REFUSED FOR FILING
1. App. R. 202 — No final judgment/no new appeal.
2. App. R. 205 — Motion to Stay not filed in trial ct.
M. Montgomery, Clerk
12/21/2021

Email: rlgreenak@yahoo.com

IN THE SUPREME COURT FOR THE STATE OF ALASKA

Richard L. Green Appellant, vs. State of Alaska, Third Judicial District DHSS, OCS, OPA (as GAL), Phuong Dinh, Appellee(s),	Supreme Court Case No. S-18245/S-18062 S-18080/180149

Case No. 3PA-20-151-154CN, 3PA-20-00568-571CI, 3PA-00594-598CI, 3PA-19-01073CI

NOTICE OF APPEAL
SUBJECT-MATTER JURISDICTIONAL REVIEW
(EXPEDITED FOR CHILD CUSTODY)
and
MOTION TO DISMISS/STAY ALASKA CUSTODY/CHILD PROTECTION CASES PENDING THE APPEAL PROCESS OF CONSITUTIONAL AND TREATY VIOLATIONS BY THE STATE OF ALASKA

Mr. Green motioned this court to review the issue of subject-matter jurisdiction and this court has again refused to obtain subject-matter jurisdiction before proceeding in civil litigation in which Constitutional issues are at stake. This Court clearly favors their sister state agency (OCS) allowing the litigant to be tried convicted, punished all without the protection of due process, parental autonomy and freedom of religion as protected by the United States and Alaska Constitutions.

Mr. Green files contemporaneously with this Notice of Appeal his Petition for Writ of Certiorari/Review to and filed with the 9th U.S. Circuit Court of Appeal this same day.

Mr. Green moves this Court (Alaska Supreme Court) to stay any and all State of Alaska custody and child protection proceedings pending the final outcome of this appeal and restore Mr. Green and his children constitutional rights that have been so egregiously violated by the State of Alaska.

STANDARDS OF REVIEW

Both subject matter jurisdiction and personal jurisdiction are reviewed de novo, as "[j]urisdictional issues are questions of law subject to this court's independent judgment."[1] Accordingly, this court's duty is "to adopt the rule of law that is most persuasive in light of precedent, reason, and policy."[2]

Parents have a due process right to effective assistance of counsel in proceedings terminating their parental rights.[3] Whether this due process right, such as the right to effective assistance of counsel, has been violated is a question of law.[4] As we examine questions of law under a de novo standard of review, we will

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[1] McCaffery v. Green, 931 P.2d 407, 408 n. 3 (Alaska 1997)
[2] Guin v. Ha, 591 P.2d 1281, 1284 n. 6 (Alaska 1979).
[3] V.F. v. State, 666 P.2d 42, 47-48 (Alaska 1983).
[4] D.M. v. State, Div. of Family Youth Servs., 995 P.2d 205, 207 (Alaska 2000).

"adopt the rule of law that is most persuasive in light of precedent, reason, and policy."[5]

THE ALASKA SUPREME COURT IS THE COURT OF FIRST INSTANCE

There has never been a hearing on jurisdiction before the Alaska Court on many of these issues and no hearing on the merits has ever been adjudicated in Alaska.

"There being no concurrent findings by the master and Circuit Court in this equity case, it becomes the duty of this Court to independently determine the issues of fact according to our view of the weight of the evidence. *Adams v. Adams*, 262 S.C. 85, 202 S.E.2d 639 (1974)." [6]

Thus this Court is the Court of first instance and should have consider the issues of Jurisdiction, Res Judicata, Full Faith and Credit, by independent judgment and consider the facts in this case accordingly. By denying such a review the Alaska Supreme Court has fully denied Mr. Green and his children their United State Constitutional rights.

JURISDICTION IN GENERAL TERMS

Whether a court has subject-matter jurisdiction is a "threshold determination" in any action.[7] This reflects the fundamental principle that "[j]urisdiction is power to declare the law, and when it ceases to exist, the only function remaining

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[5] Guin v. Ha, 591 P.2d at 1284 n. 6.

[6] Davenport v. Davenport 265 S.C. 524 (S.C. 1975) • 220 S.E.2d 228 Decided Dec 1, 1975

[7] Am. Telecom Co. v. Republic of Lebanon, 501 F.3d 534, 537 (6th Cir. 2007).

to the court is that of announcing the fact and dismissing the cause."[8]

The party (the State of Alaska) asserting subject-matter jurisdiction bears the burden of establishing that it exists.[9] A motion to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction "may either attack the claim of jurisdiction on its face or it can attack the factual basis of jurisdiction."[10] A facial attack challenges the sufficiency of the pleading and, like a motion under Rule 12(b)(6), requires the Court to take all factual allegations in the pleading as true.[11] A factual attack challenges the allegations supporting jurisdiction, raising "a factual controversy requiring the district court to 'weigh the conflicting evidence to arrive at the factual predicate that subject-matter does or does not exist.'"[12]

