TABLE OF APPENDICES

Filed: September 25, 2025

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of S. H. A., aka S. H. P., aka S. T., aka S. T., a Child.

Department of Human Services,

and

S. H. A., aka S. H. P., aka S. T., aka S. T., and Pit River Tribe,

Respondents on Review,

v.

M. G. J.,

Petitioner on Review.

In the Matter of K. O. A., aka P. J. R. J., a Child.

Department of Human Services,

and

K. O. A., aka P. J. R. J., and Pit River Tribe,

Respondents on Review,

v.

M. G. J.,

Petitioner on Review.

(CC 20JU02316; 20JU06985) (CA A181035 (Control); A181037) (SC S070679)

En Banc

On review from the Court of Appeals.*

Argued and submitted June 20, 2024.

Kristen G. Williams, Williams Weyand Law, LLC., Salem, argued the cause and filed the briefs for petitioner M. G. J. Also on the briefs were Shannon Storey, Chief Defender, and Tiffany C. Keast, Deputy Public Defender, Oregon Public Defense Commission, Salem.

Erin K. Galli, Assistant Attorney General, Salem, argued the cause and filed the brief for respondent Department of Human Services. Also on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Erica Hayne Friedman, Youth, Rights & Justice, Portland, argued the cause and filed the brief for respondent S. H. P., and P. J. R. J.

Simon W. Gertler, California Indian Legal Services, Sacramento, California, argued the cause and filed the brief for respondent Pit River Tribe. Also on the brief were Jay P. Petersen, and Jason Golfinos.

Craig J. Dorsay, Dorsay & Easton LLP, Portland, filed the brief for *amici curiae* Confederated Tribes of Siletz Indians of Oregon; Confederated Tribes of Warm Springs Reservation of Oregon; and Confederated Tribes of Umatilla Indian Reservation. Also on the brief were Lea Ann Easton, and Kathleen M. Gargan, Dorsay & Easton, LLP, Portland; Howard G. Arnett and Sarah Monkton, Best Best & Krieger, LLP, Bend; and M. Brent Leonhard, Office of Legal Counsel for the Confederated Tribes of Umatilla Indian Reservation, Pendleton.

DeHOOG, J.

The decision of the Court of Appeals and the judgments of the circuit court are affirmed.

Bushong, J., concurred and filed an opinion, in which Masih, J., joined.

*Appeal from Jackson County Circuit Court,
Timothy C. Gerking, Judge.
329 Or App 101, (2023) (nonprecedential memorandum opinion).

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondents on Review.
[X] No costs allowed.
[ ] Costs allowed, payable by:
[ ] Costs allowed, to abide the outcome on remand, payable by:

DeHOOG, J.

This Oregon Indian Child Welfare Act (ORICWA) case requires us to determine whether, before accepting an order or judgment of tribal customary adoption (TCA) from an Indian child's tribe, a juvenile court must conduct a contested evidentiary hearing under ORS 419B.656 (the TCA statute) to ensure that the requirements of that statute are satisfied. In this case, following a contested hearing under the permanency statute, ORS 419B.476, the juvenile court ordered that the case plan for mother's two children change from reunification to TCA. The court then asked the children's tribe to submit a tribal order or judgment reflecting that TCA had been completed. *See* ORS 419B.476 (permanency hearings); ORS 419B.476(2)(e), (5)(g) (authorizing court to consider and choose TCA as permanency plan for an Indian child); ORS 419B.476(7)(d)(A) (if juvenile court determines that TCA is appropriate permanent placement and child's tribe consents, court must request that tribe submit formal tribal documentation reflecting completion of TCA). The court then scheduled another hearing to decide whether to accept the tribe's submission. Upon determining at that hearing (TCA hearing) that the tribe's resolution met the requirements of the TCA statute and that the statute was otherwise satisfied, the juvenile court accepted the tribe's resolution and entered judgment accordingly.

The issue on review is whether the juvenile court complied with the TCA statute in approving TCA for mother's children. Mother's primary contention on review is that the juvenile court was required -- *after* the tribe had submitted its documentation demonstrating its completion of TCA for her children -- to conduct an evidentiary

hearing at which she could contest the court's decision to approve TCA. As we will explain, we conclude that neither ORICWA, nor the TCA statute, requires a juvenile court to hold a contested evidentiary hearing following a tribe's completion of its own TCA process to determine whether (1) the tribe's submission satisfies the requirements of the TCA statute, or (2) TCA should be a child's ultimate placement. We therefore affirm the juvenile court's judgments and the decision of the Court of Appeals.

I. BACKGROUND

The relevant factual and procedural history of this case involves the overlay between (1) juvenile dependency proceedings -- particularly permanency proceedings -- and (2) the requirements of ORICWA as they relate to permanency decisions. Thus, before further discussing the issues on review, the parties' respective contentions, and the relevant history of mother's dependency case, we first provide some general background regarding the underlying statutory scheme.

A. *Statutory Framework*

1. *Juvenile permanency proceedings*

A juvenile court having jurisdiction over a child must establish a permanent plan for that child. ORS 419B.470 (initial permanency hearing; subsequent hearings); *see also* ORS 419B.100 (juvenile court jurisdiction); *see generally* ORS ch 419B (juvenile dependency). Once a case plan has been established for a child, the juvenile court must, from time to time, hold permanency hearings, at which time the court may either continue an existing plan or, subject to various procedural requirements, change the plan to the concurrent plan or another appropriate permanent placement. ORS

419B.470(6) (permanency hearing to be held upon request of a party); ORS 419B.470(7) (requiring subsequent permanency hearings at intervals of no more than 12 months); ORS 419B.476 (setting forth determinations to be made at permanency hearings, placement options available to juvenile court, and required contents of resulting judgment).

2. *ORICWA*

In 2020, the legislature enacted ORICWA, which provides, among other things, specific protections for Indian children who become involved in Oregon's child welfare system. Or Laws 2020, ch 14, §§ 1-66 (Spec Sess 1), *codified as* ORS 419B.600 - ORS 419B.654.[1] ORICWA both added to and amended Oregon's existing juvenile dependency code, ORS chapter 419B. In enacting ORICWA, the legislature explicitly "recognize[d] the inherent jurisdiction of Indian tribes to make decisions regarding the custody of Indian children." ORS 419B.600. Consistent with the underlying policy of "protect[ing] the health and safety of Indian children and the stability and security of Indian tribes and families," ORICWA provides procedural and substantive safeguards designed "to ensure that Indian children who must be removed are placed with Indian families, communities and cultures." *Id*. Of particular relevance here are ORICWA's provisions governing TCA and its implementation as a permanency plan in dependency cases. Those include, among other provisions, the TCA statute itself,

[1] The legislature enacted the TCA statute as an addition to ORICWA the next year. Or Laws 2021, ch 398, § 65, *codified as* ORS 419B.656. Except when referencing specific legislative acts or statutory provisions, we refer to the provisions of ORICWA and the TCA statute collectively as "ORICWA."

ORS 419B.656; and an ORICWA statute it references, ORS 419B.612 (best interests of Indian child). We introduce those statutes here but will discuss them in greater detail in our analysis below.

a. ORS 419.656: "Tribal Customary Adoption"

The TCA statute defines "'tribal customary adoption'" as "the adoption of an Indian child, by and through the tribal custom, traditions or law of the child's tribe, and which may be effected without the termination of parental rights." Or Laws 2021, ch 398, § 65a, *codified as* ORS 419B.656(1). Through ORICWA and its amendments, TCA became an explicitly available option for juvenile courts conducting permanency hearings involving Indian children, at which a court must, after consultation with a child's tribe, determine whether TCA is an appropriate permanent placement if reunification is unsuccessful. ORS 419B.476(2)(e).[2] If, as a result of a permanency hearing, the juvenile court determines that TCA is an appropriate permanent placement for an Indian child and the child's tribe consents to TCA as the plan, the court must ask the tribe to file "a tribal customary adoption order or judgment evidencing that the tribal customary adoption has been completed[,]" after which the court sets a hearing to consider whether it will accept the tribe's filing. ORS 419B.476(7)(d)(A) (procedures court must follow upon determination that plan should be TCA); ORS 419B.656(3)(a) (stating when juvenile

[2] We discuss below the nature of the juvenile court's permanency decision, including the procedural and substantive rights that a parent of an Indian child has at the permanency hearing and the various criteria that must be satisfied before the juvenile court may order TCA as an Indian child's permanent plan.

court must "accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe").

The TCA statute sets forth various requirements for DHS and the child's tribe, and it states criteria for the TCA, its supporting home study, and the juvenile court's acceptance of the tribe's filing. ORS 419B.656. First, the statute states that, if "the juvenile court determines" that TCA is in the child's best interests "as described in ORS 419B.612" and that the child's tribe consents to TCA, DHS must provide a written report regarding the child to the child's tribe and to the proposed adoptive parents. ORS 419B.656(2)(a) (detailing what that report must entail).[3] Second, also subject to the determination of the child's best interests and the tribe's consent, the TCA statute requires the court to accept the tribe's adoptive home study if it includes certain elements and "[u]ses the prevailing social and cultural standards of the Indian child's tribe as the standards for evaluation of the proposed adoptive placement." ORS 419B.656(2)(b). Third, ORS 419B.656(3)(a) states when a juvenile court must accept a tribe's order or judgment evidencing the tribe's completion of a TCA:

> "The juvenile court shall accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe if:

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[3] The written report that ORS 419B.656(2)(a) contemplates is not at issue in this case. We note, however, that it is not apparent from the statute *when* the court is to make the underlying determination or DHS is to produce the written report, which, unlike the partly analogous "placement report" generally required in adoption proceedings under ORS 109.276 (petitions for adoption), is not required to be filed with the court. *Compare* ORS 109.276(8)(a)(A) (requiring DHS to file placement report for the consideration of the court hearing the adoption proceedings), *with* ORS 419B.656(2)(a) (providing for service only on child's tribe and proposed adoptive parents).

> "(A) The court determines that tribal customary adoption is an appropriate permanent placement option for the Indian child;
>
> "(B) The court finds that the tribal customary adoption is in the Indian child's best interests, as described in ORS 419B.612; and
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> "(C) The order or judgment:
>
> "(i) Includes a description of the modification of the legal relationship of the Indian child's parents or Indian custodian and the child, including contact, if any, between the child and the parents or Indian custodian, responsibilities of the parents or Indian custodian and the rights of inheritance of the parents and child;
>
> "(ii) Includes a description of the Indian child's legal relationship with the tribe; and
>
> "(iii) Does not include any child support obligation from the Indian child's parents or Indian custodian."

If, at the conclusion of the TCA hearing, the juvenile court accepts the tribe's order or judgment of TCA, the court enters a judgment of adoption and the court's jurisdiction over the Indian child is terminated. ORS 419B.656(4)(d), (f).

Two aspects of ORS 419B.656(3)(a) are central to our discussion: First, ORS 419B.656(3)(a)(A) contemplates a determination whether TCA is an "appropriate permanent placement," a determination also required by the permanency statute, ORS 419B.476; second, ORS 419B.656(3)(a)(B), like the paragraph immediately preceding it, ORS 419B.656(2)(a), again refers to the "Indian child's best interests, as described in ORS 419B.612[.]" We discuss below the "appropriate permanent placement" determination referenced in the TCA statute and its relationship to the same determination under the permanency statute. However, to provide further context for the parties' dispute, we briefly discuss the statute that the TCA statute expressly cross-

references: ORS 419B.612.

b. ORS 419B.612: "Best interests of the Indian child"

As we have just noted, the TCA statute, ORS 419B.656, requires the juvenile court to accept a TCA order or judgment filed by a child's tribe if, in addition to other prerequisites, the court finds that TCA "is in the child's best interests, as described in ORS 419B.612[.]" Neither ORS 419B.612 nor the dependency code as a whole explicitly defines "best interests," despite there being statutorily required "best interests" determinations throughout any dependency proceeding, including one involving Indian children. Rather than defining "best interests," ORS 419B.612 sets out factors that a juvenile court must consider "in consultation with [an] Indian child's tribe" when making a determination regarding the best interests of an Indian child. Those factors include:

> "(1) The protection of the safety, well-being, development and stability of the Indian child;
>
> "(2) The prevention of unnecessary out-of-home placement of the Indian child;
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> "(3) The prioritization of placement of the Indian child in accordance with the placement preferences under ORS 419B.654;
>
> "(4) The value to the Indian child of establishing, developing or maintaining a political, cultural, social and spiritual relationship with the Indian child's tribe and tribal community; and
>
> "(5) The importance to the Indian child of the Indian tribe's ability to maintain the tribe's existence and integrity in promotion of the stability and security of Indian children and families."

As we will explain, the issue in this case ultimately reduces to whether -- and if so, how -- the juvenile court in this case was required *at the time of the TCA hearing* to apply those considerations and make the related findings and determinations

under the TCA statute. After next recounting the salient details of the permanency and TCA hearings that took place in this case, we will turn to that issue and the related arguments of the parties and *amici.*

B. *Permanency Proceedings in this Case*

Mother and her children, S and P, are members of the Pit River Tribe, a federally recognized Indian tribe located in Northern California; thus, once the juvenile court had asserted dependency jurisdiction over S and P, ORICWA applied to their dependency cases. *See* ORS 419B.603(5) (defining "Indian child"). Initially, the permanency plan for both children was reunification with mother, but DHS eventually petitioned to change their plans from reunification to TCA. As described next in more detail, the juvenile court considered DHS's petition in a contested permanency hearing under ORS 419B.476 and ultimately authorized the proposed change in plan to TCA.

1. *Permanency hearing*

The juvenile court held a permanency hearing over the course of more than two full days in July 2022. DHS and the Pit River Tribe participated in the permanency hearing and presented evidence supporting the proposed change in plan. Among their witnesses was one of the proposed adoptive parents (who is both a tribal member and mother's first cousin), in whose care the children had been temporarily placed. He testified to the progress that the children had made since being placed under his and his wife's care and to their willingness to be a permanent placement for the children.

The juvenile court heard evidence from DHS that the children's lack of permanency was detrimental to their well-being and that mother had not made changes

that would allow them to safely return to her care. DHS also presented evidence that, throughout the pendency of the juvenile case, it had sought to prioritize placing the children with mother and that, when that was no longer a safe option, DHS had prioritized placing the children with mother's relative -- the proposed tribal-adoptive parent -- whom the tribe had approved as a permanent placement resource pursuant to ORICWA. DHS had also prioritized placing S and P together. According to DHS, the proposed adoptive family had coordinated visits between the children and one of their grandmothers, as well as with their third sibling, J.[4] DHS also presented evidence that S had a speech delay that had gone untreated prior to her temporary placement and that she had needed an Individualized Education Plan (IEP) upon that placement.

The juvenile court also heard from a tribal expert, England, who had on numerous previous occasions been received as a "qualified expert witness" (QEW) in ICWA and ORICWA cases.[5] *See* ORS 419B.642 (defining "qualified expert witness").[6]

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[4] J has a different father than S and P and lived with her father. J is not a party to this case.

[5] ICWA is the federal Indian Child Welfare Act, 25 USC §§ 1901 - 1963 (1978), which, like ORICWA, focuses on the rights of Indian children and their parents and is applicable in all juvenile dependency cases involving Indian children.

[6] Under ORS 419B.642, a QEW must testify at certain hearings, including one under ORS 419B.340 (determination whether DHS has made "active efforts * * * to prevent or eliminate the need for removal of the ward from the home"); *see also* ORS 419B.645 (defining "active efforts"). Although DHS took the position that it was not *required* to provide QEW testimony for purposes of satisfying its burden of proof at the permanency hearing, it was undisputed that England met the requirements of a QEW and that his testimony relied on his underlying expertise regarding "the prevailing social and

England had reviewed the extensive record of the state's involvement with mother and the children. He testified that, in his opinion, DHS had engaged in active efforts throughout the dependency case to reunify the family and that, despite those efforts, the children could not safely return to mother's care. England also testified about what a Pit River tribal customary adoption entailed, including that the tribe required a "culture contract" with the tribal-adoptive family to ensure that the Indian child has opportunities to remain connected to tribal culture.

Finally, the children's proposed adoptive parent testified to how he and his wife had taken the children to Powwows, read them Pit River Tribe books, and planned to have the children participate in tribal dance classes. He also described the progress that S had made with her speech and in school since being placed with them, which he attributed to her speech therapy and IEP.

After the permanency hearing, the juvenile court issued judgments ordering that the children's plans change from reunification to TCA. Although those judgments were the subject of a separate, unsuccessful appeal, *Dept. of Human Services v. M. G. J.*, 326 Or App 426, 532 P3d 905 (2023) (*M. G. J. I*), *rev den*, 371 Or 476, 537 P3d 938 (2023), they included various findings and conclusions that appear relevant to this case as well. First, the court determined that: (1) the tribe had requested and approved both TCA as the new permanency plan and the proposed tribal-adoptive family as the planned

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cultural standards" of the Pit River Tribe. ORS 419B.642 (contemplating QEW testimony whether continued custody by Indian child's parent "is likely to result in serious emotional or physical damage to the Indian child").

placement; (2) DHS had made the efforts required by ORS 419B.192 to place S and P together and with a relative with whom they had a caregiver relationship; and (3) placement in substitute care with the children's adoptive resource was necessary and in the children's best interests.

Second, applying the clear and convincing evidence standard applicable in ORICWA cases, the juvenile court made the findings that it was required to make as a predicate to changing the children's plan from reunification to TCA. *See* ORS 419B.476(5)(k) (requiring permanency findings to be supported by clear and convincing evidence in cases involving Indian children). Specifically, the court found that:

> (1) DHS had made active efforts to make it possible for mother's children to safely return home, *see* ORS 419B.476(5)(k)(A);
>
> (2) Despite those active efforts, continued removal of the children was necessary to prevent serious emotional or physical damage to them, *see* ORS 419B.476(5)(k)(B);
>
> (3) Mother had not made sufficient progress to make it possible for her children to safely return home, *see* ORS 419B.476(5)(k)(C); and
>
> (4) The new permanency plan of TCA complied with the placement preferences described in ORS 419B.654, *see* ORS 419B.476(5)(k)(D).

Third, the court found that the termination of mother's parental rights would not be in the children's best interests, both because TCA was an appropriate permanent plan and because the tribe did not agree with terminating mother's parental rights. *See* ORS 419B.498(2)(b)(C) (providing that there exists a compelling reason to forgo termination of parental rights when the juvenile court finds that TCA is an appropriate permanent plan and the tribe consents to that plan).

In addition to ordering the change in plan to TCA, the juvenile court

directed the tribe to file its TCA order or judgment within six months of the permanency judgment date. *See* ORS 419B.476(7)(d)(A) ("[T]he court shall request that the tribe file with the court a tribal customary adoption order or judgment evidencing that the tribal customary adoption has been completed.").

Mother appealed the juvenile court's permanency judgments, primarily contending that DHS had not established, by clear and convincing evidence, either that she had not made sufficient progress for her children to safely return home or that DHS had made active efforts to that end. *M. G. J. I*, 326 Or App at 428. The Court of Appeals affirmed, *id.* at 438, and this court denied mother's petition for review, 371 Or 476.

2. *TCA hearing*

While mother's appeal from the permanency hearing was pending, the children's tribe established and approved a Tribal Customary Adoption Resolution and Agreement (TCA resolution) for the children through the tribe's internal processes. The tribe then filed the TCA resolution in juvenile court, and DHS requested a hearing for the court to accept it. DHS subsequently filed two otherwise identical documents under each child's name: (1) a proposed order accepting the tribe's order or judgment of tribal customary adoption; and (2) a proposed judgment of tribal customary adoption.

Together, the materials before the juvenile court provided as follows. First, the TCA resolution stated that the Pit River Tribe has the "power to safeguard and promote the * * * general welfare of the Tribe, including the adoption and implementation of Tribal Customary Adoptions," and that the tribe "does not believe in

or adhere to termination of parental rights[.]" It further set forth the tribe's determination, "after careful consideration regarding the best interests of the minors' birth mother, adoptive family, and the Tribe, that Tribal Customary Adoption is in the minors' best interest[s,]" after which it identified S and P's proposed "Tribal Customary Adoptive parents."[7]

Second, DHS's proposed orders accepting the TCA set forth the legal standard for accepting the tribe's resolution under ORS 419B.656(3)(a) and the following findings of fact and conclusions of law:

- The tribe supported TCA as the children's permanency plan;
- TCA was an appropriate permanent placement for S and P; and
- TCA was in the children's best interests under ORS 419B.612.

And third, DHS's proposed TCA judgment included, in pertinent part, the following determination:

> "The court is satisfied as to the identity and relations of the persons, that the proposed tribal customary adoptive parent(s) are of sufficient ability to bring up the Indian child and furnish suitable nurture and education[,] and the requirements of [ORICWA] have been met."

At the time of its acceptance of the tribe's resolution and resulting entry of judgment at the TCA hearing, the juvenile court had for its consideration the foregoing TCA resolution, proposed order accepting that resolution, and proposed judgment effectuating it, as well as each child's dependency file, including their permanency

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[7] There is no dispute in this case that the TCA resolution is a qualifying "tribal customary adoption order or judgment evidencing that the tribal customary adoption has been completed" within the meaning of ORS 419B.476(7)(d)(A).

judgments. With that record for support -- though without specifically referencing that record -- the juvenile court ultimately accepted the resolution, ordered TCA, and dismissed jurisdiction over both children.[8]

3. *Mother's appeal and petition for review*

Mother appealed the juvenile court's judgments ordering tribal customary adoption of S and P, raising three arguments: (1) that the juvenile court had erred in accepting the tribe's TCA resolution without making its own best-interests determination; (2) that mother's procedural rights were violated when the court entered TCA judgments transferring her parental rights to the tribal-adoptive parents without providing her a meaningful opportunity to be heard in objection; and (3) that the court had erred in signing an order or judgment filed by DHS rather than by the tribe. The Court of Appeals rejected mother's first two arguments as unpreserved, reasoning that (1) mother had not argued that ORICWA required the juvenile court to make an independent best-interests finding at the TCA hearing or that the finding that the court did make was somehow inadequate, and (2) although mother had raised "generalized concerns" about the court's process, she had not sought to introduce testimony or other evidence, nor had she otherwise signaled that she was raising a constitutional challenge. *Dept. of Human Services v. M. G. J.*, 329 Or App 101, 104-105 (2023) (nonprecedential memorandum opinion) (*M. G. J. II*). The court rejected, apparently without deciding, mother's third

[8] We describe the TCA hearing itself in further detail below, in the context of discussing the parties' contentions regarding whether mother preserved the arguments that she seeks to advance on review.

argument regarding who was required to file the TCA orders and judgments that the court ultimately signed and entered, concluding that any error was harmless. *Id.* at 105-106.[9] We allowed mother's petition for review, which primarily sought to raise the two arguments that the Court of Appeals had held were not preserved.

II. DISCUSSION

A. *Preservation*

Before reaching the merits of mother's arguments, we must determine whether they are preserved. On review, DHS contends that the Court of Appeals was correct in framing mother's arguments and rejecting them as unpreserved. As discussed below, we view mother's arguments somewhat differently than the Court of Appeals did. As a result, we conclude that mother preserved her arguments that the TCA statute required the juvenile court to make an independent best-interests finding, and that the statute entitled her to an evidentiary hearing at which she could contest the juvenile court's decision to proceed with TCA. To provide context for that conclusion, we first recount aspects of the TCA hearing and the arguments that the parties made at the hearing, together with the juvenile court's observations and responses.

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[9] Although that matter is not before this court, we note that mother and the Court of Appeals may have conflated the filing with the court of the tribe's order or judgment reflecting completion of a TCA, *see* ORS 419B.476(7)(d)(A) (requiring juvenile court to "request that the tribe file with the court a tribal customary adoption order or judgment evidencing that the tribal customary adoption has been completed"), with the filing of an order and judgment approving the tribe's filing and entering TCA, *see* ORS 419B.656(3)(a) (providing for juvenile court's *acceptance* of the tribe's order or judgment and entry of the court's own judgment of adoption). But, as noted, we need not address that issue.

1. *The TCA hearing*

As noted, ORICWA was enacted in 2020, and, at the time of the TCA hearing in this case in 2023, TCA remained a fairly novel permanency option for Oregon courts, as the juvenile court and parties both acknowledged at the hearing.[10] Thus, throughout the hearing, the parties and the court discussed the TCA statute (ORS 419B.656) at some length, including what that statute required and whether it had been complied with. During those discussions, the juvenile court observed that the statute was "not a model of clarity" and invited the parties to state their positions as to what process was required.

DHS maintained that a TCA hearing is "ministerial" in nature and that, given the filing of the tribe's TCA resolution, the court could simply sign both the proposed order and proposed judgment, thereby finalizing the TCA, dismissing the parties, and terminating the court's jurisdiction over the children. The tribe agreed, confirming its satisfaction with DHS's description of the applicable process, including DHS's characterization of TCA hearings as being ministerial in nature and limited to domesticating the tribe's TCA order or judgment as a foreign judgment.[11]

For her part, mother made three objections. First, she expressed concern about the TCA resolution because it made no accommodations for visitation between S

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[10] From the exchanges at that hearing, it was apparent that the TCA at issue in this case was the first to come before the juvenile court in that county.

[11] Once it has been accepted by a juvenile court, a tribal customary adoption order or judgment is entitled to "full faith and credit." ORS 419B.656(3)(b).

and P and their sibling J. Mother therefore objected to the court accepting the TCA resolution. Second, mother represented that she had made progress towards ameliorating certain bases for dependency jurisdiction and that, for that reason, proceeding with TCA as the permanency plan was no longer appropriate. Third, in regard to the TCA statute, mother argued that the TCA hearing should not just be a "rubber[-]stamp hearing" and that "there should be some more testimony and at least mention and inclusion of the home study."

In response, DHS pointed out that ORS 419B.656 did not require the TCA resolution to address sibling contact; in DHS's view, "[w]hat this agreement encompasses is what is required by the statute." DHS also observed that, because mother's parental rights were not being terminated, she could petition the tribe to modify its terms if she had concerns regarding its provisions. DHS asserted that the juvenile court was "directed by the [TCA statute] to accept the tribal customary adoption and finalize this adoption[,]" essentially rebutting mother's contention that the proceedings were required to be more than a "rubber[-]stamp hearing."

Finally, counsel for the children weighed in, agreeing with DHS and the tribe's position that ORS 419B.656 had been complied with and adding, on the children's behalf, that proceeding with TCA was in the children's best interests.

After hearing the parties' positions, the juvenile court stated that it was satisfied that ORS 419B.656 had "been either fully or substantially complied with," that the proposed order accepting the resolution and the proposed judgment effectuating TCA also satisfied that statute, and that the court would adopt the findings contained in both

documents. The court then signed those filings, thereby dismissing the parties and terminating its jurisdiction over both children.

To summarize, both DHS and the tribe asserted that the TCA hearing was meant to be "ministerial" in nature. The juvenile court raised concerns about the statute's requirements, then invited any arguments about statutory compliance from the parties. Within that context, mother made three arguments objecting to the juvenile court's acceptance of the TCA resolution, including that the statute required more process than just a "rubber[-]stamp hearing." With that context in mind, we turn to mother's appeal and the Court of Appeals' conclusion that the challenges now on review were unpreserved.

2. *Whether mother preserved the arguments she sought to appeal*

On appeal, mother raised a single assignment of error as to each of the juvenile court's two judgments implementing TCA, making three, identical arguments as to S and P. Mother first argued that ORS 419B.656(3)(a)(B) required the juvenile court to make its own determination that TCA was in each child's best interests -- a determination that, according to mother, required the court to consider the concerns she had raised during the TCA hearing, including that the TCA resolution did not provide for maintaining the children's relationships with their sibling J and that mother had made progress towards ameliorating the jurisdictional bases.

Mother also argued -- in support of her assertion that the juvenile court had erred in accepting the TCA resolution -- that, because "[a] parent's due process rights are always implicated in the construction and application of the provisions of the juvenile

code[,]" it follows that "ORS 419B.656 necessarily must afford a parent some meaningful process before a juvenile court can modify or transfer to another her parental rights." Here, mother contended, "the juvenile court [had] entered judgments finalizing [TCA] over [her] objection at a 'ministerial' hearing that did nothing more than rubber[ ]stamp out-of-court actions" without taking any evidence or giving her a chance to challenge the tribe's TCA resolution.[12]

DHS argued in response that both mother's best-interests challenge and her procedural argument were unpreserved. The Court of Appeals agreed. *M. G. J. II*, 329 Or App at 103. The court concluded that mother's first challenge was unpreserved because mother had never specifically contended that ORS 419B.656(3)(a)(B) required the juvenile court to make a best-interests finding at the TCA hearing. *Id.* at 104. And, characterizing mother's second challenge as a constitutional due process argument, the court concluded that mother had likewise failed to preserve that issue. *Id.*

We conclude that mother's arguments in the juvenile court were adequate to preserve both those issues for appeal, even though, as we explain later in this opinion, mother did not preserve all the issues that she seeks to raise in this court. Starting with whether ORS 419B.656(3)(a)(B) requires a juvenile court to make a best-interests finding at the time of a TCA hearing, we acknowledge that mother did not expressly reference that finding or contend that, because of alleged defects in the TCA resolution or any other

[12] As previously noted, mother raised a third argument regarding who was responsible for filing the order or judgment that the trial court ultimately signed, but mother does not reprise that argument on review.

reason, the record was insufficient to support such a finding. As the juvenile court recognized, however, the requirements of ORS 419B.656 were in dispute, and the court sought the parties' assistance in determining what those requirements were. Under those circumstances, mother's contention that the court was required to consider "more testimony" and not simply "rubber[ ]stamp" the tribe's TCA resolution was sufficient to focus the attention of the court and the other parties on the requirements of the TCA statute, including the findings provision of ORS 419B.656(3)(a)(B). That is, the court understood that it needed to determine its obligations under the TCA statute as a prelude to its assessment of the tribe's resolution, and the parties' respective arguments gave the court the opportunity to carefully consider those requirements and apply the statute accordingly. *See State v. Skotland*, 372 Or 319, 326, 549 P3d 534 (2024) ("At its heart, preservation is a doctrine rooted in practicality, not technicality. Preservation serves a number of policy purposes, but chief among them is fairness and efficiency -- affording both opposing parties and trial courts a meaningful opportunity to engage an argument on its merits and avoid error at the outset."); *Peeples v. Lampert*, 345 Or 209, 219, 191 P3d 637 (2008) ("Preservation gives a trial court the chance to consider and rule on a contention, thereby possibly avoiding an error altogether or correcting one already made, which in turn may obviate the need for an appeal."). Thus, we conclude that mother preserved the argument that the juvenile court was required to make an independent best-interests finding at the TCA hearing, not merely adopt the tribal resolution containing that finding.

For very similar reasons, we also conclude that mother preserved her

argument that the TCA statute entitled her to an evidentiary hearing at which she could contest the juvenile court's decision to move forward with TCA and transfer her parental rights in accordance with the tribe's resolution. We disagree with the Court of Appeals' rationale that, because mother's procedural argument is effectively a constitutional due process challenge that she did not raise in the juvenile court, that issue is unpreserved. *See M. G. J. II,* 329 Or App at 105 (also noting that mother had not sought to introduce testimony or other evidence at the TCA hearing). That is not to say that we understand mother to have raised a standalone due process challenge in the juvenile court; our point is that, because that was not, in fact, the argument that mother made in the Court of Appeals, there was no need to have raised that issue in the juvenile court. Mother's argument was that the Court of Appeals was required to construe the TCA statute in a manner that protected her constitutional rights with regard to parenting. *See* ORS 419B.090(4) (courts must interpret and apply provisions of ORS chapter 419B in accordance with constitutional rights that United States Supreme Court has recognized on behalf of parents). That was a statutory interpretation argument, not a freestanding constitutional argument. And by arguing in the juvenile court that the TCA statute required the court to provide her with a meaningful opportunity to challenge the TCA decision -- through such things as testimony and cross-examination, introduction of (and perhaps challenges to) the tribe's adoptive home study, and presumably mother's evidence of her progress in addressing her parental deficits -- mother had likewise argued what the *statute* required, and not what the constitution would require if the statute did not. Thus, we conclude that mother preserved her argument that, under the TCA statute, the juvenile

court was required to do more than simply determine whether, as a "ministerial" matter, the TCA resolution that the tribe had filed complied with the TCA statute. We proceed to consider that argument, together with mother's more specific argument regarding the best-interests finding.

B. *Analysis*

As we understand the parties' arguments, there appears to be no dispute that, before accepting a tribal order or judgment of TCA for an Indian child, a juvenile court must make certain determinations that the TCA statute identifies, including (1) a determination that TCA "is an appropriate permanent placement option" for the child, and (2) a finding that TCA is in the "child's best interests, as described in ORS 419B.612." ORS 419B.656(3)(a)(A), (B). What *is* at issue, however, is *when* and *how* those determinations were to be made, and particularly whether the TCA statute requires a court to undertake those considerations and make the related findings *at the time of the TCA hearing*. Ultimately, the issue on review reduces to this: Is a juvenile court required to conduct a contested evidentiary hearing after a tribe submits a completed TCA at which the court determines whether (1) TCA remains an appropriate permanent placement for the Indian child in question; and (2) TCA is in the child's best interests within the meaning of ORS 419B.612? As we will explain, we conclude that the answer to that question is no: A juvenile court is not required to conduct a contested evidentiary hearing to make those determinations after a tribe, at the court's request, has filed an order or judgment demonstrating that a TCA has been completed.

