

No. 17A562

IN THE SUPREME COURT OF THE UNITED STATES

R.K.B. and K.A.B.,

Petitioners,

v.

E.T.,

Respondent.

**CORRECTED RESPONSE IN OPPOSITION TO
APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE UTAH SUPREME COURT**

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To the Honorable Sonya Sotomayor, Associate Justice of the Supreme Court and Circuit Justice for the Tenth Circuit:

Respondent respectfully opposes petitioners' application for an extension of time to file their petition for certiorari.

1. This case involves the rights of a biological father ("Father") to his biological son—rights that he has vigorously pursued from the first moment he learned of his son's birth. In December 2013, Father and the biological mother ("Mother") were in a committed relationship when Mother became pregnant. *Adoption of B.B.*, 2017 UT 59, ¶ 4. Both birth parents are members of the Cheyenne River Sioux Tribe and lived together on the reservation in South Dakota. *Id.* Father supported Mother during her pregnancy, paying for their rent, utilities, and groceries. *Id.* When she was six months pregnant, Mother moved to Utah to be closer to friends and relatives; Father intended to join her later, after she was settled. *Id.*

After a few weeks, Mother cut off all contact with Father. *Id.* ¶ 5. On August 29, 2014, she gave birth to B.B. *Id.* ¶ 6. Just over 24 hours later, she relinquished her parental rights and consented to the adoption of B.B. Mother also signed a "Statement Concerning Birth Father," in which she falsely named her brother-in-law, not Father, as the biological father. *Id.* The brother-in-law falsely signed a sworn statement attesting that he was B.B.'s biological father. *Id.* Ten days later, Mother relinquished her parental rights and consented to the child's adoption in open court. *Id.* ¶ 7. Accordingly, the Utah district court terminated Mother's

parental rights and declined to notify any Indian tribe. *Id.* B.B.’s custody was then transferred to the adoption agency, which delegated custody to the petitioners, the prospective adoptive parents. *Id.*

Shortly thereafter, Mother returned to South Dakota and informed Father that she had given birth and placed the child for adoption. *Id.* ¶ 8. Father was “completely shocked and devastated.” *Id.*

2. The procedural history is somewhat complex, but in essence, Father then filed a motion to intervene in the proceedings in order to establish paternity and oppose the adoption petition. *Id.* ¶ 10. The state district court denied his motion, on the grounds that he was “not a ‘parent’ under either ICWA [the Indian Child Welfare Act, 25 U.S.C. § 1901, *et seq.*] or ... Utah’s adoption statutes.” *Id.* ¶ 12. Father then appealed, and the Utah Supreme Court reversed. Specifically, the court held that the district court erred in applying Utah law, instead of federal law, in determining whether Father was a parent under ICWA. *Id.* ¶¶ 49–73. Applying federal law, the court determined that Father was a parent, *id.* ¶¶ 74–75, and, therefore, ICWA accorded him the right to intervene in the case. *Id.* ¶¶ 78–85.

The Utah Supreme Court thereafter stayed its decision pending petitioners’ petition to this Court. Accordingly, despite the fact that Father asserted his legal rights to B.B. from the first moment he learned that the child had been born and placed for adoption, and despite the fact that more than three years have passed since B.B.’s birth, Father *still* has not received the hearing to which ICWA entitles him.

3. Petitioners' application for an extension must be viewed in this context. Every additional day of further delay imposes substantial harm on Father. "[T]ime in a child's life can never be recovered." *Lassiter v. Dep't of Social Servs. of Durham Cty., N.C.*, 452 U.S. 18, 32 (1981). Every additional day of further delay also imposes substantial harm on B.B., who is denied access to his biological parent and over whom custody may well be awarded to Father at the conclusion of this litigation. Petitioners fail to acknowledge the grave impact that an extension of time will have on the child or Father.

4. Extensions of time for certiorari petitions are "not favored," Sup. Ct. R. 13.5. Notably, counsel for Petitioners completed the petition for certiorari in *Evolutionary Intelligence LLC v. Sprint Nextel Corporation*, No. 17-609, nearly a month ago and in *Ramos v. Washington*, No. 16-9363 over a month ago. App. For Ext'n of Time at 3-4. Briefing in the two other matters cited by counsel for petitioners (*Kerpen v. Metropolitan Washington Airports Authority* and *EEOC v. North Memorial*) simply do not rise to the level of "good cause" to grant the requested extension. Sup. Ct. R. 13.5; 28 U.S.C. § 2101(c); *Carter v. United States*, 75 S. Ct. 911 (1955) (barring exceptional circumstances, such as a trial during the period in which a petition for certiorari must be filed, "the responsibility of counsel to litigation in this Court should take precedence"). The 90 days provided by this Court's rules are more than sufficient for petitioners, already represented by able counsel, to file their petition.

For these reasons, respondent respectfully requests that the Court deny petitioners' application for an extension of time to file their petition for certiorari.

Respectfully submitted,

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