Jurisdiction can be raised at any time of the case.[13] This includes raising subject-matter jurisdiction on appeal.[14]

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[8] Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998) (quoting Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868)).
[9] Ammons v. Ally Fin., Inc., 305 F. Supp. 3d 818, 820 (M.D. Tenn. 2018).
[10] Golden v. Gorno Bros., Inc., 410 F.3d 879, 881 (6th Cir. 2005).
[11] Wayside Church v. Van Buren Cty., 847 F.3d 812, 816-17(6th Cir. 2017) (citing Gentek Bldg. Prods., Inc. v. Sherwin-Williams Co., 491 F.3d 320, 330 (6th Cir. 2007)).
[12] Id. at 817 (quoting Gentek, 491 F.3d at 330).
[13] Rodriguez v. Rodriguez // 1995
[14] Csibi v. Fustos 670 F.2d 134 (9th Cir. 1982) and jurisdiction must be established in the first instance. It cannot be waived by agreement or delayed like a bouncing ball. Herklotz v. Parkinson 848 F.3d 894 (9th Cir. 2017)

In essence, he was "left to fend for himself," *United States v. Gonzalez,* 113 F.3d 1026, 1029 (9th Cir. 1997), in violation of his Sixth Amendment right to assistance of counsel." [18]

Without court appointed counsel present[19] at the preliminary hearing it requires a full dismissal.

"Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have."[20]

The U.S. Supreme Court held that, "a deprivation of the right to counsel is equivalent to a lack of jurisdiction".[21] Mr. Green was denied his right to have his court appointed counsel present at the September 2, 2020 hearing.[22] The Ninth Circuit stated, "a defendant need not wait for trial or conviction to challenge violations to his Sixth Amendment right to counsel."[23]

The Supreme Court has long held that the right to counsel extends beyond the trial itself.[24]

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[18] *U.S. v. Nguyen 262 F.3d 998 (9th Cir. 2001)*

[19] Counsel at preliminary hearings *406 U.S. at 689, 92 S. Ct. at 1882, 32 L.Ed.2d at 417. When the right to counsel is violated at the pre-trial hearing the prejudice us so bad it requires dismissal of the charges.* In Gordon H. ROBERTS, v. State of Alaska, 458 P.2d 340 (1969)

[20] Schaefer, Federalism and State Criminal Procedure, 70 Harv.L.Rev. 1, 8 (1956).

[21] **Johnson v. Zerbst** 304 U.S. 458 (1938)

[22] The Court cannot proceed without counsel present. In Interest of D.B 385 So. 2d 83 (Fla. 1980)

[23] United States v. Glover, Case 3:20-cr-00012-TMB-DMS, 3 (D. Alaska Jul. 28, 2020) see also: Nordstrom v. Ryan, 762 F.3d 903, 911 (9th Cir. 2014).

[24] United States v. Ash , 413 U.S. 300, 307, 93 S.Ct. 2568, 37 L.Ed.2d 619 (1973).

Had Mr. Green been afforded the assistance of counsel and a true adversarial process the outcome of the September 2, 2020 hearing would have been complete different given the facts of this case. Mr. Green has been prejudiced since that day in this "civil" litigation since Judge Kristensen's order clearly references that part of her decision was to justify the Trial Courts error on September 2, 2020.

CINA JURISIDICTION

The State of Alaska (OCS) never issued or served a summons.[AK CRP 4(d)(1), 7(d), ARCP 4, FRCP 4][25] In clear violation of CNRP 10 (b) Mr. Green never received formal notice of a hearing, and was never advised of the nature of the proceedings. Mr. Green was never was advised of possible temporary placement or custody or supervision. Mr. Green was not told he had the right to confront any witnesses, present witnesses himself, or that Mr. Green had a right to compel witnesses. Mr. Green was never advised of his right to a hearing. Mr. Green was even denied his right to a hearing on the merits as is required by the law. The Court never advised Mr. Green of the nature of the proceedings. Mr. Green was

[25] Kounitski v. Colvin Case No. 16-CV-03018-LHK (N.D. Cal. Nov. 16, 2016), Mitchell v. Cnty. of Nye Case No. 2:15-cv-01714-APG-NJK (D. Nev. Nov. 14, 2016), *Direct Mail Specialists, Inc. v. Eclat Computerized Tech., Inc.,* (9th Cir. 1988) 840 F.2d 685, 688 , (9th Cir. 1988), *Griggs Grp. Ltd. v. Filanto Spa,* 920 F. Supp. 1100, 1102, (D. Nev. 1996), *Crowley. v. Bannister,* 734 F.3d 967, 975 (9th Cir. 2013) (quotations omitted)."

