

Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, email corrections@akcourts.gov.

THE SUPREME COURT OF THE STATE OF ALASKA

SARAH RACHEL MALLETTE,	)	
	)	Supreme Court Nos. S-19313/19353
Appellant and	)	(Consolidated)
Cross-Appellee,	)	
v.	)	Superior Court No. 3KN-24-00568 CI
	)	
GARFIELD TAU ADAMS,	)	<u>OPINION</u>
	)	
Appellee and Cross-	)	No. 7824 – August 7, 2026
Appellant.	)	
	)	
	)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kenai, Kelly J. Lawson, Judge.

Appearances: Amanda J. Harber, 49th State Law, LLC, Soldotna, for Appellant and Cross-Appellee. Jahna M. Lindemuth and Samuel G. Gottstein, Cashion Gilmore & Lindemuth, Anchorage, for Appellee and Cross-Appellant.

Before: Carney, Chief Justice, and Borghesan, Henderson, and Oravec, Justices. [Pate, Justice, not participating.]

ORAVEC, Justice.

I. INTRODUCTION

A father initiated child custody proceedings in tribal court. Shortly afterward, the child’s mother filed a complaint for custody in state court. Upon the father’s motion, the superior court issued an order dismissing the state custody case so that the matter could be heard in tribal court. The mother then filed an appeal to this

court and moved for the superior court to stay the dismissal order until this appeal was resolved. The superior court did so. The father cross-appealed that order.

After this case was fully briefed, we issued an order affirming the order dismissing the case and vacating the stay. This opinion explains our reasoning. We conclude that the superior court was correct to dismiss the state custody case because the father filed a custody petition in tribal court before the mother filed a custody complaint in state court. We do not address the merits of mother's request for a stay because the issue is now moot.

II. FACTS AND PROCEEDINGS

A. Facts

Sarah Mallette and Garfield Adams are the unmarried parents of a minor child. Adams is a member of the Kenaitze Indian Tribe, and the child is eligible for tribal membership. Mallette has no tribal affiliation. Both parents seek custody of the child. The parties dispute whether custody proceedings should take place in the Kenaitze Tribal Court or the Alaska Superior Court.

B. Proceedings

In April 2024, Adams filed a non-emergency petition to initiate child custody proceedings in the Kenaitze Tribal Court. Eight days later, Adams emailed the tribal court and asked to withdraw the petition because he and Mallette had reached a custody agreement.

A month later, Mallette filed petitions for short-term and long-term domestic violence protective orders (DVPOs) against Adams in state court. The magistrate judge issued a short-term DVPO that same day.

Eight days later, while the long-term DVPO petition was still pending, Adams filed a second non-emergency custody petition in the Kenaitze Tribal Court. The tribal court issued a notice to both parents setting a child custody hearing for June 17. We have no record of the resulting proceedings, but the superior court found that a

hearing did occur in tribal court on June 17. On June 28, Mallette filed a complaint for custody in state superior court.

In July, the state court in the domestic violence proceeding denied Mallette's long-term DVPO petition. The tribal court then issued a second notice to both parties setting a child custody hearing for July 25. One week later, Mallette's attorney sent a letter to the tribal court administrator objecting to the tribal court's exercise of personal jurisdiction over her. The letter asserted that because she was not a member of the tribe and did not consent to its jurisdiction, "[a]ny orders issued by the tribal court against her are invalid."

The next day, Adams filed a self-represented motion in the state custody case asking for the case to proceed in Kenaitze Tribal Court. He argued that the tribal court should decide the case because he had filed a custody petition in that court before state custody proceedings commenced. Mallette opposed the motion, arguing that the tribal court lacked jurisdiction to hear the matter because the case did not qualify as a "child custody proceeding" under the Indian Child Welfare Act (ICWA),¹ which affords tribal courts exclusive jurisdiction over certain legal actions involving Indian children.² She also noted that she had not consented to the tribal court's exercise of jurisdiction.

In November, before any orders were issued in the state custody case, Adams requested short-term and long-term DVPOs against Mallette in state court. The magistrate judge denied both requests.

¹ 25 U.S.C. §§ 1901-1923.

