

2000

Jayni Searle v. Boyd and Dorothy Searle : Brief of Appellant

Utah Court of Appeals

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Christina Maria Santana; Attorney for Appellee; Gary Beaudry; Attorney for Fort Peck Tribes; . Jim C. Shirley; Attorney for Appellant.

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FOR THE STATE OF UTAH

Priority 4

ORAL ARGUMENT/PUBLISHED OPINION REQUESTED

IN THE COURT OF APPEALS
FOR THE STATE OF UTAH

Jayni Searle,)	
)	
Appellant,)	
)	
v.)	Case No. 20000274-CA
)	
Boyd and Dorothy Searle,)	
)	
Appellee.)	
)	Priority 4
)	

BRIEF OF APPELLANT

APPEAL FROM A FINAL ORDER OF THE THIRD DISTRICT
COURT, HONORABLE LESLIE A. LEWIS PRESIDING

-----oOo-----

JIM C. SHIRLEY
10 E. Exchange Place, Suite 527
Salt Lake City, UT 84111
Tel: (801) 534-0651
Attorney for Appellant

CHRISTINA MARIA SANTANA
44 West Broadway, Suite 304
Salt Lake City, Utah 84101
Attorney for Appellee

GARY BEAUDRY
322 Main Street, Suite 102
Williston, North Dakota 58802-2141
Attorney for the Fort Peck Tribes

ORAL ARGUMENT/PUBLISHED OPINION REQUESTED

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BRIEF OF APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a final order of the Third District Court in and for Salt Lake County, State of Utah, which set aside entry of a foreign judgment entered by the Fort Peck Sioux and Assiniboine Tribal Court on October 16, 1998, and denied enforcement of foreign judgment. The Utah Court of Appeals has jurisdiction over this matter pursuant to UTAH CODE ANNO. § 78-2a-3(2)(j) and Rule 3 of the UTAH R. APP. P.

STATEMENT OF ISSUES FOR REVIEW

The issues presented for review in this case are:

I. Did the trial court err when it concluded that the October 16, 1999 Tribal Court Order was unenforceable because it "relates to and stems from" the May 22, 1998 Order? This issue presents a

question of law that does not require deference to the trial court. Marquiles By and Through Marquiles v. Upchurch, 696 P.2d 1195, 1199-1200 (Utah 1985). The final order was decided after Motions and Memoranda were filed and upon the record. This issue was sufficiently pled and preserved in said Motions and Memoranda at R. at 2-18, 19-74, 208-321, & 326-424.

II. Did the trial court err in setting aside the Entry of the Foreign Judgment under Rule 60(b) of the Utah Rules of Civil Procedure? This issue presents a question of law that does not require deference to the trial court. Marquiles By and Through Marquiles v. Upchurch, 696 P.2d 1195, 1199-1200 (Utah 1985). This issue was sufficiently pled and preserved in said Motions and Memoranda at R. at 208-321 & 326-424

STATUTES AND CONSTITUTIONAL PROVISIONS

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

Statutory Provisions

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

Rules of Procedure

Rule 54 of the Utah Rules of Civil Procedure

Rule 60 of Utah Rules of Civil Procedure

STATEMENT OF THE CASE/FACTS

Overview:

An action was commenced on June 15, 1999 in the Utah Third District Court in and for Salt Lake County to enforce two foreign judgments, to wit: (1) A Findings of Fact, Conclusions of Law and Decree (herein "Custody Decree") entered on October 16, 1998; and (2) An Order on an Order to Show Cause Hearing (herein "Contempt Order") entered on November 23, 1998. Both orders stem from a proceeding in the Fort Peck Assiniboine and Sioux Tribal Court (herein after "Tribal Court"). The Honorable Judge Leslie A. Lewis presided over the Third District Court matter from which this appeal arises.

The Custody Decree was entered on a default judgment against Appellees due to their failure to answer a Petition for Sole Custody filed by Appellant. The Petition for Sole Custody was filed in the Tribal Court on or about the 8th day of September, 1998. The Contempt Order was entered after an Order to Show Cause Hearing in which: (1) Appellees failed to appear at the hearing after having been served both personally and through their counsel with notice of the hearing; and (2) Evidence was offered by Appellant to support the contempt determination by proof beyond a reasonable doubt. The District Court entered an Entry of Judgment on August 25, 1999 to assist Appellant in the enforcement of the judgments. The Request for Entry of Judgment

was filed subsequent to the expiration of the thirty day time period required under UTAH CODE ANNO. §78-22a-3 (1999). The trial court set aside the August 25, 1999 Entry of Judgment and denied enforcement of the foreign judgment.

Background:

1. In February of 1998, Appellees commenced an action in the State of Utah, Third District Juvenile Court, seeking to terminate the parental rights of Appellant. Appellees also filed an Ex Parte Motion for Temporary Custody. On March 3, 1998, the Third District Juvenile Court, Judge Olof A. Johansson presiding, granted the Ex Parte Motion and entered an Ex Parte Order of Temporary Custody. In mid-March of 1998, Appellant filed a Petition to Transfer Jurisdiction over the matter to the Fort Peck Tribal Court and a Petition to Invalidate the Ex Parte Order of Temporary Custody. **See R. at 2-14, 48-51.**

2. On May 15, 1998, the Third District Juvenile Court, Judge Olof A. Johansson presiding, issued an order transferring jurisdiction over the matter to the Fort Peck Tribal Court. On May 22, 1998, the Fort Peck Tribal Court accepted Jurisdiction and ordered that the minor child who was the subject of the termination action be taken to the reservation and temporary custody placed with Appellant. Appellant filed a Petition for Writ of Assistance action in the Third District Court in Utah for enforcement of the May 22, 1998 order. On June 8, 1998, after a

hearing involving both court's judges and all counsel involved, the Third District Juvenile Court and the Fort Peck Tribal Court issued orders staying the proceedings pending review by a higher court. **See R. at 2-14, 48-51.** In mid to late June of 1998, Appellant filed a Petition for Extraordinary Relief with the Utah Court of Appeals.

On September 1, 1998, this Court issued an order stating:

The juvenile court transferred jurisdiction over issues concerning the minor, C.S., to the Fort Peck Tribal Court and the tribal court accepted jurisdiction over the matter, including jurisdiction over custody issues. Since the juvenile court no longer had jurisdiction over the matter after the tribal court accepted jurisdiction, IT IS HEREBY ORDERED that the petition for extra ordinary relief is hereby granted, the matter is deemed transferred to the tribal court, and any orders issued by the juvenile court after May 22, 1998, are hereby vacated. **See R. at 2-14, 48-51.**

3. On September 8, 1998, Appellant filed a petition for custody in the Tribal Court and Appellant caused Appellees to be served by depositing a copy of the petition in the U.S. Mail and sending it to Appellees' counsel. On September 9, 1998, pursuant to a voluntary dismissal by Appellees and a stipulation thereto by Appellant, the Fort Peck Tribal Court entered an order dismissing the termination of parental rights action. The order continued the May 22, 1998 order transferring temporary custody to Appellant. **See R. at 2-14, 48-51.**

4. On October 16, 1998, the tribal court entered a default judgment against Appellee on petition for custody and Appellant caused Appellees to be served by depositing a copy of the petition in the U.S. Mail and sending it to Appellees' counsel. On November 2, 1998, a Motion for Order to Show Cause with supporting affidavit was filed with the Fort Peck Tribal Court. The Court issued an Order on November 2, 1998 directing that a hearing be held and that Appellees appear at the hearing on November 19, 1998. The Motion and Order were served upon Appellees and upon their counsel by U.S. Mail. A hearing was held on November 19, 1998 and Appellees failed to appear at the hearing. An order was issued on the November 23, 1998 hearing and was served upon Appellees and their Counsel by U.S. Mail on November 24, 1998. **See R. at 2-14, 48-51.**

5. No appeals have been taken of any of the orders issued by the Fort Peck Tribal Court. On March 8, 1998, Judge Hanson refused to give full faith and credit and enforce the May 22, 1998 tribal court order because at the time of the transfer of custody, Appellees were not given a hearing in which they could oppose the transfer of custody, thereby, in Judge Hanson's view, denying Appellees due process and dismissed the matter. **See R. at 2-14, 48-51.** Judge Hanson's ruling specifically provided that his ruling did not affect a foreign judgment action on subsequent tribal court rulings. **See R. at 2-14, 48-51, 177.**

6. This matter was commenced on June 15, 1999 under the Utah Foreign Judgment Act. **See R. at 2-14.** On July 15, 1999, 30 days had passed without the filing of a Motion to Stay as Required by the Utah Foreign Judgment Act. **See R. at 66-67.** An Application for Entry of Judgment was filed on August 13, 1999. **See R. at 66-67.** An Entry of Judgment was entered on August 25, 1999 recognizing the October 16, 1998 Custody Decree. **See R. at 68-74.**

7. On November 16, 1999, Appellee filed a Motion to Set Aside the August 25, 1999 Entry of Judgment.¹ **See R. at 153-207.** A temporary stay was issued on November 23, 1999. **See R. at 324.** A Response to the Motion to Set Aside was filed by Appellant on December 1, 1999. **See R. at 326-424.** The Court issued a ruling on February 7, 2000. **See R. at 611-615.** An order was issued on the Court's ruling on February 25, 2000. **See R. at 620-624.** This appeal followed.

The Third District Court's Findings:

The trial court made the following Findings of Fact:

1. Petitioner Jayni Searle (hereafter "Petitioner") filed a petition for Writ of Assistance in the Third Judicial District Court, Salt Lake County, State of Utah, Case No. 98-090-5344, In the Matter of Chad Searle, a Minor Indian Child, seeking to enforce a May 22, 1998, Fort Peck Tribal Court custody Order that

¹ The Motion also sought to address other issues which are not pertinent to this appeal.

transferred custody from Respondent Boyd Searle (hereafter "Respondent") to the Petitioner. The petition sought recognition of the May 22nd Order as a foreign judgment under the Utah Foreign Judgment Act.

2. Judge Timothy R. Hanson denied the petition on the basis that since Respondent was not given an opportunity to be heard at the May 22nd hearing, the Order was not entitled to full faith and credit.

3. Petitioner subsequently filed a Petition before this Court to enforce an October 16, 1998 Fort Peck Tribal Court Order's Findings of Fact, Conclusions of Law and Decree, finding that Respondents had "wrongfully maintained custody in contravention...of [the] Court's order of May 22, 1998."

