

IN THE INTEREST OF
YAZMINE ROSE JAMES,
A CHILD

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IN THE 323rd JUDICIAL
DISTRICT COURT of
TARRANT COUNTY, TEXAS

**ORDER GRANTION MOTION TO DECLARE ICWA INAPPLICABLE AS
UNCONSTITUTIONAL**

On March 1, 2019, came on to be considered Intervenors Motion to Declare ICWA Inapplicable as Unconstitutional.

1.) Appearances

Intervenors CHAD EVERET BRACKEEN AND JENNIFER KAY BRACKEEN appeared in person and through their attorneys of record, KELLYE HUGHES and MATT MCGILL.

Respondent TEXAS DEPARTMENT OF FAMILY & PROTECTIVE SERVICES (TDFPS) appeared through their attorney of record, KRISTINE SOULE, ASSISTANT CRIMINAL DISTRICT ATTORNEY FOR TARRANT COUNTY, TEXAS.

Respondent, JACQUELENE JAMES appeared through her attorney of record, JUSTIN MURRAY.

Respondent, MANNY MARTINEZ appeared through his attorney of record, KATHLYNN K. PACK.

The NAVAJO NATION, appeared through their attorney of record, CINDY V. TISDALE.

The Attorney Ad Litem for the child, JOHN ECK, appeared.

2.) Jurisdiction

This Court is the court of continuing and exclusive jurisdiction of the child and has jurisdiction to hear this matter.

3.) Record

A record was made by the official court reporter for the 323rd Judicial District.

4.) Child Before the Court

The child before the Court is YAZMINE ROSE JAMES, a female child born on June 10, 2018.

5.) Findings

The Court acknowledges multiple claims under the United States Constitution, but is providing deference to the United States Court of Appeals for the Fifth Circuit Stay Pending Appeal dated December 3, 2018, and conscientiously refraining from ruling on those matters in this order of the court.

The Court finds that Texas Family Code §152.104(a) to be in violation of Article I, Section 1 of the Texas Constitution and inapplicable to the proceedings in this matter.

The Court finds that Texas Family Code §152.104(a) to be in violation of Article I, Section 3 of the Texas Constitution and inapplicable to the proceedings in this matter.

The Court finds that Texas Family Code §152.104(a) to be in violation of Article I, Section 3a of the Texas Constitution and inapplicable to the proceedings in this matter.

The Court finds that Texas Family Code §152.104(a) to be in violation of Article I, Section 19 of the Texas Constitution and inapplicable to the proceedings in this matter.

The Court finds that Texas Family Code §152.104(a) to be in violation of Article I, Section 29 of the Texas Constitution and inapplicable to the proceedings in this matter.

6.) Order

The Court, having reviewed the Motion to Declare ICWA Inapplicable as Unconstitutional, any responses and reply thereto, the evidence presented, the pleadings on file, the arguments of the parties, and the applicable law, is of the opinion that the Motion to Declare ICWA Inapplicable as Unconstitutional should be **GRANTED**.

IT IS HEREBY ORDERED that Texas Family Code 152.104, is unconstitutional and inapplicable to these proceedings.

IT IS SO ORDERED

SIGNED this 1st day of March, 2019.



JUDGE PRESIDING
323rd DISTRICT COURT of
TARRANT COUNTY, TEXAS