No.

IN THE

Supreme Court of the United States

Denise Halvorson, et al. v. Hennepin County Children's Services Department, et al.

On Petition For A Writ Of Certiorari To The Supreme Court Of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented is:

1. *Whether it is an error of law for a state court to order the transfer of a foster care proceeding to tribal court when the transfer forces a nonmember party residing outside the reservation to the jurisdiction of the tribal court without that party's consent?*

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

1. Petitioners, Denise and Henry Halvorson, were intervenor relative parties in the district court and Petitioners before the Minnesota Court of Appeals and Minnesota Supreme Court.

Respondents are Hennepin County Children's Services Department; the dependent child's father, F.J.V.; paternal grandmother W.M.; the Red Lake Band of Chippewa Indians; Jena Lipham, Guardian ad Litem.

2. Petitioners are all individuals.

RULE 14(1)(B)(III) STATEMENT

Petitioners are aware of the following related cases:

- *In re the Matter of the Welfare of the Child(ren) of: Fausto Vidal, Parent.,* 27-JV-21-131; District Court-Juvenile Division, Fourth Judicial District, State of Minnesota, order filed April 2, 2021.

- *In the Matter of the Welfare of the Child of: F. J. V.,* Parent., A21-0522, Minnesota Court of Appeals, decision filed October 25, 2021.

- *In the Matter of the Welfare of the Child of: F.J.V., Parent*, A21-0522, Minnesota Supreme Court, order denying review filed November 29, 2021.

- *In the Matter of the Welfare of the Child of: F.J.V., Parent*, A21-0522, Minnesota Court of Appeals, judgment entered December 30, 2021.

Petitioners are unaware of any other directly related cases in this Court or any other court, within the meaning of Rule 14.1(b)(iii).

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

Federal Statutes

Federal Regulations

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioners Denise and Henry Halvorson respectfully petition for a writ of certiorari to review the judgment of the Minnesota Court of Appeals and Order of the Minnesota Supreme Court denying review of the same.

OPINIONS BELOW

The opinion of the district court is unpublished. 15a-29a. The unpublished opinion of the Minnesota Court of Appeals is reported at *Matter of Welfare of Child of F.J.V.,* No. A21-0522, 2021 WL 4944677 (Minn. Ct. App. Oct. 25, 2021), *review denied* (Nov. 29, 2021). Pet. App. 3a–14a. The Minnesota Supreme Court's Order denying review is unpublished. App. 2a. The Judgment of the Minnesota Court of Appeals is unpublished. App. 1a.

JURISDICTION

The judgment of the Minnesota Court of Appeals was entered on December 30, 2021. Pet. App. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant statutes:

> An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

25 U.S.C. § 1911 (a) Exclusive jurisdiction

> 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)

STATEMENT

1. In the mid-1970s, Congress became concerned that "abusive child welfare practices" in certain states were "result[ing] in the separation of large numbers of Indian children from their families and tribes." *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32

(1989). Children were being "forcibly removed from Indian homes" by state officials "and sent off-reservation" to live with foster families. *Problems that American Indian Families Face in Raising Their Children and How These Problems are Affected by Federal Action or Inaction*: Hearings Before the Subcommittee on Indian Affairs, 93rd Cong. 95 (1974). Congress enacted ICWA to end those abuses and to help tribes "retain[] [their] children in [their] society." *Miss. Band of Choctaw Indians*, 490 U.S. at 37.

ICWA imposes several additional mandates on state courts and agencies, many of which are designed to ensure that they dutifully implement the federal placement preferences for Indian children. For example, ICWA orders state courts to:

- Notify tribes of proceedings and delay proceedings to allow them to intervene. 25 U.S.C. §§ 1911(c), 1912(a).
- Transfer proceedings to the tribe upon the petition of either parent or the Indian custodian or the Indian child's tribe. *Id.* § 1911(b).

At the heart of the ICWA are its provisions concerning jurisdiction over Indian child custody proceedings. Section 1911 lays out a dual jurisdictional scheme. Section 1911(a) establishes exclusive jurisdiction in the tribal courts for proceedings concerning an Indian child "who resides or is domiciled within the reservation of such tribe," as well as for wards of tribal courts regardless of domicile. Section 1911(b), on the other hand, creates concurrent but presumptively tribal jurisdiction in the case of children not domiciled on the reservation: on petition of either parent or the

tribe, state-court proceedings for foster care placement or termination of parental rights are to be transferred to the tribal court, except in cases of "good cause," objection by either parent, or declination of jurisdiction by the tribal court. *Miss. Band of Choctaw Indians*, 490 U.S. at 36.

2. Petitioners Halvorsons were the foster-adoptive parents to L.J., a four-year-old girl who was in placement twenty-one months at the time the transfer hearing in the district court. L.H's mother had her rights terminated in June 2017 and legal custody of L.J. was transferred to her father, F.J.V. L.H.'s mother was a member of the Red Lake Band of Chippewa Indians. F.J.V. is a Mexican national. In May 2019, F.J.V. was arrested for child pornography charges and deported by ICE to Mexico. On May 13, 2019, Hennepin County Children's Services Department filed a Child in Need of Protection and Services petition. L.H. has been in placement ever since.

On June 18, 2019, the County placed L.J. with Petitioners and three of L.J.'s biological siblings whom Petitioners had previously adopted. The four children share the same (now deceased) mother and F.J.V. initially supported this decision—as it was his wish for L.J. to remain with her siblings and Petitioners.

The County filed its first of *two* petitions to terminate F.J.V.'s parental rights on October 7, 2019, but it was dismissed on February 13, 2020, for reasons unknown.

On November 19, 2019, the district court determined that ICWA applied, finding that L.J. is eligible for membership with Red Lake Nation ("the Tribe").

Petitioners H.H. and D.H. are members of the Minnesota Chippewa Tribe — Bois Forte Band of Chippewa and White Earth Nation respectively. The County transferred case management to the Tribe, which reversed course in permanency planning for L.J.