4. On August 25, 1999, this Court entered an Order entitled "Entry of Judgment" which purported to give full faith and credit to the October 16th Tribal Court Decree... **SEE R. AT 620-21.**

SUMMARY OF ARGUMENT

Enforcement of the Tribal Court Order: The trial court erred when it concluded that the Custody Order was unenforceable. The trial court based its ruling on its conclusion that the October 16, 1998 Custody Order "relates to and stems from" the Temporary Order of May 22, 1998. This legal conclusion does not reflect the Utah Court's long standing view of enforcement of foreign judgment actions. The Court's conclusion does not address factual determination regarding finality and validity as required by the Estate of Jones standard. The conclusion does not reflect any viable standard under the Utah Foreign Judgment Act. Accordingly, it is an erroneous ruling and should be vacated because the judgment satisfies both the finality and validity standards.

Rule 60(b) Motion : The trial court erred in granting Appellees' Rule 60(b) Motion to Set Aside the August 25, 1998 Entry of the Foreign Judgment. Under Rule 60(b) of the Utah Rules of Civil Procedure the Motion must be brought within 90 days of the entry of the judgment. The judgment in the instant matter became properly entered on July 15, 1999. The Rule 60(b) Motion was not filed until November 15, 1999, which is beyond the ninety day time period or a reasonable time period. Additionally, Appellees failed to demonstrate any of the enumerated grounds for which relief could have been granted under Rule 60(b).

ARGUMENT

A. TRIAL COURT INCORRECTLY CONCLUDED THAT THE ORDER WAS NOT ENFORCEABLE BECAUSE IT "RELATED TO OR STEMMED" FROM THE MAY 22, 1998 TEMPORARY ORDER

i. THE TRIAL COURT'S RULING AND UNDERLYING JUDGMENTS

On or about February 7, 2000, the trial court issued a memorandum decision entitled "Court's Ruling," which stated as follows:

...Having reviewed the moving and responding memoranda with respect to remaining motions, the Court rules as state herein. Since the Motions before the Court are related to concerns previously brought before Judge Hanson, this Court provides a brief procedural history of that case and its connection to the present case. In Chad Searle, the petitioner herein filed a Writ of Assistance seeking to enforce a May 22, 1998, Fort Peck Tribal Court custody Order that transferred custody

from respondent Boyd Searle to petitioner. The Petition essentially sought recognition of the May 22nd Order as a foreign judgment under the Utah Foreign Judgment Act. Judge Hanson denied the Petition on the basis that since respondent Boyd Searle was not given an opportunity to be heard at the May 22nd hearing, the Order was not entitled to full faith and credit. (See Order of Dismissal, dated July 26, 1999).

In this case, the petitioner is attempting to enforce the Tribal Court's October 16, 1998, Findings of Fact, Conclusions of Law and Decree, finding that the respondents had wrongfully maintained custody in contravention...of [the] Court's order of May 22, 1998." On August 25, 1999, this Court entered an order entitled "Entry of Judgment" which purported to give full faith and credit to the October 16th Decree. The respondents are now seeking to set aside the August 25th Order and the October 16th Tribal Court Decree.

The Court rules that the October 16th Tribal Court Decree directly relates to and stems from an Order which another court has concluded to not be entitled to full faith and credit. Specifically, the Decree reinforces the May 22nd Order and reiterates that it "is hereby continued." The October 16th Decree is therefore flawed because it maintains custody of the minor child under an Order which was issued without giving respondent Boyd Searle his due process right to be heard. Accordingly, the October 16th Order is similarly not entitled to full faith and credit. The Motion to Set Aside is therefore [granted] in part and this Court's August 25th Judgment is set aside... **SEE R. at 617-18. See Addenda "A."**

A subsequent Written Order was prepared and submitted by Appellee and signed by the trial judge on February 27, 2000, which identified the following Factual Findings from the "Court's Ruling:"

1. Petitioner Jayni Searle (hereafter "Petitioner") filed a petition for Writ of Assistance in the Third Judicial District Court, Salt Lake County, State of Utah, Case No. 98-090-5344, In the Matter of Chad Searle, a Minor Indian Child, seeking to enforce a May 22, 1998, Fort Peck Tribal Court custody Order that transferred custody from

Respondent Boyd Searle ... to the Petitioner. The petition sought recognition of the May 22nd Order as a foreign judgment under the Utah Foreign Judgment Act.

2. Judge Timothy R. Hanson denied the petition on the basis that since Respondent was not given an opportunity to be heard at the May 22nd hearing, the Order was not entitled to full faith and credit.

3. Petitioner subsequently filed a Petition before this Court to enforce an October 16, 1998 Fort Peck Tribal Court Order's Findings of Fact, Conclusions of Law and Decree, finding that Respondents had "wrongfully maintained custody in contravention...of [the] Court's order of May 22, 1998."

4. On August 25, 1999, this Court entered an Order entitled "Entry of Judgment" which purported to give full faith and credit to the October 16th Tribal Court Decree...
SEE R. AT 620-21. See Addenda "B"

The trial court entered Conclusions of Law which, based upon these findings, state:

The October 16th Trial Court Decree directly relates to and stems from an Order which another court in Chad Searle has concluded not to be entitled to full faith and credit. Specifically, the Decree reinforces the May 22nd Order and reiterates that it "is hereby continued." The October 16th Decree is therefore flawed because it maintains custody of the minor child under an Order which was issued without giving Respondent Boyd Searle his due process right to be heard. Accordingly, the October 16th Order is similarly not entitled to full faith and credit, and the August 25th Order must be set aside. **See R. at 631. See Addenda "C."**

The foreign judgments, Judge Hanson's Letter of July 15, 1999, and the Order of July 26, 1999 provide the evidence upon which the trial court could have made any finding and/or conclusion under Utah Foreign Judgment analysis or a full faith and credit analysis.

A. The Custody Decree from October 16, 1998 provides as follows:

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 exclude jurisdiction.
2. Chad Searle is a Native American child and a member or eligible for membership in the Fort Peck Assiniboine and Sioux Tribes.
3. Jayne Searle is a biological mother of Chad Searle.
4. Temporary custody of Chad was awarded by the Court to Jayne 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. Jayne Searle is a person fit to assume custody on the afore-mentioned child.
10. Jayne Searle and Chad Searle enjoy the relationship of mother and child.
11. Jayne 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. Jayne and Chad Searle are members or eligible for membership in the Fort Peck Assiniboiné and Sioux Tribes.
3. Jayne 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. Jayne 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 Jayne 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.
SEE R. at 2-4 & Addenda "D."

B. The Contempt Order from November 23, 1998 which provides as follows:

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 3, 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 3, 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 to 25 U.S.C. 1914 and alleging violations of 1912(a, d, & e).
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 15, 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 22, 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 15, 1998 order.
22. On June 8, 1998, the tribal and juvenile courts issued 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 31, 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 22, 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 a 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 Rights was withdrawn, the Court retained jurisdiction due to a pending Petition for Sole Custody filed by Jayni 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 § 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 22, 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. **See R. at 5-12 & Addenda "E."**

C. Judge Hanson's July 26, 1999 Order of Dismissal provides the following:

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. **See R. at & Addenda "F."**

D. Judge Hanson's July 15, 1999 Letter provides the

following language:

With regard to the complaints of Ms. Santana that Mr. Shirley has brought this matter before Judge Lewis, please be advised that I do not find any impropriety in that regard, as it was my intention to only address the May 22, 1198 Order and the Writ of Assistance that was requested based thereon.

If any subsequent Order has been properly domesticated under the Utah Foreign Judgment Act and is otherwise enforceable, I am confident that Judge Lewis, who apparently is assigned to the case, will handle the matter in accordance with the facts as she finds them and in accordance with the law. **See 378-379, & Addenda "G."**

ii. ANALYSIS OF THE ERROR IN THE CONCLUSION OF LAW

(1) Court Incorrectly Entered a Conclusion Based Upon the Evidence

The primary evidence before the Courts were the foreign judgments, Judge Hanson's July 15, 1999 letter, and the Judge Hanson's ruling on the May 22, 1998 Order. The Court incorrectly concluded that the October 16, 1998 Custody Decree was unenforceable because it "related to and stemmed from" the May 22, 1998 Temporary Order of Custody which Judge Hanson refused to enforce.² As the Findings of Fact indicate, the Tribal Court did in fact: (1) Find that "temporary custody ... was awarded ... on May 22, 1998," and that Appellees had "wrongfully maintained custody

² It should be noted that the July 26, 1999 Order of Dismissal issued by Judge Hanson is on appeal before this Court. For purposes of this appeal, it will be assumed that Judge Hanson's ruling was correct. However, should this Court conclude otherwise, the underlying ruling would accordingly fail as a matter of fact and law.

in contravention... [the Tribal] Court's order of May 22, 1998;" and (2) Order that "the previous order³ requiring transfer of Chad Searle to the reservation is hereby continued." However, the trial court's conclusion, based upon these findings and order, that the Custody Decree stemmed from the May 22, 1998 Order is not supported by the facts in the record.

The evidence presented below indicates that the trial court's conclusion fails to factor in the entire gambit of language in the Findings, Conclusions, and Order from October 16, 1998. The October 16, 1998 Custody Decree clearly states that the "matter came before the Court on Jayni Searle's Petition for Restoration of Custody." Emphasis added. Furthermore, the Custody Decree clearly states that "an entry of, notice of, and application for default [were] entered for Respondent's failure to answer the Petition in a timely manner." Emphasis added. The Tribal Court found that Appellant "is a person fit to assume custody," Appellant and the child "enjoy the relationship of mother and child," and other findings pertaining to a permanent order of custody. The Court went on to conclude that "Jayni

³ It is not clear from the tribal court ruling whether it was referring to the May 22, 1998 Order at this point or the September 9, 1998 Order which continued its previous orders. The September 9, 1998 Order was in response to Appellees' Motion to Dismiss their termination of parental rights action in tribal court. It ordered that Respondent's return the child also, but came after Appellees had an opportunity to appeal the May 22, 1998 Order.

Searle is a fit and appropriate person who should be awarded custody." The Court also ordered that "Chad Searle is hereby placed in the permanent custody, care, and control of Jayni Searle, his natural and biological mother."

