No. 04-15477

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY DOE,

Plaintiff and Appellant,

vs.

JOHN DOE I, et al.,

Defendants and Appellees,

vs.

JANE DOE,

Intervenor Appellee.

Appeal from the United States District Court
for the Northern District of California
The Honorable Marilyn Hall Patel
Case No. C02-3448 MHP

BRIEF OF INTERVENOR APPELLEE JANE DOE, RESPONDING TO APPELLANT'S OPENING BRIEF

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JURISDICTIONAL STATEMENT

Intervenor Appellee Jane Doe contends that the federal judiciary lacks jurisdiction over this action under the *Rooker-Feldman* doctrine.

STATEMENT OF ISSUE

The following issue is presented by Intervenor Appellee Jane Doe in this appeal:

1. Whether the federal district and circuit court of appeal may review a state court's exercise of jurisdiction over the termination of parental rights and adoption of an Indian child where the parties to the federal action were also present in the state court action.

STATEMENT OF THE CASE

Intervenor Appellee Jane Doe, whose adoptive placement is being challenged, joins in the statement of case of Appellees Arthur Mann, Robert Crone, Jr., and the Lake County Superior Court, Juvenile Division.

STATEMENT OF THE FACTS

Intervenor Appellee Jane Doe, now age 12, is the subject of the underlying termination of parental rights and adoption judgments that Appellant Mary Doe is challenging through this federal court action. Jane

was born to Appellant in May 1992. Appellant's Excerpts of Record ("ER") 5, ¶ 22. Appellant is a member of the Elem Indian Colony of Pomo Indians, located in Lake County, California. ER 5, ¶ 20. Jane is eligible for membership in the Elem Indian Colony. ER 5, ¶ 22. The Elem Indian Colony ("the tribe") is a federally recognized tribal entity, eligible to receive services from the United States Bureau of Indian Affairs. Bureau of Indian Affairs, 65 Fed. Reg. 13298, 13299 (March 13, 2000).

On June 8, 1999, Jane confided to Appellant that an adolescent male cousin had been sexually assaulting her. ER 6, ¶ 26. On June 9, 1999, Appellant contacted Appellee Lake County Department of Social Services ("DSS") and a DSS social worker responded to the emergency. ER 6, ¶ 27. On June 9, 1999, DSS removed then seven-year-old Jane from a relative's home on the tribe's reservation. ER 5, ¶¶ 22, 27.

Appellant was not residing on the reservation when Jane was removed from the relative's home. From the fall of 1997 until January 2002, Appellant resided in the Big Valley Rancheria and the Hopland Rancheria, reservations of two other Pomo Indian tribes. ER 5, ¶ 21; see, Bureau of Indian Affairs, 65 Fed. Reg. 13298, 13299 - 13300 (March 13, 2000) [listing federally recognized tribes]. Jane had lived with Appellant on the Big

Valley Rancheria from the late 1997 until Appellant left her with relatives on her tribe's reservation in April 1998. ER 5, ¶ 24.

When DSS removed Jane from a relative's home on June 9, 1999, it placed Jane in the home of Appellees Mr. and Mrs. D., who were not Jane's relatives and are not members of the Elem Indian Colony. ER 6, ¶28; 22. Mr. and Mrs. D. had three of Jane's cousins in their care. Intervenor Appellee's Excerpts of Record ("IA-ER")[1] 19, line 23. The D's are an Indian foster home, as Mrs. D. is Choctaw. IA-ER 19, line 22.

On June 14, 1999, DSS initiated dependency proceedings in state court. ER 6, ¶ 29. The petition filed by DSS alleged specific facts to support a claim under California Welfare and Institutions Code ("WIC") section 300, subdivision (b), that Jane had "suffered ... serious physical harm or illness, as a result of the failure or inability" of Appellant to

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[1] Jane's excerpts of record contains documents that are part of the underlying Superior Court state court record. These documents include the petition that commenced the custody proceeding in Superior Court, transcripts of hearings, court minutes, a motion and tribal resolution filed on behalf of the Elem Indian Colony, and the social worker's disposition report accepted into evidence by the Superior Court. These items are all part of the normal state court record that, if this case were on appeal in state court, would also be part of the record on appeal. Cal. Rules of Court, rule 39 (c). Jane requests that the 9th Circuit take judicial notice of the excerpts of the underlying Superior Court Record.

