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**THE SUPREME COURT OF
THE SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION**



Jenny Payne,
Petitioner/Appellant

APPEAL NO. 25-005-002

CASE NO. T-25-022-010

vs.

Alexandria Fancher,
Respondent/Appellee

**MEMORANDUM OPINION AND
ORDER TO VACATE TRIAL COURT
ORDER AND DISMISS ACTION**

13 Per Curiam (Angelique EagleWoman, Chief Justice, Associate Justices Michael Harralson,
14 and Lenor Scheffler Blaeser)

15 **I. FACTS AND PROCEDURAL HISTORY**

16 This matter concerns an appeal from the Trial Court Order dated February 27, 2025
17 granting a Restraining Order and a second Trial Court Order dated February 27, 2025 denying
18 the motion to dismiss due to insufficient service of process. Petitioner/Appellant Jenny Payne
19 filed with the Trial Court a motion for insufficient service of process referring to the Sisseton-
20 Wahpeton Oyate Law and Order Code Chapter 23 Amended Criminal Procedure Code,
21 Section 23-02-03. After raising the insufficient service of process at the Trial Court level, the
22 issue was appealed to the Sisseton-Wahpeton Oyate (SWO) Supreme Court by Notice of
23 Appeal dated March 13, 2025. The SWO Supreme Court granted the appeal to clarify relevant
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1 provisions of the SWO Law and Order Code and take up the issue of insufficient service of
2 process in cases regarding applications for restraining orders.

3 4 **II. ISSUE**

5 The Petitioner/Appellant Payne raised the following issue on appeal: Insufficient
6 service of process by leaving the court documents in a mailbox at the Petitioner's home.
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8 9 **III. DISCUSSION ON APPLICABLE LAW**

10 **A. All Tribal Court Orders Must Include Legal Citation to be Valid**

11 The Sisseton-Wahpeton Oyate Supreme Court emphasizes that every Trial Court
12 Order must refer with a legal citation to the relevant section of the SWO Law and Order
13 Code. The Trial Court Orders on February 27, 2025 both contained no legal citation for the
14 Restraining Order decision and no legal citation (except in quoting from the motion to
15 dismiss) for the Order denying the motion to dismiss. In a criminal action, this is unacceptable
16 for a valid order of the Trial Court. The SWO Supreme Court holds that any Trial Court Order
17 failing to include legal citation is presumptively open to an appeal as an improper order.¹
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20 **B. The Restraining Order Procedures Act and Service of Process**

21 In reviewing the titles of the SWO Law and Order Code, Chapter 29 is specifically
22 titled, the Restraining Order Procedures Act. In the first instance for a temporary restraining
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25 ¹In the criminal context, due process requires legal citation to SWO Tribal law with the ability to provide further
26 support by including other Tribal, federal or state law provisions. In a civil action when the SWO Law and Order
Code does not have an applicable law or applicable Tribal cultural customs and traditions established by

1 order, the Trial Court must follow the provisions of 29-02-04 Notice. SWO Chapter 29
2 Restraining Procedures Act 29-02-04(2) requires that prior to issuance of a temporary
3 restraining order: “An effort is made by the Tribal Police to make personal service on the
4 defendant of the complaint and notice of the time and place of hearing. The police officer
5 shall file an affidavit with the Court stating whether service was made, and in the event that
6 service was not made, the affidavit shall state the reasons making it impossible to make
7 service.”
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9 This was clearly not followed by the Trial Court in the Orders of February 27, 2025 or
10 in the hearing leading up to those orders to provide due process through proper service to the
11 defendant to appear in the Trial Court hearing. Restraining orders require attention to detail
12 and due process as Tribal communities are often tightly connected communities with frequent
13 interactions between Tribal members. When issuing a Restraining Order, the governing body
14 of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation specifically enacted
15 Chapter 29 Restraining Order Procedures Act that is required to be followed and cited to
16 when an application is filed for a restraining order. Further, the form to apply for a Temporary
17 Restraining Order does not cite to Chapter 29 and this should be immediately updated to
18 instruct those seeking a Temporary Restraining Order on the correct provisions of the SWO
19 Law and Order Code, specifically Chapter 29 Restraining Order Procedures Act.
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25 testimony or entered through judicial notice, then a judge pursuant to Chapter 21 Judicial Code, Section 21-03-
26 14 may look to legal concepts, statutes, regulations, and case law of other Tribal, state, and federal jurisdictions.

