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No. 98487-5

IN THE WASHINGTON SUPREME COURT

In re the Dependency of

A.K., L.R.K.S., and D.B.K.S.

AMICUS BRIEF OF

THE KING COUNTY DEPARTMENT OF PUBLIC DEFENSE,
SEATTLE UNIVERSITY CENTER FOR INDIAN LAW & POLICY,
THE UNIVERSITY OF WASHINGTON CHILDREN AND YOUTH
ADVOCACY CLINIC AND PARENT ADVOCACY PROJECT, FRED
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I. INTRODUCTION

The Indian Child Welfare Act (ICWA) has been called the “gold standard” of child welfare because the core provisions of the law protect children from harm, specifically the harm of removal from their parents. ICWA is written to prevent the trauma of family separation by, among other things, raising the state’s burden of proof for removing children from their parents and requiring the state to actively work to prevent the breakup of the family. The profound harms of family separation were well-understood by the Tribes and Indian families who tirelessly advocated for this important law decades ago, and today those harms have been established with empirical certainty.¹

Yet despite more than forty years on the books, it is clear that the Department of Children Youth and Families (DCYF) and state courts often do not meet ICWA’s obligations to Indian children and families. In this case, Indian children were subjected to the trauma of family separation because the court failed to enforce the statute and failed to hold DCYF to its burden to make active efforts to prevent the breakup of this family.

¹ *Matter of Dependency of Z.J.G.*, __ Wn.2d __, No. 98003-9, slip op. at 11 (Sept. 3, 2020); Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 542-544 (2019); Vivek Sankaran, Christopher Church, & Monique Mitchell, *A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families*, 102 MARQ. L.REV. 1161, 1171 (2019).

II. ISSUES PRESENTED FOR REVIEW

1. Did the trial court err when it failed to make factual findings, either in its oral ruling or in its written order, to support its finding of active efforts? Therefore, did the trial court fail to find the state made active efforts by clear and convincing evidence?
2. Did the state fail to provide active efforts to reunify the family by focusing almost entirely on the mother's compliance with a drug test when, under ICWA and DCYF policy, proof of substance use alone would be insufficient to establish dependency and such tests cannot be compelled before dependency is established?

III. STATEMENT OF THE CASE

A. Ms. K Willingly Engaged in Services That Benefitted Her Children and Family

Prior to the current case, Ms. K worked with DCYF in a family voluntary services (FVS) case that closed in March 2018. RP 272. In that case, DCYF provided the mother with intensive family preservation services (IFPS). The IFPS worker helped the mother complete applications for housing and transported her to appointments. RP 263-264. The mother engaged with IFPS until the provider ended the service because Ms. K's goal, finding housing, had been met. RP 267. During the voluntary services case DCYF also paid for daycare, gas vouchers, bus passes, diapers, wipes, and other necessities for the children. RP 265, RP 270.

During the time the voluntary case was open, the DCYF social worker visited the mother's home (a room at the Moonlight motel) and found "it was clean, there [were] no safety concerns..." RP 271; RP 280; *see*

also RP 279 (finding Ms. K did not appear to be “under the influence” at that time). According to the testimony of the manager of the Moonlight Motel, Ms. K “always took care of her children...She was an excellent mother.” RP 386.

When it came time to close the voluntary services case, Ms. K asked the assigned social worker if she could continue to keep the case open, as it was providing her with child care. RP 21; RP 272. But, DCYF closed the case without filing a dependency petition after months of observing the mother in her home. RP 280. According to the social worker, there was insufficient reason to keep the case open, which demonstrated that the state believed the children were safe in the mother’s care. RP 270-72.

B. After the Children Were Removed, the State Failed to Make Active Efforts to Engage the Mother, Despite Her Willingness to Participate in Services

The children were removed from their mother on August 14, 2018, RP 8, five months after the voluntary services case closed. The initial allegation that required removal, according to the state, was abandonment. RP 159. However, the mother was present at the time the children were removed. RP 151, 163. The social worker testified that she was told by her supervisor: “that three children had been abandoned and that I – she needed somebody to go out and meet with the police and the children, the three children were gonna be signed into protective custody.” RP 159. DCYF did

not obtain judicial authorization prior to removing the children. *Id.*; RCW 13.34.050.