"adequately supervise or protect her." WIC § 300, subd. (b); ER 6, ¶ 29; IA-ER 4. The petition also alleged specific facts regarding sexual abuse of Jane. ER 6, ¶ 29; IA-ER 5; WIC § 300, subd. (d). Jane had been repeatedly raped by a adolescent cousin with whom she lived and Appellant knew of the harm or should have known of the risk of such harm to Jane by the cousin. ER 59, ¶¶ 107, 108; IA-ER 5. Appellant's boyfriend had also sexually assaulted Jane, resulting in physical trauma to the child. ER 59, ¶ 109; IA-ER 5.

The petition explained that DSS did not make efforts to prevent the immediate removal of Jane from Appellant's custody because of "the emergency nature of the removal." IA-ER 5. The petition explained that Jane stated she was "afraid" to live with Appellant, and that Appellant was currently denying that Jane had even been abused while in her care. *Ibid.*

Appellant did not appear at the detention hearing on June 14, 1999, nor did she appear at the jurisdiction hearings on July 9 and 26, 1999. ER 6-7, ¶¶ 31, 32, 35. Appellee Arthur Mann, state superior court judge, ordered that the care, custody and control of Jane be vested with DSS and found that the allegations in the petition were true. ER 7, ¶¶ 32, 35.

Judge Mann set a "disposition" hearing for August 9, 1999, to determine placement and reunification services. ER 7, ¶ 37; WIC §§ 358, 361, 361.5.

On August 9, 2004, Appellant appeared with two of her relatives in state court to be heard on Jane's disposition. ER 6, ¶ 37; IA-ER 7, lines 11, 12, 19-22, 24. Judge Mann reviewed Appellant's financial circumstances and appointed public defender Robert Wiley to represent her. IA-ER 4. Judge Mann explained to Appellant that he had previously found the allegations in the petition true and directed that a copy of the petition be given to her. IA-ER 8, lines 15-28. Judge Mann continued the disposition hearing to September 13, 1999 and ordered that Appellant return for that hearing. Appellant responded that she would. ER 6, ¶ 37; IA-ER 11, lines 3-10. The disposition hearing was continued several more times. ER 6, ¶ 37.

On October 4, 1999, Judge Mann adjudicated Jane a dependent of the state court, removed her from Appellant's custody, and placed her in foster care under the supervision of DSS, adopted the recommendations in the DSS report filed on September 22, 1999, and ordered reunification services for Appellant. ER 7, ¶¶ 38, 39, 40. Judge Mann accepted into evidence the DSS report and the statements of the social worker contained therein. IA-

ER 28, lines 11-16. In the report, the social worker explained Jane's circumstances. Jane was missing her aunts and uncles and her father, but was also stating that she loved the D's and wanted to remain in their home. IA-ER 17, lines 22-24. Appellant was not present at the disposition hearing and she alleges she did not have proper notice of the hearing. ER 6-7, ¶ 37.

Appellant was in telephone contact with DSS social workers during the reunification period, but she did not follow through with services and did not visit Jane, except for one visit on September 13, 1999. ER 59, ¶¶ 111, 112; IA-ER 20, lines 14-15.

On March 27, 2000, Judge Mann terminated reunification services and set a hearing pursuant to WIC § 366.26 to select and implement a permanent placement for Jane. ER 9, ¶¶ 46, 47.

On November 17, 2000, the tribal counsel issued Tribal Resolution No. 111900-1, establishing the tribe's preference that Jane be placed with her great uncle and aunt. ER 9, ¶ 50. The tribe, through an attorney with California Indian Legal Services, filed a motion in state court seeking confirmation of its proposed placement of Jane. ER 57. ¶ 95; ER 58, ¶¶ 98, 99. The motion and resolution both refer to 25 U.S.C. § 1915 of the ICWA

as the authority under which the state court should adopt the tribe's placement preference. IA-ER 34, 35.

Appellant attended at least two of the WIC section 366.26 hearings. Appellant was present at the November 20, 2000 hearing. Appellant's trial counsel, the tribal chairman and the tribe's attorney were also present. IA-ER 38. At that hearing, Appellant's trial counsel made the following statement on Appellant's behalf:

> [Appellant] wishes to state that she's in favor of the tribe's preference, your honor. That's her position. And that's contrary to the report or the, position of the department. However, she wishes to join with the tribe in their preference for placement and long-term plans.

