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STOREVISIONS, INC., APPELLEE, V. OMAHA TRIBE OF NEBRASKA, ALSO KNOWN AS OMAHA NATION, APPELLANT.

802 N.W.2d 420

Filed July 22, 2011. No. S-10-280.

SUPPLEMENTAL OPINION

Appeal from the District Court for Thurston County: DARVID D. QUIST, Judge. Supplemental opinion: Former opinion modified. Motion for rehearing overruled.

Ben Thompson and Amanda J. Karr, of Thompson Law Office, P.C., L.L.O., for appellant.

Michael J. Whaley and Elizabeth M. Skinner, of Gross & Welch, P.C., L.L.O., for appellee.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

Case No. S-10-280 is before this court on the motion for rehearing filed by the appellant regarding our opinion reported at *StoreVisions v. Omaha Tribe of Neb., ante* p. 238, 795 N.W.2d 271 (2011). We overrule the motion, but modify the opinion as follows:

In the section of the opinion designated "*Waiver of Sovereign Immunity*," we withdraw the 12th and 13th paragraphs, *id.* at 248, 796 N.W.2d at 280, and substitute the following:

> The situation presented by this appeal is virtually identical to the one presented in *Rush Creek Solutions*. One difference is that, in this appeal, the Tribe and StoreVisions entered into a separate waiver prior to entering into the underlying contracts. As noted, this separate waiver was signed in the presence of five of the seven members of the tribal council and lends even more weight to an appearance that the signatories to the document—the chairman and vice chairman—were vested with the authority to waive the Tribe's sovereign immunity. Indeed, the presence of

five of the seven members of the tribal council in the tribal meeting room at the Tribe's headquarters, along with the tribal council's vote on resolution No. 08-74, strongly suggest that the action of the chairman and the vice chairman, both members of the tribal council, were, on these facts, essentially the action of the tribal council itself. Unlike those cases wherein the agent was a party removed from the principal by time, place, and/or organizational structure, the agent and the principal in this case, if not actually one and the same, are very nearly one and the same.

We conclude that based upon these undisputed facts, the chairman and vice chairman had the requisite authority to waive the Tribe's sovereign immunity. The Tribe's first assignment of error is without merit.

The remainder of the opinion shall remain unmodified.

FORMER OPINION MODIFIED.

MOTION FOR REHEARING OVERRULED.

WRIGHT, J., not participating.

CESAR C., APPELLANT AND CROSS-APPELLEE, V. ALICIA L., APPELLEE AND CROSS-APPELLANT.

800 N.W.2d 249

Filed July 22, 2011. No. S-10-924.

1. **Paternity: Appeal and Error.** In a filiation proceeding, questions concerning child custody determinations are reviewed on appeal de novo on the record to determine whether there has been an abuse of discretion by the trial court, whose judgment will be upheld in the absence of an abuse of discretion. In such de novo review, when the evidence is in conflict, the appellate court considers, and may give weight to, the fact that the trial court heard and observed the witnesses and accepted one version of the facts rather than another.
2. **Judgments: Statutes: Appeal and Error.** Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent, correct conclusion irrespective of the determination made by the trial court.
3. **Appeal and Error.** Although an appellate court ordinarily considers only those errors assigned and discussed in the briefs, the appellate court may, at its option, notice plain error.