RESOLUTION NO. 18-55

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe;

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government;

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe;

WHEREAS, the Squaxin Island Tribal Council finds that ensuring that Squaxin youth in the foster care/dependency system maintain ties to their family, Tribe, and culture, and in particular, their grandparents;

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby adopts the following amendments to the Youth Code, Chapter 10.08.040 and 10.12.020, Youth in need of care actions and guardianship (copy attached hereto).

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 23rd day of August, 2018, at which time a quorum was present and was passed by a vote of 4 for and 0 against, with 0 abstentions.

Arnold Cooper, Chairman

Attested by:

Jeremie Walls, Secretary

Charlene Krise

Charlene Krise, Vice Chairman

PROPOSED NEW LANGUAGE SET INTO THE EXISTING CODE SECTIONS

INCREASING VISITATION FOR GRANDPARENTS/OTHER RELATIVES IN THE YOUTH CODE

At the last Council meeting, Legal was tasked with looking at options for ensuring that Squaxin youth in the foster care/dependency system maintain ties to their family, Tribe, and culture, and in particular, their biologic grandparents.

To accomplish this, I am proposing two changes to the Youth Code. These code changes would only affect children who are in the Squaxin youth court. In other words, if a family was not actively involved in an ICW case, the family would maintain the rights and control over who can and cannot visit children.

In the youth code, though, the Court would be required to assume that visits with biologic grandparents and other close relatives are in the best interests of the children, good reason (for example safety) not to have those visits. This would happen in both open ICW cases and guardianships.

First, I provide the new proposed language by itself, and then the proposed language set out in red-line in the context of the existing code.

PROPOSED NEW LANGUAGE

For active ICW cases:

Visitation: The Court shall set orders regarding visitation between the youth and his or her parents that are best suited to serve the youth's best interests while maintaining the youth's physical and emotional safety. The Court may also set orders regarding visits with other extended family by the same criteria. Unless the Court finds good reason to the contrary, it shall be presumed that it is in the youth's best interests to have visits with the youth's extended family, including grandparents.

For Guardianships:

Unless the Court finds good reason to the contrary, it shall be presumed that it is in the youth's best interests to have visits with the youth's extended family, including grandparents.

PROPOSED NEW LANGUAGE SET INTO THE EXISTING CODE SECTIONS

Title 10 - YOUTH CODE

Chapter 10.08 - YOUTH IN NEED OF CARE ACTIONS

10.08.040 - Disposition.

A. Predispositional Report—Purpose. The Indian Child Welfare worker, in consultation with the social services staff, shall prepare a written report describing all reasonable and appropriate alternatives.

B. Predispositional Report—Contents. The report shall contain a specific plan for the care of and assistance to the youth and his or her parent, guardian or custodian. The report shall explain the necessity for the proposed plan and its benefits to the youth and his or her parent, guardian or custodian.

C. Predispositional Report—Placement Recommendations. If placement with someone other than the youth's parent, guardian or custodian is recommended, the report shall contain specific reasons for not recommending placement of the youth with his/her parent, guardian or custodian.

D. Predispositional Report—Service. The Indian child welfare worker shall mail the predispositional report to the Court and all parties to the proceeding at least five days before the dispositional hearing.

E. Additional Reports. Any party to an action pursuant to this code may file a predispositional report which shall include his or her recommendations for consideration by the Court.

F. Dispositional Hearing—Time. A dispositional hearing may be held in conjunction with the fact finding hearing if the Court determines that such action is in the best interest of the youth. If the dispositional hearing is separate from the fact finding hearing, it shall take place within thirty-five (35) days of the fact finding hearing.

G. Dispositional Hearing—Notice. The dispositional hearing shall be set at the fact finding hearing and such announcement shall constitute notice.

H. Conduct of Dispositional Hearing. The court shall hear testimony to determine the proper disposition for the youth. The Court shall consider the predispositional report submitted by the Indian Child Welfare worker and any other reports submitted for review.

   All parties shall be given the opportunity to contest the factual contents and conclusions of the predispositional reports submitted.

I. Dispositional Alternatives for Youths in Need of Care. If a youth has been determined to be in need of care, the Court may take any of the following dispositions which are listed by priority:

   1. Permit the youth to remain with his or her parent, guardian or custodian, subject to any such limitations and conditions the Court may order;

   2. Place the youth with an extended family member subject to any limitations and conditions the Court may prescribe;

   3. Place the youth in a foster home which has been licensed or approved by the Tribe, subject to any limitations and conditions the court may order;

   4. Place the youth in a shelter care facility approved by the Tribe;

   5. Transfer legal custody to an agency responsible for youths in need of care, qualified to receive and care for the youth;

6. Recommend that termination proceedings begin; or

7. Order the youth to participate in a substance abuse treatment program in appropriate cases. This may be ordered in addition to any other disposition.

J. Visitation: The Court shall set orders regarding visitation between the youth and his or her parents that are best suited to serve the youth's best interests while maintaining the youth's physical and emotional safety. The Court may also set orders regarding visits with other extended family by the same criteria. Unless the Court finds good reason to the contrary, it shall be presumed that it is in the youth's best interests to have visits with the youth's extended family, including grandparents.

K. Dispositional Order Is Final. The dispositional order constitutes a final order for purposes of appeal.

L~~K~~. Review and Modification of Dispositional Order. Dispositional orders are to be reviewed by the Court at least every six months. A dispositional order may be modified upon a finding of a good cause to modify.

M~~L~~. Motion to Modify. The Court shall review a dispositional order at any time upon the motion of the following to modify:

1. The youth;

2. The youth's parent, guardian or custodian;

3. The Indian Child Welfare worker; or

4. The presenting officer.

N~~M~~. Review Hearing. The Court shall conduct a hearing to review its dispositional order at least once every six months, or earlier upon motion of any party.

