

No. 21-_____

THE SUPREME COURT OF THE UNITED STATES

Elizabeth Shaw,

Petitioner,

vs.

Derek Shaw,

Respondent.

PETITIONER'S APPENDIX

PETITION FOR A WRIT OF CERTIORARI, MANDAMUS, AND PROHIBITION

Elizabeth Shaw
Pro Se
3314 Ash Drive
Apt. 11201
Orion, MI 48359
(810) 662-5475
annjoelou54@gmail.com

APPENDIX
TABLE OF CONTENTS

Appendix A.....	1-6
December 10, 2020 Decision of the Michigan State Court of Appeals	
Appendix B.....	7
February 3, 2020 Decision of the Sanilac County Circuit Court in the divorce case	
Appendix C.....	8
March 30, 2021 <i>unsigned</i> Decision of the Michigan Supreme Court Denying Review	
Appendix D.....	9-16
The Indian Child Welfare Act of 1978	
Appendix E.....	17-19
The Indian Civil Rights Act	
Appendix F.....	20-32
Michigan's Child Custody Act	
Appendix G.....	33-43
The Michigan Indian Child Preservation Act	
Appendix H.....	44-71
Miami Tribe of Oklahoma Children's Code	
Appendix I.....	72-84
Miami Tribe of Oklahoma Constitution	
Appendix J.....	85-131
Detailed Statement of the Case	

Appendix K.....	132-133
Affidavit of Marsha Wetzel	
Appendix L.....	134
February 17, 201[8] Donna Greenhaw letter	
Appendix M.....	135-142
April 13, 2018 Tribal Court Order of Adjudication	
Appendix N.....	143-144
September 20, 2016 counselor report: Sarah Shelton	
Appendix O.....	145
ICW Update to the Tribal Court	
Appendix P.....	146
June 28, 2017 Tribal Court Protection Order Against ICW & GAL	
Appendix Q.....	147-154
March 18, 2015 MCPP order	
Appendix R.....	155
March 24, 2015 Order of Transfer	
Appendix S.....	156
August 12, 2020 MCOA Peremptory Reversal denial order	
Appendix T.....	157
October 16, 2020 MSC denial order	
Appendix U.....	158
April 30, 2020 MCOA dismissal order in MCPP appeal	

Appendix V.....	159
May 12, 2020 MCOA order denying reconsideration in MCPP appeal	
Appendix W.....	160-162
March 26, 2021 Trial court termination order	
Appendix X.....	163
November 26, 2014 custody modification order	
Appendix Y.....	164
Donna Greenhaw custodial/reunification proposed agreements	
Appendix Z.....	165-174
June 9, 2015 Tribe's Petition against Derek	
Appendix AA.....	175-178
Petition & Order Accepting Jurisdiction in Tribal Court	

STATE OF MICHIGAN
COURT OF APPEALS

DEREK SHAW,

Plaintiff/Counterdefendant-Appellee,

v

ELIZABETH SHAW,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED
December 10, 2020

No. 352851
Sanilac Circuit Court
Family Division
LC No. 14-035535-DM

Before: MURRAY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

Defendant, appearing *in propria persona*, appeals as of right an order denying her motion for relief from judgment and denying her a declaratory judgment in the divorce proceedings. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant had two children during their marriage. The circuit court presiding over the divorce proceedings (the state court) granted the parties a divorce by consent judgment entered on September 12, 2014. The consent judgment granted the parties joint legal and physical custody of the couple's children. It established a "Custodial Time" schedule for the parties, with significant parenting time granted to defendant. On September 30, 2014, defendant filed a motion for full custody, arguing that plaintiff had abused one of the children. In response, plaintiff stated that defendant had made "multiple vexatious complaints" of abuse. Subsequently, a Michigan child-protective-proceedings (MCP) case was initiated in the family division of the state court, LC No. 15-035887-NA, but it was transferred on March 24, 2015, to the Miami Tribe of Oklahoma District Court (the tribal court). It is not disputed that plaintiff is a Native American and a member of the Miami Tribe of Oklahoma and that the couple's children are "Indian" children for purposes of the Indian Child Welfare Act of 1978 (ICWA), 25 USC 1901 *et seq.*, see 25 USC 1903(4), and the Michigan Indian Family Preservation Act, MCL 712B.1 *et seq.*, see MCL 712B.3(k). The children, on March 24, 2015, were made wards of the tribal court.

A

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Defendant attempted, many years later, to file a claim of appeal in this Court regarding the transfer of the MCPP case to the tribal court, but the appeal was dismissed by this Court as delineated in the following order:

The claim of appeal is DISMISSED for lack of jurisdiction because it was not filed within 21 days of the March 24, 2015 order transferring jurisdiction of the case to the Miami Tribe of Oklahoma District Court. MCR 7.204(A)(1)(a). Although appellant claims that the appeal was timely filed from the Sanilac Circuit Court's February 27, 2020 order denying appellant's motion to rescind the transfer, appellant cannot claim an appeal of right from such an order. See MCR 3.993(A)(6). Dismissal is without prejudice to the filing of a late appeal under MCR 7.205(G), provided such a filing meets all requirements under the court rules and is not time-barred. [*Shaw v Shaw*, unpublished order of the Court of Appeals, entered April 30, 2020 (Docket No. 353213).]

In a letter dated October 6, 2015, the children's guardian ad litem (GAL) stated that the tribal court had "deferred jurisdiction" on ruling about where the children should attend school to the state court. Defendant wanted, among other things, to transfer the children to the Port Huron Michigamme School, and the GAL stated, "If the Sanilac County . . . Court sees fit to allow the children to transfer to the Michigamme Public School, I agree and the children agree as well." Plaintiff filed a document indicating that the tribal court had deferred jurisdiction to Sanilac County for only the single issue regarding a change of schools. The state court granted the change-of-schools motion.

Years later, in 2019 and 2020, defendant filed numerous motions in the state court, arguing, among other things, that the children had been unlawfully taken from her by the tribal court, that the order transferring the MCPP case to the tribal court was invalid, and that the custody arrangement in the consent judgment of divorce must be enforced. However, documents filed by defendant demonstrate that the tribal court suspended her visitations with the children in light of her behavior, stating that she was harassing counselors, causing public scenes in front of the children, and making no genuine effort to comply with her service plan. In fact, the tribal court approved plaintiff's request to move the children to Oregon in August 2019. The tribal court stated that it had allowed the state court to decide the years-earlier issue of a change of schools because

¹ In a court transcript filed by defendant in Docket No. 353213, defendant's attorney, while the transfer ruling was being discussed, stated on the record that defendant *agreed* with the transfer to the tribal court. 25 USC 1911(b) states:

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

that court, at the time, was more familiar with the proceedings. The tribal court went on to explain, "Today, this [tribal] court is in the position to have the most information with regard to the family and whether a move is appropriate."

In ruling on the various motions filed by defendant, the state court opined that because a child-protective-proceedings case was pending, the authority of the state court to decide custody matters was suspended. The state court acknowledged that the tribal court had *granted* the state court the authority to decide a custody matter in October 2015, but it concluded that the tribal court was not divested of all jurisdiction over custody matters. The state court opined that defendant was requesting a modification of orders over which it, in presiding over the divorce case, did not have jurisdiction. From these rulings, defendant appeals.

II. STANDARD OF REVIEW

The resolution of this appeal involves determining whether the state court was correct in concluding that it lacked the authority to grant the various forms of relief requested by defendant. This is a question of law, and questions of law are reviewed de novo. *In re Fried*, 266 Mich App 535, 538; 702 NW2d 192 (2005).

III. ANALYSIS

Essentially, defendant contends that the consent judgment of divorce addressed child custody, and therefore, the state court erred in failing to rule on custody issues and in deferring to the decisions of the tribal court when defendant was not a respondent in that litigation. We disagree.

Defendant's attempt in the present appeal to challenge the order of transfer of the MCPP case to the tribal court is easily resolved. The state court was not involved in that decision and had no authority to vacate that order. The proper place to challenge that was in the MCPP court—i.e., in LC No. 15-035887-NA—or in the tribal court, to the extent defendant is challenging the acceptance of the transfer by the tribal court. As noted, defendant did file an untimely claim of appeal in this Court from a decision of the MCPP court, but this Court dismissed the appeal. Defendant's argument in the present case addressing the transfer order is without merit because the state court had no authority to void an order entered in a different case.² Her arguments that the order was not properly effectuated under the court rules are arguments to be directed to a different court.

Defendant's contention that the so-called "one-parent doctrine," as discussed in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), entitles her to appellate relief is also unavailing. Although defendant claims that she was a non-respondent in the tribal court and that the tribal court's decisions denying her custody of the children were unconstitutional under *In re Sanders*, it is not apparent that this allegation is true in light of the tribal court's statement that the children

² While issues of jurisdiction can be collaterally attacked, see *In re Ferranti*, 504 Mich 1, 22; 934 NW2d 610 (2019), the MCPP had jurisdiction to order the transfer, as set forth *infra*. Thereafter, as also set forth *infra*, the tribal court acquired jurisdiction over the child-protective proceedings.

had been “adjudicate[ed] . . . deprived as to their Mother.” More importantly, however, it simply was not the state court’s role to determine whether the one-parent doctrine had been improperly applied by the tribal court. The state court was not empowered to correct errors by the tribal court that occurred in the course of the child-protective proceedings once the tribal court acquired jurisdiction over those proceedings.

Defendant contends that the divorce proceedings must take precedence over the proceedings in the tribal court, but this is not correct. In *In re AP*, 283 Mich App 574, 593-594; 770 NW2d 403 (2009), this Court stated:

[O]nce a juvenile court assumes jurisdiction over a child and the child becomes a ward of the court under the juvenile code, *the juvenile court’s orders supersede all previous orders, including custody orders entered by another court*, even if inconsistent or contradictory. In other words, the previous custody orders affecting the minor become dormant, in a metaphoric sense, during the pendency of the juvenile proceedings, but when the juvenile court dismisses its jurisdiction over the child, all those previous custody orders continue to remain in full force and effect. . . . In addition, *the juvenile court’s orders function to supersede, rather than modify or terminate, the custody orders while the juvenile matter is pending because the juvenile orders are entered pursuant to a distinct statutory scheme that takes precedence over the Child Custody Act*[, MCL 722.21 *et seq.*].³ We note that during the duration of the juvenile proceedings, while the parties subject to the custody order can move to modify the custody order, any modification would remain superseded by the juvenile court’s orders. [Citations omitted; emphasis added.]

The *In re AP* Court cited *Krajewski v Krajewski*, 420 Mich 729, 734-735; 362 NW2d 230 (1984), in stating that orders in child-protective proceedings take precedence over orders under the Child Custody Act. *In re AP*, 283 Mich App at 594. In *Krajewski*, 420 Mich at 734-735, the Court stated:

The observation in GCR 1963, 724.1(5) that “no waiver or transfer of jurisdiction is required for the full and valid exercise of jurisdiction of the subsequent court” evinces our conviction *that the children intended to be protected by the constitution and the Juvenile Code can best be served by a procedure which, having provided for appropriate notice and opportunity for the prior court to exercise its responsibility under its jurisdiction to further the child’s best interests, nonetheless gives unrestricted freedom to the juvenile court to carry out its mandate.* [Emphasis added.]

The *Krajewski* Court also noted that the court rules in effect at the time allowed for the entry of an order by a subsequent court if such subsequent order was necessary for justice and the welfare of the child. *Id.* at 734. MCR 3.205(A) states, “If an order or judgment has provided for continuing

³ The Child Custody Act applies to custody matters arising out of divorce proceedings. *Sirovey v Campell*, 223 Mich App 59, 68; 565 NW2d 857 (1997).

jurisdiction of a minor and proceedings are commenced in another Michigan court having separate jurisdictional grounds for an action affecting that minor, a waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court." MCR 3.205(C)(2) states, "A subsequent court must give due consideration to prior continuing orders of other courts, and may not enter orders contrary to or inconsistent with such orders, *except as provided by law.*" (Emphasis added.) Accordingly, the operative language from *Krajewski* remains in effect in the present-day court rules; when the child-protective proceedings were commenced in Michigan, they took precedence over the divorce proceedings; and the MCPP court was, therefore, empowered to transfer the case to the tribal court, contrary to defendant's argument on appeal. *In re AP*, 283 Mich App at 593; MCR 3.205(A); see also *In re DaBaja*, 191 Mich App 281, 290; 477 NW2d 148 (1991) ("The probate court had the ability to exercise its jurisdiction over the minor child in this case, despite the Wayne Circuit Court's continuing jurisdiction over the child as a result of the prior divorce proceedings.").

In this case, the tribal court acquired jurisdiction after being petitioned to do so, stated that the transfer served the best interests of the children, stated that the children were thereby made wards of the tribal court, and stated that custody decisions would be made by the tribe's foster-care division. The MCPP court stated in the order of transfer that the Oklahoma Department of Human Services had custody of the children and that the tribe had the authority to place the children. When one reads *In re AP*, *Krajewski*, *In re DaBaja*, the Michigan Court Rules, 25 USC 1911(b), the order of transfer, and the order accepting transfer together, it is apparent that the state court properly concluded that it was not empowered to enter an order reinstating the custody provisions of the divorce judgment. The MCPP court took precedence, and it *transferred the custody issue to the tribal court*.

Defendant makes many misguided arguments that any orders of the tribal court were unenforceable because they were foreign judgments and that, therefore, the GAL, the tribe, the children's school, and police officers kidnapped the children. But this argument is not being raised before the proper court. It was not the state court presiding over the divorce proceedings that directed the enforcement of the tribal court's orders. Defendant takes issue with various actions by the judge presiding in the tribal court, but again, the state court overseeing the divorce proceedings was not empowered to correct alleged errors made by the tribal court. Defendant also complains about the sequence of proceedings in the MCPP case, but once again she is not directing these arguments at the proper court. Although the state court was, at times, involved in the MCPP proceedings, it was presiding over a different lower court case at those times; the present appeal encompasses its actions *in the divorce case*.

Defendant contends that the tribal court did not have jurisdiction over parenting-time issues because it had previously allowed those issues to be determined by the state court. As noted, however, the tribal court gave reasons for why, early in the case, it had allowed the state court to decide certain custody issues. Defendant contends that equal protection requires that plaintiff be subject to the authority of the state court for any school-change issue because defendant was subject to the state court's authority when she sought a change of schools. This argument is not developed, is not supported by any legal authorities, and is clearly without merit. As stated in *Ross v Stokely*, 258 Mich App 283, 296; 673 NW2d 413 (2003), "the essence of the equal protection clauses is that the government not treat persons differently on account of characteristics that do not justify such disparate treatment." Once again, the tribe *explained* why it had, early in the case,

deferred resolution of the school-change issue to the state court, but later decided to exercise its jurisdiction over custody issues.

Defendant also argues that various statutes and court rules do not allow for divorce cases to be transferred to tribal courts, but a divorce case was not, in fact, transferred to a tribal court. Finally, defendant appears to be arguing that because a court had once suspended plaintiff's parenting time, this suspension remains effective under principles of res judicata. This argument is patently without merit given the nature of child-protective proceedings, during which a court continually reassesses a parent's ability to care for his or her children.

In sum, the state court presiding over the divorce proceedings properly concluded that it did not have the authority to grant the relief requested by defendant because custody issues were in the hands of the courts presiding over the child-protective proceedings. Moreover, the additional issues raised or mentioned by defendant on appeal are either without merit or are being raised in the wrong case.

Affirmed.

/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens

STATE OF MICHIGAN

IN THE 24th CIRCUIT COURT FOR THE COUNTY OF SANILAC
FAMILY DIVISION

DEREK SHAW,
Plaintiff,

File No.: 14-35535-DM
Hon. Gregory S. Ross, P31377

ELIZABETH SHAW,
Defendant.

**ORDER DENYING MOTION FOR RELIEF FROM
JUDGMENT UNDER MCR 2.612 AND DECLARATORY
JUDGMENT UNDER MCR 2.605**

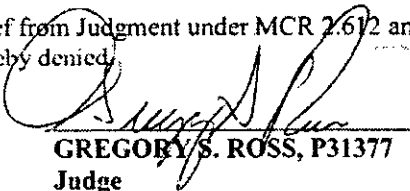
At a session of said Court held in the City of Sandusky,
said County and State, on the 3 day of February, 2020.

Present: **HONORABLE GREGORY S. ROSS, JUDGE**

Defendant filed a Motion for Relief from Judgment under MCR 2.612 and Declaratory Judgment under MCR 2.605 on January 2020. The Court reviewed the motion and the brief in support thereof. On January 22, 2020, Defendant appeared self-represented for the hearing on the matter; Plaintiff failed to appear. The court listened to oral argument of Defendant, and, now being fully advised in the premises,

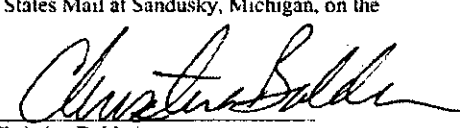
ORDERS that Defendant's Motion for Relief from Judgment under MCR 2.612 and Declaratory Judgment under MCR 2.605 is hereby denied.

1-31-2020 ✓ No Objections
Received _____


GREGORY S. ROSS, P31377
Judge

PROOF OF SERVICE

I do hereby certify that I served a copy of the above Order Denying Motion upon each attorney/party of record as appearing above by placing a copy of said Order in a sealed envelope addressed to each, with full postage prepaid thereon and placing said envelope in the United States Mail at Sandusky, Michigan, on the 4th day of February, 2020.


Christina Baldwin
Assignment Clerk

B

7

Order

Michigan Supreme Court
Lansing, Michigan

March 30, 2021

Bridget M. McCormack,
Chief Justice

162505 & (65)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

DEREK SHAW,
Plaintiff-Appellee,

v

SC: 162505
COA: 352851
Sanilac CC: 14-035535-DM

ELIZABETH SHAW,
Defendant-Appellant.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the December 10, 2020 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



b0322

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 30, 2021

Clerk

C

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25 U.S.C. §§ 1901-63

§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds--

- (1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes¹ and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
- (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
- (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
- (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
- (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. (Pub. L. 95-608, § 2, Nov. 8, 1978, 92 Stat. 3069.) Short Title Section 1 of Pub. L. 95-608 provided: "That this Act [enacting this chapter] may be cited as the 'Indian Child Welfare Act of 1978'."

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs. (Pub. L. 95-608, § 3, Nov. 8, 1978, 92 Stat. 3069.)

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term--

- (1) "child custody proceeding" shall mean and include--
 - (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
 - (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
 - (iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
 - (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.
- (2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
- (3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;
- (4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
- (5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in

more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

- (6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;
- (7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;
- (8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;
- (9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;
- (10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;
- (11) "Secretary" means the Secretary of the Interior; and
- (12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (Pub. L. 95-608, § 4, Nov. 8, 1978, 92 Stat. 3069.) Section Referred to in Other Sections This section is referred to in sections 1727, 3202, 3653, 4302 of this title; title 12 section 4702; title 26 section 168.

Subchapter 1

Child Custody Proceedings

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the

Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity. (Pub. L. 95-608, title I, § 101, Nov. 8, 1978, 92 Stat. 3071.) Section Referred to in Other Sections This section is referred to in sections 1914, 1918, 1923 of this title.

§ 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (Pub. L. 95-608, title I, § 102, Nov. 8, 1978, 92 Stat. 3071.) Section Referred to in Other Sections This section is referred to in sections 1914, 1916 of this title.

§ 1913. Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court

of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law. (Pub. L. 95-608, title I, § 103, Nov. 8, 1978, 92 Stat. 3072.) Section Referred to in Other Sections This section is referred to in section 1914 of this title.

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title. (Pub. L. 95-608, title I, § 104, Nov. 8, 1978, 92 Stat. 3072.)

§ 1915. Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the

request of the Secretary or the Indian child's tribe. (Pub. L. 95-608, title I, § 105, Nov. 8, 1978, 92 Stat. 3073.)

§ 1916. Return of custody

(a) Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed. (Pub. L. 95-608, title I, § 106, Nov. 8, 1978, 92 Stat. 3073.)

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship. (Pub. L. 95-608, title I, § 107, Nov. 8, 1978, 92 Stat. 3073.)

§ 1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

- (1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:
 - i. whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;
 - ii. the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;
 - iii. the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and (iv) the feasibility of the plan in cases of multiracial occupation of a single reservation or geographic area.
- (2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title. (Pub. L. 95-608, title I, § 108, Nov. 8, 1978, 92 Stat. 3074.)

§ 1919. Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise. (Pub. L. 95-608, title I, § 109, Nov. 8, 1978, 92 Stat. 3074.)

Section Referred to in Other Sections

This section is referred to in sections 1918, 1923 of this title.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child; danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

§ 1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage

or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

§ 1923. Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

Subchapter II **Indian Child and Family Programs**

§ 1931. Grants for on or near reservation programs and child welfare codes

(a) Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

- (1) a system for licensing or otherwise regulating Indian foster and adoptive homes;
- (2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
- (3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;
- (4) home improvement programs;
- (5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;
- (6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;
- (7) a subsidy program under which Indian adoptive children may be provided support comparable to

that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

- (8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program
Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act [42 U.S.C. 620 et seq., 1397 et seq.] or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

§ 1932. Grants for off-reservation programs for additional services

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

- (1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;
- (2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;
- (3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and
- (4) guidance, legal representation, and advice to Indian families involved in child custody proceedings. (Pub. L. 95-608, title II, § 202, Nov. 8, 1978, 92 Stat. 3076.)

Section Referred to in Other Sections

This section is referred to in section 1934 of this title.

§ 1933. Funds for on and off reservation programs

(a)Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments

In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b)Appropriation authorization under section 13 of this title

Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title. (Pub. L. 95-608, title II, § 203, Nov. 8, 1978, 92 Stat. 3076; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

§ 1934. "Indian" defined for certain purposes

For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.

Subchapter III **Recordkeeping, Information Availability, and** **Timetables**

§ 1951. Information availability to and disclosure by Secretary

(a)Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act

Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

- (1) the name and tribal affiliation of the child;
- (2) the names and addresses of the biological parents;
- (3) the names and addresses of the adoptive parents; and
- (4) the identity of any agency having files or information relating to such adoptive placement. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information

shall not be subject to the Freedom of Information Act (5 U.S.C. 552); as amended.

(b)Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment
Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe; the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

§ 1952. Rules and regulations

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

Subchapter IV **Miscellaneous Provisions**

§ 1962. Locally convenient day schools

(a)Sense of Congress

It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b)Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades. (Pub. L. 95-608, title IV, § 401, Nov. 8, 1978, 92 Stat. 3078; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

§ 1962. Copies to the States

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

§ 1963. Severability

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

Text of Indian Civil Rights Act

The Indian Civil Rights Act of 1968 (ICRA) (see [Federal Laws](#)), 25 U.S.C. §§ 1301-1304 (ICRA), provides as follows:

§ 1301. Definitions: For purposes of this subchapter, the term

1. "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government.
2. "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
3. "Indian court" means any Indian tribal court or court of Indian offense, and.
4. "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 19, United States Code, if that person were to commit an offense listed in that section in Indian country to which that section applies.

§ 1302. Constitutional Rights: No Indian tribe in exercising powers of self-government shall:

(a) In general

No Indian tribe in exercising powers of self-government shall—

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
3. subject any person for the same offense to be twice put in jeopardy;
4. compel any person in any criminal case to be a witness against himself;
5. take any property for a public use without just compensation;
6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- 7.

(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;

8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
9. pass any bill of attainder or ex post facto law; or
10. deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—

1. Has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or
2. Is being prosecuted for any offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

1. provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
2. at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
3. require that the judge presiding over the criminal proceeding—

(A) has sufficient legal training to preside over criminal proceedings; and

(B) is licensed to practice law by any jurisdiction in the United States;

4. prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and
5. maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—

1. to serve the sentence—

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[National American Indian Court Judges Association \(NAICJA\)](#)
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[National Indian Child Welfare Association \(NICWA\)](#)
[National Indian Country Clearinghouse on Sexual Assault \(NICCSA\)](#)
[National Child Welfare Resource Center for Tribes \(NRC4Tribes\)](#)
[Native American Children's Alliance \(NACA\)](#)
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- (A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;
- (B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c)(1) of the Tribal Law and Order Act of 2010;
- (C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or
- (D) in an alternative rehabilitation center of an Indian tribe; or

2. to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(e) Definition of offense

In this section, the term "offense" means a violation of a criminal law.

(f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

§ 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

§ 1304. Tribal Jurisdiction over Crimes of Domestic Violence

(a) Definitions.—In this section:

1. **Dating Violence.**—The term 'dating violence' means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
2. **Domestic Violence.**—The term 'domestic violence' means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.
3. **Indian country.**—The term 'Indian country' has the meaning given the term in section 1151 of title 18, United States Code.
4. **Participating tribe.**—The term 'participating tribe' means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.
5. **Protection order.**—The term 'protection order'—
 - (A) means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
 - (B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a Pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of the person seeking protection.
6. **Special domestic violence criminal jurisdiction.**—The term 'special domestic violence criminal jurisdiction' means the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.
7. **Spouse or intimate partner.**—The term 'spouse or intimate partner' has the meaning given the term in section 2266 of title 18, United States Code.

(b) Nature of Criminal Jurisdiction.—

1. In general.—Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 201 and 203 [25 USC § 1301 and 1303, respectively], the powers of self-government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.
2. Concurrent jurisdiction.—The exercise of special domestic violence criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.
3. Applicability.—Nothing in this section—
 - (A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or
 - (B) affects the authority of the United States or any State government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.
4. Exceptions.—
 - (A) Victim and defendant are both non-Indians.—
 - (i) In general.—A participating tribe may not exercise special domestic violence criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.
 - (ii) Definition of victim.—In this subparagraph and with respect to a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a violation of a protection order, the term 'victim' means a person specifically protected by a protection order that the defendant allegedly violated.
 - (B) Defendant lacks ties to the Indian tribe.—A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant—
 - (i) resides in the Indian country of the participating tribe;
 - (ii) is employed in the Indian country of the participating tribe; or
 - (iii) is a spouse, intimate partner, or dating partner of—
 - (I) a member of the participating tribe; or
 - (II) an Indian who resides in the Indian country of the participating tribe.

(c) Criminal Conduct.—A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

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1. Domestic violence and dating violence.—An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.
2. Violations of protection orders.—An act that—

- (A) occurs in the Indian country of the participating tribe; and
- (B) violates the portion of a protection order that—
 - (i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
 - (ii) was issued against the defendant;
 - (iii) is enforceable by the participating tribe; and
 - (iv) is consistent with section 2265(b) of title 18, United States Code.

(d) Rights of Defendants.—In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant—

1. all applicable rights under this Act;
2. if a term of imprisonment of any length may be imposed, all rights described in section 202(c) [25 USC 1302(c)];
3. the right to a trial by an impartial jury that is drawn from sources that—
 - (A) reflect a fair cross section of the community; and
 - (B) do not systematically exclude any distinctive group in the community, including non-Indians; and
4. all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant.

(e) Petitions to Stay Detention.—

1. In general.—A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 203 [25 USC § 1303] may petition that court to stay further detention of that person by the participating tribe.
2. Grant of stay.—A court shall grant a stay described in paragraph (1) if the court—
 - (A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
 - (B) after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.
3. Notice.—An Indian tribe that has ordered the detention of any person has a duty to timely notify such person of his rights and privileges under this subsection and under section 203 [25 USC § 1303].

Page 19 of 20

Revised by the American Indian Law Center, University of Minnesota, in cooperation with the National Indian Justice Institute (NIJI) and the National Indian Law Center (NILC).



The National Indian Law Center (NILC) is a non-profit organization that provides legal assistance and advocacy for Native Americans.

CHILD CUSTODY ACT OF 1970
Act 91 of 1970

AN ACT to declare the inherent rights of minor children; to establish rights and duties to their custody, support, and parenting time in disputed actions; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; to provide for certain procedure and appeals; and to repeal certain acts and parts of acts.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1990, Act 245, Imd. Eff. Oct. 10, 1990;—Am. 1996, Act 19, Eff. June 1, 1996.

The People of the State of Michigan enact:

722.21 Child custody act; short title.

Sec. 1. This act shall be known and may be cited as the "child custody act of 1970".

History: 1970, Act 91, Eff. Apr. 1, 1971.

722.22 Definitions.

Sec. 2. As used in this act:

(a) "Active duty" means that term as defined in section 101 of the servicemembers civil relief act, 50 USC 511, except that "active duty" includes full-time national guard duty.

(b) "Agency" means a legally authorized public or private organization, or governmental unit or official, whether of this state or of another state or country, concerned in the welfare of minor children, including a licensed child placement agency.

(c) "Attorney" means, if appointed to represent a child under this act, an attorney serving as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney defined under this subdivision owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes as the attorney would to an adult client.

(d) "Child" means minor child and children. Subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, for purposes of providing support, child includes a child and children who have reached 18 years of age.

(e) "Deployment" means the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days under temporary or permanent official orders as follows:

(i) That are designated as unaccompanied.

(ii) For which dependent travel is not authorized.

(iii) That otherwise do not permit the movement of family members to that location.

(iv) The servicemember is restricted from travel.

(f) "Grandparent" means a natural or adoptive parent of a child's natural or adoptive parent.

(g) "Guardian ad litem" means an individual whom the court appoints to assist the court in determining the child's best interests. A guardian ad litem does not need to be an attorney.

(h) "Lawyer-guardian ad litem" means an attorney appointed under section 4. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section 4.

(i) "Parent" means the natural or adoptive parent of a child.

(j) "State disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

(k) "Third person" means an individual other than a parent.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1990, Act 245, Imd. Eff. Oct. 10, 1990;—Am. 1998, Act 482, Eff. Mar. 1, 1999;—Am. 1999, Act 156, Imd. Eff. Nov. 3, 1999;—Am. 2002, Act 9, Imd. Eff. Feb. 14, 2002;—Am. 2004, Act 542, Imd. Eff. Jan. 3, 2005;—Am. 2005, Act 327, Imd. Eff. Dec. 28, 2005;—Am. 2015, Act 51, Eff. Sept. 7, 2015.

722.23 "Best interests of the child" defined.

Sec. 3. As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

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

(b) 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.

(c) 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 state in place of medical care, and other material needs.

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

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

(f) The moral fitness of the parties involved.

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

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

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

(j) 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. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.

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

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

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1980, Act 434, Imd. Eff. Jan. 14, 1981;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993;—Am. 2016, Act 95, Eff. Aug. 1, 2016.

722.24 Child custody disputes; powers of court; appointment of lawyer-guardian ad litem.

Sec. 4. (1) In all actions involving dispute of a minor child's custody, the court shall declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with this act.

(2) If, at any time in the proceeding, the court determines that the child's best interests are inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIA of 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIA of 1939 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act.

(3) In a proceeding in which a lawyer-guardian ad litem represents a child, he or she may file a written report and recommendation. The court may read the report and recommendation. The court shall not, however, admit the report and recommendation into evidence unless all parties stipulate the admission. The parties may make use of the report and recommendation for purposes of a settlement conference.

(4) After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of the lawyer-guardian ad litem against 1 or more of the parties involved in the proceedings or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad litem appointed under this section shall not be paid a fee unless the court first receives and approves the fee.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1996, Act 19, Eff. June 1, 1996;—Am. 1998, Act 482, Eff. Mar. 1, 1999.

722.24a Repealed. 2001, Act 108, Eff. Sept. 30, 2001.

Compiler's note: The repealed section pertained to support of child after child reaches 18 years of age.

722.25 Child custody dispute; controlling interests; presumption; award of custody to parent convicted of criminal sexual conduct or acts of nonconsensual sexual penetration; prohibition; support or maintenance obligation; defense; "offending parent" defined.

Sec. 5. (1) If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence.

(2) Notwithstanding other provisions of this act, if a child custody dispute involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a substantially similar statute of another state or the federal government, or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, the court shall not award custody to that biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d. This subsection does not apply if, after the date of the conviction, or the date of the finding in a fact-finding hearing described in this subsection, the biological parents cohabit and establish a mutual custodial environment for the child.

(3) An offending parent is not entitled to custody of a child described in subsection (2) without the consent

of that child's other parent or guardian.

(4) Notwithstanding other provisions of this act, subsection (2) does not relieve an offending parent of any support or maintenance obligation to the child. The other parent or the guardian of the child may decline support or maintenance from the offending parent.

(5) A parent may assert an affirmative defense of the provisions of subsection (2) in a proceeding brought by the offending parent regarding a child described in subsection (2).

(6) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the individual's child, the court shall not award custody of that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the custody.

(7) As used in this section, "offending parent" means a parent who has been convicted of criminal sexual conduct as described in subsection (2) or who has been found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration as described in subsection (2).

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993;—Am. 2016, Act 96, Eff. Aug. 1, 2016.

722.26 Liberal construction and application of act; purpose; provisions applicable to child custody disputes and actions; precedence of other actions; submission of action; habeas corpus or warrant.

Sec. 6. (1) This act is equitable in nature and shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved. This act applies to all circuit court child custody disputes and actions, whether original or incidental to other actions. Those disputes and actions shall have precedence for hearing and assignment for trial over other civil actions.

(2) Except as otherwise provided in section 6b or 6e, if the circuit court of this state does not have prior continuing jurisdiction over a child, the action shall be submitted to the circuit court of the county where the child resides or may be found by complaint or complaint and motion for order to show cause. An application for a writ of habeas corpus or for a warrant in its place to obtain custody of a child shall not be granted unless it appears that this act is inadequate and ineffective to resolve the particular child custody dispute.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1990, Act 315, Imd. Eff. Dec. 20, 1990;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993.

722.26a Joint custody.

Sec. 6a. (1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:

(a) The factors enumerated in section 3.

(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

(2) If the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interests of the child.

(3) If the court awards joint custody, the court may include in its award a statement regarding when the child shall reside with each parent, or may provide that physical custody be shared by the parents in a manner to assure the child continuing contact with both parents.

(4) During the time a child resides with a parent, that parent shall decide all routine matters concerning the child.

(5) If there is a dispute regarding residency, the court shall state the basis for a residency award on the record or in writing.

(6) Joint custody shall not eliminate the responsibility for child support. Each parent shall be responsible for child support based on the needs of the child and the actual resources of each parent. If a parent would otherwise be unable to maintain adequate housing for the child and the other parent has sufficient resources, the court may order modified support payments for a portion of housing expenses even during a period when the child is not residing in the home of the parent receiving support. An order of joint custody, in and of itself, shall not constitute grounds for modifying a support order.

(7) As used in this section, "joint custody" means an order of the court in which 1 or both of the following

is specified:

- (a) That the child shall reside alternately for specific periods with each of the parents.
- (b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

History: Add. 1980, Act 434, Imd. Eff. Jan. 14, 1981.

722.26b Standing of guardian or limited guardian of child to bring action for custody of child; filing of action; stay of proceedings; continuation of order in force; copy of judgment or order of disposition; assignment of judge.

Sec. 6b. (1) Except as otherwise provided in subsection (2), a guardian or limited guardian of a child has standing to bring an action for custody of the child as provided in this act.

(2) A limited guardian of a child does not have standing to bring an action for custody of the child if the parent or parents of the child have substantially complied with a limited guardianship placement plan regarding the child entered into as required by section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, or section 424a of former 1978 PA 642.

(3) If the circuit court does not have prior continuing jurisdiction over the child, a child custody action brought by a guardian or limited guardian of the child shall be filed in the circuit court in the county in which the probate court appointed the guardian.

(4) Upon the filing of a child custody action brought by a child's guardian or limited guardian, guardianship proceedings concerning that child in the probate court are stayed until disposition of the child custody action. A probate court order concerning the guardianship of the child continues in force until superseded by a circuit court order. If the circuit court awards custody of the child, it shall send a copy of the judgment or order of disposition to the probate court in the county that appointed the child's guardian or limited guardian.

(5) If a child's guardian or limited guardian brings a child custody action, the circuit court shall request the supreme court in accordance with section 225 of the revised judicature act of 1961, 1961 PA 236, MCL 600.225, to assign the probate court judge who appointed that guardian or limited guardian to serve as the circuit court judge and hear the child custody action.

History: Add. 1990, Act 315, Imd. Eff. Dec. 20, 1990;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993;—Am. 2000, Act 60, Eff. Apr. 1, 2000.

722.26c Custody action by third person; conditions.

Sec. 6c. (1) A third person may bring an action for custody of a child if the court finds either of the following:

- (a) Both of the following:
 - (i) The child was placed for adoption with the third person under the adoption laws of this or another state, and the placement order is still in effect at the time the action is filed.
 - (ii) After the placement, the child has resided with the third person for a minimum of 6 months.
 - (b) All of the following:
 - (i) The child's biological parents have never been married to one another.
 - (ii) The child's parent who has custody of the child dies or is missing and the other parent has not been granted legal custody under court order.
 - (iii) The third person is related to the child within the fifth degree by marriage, blood, or adoption.
- (2) A third person shall include with an action filed under this section both of the following:
- (a) An affidavit setting forth facts relative to the existence of the prerequisites required by subsection (1)(a) or (b).
 - (b) Notice that a defense or objection to a third person's right to bring an action for custody may be raised as an affirmative defense or by a motion for summary disposition based on lack of standing as provided in the Michigan court rules.

History: Add. 1993, Act 259, Imd. Eff. Nov. 29, 1993.

Compiler's note: Section 2 of Act No. 259 of the Public Acts of 1993 provided:

"Sections 6c to 6e as added by this amendatory act are remedial in nature and apply retroactively."

722.26d Custody action by third person; jurisdiction.

Sec. 6d. A third person filing an action under section 6c shall proceed as follows:

- (a) If the circuit court has continuing jurisdiction over the child, the action shall be filed in the circuit court that has continuing jurisdiction over the child.
- (b) If the circuit court does not have continuing jurisdiction over the child, the action shall be filed in the

circuit court in the county where the child has resided for the 6 months immediately preceding the filing of the action or, if the child has not resided in any county for the 6 months immediately preceding the filing of the action, the action shall be filed in the circuit court in the county having the most significant connection with the child.

History: Add. 1993, Act 259, Imd. Eff. Nov. 29, 1993.

Compiler's note: Section 2 of Act No. 259 of the Public Acts of 1993 provided:

"Sections 6c to 6e as added by this amendatory act are remedial in nature and apply retroactively."

722.26e Custody action by third person; notice; powers of court.

Sec. 6e. (1) A third person filing an action under section 6c shall send notice of the action to each party who has legal custody of the child and to each parent whose parental rights have not been terminated.

(2) In addition to other powers of the court, in an action under section 6c, the court may do any of the following:

(a) Appoint an attorney for a parent.

(b) Order that a necessary and reasonable amount of money be paid to the court for reimbursement of a party's attorney. A party may request an order under this subdivision. The moving party shall allege facts showing that the party is otherwise unable to bear the expense of the action. The court shall require the disclosure of attorney fees or other expenses paid.

(c) The court may award costs and fees as provided in section 2591 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2591 of the Michigan Compiled Laws.

History: Add. 1993, Act 259, Imd. Eff. Nov. 29, 1993.

Compiler's note: Section 2 of Act No. 259 of the Public Acts of 1993 provided:

"Sections 6c to 6e as added by this amendatory act are remedial in nature and apply retroactively."

722.27 Child custody disputes; powers of court; support order; enforcement of judgment or order; child custody while parent on deployment.

