

1999

Jayni Searle v. Boyd Searle : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS

FOR THE STATE OF UTAH

Jayni Searle,

Appellant,

v.

Boyd Searle,

Appellee.

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Case No. 990726-CA

Priority 4

BRIEF OF APPELLANT

APPEAL FROM A FINAL ORDER OF THE THIRD DISTRICT
COURT, HONORABLE TIMOTHY HANSON PRESIDING

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FILED

SEP 14 2000

COURT OF APPEALS

ORAL ARGUMENT/PUBLISHED OPINION REQUESTED

FOR THE STATE OF UTAH

Boyd Searle,
Appellee.

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Case No. 990726-CA
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ORAL ARGUMENT/PUBLISHED OPINION REQUESTED

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FOR THE STATE OF UTAH

Priority 4

deference to the trial court. Marquilles By and Through Marquilles v. Upchurch, 696 P.2d 1195, 1199-1200 (Utah 1985).

II. Did the Trial Court err when it determined that the Tribal Court's May 22, 1998 Order, which transferred custody, lacked due process with respect to Appellee? This issue presents a question of law that does not require deference to the trial court.

Marquilles By and Through Marquilles v. Upchurch, 696 P.2d 1195, 1199-1200 (Utah 1985).

STATUTES AND CONSTITUTIONAL PROVISIONS

Appellant believes the following statutes and constitutional provisions are determinative of this appeal.

Constitutional Provisions

U.S. Const., Amend. 5, 14

Utah Const. Art. 1, §7

Utah Const. Art. 1, §24.

Statutory Provisions

25 U.S.C. 1914

UTAH CODE ANNO. § 30-6-4.2 & 4.3 (1999)

UTAH CODE ANN. §78-22a-1 *et. seq.* (1999)

UTAH CODE ANNO. §78-22a-2(2) (1999)

UTAH CODE ANNO. §78-22a-3 (1999)

UTAH CODE ANNO. §78-22a-3(2) (1999)

UTAH CODE ANNO. §78-22a-6 (1999)

Rules of Procedure

Rule 4-501(3)(A) of the Utah Rules of Judicial Administration

Rule 5 of the Utah Rules of Civil Procedure

Rule 65A of Utah Rules of Civil Procedure

Rule 37 of the Utah Rules of Juvenile Procedure

STATEMENT OF THE CASE/FACTS

Overview:

An Action was commenced on May 28, 1998 in the Third District Court (herein after "District Court") to enforce a May 22, 1998 Order from the Fort Peck Assiniboine and Sioux Tribal Court (herein after "Tribal Court"), the Honorable Judge Timothy Hanson presiding. The May 22, 1998 Tribal Court Order was entered after jurisdiction over an action was transferred pursuant to the Indian Child Welfare Act by the Third District Juvenile Court (herein after "Juvenile Court").

Background:

Appellee commenced suit in the Juvenile Court against Appellant in February of 1998, seeking termination of Appellant's parental rights. (See **R. at 326-27**). Appellant is the natural mother of Chad Searle ("Chad"). (See **R. at 326**). Appellees filed an Ex Parte Motion for Temporary Custody in the Juvenile Court, prior to serving Appellant with the Petition to Terminate Appellant's Rights (herein "Termination Petition"). (See **R. at 326-27**). On or about the 3rd day of March, 1999, the Juvenile

Court entered an ex parte Order granting temporary custody of Chad to Appellee. (See **R. at 326-27**).

On or about March 19, 1998, pursuant to the section 104 of the Indian Child Welfare Act, a Petition to Invalidate and Vacate the Ex Parte Custody Order (herein after "Invalidation Petition") was filed in the Third District Juvenile Court by Appellant. (See **R. at 327**). The Petition sought to vacate the March 3, 1998 Juvenile Court Ex Parte Order of temporary custody. (See **R. at 328**).

Appellant also filed a Petition to Transfer (herein after "Transfer Petition") the Juvenile Court matter to Tribal Court. (See **R. at 327**). In April of 1998, Appellee and Appellant agreed that the issues raised in the Invalidation Petition could be determined by the Court with jurisdiction after the Juvenile Court ruled on jurisdictional issues in the Transfer Petition. (See **R. at 357 (paragraph 4)**). The Juvenile Court, the Tribal Court, and the Fort Peck Tribes, were never notified of nor privy to this agreement between the Appellant and Appellee. (See **R. at 357 (paragraph 4)**). Jurisdiction over the Juvenile Court action was transferred from the Juvenile Court to the Tribal Court pursuant to an order entered on May 15, 1998. (See **R. at 6 & Addenda "A"**).

On May 22, 1999, the Fort Peck Tribal Court accepted jurisdiction and transferred placement of Chad to the reservation

and temporary custody to Appellant. (See **R. at 9 & Addenda "B"**). On or about May 28, 1998, Appellant filed a Petition for Writ of Assistance in the District Court seeking to enforce the Tribal Court May 22, 1998 Order. (See **R. at 1 & Addenda "C"**). Attached to the Petition for Writ of Assistance was a certified copy of the May 22, 1998 Tribal Court Order granting Appellant temporary custody. (See **R. at 9**). The District Court scheduled and held a telephonic hearing on June 2, 1998, Judge Timothy Hanson presiding. (See **R. at 11**). Present telephonically at the hearing were: Appellant's counsel, Jim C. Shirley; and Appellee's counsel, Maria C. Santana. (See **R. at 11**). The Court indicated that it would issue the Writ of Assistance unless Appellee sought and obtained the assistance of another Court to stay the Writ of Assistance. (See **R. at 11**).

On June 3, 1998, the Juvenile Court, Judge Olof A. Johansson presiding, issued a stay of its May 15, 1998 order. (See **R. at 328**). Appellant's counsel contacted the Third District Court and informed the Court Clerk that Appellant would not execute on the Writ of Assistance pending a resolution of the Juvenile Court's June 3, 1998 Stay. (See **R. at 55-56**).

On June 8, 1998, a telephonic hearing was held before the Juvenile Court, Judge Olof A. Johansson presiding. (See **R. at 328**). Jointly with the Juvenile Court hearing, a telephonic hearing was also held before the Tribal Court, Judge A.T. Stafni

presiding. (See **R. at 328**). The hearings were telephonically held so that both Courts and all counsel could participate. Appellant's counsel and Appellee's counsel were both present in person at the Juvenile Court site. Gary Beaudry, counsel for the Tribes, was present at the Tribal Court site. (See **R. at 211**).

Counsel were allowed to address both Courts. (See **R. at 211**). Both Courts stated their respective positions. When it became clear that the Court's could not resolve their respective positions, the Juvenile Court stayed the May 15, 1998 order pending review by a "higher court." (See **R. at 328**). The Tribal Court also stayed its order pending review by a "higher court." (See **R. at 328**).

Appellant filed a Petition for Extraordinary Relief seeking review of the Juvenile Court's June 8, 1998 Stay (Case No. 981352-CA). This Court vacated the Juvenile Court's Stay on September 1, 1998. (See **R. at 110**). The litigation resumed in the Fort Peck Tribal Court. On September 8, 1998, Appellant filed a Petition for Custody. (See **R. at 329**). The Petition for Custody was served upon Appellee's counsel pursuant to the Tribal Court's Rules of Civil Procedure (and Rule 5 of the Utah Rules of Civil Procedure). (See **R. at 329**). On September, 9, 1998, the Fort Peck Tribal Court dismissed the Petition for Termination of Parental Rights pursuant to Appellee's request and Appellant's stipulation (however the Tribal Court retained

jurisdiction over the custody matters pending before in Appellant's Petition for Sole Custody. (See **R. at 329**).

On September 10, 1998, Appellant moved that the District Court issue a Writ of Assistance. (See **R. at 55-56**). Appellee filed a Notice of Appeal seeking review of the May 15, 1998 Juvenile Court Order (which transferred jurisdiction).¹ (See **R. at 68**). On September 16, 1998, the District Court sent a letter to the parties stating that it would hold off decision pending the appeal filed by Appellee regarding the May 15, 1998 Juvenile Court Order transferring jurisdiction. (See **R. at 55-56**).

On October 16, 1999, the Fort Peck Tribal Court granted a default judgment in favor of Appellant on her September 8, 1998 Petition for Sole Custody. (See **R. at 322-324**). On November 19, 1999, the Fort Peck Tribal Court held an Order to Show Cause hearing. (See **R. at 326-333**). Appellee failed to appear for the hearing after being served with notice to appear pursuant to the Tribal Court's Order. (See **R. at 326-333**). The Tribal Court held Appellee in contempt and ordered the child returned to the reservation in its November 23, 1998 Order on the Order to Show Cause. (See **R. at 326-333**).

On December 12, 1999, the Supreme Court dismissed the appeal

¹ Appellee also served a Petition for Extraordinary Relief against Judge Hanson of the District Court upon Appellant, but did not file the same or serve the Court with the same. (See **R. at 55-56**).

filed by Appellee regarding the Juvenile Court's May 15, 1998 order. (See **R. at 146**). On December 18, 1999, Appellant requested issuance of a Writ by the District Court. (See **R. at 153-150**). The Court scheduled a hearing on February 5, 1999. (See **R. at 206**). The hearing was rescheduled several times and was finally held on March 8, 1999. (See **R. at 206-334**).

No evidence was taken. Only argument was offered. See **Transcript**. First, the Court found that the Petition for Writ of Assistance did not comply with the provisions of the Utah Foreign Judgment Act. (See **Transcript at page 32 lines 19-20**). The Court indicated that the sole method of enforcement was through the Foreign Judgment Act. (See **Transcript at page 32 lines 3-5**). Second, the Court found that the May 22, 1999 order could not be enforced because the order lacked due process. (See **Transcript at page 33 lines 4-8**). The Court based this lack of due process finding on the fact that the order was issued Ex Parte on May 22, 1998 (i.e. Appellee did not receive notice of the Fort Peck Tribes' Motion and, therefore, were not heard at the ex parte hearing). (See **Transcript at page 33 lines 4-8**). An order was entered on July 26, 1999 by the District Court on the March 10, 1999 hearing. (See **R at 453-57**).

