STATE OF 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 FINAL**

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

**CHILD (DOB)** ) **AND** **CONCLUSIONS OF** ) **LAW**

Child(ren), and concerning) (ICWA)

)

**MOTHER (DOB)**)

**FATHER (DOB)** )

**FATHER (DOB)** )

Respondent(s). )

**TRIBE**)

Intervener )

The above-entitled matter having come before the Court for a Final Dispositional Hearing on the       day of      , 20     ; 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 Respondent father, appearing in person but represented by counsel,      ; the minor children not appearing in person but represented by counsel,      ; CASA appearing through a designated agent; the Tribe represented by counsel,      ; 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.

     ,      , 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 has 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 child,      . He has received notice of these proceedings, and has been apprised of his rights and obligations in these proceedings, including the possibility of termination of his parental rights.       appeared at these proceedings and was represented by counsel.

6.

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

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
  + 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,       from       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.

Termination of the Respondent parents’ parental rights is the least restrictive alternative commensurate with the best interests of the children with due regard for the rights of the parents, the public and the state.

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 one year. Prior to this case, the minor children,       had been in the custody of the Department of Social Services for       months. The children had only been returned to the Respondent mother for       months before being removed again. Both times the children have been removed it has been as a result of drug use by the Respondent mother and unaddressed mental health concerns.

18.

The Respondent mother has led a life that has been plagued by addiction and trauma and she continues to demonstrate that she has not overcome the issues that led to the children’s removal. There has been no progress. The Respondent mother is still not addressing her mental health, her addiction, or the violence. The Respondent mother is not in a position to have the minor children returned to her custody.

19.

The Respondent father,       has demonstrated and maintained his anger with the Department of Social Services. He has spent a great deal of energy and emotion on working against the Department. This Court would rather have seen the Respondent father put that energy into working with the Department towards reunification. The Respondent father perceives this all to be unfair. He has been unable to back away from that position and take a different perspective. The Respondent father has not taken any responsibility for his child coming into custody and continues to blame the Respondent mother. Because of that belief he has taken the position that he did not need to work with the Department. The Respondent father overlooks the fact that it was his actions that caused the child to be in the Respondent mother’s custody at the time the child was removed. The Respondent father lacks the protective capacity to be able to keep the minor child,       safe.

20.

The Respondent father,       attended visitation. He was able to maintain consistent employment, housing and contact; however, those were not the expectations for reunification. The expectations were clear from the beginning and the Respondent father demonstrated a complete avoidance of the Department of Social Services. The Respondent father demonstrated a passive response to the required acts and without the behavioral changes the Court has no indication that the Respondent father is able to care for the minor children,      .

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      , including The Report to the Court entered as States Exhibit 1, as well as Mother’s Exhibits A and B; 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 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,       parental rights is supported by the evidence including testimony of the qualified ICWA expert that continued custody, or return of custody of the child,       to the Respondent father would likely result in serious emotional and/or physical damage to the child.

4.

That termination of the Respondent father,       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 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 of      , 20     , effective, however, the      , 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)