STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1389

In re: the Petition of A. M. G. and J. L. G. to Adopt C. A. R., L. C. R., T. M. R., K. M. R.

Filed March 23, 2020
Reversed and remanded
Florey, Judge

Becker County District Court
File No. 03-FA-19-225

Mark D. Fiddler, Fiddler Osband, L.L.C., Edina, Minnesota (for appellants J.L.G. and A.M.G.)

Rebecca McConkey-Greene, McConkey-Greene Law Office, Duluth, Minnesota (for respondent White Earth Band of Chippewa)

MaryJo Wiatrak, ICWA Law Center, Minneapolis, Minnesota (for biological mother)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

Appellants challenge the district court's transfer, pursuant to Minn. Stat. § 260C.771, subd. 3(b) (2018), of their adoption petition to tribal court. We reverse and remand.

FACTS

This dispute arises from appellants J.G. and A.G.'s (collectively appellants) attempt to adopt four children (collectively the children). The children, aged 10 to 16 years old, are all the biological children of A.B. and C.R. A.B., C.R., and the children are all members of respondent White Earth Band of Chippewa (White Earth).

In November 2011, child-protection proceedings involving the children were initiated in White Earth tribal court. A.B. and C.R.'s parental rights were "voluntarily suspended" by the tribal court in May 2013. In May 2015, the children's maternal aunt, L.R., and her partner, M.G., adopted the children in tribal court. L.R. passed away in June 2015, and M.G. passed away in March 2016. In his will, M.G. appointed his nephew, J.G., as the children's guardian. The Minnesota district court issued appellants letters of guardianship over the children in July 2016.

In August 2018, A.B. moved the tribal court to reinstate her parental rights. In February 2019, appellants petitioned for adoption of the children in district court. The tribal court reinstated A.B.'s parental rights in March 2019, and White Earth[1] moved the district court to dismiss appellants' adoption petition for lack of jurisdiction.[2]

Following a hearing, the district court determined that it had concurrent jurisdiction over appellants' adoption petition and therefore denied White Earth's motion to dismiss.

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[1] White Earth intervened as a matter of right in the district court adoption proceedings in February 2019.

[2] Because we rely on the supreme court's decision in *In re Welfare of the Child of R.S.*, we adopt the supreme court's usage of the term "jurisdiction" in *R.S.* throughout this opinion for consistency. *See* 805 N.W.2d 44, 48-51 (Minn. 2011).

However, the district court also determined that state law required transfer of the adoption proceedings to tribal court. This appeal followed.

D E C I S I O N

Appellants argue that the district court erroneously determined that Minn. Stat. § 260.771, subd. 3(b), required transfer of appellants' adoption-petition to tribal court. Appellate courts review a district court's interpretation of a statute de novo. *Nelson v. Nelson*, 866 N.W.2d 901, 903 (Minn. 2015). "If the plain language of a statute is clear and free from ambiguity, the court's role is to enforce the language of the statute and not explore the spirit or purpose of the law." *Id.* (quotation omitted).

In order to conclude that it was required to transfer appellants' adoption petition to tribal court, the district court held that Minn. Stat. § 260.771, subd. 3(b), abrogated the supreme court's holding in *In re Welfare of the Child of R.S.*, 805 N.W.2d 44 (Minn. 2011). Appellants assert that under the Supremacy Clause of the Constitution and the principles set forth in *Marbury v. Madison*, the supreme court's holding in *R.S.* should control, not the subsequent state statute. 5 U.S. 137 (1803). However, for the reasons set forth below, we do not treat Minn. Stat. § 260.771, subd. 3(b), and *R.S.* as incompatible with one another.

In *R.S.*, the supreme court analyzed the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-1963 (2012), to determine whether it authorized the transfer of preadoptive-placement proceedings to tribal court. 805 N.W.2d at 49. ICWA contains two specific grants of jurisdiction to tribal courts. 25 U.S.C. § 1911(a) provides for exclusive tribal-court jurisdiction over custody proceedings involving an Indian child who resides or

is domiciled within the tribe's reservation, or is a ward of a tribal court. This section does not apply to the children in this case because, following their adoption, they no longer resided or were domiciled within the White Earth reservation, nor were they wards of the tribal court.

Section 1911(b) of ICWA requires the transfer to tribal court of "any [s]tate court proceeding for the foster care placement of, or termination of parental rights to, an Indian child." 25 U.S.C. § 1911(b). In *R.S.*, the supreme court held that section 1911(b) is unambiguously limited to the two enumerated proceedings and therefore did not allow for the transfer of preadoptive-placement proceedings to the tribal court. 805 N.W.2d at 50. The supreme court concluded that transfers other than those enumerated in section 1911(b) were not authorized under state or federal law because Congress has not granted tribal courts jurisdiction over preadoptive and adoptive-placement proceedings for children who do not reside—or are not domiciled—within the tribe's reservation. *Id.* at 50-51.

The Minnesota state legislature amended Minn. Stat. § 260.771, subd. 3, following the supreme court's ruling in *R.S.* to require the transfer of preadoptive- and adoptive-placement proceedings involving Indian children not domiciled or residing within a reservation to tribal court. 2013 Minn. Laws ch. 65, § 1, at 356 (codified at Minn. Stat. § 260.771, subd. 3(b)). Despite the supreme court's statement that state law cannot create tribal-court jurisdiction where federal law has not, *R.S.*, 805 N.W.2d at 50, the district court held that the subsequently enacted Minn. Stat. § 260C.771, subd. 3(b), abrogated the holding in *R.S.* and mandated transfer of appellants' adoption petition to tribal court.

