



# NICWA

National Indian Child Welfare Association

Protecting our children • Preserving our culture

## **ADOPTIVE COUPLE v. BABY GIRL MEDIA COVERAGE FACT CHECK**

Extensive media coverage of *Adoptive Couple v. Baby Girl* has included many inaccuracies. Whether misinformation has been repeated inadvertently, or as part of coverage which includes myriad opinions, NICWA has checked some of these recurring assertions here.

| STATEMENT (SOURCE)  | FACT  | FACT SOURCE   |
|---|---|---|
| <p>"We were told she was not an Indian child, so we didn't think it was going to make a difference." (Melanie Capobianco, <i>Kelly's Court</i>, Fox News, January 11, 2012)</p>   | <p>Mother knew of father's Cherokee heritage and informed the adoption agencies and the Capobiancos.</p>  | <p>"Mother testified that she knew 'from the beginning' that Father was a registered member of the Cherokee Nation, and that she deemed this information 'important' throughout the adoption process...Mother reported Father's Indian heritage on the Nightlight Agency's adoption form and testified she made Father's Indian heritage known to Appellants and every agency involved in the adoption." (SC Supreme Court Decision, p. 4)</p>  |
| <p>"Her story begins in 2009, when Veronica's biological parents put her up for adoption. That's when Matt and Melanie Capobianco entered the picture." (Randi Kaye, <i>Anderson Cooper 360</i>, February 22, 2012)</p> | <p>Mother never informed Father of her intent to place Veronica up for adoption, and placed Veronica without discussing it with him.</p>  | <p>"Mother never informed Father that she intended to place the baby up for adoption." (SC Supreme Court Decision, p. 3)</p>  |
| <p>Anderson Cooper: The biological father did waive his rights, apparently, early on, and then two weeks later changed his mind.</p> <p>Jeffrey Toobin: He did. (<i>Anderson Cooper 360</i>, July 26, 2012)</p>         | <p>Father was not made aware of the Mother's intent to adopt out Veronica until four months after her birth.</p> <p>Father signed an "Acceptance of Service and Answer of Defendant" which was not a lawful "waiver" of his rights.</p> <p>After signing, Father realized that the paper did not relinquish his rights to the mother but instead to potential adoptive parents and immediately attempted to retrieve it.</p> <p>Father sought the advice of a JAG attorney. Five days later, he requested a stay of the adoption. Eight days later, he filed official documentation to establish paternity, child custody, and support of Veronica.</p> | <p>"...a process server presented Father with legal papers entitled 'Acceptance of Service and Answer of Defendant,' which stated he was not contesting the adoption of Baby Girl and that he waived the thirty day waiting period and notice of the hearing. Father testified he believed he was relinquishing his rights to Mother and did not realize he consented to Baby Girl's adoption by another family until after he signed the papers. Upon realizing that Mother had relinquished her rights to Appellants, Father testified, 'I then tried to grab the paper up. [The process server] told me that I could not grab that [sic] because . . . I would be going to jail if I was to do any harm to the paper.'"</p> <p>After consulting with his parents and a JAG lawyer at his base, Father contacted a civilian lawyer the next day, and on January 11, 2010, he requested a stay of the adoption proceedings under the Servicemember's Civil Relief Act. On January 14, 2010, Father filed a summons and complaint in an Oklahoma district court to establish paternity, child custody, and support of Baby Girl." (SC Supreme Court Decision, p. 6)</p> |



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| <p>“In the current Supreme Court case, Matt and Melanie Capobianco are fighting to get back custody of a little girl they legally adopted even before she was born. The biological mother had agreed to the adoption, and the father signed away his rights.” (Jenny Kane, <i>The Daily Times</i>, January 13, 2013)</p> <p>“The state of South Carolina finalized the adoption and terminated Brown’s rights as a father for lack of action on his daughter’s behalf. Brown waived his right to contest the adoption. At that time, Veronica, then an infant, legally became the daughter of the Capobiancos.” (Andrea Poe, <i>Huffington Post</i>, August 23, 2012)</p> | <p>The adoption was never finalized. This court battle is based upon the South Carolina Family Court’s decision to deny the Capobiancos’ petition for adoption of Veronica because Father’s parental rights were not and should not be terminated.</p> | <p>“Appellants filed the adoption action in South Carolina on September 18, 2009...On November 25, 2011, the family court judge issued a Final Order, finding that: ... (3) Father did not voluntarily consent to the termination of his parental rights or the adoption; and (4) Appellants failed to prove by clear and convincing evidence that Father’s parental rights should be terminated or that granting custody of Baby Girl to Father would likely result in serious emotional or physical damage to Baby Girl. Therefore, the family court denied Appellants’ petition for adoption and ordered the transfer of custody of Baby Girl to Father on December 28, 2011.” (SC Supreme Court Decision, p. 8)</p> |
| <p>“Lawyers for the Capobiancos say federal law does not define an unwed biological father as a ‘parent.’” (Bill Mears, CNN, January 5, 2013)</p>   | <p>The family court in this case found the father to be a parent and the South Carolina Supreme Court agreed, under this definition.</p>   | <p>“[T]he family court ultimately concluded that Father met the ICWA’s definition of ‘parent’ by both acknowledging his paternity through the pursuit of court proceedings as soon as he realized [Veronica] had been placed up for adoption and establishing his paternity through DNA testing.” (SC Supreme Court Decision, p. 16)</p> <p>ICWA defines parent as follows: “‘parent’ means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.” (Indian Child Welfare Act 25 U.S.C. § 1903(9))</p>       |