IA-ER 42, lines 25-28; IA-ER 43, line 1. Appellant was again present at the WIC section 366.26 hearing on February 1, 2001. IA-ER 48, 49 (line 25-25), 50 (lines 6-7). At that hearing, Judge Mann continued the matter one more time to February 16, 2001. IA-ER 52, lines 1-2.

At the hearing on February 16, 2001, Judge Mann terminated Appellant's parental rights. ER 9, ¶ 49. Appellant was not present at the hearing. Her attorney was present. ER 9, ¶ 49; IA-ER 54.

Appellant and the tribe did not appeal the superior court's denial of the placement change or termination of parental rights. ER 58, ¶¶ 100, 101.

On September 28, 2001, Appellee Judge Robert L. Crone, Jr., issued an order granting the adoption of Jane by Appellee's Mr. and Mrs. D. ER 10, ¶ 54. Neither appellant nor the tribe filed a notice of appeal or any petition in state court to challenge the judgment of adoption. ER 58, ¶ 102.

SUMMARY OF ARGUMENT

The federal courts lack jurisdiction over this case under the *Rooker-Feldman* doctrine, which prohibits plaintiffs in federal court actions from collaterally attacking final state court judgments. The district court was incorrect when it determined that *Rooker-Feldman* did not apply. While section 1914 of the Indian Child Welfare Act ("the ICWA") (25 U.S.C. § 1914) grants "courts of competent jurisdiction" to invalidate state court judgments involving custody of an Indian child, this does not open the federal court to hear all challenges under section 1914. In this case, all the parties participated in the state court proceeding. Appellant is seeking to redo the custody and placement of her daughter after she participated and lost in the state court. This court should consider that in enacting the ICWA, Congress declared a second purpose to protect the interests of Indian children, as well as the tribes and family, and it provided substantial rights

for Indian children to be heard regarding their separate interests. Jane has a fundamental interest in the continuing stability and safety of her adoptive family, where coincidentally some of her cousins also reside. In determining the issue of federal court jurisdiction in this case, this court should consider the Supreme Court's reasoning when it held that federal habeas corpus could not be used to collaterally attack a state court child custody matter and litigate the parent's constitutional claims:

> It is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current 'home,' under the care of his parents or foster parents, especially when such uncertainty is prolonged."

Lehman v. Lycoming County Children's Services, 458 U.S. 502, 513-514 (1982).

STANDARD OF REVIEW

Appellee Intervenor agrees with the statements of other parties that the standard of review of the purely legal issues regarding jurisdiction and the interpretation of statutes is de novo. De novo review also applies to this court's consideration of the issue that the federal court lacks jurisdiction over Appellant's challenge to the ICWA. See e.g. *Ziegler v. Champion Mortg. Co.*, 913 F.2d 228 (5th Cir. 1990) (raising on its own motion the issue

of jurisdiction under *Rooker-Feldman* principles); *Noel v. Hall*, 341 F.3d 1148 (9th Cir. 2003).

ARGUMENT

A. The Federal Courts Lack Jurisdiction Over This Action Under the *Rooker-Feldman* Doctrine Because Appellant's Claim in Federal Court is an Appeal Of A Final Judgment In a State Court Proceeding In Which She Was A Party.

"Under Rooker-*Feldman*, a federal district court does not have subject matter jurisdiction to hear a direct appeal from the final judgment of a state court. The United States Supreme Court is the only federal court with jurisdiction to hear such an appeal." *Noel v. Hall*, 341 F.3d at p. 1154.

