

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

In the Matter of:

████████████████████

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

**ORDER DENYING MOTION FOR RECONSIDERATION OF COURT'S ORDER  
RECOGNIZING TRIBAL JURISDICTION AND CLOSING CASE  
AND  
ORDER DENYING MOTION FOR EVIDENTIARY HEARING  
(MOTION 5)**

**ORDER DENYING TRIBE'S MOTION TO STRIKE PETITIONERS' MOTION TO  
RECONSIDER AND CONDUCT EVIDENTIARY HEARING  
(MOTION 6)**

**ORDER DENYING TRIBE'S MOTION TO STRIKE PETITIONERS' REPLY TO  
OPPOSITION TO MOTION TO RECONSIDER AND CONDUCT EVIDENTIARY  
HEARING  
(MOTION 9)**

**ORDER DENYING TRIBE'S MOTION TO STRIKE SUPPLEMENT TO  
PETITIONERS' MOTION TO RECONSIDER AND CONDUCT EVIDENTIARY  
HEARING  
(MOTION 10)**

COMES NOW the Court and DENIES Motions 5, 6, 9, and 10 in this matter. Regarding this single issue, the Court's dismissal of this case for lack of subject matter jurisdiction, the parties have made eleven separate filings consisting of a motion to reconsider, motions to strike, supplements, oppositions, affidavits, supporting documents, and replies, that comprise more than 400 pages in the Court's docketed file. The foundational decision of the Court—that it does not have subject matter jurisdiction—renders moot all subsequent filings regarding this issue.

Accordingly, the Court rules as follows:

D

Motion 5: Petitioners' Motion to Reconsider and Conduct Evidentiary Hearing is DENIED.

Motion 6: [Tribe's] Motion to Strike [Motion 5] Petitioners' Motion to Reconsider and Conduct Evidentiary Hearing is DENIED as the Court's ruling on Motion 5 renders this motion moot.

Motion 9: [Tribe's] Motion to Strike [Petitioners' Reply to Opposition of Motion 5] Petitioners' Reply to Opposition to Motion to Reconsider and Conduct Evidentiary Hearing is DENIED as the Court's ruling on Motion 5 renders this motion moot.

Motion 10: [Tribe's] Motion to Strike [Supplement to Motion 5] Supplement to Petitioners Motion to Reconsider and Conduct Evidentiary Hearing is DENIED as the Court's ruling on Motion 5 renders this motion moot.

The Court previously ruled on Motion 7, [Tribe's] Motion to Accept Late Filing. The Court will rule on Motion 8: Tribe's Motion for Attorney's Fees, in a later ruling. However, since all supplements, oppositions, replies, and motions contained in Motions 5, 6, 9, and 10 are all dependent upon one decision by this Court, the Court addresses them jointly and DENIES them.

All of the Court's rulings herein are dependent on a single issue: the Court lacks subject matter jurisdiction to decide this case. The Court's jurisdiction was extinguished upon the notice it received by the Selawik Tribal Court, asserting its jurisdiction over a person it determined to be a member of its tribe. Therefore, in the interest of efficiency for all parties, the Court denies all motions stemming from this issue so that the matter may be timely resolved in the appropriate court and no time is further squandered in superfluous documentation.

## DISCUSSION

- I. Because the tribal courts were already exercising jurisdiction over this motion, the Court cannot exercise jurisdiction over this case simultaneously with a tribal court, since the Selawik Tribal Court continues to exercise its jurisdiction.

Multiple tribunals may have concurrent jurisdiction over a matter, but only one court can exercise that jurisdiction at a time.<sup>1</sup> If one court is presently exercising subject matter jurisdiction over a case, no other court can exercise jurisdiction over that case.<sup>2</sup> Further, transferring a case within the same judicial system is not equivalent to dismissing it. When a case is transferred within a judicial system, that judiciary continues to exercise its authority, until it makes a final judgment.

