

A05-1615  
A05-1631

STATE OF MINNESOTA

IN COURT OF APPEALS

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In the Matter of the Welfare of the  
Child of T.T.B. and G.W., Parents

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OFFICE OF  
APPELLATE COURTS

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APPELLANT YANKTON SIOUX TRIBE'S BRIEF AND APPENDIX

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## STATEMENT OF LEGAL ISSUES

1. Did the Juvenile Court have subject matter jurisdiction regarding custody of X.T.B.?

The Juvenile Court held in the affirmative.

Authorities:

*In Re Shady*, 118 N.W.2d 449 (Minn. 1962)

Minn. Stat. § 260C.175 subd. 1(a)

Minn. Stat. § 260C.151 subd. 6

2. Did the Juvenile Court have personal jurisdiction over X.T.B.?

The Juvenile Court held in the affirmative.

Authorities:

*Pugsley v. Magerfleisch*, 201 N.W. 323 (Minn. 1924)

*In Re Longseth v. Columbia County, Wisconsin*, 162 N.W.2d 365 (Minn. 1968)

*Ray v. Ray*, 217 N.W.2d 492 (Minn. 1974)

3. Did the Juvenile Court commit reversible error by not transferring the proceedings to the Yankton Sioux Tribal Court?

The Juvenile Court held in the negative.

Authorities:

*Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989)

*In the Matter of Custody of S.E.G., A.L.W., and V.M.G.*, 521 N.W.2d 357 (Minn. 1994)

*In the Matter of Welfare of B.W.*, 454 N.W.2d 437 (Minn. Ct. App. 1990)

## STATEMENT OF THE CASE

This is an appeal by the Yankton Sioux Tribe ("Tribe") from orders of the Hennepin County Juvenile Court ("Juvenile Court") granting permanent legal custody of X.T.B., an enrolled member of the Yankton Sioux Tribe, to Sandra Granse. Ms. Granse is not Native American, is not a member of the Yankton Sioux Tribe, and is not a blood relative of X.T.B.

X.T.B. was born on November 15, 2003 in Rhode Island to T.T.B., mother and member of the Oglala Sioux Tribe, and G.W., father and enrolled member of the Yankton Sioux Tribe. At the time of X.T.B.'s birth, the Juvenile Court had dismissed its jurisdiction over T.T.B and defaulted T.T.B. from proceedings on a petition to terminate her rights with respect to another child, A.G., who had been fathered by a non-Indian father.

On November 21, 2003, the Hennepin County Human Services Department ("Human Services") filed an *ex parte* "Motion for an Order for Emergency Protective Care" to obtain immediate custody of X.T.B. The Juvenile Court, the Honorable Herbert P. Lefler presiding, granted the motion, and X.T.B. was transferred from Rhode Island to Minnesota. Human Services then filed an amended petition to add X.T.B. to the proceedings regarding termination of T.T.B.'s parental rights to A.G.

On December 23, 2003, the Juvenile Court granted Human Services' request to maintain temporary custody of X.T.P., denied visitation to the individuals that T.T.B. wanted to have adopt X.T.P. (the Murphys) and placed X.T.P. in the home of Sandra

Granse, the paternal grandmother and custodian of A.G. Ms. Granse is not a Native American and has no blood relationship with X.T.P.

On December 31, 2003, Human Services filed a new and separate petition seeking termination of T.T.B.'s parental rights with respect to X.T.B. Neither that petition, nor the earlier amended petition filed in the A.G. proceedings, included any factual assertions regarding X.T.P.'s health or welfare.

At a February 17, 2004 pretrial hearing, counsel for T.T.B. again informed the Juvenile Court that both T.T.B. and G.W. wanted to have X.T.B. placed with the Murphys. (II Tr. 18, 2/17/04). The Juvenile Court was also informed that the Murphys would be traveling to Minnesota and wanted to visit X.T.B. (II Tr. 18-19, 2/17/04). The Juvenile Court denied the request for visitation. (II Tr. 19, 2/17/04).

