

MEMORANDUM

To: Kate Fort
From: Neoshia Roemer
RE: Utah ICWA Cases Annotated
Date: September 13, 2018

I. ICWA Annotated

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

- *State in Interest of A.J.B.*, 414 P.3d 552 (U.T. Ct. App. 2017) (holding the UCCJEA, not ICWA, applied where a child found not to be an Indian child at the outset of the proceedings moved to a reservation as result of a placement).¹
- *Matter of Adoption of B.B.*, 417 P.3d 1 (U.T. 2017) (holding that federal law, not state law, definitions of parent applied in a case to define “parent”).²
- *Guardian ad Litem v. State ex rel. C.D.*, (U.T. 2010) (holding that placing children with a biological parent after their removal from another parent and subsequent third-party placement did not conflict with ICWA’s goal of keeping Indian families together).³

25 U.S.C. § 1903: Definitions

- *Matter of Adoption of B.B.*, 417 P.3d 1 (U.T. 2017) (determining a father acknowledged paternity and was a parent of an Indian child under § 1903 and applying a reasonableness standard to the time and manner in which a father establishes paternity).⁴
- *State in Interest of P.F.*, 405 P.3d 755 (U.T. Ct. App. 2017) (declining to invalidate a court order under ICWA where a child did not meet the ICWA definition of Indian child at the time of the original order).⁵
- *State in Interest of M.J.*, 266 P.3d 850 (U.T. Ct. App. 2011) (“Instead, before a hint or suggestion of Indian ancestry is sufficient to constitute ‘reason to know,’ the assertion must be ‘sufficiently reliable’ and support a low but reasonable probability that a child is a member of an Indian tribe or eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.”).⁶
- *Guardian ad Litem v. State ex rel. C.D.*, (U.T. 2010) (holding that placing children with a biological parent after their removal from another parent and subsequent third-party placement did not conflict with ICWA’s goal of keeping Indian families together).

¹ Cross-referenced at §1912.

² Cross-referenced at §1903 and §1911.

³ Cross-referenced at §1903.

⁴ Cross-referenced at § 1901 and §1911.

⁵ Cross-referenced at §1912 and §1915.

⁶ 2016 BIA Guidelines may conflict with, or alter, this holding; cross-referenced at §1911.

- *State in Interest of D.A.C.*, 933 P.2d 993 (U.T. Ct. App. 1997) (holding that ICWA is applicable to an intra-family custody dispute where one party seeks to terminate the parental rights of the other party).

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

- *Matter of Adoption of B.B.*, 417 P.3d 1 (U.T. 2017) (citing §§ 1911-1913 to say “ICWA does not create an independent federal adoption regime. Its substantive provisions function only within the context of a state or tribal adoption proceeding.”).⁷
- *State in Interest of E.B.*, 327 P.3d 594 (U.T. Ct. App. 2014) (per curiam) (holding the trial court never transferred jurisdiction to the tribal court when it found good cause not to transfer and the tribe expressly declined jurisdiction in the matter).
- *In re Adoption of L.O.*, 282 P.3d 977 (U.T. 2012) (discussing mootness in an ICWA case where tribe consented to the adoption and declining to extend §1911 to cover untimely jurisdictional disputes).
- *State in Interest of M.J.*, 266 P.3d 850 (U.T. Ct. App. 2011) (“Key to ICWA's statutory scheme is the requirement that an interested Indian tribe be allowed to intervene in a child custody proceeding involving an ‘Indian child.’”).⁸
- *Searle v. Searle*, 38 P.3d 307 (U.T. Ct. App. 2001) (holding that child custody orders issued by a tribal court are entitled to full faith and credit under §1911 so long as they comply with Utah’s Foreign Judgment Act).
- *State in Interest of T.D.C.*, 748 P.2d 201 (U.T. Ct. App. 1988) (holding that ICWA did not preclude a delinquent child’s confinement).
- *Matter of Adoption of Holloway*, 732 P.2d 962 (U.T. 1986) (holding that ICWA’s provisions were not satisfied when a child was removed from his home on the reservation and placed with non-Indians for adoption and no notice was sent to the tribe as a result).

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

- *State in interest of A.J.B.*, 414 P.3d 552 (U.T. Ct. App. 2017) (declining to apply ICWA & briefly mentioning §1912 with regard to whether the trial court had reason to know the child was an Indian child when its findings showed the mother’s tribe was not federally recognized).⁹
- *Matter of Adoption of B.B.*, 417 P.3d 1 (U.T. 2017) (holding where proceedings are involuntary to one parent, they are defined as involuntary proceedings under §1912 because it is inconsistent with §1902 to deny a parent the right to receive notice and intervene in TPR proceedings because one parent voluntarily enters the proceedings).¹⁰
- *State in Interest in P.F.*, 405 P.3d 755 (U.T. Ct. App. 2017) (holding that expert testimony is not required to support the determination that active efforts were made, nor does §1912 require evidence that the expert witness is versed on the child’s specific culture—trial court is capable of weighing competing expert testimony).¹¹

⁷ Cross-referenced at §1901 and §1903.

