

ATCE v. Piper

Parties:

(1) Plaintiffs

- Americans for Tribal Court Equality (ATCE) is a nonprofit organization out of Prior Lake, Minnesota, whose self-proclaimed mission is to “promote eliminating prejudice and discrimination in the court systems.”¹
 - ATCE is an association of individuals that seeks to inform, advise, and unify individuals who have or have had a spouse or intimate partner who is a member of a tribe regarding discriminatory practices towards non-members in family, child custody, and child protection proceedings.
- James Nguyen, individually, and on behalf of his minor child A.N.
 - He is a citizen of Minnesota residing in Hennepin County, and is Amanda Gustafson’s husband, and father of their minor child A.N.
 - He is not a member of the Shakopee Mdewakanton Sioux Community (SMSC), or any other tribe, but he is a member of ATCE.
 - Amanda Gustafson and minor child A.N. are SMSC members.
- Michelle Steinhoff, individually and on behalf of her minor child T.J.
 - She is a citizen of Minnesota and resident of Dakota County.
 - She is not a member of the SMSC or other tribe, but she is a member of ATCE.

(2) Defendants

- Emily Piper, in her official capacity as commissioner of the Minnesota Department of Human Services.
 - She is responsible for the promulgation and dissemination of Minnesota’s Indian Child Welfare Manual.
- Scott County, Minnesota
 - The Scott County Social Services Department operates as the county’s public child welfare agency responsible for community concerns about child safety, child well-being, and family stability.

Facts:

- Both Plaintiffs
 - Neither of the Plaintiff individuals reside in Scott County, however both of their adoptive children are members of the SMSC, located in Scott County.
- Mr. Nguyen and Ms. Gustafson
 - In 2014, the couple got married in Las Vegas, Nevada, and then moved to Prior Lake, Minnesota.
 - Ms. Gustafson is an SMSC member, but did not reside within the SMSC boundaries.
 - In September 2014, A.N. was born in Minneapolis, Minnesota.
 - Ms. Gustafson struggled with substance abuse, including while pregnant with A.N. As a result, she has been incarcerated, and this use of illicit drugs during her pregnancy was reported to the Scott County Police Department and SMSC.
 - After her incarceration, Ms. Gustafson temporarily moved in with her aunt who resided within the SMSC property boundaries. Shortly after, she petitioned for divorce in SMSC Tribal Court, and Mr. Nguyen also petitioned for divorce in Scott County.
 - SMSC’s Business Council issued a no-trespass order against Mr. Nguyen. He also received an order of protection for himself and the child A.N.
 - Ms. Gustafson filed a complaint against Mr. Nguyen with the SMSC child protection services, which opened a child welfare case. The SMSC allegedly did not report the complaint to Scott County.
 - In March 2015, the two parents reconciled and purchased a home in Bloomington, Minnesota, where they lived with their child A.N. Shortly after, both parents agreed to dismiss their respective divorce petitions and vacated the order for protection.

¹ ATCE’s website with further information can be found at: <https://atcenow.org/>.

