QUILEUTE TRIBAL COURT
LA PUSH, WASHINGTON

IN THE MATTER OF:		
THE GUARDIANSHIP OF	)	
	)	14-G-009
Samantha California Brewer	)	
	)	Appellant's Brief
	)	
	)	

COMES NOW the Father, Eric Brewer, through his attorney Sandra L. Denton Quileute Tribe Public Defender, and submits his initial Brief in this matter.

This is a case of the utmost tragedy. A wrong was done to a parent and a child. The bright spot, the glimmer of hope, is that the legal system, this Court, has the opportunity to right a wrong.

I. ISSUES FOR REVIEW

1) Did the trial court make a finding in accordance with the Quileute Tribal Code?
2) Did the trial court make a finding consistent with United States Supreme Court precedent?
3) Is the Guardianship Petition in Samantha's best interest?

II. STATEMENT OF THE CASE

A. Procedural History

On September 14, 2014 a Petition for Guardianship of Samantha Brewer was filed by Tony and Narcissus Foster. On January 14, 2015 the matter came before Chief Judge Colegrove for hearing. On March 12, 2015 Judge Colegrove entered an Order of Guardianship (Order). The father of Samantha and Appellant in this matter, Eric Brewer, timely filed his notice of appeal.

The Appellant, by and through the undersigned counsel, respectfully move this Appellate Court to vacate the decision and Order of Guardianship by Quileute Tribe Chief Judge Colegrove entered on March 12, 2015. We ask the Appellate Court to review the facts on the record, reverse the trial court's decision and dismiss the Guardianship Petition for insufficient evidence.

B. Facts

Samantha Brewer was removed from her parents in 2009 due to her mother's abuse of her father, Eric Brewer. (Transcript from January 13, 2015 hearing on Guardianship Petition (hereinafter TR), 12:2) Eric did nothing to instigate his daughter being placed in the custody of Indian Child Welfare (ICW) (TR 26:3-6). After Samantha was taken from her father, a judge for the Quileute Tribe (Tribe) entered an illegal permanent protection order keeping Eric from seeing his children for over 2 years. (TR 14:3; 15:15) It was not until the very end of 2013 that Eric was able to resume visits with Samantha, 4 years after her removal. (TR 5:15) Since that time he was afforded minimal visitation with no efforts to reunify. (TR 28:17-25; 29:1) Eric successfully and easily completed all that was required of him by ICW *over a year prior* to the Guardianship Petition being filed. (TR 19:8; 34:13-15) Notwithstanding Eric completing everything required of him and the fact that he was NOT the parent "at fault" in the MINOC petition, ICW still made no attempts to reunify him with Samantha. (TR 19:8) Now, six long years after the inception of this case, the foster parents, joined by the Tribe, have petitioned the Tribal Court for Guardianship claiming that Samantha is bonded in her placement and to remove her would not be in her best interest. (TR 29:11-13)

III. SUMMARY OF THE ARGUMENT

The Tribal Court entered an Order, a hybrid of sorts, that grants the Guardianship Petition but orders the guardians to allow Eric to have visits. (Order ¶6) The Order also was entered in a temporary fashion, as the Order is in effect "until such time that a shared custody order may be achieved between the current guardians and the child's biological father, Mr. Brewer". (Order finding ¶8) The trial court made the finding for Guardianship contrary to the Quileute Tribal Code and United States Supreme Court case law as Eric has preference for placement of his biological daughter and a constitutional right to raise her. Additionally, the trial court entered the order without a supported factual basis either from the record or contained within the Order itself. It is upon these issues that the appeal follows.

IV. ARGUMENT

A. The Quileute Tribal Code gives biological parents priority for placement unless there is a determination of unfitness.

Eric Brewer is the biological father of Samantha and is a fit parent as agreed to by the ICW. (TR 26, 1-14) He has priority for placement. (Quileute Tribal Code Section 2.5) The Quileute Tribal Code (Code) has a very specific outline the trial court is to follow when making placement decisions regarding children within its jurisdiction. In determining placement, pursuant to Section 7.7.D) the trial court must follow the placement priority under the Code as set out in §2.5. The Code mandates in Guardianship matters that the Quileute Family Court shall observe the preferences as outlined in §2.5. (Code, §7.7.D) The biological parent has priority unless and until they

can be shown to be unfit. (Code, §2.5.A.1, B.2). In fact, the Code goes on to say that the placement preferences shall be observed unless the person having priority cannot adequately care for and protect the child, or placing the child with the person having priority may pose a danger to the child. (Emphasis Added) (Code, §2.5.B.2).

