Native American Rights Fund

Indigenous Peoples' Rights

https://www.narf.org/cases/tununak-v-alaska/

Campaign and Advocacy

Alaska courts considered the application of the Indian Child Welfare Act in their state's adoption process

Status: Archived

The Indian Child Welfare Act establishes adoptive placement preferences for placing an Indian child with a member of the childs extended family, other members of the childs tribe, or with other Indian families. A court may deviate from these preferences only upon a showing of good cause. NARF has worked with tribes on the issue of ensuring that state courts abide by a tribes adoptive placement preference.

In Alaska, courts had been applying the incorrect standardthe preponderance of the evidence standard instead of the clear and convincing standard of proof. At issue in*Native Village of Tununak v. State of Alaska*was this proper burden of proof that the Alaska Office of Childrens Services must meet in order to move a child from one placement to another. NARF authored an amicus brief in the case on behalf of the Native Village of Kotzebue.

In June 2013 the Alaska Supreme Court issued an important ruling in the case which held that ICWA implicitly mandates that good cause to deviate from ICWAs adoptive placement preferences be proved by clear and convincing evidence, not the weaker preponderance of the evidence standard. This is an important decision because Alaska had been the only state where courts applied the preponderance of the evidence burden of proof to findings of good cause to deviate from ICWAs adoption preferences. In addition, the courts opinion also includes important language on the need for trial courts to evaluate the suitability of placements not under white, middle class standards but under the prevailing social and cultural standards of the Indian community.

Unfortunately, the ruling did not end the status of the appeal as the adoptive parents asked the court to revise its ruling in light of the United States Supreme Courts decision in *Adoptive Couple v. Baby Girl (Baby Veronica)*. The Alaska court asked the parties to brief the effect, if any, of *Baby Veronica* on the pending adoption case. NARF submitted an amicus brief in November 2013 in support of the tribal placement preference. Oral argument was heard in January 2014 and in September 2014, the Alaska Supreme Court issued its decision. The Alaska Supreme Court ruled that, in order to be considered as an adoptive placement option for children in the custody of the state, family members, and other Native families must file formal adoption cases. The court held that the United States Supreme Courts decision last year in the *Baby Veronica* case required this new rule.

Because filing a formal petition for adoption is a very complicated process that requires the assistance of a lawyer and the vast majority of Alaska Native families (especially those in rural Alaska) lack access to or resources for an attorney, this new requirement will be an insurmountable hurdle for most families and will prevent them from asserting their rights under ICWA. It also means that grandparents, rather than encouraging their childrens efforts to reunite with their children, will have to file adoption cases seeking to terminate their own childrens parental rights.

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