NO. 25-4095

UNITED STATES COURT OF APPELS
FOR THE TENTH CIRCUIT

Kandra Amboh,

Plaintiffs-Appellant,

v.

Nicholas Haney, et al.,

Defendant-Appelless,

On Appeal from the U.S. District Court for the
District of Utah, No. 2:25-CV-00868-RJS Hon. Robert J. Shelby

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PLAINTIFF-APPELLANT'S OPENING BRIEF OF KANDRA AMBOH

Plaintiff-Appellant's:

Kandra Amboh
Post Office Box 536
Fort Washakie, Wy 84514
Telephone: (307) 349-8346

August 11, 2025.

ORAL ARGUMENT NOT NEEDED

QUESTION PRESENTED

State child-custody proceedings generally are governed by State law, with placement decisions based on the children Two Shoshone boy's best interests. The Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. 1901-1963, however dictates that, in any custody proceeding under tribal law involving an Indian children, preference shall be given to placing the children with; (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or, (3) other Indian families rather than with non-Indian parents. 1915(a); and also 1915(a).

1. Whether ICWA placement preference exceed Congress's Article I authority by invading the arena of child placement - the virtually exclusive province of the States, Sosna v. Iowa, 419 U.S. 393, 404 (1975) - and otherwise commanding state courts and state agencies to carry out the federal child-placement program, which involves the Indian Children's sovereign rights to their Indian people.

PARTIES TO THE PROCEEDING

Plaintiff-Appellant have Appealed from United States District Court of Utah as:

Kandra Amboh,
Post Office Box 536
Fort Washakie, Wy 82514

that the Defendant-Appellee as:

Nicholas Haney
369 West 2050
Vernal, Utah 84078

Stacy R. Haacke
Office of General Counsel
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241

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JURISDICTIONAL STATEMENT

This action arose under the Indian Child Welfare Act (ICWA), Title 25 U.S.C. 1901, et. seq. The District Court had jurisdiction of the cause pursuant to Title 28 U.S.C. 1331, Title 28 U.S.C. 1343, and Title 28 U.S.C. 1332.

The United States Court of Appeals had jurisdiction pursuant to Title 28 U.S.C. 1291, as the District Court order represents the final decision terminating all matters as to all parties and cause of action.

STATEMENT OF ISSUES PRESENTED

1. Whether the Plaintiff Shoshone Indian mother has the right to have Nicholas Haney's State Court terminated as to Indian parental rights, this decision is to be reviewed by the federal court pursuant to Title 25 U.S.C. 1914?

2. Whether the State Trial Court should have properly dismissed this case under the ICWA.

STATEMENT OF THE CASE

This case is about enrolled Shoshone Indian woman and Her enrolled children. When the two Indian Shoshone boys mother tried to go see her sons, but was prevented from taking her children, or visiting the children or calling them without the order of the father who is none Shoshone parent.

After the Utah State Court in Duchesne county court determined that it had jurisdiction, the matter came on for the Court at which time the Court ruled that the ICWA applied,

but continued to order for 150 days, (this State order limited Indian mother's rights to her children) in the Utah State case, so ICWA could be followed. After Plaintiff Amboh's action on moving the case to U.S. District Court, the case was, and not surprisingly, the mother's parental rights was questioned by the State Court that determined that: 1) the ICWA and the Utah Indian Child Welfare Act were relevant because the existing Indian family exception as recognized in Utah, and controlled the Indian child custody proceeding was not acting within the Indian Child Welfare Act for the Shoshone Mother. (terminated for 150 days by the State Court Judge's order?) and, 2) the Indian children were eligible to be with their mother because she had primary custody and maintain sole support for her children, where the father neglected to contribution to their support as the father to the extent of his none financial abilities and Nicholas Haney sought to live with another person.

When the mother filed the complaint in federal court against the Judge pursuant to Section 1914 of the ICWA, and legal service on the Judge, J. Ross was executed, raising the question whether named Appellee Judge, J. Ross could remain unbiased while Ms. Amboh was being charged in State Court.

