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NICWA
National Indian Child Welfare Association

A Brief Summary of the Decision in *Adoptive Couple v. Baby Girl* (12-399)

On June 25, 2013, the U.S. Supreme Court reversed the South Carolina Supreme Court decision and remanded the case for further hearings in South Carolina court, the outcome of which will determine who should have custody of Veronica. The Court issued a narrow decision interpreting three specific sections of the Indian Child Welfare Act (ICWA) and did not find ICWA to be unconstitutional.

What the Court held:

- The heightened standard of proof for termination of parental rights (25 U.S.C. 1912(f)) does not apply when a parent has never had prior legal or physical custody, although Justice Breyer in his concurrence suggests that there may be exceptions to this rule.
- Active efforts (25 U.S.C. 1912(d)) are not required to prevent the breakup of an Indian family when a parent abandons a child before birth and has never had physical or legal custody of the child, although Justice Breyer's concurrence indicates that the section may apply to a non-custodial parent in other factual circumstances.
- Adoption placement preferences (25 U.S.C. 1915(a)) are not triggered until a party within the placement preferences (relative, tribal member, or other Indian person) seeks to adopt the child.

Limitations on the Court's holding:

- Contrary to some misinterpretations of the opinion, the Court did not specifically adopt the Existing Indian Family Exception. Rather, the Court appeared to accept the dissent's view that many provisions of the Act, such as the notice, transfer, and consent provisions, would still apply to biological fathers regardless of whether they ever had custody.
- The Court did not decide what the terms "acknowledge or establish" mean within ICWA's definition of parent or how they should be interpreted, but merely assumed for the sake of argument that Dusten was a parent under the Act.
- The Court's decision does not overturn state ICWA provisions that provide greater protections to non-custodial parents; 25 U.S.C. 1921 still permits the application of state laws that provide greater protections to children and parents.

For further information regarding this case, please contact AAIA Executive Director Jack Trope at jt.aaia@indian-affairs.org or NICWA Government Affairs Associate Addie Smith at addie@nicwa.org.