Supreme Court of Florida

No. SC2026-0470

S.H., IN THE INTEREST OF A.H. AND K.W., THE CHILDREN,
Petitioner,

vs.

DEPARTMENT OF CHILDREN AND FAMILIES AND GUARDIAN AD LITEM,
Respondents.

October 22, 2026

COURIEL, C.J.

S.H. challenges the termination of her parental rights to her daughter, K.W., who is an Indian child as that term is defined in the Indian Child Welfare Act (ICWA). *See* 25 U.S.C. § 1903(4). Section 1912(f) of the ICWA prohibits the termination of parental rights to an Indian child unless a court finds beyond a reasonable doubt that continued custody will likely result in the child's serious harm. We must decide whether the burden of proof for this finding under federal law preempts the clear-and-convincing-evidence burden of proof applicable to the separate findings that Florida law

requires before a court may terminate a parent's right to his or her child. *See* § 39.809(1), Fla. Stat. (2025). We have jurisdiction. *See* art. V, § 3(b)(3), Fla. Const. For the reasons below, we hold that the ICWA does not change the burden of proof applicable to the distinct findings required under Florida law to terminate parental rights to an Indian child.

I

In June 2025, the circuit court terminated S.H.'s parental rights to K.W. after a multi-day adjudicatory hearing.[1] The court found that the Department of Children and Families established, by clear and convincing evidence, the necessary elements under Florida law for the termination. And because K.W. is an Indian child under the ICWA, the court considered, and ultimately determined, that the Department had proven, beyond a reasonable doubt, that S.H.'s continued custody of K.W. would likely result in K.W.'s serious emotional damage. *See* 25 U.S.C. § 1912(f).

1. The circuit court also terminated S.H.'s parental rights to her other child, A.H. But she does not challenge that termination before us.

S.H. appealed to the Sixth District Court of Appeal. *Int. of A.H.*, 428 So. 3d 612 (Fla. 6th DCA 2026). She argued, in part, that the circuit court erred in not applying the ICWA's beyond-a-reasonable-doubt burden of proof to the findings necessary under Florida law to terminate parental rights. *Id.* at 614. She contended that the burden of proof set forth in the ICWA preempted the clear-and-convincing-evidence burden that applies to the Florida law findings. *Id.* The Sixth District disagreed. *Id.* at 615. It determined that nothing in the ICWA "preempted the burden of proof that applies to findings [s]tates require before a parent's rights are terminated." *Id.* at 614. So the Sixth District affirmed, holding that the circuit court "correctly applied the clear and convincing standard to the findings required under Florida law and the beyond a reasonable doubt standard to the finding required by" section 1912(f) of the ICWA. *Id.* at 615.

S.H. sought our review. She identified that the Sixth District's decision conflicts with the First District Court of Appeal's decision in *J.P.H. v. Florida Department of Children & Families*, 39 So. 3d 560 (Fla. 1st DCA 2010). In *J.P.H.*, the First District broadly held that section 1912(f) of the ICWA "requires that any order terminating

parental rights to an Indian child be supported 'by evidence beyond a reasonable doubt,' rather than the clear and convincing evidence standard set forth in Chapter 39, Florida Statutes." *Id.* (quoting 25 U.S.C. § 1912(f)).

We accepted review to resolve the conflict.

II

We review de novo whether a state law is preempted by federal law. *See R.J. Reynolds Tobacco Co. v. Marotta*, 214 So. 3d 590, 595 (Fla. 2017) (citing *Vreeland v. Ferrer*, 71 So. 3d 70, 73 (Fla. 2011)). The Supremacy Clause of the U.S. Constitution provides that the U.S. Constitution, federal statutes, and treaties are "the supreme Law of the Land." Art. VI, cl. 2, U.S. Const. This Clause "supplies a rule of decision when federal and state laws conflict." *Martin v. United States*, 605 U.S. 395, 409 (2025). Essentially, "when a regulated party cannot comply with both federal and state directives, the Supremacy Clause tells us the state law must yield." *Id.*

Under the Supremacy Clause, a federal statute may expressly preempt state law. *Kansas v. Garcia*, 589 U.S. 191, 203 (2020) ("It is well established that within constitutional limits Congress may

preempt state authority by so stating in express terms." (quoting *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 203 (1983))). A federal statute may also preempt state law by implication. "In rare cases, the [U.S. Supreme] Court has found that Congress 'legislated so comprehensively' in a particular field that it 'left no room for supplementary state legislation . . . .' " *Id.* at 208 (quoting *R.J. Reynolds Tobacco Co. v. Durham County*, 479 U.S. 130, 140 (1986)). In other cases, state law may simply conflict with federal law, that is, "where compliance with both state and federal law is impossible, or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015) (citation modified). While these categories are not "rigidly distinct," they are often called "express, field, and conflict preemption." *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 767 (2019) (Gorsuch, J., opinion). Here, the ICWA does not preempt the Florida law at issue under any of these categories.

The ICWA does not expressly preempt Florida law. It contains none of the words for which courts traditionally look when

determining express preemption.[2] The Act's policy section says that the ICWA establishes the "minimum Federal standards for the removal of Indian children from their families." 25 U.S.C. § 1902. That of course does not prevent the states from enacting other additional standards to use in child custody proceedings. Indeed, the ICWA anticipates as much:

> In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

Id. § 1921.