W.M., L.J.'s maternal grandmother, a member of the Tribe, changed her mind and decided that she wanted placement of L.J., even though it would result in sibling separation. W.M. never sought placement of L.J.'s siblings. After a contested hearing, the district court granted Petitioners permissive intervention, but denied a stay of change in placement. On June 5, 2020, L.J. was forced to leave her siblings and was placed with W.M.

On June 9, 2020, the County filed its second petition to terminate F.J.V.'s parental rights. It then requested dismissal of the petition at the November 17, 2020 review hearing, advising the court that it would be filing a transfer of legal custody petition to W.M. instead.

On January 21, 2021, Petitioners filed a permanency pleading to transfer custody of L.J. to them. The Tribe and W.M. responded with a motion to transfer the proceedings to Red Lake Tribal Court. Petitioners objected to the proposed transfer based upon "good cause" under 25 U.S.C. § 1911 (b), arguing that Red Lake Tribal Court had no jurisdiction over Petitioners as nonmembers and that proceedings were at an "advanced stage" under 25 C.F.R. § 23.118 (c)(1).

The district court heard the motion on February 22, 2021. By Order filed April 2, 2021, the court dismissed Petitioners' legal custody petition and granted the Tribe and W.M.'s motion to transfer, finding that

the tribal court had jurisdiction over nonmembers, and that the proceedings were not advanced because the prior termination petitions were dismissed.

Petitioners filed their appeal with the Minnesota Court of Appeals on April 21, 2021, which affirmed the district court in an unpublished opinion filed October 25, 2021. Petitioners then sought discretionary review at the Minnesota Supreme Court on November 19, 2021, which was denied on November 29, 2021. Judgment was entered on December 30, 2021.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO DECIDE WHETHER ICWA PERMITS THE TRANSFER OF PROCEEDINGS INVOLVING NON-MEMBERS TO TRIBAL COURTS.

A. This case squarely presents the important, unsettled questions of whether Tribal courts have adjudicatory jurisdiction over nonmembers.

The issue of whether tribes possess adjudicatory jurisdiction over nonmembers is an unsettled question in which state appellate courts around the country have split. Rule 10(b). The Minnesota Court of Appeals opinion below underscores the confusion among lower courts over how the Supreme Court's prior case law applies to ICWA. Given longstanding concerns this Court has raised about the scope of tribal jurisdiction over nonmembers—as well as the life-altering consequences that the answer carries for the parents

and children involved in custody proceedings across the country—this Court should grant review.

B. The decision below cannot be reconciled with this Court's precedents.

The central question presented addresses whether the district court properly granted transfer of the foster care matter to tribal court, subjecting the Petitioners, collectively a nonmember party residing outside the reservation, to tribal jurisdiction despite their express objection to the transfer. This state court of appeals has decided this important federal question in a way that conflicts with relevant decisions of this Court. Rule 10(c).

This Court has held that tribal jurisdiction over nonmembers cannot exceed the Tribe's legislative, *i.e.*, *regulatory* jurisdiction. *See Nevada v. Hicks*, 533 U.S. 353, 357–58 (2001)("As to nonmembers ... a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction."). Congress can extend tribal jurisdiction over non-members, but when it does so it is by express language. *See, e.g., United States v. Lara*, 541 U.S. 193 (2004)(upholding a federal statute providing for tribal jurisdiction to prosecute non-member Indians when the statute explicitly authorized the power of Indian tribes to "exercise criminal jurisdiction over *all Indians*."). Section 1911(b) contains no such express provision of adjudicatory jurisdiction over nonmembers.

State courts are divided on this question. Importantly, and in contradiction to the Minnesota Court of Appeals' decision in this matter, the Minnesota Supreme Court has previously held, in *In re Welfare of R.S.,* that ICWA *prohibits* transfer to tribal court of cases involving nonmembers. 805 N.W.2d 44, 50 (Minn. 2011) (holding that "R.S. is not Native American. As a result, the tribal court lacked inherent jurisdiction over the termination of parental rights proceedings."). But the Alaska Supreme Court has held, "the power to set nonmember parents' child support obligations is within the retained powers of membership-based inherent tribal sovereignty. *State v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska,* 371 P.3d 255 (Alaska 2016).

Both cases considered this Court's seminal case of *Montana v. United States,* 450 U.S. 544 (1981), which defines the contours of tribal jurisdiction over nonmembers. At issue in that case was whether tribes have inherent sovereignty to regulate nonmembers. This Court held "long ago we described Indian tribes as 'distinct, independent political communities' exercising sovereign authority." *Worcester v. Georgia*, 6 Pet. 515, 559, 8 L.Ed. 483 (1832).

Due to their incorporation into the United States, however, the "sovereignty that the Indian tribes retain is of a unique and limited character." *United States v. Cooley*, 141 S. Ct. 1638, 1642 (2021), citing *U.S. v. Wheeler*, 435 U.S. 313, 323, 98 S. Ct. 1079, 55 L. Ed. 2d 303 (1978). Indian tribes may, for example, determine tribal membership, regulate domestic affairs among tribal members, and exclude others from

entering tribal land. *See*, *e.g., Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327–328, 128 S.Ct. 2709, 171 L.Ed.2d 457 (2008).

On the other hand, owing to their "dependent status," tribes lack any "freedom independently to determine their external relations" and cannot, for instance, "enter into direct commercial or governmental relations with foreign nations." *Wheeler*, 435 U.S. at 326, 98 S.Ct. 1079. Tribes also lack inherent sovereign power to exercise criminal jurisdiction over non-Indians. See *Oliphant v. Suquamish Tribe*, 435 U.S. 191, 212, 98 S.Ct. 1011, 55 L.Ed.2d 209 (1978). In all cases, tribal authority remains subject to the plenary authority of Congress. *E.g., Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788, 134 S.Ct. 2024, 188 L.Ed.2d 1071 (2014); *United States v. Cooley*, 141 S. Ct. 1638, 1642–43 (2021).

