NICWA

National Indian Child Welfare Association

**The Dr. Phil Show Fact Check**

**The Facts of the Case:**

- **Capobiancos were described as Veronica's parents and Veronica's adoptive parents (Dr. Phil)**
  - **Fact:** The adoption was never finalized. Veronica was in a pre-adoptive placement with the Capobiancos.
  - **Fact:** The South Carolina District/Family courts denied the Capobiancos' petition for adoption of Veronica because Father did not voluntarily relinquish his parental rights and the court did not terminate them.
    - **South Carolina Supreme Court Opinion:** "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." (pg. 8)

- **Veronica's father was said to have wanted to relinquish his rights and was not interested in parenting (Capobiancos)**
  - **Fact:** Mother cut off communication with the father over four months before the birth of Veronica and never informed father of her intent to place Veronica up for adoption.
  - **Fact:** Father was not made aware of the Mother's intent to adopt out Veronica until four months after her birth and placement with the Capobiancos. Waiting this long to notify the birth father is highly unusual when the birth father is known. This was days before he was to be deployed to Iraq to serve his country where he received the bronze star for his bravery.
  - **Fact:** The father signed an "Acceptance of Service and Answer of Defendant" which was not a lawful relinquishment of his rights.
  - **Fact:** After signing this document the 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.
  - **Fact:** After being informed of the potential adoption, Father immediately sought the advice of a JAG attorney and only five days later requested a stay of the adoption as part of his rights as a U.S. service member, and eight days later he filed official documentation to establish paternity, child custody, and support of Veronica.
    - **South Carolina Supreme Court Opinion:** "Father and Mother became engaged to be married in December 2008, and Mother informed Father that she was pregnant in January 2009. At the time Mother became pregnant, Father was actively serving in the United States Army and stationed at Fort Sill, Oklahoma, approximately four hours away from his hometown of Bartlesville, Oklahoma, where his parents and Mother resided. Upon learning Mother was pregnant, Father began pressing Mother to get married

sooner. The couple continued to speak by phone daily, but by April 2009, the relationship had become strained. Mother testified she ultimately broke off the engagement in May via text message because Father was pressuring her to get married. At this point, Mother cut off all contact with Father." (pg. 2–3)

- **South Carolina Supreme Court Opinion:** "Footnote 9. Father testified he asked friends and family if they had seen Mother because she would not reply to his text messages. [Father's] mother testified she attempted to contact Mother on several occasions and once left Mother a voice message before Baby Girl's birth to tell Mother she had money and some gifts for the baby, including items she hand-knitted, but Mother never returned her telephone calls." (pg. 6)
- **South Carolina Supreme Court Opinion:** "When Mother arrived at the hospital to give birth, she requested to be placed on 'strictly no report' status, meaning that if anyone called to inquire about her presence in the hospital, the hospital would report her as not admitted. Footnote 7. Mother testified that she chose this option in both of her previous births primarily to prevent the father from contacting her." (pg. 5)
- **South Carolina Supreme Court Opinion:** "January 6, 2010, approximately four months after Baby Girl was born and days before Father was scheduled to deploy to Iraq. On that date outside of a mall near his base, 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.'"
- **South Carolina Supreme Court Opinion:** "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 ('SCRA'). 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." (pg. 6)
- **South Carolina Supreme Court Opinion:** "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, Appellants did not follow the clear procedural directives of section 1913(a) [of ICWA] in obtaining Father's consent. 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. 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." (pg. 18)

**<u>The Indian Child Welfare Act</u>**

- **"Sounds like what you're saying is a bad Indian family is better than a good non-Indian family." (Troy)**

- **Fact:** Veronica's father is a good father. The South Carolina Supreme Court said there was nothing to indicate that he was anything else. He and his extended family love his daughter and are providing a good, loving home for her where she can be with her relatives. The father's decision not to speak to the media reflects his desire to keep his daughter out of the media spotlight and protect her well-being.
- **Fact:** Nothing in ICWA requires the placement of a child in an Indian family if that family is deemed unfit or "bad." ICWA merely requires that the placement preferences which include extended families of AI/AN children, Indian or non-Indian, be the first considered and evaluated as placement options for an Indian child. This is not a unique requirement and is consistent with other federal laws that apply to all children which requires placement with relatives whenever possible.
- **Fact:** ICWA specifically provides a safety mechanism to protect children from potential inappropriate placements by stating that if the court finds "good cause" placement outside the placement preferences can occur.
  - **ICWA Text:** "In any…preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to…
    i. a member of the Indian child's extended family;
    ii. a foster home licensed, approved, or specified by the Indian child's tribe;
    iii. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
    iv. an institution for children approved by an Indian tribe..." (25 U.S.C. § 1915(b))
  - **South Carolina Supreme Court Decision:** "Likewise, we cannot say that Baby Girl's best interests are not served by the grant of custody to Father, as Appellants [pre-adoptive parents] have not presented any evidence that Baby Girl would not be safe, loved, and cared for if raised by Father and his family. 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 ICWA, which is to preserve American Indian culture by retaining children within the tribe." (pg. 26–27)

- **"I'll tell you what I hear you saying is what's best for the tribe and not what's best for the child." (Dr. Phil)**
  - **Fact:** Federal law and policy for all children have long protected the rights of children to be placed with their birth family and relatives.
  - **Fact:** The deceptive practices of the birth mother's and Capobianco's attorneys that allowed Veronica to be wrongfully placed with the Capobianco's and remain in that home for two years when Veronica had family willing and able to care for her were not in her best interest.
  - **Fact:** ICWA requires that the best interest of an *Indian child* be considered in cases involving tribal members of federally recognized tribes. This requires a broader examination of whether the prospective adoptive or foster care home has financial resources or the ability to provide a caring home. It also examines the Indian child's rights to affiliation with his/her tribe and rights that extend from that political relationship and any future considerations regarding these rights.
    - **ICWA Text and Supreme Court Interpretation:** The placement be in the best interest of the Indian child, (U.S.C. § 1902). The U.S. Supreme Court further explained this when it stated that ICWA is "based on the fundamental assumption that it is in the Indian child's best interest that its relationship with the tribe be protected" (*Miss. Band of Choctaw Indians v. Holyfield*, 490 US 30, 50).

- **"Children have constitutional rights, I've heard about tribes' and parents' rights I haven't heard a single mention about the trauma this child experienced. We know that bonding and attachment issues are very severe if removed at that age." (Jay McCarthy, American Academy of Adoption Attorneys)**
    - **Fact:** Children do have constitutional rights. Recent Supreme Court rulings define children's rights in adoption, foster care, and child welfare proceedings as the right to be with their biological parent whenever possible—unless their parents have been found to be unfit, which was not the case for Veronica's birth father.
    - **Fact**: The pain and suffering that is spoken of in this case was completely preventable. If the constitutional rights of Veronica and her father to be a united family had been respected by the attorneys representing the mother and the Capobianco's neither Veronica, her birth family, or the Capobianco's would have had to experience this grief and anguish. These attorneys should be held accountable for their practices.
    - **Fact:** 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 the child's rights as a tribal member and instead are focused on personal financial incentives or operating from narrow understandings of what is in an Indian child's best interest. ICWA was passed to combat and balance the known bias in the child welfare and adoptive systems and protect Indian families' rights to be together. Additional compliance efforts are needed to ensure that what happened in this case doesn't happen to other Indian children and families.
        - **United States Supreme Court:** The Supreme Court has long made clear that the constitution protects children's rights to their relationship between themselves and their biological parents. See, e.g. *Roberts v U.S. Jaycees*, 468 U.S. 609 (1984).