

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Brock James Baker,	)	
Plaintiff and Appellee,	)	
	)	Supreme Court # 20210288
	)	Cass County # 40-2021-DM-00030
vs.	)	
	)	
	)	
Luann Erickson aka Thiel,	)	
Defendant and Appellant.	)	

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APPEAL OF THE ORDER GRANTING MOTION TO VACATE ORDER

RECOGNIZING TRIBAL PROTECTION ORDER

ENTERED BY THE HONORABLE ANTHONY SWAIN BENSON

THE DISTRICT COURT, ROLETTE COUNTY, NORTH DAKOTA

NORTHEAST JUDICIAL DISTRICT

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**APPELLEE’S BRIEF**

**ORAL ARGUMENT REQUESTED**

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### **JURISDICTIONAL STATEMENT**

[¶1.] The District Court had jurisdiction to consider the registration of a foreign protection order pursuant to North Dakota Rules of Court 7.2 and 18 U.S.C. § 2265. The Appellant's appeal was timely filed.

### **STATEMENT OF ISSUES**

- [¶2.] Did the District Court err in granting full faith and credit to the Order of Protection entered by the Turtle Mountain Tribal Court pursuant to 18 U.S.C. § 2265(b).
- a. Did the District Court err in its determination that the Turtle Mountain Tribal Court had jurisdiction over the parties and matter under the laws of the Turtle Mountain Tribal Code?
  - b. Did the District Court err in its determination that reasonable notice and an opportunity to be heard was afforded to the Appellant?

### **STATEMENT OF THE CASE**

[¶3.] Although the Appellee, Brock James Baker ("Brock"), agrees with some of the Appellant, LuAnn Erickson aka Thiel ("LuAnn")'s, Statement of the Case in its Appellant's Brief, there are certain areas that requires additional clarification. The parties were divorced on June 21, 2016, and judgment was originally entered in Cass County District Court. (R9:1:¶1).

[¶4.] This appeal arises out of an action for registration of a Tribal Protection Order in the Northeast Judicial District Court granted by the Honorable Judge Anthony Benson. (R7).

[¶5.] On April 12, 2021, Brock filed a Petition for Protection Relief before the Turtle Mountain Tribal Court due to incidents that took place between April 3, 2021 to April

10, 2021 involving the safety and wellbeing of the parties' minor children, E.M.B., born in 2010; S.D.B., born in 2011, and C.J.B., born in 2014. (R33:1, 4-5).

[¶6.] On April 20, 2021, the Honorable Special Judge Andrew Laverdure entered a Temporary Ex-Parte Protection Order against LuAnn in Turtle Mountain Tribal Court. (R34:1-3). Notice of the Entry of Order was entered on April 20, 2021. (R34:4).

[¶7.] Upon entry of the Temporary Ex-Parte Protection Order, a hearing was scheduled before Judge Laverdure for May 6, 2021 at 9:00 a.m. in the Turtle Mountain Tribal Court. (R34:2, R35:1). An Order for Telephonic Hearing was entered on April 20, 2021. (R35).

[¶8.] The Affidavit of Mailing confirmed that the parties, Brock and LuAnn, were provided a true copy of the Order for Telephonic Hearing, Notice of Entry of Order, and Temporary Ex-Parte Protection Order at their respective addresses. (R36:1).

[¶9.] A hearing on the Temporary Ex-Parte Protection Order was held on May 6, 2021, with Brock appearing, with counsel, and LuAnn was not present. (R1:2:¶¶5, 7). Based on the information and testimony provided at the hearing, an Order of Protection was entered by Judge Laverdure on May 6, 2021. (R1:2:¶10).

[¶10.] An Affidavit of Mailing confirmed that a copy of the Permanent Protection Order and Notice of Entry was mailed to the parties on May 7, 2021. (R2:1, R3:1).

[¶11.] On May 18, 2021, Brock filed an Affidavit for Registration of Out-of-State or Tribal Court Protection Order in the Northeast Judicial District, County of Rolette. (R4).

[¶12.] On May 21, 2021, the Honorable Judge Anthony Benson entered an Order granting the Turtle Mountain Band of Chippewa Permanent Order of Protection pursuant to N.D.R.Ct. 7.2. (R7).

[¶13.] On June 3, 2021, Luann filed a Motion to Vacate the Order granting the Turtle Mountain Band of Chippewa Permanent Order of Protection. (R8). Brock filed a response on June 9, 2021 along with a supplemental response on June 28, 2021. (R13, 31).

[¶14.] On July 7, 2021, a hearing was held before Judge Benson with both parties being represented and present at the time.

[¶15.] On August 24, 2021, Judge Benson entered an Order granting Motion to Vacate Order Recognizing Tribal Protection Order on the grounds that 18 U.S.C. § 2265 requires recognition of the Tribal Protection Order. (R41:¶¶ 6-11).

### **STATEMENT OF THE FACTS**

[¶16.] Brock is an enrolled member of the Turtle Mountain Band of Chippewa Indians (“TMBCI”) along with the parties’ minor children. (R16; Tr. 42:1-2). Brock resides in Belcourt, North Dakota, specifically as of July 7, 2021, Brock had been residing in Belcourt for three and a half months. (Tr. 9:22-25).

[¶17.] LuAnn is not an enrolled member. LuAnn had been residing in Bismarck, North Dakota. (Tr. 74:4-6). On May 21, 2021, LuAnn moved to Dent, Minnesota. (Tr. 58:4-8).

[¶18.] On April 9 and 10, 2021, incidents involving LuAnn consuming excessive amounts of alcohol while the parties’ minor children were in her care resulted in Brock contacting law enforcement for a welfare check. (Tr. 86:17-87:5).

[¶19.] Law enforcement attended LuAnn's residence in Bismarck, North Dakota. (Tr. 88:11-14). As a result of LuAnn's condition, law enforcement had Brock retrieve the minor children due to her inability to care for them. (Tr. 32:7-14). Coincidentally, the weekend of April 10 was Brock's scheduled visitation time with the minor children. (R9:5:¶g). LuAnn was also going to be in Minnesota that weekend until Tuesday, April 13, 2021. (Id.).

[¶20.] After Brock picked up the minor children, he brought the children into the ER at the Indian Health Services where he resides to check the wellbeing of the children. (R33:5, Tr. 43:16-17). The minor children disclosed additional information of neglect and lack of care to their physical and emotional wellbeing. (R20:3,5). Based upon the incident that had just taken place together with the information the minor children provided to medical professionals, Brock felt that the children were in immediate danger and were not safe to be within Luann's care. (Tr. 43:14-18).

[¶21.] At the earliest opportunity, Brock filed a Petition for Protection Relief before the Turtle Mountain Tribal Court on April 12, 2021. (R33; Tr. 41: 17-22). At the time of his filing, LuAnn was to resume her parenting time on April 11, 2021. (R33:6).

[¶22.] At the time of his filing for Protection Relief, Brock resided, and still continues to reside, in Belcourt, North Dakota. (Tr. 9: 23-24, 41:23).

