


**GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS
TRIBAL APPELLATE COURT**

2605 N. West Bay Shore Drive, Peshawbestown, MI 49682
(231)-534-7050, Main ** (231)-534-7051, Fax ** tribalcourtICW@gtbindians.com

Timothy and Anne Donn, Appellants,	CASE NO.: 2017-22-AP Hon. Matthew Fletcher Hon. Mary Roberts Hon. Quinton Walker
IN THE MATTER OF: 	
Craig W. Elhart (P26369) Elhart & Horvath, P.C. Attorney for Timothy and Anne Donn / Appellants 329 South Union Traverse City, MI 49684 Telephone: (231)-946-2420 craig@ehlawtc.com	Cheryl Gore-Follette (P41102) Guardian Ad Litem P.O. Box 788 Traverse City, MI 49685 Telephone: (231)-883-6087 Cfollette2@yahoo.com
Matthew J. Feil (P59658) Presenting Officer Grand Traverse Band of Ottawa and Chippewa Indians 2605 N. West Bay Shore Drive Peshawbestown, MI 49682 Telephone: (231)-534-7637 Matthew.Feil@gtbindians.com	James Keedy (P27699) Attorney for Respondent Mother 814 S. Garfield Avenue, Suite-A Traverse City, MI 49686 Telephone: (231)-947-0122 jkeedy@mils.org

Oral Argument on Appellant's Motion for Reconsideration was held on Thursday, October 12, 2017 at 10:00 a.m., EST, before the Honorable Matthew Fletcher, the Honorable Mary Roberts and the Honorable Quinton Walker.

**ORDER FOLLOWING ORAL ARGUMENT ON APPELLANT'S MOTION FOR
RECONSIDERATION**

There are three children and their biological mother who are citizens of the Grand Traverse Band at the heart of this wrenching case. Every decision made by every adult who plays a role in the protecting the welfare of an Indian child, Anishinaabe Binoojiinh, must comport with the principles of mino-bimaadziwin, or the act

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of living in a good way. Every decision made by stakeholders in this matter must be in consideration of the procedural and substantive rights of the biological mother, Anishinaabe Omaamaayan.

Mino-Bimaadziwin provides us with the framework for Niizhwaaswi Mishomis Kinoomaagewinawaan, the Seven Grandfather Teachings:

The Seven Grandfathers are:

Nbwaakaawin – Wisdom
Zaagidwin – Love
Mnaadendimowin – Respect
Aakwade'ewin – Bravery
Gwekwaadiziwin – Honesty
Dbaadendizwin – Humility
Debwewin – Truth

The Seven Grandfathers are general principles of Anishinaabe traditional common law that derive from the even more general principle of Mino-Bimaadziwin, a way of life akin to what legal scholars and practitioners might think of as natural law. We borrow from Eva Petoskey, a former Grand Traverse Band elected official, who described Mino-Bimaadziwin in these terms:

There is a concept that expresses the egalitarian views of our culture. In our language we have a concept, mino-bimaadziwin, which essentially means to live a good life and to live in balance. But what you're really saying is much different, much larger than that; it's an articulation of a worldview. Simply said, if you were to be standing in your own center, then out from that, of course, are the circles of your immediate family. And then out from that

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your extended family, and out from that your clan. And then out from that other people within your tribe. And out from that people, other human beings within the world, other races of people, all of us here in the room. And out from that, the other living beings . . . the animals, the plants, the water, the stars, the moon and the sun, and out from that, the spirits, or the manitous, the various spiritual forces within the world. So when you say that, mino-bimaadziwin, you're saying that a person lives a life that has really dependently arisen within the web of life. If you're saying that a person is a good person, that means that they are holding that connection, that connectedness within their family, and within their extended family, within their community.

Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board, No. 13-2189-CV-CV, at 6-7 (Grand Traverse Band Tribal Judiciary, May 21, 2014) (en banc) (quoting Eva Petoskey, 40 Years of the Indian Civil Rights Act: Indigenous Women's Reflections, in *The Indian Civil Rights Act at Forty* at 39, 47-48 (2012)).

Perhaps more so than is typical in legal proceedings, the welfare of an Anishinaabe Binoojiinh demands a collective community process. See generally Hannah Askew & Lindsay Borrows, Summary of Anishinabek Legal Principles: Examples of Some Legal Principles Applied to Harms and Conflicts between Individuals within a Group, at 3 (2012) ("Major decisions over how to address serious harms were typically determined through a collective community process."). Biological parents that retain their parental rights have a role. It is likely that other biological family members such as grandparents, aunts and uncles, brothers

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and sisters, close cousins, and perhaps others, have important roles as well. Tribal and non-tribal government officials and offices have important roles to play as well. It is a truly collective and collaborative effort to ensure the well-being and safety of an Anishinaabe Binoojiinh.

