

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

FILED

October 21, 2026

No. 26-140

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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA EX REL. PRAIRIE ISLAND INDIAN COMMUNITY,
Petitioner,

v.

THE HONORABLE KELLY GILMORE CODISPOTI,
JUDGE OF THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA,
N.R.L.Q., A MINOR CHILD, WEST VIRGINIA DEPARTMENT OF HUMAN
SERVICES, WEST VIRGINIA BUREAU FOR CHILD SUPPORT ENFORCEMENT,
JOSEPH Q., PATRICIA Q., CHARLENE Q., AND JOHN Q.,
Respondents.

PETITION FOR A WRIT OF PROHIBITION

WRIT GRANTED

Submitted: September 8, 2026

Filed: October 21, 2026

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JUSTICE FLANIGAN delivered the Opinion of the Court.

SYLLABUS

“In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal’s order is clearly erroneous as a matter of law; (4) whether the lower tribunal’s order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal’s order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.” Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996).

FLANIGAN, Justice:

Petitioner, the Prairie Island Indian Community (“the Tribe”), seeks a writ of prohibition to prevent the Circuit Court of Logan County from enforcing its February 26, 2026, order denying the Tribe’s motion to transfer the underlying abuse and neglect proceeding to the jurisdiction of the Prairie Island Mdewakanton Dakota Community Tribal Court (“Tribal Court”) pursuant to the Indian Child Welfare Act (“ICWA”), 25 United States Code §§ 1901-1963. The circuit court denied the Tribe’s motion on the grounds that the Tribe had not sought to transfer a prior abuse and neglect case involving the child and “[e]verything involving this case except for the fact that this an Indian child” is in West Virginia. The Tribe argues that the circuit court’s reasons do not constitute “good cause” for denying its motion under the ICWA. Upon consideration of the parties’ briefs and oral arguments, the appendix record, and applicable authorities, we agree. Accordingly, we grant the requested writ and remand this case to the circuit court with directions to enter an order transferring the underlying abuse and neglect proceeding to the Tribal Court.

I. Facts and Procedural Background

The underlying abuse and neglect proceeding was instituted in October 2025, after police responded to an altercation between N.Q.’s¹ parents resulting in their arrests

¹ We use initials instead of a full name to protect the identity of the juvenile involved in this case. *See* W. Va. R. App. P. 40(e). In this instance, the style of the case includes

on charges of possession of fentanyl, domestic assault, domestic battery, strangulation, and child neglect with risk of causing bodily injury. The latter charge was based on the condition of the home, which was described as cluttered and in disarray and included the presence of fentanyl. At the time the alleged offenses occurred, N.Q. was visiting her paternal grandparents, so she did not witness the altercation. Nonetheless, respondent, West Virginia Department of Human Services (“DHS”), immediately sought and received emergency legal custody of N.Q. because of her parents’ arrests and the condition of their home. DHS then placed N.Q. in the physical custody of her paternal grandparents. The abuse and neglect petition, filed a few days later, noted that the parents had a prior history with child protective services as N.Q. was previously removed from their custody and then returned upon their successful completion of improvement periods.

On October 29, 2025, the Tribe moved to intervene in the abuse and neglect proceeding pursuant to the ICWA, 25 United States Code § 1911(c).² The ICWA applies to any “child custody proceeding” involving an “Indian child.” *See* 25 U.S.C. § 1903(1) (defining “child custody proceeding” to include proceedings involving foster care placement, termination of parental rights, preadoptive placement, and adoptive

the juvenile’s middle initials, but for ease of reference in this opinion, we only use first and last initials.

² 25 United States Code § 1911(c) provides: “In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have a right to intervene at any point in the proceeding.”

placement”); *see also* 25 U.S.C. § 1903(4) (defining “Indian child” as “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe”). It is undisputed that N.Q. is an Indian child as defined by the ICWA. Both N.Q. and her mother are members of the Tribe.

On November 5, 2025, the Tribe filed a “Motion to Invalidate Removal Proceedings,” seeking to have the abuse and neglect petition dismissed. The Tribe asserted that the DHS had failed to undertake active efforts to prevent removal of N.Q. from her parents’ custody in violation of 25 United States Code § 1912(d)³ and West Virginia Code § 49-4-602 (2015).⁴ Approximately two weeks later, the Tribe filed a “Motion for Transfer Jurisdiction,” requesting that the circuit court transfer the case to the jurisdiction of its Tribal Court as required by the ICWA.⁵

³ 25 United States Code § 1912(d) provides: “Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”

⁴ West Virginia Code § 49-4-602(a)(4)(B) requires an order granting emergency removal of a child from his or her home based on allegations of abuse and neglect to state “[w]hether or not the department made reasonable efforts to preserve the family and prevent the placement or that the emergency situation made those efforts unreasonable or impossible.”

⁵ *See* 25 U.S.C. § 1911(b), quoted and discussed, *infra*.

