SOUTH DAKOTA ) IN CIRCUIT COURT

) SS.

COUNTY OF       )       JUDICIAL CIRCUIT

)

The People of the State of )

South Dakota in the Interest of, ) COURT FILE NO:

)

**CHILD (DOB)** ) **STATE’S PROPOSED**

**CHILD (DOB)**)  **ADJUDICATORY FINDINGS OF FACT**

Child(ren), and concerning ) **AND CONCLUSIONS OF LAW** )

) **(ICWA)**

**MOTHER (DOB)** )

**FATHER (DOB)**)

Respondent(s). )

**CUSTODIAN (DOB)** )

Indian Custodian )

**TRIBE** )

Intervener )

The above-entitled matter having come on for an Adjudicatory Hearing on the       day of      ; the Honorable      , presiding; the State of South Dakota represented by Deputy State’s Attorney,      ; the South Dakota Department of Social Services appearing through Family Services Specialist      ;      , the Respondent mother, appearing in person and represented by counsel      ;      , the Respondent father, appearing in person and represented by counsel,      ;      , the Indian Custodian, appearing in person and represented by counsel,      ;      , the minor children not appearing in person but represented by counsel,      ; the Tribe represented by counsel, and appearing through ICWA Representative; CASA 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.

      and       are minor children who are in the legal and physical custody of the Department of Social Services and who were residents of       County at the commencement of these proceedings.

4.

      is the biological mother of the minor children. She received notice of these proceedings and has been apprised of her rights and obligations in these proceedings, including the possibility of termination of her parental rights.       appeared at these proceedings and was represented by counsel,      .

5.

      is the biological father of the minor children. He has received notice of these proceedings, and has been fully apprised of his rights and obligations in these proceedings, including the possibility of termination of his parental rights.       appeared at these proceedings and as represented by counsel,      .

6.

      is the children’s Indian Custodian as defined by the Indian Child Welfare Act. She has received notice of these proceedings, and has been fully apprised of her rights and obligations in these proceedings, including the possibility of termination of her custodial rights.       appeared at these proceedings and was represented by      .

7.

     , the Respondent mother, after an advisement of her rights including the possibility of termination of her parental rights admitted to the portion of the Amended Petition for Abuse or Neglect under subsections 7(B) and 8(B) alleging that the minor children lacked proper parental care through the actions and/or omissions of the Respondent mother in that on       when the children came into care the Respondent mother was incarcerated in the South Dakota State Women’s Penitentiary and she was unavailable to provide proper and necessary care for the minor children.

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 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 attempted to 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.

FACTS AS ESTABLISHED BY THE COURT.

1.

The Court adjudicates the minor children to be abused or neglected in that their environment was injurious to their welfare.

2.

The minor child(ren) are an Indian Children as defined by the Indian Child Welfare Act therefore the Indian Child Welfare Act applies to these proceedings.

3.

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

4.

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 and appeared through ICWA Representative.

5.

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

6.

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.

7.

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.

8.

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 within the meaning of SDCL 26-8A-2 due to the actions and/or omissions of the Respondent mother and the Indian Custodian.

Dated this       day of      , effective however the       day of      , 20     , being the date of the hearing affording judicial basis for this order.

BY THE COURT:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Honorable

Judge of the Circuit Court

ATTEST:

Clerk of Court

By:\_     \_\_\_\_\_\_\_\_\_

Deputy

(SEAL)