[¶23.] Within Brock's Petition for Protection Relief, he provided the Court with LuAnn's address in Bismarck, North Dakota, acknowledgment of the Burleigh County Court Order regarding the divorce, visitation, and custody, and detailed grounds in support of his petition. (R33:1:¶¶F-E, 33:2:¶A, 33:4-6).



[¶24.] On April 15, 2021, LuAnn sent an email to Brock advising him that she was voluntarily entering an inpatient program at a Minnesota based addiction and dependency treatment center and would not be in contact over the next five weeks beginning the week of April 19, 2021. (R11).

[¶25.] Unbeknownst to Brock, Luann was admitted to Hazelden Betty Ford on April 17, 2021. (Tr. 59:24-25).

[¶26.] On April 20, 2021, a Temporary Ex-Parte Protection Order was granted by Judge Laverdure in Turtle Mountain Tribal Court. (R34). Notice of Entry of the Temporary Ex-Parte Protection Order was entered on April 20, 2021. (R34:4). Upon entry of the Temporary Ex-Parte Protection Order, a hearing was scheduled before Judge Laverdure for May 6, 2021. (R34:2). An Order for Telephonic Hearing was entered on April 20, 2021. (R35). Affidavit of mailing by the Chief Court of Clerk confirmed that the parties along with Belcourt Law Enforcement and VOCA were served with a copy of the Order for Telephonic Hearing, Notice of Entry of Order, and Temporary Ex-Parte Protection Order. (R36).

[¶27.] Brock received a certified copy of the Temporary Ex-Parte Protection Order within a week of it being granted. (Tr. 44:8-9).

[¶28.] On May 3, 2021, Brock's tribal attorney at the time, Don Bruce, filed a Notice of Entry of Appearance with the Turtle Mountain Tribal Court. (R37). Attorney Bruce served LuAnn with the Notice by electronic mail to two personal email addresses along with an attempt to be made by certified mail to her last known residence. (Id.)

[¶29.] On May 5, 2021, Attorney Bruce filed exhibits with the Clerk of Court and LuAnn by way of electronic mail in preparation for the upcoming hearing. (R25, Tr. 48:10-

17). Luann responded on May 6, 2021 stating “adding Pat O’Day, my lawyer. LuAnn”. (R25, Tr. 49:11-12, 72:7-11).

[¶30.] On May 6, 2021, a hearing on the Temporary Ex-Parte Protection Order was held before Judge Laverdure in the Turtle Mountain Tribal Court. (Tr. 50: 9-11). Based on the evidence presented, the Court entered an Order of Protection for the duration of one year (May 6, 2021-May 6, 2022). (R1:1-2). The Order of Protection prohibited any contact or visitation between LuAnn and the minor children and granted custody to Brock for the duration of the Order. (R1:2-3).

[¶31.] An Affidavit of Mailing executed by the Civil Clerk confirmed that a copy of the Permanent Protection Order and Notice of Entry was mailed to the parties on May 7, 2021. (R2, R3).

[¶32.] On May 21, 2021, LuAnn was discharged from the Betty Ford Center. (Tr. 64:6).

[¶33.] On May 22, 2021, LuAnn returned back her property in Bismarck and her mail had been placed on hold while she was gone. (Tr. 66:13-15). It was during the first week of June that she retrieved her mail, which had contained the documents from the Turtle Mountain Tribal Court regarding the protection order matter. (Tr. 66:18-19).

## **LAW AND ARGUMENT**

### **I. Standard of Review**

[¶34.] Interstate custody disputes are governed by the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), codified through North Dakota Century Code § 14-14.1. Hashberger v. Hashberger, 2006 ND 245, 724 N.W.2d 148. In conjunction with the UCCJEA, the Uniform Interstate Enforcement of Protection Orders Act (“UIEPA”) pursuant to N.D.C.C. § 14-07.4 further sets out how foreign Protection

Orders would be enforced in this state. Similarly, Rule 7.2 of the North Dakota Rules of Court further governs the recognition of Tribal Court Orders and Judgment.

[¶35.] This Court has held that when a motion challenges a judgment as void under Rule 60(b)(4), this Court's sole task is to determine the validity of the judgment. Roe v. Doe, 2002 ND 136, ¶6, 649 N.W.2d 566, 568. It is the burden upon the party bringing the Rule 60(b)(4) motion to show sufficient grounds for disturbing the finality of the earlier judgment. State of North Dakota v. Peltier, 2018 ND 170, ¶9, 915 N.W.2d 115, 117.

[¶36.] The standard of review under Rule 60(b)(4) is plenary. Roe, 2002 ND 136 at ¶6. If the judgment is valid, the motion must be denied and if the judgment is void, the motion must be granted. Id. A judgment entered without subject matter jurisdiction is void. Id.

[¶37.] However, jurisdictional challenges are a mixed question of law and fact. Peltier, 2018 ND at ¶10. When the jurisdictional facts are not in dispute, the question of subject matter jurisdiction is a question of law subject to the de novo standard of review. Harshberger, 2006 ND 245 at ¶16. Whereas, when jurisdictional facts are disputed, findings of fact are subject to the clearly erroneous standard of review. Peltier, 2018 ND at ¶10.

[¶38.] A finding is clearly erroneous if induced by an erroneous view of the law, if no evidence supports it, or if the reviewing court, after reviewing the entire evidence, is left with a definite and firm conviction a mistake has been made. Niemann v. Niemann, 2008 ND 54, ¶11, 746 N.W.2d 3, 7 (citing to Burns v. Burns, 737 N.W.2d 243, 246 (N.D. 2007)). This Court has held that it will not reassess evidence, credibility of witnesses, or substitute its judgment for a district court's decision merely because it

might have reached a different result. Id. A choice between two permissible views of the weight of the evidence is not clearly erroneous. Id.

[¶39.] The arguments raised by LuAnn on appeal can be boiled down to two issues challenging whether the Turtle Mountain Tribal Court had jurisdiction to grant the Temporary Ex-Parte Protection Order and subsequently, the Order of Protection and whether reasonable notice was afforded to LuAnn. Although LuAnn never blatantly raised the jurisdictional issue before the District Court as their arguments were based on alleged fraudulent or misconduct under Rule 60(b)(5), the District Court did consider the jurisdiction of the Turtle Mountain Tribal Court in granting full faith and credit to the Turtle Mountain Tribal Court Order of Protection. (R41:1:¶1). The issues on appeal contain mixed question of law and fact as the issue of jurisdiction rests on question of law while the issue of notice rests on questions of fact and law.

**II. The District Court did not err in granting full faith and credit to the Turtle Mountain Tribal Court Order of Protection as the Turtle Mountain Tribal Court had jurisdiction and reasonable notice and opportunity to be heard was provided, therefore, the Order granting full faith and credit is not void.**

[¶40.] The District Court did not err in granting full faith and credit to the Turtle Mountain Tribal Court Order of Protection pursuant to 18 U.S.C. §2265 as the Turtle Mountain Tribal Court had emergency jurisdiction over the parties and subject-matter pursuant to Section 204 of the UCCJEA, codified in N.D.C.C. 14-14.1-15, Sections 37.0500 and 37.0101(2)-(3) of the Turtle Mountain Tribal Code and reasonable notice and opportunity to be heard had been afforded to LuAnn.

