

STATE OF NORTH DAKOTA

IN JUVENILE COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

IN THE INTEREST OF \_\_\_\_\_, DOB \_\_\_\_\_, A CHILD.

\_\_\_\_\_ )

\_\_\_\_\_ )

PETITIONER(S), )

vs )

\_\_\_\_\_ )

\_\_\_\_\_ (*child*) )

\_\_\_\_\_ (*mother*) )

\_\_\_\_\_ (*father*) )

\_\_\_\_\_ )

RESPONDENTS. )

Case No. \_\_\_\_\_

**FINDINGS OF FACT AND ORDER  
APPOINTING GUARDIAN OF CHILD  
(Hearing Held)**

1. A hearing regarding the petition for appointment of \_\_\_\_\_

as guardian/co-guardian of the child in the above-entitled matter was held before the

Honorable \_\_\_\_\_ at the \_\_\_\_\_

County Courthouse, \_\_\_\_\_ (city), North Dakota on \_\_\_\_\_

at \_\_\_\_\_ (*time*).

2. The following persons appeared personally at the hearing:

Petitioner:

Petitioner's Lawyer:

Co-Petitioner:

Co-Petitioner's Lawyer:

Child:

Child's Lawyer:

Mother:

Mother's Lawyer:

Father:

Father's Lawyer:

Proposed Guardian:

Proposed Guardian's Lawyer:

Child's Guardian ad Litem:

Guardian ad Litem's Lawyer:

Tribal Representative:

Tribal Representative's Lawyer:

Interpreter for

Other:

Other:

3. Based on the record in this matter, the Court finds by clear and convincing evidence:

**FINDINGS OF FACT**

4. **Jurisdiction:**

This court has jurisdiction under Section 27-20.1-02 of the North Dakota Century Code (N.D.C.C.).

This court has jurisdiction under N.D.C.C. Section 30.1-27-05(2).

5. **Venue:** \_\_\_\_\_ County is the proper venue because:

The Petition did not allege the child is in need of protection and the child resides in this County.

The Petition alleged the child is in need of protection and:

The child was present in this County when this proceeding commenced.

The child resided in this County for the majority of 30 days prior to the date the need for protection occurred.

The alleged need for protection occurred in this County.

6. **Notice of Guardianship Proceedings:** The Summons and Petition for Guardianship were properly served as required by N.D.C.C. Section 27-20.1-08(2) and Rule 6 of the North Dakota Rules of Juvenile Procedure.

7. \_\_\_\_\_ failed to appear, was property served under Rule 6 of the North Dakota Rules of Juvenile Procedure and is found to be in default.

8. **Child's Information:** The child's full legal name is \_\_\_\_\_.

The child resides at \_\_\_\_\_

\_\_\_\_\_. The child's telephone number is: \_\_\_\_\_.

9. The child's birthdate is \_\_\_\_\_ and the child is currently \_\_\_\_\_ years of age.

A certified copy of the child's birth certificate (choose one):

- Accompanied the Petition for Guardianship.
- Did not accompany the Petition for Guardianship. The Court finds good cause for why the birth certificate is unavailable as follows:

10. The child  is  is not currently under the care, custody or control of a person or entity. If a person or entity currently has care, custody or control of the child:

Name of Person or Entity: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone number(s): \_\_\_\_\_

11. **Child's Indian Child Welfare Act Status:** The child:

**is not an Indian Child**, as defined by the Indian Child Welfare Act, based on the following findings:

**is an Indian Child**, as defined by the Indian Child Welfare Act, based on the following findings:

The child's tribe was afforded a full opportunity to participate in the guardianship proceedings and provided copies of the petition, reports and information regarding the child.

12. **Child's Assets:** The child  **does** have or will have  **does not** have or will not have significant excess assets and a conservatorship  **is**  **is not** necessary based on the following findings:

13. **Mother's Information:** The child's mother is \_\_\_\_\_.  
Her last known address is \_\_\_\_\_  
and her telephone number is \_\_\_\_\_.

14. **Known, Alleged, Presumed Father(s) Information:**

The child's  **known**,  **alleged**, or  **presumed** father is \_\_\_\_\_.  
His last known address is \_\_\_\_\_  
and his telephone number is \_\_\_\_\_.

