04 Time: 4:30pm

Address where mailed/left/given (No., Street, City, State, ZIP) _____

ASK: Is the child or child's parents of American Indian heritage/ancestry? Yes No Unknown

PARENT, GUARDIAN OR CUSTODIAN'S SIGNATURE Refused to sign CHILD PROTECTIVE SERVICES SPECIALIST'S SIGNATURE (Or law enforcement official) Tina Valdez DATE 08/19/04

ARIZONA DEPARTMENT OF ECONOMIC SECURITY
TEMPORARY CUSTODY NOTICE

On (date) 08-19-04 at (time) 1:00 PM temporary custody of (child's name) Trinity Marie Coronado

was taken at (address) Barrow Desert Hosp 1400 S. Dobson Rd, Mesa, AZ by (agency) CPS

Describe the specific reason(s) temporary custody is necessary baby born substance exposed, no preparations for baby, previous severance of mother's rights, parents substance abuse history

- Check the circumstances (imminent risk factor) that most clearly describes the reason temporary custody was necessary:
- Medical or psychological examination required to diagnose abuse or neglect.
 - No caregiver is present and the child cannot care for himself or herself or for other children in the household.
 - A child has severe or serious non-accidental injuries that require immediate medical treatment.
 - A child requires immediate medical treatment for a life-threatening medical condition or a condition likely to result in impairment of bodily functions or disfigurement, and the child's caregiver is not willing or able to obtain treatment.
 - A child is suffering from nutritional deprivation that has resulted in malnourishment or dehydration to the extent that the child is at risk of death or permanent physical impairment.
 - The physical or mental condition of a child's caregiver endangers a child's health or safety.
 - A medical doctor or psychologist determined that a child's caregiver is unable or unwilling to provide minimally adequate care.
 - The home environment has conditions that endanger a child's health or safety, such as unsanitary disposal of human waste, animal feces or garbage, exposed wiring, access to dangerous objects, or harmful substances that present a substantial risk of harm to the child.
 - A medical doctor or psychologist determined that a child's caregiver has emotionally damaged the child; the child is exhibiting severe anxiety, depression, withdrawal, or aggressive behavior due to the emotional damage; and the caregiver is unwilling or unable to seek treatment for the child.
 - The child's caregiver has engaged in sexual conduct with a child, or has allowed the child to participate in sexual activity with others.
 - Other circumstances place a child at imminent risk of harm requiring removal (describe specific circumstance). baby born substance exposed, previous severance of mother's rights, no preparations for baby, parent substance abuse history

The Department of Economic Security, Child Protective Services (CPS) must:

- Return your child within 72 hours (not including weekends and holidays) unless CPS files a legal paper, called a petition, with the Juvenile Court. If a petition is filed, your child will be kept in the temporary custody of CPS.
- Return your child within 12 hours if your child was removed to be examined by a medical doctor or psychologist, unless abuse or neglect is diagnosed, and
- Inform you of the right to give a verbal, telephonic or written response to the allegations and have them included in the investigation report. Any documentation you give and what you say or write will be included in the case record and can be used in court proceedings.

A Preliminary Protective Hearing will be held on (date) _____ (time) _____

OR You will be notified if CPS files a petition and a Preliminary Protective Hearing is set. CPS will provide you a written notice of the date, time and location of the hearing within 24 hours after the petition is filed.

If a petition is filed, you have the right to have an attorney represent you. The Juvenile Court will appoint an attorney to represent you if you qualify financially. The court may also appoint an attorney or a guardian ad litem to represent your child's best interest.

• Before the Preliminary Protective Hearing, you must meet with your attorney. Prior to the Preliminary Protective Hearing, a meeting will be held to try to reach an agreement about placement of your child, what services should be provided and visitation with your child. The availability of reasonable services will be considered. The child's health and safety will be a main concern at this meeting.

Other people may attend this meeting including: child, relatives, other interested persons with whom the child might be placed, witnesses, advocates or a person who has knowledge of your child or an interest in the welfare of your child.

It is your responsibility to participate in all services determined reasonable and necessary by the court. If you do not, the court may hold further hearings to terminate your rights as a parent. This means your child will never be returned to you.

Services available to parents, guardians and custodians, and agencies to contact for assistance are listed on the back of this form.

CHILD PROTECTIVE SERVICES SPECIALIST'S NAME (Please print) Talia Valdez AREA CODE AND PHONE NO. (480) 756-2276

ARIZONA DEPARTMENT OF ECONOMIC SECURITY'S ADDRESS (No., Street, City, State, ZIP) 5002 S Mill Ave, Tempe AZ 85282

CHILD PROTECTIVE SERVICES SUPERVISOR'S NAME (Please print) Christa Morgan AREA CODE AND PHONE NO. (480) 756-2276

METHOD OF NOTICE: On (date) 08-19-04 at (time) 1:00 PM I served notice to (parent, guardian or custodian) (print name) Monique Pratt

Method used: given directly left at residence verbal Date: 08-19-04 Time: 10:00am

Address where mailed/left/given (No., Street, City, State, ZIP) 1400 S. Dobson Rd, Mesa AZ

ASK: Is the child or child's parents of American Indian heritage/ancestry? Yes No Unknown

PARENT, GUARDIAN OR CUSTODIAN'S SIGNATURE Refused to sign

CHILD PROTECTIVE SERVICES SPECIALIST'S SIGNATURE (or law enforcement officer) Talia Valdez DATE: 08-19-04

EXHIBIT C

↔209k6.6 Dependency, Neglect, Abuse, or Abandonment
 ↳209k6.6(2) k. Jurisdiction; State or Tribal Court. Most Cited Cases
 (Formerly 209k32(11))

After reviewing de novo the Indian Child Welfare Act's (ICWA) applicability, the Court of Appeals reviews the juvenile court's order transferring a case to a tribal court for an abuse of discretion. Indian Child Welfare Act of 1978, § 101, 25 U.S.C.A. § 1911.

[4] KeyCite Notes 

↔209 Indians
 ↳209k6.4 Infants
 ↳209k6.6 Dependency, Neglect, Abuse, or Abandonment
 ↳209k6.6(1) k. In General. Most Cited Cases
 (Formerly 209k6(2))

Indian tribe member who acknowledged paternity before the juvenile court and who subsequently underwent a paternity test that confirmed he was the child's biological father established he was a "parent," within meaning of Indian Child Welfare Act (ICWA). Indian Child Welfare Act of 1978, § 4 (9), 25 U.S.C.A. § 1903(9).

[5] KeyCite Notes 

↔209 Indians
 ↳209k6.4 Infants
 ↳209k6.6 Dependency, Neglect, Abuse, or Abandonment
 ↳209k6.6(1) k. In General. Most Cited Cases
 (Formerly 209k6(2))

Tribe's written confirmation that father was an enrolled member of the tribe and that child was eligible for enrollment established that the child was an "Indian child," within meaning of Indian Child Welfare Act (ICWA). Indian Child Welfare Act of 1978, § 4(4), 25 U.S.C.A. § 1903(4).

[6] KeyCite Notes 

↔209 Indians
 ↳209k6.4 Infants
 ↳209k6.5 k. In General. Most Cited Cases
 (Formerly 209k6(2))

Father was not required to file a paternity action or to seek legal custody of the child in order for the child to be an "Indian Child" under the Indian Child Welfare Act (ICWA). Indian Child Welfare Act of 1978, § 4(4), 25 U.S.C.A. § 1903(4).

[7] KeyCite Notes 

↔209 Indians
 ↳209k6.4 Infants
 ↳209k6.6 Dependency, Neglect, Abuse, or Abandonment
 ↳209k6.6(1) k. In General. Most Cited Cases
 (Formerly 209k6(2))

Court of Appeals would not adopt the judicially created "existing Indian family exception" to the Indian Child Welfare Act (ICWA), under which some courts have refused to apply the Act unless an Indian child is being removed from an existing Indian family, that is, a family with a significant connection to the Indian community. Indian Child Welfare Act of 1978, § 2 et seq., 25 U.S.C.A. § 1901 et seq.



[8] KeyCite Notes

- ↳ 209 Indians
 - ↳ 209k6.1 Protection of Persons and Personal Rights
 - ↳ 209k6.3 Constitutional and Statutory Provisions
 - ↳ 209k6.3(2) k. Purpose. Most Cited Cases
(Formerly 209k6(2))

Indian Child Welfare Act's (ICWA) goals include not only preserving Indian families, but also protecting the tribe's interests in the welfare of its Indian children and the maintenance of its culture. Indian Child Welfare Act of 1978, § 2 et seq., 25 U.S.C.A. § 1901 et seq.



[9] KeyCite Notes

- ↳ 361 Statutes
 - ↳ 361VI Construction and Operation
 - ↳ 361VI(A) General Rules of Construction
 - ↳ 361k187 Meaning of Language
 - ↳ 361k188 k. In General. Most Cited Cases

If the language of the statute is plain and unambiguous, the court is counseled to simply follow the plain meaning.



[10] KeyCite Notes

- ↳ 209 Indians
 - ↳ 209k6.4 Infants
 - ↳ 209k6.6 Dependency, Neglect, Abuse, or Abandonment
 - ↳ 209k6.6(2) k. Jurisdiction; State or Tribal Court. Most Cited Cases
(Formerly 209k32(11))

Guardian ad litem's unfounded claim that Indian tribe would not provide medical care adequate to address Indian child's needs, and fact that Indian tribe had not specifically assured that it would be able to meet the child's medical needs, did not establish good cause for denying transfer of the child dependency proceeding from the juvenile court to the tribal court. Indian Child Welfare Act of 1978, § 101(b), 25 U.S.C.A. § 1911(b).

****961 *155** Hamilton Law Office by Lynn T. Hamilton, Mesa, for Appellant.
Janet A. Napolitano, Arizona Attorney General, by Stacy L. Hill, Assistant Attorney General, Phoenix, for Appellee Arizona Department of Economic Security.
Tohono O'odham Advocate Program by Frederick Lomayesva and Michele Martin, Sells, for Appellee Michael J., Sr.
Office Of Attorney General, Tohono O'odham Nation by Mark E. Curry, Deputy Attorney General and Ida B. Wilbur, Assistant Attorney General, Sells, for Appellee Tohono O'odham Nation.

OPINION

BERCH, Judge.

¶ 1 Appellant, Michael J., Jr., seeks to avoid transfer of his dependency case from superior court to tribal court. Through his guardian ad litem ("GAL"), Michael raises the following issues for review: (1) Whether the juvenile court erred by applying the Indian Child Welfare Act of 1978 to this case; (2) Whether the juvenile court erred by failing to apply an "existing Indian family" exception; and (3) Whether the juvenile court abused its discretion when it granted Father's motion to transfer the dependency proceeding to the Tohono O'odham Indian Nation tribal court.

FACTUAL AND PROCEDURAL HISTORY

¶ 2 Michael was born on December 11, 1998, exposed to cocaine and experiencing severe medical problems. Mother, a non-Indian woman who tested positive for cocaine use at the time of Michael's birth, had not received any prenatal care, was not employed, had no insurance, and was not prepared to raise a baby in her home. She requested services from the Arizona Department of Economic Security ("DES").

¶ 3 At the time of Michael's birth, Father, an enrolled member of the Tohono O'odham Indian Nation (the "Nation"), was incarcerated. Mother and Father were not married at the time of Michael's birth, Father was not named on Michael's birth certificate, and paternity had not been officially established, although Father acknowledged paternity.




¶ 4 On December 14, 1998, after determining that Michael was at risk of harm because of the unsafe and hazardous living environment at Mother's home, DES assumed custody of the infant. A DES case manager served Mother and Father with temporary custody notices and notified the Nation of Michael's birth. Two days later, DES filed a dependency petition regarding Michael.

¶ 5 On January 6, 1999, following a hearing, the juvenile court found Michael dependent as to his parents. Within two weeks, DES filed an amended dependency petition indicating that Michael was an "Indian child" who might be subject to the Indian Child Welfare Act ("ICWA") and requesting that a guardian ad litem be appointed to represent Michael in the dependency proceedings. The Nation moved to intervene, acknowledging Michael's eligibility for enrollment with the Nation. Father's counsel, DES, and an advocate for the Nation acknowledged the Nation's *156 **962 jurisdiction over Michael's siblings. The court granted the Nation's motion and appointed the GAL to represent Michael in all further proceedings. On May 19, 1999, at the continued initial dependency hearing, Father acknowledged paternity of Michael and agreed to submit to confirmatory paternity testing. Following receipt of the test results confirming paternity, the court granted Father's motion to transfer jurisdiction to the Nation's tribal court.

¶ 6 The GAL filed a timely notice of appeal.

ANALYSIS

1. Standard of Review

[1]  [2]  [3]  ¶ 7 This Court reviews *de novo* the interpretation and application of a statute. See *Columbia Parcar Corp. v. Arizona Dep't of Transp.*, 193 Ariz. 181, 183, ¶ 11, 971 P.2d 1042, 1044 (App.1999). Our role when deciding jurisdictional issues under ICWA is to decide "*who* should make the custody determination concerning [the] child[] --not what the outcome of that determination should be." *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 53, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989). After reviewing *de novo* ICWA's applicability, we review the juvenile court's order transferring a case to a tribal court for an abuse of discretion. See *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 107, 828 P.2d 1245, 1248 (App.1991).

2. Background and Application of the Indian Child Welfare Act



¶ 8 Congress adopted the Indian Child Welfare Act of 1978 ("ICWA"), 25 U.S.C. §§ 1901-1963, in response to concerns regarding the consequences to Indian children, Indian families, and Indian tribes of state child welfare practices that separated Indian children from their families and tribes. See H.R.Rep. No. 95-1386 (1978), reprinted in 1978 U.S.C.C.A.N. 7530. The Indian Child Welfare Act provides "minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture." 25 U.S.C. § 1902 (1994).


