

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2026-0482

STILLAGUAMISH TRIBE OF
INDIANS,

Appellant,

v.

D.D. and D.D.,

Appellees.

On appeal from the Circuit Court for Bay County.
Dustin Stephenson, Judge.

August 19, 2026

Neff, J.

The Stillaguamish Tribe of Indians (Tribe) appeals an order denying its motion to intervene in the proceeding below. The Tribe sought to intervene under the federal Indian Child Welfare Act (ICWA), which grants an Indian child's tribe a right to intervene in a termination of parental rights proceeding. The circuit court determined that state law did not allow intervention post-judgment. We disagree and reverse on this narrow issue.

A. Pertinent Facts and Procedural Posture

D.B.R.D. was born in 2012. D.B.R.D.'s mother is a member of the Tribe, but the tribal court determined in 2014 that D.B.R.D. was neither a member nor eligible for tribal membership. D.B.R.D.'s paternal grandparents later obtained custody and moved with D.B.R.D. to Florida. In August 2025, the grandparents petitioned to terminate the parents' rights. The father surrendered his parental rights, but the mother contested the petition.

During the course of the termination proceeding, the Tribe was pursuing a constitutional amendment that would expand membership eligibility. On November 4, 2025, the Tribe's chairman advised that D.B.R.D. was not then a member or eligible for membership and that the Tribe would not intervene. At the termination trial later that month, a tribal witness likewise testified that D.B.R.D. was not then eligible. The circuit court found that the ICWA did not apply and entered the final termination judgment on December 5, 2025.

The Tribe's voters ratified the constitutional amendment on December 16, 2025. On December 30, 2025, the mother filed a post-judgment motion alleging ineffective assistance of counsel. On the same day, the Tribe moved to intervene. The federal Department of the Interior approved the Tribe's election results and constitutional amendment on January 2, 2026, making the amendment effective under federal law. *See* 25 U.S.C. § 5123(a). On January 5, 2026, the Tribe filed an affidavit asserting that the approved amendment made D.B.R.D. eligible for membership because D.B.R.D. is the biological child of a tribal member.

On January 20, 2026, the circuit court denied the motion to intervene without a hearing. The court reasoned that the final termination judgment had already been entered and that Chapter 39, Florida Statutes, did not authorize intervention at that stage. The court stated, "The Tribe's Motion is untimely, procedurally improper, and allowing intervention at this stage would be inconsistent with the finality of this Court's final judgment and the child's need to reach permanency."

On February 19, 2026, the Tribe appealed the order denying the motion to intervene.¹

B. Analysis

We review de novo the circuit court’s application of the ICWA. *G.L. v. Dep’t of Children & Families*, 80 So. 3d 1065, 1069 (Fla. 5th DCA 2012). We review the ultimate denial of intervention for an abuse of discretion. *Litvak v. Scylla Props., LLC*, 946 So. 2d 1165, 1172 (Fla. 1st DCA 2006).

The ICWA applies to specified state court child custody proceedings involving an “Indian child.” 25 U.S.C. § 1903(1). An “Indian child” is an unmarried person under eighteen who is either a member of an Indian tribe or is eligible for tribal membership and the biological child of a tribal member. 25 U.S.C. § 1903(4). In a state court proceeding for termination of parental rights, the Indian child’s tribe “shall have a right to intervene at any point in the proceeding.” 25 U.S.C. § 1911(c). The statutory right is mandatory and need not be exercised at the outset. *See Haaland v. Brackeen*, 599 U.S. 255, 267 (2023). As stated by the United States Supreme Court, “The child’s tribe has ‘a right to intervene at any point in [a] proceeding’ to place a child in foster care or terminate parental rights, as well as a right to collaterally attack the state court’s decree.” *Id.* *See also, e.g., In re T.D.*, 890 So. 2d 473, 474–75 (Fla. 2d DCA 2004) (“For an Indian child who does not live on his or her tribe’s reservation, as in this case, section 1911(c) of the ICWA gives to the child’s Indian custodian or the child’s Indian tribe the right to intervene at any time in a state court TPR proceeding concerning the Indian child.”); *In re Desiree F.*, 83 Cal. App. 4th 460, 472–73 (2000) (“The ICWA permits a tribe to intervene at any point in state court child custody proceedings.”); *Matter of Guardianship of Q.G.M.*, 1991 OK 29, ¶ 10, 808 P.2d 684, 689 (“Even if a tribe fails to intervene at the beginning of a proceeding, it is not precluded from intervening at a later point in

¹ Had the Tribe not pursued this appeal, its ability to litigate the intervention question in federal court may have been extinguished. *See, e.g., Kickapoo Tribe of Okla. v. Rader*, 822 F.2d 1493, 1500–01 (10th Cir. 1987).

the absence of an express waiver of the right to intervene.”).² Thus, the ICWA provides an Indian child’s tribe a right to intervene in the manner it plainly states: at any point in the proceeding.

Federal law preempts state law when: (1) Congress has expressly preempted state law, (2) Congress has installed a comprehensive regulatory scheme in the area, removing the entire field from the state realm, or (3) state law directly conflicts with the force or purpose of federal law. *See Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992). Although “Congress has not expressly stated that it was preempting state law concerning child custody proceedings by enacting the ICWA or that it intended for the ICWA to occupy the area of child custody proceedings completely,” *G.L.*, 80 So. 3d at 1067 n.1, state law must step aside where it directly conflicts with a federal statute.