[¶41.] It is important to note that although Judge Benson titled his Order as a granting of the motion to vacate order recognizing tribal protection order, the substance of the Order is not to be interpreted as a denial of the Turtle Mountain Tribal Court Order of

Protection or an agreement with the arguments advanced by LuAnn under Rule 60(b). Conversely, the District Court's detailed analysis demonstrates that federal law, 18 U.S.C. § 2265, would require recognition of the Tribal Court Order of Protection.

[¶42.] It is respectfully submitted that this Court should not rely upon the title of the pleading rather, the substance underlying the Order and affirm the District Court's findings. Specifically, the District Court did not err in its determination that based upon the facts and law, the Turtle Mountain Tribal Court had jurisdiction over the parties and the matter pursuant to Chapter 37.05 of the Turtle Mountain Tribal Code and reasonable notice and opportunity to be heard was afforded to LuAnn. (R41:2:¶6, 41:3:¶9). Therefore, 18 U.S.C. §2265 have been satisfied and the Turtle Mountain Tribal Court Order of Protection should be afforded full faith and credit under 18 U.S.C. § 2265, and not pursuant to N.D.R.Ct. 7.2.

**A. The District Court did not err in law and facts that Turtle Mountain Tribal Court has jurisdiction over the parties and matter pursuant to Section 204 of the UCCJEA, as codified as N.D.C.C. 14-14.1-15, and Chapter 37.05 of the Turtle Mountain Tribal Code.**

[¶43.] The first step in the analysis of whether a Tribal Protection Order must be granted full faith and credit pursuant to 18 U.S.C. § 2265 is a determination by the District Court that the Turtle Mountain Tribal Court has jurisdiction over the parties and matter under the law of such Indian Tribe. 18 U.S.C. § 2265(b)(1).

[¶44.] LuAnn's argument rests on the sole fact that North Dakota is the home state for the minor children and as a result, issues of child support, primary residential responsibility and parenting time are vested only within the North Dakota District Courts. (App. Brief at ¶¶ 47, 66, 76). During the entire proceeding, Brock did not dispute the jurisdiction of North Dakota as the home state for the minor children. In fact, Brock agreed that

Burleigh County is the venue for this matter and any motion to modify would be later filed by Brock in Burleigh County District Court. (Tr. 22:17-20).

[¶45.] The fundamental question is whether Turtle Mountain Tribal Court had emergency jurisdiction to enter a Temporary Ex-Parte Protection Order and then subsequent Order of Protection. It is respectfully submitted that the exclusive jurisdiction of a home state does not preclude another state or Tribe to exercise temporary emergency jurisdiction as delineated in Section 204 of the UCCJEA, codified in N.D.C.C. 14-14.1-15, and Chapter 37.0507 of the Turtle Mountain Tribal Code. In fact, accepting LuAnn's argument would render Section 204 of the UCCJEA completely obsolete and in contradiction to the purpose of the revisions from the Uniform Child Custody Jurisdiction Act (UCCJA) to the UCCJEA. (See Prefatory Note, Section I stating that the UCCJEA eliminated inconsistent state interpretations and clarified emergency jurisdiction that it provided jurisdiction only on a temporary basis).

[¶46.] Section 204(a) of the UCCJEA, codified in N.D.C.C. 14-14.1-15(1), states that a court of this state has jurisdiction to enter a temporary order concerning a child if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse. UCCJEA § 204(a), codified in N.D.C.C. 14-14.1-15(1).

[¶47.] Chapter 37.05 of the Turtle Mountain Tribal Code governs the issuance of civil protection orders, specifically section 37.0500 provides for the jurisdiction of the Turtle Mountain Tribal Court for civil protection orders and section 37.0507 for the issuance of a temporary emergency ex parte protection order.

[¶48.] Section 37.0500 of the Turtle Mountain Tribal Code states:

1. The Turtle Mountain Tribal Court shall have jurisdiction:
  - a. When the petitioner or respondent is domiciled or found on the Turtle Mountain Indian Reservation;
  - b. When any act of domestic violence occurs within the exterior boundaries of the Turtle Mountain Indian Reservation;
  - c. When the Court is being asked to recognize and enforce a valid Protection Order of another court of competent jurisdiction; and
  - d. Over any petition for Protection Orders under this Domestic Violence Code.
2. The Court shall construe this Section liberally to exercise maximum jurisdiction.
3. This Section is not exclusive of the situations in which the Court may exercise jurisdiction.

(Emphasis Added) Turtle Mountain Tribal Code § 37.0500.

[¶49.] LuAnn argues that the use of “and” between the third and fourth prongs of Section 37.0500(1) must be interpreted as a conjunctive “and” whereby all the listed requirements must be satisfied inclusively and in concert, not exclusively or independently. (App. Brief ¶64). There is no available case law by the Turtle Mountain Appellate Court that could provide guidance on this issue, however, the very language of subsection 37.0507 together with subsequent sections found within the Tribal Code would provide far greater insight as to the drafter’s intent in the interpretation and application of section 37.0500 compared to the general rules of statutory interpretations.

[¶50.] Section 37.0507(2) of the Turtle Mountain Tribal Code specifically states that the interpretation of this section be applied liberally to exercise maximum jurisdiction and furthermore, subsection 3 confirms that the list shall not be one that is exclusive of situations whereby the Court may exercise jurisdiction. (Emphasis Added) Turtle

Mountain Tribal Code §§37.0507(2)-(3). In reading section 37.0507 of the Turtle Mountain Tribal Code, in its entirety, it is clear that all four prongs under subsection one is not meant to be an exclusive list nor one to be read in conjunction with each other.

[¶51.] Furthermore, if this Court were to interpret section 37.0507(1) consistent with the general rules of statutory interpretations and accept LuAnn’s argument, the jurisdiction of the Turtle Mountain Tribal Court would be extremely limited as it would be nearly impossible for any person to petition for a protection order while concurrently seeking the Tribal Court to recognize and enforce a valid protection order of another court of competent jurisdiction as set out under subsection (1)(c). Turtle Mountain Tribal Code § 37.0500(1)(b)-(c).

[¶52.] In the situation of a temporary emergency ex parte protection order, as is the case here, section 37.0507 of the Tribal Code provides that the following conditions must be present:

- ...
- a. Temporary Emergency Ex Parte Orders will be issued upon a good cause showing that it is necessary to protect the applicant or others from domestic violence;
- b. Immediate and present danger of domestic violence to the applicant or others constitutes good cause for purposes of this section
- ...

Turtle Mountain Tribal Code § 37.0507(1)(a)-(b).