1. *The parties' arguments*

Mother's core argument is that, at a TCA hearing, the juvenile court must: receive evidence and challenges to it; independently find whether TCA is in an Indian child's best interests; and determine, following a contested proceeding, whether to effectuate TCA. Mother bases her argument on ORS 419B.656(3)(a), which we set out in full for convenience and which states when a juvenile court must accept a tribal order or judgment reflecting the completion of TCA:

> "The juvenile court shall accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe if:
>
> "(A) The court determines that tribal customary adoption is an appropriate permanent placement option for the Indian child;
>
> "(B) The court finds that the tribal customary adoption is in the Indian child's best interests, as described in ORS 419B.612; and
>
> "(C) The order or judgment:
>
> "(i) Includes a description of the modification of the legal relationship of the Indian child's parents or Indian custodian and the child, including contact, if any, between the child and the parents or Indian custodian, responsibilities of the parents or Indian custodian and the rights of inheritance of the parents and child;
>
> "(ii) Includes a description of the Indian child's legal relationship with the tribe; and
>
> "(iii) Does not include any child support obligation from the Indian child's parents or Indian custodian."[13]

Mother acknowledges that ORS 419B.656 is silent as to the procedural and substantive

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[13] Although mother does not separately contend that she was entitled to an evidentiary hearing to determine whether the tribal resolution contained the components required by ORS 419B.656(3)(a)(C), we include that provision here for completeness.

protections to which an objecting parent is entitled before the court may order TCA. She notes, however, that the text of ORS 419B.656(3)(a)(A) expressly contemplates a best-interests finding by "[t]he court," which in her view precludes a juvenile court from simply adopting a tribe's finding that TCA is in a child's best interests. Additionally, mother contends that we must interpret the TCA statute so as to protect her due process rights, which (given her understanding that the TCA effectively terminated her parental rights) required the court to conduct a contested, evidentiary TCA hearing. *See* ORS 419B.090(4).

Respondents[14] disagree, noting that, in signing the TCA orders submitted by the DHS, the juvenile court expressly made the best-interests findings that mother contends it was required to make. As to mother's procedural argument, respondents contend that ORS 419B.656(3)(a) allows a juvenile court to make the determinations that it requires by relying on the information provided by an Indian child's tribe or contained in the case record. Although respondents agree that the court may also consider any evidence proffered by the parties at the TCA hearing, they argue that the court is not required to conduct a formal, evidentiary hearing at that stage. Moreover, respondents argue that the provisions of ORS 419B.656(3)(a) are not intended to provide parents of an Indian child the opportunity to relitigate whether there are grounds for TCA. That determination, they argue, is made at the permanency stage, when the juvenile court

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[14] Respondents include DHS, the Pit River Tribe, and children. Unless otherwise indicated, references in this opinion to "respondents" encompass all three parties.

holds a contested evidentiary hearing subject to a clear-and-convincing evidence standard and, in consultation with the tribe, determines whether TCA is an appropriate permanent placement. Respondents further argue that subjecting a tribe's statutorily compliant TCA order or judgment to an evidentiary challenge would fail to respect the tribe's sovereignty and fail to extend full faith and credit to tribal decisions, as respondents contend is required by ORS 419B.656(3)(b) (requiring court to "afford full faith and credit to a [TCA] order or judgment that is accepted" under ORS 419B.656(3)). Finally, respondents argue that, in all events, the evidence available to the juvenile court at the TCA hearing was sufficient to support its decision to accept the tribe's TCA resolution and implement TCA.

2. *The intended meaning ORS 419B.656(3)(a)*

The parties' arguments regarding the inquiry and process required by ORS 419B.656(3)(a) implicate two subparagraphs, specifically ORS 419B.656(3)(a)(A) and (B). As noted, those provisions require the juvenile court to accept "an order or judgment for tribal customary adoption that is filed by the Indian child's tribe" if

> "(A) The court determines that tribal customary adoption is an appropriate permanent placement option for the Indian child; and
>
> "(B) The court finds that the tribal customary adoption is in the Indian child's best interests, as described in ORS 419B.612[.]"

Whether those provisions require the juvenile court to make evidence-based decisions at the time of the TCA hearing presents a question of statutory interpretation, which we resolve by employing the established analytical framework set out in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993), and modified in *State v. Gaines*,

346 Or 160, 206 P3d 1042 (2009). Under that framework, we examine the relevant text and context, together with any legislative history that we may find helpful, all with the ultimate goal of determining the legislature's intent. *Gaines*, 346 Or at 171-72.

Before looking more closely at the determinations required under ORS 419B.656(3)(a)(A) and (B), we find it helpful to first place those inquiries in context with the larger permanency process of which they are a part. *See Dept. of Human Services v. S. J. M.*, 364 Or 37, 50-51, 430 P3d 1021 (2018) ("Before interpreting the statutes at issue, it is helpful to place the permanency decisions at issue here in context."); *see also Dept. of Human Services v. Y. B.*, 372 Or 133, 144, 546 P3d 255 (2024) (same). As discussed above, by the time a TCA hearing takes place under ORS 419B.656, the juvenile court will have already held a permanency hearing pursuant to ORS 419B.476 and, with the consent of the tribe, determined that TCA is an appropriate permanent placement for the Indian child in question. ___ Or at ___ (discussing ORS 419B.476(7)(d)(A)) (slip op at 4:9 - 5:3). It will then have asked the tribe to proceed with a TCA and file an order or judgment with the court evidencing that one has been completed. *Id*. (slip op at 5). With that temporal and procedural relationship between permanency hearings and TCA hearings in mind, we turn to the text and context of the TCA statute.

a. ORS 419B.656(3)(a)(A) and appropriate permanent placement

(1) Text

Under ORS 419B.656(3)(a)(A), "[t]he juvenile court shall accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe if" "[t]he

court *determines* that tribal customary adoption is an appropriate permanent placement option for the Indian child[.]" (Emphasis added.) Although ORS 419B.656(3)(a)(A) conditions acceptance of a tribe's order or judgment for TCA on, among other things, a determination that TCA is an appropriate permanent placement for the child in question, that provision offers little guidance as to when that determination must be made and even less guidance as to how the juvenile court must make it. That is, the statute *could* be read as requiring the juvenile court to make that determination contemporaneously with, or at least immediately before, its decision to accept an order or judgment for TCA. But that is not the only plausible reading, and the legislature may not have meant to require that determination to be made at the TCA hearing, given that the TCA hearing is the consequence of the juvenile court making the identical determination at the permanency hearing that directly preceded it. And as for what process the court must follow in making that determination -- including whether parents are entitled to an evidentiary TCA hearing or, instead, the juvenile court can base that determination on the existing record or perhaps make it as a matter of law -- the text appears to be silent.

We turn to whether something in the word "determines" itself suggests a particular form of inquiry, whether one that occurs at the TCA hearing or at another time. Neither ORICWA nor the juvenile code as a whole defines "determines," so we start with that term's plain meaning. *See DCBS v. Muliro*, 359 Or 736, 745-46, 380 P3d 270 (2016) ("When the legislature has not defined a word or a phrase, we assume, at least initially, that the word or phrase has its 'plain, natural, and ordinary' meaning." (Quoting *PGE*, 314 Or at 611)). The relevant definitions of "determines" include "to come to a decision

concerning as the result of investigation or reasoning," as well as simply to "decide by judicial sentence." *Webster's Third New Int'l Dictionary* 616 (unabridged ed 2002); *see also Black's Law Dictionary* 564 (11th ed 2019) (defining "determination" to mean "[t]he act of deciding something officially; esp., a final decision by a court or administrative agency"). Those definitions suggest thoughtful and measured decision making, but they do not indicate whether a determination under ORS 419B.656(3)(a)(A) requires the juvenile court to come to its decision through a specific process, whether it be a contested hearing, a review of evidence in the record, an examination of the case file, or something else, nor do they indicate when the court must make that decision. Here, however, the statutory context provides considerable assistance. *See State v. Cloutier*, 351 Or 68, 96, 261 P3d 1234 (2011) ("In construing statutes, we do not simply consult dictionaries and interpret words in a vacuum."); *see also State v. Fries*, 344 Or 541, 546-48, 185 P3d 453 (2008) (context determines which of multiple definitions is the one the legislature likely intended). We turn to that context.

(2) Context

We have already generally described the procedural context in which a juvenile court decides whether to accept a TCA order or judgment. In this case, that procedural context also provides the relevant statutory context for our *Gaines* analysis. *See State v. McNally*, 361 Or 314, 325, 392 P3d 721 (2017) (a statute's interpretive context includes other related statutes). And here that context strongly suggests that the legislature did not intend for a juvenile court to hold a contested evidentiary hearing at the TCA stage to determine whether TCA is an appropriate permanent placement.

As discussed, a TCA hearing does not occur in isolation. It is not even scheduled until there has been a permanency hearing under ORS 419B.476 and the juvenile court has "determine[d]" at *that* hearing that TCA is an "appropriate permanent placement" for an Indian child. ORS 419B.476(7)(d)(A).[15]

As with other permanency decisions that a juvenile court may make, a parent or other party who opposes changing a child's permanency plan from reunification to TCA is entitled to a contested permanency hearing. *See* ORS 419B.476(1) (hearings must comply with, among other statutes, ORS 419B.310); ORS 419B.310 (requiring evidentiary hearing and stating applicable burdens of proof). Specifically, to justify changing an Indian child's permanency plan to TCA, a juvenile court must make the following determinations, all of which must be established by clear and convincing evidence: (1) that DHS made active efforts to make it possible for the Indian child to safely return home, ORS 419B.476(5)(k)(A); (2) that, despite those active efforts, continued removal of the child is necessary to prevent serious emotional or physical damage to the child, ORS 419B.476(5)(k)(B); (3) that the child's parent has not made sufficient progress for the child to safely return home, ORS 419B.476(5)(k)(C); and (4)

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[15] ORS 419B.476(7)(d)(A) provides:

> "(d)(A) If the court determines that tribal customary adoption, as described in ORS 419B.656, is an appropriate permanent placement for the child, and the Indian child's tribe consents, the court shall request that the tribe file with the court a tribal customary adoption order or judgment evidencing that the tribal customary adoption has been completed. The tribe must file the tribal customary adoption order or judgment no less than 20 days prior to the date set by the court for hearing."

that the new permanency plan complies with ORICWA's placement preferences for Indian children, ORS 419B.476(5)(k)(D). For a juvenile court conducting permanency proceedings, the Indian child's health and safety take precedence over all other concerns. ORS 419B.476(2)(a), (4)(a) (in making determinations at a permanency hearing, the court must "consider the ward's health and safety the paramount concerns").

An Indian child's tribe is entitled to participate in permanency hearings involving the child. ORS 419B.473 (requiring that notice of permanency hearing be provided to parties listed in ORS 419B.470); ORS 419B.470(6) (listing tribal court as party entitled to request a permanency hearing). If, as a result of a permanency hearing, the juvenile court determines that TCA is an appropriate permanent placement for an Indian child and the child's tribe consents to TCA as the child's plan, the court must request that the tribe file "a tribal customary adoption order or judgment evidencing that the tribal customary adoption has been completed." ORS 419B.476(7)(d)(A). The child's tribe must then file its documentation no less than 20 days prior to the date set by the court for a hearing unless the tribe obtains an extension of up to 60 days. ORS 419B.476(7)(d)(A), (B). Finally, if the child's tribe does not timely file a tribal order or judgment reflecting completion of a TCA, the court must set a new permanency hearing to redetermine the best permanency plan for the child. ORS 419B.476(7)(d)(C).

Several things about this statutory context support the view that ORS 419B.656(3)(a)(A) does not contemplate a contested evidentiary proceeding at the TCA hearing. One is that, in the permanency statute, the requirement that the juvenile court determine whether TCA is an appropriate permanent placement is accompanied by

explicit requirements that the court conduct an evidentiary hearing, that DHS be held to a specific burden of proof, and that the proposed change of plan meet various criteria. *See* ORS 419B.476(1) (subjecting permanency hearings to the hearing requirements of ORS 419B.310, including requirement that DHS's contentions be supported by clear and convincing evidence); ORS 419B.476(5)(k)(D) (requiring determination, also by clear and convincing evidence, that circumstances warranting a change of plan are present and that new permanency plan complies with the ORICWA's placement preferences under ORS 419B.654); ORS 419B.476(7)(d)(A) (determination, at contested permanency hearing, that TCA is an appropriate permanency placement; requirement that the juvenile court consult with the Indian child's tribe about the proposed placement). The TCA statute, on the other hand, has none of those features. Absent other indications of the legislature's intent, we are hesitant to interpret the TCA statute as implicitly imposing comparable requirements when a closely related statute does so explicitly.

Another notable aspect is that there are no required intervening steps between the permanency hearing -- where the juvenile court will have determined, under ORS 419B.476(7)(d)(A), that TCA is an appropriate permanent placement -- and the TCA hearing -- which appears to contemplate the same determination. Thus, in most instances, requiring the juvenile court to make that determination at the TCA hearing would require the court to do the same thing twice in succession, with potentially little

time in between.[16] That is, if the juvenile court "determines" at the TCA hearing whether TCA "is an appropriate permanent placement option" under ORS 419B.656(3)(a)(A), it does so at a hearing that directly follows another hearing where the juvenile court has made the same determination and, in doing so, conducted an evidentiary hearing that closely resembles the process that mother contends that the TCA statute requires.

It appears unlikely to us that, in enacting TCA as a permanency option for Indian children, subject to the stringent requirements of the permanency statute, the legislature intended to require DHS to establish grounds for TCA as a permanency plan twice in that way. That is, given that a predicate for considering a tribe's TCA order or judgment under the TCA statute is that DHS have established, under the permanency statute, that TCA, "as described in" the TCA statute, is an "appropriate permanent placement" for an Indian child, we see no reason for the legislature to have intended to subject that inquiry to an evidentiary dispute in the TCA hearing that followed. Nor, as respondents observe, does it appear likely that the legislature would have meant to allow parents to essentially relitigate the juvenile court's permanency decision, particularly given the concerns of timeliness and the safety and wellbeing of their children.[17]

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[16] Although here the juvenile court scheduled the TCA hearing six months after the permanency hearing at which it changed the children's permanency plans to TCA, there in nothing in the statutes to preclude a court from scheduling the TCA hearing much closer in time to the permanency hearing, subject only to the need to give the tribe sufficient time to file an order or judgment reflecting a TCA at least 20 days before the TCA hearing. ORS 419B.476(7)(d)(A).

[17] That is not to suggest that the juvenile court's permanency decision cannot

The final notable aspect of this part of the statutory context is that, as the above discussion suggests, the permanency provisions of ORS 419B.476 and the TCA provisions of ORS 419B.656 appear designed to complement -- not duplicate -- each other. To illustrate that point, it is helpful to show how the permanency statute's TCA procedures are comparable to -- and substantially as protective as -- the procedures that a juvenile court must follow before implementing two other permanency options: adoption and guardianship. As with TCA for Indian children, the permanency statute permits the juvenile court to determine that a child's permanency plan should be adoption or legal guardianship if reunification ceases to be a viable option. ORS 419B.476(5)(d) (adoption); ORS 419B.476(5)(e) (legal guardianship). Unlike for TCA, however, the permanency statute does not provide a procedural mechanism requiring DHS or another petitioner to establish -- or enabling a parent to challenge -- the basis for determining that legal guardianship or adoption is an appropriate permanent placement for a child. Rather, each of those other determinations is reliant on other statutes to provide the requisite procedures and related burdens of proof.

For example, once a juvenile court determines at a permanency hearing that a child's plan should change to legal guardianship, a petitioner seeking to become the

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be challenged, simply because the court has asked a child's tribe to proceed with TCA. As in this case, a parent may directly appeal a permanency decision. ORS 419B.476(8). Alternatively -- or additionally -- a parent who believes that the grounds for the juvenile court's permanency decision have sufficiently changed to warrant a change of plan presumably may request a new permanency hearing. *See* ORS 419B.470(6) (requiring juvenile court to hold a permanency hearing upon request of any party). Mother did not request a new permanency hearing in this case.

child's guardian must file a motion to establish guardianship. ORS 419B.366(1) (providing for motion); ORS 419B.366(6) (authorizing court to grant motion if (1) juvenile court has approved a plan of guardianship under permanency statute, and (2) the court determines, "after a hearing," that various statutory requirements are met). At the hearing on a petitioner's motion, the petitioner must establish, by a preponderance of the evidence, that (a) "the ward cannot safely return to a parent within a reasonable time"; (b) "[a]doption is not an appropriate plan for the ward"; (c) "[t]he proposed guardian is suitable to meet the needs of the ward and is willing to accept the duties and authority of a guardian"; and (d) "[g]uardianship is in the ward's best interests." ORS 419B.366(6); *see* ORS 419B.366(2) (burden of proof).

Similarly, before a child may ultimately be freed for adoption as contemplated under ORS 419B.476(6), a parent is entitled to various procedural and substantive protections not provided for by the permanency statute itself but required by other statutes governing the termination of parental rights (TPR). Those include, among other things, the requirement that DHS not file a petition to terminate parental rights until a juvenile court has decided that the child's plan should be adoption, ORS 419B.498(3); that there be no "compelling reason[s]" in the record to forgo filing a TPR petition, ORS 419B.498(2)[18]; that DHS prove, by clear and convincing evidence, grounds to terminate

[18] We note that one legislatively recognized "compelling reason" for finding that filing a TPR petition is not in a child's best interests is if the child is an Indian child and "the court finds that tribal customary adoption, as described in ORS 419B.656, is an appropriate permanent plan for the child and the Indian child's tribe consents to the tribal

parental rights, ORS 419B.502 - ORS 419B.510 (grounds for termination); ORS 419B.521 (requiring proof of factual basis for termination by clear and convincing evidence for non-Indian children); and that, in addition to proving that a basis exists to terminate parental rights, DHS establish that the termination of a parent's rights is in the best interests of their child, ORS 419B.500.

Each of those three permanency options -- TCA, legal guardianship, and adoption -- is a choice made available to juvenile courts at the permanency stage, and all three require contested evidentiary hearings subject to specific statutory criteria and specified burdens of proof before the court makes its final permanency decision. That is, each path gives parents the type of hearing and opportunity to challenge the evidence that mother contends the TCA statute requires. But, unlike for adoptions and guardianships, the permanency statute itself provides parents with a contested evidentiary hearing for purposes of challenging whether TCA should be the permanency plan that a juvenile court ultimately accepts, and there is no need for a separate evidentiary hearing to allow for such a challenge. Thus, it is not, as mother seems to suggest, that the legislature must have intended to provide that process in the TCA statute so as not to deprive parents of an opportunity to which they are entitled; the legislature provided for that opportunity through ORS 419B.476(5)(k), where it imposed the procedural requirements and statutory criteria that govern the selection of TCA as the permanent plan.

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customary adoption[.]" ORS 419B.498(2)(b)(C). We discuss the potential significance of that provision below when addressing the TCA statute's best-interests provisions.

We find separate contextual support for the view that the TCA statute does not provide a chance to essentially relitigate the juvenile court's permanency decision in two other ORICWA provisions, ORS 419B.600 and ORS 419B.090(6), which emphasize the importance of tribal sovereignty and the role that the tribes play in determining the placement of Indian children. The first provision, ORS 419B.600, states the following regarding ORICWA's new provisions:

> "The Legislative Assembly finds that the United States Congress recognizes the special legal status of Indian tribes and their members. It is the policy of the State of Oregon to protect the health and safety of Indian children and the stability and security of Indian tribes and families by promoting practices designed to prevent the removal of Indian children from their families and, if removal is necessary and lawful, to prioritize the placement of an Indian child with the Indian child's extended family and tribal community. *The state recognizes the inherent jurisdiction of Indian tribes to make decisions regarding the custody of Indian children.* * * * ORS 419B.600 to 419B.654 create additional safeguards for Indian children to address disproportionate rates of removal, to improve the treatment of and services provided to Indian children and Indian families in the child welfare system and to ensure that Indian children who must be removed are placed with Indian families, communities and cultures."

(Emphasis added.) The second, ORS 419B.090(6), takes the policy set forth in ORS 419B.600 and applies it to the changes in existing law that ORICWA made:

> "It is the policy of the State of Oregon, in a case involving an Indian child, to safeguard and promote the Indian child's connections with the Indian child's family, culture and tribe in accordance with the policies regarding Indian children in child custody proceedings under ORS 419B.600."

Together, those two statements establish a policy strongly supportive of tribal sovereignty and tribal self-determination, particularly with regard to matters concerning tribal families, communities and culture and the importance of maintaining an Indian child's

role in, and connection to, those core tribal concerns.[19] Moreover, they reflect the legislature's recognition that tribes should take a principal role when it comes to determining issues of custody regarding Indian children, and that the tribes and their decisions are entitled to dignity and respect. *See* ORS 419B.600 ("recogniz[ing] the inherent jurisdiction of Indian tribes to make decisions regarding the custody of Indian children"). *See also* ORS 419B.627(1) (providing, in most instances, for juvenile court's jurisdiction over Indian child to be concurrent with that of Indian child's tribe).

Mother's view that TCA hearings provide an opportunity to contest the juvenile court's permanency-hearing determination that TCA is an appropriate permanent placement for an Indian child is inconsistent with the legislature's commitment to tribal dignity and authority with regard to tribal matters. If mother were correct, then, after the juvenile court determined, with the involvement and consent of the tribe, that TCA was an appropriate permanent placement, and after the tribe, at the request of the juvenile court, undertook the TCA process and returned to the court with an order or document reflecting that undertaking, the court could simply unravel the entire process by changing its mind, based on an essentially ad hoc rehearing of the issues thoroughly litigated at the permanency hearing. That figurative "pulling of the rug from under the tribe's feet" at the TCA hearing is not consistent with treating the tribes as essentially equal partners

[19] Most of ORICWA, including what is now ORS 419B.600 and ORS 419B.090(4), was adopted in 2020. Or Laws 2020, ch 14, § 1, § 25 (Spec Sess 1). ORS 419B.656 was added to ORICWA in 2021 by Senate Bill 562, which further amended the permanency statute, ORS 419B.476, to account for TCA. Or Laws 2021, ch 398, § 65.

concerning the custody of Indian children, at least those children for whom reunification with a parent has been adjudicated to no longer be reasonably possible. Again, we are hesitant to construe the TCA statute to permit that outcome.

Mother's principal argument in support of a different understanding of the TCA statute relies on another statute, ORS 419B.090(4), which, as discussed above, requires courts to construe and apply the dependency code in accordance with established United States Supreme Court precedent regarding the constitutional rights of parents. We understand mother to argue that, because the tribal resolution effectively terminated her parental rights, the TCA statute must be construed to provide her with the rights guaranteed a parent facing a termination trial. But mother's premise is flawed. Even if ORS 419B.090(4) might require us to construe a statute that terminates parental rights as including certain procedural protections, that statute does not advance mother's position here. The TCA statute explicitly recognizes that TCA may be accomplished *without* terminating a parent's rights, as the tribal resolution and the juvenile court's judgment expressly purported to do here. And, because the legislature would therefore not have understood a TCA hearing to result in a termination of parental rights, there is no reason that the legislature would have intended to make the procedural protections applicable to a TPR proceeding part of a TCA hearing under ORS 419B.656 if such protections were not constitutionally required. Further, because mother makes no persuasive argument that a statutory proceeding that expressly does *not* terminate parental rights is in fact entitled to the same constitutional protections as TPR, we do not view ORS 419B.090(4) as requiring a TCA hearing to provide such protections. Finally, because, as also noted in

our preservation discussion, mother did not make a freestanding constitutional argument that she was entitled to a contested evidentiary hearing even if TCA was not the equivalent of TPR, we do not consider that potential argument further.[20]

Based on the foregoing considerations, we are persuaded that the determination that ORS 419B.656(3)(a)(A) describes does not provide parents with an opportunity to relitigate whether, in fact, TCA is an appropriate permanent placement for an Indian child, as mother's argument for a contested evidentiary hearing would allow.[21] The substantive determination that TCA is an appropriate permanent placement is made at the permanency hearing and is the product of a contested evidentiary hearing subject to heightened burdens of proof and predicate findings, including that TCA complies with the placement preferences of ORS 419B.654. To the extent that the TCA statute requires a determination, *at the time of the TCA hearing*, that TCA is an appropriate permanent placement, we understand the juvenile court's obligation to be, at most, that it confirm that such a determination has been made and that the TCA, as evidenced by the tribe's order or judgment, is in accordance with the TCA envisioned at the permanency stage. That determination can readily be based upon the record before the juvenile court at that

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[20] For essentially the same reasons, we do not consider mother's argument on review that, as in TPR proceedings, the juvenile court in this case was required to base its TCA-related findings on evidence sufficient to meet the standard of beyond a reasonable doubt applicable to the termination of parental rights regarding Indian children.

[21] We have reviewed ORICWA's legislative history, but we have not found anything in that history to be helpful in addressing whether the TCA statute was intended to provide for a contested evidentiary hearing.

time, including but not limited to the TCA resolution, any additional materials (including the home study) submitted pursuant to the TCA statute, the children's case files, and their corresponding permanency judgments. It does not, however, require a contested evidentiary hearing for the juvenile court to again determine whether TCA is an appropriate permanent placement, and the juvenile court did not err in denying mother that opportunity at the TCA hearing that it held.

b. ORS 419B.656(3)(a)(B) and best interests under ORS 419B.612

We turn to whether and, if so, how the juvenile court was required to make a best-interests finding under ORS 419B.656(3)(a)(B) at the time of the TCA hearing. We have just finished explaining that the juvenile court was not required to conduct a contested evidentiary hearing at that time for purposes of determining whether TCA was an appropriate permanent placement. Some of the same reasons provided above would likewise support the conclusion that such a hearing was not required by ORS 419B.656(3)(a)(B), and we do not recount those here. We recognize, however, that, unlike the TCA statute's provision related to whether TCA is an appropriate permanent placement, the best-interests finding that ORS 419B.656(3)(a)(B) contemplates does not correspond directly to a finding that the juvenile court makes at the permanency hearing or at another stage. We also acknowledge mother's specific argument that the TCA statute required the juvenile court to independently find whether TCA was in her children's best interests rather than relying on the best-interests finding that the tribe made in the TCA resolution. Considering those points, we conclude that, although ORS 419B.656(3)(a)(B) does not permit a juvenile court to wholly defer to a tribe's best-

interests finding, that provision does not require a factual inquiry by the court to determine whether a completed TCA is in the best interests of an Indian child "as described in ORS 419B.612." Further, because the juvenile court in this case expressly made that finding in signing the orders submitted by DHS, and mother has not argued that the record was insufficient to support that finding, we conclude that the Court of Appeals did not err in affirming the judgments incorporating those orders.

As set out above, ORS 419B.656(3)(a)(B) requires a juvenile court to accept an order or judgment evidencing a tribe's completion of TCA when, in addition to other requirements, "[t]he court finds that the tribal customary adoption is in the Indian child's best interests, as described in ORS 419B.612[.]" And, as noted, the cross-referenced statute, ORS 419B.612, states,

> "when making a determination regarding the best interests of [an Indian] child * * *, the court shall, in consultation with the Indian child's tribe, consider the following:
>
> "(1) The protection of the safety, well-being, development and stability of the Indian child;
>
> "(2) The prevention of unnecessary out-of-home placement of the Indian child;
>
> "(3) The prioritization of placement of the Indian child in accordance with the placement preferences under ORS 419B.654;
>
> "(4) The value to the Indian child of establishing, developing or maintaining a political, cultural, social and spiritual relationship with the Indian child's tribe and tribal community; and
>
> "(5) The importance to the Indian child of the Indian tribe's ability to maintain the tribe's existence and integrity in promotion of the stability and security of Indian children and families."

We start with the operative term "finds." ORS 419B.656(3)(a)(B). To the

extent that it requires an action, that action is, initially at least, assigned to "[t]he court." *Id*. That is, as mother argues, that provision appears to contemplate the juvenile court making the required finding rather than deferring to the tribe on that point. The court's task of "find[ing]," however, is circumscribed by the specific finding that the TCA statute contemplates -- whether TCA is "in the Indian child's best interests, *as described in ORS 419B.612*," *id*. (emphasis added) -- and the assigned methodology for making that determination -- that is, "in consultation with the Indian child's tribe," ORS 419B.612. Although we begin, as always, with the text, that immediate context ultimately persuades us that the juvenile court did not err in its application of the TCA statute.

The word "find[]" is not defined in ORICWA or in ORS chapter 419B; thus, we turn to that term's plain meaning. *Muliro*, 359 Or at 745-46. As this court explained in *State v. A. R. H.*,

> "in the legal context, 'to find' generally refers to a trial court's factual determinations. *See Arvidson v. Liberty Northwest Ins. Corp.*, 366 Or 693, 709, 467 P3d 741 (2020) (explaining that, in 'legal proceedings, the phrase 'to find' is often, perhaps predominantly, used to refer to a specific type of determination by a tribunal: a resolution of *factual* disputes' (emphasis in original)); *see also Black's Law Dictionary* [766] (11th ed 2019) (defining 'find' as '[t]o determine a fact in dispute by verdict or decision'); Bryan A. Garner, *A Dictionary of Modern Legal Usage* (2d ed 1995) (explaining that the 'court properly makes *findings of fact* and *holdings* or *conclusions of law*' (emphases in original))."

371 Or 82, 90, 530 P3d 897 (2023). However, we have also held that "find" can carry a broader, ordinary meaning: "the act of making a decision" -- including a decision that is not "on the merits." *Arvidson*, 366 Or at 710. Thus, although the legislature's choice of the term "finds" *could* reflect its intent to require the juvenile court to conduct an

evidence-based, factual inquiry, that is by no means certain. And, beyond juxtaposing "finds" with "[t]he court," the use of the specific term "finds" does not substantially inform us whether and to what extent the court's "find[ing]" must be independent of what a tribe may find as a result of its own processes.

The immediate context, however, is illuminating. First is the limitation that the TCA statute places on the required best-interests inquiry. That statute does not invite an open-ended, factual inquiry into what may or may not be in the best interests of an Indian child; rather, it focuses the inquiry on the "Indian child's best interests, as described in ORS 419B.612[.]" And ORS 419B.612, in turn, dictates what things are to be considered in determining the child's best interests. Although not explicitly tied to a child's "best interests" in the permanency statute, several of those considerations are matters that, like the determination of the appropriate permanent placement, were necessarily part of the juvenile court's assessment at the permanency stage. Those include the protection of the Indian child's "safety, well-being, development and stability," the "prevention of unnecessary out-of-home placement," and the prioritization of placement in accordance ORS 419B.654's placement preferences, ORS 419B.612(1) - (3), all of which correspond closely to the determinations that a court must make at the permanency stage and that the juvenile court could confirm by reference to a child's permanency judgment and related case file.

For example, by finding in the permanency judgments that DHS had made active efforts to make it possible for mother's children to safely return home, ORS 419B.476(5)(k)(A), and that, despite those active efforts, continued removal of the

children was necessary to prevent serious emotional or physical damage to them, ORS 419B.476(5)(k)(B), the juvenile court had expressly contemplated whether "out-of-home placement" could be prevented. *See* ORS 419B.612(2) (including that consideration in best-interests inquiry).[22] Similarly, the permanency judgments confirmed that TCA appropriately prioritized placement in accordance ORS 419B.654's placement preferences, ORS 419B.612(3), as the permanency statute expressly conditions changing an Indian child's plan on compliance with those preferences. Finally, permanency proceedings as a whole must prioritize a child's "health and safety." *E.g.,* ORS 419B.476(2)(a). And even though the permanency statute uses slightly different terminology than the best-interests statute, *see* ORS 419B.612(1) (referring to child's safety, well-being, development, and stability), we view the two as directed at the same concerns, whether it be through the permanency statute's broad terminology -- "health and safety" -- or through that statute's additional requirements discussed above.

The remaining considerations under ORS 419B.612 are illuminating in a different way. Those again are:

> "(4) The value to the Indian child of establishing, developing or maintaining a political, cultural, social and spiritual relationship with the Indian child's tribe and tribal community; and
>
> "(5) The importance to the Indian child of the Indian tribe's ability to maintain the tribe's existence and integrity in promotion of the stability and security of Indian children and families."

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[22] ORS 419B.645(1) defines "active efforts" as "efforts that are affirmative, active, thorough, timely and intended to maintain or reunite an Indian child with the Indian child's family."

ORS 419B.612. In addition to being matters uniquely focused on the interests of *Indian* children and their tribes -- areas in which ORICWA expressly recognizes tribes as having their greatest authority -- those are matters within the particular expertise of the tribes. Indeed, in this case those were among the matters that England, the tribe's qualified expert, testified to at the permanency hearing. And as to those matters, it would make little sense to have a juvenile court impose its unilateral view regarding an Indian child's best interests and thereby effectively veto a tribe's determination of an Indian child's best interests and its corresponding implementation of TCA.

