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**IN THE  
HO-CHUNK NATION TRIAL COURT**

**In the Interest of Minor Child: K.A.L.,  
DOB 08/14/89,  
by Gary L. Lonetree, Jr.,  
Petitioner,**

v.

Case No.: **CV 05-66**

**Ho-Chunk Nation Office of Tribal  
Enrollment,  
Respondent.**

**ORDER  
(Petition Granted)**

**INTRODUCTION**

This case concerns whether the parent, Gary L. Lonetree, Jr., can access monies on behalf of his minor child, K.A.L., DOB 08/14/89, from the Children's Trust Fund (hereinafter CTF) to pay for costs associated with private school tuition and expenses. The Court employs the standard enunciated in the PER CAPITA DISTRIBUTION ORDINANCE (hereinafter PER CAPITA ORDINANCE), 2 HCC § 12.8c to assess the merit of the parent's request. The Court grants a release of funds to satisfy the request of the petitioner.

**PROCEDURAL HISTORY**

The petitioner, Gary L. Lonetree, Jr., initiated the current action by filing the August 12, 2005 *Petition for Release of Per Capita Distribution* (hereinafter *Petition*). Consequently, the Court issued a *Summons* accompanied by the above-mentioned *Petition* on August 12, 2005, and

1 served the documents upon the respondent's representative, Ho-Chunk Nation Department of  
2 Justice (hereinafter DOJ),<sup>1</sup> by personal service as permitted by *HCN R. Civ. P. 5(C)(1)*. The  
3 *Summons* informed the respondent of the right to file an *Answer* within twenty (20) days of the  
4 issuance of the *Summons* pursuant to *HCN R. Civ. P. 5(A)(2)*. The *Summons* also cautioned the  
5 respondent that a *default judgment* could result from failure to file within the prescribed time  
6 period.  
7

8 The respondent, by and through DOJ Attorney Leslie Parker Cohan, filed a timely  
9 *Answer* on August 30, 2005, asking the Court to schedule a fact-finding hearing. In response, the  
10 Court mailed *Notice(s) of Hearing* to the parties on September 7, 2005, informing them of the  
11 date, time and location of the *Fact-Finding Hearing*. The Court convened the *Hearing* on  
12 October 11, 2005 at 1:30 p.m. CDT. The following parties appeared at the *Fact-Finding*  
13 *Hearing*: Gary L. Lonetree, Jr., petitioner, and DOJ Attorney Leslie Parker Cohan, respondent's  
14 counsel. Upon the Court's request, the petitioner submitted further documentation on October  
15 26, 2005.  
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## 19 APPLICABLE LAW

### 20 PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC § 12

#### 21 Subsec. 8. Minors and Other Legal Incompetents.

22 a. The interests of minors and other legally incompetent Members, otherwise entitled to  
23 receive per capita payments, shall, in lieu of payments to such minor or incompetent Member, be  
24 disbursed to a Children's Trust Fund which shall establish a formal irrevocable legal structure for  
25 such CTFs approved by the Legislature as soon after passage of this Ordinance as shall be  
26 practical, with any amounts currently held by the Nation for passage for the benefit of minor or  
27 legally incompetent Members, and all additions thereto pending approval and establishment of

28 <sup>1</sup> The *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*) permit the Court to serve the *Complaint* upon the DOJ when the plaintiff/petitioner names as a party a unit of government or enterprise. *HCN R. Civ. P. 27(B)*.

1 such formal irrevocable structure, to be held in an account for the benefit of each such Member-  
2 beneficiary under the supervision of the Trial Court of the Nation. Trust assets of such CTFs  
3 shall be invested in a reasonable and prudent manner, which protects the principal and seeks a  
reasonable return.

4 b. Education Criterion.

5 (1) The trust assets of each such account maintained for a minor shall be disbursed to  
6 the Member-beneficiary thereof upon the earlier of (i) said Member-beneficiary meeting the dual  
7 criteria if [*sic*] (a) reaching the age of eighteen (18) and (b) producing evidence of personal  
8 acquisition of a high school diploma to the Department of Enrollment (HSED, GED or any  
9 similar substitute shall not be acceptable), or (ii) the Member reaches the age of twenty-five (25);  
10 provided that this provision shall not operate to compel disbursement of funds to Members  
11 legally determined to be incompetent. In the event a Member, upon reaching the age of eighteen  
12 (18) does not produce proof of personal acquisition of a high school diploma, such Member's per  
13 capita funds shall be retained in the CTF account and any and all per capita distributions payable  
14 to said Member after reaching age 18 will be added to such fund and not be paid to the  
15 Member[,] and the CTF account and [*sic*] shall be held on the same terms and conditions applied  
16 during the Member-beneficiary's minority until the earliest to occur: (1) the Member produces  
17 the required diploma; (2) the Member reaches the age of twenty-five (25); or (3) the Member is  
18 deceased.