> [T]he principle that there should be no appellate review of state court judgments by federal trial courts has two particularly notable statutory exceptions: First, a federal district court has original jurisdiction to entertain petitions for habeas corpus brought by state prisoners who claim that the state court has made an error of federal law. 28 U.S.C. § 2254. Second, a federal bankruptcy court has original jurisdiction under which it is "empowered to avoid state judgments, *see, e.g.*, 11 U.S.C. §§ 544, 547, 548, 549; to modify them, *see, e.g.*, 11 U.S.C. §§ 1129, 1325; and to discharge them, *see, e.g.*, 11 U.S.C. §§ 727, 1141, 1328." *In re Gruntz*, 202 F.3d. 1074, 1079 (9th Cir. 2000). In its routine application, the Rooker-*Feldman* doctrine is exceedingly easy. A party disappointed by a decision of a state court may seek reversal of that decision by appealing to a higher state court. A party disappointed by a decision of the highest state court in which a decision may be had may seek reversal of that decision by appealing to the United States Supreme Court. In neither case may the disappointed party appeal to a federal district court, even if a federal question is

> present or if there is diversity of citizenship between the parties. *Rooker-Feldman* becomes difficult--and, in practical reality, only comes into play as a contested issue--when a disappointed party seeks to take not a formal direct appeal, but rather its de facto equivalent, to a federal district court.

Noel v. Hall, 341 F.3d at p. 1155. Further, under the *Rooker-Feldman* doctrine "[i]f claims raised in the federal court action are 'inextricably intertwined' with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules, then the federal complaint must be dismissed for lack of subject matter jurisdiction." *Bianachi V. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003). For an issue to be "inextricably intertwined" with a state court's decision, there need only be a "reasonable opportunity to raise the issue in state court proceedings." *Long v. Sorebank Dev't Corp.*, 182 F.3d 548, 558 (7th Cir. 1999).

The case at bar is not that of an unsuspecting parent who was denied the opportunity to fully participate in the custody proceeding regarding her Indian child. Had Appellant not been a party to the state court custody proceeding, then *Rooker-Feldman* would not apply. *See, Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994) (holding *Rooker-Feldman* not apply to United States, which was not party to state court proceeding and was not directly attacking state court judgment).

Appellant had the ability to raise all of her complaints in the state court proceeding. As an indigent parent, Appellant had a right to a court appointed counsel throughout the dependency proceeding because the recommendation and order placed Jane out of appellant's care. 25 U.S.C. § 1912 (b); WIC § 317, subd. (b); *In re Chantal S.*, 13 Cal.4th 196, 210 (1996). Further, Appellant had the right to ask the superior court to replace her court appointed attorney. See e.g., *In re Joanne E.*, 104 Cal.App.4th 347, 351 (2002) (juvenile court considers parent's request to replace court appointed attorney in "*Marsden*" type hearing, referring to *People v. Marsden*, 2 Cal.3d 118 (1970).

Appellant also had the right to appeal all of the superior court's final orders, which included the superior court's original disposition order and jurisdictional findings, interlocutory orders thereafter, and the order terminating her parental rights. *See* WIC § 395. Appellant, as an indigent parent, had a right to court appointed appellate counsel. *Chantal S.*, 13 Cal.4th at p. 210. Appellant could seek relief in an appeal or related habeas proceeding to have the state appellate court reverse final orders based on ineffective assistance of counsel. *In re Kristin H.*, 46 Cal.App.4th 163, 1642

(1996); *In re O.S.*, 102 Cal.App.4th 1402 (2003).[2] In *O.S.*, the appellate court reversed the termination of parental rights on grounds that the father's trial counsel was ineffective when she did not raise the issue of lack of notice in a timely fashion, did not communicate with the client, and did not seek to have him named as a presumed father. *O.S.*, 102 Cal.App.4th at pp. 1408-1412.

Appellant failed to exercise any of her appeal rights, even though she had court appointed counsel, attended an early hearing before the superior court issued its first appealable order, and attended at least two of the WIC section 366.26 hearings to terminate her parental rights. ER 58, ¶¶ 97, 100, 101; IA-ER 38 (line 16), 40 (lines 3-4), 49 (line 25), 48, 50 (lines 6-7). Appellant could have, but did not, appeal the jurisdiction findings and the initial disposition order that removed Jane from her custody. *See*, *In re Sheila B.*, 19 Cal.App.4th 187, 196 (1993) and *In re Eli F.*, 212 Cal.App.3d 228, 233 (1989) (jurisdictional findings and dispositional order are both appealable from dispositional order, which is final judgment within the meaning of WIC section 395). She could have, but did not, appeal the

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[2] In its opinion, the district court below mistakenly stated that Appellant had limited rights in the dependency proceeding and could not claim ineffective assistance of counsel on appeal. ER 32.

judgment terminating her parental rights. She could have, but did not, raise the issue of jurisdiction at any time in the state court proceedings.

