

**IN THE DISTRICT COURT OF THE CHOCTAW NATION OF
OKLAHOMA**

IN RE THE GUARDIANSHIP OF:)
[REDACTED]) Case No. PGM-2023-22
A Minor Child.)

FILED
CHOCTAW NATION OF OKLAHOMA
DISTRICT COURT CLERK
JAN 10 2024
SUSAN LOZANO
COURT CLERK
BY [Signature] DEPUTY

ORDER APPOINTING GUARDIAN

NOW, on this 10th day of January, 2024, this matter comes on for decision at chambers on Petition for Guardianship filed in case number PGM-2023-22 above after the Court having previously heard both matters on the merits and taking the decision under advisement.

AT THE OUTSET, THE COURT IS VERY DISAPPOINTED IN THAT UNTIL THIS CASE WAS FILED, THE SYSTEM (SYSTEM BEING DEFINED AS PARENTS, CAREGIVERS, CHILD WELFARE AGENCIES AND COURT SYSTEMS) TOTALLY FAILED TO TAKE CARE OF AND PROTECT THIS CHILD!

Notwithstanding, the above, the Court can only deal with issues regarding this child prospectively. The Court after being fully advised in the premises makes the following findings and issues the following orders:

1. The biological mother consents to the appointment of the Petitioner as Guardian.
2. The Petition for Guardianship filed by SEANA SUTTERFIELD is **GRANTED** and Letters of Guardianship shall issue upon the Petitioner executing and filing her Oath as required by the Choctaw Nation of Oklahoma Guardianship Code (Code).

Specifically, the Court finds that the Minor Child upon attaining the age of fourteen years, executed her unequivocal nomination of the Petitioner as her Guardian as filed on June 20, 2023. The Code at Section 2-103 provides as follows:

“Nomination and Appointment of Minor – Age of Minor. If the minor is under the age of fourteen (14) years, the court may name and appoint his guardian. If the minor has attained the age of fourteen years, the minor may nominate his own guardian, who, if approved by the court, **must** (emphasis added) be appointed accordingly.”

There are no appellate decisions of the Choctaw Nation construing the cited statute and, therefore, the Court interprets same by the plain language doctrine. Therefore, the Court **must** appoint a guardian nominated by a ward who has attained the age of fourteen years **if** the guardian is approved by the Court.

The Court previously ordered a home assessment of the Petitioner’s home and appointed a Guardian Ad Litem (GAL). Both Ms. Edwards report and the GAL’s reports have been

considered by the Court and the Court finds based on the reports and the evidence that the Guardian's home is an appropriate home and that the child is thriving in the Guardian's home. Therefore, **THE PETITIONER, SEANA SUTTERFIELD, IS APPROVED BY THIS COURT AS GUARDIAN OF THE MINOR CHILD.**

The Court is mindful of the Guardian's previous criminal record but finds that same occurred more than ten years ago and is very unlikely to impact the Guardian's ability to be a suitable custodian for the Minor Child. In fact, the evidence before the Court is quite the contrary in that the interaction between the Guardian and the Minor Child has been very beneficial for the Child in that she is excelling in school and activities.

The Father testified and his attorney stated on the record at trial that a letter existed that would show that the Petitioner for Guardian promised enticements to the Minor Child to nominate the Petitioner as Guardian but no letter was produced. The Court finds there is no credible evidence that the Petitioner for Guardian did anything to place the Minor Child under duress or entice the Minor Child to nominate the Petitioner as her Guardian.

The Court is mindful that the law of the State of Oklahoma Guardianship Code references custody provisions of its Divorce Code sometimes called the Order of Custody Preference Statute. The Oklahoma law incorporates the concept of parental unfitness¹.

The CNO Code has no such provision. The Court finds that Oklahoma law is not determinative of this Court's decision. The Court may choose to consider Oklahoma law as a matter of persuasion. However, given the plain language of the CNO code as cited above, the Court finds it unnecessary to consider Oklahoma law and must determine this case based on the plain language of the CNO statute.

