IN THE QUILUETE TRIBAL COURT OF APPEALS
LA PUSH, WASHINGTON

IN RE THE GUARDIAN SHIP OF: SAMANTHA BRE\ WER (D.O.B. 11-17-2008)	**No. 14-G-009** **APPELLANT'S REPLY BRIEF**

COMES NOW the Appellant, Eric Brewer-McCloud, by and through his attorney, Zenovia N. Love, Quileute Tribe Public Defender, and submits this reply Brief in this matter.

I. ARGUMENT

A. Reply to Quileute Tribe's Responsive Brief

The Tribe's Exhibit 1 should be stricken from the appellate file and not taken into consideration by this Court because it was not an exhibit introduced at trial. An appellate court is limited to the evidence and record before the trial court at the time the order in dispute was entered.

However, if the Court does consider Exhibit 1 in its decision making, then it should be used as an example of the extent that Mr. Brewer went through to fight to parent his own children, in the face of gross injustices performed by the Tribe and its departments throughout his Dependency proceeding and ultimately during this guardianship trial.

The Tribe argues that the Court's Guardianship Order should be upheld because the trial court rightfully ruled, in the best interest of the child. The Tribe cites section 4.2 of the Quileute Code, as it defines the best interest of the child, to bolster their argument of upholding the trial Court's order. However, in section 4.2, while defining the best interest of the child, the Code states, "…, preferably within his or her own home …" According to section 4.2, the Code prefers for the child's best interest to

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be met in her own home. Therefore, although the Fosters can meet the child's basic needs, so can the father.

The social worker, Jessica Smith, testified that she did not do a home study on the father's home, but she had done a home study on the Fosters' home. (*Transcript*, pg. 23, line 20-25). She also testified that she never witnessed Mr. Brewer interact with S.B., so she based her opinion of a lack of a bond on other people's reports. (*Id.* at pg. 24, line 3-5 and line 11-15). Therefore, the Tribe never investigated whether or not it was in S.B.'s best interest to be returned to her father. The Tribe solely focused on maintaining and building the relationship between S.B. and her foster parents, as testified to by Jessica Smith, the ICW caseworker. (Id. at pg. 32, line 19- pg. 33, line 7). The Tribe's actions of focusing on maintaining the relationship with the foster parents over focusing on returning S.B. to her parents, violates the Quileute's Tribal Code and the ICW's policies.

Jessica Smith testified that the policy of ICW is to first try to reunify children with their parents. Conversely, ICW failed to seek reunification first, by making it nearly impossible for Mr. Brewer and S.B. to form a bond, with a recommendation of very limited time spent for visitation between the two. Although Mr. Brewer only had one hour a month of therapeutic visits and an hour a month of non-therapeutic visits, the foster parents would fail to bring her to the visits. (*Transcript*, pg. 26, line 15-25; pg. 27, line 1-2). The record does not reflect that the foster parents were reprimanded for failing to bring her to the visits, especially since the only service left for Mr. Brewer was to build a bond with S.B.

The Tribe argues that ICW provided a service that was tailored to develop a bond strong enough for reunification and that Mr. Brewer was given a sufficient amount of time to complete the service. However, that is the opposite of what happened. The record reflects a lack of ICW moving towards reunification with the father. The record demonstrates that the Tribe and its entities, operated as if the foster parents were the biological parents and Mr. Brewer was not. The Tribe and ICW continuously put the needs and desires of the foster parents over Mr. Brewer, thereby violating his parental rights and making it impossible for him to complete the service of bonding. For instance, the foster parents were permitted to not bring the child to visits. ICW did not intervene and pick up the child to transport her to

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visits, in the event the foster parents could not. In addition, Mr. Brewer was in substantial compliance for seven (7) years and his visits were not increased over that time span. In fact, two of those years, he was barred by the Trial Court from seeing his daughter altogether. It was not because he was a threat to his children, but because he was a threat to the Fosters' having custody of his daughter. It was not until 2013, that he was able to see his daughter again and the visiting schedule was conducive to build and maintain a deeper bond. The visits were scheduled to be one hour per month for a year; two hours per month for the second year; and 5 hours per month in the third year. This schedule is outrageous and does not provide a service to where Mr. Brewer can bond with his daughter S.B. It does the opposite. The visitation schedule continues to treat Mr. Brewer like he is not the father of S.B., and it tramples on his right to parent his own child. Throughout the dependency proceeding, there was very little effort to ensure the visits increased in a timely fashion, even when a professional requested the visits to increase, ICW, failed to act. (*Transcript*, pg. 54, line 21-pg. 55, line 8).

The Tribe argues that Section 7.7(d) of the Quileute Code makes it optional for the trial court to follow the placement preferences listed in Section 2.5A, but it is not option. The Code clearly states that the trial court shall follow the preferences in 2.5A, as that is in the best interest of the child.

Although the best interest of the child is a factor in deciding whether or not to grant a guardianship, it is only one factor. The Court must also find, by a preponderance of the evidence, three other important factors, before granting a guardianship. Quileute Tribal Code Section 7.8 states,

> "A. The court shall enter an order appointing a guardian pursuant to the petition if it finds, by a preponderance of the evidence, that at the time of the hearing:
>
> 1) The child has been, or will have been, removed from the custody of the parent(s), guardian, or custodian for a period of no less than one year;
>
> 2) All necessary services, reasonably available and capable of addressing the issues brought forth in the case within the foreseeable future, have been offered or provided, and the parent(s) have been provided with all reasonable time to access and complete services and comply with court requirements;
>
> 3) There is little likelihood that the conditions will be remedied within a time period that is not so long that the child's emotional well-being will not be placed at risk, giving consideration to the age of the child and the strength of the bond between parent and child; and that
>
> 4) A guardianship, rather than termination of the parent/child relationship or continuation of the child's MINOC status, would be in the best interest of the child."