In *Montana*, the court held some rights over nonmembers were implicitly divested (as opposed to divested by Congress). "The areas in which such implicit divestiture of sovereignty has been held to have occurred are those involving *the relations between an Indian tribe and nonmembers of the tribe. Montana*, 450 U.S. at 564.

To be sure, *Montana*'s bar on jurisdiction over nonmembers is not absolute. Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations. "A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation

when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. *Montana*, 450 U.S. at 565–66(emphasis added); *Cooley*, 141 S. Ct. at 1643.

In *Cooley*, this Court reiterated the rationale for the limitation on tribal jurisdiction over nonmembers, stating, "our prior cases denying tribal jurisdiction over the activities of non-Indians on a reservation have rested in part upon the fact that full tribal jurisdiction would require the application of tribal laws to non-Indians who do not belong to the tribe and consequently had no say in creating the laws that would be applied to them." *Cooley*, 141 S. Ct. at 1644.

Here, there is no dispute that the father is not a member of the Red Lake Band. Arguably the father can invoke the "consent" exception within *Montana*. But Petitioners did not consent to jurisdiction. Thus, the tribe has no jurisdiction over them. It is inconsistent with the dependent status of tribes to regulate the relations of nonmembers—which is exactly what was accomplished by the court's transfer order. Petitioners were *parties* to the foster care proceeding after being granted intervention. The matter was then transferred, over their express objections, to tribal jurisdiction. To date, Petitioners have received no notice of any hearings being held in tribal court.

Petitioners were improperly subjected to the personal and subject matter jurisdiction of a state foreign to them, one where they have no right to vote. *See Cooley*, 141 S. Ct. at 1644. As such, the

court's transfer order violates their due process rights to fundamental fairness and equal protection—to have the right to be heard as parties in *state* court on the same terms and conditions as other parties in this case. These due process concerns over the denial of access to state courts to nonmembers concerned Congress from the time of ICWA's passage.

Indeed, then-Assistant Attorney General Patricia Wald expressed deep misgivings to the House Committee on Interior and Insular Affairs about ICWA's application to nonmembers:

> For reasons stated above, we consider that part of s. 1214 restricting access to state courts to be constitutional as applied to tribal members. However, we think that s. 1214 is of doubtful constitutionality as applied to nontribal members living on reservations and *would almost certainly be held to be unconstitutional as applied to nonmembers living off reservations.*

H.R. REP. 95-1386, 38, 1978 U.S.C.C.A.N. 7530, 7561.

Petitioners do not argue the ICWA is unconstitutional. Rather, they argue it should be *construed* to be constitutional and comply with due process by this Court to *mandate* denial of transfer based upon Petitioners non-membership. As the U.S. Supreme Court famously held:

> …due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the

> forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'

Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945). This iconic case is simply the corollary of the this Court's holding in *Montana*:

> A tribe may also retain inherent power to exercise civil authority over the *conduct of non-Indians on fee lands within its reservation* when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Montana, 450 U.S. at 566(emphasis added). Were Petitioners to have resided on the Red Lake reservation, the Tribe's jurisdiction would be unquestionable. But they do not. *Cf. Fisher v. Dist. Ct. of Sixteenth Jud. Dist. of Montana, in & for Rosebud Cty.*, 424 U.S. 382, 389, 96 S. Ct. 943, 948, 47 L. Ed. 2d 106 (1976) (where adoption proceeding characterized as litigation arising on the Indian reservation, the jurisdiction of the Tribal Court is exclusive).

C. The Questions Presented Are Exceptionally Important.

This case presents issues that carry profound, life-altering consequences for parents and children, and implicate fundamental rights. As the divided state courts opinions demonstrate, this Court's guidance is

needed to resolve the confusion and uncertainty that pervades ICWA cases—and indeed the broader issue of tribal jurisdiction over nonmembers. Each year, thousands of American Indian children are placed into foster care. 9,851 Indian children were in care in 2020 alone. https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport28.pdf. Every one of these cases are subject to transfer to tribal courts. Thousands will involve nonmember parents or caregivers.

Given the recurring and important nature of the issues presented, there is a pressing need for this Court to resolve whether ICWA and federal Indian law in general permits the nonconsensual transfer of nonmember parties to tribal courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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May 18, 2022

APPENDIX

APPENDIX A — JUDGMENT OF THE COURT OF APPEALS OF THE STATE OF MINNESOTA, DATED DECEMBER 30, 2021

STATE OF MINNESOTA

COURT OF APPEALS

Appellate Court # A21-0522
Trial Court # 27-JV-19-1960 / 27-JV-21-131

IN THE MATTER OF THE WELFARE
OF THE CHILD OF: F. J. V.,

Parent.

Pursuant to a decision of the Minnesota Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Hennepin County District Court, Juvenile Division herein appealed from be and the same hereby is affirmed and judgment is entered accordingly.

Dated and signed: December 30, 2021

FOR THE COURT

Attest: Christa Rutherford-Block
Clerk of the Appellate Courts

By: /s/ Christa Rutherford-Block
Clerk of the Appellate Courts

APPENDIX B — ORDER DENYING REVIEW IN THE SUPREME COURT OF THE STATE OF MINNESOTA , FILED NOVEMBER 29, 2021

STATE OF MINNESOTA

IN SUPREME COURT

A21-0522

FILED
November 29, 2021

IN THE MATTER OF THE WELFARE OF THE CHILD OF: F.J.V., PARENT.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of D.H. and H.H. for further review be, and the same is, denied.

Dated: November 29, 2021 BY THE COURT:

/s/_____
Lorie S. Gildea
Chief Justice

APPENDIX C — NONPRECEDENTIAL OPINION OF THE COURT OF APPEALS OF THE STATE OF MINNESOTA, FILED OCTOBER 25, 2021

STATE OF MINNESOTA

IN COURT OF APPEALS

A21-0522

October 25, 2021, Filed

IN THE MATTER OF THE WELFARE OF THE CHILD OF: F. J. V., PARENT.

