st 28, 2016

Search...

Kansas ruling protects tribal children

Parent Category: Archive News
Published on Sunday, 28 June 2009 20:18
Written by Publisher
Hits: 3349

TAHLEQUAH, Okla. — The Cherokee Nation celebrated a legal victory and created a precedent for Indian Child Welfare cases nationally in a recent appeal to the Kansas Supreme Court.

“For 27 years, Kansas had been one of a small number of states that followed the ‘existing Indian family’ exception to application of Indian Child Welfare Act,” said Diane Hammons, Attorney General of the Cherokee Nation. “The Nation argued that this exception should be thrown out and the Kansas Supreme Court agreed.”

In the case of A.J.S., a minor child, Cherokee Nation was notified of a termination hearing to revoke the paternal rights to a newborn child. In this case the mother gave notice that the child would be adopted by her relatives and filed suit to revoke the parental rights of the father. The father did not want those rights revoked and Cherokee Nation was contacted. In August 2007, Cherokee Nation received notice from the Kansas District Court denying application of the Indian Child Welfare Act (ICWA) in the A.J.S. case because of the application of the “existing Indian family exception.” The existing Indian family exception comes from a 1982 Kansas Supreme Court case, Baby Boy L, in which the judge ruled that the ICWA was not applicable because the baby was not “...part of an existing Indian family.”

In March 2008, Cherokee Nation Assistant Attorney General Angel Smith attended a Kansas Supreme Court hearing to present an appeal of the lower courts decision in the A.J.S case. The Kansas Supreme Court issued its opinion in March 2009, that the Cherokee Nation presented a persuasive argument and retired the Kansas precedent of an “existing Indian family,” ruling that the ICWA was applicable, and upholding an Indian tribe’s right to intervene in such proceedings.

“In the only United States Supreme Court case to consider the Indian Child Welfare Act, the court noted that a special independent relationship exists between an Indian Child and their Tribe,” said Smith. “Cherokee Nation takes on Indian Child Welfare cases to assert our interest in the continued existence of our Nation by protection of the resource of our tribal children.”

According to the A.J.S. opinion, “tribal interest in preservation of their most precious resource, their children, drove passage of the ICWA.” The Indian Child Welfare Act was passed in the 1970s by Congress, which found that Indian children are vital to the existence and integrity of the tribe, that a high percentage of Indian families were broken up by non-tribal public and private agencies and placed in non-Indian homes or institutions, and that states exercising jurisdiction have failed.

“We are very proud of this victory,” said Hammons. “This is a big win for not only the Cherokee Nation, but for all of Indian Country and it assures wider protection for Indian families, and it gives effect to the framers’ intent behind ICWA.”

- Powwow Pages
- PDF Paper
- PDF Paper Archives
- Magazine
- Contact us
- Job Bank
- Advertise with us

Share on Twit
Share on Face