¶ 9 The Act applies to any "child custody proceeding," see 25 U.S.C. § 1903(1) (1994); see also *Maricopa County Juv. Action No. A-25525*, 136 Ariz. 528, 531, 667 P.2d 228, 231 (App.1983), involving an "Indian child," a term that includes "any unmarried person who is under age eighteen and ... either (a) [is] a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. § 1903(4) (1994).

¶ 10 The Act grants tribal courts exclusive jurisdiction over child custody proceedings involving Indian children domiciled on a reservation, see 25 U.S.C. § 1911(a) (1994), and concurrent but presumptively tribal jurisdiction in proceedings involving Indian children not domiciled on a reservation:


In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, that such transfer shall be subject to declination by the tribal court of such tribe.

25 U.S.C. § 1911(b). All of the parties to this action agree that if ICWA applies, section 1911(b) provides the juvenile court and tribal court concurrent jurisdiction.


[4]  [5]  ¶ 11 The GAL concedes that this dependency action is a child custody proceeding, but contends that ICWA does not apply because Father never established "legal" paternity. Thus, she asserts, Father has not established that he is a "parent" or that Michael is an "Indian child" within the meaning of ICWA. We disagree.

[6]  ¶ 12 Although ICWA's definition of "parent" excludes an "unwed father [whose] paternity has not been acknowledged or established," 25 U.S.C. § 1903(9) (1994), the record reflects ample evidence that Father acknowledged paternity before the juvenile **963 *157 court and subsequently underwent a paternity test that confirmed that he is Michael's biological father. In addition, Father submitted the Nation's written confirmation that Father is an enrolled member of the Tohono O'odham Nation and that Michael is eligible for enrollment as a member. The GAL nevertheless contends that Michael is not an "Indian child" because Father never filed a paternity action or sought legal custody of him. These actions, however, are not required. The Act merely requires that a putative Indian father acknowledge or establish paternity. See, e.g., *Coconino County Juv. Action No. J-10175*, 153 Ariz. 346, 350, 736 P.2d 829, 833 (App.1987) (court applied ICWA despite the lack of a formal paternity proceeding, where the putative father acknowledged paternity and enrolled the child in his tribe). The record contains ample evidence to support the trial court's finding that Michael is an "Indian child," and Father, his parent.

3. Existing Indian Family Exception

[7]  ¶ 13 The GAL next contends that ICWA should not apply because DES did not remove Michael from an "existing Indian family." Notwithstanding ICWA's explicit provisions, some courts have refused to apply the Act unless an Indian child is being removed from an existing Indian family--that is, a family with a significant connection to the Indian community. See *In re Adoption of Baby Boy L.*, 231 Kan. 199, 643 P.2d 168, 175-76 (1982) (first state court to adopt the "existing Indian family" exception); see also *In re Bridget R.*, 41 Cal.App.4th 1483, 49 Cal.Rptr.2d 507, 516 (1996); *In re Adoption of Crews*, 118 Wash.2d 561, 825 P.2d 305, 309-10 (1992). For several reasons, we join a growing number of jurisdictions in rejecting this judicially created exception. [FN1]

FN1. The following courts reject the "existing Indian family" exception: *In re Adoption of T.N.F.*, 781 P.2d 973 (Alaska 1989); *In re Alicia S.*, 65 Cal.App.4th 79, 76 Cal.Rptr.2d 121 (1998); *In re Crystal K.*, 226 Cal.App.3d 655, 276 Cal.Rptr. 619 (1990); *In re Baby Boy Doe*, 123 Idaho 464, 849 P.2d 925 (1993); *In re Elliott*, 218 Mich.App. 196, 554 N.W.2d 32 (1996); *In re Adoption of Baade*, 462 N.W.2d 485 (S.D.1990); and *In re D.A.C.*, 933 P.2d 993 (Utah App.1997).

[8]  ¶ 14 First among our reasons is to support ICWA's goal not only of preserving Indian families, but also of protecting the tribe's interests in the welfare of its Indian children and the maintenance of its culture. See *In re D.A.C.*, 933 P.2d 993, 1000 (Utah App.1997); see also *In re Elliott*, 218 Mich.App. 196, 554 N.W.2d 32, 34 (1996) (interest "in long-term tribal survival").

Adopting an existing Indian family exception frustrates the policy of protecting the tribe's interest in its children. [FN2] The Act is also based on the notion that protecting tribal interests best serves the interests of Indian children, another policy that adopting such an exception would thwart. See *Pima County Juv. Action No. S-903*, 130 Ariz. 202, 204, 635 P.2d 187, 189 (1981).

FN2. Section 1901 of the Act provides "that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe."



[9] ¶ 15 Second, the language of the Act contains no such requirement or exception. If the language of the statute is plain and unambiguous, we are counseled to simply follow the plain meaning. See *State v. Roscoe*, 185 Ariz. 68, 71, 912 P.2d 1297, 1300 (1996); see also *Dugan v. Fujitsu Bus. Commun. Sys.*, 188 Ariz. 516, 518, 937 P.2d 706, 708 (App.1997) (court construes statutes to give effect to legislature's intent). The language of the Act does not require either that the child be part of an existing Indian family or that the family be involved with the tribe; thus, requiring an "existing Indian family" before applying ICWA engrafts a judicially created condition not warranted by the language of the Act, and one that frustrates the policy of the Act. See *City of Tempe v. Fleming*, 168 Ariz. 454, 457, 815 P.2d 1, 4 (App.1991) (citing *Town of Scottsdale v. State ex rel. Pickrell*, 98 Ariz. 382, 386, 405 P.2d 871, 873 (1965)) ("As a rule of statutory construction, we will not read into a statute something which is not within the manifest intent of the legislature as indicated by the statute ****964 *158** itself."). We agree with the following statement by the Idaho Supreme Court:

Congress passed ICWA to limit state court power by creating mandatory protective procedures and minimum evidentiary standards that must be applied in child custody proceedings concerning Indian children. In light of the structure and nature of ICWA, it is inappropriate to use a judicially created exception to circumvent the mandates of ICWA.

In re Baby Boy Doe, 123 Idaho 464, 849 P.2d 925, 932 (1993).

¶ 16 Third, ICWA's legislative history supports our decision not to impose an existing Indian family requirement. Congress rejected an earlier version of ICWA that would have required as a prerequisite to tribal-court jurisdiction that an Indian child not living on a reservation have "significant contacts" with a tribe. See Indian Child Welfare Act S. 1214, 95th Cong. § 102(c) (1977), cited in S.Rep. No. 95-597, at 4 (1977). These provisions were deleted in subsequent legislative action; thus, it appears that Congress considered and rejected a "significant contacts" doctrine similar to the "existing Indian family" exception. [FN3] See *In re Adoption of S.S.*, 167 Ill.2d 250, 212 Ill.Dec. 590, 657 N.E.2d 935, 951 (1995) (McMorrow, J., dissenting). Thus, the legislative history of the Act supports the conclusion that the Act's "application to a case is contingent only upon whether an 'Indian child' is the subject of a 'child custody proceeding' as those terms are defined by the Act." *In re Adoption of Baade*, 462 N.W.2d 485, 490 (S.D.1990); accord *Juvenile Action No. JS-8287*, 171 Ariz. at 106, 828 P.2d at 1247; *Juvenile Action No. J-10175*, 153 Ariz. at 349, 736 P.2d at 832.

FN3. The relevant language that was subsequently deleted from Senate Bill 1214 is as follows:

In the case of any Indian child who is not a resident of an Indian reservation or who is otherwise under the jurisdiction of a state, if said Indian child has significant contacts with an Indian tribe, no child placement shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened unless the

Indian tribe with which such child has significant contacts has been accorded thirty days prior written notice of a right to intervene as an interested party in the child placement

proceedings.

¶ 17 Fourth, the United States Supreme Court has effectively undermined the imposition of an existing Indian family exception. In *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 49, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989), [FN4] the Court noted that ICWA reflects congressional concern "not solely about the interests of Indian children and families, but also about the impact on the tribes themselves of the large numbers of Indian children adopted by non-Indians." The Court emphasized "that the tribe has an interest in the child which is distinct from but on a parity with the interest of the parents." *Id.* at 52, 109 S.Ct. 1597 (quoting *In re Adoption of Halloway*, 732 P.2d 962, 969 (Utah 1986)). The Court stressed that Indian children have a corresponding interest in maintaining a relationship with the tribe, even if the parents do not share that interest. *See id.* at 49-50, 109 S.Ct. 1597. Thus, *Holyfield* indicates that ICWA applies to child custody proceedings involving Indian children regardless of the presence of an existing Indian family.

FN4. In *Holyfield*, two unwed Indian parents who resided on a

reservation traveled off the reservation for the birth of their twins and made plans for their children to be adopted by a non-Indian family. 490 U.S. at 37-38, 109 S.Ct. 1597. After the births, the parents consented to the adoption, but the tribe moved to vacate the adoption, claiming that the state court did not have jurisdiction under ICWA. *See id.* at 38, 109 S.Ct. 1597. The Supreme Court vacated the adoption, holding that federal domicile law applies in state court proceedings involving ICWA and that the parents' tribe had exclusive jurisdiction over the proceeding even though the children were not born on the reservation and did not reside with their Indian birth parents or within the Indian culture. *See id.* at 48-49, 109 S.Ct. 1597.

¶ 18 Finally, this Court has implicitly rejected the "existing Indian family" exception. In *Juvenile Action No. J-10175*, 153 Ariz. at 349, 736 P.2d at 832, this Court stated that "[t]he fact that a child may have been living in a non-Indian home is no reason, standing alone, to dispense with the provisions of [ICWA]." We agree and therefore decline to create an exception to ICWA's coverage in this case.

****965 *159 4. Trial Court's Grant of Motion to Transfer**



[10] ¶ 19 The GAL submits that the juvenile court abused its discretion by determining that the Nation could meet Michael's medical needs and by placing him with an unknown relative in Tucson, Arizona. The statements misrepresent the trial court's rulings. The court simply found that the GAL had failed to meet the burden of establishing good cause to deny the transfer.

¶ 20 "Once it is determined that a dependency proceeding involves an Indian child, the judge *must*, in the absence of good cause to the contrary, follow the provisions of the Act." *Id.* The Act requires the juvenile court to transfer jurisdiction unless (1) the court finds good cause to the contrary or (2) either parent objects to the transfer. *See* 25 U.S.C. § 1911(b); *see also* *Maricopa County Juv. Action No. JD-6982*, 186 Ariz. 354, 356, 922 P.2d 319, 321 (App.1996). The trial court did not find good cause not to apply the Act, and neither parent objected to the transfer.

¶ 21 Although not a party permitted by statute to thwart a transfer, *see* 25 U.S.C. § 1911(b), the GAL opposed the transfer. [FN5] The Bureau of Indian Affairs ("BIA") Guidelines for interpreting ICWA, however, place the burden of establishing good cause on the party opposing the petition to transfer. *See* BIA Guidelines--"Guidelines for State Courts; Indian Child Custody Proceeding," 44 Fed.Reg. 67,583, 67,584 (1979) (for assistance in interpreting ICWA, a state court may rely on the Act's interpretative guidelines drafted by the Bureau of Indian Affairs); *see also* *Juvenile Action No. JS-8287*, 171 Ariz. at 108, 828 P.2d at 1249 (citing 44 Fed.Reg. at 67,591); *Juvenile Action No. A-25525*, 136 Ariz. at 532 n. 4, 667 P.2d at 232 n. 4; *Juvenile Action No. S-903*, 130 Ariz. at 206, 635 P.2d at 191.

FN5. The parties have not questioned whether the child, through his GAL, may oppose the transfer. We therefore do not address the issue. See *Steiner v. Steiner*, 179 Ariz. 606, 613 n. 1, 880 P.2d 1152, 1159 n. 1 (App.1994); *Thompson v. Arizona Dep't of Econ. Sec.*, 127 Ariz. 293, 295, 619 P.2d 1070, 1072 (App.1980).

¶ 22 In this case, the GAL failed to carry the burden of showing that good cause existed for denying the transfer because she failed to present any evidence that the Nation would not provide medical care adequate to address Michael's needs. She relied upon unsupported allegations regarding the health care Michael might receive and upon the fact that the Nation did not specifically assure that it would be able to meet Michael's medical needs. Such avowals were not the Nation's obligation. Moreover, the BIA Guidelines specifically prohibit state courts from considering "[s]ocio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems" when determining the existence of good cause. See BIA Guidelines, 44 Fed.Reg. at 67,591 (c).

¶ 23 Because the GAL failed to present any evidence that the Nation would not be able to meet Michael's medical needs or that removal from his current placement would harm him, we agree with the juvenile court that the GAL's unfounded claims of the superiority of DES services to those of the Nation fail to meet the evidentiary burden of proving "good cause." We therefore hold that the juvenile court did not abuse its discretion in granting Father's motion to transfer jurisdiction of the dependency proceedings to the Nation's court.

CONCLUSION

¶ 24 For the foregoing reasons, we affirm the juvenile court's order transferring jurisdiction of the dependency proceedings to the Nation's court, pursuant to ICWA.

CONCURRING: RUDOLPH J. GERBER, Judge and ANN A. SCOTT TIMMER, Judge.

Ariz.App. Div. 1,2000.

Michael J., Jr. v. Michael J., Sr.

198 Ariz. 154, 7 P.3d 960, 325 Ariz. Adv. Rep. 40

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EXHIBIT D

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153 Ariz. 346, 736 P.2d 829

Court of Appeals of Arizona,
Division 1, Department D.
In the Matter of the APPEAL IN COCONINO COUNTY JUVENILE ACTION NO. J-10175.
No. 1 CA-JUV 362.
April 28, 1987.

Appeal was taken from order of the Superior Court, Coconino County, Cause No. J-10175, Richard K. Mangum, J., placing Indian child in non-Indian foster home in dependency proceeding. The Court of Appeals, Kleinschmidt, P.J., held that: (1) Indian Child Welfare Act applied; (2) good cause for not applying the Act was not presented by fact that child had been raised in a non-Indian home; and (3) evidence sustained finding that Indian putative father was the natural father of the child. Vacated and remanded.