While the Court did continue its previous order from May 22, 1998, this was done in connection with the grant of permanent custody. The Tribal Court clearly indicates October 16, 1998 Custody Decree resulted from a default judgment on Appellant's Tribal Court Petition for Custody. The Custody Decree only related to the May 22, 1998 Order because the May 22, 1998 Order was a temporary order in the same action. Under the Doctrine of Merger, the temporary order of custody would merge into the permanent order of custody. See Ikon Office Solutions, Inc. v. Crook, 6 P.3d 1143 (Utah App. 2000) (under Doctrine of Merger, TRO merges into preliminary injunction). The final order is the order reviewed for any defects because the temporary order is merged into the final order. See Birch Creek Irrigation v. Prothero, 858 P.2d 990 (Utah 1993) (Court noted "had the trial court reached a final judgment granting or denying a permanent injunction, we would dismiss that portion of the appeal challenging the temporary restraining order under the doctrine of merger.")⁴ In the instant matter the final order was valid and

⁴ Under the case law of certain jurisdictions, Appellant would have lost her ability to continue to fight the May 22, 1998 Order under the Doctrine of Merger because it would have been

final as demonstrate *infra* and should not be denied enforcement because Judge Hanson found deficiencies in a temporary order.

The trial judge determined that the defect in a temporary order rendered invalid a subsequent final order because it continued the previously entered order. This conclusion was incorrect. A subsequent order is valid regardless of whether the prior order was erroneous. Crowther v. District Court of Salt Lake County, 54 P.2d 243, 246 (Utah 1936) . The following argument in this respect was provided to the trial court and is incorporated here by reference:

Utah Courts have held that a contempt order is valid, even if the underlying order is erroneously entered. Crowther v. District Court of Salt Lake County, 54 P.2d 243, 246 (Utah 1936) ("disobedience of an order made by a court within its jurisdiction and power is contempt, although the order may be clearly erroneous"). Other jurisdictions have also addressed this issue and have held:

Consequently, the authorities are in accord that where the court has jurisdiction of the parties and of the subject matter of the suit and the legal authority to make the order⁵, a party refusing to obey it, however erroneously made, is liable for contempt. Such order, though erroneous, is lawful within the meaning of contempt statutes until it is reversed by an appellate court...the fact that a witness may disagree with the Court on the propriety of its ruling is, of course, no excuse for his not complying with it. The proper method of challenging the correctness of an adverse ruling is by an appeal and not by disobedience. Deskins

lost if it was not specifically mentioned in the final order. See Brooks v. Brooks 689 N.E.2d 987 (Ohio App. 1996).

⁵ This standard is consistent with the Estate of Jones Standard for enforcement of a foreign judgment.

v. Waldt, 499 P.2d 206 (Wash. 1972) (emphasis added); citing to Dike v. Dike, 448 P.2d 490 (Wash. 1968) and Robertson v. Commonwealth, 181 Va. 520, 25 S.E.2d 352 (1943). **SEE R. AT 54-55.**

A person can clearly be held in contempt for noncompliance to an order which may be later determined to have been erroneous. The underlying principle should be the same with other subsequent orders which are properly entered in accordance with due process.

As discussed *infra*, the Tribal Court had jurisdiction over parties and the subject matter. Accordingly, unless there is a showing under the standard pronounced in Estate of Jones 858 P.2d 983, 985 (Utah 1993) that the order is lacks validity and/or finality unenforceable, the order should be enforced. There were no findings under the Estate of Jones standard or any facts/conclusions which remotely relate to the standard. Therefore, the trial court erred in its conclusion.⁶

⁶ Rule 54 of the Utah Rules of Civil Procedure and Rules 4-6 of the Utah Rules of Appellate Procedure clearly indicate the policy behind the bright line distinction between final and temporary/interlocutory orders. The clear basis for this distinction is that interlocutory orders may be modified by the trial court during the course of the litigation. In custody matters (as the tribal court matter was), the distinction is even more evident because the party who is awarded temporary custody might not be awarded sole custody in the final order. It would stand to reason that even if an error or defect in a Utah District Court temporary custody order existed, the error would be of no consequence and cured if the final order did not result from the same defect. This is the very standard under the Utah Foreign Judgment Act.

Additionally, the Court's conclusion is not supported by the evidence. Several facts exist and are undisputed which bolster the fact that the final order was valid and did not suffer from the same infirmities identified by Judge Hanson in his ruling on the enforceability of the Tribal Court's May 22, 1998 Order. These factors include, but are not limited to, the following: (1) The temporary order was in place for more than four months (just shy of five months) prior to the final Custody Decree being issued (May 22, 1998 to October 16, 1998) **See R. at 2-14, 48-51**; (2) A stay had been issued on June 8, 1998 by the Tribal Court allowing Appellees to appeal its May 22, 1998 Order **See R. at 2-14, 48-51**; (3) Appellees through their counsel were served with a Petition for Sole Custody on September 8, 1998 **See R. at 2-14, 48-51**; (4) Appellees failed to respond to Appellant's Petition and a default was obtained (leading to the October 16, 1998 Custody Decree) **See R. at 2-14, 48-51**; (5) The October 16, 1998 Custody Decree gave Appellant permanent sole legal and physical custody of her child **See R. at 2-14, 48-51**; and (6) The May 22, 1998 Order had previously been continued on September 9, 1998 with no object from Appellees **See R. at 2-14, 48-51**.

Appellant was entitled to sole custody based upon the issuance of a permanent custody order on October 16, 1998. Appellant had the sole right to determine where the child lived. The Court's order only reinforced her right to determine that the child reside with her on the reservation. Unlike the temporary order where the Tribal Court still had a say in the placement decisions. That decision was and is now solely in the hands of Appellant.

Based upon the foregoing, the October 16, 1998 Custody Decree is not invalid merely because it merged a temporary order that required the child be returned to the reservation. Appellant prevailed based upon Appellees' default. Notice was the alleged defect in the May 22, 1998 Order. Such a defect did not exist in the October 16, 1998 Custody Decree. Accordingly, the trial court's conclusion is erroneous.

**(2) The Trial Court did not Address The Foreign
Judgment Standard For Enforcement**

The trial court did not address the core issues in determining the validity and finality of the October 16, 1998 Custody Order in making its determination that the Custody Order was not enforceable. In addressing this issue to the trial court, Appellant set forth the law in this

regard. Appellant adopts by reference that argument and sets it forth word for word as follows:

1. General Principles

To determine if the order is enforceable, the Court should look to see if the tribal court order was 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" and is enforceable under the Utah Foreign Judgment Act). This Court should enforce the tribal court order of October 16, 1998 because it is both valid and final as set forth below.

2.

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 and in compliance with the constitutional requirements of due process." Estate of Jones, Matter of, 858 P.2d 983, 985 (Utah 1993). As more fully argued below, Respondents have failed to show either element in that the judgment was rendered by a court of competent jurisdiction after extensive pleadings being filed and is final for purposes of the analysis under the foreign judgment act.

B.

A. Competent Jurisdiction

The original action involving Petitioner's custodial rights was commenced in the Third District Juvenile Court of Utah in and for Salt Lake County. Pursuant to relevant provisions of the Indian Child Welfare Act, jurisdiction over the juvenile court matter was transferred to the Fort Peck Tribal Court. The tribal court obtained exclusive jurisdiction to any state court. Petitioner filed a petition to restore sole custody. Subsequently, the tribal court dismissed the contested action which Respondents had commenced in [the Third District Juvenile Court]. The tribal court dismissed the termination action but retained jurisdiction over the custody issues and specifically continued the previous order that the child be returned to the reservation and to Petitioner's custody. The custody issues were subsequently decided in favor of Petitioner upon a default judgment. Under the Indian Child Welfare Act, the tribal court was the proper forum to resolve the

temporary and permanent custody issues. See Adoption of Halloway, Matter of, 732 P.2d 962, 966 (Utah 1986) and Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 52, 109 S.Ct. 1507, 1610, 104 L.Ed. 2d 29, _____ (1989).

As pointed out by the Halloway decision, the tribal court is the preferred forum for decisions involving custody of Native American children. Id. The United States Supreme Court has recognized that the determination of custody is squarely in the child's 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). Respondents had a chance to litigate the final custody issues but failed to file any pleadings in tribal court, resulting in a default judgment. At no time has the tribal court dismissed or ceded jurisdiction over the custody issues. Therefore, the tribal court was a court of competent jurisdiction.

C.

B. Due Process

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. Respondents fail to identify any way in which their due process rights were violated after the May 22, 1998 order. In fact, the tribal court gave them nearly three months to appeal its [May 22, 1998] order[] while the stay was issued [on June 8, 1998]. However, Respondents have chosen to sit idle and ignore the legitimate jurisdiction of the tribal court with their perceived grievances regarding due process. Their failure does not equate to a denial of due process but rather a failure to act judiciously in protecting one's rights. The tribal court was not duty bound to wait for Respondents to act.

Respondents were also placed on notice of the action for custody in tribal court. Despite ample notice and more than thirty days of opportunity to respond, Respondents chose not to be involve themselves in that process. Respondents failed to respond to Petitioner's Petition for Sole Custody.

Respondents' failure resulted in a default judgment on the custody petition in tribal court. Once again, Respondents have not filed an appeal or any appropriate Motion to Set Aside with the Tribal Court. Respondents failure to participate was of their own choosing and does not amount to a violation of due process. Given the foregoing, there was not a violation of Respondents' due process rights to be heard and to have notice. Therefore, Respondents have had sufficient due process under the circumstances.

Therefore, the order is valid as defined by applicable case law.

3.
D.

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 of Appeals interpretation is entirely consistent with the other provisions of the Foreign Judgment Act....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). The time for filing an appeal has ran and the order is therefore final for purpose of this analysis.

The applicable provisions of the Fort Peck Tribal Court Rules of Appellate Procedure differ significantly from the Utah Rules of Appellate Procedure. 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 (emphasis added). Therefore, the October 15, 1998 Fort Peck Tribal Court Order granting custody to Petitioner ...was final under the laws of the state of rendition as required under the finality prong. Having established both prongs, the order should be given full faith and credit and enforced by Utah Courts.

E. D. Validity and Enforceability – November 23, 1998 Order

Under the analysis set forth above regarding the Estate of Jones standards, the November 23, 1998 order regarding the order of custody is enforceable in Utah. While Respondent's claim that the order is merely an extension of the previous May 22, 1998 order, this is inaccurate. Respondents had more than six months to appeal the May 22, 1998 order or seek to block its enforcement through the process afforded them by the tribal court and its appellate division (and even probably the Federal Court System). Appellants failed to do so. Additionally, the case law cited to above clearly stands for the proposition that the order is valid because a person is under a duty to comply with an order until it is modified by a court having appellate jurisdiction over the court of rendition. The May 22, 1998 order was never modified by the court of rendition or an appellate court. Therefore, the contempt order needs to be analyzed under the same due process analysis set forth above.

