Custody Orders Requesting Findings for Special Immigrant Juvenile Status

A few weeks ago, [I posted about the case of *Zetino-Cruz v. Benitz-Zetino*, NC App (August 16, 2016),](#) in which the court of appeals held that the trial court erred in transferring venue *sua sponte* in a custody case. The opinion also mentions that, in addition to her request for custody, grandmother in that case also requested that the trial court make findings of fact and conclusions of law that are prerequisites for the children's application to US Citizenship and Immigration Services (USCIS) for Special Immigrant Juvenile Status. The court of appeals resolved the case on the venue issue alone and did not address the request for the "extra" findings of fact or conclusions of law by grandmother.

This same request is being made in custody cases throughout the state with increasing frequency. So what is Special Immigrant Juvenile Status and what does it have to do with Chapter 50 custody cases?

Special Juvenile Immigrant Status

I definitely am not an expert in immigration law, but these requests in custody cases have forced me to learn a little about that complex area. Special Immigrant Juvenile Status (SIJ status) is a form of at least temporary protection from deportation provided by federal law for unmarried non-citizen children in the US under the age of 21 who have been the victim of abuse, neglect or abandonment by a parent. An application is submitted on behalf of the child to the USCIS and that agency decides whether SIJ status should be granted pursuant to the requirements set out in [8 CFR 204.11](#). If a child obtains SIJ status, that child then is eligible to apply for Lawful Permanent Resident Status.

A special juvenile immigrant eligible to apply for protected status is defined in [8 USC 1101(a)(27)(J)](#) as "an immigrant who is present in the United States--

- who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
- for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
- in whose case the Secretary of Homeland Security consents to the grant of special

immigrant juvenile status."

It has been stated that the purpose of the federal law is to "protect abused, neglected or abandoned juveniles whose compelled repatriation would not be in their best interest." *In re Danny G.*, 117 A.3rd 650 (Maryland 2015).

What is the role of a state court?

State courts do not determine a child's eligibility for SIJ status. Only the federal government can determine a person's immigration status.

However, the federal government defers to the expertise of the state courts to determine issues relating to child welfare. While the North Carolina appellate courts have not considered the issue yet, there now are a significant number of opinions issued by other state appellate courts around the country. Those other courts consistently have held that when a state "juvenile court" is exercising jurisdiction over a child and is requested to do so, that state court must determine whether a juvenile has been abused, neglected or abandoned by one or both parents and whether it is in a child's best interest to be returned to the child's country of origin. Those courts reason that a state court cannot refuse to consider the request for the SIJ status findings because a child cannot petition for the protected status without a state court order containing the required findings and conclusions. *See e.g. H.S.P. v. J.K.,* 121 A.3d 849 (New Jersey Supreme Court 2015); *Recinos v. Escobar,* 46 NE 3rd 60 (Mass. 2016)*; In re J.J.X.C.*, 734 SE2d 120 (Ga. 2012). For a helpful summary of cases decided throughout the country to date on this topic, *see* 67 ALR 2d 299(2012)(updated weekly).

To petition for SIJ status, a child must present a state court order to the USCIS that:

- Commits the child to the custody of an agency or a person;
- Concludes reunification with one or both parents is not viable due to abuse, neglect or abandonment by one or both parents; and
- Concludes that it is not in the best interest of the child to be returned to the child's country of origin.

Why is this coming up in custody cases? Federal law says a juvenile court must make the findings…..

In the context of determining SJI status, the term "juvenile court" is defined as:

"a court having jurisdiction under state law to make judicial determinations about the care and custody of children."

8 CFR 204.11.

Therefore, in North Carolina, a juvenile court would include, for example, a court with jurisdiction to hear:

- Abuse, neglect and dependency proceedings
- Delinquency proceeding
- Chapter 50 custody proceedings, and
- Guardianship proceedings.

But it is still a custody case

The trial court is being asked to make the SIJ status findings and conclusions in the context of a Chapter 50 custody proceeding. That means:

- North Carolina must have subject matter jurisdiction to make a custody determination for the child pursuant to Chapter 50A, the UCCJEA;
- Plaintiff must be a person with standing to seek custody, meaning plaintiff must be a parent, a relative, or another person with a sufficient relationship with the child to establish standing. *See e.g. Ellison v. Ramos*, 130 NC App 389 (1998) and *Rodriquez v. Rodriquez*, 211 NC App 267 (2011);
- A parent who is a named defendant in the custody case must be served with process unless the parent consents to jurisdiction. If the defendant parent lives in another country, service of process may be tricky. See Rule 4(j3) of the Rules of Civil Procedure. *See also* International Service of Process, SOG Bulletin, https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/aoj200407.pdf
- Parents who are not parties must be provided notice of the proceeding pursuant to GS 50A-205; and
- Absent consent, the trial court cannot enter a custody order without an evidentiary hearing. *Bohannan v. McManaway*, 208 NC App 572 (2010). Evidence must be presented to support all findings of fact made by the trial court and the findings of fact must support the conclusions of law regarding the best interest of the child.

Can the SIJ status findings/conclusions be made by consent?

I have not found state or federal case law addressing the question of whether the findings/conclusions can be entered by consent, without any evidence presented to the court.

Obviously, trial courts in North Carolina enter custody orders by consent every day. These consent custody orders often contain findings of fact. There is no indication in our case law that parties cannot stipulate to specific findings of fact or agree to the entry of an order containing these findings by consent.

Are the SIJ status findings different? The federal scheme described above for the process of

determining a child's eligibility for this protected immigration status certainly seems to anticipate that state courts will hold evidentiary hearings, but the federal law does not explicitly state that actual evidence must be considered.

Until further guidance is provided, it probably is the better practice for a trial court willing to enter the orders by consent to make it very clear in the order itself that the findings were made by stipulation rather than by trial. Undoubtedly, that information will be important for the USCIS as it makes the decision about whether a juvenile meets the criteria for SIJ status.

What do others think?