On April 12, 2004, the Murphys moved to intervene. The Juvenile Court denied the motion on the ground that joinder of the Murphys would also require joinder of two other potential placements for X.T.B.: (1) the Granses; and (2) Bonnie Ward, a Native American and the paternal grandmother of X.T.B. (III, Tr. 7-8, 4/20/04).

On April 23, 2004, the Yankton Sioux Tribe (the "Tribe") moved to intervene. That motion was unopposed.

On July 22, 2004, T.T.B. and G.W. filed joint motions to transfer legal custody of X.T.B. to the Murphys and expressed strong objection to placement of X.T.B. with Ms. Granse. (IV Tr. 3-4, 6/10/04). Both parents also asked the court to explore placement with G.W.'s relatives, in particular, Ms. Ward. (V Tr. 9, 8/12/04; VI, Tr. 14, 10/27/04).

Also on July 22, 2004, T.T.B. and G.W. filed joint motions to transfer jurisdiction of the matter to the Tribal Court of the Yankton Sioux Tribe. In their filings, they both indicated that a petition from the Tribe would be forthcoming. Thereafter, during a hearing on August 12, 2004, the Juvenile Court indicated that, absent a written petition from the Tribe, it would not consider the motions of T.T.B. and G.W.

On September 8, 2004, the Tribe filed its own motion to transfer to its Tribal Court and dismiss the Juvenile Court proceedings.

On October 27, 2004, all parties filed a Stipulation to Transfer Custody in which they acknowledged that T.T.B. and G.W. would not seek custody of X.T.B. and further acknowledged the placement preferences of T.T.B and G.W.

On October 27, 2004, the Juvenile Court conducted a trial of the matter and filed its Order Denying Motion to Transfer Jurisdiction to Tribal Court. It noted that the Yankton Sioux tribal offices are located four hundred miles from Minneapolis. (Appendix 25-26) It also noted that the transfer petition came "thirty eight weeks after the permanency petition was filed." (Appendix 26). No mention was made of its own request on August 12, 2004 that the Tribe file a written transfer petition.

On February 17, 2005, the Juvenile Court issued its Order transferring permanent legal custody to Ms. Granse. In that Order, the court recognized that it was placing X.T.P. outside of the placement preferences of Indian Child Welfare Act ("ICWA") and in contravention with the placement preferences of the Indian parents and the Tribe.

On July 14, 2005, the Juvenile Court issued its order denying motions for a new trial. Thereafter, the Tribe and G.W. filed timely appeals with this Court.

## STATEMENT OF FACTS

In an effort to avoid duplication, the Tribe's recitation is strictly limited to those facts relevant to the specific issues raised in its appeal—namely, subject matter and personal jurisdiction and denial of the motions to transfer to tribal court. As such, facts regarding, among other things, the parents' decision to travel to Rhode Island, the parents' placement preferences and the placement preferences of the ICWA are not addressed herein.

### I. RELEVANT PARTIES

1. X.T.B. is an enrolled member of the Yankton Sioux Tribe.
2. G.W. is the father of X.T.P. and an enrolled member of the Yankton Sioux Tribe.
3. T.T.B. is the mother of X.T.B. and a member of the Oglala Sioux Tribe.
4. Bonnie Ward is a Native American and the paternal grandmother of X.T.B.
5. Sandra Granse is not a Native American or a blood relative of X.T.B.
6. The Tribe is an Indian Tribe as defined by the ICWA and is published in the Federal Register at 48 Fed. Reg. 56862 (December 23, 1983).

### II. JURISDICTION OVER X.T.B.

7. X.T.P. was born on November 15, 2003 in Rhode Island.
8. The Juvenile Court had no jurisdiction over T.T.B., G.W. or X.T.P. on November 15, 2003.
9. On November 21, 2003, the Juvenile Court granted an *ex parte* motion filed by Human Services for an Order for Emergency Protective Care to obtain immediate

custody of X.T.P. ("Emergency Order"). Pursuant to the Emergency Order, X.T.P. was transferred from Rhode Island to Minnesota.