- In July 2015, the SMSC Tribal Court closed the child welfare case, but the tribal court issued an order to give the couple temporary legal and physical custody, and retained jurisdiction over the minor child A.N. as a “ward of the court.”
- Later that year, Ms. Gustafson struggled again with drug abuse and mental health and was later sent to intensive inpatient treatment; after that proved ineffective, she was incarcerated. Mr. Nguyen purchased a home in California and the plan was for the family to relocate there after Ms. Gustafson was released from prison.
- In August 2016, after she was released, she was found using illicit drugs while caring for A.N. Mr. Nguyen was out of town, so he asked his mother and aunt to remove A.N. from the home. His aunt is a teacher and believed she was a mandated reporter, so she reported Ms. Gustafson’s drug use to Hennepin County Child Protection Services.
- During this time, Ms. Gustafson contacted an attorney who allegedly threatened Mr. Nguyen’s family with kidnapping charges if they removed A.N. from the home.
- Ms. Gustafson and A.N. flew to California to join Mr. Nguyen, but she returned to Minnesota to face additional incarceration for parole violations in February 2017.
- In June 2017, Mr. Nguyen filed for divorce in California and obtained a court order granting him full custody of A.N. Ms. Gustafson threatened to have SMSC take A.N. away since the child was still considered a “ward of the court.” Ms. Gustafson then filed for divorce in tribal court, and the California court dismissed Mr. Nguyen’s case in favor of tribal court jurisdiction.
- The tribal court issued an order that restricted Mr. Nguyen’s visitation to Scott County for any reason.
- Mr. Nguyen is concerned that SMSC does not provide a good environment for A.N, that it has a drug and alcohol culture, and that because of the success of the Mystic Lake Casino and Resort, millions of dollars are payed per capita so the SMSC member children will be wealthy without ever having to get an education or a job.
- Mr. Nguyen believes that his judgment should be taken into account as a parent of A.N.
- Ms. Steinhoff
 - Neither Michelle Steinhoff nor her child T.J. resided within the SMSC boundaries.
 - T.J.’s father, Daniel Jones, is an SMSC member. He has a criminal history including felony child neglect and endangerment, and was therefore incarcerated after T.J. was born. Before his incarceration, he started a custody and child support proceeding in SMSC Tribal Court to preempt an initial filing by Ms. Steinhoff, who objected to the tribal court proceedings.
 - Ms. Steinhoff was awarded custody, but after Mr. Jones got out of prison, he took her back to SMSC tribal court to establish a parenting visitation schedule. He was allowed visitation rights from the tribal court.
 - In August of 2013, an official from Scott County Child Protection Services came to Ms. Steinhoff’s home to check on T.J.’s safety, given Mr. Jones’ criminal history. Ms. Steinhoff contacted county child protective services and asked them to open a case in district court.
- Court Proceedings
 - October 10, 2015: Plaintiffs filed a Complaint in the district court.
 - November 2, 2015: Plaintiffs filed a Motion for Summary Judgment.
 - November 7, 2015: Defendant Scott County filed a Motion to Dismiss.
 - November 28, 2015: Defendant Scott County filed a Memorandum in Opposition to Plaintiffs’ Motion for Summary Judgment.
 - Case number has been assigned as 0:2017cv04597 and awaits a hearing in the Minnesota District Court in Scott County.

Plaintiffs’ Arguments/Claims: The State of Minnesota² is placing Native American tribal law above federal law.

² The Minnesota state ICWA statute can be found at: <https://turtletalk.files.wordpress.com/2015/08/minnifpa.pdf>.

(1) ICWA statutorily preempts the Defendants' policies and customs of transferring child custody matters to the tribe without a prior state court proceeding where parents can object to the tribal transfer.

- Plaintiffs are bringing a supremacy clause³ claim against the DHS commissioner and Scott County based on ICWA statutorily preempting the Defendants' policies and customs.
- Plaintiffs claim that the state's Indian Child Welfare Manual at 25–26 directly conflicts with ICWA because it prescribes procedures where the county is to refer child custody matters involving minor Indian children to tribes without a state court proceeding and without obtaining both parents' consent to tribal court transfer.
- Plaintiffs claim the illegal effect of this manual's procedures is that tribal courts can erroneously assert civil adjudicative jurisdiction over child custody proceedings.
- Plaintiffs claim that because Minnesota is a Public Law 280 state, the tribal court does not have jurisdiction over a child custody matter involving Indian children living off the reservation.
- Further, it is maintained that the tribal court proceedings regarding A.N. and T.J. lack subject matter jurisdiction because the tribal court proceedings are in violation of ICWA.
 - The Defendants should be federally required to implement the state's exclusive civil adjudicative jurisdiction against a tribal court proceeding which lacks subject matter jurisdiction.

(2) 42 U.S.C. 1983 (Part of the Civil Rights Act) claim that Defendants' policies and customs violate the Plaintiffs' substantive⁴ due process rights under the Constitution.

