

**STATE'S PROPOSED
ADJUDICATORY FINDINGS OF FACT AND CONCLUSIONS OF LAW
(ICWA)**

STATE OF SOUTH DAKOTA:
SS:

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

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

(DOB: _____)

(DOB: _____)

Child(ren), and concerning

(DOB: _____)

(DOB: _____)

Respondent(s),

(DOB: _____)

Indian Custodian,

Intervenor

Court File No: _____

**STATE'S PROPOSED
ADJUDICATORY FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

(ICWA)

The above-entitled matter having come on for an Adjudicatory Hearing on the (DAY) day of (MONTH), (YEAR), the Honorable (ENTER NAME), presiding; the State of South Dakota being represented by (DEPUTY STATE'S / STATE'S ATTORNEY), (ENTER NAME); the South Dakota Department of Social Services appearing through Family Services Specialist (ENTER NAME); the Respondent mother, (APPEARING IN PERSON / NOT APPEARING IN PERSON) (AND / BUT) (REPRESENTED BY COUNSEL / IS NOT REPRESENTED BY COUNSEL), (ENTER NAME); the Respondent father, (APPEARING IN PERSON / NOT APPEARING IN PERSON) (AND / BUT), (REPRESENTED BY COUNSEL / IS NOT REPRESENTED BY COUNSEL), (ENTER NAME); the Indian Custodian, (APPEARING IN PERSON / NOT APPEARING IN PERSON) (AND / BUT), (REPRESENTED BY COUNSEL / IS NOT REPRESENTED BY COUNSEL), (ENTER NAME); the minor child (APPEARING IN PERSON / NOT APPEARING IN PERSON) (AND IS / BUT)

represented by counsel,(ENTER NAME); the Tribe (REPRESENTED / IS NOT REPRESENTED) by counsel, (AND / BUT) (APPEARING / NOT APPEARING) through ICWA Representative; CASA (APPEARING / NOT APPEARING) through its designated agent; the Court, having reviewed the records and files herein and being fully informed in the premises, does now hereby make and enter its Adjudicatory Findings of Fact and Conclusions of Law by clear and convincing evidence as follows:

FINDINGS OF FACT

1.

Proper notice has been given, and the parties have been provided an opportunity to participate.

2.

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

3.

(ENTER NAME) (DOB: (ENTER DOB)) and (ENTER NAME) (DOB: (ENTER DOB)) are minor children who are in the legal and physical custody of the Department of Social Services and who were residents of (COUNTY NAME) County at the commencement of these proceedings.

4.

The Respondent MOTHER is the biological mother of the minor children. She (RECEIVED NOTICE OF THESE / HAS NOT RECEIVED NOTICE OF THESE) proceedings and (HAS BEEN APPRISED OF HER RIGHTS AND OBLIGATIONS, INCLUDING TH POSSIBILITY OF TERMINATION OF HER PARENTAL RIGHTS / HAS NOT BEEN APPRISED OF HER RIGHTS AND OBLIGATIONS, INCLUDING THE POSSIBILITY OF TERMINATION OF HER PARENTAL RIGHTS). MOTHER (APPEARED AT THESE PROCEEDINGS / HAS NOT APPEARED AT THESE

PROCEEDINGS) (AND / BUT) (WAS REPRESENTED / WAS NOT REPRESENTED) by counsel, (ENTER NAME).

5.

The Respondent FATHER is the biological father of the minor children. He (HAS RECEIVED NOTICE OF THESE PROCEEDINGS / HAS NOT RECEIVED NOTICE OF THESE PROCEEDINGS), but (HAS BEEN / HAS NOT BEEN) fully apprised of his rights and obligations, including the possibility of termination of his parental rights. FATHER (DID NOT APPEAR / APPEARED) at these proceedings (BUT / AND) was (NOT REPRESENTED / REPRESENTED) by counsel,(ENTER NAME).

6.