The Grand Traverse Band's Revised Children's Code is a manifestation of the Anishinaabe community's effort to bring forth the collective resources of the community to assist an Anishinaabe Binoojiinh in need. The code describes the specific obligations and goals of the community in such circumstances:

The Children's Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (1) To provide for the welfare, care and protection of the children and families within the jurisdiction of the Grand Traverse Band of Ottawa and Chippewa Indians;
- (2) To preserve the unity of the family, preferably by separating the child from his or her parents only when necessary;
- (3) To take such actions that will best serve the spiritual, emotional, mental, and physical welfare of the child and the best interest of the Tribe to prevent the abuse, neglect and abandonment of children;
- (4) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community based alternatives;
- (5) To secure the rights of and ensure fairness to the children, parents, guardians,

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custodians and other parties who come before the Children's court under the provisions of this Code;

(6) To provide procedures for intervention in state court procedures regarding Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to this Tribal Court;

(7) To ensure compliance with all applicable federal laws and to provide a reasonable means by which cross-jurisdictional judgments and orders may be enforced with full faith and credit[;]

(8) To recognize and acknowledge the tribal customs and traditions of the Grand Traverse Band regarding child-rearing;

(9) To preserve and strengthen the child's cultural and identity whenever possible and to protect the sovereignty of the Grand Traverse Band of Ottawa and Chippewa Indians.

10 GTBC § 101(b). The purpose of the Code is given specific meaning by the definition of the Best Interests of the Child:

As used in this Code, the sum total of the following factors to be considered, evaluated, and determined by the Court:

(1) The love, affection, and other emotional ties existing between the parties involved and the child.

(2) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

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(3) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this Tribe in place of medical care, and other material needs.

(4) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(5) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(6) The moral fitness of the parties involved including the criminal history of any person living in the same household as the minor child.

(7) The mental and physical health of the parties involved.

(8) The home, school, and community record of the child.

(9) The reasonable preference of the child, if the Court considers the child to be of sufficient age to express preference.

(10) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(11) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(12) Any other factor considered by the Court to be relevant to a particular child custody dispute.

(13) The willingness to provide the child with a strong cultural identity and to expose

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the child to the customs, values and mores
that may form the child's cultural.
10 GTBC § 102(d).

The tribal offices and the adults who play roles in this community's cooperative efforts to guarantee child welfare are spelled out in the Revised Children's Code. The offices that play a role include Anishinaabek Family Services, the Tribal Prosecutor's Office, the Tribal Court, and possibly others. The adults include all the biological parents, any foster parents, any potential adoptive parents, tribal employees and officials, and attorneys for the parties.

Unfortunately, the purpose of the Revised Children's Code is sometimes thwarted, by outside actors like state courts, by the adults who make poor decisions, or by circumstances outside of the control of any of the parties. In the matter before us, the Anishinaabe Omaamaayan, biological mother, initiated this process under state law more than seven years ago. The biological mother was herself an adoptive child, whose adoption record was closed. As a result, she did not enroll herself or her children as citizens of the Grand Traverse Band until 2011, after the unsealing of her adoption file. By then, the child welfare proceedings had been ongoing in state court for a year. This is not to lay blame on any party, but merely to highlight debwewin, truth, about this highly complicated matter.

The goals and benefits of proceeding under the Grand Traverse Band's code could not be fully realized until the state court transferred the matter of these Anishinaabe Binoojiinh to the tribal court. See generally *In re Spears*, 872 N.W.2d 852 (Mich. Ct. App. 2015). The tribe and the biological mother's effort to seek transfer to this court took four years — approximately one-year delay to unseal the adoption records and enroll the children, followed by three years or so of litigation over the matter of transfer in state trial and appellate courts. During the three years

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of litigation, the state court waited for 18 months to receive a report required under state law from the Michigan Children's Institute. The final six months passed *after* the Michigan Court of Appeals ordered the matter transferred to tribal court. Only after that court issued a second order did the Leelanau County Circuit Court finally transfer the matter to the tribal court. The delays in this case have so far effectively thwarted a critical goal of the Revised Children's Code, safe and prompt reunification of the Anishinaabe Omaamaayan and Anishinaabe Binoojiinh. Again, these statements are made without effort to lay blame on any one person or group of people, but to highlight debwewin.

The appellants in this matter are the foster couple, the Donns. Their role in this years-long effort to guarantee the welfare of the three Anishinaabe Benodjehn has shifted dramatically during this time. At first, and at all times relevant to this matter, the Donns were a foster family. As the parties recognized during oral argument, foster families work for the government. They are paid to care for children placed in their homes by the government. The goal of the state government (as well as tribal) is to seek reunification if at all possible. Modified Settlement Agreement and Consent Order § 2(E), at 5, *Dwayne B. v. Snyder*, No. 2:06-cv-13548 (E.D. Mich., July 18, 2011). As officers of the state government, the foster parents are obliged to promote and preserve that goal if at all possible.