⁸ Cross-referenced at §1903 and §1912.

⁹ Cross-referenced at §1901.

¹⁰ Cross-referenced at §1901, §1903, §1911, §1914, and §1921.

¹¹ Cross-referenced at §1903, §1915, and §1921.

- *State in Interest of M.D.*, 366 P.3d 408 (U.T. Ct. App. 2016) (holding evidence was sufficient to determine that DCFS met the active efforts requirement when the parent actively chose not to participate in services and proposed reunification plan).
- *State in Interest of M.J.*, 266 P.3d 850 (U.T. Ct. App. 2011) (“[B]efore a hint or suggestion of Indian ancestry is sufficient to constitute ‘reason to know, the assertion must be ‘sufficiently reliable’ and support a low but reasonable probability that a child is a member of an Indian tribe or eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.”).¹²
- *State ex rel. C.D.*, 200 P.3d 194 (U.T. Ct. App. 2008) (holding that the state must demonstrate that active efforts have been made with respect to the specific parent or Indian custodian from whom the child would be removed; and that active efforts require more than a reasonable effort as made on a case-by-case basis).¹³
- *State ex rel. V.H.*, 154 P.3d 867 (U.T. Ct. App. 2007) (holding that appellant had not properly challenged the evidence underlying the trial court’s ultimate findings that active efforts were met).
- *State ex rel. F.M.*, 57 P.3d 1130 (U.T. Ct. App. 2002) (holding evidence was sufficient to support beyond a reasonable doubt that continued custody by the child’s parent would likely result in harm).
- *State ex rel. S.D.C.*, 36 P.3d 540 (U.T. Ct. App. 2001) (holding a subsequent petition to terminate a parent’s rights was not barred by res judicata and active efforts requirements were satisfied).
- *State in Interest of D.A.C.*, 933 P.2d 993 (U.T. Ct. App. 1997) (remanding for findings that evidence supporting termination of parental rights supported the decision by a reasonable doubt).¹⁴
- *K.E. v. State*, 912 P.2d 1002 (U.T. Ct. App. 1996) (holding that where ICWA applies, petitioners have separate burdens of proof that they must prove, both the state law grounds for termination by clear and convincing evidence and the federal requirement beyond a reasonable doubt).¹⁵

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

- *Matter of Adoption of B.B.*, 417 P.3d 1 (U.T. 2017) (holding that legal custody constitutes custody under §1914 and a parent with legal, but not physical, custody due to the other parent’s misrepresentations could challenge an action under §1914).¹⁶
- *In re Adoption A.B.*, 245 P.3d 711 (U.T. 2010) (holding that even where a tribe could challenge an action under §1914, ICWA does not preempt Utah’s notice of appeal requirements nor grant the tribe the right to appeal).

¹² Cross-referenced at §1903 and §1911. May conflict with new regulations.

¹³ See *Guardian ad Litem v. State ex rel. C.D.*, 245 P.3d 724 (U.T. 2010) (holding guardian was no longer entitled to active efforts under ICWA when children were placed with their fathers). Cross-referenced at §1915.

¹⁴ Cross-referenced at §1903.

¹⁵ Cross-referenced at §1921.

¹⁶ Cross-referenced at §1901, §1903, §1911, §1912, and §1921.

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

- *State in Interest in P.F.*, 405 P.3d 755 (U.T. Ct. App. 2017) (holding that placement preferences did not apply where a child did not meet the ICWA definition of “Indian child” at the outset of the case).¹⁷
- *State ex rel. C.D.*, 200 P.3d 194 (U.T. Ct. App.) (holding that ICWA placement preferences should be imposed when DCFS retains custody after a shelter hearing because this is the requirement for non-Indian children and Utah’s placement preferences are similar to ICWA’s).¹⁸

25 U.S.C. §1921: Higher state or federal standard applicable to protect rights of parent or Indian custodian of Indian child

- *Matter of Adoption of B.B.*, 417 P.3d 1 (U.T. 2017) (holding that where ICWA didn’t define a term, the trial court had to use the federal legal definition, instead of state law, where it provided greater protection for the Indian parent).¹⁹
- *In re Adoption of A.B.*, 245 P.3d 711 (U.T. 2010) (holding that where Utah law, not ICWA, provided greater protections allowing a tribe to appeal adoption proceedings, the tribe had to comply with applicable state procedural rules in filing an appeal).
- *K.E. v. State*, 912 P.2d 1002 (U.T. Ct. App. 1996) (“[F]or cases in which the ICWA applies, petitioners must prove the state law grounds for termination by clear and convincing evidence, and must prove the additional federal requirement beyond a reasonable doubt...”)²⁰

¹⁷ Cross-referenced at §1903 and §1912.

¹⁸ Cross-referenced at §1912.

¹⁹ Cross-referenced at §1901, §1903, §1911, §1912, and §1914.

²⁰ Cross-referenced at §1912.