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**COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III**

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**TATUM ACEVEDO,**

Appellant

v.

**ANTHONY JORDAN, BRANDI JORDAN,**

**and STEVE JORDAN**

Respondents.

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**RESPONDENT'S BRIEF**

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Shadan Kapri, WSBA 39962  
Kapri Law Firm  
1312 N. Monroe, #244  
Spokane, WA 99201  
(509) 252-6002  
Attorney for Respondent,  
Anthony Jordan

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## I. ASSIGNMENTS OF ERROR

- A. The trial court did not error by finding that this non-parental custody proceeding is not a “child custody proceeding” as defined by statute that would make it subject to the Indian Child Welfare Act, 25 U.S.C. §1901-63 and the Washington State Indian Child Welfare Act, RCW 13.38.010-190, and therefore the court was correct in entering a Non-Parental Custody Orders that did not satisfy the procedural and evidentiary requirements of the Indian Welfare Act, 25 U.S.C. §1901-63 and the Washington State Indian Child Welfare Act, RCW 13.38.010-190.
- B. The trial court did not error by denying Ms. Acevedo’s Motion to Invalidate the Non-Parental Custody Decree pursuant to 25 U.S.C. §1914 and Motion to Vacate on the grounds that the court lacked jurisdiction.
- C. The trial court did not error by denying Ms. Acevedo’s Motion for Reconsideration.

## II. STATEMENT OF THE CASE

Tatum Acevedo was 14 years old when she became pregnant with the minor child in this matter, N.J. (Clerk’s Papers 216) The biological father, Anthony Jordan, was 17 years old. (CP 216) Due to the biological parent’s age and inability to properly provide for all of the child’s basic needs, paternal grandparents Brandi and Steve Jordan, became the primary caregivers of the minor child. (CP 216 – 217)

Due to this arrangement, all parties involved agreed that this was in the child’s best interest to give legal custody of the minor child to the paternal Indian grandparents. (CP 216-217) All parties in this case voluntarily signed a Findings of Fact and Conclusions of Law, and Non-Parental Custody Decree in Stevens County on January 2, 2015 giving Brandi and Steve Jordan, primary custody of the minor child, N.J. (CP 216-

217) The biological parents also signed a Joinder waiving notice (see Nonparental Custody Petition filed on December 19, 2014). (CP 215-223)

The Findings in the Agreed Order signed by all parties state that the custody arrangement was in the minor child's best interest because "*at the time of the case, the parents were unfit. They are currently unfit because: Due to age, both parents are unable to emotionally, financially, and developmentally support the child... [Brandi Jordan and Steve Jordan] have been the primary caregiver of...[minor child],,,since birth [and] are able to support her in all aspects of her development until her parents have shown to be able to do so.*" (emphasis added) (CP 215-223)

The Agreed Order signed by all parties and the Court granted parents, Anthony Jordan and Tatum Acevedo visitation with the child "unlimited within the Petitioner's home." (CP 215 – 223) At the time, they were all living together in the same household. The Order was signed by agreement of the parties by Anthony Jordan and Tatum Acevedo on January 2, 2015. See Findings of Fact and Conclusions of Law (Nonparental custody) filed in Superior Court of Stevens County on January 2, 2015.

In December 2017, Ms. Acevedo filed for an Immediate Restraining Order in Spokane County Superior Court to immediately remove the child from the paternal grandparents and into her primary care pending the return hearing. She also filed a Petition to Modify a Parenting Plan/Custody Order, a Motion for Adequate Cause Decision to Change a Parenting/Custody Order.

At the return hearing on January 10, 2017, a Spokane County Superior Court Commissioner found that Ms. Brandi Jordan (paternal grandmother) should continue to be

the primary custodian of the minor child under the Non-Parental Custody action entered with the Court. (CP 215 – 217) These motions follow from these facts.

### III. ARGUMENT

- A. The trial court did not error by finding that this non-parental custody proceeding is not a “child custody proceeding” as defined by statute that would make it subject to the Indian Child Welfare Act, 25 U.S.C. §1901-63 and the Washington State Indian Child Welfare Act, RCW 13.38.010-190, and therefore the court was correct in entering a Non-Parental Custody Orders that did not satisfy the procedural and evidentiary requirements of these laws.

