

SUPREME COURT LIVE

November 19, 2014
Ketchikan High School

ORAL ARGUMENT CASE SUMMARY

State of Alaska, et al.,
Appellants,
v.

Central Council of Tlingit and Haida Indian Tribes of Alaska,
Appellee.

Disclaimer: *This summary of the case highlights the major issues raised but is not intended to be comprehensive. It has been prepared for educational purposes only by the Supreme Court LIVE program staff and does not reflect the input or views of any member of the court.*

OVERVIEW OF THE CASE

This case stems from a conflict between the State of Alaska and a tribal entity, the Central Council of Tlingit and Haida Indian Tribes of Alaska (the Tribe), about whether tribes in Alaska have the power to set child support and whether the State must recognize and enforce child support orders issued by a tribe. The Tribe received money from the United States government to set up a tribal child support program in 2007, and the Tribe began issuing child support orders. The Tribe asked the State to enforce its orders under a federal law about enforcement of child support orders from other places. Because the Tribe and the State disagreed about the extent of the Tribe's powers, the Tribe filed a lawsuit in Alaska Superior Court, asking the court (1) to declare that the Tribe has the authority to decide child support questions and (2) to issue an order requiring the State to recognize and enforce the orders. The court determined that the Tribe could decide child support cases and ordered the State to recognize and enforce valid tribal child support orders. The State filed an appeal with the Alaska Supreme Court, asking it to review the superior court's decision and decide whether the Tribe has the power to issue child support orders.

ATTORNEYS

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QUESTIONS PRESENTED FOR REVIEW

1. Does the Tribe have subject matter jurisdiction to issue child support orders?
2. Did the superior court set the right amount of attorney's fees?

MAJOR AUTHORITIES TO CONSIDER

- **U.S. Constitution, Article VI**, Supremacy clause
- **U.S. Constitution, Article I, § 8**, Commerce clause

United States Supreme Court Case Law

- ***Alaska v. Native Village of Venetie Tribal Gov't***, 522 U.S. 520 (1998).
- ***Montana v. United States***, 450 U.S. 544 (1981).
- ***Nevada v. Hicks***, 533 U.S. 353 (2001).
- ***Plains Commerce Bank v. Long Family Land & Cattle Co.***, 554 U.S. 31 (2008).

Federal Circuit Case Law

- ***Native Village of Venetie I.R.A. Council v. Alaska***, 944 F.2d 548

(9th Cir. 1991).

- ***Smith v. Salish Kootenai College***, 434 F.3d 1127 (9th Cir. 2006).

Federal Statutes

- **18 U.S.C. § 1151** (Indian country).
- **25 U.S.C. § 1901-1923** (Indian Child Welfare Act)
- **28 U.S.C. § 1738B** (Full faith & credit for child support orders)
- **42 U.S.C. § 651** (Federal child support enforcement program establishment)

Federal Regulations

- **42 C.F.R. Part 309**

Alaska Statutes

- **AS 25.25.101-.903** (Uniform Interstate Family Support Act)
- **AS 25.27.010-900** (Child support services agency)

Alaska Rules of Court

- **Alaska Rule of Civil Procedure 90.3** (Child Support)
- **Alaska Rule of Civil Procedure 82** (Attorney's Fees)

Alaska Supreme Court Case Law

- ***Simmonds v. Parks***, 329 P.3d 995 (Alaska 2014) (recognition of tribal court order terminating parental rights)
- ***State v. Native Village of Tanana***, 249 P.3d 734 (Alaska 2011) (tribal court jurisdiction in child protection case)
- ***Starr v. George***, 175 P.3d 50 (Alaska 2008) (tribal court order not recognized because tribal court did not give notice)
- ***State, Dep't of Health & Social Services v. Native Village of Curyung***, 151 P.3d 388 (Alaska 2006) (village can bring suit to enforce rights of its members)
- ***John v. Baker***, 125 P.3d 323 (Alaska 2005) (question of tribal jurisdiction)

- over child support not decided)
- ***John v. Baker***, 982 P.2d 738 (Alaska 1999) (recognizing tribal court jurisdiction over some custody disputes)
 - ***Estate of Rhyner v. Farm Credit Bank of Spokane***, 780 P.2d 1001 (Alaska 1989) (concurrent jurisdiction generally)

SUMMARY OF THE CASE

The Central Council of Tlingit and Haida Indian Tribes of Alaska (the Tribe) got a grant from the federal government in 2007 to set up a child support enforcement unit as part of its tribal government. The Tribe began establishing child support orders for children who were, or were eligible to be, tribal members. It asked the State of Alaska to enforce its orders because only the State can take some action to collect child support from people who owe support and do not pay it. The State would not enforce orders that the Tribe itself issued because the State did not think the Tribe had the power to establish child support.

