

NACC envisions a justice system wherein every child has his/her voice heard with the assistance of well-trained, well-resourced independent lawyers resulting in the child's rights being protected and needs being met.

A Message from NACC Executive Director, Kendall Marlowe



"I needed that," said an attorney to her boss as they left the NACC conference's keynote address to walk to the next breakout session. With tears on her cheeks, she said *"I didn't even know it until now, but I really needed that..."*

That attorney wasn't the only one inspired by Bryan Stevenson's speech at our conference in Atlanta. Many of you have spoken with us at the conference and afterwards to say the 36th annual child law conference was one of our very best. Speaker after speaker reminded us why we do this work, and called us to do more. For many of us, that call to action was reinforced by seeing over 500 of our colleagues, and understanding that we're not alone in fighting for better futures for the kids and families we represent.

Our collective strength is our greatest asset. Among our nearly 2,000 members are respected experts in every facet of child and family law, and we can accomplish so much more by working together. I asked at the conference that members call or write me to build new partnerships and

relationships toward our shared goals, and you have responded. Members are telling me they want to honor our commitment to improving all areas of child and family law, and that they want to be more effective in advocating for systems reform. We're already working on ways to make that happen, whether by partnering with some of the major national advocacy organizations that have approached us in recent months, or by forming our own informal workgroups of NACC members dedicated to reform on specific issues in their state.

You are a part of the leading national organization of professionals dedicated to improving and reforming legal systems for the sake of vulnerable children and their families. Only you can take the first step, but you have so many fellow members eager to walk with you on that journey. The conference was only the beginning; let's talk soon about how I can support your work, and how we can succeed together. I look forward to hearing from you!

Thanks,

Kendall Marlowe

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In This Issue

A Message from NACC Executive Director, Kendall Marlowe	1
Case	2
Adoptive Parents v. Baby Girl	2
NACC Welcomes Andrew Yost	3
Affiliate News	4
NACC Board of Directors Elections	4

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Case

Adoptive Parents v. Baby Girl

This case involves a Cherokee child (“Baby Girl”), the adoption of Baby Girl, and the ultimate ruling of her adoption to non-Indian parents. After the biological mother and father separated, the biological father (“father”), serving in the United States Army and also a registered member of the Cherokee Nation, did not support the biological mother (“mother”) with pregnancy related expenses even though he had the ability to do so.¹ The father was unaware that the mother intended to place the child into adoptive services and testified that he would not have relinquished his rights had he known.² Because the mother was struggling financially, she came into contact with the adoptive mother and father (“Adoptive Parents”).³ The Adoptive Parents financially supported the biological mother in the last months of her pregnancy and ultimately upon the child’s birth on September 15, 2009.⁴ The father knew of the mother’s due date, yet made no attempts to contact or support her.⁵ Concededly, the father admitted that his actions did not mirror

1. *Adoptive Couple v. Baby Girl*, 398 S.C. 625, 630 (2012).
2. *Id.* at 631.
3. *Id.*
4. *Id.* at 633.
5. *Id.* at 634.

that of a supportive father.⁶ However, it is contested whether the mother disclaimed the Indian heritage of Baby Girl to the adoption services or to the Adoptive Parents.⁷ It is also contested whether she made attempts to hide Baby Girl’s Indian heritage.⁸ The Adoptive Parents, pursuant to the Oklahoma Interstate Compact on the Placement of Children, were required to receive consent from the State of Oklahoma to remove the newly born child from the State.⁹ Had the Cherokee Nation known of Baby Girl, her removal from the State of Oklahoma would not have been permitted.¹⁰ The Adoptive Parents then filed the adoption action in the State of South Carolina and then notified the biological father of the adoption action.¹¹

After signing forms stating that he would not contest the adoption of the child, the father contacted an attorney and filed a summons and complaint in an Oklahoma district court to establish paternity, child custody, and support of Baby Girl.¹² The Adoptive Parents and the mother filed a motion to dismiss the biological father’s action on jurisdictional grounds, which was thereby granted.¹³ The Oklahoma district court confirmed the venue and jurisdiction in Charleston County Family Court (“family court”).¹⁴ The Cherokee Nation then identified the father as a registered member and determined that Baby Girl was an “Indian Child” as defined in the Federal Indian Child Welfare Act (“ICWA”).¹⁵ Pursuant to this realization, the Cherokee