Hennepin County District Court
File Nos. 27-JV-19-1960; 27-JV-21-131

Judges: Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Kirk*, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellants challenge the district court's transfer of jurisdiction of this child-protection matter to tribal court, arguing that good cause existed to deny the motion to transfer. Appellants also challenge the district court's dismissal of their petition for third-party custody of a child. We affirm.

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Appendix C

FACTS

L.J.H. (the child) was born in March 2017. The child's biological mother's (mother)[1] race was American Indian, and her affiliation was with respondent Red Lake Band of Chippewa Indians (the Band).

Mother had six other children. Legal and physical custody of three of mother's children was involuntarily transferred to the children's biological father. Mother's parental rights to her other three children were involuntarily terminated. These three children were adopted by appellants H.H. and D.H. (foster parents). H.H., foster father, is an enrolled member of the Bois Forte Chippewa Tribe. D.H., foster mother, is a descendant of the White Earth Chippewa Tribe; her mother and siblings are enrolled members. Foster parents are licensed foster parents in Minnesota and their home is considered an Indian Child Welfare Act (ICWA) placement home.

Mother's parental rights to the child were involuntarily terminated in June 2017. The child's biological father is respondent F.J.V. (father) whose race is Hispanic. Father was awarded sole legal and sole physical custody of the child.

On May 8, 2019, father was arrested on child-pornography charges, and soon after apprehended by Immigration and Customs Enforcement and deported to Mexico. On May 13, 2019, respondent Hennepin

1. Mother is deceased.

County Human Services (the department) filed a juvenile protection petition seeking to have the child adjudicated a child in need of protection or services (CHIPS). The petition alleged that the child was CHIPS because she was in a dangerous environment and without a parent who was able to provide necessary care. The same day, the district court filed an order for protective care and out-of-home placement. The child has been in out-of-home placement since May 13, 2019.

On June 18, 2019, the child was placed with foster parents and three of her half-siblings. The foster parents' home was a permanency option. The child became very connected to her half-siblings and foster parents.

On November 15, 2019, the Band requested that the department facilitate visits between the child and her maternal grandmother, respondent W.M. The Band indicated that it wanted the child to be placed with W.M. On November 19, 2019, the district court filed an order finding the child "to be within the statutory definition on an Indian child" and that the ICWA applies. In April 2020, the department, although realizing that it would be "a significant transition" for the child, sought placement of the child with W.M. On May 6, 2020, the district court approved the child's placement with W.M.

On May 11, 2020, foster parents moved to intervene and stay the change of placement. Foster parents asserted that they had been the child's foster parents since June 18, 2019, and that it was in her best interests to remain in their home with three of her half-siblings. The district

court granted foster parents' motion to intervene but denied their motion to stay the change of placement. On June 5, 2020, the child was removed from foster parents and placed with W.M.

On January 19, 2021, foster parents initiated a new case and petitioned to establish third-party custody. The same day, W.M. and the Band moved to transfer jurisdiction to tribal court. The district court held a hearing on February 22, 2021. Father did not object to transferring jurisdiction to tribal court and the department supported the transfer of jurisdiction.

On April 2, 2021, the district court filed an order granting the motion to transfer jurisdiction to tribal court and dismissing foster parents' petition to establish third-party custody. The district court found that all other parties objected to foster parents' petition for three main reasons: (1) a third-party custody motion is a family-court proceeding and at the time the juvenile court had exclusive jurisdiction; (2) the ICWA takes precedence and foster parents' placement request is contrary to the ICWA; and (3) the matter is not currently at permanency, thus, the statute upon which foster parents relied did not apply. The district court agreed with the other parties and dismissed foster parents' petition as a family-court action, not properly addressed in juvenile court. The district court ruled, however, that foster parents were not prevented from filing the petition when juvenile-court jurisdiction has been terminated.

The district court also concluded that foster parents' alternative basis supporting their petition was not appropriate because there was no pending permanency petition. In this matter there was no permanency petition following the CHIPS petition; two termination-of-parental-rights (TPR) petitions regarding father were filed and dismissed.

Finally, the district court rejected foster parents' argument that good cause existed—the matter was at an advanced stage—to deny the transfer of jurisdiction to tribal court. The district court concluded that the Band has authority to take jurisdiction and good cause did not exist to deny the transfer of jurisdiction. This appeal followed.

DECISION

Jurisdiction

Foster parents argue that the district court erred by transferring jurisdiction to tribal court because good cause existed to deny the transfer, namely, the proceeding was at an advanced stage.

"Under the Supremacy Clause, U.S. Const. art. VI, the decision whether to transfer jurisdiction of child custody proceedings to a tribal court must meet the minimum requirements of the [ICWA]." *In re Welfare of Child of T.T.B.*, 724 N.W.2d 300, 304 (Minn. 2006). The aim of the ICWA is "to protect the interests of Indian children and to promote the stability and security of Indian communities

and tribes." *Id.* at 304-05. "[T]ransfer of jurisdiction over Indian child custody matters to tribal authorities is mandated by the ICWA whenever possible." *In re Welfare of B.W.*, 454 N.W.2d 437, 446 (Minn. App. 1990). Applying the ICWA to undisputed facts presents a question of law that we review de novo. *T.T.B.*, 724 N.W.2d at 307.

Under the ICWA,

> 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[.]

25 U.S.C. § 1911(b). Thus, regarding a child who neither resides nor is domiciled on a reservation, federal and state law recognize that Minnesota and tribal courts can have "concurrent but *presumptively* tribal jurisdiction." *T.T.B.*, 724 N.W.2d at 305 (emphasis added). Therefore, the district court must transfer jurisdiction to tribal court following petition by the Band unless a parent objects or good cause exists to deny the transfer.