Indeed, although a law enforcement officer was present when the children were removed, and law enforcement can take children into protective custody pursuant to RCW 26.44.050, the officer testified that it was CPS who made the decision to remove the children, telling the court: “I didn’t remove them. I was just assisting CPS,” RP 164, *see also* RP 152-53. He testified, “[a]s soon as we went inside, CPS workers advised that they were gonna place the kids...I wasn’t really aware of all the details on why.” RP 144-145; *but see* RP 156.²

When the state filed its dependency petition, it did not allege abandonment. CP 2.³ And despite detailing the prior voluntary services offered to and accepted by the mother, the petition alleged only that DCYF had made “reasonable efforts,” CP 5, but not that the Department “actively worked” with the family as required by WICWA. RCW 13.38.040(1)(a)(i).

On August 17, the mother appeared for the 72-hour shelter care hearing, her first opportunity to contest the removal of her children. CP 22.

² The officer’s recollection implies an abdication of authority: that the social worker removed the children, but instructed the officer to sign the papers, knowing that CPS cannot remove children without a court order.

³ The “CP” cites in this brief reference the clerk’s papers for L.R.K-S.

The mother was not represented by an attorney at that hearing. *Id.* At the shelter care hearing, the children were ordered removed from her care and placed into licensed foster care. CP 17. Yet, despite noting that the children may be Indian children, CP 13, the dependency court failed to make any of the findings required in an emergency proceeding under ICWA: that emergency removal or placement was “necessary to prevent imminent physical damage or harm to the child.” 25 C.F.R. 23.113; *see also* RCW 13.38.140; 25 U.S.C. 1922. In the “services” section of the order Ms. K was ordered to participate in both urine and hair follicle drug tests. CP 18.

After the children were removed, the mother remained in regular contact with the DCYF social worker, attended meetings with DCYF, and visited with her children. RP 310. Ms. K visited with her children three times per week, RP 288, and the social worker conceded that the visits go “overall well.” RP 310-11. There were no concerns that Ms. K was under the influence during any of the visits. RP 330. The mother also attended an FTDM (Family Team Decision Meeting), RP 288-289, and another meeting with a newly-assigned social worker, Ms. Reeves, about one month later. During the second meeting the mother called a housing program. RP 288-289. Ms. K kept in touch with the social worker by text, working closely with the social worker “for the most part.” RP 310.

However, the DCYF social worker did not assist Ms. K with services she requested. Although the social worker testified the mother wanted to take advantage of assistance with housing, RP 289, the record does not show any DCYF assistance with housing other than providing a phone number to call. It also does not appear that a social worker visited the mother's trailer to assess whether it was safe for the children to return there. The social worker testified that the mother wanted support obtaining financial assistance, RP 312, although there is no evidence that was offered.

The only service the state affirmatively offered to Ms. K that she refused was a drug test. The social worker testified the mother was asked to take a drug test both at the FTDM and at the later meeting. RP 289; RP 220. The state has also argued that the social worker developed a case plan for the Ms. K, but there is nothing in the records that indicates that a case plan was ever communicated to her prior to the dependency trial. RP 303-04.

At all hearings during the period of shelter care, ICWA requires the court to determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. 25 C.F.R. 23.113(b)(3),(e). And yet, here, the trial court entered multiple 30-day extensions of shelter care without ever making the findings that emergency removal was necessary to prevent imminent physical damage or harm. CP 26, CP 42; CP 46; CP 49.

C. At the Dependency Trial, the Trial Court Failed to Make Any Factual Findings Regarding Active Efforts

At the dependency trial, DCYF acknowledged it was required to meet a higher burden to establish dependency in an ICWA case, the clear and convincing evidence burden, RP 397, but incorrectly stated the legal test on the record. RP 398 (“these three children would face a substantial risk of harm if returned today to [Ms. K]”).

