

June 25, 2013

Justices Say Law Doesn't Require Child's Return to Indian Father

By TIMOTHY WILLIAMS and DAN FROSCH

An American Indian child being raised by her biological father should not have been taken from her adoptive parents, the Supreme Court ruled Tuesday, saying that a federal law designed to keep Indian families together did not apply in the case.

The 5-to-4 decision reversed a ruling by the South Carolina Supreme Court, finding that the case represented an exception to the 1978 Indian Child Welfare Act, a federal law designed to make it difficult for Indian children to be removed from their families. That landmark legislation effectively ended the practice of taking Indian children from their homes and placing them in boarding schools and in non-Indian foster care facilities.

The court's majority held Tuesday that the case — *Adoptive Couple v. Baby Girl*, No. 12-399 — did not involve removing a child from an Indian home because the girl's father had renounced his parental rights before the child was born and the child's birth mother, a Mexican-American, had agreed to allow the South Carolina couple to adopt the girl.

Several months after the child's birth, the biological father, Dusten Brown, an enrolled member of the Cherokee tribe, changed his mind and sought custody of his daughter. He said he had not realized that his former fiancée was going to put the child up for adoption. The girl was in the process of being adopted by Matt and Melanie Capobianco, a white couple who raised her for 27 months before South Carolina courts ruled in favor of Mr. Brown.

The *Baby Veronica* case, named for the girl at the center of the dispute, has stirred powerful emotional responses from child welfare groups, adoptive parents and Indian tribes, all of whom have sought a clearer legal standard of how the Indian Child Welfare Act should be applied when it appears to conflict with state law.

"Adoption professionals across the country have been perplexed for years over the question of whether the I.C.W.A. applies to voluntary adoption proceedings where the unwed father is Indian and the mother is not," said Mark D. Fiddler, a lawyer for the Capobianco family. "The court's decision today dramatically resolves that confusion."

He added, "My clients are thrilled with the court's decision and look forward to reuniting with their daughter, and yet they hope Veronica's birth father will stay involved in their daughter's life."

The federal law requires local agencies to try to place Indian children with Indian families whenever possible, and it also permits tribes to intervene in certain custody proceedings. The law's supporters say it has been a success because it allows Indian children to remain connected to their heritage, even when families fall apart. They point to the disproportionate number of Indian children in state foster care systems as evidence that the law remains necessary.

But a severe shortage of licensed Indian foster families, combined with the cycle of poverty and substance abuse that has gripped many reservations, can make [placing children with Indian families a difficult prospect](#).

“Obviously, we are disappointed with today’s decision. And our thoughts are immediately with the Brown family right now,” said Terry Cross, the executive director of the National Indian Child Welfare Association, a group that filed an amicus brief in support of Mr. Brown’s right to retain custody of his daughter. “It appears to be a narrow decision as far as the possible ramifications for the Indian Child Welfare Act.”