The subjects of this case originated in the Venetie Tribal Court, when Nikki Richman (“Richman”) filed a Petition for Appointment of Guardian in early 2020.<sup>3</sup> In May of 2021, the Native Village of Selawik Council passed a resolution seeking transfer of the case to Selawik Tribal Court; and by July 16, 2021, jurisdiction was officially transferred and accepted from Venetie to Selawik.<sup>4</sup> During the pendency of the transfer, Richman filed a Petition for Adoption in this Court—thus creating the issue of two pending cases in two different jurisdictions.<sup>5</sup> However, the fact that the case was transferred from Venetie to Selawik did not eliminate the subject matter jurisdiction of the tribal judicial system. The matter was still under the authority of tribal courts, even though the petition filed with this Court predated the Selawik Court’s acceptance of the matter.<sup>6</sup> Transferring the matter between tribal courts at no time divested the tribal judicial

---

<sup>1</sup> See *State v. Native Vill. of Tanana*, 249 P.3d 734, 750 (Alaska 2011).

<sup>2</sup> *Id.*

<sup>3</sup> Opp’n to Recons., at 3–4.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2.

Order Denying Motion for Reconsideration

IMO [REDACTED]  
4FA-21-00332PR

Page 3 of 8



system of jurisdiction over this case. Therefore, this Court cannot exercise subject matter jurisdiction over this case because it is presently before another court.

**II. Even if the Selawik Tribal Court did not have jurisdiction prior to this Court's involvement, this Court still lacks subject matter jurisdiction because it must honor the Selawik Tribal Court's assertion of jurisdiction, when it determined the child is a tribal member.**

The Indian Child Welfare Act was created to protect the family structures of Native American tribes. Congress found that the rulings of custody cases in the state courts far too frequently were antithetical to Native American family structures and traditions.<sup>7</sup> Accordingly, state courts are now required to decline ruling on any claims brought before it when 1) the matter is governed by native laws and 2) the tribal court has indicated its desire to rule on the matter.<sup>8</sup> An "Indian" person is anyone who has been granted membership by a native tribe.<sup>9</sup> Only due process violations allow a state court to override a tribal court's decision over Indian affairs.<sup>10</sup> Otherwise, the state court must, under the full faith and credit clause, honor, not only the rulings of a tribal court, but also the desire of a tribal court to preside over its own legal issues and members.<sup>11</sup> Once both of those prongs are met, the state court is immediately divested of subject matter jurisdiction and must dismiss the case.<sup>12</sup>

There are only two considerations the Court must make: 1) whether the child is a member of a native tribe and 2) whether the tribe has asserted its jurisdiction. The first question is a matter to be decided wholly by the tribal courts. The second is purely a matter of notice by the tribal court, to the state court.

<sup>7</sup> *State v. Native Vill. of Tanana*, 249 P.3d 734, 738 (Alaska 2011).

<sup>8</sup> 25 CFR 23.110; 25 U.S.C. 1911(a)

<sup>9</sup> 25 U.S.C. 1903(6)

<sup>10</sup> 25 U.S.C. § 1302(8) (1982).

<sup>11</sup> 25 CFR 23.110; 25 U.S.C. 1911(a)

<sup>12</sup> *Id.*

Order Denying Motion for Reconsideration

IMC [REDACTED]

4FA-21-00332PR

Page 4 of 8

A. Tribal membership requires an interpretation of tribal laws, which is wholly determined by a tribal court and is not subject to review by a state court.

The federal government recognizes Native American tribes as sovereign nations.<sup>13</sup> Absent constitutional violations, state courts are not permitted to interpret the laws of these sovereign nations.<sup>14</sup> Tribal membership is created by the laws and constitutions of the tribes. It is governed solely by tribal laws. Accordingly, state courts cannot decide who is qualified to be a member of a tribe, because it would require interpreting a tribe's laws. Further, when the tribal court makes a finding, the full faith and credit clause requires the state courts to honor that finding.<sup>15</sup> Specifically, if a tribal court finds a person is a member of a tribe, this Court is not permitted to reject, modify, or even reconsider that decision.

