

Native American Rights Fund

Indigenous Peoples' Rights

<https://www.narf.org/cases/parks-v-simmonds/>

Campaign and Advocacy

In this ICWA case, the Alaska Supreme Court reiterated that litigants must exhaust a tribal courts appellate process before approaching state courts.

Status: Archived

After numerous hearings, the Minto Tribal Court terminated the parental rights of Mr. Parks and Ms. Stearman and granted permanent custody of a child to the Simmonds. Mr. Parks sued in state court, claiming, among other things, that the tribal court has no jurisdiction over him and that his right to due process was violated when the Minto Court in accordance with its traditional practices and procedures did not permit Mr. Parks attorney to present oral argument. Based on these arguments, Mr. Parks claims that the tribal court termination order is not entitled to full faith and credit under ICWA. The Simmonds argued that the termination order is entitled to full faith and credit and they moved to dismiss the state court action, but this motion was denied by the state court in November 2010. The state court reasoned that failure to allow an attorney to present oral argument did violate Mr. Parks due process rights.

The Simmonds petitioned the Alaska Supreme Court for review. The petition was granted in March 2011 and the case was remanded to the trial court for it to make specific factual findings and legal conclusions. Briefing on remand was concluded in May 2011 and oral argument was held in December 2011. The trial court issued findings and concluded in part that tribal courts may not have jurisdiction over nonmembers outside of Indian Country, and also suggested that tribal courts must permit oral argument. The Simmonds filed another petition for review with the Alaska Supreme Court asking that numerous aspects of this decision be overturned. On July 9, 2012, the Alaska Supreme Court granted the petition for review and the Simmonds principal brief was filed in December 2012. It took over eight months for the Respondents briefs to be filed. The Simmonds reply brief was filed in October 2013. Oral argument was held on March 7, 2014.

On July 18, 2014, the Alaska Supreme Court issued a unanimous decision affirming full faith and credit for the Minto Tribal Courts order and dismissing the case. The courts opinion was notable in that it affirmed the tribal exhaustion doctrine and reiterated that litigants must exhaust a tribal courts appellate process before approaching state courts. As a result of the end of the case, the Alaska Supreme Court issued Order 1784, which created new Child In Need of Aid (CINA) Court Rules 24 and 25 which address registration and confirmation of tribal court orders in child custody proceedings as defined by section 1903(1) of ICWA. These court rules are brand new and various tribal councils have reported mixed success in using them. NARF will continue to monitor problems with CINA Rules 24 and 25 and work towards solutions with the Alaska Court System. NARF will also continue to educate tribes about these new rules and the courts ruling as it relates to the tribal exhaustion doctrine.

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