The child's  **known**,  **alleged**, or  **presumed** father is \_\_\_\_\_.  
His last known address is \_\_\_\_\_  
and his telephone number is \_\_\_\_\_.

The child's  **known**,  **alleged**, or  **presumed** father is \_\_\_\_\_.  
His last known address is \_\_\_\_\_  
and his telephone number is \_\_\_\_\_.

15. **Basis of Appointing a Guardian/Co-Guardian for the Child:**

All parents are deceased, but there is no appointment of a guardian by will, based on the following findings:

One parent, \_\_\_\_\_, is deceased and the other parent's parental rights were terminated by a previous court order, but there is no appointment of a guardian by will. \_\_\_\_\_'s parental rights were terminated, based on the following findings:

The District Court transferred the case without appointment of a guardian because the testamentary guardian failed to accept the appointment of guardian under Chapter 30.1-27 of the North Dakota Century Code (N.D.C.C.), based on the following findings:

The District Court transferred the case without appointment of a guardian upon the filing of an objection to the appointment under N.D.C.C. Chapter 30.1-27, based on the following findings:

All parents consented in writing by affidavit, based on the following findings:

All parents' parental rights were terminated by previous court order, based on the following findings:

The child is a child in need of protection as defined by N.D.C.C. Section 27-20.1-01(3) based on the following findings:

16. **Best Interest of the Child:** Appointment of a guardian/co-guardian is in the child's best interests based on the following findings:

17. **Contact and Visitation Between the Child and Parents:**

The Court finds by a preponderance of the evidence that visitation between Mother/Father and the child must be restricted as unrestricted visitation is likely to endanger the child's physical or emotional health based on the following findings:

The visitation restrictions are as follows:

The parents may exercise parenting time with the child as follows:

18. **Guardian/Co-Guardian Information:** \_\_\_\_\_

is/are a fit and willing person(s) to be appointed guardian under N.D.C.C. Chapter 27-20.1 based on the following findings:

19. **Child's Preference:** The Court has considered the child's preference. The Court  **gives**

**does not give** substantial weight to the child's preference for guardian, based on the following findings:

20. The guardianship shall take effect immediately and shall continue for:
- A period of \_\_\_\_\_ months.
  - A period of one year.
  - \_\_\_\_\_ year [*cannot exceed three years*] based on the following good cause shown:

**ORDER**

IT IS ORDERED, ADJUDGED, AND DECREED that:

21. \_\_\_\_\_ Is/are appointed guardian/co-guardian of the child.

22. The guardian's/co-guardian's address is \_\_\_\_\_  
\_\_\_\_\_.

The guardian's/co-guardian's telephone number(s) and email address(es) are \_\_\_\_\_  
\_\_\_\_\_.

23. The Letters of Guardianship shall issue, take effect immediately and expire \_\_\_\_\_  
\_\_\_\_\_.

24. **Powers and Duties of Guardian/Co-Guardian:** The guardian/co-guardian shall have the powers and duties conferred under Chapter 27-20.1 of the North Dakota Century Code (N.D.C.C.).

a. When neither parent is alive, OR every living parent's parental rights have been terminated by court order, the guardian has the following rights:

i. The right to the physical custody of the minor and the right to determine the nature of the care, placement, and treatment of the child, including ordinary

medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose.

- ii. The right and duty to provide for the care, protection, training, and education and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents.
  - iii. The authority to consent to the minor's adoption, marriage, and enlistment in the armed forces of the United States.
- b. A guardian is not liable to third persons by reason of the parental relationship for acts of the minor.
- c. The guardian must take reasonable care of the minor's personal effects and commence protective proceedings if necessary to protect other property of the minor.
- d. The guardian may receive money payable for the support of the minor to the minor's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship, or custodianship.
- i. The guardian may receive money or property of the minor paid or delivered by virtue of Section 30.1-26-03 of the North Dakota Century Code (N.D.C.C.). Any sums received must be applied to the minor's current needs for support, care, and education.

