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FORT PECK  
TRIBAL COURT OF APPEALS

**FORT PECK COURT OF APPEALS  
ASSINIBOINE AND SIOUX TRIBES  
FORT PECK INDIAN RESERVATION  
POPLAR, MONTANA**

<p>In the Matter of: A.G. Minor Indian Child.</p> <p>And Concerning: Amanda Gourneau Appellant</p> <p>v.</p> <p>Fort Peck Tribes, Roxanne Gourneau, Pro Se Appellee</p>	<p>CAUSE NO. AP # 829</p> <p><b>OPINION</b></p>
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Appeal from the Fort Peck Tribal Court, Imogene Lilley, Presiding Judge.  
Appellant Gourneau represented by Terry Boyd.  
Roxanne Gourneau appearing Pro Se.  
Before Justices B.J. Jones and Justice E. Shanley.

**BACKGROUND AND FACTS PRESENTED**

¶ 1 This matter comes before this Court on Appellant Amanda Gourneau's appeal from an order of the lower court granting Roxanne Gourneau guardianship over a minor child in the course of child protection proceedings which had not been concluded and were progressing towards a trial home return to the mother while she was in a sober living home. The Appellant argues that the Court erred in considering a guardianship petition while the child welfare proceedings were still pending and thus

deprived her of her due process rights in the child welfare proceeding. For the reasons stated herein this Court agrees with the Appellant and finds that guardianship petitions should not be entertained while a parent is actively working a case services plan and the permanency plan is reunification. The Court below should have considered the motion of Roxanne Gourneau as an objection to a change in placement and determined whether removing the child from her and placing the child with the mother in sober living was consistent with the case services plan the mother was working.

¶ 2 On appeal only the mother has submitted a brief and the guardian failed to submit a brief. Nevertheless the Court is charged with discerning the facts below from the record. On September 16, 2021 there was a review hearing on the child protection file regarding this child and the CFS worker, Linda Hansen, recommended in a report to the Court that the child be placed back with the mother in a sober living facility from the home of Roxanne Gourneau who was the family placement option at the time. Roxanne Gourneau was not pleased with this recommendation so she filed for emergency guardianship over the child and objected to the removal of the child from her home.

¶ 3 The Appellant filed a motion to dismiss the petition asserting that it was improper considering the pendency of the child welfare matter. It is not clear from the record whether that motion was ruled on. Instead, an evidentiary hearing was held on the 17th day of November 2021 on the guardianship petition and by findings of fact and conclusions of law and order dated November 19, 2021 the Court granted Roxanne Gourneau's guardianship petition on a temporary basis, thus preventing the planned CFS placement of the child with the mother in sober living. It is not clear

however whether the underlying child protection proceeding was dismissed or remained in effect.

### STATEMENT OF JURISDICTION

¶ 4 According to CCOJ Title II, Chapter 2, §202,

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court, appeals of administrative decision where a provision of this Code expressly vests such jurisdiction in the Court of Appeals.

### STANDARD OF REVIEW

¶ 5 This Court reviews de novo all determinations of the lower court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence. 2 CCOJ §202.

### ISSUES

1. **Did the Tribal Court properly apply 10 CCOJ §304-C when it replaced the existing parenting plan governing custody of the minor children with a private guardianship order.**
2. **Does a parent of a child have a due process right to efforts at reunification with a child prior to the Court considering permanency options such as guardianships?**

### DISCUSSION

¶ 6 The Appellant makes numerous arguments on appeal that have not been rebutted by the Appellee due to her not submitting a brief in response. The Court finds the issue of a denial of due process to the mother determinative however and thus vacates the lower court decision granting Roxanne Gourneau temporary guardianship. Following appropriate procedure is particularly critical in guardianship proceedings because they involve substantial interference in the rights of parents and extended family members to rear children. This Court recognizes that a guardianship

with a family member may be a potential long-term disposition for a child in the legal custody of CFS under the Tribes' law. It is not the optimal disposition, however, as Courts have recognized that guardianships, premised upon allegations of parental unfitness, are very invasive of the constitutional rights of parents and extended family members to raise their children. See Matter of Guardianship of T.H.M. and M.M.M., 640 N.W.2d 68 (SD 2002); see also In re Guardianship of D.T.N., 914 P.2d 579 (Mont. 1996)(award of permanent guardianship to grandparents reversed because the practical result was the termination of the parents' rights which could not be done in a guardianship action). In T.H.M the South Dakota Supreme Court rejected an attempt by grandparents to obtain guardianship over a minor child based upon allegations of abuse or neglect without following the same procedures that the State would have been required to follow in an abuse and neglect matter. As the Minnesota Court of Appeals held in In re Guardianship of D.M.S., 379 N.W.2d 605, 608 (Minn. App. 1985) awarding guardianship to a non-parent over the objection of the parent is tantamount to termination of parental rights because the parent may lose the ultimate right to raise the child.

¶ 7 This Court finds that the Indian Civil Rights Act guarantee of due process of law requires that any party seeking to be appointed the guardian over a minor child, against the wishes of a parent, must first wait until the parent has received active efforts in the underlying child protection matter before seeking guardianship over a child. This does not mean that the family member may not seek to be designated as the placement for the child while the parent is receiving those efforts and the child is in the legal custody of the CFS program, even by intervening into the proceeding as a potential placement. However, both the parent and the CFS should have an

opportunity to challenge the request and the standard for determining whether the Court should dictate the placement of the child is whether the CFS is abusing its discretion in making placement decisions, not the best interest of the child standard. That standard is applicable when no CFS proceeding is pending, or when the CFS proceeding has not resulted in a return of custody to the parent or guardian and the Court can determine an appropriate permanency placement.

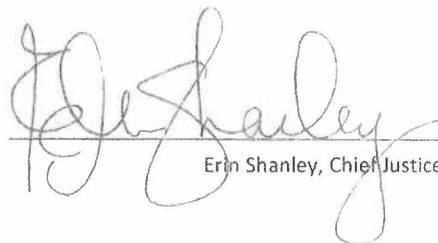
¶ 8 This Court is not mandating that the lower court on remand confirm the request of the CFS to place the child with the mother on a trial home return, if indeed that is still the agency's request, but only that the Court reconsider its guardianship order under the standard laid out in this order. Should the Court find that efforts to reunite the child with the mother have been exhausted and that the return is not in the child's best interests the Court may consider a relative guardianship. However, if efforts are continuing towards reunification the Court shall assess whether CFS's decision to try and start a trial home return with the mother is an abuse of discretion and, if so, the child may remain with the Appellee. Only, however, after the Court has determined that the mother has received active efforts should the Court consider a guardianship with the Appellee.

### **CONCLUSION**

¶ 9 For the reasons stated above, the Trial Court's Order appointing the Appellee as legal guardian over the child is REVERSED and this matter remanded to the lower court for rehearing consistent with this order.

SO ORDERED this 13<sup>th</sup> day of January 2023.

FORT PECK COURT OF APPEALS



Erin Shanley, Chief Justice



B.J. Jones, Associate Justice