Here, father did not object to the transfer. And the district court determined that good cause did not exist to deny the transfer. Foster parents claim that the district

court erred because good cause to deny the transfer existed, that is, the relevant proceeding—the "foster-care proceeding"—was at an advanced stage.

Neither the ICWA nor Minnesota law defines "good cause" to deny a petition to transfer jurisdiction. *In re Welfare of Children of R.M.B.*, 735 N.W.2d 348, 351 (Minn. App. 2007), *rev. denied* (Minn. Sept. 26, 2007). Minnesota courts have looked to the Bureau of Indian Affairs Guidelines for state courts in Indian child-custody proceedings (BIA Guidelines) which describe the circumstances under which good cause may exist. *T.T.B.*, 724 N.W.2d at 305.

The BIA Guidelines provide that a "good cause" finding is determined on a case-by-case basis. Indian Child Welfare Act Proceedings, 81 Fed. Reg. 38778-01, 38821 (June 14, 2016) (codified at 25 C.F.R. pt. 23). The BIA Guidelines provide that the discretion to finding that good cause exists to deny a transfer of jurisdiction "should be limited" and used to "protect the rights of the Indian child, parents, and Tribe, which can often best be accomplished in Tribal court." *Id.* at 38820.

The BIA Guidelines do not mandate how the good-cause analysis must be conducted. *Id.* at 38821. But, among other things, a district court may not find good cause to deny a transfer of jurisdiction "based on the advanced stage of the proceeding, if the parent, Indian custodian, or Indian child's Tribe did not receive notice of the proceeding until an advanced stage." *Id.* at 38822. The district court is also prohibited from finding good

cause to deny a transfer of jurisdiction if "there have been prior proceedings involving the child for which no petition to transfer was filed. ICWA clearly distinguishes between foster-care and termination-of-parental-rights proceedings, and these proceedings have significantly different implications for the Indian child's parents and Tribe." *Id.* Thus, the BIA guidelines describe factors that a district court *must not* use as a basis to find good cause to deny a transfer of jurisdiction. The guidelines, however, do not describe factors that a district court can or must take into consideration. Therefore, in determining whether good cause exists to deny transfer of jurisdiction to tribal court, a district court is free to consider relevant factors, but it is not required to consider any particular factor(s).

Foster parents assert that good cause existed to deny transfer of jurisdiction because the proceeding was at an advanced stage. But contrary to foster parents' assertion, the district court determined that the proceeding was not at an advanced stage.

Foster parents contend that "the issue of permanency" of the child was continuously litigated. *See* Minn. Stat. §§ 260C.503, subd. 1 (2020) (stating that when child is in foster care, the court shall commence permanency proceedings no "later than 12 months after the child is placed in foster care"); .515 (2020) (listing permanency dispositions as TPR, guardianship to commissioner of human services, custody to relative, and custody to social services agency). But the issue of permanency was not litigated because both TPR petitions were dismissed prior to litigation.

Foster parents concede that "the issue of permanency was just continually delayed," and claim that they filed their third-party custody petition in order to "provide a permanency determination" for the child. If that is the case, and the third-party petition filed on January 19, 2021, commenced the permanency proceeding, then the matter was not at an advanced stage when the Band filed the motion to transfer jurisdiction on the same day. The district court did not err in determining that foster parents failed to show that good cause existed to deny the transfer of jurisdiction to tribal court.[2]

Foster parents also argue that good cause to deny transfer of jurisdiction exists because the tribal court has no inherent jurisdiction over nonmembers such as themselves. Foster parents claim that, as nonconsenting nonmembers, they were "improperly subjected to the personal and subject matter jurisdiction of a state foreign to them" and as such, the transfer of jurisdiction "violates their due process rights to fundamental fairness and equal protection—to have the right to be heard as parties in state court on the same terms and conditions as other parties in this case."

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2. The district court had the discretion on the facts of this case to determine that good cause existed to deny the transfer of jurisdiction because of the length of these proceedings in the district court, and the nearly one-year placement of the child with her three half-siblings. *See* Minn. Stat. § 260.771, subd. 3a(a) (2020). However, the district court also had the discretion to do what it chose to do in this case.

But under the ICWA, tribal jurisdiction is presumed, and the BIA Guidelines provide that a good-cause analysis is aimed to "protect the rights of the Indian child, parents, and Tribe, which can often best be accomplished in Tribal court." *See* 81 Fed. Reg. 38778-01, at 38820. And as previously stated, while the district court *could have* considered the personal-jurisdiction issue in determining whether good cause existed to deny the transfer of jurisdiction, it was not required to weigh this into its analysis. The district court did not abuse its discretion by declining to consider whether the tribal court has jurisdiction over foster parents in its good-cause analysis. And as the district court determined, foster parents are not prohibited from filing their custody petition in tribal court.

Third-party custody petition

Foster parents argue that the district court erred by dismissing their third-party petition, filed pursuant to Minn. Stat. §§ 257C.01, subd. 3, 260C.515, subd. 4(6) (2020). The district court dismissed foster parents' third-party petition, concluding that it was a family-court petition not properly filed in juvenile court, and was prematurely filed because no permanency petition existed. The district court's determinations were based on its interpretation of relevant statutes. "Issues of statutory interpretation are reviewed de novo." *Lewis-Miller v. Ross*, 699 N.W.2d 9, 12 (Minn. App. 2005), *aff'd*, 710 N.W.2d 565 (Minn. 2006).

Foster parents concede that the petition was filed in juvenile court. They claim that the plain language of

section 257C does not require that a third-party custody action be decided in family court, only that it be brought in a court with jurisdiction to decide child custody matters.