- ii. The guardian must exercise due care to conserve any excess sum for the minor's future needs unless a conservator has been appointed for the estate of the minor, in which case the excess sum must be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for the guardian's services except as approved by order of the court or as determined by a duly appointed conservator other than the guardian.
- iii. The guardian may not use funds from the minor's estate for room and board that the guardian or the guardian's spouse have furnished to the minor unless a charge for the service is approved by order of the court made upon notice to at least one of the minor's next of kin, if notice is possible.
- iv. A guardian may institute proceedings to compel the performance by any person of a duty to support the minor or to pay sums for the welfare of the minor.
- e. The guardian has the authority to facilitate the minor's education, social, or other activities.
- f. The guardian has the authority to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the minor resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented.
- g. The guardian shall inform the court of any change in the minor's residence within thirty days of the change, but must seek prior authorization of the court to establish or move the minor's residence outside of the state.

h. In determining what is in the minor's best interest, the guardian shall take into account the minor's preferences to the extent actually known or reasonably ascertainable by the guardian.

i. To the extent reasonable, the guardian shall delegate to the minor responsibilities for decisions affecting the child's well-being.

j. The guardian may not delegate authority as a guardian under a power of attorney without prior approval from the court.

25. **Conservatorship:** A conservatorship for the child  is  is not necessary under N.D.C.C. Chapter 30.1-29. If a conservatorship is necessary, the guardian/co-guardian shall commence protective proceedings under N.D.C.C. Chapter 30.1-29.

26. **Interested Persons:** The following are interested persons for the purposes N.D.C.C. Chapter 27-20.1:

27. **Contact and Visitation Between the Child and Parents:**

Given the Court's findings that visitation between Mother/Father and the child must be restricted, visitation shall be as follows:

The parents may exercise parenting time with the child as follows:

28. Transportation and exchange of the child shall be made with the safety of the child and parties in consideration. Transportation, exchange, and payment of costs associated is ordered as follows:

29. Communication between parents and child shall be liberally permitted at reasonable hours and at the expense of parent initiating contact. The child may, of course, communicate with either parent though at reasonable hours and frequencies and at the cost of the parent contacted, if there is a cost. At a minimum, the parents shall be permitted to communicate with the child as follows:

30. The guardian(s) shall notify the parents in writing of any change in residence or telephone numbers within 5 days of the change.

31. The guardian(s) shall timely provide the parents information about the child to keep the parents informed of any medical, educational, vocational, or psychological appointments, progress or changes. The parents are entitled to participate in any events and professional meeting or appointments for the child unless restricted by the Court.

32. **Beginning inventory:** The guardian/co-guardian shall provide to the Court within ninety days from the date of this order, a beginning inventory of any assets owned by the child and any assets in which the child has an interest. The guardian/co-guardian shall file the beginning inventory with the Court and serve a copy on the child, if the child is fourteen years of age or older, on each living parent, if the parent's parental rights have not been terminated, and all interested persons designated in this Order.

33. **Annual Report:** The guardian/co-guardian shall provide an annual report to the Court regarding the guardian's exercise of their powers and duties.

34. The reporting period for the annual report runs 12 months from the date of this Order through the last day of the 12<sup>th</sup> month. The annual report is due 60 days after the end of the reporting period.

35. The guardian/co-guardian shall file the annual report with the Court and serve a copy by mail on the child, if the child is fourteen years of age or older, on each living parent, if the parent's parental rights have not been terminated, and all interested persons designated in this Order.

36. **Change of Child's Residence:** The guardian/co-guardian shall inform the court of any change in the child's residence within thirty days of the change, but must seek prior authorization of the court to establish or move the child's residence outside of the state.

37. **Guardian Ad Litem Discharged:** Upon the issuance of the Letters of Guardianship, the guardian ad litem shall be and is discharged of the duties as guardian ad litem.

38. This Order is effective immediately and expires: \_\_\_\_\_.

**NOTICE**

39. **NOTICE OF RIGHT TO REVIEW JUDICIAL REFEREE FINDINGS AND ORDER:** You are hereby given notice of your right to review of a Judicial Referee's Findings and Order by a District Court Judge. To request a review, you must file a written request stating the reasons for the review within SEVEN DAYS after service of this notice upon you.

40. **NOTICE OF RIGHT TO APPEAL TO SUPREME COURT:** You are hereby given notice of your right to appeal this order appointing a guardian to the North Dakota Supreme Court, within SIXTY DAYS from the date of service of this order upon you.

41. **NOTICE OF RIGHT TO SEEK MODIFICATION OR TERMINATION OF GUARDIANSHIP:** You are hereby given notice of your right to seek modification or termination of this guardianship at any time.

Dated \_\_\_\_\_.

\_\_\_\_\_  
Judge/Judicial Referee