

= Adoptive Couple v. Baby Girl =

Adoptive Couple v. Baby Girl , 570 U.S. \_\_ \_ ( 2013 ) , was a decision of the Supreme Court of the United States that held that several sections of the Indian Child Welfare Act ( ICWA ) do not apply to Native American ( Indian ) biological fathers who are not custodians of an Indian child . The court held that the procedures required by the ICWA to end parental rights do not apply when the child has never lived with the father . Additionally , the requirement to make extra efforts to preserve the Indian family also does not apply , nor is the preferred placement of the child in another Indian family required when no other party has formally sought to adopt the child .

In 2009 , a couple from South Carolina , Matthew and Melanie Capobianco , sought to adopt a child whose father , Dusten Brown , was an enrolled member of the Cherokee Nation and whose mother , Christina Maldonado , was predominantly Hispanic . Brown contested the adoption on the grounds that he was not properly notified in accordance with the ICWA , and won both in trial court and on appeal to the South Carolina Supreme Court , and in December 2011 , the father was given custody of the child . The case received extensive coverage in the national media , and spurred calls for Congress to review and make amendments to the 1978 law .

In October 2012 , the adoptive couple petitioned the Supreme Court of the United States to review the case . In January 2013 , the court granted certiorari and heard the case in April . In June , the Supreme Court issued a 5 ? 4 decision , holding that a non @-@ custodial father did not have rights under the ICWA , and sent the case back to the South Carolina courts for further hearings on the issue . In July 2013 , the South Carolina trial court finalized the adoption of the child to the adoptive couple , but this was prohibited in August by the Oklahoma Supreme Court . The stay was lifted in September 2013 , and the child was turned over to her adoptive parents the same month .

= = Background = =

= = = Indian Child Welfare Act = = =

Prior to the adoption of ICWA in 1978 , Indian children were often forcibly removed from their homes and placed in either Native American boarding schools or in non @-@ Indian foster and adoptive homes . Studies conducted in 1969 and in 1974 indicated that many as 25 to 35 percent of tribal children were being removed from their homes , and consequently from tribal culture . Testimony in the House Committee for Interior and Insular Affairs showed that in some states , the per capita rate of Indian children in foster care was nearly 16 times higher than the rate for non @-@ Indians . In some cases , the Bureau of Indian Affairs ( BIA ) paid the states to remove tribal children and to place them with non @-@ Indian families and religious groups . Congress determined that if Indian children continued to be removed from Indian homes at this rate , tribal survival would be threatened and stated that tribal stability was as important as the best interests of the child . One of the factors in this judgment was that , because of the differences in culture , what was in the best interest of a non @-@ Indian child was not necessarily what was in the best interest of an Indian child , especially due to the influence of extended families and tribal relationships . The Indian Child Welfare Act ( ICWA ) was enacted in 1978 to protect Indian tribes and their children .

The ICWA applies to " Indian children " , defined as " any unmarried person who is under age eighteen and is either ( a ) a member of an Indian tribe or ( b ) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe . " Additionally , in the case of a voluntary adoption of an Indian child , the courts must follow specific guidelines for the Indian birth parents to waive their parental rights or have them terminated . The ICWA provides that to relinquish parental rights , an Indian parent must :

- do so in writing ,
- do so before a judge ,
- who must certify that the parent understood his or her actions ,
- understands spoken English or has a translator available , and

a relinquishment may not be executed prior to ten days after the child 's birth .

The Indian parent may also withdraw their consent to an adoption at any time prior to a final order , or within two years of the final order if their consent was obtained through fraud or under duress . If involuntary termination occurs , it must be " supported by evidence beyond a reasonable doubt . " When consent is withdrawn or if the ICWA procedures are not followed , the Indian child is to be immediately returned to the Indian parent .

Tribal rights are also covered by the act . Tribal courts have exclusive jurisdiction for cases arising on Indian reservations and concurrent jurisdiction elsewhere . The case may be removed from a state court to a tribal court at the request of the tribe unless one of the Indian child 's parents object . In any case , the tribe has a right to intervene in the proceeding and to act to protect the tribal rights of the child .