Where Appellant and the tribe appeared in the state court proceeding with counsel, there certainly was a reasonable opportunity to raise the issue that the superior court lacked jurisdiction. Instead, the motion presented by the tribe's attorney, which Appellant actively supported, cited section 1915 of ICWA as authority for the tribe's placement preferences. There was no claim, even by inference, that jurisdiction of the state court was at issue. IA-ER 34, 35.

Appellant and the tribe should have asserted the tribe's jurisdiction in state court and then sought review by the Supreme Court, as was the procedure the tribe followed in *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 109 S.Ct. 1597 (1989). In *Holyfield*, the tribe moved in state court to vacate the adoption of twin infants on grounds it had exclusive jurisdiction. The tribe made the motion two months after the adoptions had been granted, and just three months after the twins had been born. *Holyfield*, 490 U.S. at p. 1603. The tribe appealed to the state appellate court and the sought review by the United States Supreme Court.

Ibid. See also Matter of Adoption of Halloway, 732 P.2d 962, 963 (1986) (Navaho tribe asserted exclusive jurisdiction from the moment it intervened).

It is obvious that Appellant, disgruntled with the state court's placement decision and termination of parental rights, is now seeking to overturn that judgment by appealing it to the federal district court and has tacked on a new claim that the state court lacked subject matter jurisdiction. This belated jurisdictional claim could have been raised in state court. All the potential interested parties were actively involved in that case – the child, both parents, the tribe and the state.

The federal court lacks jurisdiction over this case under *Rooker-Feldman*.

B. Section 1914 of the ICWA Does Not Create A General Exception to Application of *Rooker-Feldman*.

The district court below determined that *Rooker-Feldman* doctrine does not apply to a collateral challenge of a custody order to which the ICWA applies because section 1914 of the ICWA specifically authorizes a "court of competent jurisdiction" to review custody proceedings regarding an Indian child. ER 25-26. Section 1914 provides:

> Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

25 U.S.C. § 1914. The district court below noted that "Congress has explicitly granted federal district courts the power to collaterally review state court decisions through habeas corpus and bankruptcy petitions." ER 25. The court compared a collateral attack under ICWA section 1914 to circumstances where Congress allows collateral attacks of state court judgments under specific bankruptcy legislation. ER 25. The court noted that Congress's "power over bankruptcy is plenary" and stated: "Similarly, Congress has plenary power over Indian affairs, U.S.Const. art. I, § 8, cl. 3, a power understood to extend to 'the special problems of Indians,' [Citation]." ER 25. From this, the court determined that the District Court has, in effect, original jurisdiction to hear an ICWA section 1914 collateral attack to a state child custody judgment.

The district court's analogy to bankruptcy and its analysis under Congress's plenary power over Indian affairs is flawed. The original jurisdiction of the District Court regarding bankruptcy matters is clear, whereas Congress's reference in the ICWA to "courts of competent

jurisdiction" is not. In bankruptcy proceedings, Congress has specifically provided that the District Court has "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334 (a). Thus, as this circuit has noted: "By the plain wording of [28 U.S.C. § 1334 (a)], Congress has expressed its intent that bankruptcy matters be handled exclusively in a federal forum. *See MSR Exploration, Ltd. V. Meridian Oil, Inc.,* 74 F.3d 910, 913 (9th Cir. 1996).

> In short, " 'Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate.' " [Citations]

Ibid.

In contrast, section 1914 of the ICWA refers to "courts of competent jurisdiction," rather than specifically providing the District Court with original jurisdiction. 25 U.S.C. § 1914. Thus, an analysis under *Rooker-Feldman* is necessary to determine whether the District Court has competent jurisdiction.

Under the circumstances of the instant case, the District Court does not have competent jurisdiction because, as discussed above, Appellant participated in the state court proceeding and is seeking appellate review by the District Court.

C. Jane Has Substantive Rights That Require a Holding That The Federal Court Lacks Jurisdiction Over A Collateral Attack To The State Court Child Custody Judgment.

Appellant's action to invalidate the removal of Jane, the termination of parental rights and Jane's adoption would strip Jane of the substantive protections specifically provided to the Indian child in the ICWA and of fundamental interests recognized by courts.

