

Sioux (Dakota) Community. Her residence is 32451 Sweetgrass Circle, Shakopee, Minnesota. The minor child, [REDACTED] has lived with the Petitioner, at the request and with the consent of the Respondent, Tracy Lee Swartz, since August, 1996.

4. The Respondent Tracy Lee Swartz was born April 8, 1969, and resides at 123 East 18th Street, Hibbing, Minnesota. The Respondent Keith Peter Wisnewski was born January 16, 1963, and his residence is unknown to any of the other parties.

5. The Respondent, Tracy Lee Swartz, was served with the Petition in this matter, and attended the hearing held on May 29, 1997. She was not represented by counsel. Upon the filing of an affidavit of the Petitioner, service of process upon the Respondent Keith Peter Wisnewski was waived by Order of this Court on December 5, 1996.

6. The Respondent Tracy Lee Swartz and the Respondent Keith Peter Wisnewski were divorced on August 3, 1995, in Scott County, Minnesota, and Tracy Lee Swartz was awarded sole physical and legal custody of [REDACTED].

7. Since the time of the divorce, the Respondent Keith Peter Wisnewski has made no attempt to contact or see his daughter, [REDACTED] and has provided no child support or comparable financial contribution.

8. The Respondent Tracy Lee Swartz and the minor child, [REDACTED] have experienced problems living together, which prompted the Respondent Tracy Lee Swartz to request the Petitioner to take the minor child, [REDACTED], into her home in

X0860.045

August, 1996.

9. The minor child, [REDACTED] [REDACTED] [REDACTED], has lived continuously with the Petitioner since August, 1996; has been attending school in Shakopee, Minnesota; has made good progress in her studies; has been working with a child counsellor to deal with the grief she has experienced from the death of one of her brothers; and participates regularly in the social and cultural events of the Shakopee Mdewakanton Sioux (Dakota) Community.

10. During the time that the minor child, [REDACTED] [REDACTED] [REDACTED] has lived with the Petitioner, she has maintained regular contact, by telephone and in person, with her mother, the Respondent Tracy Lee Swartz.

11. At the hearing held in this matter on May 30, 1997, the Respondent Tracy Lee Swartz expressed the hope that at some time in the future she and her daughter, the minor child, [REDACTED] [REDACTED] [REDACTED], may be able to reconcile, and that the Respondent Tracy Lee Swartz may be able to reobtain physical and legal custody of her daughter. The Respondent Tracy Lee Swartz also expressed the opinion that the Petitioner's present request for physical and legal custody of the minor child, [REDACTED], was probably for the best.

12. The Petitioner has established an excellent relationship with the minor child, [REDACTED] [REDACTED] [REDACTED], who calls her "grandmother". The Court, off the record but in the presence of counsel and the Clerk of Court, talked to the minor child, [REDACTED] [REDACTED], on May 30, 1997. As a result of that talk, the

X0860.045

Court is convinced that [REDACTED] understands the nature of these proceedings, is happy living with the Petitioner, and has a good chance to thrive and have a healthy childhood, while continuing an open relationship with the Respondent Tracy Lee Swartz, if the Petition is granted.

Based on the foregoing, the Court makes the following Conclusions of Law:

1. Although this matter was filed in the Children's Court of the Shakopee Mdewakanton Sioux (Dakota) Community, upon review of the Petition and all of the evidence adduced at the hearing held on May 30, 1997 the Court concludes that the minor child, [REDACTED], is not delinquent or in need of protection, and therefore this matter should be filed in the Court's general docket, as a proceeding under Article IV, Section 5 of the Domestic Relations Code of the Shakopee Mdewakanton Sioux (Dakota) Community ("the Domestic Relations Code"). The Court file will be renumbered accordingly.

2. This Court has jurisdiction to hear this matter under the provisions of Chapter I, section 1 of the Domestic Relations Code, which provides in pertinent part "[t]he Community shall have original jurisdiction over the domestic relations of its members".

3. It is appropriate, under the Article IV, Section 5.d. of the Domestic Relations Code, to modify the custody provisions that were contained in the Respondents' divorce decree, entered by the District Court for Scott County, Minnesota on August 3, 1995, in

X0860.045

Court file No. 95-06019, because a change has occurred in the circumstances of the child and of the custodian since that order was entered, and that the modification is necessary to serve the best interests of the child.

4. The conditions established for a change in custody, by Article IV, Section 5.d. of the Domestic Relations Code have been satisfied, in this matter, because Tracy Lee Swartz, the previous custodian of the minor child, has not objected to the change in custody, and the minor child has been integrated into the family of the Petitioner with the consent of Tracy Lee Swartz.

For the foregoing reasons, it is herewith ORDERED:

1. Physical and Legal Custody of the minor child, [REDACTED] is awarded to the Petitioner, Maxine Woody; and
2. The Respondent, Tracy Lee Swartz, shall be entitled to liberal visitation with the minor child, [REDACTED]; and
3. Any future visitation between the minor child, [REDACTED], and the Respondent Keith Peter Wisnewski shall be supervised by the Petitioner.

Dated: May 30, 1997


John E. Jacobson
Judge