

**STATE'S PROPOSED FINAL
DISPOSITIONAL 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: _____)

(DOB: _____)

(DOB: _____)
Child(ren), and concerning

(DOB: _____)

(DOB: _____)
Respondent(s),

Intervenor

**STATE'S PROPOSED FINAL
DISPOSITIONAL FINDINGS OF FACT
AND CONCLUSIONS OF LAW

(ICWA)**

The above-entitled matter having come before the Court for a Final Dispositional 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 Family Services Specialist, (ENTER NAME); (ENTER NAME), the Respondent (MOTHER / FATHER), (APPEARING / NOT APPEARING) in person (AND / BUT) (REPRESENTED BY COUNSEL / NOT REPRESENTED BY COUNSEL), (ENTER NAME); (ENTER NAME), the Respondent (MOTHER / FATHER), (APPEARING / NOT APPEARING) in person (AND / BUT) (REPRESENTED BY COUNSEL / NOT REPRESENTED BY COUNSEL), (ENTER NAME); the minor children (APPEARING / NOT

APPEARING) in person (AND / BUT) represented by counsel, (ENTER NAME); CASA
(APPEARING THROUGH ITS DESIGNATED AGENT / NOT APPEARING); the Tribe
(REPRESENTED BY COUNSEL / NOT REPRESENTED BY COUNSEL), (ENTER NAME); 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 Final Disposition, as follows:

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT BY

CLEAR AND CONVINCING EVIDENCE:

1.

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

2.

This Court has jurisdiction and this is the proper venue.

3.

(ENTER NAME), (ENTER NAME), and (ENTER NAME) (ARE MINOR CHILDREN / IS A
MINOR CHILD) who (ARE / IS) 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.

(ENTER NAME) is the biological (ENTER TEXT) of the minor children, (ENTER NAME).
(ENTER NAME) (HAS RECEIVED NOTICE OF THESE PROCEEDINGS / HAS NOT RECEIVED
NOTICE OF THESE PROCEEDINGS / HAS RECEIVED NOTICE THROUGH PUBLICATION
REGARDING THESE PROCEEDINGS), and has been apprised of (HIS / HER) rights and obligations
in these proceedings, including the possibility of termination of (HIS / HER) parental rights. (ENTER
NAME) (APPEARED AT THESE PROCEEDINGS / DID NOT APPEAR AT THESE PROCEEDINGS)
(AND / BUT) was (REPRESENTED BY COUNSEL / NOT REPRESENTED BY COUNSEL).

5.

(ENTER NAME) is the biological (ENTER TEXT) of the minor children, (ENTER NAME). (ENTER NAME) (HAS RECEIVED NOTICE OF THESE PROCEEDINGS / HAS NOT RECEIVED NOTICE OF THESE PROCEEDINGS / HAS RECEIVED NOTICE THROUGH PUBLICATION REGARDING THESE PROCEEDINGS), and has been apprised of (HIS / HER) rights and obligations in these proceedings, including the possibility of termination of (HIS / HER) parental rights. (ENTER NAME) (APPEARED AT THESE PROCEEDINGS / DID NOT APPEAR AT THESE PROCEEDINGS) (AND / BUT) was (REPRESENTED BY COUNSEL / NOT REPRESENTED BY COUNSEL).

6.

(ENTER NAME) is the biological (ENTER TEXT) of the minor children, (ENTER NAME). (HE / SHE) has received notice of these proceedings, and has been apprised of (HIS / HER) rights and obligations in these proceedings, including the possibility of termination of (HIS / HER) parental rights. (ENTER NAME) (APPEARED AT THESE PROCEEDINGS / DID NOT APPEAR AT THESE PROCEEDINGS) (AND / BUT) was (REPRESENTED BY COUNSEL / NOT REPRESENTED BY COUNSEL).

7.

The Department of Social Services has provided reasonable efforts to prevent or eliminate the need for the removal of the minor children from the home but removal of the minor children from the home was necessary because continued presence of the children in the home was contrary to the welfare of the children and the continued removal of the children from the home was necessary to prevent imminent physical damage or harm to the minor children.

8.

The minor children have been in the legal and physical custody of the Department of Social Services since (ENTER DATE).

9.

The children have been adjudicated to be abused or neglected children as defined by SDCL 26-8A-2 through the actions and/or omissions of the Respondent parents.

10.

The Department of Social Services has made reasonable efforts to return the children to the home and those efforts have been appropriate for the children's parents and have been available pursuant to a comprehensive plan of preventive services of the Department; or those services could have been available without undue financial burden on the Department; or those services would have a significant likelihood of protecting the children from substantial danger to the children's physical health or from severe emotional damage while enabling the children to be returned to the home. The Court has considered the assistance, services, and efforts of the Department as well as the good faith efforts or lack of good faith efforts made by the children's parents to cooperate with the Department and to effectively utilize the assistance or services for the benefit and welfare of the children.

11.