² See 25 U.S.C. § 1903(1)(i)-(iv) (defining "child custody proceeding" under the Indian Child Welfare Act to include "foster care placement," "termination of parental rights," "preadoptive placement," and "adoptive placement"); 25 U.S.C. § 1911(a) (providing that Indian tribes have exclusive jurisdiction over child custody proceedings involving Indian children).

Later that month, the superior court granted Adams’s motion to proceed in tribal court. Noting that the tribal court held a hearing on June 17, the superior court concluded that the tribal court “had already exercised [its] jurisdiction without apparent objection by either party” before Mallette filed the custody complaint in state court or sent her letter to the tribal court administrator. The court determined that the tribal court had jurisdiction over this matter because “ICWA’s coverage excludes custody disputes from unmarried persons, and gives tribal courts jurisdictional authority over any parent of a child who is a tribal member or eligible for tribal membership.” It then dismissed the case “pending acceptance by the Tribal Court of this ongoing child custody matter.”

Mallette appealed the dismissal order the next day. The day after that, Mallette moved for the superior court to stay the dismissal order pending resolution of this appeal. Mallette argued that the balance of hardships favored the imposition of a stay, that Adams could be adequately protected in state court, and that there remained “serious and substantial questions” on the merits of the custody matter.³

Adams opposed the motion for stay. He reiterated his argument that the Kenaitze Tribal Court had jurisdiction over Mallette pursuant to its tribal court code, and he asserted that the tribal court’s custody proceedings began before Mallette filed the complaint for custody in state court. Mallette replied, arguing that Adams had initiated the ongoing tribal court proceedings after she had filed “the state court petition.”

The superior court granted the stay “for the reasons articulated in the motion and reply.” The court indicated that “it is unclear if the Tribal Court has accepted this ongoing child custody matter.”

³ *Rosalind M. v. State, Dep’t of Fam. & Cmty. Servs., Off. of Child.’s Servs.*, 555 P.3d 505, 515 (Alaska 2024) (quoting *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014)) (providing standard for stay pending appeal).

Mallette appealed the superior court’s order dismissing the state custody matter. Adams cross-appealed the superior court’s order staying the dismissal pending the resolution of this appeal. While we considered this appeal, Adams filed a motion in superior court requesting that the court lift the stay for the same reasons offered in his cross-appeal. The superior court granted the motion, and Mallette requested that we reimpose the stay. On July 11, 2025, we issued an order affirming the dismissal and vacating the stay. We now address the merits of the appeal.

III. STANDARD OF REVIEW

The extent of tribal court jurisdiction is a question of law that we review de novo.⁴ Under this standard, we use our independent judgment, “apply[ing] ‘the rule of law that is most persuasive in light of precedent, reason, and policy.’”⁵ “We review factual findings for clear error, and will uphold the superior court’s findings unless we are left with a definite and firm conviction on the entire record that a mistake has been made, even though there may be evidence to support the finding.”⁶

We review the superior court’s decision on a motion to stay for abuse of discretion and will overturn the court’s decision only where we are “left with a definite and firm conviction, after reviewing the whole record, that the trial court erred in its ruling.”⁷

⁴ *Simmonds v. Parks*, 329 P.3d 995, 1007 (Alaska 2014).

⁵ *Id.* (quoting *State v. Native Vill. of Tanana*, 249 P.3d 734, 737 (Alaska 2011)).

⁶ *Id.* (quoting *John v. Baker (John II)*, 30 P.3d 68, 71 (Alaska 2001)).

⁷ *Armstrong v. Tanaka*, 228 P.3d 79, 82 (Alaska 2010) (quoting *Clemensen v. Providence Alaska Med. Ctr.*, 203 P.3d 1148, 1151 (Alaska 2009)).

IV. DISCUSSION

A. The Tribal Court Was The Proper Forum For This Custody Matter Because Adams Filed His Petition There Before Mallette Filed Her State Court Complaint.

Mallette argues that the superior court erred in dismissing the state custody matter. Noting that this case is exempt from the jurisdictional requirements of ICWA, she contends that the superior court is the proper forum for this matter because she filed a DVPO petition in state court before Adams filed his second custody petition in tribal court.⁸ She further asserts that there is insufficient information in the record to determine whether the tribal court has personal jurisdiction over her.

