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Neb. tribe wants right to intervene in kids' case

By TIMBERLY ROSS / Associated Press Writer

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OMAHA— The Nebraska Supreme Court is expected to hear arguments next week on whether the state's legal procedures can trump a federal law that allows American Indian tribes to intervene in child-welfare cases.

In an appeal filed with the high court, the Ponca Tribe says a Dakota County juvenile court judge denied its rights under the Indian Child Welfare Act because the tribe was not represented by a state-recognized attorney.

"The federal law provides that tribes can intervene in any state child-custody proceeding that involves their children," said the tribe's Denver, Colo.-based attorney, Brad Jolly. "If a tribe has to have a lawyer in each of those cases, they won't be able to intervene."

For most tribes, the cost of having an attorney appear in each and every child-welfare case is prohibitive, he said.

The Indian Child Welfare Act provides tough standards for removing American Indian children from their homes.

Congress passed the law in 1978 to curb a rise in adoptions of Indian children by non-Indians. In some states, 35 percent of Indian children had been removed from their homes to live with non-Indians.

"Tribal intervention in state child-custody proceedings involving Indian children is one of the primary tools Congress provided to ensure an Indian child's continued relationship with his or her tribe and community," Jolly wrote in the appeal. "The right of Indian tribes to intervene in state child custody proceedings involving their children is absolute and unequivocal."

In October, the Ponca Tribe filed a motion in Dakota County juvenile court to intervene in a child-welfare case involving two Ponca children. But the filing was thrown out by Judge Kurt Rager because, according to court documents, it was not submitted by an attorney.

Rather, the motion had been submitted by a trained specialist who counsels tribes on juvenile cases.

In the appeal, Jolly wrote that courts typically grant such specialists the same power as an attorney because of the tribe's sovereign status.

"In refusing to allow the tribe's ICWA specialist to file a motion to intervene on behalf of the tribe, the county court has effectively removed the tribe's right to intervene in the proceedings," he wrote.

The Ponca Tribe is asking the high court to overturn Rager's dismissal of the filing. Arguments in the case are scheduled for Tuesday.

A message left for Rager was not immediately returned. Judges generally do not comment on pending cases.

Jolly said the Ponca Tribe has faced similar dismissals in other Dakota County juvenile court cases since October.

The Nebraska Appleseed Center for Law in the Public Interest, which submitted a so-called friend of the court brief in support of the tribe, said: "The state's interest in requiring organizations to be represented by an attorney, however, cannot compare to the interest of tribes in their children and in their survival, an interest which Congress unambiguously intended to safeguard through the ICWA."

Legal Aid of Nebraska, the National Child Welfare Association, Indian Center Inc. and several tribes, including the Winnebago and Omaha, also participated in the brief.