IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIFTH APPELLATE DISTRICT

EFRIM RENTERIA et al.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE COUNTY,

Respondent;

REGINA CUELLAR et al.,

Real Parties in Interest.

F075331

(Tulare Super. Ct. No. VPR047731)

ORDER

(Filed Jul. 14, 2017)

BY THE COURT:*

The "Petition for Writ of Mandate and/or Other Appropriate Relief . . . ," filed on March 23, 2017, is denied.

/s/ Hill
Hill, P.J.

* Before Hill, P.J., Poochigian, J., and Smith, J.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF TULARE

In the Matter of Angelina Porras-Cuellar Petitioner vs. Joshua Portillo, Respondent.	Case No. VPR047731 Department 8 RULING ON SUBMITTED ISSUES Date: January 17, 2017 (Filed Feb. 3, 2017)

The Parties in this matter have not stipulated as to whether or not the Indian Child Welfare Act (ICWA) applies to this matter. The Renterias argue that it does not, and the Cuellars argue that it does. Therefore, the Court set a hearing on the matter for January 17, 2017. Having reviewed the briefs of the parties, the evidence submitted, the documents on file with the Court, and taking argument from the Parties, the Court rules as follows:

The Renterias rely on *Adoptive Couple v. Baby Girl* (2013) 133 S.Ct. 2552 to support their contention that the ICWA does not apply to this action. *Adoptive Couple* is distinguishable and is not applicable to this action. *Adoptive Couple* involved an Indian father who sought custody of his 2 year old daughter. That Father had voluntarily relinquished his parental rights to the child at birth and had never had custody or prior contact with the child. The Supreme Court found on these

facts the ICWA did not apply as there was no Indian family being broken up.

The facts here differ markedly. At issue in this matter is a custody dispute over minor children whose biological parents both died in a tragic accident. It is undisputed that father here was a member of an Indian tribe. It is also undisputed that the children are members of a tribe or eligible to be members of a tribe. 25 U.S.C. 1903(4). Finally, there is no dispute that father maintained contact and custody of the children from birth until his untimely death.

As explained by a recent Court

> "Responding to inconsistent and sporadic application of the ICWA's requirements by California courts, the California Legislature enacted Senate Bill No. 678 (2005–2006 Reg. Sess.) (Senate Bill 678) in 2006. Senate Bill 678 incorporated the ICWA's requirements into California statutory law, revising several provisions of the Family, Probate, and Welfare and Institutions Codes. (See *Autumn K.*, *supra*, 221 Cal.App.4th at pp. 703–704.) According to the Senate Rules Committee, Senate Bill 678 "affirms the state's interest in protecting Indian children and the child's interest in having tribal membership and a connection to the tribal community." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended Aug. 22, 2005, p. 1.) Similar to the ICWA, Senate Bill 678 contains a section of express legislative

> findings, including findings that "[i]t is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of whether the child is in the physical custody of an Indian parent or Indian custodian at the commencement of a child custody proceeding, the parental rights of the child's parents have been terminated, or where the child has resided or been domiciled." (Welf. & Inst. Code, § 224, subd. (a)(2).) The statute directs the court to "strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child. Whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for the purpose of further foster care, guardianship, or adoptive placement, placement of the child shall be in accordance with the Indian Child Welfare Act." (*Id.*, § 224, subd. (b).) In addition, a determination that a minor is "eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings." (*Id.*, § 224, subd. (c).)"

(*In re Alexandria P.* (2014) 228 Cal.App.4th 1322, 1339.)

Furthermore, applicable federal guidelines specify the ICWA applies whenever an Indian child is the

subject of a child custody proceeding (25 CFR section 23.103 (June 14, 2016 regulations). The current matter is a child custody proceeding as defined by ICWA.

The Court understands that the Rentarias [sic] believe ICWA was not designed with the current factual situation in mind. Indeed, neither party has been able to direct the Court to a case in which both parents died at the same time and one parent was a member of a tribe. It follows that no case has been published where two great-aunts then compete for guardianship of the minors. However, the Court believes that the argument regarding the purpose of ICWA is not the starting point in analyzing whether or not ICWA applies. The proper point to begin an analysis as to the applicability of ICWA is as stated above – does this proceeding involve an Indian Child? It does. Is the current matter within the various definitions of an [sic] custody proceeding involving an Indian Child? The Court finds that it is. The Renterias have pointed to no case that says the provisions of ICWA are eliminated upon the death of an Indian parent.

The Court finds that ICWA is applicable to these proceedings.

Dated: February 3, 2017

[SEAL] /s/ Nathan D. Ide

Nathan D. Ide
Judge of the Superior Court

Court of Appeal, Fifth Appellate District –
No. F075331

S243352

IN THE SUPREME COURT OF CALIFORNIA

En Banc

(Filed Aug. 30, 2017)

EFRIM RENTERIA et al., Petitioners,

v.

SUPERIOR COURT OF TULARE COUNTY,
Respondent;

REGINA CUELLAR et al., Real Parties in Interest.

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

ARTICLE V

No person shall be . . . deprived of life, liberty, or property, without due process of law[.]

ARTICLE XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

---

25 U.S.C. § 1901
Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds –

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) 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;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 U.S.C. § 1902
Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of

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, and by providing for assistance to Indian tribes in the operation of child and family service programs.

25 U.S.C. § 1903
Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term –

(1) "child custody proceeding" shall mean and include –

> **(i)** "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
>
> **(ii)** "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
>
> **(iii)** "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of Title 43;

(4) "Indian child" means 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;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than

one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or

individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

---

25 U.S.C. § 1915
Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(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.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable
The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability
A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

Shingle Springs Band of Miwok Indians
Governance Code, Title 5 §§ 2–3
(Enrollment Ordinance)

Section 2. Membership

The membership of the Shingle Springs Band of Miwok Indians shall consist only of those persons who have filed applications for membership in the Tribe and who are qualified to be a Member under the following criteria:

A. Persons listed on the current membership roll as of the date of adoption of the amended Articles of Association, and their biological lineal descendants, who are all biological lineal descendants of either

Pamela Cleanso Adams or Annie Hill Murray Paris who were listed on the "1916 Census Roll of the Indians at and near Verona in Sutter County, California; also 15 living in Sacramento," regardless of whether the ancestor through whom eligibility is claimed is living or dead.

* * *

Section 3. Non-Eligibility

* * *

C. An individual conceived through purchased and/or donated spermatozoa or ova (the term includes any reproductive technique involving a third party (*e.g.*, a sperm and/or egg donor) of a Tribal member is not eligible for membership in the Tribe.

Section 4. Adoption

A. Only individuals qualified for enrollment under Section 2 may be members of the Tribe. The Tribe shall not allow exceptions of any kind regarding membership criteria for any person, and there shall be no honorary membership in the Tribe. Persons legally adopted by members of the Tribe are not eligible for enrollment unless they independently meet the requirements of this Ordinance.

* * *