We conclude that the superior court did not err in finding that this custody matter originated in tribal court, and the tribal court is therefore the proper forum for this case to proceed. And while we agree with Mallette that this case lacks a robust record, the tribal court must have the opportunity to determine the extent of its own jurisdiction in the first instance. Mallette must exhaust tribal remedies for her personal jurisdiction challenge before raising the issue in state court.

1. This matter should be heard in tribal court because the tribal custody petition was first in time.

Alaska Native tribes possess “inherent, non-territorial sovereignty allowing them to resolve domestic disputes between their own members.”⁹ In line with that authority, tribal courts and state courts share concurrent jurisdiction over custody disputes involving children who are tribal members or eligible for tribal membership.¹⁰ But neither tribal courts nor state courts enjoy “priority, or presumptive authority,” over

⁸ See *Starr v. George*, 175 P.3d 50, 54 (Alaska 2008) (recognizing that “custody disputes between unmarried parents” are exempt from ICWA).

⁹ *John v. Baker (John I)*, 982 P.2d 738, 748-49 (Alaska 1999).

¹⁰ *Id.* at 759.

such disputes.¹¹ We now clarify that where cases involving the same custody matter are initiated in both state and tribal court, the court where the matter is filed first “should properly be regarded as the preferred forum for resolving the parties’ custody dispute in the first instance.”¹²

This “first to file” rule aligns with Alaska’s approach to simultaneous custody proceedings in different states. Although it does not control the tribe-to-state analysis, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) proves illustrative. Under the UCCJEA, an Alaska court generally may not exercise jurisdiction over a custody matter “if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child had been previously commenced in a court of another state having jurisdiction.”¹³ The same principle applies here: Once a custody matter has been initiated in tribal court, the superior court usually must decline to exercise jurisdiction over the matter while tribal proceedings are pending. As explained in the following section, a parent must generally challenge the jurisdiction and convenience of the first-filed court in proceedings before that court.¹⁴ Here, this means challenging tribal court jurisdiction and convenience in tribal court proceedings. If the tribal court assumes jurisdiction, the superior court cannot exercise it. Only after the tribal court has issued a custody order may the superior court,

¹¹ *Id.*

¹² *John II*, 30 P.3d 68, 78 (Alaska 2001).

¹³ AS 25.30.350(a). Exceptions apply where the first proceeding has been stayed or terminated by the court of the other state because an Alaska court is a more convenient forum. *Id.* There is also an exception for temporary emergency jurisdiction. AS 25.30.330.

¹⁴ AS 25.30.300 (listing grounds for exercising jurisdiction over a child); AS 25.30.340 (requiring notice and an opportunity to be heard for other parent “before a child custody determination is made”); AS 25.30.360 (allowing court to decline jurisdiction if it determines it is an inconvenient forum under the circumstances).

upon motion from one of the parties, evaluate that order and determine if it is entitled to comity.¹⁵

Because Adams filed his second custody petition in tribal court before Mallette filed the custody complaint in state court, the tribal court is the proper forum to resolve this dispute. The parties agree that the second tribal court petition preceded the state court complaint. This should end our inquiry. However, Mallette insists that this matter should nevertheless be heard in state court because she filed a state DVPO petition after Adams withdrew his first tribal court petition and before he filed his second. Adams responds that Mallette waived this argument by failing to explicitly raise it before the superior court.

To dispute Adams's waiver assertion, Mallette points to her opposition to Adams's motion to proceed in the tribal court, in which she briefly mentioned her DVPO petition as factual background but did not discuss it in her legal argument. In her one-page reply brief on the motion for stay, Mallette wrote but did not further discuss that Adams filed his tribal court petition "after the initiation of the state court [DVPO] petition." Mallette also cites a state court filing from Adams where Adams acknowledged that the tribal court had held a hearing, but that the tribal court was waiting on resolution of the state DVPO case to proceed with custody. Although these brief references do acknowledge the DVPO petition, the parties never argued that the DVPO proceedings affected jurisdiction for the custody case. Such cursory treatment

¹⁵ See *John I*, 982 P.2d at 763-64 (holding that Alaska courts "should respect tribal court decisions under the comity doctrine" but "should refrain from enforcing tribal court judgments if the tribal court lacked personal or subject matter jurisdiction").

of the issue is insufficient to preserve it for appellate review.¹⁶ We agree with Adams that this argument is waived.

