

MEMORANDUM

To: Professor Fort
From: Kathryn Petersen
RE: Oregon ICWA Cases
Date: January 21, 2019

25 U.S.C. §1901: Congressional Findings

- *State ex rel. Juvenile Dep't of Lane County v. Tucker*, 76 Or. App. 673 (1985) (holding that child services wanted to terminate mother's parental rights because of mental health issues; testimony by village council president that child was indian).¹
- *Carson v. Carson (In re Kerby)*, 170 Or. App. 263 (2000) (holding that the adoption was valid and that notice was properly given to biological father).²
- *Hoffman v. Anderson (In re Anderson)*, 176 Or. App. 311 (2001) (holding that father failed to produce evidence that child was member or eligible for membership in any tribe, therefore court was not required to apply ICWA).³
- *State ex rel. State Office for Servs. to Children & Families v. Lucas (In re Lucas)*, 177 Or. App. 318 (2001) (holding that trial court did not error in terminating mother's parental rights when a qualified expert testified that mother's behavior as parent was not culturally appropriate within tribe, and because of her parenting, children had suffered).⁴

25 U.S.C. § 1903: Definitions

- *Quinn v. Walters (In re Quinn)*, 320 Or. 233 (1994) (holding adoption consent form was signed stating that neither mother or child was a member of an indian tribe; furthermore, affirming in favor of adoptive parents because mother did not establish that her consent to adoption could be withdrawn based on the child being an "indian child" under ICWA).⁵
- *In re Brittany Kirk v. Klamath Tribe*, 170 Or. App. 106 (2000) (holding that the tribe and the state had an agreement that included children of tribal members who were not eligible for membership themselves and applied to children).⁶
- *In re Charloe*, 292 Or. 545 (1982) (holding that foster parent was the child's aunt, but for purposes of §1903(6) she was not considered to be a custodian and therefore was not entitled to notice of termination).⁷
- *Nelson v. Hunter (In re Hunter)*, 132 Or. App. 361(1995) (holding that ICWA standards were not applied to adoption of children because father failed to established that he was a member of any tribe).

¹ Cross-referenced at §1903 and §1914

² Cross-referenced at §1912

³ Cross-referenced at §1903 and §1912

⁴ Cross-referenced at §1911

⁵ Cross-referenced at §1913

⁶ Cross-referenced at §1919

⁷ Cross-referenced at §1912

- *In re Application of Angus*, 60 Or. App. 546 (1982) (holding that biological parents were entitled to a return of their child from adoptive parents because biological parents were tribal members and ICWA standards were applied and that ICWA is constitutional).⁸
- *Hoffman v. Anderson (In re Anderson)*, 176 Or. App. 311 (2001) (holding that father failed to produce evidence that child was member or eligible for membership in any tribe, therefore court was not required to apply ICWA).⁹
- *In re Arnold*, 118 Or. App. 488 (1993) (holding that termination of mother's parental rights under a clear and convincing standard did not violate privilege and immunities provision of constitution because indian status is a political status, not racial).¹⁰
- *Dep't of Human Servs. v. M.L.M. (In re L.M.G.M.)*, 283 Or. App. 353 (2017) (holding that there was evidence to support that DHS made active efforts to provide services that addressed parent's mental health to prevent the break-up of the family).¹¹
- *State ex rel. Juvenile Dep't of Lane County v. Tucker*, 76 Or. App. 673 (1985) (holding that child services wanted to terminate mother's parental rights because of mental health issues; testimony by village council president that child was indian).¹²

25 U.S.C. §1911: Indian tribe jurisdiction over Indian child custody proceedings

- *State ex rel. Juvenile Dep't of Lane County v. Shuey*, 119 Or. App. 185 (1993) (holding that tribe's motion to intervene did not need to be signed by an attorney and complied with ICWA standards.
- *State ex rel. State Office for Servs. to Children & Families v. Lucas (In re Lucas)*, 177 Or. App. 318 (2001) (holding that trial court did not error in terminating mother's parental rights when a qualified expert testified that mother's behavior as parent was not culturally appropriate within tribe, and because of her parenting, children had suffered).¹³
- *Dep't of Human Servs. V. S.R.H. (In re A.R.)*, 278 Or. App. 427 (2016) ICWA standards were not applied because mother failed to establish that she was a tribal member.¹⁴

25 U.S.C. §1912: Pending court proceedings

- *State ex rel. Juvenile Dept' of Multnomah County v. Charles*, 70 Or. App. 10 (1984) (holding that county failed to make a showing that remedial efforts to prevent the breakup of the Indian family had proven unsuccessful and that it failed to prove by clear and convincing evidence that foster placement was necessary to prevent the child from suffering serious emotional and physical damage).
- *In re Charloe*, 292 Or. 545 (1982) (holding that foster parent was the child's aunt, but for purposes of §1903(6) she was not considered to be a custodian and therefore was not entitled to notice of termination).¹⁵