Sec. 7. (1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:

(a) Award the custody of the child to 1 or more of the parties involved or to others and provide for payment of support for the child, until the child reaches 18 years of age. Subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, the court may also order support as provided in this section for a child after he or she reaches 18 years of age. The court may require that support payments shall be made through the friend of the court, court clerk, or state disbursement unit.

(b) Provide for reasonable parenting time of the child by the parties involved, by the maternal or paternal grandparents, or by others, by general or specific terms and conditions. Parenting time of the child by the parents is governed by section 7a.

(c) Subject to subsection (3), modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, until the child reaches 19 years and 6 months of age. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. If a motion for change of custody is filed while a parent is active duty, the court shall not consider a parent's absence due to that active duty status in a best interest of the child determination.

(d) Utilize a guardian ad litem or the community resources in behavioral sciences and other professions in the investigation and study of custody disputes and consider their recommendations for the resolution of the disputes.

(e) Take any other action considered to be necessary in a particular child custody dispute.

(f) Upon petition consider the reasonable grandparenting time of maternal or paternal grandparents as provided in section 7b and, if denied, make a record of the denial.

(2) A judgment or order entered under this act providing for the support of a child is governed by and is enforceable as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650. If this act contains a specific provision regarding the contents or enforcement of a support order that conflicts with a provision in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to

552.650, this act controls in regard to that provision.

(3) As provided in the servicemembers civil relief act, 50 USC 501 to 597b, if a motion for change of custody is filed during the time a parent is on deployment, a parent may file and the court shall entertain an application for stay. The court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to deployment, except that the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interests of the child. When a temporary custody order is issued under this subsection, the court may include a limit on the period of time that the temporary custody order remains in effect. At any stage before final judgment in the proceeding, the parent may file an application for stay or otherwise request a stay of the proceedings or file an application for an extension of a stay. The parent and the custodial child are not required to be present to consider the application for stay or extension of a stay. The application for stay or extension of a stay is sufficient if it is a signed, written statement, certified to be true under penalty of perjury. The same conditions for the initial stay apply to an application for an extension of a stay. The parent's duration of deployment shall not be considered in making a best interest of the child determination.

(4) The parent shall inform the court of the deployment end date before or within 30 days after that deployment end date. Upon notification of a parent's deployment end date, the court shall reinstate the custody order in effect immediately preceding that period of deployment. If a motion for change of custody is filed after a parent returns from deployment, the court shall not consider a parent's absence due to that deployment in making a best interest of the child determination. Future deployments shall not be considered in making a best interest of the child determination.

(5) If the deploying parent and the other parent share custody, the deploying parent must notify the other parent of an upcoming deployment within a reasonable period of time.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1980, Act 161, Imd. Eff. June 18, 1980;—Am. 1985, Act 215, Eff. Mar. 1, 1986;—Am. 1988, Act 377, Eff. Mar. 30, 1989;—Am. 1989, Act 275, Imd. Eff. Dec. 26, 1989;—Am. 1990, Act 245, Imd. Eff. Oct. 10, 1990;—Am. 1990, Act 293, Imd. Eff. Dec. 14, 1990;—Am. 1996, Act 19, Eff. June 1, 1996;—Am. 1998, Act 482, Eff. Mar. 1, 1999;—Am. 1999, Act 156, Imd. Eff. Nov. 3, 1999;—Am. 2001, Act 108, Eff. Sept. 30, 2001;—Am. 2005, Act 328, Imd. Eff. Dec. 28, 2005;—Am. 2015, Act 52, Eff. Sept. 7, 2015.

722.27a Parenting time.

Sec. 7a. (1) Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.

(2) If the parents of a child agree on parenting time terms, the court shall order the parenting time terms unless the court determines on the record by clear and convincing evidence that the parenting time terms are not in the best interests of the child.

(3) A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health.

(4) Notwithstanding other provisions of this act, if a proceeding regarding parenting time involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a substantially similar statute of another state or the federal government, or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, the court shall not grant parenting time to that biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d. This subsection does not apply if, after the date of the conviction, or the date of the finding in a fact-finding hearing described in this subsection, the biological parents cohabit and establish a mutual custodial environment for the child.

(5) A parent may assert an affirmative defense of the provisions of subsection (4) in a proceeding brought by the offending parent regarding a child described in subsection (4).

(6) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the individual's child, the court shall not grant parenting time with that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the parenting time.

(7) The court may consider the following factors when determining the frequency, duration, and type of parenting time to be granted:

- (a) The existence of any special circumstances or needs of the child.
- (b) Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.
- (c) The reasonable likelihood of abuse or neglect of the child during parenting time.
- (d) The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.
- (e) The inconvenience to, and burdensome impact or effect on, the child of traveling for purposes of parenting time.
- (f) Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.
- (g) Whether a parent has frequently failed to exercise reasonable parenting time.
- (h) The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.
- (i) Any other relevant factors.

(8) Parenting time shall be granted in specific terms if requested by either party at any time.

(9) A parenting time order may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of parenting time by a parent, including 1 or more of the following:

- (a) Division of the responsibility to transport the child.
- (b) Division of the cost of transporting the child.
- (c) Restrictions on the presence of third persons during parenting time.
- (d) Requirements that the child be ready for parenting time at a specific time.
- (e) Requirements that the parent arrive for parenting time and return the child from parenting time at specific times.

(f) Requirements that parenting time occur in the presence of a third person or agency.

(g) Requirements that a party post a bond to assure compliance with a parenting time order.

(h) Requirements of reasonable notice when parenting time will not occur.

(i) Any other reasonable condition determined to be appropriate in the particular case.

(10) Except as provided in this subsection, a parenting time order shall contain a prohibition on exercising parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction. This subsection does not apply if both parents provide the court with written consent to allow a parent to exercise parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.

(11) During the time a child is with a parent to whom parenting time has been awarded, that parent shall decide all routine matters concerning the child.

(12) Prior to entry of a temporary order, a parent may seek an ex parte interim order concerning parenting time. If the court enters an ex parte interim order concerning parenting time, the party on whose motion the ex parte interim order is entered shall have a true copy of the order served on the friend of the court and the opposing party.

(13) If the opposing party objects to the ex parte interim order, he or she shall file with the clerk of the court within 14 days after receiving notice of the order a written objection to, or a motion to modify or rescind, the ex parte interim order. The opposing party shall have a true copy of the written objection or motion served on the friend of the court and the party who obtained the ex parte interim order.

(14) If the opposing party files a written objection to the ex parte interim order, the friend of the court shall attempt to resolve the dispute within 14 days after receiving it. If the matter cannot be resolved, the friend of the court shall provide the opposing party with a form motion and order with written instructions for their use in modifying or rescinding the ex parte order without assistance of counsel. If the opposing party wishes to proceed without assistance of counsel, the friend of the court shall schedule a hearing with the court that shall be held within 21 days after the filing of the motion. If the opposing party files a motion to modify or rescind the ex parte interim order and requests a hearing, the court shall resolve the dispute within 28 days after the hearing is requested.

(15) An ex parte interim order issued under this section shall contain the following notice:

NOTICE:

1. You may file a written objection to this order or a motion to modify or rescind this order. You must file the written objection or motion with the clerk of the court within 14 days after you were served with this order. You must serve a true copy of the objection or motion on the friend of the court and the party who

obtained the order.

2. If you file a written objection, the friend of the court must try to resolve the dispute. If the friend of the court cannot resolve the dispute and if you wish to bring the matter before the court without the assistance of counsel, the friend of the court must provide you with form pleadings and written instructions and must schedule a hearing with the court.

(16) As provided in the servicemembers civil relief act, 50 USC 501 to 597b, if a motion for change of parenting time is filed during the time a parent is on deployment, a parent may file and the court shall entertain an application for stay. The court shall presume that the best interests of the child are served by not entering an order modifying or amending a previous judgment or order, or issuing a new order, that changes the parenting time that existed on the date the parent was called to deployment, unless the contrary is established by clear and convincing evidence, at which time the court may enter a temporary parenting time order. When a temporary parenting time order is issued under this subsection, the court may include a limit on the period of time that the temporary parenting time order remains in effect. At any stage before final judgment in the proceeding, the parent may file an application for stay or otherwise request a stay of proceedings or file an application for an extension of a stay. The parent and the custodial child are not required to be present to consider the application for stay or extension of a stay. The application for stay or extension of a stay is sufficient if it is a signed, written statement, certified to be true under penalty of perjury. The same conditions for the initial stay apply to applications for an extension of a stay.

(17) The parent shall inform the court of the deployment end date before or within 30 days after that deployment end date. Upon notification of a parent's deployment end date, the court shall reinstate the parenting time order in effect immediately preceding that period of deployment. If a motion for change of parenting time is filed after a parent returns from deployment, the court shall not consider a parent's absence due to that deployment in making a determination regarding change of parenting time. Future deployments shall not be considered in making a best interest of the child determination.

(18) If the deploying parent and the other parent share custody, the deploying parent must notify the other parent of an upcoming deployment within a reasonable period of time.

(19) As used in this section, "offending parent" means a parent who has been convicted of criminal sexual conduct as described in subsection (4) or who has been found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration as described in subsection (4).

History: Add. 1988, Act 377, Eff. Mar. 30, 1989;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993;—Am. 1996, Act 19, Eff. June 1, 1996;—Am. 2012, Act 600, Imd. Eff. Jan. 9, 2013;—Am. 2015, Act 50, Eff. Sept. 7, 2015;—Am. 2016, Act 96, Eff. Aug. 1, 2016.

Compiler's note: Former MCL 722.27a, which pertained to action by parent of deceased father or mother for visitation of unmarried minor child, was repealed by Act 161 of 1980, Imd. Eff. June 18, 1980.

722.27b Order for grandparenting time; circumstances; acknowledgment of parentage; commencement of action; procedures; affidavit; basis for entry of order; best interests of child; alternative dispute resolution; frequency of filing complaint or motion seeking order; attorney fees; order prohibiting change of domicile of child; effect of entry of order; modifying or terminating order; record; termination of grandparent's right to commence action.

Sec. 7b. (1) A child's grandparent may seek a grandparenting time order under 1 or more of the following circumstances:

(a) An action for divorce, separate maintenance, or annulment involving the child's parents is pending before the court.

(b) The child's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled.

(c) The child's parent who is a child of the grandparents is deceased.

(d) The child's parents have never been married, they are not residing in the same household, and paternity has been established by the completion of an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, by an order of filiation entered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a court of competent jurisdiction that the individual is the father of the child.

(e) Except as otherwise provided in subsection (13), legal custody of the child has been given to a person other than the child's parent, or the child is placed outside of and does not reside in the home of a parent.

(f) In the year preceding the commencement of an action under subsection (3) for grandparenting time, the grandparent provided an established custodial environment for the child as described in section 7, whether or not the grandparent had custody under a court order.

Rendered Wednesday, April 28, 2021

Page 8

Michigan Compiled Laws Complete Through PA 8 of 2021

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(2) A court shall not permit a parent of a father who has never been married to the child's mother to seek an order for grandparenting time under this section unless the father has completed an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, an order of filiation has been entered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, or the father has been determined to be the father by a court of competent jurisdiction. The court shall not permit the parent of a putative father to seek an order for grandparenting time unless the putative father has provided substantial and regular support or care in accordance with the putative father's ability to provide the support or care.

(3) A grandparent seeking a grandparenting time order shall commence an action for grandparenting time, as follows:

(a) If the circuit court has continuing jurisdiction over the child, the child's grandparent shall seek a grandparenting time order by filing a motion with the circuit court in the county where the court has continuing jurisdiction.

(b) If the circuit court does not have continuing jurisdiction over the child, the child's grandparent shall seek a grandparenting time order by filing a complaint in the circuit court for the county where the child resides.

(4) All of the following apply to an action for grandparenting time under subsection (3):

(a) The complaint or motion for grandparenting time filed under subsection (3) shall be accompanied by an affidavit setting forth facts supporting the requested order. The grandparent shall give notice of the filing to each person who has legal custody of, or an order for parenting time with, the child. A party having legal custody may file an opposing affidavit. A hearing shall be held by the court on its own motion or if a party requests a hearing. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard.

(b) In order to give deference to the decisions of fit parents, it is presumed in a proceeding under this subsection that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's mental, physical, or emotional health. To rebut the presumption created in this subdivision, a grandparent filing a complaint or motion under this section must prove by a preponderance of the evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health. If the grandparent does not overcome the presumption, the court shall dismiss the complaint or deny the motion.

(c) If a court of appellate jurisdiction determines in a final and nonappealable judgment that the burden of proof described in subdivision (b) is unconstitutional, a grandparent filing a complaint or motion under this section must prove by clear and convincing evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health to rebut the presumption created in subdivision (b).

(5) If 2 fit parents sign an affidavit stating that they both oppose an order for grandparenting time, the court shall dismiss a complaint or motion seeking an order for grandparenting time filed under subsection (3). This subsection does not apply if 1 of the fit parents is a stepparent who adopted a child under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, and the grandparent seeking the order is the natural or adoptive parent of a parent of the child who is deceased or whose parental rights have been terminated.

(6) If the court finds that a grandparent has met the standard for rebutting the presumption described in subsection (4), the court shall consider whether it is in the best interests of the child to enter an order for grandparenting time. If the court finds by a preponderance of the evidence that it is in the best interests of the child to enter a grandparenting time order, the court shall enter an order providing for reasonable grandparenting time of the child by the grandparent by general or specific terms and conditions. In determining the best interests of the child under this subsection, the court shall consider all of the following:

(a) The love, affection, and other emotional ties existing between the grandparent and the child.

(b) The length and quality of the prior relationship between the child and the grandparent, the role performed by the grandparent, and the existing emotional ties of the child to the grandparent.

(c) The grandparent's moral fitness.

(d) The grandparent's mental and physical health.

(e) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.

(f) The effect on the child of hostility between the grandparent and the parent of the child.

(g) The willingness of the grandparent, except in the case of abuse or neglect, to encourage a close relationship between the child and the parent or parents of the child.

(h) Any history of physical, emotional, or sexual abuse or neglect of any child by the grandparent.

(i) Whether the parent's decision to deny, or lack of an offer of, grandparenting time is related to the child's well-being or is for some other unrelated reason.

Rendered Wednesday, April 28, 2021

Page 9

Michigan Compiled Laws Complete Through PA 8 of 2021

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(j) Any other factor relevant to the physical and psychological well-being of the child.

(7) If the court has determined that a grandparent has met the standard for rebutting the presumption described in subsection (4), the court may refer that grandparent's complaint or motion for grandparenting time filed under subsection (3) to alternative dispute resolution as provided by supreme court rule. If the complaint or motion is referred to the friend of the court for alternative dispute resolution and no settlement is reached through friend of the court alternative dispute resolution within a reasonable time after the date of referral, the complaint or motion shall be heard by the court as provided in this section.

(8) A grandparent may not file more than once every 2 years, absent a showing of good cause, a complaint or motion under subsection (3) seeking a grandparenting time order. If the court finds there is good cause to allow a grandparent to file more than 1 complaint or motion under this section in a 2-year period, the court shall allow the filing and shall consider the complaint or motion. Upon motion of a person, the court may order reasonable attorney fees to the prevailing party.

(9) The court shall not enter an order prohibiting an individual who has legal custody of a child from changing the domicile of the child if the prohibition is primarily for the purpose of allowing a grandparent to exercise the rights conferred in a grandparenting time order entered under this section.

(10) A grandparenting time order entered under this section does not create parental rights in the individual or individuals to whom grandparenting time rights are granted. The entry of a grandparenting time order does not prevent a court of competent jurisdiction from acting upon the custody of the child, the parental rights of the child, or the adoption of the child.

(11) A court shall not modify or terminate a grandparenting time order entered under this section unless it finds by a preponderance of the evidence, on the basis of facts that have arisen since entry of the grandparenting time order or were unknown to the court at the time it entered that order, that a change has occurred in the circumstances of the child or his or her custodian and that a modification or termination of the existing order is necessary to avoid creating a substantial risk of harm to the mental, physical, or emotional health of the child. A court modifying or terminating a grandparenting time order under this subsection shall include specific findings of fact in its order in support of its decision.

(12) A court shall make a record of its analysis and findings under subsections (4), (6), (8), and (11), including the reasons for granting or denying a requested grandparenting time order.

(13) Except as otherwise provided in this subsection, adoption of a child or placement of a child for adoption under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, terminates the right of a grandparent to commence an action for grandparenting time with that child. Adoption of a child by a stepparent under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, does not terminate the right of the parent of a deceased parent of the child to commence an action for grandparenting time with that child.

History: Add. 1982, Act 340, Imd. Eff. Dec. 17, 1982;—Am. 1996, Act 19, Eff. June 1, 1996;—Am. 2004, Act 542, Imd. Eff. Jan. 3, 2005;—Am. 2006, Act 353, Imd. Eff. Sept. 18, 2006;—Am. 2009, Act 237, Imd. Eff. Jan. 8, 2010.

Constitutionality: The Michigan Court of Appeals in *DeRose v DeRose*, 249 Mich App 388, 643 NW2d 259 (2002) held that section 7b of the child custody act of 1970, 1970 PA 91, MCL 722.27b, is unconstitutional. The Michigan Supreme Court affirmed. *DeRose v DeRose*, 496 Mich 320; 666 NW2d 636 (2003). The Michigan Supreme Court held that it was bound by the decision in US Supreme Court in *Troxel v Granville*, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000). The US Supreme Court established in that decision that parents have a fundamental right to raise their children, and on that basis, "the parents have the right to make decisions for children, and such decisions must be accorded deference or weight." The Michigan Supreme Court held that MCL 722.27b failed to "require that a trial court accord deference to the decisions of fit parents regarding grandparent visitation" and is therefore constitutionally invalid.

722.27c Parenting coordinator.

Sec. 7c. (1) A parenting coordinator is a person appointed by the court for a specified term to help implement the parenting time orders of the court and to help resolve parenting disputes that fall within the scope of the parenting coordinator's appointment.

(2) The court may enter an order appointing a parenting coordinator if the parties and the parenting coordinator agree to the appointment and its scope. Before appointing a parenting coordinator, the court shall consider any history of a coercive or violent relationship between the parties. The court shall ensure that the order appointing the parenting coordinator provides adequate protection to the victim of a coercive or violent relationship.

(3) The order appointing a parenting coordinator shall include all of the following:

(a) An acknowledgment that each party has had the opportunity to consult with an attorney and a domestic violence counselor.

(b) An acknowledgment that the parenting coordinator is neutral; that the parenting coordinator may have ex parte communications with the parties, their attorneys, and third parties; that, except as provided in subsection (9), communications with the parenting coordinator are not privileged or confidential; and that by

agreeing to the order, the parties are giving the parenting coordinator authority to make recommendations regarding disputes.

(c) A specific duration of the appointment. The order shall provide that the parenting coordinator may resign at any time due to nonpayment of his or her fee. The order may include a provision for extension of the parenting coordinator's term by consent of the parties for specific periods of time.

(d) An explanation of the costs of the parenting coordinator, and each party's responsibility for those costs, including any required retainer and fees for any required court appearances. The order may include a provision allowing the parenting coordinator to allocate specific costs to 1 party for cause.

(e) The scope of the parenting coordinator's duties in resolving disputes between the parties. These may include any of the following:

- (i) Transportation and transfers of the child between parents.
- (ii) Vacation and holiday schedules and implementation.
- (iii) Daily routines.
- (iv) Activities and recreation.
- (v) Discipline.

(vi) Health care management, including determining and recommending appropriate medical and mental health evaluation and treatment, including psychotherapy, substance use disorder and batterer intervention treatment or counseling, and parenting classes, for the child and the parents. The parenting coordinator shall designate whether any recommended counseling is or is not confidential. The parenting coordinator can recommend how any health care provider is chosen.

(vii) School-related issues.

(viii) Alterations in the parenting schedule, as long as the basic time-sharing arrangement is not changed by more than a specified number of days per month.

(ix) Phase in provision of court orders.

(x) Participation of other persons in parenting time.

(xi) Child care and babysitting issues.

(xii) Any other matters submitted to the parenting coordinator jointly by the parties before his or her appointment expires.

(f) Authorization for the parenting coordinator to have access that may include all of the following:

(i) Reasonable access to the child.

(ii) Notice of all proceedings, including requests for examinations affecting the child.

(iii) Access to a specific therapist of any of the parties or the child, provided that a proper release is executed.

(iv) Access to school, medical, and activity records.

(v) Copies of specific evaluations and psychological test results performed on any child or any parent, custodian, guardian, or other person living in the parent's households, including, but not limited to, friend of the court reports and psychological evaluations.

(vi) Access to the child's principal, teachers, and teachers' aides.

(vii) The right to interview the parties, attorneys, or the child in any combination, and to exclude any party or attorney from an interview.

(viii) The right to interview or communicate with any other person the parenting coordinator considers relevant to resolve an issue or to provide information and counsel to promote the best interests of the child.

(g) The dispute resolution process that will be used by the parenting coordinator, explaining how the parenting coordinator will make recommendations on issues and the effect to be given to those recommendations. The process must ensure that both parties have an opportunity to be heard on issues under consideration by the parenting coordinator and an opportunity to respond to relevant allegations against them before a recommendation is made. The parties may agree that on specific types of issues they must follow a parenting coordinator's recommendations until modified by the court.

(4) The court may terminate the appointment of the parenting coordinator if the court finds that the appointment is no longer helpful to the court in resolving parenting disputes or if the process is no longer safe for a party or a child.

(5) The parenting coordinator may resign at any time, with notice to the parties and to the court. If the court finds that a party has refused to pay its share of the parenting coordination costs as a means to force the parenting coordinator to resign, the court may use contempt sanctions to enforce payment of the parenting coordinator's fee.

(6) The parenting coordinator is immune from civil liability for an injury to a person or damage to property if he or she is acting within the scope of his or her authority as parenting coordinator.

(7) The parenting coordinator shall make reasonable inquiry whether either party has a history of a

coercive or violent relationship with the other party. A reasonable inquiry includes the use of the domestic violence screening protocol for mediation provided by the state court administrative office.

(8) If the parenting coordinator determines that there is a history of a coercive or violent relationship between the parties, the parenting coordinator shall not bring the parties within proximity of each other unless the party at risk from violence or coercion requests it and the parenting coordinator determines with that party what reasonable steps, if any, can be taken to address concerns regarding coercion or violence.

(9) The parenting coordinator is not required to disclose information if disclosure will compromise the safety of a party or a child.

(10) The parenting coordinator shall make his or her recommendations in writing and provide copies of the recommendation to the parties in the manner specified in the parenting coordination order. If a party attaches the recommendation to a motion or other filing, the court may read and consider the recommendation, but the recommendation is not evidence unless the parties stipulate that it is.

(11) The parenting coordinator shall not recommend relief that is less protective than any other order related to the parties.

(12) Subject to the Michigan rules of evidence, the court may allow the testimony of the parenting coordinator if the court finds the testimony useful to the resolution of a pending dispute. The parenting coordinator shall not testify regarding statements received from a child involved in the parenting coordination if the parenting coordinator believes the disclosure would be damaging to the child.

(13) A parenting coordinator who has reasonable cause to suspect child abuse or neglect shall immediately make oral and written reports, or cause oral and written reports to be made, to the department of human services as provided in section 3 of the child protection law, 1975 PA 238, MCL 722.623.

(14) As directed by the supreme court, the state court administrative office shall develop standards for the qualifications and training of parenting coordinators, including training regarding violent and coercive domestic relationships. Parenting coordinators must complete the training within 2 years of the promulgation of the standards described in this subsection.

History: Add. 2014, Act 526, Imd. Eff. Jan. 14, 2015.

722.28 Child custody disputes; appeal, grounds.

Sec. 8. To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.

History: 1970, Act 91, Eff. Apr. 1, 1971.

722.29 Transition to centralized receipt and disbursement of support and fees.

Sec. 9. The department, the SDU, and each office of the friend of the court shall cooperate in the transition to the centralized receipt and disbursement of support and fees. An office of the friend of the court shall continue to receive and disburse support and fees through the transition, based on the schedule developed as required by section 6 of the office of child support act, 1971 PA 174, MCL 400.236, and modifications to that schedule as the department considers necessary.

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1999, Act 156, Imd. Eff. Nov. 3, 1999.

722.30 Access to records or information by noncustodial parent.

Sec. 10. Notwithstanding any other provision of law, a parent shall not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless the parent is prohibited from having access to the records or information by a protective order. As used in this section, "records or information" includes, but is not limited to, medical, dental, and school records, day care provider's records, and notification of meetings regarding the child's education.

History: Add. 1996, Act 304, Eff. Jan. 1, 1997.

722.31 Legal residence change of child whose parental custody governed by court order.

Sec. 11. (1) A child whose parental custody is governed by court order has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued.

(2) A parent's change of a child's legal residence is not restricted by subsection (1) if the other parent consents to, or if the court, after complying with subsection (4), permits, the residence change. This section

does not apply if the order governing the child's custody grants sole legal custody to 1 of the child's parents.

(3) This section does not apply if, at the time of the commencement of the action in which the custody order is issued, the child's 2 residences were more than 100 miles apart. This section does not apply if the legal residence change results in the child's 2 legal residences being closer to each other than before the change.

(4) Before permitting a legal residence change otherwise restricted by subsection (1), the court shall consider each of the following factors, with the child as the primary focus in the court's deliberations:

(a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.

(b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.

(c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.

(d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.

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

(5) Each order determining or modifying custody or parenting time of a child shall include a provision stating the parent's agreement as to how a change in either of the child's legal residences will be handled. If such a provision is included in the order and a child's legal residence change is done in compliance with that provision, this section does not apply. If the parents do not agree on such a provision, the court shall include in the order the following provision: "A parent whose custody or parenting time of a child is governed by this order shall not change the legal residence of the child except in compliance with section 11 of the "Child Custody Act of 1970", 1970 PA 91, MCL 722.31."

(6) If this section applies to a change of a child's legal residence and the parent seeking to change that legal residence needs to seek a safe location from the threat of domestic violence, the parent may move to such a location with the child until the court makes a determination under this section.

History: Add. 2000, Act 422, Imd. Eff. Jan. 9, 2001.

PROBATE CODE OF 1939 (EXCERPT)

Act 288 of 1939

CHAPTER XIIB

712B.1 Chapter; short title.

Sec. 1. This chapter shall be known and may be cited as the "Michigan Indian family preservation act".

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.3 Definitions.

Sec. 3. As used in this chapter:

(a) "Active efforts" means actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the Indian child with the Indian family. Active efforts require more than a referral to a service without actively engaging the Indian child and family. Active efforts include reasonable efforts as required by title IV-E of the social security act, 42 USC 670 to 679c, and also include, but are not limited to, doing or addressing all of the following:

(i) Engaging the Indian child, child's parents, tribe, extended family members, and individual Indian caregivers through the utilization of culturally appropriate services and in collaboration with the parent or child's Indian tribes and Indian social services agencies.

(ii) Identifying appropriate services and helping the parents to overcome barriers to compliance with those services.

(iii) Conducting or causing to be conducted a diligent search for extended family members for placement.

(iv) Requesting representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards and child rearing practice within the tribal community to evaluate the circumstances of the Indian child's family and to assist in developing a case plan that uses the resources of the Indian tribe and Indian community, including traditional and customary support, actions, and services, to address those circumstances.

(v) Completing a comprehensive assessment of the situation of the Indian child's family, including a determination of the likelihood of protecting the Indian child's health, safety, and welfare effectively in the Indian child's home.

(vi) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and actively soliciting the tribe's advice throughout the proceeding.

(vii) Notifying and consulting with extended family members of the Indian child, including extended family members who were identified by the Indian child's tribe or parents, to identify and to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.

(viii) Making arrangements to provide natural and family interaction in the most natural setting that can ensure the Indian child's safety, as appropriate to the goals of the Indian child's permanency plan, including, when requested by the tribe, arrangements for transportation and other assistance to enable family members to participate in that interaction.

(ix) Offering and employing all available family preservation strategies and requesting the involvement of the Indian child's tribe to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child's tribe.

(x) Identifying community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child's family with special needs, and providing information about those resources to the Indian child's family, and actively assisting the Indian child's family or offering active assistance in accessing those resources.

(xi) Monitoring client progress and client participation in services.

(xii) Providing a consideration of alternative ways of addressing the needs of the Indian child's family, if services do not exist or if existing services are not available to the family.

(b) "Child custody proceeding" includes, but is not limited to, 1 or more of the following:

(i) Foster care placement. Any action removing an Indian child from his or her parent or Indian custodian, and where the parent or Indian custodian cannot have the Indian child returned upon demand but parental rights have not been terminated, for temporary placement in, and not limited to, 1 or more of the following:

(A) Foster home or institution.

(B) The home of a guardian or limited guardian under part 2 of article V of the estates and protected individuals code, 1998 PA 386, MCL 700.5201 to 700.5219.

(C) A juvenile guardianship under chapter XIIA.

(ii) Termination of parental rights. Any action resulting in the termination of the parent-child relationship.

(iii) Preadoptive placement. Temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but before or in lieu of adoptive placement.

(iv) Adoptive placement. Permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption.

(v) An Indian child is charged with a status offense in violation of section 2(a)(2) to (4) or (d) of chapter XIIA.

(vi) Child custody proceeding does not include a placement based on an act that, if committed by an adult, would be a crime or based on an award, in a divorce proceeding, of custody to 1 of the parents.

(c) "Court" means the family division of circuit court or the probate court.

(d) "Culturally appropriate services" means services that enhance an Indian child's and family's relationship to, identification, and connection with the Indian child's tribe. Culturally appropriate services should provide the opportunity to practice the teachings, beliefs, customs, and ceremonies of the Indian child's tribe so those may be incorporated into the Indian child's daily life, as well as services that address the issues that have brought the Indian child and family to the attention of the department that are consistent with the tribe's beliefs about child rearing, child development, and family wellness. Culturally appropriate services may involve tribal representatives, extended family members, tribal elders, spiritual and cultural advisors, tribal social services, individual Indian caregivers, medicine men or women, and natural healers. If the Indian child's tribe establishes a different definition of culturally appropriate services, the court shall follow the tribe's definition.

(e) "Department" means the department of health and human services or a successor department or agency.

(f) "Extended family members" means that term as defined by the law or custom of the Indian child's tribe or, in the absence of that law or custom, means a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent and includes the term "relative" as that term is defined in section 13a(j) of chapter XIIA.

(g) "Foster home or institution" means a child caring institution as that term is defined in section 1 of 1973 PA 116, MCL 722.111.

(h) "Guardian" means a person who has qualified as a guardian of a minor under a parental or spousal nomination or a court order issued under section 19a or 19c of chapter XIIA, section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, or sections 600 to 644 of the mental health code, 1974 PA 258, MCL 330.1600 to 330.1644. Guardian may also include a person appointed by a tribal court under tribal code or custom. Guardian does not include a guardian ad litem.

(i) "Guardian ad litem" means an individual whom the court appoints to assist the court in determining the child's best interests. A guardian ad litem does not need to be an attorney.

(j) "Indian" means any member of any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska native village as defined in section 1602(c) of the Alaska native claims settlement act, 43 USC 1602.

(k) "Indian child" means an unmarried person who is under the age of 18 and is either of the following:

(i) A member of an Indian tribe.

(ii) Eligible for membership in an Indian tribe as determined by that Indian tribe.

(l) "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than 1 tribe, the Indian child's tribe is the tribe with which the Indian child has the most significant contacts.

(m) "Indian child welfare act" means the Indian child welfare act of 1978, 25 USC 1901 to 1963.

(n) "Indian custodian" means any Indian person who has custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the Indian child's parent.

(o) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska native village as defined in section 1602(c) of the Alaska native claims settlement act, 43 USC 1602.

(p) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

Rendered Thursday, September 19, 2019

Page 2

Michigan Compiled Laws Complete Through PA 48 of 2019

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(q) "Lawyer-guardian ad litem" means an attorney appointed under section 21 of this chapter. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section 17d of chapter XIIA. The provisions of section 17d of chapter XIIA also apply to a lawyer-guardian ad litem appointed for the purposes of this chapter under each of the following:

(i) Section 5213 or 5219 of the estates and protected individuals code, 1998 PA 386, MCL 700.5213 and 700.5219.

(ii) Section 4 of the child custody act of 1970, 1970 PA 91, MCL 722.24.

(iii) Section 10 of the child protection law, 1975 PA 238, MCL 722.630.

(r) "Official tribal representative" means an individual who is designated by the Indian child's tribe to represent the tribe in a court overseeing a child custody proceeding. An official tribal representative does not need to be an attorney.

(s) "Parent" means any biological parent or parents of an Indian child or any person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. Parent does not include the putative father if paternity has not been acknowledged or established.

(t) "Reservation" means Indian country as defined in 18 USC 1151 and any lands, not covered under that section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(u) "Secretary" means the Secretary of the Interior.

(v) "Tribal court" means a court with jurisdiction over child custody proceedings that is either a court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings.

(w) "Ward of tribal court" means a child over whom an Indian tribe exercises authority by official action in tribal court or by the governing body of the tribe.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013;—Am. 2016, Act 26, Eff. May 30, 2016.

Popular name: Probate Code

712B.5 Best interests of child; duties of courts.

Sec. 5. In Indian child custody proceedings, the best interests of the Indian child shall be determined, in consultation with the Indian child's tribe, in accordance with the Indian child welfare act, and the policy specified in this section. Courts shall do both of the following:

(a) Protect the best interests of Indian children and promote the stability and security of Indian tribes and families.

(b) Ensure that the department uses practices, in accordance with the Indian child welfare act, this chapter, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian children and, when an out-of-home care placement, adoptive placement, or preadoptive placement is necessary, place an Indian child in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.7 Jurisdiction; exclusive; emergency; transfer; good cause determination; right to intervene or participate in proceeding; full faith and credit to public acts, records, and judicial proceedings.

Sec. 7. (1) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe. If a child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction, regardless of the residence or domicile, or subsequent change in his or her residence or domicile.

(2) The state court may exercise limited emergency jurisdiction if an Indian child who resides or is domiciled within the reservation is temporarily off the reservation and the state has removed the Indian child in an emergency situation to prevent imminent physical damage or harm to the Indian child. The court must comply with the emergency removal hearing requirements outlined in Michigan court rules and sections 13a, 14, and 14a of chapter XIIA. The emergency jurisdiction terminates when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child.

(3) In any state court child custody proceeding, for an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the Indian tribe's jurisdiction, absent objection by either parent, upon the petition of either

Rendered Thursday, September 19, 2019

Page 3

Michigan Compiled Laws Complete Through PA 48 of 2019

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parent or the Indian custodian or the Indian child's tribe, provided that the transfer is subject to declination by the tribal court of the Indian tribe.

(4) When a court makes a good cause determination under this section, adequacy of the tribe, tribal court, or tribal social services shall not be considered.

(5) A court may determine that good cause not to transfer a case to tribal court exists only if the person opposing the transfer shows by clear and convincing evidence that either of the following applies:

(a) The Indian tribe does not have a tribal court.

(b) The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to those parties or witnesses that the Indian tribe is unable to mitigate.

(6) In any state court child custody proceeding of an Indian child, the Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the child custody proceeding.

(7) Official tribal representatives have the right to participate in any proceeding that is subject to the Indian child welfare act and this chapter.

(8) This state shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent given to the public acts, records, and judicial proceedings of any other entity.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013;—Am. 2016, Act 26, Eff. May 30, 2016.

Popular name: Probate Code

712B.9 Child custody proceeding; notification to parent, Indian custodian, and tribe; additional preparation days; suspension of proceedings; prejudice by lack of notice; determination as to which tribe child is member; circumstances leading to belief child is an Indian; determining, documenting, and contacting extended family; determination or testimony by authorized person; documentation of efforts.

Sec. 9. (1) In a child custody proceeding, if the court knows or has reason to know that an Indian child is involved, the petitioner shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending child custody proceeding and of the right to intervene. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary in the same manner described in this subsection. The secretary has 15 days after receipt of notice to provide the requisite notice to the parent or Indian custodian and the tribe.

(2) No foster care placement or termination of parental rights proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding. If the petitioner or court later discovers that the child may be an Indian child, all further proceedings shall be suspended until notice is received by the tribe or the secretary as set forth in this subsection. If the court determines after a hearing that the parent or tribe was prejudiced by lack of notice, the prior decisions made by the court shall be vacated and the case shall proceed from the first hearing. The petitioner has the burden of proving lack of prejudice.

(3) The department shall actively seek to determine whether a child at initial contact is an Indian child. If the department is able to make an initial determination as to which Indian tribe or tribes a child brought to its attention may be a member, the department shall exercise due diligence to contact the Indian tribe or tribes in writing so that the tribe may verify membership or eligibility for membership. If the department is unable to make an initial determination as to which tribe or tribes a child may be a member, the department shall, at a minimum, contact in writing the tribe or tribes located in the county where the child is located and the secretary.

(4) Circumstances under which a court, the department, or other party to a child custody proceeding has reason to believe a child involved in a child custody proceeding is an Indian include, but are not limited to, any of the following:

(a) Any party to the case, Indian tribe, Indian organization, or public or private agency informs the court that the child is an Indian child.

(b) Any public or state-licensed agency involved in child protection services or family support has discovered information that suggests that the child is an Indian child.

(c) The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child.

(d) The residence or the domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community.

(e) An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

(5) The department shall exercise due diligence to determine, document, and contact the Indian child's extended family members in accordance with the fostering connections to success and increasing adoptions act of 2008, Public Law 110-351. If applicable, determinations and documentation should be conducted in consultation with the child or parent's tribe.

(6) A written determination or oral testimony by a person authorized by the Indian tribe to speak on its behalf, regarding a child's membership or eligibility for membership in a tribe, is conclusive as to that tribe.

(7) The petitioner shall document all efforts made to determine a child's membership or eligibility for membership in an Indian tribe and shall provide them, upon request, to the court, Indian tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, or Indian custodian.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.11 Examination of reports or documents by parties.

Sec. 11. Each party to a foster care or termination of parental rights proceeding involving an Indian child has a right to examine all reports or other documents filed with the court upon which any decision with respect to that proceeding may be based.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.13 Guardianship; adoptive placement; termination of parental rights; consent.

Sec. 13. (1) If both parents or Indian custodian voluntarily consent to a petition for guardianship under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, or if a parent consents to adoptive placement or the termination of his or her parental rights for the express purpose of adoption by executing a release under sections 28 and 29 of chapter X, or consent under sections 43 and 44 of chapter X, the following requirements must be met:

(a) To be valid, consent under this section must be executed on a form approved by the state court administrative office, in writing, recorded before a judge of a court of competent jurisdiction, and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given before, or within 10 days after, birth of the Indian child is not valid.

(b) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter.

(c) The voluntary custody proceeding shall be conducted in accordance with Michigan supreme court rules and the following statutes:

(i) In a guardianship proceeding under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, section 25 of this chapter also applies.

(ii) In an adoption proceeding, section 27 of this chapter also applies.

(2) Consent described under subsection (1) must contain the following information:

(a) The Indian child's name and date of birth.

(b) The name of the Indian child's tribe and any identifying number or other indication of the child's membership in the tribe, if any.

(c) The name and address of the consenting parent or Indian custodian.

(d) A sworn statement from the translator, if any, attesting to the accuracy of the translation.