SUMMARY OF ARGUMENT

Method of Enforcement: The District Court ruled that the

only method of enforcement of a Foreign Judgment is through the process outlined under the Utah Foreign Judgment Act. Contrary to the District Court's ruling, UTAH CODE ANNO. §78-22a-6 (1999 (entitled Optional Procedure) provides that the Foreign Judgment Act (Utah Code Anno. §78-22a-1 et. seq. (1999)) does not "impair a judgment creditor's right to bring an action in this state to enforce" a foreign judgment. Appellant simply filed an action to enforce the custody order of a foreign jurisdiction as is provided for in the Foreign Judgment Act. Additionally, Appellee was provided all the procedural protections that are allowed under the Foreign Judgment Act.

Due Process: The District Court ruled that the Tribal Court May 22, 1998 Order lacked due process in that Appellee was entitled to notice prior to the Tribal Court's decision. Contrary to the District Court's finding, Appellee was granted due process. First, Appellee had ample notice of the Invalidation Petition which requested that the March 3, 1998 Ex Parte Juvenile Court Order which granted temporary custody to Appellee be vacated. The Tribal Court had jurisdiction and a duty to immediately vacate the Juvenile Court's March 3, 1998 Order. (See 25 U.S.C. 1914).

Second, Appellee was afforded an opportunity for a hearing in which Appellee could contest the Order. On June 8, 1998, such a hearing was held. On June 8, 1998, the Tribal Court even

stayed its order, inviting a review by a "Higher Court. The subsequent hearing complied with the general requirements for such an order (i.e. that any ex parte order must be followed by a hearing on the Motion that resulted in the order). Appellee's chose not to contest the Order through an appeal to the Tribal Court's Appellate Court or renew a fight for custody. Additionally, Appellee chose not to contest the subsequent custody action in Tribal Court, which resulted in a permanent custody order. Appellee had due process, but chose not to avail himself of the process provided.

ARGUMENT

A. FOREIGN JUDGMENT ACT COMPLIANCE

The District Court ruled that the only way to enforce a foreign judgment was through the Foreign Judgment Act. Additionally, the District Court Ruled that Appellant had failed to comply with the provisions of the Foreign Judgment Act. Both of these rulings are erroneous in that there are alternatives to the Foreign Judgment Acts provisions and Appellant substantially complied with the Foreign Judgment Acts' provisions.

1. Alternatives to the Foreign Judgment Act

UTAH CODE ANNO. §78-22a-6 (1999) provides that "this chapter shall not be construed to impair a judgment creditor's right to bring an action in this state to enforce such creditor's

judgment." "The judgment holder still has the option, however, to commence an enforcement action under the older, traditional approach." Pan Energy v. Martin, 813 P.2d 1142, 1143 (Utah 1991). The traditional method of enforcing a judgment was to file an action on the judgment in Utah. Id.

A Petition for Writ of Assistance is an action to enforce the provisions of a judgment in Utah. Under current case law and the statutory constructs of the Foreign Judgment Act, it seems clear that the Petition for Writ of Assistance should have been a viable alternative action to enforce the foreign judgment of the Tribal Court. The Writ of Assistance was an appropriate method in which to address the child custody issue which was involved in the enforcement of the Tribal Court's May 22, 1998 Order.

2. Compliance with the Foreign Judgment Act

Contrary to the District Court's Order of Dismissal, the May 22, 1998 Tribal Court Order was domesticated in that an original certified copy was filed with the Clerk of the Court when the Petition for Writ of Assistance was filed. In Holm v. Smilowitz, 840 P.2d 157 , 163 (Utah App. 1992), this Court noted:

The specific language of UTAH CODE ANN. § 78-22a-2(2) (1992) reads: "A copy of the foreign judgment authenticated in accordance with an appropriate act of Congress...may be filed with the clerk of any district court in Utah. ... "The judgment holder still has the option to commence an enforcement action under the older, traditional approach." Footnote 2.

Clearly, Appellant had the option to enforce the action or to register the action in accordance with the Utah Foreign Judgment Act. Unlike the Smilowitz, Appellant filed an authenticated/certified copy of the Order with the Court. Thereby placing before the Court, an order which was registered/domesticated with the Court.

While the District Court did not address exactly how Appellant failed to comply with the Foreign Judgment Act, it is clear that the relevant provisions were substantially complied with through alternative procedures. First, an original certified copy of the judgment was filed as required by UTAH CODE ANNO. §78-22a-2(2) (1999) ("A copy of a foreign judgment authenticated in accordance with an appropriate act of Congress or an appropriate act of Utah may be filed with the clerk of any district court in Utah). (See **R. at 8**). The Tribal Court order was appropriately certified. (See **R. at 8**).

Second, the Appellee was given notice that Appellant was seeking to enforce the judgment in Utah. While this notice did not take place in the method prescribed by UTAH CODE ANNO. §78-22a-3 (1999), such notice was given when, in accordance with Rule 5 of the Utah Rules of Civil Procedure, Appellee's attorney was served with a copy Petition for Writ of Assistance with a copy of the Tribal Court's May 22, 1998 Order attached. (See **R. at 4**). While an affidavit detailing the judgment debtors address was not

submitted as required by UTAH CODE ANNO. §78-22a-3(2) (1999), a cover sheet was filed which detailed the judgment debtor's last known address.

The procedural protections of the Foreign Judgment Act were met. As argued above, the Foreign Judgment Act was not the vehicle for enforcement. However, Appellee was given all the procedural protections of the Foreign Judgment Act, in spite of the Appellant's exercise of the option to pursue an independent action to enforce the judgment. Accordingly, Appellee was not denied any process which was owed under the Foreign Judgment Act.

B. DUE PROCESS AFFORDED

The District Court also ruled that Appellee was not afforded Due Process in that the May 22, 1998 Tribal Court Order was granted without notice to Appellee. This ruling was erroneous.

In reviewing an order under the Foreign Judgment Act, the reviewing Court should look to see if the foreign judgment is valid and final. See Estate of Jones, Matter of, 858 P.2d 983, 985 (Utah 1993) (If the judgment meets the validity and finality criteria, "it is entitled to full faith and credit"). While Estate of Jones dealt with the enforcement of the order under the Foreign Judgment Act, the analysis regarding the viability and enforceability of the foreign order should be basically the same for an enforcement action because the core issues are the same. Appellant would propose that the Court should use such an

analysis in reviewing the District Court's conclusion that the foreign order lacked due process.

The District Court's order addressed only the validity portion of the analysis. However, since both prongs were raised and pled below, Appellant will address both the validity and finality issue as they relate to the Tribal Court's May 22, 1998 Order. As specifically set forth below, the Tribal Court's May 22, 1998 Order is both valid and final.

1. Validity

"In order to be 'valid' for purposes of full faith and credit, a judgment must have been rendered by a court with competent jurisdiction." Estate of Jones, Matter of, 858 P.2d 983, 985 (Utah 1993). If the rendering court had competent jurisdiction, the order must have been issued "in compliance with the constitutional requirements of due process." Estate of Jones, Matter of, 858 P.2d 983, 985 (Utah 1993).

A. Competent Jurisdiction

The original action involving Appellant's custodial rights was commenced in the Juvenile Court by Appellee. Pursuant to relevant provisions of the Indian Child Welfare Act, jurisdiction over the Juvenile Court matter was transferred to the Tribal Court. This issue was litigated to finality in the Utah Court System. Pursuant to the Indian Child Welfare Act, the tribal court is the preferred forum for resolution of custody issues

involving "Indian" children. Adoption of Halloway, Matter of, 732 P.2d 962, 966 (Utah 1986).

The United States Supreme Court has recognized that the determination of the custody of an "Indian" child is "squarely" in the tribal court's hands. Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 52, 109 S.Ct. 1507, 1610, 104 L.Ed. 2d 29, _____ (1989). Based upon the transfer of jurisdiction under the Indian Child Welfare Act and the above-cited case law, the Tribal Court was a court of competent jurisdiction which had the authority to determine the custody issues involved.

B. Due Process

Based upon the fact that the Tribal Court was a "court of competent jurisdiction," the Court should look to see if the order passed constitutional muster. This Court has previously recognized that the demands of due process rest on the concept of basic fairness of procedure and demand a procedure appropriate to the case and just to the parties involved. Holm v. Smilowitz 840 P.2d 157, 164 (Utah App. 1992) (quoting Wiscombe v. Wiscombe, 744 P.2d 1024, 1025 (Utah App. 1987) (quoting Rupp v. Grantsville City, 610 P.2d 338, 341, (Utah 1980)). "One of the fundamental requisites of due process is the opportunity to be fully heard" and notice. Id. Appellee's due process rights were not violated under Utah State Constitution or under the United States Constitution.

(i) Invalidation Petition

Under Utah law that a judge may enter an order without a hearing where a party was served with a pleading and either fails to respond or fails to file a request for hearing.² Rule 4-501(3)(A) of the Utah Rules of Judicial Administration specifically provides that "a decision on a motion shall be rendered without a hearing unless ordered by the Court or requested by the parties." Rule 4-501(3)(F) also provides that a hearing shall be deemed waived if no written request for a hearing is made. Rule 55 allows the Court to enter judgment by default in cases where the responding party fails to respond within the time period allotted.