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The Tribe's argument fails because the best interest of the child is not the only factor that the Court must find before granting a guardianship. The Court did not make findings in regards to Mr. Brewer about the other three factors and therefore we ask that the trial Court's order be overturned and the guardianship vacated.

B. Reply to Appellee's Response Brief

The United States Supreme Court is the highest court in the land, and although the decisions and rulings from the Supreme Court are not controlling in the Quileute Tribe, the rights granted to citizens of the of this country are still applicable. It has long since been decided that the right to parent one's own child is a fundamental right and should not be abridged absent extreme circumstances. The Quileute Tribe adopts this notion throughout the Family Code. The Code in Section 4 and 7 clearly indicates that the Tribe's preference is for children to remain in the home with their parents, unless the parent is not capable of meeting the child's basic needs and capable of providing a safe and nurturing home.

The case cited by the Appellee's, *Mississippi Choctaw v. Holyfield*, grants the tribe a right to supersede the rights of parents to decide who will raise their children if not them, but the tribe cannot supersede the fundamental right of parents to raise their own children, without proving the parent cannot meet the child's needs.

The Tribe and the Appellees did not prove that Mr. Brewer was incapable of meeting S.B.'s basic needs or incapable of providing a safe and nurturing home. In fact, the social worker testified that she had never been to Mr. Brewer's home and had never observed Mr. Brewer and S.B. interact. However, the reports received by the social worker about Mr. Brewer and S.B., indicated he was a loving and capable father. The expert evaluations of Mr. Brewer indicate that he does not pose a harm or a risk to S.B. and the experts could not understand why S. B. was removed from her father's care in the first place.

The Appellee's argue that Mr. Brewer did not pay for the child's expenses and that the Fosters provided for the child's need, but the Tribe should have provided for her needs since she was a dependent of the Tribe. Mr. Brewer would have been more than willing to provide for S.B.'s needs, but

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he was not required to because she was a ward of the Tribe. In addition, any gifts that Mr. Brewer gave to S.B., were thrown in the trash by the foster parents, so it would have been futile for him to try and provide support. Mr. Brewer was also court ordered to not bring any gifts or financial support to his visits.

The order in the dependency case is outside of the scope of the Guardianship. However, if the court considers this argument as valid, then the Tribe's exhibit 1 shows that Mr. Brewer contested the dependency case. Mr. Brewer tried to appeal and change the order of dependency. He spent every dollar and resource to get his children back and out of the "system." Every step of the way, he fought for his children and his right to parent them. And every step of the way, he was railroaded and his parental rights were violated.

The Appellee's refer to the Guardian ad Litem and the ICW social worker as experts, but they are not experts. The ICW social worker testified that Mr. Brewer's case was her first case after she graduated from school. The Guardian ad Litem also testified that she had only been over a couple of cases by the time she took this case. Neither the G.A.L. nor the ICW caseworker were proven to be an expert and therefore we ask this court to not consider them experts.

On the other hand, there were reports presented to this court from real experts. The report of Dr. O'Leary and Dr. Traywick showed that Mr. Brewer was capable of taking care of his daughter and was not a threat to her. Both experts could not find a valid reason that S.B. was removed from her father's care or prevented from having visits with her to continue to foster and build their relationship.

II. CONCLUSION

According to the Guardianship Code, it must be proven by a preponderance of the evidence that all necessary services, which are reasonably available and capable of addressing the issues brought forth in the case, have been provided to the parents. And they have had a reasonable time to access and complete the services and comply with the requirements. Mr. Brewer was not provided with reasonable services to reestablish the bond between him and S.B. nor was he given a reasonable time to complete the services.

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Mr. Brewer's only service he need was to form a bond with S.B., so that reunification could happen. The Tribe's lawful duty was to provide him with services to achieve this bond strong enough for reunification. However, the Tribe failed to do that when they schedule his visits to be 1 hour per month for an entire year and then two hours per month for another year. The services provided by the tribe were not reasonably sufficient for Mr. Brewer to establish a bond necessary for reunification. In addition, when the limited visits were scheduled, the foster parents would fail to bring the child to the visits, without consequence from the Tribe. The Tribe treated the foster parents like they were the biological parents, with decision making power. ICW could have motion or decided to increase Mr. Brewer's visits at any point and time during the dependency, but they failed to do so. The Tribe and its ICW department failed to provide the service needed by Mr. Brewer and therefore they failed Mr. Brewer and S.B.

Mr. Brewer respectfully requests this court overturn the guardianship order because it is deficient on its face and because it was entered against the evidence presented at the trial. The sole reason that ICW and the Guardian ad Litem supported a guardianship was because of the length of time that S.B. was in the foster parents' care. However, S.B. was in there care for so long, simply because the Tribe failed to act according to the Quileute Code. Mr. Brewer was capable and willing to care for his daughter and he still is. He was denied that right and his rights were violated by the Tribe and by ICW. A great injustice has been done, and therefore, Mr. Brewer petitions the Appellate Court to right the wrong of the Trial Court.

Respectfully submitted this 29th day of February 2016.

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