

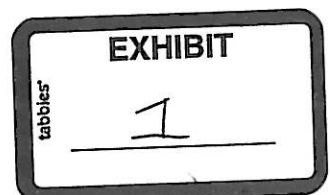
IN THE FAMILY COURT OF THE NAVAJO NATION  
JUDICIAL DISTRICT OF CHINLE, ARIZONA

IN THE MATTER OF THE ADOPTION OF	)	NO. CH-FC-532-12
PRISCILLA L. DAVIS,	)	
	)	
By FILBERT HENRY KINLICHEE (deceased),	)	ORDER VALIDATING NAVAJO
	)	COMMON LAW ADOPTION
PRISCILLA L. DAVIS, FELIX KINLICHEE, and	)	
FILVERT KINLICHEE,	)	
Petitioners.	)	
_____	)	

This matter comes before the Court on the Petitioners' Petition to Validate Traditional Parent/Child Relationship (Navajo Common Law Adoption). A hearing was held on this matter on June 19, 2012. The Petitioners were present with their counsel. In addition, the decedent's three (3) daughters were also present: Loretta Hart, Felice Kinlichee, and Filexis Kinlichee. Based on the following facts and conclusions of law, this Court finds sufficient evidence of a Navajo Common Law adoption of Priscilla L. Davis by the late Filbert Henry Kinlichee.

FINDINGS OF FACTS

1. Petitioner Priscilla L. Davis is Navajo and resides within the Chinle area at Del Muerto, AZ. She is the biological daughter of Leonard Davis and Sartreva Blacksheep. She was born on December 27, 1985.
2. The relationship between Mr. Davis and Sartreva did not last long. By the time Priscilla was merely six (6) months old, her mother and Filbert Henry Kinlichee started living together.
3. The late Mr. Kinlichee had three (3) other children from a prior relationship: Loretta Hart; Felix Kinlichee; and Felice Kinlichee.



4. Sartreva Blacksheep and the late Filbert Henry Kinlichee got married on April 25, 1992. Two (2) children were born to them: Filvert H. Kinlichee and Filexis Kinlichee.
5. In 2000, Sartreva and the late Mr. Kinlichee began living separately.
6. On August 21, 2002, Sartreva filed for divorce from the late Mr. Kinlichee.
7. On July 16, 2002, the late Mr. Kinlichee filed a *pro se* Petition for Guardianship of Priscilla Davis which was captioned as CH-FC-1145-02. Due to allegations that Sartreva was abusing alcohol in Priscilla's presence, this Court awarded temporary custody of Priscilla to the late Mr. Kinlichee.<sup>1</sup> Sartreva was personally served on July 16, 2002. Leonard Davis was served on November 12, 2002.
8. In a Social Services report dated December 5, 2002, it records a letter written by Priscilla and she is quoted as saying the following about the late Mr. Kinlichee:

"The one I'm with takes care of me and loves me. I don't think of him as my step-dad, I consider him as my real dad. He takes care of me better than my mom. My mom has changed a lot. She don't act like a mother anymore. Ever since she left the house because she wanted another guy she is not a mother to me anymore... I want to stay with my dad. She's hurting me a lot and I don't want her to hurt me anymore. So I don't want to go with her I want to be with my dad."
9. The Social Worker recorded that the late Mr. Kinlichee was "raised in the traditional perspective of growing up to being a Navajo male." The Social Worker further stated that "[h]e is very comfortable in his present parenting role. He is the primary caretaker of his children and Priscilla." In the Social Worker's opinion, he found the late Mr. Kinlichee "to be exceptionally capable and [willing] to care and love Priscilla

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<sup>1</sup> It is notable that this Court granted temporary custody of Priscilla despite the lack of paternal determination and/or clan relations.

Davis as his own child.” Therefore, the Social Worker recommended that the late Mr. Kinlichee “be granted full Legal Guardianship.”

