

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

J.P.H., Natural Father of J.H.H. and
J.H.,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED.

CASE NO. 1D10-1725

FLORIDA DEPARTMENT OF
CHILDREN and FAMILIES,

Appellee,

_____ /

J.H. (aka J.P.), Mother of J.H.H. and
J.H., minor children,

Appellant,

v.

CASE NO. 1D10-1924

DEPARTMENT OF CHILDREN and
FAMILIES,

Appellee.

_____ /

Opinion filed July 23, 2010.

An appeal from the Circuit Court for Bay County.
James B. Fensom, Judge.

W.R. Garrett, Panama City, for Appellant J.P.H.; Crystal McBee Frusciante, Civil
Appellate Regional Counsel, Office of Criminal Conflict and Civil Regional
Counsel, Region One, Jupiter, for Appellant J.H.

Lori Lee Fehr, Appellate Counsel, Department of Children and Families, Pensacola, for appellee; Kelley Schaeffer, Appellate Counsel, Guardian ad Litem Program, Tavares, for Guardian ad Litem Program.

PER CURIAM.

We sua sponte consolidate for disposition these appeals of an order terminating appellants' parental rights. Appellees forthrightly concede that because the proceedings involved Indian children within the meaning of the Indian Child Welfare Act, 25 U.S.C. § 1912, et seq., the trial court erred in not applying the standards and requirements of the Act. Most notably the trial court did not apply 25 U.S.C. § 1912(f), which requires that any order terminating parental rights to an Indian child be supported "by evidence beyond a reasonable doubt," rather than the clear and convincing evidence standard set forth in Chapter 39, Florida Statutes.

In addition, we agree with appellees that the trial court erred when it denied the affected tribe's petition to intervene because it was not represented by a Florida attorney. The tribe had a clear right to intervene pursuant to section 1911(c) of the Act, and is not required to be represented by a member of the state bar, since enforcement of state prohibitions on the unauthorized practice of law interfere with and are thus preempted in the narrow context of state court proceedings subject to the Indian Child Welfare Act. See In re Elias L., 767 N.W. 2d 98 (Neb. 2009); In

re N.N.E., 752 N.W. 2d 1 (Iowa 2008); State ex rel. Juvenile Dep't of Lane County v. Shuey, 850 P. 2d 378 (Ore. Ct. App. 1993).

Accordingly, the order terminating appellants' parental rights is REVERSED and the matter is REMANDED to the circuit court for further proceedings.

THOMAS, CLARK, and MARSTILLER, JJ., CONCUR.