14 c. Funds in the CTF of a minor or legally incompetent Member may be available for the  
15 benefit of a beneficiary's health, education, and welfare when the needs of such person are not  
16 being met from other Tribal funds or other state or federal public entitlement programs, and upon  
17 a finding of special need by the Ho-Chunk Nation Trial Court. In order to request such funds,  
the following provisions apply:

18 (1) A written request must be submitted to the Trial Court by the beneficiary's parent  
19 or legal guardian detailing the purpose and needs for such funds.

20 (2) The parent or legal guardian shall maintain records and account to the Trial Court  
21 in sufficient detail to demonstrate that the funds disbursed were expended as required by this  
Ordinance and any other applicable federal law.

22 (3) Any other standards, procedures, and conditions that may be subsequently  
23 adopted by the Legislature consistent with any applicable federal law shall be met.

24 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

25 Rule 5. Notice of Service of Process.

26 (A) Definitions.

27 (2) Summons - The official notice to the party informing him/her that he/she is identified  
28 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (See  
HCN R. Civ. P. 6) and that a *Default Judgment* may be entered against them if they do not file an

1 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case  
2 number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and  
3 shall be served with a copy of the filed *Complaint* attached.

4 (C) Methods of Service of Process.

5 (1) Personal Service. The required papers are delivered to the party in person by the  
6 bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any  
7 other person not a party to the action who is eighteen (18) years of age or older and of suitable  
8 discretion.

9 (3) After the first successful service of process, the Court and the parties will then perform all  
10 written communications through regular mail at that address. Therefore, each party to an action  
11 has an affirmative duty to notify the Court, and all other parties, of a change in address within ten  
12 (10) calendar days of such change.

13 Rule 27. The Nation as a Party.

14 (B) Civil Actions. When the Nation is filing a civil suit, a writ of mandamus, or the Nation is  
15 named as a party, the *Complaint* should identify the unit of government, enterprise or name of  
16 the official or employee involved. The *Complaint*, in the case of an official or employee being  
17 sued, should indicate whether the official or employee is being sued in his or her individual or  
18 official capacity. Service can be made on the Ho-Chunk Nation Department of Justice and will  
19 be considered proper unless otherwise indicated by these rules, successive rules of the Ho-Chunk  
20 Nation Court, or Ho-Chunk Nation Law.

21 Rule 58. Amendment to or Relief from Judgment or Order.

22 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request  
23 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*  
24 must be based on an error or irregularity which prevented a party from receiving a fair trial or a  
25 substantial legal error which affected the outcome of the action.

26 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not  
27 later than ten (10) calendar days after entry of judgment, the Court may amend its findings or  
28 conclusions or make additional findings or conclusions, amending the judgment accordingly.  
The motion may be made with a motion for a new trial. If the Court amends the judgment, the  
time for initiating an appeal commences upon entry of the amended judgment. If the Court  
denies a motion filed under this rule, the time for initiating an appeal from the judgment  
commences when the Court denies the motion on the record or when an order denying the  
motion is entered, whichever occurs first. If within thirty (30) days after the filing of such  
motion, and the Court does not decide a motion under this Rule or the judge does not sign an  
order denying the motion, the motion is considered denied. The time for initiating an appeal from  
judgment commences in accordance with the Rules of Appellate Procedure.

1 (C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for*  
2 *Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion*  
3 must be based upon new information that has come to the party's attention that, if true, could  
4 have the effect of altering or modifying the judgment. Upon such motion, the Court may modify  
5 the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal  
6 commences when the Court denies the motion on the record or when an order denying the  
7 motion is entered, whichever occurs first. If within thirty (30) calendar days after the filing of  
8 such motion, and the Court does not decide the motion or the judge does not sign an order  
9 denying the motion, the motion is considered denied. The time for initiating an appeal from  
10 judgment commences in accordance with the Rules of Appellate Procedure.

11 (D) Erratum Order or Reissuance of Judgment. Clerical errors in a court record, including the  
12 *Judgment* or *Order*, may be corrected by the Court at any time.