Foster parents are correct. It was permissible to file the petition in juvenile court. The statutory language provides: "In a court of this state with jurisdiction to decide child custody matters, a . . . third-party child custody proceeding may be brought by an individual other than a parent by filing a petition seeking custody . . . ." Minn. Stat. § 257C.03, subd. 1(a) (2020). It is undisputed that the juvenile court has jurisdiction to decide matters of child custody. And in *Stern v. Stern*, this court upheld a dismissal of a petition brought pursuant to Minn. Stat. § 257C.03 in family court because the juvenile court exercised original and exclusive jurisdiction over an existing petition for permanent legal and physical custody. 839 N.W.2d 96, 97 (Minn. App. 2013). Therefore, the third-party custody petition was not a petition that was required to be filed in family court and was appropriately filed in juvenile court.

Foster parents also claim that the district court erred by concluding that the case was not a "'permanency proceeding' under [section] 260C.515, subd. 4(6)." Foster parents assert that it is illogical to classify the matter as not being a permanency proceeding after two TPR petitions had been filed. They argue that it makes no sense to deem the matter a permanency proceeding when a TPR petition was pending between June and November 2020, but then to deem it a non-permanency proceeding two months later in January 2021, when they filed their third-party custody petition.

Appendix C

Foster parents assert that the existence of a permanency proceeding is not based on when a TPR petition exists, but rather on how long the child has been in foster care, and a permanency proceeding is required to commence no later than 12 months after the child is placed in foster care. *See* Minn. Stat. § 260C.503. And they claim that if the district court failed to commence the permanency proceeding, they "converted the matter into a permanency proceeding by filing their [p]etition."

Foster parents' argument is logical. The length of time that the child has been in out-of-home placement should be taken into consideration when deciding whether a permanency proceeding exists. However, while foster parents' argument has some merit, we have determined that jurisdiction was properly transferred to tribal court. Because jurisdiction was properly transferred, we affirm the district court's dismissal of the third-party custody petition. Foster parents are not foreclosed from filing their petition in the tribal court with jurisdiction.

Affirmed.

APPENDIX D — ORDERS OF THE DISTRICT COURT – JUVENILE DIVISION, FOURTH JUDICIAL DISTRICT

TSTATE OF MINNESOTA
COUNTY OF HENNEPIN
DISTRICT COURT – JUVENILE DIVISION
FOURTH JUDICIAL DISTRICT

Case Nos.: 27-JV-21-131
27-JV-19-1960

In the Matter of the Welfare of the Child(ren) of:
Fausto Vidal, Parent

ORDER DISMISSING PETITION AND ORDER GRANTING MOTION TO TRANSFER JURISDICTION TO TRIBAL COURT

Child(ren): Child 1

DOB: ***

The above-captioned matter came on for a motion hearing before the Honorable Juan Hoyos, Judge of District Court, Juvenile Division, on 02/22/2021, at the Juvenile Justice Center, Minneapolis, Minnesota. CMR recorded these proceedings.

SUMMARY OF HEARING

1. The parties appeared for a hearing on the Red Lake Nation's (Tribe's) and Foster Parent's joint motion to transfer jurisdiction to tribal court. Parties also

appeared on a new petition, 27-JV-21-131 filed by the Intervenors.

2. Counsel for the Former Foster Parents/Intervenors (the Halversons) indicated that family court and juvenile court related statutes allow parties to file an alternate permanency petition for permanency with a family member.

3. Counsel for the Department indicated that if the new petition is analyzed under 260C.515, the juvenile court statute, placement with the Halversons would be contrary to ICWA's placement preferences, which is a barrier.

4. Counsel for Father argued that it is established that in Hennepin County and under the law, when a CHIPS case is open in the juvenile court, the juvenile court has exclusive jurisdiction over custody and parenting time. Counsel for Father indicated that while he does not necessarily believe the Halversons' petition was inappropriately filed, he does believe that it cannot be addressed until the CHIPS case closes, and that it would be more properly addressed in family court.

5. Counsel for the Tribe indicated that the Halversons' third party custody petition is not the priority, the child welfare case is the primary concern. Counsel indicated the third party custody and transfer of legal custody statutes do not contemplate ICWA and its primacy. Counsel urged the Court focus on ICWA and MIFPA.

6. Counsel for the current Foster Parent, Willamette Morrison, asked the Court find the Halversons' third party custody motion is not properly before the juvenile court. Counsel argued that third party custody petitions are not within the realm of disposition enumerated in the juvenile court statute. Counsel further argued that under the family court statute the Halversons would not have standing as one must be an interested third party or a *de facto* custodian. Counsel argued even if the petition would have been filed in family court, there would be no statutory right to move forward. Counsel requested the Court dismiss the Halversons' petition or alternatively transfer it to tribal court.

7. The Guardian *ad Litem* indicated the Halversons' petition is inappropriate for the juvenile court at this time, and that ICWA is prime.

8. Counsel for the Halversons indicated that parties and the Court should think of the petition as a petition for TLC and not get hung up on the term third party custody. Counsel indicated the Department is arguing that only the county has the ability to file a petition whereas the rules clearly allows alternative petitions.

9. Regarding the motion to transfer the child protection case to tribal court, Counsel for the Tribe indicated this is a joint motion to transfer to Red Lake that the current Foster Parent joins. Counsel indicated that ICWA allows maters to be transferred to tribal court absent an objection by a parent. Counsel emphasized that parents have the sole veto power under ICWA.

The next issue to consider if a parent does not veto transfer, according to Counsel, is whether good cause exists to deny the transfer. Counsel indicated that the Tribe does not believe good cause exists to deny the transfer. Counsel indicated these matters are not at an advanced stage.

10. Counsel for the current Foster Parent requested the Court transfer the matter to tribal court and honor ICWA. Counsel indicated such a transfer is in the best interests of the child as it supports connections with the Child's tribe and family. Counsel indicated the Halversons' concerns of convenience are disingenuous as other parties have appeared remotely from afar.

11. Counsel for the Tribe agreed with the Custodian about remote appearances. Counsel further indicated the Tribe has made arrangements for Father's current attorney to continue his representation of Father in tribal court.