The trial court’s oral ruling did not mention ICWA or active efforts. RP 415-17. The court’s written order did not make any factual findings detailing active efforts, nor factual findings that established a causal nexus between the mother’s alleged substance use disorder and harm to the children. CP 170, 181. The written order, however, checked boxes that the state made active efforts and that continued custody by the mother “is likely to result in serious emotional or physical damage.” CP 169, 180.⁴

IV. ARGUMENT

ICWA, WICWA, and the 2016 ICWA regulations require DCYF to provide active efforts to keep Indian families together and also require trial courts to make “detailed findings” about the active efforts provided to the

⁴ Following the finding of dependency, the court’s dispositional orders placed these Indian children in licensed foster care without a good cause finding to depart from the ICWA’s placement preferences contained in 25 C.F.R. 23.132; 25 U.S.C. 1915. CP 170.

family prior to finding an Indian child dependent. These detailed findings are necessary to determine whether the state has met its high burden of establishing by “clear and convincing evidence” that it made active efforts. Here, the dependency order must be reversed because the trial court made no factual findings regarding active efforts at all, and the evidence that can be pulled from the record is also insufficient to meet the state’s burden.

A. ICWA Applies to the Finding of Dependency and Requires the Trial Court to Make Detailed Findings About Active Efforts

The state argues for the first time on appeal that ICWA doesn’t apply to a dependency fact-finding. DCYF Supp. Br. at 19-20. Instead, the state asserts an Indian child can be adjudicated dependent without the additional protections ICWA provides and must wait until the dispositional phase of the dependency case for ICWA’s provisions to be considered. *Id.*⁵

In fact, ICWA and WICWA require the trial court to make additional findings, including the “active efforts” finding, at a dependency trial rather than waiting until the dispositional hearing to consider the additional statutory elements. Further, ICWA requires the state to prove it made active efforts by clear and convincing evidence and requires the trial court to make detailed factual findings about those efforts on the record.

⁵ At trial the state repeatedly acknowledged that ICWA, and the active efforts requirement, applied to the finding of dependency. RP 6-9; RP 397; RP 404.

1. The Trial Court is Required to Make Additional Findings, Including the Active Efforts Finding, at a Dependency Trial Involving an Indian Child

A dependency trial is a “child custody proceeding” under ICWA, and as a result, when a case involves an Indian child, the state must prove additional elements, unique to ICWA cases,⁶ at a higher burden of proof (“clear and convincing evidence”). *See* RCW 13.38.040(3); RCW 13.38.130; 25 U.S.C. 1903(1); 25 C.F.R. 23.2; 25 C.F.R. 23.121.

A “[c]hild-custody proceeding” is defined as “any action, other than an emergency proceeding, that *may culminate* in” a foster-care placement. 25 C.F.R. 23.2 (emphasis added); *see also* Guidelines for Implementing the Indian Child Welfare Act (December 2016) (hereafter “Guidelines”) at L.3. A finding of dependency “may culminate” in a “foster care placement,” because it is an action after which the parent “cannot have the child returned upon demand.” *Id.* Here the state conceded that its purpose in seeking a

⁶ In order to find an Indian child dependent, the state is required to prove two elements above the statutory factors set out in the baseline dependency statute. *Compare* RCW 13.34.030(6) and JuCR 3.7 *with* 25 U.S.C. 1912(d); RCW 13.38.130; 25 C.F.R. 23.120. *First*, the state must prove 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.” RCW 13.38.130(2). The evidence must show a “causal relationship between the particular conditions in the home” and likelihood of damage to the child and be supported by a “qualified expert witness.” 25 C.F.R. 23.121(c), (d). *Second*, the petitioner must “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.” RCW 13.38.130(1); *see also* 25 CFR. 23.2 and RCW 13.38.040 (defining active efforts).

dependency was to prevent the mother from having her children returned on demand. RP 399 (arguing as to A.L.K. that “if the Court did not establish dependency today, [Ms. K] could go and pick up A.L.K. at her grandma’s...”).

This Court has not yet decided when in a dependency case the state must prove ICWA and WICWA’s required elements. However, the Supreme Court of New Mexico determined that its equivalent of a dependency trial is the appropriate proceeding to consider the elements because it “is an evidentiary hearing on the merits of the abuse or neglect case, complete with due process protections.” *In re Esther V.*, 149 N.M. 315, 323, 326, 248 P.3d 863 (2011). The New Mexico Supreme Court further held that applying ICWA at a trial on the merits “furthers the purposes and policies behind ICWA because both the parent and the tribe are able to participate meaningfully in the process.” *Id.* at 323.