13 (E) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a  
14 party made within a reasonable time for the following reasons: (1) newly discovered evidence  
15 which could not reasonably have been discovered in time to request a new trial; or (2) fraud,  
16 misrepresentation or serious misconduct of another party to the action; or (3) good cause if the  
17 requesting party was not personally served in accordance with Rule 5(c)(1)(a)(i) or (ii); did not  
18 have proper service and did not appear in the action; or (4) the judgment has been satisfied,  
19 released, discharged or is without effect due to a judgment earlier in time.

20 Rule 61. Appeals.

21 Any final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk Nation  
22 Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*  
23 *Procedure*, specifically *Rules of Appellate Procedure*, Rule 7, Right of Appeal. All subsequent  
24 actions of a final *Judgment* or Trial Court *Order* must follow the HCN *Rules of Appellate*  
25 *Procedure*.

26 **FINDINGS OF FACT**

27 1. The minor child, K.A.L., DOB 08/14/89, is an enrolled member of the Ho-Chunk Nation,  
28 Tribal ID# 439A005034.

1 The petitioner and father of the minor child, Gary L. Lonetree, Jr., is an enrolled member  
2 of the Ho-Chunk Nation, Tribal ID# 439A001543.

3 The Court previously discussed the impressive musical acumen of the minor child in  
4 connection with a prior case, and hereby incorporates those relevant facts by reference. *In the*

1 *Interest of Minor Children: J.A.L., DOB 11/20/91, et al. by Gary L. Lonetree, Jr. v. HCN Office*  
2 *of Tribal Enrollment, CV 02-85 (HCN Tr. Ct., Oct. 18, 2004) at 5-8.*

3  
4 4. On September 13, 2005, the minor child began her junior year of classes at Interlochen  
5 Arts Academy (hereinafter Interlochen), "the nation's first independent high school dedicated to  
6 the arts," located at 4000 Highway M-137, Interlochen, MI 49643. [www.interlochen.org/](http://www.interlochen.org/academy/index.htm)  
7 [academy/index.htm](http://www.interlochen.org/academy/index.htm) (last visited Nov. 9, 2005).

8 5. The minor child aspires to attend The Julliard School, and Interlochen graduates  
9 constitute an average of fifteen percent (15%) of the entering class at this prestigious institution.  
10 *Id.* The minor child gained competitive admission to Interlochen through audition. *Fact-*  
11 *Finding Hr'g* (LPER, Oct. 11, 2005, 01:47:16 CDT).

12  
13 6. Total cost for attendance at Interlochen boarding school for the 2005-06 academic year is  
14 \$38,455.00. *Pet.*, Ex. 2. Outstanding expenses amount to \$17,805.00, which includes  
15 \$12,400.00 (remaining tuition), \$3,030.00 (private music lessons), \$1,500.00 (student personal  
16 account), \$600.00 (books), and \$275.00 (sheet music). The minor child received an \$18,000.00  
17 grant from Interlochen and a \$2,000.00 grant from the Ho-Chunk Nation Department of  
18 Education. The family paid enrollment fees by means of fund-raising activities. LPER,  
19 01:40:48 CDT.  
20

21  
22 7. The petitioner will personally expend approximately \$500.00 in transportation expenses  
23 (hotel, meals and gasoline) each time he must retrieve the minor child on ten (10) school breaks.  
24 *Id.*, 02:07:36 CDT. In addition, the petitioner provides the minor \$200.00 for a monthly  
25 spending allowance and purchased a laptop computer and printer for roughly \$900.00. *Id.*,  
26 01:50:03, 01:53:37 CDT.  
27

28 8. The petitioner requested a release of CTF monies to satisfy the full outstanding balance.

1 Interlochen Center for the Arts \$17,805.00  
2 P.O. Box 199  
3 Interlochen, MI 49643-0199

4 9. The petitioner sought and received a federal bankruptcy discharge. *In re: Gary Lance*  
5 *Lonetree, Jr. et al.*, Case No. 3-05-13320-rdm (Bankr. W.D. Wis., Aug. 9, 2005).

6 10. Interlochen does not provide any work-study program for its students. LPER, 01:55:05  
7 CDT.

8 11. The petitioner has demonstrated the presence of special financial need. *See PER CAPITA*  
9 *ORDINANCE*, § 12.8c.

10 12. The Court finds that no tribal funding source or state or federal public entitlement  
11 programs exist to cover the above-enumerated costs. *Id.*

12 13. The respondent does not object to a release of CTF monies for the stated purpose. LPER,  
13 02:06:40 CDT.

