## IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO TENTH APPELLATE DISTRICT

In The Matter of: (C.J., Jr., (B.F.,	:	CASE NO. 16 AP 891
Appellant.	:	(ACCELERATED CALENDAR)
In The Matter of:	:	CASE NO. 17 AP 162
( <b>C.J., Jr.,</b>	:	
(S.R.,	:	(ACCELERATED CALENDAR)
Appellant.	:	
In The Matter of:	:	CASE NO. 17 AP 191
(C.J., Jr.,		
( <b>B.F.</b> ,	:	(ACCELERATED CALENDAR)
	:	
Appellant.	:	

## Brief of Appellant Guardian Ad Litem in Case Nos. 17 AP 162 & 17 AP 191 Oral Argument Requested

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#### **Appellant's Assignment of Error**

*First Assignment of Error*: The Juvenile Division erred by:

(1) giving full faith and credit to the Gila River Indian Community ("GRIC") tribal court order,

(2) transferring jurisdiction of the case to the GRIC tribal court, and

(3) transferring legal custody of C.J. Jr. to tribal social services and physical custody of C.J. Jr. to M.P. and T.P.—racially-matched strangers he has never met—thereby violating the Due Process and Equal Protection Clauses of the United States and Ohio Constitutions, and the Full Faith and Credit Clause of the United States Constitution. (16JU13594 Magistrate's Order dated Dec. 15, 2016 ("16JU13594 12/15/16 Order"); 15JU-232 Judgment Entry dated Dec. 22, 2016 ("12/22/16 J."); 16JU13594 Entry dated December 28, 2016 ("12/28/16 Entry"); 16AP891 Journal Entry dated Dec. 29, 2016 ("12/29/16 Entry"); 15JU232 Magistrate's Decision and Entry dated Mar. 9, 2017 ("3/9/17 Decision")).

#### **Issues Presented for Review**

1) Did the Juvenile Division err in transferring jurisdiction of the case to GRIC's tribal court, and transferring legal and physical custody of C.J. Jr. over the Mother's objection and without considering or finding

good cause to transfer, or without evaluating whether transfer is in C.J. Jr.'s best interests, thereby violating the Due Process and Equal Protection Clauses of the United States and Ohio Constitutions? (First Assignment of Error).

2) Did the Juvenile Division err in transferring custody of C.J. Jr. to M.P. and T.P.—racially-matched strangers he has never met—thereby violating the Due Process and Equal Protection Clauses of the United States and Ohio Constitutions? (First Assignment of Error).

3) Did the Juvenile Division err in giving full faith and credit to an *ex parte* tribal court order when the tribal court had no basis to assert jurisdiction over any party—and, if not, does giving full faith and credit violate the Due Process and Equal Protection Clauses of the United States and Ohio Constitutions, and the Full Faith and Credit Clause of the United States Constitution? (First Assignment of Error).

#### Introduction

C.J. Jr. is one individual child—a child with the same hopes, aspirations, and rights, as any other five-year-old Ohio boy. He has faced some setbacks in life—setbacks no one would wish on any child. The question here is whether those setbacks should be further compounded by imposing a legal detriment on him solely on account of his genetic ancestry.

C.J. Jr. was born in Ohio and has lived in Ohio since birth. His mother S.R. was an Ohio domiciliary and citizen (she passed away a few months ago). His father, C.J. Sr., is an Ohio domiciliary and citizen, who has been unable to care for C.J. Jr. As a consequence, C.J. Jr. has been in the care of foster parents N.B. and S.B., Ohio domiciliaries and citizens, since early 2015. He was placed there by Franklin County Children's Services ("FCCS"). In Ohio, he is able to regularly meet his father (who cannot leave the state) and is happy in the home of his foster parents.

