

# Tyonek: Cultural protection or discrimination

By Paul Jenkins  
The Associated Press

The decision whether to evict two white families from the tiny Native community of Tyonek went to U.S. District Judge James M. Fitzgerald on Wednesday.

Depending on where they stood in the case, attorneys argued in an afternoon hearing that the village either was seeking "racial purification" or exercising its rights under federal laws dealing with Indian affairs and sovereignty.

Fitzgerald agreed to take the case for a later ruling almost reluctantly and only after pressing the lawyers to continue the arguments at a later time.

"I sense a host of difficult and important questions," he said.

The community's village council in September 1982 sued to evict the families of Donald and Erna Puckett and Fred and Virginia Slawson, who rent homes in the mostly Athabascan village across Cook Inlet from Anchorage.

Council members claimed a village ordinance adopted in 1939 prohibits non-members, other than government employees, from remaining in the community for more than 24 hours without council approval. Non-members also are prohibited from leasing homes in

the village without tribal consent.

Tribal rules limit membership to Natives.

In June 1982, village leaders moved to invoke the rule and ordered non-tribal members out of the community of about 230 residents. The families fought the eviction.

Robert H. Wagstaff, counsel for Alexandra and Esther Kaloa and Alec and Olga Constantine, the village members leasing the homes to the Pucketts and Slawsons, urged Fitzgerald to reject the argument of Indian rights.

He said the eviction would violate constitutionally barred racial discrimination.

Bertram Hirsch, a New York attorney arguing for the village council, countered that the case does not deal with discrimination, but with Tyonek's attempt to protect its culture, economy and heritage from exploitation and infringement by outsiders.

He said the discrimination argument has done "little more than fan the flames."

He said 60 of the village's 87 homes were built with U.S. government trust funds controlled by the village's Indian Reorganization Act council.

"It was approved to provide housing for Indians," he said, adding the 27 other homes were built under the

Indian Housing Act to provide housing for Indians.

He said the Native Claims Act did not "mystically" dissolve the village government of Tyonek and argued that land ownership is not a factor in determining whether an Indian government is sovereign.

"They're asking the court to declare there is no Indian country in the United States," he said. "Congress has said, 'Yes, there shall be tribes,' and they've said it over and over and over again. So, yes, there shall be Indian country, even in Alaska."

The ordinances in question are "racial purification laws," Wagstaff said.

"What Tyonek is asking is that the court actively use federal power, presumably through the U.S. marshal, to enforce racial discrimination," he said. "It cannot be tolerated in any form or any guise."

Tyonek lost its tribal status in the Alaska Native Claims Settlement Act of 1971, and owns no land, he argued. Tribal lands were handed over to the Tyonek Native Corp. in the settlement and that private corporation is not a tribal organization.

"There is no reservation... no reservation property," he said.

Randall G. Simpson, argu-

ing for the Pucketts and Slawson, said eviction would violate the families' right to live where they want.

"There has been no allegation or assertion that they engaged in detrimental conduct," he said. "The sole and exclusive reason for the order of the village council was to prevent the Slawsons and Puck-

etts from renting housing in the village of Tyonek."

He argued the Tyonek community does not constitute a tribe, and said sovereignty "resides in land holdings," and even if sovereignty exists, it is not absolute.

"They just want them out of the village on account of their race," he said.