On December 3, 2025, the DHS filed an amended abuse and neglect petition, adding an allegation that both of N.Q.'s parents tested positive for cocaine in November 2025. The DHS also named N.Q.'s paternal grandparents as "custodial relatives" with custodial rights arising out of the prior abuse and neglect proceeding and added them as non-offending respondent parties in the case. Although the Tribe had retained local counsel, it filed a motion on December 7, 2025, requesting permission for its attorney and representative from Minnesota to appear remotely at the preliminary hearing.

When the parties convened for the preliminary hearing on February 26, 2026, the circuit court was informed that the Tribe's attorney/representative from Minnesota was available to appear remotely. However, the circuit court denied approving any remote appearance and insisted that the Tribe's Minnesota attorney had to appear in person to be heard. Consequently, the Tribe's local counsel argued its motions. With regard to its "Motion to Invalidate Removal Proceedings," the Tribe primarily asserted that N.Q.'s removal from her parents' custody was not necessary because she was with her grandparents when the alleged criminal offenses occurred. As for the "Motion to Transfer Jurisdiction," the Tribe argued that transferring the case to its Tribal Court was required by the ICWA. Neither parent objected to the motion to transfer, and N.Q.'s guardian ad litem acknowledged that transfer would be proper because N.Q. is an Indian child and her parents supported the motion. The DHS responded by noting that the grandparents were also parties in the case who should be heard on the issue. Upon inquiry by the circuit court, the

grandparents objected to the motion to transfer, stating that they felt that their rights would be best protected by a West Virginia court.

Thereafter, the circuit court verbally denied the Tribe's motions. Regarding the motion to invalidate, the circuit court found that N.Q.'s removal from her parents' custody was necessary because they were not permitted to have contact with her after their arrests and the grandparents lacked legal authority to make emergency decisions for her. As for the motion to transfer, the circuit court found that there was good cause to deny the request because the Tribe had not sought to transfer the previous abuse and neglect proceeding involving this family and "everything involving this case except for the fact that this is an Indian child" is in West Virginia. The circuit court proceeded to hold the preliminary hearing and, at the end, concluded that there was sufficient evidence to support N.Q.'s removal from her parents' custody and scheduled the case for adjudication.

Subsequently, the Tribe filed its petition for a writ of prohibition with this Court seeking to prevent enforcement of the circuit court's orders denying its "Motion to Invalidate the Proceedings" and its "Motion to Transfer Jurisdiction." As alternative relief, the Tribe filed a petition for a writ of mandamus asking this Court to direct the circuit court to allow the Tribe's Minnesota representatives and attorneys to participate in the proceedings below by virtual means if it is denied prohibition relief. In addition, the Tribe filed a motion to stay the proceedings below pending this Court's decision regarding its

requested writs and a motion to expedite this Court's consideration of its petitions. By order entered June 3, 2026, this Court issued a rule to show cause and granted the motion for a stay and the motion to expedite.

II. Standard of Review

The Tribe argues that the circuit court erred as a matter of federal law and exceeded its legitimate powers when it denied the Tribe's motions. This Court has held:

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996). With this standard in mind, we consider whether a writ of prohibition should be issued.

III. Discussion

Our discussion is limited to the denial of the Tribe's "Motion to Transfer Jurisdiction" because it is dispositive of the issues before this Court. As indicated above, the Tribe filed its motion to transfer this matter to the jurisdiction of the Tribal Court pursuant to 25 United States Code § 1911(b). That provision of the ICWA provides:

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

Id. "Succinctly put, this provision requires a state court to transfer a child custody proceeding to tribal court unless: (1) a parent objects to the transfer; (2) the tribal court declines to accept the transfer; or (3) 'good cause' exists to deny the transfer." *State ex rel. Del. Tribe of Indians v. Nowicki-Eldridge*, 248 W. Va. 366, 373, 888 S.E.2d 866, 873 (2023).

In this case, neither parent objected to the transfer⁶ and the record reflects that the Tribal Court filed an order with the circuit court accepting jurisdiction of this matter

⁶ Although N.Q.'s grandparents are respondents in the underlying proceeding, they were only granted visitation rights in the prior abuse and neglect case. As "custodians" within the definition set forth in W. Va. Code § 49-1-204 (2015), N.Q.'s grandparents had a right to be heard during the proceeding below pursuant to West Virginia Code § 49-4-

at such time as the circuit court terminates its jurisdiction. Thus, the circuit court's only basis for denying the Tribe's motion was its finding of "good cause."

As noted, the circuit court found that there was "good cause" to deny the transfer because (1) the Tribe did not seek a transfer in the prior abuse and neglect proceeding involving this child, and (2) "[e]verything involving this case except for the fact that this an Indian child" is in West Virginia. This Court has previously observed that "[t]he ICWA does not define 'good cause,' but the Code of Federal Regulations explicitly provides what cannot be considered in making a good cause determination." *Nowicki-Eldridge*, 248 W. Va. at 373, 888 S.E.2d at 873. In that regard, the current regulations that were promulgated by the Bureau of Indians Affairs ("BIA") of the Department of the Interior in 2016 "set binding standards for Indian child-custody proceedings in State Courts." ICWA Proc., 81 Fed. Reg. 38778, 38785 (June 14, 2016). Under the applicable regulation:

In determining whether good cause exists, the court *must not* consider:

(1) Whether the foster-care or termination-of-parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;

(2) *Whether there have been prior proceedings involving the child for which no petition to transfer was filed;*

(3) Whether transfer could affect the placement of the child;

601(h) (2025), but they did not have standing to object to the transfer of jurisdiction because 25 United State Code § 1911(b) only affords that right to the child's parents.