Under these provisions, the Juvenile Court would have been well within its discretion to rule on the Issues in Appellant's Invalidation Petition at any time subsequent to the lapse of time for a Response because by failing to memorialize the April agreement or by failing to file a Response, Appellee waive his right to a hearing. Additionally, a ruling on Appellant's Invalidation Petition was mandated under Federal Law. See Section 104 of the Indian Child Welfare Act, 25 U.S.C. 1914. Appellee's due process rights would not have been violated if the Juvenile Court had taken such an action. Appellee was served and had an

² See Rule 4-501 of the Utah Rules of Judicial Administration and Rule 55 of Utah Rules of Civil Procedure.

opportunity to preserve his rights in relation to the Petition to Invalidate. If the Juvenile Court had done so, Appellee would have been obligated to either file an appeal or move to vacate the order if Appellee wanted relief from such an order.

While in April of 1998, Appellee and Appellant had agreed that a responsive pleading was needed only after the issue of jurisdiction was decided. The agreement was never communicated to the Juvenile Court or the Tribal Court by either party.³ The Juvenile Court and, subsequently, the Tribal Court were not bound by the un-memorialized agreement.

The Juvenile Court could have disposed of the Invalidation Petition at any time. The Juvenile Court could have made a ruling either granting or denying the Motion without a hearing under Rule 4-501 or Rule 55. **While the parties would be entitled to notice that the ruling had been issued, the parties were not entitled to notice that the Juvenile Court would be issuing a ruling** because such Notice was provided when the pleading was served.

If the Juvenile Court was entitled to dispose of the Petition to Invalidate as set forth above, the Tribal Court, upon

³ While the parties did agree on May 1, 1998, that the Juvenile Court should only consider the Transfer Petition prior to ruling on any other issues, the parties did not communicate that agreement was reached earlier in April with regard to the Invalidation Petition. The May 1, 1998 only addressed the Transfer Petition.

retaining jurisdiction, clearly acquired the same right. Accordingly, the Tribal Court's May 22, 1998 Order did not lack due process in that Appellee waived any right to a hearing by failing to submit, at the very least, a written or oral request for hearing on the Invalidation Petition. The Tribal Court had a duty under the Indian Child Welfare Act, Section 104, to invalidate and vacate the Juvenile Court's March 3, 1998 Order because it was improperly entered.

A subsequent order from the Tribal Court indicates that the Tribal Court's May 22, 1998 Order involved a decision to invalidate the Juvenile Court's March 3, 1998 Ex Parte Order. (See R. at 327-28). In the Tribal Court's November 23rd, 1998 Order, the Tribal Court found:

16. **Ms. Searle filed a Petition to invalidate the improperly entered custody order, citing to 25 U.S.C. 1914 and alleging violations of 1912(a, d, & e).**

17. Boyd and Dorthy Searle filed a Response to the Amended Petition to Transfer, alleging that domicile had not changed at the death of the emotional father and that Jayni Searle had abandoned the child, Chad Searle.

18. Ms. Searle filed a Reply which cited to case law which demonstrated that under common law domicile did change at the death of a custodian to the surviving natural parent and which alleged grounds to demonstrate that Ms. Searle had not abandoned the child.

19. On May 15th, 1998, the Third District Juvenile Court, in and for the state of Utah issued an order transferring jurisdiction to tribal court.

20. On May 22nd, 1998, this Court found that it is has

exclusive jurisdiction and accepted jurisdiction. Additionally, **the Court invalidated the previous order granting custody to Boyd and Dorothy Searle and ordered that the child be brought back to the reservation and placed in the custody of the natural mother.** (See R. at 327-28). Emphasis added.

The District Court had this evidence before it, but did not consider this evidence in making its ruling. This evidence was entitled to Full Faith and Credit. Rather than considering the evidence, the District Court did not look at the surrounding circumstances at the entry of the Tribal Court's May 22, 1998 Order. The District Court limited itself to the May 22, 1998 Order. (See Transcript Page 17 at 5-8).

However, a full review of the facts before the Court, the Tribal Court's order did not lack due process because Appellee had notice of the Invalidation Petition and had an opportunity to be heard on the issues raised therein. The subsequent orders should have been considered to place a context for the ruling and the facts which were before the Tribal Court.

ii. Notice through the Juvenile Court's May 15, 1998 Order

The Juvenile Court's May 15, 1998 Order also left the discretion over custody with the Tribal Court. (**See R. at 6**).

The Order states as follows:

1. The Verified Petition to Terminate Parental Rights of Jayni Searle is hereby transferred to the Tribal Court, as requested by the mother, for said Court's determination as to whether or not it wishes to exercise jurisdiction over this matter.

2. Pending such a determination by the Tribal Court, this Court directs that its Order of 3-3-98, **placing temporary custody and guardianship of said child with the Petitioners, shall remain in full force and effect, and that said child remain in his current placement until the Tribe makes its determination.** Emphasis added. (See R. at 6).

The Tribal Court clearly had the discretion to change or modify the order in that there was no provision for its continued enforcement following acceptance of jurisdiction by the Tribal Court. Appellee was given notice that the Juvenile Court March 3, 1998 Order only had full force and effect until the Tribal Court made its determination on jurisdiction. Appellee did nothing with this knowledge.

iii. Standard for Ex Parte Type Orders

There are several provisions which allow a Court to enter an Ex Parte Order. The Utah Cohabitant Abuse Act provides that the Court may issue an Ex Parte Order, but requires that a hearing be held within 20 days. See UTAH CODE ANNO. § 30-6-4.2 & 4.3. Rule 37 of the Utah Rules of Juvenile Procedure provides a similar 20 day hearing requirement in the issuance of a Protective Order.

Rule 65A provides that a Court may issue a Temporary Restraining Order Ex Parte, subject to a hearing being held within 10 days. See Rule 65A of Utah Rules of Civil Procedure (such an order is subject to stringent requirements regarding notice prior to its issuance). While these statutes/rules

present a formal process for authorizing the Ex Parte Order, they demonstrate that there are situations where the Court can issue an Ex Parte Order without violating due process. Taken as a whole, the statutes/rules allow an ex parte order where it is does not finalize the litigation and the opposing party has an opportunity to have a hearing on the matter subsequent to the order.

Appellant does not dispute that a fundamental requirement of due process is notice and an opportunity to be heard. See Mullane v. Hanover Bank and Trust, Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). However, the United States Supreme Court has recognized that "due process is flexible and calls for such procedural protections as the particular situation demands." Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965). The question is whether the circumstances surrounding the entry of the Tribal Court's May 22, 1998 Order amount to due process.

In the instant matter, the key points the District Court failed to look at in making its conclusions is that due process was afforded. While, ignoring the argument above regarding appropriate notice of the Invalidation Petition, Appellee did not have notice that the Tribal Court could enter an order accepting jurisdiction and changing custody, pursuant to the May 15, 1998 Juvenile Court Order. Appellee did have a fair opportunity to

object and fight the issues raised by the order at the June 8, 1998 hearing.

On June 8, 1998, a hearing was held and Appellee was able to present his arguments. The Tribal Court stayed the proceedings and its order pending a possible review by another Court of the Stay issues. Appellee had the opportunity from June 8, 1998 until October 1, 1998 to file an appeal, a Motion, or a request for some relief from the Court. Appellee could have requested relief from the Tribal Court's May 22, 1998 Order.

Despite all of Appellee's concerns regarding due process in Tribal Court, Appellee knew that the Juvenile Court's March 3, 1998 Ex Parte Order clearly violated due process in that no notice was given to the mother and no hearing was ever held on the March 3, 1998 Ex Parte Order. Appellee knew that he did not possess a valid order of custody. Appellee had nearly a four month window in which to file pleadings before the Tribal Court to seek custody. Appellee chose not to do so. Rather Appellee sat idly by.

Appellee's claim of custody was defective and he knew or should have known it. Given the Juvenile Court's May 15, 1998 Order extending the March 3, 1998 order only until the Tribal Court accepted jurisdiction and the defective nature of the March 3, 1998 Juvenile Court Order, Appellee should have acted. In the subsequent proceedings, Appellee was given time to respond, but

chose not to do so. Appellee was given the opportunity to file Motions or Appeals to review the May 15, 1998 Order or obtain custody, Appellee chose not to do so. Nothing precluded Appellee from seeking temporary custody through the Tribal Court. Appellee was not denied any process, but rather denied himself of due process.

Appellee was given sufficient due process subsequent to June 8, 1998. In Phillips v. State Bd. of Regents, the Tennessee Supreme Court held that while the initial notice to Phillips may have been defective, the hearings subsequent to the initial notice provided Phillips with sufficient Notice and an opportunity to be heard. 863 S.W.2d 45, 50-51 (Tenn 1993). While Phillips involved an employee discharge, it provides a good factual analysis which the Court can look at. In the instant case, the May 22, 1998 Tribal Court Order was subject to modification, it did not finalize the action.

Appellee was afforded the opportunity to defend against the May 22, 1998 Tribal Court Order in that the stay on June 8, 1998 created a situation where the order did not effectively take effect for several months. Appellee had a choice to file pleadings, but chose not to do so. Rather, Appellee chose to sit on his rights. By the time that the District Court heard the matter, Appellee had over 9 months in which to have filed something contesting the May 22, 1998 Tribal Court Order.

Additionally, Appellee chose not to defend against Appellant's Petition for Sole Custody which was subsequently granted by the Tribal Court on October 16, 1998.

Even if this Court were to determine that the May 22, 1998 Order lacked due process at the time it was issued, the subsequent proceedings in the case remedied any problems with the Order. Appellant was granted sole permanent custody on October 16, 1998. Appellee could have contested the November 19, 1998 Order to Show Cause, but chose not to appear.