= = = Case history = = =

Dusten Brown is a member of the Cherokee Nation . Brown served in the United States Army at Fort Sill , Oklahoma . Christina Maldonado was a non @-@ Indian single mother of two . Brown and Maldonado became engaged to be married in December 2008 , and Maldonado informed Brown that she was pregnant in January 2009 . On learning that Maldonado was pregnant , Brown began to press her to go ahead and marry him , and refused to provide any financial support until after the two had married . In May 2009 , Maldonado broke off the engagement by text message and cut all communications with Brown . In June , Maldonado sent Brown a text message asking if he would rather pay child support or relinquish his parental rights . Brown responded via text message that he relinquished his rights . No child support order was in place at this time . Furthermore , while laws vary from state to state , it is generally impossible for any parent , male or female , to surrender their parental rights without a court hearing that determines the best interest of the child . A father cannot terminate his parental rights by contract , much less by more informal means ( such as by text message ) .

A few months prior to the baby 's birth , Maldonado began to work with an adoption attorney to place the child with Matthew Capobianco and Melanie Duncan Capobianco of James Island , South Carolina . Although Oklahoma law requires that an Indian tribe be informed if an Indian child is to be adopted , Maldonado 's attorney misspelled Brown 's name and provided an incorrect date of birth . As a result , the tribe was not notified about the proposed adoption . After receiving permission from Oklahoma authorities , based in part on the identification of the child as Hispanic rather than Native American , the Capobiancos took the child to South Carolina . Four months after the birth of the child and just days before deployment to Iraq , Brown was served with notice of the proposed adoption . Brown signed the document , believing that he was relinquishing rights to Maldonado . Brown , once he realized what he had signed , immediately tried to retrieve the document , and after that failed , contacted the Judge Advocate General at Fort Sill for assistance . Seven days after being notified of the proposed adoption by the Capobiancos , Brown obtained a stay of the adoption proceedings under the Servicemembers Civil Relief Act and he deployed with his Army unit to Iraq .

= = = Trial court = = =

The adoption case was heard in Charleston County Family Court in September 2011 . Brown contested the adoption , and the Cherokee Nation intervened as a party in its own right in the case . The court denied the Capobiancos ' petition to adopt the child , and ordered that the child be returned to Brown as the biological father . Under South Carolina law , a father 's parental rights were terminated if he did not provide pre @-@ birth support and become involved with the child shortly after birth , but the court noted that the ICWA preempts state law . On November 25 , 2011 , the court issued a ruling , holding that :

the ICWA applied and was not unconstitutional ,

the " Existing Indian Family " exception was inapplicable in this case ,

Brown did not consent to the termination of his parental rights or the adoption of his child , and

the Capobiancos had failed to show by clear and convincing evidence that Brown 's parental rights should be terminated .

On December 31 , 2011 the Capobiancos turned over the child to Brown in accordance with the trial court order . The Capobiancos then appealed to the Supreme Court of South Carolina .

= = = State Supreme Court = = =

Chief Justice Jean H. Toal delivered the opinion of the court on July 26 , 2012 . The five members of the court split 3 @-@ 2 , with Justices Costa M. Pleicones and Donald W. Beatty joining the majority opinion , while Justice John W. Kittredge , joined by Justice Kaye G. Hearn , dissented . The opinion decided three issues : First , whether the Capobiancos had improperly removed the child from Oklahoma ; second , whether state law or the ICWA is determinative of Brown 's status as a parent ; and third , whether the Capobiancos met their burden of proof to terminate the parental rights of Brown .

Toal noted that the Capobiancos were correct that the removal of the child from Oklahoma did not create an unsafe environment for the child , but they were incorrect on the legal issue . Had Oklahoma been properly notified that this was an Indian child , the Cherokee Nation would have been alerted , and the child 's interests as a member of the tribe would have been protected . She noted that at this point , the case was properly before the court , and proceeded to address the second issue .

The Capobiancos argued that it takes more than mere biology to invoke the provisions of the ICWA , and under South Carolina law , a father must reside with the mother for the six @-@ month period preceding the birth of the child and to contribute to pregnancy @-@ related expenses in order to have paternity rights . However , the Court determined that the ICWA does not defer to state law , and the trial court properly determined that the ICWA grants Indian fathers greater rights than state law .

Toal then turned to the last issue , the trial court 's refusal to terminate Brown 's parental rights . The Capobiancos could not show that Brown had agreed to consent to the adoption . The court noted that the ICWA set out clear procedural guidelines and the Capobiancos did not comply with those requirements . The Capobiancos also failed to show by clear and convincing evidence that Brown 's parental rights should be terminated . Under the ICWA , prior to terminating an Indian parent 's rights to the Indian child , the party seeking to terminate parental rights " shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful . " The court noted that the Capobiancos made no efforts to comply with this requirement of federal law , but had actively sought to prevent the father from obtaining custody since the child was four months old .

