

# PERMANENCY THROUGH GUARDIANSHIP

JUVENILE PERMANENCY WHEN REUNIFICATION IS  
NOT IN THE BEST INTEREST OF THE CHILD(REN)

# A Hope-Driven Permanency Plan

- ▶ Encourages the mindset that the future will be better, and the family system has the power to make it so!
  - ▶ Set long term **goals** for their family system.
  - ▶ Feed **willpower** and starve **ruminat**ion.
  - ▶ Chart realistic **pathways** with limited **barriers**.
- ▶ Gives power back to the family to plan for a future they can achieve in their own time, while also giving children permanency.

# Funding and Support

- ▶ Funding/support is not automatically approved by OKDHS CW Programs.
- ▶ Both Title 10A and Title 30 Guardianships may be eligible for funding/support.
- ▶ If funding/support is approved, the guardian receives:
  - ▶ Age-based monthly subsidy payment
  - ▶ Additional money for Difficulty-of-Care
  - ▶ Medicaid Coverage (guaranteed in OK)
  - ▶ Need-based childcare subsidy (up to age 12)
  - ▶ Post-Guardianship PFR to aid with service referral and benefit navigation
  - ▶ SPECIAL NOTE on SSA and SSI
    - ▶ SSA payees with monthly subsidy and other support.
    - ▶ Either SSI payees or monthly subsidy (not both), but can receive other support.
- ▶ Please do not order the guardianship until OKDHS CW Programs has approved or denied funding/support!

# Overview of Qualifications

- ▶ The guardian is able to keep the child safe.
- ▶ The child is exiting OKDHS Custody to a guardianship.
  - ▶ Court Supervision cases do not qualify for funding/support.
- ▶ The child has several months of placement stability with the guardian (at least 4mos for TANF funding; 6mos for IV-E and State funding).
  - ▶ These length-of-placement requirements apply even if the guardian is a relative.
- ▶ The guardian must be a certified Foster Home, with an approved Home Study.
- ▶ Funding/support cannot be transferred to a person whom CW Programs did not approve as a co-guardian, *and* who is not also named in the original Order Appointing Guardianship.
  - ▶ *An exception applies to IV-E funded/supported guardianship, which has a successor option.*

# Court Findings for Funding and Support

- ▶ Section III. PERMANENCY PLAN of the Permanency Review Order
  - ▶ Only select the Guardianship plan for the applicable child.
  - ▶ State the reason TPR/adoption is not being sought.
  - ▶ Select Title 10A or Title 30 in subparagraph C.
- ▶ Please add a narrative under “Other:” stating:

The Court approves the permanency plan for  all named child(ren) /or  these specified child(ren) \_\_\_\_\_ as follows:

A. Reunification  B. Adoption  C. Guardianship  D. Planned permanent living arrangement  E. Out of home placement (check all applicable).

Said permanency plan is appropriate to meet the health, safety and best interest of the child(ren).

The Court finds DHS has documented a compelling reason that filing a motion/petition to terminate parental rights does not serve the best interests of  all named child(ren)/or  these specified child(ren) \_\_\_\_\_, to wit: Insert Compelling Reasons Here

C.  Guardianship of  all named child(ren)/these specified child(ren) \_\_\_\_\_

a.  A Permanent Guardianship under Title 10A is pending or will be filed.

b.  A Guardianship under Title 30 is pending or will be filed.

c. With expected date to achieve permanency goal of \_\_\_\_\_.