First, the order was rendered by a court of competent jurisdiction as set forth above. Second, Petitioners were served with notice of the order to show cause, were given an opportunity to appear and defend, and failed to do so. Petitioners were not denied due process but [Respondents] simply failed to act.... **SEE R. at 56-61.**

The finality and validity analysis was not addressed by the trial court. The trial court's findings are insufficient to form a basis upon which to deny enforcement under the relevant case law. The trial court did not find that the Tribal Court was not a court of competent jurisdiction. The trial court did not make any findings upon which the trial court could conclude that

Appellees were denied due process in the Tribal Court's entering a Default Judgment against Appellees. The trial court did not make any findings that the October 16, 1998 Custody Decree was not final or was the subject of an appeal. The trial court did not find that a stay should issue pursuant to the Utah Foreign Judgment Act (see Utah Code Anno. § 78-22a-4).

The Conclusion of Law that the October 16, 1998 Custody Decree is not entitled to full faith and credit and enforcement is erroneous. Further proceedings are unnecessary to address this issue based upon the orders themselves which on their face demonstrate their validity and finality. Additionally, the Appellees' failure to file a Motion to Stay within thirty days of the filing of the Foreign Judgment Action is a factor the Court should have weighed in Appellant's favor. This Court should issue an order directing that the Third District Court forthwith issue an order directing law enforcement to immediately enforce the October 16, 1998 Custody Decree.

**B. THE COURT IMPROPERLY GRANTED THE RULE 60(B) MOTION
TO SET ASIDE THE AUGUST 25, 1999 ENTRY OF JUDGMENT**

i. Timeliness

The underlying action was a foreign judgment action commenced pursuant to Utah Code Anno. § 78-22a-1 *et. seq.* (1953 *as amended*). The Utah Foreign Judgment Act provides that no enforcement shall take place within thirty days. See Utah Code

Anno. §78-22a-3(3) (1953 as amended). In order to stay enforcement of a foreign judgment, the judgment debtor must file a Motion for Stay or provide proof that a stay is in effect. See Utah Code Anno. §78-22a-4 (1953 as amended). Utah Code Anno. §78-22a-5(1) provides that the "foreign judgment filed under this chapter becomes a lien as provided in Section 78-22a-1 if a stay of execution has not been granted." Utah Code Anno. §78-22-1(b) (1953 as amended) provides that the lien becomes effective upon entry of judgment.

Therefore, pursuant to the statutory framework, the foreign judgment is entered and given full faith and credit after thirty days if no Motion to Stay has been filed by the judgment debtor. Accordingly, the two foreign judgments obtained full faith and credit on July 15, 1999, thirty days after the filing on June 15, 1999 because Appellees failed to file any Motion to Stay within the designated time period. Accordingly, both judgments should be enforced as if they were Utah Judgments entered on July 15, 1999.

Rule 60(b) provides the following:

On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding ...The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken.

The Motion to Set Aside was filed by Appellees on or about November 15, 1999. See **R. at 153**. Appellees were appropriately served with the Foreign Judgment Action on June 15, 1999. See **R. at 17-18**. The judgment was given full faith and credit on July 15, 1999 due to Appellees failure to file a Motion to Stay in a timely fashion. Appellees failed to file a Rule 60(b) Motion within the 90 days of July 15, 1999 (Appellees filed after more than 120 days). Appellees had a reasonable time after discovering that the action had been commenced and a judgment could be entered as prescribed by the Utah Foreign Judgment Act. The trial court lacked jurisdiction and erred in granting a Motion to Set Aside and denying enforcement when the Judgement was effectively entered by law on July 15, 1999.

ii. Appellees failed to Prove Sufficient Grounds and the Court Failed to Make Any Conclusion or Finding as to a Rule 60(b) Ground

The trial court failed to identify which grounds were applicable to the Rule 60(b) Motion to Set Aside the August 25, 1999 Entry of Judgment. See **R. at 620-623**. The Judgment should be reversed in that Appellee's failed to demonstrate evidence justifying relief. Appellee's sought relief from the August 25, 1999 Entry of Judgment under Rule 60(b)(3) and (4). See **R. at 153-207**. Appellee made the following factual assertions in support of the Motion to Set Aside:

FACTS RELEVANT TO MOTION TO SET ASIDE

1. Petitioner commenced an action before Judge Timothy Hanson seeking to enforce a May 22, 1998 Fort Peck Tribal Court order that transferred custody of a minor Chad Searle from Respondents to Petitioner. On or about March 8, 199[8], Judge Timothy Hanson convened a hearing and issued an oral ruling denying enforcement of the May 22, 199[8] trial court order. Judge Hanson ruled that Respondents were not afforded notice in violation of due process. **See R. at 155.**

2. Respondent's counsel prepared a proposed order and served it upon counsel for Petitioner. Petitioner filed an objection to the order. **See R. at 155.**

3. While the objection to Judge Hanson's order was pending, Petitioner filed a new action before this court requesting the court give "full faith and credit" to a second Fort Peck Tribal Court order (dated October 16, 1998) which found that temporary custody was properly transferred by the tribal court on May 22, 1998, that Respondent had wrongfully maintained custody and that based on these findings the May 22, 1998 order was in full force and effect and custody was permanently transferred. (Exhibit A). **See R. at 156.**

4. Judge Hanson's oral ruling in the first case had not been entered as a written order at the time Respondent filed their response in this action opposing Petitioner's petition. **See R. at 156.**

5. On July 26, 1999, Judge Hanson entered the Order of Dismissal in the first case stating that the action is dismissed with prejudice as to the Fort Peck Tribal Court May 22, 1998 Order. (Exhibit B). **See R. at 156.**

6. Petitioner did not withdraw her petition seeking that this court enforce the other tribal court orders which expressly made findings that Respondent was "in contempt" for not obeying the May 22, 1998 order and that Respondent had wrongfully maintained custody in contravention of...the May 22, 1998 order." Exhibit A. **See R. at 156.**

7. On August 23, 1999, this Court entered a judgment giving full faith and credit to the tribal court order referred to above. (Exhibit C.). **See R. at 156.**

On December 1, 1999, Appellant submitted a Response in Opposition to Appellee's Motion to Set Aside the August 25, 1999

Entry of Judgment. **See R. 347-379.** In Response, Appellant submitted the following factual statement:

FACTS

1. On or about the 15th of May, 1998, the Third District Juvenile Court transferred jurisdiction over issues involving Chad Searle to the Fort Peck Tribal Court in Poplar Montana. **See R. at 347.**
2. On or about May 22, 1998, the Fort Peck Tribal Court accepted jurisdiction and awarded Jayni Searle temporary custody of Chad Searle, thereby vacating a previous ex parte order of temporary custody issued by the Third District Juvenile Court. **See R. at 347.**
3. On or about May 27, 1998, Jayni filed a Petition for Writ of Assistance in the Utah Third District Court seeking to enforce a May 22, 1998 order entered by the Fort Peck Tribal Courts. The Petition was assigned to the Honorable Judge Timothy Hanson. **See R. at 347-48.**
4. In February of 1999, Petitioner filed a Motion before Judge Hanson to give full faith and credit to the orders before this Court now. **See R. at 348.**
5. On or about March 8, 1998, the District Court denied the Petition for Writ of Assistance finding specifically that the May 22, 1998 was entered by without due process in that Judge Hanson found that Respondents were not given sufficient notice. Judge Hanson also found that the Utah Foreign Judgment Act was the only way that a foreign judgment could be enforced. Judge Hanson's findings have subsequently been appealed and are before the Court of Appeals for review. **See R. at 348.**
6. At the March 8, 1998 hearing, Judge Hanson stated that the order did not preclude enforcement of subsequent orders issued by the tribal court and he could not say how his colleagues would rule on those orders. Judge Hanson found that the October 16, 1998 and November 19, 1998 Orders needed to be filed under the Foreign Judgment Act to obtain full faith and credit. *See Exhibit B of Respondent's Memorandum in Support Motion to Set Aside* (paragraph 9 of the findings of fact, paragraph 7 of the Conclusions of Law, and paragraph 3 of the Order of the Court). **See R. at 348.**
7. In March of 1999, Petitioner commenced an action to enforce the two orders before the Court. However, the documents were lost in the filing process. **See R. at 348.**

8. When Petitioner discovered the glitch, counsel spoke with the Court clerks who informed him that the action needed to be filed again. **See R. at 348.**
9. On or about June 15, 1999, Petitioner commenced an action for the enforcement of two foreign judgments (dated respectively October 16, 1998 and November 19, 1998). The action was assigned to Judge Lewis by the Court. **See R. at 349.**
10. On or about the 6th Day of July, 1999, Petitioner filed a Memorandum in Support of Entry of the Judgments (responding to a letter sent to the Court by Respondent's counsel). **See Exhibit #1. See R. at 349.**
11. On or about the 9th day of August, 1999, Petitioner filed an Application for Entry of Judgment and an Entry of Judgment (the documents dealt solely with the October 16, 1998 order). **See R. at 349.**
12. The documents were served upon Counsel for the Respondents by U.S. Mail. **See R. at 349.**
13. On or about the 25th day of August, 1999, the trial court entered an "Entry of Judgment" which notified all that the October 16, 1998 order had been given full faith and credit under the Utah Foreign Judgment Act. **See R. at 349.**
14. On or about the 22nd day of November, 1999, Respondent filed a Motion to Set Aside the Judgment and a Motion to Stay. **See R. at 349.**

a. Rule 60(b) (3)

Appellees made the following legal assertions with respect to the applicability of Rule 60(b) (3) to their Motion to Set Aside:

...under subsection (3), this Court entered an Order by no fault of its own despite being precluded from doing so under the doctrine of res judicata because of Petitioner's misrepresentations and misconduct. As demonstrated in the factual allegations supporting the motion, Petitioner had already brought an action before Judge Hanson seeking to enforce the May 22, 1998 tribal court order. Judge Hanson dismissed the action with prejudice and found that the order was unenforceable for lack of due process. Petitioner then filed a second petition before this court seeking to have an

October 16, 1998 tribal court order enforced, which order had in content and effect enforced the May 22, 1998 order that Judge Hanson found to be unenforceable. This action was therefore commenced in bad faith and the Court's entry of judgment was induced by Petitioner's misrepresentation and misconduct. **R. at 158.**

In Response to these allegations of misrepresentation and misconduct, Appellant offered the following:

Rule 60(b)(3) provides that a Court may set aside a judgment if the Court determines that there was "fraud..., misrepresentation, or other misconduct of an adverse party." In support of their contention, Respondents allege that Petitioner allegedly failed to notify the Court of the action before Judge Hanson and that the enforcement action was allegedly "commenced in bad faith" through Petitioner's alleged "misrepresentation and misconduct." Respondents grossly misrepresent the facts to the Court.