The court then addressed the best interests of the child . Toal said , quoting *Mississippi Band of Choctaw Indians v. Holyfield* , " Where an Indian child 's best interests are at stake , our inquiry into that child 's best interests must also account for his or her status as an Indian , and therefore , we must also inquire into whether the placement is in the best interests of the Indian child , " that this was " based on the fundamental assumption that it is in the Indian child 's best interest that its relationship to the tribe be protected . " Toal stated that the best interest of the child was to be with her father , which also preserved her tribal affiliation .

Finally , Toal addressed the placement requirements of the ICWA , which requires that placement preference be given , in this order , to : 1 ) another member of the child 's family , 2 ) another member of the child 's tribe , and 3 ) another Indian family . The court stated that neither Maldonado nor the Capobiancos had intended to comply with the statute , and that the Capobiancos could not thereby claim that the breaking of the bond formed by the child with the Capobiancos are grounds to ignore the statute .

The court affirmed the decision of the Charleston County Family Court in returning the Indian child to her father , and reiterated that the ICWA preempts state law in the termination of parental rights for Indian parents .

== = = = Dissent = = = =

Justice John W. Kittredge , joined by Justice Kaye G. Hearn , dissented . Kittredge argued that the state standards for best interest of the child should trump those of the ICWA , and concluded that the trial court judge erred in her findings of fact . He noted that Brown had an income of approximately \$ 23 @, @ 000 in 2010 , had paid nothing to assist with pre @-@ birth expenses , and had indicated that he did not intend to do so . In addition , Kittredge stated that the record reflected that Maldonado informed both the adoption agency and the adoption attorney of the child 's Cherokee heritage , but the notification to the tribe did not have the correct identifying information for the father . At the child 's birth , the Capobiancos were present , and Matt Capobianco cut the umbilical cord .

Kittredge then evaluated the ICWA , noting that South Carolina law did not allow a father in Brown 's position to contest an adoption . Brown acknowledged paternity , and a DNA test conclusively proved that he was the biological father . Because Brown met the definition of an Indian parent , the ICWA does apply to the case . Even if Brown had not acknowledged paternity , the child was still an Indian and the federal law would apply . However , Kittredge then stated that even though the ICWA applied , Congress did not intend the ICWA to replace state law with regard to a child 's best interests .

Kittredge concluded that Brown had " abandoned " his child and should therefore not be allowed to contest the adoption . He noted that the Capobiancos provided the child with a loving and stable home . Finally , he would have ruled that termination of Brown 's parental rights was in the best interest of the child , and would have reversed the decision of the trial court .

= = Supreme Court = =

= = = Arguments = = =

After the South Carolina Supreme Court declined to rehear the case , the Capobiancos filed a petition with the United States Supreme Court for a writ of certiorari . Seven entities filed amici curiae briefs with the Supreme Court in support of hearing the case . This included amici briefs by two former U.S. Solicitors General : Paul Clement on behalf of the guardian ad litem , and Greg Garre on behalf of the birth mother . The American Academy of Adoption Attorneys , the National Council for Adoption , the California State Association of Counties and the Center for Adoption Policy were also among those that submitted briefs .

On January 4 , 2013 , the Court granted certiorari and agreed to hear the case . This was only the second time that a case involving the ICWA had been granted review by the U.S. Supreme Court , Holyfield being the first . On April 1 , 2013 , the court decided to allow some of the amici to participate in oral argument and divided the time allowed for oral argument as follows : 20 minutes for petitioners , 10 minutes for respondent Guardian ad Litem , 20 minutes for respondent Birth Father , and 10 minutes for the Solicitor General . Brown was represented by Charles Rothfeld , who was a director at the Yale Law School Supreme Court Clinic and Supreme Court litigator with the Washington , D.C. , office of the international law firm Mayer Brown . The Cherokee Nation was represented by Carter Phillips of Sidley Austin , LLP . The Capobiancos were represented by Lisa Blatt and Mark Fiddler . Blatt headed the Appellate and Supreme Court practice with international law firm Arnold & Porter . Fiddler was a registered Native American attorney and the founder of the Indian Child Welfare Law Center

The issues presented to the court were " ( 1 ) Whether a non @-@ custodial parent can invoke the Indian Child Welfare Act of 1978 ( ICWA ) , 25 U.S.C. § § 1901 ? 63 , to block an adoption voluntarily and lawfully initiated by a non @-@ Indian parent under state law ; and ( 2 ) whether ICWA defines " parent " in 25 U.S.C. § 1903 ( 9 ) to include an unwed biological father who has not complied with state law rules to attain legal status as a parent . "

Three parties filed merit briefs : the Capobiancos as petitioners , and both Brown and the Cherokee Nation as respondents . 32 different amici curiae briefs were filed arguing the merits of the case . Nine were in favor of reversal and the remainder , including the United States Department of Justice , supported the respondents generally and / or affirmation .