The Tribe sued the State in state **superior court**. The Tribe asked the state court to interpret the law and issue an order declaring that the Tribe could decide child support cases and that the State was required to recognize those orders. Unlike many court cases, there are few disputed facts in this case, so the superior court decided the case without a **trial**, using a procedure called **summary judgment**.

DECISION BELOW

After hearing legal arguments from both sides, the superior court agreed with the Tribe and issued an order requiring the State to recognize the Tribe's child support orders under a state statute about enforcing out-of-state child support orders and to enforce the Tribe's orders as it would child support orders from other states. It later ordered the State to pay attorney's fees to the Tribe.

LEGAL ISSUES GENERALLY

Appellate Courts

An appeal is an opportunity for a person who has lost his lawsuit in the **trial court** to ask an **appellate court** to look at the trial court decision for errors. In Alaska, parties in most **civil** lawsuits have a right of appeal to the Alaska Supreme Court after the superior court issues a final judgment. The parties can ask the Alaska Supreme Court to review any issue decided by the superior court. Here the State has asked the Alaska Supreme Court to decide whether the Tribe has **subject matter jurisdiction** to establish child support orders that the State must recognize and enforce under federal law.

Besides the State and the Tribe, who participated in the superior court case and therefore are **parties** to the appeal, there are two **amici curiae** in the appellate case. An **amicus curiae** (friend of the court) is an organization or entity that has some interest in the outcome of the case and wants to tell the court its views about the legal issues in the case and how the case should be decided. An amicus curiae can only file a brief when the appellate court gives it permission to do so. In this case, the Alaska Supreme Court let the United States government and the National Association of Tribal Child Support Directors file briefs in support of the Tribe's legal position. The United States also asked for and was granted permission to participate in oral argument.

Child Support

All parents have a legal duty to support their children until the children are adults. When parents do not live together, or when the parents' child is living with someone else, the person who cares for the child can ask a **court**, or in some cases, an **administrative agency**, to set a **child support order**. A child support order tells the parent or parents who do not have **custody** of the child how much money they have to pay to meet their legal duty to support their child. In Alaska child support is set according to a **court rule**, Alaska Civil Rule 90.3. Child support is often set in a **custody** or **divorce** case, when the court issues an order about where a child will live.

In most cases, child support is established by a state, using state laws. The United States (federal) government became involved in child support establishment, enforcement, and collection in part because the federal government provides funds to states for public assistance programs to help children in low-income families. Federal laws related to these public assistance programs are in the statutes related to **Social Security**; specifically, they are in Title IV of that act. The child support laws in the federal statutes are in Part D of Title IV of the Social Security Act, so the agencies and laws are called **Title IV-D** or simply **IV-D** laws or agencies.

Currently the State of Alaska's public assistance program for families is called the **Alaska Temporary Assistance Program (ATAP)**. Usually ATAP is only available to single parents whose incomes are below a certain level. When single parents get ATAP, they **assign** (give) their right to child support to the State because the government is providing the support that the other parent should be providing to the child. Some tribes have public assistance programs as well. In this case, the Tribe's program is called **Temporary Assistance to Needy Families (TANF)**. Single parents who get TANF have to assign their support rights to the tribe. The government that pays public assistance gets to keep most of the child support it collects from the parent who owes support, to pay itself back for providing public assistance.

In addition to giving states and tribes money for public assistance, the federal government also gives money to them so they can establish and enforce child support

orders. When state and tribal governments get money from the U.S. government for enforcing child support orders, they have to agree to follow federal laws about structuring their child support programs. Federal laws about child support establishment and enforcement are contained in both **statutes** and **regulations**.

One of the problems in child support establishment and enforcement is that parents who owe money (**obligors**) do not always live in the same state as their children. For example, a parent and child may move from Oregon to Alaska and then get ATAP. The obligor may never even have been to Alaska. When the parents live in different states, the question of which state has **jurisdiction** over custody and support can be complicated.

Jurisdiction and Tribal Powers

Jurisdiction is, at its most basic, an assertion of power by a government over a person. When a court has **subject matter jurisdiction**, it has authority or power to decide a specific **subject** or **issue**. A court's jurisdiction is usually set out in a **constitution** or **statute**. For a court order to be valid, the court also needs to have **personal jurisdiction** over the people (**parties**) in a lawsuit. Statutes and court rules usually determine whether a court has personal jurisdiction. People can agree to give a court personal jurisdiction over them, but parties to a lawsuit can never agree to give a court subject matter jurisdiction, if it doesn't have it.