The Court shall review the performance of the youth, the youth's parent, guardian, or custodian, the Indian Child Welfare worker, and any other parties to the disposition.

O~~N~~. Standard for Modification. If the request for review of a disposition is based on the alleged violation of a court order, the Court shall not modify its dispositional order unless it finds clear convincing evidence of the violation.

Chapter 10.12 - GUARDIANSHIP

10.12.020 - Starting an action to appoint guardian.

A. Petition—Who May File. Any person at least eighteen (18) years old may file a petition with the Court requesting that he or she be appointed as a guardian. If the petitioner is married, his or her spouse must also be at least eighteen (18) years old and must sign the petition, unless the spouse's whereabouts is unknown or unless waived by the court. "Spouse" for purposes here includes common law spouses. "Common law spouse" for purposes of this code means parties to a marriage recognized under tribal custom or parties to a relationship wherein the couple reside together and intend to reside together as a family.

B. Petition—Contents. A petition for appointment of a guardian shall include:

1. The name, birthdate, residence, and tribal status of the youth who is the subject of the petition;

2. The name, birthdate, residence, and tribal status, if known, of the youth's parent(s) and of the petitioner(s);

3. If the youth is residing with someone other than a parent, the location and length at that location; and

4. A concise statement of the facts and reasons supporting the request that the petitioner be appointed as a guardian.

C. Setting the Hearing. When the Court receives the petition it shall set a hearing date, which shall not be more than forty (40) days after the Court receives the petition.

D. Notice of Hearing. Notice of the hearing shall be given by the court clerk or other person designated by the tribe to perform this duty as provided under Section 10.04.110, Service, at least twenty (20) days before the hearing. The notice shall include the date, time, and place of the hearing and a copy of the petition. The notice shall be served on:

1. The petitioner(s);

2. The youth;

3. The youth's parent(s);

4. The presenting officer;

5. Any person the Court deems necessary for proper adjudication; and

6. Any person the parties believe necessary for the hearing.

E. Guardianship Report—Preparation. The Indian Child Welfare worker, in consultation with the social services staff, shall prepare a guardianship report. In preparing the report, the Indian Child Welfare worker shall conduct a complete home study and shall consult with the youth's parent(s), all health, education and social service personnel who have had prior professional contacts with the youth, and with the petitioner(s) to determine whether appointment of a guardian would be in the best interests of the youth. The Indian Child Welfare worker may also review the child's previous court record, if any. In addition, the Indian Child Welfare worker must obtain the recommendation, if any, of the Squaxin Island Tribal Council as to the disposition and any other relevant issues. The guardianship report shall be in writing and contain the professional opinions of all personnel consulted.

F. Guardianship Report—Service. The Indian Child Welfare worker shall mail the guardianship report to the Court and to all parties to the proceeding at least ten (10) days before the hearing.

G. Additional Reports. Any party may file a report which shall include his or her recommendations for consideration by the Court.

H. Guardianship Hearing—Purpose. The Court shall conduct the hearing to determine whether appointment of a guardian is in the best interest of the youth.

I. Guardianship Hearing—Conduct. The hearing shall be private and closed. The following procedural rules apply: Section 10.08.030F, Testimony, Sections 10.08.030G through J, Rules of Evidence, Section 10.08.030K, Admissibility of Statements, and Sections 10.08.030L through M, Questioning Witnesses, Section 10.08.030N, Written Testimony, and Section 10.08.030O, Rules for Discovery. The Court shall hear testimony to determine whether guardianship is in the best interest of the youth. The Court shall consider all guardianship reports submitted for review.

All parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports.

J. Grounds for Appointing a Guardian and Burden of Proof.

1. The Court may appoint a guardian when the following conditions have been proved by clear and convincing evidence:
   a. The parent has consented in writing to the guardianship; or
   b. The youth is a youth in need of care as defined under this code.
2. In addition to finding one of the above conditions has been proved, the Court must also find all the following conditions have been proved by clear and convincing evidence:
   a. That appointment of a guardian is in the best interest of the youth; and
   b. The youth's best interests would not be served if the youth remains under the parent's care and custody; and
   c. That the petitioner(s) can provide appropriate and adequate parental care for the youth's financial and emotional support.

K. Placement Preference. The order of preference in placing a youth with a guardian is:

1. Extended family member;
2. A member of or person eligible for enrollment in the Squaxin Island Tribe;
3. A member of another Indian tribe;
4. If this order of placement preference cannot be met, for good cause shown, then placement may be made with any person who has knowledge of and a desire to foster the youth's tribal affiliation and special needs.

L. Enrollment Prior to Appointment of Guardian. If a youth is eligible for enrollment in the Squaxin Island Tribe, the Indian Child Welfare worker may assist the parent in making application for enrollment of the youth to the Squaxin Island enrollment clerk.

M. Order of Appointment—Powers of Guardian. If the Court orders the appointment of a guardian, the order may define or limit the guardian's power. If the order does not define or limit the power of the guardian, the guardian has all the rights and responsibilities of a parent except:

1. The power to enroll a youth in a tribe other than the Squaxin Island Tribe if the child is enrolled or eligible for enrollment in the Squaxin Island Tribe;
2. The guardian shall not move outside a fifty (50) mile radius of the Squaxin Island tribal center without Court approval upon notice and hearing; and
3. The guardian may not consent to any adoption of the child.

N. Visitation. The Court may order visitation between the youth and parent(s) or any other person if the Court finds such visitation is in the best interest of the youth. Unless the Court finds good reason to the contrary, it shall be presumed that it is in the youth's best interests to have visits with the youth's extended family, including grandparents.

O. Court Review. Unless ordered by the Court, the guardianship shall not be subject to periodic or continuing supervision.