[¶53.] Here, the jurisdictional facts as to the incidents that took place on April 9 and 10, 2021 are undisputed. Law enforcements were called to LuAnn’s residence on a child welfare check. (Tr. 32: 12-14, 87:1-5). As a result of LuAnn’s condition, Brock retrieve the minor children from LuAnn’s care. (Tr. 32:7-14). LuAnn admitted that she had



relapsed and required inpatient treatment. (Tr. 59:20-25). The minor children disclosed additional information during their medical examination raising concerns to their safety and wellbeing. (R20:3,5; Tr. 85:18-19). Based upon this, Brock felt the minor children were in immediate danger. (Tr. 40:5-7, 43:14-18, 86:17-18, 88:7-10). Brock petitioned for protection relief in the jurisdiction where he was residing and where the minor children were present, that being in the Turtle Mountain Tribal Court. (Tr. 22:9-11, 41:23-25). It should be further noted that the District Court repeatedly ruled that it was not going to make any determinations on the merits of the protection order. (Tr. 41:13-14, 85:7-8).

[¶54.] It is clear from the testimony provided and the ruling by the District Court that the jurisdictional facts are not in dispute. These undisputed facts laid out are the exact reasons why the Turtle Mountain Tribal Court has jurisdiction over the parties and subject matter as an immediate and present danger proved that it was necessary to protect the minor children from domestic violence. Turtle Mountain Tribal Code § 37.0507(1)(a)-(b).

[¶55.] In considering the broader jurisdiction of the Tribal Court as it applies to all civil protection orders, section 37.0500(1) of the Turtle Mountain Tribal Code is also satisfied. At the time that Brock petitioned for protection relief, he was domiciled within the exterior boundaries of the Turtle Mountain Indian Reservation and the minor children were present and found within the Reservation. (Tr. 9:22-25, 22:9-11). Brock was within his rights to seek relief on the minor children's behalf pursuant to Section 37.0502(1)(b) of the Turtle Mountain Tribal Code. Turtle Mountain Tribal Code §37.0502(1)(b).

¶56.] Even if this Court accepted LuAnn’s false narrative that Brock was not residing in Belcourt at the time or that he only moved to Belcourt to file for protection relief, the Turtle Mountain Tribal Code speaks directly on the issue of residency. Pursuant to section 37.0502(2) of the Turtle Mountain Tribal Code, there is no minimum requirement of residency to petition for a Protection Order. Turtle Mountain Tribal Code §37.0502(2). The removal of such a requirement is consistent with ensuring that the Tribal Court be provided to “exercise maximum jurisdiction” over issues of protection orders. Turtle Mountain Tribal Code §37.0500(2).

¶57.] Similarly, section 204 of the UCCJEA requires the child only be present in the State and it is necessary to protect the child because the child is subjected to or threatened with mistreatment or abuse. UCCJEA §204(a), as codified in N.D.C.C. 14-14.1-15(1). Once again, in accordance with the UCCJEA, the undisputed facts proved that the minor children were present within the Turtle Mountain Reservation and it was necessary to protect them considering the incidents that took place on April 9 and 10, 2021 thereby, granting Turtle Mountain Tribal Court temporary jurisdiction in this matter. UCCJEA § 204(a), codified in N.D.C.C. 14-14.1-15(1).

¶58.] LuAnn argues that Brock absconded the jurisdiction of the state court by removing them from their home jurisdiction in North Dakota and secreted away to the Tribe thus, committing an “unjustifiable conduct” defined under section 208 of the UCCJEA. (App. Brief ¶¶53, 66). LuAnn attempts to paint Brock as a manipulative and dishonest individual who is alienating the children by abusing the tribal court system. (App. Brief ¶¶ 53, 78, 79). These statements are not only false but absent any support by the record.

[¶59.] None of Brock's conduct was unjustifiable. Brock did not retrieve the minor children against LuAnn's wishes on April 10, 2021. In fact, the weekend of April 10, 2021 was Brock's scheduled visitation with the minor children. (R9:5:¶g). The only factor that resulted in Brock maintaining custody of the minor children beyond his visitation is due solely to LuAnn's conduct on April 9 and 10, 2021 and the urgency to protect the minor children before returning them back to LuAnn on April 11, 2021. The fact that an emergency took place and Brock acted immediately to protect the minor children should not be interpreted as "unjustifiable conduct".

[¶60.] There is also no evidence that Brock concealed the minor children's whereabouts from LuAnn. Similarly, there is no evidence that Brock held residence anywhere else but in Belcourt, North Dakota at the time that he filed the Petition for Protection Relief. This is not a kidnapping situation as LuAnn attempts to paint for this Court whereby Brock only brought the minor children to the Turtle Mountain Indian Reservation for the sole purposes of seeking a protection order and then coincidentally, establish residence in Belcourt. On the contrary, the evidence proves that Brock was residing in Belcourt, North Dakota and in fact, LuAnn had knowledge that Brock was going to be moving to Belcourt for employment weeks leading up to the incident on April 9 and 10, 2021. (R9:5:¶f, Tr. 31:7-19). Back in March of 2021, Brock and LuAnn had discussions about Brock moving to Belcourt and enrolling one of the minor child in school at St. John School. (R10:19). Therefore, any argument that Brock only filed in Turtle Mountain Tribal Court to abscond state jurisdiction or as a means to abuse the justice system is unfounded and false.

[¶61.] Even assuming that LuAnn was unaware that Brock was residing in Belcourt, the evidence proves that LuAnn knew Brock was not residing in Bismarck or in Burleigh County. The accommodations that LuAnn made for the minor children while she would be attending inpatient treatment can only support the conclusion that LuAnn knew the minor children, while in Brock's care, would be out of the jurisdiction to attend school and therapy sessions and therefore, required distance learning and Zoom appointments. (Tr. 60: 4-17).

[¶62.] The undisputed facts as set out above proves Brock did not commit unjustifiable misconduct under Section 208 of the UCCJEA but rather, the actions taken were necessary to protect the minor children as a result of LuAnn's conduct and the incidents that took place immediately before April 12, 2021. These undisputed facts provide for the jurisdiction of the Turtle Mountain Tribal Court to exercise jurisdiction over the parties and subject matter in the issuance of the Temporary Ex-Parte Protection Order, and subsequent Order of Protection.

[¶63.] Additionally, as a Tribal Nation and under the authority granted by treaty, the Turtle Mountain Indian Reservation has the inherent authority to provide for the health and wellbeing of its Tribal members. Turtle Mountain Tribal Code Section 37.0101(1). As a policy and purpose of the Tribe, it is the intent of the Tribe that victims of domestic violence receive the maximum assistance and protection under the law. Turtle Mountain Tribal Code 37.0100. Here, the victims of the domestic violence, namely the minor children, are all enrolled members of the Turtle Mountain Band of Chippewa Indians. (R16:2-4, Tr. 42:1-2). Aside from being enrolled, the minor children were also present at the time that the Temporary Ex Parte Protection Order was filed and as such,

there is a greater vested interest and authority for the Turtle Mountain Indian Reservation to exercise jurisdiction for the purposes of protecting the health and wellbeing of its members.

