

27-JV-15-483

STATE OF MINNESOTA  
FOURTH JUDICIAL DISTRICT

DISTRICT COURT  
JUVENILE DIVISION

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*In the Matter of the Welfare of the Child in the Custody of:*

**The Commissioner of Human Services.**

**FINDINGS AND ORDER  
DENYING MOTION FOR  
ADOPTIVE PLACEMENT**

Court File No. 27-JV-15-483  
Family No. 349034

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Child: Paris Scott (d.o.b. 07/09/2011; age 7)

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The above-entitled matter came on for an evidentiary hearing before the Honorable Angela Willms, Judicial Officer of District Court, Juvenile Division, on December 11, 17, 18, and 19, 2018 and January 3, 2019 at the Hennepin County Juvenile Justice Center in Minneapolis, Minnesota. CMR recorded the proceedings.

**PARTIES**

Nancy Jones, Assistant Hennepin County Attorney, appeared on behalf of the Hennepin County Human Services and Public Health Department ("HSPHD"), which was represented by Joseph Thompson, Child Services Worker, and Hannah Epstein, Adoption Resource Worker, who were present.

Rachel Osband and Mark Fiddler, Attorneys at Law, appeared on behalf of Danielle and Jason Clifford, Movants and Former Foster Parents, who were present.

Rebecca McConkey-Greene, Attorney at Law, appeared on behalf of the White Earth Band of Chippewa, which was represented by Lee Goodman, Social Worker, who was present.

Eric Rehm, Attorney at Law, appeared on behalf of Barbara Reis, Guardian ad Litem, who was present.

**PARTICIPANTS**

Ron Walters, Attorney at Law, appeared on behalf of Robyn Bradshaw, Maternal Grandmother, who was present.

**WITNESSES**

The Court heard testimony from the following witnesses:

1. Joseph Thompson, HSPHD Child Services Worker
2. Gertrude Buckanaga, Executive Director Social Worker, Upper Midwest American Indian Center
3. Hannah Epstein, HSPHD Adoption Resource Worker
4. Jason Clifford, Child's Former Foster Parent
5. Megan Eastman (legally known as Megan Ness), MSW, LISW, Indian Health Board

6. Leonard Alan Roy, Minnesota Chippewa Tribe and White Earth Band of Chippewa
7. Faron Jackson, Sr., Minnesota Chippewa Tribe and Leech Lake Band of Ojibwe
8. Elaine Sullivan, HSPHD Program Manager
9. Jeffrey Thibert, Father of Danielle Clifford
10. Samantha Colai, MA LMFT RPT, Ascend Family Institute
11. Danielle Clifford, Child's Former Foster Parent
12. Robyn Bradshaw, Child's Maternal Grandmother
13. Bobbi Rodriguez, Foster Care Licensing Worker, Upper Midwest American Indian Center
14. Kelly Watson Ostrout, Social Worker, Waite Park Elementary
15. Lee Goodman, Social Worker, White Earth Band of Chippewa
16. Deena McMahon, LICSW, MSW, McMahon Counseling & Consultation
17. Dr. Priscilla Day, MSW, Ed.D, University of Minnesota Duluth
18. Laurie York, Director of Indian Child Welfare, White Earth Band of Chippewa
19. Barbara Reis, Guardian ad Litem
20. Rebuttal: Stephen Luzar, MA, LP, White Earth Behavioral Health

### EXHIBITS

The Court received the following exhibits into evidence:

Exhibit 1	Bradshaw Home Study Assessment
Exhibit 2	Bradshaw Home Study Update
Exhibit 3	Bradshaw Background Study
Exhibit 4	Family Wise Visitation Summary
Exhibit 5	Upper Midwest American Indian Center Client Visitation Summaries
Exhibit 6	Child Social History
Exhibit 7	OHPP Start Date (07/23/2016)
Exhibit 8	OHPP Start Date (01/23/2017)
Exhibit 9	OHPP Start Date (07/23/2017)
Exhibit 10	OHPP Start Date (01/26/2018)
Exhibit 11	OHPP Start Date (07/26/2018)
Exhibit 12	David Hoy Records
Exhibit 13	Ascend Family Institute Intake Note (09/21/2017)
Exhibit 14	Indian Health Board ("IHB") Intake (09/28/2018)
Exhibit 15	IHB Update (11/28/2018)
Exhibit 16	ICWA Relative-Kinship Search
Exhibit 17	Certificate of Completion for Separation, Loss, and Grief Training (10/15/2018)
Exhibit 99	AG Case Management SSIS (10/29/2018)
Exhibit 121	Court Notification ("CN") (07/07/2017)
Exhibit 122	CN (10/05/2017)
Exhibit 123	CN (11/01/2017)
Exhibit 124	CN (01/10/2018)
Exhibit 125	CN (03/09/2018)
Exhibit 135	Samantha Colai Redacted Letter

Exhibit 136	Samantha Colai Letter (08/28/2017)
Exhibit 137	Samantha Colai Letter (10/30/2017)
Exhibit 156	Relative Kinship Search and Placement Considerations (08/26/2015)
Exhibit 158	Social Worker Chronology Summary (08/07/2014)
Exhibit 159	Social Worker Chronology Summary (08/12/2014)
Exhibit 160	Social Worker Chronology Summary (08/21/2014)
Exhibit 161	Social Worker Chronology Summary (08/11/2016)
Exhibit 203	Text to Robyn Bradshaw from the Cliffords re: Child's meals
Exhibit 206	Timeline of Child's Placement with the Cliffords
Exhibit 207C	Emails Between Joseph Thompson and the Cliffords (06/15-16/2017)
Exhibit 207I	Email from Danielle Clifford (08/21/2017)
Exhibit 209	Pictures of Child with the Cliffords and Cliffords' Extended Family
Exhibit 212	Note from Child to Cliffords
Exhibit 214	Deena McMahon CV
Exhibit 215A	Deena McMahon Assessment of Robyn Bradshaw
Exhibit 215B	Deena McMahon Assessment of Danielle and Jason Clifford
Exhibit 217	Samantha Colai Letter (01/05/2018)
Exhibit 218	Samantha Colai Letter (02/11/2018)
Exhibit 219	Samantha Colai Letter (03/08/2018)
Exhibit 220	Samantha Colai Letter (03/10/2018)
Exhibit 221	Samantha Colai Letter (05/08/2018)
Exhibit 222	Samantha Colai Final Summary
Exhibit 223	Email from Danielle Clifford to Lee Goodman (07/17/2017)
Exhibit 300	Family Wise Visitation Summaries (06/15/2017-10/20/2017)
Exhibit 301	Affidavit of ICWA Membership, Laurie York (04/25/2018)
Exhibit 302	Affidavit of Kevin Dupuis (04/04/2018)
Exhibit 303	The Revised Constitution and Bylaws of the Minnesota Chippewa Tribe
Exhibit 304	Minnesota Constitutional Interpretation (1-80)
Exhibit 305	Minnesota Constitutional Interpretation (8-94)
Exhibit 306	Minnesota Constitutional Interpretation (10-96)
Exhibit 307	Minnesota Chippewa Tribe Resolution (104-18)
Exhibit 308	White Earth Reservation Business Committee Resolution (057-19-001)
Exhibit 309	IHB Diagnostic Assessment (09/28/2018)
Exhibit 310	IHB Diagnosis and Plan (11/26/2018)
Exhibit 311	IHB Medical Record (11/27/2018)
Exhibit 312	Waite Park Elementary School Attendance Records (11/29/2018)
Exhibit 313	Minneapolis Public School Records (11/29/2018) and Various Certificates of

	Completion
Exhibit 314	Megan Eastman, MSW, LICSW, Resume
Exhibit 315	Laurie York Resume
<b>Exhibit 316</b>	<b>Jeri Jasken Resume*</b>
<b>Exhibit 317</b>	<b>Kevin Dupuis Resume*</b>
Exhibit 318	Leonard Alan Roy Resume
<b>Exhibit 319</b>	<b>Faron Jackson, Sr. Resume*</b>
Exhibit 320	Stephan Luzar CV
<b>Exhibit 321</b>	<b>Joanna Woolman Resume*</b>
Exhibit 322	Dr. Priscilla Day CV
Exhibit 323	Dr. Art Martinez CV
<b>Exhibit 324</b>	<b>Any exhibit disclosed or introduced by any party.*</b>
<b>Exhibit 325</b>	<b>Any exhibit to rebut testimony or newly discovered evidence.*</b>
Exhibit 326	Dr. Priscilla Day Observation Report (12/21/2018)
Exhibit 401	Guardian ad Litem (“GAL”) Report with attachments (03/28/2017)
Exhibit 402	GAL Report with attachments (08/23/2017)
Exhibit 403	GAL Report with attachments (02/12/2018)
Exhibit 404	GAL Report with attachments (03/12/2018)
Exhibit 405	GAL Report with attachments (05/08/2018)
Exhibit 406	GAL Report with attachments (07/09/2018)
Exhibit 407	GAL Report with attachments (09/06/2018)
Exhibit 408	Letter with History from IHB (11/28/2018)
Exhibit 409	School Reports (08/27/2018-11/29/2018)

*\*These exhibit numbers were admitted by stipulation at the beginning of the evidentiary hearing, but the actual exhibits were never received by the Court due to witnesses not being called, etc. As such, they are not part of the record in these proceedings despite their earlier admission by stipulation.*

The Court also took judicial notice of the records contained in Hennepin County District Court File 27-JV-15-483 from the July 7, 2016 Termination of Parental Rights Order to the present.

Based on the sworn testimony and exhibits received, the arguments of counsel, and the files, records, and proceedings herein, the Court makes the following findings:

#### FINDINGS OF FACT

1. On July 7, 2016, Judge Lyonel Norris terminated the parental rights of Suzanne Bradshaw and Christopher Scott to the child at issue in these proceedings, Paris Scott. (Order Terminating Parental Rights and Appointing Guardian, 07/07/2016). Paris is currently seven years old. From the start of this case on August 11, 2014 to date, Paris has been placed in approximately seven different homes. (Ex. 6, pp. 8-9). She lived in a shelter home (“Julie”) from August 7, 2014 to October 1, 2014 before moving to a kin foster home (“Sandra”) where she remained until August 21, 2015. (*Id.* at 8). She then lived with a relative (“Teresa”) from August 21, 2015 until December 19, 2015. (*Id.*) After that, she was

briefly reunited with her mother on a trial home visit from December 19, 2015 to January 26, 2016. (Id.) Paris then moved to a different shelter home (“Essie”) and lived there until July 2016. (Id.) On July 23, 2016, Paris moved in with Danielle and Jason Clifford, Movants. (Id.) Paris lived with the Cliffords until January 26, 2018, when she was removed from their home pursuant to these proceedings and placed with her maternal grandmother, Robyn Bradshaw. (Id. at 8-9). Paris has lived with Ms. Bradshaw ever since. (Id.)