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| <p>“Ordinarily such a case would be thrown out since it’s widely believed that once parental rights are waived they stayed waived because it is in the best interest of the child to have a permanent and stable home.” (Andrea Poe, <i>The Washington Times</i>, November 26, 2012)</p> | <p>Father did not “waive” his parental rights.</p> <p>In addition, state law and ICWA include provisions that protect biological parents by giving them the right to petition the court to withdrawal consent to an adoption before a final decree has been issued. No final decree of adoption was issued in this case, therefore Father would have had a right under the law to withdrawal his consent to the adoption, had he consented—which he did not.</p> | <p>“It is undisputed that the only consent document Father ever signed was a one-page ‘Acceptance of Service’ stating he was not contesting the adoption, which was purportedly presented for Father’s signature as a prerequisite to the service of a summons and complaint. Thus, <i>Appellants did not follow the clear procedural directives of section 1913(a) in obtaining Father’s consent.</i> Moreover, even if this ‘consent’ was valid under the statute, then Father’s subsequent legal campaign to obtain custody of Baby Girl has rendered any such consent withdrawn. [<i>Emphasis added.</i>]</p> <p>Therefore, neither Father’s signature on the ‘Acceptance of Service’ document, nor his stated intentions to relinquish his rights, were effectual forms of voluntary consent under the ICWA.” (SC Supreme Court Decision, p. 18.)</p> <p>“Withdrawal of any consent or relinquishment is not permitted except by order of the court after notice and opportunity to be heard is given to all persons concerned, except when the court finds that the withdrawal is in the best interest of the child and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion. Any person attempting to withdrawal consent or relinquishment shall file the reasons for withdrawal with the family court. The entry of a final decree of adoption renders any consent or relinquishment irrevocable.” (South Carolina Children’s Code § 63-9-350)</p> <p>“In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.” (Indian Child Welfare Act, 25 U.S.C. § 1913(c))</p> |



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| <p>“Native American children who need permanent homes and families are at the highest risk if South Carolina’s interpretation of the Indian Child Welfare Act stands.” (Andrea Poe, <i>The Washington Times</i>, November 26, 2012)</p> | <p>ICWA both reflects and encourages best practice for case managers, lawyers, and judges when it comes to Indian child welfare and adoptions. The South Carolina Supreme Court’s ruling in <i>Adoptive Couple v. Baby Girl</i> reinforces the importance of following both the letter and intent of the law when it comes to proceedings involving Indian children and families.</p> <p>Statistics tell us that Indian children today face many challenges in both public and private child welfare systems. In public child welfare systems, they are removed from their homes at 2–3 times the rate of their white counterparts and often are not placed with relatives or other Indian families, even when such placements are available and appropriate. In private adoption systems where little regulation or oversight is present, Indian children and families can face practitioners who have little incentive to consider their cultural or tribal citizen rights and instead are focused on financial incentives or operating from narrow understandings of what is in an Indian child’s best interest. It is for these reasons that the South Carolina Supreme Court ruling actually better protects Indian children in the child welfare system.</p> | <p>“The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.” (Indian Child Welfare Act 25 U.S.C. § 1902)</p> |