[¶64.] The exercise of jurisdiction by the Turtle Mountain Tribal Court does not infringe upon the recognition that North Dakota remains as the home state for the minor children. This Court has recognized “there is the potential for the protection order and a future order to have conflicting terms regarding parenting time.” Rinas v. Engelhardt, 2012 ND 146, ¶13, 818 N.W.2d 767, 773. Likewise, “there is the potential for a restraining order to conflict with a child custody and visitation order.” Saville v. Ude, 2009 ND 211, ¶21, 776 N.W.2d 31, 36 (citing State v. Boyle, 771 N.W.2d 604, 606 (N.D. 2009)). In Rinas, this Court held that a judicial referee did not abuse his discretion when the terms of a protection order declined to include language allowing the order to be modified by a different court. 2012 ND 146 at ¶11.

[¶65.] Similarly, in Saville, this Court held that a district court did not err in extending a protection order that would interfere with visitation rights that had been established in a divorce decree. 2009 ND 211 at ¶25. This Court provided guidance that a district court issuing protection orders should initially attempt to reconcile the substantive visitation terms of the protection order with those in an existing divorce decree. Id. at ¶23. Although reconciliation is preferred and not required in every case, where there is an irreconcilable conflict, the visitation terms of the protection order would be controlling. Id.

[¶66.] Although in both Rinas and Saville, the protection order and visitation orders were issued by district courts involving non-Indian parties, the guidance is equally

applicable. LuAnn's argument attempts to have this Court view the Turtle Mountain Tribal Court action as a permanent parenting and custody order simply because there are provisions within the Temporary Ex Parte Protection Order and subsequent Order of Protection that conflicts with custody and visitation from the divorce judgment. (App. Brief ¶52-53). However, a reading of the Temporary Ex Parte Protection Order and subsequent Order of Protection not only proves the temporary nature of the action since the duration of the Order of Protection is only for one year but furthermore, this does not negate the jurisdictional authority that vests within the Turtle Mountain Tribal Court to act in an emergency situation for the protection of the minor children. (R1:1).

[¶67.] On the other hand, if this Court were to accept LuAnn's argument that Turtle Mountain Tribal Court lacked jurisdiction over the parties and subject matter, despite the undisputed facts that have been laid out above, this would undermine the authority and interest of the Turtle Mountain Tribal Court to protect its members from domestic violence. This Court has held that domestic relations among its members is an important area of "traditional tribal control" that simply does not dissipates merely because one of the parties to a marriage is a non-Indian. Byzewski v. Byzewski, 429 N.W.2d 394, 399 (N.D. 1988). In fact, the traditional interest over domestic relations is an integral component of tribal self-government. Id. The fact that LuAnn is a non-Indian or member of the Turtle Mountain Band of Chippewa Indians does not minimize the vested interest and jurisdictional authority granted to the Turtle Mountain Tribal Court to issue temporary protection orders and subsequent orders of protection in a situation where their enrolled members, in this case that being the minor children, were in danger and present on the Reservation.

¶68.] The guidance set out in Saville for the Courts to reconcile the substantive visitation terms of the protection order with those in an existing divorce decree mirrors the language and intent set out in Section 204(c) and (d) of the UCCJEA. 776 N.W.2d at 36; UCCJEA §204(c)–(d) of the UCCJEA, as codified by N.D.C.C.14-14.1-15(3)-(4). Section 204(c) and (d) of the UCCJEA requires communication between the state with a child-custody determination and a court of another state having exercised emergency temporary jurisdiction for the purposes of resolving the emergency, protect the safety of the parties and child, and determine a period for the duration of the temporary order. UCCJEA § 204(d), as codified by N.D.C.C. 14-14.1-15(4).

¶69.] Although it would appear that neither the Turtle Mountain Tribal Court nor the District Court communicated with one another, this does not void the temporary and permanent order of protection that had been entered nor the District Court’s finding that Turtle Mountain Tribal Court had jurisdiction over the parties and subject matter.

¶70.] In Kostrzewski v. Frisinger, 2004 ND 108, ¶17, 680 N.W.2d 271, 274, this Court held when a party seeks to register a foreign child custody judgment in North Dakota, the Court’s only issue is to determine whether the foreign judgment is valid. In Kostrzewski, a child custody order was initially established in Minnesota and thereafter, the appellee moved to Burleigh County, North Dakota and attempted to register the Minnesota Judgment. Id. at ¶3-6. The trial court denied the motion to dismiss the registration on the grounds that the child had been residing in Burleigh County for more than six months prior to the filing of the foreign judgment and that the appellant had not objected to the relocation. Id. at ¶6. On appeal, this Court affirmed, in part, the trial court’s order recognizing the Minnesota child custody judgment but

vacated, in part, the trial court's jurisdiction to modify the Minnesota judgment as that would exceed its authority, both procedurally and substantively, under N.D.C.C. § 14-14.1-14. Id. at ¶17-18.

[¶71.] In this appeal, although the foreign judgment is not a child custody judgment, the mere principle is applicable in that “by requesting only registration of the foreign judgment, the District Court’s jurisdiction is limited to the issue of the validity of the registered judgment.” Id. at ¶17. Here, unlike Kostrzewski, the Turtle Mountain Tribal Court did not exceed its authority when exercising temporary jurisdiction that would impact the custody and visitation of the minor children. Similarly, the District Court did not exceed its authority, both procedurally and substantively, in concluding that the Turtle Mountain Tribal Court Order of Protection as valid since it had jurisdiction over the parties and matter under Title 37.05 of the Turtle Mountain Tribal Code and sufficient notice was given to LuAnn to protect her right to due process. (R41:2:¶6).

[¶72.] This issue appears to be one of first impression before this Court. However, in Steckler v. Steckler, the District Court of Appeal of Florida addressed this very issue involving a North Dakota protection order. 921 So. 2d 740, 742 (Fla. Dist. Ct. App. 2006). In Steckler, a final dissolution judgment was entered in Volusia County, Florida, and thereafter, the former wife obtained a protection order against the former husband in North Dakota where her and the minor children were residing. Id. at 741-42. The North Dakota protection order modified the Florida visitation order. Id. at 742. The former wife argued that the North Dakota protection should be afforded full faith and credit and jurisdiction should be determined. Id. The trial court denied the former wife’s



motion and ruled that jurisdiction remained in Florida. Id. Both Florida and North Dakota adopted the UCCJEA and the District Court of Appeal held that

the UCCJEA generally gives the state that made the initial custody determination exclusive, continuing jurisdiction over those decisions, in emergency situations, the UCCJEAQ permits other states to obtain temporary emergency jurisdiction to protect a child.

Id. at 743.

Therefore, North Dakota court acted within the temporary emergency jurisdiction of the UCCJEA and having satisfied the provisions of 18 U.S.C.A. §2265, it was entitled to full faith and credit. Id.

[¶73.] The District Court of Appeal ruled that the trial judge should have communicated with the judge in North Dakota upon learning of North Dakota’s domestic violence protective order. Id. at 745. The lack of communication did not reverse the trial court’s determination of jurisdiction but rather, the District Court of Appeal remanded with instructions for contact between the two courts to resolve any conflicts that existed. Id.