10. No evidence of abuse, abandonment, neglect or any other condition adversely affecting the health, safety or welfare of X.T.P. was presented in support of the Emergency Order.

11. When issuing the Emergency Order, the Juvenile Court made no individualized explicit findings based upon any notarized petition or sworn affidavit that there were any reasonable grounds to believe that X.T.P. was in surroundings or conditions that endangered his health, safety or welfare.

12. There is no evidence in the record that X.T.P. was in surroundings or conditions that endangered his health, safety or welfare at the time the Emergency Order was issued or at any time prior to his return to Minnesota pursuant to that Emergency Order.

### III. REQUESTED TRANSFER TO TRIBAL COURT

13. On December 31, 2003, Human Services filed its petition seeking termination of T.T.B.'s rights with respect to X.T.P.

14. On April 23, 2004, the Tribe moved to intervene in that action.

15. On July 22, 2004, T.T.B. and G.W. each filed motions to transfer jurisdiction of the matter to the Tribe's tribal court and indicated that a petition would be forthcoming from the Tribe.

16. On August 12, 2004, the Juvenile Court indicated that it would not rule on those motions absent receipt of a written petition from the Tribe.

17. On September 8, 2004, the Tribe formally filed its own motion to transfer jurisdiction of the matter to its tribal court.

18. On October 27, 2004, the Juvenile Court denied the motions to transfer, noting that the tribal court was 400 miles away from Minneapolis and that the transfer petition “came thirty eight weeks after the permanency petition was filed.” The Juvenile Court did not address its own August 12, 2004 request that the Tribe file a formal written petition.

### ARGUMENT

#### **I. THE JUVENILE COURT HAD NO JURISDICTION— SUBJECT MATTER OR PERSONAL—REGARDING CUSTODY OF X.T.P.**

##### **A. The Juvenile Court Lacked Subject Matter Jurisdiction.**

###### **1. Standard of Review.**

Subject matter jurisdiction is a question of law to which the reviewing court applies a *de novo* standard of review. *Neighborhood Sch. Coalition v. Independent Sch. Dist. No. 279*, 484 N.W.2d 440, 441 (Minn. Ct. App.1992). Lack of subject matter jurisdiction cannot be waived as a defense and can be addressed by the reviewing court even when not raised in a timely manner. *Martizelli v. City of Little Canada*, 582 N.W.2d 904, 907 (Minn. 1998).

2. The Required Factual Basis for Subject Matter Jurisdiction Over X.T.P was Never Established.

A court does not have subject matter jurisdiction in a child protection matter and may not issue an order for the immediate custody of a child except where the court has made:

individualized, explicit findings, based upon [a] notarized petition or sworn affidavit, that there are reasonable grounds to believe the child is in surroundings or conditions which endanger the child's health, safety, or welfare that require that the child's custody be immediately assumed by the court and that continuation of the child in the custody of the parent or guardian is contrary to the child's welfare, the court may order that the officer . . . take the child into immediate custody.

Minn. Stat. § 260C.175 subd. 1(a) (referencing Minn. Stat. § 260C.151 subd. 6).

Minnesota law further provides that a court may order immediate custody of a child when the "child has run away from a parent" or "when a child is found in surroundings or conditions which endanger the child's health or welfare." Minn. Stat. § 260C.175 subdivision 1(b)(1) & (2).

In *In Re Shady*, 118 N.W.2d 449, 451-452 (Minn. 1962), the Minnesota Supreme Court stated that Minnesota law:

contemplate[s] a showing of some kind that an abandonment or actual neglect exists before the court can take custody of a child at the initiation of the proceedings without first making a determination that the child is dependent or neglected to the extent that its welfare requires immediate action.