Reunification has been ruled out, *and* that adoption is either not legally possible, or is not in the children’s best interest

# Types of funded guardianships

- ▶ Supported Permanency TANF Funded Guardianship
- ▶ TITLE IV-E Funded Guardianship
- ▶ State Funded Guardianship

# TANF FUNDED Guardianship

- ▶ **Oldest child must be at least 12 years of age, or approved by Child Welfare Services (CWS) Programs Deputy Director.**
- ▶ Reunification and Adoption were ruled out.
- ▶ **Family completed all requirements to be an approved OKDHS Resource Family**
- ▶ **Child(ren) resided in placement 4 of last 6 months.**
- ▶ Relative as defined by TANF Regulations
- ▶ Must reside in Oklahoma

# TITLE IV-e Guardianship

- Oldest child must be **at least 12** years of age, or approved by CWS Programs Deputy Director.
- Reunification and Adoption were ruled out.
- **Family completed all requirements to be an approved OKDHS Resource Family.**
- **Family received a Title IV-E payment for the child(ren) in placement for 6 consecutive months.**
  - ▶ Relative in the 5<sup>th</sup> degree
  - ▶ No residency requirement

# State funded guardianship

- ▶ Requires CWS Programs Deputy Director approval.
- ▶ Reunification and Adoption were ruled out.
- ▶ **Family completed all requirements to be an approved OKDHS Resource Family.**
- ▶ **Must show 6 consecutive months of placement stability.**
- ▶ No residency requirement

# Motion for Permanent Guardianship

- ▶ 10A O.S. § 1-4-710
- ▶ DA or Child's Attorney must file the motion, verified by proposed guardian
- ▶ Burden of Proof is Clear and Convincing Evidence, always Best Interest of Child
- ▶ Served Motion on parties, OKDHS, CASA, ICW, not required on parent if rights have been terminated

# CONDITIONS TO ESTABLISH PERMANENT GUARDIANSHIP 10A O.S. § 1-4-709

- ▶ Permanent Guardianship is in the best interest of the child;
- ▶ Child is adjudicated deprived;
- ▶ Proposed guardian maybe a relative or not;
- ▶ Proposed guardian must be appropriate (this would include anyone in household) - not denied as foster, not subject to Sex Offender registry, not had parental rights terminated;
- ▶ Parent has consented, rights have been terminated, failed to substantially correct conditions, adjudicated incompetent/incapacitated, abandoned the child, failed to be identified with diligent efforts made, or died;

# Continued Conditions: 10A OS §1-7-409

- ▶ Child consents, if required by court;
- ▶ Termination not legally possible or not in best interest of child;
- ▶ Child/proposed guardian do not require supervision or services to ensure stability of guardianship;
- ▶ Proposed guardian committed to providing for child until age of majority; (DHS has options for funded permanent guardianships)
- ▶ Proposed guardian will not return child to care of parent/person from who child was removed or all visitation without court approval;
- ▶ Child has been residing or placed with proposed guardian for at least 6 months or proposed guardian is a relative;

## OTHER FACTORS:

- ▶ Primary consideration shall be given to the physical and behavioral health needs of the child.

# Home assessment and report

## 10A OS § 1-4-710(C)

- ▶ If the child is in OKDHS custody, they will complete a home assessment of the proposed guardian's home;
- ▶ If child is not in OKDHS custody, the proposed guardian will be responsible to obtain the home assessment;
- ▶ A written report from the home assessment shall be submitted to the court, DA, child, GAL, and Tribe, if applicable.

**IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY  
STATE OF OKLAHOMA  
JUVENILE DIVISION**

**In the Matter of:** )  
 )  
**DOB:** )  
 )  
**ALLEGED DEPRIVED CHILDREN AS DEFINED** )  
**BY THE LAWS OF THE STATE OF OKLAHOMA.** )

**Case No. JD-**

**MOTION TO ESTABLISH GUARDIANSHIP**

[ ] State [ ] Child's attorney MOVES the Court for an Order establishing a Guardianship pursuant to 10A O.S. §1-4-709 et seq., and further moves and alleges as follows:

1. Information about the proposed guardian(s):  
Name(s):  
Address:
2. Information about the child:  
Name:  
Date of Birth:  
Gender:
3. The child [ ] is [ ] is not an Indian children as defined in 25 U.S.C. 1903(4).  
[ ] This is an Indian home or a tribal approved home; or  
[ ] Custody to the parents or Indian custodian will result in serious emotional or physical harm to the child.

