IN THE SUPREME COURT OF THE EASTERN BAND OF CHEROKEE INDIANS

Nos. CSC 25-03 and 25-04

Qualla Boundary, CV 15-532

JONAH CAREY, Plaintiff,

v.

AMANDA WOODALL, Defendant.

Appeal by defendant from orders entered 24 July 2025 and 3 September 2025 by Judge Sharon Tracey Barrett. Heard in the Eastern Band of Cherokee Indians Supreme Court 16 January 2026.

David D. Moore for plaintiff-appellee father.

The Law Office of Adrianna E. Gomez, by Adrianna E. Gomez, for defendant-appellant mother.

HUNTER, Justice.

Defendant-appellant mother Amanda Woodall appeals from the tribal court's Contempt Order Upon Show Cause Hearing ("the Contempt Order"), entered on 24 July 2025, an oral ruling on mother's motion to dismiss the order to show cause made in open court during the show cause hearing on 16 April 2025, and a Temporary Emergency Child Custody Order entered on 3 September 2025. After careful review, we affirm the tribal court's orders.

Background

Plaintiff-appellee father Jonah Carey and defendant-appellant mother are the parents of S.W. born 2 July 2015. Father and mother never married. Father is an enrolled tribal member of the Eastern Band of Cherokee Indians ("E.B.C.I."), living on E.B.C.I. trust lands. Mother is a non-Indian[1] who resided on trust lands at the commencement of this action. S.W. resided on trust lands for six years and at the commencement of this action. She is an enrolled member of the E.B.C.I.

Father filed a complaint in tribal court seeking custody of S.W. in November 2015. Mother filed an answer and counterclaim seeking temporary and permanent custody. Judge Kirk Saunooke awarded mother primary custody and awarded father graduated, supervised visitation, by order entered on 29 August 2016. On father's motion, Judge Saunooke modified the 29 August 2016 custody order on 12 December 2016 awarding father graduated, unsupervised visitation that was to progress to overnight visits.

Father filed a motion to modify the 12 December 2016 custody order on 21 September 2018. Mother filed an ex parte order to suspend father's visitation with the minor child on 13 December 2018, alleging sexual abuse of the child. Judge Randle Jones immediately suspended father's visitation rights.

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[1] Mother uses the term "non-Indian" in her arguments challenging the tribal court orders on appeal before this Court. We use the term non-Indian in our consideration of the issues presented for consistency.

Department of Human Services Family Safety Program investigated father for alleged sexual abuse but did not intervene, did not file a petition, and took no further action after the investigation. A criminal investigation was conducted, and father was not charged with offenses pertaining to the alleged abuse. No domestic violence protective order ("D.V.P.O.") was entered against father for S.W.'s protection.

Following the parties' agreement, Judge Jones entered a consent order on 2 December 2019 awarding mother full care, custody, and control of the minor child, ordering counseling, and awarding father such visitation as may be determined by a therapist.

Father sought to modify the consent order on 3 November 2020. He also filed motions for contempt against mother on 3 November 2020, 10 December 2021, 8 February 2022, 23 February 2022, and 3 March 2022.

The tribal court entered protective orders on 31 January and 27 April 2022 directing the production of hospital records and therapist records for the minor child. The records were provided under seal and remain under seal with the clerk of court. The court entered a consent order on 14 September 2022 (amended 23 March 2023) ordering reunification (family) therapy.

Mother and S.W. moved from Cherokee, N.C., to Evans, GA, in April 2022, without discussing the move with father. Mother and S.W. resided in Georgia with mother's aunt and uncle and also spent significant time with mother's parents in Sevierville, TN.

The tribal court dissolved the 23 March 2023 amended consent order, which had ordered family reunification therapy, on 10 August 2023, after learning that a therapist in Georgia had been providing S.W. with trauma focused cognitive behavior therapy since August 2022.

Father filed a Motion to Modify Custody and Motions for Contempt heard in the tribal court before Judge Monty Beck on 18 December 2023. Father and mother appeared with their respective counsels. Mother was awarded permanent legal and physical custody of S.W., and father was awarded visitation rights. The court ordered an end to S.W.'s trauma-based therapy and ordered that father and S.W. engage in family therapy, initially with separate therapists progressing to joint sessions. The tribal court ordered that father begin supervised visitation every other Saturday, beginning 29 June 2024, with unsupervised visitations to commence 4 October 2024. Each party was to have full rights of access to information and records concerning the minor child, including academic progress, parent-teacher conferences, special events, health issues, and extracurricular activity schedules. Failure to comply with the order provisions "shall be subject to the contempt powers of the [tribal court]." Father's motions for contempt were dismissed. Judge Beck entered the custody order on 2 February 2024.

Judge Beck modified the 2 February 2024 custody order with a memorandum of judgment (M.O.J.) dated 18 September 2024 signed by father, mother, and their attorneys. The M.O.J. rescheduled supervised and unsupervised visitations. The

parties stipulated that the M.O.J. was "enforceable by the contempt powers of the court should any party not comply with its terms." Judge Beck entered a formalized M.O.J./Order on 22 October 2024. Father's visitation was scheduled to occur every other Saturday beginning 2 November 2024 irrespective of S.W.'s ongoing therapy. Unsupervised visits were to commence on Friday, 7 February 2025.

Father filed a motion for contempt on 25 November 2024 alleging that mother failed to present the child for visitation on 2 and 16 November 2024. The tribal court ordered mother to appear and show cause for willfully refusing to comply with court orders. Mother filed a Motion to Dismiss the Show Cause Order and a Motion for Relief and a New Trial. Father filed a Motion to Modify and a Motion in Limine. A hearing was conducted on 16 April 2025 before Judge Sharon Tracey Barrett.

During the 16 April 2025 show cause hearing, father, father's counsel, and mother's newly retained counsel, attorney Adrianna E. Gomez, appeared before the tribal court. Mother's counsel had advised her client not to appear. Through counsel, mother challenged the court's authority to exercise contempt powers over her to enforce compliance with its child custody order. Mother argued that the court lacked jurisdiction to hold a show cause hearing in the child custody case relating to her defiance of tribal court orders because she is a non-Indian. Judge Barrett denied the motion to dismiss. Mother orally appealed the ruling and moved to stay the proceeding pending an interlocutory appeal. Judge Barrett denied the motion for stay and proceeded with the show cause hearing. Mother, not being present, elected not to

testify and through counsel, offered no evidence. Thus, the facts presented during the show cause hearing were uncontroverted.

During the show cause hearing, Father's evidence tended to show that mother had failed to present the minor child for visitations and failed to comply with the court's communication requirements. Father had sought to comply with the court's 2 February 2024 custody order and modifying 22 October 2024 M.O.J./Order, by continually presenting himself at the exchange locations and participating in counseling. Mother had not presented the child for visitation once.

Judge Barrett concluded that mother's failure to comply with the court's 2 February 2024 custody order and modifying 22 October 2024 M.O.J./Order (combined referred to as "the Current Custody Order") was without justification or lawful excuse. Mother was in civil contempt but could purge herself by immediate compliance with her obligations under the Current Custody Order. The court ordered that mother be held in the Cherokee Detention Center until she complied with the terms of the custody order and purged herself of the contempt. Judge Barrett entered the Contempt Order on 24 July 2025 and ordered mother to report to the detention center on the afternoon of 20 August 2025. A status hearing was scheduled for 20 August 2025, before the time mother was to report to the detention center to review her purge status.

Mother appealed Judge Barrett's 24 July 2025 Contempt Order and the denial of her Motion to Dismiss Order to Show Cause made during the 16 April 2025 show cause hearing.

Father filed a Motion for Temporary Emergency Custody with the tribal court on 13 August 2025. Judge Barrett conducted a hearing on 27 August 2025. Father appeared with counsel, and mother's counsel appeared. Mother did not appear.

Judge Barrett concluded that mother was no longer a fit, suitable, and proper person to have primary physical and legal custody of the child, nor visitation; father was a fit, suitable, and proper person to have physical and legal custody. Judge Barrett entered the Temporary Emergency Child Custody Order on 3 September 2025 awarding father exclusive legal and physical custody of S.W. Mother appealed the Temporary Emergency Child Custody Order.