Mallette further argues that the superior court erred in finding that the tribal court had exercised its jurisdiction over this matter before she filed the complaint in state court. She observes that our record contains insufficient information to support a factual finding that the June 17, 2024 hearing referenced in the superior court's order was an exercise of the tribal court's jurisdiction. Because the custody matter was filed first in tribal court, Mallette's argument that the tribal court did not actually exercise jurisdiction over the matter before she filed in state court is beside the point. Although there is scant evidence to support the superior court's finding that the tribal court exercised jurisdiction on June 17, 2024, any error is harmless because it is the date of filing the custody action that controls. Because the tribal court petition was filed first, the superior court was correct to dismiss the state custody case.

2. Mallette must exhaust tribal court remedies before arguing against tribal jurisdiction in state court.

To hear a custody dispute involving a tribal child, a tribal court must possess personal jurisdiction over the parties.¹⁷ Mallette argues that the record contains insufficient information to establish that the Kenaitze Tribal Court possesses personal jurisdiction over her. She encourages us to apply the standard for personal jurisdiction articulated by the United States Supreme Court in *International Shoe Co. v. Washington*, which permits a court to exercise personal jurisdiction over a litigant only

¹⁶ *Brandon v. Corr. Corp. of Am.*, 28 P.3d 269, 280 (Alaska 2001); *Numann v. Gallant*, 555 P.3d 527, 532 (Alaska 2024) (explaining that we generally do not consider issues raised for first time on appeal); *see also Rivera v. State, Dep't of Admin., Div. of Motor Vehicles*, 564 P.3d 1040, 1050-51 (Alaska 2025) (explaining that issue initially raised in reply brief is deemed waived).

¹⁷ *John I*, 982 P.2d at 763.

if that person has sufficient “minimum contacts” with the forum.¹⁸ Adams disagrees, arguing that the correct standard to apply is the tribal court’s own jurisdictional statute, which affords the court jurisdiction “[o]ver all persons and entities who enter into consensual relations with the Tribe or tribal members.”

We conclude that Mallette must exhaust tribal court remedies before raising her jurisdictional objections in state court. As Mallette suggests, the record is insufficient for us to determine whether the tribal court possesses personal jurisdiction over her. Under such circumstances, the tribal court must have the opportunity to determine the extent of its jurisdiction in the first instance. We have explained that “the question whether a tribal court exercising inherent, non-territorial subject matter jurisdiction has personal jurisdiction over the parties whose rights and obligations it adjudicates should be decided in cases presenting concrete factual records and a full opportunity to develop the factual and legal arguments.”¹⁹ Such facts are not currently before us. The record contains no indication that the tribal court has ruled on the scope of its own jurisdiction over Mallette. Following Mallette’s letter to the tribal court objecting to personal jurisdiction, we are aware of no proceedings held in tribal court on this issue.

We have previously declined to “adopt a strict exhaustion requirement for tribal adjudication of child custody cases.”²⁰ But requiring a litigant to exhaust

¹⁸ 326 U.S. 310, 316 (1945).

¹⁹ *State v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 371 P.3d 255, 275 (Alaska 2016).

