Adoption of Leonard, --- N.E.3d ---, 2023 WL 6220387 (Mass. App. Ct., Sept. 26, 2023).

- **Holding**: Witness lacking any "substantial education in social work or psychology and direct experience with counseling, therapy, or conducting psychological assessments" was not qualified to offer an opinion on termination of parental rights under § 1912(f) of the Indian Child Welfare Act as to whether continued custody by the Indian child's parent or Indian custodian was likely to result in serious emotional or physical damage to the child.
- **Summary**: Following trial, a juvenile court judge concluded that the mother was unfit and terminated her parental rights with respect to her son, Leonard. Both mother and Leonard were enrolled members of the Mashpee Wampanoag Tribe. The mother was persistently homeless, and Leonard had special needs. At the time of trial, Leonard had been placed with a foster mother who was a member of the Tribe and a member of Leonard's extended family.

  On appeal, the mother argued that the department failed to demonstrate that the Department of Children and Families had failed to demonstrate that "active efforts" were made to prevent the breakup of the Indian family and failed to demonstrate that the child would suffer "serious emotional or physical damage" in her custody. 25 U.S.C. § 1912(d), (f).

  On the first issue, the court of appeals concluded that the record supported the finding that active efforts were made to prevent the breakup of the family, with the Department developing an action plan with specific steps designed to reunify the family, which the mother failed to follow aside from sporadic visits with Leonard., despite the department's efforts.

  On the second issue, the court concluded that the expert witness provided by the Department was not qualified under 25 U.S.C. § 1912(f) to testify about the likelihood that "continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." The proffered witness was a member of the Peoria Indian Tribe of Oklahoma and a lawyer who had been previously qualified to testify as a "Native American expert" in Massachusetts courts in "Indian child welfare cases," who opined that the mother was "still unstable" and that it would cause the child "serious emotional damage" if he were returned to the mother. The court concluded that 25 U.S.C. § 1912(f) "requires more than showing that the witness has knowledge and experience in economics, Native American studies, law, the ICWA, care and protection cases, and the customs of the Peoria Indian Tribe of Oklahoma," and makes no exception where, as here, the child was placed with another member of the same tribe. In order to qualify as an expert addressing whether continued custody by a parent will result in serious emotional or physical harm, "the witness must be capable of testifying to 'a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child.'" Slip. op, quoting 25 C.F.R. § 23.121(c). Because the witness lacked any "substantial education in social work or psychology and direct experience with counseling, therapy, or conducting psychological assessments," her "testimony failed to illuminate how her background and experience would help the trier of fact to understand

the causal relationship between the conditions in the home and the likelihood of serious emotional or physical damage to the child," and the court vacated the decree terminating the mother's parental rights, and remanded for further proceedings.

- **Relevant (2023) Deskbook Sections**: 13:24, 13:26