In the United States, people who live in the states are subject to the jurisdiction of both the federal and state governments. The United States Constitution divides the areas over which the governments exercise power. For example, when the states formed the United States, they agreed that the federal Congress would have the power to declare war and to raise and support an army; the states gave up any war power they had. But the states retained other powers for themselves, such as the authority to regulate marriage and child custody.

Some types of lawsuits can only be brought in state court, and some can only be brought in federal court. Some lawsuits can be brought in either federal or state court. At times it is possible for two different states to have jurisdiction over a case. When two courts can both decide an issue, it is called **concurrent jurisdiction**. When two courts have concurrent jurisdiction, there can be a risk that the courts will issue conflicting decisions. Because of the potential for conflicting decisions, many states adopt **uniform laws** in some areas. Also, the federal government has enacted laws that require states to honor (**give full faith and credit to**) decisions of other courts. The United States Constitution also has a full faith and credit provision.

In addition to the federal and state governments, the United States has a number of **tribal** governments. Tribes have been called **domestic dependent nations** in United States Supreme Court cases. They are not states, but they are also not foreign countries, like Canada. The extent of tribal governmental powers is a complicated

area of law in the United States. Conflicts between the state and federal governments and the tribes have been the subject of lawsuits at least since the presidency of Andrew Jackson, in the 1830s, when the Cherokees sued the state of Georgia in federal court. Article I, section 8, clause 3 of the United States Constitution gives the U.S. Congress the authority to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes,” and Congress’s power over tribes is considered “plenary” (complete or absolute). Because of the Supremacy Clause of the U.S. Constitution, federal law controls over state laws in areas that are within the federal government’s powers. Tribes and states can have concurrent jurisdiction over some matters. As you see in this case, both the State and the Tribe get federal funds to establish and enforce child support orders.

Many tribes in the lower 48 states have reservations, so they have territory over which their governments can clearly assert jurisdiction. Reservations and some other lands related to tribes are legally classified as “**Indian country**” by federal law. The question of tribal authority in Alaska was complicated by the Alaska Native Claims Settlement Act (ANCSA) and its creation of Native corporations. ANCSA ended reservations in Alaska except for the Annette Islands Reserve of the Metlakatla Indian Community. After ANCSA, some Alaska Native villages continued to exercise some governmental powers. They or their tribal members started to ask the State of Alaska to recognize the acts of their governments, such as adoptions of children by tribal members. These requests led to lawsuits in both state and federal courts. The United States Supreme Court decided in 1998 that lands held by the Native Village of Venetie Tribal Government were not “Indian country” and that the tribal government there could not tax a nonmember corporation.

Both the Alaska Supreme Court and the federal courts have decided that Alaska Native tribes retain some power to regulate family relations, even if the tribes do not have reservations, and that the State must recognize that power. For example, the federal court of appeals determined in 1991 that Alaska had to recognize tribal adoptions from Venetie and Fort Yukon. The Alaska Supreme Court decided in 1999 that the Native Village of Northway had jurisdiction to resolve a custody dispute about children who were tribal members or eligible for membership in Northway’s tribe. The Alaska Supreme Court also decided that federally recognized Alaska Native tribes have concurrent jurisdiction with the State over child protection cases.

QUESTIONS IN THIS APPEAL

Tribal Subject Matter Jurisdiction Over Child Support

The State’s Position: The Tribe does not have subject matter jurisdiction to issue child support orders. Because there is no Indian country in Alaska except for Metlakatla, the concerns that made Congress act to give tribes in other states the authority to set child support do not apply in

Alaska. Also, because the Tribe does not have any specific territory it controls, its jurisdiction is very limited, especially over non-members of the Tribe.

The United States Congress did not delegate authority to tribes in Alaska to issue support orders. The federal statutes and regulations about tribal child support do not create tribal subject matter jurisdiction over child support. The Tribe does not have inherent authority to issue child support orders because child support is not entirely internal to the tribe. Enforcing tribal child support orders requires the involvement of the State. Also, letting the Tribe set child support will make the State's child support establishment and enforcement less uniform. Because there are many villages in Alaska that could, in theory, each establish child support orders, the result could be a patchwork of laws instead of uniformity.

The Tribe's Position: Congress has recognized that Alaska Native villages are tribes, just like tribes in the lower 48 states. Tribes have inherent governmental powers, including the power to establish child support orders for the children who are (or can be) members of their tribe. Both federal and state courts have recognized that Alaska tribes have the power to decide child custody cases when the children involved are (or can be) tribal members. Because child support is closely related to custody, the superior court was correct in deciding that the Tribe had jurisdiction to establish child support.