The ICWA's relevant "minimum" standards are as follows. For the involuntary termination of parental rights to an Indian child, the parent and the Indian child's tribe must be notified. *See id.* § 1912(a). The parent and tribe have the right to intervene, request more time to prepare, examine all reports and court documents,

---

2. *See, e.g.*, *Monsanto Co. v. Durnell*, 609 U.S. 371, 382-83 (2026) (examining the preemption clause in the Federal Insecticide, Fungicide, and Rodenticide Act, which says that a "State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter" (quoting 7 U.S.C. § 136v(b))).

and receive court-appointed counsel (if indigent). *See id.* § 1912(a)-(c). The party seeking termination must "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." *Id.* § 1912(d).[3] And to terminate parental rights, a court must determine "by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." *Id.* § 1912(f); *see also Haaland v. Brackeen*, 599 U.S. 255, 266 (2023) (outlining the ICWA).

In Florida, to terminate parental rights to any child, the Department must prove by clear and convincing evidence that (1) at

3. We decline to the reach the issue raised by S.H. regarding any finding by the circuit court about whether the Department made active efforts to prevent the breakup of an Indian family. The Sixth District did not expressly address that claim, and it is outside the scope of the conflict issue. *See Oquendo v. State*, 420 So. 3d 466, 468 n.2 (Fla. 2025). Moreover, S.H. failed to disclose the issue in her jurisdictional briefing. *See* Fla. R. App. P. 9.120(f).

least one Florida statutory ground for termination exists,[4] (2) termination is in the child's manifest best interest, and (3) termination is the least restrictive means of protecting the child from serious harm. *See Statewide Guardian ad Litem Off. v. C.C.*, 382 So. 3d 614, 618-19 (Fla. 2024) (citing § 39.809(1), Fla. Stat. (2021)). Insomuch as these determinations are more than what is required for termination of parental rights under the ICWA, Florida law "provides a higher standard of protection" for Indian families than the ICWA. *See* 25 U.S.C. § 1921.

Nor does the ICWA preempt Florida from regulating the relevant field. The ICWA is not one of those "rare" statutes that legislates the subject "so comprehensively" that it leaves "no room" for Florida to provide supplementary regulation. *Garcia*, 589 U.S. at 208 (quoting *Durham County*, 479 U.S. at 140). The ICWA in fact says the opposite. As we have said, it sets only "minimum" standards for Indian child custody proceedings to which state law may add. 25 U.S.C. §§ 1902, 1921.

4. *See* § 39.806(1), Fla. Stat. (2025) (providing the available statutory grounds).

The ICWA does not preempt Florida law by conflict with respect to the evidentiary burdens at issue here. The necessary finding under section 1912(f) of the ICWA (continued custody of the Indian child is likely to result in serious harm) is distinct from the findings required under Florida law (at least one statutory ground, best interest of the child, and least restrictive means). Finding Florida's requirements by clear and convincing evidence does not prohibit or frustrate the purpose of finding the ICWA's requirement beyond a reasonable doubt.

S.H. argues that the ICWA requires the Department to establish the required findings under Florida law beyond a reasonable doubt because the U.S. Supreme Court has said that "[w]hen a state court adjudicates [an Indian child custody] proceeding, [the] ICWA governs from start to finish." *Haaland*, 599 U.S. at 266. But the fact that the ICWA governs during the entirety of a child custody proceeding does not preclude Florida law from governing it, too.

> It has long been a principle of law that both the federal government and the states may exercise concurrent powers and enact legislation concerning the same subject matter, and the action of the state is valid and operative in all respects in which there is no direct

> and positive conflict with the action of the federal government.

Phillips v. Gen. Fin. Corp. of Fla., 297 So. 2d 6, 8 (Fla. 1974). Here, Florida law does not conflict with the ICWA.

Below, the Sixth District correctly affirmed the circuit court's application of the relevant evidentiary burdens: clear and convincing evidence for the Florida law findings and beyond a reasonable doubt for the finding required by section 1912(f) of the ICWA. *See A.H.*, 428 So. 3d at 615. In contrast, the First District incorrectly determined in *J.P.H.* that any order terminating parental rights to an Indian child must be broadly supported by evidence beyond a reasonable doubt rather than Florida's clear and convincing standard. *See* 39 So. 3d at 560.

III

Accordingly, we approve *A.H.* to the extent that it is consistent with this opinion. And we disapprove *J.P.H.* to the extent that it is inconsistent with this opinion.

It is so ordered.

LABARGA, MUÑIZ, GROSSHANS, FRANCIS, BARRIOS, and TANENBAUM, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal
Direct Conflict of Decisions

Sixth District - Case No. 6D2025-1795

(Osceola County)

Jeffrey D. Deen, Regional Counsel, and Richard F. Joyce, Special Assistant Regional Counsel, Office of Criminal Conflict and Civil Regional Counsel, Casselberry, Florida,

for Petitioner

Dennis W. Moore, Executive Director, Sara Elizabeth Goldfarb, Statewide Director of Appeals, and Amanda Victoria Glass, Senior Attorney, Appellate Division, Statewide Guardian ad Litem Office, Tallahassee, Florida,

for Respondent Statewide Guardian ad Litem

Stephanie C. Zimmerman, Deputy Director and Statewide Director of Appeals, and Kelley Schaeffer, Appellate Counsel, Department of Children & Families – Children's Legal Services, Bradenton, Florida,

for Respondent Department of Children & Families – Children's Legal Services