IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION

CONFEDERATED SALISH AND KOOTENAI CHILD SUPPORT ENFORCEMENT PROGRAM Applicant,	)	CAUSE NO. AP- 14-01-W
	)	ORDER
vs.	)	
CONFEDERATED SALISH AND KOOTENAI TRIBAL COURT, HONORABLE WINONA TANNER, HONORABLE CHERYL STEELE, HONORABLE DAVID MORIGEAU, Respondents.	)	

APPLICATION FOR WRIT OF MANDAMUS

Before Chief Justice Eldena Bear Don't Walk, Associate Justice Kenneth Pitt and Associate Justice Robert McDonald.

INTRODUCTION

This original action comes before the Court of Appeals (the "Court") on the Application for a Writ of Mandamus against Respondents. On April 23, 2014, the Confederated Salish and Kootenai Tribes ("CSKT") Child Support Enforcement Program ("Applicant") filed a well written and concise, "Verified Application For Writ of Mandamus and Memorandum of Authorities" with this Court, together with an Appendix containing various pleadings from several child support proceedings in the CSKT Trial Courts (together referred to as the "Application"). We hereby DENY the Application.

DISCUSSION

In the short amount of time allocated to respond to the Application, this court must determine whether the Application rises to the level necessary to seek an extraordinary remedy, like of Writ of Mandamus. The CSKT Law and Order Code provides for this remedy and Writs of Mandamus are not new to this court. Extraordinary Writs provide an essential alternative to the typical appeal process. Extraordinary Writs allow a court of appeals to review an issue that could not adequately be addressed upon appeal. The remedy of mandamus is a drastic one, to be involved only in extraordinary situations. *Will v. United States,* 389 U.S. 90, 95 (1867). Therefore, to obtain a Writ of Mandamus, an Applicant must show:

> 1) It has no other adequate means of obtaining the relief sought;
> 2) It must show a clear and undisputable right to the writ; and
> 3) The issuing appeals court must be satisfied that the writ is appropriate under the circumstances.

See, *Cheney v. United States District Court,* 542 U.S. 367, 380-381 (2004)
Other federal courts use a more instructive version of *Cheney, Id.*

> 1) The Applicant will be injured in a manner not correctable on appeal;
> 2) The order is clearly erroneous as a matter of law;
> 3) The error is oft repeated or systemic; and/or
> 4) The order presents new and important problems.

See, e.g. *Bauman v. United States District Court,* 557 F.2d 650, 654-55 (9th Circuit 1977).

> Although these guidelines are helpful, they of course do not always result in bright-line distinctions. First, the guidelines often raise questions of degree: How clear is it that the lower court's order is wrong as a matter of law? How severe will damage to the Applicant if extraordinary relief is withheld? Second, rarely if ever will a case arise where all the guidelines point in the

> same direction or even where each guideline is relevant or applicable. The considerations are cumulative and proper disposition will often require a balancing of conflicting indicators.

Id.

Taking the Application at face value, it is clear that the Applicant disagrees with the Trial Courts' interpretation of the Full Faith and Credit for Child Support Act, 28 U.S.C. §1738B and CSKT Laws Codified 3-1-316(15). However it has provided no arguments, or authorities, than lead us to conclude the Trial Courts' interpretation is clearly erroneous .

The Application also provides this Court with no basis to conclude that the Applicant will be injured in a manner not correctable on appeal, or that it has no other adequate means of obtaining the relief sought. Indeed, the Trial Court did not "deny" Applicant's Complaint as asserted, *Application,* page 6, paragraph 18, rather it gave Notice to the Applicant and instructed it to supplement its pleading with the jurisdictional and notice requirements, precisely as authorized by 28 U.S.C. § 1738B, and CSKT Laws Codified 3-1-316(15). Notice to Plaintiff, Cause No. 13-0422-FJ, March 20, 2014. Further, had Applicant submitted the supplementary information, and then had its Complaint actually denied, it then could have appealed the matter through a normal course of appeals. Applicant has not shown that it will be injured in a manner not correctable on appeal, or that it has no other adequate means of obtaining the relief sought. In addition, based on

the same premises as above, Applicant has not shown that it has a clear and undisputable right to the writ.[1]

CONCLUSION

Applicant has failed to meet its burden under the tests guiding when a Writ of Mandamus may be issued. Accordingly, this Court is not satisfied that the Writ of Mandamus is appropriate under these circumstances. The Confederated Salish and Kootenai Tribes Child Support Enforcement Program's "Verified Application For Writ of Mandamus and Memorandum of Authorities" is hereby DENIED.

It is so ordered this 30th day of April 2014.

CONFEDERATED SALISH & KOOTENAI TRIBES COURT SEAL OF APPEALS FLATHEAD RESERVATION

Eldena Bear Don't Walk
Chief Justice

Kenneth P. Pitt
Associate Justice

Robert McDonald
Associate Justice

[1] Applicant arguably might be correct in that if the Trial Court is in error, that that error is oft repeated or systemic; and/or the orders present new and important problems. However, as Applicant has not met the other parts of either federal test, it is unnecessary for us to, and we do not, consider these arguments here.

Certificate of Mailing

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the Order to the persons first named therein at the addresses shown below by depositing same in the inter-office mail this 6th day of May, 2014.

Robert J. McCarthy
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Honorable Sheryl Steele
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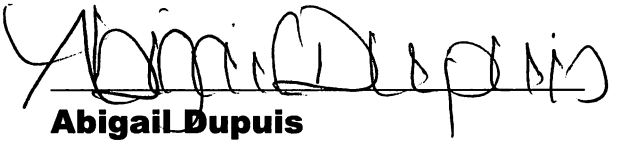

Abigail Dupuis
Appellate Court Administrator

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CONFEDERATED SALISH AND KOOTENAI CHILD SUPPORT ENFORCEMENT PROGRAM Applicant,	)	CAUSE NO. AP-11-0107
vs.	)	ORDER
CONFEDERATED SALISH AND KOOTENAI TRIBAL COURT, HONORABLE WINONA TANNER, HONORABLE CHERYL STEELE, HONORABLE DAVID MORIGEAU, Respondents.	)	

On May 13, 2014, through counsel, filed a Petition for En Banc Hearing. No objection was filed by the Respondents. Petitions for Rehearing En Banc are governed by Rule 21 of the Rules of Appellate Procedure (CSKT Law and Order Code, 2013).

After consultation with the entire panel, the Court DENIES the request for rehearing en banc.

SO ORDERED this 30th of June, 2014.

Eldena N. Bear Don't Walk,
Chief Justice

CONFEDERATED SALISH & KOOTENAI TRIBES COURT SEAL OF APPEALS FLATHEAD RESERVATION

Cc: Robert McCarthy, TCE Staff Attorney
Tribal Court

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