(e) The signature of the consenting parent, parents, or Indian custodian recorded before the judge, verifying an oath of understanding of the significance of the voluntary placement and the parent's right to file a written demand to terminate the voluntary placement or consent at any time.

(f) For consent for voluntary placement of the Indian child in foster care, the name and address of the person or entity who will arrange the foster care placement as well as the name and address of the prospective foster care parents if known at the time.

(g) For consent to termination of parental rights or adoption of an Indian child, in addition to the information in subdivisions (a) to (f), the name and address of the person or entity that will arrange the preadoptive or adoptive placement.

(3) If the placement is for purposes of adoption, a consent under subsection (1) of the Indian child's parent must be executed in conjunction with either a consent to adopt, as required by sections 43 and 44 of chapter X, or a release, as required by sections 28 and 29 of chapter X. A parent who executes a consent under this section may withdraw his or her consent at any time before entry of a final order of adoption by filing a

written demand requesting the return of the Indian child. Once a demand is filed with the court, the court shall order the return of the Indian child. Withdrawal of consent under this section constitutes a withdrawal of a release executed under sections 28 and 29 of chapter X or a consent to adopt executed under sections 43 and 44 of chapter X.

(4) A parent or Indian custodian who executes a consent under this section for the purpose of guardianship may withdraw his or her consent at any time by sending written notice to the court substantially in compliance on a form approved by the state court administrative office that the parent or Indian custodian revokes consent and wants his or her Indian child returned.

(5) A release executed under sections 28 and 29 of chapter X during a pendency of a proceeding under section 2(b) of chapter XIIA is subject to section 15 of this chapter. If the release follows the initiation of a proceeding under section 2(b) of chapter XIIA, the court shall make a finding that culturally appropriate services were offered.

(6) A parent who executes a consent to adoption under sections 43 and 44 of chapter X may withdraw that consent at any time before entry of a final order for adoption by filing notification of the withdrawal of consent with the court. In a direct placement, as defined in section 22(o) of chapter X, a consent by a parent or guardian shall be accompanied by a verified statement signed by the parent or guardian that contains all of the following:

(a) That the parent or guardian has received a list of community and federal resource supports and a copy of the written document described in section 6(1)(c) of the foster care and adoption services act, 1994 PA 204, MCL 722.956.

(b) As required by sections 29 and 44 of chapter X, that the parent or guardian has received counseling related to the adoption of his or her Indian child or waives the counseling with the signing of the verified statement.

(c) That the parent or guardian has not received or been promised any money or anything of value for the consent to adoption of the Indian child, except for lawful payments that are itemized on a schedule filed with the consent.

(d) That the validity and finality of the consent are not affected by any collateral or separate agreement between the parent or guardian and the adoptive parent.

(e) That the parent or guardian understands that it serves the welfare of the Indian child for the parent to keep the child placing agency, court, or department informed of any health problems that the parent develops that could affect the Indian child.

(f) That the parent or guardian understands that it serves the welfare of the Indian child for the parent or guardian to keep his or her address current with the child placing agency, court, or department in order to permit a response to any inquiry concerning medical or social history from an adoptive parent of a minor adoptee or from an adoptee who is 18 years or older.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013;—Am. 2016, Act 26, Eff. May 30, 2016.

Popular name: Probate Code

712B.15 Failure of parent to provide consent; requirements; removal of child from parent or Indian custodian; clear and convincing evidence; termination of parental rights; remedial services and rehabilitative programs; determination that continued custody likely to result in serious emotional or physical damage.

Sec. 15. (1) If an Indian child is the subject of a child protective proceeding under section 2(b) of chapter XIIA, including instances in which the parent executed a release under section 28 of chapter X during the pendency of that proceeding, or a guardianship proceeding under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, and if a parent does not provide consent as described in section 13 of this chapter, or a guardianship proceeding under section 19a or 19c of chapter XIIA, the following requirements must be met:

(a) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter.

(b) The proceeding shall be conducted in accordance with Michigan supreme court rules and subsections (2) to (4).

(c) Section 25 of this chapter applies in a guardianship proceeding under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205.

(2) An Indian child may be removed from a parent or Indian custodian, placed into a foster care placement, or, for an Indian child already taken into protective custody, remain removed from a parent or Indian custodian pending further proceedings, only upon clear and convincing evidence that active efforts have been

made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that the active efforts were unsuccessful, and that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. The active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. The evidence must include the testimony of at least 1 qualified expert witness, who has knowledge of the child rearing practices of the Indian child's tribe, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

(3) A party seeking a termination of parental rights to an Indian child under state law must demonstrate to the court's satisfaction that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the active efforts were unsuccessful.

(4) No termination of parental rights may be ordered in a proceeding described in this section without a determination, supported by evidence beyond a reasonable doubt, including testimony of at least 1 qualified expert witness as described in section 17, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

(5) Any Indian child who is the subject of any action for termination of parental rights under state law, any parent or Indian custodian from whose custody the Indian child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate the action upon a showing that the action violated any provision of this section.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013;—Am. 2016, Act 26, Eff. May 30, 2016.

Popular name: Probate Code

712B.17 Qualified expert witness.

Sec. 17. (1) If the testimony of a qualified expert witness is required, the court shall accept either of the following in the following order of preference:

(a) A member of the Indian child's tribe, or witness approved by the Indian child's tribe, who is recognized by the tribal community as knowledgeable in tribal customs and how the tribal customs pertain to family organization and child rearing practices.

(b) A person with knowledge, skill, experience, training, or education and who can speak to the Indian child's tribe and its customs and how the tribal customs pertain to family organization and child rearing practices.

(2) A party to a child custody proceeding may present his or her own qualified expert witness to rebut the testimony of the petitioner's qualified expert witness.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.19 Improper removal of child from custody.

Sec. 19. If a court determines at a hearing that a petitioner in an Indian child custody proceeding has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and immediately return the child to his or her parent or Indian custodian unless returning the child to his or her parent or Indian custodian would subject the child to a substantial and immediate danger or threat of danger.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.21 Appointment of counsel.

Sec. 21. (1) In a case in which the court determines indigency, the parent or Indian custodian has the right to court-appointed counsel in a removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that the appointment is in the best interest of the child. If state law makes no provision for appointment of counsel in those proceedings, the court shall promptly notify the secretary upon appointment of counsel.

(2) If state law does not require the appointment of a lawyer-guardian ad litem for the child, the court may, in its discretion, appoint a lawyer-guardian ad litem for the child upon a finding that the appointment is in the best interest of the child.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.23 Placement; least restrictive setting; order of preference; documentation.

Sec. 23. (1) Except for a placement for guardianship under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, where both parents submit a consent for the guardianship, an Indian child shall be placed in the least restrictive setting that most approximates a family and in which his or her special needs, if any, may be met. The child shall be placed within reasonable proximity to his or her home, taking into account any special needs of the child. Absent good cause to the contrary, the foster care or preadoptive placement of an Indian child must be in the following order of preference:

- (a) A member of the Indian child's extended family.
- (b) A foster home licensed, approved, or specified by the Indian child's tribe.
- (c) An Indian foster home licensed or approved by the department.
- (d) An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

(2) Absent good cause to the contrary, the adoptive placement of an Indian child must be in the following order of preference:

- (a) A member of the child's extended family.
 - (b) A member of the Indian child's tribe.
 - (c) An Indian family.
- (3) The burden of establishing good cause not to follow the order of preference is on the party requesting the deviation.

(4) The court shall not find good cause to deviate from the placement preferences stated in this section without first ensuring that all possible placements required under this section have been thoroughly investigated and eliminated. All efforts made under this section must be provided to the court in writing or stated on the record. The court shall address efforts to place an Indian child in accordance with this section at each hearing until the placement meets the requirements of this section.

(5) The court's determination of good cause to not follow the order of preference shall be based on 1 or more of the following conditions:

- (a) A request was made by a child of sufficient age.
- (b) A child has an extraordinary physical or emotional need as established by testimony of an expert witness.

(6) In the case of a placement under subsection (1) or (2), if the Indian child's tribe establishes a different order of preference, the department or court ordering the placement shall follow the tribe's order of preference.

(7) A record of each placement of an Indian child shall be maintained by the department or court evidencing the efforts to comply with the order of preference specified in this section. The record shall be made available at any time upon the request of the secretary or Indian child's tribe.

(8) The standards to be applied in meeting the placement preferences established in this section shall be the prevailing social and cultural standards of the Indian tribe or tribes in which the parent or extended family resides or maintains social and cultural ties.

(9) Nothing in this chapter or section prevents the emergency removal, protective custody, or subsequent placement of an Indian child who is a resident of or is domiciled on a reservation but is temporarily located off the reservation.

(10) All efforts made to identify, locate, and place a child according to this section shall be documented and, upon request, made available to the court, tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, or Indian custodian.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.25 Involuntary guardianship; investigation; report; notice of pending proceeding; consent; withdrawal; termination of voluntary guardianship; potential applicability of Indian child welfare act.

Sec. 25. (1) If a petition for a guardianship is filed and is determined to be involuntary under section 15 of this chapter and the court knows or has reason to know that the child is an Indian child, the court may order the department or a court employee to conduct an investigation of the proposed guardianship and file a written report of the investigation. In addition to the information required in section 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204, the report must include, but is not limited to, the following information:

Rendered Thursday, September 19, 2019

Page 8

Michigan Compiled Laws Complete Through PA 48 of 2019

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- (a) Whether the child is or is not an Indian child.
- (b) The identity and location of the Indian child's parents, if known.
- (c) If the child is an Indian child, the report must also address all of the following:
 - (i) The tribe or tribes of which the Indian child is a member or eligible for membership.
 - (ii) If the Indian child and family need culturally appropriate and other services to preserve the Indian family.
 - (iii) The identity and location of extended family members and if no extended family members can be found, what efforts were made to locate them.
- (2) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter. If the court knows or has reason to know that the proceeding involves an Indian child, the court shall conduct a hearing to determine all of the following:
 - (a) If the tribe has exclusive jurisdiction. If so, the court shall issue an order terminating the guardianship or dismissing the petition.
 - (b) If the current placement with the guardian meets the placement requirements in section 23 of this chapter.
 - (c) If it is in the Indian child's best interest to order the guardianship.
 - (d) If a lawyer-guardian ad litem should be appointed to represent the Indian child.
- (3) If a petition for guardianship is filed and is to be accompanied by a consent to a voluntary placement of an Indian child, the consent must be executed in accordance with section 13 of this chapter. If the Indian child's parents do not execute a consent under section 13 of this chapter, the petition is considered to be for an involuntary guardianship and the requirements of section 15 of this chapter must be met.
- (4) A parent or Indian custodian who executes a consent under this section for the purpose of voluntary guardianship may withdraw his or her consent at any time by sending written notice to the court substantially in compliance on a form approved by the state court administrative office that the parent or Indian custodian revokes consent and wants his or her Indian child returned.
- (5) The voluntary guardianship is terminated when the court receives from a parent or Indian custodian notice to withdraw consent to the guardianship, and the Indian child shall be immediately returned to the parent or Indian custodian.
- (6) If the court discovers a child may be an Indian child after a guardianship is ordered, the court shall provide notice of the guardianship and the potential applicability of this chapter and the Indian child welfare act, in compliance with Michigan court rules, this chapter, and the Indian child welfare act, to the tribe, the parents or Indian custodian, and the current guardian on a form approved by the state court administrative office.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013;—Am. 2016, Act 26, Eff. May 30, 2016.

Popular name: Probate Code

712B.27 Voluntary placement consent; visitation; notice of pending proceeding; providing certain information to Indian individual reaching age of 18; withdrawal of consent by parent; petition for return of custody.

Sec. 27. (1) If a release or consent to adoption under chapter X is executed, consent to voluntary placement of an Indian child must also be executed by both parents of the Indian child in accordance with section 13 of this chapter.

(2) At any time during an adoption proceeding, a court may order visitation between the Indian child and 1 or more members of the Indian child's tribe and extended family members.

(3) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter.

(4) Upon application by an Indian individual who has reached the age of 18 and who was subject to adoptive placement, the court that entered the order of adoption shall inform the individual of his or her tribal affiliation, if known, of the individual's biological parents, and provide any information as necessary to protect any rights from the individual's tribal relationship.

(5) After the entry of a final order of adoption of an Indian child in any state court, the parent may withdraw consent on the grounds that consent was obtained through fraud or duress and may petition the court to vacate the final order of adoption. Upon a finding that the consent was obtained through fraud or duress, the court shall vacate the final order of adoption and return the child to the parent. No adoption that has been effective for at least 2 years may be invalidated under the provisions of this subsection unless otherwise permitted under state law.

(6) Notwithstanding state law to the contrary, whenever a final order of adoption of an Indian child has

been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant the petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of the Indian child welfare act, 25 USC 1912, that the return of custody is not in the best interests of the child.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.29 Child taken into custody under section 14 of chapter XIA; termination of subsequent placement; condition; initiation of child custody proceeding; duties of court.

Sec. 29. (1) If an Indian child is taken into custody under section 14 of chapter XIA, the subsequent placement shall terminate immediately when the removal and placement are no longer necessary to prevent imminent physical damage or harm to the child.

(2) If a child is taken into custody under section 14 of chapter XIA and the child is under the exclusive jurisdiction of an Indian tribe or is domiciled on a reservation but temporarily located off the reservation, the court shall immediately initiate a child custody proceeding and do either of the following:

- (a) Transfer the child to the jurisdiction of the appropriate Indian tribe.
- (b) Return the child to the parent or Indian custodian.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.31 Agreements.

Sec. 31. (1) The state is authorized to enter into agreements with tribes in this state regarding the care and custody of Indian children, funding of the care and custody of Indian children, and jurisdiction over child custody proceedings, including agreements that may provide for transfer of jurisdiction on a case-by-case basis and agreements that provide for concurrent jurisdiction between the state and Indian tribes.

(2) Unless the agreement provides otherwise, both of the following apply:

- (a) The agreements described in subsection (1) may be revoked by either party upon 180 days' written notice to the other party.
- (b) Revocation of an agreement does not affect any action or proceeding over which the court already has jurisdiction.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.33 Department review of cases; monitoring; standards and procedures.

Sec. 33. The department, in consultation with Indian tribes in this state, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the Indian child welfare act and this chapter.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.35 Providing secretary and tribal enrollment officer with copy of court decree or order; other information.

Sec. 35. (1) A Michigan court entering a final decree or order in any Indian child adoptive placement shall provide the secretary and the tribal enrollment officer of the appropriate tribe with a copy of the decree or order together with other information as may be necessary to show the following:

- (a) The name, date of birth, and tribal affiliation of the child.
- (b) The names and addresses of the biological parents, if known.
- (c) The names and addresses of the adoptive parents.
- (d) The identity of any agency having files or information relating to the adoptive placement.

(2) If court records contain a statement of identifying information of the biological parent or parents that their identity remains confidential, the court shall include the statement of identifying information with the other information sent to the secretary and the tribal enrollment officer of the appropriate Indian tribe described in subsection (1).

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.37 Census.

Sec. 37. The department shall publish annually a census with no individually identifiable information of all

Indian children in the department's care and custody. The census shall include, by county and statewide, information regarding the Indian children on all of the following:

- (a) Legal status.
- (b) Placement information and whether it complies with this chapter.
- (c) Age.
- (d) Sex.
- (e) Tribe in which the child is a member or eligible for membership.
- (f) Accumulated length of time in foster care.
- (g) Other demographic information considered appropriate concerning all Indian children who are the subject of child custody proceedings.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.39 Invalidation of actions; petition.

Sec. 39. Any Indian child who is the subject of an action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody an Indian child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate the action upon a showing that the action violated any provision of sections 7, 9, 11, 13, 15, 21, 23, 25, 27, and 29 of this chapter.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

712B.41 Severability.

Sec. 41. If any provision of this chapter or its application to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this chapter that can be given effect without the invalid provision or application. For this purpose, the provisions of this chapter are severable.

History: Add. 2012, Act 565, Imd. Eff. Jan. 2, 2013.

Popular name: Probate Code

**MIAMI TRIBE OF OKLAHOMA
CHILDREN'S CODE**

CHAPTER 1 - MIAMI TRIBE OF OKLAHOMA CHILDREN'S CODE

1.1 SECTION 1: AUTHORITY AND PURPOSE

1.1.1

This Code is enacted pursuant to authority vested in the Miami Tribe of Oklahoma pursuant to the Tribal Constitution, Article VI, Section 1.

1.1.2

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

- (a) to provide for the welfare, care and protection of the child/children of the Miami Tribe of Oklahoma;
- (b) to preserve the unity of the family, preferably by separating the child/children from his/her Parent(s) only when necessary;
- (c) to facilitate return of tribal child/children to the jurisdiction of the Miami Tribe of Oklahoma.

1.2 SECTION 2: JURISDICTION

1.2.1

Tribal Proceedings Involving a Miami Tribe of Oklahoma Child.

- (a) The Court has exclusive, original jurisdiction of a proceeding involving a child/children who is an enrolled member of the Miami Tribe of Oklahoma, or is or eligible for enrollment with the Miami Tribe of Oklahoma, and resides within the Miami Tribe of Oklahoma territorial jurisdiction.
- (b) The Court has concurrent jurisdiction of a proceeding involving a child/children who is an enrolled member of the Miami Tribe of Oklahoma, or is or eligible for enrollment with the Miami Tribe of Oklahoma, and resides outside of the Miami Tribe of Oklahoma territorial jurisdiction.

1.2.2

Tribal Proceedings Involving Other Minor Indian Children.

- (a) The Court has concurrent jurisdiction over an Indian child/children who is a member of any other Indian Tribe and resides within the Miami Tribe of Oklahoma territorial jurisdiction, and the child/children is alleged to be a minor(s)-in-need-of-care.

1.2.3

Other Proceedings:

- (a) termination of parental rights
- (b) adoption
- (c) custody
- (d) guardianship

1.2.4

State Proceedings. The Court shall also exercise jurisdiction over:

- (a) a child/children who is an enrolled member of the Miami Tribe of Oklahoma, or is eligible for enrollment with the Miami Tribe of Oklahoma, living either within or outside of the jurisdictional territory of the Miami Tribe of Oklahoma, in proceedings covered by the Indian Child Welfare Act pending in state courts or other tribal courts.

1.2.5

Jurisdiction Over Adults.

- (a) Jurisdiction as a Matter of Law. In any case in which a child/children has come within the jurisdiction of the court, the court shall have authority to exercise jurisdiction over the adults to the extent necessary to make proper disposition of each case, including authority to punish for contempt either in or out of the court's presence.
- (b) Consent to Jurisdiction. Any adult living off/outside of the Miami Tribe's territorial jurisdiction who obtains custody of a child/children, however designated, from the court either personally or as the result of association with an agency or institution to which custody has been awarded, shall be deemed to have consented to the

jurisdiction of the court for all purposes or actions in any way related to such Custody of the child/children.

- (c) Procedures Applicable to Adults. Except when specific procedures are otherwise specified in this Code, all matters concerning adults or the rights of any adult which come before the court need not be handled according to procedures establish by the court, but rather may be handled in an informal manner.
- (d) Termination of Continuing Jurisdiction. Jurisdiction obtained by the court of a child/children under this Code shall continue until the child/children becomes eighteen (18) years of age or the case is dismissed or the underlying Order expires; at which time the continuing jurisdiction of the court shall terminate.

1.3 SECTION 3: DEFINITIONS

1.3.1

"Abandon" means:

- (a) when a Parent(s) or legal Guardian leaves a child without provision for care or support, and the Parent(s) whereabouts cannot be ascertained;
- (b) the Parent(s) has failed, for a period of six (6) consecutive months, to maintain a significant parental relationship with a child/children through visitation or communication in which incidental or token visits or communication are not considered significant;
- (c) the Parent(s) has failed to respond to notice of Deprived Child/Children proceedings after receiving proper service;
- (d) when a Parent(s) or legal Guardian(s) does not provide the proper care of a child/children, or whose home is unfit for a child/children by reason of neglect, abuse, cruelty, or depravity;

"Adjudicatory Hearing" means a hearing to determine whether the allegations of a petition pursuant to this Code, alleging a child/children to be neglected or deprived, in-need-of supervision, or delinquent, are supported by evidence.

"Case Plan" means a written document also known as a "Treatment Plan" stating the services and actions needed to be completed by the Parent(s), Guardian(s), or Custodian(s) before a Deprived Child/Children can be returned home.

"Child" or "Indian Child" (plural "Children" or "Indian Children") means an unmarried person who is under age eighteen (18) and is either a) a citizen of a federally-recognized Tribe, or b) is eligible for enrollment in an Indian Tribe, and is the biological child/children of a member of an

Indian Tribe. For purposes of this Code, child/children shall be interpreted to mean Indian child/children.

"Children's Code" means the Children's Code for the Miami Tribe of Oklahoma.

"Children's Court" means the Miami Tribe of Oklahoma District Court when exercising jurisdiction pursuant to this Code.

"Children's Court Judge" means any duly appointed Judge of the Miami Tribe of Oklahoma District Court when exercising jurisdiction under this Code.

"Custodian" means one who has physical Custody of and who is providing food, shelter, and supervision to a minor(s).

"Child Neglect" means an abandon child/children, or failure or omission of a person responsible for the health, safety or welfare of a child/children, to provide any of the following:

- (a) adequate food clothing, shelter, medical care, or supervision; or who lacks proper parental care through actions or omissions of the Parent(s), Guardian(s), or Custodian(s);
- (b) special care made necessary by the physician or mental condition of the child/children.

"Custody" means the care and control of a child/children.

"Deprived Minor" means a child:

- (a) whose Parent(s), Guardian(s), or Custodian(s) has subjected him to child abuse, or whose Parent(s), Guardian(s), or Custodian(s) has enabled or allowed another to subject the child to child abuse without taking lawful means to stop such child abuse or prevent it from recurring;
- (b) who lacks proper parental care through the actions or omissions of the Parent(s), Guardian(s), or Custodian(s);
- (c) whose environment is injurious to the child's/children's welfare;
- (d) whose Parent(s), Guardian(s), or Custodian(s) fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for the child's/children's health, guidance, or well-being, whether because of the fault of the Parent(s), Guardian(s) or Custodian(s), or because the Parent(s), Guardian(s) or Custodian(s) does not have the ability or resources to provide for the child/children;
- (e) who is homeless due to, or without the fault of, his Parent(s), Guardian(s), or Custodian(s);

- (f) who has been abandon by his Parent(s), Guardian(s), or Custodian(s);
- (g) who is in need of special care or treatment because of the child's/children's physical or mental condition, and the child's/children's Parent(s), Guardian(s) or Custodian(s) is unable or willfully fails to provide such special care and treatment;
- (h) who has been born to a Parent(s) whose parental rights to another child/children have been involuntarily terminated by the court and the conditions which led to the making of the finding, which resulted in termination of the parental rights of the Parent(s) to the other child/children, have not been corrected;
- (i) whose Parent(s), Guardian(s) or Custodian(s) has subjected another child/children to abuse or neglect or has allowed another child/children to be subjected to abuse or neglect and is currently a respondent in a deprived proceeding.

"Disposition" means the final determination of a matter (as a case or motion) by the court.

"Disposition Hearing" means a hearing in which the court must determine what treatment or services should be ordered for the family and/or the child/children, and the placement of the child/children during such period.

"Emergency Custody" means custody of a child/children taken pursuant to this Code with a court order prior to adjudication.

"Emergency Custody Order" means an order that may be issued by the court upon a sworn written statement of facts showing that Probable Cause exists to believe that a minor(s) is a deprived or neglected minor(s).

"Emancipation" means a procedure by which a child/children who is over sixteen (16) years of age and who has, with the real or Parent(s) assent of his Parent(s), demonstrated his independence from his Parent(s) in matters of care, Custody and earnings may petition the court for recognition of such status.

"Emergency Custody" means a child/children taken into protective Custody prior to the filing of a petition for temporary Custody. (Section 26.10)

"Foster Care" means the private residence of a Tribal Resource Parent who provides Foster Care for a child/children.

"Guardian" means an individual who has been appointed by a court with the duty to care for another's person or property.

"Guardian Ad Litem" means an adult appointed by the court to represent the best interests of a minor in any proceeding to which he/she may be a party.

"Indian Child" means any unmarried or un-emancipated person who is under the age of eighteen (18) and is either:

- a. a member of a federally-recognized Indian tribe, or
- b. is eligible for membership in a federally-recognized Indian tribe and is the biological child/children of an enrolled member of an Indian tribe.

"ICW" means Indian Child Welfare program, a branch of the Tribe's social services department.

"Neglected Minor" means a deprived child.

"Parent" includes a natural or adoptive Parent(s), or a Parent(s) established by law.

"Permanency Plan" means a written document that includes the specific steps needed to pursue the identified permanency goal for the child/children.

"Permanent Custody" means court-ordered Custody of an adjudicated deprived child/children whose parental rights have been terminated.

"Presenting Officer" means the attorney designated by Leadership to carry out the functions defined under this Code.

"Probable Cause" exists where the facts and circumstances within a judge's knowledge and of which he/she has reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that the minor is a minor-in-need-of-care.

"Protective Custody" means custody of a child/children taken pursuant to this Code, without a court order.

"Sexual Abuse" includes but is not limited to rape, incest, or lewd or indecent acts or proposals, made to a child/children by any person.

"Shelter Care" means a residential facility which provides care and services for minor(s).

"Termination of Parental Rights" means the end of a legally-recognized parent-child relationship, which may be voluntary or involuntary.

"Tribal Law Enforcement" means the Miami Tribe of Oklahoma Police; or a police officer of a federally recognized tribe.

"Transfer Proceeding" means any proceeding to the court to grant, accept, or decline transfer of any child/children's case from or to the courts of any Indian tribe or state authorized by tribal, federal, or state law.

1.4 SECTION 4: THE COURT SYSTEM

1.4.1

Establishment. There is hereby established for the Miami Tribe of Oklahoma the Miami Tribe of Oklahoma District Court Children's Court to hear and determine matters pursuant to this Code. The Children's Court shall consist of one Judge (Chief Judge) as appointed by the Tribal Business Committee.

1.4.2

Powers and Duties of Children's Court Judge. In carrying out duties and powers specifically enumerate under the Children's Code, the Judge of the court, who shall also serve as the District Court Judge, shall have all powers and duties as the Judge of the Miami Tribe of Oklahoma District Court Children's Court.

1.4.3

Cooperation and Grants. The court is authorized to cooperate fully with any Federal, State, Tribal, public or private agency in order to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this Code (subject to the approval by the Tribal Council of expenditure of funds).

1.4.4

Social Services. The court shall utilize such social services as may be furnished by any Tribal, Federal, or State agency, PROVIDED that it is economically administered without unnecessary duplication and expense.

1.4.5

Contracts. The court may negotiate contracts with Tribal, Federal, or State agencies and Departments on behalf of the Tribal Business Committee for the care and placement of minors whose status is adjudicated under this Code, subject to the approval of the Tribal Council before expenditure of funds.

1.4.6

Transfer From State Courts. The Court may accept or decline state court transfers of child/children Custody Proceedings.

1.4.7

Disqualification. In the event that a Tribal Judge is unable to hear and determine a matter due to absence, illness, or conflict of interest, the Tribal Business Committee shall have authority to appoint a substitute Judge.

1.5 SECTION 5: THE INDIAN CHILD WELFARE WORKER

The Tribal Indian Child Welfare worker shall be an employee of the Miami Tribe of Oklahoma, Social Services Department and shall have the following authority and duties:

1.5.1

To accept referrals regarding minor(s) alleged to be in need of care.

1.5.2

To investigate the circumstances of a minor(s) alleged to be in need of care and to seek the assistance of Tribal Law Enforcement Officer's, if necessary.

1.5.3

To make such other investigations as ordered by the Children's Court or authorized by this court.

1.5.4

To develop case plans concerning any minor(s), if an investigation supports an administrative or judicial finding that the minor(s) is in need of care.

1.5.5

To make reports to the Children's Court and to provide information or referrals to recognized child welfare agencies having an interest or service role concerning a tribal child/children.

1.5.6

To maintain a confidential system of records, subject to disclosure to a non-party only upon order of the Children's Court.

1.5.7

Subject to the approval of the Tribal Business Committee, negotiate service agreements with other recognized child welfare agencies.

1.5.8

Pending a determination of the minor(s) status to prevent risk of immediate harm by or to the minor(s), take into emergency Custody and provide emergency placements.

1.6 SECTION 6: GUARDIAN AD LITEM

1.6.1

Appointment. The court, under any proceeding(s) authorized by this Code, may appoint, for the purposes of that proceeding(s), a Guardian Ad Litem (G.A.L.) for a minor(s), except where the Court finds that a Parent(s), Guardian(s), or Custodian(s), is willing and able to effectively represent the best interests of the minor(s).

1.6.2

Qualifications. The G.A.L. must be familiar with the rights of child/children and the provisions of this Code.

1.6.3

Duties. The G.A.L. shall, represent the minor(s) best interests in any proceeding required by the court and make recommendations to the court on disposition.

1.6.4

The court shall compensate the G.A.L. if fees are invoiced. The court may order one or more of the parties involved in the case to reimburse the court for the G.A.L. fees. If more than one party is deemed to be responsible for G.A.L. fees, the court shall determine to what extent each party is responsible and the time frame to reimburse the court for the G.A.L. fees.

1.7 SECTION 7: PRESENTING OFFICER

1.7.1

The Miami Tribe of Oklahoma Children's Court Presenting Officer position shall be filled by the tribe's attorney whom shall carry out the duties and responsibilities set forth in this Code.

1.7.2

The Presenting Officer's qualifications shall be the same as the qualifications for the official who acts as prosecutor for the adult tribal court.

1.7.3

The Presenting Officer shall represent the Miami Tribe of Oklahoma in all proceedings under this Code.

1.8 SECTION 8: PARTIES

1.8.1

In any proceeding(s) the following parties shall be entitled to participate:

- (a) the minor(s) and the appointed G.A.L. or other representative;
- (b) the minor(s) Parent(s), Custodian(s), or Guardian(s).
- (c) the Miami Tribe of Oklahoma District Court.
- (d) any other tribal government or non-tribal child welfare agency having an independent legal interest in the welfare of the minor(s).

1.8.2

A member of the extended family, upon a motion and determination by the Children's Court that the interests of the minor(s) will be best protected by allowing such participation may intervene in a proceeding under this Code.

1.8.3

Any party may be represented by counsel of his or her own choosing at the parties' own expense. The Miami Tribe District Court or Children's Court shall not be required to provide counsel for any party, except in situations where it is ordered by the court.

1.8.4

Any party or counsel appearing in a proceeding shall be permitted access to and inspection of court records, subject to such disclosure limitations as the court may provide.

1.9 SECTION 9: HEARINGS

1.9.1

Private and Closed. All hearings under this Code shall be separate from other proceedings and shall be private and closed to the public. Only the parties, their attorneys, witnesses, and other persons requested by the parties to appear and approved by the court may be present at the hearing.

1.9.2

Denial of Allegations. If the allegations are denied, the court shall hear the evidence and decide whether or not the allegations are proved.

1.9.3

Admission of Allegations. The court must find that an admission is voluntarily and knowingly given.

1.9.4

Standard of Proof. The standard of proof for a deprived or neglected minor(s) adjudicatory hearing shall be proof beyond a reasonable doubt.

1.9.5

Dismissal of Disposition. The court will dismiss the petition if the allegations are not established by the required standard of proof; the court will proceed to the disposition hearing if the allegations are established by a valid admission or by the required standard of proof.

1.10 SECTION 10: INITIAL CONTACT – REFERRALS/COMPLAINTS

1.10.1

Referrals. All information, complaints, notices, reports, oral referrals, and inquiries concerning a minor(s) alleged to be deprived/neglected, shall be forwarded or relayed to the Indian Child Welfare worker, who is designated contact person for receipt of such.

1.10.2

Complaint. A complaint may be filed by a person who has knowledge (Tribe filings see Sec. 17) of the facts alleged. The complainant shall sign the complaint. The complaint shall contain:

(a) a citation to the specific statutory provisions of this Code which gives the Children's Court jurisdiction of the proceedings; and

(b) name, age, address, and tribal affiliations of the minor(s) who is the subject of the complaint.

(c) a plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged events occurred or circumstances arose.

1.11 SECTION 11: TEMPORARY EMERGENCY CUSTODY

1.11.1

If it appears that the child/children is in immediate danger of physical or emotional harm, a minor(s) may be taken into Temporary Emergency Custody by the Indian Child Welfare worker or Tribal Law Enforcement if a petition for Temporary Emergency Custody is filed with the court and an order is issued by the Judge.

1.11.2

Temporary Emergency Custody Order. Upon a sworn written statement of facts showing that Probable Cause exists to believe that a minor(s) is a deprived or neglected minor(s), the Court may issue a Temporary Emergency Custody Order.

1.11.3

Search Warrant. The court may issue a warrant authorizing Tribal Law Enforcement, to search for a minor(s) if there is Probable Cause to believe that the minor(s) is within the court's jurisdiction and an emergency order has been issued for the alleged deprived or neglected minor(s).

1.11.4

Upon taking a minor(s) into Custody, the person(s) having Custody of the minor(s) shall make immediate and repeated efforts to notify the minor(s) Parent(s), Guardian(s), or Custodian(s) that the minor(s) is in Custody and of the pending hearing.

1.11.5

Within fourteen (14) days after taking a minor(s) into Custody, the minor(s) shall be presented to the Children's Court for a determination whether there is Probable Cause to believe that the minor(s) is neglected or deprived.

1.12 SECTION 12: SHELTER CARE OR FOSTER CARE

1.12.1

Upon a determination that there is Probable Cause to believe that the minor(s) is deprived or neglected, or upon a determination by the Indian Child Welfare worker that the minor(s) requires custodial care pending a Probable Cause hearing, a minor(s) may be placed in Shelter Care or Foster Care.

1.12.2

The Indian Child Welfare worker shall not place a minor(s) in Shelter Care or Foster Care unless a Petition is filed in accordance with Section 17 of this Code, or the Children's Court orders that a minor(s) is taken into Custody pursuant to Section 10 (Complaint is filed) of this Code.

1.12.3

If the minor(s) Parent(s), Guardian(s), or Custodian(s) has not been contacted, the Indian Child Welfare worker shall make immediate and recurring efforts to inform him or her that the minor(s) has been taken into Custody and shall release the minor(s) to the Parent(s), Guardian(s), or Custodian(s), unless Shelter Care or Foster Care is immediately necessary.

1.12.4

If a minor(s) is not released to his Parent(s), Guardian(s), or Custodian(s), the Indian Child Welfare worker shall place the minor(s) in Shelter Care or Foster Care, pending the preliminary inquiry.

1.12.5

If a minor(s) is not released to his Parent(s), Guardian(s) or Custodian(s), the Indian Child Welfare worker shall immediately explore alternative preadjudication custody arrangements and prepare recommendations for temporary care and Custody for presentation at the preliminary inquiry.

1.13 SECTION 13: BASIC RIGHTS

1.13.1

Deprived or Neglected Child; Right to an Attorney. In a deprived or neglected minor(s) proceeding, the Parent(s), Guardian(s), or Custodian(s) shall be informed of their rights to an attorney at their own expense.

1.13.2

Guardian Ad Litem (G.A.L.). The Court, at any stage of proceeding, may appoint a G.A.L. for a minor(s) who is a party, if the minor(s) has no Parent(s), Guardian(s), or Custodian(s) appearing on behalf of the minor(s) or if their interests conflict with those of the minor(s).

1.13.3

Hearings: Explanation of Rights at Preliminary Inquiry/First Appearance. When a minor(s) is alleged to be deprived or neglected, the Parent(s) shall be informed by the court of:

- (a) the allegations against him/her;
- (b) the right to an attorney (at own expense or through the Miami Tribe of Oklahoma District Court per this Code);
- (c) the right to testify and that statement made by him/her may be used against him/her;
- (d) the right to cross-examine witnesses;
- (e) the right to subpoena witnesses on his/her own behalf; and
- (f) the possible consequences if the allegations of the complaint are found to be true.

1.14 SECTION 14: INVESTIGATION BY THE INDIAN CHILD WELFARE WORKER

1.14.1

The Indian Child Welfare worker shall make an investigation prior to the preliminary inquiry/first appearance to determine whether the interests of the minor(s) and the public require that further action be taken. Upon the basis of this investigation, the Indian Child Welfare worker may:

- (a) recommend that no further action be taken; or
- (b) suggest to the minor(s), his/her Parent(s), Guardian(s), or Custodian(s) that they appear for an informal hearing pursuant to Section 16 of this Code; or
- (c) recommend that the Presenting Officer file a Petition pursuant to Section 17 of this Code in the Children's Court to initiate further proceedings. The Petition (i.e., Petition to Adjudicate the Minor(s) Deprived) shall be filed at the preliminary inquiry if the minor is in Shelter Care or Foster Care. If the minor has been previously released to his Parent(s), Guardian(s), or Custodian(s), the Petition shall be filed within ten (10) days of the child's/children's return.

1.14 SECTION 14: PRELIMINARY INQUIRY

1.14.1

If a minor is placed in Shelter Care or Foster Care by the Indian Child Welfare Worker pursuant to Section 12 of this Code, the Children's Court shall conduct a preliminary inquiry within fourteen (14) days, for the purpose of determining:

(a) whether Probable Cause exists to believe the minor is a minor-deprived or neglected; and,

(b) whether continued Shelter Care or Foster Care is necessary pending further proceedings.

1.14.2

If a minor(s) has been released to his Parent(s), Guardian(s), or Custodian(s), the Children's Court shall conduct a preliminary inquiry within fourteen days (14) days after receipt of a Petition for the sole purpose of determining whether Probable Cause exists to believe the minor(s) is a Deprived or Neglected child/children.

1.14.3

Basic Rights. At the beginning of the preliminary inquiry the minor(s), the Parent(s), Guardian(s) or Custodian(s) shall be advised of their basic rights under Section 1.13.

1.14.4

Presence of Minor's Parent(s), Guardian(s), or Custodian(s). If the minor(s) Parent(s), Guardian(s), or Custodian(s) is not present at the preliminary inquiry, the court shall determine what efforts have been made to notify and to obtain the presence of the Parent(s), Guardian(s), or Custodian(s). If it appears that further efforts are likely to produce the Parent(s), Guardian(s), or Custodian(s), the court shall recess until the next scheduled court date and direct the Indian Child Welfare worker to make continued efforts to obtain the presence of a Parent(s), Guardian(s), or Custodian(s).

1.14.5

Criteria for Shelter Care or Foster Care. If a minor(s) is placed in Shelter Care, or Foster Care, the court shall conduct a preliminary inquiry within fourteen days (14) days for the purpose of determining if criteria for Shelter Care or Foster Care exist. Criteria for Shelter Care or Foster Care exists if the court finds:

(a) Probable Cause exists to believe the minor(s) is a Deprived or Neglected minor(s); and

(b) the minor(s) is suffering from an illness or injury, and no Parent(s), Guardian(s), or Custodian(s), or other person(s) is providing adequate care of him/her;

(c) the minor(s) is in immediate danger from his/her surroundings, and removal is necessary for his/her safety or well-being;

(d) the minor(s) will be subject to inquiry by others if not placed in the Custody of the court;

(e) the minor(s) has been abandoned by his/her Parent(s), Guardian(s), or Custodian(s); or

(f) no Parent(s), Guardian(s), Custodian(s) or other person is able or willing to provide adequate supervision and care for the minor(s).