Discussion

Mother raises the following issues before this Court: (I) whether the tribal court erred by denying her motion to dismiss the show cause proceeding for lack of jurisdiction and by denying her an interlocutory appeal; (II) whether the tribal court's contempt order lacks sufficient facts to support its conclusion that mother committed contemptuous acts; (III) whether the tribal court applied an incorrect legal standard in the temporary emergency child custody order; (IV) whether the temporary emergency custody order is permanent and therefore, appealable; (V) whether the findings and conclusions in the temporary emergency child custody order lack

sufficient support in competent evidence; and (VI) whether Judge Barrett lacked judicial authority to enter either the contempt order or the temporary emergency child custody order.

(I) Motion to Dismiss

Mother argues that the tribal court erred by denying her Motion to Dismiss Show Cause Order. Mother contends that because she is a "non-Indian U.S. citizen" and no congressional grant of authority exists allowing a tribal court to adjudicate her acts or omissions as alleged in the Order to Show Cause, she is not subject to the criminal jurisdiction of the E.B.C.I. Acknowledging that the tribal court specifically designated her contempt as civil contempt, not criminal, mother contends the label is not dispositive and that there is of no practical difference where the same conduct gives rise to either and the court may impose imprisonment under both. *See* C.C. § 1-27(b)–(c). Mother contends that because the Cherokee court lacked the authority to subject her to contempt proceedings, the court erred by denying her Motion to Dismiss Show Cause Order and erred by denying her interlocutory review of the order by this Court. We hold the Court acted within its jurisdiction.

Mother's challenge is to the tribal court's subject matter jurisdiction. *See* C.C. § 1-2(b) ("The Cherokee Court shall exercise jurisdiction over the domestic relations of all individuals residing on Cherokee trust lands. Jurisdiction shall be exercised for cases including but not limited to child protection and child welfare, . . . [and] child

custody[.]"); *see also In re A.P.*, 371 N.C. 14, 17, 812 S.E.2d 840, 842 (2018) ("[J]urisdiction is '[t]he legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it.' " (quoting *In re T.R.P.*, 360 N.C. 588, 590, 636 S.E.2d 787, 789–90 (2006))); *Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987) ("Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question." (citing W. Shuford, N.C. Civil Practice and Procedure § 12–6 (1981))). "Courts must have inherent contempt powers as necessary for the imposition of respect, decorum and submission to the court's lawful mandates." *In re Russell*, 13 Am. Tribal Law 169, 170 (E.B.C.I. 2013); *see also Bessette v. W. B. Conkey Co.*, 194 U.S. 324, 327, 48 L. Ed. 997, 1001 (1904) ("The purpose of contempt proceedings is to uphold the power of the court and also to secure to suitors therein the rights by it awarded."). "That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice." *Young v. United States ex rel. Vuitton Et Fils S. A.*, 481 U.S. 787, 795, 95 L. Ed. 2d 740, 751 (1987) (quoting *Michaelson v. United States ex rel. Chicago, St. P., M., & O. R. Co.*, 266 U.S. 42, 69 L. Ed. 162 (1924))).

As to whether a tribal court may exercise contempt power to compel a non-Indian parent to submit to civil jurisdiction in a child custody matter is answered pursuant to two different but equally uncontroverted grants of foundational authority: the inherent sovereign powers of Indian tribal governments and federal

law. It is long settled jurisprudence that Tribes retain their sovereignty unless taken away by Congress. *See Worcester v. Georgia*, 31 U.S. 515, 561, 8 L. Ed. 483, 501 (1832) ("The Cherokee nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress.").

A. Authority Over Child Custody Disputes

i. Inherent Authority

Tribes have inherent sovereignty, existing before contact with European settlers. Sovereignty includes rights, powers, and authority that have never been relinquished or abrogated and tribal rights not given by federal or state governments. *See* Cohen's Handbook of Federal Indian Law §18.02[1][a] (Nell Jessup Newton & Kevin Washburn, eds., 2024) (explaining "tribal nations are 'distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial" (quoting *Worcester*, 31 U.S. at 559, 8 L. Ed. at 501); *see also Williams v. Lee*, 358 U.S. 217, 221, 3 L. Ed. 2d 251, 256 (1959) ("Significantly, when Congress has wished the States to exercise [state law and jurisdiction on Indian land] it has expressly granted them the jurisdiction which *Worcester* had denied."); *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788, 188 L. Ed. 2d 1071, 1082 (2014) ("Indian tribes are 'domestic dependent nations' that

exercise 'inherent sovereign authority.' " (quoting *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509, 112 L. Ed. 2d 1112, 1119 (1991)).

"Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status." *United States v. Wheeler*, 435 U.S. 313, 323, 55 L. Ed. 2d 303, 313 (1978) (citing *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 55 L. Ed. 2d 209 (1978)). They maintain "the power of regulating their internal and social relations." *United States v. Kagama*, 118 U.S. 375, 382, 30 L. Ed. 228, 230 (1886); *see also Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55, 56 L. Ed. 2d 106, 113 (1978) (observing the "power to make their own substantive law in internal matters"); *see, e.g.*, *Roff v. Burney*, 168 U.S. 218, 42 L. Ed. 442 (1897) (membership); *Jones v. Meehan*, 175 U.S. 1, 44 L. Ed. 49 (1899) (inheritance rules); *United States v. Quiver*, 241 U.S. 602, 60 L. Ed. 1196 (1916) (domestic relations); *N.M. v. Mescalero Apache Tribe*, 462 U.S. 324, 335, 79 L. Ed. 2d 611, 623 (1983) (territory and resource use by members and nonmembers); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 71 L. Ed. 2d 21 (1982) (taxation). Tribes maintain the sovereign power to regulate their family-law matters and domestic disputes. *Haaland v. Brackeen*, 599 U.S. 255, 329, 216 L. Ed. 2d 254, 308 (2023) (Gorsuch, J., concurring).

"Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations[.]" *Montana. v. United States*, 450 U.S. 544, 565, 67 L. Ed. 2d 493, 510 (1981). A tribe may regulate non-Indians engaged

in consensual relationships with the tribe or its members in commercial dealing, contracts, leases, or other arrangements through taxation, licensing, or other means. *Id.* at 566, 67 L. Ed. 2d at 511. "A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians . . . within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Id.* (citations omitted).

In the realm of domestic relations, this principle of inherent sovereignty is acknowledged and followed throughout the courts of the United States. Matters involving the custody and care of tribal members in family law disputes fall within "the inherent power of tribes 'to conduct internal self-governance functions." *Alaska v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 371 P.3d 255, 265 (Alaska 2016) (emphasis omitted) (quoting *John v. Baker*, 982 P.2d 738 (Alaska1999)); *see also John*, 982 P.2d at 751 ("[I]n particular, . . . domestic affairs lie within a tribe's retained inherent sovereign powers."). This recognition of inherent sovereignty has been applied in many courts in matters of "extra-territorial jurisdiction when it comes to . . . domestic matters," even when litigation parties are non-Indians. *Cohen's Handbook of Federal Indian Law* § 15.03 (2024). *See, e.g.*, *Atwood v. Fort Peck Tribal Ct. Assiniboine*, 513 F.3d 943, 945 (9th Cir. 2008) (affirming dismissal of non-Indian plaintiff's custody dispute from federal court where plaintiff failed to exhaust tribal court remedies); *Kaltag Tribal Council v. Jackson*, No. 3:06-CV-211, 2008 WL 9434481, at *6 (D. Alaska Feb. 22, 2008) (unpublished) (concluding that tribal

membership was the controlling jurisdictional concern in adoption of an Indian child and a non-Indian party, not living on reservation), *affirmed*, 344 Fed. Appx. 324, 325 (9th Cir. 2009) (unpublished) (observing "Tribe's authority over its reservation or Indian country is incidental to its authority over its members." (quoting *Native Village of Venetie IRA Council v. Alaska*, 944 F.2d 548, 559 n.12 (9th Cir.1991))); *Miodowski v. Miodowski*, Nos. 8:06CV443, 8:06CV503, 2006 WL 3454797, at *4 (D. Neb. Nov. 29, 2006) (unpublished) (recognizing a tribal court's "jurisdiction over a divorce action where one party is a member of the tribe and one party is not a member of the tribe"); *Gila River Indian Cmty. v. Dep't of Child Safety*, 242 Ariz. 277, 282, 395 P.3d 286, 291 (Ariz. 2017) ("[A]lthough ICWA does not govern the transfer of preadoptive and adoptive placement actions, state courts may nonetheless transfer such cases involving Indian children to tribal courts" based on a tribes' inherent authority to hear child custody proceedings involving their own children); *Byzewski v. Byzewski*, 429 N.W.2d 394, 395 (N.D. 1988) (reversing a trial court's custody dispute judgment involving a non-Indian parent living off reservation observing that "domestic relations among [tribal] members is an important area of traditional tribal control" and that "tribal interest in domestic relations [does not] dissipate[] merely because one of the parties to a marriage is a non-Indian").

