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Supreme Court clarifies "qualified expert witness" requirements of Indian Child Welfare Act

SANTA FE – The state Supreme Court today clarified how New Mexico courts must determine whether expert witnesses are qualified to testify in child custody proceedings involving Native American children.

Under the federal Indian Child Welfare Act (ICWA), courts cannot place a Native American child in foster care or terminate parental rights without evidence supported by testimony of a "qualified expert witness"(QEW) in two areas: (1) whether it is likely there will be serious emotional or physical damage to the child by remaining in the parents' custody or "Indian custody," and (2) the "prevailing social and cultural standards of the Indian child's tribe."

New Mexico's highest court concluded in a unanimous opinion that courts must analyze the qualifications of expert witnesses separately in each of the areas required under the ICWA and that "the testimony can come from one or multiple experts."

The Judiciary's rules of evidence will guide courts in the legal standards to follow in evaluating the qualifications of an expert witness, the Court wrote in an opinion by Justice David K. Thomson.

The justices ordered a case back to the district court in Valencia County for new hearings on whether a child was abused and neglected and if the child should remain in custody of the state Children, Youth and Families Department under the care of her paternal aunt. The district court had ordered continued custody by CYFD. The child is eligible for membership in the Wichita and Affiliated Tribes of Oklahoma through her mother.

The justices determined that the district court improperly qualified Kyli Ahtone as an expert witness to testify on both areas required under the ICWA. The Court held that the "district court abused its discretion in allowing Ms. Ahtone to testify" about whether the child would be harmed by remaining with her parents. CYFD did not lay the proper foundation under court rules to qualify the witness to testify on that subject, according to the Court.

“CYFD never asked Ms. Ahtone to explain the subject matter of her previous expert testimony, whether her ICWA training covered the topics presented, or whether she had been taught how to determine whether certain types of abuse were likely to manifest self-harm or suicidal thoughts,” the Court wrote.

In affirming a decision of the state Court of Appeals, the high court found that Ms. Ahtone was qualified to testify about the social and cultural standards of the child’s tribe. However the justices emphasized that “knowledge about a tribe’s spiritual customs and ceremonial events is not necessarily sufficient to qualify an expert to testify about the tribe’s societal and cultural attitudes surrounding familial relationships.”

Ms. Ahtone worked for the Wichita and Affiliated Tribes of Oklahoma as an ICWA caseworker and had been qualified numerous times in Oklahoma as an ICWA expert. She was raised as a member of the Apache Tribe of Oklahoma on its reservation.

“In this case, as a procedural matter and a matter of first impression, we clarify that ICWA sets forth two distinct testimony requirements for QEWs, and we reverse the abuse and neglect adjudications upon a determination that the record did not support the district court’s qualification of Ms. Ahtone to testify as an expert regarding serious damage to the Child,” the Court wrote. “CYFD acted in good faith to comply with ICWA, its error being conflation of the cultural standards testimony requirements with the serious damage to the child requirements.”

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To read the decision in *State of New Mexico ex. rel. Children, Youth and Families Department v. Douglas B.*, No. S-1-SC-39139, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/522053/index.do