1.15 SECTION 15: NOTICE

1.15.1

Notice of the preliminary inquiry shall be given to the Parent(s), Guardian(s), or Custodian(s) as soon as the time for inquiry has been established.

1.15.2

The Notice shall contain:

(a) the name of the Court;

(b) the title of the proceeding;

(c) a brief statement of the alleged circumstances upon which the minor(s)-in-need-of-care allegation is based; and

(d) the date, time, place and purpose of the preliminary inquiry.

1.15.3

The notice shall be delivered by a Tribal Law Enforcement Officer, or an appointee of the court.

1.16 SECTION 16: INFORMAL HEARING

1.16.1

The Indian Child Welfare worker may hold an informal conference with the minor(s) and the minor's Parent(s), Guardian(s), or Custodian(s) to discuss alternatives to the filing of the petition if:

- (a) the admitted facts bring the case within the jurisdiction of the Children's Court; and
- (b) an informal adjustment of the matter would be in the best interest of the minor(s) and the Miami Tribe District Court, and
- (c) the minor(s) and his/her Parent(s), Guardian(s), or Custodian(s), consent to an informal adjustment with knowledge that the consent is voluntary and revocable at will.

1.16.2

Notice of the informal hearing shall be given to the minor(s) and his/her Parent(s), Guardian(s), or Custodian(s) and their counsel, if applicable, as soon as the time for the hearing has been established. The Notice shall contain:

- (a) the name of the court; and
- (b) the title of the proceedings; and
- (c) a brief statement of the alleged circumstances upon which the minor(s)-in-need-of-care allegation is based; and
- (c) the date, time and place of the informal hearing.

1.16.3

The Notice shall be delivered by the Tribal Law Enforcement Officer or the Indian Child Welfare worker or a designee. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

1.16.4

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing.

1.16.5

At the informal hearing, the Indian Child Welfare worker may refer the minor and the Parent, Guardian, or Custodian to a community agency for needed assistance or recommend that the Presenting Officer file a petition pursuant to Section 1.18 of this Code.

1.16.6

The Indian Child Welfare Worker shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying this situation, which shall be signed by the Parents and the child, if over 12 years of age.

1.16.7

Any informal adjustment period shall not exceed one (1) year.

1.17 SECTION 17: PETITION BY TRIBE

1.17.1

Proceedings under the Children's Code shall be instituted by a Petition filed by the Presenting Officer on behalf of the Miami Tribe District Court and in the interest of the minor(s). The petition shall state:

- (a) the name, birth date, tribal affiliations, and residence of the minor(s);
- (b) the names and residences of the minor's Parent(s), Guardian(s), or Custodian(s);
- (c) a citation to the specific provision of this Code which gives the Children's Court jurisdiction of the proceedings; and
- (d) if the minor(s) is in Shelter Care/Foster Care, the place of Shelter Care/Foster Care and the time he/she was taken into Custody.

1.17.2

Prospective adoptive Parent(s) are authorized to file an adoption petition upon completion of all pre-adoptive reports.

1.18 SECTION 18: PRE-HEARING PROCEDURE- NOTICE

1.18.1

Upon the filing of a Petition (Section 1.18) or Complaint (Section 1.10), the Court shall order Notice delivered or mailed to the parties enumerated in Section 1.8.1

1.18.2

The Notice shall contain the name, date of birth and current residence of the child/children, the name and address of the minor's Parent(s) and the circumstances upon which the complaint is based.

1.18.3

The notice shall be accompanied by a copy of the Petition.

1.18.4

The Notice shall contain the time, place, date, and purpose of the Hearing.

1.18.5

Notice may be delivered in person or by regular mail at a place calculated to give the person(s) notified reasonable time to respond. If by mail, the Notice shall be mailed no less than five (5) days before the Hearing. If delivered in person it shall be delivered no less than three (3) days before the Hearing.

1.19 SECTION 19: SUMMONS

1.19.1

Issuance. Where a Petition alleges violation of a tribal ordinance by a minor(s), the court shall cause a Summons to be issued to:

- (a) the minor(s);
- (b) the minor's Parent(s), Guardian(s), or Custodian(s); and
- (d) any person(s) the court believes necessary for the proper adjudication of the Hearing that is within the court's jurisdiction.

1.19.2

Answer. The Summons shall require the person to whom directed to appear before the Court at a specified date and time and require an answer to the allegations.

1.19.3

Petition. A copy of the Petition shall be attached to the Summons.

1.19.4

Service. The summons shall be delivered personally by a Tribal Law Enforcement Officer or appointee of the Court. If the summons cannot be delivered personally, the Court may deliver the Summons by registered mail. If the Summons cannot be delivered personally or by registered mail, the Summons may be by publication.

1.19.5

Time Limit. Summons shall be issued at least five (5) days before the specified appearance.

1.20 SECTION 20: ADJUDICATORY HEARING

1.20.1

An Adjudication Hearing shall be held at the next regularly scheduled court date following receipt of the Petition by the Court.

1.20.2

The Children's Court shall hear testimony concerning the circumstances, which give rise to the complaint.

1.20.3

If the allegations of the Petition are sustained by clear and convincing evidence, the Children's Court may find the minor(s) to be a Deprived or Neglected minor(s) and may proceed immediately to the Disposition Hearing. If any party requests, a Disposition Hearing may be scheduled at the next regularly scheduled court date.

1.20.4

A finding that a minor(s) is a Deprived or Neglected minor(s) constitutes a final order for purposes of appeal.

1.21 SECTION 21: PRE-DISPOSITION REPORT – CASE PLAN

1.21.1

No less than twenty-four (24) hours prior to a Disposition Hearing, the Indian Child Welfare worker shall file with the Court a pre-disposition report/Case Plan. The Case Plan shall, in detail, describe:

- (a) services that are appropriate and available from or through the Miami Tribe District Court and how such services have or have not been effective;
- (b) social history of the child/children;
- (c) a recommended plan of treatment, rehabilitation, and care that preserves the least restrictive environment appropriate for the child/children and is most likely to preserve and protect the child's/children's family unit;
- (d) care, service, or treatment providers under the plan; and
- (e) the needs of the child/children and how the objectives of the plan will meet those needs.

1.21.2

In the event that out-of-home placement of the child is recommended, the Case Plan shall contain, or be supplemented within thirty (30) days by a report containing the following:

- (a) services available through the Miami Tribe District Court for and provided in an effort to prevent the out of home placement;
- (b) services available through the Miami Tribe District Court to facilitate a return to the minor(s) home;
- (c) description of the minor(s) previous or planned future placements and how such placement has met or will meet the needs or facilitate the return home of the child/children;
- (f) assessment of the appropriateness of any out of home placement and the goals to be met by such placement; and

- (e) conditions upon which the minor(s) will be returned to the home including any changes in the conduct of the child/children or Parent(s) or in the conditions of the home.

1.22 SECTION 22: DISPOSITION HEARING

1.22.1

A Disposition Hearing may immediately follow the Adjudicatory Hearing or may be held at the next regularly scheduled court date, following the Adjudicatory Hearing. The court shall conduct the Hearing for the purpose of determining the proper disposition of the minor(s). The court shall enter a written judgment setting forth the findings, decision, and disposition.

1.22.2

The Disposition Order shall recite the following elements:

- (a) appearances at the Hearing;
- (b) disposition from among the alternatives provided by law; and
- (d) placement of the minor(s), except that the placement may be made after the Hearing and upon Notice to all parties, the location of the child/children shall be made a part of the record. The Court may limit disclosure of the minor(s) whereabouts if necessary to protect the minor(s).

1.22.3

In making disposition the Court may exercise jurisdiction over any adult within the Court's jurisdiction in aid of its orders.

1.23 SECTION 23: DISPOSITIONS

1.23.1

Deprived or Neglected. If a minor(s) has been adjudged a Deprived or Neglected Minor(s), the court may assume or assign legal Custody of the minor(s) and may make any of the following dispositions:

- (a) permit the minor(s) to remain with his/her Parent(s), Guardian(s), or Custodian(s), subject to such limitations and conditions as the Court may prescribe, which may include counseling, restitution, community service, treatment, or other conditions or conduct;

(b) place the minor with an extended family member subject to such limitations and conditions as the Court may prescribe;

(c) place the minor(s) in a Foster Home which has been licensed or approved by the Miami Tribe District Court, subject to such limitations and conditions as the Court may prescribe;

(d) place the minor(s) in Shelter Care or Foster Care facilities designated by the Court;

(e) transfer legal Custody to an agency (i.e., the Tribe's Indian Child Welfare worker) responsible for the care of a Deprived or Neglected Minor(s) or to an extended family member or other person who the Court finds to be qualified to receive and care for the child/children;

(f) appoint a Guardian(s) for the minor(s) under supervision of the Court;

(g) recommend that termination proceedings begin.

(h) The Miami Tribe District Court and the Tribe's ICW officer shall maintain an active role in all guardianship cases.

1.23.2

Termination of Parental Rights. If parental rights to a child/children are terminated, the Court shall:

(a) place the minor(s) with an extended family member which has been approved by the Miami Tribe District Court; or

(b) place the minor(s) in a Foster Home or Shelter Care facility which has been approved by the Miami Tribe District Court; or

(c) proceed to the adoption section of this Code.

1.23.3

Adoption. The preference of placement in adoption of a minor(s) shall be:

(a) extended family member(s);

(b) a member or person(s) eligible for membership in the Miami Tribe of Oklahoma;

(c) a member of another Indian Tribe; and

(d) if this order or preference cannot be met, then placement may be made with any person who has knowledge of the child's/children's tribal affiliation and his/her special needs.

1.24 SECTION 24: MODIFICATION OF DISPOSITION ORDERS

A disposition order may be modified as to conditions or placement, or dismissed upon the following terms:

1.24.1

Modification. A party may file a Petition for Modification of an existing order in accordance with Section 18, which shall allege the reasons for the proposed change in conditions or placement under the existing order. If the Court finds that it is in the best interest of the child/children to make such modification, it shall enter orders accordingly.

1.25 SECTION 25: PARENTAL RIGHTS

1.25.1

Termination of Parental Rights. A Termination of Parental Rights Hearing shall be held at the next regularly scheduled court date following the filing of a Petition to terminate pursuant to Section 18 of this Code. The Court shall conduct the Hearing for the purpose of determining whether parental rights should be terminated based upon a showing of:

- (a) abandonment of the child/children;
- (b) willful and repeated risk to the child/children of death, disfigurement, or impairment of bodily functions;
- (c) willful and repeated acts of Sexual Abuse;
- (d) relinquishment of parental rights acknowledged before the Court; or
- (e) failure to correct the conditions that led to court ordered out of home placement.

1.25.2

Pre-Termination of Parental Rights. If the Court determines that grounds for termination are proven beyond a reasonable doubt, it shall order a Disposition Hearing pursuant to Section 23. The Indian Child Welfare worker shall prepare and present a written report to the Court, at least

three (3) days before the Disposition Hearing. The report shall contain the opinions of all professionals consulted and their recommendations to the Court.

1.25.3

Relinquishment. Parental rights may be relinquished by a Parent in writing, if signed by the Parent in the presence and with approval of the Children's Court. Relinquishment shall not be accepted or acknowledged by the court prior to ten (10) days after birth of the child/children.

1.26 SECTION 26: ADOPTION

1.26.1

Consent Not Required. Written consent to an adoption is not required if:

- (a) the Parent(s) has abandoned his or her child/children;
- (b) the Parent(s) rights have been terminated;
- (c) the Parent(s) has relinquished his or her Parental rights; or
- (d) the Parent(s) has been declared incompetent.

1.26.2

Consent Required. Except as provided above, written consent to an adoption is required of:

- (a) the biological or adoptive mother; or
- (b) the biological, adoptive, or acknowledged father; or
- (c) the Custodian(s), if empowered to consent; or
- (d) the court, if the Custodian(s) is not empowered to consent; and
- (d) the minor(s), if he/she is over twelve (12) years of age.

1.26.3

Execution of Consent to Adopt. Written consent to an adoption shall be executed in writing and acknowledged in person before the court. Consent shall not be accepted or acknowledged by the court prior to ten (10) days after birth of a child/children.

1.26.4

Withdrawal of Consent to Adopt. Written consent to an adoption cannot be withdrawn after the entry of an Order of adoption. Upon a showing at a Hearing before the Court that the consent was obtained by fraud, duress, or coercion, consent may be withdrawn prior to the final Order of Adoption.

1.26.5

Pre-Petition Report on Prospective Adoptive Parent. Within thirty (30) days of an Application for Adoption, the Indian Child Welfare worker or Guardian Ad Litem shall investigate the prospective Parent(s) and file a written report with the Court with recommendations for or against placement with the applicant.

1.26.6

Pre-Petition Report on Minor. Within thirty (30) days of a court ordered investigation of a minor(s) to be adopted, the Indian Child Welfare worker or Guardian Ad Litem shall file a written report with the Court.

1.26.7

Adoption Hearing. An adoption Hearing shall be held within sixty (60) days of receipt of an Application for Adoption from the prospective Parent(s). The court shall conduct the Hearing to determine if it is in the best interest of the minor(s) to be placed with the applicants. In determining the best interest of the minor(s), the Court shall examine:

- (a) validity of written consent;
- (b) termination of parental rights order;
- (c) length of time of the minor(s) ward ship by the court;
- (d) special conditions of the minor(s);
- (e) Parent communication with the minor(s);
- (f) minor(s) consent to adoption, if the minor(s) is over twelve (12) years of age;
- (g) pre-petition reports; and
- (g) order of preference of placement.

1.26.8

Conditional, Defeasible, or Postponed Adoption. An adoption may be ordered by the Children's Court upon conditions that are reasonable and calculated to preserve the minor(s) tribal relationship. Such orders may include visitation rights, retained supervision or postponing final adoption orders pending proof of good faith in compliance with conditions established by the Court.

If it appears to be in the child's/children's best interest, the Court may postpone confirmation of the adoption for a period up to two (2) years to determine whether reasonable and necessary conditions for the welfare of the minor(s) are being met. If such conditions are met, the Court may then confirm the adoption without further hearing. If such conditions have not been met, the Court may issue an Order to show cause why the adoption should not be vacated, and may extend the period of supervision. Unless previously vacated by Order of the Court, an adoption shall be confirmed by the death of either natural Parent(s) or adoptive Parent(s), or by the death or attainment of eighteen years of age of the adopted child/children.

1.27 SECTION 27: FOREIGN PROCEEDINGS

1.27.1

Receipt of Notice. The Tribal Agent for service of Notice of state court Child Custody proceedings, as defined by the Indian Child Welfare Act, shall be the Indian Child Welfare worker.

1.27.2

Open File and Investigation. The Indian Child Welfare worker shall open a case file, conduct an investigation, and continue to monitor all cases in which the Miami Tribe District Court receives Notice of a foreign proceedings.

1.27.3

Intervention. ICW shall determine whether or not to intervene in a foreign proceeding. Intervention shall occur through filing an Entry of Appearance and Motion to Intervene in the foreign proceeding by ICW or the Miami Tribe's Attorney.

1.27.4

Intervention in State Court Proceedings. The Miami Tribe may intervene in State Court Child Custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings.

1.27.5

Petition for Transfer. The tribal Petition for Transfer shall be filed by the ICW or the Presenting Officer.

1.27.6

Petition to Accept Transfer. A Petition to Accept Transfer and Order shall be filed by the Presenting Officer once the foreign court approves transfer of jurisdiction to the Miami Tribe of Oklahoma Tribal Court.

1.27.7

Minors In Need of Care Application and Adjudicatory Hearing. Upon receipt of transfer of jurisdiction from State Court, the Indian Child Welfare worker shall file a Minor(s)-In-Need-of-Care Application. An Adjudicatory Hearing shall be held at the next regularly scheduled court date.

1.28 SECTION 28: RECORDS

1.28.1

Records of the Miami Tribe and Miami Tribe District Court concerning a minor(s) under the Code shall be confidential.

1.28.2

In any proceeding requiring action or consideration of the Tribal Council, any meeting, action, or record shall require such measures as will preserve the confidentiality of the matter, including but not limited to executive session, identification of persons by initials, and limitation of participants and advisers.

**CONSTITUTION
OF THE
MIAMI TRIBE OKLAHOMA**

PREAMBLE

We, the Miami Indians of Oklahoma, for the purpose of preserving our cultural heritage, promoting the general welfare of our people and taking further advantage of the opportunities for self determination and economic independence, as provided under the Thomas-Rogers Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967), hereby adopt the following revised Constitution and By-Laws which shall supersede the Constitution and By-Laws of the Miami Tribe, approved by the Secretary of the Interior on August 16, 1939.

ARTICLE I....NAME

The name of this tribal organization shall be the Miami Tribe of Oklahoma.

ARTICLE II....TERRITORY AND JURISDICTION

The authority and jurisdiction of the Miami Tribe of Oklahoma shall extend to all the territory within the boundaries now known as MIAMI LANDS, which include land in Northeast Oklahoma and the original Miami Reservation in Eastern Kansas, and to all lands which may be acquired for the Miami Tribe by the United States Government or which may be acquired by the Miami Tribe for its land base and to all Indian Country of the Miami Tribe and its citizens as of now or hereafter as defined by Federal law. The Miami Tribe of Oklahoma may exercise its authority and Jurisdiction outside the territory above described to the fullest extent not prohibited by Federal law.

ARTICLE III....MEMBERSHIP OF TRIBE

Section 1. The membership of the Miami Tribe of Oklahoma shall consist of the following persons:

(a) All persons of Miami Indian blood whose name appears on the official census roll of the Tribe as of January 1, 1938.

(b) All persons of Miami Indian blood whose name appears on the adjustment rolls of 1936, 1938, 1939, 1940, 1941, 1942, and 1943 or who have been approved for membership as of the date of approval of this Constitution by the Secretary of Interior.

(c) Any person, who has blood ties through ancestry of the above mentioned Rolls and who may not have a direct parent enrolled as a Miami; and who chooses to affiliate with the Miami Tribe, provided such person is not a member of any other Federally recognized Tribe, may apply for membership.

(d) Any child born of a marriage between a member of the Miami Tribe and a member of any other Indian Tribe who chooses to affiliate with the Miami Tribe.

(e) Any child born of a marriage between a member of the Miami Tribe and any other person, if such child is permitted to membership by the General Council of the Miami Tribe.

(f) Any person of Miami Indian blood and/or blood descendant thereof, who relocated to Kansas who had been issued Restricted Land Patents to land within the Miami Reservation in Kansas Territory as stipulated under the Second Article of the Treaty With The Miami, dated June 5, 1854, and approved by the Third Section of an Act of Congress dated, June 12, 1858, or any person listed in the La Cygne Journal, in 1871, whose names appears as an Indian Head Right, who makes application, may be admitted to membership in the Miami Tribe of Oklahoma.

Section 2. The Miami Business Committee shall have the power to prescribe rules and regulations, subject to the approval of the Secretary of the Interior, covering future membership, including adoptions and the loss of membership.

Section 3. No member of another Tribe shall be eligible for membership in the Miami Tribe of Oklahoma; provided, however, the following disqualification does not apply to persons who acquired membership in the Miami Tribe of Oklahoma before the date of approval of this Constitution by the Secretary of Interior.

Section 4. Any person who has been rejected for membership may file an appeal to the Miami General Council whose decision shall be final. The Business Committee shall enact an ordinance for such appeals.

ARTICLE IV....MEMBERSHIP OF COUNCIL

The supreme governing body of the Miami Tribe shall be the Miami General Council. The Membership of the Council shall consist of all members of the Miami Tribe of Oklahoma eighteen (18) years of age and older.

ARTICLE V....OFFICERS

The officers of the Tribe shall be the Chief, Second Chief, Secretary-Treasurer and two Councilpersons who shall be elected as provided in Article VIII Elections.

ARTICLE VI....COMMITTEES

Section 1. There shall be a Business Committee which shall consist of the Officers of the Tribe. The Business Committee shall have the power to appoint subordinate committees and representatives, enact resolutions and ordinances and to employ legal counsel, and to transact business and otherwise speak or act on behalf of the Tribe in all matters on which the Tribe is empowered to act, except as specifically reserved herein. The exercise of aforementioned powers shall be subject to limits as imposed by any applicable Federal laws. The term of office for the Business Committee shall be three years.

Section 2. The Grievance Committee shall consist of five (5) members who shall be elected by the Miami General Council and who shall not be members of the Business Committee. This Committee shall choose, from within its membership, a Chairman and a Secretary. The term of office shall be for three (3) years. The Business Committee shall enact an ordinance which shall establish the duties of its members and its procedures.

(a) Meetings of the Grievance Committee may be called by the Chairman and shall be called if a written request is received bearing the signature of at least three (3) members of the Business Committee or if a valid petition is received signed by at least seventy-five (75) members of the Miami General Council. The Business Committee shall enact an ordinance for a valid petition.

(b) The Grievance Committee shall have the responsibility to determine disputes, by a vote of at least three (3) members. If the petitioner so desires, the decision of the Grievance Committee may be appealed to the Business Committee. A final appeal may be presented to the Miami General Council at a Special called meeting for the purpose of settling the dispute. The decision of the Miami General Council shall be final. The Business Committee shall enact an ordinance for such appeals.

ARTICLE VII...BILL OF RIGHTS

The Miami Tribe, in exercising its powers of self-government, shall not take any action which is in violation of the laws of the United States as the same shall exist from time to time respecting civil rights and civil liberties of persons. This article shall not abridge the concept of self-government or the obligations of the members of the Miami Tribe to abide by this Constitution and the ordinances, resolutions, and other legally instituted actions of the Miami Tribe. The protections guaranteed by the Indian Civil Rights Act of 1968 (82 Stat. 78) shall apply to all members of the Miami Tribe.

ARTICLE VIII...JUDICIAL BRANCH

Section 1. Until such time as the Business Committee determined that the Tribe is financially and otherwise prepared to maintain a separate Tribal Court, the judicial authority of the Tribe shall be exercised by the Court of Indian Offenses. The jurisdiction of the Court of Indian Offenses shall include, but not be limited to, civil and criminal jurisdiction. When the Business Committee determines that the Tribe is prepared to begin exercising its right to judicial authority, it shall notify the Court of Indian Offenses of such intentions by transmitting a Resolution to that effect, and copies of the following:

- (a) a copy of the judicial ordinance,
- (b) a plan for establishing the Tribal Court, and
- (c) a timetable and procedure for orderly transition of pending cases.

In line with the above provisions, the judicial authority of the Tribe will, thereafter, be exercised by the Tribal Judicial Ordinance acquired before assumption of such jurisdiction. If, because of financial or other reasons it is not appropriate for the Tribe to continue the operation of a Tribal Court, the Business Committee may restore jurisdiction to the Court of Indian Offenses, upon formal Resolution

thereof.

ARTICLE IX....ELECTIONS

Section 1. Regular elections of officers and elected committee members shall be held on the first day of the Annual Meeting of the General Council, as provided for in Article III of the By-Laws, after the ratification of the Constitution revision. The first such election shall be held at the first Annual Meeting following ratification hereof. For the purpose of providing for staggered terms of office; Officers to be elected at the first meeting shall include the Secretary/Treasurer and two (2) members of the Grievance Committee, at the second Annual Meeting following ratification, the Second Chief, one (1) member of the Grievance Committee and one (1) Councilperson shall be elected. The Chief, a second Councilperson and the remaining two (2) members of the Grievance Committee shall be elected at the third Annual Meeting. Thereafter each officer shall be elected upon completion of stated term.

Section 2. The term of office for elected officials shall be three (3) years, provided that present officers shall serve until their successors have been elected as provided in Section 1 above.

Section 3. Nominations shall be made from the floor. Elections shall be by written secret ballot. Where there are more than two candidates for the same office and no one receives a majority of the vote, the low candidate shall be eliminated and the voting shall proceed until one candidate receives a majority of votes being cast. The newly elected officers shall be installed immediately thereon.

Section 4. The Miami Business Committee shall enact an ordinance to govern on going voter registration, majority vote, secret ballot, absentee voting as well as procedures for settling election disputes and appeal procedures.

ARTICLE X....VACANCIES

Except for succession of Second Chief to the office of Chief, as provided in the By-Laws, vacancies in any elective office, due to the death of any member, upon written resignation, upon conviction of a felony, has ceased to physically reside within the required area, as noted in Article II, Section 1 of the By-Laws, and/or has been absent without being excused by such respective body, for three (3) consecutive regular or special meetings, shall be filled by appointment of the Business Committee. Said appointment shall be made within thirty (30) days at any regular or special Business Committee meeting, and said appointee shall serve until the next regular election. At such time, a replacement shall be elected to fill that vacancy for the unexpired portion of the term for office.

A vacancy for the general purpose of this Article means that the office is unoccupied, and that there is no incumbent who has a lawful right to hold said office.

ARTICLE XI....RECALL AND REMOVAL OF OFFICERS

Section 1. Removal. Each elected or appointed body of the Miami Tribe shall have the power to remove any of its members for cause by affirmative vote of a majority of the total

membership of the elected or appointive body. The Business Committee shall adopt an ordinance providing for such removal.

The procedures set out in the ordinance shall be used in removal proceedings by each of the elected or appointive bodies. Included in the ordinance shall be procedures for the accused to confront his/her accusers and speak on his/her behalf in answer to a written statement of the charges at a Special meeting of the affected body called for that purpose. The accused shall be provided with the written statement of charges at least fifteen (15) days prior to the removal meeting. Such ordinance shall further provide that only one (1) person from any governmental body of the Tribe shall be considered for removal at any meeting called for that purpose. Should the process result in removal, no further removal shall be considered until the vacancy has been filled. Any Tribal member who has knowledge of wrongdoing by a Tribal official may file such charges with the appropriate body.

In the event the accused or the accuser requests an investigation into the matter, it shall be the duty of the Grievance Committee to conduct such investigation and within twenty (20) days provide its findings to the affected body for its use in making a final determination.

Procedures of "Due Process of Law" will be followed and any violation shall be grounds for dismissal of all charges or accusations. The Miami Tribe will observe the "Indian Civil Rights Act" during the proceedings.

Section 2. Recall. Any voting member of the Miami Tribe may prefer charges by a valid petition supported by the signature of no less than seventy-five (75) members of the General Council, stating any of the causes for removal set-forth in Section 1 of this Article against any member of the Business Committee. The petition must be submitted to the Grievance Committee. The Grievance Committee shall take the following action:

(a) The Grievance Committee within fifteen (15) days after receipt of the notice of petition shall in writing notify the accused of the charges brought against him/her and set a date for a hearing before the General Council. If the General Council deems the accused has failed to answer charges to its satisfaction or fails to appear at the appointed time, the General Council may schedule a recall election which shall be held within thirty (30) days after the date set for the hearing. The outcome of the recall election shall be final.

Section 3. The Miami Tribe Business Committee shall enact such ordinances as are necessary to implement removal and recall elections consistent with this Article.

ARTICLE XII....INITIATIVE AND REFERENDUM

Section 1. Initiative. Initiative is the procedure whereby the members of the Miami Council may exercise their right to present to the Business Committee proposed legislation and compel a popular vote on its adoption. An initiative is put into motion by a petition. Upon receipt of a valid petition, signed by at least seventy-five (75) eligible voters, the Chief shall call and conduct a Special meeting of the Miami Council within sixty (60) days of receipt of the petition. The Council shall determine such issues and questions as contained in the petition. A majority vote of those in attendance at such meeting, where a quorum is declared, shall be required to adopt such a measure as presented at the meeting. Voting will be conducted by written secret ballot.

(a) In the event the Chief does not call a meeting of the Miami Council within the specified sixty (60) days of presenting such petition, a spokesperson for the petitioners is hereby authorized to call and conduct such a meeting of the Council.

(b) The decision of the Council shall be binding on the Business Committee and the Tribe and shall remain in force until amended or rescinded by the Council, except as it may expire by its own terms.

Section 2. Referendum. Referendum is the exercise of authority whereby the Business Committee, at its discretion, may refer any matter before it to the Miami Council for its decision, at a special meeting of the Council called for that purpose. A majority of those voting at such a meeting, where a quorum is declared, is required to pass on any such matter before it. Voting shall be by written secret ballot. If the proposed measure is adopted it shall be binding on the Business Committee and the Tribe, until amended or repealed, except that it may expire by its own terms.

ARTICLE XIII....AMENDMENTS

Amendments to this Constitution and By-Laws may be proposed by three (3) members of the Business Committee or by a valid petition signed by seventy-five (75) of the adult members of the Tribe.

This constitution may be amended by a majority vote of the qualified votes of the Miami Tribe of Oklahoma voting in an election called for that purpose, provided, that at least thirty percent (30%) of those entitled to vote shall cast ballots in such election.

If in such election at least thirty percent (30%) of eligible voters of the Tribe vote in the election, and the amendment is approved by a majority vote, said amendment shall be effective from the date of approval.¹

ARTICLE XIV....SAVINGS CLAUSE

All enactments of the Tribe adopted before the effective date of this Constitution shall continue in effect to the extent that they are not inconsistent with this Constitution.

¹ Article XIII added by Secretarial Election held February 1, 2008. Amendment number 1.

ARTICLE XV....SEVERABILITY

If any part of this Constitution is held invalid by the Federal Court to be unlawful, the remainder shall continue to be in full force and effect.

ARTICLE XVI.... INHERENT RIGHTS AND POWERS

The enumeration in the Constitution, of certain rights and powers, shall not be construed to deny or limit other inherent rights and powers retained by the citizens of the Miami Tribe or the Miami Tribal Government.

BY-LAWS

ARTICLE XVII....DUTIES OF OFFICERS

Section 1. Chief. It shall be the duty of the Chief to preside at all meetings and perform all duties appertaining to the office, also to act as chairman of the Business Committee.

Section 2. Second Chief. In the absence of the Chief, or during a procedure to remove the Chief, the Second Chief shall perform the duties of the Chief. In the case of vacancy, the Second Chief is to immediately succeed to the office of Chief, to serve the unexpired term thereof.

Section 3. Secretary/Treasurer. The Secretary/Treasurer shall be responsible for correctly recording the proceedings of all meetings of the Miami Council and the Business Committee. He/she shall make out the order of business and issue all Notices of any such meetings, for the Chief, and shall have custody of the records and papers of the Tribe, which will be kept in the offices of the Miami Tribe and which are to be open for inspection by any member of the Tribe, by appointment with, and in the presence of the Secretary/Treasurer.

The Secretary/Treasurer shall keep a correct list of all members of the Tribe and shall authenticate all accounts or orders of the Miami General Council and, in the absence of the Chief and Second Chief, shall call such meeting to order until a chairman pro tem is selected. He/she shall be responsible for receiving all monies of the Council, and to deposit funds in a National Bank(s), where ever the Tribe deems necessary for banking purposes, and keeping an accurate account of all receipts and disbursements, and shall post a Surety Bond satisfactory to the Business Committee, to be paid out of Tribal monies.

The Secretary/Treasurer shall cause to be rendered an audited report, at each Annual Meeting of the General Council of the financial condition of the Tribe and each subsidiary thereof. And at the expiration of term of office, shall turn over all records and papers in his/her possession to the successor of the position or to the Miami Business Committee.

ARTICLE XVIII....QUALIFICATIONS OF OFFICERS

Section 1. Any person elected to any office or committee of the Miami Tribe shall be no less than twenty-one (21) years of age, a member of the Tribe and shall reside within a fifty (50) mile radius of Miami, Oklahoma. Any such member who no longer resides in a 50 mile radius of Miami, Oklahoma shall automatically be removed from office.

Section 2. No person who has lost his/her right to vote in Tribal, State or Federal elections, because of being convicted of a felony, or other crime involving moral turpitude shall hold any elected position within the Tribe and shall not be a candidate for an elected position within the Tribe, unless the person so convicted shall have been pardoned or have had his or her civil rights restored.

ARTICLE XIX....MEETINGS

Section 1. Annual meetings of the Miami Council shall be held on the first Saturday in July each year, or as otherwise advised by the Business Committee in the Notice of Meeting, for the purpose of receiving reports and transacting such other business as may come to the meeting for consideration of the Council.

Section 2. Special meetings of the Miami Council may be called at the discretion of the Chief, and shall be called by him upon the written request of three (3) of the Business Committee or upon the written request of seventy-five (75) members of the Tribe: Provided, that at least ten (10) days notice shall be given in each instance. Except in emergencies, the ten (10) day notice shall be waived.

Section 3. The principal object of the special meeting must be stated in the call for same and may include the words "and for the transaction of other business that may be presented." Unless these words are added, no other business can be transacted except for the object stated in the call.

Section 4. The Business Committee shall hold regular meetings on the second Tuesday of each month, without need for notice, unless otherwise provided by Resolution of the Committee.

Section 5. Special meetings of the Business Committee may be called by the Chief at his discretion, and shall be called by him upon the written request of three (3) members of the Business Committee.

Section 6. Unless otherwise appointed in the call or notice, all meetings of the Miami Council and any Tribal Committee shall be held at the Tribal Administrative Complex in Miami, Oklahoma. If such meeting is to be held at another location, it will require a vote of no less than three (3) members of the Business Committee to make the change.

ARTICLE XX....NOTICES

Whenever any Notice is required by these By-Laws to be given, personnel notice is not meant, unless expressly stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in the U.S. Mail, postage prepaid, addressed to the person entitled thereto, at his given address as it appears on the membership records of the Tribe. Such notice shall be deemed to have been given on the date of mailing.

ARTICLE XXI....ACTION WITHOUT MEETING

Whenever the vote of Business Committee members, at a meeting thereof, is required or permitted to be taken in connection with any action, the meeting may be dispensed with, if all members who would have been entitled to vote shall consent in writing to any such action being taken.

No Business Committee member may vote except in person, provided that Business Committee members may participate and vote in a meeting by means of conference telephone or similar communications equipment whereby all persons participating and voting during the meeting can hear each other, and participation in such meeting in such manner shall constitute presence in person at such meeting.

ARTICLE XXII....QUORUM

Section 1. Twenty-five (25) members of the Miami General Council shall be required to constitute a quorum to transact regular business.

Section 2. Three (3) members of the Business Committee shall be required to constitute a quorum to transact business for the Tribe.

Section 3. Three (3) members of the Grievance Committee shall be required to constitute a quorum to transact any business of the Grievance Committee.

ARTICLE XXIII....OFFICES

Section 1. The primary administrative offices of the Miami Tribe shall be maintained in Miami, Oklahoma.

Section 2. The Miami Tribe of Oklahoma may have other offices, either within or without the State of Oklahoma, at such places as the Business Committee may appoint or business may require.

ARTICLE XXIV....COMPENSATION

Tribal members having been elected to any office may receive a salary for their services in such capacity or as members of any committee, as may from time to time be approved by the Business Committee, and shall receive a fixed fee for attendance at any such meetings thereof.

ARTICLE XXV....DISTRIBUTIONS

Subject to any provisions of the Constitution, the Business Committee may declare a distribution of funds of the Tribe, to its members, consistent with Federal Law.

ARTICLE XXVI....ADOPTION

This Constitution and By-Laws shall be effective when approved by the Secretary of the Interior and adopted by a majority vote of the qualified voters, of the Miami Tribe voting at an election called by the Secretary of the Interior under regulations which he may prescribe pursuant to Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936: Provided, that at least 30 percent (30%) of the eligible voters vote in such election.

CERTIFICATE OF APPROVAL

I, Deborah Maddox, Acting, Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 26, 1936 (49 Stat. 1967), and delegated to me by Secretarial Order 3150 and subsequent Orders, do hereby approve the Constitution of the Miami Tribe of Oklahoma. This Constitution is effective as of this date; PROVIDED, That nothing in the approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

Acting Deputy Commissioner of Indian Affairs

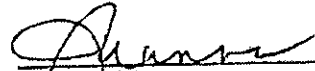
Washington, D. C.

Date: FEB 22 1996

CERTIFICATE OF APPROVAL

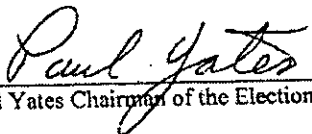
I, Jeanette Hanna, Regional Director, Eastern Oklahoma Region, Bureau of Indian Affairs, Department of the Interior, by virtue of the authority granted in the Act of June 26, 1936 (49 Stat. 1967), and under the authority delegated by 209 DM 8.1, 209 DM 8.4A, 230 DM 1.1, and 3 IAM 4.4, do hereby approve Amendment No. 1 to the Constitution of the Miami Tribe of Oklahoma. PROVIDED, that nothing contained in this approval shall be construed as authorizing any action under this Constitution that would be contrary to Federal law.

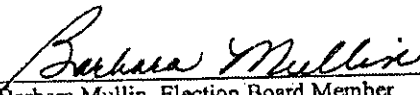
Date: 3-3-08

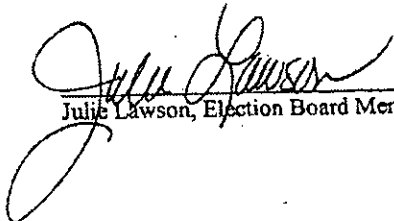

Regional Director
Eastern Oklahoma Region
Bureau of Indian Affairs
3100 W. Peak Blvd.
Muskogee, Oklahoma 74401

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial Election authorized by the Eastern Oklahoma Regional Director on September 11, 2007, delegated to the Director, Bureau of Indian Affairs, by the Act of June 26, 1936 (49) Stat. 1967, redelegated to the Regional Director by 130 D.M. and Bureau of Indian Affairs Policy Memorandum dated October 11, 2006, the attached Constitution Amendment of the Miami Tribe of Oklahoma was submitted to the qualified voters of the Tribe on February 1, 2008. Proposed Amendment (A) was duly ratified rejected by a vote of 165 for and 41 against, and 3 cast ballots found soiled or mutilated. At least thirty (30) percent of the 335 members entitled to vote, cast their ballot in accordance with the Oklahoma Indian Welfare Act of June 26, 1937, and Article XIII of the Tribe's Constitution.


Paul Yates Chairman of the Election Board


Barbara Mullin, Election Board Member


Julie Lawson, Election Board Member

Date of Election
February 1, 2008

STATEMENT OF THE FACTS

In a letter presented to the Sanilac County State Court dated **July 2, 2014**, Elizabeth Armbruster, counselor to MS and JS, addressed Judge Ross or who it may concern. In her letter, Ms. Armbruster outlined her therapy sessions with MS and JS stating,

...[MS] said numerous times that her mother would be hurt if she told... she has been "bad touched" by someone, but was too afraid to tell [the counselor] who... she drew a picture of the person who she had said "poked me in the butt and vagina"... The person she drew and then scribbled out with black crayon was her father's face, also with a vagina on the picture.

Ms. Armbruster's letter continues to address MS's recount of a visit she had with Derek in which MS said her father asked to see her "private parts". MS said she "ignored him and ran outside" to where her brother and uncle were in the yard playing baseball. The counselor said that after speaking with JS, the events seemed accurate. The letter concludes by saying,

...it is my professional opinion that until there is 100% certainty this has not and will not happen to MS, if there is visitation with MS and JS Shaw's father, Derek Shaw, the visitation should be supervised (transcripts, p.5-34; DOR ¶6).

Despite MS's continued disclosures, she was repeatedly sent back to have visitation with Derek by Sanilac County DHHS, the Croswell Police Department, and the Sanilac County Circuit Court who were all repeatedly informed of MS's disclosures. The complaints continued because visitations between Derek and MS were allowed to continue.

