

**GOOD CAUSE FINDINGS OF FACT AND CONCLUSIONS OF LAW  
(ICWA)**

STATE OF SOUTH DAKOTA:

IN CIRCUIT COURT

SS:

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

THE PEOPLE OF THE STATE OF SOUTH  
DAKOTA IN THE INTEREST OF,

File No: \_\_\_\_\_

\_\_\_\_\_  
(DOB: \_\_\_\_\_)  
Child(ren), and concerning

**DEPT. of SOCIAL SERVICES**  
Custodian,

**GOOD CAUSE FINDINGS OF  
FACT AND CONCLUSIONS OF LAW  
(ICWA)**

\_\_\_\_\_  
Intervenor.

The above-entitled matter having come on for a Good Cause Hearing on the (DAY) day of (MONTH), (YEAR); the Honorable (ENTER NAME), presiding; the State of South Dakota represented by (DEPUTY STATE’S ATTORNEY / STATE’S ATTORNEY), (ENTER NAME); the South Dakota Department of Social Services appearing through Children’s Specialist (ENTER NAME); the minor child(ren) (APPEARING / NOT APPEARING) in person (AND / BUT) represented by counsel, (ENTER NAME); the Tribe (APPEARING THROUGH ICWA REPRESENTATIVE / NOT APPEARING THROUGH ICWA REPRESENTATIVE) (AND / BUT) (REPRESENTED BY COUNSEL / NOT REPRESENTED BY COUNSEL), (ENTER NAME); CASA (APPEARING THROUGH ITS DESIGNATED AGENT / NOT APPEARING); the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law for Good Cause regarding the placement of the minor child outside the ICWA Placement Preferences for purpose of adoption as follows:

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT BY  
CLEAR AND CONVINCING EVIDENCE:

1.

Proper notice has been given.

2.

The Court has jurisdiction over these proceedings and that this is the proper venue.

3.

(ENTER NAME) is a minor child currently in the adoptive custody of the Department of Social Services, and who was a resident of (COUNTY NAME) County at the commencement of these proceedings

4.

(ENTER NAME) is the biological mother of the minor child. Her parental rights were terminated on (ENTER DATE).

5.

(ENTER NAME) is the biological father of the minor child. His parental rights were terminated on (ENTER DATE).

6.

The minor child is an Indian Child as defined by the Indian Child Welfare Act and therefore the Indian Child Welfare Act applies to these proceedings.

7.

The minor child is eligible for enrollment in the Tribe. The Tribe was represented by counsel.

8.

The Tribe was notified of today's proceedings in accordance with the Indian Child Welfare Act. The Tribe has Intervened in these proceedings.

9.

The minor child was adjudicated to be an abused or neglected child on (ENTER DATE).

10.

The minor child has been in the Department of Social Services' legal and physical custody since (ENTER DATE), and that the minor child has been in the adoptive custody of the Department of Social Services since (ENTER DATE).

11.

(UPDATE DETAILS IN THE FOLLOWING PARAGRAPH OR DELETE PARAGRAPH)

The minor child was initially placed in her current foster home on (ENTER DATE). An ICWA Placement Preference adoptive resource was identified for the minor child and she was placed with the family in (ENTER TEXT) on (ENTER DATE). The family asked that the minor child be removed from their home on (ENTER DATE). The child was returned to the current foster home on (ENTER DATE).

12.

The minor child's current placement is a Non-Native American foster care placement.

13.

The Court admits and incorporates herein by reference and takes judicial notice of the entire Abuse and Neglect file A-(ENTER TEXT) as a further factual basis in support of these Findings of Fact and Conclusions of Law and Order.

14.

The Court admits and incorporates herein by reference and takes judicial notice of the Court Report and attachments as further basis in support of these Findings of Fact and Conclusions of Law and Order.

15.

25 U.S.C. §1915(a) and (b) provides that for adoptive placements of Indian Children the children must be placed in the least restrictive setting which most approximates a family in which his or her special needs may be met; and which is in reasonable proximity to his or her home and that preference must be given in the following order, absent good cause to the contrary, to placement with (1) a member of the Indian Child's extended family; (2) a foster home, license, approved or specified by the Indian Child's tribe, whether on or off the reservation; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority or (4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

16.

