(2) the value and ownership of the vehicle,
(3) correction of the judgment amount owed by the Appellant to $1,230.50,
(4) the value and ownership of the remaining unlitigated items on the post-trial lists.

IT IS SO ORDERED.

In Re the Welfare of J.L.V. (05-20-92), J.M.V. (12-29-93), & I.B. (04-20-99).
Jose Valdez-Catalan, Appellant,
vs.
Colville Confederated Tribes (CFS), Jessilyn Ballesteros (mother),
and J.V., J.V., and I.B. (Minors), Appellees.
Case No. AP02-006, 4 CTCR 21
8 CCAR 23

[Wayne Svaren, Spokesperson for Appellant Father.
David Ward, Spokesperson for Appellee CCT.
Dana Cleveland, Spokesperson for Appellee Minors.
Tim Liesenfelder, Spokesperson for Appellee Mother.
Trial Court case number CV-MI-2000-02003]

Argued July 18, 2003. Decided July 21, 2005.
Before Chief Justice Anita Dupris, Justice Dennis L. Nelson, and Justice Theresa M. Pouley

This matter came before the Court of Appeals on July 17, 2003 for oral argument. Appellant, father, appeared through counsel Wayne Svaren. The Appellee, CFS, appeared through David Ward. The Appellee, Jessilyn Ballesteros, did not appear in person or through counsel. The Appellees, J.L.V., J.M.V. and I.B., appeared through their spokesperson, Dana Cleveland of Colville Legal Services. Oral arguments were held before Chief Justice Dupris, Justice Nelson and Justice Pouley.

Pouley, J for the Panel

SUMMARY

The Appellant Jose Valdez-Catalon (Appellant) appeals the October 30, 2002 Dependency Review Order which excluded Appellant, the natural father, from consideration for placement of his two minor children and their sibling, his step-child. Appellant asserts that the Trial Court (Court) erred in

excluding him from consideration on the basis of his citizenship and residence in Mexico and on the basis of "not splitting up the siblings." Appellant argues in the alternative that the Court made insufficient factual findings to support these claims and failed to articulate clear legal standards for its conclusions. The Colville Tribes, Appellant and the children's counsel argue that any error is a harmless error because the children should remain on the Colville Indian Reservation and that Colville custom and tradition would require such a result.

Based on the reasoning below the Court of Appeals (COA) finds that the Court made insufficient legal and factual findings to exclude the natural father from consideration for placement of the children, and REVERSES and REMANDS this matter for findings consistent with the standards set in this opinion.

FACTS

The three minors in this case, J.L.V., J.M.V and I.B., were made Minors-in-Need-of-Care and have remained in an out-of-home placement since August 5, 2000. Appellee Jessilyn Ballesteros is the natural mother of all three children. Appellant Jose Valdez-Catalon is the natural father of J.L.V and J.M.V and the stepfather to I.B. Appellant is a Mexican citizen and resides in Mexico. The putative father of I.B. is Jay Seller, but paternity has not yet been established and his whereabouts are unknown. *CCT Individual Service Plan (ISP)* 9-1-01. The mother and all three children are members of the Colville Confederated Tribes.

In 2000, the children were picked up and placed in foster care. The Court's orders, spanning more than two years, chronicle Appellant's involvement in the subsequent dependency process. In 2000, Appellant was incarcerated in the Spokane jail and was eventually deported. The Order from the Adjudicatory Hearing dated August 30, 2000 states that the children wished to visit with their father and that the Court found visitation to be in the children's best interest. On March 7, 2001, the Court found that Appellant had taken an "active role" with his children. On April 9, 2001, the Court's order allowed Appellant weekly visits with the children during his incarceration. On June 6, 2001, the Court found the mother had not complied with her court ordered requirements. The Court also found Appellant had progressed with his requirements and ordered Colville Family Services (CFS) to investigate placement with him including assessment of CFS's ability to monitor a case in Mexico, to obtain enforcement of Colville Orders, to identify services available to transport the children to Mexico and to arrange for visitation with the children.

In the next review hearings, CFS recommended the return of children to their father in Mexico. Appellant had complied with all court orders and CFS made arrangements to have his compliance information properly documented in Mexico and communicated to the Tribe, including urinalysis results. The remaining identified issue was whether CFS could continue to actively monitor the case in Mexico. The review order, filed on June 17, 2002, directed the Tribe to prepare appropriate documentation to

coordinate services with Mexico and prepare a home study. *See Appellant's Opening* Brief, page 4, and *Tribal Court Order,* filed October 30, 2002.

