Baby Veronica (continued)

The complexities of this case not only imposed legal review by the United States and South Carolina Supreme Courts, but challenged the very tenants of the Indian Child Welfare Act (ICWA) of 1978. The OCWTP asked the National Indian Child Welfare Association (NICWA) in Portland OR, a major voice in this custody battle, to provide commentary on the ways in which ICWA was challenged by this custody battle and the implications for practice for child welfare staff who provide services to Indian children and their families. Nicole Adams, Executive Communications Manager for NICWA, offered the following key points:

On September 23, 2013, Dusten Brown packed two suitcases for his daughter Veronica, kissed her goodbye, and watched as an attorney from the Cherokee Nation drove her to meet Melanie and Matt Capobianco. This hand off of custody was the result of two years of court battles that covered two states, multiple state and county courts, tribal court, and the United States Supreme Court.

The details of how this case originated are well-documented,* despite the fact that Veronica's biological parents disagree on some key details. While the birth mom contends she had little choice but to put Veronica up for adoption because of the lack of support provided by Brown (who was stationed at an Oklahoma military base at the time), he vigorously contests the assertion that he abandoned his fiancée and unborn child. What is known is that immediately after Brown learned his daughter had been put up for adoption, he took legal action to stop proceedings—invoking his right as a Cherokee citizen to be protected under the Indian Child Welfare Act (ICWA). Veronica's prospective adoptive parents, the Capobiancos, appealed numerous rulings in Brown's favor all the way to the U.S. Supreme Court.

The question before the Supreme Court was whether the parental rights of an Indian father who had no relationship–custodial or financial–with his child prior to her adoptive placement could be involuntarily terminated. ICWA prevents such terminations under sections 1912(d) and (f).

The Supreme Court announced its decision in this case, *Adoptive Couple v. Baby Girl,* in late June, finding that Brown was indeed *not* protected by the Indian Child Welfare Act. Specifically the Court ruled that certain sections of ICWA were not applicable.

It is very important to note that the Supreme Court left the Indian Child Welfare Act firmly intact. However, the interpretation and application of the concept of "continued custody" and possible implications upon ICWA's placement preferences have been the cause of concern among child welfare experts.

Probably most disturbing to child welfare advocates is what transpired *after* the decision was announced. Whereas the U.S. Supreme Court ruled only that Brown was not covered by ICWA, it only remanded the case back to the South Carolina courts for further deliberation. At the time, there was an expectation that the South Carolina Family Court would conduct new best interest hearings and proceed according to the longstanding best practices before finalizing the adoption. Indeed, counsel for the Capobiancos argued for just such a hearing before the U.S. Supreme Court.

Additionally, because the U.S. Supreme Court took measures to clarify in its decision that ICWA's placement preferences would still apply when the South Carolina Family Court further considered the case, there existed the further expectation that ICWA's placement preferences would be considered and applied should Veronica's Native American relatives petition to adopt her, which they immediately did.

*Much of the media coverage of this complex case has been rife with misinformation. NICWA recommends the *Tulsa World*'s comprehensive coverage.

ICWA Section	*Adoptive Couple v. Baby Girl* Ruling
1912(d) forbids terminations unless "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family and that these efforts have proved unsuccessful."	Section does not apply when the involuntary termination action is against a parent who never had custody. The Court stated, "ICWA's primary goal of preventing the unwarranted removal of Indian children and the dissolution of Indian families is not implicated."
1912(f) forbids terminations in the "absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child."	Section does not apply when the involuntary termination action is against a parent who never had custody. The Court stated, "ICWA's primary goal of preventing the unwarranted removal of Indian children and the dissolution of Indian families is not implicated."
1915(a) requires adherence to placement preferences, which require courts to place Indian children with (1) an Indian relative, (2) tribal member or (3) other Indian family before considering non-Indian placements.	Placement preferences do not apply when "no alternative party that is eligible to be preferred under section 1915(a) has come forward." In other words, because the Capobiancos were the only party seeking to adopt Veronica at the initial hearing, this section of ICWA did not apply. The decision left open the possibility that Veronica's family could formally petition for adoption upon remand to South Carolina and that placement preferences would apply if they did so.

Instead, the South Carolina Supreme Court ordered the Family Court to immediately finalize the adoption, bypassing any new best interest hearing and ignoring the new adoption petitions by Brown and his parents. Though not ordered to do so, the South Carolina Supreme Court expedited the finalized adoption by the Capobiancos. Brown appealed in Oklahoma, Veronica's state of residence, but facing extradition and jail time in South Carolina and a half a million dollars in fines, he relinquished custody when the Oklahoma Supreme Court lifted its stay that had kept Veronica with him during his appeals.

The U.S. Supreme Court's ruling has created even greater need for training child welfare workers and those involved in the placement and adoption of Native American children. As evidenced by South Carolina's unexpected application of *Adoptive Couple*, it is clear that extensive training needs to be offered to help those directly involved in such decisions interpret the ruling, lest it become yet another factor complicating the proper implementation of this already oft-misunderstood law.

To this end, NICWA offered a webinar on how to interpret the *Adoptive Couple v. Baby Girl* ruling and is currently developing a practical guide to interpreting the decision for caseworkers. NICWA has also redoubled its outreach efforts to increase awareness of the myriad training and technical assistance offerings are provided throughout the year.

Since 2006, the OCWTP has contracted with the National Indian Child Welfare Association in Portland, Oregon to provide web-based training on ICWA. This training was specifically developed for PCSA caseworkers, supervisors, and managers responsible for out-of-home placement of children or any caseworker who may be involved in the placement of Indian Children. More than 200 participants and 44 county agencies have signed up for the course. OCWTP trainers are encouraged to take this course. If interested, contact Charlotte Osterman.