4. The children are in the legal custody of The Department of Human Services.
5. The prospective guardian's relationship to the children is as follows:
6. The child  has  has not resided with the prospective guardian prior to this motion being filed. If the child has resided with the prospective guardian prior to this motion being filed:

Length of time:

Circumstances: Foster Care Placement

7. The prospective guardian(s) state(s) that she agrees to accept the duties and responsibilities of guardianship.
  8. The prospective guardian(s) understand(s) that the guardianship is intended to be permanent in nature and that the person(s) will be responsible as the guardian(s) until the child reaches the age of majority.
  9. There exists a loving, emotional tie between the children and the prospective guardian(s).
  10. A guardianship should be established:
    - a. The children have been adjudicated to be a deprived children.
    - b. The parent has:
      - consented to the guardianship;
      - had his or her parental rights terminated;
      - failed to substantially correct the conditions that led to the adjudication of the child;
      - been adjudicated as incompetent or incapacitated by a court;
      - abandoned the child;
      - failed to be identified or has not been located despite reasonably diligent efforts to ascertain the whereabouts of the parent;
      - died.

Guardianship is in the best interests of the children rather than termination of the parent-child relationship or continuation of the children's current deprived status.

[ ] the children consents to the formation of the guardianship.

11. The potential guardian(s) are expressly committed to not return the children to the care of the person from whom the children were removed nor to allow visitation without approval of the court.

WHEREFORE, Movant requests that the Court approve the appointment of the proposed guardians and for issuance of Letters of Guardianship.

\_\_\_\_\_  
Attorney for State/Child

### VERIFICATION

I affirm that I have read the Motion to Establish Guardianship and the foregoing representations are true.

*[Signed]* \_\_\_\_\_

State of Oklahoma            )  
  ) ss.  
County of \_\_\_\_\_        )

Signed and sworn to before me on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_.

*[Signed]* \_\_\_\_\_

Notary public

*(Seal)*

My Commission expires: \_\_\_\_\_

# Decree

- ▶ A decree of permanent guardianship divest the parent(s) of legal custody or guardianship but it does not terminate parental rights.

# Visitation and other provisions

- ▶ Order establishing may order visitation with parent(s), sibling(s) or other relatives if in the best interest of the child;
- ▶ As well as other provisions necessary to provide for the child's continuing safety and well being.

# Child support

- ▶ The parent(s) shall be ordered to contribute to the support of the child pursuant to Oklahoma Child Support Guidelines

# Reviews

- ▶ Statute requires a review within 1 year of entering guardianship
- ▶ Divest DHS of legal custody and supervision of the child, DHS shall have no further responsibility for the custody or supervision of the child;
- ▶ May require periodic reviews thereafter;
- ▶ If no periodic reviews required - the court may close the case but the order of permanent guardianship remains in full force and effect and shall control over any custody or child support order entered in an administrative or district court action initiated prior to deprived action until it is modified by a subsequent order of the district court.

# Final Order

- ▶ The final order may be docketed in any prior existing or pending administrative or district court action
- ▶ If no such action, it may be used to open a new administrative or district court action in the same county as deprived.

# MODIFICATION OR TERMINATION OF PERMANENT GUARDIANSHIP 1-4-711

May be filed by permanent guardian, the child, the District Attorney or by the Court

Based on a material substantial change in circumstances: parent able to provide for child, permanent guardian is unable to provide for child, child abused or neglected in the care of permanent guardian, or permanent guardian is deceased

Clear and Convincing Burden and Best Interest of Child

If granted, child is returned to custody of Department of Human Services and notice to parents if parental rights have not been terminated

# Findings of the court

- ▶ Continuation in home of guardian is contrary to the welfare of the child, and if so whether:
- ▶ Reasonable efforts were made to prevent removal of child from home; or
- ▶ Absence of efforts to prevent the removal of child from home is reasonable because removal is due to an emergency and if for purpose of providing for welfare of the child
- ▶ If granted, child returns to DHS and a new permanency plan is developed within 30 days

# GAL

- ▶ Court shall appoint GAL for the child in any modification / termination

# Notice to Parents

- ▶ If rights have not been terminated, they shall be notified if the guardianship is modified or terminated and shall be entitled to participate in the new permanency planning hearing
- ▶ If in best interest of child, the Court may order reunification services for child and parent(s)
- ▶ May consider parent(s) for custody if they can show by preponderance of evidence that they have substantially corrected prior conditions and that reunification is in the best interest of the child.