There was no such finding in the present case. In fact, the social worker testified that Eric was not unfit and they found no fault with his parenting abilities. (TR 26:1-14) Eric completed all services requested of him a year prior to the Guardianship Petition filing and ICW had no concerns over his parenting abilities. (TR 19:8; 26:1-14). With this evidence in and throughout the record, there is absolutely no reason the trial court should have denied Eric his preferential placement as biological father. In fact, the trial court should have admonished ICW for not instituting real efforts for reunification as Eric was entitled to under the Code. (Code §6.8.2.f). Ordering the Guardianship was in error, unsupported by the evidence and the law and should be reversed.

B. The trial court violated Eric's Due Process rights to raise his child

The controlling case law, in the absence of relevant Quileute Case law, is from the United State Supreme Court. (Code § 13.26) The Order from the trial court clearly violates long-standing precedent from the highest court in the land. The United States Supreme Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential," *Meyer v. Nebraska*, 262 U. S. 390, 399 (1923), "basic civil rights of man," *Skinner v. Oklahoma*, 316 U. S. 535, 541 (1942), and "[r]ights far more precious . . . than property rights," *May v. Anderson*, 345 U. S. 528, 533 (1953). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom

include preparation for obligations the state can neither supply nor hinder." *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, *Meyer v. Nebraska, supra*, at 399, the Equal Protection Clause of the Fourteenth Amendment, *Skinner v. Oklahoma, supra*, at 541, and the Ninth Amendment, *Griswold v. Connecticut*, 381 U. S. 479, 496 (1965).

The Petitioners did not produce evidence, nor did the trial court specifically find that Eric's "basic civil right of man", the right to raise his daughter, should be taken from him. We cannot make it an acceptable practice to keep children from their biological parents long enough that the law no longer needs to be complied with. The only evidence adduced by the Petitioner that the trial court should grant the Guardianship is because Samantha has been with her foster parents for 6 years. (TR 29:11-13) This is not adequate legal rationale to keep a biological parent from their child when the time of separation has been of no fault of the biological parent.

A natural parent who has demonstrated sufficient commitment to his or her children is thereafter entitled to raise the children free from undue state interference. *Hodgson v. Minnesota*, 497 U.S. 417, 447 (1990). Eric has shown more than a "sufficient commitment" to Samantha. He has fought for her return from the moment she was taken from him. He has logged countless hours on the road to visit her. (TR 146;5-9) Their visits show a bond, a love, an excitement to be together. (TR 24:19-25) Samantha recognizes who Eric is as she runs and jumps into his arms at their visits. (*Id*.) Yet, ICW gave no evidence at the hearing, nor did the Petitioner produce any, as to why, once visits were resumed that reunification efforts were not pursued. In fact,

ICW testified that since visits were resumed in late 2013 Eric and Samantha have had 11 contacts in a therapeutic setting. (TR 53:8-13) That is less than one time per month and contrary to a request for increased visits by the therapist, Rachel Hardies. (TR 25:7-16) Yet, Petitioner is quick to point out that Samantha is more bonded to the foster parents. Understandably so since her father was illegally kept from her for years by a permanent protection order and then she was only able to see him for a handful of hours in a year's time. ICW went as far as to ignore the child's therapist's plea to allow for more visitation between father and child. (TR 25:7-16)

This may have been a different case had ICW come into court armed with efforts of failed reunification efforts. But, fortunately for Samantha, that is not the circumstance here. She has a father who has fought for her for years, who did everything required of him by ICW, who has been a consistent loving presence in her life. (TR 24:19-25) Samantha should have been reunited with him years ago. Acknowledging that the hands of time cannot be turned back, this Court has the ability to finally right the wrong that was done to this family. Reverse the trial court's ruling and dismiss the Guardianship Petition.

The Quileute Code nor the United States Supreme Court sanctions that a child who is kept away from a parent long enough (due to no fault of the parent), is then entitled to be raised by someone other than a fit biological parent. The Order for Guardianship is not supported by the evidence or the law and should be vacated.

C. *The Trial Court's Order for Guardianship insufficiently states facts and the Order is not supported by facts in the record*

The trial court did not make any specific findings as to Eric Brewer as required by the Quileute Code. (Code §7.8(A)) A close review of the Order reveals that the trial court found default on the part of the *mother* and found by a preponderance of the evidence that a guardianship is in the best interest of the minor child. (Order, ¶6) The Order does not make any reference specifically to the father. In fact, the Order makes findings completely contrary to the evidence as it pertains to the father. In ¶4 and 5 of the Order's findings, it states that services were offered with reasonable time to complete the services but that there was little likelihood that the conditions would be remedied. Clearly the trial court simply pasted the language directly out of the Code (§7.8(A)(2)(3)) without any reference to the uncontested testimony at the hearing. The uncontested evidence was that Eric was a fit parent, he completed all services a year prior, and no further services were required of him. (TR 19:8; 34:13-15) This part of the Order does not apply to Eric nor does it fit the uncontested evidence presented at the hearing. All conditions had been remedied and the uncontested evidence was that Eric was a fit and proper parent. (TR 19:8; 26:1-14)

