

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

C.E.S., V.A.S., and H.M.S., Minors, by their
legal guardians Timothy P. Donn and Anne
L. Donn,

Case No. 1:15-cv-982

Plaintiffs,

HON. JANET T. NEFF

v.

HON. LARRY J. NELSON, in his official
capacity as a Leelanau County Family Court
Judge, MATTHEW FEIL, in his official
capacity as Tribal Prosecutor for the Grand
Traverse Band of Ottawa and Chippewa
Indians, and HELEN COOK, in her official
capacity as Supervisor of Anishinaabek
Family Services for the Grand Traverse Band
of Ottawa and Chippewa Indians,

Defendants.

TEMPORARY RESTRAINING ORDER

This matter is before the Court on Plaintiffs' Verified Complaint for Declaratory and Injunctive Relief (Dkt 1), and Plaintiffs' Ex Parte Motion for Temporary Restraining Order and Motion for Preliminary Injunction (Dkt 2). Plaintiffs challenge the constitutionality of certain provisions of the Michigan Indian Family Preservation Act (MIFPA), MICH. COMP. LAWS § 712B.1 – 712B.41, Michigan's state corollary and complement to the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901-63. Plaintiffs seek to maintain the status quo that has been in place for over the past five years – that C.E.S., V.A.S., and H.M.S. (collectively, the "children"), continue living with the Donns. Plaintiffs assert that this is an emergency situation in light of the state circuit court's September 21, 2015 transfer order of the underlying case to the tribal court, which may result in the children's imminent removal from the Donns' custody.

To determine whether to issue a temporary restraining order, a district court considers (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable injury absent injunctive relief; (3) whether issuance of an injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of an injunction. *Ne. Ohio Coal. for Homeless & Serv. Employees Int'l Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006). The four considerations are factors to be balanced together, not prerequisites that must be satisfied. *Id.* (citation omitted). Further, “the probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury the movants will suffer absent the stay.” *Id.*

Having reviewed the Verified Complaint, and the affidavit of counsel (Dkt 4), the Court hereby finds that ex parte injunctive relief is necessary to prevent irreparable injury to the minor children by the removal of the children from their stable home environment of over five years while this Court considers the merits of a preliminary injunction; that the issuance of a temporary restraining order would not cause substantial harm to others; and the public interest would be served by issuance of the injunction. Accordingly, a Temporary Restraining Order (TRO) should issue before Defendants can be heard in opposition. *See* FED. R. CIV. P. 65(b)(1).

The Court, in its discretion, waives the security requirement of FED. R. CIV. P. 65(c).

Accordingly:

IT IS HEREBY ORDERED that Plaintiffs’ Ex Parte Motion for Temporary Restraining Order and Motion for Preliminary Injunction (Dkt 2) is GRANTED IN PART AND DENIED IN PART; Defendants are ENJOINED from proceeding with any process to remove and/or removing the minor children, C.E.S., V.A.S., and H.M.S., from their current placement with their legal

guardians, Plaintiffs Timothy and Anne Donn, pending Defendants' response and a hearing on Plaintiffs' motion for preliminary injunction.

IT IS FURTHER ORDERED that Plaintiff shall serve a copy of the Verified Complaint and Summons and Motion and accompanying filings on Defendants not later than September 30, 2015, and file a proof of service of the same.

IT IS FURTHER ORDERED that Defendants shall file a Response to Plaintiffs' Motion for Preliminary Injunction on or before October 13, 2015.

IT IS FURTHER ORDERED that the parties shall appear in this Court on Wednesday, **October 21, 2015 at 1:30 PM**, 401 Ford Federal Building, 110 Michigan Street NW, Grand Rapids, Michigan, for a hearing on Plaintiff's Motion for Preliminary Injunction. All counsel of record shall be present in person and shall be prepared to argue why a preliminary injunction should not be issued for the pendency of this case.

IT IS FURTHER ORDERED that this Temporary Restraining Order shall expire when the Court issues an order granting or denying the Motion for a Preliminary Injunction, unless the Court subsequently sets an earlier date for its expiration.

IT IS SO ORDERED this 29th day of September, 2015 at 5:05 PM.

Dated: September 29, 2015

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge