

**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

GTB Anishinaabek Family Services, Appellants,	CASE NO.: 2017-24-AP Hon. Matthew Fletcher Hon. Mary Roberts Hon. Quinton Walker
IN THE MATTER OF: 	
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	Cheryl Gore-Follette (P41102) Guardian Ad Litem P.O. Box 788 Traverse City, MI 49685 Telephone: (231)-883-6087 Cfollette2@yahoo.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 Appeal was held on Thursday, October 12, 2017 at 1:00 p.m., EST, before the Honorable Matthew Fletcher, the Honorable Mary Roberts and the Honorable Quinton Walker.

**ORDER FOLLOWING ORAL ARGUMENT ON
APPELLANT'S APPEAL**

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 of living in a good way. Every decision made by stakeholders in

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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 your extended family, and out from that

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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 and sisters, close cousins, and perhaps others, have important

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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, custodians and other parties who come

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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.

(3) The capacity and disposition of the parties involved to provide the child with

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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 the child to the customs, values and mores that may form the child's cultural.

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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 of litigation, the state court waited for 18 months to receive a

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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.

This matter came to the Grand Traverse Band Judiciary in a complex position. The Anishinaabe Binoojiinh initially were wards of Leelanau County Circuit Court, placed with a foster family licensed by the state government. After transfer, the tribal court effectively granted full faith and credit under 10 GTBC § 106 and Michigan Court Rule 2.615 to the Circuit Court's orders confirming the dependency of the children and placing them with the current foster family. Today's opinion in a companion case, No. 2017-22-AP, describes that ongoing relationship with the foster family.

Though the state and tribal processes do not completely equate, the Revised Children's Code provides helpful instruction to the trial court on how to proceed. Under tribal law, the adjudication of the dependency of a child is governed by 10 GTBC § 121. The Circuit Court's orders on the dependency of the Anishinaabe Binoojiinh equate to this process. The trial court correctly complied with those orders under § 106.

The next step for the tribal family court is to hold a disposition hearing under 10 GTBC § 122. A disposition hearing allows the parties and the court to collaborate on and reach a decision to "determine a plan of remedial measures designed to achieve the reunification of the family or, concurrently a preliminary permanency plan for termination of parental right."

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According to the Appellants, Anishinaabek Family Services and the Anishinaabe Omaamaayan (biological mother), the trial court's order of June 22, 2016 is a fatally flawed attempt by the trial court to comply with § 122. The tribe and the biological mother argue that the June 22 order is a product of an erroneous understanding of the trial court about the applicable laws in this matter.

As an initial matter, assuming there is any confusion, this Court affirms that the Revised Children's Code is the applicable law. State law is now irrelevant. Going forward, outside of the state court order that the Anishinaabe Binoojinh are dependents of the court, full faith the credit is irrelevant. The only issue at this point and going forward is moving ahead with a disposition hearing under 10 GTBC § 122.

As noted above, a § 122 hearing can have only two possible big picture goals: (1) "a plan of remedial measures designed to achieve the reunification of the family" (reunification); or (2) "a preliminary permanency plan for termination of parental right" (termination).

The court's review of the June 22, 2016 Order (signed by Judge Blanche on June 21 and filed on June 22) confirms aspects of the appellants' claims. The Order is titled "ORDER FOLLOWING DISPOSITIONAL REVIEW/PERMANENCY PLANNING," which suggests an erroneous understanding of the procedural posture of the matter. Disposition hearings and permanency planning hearings have differing purposes. A permanency planning hearing, as described in 10 GTBC § 124, only comes about after a disposition hearing under § 122 and review hearings under § 123. Moreover, it may be the understanding of one or more parties that the posture of the matter is one of a "hybrid." The June 22 Order repeatedly references adoption as a possibility. Adoption is a completely different process governed by 10 GTBC § 129. And, here, the

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Anishinaabe Omaamaayan's invocation of her right to withdraw consent to an adoption forecloses, at this time, any discussion of adoption. Only if after the § 122 hearing the trial court concludes that it is necessary to proceed to potential termination of parental rights, and then after parental rights are terminated, does adoption under § 129 come into play. The June 22 Order does appear to reflect an understanding by the trial court that this case is somehow a "hybrid." There is no such thing at Grand Traverse Band. We have no choice but to vacate the trial court's June 22, 2016 Order and order a new § 122 hearing.

A secondary question involves the law about allowing the Anishinaabe Binoojiinh to testify. The trial court appears poised to allow the children, at least the children over the age of 14, to testify about their preferences in terms of where they should be placed. Appellants Anishinaabek Family Services and Anishinaabe Omaamaayan object to that order.

The Revised Children's Code does not allow children to testify. However, the Guardian ad Litem argues that nothing in the Code prohibits their testimony, and that children 14 years and older are allowed to express their preferences to the Guardian ad Litem under 10 GTBC § 108(d)(2). That provision states, "A child fourteen (14) years of age or older is presumed capable of determining what is in his or her best interests and may direct the GAL accordingly. It is the duty of the guardian ad litem to represent the child's wishes in such cases." We doubt the value of allowing the Anishinaabe Binoojiinh to testify, and worry significantly that allowing them to testify will cause more harm than good.