(4) The Indian child’s cultural connections with the Tribe or its reservation; or

(5) Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.

25 C.F.R. § 23.118(c) (2016) (emphasis added). Because subsection (2) of this regulation expressly provides that the lack of a petition to transfer in a prior proceeding involving the child may not be considered when determining whether “good cause” exists for retaining the case in state court, the circuit court clearly erred in denying the Tribe’s motion on that basis.

Likewise, the circuit court clearly erred in denying the motion to transfer on the basis that “everything” in the case—the child, the parents, the grandparents, and the witnesses—is located in West Virginia. When implementing the 2016 regulations, the BIA recognized that the “good cause” exception

has in the past been used to deny transfer for reasons that frustrate the purposes of ICWA. The legislative history indicates that this provision is intended to permit a State court to apply a modified doctrine of *forum non conveniens*, in appropriate cases, to insure that the rights of the child as an Indian, the Indian parents or custodian, and the Tribe are fully protected. *See* H.R. Rep. No. 95-1386, at 21. The Department finds that this indicates that Congress intended for the transfer requirement and its exceptions to permit State courts to exercise case-by-case discretion regarding the “good cause” finding, but that this discretion should be limited and animated by the Federal policy to protect the rights of the Indian child, parents, and Tribe, which can often best be accomplished in Tribal court. Exceptions cannot be construed in a manner that would swallow the rule.

ICWA Proc., 81 Fed. Reg. at 38821. To that end, the BIA made clear that “[i]f a State court considers distance to the Tribal court, it must also weigh any available accommodations that may address the potential hardships caused by the distance.” *Id.* at 38827.

Here, the record shows that the circuit court made no findings regarding any difficulties posed by the location of the Tribal Court.⁷ The circuit court simply announced its ruling without any consideration of whether the parties and witnesses could participate in tribal court proceedings remotely through videoconferencing and submitting evidence electronically. In the absence of any consideration of any available accommodation, the circuit court analysis was inadequate. Furthermore, to the extent that the circuit court’s

⁷ Notably, the circuit court never entered a written order setting forth findings of fact and conclusions of law to support its ruling denying the Tribe’s motions. Generally, parties seeking a writ on a non-appealable interlocutory decision must request a written order with the necessary findings and conclusions to facilitate our review of the matter. *See* Syl. Pt. 6, *State ex rel. Allstate Ins. Co. v. Gaughan*, 203 W. Va. 358, 508 S.E.2d 75 (1998). In this context, however, tribal interests as set forth in the ICWA outweigh the need for a written order. As this Court has recognized, the ICWA “establishes minimum federal standards and procedural safeguards that must be followed when an Indian child is subject to placement in a foster or adoptive home.” *In re N.R.*, 242 W. Va. 581, 584, 836 S.E.2d 799, 802 (2019). With regard to a finding of good cause to deny transfer of jurisdiction, 25 Code of Federal Regulations § 23.118(a) (2016) provides that a state court must set forth its reasons “orally on the record or . . . in writing.” Given this binding regulation and the ICWA’s mandate that a child custody proceeding involving an Indian child shall be transferred to the tribal court unless one of three limited exceptions is satisfied, the absence of a written order cannot preclude our consideration of the Tribe’s petition. *See In re Elias*, 767 N.W.2d 98, 103 (Neb. 2009) (explaining that “tribal interests articulated in the ICWA are of the highest order” and thus outweigh particular state requirements that interfere with its application).

determination was based on a negative perception of the tribal judicial system, such consideration was expressly prohibited by the applicable regulation as set forth above. *See* 25 C.F.R. § 23.118(c). In sum, the circuit court’s cursory consideration of the location of the parties and evidence was not sufficient to support its finding of “good cause” to deny the Tribe’s motion.

IV. Conclusion

Having found that the circuit court committed clear legal error when it concluded that good cause existed to retain the underlying abuse and neglect proceeding in state court, we grant the Tribe’s requested writ of prohibition and prohibit the enforcement of the circuit court’s February 26, 2026, order denying the Tribe’s Motion to Transfer Jurisdiction. *See Nowicki-Eldridge*, 248 W. Va. at 375, 888 S.E.2d at 875 (granting petition for writ of prohibition upon finding that circuit court clearly erred in determining good cause existed to deny transfer of abuse and neglect proceeding to tribal court). Accordingly, this matter is remanded to the circuit court for immediate entry of an order transferring the underlying abuse and neglect proceeding to the jurisdiction of the Tribal Court. The Clerk of this Court is directed to issue the mandate contemporaneously with this opinion.

Writ granted.