2. Prior to the Termination of Parental Rights and for approximately six months afterward, Paris was believed to be ineligible for enrollment in any American Indian Tribe. (See TPR Order 07/07/2016; Order Re: Mot. to Intervene, 02/27/17). Paris’s maternal grandmother, Robyn Bradshaw, is a member of the White Earth Band of Chippewa (“White Earth”). (Robyn Bradshaw Testimony). White Earth was notified of Paris’s case on or about April 8, 2015. (ICWA Not. for Permanency Petition, 04/08/2015). On or about April 23, 2015, the Hennepin County Attorney’s Office received written notice from the White Earth Director of Indian Child Welfare that Paris was not eligible for membership under the Indian Child Welfare Act with the White Earth Band of Chippewa. (Jeri Jasken Letter, 04/23/2015). Thus, the court did not apply the Indian Child Welfare Act (“ICWA”) or the Minnesota Indian Family Preservation Act (“MIFPA”) to these proceedings until approximately January 4, 2017. On that date, this Court received a letter from the new White Earth Director of Indian Child Welfare stating that Paris was in fact eligible for membership under the ICWA with the White Earth Band of Chippewa. (Laurie York Letter, 01/04/2017). Shortly thereafter, White Earth filed a motion to intervene into these proceedings, which the Court granted on February 27, 2017. (Order Re: Mot. to Intervene, 02/27/2017). Approximately seven months later, White Earth asserted that Paris is a member of White Earth for purposes of the Indian Child Welfare Act. (White Earth Resp. to Mot., filed 9/27/2017, p. 16; see also Ex. 301). In accordance with applicable State and federal law, this Court acknowledged Paris’s membership status with White Earth and applied the ICWA and the MIFPA to subsequent proceedings.
3. Before White Earth intervened in these proceedings, the Hennepin County Human Services and Public Health Department (“HSPHD”) had informally supported the Cliffords as Paris’s adoptive placement, but the parties had not signed an Adoptive Placement Agreement. (Ex. 7, p. 6; Ex. 8, p. 6; Ex. 99, p. 1). After White Earth’s intervention, HSPHD withdrew its support from the Cliffords and began supporting Robyn Bradshaw as Paris’s adoptive placement. (Ex. 10, p. 5-6; Ex. 11, pp. 5-6). The Cliffords filed a motion for adoptive placement on December 14, 2017. (Not. Motion and Motion, 12/14/2017). On January 22, 2018 for reasons explained in its Order, the Court deferred ruling on the Cliffords’ motion until after the Commissioner of Human Services and HSPHD executed an Adoptive Placement Agreement (“APA”) with Ms. Bradshaw. (Findings and Order for Immediate Adoptive Placement, file 01/23/2018). Pursuant to its placement authority under Minnesota Statutes §260C.613, HSPHD removed Paris from the Cliffords and placed her with Robyn Bradshaw on January 26, 2018. See Minn. Stat. §260C.613, subd. 1(a); (Findings and Order for Immediate Adoptive Placement, 01/22/2018, p. 4, ¶ 9); (Ex. 6, p. 9).
4. The Commissioner of Human Services, HSPHD, and Ms. Bradshaw executed an APA on May 14, 2018. (Not. of Adoptive Placement, 05/16/2018). On July 30, 2018, the Court found that the Cliffords made a prima facie showing that HSPHD had been unreasonable in failing to place Paris with them for adoption and granted the Cliffords an evidentiary hearing

pursuant to Minnesota Statutes §260C.607, subdivision 6(c). (Order for Ev. Hrg., 07/30/2018). This hearing was originally scheduled for the end of October 2018 but was then rescheduled at the request of Mr. Fiddler and Mr. Walters, who were subsequently unavailable for the previously selected dates. The parties appeared for a preliminary motions hearing on September 13, 2018 and for a pretrial hearing on December 4, 2018. An evidentiary hearing was held on December 11, 17, 18, and 19, 2018 and January 3, 2019. The Court heard testimony from 20 witnesses and admitted approximately 77 exhibits.

### CONCLUSIONS OF LAW

1. At the evidentiary hearing for a motion for adoptive placement, “the responsible social services agency shall proceed first with evidence about the reason for not making the adoptive placement proposed by the moving party. The moving party then has the burden of proving by a preponderance of the evidence that the agency has been unreasonable in failing to make the adoptive placement.” Minn. Stat. §260C.607, subd. 6(d) (2017). At the end of the evidentiary hearing, the court can order the responsible social services agency to make the adoptive placement in the movant’s home if it finds the agency has been unreasonable in failing to make the adoptive placement and that the movant’s home is the most suitable home under the Minnesota Statutes §260.012, subdivision 2 factors. Id. at 6(e) (emphasis added).
2. The §260.012, subdivision 2 factors include:
  - a. the child's current functioning and behaviors;
  - b. the medical needs of the child;
  - c. the educational needs of the child;
  - d. the developmental needs of the child;
  - e. the child's history and past experience;
  - f. the child's religious and cultural needs;
  - g. the child's connection with a community, school, and faith community;
  - h. the child's interests and talents;
  - i. the child's relationship to current caretakers, parents, siblings, and relatives;
  - j. the reasonable preference of the child, if the court, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences; and
  - k. for an Indian child, the best interests of an Indian child as defined in section 260.755, subdivision 2a.

Minn. Stat. §260.012, subdivision 2(b).

3. The best interests of an Indian child means, “[C]ompliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act to preserve and maintain an Indian child's family. The best interests of an Indian child support the child's sense of belonging to family, extended family, and tribe. The best interests of an Indian child are interwoven with the best interests of the Indian child's tribe.” Minn. Stat. §260.755, subd. 2a (2017).
4. As a member of White Earth, the child in these proceedings is an Indian child as defined by both the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act. 25

U.S.C. §1903(4); Minn. Stat. §260.755, subd. 8 (2017). Although the Cliffords have continuously disputed the Court's finding that Paris is an Indian child, she is a member of White Earth<sup>1</sup>, and Minnesota law is clear that this Court has no authority to review White Earth's membership determinations. See S.N.R., 617 N.W.2d at 81-83 (citing Smith v. Babbitt, 875 F. Supp. 1353, 1361 (D. Minn. 1995) which held that, "there is perhaps no greater intrusion upon tribal sovereignty than for a [non-tribal] court to interfere with a sovereign tribe's membership determinations.")

5. Under Minnesota law, "[t]he paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child. In proceedings involving an American Indian child, as defined in section 260.755, subdivision 8, the best interests of the child must be determined consistent with sections 260.751 to 260.835 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923." Minn. Stat. §260C.001, subd. 2(a) (emphasis added).
6. Throughout these proceedings, the parties have disputed whether an analysis of the 260C.212 best interest factors is required for the placement of Indian children or whether HSPHD is solely required to follow the best interests of an Indian child as defined by Minnesota Statutes §260.755, subdivision 2a. The Court believes the law is clear. Section 260C.212 sets forth the best interest factors to be applied in the placement of all children, and imposes an additional factor – factor (k) – that must also be considered in the placement of Indian children. See §260C.212, subd. 2(b).
7. It is with this law in mind that the Court reviews the reasonableness of HSPHD's decision not to place Paris with the Cliffords for adoption. HSPHD made this decision for many reasons. These include:
  - a. Paris is an Indian child as defined by the ICWA and the MIFPA. See 25 U.S.C. §1903(4); Minn. Stat. §260.755, subd. 8 (2017). Robyn Bradshaw is a member of Paris's extended family and also a member of White Earth. (Robyn Bradshaw Testimony). As such, Ms. Bradshaw meets the ICWA and the MIFPA adoptive placement preferences, whereas the Cliffords do not. See 25 U.S.C. §1915(b)(i); see also Minn. Stat. §260.771, subd. 7 (2017).
  - b. Ms. Bradshaw was Paris's primary caregiver from birth to three years old, and she and Paris have a strong bond. (Ex. 1, p. 5; Joseph Thompson Testimony).
  - c. Ms. Bradshaw is currently licensed for foster care and adoption. (Ex. 2, p. 2).
  - d. Ms. Bradshaw has no barriers to being Paris's adoptive placement. (Hannah Epstein Testimony).
  - e. Ms. Bradshaw is currently meeting all of Paris's needs. (Joseph Thompson Testimony).
  - f. HSPHD believes it is in Paris's best interest to be adopted by Robyn Bradshaw. (Joseph Thompson Testimony, Hannah Epstein Testimony, Elaine Sullivan Testimony).
8. HSPHD is required by law to place a child, "released by court order or by voluntary release

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<sup>1</sup> The Court acknowledges that Paris is a member of White Earth for the purposes of the ICWA, that the Minnesota Chippewa Tribe has delegated ICWA membership determinations to its individual bands, and that White Earth is a band of the Minnesota Chippewa Tribe. (Aff. ICWA Membership, 04/25/2018; Aff. Kevin Dupuis, 04/24/2018).

by the parent or parents, in a family foster home selected by considering placement with relatives and important friends in the following order: (1) with an individual who is related to the child by blood, marriage, or adoption; or (2) with an individual who is an important friend with whom the child has resided or had significant contact.” Minn. Stat. §260C.212, subd. 2(a) (emphasis added).

9. However, for an Indian child, HSPHD is required to follow the order of placement preferences in the Indian Child Welfare Act. (Id.) The ICWA states:

In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with--

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

25 U.S.C. §1915(b) (emphasis added).

10. The 2016 Bureau of Indian Affairs Guidelines for Implementing the ICWA (“2016 BIA Guidelines”) states that good cause to deviate from the ICWA placement preferences should be based on one or more of the following:

- (1) The request of one or both of the Indian child’s parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
- (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
- (3) The presence of a sibling attachment that can be maintained only through a particular placement;
- (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;
- (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child’s parent or extended family resides or with which the Indian child’s parent or extended family members maintain social and cultural ties.

81 FR 38778-01 (emphasis added).

11. The previous BIA Guidelines established a good cause standard to deviate from the ICWA placement preferences. However, the 2016 BIA Guidelines state:

While not mandatory, it is recommended that the documentation [provided to

establish good cause] meet the ‘clear and convincing’ standard of proof. Courts that have grappled with the issue have almost universally concluded that application of the clear and convincing evidence standard is required as it is most consistent with Congress’s intent in ICWA to maintain Indian families and Tribes intact. Widespread application of this standard will promote uniformity of the application of ICWA. It will also prevent delays in permanency that would otherwise result from protracted litigation over what the correct burden of proof should be.

81 FR 38778-01; §23.132.

12. Consistent with this guidance, Minnesota law requires those seeking to depart from the ICWA placement preferences to demonstrate by clear and convincing evidence good cause to depart. Minn. Stat. §260.771, subd. 7(d) (2017). Minnesota has also modified the grounds for placement preference departures:
  - (b) The court may place a child outside the order of placement preferences only if the court determines there is good cause based on:
    - (1) the reasonable request of the Indian child's parents, if one or both parents attest that they have reviewed the placement options that comply with the order of placement preferences;
    - (2) the reasonable request of the Indian child if the child is able to understand and comprehend the decision that is being made;
    - (3) the testimony of a qualified expert designated by the child's tribe and, if necessary, testimony from an expert witness who meets qualifications of subdivision 6, paragraph (d), clause (2), that supports placement outside the order of placement preferences due to extraordinary physical or emotional needs of the child that require highly specialized services; or
    - (4) the testimony by the local social services agency that a diligent search has been conducted that did not locate any available, suitable families for the child that meet the placement preference criteria.