Unfortunately, the Juvenile Division dealt C.J. Jr. a triple blow when it (1) transferred his case to a tribal court (not a state or federal court) (16JU13594 Entry dated 12/16/16 "12/16/16 Entry"); (2) transferred his custody to strangers he has never met, and who live half a continent away in a state he has never even visited—when no background check was ever conducted on them, nor any Interstate Compact for Placement of Children ("ICPC") procedures were followed, (15JU232 Tr. of Nov. 2, 2016 Proceedings ("11/2/16 Tr.") at 28, 124–25; 15JU232 Tr. of Dec. 15, 2016 Proceedings ("15JU232 12/15/16 Tr.") at 28; 16JU13594 Tr. of Dec. 15, 2016 Proceedings ("16JU13594 12/15/16 Tr.") at 12–13); and (3) gave full faith and credit to a self-serving *ex parte*, tribal court order purporting to assert worldwide jurisdiction over all individuals in this case based solely on C.J. Jr.'s racial profile. 15JU232 12/15/16 Tr. at 18–19. These things cannot stand. This case belongs in Ohio court, and it should be decided under non-discriminatory laws that accord C.J. Jr. the full rights accorded to all other Ohio children.

#### **Statement of the Case**

C.J. Jr. was born on July 16, 2012, and placed in FCCS custody on allegations of abuse, abandonment, and neglect on January 8, 2015. 15JU232 Compl. at 1; 16JU13594 Compl. at 1. He has remained in the care of foster parents N.B. and S.B. since that time.

GRIC intervened on July 28, 2016 in the 15JU232 case. 7/28/16 Order Granting Intervention.<sup>1</sup> It moved to invalidate prior orders based on

<sup>&</sup>lt;sup>1</sup> GRIC did not intervene in 16JU13594 until well after C.J. Jr.'s case was pending in this Court. *See* 16JU13594 GRIC's Mot. Intervene dated

Section 1914 of the Indian Child Welfare Act ("ICWA") (25 U.S.C. § 1914). 15JU232 GRIC Resp. Pre-Trial Br. dated 9/30/16 at 8–9. In light of that outstanding invalidation motion, the GAL filed a complaint in the child custody matter of C.J. Jr. on November 15, 2016. 16JU13594 Compl.

About a month later, GRIC obtained an *ex parte* order from its own tribal court. 12/13/16 Tribal Ct. Order in Case No. JC-2016-0434. Two days later, on 12/15/16, the Juvenile Division declared the entire 15JU232 "case ... null and void." 12/22/16 J. at 3. One day later, the Juvenile Division issued another order, continuing C.J. Jr.'s temporary custody with FCCS, but otherwise giving full faith and credit to, and enforcing, the tribal court order in its entirety. 12/16/16 Entry. The Juvenile Division reaffirmed that order when the court reconvened after Christmas break. 12/28/16 Entry. Those orders are now stayed pending this appeal. For now, C.J. Jr. continues to live under the care of his foster parents, N.B. and S.B., in Ohio.

The GAL appealed from the December 16 and December 28, 2016 Orders, in addition to appealing from the March 9, 2017 order in the

<sup>1/6/17; 16</sup>JU13594 Decision & J. dated 1/23/17. However, it of course fully participated in appellate briefing.

15JU232 case. 16JU13594 GAL's Notice of Appeal dated 12/29/16 ("12/29/16 NOA"); 15JU232 GAL's Notice of Appeal dated 3/15/17 ("3/15/17 NOA").

#### **Statement of Facts**

GRIC claims that C.J. Jr. is an "Indian child" as defined in ICWA, 25 U.S.C. § 1903(4), based solely on his (presumably) "one-fourth Indian blood," which is the membership criterion under the GRIC Constitution. GRIC CONST. art. III, § 1(b).<sup>2</sup>

C.J. Jr., and his birth parents S.R. and C.J. Sr., and foster parents N.B. and S.B., have at all relevant times been, and continue to be,<sup>3</sup> Ohio citizens, Ohio domiciliaries, and United States citizens. 8 U.S.C. § 1401(b); U.S. CONST. amend. XIV, § 1. All events and conduct relating to C.J. Jr.'s child custody matter occurred in Ohio. No event or conduct relevant here occurred on the GRIC reservation in Arizona. C.J. Jr. has never been to Arizona or the GRIC reservation. 16JU13594 12/15/16 Tr. at 8.