Expert witness, Dr. Suzette Walker, testified that MS was brought into her office on **September 11, 2014** for a complaint of painful urination. A urine specimen was collected at the doctor's office and the urinalysis showed blood in MS's urine without any other abnormalities such as bacteria or infection (transcripts, p.35-50; DOR ¶7). MS told her the pain started at her

father's house when he put his finger in her vagina. Dr. Walker did an external exam and MS's genital area was red, swollen and open (transcripts, p.35-50; DOR ¶7). Dr. Walker contacted Child Protective Services and instructed Elizabeth to take MS to McKenzie Hospital (transcripts, p.35-50; DOR ¶7).

At the hospital, MS was given a random urine test. The urinalysis also showed blood in MS's urine without any other abnormalities or infection (transcripts, p.35-50; DOR ¶7). After the emergency room doctor conducted an external exam of MS and took photos, he stated that they needed to get someone tonight and his report included a referral for a forensic interviewer. After MS underwent two doctor examinations and disclosed the abuse she suffered, DHHS and CPD arrived at the hospital and separated MS from Elizabeth. DHHS and CPD interviewed Elizabeth at the hospital for over an hour while MS was in a hospital bed. When DHHS and CPD concluded the interview, MS and Elizabeth were released to go home. JS was on a visitation with Derek at the time. Neither officer Erik Wurmlinger or caseworker Kris Kreuger retrieved JS from Derek or filed a petition with the court.

On **September 12, 2014**, the Consent Judgment of Divorce was filed in State Court before District Court Judge, Gregory S. Ross (DM, 83). Prior to court, Elizabeth informed her attorney, Timothy Wrathell, of the CPS complaint the night prior. Mr. Wrathell said that without a medical report, he could not bring it up in court. Mr. Wrathell then said that if we postponed the entry of the Judgment of Divorce, it would be risking having Judge Ross throw out our entire divorce like Judge Teeple did in February 2014 to the first divorce case that Elizabeth initiated in 2013 which resulted in having to start the entire divorce process over again from the very beginning. Elizabeth did not want to risk this happening so she followed her attorney's advice.

After DHHS and CPD still required MS and JS to attend visitations with Derek after the September 11, 2014 complaint and medical report, Elizabeth contacted the Children's Ombudsman for the State of Michigan who instructed her to file an emergency exparte motion with the court. Elizabeth attempted to file the emergency exparte motion on **September 25, 2014**, but did not draft the prepared order properly that must be provided, so instead, the motion was set for hearing on October 15, 2014 (DM, 90). On **September 30, 2014**, Elizabeth returned with a proper emergency exparte motion that was accepted for filing. Judge Ross denied the motion. On **October 15, 2014**, at a hearing on a motion to change custody due to Derek sexually abusing MS with supporting physical evidence in the abnormal medical report, guest judge, Honorable Michael Higgins, immediately ordered Derek's parenting time limited to supervised with MS and ordered a FOC evidentiary hearing (DM, 98). While on the courtroom break to decide on a supervisor for visits, Derek and Elizabeth made arrangements for MS to be picked up since it was Derek's parenting time, MCR 2.605¹.

On **October 17, 2014**, Derek's attorney filed a motion for relief from judgment and also filed the prepared order and submitted it on the 7-day rule (DM, 101), MCR 2.605. Elizabeth filed a response to the motion (DM, 105). No objections were filed to the prepared order. At the hearing on **October 29, 2014**, Judge Ross ruled the motion for relief was premature because the order was not entered yet, but Derek and Elizabeth were expected to follow the order. With the 7 days expired and no objections filed, Judge Ross, was already presented with the prepared order, but said he did not find it to comply with Judge Higgins' ruling so he would have it scheduled for a

¹¹ Declaratory Judgment.

settlement hearing (DM, 104). Settlement for entry of the October 15, 2015 was scheduled for November 26, 2014 (DM, 109).

After the evidentiary hearing date was set, Elizabeth prepared her witness subpoenas. Elizabeth asked her former attorney, Mr. Wrathell to sign them for her, but he declined. Since Elizabeth is not an attorney, she could not sign them herself and the court clerk told her she was not able to sign them either so they had to left with the clerk and wait for Judge Ross to sign them, MCR 2.506(B)(1). Judge Ross signed Elizabeth's ten subpoenas on **October 30, 2018** (DM, 108).

Evidentiary hearings began on **November 6, 2014**. Prior to the hearing, Referee Shelly Smith announced the hearing would only be a half day hearing rather than a full day hearing as it was originally scheduled (DM, 102).

At the top of the **November 6, 2014** hearing, Referee Smith admitted that despite the referral order from Judge Teeple and despite the modified parenting time order entered on October 15, 2014, she did not think it was necessary to review child support because that would only be necessary if there was a change in custody or parenting time.

...signed an order referring the issues, it actually says custody, parenting time and support but I think really just the issue of custody and parenting time probably. I guess support if something were to - if parenting time or custody changes and that was based on a motion filed by Ms. Shaw, a motion to change custody and Judge referred that matter here today for Referee hearing. (transcripts, p.3¶17-24).

Referee Smith disobeyed the Court's order and did not review child support. When reviewing custody and parenting time, Referee Smith limited Elizabeth's proofs and restricted witness testimony to events, observations, and contacts since September 12, 2014 when the Judgment of Divorce was entered despite MCL 722.27(1)(c) which allows for a change in custody due to "proper cause" or a "change in circumstances" (transcripts, p.9¶18-p.10¶12).

Testimony at the **November 6, 2014** FOC evidentiary hearing included expert witness, Elizabeth Armbruster, counselor for MS and JS. Ms. Armbruster testified MS has disclosed sexual abuse by her father to her using words, drawings, a good touch/bad touch coloring book, and play therapy (transcripts, p.5-34; DOR ¶6). Ms. Armbruster's testimony authenticated her letter to the court dated July 2, 2014 outlining her therapy sessions with MS and JS. Ms. Armbruster, testified that she held up a stuffed animal and asked MS to show her what she meant by "poke". MS turned the stuffed animal around, lifted up its tail and poked it (transcripts, p.5-34; DOR ¶6).

Also, on **November 6, 2014**, expert witness, Dr. Suzette Walker, testified that MS was brought into her office on September 11, 2014 for a complaint of painful urination. A urine specimen was collected at the doctor's office and the urinalysis showed blood in MS's urine without any other abnormalities such as bacteria or infection (transcripts, p.35-50; DOR ¶7). Dr. Walker testified that MS told her the pain started at her father's house when he put his finger in her vagina. Dr. Walker did an external exam and MS's genital area was red, swollen, and open. Dr. Walker testified the blood in MS's urine is consistent with the trauma described by MS of Derek putting his finger in her vagina because urine picks up blood as it passes through the trauma (transcripts, p.35-50; DOR ¶7). Dr. Walker contacted Child Protective Services and instructed Elizabeth to take MS to McKenzie Hospital. At the hospital, MS was given a random urine test. The urinalysis also showed blood in MS's urine without any other abnormalities or infection (transcripts, p.35-50; DOR ¶7).

The hearing was adjourned on November 6, 2014 without a scheduled date to continue. An order of adjournment was entered on **November 10, 2014** specifically indicating the November 20, 2014 hearing would be a half day hearing (DM, 111). Two days later, on **November 12, 2014**, the Order of Adjournment providing the hearing date was mailed (DM, 112).

By time Elizabeth received the hearing date in the mail, she only had three business days to fill out her witness subpoenas, have Judge Ross sign them, and serve them, so Elizabeth filed a motion with the court asking to adjourn the hearing, but on **November 19, 2014**, Judge Teeple denied her request (DM, 119). At the hearing on **November 20, 2014**, Elizabeth's witnesses did not appear. Elizabeth informed Referee Smith that she only had three business days of notice for the hearing (transcripts, p.4¶5-8) and had to wait for Judge Ross to sign her subpoenas which were not available for her to pick up until the day before the hearing (transcripts, p.5¶20-21) (DM, 113). Even if Elizabeth was able to serve her subpoenas the same day, the witnesses would not be legally bound to appear for the hearing, because MCR 2.506(C)(2) requires two days of notice. Referee Smith said that she could not adjourn the hearing (transcripts, p.4¶5-8). Elizabeth said that Officer Wurmlinger was aware he was expected to testify and that Chief Hall also said he would be at the hearing (transcripts, p.6¶15-17). When Elizabeth requested an opportunity to recall her witnesses, Referee Smith said she could not (transcripts, p.7¶2). Referee Smith said she could not stop the hearing to wait for Elizabeth's witnesses to show up (transcripts, p.7¶8-10). Elizabeth asked for a courtroom break to try and call her witnesses, but Referee Smith refused her that opportunity. Referee Smith also informed that she told Officer Wurmlinger when he phoned the FOC that he did not need to appear for the hearing. These portions are missing from the transcripts, but are available on the audio (DM, 118). Elizabeth had no other choice, but to rest her argument (transcripts, p.7¶18-19). Derek rested without calling any witnesses as admitted by Referee Smith (transcripts, p.8¶2-3). "From the bench", Referee Shelly Smith challenged the ruling of Circuit Court Judge Michael Higgins and immediately entered a recommendation (DM, 120) for both children to have parenting time with Derek despite expert testimony (transcripts, p.5.-34) (transcripts, p.35-50).

I feel that based on the evidence that was presented, Ms. Shaw, I feel that you failed to establish by a preponderance of evidence that either proper cause or change in circumstances exists. So it's my recommendation that your motion regarding custody be dismissed for failure to establish those - one of those two factors. It is further my recommendation that the - I believe and this really isn't probably my place to say this - but I believe that the order that was entered by Judge Higgins was inappropriately entered. He did not take - he talked to the parties but he did not take testimony and he did not make any findings so, ultimately, Judge Ross will make that decision, I guess, on Wednesday about whether or not that order should be entered but it is my position that the order should not be followed at this point in time. However, I think until you have your day in front of Judge Ross I'm not sure how that's going to happen but it's my recommendation and I'll put in the recommendation that the previous order contained in the Judgment of Divorce be reinstated (transcripts, p.17¶4-21).

At the close of the hearing, Referee Smith contradicted the limitation she repeatedly enforced throughout the hearing when she admitted her knowledge of MCL 722.27(1)(a), ...*Ms. Shaw, I feel that you failed to establish by a preponderance of evidence that either proper cause or change in circumstances exists* (transcripts, p.17¶4-21). For a change in custody, the standard of proof is "clear and convincing" MCL 722.26a(2), MCL 722.27a(2), but Referee Smith specifically referred to a "preponderance of evidence" which is the standard of proof needed for DHHS to file a petition, which the Children's Ombudsman was looking for. Referee Smith further admitted that Judge Higgins "entered" his order modifying parenting time, she didn't think the order should be followed, and Judge Ross would make that decision at a hearing on Wednesday, MCR 2.605.

Judge Higgins literally said during the October 15, 2014 hearing that the purpose of the FOC evidentiary hearing was to see if we can get the boy included. Unfortunately, transcripts of the hearing do not reflect this statement. The same transcriptionist, the Judge's secretary, Leslie Hilgendorf, has erred on another occasion when preparing transcripts. Ms. Hilgendorf erroneously listed Elizabeth on the cover page of the abuse neglect hearing transcripts, to be seen through the

clear plastic cover, as a respondent parent and did not list Derek until the following page. This transcript was provided by Judge Teeple during the September 25, 2019 hearing in the abuse neglect case. Following the hearing, Elizabeth e-mailed the Judge's secretaries, Ms. Hilgendorf and Ms. Baldwin, as well as, Mr. Lepley, informing the three of them of this mistake. Mr. Lepley, Elizabeth's then attorney, took no action. Ms. Hilgendorf provided corrected cover sheets to the transcripts accompanied by a letter admitting her mistake.

At the **November 26, 2014** hearing, Judge Ross signed the modification order from the October 15, 2014 hearing after the additional term that Pastor Barry Sheldon would supervise the visits was handwritten on the prepared order (DM, 121).

Attempting to meet the requirements to request a *deno vo* review of the FOC evidentiary hearing, Elizabeth requested transcripts from the FOC. The Friend of the Court, Ann Mroczek, quoted Elizabeth roughly \$400.00 to transcribe the half day hearing on November 6, 2014. Elizabeth would also need transcripts of the November 20, 2014 hearing for a *deno vo* review which would increase the price. On **December 10, 2014**, Elizabeth filed a motion requesting to prepare transcripts by a non-certified transcriptionist pursuant MCR 8.108(G)(1)(c)² because she could not afford to have them prepared by the FOC, but Judge Ross denied her motion (DM, 125). Months later, Ms. Mroczek only charged Elizabeth \$258.30 for transcripts of both FOC hearings.

Following Referee Smith's referral, the order signed by Judge Ross on **December 15, 2014** was on a court form. The box was checked for the motion to be dismissed and for the prior order to remain in effect (DM, 127). The order did not indicate what the prior orders were. To Elizabeth,

² MCR 8.108(G)(1)(c) allows for an indigent party to transcribe and file depositions taken by video or audiotaping by a person who is not certified pursuant to this rule.

the prior order was the November 26, 2014 order modifying parenting time with MS and the Judgment of Divorce.

Despite Croswell-Lexington schools having the court orders, they allowed Derek to pick MS up on Wednesday, **January 21, 2015**. Elizabeth was also at MS's school to pick her up, but Derek was already walking to the car with both kids. Elizabeth ran over. Principal Collette Moody took MS out of Elizabeth's arms. Ms. Moody then handed MS to another school administrator and instructed her to put MS in Derek's car while Ms. Moody blocked Elizabeth. The other administrator did as Principal Moody instructed and Derek drove away.

The next day, **January 22, 2015**, Elizabeth went to the school to speak with Ms. Moody. She told Elizabeth that Derek provided her with a court order signed by the judge that was more current than hers. Elizabeth told her she had no knowledge of the order and asked to see it. Ms. Moody would not allow Elizabeth to see the order and told her she was "content" with what Derek provided her. Ms. Moody then invited Elizabeth into her office to continue the conversation more privately presumably because the school secretary was at her desk and was able to hear. While in her office, Croswell police officer Ken Western walked in. Elizabeth was unaware that Ms. Moody had called him. Elizabeth told both of them that she did not have the order they said Derek provided that allowed him to take MS. Officer Western called the FOC and spoke with Ann Mroczek, the Friend of the Court. Officer Western relayed that Ms. Mroczek confirmed there was a more current order and put his cellphone on speakerphone. Elizabeth asked Ms. Mroczek the date of the order and she said she didn't have it in front of her to tell me, but that there was a more current order. Officer Western then asked Ms. Mroczek if Elizabeth could go up to the court and receive a copy. Ms. Mroczek said Elizabeth could at any time. Officer Western threatened Elizabeth that she could be arrested for trespassing on school property because Ms. Moody said

she asked her to leave the day before. Ms. Moody did not ask Elizabeth to leave. Officer Western also told Elizabeth that they are trying to bring child abuse charges against her. It should be noted that at this time, Officer Western's wife was the superintendent of Croswell-Lexington schools.

Elizabeth left the school and went to the courthouse. The clerk informed Elizabeth that there were not any custody orders entered after hers. Elizabeth went down to the FOC and was told Ms. Mroczek was "on the phone" and could not speak with her. Elizabeth said that since the courthouse was closing in 15 minutes, she would wait in the hallway in case Ms. Mroczek finished her call. As Elizabeth waited, three police officers arrived (City, County, and State) because Ms. Mroczek called them to have Elizabeth removed. The police asked Elizabeth if she was asked to leave and Elizabeth said that she was not and that she was just waiting for Ms. Mroczek to get off the phone. Elizabeth began to tell the three police officers what she needed help with. They cut Elizabeth off and would not listen to her. They said they didn't want to hear about it and were not going to deal with that issue.

The following morning, **January 23, 2015**, Ms. Mroczek called Elizabeth and said that the November 26, 2014 order was a temporary order and is no longer in effect. Elizabeth disagreed and Ms. Mroczek said she was not willing to discuss it further. Elizabeth asked Ms. Mroczek why she called the police and said that she asked Elizabeth to leave. Ms. Mroczek said I know you weren't asked to leave but I didn't want you to try and talk to me when I was trying to leave for the day.

Acting on advice, Elizabeth drove back up to the courthouse and asked for the case register of actions and the most recent custody order. The clerk printed the case register of actions, the December 15, 2014 order, and the November 26, 2014 order. Elizabeth called the school and told Ms. Moody that the court did not have a more recent order and that she could provide her with

documents from the court. Ms. Moody again said she was "content" with what she had from Derek and told Elizabeth not to call again.

Elizabeth then called CPD and spoke with Chief Hall. Elizabeth explained the scenario to Chief Hall and that if Derek was allowed to pick MS up again today, he would have her for the weekend. Chief Hall would not offer Elizabeth any assistance and threatened to arrest her if she went to the school.

Elizabeth went to the office of the City Manager, Sam Moore, to show him the court papers since the school and the police would not look at them. Elizabeth went into the City Building at 2:45 and when the woman called the City Manager, he said he would not be available until at least 3:05. Not to be confused with coincidence, MS's school day officially ends at 3:05, but if you pick your child up, they are usually ready by 3:00.

Following this visitation that ended on **January 26, 2015**, MS did not want to go to school because she was afraid Derek would pick her up. Her fear was real. Under these conditions, beginning **January 27, 2015**, Elizabeth did not force MS to go to school and excused her absences. For this, Ms. Moody contacted the truancy officer and initiated proceedings. On **January 30, 2015**, amongst other things, Chief Hall called Elizabeth and told her that she had to take MS to school. When Elizabeth dropped MS off at her school, the secretary told Elizabeth that Ms. Moody wanted her to go over to the other school to meet with her. When Elizabeth pulled into the parking lot and stepped out of her car, she noticed two police cars had pulled in behind her. Chief Hall and Officer Western got out of their cars. Chief Hall proceeded to arrest Elizabeth and asked if she knew what she was being arrested for. Elizabeth told him that she did not. Chief Hall told Elizabeth that she was being arrested for trespassing on school property. Chief Hall took Elizabeth to the Sanilac County jail and she was locked in a cell.

David Heyboer, Elizabeth's criminal defense attorney, told her the November 26, 2014 order was not in effect, but he could understand how a lay person would think it was. Mr. Heyboer told Elizabeth to follow the custody orders in the Judgment of Divorce or she could expect to be arrested again on a Friday so they could leave her in jail until arraignment on Monday. Elizabeth was also told to expect for the arrest to happen when the kids were with her. Mr. Heyboer repeatedly tried to get Elizabeth to accept a plea deal from the prosecutor, but she would not. This caused even more court dates and attorney fees. Elizabeth provided Mr. Heyboer with the audio recordings from the audio recorder she was wearing during the days resulting in her arrest and the day of her arrest. Elizabeth was not lying, they were. Many weeks later and after the NA case was transferred to tribal court, Mr. Heyboer told Elizabeth they were not going to drop the charges so she had to plead no contest to trespassing and in six months the charges would be off her record. Judge Ross was Elizabeth's sentencing judge. Elizabeth followed the advice of her attorney.

DHHS and the Tribe arranged for the entire family to have a comprehensive family assessment done by the Family Assessment Clinic in Ann Arbor. This included forensic interviews, psychosocial testing and psychological testing spread across multiple appointments with the team. The service agreement was signed by DHHS, the Family Assessment Clinic, and the Tribe on **January 26, 2015** (ROA, 7). The FOC awarded Derek make-up parenting time on **January 30, 2015** (DM, 131). On **February 4, 2015** Derek informed that he would be using his make-up parenting time (DM, 143). This timing resulted in Derek having both kids for nearly two weeks straight prior to the forensic interviews. Although Derek was informed about the interviews at the time they were scheduled, Elizabeth was only informed by DHHS two days prior. DHHS allowed Derek to take the kids to the interviews on **February 19, 2015** and **February 20, 2015**.

Derek's hotel room and gas were also paid for. Due to disclosures, Dr. Faller informed that they could not allow the children to leave with Derek.

Dr. Faller's **February 24, 2015** report and supporting expert testimony to follow, stated that a six-year-old in an unsafe situation should not be expected to make a detailed disclosure in order to be protected (NA1, 19; NA2, 18).

[MS] disclosed that her father, Derek, has touched her bottom, "on top" of her clothing, but then stated "sometimes on top" of her clothing. She reported "I can feel it" and "it hurts". As to what he touches with, she said "his hands". [MS] disclosed that this has happened "more than once". She reported "he still does it". [MS] reported "her dad acts like everything is ok and is acting like nothing happened. He tells everyone that her mom is lying and she is lying, but he is lying"

Dr. Faller also reported and testified that DHHS did not provide the Family Assessment Clinic with Dr. Walker's medical report and she did not understand why the medical evidence was not given weight by DHHS (NA1, 19; NA2, 18).

In response to the allegation by DHHS and Derek that Elizabeth has possibly coached MS into making the allegations of sexual abuse, Dr. Faller reported that coaching is more common by offending rather than non-offending caregivers,

research indicates that coaching to make a false allegation of sexual abuse is uncommon. Moreover, coaching is more common by offending than non-offending caregivers (e.g., Trocme & Bala, 2005). The assumption that non-offending caregivers foster false allegations of sexual abuse in divorce situations is not supported by research, but rather is driven by the accused and their advocates. I would add that the mother's presentation, in this case, and her prior responses to DHS and law intervention are consistent with believing her child has been sexually abused and not consistent with a mother's attempt to program her child (Id.).

Expert witness Dr. Faller testified that MS disclosed being sexually abused by her father to her during a forensic interview and also to Dr. Toplyn during her psychological exam. Dr. Faller agreed with the entire team that there is at least clear and convincing evidence that Derek has

sexually abused MS repeatedly. Expert witness, Dr. Faller, reported and testified that it is a betrayal for MS to be sent back to her father after repeatedly disclosing to multiple professionals and that visitation for both children should be suspended (DOR, ¶4).

On **March 3, 2015**, DHHS caseworker, Jennifer Showers and the Sanilac County 12initial CPS complaint (COA, V1.6-8³). According to Michigan's Child Protection Law, a petition is required to be filed if the abuse meets the standards of Category 1. Category 1 means CPS found evidence of child abuse, the child is not safe, the abuse was very serious and at that time, DHHS is to add the respondent's name to the statewide Child Abuse and Neglect Central Registry for life because the crime is sexual in nature, MCL 722.627 § 7(b). DHHS did not add Derek's name to the Child Abuse and Neglect Registry as required by law. In response to said petition, a letter of support was submitted by the Tribe on **March 3, 2015** (COA, V1.204-208). Had the petition been filed on the same day it was signed, a hearing would have been required to be held on March 4, 2015 in compliance with MCR 3.965(A)(2)⁴. Instead, the petition was filed on **March 4, 2015** and a hearing was held on **March 5, 2015**. With the petition filed, Derek was still able to exercise his parenting time from March 4, 2015 – March 9, 2015 which allowed for the children to be with Derek for their interview with the L-GAL that was court appointed by Judge Ross on **March 4, 2015** (NA1, 5; NA2, 5). Four days after the March 5, 2015 hearing and on Derek's last day of visitation, an order was entered by Judge Ross on March 9, 2015, allowing Derek to continue to exercise his parenting time (NA1, 7; NA2, 7)⁵. With this timing, paperwork wise, in the NA case, Judge Ross did not allow the visitation to occur until after it was over.

³ Not listed on Case Register of Actions.

⁴ MCR 3.965(A)(2) – Time for Preliminary Hearing...Sexually Abused Child. The preliminary hearing must commence no later than 24 hours after the agency submits a petition or on the next business day following the submission of the petition.

⁵ Date listed on Case Register of Actions is different than file stamped date.

ICW, Callie Lankford, filed a Motion for Intervention in the NA case on **March 17, 2015** requesting the state court grant the Tribe the right to participate in the NA case, 25 USC § 1911(c); MCL 712B.7(6) (NA1, 18; NA2, 17). Following the fact-finding hearing held on **March 17, 2015**, Judge Ross entered an order on **March 18, 2015** in the NA case determining parenting time with Derek, even if supervised, may be harmful to the children (NA1, 19¶17; NA2, 18¶17). The children were both ordered to remain home with non-respondent mother, Elizabeth Shaw, under the continuing jurisdiction of the divorce case (NA1, 19¶19b; NA2, 18¶19b). The order further reads that the March 9, 2015 order remains in effect except as modified by this order (NA1, 19¶24; NA2, 18¶24). The NA case has taken judicial notice of the divorce case (NA1, 7; NA2, 7)⁶ and the DM case has taken judicial notice of the NA case (transcripts, p.7¶23-25).

On **March 24, 2015** at 8:36am, on behalf of the Tribe, ICW filed a motion to transfer the NA case to tribal court in Oklahoma pursuant 25 USC § 1911(b) (NA1, 28; NA2, 24). At this time, Judge Ross had not entered an Order granting the Tribe's motion to intervene. At 9:49am on **March 24, 2015** Judge Ross entered an order granting the Tribe intervention finding no good cause exists to deny the motion, (NA1, 27; NA2, 23). Also, at 9:49am on **March 24, 2015**, Judge Ross entered an Order of Transfer without a hearing and without parties having an opportunity to respond even though a hearing was already scheduled for 10:00am that day. In the hallway, prior to the March 24, 2015 hearing, Ms. Lankford informed Elizabeth that Judge Ross already agreed to transfer the case. Based off of what Ms. Lankford said, Elizabeth's attorney, Mr. Whitesman, felt Judge Ross did not want this case and it would be a bad situation for the kids and Elizabeth not to agree to transfer. Risky all around because if Elizabeth didn't agree to transfer, it could

⁶ Date listed on Case Register of Actions is different than file stamped date.

upset the Tribe to whom the case was already transferred and if she didn't agree it could upset Judge Ross who has the power to make the kids go back to Derek which was daunting when we finally had an order saying his parenting time was suspended. Elizabeth followed her attorney's advice.

Unlike the Order granting intervention, the Order of Transfer did not include a finding that no good cause exists to deny the motion. The Order of Transfer excessively ordered that legal custody of the children now resided with Oklahoma DHHS, granted ICW the authority to place the children, and said the children were to remain wards of the court (NA1, 29; NA2, 25). Said terms were not addressed in the Tribe's motion for transfer (NA1, 28; NA2, 24) or at any point during the hearing that was held later that day (transcripts). The children were not "wards" of the court and Elizabeth is a non-respondent. See *In re Sanders*. See also *Troxel v. Granville*. Elizabeth was not provided with a copy of this order.

At the hearing held following the entry of the Order of Transfer, Elizabeth still was not aware of the terms decreed in said Order of Transfer. From the Court Recorder's notes, it is clear that Elizabeth is a non-respondent and the signed order had not been provided to the parties, [the Referee informed the parties that the Court will sign the order as soon as presented and Ms. Langford [sic] will prepare order (COA, V1.p.61). The date on the court recorder's notes reflect March 17, 2015; however, it was actually March 24, 2015. An entry was already provided for March 17, 2015 in the court recorder's notes (COA, V1.p.60).

Also, on **March 24, 2015**, the tribe filed a petition in tribal court to accept transfer of jurisdiction of the case. The tribal judge, Judge Tripp, entered an order accepting transfer of jurisdiction declaring the following terms; the children were now wards of the tribal court, the tribe had legal custody of the children, ICW had the power to place the children with Elizabeth Shaw,

and the tribe was authorized to consent to any necessary and appropriate emergency medical, dental or health care needs of the children. Elizabeth was provided with the petition and order at the same time (NA1, 30,31; NA2, 26,27). There was not opportunity to respond to the petition and the order was entered absent a hearing. Elizabeth did not forfeit her legal custody of the children or her physical custody of the children at any point in state court or in tribal court.

In tribal court, to begin the adjudicatory hearing process in accordance with CC§1.27.7, ICW filed a Minors in Need of Care Application affirmed by affidavit on **April 7, 2015** (ROA, 7). At the first hearing held in Tribal Court on **April 16, 2015**, the Tribe requested an extension to file a petition pending receipt and review of the Ann Arbor family assessment report (ROA, 9). CC§27 only requires the Minors in Need of Care application which was already filed, but the Tribe stated they wanted to review the mental health assessments given Derek's false allegations that Elizabeth's mental health issues are the culprit of MS's disclosures of sexual abuse (*Id.*). Judge Tripp ordered Derek not to have contact with the children. The next hearing was scheduled *nine weeks* later on June 18, 2018. Following the April 16, 2015 hearing and prior to the June 18, 2015 hearing, ICW, Ms. Lankford was no longer an employee of the Tribe. Elizabeth was not informed of this change.

On **June 9, 2015**, following their investigation and after review of the Ann Arbor reports, the Tribe filed, *Petition to Adjudicate Minor Children Deprived as to Biological Derek Shaw*. In said petition, the tribe specifically admitted they determined not to file a petition against Elizabeth because there is no information or findings of abuse or neglect related to Ms. Shaw (DM, 201-Ex.A).

At the **June 18, 2015** adjudication hearing, the Court accepted the petition authored by the tribe's attorney general/presenting officer, Robin Lash, admitting that the Tribal Court's

jurisdiction is concurrent with state court, CC§1.2.1 (*Id.*). The completed Ann Arbor reports were accepted as evidence. Expert witness, Dr. Faller, testified authenticating the reports and the disclosures made by MS during her forensic interview (ROA, 11-16,20; DOR, ¶4). Darold Wolford appeared as the tribe's interim ICW. The next hearing was scheduled *7 weeks later* on August 6, 2015.

Following the hearing, Elizabeth requested a court appointed attorney from the Tribe's Presenting Officer (ROA, 106). Robin Lash informed Elizabeth that she was not eligible for a court appointed attorney because her parental rights were not at stake (*Id.*) On **July 27, 2015** Elizabeth's attorney, Barney Whitesman, filed an appearance.

On **August 4, 2015** a motion was filed by the Tribe to continue the August 6, 2015 hearing another *8 weeks later* until October 1, 2015 (ROA, 22). Elizabeth was not provided an opportunity to respond to said motion because it was issued with an order that was filed the same day (ROA, 23). This Motion and Order allowed a gap of *15 weeks* between hearings.

On **August 12, 2015**, the Tribe filed a motion for the Court to appoint a GAL (ROA, 24) and an order was entered the same day appointing GAL, Curt Lawrence (ROA, 25).

On **August 18, 2015**, Mr. Whitesman filed a motion in tribal court to allow Elizabeth and the children to move and to change the children's school (ROA, 26). After repeated e-mailing between Mr. Whitesman and the tribal court clerk in attempt to secure a brief hearing on the motion prior to the beginning of the school year, the Clerk emailed on **August 25, 2015** that the Judge informed he would hear the motion *five weeks later* on October 1, 2015.

On **September 17, 2015**, Elizabeth was ordered by Subpoena Duces Tecum to appear with the kids at the October 1, 2015 hearing so the Judge could meet them for the first time¹.

At the **October 1, 2015** tribal court hearing, Judge Tripp entered an order finding, "Ultimately, call on whether move is allowed, is up to the Court in Michigan, who has jurisdiction over the divorce between Derek and Elizabeth Shaw." (DM, 215-Ex.1). The process was already delayed by *six weeks* and now, the matter needed to be addressed in state court. Judge Tripp ordered supervised visitation to begin for JS with Derek at the request of GAL even though no evidence was presented to alter the court order suspending Derek's parenting time (*Id.*). The tribal code dictates that orders of the state court have the same effect and are subject to the same procedures as the orders in tribal court, TC§922. Elizabeth questioned this recommendation and order. GAL told Elizabeth that the Tribe usually sees it as, what is fit for one child is fit for both children. Prior to GAL's recommendation, the state court, based on evidence supporting the sexual abuse petition, ordered Derek's parenting time suspended (NA1, 19¶17; NA2, 18¶17) and the tribal court entered a no contact order (ROA, 9). Also, at the request of GAL to confirm that Elizabeth is not psychotic or delusional, the tribal court ordered Elizabeth to undergo a Psychiatric Evaluation even though after review of the mental health assessments done by the Family Assessment Clinic, the Tribe determined not to file a petition against Elizabeth (DM, 201-Ex.A). Mr. Whitesman had four subpoenaed witnesses available to testify. Judge Tripp only allowed one witness to testify alleging that was all the time available even though it was not the end of the court day (ROA, 28-31). The Tribe hired Janet Grant as their new ICW. Elizabeth became aware of and met Jan Grant for the first time at the hearing even though she was hired by the Tribe in August. Mr. Lawrence is a tribal member of the Seneca-Cayuga Tribe and Ms. Grant worked with him for the Seneca-Cayuga Tribe prior to the Miami Tribe of Oklahoma. The next hearing was scheduled *14 weeks later* on January 7, 2016.

When in state court on **October 28, 2015** in front of Judge Higgins for a hearing on defendant's motion for change of school, Judge Higgins referred the matter to the FOC for an evidentiary hearing and directed Mr. Whitesman to file a motion to modify child support in accordance with the March 18, 2015 suspension of Derek's parenting time (DM, 175). Counsel filed said motion on **November 9, 2015** (DM, 164). The evidentiary hearing held before Referee Shelly Smith on **November 19, 2015** addressed school change, medical expenses, and child support modification (DM, 161).

Unlike the evidentiary hearings in November 2014 addressing a change in custody due to sexual abuse when Referee Shelly Smith made her recommendation from the bench, this time Referee Shelly Smith issued her recommendation on **December 10, 2015** after utilizing her maximum allowance of 21 days (DM, 173). Referee Smith's recommendation was to allow the school change, not to require Derek to pay his portion of medical costs, and she opted not to provide a recommendation regarding child support as the Circuit Court Judge ordered.

In compliance with the tribal court order, on **November 11, 2015** Elizabeth underwent a psychiatric evaluation with adult psychiatrist, Dr. Kimpo. ICW selected Dr. Kimpo and arranged the appointment. Expert witness Dr. Kimpo testified that mother is not delusional or psychotic (DOR, ¶9).

Absent a motion being filed and absent a hearing being held, on **December 7, 2015**, the tribal court entered a supplemental order allowing Derek additional visitation with JS (ROA, 41). JS's supervised visits with Derek were significantly increased (*Id.*). The order also continued the January 7, 2016 another *4 weeks* until February 4, 2016 (*Id.*). This continuance allowed for a gap of *18 weeks* between hearings.

Outside of a motion and a hearing, ICW provided Judge Tripp *ex parte* with Dr. Faller's report responding to Mr. Grooters' report following Mr. Whitesman's objection to its admittance (ROA, 41). Mr. Grooters was contracted by the Tribe to perform a sexual deviancy evaluation on Derek (*Id.*). The Tribe allowed Derek to provide the background information and reports that Mr. Grooters relied on for his testing. Mr. Grooters did not indicate he was aware of the disclosures made by MS or the contemporaneous medical evidence. Instead, it appears from Mr. Grooters' report that he took Derek's allegations at face value that Elizabeth is mentally ill and that she coached MS to make the allegations (*Id.*). There were also discrepancies in the information Derek reported to Mr. Grooters in comparison to what he had previously reported in regard to his stepfather being physically and emotionally abusive to him as a child and Derek's sexual experiences also varied from what he previously reported (*Id.*). Mr. Whitesman on behalf of Elizabeth is the only party that objected to the admission of Mr. Grooters' report. The Tribe, GAL, nor ICW objected or raised any concerns.

On **December 22, 2015**, Mr. Whitesman filed a motion for immediate consideration because ICW made a parenting time schedule for JS with Derek (ROA, 42). ICW provided this schedule to Elizabeth three days before it was to begin on Christmas Eve. ICW allowed Derek to select his own supervisor for the visits and did not consult with Elizabeth. ICW informed that the Judge instructed Elizabeth is to give MS Christmas presents from Derek. The motion notes objection to the regular communication ICW has with Derek, the *ex parte* communication ICW has with the Court, and the effect these communications appear to be having on the rulings. Mr. Whitesman also requested the audio of previous proceedings (*Id.*). The motion was granted and the visitations did not occur.

In state court on **December 29, 2015**, Judge Higgins entered an order requiring Derek to pay the office of Mr. Whitesman \$200.00 within two weeks. To date payment has not been made.

On **January 26, 2016**, Mr. Whitesman filed a motion requesting reports that are not being shared and an inquiry regarding next hearing (ROA, 45). The tribal court order resulting from the **February 4, 2016** hearing falsely stated that Elizabeth did not complete her psychiatric evaluation. Dissatisfied with the results of the two evaluations showing Elizabeth is not mentally ill, not delusional, and not psychotic, ICW and GAL requested for Elizabeth to be tested again and the Judge ordered it with a practitioner of ICW's choosing. Judge Tripp further ordered more parenting time for JS with Derek, but not as much as ICW requested. Judge Tripp also ordered MS to undergo an evaluation with a new counselor of ICW's choosing. ICW selected Mr. Rosenberg to evaluate MS.

On **April 6, 2016**, Mr. Whitesman filed an objection and motion to strike Mr. Rosenberg's report, as well as other reports (ROA, 57). A second motion addressed Elizabeth's concerns regarding parenting time being allowed and that Derek has not completed recommendations and orders but has been granted unsupervised parenting time by Judge Tripp (ROA, 58). The third motion addressed ICW preventing Elizabeth from speaking to the evaluator ICW arranged for MS. There was no disclosure as to what reports the evaluator was provided by ICW causing question if ICW was looking for objective evaluation or the results she wanted. On **April 12, 2016** Mr. Whitesman was provided with a motion and an order at the same time, to continue the April 14, 2016 until *5 weeks later* on May 19, 2016 (ROA, 60-61). On **April 13, 2016**, on behalf of the tribe, Robin Lash, the author of the petition against Derek, filed a motion to expand parenting time of JS with Derek further allowing unsupervised parenting time. Mr. Whitesman filed a response to the tribe's motion expressing concern, requesting testimony from JS's counselor, and

asking for an evidentiary hearing on the matter. Mr. Whitesman filed Elizabeth's response 42 minutes after being e-mailed the Tribe's motion only to be informed that the Court already entered an order (ROA, 67). Judge Tripp's order granted the Tribe's motion without allowing an opportunity to respond and without a hearing (ROA, 62-63). On **May 6, 2016**, Mr. Whitesman filed a motion for relief from the parenting time order. The motion addressed JS's report of Derek abusing the dog and the real concern of irreparable harm with the counselor's report attached (DOR)⁷. The Court was also made aware that the adjournments have resulted in a scheduling conflict for Dr. Walker to testify regarding her medical report (ROA, 67).

ICW Janet Grant fired JS's counselor for reporting Derek abused the dog and for sharing this information with Elizabeth and Mr. Whitesman. On **May 16, 2016**, Mr. Whitesman filed a motion regarding ICW terminating JS's counselor. The motion further addressed impediment of due process and for discovery and disclosure (ROA, 69). A motion for Relief from Journal Order was filed by Mr. Whitesman on **May 19, 2016** (ROA, 72). Mr. Whitesman filed a Case Review Hearing Memorandum; summary of hearing and testimony up until this point with relief requested on **May 24, 2016**.

At the hearing on **May 25, 2016**, Mr. Whitesman objected to ICW's case review and the change in parenting time/custody she sought (ROA, 76). Testimony was heard including that of expert witness, Dr. Suzette Walker who authenticated her medical report (DOR, ¶7). Heather Winkler testified she performed a urinalysis on MS Shaw on September 11, 2014 and the urine tested positive for a moderate amount of blood. Testimony is authenticated by the report and chart of Dr. Walker (DOR, ¶8).