Id. at subd. 7(b) (emphasis added).
13. Under §260.771: “Testimony of the child's bonding or attachment to a foster family alone, without the existence of at least one of the factors in paragraph (b), shall not be considered good cause to keep an Indian child in a lower preference or nonpreference placement.” Id. at subd. 7(c).
14. Thus, whether or not the MIFPA and/or the ICWA applies to a particular case, HSPHD is required by law to first consider members of the child’s family for placement. If the MIFPA and/or the ICWA applies, a court can only deviate from the ICWA placement preferences upon a showing of good cause. In Minnesota, the MIFPA requires that showing to be made by clear and convincing evidence.
15. Ms. Bradshaw was originally ruled out as a placement for Paris in August 2014 due to her criminal history, which presented disqualifiers for foster care licensing. (Ex. 16, p. 3-4, 6). The social workers assigned to Paris’s case at that time made no attempt to work with Ms.

- Bradshaw to have her disqualifiers set aside by the Minnesota Department of Human Services, something HSPHD routinely does in cases where extended family members have old criminal histories or criminal histories that do not pose a current safety risk to the child. (Robyn Bradshaw Testimony; Gertrude Buckanaga Testimony; Elaine Sullivan Testimony). Not only did the social workers rule out Ms. Bradshaw for placement, but they also failed to inform her that she could attempt to have her disqualifiers set aside. (Robyn Bradshaw Testimony). The social workers made these decisions despite the fact that Ms. Bradshaw had been Paris's primary caregiver since birth and knowing that Ms. Bradshaw was not the cause of the child protection proceedings regarding Paris. (Ex. 99).
16. Nevertheless, Ms. Bradshaw continued to work with HSPHD so it could locate family and kin where Paris could be placed. (Ex. 99, p. 4). HSPHD considered Ms. Bradshaw's sister Marlene for placement but ruled her out due to medical issues and suspected criminality in her home. (Ex. 16, pp. 6-8). HSPHD also considered Ms. Bradshaw's friend and former building manager, Angela Johnson, whose granddaughter often played with Paris, but declined to place Paris with Ms. Johnson in favor of Paris's relative, Teresa Rojas. (Id. at 8-10). Numerous other relatives were listed in the ICWA Relative-Kinship Search and Placement Considerations report, including Paris's paternal grandmother Patricia, who lives in Illinois and was willing to be a placement resource for Paris. (Id. at 10-14). In 2016, Paris's paternal grandfather also requested to be a placement resource for Paris. (Ex. 99, p. 1). He was ruled out in August 2016 by Paris's Adoption Resource Worker at the time, Theresa Brinkhaus, and her supervisor, Lisa Berry, due to the amount of time that he had not had contact with Paris. (Id. at 3). At that point, Paris was living with the Cliffords, who were not relatives or kin, and who had been told by HSPHD not to allow Paris to have any contact with her relatives. (Danielle Clifford and Jason Clifford Testimony). When Ms. Brinkhaus informed Paris's paternal grandfather of HSPHD's decision, he indicated that he would fight it. (Ex. 99, p. 4). Other than Teresa Rojas, Paris was not placed with any of the relatives or kin listed in the relative-kinship search. (See Ex. 6). HSPHD had numerous relatives and kin who were willing to be placement resources for Paris that, contrary to Minnesota law, were never truly considered. (See Ex. 16). In fact, the relative-kinship search report appears incomplete regarding many of these relatives and kin. (See Id. at 10-14).
17. Between August 2014 and December 2017, Ms. Bradshaw was allowed periodic visits with Paris. (Robyn Bradshaw Testimony). Ms. Bradshaw attended the visits that her daughter Suzanne had with Paris during the child protection proceedings. (Id.) Robyn Bradshaw was also able to visit Paris when she was placed with Sandra Ignatius. (Id.) There were long periods of time during those years when Ms. Bradshaw was not allowed to see Paris at all. (Id.) Nevertheless, Ms. Bradshaw continued to attend every court hearing regarding her granddaughter and has been unwavering in her desire to adopt Paris. (Id.)
18. Ms. Bradshaw sought help from the police, she called child protection, she tried to get a lawyer at the ICWA Law Center, she even went to family court, but no one would help her get custody of Paris. (Id.) Finally in July 2016, she went to the Upper Midwest American Indian Center ("UMAIC"), where they helped her obtain a foster/adopt home study. (Id.; Gertrude Buckanaga Testimony; Bobbi Rodriguez Testimony). The UMAIC followed the Minnesota Department of Human Services procedures in completing this home study. (Gertrude Buckanaga Testimony). On March 29, 2017, Ms. Bradshaw's home study

- assessment was complete, and she was approved for foster care and adoption. (Ex. 1). The UMAIC also assisted Ms. Bradshaw in the set-aside process. (Bobbi Rodriguez Testimony). On January 10, 2018, the Minnesota Department of Human Services set aside Ms. Bradshaw's felony conviction, allowing her to be licensed as a foster and/or adoptive placement. (Ex. 3). Ms. Bradshaw's current home study assessment for foster care and adoption was approved on March 23, 2018 and is good for two years. (Ex. 2).
19. In the summer of 2017, Ms. Bradshaw began having regular visits with Paris. (Ex. 4; Ex. 5). She attended every visit except the first one, which she missed due to a miscommunication regarding the start time. (Id.; Robyn Bradshaw Testimony). Overall, these visits went very well. (Ex. 4; Ex. 5). Ms. Bradshaw brought numerous gifts to her first visit with Paris, including a note from Paris's mother. (Robyn Bradshaw Testimony). Ms. Bradshaw had collected these gifts for Paris during the year she was not permitted visits with Paris. (Id.) Ms. Bradshaw had never been told that she could not bring gifts or notes for Paris, and after Ms. Bradshaw was told not to do so in the future, she complied. (Id.)
20. Ms. Bradshaw was then given weekend visits and later, a two-week visit over Paris's winter break. (Id.) Ms. Reis and the Cliffords voiced several concerns regarding these visits, but the majority of their concerns were either minor or resolved by Mr. Thompson, Mr. Goodman and/or Ms. Bradshaw. (See i.e. Ex. 402, p. 3; Joseph Thompson Testimony). Overall, these visits also went well; however, the Cliffords, Ms. Reis, and Paris's therapist at the time, Samantha Colai, expressed concern about Paris's regressive behaviors in between visits. (Ex. 207C; Ex. 207I; Ex. 135; Ex. 136; Ex. 137). They believed Paris's regression was recurring because of her visits with Ms. Bradshaw. (Id.; Danielle Clifford Testimony; Jason Clifford Testimony; Samantha Colai Testimony). Mr. Thompson and Mr. Goodman did not share these concerns. (Joseph Thompson Testimony; Lee Goodman Testimony). They believed Paris could successfully transition to Ms. Bradshaw's home due to their strong bond. (Id.)
21. For six months, Mr. Thompson, Mr. Goodman, and Ms. Reis checked in on Paris as she progressed through her visits with Ms. Bradshaw. (Joseph Thompson Testimony; Lee Goodman Testimony; Barbara Reis Testimony). Other than Paris's regressive behaviors between visits, Paris was maintaining the life of a healthy seven year old. (Danielle Clifford Testimony; Jason Clifford Testimony). She enjoyed visits with her grandmother and, despite some reluctance about her first grade year, she continued to do well in school. (Ex. 4; Ex. 5, p. 3; Ex. 13, p. 3). It was with all of this information in mind that HSPHD, in consultation with White Earth, decided to support Paris's adoptive placement with Ms. Bradshaw. (Joseph Thompson Testimony).
22. HSPHD has a framework for managing child protection and post permanency cases involving Indian children. (Elaine Sullivan Testimony). Child Services Workers and Adoption Resource Workers with specialized training are assigned to cases that fall under the ICWA. (Elaine Sullivan Testimony; Joseph Thompson Testimony; Hannah Epstein Testimony). Part of this training teaches ICWA Social Workers the importance of working with the child's tribe during the pendency of the child's case. (Elaine Sullivan Testimony). Due to the high volume of cases involving Indian children, ICWA Social Workers often work closely with the tribes and develop strong working relationships. (Elaine Sullivan Testimony). It is very common, as occurred here, for the tribe's social worker and the

- HSPHD child services worker to agree on which placement is in the child's best interest. (Elaine Sullivan Testimony; Joseph Thompson Testimony). While HSPHD may in practice defer to the tribes, this does not mean HSPHD has not reviewed the case and made its own independent determination of what it believes is in the child's best interest. (Id.) HSPHD and White Earth follow similar social work practice models and both adhere to the requirements set forth by the Minnesota Department of Human Services in certain circumstances, which can often lead to similar placement recommendations. (See Elaine Sullivan Testimony; Laurie York Testimony).
23. When HSPHD learned that Paris was an Indian child under the ICWA, it employed its ICWA case management framework and assigned an ICWA child services worker and adoption resource worker. (Joseph Thompson Testimony; Hannah Epstein Testimony). Mr. Thompson and Ms. Epstein reviewed Paris's case file and visited Paris at the Cliffords' home. (Id.) They also worked with White Earth via Mr. Goodman. (Id.) As visits began between Paris and Ms. Bradshaw, Mr. Thompson was involved, and he addressed issues as they arose. (Joseph Thompson Testimony). The Court does not believe Mr. Thompson supported Paris's placement with Ms. Bradshaw solely out of deference to White Earth. The Court believes Mr. Thompson used his training, experience, and observations to arrive at a professional judgment that it was in Paris's best interests to be placed with Ms. Bradshaw. This decision was supported by the information he had at the time, and it was in accordance with Minnesota law requiring placement consideration of relatives and/or extended family first. It was also in accordance with the ICWA and the MIFPA requiring HSPHD to give first order preference, absent good cause, to a member of the Indian child's family. Mr. Thompson did not believe he had good cause to deviate from this preference because he believed Ms. Bradshaw was capable of meeting Paris's needs. (See Id.). His determination was reviewed and supported by his supervisors at HSPHD. (Joseph Thompson Testimony; Elaine Sullivan Testimony).
24. The Cliffords have failed to prove by a preponderance of the evidence that HSPHD's decision not to place Paris with them for adoption was unreasonable. The record is clear that from the beginning, HSPHD told Danielle Clifford there was no guarantee she and her husband would get to adopt Paris. (Ex. 99, p. 1). Although it is undisputed that Paris became attached to the Cliffords, it is also clear that Paris shares a deep bond with Ms. Bradshaw. (Ex. 5; Gertrude Buckanaga Testimony; Megan Eastman Testimony; Lee Goodman Testimony). In fact, Paris's separation from Ms. Bradshaw during the pendency of the child protection proceedings was believed to be a cause of Paris's separation anxiety, extreme behaviors, and emotional outbursts. (Ex. 12, p. 5). The Cliffords have continually asserted that Paris's regressive behaviors were caused by contact with Ms. Bradshaw, but the Court does not find this credible. The severity of Paris's regressive behaviors has significantly declined since she was placed with Ms. Bradshaw. (Robyn Bradshaw Testimony; Megan Eastman Testimony). The Cliffords believe this is because Ms. Bradshaw is stifling Paris's regressive behaviors, but the Court finds credible Ms. Bradshaw's testimony that she allows Paris these behaviors at home. Furthermore, the Court believes it is more likely that Paris was exhibiting regressive behaviors in the first place due to her separation from Ms. Bradshaw and her family as well as the trauma Paris experienced during her frequent moves in the child protection system.
25. The Cliffords have also asserted that Paris has extraordinary mental or emotional needs, but

the record does not support this assertion.