This case is not subject to the Washington Indian Child Welfare Act. RCW 13.38.010 – 190. Under the Findings and Intent for this law it states explicitly:

“The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent *out-of-home placement* of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe. Whenever *out-of-home placement* of an Indian child is necessary in a proceeding subject to the terms of the federal Indian child welfare act and in this chapter, the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in this chapter. The legislature further finds that where placement away from the parent or Indian custodian is necessary for the child's safety, the state is committed to a placement that reflects and honors the unique values of the child's tribal culture and is best able to assist the Indian child in establishing,

developing, and maintaining a political, cultural, social, and spiritual relationship with the child's tribe and tribal community.”

RCW 13.38.030 (emphasis added)

This case was not an “out of home placement.” The child was placed with her Indian paternal grandparents. Furthermore, the Act (state and federal law) is clear that the applies only in a “child custody proceeding” where one of the following must be satisfied. For these Acts to apply the Indian child must be placed in one of the following:

- (a) "Foster care placement" which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
- (b) "Termination of parental rights" which means any action resulting in the termination of the parent-child relationship;
- (c) "Preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement; and
- (d) "Adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

RCW 13.38.040 (3); See 25 U.S.C. §1903 (1)

None of these applied in this case. This was not a foster care placement, termination of parental rights, pre-adoptive placement or an adoptive placement. In fact, the minor child was placed with Indian custodians. The paternal side of the minor child 's family is of Indian decent and the child was placed with the paternal grandparents. Indian custodians are defined as Native Americans who under state

law has legal or temporary physical custody of an Indian child, or to whom the parent has transferred temporary care, custody, and control of an Indian child. RCW 13.38.040 (10); See also 25 U.S.C. §1903 (6).

As defined by statutes the paternal Indian grandparents fit within the definition of Indian custodians. See RCW 13.38.040 (10); See also 25 U.S.C. §1903 (6). And the Respondent's argument is that by placing the child with Indian custodians this Act was not triggered as an "out of home placement" or a "child custody proceeding." RCW 13.38.030; RCW 13.38.040 (3); RCW 13.38.040 (10). 25 U.S.C. §1903. At the time the original Non-parental Custody Order was entered in 2015 all the parties in this case were living together in the same household.

Furthermore, the court did not error in granting the non-parental custody to the biological (paternal) side of the family because all parties agreed and signed off on the original nonparental custody action in January 2, 2015. None of the parties objected to this placement for three years and it was found to be in the best interest of the minor child to have responsible Indian custodians at that time since the parents were both minors. Not doing so would have been detrimental to this minor child due to the parents age and inability to adequately care for this child.

In Washington, there is a presumption in favor of parental custody. However, that presumption was lifted in this case when both parents signed the Joinder waiving notice in the Nonparental Custody Petition and again when both biological parents signed the Final Orders in the Nonparental Custody giving custody to the grandparents. Also, custody was given to the paternal grandparents and not outside foster care or an institution. Everyone agreed when it was entered that this was a

valid custody order in the child's best interest, and all parties had followed the order for three years before any objection had been filed.

In conclusion, all parties agreed when this original petition was filed back in December 19, 2014 that the Indian Child Welfare Act and its equivalent federal law did not apply as did the Judge when the final Nonparental Custody orders were signed by the court and entered in Stevens County on January 2, 2015.

- B. The trial court did not error by denying Ms. Acevedo's Motion to Invalidate the Non-Parental Custody Decree pursuant to 25 U.S.C. §1914 and the Motion to Vacate on the grounds that the court lacked jurisdiction.

A court is only authorized to hear and determine a cause or proceeding if it has jurisdiction over the parties and the subject matter. *State v. Werner*, 129 Wn.2d 485, 493, 918 P.2d 916 (1996). A court lacking jurisdiction may do nothing more than enter an order of dismissal. *Deschenes v. King County*, 83 Wn.2d 714, 716, 521 P.2d 1181 (1974).

