

2003 WL 25446105 (Alaska Super.) (Trial Order)  
Superior Court of Alaska,  
Third Judicial District at Anchorage.

NATIVE VILLAGE OF PERRYVILLE, Plaintiff,

v.

John W. TAGUE, Defendant.

No. 3AN-00-12245 CI.

November 19, 2003.

### **Order**

On March 25, 1999 the Native Village of Perryville (Perryville) passed a resolution banning John W. Tague from Perryville after a series of occurrences in which he acted violently and dangerously to the people of Perryville.

In November 2000 Perryville sought an injunction from this court to enforce its resolution banishing John W. Tague from Perryville. Notice by publication was allowed. Mr. Tague did not respond to publication, default was granted and the permanent injunction was signed on March 10, 2001. A writ of assistance was issued to Perryville directing peace officers to enforce the court's injunction in January 2003.

When the Alaska State Troopers served the writ Mr. Tague asked Perryville to pay his airfare out, which they did, and he left.

The State of Alaska, unaware of some facts underlying the Perryville resolution, the relationship of Mr. Tague to Perryville, the history of his conduct in Perryville, and perhaps even the serendipity of a trooper being available to perform constabulary duties, expressed concern about the propriety of the court's provision of injunctive relief.

Based on some incorrect information, the state may have thought Mr. Tague was not subject to Perryville's jurisdiction as a native, and that the injunctive process within the court system was not followed. Consequently, out of concern for Mr. Tague's rights, and an understandable lack of experience with orders having the effect of banishment, the Department of Public Safety refused to enforce the injunction without a fresh writ of assistance from the court, which Perryville then sought and which was issued by the court in January 2003. The writ was complied with, as indicated above.

The Department of Law has informed the court of what it considered to be defects in the court's underlying decision. It told the court that in the future it intended to advise the Department of Public Safety to not enforce the court's order due to those defects.

Respecting the desire of the executive branch to protect the rights of its citizens, the court sought more information. The court issued an order to show cause why the injunction should not be vacated. Perryville, the State of Alaska, and others have addressed the court on the question. Mr. Tague has not.

### ***Summary of the Outcome***

Because Mr. Tague has not participated, no further action is called for, and the court does not vacate the injunction. The State of Alaska's sensitivity to the civil rights of all its citizens makes its concern about the court's order

understandable. Its concern was based on incomplete understanding of the facts. An expression of an intent not to obey the court's order at some indeterminate future is no basis for additional orders to show cause to the State, especially where, as here, the court's orders have been obeyed.

### *Discussion*


#### **1. Standing and Real Controversy**

Perryville correctly notes that the State of Alaska is before the court in this matter as *amicus curiae* or friend of the court. In such role the State may seek to aid the court in understanding the facets of issues before it and how those issues interrelate with larger social and governmental goals, policies, and the practical limitations of life. As a practical matter, however, *parties* must seek remedies for a matter to be truly at issue. Here, Mr. Tague has not challenged the court's decision by a timely request for reconsideration, [Civil Rule 65](#) motion, or appeal.

Because the true party in interest, Mr. Tague, has not participated, it is appropriate for the court to vacate the order to show cause, thus leaving its injunction in place.

#### **2. The Injunction is Lawful**

Respect for concern expressed by the State of Alaska mandated a second look to insure no manifest injustice had resulted from the court's order. The long history of cooperative respect between the three branches of the State government made the concerns expressed by the Department of Law ones the court could not simply ignore. The unfairness of subjecting an unwilling non-native citizen to the authority of a native governing body is simply not allowed by the authority claimed by Perryville. But as the record indicates, Mr. Tague is a tribal member of Perryville and that central factual basis for the State's concern is wrong.

The law allows tribes to “regulate the internal affairs of its IN THE SUPERIOR COURT FOR THE STATE OF ALASKA Page 4 of 6 members”.  [John v. Baker, 982 P. 2d 738, 759 \(Alaska 1999\)](#). Mr. Tague is a member of Perryville. The State is concerned that without requiring “Indian Country” for banishment, banishment will be applied by tribes in small villages to try to keep the banished person out of such places as Anchorage or Fairbanks in addition to the specific small village. The court recognizes that with many members of various tribal groups living in Anchorage and Fairbanks, not to mention Seattle and other cities, this concern about the extreme limits of such orders by tribes is not just academic. But this isn't such a case. Here the people of Perryville simply want Mr. Tague to stay away from tribal members in Perryville.

The court's injunction issued after default by Mr. Tague. On the record that was before the court he had acted in demonstratively dangerous ways to the people of Perryville. The relief sought constituted a “no contact” order, uncommon in its breadth, but the kind of order frequently issued on a narrower basis in family matters. The grave results of Mr. Tague's behavior in Perryville justified the injunction's issuance. Though issued on default, it should be clear it was neither lightly sought nor lightly granted.

Though this court relied on the constructive notice by publication to enter its original injunction by default of Mr. Tague, he has had actual notice of Perryville's banishment action since at least May 1999 when it was raised during his sentencing before the Superior Court at Dillingham. He took no action to reverse Perryville's decision.

Finally, though the order is a permanent injunction, it provides that Mr. Tague “shall not reenter or remain within the Village, absent a court order or prior approval of the Perryville IRA IN THE SUPERIOR COURT FOR THE STATE OF ALASKA Page 5 of 6 Council.” Thus, Mr. Tague may apply for a lifting of the injunction by the

court or request Perryville to seek that action from the court when he can conduct himself in a manner safe for the people of Perryville.

***3. Actions Since the Court's Injunction***

Subsequent actions by Perryville and Mr. Tague arguably supersede this court's present order: Perryville has held hearings in its tribal court with Mr. Tague participating and recognizing the appropriateness of Perryville's action. He acknowledged that he would comply with Perryville's decision, which allows him to petition every two years to remove the banishment.

***Conclusion and Order***

This court vacates its order to show cause. The injunction stands.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 19th day of November, 2003.

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PETER A. MICHALSKI

Superior Court Judge