West Headnotes

[1] KeyCite Notes 

↳ 209 Indians
↳ 209k6.4 Infants
↳ 209k6.6 Dependency, Neglect, Abuse, or Abandonment
↳ 209k6.6(1) k. In General. Most Cited Cases
(Formerly 209k6(2))

Indian Child Welfare Act applied to determination of custody of Indian child even though child had not been living on the reservation but had been living with her non-Indian mother. Indian Child Welfare Act of 1978, § 2-403, 25 U.S.C.A. §§ 1901-1963.

[2] KeyCite Notes 

↳ 209 Indians
↳ 209k6.4 Infants
↳ 209k6.6 Dependency, Neglect, Abuse, or Abandonment
↳ 209k6.6(1) k. In General. Most Cited Cases
(Formerly 209k6(1))

Once it is determined that dependency proceeding involves Indian child, judge must, in the absence of good cause to the contrary, follow the provisions of the Indian Child Welfare Act. Indian Child Welfare Act of 1978, § 2-403, 25 U.S.C.A. §§ 1901-1963.

[3] KeyCite Notes 

↳ 209 Indians
↳ 209k6.4 Infants
↳ 209k6.6 Dependency, Neglect, Abuse, or Abandonment
↳ 209k6.6(1) k. In General. Most Cited Cases
(Formerly 209k6(2))

Good cause for failing to apply provisions of Indian Child Welfare Act in dependency proceeding was

not presented by fact that child had spent only a few hours on the reservation and had been raised as a non-Indian child, where child had a real attachment to and affection for her Indian father and other members of his family. Indian Child Welfare Act of 1978, § 105(b), 25 U.S.C.A. § 1915(b).



[4] [KeyCite Notes](#)

↻76H Children Out-Of-Wedlock

↻76HV Paternity Proceedings

↻76Hk42 Evidence

↻76Hk53 k. Sufficiency. [Most Cited Cases](#)

Finding that putative father was father of child was supported by evidence that father, a Navajo Indian, had acknowledged paternity and enrolled child in Navajo Tribe, that he was listed as father on birth certificate, that mother thought that he was probably the father, and that, following birth, he helped care for the child.

****830 *347** Navajo Legal Aid and Defender Service by Peter Breen, Window Rock, for appellant Father.

Navajo Nation Dept. of Justice by Donna C. Bradley, Window Rock, for intervenor-appellant.

Robert K. Corbin, Atty. Gen. by Macre S. Monson, Asst. Atty. Gen., Phoenix, for appellee ADES.

J. Michael Flournoy, Flagstaff, for appellee Mother.

KLEINSCHMIDT, Presiding Judge.

This case presents the question whether the trial court erred when it placed an Indian child in a non-Indian foster home. We hold that the court did err because it refused to apply the provisions of the Indian Child Welfare Act, 25 U.S.C.A. §§ 1901-1963.

The seven-year-old minor child, Jessica Brown/Jensen, is the daughter of Alan Brown, a Navajo, and Cindy Jensen, a non-Indian. The child is an enrolled member of the Navajo Tribe. The child's parents never married but lived together for over three years in Page, Arizona, a community adjacent to the Navajo Reservation. Thereafter, the child lived with her mother and stepfather. State authorities intervened when the stepfather abused the child. A dependency petition was filed in which the natural father intervened, seeking custody of the child. The court heard evidence on all issues.

At the hearing, Virginia Hannon, a social worker employed by the Navajo Tribe, testified that she had investigated Alan Brown's home and circumstances. She found that Brown lived in a new house, which was well furnished and had modern conveniences. Brown's parents lived nearby. She observed a visit that the child, Jessica, had with the Brown family in the summer of 1986. She described the child as affectionate towards her father and said that the whole family, including the child, acted as though they had always been together. She believed that placement with the father would not entail any physical or emotional suffering and recommended that Alan Brown be given custody of the child after Jessica became accustomed to his home.

James Cox, a psychotherapist who was familiar with the child, with the mother, and with Alan Brown, felt that Brown had the potential to be an adequate parent, but that he needed to be more consistent in keeping in contact with the child when she was living in a foster home.

Kate Johnson, a psychologist who had performed an evaluation of the child, had reservations about placing the child with her father because she was unsure of how familiar the child was with him. She believed a resolution of this question would require further study, and she did not want to make a firm judgment on the issue. She believed that it would involve considerable adjustment to place the child in a traditional Navajo home but saw no contraindications to placing her in an Indian home in Page. She believed that although the child had adapted well to her foster home, she could be moved again without trouble.

Daniel Cady, a psychologist, had performed an evaluation of Alan Brown. He found that Brown would be an adequate parent. He described Brown as neither a completely traditional Navajo nor a completely Anglicized individual.

A caseworker for the Department of Economic Security, Nancy Garduno, advised the court that she had prepared a case plan that called for the child to live with her father pending a final custody determination. This plan was modified because two of the natural mother's younger sisters had

accused Alan Brown of molesting them while he was residing with them. These accusations first surfaced after Brown sought custody of the child. At the time of the hearing, the accusations were being investigated by the police. Ms. Garduno said that from all that she had observed, the child's relationship with her Navajo extended family was positive. She had no reason to think there was good cause to ****831 *348** place the child outside a Navajo home. She had investigated the school in Gallup which the child would attend if she lived with her father and found the curriculum appropriate to Jessica's needs.

The trial judge also heard testimony from Alan Brown, Cindy Jensen, and Cindy Jensen's husband. The judge then made the following findings and issued the following order:

The court finds facts as follows:

1. The minor child, Jessica Brown/Jensen, is the daughter of Cindy Jensen and Alan Brown.
2. Cindy Jensen, the mother, is an Anglo.
3. Alan Brown, the father, is an Indian, being an enrolled member of the Navajo Tribe.
4. The mother and father never married, but lived together for three and one-half years after the child was born. They lived in Page, Arizona, off of any reservation.
5. The mother and father separated, with the mother keeping the child. There has never been any formal court order concerning custody.
6. The mother married and continued to live in Page. She is still married to this husband, Bradley Jensen.
7. From the time of the child's birth until the initiation of this action, she has spent only a few hours on the Navajo Reservation and has had only minimum contacts with her Indian relatives. She has in all meaningful respects been raised as a non-Indian child.
8. In March, 1986, the child came to the attention of state agents because of an alleged act of abuse committed against her by her stepfather, Bradley Jensen.
9. The child was thereupon removed from the Jensen home and placed in an Anglo foster home in Page, where she is today.
10. Although Alan Brown had had very infrequent contacts with the child up to that point, he has been more assertive since being notified of these proceedings by DES, although he has without justifiable excuse missed some visits.
11. In June, 1986, Alan Brown caused the child to be enrolled as a member of the Navajo Tribe. This court has considered the child to be an Indian solely on the basis of said enrollment.
12. Also in June, 1986, the sisters of Cindy Jensen accused Alan Brown of having sexually assaulted them. These accusations are unresolved.

Conclusions of Law

1. The Indian Child Welfare Act, 25 U.S.C. Section 1901, does not apply.

The act is clearly designed to prevent culture shock and disturbance of Indian homes. It sensibly applies in situations where the state removes an Indian child from an Indian family and places the child in an Anglo foster home. However, it would cause evil to remove a partly Indian child who has always been raised as an Anglo from her Anglo home and place her in an Indian foster home. This is simply the other side of the culture shock coin.

2. It is in the best interests of this child to keep her in a situation most like that to which she is accustomed, namely an Anglo home in Page.
3. The mother's home is not a fit placement at present because of Bradley Jensen's [the stepfather] presence there.
4. The father's home is not a fit placement because it is remote, thrusts the child into a totally unfamiliar lifestyle, school and environment and due to the doubts about the father's character raised by the sexual claims are unresolved.

ORDER

Therefore the Court orders that the child shall remain in a foster home at the discretion of DES until she can be returned to the home of her mother.

We disagree with the judge's conclusion that the Indian Child Welfare Act does not apply. As we have previously recognized, the Act was enacted to " 'protect the best interests of Indian children and to promote ****832 *349** the stability and security of Indian tribes and families.' " *In re Maricopa County Juvenile Action No. A-25525*, 136 Ariz. 528, 531, 667 P.2d 228, 231 (App.1983) (quoting 25 U.S.C.A. § 1902). Congress acknowledged that " 'an alarmingly high percentage of Indian families are broken up by the removal ... of their children' and placement in non-Indian homes." *Id.* (quoting 25 U.S.C.A. § 1201(4)). The Act sets out " 'minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture' " *Id.* (quoting 25 U.S.C.A. § 1902).



[1] The Act applies if the proceeding is a "child custody proceeding" as defined in the Act and the child is an "Indian child." An Indian child is a child who is a member of an Indian Tribe or a biological child of a member and eligible for membership in a tribe. 25 U.S.C.A. § 1903(4). It is undisputed that the proceeding was a child custody proceeding, and the trial judge expressly found that the child was an Indian child. The mother contests this latter finding on appeal. As we discuss in more detail later, however, the judge's finding was amply supported by the record.



[2] Once it is determined that a dependency proceeding involves an Indian child, the judge *must*, in the absence of good cause to the contrary, follow the provisions of the Act. The child may not be placed in foster care unless the judge finds by clear and convincing evidence that parental custody is likely to result in serious physical or emotional harm to the child. 25 U.S.C.A. § 1912(e). The specific provision which governs foster care placement is 25 U.S.C.A. § 1915(b). It reads:

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, *in the absence of good cause to the contrary*, to a placement with--

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

25 U.S.C.A. § 1915(b) (emphasis added).

The prerequisites for the application of the Act are clearly met. We assume, therefore, that the trial judge's comments about its "sensible application," the "evil" of removing a child from a non-Indian to an Indian home when culture shock would result, and the remoteness of the father's home were made in an attempt to establish the necessary good cause not to follow the Act.



[3] The question thus becomes whether the reasons articulated by the judge constitute good cause to avoid the provisions of the Act. In our opinion they do not. We realize that most cases dealing with the placement of Indian children will involve children who have been living in an Indian home. The fact that a child may have been living in a non-Indian home is no reason, standing alone, to dispense with the provisions of the Act. *See In re Adoption of Holloway*, 732 P.2d 962 (Utah 1986). When the Act is read as a whole, it is clear that Congress has made a very strong policy choice that Indian children, including those who have a non-Indian parent, belong in an Indian home. Assuming that the remoteness of the Indian home and "culture shock" may be valid considerations in deciding whether there is good cause not to follow the preferences expressed in the Act in a given case, on the record before the trial court in this matter, we find that it was an abuse of discretion not to apply the ****833 *350** preferences. The child had actually lived with her Indian father for three years, although concededly not in a purely reservation setting. The evidence shows that the child had a real attachment to, and affection for, her father and the other members of his family. None of the professionals familiar with the people involved raised any substantial objection to placement in an Indian home. The mother expressed no objection to Jessica's exposure to Indian culture but thought that another move would not be good for the child. The father lived in a small community within twenty miles of Gallup, where the evidence showed that services and schooling for the child were adequate.

We do not rule that the trial judge must order this child placed with her father. The judge never resolved the allegations that the father was a child molester. These are accusations that the trial judge must resolve in making a decision, based on all of the evidence now before him or which may come before him in subsequent proceedings. The judge may not order foster care, however, unless he determines, by clear and convincing evidence, including testimony from a qualified expert, that parental placement is likely to result in serious emotional or physical harm to the child. 25 U.S.C.A. § 1912(e). If the trial judge finds that the father is not a fit parent he must, in the absence of good cause based on something more than has been presented in this case so far, follow the placement hierarchy dictated by 25 U.S.C.A. § 1915(b).



[4] Finally, we address the question raised by the mother as to whether Alan Brown was really the father of the child. While Brown's fatherhood was never the subject of a formal paternity proceeding, he has acknowledged paternity and enrolled the child in the Navajo Tribe. Brown is listed as the father on the birth certificate. Cindy Jensen said that he was probably the father, although she was unsure. She remembered when and where she believed the child was conceived, and while she was carrying the child she told Brown that she was pregnant by him. After Cindy became pregnant, her parents directed Cindy to approach Brown's parents for money for an abortion. Brown took Cindy to a Public Health Service Hospital on the reservation to have the child delivered, and following the birth Brown helped care for the child. The evidence adequately supports the court's finding that Alan Brown is the natural father of the child.

The order of the trial court is vacated and this matter is remanded for further proceedings consistent with this opinion.

SHELLEY and BROOKS, JJ., concur.

Ariz.App.,1987.

Matter of Appeal in Coconino County Juvenile Action No. J-10175

153 Ariz. 346, 736 P.2d 829

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EXHIBIT E

MICHAEL J. JEANES, CLERK
BY *J. Decker* DEP.
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1 TAMARA R. WALTERS
2 Assistant Attorney General
3 PASCUA YAQUI TRIBE
4 4725 W. Calle Tetakusim, Bldg. B
5 Tucson, Arizona 85746
6 Tel.: (520) 883-5108
7 Fax: (520) 883-5084
8 Arizona Bar Number 10510
9 Attorney for Pascua Yaqui Tribe

10
11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
12
13 IN AND FOR THE COUNTY OF MARICOPA

14 **In the Matter of:**) **Case No. JD-505197**
15)
16 **TRINITY MARIE CORONADO**) **MOTION TO INTERVENE**
17) **25 USC Sec. 1911(c)**
18)
19) **Assigned to Judge Araneta**
20 **Person under 18 years of age.**)

21 **THE PASCUA YAQUI TRIBE OF ARIZONA**, by and through Tamara R. Walters,
22 Assistant Attorney General for the Pascua Yaqui Tribe, hereby informs this Court of its intent to
23 intervene in the above-entitled dependency action. This Motion to Intervene is made pursuant to
24 Sec. 1911(c) of the Indian Child Welfare Act of 1978, Pub. L. 95-608, 25 USC Sec. 1901-1932,
25 hereinafter "the Act".