ii. Federal Authority

The authority of a tribal court to exercise contempt powers to compel a non-Indian parent to submit to civil jurisdiction in a child custody matter must also be

answered by reference to federal law and is a federal question under 28 U.S.C.S. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."). The Indian Child Welfare Act ("I.C.W.A.") provides that "[a]n Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law." 25 U.S.C.S. § 1911(a).[2] Consistent with section 1911, our Cherokee Code directs that our courts "shall exercise jurisdiction over the domestic relations of all individuals residing on Cherokee trust lands. Jurisdiction shall be exercised for cases including but not limited to child protection and child welfare, . . . [and] child custody[.]" C.C. § 1-2(b).

The United States Congress has enacted legislation with the objective of increasing tribal self-government. *Martinez*, 436 U.S. at 51, 56 L. Ed. 2d at 110; *Morton v. Mancari*, 417 U.S. 535, 551, 41 L. Ed. 2d 290, 301 (1974). *See Martinez*, 436 U.S. at 59, 56 L. Ed. 2d at 116 ("[I]n matters involving . . . domestic relations, we have recognized that [subjecting] a dispute arising on the reservation among reservation Indians to a forum other than the one they have established for themselves, may undermine the authority of the tribal [court] . . . and hence . . . infringe on the right

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[2] *See generally Ankenbrandt v. Richards*, 504 U.S. 689, 703, 119 L. Ed. 2d 468, 482 (1992) (observing in the context of diversity actions under 28 U.S.C. § 1332, that "the domestic relations exception, as articulated by this Court since [*Barber v. Barber*, 62 U.S. 582, 16 L. Ed. 226 (1859)], divests the federal courts of power to issue . . . child custody decrees." (citations omitted)).

of the Indians to govern themselves." (citation and quotation marks omitted)); *see, e.g.*, *In re C[Redacted] M[Redacted]*, Nos. 15-CVJ-008–011, 14 Am. Tribal Law 437 (E.B.C.I. tribal ct. May 22, 2019) (ruling tribal court enjoyed "full jurisdiction to proceed in [a matter of child mistreatment petitions] both under the ICWA jurisdictional framework as well as independently of the operation of the ICWA"); *In re B.A.S.*, No. 17-CVJ-059, 15 Am. Tribal Law 443 (E.B.C.I. tribal ct. June 21, 2019) (ruling Cherokee courts exercise concurrent jurisdiction with the State of North Carolina to adjudicate child maltreatment claims pertaining to an enrolled child not residing on trust lands or to cases where the alleged maltreatment did not occur on trust lands in accordance with "the ICWA jurisdictional framework . . . and persuasive precedent from other jurisdictions").

The E.B.C.I. has a strong and compelling interest in preserving and protecting the Indian family. It is axiomatic that the Cherokee court must be able to enter and enforce custody decisions in domestic cases as this directly impacts the well-being and the future of the E.B.C.I. The best interest of the next generation is therefore " 'a family law matter integral to tribal self-governance,' and as such is part of the set of core sovereign powers that tribes retain." *Cent. Council*, 371 P.3d at 265 (quoting *John*, 982 P2d. at 758). These same legal rules of construction also apply if one of the parents is a non-Indian. Courts who have addressed this issue have determined that tribes possess inherent "extra-territorial jurisdiction when it comes to . . . domestic matters," even when non-Indians are parties to such cases. *See, e.g.*, *Miodowski v.*

Miodowski, Nos. 8:06CV443, 8:06CV503, 2006 WL 3454797, at *4 (D. Neb. Nov. 29, 2006) (unpublished) (observing that courts have recognized a tribes' "jurisdiction over a divorce action where one party is a member of the tribe and one party is not a member of the tribe."). The welfare of Cherokee children, thus, must be vigilantly guarded and the safety of these same children protected by the Cherokee court. For tribal self-governance to flourish, the proper forum for the adjudication and resolution of domestic relations disputes between parents involving Cherokee children is in the Cherokee Court.

B. Show Cause and Contempt

Both civil and criminal contempt can allow for detention or imprisonment.

> "If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court." *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911). . . . If the relief provided is a sentence of imprisonment, it is remedial if "the defendant stands committed unless and until he performs the affirmative act required by the court's order," and is punitive if "the sentence is limited to imprisonment for a definite period." *Id.* at 442.

Hicks v. Feiock, 485 U.S. 624, 631–32, 99 L. Ed. 2d 721, 731–32 (1988) (quoting *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441–42, 55 L. Ed. 797, 806 (1911)).

The Cherokee Code recognizes both criminal and civil contempt. *See* C.C. §§ 1-20(a) ("Criminal contempt shall include . . . (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its

execution."), -21(a) ("A person who commits criminal contempt, whether direct or indirect, is subject to imprisonment up to 30 days, fine not to exceed $500.00, or both."); -27(a) ("Failure to comply with an order of a court is a continuing civil contempt . . . ."), -27(b) ("[a] person who is found in civil contempt may be imprisoned as long as his civil contempt continues[.]"). Here, the tribal court decreed that "[f]or civil contempt, Mother shall be held in custody at the Cherokee Detention Center until she is in compliance with terms of the Order and has purged herself of contempt." We agree with mother that this Court is not bound by the tribal court's characterization.

The tribal court found that "Mother ha[d] willfully and deliberately failed and refused to comply with her duties and obligations under the [2 February 2024 custody order and modifying 22 October 2024 M.O.J./] Order," namely, "to present the child for visitation" with father and to communicate with father and timely share "any information about the child's academic progress, parent-teacher conferences (if she attends any school other than home-school), special events or activities open to parents, health issues (illness, injury, doctor visits) and extra-curricular activity schedules." The court found that mother was able to comply with all communication standards as ordered and visitations requirements. Mother's failure to comply with the custody order and M.O.J./Order was "without justification or lawful excuse"; "Mother is therefore currently found and held to be in civil contempt of court, but remains able to purge herself of this contempt by immediate compliance with all of

her obligations under the Order." The court ordered that mother be taken into custody at the Cherokee Detention Center "until she is in compliance with the terms of the Order and has purged herself of contempt . . . including but not limited to presenting the child for visitation with Father on the required schedule set by the Order."

We hold that imprisonment to compel compliance with its custody orders, including bringing S.W. for visitation with father, such that imprisonment lasts only until mother complies with the custody orders reflects coercive power addressing civil contempt. *See Hicks*, 485 U.S. at 631–32, 99 L. Ed. 2d at 731–32. We do not address the exercise of criminal contempt powers over a non-Indian, rejecting, as claimed by mother and unsupported by the record, that mother was subjected to criminal contempt by the tribal court.[3]

Here, we are presented with a case of first impression: mother contends that our tribal court cannot coerce her compliance by contempt powers as she is a non-Indian, U.S. citizen.

The United States Supreme Court has reasoned that

> from the formation of the Union and the adoption of the Bill of Rights, the United States has manifested an equally great solicitude that its citizens be protected by the United States from unwarranted intrusions on their personal liberty. The power of the United States to try and criminally punish is an important manifestation of the power to restrict personal liberty. By submitting to the overriding sovereignty of the United States, Indian tribes

[3] The question of criminal contempt over a non-Indian citizen by the Cherokee Court is left for determination when that issue is properly before us.