⁸ Cross-referenced at §1913

⁹ Cross-referenced at §1901 and §1903

¹⁰ Cross-referenced at §1912

¹¹ Cross-referenced at §1912

¹² Cross-referenced at §1901 and §1914

¹³ Cross-referenced at §1901

¹⁴ Cross-referenced at §1912 and §1914

¹⁵ Cross-referenced at §1903

- *Dep't of Human Servs. v. S.R.H. (In re A.R.)*, 278 Or. App. 427 (2016) ICWA standards were not applied because mother failed to establish that she was a tribal member.¹⁶
- *Dep't of Human Servs. v. J.G. (In re C.G.)*, 260 Or. App. 500 (2014) (holding that juvenile court was not required to make an “active efforts” finding in the guardianship judgement).
- *State ex rel. Juvenile Dept' of Clackamas County v. Charles*, 106 Or. App. 637 (1991) (holding that notice was valid because it was given 10 day prior to hearing).¹⁷
- *Carson v. Carson (In re Kerby)*, 170 Or. App. 263 (2000) (holding that the adoption was valid and that notice was properly given to biological father).¹⁸
- *State ex rel. State Office for Servs. to Children & Families v. Amador (In re Amador)*, 176 Or. App. 237 (2001) (holding that in a parental rights termination case, evidence should establish that the state’s witness was qualified to render an opinion as an expert under ICWA).
- *Dep't. of Human Servs. v. K.C.J. (In re K.L.D.)*, 228 Or. App. 70 (2009) (holding that father’s parental rights were properly terminated on the grounds of unfitness because of evidence that returning the children would result in serious emotional or physical damage).
- *Dep't of Human Servs. v. D.L.H. (In re A.W.)*, 251 Or. App. 787 (2012) (holding that DHS did not make active efforts to reunite father with child and failed to show father how to act appropriately as a parent).
- *Dep't of Human Servs. v. M.L.M. (In re L.M.G.M.)*, 283 Or. App. 353 (2017) (holding that there was evidence to support that DHS made active efforts to provide services that addressed parent’s mental health to prevent the break-up of the family).¹⁹
- *Hoffman v. Anderson (In re Anderson)*, 176 Or. App. 311 (2001) (holding that father failed to produce evidence that child was member or eligible for membership in any tribe, therefore court was not required to apply ICWA).²⁰
- *Dep't of Human Servs. v. J.M. (In re L.M.)*, 266 Or. App. 453 (2014) (holding that the change from reunification to adoption was not a “foster care placement” under ICWA because DHS offered services to the parents, however, no progress was made to help parents deal with mental illnesses).
- *Dep't of Human Servs. v. W.H.F. (In re S.W.F.)*, 254 Or. App. 298 (2012) (holding that active efforts standard did not apply because hearing was for permanency).
- *State ex rel. Juvenile Dep't of Multnomah County v. Cooke*, 88 Or. App. 176 (1987) (holding that court could not render decision that native children were within jurisdiction without complying with the statutory prerequisites for determinations affecting the children’s placement).
- *State ex rel. Dep't of Human Servs. v. Cain (In re Byrd)*, 210 Or. App. 237 (2006) (holding that termination of mother’s parental rights based on unfitness was in child’s best interest and her condition was unlikely to change within reasonable time).

¹⁶ Cross-referenced at §1911 and §1914

¹⁷ Cross-referenced at §1915

¹⁸ Cross-referenced at §1901

¹⁹ Cross-referenced at §1903

²⁰ Cross-referenced at §1901 and §1903

- *State ex rel. Juvenile Dep't v. T.N. (In re L.N.)*, 226 Or. App. 121 (2009) (holding that mother's rights were properly terminated because state services made active efforts for two years, but mother's mental illness was untreated and she was homeless).
- *State ex rel. Children's Servs. Div. v. Campbell*, 122 Or. App. 371 (1993) (holding that the trial court properly terminated mother's parental rights because state presented evidence of mental illness over extended periods of time).
- *State ex rel. Juvenile Dep't of Multnomah County v. Charles*, 299 Or. 341 (1985) (determining the meaning of "qualified expert witness").
- *Dep't of Human Servs. v. M.D. (In re S.A.D.)*, 266 Or. App. 789 (2014) (holding that there was sufficient evidence from DHS that active efforts were made to return child to the home).
- *In re Arnold*, 118 Or. App. 488 (1993) (holding that termination of mother's parental rights under a clear and convincing standard did not violate privilege and immunities provision of constitution because indian status is a political status, not racial).²¹
- *In re Greybull*, 23 Or. App. 674 (1975) (affirming that termination of parental rights because children did not live on reservation and therefore state court had jurisdiction over case).

25 U.S.C. §1913: Parental rights; voluntary termination

- *Quinn v. Walters (In re Quinn)*, 320 Or. 233 (holding adoption consent form was signed stating that neither mother or child was a member of an indian tribe; furthermore, affirming in favor of adoptive parents because mother did not establish that her consent to adoption could be withdrawn based on the child being an "indian child" under ICWA).²²

25 U.S.C. §1914: Petition to court of competent jurisdiction to invalidate an action upon showing of certain violations

- *State ex rel. Juvenile Dep't of Lane County v. Tucker*, 76 Or. App. 673 (1985) (holding that child services wanted to terminate mother's parental rights because of mental health issues; testimony by village council president that child was indian).²³
- *Dep't of Human Servs. V. S.R.H. (In re A.R.)*, 278 Or. App. 427 (2016) ICWA standards were not applied because mother failed to establish that she was a tribal member.²⁴

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

- *State ex rel. Juvenile Dep't of Multnomah County v. Woodruff*, 108 Or. App. 352 (1991) (holding that action to terminate parental rights is proper when failure to comply with placement requirements of ICWA did not invalidate termination order and parent was unfit).
- *State ex rel. Juvenile Dept' of Clackamas County v. Charles*, 106 Or. App. 637 (1991) (holding that notice was valid because it was given 10 day prior to hearing and placement was consistent with §1915).²⁵

²¹ Cross-referenced at §1903

²² Cross-referenced at §1903

²³ Cross-referenced at §1901 and §1903

²⁴ Cross-referenced at §1911 and §1912

²⁵ Cross-referenced at §1912

25 U.S.C. §1919

- *In re Brittany Kirk v. Klamath Tribe*, 170 Or. App. 106 (2000) (holding that the tribe and the state had an agreement that included children of tribal members who were not eligible for membership themselves and applied to the children). ²⁶

²⁶ Cross-referenced at §1903