In our view, the TCA statute cannot be read to grant that unilaterally to the juvenile court. That is in part because, by incorporating the description of best interests found in ORS 419B.612, the TCA statute necessarily also incorporates the other statute's requirement that the court consider an Indian child's best interests "in consultation with the Indian child's tribe[.]" That is, unlike, for example, certain provisions requiring the testimony of a QEW, *e.g.*, ORS 419B.340, the requirement in ORS 419B.612 is not merely that the juvenile court hear input from a child's tribe -- it must consider what is in the Indian child's best interests "in consultation with" the tribe, which, in that statute, more suggests a joint decision between the court and tribe than a decision ultimately left up to the court alone. *Cf.* ORS 419B.627(1) (recognizing in other contexts that tribal court's jurisdiction over an Indian child is concurrent with the juvenile court's).

Given that understanding of the "find[ing]" that the TCA statute envisions, we conclude that the juvenile court did not err in accepting the tribe's TCA resolution. That is not to say that a juvenile court is free to "rubber stamp" a TCA and wholly defer

to a tribe's determination of what is in an Indian child's best interests. But that is not what we understand the juvenile court to have done in this case. In addition to the explicit best-interests finding in the TCA resolution,[23] the court had for its consideration: the permanency judgments with their various findings; its own understanding based on its ongoing consultation with the children's tribe that the tribe continued to believe that the TCA it had completed was in the children's best interests; the view expressed through the children's attorney that TCA was in their best interests; and DHS's proposed finding in the orders it submitted that TCA was in the children's best interests "as described in ORS 419B.612." The court also could confirm from the content of the TCA resolution itself that it was consistent with the expectations set at the permanency hearing, including the children's continued placement in accordance with the preferences under ORS 419B.654 and, relatedly, placement with an Indian relative. Finally, the court had before it the tribe's adoptive home study, which, in addition to providing further detail on some of the above matters, was separately subject to the court's approval. *See* ORS 419B.656(2)(b) (stating conditions for acceptance of a TCA home study conducted by a tribe). That record sufficed to permit the juvenile court to assure itself that the TCA completed by the children's tribe, like the TCA envisioned at the time of their permanency hearing, was in their best interests "as described in ORS 419B.612[.]" ORS 419B.656(3)(a)(B).

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[23] We note that, in its submission, the tribe also stated that the permanent plan of TCA had, "under Oregon state law," been "determined to be in the children's best interests," likely referring to the finding in the permanency judgments that TPR was not in their best interests because the court found that TCA was an appropriate permanent placement and that the tribe consented to TCA.

Ultimately, by signing DHS's proposed orders, the juvenile court expressly made the finding contemplated under ORS 419B.656(3)(a)(B), and, as noted, mother does not dispute the adequacy of the record to support that finding. Although mother's position on review is that the juvenile court was required to conduct a different kind of hearing before making that finding, we disagree. The TCA statute did not entitle mother to challenge the TCA resolution or implementation through her own evidence of progress towards ameliorating the bases of the juvenile court's jurisdiction, which, among other things, is not among the best-interests considerations that ORS 419B.612 describes. And to the extent that there was anything in the home study to suggest that the TCA was *not* in the children's best interests, that would be ascertainable from the home study itself and therefore would not require an evidentiary hearing. The juvenile court's obligation was to satisfy itself that the TCA resolution (and the home study) complied with the statutory requirements set forth in the TCA statute, including that, in light of the document itself and the record before the court, it reflected the court's and the tribe's consideration of the ORS 419B.612 factors and was in the best interests of mother's children. By agreeing to sign the orders and judgments of TCA, which included the court's express finding that TCA was in the children's bests interests, the juvenile court satisfied that obligation and did not err.

The decision of the Court of Appeals and the judgments of the circuit court are affirmed.

BUSHONG, J., concurring.

This case presents an important question under the Oregon Indian Child Welfare Act (ORICWA) regarding juvenile court proceedings to consider a tribal customary adoption (TCA) for an Indian child. Mother contends that the juvenile court violated ORICWA by failing to conduct a contested evidentiary hearing when it approved the TCA that the Pit River Tribe had submitted to the court for S and P, two children who are members of that tribe. I agree with the majority opinion's conclusion that nothing in ORICWA, as amended to authorize TCAs in some circumstances, required the juvenile court to conduct such a hearing at that time. I write separately to emphasize the importance that tribal sovereignty plays in interpreting the provisions of ORICWA that address TCAs.

As I will explain, the legislature, mindful of tribal sovereignty when it enacted ORICWA and amended it to provide for a TCA as an appropriate option for an Indian child, was careful to respect the role that tribes would play in defining the specific TCA that will apply to a particular child. That is, the legislature required the juvenile court to determine whether a TCA was an appropriate option; however, it left it to the tribe to determine the terms of the TCA that will apply to a particular child.

Once the tribe made that determination, the juvenile court was required to give it full faith and credit, subject only to making the limited findings specified in the statute. None of those findings required the juvenile court to conduct a contested evidentiary hearing before approving the TCA that the tribe had determined would be appropriate for S and P.

This sharing of responsibility between the two sovereigns -- the state of Oregon, acting by and through the juvenile court, and the tribe -- is an important aspect of ORICWA. That shared responsibility helps explain why the statute did not require the juvenile court to hold the contested evidentiary hearing that mother sought when the Pit River Tribe submitted the TCA that it had developed for S and P. I do not understand the majority opinion to say anything to the contrary in its thorough analysis of the text and context of the relevant statutory provisions.

In ORICWA, the legislature "recognize[d] the inherent jurisdiction of Indian tribes to make decisions regarding the custody of Indian children." ORS 419B.600. The stated policy of the statute was to "protect the health and safety of Indian children and the stability and security of Indian tribes and families by promoting practices designed to prevent the removal of Indian children from their families and, if removal is necessary and lawful, to prioritize the placement of an Indian child with the Indian child's extended family and tribal community." *Id.* The legislature required juvenile courts to "give full faith and credit to the public acts, records and judicial proceedings of an Indian tribe applicable to an Indian child custody proceeding." ORS 419B.663. Those provisions reflect the legislature's acknowledgement of tribal sovereignty.

When the legislature amended ORICWA to provide for TCAs, it explained that a TCA furthers the legislature's policy by providing for a permanency option that is completed by the Indian child's tribe according to the "tribal custom, traditions or law of the child's tribe," an option that could occur "without the termination of parental rights."

ORS 419B.656(1). In furtherance of that policy, the legislature required the juvenile court to accept the home study conducted by the tribe if it included certain required information, used "the prevailing social and cultural standards of the Indian child's tribe as standards for evaluation of the proposed adoptive placement," and was completed before the child's placement, unless the proposed placement was the child's current foster care placement. ORS 419B.656(2)(b)(B).[1]

The TCA statute highlighted the importance of two sovereigns with shared responsibilities by including a second "full faith and credit" provision in addition to ORICWA's existing provision. *See* ORS 419B.663 (generally requiring juvenile courts to give "full faith and credit" to official tribal acts in connection with an Indian child custody proceeding); ORS 419B.656(3)(b) (stating that a juvenile court "shall afford full faith and credit to a tribal customary adoption" approved by the tribe and accepted by the court).

In short, the legislature created a permanency option for Indian children that includes a separate process within the tribe's jurisdiction. This acknowledges, consistent with tribal sovereignty, that tribes and tribal courts serve as active decisionmakers in the tribal customary adoption of an Indian child, with the state juvenile court giving full faith and credit to the tribe's decision if it meets the requirements of ORS 419B.656. The legislature specified in that statute the findings that the juvenile

[1] The specific information that was required to be included in the home study included criminal background checks, and an evaluation of the background, safety and health information of the proposed placement. ORS 419B.656(2)(b)(A) and (C).

court must make to approve the TCA developed by the tribe, but it did not describe the process the juvenile court would use to make those findings.

Here, the juvenile court concluded after a contested evidentiary hearing under the permanency statute, ORS 419B.476, that changing the plan from reunification to a TCA as the appropriate permanent placement was in the best interests of S and P. I agree with the majority opinion that, under the circumstances, the juvenile court was not required to conduct another contested evidentiary hearing after the tribe submitted the TCA that it had developed for those children for juvenile court approval under ORS 419B.656. Having highlighted the importance of tribal sovereignty in this decision-making process, I respectfully concur.

Masih, J., joins in this opinion.

FILED: November 08, 2023

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of S. H. A., aka S. H. P., aka S. T., aka S. T., a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

M. G. J.,
Appellant.

Jackson County Circuit Court
20JU02316

A181035 (Control)

In the Matter of K. O. A., aka P. J. R. J., a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

M. G. J.,
Appellant.

Jackson County Circuit Court
20JU06985

A181037

Timothy C. Gerking, Judge.

Argued and submitted on October 10, 2023.

Kristen G. Williams argued the cause and filed the briefs for appellant.

Erin K. Galli, Assistant Attorney General, argued the cause for respondent. Also on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before Egan, Presiding Judge, and Kamins, Judge, and DeVore, Senior Judge.

KAMINS, J.

Affirmed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

[ ] No costs allowed.
[ ] Costs allowed, payable by
[ ] Costs allowed, to abide the outcome on remand, payable by

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KAMINS, J.

Mother appeals the juvenile court's adoption and implementation of a Tribal Customary Adoptive Agreement (TCAA), assigning error to the judgment as to each of her two children. *See* ORS 419B.656(1) ("As used in this section, 'tribal customary adoption' means the adoption of an Indian child, by and through the tribal custom, traditions or law of the child's tribe, and which may be effected without the termination of parental rights."). Because two of mother's arguments in support of those assignments are not preserved, we do not consider them on appeal. We otherwise affirm.

This case involves mother's two children, S and P; they are Indian children within the meaning of Oregon Indian Child Welfare Act (ORICWA). *See* ORS 419B.600 - 419B.665. In 2021, the court asserted dependency jurisdiction over both children. In June 2022, the court held a hearing and changed S's and P's permanency plans from reunification to a TCAA because mother had not made sufficient progress for S and P to safely return to her care. We affirmed that judgment earlier this year in *Dept. of Human Services v. M. G. J.*, 326 Or App 426, 532 P3d 905 (2023). In January 2023, while that appeal was pending, the Pit River Tribe established and approved a TCAA, which outlined the transfer of mother's parental rights to the adoptive parents. After the hearing, the juvenile court adopted and implemented the TCAA over mother's objections.

Mother contends that the juvenile court erred in entering a TCAA "transferring all parental rights or obligations not specially retained in the judgment" as it relates to both of her children. Mother makes three arguments: (1) the juvenile court failed to make its own best interest determination; (2) mother's due process rights were

violated; and (3) the juvenile court erred by accepting documents that were prepared by the Department of Human Services (DHS). However, for the reasons explained below, we conclude that mother's first two arguments are not preserved. Mother also does not seek plain error review. We therefore do not consider those arguments on appeal.

ORAP 5.45(1) provides that "[n]o matter claimed as error will be considered on appeal unless the claim of error was preserved in the lower court * * *." Preserving a claim "is not something that can be explained by a neat verbal formula." *State v. Walker,* 350 Or 540, 548, 258 P3d (2011). A party must articulate enough information to an opposing party or a trial court "to be able to understand [a party's] contention and to fairly respond to it." *Id.* at 552. With those preservation rules in mind, we address the first two arguments.

In mother's first argument, she contends that the juvenile court did not make its own best interest determination as required by ORS 419B.656(3)(a)(B), and instead, the court simply adopted the tribe's best interest determination. *See* ORS 419B.656(3)(a)(B) ("The juvenile court shall accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe if * * * [t]he court finds that the tribal customary adoption is in the child's best interests."). She asserts that she preserved that argument below by asserting that: (1) "[t]here's been no accommodation of contact with S and P's other sibling, J, who "will not be adopted and is under the jurisdiction of a juvenile court in another county"; (2) mother now has stable housing and employment; (3) mother has unsupervised contact with her other daughter, J; and (4) she "continues to disagree" with the TCAA and expressed that there should be testimony at

the hearing. Those contentions failed to preserve mother's current argument that the juvenile court did not make its own best interest determination for two reasons. First, mother never raised an argument that ORICWA required the juvenile court to make an independent best interest finding. Second, if and to the extent she is challenging the best interest determination that the court *did* make, she never alerted the court that ORICWA required something different. Rather, mother offered argument about her own progress, the resolution's lack of explicit mention of S and P's relationship with their sibling, and a general dissatisfaction with the lack of testimony at the hearing. Those arguments did not preserve the legal argument that she now makes on appeal. *See State v. Wyatt*, 331 Or 335, 343, 15 P3d 22 (2000) (requiring that an objection is "specific enough to ensure that the court can identify its alleged error with enough clarity to permit it to consider and correct the error immediately, if the correction is warranted.").

In mother's second argument, she contends that the juvenile court erred because it did not afford her a constitutionally adequate process before transferring her parental rights. Mother never attempted to introduce any evidence or call any witnesses at the hearing. According to mother, the due process argument was sufficiently preserved because she complained that it was a "rubberstamp" hearing and expressed a general desire for more evidence. However, those statements did not signal to the juvenile court that she was raising a constitutional due process challenge; rather, her argument indicated that she had generalized concerns with the way in which the hearing was conducted. *See State v. Blasingame*, 267 Or App 686, 692-93, 341 P3d 182 (2014) (explaining that even though the "defendant referred to 'due process' generically, the gravamen of his objection

was simply that he disagreed with the case law" and the defendant's "general reference to the legal concept of 'due process' was insufficient to preserve his appellate challenge").

Finally, in mother's third argument, she asserts that the juvenile court erred because it should not have accepted the documents prepared by DHS; rather, she contends that those documents can only be accepted if they were prepared by the tribe. *See* ORS 419B.656(3)(a) (providing the considerations required for the juvenile court to "accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe"). We review a trial court's interpretation of a statue for legal error. *State v. Urie*, 268 Or App 362, 363, 341 P 3d 855 (2014).

Prior to the hearing, DHS submitted two proposed documents in each child's case: (1) an "order accepting order/judgment of tribal customary adoption"; and (2) a "judgment of tribal customary adoption." Mother argues that "the tribe" did not file the "order or judgment for the tribal customary adoption" as contemplated by ORS 419B.656, because those documents were filed by DHS. In response, DHS disputes mother's assertions, and alternatively argues that even if the court did err, the error was harmless. We agree that any error was harmless. *See* ORS 19.415(2) ("No judgment shall be reversed or modified except for error substantially affecting the rights of a party."); *see also Doe v. First Christian Church of the Dalles*, 328 Or App 283, 290, ___ P3d ___ (2023) (explaining that "[d]espite the court's error here, we cannot reverse the judgment unless the party seeking reversal can show that the evidentiary error substantially affected the party's rights"). Here, mother's rights were not substantially affected for two reasons. First, the tribal representative was present during the hearing

and articulated that "[t]he Tribe * * * supports this fully * * * [and] there are no objections to the State's representation * * * of the Tribe's agreement." Second, nothing in mother's arguments elucidate or otherwise dispute how the judgment would be different had the tribe filed the documents.

Affirmed.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR JACKSON COUNTY

Juvenile Department

In the Matter of [redacted] aka [redacted] aka [redacted], A Child.	Case No. 20JU02316 JUDGMENT OF TRIBAL CUSTOMARY ADOPTION

This matter came on for hearing on March 8, 2023, before the Honorable Timothy Gerking, Circuit Court Judge. ODHS appeared through Tia Jaggers, caseworker, and Rebecca May, Senior Assistant Attorney General. Manuelita Jacobs, mother of the above-named child, appeared in person and with her attorney, Risa Hall. The tribe appeared through Jay Petersen. Also present was Vance Waliser, child's attorney. Rebecca Orf, CASA, also appeared. Dominique Peters, father of the above-named child, did not appear.

The court's findings or determinations are based on the Agreement and Resolution of Tribal Customary Adoption submitted by the tribe, the Order Accepting the Tribe's Agreement and Resolution of Tribal Customary Adoption and the Tribal Customary Adoption Home Study reviewed by the court.

The court announced its decision on the record.

THE COURT FINDS:

1. A proper inquiry under the Oregon Indian Child Welfare Act and ORS 419B.636 has been conducted and [redacted] an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.636.

///

Department of Justice
1555 E McAndrews Rd, Ste 200
Medford, Oregon 97504

PHONE (541) 414-1030
FAX (541) 245-9408
TTY (503) 378-5938
Email rebecca z may@doj state or us

2. The child is an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.603(5).

3. The court has jurisdiction over the child, the subject matter and the parties and the court's exercise of jurisdiction is proper.

3. The Pit River Tribe supports the plan of tribal customary adoption for the purpose of adoption for this Indian child. On June 28, 2022, the permanency plan for the child was changed to Tribal Customary Adoption.

4. On January 31, 2023, the Pit River Tribe filed with this court a copy of the tribe's Agreement and Resolution of Tribal Customary Adoption. On March 8, 2023, this court signed an Order Accepting the Tribe's Order/Judgment of Tribal Customary Adoption. Copies of both orders are attached and incorporated herein as Exhibit A.

5. The child's birth name is [redacted] and the child's name after adoption will be [redacted]

6. The names and addresses of the biological parent(s) are: Manuelita Grace Jacobs, 4277 Rogue River Highway Space 5, Grants Pass, Oregon, 97527; and Dominique Peters, General Delivery, Bend, Oregon.

7. The names and addressed of the adoptive parents are filed separately as a confidential attachment.

8. The name and contact information for any agency(ies) having files or information relating to the adoption include: Oregon Department of Human Services, 909 Royal Ct. Medford, Oregon 97504.

9. The child is a member of the Pit River Tribe.

10. The residence and domicile of the Indian child is in substitute care with Oregon Department of Human Services. The Indian child is not a ward of tribal court.

11. ODHS has complied with the notice requirements under the Oregon Indian Child Welfare Act, ORS 419B.639.

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12. The adoptive placement complies with the placement preferences of the Oregon Indian Child Welfare Act under ORS 419B.654.

13. The court is satisfied as to the identity and relations of the persons, that the proposed tribal customary adoptive parent(s) are of sufficient ability to bring up the Indian child and furnish suitable nurture and education and the requirements of Oregon Indian Child Welfare Act have been met.

14. The court finds that it is fit and proper that the Tribal Customary Adoption be effected.

IT IS THEREFORE ORDERED THAT:

1. The Agreement and Resolution of Tribal Customary Adoption is hereby effectuated.

2. Any parental rights or obligations not specifically retained by the Indian child's parent(s) in the Agreement and Resolution of Tribal Customary Adoption are presumed to transfer to the tribal customary adoptive parent(s). The child's legal relationship with the child's tribe is tribal member.

3. Upon entry of this judgment, the court shall provide to the United States Secretary of the Interior copies of this judgment and any document signed by a consenting parent requesting anonymity.

4. Upon the entry of this judgment the court's jurisdiction over the Indian child terminates as provided in ORS 419B.328(2)(d).

5. The Oregon Health Authority Vital Records Department shall issue an amended birth record consistent with this judgment.

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THE COURT FURTHER ORDERS that ODHS and its counsel are authorized to disclose a copy of this judgment as necessary to facilitate the child's adoption.

3/8/23

Timothy Gerking
Circuit Court Judge

Submitted by:

Rebecca May #074571
Senior Assistant Attorney General
Of Attorneys for Petitioner

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PIT RIVER TRIBE

ELEVEN AUTONOMOUS BANDS

EXHIBIT
A
20JU02316

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe

JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316

In the Matters of [redacted]

This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

WHEREAS, the Pit River Tribe (the "Tribe") is a federally recognized Tribe with all the rights and privileges of federally recognized Indian Tribes; and

WHEREAS, the General Council is the governing body of the Tribe under the authority of their Customs and Traditions and their Governing Documents; and

WHEREAS, under its inherent powers of self-government, the Tribe is vested with the power to safeguard and promote the peace, safety, morals and general welfare of the Tribe, including the adoption and implementation of Tribal Customary Adoptions; and

WHEREAS, the Tribe finds that the protection of its children's safety, well-being, welfare, and sense of belonging; preservation of its children's identity as tribal members and members of an extended family; and preservation of the culture, religion, language, values, and relationships with the Tribe embody and promote the traditional values of the Tribe regarding the protection and care of its children. The Tribe believes it is their responsibility together with the Tribal community and extended families to protect, care for, and nurture our children; and

WHEREAS, the Tribe finds that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage, including their tribal customs, history, language, religion, values, and political systems; and

WHEREAS, because of Tribal custom and tradition, the Tribe does not believe in or adhere to termination of parental rights and finds that the state law termination of parental rights is inconsistent with Tribal customs and traditions. The Tribe does support the process of joining individuals and relatives into family relationships and expanding family resources; and

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe
JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316
In the Matters of [redacted]
This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

WHEREAS, the General Council, as the governing body of the Tribe under the authority of its Customs and Traditions and Governing Documents, has delegated authority to the elected Tribal Council of the Tribe to establish and approve, on behalf of the Tribe, Tribal Customary Adoption Agreements for Pit River Tribal children;

WHEREAS, the minors, [redacted] are the biological children of Manuelita Grace Teeman (Jacobs) ([redacted]);

WHEREAS, the minors, [redacted] (Enrollment No. 536U10326 and [redacted] (Enrollment No. 536U9868) are members of the Tribe through their mother Manuelita Grace Teeman (Jacobs), who is a Tribal member (Enrollment No. 536U7139);

WHEREAS, the minors, [redacted] and [redacted] are currently the subjects of Jackson County Juvenile Court, Medford Oregon, Case Nos. 20JU06985 and 20JU02316;

WHEREAS, the Court has terminated the Family Reunification Services to the birth mother, Manuelita Grace Teeman (Jacobs) and has authorized a Tribal Customary Adoption as the permanent plan for the minors [redacted] and [redacted]

WHEREAS, the Tribal Council of the Tribe has determined, after careful consideration regarding the best interest of the minors' birth mother, adoptive family, and the Tribe, that Tribal Customary Adoption is in the minors' best interest and has identified Christopher Anderson [redacted] and Damaris Anderson [redacted] as the Tribal Customary Adoptive parents;

WHEREAS, under Oregon state law, a permanent plan of Tribal Customary Adoption can, and has been, determined to be in the children's best interests. The Tribe retains all rights and responsibilities for ordering the Tribal Customary Adoption, and all requirements under Oregon state law, including the adoptive home assessment and applicable criminal background checks. The Tribe has completed the adoptive home assessment and requested Oregon Department of Human Services to complete the criminal background checks.

NOW THEREFORE BE IT RESOLVED that through the authority delegated to it by the General Council of the Pit River Tribe, the Tribal Council authorizes this Tribal Customary Adoption Agreement, established as the permanent plan for the minors [redacted] and [redacted] in Jackson County Juvenile Court Medford, Oregon Case Nos. 20JU6985 and 20JU02316;

BE IT FURTHER RESOLVED that under this Resolution and Tribal Customary Adoption Agreement, the so-called "Stanley" fathers of [redacted] Adan Ramirez Gamboa ([redacted]), and [redacted] Dominque Peters ([redacted]), possess no enforceable legal or visitation rights with respect to either child

BE IT FURTHER RESOLVED that under this Resolution and Tribal Customary Adoption Agreement, the parental rights of Manuelita Grace Jacobs shall be modified as follows:

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe
JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316
In the Matters of [redacted]
This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

1. The birth mother, Manuelita Grace Jacobs, is no longer physically, legally, or financially responsible for the minors. All such responsibilities are transferred to the Tribal customary adoptive parents. However, under, the customs and traditions of the Tribe and the inviolate nature of the connection between Tribal children and Tribal parents, the birth mother shall retain the following rights:

(a) Visitation:

(i) The birth mother shall have a right of a one time a year visit with the minors, subject to reasonable controls of the adoptive parents. Adoptive parents shall have full discretion to determine what type and amount of visitation is reasonable and to determine if visitation is harmful to the minors and should not occur. Visitation may include sending pictures and updates about the children to the birth mother. In addition, adoptive parents have discretion to authorize written, electronic, or telephonic contact. Finally, adoptive parents shall have discretion to determine whether in-person or virtual visitation would be appropriate for the minors and may exercise discretion as to the time, place, and manner of any visits. Adoptive parents may require that the birth mother pay for a professional supervisor for visits should adoptive parents consider that necessary for the minors' health, safety, and well-being, or the adoptive parents may select a supervisor for the visits themselves. Birth mother shall be clean, sober, of sound mind, stable, and respectful during any contact with the minors. Any contact that adoptive parents, a paid professional supervisor, or the Tribal Social Worker consider harmful or inappropriate will be terminated immediately.

(ii) Birth mother shall have no direct contact with adoptive parents and must contact the Tribal Social Worker to arrange for visits and other contacts. Birth mother shall ensure that the Tribal Social Worker has their current contact information.

(iii) Visitation shall not include any person that is listed on any Sex Offender Tracking Registry, including, but not limited to, Oregon's Sex Offender Registry.

(iv) The birth mother must submit to the Tribal Social Worker proof of a clean drug screening completed no more than one (1) week prior to each of the first two (2) scheduled visitations that take place after the termination of jurisdiction of the state court. The birth mother is responsible for securing, paying for, and producing written results of drug screenings. If the birth mother's two (2) drug screenings show no evidence of substance abuse, no additional drug screenings shall be required of the birth mother, unless the Tribal Social Worker reasonably suspects that the birth mother engaged in substance use.

(v) The birth mother shall not be under the influence of drugs or alcohol during a scheduled visit. If the Tribal Social Worker or visitation supervisor reasonably suspects that the birth mother, an extended family member, or any other person attending the visit with the birth mother or extended family is under the influence of drugs or alcohol during a scheduled

visit, the Tribal Social Worker may terminate the visit immediately. If a visit is terminated because the Tribal Social Worker or visitation supervisor reasonably suspects that the birth mother is under the influence of drugs or alcohol, the birth mother shall submit to the Tribal Social Worker proof of clean urinalysis before scheduling of another visitation.

(vi) Cancellations/Missed Visits: If the birth mother, an extended family member, or any other person attending the visit with the birth mother or extended family cancels the scheduled visit less than forty-eight (48) hours prior to the scheduled visit time, or if the birth mother, extended family member, or any other person attending the visit with the birth mother or extended family does not arrive and make herself available for a scheduled visit, the adoptive parents and Tribal Social Worker shall have no obligation to schedule a make-up visit.

(b) Inheritance: The minors possess certain rights of inheritance, which may be controlled by applicable federal law, including the American Indian Probate Reform Act of 2004, or by Tribal probate laws enacted now or in the future. The Tribe finds that the minors will benefit from maintaining rights of inheritance by and between them and their birth mother.

2. Extended Family Members: Visitation between the minors and other birth relatives not specifically identified by relationship can occur at the discretion of the adoptive parents. Adoptive parents shall have full discretion as to time, place, and manner of visitation, but visits shall not be unreasonably withheld. Adoptive parents may terminate or prevent any contact they consider harmful or inappropriate.

3. The Adoptive Parents: Upon approval of the Agreement by the Tribal Council and recognition by the Jackson County Juvenile Court consistent with Oregon state law, the adoptive parents will become the legal parents of the minors [redacted] and [redacted] The adoptive parents shall have the following rights and obligations as defined below:

(a) Financial Support: The adoptive parents shall be completely financially responsible for supporting the minor and may use any assistance offered by the United States, Oregon or the Tribe.

(b) Medical/Dental/Mental Health Care: The adoptive parents shall be completely responsible for all medical, dental, and mental health care decisions for the minor. The minor shall be eligible for all benefits provided to Indian children and Tribal members.

(c) Educational rights: The adoptive parents have discretion to make all decisions regarding the minor's education for her best interests. The minor is eligible for all benefits available to Indian children and Tribal members.

(d) Inheritance: The adoptive parents extend full rights of inheritance onto the minor under Oregon, Tribal, and Federal Law.

(e) Receipt of benefits: For purposes of Tribal, State, and Federal benefits, including but not limited to, financial, insurance, educational, cultural, and citizenship benefits, the minor is the minor child of the adoptive parents. The minor will be eligible for all benefits provided to Indian children and Tribal members.

(f) Travel: The adoptive parents shall have absolute authority to determine any circumstances under which the minors might travel outside their state of residence.

(g) Residency: The adoptive parents will notify the Tribe at least sixty (60) days in advance of any change in the minors' residence. They will keep the Tribe notified of their current contact information. A change of residence does not alter the obligations of the adoptive parents contained in this Agreement, except that if the adoptive parents move, the adoptive parents and the Tribe understand and agree that the visitation requirements can be modified. If a mutual agreement is not reached, the adoptive parents and birth mother will engage in dispute resolution to establish a modified visitation schedule.

(h) Incapacity or Unavailability of Adoptive Parents: In the event that the adoptive parents become incapacitated or unavailable in the future, the minors will be placed temporarily with Belinda Brown ([redacted] the minors' maternal grandmother. In case of the permanent incapacity or unavailability of both adoptive parents, this Agreement will apply to the above-mentioned person(s) to provide permanent care for the minors.

(i) Disclosure of Adoption to Minors: The adoptive parents retain the right to disclose and explain to the minors the background and history of how she came to be in the care of the adoptive parents and the fact that they are adopted. The parties all understand and agree that the minors may be aware that the adoptive parents are not their birth parents; however, all parties agree that when, at the appropriate developmental time, the circumstances of the minors' family creation are to be disclosed by adult family members, such disclosure shall be initially made by the adoptive parents.

(j) Cultural Support: The adoptive parents will work to keep the minors closely connected to their Tribal heritage and will provide them with every opportunity to develop a strong cultural identity as members of the Tribe. The adoptive parents will make every effort to attend or have the minors attend all significant Tribal Community events.

(k) Quarterly and Annual Reports: The adoptive parents will provide reports to the Tribe's ICWA Program on a quarterly and annual basis. The reports shall include updates and information regarding the minors' development, educational progress, and any major medical concerns.

(l) Birth Certificate:

a. The minors' birth certificates shall retain the names of their birth parents; however, the adoptive parents are authorized to amend the minors' birth certificates consistent with Oregon state law;

b. The minors' names will change under this Agreement and will become:

[redacted]

4. Dispute Resolution: Adoptive parents and birth mother shall make a good faith effort to resolve any disputes informally among themselves or through the Tribal Social Worker. In the event the parties cannot reach a resolution, either the adoptive parents or the birth mother may submit the matter to a neutral mediator. To initiate the mediation process, a party should contact the Tribal Council in writing with a mediation request. The Tribal Council will select a mediator through the Judicial Arbitration Mediation Services (JAMS) or through another authorized mediation provider. Both parties shall participate in a good faith effort to resolve the dispute through mediation. The Tribe will pay the reasonable costs of the mediation.

5. Forum for Enforcement of Agreement: Jackson County Juvenile Court, Medford Oregon, is the proper forum to bring any subsequent legal action regarding enforcing the terms of this Agreement. Enforcement actions may only be brought in the same Court after the parties have made good faith efforts to resolve the dispute using the requirements set out in paragraph four (4) to address the dispute and any other requirements of Oregon state law.

6. Severability: This Agreement will be enforced to achieve a practical result consistent with the intent of this Agreement if any provision is eliminated or declared void by court of competent jurisdiction.

7. All rights not specified herein shall vest with the adoptive parents.

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe
JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316
In the Matters of [redacted]
This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the under-signed Tribal Chairperson, Agnes Gonzalez of the Pit River Tribe, do hereby certify the Pit River Tribal Council is composed of eleven autonomous bands of which 11 were present, constituting a quorum at a regular scheduled, noticed, convened and held meeting this *January 12, 2023,* and 11 Tribal Council present, to approve this resolution adopted by a vote of 8 yes 0 no 3 abstaining, and that said resolution has not been rescinded in any way.

Agnes Gonzalez, Tribal Chairperson — 1-12-2023 Date

Julie George, Tribal Secretary — 1-12-2023 Date

Tribal Council Member Signatures:

Ajumawi: [signature] Date: 1/12/23
Aporige: _____ Date: _____
Astarawi: [signature] Date: 1-12-2023
Atsugewi: [signature] Date: 1-12-2023
Atwamsini: [signature] Date: 1-12-2023
Hammawi: [signature] Date: 1/12/23
Hewisedawi: _____ Date: _____
Illmawi: [signature] Date: 1/12/2023
Itsatawi: [signature] Date: 1/12/23
Kosealekte: _____ Date: _____
Madesi: [signature] Date: _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR JACKSON COUNTY

Juvenile Department

In the Matter of [redacted] A Child.	Case No. 20JU06985 JUDGMENT OF TRIBAL CUSTOMARY ADOPTION

This matter came on for hearing on March 8, 2023, before the Honorable Timothy Gerking, Circuit Court Judge. ODHS appeared through Tia Jaggers, caseworker, and Rebecca May, Senior Assistant Attorney General. Manuelita Jacobs, mother of the above-named child, appeared in person and with her attorney, Risa Hall. Adan Ramirez Gamboa, father of the above-named child, appeared in person with his attorney, Sarah Robbins. The tribe appeared through Jay Petersen. Also present was Vance Waliser, child's attorney. Rebecca Orf, CASA, also appeared.