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| <p>“While family courts usually base their decisions on the best interests of the child, the 1978 law notes other factors should be considered and the tribe’s interest in the child is equal to that of the parents.” (Daily Mail Reporter, <i>The Daily Mail</i>, December 25, 2012)</p> | <p>ICWA is designed to promote the best interest and unique needs of the Indian child. Whether the situation is premised on good intention or bias, separation of an Indian child from his family and his tribe can have devastating consequences. The best interest standard always requires the court to assess many facets of a child’s life, development, and well-being. ICWA merely ensures that one facet considered among the many is the child’s continued connection to family and culture.</p> | <p>“South Carolina courts have a long history of determining custody disputes based on the ‘best interests of the child.’... This important history is not replaced by the ICWA’s mandate. ... (“ICWA’s applicability does not mean that ICWA replaces state law with regard to a child’s best interests.”) Instead, “[w]ell established principles for deciding custody matters should further [the ICWA’s] goals.”</p> <p>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. See 25 U.S.C. § 1902....</p> <p>In making this determination, the child’s relationship with his or her tribe is an important consideration, as the ICWA is “based on the fundamental assumption that it is in the Indian child’s best interest that its relationship to the tribe be protected.” Holyfield, 490 U.S. at 50 n. 24. Thus, Baby Girl, as an Indian child, has a strong interest in retaining ties to her cultural heritage...</p> <p>The family court order stated, ‘[w]hen parental rights and the best interests of the child are in conflict, the best interests of the child must prevail. However, in this case, I find no conflict between the two.’</p> <p>Likewise, we cannot say that Baby Girl’s best interests are not served by the grant of custody to Father, as [pre-adoptive couple] have not presented evidence that Baby Girl would not be safe, loved, and cared for if raised by Father and his family.</p> <p>Moreover, in transferring custody to Father and his family, Baby Girl’s familial and tribal ties may be established and maintained in furtherance of the clear purpose of the ICWA, which is to preserve American Indian culture by retaining its children within the tribe. See Holyfield, 490 U.S. at 37.” (SC Supreme Court Decision pp. 24-27.) [some citations omitted]</p> |



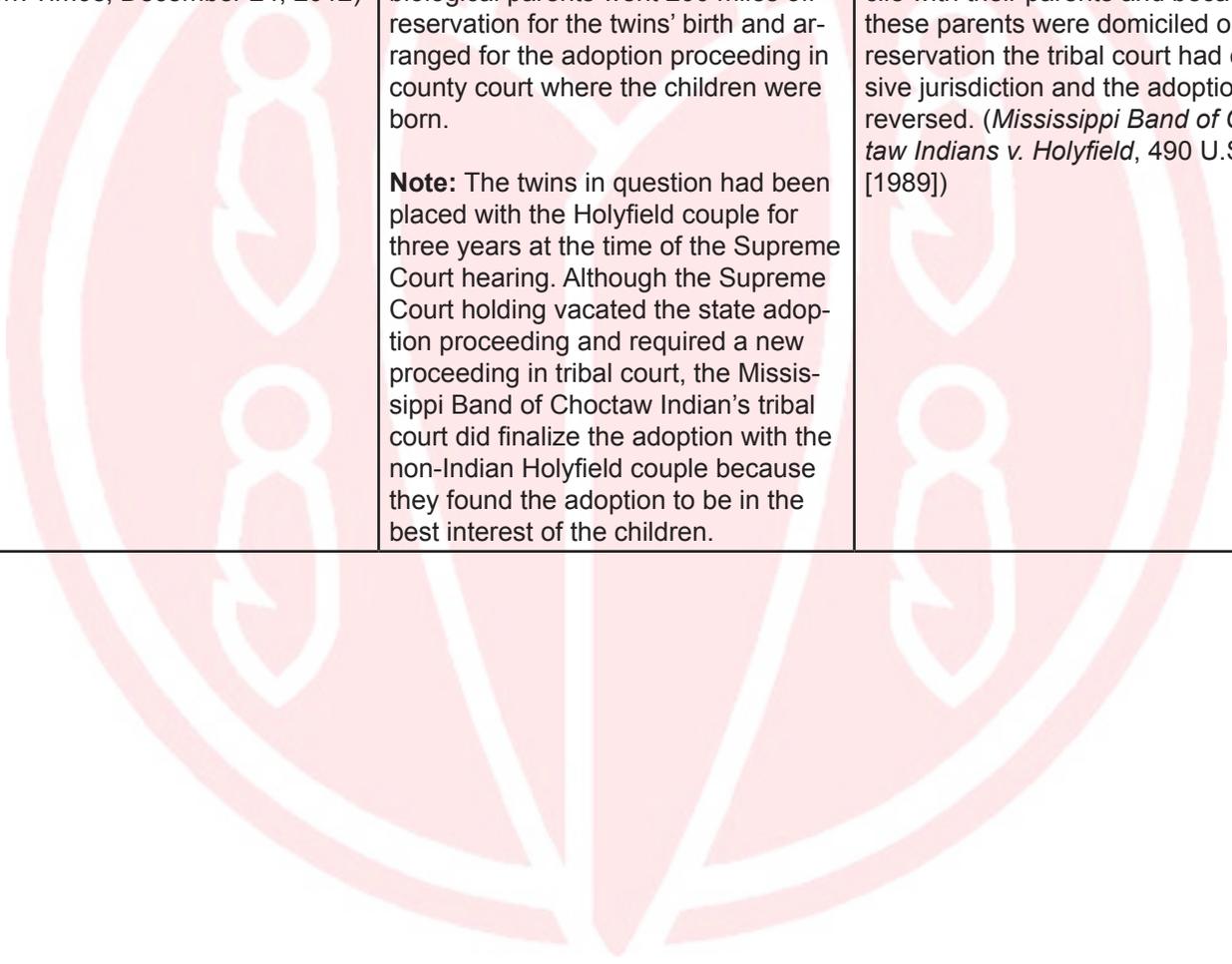
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| <p>“We had a case in which a very wealthy rancher and his wife had adopted a child of a young man and woman on an Indian reservation who had had the child out of wedlock. And they gave the child to the rancher to raise. . . The kid was, I think, 5 years old or so. . . And we had to turn that child over to the tribal council. I found that very hard. But that’s what the law said, without a doubt.” (Justice Antonin Scalia, quoted by Adam Liptak, <i>The New York Times</i>, December 24, 2012)</p> | <p>ICWA provides exclusive jurisdiction for adoptions which involved children “domiciled” on reservations. This means that tribal courts are the only court with authority over adoption proceedings that involve Indian children who live on their reservation. In <i>Holyfield</i> the Supreme Court held that the tribal court had exclusive jurisdiction over the adoption of two twins who were Indian children as defined by ICWA, in spite of the fact that the biological parents went 200 miles off reservation for the twins’ birth and arranged for the adoption proceeding in county court where the children were born.</p> <p><b>Note:</b> The twins in question had been placed with the Holyfield couple for three years at the time of the Supreme Court hearing. Although the Supreme Court holding vacated the state adoption proceeding and required a new proceeding in tribal court, the Mississippi Band of Choctaw Indian’s tribal court did finalize the adoption with the non-Indian Holyfield couple because they found the adoption to be in the best interest of the children.</p> | <p>The Court held that federal law should be used to define ‘domicile’ for the purpose of determining jurisdiction under ICWA because otherwise states might adopt a definition which frustrates the purpose of ICWA and that ICWA was specifically created to protect Indian families from the abusive laws and practices of state child welfare and adoption systems. Therefore, because the common law definition of domicile provides that children share a domicile with their parents and because these parents were domiciled on the reservation the tribal court had exclusive jurisdiction and the adoption was reversed. (<i>Mississippi Band of Choctaw Indians v. Holyfield</i>, 490 U.S. 30 [1989])</p> |