This Court should likewise conclude that when a dependency case involves an Indian child, the dependency fact-finding pursuant to RCW 13.34.110(1) must incorporate ICWA’s elements because that is the hearing that offers the most due process protections. *Compare* JuCR 3.7 *with* JuCR 3.8. As in New Mexico, dependency fact-finding trials in Washington assess the merits of DCYF’s petition. The rules of evidence apply at a dependency fact-finding but not at a dispositional hearing (where hearsay is

admissible). *Id.*⁷ Allowing hearsay evidence to support a finding by clear and convincing evidence would undermine the very purpose of the higher evidentiary threshold. Finally, the dispositional hearing can be held up to two weeks after the dependency fact-finding. RCW 13.34.110(4). For these reasons, waiting until the dispositional phase of the trial to consider ICWA’s additional requirements risks minimizing the significance of those additional legal elements.

2. Active Efforts Must Be Proven by Clear and Convincing Evidence and Supported by Detailed Factual Findings Made on the Record

This Court has not previously ruled on the appropriate standard of proof for demonstrating active efforts at a dependency trial. However, the 2016 Federal ICWA Guidelines indicate the state’s burden should be clear and convincing evidence. Guidelines at E6 (viewing “favorably” caselaw that sets the burden at clear and convincing evidence)⁸; *see e.g. In re G.S.*, 312 Mont. 108, 120, 59 P.3d 1063, 1071 (2002) (“[G]iven the intent of Congress in preserving Indian families and this [s]tate’s commitment to preserving Indian culture, we conclude that the proper evidentiary standard

⁷ In King County, for example, contested dispositional issues are typically resolved by written motion, rather than at an actual evidentiary hearing. LJuCR 3.8(h).

⁸ Although the federal ICWA Guidelines are not a binding source of authority, this Court has previously found the ICWA Guidelines’ interpretation of the statute persuasive. *Matter of Adoption of T.A.W.*, 186 Wn.2d 828, 856, 383 P.3d 492, 505 (2016).

for determining ‘active efforts’ under 25 U.S.C. 1912(d) is the same standard we apply to the underlying ICWA proceeding.”); *but see In re Dependency of A.M.*, 106 Wn. App. 123, 133, 22 P.3d 828, 833 (2001) (applying a lower burden to the active efforts finding than the continued custody finding at a termination trial). To satisfy a clear and convincing evidence burden, the ultimate fact in issue must be shown by evidence to be “highly probable.” *See In re Sego*, 82 Wn.2d 736, 739, 513 P.2d 831, 833 (1973) (describing the clear, cogent, and convincing burden in non-ICWA parental termination cases).

Accordingly, federal regulations require the court to document the state’s active efforts “in detail on the record.” 25 C.F.R. 23.120(b). *See also* Guidelines at E6 (“The active-efforts requirement is a key protection provided by ICWA ... *The rule therefore requires the court to document active efforts in detail in the record.*”) (emphasis added); 81 Fed. Reg. 38778, 38828 (commenting that a finding by clear and convincing evidence “necessarily require[s] documentation in the record”).

The Guidelines recommend that the court consider among other things: “[d]ates, persons contacted, and other details evidencing how the State agency provided active efforts” as well as “whether the State agency adjusted the active efforts to better address the issues.” Guidelines at E6.

These detailed factual findings are necessary to ensure that the trial court has actually determined whether the state has, in fact, met its burden of proving by clear and convincing evidence it provided active efforts to ensure that Indian families are kept whole.

B. The Order of Dependency Must Be Reversed Because the Trial Court Made No Factual Findings Regarding Active Efforts

Here the trial court's oral ruling made no mention of ICWA or "active efforts." RP 415-427. The trial court's written order contained no factual findings regarding active efforts, CP 170, 181, and included only a check box stating the legal conclusion that active efforts were made. CP 169, 180. In *In re Dependency of H.*, the Court of Appeals (Div. 1) held, in a non-ICWA case, that the trial court erred in failing to make at least an oral ruling about what reasonable efforts the state made. 71 Wn. App. 524, 529–31, 859 P.2d 1258, 1261–62 (1993) (finding a check box insufficient). Likewise, here, the trial court made no mention of ICWA in his oral ruling and then made no written factual findings detailing the state's active efforts. This record cannot support a finding that the state made "active efforts" by any evidentiary burden, and certainly does not satisfy the heavy burden required here: clear and convincing evidence.