26. On February 11, 2015, Paris was referred by her then Child Services Worker, Gina Hyun, to be assessed for medical necessity to receive CTSS Services. (Ex. 12, p. 5). Paris, who was three years old at the time, was diagnosed with Separation Anxiety Disorder. (*Id.*) She was also evaluated by Samantha Colai, MA, LMFT, on September 21, 2017, who diagnosed Paris with Adjustment Disorder, With Mixed Disturbance of Emotion and Conduct. (Ex. 13, p. 8). Ms. Colai also discussed Paris's regression in the summer of 2017, including crawling, baby talk, wanting a pacifier or bottle, whining, and needing more attention. (*Id.*) Approximately one year later on September 28, 2018, Megan Eastman, MSW, LICSW, conducted a diagnostic assessment of Paris. (Ex. 14). At that time, Ms. Bradshaw reported that Paris was sometimes tearful and sad regarding missing her parents, and that at times, Paris had difficulty separating from Ms. Bradshaw. (*Id.* at 2). After completing the assessment, Ms. Eastman determined that, "[t]herapeutic services are needed to help Paris adjust to environmental changes, missing her parents and adjusting to change. To not continue services may lead to ongoing mental health issues, increased symptom severity, and attachment/interpersonal relationship problems." (Ex. 14, p. 5). Ms. Eastman diagnosed Paris with Adjustment Disorder with Anxiety and recommended individual therapy and work on emotional regulation and anxiety management. (*Id.*) Paris has met with Ms. Eastman approximately weekly since the diagnostic assessment and has engaged in components of Trauma-Focused Cognitive Behavioral Therapy, non-directive play therapy, and culturally specific traditional medicines. (Ex. 15).
27. Thus, Paris has been diagnosed with Adjustment Disorder (Mixed Disturbance of Emotion and Conduct) and Adjustment Disorder with Anxiety. Although Ms. Colai opined that Paris could be diagnosed with Developmental Trauma Disorder if that diagnosis were a DSM diagnosis, the facts remain that it is not a DSM diagnosis, and Paris has not been so diagnosed. (Ex. 217; Samantha Colai Testimony). The Court does not find credible the testimony equating Adjustment Disorder with a Severe Emotional Disturbance. (Samantha Colai Testimony; Deena McMahon Testimony). Furthermore, Ms. Colai does not provide culturally specific therapeutic services, so the lens through which she views Paris's behaviors does not take into account the majority of Paris's history and experiences. (Samantha Colai Testimony). This gap in Ms. Colai's perspective is amplified by the limited social history she was able to receive from Mrs. Clifford prior to beginning Paris's therapy. (*Id.*) Ms. Colai is also relatively new to her practice, having only graduated approximately five years ago, and only twenty percent of the kids she treats are from the foster care system. (*Id.*) The Court believes this relative inexperience with children like Paris may have contributed to Ms. Colai's tendency to make sweeping statements, such as her statement that Paris's sexualized behavior suggests that she's seen pornography and that Paris's behaviors are in the top 10% of her caseload in terms of needs. (*Id.*) The Court also questions Ms. Colai's objectivity based on the way she testified about Ms. Bradshaw. (*Id.*) For these reasons, the Court does not find Ms. Colai credible on the nature or the seriousness of Paris's behaviors.
28. The Court does not find Deena McMahon credible on this subject either because she did not perform a diagnostic assessment or any other mental health assessments specifically on Paris. (Deena McMahon Testimony). Either way, Paris's behaviors are successfully managed by weekly therapy and by the stability Ms. Bradshaw provides in her home. The

fact that Paris has to attend weekly therapy does not mean she has extraordinary mental or emotional needs. (See Joseph Thompson Testimony). Her mental health needs are similar to many other children whose early childhoods were impacted by the child protection system, as well as many children whose early childhoods were not. (See Id.) Paris's behaviors have not significantly impacted her ability to function at home, and she functions well at school and maintains social relationships. (Robyn Bradshaw Testimony; Kelly Watson Ostroot Testimony). She is doing well in Ms. Bradshaw's home. It was not unreasonable for HSPHD to think that Paris's mental health needs do not rise to the level of "extraordinary physical, mental, or emotional needs such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live." 81 FR 38778-01. Paris's mental health needs do not require "specialized" treatment services, and the treatment services she needs are available in her community. (Megan Eastman Testimony). Furthermore, Ms. Bradshaw and the Cliffords live in approximately the same community, so the treatment services available in either placement would be similar.

29. The Cliffords and Ms. Reis also attempted to prove HSPHD was unreasonable by asserting placement with Ms. Bradshaw is negatively impacting Paris's grades and her weight. (Kelly Watson Ostroot Testimony; Jason Clifford Testimony). However, Kelly Watson Ostroot credibly testified that there are many factors which can affect a student's grades from year to year and that no concerns have been brought to her attention about Paris's grades this year. She also credibly testified that Ms. Bradshaw has been proactive about Paris's grades and academic performance. (See Kelly Watson Ostroot Testimony). Regarding Paris's weight, the Court does not find this argument persuasive. There is nothing in the record to suggest Paris's current weight is a legitimate health concern. Paris may have been more "toned" when she lived with the Cliffords, but this fact does not mean HSPHD was unreasonable in failing to place Paris with the Cliffords for adoption. (See Jason Clifford Testimony).
30. The Cliffords and Ms. Reis have suggested that Ms. Bradshaw cannot keep up with an active seven year old and that Ms. Bradshaw does not have the financial resources to adequately support Paris. Ms. Bradshaw is currently meeting all of Paris's basic needs. It was not unreasonable for HSPHD to support Ms. Bradshaw as Paris's adoptive placement even though Ms. Bradshaw cannot run around with Paris as much as the Cliffords. As for Ms. Bradshaw's financial resources, she has been supporting Paris for one year. She currently has public housing, she has sources of income, and various witnesses from White Earth credibly testified about services within the White Earth community to which Ms. Bradshaw would have access. (See i.e. Lee Goodman Testimony, Gertrude Buckanaga Testimony, Laurie York Testimony). Furthermore, the 2016 BIA Guidelines say courts may not depart from the ICWA placement preferences based on the socioeconomic status of one placement relative to another. (81 FR 38778-01; §23.132). It is illogical for the Court to find HSPHD unreasonable for not basing its placement decision on the same comparison. The fact that the Cliffords have more financial resources than Ms. Bradshaw does not make HSPHD unreasonable for choosing Ms. Bradshaw over the Cliffords. The fact that the Cliffords can financially provide for Paris in a different way does not mean HSPHD was unreasonable for supporting Paris's placement with her family.
31. The Cliffords have not met their burden of proving by a preponderance of the evidence that HSPHD was unreasonable in failing to place Paris with them for adoption – especially in

light of the Minnesota and federal law governing HSPHD's placement decisions.<sup>2</sup>

32. However, even if the Court were to find that HSPHD was unreasonable in failing to place Paris with the Cliffords for adoption, Ms. Bradshaw is still the most suitable adoptive home to meet Paris's needs.
- a. the child's current functioning and behaviors;

Overall, Paris's functioning and behaviors are that of a normal, healthy seven year old. She is well adjusted in school and maintains typical family and social relationships. (See Robyn Bradshaw Testimony; Kelly Watson Ostroot Testimony). Despite her traumatic early childhood, Paris's functioning and behaviors have been relatively normal throughout her young life. (Ex. 7, p. 2; Ex. 8, p. 2; Ex. 9, p. 2; Ex. 10, p. 2; Ex. 11, p. 2). Two months after Paris was placed with the Cliffords, Mrs. Clifford reported to then Adoption Resource Worker Teresa Brinkhaus that Paris was a wonderful child with no behavior issues and that she was on track developmentally. (Ex. 99, p. 1). However, Paris's out of home placement plans up until January 26, 2018 indicated that Paris displayed, "difficulty in coping with stress and emotions that [was] atypical for the youth's age." (*Id.*) This difficulty ultimately prompted the Cliffords to find a therapist for Paris and to ensure that Paris received approximately weekly therapy. (Danielle Clifford Testimony).

Paris has been doing well in therapy and has not demonstrated any unusual needs or abnormally challenging behaviors since her placement with Ms. Bradshaw. (Robyn Bradshaw Testimony; Megan Eastman Testimony). Ms. Bradshaw has demonstrated an understanding of Paris's current functioning and behaviors and has a genuine desire to get Paris whatever services and/or assistance she may need. (Robyn Bradshaw Testimony). The Court believes Ms. Bradshaw's testimony that she wants to do whatever is best for Paris. Ms. Bradshaw has allowed Paris to change and to grow as Paris needs and has given Paris a greater sense of independence. (Robyn Bradshaw Testimony; Lee Goodman Testimony). Ms. Bradshaw is able to successfully parent Paris's current functioning and behaviors.

In contrast, the Cliffords imposed a strict schedule to manage Paris's functioning and behaviors. (Danielle and Jason Clifford Testimony) Their routine was extremely specific and invariable. (Jason Clifford Testimony; *see i.e.* Ex. 203, Ex. 206). They established this routine upon the advice of social workers and therapists in an effort to manage Paris's challenging behaviors, which they did, by working very closely with the school officials and professionals in Paris's life and by following their advice. (Danielle Clifford Testimony). Paris's functioning and behaviors were more challenging when she was placed with the Cliffords, but the Cliffords were able to successfully manage them. Paris's social workers and Ms. Reis told the Cliffords that their home was the best Paris had ever done in placement. (Danielle Clifford Testimony).

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<sup>2</sup> For reasons stated in the Court's December 5, 2018 Order, the Brackeen v. Zinke decision neither binds HSPHD or this Court. (Order Re: Pretrial Motions, 12/05/2018); *see also Brackeen v. Zinke*, 2018 WL 4927908 (October 4, 2018).

b. the medical needs of the child;

Paris has no significant or unusual medical needs or any known allergies. (Ex. 6, pp. 7-8, 10; Ex. 7, p. 3; Ex. 10, p. 2). Her physical health has generally been excellent. (Ex. 13, p. 5). She wears/wore glasses to correct an eye tracking issue. (Jason Clifford Testimony; See Ex. 209).