STATEMENT OF FACTS

The Shoshone mother is in no dispute that as Plaintiff

Kandra Amboh is member of Shoshone Nation on Fort Washakie Reserve in Wyoming and with the Wind River Federal Agency. The mother told the father, in an effort to break off the relationship with him to start Divorce proceedings.

As none Shoshone parent, father filed false allegations against Ms. Amboh in Duchsene County Court before Judge J. Ross to determined that State Court had jurisdiction, and ruled that the Indian Child Welfare Act (ICWA) applied to Amboh's Shoshone Children, the case was continued for 150 days so it could be formally notified and allowing the State Court's action.

SUMMARY OF THE ARGUMENT.

The ICWA protects Indian Shoshone mother from having her parental rights protected from the state court judge without evidence beyond the reasonable doubt that the custody of the Two Shoshone Indian Boys remains in their Shoshone mother's care, in terms of the ICWA parent's actions, is likely to result in serious emotional or physical damage to the Indian Children, and that active efforts have not been made to remediate that perceived harm, and those efforts have proven unsuccessful. In the case at bar, the children was wrongly taken and kept from their mother. Thereafter, even recognizing the mistake, the state courts still caused the children kept from their mother as parent constitutes serious emotional or physical damage to the children sufficient to obviate

the express dictates of ICWA.

Title 25 U.S.C. 1914 provides that an aggrieved mother as parent may petition the federal district court of competent, jurisdiction to review, and invalidate any actions which violate ICWA. The only way that statute makes sense is if federal district court of competent jurisdiction is the federal court reviewing the decisions of the state court, either at the court or event after review. Congress did not intend for the state courts to thumb their noses at the ICWA, which the federal courts either abstain, or give res judicata effect to the faulty state court decisions that caused the problem in the first place. Plaintiff Amboh has the statutory right for federal review on the state court's decisions.

ARGUMENT AND AUTHORITIES

I.

THE STANDARD OF REVIEW

The motion to dismiss the complaint may be made by the defendant for failure to state the claim upon which relief can be granted, and granted by the court on such grounds. That Congress enacted the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. 1901 et seq, to protect the best interest of Indian children and promote the stability and security of Indian tribes and families. 25 U.S.C. 1902. The provisions of 25 U.S.C. 1912 establish minimum federal standards for the

removal of Indian children from their families, while 25 U.S.C. 1915(a) and (b) establish default preferences for the placement of such children in adoptive or foster homes. The statute also contains several record keeping provisions. 25 U.S.C. 1915(e), 1951(a). The Supreme Court of the United States in, Haaland v. Bracken, Case No. 21-376 (June 15, 2023). United States Supreme Court.

Motion to dismiss on such grounds are viewed with disfavor in the federal courts because of the possible waste of time in the case should the dismissal be reversed and because the primary objective of the law is to obtain the determination of the merits of any claim. Kennedy v. Tangipalhoa Parish Library Bd. of Control, 224 F. 3d 359 (5th Cir. 2000), reh'g and reh'g en banc denied, 239 F. 3d 367 (5th Cir. 2000).

Granting the defendant's motion to dismiss for failure to state the claim is the harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading, but also to protect the interests of justice. Cottrell, Ltd. V. Biotrol Intern., Inc., 191 F. 3d 1248 (10th Cir. 1999), Such motions assume the truth of the pleadings factual allegations and their inferences. Horwitz v. Board of Educ. Of Avoca School Dist. No. 37, 260 F. 3d 602 (7th Cir. 2001). The court must assess whether the Plaintiff's complaint alone is legally sufficient to state the claim for

which relief may be granted. Duran v. Carris, 238 F. 3d 1260 (10th Cir. 2001).