First, Petitioner filed the action in accordance with the Utah Foreign Judgment Act. Petitioner provided all the facts which are essential under the act at the time of filing. Second, the Court stated to both parties' counsel on the record at the November 23, 1999 hearing that the Court had reviewed Judge Hanson's file prior to ruling (showing that the Court had actual notice of the Judge Hanson proceeding). Third, Petitioner filed a Memorandum with the Court which clearly delineated Judge Hanson's ruling and the history of the case. See Exhibit #1. Petitioner did not attempt to hide anything from the Court or run from Judge Hanson's ruling. Fifth, Judge Hanson notified the parties that he did not find anything inappropriate in Petitioner's filing the foreign judgment action on the October 16, 1998 and November 19, 1998 Orders after Respondent sent a letter on June 21, 1999 raising these same issues and asking for sanctions. See Exhibit #2 (Judge Hanson's Letter). At the March 8, 1999 hearing before Judge Hanson, he stated that he expected that Petitioner would file the subsequent orders under the Foreign Judgment Act and "one of

his colleagues" would determine whether enforcement was appropriate.

Sixth, the October 16, 1998 Order did not merely enforce the May 22, 1998 Order that "Judge Hanson found to be unenforceable." Rather, the October 16, 1998 Order granted a Petition for Sole Custody filed by Petitioner in Tribal Court and served upon Respondents through their counsel. The October 16, 1998 Order is a permanent order of custody resulting from Petitioner's Petition for Custody. The May 22, 1998 Order is an order of temporary custody, resulting from an ex parte motion for temporary custody from the Fort Peck Tribes. While the October 16, 1998 Order does reflect the procedural history of the case and Respondents failure to obey the order of the Court, the Order is based upon a default due to Respondents's failure to respond and file an answer to the Petition for Custody.

Seventh, Respondents sent a letter to this Court notifying the Court of Respondents' concerns. Petitioner filed an objection to that letter. Respondents chose not to file any pleadings as required by the Rules and the Foreign Judgment Act to oppose entry of the judgment and enforcement of said judgment. Eighth, Respondents have failed to identify any specific conduct which is not addressed herein which would substantiate Respondents' claim of fraud.

Respondents allegations of fraud are without merit. Petitioner has provided the Court with the necessary information and the Court even took the next step of reviewing the file from the matter which was before Judge Hanson. Respondents merely create allegations in a blatant attempt to sway the Court. Respondents have failed to provide the Court with any real evidence of fraud, miscommunication, or misconduct as required by Rule 60(b).

This Court determined from the record that there was no real evidence of fraud, miscommunication, or misconduct as alleged by Appellees in their Motion. The trial court reviewed the record before Judge Hanson (Case No. 980905344), had a July 15, 1999

letter from Judge Hanson to counsel (**See R. at 378-79**), and had the July 26, 1999 Order of Dismissal from the matter decided by Judge Hanson (Case No. 980905344) (**See R. at 176-78**). The letter from Judge Hanson states:

With regard to the complaints of Ms. Santana that Mr. Shirley has brought this matter before Judge Lewis, please be advised that I do not find any impropriety in that regard, as it was my intention to only address the May 22, 1998 Order and the Writ of Assistance that was requested based thereon.

If any subsequent Order has been properly domesticated under the Utah Foreign Judgment Act and is otherwise enforceable, I am confident that Judge Lewis, who apparently is assigned to the case, will handle the matter in accordance with the facts as she finds them and in accordance with the law. **See R. at 379.**

The July 26, 1999 Order of Dismissal provides the following:

9. Petitioner also subsequently filed a Motion to give Full Faith and Credit to two subsequent Tribal Court Orders. **See R. at 176.**

7. The subsequent Tribal Court Orders are not before the Court under the Utah Foreign Judgment Act. **See R. at 177.**

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. See R. at 177 (Emphasis added).**

Additionally, the Court was informed that Judge Hanson's verbal ruling indicated this same point. This issue was

preserved by pleading (**See R. at 54**) in which Appellant made the following proffer:

It should also be noted that in his verbal ruling, Judge Hanson indicated that in order to have the October and November judgments recognized, Petitioner would have to file them in accordance with the Utah Foreign Judgment Act. Judge Hanson also recognized that it might go before one of the other judges...

These facts make it very clear that there was no fraud, misrepresentation, or misconduct committed upon the Court or Appellees in the manner alleged by Appellees. The facts as alleged by Appellees did not support the relief that Appellees sought under Rule 60(b)(3). Judge Hanson's letter and the Third District Court Orders make it very clear that "Judge Hanson's" ruling did not preclude enforcement of the Tribal Court Orders which were entered subsequent to May 22, 1998. Furthermore, the record does not reveal that the trial court made any determination which even closely resembles misconduct, misrepresentation, or fraud upon the Court.

The pleadings filed by Appellant to commence the underlying action demonstrate that they were filed appropriately in accordance with the Foreign Judgment Action. **See R. at 1-18.** The application and the Notice of Entry of Judgment are equally appropriate. **See R. at 66-75.** Appellees did not demonstrate an adequate factual basis to support this alleged ground for relief. This Court can determine from the record, which is all based upon

a Motion and Response, that the factual assertions by Appellee would have failed to adequately state a claim for any relief under Rule 60(b)(3) as a matter of law to meet the burden of proof. Additionally, Judge Lewis did not find any misconduct or fraud.

b. Rule 60(b)(4)

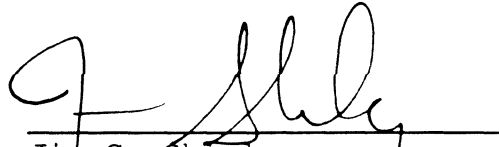
Appellees' assertions as to Rule 60(b)(4) do not rise on their face to the level to demonstrate that the Entry of Judgment was void. In order to be void the judgment must have been rendered without jurisdiction. Stanley Title Company v. Continental Bank and Trust Company 485 P.2d 1400 (Utah 1971) (Must show that the judgment on its face lacked subject matter jurisdiction, personal jurisdiction, lack of reasonable notice, incompetency of the Court, or failure to comply with requirements of due process). Nothing in Appellees Motion gives rise to this justification for a Rule 60(b) Motion because the Judgment was void. **See R. at 151-207.**

CONCLUSION

The Judgment of the District Court should be reversed because the trial court erred in its conclusion regarding enforcement and erred in granting the Rule 60(b) Motion to Set Aside. This Court should issue an order requiring that the Foreign Judgments be given full faith and credit and directing

the District Court to enter such orders as are necessary to enforce said orders.

Dated this 6th Day of April, 2001



Jim C. Shirley
Counsel for Appellant

CERTIFICATE OF MAILING


I hereby certify that on this 6th day of April, 2001, 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

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

JAYNI SEARLE,	:	COURT'S RULING
Plaintiff,	:	CASE NO. 996907234
vs.	:	
BOYD SEARLE and DOROTHY SEARLE,	:	
Defendants.	:	

A Notice to Submit has been filed, pursuant to Rule 4-501, Code of Judicial Administration, in connection with the respondent's Emergency Motion for Stay Pending Rule 60 Motion, Motion to Set Aside Judgment and Motion for Declaratory Judgment. A hearing was held before the Court on November 23, 1999, on the Emergency Motion to Stay. At that time, the Court granted the Motion to Stay temporarily, but deferred making a final ruling on the Motion until counsel for the petitioner had an opportunity to respond to the Motion and the Court had an opportunity to review the case of In the Matter of Chad Searle, a Minor Indian Child, Case No. 980905344, Judge Timothy Hanson presiding. The petitioner is now seeking a ruling on the Motion to Stay and the Motion to Set Aside Judgment. The petitioner has also filed a Notice of Request for Delay of Decision with respect to the respondent's Motion for Declaratory Judgment. In her Notice, the petitioner requests that

the Court defer ruling on the Motion for Declaratory Judgment until the Court has rendered a decision on the petitioner's pending Motion for Rule 11 Sanctions. Finally, the petitioner requests a hearing on the Motion for Declaratory Judgment "if the Court is inclined to grant the Motion."

The Court determines that a hearing on the Motion for Declaratory Judgment and the Motion for Rule 11 Sanction, which will shortly be ripe for decision, is appropriate to further clarify the parties' positions. The Court therefore schedules a hearing on April 26, 2000, at 2:00 p.m. to consider these Motions.

Having reviewed the moving and responding memoranda with respect to the remaining motions, the Court rules as stated herein. Since the Motions before the Court are related to concerns previously brought before Judge Hanson, this Court provides a brief procedural history of that case and its connection to the present case. In Chad Searle, the petitioner herein filed a Writ of Assistance seeking to enforce a May 22, 1998, Fort Peck Tribal Court custody Order that transferred custody from respondent Boyd Searle to the petitioner. The Petition essentially sought recognition of the May 22nd Order as a foreign judgment under the Utah Foreign Judgment Act. Judge Hanson denied the Petition on the basis that since respondent Boyd Searle was not given an opportunity to be heard at the May 22nd hearing, the Order was not

entitled to full faith and credit. (See Order of Dismissal, dated July 26, 1999).

In this case, the petitioner is attempting to enforce the Tribal Court's October 16, 1998, Findings of Fact, Conclusions of Law and Decree, finding that the respondents had "wrongfully maintained custody in contravention . . . of [the] Court's order of May 22, 1998." On August 25, 1999, this Court entered an Order entitled "Entry of Judgment" which purported to give full faith and credit to the October 16th Decree. The respondents are now seeking to set aside the August 25th Order and the October 16th Tribal Court Decree.

The Court rules that the October 16th Tribal Court Decree directly relates to and stems from an Order which another court has concluded to not be entitled to full faith and credit. Specifically, the Decree reinforces the May 22nd Order and reiterates that it "is hereby continued." The October 16th Decree is therefore flawed because it maintains custody of the minor child under an Order which was issued without giving respondent Boyd Searle his due process right to be heard. Accordingly, the October 16th Order is similarly not entitled to full faith and credit. The Motion to Set Aside is therefore be granted in part and this Court's August 25th Judgment is set aside. However, to the extent the Motion seeks to set aside the Decree itself, the Court

determines that it has no jurisdiction to make such a ruling. In other words, respondents' Motion essentially urges this Court to impermissibly act as an appellate court and review the propriety of another court's ruling and then "overturn" that ruling by setting it aside. Accordingly, the Motion to Set Aside is granted with respect to the August 25th "Judgment", but denied with respect to the October 16th Tribal Court Decree. As a corollary, since the Court sets aside the August 25th Judgment, the Motion seeking to stay that Judgment is rendered moot.