12. Counsel for Father indicated Father had no objection to transferring the matter to tribal court. Counsel reported that the Mexican Consulate would give this case the same attention they had been providing so far if the matter were to be transferred to tribal court. Counsel reported Father believes a transfer is in Child's best interest and that Father has been able to have consistent and meaningful visits with Child in the current Foster Parent's care. Counsel indicated there is no longer a TPR petition before the Court, and that now is the logical time to transfer the matter to tribal court. Counsel reported the tribal court has

similar accommodations to those available in Hennepin County Juvenile Court.

13. Counsel for the Department indicated MIFPA enumerates two ways to find good cause to prevent transfer, and that the first does not apply as the Red Lake Nation has a tribal court that presides over child protection cases. Regarding the second ground to find good cause under MIFPA, Counsel argued it does not apply as there is no undue hardship that the tribal court could not mitigate if the matter were transferred, and that the Tribe has demonstrated its willingness to help Father maintain his current counsel. Counsel argued that Zoom hearings and trials make distance no barrier to convenience. Counsel argued the matter is not at an advanced stage and transfer should not be denied for that reason either.

14. The Guardian *ad Litem* indicated that ICWA and MIFPA allows tribes to intervene and request transfer. The GAL supported the joint motion to transfer to tribal court.

15. Counsel for the Halversons indicated the matter is at an advanced stage. Counsel indicated a TPR had been filed in June of 2020. Counsel indicated the timelines have not been followed. Counsel indicated the tribal court is an inconvenient forum. Counsel argued the *Montana* case, as quoted in *RS* indicates that the Tribe lacks inherent jurisdiction over non-members. Counsel argued the *AMG* case found good cause to not transfer an adoption proceeding to tribal court where

petitioners were not members of the tribe. Counsel indicated ICWA is predicated upon a consensual transfer of parents who are tribal members, and that is not the case here.

16. Counsel for the Department responded to the Intervenor's arguments by indicating the TPR petition had been dismissed. Counsel indicated the Department supports a TLC to the current Foster Parent, but is still working on getting her licensed. A TLC petition has thus not yet been filed according to Counsel. Counsel distinguished the cases cited by Counsel for the Halversons by arguing those cases involved adoption proceedings.

17. Counsel for the current Foster Parent agreed that the Court dismissed the TPR petition in the past, distinguished the Counsel for the Halversons' cases from the instant matter, and argued that the tribal court can make decisions in the best interest of the Child who is a Red Lake citizen.

18. Counsel for the Halversons apologized for missing the fact that the TPR petition had been dismissed, but argued that had no bearing on the matter as ICWA remains applicable to this case, and that the case is 4 years old.

19. Counsel for the Department indicated the instant matter was from May, 2019, and therefore not quite two years old. Counsel indicated that the Tribe intervened in this matter when the Red Lake Nation's eligibility

criteria changed, and that the Tribe was not available at the beginning of the case, which is significant according to counsel.

20. The Court took the motions under advisement.

In the best interests of the child(ren), upon the representations of the parties, the arguments of counsel, and all of the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. Counsel for the Halversons filed a Petition entitled "Petition to Establish Third-Party Custody," on January 19, 2021 into a new case, 27-JV-21-131. In the petition, Counsel cites to both Minn. Stat. §257C.01, subd. 3 (Third-Party Custody, i.e. the family court statute) and Minn. Stat. §260C.515, subd. 4 (Transfer of Permanent Legal and Physical Custody, i.e. the juvenile court statute), and requests that the Court grant the Halvorsons sole custody of the child.

2. On the same day as the Halvorson's filed their motion for custody, a joint motion was filed by the relative foster parent and the Tribe to transfer the matter to tribal court.

3. Counsel for the Halvorsons argued that they have the right to ask for custody at this time under either the Third-Party Custody statute or under Minn. Stat. §260C.515, subd. 4. Counsel argued that

under §260C.515, subd. 4(6), "another party to the permanency proceeding regarding the child may file a petition to transfer permanent legal and physical custody to a relative."

4. All other parties objected to the Petition filed by the Halvorsons, arguing that 1) a third-party custody motion is a family court proceeding and that it cannot move forward at this time as Juvenile Court has exclusive jurisdiction; 2) that ICWA takes precedent over the matter at this time and the motion is akin to placement and is out-of-line with ICWA; and 3) this matter is not currently at permanency and therefore §260C.515, subd. 4 (6) does not apply.

5. The Court finds that the Halvorson's Petition to Establish Third-Party Custody, both under Minn. Stat. §257C.01, subd. 3 and Minn. Stat. §260C.515, subd. 4 is not properly filed at this time and should be dismissed.

6. Evidence necessary to decide the case may be adequately presented in the Red Lake Nation's tribal court without undue hardship, to the parties or witnesses, which the tribal court cannot mitigate with the use of remote technology. Similarly, Red Lake Nation's tribal court is not an inconvenient forum given representations that the tribe has similar accommodation available for conducting remote appearance as this Court, and representations that the Mexican consulate will be able to participate to the same extent in tribal court as in state court.

7. This case is not at an advanced stage in the proceedings as the TPR petition has been dismissed.

CONCLUSIONS OF LAW

The Halvorson's Petition

1. Juvenile Court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services, or neglected and in foster care. Minn. Stat. §260C.101, subd. 1. While there are some clearly delineated actions that can be filed in Family Court at the same time as an open CHIPS proceeding, such as a paternity action, the Minnesota Court of Appeals has held that Family Court does not have jurisdiction over a custody motion when the child is currently under Juvenile Court jurisdiction. See *Stern v. Stern*, 839 N.W.2d 96 (Minn. Ct. App. 2013) in which the Court of Appeals concluded that that family court does not have concurrent jurisdiction with juvenile court "relative to issues over which the juvenile court has original and exclusive jurisdiction," including custody issues. The Halvorson's Petition for Third- Party Custody under §257C.01, subd. 3, a family court custody action, cannot be addressed when there is current juvenile court jurisdiction and must therefore be dismissed. The Halvorsons are not prevented from filing this motion in the future when juvenile court jurisdiction has been terminated.