⁷ Not Entered on Exhibit Log. DOR shows reports are in evidence.

Dr. Lemmen, child and adolescent psychologist performed the *third* round of testing on Elizabeth. Dr. Lemmen, child psychologist testified that Elizabeth's results were normal to both the psychiatric evaluation and the psychological test (DOR, ¶10). Dr. Lemmen testified that ICW coordinated the appointment and indicated to him that the problem was with Elizabeth, not with Derek. Dr. Lemmen testified that ICW further directed him that a report was needed determining what that problem was with Elizabeth (DOR, ¶10). Dr. Lemmen reported a *possible* borderline personality disorder, but his examination of Elizabeth was normal. Dr. Lemmen further testified that Elizabeth is not delusional or psychotic (DOR ¶10). Dr. Lemmen hired a psychologist to do a psychological test on Elizabeth. The test results were normal (DOR ¶10).

After hearing the testimony, Judge Tripp reinstated JS's counselor that ICW terminated. Judge Tripp declared that if he enters an order of Adjudication he will proceed with termination of Derek's parental rights and then ordered overnight visitation for JS with Derek, but would not issue a written order.

Elizabeth provided ICW an update on the children which included JS's anger, being physically aggressive, and lying. ICW e-mailed the counselor inquiring and the counselor sent a report to ICW. ICW provided the report to the Court Clerk. (DOR). Cynthia Willey-King's counseling progress report states JS said he was not ready for overnights with Derek yet, that JS's anger has been increasing as visitation with Derek has been increasing, that JS claimed Derek blamed Elizabeth for Derek's empty promise, and that JS's stated "they believe me when I lie". The counseling progress report also includes a treatment plan (DOR).

At the **August 10, 2016** hearing, testimony was heard from Callie Lankford, a qualified expert witness on child-rearing practices of the Tribe. Ms. Lankford testified that she felt there was at least clear and convincing evidence that Derek sexually abused MS repeatedly (DOR, ¶5).

QEW, Ms. Lankford, testified that there was not any indication that mother was delusional or had any mental health problems (DOR, ¶5). Callie Lankford's testimony fulfills the requirements of 25 USC 1912(f). JS's counselor, expert witness Cynthia Willey-King, also testified. Despite the tribe's QEW and the counselor's testimony authenticating her extensive progress report, ICW and GAL requested for JS to live with Derek. Judge Tripp denied their request but did increase visitation to include an extra overnight. No written order was issued.

On **August 27, 2016**, Elizabeth received a FedEx letter from ICW stating ICW and GAL removed JS from her care. On **August 29, 2016**, ICW filed an Update to the Court explaining GAL was in full agreement with the removal and her reasoning for removing JS from Elizabeth was she was exercising her "broad authority..." (DM, 223-App.2). Mr. Whitesman filed a motion for immediate consideration for the return of JS to Elizabeth on **August 30, 2016**. A hearing was set for September 6, 2016. At the hearing on **September 6, 2016**, Judge Tripp ordered JS returned back home to Elizabeth. ICW and GAL remained in their positions and were not removed from the case. Mr. Whitesman requested a written order, but was denied.

Closing arguments were heard on **September 28, 2016**. After being sworn as a witness, Judge Tripp questioned ICW Janet Grant. Ms. Grant testified affirmatively that she treats Elizabeth as though she is the offender and represents her to others as though she is the problem substantiating Dr. Lemmen's testimony (DOR, ¶14). Judge Tripp asked ICW if she has constant communication with Derek and if she has communication with JS during all of his court ordered visits with Derek. Ms. Grant testified that she does not have regular communication with Derek and that she does not have contact with JS on all of his visits with Derek. Judge Tripp responded by informing Ms. Grant that he could take her cellphone into custody. Ms. Grant quickly asked Judge Tripp to "clarify" her testimony. Ms. Grant recanted by testifying that she does have regular

communication with Derek and that she does contact JS on all of his court ordered visits with Derek (DOR, ¶14). Ms. Grant further testified that if Derek committed the abuse, he should not have unrestrained access to either child (DOR, ¶14). Judge Tripp said he would review the case and issue a decision.

In state court, since Elizabeth did not object to the Referee failing to modify child support in 2015, a year and a half later, in **May 2016**, the FOC initiated a standard three-year review by mailing paperwork. Elizabeth provided the FOC with the requested income verification paperwork. Derek failed to provide said paperwork after two requests by the FOC.

In tribal court, Judge Tripp entered a Protective Order against ICW and GAL on **June 28, 2017** after it was realized they intended on travelling to Michigan to “interview” JS and MS for a couple of hours (DM, 201-Ex.E). After experiencing the illegal removal of JS from Elizabeth by ICW and GAL in August 2016, the Protective Order was a preventative measure to prevent JS and MS from being kidnapped by ICW and GAL.

In state court, since Derek failed to cooperate by completing the income verification form requested by the FOC, both parents were ordered to appear for an evidentiary hearing on **July 25, 2017** in front of Referee Shelly Smith (DM, 189). At the hearing, Derek again did not provide the information. Rather than impute his income, Referee Shelly Smith gave Derek another extension to verify his income.

On **September 1, 2017**, an updated Uniform Child Support Order was entered using imputed income for Derek, because he again failed to provide his income verification (DM, 194). On **November 20, 2017**, an Order was entered for Derek to show cause for not paying child support (DM, 196). At a **December 20, 2017** show cause hearing, Derek was found guilty of civil

contempt and sentenced to jail which would be held in abeyance if terms of payment were met (DM, 197).

Elizabeth received a text from ICW on **January 18, 2018** telling her to call into the hearing. Elizabeth called in for the hearing and explained that she was at work and was not given notice of the hearing. During the hearing, it was very difficult to hear. Elizabeth repeatedly asked Judge Tripp to repeat himself. Both ICW and the tribe's new presenting officer, Cynthia Burlison, who was previously Derek's court-appointed attorney, tried to relay to Elizabeth what the Judge was saying. The following day, since she could not hear, Elizabeth emailed the court clerk requesting audio or transcripts. After a week passed without receiving any information, Elizabeth decided to file a motion to vacate the order, even though she had not received one. After Elizabeth filed the motion on **January 30, 2018**, the clerk emailed Elizabeth the Order of Adjudication. The Order lifted the Protection Order against ICW and GAL, outlined testimony heard, released JS from the tribal court case, retained MS in tribal court with a disposition plan of reunification with Derek, and specifically stated, "no change of placement warranted at this time."

ICW and GAL made a surprise visit at about 7:30pm on **February 17, 2018** to Elizabeth's home. JS was on a court ordered visit with Derek. They wanted to talk to MS, but MS was at a sleepover. ICW and GAL insisted Elizabeth take them to the sleepover so they could talk to her. Elizabeth asked if they could talk to her the following day and they said it had to be that night. The sleepover was about 40 minutes away and it was snowing. At almost 9:00 pm, MS had to leave her sleepover to talk with ICW and GAL for 45 minutes. Once they were done talking to her, Elizabeth took MS back to her sleepover.

On **February 18, 2018**, GAL, Curt Lawrence, contacted maternal grandmother by phone to see if she would be willing to take JS and MS to live with her while in joint counseling with

Derek. GAL said the placement was necessary due to Elizabeth not wanting reunification of Derek and MS. Maternal grandmother, Marsha Wetzel told GAL that if the judge ordered it, she would. GAL said that he and ICW would need to convince the Judge which would take a couple weeks, possibly a little longer to do. Said statements are affirmed by affidavit of maternal grandmother, Marsha Wetzel (DM, 223-App.14-15).

Four weeks after Elizabeth's motion to vacate, on **March 2, 2018**, Judge Tripp entered an order vacating the original order of adjudication and scheduled a hearing *6 weeks later* on Friday, April 13, 2018 for entry of adjudication. With the order vacated, the protection order against ICW and GAL was again effective. On **March 7, 2018**, without a motion filed and absent a hearing, Judge Tripp entered an order stating the protection order against ICW and GAL was lifted following a motion filed by Elizabeth. Elizabeth did not file a motion requesting the protection order to be lifted. The order also said MS was to begin counseling with a "new counselor" of ICW's choosing. At the time of this order, MS was still attending counseling sessions with Ms. Armbruster with whom she had an established therapeutic relationship with for over four years.

Without a motion filed and without a court hearing, Judge Tripp entered an order allowing Derek to have visitation with JS for half of his spring break that ICW texted to Elizabeth. On **March 27, 2018** Elizabeth received another order from the court clerk dictating JS was to spend the other half of his spring break with Derek (ROA, 99). The Judgment of Divorce dictates Derek and I are to divide visitation 50/50 during school vacations.

At the tribal court hearing on **April 13, 2018**, Judge Tripp entered an Order of Adjudication retaining JS and MS in the tribal court case and adopting the terms of the previous January 18, 2018 adjudication which states, "no change of placement warranted at this time." According to

the Miami Tribe of Oklahoma's Children's Code, CC§1.9.5, entry of an order of adjudication occurs if the evidence meets the "proof beyond a reasonable doubt" standard of proof.

Executing their intent, despite Judge Tripp just ordering *no change of placement* ICW and GAL on **April 13, 2018**, who were already in Port Huron, Michigan and attended the hearing by phone, went to the schools of JS and MS and removed them with the assistance of the St. Clair County Sheriff's Department (DM, 223-App.1). ICW and GAL did not have the permission of Elizabeth or a valid court order authorizing the removal of the children. ICW and GAL proceeded to "place" JS with Derek and MS with maternal grandmother, illegally removing the children from their home with Elizabeth.

The following day on **April 14, 2018**, the St. Clair County Sheriff's Department dispatched the deputy that assisted the Tribe to Elizabeth's home and rather than consider what Elizabeth was telling him, he opted to call ICW and follow her directives. In his report, Deputy Cleland claimed Elizabeth admitted the tribe has custody of the children. Elizabeth did not. Elizabeth would not say that. Elizabeth would say, "they say they do, but they don't." Elizabeth offered Deputy Cleland court orders, but he would not accept them. Deputy Cleland said he had the paperwork he needed from Ms. Grant, but would not provide the paperwork to Elizabeth and the paperwork was not included with his report (COA, V1.190-195).

On Monday, **April 16, 2018**, Elizabeth filed an emergency motion for immediate consideration in tribal court demanding the return of JS and MS. Elizabeth filed a supplemental brief to her motion on **April 17, 2018**. The motion was set for hearing *3 weeks later* on May 3, 2018. Also, on **April 17, 2018**, Robin Lash filed a motion to withdraw from the case and an order granted her withdrawal. **April 18, 2018**, Elizabeth filed a motion for a court appointed attorney to

assist her in preparation for the May 3, 2018 hearing (DM, 223-App.4-5). This motion was also set for hearing on May 3, 2018.

A possible motivation for the explicit trauma inflicted on JS, MS, and Elizabeth, was filed on **April 18, 2018** at 8:25am in state court. The FOC filed a Notice of Abatement of Child Support after being advised that JS and MS were now living with Derek (DM, 200). The Abatement would be applied retroactive April 13, 2018. Rather than initiate enforcement proceedings MCR 3.208(B)⁸ for violation of the parenting time order, the FOC immediately implemented the abatement rather than waiting the required 21 days. The child support order that the FOC abated was a modification to a final judgment. The FOC should not have taken any action without a motion filed in the divorce case giving Elizabeth an opportunity to contest, MCR 3.210(D)(1)⁹. This is the process Elizabeth was ordered to follow and the process the FOC required Elizabeth to follow (DM, 120,160,173). To not require Derek or the Tribe to follow the same procedure deprives Elizabeth of her constitutionally protected right to equal protection under the law¹⁰. The FOC should have taken immediate action initiating enforcement proceedings against Derek for not following the custody orders of the court. This issue was beyond granting make-up parenting time. The FOC was informed that the children were taken from Elizabeth in violation of court order and placed with Derek in violation of court order. The information provided to the FOC was a clear indication that withholding the children from Elizabeth was not intended as a temporary action, it

⁸ MCR 3.208(B) – Enforcement. The friend of the court is responsible for initiating proceedings to enforce an order or judgment for support, parenting time, or custody. The procedures in this subrule govern contempt proceedings under the Support and Parenting Time Enforcement Act. MCR 3.606 governs contempt proceedings under MCL 600.1701.

⁹ MCR 3.210(D)(1) – The court must make findings of fact as provided in MCR 2.517, except that findings of fact and conclusions of law are required on contested post-judgment motions to modify a final judgment or order

¹⁰ Equal Protection Clause of the 14th Amendment requires the governing body state to treat an individual in the same manner as others in similar conditions and circumstances.

was intended as permanent. The FOC should have taken immediate action to initiate enforcement proceedings to uphold the orders of the court, but they did not.

On **April 19, 2018**, Elizabeth and her aunt went to the St. Clair County Sheriff's Department and asked to speak with someone about her children being taken. After waiting, Deputy Duva took Elizabeth and her aunt to an interview room. Elizabeth informed Deputy Duva that the tribe took the kids without the right, explained they have done this to her son in the past, and answered all the questions Deputy Duva had for her. Elizabeth told Deputy Duva about how ICW and GAL insisted she take MS from her sleepover so they could interview her on February 17, 2018. Deputy Duva informed Elizabeth that she was in her driveway that night at the request of ICW and GAL while they came in the house. Elizabeth had no prior knowledge of this. Deputy Duva indicated that ICW and GAL told her a different story when they came out and released her to leave prior to Elizabeth coming out of the house to drive to the sleepover, but Deputy Duva did not divulge what they may have said. Deputy Duva reported that Elizabeth admitted the tribe has custody of her children. Elizabeth did not. Whenever asked a question like that, Elizabeth responds with the truth, "they say they do, but they don't."

At a hearing held in tribal court on **May 3, 2018**, without any responses filed, Judge Tripp denied Elizabeth's motion demanding the return of the children. During the hearing, Judge Tripp removed ICW Janet Grant from the case and said Elizabeth had to sign the Service Plan (DM, 223-App.6-7) if she wanted her children returned to her. With Judge Tripp off his bench and standing over Elizabeth alongside Ms. Grant, Elizabeth signed the service plan under duress. The service plan was already signed by both Judge Tripp and Ms. Grant. Judge Tripp told Elizabeth that once

she completed a portion of the service plan, she could make application to the court for return of the children. Elizabeth was not issued an order¹¹.

On **May 9, 2018**, Elizabeth filed an emergency ex parte motion for change in counselor (ROA, 113). On **May 9, 2018**, Elizabeth also filed an emergency motion showing completion of service plan and proofs thereof for return of the children and revoked her signature on the Service Plan with supporting affidavit in fear it somehow allowed the Tribe to keep her children from her (DM, 223-App.8-10). Elizabeth filed another motion on **May 14, 2018** for Reconsideration and Objection to ICW's report (ROA, 114). The motions were set to be heard on May 31, 2018. No responses were filed to the motions. At the **May 31, 2018** hearing, Judge Tripp denied all of Elizabeth's motions. Elizabeth was not provided with an order.

In effort to exhaust her recourse in tribal court, on **May 14, 2018**, Elizabeth filed a Notice of Appeal. In lieu of transcripts that were unavailable due to audio/video failure, on **June 4, 2018** in the tribal court of appeals, Elizabeth filed the Designation of Record outlining testimony heard throughout the proceedings (DOR). Judge Tripp, the Tribe, Derek, ICW, and GAL were all allowed an opportunity to object or amend the Designation of Record if they were not in agreement of the contents therein, AC § 8(B)¹². There were no objections or amendments, therefore, all were in agreement with the Designation of Record.

¹¹ Once Ms. Sherigan filed an appearance and requested orders, the tribal court clerk provided them.

¹²AC § 8(B) – Statement of Proceedings When No Report or Transcript Made: If no report of the evidence or proceedings at a trial or hearing was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence and proceedings. Said statement shall be filed with the Clerk of Court. The appellant shall serve a copy of the statement on appellee, and the appellee shall have ten (10) days to raise objections and propose amendments to the statement and file those objections and proposed amendments with the Clerk of Court. The Miami Tribe District Court shall settle the objections, make any necessary amendments and finally approve the statement for inclusion in the record of appeal.

On **July 18, 2018**, Elizabeth's new tribal court attorney, Angela Sherigan, who is a tribal judge in Michigan and the President/Chair of Michigan Indian Legal Services filed an emergency motion for return of the children to Elizabeth. Angela admitted the removal of the children from Elizabeth was illegal, the removal of the children from Elizabeth is a violation of the Miami Tribe of Oklahoma's Children's Code, and a violation of the Indian Child Welfare Act (DM, 223-App.11¶24). Ms. Sherigan furthered that the children should be returned to Elizabeth immediately and without necessity of a hearing (DM, 223-App.11¶25). Ms. Sherigan also filed a motion to stay counseling between Derek and MS. A hearing was held on the motions **July 27, 2018**. Judge Tripp entered an order on **August 1, 2018** allowing counseling between Derek and MS. To date, no opinion or order has been entered in regard to the motion to return the children. Unfortunately, Ms. Sherigan did not respond to Elizabeth's request to represent her in state court proceedings. Possibly due to a conflict of interest because Michigan Indian Legal Services limit their services to only be available to tribal members¹³.

After counselor Donna Greenhaw arranged for MS to have overnight visitation with Derek, Ms. Sherigan filed an *ex parte* emergency motion to stay overnight visitation on **September 6, 2018**.

On **September 11, 2018**, without a hearing being held, Judge Tripp entered an order prohibiting Derek and Elizabeth from having access to the children's counseling files with Ms. Greenhaw. The order further stated the children's counseling files are only to be provided to ICW and GAL. On **September 11, 2018**, Ms. Sherigan filed a motion regarding Elizabeth's parenting time. On **October 10, 2018**, Andrew Doney filed an appearance as the tribe's presenting officer.

¹³ Non-respondent mother is not a tribal member. She is a non-Indian.

An order was entered in the tribal court of appeals on **August 28, 2018** dismissing the appeal because appellant's brief was not timely filed. The court clerk e-mailed the dismissal order to Ms. Sherigan even though she did not represent Elizabeth in the tribal court of appeals, only in the tribal district court. An outside source informed Elizabeth of the dismissal order some time thereafter at which time Ms. Sherigan provided Elizabeth with the dismissal order. On **December 7, 2018**, Elizabeth filed a motion to reinstate the appeal due to not being made aware by the court clerk that the case file was transferred which begins the briefing timeline according to the tribe's appellate code. After consideration of the motion and the Tribe's response in opposition of the appeal being reinstated, the Court of Appeals entered an order vacating the dismissal order and reinstating the original appeal on **January 8, 2019**.

On **December 13, 2018**, Mr. Doney filed a Motion to Adopt the Counselor's [Donna Greenhaw] Recommendations which included custody of the children and Derek moving the children to Oregon. On behalf of Elizabeth, Ms. Sherigan filed a response in objection on **January 8, 2019** that explicitly stated this is not a custody case, the custody order is in Sanilac County State Court, and Derek is prohibited from moving the children more than 100 miles without prior approval of the state court. Mr. Doney filed a motion to continue hearing on motion to adopt counselor's recommendations on **January 15, 2019**.

In tribal district court, a hearing was held on **January 17, 2019**. The hearing was scheduled to address Ms. Sherigan's motion to stay overnight visitation and motion regarding parenting time. No responses were filed to said motions. This hearing resulted in a Journal Entry being entered. The court ordered for the family to attend peacemaking court in Michigan either in the Washtenaw County Circuit Court or in the Saginaw-Chippewa tribal court. If this service was not available quickly then the Court would set a parenting time schedule. The family was unable to attend

peacemaking court because in tribal culture, abuse/neglect cases are not eligible for peacemaking court because you are not supposed to make peace with your abusers. Judge Tripp did not set a parenting time schedule as ordered to be the alternative.

On **January 28, 2019** in the tribal court of appeals, Elizabeth filed an emergency Motion for Declaratory and Injunctive Relief (TROA, 12). The same day, Chief Justice Blaesar ordered the Court *will not entertain* said motion because the case *has pended in district court for over two years* (TROA, 13). On **February 7, 2019** in the Tribal Court of Appeals and in the tribal district court, Elizabeth filed a motion regarding ICWA violations (TROA, 15). No responses were filed in either court. On **February 15, 2019** Justice Moore ordered, *[t]his Court will not entertain... The Motion is hereby DENIED.* (TROA, 18). To date, the tribal district court has not heard said motion or issued an order.

On **March 7, 2019**, the tribe filed a motion in the tribal court of appeals for an extension of time to file their appellee brief (TROA, 20). Elizabeth was e-mailed said motion on **March 8, 2019** and was also e-mailed on **March 8, 2019** the tribal court of appeals order granting the tribe a 20-day extension to file their appellee brief (TROA, 22). Not having an opportunity to respond to the motion prior to entry of the order, on **March 18, 2019**, Elizabeth filed a response to the tribe's motion for extension of time inclusive of a motion for reconsideration of the denial orders. The basis of Elizabeth's motion was that if the Court was willing to grant an extension of time, maybe now they'd be willing to consider my motions regardless of how long the case pended in tribal district court (TROA, 24). To date, the tribal court of appeals has not entered an order in response to Elizabeth's motion for reconsideration.

On **April 3, 2019**, in tribal district court, Judge Tripp entered an Order requiring Derek to show cause after determining Derek violated multiple orders of the Court including removal of JS

and MS from Elizabeth, withholding JS and MS from Elizabeth, changing the school of JS which is a state court matter, travelling with JS and MS across state lines, and failing to provide safe, stable, and appropriate housing and transportation (DM, 201-Ex.D).

Elizabeth was contacted by the state court and informed that the money order she used to pay on the L-GAL's attorney fees that the court had been regularly billing her for since 2015 was returned because it was stale dated. On or about **April 3, 2019**, Elizabeth paid for a copy of the NA case file. In the file there was an order stating the respondent was responsible for paying the L-GAL's attorney fees (NA1, 32; NA2¹⁴). As a non-respondent, Elizabeth filed a motion¹⁵. In response to said motion, Judge Teeple entered a fee-waiver on **April 11, 2019** that stated the reason for write-off is that *debtor is a non-respondent and filed a motion*.¹⁶

On **April 15, 2019**, Elizabeth e-mailed the tribal court clerk to clarify what was scheduled to be heard at the April 18, 2019 hearing. The clerk e-mailed the response; Motion to Show Cause, Order to Show Cause, Motion for Clarification.

Elizabeth included the tribal court order to show cause as an exhibit on **April 16, 2019** when she filed an emergency exparte motion in the state court divorce case regarding the illegal removal of the children and the ICWA violations (DM, 201-Ex.D). Judge Ross denied said motion on **April 16, 2019** (DM, 202). Prior to receiving or having knowledge of the April 16, 2019 denial order, Elizabeth filed an amended emergency exparte motion concerning same on **April 18, 2019** (DM, 203).

¹⁴ Not listed on Case Register of Actions.

¹⁵ Not listed on Case Register of Actions.

¹⁶ Not listed on Case Register of Actions.

At the **April 18, 2019** tribal court hearing, Elizabeth was given a cellphone number to call into rather than the conference phone system. Prior to the hearing the tribal court clerk e-mailed Elizabeth, "I just spoke to Judge Tripp and he will be late this morning for Court. We are looking at least a 30 minute delay." Court was originally scheduled for 11:45 CST/12:45 EST. At 11:54 CST/12:45 EST, Elizabeth e-mailed the clerk, "Will court begin at 12:15 pm your time or have you heard there is another delay?" The clerk responded at 12:07 CST/1:07 EST, "Your case was heard at 11:45 PM CST as scheduled." Elizabeth then received an order indicating Judge Tripp granted the Tribe's motion to adopt the counselor's recommendations by default since Elizabeth previously objected [January 8, 2019]. Although Judge Tripp does not specify in his order what the counselor's recommendations are, they change custody, allow the children to live with Derek, and for it to be considered for Derek to move the children to Oregon in summertime. According to the clerk's e-mail on April 15, 2019, said motion was not scheduled to be heard.

Judge Ross denied the amended motion on **April 22, 2019** (DM, 204). Elizabeth filed a third motion to Enforce the Terms of the Judgment of Divorce concerning the custody of the children on **April 22, 2019** and it was set for hearing on May 1, 2019 (DM, 205).

On **April 26, 2019**, without a hearing being held, Elizabeth received an e-mail from the tribal court with an attached motion filed by Curt Lawrence and an attached protection order signed by Judge Tripp saying Elizabeth was not allowed contact with her children. The documents were on a false case heading, contained lies, and were entered without the jurisdiction to do so. Derek attached said documents to his Michigan Court of Appeals response.

In state court on **May 1, 2019**, Elizabeth argued her motion for Judge Ross to enforce his jurisdiction regarding custody of the children and order the immediate return of JS and MS. Derek failed to appear for the hearing and did not file a response. Judge Ross would not accept

Elizabeth's three exhibits as evidence (transcripts; p.4¶12, p.5¶17, p.7¶18). Rather than accept the March 18, 2015 order as evidence, Judge Ross said, "I will take judicial notice of the NA File in this case and the documents filed therein." (transcripts; p.7¶23-25). Judicial notice of the NA case confirms that Judge Ross recognizes the March 18, 2015 order suspending Derek's parenting time for sexually abusing MS as a fact in the divorce case. Judge Ross also recognizes as a fact that mother is a non-respondent and that according to the Assistant Prosecutor in his response, there is "no such evidence known" that negates the guilt, mitigates the degree of the offense, or reduces the punishment for the allegations that Derek has repeatedly sexually abused MS (transcripts; p.7¶23-25) (NA1, 14; NA2, 13).

Elizabeth filed a proposed order on the 7-day rule on **May 2, 2019**. Derek did not file any objections. Fully advised on the premises that the children were living with Derek and being withheld from Elizabeth, Judge Ross decided the proposed order did not comport to his ruling so on **May 15, 2019**, Judge Ross ordered Derek and Elizabeth to appear *seven weeks* after the original hearing on June 19, 2019 for another hearing and entry of judgment.

Oral arguments were held in the tribal court of appeals on **May 20, 2019** during which the Tribe admitted Elizabeth's most compelling argument is that she is a non-respondent (Tribal COA transcripts, p.6¶12-15, p.9¶17-23).

Elizabeth retained attorney, Frederick Lepley, Jr. with a payment of \$1500.00 on **May 31, 2019** to represent her in state court after first meeting with Mr. Lepley on May 9, 2019 and providing him with documents to review. Elizabeth gave Mr. Lepley the NA file that was purchased the month prior without making a copy for herself so on **June 4, 2019** Elizabeth e-mailed Mr. Lepley telling him she would pick up her originals from him later that week. Elizabeth's first attempts at picking up the originals were unsuccessful because Mr. Lepley's

secretary said he was not finished with them yet. The secretary said she would make copies and Elizabeth could pick them up at a later date.

According to the certificate of mailing dated **June 12, 2019**, Mr. Lepley's appearance was mailed to Derek. Due to a conflicting court hearing, Mr. Lepley would not represent Elizabeth during the hearing even though Mr. Lepley accepted the case and Elizabeth's retainer fully aware of the June 19, 2019 court hearing.

On **June 7, 2019**, the tribal court clerk e-mailed Elizabeth to inform that the tribal court hearing scheduled for June 13, 2019 was continued until **July 18, 2019**, after Judge Ross's entry of Judgment.

Derek and Elizabeth appeared for the hearing and entry of judgment on **June 19, 2019** (DM, 211). Derek falsely alleged that he was not served with the motion or notice of hearing (transcripts; p.4¶11-15). Judge Ross advised Derek that he had the option to pursue recourse if he did not receive notice, but it would need to be in writing for him to take action (transcripts; p.5¶17). Later in the hearing, without prompt Judge Ross advised Derek, *[a]gain, I would suggest that if you do have a motion to make you put it in writing, okay.* (transcripts; p.6¶17). Derek then questioned Judge Ross, *[d]o you have the protective orders and the no contact orders for Ms. Shaw?* (transcripts; p.6¶20). Not confused or unaware of the documents in question, Judge Ross quickly and sharply responded by saying, *[y]ou will have to review the file yourself. I am not going to review the file right now to determine what is contained in the file as evidence and what is not* (transcripts, p.6¶20-25). Judge Ross did not admit nor deny that he was provided with said tribal court documents outside the knowledge of Elizabeth and therefore outside the law. Judge Ross denied Elizabeth's motion and failed to return the children to her rightful custody claiming the tribal court had jurisdiction which suspended his orders. It was Elizabeth's intent to appeal the

June 19, 2019 order but Mr. Lepley was continuously unavailable to meet which caused the time for reconsideration to pass, MCR 2.611(B)¹⁷ and the time to file a claim of appeal to expire, MCL 7.204(A)(1)(a). Mr. Lepley obstructed Elizabeth's appeal causing her to miss her deadline.

On **August 5, 2019**, Judge Tripp entered an order allowing Derek to move the children from Michigan to Oregon despite not having the jurisdiction to do so and in violation of the Judgment of Divorce (DM, 215-Ex.2). Said order was attached as an exhibit to the motion Mr. Lepley filed in the divorce case to Enforce the Judgment of Divorce concerning change in domicile (DM, 215). Said motion was heard on **September 4, 2019**. Derek did not file a response and failed to appear. From the bench Judge Ross denied the motion but an order has not been entered making it impossible to file a claim of appeal¹⁸.

Six days after the hearing in state court and nearly four months after oral argument, the tribal court of appeals entered their Opinion on **September 10, 2019** upholding the order of the tribal district court (COA, V1.123-126). Despite the questions posed and arguments made in Elizabeth's tribal court of appeals brief (TROA, 14), the support of Elizabeth's contentions in the Tribe's response brief (TROA, 26), Elizabeth's reply brief (TROA, 28), and the Tribe admitting Elizabeth's most compelling argument is that she is a non-respondent (transcripts, p.6¶12-15, p.9¶17-23), the Tribal Justices opted not to directly address the jurisdiction of the divorce case, ICWA, *Troxel* or the March 18, 2015 order (COA, V1.123-126), just as they *would not entertain* Elizabeth's previous motions that required a direct determination regarding custody (TROA, 12,13,15,18,24). The Tribal Justices admit that the removal of the children by ICW and GAL was

¹⁷ MCR 2.611(B) – A motion...to alter or amend a judgment must be filed and served within 21 days after entry of judgment.

¹⁸ On the Case Register of Actions, there appears to be an invalid entry dated February 3, 2020 indicating an order was entered concerning this matter (DM, 234).

not ordered by Judge Tripp, but used the same language that they were "placed" (COA, V1.123-126). In Elizabeth's reply brief she reminded the tribal court of appeals that their decision would create case law allowing all Indian children to be taken from their parents without cause and absent due process (TROA, 28). The tribal court of appeals opted not to publish their opinion. Two of the three justices failed to authenticate their opinion with a signature or a signature stamp, as previously done, and instead signed the Opinion via /s/ (COA, V1.123-126).

In the NA case, Mr. Lepley filed a motion to rescind the transfer of the NA case to tribal court (NA1, 29; NA2, 25). On **September 23, 2019**, Elizabeth e-mailed Mr. Lepley the information she found that indicated the Order of Transfer is a void order in thought that it would be helpful for the upcoming hearing. Mr. Lepley did not respond. For the **September 25, 2019** before Judge Teeple, Derek did not file a response and failed to appear. DHHS did not file a response and failed to appear. The Tribe was represented by counsel, submitted a response brief, and attended the hearing by phone (NA1, 40; NA2, 33). The Tribe admitted in their brief that the children were removed from Derek's custody following a fact-finding hearing and that the evidence was at least clear and convincing meeting the requirement of "foster care placement",

After this proceeding was initiated and prior to the transfer of jurisdiction to the Tribe, the Court ordered that the biological father of the children, Derek Shaw, be stripped of all contact with his children based on allegations of sexual abuse. See Order After Pretrial Hearing (Child Protective Proceedings), No. 15-35887- NA-01-02 (Mar. 17, 2015). As a result, the children were removed from any and all care of Derek Shaw and, pursuant to the Court's order, they could not be returned to him upon his demand. Id. As a result, this proceeding falls squarely within the definition of a "foster care placement" under 25 U.S.C. § 1903(1)(i) (DM, 223-App.17).

During the September 25, 2019 hearing, the Tribe further admitted that Elizabeth is a non-respondent and the children were placed with her prior to the transfer,

I just want to briefly respond to just the due process point. You know that the ... the argument backs Ms. Shaw's due process rights are ... were violated by roping her into the proceeding without

adjudicating her is somewhat puzzling on a few levels that the first is that at the time the transfer occurred the County, had been investigating allegations of abuse as ... as opposing Counsel notes targeted at that children's Father and not Ms. Shaw. So it's really unclear how this Court, how this State Court could of violated Ms. Shaw's due process rights, when the children were placed with her before the transfer occurred (transcripts, p.18¶12-23)...that after the transfer occurred there were allegations and ongoing investigations that ultimately did involve Ms. Shaw (transcripts, p.19¶1-3).

The Tribe's admission provided an opportunity, so Elizabeth wrote Mr. Lepley a note suggesting he mention the information she e-mailed about the Order of Transfer being a void order thinking it may be helpful. After looking at the note Mr. Lepley slid it back and ignored it. From the bench, Judge Teeple denied the motion after admitting he is not an expert on the matter, (transcripts, p.21¶10). Judge Teeple asked the tribe's counsel to prepare the order. Elizabeth did not receive the proposed order. Elizabeth was unaware of the entry of the denial order on **October 23, 2019** (NA1, 42; NA2, 35). Following the hearing, as agreed upon, Elizabeth e-mailed Mr. Lepley to discuss options including filing an appeal. Mr. Lepley did not respond. Elizabeth e-mailed Mr. Lepley inquiring whether or not an order was entered. Mr. Lepley has not responded. After several attempts, Mr. Lepley continually failed to have any communication with Elizabeth following the hearing. Mr. Lepley's obstructed Elizabeth's margin of time to file a claim of appeal.

Elizabeth filed a motion on **January 13, 2020** for Relief from Judgment and Declaratory Judgment and Motion to Remove Attorney from Case (DM, 223). On **January 21, 2020**, Mr. Lepley faxed the court with a response to the motion to remove him from the case (DM, 225). Mr. Lepley did not provide Elizabeth with his response. The Sanilac County court typically accepts filings by mail or in person, not by fax.

A hearing was held on **January 22, 2020**. Derek did not file a response and failed to appear. Judge Ross entered an order removing Mr. Lepley from the case and indicated he was

aware of Mr. Lepley's faxed response stating he had no objection (transcripts, p.3¶14-19). Elizabeth proceeded with argument of her other motion. The first exhibit Elizabeth offered was the April 3, 2019 tribal court order to Show Cause (DM, 201-Ex.D). Judge Ross would not admit the exhibit into evidence (transcripts; p.11¶8-9), however, once Elizabeth reserved her right to appeal (transcripts; p.19¶10-14), Judge Ross directed Elizabeth to provide him with the exhibit so he could keep it as part of the record (transcripts; p.19¶10-14). Judge Ross also kept Elizabeth's second exhibit, Ms. Sherigan's tribal court pleading admitting the removal was a violation of tribal law and ICWA, as part of the record, but would not admit it as evidence. When Elizabeth asked to present additional exhibits, Judge Ross denied her request (transcripts; p.19¶18-19). In response, Elizabeth reserved her right on appeal to offer the documents necessary to provide a background and full explanation of the case (transcripts; p.20¶14-18). Immediately following Elizabeth reserving her right to appeal, Judge Ross executed MCR 2.119(E)(3) limiting argument and exhibits (transcripts; p.20¶19-24). From the bench, Judge Ross ruled that he was denying all of the relief requested.

Submitted on the 7-day rule, Judge Ross entered an order denying Elizabeth's motion (DM, 235). The Case Register of Actions indicates the order was entered on February 4, 2020 yet the order is file stamped **February 3, 2020**. Elizabeth had filed by mail an objection to the proposed order (DM, 236), but from the date it was mailed, it took the court nearly a week to receive and file the motion (transcripts; p.5¶2-4). In the same manner, based on the certificate of mailing, it took Elizabeth a week to receive the signed order in the mail from the Court (transcripts; p.3¶12-14) which significantly diminished her appeal timeline. In response to the denial order file stamped February 3, 2020, Elizabeth filed a timely appeal of right in the Michigan Court of Appeals and the Sanilac County court on **February 24, 2020**.

After reserving her right to appeal at the hearing on January 22, 2020, for her appeal, on **February 19, 2020**, Elizabeth purchased a certified copy of the case register of actions in the divorce case. Elizabeth was unaware of many entries such as hearings and entry of an order five months after the September 4, 2020 hearing (DM, 217, 219, 220, 234). Elizabeth was not provided with notice of the review hearings and was not provided with the order.

On **February 19, 2020**, Elizabeth filed a motion and brief with supporting appendix (NA1, NA2)¹⁹ for relief from the October 23, 2019 judgment and for declaratory judgment. Judge Teeple reviewed the motion, brief, and appendix without a hearing and issued an order denying Elizabeth's motion on **February 27, 2020** (NA1, 53; NA2, 46). In response to said order, Elizabeth filed a timely appeal of right in the Michigan Court of Appeals and the Sanilac County court on **March 19, 2020**. Elizabeth filed her appellant's brief on **April 7, 2020**. Phoebe Moore filed an appearance on **April 16, 2020** representing Sanilac County DHHS. The Michigan Court of Appeals entered an order on **April 30, 2020** dismissing the appeal for lack of jurisdiction. Elizabeth filed a motion for reconsideration on **May 3, 2020**. Phoebe Moore filed a response to said motion on **May 7, 2020**. The Court of Appeals filed an order denying the motion for reconsideration and denying the request for an order declaring the Order of Transfer void on **May 12, 2020**.

In the pending appeal in the divorce case, Elizabeth filed her appellant's brief and her motion for immediate consideration of the appeal on **March 23, 2020**, but there was a defect within Mi-File so it was resubmitted on **March 25, 2020**. In the pending appeal in the divorce

¹⁹ Not listed on Case Register of Actions.

case, Elizabeth filed her appellant's brief and her motion for immediate consideration of the appeal on **March 23, 2020**, On **March 25, 2020**, Elizabeth received an email from TrueFiling stating,

I am reaching out to you because, your bundle (ID# 1542655) that you submitted into case 352851 on 3/23 is to big for the court to process correctly. After speaking with the court they have advised to see if you can attempt to decrease the size of all these documents or break them up into smaller sections in order to get the documents in front of the court for review. Thank you so much.

Elizabeth resubmitted on **March 25, 2020**. On **April 20, 2020** the Court of Appeals Clerk sent a notice that the case was scheduled to be placed on an upcoming case call session. On **April 20, 2020**, Elizabeth filed an immediate motion for peremptory reversal and a supporting brief. The Court of Appeals issued an order on **July 16, 2020** directing Derek to file a response on or before July 30, 2020. Derek filed his response on **August 3, 2020**. Derek did not provide Elizabeth with a copy of his filing so the Court of Appeals provided service to Elizabeth in lieu of defecting Derek's response for failure to provide service. Elizabeth filed a motion for immediate consideration requesting leave to reply on **August 10, 2020**. The court of appeals entered an order on **August 12, 2020** granting the motion for immediate consideration, granting leave to reply, and denying the motion for peremptory reversal for failing to persuade the Court of manifest error without oral argument or formal submission. On **August 14, 2020**, the Michigan Court of Appeals clerk informed Elizabeth that although Derek's appellee brief was due on June 29, 2020, they will continue to accept his brief for filing and notification will be sent when the appeal is placed on the case call panel, but that will be in October at the earliest.