In that case, the court granted a petition for a writ of prohibition to forbid the juvenile court from enforcing an order of immediate removal of a child on the basis of a request lodged by the County. *Id.* at 450. The court concluded that the juvenile court's order

could not be enforced on the ground that “[t]here is no finding or any showing made that any necessity existed for removing the child from the custody of its putative father.” *Id.*

The court noted that “the only basis for attempting to take immediate custody was the desire of the welfare board. Removing the child from the custody of an admitted father . . . should rest on something more substantial than the whims of the welfare board if the child is receiving adequate care.” *Id.* The court concluded that, in light of the fact that “neither the mother nor the putative father . . . abandoned the child or consented to relinquish custody” and because the juvenile court did not provide specific facts to support a contention that the child was neglected or abandoned, the juvenile court did not have the power to order the immediate custody of the child. *Id.* at 454.

That holding and the plain language of the above-cited Minnesota statutes conclusively confirm that the Juvenile Court never had subject matter jurisdiction over X.T.P.—not when it initially ordered his transfer from Rhode Island to Minnesota and not when it granted temporary and permanent custody.

There was absolutely no factual basis for the Juvenile Court’s November 21, 2003 Order transferring X.T.P. from Rhode Island to Minnesota. There were no individualized, explicit findings that X.T.P. was in surroundings or conditions that endangered his health, safety or welfare. There was no notarized petition or sworn affidavit to that effect. There was no evidence that X.T.P.’s parents had abandoned or neglected him or consented to relinquish custody to any agency of the State of Minnesota. In short, there was no subject matter jurisdiction for the Juvenile Court’s

entry of an Order transferring X.T.P. from his parents in Rhode Island to Human Services in Minnesota.

Nor was any such evidence ever produced to support the Juvenile Court's further proceedings and orders regarding temporary and permanent custody of X.T.P. The Amended Petition in the A.G. proceedings and the separate Petition in X.T.P.'s proceedings are entirely bereft of any evidence of abuse, abandonment, neglect or any other condition adversely affecting X.T.P.'s health, safety or welfare. Indeed, there is no such evidence anywhere in the record before this Court.

The total absence of that required evidence conclusively demonstrates that the Juvenile Court never had subject matter jurisdiction over X.T.P.; as such, its Orders regarding custody of X.T.P. are without effect and should be reversed. *Id.*

**B. The Juvenile Court Also Lacked Personal Jurisdiction Over X.T.P.**

1. Standard of Review.

Whether personal jurisdiction exists is a question of law that is reviewed *de novo*. *Domtar, Inc., v. Niagara Fire Insurance Co.*, 518 N.W.2d 58, 60 (Minn. Ct. App. 1994); *see also, Stanton v. St. Jude Medical, Inc.*, 340 F.3d 690, 693(8th Cir. 2003); *AeroGlobal Capital Management, LLC v. Cirrus Industries, Inc.*, 871 A.2d 428, 437-38 (Del. Sup. 2005); *BCM Software N.V., v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002) (legal conclusions with respect to personal jurisdiction are reviewed *de novo*); *Vons Great-West Life Assurance Co. v. Guarantee Co. of North America*, 252 Cal.Rptr. 363 (Cal. Ct. App. 1988).

2. The Required Factual Basis for Personal Jurisdiction Over X.T.P. was Never Established.

To adjudicate any matter in a juvenile protection procedure in Minnesota, the juvenile court must have personal jurisdiction over the juvenile. *Pugsley v. Magerfleisch*, 201 N.W. 323, 323 (Minn. 1924); *In Re Welfare of Children of S.C.*, 656 N.W.2d, 580, 583 (Minn. Ct. App. 2003); *In the Matter of T.D.*, 631 N.W.2d 806, 808 (Minn. Ct. App. 2001).

In the context of custody determinations, as stated by the Minnesota Supreme Court in *In Re Longseth v. Columbia County, Wisconsin*, 162 NW.2d 365, 367, (Minn. 1968):

A proceeding to determine custody of a minor child partakes of the nature of an action *In rem*, the Res being the child's status or his legal relationship with another. Except where necessary as a police measure, . . . it would seem that the only court which has power to fix, to change, or to alter this status is the court of the state in which the minor child is domiciled.