> therefore necessarily give up their power to try non-Indian citizens of the United States except in a manner acceptable to Congress.

Oliphant, 435 U.S. at 210, 55 L. Ed. 2d at 222. *See, e.g.*, 25 U.S.C. § 1304 (recognizing a tribe's "inherent power . . . to exercise Tribal criminal jurisdiction over all persons" as defendants in covered crimes, including, assault on tribal justice personnel, child violence, dating violence, domestic violence, obstruction of justice, sexual violence, sex trafficking, stalking, and violation of a protective order).

Though *Oliphant* only addressed tribal authority in criminal matters, "the principles on which it relied support the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Montana*, 450 U.S. at 565, 67 L. Ed. 2d at 510. *But see United States v. Lara*, 541 U.S. 193, 198, 158 L. Ed. 2d 420, 427 (2004) (recognizing that 25 U.S.C. § 1301(2) permits a tribe to bring certain prosecutions against nonmember Indians). Nevertheless, the Supreme Court also observed that "[t]o be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations[.]" *Montana*, 450 U.S. at 565, 67 L. Ed. 2d at 510 (recognizing a tribe may retain inherent powers to exercise civil authority over the conduct of non-Indians on a reservation "when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe").

This matter involves the custody of a minor child enrolled in the E.B.C.I. who resided on trust land for six years of her life as well as at the commencement of this

action. Father, an enrolled E.B.C.I. member, commenced the litigation in tribal court involving mother, a non-Indian residing on trust lands. Mother and father signed the 18 September 2024 M.O.J. stipulating that it was "enforceable by the contempt powers of the court should any party not comply with its terms." Judge Beck formalized the M.O.J. with the 22 October 2024 M.O.J./Order modifying the 2 February 2024 custody order. Judge Barrett found that mother willfully failed to comply with the terms of the child custody orders though she remained able to do so and found her in civil contempt. The court imposed detention by order entered on 24 July 2025, to commence twenty-seven days later on 20 August 2025, if mother had yet to comply with the obligations of the child custody orders. In the context of a child custody proceeding, given the essential nature of contempt powers to a court's administration, we uphold the tribal court's authority to exercise its civil contempt power over mother, a non-Indian.[4] We overrule mother's argument that the tribal court erred by denying her Motion to Dismiss Order to Show Cause.

C. Interlocutory Appeal

Mother contends that the tribal court erred by denying her right to immediate, interlocutory review after the tribal court denied her Motion to Dismiss Order to Show Cause at the outset of the 16 April 2025 show cause hearing. Following the

[4] *See, e.g., Byzewski*, 429 N.W. 2d at 398 (observing that "tribal interest in domestic relations" does not "dissipate [] merely because one of the parties to a marriage is a non-Indian").

denial of the motion to dismiss, the court heard arguments to stay the action pending an interlocutory appeal. The court denied the motion for stay and ruled that the hearing would proceed, at which point mother's counsel offered, "[t]hen the [c]ourt may proceed, and we will appeal, and I can just sit here and watch you guys go."

"An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citing *Johnson v. Roberson*, 171 N.C. 194, 88 S.E. 231 (1916)). Almost presumptively an appeal of an interlocutory order is not immediately appealable. *Stanback v. Stanback*, 287 N.C. 448, 453, 215 S.E.2d 30, 34 (1975). "The purpose of this rule is 'to prevent fragmentary and premature appeals that unnecessarily delay the administration of justice and to ensure that the trial divisions fully and finally dispose of the case before an appeal can be heard.' " *Sharpe v. Worland*, 351 N.C. 159, 161–63, 522 S.E.2d 577, 578–79 (1999) (quoting *Bailey v. Gooding*, 301 N.C. 205, 209, 270 S.E.2d 431, 434 (1980)).

Our Cherokee Code designates the North Carolina Rules of Civil Procedure and the North Carolina Rules of Appellate Procedure as governing proceedings in the courts of our Judicial Branch. C.C. § 7-23(a). This issue is further discussed at the end of this opinion. The Code also provides that "[t]he Supreme Court shall have appellate jurisdiction to certify and decide any appeal from the Trial Court." *Id.* § 7-2(e). Where there is no appeal of right, this Court has recognized that appellate

review "may be allowed by a writ of certiorari if the order affects a substantial right." *E. Band of Cherokee Indians v. Martinez*, CSC-17-02, 15 Am. Tribal Law 51, 53 (E.B.C.I. 2018); N.C.R. App. P. 21 (governing writ of certiorari issuance). "A substantial right is 'one which will clearly be lost or irremediably adversely affected if the order is not reviewable before final judgment.' " *E. Band of Cherokee Indians on behalf of Enrolled Members v. Lambert*, No. CSC-17-03, 15 Am. Tribal Law 55, 62 (E.B.C.I. 2018) (quoting *Blackwelder v. Dep't. of Human Res.*, 60 N.C. App. 331, 335, 299 S.E.2d 777, 780 (1983)).

"The 'substantial right' test for appealability is more easily stated than applied." *Bailey v. Gooding*, 301 N.C. 205, 210, 270 S.E.2d 431, 434 (1980). "It is usually necessary to resolve the question in each case by considering the particular facts of that case and the procedural context in which the order from which appeal is sought was entered." *Waters v. Qualified Pers., Inc.*, 294 N.C. 200, 208, 240 S.E.2d 338, 343 (1978). A substantial right has been defined as "a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which a man is entitled to have preserved and protected by law: a material right." *Oestreicher v. American Nat'l Stores, Inc.*, 290 N.C. 118, 130, 225 S.E.2d 797, 805 (1976) (quoting Webster's Third New International Dictionary (1971) at 2280). *But see, e.g., Green v. Duke Power Co.*, 305 N.C. 603, 608, 290 S.E.2d 593, 596 (1982) ("The avoidance of one trial is not ordinarily a substantial right." (citing *Bailey*, 301 N.C. at 210, 270 S.E.2d at 434; *Industries, Inc. v. Insurance*

Co., 296 N.C. 486, 492, 251 S.E.2d 443, 447–48 (1979); *Waters v. Personnel, Inc.*, 294 N.C. 200, 208, 240 S.E.2d 338 344 (1978))).

Mother contends that the potential for her to be held in contempt was a substantial right warranting immediate appellate review before the tribal court conducted a show cause hearing. We do not agree. Before the tribal court, mother contended that the court lacked jurisdiction to exercise its criminal contempt powers against her, as she was a non-Indian; however, whether the court could exercise civil contempt was a "gray area."

We do not believe the matter illustrates a right which will clearly be lost or irremediably adversely affected if the court's ruling is not reviewed before the show cause order was entered. *See Lambert*, 15 Am. Tribal Law at 62. Even presuming mother would be found in contempt, the character of the court's order to be coercive or punitive would determine if the contempt was civil or criminal—a characterization relevant to the issues raised on appeal. Thus, the matter warranted further development than provided during the discussion of the motion to dismiss before the show cause hearing. We believe mother's right to seek appeal of any ruling denying her motion to dismiss the show cause hearing was adequately protected by procedures to appeal the final order from the show cause hearing, if necessary. *See* C.C. § 1-30 ("A person found in civil contempt may appeal in the manner provided for in appeals in civil actions."). Mother's contention that the tribal court erred by denying her right

to immediate, interlocutory review of its ruling to deny her Motion to Dismiss Order to Show Cause is overruled.

(II) Contempt Order: Findings of Fact

Mother argues that the tribal court's 24 July 2025 Contempt Order lacked sufficient findings of fact to support its conclusion that she committed contemptuous acts. In rebuttal to father's allegation that she failed to present S.W. for visitation on 2 and 16 November 2024, mother points to evidence showing that S.W. was hospitalized on 2 November 2024 and that an ex parte D.V.P.O. had been entered against father by a Tennessee court in November 2024. She contends he took no steps other than showing up at the exchange point; he presented no evidence of attempting alternative arrangements, contacting mother, or addressing S.W.'s medical needs; and "[father]'s effort was limited to 'showing up' without communicating with [mother] for years." Mother also contends that father testified he did not know key facts on which the motion depended: he was unaware of whether the minor child was homeschooled or enrolled; did not know whether he contacted the correct entities to obtain school records; and confirmed that mother had not communicated falsely, blocked him, or instructed providers to withhold records. Mother contends that father's motion for contempt was based on speculative assumptions and that her failure to present the child for visitation on 2 and 16 November 2024 does not amount to willful disobedience. We uphold the tribal court's conclusion.

