

**FILED**

SISSETON-WAHPETON-SIOUX  
TRIBAL COURT

11/15/15

Date

by:

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**SISSETON-WAHPETON OYATE  
SUPREME COURT**

D-15-360-183 Clerk of Courts

IN THE INTEREST OF:  
SAFFIRE WOLFE, DOB: 2-21-2014  
Minor Child.

MEMORANDUM OPINION  
AND ORDER

Per Curiam (Thor Hoyte, Chief Justice and Associate Justices Russel Zephier and Pat Donovan)

**FACTS AND PROCEDURAL HISTORY**

This appeal involves a non-parent child custody determination made by the Tribal court. Saffire Wolfe was born on February 21, 2014 and shortly thereafter, the Tribe’s Child Protective Program took custody of the child and made a relative placement with Mark and Moshall Genia.<sup>1</sup> Mark Genia is the maternal great uncle of the child. David Genia, the child’s maternal grandfather, filed for permanent custody of the child as well as the child’s two siblings, Honesty and Lakaya.<sup>2</sup> Mark and Moshall Genia then filed for permanent custody of Saffire Wolfe. David and Mark Genia are brothers. David Genia has custody of these children’s eldest sister age 7.

The Tribal Court held a custody hearing on each parties Petition for Permanent Custody. The Tribal Court entered an order granting David Genia custody of Honesty and Lakaya Wolfe. This order is not subject to this appeal. In a separate order the Tribal Court granting custody of Safire Wolfe to Mark and Moshall Genia. David Genia appeals this order alleging the Tribal Court erred by misapplying tribal custom and tradition of grandparents raising their grandchild and raising siblings together. In his Notice of Appeal, David Genia also alleges the Tribal Court

<sup>1</sup> It is unclear from the record whether the Tribe’s Child Protection Program continues to provide reunification services to the mother.

<sup>2</sup> These two siblings continue to reside in the State of Washington with a maternal aunt although at oral arguments it was noted that David Genia is attempting to have the SWO Tribal court’s order enforced in regards to these two siblings.

erred by not allowing him to object during the hearing and that the court order was not enforceable or workable but David Genia abandoned these last two issues by failing to file a brief and not arguing these alleged errors in oral arguments.

### **ISSUES**

Therefore David Genia raises the following issues on appeal:

1. The Tribal Court erred by misapplying tribal custom and tradition of grandparents raising their grandchild.
2. The Tribal Court erred by misapplying tribal custom and tradition of raising siblings together.

### **STANDARD OF REVIEW**

Findings of Fact, whether based on oral or documentary evidence shall not be set aside unless clearly erroneous. Findings of Fact are clearly erroneous if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake was committed.<sup>3</sup>

Appeals challenging legal conclusions are reviewed under a “de novo” standard of review. Under the de novo standard, we accord no deference to the Tribal Court’s conclusions of law, but instead independently analyze the relevant facts to arrive at its own legal conclusion.<sup>4</sup>

### **DISCUSSION**

After a hearing on the issues of custody, the Tribal Court found that both parties are appropriate caretakers and entitle to preference in placement under Tribal law as extended family members. The Tribal court further considered David Genia’s request that the children be placed in the same home and be raised together. The court rejected the request finding the child had been in the home of Mark and Moshall Genia for most of her life and transitioning her out of the

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<sup>3</sup>Rule 12(a)(1) of SWO Rules of Appellate Procedure.

<sup>4</sup> Rule 12(a)(3) of SWO Rules of Appellate Procedure.

home now may cause some emotional turmoil for her. The court found no evidence to suggest Mark Genia had denied David Genia access to the child and the child should stay in her current placement with visitation rights for David Genia to allow the child to adjust and the children to be together for substantial periods of time.

The court then entered an order awarding custody to Mark and Moshall Genia with David Genia being given visitation with the child every other weekend and for two weeks in the summer to permit the child to bond with her siblings. The court ordered that either party can request review of the order after one year or earlier if there is a material change of circumstances.

David Genia's first assignment of error is that the Tribal Court erred by misapplying tribal custom and tradition of grandparents raising their grandchild. His second assignment of error is that the Tribal Court erred by misapplying tribal custom and tradition of raising siblings together. These two assignments of error can be combined for purposes of appeal since the same analysis is used for both assignments.

This Court recognizes the importance of tribal custom and tradition in regards to custody of children and the importance of extended family in filling this role. The Tribal Council also recognizes this importance of extended family when it enacted Chapter 38-03-25 of the SWO code.<sup>5</sup>

David Genia failed to produce evidence at trial of what tribal custom and tradition of nonparent custody is. He attempted to have an elder tell this Court what those tribal customs and traditions are. The Court, out of respect for elders, allowed the elder to have his say. The problem with attempting to introduce such evidence before this Court is that we do not judge credibility of witnesses and the elder was not subject to cross examination by the opposing party

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<sup>5</sup> Extended family is any person related by blood or marriage or viewed by the family as a relative in accordance customs of the tribe.

as would be done by the Tribal court.

Even if there was such evidence, the Tribal court did not err in continuing placement with Mark and Moshall Genia. The Tribal court found that both parties are appropriate caretakers and entitled to preference in placement under Tribal law as extended family members. Extended family is defined by the Tribe as any person related by blood or marriage or viewed by the family as a relative in accordance customs of the tribe.<sup>6</sup> The Tribal Court considered extended family as a factor in its determination. The Tribal court also considered the best interest of the child as a factor in its determination. The court found that at the present time, it is not in the child's best interest to be removed from her current placement. The court specifically found the child had been in the home of Mark and Moshall Genia for most of her life and transitioning her out of the home now may cause some emotional turmoil for her. The court left the door open for possible transition to David Genia's care and custody and reunification of the children by ordering David Genia be given visitation with the child every other weekend and for two weeks in the summer to permit the child to bond with her siblings and that either party can request review of the order after one year or earlier if there is a material change of circumstances. The Tribal court's findings of fact are not clearly erroneous and reviewing its conclusions of law this Court would come to the same conclusion as the Tribal court.

### CONCLUSION

The Tribal court's order is affirmed.

Made this 2<sup>nd</sup> Day of November, 2015 for the Court



<sup>6</sup> 38-03-25 of the SWO code.

  

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Pat Donovan, Associate Justice