<sup>&</sup>lt;sup>2</sup> http://thorpe.ou.edu/IRA/gilacons.html

<sup>&</sup>lt;sup>3</sup> S.R. (C.J. Jr.'s mother) passed away after all of these consolidated appeals had been filed. 16AP891 Suggestion of Death of S.R. dated 3/28/17.

On December 13, 2016, GRIC's tribal court, in an ex parte order of which the parties received no notice, ordered the following: (1) it made C.J. Jr. a ward of the tribal court and placed him "under the care, custody, and control of Gila River Indian Community Tribal Social Services"; (2) it ordered C.J. Jr. be placed with M.P. and T.P., whom C.J. Jr. has never met (and on whom no background checks, nor ICPC approval was sought or obtained (11/2/16 Tr. at 124–25; 16JU13594 12/15/16 Tr. at 12–13)) and "authorized" them "to sign for medical and educational needs deemed necessary"; (3) it ordered S.R. and C.J. Sr. to appear in the tribal court for all hearings and adjudications; (4) it made S.R. and C.J. Sr. "financially responsible for" C.J. Jr.—meaning that the birth parents, both of whom at the time had limited financial means (C.J. Sr. still is), will be financially responsible for all the costs GRIC incurs to get this case into tribal court. 12/13/16 Tribal Ct. Order at 1–2.

The Juvenile Division adopted that *ex parte* tribal court order as its own. 12/16/16 Entry; 12/28/16 Entry. C.J. Jr., by and through his Guardian Ad Litem ("GAL"), appealed from those orders. 12/29/16 NOA.

On February 23, 2017, S.R. and C.J. Jr. filed a motion for relief from judgment in the Juvenile Division in the 15JU232 case. 15JU232 Mot. For Relief from J. dated 2/23/17 ("2/23/17 Mot. For Relief"). On March 6,

2017, GRIC responded to that motion. 15JU232 Opp. To Mot. For Relief from J. dated 3/6/17 ("3/6/17 Opp."). On March 8, 2017 C.J. Sr. responded to that motion. ("03/8/17 Opp."). After briefing on the motion was complete, on March 9, 2017, the Juvenile Division entered an order dismissing the 15JU232 case because it was "refiled as 16JU13594." 3/9/17 Decision. On March 15, 2017, the 17AP-191 appeal was taken from the March 9 Entry. 3/15/17 NOA.

Construing the March 9 Entry as a decision on the motion for relief from judgment, C.J. Jr. asked this Court to remand the consolidated cases to the Juvenile Division so that the court could "clarify" the March 9 Entry. 3/21/17 Mot. for Remand & Stay. This Court granted that request. 4/6/17 Entry. On May 24, 2017, the Juvenile Division clarified its March 9 Entry; this Court then reactivated the consolidated cases. 15JU232 Decision & J. dated 5/24/17 ("5/24/17 Decision"); 6/5/17 Entry.

#### Argument<sup>4</sup>

This case is about which court should decide C.J. Jr.'s fate. GRIC's view is that, *based solely on C.J. Jr.'s racial ancestry*—not on his best

<sup>&</sup>lt;sup>4</sup> All legal issues in this appeal are subject to *de novo* review. *In re A.J.S.*, 120 Ohio St. 3d 185, 2008-Ohio-5307, 897 N.E.2d 629 ¶ 47; *Stancourt v. Worthington City Sch. Dist.*, 10th Dist. Franklin Nos. 07AP-835, 07AP-836, 2008-Ohio-4548 ¶ 17.

interests—*its* court should decide his fate instead of the courts of Ohio, where C.J. Jr. is a citizen, and where jurisdiction would undeniably lie if C.J. Jr. were white, black, Hispanic, Asian, Serbian or Hindu.