10. On February 12, 2003, this Court issued a Guardianship Decree awarding guardianship of Priscilla Davis to the late Mr. Kinlichee. This Court takes notice of the Decree that found “[t]he natural parent(s) have consented to the guardianship of the child(ren) or has been made aware of the proceedings by the Petitioner(s).”
11. On March 4, 2004, Sartreva and the late Mr. Kinlichee were officially divorced. Although the divorce decree did not mention Priscilla, she continued to live with the late Mr. Kinlichee and his children.
12. In 2009, the late Mr. Kinlichee made an application to the Department of Navajo Veterans Affairs / Veterans Housing Assistance Program wherein he included Priscilla and her two (2) children as his dependents.
13. Mr. Kinlichee died on November 9, 2009. Filvert and Felix are pursuing a wrongful death suit and have been appointed as co-personal representatives. The suit was filed with the U.S. District Court for the District of Arizona and if successful, each surviving child of the late Mr. Kinlichee will be entitled to recover a monetary value. The Petitioners cite *Dunn v. Industrial Com'n of Arizona*, 171 Ariz. 463, 466 (App. 1991), to assert that Priscilla may not be considered an eligible beneficiary unless she was adopted by the late Mr. Kinlichee.
14. Co-Petitioners Felix and Filvert are essentially supporting Priscilla’s Petition to be recognized, legally, as their sister. The late Mr. Kinlichee’s remaining children have all submitted sworn affidavits indicating that they agree with the contents of the Petition. Specifically, Ms. Loretta Hart, Felice Kinlichee, and Filexis Kinlichee have



each stated that “I believe that the traditional adoption by my father Filbert of my sister Priscilla Davis should be validated by the Chinle Family Court, in order to carry out my father’s wishes and permit Priscilla to participate fully as a family member in the Wrongful Death Case, and for other purposes.”

15. At the hearing, all five biological children of the late Mr. Kinlichee testified that they understood that validating this adoption impacted more than just the wrongful death benefits and they continued to agree with the adoption.

16. The former Chief Justice of the Navajo Nation, Honorable Robert Yazzie, has submitted an affidavit indicating that since he has left the bench, he has continued to study and research Navajo Common Law by consulting with Navajo elders and reading about it. Mr. Yazzie asserts, amongst other things, that “[t]he Navajo language has no word or corresponding concept for the Anglo term and concept ‘stepfather.’” He further explains that in a father-child relationship, it is “expressed in the words shiyazhé (‘my little one’), sh[i] awe (‘my child’) and sh[i] zhe’é (‘my father’).”

17. Priscilla’s biological father, Mr. Davis, has never attempted to contact her. He did not participate in the guardianship proceedings even though he was given notice of it. Priscilla did not consider Mr. Davis as her father.

#### CONCLUSIONS OF LAW

This Court has subject matter jurisdiction over this matter pursuant to 7 N.N.C. §253(B) because it involves an adoption of a Navajo person. Personal jurisdiction also exists because all parties have consented to the jurisdiction of this Court. See 7 N.N.C. §253a(C).

This is not an ordinary action for adoption because our statutes only apply to adoptions of children by adults and/or adoptions of adults by other adults.<sup>2</sup> In the ordinary sense, the late Mr. Kinlichee should be the Petitioner to adopt Priscilla. Instead, because of the passing of Mr. Kinlichee, Priscilla is asking this Court to formally recognize the parent-child relationship she had with the late Mr. Kinlichee through her petition for adoption. Clearly, there are no Navajo statutes on point. In such situations when Navajo statutes are silent, our choice of law statute, 7 N.N.C. §204(A), allows Navajo Courts to use *Diné bi beenahaz'áanii* (Navajo Traditional, Customary, Natural, and Common Laws).

It is not a new understanding that there are differences between American laws on adoption and Navajo common laws on adoption. *In the Matter of the Interest of J.J.S.*, 4 Nav. R. 192, 193-195 (W.R. Dist. Ct. 1983). Under the American view, “[a]doption is a legal process by which the law makes a substitution of parents for a child and terminates the parent and child bond with the natural parents,... *Id.* Additionally, American adoption laws are created only by statute and are based on duties of the parents. *Id.*

Whereas, Navajo common law adoption is based on expectations “that children are to be taken care of and that obligation is not simply one of the child’s parents.” *Id.* It is common knowledge that “[o]rphans of Navajo families or children of large families or broken homes are adopted by other family members or a family member of the same clan as the child. *Id.* quoting Carl N. Gorman, *The Navajo Nation is Made up of Many Conference*, (1980), published in Dine’ Center for Human Development For Generations to Come, (1982). As such, unlike an American adoption, a Navajo adoption is not “concerned with the exchange of legal parents.” *Id.* at 194. Furthermore:

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<sup>2</sup> See 9 N.N.C. §§601 *et. seq.*

“Navajo adoption is based on need, mutual love and help. Children may or may not change the surname. Either way the family is a unit with strong, supportive, extended family and clan ties. It has worked for hundreds of years without adoption agencies and courts of law.” *Id.* at 195.