It may appear on the face of the pleading that the recovery is very remote and unlikely, but that is not the test; the issue is whether the plaintiff is entitled to offer evidence to support their claims. Chance v. Armstrong, 143 F. 3d 698 (2d Cir. 1998): Woodford v. Community Action Agency of Green County, Inc., 239 F. 3d 517 (2d Cir. 2001). The motion to dismiss challenges the legal sufficiency of the complaint to state the cause of action, and the complaint must be upheld, as against the motion to dismiss, as long as it states the claim on which relief can be granted, or if any valid claim may be proved under it, baseless though the claim may eventually prove to be, and inartfully as the complaint may be pleaded. McCall v. Pataki, 232 F. 3d 321 (2d Cir. 2000). If the facts alleged reveal that the plaintiff is entitled to any relief. Lada v. Wilkie, 250 F. 2d 211 (8th Cir. 1957); or any kind of relief. Tauzin v. Saint Paul Mercury Indem. Co., 195 F. 2d 233 (5th Cir. 1952); or if the plaintiff can recover on any set of facts which may be proved under the allegations as laid, the complaint should not be dismissed. Kent v. Walter E. Heller & Co., 349 F. 2d 480 (5th Cir. 1965).

II.

TITLE 25 U.S.C. 1914 MANDATES FEDERAL REVIEW

OF STATE COURT ICWA DECISIONS

Section 1914 of the ICWA specifically provides for the judicial review of state court decisions:

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title. Two questions arise from this statute; First, what constitutes the court of competent jurisdiction; and, secondly, what actions are reviewable by that court, Two question arise from this Statute. First, what constitutes the court of competent jurisdiction, And Secondly, what actions are reviewable by that court? To answer these questions, one must look to the history of ICWA and section 1914. Two questions arise from this statute. First, what constitutes the court of competent jurisdiction; and secondly, what actions are reviewable by this court? To answer these questions, one must look to the history of ICWA and Section 1914.

In Mississippi Band of Chacotaw Indians v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L.Ed. 29 (1989), the Supreme Court analyzed the history behind the passage of the ICWA in

1978. The Court said that the ICWA was the product of rising concern over the consequences to Indian children, families and tribes, of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families by placing them in non-Indian homes.

One cannot seriously contend, in light of this historical distrust of state courts, that Congress intended those same state court to serve as courts of competent jurisdiction. A better example of the fox guarding the henhouse could not be found. The only rational interpretation is that Congress intended the federal courts to serve as courts of competent jurisdiction, to review and invalidate, if necessary, the decisions of the state courts which violate the ICWA. AS stated by the Ninth Circuit in Doe v. Mann, 285 F. Supp. 2d 1229 (2003):

Plaintiff is clearly requesting this court to invalidate the state court's interference of her parental rights and placement of Jane in foster care Invalidation by definition requires the court to revisit the state court proceeding and overturn the decision. In addition, by a process of elimination, a court of competent jurisdiction must include interior federal courts, or the provision is meaningless. If the section only referred to state appellate courts, there would be no need for Congress to create this cause of action;

plaintiff already has the right to appeal an adverse decision to state higher courts.

Having established that the only logical interpretation of Title 25 U.S.C. 1914, is that the federal courts have the duty, and obligation, to review the state court actions, the question remains as to what actions are reviewable.

THE STATE COURTS VIOLATED THE ICWA

The ICWA imposed various procedural and substantive obligations on state courts when an Indian child is the subject of the children custody proceedings. 25 U.S.C. 1901-1963. Pursuant to the ICWA (Title 25 U.S.C. 1912(f)), parental rights shall not be terminated absent proof, beyond the reasonable doubt, that continued custody of the child by the Indian parent is likely to result in serious emotional or physical damage to the children. Pursuant to 1912(a), parental rights shall not be terminated absent clear and convincing proof that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that those programs have proven unsuccessful. Central among these federally mandated obligations are certain limitations on the exercise of state court jurisdiction. the state court is required in the absence of good cause to the contrary and subject to tribal court declination, to transfer the proceeding the jurisdiction of the children's tribe, absent objection by the parent, upon the

petition of either parent or the Indian custodian or the Indian child's tribe. 25 U.S.C. 1911(b), The ICWA specifically authorizes collateral review of state-court child custody proceeding orders pursuant to Title 25 U.S.C. 1914.