The court's findings or determinations are based on the Agreement and Resolution of Tribal Customary Adoption submitted by the tribe, the Order Accepting the Tribe's Agreement and Resolution of Tribal Customary Adoption and the Tribal Customary Adoption Home Study reviewed by the court.

The court announced its decision on the record.

THE COURT FINDS:

1. A proper inquiry under the Oregon Indian Child Welfare Act and ORS 419B.636 has been conducted and [redacted] is an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.636.

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Department of Justice
1555 E McAndrews Rd, Ste 200
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2. The child is an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.603(5).

3. The court has jurisdiction over the child, the subject matter and the parties and the court's exercise of jurisdiction is proper.

3. The Pit River Tribe supports the plan of tribal customary adoption for the purpose of adoption for this Indian child. On June 28, 2022, the permanency plan for the child was changed to Tribal Customary Adoption.

4. On January 31, 2023, the Pit River Tribe filed with this court a copy of the tribe's Agreement and Resolution of Tribal Customary Adoption. On March 8, 2023, this court signed an Order Accepting the Tribe's Order/Judgment of Tribal Customary Adoption. Copies of both orders are attached and incorporated herein as Exhibit A.

5. The child's birth name is [redacted] and the child's name after adoption will be [redacted]

6. The names and addresses of the biological parent(s) are: Manuelita Grace Jacobs, 4277 Rogue River Highway Space 5, Grants Pass, Oregon, 97527; and Adan Ramirez Gamboa, 787 W. 8th Street, Medford, Oregon, 97504.

7. The names and addressed of the adoptive parents are filed separately as a confidential attachment.

8. The name and contact information for any agency(ies) having files or information relating to the adoption include: Oregon Department of Human Services, 909 Royal Ct. Medford, Oregon 97504.

9. The child is a member of the Pit River Tribe.

10. The residence and domicile of the Indian child is in substitute care with Oregon Department of Human Services. The Indian child is not a ward of tribal court.

11. ODHS has complied with the notice requirements under the Oregon Indian Child Welfare Act, ORS 419B.639.

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12. The adoptive placement complies with the placement preferences of the Oregon Indian Child Welfare Act under ORS 419B.654.

13. The court is satisfied as to the identity and relations of the persons, that the proposed tribal customary adoptive parent(s) are of sufficient ability to bring up the Indian child and furnish suitable nurture and education and the requirements of Oregon Indian Child Welfare Act have been met.

14. The court finds that it is fit and proper that the Tribal Customary Adoption be effected.

IT IS THEREFORE ORDERED THAT:

1. The Agreement and Resolution of Tribal Customary Adoption is hereby effectuated.

2. Any parental rights or obligations not specifically retained by the Indian child's parent(s) in the Agreement and Resolution of Tribal Customary Adoption are presumed to transfer to the tribal customary adoptive parent(s). The child's legal relationship with the child's tribe is tribal member.

3. Upon entry of this judgment, the court shall provide to the United States Secretary of the Interior copies of this judgment and any document signed by a consenting parent requesting anonymity.

4. Upon the entry of this judgment the court's jurisdiction over the Indian child terminates as provided in ORS 419B.328(2)(d).

5. The Oregon Health Authority Vital Records Department shall issue an amended birth record consistent with this judgment.

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THE COURT FURTHER ORDERS that ODHS and its counsel are authorized to disclose a copy of this judgment as necessary to facilitate the child's adoption.

3/8/23

Timothy Gerking
Circuit Court Judge

Submitted by:

Rebecca May #074571
Senior Assistant Attorney General
Of Attorneys for Petitioner

Department of Justice
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AGNES GONZALEZ
TRIBAL CHAIRPERSON

DAMION STEDMAN
VICE CHAIRPERSON

JOLIE GEORGE
TRIBAL SECRETARY

PIT RIVER TRIBE

ALEXANDRO URENA
TRIBAL TREASURER

BETTY GEORGE
RECORDING SECRETARY

ANDREW MIKE
SERGEANT AT ARMS

ELEVEN AUTONOMOUS BANDS

EXHIBIT
A
20JU06985

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe

JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316

In the Matters of [redacted]

This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

WHEREAS, the Pit River Tribe (the "Tribe") is a federally recognized Tribe with all the rights and privileges of federally recognized Indian Tribes; and

WHEREAS, the General Council is the governing body of the Tribe under the authority of their Customs and Traditions and their Governing Documents; and

WHEREAS, under its inherent powers of self-government, the Tribe is vested with the power to safeguard and promote the peace, safety, morals and general welfare of the Tribe, including the adoption and implementation of Tribal Customary Adoptions; and

WHEREAS, the Tribe finds that the protection of its children's safety, well-being, welfare, and sense of belonging; preservation of its children's identity as tribal members and members of an extended family; and preservation of the culture, religion, language, values, and relationships with the Tribe embody and promote the traditional values of the Tribe regarding the protection and care of its children. The Tribe believes it is their responsibility together with the Tribal community and extended families to protect, care for, and nurture our children; and

WHEREAS, the Tribe finds that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage, including their tribal customs, history, language, religion, values, and political systems; and

WHEREAS, because of Tribal custom and tradition, the Tribe does not believe in or adhere to termination of parental rights and finds that the state law termination of parental rights is inconsistent with Tribal customs and traditions. The Tribe does support the process of joining individuals and relatives into family relationships and expanding family resources; and

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe
JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316
In the Matters of [redacted]
This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

WHEREAS, the General Council, as the governing body of the Tribe under the authority of its Customs and Traditions and Governing Documents, has delegated authority to the elected Tribal Council of the Tribe to establish and approve, on behalf of the Tribe, Tribal Customary Adoption Agreements for Pit River Tribal children;

WHEREAS, the minors, [redacted] are the biological children of Manuelita Grace Teeman (Jacobs) ([redacted]);

WHEREAS, the minors, [redacted] (Enrollment No. 536U10326 and [redacted] (Enrollment No. 536U9868) are members of the Tribe through their mother Manuelita Grace Teeman (Jacobs), who is a Tribal member (Enrollment No. 536U7139);

WHEREAS, the minors, [redacted] and [redacted] are currently the subjects of Jackson County Juvenile Court, Medford Oregon, Case Nos. 20JU06985 and 20JU02316;

WHEREAS, tbe Court has terminated the Family Reunification Services to the birth mother, Manuelita Grace Teeman (Jacobs) and has authorized a Tribal Customary Adoption as the permanent plan for the minors [redacted] and [redacted]

WHEREAS, the Tribal Council of the Tribe has determined, after careful consideration regarding the best interest of the minors' birth mother, adoptive family, and the Tribe, that Tribal Customary Adoption is in the minors' best interest and has identified Christopher Anderson ([redacted]) and Damaris Anderson ([redacted]) as the Tribal Customary Adoptive parents;

WHEREAS, under Oregon state law, a permanent plan of Tribal Customary Adoption can, and has been, determined to be in the children's best interests. The Tribe retains all rights and responsibilities for ordering the Tribal Customary Adoption, and all requirements under Oregon state law, including the adoptive home assessment and applicable criminal background checks. The Tribe has completed the adoptive home assessment and requested Oregon Department of Human Services to complete the criminal background checks.

NOW THEREFORE BE IT RESOLVED that through the authority delegated to it by the General Council of the Pit River Tribe, the Tribal Council authorizes this Tribal Customary Adoption Agreement, established as the permanent plan for the minors [redacted] and [redacted] in Jackson County Juvenile Court Medford, Oregon Case Nos. 20JU6985 and 20JU02316;

BE IT FURTHER RESOLVED that under this Resolution and Tribal Customary Adoption Agreement, the so-called "Stanley" fathers of [redacted], Adan Ramirez Gamboa ([redacted]), and [redacted] Dominque Peters ([redacted]), possess no enforceable legal or visitation rights with respect to either child

BE IT FURTHER RESOLVED that under this Resolution and Tribal Customary Adoption Agreement, the parental rights of Manuelita Grace Jacobs shall be modified as follows:

1. The birth mother, Manuelita Grace Jacobs, is no longer physically, legally, or financially responsible for the minors. All such responsibilities are transferred to the Tribal customary adoptive parents. However, under, the customs and traditions of the Tribe and the inviolate nature of the connection between Tribal children and Tribal parents, the birth mother shall retain the following rights:

(a) Visitation:

(i) The birth mother shall have a right of a one time a year visit with the minors, subject to reasonable controls of the adoptive parents. Adoptive parents shall have full discretion to determine what type and amount of visitation is reasonable and to determine if visitation is harmful to the minors and should not occur. Visitation may include sending pictures and updates about the children to the birth mother. In addition, adoptive parents have discretion to authorize written, electronic, or telephonic contact. Finally, adoptive parents shall have discretion to determine whether in-person or virtual visitation would be appropriate for the minors and may exercise discretion as to the time, place, and manner of any visits. Adoptive parents may require that the birth mother pay for a professional supervisor for visits should adoptive parents consider that necessary for the minors' health, safety, and well-being, or the adoptive parents may select a supervisor for the visits themselves. Birth mother shall be clean, sober, of sound mind, stable, and respectful during any contact with the minors. Any contact that adoptive parents, a paid professional supervisor, or the Tribal Social Worker consider harmful or inappropriate will be terminated immediately.

(ii) Birth mother shall have no direct contact with adoptive parents and must contact the Tribal Social Worker to arrange for visits and other contacts. Birth mother shall ensure that the Tribal Social Worker has their current contact information.

(iii) Visitation shall not include any person that is listed on any Sex Offender Tracking Registry, including, but not limited to, Oregon's Sex Offender Registry.

(iv) The birth mother must submit to the Tribal Social Worker proof of a clean drug screening completed no more than one (1) week prior to each of the first two (2) scheduled visitations that take place after the termination of jurisdiction of the state court. The birth mother is responsible for securing, paying for, and producing written results of drug screenings. If the birth mother's two (2) drug screenings show no evidence of substance abuse, no additional drug screenings shall be required of the birth mother, unless the Tribal Social Worker reasonably suspects that the birth mother engaged in substance use.

(v) The birth mother shall not be under the influence of drugs or alcohol during a scheduled visit. If the Tribal Social Worker or visitation supervisor reasonably suspects that the birth mother, an extended family member, or any other person attending the visit with the birth mother or extended family is under the influence of drugs or alcohol during a scheduled

visit, the Tribal Social Worker may terminate the visit immediately. If a visit is terminated because the Tribal Social Worker or visitation supervisor reasonably suspects that the birth mother is under the influence of drugs or alcohol, the birth mother shall submit to the Tribal Social Worker proof of clean urinalysis before scheduling of another visitation.

(vi) Cancellations/Missed Visits: If the birth mother, an extended family member, or any other person attending the visit with the birth mother or extended family cancels the scheduled visit less than forty-eight (48) hours prior to the scheduled visit time, or if the birth mother, extended family member, or any other person attending the visit with the birth mother or extended family does not arrive and make herself available for a scheduled visit, the adoptive parents and Tribal Social Worker shall have no obligation to schedule a make-up visit.

(b) Inheritance: The minors possess certain rights of inheritance, which may be controlled by applicable federal law, including the American Indian Probate Reform Act of 2004, or by Tribal probate laws enacted now or in the future. The Tribe finds that the minors will benefit from maintaining rights of inheritance by and between them and their birth mother.

2. Extended Family Members: Visitation between the minors and other birth relatives not specifically identified by relationship can occur at the discretion of the adoptive parents. Adoptive parents shall have full discretion as to time, place, and manner of visitation, but visits shall not be unreasonably withheld. Adoptive parents may terminate or prevent any contact they consider harmful or inappropriate.

3. The Adoptive Parents: Upon approval of the Agreement by the Tribal Council and recognition by the Jackson County Juvenile Court consistent with Oregon state law, the adoptive parents will become the legal parents of the minors [redacted] The adoptive parents shall have the following rights and obligations as defined below:

(a) Financial Support: The adoptive parents shall be completely financially responsible for supporting the minor and may use any assistance offered by the United States, Oregon or the Tribe.

(b) Medical/Dental/Mental Health Care: The adoptive parents shall be completely responsible for all medical, dental, and mental health care decisions for the minor. The minor shall be eligible for all benefits provided to Indian children and Tribal members.

(c) Educational rights: The adoptive parents have discretion to make all decisions regarding the minor's education for her best interests. The minor is eligible for all benefits available to Indian children and Tribal members.

(d) Inheritance: The adoptive parents extend full rights of inheritance onto the minor under Oregon, Tribal, and Federal Law.

(e) Receipt of benefits: For purposes of Tribal, State, and Federal benefits, including but not limited to, financial, insurance, educational, cultural, and citizenship benefits, the minor is the minor child of the adoptive parents. The minor will be eligible for all benefits provided to Indian children and Tribal members.

(f) Travel: The adoptive parents shall have absolute authority to determine any circumstances under which the minors might travel outside their state of residence.

(g) Residency: The adoptive parents will notify the Tribe at least sixty (60) days in advance of any change in the minors' residence. They will keep the Tribe notified of their current contact information. A change of residence does not alter the obligations of the adoptive parents contained in this Agreement, except that if the adoptive parents move, the adoptive parents and the Tribe understand and agree that the visitation requirements can be modified. If a mutual agreement is not reached, the adoptive parents and birth mother will engage in dispute resolution to establish a modified visitation schedule.

(h) Incapacity or Unavailability of Adoptive Parents: In the event that the adoptive parents become incapacitated or unavailable in the future, the minors will be placed temporarily with Belinda Brown ([redacted]) the minors' maternal grandmother. In case of the permanent incapacity or unavailability of both adoptive parents, this Agreement will apply to the above-mentioned person(s) to provide permanent care for the minors.

(i) Disclosure of Adoption to Minors: The adoptive parents retain the right to disclose and explain to the minors the background and history of how she came to be in the care of the adoptive parents and the fact that they are adopted. The parties all understand and agree that the minors may be aware that the adoptive parents are not their birth parents; however, all parties agree that when, at the appropriate developmental time, the circumstances of the minors' family creation are to be disclosed by adult family members, such disclosure shall be initially made by the adoptive parents.

(j) Cultural Support: The adoptive parents will work to keep the minors closely connected to their Tribal heritage and will provide them with every opportunity to develop a strong cultural identity as members of the Tribe. The adoptive parents will make every effort to attend or have the minors attend all significant Tribal Community events.

(k) Quarterly and Annual Reports: The adoptive parents will provide reports to the Tribe's ICWA Program on a quarterly and annual basis. The reports shall include updates and information regarding the minors' development, educational progress, and any major medical concerns.

(l) Birth Certificate:

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe
JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316
In the Matters [redacted]
This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

a. The minors' birth certificates shall retain the names of their birth parents; however, the adoptive parents are authorized to amend the minors' birth certificates consistent with Oregon state law;

b. The minors' names will change under this Agreement and will become:

[redacted]

4. Dispute Resolution: Adoptive parents and birth mother shall make a good faith effort to resolve any disputes informally among themselves or through the Tribal Social Worker. In the event the parties cannot reach a resolution, either the adoptive parents or the birth mother may submit the matter to a neutral mediator. To initiate the mediation process, a party should contact the Tribal Council in writing with a mediation request. The Tribal Council will select a mediator through the Judicial Arbitration Mediation Services (JAMS) or through another authorized mediation provider. Both parties shall participate in a good faith effort to resolve the dispute through mediation. The Tribe will pay the reasonable costs of the mediation.

5. Forum for Enforcement of Agreement: Jackson County Juvenile Court, Medford Oregon, is the proper forum to bring any subsequent legal action regarding enforcing the terms of this Agreement. Enforcement actions may only be brought in the same Court after the parties have made good faith efforts to resolve the dispute using the requirements set out in paragraph four (4) to address the dispute and any other requirements of Oregon state law.

6. Severability: This Agreement will be enforced to achieve a practical result consistent with the intent of this Agreement if any provision is eliminated or declared void by court of competent jurisdiction.

7. All rights not specified herein shall vest with the adoptive parents.

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe
JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316
In the Matters of [redacted]
This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the under-signed Tribal Chairperson, Agnes Gonzalez of the Pit River Tribe, do hereby certify the Pit River Tribal Council is composed of eleven autonomous bands of which 11 were present, constituting a quorum at a regular scheduled, noticed, convened and held meeting this *January 12, 2023,* and 11 Tribal Council present, to approve this resolution adopted by a vote of 8 yes 0 no 3 abstaining, and that said resolution has not been rescinded in any way.

Agnes Gonzalez, Tribal Chairperson — Date: 1-12-2023

Jolie George, Tribal Secretary — Date: 1-12-2023

Tribal Council Member Signatures:

Ajumawi: _____ Date: 1/12/23

Aporige: _____ Date: _____

Astarawi: _____ Date: 1-12-2023

Atsugewi: _____ Date: 1-12-2023

Atwamsini: _____ Date: 1-12-2023

Hammawi: _____ Date: 1/12/23

Hewisedawi: _____ Date: _____

Illmawi: _____ Date: 1/12/2023

Itsatawi: _____ Date: 1/12/23

Kosealekte: _____ Date: _____

Madesi: _____ Date: _____

AJUMAWI APORIGE ASTARAWI ATSUGEWI ATWAMSINI HAMMAWI HEWISEDAWI ILLMAWI ITSATAWI KOSEALEKTE

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of S. H. A., aka S. H. P., aka S. T., aka S. T., a Child. DEPARTMENT OF HUMAN SERVICES, Petitioner-Respondent, Respondent on Review, and S. H. A., aka S. H. P., aka S. T., aka S. T., Respondent on Review, v. M. G. J., Appellant, Petitioner on Review.	Jackson County Circuit Court Case No. 20JU02316 Petition No. N/A **S070679** A181035 (Control) CONFIDENTIAL BRIEF UNDER ORS 419A.255
In the Matter of K. O. A., aka P. J. R. J., A Child. DEPARTMENT OF HUMAN SERVICES, Petitioner-Respondent, Respondent on Review, and K. O. A., aka P. J. R. J., Respondent on Review, v. M. G. J., Appellant, Petitioner on Review.	Jackson County Circuit Court Case No. 20JU06985 Petition No. N/A A181037

EXPEDITED JUVENILE DEPENDENCY CASE (NOT TPR)
BRIEF ON THE MERITS OF PETITIONER ON REVIEW

Review of the Decision of the Court of Appeals
on an Appeal from the Judgment of the Circuit Court for Jackson County
Honorable Timothy C. Gerking, Judge

Affirmed With Opinion: November 8, 2023
Author of Opinion: Kamins, Judge
Before Egan, Presiding Judge, and Kamins, Judge, and DeVore, Senior Judge

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BRIEF ON THE MERITS OF PETITIONER ON REVIEW

INTRODUCTION

In 1978, Congress passed the Indian Child Welfare Act (ICWA), 25 USC §§ 1901 - 1963, in an attempt to stop public and private agencies from continuing to break apart and destroy Indian families and cultures.[1] Nonetheless, thereafter, Oregon continued to remove Indian children from their homes at higher rates than non-Indian children.[2]

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[1] *See* 25 USC § 1901(4) (noting "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"); 25 USC § 1902 (stating that ICWA's purpose was, in part, "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").

[2] In 2018, 4.8 percent of the total children in foster care in Oregon were "American Indian or Alaska Native" while Indian and Alaska Native children comprised only about 1.6 percent of the total population of children in Oregon. Oregon Department of Human Services, *2018 Child Welfare Data Book* 2, 6, 10 (May 2019), https://www.oregon.gov/odhs/data/cwdata/cw-data-book-2018.pdf (accessed Apr 6, 2024). In 2020, the percentage of Indian and Alaska Native children in foster care in Oregon rose to 4.9 percent, while Indian and Alaska Native children continued to comprise only about 1.6 percent of Oregon's population. Oregon Department of Human Services, *2020 Child Welfare Data Book* 2, 7 (Sep 2021), https://www.oregon.gov/odhs/data/cwdata/cw-data-book-2020.pdf (accessed Apr 6, 2024).

Accordingly, in 2020, the Oregon legislature enacted the Oregon Indian Child Welfare Act (ORICWA).[3] *See* Or Laws 2020, ch 14. The following year, the Oregon legislature amended and added provisions to ORICWA. One such change authorized a new type of permanency plan for an Indian child: tribal customary adoption (TCA). ORS 419B.476(5)(g); ORS 419B.656. A TCA does not require the consent of the Indian child's parents, and a TCA "may be effected without the termination of parental rights." ORS 419B.656(4)(e); ORS 419B.656(1). In a TCA, "[a]ny parental rights or obligations not specifically retained by the Indian child's parents in the juvenile court's adoption judgment are conclusively presumed to transfer to the tribal customary adoptive parents." ORS 419B.656(5).

In this case, mother's two children, who both qualify as Indian children under ICWA and ORICWA, were wards of the juvenile court pursuant to dependency cases. The court changed the children's permanency plans from reunification to TCA. The council for mother's tribe then issued a "Tribal

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[3] After the legislature adopted ORICWA, the Department of Human Services (the department) promulgated rules regarding the new law. In doing so, the department recognized that "ORICWA does not cover the full range of procedures involved in a juvenile court proceeding; where it is silent, the usual state court procedure applies. Under constitutional law, the Act takes precedence where it conflicts with state law. When federal and state law provide different standards of protection, the higher standard applies." OAR 413-115-0010(2)(e).

Council Resolution and Tribal Customary Adoption Agreement" (TCA agreement) that addressed TCAs for both children. ER 30-36. Under the TCA agreement, mother "is no longer physically, legally, or financially responsible for" the children, and the only "right" mother retains is to have one visit with the children each year, which the adoptive placement may deny at their discretion. ER 32-33.

At the subsequent required TCA hearing, no party presented any evidence whatsoever, much less any evidence about mother's capacity or fitness to safely parent or evidence pertinent to the determinations the court was required to make under ORS 419B.656, which included a determination that TCA was in the children's best interests as set forth in ORS 419B.612. ER 1-29. Instead of making independent determinations based on evidence (as there was no evidence), the court, over mother's objection, "adopted" the "findings" in the Department of Human Services' (the department's) proposed orders accepting the TCA agreement, signed the proposed judgments of adoption, terminated juvenile court jurisdiction, and ordered the state to amend the children's birth certificates. ER 27-29, 37-52. Mother appealed the adoption judgments, the Court of Appeals affirmed, and this court allowed mother's petition for review.

The issue for this court is whether the Oregon legislature, in enacting ORS 419B.656, intended to require the juvenile court to permanently deprive the parents of Indian children of all enforceable rights to their children in the

absence of any of the substantive and procedural protections that it must afford similarly situated non-Indian families, much less those that it must provide to Indian families in accord with ICWA.

QUESTIONS PRESENTED AND PROPOSED RULES OF LAW

First Question Presented

ORS 419B.656 authorizes the juvenile court to implement a tribal customary adoption (TCA) without the parent's consent and over the parent's objection. When, as in this case, the TCA retains no enforceable rights for the parent, does ORS 419B.656 require the party moving for the TCA to first prove that the parent's conduct warrants terminating parental rights before the court may enter the judgment of adoption, and must the procedure and proof of such parental conduct comport with ICWA?

First Proposed Rule of Law

Yes. Courts must construe every provision of ORS chapter 419B in compliance with the parent's due process rights. Thus, when a TCA divests the parent of all their parental rights and the parent does not consent to their child being adopted under the TCA, as a matter of state statutory law, the moving party must first prove that the parent's conduct authorizes terminating the parent's parental rights. Further, ICWA does not recognize tribal customary adoption as distinct from other adoptions, and ICWA preempts state law where there is a conflict. Thus, when the TCA retains no enforceable rights for the

parent, ICWA requires proof, beyond a reasonable doubt, that the parent's parental rights should be terminated, and also requires testimony by a qualified expert that the continued custody of the child by the parent is likely to result in serious emotional or physical damage.

Second Question Presented

If the proponent of the TCA proves that the parent's conduct authorizes terminating parental rights, ORS 419B.656 allows the juvenile court to enter a judgment of tribal customary adoption if the court first makes four determinations, *viz.*, (1) that the home study of the potential adoptive placement conforms to the requirements enumerated in the statute; (2) that no adults living in the proposed adoptive home have disqualifying criminal convictions; (3) that TCA is an appropriate permanent placement option for the Indian child; and (4) that the TCA is in the Indian child's best interests under ORS 419B.612. Must those conclusions be based upon sufficient evidence in the record? In other words, in the absence of evidence in support of each required determination, may the juvenile court merely adopt the tribe's or the department's representations as to those determinations?

Second Proposed Rule of Law

No. ORS 419B.656 plainly conditions the juvenile court's entry of judgments of tribal customary adoption upon proof to the court that the proposed TCA is an appropriate permanent placement, that the proposed

adoption serves the ward's best interests, that the home study conforms to the requirements enumerated in the statute, and that no adults living in the proposed adoptive home have disqualifying criminal convictions. Thus, to prevail, the proponent of the adoption must present sufficient competent evidence to allow the court to so conclude.

SUMMARY OF ARGUMENT

This case of first impression seeks clarification on what procedural and substantive requirements the juvenile court must provide to parents of Indian children before the court may divest them of their parental rights through a tribal customary adoption (TCA), an outcome that the Oregon legislature authorized as part of the Oregon Indian Child Welfare Act (ORICWA).

A TCA is "the adoption of an Indian child, by and through the tribal custom, traditions or law of the child's tribe, and which may be effected without the termination of parental rights." Once a tribe has "completed" a TCA, it must file the TCA with the juvenile court for the court to determine, pursuant to ORS 419B.656, whether to "accept" the TCA and enter a judgment of adoption. By its plain text, ORS 419B.656 conditions the court's authority to do so on the court first making specified determinations, including, most importantly, that the TCA is in the best interests of the Indian child as set forth in ORS 419B.612. But the text is silent as to what—if any—procedural or substantive

protections the court must afford the parent when the TCA permanently deprives the parent of all their parental rights.

As this court will not interpret ORS 419B.656 (or any statute) in isolation, the statute's silence does not conclusively establish that the legislature intended for the juvenile court to accept a TCA and enter a judgment of adoption in the absence of sufficient procedural and substantive protections. Contextual statutes such as ORS 419B.090(4), other provisions of ORS chapter 419B, and the federal Indian Child Welfare Act (ICWA), illuminate that the requirements of ORS 419B.656 must necessarily vary depending on the severity of the parental deprivation. And when the juvenile court's acceptance of the TCA would operate to permanently deprive the parent of all their parental rights, the court may not accept the TCA and enter a judgment of adoption unless and until the proponents of the TCA prove statutory grounds for termination of parental rights (TPR) and do so in accord with ICWA, which requires proof beyond a reasonable doubt and testimony of a qualified expert that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

Thus, properly construed, ORS 419B.656 contains two proof stages. At the first stage, the court must assess the nature and extent of the deprivation of parental rights and then hold the proponent of the TCA to the legal and substantive standards that due process, ORS chapter 419B, and ICWA require.

When the TCA will result in the loss of all enforceable parental rights, the proponent of the TCA must prove a statutory basis for TPR under ORS 419B.502 to ORS 419B.510 and that TPR serves the child's best interest under ORS 419B.500, and it must do so in accord with the requirements of ICWA, which requires proof beyond a reasonable doubt and also requires testimony by a qualified expert that continued custody by the parent is likely to result in serious physical or emotional damage to the child.

The second proof stage arises only upon satisfaction of the first. At the second stage, the proponent of the TCA must then also present evidence that is sufficient to allow the juvenile court to make the determinations required by ORS 419B.656.

Both stages must occur at a properly noticed evidentiary hearing at which the juvenile court may consult with the tribe but must independently make the family- and child-specific determinations that due process, ICWA, and ORS 419B.656 require.

This construction of ORS 419B.656 does not offend due process or ICWA and is consistent with this court's approach in construing other statutes authorizing adoption over a parent's objection. By contrast, the Court of Appeals' requirement of a free-standing constitutional challenge at the trial court level ignores this court's mandate, in *Dept. of Human Services v. J.R.F.*, 351 Or 570, 273 P3d 87 (2012), to—as a matter of state statutory law—

construe every provision of ORS chapter 419B in accord with parents' due process rights to the care and control of their children, and also gives no effect to ICWA, which preempts state law where there is a conflict.

The enactment and other legislative history of ORICWA supports mother's reading of ORS 419B.656. That is so because that history reveals that Oregon's legislature intended all provisions of ORICWA to enhance, not diminish, the protections for Indian families, including the parents of Indian children.

In this case, the TCAs effectively terminated all of mother's parental rights. The juvenile court accepted the TCAs and signed judgments of adoption for mother's children as a "ministerial" task, without holding the proponents of doing so to their burden to prove a statutory basis for TPR, the requirements of ICWA, and the ORS 419B.656 determinations. For those reasons, this court should reverse.

To the extent that this court disagrees and determines that ORS 419B.656 requires the juvenile court to accept a TCA and enter an adoption judgment that terminates parental rights regardless of whether any party sufficiently proved a statutory basis for TPR or satisfied the requirements of ICWA, this court must nonetheless invalidate the adoption judgments under ICWA. That is so because that construction of ORS 419B.656 obstructs the purposes of ICWA, and ICWA therefore preempts ORS 419B.656. ICWA also preempts the appellate courts' preservation principles.

The juvenile court's adoption judgments terminate mother's parental rights as that phrase is employed in ICWA ("any action resulting in the termination of the parent-child relationship"), but the department obtained those judgments in violation of ICWA (*inter alia*, without proof beyond a reasonable doubt and without qualified expert testimony). Therefore, under ICWA, mother is entitled to petition any "court of competent jurisdiction to invalidate" the adoption judgments. Mother so petitions this court.

STATEMENT OF HISTORICAL AND PROCEDURAL FACTS

This case involves mother's children [redacted] and [redacted] each of whom, it is undisputed, is an "Indian child" under ICWA and ORICWA.[4]

The juvenile court asserted its dependency jurisdiction over [redacted] in February 2021 and over [redacted] in April 2021; thereafter, in July 2022, after a permanency hearing, the juvenile court ruled to change the children's permanency plans from reunification to tribal customary adoption (TCA).[5]

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[4] ICWA and ORICWA define "Indian child" slightly differently, 25 USC § 1903(4); ORS 419B.603(5), but the differences are not material to this appeal.

[5] This court may take judicial notice of the facts that the juvenile court entered jurisdiction and permanency judgments, as those facts are not subject to reasonable dispute, in that they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," *viz.*, the trial court files in the children's dependency cases. OEC 201(b) (setting forth that requirement for facts subject to judicial notice); OEC 201(f) ("Judicial notice may be taken at any stage of the proceeding.").

About six months after that permanency hearing, the tribal council for mother's tribe approved a "Tribal Council Resolution and Tribal Customary Adoption Agreement" (the TCA agreement) for both children. ER 30-36.[6] The TCA agreement transfers all of mother's enforceable rights and responsibilities to the adoptive placement: mother retains only the "right" to one visit with her children each year, but that "right" is, among other restrictions, at the discretion of and "subject to reasonable controls of" the adoptive placement. ER 32-36.

In March 2023, nearly eight months after the permanency hearing at which the juvenile court changed the children's permanency plans to TCA, the juvenile court held the required hearing on the proposed TCAs. Tr 1-29 (ER 1-29).[7]

At the TCA hearing, the department's counsel and the tribe's representative told the court that it had no authority to do anything other than sign the department's proposed orders accepting the TCA agreements and the proposed adoption judgments. ER 9-10, 17-18, 25. Mother objected to the court doing so. ER 22. Mother argued that she was "doing great" and had housing, a job, clean urinalyses, and unsupervised contact with her other child (who was also a ward of the juvenile court and living in foster care but whose

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[6] References to "ER" are to the excerpt of record accompanying this brief.

[7] Mother includes the complete transcript of the TCA hearing in the ER.

permanency plan remained reunification). ER 19-20. Mother cited ORS 419B.656 and further argued that the hearing "needs to be not so much of a rubberstamp hearing, but" rather must include "testimony and at least mention and inclusion of the home study" just like in "a regular adoption in the State of Oregon." ER 21-22.

The juvenile court overruled mother's objection and, without hearing any testimony or receiving any evidence, announced that it would "adopt the findings" in the proposed orders accepting the TCAs and the proposed adoption judgments,[8] and signed the orders and judgments. ER 27-29.

Mother appealed, arguing in the Court of Appeals that, *inter alia*, the juvenile court erred in signing the adoption judgments without any supporting evidence in violation of ORS 419B.656 which, properly construed consistently with the due process clause as required by ORS 419B.090(4), required such evidence. App Br 3-4, 13-15, 21-28. Rather than reach the merits of that argument, the Court of Appeals concluded that mother had failed to preserve "a constitutional due process challenge" and affirmed the juvenile court's adoption

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[8] The department told the court that "it's fine for Your Honor to simply put on the record that you adopt the findings that are contained in the orders and judgments and then sign the documents," and the court agreed and did so. ER 28-29.

judgments.[9] *Dept. of Human Services v. M.G.J.*, 329 Or App 101, 105 (2023) (nonprecedential memorandum opinion), *rev allowed*, 372 Or 63 (2024). This court allowed mother's petition for review.

ARGUMENT

I. Oregon's legislature did not intend for ORS 419B.656 to deprive parents of Indian children of the procedural and substantive protections to which they are entitled under both ICWA and state law.