Ms. Bradshaw has identified a medical clinic, doctor, and dentist for Paris. (Ex. 1, p. 5). She ensures that Paris attends weekly therapy with Megan Eastman and has attended every session with Paris. (Robyn Bradshaw Testimony; Megan Eastman Testimony). Ms. Bradshaw meets all of Paris's routine medical and mental health needs. (Ex. 11, p. 2). She has completed numerous trainings to maintain her foster care and adoption licensure, which have included mental health trainings so that she can support Paris's mental health needs. (Ex. 1, p. 5; Ex. 2, p. 2; Ex. 17). Even though Ms. Bradshaw is uncomfortable with aspects of Paris's prior mental health treatment (i.e. allowing regression), she has been open to learning about it and has allowed it in her home. (Robyn Bradshaw Testimony). Ms. Bradshaw also maintains an open relationship with Paris's current therapist and feels comfortable asking her questions as needed to meet Paris's mental health needs. (Id.; Megan Eastman Testimony.) Although Ms. Reis has routinely suggested that Ms. Bradshaw is unable to meet Paris's mental health needs, the Court sees no basis for this assertion. The Court finds credible Ms. Bradshaw's testimony that she did not feel comfortable working with Ms. Colai, but she is comfortable working with Ms. Eastman.

The Cliffords ensured that Paris received routine medical and dental care, including immunizations. (Ex. 7, p. 3). Mrs. Clifford went to great lengths to locate a therapist for Paris and ensured that Paris received weekly therapy to address the trauma she experienced in the child protection system and the resulting challenging behaviors. (Danielle Clifford Testimony; Ex. 7, p. 3; Ex. 8, p. 3; Ex. 9, p. 2; Ex. 10, p. 2). The Cliffords were actively involved in Paris's mental health treatment and attended sessions with Ms. Colai to learn about what they could do to better support Paris's mental health needs. (Id.) They were very open to parenting guidance and made substantial changes based on what they learned. (Id.) They too attended numerous mental health trainings in order to be licensed for foster care, and Mrs. Clifford also read additional books and materials to better support Paris's mental health needs. (See Id.)

c. the educational needs of the child;

Paris's educational needs are age appropriate. (Testimony of Kelly Watson Ostroot). She does not have any known learning disabilities or an Individualized Education Plan. (Ex. 13, p. 7; Ex. 6, p. 10; Ex. 14, p. 3).

Much was made of Ms. Bradshaw's ability to meet Paris's educational needs. It was suggested on numerous occasions that Paris is not doing as well in school this year (2018-2019), a fact which is allegedly caused somehow by Ms. Bradshaw. (See Ex. 313). The Court does not find this assertion credible. Ms. Bradshaw is meeting Paris's educational needs. She has long supported Paris's educational pursuits, and

she is currently meeting Paris's educational needs. (See Ex. 5, p. 3; Robyn Bradshaw Testimony; Kelly Watson Ostroot Testimony). As noted above, the Court finds Ms. Watson Ostroot's testimony credible that there are many reasons a student's grades change from year to year, and no one has expressed concerns to her about Paris's grades this year. Ms. Bradshaw went to meet with Ms. Watson Ostroot to discuss Paris's academic performance, and the Court believes Ms. Bradshaw is capable of reaching out to other school professionals as needed to address any academic issues Paris may have in the future. (See *i.e.* Robyn Bradshaw Testimony re: contacting the school about Paris's missing homework). The Court does not believe Paris's current grades are indicative of a larger trend. The Court notes that Paris is still dealing with the recent death of her father, which could also be impacting her academic performance. (Robyn Bradshaw Testimony; Megan Eastman Testimony). Furthermore, the Court does not blame Ms. Bradshaw for being unable to move Paris's therapy to another time so Paris does not miss as much school. (See *i.e.* 312). The Court finds Ms. Eastman's testimony credible that there is not another appointment time available.

The Cliffords actively participated in Paris's education. Mrs. Clifford communicated with school professionals, regularly volunteered at the school, assisted Paris with school preparation activities prior to kindergarten, and assisted Paris with her homework. (Danielle Clifford Testimony; Ex. 7, p. 3). The Cliffords also filled their home with educational toys and books and took her to museums. (*Id.*) They met Paris's educational needs while she was placed in their home.

d. the developmental needs of the child;

Paris has consistently met developmental milestones and has no special developmental needs at this time. (Ex. 6, p. 9; Ex. 7, p. 4; Ex. 8, p. 4; Ex. 9, p. 3; Ex. 10, p. 3; Ex. 11, p. 3; Ex. 13, p. 5). Ms. Bradshaw is currently meeting Paris's developmental needs by teaching her new skills and by playing board games with her. (Robyn Bradshaw Testimony). Paris has achieved age-appropriate milestones such as learning how to ride a bike and how to swim. (*Id.*)

The Cliffords also met Paris's developmental needs and supported her achievement of developmental milestones while she was placed with them. They bought her age-appropriate books and toys, made sure she was very active, and gave her room to build her confidence when trying new things. (Jason Clifford Testimony).

e. the child's history and past experience;

Ms. Bradshaw lived with her daughter and Paris and raised Paris from birth to 3 years old while Paris's mother went to night school and worked two jobs. (Robyn Bradshaw Testimony). As such, Ms. Bradshaw has been Paris's primary caregiver for four of the seven years Paris has been alive. Ms. Bradshaw and her friends and relatives are Paris's history and past experience. Ms. Bradshaw is aware of Paris's numerous placements in the child protection system and is caring and nurturing about Paris's childhood traumas, including her separation from Ms. Bradshaw, her biological parents, and the death of her father. (Ex. 11, p. 3; Robyn Bradshaw

Testimony). Ms. Bradshaw knows Paris's family history too and has maintained connections to many of Paris's relatives on both sides of Paris's family. (See Robyn Bradshaw Testimony). The record is clear that Ms. Bradshaw and Paris have a deep love and attachment to each other and share a strong bond.

Paris was placed with the Cliffords for approximately one year and five months. While there, she became very attached to them and believed they were going to adopt her. She called Danielle Clifford "mom" and Jason Clifford "dad." (Ex. 212). Paris also became attached to the Cliffords' extended family and friends, who welcomed her with open arms.

f. the child's religious and cultural needs;

Paris is believed to be of Ojibwe, African American, Egyptian, Puerto Rican, Norwegian, Scotts, and French Canadian descent. (Ex. 12, p. 5). Her religious background is believed to be predominantly Christian.

Ms. Bradshaw is Native American and involved in the American Indian community. (Ex. 1, p. 5). She has relatives living in Minneapolis and from the White Earth Band of Ojibwe. (Id.) She volunteers at Upper Midwest American Indian Center. (Id.) She practices her American Indian Culture by beading, burning sage, and participating in ceremonies, among other things. (Testimony of Robyn Bradshaw). Growing up, Ms. Bradshaw and her family visited the White Earth Reservation for Pow Wows and to see relatives, attended cultural activities in the community such as feasts, ceremonies, and wakes, and learned some of the Ojibwe language from Ms. Bradshaw's mother. (Ex. 1, p. 3). Paris has demonstrated an interest in learning about her American Indian Culture and participating in cultural activities. (Ex. 5, p. 1) Ms. Bradshaw has encouraged and engaged Paris in these activities and taught Paris about her American Indian culture. (See Ex. 5, pp. 2-3, 5, 6-10). Ms. Bradshaw has maintained connections with Paris's relatives from other cultural backgrounds including Paris's relatives on her father's side and Paris's sister. (Robyn Bradshaw Testimony). Ms. Bradshaw is a practicing Christian and regularly attends church services. (Id.) Paris goes with her and attends the children's program. (Id.)

The Cliffords do not identify as Native American, although Danielle Clifford has Lac Courte Oreilles ancestry through her father's lineage, and he is a member of the Lac Courte Oreilles Band. (See Danielle and Jason Clifford Testimony; Jeffrey Thibert Testimony). The Cliffords have attempted to teach Paris about all parts of her heritage. The Cliffords took Paris to a Mother's Day Pow Wow, played flute music in their home, and Mrs. Clifford made wild rice for Paris. (Danielle and Jason Clifford Testimony). They read books to Paris about many cultures. (Id.) They asked Mr. Goodman for suggestions on how they could better teach Paris about the Ojibwe culture. (Id.) The Court believes the Cliffords genuinely wanted to help Paris learn about the cultural practices in her heritage. The Cliffords belong to an expansive Christian faith community, in which they immersed Paris. (Danielle and Jason Clifford Testimony). They taught Paris about The Bible and prayed with her every night before bed. (Jason Clifford Testimony). They would often listen to

spiritual music with Paris and they regularly attended church services. (Id.)

g. the child's connection with a community, school, and faith community;

Paris attends the same school now that she did when she was placed with the Cliffords and is doing well there. Ms. Bradshaw has ensured that Paris has after school activities so Paris can spend extra time with her friends. (Robyn Bradshaw Testimony). Paris is a very social little girl and seems to enjoy these activities very much. (Id.) Paris attends church services with Ms. Bradshaw and goes to the children's program. (Id.) She is connected to the Minneapolis Native American community through Ms. Bradshaw and the Upper Midwest American Indian Center. (Id.; Gertrude Buckanaga Testimony). Paris has many relatives with whom Ms. Bradshaw maintains regular contact, including Paris's sister. (Robyn Bradshaw Testimony). These people have been in her life since birth, and she is very connected to them. (Id.)

The Cliffords have a robust social and faith community, within which they immersed Paris. (Jason Clifford Testimony; Danielle Clifford Testimony; Ex. 7, p. 5). Mrs. Clifford was also very involved in Paris's school community, maintaining ongoing relationships with Paris's teachers, school social worker, and principal. Mrs. Clifford was also very familiar with the school community and with Paris's school friends due to the volunteer work Mrs. Clifford participated in at the school. (Danielle Clifford Testimony). Paris enjoyed spending time with the Cliffords' large community of family and friends who warmly welcomed her. (Id.)

h. the child's interests and talents;

Paris enjoys playing board games, and Ms. Bradshaw regularly plays games with her. (See i.e. Ex. 5, pp. 1-3, 7; Testimony of Robyn Bradshaw). They even have a game night each week. (Robyn Bradshaw Testimony). Paris also enjoys playing with toys, coloring, watching cartoons, and riding her bike. (Ex. 6, p. 3; Ex. 7, p. 5). Ms. Bradshaw has encouraged Paris to participate in whatever activities Paris seems interested in. (Robyn Bradshaw Testimony; see also Ex. 10, p. 5). Paris loves to dance, and Ms. Bradshaw is trying to obtain regalia for Paris so she can dance at a Pow Wow. (Robyn Bradshaw Testimony). Ms. Bradshaw and Paris also have regular movie nights.

The Cliffords also encouraged Paris's interests and talents while she lived with them. Paris participated in Girl Scouts and in dance. (Danielle Clifford Testimony). The Cliffords often took Paris to parks and on play dates and were very active with her. (Danielle and Jason Clifford Testimony). They also went to museums. (Jason Clifford Testimony).

i. the child's relationship to current caretakers, parents, siblings, and relatives;

Ms. Bradshaw comes from a very large family and has siblings that live in both Minneapolis and in greater Minnesota. (Ex. 1, p. 3). The record notes that prior to her removal from her biological parents, Paris had a good relationship with Ms.