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| <p>“Counsel representing Ms. Maldonado in the case points out that despite widespread media reports, the Cherokee Nation was properly informed of the adoption proceedings, and both the tribe and the Bureau of Indian Affairs have acknowledged that the tribe was properly notified of the adoption proceedings.” (Abigail Perkiss, <i>Constitution Daily</i>, March 4, 2013)</p> | <p>Child was seven months old before Cherokee Nation received correct information and it still did not comply with the law.</p> <p>“Initially the birth mother did not wish to identify the father, said she wanted to keep things low-key as possible for the [Adoptive Couple] because he’s registered in the Cherokee tribe. It was determined that naming him would be detrimental to the adoption.” (SC Supreme Court Decision)</p> | <p><b>Timeline of Notification</b></p> <p>August 21, 2009: Letter to Cherokee Nation (CN) to determine whether Mother or Father was enrolled. Father’s first name, day, and year of birth were all incorrect.</p> <p>September 3, 2009: Letter from CN to Mother’s attorney states, “based on the above listed information exactly as provided by you,” Baby Girl was not an Indian Child.</p> <p>September 18, 2009: Complaint for Adoption and Summons issued – Father’s name spelled correctly, but no date of birth provided.</p> <p>January 6, 2010: Father personally served.</p> <p>January 11, 2010: Father sends letter to South Carolina Court asking for stay under Civil Service Relief Act</p> <p>January 14, 2010: Father files Oklahoma action seeking custody of child (to be placed with his parents while he is in Iraq).</p> <p>January 22, 2010: Adoptive Couple (AC) files father’s acceptance of service and answer stating he is biological father and not contesting adoption. Family Court found that in exchange for his signature on the “prepared legal document” he was then given the Summons and Complaint.</p> <p>March 30, 2010: CN intervened in the Oklahoma case.</p> <p>April 1, 2010: Amended Complaint; Father’s name and date of birth now correct. AC state they believe ICWA does not apply but if so they have complied with relative portions and mother can rescind her consent at any time.</p> <p>April 10, 2010: AC attorney sends Complaint and Summons to CN and BIA. Not ICWA complaint as it has no statement of the Tribe’s Right to Intervene. In fact, the Complaint states “Cherokee Nation should be stopped from asserting claims in this matter due to their conduct in sending out notices of compliance with the Indian Child Welfare Act.”</p> <p>April 12, 2010: Letter from BIA that CN had been notified.</p> <p>April 13, 2010: CN intervened in South Carolina case.</p> <p>(Source: CN Attorney General’s Office)</p> |