1 To further instruct on following the law set forth as the Chapter 29 Restraining Order
2 Procedures Act, 29-04-01 provides "Hearing When Notice Not Served." Under this provision,
3 29-04-04 Vacating or Modifying Restraining Order was on point for the underlying case.

4 Vacating or Modifying Restraining Order

5 If the restraining order is granted by a Judge of the Court without notice having been
6 served on the defendant; the defendant at any time prior to the hearing provided for in
7 29-04-02 of this Section, may apply, upon notice to the plaintiff, to a Judge of the
8 Court to vacate or modify the restraining order. The application shall be made in an
9 affidavit of the defendant. At the earliest possible time, the Court shall hold a hearing
on the defendant's application. If the plaintiff does not appear at the hearing or offer
evidence in support of the restraining order, the Court shall vacate the order and
dismiss the complaint.

10 It should be understood that the remedy of a restraining order should only be issued
11 after sufficient notice and the opportunity to be heard is given to the defendant or the person
12 to be restrained by the order. In this case, Petitioner/Appellant Jenny Payne filed a motion to
13 dismiss for insufficient service of process and although the motion cited to the more general
14 law on criminal procedure, Chapter 23 Amended Criminal Procedures Act, the Trial Court
15 should have been aware of every law of the SWO Law and Order Code. This required the
16 Trial Court to review service under Chapter 29 Restraining Order Procedures Act.
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19 **C. Incomplete and Insufficient Affidavit by Improper Server Under Chapter 29**

20 The SWO Supreme Court further finds that the affidavit of service provided to the
21 Trial Court in the underlying case lacked dates and times on attempted service and was
22 wholly incomplete and insufficient as an affidavit. Every affidavit filed with the Trial Court
23 should have clear facts with times, dates, and addresses for service activities. Each service
24 activity should be clearly explained with the date, the time, the description of attempted or
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1 completed service, any persons involved, and the location. Every affidavit must be a sworn
2 statement that is notarized to be admitted to the record of the case by the Trial Court.

3 Under Chapter 29 Restraining Orders Procedures Act, an affidavit is required for
4 service by a Tribal Police Officer with sufficient detail as noted above on the date, the time,
5 the description of attempted or completed service, any persons involved, and the location. The
6 affidavit must be a sworn statement that is notarized to be admitted to the record of the case
7 by the Trial Court. This was completely lacking in this case.
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9 The SWO Supreme Court finds the following errors on appeal:

- 10 1. Lack of any legal citation by the Trial Court and lack of relevant legal citation in
11 the Orders of February 27, 2025 to the Chapter 29 Restraining Order Procedures
12 Act;
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- 14 2. Improper service of process as required under Chapter 29 Restraining Order
15 Procedures Act; and
- 16 3. Improper affidavit and failure of proper Tribal Police Officer to provide service as
17 required under Chapter 29 Restraining Order Procedures Act.
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19 Therefore, the Restraining Order dated February 27, 2025 was not lawful and the Denial of
20 the Motion to Dismiss dated February 27, 2025 was improperly denied.
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1 **IV. CONCLUSION**

2 For the reasons stated above, the Trial Court Restraining Order of February 27, 2025
3 and the Denial of the Motion to Dismiss dated February 27, 2025 are both **VACATED**.
4 Regarding the application for a Restraining Order in Alexandria Fancher v. Jenny Payne, the
5 petition is **DISMISSED** due to insufficient service of process as required by Chapter 29
6 Restraining Orders Procedures Act.
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8 Further, the SWO Supreme Court requires all Trial Court orders to provide legal
9 citation to the SWO Law and Order Code to be lawful and valid.² Specifically for the forms
10 available to those seeking assistance from the Trial Court, all forms must include the SWO
11 Law and Order Code legal citation to instruct on the proper law that will be followed.
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13 IT IS SO ORDERED

14 Dated the 4th day of June, 2025.

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16 BY THE COURT:

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19 _____
20 Angelique W. EagleWoman
21 (Wambdi A. Was'teWinyan)
22 Chief Justice
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25 _____
26 ² For criminal matters, specific SWO Tribal laws must be cited to. For civil matters, the Judicial Code Chapter 21 Section 21-03-14 provides instruction when there is no SWO Tribal law or verified tradition and customs directly on point, to cite to the law of other Tribes or federal and state laws.