

**MATTER OF HANSON**

Cite as 470 N.W.2d 669 (Mich.App. 1991)

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Also, the Public Health Code defines “[p]rescription drug” to include “[a] drug designated by the board as one which may only be dispensed pursuant to a prescription.” M.C.L. § 333.17708(4)(c); M.S.A. § 14.15(17708)(4)(c). This definition, too, focuses on the nature of the drug.

Second, giving the term “prescription drug” its commonly understood definition furthers the purpose or intent of the sales and use tax exemption contained in art 9, § 8. The exemption apparently was adopted to eliminate the burden and inequity a regressive tax on food and drugs imposes on low-income and elderly persons. Respondent argues that exempting from use taxes a drug manufacturer who uses drug samples as part of its marketing activities does not further the purpose of the exemption. We disagree.

Imposing a use tax on the drug manufacturer would ultimately burden low-income and elderly persons. Either fewer drug samples would be made available to physicians who in turn would pass the samples on to their patients, which means the patients probably would have to purchase the prescribed drugs instead of receiving them gratuitously from their physicians, or the cost of the use tax on the drug samples would be passed on to patients through the cost of drugs which eventually would be purchased. Either way, the ultimate consumer of these necessary items would pay. Therefore, giving the phrase “prescription drugs for human use” its commonly understood meaning results in a use tax exemption for the drug manufacturer which, in turn, furthers the purpose of the exemption—to eliminate a burden on low-income and elderly persons which results from a regressive tax on necessities of life.

In conclusion, the art 9, § 8 sales and use tax exemption for “prescription drugs” applies to petitioner’s use of drug samples in its solicitation process. Therefore, imposing a use tax on petitioner’s use of sample drugs violated the constitution.

Affirmed.



188 Mich.App. 392

**In the Matter of the Adoption of  
Elaine Frances HANSON.**

**Elaine Frances HANSON,  
Petitioner–Appellant,**

v.

**Jane DOE, an unidentified biological  
mother, Respondent–Appellee.**

**Docket No. 119366.**

Court of Appeals of Michigan.

Submitted Oct. 16, 1990, at Detroit.

Decided April 2, 1991, at 9:25 a.m.

Released for Publication June 21, 1991.

Adult adoptee petitioned for right to inspect adoption records in order to establish her Indian heritage. The Probate Court, Wayne County, Frances Pitts, J., denied adoptee’s request to make her adoption records available for her inspection, and adoptee appealed. The Court of Appeals held that adoptee established good cause as matter of law for release of information in order to allow her to establish her membership in Indian tribe and her entitlement to state and federal benefits.

Reversed and remanded.

**1. Indians ⇐6(2)**

Action by adult adoptee to obtain information regarding her biological parents under Indian Child Welfare Act, in order to establish her membership in Indian tribe and her entitlement to state and federal benefits, was not rendered moot by adoptee’s receipt of information regarding biological mother, including copy of birth certificate, where adoptee still lacked official documentation regarding her adoption sufficient to prove that she was person on birth certificate. Indian Child Welfare Act of 1978, § 2 et seq., 25 U.S.C.A. § 1901 et seq.

**2. Records** ⇐32

Whether and to what extent adult adoptee is entitled to access to adoption records for information regarding Indian ancestry was issue of sufficient public significance to be addressed, notwithstanding alleged mootness of action in which it arose, under "reoccurring but evading judicial review" exception to mootness doctrine.

**3. Records** ⇐32

Adult adoptee may obtain release of all information relative to biological parent either by written consent of parent or after death of parent, or upon order of court of record for good cause shown. M.C.L.A. §§ 710.67(1), 710.68(5).

**4. Indians** ⇐6(2)

Adult adoptee's petition to examine her adoption records to establish her Indian heritage qualified as "subsequent proceeding," within meaning of provision of Indian Child Welfare Act regarding adult adoptee's entitlement to information regarding biological parents. Indian Child Welfare Act of 1978, §§ 107, 113, 25 U.S.C.A. §§ 1917, 1923.

See publication Words and Phrases for other judicial constructions and definitions.

**5. Records** ⇐32

Adult adoptee demonstrated good cause for release of information regarding her biological mother, on ground that such information was necessary to enable her to establish her membership in Indian tribe and her entitlement to benefits under federal law and under Michigan's tuition waiver program. M.C.L.A. §§ 390.1251 et seq., 710.67(1), 710.68(5).

**6. Records** ⇐32

When consent of adult adoptee's living biological parents has not been obtained, probate court should release adoption records necessary to enable adoptee to establish her Indian heritage only to appropriate Indian tribe, and not to adoptee herself, with request that tribe keep information confidential. Indian Child Welfare Act of 1978, §§ 107, 113, 25 U.S.C.A. §§ 1917, 1923.

James A. Keedy, Traverse City, for petitioner-appellant.

Janice L. Burns, Detroit, for biological mother.