We hold that the Guardian ad Litem must represent and advocate for the best interests of the Anishinaabe Binoojiinh. That is the "duty" of the GAL, not the children. The GAL may articulate the statements made by the children to the court. But more importantly, it is the duty of the GAL as counsel and advocate for

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the Anishinaabe Binoojiinh. If the children articulate preferences to their attorney, the GAL, it is the duty of the GAL to parse out the reasoning and justification for those preferences, to develop the evidentiary record in support of those preferences and to make the legal arguments favoring those preferences. The court worries the GAL's motion to allow the testimony of the Anishinaabe Binoojiinh will impose the burden of advocacy on the children, a burden that must be shouldered by the GAL and the other adults in this matter.

Like the foster parents, as we stated in the companion case, the Guardian ad Litem, and counsel for Anishinaabek Family Services and for the Anishinaabe Omaamaayan, are all obligated to act in accordance with mino-bimaadziwin and the Seven Grandfathers. Attorneys in tribal litigation share in many respects the strengths of the Ogitchidawaag, tribal warriors. Browning Pipestem, the late legendary Indian lawyer from Oklahoma, once referred to Indian lawyers as "briefcase warriors." Attorneys in matters involving the protection and welfare Anishinaabe Binoojiinh bring strengths in some ways unique to the profession, namely, nbwaakaawin, wisdom, aakwade'ewin, bravery, and gwekwaadiziwin, honesty. These three Grandfather teachings may be in tension with each other, especially in contested matters involving difficult emotional situations. In such circumstances, the obligation of all American lawyers to zealously advocate for their client tends to excite the warrior inside attorneys. But that instinct must be tempered with Nbwaakaawin, wisdom, and dbaadendizwin, humility.

Counsel for the parties as officers of the court have an obligation to the Anishinaabe Binoojiinh, Anishinaabe Omaamaayan, and to the tribal community. At the current state of these proceedings, the goal of all the parties is the safe and prompt reunification of the Anishinaabe Binoojiinh and Anishinaabe Omaamaayan, if at all possible. We expect our

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briefcase warriors to continue to advocate for the parties to this complex and emotionally difficult matter going forward.

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 order of June 22, 2016 in the matter of No. 2015-2524-CV-CW is VACATED. The trial court is ordered to schedule a hearing and issue an order in conformance with 10 GTBC § 122 and this Order as soon as possible, preferably within the 30-day window described in § 122(b)(1).

IT IS FURTHER ORDERED that the Anishinaabe Binoojiinh are barred from testifying in the matter of No. 2015-2524-CV-CW. The Guardian ad Litem is authorized by 10 GTBC § 108(d)(2) to advocate for the best interests of the Anishinaabe Binoojiinh.

10/19/17
Date

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

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GTB Anishinaabek Family Services, Appellants,	CASE NO.: 2017-24-AP Hon. Matthew Fletcher Hon. Mary Roberts Hon. Quinton Walker
IN THE MATTER OF: <div style="background-color: black; width: 100%; height: 20px; margin-top: 5px;"></div>	

PROOF OF MAILING

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

first class mail, certified, restricted, inter-office mail, personal service, and/or courtesy email

addressed to their last known address by placing a copy of the same in the United States Postal Service Mail in Suttons Bay, Michigan.

Proof of mailing for: **Order Following Oral Argument on Appellant's Appeal.**

To:	Original
<p>Court File Matt Feil,</p> <p>Helen Cook</p> <p>Cheryl Gore Follette</p> <p>James Keedy</p> <p>Autumn McDonald</p> <p>Judge Matthew Fletcher</p> <p>Judge Mary Roberts</p> <p>Judge Quinton Walker</p>	<p>Presenting Officer: Inter-Office Mail & Courtesy Email & Hand Delivery at AFS Meeting today by SLVezina.</p> <p>GTB AFS: Inter-Office Mail & Courtesy Email & Hand Delivery at AFS Meeting today by SLVezina.</p> <p>GAL, PO Box 788, Traverse City, MI 49685-0788 and Courtesy Email.</p> <p>MILS, Attorney for Biological Mother: 814 S. Garfield Ave, Ste. A Traverse City, MI 49686 and Courtesy Email.</p> <p>Biological Mother: None – Her Attorney, James Keedy, will serve on her.</p> <p>Address and Courtesy Email on file</p> <p>Hand delivered and Courtesy Email on file</p> <p>Address and Courtesy Email on file</p>

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

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Appellants,**

**CASE NO.: 2017-24-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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and/or courtesy email

addressed to their last known address by placing a copy of the same in the United States Postal Service Mail in Suttons Bay, Michigan.

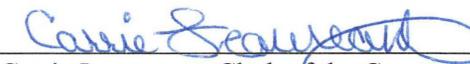
Proof of mailing for: **Order Following Oral Argument on Appellant's Appeal.**

To: Lower Court File Laura Mains	To: Case #: 2015-2524-CV-CW GTB AFS Caseworker, Inter-Office Mail and Courtesy Email
Vicki Parzych	GTB Paralegal to Presenting Officer – Courtesy Email Only
Brianna Peterman	GTB Assistant Paralegal to Presenting Officer – Courtesy Email Only
Judge Gregory Blanche	Address and Courtesy Email on file

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