Native American Rights Fund

Indigenous Peoples' Rights

https://www.narf.org/cases/state-alaska-v-native-village-tanana/

Campaign and Advocacy

In January 2005, NARF filed a complaint on behalf of the Villages of Tanana, Nulato, Akiak, Kalskag, Lower Kalskag, and Kenaitze along with Theresa and Dan Schwietert

Status: Archived

In January 2005, NARF filed a complaint on behalf of the Villages of Tanana, Nulato, Akiak, Kalskag, Lower Kalskag, and Kenaitze along with Theresa and Dan Schwietert against the State of Alaska, then-Attorney General Greg Renkes, and various state agencies challenging a policy opining that state courts have exclusive jurisdiction over child custody proceedings involving Alaska Native children.

The policy as implemented instructed state employees to stop recognizing tribal court decrees on the alleged basis that tribes in Alaska do not have concurrent jurisdiction to hear childrens cases unless (1) the childs tribe has successfully petitioned the Department of Interior to reassume exclusive or concurrent jurisdiction under the Indian Child Welfare Act (ICWA) 25 U.S.C. 1918, or (2) a state superior court had transferred jurisdiction of the childs case to a tribal court in accordance with 26 U.S.C. 1911(b).

Plaintiffs sought a declaration that tribes have inherent jurisdiction to initiate tribal member childrens proceedings without first filing a petition to reassume jurisdiction under ICWA. On May 30, 2007, the state superior court issued an opinion in the Tribes favor rejecting all of the State of Alaskas arguments. After extensive briefing on the form of relief, judgment was entered. The State appealed to the Alaska Supreme Court and oral argument was heard on December 7, 2009.

On March 4, 2011, the Alaska Supreme Court published its decision in *State of Alaska v. Native Village of Tanana* and reaffirmed that (1) Alaska tribes had not been divested of their jurisdiction to adjudicate childrens custody cases, and (2) Alaskas tribes have concurrent jurisdiction with the state. The court further held that tribes that had not reassumed exclusive jurisdiction under ICWA nonetheless had concurrent jurisdiction to initiate ICWA-defined child custody proceedings, regardless of the presence of Indian country and that as such, the decisions of tribal courts in these cases were due full faith and credit under ICWA.

See also, NARF Staff Attorney Heather Kendall-Millers Alaska Law Review article, *State of Alaska v. Native Village of Tanana: Enhancing Tribal Power by Affirming Concurrent Tribal Jurisdiction to Initiate ICWA-Defined Child Custody Proceedings, both Inside and Outside of Indian Country*.

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