On **September 3, 2020**, Elizabeth filed an application and supporting brief for immediate consideration in the Michigan Supreme Court requesting leave to appeal and other relief. The Michigan Supreme Court mailed a copy of the order denying this request on **October 16, 2020**. The Clerk's office informed that because my appellant's brief was not technically filed until after

its due date, a motion and order of the Court are necessary for oral argument. The Notice of Case Call issued on **October 30, 2020** scheduled this case to be heard on December 2, 2020 at 11:00 a.m. On **November 2, 2020** Elizabeth filed a motion for oral argument in the COA. The COA granted Elizabeth 10 minutes of oral argument in an order entered on **November 12, 2020**, but in an email from the clerk's office on **November 17, 2020**, Elizabeth was not shown to be designated for oral argument. After a phone call on **November 18, 2020**, the clerk's office informed that they will not email a correction, but I do show to be designated for oral argument on their system and I can check the website for the update. Elizabeth provided oral argument on **December 2, 2020** and the COA issued their decision on **December 10, 2020** upholding the trial court.

On **April 20, 2020** the Court of Appeals Clerk sent a notice that the case was scheduled to be placed on an upcoming case call session. On **April 20, 2020**, Elizabeth filed an immediate motion for peremptory reversal and a supporting brief. The Court of Appeals issued an order on **July 16, 2020** directing Derek to file a response on or before July 30, 2020. Derek filed his response on **August 3, 2020**. Derek did not provide Elizabeth with a copy of his filing so the Court of Appeals provided service to Elizabeth in lieu of defecting Derek's response for failure to provide service. Elizabeth filed a motion for immediate consideration requesting leave to reply on **August 10, 2020**. The court of appeals entered an order on **August 12, 2020** granting the motion for immediate consideration, granting leave to reply, and denying the motion for peremptory reversal for failing to persuade the Court of manifest error without oral argument or formal submission. On **August 14, 2020**, the Michigan Court of Appeals clerk informed Elizabeth that although Derek's appellee brief was due on June 29, 2020, they will continue to accept his brief for filing and I will be notified when the appeal is placed on the case call panel, but that will be in October at the earliest. To date, notification has not been received.

On **September 3, 2020**, in the Michigan Supreme Court, Elizabeth filed an application for leave to appeal the Michigan Court of Appeals' August 12, 2020 order, a motion for immediate consideration, a motion to expedite proceedings, and a supporting brief. The Michigan Supreme Court denied me leave to appeal in an unsigned order dated **October 16, 2020**. Although they were not stayed by motion or order, proceedings in the Michigan Court of Appeals did not resume until after the Michigan Supreme Court issued their decision. The Court of Appeals' Clerk's office informed that appellant's brief was not technically received as filed by the Court of Appeals until after submission deadline even though it was timely accepted by the Mi-File system. Due to this, Elizabeth would need to file a motion and receive an order of the Court to be allowed oral argument. The Notice of Case Call issued on **October 30, 2020** scheduled this case to be heard on December 2, 2020 at 11:00 a.m. On **November 2, 2020** Elizabeth filed a motion for oral argument in the COA. The COA granted Elizabeth 10 minutes of oral argument in an order entered on **November 12, 2020**, but in an email from the clerk's office on **November 17, 2020**, Elizabeth was not shown to be designated for oral argument. After a phone call on **November 18, 2020**, the clerk's office informed that they will not email a correction, but the website will reflect the update. Elizabeth provided oral argument on **December 2, 2020** and the COA issued their decision on **December 10, 2020** upholding the trial court. On **January 21, 2021**, Elizabeth filed an Application for Leave to Appeal in the Michigan Supreme Court. No response was filed. On **March 30, 2021**, the Michigan Supreme Court issued an unsigned order denying Elizabeth Leave to Appeal and mailed said order to an address in another state.

IN THE DISTRICT COURT FOR THE
MIAMI TRIBE OF OKLAHOMA
JUVENILE DIVISION

In the Matter of the Welfare of:

J [REDACTED] S [REDACTED],
DOB: 06/23/[REDACTED]

Case No. CW-2015-0003

And,

M [REDACTED] S [REDACTED],
DOB: 09/22/[REDACTED]

Judge: Charles Tripp

Minor Indian Children

AFFIDAVIT OF MARSHA WETZEL

Affidavit of Marsha Wetzel

I, Marsha Wetzel, swear and affirm:

1. My name is Marsha Wetzel (DOB 09/07/[REDACTED]). I am the maternal Grandmother of J [REDACTED] and M [REDACTED] S [REDACTED]. My address is [REDACTED]. My phone number is [REDACTED].
2. On Sunday, February 18, 2018, Curt Lawrence contacted me by phone and said he was in Port Huron.
3. Curt told me the Judge sent him to Michigan to make an unannounced visit at my daughter, Elizabeth Shaw's, home.
4. Curt told me he went to Croswell Saturday night, February 17, 2018, to talk to M [REDACTED] who was at a sleepover at her friend's house.
5. Curt told me he talked with J [REDACTED] that morning (Sunday, February 18, 2018).
6. Curt told me he talked with a counselor in Lapeer, Michigan regarding joint counseling for M [REDACTED] and Derek.
7. Curt asked me if I would be willing to take M [REDACTED] to live with me while in joint counseling with Derek Shaw.

132

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8. Curt told me placement was necessary because Elizabeth does not want the counseling to happen.
9. I told Curt if the Judge ordered it, I would take M[REDACTED].
10. Curt asked me if I would take J[REDACTED] to live with me.
11. I told Curt, if the Judge ordered it, I would take J[REDACTED].
12. Curt told me he had stopped by my house, took pictures, and looked in my windows.
13. Curt told me they were recommending the joint counseling and placement of the kids with me to the Judge.
14. Curt said they would have to convince the Judge to do this and it would take a couple weeks, possibly a little longer to do so.

Marsha Wetzel, being first duly sworn, under oath, affirms the affidavit is a complete representation of facts and that I have personal knowledge thereof.

Signature Marsha Wetzel

Subscribed and sworn to by Marsha Wetzel before me on the 21st day
of February, 2018.

Signature Cynthia Hernandez

Printed name Cynthia Hernandez

Notary public, State of Michigan, County of St. Clair

My commission expires 4/19/2024

Concepts in Counseling L.L.C.
608 Fox Street
Lapeer, MI 48446
(810) 538-0229
Fax: (810) 538-0231

February 18, 2017

Miami Tribe of Oklahoma
P.O. Box 1326
Miami, OK 74355

After meeting with Janet Grant, Indian Child Welfare Coordinator and Curt Lawrence, Esq. Guardian Ad Litem, the following will be the proceedings for possible reunification between father Derck Shaw and daughter M■■■■ S■■■■.

M■■■■ will meet with therapist Donna Greenhaw LMSW, ACSW weekly for as many visits as therapist deems necessary to decide on possible reunification.

Mother, Elizabeth Shaw will transport M■■■■ to Concepts in Counseling L.L.C. and come to the door where Office Manager, Heather Wagner will meet them. Heather will bring M■■■■ to therapist's office for visit. At end of session Heather Wagner will take M■■■■ back to the door to mom. No contact between mom and therapist at this time.

After as many sessions as needed, therapist will contact Janet Grant, Indian Child Welfare Coordinator with how this possible reunification will proceed.

Kind regards,

Donna Greenhaw, LMSW, ACSW

Donna Greenhaw LMSW, ACSW

Judy Church L.M.S.W., A.C.S.W., Donna Greenhaw L.M.S.W., A.C.S.W., Stephanie Kushel M.A., L.P.C.,
Kimberly Owen L.M.S.W., A.C.S.W., Sarah Shelton L.M.S.W., A.C.S.W., C.A.A.D.C.

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134

MIAMI TRIBE OF OKLAHOMA
TRIBAL COURT

IN THE DISTRICT COURT FOR
THE MIAMI TRIBE OF OKLAHOMA
3510 P STREET NW
MIAMI, OKLAHOMA 74354

APR 13 2018

FILED

IN THE MATTER OF

J. S. and
M. S.

Alleged Deprived
Minor Indian Children.

Case No. CW-2015-0003

ORDER OF ADJUDICATION

NOW on this 13th day of April, 2018, this decision is presented by the undersigned Judge.
Present are the natural parents, the GAL, and ICW are present by phone, Ms. Lash is present in the courtroom.

On the 18th of January, 2018, this matter was adjudicated, however, the order was vacated at the request of the natural mother. The court gave the parties opportunity to explain their objections. Both the tribe and the natural mother objected. The tribe presented information that the minor child, J., had been treated in a manner consistent with being deprived. In the previous order J. was taken out of the case, but, was placed back in the case upon the vacation of the order. The natural mother objected to J. and M. not being in the case together.

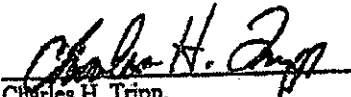
The findings in the previous order as to Maya are hereby adopted in this order. The only change to the original adjudication order is that J. is also found to be a deprived child. Legal custody of the children to remain with the Miami Tribe. ICW to have authority to place. M. to receive counseling as set up by ICW. Jackson to do the same. When appropriate there is to be counseling with M. and Dad, and Mom and J., as well as family counseling for both parents and the children. ICW to prepare a full service plan for both parents and a plan for both

135

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children. The Court will contact the former court in Michigan to talk with the Judge. It would be best for all involved to transfer this matter back to the Michigan state court as they would have a better opportunity to have contact with the parents and child, as well as any counselors. In the meantime, ICW is to look for a worker from the state to help monitor this case. Disposition is set for May 3, 2018, at 11:00 a.m. CST and 12:00 EST.

IT IS SO ORDERED.


Charles H. Tripp,
Judge of the District Court

IN THE DISTRICT COURT FOR
THE MIAMI TRIBE OF OKLAHOMA
3510 P STREET NW
MIAMI, OKLAHOMA 74354

MIAMI TRIBE OF OKLAHOMA
TRIBAL COURT

JAN 18 2018

IN THE MATTER OF

J. S. and
M. S.

Alleged Deprived
Minor Indian Children.

FILED

Case No. CW-15-003

ORDER OF ADJUDICATION

NOW on this 18th day of January, 2018, this decision is presented to the parties in open court by the undersigned judge. Present are the natural parents and the GAL by phone, ICW is present in the courtroom.

This decision is rendered and presented reluctantly. After the final hearing on adjudication, the Court, based upon the conversations and the general appearance of the situation afterwards, withheld issuing an order. Being adjudicated as a deprived child is a label that can carry a stigma for children that can be detrimental to some children. Further, the parents had given the impression that they may be able to continue to do the necessary things to heal their minor children in this rather odd circumstance. As parents they should be making the decisions in raising their children, as they know the minor children the best and should through care and love do what is best for them, without interference from the Court. However, it became clear that the hopes of this Court were only that, hopes.

Present for the hearings were Robin Lash, for the Miami Nation, Jan Grant, Indian Child Welfare Director, Curt Lawrence, Guardian Ad Litem, Elizabeth Shaw, natural mother of the above named children, Barney Whitesman, attorney for natural mother, Derek Shaw, natural father of the above named children, and Cynthia Burlison, attorney for the natural father.

137

Due to the number and location of witnesses, the location of the parents and the complexity of this case, the adjudication hearing was held over a number of sessions. Sworn testimony was taken of the following people: Dr. Craig Lemmon, a Forensic and Child Psychiatrist; Heather Winkler, a Certified Medical Assistant; Mr. Neumann, Therapist and Licensed Clinical Social Worker; Matthew D. Rosenberg, a Clinical Social Worker; Suzette Walker, a Nurse Practitioner; Elizabeth Armbrister, a Mental Health Therapist; Kathleen Faller, a Social Worker and Psychologist; Callie Lankford, former Director of Miami Nation Indian Child Welfare; Cynthia Willey-King, Licensed Registered Social Worker; Dr. Kimbo, a Psychiatrist; Elizabeth Shaw, the natural mother of the above named children; Derek Shaw, the natural father of the above named minor children; and Jan Grant, current Director of Miami Nation Indian Child Welfare.

This case was transferred in from the State of Michigan, where the parents, children, and majority of witnesses reside. The case began while the parents were in the midst of a divorce, custody, and visitation case in Michigan. The natural mother alleges the minor child, M■■■■ disclosed that the natural father touched her in an inappropriate and sexual manner. The courts in the divorce/custody matter did not find sufficient information to disallow visitation on the part of the father. The natural mother continued with her fight in and to various entities to prevent the natural father from being around M■■■■ due to these allegations. The natural father has, at all times, denied any misconduct. No criminal charges have ever been filed. The state of Michigan proceeded, with some thought that the natural mother may be inappropriately using the system to prevent the natural father from visiting the children, that is, the natural mother may be falsely accusing the natural father.

The petition filed by the Tribe alleges the children to be deprived. The allegations in the petition are directed at the natural father. Deprived is a status of the children and not the parents. By definition, the children can only be deprived if both parents have caused deprivation by act or omission. Further, the inherent authority of the Court allows for the Court to do anything proper and just to protect minor children. Still further, if one or both parents have not created such a situation, the petition fails and case dismissed, as a parent or parents is fit to care for the minor children. Mr. Whitesman argued that the mother's actions or omissions were not to be considered and the children should not be considered deprived as to her. However, if that were a correct assertion, the case should be dismissed and the parties take this up in their divorce/custody action in Michigan.

To avoid such a lengthy decision, the Court can characterize the testimony of the witnesses presented by the natural mother as follows. They stated that they believed the minor child and the natural mother that the natural father had molested M.

Nurse Walker indicated there was moderate blood in Maya's urine and nothing indicated an infection. To Ms. Walker the child indicated it hurt to go to the bathroom all the time, that Dad had touched her and hurt her by putting his finger inside her. Maya had said the abuse began that weekend at Dad's. Ms. Walker then called Child Protective Services, the Emergency Room and the Sandusky Police Department.

Heather Winkler stated that there was moderate blood in Maya's urine.

Elizabeth Armbrister testified that she had counseled Maya for a period of time every other week. She said that Maya told her that Dad had "poked" her and taught her to French kiss. Ms. Armbrister indicated that she had handled only a handful of children sexual abuse cases and that she does not do forensic interviews.

Kathleen Faller stated that she interviewed J[REDACTED] and M[REDACTED]. She said M[REDACTED] talked about her parents bickering. M[REDACTED] said the touching had happened more than once and had been going on for a long time, all the way back to the time Mom and Dad lived together. M[REDACTED] stated to Ms. Faller that the touching sometimes happens on top of clothing, happens day and night and is done by Dad with his hands.

Callie Lankford stated she got involved in the case after receiving a call from Dad. Dad stated that allegations had been made against him. Several months later Mom contacted Ms. Lankford. Ms. Lankford said she talked with the attorneys, the Guardian Ad Litem and Department of Human Services in Michigan. She also said she reviewed the records of the matter. She said the records did not substantiate the alleged abuse. However, after her review she felt the State of Michigan was not acting in the minor children's best interest. Ms. Lankford eventually went to a court hearing in Michigan. Prior to the hearing while in Michigan, Ms. Lankford said she personally interviewed the mom, dad, and children, as well as, other collateral interviews. She also said she spoke with the police, the clinic. Eventually, Ms. Lankford went back to Michigan to ask the case be transferred to the Miami Tribal Court. All parties agreed to transfer. She testified she had no concerns about Mom, but there were "red flags" as to Dad. She believed there to be clear and convincing evidence that M[REDACTED] had been sexually abused by her Dad. She also testified Dad had told her that he believed that M[REDACTED] was being abused by the Mom, because Mom kept telling Maya that she was abused.

Dr. Kimbo oversaw the evaluation of M[REDACTED] to determine the possibility of sexual abuse of M[REDACTED] by her Dad. According to the Dr. she believed and her colleagues agreed that there was clear and convincing evidence that M[REDACTED] had been so abused by her Dad.

The other witnesses tended to state that while they could not say Dad did not abuse M, the interviews, testing, etc. seemed to show that the likelihood of abuse was slim to none.

Dr. Lemmon testified that he did an evaluation of Mom. He stated there was evidence in Mom's past of over interpreting sexual matters. Thought that the Mom may have a thought disorder, a loosening of associations or be grossly illogical. Also, said he diagnosed Mom as having a borderline personality disorder.

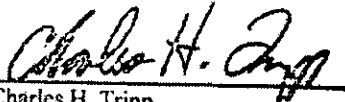
Mr. Neumann tested Dad for his level of risk of pedophilia and recidivism. He testified that he found a low level of risk and no foundations of pedophilia. All tests, results, and reports done by the various parties are part of the Court record.

The Court finds the testimony insufficient to say that J S is a deprived child. Therefore, J is dismissed from this case. The issue of custody and visitation regarding J reverts to the order(s) of the Michigan divorce court.

The Court finds that no particular piece of testimony, testing, results, reports, etc. is strong enough for the Court to have an a-ha moment. The Court finds that the most telling aspect is M. The Court met with J and M. It is clear that M believes something happened. The testimony of all witnesses is insufficient for this Court to say the burden of proof was met to make a finding that Dad perpetrated on the minor child. But the testimony is sufficient to see that it is a possibility. Further, the child believes something happened whether it did or not. This child has been harmed. Either by the molestation of her father or her mother convincing her that she was molested by her father. Therefore, the Court finds that M S is a deprived child. Legal custody to remain with the Miami Tribe. ICW to have authority to place. No change of placement warranted at this time. M to continue to receive counseling. When appropriate there is to be counseling with M and Dad, as well as family counseling for

both parents and M. The no contact order previously entered as to ICW and the GAL is lifted. ICW to prepare a full service plan for both parents. The Court will contact the former court in Michigan to talk with the Judge. It would be best for all involved to transfer this matter back to the Michigan state court as they would have a better opportunity to have contact with the parents and child, as well as any counselors. Review April 5, 2018, at 10:00 a.m. CST.

IT IS SO ORDERED.


Charles H. Tripp,
Judge of the District Court

Concepts in Counseling L.L.C.
608 Fox Street, Lapeer, MI . 48446
Ph. 810-538-0229, fax 810-538-0231

September 20, 2016

Ms. Jan Grant
Indian Child Welfare Coordinator

Re: Derek Shaw
DOB : 02/28/1971

Dear Ms. Grant,

I am submitting this progress update per your request . Mr. Shaw has been seen at Concepts in Counseling L.L.C. on the following dates: 5/3/16, 5/10/16, 6/7/16, 6/14/16, 6/20/16, and 7/20/16, 8/16/16, 8/30/16, 9/8/16, 9/15/16. Themes discussed are boundaries within relationships, reacting non defensively to statements of others, promoting safety and well being for his children within his family. Mr. Shaws' treatment plan is as follows:
Goal One: to improve coping skills and promote family safety. Obj. 1: To identify trauma triggers and trauma reactions to promote safety within his home.

Progress: Mr. Shaw remains cooperative in therapy. Derek has been able to begin looking at communication and how it affects his children. He has verbalized areas of safety and emotional well being as it relates to his children. He is re establishing boundaries during visits with his son. Mr. Shaw identified parenting emphasis on having experiences with his son. Derek reported a change in living arrangements for his son J. Mr. Shaw responded with care to enroll his son in school and gain athletic information to allow J. to play football at the school he would attend while living with Mr. Shaw.

I had the pleasure of meeting with Derek and J. for a family session. Derek and J. appeared relaxed and interacted well during the session. J. appeared to be well groomed and excited to be going to Cross Lex school and very excited to be playing football at Cross- Lex school as a receiver. When surprised by the request to meet with J. alone, Mr. Shaw did not hesitate to allow J. to meet with this worker alone. I met with J. alone and when asked about how he felt to be living with his Dad he responded "I've been waiting and waiting to live with my Dad". J. was pleasant and cooperative during the session. When asked what is the best and worst thing about living with your Dad J. replied "Best is EVERYTHING, worst is Miley may need a different home " Miley is one of the family dogs, young and too energetic for the older dog Cesar . J. and Mr. Shaws reporting of how it was going at Dad's house remained consistently positive.

Mr. Shaw later informed this worker that Jackson was ordered to return to his mothers care. Due to Mr. Shaw following up on his responsibility to enroll J. in school and ensuring

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143

J. continued participation in a sport that J. enjoys it may be necessary to discuss what violation Mr. Shaw committed to disrupt J. placement with his father. J. may need to know what violation was committed to disrupt living with his father to not confuse good parental follow up i.e. school and sports enrollment and following the courts decision with anything J. might have done to disrupt placement with his father. It is also my recommendation J. may need monitoring for reactions to being dislocated from his father's home. If Mr. Shaw committed a violation to disrupt placement J. may need to know that. If Mr. Shaw did not commit a violation to disrupt placement clarification of Mr. Shaw providing appropriate parenting may help J. adjust to being removed from his fathers home and reduce parental alienation.

Reunification efforts with his daughter may include phone calls and visits as recommended by Mays's therapist. It may be beneficial for M. therapist to forward information specific to M. trauma responses to our office so that coordination of care maybe obtained. Coordination of care may also be obtained through the Tribe communication that is managing this case. It would be helpful if Mr. Shaw could take part in sessions with M. to process trauma responses as directed by the trauma specialist M. is working with.

Mr. Shaw wants assistance and support in working on trauma responses from his daughter. He is unsure what to expect or what she has been told. Encouragement to answer any of M. questions, promote feelings of safety, and active listening are being promoted. Seeing trauma responses from M. point of view and not through either parents lens would be very helpful in promoting safety and reestablishing trust. Mr. Shaws progress in reunification, processing trauma responses and promoting safety with his daughter is limited while he has no contact with her. It would be helpful to have the children's treatment records (as previously mentioned) to assist in promoting healing and safety. Parenting classes for both parents can be obtained by registering for Parenting the Love and Logic Way, next class is Oct. 11, 2016 to November 15, 2016, call 810-667-1544 or go online to register at www.parenting-partnership.com/classes.html (see attached brochure). If you have any questions please contact our office at 810-538-0229.

Sincerely,

Sarah M. Shelton ACSW, CLM5W, CAADC

Sarah M. Shelton ACSW, CLM5W, CAADC

IN THE DISTRICT COURT
FOR THE
MIAMI TRIBE OF OKLAHOMA

MIAMI TRIBE OF OKLAHOMA
TRIBAL COURT

IN THE INTEREST OF:

J. S.

Case No.: CW 2015-0003
AUG 29 2016

FILED

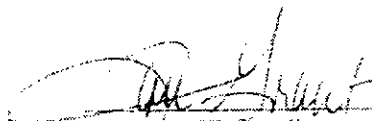
UPDATE TO THE COURT

COMES NOW, the Miami Tribe of Oklahoma ICW Coordinator with an update to the Court regarding the above captioned case. This ICW Coordinator is exercising the "broad authority in this case to make changes with Notice to parties" and changing the placement of minor Indian child J. S. to reside with his biological father, Derek Shaw, effective August 26, 2016. J. S. will have scheduled counseling.

Visitation between J. S. and his mother will be set at every other weekend beginning September 10, 2016 from 9 am until Sunday at 6 pm. Phone visitation between J. S. and his mother will be on Tuesday and Thursday evening and scheduled at the convenience of all schedules involved. This ICW Coordinator is respectfully requesting Ms. Shaw to cooperate in allowing J. S. to have his belongings at his father's home.

GAI Curt Lawrence has been consulted regarding this placement change and is in full agreement.

Respectfully submitted,


Jan Grant, ICW Coordinator
Miami Tribe of Oklahoma

145

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MIAMI TRIBE OF OKLAHOMA
TRIBAL COURT

IN THE DISTRICT COURT FOR THE
MIAMI TRIBE OF OKLAHOMA
JUVENILE DIVISION

JUN 28 2017

FILED

In the Matter of the Welfare of:

J. S. [REDACTED]
DOB: 06/23/[REDACTED]

And,

M. S. [REDACTED]
DOB: 09/22/[REDACTED]

Minor Indian Children.

Case No. CW-2015-0003

PROTECTIVE ORDER

At a session of said Court
Held on the 28 day of June, 2017
Present: The Honorable Charles Tripp

For the reasons set forth in Non-Respondent's motion; it is hereby

ORDERED that there shall be no interviews of the minor children
by the Guardian or ICW until further order of the Court.

Date: 06/28/2017

Charles H. Tripp

Judge Charles Tripp

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146

Approved: SCAO

JIS CODE: PCS-PT/OAT
TCS-PTH/OEPL

STATE OF MICHIGAN
24TH JUDICIAL CIRCUIT - FAMILY DIVISION
SANILAC COUNTY

ORDER AFTER PRETRIAL HEARING
(CHILD PROTECTIVE PROCEEDINGS), PAGE 1
ORDER ____ OF ____

CASE NO. 15-35887-NA
PETITION NO.

Court address
60 W. Sanilac Ave., Sandusky, MI 48471

Court telephone no.
(810) 648-3220

1. In the matter of J [REDACTED] S [REDACTED] (06/23/2015), M [REDACTED] S [REDACTED] (09/22/2015)
name(s), alias(es), DOB
2. Date of hearing: 03/05/2015 Judge/Referee: Heather A. Zang Bar no. P67727
- ☐ 3. Removal date: _____ (Specify for each child if different.)

THE COURT FINDS that:

4. A petition has been submitted alleging that the above child(ren) come(s) within the provisions of MCL 712A.2(b).
5. The child(ren) ☒ is/are ☐ is not/are not subject to the continuing jurisdiction of Sanilac County FOC Court(s)
6. ☒ Notice of hearing was given as required by law. ☐ Notice of proceedings is to be given as required by law.
7. The lawyer-guardian ad litem ☒ has ☐ has not complied with the requirements of MCL 712A.17d.
8. ☒ a. There is probable cause to believe the legal/putative father(s) is/are: (Name each child, his/her father, and whether legal or putative.)
Derek Shaw - Legal as to J [REDACTED] and M [REDACTED]
☐ b. The putative father of _____ is unknown and cannot be identified.
☐ c. The putative father was notified as required by law and failed to establish paternity within the time set by the court. The putative father waives all rights to further notice, including the right to notice of termination of parental rights and the right to an attorney.
- ☐ 9. The child(ren) has/have not been removed prior to this hearing and an order to take the child(ren) into protective custody is necessary because: (a) the child(ren) is/are at substantial risk of harm or is/are in surroundings that present an imminent risk of harm and the child(ren)'s immediate removal from those surroundings is necessary to protect the child(ren)'s health and safety; (b) the circumstances warrant issuing this order; and (c) no remedy other than protective custody is reasonably available to protect the child(ren). (If this box is checked, contrary to the welfare and reasonable efforts findings must be made. See items 11 and 12.)
- ☐ 10. The child(ren) is/are Indian as defined in MCR 3.002(12). The petitioner ☐ has ☐ has not given notice of the pretrial hearing as required by MCR 3.920(C)(1).
☐ The pretrial hearing must be adjourned pending conclusion of a removal hearing required by MCR 3.967.
☐ The removal hearing required by MCR 3.967 was conducted in conjunction with this hearing (see required findings in item 12).
A qualified expert, _____, testified as required by law.
- ☐ 11. ☐ a. Contrary to the welfare findings were made in a prior order.
☐ b. It is contrary to the welfare of the child(ren) to remain in the home because: (Attach separate sheets as necessary.)

(SEE SECOND PAGE)

Do not write below this line - For court use only

MCL 712A.2, MCL 712A.13a, MCL 712A.14, MCL 712A.19a(2), MCL 712A.19b(4), MCL 722.638, MCR 3.002, MCR 3.921(C), MCR 3.965
JC 11b (9/13) ORDER AFTER PRETRIAL HEARING (CHILD PROTECTIVE PROCEEDINGS), PAGE 1

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147

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STATE OF MICHIGAN
24TH JUDICIAL CIRCUIT - FAMILY DIVISION
SANILAC COUNTYORDER AFTER PRETRIAL HEARING
(CHILD PROTECTIVE PROCEEDINGS), PAGE 2
ORDER ____ OF ____CASE NO. 15-35887-NA
PETITION NO.Court address
60 W. Sanilac Ave., Sandusky, MI 48471Court telephone no.
(810) 648-3220

In the matter of J [REDACTED] S [REDACTED] (06/23/ [REDACTED]); M [REDACTED] S [REDACTED] (09/22/ [REDACTED])

- ☐ 12. ☐ a. Consistent with the circumstances, reasonable efforts to prevent or eliminate removal of the child(ren) from the home were made as determined in a prior order. OR
- ☐ b. Consistent with the circumstances, reasonable efforts were made to prevent or eliminate removal of the child(ren) from the home. Those efforts include: (Specify below.) OR
- ☐ c. The child(ren) is/are Indian, and the court finds by clear and convincing evidence and the testimony of a qualified expert witness who has knowledge about the child-rearing practices of the Indian child's tribe, that active efforts ☐ have ☐ have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. These efforts have proved ☐ unsuccessful, ☐ successful, the continued custody of the child(ren) by the parent or Indian custodian ☐ is ☐ is not likely to result in serious emotional or physical damage to the child(ren), and the child(ren) ☐ should ☐ should not be removed from the home.
(Specify below.)

The efforts for 12.b. or 12.c. are: (Specify the efforts from 12.b. or 12.c. here. If the child is an Indian child, specify active efforts as defined by MCR 3.002[1] and MCL 712B.3[a].)

- ☐ d. Reasonable efforts to prevent or eliminate removal of the child(ren) from the home were not made.

- ☐ 13. a. Reasonable efforts are not required to prevent or eliminate the child(ren)'s removal from the home due to ☐ the ☐ mother ☐ father subjecting the child(ren) to the aggravated circumstance(s) of _____ as provided in section MCL 722.638(1) and (2), and as evidenced by _____

- ☐ the ☐ mother's ☐ father's conviction for murder of another child of the parent.
- ☐ the ☐ mother's ☐ father's conviction for voluntary manslaughter of another child of the parent.
- ☐ the ☐ mother's ☐ father's conviction for aiding or abetting in the murder or manslaughter of another child of the parent, attempting to murder the child(ren) or another child of the parent, or conspiring or soliciting to commit the murder of the child(ren) or another child of the parent.
- ☐ the ☐ mother's ☐ father's conviction for felony assault that resulted in serious bodily injury to the child(ren) or another child of the parent.
- ☐ the ☐ mother's ☐ father's involuntary termination of parental rights to a sibling of the child(ren).
- ☐ the ☐ mother ☐ father being required to register under the Sex Offender Registration Act.

- b. Reasonable efforts to preserve and reunify the family to make it possible for the child(ren) to safely return home are ☐ not required because the parent subjected the child or another child of the parent to one of the circumstances stated above.
OR
☐ still recommended because:

(When item 13 is checked, either complete item 15 below or schedule a permanency planning hearing within 28 days of this determination.)

(SEE THIRD PAGE)

JC 11b (9/13) ORDER AFTER PRETRIAL HEARING (CHILD PROTECTIVE PROCEEDINGS), PAGE 2

148

Approved, SCAO

JIS CODE: PCS-PT/OAT

TCS-PTH/OEPL

24TH JUDICIAL CIRCUIT - FAMILY DIVISION
SANILAC COUNTY

ORDER AFTER PRETRIAL HEARING
(CHILD PROTECTIVE PROCEEDINGS), PAGE 3
ORDER ____ OF ____

CASE NO. 15-35887-NA
PETITION NO.

Court address
60 W. Sanilac Ave., Sandusky, MI 48471

Court telephone no.
(810) 648-3220

In the matter of J. [REDACTED] S. [REDACTED] (06/23/ [REDACTED]); M. [REDACTED] S. [REDACTED] (09/22/ [REDACTED])

- ☐ 14. ☐ a. Reasonable efforts shall be made to preserve and reunify the family to make it possible for the child(ren) to safely return home.
☐ b. Reasonable efforts shall not be made to preserve and reunify the family because it would be detrimental to the child(ren)'s health and safety.

- ☐ 15. Because reasonable efforts to prevent or eliminate removal or to reunite the child(ren) and family are not required, a permanency planning hearing was conducted. (Use and attach form JC 19, Order Following Dispositional Review/Permanency Planning Hearing.)

16. Custody of the child(ren) with the parent/guardian/legal custodian

- ☐ a. presents a substantial risk of harm to the child(ren)'s life, physical health, or mental well-being.
☐ No provision of service or other arrangement except removal of the child(ren) is reasonably available to adequately safeguard the child(ren) from the risk of harm to the child(ren)'s life, physical health, or mental well-being.
☐ Conditions of custody at the placement away from the home and with the individual with whom the child(ren) is/are placed are adequate to safeguard the child(ren)'s health and welfare.

- ☐ b. does not present a substantial risk of harm to the child(ren)'s life, physical health, or mental well-being.

- ☒ 17. Parenting time with Derek Shaw, even if supervised, may be harmful to the child(ren)

IT IS ORDERED:

- ☐ 18. Notice is to be given to the legal/putative father(s) as required by law. ☐ The father was not present and must appear at the next hearing. ☐ The putative father was present at this hearing and shall establish paternity within 14 days.

19. The child(ren)

- ☐ a. is/are placed with the Department of Human Services for care and supervision, and
i. the parent(s), guardian, or legal custodian shall execute all documents necessary to release confidential information regarding the child(ren) including medical, mental, and educational reports, and shall also, within 7 days, provide the Department of Human Services with the name(s) and address(es) of the medical provider(s) for the child(ren). Any medical provider for the child(ren) shall release the medical records of the child(ren) to the Department of Human Services.
ii. if the child(ren) is/are placed in the home of a relative, a home study shall be performed by the Department of Human Services and a copy of the home study submitted to the court not more than 30 days after the placement.
iii. upon request, the Department of Human Services shall release to the foster parent the information concerning the child(ren) in accordance with MCL 712A.13a(13);

- ☐ The child(ren) shall be taken into protective custody. To effect this order, _____
is authorized to enter the premises located at _____
This authorization to enter the premises and take the child(ren) into protective custody expires _____
☐ Enter on LEIN

- ☒ b. remain home with or is/are released to Elizabeth Shaw under the supervision of
Name(s) of parent(s), guardian, or legal custodian
the Department of Human Services. ☒ The following terms and conditions apply to the parent/guardian/legal custodian:
Derek Shaw's parenting time order under file 14-35535-DM (FOC Case) is suspended until further order of the court.

(SEE FOURTH PAGE)

Approved, SCAO

JIS CODE: PCS-PT/OAT
TCS-PTH/QEPL

24TH JUDICIAL CIRCUIT - FAMILY DIVISION
SANILAC COUNTY

ORDER AFTER PRETRIAL HEARING
(CHILD PROTECTIVE PROCEEDINGS), PAGE 4
ORDER _____ OF _____

CASE NO. 15-35887-NA
PETITION NO.

Court address
60 W. Sanilac Ave., Sandusky, MI 48471

Court telephone no.
(810) 648-3220

In the matter of J. [REDACTED] S. [REDACTED] (06/23/[REDACTED]); M. [REDACTED] S. [REDACTED] (09/22/[REDACTED])

IT IS ORDERED: (continued)

- ☐ 20. The child(ren) named _____ shall have ☐ a psychological evaluation ☐ counseling to determine appropriateness and conditions of parenting time.
- ☒ 21. ☒ a. Parenting time of Derek Shaw - Suspended until further Court order. is ☐ unsupervised. ☐ supervised until further order of the court.
☐ The Department of Human Services has discretion to allow unsupervised or supervised parenting time by its designee.
- ☐ b. Parenting time of _____ is ☐ unsupervised. ☐ supervised until further order of the court.
☐ The Department of Human Services has discretion to allow unsupervised or supervised parenting time by its designee.
- ☐ c. Parenting time of _____ is ☐ unsupervised. ☐ supervised until further order of the court.
☐ The Department of Human Services has discretion to allow unsupervised or supervised parenting time by its designee.
- ☐ d.

22. Until further order of the court, placement shall continue pending ☒ resumption of the pretrial & ☐ trial
on March 24, 2015 at 10:00 AM Rebuke cause hearing
Date and time

- ☒ 23. Other: (Include orders regarding discovery, scheduling orders, etc.)
Father's parenting time is suspended until further court order.
Both parents must cooperate with the comprehensive family assessment.
Mother may not discuss the details of this case with the minor children.

24. Prior orders remain in effect except as modified by this order.

Recommended by [Signature]
Referee signature

3/18/15
Date

[Signature] P-31377
Judge

**REFEREE'S SUMMARY AND RECOMMENDATION
REGARDING RESPONDENT FATHER'S PARENTING TIME**

Present on March 17, 2015 at the preliminary hearing/probable cause hearing were: DHS Worker, Rachel Jacobson, Prosecuting Attorney Eric Scott ("Mr. Scott"), L-GAL Margaret Kelly ("Ms. Kelly"), Non-respondent Mother, Elizabeth Shaw ("Mother"), and Mother's attorney, Barney Whitesman ("Mr. Whitesman"). Kelly Langford, representative of the tribe of Oklahoma appeared in person.

SUMMARY

The parties placed their appearances on the record. The referee explained that Ms. Benson had pneumonia and had contacted the court to tell them she would be unable to attend the hearing. Her client, respondent father, Derck Shaw, was not present since his client would not be available. Since this was Mr. Shaw's probable cause hearing we could not conduct it in his attorney's absence. The court concluded that the probable cause portion of the hearing would be adjourned; however any emergency motions/requests could be presented and would be taken under advisement. Mr. Whitesman joined Mr. Scott in his renewed request for supervised or suspended parenting time pending the conclusion of the evaluation initiated by the tribe. Mr. Whitesman then proposed exhibits #3, #4, #5 and #6, which are as follows:

- EX 3: Report of Dr. Faller dated February 24, 2015.
- EX 4: Transcript of the November 6, 2014 FOC hearing: Testimony of Dr. Suzette Walker.
- EX 5: Transcript of the November 6, 2014 FOC hearing: Testimony of Elizabeth Armbruster.
- EX 6: Kathleen May Lawton Coulborn Faller, PhD Curriculum Vitae.

Ms. Kelly argued that the report from Dr. Faller should be given little credibility, but admitted the information was relevant. Mr. Scott did not object, stating that they were material and relevant. Exhibits #3 through #6 were admitted.

Mr. Whitesman argued that the visitation should be suspended or supervised at the very least until the next court hearing, or the conclusion of the investigation. Mr. Whitesman stated that the reports contained reports by the child to doctors and counselors where she had reported being touched by her father in a sexual manner. Mr. Scott also argued that the visitation should be suspended or supervised until the investigation is complete to protect the child based on her allegations against the father. Ms. Kelly had met with the children and their principal and based on her investigation thus far has concluded that there is no reason to suspend parenting time with the Father. Ms. Kelly believes that Mother may be coaching the child to make these statements. Ms. Langford stated that it is the tribe's position that based the report by Dr. Faller, and various report by Mr. S. that father's parenting time should be suspended until the completion of the investigation.

At this time the referee adjourned the probable cause hearing to Tuesday, March 24, 2015 at 10:00 AM. The referee then took the issue of suspension/supervised parenting time under advisement and indicated that she would review the exhibits and provide them to Judge Ross to review as well. An opinion and order would issue as soon as possible.