The Selawik Tribal Court has determined that the child in this case is a tribal member and has notified the Court of its findings.<sup>16</sup> There is no further consideration or analysis the Court need make on that issue. Petitioners, in their filings, supplied over 200 pages of tribal constitutions and codes to support their argument that the child is not a tribal member, but these laws are not for this Court to interpret.

B. The Selawik Tribal Court has given this Court notice of its intent to continue exercising jurisdiction over this case.

The second prong simply requires that once the tribal court provides notice to the state court of the tribal court's intent to exercise jurisdiction over a tribal matter, the state court must dismiss the case, because the tribal court has exclusive jurisdiction.<sup>17</sup> The case will then be tried by the tribal court. The only time that a state court may exercise jurisdiction over a tribal matter is when 1) the

---

<sup>13</sup> *State v. Native Vill. of Tanana*, 249 P.3d 734, 743 (Alaska 2011).

<sup>14</sup> 25 CFR 23.108(b)

<sup>15</sup> 25 U.S.C. § 1302(a)(8) (1982).

<sup>16</sup> Opp'n to Recons., at 8.

<sup>17</sup> 25 U.S.C. 1911(a)

Order Denying Motion for Reconsideration

IMO [REDACTED] [REDACTED]  
4FA-21-00332PR

Page 5 of 8

petitioner has exhausted her remedies within the tribal judiciary and seeks further relief after final adjudication or the tribal court's refusal to rule on the matter<sup>18</sup> or 2) proceeding in a tribal court will violate due process.<sup>19</sup>

Despite Petitioners' argument, the Selawik Tribal Court has notified this Court of its intent to exercise jurisdiction and has requested that this Court dismiss the case.<sup>20</sup> Further, Petitioners have not fully adjudicated this matter in the tribal judiciary and therefore have not exhausted their remedies. The Court cannot consider their claim for different or additional relief until after the tribal judiciary has made a final judgment on the matter. Lastly, though Petitioners conclusively argue due process concerns<sup>21</sup> and cite this claim as a fundamental right,<sup>22</sup> none of these arguments were raised before the Court's ruling to dismiss and cannot be raised for the first time on a motion to reconsider.<sup>23</sup>

### **III. Petitioners' request for a "Peidlow" Hearing was properly denied.**

On brief, Petitioners cited *Peidlow v. Williams*<sup>24</sup> and insisted that the Court cannot dismiss the case without first granting a hearing to determine jurisdiction,<sup>25</sup> but Petitioners misapply this case. In *Peidlow*, the Superior Court of Utqiagvik declined to enforce a custody order by a tribal court.<sup>26</sup> The Superior Court discussed whether the case was technically pending before a tribal court and whether the tribal court had jurisdiction to hear the case.<sup>27</sup> The Superior Court denied a hearing

---

<sup>18</sup> *Simmonds v. Parks*, 329 P.3d 995, 999 (Alaska 2014).

<sup>19</sup> 25 U.S.C. § 1302(a)(8) (1982).

<sup>20</sup> See Opp'n to Recons.

<sup>21</sup> Pet'rs' Opp'n to Tribe's Mot. To Strike Pet'rs' Mot. To Recons. And Conduct Evidentiary Hr'g., at 2.

<sup>22</sup> Opp'n to Selawik Mot. For Att'y Fees, at 3.

<sup>23</sup> *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.")

<sup>24</sup> 459 P.3d 1136 (Alaska 2020)

<sup>25</sup> Pet'rs' Opp'n to Tribe's Mot. to Strike Pet'rs' Mot. to Recons. and Evidentiary Hr'g., at 1.

<sup>26</sup> *Peidlow v. Williams*, 459 P.3d 1136, 1139-40 (Alaska 2020).

<sup>27</sup> *Id.* at 1138.

