

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

COURT OF APPEALS

IN THE MATTER OF:

MB 09-17-2012  
EB 04-03-14

APP-2025-03  
Lower Court: CW-2025-15

Decided June 5, 2026

BEFORE: BIRON, BUTTS, CORBIERE, DIETZ, and DEMOORE, Appellate Judges.

OPINION & ORDER TO VACATE & REMAND

BIRON and DEMOORE writing on behalf of the Court, who are joined by Judges BUTTS, CORBIERE and DIETZ.

For the reasons detailed below, the Order Dismissing Petition as to Appellant Kelly Ham, dated December 3, 2025 and entered on December 4, 2025 (“December 2025 Order”), is vacated, reversed, and remanded for further proceedings consistent with this Court’s Opinion & Order.

*Facts and Procedural History*

This matter comes before the Court on an appeal filed by Anishnaabek Community and Family Services (“ACFS”) following the Tribal Court’s dismissal of Appellant Kelly Ham for lack of personal jurisdiction.

On November 13, 2025, ACFS filed an Ex Parte Petition for Emergency Removal naming both the children’s mother and Respondent Ham as parties. The children are enrolled Tribal members residing on Tribal trust land, and Respondent resided with them in that home at the relevant times.

At the December 3, 2025 hearing, Appellant Ham challenged jurisdiction, asserting that as a non-Indian and non-parent he was beyond the authority of the Tribal Court. The Tribal Court accepted that argument and dismissed him from the proceeding.

A timely appeal followed.

*Jurisdiction*

Pursuant to STC § 82.109, this Court has exclusive jurisdiction to review the judgments or orders of the Tribal Court. An appeal lies from a final order under STC § 82.111(1). The matter is properly before this Court.

### ***Standard of Review***

Child protective proceedings fall within the jurisdiction of the Tribal Court. See STC Chapter 30; *In the Matter of JK*, APP-06-02 at 5 (January 9, 2009). Matters on appeal involving a conclusion of law are reviewed *de novo* and without deference to the Tribal Court's determination. STC § 82.124(5). A matter which is within the discretion of the Tribal Court shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority; applied the appropriate legal standard to the facts; and did not abuse its discretion. *Ibid.* Also see STC § 82.124 (8).

In all matters, but especially those involving Tribal Member minor children, the Anishinaabe teachings of *Nibwaakaawin* (wisdom), *Zaagi'idiwin* (love), *Minaadendamowin* (respect), *Aakode'ewin* (bravery/courage), *Gwayakwaadiziwin* (honesty/integrity), *Dabaadendiziwin* (humility), and *Debwewin* (truth) must inform all that we do as a Court. *Payment v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-2022-02 (December 5, 2022); *Buggy v. Housing Authority*, APP-2025-04, Order Denying Appellee's Motion to Vacate Order of Stay and Order Denying Appellee's Motion to Dismiss (January 30, 2026).

### ***Discussion***

#### ***A. Tribal Court Jurisdiction Over Child Welfare Proceedings***

This appeal presents whether the Tribal Court possesses jurisdiction over a non-Indian adult residing in the home of Tribal children and exercising a parental role in a proceeding properly before the Court.

The Tribal Court concluded that it did not. This Court concludes that determination is inconsistent with controlling Tribal law and precedent.

At the outset, the jurisdiction of the Tribal Court in child welfare matters is well-established. In *In re C.S.D.*, APP-04-01 (November 14, 2005), this Court held that where a child is a Tribal member residing on Tribal land, the Tribal Court possesses original and exclusive jurisdiction under Chapter 30.

This Court has further recognized that jurisdiction in civil matters requires both political status and territorial nexus, but that child welfare proceedings occupy a core sovereign domain where those elements converge. *In re B.T., a Minor*, APP-13-01 (September 18, 2013)

Here, both conditions are satisfied. The children are enrolled members, and the conduct at issue arises within the Tribal community. The Tribal Court therefore properly exercised subject-matter jurisdiction.

#### ***B. Personal Jurisdiction Under Tribal Law***

### *1. Personal Jurisdiction and Contacts with the Forum*

Independently of statutory ‘parent’ status, Appellant Ham’s sustained residence with enrolled children on Tribal trust land, assumption of caregiving authority, and participation in the home establish purposeful, ongoing contacts with the Tribe and its forum sufficient to support the Court’s exercise of authority in this child-protection proceeding. These forum-connected activities gave rise to the claims and are the precise subject of the proceeding.

The Tribal Court’s error lies in its conclusion that Appellant Ham fell outside its personal jurisdiction.

That conclusion rests first on its determination that Appellant Ham was not a “parent.” That determination cannot be sustained.

Tribal Code §30.336 expressly defines “parent” to include a live-together partner responsible for the care and control of a child. This Court has repeatedly held that written law controls and must be applied as enacted. *Munro v. Housing Authority*, APP-07-05 (July 9, 2009); see also *Causley v. Housing Authority*, APP-01-02 (December 21, 2001)

That principle is consistently reinforced in subsequent cases requiring strict adherence to enacted law rather than unwritten policy or interpretation. See *Wilson v. Harris*, APP-24-01 (June 21, 2024); *Isrow v. Housing Authority*, APP-15-01 (October 16, 2015)

The Tribal Court’s failure to apply STC §30.336 therefore constitutes clear legal error.