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I. PROCEDURAL SEQUENCE**

28 The Arizona Department of Economic Security filed a Dependency Petition in
29 this matter on August 24, 2004. The Dependency Petition pertains to the parental rights of both
the mother and the father of said child.

II. LAW

The Indian Child Welfare Act, 25 USC Sec. 1911(c), provides that in any State court



1 proceeding for the foster care placement of, or termination of parental rights to, an Indian child,
2 the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any
3 point in the proceeding.

4 The Act defines an "Indian child" as any unmarried person who is under age eighteen
5 and is either a) a member of an Indian tribe or b) is eligible for membership in an Indian tribe,
6 and is the biological child of a member of an Indian tribe. 25 USC Sec. 1903(4).

7 **III. FACTS AND ARGUMENT**

8 a. TRINITY MARIE CORONADO is an "Indian child" as defined by the Act, 25
9 USC Sec. 1903(4). The child is not an enrolled member but is eligible for enrollment with the
10 Pascua Yaqui Tribe through her father (Enrollment Verification is attached hereto as Exhibit A),
11 and is the biological child of JOE CORONADO and MONIQUE PRATT.

12 b. JOE CORONADO, the father, is an enrolled member of the Pascua Yaqui Tribe,
13 Enrollment Number 2694U00793 (Certificate Degree of Indian Blood attached as Exhibit B).

14 c. This dependency proceeding is a "proceeding for the foster care
15 placement" of an Indian child as "foster care placement" is defined in the Act, 25 USC Sec.
16 1903(1)(i).

17 d. The Pascua Yaqui Tribe of Arizona, as the Indian child's tribe, has a right
18 to intervene in this dependency proceeding.

19 **III. SUMMARY**

20
21 Under the Act, the Pascua Yaqui Tribe has a right to intervene in this
22 dependency proceeding. Therefore, the Pascua Yaqui Tribe hereby requests that this Court
23 recognize the Pascua Yaqui Tribe as a party to this action and notice the Tribe in all matters and
24 hearings pertaining to this matter.

25 Respectfully Submitted this 27th day of August, 2004.

26
27 

28 **TAMARA R. WALTERS**

29 Assistant Attorney General

Pascua Yaqui Tribe

ATTORNEY FOR PASCUA YAQUI TRIBE

1 COPY of the foregoing mailed/faxed this
2 21st day of August, 2004 to:

3 The Honorable Louis Araneta
4 1810 South Lewis
5 Mesa, Arizona 85210-6234

6 Thomas F. Stubbs
7 Assistant Attorney General
8 430 North Dobson, Suite 101
9 Mesa, Arizona 85201
10 Attorney for Arizona DES

11 Talia Valdez
12 Arizona Department of Economic Security
13 5002 S. Mill Avenue
14 Tempe, Arizona 85282
15 CPS Case Worker

16 Kim Zack
17 411 N. Central Avenue, Suite 900
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19 Attorney for Child

20 Jeff Kolbe
21 222 N. Central Avenue, Suite 910
22 Phoenix, Arizona 85004
23 Attorney for Mother

24 Vicki Liszewski
25 4445 E. Holmes Avenue, Suite 101
26 Mesa, Arizona 85206-3398
27 Attorney for Father

28 Gabriel Alvarez
29 Pascua Yaqui Tribe Social Services
9405 S. Avenida Del Yaqui
Guadalupe, Arizona 85283
ICWA Case Worker

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EXHIBIT "A"

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PASCUE YAQUI TRIBE ENROLLMENT DEPARTMENT
7474 S. CAMINO DE OESTE TUCSON, AZ 85746
(520) 879-6226/1-800-572-7282 EXT. 6226

Date: 8/27/2004

TRIBAL ATTORNEY'S OFFICE
TAMARA WALTERS
4725 W. CALLE TETAKUSIM #B
TUCSON, AZ 85746

As per your request for enrollment verification / information on the following individual :

Name: TRINITY MARIE CORONADO

D.O.B. 8/17/2004

Social Security _____

Parent's Names:

Father: JOSE CORONADO

Enrollment # 2694U00793

Mother: MONIQUE PRATT

Enrollment # NON-MEMBER

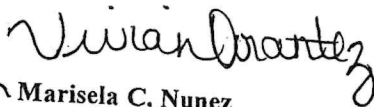
Other Info:

Based on all information provided to the Pascua Yaqui Tribe Enrollment Department, we have determined that TRINITY MARIE CORONADO falls under the following reason(s):

This is to Verify that the above named person is a direct lineal descendant of the Pascua Yaqui Tribe and is eligible for membership

Notes: No application no documentation on file.

Sincerely,



for Marisela C. Nunez
Enrollment Manager

Pascua Yaqui Tribe Enrollment Office

FRM/NON.MEM

REV. 10/2002

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EXHIBIT "B"

**PASCUA YAQUI TRIBE
ENROLLMENT DEPARTMENT**

CERTIFICATE DEGREE OF INDIAN BLOOD

This is to certify that the following individual is an enrolled member of the Pascua Yaqui Tribe. An official Tribal Enrollment Document is on file, at the Pascua Yaqui Tribal Enrollment Department.

Name	Date of Birth	Tribal Enrollment Number	Tribal Enrollment Date	Pascua Yaqui Blood Quantum
JOSE CORONADO	10/17/1975	2694U00793	11/4/1980	1/2

I certify that the above information, is true based on the records of the Pascua Yaqui Tribe Enrollment Department.

Issued: July 8, 2004

Certified by:

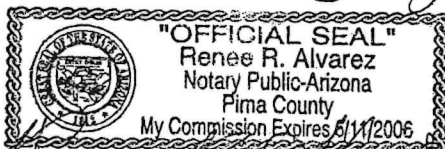
Maria R. Padilla

MARIA R. PADILLA

DATA RESEARCH TECH

State of Arizona, County of Pima

Subscribed and sworn before me this 8th day of July, 2004



Notary Public

Renee R. Alvarez

EXHIBIT F

MICHAEL R. JEANES, CLERK
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TAMARA R. WALTERS
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Fax: (520) 883-5084
Arizona Bar Number 10510
Attorney for Pascua Yaqui Tribe

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

In the Matter of:

TRINITY MARIE CORONADO

Person under 18 years of age.

Case No. JD-505197

PETITION FOR TRANSFER OF
JURISDICTION AND MOTION
TO DISMISS DEPENDENCY
[25 USC Sec. 1911(b)]

Assigned to Judge Araneta

COMES NOW THE PASCUA YAQUI TRIBE OF ARIZONA, by and through their attorney, Tamara R. Walters, Assistant Attorney General for the Pascua Yaqui Tribe, and respectfully petitions this Court for an Order transferring jurisdiction of the above-entitled involuntary dependency action as it pertains to the minor child, TRINITY MARIE CORONADO, to the Juvenile Court of the Pascua Yaqui Tribe. This Petition is made pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. Sec. 1911(b).

MEMORANDUM IN SUPPORT OF PETITION TO TRANSFER AND MOTION TO DISMISS DEPENDENCY AS TO MINOR CHILD MARTHA GARCIA

The central feature of the Indian Child Welfare Act is the presumptive primacy of tribal courts' jurisdiction over child custody proceedings involving Indian children. "The Act grants

PASCUA YAQUI
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1 tribal courts exclusive jurisdiction over child custody proceedings involving Indian children
2 domiciled on a reservation, *See* 25 U.S.C. Sec. 1911(a), and concurrent but presumptively tribal
3 jurisdiction in proceedings involving Indian children not domiciled on a reservation ... 25 U.S.C.
4 Sec. 1911(b).” *Michael J., Jr. v. Michael J., Sr.*, 198 Ariz. 154, 7 P.3d 960 (Ct.App.Div.I, 2000).

6 Pursuant to 25 U.S.C. Sec. 1911, ICWA applies to any child custody proceeding, defined
7 in 25 U.S.C. Sec. 1903(1), involving an Indian child. An “Indian child” means any unmarried
8 person who is under age eighteen and is either a) a member of an Indian tribe or b) is eligible for
9 membership in an Indian tribe and is the biological child of a member of an Indian tribe.” 25
10 U.S.C. Sec. 1930(4).

12 In any State court proceeding for the foster care placement of, or termination of parental
13 rights to, an Indian child not domiciled or residing within the reservation of the Indian child’s
14 tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the
15 jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the
16 Indian custodian or the Indian child’s tribe; Provided, that such transfer shall be subject to
17 declination by the tribal court of such tribe. 25 U.S.C. Sec. 1911(b). “Once it is determined that
18 a dependency proceeding involves an Indian child, the judge *must*, in the absence of good cause
19 to the contrary, follow the provisions of the Act.” *In re Coconino County Juvenile Action No. J-*
20 *10175*, 153 Ariz. 346, 349, 736 P.2d 829, 832 (App. 1987).

24 Because the Act itself does not define good cause, a state court has some discretion in
25 deciding whether to transfer a matter to tribal court. *See Michael J.*, 198 Ariz. 154, 7 P.3d 960;
26 *In re Maricopa County Juvenile Action No. JS-8287*, 171 Ariz. 104, 107, 838 P.2d 1245, 1248
27 (App. 1991). The juvenile court’s discretion, however, should be exercised whenever possible
28
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1 “to support ICWA’s goal not only of preserving Indian families, but also of protecting the tribe’s
2 interests in the welfare of its Indian children and the maintenance of its culture.” *See Michael J.*,
3 198 Ariz. 154, 7 P.3d 960 (rejecting “existing Indian family” exception to ICWA’s coverage).
4 *See also In re Pima County Juvenile Action No. S-903*, 130 Ariz. 202, 204, 635 P.2d 187, 189
5 (App. 1981) (reversing trial court’s denial of petition to transfer and noting the Act’s
6 “fundamental assumption that it is in the Indian child’s best interest that its relationship to the
7 tribe be protected”).
8

9
10 The limited issue for this court is “the legal question of who should make the custody
11 determination of the minor children – not what the outcome of that determination should be. The
12 law places that decision in the hands of the tribal court.” *Holyfield*, 490 U.S. 30, 53, 109 S.Ct.
13 1597, 1611, 104 L.Ed.2d 29, 50. *See also Michael J.*, 198 Ariz. 154, 7 P.3d 960. The Supreme
14 Court in *Holyfield* concluded:
15

16 It is not ours to say whether the trauma that might result from removing
17 the child from the foster family should outweigh the interest of the Tribe-
18 and perhaps the child himself – in having him raised as part of the tribal
19 community. Rather, we must defer to the experience, wisdom, and com-
20 passion of the tribal courts to fashion an appropriate remedy. 490 U.S.
21 at 53-54, 109 S.Ct. at 1611, 104 L.Ed.2d at 50.

22 Conclusion

23 The minor child, TRINITY MARIE CORONADO, is eligible for membership with the
24 Pascua Yaqui Tribe. The Pascua Yaqui Tribe Social Services Department is prepared to take
25 custody of the child as soon as the respective Courts enter the appropriate orders for change of
26 jurisdiction. The child has already been placed with a Yaqui relative.

27 The Indian Child Welfare Act of 1978, 25 U.S.C. Sec. 1911(b) states “the court, in the
28 absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the
29

1 tribe, absent objection from either parent, upon the petition of either parent or the Indian
2 custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination
3 by the tribal court of such tribe." It is anticipated that there will be no objection to the transfer of
4 jurisdiction, nor is there good cause why this matter should not be transferred. The Pascua Yaqui
5 Juvenile Court has jurisdiction to hear this matter pursuant to the Indian Child Welfare Act, 25
6 U.S.C. Sec. 1911(b) and to the Pascua Yaqui Juvenile Code, Title 2, and the Pascua Yaqui Tribe
7 Child Welfare Policy Act of 2002. The Pascua Yaqui Tribal Court has accepted jurisdiction of
8 this matter. A certified copy of the Order Exercising Jurisdiction and Accepting Transfer from
9 State Court is attached hereto as Exhibit A.

10 Therefore, based upon the foregoing, the Pascua Yaqui Tribe hereby requests that the
11 Superior Court enter an order to transfer Dependency Case No. JD-505197 as it pertains to the
12 minor child, TRINITY MARIE CORONADO, to the jurisdiction of the Pascua Yaqui Juvenile
13 Court and that Dependency Case No. JD-505197 be dismissed.

14 Respectfully Submitted this 27th day of August, 2004.

15 

16 **TAMARA R. WALTERS**
17 Assistant Attorney General
18 ATTORNEY FOR PASCUA YAQUI TRIBE

19 **ORIGINAL** delivered/mailed this 27th day
20 of August, 2004 to the Clerk's Office,

21 Maricopa County Juvenile Court Center
22 1810 South Lewis
23 Mesa, Arizona 85210-6234

24 **COPY** of the foregoing mailed/faxed this
25 27th day of August, 2004 to:

1 The Honorable Louis Araneta
2 1810 South Lewis
3 Mesa, Arizona 85210-6234

4 Thomas F. Stubbs
5 Assistant Attorney General
6 430 North Dobson, Suite 101
7 Mesa, Arizona 85201
8 Attorney for Arizona DES

9 Talia Valdez
10 Arizona Department of Economic Security
11 5002 S. Mill Avenue
12 Tempe, Arizona 85282
13 CPS Case Worker

14 Kim Zack
15 411 N. Central Avenue, Suite 900
16 Phoenix, Arizona 85004-2166
17 Attorney for Child

18 Jeff Kolbe
19 222 N. Central Avenue, Suite 910
20 Phoenix, Arizona 85004
21 Attorney for Mother

22 Vicki Liszewski
23 4445 E. Holmes Avenue, Suite 101
24 Mesa, Arizona 85206-3398
25 Attorney for Father

26 Gabriel Alvarez
27 Pascua Yaqui Tribe Social Services
28 9405 S. Avenida Del Yaqui
29 Guadalupe, Arizona 85283
ICWA Case Worker

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EXHIBIT A

IN THE JUVENILE COURT
OF THE PASCUA YAQUI TRIBE

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

In the Matter of:

CORONADO, TRINITY MARIE
DOB: 8/17/04

Case No.:

ORDER EXERCISING
JURISDICTION AND
ACCEPTING TRANSFER
FROM STATE COURT
[ICWA - 25 USC § 1911]

This matter comes before the court on a request to exercise jurisdiction and accept transfer from Maricopa County Juvenile Court. Hearing no good cause to the contrary or objections by the parents, and finding no reason to decline jurisdiction, this Court hereby accepts transfer of this matter from the Maricopa County Juvenile Court, as it pertains to the rights of the biological parents of the minor TRINITY MARIE CORONADO in Cause Number JD-505197. This exercise and acceptance is made pursuant to § 1911 (b) of the Indian Child Welfare Act of 1978, Pub. L. 95-608, 25 USC §§1901-1932.