When an Indian child is subject to the Oregon juvenile court's dependency jurisdiction, ORS 419B.476(5)(g) allows the juvenile court to change the child's permanency plan to tribal customary adoption (TCA). If

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[9] The Court of Appeals was wrong to conclude that mother's argument was not preserved. Mother adequately preserved her claim of error when her trial counsel argued that mother was doing well and that ORS 419B.656 required more than the requested "ministerial" hearing that merely "rubberstamp[ed]" the tribe's TCA agreement and lacked evidence that authorized the court to enter adoption judgments, evidence that would be required in "a regular adoption in the state of Oregon." *See State v. Wyatt*, 331 Or 335, 343, 15 P3d 22 (2000) (to preserve a claim of error, the party "must provide the trial court with an explanation of his or her objection that is specific enough to ensure that the court can identify its alleged error with enough clarity to permit it to consider and correct the error immediately, if correction is warranted"); *see also State v. Weaver*, 367 Or 1, 472 P3d 717 (2020) ("'We have previously drawn attention to the distinctions between raising an *issue* at trial, identifying a *source* for a claimed position, and making a particular *argument*. The first ordinarily is essential, the second less so, the third least.'" (Quoting *State v. Hitz*, 307 Or 183, 188, 766 P2d 373 (1988); emphasis in *Hitz*.)).

In any event, as the Court of Appeals correctly has concluded, ICWA preempts the appellate courts' preservation rule. *Dept. of Human Services v. J.G.*, 260 Or App 500, 506-14, 317 P3d 936 (2014).

the tribe consents to the plan of TCA, it must file a proposed order or judgment "evidencing that the tribal customary adoption has been completed." ORS 419B.476(7)(d)(A). If the tribe does so, ORS 419B.656 requires the juvenile court to make certain determinations and to ultimately determine whether to accept the TCA and enter a judgment of adoption under Oregon law.

As set forth in the sections below, the text, context, and legislative history of ORS 419B.656 support mother's reading that the juvenile court must receive evidence and independently assess that evidence to itself determine whether the TCA satisfies the ORS 419B.656 criteria and ultimately whether to accept the TCA and enter an adoption judgment. And while the text is silent as to the procedural and substantive protections to which an objecting parent is entitled before the court may grant the TCA over the parent's objection, pertinent context and legislative history support mother's reading that, when the TCA operates to permanently deprive the parent of all enforceable parental rights, the court may accept it only upon proof beyond a reasonable doubt that the parental rights of the Indian child's parent should be terminated according to Oregon statute and, as required by ICWA, testimony by a qualified expert that continued custody of the child by the parent is likely to result in serious emotional or physical damage.

A. Text: By directing the juvenile court to "determine" and "find" certain things as necessary conditions to "accept" the tribe's TCA, the Oregon legislature unequivocally expressed its intent that the Oregon court reach its own conclusions and did not intend for the court to rotely adopt tribal or state government decrees.

When construing a statute, Oregon courts first examine the plain text of the statute at issue, as it is well settled that the text of the statute, in context, is the best indication of the enacting legislature's intent. ORS 174.020(1)(a); *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Indus.*, 317 Or 606, 610-11, 859 P2d 1143 (1993). In doing so, "the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted." ORS 174.010. In engaging in the textual analysis, the court may rely on any legislative history the court deems relevant and useful. *Gaines*, 346 Or at 171-72. If the intended meaning of the statute remains ambiguous, the court applies maxims of statutory construction to aid the court in ascertaining legislative intent. *Id*. at 172.

ORS 419B.656[10] sets forth the requirements of the Oregon juvenile court in determining whether to "accept" any particular TCA. That statute provides, in pertinent part:

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[10] Mother sets out ORS 419B.656 and ORS 419B.612 at App 7-12.

"(1) As used in this section, 'tribal customary adoption' means the adoption of an Indian child, by and through tribal custom, traditions or law of the child's tribe, and which may be effected without the termination of parental rights.

"(2) If the juvenile court determines that tribal customary adoption is in the best interests, as described in ORS 419B.612, of a ward who is an Indian child and the child's tribe consents to the tribal customary adoption:

"(a) The Department of Human Services shall provide the Indian child's tribe and proposed customary adoptive parents with a written report on the Indian child, including, to the extent not otherwise prohibited by state or federal law, the medical background, if known, of the child's parents, and the child's educational information, developmental history and medical background, including all known diagnostic information, current medical reports and any psychological evaluations.

"(b) The court shall accept a tribal customary adoptive home study conducted by the Indian child's tribe if the home study:

"(A) Includes federal criminal background checks, including reports of child abuse, that meet the standards applicable under the laws of this state for all other proposed adoptive placements;

"(B) Uses the prevailing social and cultural standards of the Indian child's tribe as the standards for evaluation of the proposed adoptive placement;

"(C) Includes an evaluation of the background, safety and health information of the proposed adoptive placement, including the biological, psychological and social factors of the proposed adoptive placement and assessment of the commitment, capability and suitability of the proposed adoptive placement to meet the Indian child's needs; and

"(D) Except where the proposed adoptive placement is the Indian child's current foster care placement, is completed prior to the placement of the Indian child in the proposed adoptive placement.

"(c)(A) Notwithstanding subsection (3) of this section, the court may not accept the tribe's order or judgment of customary adoption if any adult living in the proposed adoptive placement has a felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence.

"* * * * *

"(3)(a) The juvenile court shall accept an order or judgment for tribal customary adoption that is filed by the child's tribe if:

"(A) The court determines that tribal customary adoption is an appropriate permanent placement option for the Indian child; [and]

"(B) The court finds that the tribal customary adoption is in the Indian child's best interests, as described in ORS 419B.612[.]

"* * * * *

"(b) The court shall afford full faith and credit to a tribal customary adoption order or judgment that is accepted under this subsection.

"(4)(a) Notwithstanding ORS 109.276, a tribal customary adoptive parent is not required to file a petition for adoption when the court accepts a tribal customary adoption order or judgment under subsection (3) of this section.

"* * * * *

"(d) After accepting a tribal customary adoption order or judgment under subsection (3) of this section, the juvenile court that accepted that order or judgment shall proceed as provided in ORS 109.350 and enter a judgment of adoption. In addition to the requirements under ORS 109.350, the judgment of adoption must include a statement that any parental rights or obligations not specified in the judgments are transferred to the tribal customary adoptive parents and a description of any parental rights or duties retained by the Indian child's parents, the rights of inheritance of

> the child and the child's parents and the child's legal relationship with the child's tribe.
>
> "(e) A tribal customary adoption does not require the consent of the Indian child or the child's parents.
>
> "* * * * *
>
> "(5) Any parental rights or obligations not specifically retained by the Indian child's parents in the juvenile court's adoption judgment are conclusively presumed to transfer to the tribal customary adoptive parents."

Thus, from the plain text of the statute we know that the court may enter a judgment of TCA without the consent of the parent or child, ORS 419B.656(4)(e), and that some TCAs "may be effected without termination of parental rights," ORS 419B.656(1).

The plain text tells us that if the juvenile court determines that a TCA is in the child's best interests and the child's tribe consents to the TCA, the court must review the tribe's "home study" to determine if it, *inter alia*, "[i]ncludes federal criminal background checks * * * that meet the standards applicable under [Oregon law] for all other proposed adoptive placements," "uses prevailing social and cultural standards of the tribe," and "[i]ncludes an evaluation of the background, safety and health information of the proposed adoptive placement" as well as an "assessment of the commitment, capability and suitability of the proposed adoptive placement to meet the Indian child's needs." ORS 419B.656(2)(b)(A) - (C). And if the court determines that the

home study complies with those requirements, the court "shall accept" it. ORS 419B.656(2)(b).

Similarly, the text tells us that the tribe's "fil[ing]" of an "order or judgment for tribal customary adoption" triggers the juvenile court's responsibility to determine whether the "tribal customary adoption is an appropriate permanent placement option for the Indian child" and whether "the tribal customary adoption is in the Indian child's best interests, as described in ORS 419B.612." ORS 419B.656(3)(a)(A) - (B). And if the court determines that the TCA is appropriate and is in the child's best interests, then the court has no discretion; it "shall" accept it. ORS 419B.656(3)(a).

Lastly, the text informs that—if accepted by the juvenile court—the court shall afford the TCA "full faith and credit." ORS 419B.656(3)(b).

Thus, a simple reading of the unambiguous text confirms that the legislature intended for the juvenile court to play a critical and gatekeeping role in the establishment of any TCA. It intended for the court to inspect the home study and make independent and child-centric determinations—which necessarily must be derived from evidence before it—about both the suitability of the placement and the child's best interests. And although ORS 419B.656 does not expressly allocate the burden of proof to any specific party in the text, "[t]he general rule is that the burden of proof is upon the proponent of a fact or

position, the party who would be unsuccessful if no evidence were introduced on either side." *Harris v. SAIF*, 292 Or 683, 690, 642 P2d 1147 (1982).

It is only after the court satisfies itself as to those elements that the court's role becomes a ministerial task to "accept" the TCA.

Although the text acknowledges that a TCA "may be effected without the termination of parental rights," it is silent as to the procedural protections due a parent when the TCA *does* terminate parental rights.

B. Context: The statute is silent as to the substantive and procedural protections due a parent when a TCA permanently severs all enforceable parental rights; but the context of ORS 419B.090(4) and ICWA, *inter alia*, illuminates that the proponent of the TCA must prove grounds for termination of parental rights beyond a reasonable doubt before the Oregon court may "accept" this type of TCA.

Parents have a constitutionally protected interest, as a matter of due process, in their relationship with their child. *Stanley v. Illinois*, 405 US 645, 651, 92 S Ct 1208, 31 L Ed 2d 551 (1972) (recognizing that the right to the companionship, care, custody, and control of one's children is an interest protected by due process).

And ORS 419B.090(4) requires Oregon courts to construe and apply all provisions of ORS chapter 419B—as a matter of state statutory law—to not violate a parent's due process rights. As this court explained in *J.R.F.*, ORS 419B.090(4) "guard[s] the liberty interest of parents protected by the Fourteenth Amendment to the United States Constitution" and directs that the

provisions of the dependency code (which includes ORS 419B.656, the provision at issue in this case) "shall be construed and applied in compliance with federal constitutional limitations on state action established by the United States Supreme Court with respect to interference with the rights of parents to direct the upbringing of their children" and other parental rights. 351 Or at 578-79.[11]

Even in the absence of such explicit statutory context, this court has readily construed adoption statutes to avoid violating a parent's due process

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[11] In *J.R.F.*, 351 Or at 579, the Court of Appeals affirmed a juvenile court order, concluding—as it did in this case—that the parent had failed to preserve his claim that the court's order violated his due process rights; explaining that the context of ORS 419B.090(4) places the due process rights of parents as the threshold in the interpretation of every provision of the juvenile dependency code, this court reversed:

> "DHS insists—and the Court of Appeals agreed—that father failed to preserve a contention that the trial court's order violated his parental rights under the Due Process Clause of the Fourteenth Amendment. Our decision, however, is not based on an unpreserved constitutional claim. Rather, it is based on our obligation to interpret the statutes correctly, which includes an obligation to consider relevant context, regardless of whether it was cited by any party. *See Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722 (1997) ('In construing a statute, this court is responsible for identifying the correct interpretation, whether or not asserted by the parties.'). In this case, the relevant context includes ORS 419B.090(4), which makes clear that the due process rights of parents are always implicated in the construction and application of the provisions of ORS chapter 419B."

rights, as adoption "terminates all such rights of the natural parent." *Simons et ux v. Smith*, 229 Or 277, 284, 366 P2d 875 (1961).[12]

In *Simons*, the issue was whether this court should construe ORS 109.314 to divest the father of all parental rights without proof that his rights should be terminated. *See id.* at 279 ("The only question on this appeal is whether ORS 109.314 can be enforced literally to cut off the rights of a father who is free from disabilities or faults which, under the [termination of parental rights] statutes permit termination of a parent's parental rights."). On its face, ORS 109.314 allowed a child's custodial parent after a marital dissolution to agree to an adoption of the parents' child by the custodial parent's spouse without the

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[12] As noted, ORS 419B.656 defines "tribal customary adoption" to mean "the *adoption* of an Indian child, by and through the tribal custom, traditions or law of the child's tribe, which may be effected without the termination of parental rights." ORS 419B.656(1) (emphasis added). Accordingly, a TCA is, by its express terms, an adoption. And while a TCA "*may* be effected" without terminating parental rights, ORS 419B.656(1) does not preclude the tribe or the court from doing so or effectively doing so. Indeed, a TCA terminates any and all parental rights that are not explicitly retained to the parent in the juvenile court's adoption judgment. *See* ORS 419B.656(5) (stating that "[a]ny parental rights or obligations not specifically retained by the Indian child's parents in the juvenile court's adoption judgment are *conclusively* presumed to transfer to the tribal customary adoptive parents" (emphasis added)); *see also* ORS 419B.656(4)(d) (stating that the juvenile court's judgment of tribal customary adoption "must include a statement that any parental rights or obligations not specified in the judgment are transferred to the tribal customary adoptive parents"). Thus, depending on its terms, a TCA can have the effect of permanently severing some or all of the Indian child's biological or legal parent's parental rights.

consent of the noncustodial parent, who could "appear and object" to the adoption. *Id.* at 279-85. The statute was silent as to the protections—if any—the trial court must afford the noncustodial parent when that parent did "appear and object." In providing no more protection than the words of the statute required, the trial court in *Simons* decided that the custodial parent's consent was sufficient, without more, to overcome the noncustodial father's objection and to authorize the child's adoption by the mother's spouse. *Id*.

On appeal, the father challenged the constitutionality of ORS 109.314. But instead of striking the statute as unconstitutional because it violated the father's due process rights, this court construed it (apparently applying the canon of constitutional avoidance) to require proof in the first instance of a basis upon which the trial court could terminate the father's parental rights. *Id*. at 279-80 (where the father asked the court to "[s]trike down the statute as repugnant to due process of law," this court explained that that "alternative should be avoided if possible" and instead construed the statute to include a requirement for proof of a basis to terminate parental rights to avoid a due-process problem). Without such proof, this court held, the objection of the noncustodial parent precluded the adoption of the parent's child. *Id*.

Similarly, and correctly so, in *Moran v. Weldon*, 184 Or App 269, 273-76, 57 P3d 898 (2002), *rev den*, 335 Or 195 (2003), the Oregon Court of Appeals applied the reasoning in *Simons* to construe another adoption statute, ORS

109.322, which permitted adoption without parental consent if the nonconsenting parent had been sentenced to a prison term of no less than three years and had actually served at least three years, to require proof of a basis for terminating the nonconsenting parent's parental rights to avoid due process problems. In *Moran*, the trial court construed the statute to allow the adoption of a parent's child over the parent's objection based on the sole fact that the parent had been imprisoned for more than three years. *Id*. at 272. Recognizing, as this court did in *Simons*, that "an adoption without the consent of the biological parent has the effect of terminating that parent's rights, an action that ought to be related to the parent's conduct as a parent," and that "[t]ermination is the greatest possible deprivation of the fundamental right to be a parent," the Court of Appeals concluded that allowing an adoption over a parent's objection based on the length of incarceration alone without proof of an additional "statutory ground for terminating parental rights" raises "serious constitutional issues." *Moran*, 184 Or App at 275 (internal quotation marks omitted). Interpreting the statute to require proof of a statutory basis for termination of parental rights, the Court of Appeals held, "give[s] effect to the procedures that the statute prescribes without permitting the termination of a parent's rights in the absence of evidence that would otherwise support that action, thereby protecting a parent's fundamental constitutional right while preserving the statutory scheme that the legislature created." *Id*. at 275-76.

In accord with the ORS 419B.090(4) requirement as clarified in *J.R.F.* and the reasoning in *Simons*, this court should apply the same methodology in interpreting ORS 419B.656.

Accordingly, when a TCA purports to divest a parent of all enforceable parental rights, this court should construe ORS 419B.656 as requiring the proponent of the TCA to prove some conduct or circumstance on the part of the nonconsenting parent that would warrant terminating that parent's parental rights.[13] This court should clarify that—in the absence of such proof—the court must sustain the nonconsenting parent's objection.

And when the TCA leaves a parent no enforceable parental rights, the standard of proof is beyond a reasonable doubt because that is what ORS chapter 419B and ICWA require. *See* 25 USC § 1912(f) (requiring proof beyond a reasonable doubt, including testimony of a qualified expert witness, in a termination of parental rights proceeding concerning an Indian child); ORS 419B.660(1)(a) (requiring the "higher standard of protection" in ICWA to

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[13] Presumably, some tribes will implement TCAs that do not effectively terminate the parental rights of the Indian child's parent. In those cases where parental rights remain intact, the procedures a parent is due may be less demanding than in the instant case where the TCA permanently transferred all of mother's parental rights to the adoptive parents. For example, for a TCA that results in a permanent arrangement for the Indian child that looks more like a general guardianship under ORS 419B.366, the procedures due a parent of an Indian child would be akin to those that ICWA and Oregon law require in the hearing for that type of guardianship.

control over any provision of ORICWA that provides a lower standard of protection).

C. Legislative history: The legislative and enactment history of ORS 419B.656 demonstrates that the legislature intended to afford Indian families protections beyond those afforded by the due process clause and ICWA and did not intend to allow pro forma termination of Indian parental rights.

Little legislative history exists concerning the scope of the issue presented in this appeal, *viz*., what procedural safeguards the legislature intended to govern an ORS 419B.656 TCA that extinguishes a parent's parental rights. But what exists does not contradict mother's interpretation.

ORS 419B.656 originally started as part of House Bill (HB) 3182 (2021).[14] Part of the bill included TCA as a permanency plan option and the provisions that were later codified as ORS 419B.656. TCAs were added to recognize and allow adoptions that "align with traditional tribal child-rearing practices and the importance of tribal families." *See* Testimony, House Committee on Judiciary, HB 3182, Mar 30, 2021 (written statement of Amanda Hess on behalf of the Confederated Tribes of Umatilla Indian Reservation) (explaining that "[c]ustomary adoption means that a child's grandparents, aunts and uncles would

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[14] HB 3182 was not enacted. Rather, it was replaced by Senate Bill (SB) 562 (2021), which was enacted and codified in ORS 419B.656 and other parts of ORS chapter 419B. Or Laws 2021, ch 398. The legislative history does not illuminate why that occurred.

have the ability to take over or share legal parenting responsibilities so that a child can be safe, cared for and connected"); Testimony, House Committee on Judiciary, HB 3182, Mar 30, 2021 (written statement of Chris Coughlin on behalf of The Childrens Agenda/Our Children Oregon) (explaining that TCAs "align with traditional tribal child-rearing practices and the importance of tribal families" and "will allow extended family to assume or share legal parenting responsibilities so that a child can be safe, cared for, and connected").[15]

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[15] One of the early versions of HB 3182 directed the department to "prescribe by rule a procedure for the Indian child or the child's parents to contest a tribal customary adoption under this section." HB 3182, -2 amendments (Mar 15, 2021). The proposed amendments further stated that that "procedure must afford the Indian child and the child's parent the same rights and opportunity to be heard that is afforded to an Indian child and parent in a proceeding for the termination of parental rights." *Id*. Without explanation, by April 8, 2021, those proposed amendments were no longer included in the bill. HB 3182, -4 amendments approved by the House Committee on Judiciary (Apr 8, 2021). Nothing can be discerned from the absence of an explanation as to why those proposed amendments were removed from HB 3182. *See Wyers v. American Medical Response Northwest, Inc*., 360 Or 211, 227, 377 P3d 570 (2016) (stating that "drawing conclusions from silence in legislative history misapprehends the nature of the legislative history itself, which often is designed not to explain to future courts the intended meaning of a statute, but rather to persuade legislative colleagues to vote in a particular way"). The provision was most likely removed because such procedural protections were already afforded by the juvenile code. *See* ORS 419B.800(1) ("ORS 419B.800 to 419B.929 govern procedure and practice in *all* juvenile court proceedings under this chapter." (Emphasis added.)). And the department promulgating rules about procedure does nothing to ensure those procedural protections apply in court proceedings.

In any event, HB 3182 never passed. Instead, the legislature enacted SB 562 codified, in part, in ORS 419B.656.

Thus, the legislative history reveals that the legislature intended Oregon law to recognize TCAs as a permanency plan for an Indian child under the jurisdiction of Oregon juvenile courts. But it does not follow from that intention that, in doing so, the legislature also intended to *strip* Indian families of the rights and procedural protections that they would receive in proceedings concerning other permanency plans or that are enjoyed by non-Indian parents. Such a reading of the statute would run contrary to the purposes of ICWA and ORICWA, which are to protect Indian families through more robust procedural protections.

It simply cannot be that the legislature intended a parent of an Indian child (or an Indian child who does not agree with the proposed TCA) to receive less protection when facing the loss of parental rights under this form of tribal customary adoption—a permanent option that may effect a far more significant deprivation to a parent than a permanent or even a general guardianship under ORS 419B.365 and ORS 419B.366—than the parent would receive in either type of guardianship proceeding. And most fundamentally, the legislature would not have intended for ORS 419B.656 to operate to give Indian families *less* protection than non-Indian families, in direct contravention of the goals of ICWA and ORICWA, which was to give them *more* protection through, *inter alia*, heightened notice requirements, an elevated standard of proof, additional

substantive elements, and expert witness testimony. *See* ORS 419B.600 (stating the policy of ORICWA).

The text, context, and legislative history illuminate only one unambiguous interpretation of what procedural protections the juvenile court must provide at a hearing to establish an ORS 419B.656 TCA that leaves the parent with no enforceable rights: the proponent of adoption must prove statutory grounds for termination of an Indian child's parent's parental rights (under ORS 419B.500 and ORS 419B.502 to ORS 419B.510). Should the proponent fail to do so, the juvenile court may not accept the TCA or enter a judgment of adoption.

II. As the TCAs in this case terminated all of mother's parental rights, the juvenile court had the authority to accept them only upon proof of grounds for terminating mother's parental rights and the requirements of ICWA; as no party proved anything of the sort, this court must reverse.

The hearing at issue here began at 10:00 a.m. and, by 10:43 a.m., mother had lost all her parental rights to her two Indian children. ER 3-29.

At the hearing, mother objected to the TCAs. Her counsel offered to the juvenile court that, in the nearly eight months since the permanency hearing, mother was "doing great," had maintained stable housing and a job, had clean urinalyses, and was having unsupervised contact with her other child, who also was a dependent ward of the court. ER 19-21.

The juvenile court—unconcerned with mother's current parenting capacity or the lack of evidence upon which to base any of its determinations—rotely accepted the TCA agreements and entered the judgments of adoption. The adoption judgments made the adoptive parents "the legal parents of" [redacted] and [redacted] and with the rights and obligations listed in the TCA agreement, including changes to their legal names. ER 30-36. The judgments transferred mother's parental rights to the adoptive parents, reserving for mother only the *possibility* of one annual visit with her children *at the discretion of* and "subject to reasonable controls of the adoptive parents." ER 32-36. That is no "right" at all.

The juvenile court erred in doing so because, properly construed, ORS 419B.656 required it to condition its rulings on evidence[16] and to condition its acceptance of the TCAs on proof that would authorize terminating mother's parental rights to her Indian children. In summarily accepting and implementing the TCAs and entering adoption judgments, the juvenile court terminated mother's parental rights in the absence of any of the substantive or

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[16] The TCA agreement filed in this case simply showed that the tribe had made its determinations. But those determinations are not evidence, and the juvenile court could not rely on them to make the determinations that ORS 419B.656 required it to independently make.

procedural protections mother was due. Thus, this court should reverse the Court of Appeals and vacate the judgments.

III. In the unlikely event that this court interprets ORS 419B.656 to allow what happened in this case, this court should nonetheless invalidate the adoption judgments because the juvenile court's acceptance of the TCAs in this case qualifies as a termination of parental rights under ICWA, ICWA preempts state law, and the procedural and substantive law applied by the juvenile court violated ICWA.

Although ORS 419B.656(1) permits a TCA to "be effected without the termination of parental rights," in this case, the terms of the TCA agreement *do* terminate mother's parental rights. As noted, under the agreement, mother retains only one thing: the illusory "right" to an annual visit with her children, *at the discretion of the adoptive placement*. The TCAs here transfer mother's physical, legal, and financial responsibility for her children to the adoptive placement. In other words, mother retains no "parental rights" at all. The TCA agreement thus qualifies as a termination of parental rights under ICWA. *See* 25 USC § 1903(1)(ii) (defining "termination of parental rights" as "any action resulting in the termination of the parent-child relationship").

But the juvenile court accepted the TCAs and entered judgments of adoption without affording mother any of ICWA's protections; most notably, without proof beyond a reasonable doubt of grounds for TPR and without qualified expert testimony "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." 25 USC § 1912(f). To the extent this court interprets ORS 419B.656 as authorizing that result, it must nonetheless reverse the adoption judgments because that statute, interpreted in that way, obstructs the purposes of ICWA and is therefore preempted by it.

The power of Congress to preempt state law arises from the Supremacy Clause of Article VI of the United States Constitution, which provides that the laws of the United States are "the supreme law of the land" and that the state courts "shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." The United States Supreme Court has recognized three categories of preemption: (1) when the federal law expressly provides for preemption; (2) when a congressional statutory scheme so completely occupies the field with respect to some subject matter that an intent to exclude the states from legislating in that subject area is implied; and (3) when an intent to preempt is implied from an actual conflict between state and federal law. *Willis v. Winters*, 350 Or 299, 308, 253 P3d 1058 (2011), *cert den*, 565 US 1110 (2012) (citing *Crosby v. National Foreign Trade Council*, 530 US 363, 372, 120 S Ct 2288, 147 L Ed 2d 352 (2000)).

The third type of preemption—conflict preemption—"exists not only when it is physically impossible to comply with both the state and federal law, but when 'under the circumstances of the particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Willis*, 350 Or at 308 (quoting *Hines v. Davidowitz*, 312 US 52, 67-68, 61 S Ct 399, 85 L Ed 581 (1941); brackets in *Willis*). In the latter circumstance, to resolve a question of "obstacle preemption," the court "examine[es] the federal law to ascertain its purposes and intended effects, examin[es] the state statute to determine its effects, and compar[es] the results to determine whether the latter statute in some way obstructs the accomplishment of the objectives that have been identified with respect to the former statute."[17] *Willis*, 350 Or at 309 (citations omitted).

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[17] This court described that "[w]hen traditional regulatory powers of the states are implicated * * * that analysis incorporates a presumption that Congress did not intend to preempt." *Willis*, 350 Or at 309 (citing *Rice v. Santa Fe Elevator Corp*., 331 US 218, 230, 67 S Ct 1146, 91 L Ed 1447 (1947)). However, there is "little doubt" that Congress's authority to regulate Indian affairs "is muscular, superseding both tribal and state authority." *Haaland v. Brackeen*, 599 US 255, 273, 143 S Ct 1609, 216 L Ed 2d 254 (2023). And, as the Supreme Court has recognized, "the Constitution does not erect a firewall around family law. On the contrary, when Congress validly legislates pursuant to its Article I powers, we have not hesitated to find conflicting state family law preempted, notwithstanding the limited application of federal law in the field of domestic relations generally. * * * In fact, we have specifically recognized Congress's power to displace the jurisdiction of state courts in adoption proceedings involving Indian children." *Id.* at 276-77 (brackets, quotation marks, and citations omitted).

The purpose and intended effect of ICWA was to stem a pervasive history of unlawful and discriminatory state interference in the lives of Indian families and tribes and the deleterious effects thereof. 25 USC § 1902; *see Mississippi Band of Choctaw Indians v. Holyfield*, 490 US 30, 32, 109 S Ct 1597, 104 L Ed 2d 29 (1989) (explaining that ICWA resulted from "rising concern in the mid-1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes"). To that end, ICWA precludes, among other things, termination of parental rights absent "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." 25 USC § 1912(f). And the Court of Appeals has long held, correctly, that the Oregon statutory elements necessary for termination of parental rights—*viz.*, a basis for TPR under ORS 419B.502 to 419B.510 and that TPR serves the child's best interest under ORS 419B.500—must be proved beyond a reasonable doubt in an ICWA case. *Dept. of Human Services v. J.L.H.*, 258 Or App 92, 101, 308 P3d 323 (2013); *Dept. of Human Services v. K.C.J.*, 228 Or App 70, 82, 207 P3d 423 (2009); *State ex rel Dept.*

of Human Services v. Cain, 210 Or App 237, 240, 150 P3d 439 (2006), *rev den*, 342 Or 503 (2007); *State ex rel Juvenile Dept v. Woodruff*, 108 Or App 352, 359, 816 P2d 623 (1991).

But the adoption judgments in this case effectively terminated mother's parental rights without *any* proof of *any* of the elements required to terminate parental rights under Oregon law and ICWA, let alone proof of *all* of those elements *beyond a reasonable doubt*. If this court interprets ORS 419B.656 as authorizing that result, then ORS 419B.656 obstructs ICWA's purpose of protecting Indian families by providing increased procedural protections for Indian families and imposing heightened requirements for a state to take that action. As a result, so interpreted, ORS 419B.656 conflicts with ICWA, and ICWA therefore preempts that statute. The legislature itself indicated its intent that that would be so: ORS 419B.660(1)(a) states that ICWA preempts any provision of ORICWA that provides less protection than ICWA.

Even were that not so, ICWA expressly allows a parent to petition "any court of competent jurisdiction to invalidate" a "termination of parental rights under State law, * * * upon a showing that such action violated any provision of

[ICWA's] sections 1911, 1912, and 1913." 25 USC § 1914.[18] Mother so petitions this court.

As mother has shown, the juvenile court's action in this case taken under Oregon law amounts to the termination of mother's parental rights in violation of what ICWA section 1912(f) requires:

> "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."

Such a violation subjects the adoption judgments in this case to "post-judgment invalidation under 25 USC section 1914" as the Supreme Court of North Dakota recognized in *In re K.S.D.*, 904 NW2d 479, 485 (ND 2017) (noting that a ruling to terminate parental rights without receiving the requisite qualified expert witness testimony subjects the ruling to such invalidation and reversing the judgment even though "neither party raised that issue on appeal," because

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[18] The Court of Appeals in *J.G.* relied on ICWA's invalidation provision in 25 USC § 1914 as to why Oregon preservation rules could not preclude the mother in that case from challenging active efforts for the first time on appeal, noting that section 1914 "provides a method of enforcing" the law's "minimum federal standards, [such that] a state rule that precludes a party from using section 1914 on appeal to assert a right under section 1912(d) stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." 260 Or App at 513.

"affirmance would provide the children no certainty or stability" given that "either parent or the tribe could collaterally attack the judgment at any time").[19]

CONCLUSION

In this case, mother did not receive the procedural and substantive protections that she was due before her parental rights were effectively terminated. Accordingly, this court should reverse the decision of the Court of Appeals, vacate the judgments of adoption, and remand to the juvenile court for

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[19] Other courts have held similarly. *See In re H.T.*, 378 Mont 206, 213-14, 343 P3d 159 (2015) (hearing the mother's unpreserved arguments for the first time on appeal because, as a court of competent jurisdiction, the appellate court could decide issues raised for the first time on appeal about ICWA violations under 25 USC § 1914); *People in Interest of S.R.M.*, 153 P3d 438, 443 (Colo App 2006) (relying on ICWA's invalidation provision to reverse a judgment terminating parental rights entered without providing notice to the required parties under ICWA because such a failure "violates the plain meaning" of 25 USC § 1912(a)); *In re S.M.H.*, 33 Kan App 2d 424, 430-31, 103 P3d 976 (2005) (relying on ICWA's invalidation provision to reverse an action for a foster care placement that occurred without qualified expert witness testimony even though the error was both unpreserved and invited by the party below); *In re Antoinette S.*, 104 Cal App 4th 1401, 1408, 104 Cal Rptr 2d 15 (2002) (holding that a parent's failure to challenge the lack of the required notice under ICWA does not waive the issue on appeal, as 25 USC § 14 permits "any parent" to "petition any court of competent jurisdiction to invalidate" foster care placement or termination of parental rights "upon a showing that such action violated any provision of sections 1911, 1912, and 1913," and lack of notice violates one such provision); *Matter of L.A.M.*, 727 P2d 1057, 1060 (Alaska 1986) (hearing, over the state's objection, an unpreserved claim for lack of ICWA-required notice that was not raised in the "statement of points on appeal" because "[t]he due process right to proper notice in a parental rights termination proceeding is so fundamental that justice requires" the court to consider it and because doing so gives effect to ICWA's invalidation provision).

further proceedings. This court should do so with instructions that any such proceedings must comport with the requirements of ORS 419B.656, the standard of fundamental fairness, and ICWA.

Respectfully submitted,

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Attorneys for Petitioner on Review, M. G. J.

EXCERPT OF RECORD INDEX

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JACKSON

In the Matter of [redacted] [redacted]	Docket No. 20JU02316
[redacted] a Child.	Appeal Case No. A181035
Department of Human Services,	
Petitioner,	
v.	Medford, Oregon
Manuelita Grace Jacobs,	March 8, 2023
Appellant.	10:00 a.m.