The Respondent Indian CUSTODIAN is the children's Indian Custodian as defined by the Indian Child Welfare Act. (HE / SHE) (HAS RECEIVED NOTICE / HAS NOT RECEIVED NOTICE) of these proceedings, (AND / BUT) has been fully apprised of her rights and obligations, including the possibility of termination of her custodial rights. CUSTODIAN (APPEARED / DID NOT APPEAR) at these proceedings (BUT / AND) was (REPRESENTED / NOT REPRESENTED) by counsel,(NAME).

7.

The Respondent mother, after an advisement of her rights including the possibility of termination of her parental rights admitted to the portion (ENTER FACTS ABOUT THE CASE HERE).

8.

The Respondent mother's admissions were knowingly and intelligently entered and during these proceedings she has been represented by competent counsel.

9.

The Respondent mother understands the nature of her admissions and the consequences thereof. The reports provide a further factual basis from which to rely that the minor children are adjudicated to be abused or neglected children as defined by SDCL 26-8A-2 due to the actions and/or omissions of the Respondent mother.

10.

The Indian Custodian after an advisement of her rights including the possibility of termination of her custodial rights (ENTER TEXT) admit to the allegations contained within the Amended Petition for Abuse or Neglect but was unable to provide a factual basis for the Court to determine that the children should be adjudicated to be abused or neglected and therefore the matter went to full hearing.

11.

The State has met its burden by clear and convincing evidence to establish the facts set forth in the Amended Petition for Abuse or Neglect that the minor children are adjudicated to be abused or neglected children as defined by South Dakota law as a result of the actions and/or omissions of the Indian Custodian.

12.

FACTS AS ESTABLISHED BY THE COURT. The Court adjudicates the minor children to be abused or neglected as defined by SDCL 26-8A-2 in that their environment was injurious to their welfare.

13. (IF NOT APPLICABLE, DELETE PARAGRAPH BELOW)

The Respondent (MOTHER / FATHER) was properly noticed of these proceedings and failed to appear and is in default of these proceedings pursuant to the provisions of SDCL § 26-7A-53 and therefore, the Abuse or Neglect Petition in this matter is hereby taken as admitted to in its entirety by the Respondent (MOTHER / FATHER).

14.

The minor children are adjudicated to be abused or neglected children as defined by SDCL 26-8A-2 due to the actions and/or omissions of the father.

15.

The minor children are an Indian Children as defined by the Indian Child Welfare Act therefore the Indian Child Welfare Act applies to these proceedings.

16.

The minor children are eligible for enrollment or membership in the Tribe.

17.

The Department of the Interior, the Bureau of Indian Affairs, and the (TRIBE NAME) Tribe and the (TRIBE NAME) Tribe have been notified of these proceedings in accordance with the Indian Child Welfare Act. The (TRIBE NAME) Tribe (HAS INTERVENED / HAS NOT INTERVENED) in these proceedings.

18.

The Department of Social Services has made reasonable and active efforts to reunite the minor children with the Respondent parents and Indian Custodian.

19.

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.

20.

Continued custody of the children by the Respondent parents or Indian Custodian would likely result in serious emotional or physical damage to the minor children at this time.

21.

The least restrictive alternative available commensurate with the best interest of the minor children is for physical and legal custody of the minor children to remain with the

Department of Social Services during the pendency of these proceedings, it being contrary to the welfare of the minor children to return legal or physical custody to the Respondent parents or Indian Custodian at this time.

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.

The allegations contained in the Petition for Abuse or Neglect are supported by clear and convincing evidence that the minor children are abused or neglected children as defined by SDCL 26-8A-2 due to the actions and/or omissions of the Respondent mother, the Respondent father, and the Indian Custodian.

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

BY THE COURT:

The Honorable (NAME)
Judge of the Circuit Court

ATTEST:
Clerk of Court

BY: _____
Deputy (NAME)
(SEAL)