People in Interest of My.K.M., 2022 CO 35, 512 P.3d 132 (2022)

- **Holding:** ICWA's "active efforts" requirement requires a greater degree of agency involvement than the traditional "reasonable efforts" standard, but the county department of human services satisfied that requirement when its remedial efforts were viewed as a whole under the case's circumstances.
- **Summary:** This opinion is in a certiorari proceeding from the court of appeals' decision, *People in Interest of My.K.M.*, 2021 COA 33M, 491 P.3d 495 (2021), summarized at https://docs.google.com/document/d/1OnFpWMsYIPotd6rGCjMpjZBgH3boPmcR/edit. There, the latter reversed a juvenile court's determination that the county department of human services exercised the "active efforts" required under the Indian Child Welfare Act to effect familial reintegration. It held that the trial court committed reversible error in finding ICWA compliance because "even significant efforts by the department may not satisfy the active efforts requirement if a critical service is overlooked" and that such a "critical service"—offering adequate job training or income assistance to the appellant mother—had not be provided. The supreme court reversed that determination.

  The court found that "Congress crafted the active efforts standard to fix what it deemed as state courts' failure to recognize and address the special needs and circumstances that Native American families face" and that its use of the term "active efforts" had substantive significance:

  > Congress's choice of the phrase "active efforts" to describe the standard is ... notable. Had Congress meant for the standard to equate to "reasonable efforts," it presumably would have used that phrase. But whereas "reasonable efforts" may include passive efforts, the phrase "active efforts" denotes something more; as the federal regulations indicate, such efforts must be *affirmative, active, thorough, and timely*. ... In short, we conclude that the active efforts standard under ICWA is a more demanding standard than the reasonable efforts standard applied in non-ICWA cases.

  Turning to the question of how to define the scope of the "active efforts" requirement, the court

  > agree[d] that at a minimum, active efforts require an agency like DHS to identify and secure the resources and services parents need to successfully satisfy court treatment plan objectives and support the parents through the treatment plan goals. However, we recognize that there is no one-size-fits-all formula for "active efforts" and that, as federal regulatory guidance indicates, active efforts should be "tailored to the facts and circumstances of the case."

  "Courts[,]" therefore, "should analyze an agency's active efforts by considering the totality of the circumstances and accounting for all services and resources provided to a parent to ensure the completion of the entire treatment plan." Agencies also "must retain discretion to prioritize certain services or resources to address a family's most pressing needs in a way that will assist the family's overall completion of the treatment plan."

  Applying these standards to the trial court record, the court held that the department had discharged its "active efforts" duty. It pointed out, in part, that although "the juvenile court found that Mother had no job or any other legal source of income or financial stability after the end of 2018 and that, therefore she had not successfully met that treatment plan objective[,]" it "did not deem Mother unfit based on her lack of employment or income; rather, the juvenile court was focused on her inability to maintain

sobriety and her cessation of nearly all contact with DHS (and all contact with the children)" after she relapsed into substance abuse two years after her children had been adjudicated dependent or neglected. The court further deferred to the juvenile court's "heavily credit[ing]" the involved tribe's qualified expert witness's testimony "that, from the Tribe's perspective, the services DHS provided were appropriate as they 'ha[d] provided multiple referrals and different providers to assist the family in various aspects, such as mental health, domestic violence, [and] substance abuse.'" Finally, in rejecting the mother's argument "that a totality-of-the-circumstances analysis of active efforts is contrary to the plain text and purpose of the law[,]" it stated that "[n]othing in our opinion excuses an agency from its obligation to address all aspects of a parent's treatment plan" but reiterated that "agencies must retain a degree of discretion in how they actively and efficiently provide resources and services to a parent to successfully complete their entire treatment plan—with the ultimate objective of keeping the Native American family together."

- **Relevant (2022) Deskbook Section:** 13:24 nn.5, 11, 14