

AUG 24 2009

In the Supreme Court of the State of Alaska ^{JJB}
MORRISON & FOERSTER

Office of Public Advocacy,)

Appellant,)

v.)

Alaska Court System, Randall Guy)

Gordanier, Jr., and Siv Betti Jonsson,)

Appellees.)

Supreme Court No. **S-12999**

**Order
Dismissing Appeal**

Date of Order: **8/20/09**

Trial Court Case # **3AN-06-08887CI**

Before: Carpeneti, Chief Justice, and Eastaugh, Fabe, Winfree, and Christen,
Justices

This court, by order of 5/29/09, asked for supplemental briefing addressing why this appeal should not be dismissed. A copy of that order is attached as Appendix A. Having considered the supplemental briefs filed by the parties and amici, this court concludes:

1. The underlying due process issue is not properly before this court, because appellant did not appeal the due process ruling and appellee Alaska Court System did not cross-appeal, and because any due process issue arising out of the GAL appointment does not raise an issue about whether due process requires appointment of counsel when the other party has private counsel. Any ruling on the underlying due process issue would therefore be purely advisory, and not in context of an actual case or controversy.
2. All issues are mooted by the conclusion of the initial custody dispute.

3. The public interest exception does not justify appellate consideration of the mooted or unpreserved issues in this case, even though the party and amicus briefing has been of the highest quality. The court considers it unlikely that the issues, including the critical due process issue, will evade direct appellate or interlocutory review in an actual case or controversy. The court likewise considers it unlikely that the issues will be mooted out when they do recur. The court also anticipates that some agency or branch of the State of Alaska, as the entity ultimately responsible for paying for counsel appointed in such a case, will actively participate when the dispute recurs.

Consequently, **IT IS ORDERED:**

1. This appeal is **DISMISSED**.
2. The parties are to bear their own costs and fees.

Entered at the direction of the court.


Marilyn May

cc: Supreme Court Justices
Judge Rindner
Trial Court Clerk - Anchorage

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OPA v. Alaska Court System
Supreme Court Case No. S-12999
Order of 8/20/09
Page 3

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