This Court shall exercise jurisdiction over this matter as provided in Article II and Article VIII, § 2 of the Pascua Yaqui Constitution, and the Pascua Yaqui Juvenile Code, §2.1(A)(1), and The Pascua Yaqui Tribe Child Welfare Policy Act of 2002.

DATED this 25th day of August, 2004.



JUDGE, PASCUA YAQUI JUVENILE COURT
Pascua Yaqui Tribal Court) ss.

The foregoing instrument is full, true, and correct copy of the original on file in this Court.

Attested August 25, 2004
by Malina M. Valverde
Court Clerk

Copy of the foregoing mailed/delivered
this date to:

Tamara Walters
Assistant Attorney General
Pascua Yaqui Tribe
4725 W. Calle Tetakusim, Bldg. B
Tucson, Arizona 85746

Gabriel Alvarez
Pascua Yaqui Tribe Social Services
9405 S. Avenida Del Yaqui
Guadalupe, Arizona 85283
ICWA Case Worker

Michael Andrews
Chief Prosecutor
Pascua Yaqui Tribe
4725 W. Calle Tetakusim, Bldg. C
Tucson, Arizona 85746
Juvenile Presenting Officer

EXHIBIT G

AG Thomas Stubbs (relieved)
LD Jeffrey Kolbe (relieved)
LA Kim Zack (relieved)
DES Talia Valdez (relieved)
FCRB (relieved)
FILE CLERK
OCC

FILED: 09-17-04

SUPERIOR COURT OF ARIZONA
Maricopa County
Juvenile Division

09-01-04
Date

HONORABLE LOUIS A. ARANETA

B. Nance
Deputy Clerk

No. JD 505197

IN THE MATTER OF

TRINITY MARIE CORONADO

VICKI LISZEWSKI (RELIEVED)

TAMARA R. WALTERS
PASCUA YAQUI TRIBE
4725 W CALLE TETAKUSIM BLDG B
TUCSON AZ 85746

PASCUA YAQUI TRIBAL COURT
4730 W CALLE TETAKUSIM
TUCSON AZ 85746

SERVICE:

Name	Date	Method	Date
Monique Pratt	09-01-04	P/A	LAST DAY: 11-30-04
Joe Coronado	09-01-04	P/A	LAST DAY: 11-30-04
John Doe		INC	LAST DAY:

10:30 a.m. (C/R)

This is the time set for Preliminary Protective Hearing on a dependency petition filed 08-24-04.

PRELIMINARY PROTECTIVE HEARING/
DISMISS PETITION

TRINITY MARIE CORONADO
JD 505197
09-01-04

Present are: Assistant Attorney General Tom Stubbs; Assistant Attorney Ronald Siegel, observing; DES Case Manager Talia Valdez; guardian ad litem for the child, Kim Zack; counsel for the mother, Barbara Carroll, appearing on behalf of Jeff Kolbe; the mother, Monique Pratt; counsel for the father, Vicki Liszewski; the father, Joe Coronado; Assistant Attorney General for the Pascua Yaqui Tribe, Tamara Walters, appearing telephonically; Pascua Yaqui Tribe social worker, Gabriel Alvarez; and DES supervisor, Kristen Morgan.

Court Reporter Sharon Flores is present.

A discussion is held among the parties.

IT IS ORDERED granting the Motion to Intervene on behalf of the Pascua Yaqui Tribe.

IT IS ORDERED granting the Petition for Transfer of Jurisdiction and Motion to Dismiss Dependency.

Upon this matter being transferred to the Pascua Yaqui Juvenile Court,

IT IS ORDERED dismissing the 08-24-04 dependency petition effective this date.

IT IS ORDERED relieving DES, FCRB and all counsel from further responsibility in this matter.

IT IS ORDERED that the Clerk of the Superior Court of Arizona, Maricopa County, is hereby directed to transfer a certified copy of this file to the Pascua Yaqui Juvenile Tribal Court.

The Court also directs that the case manager's August report be transmitted to the tribal court as well as a copy of the home study report dated 08-01-04.

IT IS ORDERED sealing the criminal history records subject to review by the tribal court with any further dissemination subject to the tribal court's rulings.

IT IS ORDERED dismissing the Initial Dependency Hearing

on 09-13-04
at 9:15 a.m.
before Honorable Louis A. Araneta
at the Maricopa County Juvenile Court Center
Southeast Facility, 1810 S. Lewis St., Mesa, AZ 85210

PRELIMINARY PROTECTIVE HEARING/
DISMISS PETITION

TRINITY MARIE CORONADO
JD 505197
09-01-04

IT IS ORDERED dismissing the Publication Hearing

on 11-02-04
at 10:00 a.m.
before Judge Pro Tem Thomas A. Kaipio
at the Maricopa County Juvenile Court Center
Southeast Facility, 1810 S. Lewis St., Mesa, AZ 85210

IT IS ORDERED vacating the Permanency Planning Hearing

on 08-01-05
at 8:45 a.m.
before Honorable Louis A. Araneta
at the Maricopa County Juvenile Court Center
Southeast Facility, 1810 S. Lewis St., Mesa, AZ 85210

10:37 a.m. Court adjourns.

FILED: Order Transferring Jurisdiction and Dismissing
Dependency
Parent's Financial Affidavit to Determine
Eligibility for a Court-Appointed Attorney (2)
Preliminary Criminal History Records Check Response under seal

ppd: 09-09-04

September 16, 2004
Date

Louis A. Araneta
HONORABLE LOUIS A. ARANETA

EXHIBIT H

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
7474 S. Camino de Oeste
Tucson, Arizona 85746
(520) 879-6251
Nicki DiCampli
Juvenile Presenting Officer

RECEIVED
MAY 17 AM 10:36

SECRET NO. CW-04-019

FILED ABM

IN THE PASCUA YAQUI JUVENILE COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

In the Matter of:

CORONADO, TRINITY

D.O.B. 08/17/04

NO. CW- 04-019

DEPENDENCY PETITION

THE PETITIONER, Pascua Yaqui Tribal Social Services and the Pascua Yaqui Tribe, hereby requests a status conference regarding the following child;

1. The name, age, sex, tribal affiliation and residence of the children are:

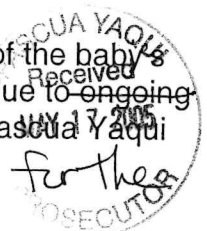
Trinity Coronado, born August 17, 2004, daughter of Monique Pratt and Joe Coronado. Jose Coronado is a registered Pascua Yaqui Tribe member, number 269U00793

LEGAL HISTORY

August 19, 2004, Parents Monique Pratt and Joe Coronado were given copies of Temporary Custody Notice regarding their daughter, Trinity Coronado. Both parents refused to sign the paper work.

August 24, 2004, the Attorney General filed a Dependency Petition regarding Trinity Coronado in Maricopa County. The State alleged that her mother, Monique Pratt was unable to parent due to ongoing substance abuse issues. The child was born exposed to methamphetamine and tested positive at the time of the baby's birth. Previously, her rights to five other children were terminated for neglect and substance abuse related issues.

The Father, Joe Coronado was not married to Monique Pratt at the time of the baby's birth but he did establish paternity to her. He also was unable to parent due to ongoing substance abuse issues. Jose Coronado is an enrolled member of the Pascua Yaqui Tribe, member no. 269U00793. *being incarcerated in DOC for the next 3.5 years -*



1. The Tribe requests that the hearing date for June 3, 2005 remain in place.
2. The Tribe request the parents be served with Notice of the June 3, 2005 hearing date.
3. The Tribe requests that a status conference be set before the June 3, 2005 hearing.

2. The Court has jurisdiction in this matter for the reason that the children are enrolled or eligible for enrollment in the Pascua Yaqui Tribe, pursuant to 2 PYTC §2.1(A), and/or the Indian Child Welfare Act of 1978, 25 USC § 1901 et. seq.. The Court has jurisdiction over non-Pascua Yaqui child custody matters arising on the reservation when the best interest of the juvenile require, pursuant to 2 PYTC §2.1(C).

3. The names, residence, and tribal affiliation of the parents, guardians, or custodians of the children are:

Father – Jose Coronado, Pascua Yaqui Tribe Member no. 269U))793-whereabouts unknown. *currently incarcerated for next 3.5 years*
Mother – Monique Pratt, 330 Deanna, Prescott, Arizona-last known address.

4. The children are in need of protection, within the provisions of 2 PYTC, in that the child/children are in need of proper and effective care and control and have no parent, guardian or custodian willing to exercise or capable of exercising such care and control; or the child is not provided with the necessities of life, or is not provided with a home or suitable place of abode, or whose home is unfit by reason of abuse, neglect, cruelty or depravity by either parent, guardian or other person having custody and care of the child; or who has not been provided with adequate medical care, education or supervision; or who have been placed in a situation that my endanger their life or health by their parent, guardian or custodian, to wit:

Trinity Coronado was born on August 17, 2004. On August 19, 2004, Child Protective Services took custody of the baby. Her Mother, Monique Pratt, had ongoing substance abuse issues and tested positive for methamphetamine at the time of the baby's birth. The Father, Jose Coronado, also had ongoing substance abuse issues at the time of Trinity's birth. Neither parent was able to provide or care for their daughter, Trinity Coronado at the time of her birth.

Monique Pratt and Jose Coronado have not complied with or participated in their Court ordered counseling or meaningfully expressed a desire to be reunited with their daughter. Trinity Coronado remains with her Paternal Grandmother.

5. Based on the foregoing allegations, immediate action is required to Protect the best interests and welfare of this child.

WHEREFORE, Petitioner prays that the Court set a time and place for a hearing on this Petition; and that notice be given to all interested parties;

FURTHER, that the Court grant temporary legal custody to the Pascua Yaqui Tribal Social Services and that the Tribal Social Services be authorized to consent to

Trinity Coronado was placed with her Paternal Grandmother, Julia Coronado.

August 25, 2004, The Pascua Yaqui Tribe filed a Motion to Intervene, a Motion to Exercise Jurisdiction and Accept Transfer from State Court.

September 17, 2004, the Maricopa County Juvenile Court held the Preliminary Protective Hearing. Both Mother and Father were present and represented by Counsel. The Court granted the Motion to Intervene and the Motion to Transfer to the Pascua Yaqui Tribe Juvenile Court and dismissed the Dependency Petition in State Court.

March 14, 2005, the Pascua Yaqui Tribe Prosecutor's Office filed a Motion for a Status Conference.

April 8, 2005, the Pascua Yaqui Tribe Juvenile Court held the Status Conference. The Court found that the Mother, Monique Pratt had not met her counseling requirements as ordered by the State and Tribal Court.

Jose Coronado had not complied with his counseling either and failed to participate in after care program, the Centered Spirit Outpatient or attend his individual counseling sessions. His whereabouts are unknown.

The PYT Court also held that Trinity Coronado should remain in her current placement, with the Paternal Grandmother, Julia Coronado. The Court also ordered the Prosecutor's Office to file an Amended Dependency Petition.

May 6, 2005, the Court held an Initial hearing on Transfer of the case. However, Jose Coronado and Monique Pratt both failed to appear. It was determined the parents were not served proper notice of the hearing. The case was continued until June 3, 2005.

RECOMMENDATIONS:

The Tribe recommends that Trinity Coronado remain in her current placement with her Paternal Grandmother, Julia Coronado. The Tribe also recommends that a concurrent case exist: (1) return to parents and (2) permanent guardianship. An Initial Hearing is set for June 3, 2005. If the parents have not made contact with their case worker or expressed a desire to re-unite with their daughter, by this hearing date, the tribe recommends that the case plan should be changed to permanent guardianship with the Paternal Grandmother.

The Tribe is pessimistic regarding the possibility of reunifying Trinity Coronado with her parents. Her Mother, Monique Pratt, had five other children removed from her care. The Father, Jose Coronado, has a history of substance abuse and inconsistent participation in services offered to him. Trinity Coronado deserves to have a loving and stable home. Her Grandmother, Julia Coronado is a Pascua Yaqui Tribe member and is ready to assume guardianship of her granddaughter and give her the home she deserves.

REQUESTS

such medical treatment as may be necessary for the welfare of the children;

FURTHER, that the Court grant Tribal Social Services the authority to arrange physical custody of the minors as it deems in the best interest and welfare of the minor children;

FURTHER, that the Court grant Tribal Social Services the authority to consent for the children to leave the jurisdiction of the Court for travel within the State and continental United States for a period not to exceed thirty days, if such travel is in the best interest and welfare of the children;

FURTHER, that after a formal hearing in this matter, if so warranted, this Court adjudge the children to be in need of protection and this Court enter such judgment and orders for the commitment, custody, care and support and such other relief as the children's welfare and the interests of the Tribe may require under 2 PYTC § 5.1, et. seq.;

FURTHER, that the Tribal Social Services be ordered to review, and submit a written report of such review, prior to the expiration of six months, the case of the children listed in the Petition who are in an out-of-home placement (including relative care) in the legal custody of Tribal Social Services. The six month time period for review of out-of-home placement shall include any time the children were in a voluntary placement as well as time the children have been in an out-of-home placement as minors in need of protection or temporary ward of the Court;

FURTHER, that the Court find at this time, continuation of the children in the home would be contrary to the welfare of the children and that the Petitioner has made reasonable efforts to prevent or eliminate the need for removal of the children from the home or that an emergency situation exists which prevents such efforts as an alternative to removal, pursuant to 2 PYTC § 7.3.