VOLUME I
TRANSCRIPT OF HEARING
BEFORE THE HONORABLE TIMOTHY C. GERKING
CIRCUIT COURT JUDGE.

APPEARANCES:

For the Plaintiff: Oregon Department of Justice
By: Rebecca May
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Medford, OR 97504

For the Defendant: Attorney at Law
By: Risa L. Hall
44 South 1st Street
Central Point, OR 97502

For the Tribe: Pit River Tribe
By: Gilda Payne
By: Jay Peterson
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Burney, CA 96013

For the Father: Attorney at Law
By: Vance M. Waliser

Transcription Service: Script Warrior Services, LLC
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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

I N D E X

WITNESSES	Direct	Cross	Redirect	Recross
For the Plaintiff:				
None				
For the Defendant:				
None				

EXHIBITS	Offered	Admitted
For the Plaintiff:		
None		
For the Defendant:		
None		

MISCELLANEOUS	Page

Medford, Oregon, Wednesday, March 8, 2023

(Proceedings convened at 10:00 a.m.)

THE COURT: Is there somebody for the Tribe on the telephone?

MS. PAYNE: Your Honor, my name is Gilda Payne. I'm with the Pit River Tribe.

THE COURT: At Pit River Tribe.

MS. PAYNE: Yes.

MS. MAY: I'm sorry. Who's -- who from -- this is Ms. May from Department of Justice. Who is on the phone for the Tribe, please?

MS. PAYNE: Gilda Payne.

THE COURT: I thought I heard a voice, but I couldn't make it out.

MS. PAYNE: It is Gilda Payne, and I am the interim ICWA, Pit River Tribe.

THE COURT: Kane?

MS. PAYNE: Yes, P-A-Y-N-E.

THE COURT: Okay. And your first name, ma'am?

MS. PAYNE: Gilda, G-I-L-D-A.

THE COURT: Thank you.

MS. PAYNE: You're welcome.

THE COURT: Okay. So Ms. May?

(Interruption)

MS. MAY: (Indiscernible) the Father's on the --

MR. PETERSON: Hello. This is Jay Peterson for the Pit River Tribe.

THE COURT: Okay. Thank you.

MS. MAY: And Your Honor, for the record --

MS. HALL: Your Honor, this is Risa Hall. I'm on the line on behalf of Mother.

THE COURT: Okay.

MS. MAY: And Your Honor, for the record, the CASA is also here.

THE COURT: Thank you. Thank you.

THE CLERK: It's going to take me just a minute to call.

THE COURT: Pardon me?

THE CLERK: It's going to take me a minute to call the jail, just (indiscernible).

THE COURT: Okay. We need to call the jail. I did spend some time looking at the statute. I have reviewed the order, but we're waiting for Dad, right?

(Pause)

THE COURT: Ms. May, did you prepare any -- anything else other than your --

MS. MAY: There's an order and there's a judgment.

THE COURT: I haven't seen the judgment. When did you file that?

MS. MAY: That would have been filed yesterday. Let me contact my --

THE COURT: Late yesterday?

THE CLERK: It was filed this morning. I can print.

THE COURT: This morning.

UNIDENTIFIED SPEAKER: Okay. Thank you.

MS. HALL: Your Honor, this is Risa Hall. I --

THE COURT: Yeah.

MS. HALL: -- wanted to bring to the State's attention that the judgment that was filed or presented last night, the judgment has just [redacted] On page 1, there is a correct statement, it mentions [redacted] and -- and so that name needs to be corrected if --

MS. MAY: I'm sorry. The --

MS. HALL: -- that's going to be looked at by the Court.

MS. MAY: I'm sorry. Can you say that again? You cut out briefly, Ms. Hall?

MS. HALL: So we've got is, on page 1, Ms. May --

MS. MAY: Yes.

MS. HALL: -- under [redacted] judgment --

MS. MAY: Yes.

MS. HALL: -- under number one, what I got last night doesn't --

MS. MAY: Oh --

MS. HALL: -- it has [redacted] name --

MS. MAY: Yes.

MS. HALL: -- and not [redacted] name.

MS. MAY: Yes. I apologize. That is a scrivener's error. I would ask the Court to adjust -- or to correct that by interlineation. I apologize to the parties.

(Pause)

UNIDENTIFIED SPEAKER: Your Honor, since I have had several conversations with him and he has been consistent with wanting the case to be, one, changed to tribal adoption, and then two, he does want the tribal adoption to be finalized, I do feel comfortable going forward.

But I did want to make a record, I have spoken with him several times. He is currently incarcerated. He understands he cannot be a resource for his daughter. He also has consistently informed me that he does not want to disrupt his daughter's current placement. He understands that his daughter is thriving

and --

THE COURT: Which child is he the father of?

UNIDENTIFIED SPEAKER: [redacted]

THE COURT: Okay.

THE CLERK: I'm sorry, the recording is playing the waiting music, (indiscernible) pick up (indiscernible) the signal, if that makes sense.

UNIDENTIFIED SPEAKER: And did they say five minutes?

THE COURT: Okay. So you're --

UNIDENTIFIED SPEAKER: One minute.

UNIDENTIFIED SPEAKER: One minute.

THE COURT: One minute?

UNIDENTIFIED SPEAKER: Did they find him?

THE CLERK: They are transporting him to the conference room now. I don't know if you want to wait, or (indiscernible).

THE COURT: I don't know what that means, transporting. That's ambiguous. Maybe he stepped out to get some coffee.

(Pause)

THE COURT: Okay. So let's see who's here. Mr. Ramirez, are you on the phone?

MR. RAMIREZ: Yeah.

THE COURT: Mr. Ramirez?

MR. RAMIREZ: Yes.

THE COURT: Oh, great. This is Judge Gerking, can you hear me all right?

MR. RAMIREZ: Yeah.

THE COURT: Okay. And then just to make sure everyone else is on the phone. Ms. Payne, are you still on the phone?

MS. PAYNE: Yes, Your Honor. I am here.

THE COURT: All right. Thank you. Mr. Peterson?

MR. PETERSON: Yes, Your Honor.

THE COURT: And then, Ms. Hall?

MS. HALL: I'm still here, Your Honor.

THE COURT: Okay. So Ms. Payne, when you speak, if you could make sure your voice is elevated so that I can hear you? You're coming in kind of soft. Thank you. And if any of you have any difficulty hearing what's going on, please speak up so we can correct that problem.

All right. Ms. May?

MS. MAY: Thank you, Judge. Today is the day set to finalize the Tribal customary adoptions for these two children. This is the first TCA in Jackson County, so it's been a learning process for all the

parties involved.

What -- the Court today -- we're requesting today that the Court sign the two orders accepting the order of judgment of tribal customary adoption, which has been provided to the Court and accepted by the Court and provided to all the parties. Stage two is to sign the judgment of the tribal customary adoption.

So the first -- the order, basically, domesticates the adoptive resolution from the Tribe, and then the judgment finalizes the adoption of these children and dismisses parties and dismisses wardship from this case. So that is the only thing that needs to happen today, and then we're asking to proceed.

THE COURT: Okay. So I've got a few questions before I --

MS. MAY: Yes.

THE COURT: -- allow the others lawyers to speak. Reading the statute, I get the impression it's the Tribe who submits the order and/or judgment.

MS. MAY: Well, the Tribe submitted the -- the adoption documents. This Tribe calls theirs a resolution and agreement.

THE COURT: Right. I understand that.

MS. MAY: It's in the order. So that -- that is what the Tribe submits, which they have done. And

the Department of Justice handles the other order and judgment.

THE COURT: So is it your -- you had -- the Tribe could submit an order or a judgment denominated as such, or DHS could do that as well.

MS. MAY: To serve these same purposes?

THE COURT: Yeah.

MS. MAY: Well, I -- I would not agree with that, Your Honor, because what we're doing is domesticating, basically a foreign judgment. And so that would need to have --

THE COURT: I'm just saying that the statute directs the Tribe to submit the order and the judgment, which you prepared on behalf of DHS.

MS. MAY: Your Honor, I --

THE COURT: And I'm wondering whether that's a problem --

MS. MAY: I --

THE COURT: -- or an issue.

MS. MAY: I don't think so. The Tribe is a California tribe, so we -- it is --

THE COURT: Well, maybe they'd have to engage Oregon counsel.

MS. MAY: Well, we -- Your Honor, I -- I don't think that that is the reading of the statute. I

believe the statute --

THE COURT: Well, where does --

MS. MAY: -- requires --

THE COURT: -- it say DHS prepares anything?

MS. MAY: Well, it's not DHS. It's Department of Justice on behalf of --

THE COURT: Okay. Department of Justice.

MS. MAY: -- Department of Human Services.

THE COURT: I don't want to argue with you.

MS. MAY: Well --

THE COURT: I just want clarity.

MS. MAY: Okay. It is my -- again, this is the first tribal customary adoption in this county, and it is my instruction and direction from Department of Justice, considering the statutes that the tribe files the adoption judgment and then the Department of Justice being local counsel for Department of Human Services, handles the rest of --

THE COURT: Well, it does say Department of Human Services.

MS. MAY: -- handles the rest of the finalization paperwork as it would do for any adoption that happens outside of the state.

THE COURT: Okay. So Mr. Peterson?

MR. PETERSON: Yes, Your Honor.

THE COURT: Do you understand the -- the issue that I raised?

MR. PETERSON: I do, Your Honor. And the Tribe has followed instructions from the Department of Justice and is satisfied under the statute that with their filing of the resolution and agreement, the order adopting their agreement and the final judgment would be prepared by -- by Oregon.

THE COURT: Okay. Okay. Thank you. Then has a home study been prepared?

MS. HALL: Your Honor, this is Risa Hall. Can I make a statement? I had an issue as to that -- that particular matter.

THE COURT: All right. Go ahead.

MS. HALL: So -- and like Ms. May said, this is our first attempt. I am looking at the statute and I have been for -- since last night, 419B.656, and I'm looking at (3)(a). It very -- it's very specific. It -- and -- and -- and I'll -- is not -- number one, DHS does not represent the Tribe. I think we all can agree to that.

THE COURT: Right.

MS. HALL: But the -- this language actually says, the juvenile court shall accept an order or

judgment for tribal customary adoption that is filed by the Indian child's tribe. So I would argue that, technically, DHS can't represent -- I mean, the Department of Justice can't represent both the Tribe and the Department of Justice. There's a conflict.

And I think the -- if you read the language, the intent is the tribe is to file it. And if that means they have to consult counsel up here -- I just want to be very clear because this is the first time that we've ever had to deal with this in this county. But I -- that's how I read it. And that would be my position on that, and it was only because of how the language reads. Thank you.

MS. MAY: Your Honor, the order or judgment is the order or judgment of adoption prepared by the Tribe, not the finalization. It is the same as any other adoption that the agency handles where the agency files the final paperwork to -- to get the adoption finalized and accepted by the Court.

So that is our position that this does not mean the order and judgment finalizing the adoption. It means the adoption document itself. The statute refers to it as an order or judgment of tribal customary adoption. We have a resolution and agreement --

THE COURT: I mean, it's a little --

MS. MAY: -- of tribal customary --
THE COURT: -- it's a little --
MS. MAY: I understand.
THE COURT: -- ambiguous --
MS. MAY: I -- I understand --
THE COURT: -- if that's the correct --
MS. MAY: -- that, but it --
THE COURT: -- word.
MS. MAY: -- it otherwise makes no sense because it is meant to function as similarly to a regular termination and adoption, but without termination of parental rights and the Tribe is in charge of creating the adoption.
THE COURT: You know, it seems to me that -- I seem to kind of disagree with you. I think the statute contemplates that the Tribe would be preparing these documents. On the other hand, as long as the -- the Tribe is represented in this hearing, and has no objection to the process by which the adoption takes place, I don't think there's a problem.
So I disagree with -- with -- with Ms. Hall. But gee, you know, this -- we can proceed until the Tribe prepares the paperwork. So I don't agree with that. So I -- I just want to make sure that we've -- we have done everything that needs to be done. I was looking

for a report that DHS is --

MS. MAY: Yes.

THE COURT: -- required to prepared and provide --

MS. MAY: Correct.

THE COURT: -- to the Tribe and to the --

MS. MAY: Yes.

THE COURT: -- tribal customary adoptive parents.

MS. MAY: Yes.

THE COURT: I didn't see that.

MS. MAY: Are you speaking of the home study, Your Honor?

THE COURT: Pardon me?

MS. MAY: Are you speaking of the home study that is --

THE COURT: Well --

MS. MAY: -- required by statute?

THE COURT: -- is there a difference between the -- the report that's referred to in (2)(a) and the -- and a home study?

MS. MAY: Let me read the language.

THE COURT: Home study is in (2)(b).

MS. MAY: (Indiscernible).

THE COURT: The tribal customary -- well --

MS. MAY: Yes. So Your Honor's --

THE COURT: The Tribe -- does the Tribe prepare the home study?

MS. MAY: So the Tribe can prepare the home study. In our case, the Tribe adopted the agency's ICPC home study, which was required before these children moved out of state.

THE COURT: Okay.

MS. MAY: The Tribe also conducted its own home study. As in any other adoption, the home studies are not provided to the parties or the Court because of the confidential information that's pertained therein. The Tribe is aware. The Tribe has put language in their agreement and resolution that they adopt the agency's ICPC home study, that they have a copy of and they also conducted their own --

THE COURT: Okay.

MS. MAY: -- home study.

THE COURT: You know, as long as there are no objections because something has not been done or the statute has not been --

MS. MAY: And --

THE COURT: -- strictly complied with.

MS. MAY: -- I know Mr. Peters (sic) was involved in drafting the -- this resolution and agreement.

So --

THE COURT: Okay.

MS. MAY: -- if the Court has --

THE COURT: Yeah.

MS. MAY: -- any questions, he can probably answer those, but this was a topic that has been discussed and this was the resolution that instead of -- just like in other adoptions, we don't provide the home study.

THE COURT: Well --

MS. MAY: It's adopted by the Tribe.

THE COURT: -- as I said at the outset, I think the statute is not a model of clarity.

MS. MAY: I -- I would agree with Your Honor.

THE COURT: So I'm going to address Mr. Peterson first. Mr. Peterson, do you have any objection the process by which this adoption is taking place or to the substance of the petition?

MR. PETERSON: Not at all, Your Honor. The tribal customary adoption agreement is a Tribal document drafted and approved exclusively by the Tribe.

THE COURT: Okay.

MR. PETERSON: In all other respects, the Tribe joins with Oregon and their position that this is just like in other termination case, which event the State

would prepare the -- the domestication documents. Our interpretation of the statute is that today is a ministerial hearing that the Tribe has completed.

Their obligation under the statute including adopting the State's home study, number one, and their criminal background check, number two, and that this hearing is essentially confined to the -- the -- the domestication of the Tribe's agreement as a foreign judgment.

The Tribe is -- supports this fully because it would -- this -- the result of the hearing today will enable the Tribe to, you know, enforce the agreement nationwide if necessary. So there are no objections to -- to the State's representation of -- of this process or of the Tribe's agreement.

THE COURT: Thank you, Mr. Peterson. Ms. Payne?

MS. MAY: Yes, Judge. I'm Ms. May. Did you say Ms. May?

THE COURT: Gilda.

MS. PAYNE: Your Honor --

MS. MAY: Oh, Ms. Payne. I apologize.

THE COURT: I didn't know that, Ms. May. Ms. Payne, can you hear me?

MS. PAYNE: Yes, I can.

THE COURT: Any -- do you have any concerns or problems or issues?

MS. PAYNE: No, I do not.

THE COURT: Anything you -- else you would like to say?

MS. PAYNE: Not at this time.

THE COURT: All right. Very good. Thank you. So Ms. Robbins, do you wish to speak?

MS. ROBBINS: Really quickly. Father does support the establishment and the finalization of the Tribal adoption.

THE COURT: Okay. Mr. Ramirez, is that correct?

MR. RAMIREZ: Yeah.

THE COURT: Thank you. Okay. Then, Ms. Hall?

MS. HALL: Your Honor, my client was -- is she present? She was going to be there.

THE COURT: She is sitting right here.

MS. HALL: Okay. So I -- I spoke with her last night, and on my client's behalf, I would argue against the Court signing it. A couple of things, my client continues to disagree. She appeals the underlying decision to implement a change of plan to this -- this -- the tribal customary adoption. She -- there is another

child that is a sibling to these children.

There's been no accommodation of contact between the -- that would be Jazmyne Bake Teeman, who is -- is the sibling to these two kids. She is -- in Harney County, there is an open Harney County case. My client is doing great right now, continues to be doing good. She's got stable housing. She continues to work at Club Northwest. She's gone into OnTrack.

She's provided and it was discovered from DHS that she's got clean UAs. She gets unsupervised contact with her daughter Jazmyne out of Harney County. She gets Jazmyne for -- for spring break. I'm really concerned that none of these -- none of this process has mentioned anything about a sibling.

It mentions the agreement, the Tribal agreement mentions that if something were to happen to the -- the adoptive family, the Andersons, that the maternal grandmother, who is my client's mother, would then be the resource for the -- for these two children.

But there's nothing in any of these documents that mentions the continued contact with the child's sibling Jazmyne, and I -- on behalf of my client, I object. I -- I would ask the Court not to sign it. There's a lot -- there -- that's a huge concern for my client as well as the fact that she continues to disagree

with what's going on with proceeding with the tribal adoption.

And then technically, I'm going to -- for the record, I am going to object to -- I believe -- and once again, we're all looking at this a little differently for the first time -- that when you look at the statute under 41 -- 419B.656. It would be (2)(b), it -- it appears in my reading of this that they're -- that the anticipated -- the Court will at least be given something about -- so the Court shall accept the tribal customary adoptive study conducted by the Indian child's tribe if the home (indiscernible).

My -- my position would be, it -- there's so many -- as the Court said earlier, it's true, there's so much vagueness. The detail is missing, but I would argue on my client's behalf that -- that this needs to be not so much of a rubberstamp hearing, but there should be some more testimony and at least mention and inclusion of the home study.

So just as you would have in an adoption, a regular adoption in the state of Oregon. The Court is advised that there is a home study and it's accepted. None of that has been included in the language and there's a lot of differences and just a lot of areas that I would argue is vague. And on my client's behalf, I would ask

the Court not to sign today.

MS. MAY: Your Honor, I would like to address a couple of these points. On the second page of the resolution agreement, there is -- there are several whereas -- one, two, three, four -- the last --

THE COURT: Let me find that.

MS. MAY: You bet. It's on the second page.

THE COURT: Second page?

MS. MAY: The second.

THE COURT: Of Exhibit A?

MS. MAY: Yes.

THE COURT: Okay.

MS. ROBBINS: Where -- where at, Ms. May? I can't -- I --

MS. MAY: I'm on the --

MS. ROBBINS: -- which --

MS. MAY: I'm on the second page --

MS. ROBBINS: -- at the bottom?

MS. MAY: -- I'm on the second page of the resolution and agreement. The final whereas paragraph --

THE COURT: Okay.

MS. MAY: -- or under Oregon state law, the last sentence -- oh, the last couple of sentences. The Tribe retains, blah, blah, blah, including the adoptive

home assessment and applicable criminal background checks. The Tribe has completed the adoptive home assessment and requested Oregon Department of Human Services to complete the criminal background checks, which have been done because the children are in -- that was part of the ICPC process, which the -- the Tribe adopted.

As far as contact with Jazmyne, there is no requirement in the statute to discuss sibling contact. What this agreement encompasses is what is required by the statute. That doesn't mean contact isn't happening. In fact, there are probably -- there -- in fact, contact is happening between -- I'm getting nods from my client and the CASA -- between Jazmyne and her siblings. So that is something that can --

THE COURT: So is it your point of view that tribal customary adoption can or the (indiscernible) --

MS. MAY: Yes.

THE COURT: -- the parent who is --

MS. MAY: Yes.

THE COURT: -- whose parental rights have not been terminated?

MS. MAY: Yes, Your Honor. It is my position and --

THE COURT: Okay.

MS. MAY: -- under section 4 -- I'm sorry, I'm in 419B.656(4)(E), a tribal customary adoption under --

THE COURT: Hold on. (E)?

MS. MAY: (E), E --

THE COURT: Okay.

MS. MAY: -- like Edward. A tribal customary adoption under this section does not require the consent of the Indian child or the child's parents. Parents rights aren't terminated if Mother has issues with the contents of the adoption document that was created by the tribe, she is the tribal member. She can contact the tribal council.

Again, contact is happening, and it's outside the scope of this hearing, outside the Court's authority regarding this tribal customary adoption to deal with contact between the sibling, Mother and the -- the child and the sibling. This Mother does have -- there is an appeal in this case. There was no stay filed. So the appeal moves forward, but there is nothing preventing the adoption from being finalized today.

THE COURT: What's on the -- what's -- what's involved in the appeal? What -- what's --

MS. MAY: Well, the --

THE COURT: -- the issue?

MS. MAY: The -- it's the permanency hearing from last summer that is --

THE COURT: Okay.

MS. MAY: -- under appeal at the moment. Yes, Mother's filed briefs. The Department of Justice has filed briefs. I think the Tribe is joining in with the Department of Justice, so that's working its way through the Court of Appeals, but there is no stay to --

THE COURT: Okay.

MS. MAY: -- these proceedings. So I am asking the Court to sign this adoption today.

THE COURT: All right.

MS. MAY: You're directed by the -- the statutes that -- to accept the tribal customary adoption and finalize this adoption.

THE COURT: Okay. Thank you.

UNIDENTIFIED SPEAKER: Your Honor, I just -- for the CASA again. I just briefly would like to assure the Court, represent to the Court that this is our, and have occurred, between the older sister and these two girls. Any difficulty in doing that, quite frankly, has been because Mother has joined -- has been present with the older daughter and tried to bootstrap into the visits that are supposed to exclusively be with the older daughter.

But if the -- if they can be -- this is just for Jazmyne, I -- the foster parents represent the resource parents have represented to me that they -- that they understand the importance of that bond between sister. And Your Honor, if for -- I'm sure that the Court is aware that many tribes don't believe in or recognize termination of parental rights. And that was --

THE COURT: Right. I understand that.

UNIDENTIFIED SPEAKER: -- the reason for the alternative of the tribal customary adoption being put into law. Thank you very much.

THE COURT: Yeah. Thank you. Ms. Waliser?

MR. WALISER: Your Honor, as was just stated, or as was just referenced, the Court can grant this, actually, over my objection. But I support this. This has been a long process. It's appropriate in this case --

MS. HALL: Your Honor, this is Risa Hall. I can't hear Mr. Waliser right now.

MR. WALISER: The Court doesn't need my consent on behalf of the children to grant this, but I support the Court signing the filed orders and judgments as to both children. It's my position that it's in their best interests, statutes have been complied with. There's -- I don't believe there's any requirement that --

that counsel here for the Tribe or child welfare file a home study.

It's just that the Court shall accept it under certain conditions. Home studies have been completed. They're referenced in the -- in the Tribe's petition. So that's been done to make sure that the statutes are complied with, but it just states that the Court shall accept a home study if it's, you know -- if it -- if it contains the following information.

So that's not an impediment. So I don't see any reason not to proceed today. The -- the -- the Department has complied with the statute. The Tribe has obviously filed their petition, which complies with the law. So on behalf of the children, I would ask the Court to sign the order -- the orders and the judgments.

THE COURT: Thank you. So after -- I think the questions that I had have been satisfied by counsel and -- and I believe the statue has been either fully or substantially complied with. And so I am going to proceed with signing the order and the judgment over the objection of Mother. So you know, the -- where is the order? Oh, there it is. So I've got two documents.

One is the order accepting order/judgment of the tribal customary adoption. And it's my understanding and my interpretation

of the -- the filings that the Tribe prepared their own resolution for the tribal customary adoption. And it's contained in Exhibit A attached to both the order and the judgment. I believe that is the Tribe's order/judgment in this matter.

And I believe the order and the judgment that were prepared by DHS complies with the statute, which is, for the record, 4 -- that's 419B.656. So you know, I'm just -- and I can adopt the findings that are contained in both of those documents. You wish that I put that on the record?

UNIDENTIFIED SPEAKER: Yes, please.

MS. MAY: I think --

THE COURT: I've read them both, and I believe they contain the findings that are required to be made by the Court.

MS. MAY: I think it's fine for Your Honor to simply put on the record that you adopt the findings that are contained in the orders and judgments and then sign the documents.

THE COURT: And I will do so.

MS. MAY: Thank you. My -- my one -- I wanted to make sure because I made a scrivener's error on [redacted] judgment of tribal customary adoption. On page 1, line 24 --

THE COURT: Page 1?

MS. MAY: Yes. Line 24, I mistakenly did not take out [redacted] name. That should be crossed out and by interlineation, substitute [redacted] name.

THE COURT: Okay.

MS. MAY: Thank you.

THE COURT: So I don't have -- see, I have -- oh, do you have the other one? The judgment for [redacted]

THE CLERK: I think I gave them both --

THE COURT: Oh, no. I do. I have got them both. Well, okay. So the Court, as I already stated, will adopt the findings that are contained in the -- the orders and the judgments prepared on behalf of the children, [redacted] and [redacted] and I will sign those today. Thank you.

MS. MAY: Thank you, Your Honor.

(Pause)

THE COURT: Mr. Ramirez?

MR. RAMIREZ: Yeah.

THE COURT: We're all done. You can hang up now. Thank you.

MR. RAMIREZ: Okay.

THE COURT: Okay.

(Proceedings concluded at 10:43 a.m.)

AGNES GONZALEZ
TRIBAL CHAIRPERSON

DAMION STEDMAN
VICE CHAIRPERSON

JOLIE GEORGE
TRIBAL SECRETARY

PIT RIVER TRIBE

ALEXANDRO URENA
TRIBAL TREASURER

BETTY GEORGE
RECORDING SECRETARY

ANDREW MIKE
SERGEANT AT ARMS

ELEVEN AUTONOMOUS BANDS

EXHIBIT
A
20JU06985

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe

JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316

In the Matters of [redacted]

This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

WHEREAS, the Pit River Tribe (the "Tribe") is a federally recognized Tribe with all the rights and privileges of federally recognized Indian Tribes; and

WHEREAS, the General Council is the governing body of the Tribe under the authority of their Customs and Traditions and their Governing Documents; and

WHEREAS, under its inherent powers of self-government, the Tribe is vested with the power to safeguard and promote the peace, safety, morals and general welfare of the Tribe, including the adoption and implementation of Tribal Customary Adoptions; and

WHEREAS, the Tribe finds that the protection of its children's safety, well-being, welfare, and sense of belonging; preservation of its children's identity as tribal members and members of an extended family; and preservation of the culture, religion, language, values, and relationships with the Tribe embody and promote the traditional values of the Tribe regarding the protection and care of its children. The Tribe believes it is their responsibility together with the Tribal community and extended families to protect, care for, and nurture our children; and

WHEREAS, the Tribe finds that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage, including their tribal customs, history, language, religion, values, and political systems; and

WHEREAS, because of Tribal custom and tradition, the Tribe does not believe in or adhere to termination of parental rights and finds that the state law termination of parental rights is inconsistent with Tribal customs and traditions. The Tribe does support the process of joining individuals and relatives into family relationships and expanding family resources; and

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe
JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316
In the Matters of [redacted]
This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

WHEREAS, the General Council, as the governing body of the Tribe under the authority of its Customs and Traditions and Governing Documents, has delegated authority to the elected Tribal Council of the Tribe to establish and approve, on behalf of the Tribe, Tribal Customary Adoption Agreements for Pit River Tribal children;

WHEREAS, the minors, [redacted] are the biological children of Manuelita Grace Teeman (Jacobs) ([redacted]);

WHEREAS, the minors, [redacted] (Enrollment No. 536U10326 and [redacted] (Enrollment No. 536U9868) are members of the Tribe through their mother Manuelita Grace Teeman (Jacobs), who is a Tribal member (Enrollment No. 536U7139);

WHEREAS, the minors, [redacted] are currently the subjects of Jackson County Juvenile Court, Medford Oregon, Case Nos. 20JU06985 and 20JU02316;

WHEREAS, the Court has terminated the Family Reunification Services to the birth mother, Manuelita Grace Teeman (Jacobs) and has authorized a Tribal Customary Adoption as the permanent plan for the minors [redacted];

WHEREAS, the Tribal Council of the Tribe has determined, after careful consideration regarding the best interest of the minors' birth mother, adoptive family, and the Tribe, that Tribal Customary Adoption is in the minors' best interest and has identified Christopher Anderson [redacted]) and Damaris Anderson ([redacted]) as the Tribal Customary Adoptive parents;

WHEREAS, under Oregon state law, a permanent plan of Tribal Customary Adoption can, and has been, determined to be in the children's best interests. The Tribe retains all rights and responsibilities for ordering the Tribal Customary Adoption, and all requirements under Oregon state law, including the adoptive home assessment and applicable criminal background checks. The Tribe has completed the adoptive home assessment and requested Oregon Department of Human Services to complete the criminal background checks.

NOW THEREFORE BE IT RESOLVED that through the authority delegated to it by the General Council of the Pit River Tribe, the Tribal Council authorizes this Tribal Customary Adoption Agreement, established as the permanent plan for the minors [redacted] and [redacted] in Jackson County Juvenile Court Medford, Oregon Case Nos. 20JU6985 and 20JU02316;

BE IT FURTHER RESOLVED that under this Resolution and Tribal Customary Adoption Agreement, the so-called "Stanley" fathers of [redacted], Adan Ramirez Gamboa [redacted], and [redacted], Dominque Peters [redacted], possess no enforceable legal or visitation rights with respect to either child

BE IT FURTHER RESOLVED that under this Resolution and Tribal Customary Adoption Agreement, the parental rights of Manuelita Grace Jacobs shall be modified as follows:

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe
JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316
In the Matters of [redacted]
This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316,

1. The birth mother, Manuelita Grace Jacobs, is no longer physically, legally, or financially responsible for the minors. All such responsibilities are transferred to the Tribal customary adoptive parents. However, under, the customs and traditions of the Tribe and the inviolate nature of the connection between Tribal children and Tribal parents, the birth mother shall retain the following rights:

(a) Visitation:

(i) The birth mother shall have a right of a one time a year visit with the minors, subject to reasonable controls of the adoptive parents. Adoptive parents shall have full discretion to determine what type and amount of visitation is reasonable and to determine if visitation is harmful to the minors and should not occur. Visitation may include sending pictures and updates about the children to the birth mother. In addition, adoptive parents have discretion to authorize written, electronic, or telephonic contact. Finally, adoptive parents shall have discretion to determine whether in-person or virtual visitation would be appropriate for the minors and may exercise discretion as to the time, place, and manner of any visits. Adoptive parents may require that the birth mother pay for a professional supervisor for visits should adoptive parents consider that necessary for the minors' health, safety, and well-being, or the adoptive parents may select a supervisor for the visits themselves. Birth mother shall be clean, sober, of sound mind, stable, and respectful during any contact with the minors. Any contact that adoptive parents, a paid professional supervisor, or the Tribal Social Worker consider harmful or inappropriate will be terminated immediately.

(ii) Birth mother shall have no direct contact with adoptive parents and must contact the Tribal Social Worker to arrange for visits and other contacts. Birth mother shall ensure that the Tribal Social Worker has their current contact information.

(iii) Visitation shall not include any person that is listed on any Sex Offender Tracking Registry, including, but not limited to, Oregon's Sex Offender Registry.

(iv) The birth mother must submit to the Tribal Social Worker proof of a clean drug screening completed no more than one (1) week prior to each of the first two (2) scheduled visitations that take place after the termination of jurisdiction of the state court. The birth mother is responsible for securing, paying for, and producing written results of drug screenings. If the birth mother's two (2) drug screenings show no evidence of substance abuse, no additional drug screenings shall be required of the birth mother, unless the Tribal Social Worker reasonably suspects that the birth mother engaged in substance use.

(v) The birth mother shall not be under the influence of drugs or alcohol during a scheduled visit. If the Tribal Social Worker or visitation supervisor reasonably suspects that the birth mother, an extended family member, or any other person attending the visit with the birth mother or extended family is under the influence of drugs or alcohol during a scheduled

visit, the Tribal Social Worker may terminate the visit immediately. If a visit is terminated because the Tribal Social Worker or visitation supervisor reasonably suspects that the birth mother is under the influence of drugs or alcohol, the birth mother shall submit to the Tribal Social Worker proof of clean urinalysis before scheduling of another visitation.

(vi) Cancellations/Missed Visits: If the birth mother, an extended family member, or any other person attending the visit with the birth mother or extended family cancels the scheduled visit less than forty-eight (48) hours prior to the scheduled visit time, or if the birth mother, extended family member, or any other person attending the visit with the birth mother or extended family does not arrive and make herself available for a scheduled visit, the adoptive parents and Tribal Social Worker shall have no obligation to schedule a make-up visit.

(b) Inheritance: The minors possess certain rights of inheritance, which may be controlled by applicable federal law, including the American Indian Probate Reform Act of 2004, or by Tribal probate laws enacted now or in the future. The Tribe finds that the minors will benefit from maintaining rights of inheritance by and between them and their birth mother.