Counsel for the respondents is to prepare an Order consistent with this Court's Ruling and submit the same to the Court for Review and signature.

Dated this 7th day of February, 2000.



LESLIE A. LEWIS
DISTRICT COURT JUDGE

IN THE COURT OF APPEALS
FOR THE STATE OF UTAH

Jayni Searle,
Appellant,
v.
Boyd and Dorothy Searle,
Appellee.

Case No. 20000274-CA

Priority 4

Jayni Searle,
Appellant,
v.
Boyd and Dorothy Searle,
Appellee.

Case No. 20000274-CA

Priority 4

Jayni Searle,
Appellant,
v.
Boyd and Dorothy Searle,
Appellee.

Case No. 20000274-CA

Priority 4

Jayni Searle,
Appellant,
v.
Boyd and Dorothy Searle,
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Case No. 20000274-CA

Priority 4

Jayni Searle,
Appellant,
v.
Boyd and Dorothy Searle,
Appellee.

Case No. 20000274-CA

Priority 4

Jayni Searle,
Appellant,
v.
Boyd and Dorothy Searle,
Appellee.

Case No. 20000274-CA

Priority 4

Jayni Searle,
Appellant,
v.
Boyd and Dorothy Searle,
Appellee.

Case No. 20000274-CA

Priority 4

BRIEF OF APPELLANT

APPEAL FROM A FINAL ORDER OF THE THIRD DISTRICT
COURT, HONORABLE LESLIE A. LEWIS PRESIDING

-----o0o-----

APPEAL FROM A FINAL ORDER OF THE THIRD DISTRICT
COURT, HONORABLE LESLIE A. LEWIS PRESIDING

-----o0o-----

ADDENDA B

Maria Cristina Santana (7300)
SANTANA LAW FIRM
44 West Broadway, Suite 304
Salt Lake City, Utah 84101
Telephone: (801) 363-5803

FILED DISTRICT COURT
Third Judicial District

FEB 25 2000

By W. S. [Signature]
SALT LAKE COUNTY
Deputy Clerk

Attorney for Respondents

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

IMAGED

JAYNI SEARLE,

Petitioner, .

vs.

BOYD SEARLE and
DOROTHY SEARLE,

Respondents.

ORDER SETTING ASIDE JUDGMENT

Civil No. 99-690-7234 FJ

Judge: Leslie A. Lewis

The above-entitled matter came before the Court pursuant to Rule 4-501 Code of Judicial Administration for decision on Respondents' Emergency Motion for Stay Pending Rule 60 Motion, and Motion to Set Aside Judgment. The Court having reviewed In the Matter of Chad Searle, a Minor Indian Child, Case No. 98-090-5344, Judge Timothy Hanson presiding, having properly considered all the oral and written arguments submitted to the Court by the parties, and being otherwise advised in the premises, the Court hereby makes the following:

FINDINGS OF FACT

1. Petitioner Jayni Searle (hereafter "Petitioner") filed a petition for Writ of Assistance in Third Judicial District Court, Salt Lake County, State of Utah, Case No. 98-

Order Setting Aside Judgment @



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090-5344, In the Matter of Chad Searle, A Minor Indian Child, seeking to enforce a May 22, 1998, Fort Peck Tribal Court custody Order that transferred custody from Respondent Boyd Searle (hereafter “Respondent”) to the Petitioner. The petition sought recognition of the May 22nd Order as a foreign judgment under the Utah Foreign Judgment Act.

2. Judge Timothy R. Hanson denied the petition on the basis that since Respondent was not given an opportunity to be heard at the May 22nd hearing, the Order was not entitled to full faith and credit.

3. Petitioner subsequently filed a petition before this Court to enforce an October 16, 1998 Fort Peck Tribal Court Order’s Findings of Fact, Conclusions of Law and Decree, finding that Respondents had “wrongfully maintained custody in contravention...of [the] Court’s order of May 22, 1998.”

4. On August 25, 1999, this Court entered an Order entitled “Entry of Judgment” which purported to give full faith and credit to the October 16th Tribal Court Decree.

5. Respondents filed an Emergency Motion for Stay Pending Rule 60 Motion to Set Aside Judgment, and a Motion to Set Aside Judgment. Respondents’ motions sought to stay the August 25th Order and to set aside the August 25th Order and the October 16th Tribal Court Decree.

6. A hearing was held before the Court on November 23, 1999, on the Emergency Motion for Stay, at which time the Court granted the motion temporarily but deferred making a final ruling on the Motion until counsel for Petitioner had an opportunity to respond to the Motion and the Court had an opportunity to review the case In the Matter of Chad Searle, a Minor Indian Child.

7. Petitioner subsequently filed a response in opposition to the motions and a Notice to Submit for Decision pursuant to Rule 4-501, Code of Judicial Administration.

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

CONCLUSIONS OF LAW

1. The October 16th Tribal Court Decree directly relates to and stems from an Order which another court in Chad Searle has concluded not to be entitled to full faith and credit. Specifically, the Decree reinforces the May 22nd Order and reiterates that it “is hereby continued.” The October 16th Decree is therefore flawed because it maintains custody of the minor child under an Order which was issued without giving Respondent Boyd Searle his due process right to be heard. Accordingly, the October 16th Order is similarly not entitled to full faith and credit, and the August 25th Order must be set aside.

2. The Court has no jurisdiction to review the propriety of the Fort Peck Tribal Court’s ruling and then set aside or overturn that ruling as it pertains to the October 16th Tribal Court Decree.

3. Since the Court sets aside the August 25th Judgment, the Motion seeking Stay of the Judgment is rendered moot.

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

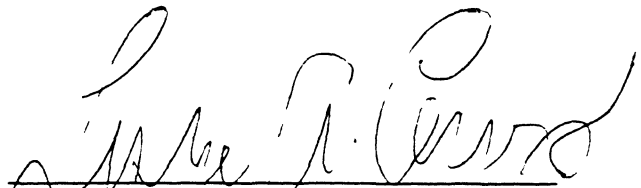
ORDER

1. The August 25th Order is set aside and vacated, and shall not be enforced by the parties or law enforcement.

DATED this 25th day of July, 2000.

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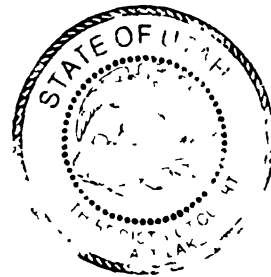
BY THE COURT

A handwritten signature in black ink, appearing to read "Leslie A. Lewis", written over a horizontal line.

Honorable Leslie A. Lewis
Third District Court Judge

Approved as to form

Jim C. Shirley

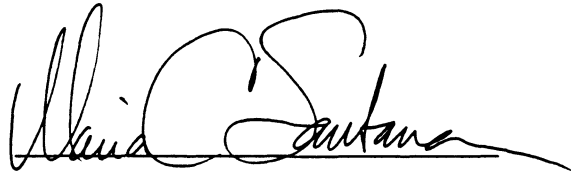


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CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of Feb 1999, I caused to be served by mail
~~and for~~ a true and correct copy of the foregoing upon:

Jim Shirley
9 East Exchange Place, Suite 400
Salt Lake City, Utah 84111
Fax: 359-0181

A handwritten signature in black ink, appearing to read "Maria Santana", written over a horizontal line.

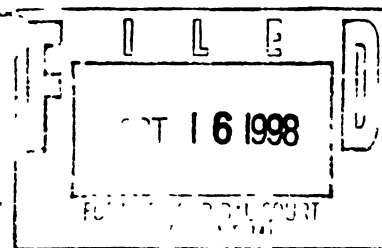
ADDENDA C

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

FILED DISTRICT COURT
Third Judicial District

JUN 15 1999

By *D. J. Hundberg*
SALT LAKE COUNTY
Deputy Clerk



**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,

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Judge

Stafne

996907234
FJ

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

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



STATE OF MONTANA }
COUNTY OF ROOSEVELT } ss.
I hereby certify that the above and foregoing is a full, true and correct copy of the original Findings of Fact, Conclusions of Law and Decree.
now on file in the office of the Clerk of Fort Peck Tribal Court.
Witness my hand and seal of the Court this 16th day of June A.D. 1999
Lorian M. Jaki Clerk
CLERK of FORT PECK TRIBAL COURT
Fort Peck Reservation in Montana, Wolf Point, Mont.

Jayni Searle,
Appellant,
v.
Boyd and Dorothy Searle,
Appellee.

Case No. 20000274-CA

Priority 4

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ADDENDA D

FILED DISTRICT COURT

Third Judicial District

JAYNI SEARLE

PRO SE

P.O. BOX 702

WOLF POINT, MONTANA 59201

JUN 15 1998

SALT LAKE COUNTY

By L. Lundberg
Deputy Clerk

23 1998

**FORT PECK TRIBAL COURT
ASSINIBOINE AND SIOUX TRIBES**In the Matter of Chad Searle,
A Minor Indian Child,

Jayni Searle,

Plaintiff.

996907234 FJ
ORDER RE: ORDER TO SHOW
CAUSE

Case No.

Judge

517

STAFNE

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

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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 to 25 U.S.C. 1914 and alleging violations of 1912(a,d,&e).
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 Lloyd 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 Jayni 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

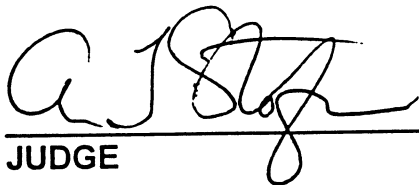
1. Boyd and Dorothy Searle are hereby held in contempt of Court;
2. The Court will stay the jail time if and when Boyd and Dorothy Searle agree to bring Chad to the reservation as previously ordered;
3. A bench warrant is issued for the immediate detention and transport of Boyd and Dorothy Searle to 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

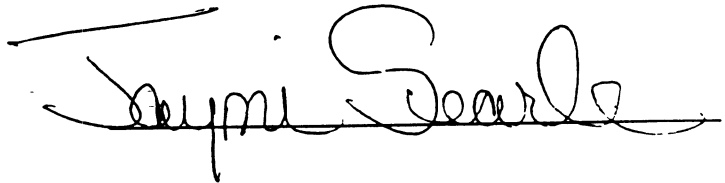

JUDGE

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



STATE OF MONTANA }
COUNTY OF ROOSEVELT }

I hereby certify that the above and foregoing is a full, true and correct copy of the original Order to Show Cause

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

Witness my hand and seal of the Court this 6th

day of June, A.D. 1999

Dorian M. Jackson
CLERK of FORT PECK TRIBAL COURT

Fort Peck Reservation in Montana, Wolf Point, Mont.