Congress stated two intentions when it enacted the ICWA, "to protect the best interests of Indian children" and to "promote the stability and security of Indian tribes and families." 25 U.S.C. § 1902. The provisions in the ICWA show that Congress did not subordinate the child's interests to that of the parent and tribe, but rather gave the Indian child equal footing. The ICWA provides for appointment of counsel for the Indian child. 25 U.S.C. § 1912 (b). The ICWA provides the Indian child, not just the parent and tribe, with the right to petition to overturn the Indian child's removal, the termination of parental rights, and the child's adoption. 25 U.S.C. § 1914.

Further, under the ICWA, Jane has a substantive right to be heard regarding placement. When the child's tribe establishes a placement preference by resolution, the state court may consider "the particular needs

of the child" and also the child's wishes regarding placement. 25 U.S.C. §§ 1912 (b) [appointment of counsel], 1915 (c) [placement][3]. Thus, under the ICWA, an Indian child's special needs and wishes regarding placement could outweigh a tribe's resolution.

In the state court proceedings, the court appointed an independent attorney for Jane who represented her throughout the proceedings. IA-ER 6, 14 (line 5), 27, 33, 38 (line 6), 49 (line 17), 54. State law required that the attorney interview Jane "to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes." WIC § 317, subd. (e). On March 10, 2004, the district court below appointed independent counsel for Jane to represent the child "in all matters before this court and on appeal." IA-ER 56. Subsequent to that appointment, there has been no petition filed on Jane's behalf to invalidate her placement. Rather, Jane seeks to preserve her adoptive family.

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[3] 25 U.S.C. § 1915 (c) provides, in pertinent part, that "if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting *appropriate to the particular needs of the child*, as provided in subsection (b) of this section. *Where appropriate, the preference of the Indian child* or parent *shall be considered*." (Emphasis added.)

The invalidation of Jane's placement based on this belated assertion of tribal jurisdiction and against the child's wishes would not serve any purpose articulated by the ICWA. Jane is not an infant or young child any more. She is a 12-year-old with the strong will and developmental needs of a pre-adolescent. The means to maintain or develop a healthy relationship with her natural family and tribe are not being served by this litigation, nor will they be served by a change of custody against her will and emotional interests. The parties and this court should bear in mind that Jane was repeatedly raped as a very young girl. A sense of stability and safety are critical to the well-being and development of a child, especially one whose trust and boundaries have been violated by sexual abuse homes in her home. Jane was placed with the D's five years ago and it has been almost three years ago since they adopted her.

Courts have recognized that the child's interest in her adoptive family is fundamental and that the interests in maintaining this relationship are compelling. See *In re Bridget R.* 41 Cal.App.4th 1483, 1503 – 1505, *cert. denied, sub nom.* 519 U.S. 1060, 520 U.S. 1181. As the court noted in *Bridget R.*:

> A child's right to remain in a stable home is ... found both to be adverse to and outweigh a parent's interests where a natural father failed to show a commitment to the child within a

> reasonable time of learning of the mother's pregnancy, but later seeks to assert parental rights and disturb an adoptive placement or stepparent family in which the child is secure and thriving. [Citations]. In such cases, the United States Supreme Court has ruled that the parental rights of the natural father are superseded by policies favoring preservation of the child's existing family unit. [*Quilloin*]

Id. at p. 1505, citing *Lehr v. Robertson*, 463 U.S. 248, 261-262 (1983), *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978), and *Adoption of Michael H.*, 10 Cal.4th 1043, 1054-1058 (1995).

The statement of the Unites States Supreme Court in *Lehman*, justifying the holding that federal courts do not have jurisdiction over a habeas action brought by a parent to collaterally attack a custody judgment bears repeating:

> It is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current 'home,' under the care of his parents or foster parents, especially when such uncertainty is prolonged."

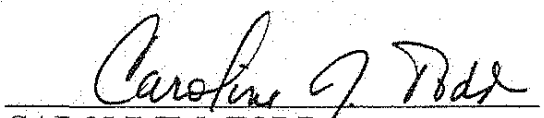
Lehman v. Lycoming County Children's Services, 458 U.S. at 513-514.

CONCLUSION

Where, as here, all parties appeared in the state court proceeding, the District Court lacks jurisdiction over Appellant's collateral attack to the state court custody judgment.

Dated: June 26, 2004

Respectfully submitted:



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