

You can read the Lawyers.com News Blog at <http://blogs.lawyers.com>

## Custody Case Pits Adoptive Parents Against Indian Nation

January 12, 2012 By [Keith Ecker](#)



A case out of South Carolina has ignited a battle that pits an adoptive couple against a Native American tribe and the child's biological father.

Matt and Melanie Capobianco adopted 2-year-old Veronica in an Oklahoma [open adoption](#) in 2009. The child's biological father, Dusten Brown, was not actively in her life at the time. Furthermore, when Veronica was four months old, Brown stated in writing that he would not contest the adoption, according to the Capobianco's attorney. Two weeks later, Brown changed his mind and began petitioning for custody.

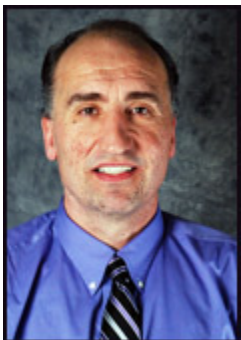
But Brown isn't just any U.S. citizen. He is an official member of the [Cherokee Nation](#). And so he sued for custody under an often misunderstood federal law called the [Indian Child Welfare Act \(ICWA\)](#). On Dec. 30, 2011, after an ongoing legal battle, a South Carolina appellate court ruled in favor of Brown. The next day, Veronica was taken from her adoptive parents and given over to her biological father, who is currently raising her among the Cherokee tribe.

"Because this is an adoption, the details of who knew what and when they knew it are confidential," says [June Stanley](#), an attorney at [Meier & Associates](#) and an expert on Indian law. "So the question of whether ICWA should apply really depends on the facts, which we just don't know."

### Preserving a Dying Culture

Before 1978, Native American children were being removed from their families and placed in [adoption and foster care](#) at alarmingly high rates.

B.J. Jones



"In some states as many as 25 to 30 percent of Indian children were taken from their families," says B.J. Jones, director of the [Tribal Judicial Institute](#) at the University of North Dakota's School of Law. "When that happens, the child is being denied the right to be exposed to his or her tribal culture."

Seeing that entire generations of Native American tribes were in jeopardy, Congress decided to act to help preserve Indian culture. The result was ICWA.

"ICWA has two purposes," Stanley says. "The first one is to give tribal courts the authority to make determinations concerning the custody of their children in foster and adoption cases. The second purpose is for those cases that don't need to be brought to tribal court to be subject to higher standards that have to be met before an Indian child can be removed from their home and tribe."

It is this latter purpose that is at the center of the Capobianco case. There are a number of steps and conditions that must be met for a non-tribal family to adopt a child that is a member of an Indian nation or is eligible to be a member of an Indian nation and is the biological child of a member of a tribe.

“ICWA says the parent of an Indian child cannot just sign a document to relinquish parental custody,” Jones says. “The parents, even a non-Indian parent, would have to go into open court where the judge would explain the law and the consequences of voluntarily terminating their parental rights.”

In addition, Jones says that even if the father is not directly involved in the child’s life, he and the respective tribe usually must be given notice. The adoptive parents would also have to prove that placement of the child with the father would result in serious harm to the child.

## A Case with No Winners



Although Brown is merely asserting his rights under the law, public sentiment has been largely in favor of the Capobiancos. In fact, supporters of the adoptive parents have even erected a website called [Save Veronica](#) that sides with their plight while advocating for a change to the law. But Jones says Brown and the Cherokee tribe aren’t to blame for the unfortunate circumstances.

“It seems to me that a lot of these cases that blow up like this are caused by the fact that the attorney for the adoptive parents doesn’t know the law,” Jones says. “When it goes wrong, oftentimes the tribe is depicted to be at fault when really it was the lawyer who erred.”

Stanley believes there are likely additional facts in this case that have not been made public that may explain the actions of both parties.

“[Brown] giving his consent and then taking it back doesn’t make a lot of sense,” she says. “Also, for [Brown] to have the decree of adoption vacated as he did, the court would have had to determine there was an element of duress or fraud.”

The Capobiancos may still be able to argue that it is in Veronica’s best interest for her to stay in their custody. However, the success of such an argument is uncertain. If Brown does end up permanently receiving custody of the child, there still may be an avenue for the Capobiancos to remain in their adopted daughter’s life.

“If this case were transferred to the Cherokee tribal court, the adopted couple may be able to apply for guardianship or visitation as de facto parents,” Jones says.

**Tagged as:** [adoption](#), [BJ Jones](#), [Capobianco](#), [Cherokee](#), [Cherokee Nation](#), [Cherokee tribe](#), [Child custody](#), [foster care](#), [ICWA](#), [Indian Child Welfare Act](#), [June Stanley](#), [Meier & Associates](#), [Native American](#), [Save Veronica](#), [Tribal Judicial Institute](#), [visitation](#)

---

**Disclaimer:** The information provided on Lawyers.com is not legal advice, Lawyers.com is not a lawyer referral service, and no attorney-client or confidential relationship is or should be formed by use of the site. The attorney listings on Lawyers.com are paid attorney advertisements and do not in any way constitute a referral or endorsement by Lawyers.com or any approved or authorized lawyer referral service. Your access of/to and use of this site is subject to additional [Terms and Conditions](#).