[¶74.] Analogous to Steckler, the District Court in this appeal did not err in its determination that the Turtle Mountain Tribal Court had jurisdiction over the subject matter and parties based upon the undisputed facts regarding the incidents immediately preceding the petition for protection relief by Brock. The holding in Steckler is persuasive and should be adopted by this Court whereby the matter should be remanded back to the District Court for the purposes of resolving any conflicting custody terms. Id.

[¶75.] Whether this Court adopts the holding in Steckler in remanding the matter back to the District Court with instructions, the result remains the same that the District Court

did not err in finding that the Turtle Mountain Tribal Court had both subject matter and personal jurisdiction when it exercised its emergency jurisdiction to enter a Temporary Emergency Ex Parte Order of Protection, and then subsequently, an Order of Protection following a hearing on the temporary order.

**B. The District Court did not err in law or facts in finding that LuAnn was afforded reasonable notice and opportunity to be heard, sufficient to protect her rights to due process.**

[¶76.] The next step in the inquiry as to whether to grant full and credit pursuant to 18 U.S.C. § 2265(b) is the determination that reasonable notice and opportunity to be heard was given to the person against whom the order is sought, sufficient to protect the person's rights to due process. 18 U.S.C. § 2265(b)(2). The District Court considered all the facts and history of the mailing of the Orders by the Tribal Court and determined that LuAnn was provided notice and an opportunity to be heard within a reasonable time after the Order was issued, sufficient to protect her due process rights pursuant to 18 U.S.C. §2265. (R41:3). The District Court did not err both in facts and law.

[¶77.] The second requirement under 18 U.S.C. § 2265(b)(2) states:

Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's rights to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

18 U.S.C. § 2265(b)(2).

[¶78.] The fundamental right of due process is vested within the U.S. Const. Amend 14, Section 1. U.S.C.A. Const. Amend. XIV § 1. Generally, procedural due process

requires fundamental fairness, which at a minimum, necessitates notice and a meaningful opportunity for a hearing appropriate to the nature of the case. St. Clair v. St. Clair, 2004 ND 39, ¶6, 675 N.W.2d 175, 177. A fair hearing requires reasonable notice or opportunity to know of the claims of opposing parties, along with the opportunity to rebut those claims. Krolík v. Muscha, 2020 ND 240, ¶5, 951 N.W.2d 229, 230 (citing Rath v. Rath, 214 ND 171, ¶ 14, 852 N.W.2d 377). The due process clause requires that notice be reasonably calculated to inform parties of proceedings which directly and adversely affect their legally protected interests. Id.

[¶79.] In cases of ex parte orders, the time required to provide notice and opportunity to be heard is governed by state or Tribal law. 18 U.S.C. §2265(b)(2). Section 37.0504(2) of the Turtle Mountain Tribal Code requires that within fourteen days of the issuance of a Temporary Ex Parte Protection Order, excluding holidays and weekends, a hearing shall be held to determine whether the Order should be extended, made permanent or modified in any respect. Turtle Mountain Tribal Code § 37.0504(2). Service must be made upon the Respondent at least five days prior to the hearing and pursuant to the procedure set forth in the Turtle Mountain Tribal Code. Turtle Mountain Tribal Code § 37.0504(3)-(4).

[¶80.] Similarly, section 14-07.1-02 of the N.D.C.C. governs the issuance of domestic violence protection orders. Upon receipt of an application for a domestic violence protection order, the Court must order a hearing to be held no later than fourteen days from the date of the order of hearing and service must be achieved upon the respondent at least five days prior to the hearing. N.D.C.C. §§ 14-07.1-02(2)-(3). In the instances

of an ex parte temporary protection order, the hearing must be set no later than fourteen days from the issuance of the temporary. N.D.C.C. § 14-07.1-03(4).

[¶81.] In this case, the Temporary Ex Parte Order was entered on April 20, 2021. (R34:3).

A hearing was scheduled for May 6, 2021, which is 12 days after the Temporary Ex-Parte Protection Order was entered. (R34:2, 35:1). The Notice of Entry of Order certified that notice was provided to the Petitioner and Respondent on April 20, 2021. (R35:2). An Affidavit of Mailing confirmed that the Chief Court of Clerk mailed the Order for Telephonic Hearing, Notice of Entry of Order, Temporary Ex-Parte Protection Order to Brock at his residence in Belcourt, ND, LuAnn at her residence in Bismarck, ND, and copies to Belcourt Law Enforcement and VOCA on April 20, 2021. (R36:1). This notice was sent 12 days prior to the scheduled hearing, which is within the timeline provided by both Tribal and State law. Turtle Mountain Tribal Code § 37.0504(2); N.D.C.C. § 14-07.1-03(4).

[¶82.] Within the Temporary Ex Parte Protection Order, Judge Laverdure certifies under the Certificate of Compliance that the Protection Order meets all full faith and credit requirements of 18 USC 2265 (1994) whereby the Court has jurisdiction over the parties and subject matter and the respondent has been afforded notice and a timely opportunity to be heard as provided by the laws of the jurisdiction. (R34:3). Similarly, the Notice of Entry of Order certified by the Civil Clerk confirms that notice is given to the Respondent for the Temporary Ex-Parte Protection Order. (R34:4).

[¶83.] LuAnn argues that reasonable notice was never afforded to her based on two grounds: 1) she was not home at the time that the Temporary Ex-Parte proceedings were commenced and 2) the Orders were not mailed in accordance to the Tribal Code.

[¶84.] On April 12, 2021, Brock filed the Petition for Protection Relief and listed the address that he had for LuAnn in Bismarck, North Dakota. (R33:1). This was also the residence that law enforcement attended for the child welfare call regarding the minor children. (Tr. 88:11-14). LuAnn also testified that her residence was in Bismarck until May 20, 2021. (Tr.58:9-16). In fact, after she completed her treatment, LuAnn returned to her Bismarck residence and only thereafter, began staying at her lake home in Minnesota. (Tr. 74:1-3). Even LuAnn’s driver’s license listed the Bismarck address. (Tr.74:4-6). At all times, LuAnn’s residence and last known address was in Bismarck, North Dakota, which is where all respective notices were mailed to pertaining to the Temporary Ex-Parte Order and the Order of Protection. (R35:2, 36:1).

[¶85.] Despite LuAnn’s own admission that she resided in Bismarck at the time the Petition for Protection Relief commenced, LuAnn argues that “Brock and his counsel, Mr. Bruce, knew where she was during the duration of the proceedings and chose not to have her personally served or served by mail at her actual location.” (App. Brief ¶ 39). To support their allegations, LuAnn relies upon an email that she sent to Brock on April 15, 2021 informing him that over the next five weeks beginning the week of April 19, 2021, she would be voluntarily entering an inpatient program at a Minnesota based addiction and dependency treatment center. (R11:1-2). Brock did not deny the fact that he did receive an email confirming this. (Tr. 19:14-19). Brock also admitted that he knew LuAnn was “at a treatment facility full time in the state of Minnesota.” (Tr. 19:13-19). Yet, there is no evidence in the record nor within LuAnn’s email on April 15, 2021 whereby Brock would “know exactly where [LuAnn] was and could have easily and lawfully effectuated personal service or certified service upon her” as LuAnn argues.