At the next review hearing, appealed to COA, the Court apparently reconsidered the previous plan of placing the children with their father in Mexico. In October of 2002[10], the Court reviewed this matter and found that: 1) the CFS Caseworker was considering Appellant for placement of the children; 2) that the Colville Prosecuting Attorney learned that the U.S. State Department considered Mexico to be "out of compliance" in its agreements with the United States; 3) that sending the children to Mexico would be a "crapshoot." The Court then ordered that: "Jose Valdez-Catalan will no longer be considered an option for placement of the minor children so long as he remains in Mexico. The Court will not consider splitting up the three minor children to send two children, J. and J., to Mexico."

Appellant timely appealed. Numerous continuances, not detailed here, were properly requested and granted. Oral arguments were finally heard in July of 2003. It should be noted that in each of these hearings Appellee mother was not in substantial compliance with her court- ordered requirements and was not being considered for placement.

DISCUSSION

I. Can the Trial Court, on the basis of the record in this matter, exclude placement with a natural parent in compliance with his service plan based on the fact that he is a citizen and resident of Mexico?

Appellant argues that he is a fit parent, has complied with all court orders and should not wrongfully excluded from his children. Both parties argue that the "best interest of the child" standard should apply. However, Appellant argues, the Court failed to articulate clear legal standards. Appellee CFS argues this failure is harmless error. We hold that when important dispositive rulings regarding rights of parents and children are implicated, the Court must properly apply the "best interest of the child" standard finding to exclude the natural parent from placement.

The "best interest of the child" standard is well-established in Colville Tribal statutory and case law. The Colville Tribal Code, CCT 5-2-1 states:

> Purpose and Construction. It is the purpose of the Chapter to secure for each child coming before the Tribal Juvenile Court such care, guidance, and control, preferable in his own home, as will serve his welfare and the best interests of the Colville Confederated Tribes; to preserve and strengthen family ties whenever possible; to preserve and strengthen the child's cultural and ethnic identity whenever possible, to secure for any child removed from his

[10] Although the Order itself has a file stamp of October, 2003, it was undisputably entered in October of 2002.

> home that care, guidance, and control as nearly equivalent as that which he should have been given by his parents to help him develop into a responsible, well-adjusted adult; to improve any conditions or home environment which may be contributing to his delinquency; and at the same time to protect the peace and security of the community and its individual residents from juvenile violence or law-breaking. To this end, this Chapter is to be liberally construed.

CTC 5-2-1.

The COA had occasion to further define this standard. In the context of terminating a parents rights, with almost identical purpose language, the COA in *In Re the Welfare of L.S, M.S., and C.S.,* stated:

> It is uniformly held that substantive decisions regarding the welfare of a child shall be in the best interest of the child. Welfare of child is paramount consideration in determining the best interests of the child. *(Emphasis added, citations omitted.)* Tribal Courts have regularly exercised discretion in determining the welfare and what is in the best interest of minor children and, in the best interest of the Colville Confederated Tribes.

3 CCAR 72, 74 (1997).

Thus the Colville Tribal Code directs and the COA has held that in determining the care of minor children, such care must be in the best interest of the child and the Tribe, and must seek to give such care and guidance to preserve and strengthen families whenever possible. *See CTC 5-2; In Re the Welfare of J.AM., K.A.M., P.M., S.Z.M.Z.,* 3 CCAR 6, 8 (1995).

Case law is equally well-established on factors used to determine the best interests of the child. The determination of the best interests of the child is a highly factual inquiry which will not be disturbed on appeal without a showing of abuse of discretion. The Court must weigh a variety of factors, including identifying the appropriate factors and weighing such factors to reach an appropriate legal conclusion. Appellant argues the Court should adopt the standards articulated in *In the Matter of the Dependency of J.B.S.,* 123 Wn. 2d. 1 (1993). Although we note that some of the specific factual inquiries for persons who are foreign nationals are useful, Colville Tribal law provides sufficient guidance on the factors to be weighed. For clarity, we will outline the factors which should be included in an inquiry based on the best interest of the child. The following factors, and others as needed on a fact-specific basis, should be used in determining the best interest of the child:

1. The appropriateness of the care, guidance and control given to a child. *CTC 5-2-1.*
2. Preserving and strengthening the child's family which may include consideration of the harm suffered by the child in severing family relations. *CTC 5-2-1.*

3. Preserving and strengthening the child's cultural and ethnic identity which may include considerations involved in placing a child in another cultural or ethnic region. *CTC 5-2-1.*
4. The appropriateness of the home environment including the availability of a safe and stable home, and the effect of abrupt changes in that environment.*CTC5-2-1; In Re Welfare of S.M.C., E.M.P., 2 CCAR 45, 46 (1994);*
5. The availability of services, including therapeutic, educational and cultural for the child at their home or placement. *In re Welfare of D.A., L.F.,* 3CCAR 54,56 (1996).
6. The attachment of the child to the parents and/or their home and/or their siblings including consideration of the length of current placement. *In re Welfare of L.S., M.S., and C.S.,* 3 CCAR 72, 74 (1997). This would necessarily include consideration of the child's psychological and emotional bonds with each parent, siblings and extended family. *In the Matter of the Dependency of J.B.S.,* 123 Wn. 2d. 1, 11 (1993).
7. The attributes of the child including his or her age, physical well-being, and depending on the age of the child perhaps the child's wishes and certainly any harm to be suffered by the child by a substantial change in circumstances. *In re Welfare of L.S., M.S., and C.S.,* 3 CCAR 72, 74 (1997) and *In re J.B.S.* 123 Wn. 2d at 11.

This list is not meant to be exhaustive but rather instructive of the type of factors to be considered and weighed with specific facts by the Court.

When these factors are compared to the record below, the factual record does not provide sufficient information to weigh and balance the factors. We are not unmindful of the burden such an inquiry would place on the Court in a typical review case where little has changed. However, this examination is necessary when such a substantial modification, such as finding a child will not be returned home to a parent, is done in a dependency review hearing.

The Appellee CFS and the Children's Attorney argue that the custom and tradition of the Colville Tribes weighs in favor of the children remaining on the Colville Reservation. Thus, Appellees argue, since the result of the Court was correct, then the error must be harmless. We do not agree. The custom and tradition of the Tribes was neither argued, weighed or considered in the Court's findings. Appellees are correct that this is a factor that must be weighed. However, the Court's lack of findings preclude us from reviewing the matter. As a final note, the Court did not consider or issue any findings regarding the "best interest of the Tribe." For all these reasons, we hold the Court erred in failing to identify the legal factors and weigh each factor as required.

II. Did the Court err in finding that the detriment from separating siblings was sufficient to exclude consideration of the natural father for placement?

Appellant agues that the Court gave improper weight to this factor when balanced against the return of the natural children to their natural parent who is successfully complying with court orders. This is an appropriate factor to consider in placing children. *See, Number 6 & 7, supra.* However, this factor alone cannot support an order to exclude a natural parent from having his or her children returned. As with the previous factor, we hold the Court erred in failing to properly identify and weigh the factors for consideration.

CONCLUSION

For the reasons stated in this Opinion, this matter is REVERSED and REMANDED for the Court to properly weigh the above factors and enter Findings of Fact and Conclusions of Law consistent with the "best interests of child" standard.

Benjamin CAMPBELL, Appellant,

vs.

COLVILLE CONFEDERATED TRIBES, Appellee.

Case No. AP05-006, 4 CTCR 22

8 CCAR 28

[Wayne Svaren, Spokesperson for Appellant.
Samuel J. Conklin, Spokesperson for Appellee.
Trial Court Case No. CR-2005-28014]

Initial hearing held July 15, 2005. Decided July 22, 2005.
Before Chief Justice Anita Dupris, Justice Edythe Chenois and Justice Howard E. Stewart

Dupris, CJ, for the Panel.

This matter came before the Court for an Initial Hearing on July 15, 2005. This hearing was rescheduled from June 17, 2005 in order for the parties to submit initial briefings specifically on the issue whether the Appellant has a *prima facie* case to go forward on appeal. For the reasons stated below we find there is no *prima facie* case and the Appeal is denied.

FACTS

On January 14, 2005 the Appellant was charged with one count of Obstructing Justice and one count of Criminal Homicide; he was arraigned on the same day as he