(quoting *State ex rel. Larson v. Larson*, 252 N.W. 329, 330 (Minn. 1934)). See also, *Ray v. Ray*, 217 N.W.2d 492, 493 (Minn. 1974) ("The state of the child's domicile . . . is the state with the power to determine custody of the child. A custody proceeding is in the nature of an action *in rem*, the child's' status being the res.").<sup>1</sup>

In this case, it is undisputed that X.T.B. was not a resident of the State of Minnesota when the Juvenile Court purported to assert personal jurisdiction over him in

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<sup>1</sup> See also, *State of Oregon ex rel. Juvenile Department of Multnomah County v. Kennedy*, 672 P.2d 1233, 1236 (Ore. Ct. App. 1983) ("personal jurisdiction over a child in a dependency proceeding is proper when the child is a resident or a non-resident who is taken into custody within the state . . . [a court does not have] personal jurisdiction over a child by the filing of a petition and the issuance of an arrest warrant for a non-resident child in the lawful custody of his parents in another state.").

November 2003. X.T.B. was born in, and resided in, Rhode Island. He had never been in Minnesota, and his parents never indicated any desire or intent that he would ever reside in Minnesota. Nor did the Juvenile Court have personal or subject matter over X.T.P.'s parents at that time.

It is therefore clear as a matter of law that the Juvenile Court did not have personal jurisdiction over X.T.P. The required res, *i.e.* X.T.P., was in Rhode Island, and had never been in Minnesota. As such, the Juvenile Court did not have personal jurisdiction over X.T.B. so as to effect a change of custody from X.T.B.'s parents in Rhode Island to Human Services in Minnesota. A juvenile court in Minnesota cannot simply assert jurisdiction over a child born in another state. To rule otherwise "would enable the juvenile court to 'roundup' dependent children in every other state merely upon the filing of a petition in this state and the issuance of execution of a warrant in a sister state." *In the Matter of Kennedy, Shalawn, Shameka, Tremaine, Children*, 672 P.2d 1233, 1236 (Ore. Ct. App.1983).

There is no support in Minnesota law for such a result. Consequently, the Juvenile Court's exercise of jurisdiction over X.T.P. was erroneous and all of its Orders regarding X.T.P. should be reversed.

Finally, for reasons discussed above, any claim that "exigent circumstances" justified the Juvenile Court's assertion of jurisdiction over X.T.P. is entirely without factual support and, as such, cannot stand. *See e.g., Bergh v. Bergh*, 387 N.W.2d 213, 216 (Minn. 1986) (North Dakota courts did not have jurisdiction to modify a child custody decree because "the child [was] not physically present in North Dakota and there

[were] no allegations of abandonment or an emergency”) and *Longseth v. Columbia County, Wisconsin*, 162 N.W.2d 365, 368 (Minn. 1968) (in the case of a non-resident child in the care and custody of his or her parents, Minnesota courts should not interfere unless, at the very least, there is “reason to suppose” that the foreign state’s courts “will be less solicitous of the welfare of the [child] than would the courts of Minnesota”).

X.T.P. was born in and resided in a state other than Minnesota. There was no evidence that X.T.P. was abused, neglected or otherwise in need of the Minnesota Juvenile Court’s intervention. Nor did such evidence ever appear. In short, there were no exigent circumstances to justify asserting personal jurisdiction; consequently, the juvenile court never obtained personal jurisdiction over X.T.P.

## **II. THE JUVENILE COURT ABUSED ITS DISCRETION BY DENYING THE MOTION TO TRANSFER TO TRIBAL COURT.**

### **A. Standard of Review.**

A trial court’s refusal to transfer a proceeding to tribal court is reviewed for abuse of discretion. *In the Matter of the Welfare of the Children of C.V.*, 2004 WL 2523127 (Minn. App. 2004). Moreover, the trial court’s factual determinations must be reversed if they are clearly erroneous. *In the Matter of the Custody of S.E.G., A.L.W., and V.M.G.*, 521 N.W.2d 357, 363 (Minn. 1994).