However, foster parents that have filed a petition for adoption — which is their right under state and tribal law — place themselves in a position that is potentially rife with conflicts of interest. The Donns did file a petition for adoption, one that competed with a petition for adoption filed by the children's paternal grandparents, who live out of state, and who are not parties to this matter. And so the Donns' interests shifted to this new state of conflict. As foster parents who worked for the state, they retained the state's goal in safe and prompt reunification.

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But as potential adoptive parents, they now had a new goal in tension with reunification.

The Donns' role shifted again when the biological mother and the children became enrolled citizens of the Grand Traverse Band. At that point, the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq. became the foundational and controlling law going forward. As appellee Anishinaabek Family Services points out, the continued placement of the Anishinaabe Binoojiinh with the Donns was arguably in violation of that statute's placement preferences. 25 U.S.C. § 1915. This specific matter here on appeal is not to assess whether that is the case, but recitation of this fact is instead necessary to denote the changing relationships and roles played by the Donns as this case shifted. At the point the Anishinaabe Binoojiinh became tribal citizens, the Donns' position, in light of their pending petition for adoption, became that much more complicated.

The Donns' role shifted a fourth time when the Leelanau County Circuit Court finally transferred this matter to the Grand Traverse Band tribal court. At that point, the Donns' as foster parents no longer worked for the State of Michigan, but now reported to the Grand Traverse Band. The Donns' petition for adoption remained potentially viable at the moment of that transfer, but now the Donns acquired new obligations, to the tribal government, to the Anishinaabe Binoojiinh, and to the Anishinaabe Omaamaayan. These are the obligations required of all tribal foster parents, to further the goals of the Revised Children's Code described above. Those goals continued to require the Donns to seek safe and prompt reunification of the family. To be sure, prompt reunification by that time was surely a goal that had become difficult to reach. But now the Donns' role as foster parents is governed by tribal laws, including the principles of mino-bimaadziwin and the Seven Grandfathers.

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In this matter, the Donns' role shifted one last time, and that last shift ended their role as parties to this litigation. The Anishinaabe Omaamaayan invoked her rights under tribal law to withdraw her consent to the adoption. 10 GTBC § 129(e) ("Consent to voluntary termination of parental rights for the purposes of adoption may be withdrawn by a parent(s) at any time before the entry of the final order of adoption."). That withdrawal of consent by an Indian biological parent is also a federal right. 25 U.S.C. § 1913(c). Once that happened, as the trial court confirmed in the order appealed here, the Donns' status as a potential couple terminated. The biological mother's right to withdraw her consent is an absolute right that can dramatically shift the proceedings involving child welfare. That the withdrawal of consent might occur at the last minute is a distinct possibility. It may even be a shocking moment for a potential adoptive couple.

The Revised Children's Code identifies biological parents whose rights have not been terminated, the Tribe, and the Child(ren) as parties in interest in child welfare proceedings. 10 GTBC § 102(hh). Only parties in interest have standing to participate in child welfare proceedings. Foster parents, and that is the current role played by the Donns, are simply not listed as parties in interest. This is not merely an arbitrary listing of parties that callously excludes adults who are foster parents for no reason. Foster parents have a limited role to play in the legal proceedings concomitant to the reunification process. And, in this case, where the foster parents previously petitioned for adoption and apparently continue to seek adoption, there is a clear conflict of interest necessitating the exclusion of the foster parents from participating as parties in ongoing litigation.

The Donns' claim that their procedural rights have been violated by their exclusion from the legal proceedings after the termination of their pending adoption petition must fail. Understanding the current role of the Donns — foster parents obligated to the Grand Traverse Band to pursue the goals of safe

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and prompt reunification, if at all possible, as established by the Revised Children's Code. It is the Code, not any other law, state or federal, that establishes the rights and responsibility of foster parents in this matter.

All of this is incredibly confusing. Government officials, state and tribal, perhaps do not make these shifting goals apparent to foster parents such as the Donns. Normally, foster parents are not parties to ongoing child protection proceedings, and so have no need of counsel, persons who could be helpful in candidly advising foster parents. They are often left in the dark on questions relating to the court processes and aspects of the reunification efforts. Luckily, in this matter, the Donns are represented by counsel who is well versed in the processes of the Grand Traverse Band judiciary, and in the traditions — including mino-bimaadziwin — that guide this tribal community. The first and by far most important goal of the court, the adults who care for the Anishinaabe Binoojiinh, and all of the resources arrayed to assist them is the best interests of the children. 10 GTBC § 102(d).