- The due process clause of the Fourteenth Amendment “includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests.”
- Parents have a fundamental liberty interest in the care, custody, and control of their children, as recognized by the Fourteenth Amendment's due process clause.
- Plaintiffs believe a natural parent is presumed fit and suitable to care for his or her child, and that parents have a fundamental right to the custody and companionship of their children.
- Plaintiffs again state the under ICWA, tribal courts do not have jurisdiction over child custody proceedings involving children of Public Law 280 tribes.
- Plaintiffs maintain that neither Mr. Nguyen nor Ms. Steinhoff were ever found to be an unfit parent by any court or agency, and neither child resided in or were domiciled within the SMSC reservation.
- Plaintiffs claim that DHS and Scott County have violated Plaintiffs' substantive due process rights by allowing the child custody proceedings regarding A.N. and T.J. to be in tribal court without the state court proceeding and without the Plaintiffs' consent to tribal-court transfer.
- Plaintiffs claim that the Defendants violate the substantive due process rights of non-member parents regarding their children and deprive the parents from making a decision regarding the jurisdiction under which the child will be subjected.

(3) 42 U.S.C. 1983 claim that Defendants' policies and customs violate the Plaintiffs' procedural⁵ due process rights under the Constitution.

- The due process clause has a procedural component which requires notice and an opportunity to be heard.

³ U.S. Const. Art. VI. The supremacy clause dictates that federal law is the “supreme law of the land,” which means that judges in every state must follow the Constitution, laws, and treaties of the federal government in matters which are directly or indirectly within the government's control. The doctrine of preemption, based on the supremacy clause, states that federal law preempts state law, even when the laws conflict. A federal court may require a state to stop certain behavior it believes interferes with, or is in conflict with, federal law.

⁴ The principle of substantive due process allows courts to protect certain fundamental rights from government interference, even if procedural protections are present or the rights are not specifically mentioned elsewhere in the U.S. Constitution.

⁵ Procedural due process protects individuals from the coercive power of government by ensuring that adjudication processes, under valid laws, are fair and impartial.

- Plaintiffs claim there is a recognized procedural due process right to notice and opportunity to be heard prior to governmental interference in a parent's childbearing decisions.
- Plaintiffs maintain that the government "must assume that a fit parent's childrearing decision is in the best interest of the child."
- Plaintiffs allege that the Defendants' policies and customs violate their rights to procedural due process in an initial state court proceeding where either parent, after notice and opportunity to be heard, can object to transfer to the tribe.
- Plaintiffs also claim that Mr. Nguyen cannot file a child protection complaint with Scott County because if he were to do so, the county would, without notice or hearing, transfer the matter to SMSC automatically as the Defendants' policies and customs require. He is effectually intentionally discriminated against by SMSC because he is a non-member.
 - Allegedly Ms. Steinhoff would face a similar result if she tried to report about the instability of her child's biological father to Scott County; it would also be automatically transferred to SMSC without notice or hearing.
- Plaintiffs finally allege that the tribal court proceedings are unnecessary and illegal and have caused Plaintiffs financial and psychological burdens interfering with and damaging family plaintiffs.

(4) 42 U.S.C. 1983 claim that Defendants' policies and customs violate the Plaintiffs' procedural rights under ICWA.

- Plaintiffs claim that under ICWA, the tribal courts do not have jurisdiction over child custody proceedings involving children of Public Law 280 tribes.⁶
- Defendants have allegedly violated the ICWA procedural rights of Plaintiffs by allowing the child custody proceedings regarding A.N. and T.J. to be in tribal court without the initial state court proceeding and without the Plaintiff parents' consent to tribal court transfer.
- Plaintiffs allege this claim supported by all the statements in the previous claims.

