



# Summer 2013 Adoptalk

## Legal Battle Continues for Veronica

by *Mary Boo, assistant director, and Joe Krull, executive director*

As *Adoptalk* went to press on July 31, legal maneuvers continued over custody of Veronica Brown, a three-year-old girl at the center of a contested adoption. On July 17, the South Carolina Supreme Court decided Veronica should move from her father's home, where she has lived for the last 19 months, to live with her prospective adoptive parents in South Carolina. The court ordered a family court to finalize the Capobiancos' adoption of Veronica and denied the birth father's appeal. In a ruling issued June 26, the U.S. Supreme Court had returned the case to the state level after finding the Indian Children Welfare Act (ICWA) did not apply to birth father Dusten Brown, and therefore his parental rights could be terminated.

Hours before the South Carolina ruling, the Cherokee Nation—of which Dusten is a member and Veronica is eligible for enrollment—granted tem-

porary guardianship of Veronica to Dusten's family since he is currently deployed as a member of the National Guard. Dusten and the Cherokee Nation have also filed for an injunction from the U.S. Supreme Court, stating that the South Carolina Supreme Court misread the higher court's ruling by not calling for a hearing on Veronica's best interests.

Three national tribal organizations are preparing to file a lawsuit claiming the lack of a best interest hearing violates Veronica's civil rights. Veronica's birth mother—who wants the girl to be adopted by the Capobiancos—has filed suit against U.S. attorney general Eric Holder, claiming parts of ICWA are unconstitutional. It seems a number of legal battles remain before any final decision is reached about where Veronica will live.

We at NACAC are extremely disappointed the South Carolina Supreme Court didn't think a hearing was necessary to determine what was in Veronica's best interests. We hold out hope that Veronica will remain with her father in Oklahoma, but know that no matter what happens, this case has no winner and no fairy tale ending. Contested adoptions such as this are deeply painful, with the child and both sets of parents hurt in the process. Although it is too late to spare Veronica and her birth and prospective adoptive parents the pain this case has already caused, we call on the adoption community to follow the best possible practice standards to ensure children's interests and birth parents' rights are protected in future cases.

### Background

Veronica was born in September 2009 after her birth mother had broken up with fiancé Dusten Brown. At birth, Veronica was placed, without Dusten's knowledge, with prospective adopters Matt and Melanie Capobianco in South Carolina. During the process, the Cherokee Nation was notified about the adoption but the notice misspelled Dusten's name and gave the wrong birth date. Since the tribe did not find an enrolled member with that information, it did not intervene.

Four months after Veronica was born, as Dusten was preparing for deployment to Iraq, he was served with adoption papers. Dusten signed the papers believing he was giving custodial rights to the birth mother. Once he realized he had just signed adoption papers, Dusten immediately began the process of contesting the adoption, employing ICWA in his battle to keep his daughter. While birth fathers have limited legal rights in infant adoption proceedings in many states—including Oklahoma and South Carolina—ICWA has a number of provisions designed to better protect birth parents.

A law protecting active duty military members put the case on hold while Dusten served overseas. As a result, Veronica spent her first 27 months with the Capobiancos before the South Carolina family court ruled that ICWA prevented the termination of Dusten's parental rights. The court granted custody to Dusten and, 19 months ago, Veronica moved to Oklahoma to live with Dusten, his wife Robin, and Dusten's older daughter. The South Carolina Supreme Court upheld the lower court's decision, allowing Veronica to remain with her father.

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On June 26, the U.S. Supreme Court ruled that Dusten did not have “continued custody” of Veronica. Therefore two provisions of the law using the continued custody language did not apply and did not prevent termination of his parental rights.

The court also found that ICWA’s adoption placement preferences apply only if there are competing families seeking to adopt an Indian child. In adoption decisions, ICWA gives placement priority first to relatives, then to other tribal members, next to other Indian families, and finally to other prospective adopters. In its decision, the court noted that if Dusten had wanted to parent Veronica he should have sought to adopt her. Justice Scalia noted in his dissent that this interpretation “needlessly demeans the rights of parenthood.”

Although Dusten and his wife filed for both custody and for adoption after the U.S. Supreme Court ruling, the South Carolina Supreme Court ruled that Veronica’s adoption by the Capobiancos should be finalized.

### **A Weakened ICWA Remains Law**

Passed in 1978, ICWA was created to curtail practices that separated so

many Indian children from their families and tribes and to recognize the sovereignty of tribal governments. Before ICWA, far too many Indian children were removed from their homes, and the vast majority were placed in non-Indian families.

The U.S. Supreme Court did not find ICWA to be unconstitutional, but its ruling narrowed the application of ICWA in future cases. In its interpretation, the court majority seemed to ignore ICWA’s original intent, which was to keep Indian children with their families whenever possible. As Justice Sotomayor wrote in her dissent, “The majority openly professes its aversion to Congress’s explicitly stated purpose in enacting the statute.”

As a result of the ruling:

- Parents who had no physical or legal custody of a child are not guaranteed active efforts to provide services and support that would keep the child with the Indian family before parental rights can be terminated.
- Noncustodial parents are also not protected by the provision that prevents termination of parental rights without convincing evidence that continued custody is likely to result in harm to the child.
- ICWA’s placement preferences do not take effect unless a competing adoption petition is filed. This portion of the ruling could have a profound effect on private adoption for Indian children.

It is unclear how the ruling will affect application of ICWA in foster care cases, especially cases where a birth parent never had custody. Because Justice Breyer expressed concerns in his concurrence about making the ruling too broad, it is likely the narrowing of ICWA will apply only in circumstances much like those of Veronica’s case.