Before HOLBROOK, P.J., and CYNAR and WEAVER, JJ.

PER CURIAM.

Petitioner Elaine F. Hanson appeals as of right from a July 10, 1989, order of the Wayne County Probate Court denying her request to make her adoption records available for her inspection. Petitioner seeks to determine her American Indian ancestry by means of those records in order to establish tribal membership. We reverse and remand.

Petitioner was born on March 13, 1960, the illegitimate daughter of a woman of Irish, Dutch, English, and Indian ancestry. Petitioner was adopted by Geraldine and William Hanson through the Wayne County Probate Court in 1961. Through a previous request for information about her biological parents, petitioner was provided with nonidentifying information, from which she learned she was part Indian.

Petitioner filed the present action for disclosure of identifying information, including the names, birth dates, and birthplaces of her biological parents, or copies of any birth certificates or death certificates. Because of her Indian ancestry, petitioner relied on § 107 of the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1917, in support of her request for the information. Petitioner alleged that if she could prove that she is at least one-quarter-blood North American Indian, she would be entitled to benefits under Michigan's tuition waiver program, M.C.L. § 390.1251 *et seq.*; M.S.A. § 15.2114(1) *et seq.*, as well as be eligible for other social and economic benefits under federal law. Alternatively, petitioner argued that federal law, particularly the ICWA, constituted good cause for release of the information under state law, M.C.L. § 710.67(1); M.S.A. § 27.3178(555.67)(1).

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Following a hearing on the matter, the probate court ruled that the ICWA did not apply and that petitioner had not demonstrated good cause for release of the requested information. Accordingly, the petition was denied.

On information provided by petitioner, we note that while the present appeal was pending, petitioner was able to learn the identity of her biological mother and has even met with her. Petitioner has also obtained a copy of her birth certificate. Further, petitioner's adoption records reflect that petitioner's biological mother signed a consent form to release identifying information on November 3, 1989. By letter dated November 30, 1989, the probate court, provided petitioner the name, address, and telephone number of her biological mother, her own name before adoption, and the fact she had no siblings at the time of adoption. However, petitioner has stated on appeal that she still lacks official documentation regarding her adoption sufficient to prove that she is the person on the birth certificate, documentation which petitioner asserts is necessary in order for her to obtain tribal membership.

[1, 2] On these facts, we are not persuaded that this case is now moot. However, even if this case were moot, we feel that whether and to what extent an adult adoptee is entitled to access to her adoption records for information regarding Indian ancestry is an issue of public significance and is likely to reoccur in the future and still evade judicial review. *In re Forfeiture of \$53,00*, 178 Mich.App. 480, 485, 444 N.W.2d 182 (1989). Consequently, we will address the merits of petitioner's appeal.

[3] With respect to adoptions in which the biological parents' rights were terminated before September 12, 1980, an adult adoptee may obtain release of all information relative to a biological parent either by written consent of that parent or after the death of that parent, M.C.L. § 710.68(5); M.S.A. § 27.3178(555.68)(5), or "upon order of a court of record for good cause shown," M.C.L. § 710.67(1); M.S.A. § 27.3178(555.67)(1). *In re Creed*, 126 Mich.App. 32, 337 N.W.2d 41 (1983), appeal

after remand 128 Mich.App. 710, 341 N.W.2d 187 (1983); *In re Dixon*, 116 Mich.App. 763, 323 N.W.2d 549 (1982); see also *In re Dodge Estate*, 162 Mich.App. 573, 584, 413 N.W.2d 449 (1987).

[4] Section 107 of the ICWA, under which petitioner sought access to her adoption records, states:

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

That section is limited by 25 U.S.C. § 1923, which provides:

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, *but shall apply to any subsequent proceeding in the same matter* or subsequent proceedings affecting the custody or placement of the same child. [Emphasis added.]

The trial court summarily concluded that the present action was not a "subsequent proceeding" under the statute. We have not been able to locate any other case, in this or any other jurisdiction, which is directly on point. However, we believe that an adult adoptee's petition to examine her adoption records to establish her Indian heritage is both a "subsequent proceeding" and "a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement."

We note that the Supreme Court of Alaska in *E.A. v. Alaska*, 623 P.2d 1210, 1215 (Alas.1981), interpreted § 1923 in light of its legislative history which revealed that that section was intended to provide an

orderly phasing in of the act's effect by making its provisions inapplicable to proceedings still pending on the act's effective date. However, § 1923 would apply to any subsequent, discrete phase of the same matter or to any proceeding involving the same child initiated after enactment. *Id.* See also H.R.Rep. No. 1386, 95th Cong. (2d Sess.) pp. 25-26, reprinted in 1978 U.S.Code Cong. & Admin.News pp. 7530, 7548.