Bradshaw's brothers and with Ms. Bradshaw's friend, Michelle, who is like a daughter to Ms. Bradshaw and an auntie to Paris. (Ex. 12, p. 5). Ms. Bradshaw has remained friends with Paris's maternal grandfather, Mohammad Shams Eshrawy, and he has been part of Paris's life since she was a baby. (*Id.*) Ms. Bradshaw also ensures that Paris is able to regularly see her sister, Nadia, which is important to Paris. (Robyn Bradshaw Testimony; Ex. 5, p. 4). The record is clear that Ms. Bradshaw and Paris share a deep bond. (*See* Ex. 4, pp. 4-5; Ex. 5, p. 2, 6). Even while Paris was living away from Ms. Bradshaw and Paris's other relatives, Paris greatly missed them, especially Ms. Bradshaw. (Ex. 6, p. 2). In fact, Paris's separation from Ms. Bradshaw during the pendency of the child protection proceedings was believed to be a cause of Paris's separation anxiety, extreme behaviors, and emotional outbursts. (Ex. 12, p. 5). Ms. Bradshaw consistently puts Paris's needs first and has a genuine desire to act in Paris's best interests. (Robyn Bradshaw Testimony; *see also* Ex. 10, p. 2). They are very attached.

The Cliffords are not Paris's *current* caretakers, parents, siblings, or relatives, so this section does not apply to them. The Cliffords are arguably kin, however. Paris is attached to the Cliffords and enjoys her visits with them. (Danielle and Jason Clifford Testimony; Barbara Reis Testimony).

- j. the reasonable preference of the child, if the court, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences;

Paris is of an age where she can express preferences; however, the record does not contain any evidence clearly indicating Paris's placement preference. Ms. Eastman testified that Paris told her it would be all right with Paris if she had a visit with the Cliffords and then did not see them again for a while, but the context of this statement was not entirely clear. As such, the Court does not know Paris's placement preference.

- k. for an Indian child, the best interests of an Indian child as defined in section 260.755, subdivision 2a.

The best interests of an Indian child means, "[C]ompliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act to preserve and maintain an Indian child's family. The best interests of an Indian child support the child's sense of belonging to family, extended family, and tribe. The best interests of an Indian child are interwoven with the best interests of the Indian child's tribe." Minn. Stat. §260.755, subd. 2a (2017).

The Cliffords urge the Court to depart from the ICWA placement preferences, but they have not shown good cause to do so. As previously stated in paragraph 25 above; Paris does not have "extraordinary physical, mental, or emotional needs, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live." 81 FR 38778-01(c).

The Cliffords also urge the Court to depart from the ICWA placement preferences

using Deena McMahon's testimony to satisfy the MIFPA departure requirements. The Cliffords argue that Qualified Expert Witness ("QEW") testimony is not required to establish a good cause departure based on the extraordinary physical, mental, or emotional needs of a child. (Cliffords' Closing Memorandum, p. 3, 01/11/2019). The Court agrees that QEW testimony is not required to depart from the ICWA placement preferences under the ICWA for the extraordinary needs of the child. However, the MIFPA is different, and the law is clear:

...the testimony of a qualified expert designated by the child's tribe and, if necessary, testimony from an expert witness who meets qualifications of subdivision 6, paragraph (d), clause (2), that supports placement outside the order of placement preferences due to extraordinary physical or emotional needs of the child that require highly specialized services; §260.771, subd. 7(b) (2017).

As previously ruled during the evidentiary hearing, Deena McMahon does not meet the Qualified Expert Witness requirements of §260.771, so her testimony cannot be used under the MIFPA to depart from the ICWA placement preferences. See Minn. Stat. §260.771, subd. 6, 7. Accordingly, the Cliffords have not met their good cause burden under either the ICWA or the MIFPA to depart from the ICWA placement preferences.

Even if Deena McMahon were a QEW, her testimony and report do not support placement outside of the placement preferences due to "extraordinary physical or emotional needs of the child that require highly specialized services." She was hired to conduct attachment assessments on Ms. Bradshaw and the Cliffords, not to diagnostically evaluate Paris. (Deena McMahon Testimony). Also, her attachment assessment of Ms. Bradshaw is socioeconomically biased. Her clinical summary essentially concludes that Paris is not attached to Ms. Bradshaw because she was removed from Ms. Bradshaw in the past and because Ms. Bradshaw does not have financial stability. (Ex. 215A, pp. 9-10). In contrast, Ms. McMahon opines that the Cliffords "have all the hallmarks of a couple able to parent to attachment" and then lists six characteristics to support that conclusion – four of which are based on financial stability. (Ex. 215B, p. 11). Ms. McMahon's assessments suggest that a child can only be securely attached to a caregiver when a caregiver can provide financially for that child, and the Court does not find this suggestion credible. Ms. McMahon's assessments are also obviously biased in favor of the Cliffords. In Ms. Bradshaw's assessment in the Healthy and Discriminating Boundaries section, the information about Ms. Bradshaw has nothing to do with the italicized language describing what that category is supposed to evaluate. (Ex. 215A, p. 5, ¶g). It talks about how bossy Paris is, suggests that Ms. Bradshaw has no control over her, and it even blames Ms. Bradshaw for Paris's weight gain. (*Id.*) The same section of the Cliffords' assessment, however, talks about how Paris "struggles with boundaries," yet discusses this in the passive tense so that the Cliffords are not even mentioned. (*Id.*)

The Court does not find Deena McMahon credible and believes Paris is securely attached to Ms. Bradshaw. The record shows that many of Paris's prior behavior issues stemmed from her attachment to and removal from Ms. Bradshaw. (Ex. 12, p. 5). The Court finds credible the testimony of Stephen Luzar regarding the bias within Ms. McMahon's report. The Court also finds credible the other professionals who testified regarding the strong bond between Ms. Bradshaw and Paris. (Lee Goodman Testimony, Gertrude Buckanaga Testimony, Megan Eastman Testimony; Dr. Priscilla Day Testimony). The Court finds the testimony and report of Dr. Priscilla Day to be significantly more credible on the issue of Paris's attachment to Ms. Bradshaw than Ms. McMahon's testimony and report. (Dr. Priscilla Day Testimony; Ex. 326). Despite Ms. McMahon's extensive experience as an attachment expert, her report is clearly biased, and she did not assess Paris's relationship with Ms. Bradshaw through a culturally specific lens. For these reasons, the Court adopts the findings of Dr. Day's report over that of Deena McMahon's assessments.

Accordingly, factor (k) supports placement with Ms. Bradshaw.

33. Ms. Reis has been Guardian ad Litem on this case since the case opened in 2014. (Barbara Reis Testimony). She clearly supports Paris's placement with the Cliffords over Ms. Bradshaw. (Id.) Ms. Reis is not an ICWA Guardian ad Litem, but she did conduct her own limited research to educate herself on the ICWA. (Id.) It appeared to the Court that she had little to no familiarity with the subject prior to conducting her research. (Id.) Ms. Reis's bias in favor of the Cliffords is palpable. When Ms. Reis talks about Paris's best interests, it is often couched in the parties' respective financial resources. (Id.) She testified that in her opinion, "Ms. Bradshaw is not parent material." (Id.) The way Ms. Reis has behaved at prior court hearings has suggested to the Court that Ms. Reis will never believe Ms. Bradshaw is a successful parent no matter what she does. The Court believes Ms. Reis thinks she is truly considering what is in Paris's best interests. However, Ms. Reis's testimony was very dismissive of the importance of Paris's Ojibwe culture and of growing up in that culture. (Id.) In Ms. Reis's opinion, despite not identifying as Native American, the Cliffords can meet Paris's cultural needs simply by reading books and occasionally bringing her to cultural events. (Id.) This demonstrates Ms. Reis's fundamental misunderstanding of what it means to be adopted into a family that does not share your predominant cultural identity. It makes an individual feel as if they are living between two worlds and that they do not really fit within either one. (See Faron Jackson, Sr. Testimony). The Court finds credible the testimony received regarding the difference between culture and heritage. (Gertrude Buckanaga Testimony; Faron Jackson, Sr. Testimony; Lee Goodman Testimony; Laurie York Testimony; Stephen Luzar Testimony). In addition to our nation's horrific history of separating Native American parents from their children, the distinct between culture and heritage is a large part of why the ICWA was enacted and why it is so important to follow the ICWA placement preferences absent a showing of good cause. (See Id.) For these reasons, the Court did not find Ms. Reis's testimony credible on the issue of Paris's best interests.
34. This case is very difficult because it is so clear which decision points caused this litigation. If White Earth had not failed to acknowledge Paris's membership for so long or if HSPHD

had seriously considered Ms. Bradshaw and/or Paris's other relatives for placement, none of this would have happened. Instead, Paris has been traumatized by our system due to numerous failed placements, Ms. Bradshaw has been equally traumatized by the same system that for years ignored her as a placement option for her granddaughter, and the Cliffords have lost a child whom they love and considered their own.

35. Danielle and Jason Clifford took excellent care of Paris during her time in their home, and they did everything foster parents are supposed to do. However, Minnesota law requires local social services agencies to consider placement with relatives first, and the ICWA and the MIFPA require placement within the ICWA placement preferences absent a showing of good cause. The Cliffords have not made this showing under the ICWA or the MIFPA, and therefore the Court will not depart from the placement preferences. Furthermore, the Court truly believes that the most suitable home for Paris is with Ms. Bradshaw. Ms. Bradshaw deeply loves Paris and they share a strong bond and a secure attachment. Ms. Bradshaw has demonstrated an ability to meet all of Paris's needs. Ms. Bradshaw can nurture Paris's connection to her tribe, to her Ojibwe culture, to her sister, and to both sides of her family in a way that the Cliffords cannot. The Cliffords can provide love, attachment, an active two-family household and extended family, and ample financial resources for Paris, but these considerations do not offset the family connections and connections to her culture that Ms. Bradshaw can provide Paris. It is in Paris's best interests to be placed for adoption with Ms. Bradshaw.

36. For these reasons, the Court denies the Cliffords' motion for adoptive placement.

**IT IS HEREBY ORDERED**

1. Danielle and Jason Clifford's motion for adoptive placement is denied.
2. The Department shall work with Robyn Bradshaw toward the finalization of her adoption of Paris Scott (d.o.b. 07/09/2011).