In order to find a party in civil contempt, the tribal court must find "(1) [t]he order remains in force; (2) [t]he purpose of the order may still be served by compliance with the order; and (3) [t]he person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable him to comply with the order." C.C. § 1-27(a).

"In contempt proceedings, the trial judge's findings of fact are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing on their sufficiency." *O'Briant v. O'Briant*, 313 N.C. 432, 436–37, 329 S.E.2d 370, 374 (1985) (citing *Clark v. Clark*, 294 N.C. 554, 243 S.E.2d 129 (1978)). Unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Whether a court's findings of fact support a conclusion of law is subject to de novo review. *Shipman v. Shipman*, 357 N.C. 471, 475, 586 S.E.2d 250, 254 (2003).

The 2 February 2024 child custody order directed father and S.W. to engage in family therapy, entitled father to visit with S.W. pursuant to a visitation schedule that progressed from supervised to unsupervised visitation, and decreed that each party have full rights of access to information and records concerning S.W. The parties memorialized their consent to modify the 2 February 2024 custody order with the 22 October 2024 M.O.J./Order decreeing that father shall have visitation with

S.W. every other Saturday beginning 2 November 2024 until 24 January 2025 and that unsupervised visitation shall commence on Friday, 7 February 2026.

The tribal court's unchallenged observations, as set forth in its Contempt Order, provide that "[t]he Order remain[ed] in force and the purpose of the Order may still be served by allowing Father visitation with this daughter and his other rights in the Order." Mother engaged in a "continuing pattern of conduct"; "[she] has never complied with the requirements of the Order to present the child for visitation, supervised or unsupervised, with Father. Not even once."

> Mother has not communicated with Father at all, and so she has failed to timely share with Father any information about the child's academic progress, parent-teacher conferences . . . , special events or activities open to parents, health issues (illness, injury, doctor visits) and extra-curricular activity schedules. As to educational records, Father has credibly testified that he has never received education records from Mother and that he does not know whether the child is being homeschooled.

The court found that mother failed to communicate with Father about S.W.'s hospitalization and that he did not learn of it until obtaining medical records. As for the D.V.P.O. issued by the Circuit Court of Sevier County, Tennessee, the court observed that mother filed for the protection order against father and that no proof of service was included with the filings. Father testified that he was served on 30 December 2024. "The [Tennessee] state court later dismissed the case 'on the grounds of Res Judicata' after learning about this pending action." The court found that

"Mother [wa]s able to comply [with] all of the communication standards" and that "Mother is able to comply [with] the visitation requirements of the Order."

Based on these findings, the tribal court concluded that

> Mother has willfully and deliberately failed and refused to comply with her duties and obligations under the Order, specifically including her obligation to allow Father his court-ordered visitation rights and to "share with Father, in a timely manner, by text, phone call, email, or by regular mail the following information about [the child]: academic progress, parent-teacher conferences . . . , special events or activities open to parents, health issues (illness, injury, doctor visits), and extracurricular activity schedules" and to "promptly notify [Father] of the need for such medical treatment."

We hold the tribal court's findings of fact support the conclusion that mother committed contemptuous acts. Mother's argument is overruled.

(III) Temporary Emergency Child Custody Order: Legal Standard

Mother argues that the tribal court applied an incorrect notice standard before entering its Temporary Emergency Child Custody Order. Where the Cherokee Code does not provide protocols for addressing family matters, we must look to other sources of law for our analysis. C.C. 7-2(d). In this instance, guidance can be found in the North Carolina General Statutes. Pursuant to General Statutes, section 50-13.5, motions for the custody of a minor child may be heard on ten days' notice. Mother asserts she was given only six days' notice (including an intervening Saturday and Sunday) of the hearing on the motion for temporary emergency child custody.

She contends that she was denied the opportunity to timely issue and serve subpoenas for the child's healthcare providers or other witnesses. We disagree.

Our Tribal Council has adopted the North Carolina Rules of Civil Procedure as governing rules. *See* C.C. § 7-23(a); *see also* Ord. No. 186 (2021). Pursuant to North Carolina Rules of Civil Procedure, Rule 6(d) "[a] written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court." N.C. Gen. Stat. § 1A-1, Rule 6(d).

However, as mother notes, our Cherokee Code affords that "parties seeking . . . child custody . . . shall have all rights provided by the laws of North Carolina." C.C. § 50-13. Under General Statutes, section 50-13.5, "[m]otions for custody of a minor child in a pending action may be made on 10 days notice to the other parties . . . ." N.C. Gen. Stat. § 50-13.5(d)(1). However, the North Carolina state courts acknowledge that, in accordance with N.C. Gen. Stat. § 50-13.5(d)(2), "[i]f the circumstances of the case render it appropriate, upon gaining jurisdiction of the minor child the court may enter orders for the temporary custody . . . pending the service of process or notice as herein provided." *See also Brandon v. Brandon*, 10 N.C. App. 457, 461, 179 S.E.2d 177, 180 (1971) (observing that statutory notice periods for hearings involving the custody of a child under N.C. Gen. Stat. §§ 50-13.5 and 1A-1, Rule 6, are not an absolute right but subject to rules of waiver and "the rule that a new trial

will not be granted for mere technical error which could not have affected the result, but only for error which is prejudicial amounting to the denial of a substantial right").

Father filed the Motion for Temporary Emergency Custody on 13 August 2025, and within its authority, the tribal court provided the parties with seven days' notice for the hearing on the matter. We also observe that mother objected to the motion and that her written objection was signed by her and notarized by counsel on 14 August 2025. Where the hearing on father's motion was conducted on 27 August 2025, mother had thirteen days actual notice of the emergency child custody proceeding. Moreover, mother's assertion that she "was not afforded sufficient opportunity to issue, serve, and ensure compliance with, subpoenas for the child's mental health provider(s), medical provider(s), or any other witness" fails to show prejudice. Mother does not identify any witness unable to be present due to the notice period and made no motion to continue, but mother presented her parents—two out-of-state witnesses—at the hearing. We overrule Mother's challenge.

(IV) Temporary Emergency Child Custody Order: Appealable

Mother argues that the Temporary Emergency Child Custody Order is not temporary but permanent and appealable. We agree.

It does not appear that this Court has previously recognized the authority of our trial tribunals to enter temporary orders in a child custody proceeding. *But cf.* C.C. § 50-13 (affording parties seeking child custody "all rights provided by the laws

of North Carolina"); N.C. Gen. Stat. § 50-13.5(d)(2) ("If the circumstances of the case render it appropriate, upon gaining jurisdiction of the minor child the court may enter orders for the temporary custody . . . ."). Nevertheless, we do not need to determine the issue. We may review the matter by writ of certiorari if the order affects a substantial right. *Martinez*, 15 Am. Tribal Law at 53.

Parents have a right to the custody and control of their infant children. Though not absolute, it is a substantial right. *See In re GL*, App-20-03, 2021 Sault Ste. Marie Chippewa App. LEXIS 1, *7 (" 'Parents' have a significant interest in the companionship, care, custody and management of their children." (quoting *In the Matter of SD and JD*, APP 06-04, 5 (January 9, 2009); *see also Atkinson v. Downing*, 175 N.C. 244, 246, 95 S.E. 487, 488 (1918); *Maness v. Kornegay*, 292 N.C. App. 129, 134, 897 S.E.2d 154, 159 (2024) ("[A] trial court's order which 'eliminates the fundamental right of . . . a parent, to make decisions concerning the care, custody, and control of [his] children, . . . affects a substantial right."); *Oestreicher*, 290 N.C. at 130, 225 S.E.2d at 805 (describing "a right materially affecting those interests which a man is entitled to have preserved and protected by law: a material right," as a substantial right).