Order Denying Motion for Reconsideration

IMO [REDACTED]

4FA-21-00332PR

Page 6 of 8



to determine jurisdiction, *before vacating the tribal court's ruling*, not before dismissing the case to be heard by a tribal court.<sup>28</sup>

*Peidlow* proves the exact opposite premise of Petitioners' argument. Petitioners assert that this Court should reject the Selawik Tribal Court's ruling that the child is a tribal member and deny the Selawik Tribal Court's motion to revert the case back into the tribal system.<sup>29</sup> Further, Petitioners assert that *Peidlow* guarantees them a hearing to support rejecting and denying the Selawik Tribal Court. This action would minimize tribal jurisdiction. *Peidlow* required the Superior Court to hold a hearing *before rejecting* tribal jurisdiction.<sup>30</sup> The effect of *Peidlow* is to bolster 25 U.S.C. 1911(a), by requiring state courts to take the extra step of a hearing *before* rejecting a tribal order, not requiring state courts to take an extra step of a hearing *to support* a tribal order. The motivation behind *Peidlow* is to give an extra layer of protection to respect the jurisdiction of tribal courts, not an extra hurdle to assert the jurisdiction of tribal courts.<sup>31</sup>

#### CONCLUSION

Petitioners ultimately make two requests: that this Court hear and decide the matter or, in the alternative, that it grant a hearing before dismissing the case. However, because this Court has no jurisdiction to hear the case, it would be a waste of judicial resources and a disservice to all parties to hear, consider, or rule on any substance of the case—because any decision by the Court at this time would be unenforceable.

The only issues that would alter the Court's decision are not subject to the Court's discretion. Petitioners cannot argue whether the child is a native member and entitled to tribal

---

<sup>28</sup> *Id.* at 1143.

<sup>29</sup> Pet'rs' Opp'n to Tribe's Mot. to Strike Pet'rs' Mot. to Recons. and Evidentiary Hr'g., at 1.

<sup>30</sup> *Peidlow*, 459 P.3d 1136, at 1143.

<sup>31</sup> *See generally, Id.* at 1142.

Order Denying Motion for Reconsideration

IMO [REDACTED]  
4FA-21-00332PR

Page 7 of 8

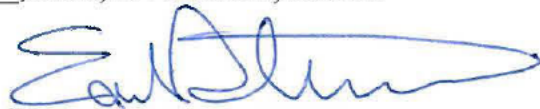
heritage, because the tribal court has already determined that she is. Also, Petitioners cannot argue that the tribal court has not given this Court notice of its intent to exercise jurisdiction, because it has. These two elements, together, negate any arguments that Petitioners could make. Granting a hearing to Petitioners cannot alter the Court's jurisdiction, because Petitioners' argument is altogether detached from the issue and, at this time, is moot. Because the Court denies Petitioners' motions for reconsideration and an evidentiary hearing, the three subsequent motions to strike in response to those motions are moot.

The Native Village of Selawik is a sovereign nation and presently has jurisdiction over this case. There are no timely arguments of violation of due process in this case that would prohibit it from proceeding in the Selawik Tribal Court. The Court recognized tribal jurisdiction in its order dismissing the case, and directed the parties to handle this matter in the court whose jurisdiction has primacy.

1. The Motion for Reconsideration and Evidentiary Hearing is DENIED.
2. The Motion to Strike Petitioners' Motion to Reconsider and Evidentiary Hearing is DENIED.
3. The Motion to Strike Petitioners' Reply to Opposition to Motion to Reconsider and Evidentiary Hearing is DENIED.
4. The Motion to Strike Supplement to Petitioners' Motion to Reconsider and Evidentiary Hearing is DENIED.

**IT IS SO ORDERED.**

DATED this 16<sup>th</sup> day of September, 2022, at Fairbanks, Alaska.



EARL A. PETERSON  
Superior Court Judge

I certify that on 9/22/22 Walteri  
copies of this form were sent to Fletcher

Clerk: HF

Order Denying Motion for Reconsideration  
IMO [REDACTED]  
4FA-21-00332PR  
Page 8 of 8