BY THE COURT:

2019.01.17

*Angela Willms* 11:21:54

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Angela Willms -06'00'  
Judge of District Court  
Juvenile Court Division

**Post-Permanency Report**

**STATE OF MINNESOTA**  
**Guardian ad Litem Program**



State of Minnesota

District Court

<b>County:</b> Hennepin	<b>Judicial District:</b> Fourth
	<b>Case Type:</b> CHIPS Permanency – TPR
	<b>Court Case:</b> 27-JV-15-483

**In the Matter of the Welfare of the Child(ren) of:**  
Suzanne Bradshaw, Parent

**Guardian ad Litem Report**  
Review- Post Permanency

**Name of Guardian ad Litem:** Lynn Brave Heart

**Date of Report:** 4/20/20  
**Date of GAL Appointment:** 2/13/19  
**Does ICWA Apply:** yes

**Date of Hearing:** 4/22/20

**Number of Moves Into Out of Home Placement:** 7  
**Days In Out of Home Placement:** Over four years  
**Date Child Ordered into Placement:** 1/26/2018  
**Date Ordered Permanent Custody to Agency:** 7/7/2016

**Child(ren) Name: DOB, Age at Time of Report:**  
Paris Scott, DOB 7/9/2011, age 8 years

**GUARDIAN AD LITEM RECOMMENDATIONS REGARDING THE CHILD(REN)**

For the reasons stated below, and based upon my independent investigation and the best interests of the child(ren), I recommend the following to the court:

1. Continue current placement with Maternal Grandparent which is an ICWA placement supported by the White Earth Nation.
2. I support the adoption of Paris to her Maternal Grandparent who meets the ICWA placement preferences for permanency as being in the child's best interest. An adoption date has been set.

**RATIONALE FOR RECOMMENDATIONS**

**Changes Impacting the Child (ren) since the Last Hearing**

Paris is doing very well in the care of her Maternal Grandmother, Robyn Bradshaw. Since the last court hearing they have moved into a bigger apartment and are happy to have more room. Paris started at a new school and

is adjusting well. She reports liking her new school. Paris has cousins who attend the same school and one cousin is in her same class. Paris is a happy and healthy girl.

Update: Since the last court hearing COVID-19 has prevented home visits to occur but I have had phone conversations with Robyn Bradshaw and Paris.

### **Continued Appropriateness of Current Placement for Child(ren)**

Placement with her Maternal Grandmother continues to be appropriate as all her needs are being met. The placement is ICWA compliant as it meets the placement preferences outlined by the ICWA.

### **Child (ren)'s Wishes Regarding Placement**

Paris reports that she wishes to live with her grandmother permanently.

### **Establishing and Maintaining Connections with Parents/Siblings/Tribe/Significant Others**

Since this is an ICWA case, it is appropriate that children will maintain connections to family and extended relatives as long as it is safe and in accordance with licensing requirements or court orders. Since the last hearing, Paris visited her mother in the hospital as her mother was gravely ill and this contact was supervised, safe and appropriate. Paris has had visits with cousins and other extended relatives when attending family events. It is important and good for Paris to have contact with family and extended relatives to keep her connected to her identity and cultural heritage. Maternal Grandmother reports having a lot of support from the White Earth tribe and to other American Indian community resources.

### **Relative Search Efforts since Last Hearing**

None to my knowledge. Maternal Grandmother is the preferred permanency option.

### **Mental Health/Medication**

Paris continues to have therapy consistently with the same therapist. Since COVID-19 these are virtual phone visits. Maternal Grandmother reported that the therapist recommended decreasing sessions to every other week because Paris is stable and doing well. Since the last hearing sessions are bi-weekly. Paris does not take medications.

### **Current Functioning and Behaviors**

I have no concerns about Paris's development or behaviors. She is functioning and behaving within what is expected of an 8 year old. She is happy and likes to be active. Paris continues in Ballet. Grandparent reports Paris loves ballet and swimming. I have observed first hand that Paris is a good listener and only needs one or two gentle reminders from her grandmother to get her to follow directions. This is well within normal expectations for an 8 year old. I have observed Grandmother giving small gentle warnings for how long Paris

can do a certain activity and reminding Paris of what they will be doing in an hour or more later in the day. This gives Paris time to adjust and understand when she needs to stop doing a certain activity as they will be moving on to some other appointment or task.

### **Medical/Dental/Vision**

Paris no longer needs glasses and the last dental visit she has no cavities. Paris had a dental appointment on August 8th. Paris is up to date on shots and doctors visits. She had a well child check since the last hearing and is healthy.

### **Education**

Paris is in 3rd grade. She is in a new school and is adjusting well and has made new friends. She has cousins who are in her same grade and school. (Since COVID-19 school has to be online and Paris has a chrome book laptop and daily assignments to work on.)

### **Community Connection/Social/Recreational Activities**

Due to COVID outside recreation is not possible. Before Covid, Paris's grandmother brought her to swimming and ballet. In warmer months Paris goes to powwows and community events.

### **Cultural**

Grandparent makes sure to maintain cultural practices in the home including smudging, drumming and attending powwows in warmer months. Paris has a Jingle dress and when possible Grandparent takes her to powwows.

### **Religious**

Grandparent practices American Indian spirituality. There is a drum at home for practicing songs they have learned when they made the drum together at a community cultural event. Paris and grandma smudge and pray together.

### **Safety Concerns**

I have no safety concerns at this time.

### **Independent Living Skills**

Paris is too young but does help grandparent with some age appropriate chores.

### **Summary of Strengths and Issues of Concerns for the Family**

I am impressed with Ms. Bradshaw's parenting skills and all the activities both cultural and recreational that she has Paris involved in. Paris is thriving and happy in her care. Paris is learning her culture and was very proud when talking about her jingle dress and the drum she made at a previous visit. Paris and grandma Bradshaw have a great relationship that is fun, light-hearted, and they are clearly happy in each other's presence. They make plans for activities to look forward to together. Ms. Bradshaw has connected Paris to her American Indian culture in a way that did not exist before. This is helping to heal them and bring their relationship closer.

### **Additional Information**

N/A

## **SUMMARY OF INFORMATION AND CONTACTS**

### **Parent Information**

Suzanne Bradshaw, Mother

Christopher Daniel Scott, Adjudicated Father (Deceased)

### **Brief History of Case**

This Child Protection case opened in September, 2014. The TPR for both parents was signed in Hennepin County in July of 2016. The Clifford's became foster family in July 2016. This became an ICWA case in January 2017. Paris was placed with her Maternal Grandparent in January of 2018.

### **Placement Information**

ICWA compliant relative foster provider

### **Services Provided for Child(ren)**

Therapy bi-weekly

**Date and Type of Contact with Child(ren) since Last Hearing**

1-28-20 Home visit

Since COVID I have only had phone contact with the family.

**Documents Reviewed since Last Hearing**

Pre-Hearing Report

**Collateral Contacts since Last Hearing**

Paris Scott, Child

Maternal Grandparent, Robyn Bradshaw

Megan Eastman, Therapist

Kiana Batteau, CSW

Hannah Epstein, ARW

Lee Goodman, White Earth Tribal Representative

**AMENDMENT OF REPORT**

As permitted under Rule 38.11, subd. 3, of the Rules of Juvenile Protection Procedure, the guardian ad litem reserves the right to amend and/or supplement this report as deemed necessary or appropriate by the guardian ad litem. Such amendment or supplementation may be done through a written addendum if time permits or, if time does not permit, orally at the time of the hearing.

**OBJECTION TO REPORT**

Pursuant to Rule 38.11, subd. 6, of the Rules of Juvenile Protection Procedure, any party who objects to the content or recommendations of this report may submit to the court and other parties a written objection either before or at the hearing at which the report is to be considered. Such objection shall include a statement certifying the content of the objection as true based upon personal observation, first-hand knowledge, or information and belief. An objection may be stated on the record as long as the Court gives the guardian ad litem a reasonable opportunity to respond to the objection.

**BY SIGNING THIS REPORT, I CERTIFY THAT THE CONTENT IS TRUE AND CORRECT, TO THE BEST OF MY KNOWLEDGE, BASED UPON PERSONAL OBSERVATION, FIRST-HAND KNOWLEDGE, INFORMATION, AND BELIEF.**

**Respectfully Submitted,**

/s/ Lynn Brave Heart

**Guardian ad Litem**

4/20/20

**Date**

**Certificate of Service and Copy**

Nancy Jones, Assistant Hennepin County Attorney

Lee Goodman, White Earth Tribal Representative

Rebecca McConkey-Greene, White Earth Attorney

Kiana Batteau, CSW

Hannah Epstein, ARW

Ron Walters, ICWA Law Center Attorney

Mark Fiddler, Attorney

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
JUVENILE COURT DIVISION

*In the Matter of the Welfare of the Child of:*  
**The Commissioner of Human Services**

**AMENDED FINDINGS AND ORDER**  
**REGARDING MOTIONS FOR**  
**ADOPTIVE PLACEMENT**

Case Number: 27-JV-15-483  
Family Number: 349034

Child: Paris Scott (d.o.b. 07/09/2011)

The above-entitled matter came before the Honorable Angela Willms, Referee of District Court, Juvenile Division, on January 16, 2018 at the Hennepin County Juvenile Justice Center in Minneapolis, Minnesota. CMR recorded the proceedings.

**PARTIES AND PARTICIPANTS**

Nancy Jones, Assistant Hennepin County Attorney, appeared on behalf of the Hennepin County Human Services and Public Health Department ("Department"), which was represented by Hannah Epstein, Adoption Resource Worker, and Joseph Thompson, Child Services Worker, who were present.

Eric Rehm, Attorney at Law, appeared on behalf of Barbara Reis, Guardian ad Litem, who was present.

Rebecca McConkey-Greene, Attorney at Law, appeared on behalf of the White Earth Band of Chippewa ("White Earth"), which was represented by Lee Goodman, Social Worker, who was present.

Mark Fiddler, Attorney at Law, appeared on behalf of Danielle and Jason Clifford, Foster Parents, who were present.

Ronald Walters, Attorney at Law, appeared on behalf of Robyn Bradshaw, Maternal

parties and participants to comply with certain filing deadlines regarding any motions for adoptive placement. On December 14, 2017, Mr. Walters filed a letter indicating that his client, Robyn Bradshaw, would not file a motion for adoptive placement because the Department and White Earth currently support her as the child's adoptive placement. In

this letter, Mr. Walters indicated: "My client, of course, continues in her desire to adopt Paris." (R. Walters Letter, filed 12/14/17, p. 1).