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ADDENDA E

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>	:	
JAYNI SEARLE,	:	CASE NO. 980905344
	:	
Petitioner,	:	
	:	FILED DISTRICT COURT
vs.	:	Third Judicial District
	:	
BOYD SEARLE,	:	JUL 26 1999
	:	SALT LAKE COUNTY
Respondent.	:	By _____
	:	Deputy Clerk

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.

151
TIMOTHY R. HANSON
DISTRICT COURT JUDGE

IN THE COURT OF APPEALS
FOR THE STATE OF UTAH

Jayni Searle,)	
)	
Appellant,)	
)	Case No. 20000274-CA
v.)	
)	
Boyd and Dorothy Searle,)	
)	
Appellee.)	
)	Priority 4
)	

BRIEF OF APPELLANT

APPEAL FROM A FINAL ORDER OF THE THIRD DISTRICT
COURT, HONORABLE LESLIE A. LEWIS PRESIDING

-----o0o-----

ADDENDA F

The Judicial District Court

Scott M. Matheson Courthouse
450 South State Street
Salt Lake City, Utah 84111
801-238-7515

Timothy R. Hanson
District Judge



July 15, 1999

✓ Jim C. Shirley, Esq.
9 Exchange Place, Suite 400
Salt Lake City, Utah 84111

Maria Cristina Santana, Esq.
2159 South 700 East, Suite 100
Salt Lake City, Utah 84101

Re: Jayni Searle v. Boyd Searle
Case No. 980905344

Dear Counsel:

I have the request for decision in the above-referenced matter relating to the proper form of Order as a result of the hearing on March 8, 1999.

I had anticipated a transcript prepared by one of the court reporters here at the District Court, and note that the transcript was prepared by personnel of Mr. Shirley's office by reviewing a videotape. I have no concerns that the transcript is not reasonably accurate, but it should be clear that it is not an official transcript.

I have examined both the Orders submitted and am satisfied that Mr. Shirley's Order, with some modifications, is appropriate, and rather than ask Mr. Shirley to make those modifications, I have prepared an Order, a copy of which is enclosed, making the changes that I require.

I was satisfied that the Findings of Fact in Mr. Shirley's proposed Order were appropriate, as well as the Conclusions of Law. The Order of Dismissal, however, was not complete and as you will note, includes now as paragraph 1, the statement that the Petition for Writ of Assistance is denied; paragraph 1, which is now numbered paragraph 2 is slightly modified to strike the words "the above-entitled", and insert the word "this"; and finally, on what was previously proposed paragraph 2 in the Order is now paragraph 3 and contains after the words "Utah Foreign Judgment Act", the following: "and which are otherwise enforceable under law".

00373

Jim C. Shirley, Esq.
Maria Cristina Santana, Esq.

-2-

July 15, 1999

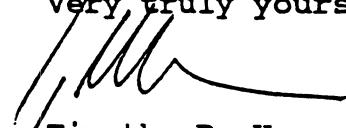
With those modifications, the Order is appropriate and I have signed the same, all on a date shown on your copy.

With regard to the complaints of Ms. Santana that Mr. Shirley has brought this matter before Judge Lewis, please be advised that I do not find any impropriety in that regard, as it was my intention to only address the May 22, 1998 Order and the Writ of Assistance that was requested based thereon.

If any subsequent Order has been properly domesticated under the Utah Foreign Judgment Act and is otherwise enforceable, I am confident that Judge Lewis, who apparently is assigned to the case, will handle the matter in accordance with the facts as she finds them and in accordance with the law.

Accordingly, the informal request for sanctions as contained in Ms. Santana's letter of June 21, 1999 is refused. Hopefully, this Order that I have signed will bring this case number to a conclusion.

Very truly yours,



Timothy R. Hanson
District Court Judge

TRH:jsh
Enclosure
cc: Gary Beaudry, Esq.

00373

Jayni Searle,
Appellant,

Case No. 20000274-CA

Priority 4

BRIEF OF APPELLANT

APPEAL FROM A FINAL ORDER OF THE THIRD DISTRICT
COURT, HONORABLE LESLIE A. LEWIS PRESIDING

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ADDENDA G

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

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

JAYNI SEARLE,	}	APPLICATION FOR ENTRY OF
	}	JUDGMENT
Petitioner,	}	
	}	
vs.	}	CASE NO. <u>996907234FJ</u>
	}	
BOYD AND DOROTHY SEARLE.	}	
	}	
Respondent.	}	JUDGE <u>LESLI LEWIS</u>

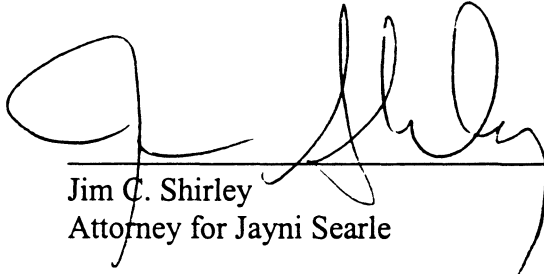
In accordance with U.C.A. § 78-22a-1 *et. seq.* (1998 as amended), the Utah Foreign Judgment Act, Jayni Searle, by and through counsel of record, hereby applies to this Court for entry of judgment based upon the following matters appearing of record:

1. A Notice of Judgment was filed on the 15th Day of June, 1999 in accordance with the Utah Foreign Judgment Act, U.C.A. § 78-22a-2(2);
2. An Affidavit was filed on the 15th Day of June, 1999 in accordance with the Utah Foreign Judgment Act, U.C.A. § 78-22a-3(1);
3. Thirty days have passed as required by the Utah Foreign Judgment Act, U.C.A. § 78-22a-3(3), prior to any process regarding the enforcement of the foreign judgment;
4. Boyd and Dorothy Searle have failed to file a request for Stay as required by the Utah Foreign Judgment Act, U.C.A. § 78-22a-4;
5. Respondents have failed to raise any issue as to the October 16, 1998 order.

6. The order should now be given full faith and credit and "should be treated in all respects as a judgment of a district court of Utah" as set forth in the Utah Foreign Judgment Act, U.C.A. § 78-22a-1(1 &2); and
7. An Entry of Judgment for each order was filed with this Application.

Therefore, Petitioner hereby requests that the Court enter the foreign judgments for enforcement in Utah by issuing the two Entry of Judgment pleadings filed herewith.

Dated This 11th Day of August, 1999.

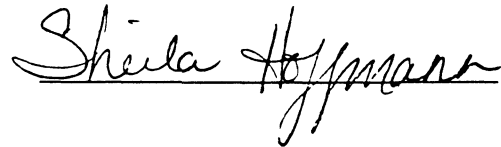


Jim C. Shirley
Attorney for Jayni Searle

CERTIFICATE OF MAILING

On this 13 day of August, 1999 I mailed, postage pre-paid First Class, a copy of the foregoing Application for Entry of Judgment to:

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



Case No. 200000374-CA

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) Case No. 20000274-CA
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) Priority 4
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) Priority 4
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.....

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

FILED DISTRICT COURT
Third Judicial District

AUG 25 1999

IMAGED

By *[Signature]*
SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF UTAH

IN AND FOR SALT LAKE COUNTY

JAYNI SEARLE,

Petitioner,

vs.

BOYD AND DOROTHY SEARLE.

Respondent.

ENTRY OF JUDGMENT

CASE NO. 996907234EJ

JUDGE LESLI LEWIS

A Notice of Judgment was filed by Jayni Searle on the 15th Day of June, 1999 in the above-entitled court. The Judgment was entered by the Fort Peck Assiniboine and Sioux Tribal Court on the 16th Day of October, 1998. A review of the record indicates that the Notice of Judgment was served by Certified Mail by the Clerk of the Court on Boyd and Dorothy Searle at 4906 South 4460 West, Kearns, Utah 84118. Certified copies of the foreign judgments were filed with the Court. All appropriate documentation was filed as required by the Utah Foreign Judgment Act, Utah Code Anno. § 78-22a-1 et. seq.

Respondents, Boyd and Dorothy Searle, filed a responsive pleading but failed to raise any issues which would prevent the entry of the October 16, 1998 order, all comments were directed at the November 23, 1998 order of contempt. Additionally, Boyd and Dorothy Searle have failed to file a request for Stay as required by the Utah Foreign Judgment Act, U.C.A. § 78-22a-4. The thirty day time period having lapsed and Respondents having failed to file a request for Stay as required by the Utah Foreign Judgment Act, the Court hereby recognizes and gives full faith and credit to the October 16, 1998 order of the Fort Peck Tribal Court attached hereto. The attached order is hereby given full faith and credit, subject to all the enforcement provisions which govern such judgments. All county, local, and other peace officers and/or law enforcement personnel are hereby directed to give full faith and credit to the attached judgments.

DATED THIS 25th DAY OF Aug., 1999.

L. A. Christ

CLERK OF THE COURT

Ridge

W. Searle
DEPUTY CLERK OF THE COURT



CERTIFICATE OF MAILING

On this 13 day of August, 1999 I mailed, postage pre-paid First Class, a
copy of the foregoing Unsigned Entry of Judgment to:

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

A handwritten signature in cursive script, reading "Sheila Hoffmann", written over a horizontal line.

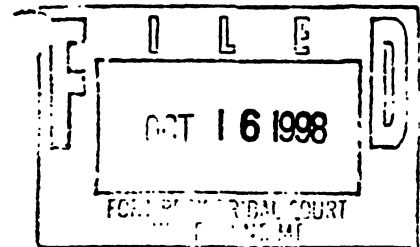
JIM C. SHIRLEY (#7100)
ATTORNEY FOR PLAINTIFF
9 EXCHANGE PLACE, SUITE 400
SALT LAKE CITY, UTAH 84111
TELEPHONE: (801) 359-8003

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

JAYNI SEARLE,	}	ENTRY OF JUDGMENT
Petitioner,	}	
vs.	}	CASE NO. <u>996907234FJ</u>
BOYD AND DOROTHY SEARLE.	}	
Respondent.	}	JUDGE <u>LESLI LEWIS</u>

Exhibit #1

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 Assiniboine 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**

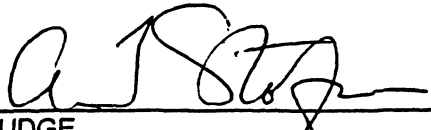
BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters the following:

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

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



SERVE OF MONTANA
COUNTY OF ROOSEVELT } ss.