(App. Brief ¶ 39). Moreover, the notices were mailed and served upon LuAnn by the Tribal Court and not Brock or his then-attorney. (Tr. 43:20-44:8; 45:16-21).

[¶86.] LuAnn also fails to acknowledge within her argument the fact that Brock commenced the action for Protection Relief three days prior to LuAnn informing him that she would be entering inpatient treatment. Brock had no idea that LuAnn had left or was going to be entering into treatment on the day he filed the Petition for Protection Relief. (Tr. 37:20-25). To the best of his knowledge at the time of his filing of the Petition, LuAnn was still residing at the address in Bismarck, ND, which is the address listed on the Petition. (R33:1). LuAnn testified and confirmed that she never provided Brock with the name of the facility or the exact location of where she would be. (Tr. 70:12-19).

[¶87.] The District Court did not find anything fraudulent or misleading in Brock's Petition for Protective Relief or his Petition to Register the Tribal Protection Order. In fact, the District Court considered these factors since LuAnn's principal argument to vacate the District Court's original Order recognizing the Tribal Court Order of Protection rests on allegations that Brock withheld pertinent information from the Court and was misusing the process to have an adverse effect on previous Burleigh County Orders regarding residential responsibility and parenting time. (R41:1). As held in Niemann, this Court shall not reassess the credibility of witnesses or substitute its judgment for a district court's decision merely because it might have reached a different result. 2008 ND 54 at ¶11. This Court must defer to the District Court's assessment of the facts and credibility of Brock and LuAnn in reaching their conclusion that no

fraudulent or misleading conduct had been committed by Brock and notice was properly given to LuAnn. (R41:1:¶1, 41:2:¶7, 41:3:¶9).

[¶88.] By accepting LuAnn's argument that notice was not afforded to her based on her temporary absence from her residence at the time the action in Tribal Court commenced would be contrary to public policy. Advancing Luann's argument, every Plaintiff, in the situation of a domestic violence protection order proceeding, would be either forced to wait to commence proceedings if their perpetrator was going to be temporarily away from their residence or ensure that the perpetrator be at their residence to personally accept service or receive their mail in a timely manner. In fact, LuAnn's argument places the burden upon Brock to have known LuAnn's exact location, despite the lack of evidence that LuAnn ever provided Brock with the name of the facility or location, or alternatively, Brock should have looked up every inpatient facility within the State of Minnesota to achieve service. The very purpose of protection orders is to protect victims of domestic violence from further harm. Saville, 2009 ND 211 at ¶19. The acceptance of LuAnn's argument is contrary to this purpose and public policies in the protection of victims.

[¶89.] The right of due process does not place a duty upon the court to ensure a party's presence at the trial, telephonically or otherwise. Curtiss v. Curtiss, 2016 ND 197, ¶8, 886 N.W.2d 565. In Curtiss, the appellant failed to appear at a hearing, despite the district court granting the appellant's request to appear through Interactive Video Network as a result of his incarceration. Id. at ¶4. The district court had informed the appellant that he must make appropriate arrangements for his appearance. Id. at ¶9. The appellant failed to make the necessary arrangements and did not appear at the hearing,

which this Court held was not a violation of his constitutional rights. Id. at ¶8-9. Similarly, in St. Claire, this Court held that the district court did not have a duty to ensure a prisoner was present at the trial, telephonically or otherwise, and whether due process was afforded is dependent upon whether the individual received a meaningful opportunity to be heard. 2004 ND 39 at ¶7-8.

[¶90.] Although LuAnn was not incarcerated at the time that Brock commenced the Temporary Ex-Parte Protection Order proceedings, the holdings in Curtiss and St. Claire are persuasive insofar that LuAnn's due process rights are not violated when the evidence proves that notice was provided to her, which LuAnn confirmed receipt of upon her return to her residence, and a hearing was scheduled that had afforded LuAnn the opportunity to be heard. There should be no duty placed upon the Turtle Mountain Tribal Court or Brock to ensure that LuAnn was home to receive the notices and moreover, to be present at the hearing, despite receiving the notices.

[¶91.] The right of due process requires notice to be reasonably calculated to inform parties of the proceedings and how their legally protected interests are affected. Krolik, 2020 ND 240 at ¶5. LuAnn received notice sixteen days before the hearing was scheduled to be heard. The fact that LuAnn made the personal decision to be temporarily out of the State of North Dakota, not at her residence, should not be imputed against Brock or the Turtle Mountain Tribal Court as an infringement upon LuAnn's due process rights and moreover, against the District Court's findings that reasonable notice and an opportunity to be heard was achieved.

[¶92.] In Krolik, the respondent appealed a domestic violence protection order on the grounds that he was denied due process when he did not receive adequate notice of the



protection order hearing, 2020 ND 240 at ¶3. When the respondent had been served with the temporary domestic violence order by the sheriff's deputy, he claimed that the deputy told him the incorrect date for the hearing, which resulted in his non-appearance at the hearing and a permanent order of protection was granted. Id. This Court held that the requirements of procedural due process had been satisfied as notice was provided to the respondent well in advance since he was served eight days prior to the scheduled hearing. Id. at ¶7. The notice was reasonably calculated to inform the respondent of a proceeding which had the potential to adversely affect his legal interests. Id. The fact that the respondent failed to recognize the discrepancy between the alleged information provided by the deputy and what the notice stated cannot be imputed to the District Court, even assuming that he was provided with the incorrect date. Id.

[¶93.] Although the facts of this case differs from Krolik, the reasoning provided by this Court can be applied. The evidence and record proves that LuAnn was served sixteen days prior to the scheduled hearing on the Temporary Ex-Parte Protection Order, which would satisfy the notice requirement. (R34:4, 36:1). This is not a situation where LuAnn never received any of the notices. In fact, LuAnn admitted receiving all the pleadings from Turtle Mountain Tribal Court the first week of June, after she returned to her property in Bismarck and retrieved her mail. (Tr.66:13-19). LuAnn choice to not receive her mail while she was temporarily away in treatment could be analogous to Krolik in the respondent's failure to verify the information he had been allegedly provided. LuAnn could have received her mail just as the respondent in Krolik could have verified the date of his hearing. Although this may be stretching the two sets of

facts quite broadly, the results remain the same in this case and Krolik that both parties received notice and was given the opportunity to be heard but simply failed to appear.

[¶94.] Furthermore, on May 3, 2021, Brock’s counsel, at that time, Don Bruce, notified the Tribal Court and LuAnn that he had just been retained to represent Brock. (R37:1, Tr.53:24-54:3). Mr. Bruce served LuAnn by way of email at two different email addresses and by certified mail at LuAnn’s last known address. (R37:1, Tr.47:13-23, 54:5-8). The day prior to the hearing, Mr. Bruce filed subsequent exhibits with the Court and served LuAnn, once again by way of email. (R25:1). LuAnn responded to the email on the day of the hearing by stating “Adding Pat O’Day, my lawyer” and included Mr. O’Day in the email correspondence. (Id.). Although the District Court stated “while the emails a day or three before the hearing are very close in time and not necessarily proper service”, the fact that LuAnn responded to an email correspondence and added her attorney would logically imply that she was aware her legally protected interests would be affected insofar to include her attorney into the email correspondence. (R41:3:¶9).