25 U.S.C. §1915 also provides that in any adoptive placement of an Indian Child under state law preference must be given absent good cause to the contrary, to placement of the child with a member of the Indian child's extended family, other members of the Indian child's tribe or other Indian families, including families of single parents.

17.

(UPDATE DETAILS IN THE FOLLOWING PARAGRAPH OR DELETE PARAGRAPH)

Other than the minor child's placement in (ENTER TEXT) from (ENTER DATE) until (ENTER DATE), the minor child has been placed in the same basic foster home since (ENTER DATE). That home has proven to be a nurturing, loving, and stable home able to meet the minor child's needs.

18.

The minor child is (ENTER TEXT) years old. She has been in the custody of the Department of Social Services since (ENTER DATE). She came into care at (ENTER TEXT).

19.

The minor child's biological father, has stated in writing that he has reviewed the placement options and his preference is that the child be adopted by the current foster care providers.

20.

The Tribe is in agreement with the minor child being adopted by her current foster care providers given that the placement that was within the ICWA Placement Preferences disrupted.

21.

There is good cause in this case to not follow the order of preference set forth in the Indian Child Welfare Act due to the unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria, but none have been located.

22.

The child's current placement meets the physical, mental and emotional needs of the child.

23.

The Department of Social Services has made a diligent search to locate family members and/or other Native American placements for the minor child. Specifically, the Court finds that the Department has researched (ENTER TEXT) relatives. Native American placement resources were requested from the Tribe. The minor child was listed nationwide on AdoptUSKids.org to seek out placements within the ICWA Placement Preferences. The minor child was placed in an ICWA Placement Preference for purpose of adoption from (ENTER DATE) until (ENTER DATE) and that placement was unsuccessful.

24.

There is good cause to deviate from the placement preferences and that there is good cause to approve the plan for adoption that has been presented.

25.

To move the child again would be highly disruptive. To allow her to remain in her current placement would be the most beneficial and would keep her in close proximity to her extended family and to her Tribe.

26.

The Court finds that reasonable and active efforts have been made to effectuate a permanent plan for the minor child.

27.

The permanent plan presented today is the least restrictive alternative and, in the child's, best interest in light of the child's special needs and the diligent search that has been conducted.

28.

(UPDATE DETAILS IN THE FOLLOWING PARAGRAPH OR DELETE PARAGRAPH)

Good cause exists to place the child outside the ICWA placement preferences because there are no Native American foster care homes available, relative searches have been exhausted and appropriate relatives have not been located, and Tribal resources have not resulted in the identification of an appropriate placement. The Court finds a diligent search has been completed by the Department of Social Services and there is good cause to deviate from the placement preferences.

29.

The Department of Social Services has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family but that those efforts have proven unsuccessful.

30.

Leaving the child in the adoptive custody of the Department of Social Services and vesting the Department of Social Services with the full custody and guardianship of the child, with the appropriate

personnel of the Department of Social Services to have the ability to consent to her adoption, is the least restrictive alternative and in the minor child's best interest.

31.

The Court hereby incorporates through judicial notice the Reports to the Court, and all files and records in this case as a further factual basis to support these Findings of Fact and Conclusions of Law.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following Conclusions of Law:

#### CONCLUSIONS OF LAW

1.

Any Conclusion of Law deemed to be a Finding of Fact or vice versa shall be appropriately incorporated into the Findings of Fact or Conclusions of Law.

2.

This Court has jurisdiction over the parties and subject matter of this action.

3.

That good cause exists for DSS to cease relative searches at this time and to move forward with the permanent plan for the minor child, said permanent plan being placement in a home and with a family suitable for adoption.

4.

That it is in the least restrictive alternative and in the minor child's best interest that the Department of Social Services deviate from the ICWA placement preferences in regards to the adoptive placement of the minor child.

5.

In making this determination the Court has balanced the rights of the Tribe, the child and the State and finds that this decision is the least restrictive alternative and in the minor child's best interest.

6.

That DSS has made active efforts to effectuate the permanency plan that is in place.

Dated this (DAY) day of (MONTH), (YEAR), effective, however, the (DAY) day of (MONTH, YEAR) being the date of the hearing affording judicial basis for this order.

BY THE COURT:

ATTEST:

Clerk of Court

BY: \_\_\_\_\_

Deputy (ENTER NAME)

(SEAL)

\_\_\_\_\_  
The Honorable (ENTER NAME)  
Judge of the Circuit Court