The record establishes that Appellant Ham resided with the children on Tribal trust land, exercised authority within the home, and participated in their daily care. Under STC §30.336, those facts are sufficient to bring him within the definition of ‘parent,’ supplying personal jurisdiction and party status in this Chapter 30 proceeding.

### ***C. Ancillary Jurisdiction Over Essential Participants***

The Court’s authority over Appellant Ham rests on independent grounds: (1) his status as a ‘parent’ under STC §30.336; and (2) ancillary jurisdiction over essential participants under STC §30.202(4).

Even if Appellant were not a statutory ‘parent,’ STC §30.202(4) authorizes the Court to exercise jurisdiction over any person whose participation is essential to the Court’s authority. A live-in adult who exercises control over children within the household is essential to fashioning and enforcing protective orders under Chapter 30.

Either ground independently supports jurisdiction; together they reinforce the Court’s authority.

Indeed, this Court’s child welfare jurisprudence rejects formalistic approaches in favor of functional analysis. In *In re T.C.D.*, APP-13-02 (July 14, 2014), the Court emphasized that Chapter

30 requires a fact-driven, functional evaluation of the child's actual circumstances, including available alternatives and caregiving realities.

Similarly, in *In re L.C., J.G., & L.G.*, APP-13-03 (July 14, 2014), the Court reversed termination where the trial court failed to properly account for real-world caregiving relationships and demonstrated parental progress.

In *In re A.S./R.R.*, APP-12-01/02 (October 12, 2012) the Court required individualized and evidence-based analysis, rejecting assumptions untethered from the record.

Taken together, these cases establish that Chapter 30 proceedings must be grounded in functional reality rather than formal designation.

Appellant's deliberate cohabitation with a Tribal member and assumption of caregiving responsibilities for enrolled Tribal children on Tribal trust land constitutes a consensual, ongoing relationship with Tribal members. Per the analysis that follows below, the jurisdiction exercised here arises directly from that relationship, satisfying the first exception in *Montana v. United States*, 450 U.S. 544, 564 (1981).

That principle necessarily extends to jurisdiction. A court charged with protecting children cannot effectively do so while excluding from its authority an adult who exercises control over them within the household.

The allegations concern the care and safety of enrolled Tribal children within their home. Respondent's in-home role and conduct directly affect their well-being. Child protection lies at the center of Tribal health and welfare, bringing this matter within the second *Montana, supra*, exception, as discussed below.

The Tribal Court's approach would create a jurisdictional gap inconsistent with both the text and purpose of Chapter 30.

#### ***D. Tribal Sovereignty and Authority Over Child Welfare***

This conclusion is reinforced by broader principles of tribal sovereignty reflected in this Court's precedent.

In *Nickaboine v. SSMTCI*, APP-17-03 (October 23, 2017) the Court affirmed the Tribe's inherent authority to regulate conduct threatening the safety and welfare of the community, including nonmember conduct occurring within Tribal lands.

Similarly, in *Krull v. SSMTCI*, APP-06-05 (2006) the Court upheld Tribal jurisdiction over conduct affecting Tribal governance and members, confirming that Tribal authority extends where necessary to protect community welfare.

These cases reflect a consistent rule: where conduct directly affects Tribal members—particularly children—the Tribe retains authority to act.

Child welfare lies at the center of that authority. Decisions such as *In re J.B.*, APP-0-03/04 (May 25, 2010); *In re A.C.G.*, APP-16-02 (November 14, 2016) and *In re R.W.*, APP-19-02 (January 31, 2020) emphasize that Chapter 30 proceedings are governed by the Tribe's overriding responsibility to protect children and preserve family integrity.

***E. Federal Law: ICWA's Exclusive Jurisdiction and Montana's Exceptions Applied to a Nonmember Caregiver***

*1. Application of Montana's Exceptions to Appellant Ham*

The Tribal Court's conclusion that it lacked jurisdiction also reflects an incomplete application of governing federal Indian law.

It is well established that Indian tribes retain inherent sovereign authority over their territory and internal affairs, subject only to express limitations imposed by Congress. *Montana, supra*. While *Montana* articulates a general rule limiting tribal civil authority over nonmembers, that rule is not absolute. Rather, the Supreme Court recognized two exceptions under which tribes retain jurisdiction over nonmembers:

1. where the nonmember has entered into a consensual relationship with the tribe or its members; and
2. where the nonmember's conduct threatens or has a direct effect on the political integrity, economic security, or health or welfare of the tribe. *Supra* at 565–66.

Both exceptions are satisfied here.