RESPECTFULLY SUBMITTED this 17 day of May, 2005.

PASCUA YAQUI TRIBE OF ARIZONA



Nicki DiCampi

Juvenile Presenting Officer

EXHIBIT I

IN THE PASCUA YAQUI JUVENILE COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

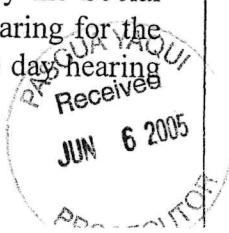
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IN THE MATTER OF;)	
)	NO. <u>CW-04-019</u>
Coronado Trinity)	
D.O.B. 08/17/04)	ORDER
Minor child(ren))	
_____)	

The above matter came before the Court on this 3rd day of June, 2005 for Initial hearing. Gabriel Alvarez appeared for Tribal Social Services; Allen Osburn appeared for the Tribe; Monique Pratt the mother appeared; the father failed to appear.

The Court finds that jurisdiction lies within this Court in that the father and the minor are enrolled members of the Pascua Yaqui Tribe; that the mother after being advised of her rights and of the consequences enters responsible pleas to the allegation of testing positive for methamphetamine and to the allegation of failing to attend counseling; that the Court accepts the mother responsible pleas as the Court is satisfied that the mother understands the rights she is waiving and understands the consequences of entering the responsible pleas; that the mother states she wants to reunite with the child and that is the reason why she is working on her issues and that she is also submitting to random urinalysis tests; that the Social Worker states that they have been having problems with the counseling agencies and it is difficult to obtain counseling as the mother has moved back to Prescott and further states that at this point the mother is doing very well; the Tribe recommends that the child be declared a Ward of Court, that the child be placed in the legal care, custody of control of Tribal Social services and that the 30 day hearing be scheduled; that it appears to the Court that continued Court intervention and out of home placement is necessary as there continues to be no parent available, capable or willing to provide for the care of the child and in that the child has not been provided with the adequate food, clothing, shelter, medical care and supervision by the parent that is necessary for the child's health and welfare as required under Title 2, Chapter 9, section 9.I, Subsections 1 and 3 of the Pascua Yaqui Juvenile Code and in that it is in the best interest of the child to remain under Wardship; that the Tribe request that the mother make efforts to contact the father and that if she is able to that she obtain a current address and submit it to the Court; that the mother states that the father can be served at his mother's home as he keeps in contact with his mother.

IT IS ORDERED THAT the above named child is declared a Ward of the Pascua Yaqui Tribal Court and the child is placed under the legal care, custody and control of Tribal Social Services who are authorized to place the child where they deem necessary and in the child's best interest and the department of Tribal Social Services shall be responsible for all of the child's medical and educational needs and the mother shall abide by the case plans and shall abide by any and all other requirements made by the Social Worker or anyone working on the treatment team and notice of the Initial hearing for the father shall be published as the father's whereabouts are unknown and the 30 day hearing



shall be held on **FRIDAY, JULY 1, 2005 AT 10:30 A.M.** and the Social Worker shall submit his report on or by **June 24, 2005.** *yvs*

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THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

SO ORDERED THIS 3RD DAY OF June, 2005.

Cornel D. S.

Judge, Pascua Yaqui Juvenile Court

Cc:
Date: 06-06-05
 Tribe Parent(s)/Minor Social Worker Other
C. M. Valenzuela
Clerk

EXHIBIT J

IN THE PASCUA YAQUI JUVENILE COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

IN THE MATTER OF;)
)
Coronado Trinity)
D.O.B. 08/17/04)
Minor child(ren))
_____)

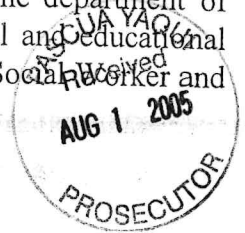
NO. CW-04-019

ORDER

The above matter came before the Court for the continued 30 day hearing on this 29th day of July, 2005. Allan Osburn appeared for the Tribe; Gabriel Alvarez appeared for Tribal Social Services; Monique Pratt, the mother appeared telephonically; the father, Jose Coronado failed to appear.

The Court finds that the Court informs the mother that this is the last time the mother will be allowed to appear telephonically as the Court prefers that the parents appear in person for hearings; that the Social Worker states that the mother had discontinued her urinalysis testing due to the Tribe no having paid the bill, and that the mother is going to counseling; that the mother states she has restarted the urinalysis drops, has completed the in-take for counseling services, will be attending sessions with different therapists, and that all reports will forwarded to the Social Worker; that notice of today's hearing was mailed to the father by certified mail, return receipt requested and the Court is unclear if the father received the notice of hearing as the Court has not received back the return receipt; that the Tribe will have to publish the notice of the Initial hearing for father as the Initial hearing on the father did not take place on July 1, 2005 as scheduled; that the mother states she is not sure if the P.O. Box address for the father is current; that the Court did not receive a report for this hearing and the Social Worker explains to the Court that he did not complete a report as he had been on administrative leave and had no knowledge that the report had not been completed; that the Social Worker Tony Sanchez represented the Social Service department at the July 1, 2005 hearing at which the Court ordered that a status report be provided on July 22, 2005; that the Court will issue an Order To Show Cause for Mr. Sanchez for his failure to comply with the order of the Court; that the recommendations is for continued Wardship and that the four month review hearing be scheduled; that good cause exist to for continued Court intervention and out of home placement as there continues to be no parent available, capable or willing to provide for the care of the child and in that the child has not been provided with adequate food, clothing, medical care, education or supervision by her parent which is necessary for the child's health and well-being as required under Title 2, Chapter 9, Section 9.1I, Subsections 1 and 3 of the Pascua Yaqui Juvenile Code.

IT IS ORDERED THAT the child shall continued under Wardship and shall continue in the legal care, custody and control of Tribal Social Services who are authorized to place the child where they deem necessary in the child's best interest and the department of Tribal Social Service shall be responsible for all of the child's medical and educational needs and the parent shall comply with all the requirements made by the Social Worker and



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or anyone working on the treatment team and Social Worker Gabriel Alvarez shall submit a case plan for the mother and file the case plan with the Tribal Court on or by **August 12, 2005** and upon review of the case plan the Court will issue an order requiring the mother to abide by the case plan and the four month review hearing shall be held on **FRIDAY, NOVEMBER 18, 2005 AT 11:30 A.M.** and the status report shall be filed by the Social Worker on or by **November 11, 2005** and the Initial hearing for the father shall be held on **THURSDAY, SEPTEMBER 15, 2005 AT 9:00 A.M.** and the Tribe shall publish the notice of hearing for the Initial hearing on the father and Social Worker, Tony Sanchez is **HEREBY ORDERED TO APPEAR BEFORE THIS COURT ON FRIDAY, AUGUST 19, 2005 AT 10:30 A.M. TO SHOW CAUSE IF ANY AS TO WHY HE SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR FAILING TO PROVIDE THE STATUS REPORT ON JULY 22, 2005 AS ORDERED BY THE COURT.**
FAILURE TO APPEAR MAY RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.

YPS
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THIS IS THE ONLY NOTICE OF HEARINGS YOU WILL RECEIVE.

SO ORDERED THIS 29th DAY OF July, 2005.

Cornelia S. G.
Judge, Pascua Yaqui Juvenile Court

Cc:
Date: 8-1-05
 Tribe Parent(s)/Minor Social Worker Other
C. M. Velazquez
Clerk

EXHIBIT K

IN THE PASCUA YAQUI JUVENILE COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

IN THE MATTER OF;)
)
Coronado Trinity)
D.O.B. 08/17/04)
Minor child(ren))
_____)

NO. CW-04-019

ORDER

The above matter came before the Court for the Initial hearing on the putative father on this 14th September, 2005. Nicki DiCampli appeared for the Tribe; Gabriel Lopez appeared for Tribal Social Services; the putative father appeared without legal counsel.

The Court finds that the it appears that paternity has not been established in this matter as the putative father states that he has never appeared before any Court to establish paternity for this child nor for his other children and states he wants to proceed to establishing paternity today; that the Social Worker states that a report was not completed as this matter is a Guadalupe case and none of the Social Workers are certified to practice before the Court and therefore did not complete a report, that the mother has to be present in order for the Court to establish paternity and that to his knowledge paternity has not been established; that the Tribe states that the putative father has always been treated as the father in all hearings and that his name is on the birth certificate; that the Court will not proceed with the Initial hearing today as paternity has be established first and the Court will set a hearing date for the paternity and if paternity is established, then this matter will proceed to the Initial hearing; that the putative father states he will be transferred to a prison in the near future and requests that the hearing be held as soon as possible as he may be transferred out of state; that the child is under Wardship in this matter as to the mother and the child will continue under Wardship.

IT IS ORDERED THAT the ^{vva} hearing to establish paternity shall be held on THURSDAY, OCTOBER 6, 2005 AT 11:00 A.M. and the putative father shall be transported to the hearing and the Tribe shall file the appropriate documents to have the Court issue the transport order and if paternity is established the Court will then proceed to the Initial hearing.

THIS IS THE ONLY NOTICE OF HEARINGS YOU WILL RECEIVE.

SO ORDERED THIS 15th DAY OF September, 2005.

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EXHIBIT L

PASCUA YAQUI TRIBAL COURT
OCTOBER 6, 2005

In the matter of: CORONADO, TRINITY
CW-04-019
JUDGE: Cornelia V. Cruz
TRIBE: Nikki DiCampli
SOCIAL SERVICES Julia Chavez
ALLEDGED FATHER Joseph Coronado
Clerk
Bailiff

Judge: The Pascua Yaqui Tribal Court, I'm sorry, the Pascua Yaqui Juvenile Court is now in session. In the matter of Trinity Coronado, docket number, CW-04-019. Julia Chavez appears for the Social Services Department, Nikki DeCampli appears for the Tribe and the father is present with, putative father without legal counsel. This the date and time set for paternity hearing and initial hearing if paternity is established and where is the mother?

Tribe: Your honor we have no idea where the mom is? I was looking at my notes, the last interaction I've had with her was she appeared telephonically on the 29th of July uhm but caseworker has been looking for her. The address we had for her was with her mom. I think you spoke with the mom and she hasn't seen her in quite a while.

SS: Right.

Tribe: Uhm, since the report was submitted I, in talking to the case worker, I understand she has been going to RTC for her, for her drug testing and the last test she did was on September 29. I've asked the caseworker to insure that RTC tries to get an address from her next time she shows up. We have no idea where she is at.

Judge: Okay, we need to established paternity in this matter

Tribe: Your honor, the Tribes position is that Mr. Coronado is in fact the father. His name is on the birth certificate and has been treated as the father in state court. When both parents were there as well as the tribal court treated him in the very beginning of this case as if he is the father.

Judge: Let me take a brief recess and, and let me research this and then I will be back.

Tribe: Okay, thank you Judge.

Bailiff: All rise

Judge: Court is back in session in the matter of Trinity Coronado. At this time it looks like the court cannot proceed with matter without the parent being present. We do need the other parent to be present in order to give her an opportunity to contest whether the alleged father is the father.

Tribe: Your honor if you don't find an issue that we have jurisdiction, cause jurisdiction is based on Mr. Cordova, and we don't have a right to...

Judge: Mr. Cordova?

Tribe: I'm sorry, I apologize, on this gentleman as Trinity's father. We took jurisdiction based on him being her father. If we don't recognize him as the father, we don't have jurisdiction over Trinity.

Judge: And that's the issue that your going to have to, your office is going to have to address.

Tribe: It might be a transfer back to state court.

Judge: Exactly

Tribe: Okay

Judge: With that information that you have given me, that now we may lose jurisdiction.

Tribe: All right as long as you understand the Tribes position was that he is fact the father...he is on the birth certificate...

Judge: I understand that...

Tribe: Okay

Judge: ...but, but I asked the other judge and it's an ICWA case and the mother has to be present.

Tribe: To establish paternity for you.

Judge: In order for paternity to be established.

J.C. Your honor...

Tribe: The Court will not accept his name on the birth certificate as satisfactory?

Judge: No, it...

Tribe: Okay

Judge: It has to be the way we discussed that last time it has to be done through a, a court, and it has never been done before.

Tribe: And the court will not accept an at all you said last week without the mother being here.

Judge: Exactly

Tribe: Okay

J.C. Your honor?

Judge: Yes, Mr. Coronado?

J.C. Could we just do a DNA test or something to establish paternity?

Judge: We can however uhm.. we still need the mother to do that.

Tribe: Well the problem I see, your honor, and I understand your position and I don't mean to be disrespectful, I'm just articulating what our problem is. This is only an ICWA case because of the father...

Judge: Right

Tribe: We may immediately have to transfer this case back to state court because we don't even have jurisdiction in this matter, the child welfare case matter.

Judge: Mmmh Mmh

Tribe: As to the father,

Judge: Exactly.

Tribe: And so I don't think we can order anyone to do a DNA test or, or, or...

Judge: Right

Tribe: ...or do anything. I do want to make my record though is that enrollment has accepted her, they have approved her, she just has not appeared on the council list for approval, but they also accept that, he is in fact her father and were ready to enroll her.

Judge: I guess enrollment has a different criteria than...

Tribe: Okay

Judge: than the Court has...

Tribe: All right.