This case is about whether Ohio courts can casually change C.J. Jr.'s custody without regard to his best interests, because of his racial or national origin.

#### I. Transfer of Jurisdiction

#### A. S.R. objected to the jurisdiction transfer.

ICWA Section 1911(b) addresses the jurisdiction-transfer question. It expressly gives "either parent" "a veto right over a request to transfer jurisdiction to the tribal court." *In re Taylor*, 5th Dist. Tuscarawas No. 2005 AP 11 0081, 2006-Ohio-6025 ¶ 44. Here, S.R. objected to transfer *four times* in writing before she passed away.<sup>5</sup> She also objected orally in court. 15JU232 12/15/16 Tr. at 17. Her veto power is "absolute." *In re D.A.C.*, 933 P.2d 993, 997 (Utah App. 1997). The Juvenile Division thus erred as a matter of law in disregarding this veto and in transferring jurisdiction to GRIC's tribal court.

<sup>&</sup>lt;sup>5</sup> 15JU232 Birth Mother's Objection to Transfer Juris. filed 9/22/16; 15JU232 Birth Mother's Br. Objecting to Transfer Juris. filed 10/25/16; 16JU13594 Birth Mother's Objection to Transfer Juris. filed 1/24/17; 16AP891 Mem. of Mother Opp'n Dismissal at 5 filed 2/13/17.

#### **B.** There was good cause to deny transfer.

Even if S.R.'s veto were not enough to bar transfer, there was another independent reason to deny transfer to GRIC's tribal court: the "good cause" provision of 25 U.S.C. § 1911(b).<sup>6</sup> In not addressing that question, the Juvenile Division also committed reversible error.<sup>7</sup>

"Good cause" is a totality-of-circumstances standard under which state courts apply a modified version of *forum non conveniens*—one that includes consideration of the child's best interests. *See In re Robert T.*, 200 Cal. App. 3d 657, 667 (1988) ("best interests" is an "*additional ground*" in addition to the *forum non conveniens* factors) (emphasis added); *C.E.H. v. L.M.W.*, 837 S.W.2d 947, 953 (Mo. App. 1992) ("The 'best interests of the child' have been considered valid considerations to determine whether or not to transfer jurisdiction." (citation omitted)); *In re N.L.*, 754 P.2d 863, 869 (Okla. 1988) ("best interests of the child may

<sup>&</sup>lt;sup>6</sup> It is worth emphasizing that there are two "good cause" standards one under Section 1911(b) and the other under Sections 1915(a) and (b), that do different work. Section 1911(b) deals with jurisdiction transfers, Sections 1915(a) and (b) deals with placement preferences. But both require courts to consider and give weight to the child's best interests.

<sup>&</sup>lt;sup>7</sup> The "good cause" inquiry is typically conducted in a full-fledged evidentiary hearing. *GRIC v. Dep't of Child Safety*, 395 P.3d 286, 288–89 ¶ 6 (Ariz. 2017) (trial court conducted evidentiary hearing to determine whether good cause existed under § 1911(b)).

prevent transfer of jurisdiction to a tribal court"); *In re M.E.M.*, 635 P.2d 1313, 1317 (Mont. 1981) ("best interests of the child could prevent transfer of jurisdiction" to tribal court); *In re JS-8287*, 828 P.2d 1245, 1251 (Ariz. App. 1991) ("A trial court properly may consider an Indian child's best interest when deciding whether to transfer a custody proceeding to tribal court.").

Even if the Court were to apply *only* traditional *forum non conveniens* factors—such as "ease of access to sources of proof; availability of compulsory process," and "other practical problems that make trial of a case easy, expeditious and inexpensive," *id.* at 1249; Restatement (Second) of Conflict of Laws § 84; R.C. § 3127.21 (listing UCCJEA *forum non conveniens* factors)—the transfer of jurisdiction should have been denied. All those factors show that Ohio courts are the *more* convenient forum. GRIC's tribal forum is located 2,000 miles away, and no relevant evidence is or has ever been located there. It is extraordinarily inconvenient.