Indeed:

“The correct statement of the Navajo Common Law of adoption is that there is an obligation in family members, usually aunts or grandparents or a family member, who are best suited to assist the child to support and assist children in need by taking care of them for such periods of time as are necessary under the circumstances, or permanently in the case of a permanent tragedy effecting the parents. The Navajo Common Law is not concerned with the termination of parental rights or creating a legalistic parent and child relationship because those concepts are irrelevant in a system which has obligation to children that extends beyond the parents. Therefore, upon the inability of the parents to assist the child or following the occurrence of a family tragedy, children are adopted by family members for care which [may be] temporary or permanent, depending upon the circumstances. The mechanism is informal and practical and based upon community expectations founded in religious and cultural belief.” *Id.* quoting Opinion of the Solicitor of the Courts of the Navajo Nation, No. 83-10, September 9, 1983.

A literal application of the long recognized rule on Navajo common law adoption would defeat this action because the late Mr. Kinlichee was not a “clan relative” of Priscilla. However, what happens when none of Priscilla’s clan relatives asserted their right over her? It is clear that Priscilla’s biological father had abandoned her when she was an infant. As far as this Court is concerned, Priscilla’s biological father’s rights were terminated as of June 1987.<sup>3</sup> It is also clear from his non-participation in the guardianship action that he did not want to be considered as Priscilla’s father. Does this automatically require Priscilla to be considered *wótaské* (a fatherless child) when there is another man willing to take that responsibility by caring for her and marrying her mother? Especially when our courts are responsible for ensuring that a child

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<sup>3</sup> There is clear and convincing evidence that the biological father abandoned the child at least six months after the child was born (June 1986). Pursuant to 9 N.N.C. §603(D)(2), a parent is considered to have abandoned a child when he/she is absent for more than a year. Thus, Leonard Davis abandoned Priscilla and lost his parental rights as of June 1987.



does not consider themselves to be *wótaské*. *In the Matter of T.S.E.J., et. al.*, No. SC-CV-07-09, slip op. at 10 (Nav. Sup. Ct. August 17, 2011). The answer clearly should be no.

This Court agrees with the Honorable Robert Yazzie that there is no Navajo word for the Anglo term and concept of “stepfather.” Rather, when a Navajo man marries a child’s mother, the child can refer to him as *shí zhe’é* (my father) or *ei shí má yil síké* (that person is with my mother). This is a very important distinction which was not an issue in the *J.J.S.* case. The former Navajo term clearly recognizes a close family bond. Whereas, the latter indicates a recognition that the person is unrelated. The same is true from the adult’s perspective, a person can refer to the child as *shí awee* (my child) or include the child with his children as *shí áłchíní* (my children). If the person doesn’t consider the child as his own child, the child is referred to as *ei shí asdzáá bi awee at’e* (that is my wife’s child). These terms cannot be freely used when determining whether a Navajo common law adoption exists because an adoption in the truest sense requires the person to maintain a parent-child relationship throughout their entire lives. In a sense, despite the lack of clan relations, the person becomes a relative of the child and vice-versa.

In this case, the late Mr. Kinlichee began caring for Priscilla when she was only six (6) months old and he eventually married her mother. When Priscilla turned 16, the late Mr. Kinlichee filed for guardianship and custody of Priscilla. It is evident that Priscilla wanted the late Mr. Kinlichee to maintain custody of her. Priscilla referred to the late Mr. Kinlichee as “my dad.” The late Mr. Kinlichee referred to Priscilla as one of his children whom he raised. In fact, his biological children referred to Priscilla as one of their sisters and continue to do so today.

