

**THE CHEROKEE SUPREME COURT
EASTERN BAND OF CHEROKEE INDIANS
QUALLA BOUNDARY, CHEROKEE, NORTH CAROLINA**

2019 SEP 10 P 4: 34

FILED

In the Matter of J.T.W., a Juvenile

CSC-19-02

Petitioner

ORDER ON PETITION FOR A WRIT OF CERTIORARI

This cause is before the Cherokee Supreme Court on the Petition for a Writ of Certiorari and Motion for Stay filed on April 23, 2019, the Response and Opposition to a Stay filed on May 3, 2019 on behalf of the Eastern Band of Cherokee Indians ("Tribe"). The Petitioner appeals Judge Randle L. Jones' order of March 18, 2019 denying Petitioner's motion to dismiss for lack of subject matter jurisdiction. Petitioner relies upon a ruling by a judge of the Cherokee Court in a different case, *In Re C.T.*, 8 Am. Tribal Law 386 (2010), and seeks clarification from this Court as to the jurisdictional import of C.C. § 7A-8.

On April 26, 2019, this Court issued its "Order Granting Stay Pending Review" setting a deadline for written response to be filed and scheduling an oral argument to be held on June 5, 2019.

The Court heard oral arguments on the petition for writ of certiorari and on the merits of the jurisdictional question presented to the court therein. Ms. Melissa Jackson represented the Petitioner and Tribal Prosecutor Mr. Cody White represented the Eastern Band of Cherokee Indians Department of Juvenile Services before the Court.

BACKGROUND & PROCEDURAL HISTORY

1. The juvenile was alleged to have possessed a controlled substance in violation of Cherokee law on April 2, 2018. Information relating to this offense was received by the tribal Department of Juvenile Justice and Delinquency Prevention ("DJJDP") the same day.
2. Within fourteen days, the DJJDP intake counselor made the decision to divert this matter, without filing a juvenile petition, and to refer the juvenile to Analenisgi for substance abuse treatment services. This provided an opportunity to meet the juvenile's needs while avoiding a court proceeding. Neither the juvenile nor his mother, who assisted the juvenile, opposed this process. In fact, the juvenile and his mother agreed to the terms and conditions of a diversion contract which included random drug screens and participation in individual and group therapy, in lieu of having the matter proceed directly to court.

3. In May, June and July 2018, juvenile failed drug screens in contravention of the diversion contract, so in July 2018 DJJDP and the juvenile's mother, acting on the juvenile's behalf, agreed that the best course of action was to enroll the juvenile in an in-patient substance abuse treatment program, as an alternative to the filing of a complaint and petition. The juvenile applied and was approved for inpatient treatment with an admission date of August 14, 2018.
4. Despite the agreement to inpatient treatment, the juvenile refused to report to the program on August 14, 2018. As a result, a juvenile petition was verified by the intake counselor on August 15, 2018, and was filed the next day. On September 24, 2018, a hearing was held and the juvenile was adjudicated delinquent.
5. On December 16, 2018, Petitioner moved to dismiss on grounds that the Cherokee Court lacked jurisdiction because the case was diverted and as a result, the juvenile petition was not filed within thirty days of DJJCP's receipt of information related to the offense. C.C. § 7A-8. Petitioner does not deny: (1) that the juvenile and his mother agreed to a diversion contract, then (2) agreed to inpatient treatment, or (3) that the juvenile refused to report to inpatient treatment.
6. The trial court denied juvenile's motion to dismiss on jurisdictional grounds on March 18, 2019.

DISCUSSION:

At oral argument, both parties asserted that a determination from the Cherokee Supreme Court is needed to guide proceedings in the trial court on the question of whether the statutory deadlines in Chapter 7A of the Cherokee Code are: (a) mandatory deadlines, in which case the Cherokee Court would be divested of jurisdiction if deadlines are not met, or (b) directory, in which case violations of such deadlines may be considered by the trial court upon a juvenile's motion alleging violation of procedural due process under the Indian Civil Rights Act ("ICRA"), 25 U.S.C. §§1301 *et seq.*

The Court grants Petitioner's motion for a writ of certiorari under Rule 2 and Rule 11 of this Court's Rules of Appellate Procedure, for the limited purpose of deciding a question of law on which there have been inconsistent trial court rulings, so as to expedite a decision in the public interest.

The trial judge herein found that the statutory deadlines are directory, not mandatory, in an Order which included Findings of Fact and Conclusions of Law, as well as careful analysis of the relevant legal authorities. Petitioner appeals, relying upon the authority of a Memorandum Order issued by a trial judge of the Cherokee Court in 2010 which had found the statutory deadlines to be mandatory. See *In Re C.T.*, *supra*. The trial judge in that case found persuasive the reasoning set forth in a North Carolina Court of Appeals opinion that was soon reversed by the North Carolina Supreme Court. See *In Re D.S.*, 364 N.C. 184 (2010) (finding statutory language directory, not mandatory, where express language allows a maximum of 30 days from receipt of a complaint to the filing of a juvenile petition), *reversing* 197 N.C. App. 598, 682 S.E.2d 709 (2009).