2. The same day, the Cliffords filed a motion for adoptive placement pursuant to Minnesota Statutes §260C.607, subdivision 6, asking the Court for an evidentiary hearing on the issue of whether the Department is unreasonable for failing to place the child with them for adoption. On December 27, 2017, Mr. Rehm submitted a letter on behalf of the Guardian ad Litem, supporting the Cliffords' motion and opposing adoptive placement with Ms. Bradshaw.
3. On December 29, 2017, the Department filed a memorandum opposing the Cliffords' motion. The Department argues it was reasonable not to place the child with the Cliffords for adoption because Minnesota and federal law require the Department to place the child according to Indian Child Welfare Act ("ICWA") and Minnesota Indian Family Preservation Act ("MIFPA") preferences, which the Cliffords do not satisfy. The Department also filed a motion requesting court authorization to immediately place the child with Ms. Bradshaw and to enter into an adoptive placement agreement with her.
4. The same day, White Earth filed a response opposing the Cliffords' motion and supporting the Department's motion for immediate placement with Ms. Bradshaw.
5. Mr. Walters filed a memorandum on December 29, 2017 supporting the child's placement with his client and arguing that the Cliffords are legally unable to adopt the child due to the ICWA placement preferences and the Cliffords' inability to obtain a Qualified Expert Witness from White Earth to support their adoption of the child. On January 5, 2018, the Cliffords filed a reply memorandum arguing that the child cannot legally be placed with Ms. Bradshaw for adoption because she does not have an approved adoption home study.
6. On January 8, 2018, Mr. Walters re-filed his December 29, 2017 memorandum in order to serve the Cliffords, who were inadvertently excluded from his initial service of the document. On January 9, 2018, the Cliffords responded to Mr. Walters's memorandum. The Cliffords' January 9, 2018 memorandum was filed in violation of the Court's December 5, 2017 Order but will nevertheless be considered under the circumstances.<sup>1</sup>

placement as long as those foster parents have an approved adoption home study and have resided in Minnesota for at least six months prior to filing the motion. Minn. Stat. §260C.607, subd. 6(1) (2017). There is no dispute that Danielle and Jason Clifford are

<sup>1</sup> "Any motions or responses filed outside of the aforementioned timelines will be dismissed or excluded from consideration by the Court." (Order, filed 12/5/17, p. 3, ¶ 9).

foster parents within the meaning of the statute, that they have an approved adoption home study, and that they resided in Minnesota for at least six months before filing their motion.

2. The issue before the Court is whether the Cliffords' motion and supporting documents make a prima facie showing that the Department has been unreasonable in failing to place the child with the Cliffords for adoption. See Id. If the Cliffords meet this burden, they are entitled to an evidentiary hearing where they must prove by a preponderance of the evidence that the Department was unreasonable in failing to make the requested adoptive placement. Minn. Stat. Id. at subd. 6(d). However, if the Cliffords fail to make a prima facie showing, they are not entitled to an evidentiary hearing, and Minnesota law requires the Court to dismiss their motion. Id. at subd. 6(c).
3. When determining whether the movant has made a prima facie showing, "the district court must accept facts in [the movant's] supporting documents as true, disregard contrary allegations, and consider the non-moving party's supporting documents only to the extent that they explain or provide context." In the Matter of the Welfare of the Children of L.L.P., A.J.H., and J.M.L., 836 N.W. 2d 563, 570 (Minn. Ct. App. 2013).
4. The district court shall not weigh the movant's allegations against the agency's conduct and the history of the proceedings. Id. However, conclusory allegations do not support a prima facie showing. Id. at 571. Minnesota Statutes Section 260C.607 is a relatively new statute, so there is almost no case law to guide the Court regarding what constitutes a prima facie showing in these cases. Additionally, the child in this case is an Indian child subject to the ICWA and the MIFPA. (See Order, filed 10/23/17, p. 11, ¶ 42). The Court is not aware of any case law regarding a §260C.607 motion for the adoptive placement of an Indian child and believes this may be an issue of first impression.
5. The Department, White Earth, and Robyn Bradshaw argue that the Department was reasonable in not placing the child with the Cliffords for adoption because the §1915(a) ICWA placement preferences apply to this child, the Cliffords cannot meet them, and the Cliffords cannot prove by clear and convincing evidence that there is good cause to deviate from the preferences. In response, the Cliffords argue that the §1915(a)

convincing evidence.<sup>2</sup>

<sup>2</sup> The letter filed and oral arguments made by Mr. Rehm on behalf of the Guardian ad Litem, while clearly supportive of the child's placement with the Cliffords, did not address the legal issues before the Court and are therefore given little weight in this decision.

6. Thus, as argued by the parties and participants to this case, central to the Court's determination of whether the Cliffords have made a prima facie showing under §260C.607 is the issue of whether the §1915(a) ICWA placement preferences apply to this child.
7. However, the §1915(a) placement preferences only apply to the *adoptive* placement of an Indian child, and this child has not yet been placed for adoption. See 25 U.S.C. §1915(a). The ICWA defines adoptive placement as, "the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption." 25 U.S.C. §1903(1)(iv). Under Minnesota law, "[t]he child shall be considered placed for adoption when the adopting parent, the agency, and the commissioner have fully executed an adoption placement agreement on the form prescribed by the commissioner." §260C.613, subd. 1(a). No adoption placement agreement has been executed for this child. For these reasons, the issue of whether the §1915(a) placement preferences apply to this child (and by extension, whether the Cliffords have made a prima facie showing of unreasonableness) is not yet ripe for the Court's consideration.<sup>3</sup>
8. Normally under these circumstances, the Court would dismiss the Cliffords' motion without prejudice. However, the Court believes doing so in this case would only lead to the re-litigation of the same issues when the Department places the child for adoption. To avoid further delaying this child's permanency, the Court finds that it is in her best interests for the Court to defer ruling on the Cliffords' motion until the Department has placed the child for adoption and the Cliffords' motion becomes justiciable.
9. The Department says it has not placed the child for adoption as it desires, with Ms. Bradshaw, out of deference to the Court. While the Court understands this deference given the litigious nature of these proceedings, there is no legal basis for it. The law is clear: "The responsible social services agency has exclusive authority to make an adoptive placement of a child under the guardianship of the commissioner." Id. The Court may only compel the Department to make a different adoptive placement upon granting a §260C.607 motion for adoptive placement. See Minn. Stat. §260C.607, subd. 5(a), 6(e) (2017).

<sup>3</sup> "[I]ssues that exist only hypothetically in the future are not justiciable." Power Line Task Force, Inc. v. Northern States Power Co., 2004 WL 2659837, \*2 (Minn. Ct. App. 2004) (citing State v. Murphy, 545 N.W.2d 909, 917 (Minn. 1996)).

<sup>4</sup> Accordingly, the Court will not rule on the Department's motion for adoptive placement because the Court has no authority under the circumstances to place this child for adoption.

Agreement, p. 9, ¶ 31). Preadoptive placements have their own placement preferences under the ICWA. Section 1915(b) requires:

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which [her] special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with--

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

25 U.S.C. §1915(b).

11. The Court may deviate from these preferences upon a tribal resolution specifying a different order of preferences or for good cause shown. *See Id.* §1915(a), (b), (c). As far as the Court is aware, White Earth does not have a tribal resolution specifying a different order of preferences; therefore, the Court may only depart from the ICWA placement preferences in this case upon good cause shown. Under federal law:

A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:

- (1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
- (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

25 C.F.R. §23.132(c) (Effective 12/12/16). "The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is 'good cause' to depart from the placement preferences." 25 C.F.R. §23.132(b).

12. Minnesota law also permits departure from the §1915 placement preferences but has established slightly different requirements for good cause:

- (b) The court may place a child outside the order of placement preferences only if the court determines there is good cause based on:
  - (1) the reasonable request of the Indian child's parents, if one or both parents attest that they have reviewed the placement options that comply with the order of placement preferences;
  - (2) the reasonable request of the Indian child if the child is able to understand and comprehend the decision that is being made;
  - (3) the testimony of a qualified expert designated by the child's tribe and, if necessary, testimony from an expert witness who meets qualifications of subdivision 6, paragraph (d), clause (2), that supports placement outside the order of placement preferences due to extraordinary physical or emotional needs of the child that require highly specialized services; or
  - (4) the testimony by the local social services agency that a diligent search has been conducted that did not locate any available, suitable families for the child that meet the placement preference criteria.
- (c) Testimony of the child's bonding or attachment to a foster family alone, without the existence of at least one of the factors in paragraph (b), shall not be considered good cause to keep an Indian child in a lower preference or nonpreference placement.
- (d) A party who proposes that the required order of placement preferences not be followed bears the burden of establishing by clear and convincing evidence that good cause exists to modify the order of placement preferences.

Minn. Stat. §260.771, subd. 7(b) (2017).

legal authority requiring the same two-step review under the §1915(b) preferences. Both Minnesota and federal law require a showing of good cause by clear and convincing evidence in order to depart from the §1915(b) placement preferences, and the Cliffords have not made that showing here.

14. This Court has previously held that this child is an Indian Child as defined by the ICWA (order, filed 2/27/17, p. 4, ¶ 3), that she is a member<sup>5</sup> in a federally recognized Indian tribe (id.; see also order, filed 10/23/17, p. 11, ¶ 42), and that the ICWA and the MIFPA apply to her. (See Id.). Accordingly, the §1915(b) preadoptive placement preferences apply to her. The Cliffords do not dispute that they do not meet these preferences, and without a finding of good cause to deviate, the Department is bound by them. There is no dispute that Ms. Bradshaw meets the first placement preference as an extended member of the child's family. The record is clear that Ms. Bradshaw has an approved adoption home study. (See N. Jones Oral Argument, 1/16/18). Despite Ms. Bradshaw's lack of a foster care license, the Department confirms there are no legal barriers to the child's placement with Ms. Bradshaw. (Id.) Ms. Bradshaw is willing to have the child placed with her for adoption, and the Department and White Earth believe such placement is in the child's best interests. (See N. Jones Oral Argument, 1/16/18; R. McConkey-Greene Oral Argument, 1/16/18). The Court notes that the Guardian ad Litem does not support the child's placement with Ms. Bradshaw, but the Court is not aware of any legal authority requiring the Department to follow the Guardian ad Litem's placement recommendation instead of its own. Under the current posture of this case, the Department retains the exclusive authority to place the child for adoption, and there appear to be no legal barriers restricting their ability to do so.
15. The Department asserted that the child would have been placed with Ms. Bradshaw immediately had it not been for these proceedings and that it is ready to sign an adoption placement agreement with her. The Court is tasked with ensuring that the Department makes reasonable efforts (or in this case, *active* efforts) toward finalizing the adoption of this child. See Minn. Stat. §260C.607, subd. 1(a); see also Minn. Stat. §260.762, subd. 3. The Court is also required to make sure that these efforts are "appropriate to the stage of the case." Id. at 4(a)(1). It is with this authority that the Court orders the Department to act expeditiously in its adoptive placement of this child so that the resolution of the Cliffords' motion, and more importantly, the child's permanency, are not further delayed.

#### IT IS HEREBY ORDERED

1. The Court reserves its ruling on Danielle and Jason Clifford's motion for adoptive

§260C.607.

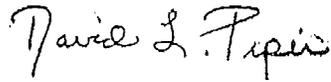
<sup>5</sup> Amended on February 5, 2018. This sentence used to read: "This Court has previously held that this child is an Indian Child as defined by the ICWA (order, filed 2/27/17, p. 4, ¶ 3), that she is an **enrolled** member in a federally recognized Indian tribe (id.; see also order, filed 10/23/17, p. 11, ¶ 42), and that the ICWA and the MIFPA apply to her. (See Id.)."

4. The parties shall appear for a review hearing on Tuesday, February 13, 2018 at 11:00 a.m.

BY THE COURT:

February 5, 2018

  
Angela Willms  
Referee of District Court  
Juvenile Court Division

  
\_\_\_\_\_  
Judge of District Court  
Juvenile Court Division