6. *Id.* at 631.
7. *Id.* at 632.
8. *Id.* at 632-33.
9. *Id.* at 633.
10. *Id.*
11. *Id.*
12. *Id.* at 634.
13. *Id.*
14. *Id.* at 635.
15. *Id.*

Nation filed a Notice of Intervention.¹⁶ The family court found that (i) ICWA applied, (ii) the biological father did not voluntarily consent to the termination of his parental right or the adoption, and (iii) the Adoptive Parents failed to prove that the biological father’s custody would result in emotional or physical damage to Baby Girl.¹⁷ Adoptive Parents appealed the district court’s ruling.¹⁸

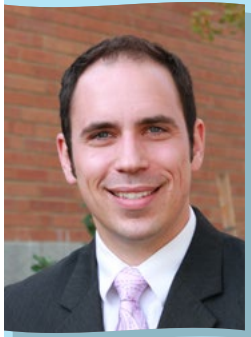
The Supreme Court of South Carolina confirmed the district court’s rulings finding that (i) ICWA does apply as “[I]t is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes...”;¹⁹ (ii) under the standards of ICWA, the biological father did not meet the said standards to voluntarily or involuntarily terminate his parental interest;²⁰ and (iii) it could not be proven beyond a reasonable doubt that the father’s custody of Baby Girl would result in the child’s emotional or physical harm. Thereby, the South Carolina Supreme Court could not terminate the biological father’s parental rights.²¹

On appeal, the Supreme Court of the United States (“the Court”) reversed and remanded the South Carolina Supreme Court’s rulings. The Court held that: (i) the ICWA section addressing involuntary termination of parental rights of an Indian child do not apply when the Indian parent never had custody, (ii) efforts to provide remedial services and rehabilitative programs designed to prevent breakup of Indian family do not apply when the Indian parent abandoned the child prior to birth and the child had never been in Indian parent’s

[See Case, next page »](#)

16. *Id.*
17. *Id.* at 636.
18. *Id.*
19. *Id.* at 640.
20. *Id.* at 645-47.
21. *Id.* at 657.

NACC Welcomes Andrew Yost



If you have any questions regarding child welfare law and practice, curriculum development, or the NACC training program, feel free to contact Andrew at: d.andrew.yost@childrenscolorado.org.

The NACC is happy to welcome its newest staff attorney, Andrew Yost. Andrew runs the NACC training program. He became interested in child welfare as a teacher for “at risk” youth in Denver, Colorado. Before his legal career, Andrew earned a BA and MA in philosophy of religion and theology, respectively. Andrew has taught across grade levels, from secondary school to the university, and in several different states, including Ohio, Massachusetts, Hawaii, and Colorado. Andrew clerked at the NACC during law school, and has since returned to pursue a career serving children and families. Andrew is licensed to practice law in Ohio and Colorado.

The NACC training program has recently undergone a needs assessment and review. The results of the assessment were encouraging, but there is still much to be done. In July the NACC revised its training offerings to reflect current needs in child welfare instruction. We composed a Child Welfare Trainings course catalogue, which was distributed at the Atlanta conference. Moreover, the NACC is actively working with states to develop jurisdiction-specific child welfare trial skills programs. These small, practice-heavy courses are designed to maximize student interaction and allow students to apply their knowledge in a mock courtroom setting. And of course the NACC continues to update and revise its Red Book training to reflect current law and policy in child welfare. During the next fiscal year we will revisit the pedagogical methods traditionally used to teach the Red Book Training with the hopes of diversifying content delivery. Stay tuned!

» Case from page 2

custody, and (iii) ICWA does not bar a non-Indian family from adopting an Indian child.²²

On remand, the South Carolina Supreme Court held: (i) ICWA placement preferences did not apply and (ii) the biological father’s consent to adoption was not required. The South Carolina Supreme Court then remanded the case to the family court to finalize the Adoptive Parent’s adoption of Baby Girl and terminating the biological father’s parental rights.²³ As the South Carolina Supreme Court stated, “[T]he orders of this Court following remand from the USSC leave nothing further to be decided by the family court. Accordingly, the family court shall forthwith approve the adoption and award legal custody to the Adoptive Couple.”²⁴

Devon Bell, NACC Fellow

» [View case & Supreme Court Syllabus](#)

NOTICE TO READERS : Decisions reported herein may not be final. Case history should always be checked before relying on a case. Cases and other material reported are intended for educational purposes and should not be considered legal advice. Featured cases are identified by NACC staff and our members. We encourage all readers to submit cases. If you are unable to obtain the full text of a case, please contact the NACC and we will be happy to furnish NACC members with a copy at no charge.