14 14. As of July 31 2005, K.A.L. had an amount of \$82,865.56 deposited in the CTF account.

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18 **DECISION**

19  
20 The Court applies a four-part test when determining the circumstances under which it  
21 would grant a release of monies from the CTF account of a minor tribal member. *See In the*  
22 *Interest of Minor Child(ren): V.D.C., DOB 10/03/84, et al., by Debra Crowe v. HCN Office of*  
23 *Tribal Enrollment*, CV 00-25 (HCN Tr. Ct., Apr. 6, 2001) at 7 (citing *In the Interest of Minor*  
24 *Child: S.D.S., DOB 04/25/83, by Michelle R. DeCora v. HCN Office of Tribal Enrollment*, CV  
25 00-35 (HCN Tr. Ct., May 4, 2000) at 7). The Court derived the four-part test from language  
26 appearing in the PER CAPITA ORDINANCE, § 12.8c. *Crowe* at 7. First, the Court may only grant a  
27 release for the benefit of a beneficiary's health, education, or welfare. Second, any such benefit  
28

1 must represent a necessity, and not a want or desire. Third, the parent or guardian must  
2 demonstrate special financial need. Finally, the petitioner must provide evidence of exhaustion  
3 of tribal funds and public entitlement programs. *Id.* at 8.

4  
5 The Court closely examines each *Petition for Release of Per Capita Distribution* in  
6 fulfillment of its statutory obligation to supervise the CTF accounts. PER CAPITA ORDINANCE, §  
7 12.8a. The Court performs this supervision against the backdrop of federal enabling legislation.  
8 Specifically, the INDIAN GAMING REGULATORY ACT requires that parents receive per capita  
9 monies “in such amounts as may be *necessary* for the health, education, or welfare, of the  
10 minor.” INDIAN GAMING REGULATORY ACT, 25 U.S.C. § 2710(b)(3)(C) (emphasis added). The  
11 Court has focused upon this limitation in developing its case law, announcing basic principles  
12 and rudimentary understandings that have guided it through a variety of requests.

13  
14 Foremost among these understandings is the recognition that petitioners are “asking that  
15 the Court do something very unusual and extraordinary, *i.e.*, take money from children and give  
16 it to the parents.” *In the Interest of the Minor Children: M.C., DOB 04/09/89, et al. by Myra*  
17 *Cunneen v. HCN Dep’t of Enrollment*, CV 99-83 (HCN Tr. Ct., Jan. 21, 2000) at 3. The Court  
18 rightfully practices restraint when asked to serve as this instrumentality. The Court reasons that  
19 “no matter what the financial plight of the parents, the ordinary and usual expenses for raising  
20 children should not be shifted to the children.” *Id.* at 6.

21  
22 Only a verifiable claim of poverty can justify a parent’s failure to provide a child’s basic  
23 necessities of life: “adequate food, clothing, shelter, medical care, education [and] supervision.”  
24 HOCOK NATION CHILDREN AND FAMILY ACT, 4 HCC § 3.5bb. The Court, however, shall not  
25 relieve a parent of this responsibility if the impoverished condition of the family derives from  
26 poor parental decisions. The Court will not elevate a child to the status of provider as a  
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28

1 consequence of regrettable choices made by the parent. *Crowe* at 13-14. “When a person  
2 becomes a parent, that parent inherently accepts the responsibility to provide for the health,  
3 education and welfare for that child or children. . . . As a parent, [he or she] has inherently  
4 accepted these financial obligations by bringing . . . children into this world.” *In the Interest of*  
5 *Gary Alan Funmaker, Sr. v. Ho-Chunk Nation*, CV 96-39 (HCN Tr. Ct., Oct. 18, 1996) at 7.

7 Accordingly, the Court has only granted CTF releases for food, clothing, shelter or  
8 medical care in the most egregious of circumstances. *See In the Interest of Minor Child: D.A.S.,*  
9 *DOB 10/14/87, by Larry Swan v. HCN Office of Tribal Enrollment*, CV 00-96 (HCN Tr. Ct.,  
10 Dec. 18, 2000) (insufficient Social Security Income to satisfy clothing needs of twelve (12) year  
11 old child cared for by terminally ill single parent); *In the Interest of Minor Child: D.M.S.T.,*  
12 *DOB 07/01/83, by Roxanne Tallmadge-Johnson v. HCN Office of Tribal Enrollment*, CV 00-14  
13 (HCN Tr. Ct., Apr. 13, 2000) (inability of Medical Assistance to cover a sports-related injury of  
14 a teenager residing in a household with eleven (11) other minor children). For other requests  
15 relating to health, education or welfare, the Court has distinguished between cases where the  
16 child receives the direct, tangible benefit (orthodontics) as opposed to those where the request  
17 proves beneficial to the entire family (automobiles). The Court is certainly less inclined to grant  
18 the latter type of requests due to the presence of this distinction. Also, the Court typically will  
19 require the parent(s) to offer a greater financial contribution depending upon the circumstances.