But in addition to the traditional factors, the Juvenile Division was also obligated to consider C.J. Jr.'s best interests. *Cf. Daerr v. Daerr*, 41 Ohio App. 3d 206, 207, 534 N.E.2d 1229, 1230 (9th Dist. 1987) (in considering transfer of jurisdiction, "the child's best interest is the paramount factor"); *Mayor v. Mayor*, 71 Ohio App. 3d 789, 793, 595 N.E.2d 436, 438 (8th Dist. 1991) (Ohio courts determine which forum is more convenient with a view toward "protecting the best interests of the child"). It failed to do so—and any such consideration would have counseled against transfer.

It is simply not in C.J. Jr.'s best interest to transfer his case to a tribal court on an Arizona reservation where he has never been and which has no connection to him except an arbitrarily specified proportion of his genetic ancestry. C.J. Jr.'s birth parents live in Ohio; his mother lived and passed away in Ohio. C.J. Sr. resides in Ohio (and may not leave, because he is on probation). 11/2/16 Tr. at 36:17–37:4. His foster parents live in Ohio and have at all relevant times. C.J. Jr. is bonded to his birth father as much as he is bonded to his foster parents. And C.J. Jr. has expressed unambiguously that he is happy with his current arrangement and wants nothing to disrupt that. 16JU13594 GAL's Mot. Emergency Stay filed 12/28/16 at 2.

Returning to the *forum non conveniens* factors, "a court's accessibility to proof of a parent's unfitness is a principal factor on which a state court may decide to retain jurisdiction." *JS*-8287, 828 P.2d at 1249. The GRIC court is an inappropriate and inconvenient forum based on this

factor alone—and the Ohio forum is unquestionably the more appropriate and convenient one. Because jurisdiction is "predicate[d] ... on the residence of the litigants," *Fisher v. District Court of 16 Jud. Dist. of Mont. In and for Cnty. of Rosebud*, 424 U.S. 382, 389 n.14 (1976), and all individuals involved in this case are Ohio residents, domiciliaries, and citizens, there was no conceivable basis to transfer jurisdiction to GRIC's court.<sup>8</sup>

The doctrine of *forum non conveniens* permits a court to refuse to exercise jurisdiction if it is a seriously inconvenient forum for the action, and if another *more convenient forum* is available. Restatement (Second) of Conflict of Laws § 84. In *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947) (emphasis added), the Court held that "unless the balance is *strongly in favor*" of the party seeking transfer of jurisdiction, "the plaintiff"s choice of forum should *rarely be disturbed*." Thus the balance must tilt *heavily* in favor of GRIC before jurisdiction can be transferred to tribal court.

The doctrine of *forum non conveniens* also forbids a party from forum-shopping to obtain a change in substantive law—which is precisely

<sup>&</sup>lt;sup>8</sup> In *Fisher*, the tribal court had jurisdiction because all parties *resided on reservation*. Not so here.

what GRIC is attempting here. That is because any transfer of jurisdiction must carry into the new forum the law of the forum where suit was originally filed. Courts are especially sensitive to the anti-forum-shopping rule: "a party" may not "utilize a transfer to achieve a result in [its preferred] court which could not have been achieved in the courts of the State where the action was filed." *Van Dusen v. Barrack*, 376 U.S. 612, 638 (1964). The party seeking transfer should not "get a change of law as a bonus for a change of venue." *Id.* at 636. *See Ferens v. John Deere Co.*, 494 U.S. 516 (1990). Here, however, GRIC is seeking transfer out of Ohio court and into its own tribal court (in disregard of jurisdictional rules to begin with) precisely so that its own tribal code will apply instead of Ohio law. 15JU232 GRIC's Mot. to Transfer Jurisdiction dated 9/14/16 at 3.

