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SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2024AP001845

In the Interest of G.L.W., a person under the age of 18:
MONROE COUNTY,
Petitioner-Respondent,

v.

T.B.,
Respondent-Appellant.

RESPONSE TO PETITION FOR REVIEW

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ISSUES PRESENTED

1. Did the trial court err regarding the denial of the petition for transfer of jurisdiction to tribal court?

The Wisconsin court of appeals answered no.

2. Did the court err in denying the mother's authority to make medical decisions for her child?

The Wisconsin court of appeals answered no.

CRITERIA FOR REVIEW

The Petition for Review should be denied as this case does not pose significant legal issues or meet the criteria set forth in § 809.62. The Supreme Court's primary function is not to correct errors that might have occurred in the lower courts, but instead to develop law. **State v. Mosely**, 102 Wis.2d 636, 307 N.W.2d 200 (1981). The decision of the Court of Appeals relied largely on rules of statutory interpretation which are well established. There are no alternative grounds not already reviewed by the Court of Appeals. The statement of facts supporting the decision are straightforward.

STATEMENT OF FACTS

A Petition for Protection or Services was filed under Wis. Stat. §48.13(10). The child's parent ...neglects, refuses, or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental or shelter so as to seriously endanger the physical health of the child. Little Gary is subject to the federal Indian and Child Welfare Act (ICWA). *See* 25 U.S.C. §1901-1963 and *See* Wis. Stat. §48.028. The tribe intervened in the case. (17) *See* Wis. Stat. §48.028(3)(e).

Mr. and Mrs. Brown filed a petition for transfer to tribal court. (28) Good cause was found to deny the transfer (139:35) based on the objection

of 12 year old Little Gary (32:1). A five-day jury trial commenced on December 18, 2023. Numerous witnesses were called as reflected in the court record. The jury returned a verdict finding Little Gary In Need of Protection or Services. (98) The court held a disposition hearing on January 17, 2024. (141)

ARGUMENT

A request was made by the parents to transfer the child protection or services case to the Ho-Chunk Nation Tribal Court. The 12 year old minor child that is the subject of the underlying case objected to the transfer to tribal court. There are numerous areas of the law that touch on the handling of matters involving Indian children. The Decision under review here was based upon Wis. Stat. § 48.028(3).

Jurisdiction over Indian child custody proceedings.

(a) Applicability. This section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to any Indian child custody proceeding regardless of whether the Indian child is in the legal custody or physical custody of an Indian parent, Indian custodian, extended family member, or other person at the commencement of the proceeding and whether the Indian child resides or is domiciled on or off of a reservation. A court assigned to exercise jurisdiction under this chapter may not determine whether this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to an Indian child custody proceeding based on whether the Indian child is part of an existing Indian family.

(b) Exclusive tribal jurisdiction.

1. An Indian tribe shall have exclusive jurisdiction over any Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except when that jurisdiction is otherwise vested in the state by federal law and except as provided in subd. 2. If an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence or domicile of the child.

2. Subdivision 1. does not prevent an Indian child who resides or is domiciled within a reservation, but who is temporarily located off the reservation, from being taken into and held in custody under ss. 48.19 to 48.21 in order to prevent imminent physical harm or damage to the Indian child. The person taking the Indian child into custody or the intake worker shall immediately release the Indian child from custody upon determining that holding the Indian child in custody is no longer necessary to prevent imminent physical damage or harm to the Indian child and shall expeditiously restore the Indian child to his or her parent or Indian custodian, release the Indian child to an appropriate official of the Indian child's tribe, or initiate an Indian child custody proceeding, as may be appropriate.

(c) Transfer of proceedings to tribe. In any Indian child custody proceeding under this chapter involving an out-of-home placement of, termination of parental rights to, or delegation of powers, as described in sub. (2) (d) 5., regarding, an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian child's parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies:

1. A parent of the Indian child objects to the transfer.
2. The Indian child's tribe does not have a tribal court, or the tribal court of the Indian child's tribe declines jurisdiction.
3. The court determines that good cause exists to deny the transfer. In determining whether **good cause exists to deny the transfer**, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child's tribe. The court may determine that good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence that any of the following applies:

a. The Indian child is 12 years of age or over and objects to the transfer.

b. The evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.

c. The Indian child's tribe received notice of the proceeding under sub. (4) (a), the tribe has not indicated to the court in writing that the tribe is monitoring the proceeding and may request a transfer at a later date, the petition for transfer is filed by the tribe, and the petition for transfer is filed more than 6 months after the tribe received notice of the proceeding or, if the proceeding is a termination of parental rights proceeding, more than 3 months after the tribe received notice of the proceeding.

Per the decision of the court of appeals, an argument was not raised to the court of appeals that the state statute § 48.028(3)(c) is inconsistent with the federal Indian and Child Welfare act, 25 U.S.C 1901 to 1963. The analysis required statutory interpretation and does not rise to the level of a statewide issue.

Additionally, there is no argument provided that supports review of the entry of the dispositional order denying the mother authority to make medical decisions for the child. The Court of Appeals noted that the mother did not argue that the order was improper on any other basis and hence rejected the challenge as unsupported by legal authority. There is no argument resented here that overcomes that conclusion.

Wis. Stat. §48.028(3) does not explicitly require communication with the tribal court before ruling on good cause to deny a transfer. However, the

statute does outline the conditions under which a state court may determine that good cause exists to deny the transfer of an Indian juvenile custody proceeding to a tribal court. Specifically, the court must not consider any perceived inadequacy of the tribal social services department or the tribal court and must base its decision on clear and convincing evidence that certain conditions apply, such as undue hardship in presenting evidence or testimony in the tribal court. Here a good cause finding was made to deny the transfer based on the objection of the 12 year old minor child which will be discussed later in the brief.

The circuit court relied upon Wis. Stat. §48.028(3) to frame the determination for good cause. The minor child that was 12 years or older objected. All parties had an opportunity to present their views on the record. This statute is consistent with the regulation and guidance and here the court followed the law. There is no mandate to communicate with the tribal court before making a decision and chapter 48 specifically provides guidance for what is good cause.

The court of appeals distinguished **Brown County v. Marcella G.**, 2001 WI App 194, ¶14, 247 Wis. 2d 158, 634 N.W.2d 140 on two points: 1) unlike **Marcella**, the circuit court in this case properly denied the mother's transfer petition based on one of the statutory prerequisites for denial, good cause and 2) unlike in **Marcella G.**, no tribal court order accepting jurisdiction was presented here. Therefore, no follow-up with the tribal court was required once the circuit court denied the transfer petition based on the existence of good cause, under the above-stated plain language analysis of WIS. STAT. § 48.028(3)(c)3. and the quoted language of 25 U.S.C. § 1911(b).

There is an insufficient argument related to the medical authorization and the Court of Appeals decision is clear that the argument was rejected based on unsupported relevant legal authority.

CONCLUSION

The Court should deny the mother's petition for review.

Dated this 12th day of May, 2025.

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 1591 words.

Dated this 12th day of May, 2025.

Electronically signed by

Lisa Aldinger Hamblin

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