

Adoption: Motions for Equitable Relief; Transfer to District Court

- *Motion is treated by substance, not label.*
- *An adoption proceeding before the clerk of superior court is transferred to district court when a request for equitable relief is made.*

For the Adoption of C.E.Y., ____ N.C. App. ____ (July 16, 2013)

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy02NS0xLnBkZg==>

Facts: Father of CEY was served in prison with adoption petition and TPR regarding his daughter. He forwarded his paperwork to his court appointed attorney for the TPR action, mistakenly believing his attorney would be representing him in the adoption proceeding as well. Due to his failure to respond to the adoption petition in a timely manner, the clerk of superior court determined his consent was not required for the adoption. Father filed a motion to set aside the clerk's order under Rules 59 and 60 and gave notice of appeal of the order to district court. The clerk transferred the case to district court. The district court dismissed the motion on the basis that the clerk's order was not a final order for purposes of Rule 60 and dismissed the appeal on the basis that only final orders can be appealed pursuant to G.S. 48-2-607(b) or G.S. 1-301.2(e).

Held: Reversed and remanded

1. The appeal to the court of appeals, although interlocutory, was proper because a trial court's determination that a parent's consent to adoption is not required affects a substantial right.
2. Although respondent characterized his challenges to the clerk's order as an "appeal" and a Rule 60 motion, a motion must be treated according to its substance not label, and respondent's motion was a request for equitable relief.
3. District court had jurisdiction to hear respondent's motion pursuant to G.S. 1-301.2(b), which requires transfer to district court when "a request for equitable relief is raised in a ...pleading or written motion in an adoption proceeding."

Criminal Conviction for Contributing to Neglect of a Minor

State v. Stevens, ____ N.C. App. ____ (July 16, 2013)

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMzk0LTEucGRm>

The court of appeals upheld defendant's appeal of his conviction for contributing to the delinquency and neglect of a minor, a Class 1 misdemeanor. Evidence was sufficient to prove the elements of the crime: Defendant was at least 16, the minor was younger than 12, and defendant caused the minor to be in a place or condition where the minor could be adjudicated neglected as defined by G.S. 7B-101. The State was able to show beyond a reasonable doubt that defendant knowingly or willfully caused the juvenile to be in a place or condition where the juvenile could be adjudicated neglected. And, the state showed by clear and convincing evidence that the juvenile was neglected. During a bike ride with the juvenile, defendant took the juvenile away from his neighborhood, later caused an eye injury to the juvenile, did not seek

treatment of that injury, and abandoned the juvenile when the juvenile was sleeping in a parking lot, leaving the juvenile without the proper supervision of his parents.

Applicability of ICWA When Non-Custodial Indian Parent Facing TPR

- *When an Indian child is involved in a custody proceeding addressed by ICWA, ICWA does not apply if the Indian parent never had physical or legal custody of the Indian child.*
- *The requirement to provide remedial/reunification services to an Indian parent applies only if there had been a relationship between the Indian parent and child.*
- *The adoption preferences under ICWA do not apply where no alternate party has formally sought to adopt the Indian child.*

Adoptive Couple v. Baby Girl, 570 U.S. ____ (June 23, 2013)

http://www.supremecourt.gov/opinions/12pdf/12-399_8mj8.pdf

Facts: Baby girl's biological father is a member of the Cherokee Nation, and she is an Indian child under ICWA. Her mother is not Indian. The parents ended their relationship during the pregnancy. In a text to mother, biological father stated he relinquished his rights to the child. Mother contacted an adoption agency and selected a non-Indian couple in South Carolina as the adoptive parents. Adoptive parents supported mother during pregnancy. Three months after father relinquished his rights by text to mother, Baby Girl was born. Father did not support mother during pregnancy or during the first four (4) months of Baby Girl's life. Father was served with a petition for adoption of Baby Girl and signed an acknowledgement and that he was "not contesting the adoption." The next day, father contacted an attorney and contested the adoption and sought custody. DNA testing proved he was Baby Girl's biological father. Adoptive parents sought to terminate father's parental rights and adopt Baby Girl. Applying ICWA, the South Carolina trial court denied the adoption and awarded custody of Baby Girl to dad based upon a failure of the adoptive parents to show Baby Girl would suffer serious emotional or physical harm with biological father. The Supreme Court of South Carolina affirmed. Adoptive parents petitioned for certiorari, which was granted by the U.S. Supreme Court.

Held: Reversed and remanded

Decision written by Justice Alito and joined by Roberts, Kennedy, Thomas and Breyer

1. ICWA establishes federal standards that govern state-court child custody proceedings involving Indian children. The purpose of ICWA is to prevent the removal of Indian children from their homes.
2. The provision of 25 U.S.C. §1912(f) that requires the court find Baby Girl would suffer serious emotional or physical damage if biological father had "continued custody" is inapplicable because he never had custody of the Indian child. Having never had physical or legal custody of Baby Girl, removal of an Indian child is not at issue.
3. The provision of 25 U.S.C. §1912(d) that requires a party seeking to terminate parental rights to an Indian child to prove active efforts were made to provide remedial services

and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts failed does not apply when there was never a relationship between the parent and Indian child.

4. Section 1915(a) addressing adoptive placement preferences with Indian families are inapplicable in cases where no alternative party has formally sought to adopt the child.



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