In *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 (1981), the Supreme Court reiterated that the danger of forum-shopping should be a consideration in a transfer case and gave "substantial weight" to the "unfavorable change in law" that the transfer of jurisdiction would entail. The traditional *forum non conveniens* doctrine that applies here is even "stricter" than those federal rules developed under the venue-transfer statute that applied in that case. *See Norwood v. Kirkpatrick*, 349 U.S. 29, 30 (1955).

Yet the Juvenile Division simply ignored these factors. Thus, it committed serious error in not employing the traditional-plus version of *forum non conveniens* doctrine that applies to this case when it considered the tribe's jurisdiction transfer request under 25 U.S.C. § 1911(b).

# C. GRIC's tribal court lacks personal jurisdiction over C.J. Jr.

*Nobody* in this case (except GRIC itself, of course), has any "minimum contacts" required for GRIC's tribal court to exercise personal jurisdiction—and especially not C.J. Jr. Yet due process of law forbids the GRIC tribal court from exercising personal jurisdiction over him or any other party in the absence of "minimum contacts." *See International Shoe Co. v. State of Wash. Office of Unemployment Comp. & Placement*, 326 U.S. 310, 319 (1945).<sup>9</sup>

C.J. Jr. has *no* contacts with the GRIC tribal forum except his biological ancestry, which is not a constitutionally acceptable "minimum contact." *See id.* at 316 (minimum contacts must "not offend 'traditional

<sup>&</sup>lt;sup>9</sup> The "same due process standards" that "govern state court assertions of jurisdiction over nonresident[s] ... apply to tribal courts." *Red Fox v. Hettich*, 494 N.W.2d 638, 645 (S.D. 1993); *see also In re J.D.M.C.*, 739 N.W.2d 796, 811–13 ¶¶ 43–51 (S.D. 2007) (rejecting tribe's effort to transfer jurisdiction due to lack of minimum contacts).

notions of fair play and substantial justice." (citation omitted)).<sup>10</sup> This lack of personal jurisdiction is fatal to GRIC's attempt to get this case transferred to GRIC's court and also renders such transfer, were it to occur, unconstitutional.

These arguments were briefed fully in the GAL's opening brief in the 16AP-891 case in Sections I.A, II.A and II.B. For the sake of brevity, those arguments are not repeated here but instead are incorporated by reference as though fully set forth herein. 16AP891 GAL's Opening Br. at 6–7, 15–21.

<sup>&</sup>lt;sup>10</sup> There is no case on point of whether a person's genetic ancestry can constitutionally meet the "minimum contacts" requirement, but that is "for the perverse reason that the less support exists for a constitutional claim, the less likely it is that the claim has been raised or taken seriously before, and hence the less likely that [the Supreme] Court has previously rejected it. ... [It is] impossible to say anything against the claim except that there is nothing to be said *for* it—neither in text, tradition, nor jurisprudence . ... [T]hat alone suffices." *McKoy v. North Carolina*, 494 U.S. 433, 466–67 (1990) (Scalia, J., dissenting). An assertion of personal jurisdiction based on a person's race offends substantial justice because it violates due process to "impos[e] ... special disabilities" upon people based on "an immutable characteristic determined solely by the accident of birth." *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality).

#### **II.** Transfer of Custody

In addition to transferring jurisdiction, the Juvenile Division also transferred C.J. Jr.'s legal custody to tribal social services and his physical custody to strangers he has never met, in complete disregard of his best interests, and solely because of his racial or national origin. 12/22/16 J.; 12/13/16 Tribal Ct. Order.

Neither GRIC nor Birth Father obtained any ICPC approval, nor did they obtain a background check on M.P. and T.P. 11/2/16 Tr. at 124–25; 16JU13594 12/15/16 Tr. at 12–13. Moreover, the Juvenile Division did not evaluate whether there was "good cause" to depart from ICWA's racematching preferences given in 25 U.S.C. § 1915(b).

Part III.C of the GAL's opening brief in the 16AP-891 case is incorporated by reference as though fully set forth herein. 16AP891 GAL's Opening Br. at 25–29.

