

**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS
OF FACT AND CONCLUSIONS OF LAW
(COMPELLING REASONS NOT TO TPR 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: _____)
Child(ren), and concerning

(DOB: _____)

(DOB: _____)
Respondent(s),

Intervenor.

File No: _____

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

(Compelling Reasons not to TPR ICWA)**

The above-entitled matter having come on 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 child(ren) (APPEARING / NOT APPEARING) in person (AND / BUT) represented by counsel, (ENTER NAME); CASA (APPEARING THROUGH ITS DESIGNATED AGENT / NOT APPEARING); the Tribe (APPEARING THROUGH / NOT

APPEARING THROUGH) ICWA Representative and (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 that 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) is a minor child who 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 (MOTHER / FATHER) of the minor child. (SHE / HE) (HAS RECEIVED NOTICE OF THESE PROCEEDINGS / HAS NOT RECEIVED NOTICE OF THESE PROCEEDINGS / HAS RECEIVED NOTICE THROUGH PUBLICATION REGARDING THESE PROCEEDINGS) and has been fully apprised of (HIS / HER) rights and obligations in these proceedings, including the possibility of termination of (HIS / HER) parental rights. (ENTER NAME) (APPEARED / DID NOT APPEAR) at these proceedings and (WAS REPRESENTED / WAS NOT REPRESENTED) by counsel.

5.

(ENTER NAME) is the biological (MOTHER / FATHER) of the minor child. (SHE / HE) (HAS RECEIVED NOTICE OF THESE PROCEEDINGS / HAS NOT RECEIVED NOTICE OF THESE PROCEEDINGS / HAS RECEIVED NOTICE THROUGH PUBLICATION REGARDING THESE PROCEEDINGS) and has been fully apprised of (HIS / HER) rights and obligations in these proceedings, including the possibility of termination of (HIS / HER) parental rights. (ENTER NAME) (APPEARED / DID NOT APPEAR) at these proceedings and (WAS REPRESENTED / WAS NOT REPRESENTED) by counsel.

6.

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

7.

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

8.

The Department of Social Services has made reasonable efforts to return the child to the home and those efforts have been appropriate for the child'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 child from substantial danger to the child's physical health or from severe emotional damage while enabling the child 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 child's parents to cooperate with the Department and to effectively utilize the assistance or services for the benefit and welfare of the child.

9.

The child has been adjudicated to be an abused or neglected child 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 achieve the permanent plan of reunification of the child with his parents and these efforts have been unsuccessful and it would be contrary to the welfare of the minor child 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
- Safety Plan Determination and Conditions for Return
- Protective Capacity Assessment and Evaluation
- Child Case Plan and Evaluations
- Foster Care
 - 24 hour and weekly safety checks
 - Monthly home visits
- Group Care
 - Short term assessment
- Kinship Search
 - Family Locator assigned
 - Correspondence and collateral contacts with family
- Kinship Care
 - PRIDE referral
 - Home Study referral
 - Clothing voucher
- Secondary Worker Assigned from Watertown
- Medical/Vision/Dental services
- Visitation
 - In person visitation at the Department
 - Visitation provided at the Pennington County Jail
 - Letter correspondence with parents
- Transportation
- Family Connections
 - Phone contact with relatives
 - Certified letters
 - Postage paid envelopes for father

- Contact with the Oglala Sioux Tribe
 - Request for enrollment information
 - Request for relative information
 - Case updates
- Parent Locator Search
 - Collateral contact with family
 - Requested assistance from the Tribe
 - Social Media search
- Team Decision Making Meeting
 - Placement Team Meetings
 - Concurrent Planning Meeting

11.

All reasonable efforts have been made to return the adjudicated child to the home of the child's parents (BUT THOSE / . THOSE) efforts have (BEEN / NOT BEEN) successful and the child (WILL BE REFERRED FOR A LEGAL GUARDIANSHIP AS IT IS NOT AND WILL NOT BE SAFE TO RETURN THE CHILD TO THE CUSTODY OF THE RESPONDENT PARENTS. / WILL BE RETURNED TO THE CUSTODY OF THE RESPONDENT PARENTS.)

12.

The conditions which led to the child's removal (STILL EXIST / HAS BEEN REMIDIED) (AND THERE IS LITTLE LIKELIHOOD THAT THOSE CONDITIONS WILL BE REMIDIED SO THAT THE CHILD CAN BE RETURNED TO THE CUSTODY OF THE RESPONDENT PARENTS. / .)

13.

There (IS GOOD CAUSE / IS NOT GOOD CAUSE) to terminate the parental rights of the Respondent parents.

14.

The least restrictive alternative available commensurate with the best interest of the minor child is for the child to (BE PLACED IN THE PERMANENT CUSTODY OF THE DEPARTMENT OF SOCIAL SERVICES PENDING THE FORMATION OF A LEGAL GUARDIANSHIP. / BE RETURNED TO THE CUSTODY OF THE RESPONDENT PARENTS.)

15.

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

16.

This Court must at all times consider what is in the best interest of the child.

17.

The fundamental rights of the Respondent parents have been appropriately balanced with the best interests of the minor child and the public, and the Court finds and concludes that it is in the best interest of the minor child to not terminate parental rights of the Respondent parents, but rather to place the minor child in the permanent custody of the Department of Social Services pending a guardianship.

18.

The parents and the Tribe (AGREES / DISAGREES) with the placement of the minor child in the permanent custody of the Department of Social Services pending a guardianship.

19.

The Department of Social Services (AGREES / DISAGREES) with the minor child being placed in a guardianship as soon as the child has been in his current placement for at least 6 months and the guardianship can be created with the child's relative.

20.

The minor child is an Indian Child as defined by the Indian Child Welfare Act; therefore, the Indian Child Welfare Act applies to these proceedings. The minor child is an enrolled member of the Tribe.

21.

The Tribe was notified of these proceedings in accordance with the Indian Child Welfare Act. The Tribe (HAS INTERVENED / HAS NOT INTERVENED) in these proceedings. The Tribe (APPEARING THROUGH / NOT APPEARING THROUGH) ICWA Representative and (REPRESENTED BY COUNSEL / NOT REPRESENTED BY COUNSEL), (ENTER NAME).

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 those efforts have been (SUCCESSFUL / UNSUCCESSFUL).

2.

Continued custody of the minor child by the Respondent parents would likely result in serious emotional or physical damage.

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 compelling reason exists to not terminate parental rights of the Respondent parents and good cause has been shown to place the minor child in the permanent custody of the Department of Social Services with the intent of placing the child in a permanent guardianship.

4.

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

Dated this (DAY) day of (MONTH), (YEAR), effective however the (DAY) day of (MONTH, YEAR) that being 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