Appellee was given the opportunity to file pleadings repeatedly, but chose not to do so. Appellee was given procedural protections under the Tribal Court's Appellate Rules, but did not avail himself of those protections. By the time that the Court heard argument on March 10, 1999, Appellee had completely failed to participate in any meaningful way in Tribal Court, despite ample notice of the proceedings which were occurring. The District Court had evidence to show that any procedural defects that may have existed were cured by the subsequent proceedings which gave Appellant custody. The subsequent Orders demonstrate that the May 22, 1998 Order of Temporary Custody was appropriate despite Appellee's protestations that he was denied due process.

2. Finality

A. Estate of Jones Standard of Finality

The finality in the context of domestication of a foreign order is not the same as determining the finality of a judgment for purposes of appeal (i.e. interlocutory v. appeal of right). In the Estate of Jones decision cited above, the Court held that the foreign judgment (the California judgment) was "final because the trial court judgment was not appealed." Noting that the foreign jurisdiction (California) provided "a specific time period in which to appeal from the entry of judgment," the Court found that the litigant had failed to appear or participate in the foreign litigation, including a failure to even "attempt to appeal the judgment." Id. at 986.

This Court's interpretation is entirely consistent with the other provisions of the Foreign Judgment Act (the 30 day waiting period and the stay provisions which have been argued by Respondents previously). These provisions allow for time to file an appeal or to stay the enforcement if an appeal is pending. Under this analysis, the judgment is final in that Respondents failed to participate in the underlying litigation or challenge the tribal court's order in any manner (i.e. filing an objection or even a request for hearing).

B. Finality as to the Issue of Custody

As shown by the subsequent Tribal Court Rulings on October 16, 1998 and November 23, 1998, the issue of custody was finalized as of March 10, 1999. Whether the temporary custody order does not satisfy the requirement of finality is no longer an issue. Even if the temporary custody order was not final, it became final upon entry of the permanent custody Tribal Court Order on October 16, 1998. Even under Utah law, the temporary custody order could have been appealed subsequent to the determination of the custody action. The temporary custody order is now final and no longer subject to appeal.

C. Laws of the State of Rendition

The applicable provisions of the Fort Peck Tribal Court Rules of Appellate Procedure differ significantly from the Utah Rules of Appellate Procedure. (**See R. at 200-05**). Unlike the Utah Rules of Appellate Procedure, all appeals are labeled as being interlocutory. The orders which are appealable/final are those which "involves an issue of law consistent with a violation of due process adversely affecting the outcome of a trial on the merits, **regardless of whether the final order includes a full determination on the merits.**" See Rule 6 of Fort Peck Rules of Appellate Procedure (**See R. at 200-05**). Therefore, the temporary custody order was final under the laws of the state of rendition

as required under the finality prong because Appellee could have appealed on an alleged due process violation.

CONCLUSION

The Judgment of the District Court should be either reversed or reversed and remanded. It should be reversed because the District Court erred in determining that the Utah Foreign Judgment Act precluded an independent action to enforce the judgment. It should be reversed because the order did not lack due process as established by the Tribal Court's subsequent orders, or, in the alternative, remanded so that the District Court can make a determination based upon all the evidence presented as to subsequent facts that were available at the time of the March 10, 1999 Hearing. The Order should not stand as it was issued.

DATED this 13th day of September, 2000.



Jim C. Shirley
Counsel for Appellant

CERTIFICATE OF MAILING

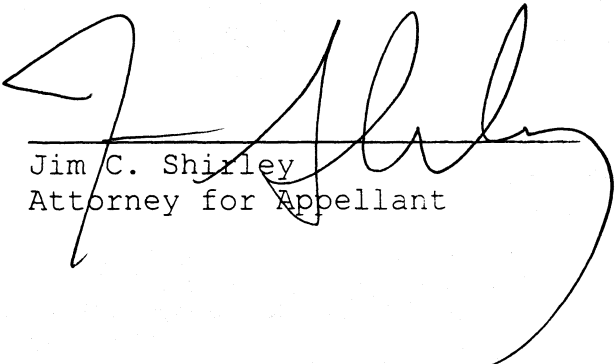
I hereby certify that on this 13th day of September, 2000, I mailed, first class postage prepaid, true and correct copies of the foregoing Appellant's Brief to:

Maria Santana

Attorney for Appellants
44 West Broadway, Suite 304
Salt Lake City, UT 84111

Gary Beaudry

Attorney for Fort Peck Tribes
322 Main Street, Suite 102
Williston, N.D. 58802-2141



Jim C. Shirley
Attorney for Appellant

Jayni Searle,
Appellant,

V.

Appellee.

Priority 4

ADDENDA "A"-MAY 15, 1998
JUVENILE COURT ORDER

In the Third District Juvenile Court
Salt Lake County, State of Utah

MAY 15 1998

State of Utah, interest of	Ruling on Motions:
Searle, Chad (1-14-97)	Motion to Intervene
A person under eighteen years	Motion to Transfer to Tribe
	Case #948405

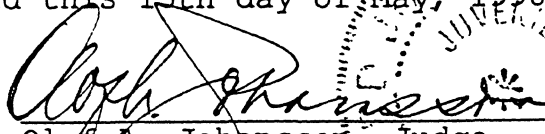
The above matter came before this Court pursuant to a Verified Petition to Terminate the Parental Rights of Jayni Searle filed 2-23-98, and amended 3-19-98, filed by Petitioners, Boyd Clark Searle and Dorothy Searle. They were represented by Maria Cristina Santana, attorney. Subsequently, the above Motions were filed. The Motion to Intervene was granted to the Fort Peck Assiniboine and Sioux Tribes and signed by this Court on 3-24-98, said Motion having been filed by Gary Beaudry, attorney for the Tribes. On behalf of the mother, Jayni Searle, Jim Shirley, attorney, filed a Motion to Transfer said matter to the Tribe. On 3-3-98, this Court issued an exparte temporary order of custody and guardianship with the Petitioners pending further hearing on their Petition for Termination.

The Court, having reviewed the documents filed and the applicable sections of the Indian Child Welfare Reform Act, makes the following order:

1. The Verified Petition to Terminate the Parental Rights of Jayni Searle is hereby transferred to the Tribal Court, as requested by the mother, for said Court's determination as to whether or not it wishes to exercise jurisdiction over this matter;

2. Pending such determination by the Tribal Court, this Court directs that its Order of 3-3-98, placing temporary custody and guardianship of said child with the Petitioners, shall remain in full force and effect, and that said child remain in his current placement until the Tribe makes its determination.

Dated this 15th day of May, 1998


Olof A. Johansson, Judge

cc: Jim Shirley, attorney for mother
Maria Cristina Santana, attorney for Petitioners
Gary Beaudry, attorney for Tribes

STATE OF UTAH) ss.
COUNTY OF SALT LAKE)
I, THE UNDERSIGNED CLERK OF THE THIRD DISTRICT
JUVENILE COURT, DO HEREBY CERTIFY THAT THE
TRUE AND FULL CO
MY OFFICE

COURT

May 15 1998

FORT PECK TRIBAL COURT
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
P.O. BOX 1027
POPLAR, MONTANA 59255
(406) 768-5557

State of Utah, Third District Juvenile Court)	Order Accepting Jurisdiction
)	
In the Matter of Chad Searle,)	
)	
A Minor Indian Child)	(Utah case # 948405)

Upon Motion of Gary M. Beaudry, ICWA Attorney for the Fort Peck Tribes and upon review of the court order issued by Judge Olof A. Johansson of the Third District Juvenile Court, Salt Lake City County, State Utah, in accordance with the Indian Child Welfare Act of 1978 and good cause appearing this court issues the following:

Findings


1. This matter is an Indian Child Welfare Act Proceeding as defined under the Indian Child Welfare Act of 1978 as it pertains to a Termination of Parental Rights;.
2. The child subject to this proceeding is an Indian Child as defined under the Act and the Fort Peck Tribes is the Indian Child's Tribe as defined under the Act;
3. The State court after due process issued an order transferring jurisdiction of this matter to this Tribal court;
4. This court enjoys jurisdiction exclusive of any state court under 25 U.S.C. 1911(a).

NOWHEREFORE it is the order of this court that:

1. The Fort Peck Tribal Court hereby accept jurisdiction and allow the child to be transported from the State of Utah to the Fort Peck Indian Reservation by his Natural Mother, Jayni Searle and
2. That the child shall remain under the temporary care, custody and control of his natural mother Jayni Searle until further order of this court.

Issued and dated this 22nd day of May 1998.

Attest Clerk of Court


Chief Judge, A.T. Stafne

FOR THE STATE OF UTAH

Priority 4

BRIEF OF APPELLANT

B

FILED DISTRICT COURT
Third Judicial District

MAY 28 1998

By M. Wheeler SALT LAKE COUNTY
Deputy Clerk

JIM C. SHIRLEY (#7100)
ATTORNEY FOR PLAINTIFF
9 EXCHANGE PLACE, SUITE 400
SALT LAKE CITY, UTAH 84111
TELEPHONE: (801) 359-8003

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, UTAH

IN THE MATTER OF CHAD SEARLE
A MINOR INDIAN CHILD

JAYNI SEARLE,

Petitioner,

vs.

BOYD SEARLE,

Respondent.

PETITION FOR WRIT OF
ASSISTANCE

Case No.

980905344

Judge

Hanson

COMES NOW Petitioner, Jayni Searle, by and through counsel, Jim C. Shirley. and,
pursuant to 25 U.S.C. 1911(d), petitions the Court to grant a Writ of Assistance in the above-
entitled matter. The Request is based upon the following:

FACTUAL AND PROCEDURAL RECITALS

1. Jayni Searle is the natural mother of Chad Searle.
2. An action was previously commenced in Third District Juvenile Court involving
Chad Searle.

