



1 Hendrickson home. Efforts by a Tribal Social Worker to reach unification with Shane and Shelly  
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3 Hendrickson faltered when, despite warnings, the Hendrickson's son was not kept away from SB  
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5 and HB. As a result of Shane and Shelly continuing to allow contact between SB and HB and the  
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7 son, all future visits were cancelled. Further reunification efforts were not recommended by SB  
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9 and HB's therapists. Testimony at the trial court showed Shelly Hendrickson does not believe  
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11 her son assaulted either of the girls, and she believed that they did not need to be protected from  
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13 her son. The trial court found that it is in the best interest of the children to accept the  
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15 Permanency Plan submitted by the Tribes, which was continued placement in the current  
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17 Therapeutic Foster Home with the guardianship of SB and HB placed with Jennifer Bartlette.  
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19 The Permanency Plan included visits with the children's siblings as well as with the  
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21 Hendricksons so they may continue the family connection.  
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25 In this appeal, and at argument, the Hendricksons have asserted that they have adopted SB and  
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27 HB under Indian Law and that Tribal Social Services have taken a legal path that ignores that  
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29 adoption. They admit that no filings have been made to indicate a cultural adoption has taken  
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31 place.  
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### 35 **ISSUES, APPLICABLE LAW AND STANDARD OF REVIEW**

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37 The appellant asks this Court to hear the matter *de novo* to address the question of law – did  
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39 the trial court have the legal authority to proceed to a permanency plan without hearing a  
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41 guardianship petition simultaneously. The appellant also asks this Court to accept a traditional  
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43 Indian adoption to have standing without supporting court filings and possessing simply the will  
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45 of the family to adopt, under Indian community standards.

1 This Court will review the trial court's decision in adoption proceedings to determine whether  
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3 the court abused its discretion. *See In re Matter of the Adoption of R.M., S.P.M., and R.M.*, 241  
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5 Mont. 111, 118 (1989). The trial court's determination is entitled to a presumption of correctness,  
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7 and will not be disturbed absent an abuse of discretion. *See e.g., In re Marriage of Welch*, 905  
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9 P.2d, 132, 135 (Mont. 1995).

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11 Pursuant to the Tribal Children's Code of the Confederated Salish and Kootenai Tribes  
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13 (CS&KT), the petitioner in adoption proceedings has the burden of proof to establish by clear  
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15 and convincing evidence that the adoption is in the best interests of the children. Ordinance 36-  
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17 B, CS&KT Law and Order Code, Ch. VI, §6g. Accordingly, the trial court's determination as to  
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19 what constitutes the best interests of the children in adoption proceedings in this jurisdiction  
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21 cannot be disturbed as an abuse of discretion where it is supported by clear and convincing  
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23 evidence.

## 24 25 26 27 28 29 **DISCUSSION**

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31 The Confederated Salish and Kootenai Tribes (Tribes) recognize Indian children as the Tribes'  
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33 most important resource, and declare it to be the policy of the Tribes to treat Indian children in  
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35 accordance with their paramount importance. Title III, Chapter 2, Part 1, 3-2-101. Indian  
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37 children shall be entitled to a permanent, physical and emotional environment necessary to  
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39 promote their successful development into productive, responsible adults. It is the policy of the  
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41 Tribes to prevent the unwarranted break-up of Indian families by adopting procedures that  
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43 recognize family member rights while utilizing the best interests of the child standard. Finally, it  
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45 is the policy of the Tribes, when permanent out-of-home placements are necessary, that those

1 placements be accomplished through guardianship and adoption in the child's extended family;  
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3 legal adoption outside the Tribes shall be the least preferred alternative.  
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5 In this case, Shane and Shelly Hendrickson lost their guardianship status with SB and HB  
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7 due to a Tribal Social Worker's findings of sexual and physical abuse. As part of the discussion  
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9 in this case, the definition of parent versus guardian has arisen. The Hendrickson's attorney  
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11 brings up the tribal community practice of defining family in a wider scope than non-Indian  
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13 communities, saying it's become common for aunts and uncles to be called mother and father.  
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15 The appellant did not provide any further citations from the Tribes' two culture committees.  
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17 Absent clear direction from Tribal law, this Court will not create its own definition of "family"  
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19 for the Tribes. Council does not cite a law at CSKT or elsewhere to bolster his point. We decline  
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21 to accept a wider definition of "family." This Court finds the lower court acted within applicable  
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23 laws in finding the new parenting plan appropriate.  
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26 **CONCLUSION**  
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28 The Tribal Court acted in accordance with existing tribal laws and ruled within in  
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30 providence in determining the best course of action in the best interests of the children. This  
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32 court upholds the lower court decision.  
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36 Submitted this 9<sup>th</sup> day of July, 2019.  
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*Robert McDonald*  
Robert McDonald  
Associate Lay Justice

*Thor Hoyte*  
Thor Hoyte  
Associate Justice

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Josh Morigeau  
Associate Justice

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Abigail Dupuis  
Appellate Court Administrator

**Certificate of Mailing**

**I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the Opinion to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, or through interoffice mail this 18th day of July, 2019.**

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