

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In the Matter of:

████████████████████

)
)
) Case No. 4FA-21-00332-PR
)

**ORDER GRANTING MOTION FOR ATTORNEY'S FEES
(Motion 8 & 11)**

COMES NOW the Court and GRANTS Motions 8 and 11 in this matter. Regarding this single issue, the Court's dismissal of this case for lack of subject matter jurisdiction, the parties made eleven separate filings consisting of a motion to reconsider, motions to strike, supplements, oppositions, affidavits, supporting documents, and replies, that comprised more than 400 pages in the Court's docketed file. The foundational decision of the Court—that it does not have subject matter jurisdiction—should have rendered moot all subsequent filings regarding that issue. Additionally, the parties have made seven more separate filings regarding attorney's fees for this same issue—dismissal for lack of subject matter jurisdiction.

Because the Native Village of Selawik ("Selawik") succeeded on the dismissal for lack of subject matter jurisdiction and on the Motion for Reconsideration, it is entitled to attorney's fees under Civil Rule 82. However, it is only entitled to 25% of its attorney's fees. Accordingly, the Court GRANTS Selawik's motion, awarding it \$5,192.50.¹

BACKGROUND

Unlike the other forty-nine states, Alaska generally follows the English Rule of fee shifting, which "partially compensate[s] a prevailing party for the expenses incurred in winning his case."²

¹ Selawik quoted in its motion that 50% of its attorney's fees equals \$10,585.00. Therefore, 25% of its attorney's fees equals \$5,192.50.

² *Tobeluk v. Lind*, 589 P.2d 873, 876 (Alaska 1979).

Alaska Rule of Civil Procedure (“CR”) 82 codifies this rule. Awards of attorney’s fees are appropriate, even if the court lacked jurisdiction over the claim.³ Courts have discretion in how much attorney’s fees to award, but if they deviate from the guidelines in CR 82, they must explain why. For actions with no money damages, CR 82 suggests a baseline award of 20% of the prevailing party’s attorney’s fees. However, the Court may, in its discretion, vary that amount based on several factors:

- (A) the complexity of the litigation;
- (B) the length of trial;
- (C) the reasonableness of the attorneys’ hourly rates and the number of hours expended;
- (D) the reasonableness of the number of attorneys used;
- (E) the attorneys’ efforts to minimize fees;
- (F) the reasonableness of the claims and defenses pursued by each side;
- (G) vexatious or bad faith conduct;
- (H) the relationship between the amount of work performed and the significance of the matters at stake;
- (I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;
- (J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and
- (K) other equitable factors deemed relevant.

Though most motions require a responsive pleading, “[n]o response shall be made to a motion for reconsideration unless requested by the court.”⁴ Motions to reconsider are not opportunities to re-litigate the case.⁵ The Court does not always require a response, and often, may only request a response where it ponders granting the motion to reconsider.⁶

³ *Foster v. State, Dep’t of Transp.*, 34 P.3d 1288, 1291–92 (Alaska 2001).

⁴ Alaska R. Civ. Proc. 77(k)(3).

⁵ *Katz v. Murphy*, 165 P.3d 649, 661 (Alaska 2007) (“Alaska Civil Rule 77(k), which governs motions for reconsideration, does not allow the moving party to raise new grounds as a basis for reconsideration; instead the rule only allows reconsideration of points that were overlooked or misconceived despite having been properly raised.”).

⁶ Alaska R. Civ. Proc. 77(k)(3) (“[A] motion for reconsideration will ordinarily not be granted in the absence of” a request for a response from the opposing party.).

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DISCUSSION

Here, the Court considered arguments from both sides, decided a ruling, and fully explained its reasoning on the issue of jurisdiction. Petitioner's Motion to Reconsider provided no new evidence or perspectives of law warranting a different ruling. The Court was prepared to make its ruling without further filings. Before it could do so, the docket was inundated with several hundred pages of filings by both parties. Irrespective that the Court initially never ordered a response, the parties barraged the Court with excessive motions, all re-arguing jurisdiction. There was no matter before either party warranting a response, nevertheless, responses, motions to strike, oppositions, supplements, and replies continued to come. The parties made twenty-four separate filings, eleven of which specifically derived from the motion to reconsider jurisdiction issue. Also part of the twenty-four filings, the parties made seven filings regarding attorney's fees on this jurisdiction issue. This was excessive.

The timeline of filings proceeded as followed:

February 18, 2022:	Tribe: Notice of Tribal Jurisdiction
February 28, 2022:	Petitioner: Motion to Strike Notice of Tribal Jurisdiction
March 14, 2022:	Tribe: Opposition to Motion to Strike Notice of Tribal Jurisdiction
March 17, 2022:	Petitioner: Reply to Motion to Strike Notice of Tribal Jurisdiction
March 21, 2022:	Tribe: Sur-Reply to Motion to Strike Notice of Tribal Jurisdiction
June 6, 2022:	Tribe: Motion for Extension
June 6, 2022:	Petitioner: Motion to Reconsider
June 7, 2022:	Petitioner: Supplement to Motion to Reconsider ⁷
June 10, 2022:	Tribe: Motion to Strike Motion to Reconsider
June 16, 2022:	Petitioner: Opposition to Motion to Strike Motion to Reconsider
June 20, 2022:	Tribe: Motion for Attorney's Fees

⁷ This filing alone exceeded 150 pages.
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June 24, 2022: Tribe: Motion for Extension for Reply to Motion to Strike Motion to Reconsider

