

**STATE'S PROPOSED FINAL DISPOSITIONAL FINDINGS
OF FACT AND CONCLUSIONS OF LAW
(GUARDIANSHIP 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: _____)

Child(ren), and concerning

DEPT. of SOCIAL SERVICES

Custodian,

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

(GUARDIANSHIP - ICWA)

Intervenor.

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); 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 ICWA REPRESENTATIVE / NOT APPEARING THROUGH ICWA REPRESENTATIVE) (AND / BUT) (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:

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 permanent custody of the Department of Social Services and who was a resident of (COUNTY NAME) County at the commencement of these proceedings.

4.

(ENTER NAME) is the biological (MOTHER / FATHER) of the minor child.

5.

(ENTER NAME) is the biological (MOTHER / FATHER) of the minor child.

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 NAME). The minor child has been in the permanent custody of the Department of Social Services since (ENTER NAME).

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.

10.

The Department of Social Services was relieved of providing any further efforts for reunification on (ENTER TEXT) and the child's permanent plan became guardianship.

11.

All efforts have been made to return the adjudicated child to the home of the child's parents but those efforts have not been successful and the child has been referred for a legal guardianship.

12.

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

13.

There 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 guardianship of the minor child to be vested with his relative, (ENTER NAME), until the minor

child reaches the age of majority; it being contrary to the welfare of the minor child to return legal or physical custody to 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 1, 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 least restrictive alternative available, commensurate with the best interest of the minor child is to place the minor child in a legal guardianship with his relative, (ENTER NAME).

18.

(ENTER NAME) is committed to the minor child's health and wellbeing.

19.

The Tribe agrees with the placement of the minor child in a legal guardianship with (ENTER NAME).

20.

The minor child, who is (ENTER TEXT) years old, agrees and consents to the guardianship with (ENTER NAME).

21.

The Department of Social Services as the minor child's custodian, consents and agrees with the guardianship.

22.

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 a guardianship with his relative, (ENTER NAME).

23.

The parents agree with the placement of the minor child in a guardianship.

24.

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.

25.

The minor child is an enrolled member of the Tribe.

26.

The Tribe was notified of today's proceedings in accordance with the Indian Child Welfare Act. The Tribe Intervened in these proceedings. The Tribe was 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 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 a permanent guardianship with (ENTER
NAME).

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