

RE COOKE; THE COUNTY OF BRUCE v. THE CITY OF HAMILTON

[1955] O.W.N. 812

Ontario Court of Appeal, Laidlaw, Aylesworth and Gibson JJ.A., 22 June 1955

Infants--Neglected Children--Municipal Liability for Maintenance--Residence on Indian Reserve--Reserve Deemed to be within County--The Child Welfare Act, 1954 (Ont), c. 8, s. 1 (e)--The Territorial Division Act, R.S.O. 1950, c. 388, ss. 1(2), 5--The Indian Act, R.S.C. 1952, c. 149, ss. 2 (o), 18.

An appeal by the County of Bruce from an order of a juvenile court judge declaring the appellant liable for the maintenance of Deborah Rose Cooke, a neglected child.

The appeal was heard by Laidlaw, Aylesworth and Gibson JJ.A.

S. A. Shoemaker, Q.C., for the appellant.

R. B. Robinson, for the city of Hamilton, respondent.

The judgment of the Court was delivered by Aylesworth J.A. [after stating the nature of the appeal]:-- The child was born in Hamilton on 11th August 1954. The child's mother, Ethelene Cooke, was born in the Saugeen Indian Reserve and lived there all her life until 1952. Thereafter she lived for uncertain periods in Toronto, Waterdown, Burlington and eventually back again in the Saugeen reserve. The trial judge found that the mother's residence was in the Saugeen reserve "and, therefore, as the Indian Reserve geographically is within the confines of the County of Bruce, I find that the child belongs to the County of Bruce".

I agree that the determining factor in ascertaining liability for the child's maintenance is, on the facts of this case, the mother's residence, and I agree that, for the purposes of this case, the mother's residence was in the Saugeen Indian Reserve. I further agree that the appellant is liable for the child's maintenance. Pending the disposition of the case by His Honour, *The Children's Protection Act*, R.S.O. 1950, c. 53, was repealed and *The Child Welfare Act*, 1954 (Ont.), c. 8, came into force on the 1st January 1955, but counsel agree that it is immaterial which of the Acts applies. For convenience, reference need only be made to the present Act.

For the appellant it is said that the Saugeen Indian Reserve forms no part of the county: *The Territorial Division Act*, R.S.O. 1950, c. 388, ss. 1(2) and 5. Appellant also refers to *The Indian Act*, R.S.C. 1952, c. 149, ss. 2(o) and 18, whereby the lands of an Indian reserve are vested in and held by Her Majesty for the use and benefit of Indians. I do not think the question in issue falls to be determined by reference to either of those enactments. For the purposes of *The Child Welfare Act* "municipality" is broadly defined by s. 1(e) thereof as meaning "county, city or separated town"; that is to say, the organizational or geographical units deemed appropriate for the purpose of child welfare charges are prescribed in the definition. Many other organizational or geographical units, such as townships, villages and police villages, are not so prescribed. In my view, the Saugeen reserve is "in the county" just as much as one of the county's townships or villages. For the purposes of the Act residence is, and remains, primarily a geographical consideration. Designation of some "county, city or separated town" as the place of residence is to be made, and consequent upon that designation being made as a finding of fact, liability for the maintenance of the neglected child depends.

Presumably in most cases involving an Indian reserve as the place of residence, the Department of Indian Affairs will reimburse the municipality held to be liable, but it is suggested that the mother of this child is not "a Treaty Indian" and that upon that ground the Department has refused to accept any of the financial burden for maintenance. That matter, however, is really not before us except incidentally, and it cannot affect our decision. Both the Department of Indian Affairs and the Director of Child Welfare were served with notice of the appeal to this Court but neither was represented before the Court.

The appeal will be dismissed and the appellant will pay the Corporation of the City of Hamilton its costs of the appeal.

Appeal dismissed with costs.