The purpose of this section is to allow facts specific deviation from ICWA protections in cases where the natural parent is actually dangerous, physically or emotionally, Mother as Shoshone Indian from Fort Washakie Reserve and Wind River Indian Agency of State of Wyoming are the Two Shoshone boy's Sovereign rights as minors to remain with their Shoshone mother. In the Interest of Mahaney, 20 P. 3d 437 (Wash. 2001); In re Adoption of M.T.S., 489 N.W. 2d 285 (Minn. App. 1992); State ex rel Juvenile Department v. Tucker, 710 P. 2d 793 (Ore. 1985)(the state must prove actual physical or emotional harm resulting from the acts of the parents).

This type of decision is exactly what Congress referred to when it passed Section 1914, fearing Indian child welfare decisions based on the white middle-class standard which, in many cases, forecloses placement with an Indian family. H.R. Rep. No. 1386, 95th Congress., 2d Sess. 9, p.24 (1978), reprinted in 1978 U.S.C.C.A.N. 7530, 7532.

At least one court has held that active efforts to prevent the breakup of the Indian family must be proven beyond the reasonable doubt. In re Welfare of M.S.S., 465 N.W. 2d 412 (Minn. App. 1991). In the case at bar, No efforts were

provided to prevent the breakup of this Indian family. In re Custody of S.E.G., 521 N.W. 2d 510 (Minn. 1994).

The natural father's future conduct would actually Engendering stated in the case of Adoption of M.T.S., 489 NW. 2d 285 489 N.W. 2d 285 (Minn. App. 1992). State Courts; Indian Child Custody Proceedings, Federal Register 67, 593; also In re Custody of S.E.G. 521 N.W. 2d 510 (Minn. 1994). They would have required frequent and extended visitation with the parent during the litigation and appeals process, which would have greatly decreased any separation anxiety from the change of custody. Guardianship of K.L.F., 608 A. 2d 1327 (N.J. 1992). This was not allowed in Judge Ross's court, along the the State Juvenile Department.

The emotional attachment between the non-Indian custodian and an Indian child should not outweigh the interest of the Tribe in having that child raised in the Indian community. Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 54, 109 S.Ct. 1597, 1611, 104 L. Ed. 2d 29, 50. Normal emotional bonding does not constitute an extraordinary emotional need to negate the ICWA presumptions. In the Matter of C.H., 997 P. 2d 776 (Mont. 2000). Some courts have suggested that theories of parental bonding may in fact be relied upon too often to keep children in foster care, rather than return the to their parents. In the Interest of L.J., 220 Neb. 102, 368 N.W. 2d 474, 483 (May 31, 1985).

The Arizona Court of Appeals spoke to this after the failed adoptions of an Indian child in, In re Pima County Juvenile Action, 635 P. 2d 187 (Ariz. App. 1981);

> There is no evidence as to appellant's fitness as a parent or any attempt to preserve the parent-child relationship. In fact, the contrary appears, Appellant was entitled to the return of her child, then only seven months old, when she revoked her relinquishment. Any potential emotional trauma to the child if the contemplated adoption is aborted was engendered by the conduct of the adoptive parents not adhering to [ICWA]. The evil which Congress sought to remedy by the [ICWA] was exacerbated by the conduct here under the guise best interests of the child.

CONCLUSION

WHEREFORE, Plaintiff Appellant Amboh requests that the District Court's decision to dismiss this case be reversed and remanded with direction to hear this most important case, and for such other and further relief as the Court deems fair and equitable.

Respectfully submitted this 11 day of August 2025

Kandra Amboh

CERTIFICATE OF SERVICE

Hereby certify that on 11, day of August, 2025, I have filed the foregoing: **PLAINTIFF-APPELLANT'S OPENING BRIEF OF KANDRA AMBOH**, which caused parties of record to be served on;

Nicholas Haney
389 West 2050
Vernal, Utah 84078

Stacy R. Haacke
Office of General Counsel
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241

Respectfully submitted.

Kandra Amboh

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