2. Extended Family Members: Visitation between the minors and other birth relatives not specifically identified by relationship can occur at the discretion of the adoptive parents. Adoptive parents shall have full discretion as to time, place, and manner of visitation, but visits shall not be unreasonably withheld. Adoptive parents may terminate or prevent any contact they consider harmful or inappropriate.

3. The Adoptive Parents: Upon approval of the Agreement by the Tribal Council and recognition by the Jackson County Juvenile Court consistent with Oregon state law, the adoptive parents will become the legal parents of the minors [redacted] The adoptive parents shall have the following rights and obligations as defined below:

(a) Financial Support: The adoptive parents shall be completely financially responsible for supporting the minor and may use any assistance offered by the United States, Oregon or the Tribe.

(b) Medical/Dental/Mental Health Care: The adoptive parents shall be completely responsible for all medical, dental, and mental health care decisions for the minor. The minor shall be eligible for all benefits provided to Indian children and Tribal members.

(c) Educational rights: The adoptive parents have discretion to make all decisions regarding the minor's education for her best interests. The minor is eligible for all benefits available to Indian children and Tribal members.

(d) Inheritance: The adoptive parents extend full rights of inheritance onto the minor under Oregon, Tribal, and Federal Law.

(e) Receipt of benefits: For purposes of Tribal, State, and Federal benefits, including but not limited to, financial, insurance, educational, cultural, and citizenship benefits, the minor is the minor child of the adoptive parents. The minor will be eligible for all benefits provided to Indian children and Tribal members.

(f) Travel: The adoptive parents shall have absolute authority to determine any circumstances under which the minors might travel outside their state of residence.

(g) Residency: The adoptive parents will notify the Tribe at least sixty (60) days in advance of any change in the minors' residence. They will keep the Tribe notified of their current contact information. A change of residence does not alter the obligations of the adoptive parents contained in this Agreement, except that if the adoptive parents move, the adoptive parents and the Tribe understand and agree that the visitation requirements can be modified. If a mutual agreement is not reached, the adoptive parents and birth mother will engage in dispute resolution to establish a modified visitation schedule.

(h) Incapacity or Unavailability of Adoptive Parents: In the event that the adoptive parents become incapacitated or unavailable in the future, the minors will be placed temporarily with Belinda Brown [redacted]) the minors' maternal grandmother. In case of the permanent incapacity or unavailability of both adoptive parents, this Agreement will apply to the above-mentioned person(s) to provide permanent care for the minors.

(i) Disclosure of Adoption to Minors: The adoptive parents retain the right to disclose and explain to the minors the background and history of how she came to be in the care of the adoptive parents and the fact that they are adopted. The parties all understand and agree that the minors may be aware that the adoptive parents are not their birth parents; however, all parties agree that when, at the appropriate developmental time, the circumstances of the minors' family creation are to be disclosed by adult family members, such disclosure shall be initially made by the adoptive parents.

(j) Cultural Support: The adoptive parents will work to keep the minors closely connected to their Tribal heritage and will provide them with every opportunity to develop a strong cultural identity as members of the Tribe. The adoptive parents will make every effort to attend or have the minors attend all significant Tribal Community events.

(k) Quarterly and Annual Reports: The adoptive parents will provide reports to the Tribe's ICWA Program on a quarterly and annual basis. The reports shall include updates and information regarding the minors' development, educational progress, and any major medical concerns.

(l) Birth Certificate:

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe
JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316
In the Matters of [redacted]
This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

a. The minors' birth certificates shall retain the names of their birth parents; however, the adoptive parents are authorized to amend the minors' birth certificates consistent with Oregon state law;

b. The minors' names will change under this Agreement and will become:

[redacted]

[redacted]

4. Dispute Resolution: Adoptive parents and birth mother shall make a good faith effort to resolve any disputes informally among themselves or through the Tribal Social Worker. In the event the parties cannot reach a resolution, either the adoptive parents or the birth mother may submit the matter to a neutral mediator. To initiate the mediation process, a party should contact the Tribal Council in writing with a mediation request. The Tribal Council will select a mediator through the Judicial Arbitration Mediation Services (JAMS) or through another authorized mediation provider. Both parties shall participate in a good faith effort to resolve the dispute through mediation. The Tribe will pay the reasonable costs of the mediation.

5. Forum for Enforcement of Agreement: Jackson County Juvenile Court, Medford Oregon, is the proper forum to bring any subsequent legal action regarding enforcing the terms of this Agreement. Enforcement actions may only be brought in the same Court after the parties have made good faith efforts to resolve the dispute using the requirements set out in paragraph four (4) to address the dispute and any other requirements of Oregon state law.

6. Severability: This Agreement will be enforced to achieve a practical result consistent with the intent of this Agreement if any provision is eliminated or declared void by court of competent jurisdiction.

7. All rights not specified herein shall vest with the adoptive parents.

RESOLUTION NO: 23-01-11
DATE: JANUARY 12, 2023
SUBJECT: Tribal Council Resolution and Tribal Customary Adoption Agreement of the Pit River Tribe
JACKSON COUNTY JUVENILE COURT (MEDFORD OREGON) NOS. 20JU06985 AND 20JU02316
In the Matters of [redacted]
This Resolution and Tribal Customary Adoption Agreement amend and supersede Resolution No. 22-07-18 dated July 22, 2022, in the above-referenced Jackson County Juvenile Court (Medford Oregon) Nos. 20JU6985 and 20JU02316;

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the under-signed Tribal Chairperson, Agnes Gonzalez of the Pit River Tribe, do hereby certify the Pit River Tribal Council is composed of eleven autonomous bands of which 11 were present, constituting a quorum at a regular scheduled, noticed, convened and held meeting this *January 12, 2023,* and 11 Tribal Council present, to approve this resolution adopted by a vote of 8 yes 0 no 3 abstaining, and that said resolution has not been rescinded in any way.

Agnes Gonzalez — 1-12-2023
Agnes Gonzalez, Tribal Chairperson — Date

Jolie George — 1-12-2023
Jolie George, Tribal Secretary — Date

Tribal Council Member Signatures:

Ajumawi: [signature] Date: 1/12/23
Aporige: _____ Date: _____
Astarawi: [signature] Date: 1-12-2023
Atsugewi: [signature] Date: 1-12-2023
Atwamsini: [signature] Date: 1-12-2023
Hammawi: [signature] Date: 1/12/23
Hewisedawi: _____ Date: _____
Illmawi: [signature] Date: 1/12/2023
Itsatawi: [signature] Date: 1/12/23
Kosealekte: _____ Date: _____
Madesi: [signature] Date: _____

AJUMAWI APORIGE ASTARAWI ATSUGEWI ATWAMSINI HAMMAWI HEWISEDAWI ILLMAWI ITSATAWI KOSEALEKTE

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR JACKSON COUNTY

Juvenile Department

In the Matter of

[redacted]

A Child.

Case No. 20JU06985

ORDER ACCEPTING ORDER/JUDGMENT OF TRIBAL CUSTOMARY ADOPTION

This matter came on for hearing on March 8, 2023, before the Honorable Timothy Gerking, Circuit Court Judge. ODHS appeared through Tia Jaggers, caseworker, and Rebecca May, Senior Assistant Attorney General. Manuelita Jacobs, mother of the above-named child, appeared in person and with her attorney, Risa Hall. Adan Ramirez Gamboa, father of the above-named child, appeared remotely and with his attorney, Sarah Robbins. The tribe appeared through Jay Petersen. Also present was Vance Waliser, child's attorney. Rebecca Orf, CASA, also appeared.

Pursuant to ORS 419B.656(3)(a) the juvenile court shall accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe if the criteria set forth in ORS 419B.656(3)(a)(C) are met. On January 31, 2023, the Indian child's tribe filed an Agreement and Resolution of Tribal Customary Adoption for the above-named child. The juvenile court has reviewed the attached Order and Resolution of Tribal Customary Adoption attached here as Exhibit #1. The court's findings or determinations outlined below are based on the Agreement and Resolution of Tribal Customary Adoption and the Tribal Customary Adoption Home Study reviewed by the court.

The court announced its decision on the record.

THE COURT FINDS:

PHONE (541) 414-1030
FAX (541) 245-9408
TTY (800) 735-2900
Email rebecca z may@doj state or us

1. A proper inquiry under the Oregon Indian Child Welfare Act and ORS 419B.636 has been conducted and [redacted] is an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.636.

2. The child is an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.603(5).

3. The court has jurisdiction over the child, the subject matter and the parties and the court's exercise of jurisdiction is proper.

4. The Pit River Tribe supports the plan of tribal customary adoption for the purpose of adoption for this Indian child. On July 28, 2022 the permanency plan for the child was changed to Tribal Customary Adoption.

5. Tribal Customary Adoption is an appropriate permanent placement option for the Indian child.

6. Tribal Customary Adoption is in in the Indian child's best interest pursuant to ORS 419B.612.

7. ODHS has provided the Indian child's tribe and proposed tribal customary adoptive parent(s) with a written report on the Indian child including all the information required by ORS 419B.656(2)(a).

8. The tribal customary adoption home study meets the requirements of ORS 419B.656(2)(b) as follows:

   a. Includes federal criminal background checks, including reports of child abuse, that meet the standards applicable under the lase of this state for all other proposed adoptive placements.

   b. Uses the prevailing social and cultural standards of the Indian child's tribe as the standards for evaluation of the proposed adoptive placement.

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c. Includes an evaluation of the background, safety and health information of the proposed adoptive placement, including the biological, psychological and social factors or the proposed adoptive placement and assessment of the commitment, capability and suitability of the proposed adoptive placement to meet the Indian child's needs.

9. The circumstances outlined in ORS 419B.656(2)(c) are not present.

10. The court has reviewed the Agreement and Resolution of Tribal Customary Adoption and finds that it includes a full description of the modification of the legal relationship of the Indian child's parent(s) and the child, including contact, if any, between the child and the parents, the responsibilities retained by the parent(s)/Indian custodian and the rights of inheritance of the parents and the child.

11. The court has reviewed the Agreement and Resolution of Tribal Customary Adoption and finds that it conforms that with ORS 419B.656(3)(a)(C) including a full description of the following:

a. The modification of the legal relationship of the Indian child's parent(s) and the child, including contact, if any, between the child and the parents.

b. The responsibilities retained by the parents.

c. The rights of inheritance of the parents and the child.

12. The attached Agreement and Resolution of Tribal Customary Adoption includes a description of the Indian child's legal relationship with the tribe.

13. The attached Agreement and Resolution of Tribal Customary Adoption does not include any child support obligation from the Indian child's parents.

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TTY (800) 735-2900
Email rebecca z may@doj state or us

IT IS THEREFORE ORDERED that the Agreement and Resolution of Tribal Customary Adoption dated January 12, 2023 is accepted by this court and made a part of the record of the case in this above-entitled matter.

3/8/23

Timothy Gerking
Circuit Court Judge

Submitted by:
Rebecca May, OSB #074571
Senior Assistant Attorney General
Of Attorneys for Petitioner

PHONE (541) 414-1030
FAX (541) 245-9408
TTY (800) 735-2900
Email rebecca z may@doj state or us

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR JACKSON COUNTY

Juvenile Department

In the Matter of [redacted] A Child.	Case No. 20JU06985 JUDGMENT OF TRIBAL CUSTOMARY ADOPTION

This matter came on for hearing on March 8, 2023, before the Honorable Timothy Gerking, Circuit Court Judge. ODHS appeared through Tia Jaggers, caseworker, and Rebecca May, Senior Assistant Attorney General. Manuelita Jacobs, mother of the above-named child, appeared in person and with her attorney, Risa Hall. Adan Ramirez Gamboa, father of the above-named child, appeared in person with his attorney, Sarah Robbins. The tribe appeared through Jay Petersen. Also present was Vance Waliser, child's attorney. Rebecca Orf, CASA, also appeared.

The court's findings or determinations are based on the Agreement and Resolution of Tribal Customary Adoption submitted by the tribe, the Order Accepting the Tribe's Agreement and Resolution of Tribal Customary Adoption and the Tribal Customary Adoption Home Study reviewed by the court.

The court announced its decision on the record.

THE COURT FINDS:

1. A proper inquiry under the Oregon Indian Child Welfare Act and ORS 419B.636 has been conducted and [redacted] is an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.636.

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Department of Justice
1555 E McAndrews Rd, Ste 200
Medford, Oregon 97504

PHONE (541) 414-1030
FAX (541) 245-9408
TTY (503) 378-5938
Email rebecca z may@doj state or us

2. The child is an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.603(5).

3. The court has jurisdiction over the child, the subject matter and the parties and the court's exercise of jurisdiction is proper.

3. The Pit River Tribe supports the plan of tribal customary adoption for the purpose of adoption for this Indian child. On June 28, 2022, the permanency plan for the child was changed to Tribal Customary Adoption.

4. On January 31, 2023, the Pit River Tribe filed with this court a copy of the tribe's Agreement and Resolution of Tribal Customary Adoption. On March 8, 2023, this court signed an Order Accepting the Tribe's Order/Judgment of Tribal Customary Adoption. Copies of both orders are attached and incorporated herein as Exhibit A.

5. The child's birth name is [redacted] and the child's name after adoption will be [redacted]

6. The names and addresses of the biological parent(s) are: Manuelita Grace Jacobs, 4277 Rogue River Highway Space 5, Grants Pass, Oregon, 97527; and Adan Ramirez Gamboa, 787 W. 8th Street, Medford, Oregon, 97504.

7. The names and addressed of the adoptive parents are filed separately as a confidential attachment.

8. The name and contact information for any agency(ies) having files or information relating to the adoption include: Oregon Department of Human Services, 909 Royal Ct. Medford, Oregon 97504.

9. The child is a member of the Pit River Tribe.

10. The residence and domicile of the Indian child is in substitute care with Oregon Department of Human Services. The Indian child is not a ward of tribal court.

11. ODHS has complied with the notice requirements under the Oregon Indian Child Welfare Act, ORS 419B.639.

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12. The adoptive placement complies with the placement preferences of the Oregon Indian Child Welfare Act under ORS 419B.654.

13. The court is satisfied as to the identity and relations of the persons, that the proposed tribal customary adoptive parent(s) are of sufficient ability to bring up the Indian child and furnish suitable nurture and education and the requirements of Oregon Indian Child Welfare Act have been met.

14. The court finds that it is fit and proper that the Tribal Customary Adoption be effected.

IT IS THEREFORE ORDERED THAT:

1. The Agreement and Resolution of Tribal Customary Adoption is hereby effectuated.

2. Any parental rights or obligations not specifically retained by the Indian child's parent(s) in the Agreement and Resolution of Tribal Customary Adoption are presumed to transfer to the tribal customary adoptive parent(s). The child's legal relationship with the child's tribe is tribal member.

3. Upon entry of this judgment, the court shall provide to the United States Secretary of the Interior copies of this judgment and any document signed by a consenting parent requesting anonymity.

4. Upon the entry of this judgment the court's jurisdiction over the Indian child terminates as provided in ORS 419B.328(2)(d).

5. The Oregon Health Authority Vital Records Department shall issue an amended birth record consistent with this judgment.

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Department of Justice
1555 E McAndrews Rd, Ste 200
Medford, Oregon 97504

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TTY (503) 378-5938
Email rebecca z may@doj state or us

THE COURT FURTHER ORDERS that ODHS and its counsel are authorized to disclose a copy of this judgment as necessary to facilitate the child's adoption.

3/8/23

Timothy Gerking
Circuit Court Judge

Submitted by:

Rebecca May #074571
Senior Assistant Attorney General
Of Attorneys for Petitioner

Department of Justice
1555 E McAndrews Rd, Ste 200
Medford, Oregon 97504

PHONE (541) 414-1030
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR JACKSON COUNTY

Juvenile Department

In the Matter of [redacted] A Child.	Case No. 20JU02316 ORDER ACCEPTING ORDER/JUDGMENT OF TRIBAL CUSTOMARY ADOPTION

This matter came on for hearing on March 8, 2023, before the Honorable Timothy Gerking, Circuit Court Judge. ODHS appeared through Tia Jaggers, caseworker, and Rebecca May, Senior Assistant Attorney General. Manuelita Jacobs, mother of the above-named child, appeared in person and with her attorney, Risa Hall. The tribe appeared through Jay Petersen. Also present was Vance Waliser, child's attorney. Rebecca Orf, CASA, also appeared. Dominique Peters, father of the child, is unrepresented and did not appear.

Pursuant to ORS 419B.656(3)(a) the juvenile court shall accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe if the criteria set forth in ORS 419B.656(3)(a)(C) are met. On January 31, 2023, the Indian child's tribe filed an Agreement and Resolution of Tribal Customary Adoption for the above-named child. The juvenile court has reviewed the attached Order and Resolution of Tribal Customary Adoption attached here as Exhibit #1. The court's findings or determinations outlined below are based on the Agreement and Resolution of Tribal Customary Adoption and the Tribal Customary Adoption Home Study reviewed by the court.

The court announced its decision on the record.

///

PHONE (541) 414-1030
FAX. (541) 245-9408
TTY (800) 735-2900
Email rebecca z may@doj state or us

THE COURT FINDS:

1. A proper inquiry under the Oregon Indian Child Welfare Act and ORS 419B.636 has been conducted and [redacted] is an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.636.

2. The child is an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.603(5).

3. The court has jurisdiction over the child, the subject matter and the parties and the court's exercise of jurisdiction is proper.

4. The Pit River Tribe supports the plan of tribal customary adoption for the purpose of adoption for this Indian child. On July 28, 2022 the permanency plan for the child was changed to Tribal Customary Adoption.

5. Tribal Customary Adoption is an appropriate permanent placement option for the Indian child.

6. Tribal Customary Adoption is in in the Indian child's best interest pursuant to ORS 419B.612.

7. ODHS has provided the Indian child's tribe and proposed tribal customary adoptive parent(s) with a written report on the Indian child including all the information required by ORS 419B.656(2)(a).

8. The tribal customary adoption home study meets the requirements of ORS 419B.656(2)(b) as follows:

   a. Includes federal criminal background checks, including reports of child abuse, that meet the standards applicable under the lase of this state for all other proposed adoptive placements.

   b. Uses the prevailing social and cultural standards of the Indian child's tribe as the standards for evaluation of the proposed adoptive placement.

///

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TTY (800) 735-2900
Email rebecca z may@doj state or us

c. Includes an evaluation of the background, safety and health information of the proposed adoptive placement, including the biological, psychological and social factors or the proposed adoptive placement and assessment of the commitment, capability and suitability of the proposed adoptive placement to meet the Indian child's needs.

9. The circumstances outlined in ORS 419B.656(2)(c) are not present.

10. The court has reviewed the Agreement and Resolution of Tribal Customary Adoption and finds that it includes a full description of the modification of the legal relationship of the Indian child's parent(s) and the child, including contact, if any, between the child and the parents, the responsibilities retained by the parent(s)/Indian custodian and the rights of inheritance of the parents and the child.

11. The court has reviewed the Agreement and Resolution of Tribal Customary Adoption and finds that it conforms that with ORS 419B.656(3)(a)(C) including a full description of the following:

a. The modification of the legal relationship of the Indian child's parent(s) and the child, including contact, if any, between the child and the parents.

b. The responsibilities retained by the parents.

c. The rights of inheritance of the parents and the child.

12. The attached Agreement and Resolution of Tribal Customary Adoption includes a description of the Indian child's legal relationship with the tribe.

13. The attached Agreement and Resolution of Tribal Customary Adoption does not include any child support obligation from the Indian child's parents.

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PHONE (541) 414-1030
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Email rebecca z may@doj state or us

IT IS THEREFORE ORDERED that the Agreement and Resolution of Tribal Customary Adoption dated January 12, 2023 is accepted by this court and made a part of the record of the case in this above-entitled matter.

3/8/23

Timothy Gerking
Circuit Court Judge

Submitted by:
Rebecca May, OSB #074571
Senior Assistant Attorney General
Of Attorneys for Petitioner

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR JACKSON COUNTY

Juvenile Department

In the Matter of [redacted] A Child.	Case No. 20JU02316 JUDGMENT OF TRIBAL CUSTOMARY ADOPTION

This matter came on for hearing on March 8, 2023, before the Honorable Timothy Gerking, Circuit Court Judge. ODHS appeared through Tia Jaggers, caseworker, and Rebecca May, Senior Assistant Attorney General. Manuelita Jacobs, mother of the above-named child, appeared in person and with her attorney, Risa Hall. The tribe appeared through Jay Petersen. Also present was Vance Waliser, child's attorney. Rebecca Orf, CASA, also appeared. Dominique Peters, father of the above-named child, did not appear.

The court's findings or determinations are based on the Agreement and Resolution of Tribal Customary Adoption submitted by the tribe, the Order Accepting the Tribe's Agreement and Resolution of Tribal Customary Adoption and the Tribal Customary Adoption Home Study reviewed by the court.

The court announced its decision on the record.

THE COURT FINDS:

1. A proper inquiry under the Oregon Indian Child Welfare Act and ORS 419B.636 has been conducted and [redacted] an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.636.

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Department of Justice
1555 E McAndrews Rd, Ste 200
Medford, Oregon 97504

PHONE (541) 414-1030
FAX (541) 245-9408
TTY (503) 378-5938
Email rebecca.z.may@doj.state.or.us

2. The child is an Indian child within the meaning of the Oregon Indian Child Welfare Act, ORS 419B.603(5).

3. The court has jurisdiction over the child, the subject matter and the parties and the court's exercise of jurisdiction is proper.

3. The Pit River Tribe supports the plan of tribal customary adoption for the purpose of adoption for this Indian child. On June 28, 2022, the permanency plan for the child was changed to Tribal Customary Adoption.

4. On January 31, 2023, the Pit River Tribe filed with this court a copy of the tribe's Agreement and Resolution of Tribal Customary Adoption. On March 8, 2023, this court signed an Order Accepting the Tribe's Order/Judgment of Tribal Customary Adoption. Copies of both orders are attached and incorporated herein as Exhibit A.

5. The child's birth name is [redacted] and the child's name after adoption will be [redacted]

6. The names and addresses of the biological parent(s) are: Manuelita Grace Jacobs, 4277 Rogue River Highway Space 5, Grants Pass, Oregon, 97527; and Dominique Peters, General Delivery, Bend, Oregon.

7. The names and addressed of the adoptive parents are filed separately as a confidential attachment.

8. The name and contact information for any agency(ies) having files or information relating to the adoption include: Oregon Department of Human Services, 909 Royal Ct. Medford, Oregon 97504.

9. The child is a member of the Pit River Tribe.

10. The residence and domicile of the Indian child is in substitute care with Oregon Department of Human Services. The Indian child is not a ward of tribal court.

11. ODHS has complied with the notice requirements under the Oregon Indian Child Welfare Act, ORS 419B.639.

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12. The adoptive placement complies with the placement preferences of the Oregon Indian Child Welfare Act under ORS 419B.654.

13. The court is satisfied as to the identity and relations of the persons, that the proposed tribal customary adoptive parent(s) are of sufficient ability to bring up the Indian child and furnish suitable nurture and education and the requirements of Oregon Indian Child Welfare Act have been met.

14. The court finds that it is fit and proper that the Tribal Customary Adoption be effected.

IT IS THEREFORE ORDERED THAT:

1. The Agreement and Resolution of Tribal Customary Adoption is hereby effectuated.

2. Any parental rights or obligations not specifically retained by the Indian child's parent(s) in the Agreement and Resolution of Tribal Customary Adoption are presumed to transfer to the tribal customary adoptive parent(s). The child's legal relationship with the child's tribe is tribal member.

3. Upon entry of this judgment, the court shall provide to the United States Secretary of the Interior copies of this judgment and any document signed by a consenting parent requesting anonymity.

4. Upon the entry of this judgment the court's jurisdiction over the Indian child terminates as provided in ORS 419B.328(2)(d).

5. The Oregon Health Authority Vital Records Department shall issue an amended birth record consistent with this judgment.

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THE COURT FURTHER ORDERS that ODHS and its counsel are authorized to disclose a copy of this judgment as necessary to facilitate the child's adoption.

3/8/23

Timothy Gerking
Circuit Court Judge

Submitted by:

Rebecca May #074571
Senior Assistant Attorney General
Of Attorneys for Petitioner

Department of Justice
1555 E McAndrews Rd, Ste 200
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APPENDIX INDEX

25 USC § 1901

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 tribes" 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.

25 USC § 1902

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.

25 USC § 1903

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 section 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.

25 USC § 1911

(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."

25 USC § 1912

(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."

25 USC § 1913

(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."

25 USC § 1914

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.

ORS 419B.656

Tribal customary adoption; rules; forms. (1) As used in this section, "tribal customary adoption" means the adoption of an Indian child, by and through the tribal custom, traditions or law of the child's tribe, and which may be effected without the termination of parental rights.

(2) If the juvenile court determines that tribal customary adoption is in the best interests, as described in ORS 419B.612, of a ward who is an Indian child and the child's tribe consents to the tribal customary adoption:

(a) The Department of Human Services shall provide the Indian child's tribe and proposed tribal customary adoptive parents with a written report on the Indian child, including, to the extent not otherwise prohibited by state or federal law, the medical background, if known, of the child's parents, and the child's educational information, developmental history and medical background, including all known diagnostic information, current medical reports and any psychological evaluations.

(b) The court shall accept a tribal customary adoptive home study conducted by the Indian child's tribe if the home study:

(A) Includes federal criminal background checks, including reports of child abuse, that meet the standards applicable under the laws of this state for all other proposed adoptive placements;

(B) Uses the prevailing social and cultural standards of the Indian child's tribe as the standards for evaluation of the proposed adoptive placement;

(C) Includes an evaluation of the background, safety and health information of the proposed adoptive placement, including the biological, psychological and social factors of the proposed adoptive placement and assessment of the commitment, capability and suitability of the proposed adoptive placement to meet the Indian child's needs; and

(D) Except where the proposed adoptive placement is the Indian child's current foster care placement, is completed prior to the placement of the Indian child in the proposed adoptive placement.

(c)(A) Notwithstanding subsection (3) of this section, the court may not accept the tribe's order or judgment of tribal customary adoption if any adult living

in the proposed adoptive placement has a felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence.

(B) As used in this paragraph, "crime involving violence" has the meaning described by the Department of Human Services by rule, which must include rape, sexual assault or homicide, but may not include other physical assault or battery.

(3)(a) The juvenile court shall accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe if:

(A) The court determines that tribal customary adoption is an appropriate permanent placement option for the Indian child;

(B) The court finds that the tribal customary adoption is in the Indian child's best interests, as described in ORS 419B.612; and

(C) The order or judgment:

(i) Includes a description of the modification of the legal relationship of the Indian child's parents or Indian custodian and the child, including contact, if any, between the child and the parents or Indian custodian, responsibilities of the parents or Indian custodian and the rights of inheritance of the parents and child;

(ii) Includes a description of the Indian child's legal relationship with the tribe; and

(iii) Does not include any child support obligation from the Indian child's parents or Indian custodian.

(b) The court shall afford full faith and credit to a tribal customary adoption order or judgment that is accepted under this subsection.

(4)(a) Notwithstanding ORS 109.276, a tribal customary adoptive parent is not required to file a petition for adoption when the court accepts a tribal customary adoption order or judgment under subsection (3) of this section.

(b) The tribal customary adoptive parent shall file an Adoption Summary and Segregated Information Statement with accompanying exhibits as provided under ORS 109.287.

(c) Notwithstanding ORS 21.135, the clerk of the juvenile court may not charge or collect first appearance fees for a proceeding under this subsection.

(d) After accepting a tribal customary adoption order or judgment under subsection (3) of this section, the juvenile court that accepted the order or judgment shall proceed as provided in ORS 109.350 and enter a judgment of adoption. In addition to the requirements under ORS 109.350, the judgment of adoption must include a statement that any parental rights or obligations not specified in the judgment are transferred to the tribal customary adoptive parents and a description of any parental rights or duties retained by the Indian child's parents, the rights of inheritance of the child and the child's parents and the child's legal relationship with the child's tribe.

(e) A tribal customary adoption under this section does not require the consent of the Indian child or the child's parents.

(f) Upon the court's entry of a judgment of adoption under this section, the court's jurisdiction over the Indian child terminates as provided in ORS 419B.328 (2)(d).

(g) Records of adoptions filed and established under this subsection shall be kept in accordance with, and are subject to, ORS 109.289.

(5) Any parental rights or obligations not specifically retained by the Indian child's parents in the juvenile court's adoption judgment are conclusively presumed to transfer to the tribal customary adoptive parents.

(6) This section shall remain operative only to the extent that compliance with the provisions of this section do not conflict with federal law as a condition of receiving funding under Title IV-E of the Social Security Act.

(7)(a) The Department of Human Services shall adopt rules requiring that any report regarding a ward who is an Indian child that the department submits to the court, including home studies, placement reports or other reports required under ORS chapters 109, 418, 419A and 419B, must address tribal customary adoption as a permanency option.

(b) The Chief Justice of the Supreme Court may make rules necessary for the court processes to implement the provisions of this section.

(c) The State Court Administrator may prepare necessary forms for the implementation of this section.

ORS 419B.612

Best interests of Indian child. In a child custody proceeding involving an Indian child, when making a determination regarding the best interests of the child under ORS 109.266 to 109.410 or 419B.600 to 419B.654, ORS chapter 419B, the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) or any regulations or rules regarding ORS 109.266 to 109.410 or 419B.600 to 419B.654, ORS chapter 419B, or the Indian Child Welfare Act, the court shall, in consultation with the Indian child's tribe, consider the following:

(1) The protection of the safety, well-being, development and stability of the Indian child;

(2) The prevention of unnecessary out-of-home placement of the Indian child;

(3) The prioritization of placement of the Indian child in accordance with the placement preferences under ORS 419B.654;

(4) The value to the Indian child of establishing, developing or maintaining a political, cultural, social and spiritual relationship with the Indian child's tribe and tribal community; and

(5) The importance to the Indian child of the Indian tribe's ability to maintain the tribe's existence and integrity in promotion of the stability and security of Indian children and families.

ORS 419B.639

Notice to tribe in emergency proceeding; notice in other proceedings; form and timing of notice; exception. (1)(a) In an emergency proceeding, if there is reason to know that a child is an Indian child and the nature of the emergency allows, the Department of Human Services must notify by telephone, electronic mail, facsimile or other means of immediate communication any tribe of which the child is or may be a member.

(b) Notification under this subsection must include the basis for the child's removal, the time, date and place of the initial hearing and a statement that the tribe has the right to participate in the proceeding as a party or in an advisory capacity under ORS 419B.875.

(2) Except as provided in subsection (1) of this section, if there is reason to know that a child alleged to be within the court's jurisdiction under ORS chapter 109, 418, 419A or 419B is an Indian child and notice is required, the party providing notice must:

(a) Promptly send notice of the proceeding as described in subsection (3) of this section; and

(b) File a copy of each notice sent under this section with the court, together with any return receipts or other proof of service.

(3) Notice under subsection (2) of this section must:

(a) Be sent to:

(A) Each tribe of which the child may be a member or of which the Indian child may be eligible for membership;

(B) The child's parents;

(C) The child's Indian custodian, if applicable; and

(D) The appropriate United States Bureau of Indian Affairs Regional Director listed in 25 C.F.R. 23.11(b), if the identity or location of the child's parents, Indian custodian or tribe cannot be ascertained.

(b) Be sent by registered or certified mail, return receipt requested.

(c) Be in clear and understandable language and include the following:

(A) The child's name, date of birth and place of birth;

(B) To the extent known, all names, including maiden, married and former names or aliases, of the child's parents, the parents' birthplaces and tribal enrollment numbers;

(C) To the extent known, the names, dates of birth, places of birth and tribal enrollment information of other direct lineal ancestors of the child;

(D) The name of each Indian tribe of which the child is a member or in which the Indian child may be eligible for membership;

(E) If notice is required to be sent to the United States Bureau of Indian Affairs under paragraph (a) of this subsection, to the extent known, information regarding the child's direct lineal ancestors, an ancestral chart for each biological parent, and the child's tribal affiliations and blood quantum;

(F) A copy of the petition or motion initiating the proceeding and, if a hearing has been scheduled, information on the date, time and location of the hearing;

(G) The name of the petitioner and the name and address of the petitioner's attorney;

(H) In a proceeding under ORS chapter 419B:

(i) A statement that the child's parent or Indian custodian has the right to participate in the proceeding as a party to the proceeding under ORS 419B.875;

(ii) A statement that the child's tribe has the right to participate in the proceeding as a party or in an advisory capacity under ORS 419B.875;

(iii) A statement that if the court determines that the child's parent or Indian custodian is unable to afford counsel, the parent or Indian custodian has the right to court-appointed counsel; and

(iv) A statement that the child's parent, Indian custodian or tribe has the right, upon request, to up to 20 additional days to prepare for the proceeding;

(I) In a proceeding under ORS 109.266 to 109.410, a statement that the child's tribe may intervene in the proceeding;

(J) A statement that the child's parent, Indian custodian or tribe has the right to petition the court to transfer the child custody proceeding to the tribal court;

(K) A statement describing the potential legal consequences of the proceeding on the future parental and custodial rights of the parent or Indian custodian;

(L) The mailing addresses and telephone numbers of the court and contact information for all parties to the proceeding and individuals notified under this section; and

(M) A statement that the information contained in the notice is confidential and that the notice should not be shared with any person not needing the information to exercise rights under ORS 419B.600 to 419B.654.