3. Pursuant to a temporary order of custody signed on March 3, 1998, Respondent, Boyd Searle, was given temporary custody, care, and control of Chad Searle.
4. Respondent also obtained an Ex-Parte Protective Order from the Third District Court.
5. The Ex-Parte Protective Order was certified to the Juvenile Court by Commissioner Arnett.
6. Pursuant to 25 U.S.C. 1911(a) (Indian Child Welfare Act), exclusive jurisdiction over the child and the proceedings was transferred to the Fort Peck Assiniboine and Sioux Tribal Court. See Exhibit #1 (Certified Copy of the Juvenile Court Order).
7. The Fort Peck Tribal Court entered an order accepting jurisdiction, ordering that Chad Searle be transported to the Fort Peck Indian Reservation by Jayni Searle, and that temporary custody of Chad Searle be given to Jayni Searle. See Exhibit #2 (Certified Copy of Tribal Court Order).
8. Based upon conversations between counsel for Boyd Searle and counsel for Jayni Searle, Boyd Searle has been unwilling to comply with the tribal court order and surrender custody of Chad Searle to Jayni Searle for transportation.
9. To the best of Petitioner's understanding, Chad Searle attends Arcadia Elementary located at 3461 West 4850 South, Kearns, Utah
10. To the best of Petitioner's knowledge, information, and belief, Chad Searle is either residing at: (1) the residence located at 4885 South 3640 West, Kearns, Utah; or (2) the residence located at 4906 South 4460 West, Kearns, Utah.

LEGAL ANALYSIS

The Indian Child Welfare Act was enacted “to promote the stability and security of Indian tribes and families.” 25 U.S.C. 1902. The provisions of the Indian Child Welfare are controlling where applicable due to the supremacy of Federal Law. Adoption of Halloway, Matter of, 732, P.2d 962, 966 (Utah 1986). The importance of tribal primacy should be enforced by the state courts because the tribal interest in “preserv[ing] its identity and the traditions” by determining “who will have the care and custody of its children.” Id. Under 25 U.S.C. 1911(d):

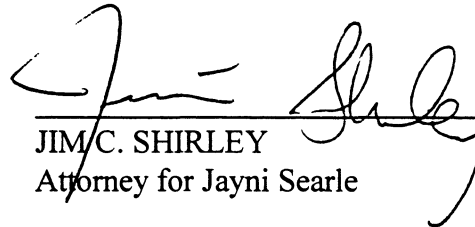
The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other public entity.”

CONCLUSION

The Fort Peck Tribal Court has entered an order requiring the transport of Chad Searle to the tribal reservation by Jayni Searle. This order necessitates the surrender of physical custody of Chad Searle. Pursuant to federal law and the supremacy clause, the order of the Fort Peck Tribal Court should be given the same full faith and credit of any order granted by a court in the state of Utah. Third District Court should recognize and give full faith and credit to the Order of the Fort Peck Assiniboine and Sioux Tribal Court pursuant to 25 U.S.C. 1911(d). The tribal court has determined that the temporary care, custody, and control of Chad Searle should vest in his mother and that Chad Searle should be transported back to the tribal reservation. The refusal of Boyd Searle to comply with this order is willful. The Court should issue a Writ of Assistance so that a peace officer or law enforcement officer may enforce the order of the tribal court and surrender the child to his mother so that he can be transported to the reservation.

WHEREFORE, Petitioner prays that the Court issue a Writ of Assistance directing the Sheriff, Law Enforcement, or Constable to use any and all necessary and reasonable means to secure the child and deliver him to Jayni Searle. All necessary and reasonable means shall include entrance upon the premises located at: (1) the residence at 4885 South 3640 West, Kearns, Utah; (2) the residence at 4906 South 4460 West, Kearns, Utah; or (3) Arcadia Elementary at 3461 West 4850 South, Kearns, Utah and execute upon the attached Order.

DATED THIS 28th day of May, 1998.

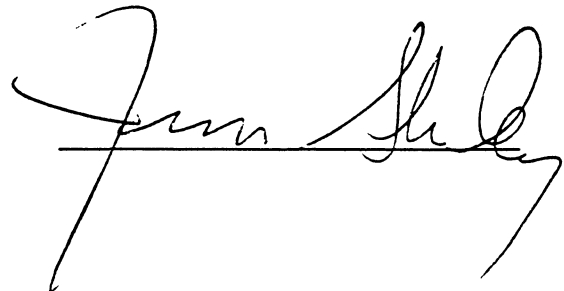

JIM C. SHIRLEY
Attorney for Jayni Searle

CERTIFICATE OF MAILING

On this 28th day of May, 1998 I mailed, postage pre-paid First Class,
a copy of the foregoing Petition for Writ of Assistance to:

Maria Christina Santana
Santana Law Firm
Attorney for Petitioner
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106

Beaudry, Gary
Beaudry Law Offices
322 Main Street, Suite 102
Williston, North Dakota 58802-2141



FOR THE STATE OF UTAH

Appellee.

Priority 4

BRIEF OF APPELLANT

ADDENDA "D"-COVERSHEET

COVER SHEET FOR CIVIL ACTIONS

PARTY IDENTIFICATION (ATTACH ADDITIONAL SHEETS AS NECESSARY)

PLAINTIFF/PETITIONER

Name Jayni Searle
Address Fort Peck Tribal Reservation
Poplar Montana
Day Time Telephone o

PLAINTIFF/PETITIONER

Name
Address

Day Time Telephone

DEFENDANT/RESPONDENT

Name Boyd Searle
Address 4406 South 4460 West
Idaho, Utah
Day Time Telephone

DEFENDANT/RESPONDENT

Name Fort Peck Tribes
Address Fort Peck Tribe PO Box 1022
Poplar Montana 59255
Day Time Telephone

ATTY FOR PLAINTIFF/PETITIONER

Name Jim C Shirley
Address Exchange Place, Suite 400
Salt Lake City, Utah 84111
Day Time Telephone 801 359 8003

ATTY FOR PLAINTIFF/PETITIONER

Name
Address

Day Time Telephone

ATTY FOR DEFENDANT/RESPONDENT

Name Maria Santana
Address 2159 South 700 East
Salt Lake City Utah 84106
Day Time Telephone

ATTY FOR DEFENDANT/RESPONDENT

Name Gary Beaudry
Address 322 Main Street Suite 100
Williston, N. Dakota 58802
Day Time Telephone
1-800-760 4823

TOTAL CLAIM FOR DAMAGES

\$

JURY DEMAND

☐ Yes ☒ No

SCHEDULE OF FEES: §21-5. CHECK ANY THAT APPLY. (SEE CASE TYPES FOR FILING FEES FOR COMPLAINTS OTHER THAN CLAIM FOR DAMAGES)

----- COMPLAINT FOR DAMAGES -----

- | | |
|---|------|
| <input type="checkbox"/> Civil, Interpleader or Small | \$37 |
| Claims: \$2000 or less | |
| <input type="checkbox"/> Small Claims: \$2001-\$5000 | \$60 |
| <input type="checkbox"/> Civil or Interpleader: \$2001-\$9999 | \$80 |

☐ Civil or Interpleader: \$10,000 \$120
and over

☐ Civil Unspecified \$120

----- MISCELLANEOUS -----

- | | |
|--|------|
| <input type="checkbox"/> Jury Demand | \$50 |
| <input type="checkbox"/> Vital Statistics §26-2-25 | \$2 |

COVER SHEET FOR CIVIL ACTIONS

CASE TYPE (CHECK ONLY ONE CATEGORY)

Fee	Case Type
----- APPEALS -----	
\$120 <input type="checkbox"/> AA	Administrative Agency Review
\$70 <input type="checkbox"/> AP	Small Claims Trial de Novo
----- GENERAL CIVIL -----	
\$120 <input type="checkbox"/> BD	Attorney Discipline
Sch <input type="checkbox"/> CV	Civil Rights
\$120 <input type="checkbox"/> CD	Condemnation
Sch <input type="checkbox"/> CN	Contract
Sch <input type="checkbox"/> DC	Debt Collection
\$50 <input type="checkbox"/>	Expungement (Fee is \$0 under circumstances of §77-18-10(2))
Sch <input type="checkbox"/> EV	Forcible Entry and Detainer
\$120 <input type="checkbox"/> MI	Forfeiture of Property
Sch <input type="checkbox"/> CV	Interpleader
Sch <input type="checkbox"/> LM	Lien/Mortgage Foreclosure
Sch <input type="checkbox"/> MP	Malpractice
Sch <input type="checkbox"/> CV	Miscellaneous Civil
\$120 <input type="checkbox"/> WR	Extradordinary Relief
Sch <input type="checkbox"/> PI	Personal Injury
\$120 <input type="checkbox"/> HC	Post Conviction Relief: Capital
\$120 <input type="checkbox"/> HC	Post Conviction Relief: Noncapital
Sch <input type="checkbox"/> PD	Property Damage
Sch <input type="checkbox"/> PR/QT	Property /Quiet Title
Sch <input type="checkbox"/> CV	Sexual harassment
Sch <input type="checkbox"/> SC	Small Claims
Sch <input type="checkbox"/> TP	Tax
Sch <input type="checkbox"/> PR	Water Rights
Sch <input type="checkbox"/> WD	Wrongful Death
Sch <input type="checkbox"/> CV	Wrongful Termination
----- DOMESTIC -----	
\$0 <input type="checkbox"/> SA	Cohabitant Abuse
\$120 <input type="checkbox"/> CV	Common Law Marriage
\$120 <input type="checkbox"/> CS	Custody/Visitation/Support
\$80 <input type="checkbox"/> DA	Divorce/Annulment
<input type="checkbox"/>	Check if child support, custody or visitation will be part of decree
\$120 <input type="checkbox"/> PA	Paternity
\$80 <input type="checkbox"/> SM	Separate Maintenance
\$120 <input type="checkbox"/> CS	Uniform Child Custody