Alternatively, if the Court on appeal determines that parental unfitness is the appropriate legal standard to be applied in this case irrespective of the plain language of the statute cited above that permits the fourteen year old minor in this case to nominate her guardian, the Court makes the following further findings:

- a. Concerning the Biological Mother, as set forth above, she has consented to the Petitioner being appointed Guardian and the issue of unfitness is not relevant as to the Mother.
- b. Concerning the Biological Father, the Court finds that his testimony is not credible and, in fact, wholly unbelievable by this Court. The unrefuted evidence is that the Minor Child has had anal warts and an associated disease since she was at least Three (3) years old and, that the occurrence of same began when the Child was in the sole custody of the Father. The evidence is further undisputed that the paternal grandfather is a convicted sex offender serving a lengthy sentence in California for abusing other minor children. The father testified that the paternal grandfather had no unsupervised

¹ See Title 30 Oklahoma Statutes, Section 2-104 and Title 43, Oklahoma Statutes, Section 112.5. It is also interesting to note that no Oklahoma appellate decision exists construing the right of a minor to designate his or her guardians and no decision regarding the interplay between the parental unfitness issue and the right of a fourteen year old minor to nominate a guardian.

access to the Child. The Court took judicial notice of the previous guardianship file in this Court involving the Minor Child, being case number PG-2011-12. The Court further finds that the former file contains exhibits considered by the former judge of this Court wherein a CNO day care log reflects at least nineteen times that the paternal grandfather picked up the Minor Child from the daycare. Of equal concern is that the unrefuted evidence shows that the Father allowed the paternal grandfather to send letters to the child from prison on numerous occasions. The Father exhibited to the Guardian Ad Litem during the report interview process and to the Court during the hearing an extremely cavalier attitude to the issue. Accordingly, the Court finds the Father to be affirmatively unfit to be the legal custodian of the Minor Child and his request to retain legal and physical custody of the Minor Child is **DENIED**.

3. The Motion to Modify in FP-2011-04 was previously **DENIED** moot in the Court's order of December 20, 2023.
4. Visitation with the Father and the Minor Child is **SUSPENDED** due to the present circumstances surrounding the finding of affirmative unfitness as set for above. The Father must within thirty days seek individual counseling at his expense and request services from a licensed professional family counselor to become educated among other things on the issues a child victim of sexual abuse and exploitation experiences with added complications of a Father who failed to protect her and request the counselor to assist him formulate a strategy to assist the Minor Child to deal with him as an absent parent, and to formulate a plan to assist him to interact with the Minor Child in a therapeutic setting. The plan should also include how the Father can best assist the child to deal with the medical issues she will continue to deal with for the foreseeable future. The Guardian shall request the Child's therapist to communicate with the Father's counselor to agree on a plan to establish a visitation in a therapeutic setting. The plan as proposed by the professional counselors must be reduced to writing and reviewed by the Guardian Ad Litem who shall, in turn, provide same to the Court for review with recommendations from the Guardian Ad Litem for potential approval via an appropriate motion. The Court shall, upon receipt of a motion from the Guardian Ad Litem, set same for hearing and provide notice to all parties who may appear and present argument and/or evidence on the execution of a visitation plan. The Court reserves the right to accept, reject or approve the plan as amended by the Court as the Court shall determine is in the Child's best interest. Telephone visitation may occur if requested by the Minor Child in the manner and frequency the Minor Child requests. Otherwise, the issue of telephone visitation shall be incorporated in any visitation plan formulated as set forth above.
5. Visitation between the mother and the child shall occur at the Guardian's discretion and under the supervision of the Guardian.
6. The parents shall be ordered to pay child support per the CNO Child Support Guidelines. The parties shall provide pay stubs and other records to illustrate their respective monthly gross incomes to the attorneys of record and the GAL within 10 days from the date of this order. If a parent is presently unemployed, income will be imputed at minimum wage on a forty-hour week basis. Counsel and the GAL shall submit an agreement child support computation worksheet within 30 days of this Order and the Court will issue a

supplemental order addressing child support and the division of medical expenses, if applicable.

7. This case is set for review hearing on July 10, 2024, at 11:30 a.m. and the hearing is scheduled for thirty (30) minutes. If the parties or GAL elect to file motion(s) for further relief, that will require presentation of evidence or otherwise necessitate a longer hearing than scheduled for review, the party(ies) and/or the GAL must inform the Clerk of this Court so that a special setting can be obtained.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED BY THIS COURT THAT A GUARDIAN IS APPOINTED, VISITATION IS ADDRESSED, CHILD SUPPORT BE PAID AND THE CASE BE REVIEWED AS SET FORTH ABOVE

IT IS FURTHER ORDERED that the Clerk shall deliver by mail and email a copy of this Order to the attorneys of record and the GAL and file written certification of such delivery.

IT IS SO ORDERED THIS 10th DAY OF JANUARY, 2024!



**MARK A. MORRISON
DISTRICT JUDGE
CHOCTAW NATION OF OKLAHOMA**

CERTIFICATE OF DELIVERY

I hereby certify that on the 10th day of January, 2024, mailed by first class U.S. mail with appropriate postage affixed and emailed thereon the foregoing document to:

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District Court Clerk, Susan Lozano

By: [Signature] deputy