June 24, 2022: Tribe: Reply to Motion to Strike Motion to Reconsider

June 29, 2022: Petitioner: Opposition to Motion for Attorney's Fees

July 7, 2022: Tribe: Reply for Motion for Attorney's Fees

July 19, 2022: Tribe: Opposition to Motion to Reconsider

July 22, 2022: Petitioner: Reply to Motion to Reconsider

July 25, 2022: Tribe: Motion to Strike Reply to Motion to Reconsider

August 1, 2022: Petitioner: Opposition to Motion to Strike Reply to Motion to Reconsider

August 8, 2022: Tribe: Reply to Motion to Strike Reply to Motion to Reconsider

August 26, 2022: Tribe: Motion to Strike Supplement to Motion to Reconsider

September 27, 2022: Tribe: Supplement for Motion for Attorney's Fees

October 5, 2022: Petitioner: Opposition to Supplement Motion for Attorney's Fees

October 7, 2022: Tribe: Reply to Supplement for Motion for Attorney's Fees

Neither party comes with clean hands. The Court finds factors (C) and (G) are implicated here. Petitioner's good faith in arguing due process violations is questionable. Also, the responses filed by Selawik were an unreasonable disposal of attorneys' time and the Court's resources.

I. PETITIONER'S ARGUMENTS LACKED A GOOD-FAITH BASIS.

Petitioner's actions strained good faith. Petitioner, after choosing to file her claim in the Venetie Tribal Court and submitting to its jurisdiction for some time, suddenly asserted that tribal courts do not have jurisdiction. Petitioner intercepted the pass of the case from Venetie to Selawik, and brought it to this Court. Petitioner's argument, that she honestly believed tribal courts do not have jurisdiction, even after Selawik stepped in to assert jurisdiction, is suspect at best. Bolstering that suspicion, Petitioner argued violation of due process, but could not tell this Court how her due process rights were violated in the tribal courts. A far more logical conclusion presents itself here:

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Petitioner, for whatever reason, did not prefer the Selawik Court and argued an empty allegation of due process violation in an attempt to overcome tribal jurisdiction. Petitioner lacked good faith by making a due process argument for which she had no justification.

The issue was fully resolved upon notification from Selawik that it intended to exercise jurisdiction over this case. Petitioner, instead of remaining in the tribal courts asked this Court to reinterpret tribal laws and overrule the tribal court's finding that the child qualifies as a tribal member. As previously stated in both of the Court's previous orders, the Village of Selawik is a sovereign nation, entitled to both its own laws and the right to interpret its own laws. Petitioner's argument, like her due process allegation, was not premised on any law or fact within this Court's authority. Petitioner lacked a good-faith basis in raising it.

Petitioner's timing, in filing this action here after litigating in the Venetie Court for years, is suspect. Petitioner's hotly contesting the Court's dismissal, based on two disingenuous claims, furthers that suspicion. Had Petitioner simply remained under the tribal jurisdiction, where she originally chose to file this issue, none of the hours of labor and umpteen filings would have been wasted here.

II. SELAWIK'S UNSOLICITED RESPONSES WERE EXCESSIVE.

The Selawik Tribe does not come with clean hands either. Parties are not permitted to respond to a motion to reconsider unless ordered by the Court. Selawik made an end-run-around and perpetuated the litigation by moving to strike the motion to reconsider. Selawik filed five responses, instigating even more responses from Petitioner. The Court had all the information it needed to decide the Motion to Reconsider, and when it needed more information, it asked for it. One filing, opposing the Motion to Reconsider, when requested, would have been acceptable, but five responses

was excessive. Truly, we would not be here, absent Petitioner's dodging the tribal court's jurisdiction, but Selawik exasperated the issue.

III. SINCE PETITIONER'S ARGUMENT LACKED GOOD FAITH AND SELAWIK'S RESPONSES WERE EXCESSIVE, THE APPROPRIATE AWARD OF ATTORNEY'S FEES HERE IS 25%.

The Civil Rules allow the Court to deviate from the structured attorney's fees guidelines. Selawik petitions the Court to grant it 50% of its attorney's fees, instead of the presumption of 20%. Selawik, however, substantially over-litigated this case and is not entitled to the significant increase above the guideline it requests.

What should have been a celebratory case—the adoption of a child into a permanent family—has been turned into a hotly contested legal battle. The Court queries how both sides lost sight of the common goal of giving a mother-bereaved child a new home. The vehemence between the parties depicted opponents fighting for opposed rights, not two parties working toward the common goal of safety and stability of the child.

As discussed, neither party is faultless. However, Petitioner bears more of the fault. None of this litigation would have been filed, but for Petitioner's questionable refusal of the tribal court's jurisdiction. Subsequently, Selawik litigiously compounded this issue beyond appropriate measures of advocacy. Because Petitioner lacked a good-faith basis for instigating this matter and is the but-for cause of all of the excessive subsequent filings, the Court does increase the attorney's fees percentage. Because Selawik unreasonably complicated the issue, the Court increases that amount only slightly. Accordingly, the Court finds, in its discretion, that Selawik, as a prevailing party on the issue of jurisdiction, is entitled to 25% of its attorney's fees.

CONCLUSION

Selawik is a prevailing party and is entitled to attorney's fees under Civil Rule 82. Because Petitioner's good faith in filing this action was questionable, the Court increases the percentage award of attorney's fees. However, since Selawik also acted unreasonably by filing excessive responses, the Court adjusts that amount by only 5%. Accordingly, the Court GRANTS Selawik 25% of its attorney's fees, totaling \$5,192.50.

IT IS SO ORDERED.

DATED this 9th day of November, 2022, at Fairbanks, Alaska.



EARL A. PETERSON
Superior Court Judge

I certify that on 11/14/2022
copies of this form were sent to:
Clerk: AW *Richard
Walleri
Fletcher*