Fee	Case Type
\$120 <input type="checkbox"/> CS	Uniform Interstate Family Support Act (UIFSA)
----- JUDGEMENTS -----	
\$25 <input type="checkbox"/> FJ	Abstract of Foreign Judgment or Decree
\$40 <input type="checkbox"/> AJ	Abstract of Judgment or Order of Utah Court or Agency
\$30 <input type="checkbox"/> TL	Abstract of Judgement or Order of Utah State Tax Commission
\$25 <input type="checkbox"/> AJ	Judgment by Confession
\$0 <input type="checkbox"/> AJ	Renew Judgment
----- PROBATE -----	
\$120 <input type="checkbox"/> AD	Adoption
\$120 <input type="checkbox"/> GC	Conservatorship
\$120 <input type="checkbox"/> ES	Estate Personal Rep - Formal
\$120 <input type="checkbox"/> ES	Estate Personal Rep - Informal
\$120 <input type="checkbox"/> GC	Guardianship
\$120 <input type="checkbox"/> MH	Involuntary Commitment
\$120 <input type="checkbox"/> OT	Minor's Settlement
\$120 <input type="checkbox"/> NC	Name Change
\$120 <input type="checkbox"/> OT	Supervised Administration
\$120 <input type="checkbox"/> TR	Trusts
\$120 <input type="checkbox"/> OT	Unspecified Probate
----- SPECIAL MATTERS -----	
\$0 <input type="checkbox"/> MI	Administrative Search Warrant
\$25 <input type="checkbox"/> MI	Arbitration Award
\$0 <input type="checkbox"/> CRIM	Criminal Investigation Search Warrant
\$0 <input type="checkbox"/> MI	Deposit of Will
\$0 <input type="checkbox"/> MH	Determination of Competency in Criminal Case
\$0 <input type="checkbox"/> CRIM	Extradition
\$25 T MI	Foreign Probate or Child Custody Document
\$0 <input type="checkbox"/> HL	Hospital Lien
\$25 <input type="checkbox"/> MI	Judicial Approval of Document not part of a Pending Case
\$25 <input type="checkbox"/> MI	Notice of Deposition in out-of-state case

FOR THE STATE OF UTAH

Appellee.

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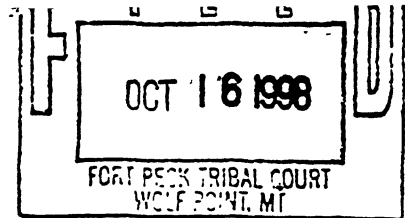
Case No. 990726-CA

Priority 4

BRIEF OF APPELLANT

ADDENDA "E"-OCTOBER 16, 1998
TRIBAL COURT ORDER

JAYNI SEARLE
PRO SE
P.O. BOX 702
WOLF POINT, MONTANA 59201



**FORT PECK TRIBAL COURT
ASSINIBOINE AND SIOUX TRIBES**

In the Matter of Chad Searle,
Minor Indian Child,

) **FINDINGS OF FACT, CONCLUSIONS**
) **OF LAW, AND DECREE**
) Case No. 517

Jayni Searle,

Plaintiff.

)
)
) Judge Stafne
)

The above-entitled matter came before the Court on Jayni Searle's Petition for Restoration of Custody. An entry of, notice of, and application for default having been entered for Respondent's failure to answer the Petition in a timely manner. An Affidavit of Residence and Grounds having been filed by Jayni Searle. The Court having reviewed the file and having made its decision, now enters the following:

FINDINGS OF FACT

1. Chad Searle is subject to the jurisdiction of this Court pursuant to a ruling by Judge Stafne that this Court has exclusive jurisdiction.
2. Chad Searle is a native American child and a member or eligible for membership in the Fort Peck Assiniboiné and Sioux Tribes.
3. Jayni Searle is a biological mother of Chad Searle.
4. Temporary custody of Chad was awarded by the Court to Jayni Searle on May 22, 1998.
5. The emotional father of Chad Searle died in February of 1998.
6. Since then, Boyd and Dorothy Searle have wrongfully maintained custody in contravention of the Indian Child Welfare Act (25 U.S.C. 1901 et. seq.) and this

Court's order of May 22, 1998.

- 7. Boyd and Dorothy Searle are the emotional grandparents and currently have physical custody despite the Court's order.**
- 8. Boyd and Dorothy Searle have petitioned the court to dismiss the termination action pending in tribal court. See Attached exhibit #1.**
- 9. Jayni Searle is a person fit to assume custody on the afore-mentioned child.**
- 10. Jayni Searle and Chad Searle enjoy the relationship of mother and child.**
- 11. Jayni Searle and Chad Searle have a normal parent-child bond which has been drastically impacted by the emotional grandparents.**

BASED UPON the foregoing Findings of Fact, the Court hereby enters its:

CONCLUSIONS OF LAW

- 1. The matter is properly before the Court pursuant to tribal code.**
- 2. Jayni and Chad Searle are members or eligible for membership in the Fort Peck Assiniboine and Sioux Tribes.**
- 3. Jayni Searle is domiciled on the reservation.**
- 4. Chad Searle, pursuant to law and tribal custom, became domiciled on the reservation due to the death of his physical custodian and emotional father, Boyd Carl Searle.**
- 5. Jayni Searle is a fit and appropriate person who should be awarded custody**

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Court hereby

enters the following:

DECREE AND ORDER

- 1. Chad Searle is hereby placed in the permanent custody, care, and control of Jayni Searle, his natural and biological mother.**
- 2. The previous order requiring transfer of Chad Searle to the reservation is hereby continued.**

3. Law enforcement is hereby directed to remove the child and return him to the reservation.

SIGNED THIS 16 Day of OCTOBER, 1998.



JUDGE
TRIBAL COURT JUDGE

STATE OF MONTANA }
COUNTY OF ROOSEVELT }

I hereby certify that the above and foregoing is a full, true and correct copy of the original. Deputy

Done on file in the office of the Clerk of the Fort Peck Tribal Court.

Witness my hand and seal of the Court this 19th

day of July, 1999.



CLERK OF FORT PECK TRIBAL COURT

Fort Peck Reservation in Montana, Fort Peck, Mont.

Certificate of Mailing

On this 16 day of OCT, 1998 I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing Entry of Default to: Maria Santana, 2159 South 700 East, Suite 100, Salt Lake City, Utah 84106



Tame Searle

FOR THE STATE OF UTAH

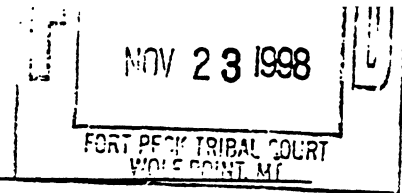
Boyd Searle,
Appellee.

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)
Case No. 990726-CA
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)
)
)
)
Priority 4
)

BRIEF OF APPELLANT

ADDENDA "F"-November 23, 1998
Tribal Court Order

JAYNI SEARLE
PRO-SE
P.O. BOX 702
WOLF POINT, MONTANA 59201



**FORT PECK TRIBAL COURT
ASSINIBOINE AND SIOUX TRIBES**

In the Matter of Chad Searle, A Minor Indian Child.)	ORDER RE: ORDER TO SHOW CAUSE
)	
Jayni Searle,)	Case No. <u>517</u>
)	
Plaintiff.)	Judge <u>STAFNE</u>
)	

The above-entitled matter came before the Court for hearing on an Order to Show Cause on the 19th Day of November, 1998. Present for the hearing was Jayni Searle. The Court notes that Boyd and Dorothy Searle were personally served with notice of the hearing and the Order to Show Cause by certified, return receipt, U.S. mail. The Court notes further that counsel for Boyd and Dorothy Searle, Maria Christina Santana, was served by certified, return receipt U.S. mail. The Court, having heard testimony from Jayni Searle and argument and having fully reviewed the file, enters the following:

FINDINGS OF FACT

1. Chad Searle is an Indian child as defined in the Indian Child Welfare Act.
2. Jayni Searle is an Indian parent as defined in the Indian Child Welfare Act
3. Jayni Searle is domiciled on the reservation.
4. Boyd Carl Searle was Chad Searle's emotional father, having been deemed so by his own admission in a divorce action in the Third District Court.
5. On February 1998, Boyd Carl Searle died.
6. Chad Searle was in the custody of his emotional father, Boyd Carl Searle, when the emotional father died.
7. The emotional grandparents, Boyd and Dorothy Searle filed a Petition to

Terminate Parental Rights of Jayni Searle in the Third District Court in Salt Lake County for the State of Utah.

8. On March 3rd, 1998, Boyd and Dorothy Searle obtained temporary custody of Chad through order of the Third District Juvenile Court of Utah.
9. Boyd and Dorothy Searle also filed a Petition for Protective Order.
10. Subsequent to that order, Jayni Searle retained private counsel, Mr. Jim C. Shirley of Salt Lake City, Utah.
11. Mr. Shirley obtained a copy of the March 3rd, 1998 order. He subsequently received copies of the other documents. This transpired after the order of temporary custody was entered by the juvenile court. Boyd and Dorothy Searle did not serve Jayni Searle or the Fort Peck Tribes with Notice prior to obtaining the temporary custody order in juvenile court or the protective order in district court.
12. The Petition for Protective Order was certified from Utah's Third District Court to Utah's Third District Juvenile Court.
13. Mr. Shirley sent courtesy copies of the pleadings to Mr. Gary Beaudry, counsel for the Fort Peck Tribes. Prior to receipt of these courtesy copies, the tribe had not been notified of the proceedings as required by I.C.W.A.
14. Ms. Searle filed a Petition to transfer the proceedings to tribal court under 25 U.S.C. 1911(b) in the juvenile court, alleging concurrent jurisdiction.
15. Ms. Searle subsequently filed an Amended Petition to transfer under 25 U.S.C. 1911(a) in the juvenile court, alleging exclusive jurisdiction.
16. Ms. Searle filed a Petition to invalidate the improperly entered custody

order, citing 25 U.S.C. 1914 and alleging violations of 1912(a,4,6e).