The district court erred in its determination that Minn. Stat. § 260.771, subd. 3(b), abrogated the holding in *R.S.* and in its determination that transfer of appellants' adoption petition to tribal court was required under state law. The district court concluded that the enactment of section 260.771, subdivision 3(b), created "a statutory mandate to transfer these proceedings absent good cause." However, as the district court acknowledged, good cause to deny transfer of adoptive-placement proceedings exists when "the Indian child's tribe does not have a tribal court or any other administrative body of a tribe vested with authority over child custody proceedings, as defined by [ICWA], to which the case can be transferred, and no other tribal court has been designated by the Indian child's tribe." Minn. Stat. § 260.771, subd. 3a(b)(1) (2018).

Good cause existed to deny the transfer because the tribal court does not possess jurisdiction over the adoptive-placement proceeding. When Indian children neither reside nor are domiciled on their tribe's reservation, as is the case here, the supreme court interpreted section 1911(b) as conveying to the tribal courts "presumptive jurisdiction" over two types of child-custody proceedings only: foster care placements, and terminations of parental rights. *R.S.*, 805 N.W.2d at 51.

The supreme court went on to state in *R.S.* that "Congress has not granted tribal courts jurisdiction over preadoptive and adoptive placement proceedings involving Indian children who do not reside and are not domiciled on their tribe's reservation." *Id.* Accordingly, because the tribal court lacked jurisdiction over appellants' adoption petition, good cause existed to deny the transfer under Minn. Stat. § 260.771, subd. 3a(b)(1).

White Earth argues that the district court's transfer order was not erroneous because the tribe retains inherent jurisdiction over its members, and thus the tribal court could accept a transfer of appellants' adoption petition under Minn. Stat. § 260.771, subd. 3(b). *See State v. Stone*, 572 N.W.2d 725, 728 (Minn. 1997) ("The Supreme Court has consistently recognized that Indian tribes retain 'attributes of sovereignty over both their members and their territory.'" (quoting *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 107 S. Ct. 1083, 1087 (1987))). However, in *R.S.*, the supreme court stated that inherent jurisdiction did not apply, and thus "the tribal court could assume jurisdiction over the proceeding, if at all, only by Congressional grant." 805 N.W.2d at 50. At oral argument, White Earth argued that *R.S.* is distinguishable because, in that case, one of the biological parents was a non-Indian, but that is a distinction without a difference.

The Supreme Court discussed the general contours of inherent tribal jurisdiction in *Montana v. United States*, stating that

> the Indian tribes retain their inherent power to determine tribal membership, to regulate domestic relations *among members*, and to prescribe rules of inheritance for members. But exercise of tribal power beyond what is necessary to protect tribal self-government or to control *internal* relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.

450 U.S. 544, 564, 101 S. Ct. 1245, 1257-58 (1981) (citation omitted, emphasis added). As in *R.S.*, here, the children did not reside, and were not domiciled on, the White Earth reservation, and nothing in the record indicates that the children's adoptive parents, or appellants, are tribal members. As such, appellants' adoption petition does not constitute solely a matter of domestic relations among the members of the White Earth tribe.

Therefore, as was the case in *R.S.*, the tribe does not possess inherent jurisdiction over appellants' adoption petition.

White Earth next argues that the supreme court's narrow reading of section 1911(b) is incompatible with the general purpose of ICWA, but the supreme court specifically declined to adopt this argument in *R.S.* In that decision, the supreme court distinguished the holdings of foreign jurisdictions that relied on a finding of generalized intent under ICWA from those that relied on a reading of ICWA's unambiguous statutory provisions, determining that "courts that have concluded that transfer of preadoptive and adoptive placement proceedings to tribal courts is permitted have done so only by disregarding the plain language of ICWA in favor of the intended purpose of the act." *Id.* at 52-53 (quotation omitted). Therefore, White Earth's argument that the transfer of jurisdiction to tribal court was supported by the generalized purpose of ICWA was already determined to be unavailing in *R.S.*

White Earth also argues that transfer to the tribal court was authorized by federal law by citing to the Bureau of Indian Affairs's (BIA) response to a comment within the Federal Register which discusses aspects of inherent tribal jurisdiction. Indian Child Welfare Act Proceedings; Final Rule, 81 Fed. Reg. 38,822 (June 14, 2016) (response to comment). However, White Earth has not identified any instance where the BIA's response to the comment has been codified into the Code of Federal Regulations, nor has White Earth identified any authority to support its reliance on the BIA's response.

As discussed above, the supreme court in *R.S.* determined that tribal inherent jurisdiction did not apply to proceedings under section 1911(b), and thus transfer of

jurisdiction was only authorized under federal law for the two types of proceedings enumerated in that section, which do not include adoptive placements. *R.S.*, 805 N.W.2d at 50-51. Because the tribal court lacked jurisdiction over appellants' adoption petition, good cause existed to deny the transfer in accordance with Minn. Stat. § 260.771, subd. 3a(b)(1). Therefore, the district court's order transferring the petition to tribal court is reversed, and the appellants' petition to adopt the children is remanded to the district court.

Reversed and remanded.