IN THE CHOCTAW SUPREME COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS

IN THE MATTER OF THE ADOPTION OF K.S., A MINOR CHILD NAMED IN THE PETITION

CASE NO. SC-2006-01

HUDDLESTON SOLOMON
AND CYNTHIA SOLOMON
APPELLANTS

MEMORANDUM OPINION AND ORDER

VS.

DINA MAE SHOEMAKE, JOHN DOE,
AND CHOCTAW SOCIAL SERVICES
APPELLEES

(Per curiam, Chief Justice, Pro Tem Roseanna Thompson, Associate Justices Frank Pommersheim and Carey Vicenti)

I. Introduction

On November 18, 2003, Huddleston and Cynthia Solomon, Plaintiffs/Appellants, and members of the Mississippi Band of Choctaw, adopted the eleven year old minor child, K.S., who is also a Tribal member. The adoptive parents and Choctaw Social Services, for reasons that are not explained in the record, waived the interlocutory waiting period as well as the medical and social history.[1] The adoption promptly confronted difficulties in which K.S., in separate instances, assaulted his adoptive father and broke his four year old adoptive brother's arm.

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[1] See Mississippi Band of Choctaw Code § 11-7-2 (12) which provides:

> Trial Period: A time period for the adoptive parent and child, ranging from three to six months, more or less, according to the ruling of the court, to insure proper adoption placements. The trial period is optional, according to the ruling of the court.

These requirements are discretionary not mandatory and although not an issue in this case, they ought not to be waived except in exceptional circumstances. These requirements are meant to assure the adoptive parents, the adopted child, and the Tribe itself that any proposed adoption is truly in the best interests of the child and all health and bonding issues point to legally approving the adoption. Their waiver in this case was a likely factor in the ensuing difficulties that led to the quite unusual circumstances of the adoptive parents seeking to have their parental rights terminated.

Approximately one year later the adoptive parents brought an action in Tribal court pursuant to Choctaw Tribal Code § 11-5-2 (b)(ii)[2] to terminate their parental rights. On December 14, 2004, Choctaw Social Services took custody of K.S. Both Choctaw Social Services and Mr. Kiley Catledge Kirk, Guardian ad litem for K.S., agreed that the termination of the parental rights of Huddleston and Cynthia Solomon would be in the "best interests of the child." The Youth Court issued its order terminating parental rights on February 8, 2006 specifically finding:

> The best interest of the minor child, namely Kendrick Solomon, born August 20, 1992, will be served by terminating the parental rights of the Petitioners, Huddleston Solomon and Cynthia Solomon, due to the deterioration of the relationship between the parents and the minor child. The Court also considered the deteriorating physical condition of the Petitioner, Huddleston Solomon.

Although there was no request made by Choctaw Social Services, the Court nevertheless ordered that the Solomons pay child support in the amount of $326/month.[3] This appeal followed.

II. Issue

The sole issue in this case is whether the Youth Court properly ordered the adoptive parents, whose parental rights were terminated, to pay child support.

III. Discussion

The Choctaw Tribal Code does not expressly authorize the imposition of child support on individuals whose parental rights have been terminated.[4] While there is no express Tribal Code

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[2] Mississippi Band of Choctaw Tribal Code § 11-5-2(b)(ii) provides:

§ 11-5-2. Petition: Form of and By Whom Filed

(b)(ii) Both parents of the child pursuant to a voluntary decision to give up their parental rights,

[3] The Report of the guardian ad litem did request an award of child support.

[4] Mississippi Band of Choctaw Tribal Code § 11-5-9 (Dispositional Alternatives) provides:

§ 11-5-9. Dispositional Alternatives

(a) If parental rights to a child are terminated, the Youth Court shall:

(1) Place the minor in a relative care placement which has been approved by the

provision that prohibits the award of child support upon the termination of parental rights, this is likely so because the overwhelming rule is to the contrary. Neither side in this case cited a single case in which a court – state or tribal – awarded child support against (adoptive) parents whose parental rights were terminated. As noted by the California Court of Appeals:

> We conclude that an order terminating parental rights completely severs the parent-child relationship and deprives the court of the authority to make an award of child support.[5]

Courts have also uniformly denied petitions to terminate parental rights based on the desire to escape child support responsibilities. *See, e.g.*, In re Bruce P., 662 A.2d 107 (Ct. 1995).

No court of the Mississippi Band of Choctaw Indians has ever awarded child support in a termination of parental rights proceeding. This Court finds no reason to depart from uniform line of thinking. It would be especially unfortunate to depart this rule for adoptive parents and thus potentially create an (inadvertent) disincentive to the important and significant process of Tribal adoption.

Youth Court.
(2) Place the minor in a foster care or shelter care situation or facility which has been approved by the tribe; and
(3) Proceed to the adoption section of the tribal Code.
(b) If parental rights are not terminated, the Choctaw Youth Court shall make a disposition according to § 11-4-29 or 11-7-23 of this Title.
(c) The termination order constitutes a final order for purposes of appeal, however adoption proceedings shall not be commenced until the parent(s) has exhausted all appeals from order terminating parental rights.

[5] County of Ventura v. Gonzales, 106 Cal.Reptr.2d 461, 462 (Cal. App. 2 Dist. 2001). *See also* Erwin v. Luna, 443 So.2d 1242, 1244 (Ala. Civ. App. 1983); In re Bruce R., 662 A.2d 107, 111 (Conn. 1995); Porter v. Tabares, 711 So.2d 125, 126 (Fla. Ct. App. 1998); Department of Human Resources v. Ammons, 426 S.E.2d 901, 902 (Ga. Ct. App. 1993); Kansas ex. Rel. Secretary of Social and Rehabilitative Services c. Clear, 804 P.2d 961, 966 (Kan. 1991); Mauls v. Mauls, 873 S.W.2d 213, 216 (Ky. Ct. App. 1994); Louisiana v. Smith, 571 So.2d 746, 748 (La. Ct. App. 1990); In re Estate of Bruce, 452 N.W.2d 686, 688 (Minn. 1990); Schleismen v. Schliesmen, 989 S.W.2d 664, 671 (Mo. Ct. App. 1999); Nevada v. Vine, 662 P.2d 295, 297-98 (Nev. 1983); Gabriel v. Gabriel, 519 N.W.2d 293, 295 (N.D. 1994); In re Scheelle, 730 N.E.2d 472, 475 (Ohio Ct. App. 1999); Kaufman v. Truett, 771 A.2d 36, 39 (Pa. 2001); Coffey v. Vaspareny, 350 S.E.2d 396, 398 (S.C. App. 1986); Estes v. Albers, 504 N.W.2d 607, 701 (S.D. 1993); Swate v. Swate, 72 S.W.3d 763, 771 (Tex. Ct. App. 2002); Virginia ex re. Spotsylvania County Department of Social Services v. Fletcher, 562 S.E.2d 327, 329 (Va. Ct. App. 2002); In re Dependency of G.C.B., 870 P.2d 1037, 1042 N. 6 (Wash. Ct. App. 1994).

IV. Conclusion

For all the above-stated reasons, that portion of the decree of the Youth Court that awarded child support in this matter is *reversed.*[6]

IT IS SO ORDERED.

Decided on the briefs.

For the Court

Frank Pommersheim
Associate Justice

Dated: December 13, 2006

[6] While not necessary for the Court's decision, the Court notes that any equal protection argument must be couched in language found in the Mississippi Band of Choctaw Constitution and the Indian Civil Rights Act, 25 U.S.C. § 1302 (8) and not the United States Constitution. *See, e.g.*, Talton v. Mayes, 163 U.S. 376 (1896).