But even looking behind the trial court's findings, the underlying record does not support a finding of active efforts.

C. The Nature of the State’s Efforts Did Not Comply with Department Policy and Were Not Active Efforts

Enacting ICWA, “Congress recognized that many Indian children were removed from their homes because of poverty, joblessness, substandard housing, and related circumstances.” 81 Fed. Reg. 38778, 38791. Congress concluded “agencies of government often fail to recognize immediate, practical means to reduce the incidence of neglect or separation.” *Id.* The “active efforts” requirement “is one of the primary tools provided in ICWA to address this failure.” *Id.* “Active efforts” describes the expected character of social work practice and creates an expectation of “a significantly increased level of engagement with parents/Indian custodians than that required by the ‘reasonable efforts’ standard so often employed in child welfare cases.” Wash. Court Improvement Training Academy, Indian Child Welfare Act Benchbook, Ch. 29 (hereafter “Benchbook”).⁹

Accordingly, the 2016 ICWA regulations took the significant step of defining the term “active efforts,” under federal law for the first time. 25 C.F.R. 23.2 (setting forth a non-exclusive list of examples of active efforts). Active efforts must be “affirmative, active, thorough, and timely efforts

⁹ Washington Court Improvement Training Academy, Indian Child Welfare Act Benchbook, Chapter 29, available at: <https://www.wacita.org/benchbook/chapter-29-indian-child-welfare-act/>.

intended primarily to maintain or reunite an Indian child with his or her family.” *Id.* Likewise, WICWA defines active efforts as “timely and diligent efforts” to “prevent the breakup of the family beyond simply providing referrals to such services.” RCW 13.38.040. In other words, active efforts must focus on the practical steps the state can take to keep a family together.

Under ICWA, to the maximum extent possible, services must be conducted “in partnership” with the Indian child's parents. 25 C.F.R. 23.2. WICWA, similarly, requires the state “to engage” the parent in “remedial services and rehabilitation programs to prevent the breakup of the family....” RCW 13.38.040(1)(a)(i),(ii). Both statutes require the state to satisfy the trial court that the state made active efforts before the court can determine that those efforts were unsuccessful. RCW 13.38.130(1); 25 U.S.C. 1912(d).

The active efforts requirement is intended to overcome the legacy of distrust of child protection agencies that results from the government’s history of efforts to destroy Indian families and culture Benchbook at Ch. 29. “[S]tatistics [demonstrating continued disproportionality in Washington’s removal of Indian children] indicate that continued commitment to the robust application of ICWA and WICWA is needed to

address ongoing harms of Indian child removal.” *Matter of Dependency of Z.J.G.*, at *8.

1. Refusing to Provide Services Unless a Parent Submits to Drug Testing Does Not Constitute Active Efforts

Here, the state failed to meet its obligations to provide active efforts to keep Ms. K’s family together when it assumed the mother had a substance use disorder, and that, if true, the disorder necessitated the removal of the children. According to ICWA, evidence of substance abuse, on its own, is insufficient to establish that a child is unsafe with a parent. ICWA specifically requires proof of a causal connection between any alleged substance use and the likely harm to the child – it cannot be presumed based on evidence of substance abuse alone. The 2016 ICWA regulations state:

...evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, *substance abuse*, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

25 C.F.R. 23.121(d) (emphasis added); *see also Nassau Cty. Dep’t of Soc. Servs. on Behalf of Dante M. v. Denise J.*, 87 N.Y.2d 73, 79, 661 N.E.2d 138, 637 N.Y.S.2d 666, 669 (1995) (“Relying solely on a positive toxicology result for a neglect determination fails to make the necessary causative connection to all the surrounding circumstances that may or may

not produce impairment or imminent risk of impairment in the newborn child.”).

Likewise, DCYF policy also recognizes that substance use is not necessarily a child safety concern. Rather, “[t]he state of the parent’s condition is more important than the use of a substance.”¹⁰ Indeed, even a “decision that a child is unsafe does not mean the child must be removed,” rather removal is only justified when it is “clear that child safety cannot be controlled and managed in the home.”¹¹

Here, the state placed the burden on Ms. K to disprove the state’s allegations of a substance use disorder by taking a drug test even before she had an opportunity to be heard at her dependency trial. Meanwhile, the state did not make efforts, after the children were removed, to engage Ms. K or to consider the safety of the children separately from the question of the alleged substance use.