22. Adoptive Couple v. Baby Girl, 133 S. Ct. 2552 (2013).

23. Adoptive Couple v. Baby Girl, 404 S.C. 483 (2013).

24. Adoptive Couple v. Baby Girl, 404 S.C. 490, 492-93 (2013).

Do you know of an important case which you feel NACC members should be made aware of?



If so, please let us know. Email: advocate@childrenscolorado.org.



Affiliate News

Florida Lawyers Vow to Do What's Best for Children and Defend the Attorney-Client Privilege

West Palm Beach, FL – The Florida Association of Counsel for Children announces its intention to fight against any efforts by the Guardian Ad Litem Program or the Department of Children and Families to convince the Legislature to gut the attorney-client privilege for children.

Both the GAL Program and DCF recently lost a case before the 3rd District Court of Appeal in which a runaway teenager confided in his attorney, but not his GAL or DCF case worker, as to his whereabouts. When the GAL Program and DCF tried to force the attorney to reveal the client's whereabouts, the appellate court in Miami ruled that the attorney-client privilege protected ALL communication between the teenager and his counsel. The Court added that, had the young person not had an attorney, no adult would have known his whereabouts. The child felt comfortable sharing information with his attorney because he knew such information would be kept confidential.

Foster children need someone to confide in. An attorney for a child is both professionally trained and ethically bound to counsel and advise the client as to the best course of action. DCF and the GAL Program fought hard to convince the Court to deny children one of the most basic rights all people enjoy – a confidential communication with one's attorney. Having lost in the courts, it is expected that the two organizations will now turn to the Legislature in an attempt to pass a law that would harm foster children by taking away the one person they can confidentially confide in, and whose sole responsibility is to protect their legal and best interests.

Such a law would be unprecedented. It is hard to understand why these two organizations, who profess to be concerned with the best interests of children in the child welfare system, would seek to do something so detrimental to the best interests of children.

The Florida Association of Counsel for Children is the state chapter of the National Association of Counsel for Children. FACC is composed of child advocates dedicated to seeing that every foster child is provided her or his own attorney to represent him or her, just as DCF, the GAL Program, and the parents are all provided attorneys to represent them. FACC believes a major shortcoming in the Florida child welfare system is the failure to provide attorney representation to the children who have the most rights to protect and the most to lose in these cases. A vital part of that representation is the right to confidentiality between the child and his or her attorney. FACC vows to protect that right because it is unquestionably the best thing for Florida's foster children.

For more information contact Louis M. Reidenberg: 954-294-7283.



NACC Board of Directors Elections

Officers

At our annual meeting of the NACC Board of Directors on August 25, 2013, elections were held for officers of the Board. Please congratulate these officers for the 2014-2015 term, effective January 1, 2014:

Gerard F. Glynn, MS, JD, LL.M.	President
H.D. Kirkpatrick, PhD, ABPP	Vice President
Leslie Heimov, JD, CWLS	Treasurer
Linda Weinerman, JD	Secretary
Janet Sherwood, JD, CWLS	Immediate Past President

Board Members

In addition, the Board approved the following candidates to stand for election by the membership to the Board of Directors for six-year terms, effective January 1, 2014:

Candi M. Mayes, JD, CWLS Ms. Mayes is currently the CEO and Executive Director of the Dependency Legal Group of San Diego. She holds a JD from the University of San Diego School of Law, and has presented and trained on a wide range of issues for state, national and international conferences. Her career has included direct representation of both children and parents, as well as service on multiple advisory boards, committees and workgroups in the field of child welfare law.

Judith Waksberg, JD Ms. Waksberg is currently the Director of the Juvenile Rights Practice Appeals Unit of the Legal Aid Society in New York. She holds a JD from the New York University School of Law, and has trained and published extensively on appellate and practice issues for attorneys representing children and parents. Her career has included representation in criminal courts, as well as juvenile dependency and delinquency cases.

Please cast your online vote in the NACC Board of Directors election by October 31.



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