23 The Court shall now address the request presented by the petitioner in the instant case.  
24 To begin, granting a CTF release for tuition and related expenses would obviously benefit the  
25 beneficiary's education. The more difficult inquiry involves whether the release would prove a  
26 need since the minor could simply attend public school at no cost. The Court addressed this  
27 question in a prior decision, and directs the parties to that discussion. *In the Interest of Minor*  
28

1 *Child: S.R.D., DOB 04/08/02, by Jason Decorah v. HCN Office of Tribal Enrollment, CV 05-31*  
2 (HCN Tr. Ct., June 2, 2005) at 11-12 n.2. Suffice it to say, the minor child, through her own  
3 conviction, is presented with a unique opportunity, which the parents cannot reasonably afford,  
4 but will prove an invaluable benefit to the minor's resolute future ambitions. The Court will not  
5 serve as an impediment to the minor child's clear objective to achieve educational excellence.  
6

7 The Court, therefore, directs Fifth Third Bank to deliver a check payable in the following  
8 amount to:

9  
10 Interlochen Center for the Arts \$17,805.00  
11 P.O. Box 199  
12 Interlochen, MI 49643-0199

13 The check shall bear the following notation: “for K.A.L., DOB 08/14/89, Tribal ID  
14 #439A005034.” The petitioner bears the responsibility of contacting the above provider to  
15 inform them of the anticipated receipt of such check and the item that the Court has approved for  
16 payment.

17 In regards to the granted request, the Court directs Gary L. Lonetree, Jr. to “maintain  
18 records and account to the Trial Court in sufficient detail to demonstrate that the funds disbursed  
19 were expended as required by this Ordinance and any other applicable federal law.” PER CAPITA  
20 ORDINANCE, § 12.8c(2). The petitioner shall submit a financial report along with relevant  
21 documentation (*e.g.*, receipts and invoices) to the Court within three (3) months after receipt of  
22 the disbursement, confirming the specified use of the funds. Failure to do so may subject the  
23 petitioner to the contempt powers of the Court pursuant to the HO-CHUNK NATION CONTEMPT  
24 ORDINANCE and/or repayment of the amount advanced from the CTF of K.A.L., DOB 08/14/89.  
25 Furthermore, the petitioner must submit any excess funds to the Court in the form of a check.  
26 The Court shall maintain an open case file until acceptance of a final accounting, and service of  
27  
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1 process shall be performed on the address stated in the *Petition* unless parties direct otherwise in  
2 writing. *See HCN R. Civ. P. 5(C)(3).*

3  
4 The parties retain the right to file a timely post-judgment motion with this Court in  
5 accordance with *HCN R. Civ. P. 58, Amendment to or Relief from Judgment or Order.*  
6 Otherwise, “[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk  
7 Nation Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*  
8 *Procedure* (hereinafter *HCN R. App. P.*), specifically [*HCN R. App. P.*], Rule 7, Right of  
9 Appeal.” *HCN R. Civ. P. 61.* The appellant “shall within sixty (60) calendar days after the day  
10 such judgment or order was rendered, file with the Supreme Court Clerk, a *Notice of Appeal*  
11 from such judgment or order, together with a filing fee as stated in the appendix or schedule of  
12 fees” *HCN R. App. P. 7(b)(1).* “All subsequent actions of a final *Judgment* or Trial Court *Order*  
13 must follow the [*HCN R. App. P.*].” *HCN R. Civ. P. 61.*

14  
15  
16 **IT IS SO ORDERED** this 9<sup>th</sup> day of November 2005, by the Ho-Chunk Nation Trial  
17 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

18  
19 \_\_\_\_\_  
20 Honorable Todd R. Matha  
21 Chief Trial Court Judge

Ho-Chunk Nation Court System  
P.O. Box 70  
Black River Falls, WI 54615  
(715) 284-2722 or 800-434-4070

