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**THE SUPREME COURT OF
THE SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION**

IN THE MATTER OF:

APPEAL NO. AP-23-013-004

ARIAH GERMAN, Minor Child

CASE NO. D-22-046-659

And concerning:

Hunter Watts,
Respondent/Appellee

**MEMORANDUM OPINION AND
ORDER TO VACATE TRIAL COURT
ORDER AND REMAND**

vs.

Mikaela German,
Petitioner/Appellant

Per Curiam (Angelique EagleWoman, Chief Justice, Associate Justices Michael Harralson,
and Lenor Scheffler Blaeser)

I. FACTS AND PROCEDURAL HISTORY

This matter concerns an appeal from the Trial Court Order dated July 27, 2023
reinstating visitation with Ariaah German, Minor Child by the Respondent/Appellee Hunter
Watts, Father. The Petitioner/Appellant Mikaela German appealed that Order.

In November of 2021, Petitioner/Appellant Mikaela German, Mother, and
Respondent/Appellee Hunter Watts, Father, stipulated that Mother would have custody of the
child subject to Father's visitation each week. The Trial Court accepted the stipulation and
issued a Custody and Visitation Order dated November 17, 2021. Respondent/Appellee Watts
exercised his visitation including overnight visits.

In October 2022, the Petitioner/Appellant Mother put a stop to Respondent/Appellee
Father's visitation. The Father filed a Motion for a Review Hearing on January 5, 2023 as he

1 had been denied visitation in accordance with the November 17, 2021 Custody and Visitation
2 Order. The Petitioner/Appellant Mother filed a Motion to Suspend Visitation on January 23,
3 2023 alleging that the Mother had been made aware of allegations of sexual assault to the
4 Minor Child taking place during Father's visitation times. On January, 25, 2023, a hearing
5 was held and the parties entered into a stipulation that the Father's visitation be suspended for
6 at least 60 days for the Mother to arrange counseling for the Minor Child. The Trial Court
7 accepted the stipulation and issued the February 8, 2023 Order Granting the Motion to
8 Suspend Visitation for at least 60 days with the expiration of the 60 days either parent
9 permitted to file a petition to the court for a review hearing. This action by the Trial Court will
10 be further discussed below.
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12 On June 1, 2023, the Respondent/Appellee Father filed a Motion for Review Hearing
13 as visitation had not been reinstated. On July 6, 2023, the Trial Court held a hearing on the
14 motion and issued its order of July 27, 2023 that "1. This Court has jurisdiction over the
15 parties and the subject matter. 2. Mother failed to conclusively establish that Father
16 committed sexual abuse against the child or that it would be in the child's best interests for the
17 Court to continue the suspension of Father's visitation. 3. Father's visitation be gradually
18 reinstated."
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20 The Petitioner/Appellant German timely filed her Notice of Appeal of the July 27,
21 2023 Order from the Review Hearing on August 4, 2023.
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1 **II. ISSUE**

2 The Petitioner/Appellant German raised the following issue on appeal:

- 3 1) The Trial Court abused its discretion by entering the July 27, 2023 Order reinstating
4 Respondent/Appellee Watts' visitation.
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6 **III. DISCUSSION ON APPLICABLE LAW**

