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January 18, 2017

Via ECF

The Honorable Hildy Bowbeer  
United States District Court  
U.S. Courthouse, Suite 632  
316 N Robert Street  
Saint Paul, Minnesota 55101

Re: ***Kimberly Watso, individually and on behalf of C.P., minor child, Petitioner, v.  
John E. Jacobson, in his official capacity as Chief Judge of Shakopee Mdewakanton  
Sioux Tribal Court (Children's Court), et al.  
Court File No. 16-CV-00983 (PJS/HB)***

Dear Judge Bowbeer:

A hearing was held January 12, 2017 before the Honorable John E. Jacobson, Chief Judge of the Shakopee Mdewakanton Sioux Tribal Court, regarding the matter *In re: the Matter of C.P. and C.H.*, Tribal Court File No. CC083-15. A copy of Judge Jacobson's Order dated January 17, 2017 is enclosed.

Very truly yours,

/s/Erick G. Kaardal

EGK/mg  
Enclosure  
cc: Counsel of Record (via ECF)

**CHILDREN'S COURT  
OF THE  
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY**

**SMSC RESERVATION**

**STATE OF MINNESOTA**

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**Attorney for SMSC:**

Jessica Ryan  
Ryan Skeesuck Law Firm  
Southgate Office Plaza  
Suite 500  
5001 American Boulevard West  
Bloomington MN 55437

**Child Welfare Officer:**

Ann ManyBirds  
Shakopee Mdewakanton Sioux Community  
2330 Sioux Trail NW  
Prior Lake MN 55372

**Guardian Ad Litem:**

Jody Alholinna  
El-Ghazzawy Law Offices, LLC  
309 Clifton Avenue  
Minneapolis, MN 55403

**Maternal Grandmother of C.M.H. & C.D.P.:**

Kaleen Dietrich  
PO Box 50932  
1328 Third Street  
Mendota MN 55150

**Attorney for Mother Kimberly Watso:**

Erick G. Kaardal  
Mohrman Kaardal & Erickson PA  
150 South Fifth Street  
Suite 3100  
Minneapolis MN 55402

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**SMSC-Director Family Services:**

Nancy Martin  
Shakopee Mdewakanton Sioux Community  
2330 Sioux Trail NW  
Prior Lake MN 55372

**Mother of C.M.H. & C.D.P.:**

Kimberly Jean Watso  
Address Unknown

**Father of C.M.H.:**

Isaac Hall  
5650 Tinta Circle  
Shakopee MN 55379

**Attorney for Isaac Hall:**

Gary Debele  
Berg Debele DeSmidt & Rabuse PA  
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Suite 1100  
Minneapolis MN 55402

**Red Lake Band of Chippewa Indians – C.D.P.:**

Sheila Beaulieu – ICWA Advocate  
Red Lake Nation Embassy  
2929 Bloomington Avenue South  
Minneapolis MN 55407

**Paternal Aunt of C.M.H.:**

Allene Ross  
PO Box 297  
Shakopee MN 55379

**Attorney for Red Lake Nation Band of Ojibwe:**

Joseph Plumer  
Attorney At Law  
PO Box 550  
Red Lake MN 56671

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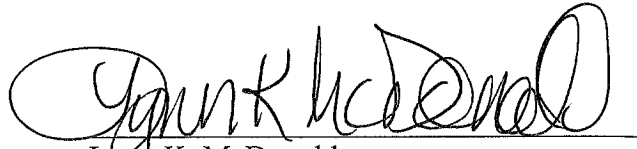
**CLERK'S NOTICE OF ORDER**

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**Re: In Re: C.M.H. & C.D.P., Children In Need of Assistance..**  
**Court File No. CC083-15**

You are hereby notified that a **Memorandum & Order** has been issued on **January 17, 2017**, in regard to the above-referenced matter. A copy is attached.

Dated: January 17, 2017

  
Lynn K. McDonald  
Clerk of Court

IN THE CHILDREN'S COURT  
OF THE  
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

FILED JAN 17 2017 *LKM*  
LYNN K. McDONALD  
CLERK OF COURT

SMSC RESERVATION

STATE OF MINNESOTA

In re C.M.H. and C.D.P.

Court File No. CC083-15

Children in Need of Assistance

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**Memorandum and Order**

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On December 16, 2016, the Red Lake Nation ("the Nation") moved to dismiss the aspects of this matter that pertain to the welfare of, and the custody of, C.D.P.. The grounds for the Nation's motion were, in sum, that C.D.P. is a member of the Nation; that the Nation therefore has concurrent jurisdiction over him, and a child protection matter relating to him is pending before the Nation's courts; that, given the circumstances of C.D.P. and his family, the process of assessing his permanent placement may well commence soon; and that any permanency decision relating to an Indian child should, if at all possible, be made by the tribe in which the child is a member.