²⁰ *John II*, 30 P.3d 68, 74 n.31 (Alaska 2001); *see also Simmonds v. Parks*, 329 P.3d 995, 1013-14 (Alaska 2014) (explaining difference in exhaustion standard between ICWA-defined child custody cases and ICWA-exempt cases).

remedies on jurisdiction supports tribal sovereignty.²¹ So long as tribal jurisdiction is “colorable and plausible,” litigants are required to exhaust their remedies on the issue.²² This is particularly the case where, as here, the tribal court has robust appellate procedures available.²³

Without the benefit of a fully developed record, we do not decide what standard should be applied to determine the extent of the Kenaitze Tribal Court’s personal jurisdiction over Mallette, nor do we interpret the jurisdictional provision of the tribal court code.²⁴ Instead, we direct Mallette to raise any further jurisdictional challenges before the tribal court and exhaust the remedies available under tribal procedures.²⁵ Only after she has done so may she return to state court and challenge the tribal court’s exercise of jurisdiction under the doctrine of comity.²⁶

B. The Validity Of The Stay Pending Appeal Is Moot.

Adams cross-appeals the superior court’s order granting Mallette’s request for a stay pending appeal. He argues that Mallette failed to demonstrate that a

²¹ See *Simmonds*, 329 P.3d at 1017 (“the policies behind the exhaustion requirement itself dictate that tribal courts be permitted to first review the jurisdictional question”) (quoting COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, § 7.04[3], at 632).

²² *Id.*

²³ TRIBAL COURT CODE OF THE KENAITZE INDIAN TRIBE, Ch. 1, Sec. 10 (approved Sept. 17, 2025).

²⁴ But see *John II*, 30 P.3d at 74 (holding that unless tribal court maintains some record suitable for review, decision may be vulnerable to attack in state court).

²⁵ But see *id.* at n.31 (noting that strict exhaustion requirement might in some cases disserve best interests of child in custody matter).

²⁶ See *id.* at 74 (“[A]bsence of a suitably developed record may in many cases . . . make it impossible for the Alaska state court to carry out comity analysis.”); *John I*, 982 P.2d 738, 762-64 (Alaska 1999) (explaining comity analysis).

stay was warranted by showing either that the balance of hardships weighed in her favor or that she would probably succeed on the merits of this appeal.

We need not decide whether the superior court abused its discretion by entering a stay pending appeal; the issue is moot. “If the party bringing the action would not be entitled to any relief even if it prevails, there is no case or controversy for us to decide, and the action is therefore moot.”²⁷ Our July 11 order affirmed the dismissal and vacated the stay. This opinion explains the merits of that decision. We provided appropriate relief when we vacated the stay. The action is moot because there is no case or controversy to decide.

Although the issue is moot, we do recognize that the superior court may have been hesitant to allow the dismissal order to take immediate effect and thereby deny Mallette the opportunity to seek appellate review in state court.²⁸ We have explained that under such circumstances, the superior court may grant a stay “long enough to permit [a parent] to file an appeal and seek a stay pending appeal from our court.”²⁹ When a party does not meet the standards for a stay pending appeal, and the superior court must balance the competing concerns of preserving the right to appellate review and facilitating the swift resolution of a time-sensitive custody matter, a temporary stay is appropriate.

Finally, we note that the superior court should not have modified its stay while we considered this appeal. The court’s order imposing a stay was the subject of

²⁷ *J.P. v. State*, 506 P.3d 3, 4 (Alaska 2022) (internal citations and quotation marks omitted).

²⁸ *Id.* (explaining that we lack authority to order tribal court to transfer custody case back to state court).

²⁹ *Rosalind M. v. State, Dep’t of Fam. & Cmty. Servs., Off. Of Child.’s Servs.*, 555 P.3d 505, 515 (Alaska 2024).

Adams’s cross-appeal. The superior court lacked jurisdiction to modify that order once it was on appeal to us.³⁰

V. CONCLUSION

We AFFIRM the superior court’s order dismissing the state custody case.

³⁰ See Alaska R. App. P. 203 (“The supervision and control of the proceedings on appeal is in the appellate court from the time the notice of appeal is filed with the clerk of the appellate courts, except as otherwise provided in these rules.”); *Asher v. Alkan Shelter, LLC*, 212 P.3d 772, 783 (Alaska 2009) (noting that once notice of appeal is filed, “the superior court cannot then modify any ‘matters directly or necessarily involved in the matter under review’ ”) (quoting *Heppinstall v. Darnall Kemna & Co.*, 851 P.2d 78, 79 n.3 (Alaska 1993)), *abrogated on other grounds by Shaffer v. Bellows*, 260 P.3d 1064 (Alaska 2011).