The Order also fails to detail findings regarding the placement priorities as the trial court is directed to do under the Code. (Code, §7.7.D) The Code requires the trial court to follow the placement priorities unless the person having priority cannot adequately care for and protect the child, or placing the child with the person having priority may pose a danger to the child. (Code §2.5.B.2) Biological family has priority over non-blood relations. (Code, §2.5.A.1)

Instead of following the Code the Order states a finding in ¶8 that the Guardianship shall be entered until such time that a shared custody order may be

achieved between the current guardians and the child's biological father. Certainly if the trial court had issue with the safety of Samantha with her father the court would not have considered any type of custody be awarded to the father. Furthermore, it is evident that the trial court was looking to appease all parties by finding a compromise to avoid having to apply the law - the law that recognizes that Eric has priority for placement and a Constitutional right to raise his child. Absolutely no evidence was presented, nor did the Petitioners ever argue, that Eric could not adequately care for and protect the child or posed a danger to Samantha. In fact, ALL of the evidence was to the contrary. (TR 26:1-14) The uncontested evidence was that Eric was a fit and proper parent, loving and attentive to Samantha. (TR 24:19-25) Had the trial court followed the Code, as directed, the Guardianship Petition should have been dismissed for lack of evidence. (Code §2.5.B.2)

Finally, the trial court enunciated the importance of Samantha maintaining a relationship with her foster parents. (Order ¶11) While Eric recognizes the importance of a gentle transition from the foster parent's home to his, the Code mandates that the trial court give placement priority to biological parents. (Code, §2.5.A) The trial court did not follow the law of the Quileute Tribe or the supreme law of the land in issuing the Order. The Order must be reversed and the Guardianship Petition dismissed.

D. Best Interest of the Child dictates a reunification with her father

Besides the petition being baseless and unsupported by evidence, the best interest of Samantha is to be with her biological parent and to be reunited with her family. Eric fully recognizes that his child has bonded with her foster parents and to quickly remove her would cause her harm. (TR 151:19-25; 152:1-3) The Guardianship

Petition was granted in error and was premature. By their own admission, Eric was in no further need of services FOR OVER A YEAR yet they kept his visits limited, supervised and made zero efforts toward reunification. (TR 19:8; TR 26:1-14) Eric asked the trial court to allow real reunification efforts to occur and gently ease Samantha through a transition into his home. (TR 193:14-19) Instead the trial court erroneously and without legal grounds granted the Guardianship Petition on the sole basis of Samantha living with her foster parents for 6 years. This is not a sufficient legal justification to keep a child from her biological parent as stated in the Code §6.9(C): "the best interest of the child can never be determined *solely* by the amount of time that may have passed between events in a child's life or the amount of time which may have passed between court hearings." (Emphasis in original) There is absolutely no other reason, stated in the record or on the Order, other than time. (TR 29:11-13) This reason is legally insufficient and violates the Quileute Code and Eric's constitutional rights.

V. CONCLUSION

This is a case of the utmost tragedy. Many years ago a wrong was done to a parent and a child. That wrong was perpetuated over 6 years by a complete lack of reunification efforts by ICW. The bright spot, the glimmer of hope, is that the legal system, this Court, has the opportunity to right a wrong. The trial court entered an Order that was unsupported by evidence, any evidence at all, that the Guardianship Petition should be entered. Eric is a fit parent, ready and capable of raising his daughter. Not one party in this action stated otherwise. Not even the trial court. However, once again he has been wrongfully denied his daughter and the rationale

being that too much time had passed is not legally sufficient. To allow the Guardianship to continue violates Quileute Tribal Code as well as United States Supreme Court precedent. Stop the injustice and allow Eric to reunify with his daughter. Reverse the trial court's Order and dismiss the Guardianship Petition.

RESPECTFULLY SUBMITTED this 24th day of July, 2015,

/s/ Sandra L Denton
Sandra L Denton, Attorney for Father/Appellant
Quileute Public Defender

CERTIFICATE OF SERVICE

I, Sandra L. Denton, hereby certify that I served this Motion to Emily Howlett, Quileute Prosecutor via email to emily.howlett@quileutenation.org., Paul Siewell, attorney for Petitioners via email to psiewell@gmail.com and to Anita Neal, Attorney for Mother via email to anita.neal@quileutenation.org.

Dated July 24, 2015

/s/ Sandra L Denton
Sandra L. Denton, Attorney for Father/Appellant