17. Boyd and Dorothy Searle filed a Response to the Amended Petition to Transfer, alleging that domicile had not changed at the death of the emotional father and that Jayni Searle abandoned the child, Chad Searle.
18. Ms. Searle filed a Reply which cited to case law which demonstrated that under common law domicile did change at the death of a custodian to the surviving natural parent and which alleged grounds to demonstrate that Ms. Searle had not abandoned the child.
19. On May 15th, 1998, the Third District Juvenile Court, in and for the state of Utah issued an order transferring jurisdiction to the tribal court.
20. On May 22nd, 1998, this Court found that it has exclusive jurisdiction and accepted jurisdiction. Additionally, the Court invalidated the previous order granting custody to Boyd and Dorothy Searle and ordered that the child be brought back to the reservation and placed in the temporary custody of the natural mother.
21. On the 3rd Day of June, 1998, the Third District Juvenile Court entered an order staying its May 15th, 1998 order.
22. On June 8th, 1998, the tribal and juvenile courts issues stays of the proceedings pending hearing before an appeals or federal court on the issue of whether the juvenile court had any jurisdiction to enter such an order.
23. Ms. Searle caused to be filed an appeal in the Court of Appeals in and for Utah.
24. On August 31st, 1998, counsel for Boyd and Dorothy Searle signed a

voluntary dismissal of the Petition to Terminate.

25. On the 1st Day of September, 1998, the Court of Appeals found that the Juvenile Court did not have jurisdiction to enter any orders.
26. On the 8th Day of September, 1998, Jayni Searle filed a Petition for Sole Custody.
27. Counsel for Boyd and Dorothy Searle, Maria Santana, was served with this Petition for Sole Custody.
28. On the 9th Day of September, 1998, Jayni Searle filed a Stipulation to Dismiss Action Brought by Boyd and Dorothy Searle.
29. On the 9th Day of September, 1998, the Court granted Boyd and Dorothy Searle's voluntary dismissal but specifically ordered that "the previous order of temporary custody entered by this Court on May 22nd, 1998, is hereby continued with Jayni Searle."
30. Counsel for Boyd and Dorothy Searle were served with the stipulation and the order.
31. Jayni Searle subsequently filed an Notice of Entry of Default, Entry of Default, and Application for Entry of Default. All these documents were served on counsel for Boyd and Dorothy Searle, Maria Christina Santana, by U.S. Mail.
32. The Court entered a default and entered Findings of Fact, Conclusions of Law, and Decree. The decree was served on counsel for Boyd and Dorothy Searle, Maria Christina Santana, by U.S. Mail.
33. Jayni Searle subsequently filed a Corrected Notice of Entry of Default. Corrected Entry of Default, and Corrected Application for Entry of Default.

All these documents were served on counsel for Boyd and Dorothy Searle, Maria Christina Santana, by U.S. mail.

Based upon the foregoing Findings of Fact, the Court hereby enters its:

Conclusions of Law

1. Chad Searle is an Indian Child as defined by the Indian Child Welfare Act.
2. The Court previously entered a finding and conclusion of exclusive jurisdiction under 25 U.S.C. 1911(a) based upon the fact that upon the death of the custodian/emotional father, domicile of Chad Searle became that of his mother pursuant to tribal custom and well-established common law. The Court previously rejected Boyd and Dorothy Searle's contentions as meritless.
3. The Court has subject matter jurisdiction over the issues of custody and contempt before it. The Indian Child Welfare Act applies to the case at hand. Tribal court is the proper forum for any litigation involving the custody of an Indian child which is not the result of a divorce action or delinquency matter. The Court obtained jurisdiction originally due to the transfer of the litigation involving the Petition to Terminate Parental Rights. At the time the Petition to Terminate Parental Right was withdrawn, the Court retained jurisdiction due to a pending Petition for Sole Custody filed by Jayne Searle which was filed prior to the stipulation allowing dismissal. The Court continues to enjoy exclusive jurisdiction. The Court has original jurisdiction over the custody matter involving Chad Searle due to the filing of the Petition for Sole Custody. Jurisdiction has never been terminated by the Court as contended by the emotional grandparents,

Boyd and Dorothy Searle.

4. The Court has personal jurisdiction over Jayni Searle and Chad Searle as domiciliaries of the reservation pursuant to the Indian Child Welfare Act.
5. The court has personal jurisdiction over Boyd and Dorothy Searle that was acquired when litigation involving the termination of parental right action was transferred to Tribal Court. See 92 Corpus Juris Secundum, Venue SS 207 (the court receiving the transfer of jurisdiction/venue “**thereby acquires jurisdiction over the subject matter, all the parties thereto, and all matters incident thereto, and it may inquire into matters connected with the subject matter of the action**”).
6. Additionally, the Court has jurisdiction due to emotional grandparents voluntary filing of pleadings before the Court. The Rules of Tribal Procedure require that the party file a special and limited appearance if they do not wish to subject themselves to the jurisdiction of the tribal court. Boyd and Dorothy Searle failed to file any special and limited appearance as required.
7. Jayni Searle having satisfied her burden by proof beyond a reasonable doubt that:
 - a. Boyd and Dorothy Searle were served with a true and correct copy of the Order to Show Cause;
 - b. Boyd and Dorothy Searle voluntarily and willfully failed to comply with the Court’s order to appear and produce the child;
 - c. Boyd and Dorothy Searle voluntarily and willfully failed to comply with the Court’s May 22nd, 1998 order to surrender physical custody of the child, and

- d. that Boyd and Dorothy Searle had the capacity to comply with the Court's orders.

BASED upon the foregoing Conclusions of Law, the Court hereby enters the following:

ORDER

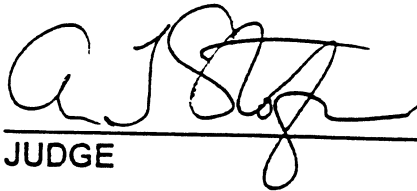
1. Boyd and Dorothy Searle are hereby held in contempt of Court;
2. The Court will stay the jail time if and when Boyd and Dorothy Searle agree to bring Chad to the reservation as previously ordered;
3. A bench warrant is issued for the immediate detention and transport of Boyd and Dorothy Searle to jail;
4. The Court will lift the Bench Warrant if and when Boyd and Dorothy Searle contact the court, agree to return the child to the reservation, and make suitable arrangements for the transport of Chad Searle to the reservation;
5. A bench warrant is issued for the immediate detention and transport of Chad Searle to the reservation;
6. The court will lift the Bench Warrant upon Chad Searle's return to the custody of his mother;
7. Boyd and Dorothy Searle be required to reimburse the tribe for costs incurred in the Fort Peck Tribe's effort to secure the release and return of Chad Searle to the reservation;
8. The Fort Peck Tribes are ordered to provide the Court with a specific amount;
9. Boyd and Dorothy Searle are ordered to pay Jayni Searle for

reasonable attorneys fees incurred; and

10. Jayni Searle is instructed to secure a list of attorneys fees incurred.

DATED THIS 23rd DAY OF November, 1998.

FORT PECK TRIBAL COURT



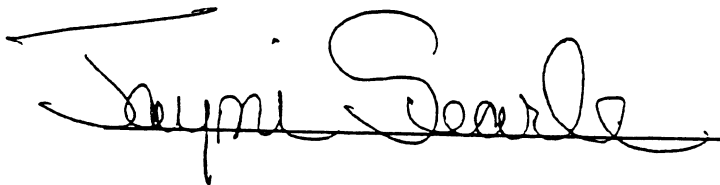
JUDGE

Certificate of Mailing

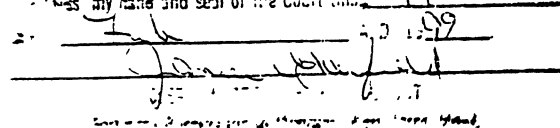
On this 24 day of Nov, 1998 I deposited in the United States Mail, postage prepaid, a true and correct signed copy of the foregoing Order Re: Order to Show Cause to:

Maria Christina Santana
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106

BOYD AND DOROTHY SEARLE
4906 South 4460 West
Kearns, Utah 84118



Jayni Searle

NOTED & FILED
JAN 14 1999
CLERK OF COURT
That the above and foregoing is a true and correct copy of the original Order to Show Cause
Filed in the office of the Clerk of Fort Peck Tribal Court
Witness my hand and seal of the Court this 19th day of Jan 1999


Clerk of Court

FOR THE STATE OF UTAH

Priority 4

BRIEF OF APPELLANT

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1 out of context. What the specific issue was was that the
2 tribal court found exclusive jurisdiction. And Beaudry
3 indicated that, as to that issue, there was due process in
4 the state court.

5 So I don't think he ever said that they had no
6 right to due process in tribal court. And in fact, on --
7 I've seen the tribal courts come into Utah from out of
8 state to litigate matters. So I don't believe that he said
9 that or that, if it was understood that way, that it was
10 meant that way.

11 So I believe like I've argued all the rest of the
12 issues, and I'll just submit it, Your Honor.

13 THE COURT: The record needs to clearly reflect
14 that the Court's decision today goes to the order issued by
15 the Ft. Peck Tribal Court dated May 22, 1998, a copy of
16 which was attached to the original petition for writ of
17 assistance. This action was commenced by the filing of a
18 petition for writ of assistance and was not commenced in a
19 fashion that generally would be handled in enforcing a
20 foreign order, and that is through Section 78-22(a)-1 in
21 the following sections of the Utah Code Annotated, which
22 specifically designated how one domesticates a foreign
23 judgment.