The Donns remain at this time the primary caregivers of the Anishinaabe Binoojiinh. Appellants can and should be guided by the Seven Grandfathers. Above all, it is the role and duty of the foster parents to ensure that the children are in a home guided by zaagidwin, love. The foster parents also have an important role to play as protectors of the children from the legal storm that swirls around them, which requires aakwade'ewin, bravery. Understanding the shifting roles played by foster parents requires dbaadendizwin, humility, and nbwaakaawin, wisdom; appellants' counsel has a role to play assisting appellants in that regard as well. Appellants' obligations to the Grand Traverse Band and to the citizenship of the Anishinaabe Binoojiinh requires mnaadendimowin, respect, to the tribe and its traditions. Going forward, as this matter appears headed for the real work of pursuing a goal of reunification, the appellants must be patient (which perhaps should be an eighth grandfather teaching). It is

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very true the biological mother and the Anishinaabe Binoojiinh have been separated for many years. Reunification may be a difficult process, and all parties must be bound to gwekwaadiziwin, honesty, and to debwewin, truth.

Today, in a companion case (2017-24-AP), the court also instructs the lower court to revisit its prior orders in the case. There is a difficult road ahead, and the foster parents play an important role. It is important for the foster parents to understand that role. If the reunification process fails, and the best interests of the Anishinaabe Binoojiinh is to remain under the care of the Donns, then the Donns' role will shift yet again. It is also important for the Donns to perform their current role, and any future role, in accordance with mino-bimaadziwin and the Seven Grandfathers, and the Revised Children's Code.

The appellate judiciary comes to this matter late, a newcomer to this years-long matter that has traversed the courts of all three American sovereigns. We come to this matter with a great deal of dbaadendizwin, humility, toward the work done by all of the adults and the work yet to be done. We are also humbled by the opportunity and duty to perform this work in the best interests of the Anishinaabe Binoojiinh, to whom we and all others involved are dedicated.

IT IS ORDERED that the Donns are not parties in interest to the matter at hand, No. 2015-2524, CV-CW. The relevant orders of the trial court denying standing to the Donns are AFFIRMED.

10/19/17
Date

Mary Roberts
Honorable Mary Roberts,
On behalf of the Appellate Judiciary

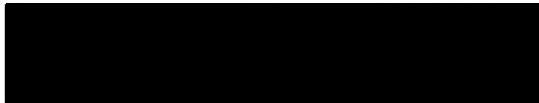
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**Timothy and Anne Donn,
Appellants,**

CASE NO.: 2017-22-AP
Hon. Matthew Fletcher
Hon. Mary Roberts
Hon. Quinton Walker

IN THE MATTER OF:



PROOF OF MAILING

I, Carrie Leureaux, being duly sworn, deposes and says that on the date below I sent by:
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addressed to their last known address by placing a copy of the same in the United States Postal
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To:	Court File	Original
Timothy and Anne Donn		Foster Parents/Appellants: None - Their Attorney, Craig Elhart, will serve on them.
Craig Elhart		Attorney for Foster Parents/Appellants: 329 S. Union St Traverse City, MI 49684 and Courtesy Email
Matt Feil,		Presenting Officer: Inter-Office Mail & Courtesy Email & Hand Delivery at AFS Meeting today by SL Vezina.
Helen Cook		GTB AFS: Inter-Office Mail & Courtesy Email & Hand Delivery at AFS Meeting today by SL Vezina.
Cheryl Gore Follette		GAL, PO Box 788, Traverse City, MI 49685-0788 and Courtesy Email.
James Keedy		MILS, Attorney for Biological Mother: 814 S. Garfield Ave, Ste. A Traverse City, MI 49686 and Courtesy Email.
Autumn McDonald		Biological Mother: None – Her Attorney, James Keedy, will serve on her.
Judge Matthew Fletcher		Address and Courtesy Email on file
Judge Mary Roberts		Hand delivered and Courtesy Email on file
Judge Quinton Walker		Address and Courtesy Email on file

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: 10/19/2017

Carrie Leureaux, Clerk of the Court

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**CASE NO.: 2017-22-AP
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PROOF OF MAILING

I, Carrie Leureaux, being duly sworn, deposes and says that on the date below I sent by:

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and/or ☒ courtesy email

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To: Lower Court File
Laura Mains

Vicki Parzych

Brianna Peterman

Judge Gregory Blanche

To: Case #: 2015-2524-CV-CW

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NOTE: All other Parties in the Lower Court Case are Parties in the Appellate Court Case
and therefore, have already been served Appellate Court Order.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: 201710.19


Carrie Leureaux, Clerk of the Court