Defendants' Claims in Opposition of Plaintiffs' Motion for Summary Judgment:

- 1) This motion is nothing more than a maneuver by Plaintiffs to go on the offensive with respect to Defendants' Motion to Dismiss.
- 2) The undisputed facts show that Plaintiffs' case should be dismissed.
 - Plaintiff Nguyen's allegations of events taking place in Scott County actually took place in Hennepin County, and his statement of facts do not line up.
 - A child protection action cannot take place until a child is actually born.
 - It should be undisputed that Plaintiff Nguyen and his child were residing in Hennepin County at the time of these investigations and any subsequent action that needed to be taken should have been taken by either Hennepin County or the SMSC. Scott County did not proceed any further with A.N.
 - The various allegations of abuse or neglect occurred either in Bloomington, Minnesota; in Hennepin County; or in California. Hennepin County Child Services and Humboldt County Child Protection Services were contacted by Plaintiff Nguyen's aunt.
 - Plaintiff Steinhoff and her child T.J. lived in Dakota County, so it would be that county that should pursue the matter.
 - When Plaintiff Steinhoff suggested she "begged" Scott County to open a case during her home visit by a Scott County child protection worker, Scott County sent the original report to Dakota County.
 - Since there was no referral, no case lies that the state ICWA Manual conflicts with ICWA, and summary judgment could actually be granted *sua sponte*.⁷
 - There was no actual referral to the SMSC.

⁶ Public Law 280 effectually creates a concurrent jurisdiction with states and tribes where ICWA is concerned. <https://www.narf.org/nill/documents/icwa/faq/jurisdiction.html#Q12>.

⁷ Summary judgment can be granted *sua sponte* to a defendant who shows through its response that a plaintiff cannot maintain the action it brings. See *Lester v. Wildwood Financial Group, Ltd.*, 205 F.3d 1346 (8th Cir. 2000).

- 3) Plaintiffs can make no Monell claim because they cannot point to a policy or custom of Scott County that caused their alleged injury.
- It was not a Scott County policy that allegedly caused harm, and under *Monell*, the case should be dismissed as against Scott County.
 - In order to sue a municipality, such as a county, under 42 U.S.C. 1983, a Plaintiff must allege that a policy, custom, or practice of the municipality caused the injury (*Monell v. Department of Social Services*, 436 U.S. 458, 690 [1978]).
 - *Monell* requires that the policy in question must have been promulgated by the municipalities' actors. The policy in question here is the Minnesota ICWA Manual, which by virtue of state law, the county must comply with. Thus it is not a county policy that Plaintiffs are complaining about. Plaintiffs cannot avoid this analysis by stating that the county policy in question was a policy to follow the state policy.
- 4) Scott County did not violate the Plaintiffs' civil rights by following the ICWA Manual or State Policy.
- Even if the Minnesota DHS Indian Child Welfare Manual somehow becomes Scott County's policy, it does not violate the Plaintiffs' civil rights.
 - There was never actually a referral from Scott County to the SMSC.
 - Scott County properly enforced a state policy in the Indian Child Welfare Manual and that policy does not contravene the Plaintiffs' civil rights.
- 5) Scott County is an arm of the state and therefore, immune to a suit for damages.
- Commissioner Piper accurately discussed the Eleventh Amendment immunity provided to the state for a monetary claim in federal court for damages.⁸
 - Scott County acts as an "arm of the state" and thus may share in that immunity. It is merely the local governmental entity operating under direction of the state's DHS.
 - There is case law that extends a state's 11th Amendment immunity from suit to an "arm of the state."
 - To be an arm of the state, the county must show two things: (1) the amount of state control over the entity; and (2) whether state money would pay for any judgment.
 - Here, Scott County, under state law, must follow the edicts of the DHS, and it receives substantial state funds to do this.

Where are we now?

- As of an ICWA Developments Panel on April 6, 2018, there are no new updates on the case proceedings. However, ATCE's lawyers have said they have no plans of stopping any time soon.
- In other news, Minnesota is rolling out a five-year ICWA implementation plan, and working on creating an exclusive ICWA docket court in St. Paul, Minnesota.

⁸ U.S. Const. amend XI. The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.