= = = Opinion of the Court = = =

Justice Samuel Alito delivered the opinion of the Court . Alito noted that three provisions of the ICWA were relevant to the case , § 1912 ( f ) , § 1912 ( d ) , and § 1915 ( a ) . He also noted it is undisputed under South Carolina law that Brown would not be able to object to the adoption . Alito stated that the heightened standard required under § 1912 ( f ) does not apply when the parent in question never had custody of the child , focusing on the phrase " continued custody " in the statute . Alito continued that § 1912 ( d ) does not require remedial efforts be made when the parent did not have custody . Since Brown never had either physical or legal custody , no remedial efforts were required . Finally , § 1915 ( a ) does not prevent a non @-@ Indian couple from adopting when no preferred individuals or entities have formally sought to adopt the child .

= = = Concurring opinions = = =

= = = = Justice Thomas = = = =

Justice Clarence Thomas issued a concurring opinion . Thomas stated that the canon of constitutional avoidance required the outcome reached by the majority . Thomas contended that there was no constitutional authority for Congress to enact the ICWA . Since the application of the ICWA to the adoption would be unconstitutional , and the result of the majority avoids this issue , Thomas concurred with the majority .

= = = = Justice Breyer = = = =

Justice Stephen Breyer also issued a very short concurring opinion . Breyer stated that since the ICWA does not address how to treat absentee fathers , the Court 's decision may be too broad . He also noted that the preferential placement order required under § 1915 ( a ) could be changed by the tribe under § 1915 ( c ) and a tribe could , by resolution , grant the absentee father a place in preferential placement .

= = = Dissenting opinions = = =

= = = = Justice Scalia = = = =

Justice Antonin Scalia issued a very short dissenting opinion . He stated that , in his opinion , the phrase " continued custody " could refer to " custody in the future " ? in other words , even if the biological father had no custody of the child in the past , he could have it in the future , and therefore USC § 1912 ( f ) would still apply . Scalia also noted that biological parents also had legal rights and that there was no reason in law or policy to dilute those rights .

= = = = Justice Sotomayor = = = =

Justice Sonia Sotomayor dissented from the majority opinion . Sotomayor stated that " continued custody " in § 1912 ( f ) is " most sensibly read to refer generally to the continuation of the parent @-@ child relationship that an ICWA " parent " has with his or her child . " She also stated that even a non @-@ custodial father @-@ child relationship was a " family " for the purposes of § 1912 ( d )

and therefore efforts needed to be made to prevent its breakup . She stated that the majority turned the law " upside down " to reach their result . She indicated that the narrow interpretation of the statute by the majority destroyed the unified federal standard established by Congress in favor of a piecemeal system of state control . Finally , Sotomayor stated that the majority ignored the primary purpose of the ICWA in its interpretation of § 1915 ( a ) , and noted that there was nothing to prevent the grandparents from filing a petition to adopt the child . She noted that nothing in the opinion mandated the return of the child to the Capobiancos .

= = Subsequent developments = =

= = = Media coverage = = =

= = = = Prior to Supreme Court decision = = = =

Coverage in the mainstream media was extensive . Charleston 's Post and Courier ran a series of articles on the case , and the news was picked up by other media outlets . These included local television stations , distant television stations , Cable News Network ( CNN ) , Fox News Channel , national magazines , U.S. News , and the New York Times . Additionally , Dr. Phil McGraw featured the Capobiancos on his television show in an episode that aired on October 18 , 2012 . The show immediately sparked controversy , with some Indian newspapers and internet news sources calling for a boycott of his show due to what they alleged was a one @-@ sided attack on Native Americans . It has also been alleged that the mainstream media has disseminated incorrect and false information that portrayed the Capobiancos in a good light and Brown in a bad light .