Because the court’s ruling was based on legal interpretation—rather than on constitutional grounds—Congress can amend the law and restore its original intent of preserving Indian fami-

lies and maintaining children’s connection with their culture. We encourage Congress to act now to ensure all of ICWA’s protections remain in place for Indian children and families.

NACAC has long supported ICWA and its protections for Native American children and families, and its acknowledgement that tribes have sovereignty in child welfare decisions involving the tribe’s citizens. We believe the law helps protect both children and birth parents—and that protections such as those outlined in ICWA should be applied to *all* families whenever possible.

### **Best Practices Protect Children and Parents**

Although the Supreme Court case here revolved around ICWA, this case seems to us to be a birth parent rights case like the Baby Jessica and Baby Richard cases of the 1990s—cases where birth fathers were not properly informed about an adoption and chose to parent their child.

Involving and informing birth fathers is simply good adoption practice. As the Child Welfare League of America’s Standards of Excellence for Adoption Services state:

- “The agency providing adoption services should provide services to birth fathers equivalent to those it provides for birth mothers. Birth fathers have the right to parent their children, with or without the birth mother.”
- “Services to birth fathers should include counseling, support for informed decisionmaking....”
- Both birth parents should be supported and fully informed regarding an adoption.
- The child welfare or adoption agency should not accept a voluntary relinquishment of a child until “birth parents have received full and accurate information about the consequences” of their decision and have had “an opportunity to reach a deci-

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# Adoptalk

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Comments and contributions welcome!

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sion that they recognize is best for both themselves and the child.”

If there is disagreement between the parents, the Standards say “skillful counseling should be provided to help all parties reach agreement whenever possible.”

Tragically, that didn’t happen in this case. There was an acknowledged father who wasn’t told about the adoption plan and wasn’t given an opportunity to exercise his rights until four months after the placement—six or seven months after the mother began working with professionals related to the adoption. There was no counseling and no discussion of options for Dusten—he was handed a document to sign while he was at the mall and then was fought at every turn.

It is good practice to engage fathers from the beginning. But it’s not just about protecting the father or ensuring the child has an opportunity to be raised by a biological parent. It can save tremendous pain for prospective

adoptive parents and prevent wasted time and energy on the part of adoption practitioners. As a former president of the American Academy of Adoption Attorneys said in a 2001 *Adoptive Families* magazine article, addressing birth fathers from day one is “the number one way to avoid contested adoptions.”

The delay in Dusten’s notification is particularly distressing. The adoption plan was in place for many, many months and no one notified him. While we know birth fathers are often ignored, it is certainly not a best practice. The intense pain of this case—on all sides—could easily have been avoided if the professionals involved had contacted Dusten when adoption discussions began.

## Conclusion

No matter how this case ends, hearts will be broken. Dusten and his family love Veronica, as do the Capobiancos. Both are fighting to parent a little girl they believe to be theirs. Our hearts and thoughts go out to all of them, but especially to Veronica. We can and should do better for other children in future adoption cases. ♦

## Resources...

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### **Making Medicaid Work for Children in Child Welfare: Examples from the Field**

*Sheila Pires and Beth Stroul. 2013.* Given fragmentation among systems, it is often difficult for children in foster care to get the health care they need. In this report, authors interviewed representatives from four states that have developed innovative strategies to partner across their child welfare, behavioral health, and Medicaid agencies to maximize Medicaid’s effectiveness for this population. The brief synthesizes state strategies into eight key areas and lessons. [www.chcs.org/publications/3960/publications\\_show.htm?doc\\_id=1261531#.UctY2b-MXzK](http://www.chcs.org/publications/3960/publications_show.htm?doc_id=1261531#.UctY2b-MXzK)

### **Fact Sheets & Toolkits**

#### **Facilitating an Adult Adoption as a Pathway to Permanence for Older Youth**

*National Resource Center on Permanency and Family Connections. 2013.* This publication highlights a pathway to permanent family connection for those 18 and older who haven’t achieved permanency. It explores the steps to facilitate an adult adoption, discusses common reasons for pursuing this option, and offers state-specific resources. [www.nrcpfc.org/is/downloads/Adult%20Adoption.pdf](http://www.nrcpfc.org/is/downloads/Adult%20Adoption.pdf)

#### **Openness in Adoption: Building Relationships between Adoptive and Birth Families**

*Child Welfare Information Gateway. 2013.* This fact sheet for parents explains the what and why of open adoption. Presenting types of open adoption and how it may change over time, the sheet describes the benefits of—and strategies for—maintaining an open adoption. It also guides parents through deciding if openness is the right choice. [https://www.childwelfare.gov/pubs/f\\_openadopt.cfm](https://www.childwelfare.gov/pubs/f_openadopt.cfm)

#### **Working with Birth and Adoptive Families to Support Open Adoption**

*Child Welfare Information Gateway. 2013.* This bulletin guides profession-



## Kirstie & Williams

William, who turned 15 in July, is very lively and full of energy. He loves playing outside and enjoys living in the country, where he can ride horses. A very loving child, William likes to give lots of hugs and kisses. William looks forward to vacations, school (where he just completed eighth grade), and birthdays.

Eleven-year-old Kirstie, who just finished fifth grade, enjoys wearing dresses and is very fond of purses. Her favorite colors are purple and pink. Kirstie loves to be hugged and kissed, and likes to please others by helping. For fun, Kirstie loves to dance, play on the trampoline, watch movies, draw, swim, go to summer camp, and ride her bike. She likes watermelon, macaroni and cheese, and basically all food.

Unfortunately, these two siblings were recently separated when their foster parents’ contract expired. Could you be the consistent, patient family that will bring William and Kirstie back together? For more information, contact Liz Ross at the Midwest Foster Care and Adoption Association: 816-914-8182 or [liz@mfaaa.org](mailto:liz@mfaaa.org). ♦