

404 S.C. 490
Supreme Court of South Carolina.

ADOPTIVE COUPLE, Appellants,

v.

BABY GIRL, a minor child under the
age of fourteen years, Birth Father, and
the Cherokee Nation, Respondents.

Appellate Case No. 2011–205166.

July 24, 2013.

Synopsis

Background: Prospective adoptive parents filed petition to adopt child. Biological father, a member of an Indian tribe, opposed adoption, and Cherokee Nation intervened. The Family Court, Charleston County, [Deborah Malphrus, J.](#), denied petition and required prospective adoptive parents to transfer child to father. Prospective adoptive parents appealed. The South Carolina Supreme Court, [Toal, C.J.](#), [398 S.C. 625](#), [731 S.E.2d 550](#), affirmed. Certiorari was granted. The United States Supreme Court, [133 S.Ct. 2552](#), reversed and remanded. On remand, the South Carolina Supreme Court remanded, [746 S.E.2d 51](#), [2013 WL 3752641](#), directing entry of order finalizing adoption and termination biological father's parental rights. Biological father and Cherokee Nation filed petitions for rehearing, and biological father filed petition for supersedeas in which Cherokee Nation joined.

Holding: The Supreme Court held that remand for entry of order finalizing adoption and terminating biological father's parental rights was appropriate.

Petitions denied.

[Costa M. Pleicones](#) and [Donald W. Beatty, JJ.](#), would have granted rehearing and filed separate statement.

West Headnotes (1)

- [1] [Indians](#)
🔑 [Adoption of persons](#)

In proceedings on petition for adoption, remand with direction for entry of order finalizing adoption and terminating biological father's parental rights was appropriate, on remand from the United States Supreme Court, where United States Supreme Court reversed original determination that Indian Child Welfare Act (ICWA) applied to permit biological father to block child's adoption by non-Indian family, lower courts consistently held that biological father's parental rights were subject to termination under state law based upon his irrefutable lack of support, interest and involvement in child's life, and adoption of child by prospective adoptive parents was in child's best interest in light of urgent need for resolution. Indian Child Welfare Act of 1978, § 105(a), [25 U.S.C.A. § 1915\(a\)](#).

Opinion

*491 **346 ORDER

On July 22, 2013, Birth Father and the Cherokee Nation filed petitions for rehearing requesting that this Court reconsider its order dated July 17, 2013. Additionally, on July 22, 2013, Birth Father filed a petition for supersedeas, which the Cherokee Nation joins by way of return. All petitions are denied.¹

¹ It has come to our attention that on July 23, 2013, Birth Father filed a motion in the Charleston County Family Court requesting a de novo hearing. We reiterate that such a hearing is unavailable in light of this Court's order dated July 17, 2013.

*492 We remain fully aware of the important and time-sensitive interests at stake. More to the point, we are cognizant that the paramount consideration is the best interest and welfare of Baby Girl. This matter was, without objection, placed in the jurisdiction of the South Carolina courts long ago. Jurisdiction remains in South Carolina, notwithstanding apparent actions filed in other jurisdictions following the decision of the United States **347 Supreme Court (USSC). As determined by the USSC, the Indian Child Welfare Act (ICWA) has no application to Birth Father. Our original and erroneous decision was premised on the applicability of

ICWA to the Birth Father. As a result, the Birth Father's rights, if any, are determined by the law of the state of South Carolina. While this Court was in error concerning the applicability of ICWA, we have consistently held that under state law, the Birth Father's parental rights (because of his irrefutable lack of support, interest and involvement in the life of Baby Girl) would be terminated.² Therefore, under state law, the Birth Father is precluded from challenging the adoption. Moreover, in light of the urgent need for this matter to be concluded, we determine, upon review of the record, that the adoption of Baby Girl by the Adoptive Couple is in the best interests of Baby Girl.

² On this point, the respective majority and dissenting opinions from our original decision are in accord.

The Adoptive Couple has throughout this litigation confirmed their intent to rear Baby Girl in a manner that maintains a meaningful connectedness to her Native American heritage. Consistent with their commitment to serve Baby Girl's best interests, and in recognition that the return of Baby Girl to them must be accomplished with her best interest as the controlling consideration, the Adoptive Couple has commendably proposed a thoughtful transition plan. We leave it to the family court to determine whether to adopt the Adoptive Couple's proposed transition plan or another plan. Nevertheless, our order of July 17, 2013, stands.

We reiterate that, aside from the narrow issue of whether a transition plan is in Baby Girl's best interest, the orders of this Court following remand from the USSC leave nothing further to be decided by the family court. Accordingly, the *493 family court shall forthwith approve the adoption and award legal custody to the Adoptive Couple. The matter of transfer

of physical custody shall be accomplished in accordance with Baby Girl's best interest, as determined by the family court.

It is our fervent hope that the parties will work together in good faith and place the best interest and welfare of Baby Girl above their own desires. This emotionally charged case was fully litigated in the South Carolina courts and the United States Supreme Court. This case has reached finality, in this unchallenged forum and jurisdiction. That finality should be honored.

/s/Jean H. Toal, C.J.

/s/John W. Kittredge, J.

/s/Kaye G. Hearn, J.

/s/FOR THE COURT

We would grant the petitions for rehearing, vacate the Court's earlier order, and remand this matter to the family court for further proceedings. Since the majority of the Court has decided to deny rehearing, we would grant the request for a stay.

/s/Costa M. Pleicones, J.

/s/Donald W. Beatty, J.

/s/FOR THE COURT

Parallel Citations

746 S.E.2d 346