Whether or not a court has jurisdiction is a question of law subject to de novo review. *Crosby v. County of Spokane*, 137 Wn.2d 296, 971 P.2d 32, 36 (1999), *State v. Werner*, 129 Wn.2d 485, 493, 918 P.2d 916 (1996).

"Jurisdiction means the power to hear and determine." *State ex rel. McGlothern v. Superior Court*, 112 Wn. 501, 505, 192 P. 937 (1920). "In order to acquire complete jurisdiction, so as to be authorized to hear and determine a cause or proceeding, the court necessarily must have jurisdiction of the parties thereto and of the subject matter involved." *State ex rel. New York Casualty Co. v.*

*Superior Court*, 31 Wn.2d 834, 839, 199 P.2d 581 (1948). There are in general three jurisdictional elements in every valid judgment, namely, jurisdiction of the subject matter, jurisdiction of the person, and the power or authority to render the particular judgment. *Marriage of Little*, 96 Wn.2d 183, 197, 634 P.2d 498 (1981).

In this case, the original non-parental custody decree was entered in Stevens County on January 2, 2015. When this motion to vacate and invalidate was brought before the court in Spokane County, Stevens County still had jurisdiction over the case.

At that time there was no showing that it violated any provisions of sections 25 U.S.C. §1911 – 1914. The Spokane trial court's findings that it does not have jurisdiction to vacate or invalidate Orders entered in other counties was correct. *See State v. Golden*, 112 Wn. App. 68 47 P.3d 587. The trial court also made a finding that these "motions must be brought before the Stevens County Superior Court" and not Spokane County. (CP 352-353)

There is no valid reason that the Appellant could not have brought these motions in the court of proper jurisdiction, Stevens County. The possibility of relief and the opportunity to decide the motion to invalidate and/or vacate could have been brought up in the county that actually entered the original non-parental custody orders back in January of 2015 and had the full record of the case.

C. The trial court did not error by denying Ms. Acevedo's Motion for Reconsideration.

The Appellant assigns error to the trial court's denial of the Motion for Reconsideration. Appellate courts review motions for reconsideration for an abuse of discretion. *Wilcox v Lexington Eye Institute*, 130 Wn. App. 234, 241, 122 P.3d 729 (2005). A court abuses its discretion when its decision is based on untenable grounds or reasons. *Stenson*, 132 Wn.2d at 701.

In this case, the trial court did not abuse its discretion in making such a ruling. In the court's findings the trial judge states:

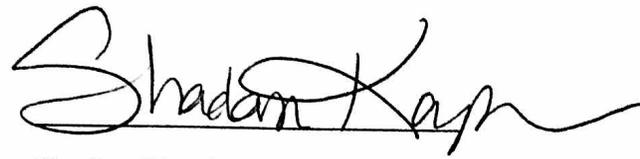
"This Court has no knowledge of what the record in Stevens County reflects or what the standard procedure in that County is as to who was present, who was questioned, what evidence or testimony was presented etc. In Spokane County, the matter could have been simply handled in the ex parte department by having a commissioner review the agreed order without taking any further evidence. In other counties, testimony is often required. This Court cannot examine the question of whether the proceedings were 'erroneous' without that information and that information is readily available in Stevens County." (CP 578-579)

Based upon these findings in the record, it is clear that the trial court did not abuse its discretion when denying the motion for reconsideration

#### IV. CONCLUSION

Based on the legal arguments above Respondent, Anthony Jordan, through counsel requests that the trial court's decisions in this case be affirmed.

Dated this 13<sup>th</sup> day of November, 2018.

A handwritten signature in black ink that reads "Shadan Kapri". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Shadan Kapri, WSBA 39962

Kapri Law Firm

Attorney for Respondent,

Anthony Jordan

# KAPRI LAW

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## Transmittal Information

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### Comments:

This is the brief submitted on behalf of Anthony Jordan, a Respondent in this case. I do not represent the other two Respondents in this case.

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Sender Name: Shadan Kapri - Email: Kaprilawfirm@gmail.com

Address:  
1312 N MONROE ST  
SPOKANE, WA, 99201-2623  
Phone: 509-252-6002

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