

**IN THE FAMILY COURT OF ST. LOUIS COUNTY, MISSOURI
21st JUDICIAL CIRCUIT**

IN THE MATTER OF:)	
)	
T. W.)	Cause No:
Minor Child)	Division: 20
)	
D. M. H.)	
Petitioner)	

**ORDER, JUDGMENT AND DECREE
OF GUARDIANSHIP OF A MINOR**

The application for Appointment of Guardian of Minor, having been transferred to the Family Court on the Probate Court's own motion, called for hearing on April 6, 2017. Petitioner appeared in person and by counsel, Jayne M. Glaser. Mother, A.D, appeared in person and by counsel, Michael Myers. Father, T.W., appeared in person and by counsel Deborah C.M. Henry. The Oneida Nation of Wisconsin appeared by video conference through counsel Michelle Gordon. The minor child appeared by her Guardian ad Litem, Dennis Curland. The Children's Division appeared by their counsel Theodora Strassburg. This matter having been submitted to the Court on the pleadings and proof and the Court having considered the record, the evidence, the testimony, and the proposed Findings of Fact and Conclusions of Law filed by the parties, the Court now enters its Findings of Facts and Conclusions of Law and Judgment:

Findings/Conclusions

1. This Court has jurisdiction as required by Chapter 475 RSMo.
2. The subject child, T. W., is a minor, age 2 years.
3. The mother of the minor, A. D., has consented to this guardianship.
4. The father of the minor, T. W., has consented to this guardianship.

5. The Indian Child Welfare Act (hereinafter **ICWA**), 25 U.S.C. §§1901-1963, is applicable to this case as the minor child is eligible for membership in the Oneida Nation of Wisconsin.
6. Pursuant to 25 U.S.C §1903(1) (i) a foster care placement is a child custody proceeding to which the ICWA applies.
7. 25 U.S.C §1903(1)(i) includes guardianship under the definition of foster care.
8. Pursuant to 25 U.S.C §1913(a) voluntary consent to a foster care placement is valid if said consent is "...executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid."
9. The parents of the minor child complied with the consent requirements of 25 U.S.C. §1913(a).
10. This Court has certified said consents in accordance with 25 U.S.C 1913(a).
11. The Court finds that the consents of the parents were freely given.
12. Both parents are currently incarcerated and the credible evidence is that they are currently unable to assume their natural duties of guardianship. The parental rights of the parents have not been terminated.
13. 25 U.S.C §1915(b) provides in part that "...in any foster care placement a preference shall
be given, in the absence of good cause to the contrary, to a placement with
 - (i) a member of the Indian child's extended family;
 - (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
 - (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
 - (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs."
14. 25 U.S.C §1915(b) further provides that " [t]he child shall also be placed within

reasonable proximity to his or her home, taking into account any special needs of the child.”

15. The regulations governing the ICWA with respect to placement are contained in 25 C.F.R §23.132.
16. 25 C.F.R §23.132 (c) provides that a court’s determination to deviate from the placement preferences for good cause should be “...based on **one or more** of the following considerations: (emphasis added)
 - (1) The request of one or both of the **Indian child's** parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
 - (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
 - (3) The presence of a sibling attachment that can be maintained only through a particular placement;
 - (4) The extraordinary physical, mental, or emotional needs of the **Indian child**, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;
 - (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the **Indian community** in which the **Indian child’s** parent or extended family resides or with which the **Indian child’s** parent or extended family members maintain social and cultural ties.”
17. The credible evidence is that there are no members of the Indian child’s extended family with whom the child could be placed. The credible evidence is that the Oneida tribe has a foster/preadoptive home licensed and approved by the tribe. Said foster home is located in Wisconsin.
18. Both parents testified that they were aware of the foster home in Wisconsin and that they did not wish the minor child to be placed there.
19. Both parents testified that the Petitioner has maintained contact between them and the child. Both parents testified that they had observed the minor child with Petitioner and they believed she provided good care and stability for the minor child. Both parents testified that if the minor child was placed in Wisconsin they would not have the ability to maintain ties with her.

20. Petitioner testified that Mother has video contact with the child and that Father has sent recordings of him reading stories to be shared with the child. Petitioner testified that she sends letters to both parents. Petitioner testified that extended family members of both Mother and Father visit with the minor child. Petitioner testified that she would continue to maintain contact with the parents and other extended family if she is granted Guardianship.
21. The clear cogent and convincing evidence is that the parents have valid reasons to want the Petitioner to have guardianship of the child, to wit:
 - a) the child will be in close proximity to her home and to their extended family;
 - b) the Petitioner has promoted their involvement and the involvement of extended family members with the child;
 - c) they will have the ability to have contact with the child upon their release from incarceration;
 - d) they believe Petitioner provides good care and stability for the child.
22. There was no credible evidence offered to this Court as to any of the other four considerations listed in 25 C.F.R §23.132 (c)
23. 25 C.F.R §23.132 (e) further provides that: “A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.”
24. There was credible evidence from James Carroll, who did a bonding and attachment evaluation of the minor child, that the minor child has a secure attachment to Petitioner.
25. There was no credible evidence that this bonding and attachment flowed from time spent in a non-preferred placement that was made in violation of ICWA.
26. The Court finds by clear, cogent and convincing evidence that the parents are unwilling and unable to exercise their natural rights to guardianship.
27. The Court finds by clear, cogent and convincing evidence that the guardianship should be granted and that there is good cause to deviate from the placement preferences as listed in 25 U.S.C. §1915 as the parents wish to voluntarily consent to a guardianship in favor of Petitioner, they have requested that the minor child be placed in Petitioner’s home and not in the foster/preadoptive home in Wisconsin, and there is evidence of secure bonding and attachment that has occurred between Petitioner and the minor child in a placement that is not in violation of ICWA.

28. Petitioner is an adult found to be suitable and willing to serve.
29. The Guardian ad Litem has incurred fees and expense totaling \$980.00. The court finds that the fees and expenses of the GAL are reasonable.
30. The Attorney for Mother has incurred fees and expense totaling \$1,140.00. The court finds that the fees and expenses of the Attorney for Mother are reasonable.
31. The Attorney for Father has incurred fees and expense totaling \$1,380.00. The court finds that the fees and expenses of the Attorney for Father are reasonable.

ACCORDINGLY, it is the opinion of the Court that it is fit and proper that the Letters of Guardianship be issued, since the welfare of said minor person so demands.

It is Therefore Ordered, Adjudged and Decreed that:

The Petitioner is authorized and empowered to perform such duties as provided by law.

The cause is transferred to the Probate Division for administration.

The Children's Division may award a subsidy for fees to the Guardian ad Litem in the amount of \$980.00; Attorney for Mother in the amount of \$1,140; and Attorney for Father in the amount of \$1,380.00

So Ordered

Margaret T. Donnelly, Judge

Date