In response, the Shakopee Mdewakanton Sioux Community and its Family and Children's Services Department ("the Community") filed a memorandum supporting the Nation's motion, as did C.D.P.'s Guardian *ad Litem* ("the Guardian"), and the Nation then filed a formal Consent to Dismissal signed by C.D.P.'s father, Donald Perkins.

C.D.P.'s mother, Kimberly Watso, filed a memorandum agreeing that this matter should be dismissed, but for reasons quite different than those asserted by the Nation, the Community, and the Guardian. Ms. Watso argued that this Court simply lacks jurisdiction over both C.D.P. and C.M.H.. That is not a new contention – the Court rejected her jurisdiction-based motion to dismiss on March 3, 2016. But an aspect of her argument was new. Responding to the Nation, she contends, for the first time at least in this Court, that she and her children are not properly before this Court, or before the Nation's courts, because, she contends, nearly two years ago, at the inception of these proceedings, Scott County officials acted in a fashion that was inconsistent

with the Indian Child Welfare Act, 25 U.S.C. 1901, *et seq.*. Specifically, she argues that when Scott County officials opened child welfare files on C.D.P. and C.M.H. in early 2015, and then did not commence proceedings involving the children in the Minnesota district courts – when, instead, the instant action was commenced in this Court, and later the parallel action involving C.D.P. was commenced in the Nation’s courts – her rights and her children’s rights were violated. She contends that she should have been given an opportunity in Minnesota district court to oppose any transfer of proceedings to this Court or to the Nation’s court; and she asserts that the proper course now would be for both tribes’ proceedings either to be dismissed or in some fashion transferred to the Minnesota District Court for Scott County.

Oral argument on the Nation’s motion was heard on January 12, 2017, and at the conclusion of the hearing the Court, from the bench, closed the aspects of this matter that relate to C.D.P.. It did so as a matter of comity, to permit the Nation’s courts to protect C.D.P.’s welfare going forward. This Memorandum summarizes the reasons for that decision.

At the outset, the Court utterly rejects Ms. Watso’s contention that a Minnesota state court decision transferring jurisdiction over Ms. Watson’s children to this Court, or to the Nation’s courts, is somehow a prerequisite to this Court’s or the Nation’s courts’ proper exercise of jurisdiction over the children. Her suggestion that the exercise of tribal jurisdiction over Indian children must await, and must be blessed by, a state court completely stands the Indian Child Welfare Act on its head: The Act’s provisions relating to the obligations of state courts to Indian children and Indian tribes apply only if and when a state court proceeding has been commenced. Tribes and tribal courts unquestionably have the inherent, independent power to initiate proceedings over Indian children within their jurisdiction when the welfare of those children is threatened; and, as the three-judge panel of this Court observed when it rejected Ms. Watso’s earlier jurisdictional arguments, the Indian Child Welfare Act, at 25 U.S.C. 1911(a), expressly confirms that authority.

The reasons underlying the Court’s decision to close the portions of this file relating to C.D.P. basically are those which were forcefully argued by the Community and the Guardian. Approximately two years have passed since this file was opened, and both the Community and the Nation have expressed the view that the time is fast approaching when a decision with respect to permanent placement may need to be made for both C.D.P. and C.M.H.. In this Court’s view, if that enormously weighty decision must be made for either child, it should be

made, if at all possible, by the institutions and the courts of the tribe in which the child is a member. The Court is not dismissing the portions of the proceedings that relate to C.D.P., because in the Court's view it is not clear that dismissal is contemplated by the Community's Amended Domestic Relations Code when a child, over whom the Court is properly exercising jurisdiction, remains a child in need of protection. Rather, the Court has concluded that the doctrine of comity directs it to defer to the Nation's courts; and that conclusion is possible, under Chapter VIII of the Community's Domestic Relations Code, at least in part because the record establishes that none of the vital therapeutic and educational services which have been put in place to assist C.D.P. during the pendency of these proceedings – and that by all accounts have had enormously salutary effects for him – will be affected, or jeopardized, or limited, by the Court's action.

**THEREFORE, IT IS ORDERED:**

1. That the portions of this file that pertain to the welfare of C.D.P. are closed as a matter of comity, in deference to the proceedings relating to the welfare of C.D.P. that now are pending in the Courts of the Red Lake Nation; and
2. That all Orders of this Court pertaining to the welfare of C.M.H. shall remain in full force and effect.

Dated: January 17, 2017



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Judge John E. Jacobson  
Court of the Shakopee Mdewakanton  
Sioux Community