The Department of Social Services has made reasonable efforts to achieve the permanent plan of reunification of the children with their parents and these efforts have been unsuccessful and it would be contrary to the welfare of the minor children to be returned to the legal or physical custody of the parents; those efforts include but are not limited to the following: (EXAMPLE)

- Initial Family Assessment
 - Assignment of IFA Specialist Beard
 - Initial Family Assessment completed
 - Safety Plan Determination Worksheet and Conditions for Return
 - Present Danger Plan considered
 - Interviews with family members
 - Collateral contacts
 - Supervised visitation
 - Visitation at United Families Visitation Center
 - Referral to Family Group Conference
 - Requested Random UAs
 - Transportation
 - Contact with the Tribe
 - Relative Search

- Child Services
 - Kinship Care Services
 - Child Case Plan Assessment and Evaluations
 - Transportation
 - Medicaid for mental health/medical/vision and dental services
 - Contact with Placement for children's needs and updates
 - Safety checks
 - 24 hour checks
 - Weekly checks
 - Monthly home visits
 - Regular contact through email/phone and in person
- Ongoing Services
 - Assignment of Specialist Click or tap here to enter text.
 - Protective Capacity Assessments and Evaluations
 - Safety Plan Determination Worksheet and Conditions for Return
 - Contact with the parents
 - Contact with Kinship Provider
 - Contact with the Resource Provider
 - Contact with the United Families Visitation Center
 - Transportation
 - Supervised Visitation
 - UAs
- Kinship Locator Services
 - Assignment of Resource Specialist
 - Ongoing relative search for placement and connections
 - Home Study request and PRIDE referral
- Family Group Coordinator Services
 - Assignment of Family Group Coordinator
 - Placement Team Meeting
 - Concurrent Planning Meeting
 - Ongoing meetings available for placement stability
- Services provided to the Respondent mother and the Respondent father, Click or tap here to enter text. from Click or tap here to enter text. when case closed with reunification.

12.

All reasonable efforts have been made to rehabilitate the family.

13.

The conditions which led to the children's removal still exist and there is little likelihood that those conditions will be remedied so that the children can be returned to the custody of the Respondent parents.

14.

There is good cause to terminate the parental rights of the Respondent parents.

15.

(INSERT CASE-SPECIFIC INFORMATION HERE)

16.

Termination of parental rights is final and unconditional.

17.

The minor children have been in the custody of the Department of Social Services for (ENTER NUMBER) year. Prior to this case, the minor children, (ENTER TEXT) had been in the custody of the Department of Social Services for (ENTER NUMBER) months. The children had only been returned to the Respondent (ENTER NAME) for (ENTER NUMBER) months before being removed again.

(INSERT CASE-SPECIFIC INFORMATION HERE)

18.

(INSERT CASE-SPECIFIC INFORMATION HERE)

The Respondent (ENTER NAME) is not in a position to have the minor children returned to her custody.

19.

(INSERT CASE-SPECIFIC INFORMATION HERE)

20.

(INSERT CASE-SPECIFIC INFORMATION HERE)

21.

The least restrictive alternative commensurate with the best interests of the minor children is to terminate the Respondent parents' parental rights and to vest the Department of Social Services with the custody and guardianship of the person of the children for the purpose of placing the children for adoption and to authorize the appropriate personnel of Department of Social Services to consent to the adoption of the children.

22.

The Court hereby takes judicial notice of the entire court file (ENTER TEXT), including The Report to the Court entered as (ENTER TEXT); as a further factual basis to support these Final Dispositional Findings of Fact and Conclusions of Law.

23.

The minor children need and deserve permanency and a home that can meet their needs. It is clear that the Respondent parents (HAVE / HAVE NOT) demonstrated a commitment to meet the children's needs.

24.

The Respondent parents are not able to provide proper and necessary care for the minor children; and the children should not be made to wait for the parents to gain the necessary skills needed for them to be able to parent the children.

25.

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

26.

The minor children are eligible for enrollment with the Tribe.

27.

The Tribe was notified of these proceedings in accordance with the Indian Child Welfare Act. The Tribe Intervened in these proceedings. The Tribe was represented by counsel.

28.

That ICWA EXPERT has more than substantial knowledge, education and experience in the area of social work and delivery of child and family services to Indian families and has extensive knowledge of the prevailing social and cultural standards in the child rearing practices within the Native American

community and is therefore a qualified expert under the Indian Child Welfare Act. Furthermore, he has knowledge of the cultural practices of the Tribe.

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT BY
EVIDENCE BEYOND A REASONABLE DOUBT:

1.

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 and these efforts have proved unsuccessful.

2.

That termination of the Respondent mother's parental rights is supported by the evidence including testimony of the qualified ICWA expert that continued custody or return of custody of the children to the Respondent mother would likely result in serious emotional and/or physical damage to the children.

3.

That termination of the Respondent father, (ENTER TEXT) parental rights is supported by the evidence including testimony of the qualified ICWA expert that continued custody, or return of custody of the child, (ENTER TEXT) to the Respondent father would likely result in serious emotional and/or physical damage to the child.

4.

That termination of the Respondent father, (ENTER TEXT) parental rights is supported by the evidence including testimony of the qualified ICWA expert that continued custody, or return of custody of the children, (ENTER TEXT) to the Respondent father would likely result in serious emotional and/or physical damage to the children.

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 children have been adjudicated to be abused or neglected children due to the actions and/or omissions of the Respondent parents.

4.

The fundamental rights of the Respondent parents to raise their children have been appropriately balanced with the best interests of the minor children and the public, and the state and the Court finds and concludes that the least restrictive alternative in the children's best interests is for the parental rights of the Respondent parents to be terminated.

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

BY THE COURT:

ATTEST:

The Honorable (ENTER NAME)
Judge of the Circuit Court

Clerk of Court

BY: _____
Deputy (ENTER NAME)
(SEAL)