### **B. The Juvenile Court’s Refusal to Transfer X.T.P.’s Case to Tribal Court was an Abuse of Discretion, and Its Factual Predicates were Clearly Erroneous.**

A court must grant a motion to transfer a custody proceeding involving an Indian Child to tribal court unless good cause is shown. 25 U.S.C. § 1911(b); *see also, In the*

*Matter of Welfare of B.W.*, 454 N.W.2d 437 (Minn. Ct. App. 1990) (“transfer of jurisdiction over Indian child custody matters to tribal authorities is mandated by the ICWA whenever possible”). In enacting the ICWA, Congress specifically provided that:

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe . . . .

25 U.S.C. § 1911(b). As the Minnesota Supreme Court has stated, the purpose of the ICWA is:

to prevent the destruction of Indian families by reducing removal of Indian children from their communities and to relieve the difficulties experienced by Indian children raised in non-Indian homes by providing preferences from placements within Indian communities.

\* \* \* \*

One important way in which the Act achieves its goals is by . . . providing for transfer of jurisdiction to the tribe, absent good cause to the contrary, of child custody proceedings involving Indian children living off the reservation.

*In the Matter of the Custody of S.E.G., A.L.W., and V.M.G.*, 521 N.W.2d 357, 358-359 (Minn. 1994). The party opposing the transfer bears the burden of establishing that good cause exists for denying the transfer. *In the Interest of J.L.P., S.D.P., W.J.P., and C.P.*, 870 P.2d 1252, 1257 (Colo. Ct. App. 1994).

In this case, the Juvenile Court proffered two grounds in support of its denial of transfer to tribal court: (1) undue hardship might result from the fact that the Tribe's tribal courts are 400 miles from Minneapolis; and (2) the Tribe's formal petition was not

filed until “thirty eight weeks after the permanency petition was filed.” As a matter of law, neither purported ground is sufficient, and the Juvenile Court’s denial of transfer should be reversed.

1. Transferring the Matter Would not Impose an Undue Hardship.

The Juvenile Court concluded that granting the motion to transfer would cause an undue hardship on the parties as the Tribal Offices of the Yankton Sioux are located approximately four hundred miles from Minneapolis. The court conclusorily averred that a transfer would make it difficult for witnesses, participants, and parties to participate in the proceedings.

That conclusion must be rejected for two reasons. First, the conclusion of undue hardship is not supported by any facts. In its findings of fact, the Juvenile Court did not cite the testimony of a single potential witness, participant, or party to the effect that he or she would be unduly burdened if the proceedings were transferred to the Yankton Sioux Tribal Court. Where there is no evidence to support a determination that a transfer would impose an undue hardship on the relevant parties, a trial court should grant the motion to transfer. *In the Interest of J.L.P., S.D.P., W.J.P. and C.P.*, 879 P.2d 1252, 1258 (Colo. App. 1994) (a motion to transfer cannot be denied on undue hardship grounds where the party opposing the motion “did not present any evidence . . . at the preliminary hearing through affidavits” that it would be unduly burdened). Here, Human Services wholly failed to satisfy its burden of demonstrating undue burden.

Second, acceptance of the Juvenile Court’s sole basis for a finding of undue burden—*i.e.* that the Tribe is located 400 miles from Minneapolis—would be tantamount

to a *per se* rule precluding a transfer in every case involving a tribe in a relatively remote locale. As noted by the South Dakota Supreme Court in rejecting a similar argument, if the Juvenile Court were right, “almost every case involving a child not residing on a reservation could be denied transfer.” *In the Matter of the Guardianship of J.C.D.*, 686 N.W.2d 647, 650 (S.D. 2004).

As a matter of law, the mere fact that the Yankton Sioux is located in South Dakota is not a sufficient reason to deny the motion to transfer on undue hardship grounds. However, the Juvenile Court cited no other factor in support of its hardship determination. It simply stated a conclusion that a transfer would present an undue hardship. Because that legal conclusion was not based upon any facts, it is clearly erroneous and must be reversed.