[5] We find the petition in this case to be just such a "subsequent proceeding" within the meaning of 25 U.S.C. § 1923. However, even if we did not, we hold that, in light of the express policy of the ICWA as set forth in 25 U.S.C. § 1902, "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" petitioner has demonstrated good cause as a matter of law for the release of any information regarding her biological mother which could assist in establishing her tribal affiliation.

Our holding also finds support in the "Guidelines for State Courts; Indian Child Custody Proceedings," issued by the Department of the Interior, Bureau of Indian Affairs, which provides in pertinent part:

G.2. Adult Adoptee Rights

(a) Upon application by an Indian individual who has reached age 18 who was the subject of an adoptive placement, the court which entered the final decree must inform such individual of the tribal affiliations, if any of the individual's biological parents and provide such other information necessary to protect any rights flowing from the individual's tribal relationship.

(b) The section applies regardless of whether or not the original adoption was subject to the provisions of the Act.

(c) Where state law prohibits revelation of the identity of the biological parent, assistance of the Bureau of Indian Affairs shall be sought where necessary to help an adoptee who is eligible for membership in a tribe establish that right without breaching the confidentiality of the record. [44 FedReg 67595 (1979).]

However, while we hold that petitioner is entitled to the release of information regarding her biological mother in this case, we would also note that in cases in which the biological parents have not consented the manner in which that information is released should be tailored to best protect the privacy rights of the biological parents. *Dixon, supra*, 116 Mich.App. at pp. 768-769, 323 N.W.2d 549. We feel that a procedure similar to that outlined in 25 U.S.C. § 1951(b) would best effectuate that purpose, yet still provide the means by which the adult adoptee's tribal membership can be established. 25 U.S.C. § 1951(b) provides:

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. *Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.* [Emphasis added.]

This procedure is echoed in subsection G.2.(c) of the guidelines set forth previously.

[6] Consequently, where the consent of the adult adoptee's living biological parents has not been obtained, the probate court should release the identifying information to the appropriate tribe, not the adoptee, with a request that the tribe keep the information confidential. The court should seek the assistance of the Bureau of Indian Affairs where necessary to accomplish this. It is the tribe, not the adoptee, which needs the information to establish tribal membership.

In this case, we reverse the order of the probate court and remand for a determination whether there is any further information or documentation regarding petitioner's biological mother which the court could provide to assist her in establishing tribal membership. We do not retain jurisdiction.



188 Mich.App. 405  
**PEOPLE of the State of Michigan,**  
**Plaintiff-Appellee,**  
**v.**  
**Hal ROCKWELL, Jr.,**  
**Defendant-Appellant.**  
**Docket No. 123768.**

Court of Appeals of Michigan.

Submitted Feb. 19, 1991, at Lansing.

Decided April 2, 1991, at 9:35 a.m.

Released for Publication June 21, 1991.

Defendant was convicted of conspiracy to commit murder, and assault with intent to commit murder. Judgment was entered in the Circuit Court, Oakland County, Barry L. Howard, J. Defendant appealed. The Court of Appeals held that evidence supported trial court's refusal to admit evidence of alleged sexual assault performed upon codefendant by victim.

Affirmed.

**1. Criminal Law** ⇌409(7)

Rule that corpus delicti of crime must be established by evidence independent of an accused's confession applies only to admissions which are confessions, and not to admissions of fact which do not amount to confessions of guilt.

**2. Criminal Law** ⇌384, 412(5)

No error occurred in admission of conversations in which defendant charged with conspiracy to commit murder and assault

with intent to commit murder participated regarding plan to electrocute victim in bathtub; conversations were admissible to establish element of agreement and were not so remote as to render them irrelevant. MRE 803(3).

**3. Criminal Law** ⇌338(6)

Evidence of prior acts is not limited to prior acts of defendant, but may include those of victim as well. MRE 404(b).

**4. Criminal Law** ⇌1153(1)

Trial court will not be found to have abused discretion in refusing to admit evidence unless an unprejudiced person, considering facts on which trial court made its decision, would conclude there was no justification for ruling made.

**5. Conspiracy** ⇌45

**Homicide** ⇌191

Trial court did not abuse discretion by precluding defendants charged with conspiracy to commit murder and assault with intent to commit murder from introducing evidence that victim had previously sexually assaulted one of them; defendants did not allege sexual assault incidents sufficiently recent to support reasonable belief on part of defendant that he would be subject to such attack at present time. MRE 404(b).

**6. Homicide** ⇌84

Elements of assault with intent to commit murder are: (1) an assault; (2) with specific intent to commit murder; (3) which, if successful, would make the killing murder. M.C.L.A. § 750.83.

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Frank J. Kelley, Atty. Gen., Gay Secor Hardy, Sol. Gen., Richard Thompson, Pros. Atty., Michael J. Modelski, Chief, Appellate Div., and Robert C. Williams, Asst. Pros. Atty., for the people.

Charles M. Sibert, Rochester, for defendant-appellant.

Before SAWYER, P.J., and HOOD and MURPHY, JJ.