For example, this court in *J.P.H. v. Florida Dep’t of Children & Families*, 39 So. 3d 560, 561 (Fla. 1st DCA 2010), stated that a tribe’s right to intervene could not be undercut by the fact that its counsel was not a member of the Florida Bar. The court stated that “enforcement of state prohibitions on the unauthorized practice of law interfere with and are thus preempted in the narrow context of state court proceedings subject to the Indian Child Welfare Act.” *Id.* Similarly, in a case from the Fifth District Court of Appeal, the court found “that the provisions of the federal ICWA allowing post-judgment challenges to involuntary termination proceedings preempt the traditional rules regarding preservation of error.” *G.L.*, 80 So. 3d at 1067. Here, the ICWA preempts any bar under Chapter 39 concerning intervention by non-parties. *See K.N. v. Dep’t of Children & Families*, 359 So. 3d 741, 745 (Fla. 4th DCA 2023) (holding that Chapter 39 does not permit non-party intervention).

More importantly, however, Section 1911(c) of the ICWA makes no distinction between trial-level and appellate-level

² The Department of the Interior’s current regulations likewise require notice of an Indian Tribe’s right to intervene at any time in a covered State-court proceeding. 25 C.F.R. § 23.111(d)(6)(iii).

proceedings. Nothing in the statute suggests that a tribe's right to intervene lapses once the trial court enters judgment. Nor does entry of judgment necessarily end an action under Florida law. "The general rule is that an action remains pending in the trial court until after a final judgment and such time as an appeal is taken or time for an appeal expires. If an appeal is taken, the action is still pending until final disposition." *Wilson v. Clark*, 414 So. 2d 526, 530 (Fla. 1st DCA 1982). When the Tribe moved to intervene on December 30, 2025, the December 5 judgment had not yet reached that point of finality—contrary to the Guardian ad Litem's argument that the proceeding had already transitioned to some other stage. See § 39.812(6), Fla. Stat. (2025) ("The prospective adoptive parents may not file a petition for adoption until the judgment terminating parental rights becomes final."); § 39.815, Fla. Stat. (2025) ("However, a termination of parental rights order with placement of the child with a licensed child-placing agency or the department for subsequent adoption is suspended while the appeal is pending, but the child shall continue in an out-of-home placement under the order until the appeal is decided."); § 63.142(4), Fla. Stat. (2025) ("At the conclusion of the hearing, after the court determines that the date for a parent to file an appeal of a valid judgment terminating that parent's parental rights has passed and no appeal, pursuant to the Florida Rules of Appellate Procedure, is pending and that the adoption is in the best interest of the person to be adopted, a judgment of adoption shall be entered.").

Thus, the trial court erred in treating the December 5, 2025 judgment as final for ICWA intervention purposes. Under Florida decisional precedent regarding finality, the termination of parental rights proceeding remained pending at the time the Tribe moved to intervene. The Tribe has a federal statutory right to intervene at any point in the proceeding, including post-judgment but before finality.³ We note, however, that this conclusion does not necessarily give the ICWA retroactive effect to actions in the

³ Independent of 25 U.S.C. § 1911(c), the ICWA also provides the Tribe a distinct avenue to challenge a completed action that violated the Act's procedures, see 25 U.S.C. § 1914, though we do not decide whether that provision applies here.

proceeding that are substantially completed before the ICWA is applicable, especially where the tribe was placed on proper notice of the proceeding or actually participated in the proceeding. *See, e.g., Adoption of Breck*, 105 Mass. App. Ct. 652, 666 (2025) (“Because at the time of trial, neither the child nor the father was enrolled in a tribe recognized under the ICWA, the judge correctly found that the ICWA did not apply.”); *State in Interest of P.F.*, 405 P.3d 755, 762 (Utah Ct. App. 2017) (stating the child was not, for the ICWA purposes, an “Indian child” when the custody order was entered because she was neither a member of an Indian tribe nor eligible for membership at that time); *Matter of M.H.C.*, 381 P.3d 710, 714 (Okla. 2016) (the ICWA became applicable when the mother gained tribal membership, but did not retroactively apply to invalidate prior court orders); *In re Adoption of Kenten H.*, 725 N.W.2d 548, 555 (Neb. 2007) (“These cases establish that the provisions of ICWA and NICWA apply prospectively from the date Indian child status is established on the record.”).

C. Conclusion

We therefore reverse the January 20, 2026 order denying the motion to intervene. On remand, the trial court must determine whether D.B.R.D. is classified as an “Indian child” under section 1903(4). If so, the Tribe must be allowed to intervene. The court must then determine what impact, if any, the Tribe’s intervention has on the proceedings as of the time the ICWA became applicable.

REVERSED and REMANDED.

BILBREY and TREADWELL, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

H. Leon Holbrook, III, of Lippes Mathias LLP, Jacksonville, for Appellant.

Richard D. Ogburn, of Richard D. Ogburn Attorney at Law,
Panama City, for Appellees.

Sara Elizabeth Goldfarb, Statewide Director of Appeals, and Jaime
Michelle Generazzo, Senior Attorney, Statewide Guardian ad
Litem Office, Tallahassee, for the Guardian ad Litem.