(4) If there is a reason to know that the Indian child's parent or Indian custodian has limited English proficiency and may not understand the contents of the notice under subsection (2) of this section, the court must provide language access services as required by Title VI of the Civil Rights Act of 1964 and other applicable federal and state laws. If the court is unable to secure translation or interpretation support, the court shall contact or direct a party to contact the Indian child's tribe or the local office of the United States Bureau of Indian Affairs for assistance identifying a qualified translator or interpreter.

(5)(a) A hearing that requires notice under subsection (2) of this section may not be held until at least 10 days after the latest of receipt of the notice by the Indian child's parent, Indian custodian or tribe or, if applicable, the United States Bureau of Indian Affairs. Upon request, the court shall grant the Indian child's parent, Indian custodian or tribe up to 20 additional days from the date upon which notice was received by the parent, Indian custodian or tribe to prepare for participation in the hearing.

(b) Nothing in this subsection prevents a court at an emergency proceeding before the expiration of the waiting period described in paragraph (a) of this

subsection from reviewing the removal of an Indian child from the Indian child's parent or Indian custodian to determine whether the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child.

CERTIFICATE OF COMPLIANCE WITH ORAP 9.17

Brief length

I certify (1) that this Brief on the Merits of Petitioner on Review complies with the word-count limitation in ORAP 5.05(1)(b); and (2) that the word count of this brief (as described in ORAP 5.05(1)(a)) is 9,589 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text and footnotes as required by ORAP 5.05(3)(b).

NOTICE OF FILING AND PROOF OF SERVICE

I certify that I directed the original Brief on the Merits of Petitioner on Review to be filed with the Appellate Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301, on April 8, 2024.

I further certify that I served this Brief on the Merits of Petitioner on Review on April 8, 2024, upon Benjamin Gutman #160599, Solicitor General, and Erin K. Galli #952696, Assistant Attorney-in-Charge, Collateral Remedies, 1162 Court Street NE, Salem, OR 97301, attorneys for Respondent on Review Department of Human Services, by emailing a true copy to AppellateService@doj.state.or.us and erin.k.galli@doj.state.or.us.

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Furthermore, I certify that I served the foregoing Brief on the Merits of Petitioner on Review on April 8, 2024, by mailing first class true copies to the following:

Attorney of Respondents on Review, S. H. A. and K. O. A.:
Vance Michael Waliser
915 W 10th Street
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IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of S. H. A., aka S. H. P., aka S. T., aka S. T., a Child. DEPARTMENT OF HUMAN SERVICES, Petitioner-Respondent, Respondent on Review, and S. H. A., aka S. H. P., aka S. T., aka S. T., and Pit River Tribe, Respondents on Review, v. M. G. J., Appellant, Petitioner on Review.	Jackson County Circuit Court Case No. 20JU02316 Petition No. N/A **S070679** A181035 (Control) CONFIDENTIAL REPLY BRIEF UNDER ORS 419A.255
In the Matter of K. O. A., aka P. J. R. J., A Child. DEPARTMENT OF HUMAN SERVICES, Petitioner-Respondent, Respondent on Review, and K. O. A., aka P. J. R. J., and Pit River Tribe, Respondents on Review, v. M. G. J., Appellant, Petitioner on Review.	Jackson County Circuit Court Case No. 20JU06985 Petition No. N/A A181037

EXPEDITED JUVENILE DEPENDENCY CASE (NOT TPR)
REPLY BRIEF ON THE MERITS OF PETITIONER ON REVIEW

Review of the Decision of the Court of Appeals
on an Appeal from the Judgment of the Circuit Court for Jackson County
Honorable Timothy C. Gerking, Judge

Affirmed With Opinion: November 08, 2023
Author of Opinion: Kamins, Judge
Before Egan, Presiding Judge, and Kamins, Judge, and DeVore, Senior Judge.

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REPLY BRIEF ON THE MERITS OF PETITIONER ON REVIEW

SUMMARY OF ARGUMENT

Mother's reading affords her Indian family the protections it deserves, comports with common sense, gives effect to all the words of the Oregon statutes and ICWA, and raises no equal protection concerns.

Respondents contend that Congress and the Oregon Legislative Assembly—to prevent the unnecessary breakup of Indian families—would readily embrace what happened in this case: An Oregon circuit court entered judgments divesting an Indian mother of the custody, companionship, and control of her Indian children over the Indian mother's objection, without a hearing conducted in accord with ICWA, and without any proof of any quantum that the Indian mother was presently unfit.

Notwithstanding that other similarly situated mothers would be entitled to, minimally, proof of present unfitness in accord with the rules of evidence before an Oregon court would be authorized to extract such deprivations, respondents contend that the state legislature and Congress would approve of depriving *this mother* of basic due process protections and the heightened protections of ICWA. That is so, respondents contend, because the Oregon court's conduct of making statutorily required determinations, accepting a Tribal Customary Adoption (TCA) resolution, signing Oregon judgments of adoption, and entering those judgments in the Oregon circuit court register—was not a proceeding in state court.

And respondents contend that because mother's tribe does not believe in termination of parental rights, these Oregon adoption judgments do not permanently deprive her of her liberty interests in her children. If only that were so.

The Oregon circuit court—at the request of the Oregon government—signed and entered Oregon adoption judgments permanently transferring all of mother's rights to the care, companionship, and management of her children to other people. That is a state court proceeding.

The court's judgments restrain mother from contacting the adopters but allow her to ask a tribal social worker to inquire of the adopters if they will allow a single annual contact. Respondents maintain that it is that "right" that forecloses any conclusion that the Oregon judgments operate to terminate mother's parental rights. Respondents' characterization of that restraint as a residual parental "right" strains credulity.

In mother's view, if the Oregon court had provided her with the procedural protections that it would provide other parents facing the threat of similar deprivation, she would have prevailed at trial because no party could have proved that she was presently unfit as is required for termination of parental rights, permanent guardianship, or contested adoption. And had the Oregon court afforded mother's Indian family those protections, it would have done no violence to the purposes of ORICWA or ICWA. *See* 25 USC § 1901

(stating ICWA's purpose). Had the Oregon court done so, this Indian family would be intact.

Mother's proposed construction of ORS 419B.656 gives effect to the words of the statute—including the necessary context of ORS 419B.090(3), (4), and (6), ORS 419B.600, and ORS 419B.660—and thus avoids any conflict with due process or ICWA. By contrast, respondents propose an inverted standard whereby this Indian mother of Indian children is deprived of both due process and the heightened protections that Congress intended in enacting ICWA. That standard raises significant equal protection questions that this court should avoid. *Cf. Haaland v. Brackeen*, 599 US 255, 291-95, 143 S Ct 1609, 216 L Ed 2d 254 (2023) (leaving open the equal protection challenge to ICWA's placement preferences for lack of standing under Article III of the United States Constitution).[1]

ARGUMENT

I. Mother's claims are preserved.

Respondents do not want this court to reach the merits, urging that mother's arguments are not preserved. Dept. BOM at 14-16; Tribe Amended BOM at 5-9. But the proper scope and application of the statute was squarely before the trial court.

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[1] Mother's proposed construction is protective of both ICWA and ORICWA because her reading minimizes if not eliminates any equal protection concern.

The preservation rule "serves several purposes, including giving a trial court the chance to consider and rule on an issue, ensuring fairness to the opposing party by giving them an opportunity to respond, and fostering full development of the record." *State v. Fox*, 370 Or 456, 461, 521 P3d 151 (2022) (citing *Peeples v. Lampert*, 345 Or 209, 219, 191 P3d 637 (2008)). When those purposes are met, preservation presents no impediment to the reviewing court reaching the merits. *Fox*, 370 Or at 461.

At the March 8, 2023, Oregon circuit court hearing, mother objected to the court signing the adoption judgments, cited ORS 419B.656, informed the court that her circumstances had significantly improved, argued that the court should not "rubberstamp" the TCA resolution, that the statute was "vague," that the court should hear "testimony," and that the process should be no different than "in * * * a regular adoption in the state of Oregon." ER 19-22.[2]

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[2] The department contends that mother did not raise in the trial court the "arguments" she makes on appeal. Dept. BOM at 14-16. But a party need not preserve particular "arguments." *State v. Weaver*, 367 Or 1, 17, 472 P3d 717 (2020) ("'We have previously drawn attention to the distinctions between raising an *issue* at trial, identifying a *source* for a claimed position, and making a particular *argument*. The first ordinarily is essential, the second less so, the third least.'" (Quoting *State v. Hitz*, 307 Or 183, 188, 766 P2d 373 (1988) (emphasis in *Hitz*).)). This court also has recognized that "[e]volution of argument from the pressures of trial to reflection on review is not uncommon." *State v. Bray*, 363 Or 226, 246, 422 P3d 250 (2018). And because "[t]he preservation rule also may inhibit needed development or clarification of the law," this court has cautioned against slicing the "'preservation onion * * * too thinly.'" *State v. Parkins*, 346 Or 333, 340-41, 211 P3d 262 (2009) (quoting *State v. Amaya*, 336 Or 616, 629, 89 P3d 1163 (2004)).

The parties argued against mother and told the trial court that the hearing was "ministerial" only, that ORS 419B.656 limited the court's role to nothing more than accepting the tribe's resolution and signing adoption judgments, and that the statute precluded the court from doing the things mother was asking it to do. *See, e.g.*, ER 8-9, 18, 25. Accordingly, the parties cannot now claim that they were "taken by surprise, misled, or denied opportunities to meet" mother's claims.[3] *Davis v. O'Brien*, 320 Or 729, 737, 891 P2d 1307 (1995).

For the same reasons, mother's arguments gave the trial court the opportunity to avoid the errors. *See State v. Wyatt*, 331 Or 335, 343, 15 P3d 22 (2000) ("[A] party must provide the trial court with an explanation of his or her objection that is specific enough to ensure that the court can identify its alleged error with enough clarity to permit it to consider and correct the error immediately, if correction is warranted."). The trial court thus would not "'be taken aback to find itself reversed *on this issue, for this reason*.'" *State v. Quebrado*, 372 Or 301, 314, ___ P3d ___ (2024) (quoting *State v. Skotland*, 372 Or 319, 329, ___ P3d ___ (2024) (emphasis in *Skotland*)).

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[3] This is particularly so as neither the children's counsel nor the tribe elected to appear as parties to the appeal in the first instance.

In any event, the issue of the proper construction of ORS 419B.656 was squarely presented in both the trial court and the Court of Appeals. This court's opinion in *Dept. of Human Services v. J.R.F.*, 351 Or 570, 273 P3d 87 (2012), is instructive.

The father in *J.R.F.* objected to the trial court that the court lacked authority to order him to make his children (who were not wards of the court) available for visits with their sibling (who was a ward of the court). *Id.* at 573-76. On appeal in the Court of Appeals, the father then argued that no statute authorized the trial court's visitation order and that the order violated "ORS 419B.090(4) and his constitutional right under the Fourteenth Amendment to the United States Constitution to direct the upbringing of his children." *Dept. of Human Services v. J.R.F.*, 244 Or App 363, 365, 261 P3d 42 (2011), *rev'd*, 351 Or 570 (2012). The Court of Appeals held that ORS 419B.337(3) authorized the court's order. *Id.* at 366. And—as pertinent here—it declined to reach the ORS 419B.090(4) and due process argument because the father "did not raise [it] to the juvenile court." *Id.* at 366-67. This court reversed, explaining that "[o]ur decision * * * is not based on an unpreserved constitutional claim. Rather it is based on our obligation to interpret the statutes correctly." *J.R.F.*, 351 Or at 579. And "the relevant context" of ORS 419B.090(4) "makes clear that the due process rights of parents are always implicated in the construction and application of the provisions of ORS chapter 419B." *Id.*

II. The TCAs reserved no parental rights.

The department argues that the TCAs in this case do not terminate parental rights because ORS 419B.656 precludes *any* TCA from terminating parental rights (TPR). Dept. BOM at 18-24. But that is not what the statute says.

ORS 419B.656 states that a TCA "may" be effected without the termination of parental rights. The department's reading substitutes the word "must" for "may." This court should not do the same. ORS 174.010.

The department also contends that *no* TCA can operate to terminate a parent's parental rights because other statutes set forth the department's authority to petition for TPR and a trial court's authority to enter a TPR judgment. Dept. BOM at 18-24. But that is precisely mother's point: The procedure in this case was an *extra-statutory* TPR. It does not follow from the fact that a TCA relieves the department of its statutory obligation to file a TPR petition that any resulting TCA, as a matter of law, cannot effect a permanent loss of parental rights akin to a TPR.[4] *See, e.g.*, *Zockert v. Fanning*, 310 Or 514, 521, 800 P2d 773 (1990) (holding that parents have the right to appointed

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[4] Mother does not contend that a TCA must be preceded by a TPR petition. Mother contends only that before a TCA that effectively terminates parental rights can be accepted and an adoption ordered by an Oregon state court, the state court must provide the parent with due-process safeguards that are concomitant to the severity of that deprivation.

counsel and elevated standards of proof in private adoption cases proceeding without parental consent under ORS chapter 109 just as in involuntary TPR proceedings initiated by the state under ORS chapter 419B because both types of cases concern the potential loss of parental rights without the consent of the parent being subjected to the loss).

Respondents contend that, even if ORS 419B.656 *does* permit a TCA to effectively terminate parental rights, *these* TCAs do not do so because mother might get one "visit" with her children each year subject to the discretion of the adopters. Dept. BOM at 19; Tribe Amended BOM at 11-12; Children BOM at 2 n 2. But that "right" is actually an order restraining mother from having any contact with the adopters with the single caveat that she may ask a third-party social worker to ask the adopters if they consent to a visit.[5] ER 32.

By contrast, "parental rights" involve "the companionship, care, custody, and management of his or her children." *Stanley v. Illinois*, 405 US 645, 651, 92 S Ct 1208, 31 L Ed 2d 551 (1972); *accord Troxel v. Granville*, 530 US 57, 65, 120 S Ct 2054, 147 L Ed 2d 49 (2000) (parents have the right to control contact between their children and third parties); *Pierce v. Society of Sisters*, 268 US 510, 534-36, 45 S Ct 571, 69 L Ed 1070 (1925) (parents have the right

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[5] A stranger on the street has more rights than the TCAs give mother because no source of law would prevent a stranger from directly contacting the adopters to ask for a visit, however strange such a request might be.

to guide their children's education); ORS 419B.090(4)(b) - (c) (parents have the right to make health care decisions for and discipline their children). Mother retains *none* of those rights under the TCAs in this case.[6] ER 33-35.

Respondents further contend that the TCAs in this case do not operate to terminate mother's parental rights because they leave intact the children's ability to inherit from mother. Dept. BOM at 19; Tribe BOM at 12; Children BOM at 2 n 2. But that is not a "right" enjoyed by *mother*[7] (and even were that not so, *the children's* right to inherit is certainly not a *constitutional* right, as intestate succession is a matter of statutory, not constitutional, law). In any

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[6] The department states that it is "possible that the terms of the TCA can change in the future." Dept. BOM at 20. As mother has no *right* to a change in the terms, any such "possibility" is both speculative and irrelevant to the analysis of whether the Oregon court's adoption judgments operated to terminate her parental rights. Even after the successful prosecution of a TPR petition in an Oregon circuit court, the parent's rights may be reinstated. *See* ORS 419B.532 (setting forth the procedural and substantive requirements for reinstatement of parental rights). But as in this case, that hypothetical possibility does not lessen the deprivation inflicted by a TPR judgment or otherwise lessen the procedural and substantive protection that the government must provide the parent when it seeks that result. The same is true with an ORS 419B.365 permanent guardianship (which also requires proof of present unfitness). *See* ORS 419B.368(1), (7) (the court *sua sponte* or any party except the parent may move the court to vacate a permanent guardianship).

[7] Note also ORS 419B.510(2), which specifies that TPR does not relieve the parent of their obligation to pay child support when the court terminates the parent's parental rights because the child was conceived as the result of an act of rape for which the parent suffered a criminal conviction.

event, even if that provision were omitted from the TCAs, mother could simply draft a will leaving her property to her children.[8]

Prior to the enactment of ORS 419B.656, this court held in *J.R.F.*, 351 Or 570, that ORS 419B.090(4) requires Oregon courts to interpret all provisions of the juvenile dependency code—at the first level of the statutory construction analysis—to protect the due process rights of parents. The legislature would have been aware of *J.R.F.* when it enacted ORS 419B.656. *See Comcast of Oregon II, Inc. v. City of Eugene*, 346 Or 238, 254, 209 P3d 800 (2009) ("'[W]e generally presume that the legislature enacts statutes in light of existing judicial decisions that have a direct bearing on those statutes.'" (Quoting *Mastriano v. Board of Parole*, 342 Or 684, 693, 159 P3d 1151 (2007) (brackets in

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[8] The department further contends that mother retains the "right" to inherit from the children, citing to the American Indian Probate Reform Act but providing no analysis or explanation for why that statute commands that result. Dept. BOM at 20. The department's claim is belied by the TCA resolution itself, which states that "*[t]he minors* possess certain rights of inheritance" and "*the minors* will benefit from maintaining rights of inheritance by and between them and their birth mother." ER 33 (emphasis added). Given that as a result of the TCAs, the court entered judgments of "adoption," and that by those judgments, mother loses her status as a legal parent and the adopters gain that status, the adopters, not mother, would inherit from the children should the children predecease mother and die intestate. *See* 109.050 ("An adopted child bears the same relation to adoptive parents and their kindred in every respect pertaining to the relation of parent and child as the adopted child would if the adopted child were the natural child of such parents."); ORS 112.045(2) (providing that the estate of a decedent who dies intestate passes to the decedent's parents if the decedent has no surviving spouse).

Mastriano).)). But as did the Court of Appeals, most of the respondents ignore this court's *J.R.F.* mandate.[9]

To the extent this court concludes that the TCAs do not operate to terminate all of mother's parental rights, the deprivations she suffers are, at the least, akin to permanent guardianship under ORS 419B.365.[10] And those

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[9] The tribe misreads *J.R.F.* to be applying the canon of constitutional avoidance, and, thus, its proffered analysis is unhelpful.

[10] The department maintains that, because TCAs can never terminate parental rights (in its view), ICWA does not apply to this or any TCA proceeding. Dept. BOM at 18-21. The department is wrong. ICWA applies in "any involuntary proceeding in a State court" in which a party seeks "the foster care placement of or termination of parental rights to, an Indian child." 25 USC § 1912. A TCA proceeding in which the parent objects to the TCA, as in this case, is such a proceeding. That is so because ICWA defines "foster care placement" as "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." 25 USC § 1903(1)(i). ICWA does not refer to guardianships; Congress enacted ICWA in 1978, prior to its apparent first recognition of guardianship as an option for dependent children, which occurred two years later as part of the Adoption Assistance and Child Welfare Act of 1980. Mark F. Testa, Ph.D., *The Quality of Permanence - Lasting or Binding? Subsidized Guardianship and Kinship Foster Care As Alternatives to Adoption*, 12 Va J Soc Pol'y & L 499, 504, 504 n 33 (2005). The Oregon Court of Appeals and the Arizona Court of Appeals have correctly interpreted "foster care placement" to include guardianship. *Dept. of Human Services v. J.G.*, 260 Or App 500, 516-18, 317 P3d 936 (2014); *Navajo Nation v. Dept. of Child Safety*, 246 Ariz 463, 467, 441 P3d 982 (Ariz Ct App 2019).

deprivations also entitle her to demand proof of her present unfitness at a hearing conducted in accord with the rules of evidence and ICWA.[11]

III. In asserting that the Oregon court was required to blindly give full faith and credit to the tribe's TCA resolution, respondents and *amici curiae* ignore the plain text of ORS 419B.656(3) and the well-settled principle that judgments issued in violation of a party's right to due process are not entitled to full faith and credit.

ORS 419B.656(3)(b) states that "[t]he court shall afford full faith and credit to a tribal customary adoption order or judgment *that is accepted under this subsection.*" (Emphasis added.) And ORS 419B.656(3)(a) authorizes the Oregon court to "accept" a tribe's TCA order only if the court first makes the determinations listed in that statute and ensures that the tribe's TCA order complies with the requirements of the statute. Thus, the Oregon court need

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[11] Counsel for children contends that ICWA does not apply to TCAs because "establishment" of a TCA is not "an involuntary proceeding *in a State court.*" Children BOM at 11-12 (emphasis in original). Counsel is wrong. It was the Oregon court that "accept[ed]" the TCA resolution, the Oregon court that signed the Oregon adoption judgments, the Oregon court that entered those adoption judgments in the Oregon case register, and an Oregon statute (ORS 419B.656) that authorized the Oregon court to do so. Even assuming *arguendo* that mother is not entitled to ICWA's heightened protections, she is nonetheless entitled to reversal because this court must construe and apply the statute in accord with due process.

not afford a tribe's TCA order full faith and credit unless it has first "accepted" it.[12]

In any event, full faith and credit requirements are not absolute. A judgment is not entitled to full faith and credit if, for example, it was issued in violation of a party's right to due process. *Kremer v. Chemical Construction Corp*., 456 US 461, 482, 102 S Ct 1883, 72 L Ed 2d 262 (1982) (explaining that under the Full Faith and Credit Act, 28 USC § 1738, the initial judgment is not entitled to full faith and credit if rendered without due process); *Durfee v. Duke*, 375 US 106, 110-11, 84 S Ct 242, 11 L Ed 2d 186 (1963) (noting that the federal constitution's full faith and credit provision is not without limits, and the second court can inquire to ensure that the issue at hand "was fully and fairly litigated and finally decided in the court which rendered the

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[12] ORICWA contains a more general full faith and credit provision in ORS 419B.663. To the extent that that general statute is in conflict with the full faith and credit provision of ORS 419B.656(3)(b), which pertains specifically to TCAs, the more specific statute controls over the general. *See, e.g.*, *Powers v. Quigley*, 345 Or 432, 438, 198 P3d 919 (2008) (stating that, "if two statutes are inconsistent, the more specific statute will control over the more general one" and citing ORS 174.020(2)). ICWA also contains a full faith and credit provision in 25 USC § 1911(d). Children's counsel asserts that "[i]f this Court * * * concludes that the legislature intended to permit reconsideration of matters decided by a tribal government in its TCA, such a procedure would violate ICWA's full-faith-and-credit requirement." Children BOM at 21. If children's counsel is correct, then ORS 419B.656 would be inconsistent with ICWA and must fall in its entirety, as ICWA preempts state law. *See* Mother's BOM at 31-37 (so describing).

original judgment"); *Starr v. George*, 175 P3d 50, 55-56 (Alaska 2008) (recognizing that ICWA's full faith and credit provision does not preclude the second court from determining whether the first court provided the parties due process).

Thus, even after the Oregon court decides to "accept" a tribe's TCA order under ORS 419B.656, it is not required to afford the order full faith and credit unless the tribe afforded the parent due process.[13] *See* 25 USC § 1302, (8) ("No Indian tribe in exercising powers of self-government shall * * * 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[.]").

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[13] Amici, which presumably have not been privy to the briefing in this confidential case, assert that mother does not dispute that the tribe's TCA resolution was valid and entitled to full faith and credit. Amici BOM at 10-11. Mother has never so conceded, and she does not do so now.

CONCLUSION

For the foregoing reasons and the reasons stated in mother's opening brief on the merits, mother respectfully requests that this court reverse the decision of the Court of Appeals, vacate the adoption judgments, and remand to the circuit court for a new hearing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d) UNDER ORAP 9.05(3)(A)

Petition Length

I certify that (1) this Reply Brief on the Merits of Petitioner on Review complies with the word-count limitation in ORAP 5.05(1)(b), and (2) the word-count of this brief (as described in ORAP 5.05(1)(a) is 3,824 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text and footnotes as required by ORAP 5.05(3)(b).

NOTICE OF FILING AND PROOF OF SERVICE

I certify that I directed the original Reply Brief on the Merits of Petitioner on Review to be filed with the Appellate Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301, on June 10, 2024.

I further certify that, upon receipt of the confirmation email stating that the document has been accepted by the eFiling system, this Reply Brief on the Merits of Petitioner on Review will be eServed pursuant to ORAP 16.45 (regarding electronic service on registered eFilers) on Benjamin Gutman #160599, Solicitor General, and Erin K. Galli #952696, Assistant Attorney-in-Charge Collateral Remedies, attorneys for Respondent on Review, and shall also be eServed on the following:

Children's Appellate-Level Attorneys:
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Furthermore, I certify that I served the foregoing Reply Brief on the Merits of Petitioner on Review on June 10, 2024, by electronic mail to the following:

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(iii) Any extraordinary physical, mental or emotional needs of the Indian child that require specialized treatment services if, despite active efforts, those services are unavailable in the community where families who meet the placement preferences under subsection (1) or (2) of this section reside; or

(iv) Whether, despite a diligent search, a placement meeting the placement preferences under this section is unavailable, as determined by the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(B) Must, in applying the placement preferences under this subsection, give weight to a parent's request for anonymity if the placement is an adoptive placement to which the parent has consented.

(C) May be informed by but not determined by the placement request of a parent of the Indian child, after the parent has reviewed the placement options, if any, that comply with the placement preferences under this section.

(D) May not be based on:

(i) The socioeconomic conditions of the Indian child's tribe;

(ii) Any perception of the tribal or United States Bureau of Indian Affairs social services or judicial systems;

(iii) The distance between a placement meeting the placement preferences under this section that is located on or near a reservation and the Indian child's parent; or

(iv) The ordinary bonding or attachment between the Indian child and a nonpreferred placement arising from time spent in the nonpreferred placement.

(4) The court, on the court's own motion or on the motion of any party, shall make a determination under ORS 419B.651 (2) regarding the Indian child's placement if the court or the moving party has reason to believe that the child was placed contrary to the placement preferences of subsection (1) or (2) of this section without good cause. A motion under this subsection may be made orally on the record or in writing. [2020 s.s.1 c.14 §23; 2021 c.398 §16]

Note: See note under 419B.600.

419B.656 Tribal customary adoption; rules; forms. (1) As used in this section, "tribal customary adoption" means the adoption of an Indian child, by and through the tribal custom, traditions or law of the child's tribe, and which may be effected without the termination of parental rights.

(2) If the juvenile court determines that tribal customary adoption is in the best interests, as described in ORS 419B.612, of a ward who is an Indian child and the child's tribe consents to the tribal customary adoption:

(a) The Department of Human Services shall provide the Indian child's tribe and proposed tribal customary adoptive parents with a written report on the Indian child, including, to the extent not otherwise prohibited by state or federal law, the medical background, if known, of the child's parents, and the child's educational information, developmental history and medical background, including all known diagnostic information, current medical reports and any psychological evaluations.

(b) The court shall accept a tribal customary adoptive home study conducted by the Indian child's tribe if the home study:

(A) Includes federal criminal background checks, including reports of child abuse, that meet the standards applicable under the laws of this state for all other proposed adoptive placements;

(B) Uses the prevailing social and cultural standards of the Indian child's tribe as the standards for evaluation of the proposed adoptive placement;

(C) Includes an evaluation of the background, safety and health information of the proposed adoptive placement, including the biological, psychological and social factors of the proposed adoptive placement and assessment of the commitment, capability and suitability of the proposed adoptive placement to meet the Indian child's needs; and

(D) Except where the proposed adoptive placement is the Indian child's current foster care placement, is completed prior to the placement of the Indian child in the proposed adoptive placement.

(c)(A) Notwithstanding subsection (3) of this section, the court may not accept the tribe's order or judgment of tribal customary adoption if any adult living in the proposed adoptive placement has a felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence.

(B) As used in this paragraph, "crime involving violence" has the meaning described by the Department of Human Services by rule, which must include rape, sexual assault or homicide, but may not include other physical assault or battery.

(3)(a) The juvenile court shall accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe if:

(A) The court determines that tribal customary adoption is an appropriate permanent placement option for the Indian child;

(B) The court finds that the tribal customary adoption is in the Indian child's best interests, as described in ORS 419B.612; and

(C) The order or judgment:

(i) Includes a description of the modification of the legal relationship of the Indian child's parents or Indian custodian and the child, including contact, if any, between the child and the parents or Indian custodian, responsibilities of the parents or Indian custodian and the rights of inheritance of the parents and child;

(ii) Includes a description of the Indian child's legal relationship with the tribe; and

(iii) Does not include any child support obligation from the Indian child's parents or Indian custodian.

(b) The court shall afford full faith and credit to a tribal customary adoption order or judgment that is accepted under this subsection.

(4)(a) Notwithstanding ORS 109.276, a tribal customary adoptive parent is not required to file a petition for adoption when the court accepts a tribal customary adoption order or judgment under subsection (3) of this section.

(b) The tribal customary adoptive parent shall file an Adoption Summary and Segregated Information Statement with accompanying exhibits as provided under ORS 109.287.

(c) Notwithstanding ORS 21.135, the clerk of the juvenile court may not charge or collect first appearance fees for a proceeding under this subsection.

(d) After accepting a tribal customary adoption order or judgment under subsection (3) of this section, the juvenile court that accepted the order or judgment shall proceed as provided in ORS 109.350 and enter a judgment of adoption. In addition to the requirements under ORS 109.350, the judgment of adoption must include a statement that any parental rights or obligations not specified in the judgment are transferred to the tribal customary adoptive parents and a description of any parental rights or duties retained by the Indian child's parents, the rights of inheritance of the child and the child's parents and the child's legal relationship with the child's tribe.

(e) A tribal customary adoption under this section does not require the consent of the Indian child or the child's parents.

(f) Upon the court's entry of a judgment of adoption under this section, the court's jurisdiction over the Indian child terminates as provided in ORS 419B.328 (2)(d).

(g) Records of adoptions filed and established under this subsection shall be kept in accordance with, and are subject to, ORS 109.289.

(5) Any parental rights or obligations not specifically retained by the Indian child's parents in the juvenile court's adoption judgment are conclusively presumed to transfer to the tribal customary adoptive parents.

(6) This section shall remain operative only to the extent that compliance with the provisions of this section do not conflict with federal law as a condition of receiving funding under Title IV-E of the Social Security Act.

(7)(a) The Department of Human Services shall adopt rules requiring that any report regarding a ward who is an Indian child that the department submits to the court, including home studies,

placement reports or other reports required under ORS chapters 109, 418, 419A and 419B, must address tribal customary adoption as a permanency option.

(b) The Chief Justice of the Supreme Court may make rules necessary for the court processes to implement the provisions of this section.

(c) The State Court Administrator may prepare necessary forms for the implementation of this section. [2021 c.398 §65a]

Note: Section 80, chapter 398, Oregon Laws 2021, provides:

Sec. 80. Report to Legislative Assembly regarding tribal customary adoption. No later than March 15, 2024, the Department of Human Services shall submit a report to the interim committees of the Legislative Assembly related to the judiciary describing the department's implementation of tribal customary adoption as described in section 65a of this 2021 Act [419B.656], as an alternative permanency option for wards who are Indian children and the department's recommendations for proposed legislation to improve the tribal customary adoption process. [2021 c.398 §80]

419B.657 Reports to Legislative Assembly. No later than September 15 of every even-numbered year, the Department of Human Services and the Judicial Department shall report to the interim committees of the Legislative Assembly relating to children regarding:

(1) The number of Indian children involved in dependency proceedings during the prior two-year period.

(2) The average duration Indian children were in protective custody.

(3) The ratio of Indian children to non-Indian children in protective custody.

(4) Which tribes the Indian children in protective custody were members of or of which they were eligible for membership.

(5) The number of Indian children in foster care who are in each of the placement preference categories described in ORS 419B.654 and the number of those placements that have Indian parents in the home.

(6) The number of Indian children placed in adoptive homes in each of the placement preference categories described in ORS 419B.654 and the number of those placements that have Indian parents in the home.

(7) The number of available placements and common barriers to recruitment and retention of appropriate placements.

(8) The number of times the court found that good cause existed to deviate from the statutory placement preferences under ORS 419B.654 when making a finding regarding the placement of a child in a dependency proceeding.

(9) The number of cases that were transferred to tribal court under ORS 419B.633.

(10) The number of times the court found good cause to decline to transfer jurisdiction of a dependency proceeding to tribal court upon request and the most common reasons the court found good cause to decline a transfer petition.

(11) The efforts the Department of Human Services and the Judicial Department have taken to ensure compliance with the provisions of ORS 419B.600 to 419B.654 and the amendments to statutes by sections 24 to 60, chapter 14, Oregon Laws 2020 (first special session), in dependency proceedings.

(12) The number of ICWA compliance reports, as defined in ORS 109.266, in which the department reported the petitioner's documentation was insufficient for the court to make a finding regarding whether the petitioner complied with the inquiry or notice requirements under ORS 419B.636 (2) or 419B.639 (2).

(13) The total number and the ratio of all ICWA compliance reports that indicated there was a reason to know that the child was an Indian child. [2020 s.s.1 c.14 §61; 2021 c.398 §79]

Note: See note under 419B.600.