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

Conclusions of Law and Decree

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

Witness my hand and seal of the Court this 8th

day of June A.D. 19 99

Dorian M. Jalko

CLERK of FORT PECK TRIBAL COURT

Fort Peck Reservation in Montana, Wolf Point, Mont.

FOR THE STATE OF UTAH

Appellee.

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Priority 4

BRIEF OF APPELLANT

APPEAL FROM A FINAL ORDER OF THE THIRD DISTRICT
COURT, HONORABLE LESLIE A. LEWIS PRESIDING

-----oOo-----

ADDENDA I

FILED DISTRICT COURT
Third Judicial District

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

JUN 15 1999

SALT LAKE COUNTY
By *[Signature]*
Deputy Clerk

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

<u>JAYNI SEARLE,</u>	}	NOTICE OF JUDGMENT
vs.	}	CASE NO. <u>996907234 FJ</u>
<u>BOYD AND DOROTHY SEARLE.</u>	}	Judge <u>Lewis</u>

PLEASE TAKE NOTICE THAT JUDGMENTS DATED OCTOBER 16, 1998 AND NOVEMBER 23, 1998 FILED IN THE FORT PECK ASSINIBOINE AND SIOUX TRIBAL COURT HAS BEEN FILED IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF UTAH UNDER THE PROVISIONS OF THE UTAH FOREIGN JUDGMENT ACT (UCA 78-22a-1). THIS JUDGMENT HAS THE SAME LEGAL FORCE AND EFFECT AS A JUDGMENT RENDERED BY A UTAH STATE COURT.

June 14, 1999 *[Signature]*
DATE ATTORNEY

NAME & P.O./ADDRESS OF JUDGMENT CREDITOR:

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

NAME & P.O./ADDRESS OF CREDITOR'S ATTORNEY:

JIM C. SHIRLEY
LAHERTY AND ASSOCIATES, P.C.
9 EXCHANGE PLACE, SUITE 400
SALT LAKE CITY, UTAH 84111

CERTIFICATE OF MAILING

STATE OF UTAH)
 : ss
County of Salt Lake)

SUSAN L. SUNDBERG (COURT CLERK), BEING FIRST DULY SWORN,
UPON OATH STATES THAT HE/SHE HAS MAILED A COPY OF THE NOTICE OF

00017

JUDGMENT WITH THE ATTACHED ORDERS TO THE JUDGMENT DEBTORS, BOYD AND
DOROTHY SEARLE, AT 4906 SOUTH 4460 WEST, KEARNS, UTAH 84118.

THIS 15 DAY OF June, 1999.

Susan L. Sundley
DEPUTY CLERK

Jayni Searle,
Appellant,
v.
Boyd and Dorothy Searle,
Appellee.

Case No. 20000274-CA

Priority 4

APPEAL FROM A FINAL ORDER OF THE THIRD DISTRICT
COURT, HONORABLE LESLIE A. LEWIS PRESIDING

ADDENDA J

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

00627

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

JAYNI SEARLE,	}	NOTICE OF APPEAL
Petitioner,	}	
vs.	}	CASE NO. 996907234FJ
BOYD AND DOROTHY SEARLE.	}	
Respondents.	}	JUDGE LESLI LEWIS

Comes now Petitioner, Jayni Searle, by and through counsel, Jim C. Shirley of Laherty & Associates, P.C., and hereby enters this Notice of Appeal. Petitioner appeals to the Utah Court of Appeals the February 25, 2000, Order Setting Aside Judgment issued by the Third District Court, Judge Leslie A. Lewis presiding. Attached hereto as Exhibit #1.

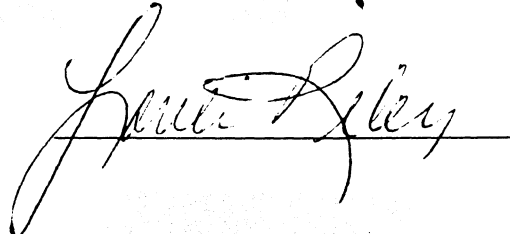
DATED THIS 27th day of March, 2000.


JIM C. SHIRLEY
Attorney for Jayni Searle

CERTIFICATE OF MAILING

On this 27 day of March, 2000, I mailed, postage pre-paid First Class,
a copy of the foregoing **Notice of Appeal** to:

Maria Christina Santana
Santana Law Firm
Attorney for Petitioner
~~2159 South 700 East, Suite 100~~
~~Salt Lake City, Utah 84106~~
44 West Broadway, Suite 304
Salt Lake City, UT 84101



00627

~EXHIBIT #1~

Maria Cristina Santana (7300)
SANTANA LAW FIRM
44 West Broadway, Suite 304
Salt Lake City, Utah 84101
Telephone: (801) 363-5803

FILED DISTRICT COURT
Third Judicial District

FEB 25 2000

By SKAT LAKE COUNTY
Deputy Clerk

Attorney for Respondents

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

JAYNI SEARLE,

Petitioner,

vs.

BOYD SEARLE and
DOROTHY SEARLE,

Respondents.

ORDER SETTING ASIDE JUDGMENT

Civil No. 99-690-7234 FJ

Judge: Leslie A. Lewis

The above-entitled matter came before the Court pursuant to Rule 4-501 Code of Judicial Administration for decision on Respondents' Emergency Motion for Stay Pending Rule 60 Motion, and Motion to Set Aside Judgment. The Court having reviewed In the Matter of Chad Searle, a Minor Indian Child, Case No. 98-090-5344, Judge Timothy Hanson presiding, having properly considered all the oral and written arguments submitted to the Court by the parties, and being otherwise advised in the premises, the Court hereby makes the following:

FINDINGS OF FACT

1. Petitioner Jayni Searle (hereafter "Petitioner") filed a petition for Writ of Assistance in Third Judicial District Court, Salt Lake County, State of Utah, Case No. 98-

Order Setting Aside Judgment @



996907234 JD1182054 SEARLE, BOYD

Jp

090-5344, In the Matter of Chad Searle, A Minor Indian Child, seeking to enforce a May 22, 1998, Fort Peck Tribal Court custody Order that transferred custody from Respondent Boyd Searle (hereafter “Respondent”) to the Petitioner. The petition sought recognition of the May 22nd Order as a foreign judgment under the Utah Foreign Judgment Act.

2. Judge Timothy R. Hanson denied the petition on the basis that since Respondent was not given an opportunity to be heard at the May 22nd hearing, the Order was not entitled to full faith and credit.

3. Petitioner subsequently filed a petition before this Court to enforce an October 16, 1998 Fort Peck Tribal Court Order’s Findings of Fact, Conclusions of Law and Decree, finding that Respondents had “wrongfully maintained custody in contravention...of [the] Court’s order of May 22, 1998.”

4. On August 25, 1999, this Court entered an Order entitled “Entry of Judgment” which purported to give full faith and credit to the October 16th Tribal Court Decree.

5. Respondents filed an Emergency Motion for Stay Pending Rule 60 Motion to Set Aside Judgment, and a Motion to Set Aside Judgment. Respondents’ motions sought to stay the August 25th Order and to set aside the August 25th Order and the October 16th Tribal Court Decree.

6. A hearing was held before the Court on November 23, 1999, on the Emergency Motion for Stay, at which time the Court granted the motion temporarily but deferred making a final ruling on the Motion until counsel for Petitioner had an opportunity to respond to the Motion and the Court had an opportunity to review the case In the Matter of Chad Searle, a Minor Indian Child.

7. Petitioner subsequently filed a response in opposition to the motions and a Notice to Submit for Decision pursuant to Rule 4-501, Code of Judicial Administration.

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

CONCLUSIONS OF LAW

1. The October 16th Tribal Court Decree directly relates to and stems from an Order which another court in Chad Searle has concluded not to be entitled to full faith and credit. Specifically, the Decree reinforces the May 22nd Order and reiterates that it "is hereby continued." The October 16th Decree is therefore flawed because it maintains custody of the minor child under an Order which was issued without giving Respondent Boyd Searle his due process right to be heard. Accordingly, the October 16th Order is similarly not entitled to full faith and credit, and the August 25th Order must be set aside.

2. The Court has no jurisdiction to review the propriety of the Fort Peck Tribal Court's ruling and then set aside or overturn that ruling as it pertains to the October 16th Tribal Court Decree.

3. Since the Court sets aside the August 25th Judgment, the Motion seeking Stay of the Judgment is rendered moot.

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

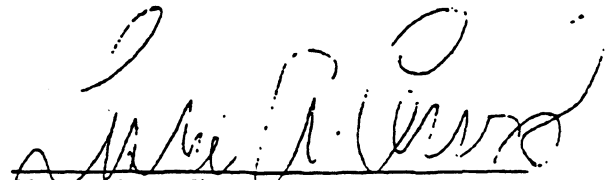
ORDER

1. The August 25th Order is set aside and vacated, and shall not be enforced by the parties or law enforcement.

DATED this 25th day of Feb, 2000.

94690, 234

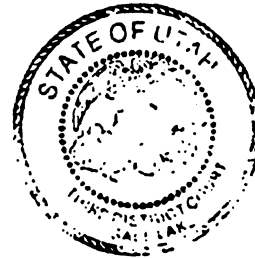
BY THE COURT

A handwritten signature in dark ink, appearing to read "Leslie A. Lewis", written over a horizontal line.

Honorable Leslie A. Lewis
Third District Court Judge

Approved as to form

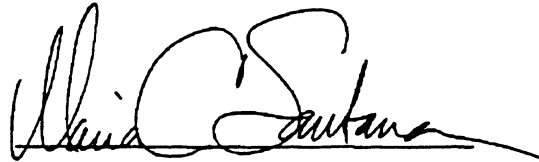
Jim C. Shirley



CERTIFICATE OF SERVICE

I hereby certify that on this ~~10~~ day of Feb 1999, I caused to be served by mail
~~and for a~~ true and correct copy of the foregoing upon:

Jim Shirley
9 East Exchange Place, Suite 400
Salt Lake City, Utah 84111
Fax: 359-0181

A handwritten signature in black ink, appearing to read "Maria Santana", written over a horizontal line.