24 The Ft. Peck trial order is clearly a foreign
25 judgment, same as the State of Nevada or State of Colorado

1 or any place else. It's -- and to domesticate and,
2 therefore, bring into power -- or bring into play the
3 powers of this Court to issue orders, one must follow the
4 foreign judgment act which provides for the domestication
5 of those judgments. It's not difficult, one just has to
6 file the appropriate documents and give notice following
7 the appropriate procedures outlined in that act.

8 Once it's domesticated, then the -- then this
9 Court issues whatever orders are necessary in the same
10 fashion as it would the domestication of any other foreign
11 judgment, unless there's a showing that the foreign
12 judgment was obtained without due process.

13 With regard to the May 22, 1998 order, while
14 there may have -- while Boyd Searle may have notice of the
15 foreign judgment at this point in time and may have had an
16 opportunity to -- this case has been in every court in the
17 state except the federal court. Maybe we can get it over
18 there too. .

19 But in any event, the Foreign Judgment Act has
20 not been complied with as to the order of May 22, 1998.
21 Even if it had been complied with, strictly complied with,
22 and it must be, the only thing I've heard here and the only
23 thing I can garner from this record is that the tribal
24 court issued an order changing custody after it accepted
25 jurisdiction, and that's fine, it likely has jurisdiction

1 in this matter. But it issued an order without giving
2 Mr. Searle any notice. And saying they fixed it after the
3 fact doesn't rise to a level of due process.

4 He was entitled to an opportunity to have notice
5 of the hearing that would be heard before an order was
6 issued on May 22, 1998, and he was not. That's the order
7 that's sought to be enforced here, and I decline to do so
8 because it wasn't due process.

9 If this order had been issued by the State of
10 Colorado, I wouldn't enforce it and for the same reasons,
11 no notice.

12 So as to the matter before me today, and that is
13 whether or not a petition for writ of assistance will issue
14 or should issue from this court, based upon the tribal
15 court order of May 22, 1998, the petition is denied.

16 Now, so we don't get down here in some other area
17 with regard to a subsequent order that may have been issued
18 with notice, let me make it clear what's going to have to
19 happen in this case.

20 This action, in its entirety, is dismissed
21 because there has been no foreign judgment that has been
22 properly domesticated in this case.

23 Mr. Shirley, if you want to domesticate a foreign
24 judgment beyond the one of May 22, 1998, you're going to
25 have to follow 78-22(a)-1 and domesticate whatever foreign

1 judgment you may have and with a proper pleading, in the
2 first instance, giving Mr. Searle an opportunity to be
3 heard. Assuming that the Court is satisfied that due
4 process attaches to any subsequent order, then once that
5 order -- once a foreign order is domesticated, then this
6 Court, or wherever else you may file it, will issue the
7 appropriate orders.

8 But I am not going to issue, even if I was
9 satisfied there were due process, an order for assistance
10 based upon a subsequent filing following that original
11 filing. It just -- you're just going to have to follow the
12 Foreign Judgment Act before -- at least before you get me
13 to enforce it. Maybe you can convince one of my colleagues
14 in this court to do so, but not me.

15 So what I'm telling you is that, even though
16 there may be some request on the part of the petitioner
17 here, Jayni Searle, to have this Court consider a
18 subsequent order following May 22, 1998 in tribal court,
19 I'm not going to do it until that order is properly
20 domesticated in the courts with 22(a) of Title 78. And
21 that requires a new action.

22 This case is dismissed in its entirety.

23 Ms. Santana, prepare an appropriate order.

24 MS. SANTANA: Thank you, Your Honor.

25 THE COURT: With findings of fact that clearly

1 indicate that I'm satisfied the May 22, 1998 order has not
2 been properly domesticated with the Foreign Judgment Act.
3 And, number two, that the materials that have been
4 presented to me here, both in oral argument and with the
5 file, indicate that Mr. Searle was given no notice and no
6 opportunity to be heard with regard to the orders that were
7 issued by the tribal court on May 22 of 1998.

8 And further, I want a further indication that
9 because no order has -- no foreign order has been
10 domesticated, this action is dismissed in its entirety
11 without prejudice, at least as to the subsequent -- the
12 subsequent orders.

13 Ms. Searle is entitled to domesticate the tribal
14 court orders that came after May 22, 1998, if she does it
15 properly. And if she files and domesticates a foreign
16 judgment properly by filing an appropriate action with this
17 court or this district, then we will deal with it in
18 accordance with the law. But we're not going to do it
19 backwards and then find ourselves in some appellate court
20 two years from now having them saying, "What's Hanson doing
21 issuing orders based upon a foreign judgment that was never
22 properly domesticated?" We're going to do this right from
23 the start.

24 Prepare an appropriate order.

25 MS. SANTANA: Thank you, Your Honor.

(Whereupon, at the hour of 11:45 a.m.,
the hearing was concluded.)

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IN THE COURT OF APPEALS

FOR THE STATE OF UTAH

Jayni Searle,)	
)	
Appellant,)	
)	Case No. 990726-CA
v.)	
)	
Boyd Searle,)	
)	
Appellee.)	
)	Priority 4
)	

BRIEF OF APPELLANT

ADDENDA "H"-District Court Order of Dismissal

JUL 26 1999

By E. Thompson SALT LAKE COUNTY
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF CHAD SEARLE,	:	ORDER OF DISMISSAL
<u>A MINOR INDIAN CHILD</u>	:	
	:	CASE NO. 980905344
JAYNI SEARLE,	:	
	:	
Petitioner,	:	
	:	
vs.	:	
	:	
BOYD SEARLE,	:	
	:	
Respondent.	:	

The above-entitled matter came before the Court on March 8, 1999 for hearing on petitioner's Petition for Writ of Assistance. Jim C. Shirley appeared representing petitioner, Jayni Searle. Maria Cristina Santana appeared representing respondent, Boyd Searle. Boyd Searle personally appeared. The parties have filed extensive pleadings regarding the issues before the Court, the parties made their respective arguments. The Court having reviewed the file, having properly considered all the oral and written arguments submitted to the Court by the parties, the Court hereby makes the following:

FINDINGS OF FACT

1. In February of 1998, respondent filed in the Third District Juvenile Court a Petition to Terminate the Parental Rights of Jayni Searle in relation to Chad Searle.

2. Subsequently, respondent filed an Ex Parte Motion for Custody and obtained an Ex Parte Order of Temporary Custody on March 3, 1998.

3. Petitioner filed a Petition to Transfer to Tribal Court in March of 1998.

4. The Third District Juvenile Court, Judge Olof A. Johansson, presiding, transferred jurisdiction over a pending Petition for Termination to the Fort Peck Tribal Court.

5. The Fort Peck Tribal Court accepted jurisdiction and transferred custody of the minor child on May 22, 1998.

6. Boyd Searle was not provided notice that the Fort Peck Tribal Court would issue an Order on the issue of custody.

7. Petitioner filed a Petition for Writ of Assistance with this Court seeking assistance of this Court in enforcing the May 22, 1998 Fort Peck Tribal Court custody Order.

8. The parties have subsequently filed numerous pleadings regarding the appropriateness of the issuance of a Writ of Assistance.

9. Petitioner also subsequently filed a Motion to give Full Faith and Credit to two subsequent Tribal Court Orders.

Based upon the foregoing Findings of Fact, the Court hereby enters its:

CONCLUSIONS OF LAW

1. The May 22, 1998 Order of the Fort Peck Tribal Court transferring custody from respondent to petitioner is a foreign judgment.

2. As a foreign judgment, the judgment must be filed in accordance with the Utah Foreign Judgment Act, Utah Code Ann., Section 78-22a-1, et seq.

3. The Petition for Writ of Assistance does not comply with the Utah Foreign Judgment Act.

4. Petitioner was entitled to be heard at a hearing prior to the transfer of custody by the Fort Peck Tribal Court.

5. The failure to give respondent an opportunity to be heard at a hearing prior to transfer of custody constitutes a violation of respondent's due process rights.

6. As such, the May 22, 1998 Order transferring custody is not entitled to full faith and credit.

7. The subsequent Tribal Court Orders are not before the Court under the Utah Foreign Judgment Act.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters the following:

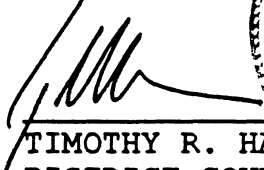
ORDER

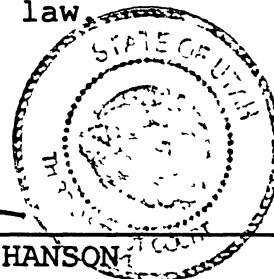
1. The Petition for Writ of Assistance is denied.

2. The action is dismissed with prejudice as to the Fort Peck Tribal Court May 22, 1998 Order.

3. The above-entitled action is dismissed without prejudice as to any Order entered subsequent to the May 22, 1998 Order which has been entered by the Fort Peck Tribal Court and the dismissal of this action in no way precludes subsequent enforcement of subsequent Orders through a filing under the Utah Foreign Judgment Act, and which are otherwise enforceable under law.

Dated this 26 day of July, 1999.


TIMOTHY R. HANSON
DISTRICT COURT JUDGE



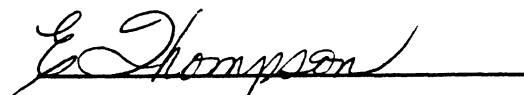
MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Order of Dismissal, postage prepaid, to the following, this 26 day of July, 1999:

Jim C. Shirley
Attorney for Petitioner
9 Exchange Place, Suite 400
Salt Lake City, Utah 84111

Maria Cristina Santana
Attorney for Respondent
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106

Gary Beaudry
Attorney for Fort Peck Tribes
322 Main Street, Suite 102
Williston, North Dakota 58802-2141

A handwritten signature in cursive script, appearing to read "E. Thompson", is written over a horizontal line.