Carrie Janto - Tribal transfer

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Hi Julie,

I wanted to send you my thoughts on some of the comments raised at the administrative conference on Friday.

1. **Transferring not only child support, but also custody and placement, to the tribes**. There is no requirement in federal law that either states or tribes enforce physical placement or custody provisions in an order. However, as a practical reality, the two go hand in hand and the federal government has realized this through the enactment of the "Grants to States for Access and Visitation" Program (42 U.S.C. 669b) as a part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of this program is to "..to enable States to establish and administer programs to support and facilitate non-custodial parents' access to and visitation of their children...

Additionally, calculation of support is dependent on the physical placement of the chidlren. Under Wisconsin's guidelines, a noncustodial parent begins to receive a credit against the amount of child support owed as soon as they reach 25% placement which is considered standard placement-every other weekend and two weeks in the summer. It would create an administrative nightmare to have the responsibility for placement in state court and the child support in tribal court.

Justice Roggensack also noted that she did not think this amendment was necessary because these transfers were already being done. However, all of the existing tribal IV-D programs are quite small and the cases transferred confined in large part to a few small counties where the courts have simply made it work. The Oneida Nation transfer involves a much large number of cases spread across the entire state and without a clear determination of which court has jurisdiction under the new rule, we are exposing the parties to additional litigation and forum shopping.

2. **UIFSA** I do not see anything in UIFSA, chapter 769 of the Wisconsin statutes, as having any bearing on determinations for discretionary transfer to a tribal court. The purpose of UIFSA is to ensure that there is only one controlling order in cases where one or more of the parties leaves the original jurisdiction. Tribes are not required to enact UIFSA; however, those that do are bound by its provisions. As long as the state of Wisconsin has the authority under UIFSA to enforce or modify an order under UIFSA, the state could transfer its jurisdiction to the tribe without any further consideration of any factors under UIFSA.

3. **Family Support and Maintenance** The federal government does provide funding to state child support programs to enforce family support and maintenance orders. The only restriction on maintenance orders is that the state IV-D program must also be enforcing a child support order in the same case. (See 4 USC 654(4)(B)(ii) and 45 CFR 302.31(a)(2)). Federal law is silent with respect to the tribal requirements to enforce maintenance orders. The Oneida Nation did not pass any tribal ordinance governing the enforcement of maintenance and they have no laws granting the tribal courts authority to estabish maintenance orders. Accordingly, the state does not intend to transfer any family support or maintenance orders to the tribe. If a tribal member would like to have the tribe assume jurisdiction of their case and they have either a family support or maintenance order, they would first need to return to state court to have the order modified to include separate maintenance and child support provisions and then only jurisdiction of the child support provision would be transferred to the tribe.

4. **Due Process.** Just a note that in the federal regulations governing tribal child support, 45 CFR 309.65(a)(3) which governs what a tribe must include in their IV-D plan in order to demonstrate capacity to operate a IV-D program provides :
(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal IV-D program, including establishment of paternity, and establishment, modification, and enforcement of support orders."

Additionally, there is a footnote to s. 801.54 that does require the court, as a factor in its determination, to consider whether the parties will receive similar rights under tribal law.

5. **Concurrent Jurisdiction**. I realize this goes beyond the scope of our amendment; however, the Supreme Court held in the Montana case that tribes retain their inherent power to, among other things, regulate domestic relations among members. Additionally, the court in Montana held that a tribe may regulate the activities of nonmembers who enter consensual relationships with the tribe or its members. It's my understanding that the term 'consensual relations' has long been interpreted to include domestic relations and has served as a basis for the tribes assuming jurisdiction in domestic violence cases.

6. **Caseload.** The fact that there were 4000 cases to be transferred seemed like a large number. It might not if you look at it in context. We have over 150,000 cases statewide affecting over 300,000 children. So it's actually only about 2.5% of the state's caseload.

I hope this is helpful. Thanks again for all your work on this.

Connie

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