With the Temporary Emergency Child Custody Order, the tribal court found that since the custody proceeding commenced in 2015 "[v]arious orders of this [c]ourt over the subsequent years have repeatedly awarded custody of the child to Mother and those orders have repeatedly granted visitation rights to Father." But with the

Temporary Emergency Child Custody Order, the court concluded that mother was "no longer a fit and proper person to have legal and physical custody of [S.W.]" Moreover, father was "a fit and proper person to have exclusive temporary legal and physical custody of the child, and it [wa]s in the best interests of the child that exclusive temporary legal and physical custody be placed with Father."

The transfer of a child's custody from one parent to the exclusive legal and physical custody of another impacts "a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which a [person] is entitled to have preserved and protected by law: a material right," *Oestreicher*, 290 N.C. at 130, 225 S.E.2d at 805. Where, as here, the transfer of custody was for an indefinite period, we believe the substantial right would be clearly lost or irremediably adversely affected if not reviewable. *See Lambert*, 15 Am. Tribal Law at 62. As such, the matter comes within the scope of appellate review by writ of certiorari. We agree with mother: the 3 September 2025 Temporary Emergency Child Custody Order is subject to immediate review.

(V) Temporary Emergency Child Custody Order: Evidentiary Support

Mother argues that the findings of fact in the 3 September 2025 Temporary Emergency Child Custody Order lack evidentiary support. Mother further argues that the findings of fact do not support the tribal court's determination of a substantial change in circumstances warranting a change in custody.

Per Cherokee Code section 7-4, the tribal courts are empowered to "interpret and apply the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, and to make findings of fact and conclusions of law." C.C. § 7-4(a). "[W]ithin this structure, the trial court, as the fact-finder with the judicial responsibility to assess the credibility of witnesses" has the responsibility to develop the record and make key determinations. *Campos v. E. Band of Cherokee Indians*, No. CSC-19-06, 18 Am. Tribal Law 137, 159 (E.B.C.I August 7, 2024) (citing C.C. § 7-4). "[T]he trial court's findings of fact are conclusive on appeal if there is evidence to support them, even though the evidence might sustain findings to the contrary. Whether those findings of fact support the trial court's conclusions of law is reviewable de novo." *In re A.B.*, No. CSC 23-01, 18 Am. Tribal Law 42, 51 (E.B.C.I. October 18, 2024) (quoting *Drum v. Drum*, 284 N.C. App. 272, 275–76, 874 S.E.2d 916, 921 (2022)). Unchallenged findings of fact are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

We find further guidance in North Carolina state court decisions.

> Our trial courts are vested with broad discretion in child custody matters. [*Pulliam v. Smith*, 348 N.C. 616, 624, 501 S.E.2d 898, 902 (1998)]. This discretion is based upon the trial courts' opportunity to see the parties; to hear the witnesses; and to " 'detect tenors, tones, and flavors that are lost in the bare printed record read months later by appellate judges,' " *Surles v. Surles*, 113 N.C.App. 32, 37, 437 S.E.2d 661, 663 (1993) (quoting *Newsome v. Newsome*, 42 N.C. App. 416, 426, 256 S.E.2d 849, 855 (1979)), quoted in *Pulliam*, 348 N.C. at 625, 501 S.E.2d at 903. Accordingly, should we conclude that there is substantial evidence in

> the record to support the trial court's findings of fact, such findings are conclusive on appeal, even if record evidence " 'might sustain findings to the contrary.' " *Pulliam*, 348 N.C. at 625, 501 S.E.2d at 903 (quoting *Williams v. Pilot Life Ins. Co.*, 288 N.C. 338, 342, 218 S.E.2d 368, 371 (1975)).
>
> In addition to evaluating whether a trial court's findings of fact are supported by substantial evidence, this Court must determine if the trial court's factual findings support its conclusions of law. *Id.* at 628, 501 S.E.2d at 904. With regard to the trial court's conclusions of law, our case law indicates that the trial court must determine whether there has been a substantial change in circumstances and whether that change affected the minor child. Upon concluding that such a change affects the child's welfare, the trial court must then decide whether a modification of custody was in the child's best interests. If we determine that the trial court has properly concluded that the facts show that a substantial change of circumstances has affected the welfare of the minor child and that modification was in the child's best interests, we will defer to the trial court's judgment and not disturb its decision to modify an existing custody agreement. *Id.*

Shipman, 357 N.C. at 474–75, 586 S.E.2d at 253–54.

Mother challenges observations within the tribal court's findings of fact 11, 13, 15, and 16.

Within finding of fact 11, the tribal court observed that "Robin Woodall [(S.W.'s maternal grandmother)] testified that Mother has taken the child away to avoid any possibility that Father could be around the child." We note Robin Woodall's testimony that mother left the Woodall home in Tennessee sometime in June 2024 before law enforcement officers sought to locate her, that she continues to speak with mother and S.W., and that mother told her she was not coming back until S.W. was protected,

such that father cannot have any visitation with S.W. We believe the record evidence is sufficient to uphold the challenged finding.

Mother makes a number of challenges to finding of fact 13. Mother challenges the observation that

> [n]o evidence was offered about whether [S.W.] is currently being home-schooled. No evidence was offered about whether she is receiving medical care . . . , or whether Mother is in a place where she can access medical or mental health services for the child in an emergency. No evidence was offered to show that Mother has savings or a reliable source of income to financially support the child, has safe and reliable means of transportation to access essential goods and services, has clean and proper clothing for the child, or has safe and adequate housing.

Per the record transcript, Jeff Woodall (S.W.'s maternal grandfather) testified that he had not spoken to mother "in a while," but Robin Woodall spoke with mother and S.W. "regularly." Robin Woodall testified that she was unaware of where mother and S.W. were located, that S.W. was not seeing a mental health provider, and that she had no idea if S.W. saw a dentist or a pediatrician. Robin responded, "No," when asked, if she had "information on how [mother] may be earning an income right now?" Robin testified to her belief that mother "c[ould] get where she needs to go"; however, Robin did not know any specifics about mother's transportation, whether mother had a vehicle, or who the people were that could get her anywhere she needed to go. What she knew was based on what mother told her. Robin testified that she had no information on S.W.'s residence or housing.

Upon review of the record testimony from Jeffrey Woodall, Robin Woodall, and father, we agree with mother that the record does not support the finding that "[n]o evidence was offered about whether S.W. is currently being homeschooled." Therefore, we strike this observation under finding of fact 13. We also strike the observation that "[n]o evidence was offered to show that Mother . . . has clean and proper clothing for the child," as it does not appear this matter was discussed. However, the record supports the tribal court's observations under the remaining challenges to finding of fact 11. The remaining challenges to finding of fact 13 are overruled.

Mother challenges finding of fact 15 and 16 as failing to address pertinent evidence.

> 15. A 35-second audio recording was offered into evidence by the defense at the Hearing, This recording was taken of the child while she was screaming and crying, saying words that sound like "PLEASE DON'T . . . PLEASE . . . PROTECT ME." No evidence was offered from anyone who made the recording or even from a person who was present when the recording was made. The recording was posted on social media by Mother. Although the date of the recording was not identified, it may have been made sometime in November of 2024. The lack of direct, reliable evidence regarding the circumstances surrounding the child when this recording was made greatly limits the recording's probative value. Even so, the recording does support the fact that the child's behavior involves emotional outbursts of an extreme nature.

Mother contends that the tribal court failed to acknowledge that she engaged emergency services for S.W. due to threats of suicide.

Under finding of fact 16, the tribal court observed the following:

> 16. It is clear that Jeff and Robin Woodall both believe that their daughter has always been a "good girl" and currently that she is also a good mother who is doing nothing wrong as a parent. They are supportive of her and her decisions, including her ongoing refusal to allow Father's Visitation rights in defiance of court orders and her current decision to evade law enforcement. They believe whole-heartedly that all of the troubling aspects of the child's mental and emotional condition, many of which they have witnessed, are attributable to visitation she had with Father in 2018, when she was three years old. Both witnesses seem certain that all of the ten-year-old child's panic attacks, anxiety, nightmares, fearfulness, suicidal statements and threats, fear of crowds, crying and emotional upset, as well as the "thousand-yard stare" that the child sometimes exhibits when she is deep in thought, are caused solely by actions of a parent she has not seen in nearly seven years. In short, Jeff and Robin Woodall blame Father for everything that is negative in the child's life and experience. This is so despite the fact that the child has seen little, if any, improvement from the therapy and treatment she has received for approximately six years, during which time she did not see Father and has exclusively lived with Mother.