RECOMMENDATION

While we declined to go forward with Father's probable cause hearing, it is important to protect the minor children until the next hearing. We cannot simply ignore the best interests of the child because Father's attorney is ill. The court recognizes that Father would object to the

relief being requested. In addition, Father's attorney was able to and did voice objections at the last hearing. At the last hearing, there was no information available except the petition as a basis for suspension of Father's parenting time. At the continuation of the preliminary hearing today several exhibits were admitted.

In Exhibit #4, Dr. Suzette Walker testified to seeing urinalysis results showing a "moderate to a large amount of blood in the urine." Upon further examination, Dr. Walker observed M[REDACTED] vagina and found that it was "swollen and red and very irritated" and M[REDACTED] again showed Dr. Walker this was where her father put his hand and hurts her.

In Exhibit #5, the child's therapist, Ms. Arbruster states that "the actions and things she has shown my during play therapy and those type of things I don't believe could have been guided in the way she has shown me" and that Ms. Armbruster does not believe that M[REDACTED] has been coached.

Based on a review of the report by Dr. Faller and the disclosures made by M[REDACTED] S[REDACTED] to Dr. Faller, I have to agree that with Dr. Faller's statement that "a six year old child who is in an unsafe situation should not be expected to make a detailed disclosure in order to be protected. Indeed, it would be a betrayal if after telling about sexual touching, she is sent back to her offender." Dr. Faller strongly recommends that parenting time be suspended until the conclusion of the comprehensive family assessment.

In this case we have a six year old who is being abused or strongly believes she is being abused. M[REDACTED] has reported this to multiple health and mental health professionals. In either case, having unsupervised contact with the person who she believes is sexually abusing her or who is in fact sexually abusing her presents an imminent risk of harm for the minor child, both

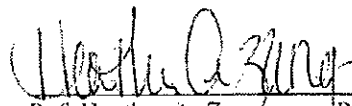
physically and emotionally. If the court accepts what M[REDACTED] has been reporting is true, and for purposes of this hearing the court is accepting her statements as true, parenting time, even if supervised, would be harmful to the minor child. Because the way a parent treats one child is indicative of how you would treat another of your children, that same risk is also present for J[REDACTED] S[REDACTED].

Once the comprehensive family assessment is completed the court will reevaluate the parenting time of Father.

Therefore, my recommendation is that:

1. That Father's parenting time be suspended until further court order; and
2. That both parents cooperate so that the comprehensive family assessment can be completed as soon as possible.

March 18, 2015


Ref. Heather A. Zang

P67727

STATE OF MICHIGAN
IN THE 24th CIRCUIT COURT FOR THE COUNTY OF SANILAC
FAMILY DIVISION

In the Matter of the Welfare of:

Court No. 15-35887-NA-01-02

J. [REDACTED] S. [REDACTED] (DOB 06/23 [REDACTED])

ORDER GRANTING

And

TRANSFER

M. [REDACTED] S. [REDACTED] (DOB 09/22 [REDACTED])

2015 MAR 20 AM 9 44
SANILAC COUNTY
CLERK'S OFFICE
FILED
DEPT. CLERK
CLERK

ORDER OF TRANSFER

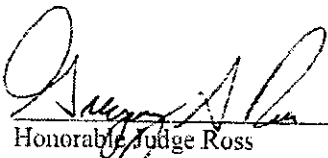
This matter comes on for hearing upon the Motion to Transfer filed by the Miami Tribe of Oklahoma, seeking an order to transfer this case to the **MIAMI TRIBE OF OKLAHOMA DISTRICT COURT**, 3510 P Street NW, Miami, Oklahoma 74354.

The court has heard the arguments of counsel and is fully advised in this matter. The Court finds that transfer of this case is proper and no good cause exists to deny the transfer.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT this case is therefore transferred to the **MIAMI TRIBE OF OKLAHOMA DISTRICT COURT**, subject to the right of declination by that court.

IT IS FURTHER ORDERED that the child shall remain a ward of this Court, with legal custody residing with the Oklahoma Department of Human Services, with the tribal Indian Child Welfare Department having authority to place the child. This shall remain in effect until this Court receives notification that the **MIAMI TRIBE OF OKLAHOMA DISTRICT COURT** has accepted transfer of jurisdiction over these children.

3/24/15

 P.31377
Honorable Judge Ross

155

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Court of Appeals, State of Michigan

ORDER

Derek Shaw v Elizabeth Shaw

Docket No. 352851

LC No. 14-035535-DM

Michael F. Gadola
Presiding Judge

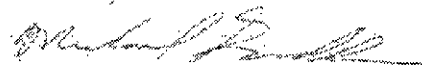
Stephen L. Borrello

Michael J. Kelly
Judges

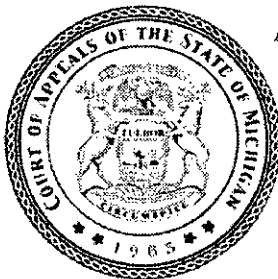
The motion for immediate consideration is GRANTED.

The motion for leave to file a reply is GRANTED. The reply received on August 10, 2020 is accepted for filing.

The motion for peremptory reversal pursuant to MCR 7.211(C)(4) is DENIED for failure to persuade the Court of the existence of manifest error requiring reversal and warranting peremptory relief without argument or formal submission.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

August 12, 2020

Date



Chief Clerk

S

156

Order

Michigan Supreme Court
Lansing, Michigan

October 16, 2020

Bridget M. McCormack,
Chief Justice

161945 & (43)

David F. Viviano,
Chief Justice Pro Tem

DEREK SHAW,
Plaintiff-Appellee,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 161945
COA: 352851
Sanilac CC: 14-035535-DM

ELIZABETH SHAW,
Defendant-Appellant.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the August 12, 2020 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



61013

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 16, 2020

Clerk

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157

Court of Appeals, State of Michigan

ORDER

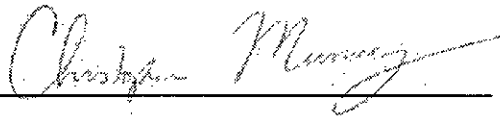
In re Shaw Minors

Docket No. 353213

LC No. 15-035887-NA

Christopher M. Murray, Chief Judge, acting under MCR 7.203(F)(1), orders:

The claim of appeal is DISMISSED for lack of jurisdiction because it was not filed within 21 days of the March 24, 2015 order transferring jurisdiction of the case to the Miami Tribe of Oklahoma District Court. MCR 7.204(A)(1)(a). Although appellant claims that the appeal was timely filed from the Sanilac Circuit Court's February 27, 2020 order denying appellant's motion to rescind the transfer, appellant cannot claim an appeal of right from such an order. See MCR 3.993(A)(6). Dismissal is without prejudice to the filing of a late appeal under MCR 7.205(G), provided such a filing meets all requirements under the court rules and is not time-barred.





A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 30, 2020

Date


Chief Clerk

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158

Court of Appeals, State of Michigan

ORDER

In re Shaw Minors

Docket No. 353213

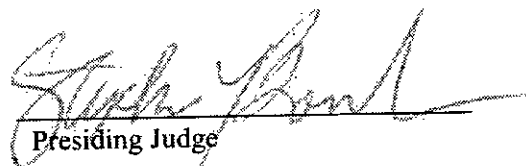
LC No. 15-035887-NA

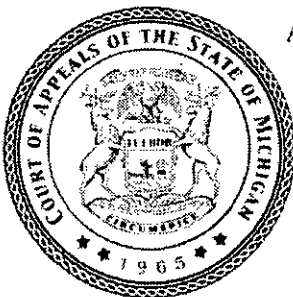
Stephen L. Borrello
Presiding Judge

Mark T. Boonstra

Michael F. Gadola
Judges

The motion for reconsideration of this Court's order of April 30, 2020 is DENIED. Because this Court is without jurisdiction to entertain the appeal as of right, the motion for immediate consideration and entry of an order declaring the circuit court's order of transfer void is also DENIED.


Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

May 12, 2020

Date


Chief Clerk

V

159

IN THE DISTRICT COURT FOR THE
MIAMI TRIBE OF OKLAHOMA
JUVENILE DIVISION

In the Matter of:

J. [REDACTED] S. [REDACTED],

and

M. [REDACTED] S. [REDACTED],

minor Indian children
under 18 years of age.

Case No. CW-2015-0003

MIAMI TRIBE OF OKLAHOMA
DISTRICT COURT

MAR 25 2021

ORDER TERMINATING PARENTAL RIGHTS
OF BIOLOGICAL MOTHER, ELIZABETH SHAW

FILED

On the 24th day of February, 2021, pursuant to regular setting, the above styled and numbered cause came on before the Court upon the Petition to Terminate Parental Rights of Biological Mother, Elizabeth Shaw filed by the Movant, Andrew T. Doney, Presenting Officer of the Miami Tribe of Oklahoma. The natural father, Derek Shaw, the GAL, Curt Lawrence, the ICW Coordinator, Wanda Stovall, and the Presenting Officer, Andrew T. Doney, all appeared virtually. The biological mother Elizabeth Shaw was duly served with notice of this hearing and did not appear and is wholly in default.

Upon reviewing the files and records in this matter, hearing the testimony of the parties and argument of counsel, the Court **FINDS** as follows:

1. That the minor children named above whose dates of birth are indicated above are members of the Miami Tribe of Oklahoma (referred to herein as "the Tribe"). Jackson Shaw's enrollment number is 4139 and Maya Shaw's enrollment number is 4140.
2. That the natural mother, Elizabeth Shaw, is not an enrolled member of the Miami Tribe of Oklahoma. The natural father, Derek Shaw, is an enrolled member of the Miami Tribe of Oklahoma with the enrollment number of 0894.
3. That the case originates from a divorce and custody action filed in the District Court of Sanilac County, Michigan. The respective cases are as follows: In the Matter of Jackson

W

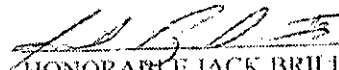
160

Shaw, Case No. 15-55887-NA-01-02 and in the Matter of Maya Shaw, Case No. 15-35887-NA-01-02, Sanilac County District Court, State of Michigan.

4. That on March 24, 2015, the Miami Tribe of Oklahoma filed a Petition to Accept Transfer of Jurisdiction and on the same date, the Miami Tribe of Oklahoma District Court entered an Order Accepting Transfer and Awarding Temporary Custody to the Tribe.
5. That this Court has jurisdiction in this proceeding pursuant to the Miami Tribe of Oklahoma Children's Code Section 1.21(b) in that the proceeding involves children who are enrolled members of the Miami Tribe of Oklahoma and reside outside of the Miami Tribe of Oklahoma territorial jurisdiction and this Court is the most appropriate forum for hearing this matter.
6. That on June 9, 2015, the Tribe filed a Petition to adjudicate the minor children deprived as to the biological father. The basis for the Petition stemmed from allegations of sexual abuse to Maya Shaw made by the biological mother, Elizabeth Shaw, which ultimately were determined to be fabricated by the natural mother. The biological father was ordered to have no contact with the children and mother was ordered to complete a psychological evaluation.
7. That a multitude of events and filings occurred with regard to these minor children up to the time of Order of Adjudication filed on April 13, 2018, adjudicating both children deprived as to both the natural father and natural mother.
8. That each parent was given a family services treatment plan. The father signed his plan and completed it. The natural mother had an appropriate family services treatment plan but she failed to comply with the plan and the plan has not been successful. Throughout this extensive case the natural mother has been actively noncooperative. She has actively resisted co-parenting and co-counseling and has filed multiple actions attempting to thwart the reunification of the natural father and the children. The father has complied with the process of family reunification while the mother for the most part has been non-compliant. The Court finds that the children are adjudicated abused and neglected by the natural mother and the natural mother is unfit and that the conduct or condition of the natural mother is unlikely to change within a reasonable time.
9. That the minor children were ultimately reunified with their father and moved with him to Oregon in August of 2019 and remain with their father. The children have appropriate placement with their father and are happy and well adjusted.
10. The Court in paramount consideration of the health safety and welfare of the minor children finds beyond a reasonable doubt that termination of the natural mother's parental rights would be in the best interests of the minor children and further finds that the Tribe's Petition to Terminate Parental Rights of Biological Mother, Elizabeth Shaw, should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the parental rights of the biological mother, Elizabeth Shaw, are by these presents terminated.

IT IS SO ORDERED.


HONORABLE JACK BRILL

3/23/71
Date

STATE OF MICHIGAN
IN THE 24th CIRCUIT COURT FOR THE COUNTY OF SANILAC
FAMILY DIVISION

DEREK JOSEPH SHAW,

Plaintiff,

vs.

Case No: 14-35535-DM
Hon: Gregory S. Ross

ELIZABETH ANN SHAW,

Defendant.

JOHN S. PATERSON P18693
Attorney for Plaintiff
35 S. Elk, Box 311
Sandusky, MI 48471
810-648-2414

ELIZABETH SHAW
In Pro Per
15 Truman St., Apt 204
Croswell, MI 48422
810-712-1617

2014 NOV 26 11:31
FILED
SANILAC COUNTY
CLERK'S OFFICE
DENISE MCGUIRE
CLERK

ORDER

At a session of court held in the City of Sandusky,
Michigan, on, 26 day of October, 2014.

PRESENT: THE HONORABLE MICHAEL P. HIGGINS

This matter having come before the Court on Defendant's Motion for Custody, in the above captioned matter and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that the minor child, M S , shall not be interviewed by any person without a court Order.

FURTHERMORE, IT IS HEREBY ORDERED that the matter is referred to the Sanilac County Friend of the Court for an evidentiary hearing on the issue of custody and custodial time.

FURTHERMORE, IT IS HEREBY ORDERED that Plaintiff shall have supervised visitation with M S on alternate Sundays from 12:00 p.m. until 6:00 p.m.

It is further ordered that Barry Sheklow, The Pastor at St. Matthews Lutheran Church will supervise the visits.

11/26/14
Date

[Signature]
Michael P. Higgins, CIRCUIT JUDGE

Approved As to form Only:

[Signature]
Ann M. Mroczek
Friend of the Court

10-29-14: NO objections CB
GREGORY S. ROSS (P31377)
PRESIDING FAMILY COURT JUDGE

163

X

Concepts in Counseling L.L.C.
608 Fox Street
Lapeer, MI 48446
(810) 538-0229 Fax (810) 538-0231

October 16, 2018

**Requirements for Ms. Shaw for M. S. to return home to Ms. Shaw for
fifty percent of time/custody**

Ms. Shaw will cease and desist all petitions to the court regarding the return of her children to her home and her daughter to not see her father. Ms. Shaw will withdraw all petitions awaiting a court hearing. Ms. Shaw will not petition the court anymore about past allegations of sexual abuse by Mr. Shaw against his daughter, M. S. All new allegations must be brought up to therapist, Donna Greenhaw LMSW, ACSW, not petitioned to the court. Ms. Shaw agrees to not take daughter, M. to any forensic evaluations or physical or mental health appointments regarding abuse issues, except to Donna Greenhaw LMSW, ACSW at Concepts in Counseling L.L.C.

Ms. Shaw will agree to have 50/50 custody with the father of the children, J. S. and M. S. Ms. Shaw agrees to allow son, J. S. to live full time with his father. Continued therapy will be utilized to help J. S. with reunification with his mother with the goal of J. S. having overnight visits with his mother. The arrangements of this to be determined as therapy proceeds. Visits with each parent for M. will be: Monday pick up after school, at school, and returned to school the following Monday morning. For M., each parent can also have visits for three hours on Wednesday in which they do not have the child in their home. Any half days or days off, Grandmother Marsha Wetzell has agreed to be available, if needed.

Furthermore, Ms. Shaw agrees to not do any actions that would estrange the children from their father. She will not verbalize or behave in any way that would discredit, cause disrespect to, or diminish the quality of the children's relationship with their father.

Ms. Shaw will continue therapy with Donna Greenhaw LMSW, ACSW and agrees to work on her own issues as well as family issues. She agrees to have individual sessions as well as family sessions, and co-parenting sessions between her and Mr. Shaw.

Elizabeth Shaw

Date

Donna Greenhaw LMSW, ACSW

Date

Donna Greenhaw LMSW, ACSW, Stephanie Kusel M.A., LPC, Kimberly Owen LMSW, ACSW,
Sarah Shelton LMSW, ACSW, CAADC, Michelle Windom LMSW, SSW.

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164

IN THE DISTRICT COURT FOR THE
MIAMI TRIBE OF OKLAHOMA
JUVENILE DIVISION

In the Matter of the Welfare of:

J. S.,
DOB: 06/23/

and,

M. S.,
DOB: 09/22/

Minor Indian Children.

Case No.: CW-2015-0003

MIAMI TRIBE OF OKLAHOMA
TRIBAL COURT

JUN 09 2015

FILED

PETITION TO ADJUDICATE MINOR CHILDREN DEPRIVED
AS TO BIOLOGICAL FATHER DEREK SHAW

COMES NOW Robin Lash, Attorney General, as Presenting Officer for the Miami Tribe of Oklahoma, and moves this Honorable Court to enter an Order adjudicating the above minor children deprived as to biological father, Derek Shaw. Pursuant to the Miami Tribe of Oklahoma Children's Code § 1.2.1, this Court has jurisdiction of the above minor children.

In support of this Motion the Miami Tribe of Oklahoma would show as follows:

1. The above minor children are under the age of eighteen (18) years of age.
2. The minors are enrolled or eligible for enrollment with the Miami Tribe of Oklahoma.
3. Elizabeth Shaw, the biological mother, is a non-Indian.
4. Derek Shaw, the biological father, is an enrolled member of the Miami Tribe.
5. The above named children are subject to the jurisdiction of this Court within the meaning of the Indian Child Welfare Act, 25 U.S.C.1911(b).

Z

165

6. The basis of this matter arises from allegations and information that the above named childrens' biological father, Derek Shaw, sexually abused his daughter, M. S.
7. On March 24, 2015, the Tribe filed with the Sanilac County District Court, State of Michigan, a Motion to Transfer the state case to the Miami Tribe of Oklahoma District Court.
8. On March 24, 2015, the Motion to Transfer was approved by the Sanilac County District Court, State of Michigan, Honorable Judge Ross; and an Order to Transfer this case to this Court was entered, subject to the right of declination of 25 U.S.C.1911(b).
9. On March 24, 2015, the Miami Tribe of Oklahoma, by and through Presenting Officer, Robin Lash, filed a Petition to Accept Transfer of Jurisdiction in this Court.
10. On March 24, 2015, the Order Accepting Transfer and Award of Temporary Custody was signed by the Honorable Judge Charles Tripp, Miami Tribe of Oklahoma District Court Judge.
11. On April 7, 2015, Miami Tribe ICW worker Callie Lankford, filed with this Court an Application for Minors in Need of Care reciting the lengthy history of this case including specific allegations and information as to sexual abuse referenced above. The allegations of sexual abuse are incorporated herein through the Application for Minors in Need of Care.
12. On April 16, 2015 an Initial Hearing took place in this Honorable Court with both Mr. and Mrs. Shaw appearing by phone.
13. At the Initial Hearing the Tribe asked for an extension of time to make a determination whether or not to file a Petition to Determine the Minors Deprived, pursuant to Section 1.17.1 of the MTOK Children's Code.
14. Pursuant to Section 1.3(a) of the Miami Tribe of Oklahoma Children's Code the definition for "Deprived Child" means a Child "whose Parent(s), Guardian(s), or Custodian(s) has subjected his/her child to abuse or whose Parent(s), Guardian(s), or Custodian(s) has enabled or allows another to subject the child to child abuse without taking lawful means to stop such child abuse or prevent it from recurring."
15. The Tribe requested the extension of time to consider whether to file a Petition to Determine Minor Children Deprived following review comments and or findings of the Family Assessment Clinic in Ann Arbor, Michigan, relating to the parties.

- WHEREFORE**, premises considered, the Miami Tribe of Oklahoma prays for an Adjudicatory Hearing on the Petition to Determine the Minor Children Deprived; and for any and all other relief this Court may deem just and proper.

167

IN THE DISTRICT COURT FOR THE
MIAMI TRIBE OF OKLAHOMA

In The Matter of:

J [REDACTED] S [REDACTED] DOB 06/23/[REDACTED]
M [REDACTED] S [REDACTED] DOB 09/22/[REDACTED]

A Minor Indian Child(ren).

Case No.: CW-2015-003

HONORABLE CHARLES TRIPP
MIAMI TRIBE OF OKLAHOMA
TRIBAL COURT

APR 07 2015

APPLICATION FOR MINOR(S) IN NEED OF CARE

FILED

COMES NOW, the Miami Tribe of Oklahoma by and through Callie Lankford, MSW, Child Welfare Director, and moves this Court to Enter an Order declaring the above minor Indian Child(ren) to be Minor(s) in Need of Care with legal custody of the child(ren) placed with the Miami Tribe of Oklahoma with the Indian Child Welfare Office having authority to place the child(ren), with biological mother, Elizabeth Shaw, 15 Truman Street, Apartment 204, Croswell, Michigan, 48422.

In support of this Motion, the Miami Tribe of Oklahoma would show the following:

1. The Miami Tribe of Oklahoma is a Federally Recognized Indian Tribe organized under a Constitution and Bylaws adopted by its members and approved by the United States Secretary of the Interior pursuant to the Oklahoma Indian Welfare Act of 1936, 25 U.S.C. 301, *et seq.* and exercises governmental authority over its people and its lands.
2. Pursuant to Article VI, Section I of the Constitution of the Miami Tribe of Oklahoma, the Miami Tribe of Oklahoma is governed by a Tribal Council, also known as the Tribal Business Committee. The Tribal Business Committee exercises the inherent tribal sovereign authority to protect the Miami Tribe of Oklahoma's territory and its members.
3. Article III, Section 1(e) of the Miami Tribe of Oklahoma's Constitution governs enrollment any child born of a marriage between a member of the Miami Tribe of Oklahoma and any other person if such child is permitted to membership by the General Council of the Miami Tribe of Oklahoma.
4. J [REDACTED] S [REDACTED] (DOB 06/23/[REDACTED]) and M [REDACTED] S [REDACTED] (DOB 09/22/[REDACTED]), the above named children are Indian Children within the meaning of the Indian Child Welfare Act, 25 U.S.C.1903(4).
5. The Miami Tribe of Oklahoma is the above named child(ren)'s Tribe within the meaning of the Indian Child Welfare Act, 25 U.S.C.1903(5). The Minor Children are the biological children of Elizabeth Shaw and Derek Shaw.

6. Derek Shaw is an enrolled member of the Miami Tribe of Oklahoma.
7. The above named child(ren) is subject to the jurisdiction of this Court within the meaning of the Indian Child Welfare Act, 25 U.S.C.1911(b).

8. The above named children's biological father, Derek Shaw, is alleged to have Sexually Abused his daughter, M. S.

7. On February 19, 2014, the Miami Tribe of Oklahoma's Indian Child Welfare Office opened a case and began an investigation to determine if the best interest(s) of the Minor(s) required further action be taken.

8. On March 17, 2015, upon conclusion of the Indian Child Welfare Office's preliminary investigation, the Indian Child Welfare Office filed an Entry of Appearance and Motion to Intervene in the 24th Circuit Court for the County of Sanilac based on the following preliminary findings:

1) Disclosures of Sexual Abuse made by the Minor(s) recorded in writing and through play therapy findings documented in therapy notes at Advantage Counseling & Educational Services between the dates of January 31, 2014 and September 16, 2014.

2) Letter from the Minor(s) therapist, dated July 2, 2014, submitted to the Sanilac County Friend of the Court, State of Michigan, stating, *It is my professional opinion that until there is 100% certainty this has not and will not happen to M. S. if there is visitation with M. S. and J. S.'s father, Derek Shaw, the visitation should be supervised.*

3) Medical Examination Reports dated January 30, 2014, September 11, 2014, and October 7, 2014 documenting the Minor(s) Sexual Abuse disclosure and irregular medical exam findings.

4) Sanilac County Department of Human Services Investigative Reports dated January 15, 2014, March 14, 2014, and June 3, 2014 documenting reports unsubstantiated.

5) Police Department Reports dated June 6, 2014, September 3, 2014, September 11, 2014, and January 22, 2015 documenting Divorce/Custody disagreements between Derek Shaw and Elizabeth Shaw, disclosures of Sexual Abuse, and the interference of Court Ordered Visitation between the Minor(s) and the biological father by the biological mother, Elizabeth Shaw.

5) The conducting of multiple Forensic Interviews by the Children's Advocacy Center; without transcripts provided to the Indian Child Welfare Office for review of findings.

6) Submission of a letter, by and through the Indian Child Welfare Office, dated October 15, 2014, to the Sanilac County District Court, State of Michigan, biological mother, biological father, the Minor(s) therapist, Sanilac County Department of Human Services, biological father's counsel, and the Miami Tribe of Oklahoma District Court requesting cooperation in resolving the matter, and further requesting Minor(s) visits with the biological father be supervised or suspended until the Indian Child Welfare Office received the results of the most recent forensic interview and received recommendation from the Minor(s) therapist regarding the Minor(s) mental and emotional well-being prior to visitations resuming.

7) Submission of a subsequent letter, by and through the Indian Child Welfare Office, dated March 3, 2015, to the Sanilac County District Court, State of

Michigan, biological mother, biological father, the Minor(s) therapist, Sanilac County Department of Human Services, biological father's counsel, and the Miami Tribe of Oklahoma District Court outlining concerns for the Minor(s) well-being based on the events, and lack thereof of events, which occurred between February 2014 to March 2015. Additionally, the Indian Child Welfare Office included, in writing, support of the Sanilac County Department of Human Services filing a Petition for a Child Protective Proceeding; further requesting the Sanilac County District Court, State of Michigan, Order a Suspension of Parenting Time for the biological father.

8) Financial assistance provided by the Indian Child Welfare Office to the Family Assessment Clinic in Ann Arbor, Michigan to provide contractual services for the family in the form of Psychosocial Assessments and Psychological Evaluations for each of the following: the biological mother, the biological father, and the Minor(s). Services Agreement signed by the Sanilac County Department of Human Services, Family Assessment, and the Miami Tribe of Oklahoma on January 26, 2015.

9) Preliminary Interview Findings submitted by the Family Assessment Clinic, dated February 24, 2015, making the following recommendation(s): *The Family Assessment Clinic strongly recommends that visitations with the father be suspended until we can complete our comprehensive family assessment. This, after all, is the reason for the referral. We feel there is considerable merit to the disclosures that M. made during her second interview. A six year old child who is in an unsafe situation should not be expected to make a detailed disclosure in order to be protected. Indeed, it would be a betrayal if after telling about sexual touching, she is sent back to her offender.*

10) Petition (Child Protective Proceedings) filed by the Sanilac County Department of Human Services, approved by the Sanilac County Prosecutor, on March 3, 2015 in the Sanilac County District Court Family Division, State of Michigan, including the following as provisions of MCL 712A.2(b)(1)-(5):

- a. An action within the jurisdiction of the family division of circuit court involving the family or family members of the minor has been previously filed in Sanilac County Circuit Court, Case Number 14-55535-DM, was assigned to Judge Gregory S. Ross, and remains pending.
- b. [REDACTED] and M. S. [REDACTED] is a/are member(s) of or eligible for membership in the Miami Tribe of Oklahoma Indian tribe. Removal is requested below and attached are details describing the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and documentation and attempts to identify the child's tribe.
- c. The parent or other person legally responsible for the care and maintenance of the child(ren), when able to do so, neglected or refused to provide proper or necessary support, education, medical, surgical, or other care necessary for the child(ren)'s health or morals, or he/she has subjected the child(ren) to a substantial risk of harm to his or her mental well-being, or he/she has abandoned the child(ren) without proper custody or guardianship.
- d. The home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of the parent, guardian,

nonparent adult, or other custodian, is an unfit place for the child(ren) to live.

- e. The reason(s) why it is contrary to the welfare of the child(ren) for the child(ren) to remain in the home are:
M[REDACTED] has disclosed allegations that her father, Derek, has sexually abused her.
- f. The reasonable effort(s) made to prevent the removal of the child(ren) include:
Extensive case management with DHS and the Miami Tribe of Oklahoma, three forensic interviews conducted at Child Advocacy Centers and two conducted with CPS workers during previous CPS investigations, coordination with law enforcement, individual counseling for the child(ren), a family assessment at the Family Assessment Center in Ann Arbor through the University of Michigan, as well as funding to assist with the cost of the assessments and gas to assist with the transportation to the assessments
- g. The specific allegations are:
 - A. On February 20, 2015, M[REDACTED] was forensically interviewed at the Family Assessment Clinic in Ann Arbor by Dr. Kathleen Faller.*
 - B. During the interview, Maya disclosed that her father, Derek, has touched her bottom, "on top" of her clothing, but then stated "sometimes on top" of her clothing. She reported "I can feel it" and "it hurts". As to what he touches with, she said "his hands".*
 - C. M[REDACTED] disclosed that this has happened "more than once". She reported "he does it lots and lots of times". She reported "he still does it".*
 - D. M[REDACTED] reported "her dad acts like everything is ok and is acting like nothing happened. He tells everyone that her mom is lying and she is lying, but he is lying".*
 - E. Derek Shaw and his two children, M[REDACTED] and J[REDACTED], are all members of the Miami Tribe of Oklahoma. Derek's roll number is 0894.*
- h. I request the court to authorize this petition and take jurisdiction over the child(ren). Further, I request the court to issue an order removing the child(ren).

11) Ex Parte Order to Take Child(ren) into Protective Custody denied on March 3, 2015 in the Sanilac County District Court Family Division, State of Michigan, by the Honorable Judge Ross. Pre-Trial set for March 5, 2015.

12) Pre-Trial hearing held on March 5, 2015 set for Probable Cause hearing on March 17, 2015 in the Sanilac County District Court Family Division, State of Michigan. The Indian Child Welfare Office's request for Suspension of Parenting Time, in regard to the biological father, until such time the Family Assessment Clinic provided a final report was denied by the Honorable Judge Ross.

13) Probable Cause hearing held on March 17, 2015 adjourned until March 24, 2015 in the Sanilac County District Court Family Division, State of Michigan. The

Indian Child Welfare Office's request for Suspension of Parenting Time, in regard to the biological father, until such time the Family Assessment Clinic provided a final report was Ordered by the Honorable Judge Ross.

14) The Indian Child Welfare Office conducted collateral interviews, in person, with the Sanilac County Department of Human Services, the Guardian ad Litem appointed to this matter, biological mother's counsel, and the Minor(s)'s therapist during the dates of March 16 and March 17, 2015. Face to face contact was made with biological mother, biological father, and the above named child(ren) on March 17, 2015.

15) The Indian Child Welfare Office conducted a collateral interview, via phone, with biological mother's mother on March 23, 2015.

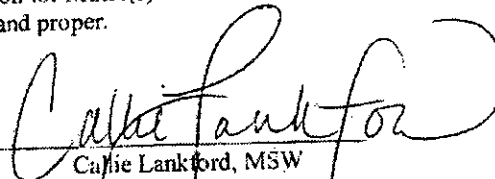
On March 24, 2015, pursuant to the Indian Child Welfare Act, 25 U.S.C.1911(b), the Indian Child Welfare Office filed a Motion to Transfer in the Sanilac County District Court, State of Michigan.

16) On March 24, 2015, the Motion to Transfer was approved by the Sanilac County District Court, State of Michigan, Honorable Judge Ross; and an Order to Transfer this case to this Court was entered, subject to the right of declination of 25 U.S.C.1911(b).

17) On March 24, 2015, the Miami Tribe of Oklahoma, by and through Presenting Officer, Robin Lash, filed a Petition to Accept Transfer of Jurisdiction in this Court.

18) On March 24, 2015, the Order Accepting Transfer and Award of Temporary Custody was signed by the Honorable Judge Charles Tripp, Miami Tribe of Oklahoma District Court Judge.

WHEREFORE, premises considered, the Miami Tribe of Oklahoma prays for an Adjudicatory Hearing on the above Application for Minor(s) in Need of Care; and for any and all other relief this Court may deem just and proper.


Callie Lankford, MSW
Child Welfare Services Director
Miami Tribe of Oklahoma

VERIFICATION

State of Oklahoma)
)
County of Ottawa)

Callie Lankford, of lawful age and first being duly sworn upon oath, deposes and states that she has read the above and foregoing APPLICATION FOR MINOR(S) IN

NEED OF CARE and that the facts and things contained therein are true and correct to the best of her knowledge and belief.

Callie Lankford
Callie Lankford

Subscribed and sworn to before me this 9th day of April, 2015.

Karissa Cantwell
Court Clerk

My Commission Expires:



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of April, 2015, a true and correct copy of the above and foregoing instrument was sent by U.S Mail, postage prepared to the following:

1. Derek Shaw
134 Gaige Street
Croswell, MI 48422
2. Barney R. Whitesman
Attorney for Elizabeth Shaw
1121 S. Grand Traverse
Flint, MI 48502
(810)239-1430 Office
(810)240-0339 Cell
secretarywhitesman@aol.com
3. Robin Lash, Esq.
General Counsel
Miami Tribe of Oklahoma
202 S. Eight Tribes Trail
Miami, OK 74354
918-541-1357 Office
918-542-2117 Fax
rlash@miamination.com

Karissa Cantwell
Karissa Cantwell, Court Clerk



IN THE DISTRICT COURT FOR THE
MIAMI TRIBE OF OKLAHOMA
JUVENILE DIVISION
3510 P ST. NW
MIAMI, OK 74354

MIAMI TRIBE OF OKLAHOMA
TRIBAL COURT

MAR 24 2015

FILED

In the Matter of the Welfare of:

Case No.: CW-2015-0003

J [REDACTED] S [REDACTED] (DOB 06/23/[REDACTED])

PETITION TO ACCEPT TRANSFER
OF JURISDICTION

And

M [REDACTED] S [REDACTED] (DOB 09/22/[REDACTED])

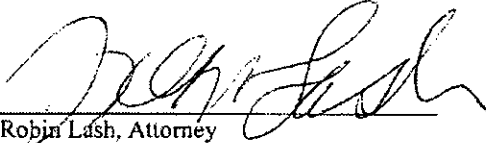
PETITION TO ACCEPT TRANSFER OF JURISDICTION

COMES NOW, the Miami Tribe of Oklahoma by and through Robin Lash, Attorney, and requests this honorable Court accept jurisdiction of child custody proceedings which were ordered transferred to this Court on the 24th day of March, 2015, by the Circuit Court of Sanilac County, State of Michigan, and which causes are therein entitled and numbered as follows: *In The Matter Of: J [REDACTED] S [REDACTED] A Minor Indian Child, Case No. 15-35887-NA-01-02; In The Matter Of: M [REDACTED] S [REDACTED] A Minor Indian Child, Case No. Court No.15-35887-NA-01-02.*

In support of this petition, The Miami Tribe of Oklahoma would show the following:

1. That the children, J [REDACTED] S [REDACTED] and M [REDACTED] S [REDACTED] are Indian children within the meaning of the Indian Child Welfare Act, 25 U.S.C.1903(4).
2. That the Miami Tribe of Oklahoma is the children's Tribe within the meaning of the Indian Child Welfare Act, 25 U.S.C.1903(5).
3. That the Miami Tribe of Oklahoma desires to exercise jurisdiction over these matters and have these causes heard in the Juvenile Court Division of the Miami Tribe of Oklahoma.

Wherefore, the Miami Tribe of Oklahoma request this Court accept transfer of jurisdiction of the above reference causes. or, in the alternative, that a hearing be set for consideration of these matters.


Robin Lash, Attorney
OBA # 19859
Miami Tribe of Oklahoma

2015 MAR 24 PM 2:01
SANILAC COUNTY
CLERK'S OFFICE
FILED
DETROIT
CLERK

AA

175

MIAMI TRIBE OF OKLAHOMA
TRIBAL COURT

IN THE DISTRICT COURT FOR THE
MIAMI TRIBE OF OKLAHOMA
JUVENILE DIVISION
3510 P ST. NW
MIAMI, OK 74354

MAR 24 2015

FILED

In the Matter of the Welfare of:

Case No.: CW-2015-0003

J [REDACTED] S [REDACTED] (DOB 06/23/ [REDACTED])

PETITION TO ACCEPT
TRANSFER
OF JURISDICTION

And

M [REDACTED] S [REDACTED] (DOB 09/22/ [REDACTED])

ORDER ACCEPTING TRANSFER AND
AWARD OF TEMPORARY CUSTODY

2015 MAR 24 PM 2:00
DENISE MCQUIR
CLERK
SANILAC COUNTY
CLERK'S OFFICE
FILED

This matter comes for hearing on the Petition to Accept Transfer of: *In the Matter of*

J [REDACTED] S [REDACTED], Case No. 15-35887-NA-01-02, Sinilac County District Court, State of Michigan.; and, *In the Matter of* M [REDACTED] S [REDACTED], Case No. 15-35887-NA-01-02, Sinilac County District Court, State of Michigan.

The Court has considered this matter and is fully advised in the above matters. The Court therefore finds the following:

1. That on March 24, 2015, the Miami Tribe of Oklahoma, by and through Attorney Robin Lash, filed a Petition to Accept Transfer of jurisdiction from the Sinilac County District Court, State of Michigan, in the above reference matters.
2. The minor children, J [REDACTED] S [REDACTED] and M [REDACTED] S [REDACTED] are members, or are eligible for membership, with the Miami Tribe of Oklahoma and are subject to the jurisdiction of this Court.
3. This matter is properly before the Court. The best interest of the children and the Tribe are served by this Court accepting the transfer of jurisdiction in these cases.

4. The Sinilac County District Court, State of Michigan, has entered an Order transferring this case to this Court, subject to the right of declination of 25 U.S.C. § 1911(b) (See attached).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED this Court accept the transfer of jurisdiction tendered by the Sinilac County District Court, State of Michigan *In the Matter of J. S.*, Case No. 15-35887-NA-01-02, Sinilac County District Court, State of Michigan.; and, *In the Matter of M. S.*, Case No. 15-35887-NA-01-02, Sinilac County District Court, State of Michigan.

IT IS FUTHER ORDERED that legal custody of the children is transferred to the Miami Tribe of Oklahoma, and that the children are now made wards of this Court. Custody of the children is placed with the Miami Tribe of Oklahoma with the MTOK Indian Child Welfare Department having authority to place the children, with biological mother, Elizabeth Shaw.

IT IS FURTHER ORDERED that the Indian Child Welfare Department has the authority to consent to any necessary or appropriate emergency, medical, dental, or health care needed for the interests of the children during the pendency of this case.

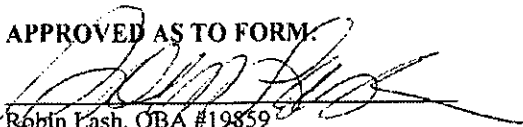
IT IS FURTHER ORDERED that the Miami Tribe of Oklahoma Clerk of Court order and file a full and complete record of the proceedings held in the Sinilac County District Court.

The Court Clerk of this Court is ordered to serve a certified copy of this Order on all parties in the proceeding and the Court Clerk of the Sinilac County District Court, State of Michigan.

SO ORDERED this 24th day of March, 2015.


JUDGE CHARLES TRIPP

APPROVED AS TO FORM:


Robin Lash, OBA #19859
Miami Tribe of Oklahoma
202 S. Eight Tribes Trail
Miami, Oklahoma 74354
(918) 541-1357
Facsimile: (918) 542-2117

DENISE MOQUIRE
CLERK

2015 APR 20 PM 2:00

SAHILLAC COUNTY
CLERK'S OFFICE
FILED