2. The Voluntary Services Case Shows the State Was Capable of Making Active Efforts

The state has argued that it made active efforts by offering Ms. K voluntary services in response to prior referrals. If anything, the contrary is

¹⁰ DCYF Present Danger Guide, available at: <https://www.dcyf.wa.gov/sites/default/files/pdf/PresentDangerGuide.pdf>.

¹¹ DCYF Practices and Procedures 1100 (Child Safety), available at: <https://www.dcyf.wa.gov/practices-and-procedures/1100-child-safety>.

true. Evidence from the earlier voluntary services case demonstrates that the state had a roadmap for supporting this family without removing the children and without mandatory drug testing. At the dependency trial, the DCYF social worker who was assigned to the voluntary services case testified that when the mother was staying at the Moonlight Motel, the children were safe in the mother's care, her home was clean, and the mother did not appear to be "under the influence." RP 271, 279-280. The mother testified that she benefitted from childcare and transportation assistance provided by the DCYF, so much, in fact, that she asked the case remain open. RP 21. During the voluntary services case, which ended in March of 2018, Ms. K's refusal to submit to drug testing did not create a safety concern that required the assigned social worker, who is a mandated reporter, to call in an intake or to file a dependency petition. But, instead showed that the state was capable of providing active efforts, ensuring the children's safety without a drug test, and assisting Ms. K in keeping her family whole.

Similar efforts were justified in the present case. For example, the petition alleged that the children were removed because they were left unsupervised by the mother's landlord and one child had a very full diaper. CP 3. An active effort to address that concern would be to offer Ms. K child care. However, DCYF failed to offer child care assistance to Ms. K. Further,

according to the state, the child safety concerns at the time of trial were the mother's lack of housing, income, and stability that the state attributed to a substance use disorder. RP 308.¹² Even after acknowledging the barriers that Ms. K faced, over the six-month period following the removal of the children there is no evidence that the state offered services with housing, income or stabilizing her life —except for a single instance where a social worker was in the same room when Ms. K called a housing provider. And, unlike during the voluntary services case, the state did not offer family preservation services, transportation assistance, or other practical supports.

3. DCYF's Failure to Comply with the Law Does Not Constitute Active Efforts

Throughout the period of shelter care, DCYF disregarded important provisions of ICWA and WICWA, undermining its assertion that it made active efforts. Even though prior judicial authorization is required before DCYF can remove a child, RCW 13.34.050, DCYF removed Ms. K's children from her care without a court order. RP 159. Then, DCYF failed to ensure that Ms. K was represented by an attorney when she appeared at the initial shelter care hearing. *See* CP 10; 21, 22; RCW 13.34.090; RCW 13.38.110; 25 U.S.C. 1912(b). And DCYF failed to ensure that the

¹² Also, without a proven nexus to child safety, those reasons are, nearly verbatim, an insufficient basis to find a child dependent. *See* 25 C.F.R. 23.121(d).

dependency court applied ICWA's removal standard to the removal of her children. CP 13; CP 26, CP 42; CP 46; CP 49.

At the initial shelter care hearing Ms. K was ordered to participate in a drug test. CP 18. Yet, a parent cannot be compelled to participate in services or evaluations prior to a dependency trial unless the parent agrees. RCW 13.34.065(4)(j). Accordingly, at the shelter care hearing, *either* Ms. K agreed to take a drug test, which would contradict the state's argument that she persistently refused such testing, *or* the trial court ordered her to take a drug test in violation of the statute. It would be problematic if this Court were to now find that DCYF's "offer" of a drug test satisfied the active efforts requirement, when it appears the drug test was not offered to the mother (as a service intended to keep her family together) but rather demanded of her in violation of the law.

In all of the above ways, DCYF either failed to ensure compliance with the law or actively violated it; this Court should not now condone such actions as active efforts.

V. CONCLUSION

ICWA's active efforts requirement provides a key protection for Indian children. The state should be held to the high standard required by the law to provide active efforts to prevent the breakup of Indian families.

DATED this 24th day of September 2020.

Respectfully submitted,

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