The record reflects that Appellant Ham voluntarily chose to cohabit with a Tribal member on Tribal trust land, assumed a live-in caregiving role for enrolled Tribal children, and exercised household authority over them. The Petition and hearing record identify him as a live-in caregiver participating in the children's day-to-day care. These facts constitute a consensual and continuing relationship with Tribal members, and the jurisdiction exercised here arises directly from that relationship, satisfying Montana's first exception.

More significantly, Appellant's conduct implicates the Tribe's health and welfare in its most fundamental form—the protection of its children.

The Supreme Court has recognized that tribal authority remains strongest where the internal welfare of the Tribe is at issue. *Montana, supra*. at 566. The United States Congress codified this authority through its Congressional Findings of the Indian Child Welfare Act of 1978 stating that “there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children.” 25 U.S.C. § 1901(3).

This Court's own jurisprudence reflects that same understanding. See *In re C.S.D.*, *supra*; *In re T.C.D.*, *supra*; *In re L.C., J.G., & L.G.*, *supra*. The allegations in this matter concern the care and safety of Tribal children within the home. Appellant's role in that home—and his conduct within

it—directly affects their well-being. Such conduct falls squarely within the Tribe’s sovereign authority.

Child protection is a core component of Tribal health and welfare. The allegations here concern the in-home care and safety of enrolled Tribal children residing in the Tribal community. Appellant’s role and conduct within that home directly affect their wellbeing, thereby meeting Montana’s second exception.

The Appellee’s reliance on *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008), is misplaced. That case addressed commercial conduct and does not limit tribal authority in core sovereign functions such as child welfare. Because the conduct at issue is household caregiving affecting enrolled children on Tribal lands—a core sovereign interest—the commercial limitations discussed in *Plains Commerce Bank*, *supra*, do not constrain jurisdiction here.

To the extent Appellant relies on generalized limits on Tribal authority over nonmembers, those limits do not apply where, as here, both *Montana*, *supra*, exceptions are satisfied and the conduct occurs on Tribal trust land within a core sovereign domain—child protection. The Court’s exercise of authority is tailored to the child-welfare issues before it and to Appellant’s essential role in the home.

## *2. ICWA’s Exclusive Jurisdiction Over Children on Tribal Trust Land*

ICWA’s grant of exclusive jurisdiction over child custody proceedings involving Indian children residing on the reservation establishes the Tribe’s adjudicatory authority over the matter itself. The *Montana*, *supra*, framework then informs the scope of the Tribal Court’s authority over non-member adults whose conduct is inextricably intertwined with the child’s care and custody.

Given the functional imperatives of Chapter 30 and this Court’s jurisprudence, exercising authority over an in-home caregiver is necessary to effectuate ICWA’s protective mandate. Where Indian children reside on the reservation, the Tribe retains exclusive jurisdiction over child custody proceedings. 25 U.S.C. § 1911(a). That jurisdiction necessarily extends to those individuals whose conduct affects the child’s care and custody.

The record reflects that the children’s residence is on Tribal trust land, reinforcing both the Tribal Court’s Chapter 30 jurisdiction and ICWA’s exclusivity for child-custody proceedings, and providing the territorial nexus relevant to the framework of *Montana*, *supra*.

Taken together, federal law reinforces—rather than limits—the Tribal Court’s authority in this matter. Accordingly, ICWA and *Montana* operate in tandem here: ICWA grounds the proceeding; *Montana*’s exceptions permit the Court to bind essential non-member participants whose conduct directly affects Tribal children’s welfare.

## *F. Appellate Review and Remedy*

Finally, this Court's appellate jurisprudence confirms that failure to apply governing law requires corrective action.

In *Neal v. Housing Authority*, APP-02-04 (October 10, 2002) and *Truitt v. Housing Authority*, APP-11-01 (July 19, 2011) the Court held that where the record or legal framework is insufficient to sustain a decision, remand or reversal is required to ensure proper application of law.

That principle applies here. The Tribal Court's jurisdictional ruling rested on a misapplication of the Code and controlling precedent.

### ***Conclusion***

The Tribal Court erred as a matter of law in concluding that it lacked jurisdiction over Appellant Kelly Ham.

Specifically, the Tribal Court:

- Failed to apply the statutory definition of "parent" under STC §30.336;
- Failed to apply ancillary jurisdiction under STC §30.202(4);
- Failed to apply controlling precedent requiring functional analysis in child welfare matters; and
- Improperly narrowed Tribal jurisdiction contrary to established doctrine recognizing broad authority over matters affecting Tribal children and community welfare.

Under controlling Tribal law and precedent, jurisdiction exists.

### **ORDER**

For the reasons set forth in this Opinion, the *December 2025 Order* is vacated and reversed.

This matter is remanded with instructions to make explicit findings on:

- (1) The children's Tribal enrollment status;
- (2) The land status of the residence during the relevant period;
- (3) Respondent's residence, caregiving role, and authority within the home; and
- (4) The nexus of the alleged conduct to the children's care and safety; and to proceed consistent with this Court's holdings regarding statutory 'parent' status, essential-participant jurisdiction, ICWA exclusivity, and the exceptions per *Montana, supra*.

**IT IS SO ORDERED.**