In the Matter of the Guardianship of L.C., --- P.3d ---, 2023 WL 6386018 (Wash. Ct. App., Oct. 2, 2023), opinion withdrawn and substituting opinion issued, 2023 WL 7486608 (Wash. Ct. App., Noc. 13, 2023)..

- **Holding**: Where filing by guardian ad litem prior to guardianship trial included records indicating that father had Apache heritage on his mother's side, the trial court had no reason to know that the child may be an Indian child when the report was not admitted as substantive evidence during the trial, there was no indication in the record that anyone called the report to the trial court's attention, and none of the witnesses, including the father, testified during the trial that the child had tribal heritage.
- **Summary**: Mother and father appealed from a trial court order in an involuntary custody proceeding appointing the mother's cousins as limited guardians over their minor daughter L.C. The father asserted, for the first time on appeal, that the trial court erred by not adhering to the dictates of § 1912 of the Indian Child Welfare Act (ICWA) and § 13.38.070(1) of the Washington State Indian Child Welfare Act (WICWA) because the trial court had reason to know L.C. was an Indian child because the records reviewed by the court-appointed guardian ad litem referred to the father having "Apache ancestry on his mother's side."

  The court of appeals held that the trial court had no reason to know that L.C. may be an Indian child for purposes of ICWA and WICWA—while the guardian ad litem had, five days before trial, filed copies of reports from the Department of Children, Youth and Families indicating possible tribal heritage, the "reports were not admitted as substantive evidence during the trial, and there is no indication in the record that anyone called the reports to the trial court's attention. Furthermore, none of the witnesses, including the father, testified during the trial that L.C. had tribal heritage. Because no participant to the proceeding indicated that L.C. has tribal heritage, the trial court did not have reason to know that L.C. was an Indian child subject to ICWA and WICWA." In support of its holding, the court cited 25 C.F.R. § 23.107(a), which dictates that the trial court in a child custody proceeding must ask all participants whether they know or have reason to know that the child is an Indian child. "This inquiry is to be 'made at the commencement of the proceeding and all responses should be on the record.'" 25 C.F.R. § 23.107(a).

  Further, while the court had held several pre-trial hearings on motions for extension filed by the parents, with the parents testifying on the record, the parties did not provide the appellate court with transcripts, so the appellate court was unable to review the father's claim to the extent it asserted that the earlier hearings gave the trial court reason to know that L.C. was possibly an Indian child.
- **Relevant (2023) Deskbook Section**: 13:18

- **Comment:** The substitute opinion does not appear to alter the ICWA analysis, aside from one addition, noting that "the trial court did not have reason to know that L.C. was an Indian child subject to ICWA and WICWA based on the trial evidence." The majority of both opinions addresses the court's appointment of guardians without making a finding that the parents' choices of guardians would not be in the child's best interest.