Priscilla was also 16 when her mother filed for divorce against the late Mr. Kinlichee. In the Navajo way, when parents get divorced, the children belong to the mother or the mother's clan. *Lente v. Notah*, 3 Nav. R. 72, 80-81 (Nav. Ct. App. 1982). In our case, this did not occur. When the divorce became final, Priscilla continued to reside with the late Mr. Kinlichee and his children. This is key because it illustrates that Priscilla did not "return" to her mother or her mother's clan. Rather, she stayed with the only person she ever knew as her father, the late Mr. Kinlichee.

Thus, in the absence of a clan relative asserting their right to care for a child, a person who assumes the duties and responsibilities of a parent can also effectuate a Navajo Common Law Adoption. In this, the person must consider the child as *shi awee* (my child). Conversely, the child must consider the caretaker as *shi má* (my mother) or *shi zhe'é* (my father). Here, it is clearly evident that the late Mr. Kinlichee and Priscilla maintained a father-child relationship from June 1986 to the day Mr. Kinlichee passed on November 9, 2009.

This Court takes special notice that the guardianship petition submitted by the late Mr. Kinlichee was submitted as *pro se*. It was a fill-in-the-blank Petition for Guardianship wherein the late Mr. Kinlichee filled out by hand. At the time of the filing, he had been separated from his wife for approximately two (2) years and he was asserting custody of Priscilla. Did he intend to file an adoption? This is an interesting inquiry considering that he was facing a divorce as well. Did he know the differences between the Anglo rules and results for a guardianship and an adoption? After all, unless legally represented, there are no law libraries or readily available information to allow *pro se* petitioners to know they are filing the right action. If he knew that an adoption would create certain rights in Priscilla, would he have opted to file a Petition for



Adoption? We will never know the answer but the fact that the late Mr. Kinlichee obtained custody of Priscilla through a Guardianship Decree is also a key factor in this decision.

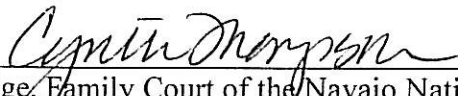
Not to mention, in a traditional adoption, there is no court intervention. The parent simply gives the child to the caretaker. It is only when the Anglo world requires a piece of paper recognizing the custody of that caretaker that such individuals come to court. Here, there was Sartreva who recognized her inability to care for her daughter Priscilla and consented to her guardianship by the late Mr. Kinlichee. In essence, Sartreva was giving her child to the late Mr. Kinlichee. This did not require that her parental rights be terminated. She is still Priscilla's mother but she is no longer her caretaker whether it was temporary or permanent. At the very least, the guardianship terminated Mr. Davis' parental rights as a father of Priscilla. Therefore, this Court will recognize the date of the adoption as the date the guardianship decree was granted which was February 12, 2003.

This Court recognizes that there may be complexities with recognizing posthumous adoptions because the potential adopted child shares in the Anglo legal rights of a decedent's heirs and/or beneficiaries. However, there are a couple of reasons to do so in this case. First, it is against Navajo practice to plan for one's own death. How could the late Mr. Kinlichee foretell that Priscilla would need to file this action when he could not have thought about it to begin with? Second, it is a universal requirement for this Court to ensure that *k'e* (relations) is maintained. All court actions should also strive to obtain *hozho* (harmony). In this case, all of the late Mr. Kinlichee's biological children are agreeing to this adoption. Thus, by recognizing the adoption of Priscilla by the late Mr. Kinlichee, this Court is assured that *k'e* and *hozho* will continue to be preserved for this family.

THEREFORE, IT IS ORDERED THAT THE PETITION TO VALIDATE TRADITIONAL PARENT/CHILD RELATIONSHIP (NAVAJO COMMON LAW ADOPTION) BETWEEN PRISCILLA L. DAVIS AND THE LATE FILBERT HENRY KINLICHEE BE GRANTED.

IT IS FURTHER ORDERED THAT THE EFFECTIVE DATE OF THE NAVAJO COMMON LAW ADOPTION BE FEBRUARY 12, 2003.

SO ORDERED this 22 day of June, 2012.

  
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Judge, Family Court of the Navajo Nation

I hereby Certify that this is a true  
and correct copy of the Instrument  
on file in the Chinle Family Court.