But there is also an easier way to resolve the transfer-of-custody issue. This Court should direct the Juvenile Division to conduct an evidentiary hearing to determine whether there was good cause under 25 U.S.C. § 1915(b) to deviate from ICWA's race-matching preferences. That standard also calls not only for evaluating the child's best interests, but for making those interests the paramount criterion of the good cause inquiry. *In re A-25525*, 667 P.2d 228, 234 (Ariz. App. 1983) (concluding that "the child's best interest may override a tribal or family interest" under ICWA §§ 1915(a), (b)); *C.L. v. P.C.S.*, 17 P.3d 769, 773 (Alaska 2001) ("best interests of the child remain the paramount criterion" in determining whether there is "good cause to deviate from the ICWA placement preferences"); *In re Alexandria P.*, 228 Cal. App. 4th 1322, 1355 (2014) ("The court also committed legal error by failing to consider Alexandria's best interests as part of its good cause determination ... to depart from the ICWA's placement preferences.").

Under that standard, there is a straightforward reason to deny transfer of C.J. Jr.'s custody to M.P. and T.P.: they are strangers he has never met. He is, by contrast, bonded to his foster parents, N.B. and S.B. He has lived with them since early 2015. In their home, he has visited with S.R. and C.J. Sr. He will continue to have frequent contact with C.J. Sr. in Ohio in the home of N.B. and S.B. because, as a result of the terms of his probation, C.J. Sr. is unable to leave the state. 11/2/16 Tr. at 36:17–37:4. In Arizona, he will have no such contacts, and will be separated from his caring foster family to be placed with strangers. *However* it is measured, it is in C.J. Jr.'s best interests to maintain his current placement with N.B. and S.B.

#### **III.** Full Faith and Credit

The Juvenile Division erred in giving full faith and credit to a selfserving *ex parte* order procured without adequate procedural safeguards by GRIC from its own courts. The myriad problems in giving full faith or credit to that order are adequately briefed in Part I of the GAL's opening brief in the 16AP-891 case. 2/23/17 Opening Br. at 5–15. Those arguments are incorporated by reference as if fully set forth herein.

The GAL's argument is unremarkable: Ohio courts unquestionably have jurisdiction over C.J. Jr.'s case. Opposing parties have offered no reason to upset that jurisdiction or to give the tribal court order any faith or credit.

## IV. The Procedural Arguments that GRIC or Birth Father Could Raise are Unavailing and Immaterial

GRIC and Birth Father have tried to distract the Court and divert its attention to matters that are immaterial and irrelevant to the questions presented here.

GRIC's multiple-case hypothesis is untenable. The *whole* of C.J. Jr.'s case is before this Court on appeal. The Existing Indian Family Doctrine is also not at issue here. The argument before this Court is that *Ohio* has a commitment to uphold the best interests of one of its most

vulnerable citizens against a procedure that violates the "minimum contacts" rule of due process, the race-neutrality rule of equal protection, the best-interests rule of Ohio state law, and the dictates of ordinary common sense and compassion. This Court should reject GRIC's and the Birth Father's efforts to distract it from the central issues in this case.

#### Conclusion

This Court, in C.J. Jr.'s best interests, should refuse to accord any faith or credit to the GRIC's tribal court order, reject the tribe's claim to jurisdiction, deny the transfer of jurisdiction to tribal court, and reverse the transfer of C.J. Jr.'s legal and physical custody. If the Court is inclined to address the weighty constitutional issues, it should conclude that the application of ICWA here is unconstitutional for reasons stated in the previous briefing in this case. If the Court is inclined to affirm or, for procedural reasons not address, any part of the Juvenile Division's decision, it should maintain the stay pending appeal so that C.J. Jr. by and through his GAL, can seek appropriate appellate review.

#### July 31, 2017

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## **CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2017, the foregoing was

electronically filed, using the e-filing system, which will send a notice of

electronic filing to parties of record and emailed to the parties as

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