This Court has made plain that rulings of the Cherokee Court are not binding on the Cherokee Supreme Court, which is a higher court. *Teesateskie v. E. Band of Cherokee Indians Minors Fund*, 13 Am. Tribal Law 180 (2015). Orders entered by the Cherokee Court's trial judges are required to be written and published, but they are not binding precedent for trial judges in other cases. C.C. §7-4(b). Of course, judges of the Cherokee Court may be persuaded by the reasoning of their colleagues in prior cases. However, as in other jurisdictions, orders issued by the Cherokee Court are not binding precedent for trial judges in other cases under *stare decisis*. 21 C.J.S. *Courts* §206. This Court decides cases, bound by the laws, customs, traditions and precedents of the Eastern Band of Cherokee Indians. C.C. § 7-2(d). It is only "if there is no applicable Cherokee law, [then] the Judicial Branch shall look next to Federal law, then to North Carolina law, and finally to the law of other jurisdictions for guidance." *Id.*

This Court reviews the deadlines in view of the statutory purpose of the Juvenile Code, C.C. § 7A-1 *et seq.*, which is to "divert juvenile offenders from the juvenile system through the intake services authorized herein so that juveniles may remain in their own homes and may be treated through community-based services when this approach is consistent with the protection of the public safety." C.C. § 7A-1(a). Further, it is the purpose of this section to "develop a disposition in each juvenile case that reflects consideration of the facts . . . and the protection of the public safety." C.C. § 7A-1(c).

Petitioner argues that the statutory timeline in C.C. § 7A-8 was jurisdictional and required the filing of a juvenile petition within thirty days of DJJCP's receipt of information related to the offense. However, such a reading fails to consider this jurisdiction's Juvenile Code as a whole in light of its express statutory purposes. The sections of Article II of the Juvenile Code should be read *in pari materia*. See *Sessions v. Cherokee Bd. of Elections*, 15 Am. Tribal Law 39 (Eastern Cherokee Sup. Ct. Oct. 6, 2017) (citing 2A *Sutherland Statutory Construction* §46:5 (7th ed. 2016)) ("[T]he meaning of a statute is determined...from the statute as a whole and viewing the legislation in light of its general purpose"); Cf. *Blankenship et al v. Eastern Band Cherokee Indians et al*, CSC 16-03, Cherokee Sup. Ct. (Feb. 1, 2019) (Cherokee Code provisions not construed together where they serve different legislative purposes). Read together, the thirty-day deadline under C.C. § 7A-8, if jurisdictional as proposed by Petitioner, would directly conflict with C.C. § 7A-7, which provides an intake counselor the option of diverting a juvenile to community-based services. Further, under C.C. § 7A-9, once a case is diverted, the intake counselor must follow-up regarding compliance and may file a complaint as a petition outside the timeline provided under C.C. § 7A-8.

After carefully reviewing the Juvenile Code, the trial judge's order, and the 2010 Memorandum Order in *In Re C.T.*, 8 Am. Tribal Law 386, Cher. Ct. (2010), as well as the other authorities cited, this Court holds that Tribal Council did not create a thirty (30) day mandatory subject matter jurisdictional requirement by establishing timelines in C.C. § 7A-8. Further, the Tribal Council did not intend to implicate subject matter jurisdiction by establishing timing requirements in the Juvenile Code, C. C. Section 7A-1 *et seq.*, as evidenced by fact that there is no mention of jurisdiction in the sections regarding the evaluation and filing of juvenile petitions, nor do those provisions of law expressly state that failure to comply would divest the court of the broadly worded grant of jurisdiction set forth in C.C. § 7A-3. See, *In Re D.S.*, 364 N.C. 184, 694 S.E.2d 758 (2010).

IT IS THEREFORE ORDERED that the Petition for a Writ of Certiorari is GRANTED for the limited purpose of the Court's issuance of this ORDER, and otherwise DENIED.

The Stay previously entered herein is LIFTED and this matter is REMANDED to the trial court for disposition and further proceedings consistent with this Order.

SO ORDERED this the 10th day of September, 2019.

Brenda Toineeta Pipestem
Brenda Toineeta Pipestem
Presiding Chief Justice

Robert C. Hunter/STB
Robert C. Hunter
Associate Justice

Sharon Tracey Barrett
Sharon Tracey Barrett
Associate Justice by designation