

VIEWPOINT : Law could tear children from a 'tribe' they love

By Lisa Morris,

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RONAN, Mont. - At 10:30 p.m. on Feb. 9, Patrick and Virginia Swartz of Van Buren County, Ark., were getting their two girls ready for bed. The 10-year-old twins already were in pajamas when police suddenly arrived. Brandishing a court order, they took the frightened girls and drove them 60 miles to the home of an elderly relative. The girls couldn't even tell their friends good-bye.

By all accounts, the Swartz's, owners of an Arkansas trucking company, took good care of the girls. In October 2002, the birth mother, Virginia's fourth cousin, had arranged for them to adopt the twins. However, another relative with four of the twins' siblings began custody action. With the support of the Tohono O'odham Indian Nation, she won.

Neither the birth mother, the Swartzes NOR the relative are Indian. So why was this tribe from Arizona involved?

Because the twins' natural father is Indian. And although he has "undisputedly abandoned the children," his status as an enrolled member of the tribe makes him "relevant to this case," the Arkansas Court of Appeals declared.

This gave the tribe jurisdiction under the Indian Child Welfare Act. The tribe wanted the twins placed with the siblings, "irrespective of the fact that other full and half-siblings are scattered among several other states," according to the court.

Again, why take children from the only safe, nuclear family they'd ever had?

The appeals court found that the "best interest" of the twins wasn't the only issue. Citing the Indian Child Welfare Act, the court found that "maintaining the integrity of the Nation, its culture, its children, and its progression through time not to become extinct" also had to be considered.

Neither the tribe nor the court adequately explained how moving the girls from the nontribal home they loved to a nontribal home they didn't know would preserve the tribe.

The Indian Child Welfare Act's original goal was to combat abusive practices that took Indian children from tribal communities and put them in unfamiliar environments with strangers. The trauma that Indian children suffered from, among other things, being forced to enroll in far-off boarding schools is undeniable.

But today, the reverse is happening. Children who never have been near a reservation are being removed from environments they love and forced to live with strangers chosen by tribes.

Stories affecting black, hispanic, Norwegian-American and other families reflect this reality. Letters from birth parents, grandparents, pre-adoptive families and tribal members themselves can be read at www.caicw.org/familystories.html.

Many children falling under the Indian Child Welfare Act are primarily nontribal. Tribal governments decide their own membership, and most have decided ¼ blood quantum is all that's necessary. Some have decided less.

Furthermore, parents can't avoid the act by not enrolling their children. The act defines an Indian child as any "enrollable" child. So today, children with ¼ or less heritage and no connection to Indian Country fall under the act.

Any emotionally healthy child, no matter their heritage, is devastated when taken from home and forced to live with strangers. Even children of 100 percent tribal heritage are devastated if they're

taken from non-tribal homes they love and put into reservation homes they know nothing about. And remember, children with less than 100 percent blood quantum have other relatives and heritages as well.

Why should Herald readers be concerned? Because Minnesota state officials are working to disallow courts even from considering a child's lack of involvement with a tribe.

A February agreement signed by Minnesota and tribal governments mandates that the Indian Child Welfare Act apply to all children eligible for tribal membership. This agreement does away with the "Existing Family Doctrine," an exception used to determine if ICWA applies.

Furthermore, House File 1169 and Senate File 1221 amend Minnesota law to read that the act is "applicable without exception." A court may not use questions about a child's lack of contact with a tribe or whether "a child is part of an existing Indian family" to determine the act's applicability, the change declares.

Tribal authorities argue they are most qualified to decide the best interest of enrollable children. Are they? I am birth mother to five members of the Minnesota Chippewa Tribe. As well-intended as some in government are, they haven't the ability to know what's best for families who have left to live a different life.

Please ask Gov. Tim Pawlenty and state legislators to ensure that the "Existing Family Doctrine" remains available to Minnesota families who choose not to live within the reservation system.

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