Judge: And you will need to move on this as soon as possible then.

Tribe: Thank you Judge

Judge: At this time we cannot hold the hearing. We will however, based on what the Tribe is going to do now with the information they have just given the Court we don't know if further proceedings will take place in this jurisdiction or in another jurisdiction, but at this time we can not proceed without the mother. Okay.

J.C. Okay

Tribe: Your honor do you want to set a status conference just to let the, the...I can tell the court what is happening.

Judge: Yes, sure.

Tribe: Maybe a couple of weeks, that works.

Judge: See the other thing is maybe if enrollment had passed the child as, had passed the resolution enrolling the child we would probably, would retain jurisdiction, but that hasn't been done, so that also leaves the child in limbo.

Tribe: Well let me ask the Court then, if she makes it on the next months approval list and they approve her enrollment and I come back to the Court and say" Here's her enrollment number" would you accept that as paternity having been established?

Judge: No, not as paternity having been established but...

Tribe: Jurisdiction

Judge: Jurisdiction

Tribe: Okay

Judge: But not as paternity we still need the parent to be here.

Tribe: That's kind of a strange conunderment because her enrollment is based on his enrollment. So you would accept her enrollment, but not that he's the father?

Judge: But because we accept jurisdiction over the child, because the law and order code

...

Tribe: Native American...

Judge: allows us to accept jurisdiction over any child.

Tribe: Okay

Judge: Within the jurisdiction of this either pending transferring to the state or remaining here.

Tribe: All right. Thank you Judge.

Judge: Okay, let me have a hearing date

Clerk: October 21, 2005 at 10:30 in the morning.

Judge: At this time we will hold a status hearing on October 21, 2005 at 10:30 in the morning. I don't know Ms. Uhm...

Tribe: We will try to find here your honor.

Judge: The mother, that's what I was trying to get at uhm and that would speed up things really quick if the mother was present.

Tribe: If I, if I, if I get information, that gives court jurisdiction I will vacate the hearing and file a motion.

Judge: Okay, that will be fine.

Tribe: Okay

Judge: Court is adjourned

Tribe: Thank you Judge.

Bailiff: All rise.

EXHIBIT M

1 IN THE PASCUA YAQUI JUVENILE COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 IN THE MATTER OF;) CASE NO. CW-04-019
4) ORDER TO RESCIND
5 CORONADO, TRINITY MARIE,) ORDER FOR 120 DAY REVIEW,
6 DOB: 08/17/04,) **AMENDED**
7) MEMORANDUM OPINION,
8) AND ORDER SETTING 30 DAY
9) INITIAL HEARING
10)

11 On April 8, 2005, the above matter came before this Court on a status review.
12 Appearing were Tribal Social Services' Gabriel Alvarez and G. Allen Osburn for the Tribe.
13 **Upon closer review of the file, there was no service on the parents in this case.**

14 **The court amends its previous order, after its own reconsideration, that upon**
15 **further research of similar cases Indian Child Welfare Act cases involving a tribal**
16 **court's jurisdiction over cases which are transferred from the state courts that have**
17 **taken actions against parents and which are late into the proceeding, the Pascua Yaqui**
18 **tribal court is not required to "follow up" on the state court proceedings and "pick up"**
19 **where the state proceeding left off prior to its transfer of the case to tribal court.**
20 **Although the tribal court signed an order accepting transfer of the case from the state**
21 **court, the tribe's prosecutor never filed an original petition for removal as required by**
22 **section 8.1 of the Pascua Yaqui Juvenile Code, nor did the court hold an "initial**
23 **hearing" as required by section 8.2 .**

24 **For that reason, the court amends its previous order which was decided based on**
25 **the tribal attorney's request for a "status conference" and the Pascua Yaqui social**
26 **worker's request in her status report to have the "case review in six months," because**
27 **the parents had already been provided a preliminary hearing in the state court to**
28 **respond to the allegations of child neglect, and based on all of allegations of neglect filed**
in the state court removal proceedings. In the state court proceedings, the state's
Assistant Attorney General asked the state court to consider permanent guardianship
proceedings or alternatively termination of parental rights based on the parents'
"failure to participate in reunification services." Although the state's attorney was of
the opinion the parents' rights to the child should be terminated, because the mother
Monique Pratt, has her parental rights terminated to five other children by the state of
Arizona, such a request is inconsistent with the Tribe's public policy to avoid
termination of parental rights and its wish to protect reunification of Indian families.

The court should issue an order requiring the Tribe's prosecutor to file an appropriate original petition for removal in this court, as required by section 8.1 of the Juvenile Code, so that the parents may appear to answer to allegations filed on behalf of

1 the Tribe. Upon transfer from the state court, notwithstanding the fact that the parents
2 may have been provided an opportunity to proceed to a stage beyond the state's
3 "preliminary protective conference" and "preliminary protective hearing" and the case
4 proceeded to a point where the state court the state was to set an "initial dependency
5 hearing" (the equivalent of the Pascua Yaqui Tribe's 30 day hearing), such state actions
6 and hearings do not bind the tribal court to "pick up where the state left off," and the
7 tribal court should give the parents an opportunity to begin their counseling with a fresh
8 start and be guaranteed the same rights as other parents in tribal court removal actions.
9 For that reason the court holds that the Tribe's request for a status conference and the
10 social worker's request to set the matter for a review hearing "in six months" do not
11 constitute an appropriate petition for removal in the Pascua Yaqui Court, and the
12 matter shall be re-set for a thirty day hearing to allow the Tribe to submit a proper child
13 protection petition, pursuant to Sec. 8.1 of the juvenile code, have the parents' served
14 with notice of the petition, and re-set this matter for an initial hearing, pursuant to
15 section 8.2 of the Pascua Yaqui Code.

16 On August 19, 2004 the child was removed from the parent's home, because the child
17 and mother both tested positive for methamphetamine at the time of the child's birth, and on
18 August 24, 2004 the Tribe's Attorney General, Tamara Walters, petitioned for removal and
19 placement of the child, Maricopa County juvenile division court allowed the removal and set
20 the matter for hearing on September 1, 2004. The Pascua Yaqui Tribal court accepted
21 jurisdiction over the transfer of the case on August 25, 2004, based on the Pascua Yaqui
22 Attorney General's request to transfer, and the state Indian Child Welfare Act case files were
23 transferred from the State of Arizona through child welfare case JD-505197, Maricopa County
24 Juvenile Division Court on September 1, 2004. The Pascua Yaqui Attorney General requested
25 temporary custody orders, and the Tribe's Prosecutor's Office was given the case, so it may
26 have filed further petitions with the tribal court.

27 However, rather than filing a child welfare petition promptly with the Tribal Court,
28 when it received the file in late August, 2004, as impliedly required by the Pascua Yaqui
Tribal Code, the Tribe's prosecutor did not request an initial hearing as required by the Pascua
Yaqui Tribal code, but rather, Mr. Osburn waited until March 14, 2005, over six months after
he received the case, when he requested that the Pascua Yaqui court set a status hearing,
instead of requesting an initial hearing. When asked about the substantial delay in filing by
the court, Mr. Osburn's explanation was that the Prosecutor's office was understaffed and it
has only recently hired an attorney to handle all state transfer cases and tribal child welfare
cases. The court is not satisfied with the explanation, because such is not a legal excuse nor
does such inaction and dilatory conduct comport with the requirements of the Pascua Yaqui
Tribe Child Welfare Policy Act of 2002.

The Pascua Yaqui Tribe Child Welfare Policy Act provides in pertinent part, as
follows:

Sec. 1 Findings

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- a) Preservation of Yaqui families is critical to the survival of the Yaqui Tribe and Yaqui cultural traditions.
- b) The Tribe has an obligation and duty to support, preserve, and reunify Yaqui families.
- c) The Indian Child Welfare Act, 25 U.S.C. §1901, et seq. gives the tribe authority to advocate and enforce the Tribe's laws in state child welfare cases.
- d) The Tribe as a sovereign government should exercise its jurisdiction to protect Yaqui children. . . .
- . . .(f) There are approximately 60 child dependency cases involving child tribal members. Approximately 30 cases are in state courts and approximately 30 cases are in tribal court.
- (g) The Tribe has not consistently exercised its sovereignty to transfer jurisdiction of child dependency cases from state court to the Tribe's court. Prior to 2002, only 2 cases have been transferred.
- (h) There is no current policy or guidelines in place to provide guidance to the Tribe's social services workers or attorneys on how to represent the Tribe's interests in either state or tribe (sic) court.

The Pascua Yaqui Tribe Child Welfare Policy Act further provides under Sec. 2 entitled "Policy" subsec. (c) as follows:

Pursuant to the inherent sovereignty of the Pascua Yaqui Tribe and the Indian Child Welfare Act, the Tribe should request a transfer of jurisdiction to the Tribe's court on every appropriate state child dependency case. . . .

and under section 3 of the Act entitled "Implementation" provides:

The Tribe's attorneys, representing the Tribe in . . .state court, shall present the Tribe's placement and permanency planning policy when filing the original petition or the motion to intervene.

In this case, the Tribe's Attorney General, Tamara Walters, promptly filed for a transfer from state court to tribal court, providing the state court judge with a copy of all relevant Pascua Yaqui policies and statutes, and Ms. Walters obtained an order signed by the Chief Judge of the tribal court the same day Ms. Walters submitted the requested, whereby the tribal court accepted jurisdiction, in support of and anticipation of the state court transferring the matter to the Pascua Yaqui Tribal court. The procedures followed by the Pascua Yaqui tribal court are that once the Tribe's Attorney General transfers the case to the Tribal court's jurisdiction, then the Tribe's prosecutor's office becomes responsible for any further action to be taken regarding the Pascua Yaqui child and family, under the relevant provisions of the Pascua Yaqui Tribe Child Welfare Policy Act of 2002, sec. 3(f):

1 Jurisdiction of the child dependency cases shall be accepted by the Pascua Yaqui Tribe
2 trial court **when petitioned by the tribal prosecutor**, irrespective of whether it is an
3 original petition or based on a transfer from state court. (emphasis added).

4 If this were a removal of a child by Pascua Yaqui social workers, the Pascua Yaqui Juvenile
5 Code requires a prompt and timely **filing of the petition no later than 12:00 p.m. (noon) of**
6 **the second Court working days following the removal.** Section 8.1(B), "Filing
7 Child/Family Protection Petition" and "Time Limitations." The "juvenile presenting officer"
8 from the prosecutor's office has authority to file such petitions. Sec. 8.1(A), "Authorization to
9 File Petition." Once the child removal petition is filed by the Tribe's prosecutor, the court
10 must then set the initial hearing **"before the end of the second working day."** Sec. 8.2(A)
11 "Hearing Date." (emphasis added).

12 If the Pascua Yaqui Juvenile code provides for prompt filing of petitions by the
13 juvenile presenting officer of original removal cases in two days from the date of removal and
14 the court must set an initial hearing within 2 days, then implied in the Pascua Yaqui code
15 provision is the same prompt and timely requirement for Indian Child Welfare Act cases
16 which are transferred from the state courts to the Pascua Yaqui Tribal court .

17 The prosecutor in this case waited from August, 2004 until March, 2005, a period of
18 over six months before it took any actions. This dilatory conduct is unacceptable, such delay
19 in filing is repugnant to the intent of the Pascua Yaqui Juvenile Code to promptly provide
20 notice to parents in an effort to provide them remedial services and counseling to protect their
21 children's best interests and to prevent further break up of Pascua Yaqui families. In addition,
22 by failing to file in a timely fashion, parents and relatives' rights may be violated under the
23 Pascua Yaqui Constitution, Indian Civil Rights Act, and the Pascua Yaqui Juvenile Code, in
24 that they are deprived of due process of law, in that they are not advised of their rights, duties
25 and obligations in the child welfare case, not provided with an opportunity to contest the
26 allegations, deprived of their right to seek legal counsel, not advised of their options when
27 their children are removed, and they are not given a timely opportunity to address the issues
28 which led up to the removal of the children from their home. PYConst. Art. I, sec.1(h) "Bill
of Rights;" 25 U.S.C. § 1302(8), "Indian Civil Rights Act;" and PY Juvenile Code Title II,
Ch. 8 "Filing Child/Family Protection Petition."

The prosecutor's office should be advised and placed on notice that if such inaction
and dilatory conduct occurs in future child welfare cases, because such delay hinders the
administration of court proceedings to protect Pascua Yaqui Children and promote family
reunification as enunciated in the Juvenile Code, the failure to file petitions promptly and
timely could result in contempt of court, and possible sanctions against the prosecutor's office
for violation of the spirit and intent of the juvenile code to promote prompt and timely
remedies to serve Pascua Yaqui families and their children's best interests.

1 The Court finds that the Social Worker recommendation that the child remain in her
2 placement with her paternal grandparent, Julia Coronado, and such a placement serves the
3 minor child's best interests, and should be granted.

4 Social Services has made all reasonable efforts to prevent breakup of the family and to
5 provide services to address the issued which led up to the child's removal from her parents.
6 The State of Arizona terminated the parental rights to the mother's other children.

7 The social worker reports that the mother of the child, Monique Pratt, has not met with
8 her counseling requirements as ordered through the State and tribal court. Her whereabouts
9 are unknown.

10 The father of the child, Joseph Coronado, has not complied with the counseling
11 requirements previously ordered by the state court and on April 1, 2005, his counseling file
12 with the ASAP program was closed, because Mr. Coronado failed to participate in after care
13 program, and he has not participated in the Centered Spirit outpatient program, nor attended
14 his individual counseling sessions.

15 Trinity Marie Coronado continues to do well in her foster care placement, the child is
16 doing well at school, and her medical needs have been met. The Social Worker, with the
17 Tribe concurring, recommends continued wardship. Such a placement serves the child's best
18 interests and should continue. Such a placement is the least restrictive and most family like
19 setting, and the placement is designed to meet the special needs of the child.