Mother contends that the finding misstates Jeff and Robin Woodall's testimonies. Mother points out that both testified that S.W.'s panic attacks stem from visits with father in the past, triggered by present concerns of having to visit with him. We note that the court did find that Jeff and Robin Woodall evidenced their belief that S.W.'s panic attacks were rooted in father's actions seven years ago. The court simply did not find that S.W.'s panic attacks were triggered by present concerns of having to visit father.

The tribal court is empowered to make key determinations and findings of fact.

Campos, 18 Am. Tribal Law at 159. Those findings are "conclusive on appeal if there is evidence to support them, even though the evidence might sustain findings to the contrary." *In re A.B.*, 18 Am. Tribal Law at 51. Therefore, as mother does not challenge the court's observations as stated under finding of fact 15, we uphold the finding. *See Koufman*, 330 N.C. at 97, 408 S.E.2d at 731. Mother's argument seeking additional acknowledgement of proffered evidence under findings of fact 15 and 16 are overruled. The remaining unchallenged findings of fact are binding on appeal. *See In re A.B.*, 18 Am. Tribal Law at 51; *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

Mother challenges whether the tribal court's findings of fact support its determination of a substantial change in circumstances occurring since the 2 February 2024 custody order was modified 22 October 2024 M.O.J./Order.

The tribal court's findings of fact show that father has been married for ten years and has a daughter with his wife. He is employed with the E.B.C.I. Father filed the custody action for S.W. in 2015, and mother counterclaimed for custody. The tribal court has consistently awarded mother primary custody and father visitation. Yet, mother has not presented S.W. for visitation as required by custody orders, and father has not seen S.W., since December 2018. We observe that the parties have submitted themselves to the Cherokee court since 2015, a period of some nine to ten years and only now does mother claim that jurisdiction is lacking. Mother was content with the tribal court's exercise of jurisdiction when the court awarded her custody of the child. We recognize that mother changed her acquiescence with the exercise of

jurisdiction only when the tribal court modified its order and she lost custody of the child.

Since the 2 February 2024 custody order was entered (in which mother consented to father's visitation with S.W.) and modified with the 22 October 2024 M.O.J./Order, mother has continually failed and refused to present the child for father's visitation. Mother failed to appear in the tribal court as ordered for the 16 April 2025 show cause hearing or the 20 August 2025 hearing on mother's compliance with the Contempt Order entered upon the show cause hearing.[5] Ten outstanding criminal complaints were sworn out against mother by E.B.C.I. law enforcement in May 2025 (charging mother with cyberstalking, transporting a child outside the territory of the E.B.C.I. with intent to violate a custody order, and perjury) subjecting mother to arrest. Father obtained a one-year D.V.P.O. against mother in Jackson County, North Carolina, on 2 June 2025. Mother knows that law enforcement is attempting to find her, and she is hiding. Neither of mother's parents know where she or S.W. is located or who is with them. The last place either parent knows that mother and S.W. were located was in Evans, GA, when they visited Jeff Woodall's sister in June 2025. Robin Woodall testified that mother has taken S.W. away to avoid the possibility that father could be around the child and that mother will return only

[5] Counsel directed mother not to attend the tribal court's 16 April 2025 show cause hearing, and after being told not to attend and then learning of the contempt order, mother did not present herself on 20 August 2025.

when it is safe to do so, i.e., when mother is no longer subject to arrest and father cannot have visitation. Mother and S.W. left mother's vehicle along with their belongings with Jeff and Robin Woodall. During the 27 August 2025 emergency custody hearing, mother was not present and thus, presented no evidence about S.W.'s current location, whether she was receiving medical care or mental health services, whether mother could access medical or mental health services in an emergency; no evidence was offered to show that mother had savings or a reliable source of income to support S.W., had safe and reliable transportation, had access to essential goods and services, or had safe and adequate housing; and an audio recording of the child screaming and saying words like "PLEASE DON'T . . . PLEASE . . . PROTECT ME" supports a finding that the child's behavior involves extreme emotional outburst.

The tribal court found that mother's conduct in refusing to allow father visitation as well as the DVPO entered against mother for engaging in domestic violence against father constituted a substantial change in circumstances. Moreover, mother's "fugitive conduct"—staying in undisclosed locations, hiding from law enforcement with the child—posed a substantial risk to S.W.'s safety and well-being. We believe the tribal court's findings of fact support its determination that a substantial change in circumstances had occurred. The court further concluded that mother was no longer a fit and suitable person to have legal and physical custody of S.W., that father was a fit and suitable person to have exclusive temporary legal and

physical custody, and that it was in S.W.'s best interests that her exclusive temporary legal and physical custody be placed with father.

It is clear from the supported and unchallenged findings of fact that the tribal court's determination that a substantial change in circumstances had occurred, that mother lacked fitness to have legal or physical custody of S.W., that father was fit to exercise legal and physical custody, and that it was in S.W.'s best interests for father to exercise legal and physical custody was not an abuse of the tribal court's discretion. We overrule mother's arguments.

(VI) Judge Barrett's Authority to Preside

Mother argues that Judge Barrett lacked lawful, judicial authority under the Cherokee Code to enter either the Contempt Order or the Temporary Emergency Child Custody Order. Mother points out that Judge Barrett was confirmed as a temporary judge of the E.B.C.I. court by resolution entered on 13 May 2016. Following Judge Barrett's appointment, other individuals were nominated and confirmed to serve as tribal court judges for court vacancies, including one temporary court judge. Mother asserts that "whatever vacancy existed in May 2016 to give rise to the appointment and confirmation of Judge Barrett as a Temporary Judge, has long since been filled" and that temporary appointments are not meant to continue in perpetuum. Because the Cherokee Code does not provide for those appointed in a temporary capacity to serve beyond the time the vacancies they were appointed to

address were filled, Judge Barrett's status as a temporary judge has expired. As Judge Barrett has not been reappointed as a temporary judge since May 2016, the authorization for her to serve as a temporary judge must have expired prior to April 2025, and absent the continuing authority to preside over the proceedings as a temporary judge, her orders are void ab initio. We disagree.

Our Cherokee Code directs that "[t]he Court shall maintain a list of temporary justices, judges and magistrates available for assignment to particular cases or duties by the Chief Justice. Prior to assignment by the Chief Justice, temporary justices, judges or magistrates must be nominated and confirmed" by the Tribal Council. C.C. § 7-1(c). The terms of judicial office are provided under Cherokee Code section 7-12. *See* C.C. § 7-12(a) (The Chief Justice, the Chief Judge, and Associate Judges for Trial Courts of Special Jurisdiction serve six-year terms.); *id.* § 7-12(b) (Associate Justices of the Supreme Court and Associate Judges of the Tribal Court serve four-year terms). Our Tribal Council chose not to set term limits for temporary justices, judges and magistrates in the Cherokee Code, though the Council had the ability to do so. *See* C.C. Part I, § 23 ("The Tribal Council is hereby fully authorized and empowered to adopt laws and regulations for the general government of the Tribe[.]").

Although the resolution that memorializes Judge Barrett's appointment acknowledges that it was due to the retirement of Judge Danny E. Davis, the resolve clause does not establish a term limit.

NOW THEREFORE BE IT RESOLVED by the Tribal

> Council of the Eastern Band of Cherokee Indians in Special Council assembled, at which a quorum is present, that based upon Judge Barrett's background and expertise, the Tribal Council hereby accepts the Principal Chief's nomination and confirms the appointment of the Honorable Sharon Tracey Barrett as a Temporary Judge/Justice of the Cherokee Court for the Eastern Band of Cherokee Indians.