The existence of Indian country in Alaska is irrelevant to the question whether the Tribe has authority to establish child support orders because establishing child support is similar to making custody decisions. Custody decisions are tied to a child's tribal membership, and child support should be treated the same way. In any event, the federal government already considered and rejected the State's argument when the federal government decided to use the term "tribal territory" in its regulations and defined "tribe" in those regulations as including Alaska Natives. Nothing supports the State's concern about possible conflicting orders and other potential future problems in specific cases.

Amicus United States's Position: The U.S. government has set up a comprehensive system to make sure that states and tribes establish child support orders and also recognize and enforce child support orders from other states and tribes. The U.S. government gives money to the State of Alaska so that the State can administer its child support program. When the State refuses to recognize and enforce tribal child support orders, the State undermines the purposes of the child support program.

Tribes have the inherent power to establish child support for children who are tribal members, just as they can issue custody decisions about those

children. Congress has recognized that tribes have this inherent power by giving money to tribes for child support establishment and by requiring states to include tribes in the jurisdictions whose orders the states will enforce. There is a process in place for individuals who are affected by tribal court orders to object to the orders, so the State of Alaska's concern about non-members is misplaced. The courts have also recognized the Tribe's inherent powers over child custody of members; child support is closely related to child custody, and the court should recognize the Tribe's jurisdiction in this area as well.

Amicus Association of Tribal Child Support Directors' Position: The federal government's regulations about child support establishment and enforcement already require the State of Alaska to recognize and enforce the Tribe's orders. The State has to fulfill its duties under federal law, just as other states are already doing.

Attorney's Fees

The parties both make very short arguments about the award of attorney's fees that the superior court made in favor of the Tribe.

The State's Position: The State's argument about attorney's fees is based entirely on its argument about the Tribe's jurisdiction. The State says that the superior court was wrong about tribal jurisdiction, so if the Alaska Supreme Court agrees with the State, the Tribe will not be the party who won the case. Because attorney's fees are only awarded to a party who wins a case, the Tribe should not get attorney's fees if the Supreme Court reverses the superior court.

The Tribe's Position: The Tribe argues that the superior court was correct in deciding that it had jurisdiction, and as a result, the amount of attorney's fees awarded by the superior court should not change.

QUESTIONS FOR STUDENTS TO CONSIDER

1. Looking at what the parties argue in their briefs, what is the basis for tribal governments' powers in the United States? What does the Tribe say is the basis for its authority to set child support? Why does the State disagree with the Tribe? What is the difference between a tribe having inherent power and the tribe having power delegated to it?
2. Under the federal Constitution, who has inherent powers and who has delegated powers? Explain your answer.

3. Under the U.S. Constitution, the federal and state governments have different functions. Looking at the Constitution, what are some of the functions of the federal government? What type of control, if any, does the federal government have over family (or domestic relations) law?
4. How does the federal government make states adopt laws like the Uniform Interstate Family Support Act? Do you think it is a good idea for the federal government to require all the states to have similar laws? Explain why or why not.
5. Why does the State think Indian country is important to the Tribe's ability to set and enforce child support? Do you agree with the State?
6. Find in the excerpt of record the Tribe's rules about setting the amount of child support and compare those rules to the court rule that the State uses. (Civil Rule 90.3 is available on the court system's website under court rules.) How are the rules different? How are they similar? Why do you think the State wants to use its own rules for establishing child support?
7. What are some policy reasons for letting the Tribe set its own child support orders? Why is the State opposed to Tribes setting child support?
8. How closely related do you think child support is to child custody? Do you think the same court should decide both issues most of the time? Why or why not?
9. Look at the amicus curiae brief filed by the United States. What interests does the United States identify for filing a brief? How might the interests of state governments be different from the interest of the federal government when dealing with tribes, both in Alaska and in the other states?
10. Alaska is unique among the states in awarding attorney's fees in most lawsuits. Whom does the rule help? What is the State's argument about why the Tribe should not get attorney's fees? Do you think it is fair to make the State pay attorney's fees in this case?
11. What do you think is the State's strongest argument on appeal? What do you think is its weakest argument? Explain.
12. What do you think is the Tribe's strongest argument? What do you think is its weakest argument? Explain.
13. Do you think the U.S. government's arguments help the Tribe? Explain your answer.
14. If you were a justice on the Alaska Supreme Court, how would you decide this case? Explain.