20 The Court, after reviewing the status report and after hearing from the Social Worker
21 and the Juvenile Presenting Officer, finds that it is in the best interest of the minor child that
22 she continue under wardship of the Pascua Yaqui Juvenile Court, as there continues to be no
23 parent capable or willing to care for the minor children as required by Title 2 Chapter 9
24 subsection 9.1 (1) of the Pascua Yaqui Juvenile Code. Social Services is responsible for the
25 minor's educational and medical needs and are also authorized to place the minor child where
26 they deem necessary and in the minor's best interest. Trinity Marie Coronado should remain
27 in her current placement with her paternal grandmother, Julia Coronado.

28 **IT IS ORDERED** that the minor child shall continue as a ward of the Pascua Yaqui
Juvenile Court, in the legal care, custody and control of Pascua Yaqui Social Services who are
responsible for the minor's educational and medical needs and who are authorized to place the
minor child where they deem necessary and in the minor's best interest as there continues to
be no parent capable or willing to care for the minor child as required by Title 2, Chapter 9,
Subsection 9.1 (1) of the Pascua Yaqui Juvenile Code. Physical Placement shall remain as
follows: Trinity Marie Coronado shall remain in her current placement with her paternal
grandmother, Julia Coronado.

IT IS FURTHER ORDERED that the previous order in which the court allowed
the matter to proceed to a 120 day review based on the premise that the tribal court

1 could "pick up where the state left off," and based on the prosecutor's filing of a "status
2 conference request" and the social worker's request to set the matter for "six month
3 review," does not comport with the Pascua Yaqui code requirements for the court to
4 assume jurisdiction over a child protection case. The court rescinds its order setting the
5 120 day hearing. Notwithstanding the tribal court order accepting jurisdiction and
6 transfer of the case from the state, such an action of the tribal court does not relieve the
7 Tribal prosecutor's duty to file appropriate petitions for relief in the tribal court. The
8 Tribal prosecutor shall file an original child protection petition, pursuant to section 8.1
9 of the Pascua Yaqui tribal code ensure that the parents are properly served with notice
10 of the petition, and the matter shall be reviewed in thirty days.

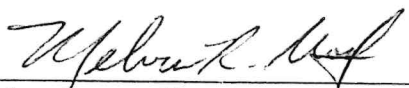
11 **IT IS FURTHER ORDERED** that the thirty day "initial hearing" is scheduled
12 for May 6, 2005 at 11:30 a.m..

13 **IT IS FURTHER ORDERED** that any social services' reports shall be submitted
14 no later than April 29, 2005.

15 **THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**

16 **IT IS FURTHER ORDERED** that the prosecutor's office is advised that it has an
17 ongoing duty to promptly and timely file all child welfare cases involving Pascua Yaqui
18 families, pursuant to the Pascua Yaqui Juvenile Code, Title 2, and the Pascua Yaqui Tribe
19 Child Welfare Policy Act of 2002, and that if it fails to meet with its statutory duty to
20 represent zealously the interests of the Pascua Yaqui Tribe to promote family reunification
21 and to prevent break up of Pascua Yaqui families, then the prosecutor's office may be held in
22 contempt or be subject to sanctions for either hindering the administration of justice by the
23 Pascua Yaqui tribal court or adversely affecting the rights, duties, and obligations of Pascua
24 Yaqui families.

25 **SO ORDERED THIS 11th DAY OF APRIL, 2005. (as amended April 13, 2005).**

26 
27 _____
28 Judge, Pascua Yaqui Juvenile Court

29 Cc:

30 Date: 4-15-05

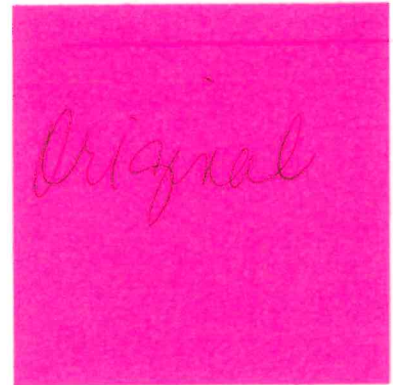
31 Tribe Parent(s) Social Worker Other

32 AmValenzuela

33 Clerk

PASCUA YAQUI TRIBAL COURT
OCTOBER 6, 2005

In the matter of: CORONADO, TRINITY
 CW-04-019
JUDGE: Cornelia V. Cruz
TRIBE: Nikki DiCampli
SOCIAL SERVICES Julia Chavez
ALLEDGED FATHER Joseph Coronado
Clerk
Bailiff



Judge: The Pascua Yaqui Tribal Court, I'm sorry, the Pascua Yaqui Juvenile Court is now in session. In the matter of Trinity Coronado, docket number, CW-04-019. Julia Chavez appears for the Social Services Department, Nikki DeCampli appears for the Tribe and the father is present with, putative father without legal counsel. This the date and time set for paternity hearing and initial hearing if paternity is established and where is the mother?

Tribe: Your honor we have no idea where the mom is? I was looking at my notes, the last interaction I've had with her was she appeared telephonically on the 29th of July uhm but caseworker has been looking for her. The address we had for her was with her mom. I think you spoke with the mom and she hasn't seen her in quite a while.

SS: Right.

Tribe: Uhm, since the report was submitted I, in talking to the case worker, I understand she has been going to RTC for her, for her drug testing and the last test she did was on September 29. I've asked the caseworker to insure that RTC tries to get an address from her next time she shows up. We have no idea where she is at.

Judge: Okay, we need to established paternity in this matter

Tribe: Your honor, the Tribes position is that Mr. Coronado is in fact the father. His name is on the birth certificate and has been treated as the father in state court. When both parents were there as well as the tribal court treated him in the very beginning of this case as if he is the father.

Judge: Let me take a brief recess and, and let me research this and then I will be back.

Tribe: Okay, thank you Judge.

Bailiff: All rise

Judge: Court is back in session in the matter of Trinity Coronado. At this time it looks like the court cannot proceed with matter without the parent being present. We do need the other parent to be present in order to give her an opportunity to contest whether the alleged father is the father.

Tribe: Your honor if you don't find an issue that we have jurisdiction, cause jurisdiction is based on Mr. Cordova, and we don't have a right to...

Judge: Mr. Cordova?

Tribe: I'm sorry, I apologize, on this gentleman as Trinity's father. We took jurisdiction based on him being her father. If we don't recognize him as the father, we don't have jurisdiction over Trinity.

Judge: And that's the issue that your going to have to, your office is going to have to address.

Tribe: It might be a transfer back to state court.

Judge: Exactly

Tribe: Okay

Judge: With that information that you have given me, that now we may lose jurisdiction.

Tribe: All right as long as you understand the Tribes position was that he is fact the father...he is on the birth certificate...

Judge: I understand that...

Tribe: Okay

Judge: ...but, but I asked the other judge and it's an ICWA case and the mother has to be present.

Tribe: To establish paternity for you.

Judge: In order for paternity to be established.

J.C. Your honor...

Tribe: The Court will not accept his name on the birth certificate as satisfactory?

Judge: No, it...

Tribe: Okay

Judge: It has to be the way we discussed that last time it has to be done through a, a court, and it has never been done before.

Tribe: And the court will not accept an at all you said last week without the mother being here.

Judge: Exactly

Tribe: Okay

J.C. Your honor?

Judge: Yes, Mr. Coronado?

J.C. Could we just do a DNA test or something to establish paternity?

Judge: We can however uhm.. we still need the mother to do that.

Tribe: Well the problem I see, your honor, and I understand your position and I don't mean to be disrespectful, I'm just articulating what our problem is. This is only an ICWA case because of the father...

Judge: Right

Tribe: We may immediately have to transfer this case back to state court because we don't even have jurisdiction in this matter, the child welfare case matter.

Judge: Mmmh Mmh

Tribe: As to the father,

Judge: Exactly.

Tribe: And so I don't think we can order anyone to do a DNA test or, or, or...

Judge: Right

Tribe: ...or do anything. I do want to make my record though is that enrollment has accepted her, they have approved her, she just has not appeared on the council list for approval, but they also accept that, he is in fact her father and were ready to enroll her.

Judge: I guess enrollment has a different criteria than...

Tribe: Okay

Judge: than the Court has...

Tribe: All right.

Judge: And you will need to move on this as soon as possible then.

Tribe: Thank you Judge

Judge: At this time we cannot hold the hearing. We will however, based on what the Tribe is going to do now with the information they have just given the Court we don't know if further proceedings will take place in this jurisdiction or in another jurisdiction, but at this time we can not proceed without the mother. Okay.

J.C. Okay

Tribe: Your honor do you want to set a status conference just to let the, the...I can tell the court what is happening.

Judge: Yes, sure.

Tribe: Maybe a couple of weeks, that works.

Judge: See the other thing is maybe if enrollment had passed the child as, had passed the resolution enrolling the child we would probably, would retain jurisdiction, but that hasn't been done, so that also leaves the child in limbo.

Tribe: Well let me ask the Court then, if she makes it on the next months approval list and they approve her enrollment and I come back to the Court and say "Here's her enrollment number" would you accept that as paternity having been established?

Judge: No, not as paternity having been established but...

Tribe: Jurisdiction

Judge: Jurisdiction

Tribe: Okay

Judge: But not as paternity we still need the parent to be here.

Tribe: That's kind of a strange conunderment because her enrollment is based on his enrollment. So you would accept her enrollment, but not that he's the father?

Judge: But because we accept jurisdiction over the child, because the law and order code

...

Tribe: Native American...

Judge: allows us to accept jurisdiction over any child.

Tribe: Okay

Judge: Within the jurisdiction of this either pending transferring to the state or remaining here.

Tribe: All right. Thank you Judge.

Judge: Okay, let me have a hearing date

Clerk: October 21, 2005 at 10:30 in the morning.

Judge: At this time we will hold a status hearing on October 21, 2005 at 10:30 in the morning. I don't know Ms. Uhm...

Tribe: We will try to find here your honor.

Judge: The mother, that's what I was trying to get at uhm and that would speed up things really quick if the mother was present.

Tribe: If I, if I, if I get information, that gives court jurisdiction I will vacate the hearing and file a motion.

Judge: Okay, that will be fine.

Tribe: Okay

Judge: Court is adjourned

Tribe: Thank you Judge.

Bailiff: All rise.

05 OCT 19 PM 3:16

DOCKET NO. CA 06-001

CLERK CR

1 PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
2 7474 S. Camino de Oeste
Tucson, Arizona 85757
3 (520) 879-6251

4 Patricia Castro,
Juvenile Presenting Officer

6 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**

7 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

8 PASCUA YAQUI TRIBE,
9 Appellant,

NO.
(Juvenile Court No. CW-05-019)

10 In the matter of:
CORONADO, Trinity
11 (DOB: 08/17/04)

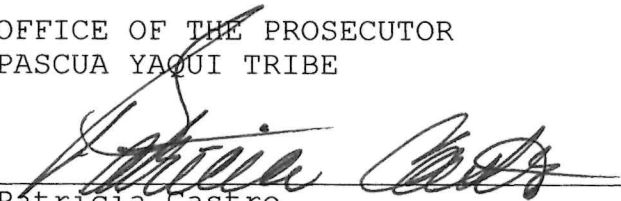
NOTICE OF APPEAL
Oral argument requested

12 Minor Appellee.

13 Notice is hereby given that the Pascua Yaqui Tribe appeals to
14 the Appellate Court of the Pascua Yaqui Tribe from the judgment
15 entered in this action by the Pascua Yaqui Juvenile Court on
16 October 6, 2005. The Pascua Yaqui Tribe requests oral argument.
17

18 **Respectfully submitted this 19th day of October, 2005.**

19 OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE

20 
21 Patricia Castro,
22 Juvenile Presenting Officer

23 Original delivered/mailed
24 This **date** to:

Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

25 Copy delivered/mailed to:

26 Pascua Yaqui Tribal Court

27 Pascua Yaqui Social Services
Julia Chavez

By: 

IN THE PASCUA YAQUI JUVENILE COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

IN THE MATTER OF;)	
)	NO. <u>CW-04-019</u>
Coronado Trinity)	
D.O.B. 08/17/04)	ORDER
Minor child(ren))	
_____)	

The above matter came before the Court for the paternity and Initial hearing on this 6th day of October, 2005. Nicki DiCampi appeared for the Tribe; Julia Chavez appeared for Tribal Social Services; the putative father appeared without legal counsel and in custody from another jurisdiction; the mother failed to appear.

The Court finds that the Tribe informs the Court that the mother's whereabouts are unknown at this time, that the Social Worker has found out that the mother is no longer residing with her mother, and that the mother has been reporting to her urinalysis testing; that the Court informs the parties that in order for paternity to be established the mother has to be present; that the Tribe informs the Court that they wish for the record to show that the father's name appears on the birth certificate and that the enrollment department has accepted the child for enrollment, and the Tribe further informs the Court that child is eligible for enrollment through the father as he is the Tribal member and that without the paternity being established this matter will have to be transferred back to the state; that the Court informs the Tribe that given that information the Tribe has to act immediately on how they will be proceeding and need to inform the Court immediately; that the Tribe moves for a status report and the Court will set the status report; that the child will remain under Wardship pending further action from the Tribe.

IT IS ORDERED THAT the status hearing shall be held on **FRIDAY, OCTOBER 21, 2005 AT 10:30 A.M.** and the minor shall remain under Wardship and in the legal care, custody and control of Tribal Social Services who are authorized to place the child where they deem necessary and in the child's best interest pending the Status hearing and pending the Tribe informing the Court as to how they are going to proceed in this matter.

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

SO ORDERED THIS 6th DAY OF October, 2005.

Cornelia S. G.
Judge, Pascua Yaqui Juvenile Court

Cc:
Date: 10-7-05
 Tribe Parent(s)/Minor
C. Maldonado
Clerk

Social Worker Other
PASCUA YAQUI
Received
OCT 7 2005
PROSECUTOR