Resolution No. 244 (2016) (E.B.C.I., Cherokee Council House). *Resolving clause*, Black's Law Dictionary (12th ed. 2024) ("The clause that introduces a resolution's operative text, usu. beginning with "Resolved, That ..." • A resolving clause is comparable to a statute's enacting clause."). *See generally Jackson v. Home Depot U.S.A., Inc.*, 388 N.C. 109, 115, 919 S.E.2d 199, 204 (2025) ("If the plain language of the statute is unambiguous, we apply the statute as written." (quoting *Sturdivant v. N.C. Dep't of Pub. Safety*, 386 N.C. 939, 944, 909 S.E.2d 483 (2024) (cleaned up))); *Sturdivant*, 386 N.C. at 944, 909 S.E.2d at 488 (2024) ("If the plain language of the statute is ambiguous, however, we then look to other methods of statutory construction such as the broader statutory context, the structure of the statute, and certain canons of statutory construction to ascertain the legislature's intent." (quoting *Wynn v. Frederick*, 385 N.C. 576, 581, 895 S.E.2d 371 (2023) (cleaned up))).

When Tribal Council revised the appointment confirmation process in 2022, with the adoption of Ordinance No. 186,[6] it could have set term limits for temporary

[6] Prior to the adoption of Tribal Council Ordinance No. 186, C.C. § 7-1 provided that "[a]ll Justices and Judges" as well as temporary justices, judges, or magistrates "shall be

judges but again did not do so. *See generally Wynn*, 385 N.C. at 582, 895 S.E.2d at 377 ("[T]he legislature's intent may be revealed from the legislative history of the statute in question, as changes the legislature makes to a statute's text over time provide evidence of the statute's intended meaning." (internal citations omitted)). Our Cherokee Code does not establish when the term ends for a judge made eligible to serve for a temporary assignment. In fact, nowhere in Chapter 7 does Tribal Council set a term limit for temporary justices and judges even though it set out term limits for the chief justice, the chief judge, associate justices of the Supreme Court, and associate judges of the tribal court, though it could have done so at any time and still may do so at any time.

Any limitation of temporary appointments is for Tribal Council to establish, not for this Court to impose. We note that pursuant to the confirmation process adopted in 2022, the Tribal Council is to conduct a confirmation hearing in accordance with Cherokee Code, Chapter 117, Art. III-A. *See* C.C. §§ 7-1, -11. Judge Barrett is a temporary judge appointed prior to the amendment of Cherokee Code section 7-1 and the enactment of section 7-11. Therefore, Tribal Council was not required to conduct a confirmation hearing for her appointment.

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appointed upon nomination by the Principal Chief, and the confirmation by the Tribal Council." Upon adoption of the ordinance, C.C. § 7-1(c), (d) (2021). Upon adoption of Ordinance No. 186, "temporary justices, judges or magistrates must be nominated and confirmed in accordance with C.C. § 7-11." Under C.C. § 7-11, "[t]he Principal Chief shall appoint all justices and judges with confirmation by the Tribal Council. Tribal Council shall hold confirmation hearing in accordance with C.C. Ch. 117, Art. III-A."

Without temporary justices and judges, the Supreme Court and tribal court could not function when a recusal or vacancy occurred. The Tribal Council has recognized this as an ongoing need. Mother advocates for vacatur of Judge Barrett's judgments and says the result on settled cases and decisions would be "tricky." We would describe the result as chaos.

Judge Barrett was appointed as a temporary judge by virtue of the process of nomination and confirmation by Tribal Council. She remains on the Cherokee court's list of temporary judges and was assigned this case by Chief Justice Letts, after Judge Beck recused.[7] By virtue of her status as a temporary judge and the assignment by the Chief Justice, Judge Barrett was authorized to preside over the underlying matter and enter the Contempt Order and the Temporary Emergency Child Custody Order. Mother's argument is overruled.

Father responds to mother's argument by contending that this issue is a nonjusticiable political question. We disagree. The political question doctrine "excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch. The Judiciary is particularly ill-suited to make such decisions." *E. Band of Cherokee Indians on behalf*

[7] Temporary Justice Barrett was also appointed to serve on several panels for appeals of cases by Presiding Chief Justice Brenda Pipestem, after former Chief Justice Kirk Saunooke recused himself.

of Enrolled Members v. Lambert, No. CSC-17-03, 15 Am. Tribal Law 55, 62 (E.B.C.I. Feb. 8, 2018) (quoting *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230, 92 L. Ed. 2d 166, 178 (1986)). We do not view this as a policy issue or a nonjusticiable political question. The doctrine of justiciability

> instructs the courts, especially in dealing with cases challenging the validity of government action, to refuse to issue advisory opinions, to decline to determine political questions, and to observe the constraints of standing, ripeness and mootness. *See United States v. Richardson*, 418 U.S. 166, 172, 94 S. Ct. 2940, 41 L. Ed. 2d 678, 685 (1974); *Flast v. Cohen*, 392 U.S. 83, 95, 88 S. Ct. 1942, 20 L. Ed. 2d 947, 959 (1968). To the extent that a case requires a determination of what the law is, such as, an interpretation of a statute, it is a matter that is appropriate for judicial inquiry, *E. Band of Cherokee Indians on behalf of Enrolled Members v. Lambert*, No. CSC-17-03, 15 Am. Tribal Law 55, ([E.B.C.I. February 8, 2018])[.]

Blankenship v. E. Band of Cherokee Indians, No. CSC-16-03, 16 Am. Tribal Law 30, 35 (E.B.C.I. 2019). Mother asks this Court to determine whether Judge Barrett's tenure as a temporary judge confirmed by Tribal Council in 2016 had expired by operation of the provisions of our Cherokee Code. We view the matter as appropriate for judicial inquiry, not a policy choice or a value determination committed to our legislative body.

Conclusion

For the reasons stated, we affirm Judge Barrett's 24 July 2025 Contempt Order, the ruling to deny mother's motion to dismiss the order to show cause made during the 16 April 2025 show cause hearing, and the 3 September 2025 Temporary

Emergency Child Custody Order. Any motions which have not been ruled on in the opinion and were not ruled on previously are deemed denied.[8]

Finally, to resolve a question of rules of appellate procedure that has existed for over the past two decades, we address whether the North Carolina Rules of Appellate Procedure, adopted pursuant to Cherokee Code, section 7-23(a) ("Proceedings in the courts of the Judicial Branch shall be governed by . . . the North Carolina Rules of Appellate Procedure."), or the "Rules of Appellate Procedure, The Cherokee Supreme Court," implemented by Chief Justice Harry Martin on 25 August 2005, are the applicable and controlling rules of appellate procedure. Today's decision establishes and we hold that as directed through the legislative intent of Tribal Council, *see* C.C. Part I, § 23, pursuant to their authority, the North Carolina Rules of Appellate Procedure shall control appeals in the Cherokee Supreme Court, henceforth.

This is the 25th day of March, 2026.

[8] The E.B.C.I. filed a motion to file an amicus brief. On 6 January 2026. This Court granted the motion in part. However, no amicus brief was filed on behalf of the tribe.

Bradley B. Letts[9]
Chief Justice

Robert C. Hunter
Robert Hunter (Mar 25, 2026 15:06:45 EDT)

Robert C. Hunter[10]
Associate Justice

Jerry F. Waddell[11]
Associate Justice by designation

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[9] Bradley B. Letts has served as Chief Justice of the Cherokee Supreme Court since 2024. He previously served as the North Carolina Senior Resident Superior Court Judge for Judicial District 43B from 2018–24, as North Carolina Superior Court Judge for Judicial District 30B from 2009–18, and as North Carolina District Court Judge for the 30th District from 2000–09.

[10] Robert C. Hunter has served as an Associate Justice of the Cherokee Supreme Court since 2015. He previously served as an Associate Judge on the North Carolina Court of Appeals from 1998 to 2014.

[11] Jerry F. Waddell currently serves as a Temporary Judge/Justice for the Cherokee Supreme Court since 2017. He is sitting by designation, 2 September 2025 through present. He has served as a North Carolina District Court Judge since 1991, including 16 years as Chief District Court Judge in Judicial District 3B (now Judicial District 4) and has served as an Emergency Judge since 2012.