2. The Motion to Transfer was not Untimely.

The Juvenile Court also declined to transfer the proceedings on the purported ground that the motion to transfer was untimely and that the “request for the transfer came at an advanced stage in the proceedings.” That assertion is also clearly erroneous and an abuse of the Juvenile Court’s discretion.

The underlying motion to transfer was filed more than three months before the scheduled trial date and less than eight months after the petition to terminate T.T.B.’s parental rights was filed. Moreover, it was filed on July 22, 2004, the date set by the

Juvenile Court for the filing of dispositive motions.<sup>2</sup> Thus, the proceedings were very much in the pretrial stages.

Courts that have addressed this issue have not found untimely a motion to transfer to tribal court filed at the pretrial stages. For example, in *In the Interest of A.B.*, 663 N.W.2d 625, 632 (N.D. 2003), the Supreme Court of North Dakota did not find untimely a transfer motion that “was filed about one week before a pre-trial conference and about two weeks before the scheduled trial.” *See also, In the Interest of J.L.P., S.D.P., and C.P.*, 870 P.2d 1252 (Colo. Ct. App. 1994) (motion filed one year after tribe received notice of proceedings was not untimely). In this case it is undisputed that the transfer motion was filed months before the scheduled trial date, much less than a year after the case was commenced and in full conformance with the Juvenile Court’s schedule for the filing of dispositive motions. There is no evidence anywhere in the record that any party was prejudiced in any way by the timing of the motion. Moreover, the Juvenile Court itself invited the Tribe to serve its own petition on August 12, 2004. Viewing these facts in light of the above-cited precedents, it is evident that the Juvenile Court abused its discretion in denying the motion to transfer, and its Order denying transfer must be reversed.

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<sup>2</sup> While the Tribe’s official petition was not filed until September 8, 2004, that fact is immaterial. *See, e.g., People in the Interest of J.L.P.*, 870 P.2d 1252 (Colo. Ct. App. 1994) (citing BIA Guidelines and holding that a request made by a parent to transfer jurisdiction is the equivalent of a request made by the Tribe and vice versa) Consequently, the Tribe’s official request was merely evidentiary—reflecting irrefutable proof that the Tribe would accept jurisdiction. Additionally, the Court was notified that the Tribe agreed to the Joint Petition to Transfer Jurisdiction to Tribal Court, and there is reason to believe that Tribe thought that it need not do anything else. *See V, Tr 3-5, 8/12/04*. Moreover, at a hearing on August 12, 2004, the trial court expressed a preference for receiving written confirmation from the Tribe that it wished to accept jurisdiction before the court issued an opinion on the motion to transfer to tribal court. *See V, Tr. 13, 8/12/04*. The Tribe then acted in accordance with the Juvenile Court’s request and filed its own petition. Remarkably, the Juvenile Court then used the Tribe’s compliance with its request as “grounds” for denying transfer.

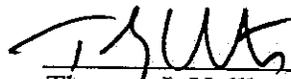
## CONCLUSION

For the reasons stated herein, Appellant Yankton Sioux Tribe asks this Court to hold that the Juvenile Court's orders granting permanent custody to Sandra Granse and refusing to transfer the proceedings to the Yankton Sioux Tribal Courts are unlawful under Minnesota law and the Indian Child Welfare Act. The Juvenile Court did not have subject matter jurisdiction over this case. The Juvenile Court did not have personal jurisdiction over X.T.B. The juvenile court did not have good cause to refuse a request to transfer these proceedings to tribal court. These errors taken singly or cumulatively are erroneous and mandated reversal of the Juvenile Court's award of custody.

Respectfully submitted,

Dated: November 29, 2005

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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In the Matter of the Welfare of the

CERTIFICATION  
OF BRIEF LENGTH

Child of T.T.B. and G.W., Parents

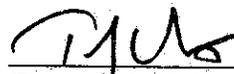
Appellate Court  
Case Number: No. A05-1615

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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with proportional font. The length of this brief is 4,418 words. This brief was prepared using Microsoft Word 2003 software.

Dated: November 29, 2005

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).