never told the possible disposition of the 'trial by ambush' that the State of Alaska (OCS) had set up. Mr. Green was never advised of the possibility of any temporary custody order pending final disposition. Mr. Green was never told he may be liable for child support. [Exc. 1-19 in Case 3PA-20-151-154]

The SOA/OCS has violated AS 47.10.070(a), AS 47.10.030(a)(2), (d)(1,2), AS 47.10.086(a)(1)(2)(3) and AS 47.10.088(e) and AS 47.10.142(d), CINA Rule 3(a), 7(a),7(b),7(c),7(d), 8(b)(1), 8(e), 10(a)(1), 10(b)(1)(2)(3), 10(c)(3), 10(1)(a)(C), 11(b),(c),(f),(3),(g), 15(a).

"Within forty-eight hours after the State has filed a petition alleging that a child is in need of aid, the superior court must conduct a temporary custody hearing.[26]

AS 47.10.080 mandates that the SOA/OCS bring the a matter of adjudication to completion within 120 days, no request for an extension of time was ever requested and thus the court lost jurisdiction on July 3, 2020.

Failure to comply with the rule results in dismissal of the charge with prejudice.[27]

"In light of the policies which underlie the right to a speedy trial, dismissal [with prejudice] must remain ... `the only possible remedy.'"[28]

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[26] In JA 962 P.2d 173 (1998) No. S-8454. Supreme Court of Alaska. August 7, 1998

[27] Alaska R.Crim.P. 45(g),

[28] Strunk v. United States, 412 U.S. 434, 93 S. Ct. 2260, 37 L. Ed. 2d 56 (1973) See also: 412 U.S. at 440, 93 S. Ct. at 2263, 37 L. Ed. 2d at 61, quoting Barker v. Wingo, 407 U.S.

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THE ALASKA SUPREME COURTS CASE LAW

"The PKPA, however, preempts this first in time provision, and grants exclusive jurisdiction to the child[s] home state. Moreover, the UCCJEA, which replaces the UCCJA, is consistent with the PKPA and grants exclusive jurisdiction to the home state… thereby eliminating the possibility of concurrent jurisdiction" [29]

"without subject-matter jurisdiction under the UCCJEA to modify a foreign custody order the court cannot act to modify custody."[30]

According to this Courts case law in *Risher v. State*, 523 P.2d 421, 425 (Alaska 1974) once the party has been deprived of counsel reversal is mandatory. As this Court explained in *Risher v. State*:

"The absolute deprivation of counsel will be regarded as a constitutional violation *per se*, and no inquiry will be permitted as to whether the defendant would otherwise have been found guilty.... The automatic reversal has the effect of placing judges on notice that such deprivations of counsel will not be permitted."

523 P.2d 421, 425 n. 19 (Alaska 1974).

CONCLUSION

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514 at 522, 92 S. Ct. 2182 at 2187, 33 L. Ed. 2d 101 at 112 (1972). Strunk prompted the American Bar Association in formulating its Standards for Criminal Justice to remain "unswayed in the basic philosophy that anything less renders the right of speedy trial largely meaningless." II Standards for Criminal Justice: Speedy Trial § 12 at 12.4, Introduction (1978). A dismissal without prejudice would not fulfill the objectives of the rule, particularly from the defendant's standpoint, such as preservation of evidence to prove a defense, avoidance of "a long period of pretrial imprisonment or conditional release" and of "a long period of anxiety and public suspicion arising out of the accusation." Id. at 12.5, commentary to Standard 12-1.1.[16]

[29] *Atkins v Vigil S-10621 (2002)*

[30] CHRISTENSEN, v. SECKIN, Supreme Court No. S-17749 No. 7530 May 14, 2021

Dismissal is the only remedy in this case. Mr. Green asks this court to order the dismissal of all State of Alaska custody/child protection cases.

Based on the forgoing arguments and the clear fact that the Alaska Supreme Court refuses to follow its own case law, the case law from the U.S. Court of Appeals and the U.S. Supreme Court Mr. Green lodges his notice of appeal and Petition for Writ of Certiorari/Review to and filed with the 9th U.S. Circuit Court of Appeals this day.

(If this Court refuses to follow the law and order the dismal) and since these are U.S. Constitutional issues Mr. Green asks this Court to stay all State of Alaska custody/child protection preceding's pending the adjudication of the appeal and restore his and his children's constitutional rights immediately.

Respectfully submitted.

DATED at Wasilla, Alaska, this _17th_ day of December, 2021.

__/R/Green_____
Richard Green
* Forced to file pro se by the State of Alaska in a child custody proceeding against the State of Alaska.

Certificate of Service
I hereby certify that a true and
correct copy of the foregoing

was mailed/emailed/hand delivered to:

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this _17th_ day of December, 2021

___/R/Green_____