2. Counsel for the Halvorsons also argued that even if they cannot proceed under Minn. Stat. §257C.01, subd. 3, they should be allowed to proceed with the action for custody under Minn. Stat. §260C.515, subd. 4 (6) which allows a party to a permanency proceeding regarding the child to file a petition to transfer permanent legal and physical custody to a relative. Typically referred to as an "alternative" or "competing" petition, this section of the statute provides an avenue for a relative to seek custody of a child currently under juvenile court jurisdiction when there is another permanency petition filed. In this case, however, there is no current permanency petition.

3. This matter opened when a CHIPS petition was filed on May 13, 2019 in case 27-JV-19-1960. Following the CHIPS petition, there were two permanency petitions filed regarding Respondent father: a Termination of Parental Rights Petition filed on October 7, 2019, in case 27-JV-19-4241, and another Termination of Parents Rights Petition filed on June 9, 2020, in case 27-JV-20-2283. Both of those permanency petitions have since been dismissed, one by order filed February 13, 2020, and the other by order filed November 20, 2020.[1] Once both permanency petitions were dismissed, the only open petition/case was the CHIPS petition in case 27-JV-19-1960. Counsel for the Halvorson's argued that due to the length of time that the case has been open and the fact that a permanency petition

1. During the hearing, Counsel for the Halvorsons acknowledged that he was not aware that the permanency petition had been dismissed.

was previously filed, regardless if it was dismissed, the matter is essentially at the permanency stage. However, counsel provided no legal basis to support this argument. With no current permanency case, the Court is unable to find that at this time the matter is a "permanency proceeding" which would allow the Halvorsons to file an alternative petition for custody under Minn. Stat. §260C.515, subd. 4(6).

The Motion to Transfer to Red Lake Nation Tribal Court

1. "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." 25 U.S. Code § 1911 (b) (emphasis added).

2. Under the MIFPA, "in a proceeding for: (1) the termination of parental rights; or (2) the involuntary foster care placement of an Indian child not within the jurisdiction of subdivision 1, the court, in absence of good cause to the contrary, shall transfer the proceeding to the jurisdiction of the tribe absent objection by either parent…" Minn. Stat. § 260.771, Subd. 3(a). Additionally, "at any point in a proceeding for finalizing a permanency plan, the court, in the absence of good cause to the contrary

and in the absence of an objection by either parent, shall transfer the proceeding to tribal court for the purpose of achieving a customary adoption or other culturally appropriate permanency option." Minn. Stat. § 260.771, Subd. 3(c).

3. MIFPA defines what establishes good cause as follows:

   A. Establishing good cause to deny transfer of jurisdiction to a tribal court is a fact-specific inquiry to be determined on a case-by-case basis. Socioeconomic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems must not be considered in a determination that good cause exists. The party opposed to transfer of jurisdiction to a tribal court has the burden to prove by clear and convincing evidence that good cause to deny transfer exists. Opposition to a motion to transfer jurisdiction to tribal court must be in writing and must be served upon all parties.

   B. The court may find good cause to deny transfer to tribal court if:

      1. the Indian child's tribe does not have a tribal court or any other administrative body of a tribe vested with authority over child custody proceedings, as defined by the Indian Child Welfare Act, United States Code, title 25, chapter 21, to which the case can be transferred, and no other tribal court has

been designated by the Indian child's tribe; or

2. the evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses and the tribal court is unable to mitigate the hardship by any means permitted in the tribal court's rules. Without evidence of undue hardship, travel distance alone is not a basis for denying a transfer.

Minn. Stat § 260.771, subd. 3(a).

4. Under federal regulations, the Court must not consider:

    1. Whether the foster-care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;

    2. Whether there have been prior proceedings involving the child for which no petition to transfer was filed;

    3. Whether transfer could affect the placement of the child;

    4. The Indian child's cultural connections with the Tribe or its reservation; or

5. Socioeconomic conditions or any negative perception of the Tribal or BIA social services or judicial systems.

25 CFR § 23.118

5. The Court cannot find good cause exists under MIFPA to deny the transfer given the Red Lake Nation has a tribal Court that presides over child protection cases, representations have been made that the tribal court can accommodate remote appearances in a similar fashion as the Hennepin County Juvenile Court, and the Tribe has demonstrated a willingness to help overcome logistical barriers faced by parties by making arrangements for Father's attorney to continue representing Father, and representations were made that the Mexican consulate will be able to give this matter the same attention in tribal court as in state court. The Halvorsons have not shown good cause exists to transfer under MIFPA as any hardship to the parties may seemingly be mitigated. For similar reasons, the Halversons have not shown good cause exists to deny the transfer on the basis of Red Lake Tribal Court being an inconvenient forum.

6. Good cause does not exist to deny the motion to transfer on the basis of this matter being at an advanced stage. For the reasons discussed above related to being at the permanency stage, this matter is not at an advanced stage as the TPR petition was dismissed.

7. Because Child 1 is an Indian child, the Tribe has authority to take jurisdiction, and good cause does not exist to deny the transfer on the basis that the tribal court has no jurisdiction over non-members. Under ICWA, the Tribe's authority to take jurisdiction has vested given Child 1 is an Indian Child.

ORDER

1. The Petition for Third-Party Custody is hereby DISMISSED without prejudice. The Petition may be able to be filed at a future date when Juvenile Court jurisdiction has terminated.

2. The Halvorson's motion to deny the transfer to tribal court for good cause is DENIED.

3. The joint motion of the Tribe and Foster Parent to transfer the matter to Red Lake Nation Tribal Court is GRANTED.

BY THE COURT:

Dated:

_____
Juan Hoyos
Judge of District Court