Terry Cross of the National Indian Child Welfare Association ( NICWA ) commented that despite all the negative press , the ICWA was needed to protect Indian children from having their tribal rights taken from them . He noted that a failure to comply with the ICWA was what caused the controversy in the case . The author of the ICWA , Senator Jim Abourezk initially stated that this is " something totally different than what we intended at the time " but two weeks later said that the main intent of the law was to ensure that tribes had an opportunity to sign off on the adoption of tribal children .

= = = = Post @-@ opinion = = = =

After the Supreme Court decision , most media outlets stated that the Capobiancos won the case , although some correctly noted that they did not gain custody , nor receive an order of adoption . Some noted that even with the decision , the return of the child to the Capobiancos was not " foreordained " and that the case had to return to South Carolina state courts for additional hearings .

= = = = Social media = = = =

The case received a great deal of coverage in social media . A friend of Melanie Duncan Capobianco , Jessica Munday , is a publicist who had previously done contracted work for Melanie Duncan 's employer MST Services [ Multisystemic Therapy ] in South Carolina . Munday started a " Save Veronica " campaign aimed at gathering grassroots support for the couple 's efforts to overturn both the Charleston Family Court and the South Carolina Supreme Court decisions . Munday , who runs the marketing firm Trio Solutions Inc . [ TRIO ] in Mount Pleasant , South Carolina , is responsible for making the case well known according to at least one source . Responses from the Native American community pointed out the irony in the campaign , with an editorial cartoon depicting " Veronica " puzzling over a campaign to save her ( an Indian child ) from other Indians . In addition , a movement supporting Dusten Brown and the Cherokee , " Stand Our Ground , " said that the Baby Veronica case has become a strong example of systemic problems in the adoption

industry and has pushed for adoption reform . Stand Our Ground started on Facebook then swelled in protests and rallies across several states .

= = = Legal developments = = =

Maldonado filed suit in the South Carolina U.S. District Court on July 24 , 2013 , asking that the ICWA be declared unconstitutional . On July 31 , 2013 , the Capobiancos legally adopted the child . Concurrently with the South Carolina court finalizing the adoption , the Native American Rights Fund filed a civil rights lawsuit in U.S. District Court on behalf of the child , alleging that her rights had been violated by the South Carolina court . In addition , a South Carolina court order cannot be enforced in Oklahoma without the agreement of an Oklahoma court , and Brown stated that he would fight the order in Oklahoma , with the aid of the Cherokee Nation . Prior to the South Carolina adoption being finalized , the Cherokee Nation District Court granted temporary guardianship to Brown 's wife and parents while Brown was in military training out of state . At the same time , a judge in South Carolina ordered Brown to immediately turn over the child to the Capobiancos , which representatives of the Cherokee Nation said was impossible while Brown was performing his military duties .

On August 30 , 2013 , the Oklahoma Supreme Court stayed an order of a district court that the child be immediately be transferred from the custody of Brown to the Capobiancos . The Capobiancos had court @-@ ordered visits with the girl in Oklahoma , while the Brown family celebrated the girl 's fourth birthday at a party on September 15 . A court @-@ ordered mediation hearing took place between the Browns and the Capobiancos between September 16 and September 20 , but failed to produce a resolution . The Oklahoma Supreme Court lifted its stay of the district court order on September 23 , 2013 , clearing the way for custody of the child to be returned to the Capobiancos . The girl was turned over to her adoptive parents on the evening of September 23 , 2013 . On September 25 , 2013 , the Charleston County Family Court began contempt proceedings against Brown and the Cherokee Nation for withholding Veronica in the face of the South Carolina adoption decree , which was finalized in July . Both parties may face financial sanctions that could include defraying living and legal expenses for the Capobiancos during the period that Brown and the Cherokee Nation were allegedly in contempt of court . In October 2013 , Brown announced that he was dropping his appeals to give his daughter a chance at a normal life .

In November 2013 , Matt and Melanie Capobianco filed a lawsuit in Nowata County , Oklahoma , demanding more than \$ 1 million in court costs , accrued during their custody battle . The lawsuit is against Veronica 's biological father , Dusten Brown , and the Cherokee Nation . The Cherokee Nation issued a forceful response , saying " it is not responsible for paying the fees and costs for the Capobiancos because of its Eleventh Amendment sovereign immunity from suits without its express consent . " The Cherokees also " made clear the tribe 's displeasure with the Capobianco 's very public media appearances , interviews and various fundraising schemes during the same time in which all the parties were under statutory gag order in South Carolina " .