[¶95.] LuAnn’s second argument on the lack of due process rests on how service was effectuated, specifically that the Turtle Mountain Tribal Court failed to serve LuAnn by certified mail, with return receipt. (App. Brief ¶ 60).

[¶96.] Section 37.0504(3) of the Turtle Mountain Tribal Code states that service of temporary and permanent protection orders shall be pursuant to the procedure set forth in the Turtle Mountain Tribal Code. Turtle Mountain Tribal Code §37.0504(3). Section 2.0405 of the Turtle Mountain Tribal Code governs service of summons and complaint. Specifically, a copy of the summons, together with a copy of the complaint, may be

served by certified mail, return receipt requested, or may be served personally upon an individual defendant by leaving it at the defendant's usual abode with a resident of the household above the age of fourteen (14) years, if the defendant cannot be conveniently found. Turtle Mountain Tribal Code §§ 2.0405(1) – (3).

[¶97.] In this case, all pleadings pertaining to both the temporary and subsequent permanent protection order were mailed to LuAnn's residence in Bismarck, North Dakota by way of mail. (R36:1, 3:1). An affidavit of mailing was provided with each respective temporary and permanent protection order certifying that the Clerk of Court mailed copies of the orders. (R36:1, 3:1).

[¶98.] LuAnn's argument hinges on the fact that such service is improper because "LuAnn was not served first" at her abode personally or by certified mail, return receipt and restricted delivery. (App. Brief ¶ 60). First, the requirement that a defendant be served first is not required pursuant to section 2.0405 of the Turtle Mountain Tribal Code. Secondly, the language contained under section 2.0405(1) of the Turtle Mountain Tribal Code states that certified mail, return receipt, may be utilized to effectuate service upon a defendant. Turtle Mountain Tribal Code §2.0405(1). The fact that the notices were only sent by regular mail should not be deemed as improper service, especially given the fact that such interpretation is not utilized by the Tribal Court itself.

[¶99.] As confirmed by the Civil Clerk of Court, the Tribal Court accepted service upon LuAnn based upon the fact that both the temporary and permanent protection orders were mailed and the Tribal Court have not received return mail on either mailing, which would indicate to the Court that service was achieved. (R38:1).

[¶100.] Most importantly, the Tribal Court considered the fact that the pleadings were only mailed to LuAnn, not certified or with returned receipt, and did not conclude that it was a violation of the Tribal Code nor an infringement upon LuAnn's due process rights. The specific findings of fact from the Order of Protection states that "on April 20, 2021 a copy of the Order for Telephonic Hearing, Notice of Entry, Temporary Protection Order with Show Cause Hearing was mailed to the Petitioner and the Respondent" (R1:2:¶4).

[¶101.] LuAnn further argues that service by email is not proper in referring to Brock's then-attorney having served the Tribal Court and LuAnn with Notice of Representation and subsequent exhibits to be utilized at the upcoming hearing. (App. Brief ¶ 59-60; R25, 37). It is important to note that Brock and the District Court do not rely upon the email correspondence as confirmation that notice was achieved. The use of such evidence is prove that LuAnn was given multiple opportunities to be notified of the proceedings prior to the hearing, or at the time of the hearing. The undisputed facts rest on the actual notices and orders that were mailed, and received, by LuAnn in accordance to the Tribal Code. Furthermore, although the use of electronic filing is not stated within the Tribal Code, it is clearly accepted by the Tribal Courts as stated within the Order for Telephonic Hearing that the parties may submit exhibits by way of mail or email. (R35:1).

[¶102.] It is clear through the evidence that the Tribal Court followed its procedure in accordance with the Tribal Code in that LuAnn was given notice and an opportunity to be heard when she was mailed copies of the orders and notices to the address provided by Brock, which was LuAnn's address at the time. (Tr. 36:5-10). There was no

erroneous view and application of the law by the Turtle Mountain Tribal Court and the District Court when considering the timelines of the notices and the reasonable amount of time prior to the scheduled hearing in which LuAnn was provided notice. Moreover, there is no evidence to support the fact that LuAnn never received notice of the hearing and proceeding. Therefore, based upon the law and facts, the District Court did not err in finding that LuAnn's due process rights were protected and she was given notice and an opportunity to be heard. As a result, 18 U.S.C. § 2265(b) was satisfied and full faith and credit was correctly granted by the District Court.

### **CONCLUSION**

[¶103.] Based upon the evidence and the law, the District Court did not err in finding that 18 U.S.C. § 2265(b) has been satisfied and therefore, granting full faith and credit to the Turtle Mountain Tribal Court Order of Protection against LuAnn. Brock respectfully requests that this Court affirm the District Court's Order in granting full faith and credit to the Turtle Mountain Tribal Court Order of Protection, or in the alternative, affirm District Court's Order and remand with instruction for the District Court to communicate with the Turtle Mountain Tribal Court to resolve and reconcile any conflicting terms on visitation and custody.

**ORAL ARGUMENT REQUESTED**

[¶104.] Brock respectfully requests oral arguments on this appeal on the grounds that oral argument would be appropriate and helpful due to this case involving issues of first impression involving emergency jurisdiction of Tribal Courts as it conflicts with existing State Court custody orders and service upon individuals who are temporarily away from their residence.

Respectfully submitted this 16<sup>th</sup> day of March, 2022.

**/s/ Sharon T. Thompson**  
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**CERTIFICATE OF COMPLIANCE**

[¶105.] The undersigned, as attorney for the Plaintiff/Appellee in the above-entitled matter, and as the author of the above brief, hereby certifies, in compliance with Rule 32 of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportional typeface and the total number of pages in the above brief is 38.

Respectfully submitted this 16<sup>th</sup> day of March, 2022.

**/s/ Sharon T. Thompson**

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Attorney for Plaintiff/Appellee

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Brock James Baker,	)	
Plaintiff and Appellee,	)	
	)	Supreme Court # 20210288
	)	Cass County # 40-2021-DM-00030
vs.	)	
	)	
	)	
Luann Erickson aka Thiel,	)	
Defendant and Appellant.	)	

**CERTIFICATION OF SERVICE**

[¶1.] I, Sharon T. Thompson, hereby certify that on March 15, 2022, the following documents:

- a. Appellee’s Brief;
- b. Certification of Service.

Were filed and served on the Clerk of the North Dakota Supreme Court at [supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov) and true and correct copies were served upon the following individuals by electronic service:

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Respectfully submitted this 15<sup>th</sup> day of March, 2022.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Brock James Baker, )  
Plaintiff and Appellee, )  
) Supreme Court # 20210288  
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)  
)  
Luann Erickson aka Thiel, )  
Defendant and Appellant. )

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Respectfully submitted this 16<sup>th</sup> day of March, 2022.

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