7 Under SWO Chapter 21 of the Judicial Code 21-14-02 Rule 39(h), the SWO Supreme
8 Court "may review both the factual findings and the conclusions of law of the Trial court."
9 The Tribal Court in its July 27, 2023 Order concluded that "2. Mother failed to conclusively
10 establish that Father committed sexual abuse against the child or that it would be in the child's
11 best interests for the Court to continue the suspension of Father's visitation." The first part of
12 the conclusion is that "Mother failed to conclusively establish that Father committed sexual
13 abuse against the child." The Trial Court referenced no applicable section of the SWO Law
14 and Order Code in its conclusions.
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16 As a matter of reviewing the law applied by the Trial Court, the SWO Chapter 38
17 Juvenile Code authorizes petitions to be filed when an allegation of sexual abuse of a minor
18 child is raised to the court. This process was not followed when the Petitioner/Appellant
19 Mother by motion requested the Respondent/Appellee Father's visitation be suspended.
20 Further, the Trial Court did not follow SWO Chapter 38 Juvenile Code for allegations of
21 sexual abuse as defined in SWO Chapter 38-03-05 Sexually Abused Child. A parent may file
22 a petition alleging sexual abuse of a child under SWO Chapter 38-18-05. The process is
23 outlined as requiring the Trial Court once receiving a petition that a child is within the court's
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25 outlined as requiring the Trial Court once receiving a petition that a child is within the court's
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1 jurisdiction, "...the Clerk of Courts shall notify a Probation Officer or other designated person
2 who shall make a preliminary inquiry to determine whether the interests of the public, the
3 Tribe, or child require further action to be taken. The report on the preliminary investigation
4 shall be filed with the Court without unnecessary delay." SWO Chapter 38-18-03 Section 3.
5 The Trial Court has the authority to order an examination of the minor child and of the parent
6 whose ability to care for the child is at issue with the parent's consent. SWO Chapter 38-18-
7 06.
8

9 For investigations and hearings, the Trial Court is to follow SWO Chapter 38-20-01.
10 A social investigation is authorized under SWO Chapter 38-20-02 and 28-20-03 for the
11 child's home environment and associations, which would include the Father's home where
12 visitations were ordered to occur. A report is required to be submitted to the court by a
13 qualified expert witness, such as the SWO Child Protection Program. The standard of proof
14 for an allegation involving a minor child, not a juvenile, is "clear and convincing evidence"
15 pursuant to SWO Chapter 38-29-05. "The Court will dismiss the petition if the allegations are
16 not established by the required standard of proof or proceed to the dispositional hearing if the
17 allegations are established by a valid admission or the required standard of proof." SWO
18 Chapter 38-29-05. For these reasons, this matter will be remanded for the Trial Court to
19 follow the appropriate SWO laws when an allegation of sexual abuse of a minor child is
20 raised in any matter before the court.
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23 The second part of the conclusion by the Trial Court in the July 27, 2023 Order was
24 "or that it would be in the child's best interests for the Court to continue the suspension of the
25 Father's visitation." The standard of review for the Sisseton Wahpeton Supreme Court
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1 challenging legal conclusions are reviewed under a “de novo” standard of review. Rules of
2 Appellate Procedure Rule 12(a)(3). The Tribal Court should have clearly stated the legal
3 standard of the “best interests of the child” which is a well-established and recognized
4 standard in child custody and child protection cases under Tribal Nation jurisprudence and
5 state jurisprudence. The standard in future Trial Court orders should not be combined with
6 any other statements of the court. The standard should be clearly and separately stated as a
7 legal standard in future court orders.
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9 In this instance, this Court finds it necessary for the benefit of the children of the
10 Oyate to affirmatively acknowledge the “best interests of the child” standard for cases
11 involving minor children, such as custody/visitation matters and in child protection cases. For
12 example, the SWO Chapter 34C Sisseton Wahpeton Oyate Child Support Act states in the
13 purpose of the law: “...The [Sisseton Wahpeton Oyate Child Support Enforcement Office]
14 SWOCSE represents the Oyate and acts **in the best interests of the children** when bringing
15 an action in Tribal Court or carrying out the provisions of this Chapter and Chapter 34A, the
16 Uniform Parentage Act.” SWO Chapter 34C-01-01 (emphasis added).
17

18 As the proper law was not followed by the Trial Court, the Order of July 27, 2023 will
19 be vacated and the matter remanded with instructions to follow the provisions of SWO
20 Chapter 38 to provide proper due process and to follow the process to determine whether the
21 harm alleged to the Minor Child has been proven by the correct legal standard.
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