

In the Supreme Court of the State of Alaska

Rozella Simmonds and Jeff Simmonds,)
) Supreme Court Nos. S-14103/14134
Petitioners/Cross-Respondents,)
v.)
) **Order**
) Petitions for Review
Edward Parks,)
)
)
Respondent/Cross-Petitioner.) **Date of Order: March 7, 2011**

Trial Court Case # **4FA-09-02508CI**

Before: Carpeneti, Chief Justice, Fabe, Winfree, Christen, and Stowers, Justices.

Having reviewed the Simmondses' petition for review filed on December 13, 2010, the guardian ad litem's notice of joinder in petition filed December 20, 2010, and the opposition filed December 27, 2010,

IT IS ORDERED that the petition is **GRANTED TO THE FOLLOWING EXTENT:**

This case is **REMANDED** to the trial court for further proceedings to develop the record and to make findings and conclusions on the following questions:

1. Was Parks given an opportunity to present oral or written jurisdictional arguments on his own behalf to the Minto Tribal Court? Was Parks's attorney permitted by the Minto Tribal Court to submit written jurisdictional arguments to the Minto Tribal Court? Was Parks given an opportunity to have his attorney speak for him at any of the stages of the child protection proceedings?

2. If Parks was not allowed to be represented by an attorney in the Minto Tribal Court, was this a violation of due process? Must the Minto Tribal Court

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allow a party to be represented by an attorney at all or some stages of a child protection proceeding involving termination of parental rights in order to afford minimal due process? What rationale, if any, has the Minto Tribal Court expressed for limiting a party's ability to be represented by an attorney in such proceedings?

3. Were the Minto Tribal Court proceedings recorded? If the proceedings were recorded, are the recordings available to the superior court and to this court, and, if the proceedings were not recorded, has the Minto Tribal Court expressed any reason for declining to record the proceedings?

4. Can any possible due process violations be characterized as harmless error? Specifically,

(a) In light of the decision in *State v. Native Village of Tanana*, ___ P.3d ___, Opinion No. 6542 (Alaska, March 4, 2011), would Parks's argument that the Minto Tribal Court lacked subject matter jurisdiction to initiate child protection proceedings have been successful?

(b) If Parks or his attorney had been permitted by the Minto Tribal Court to make Parks's other jurisdictional arguments, would such arguments have been successful? In addressing this question, the superior court may need to address:

(1) Whether Parks's or Stearman's objections to the Minto Tribal Court proceedings affected the Minto Tribal Court's jurisdiction to hear the case?

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(2) Whether the alleged minimal contacts by Parks, Stearman, or the child with Native Village of Minto affected the Minto Tribal Court's jurisdiction to hear this case?

(3) Whether Parks and Stearman submitted to the personal jurisdiction of the Minto Tribal Court?

We will retain jurisdiction of this matter and on receiving the superior court's findings and conclusions, which shall be transmitted on or before **June 1, 2011**, we will issue an order regarding any further briefing to be provided by the parties in this case and any amicus participants before the superior court.

Having reviewed Parks's cross-petition for review filed on December 27, 2010, and the opposition filed January 7, 2011,

IT IS ORDERED that the cross-petition is **DENIED**.

Entered by direction of the court.

Clerk of the Appellate Courts


Marilyn May

cc: Supreme Court Justices
Judge Lyle
Regional Appeals Clerk - Fairbanks

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