# OKSA - Oklahoma Successful Adulthood Program

- ▶ **OKSA SERVICES:** All youth that enters adoption or approved funded guardianship at 16 years of age and older are eligible. Youth can receive all services except Housing Youth Development Funds or Medicaid for ages 18-26.
- ▶ **COLLEGE TUITION WAIVERS:** All youth in OKDHS custody at least 9 months between the ages of 16 and 18 are eligible.
- ▶ **EDUCATIONAL TRAINING VOUCHERS:** All youth in OKDHS custody at age 16 or after and are adopted, placed in guardianship, or age out in foster care on or after their 18th birthday are eligible.
- ▶ **FOR MORE INFORMATION OKSA TECHNICAL --1-800-397-2945**

# TITLE 30 GUARDIANSHIPS

- When considering guardianship as permanency for a child in OKDHS custody, there are two types of guardianships - one pursuant to Title 10A and one pursuant to Title 30 of the Oklahoma Statutes.
- The two types of guardianships differ in one very important aspect - who can request termination of a guardianship.
- Under Title 30, a guardian, a parent, or a minor child can request the Court to terminate a guardianship.
- Under Title 10A, a child, a guardian, or the State can request the Court to terminate a guardianship - *a parent cannot request the Court to terminate a guardianship.*

- Although Title 30 guardianships may appear to be less secure or permanent than and therefore less preferable to Title 10A guardianships, some families prefer them for various reasons, for example:
  - Families can apply for Title 30 guardianship early to keep placement of children and keep them out of OKDHS custody
  - The waiting periods to attain the guardianship may be shorter
- ▶ Families may not want to be a part of a OKDHS case, for whatever reason, but could qualify to be appointed guardian under Title 30

# Necessary Documents

- Petition for Special/Emergency and/or General Guardianship (co-guardians may petition)
- Sex offender affidavit
- Uniform Child Custody Jurisdiction and Enforcement Act affidavit (UCCJEA)
- Emergency and/or General Plan for Care and Treatment of the Ward
- If applicable, Emergency and/or General Plan for the Management of the Ward's Property
- Order approving plan(s)
- Letters of Emergency and/or General Guardianship
- Notices and Orders for Hearings - Notice must be provided to parents, the minor child if 14 years or older, Tribes, and possibly others depending on circumstances
- Proof of notice

# Background Checks and Home Studies

- CANIS (Child Abuse and Neglect Information System Search) report
- OKDHS records, if necessary, based on CANIS report
- OSBI and/or FBI background checks
- Home study, if requested by the Court.
- For a child in in the custody of the Department of Human Services, the Department shall conduct or provide for the home study for such child as required by the Oklahoma Children's Code

# Potential Additional Documents and Issues

- If the guardianship is contested, the Court will hold hearings, such as show cause hearings and hearings to appoint general guardian
- The Court shall order a reasonable amount of child support from the parent(s)
- If the child is an Indian child, the Court must receive tribal testimony by a qualified expert
- Appointment of an attorney and/or guardian ad litem for the child(ren)
- Order setting standards for the parent(s) to regain custody of their children
- Order setting family time for the child(ren) and parent(s)
- Reviews of parent progress on achieving standards, family time, and other necessary issues
- Annual reports and review hearings, if required
- Motions to terminate guardianships (may be filed by guardian, parent, minor child)
- Motions to appoint successor guardian or co-guardian or to remove guardian

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