



CHEROKEE NATION
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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Kara Whitworth, Director of Child Support Services

Opinion Number: 2018-CNAG-02 Guardianship and Child Support
Jurisdiction

Date Issued: June 12, 2018

This office has received your request for an official Attorney General Opinion in which you ask the following question:

Under the laws of the Cherokee Nation, does the District Court of Cherokee Nation have exclusive jurisdiction over all child support issues resulting from a guardianship under the jurisdiction of the District Court of Cherokee Nation?

ANSWER AND ANALYSIS

Yes, the District Court of the Cherokee Nation maintains exclusive jurisdiction to hear child support issues resulting from a guardianship under the jurisdiction of the District Court of the Cherokee Nation.

To answer the question submitted, it must first be determined that the District Court of the Cherokee Nation ("District Court") has jurisdiction to hear child support issues resulting from a guardianship under the jurisdiction¹ of the District Court. If it is determined that the District Court does not have jurisdiction, then the analysis will stop there and the answer to the submitted question will be "no." However, if it is determined that the District Court does have jurisdiction over child support issues resulting from District Court guardianships, then it will need to be determined whether or not the District Court has *exclusive* jurisdiction over these matters.

¹ The District Court has exclusive jurisdiction over guardianships that are initiated in the court or transferred to Cherokee Nation pursuant to the Indian Child Welfare Act, 25 U.S.C. 1901, *et. seq.* or other applicable law.

Does the District Court Have Jurisdiction to Hear Child Support Issues Resulting from District Court Guardianships

The first and dispositive issue when answering the submitted question is simply whether the District Court has jurisdiction over child support issues resulting from a District Court guardianship. The District Court has jurisdiction to hear “. . . all child support cases *arising* in Cherokee Nation Indian country (14-county Cherokee Nation boundary)” 20 CNCA §24(4)(a) (parentheses content added) (emphasis added). In order for the District Court to hear a child support case from a District Court guardianship, the child support case must arise in Cherokee Nation Indian country.

For the child support case to arise in Cherokee Nation Indian country, it must be determined that 1) the guardianship is properly within Cherokee Nation Indian country and 2) the guardian has the right to receive child support.

The District Court is within the Cherokee Nation Tribal Courthouse located within the Cherokee Nation boundary. One cannot disagree that a guardianship executed in or transferred to the District Court is properly within Cherokee Nation Indian country.

As for the guardian’s right to receive child support, Cherokee Nation law allows the District Court to “. . . enter an order providing for the support and maintenance of the child” at the courts discretion. 10 CNCA 104(D). Therefore, once a guardian is appointed, the District Court can order child support in favor of the guardian for the support of the child.

Since the guardianship occurred in the District Court and because the guardian is able to receive child support for the child, any subsequent child support case as a result of the District Court guardianship will have “arose within Cherokee Nation Indian country.” 20 CNCA §24(4)(a). Therefore, District Court has jurisdiction over child support issues resulting from a District Court guardianship.

Does the District Court Have Exclusive Jurisdiction to Hear Child Support Issues Resulting from District Court Guardianships

Now that it has been determined that the District Court has jurisdiction to hear child support issues resulting from guardianships within the jurisdiction of the District Court, we must look at whether the District Court has *exclusive* jurisdiction in these instances. Similar to the first question above, there is no case law on point, so the analysis is based on the language of the Cherokee Nation Code.

“In *all cases* the [District] Court making the appointment of a guardian has *exclusive jurisdiction* to control such guardian in the *management and disposition of the person*” 30 CNCA § 8(A) (emphasis added). Though not specifically mentioned, the plain meaning of the phrase “all cases” is certainly to include child support cases resulting from the District Court guardianship.

However, this is only true if issues of child support fall within the guardian's "management and disposition of the person" for which child support is being ordered. *Id.* Therefore, if the guardian's "management and disposition" of the child includes any aspects of receiving child support for the child, then it will be concluded the District Court does have exclusive jurisdiction over child support matter resulting from a District Court guardianship. *Id.*


Here, the words *management and disposition* are not defined within the Cherokee Nation Code. However, other sections of the Cherokee Nation Code support that the guardian's management and disposition of a child certainly includes any and all issues of child support for the child.

Indeed, "child support" is defined as "... a payment of money ... (including payment of health insurance, child care, and educational expenses) for the support of the child." 43 CNCA § 500A(C). Additionally, "a guardian of a child shall have the right to take or provide for his physical custody and shall be required to care for his health, safety and welfare, and provide for his education and medical care." 30 § 10(A)(1).


It is the guardian's right and duty to attend to the child's needs while the child is in the guardian's custody. However, it is not the guardian's monetary burden to satisfy all the child's needs. Rather, the payment of child support is for the monetary support of the child, including medical, child care, and educational costs. Therefore, the guardian's "management and disposition" of the child must include payment of child support because it is not the guardian's burden to provide for all the child's monetary needs; instead, it is the payment of "child support" to insure payment of the costs to support the child.

IT IS, THEREFORE, THE OFFICIAL OPINION OF THE ATTORNEY GENERAL THAT:

It is the opinion of the Attorney General the District Court of the Cherokee Nation maintains exclusive jurisdiction to hear issues of child support resulting from a guardianship under the jurisdiction of the District Court of the Cherokee Nation.



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