

STATE OF SOUTH DAKOTA
COUNTY OF MINNEHAHA

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IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

IN THE MATTER OF THE GUARDIANSHIP
OF [REDACTED],

A minor person.

GDN. 19-68

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER OF
GUARDIANSHIP**

Pursuant to SDCL § 29A-5-201 and upon the foregoing Petition for Appointment of Guardian of a Minor ("Petition"), supporting Affidavit of [REDACTED] ("Affidavit"), and upon all the files, records and proceedings herein, and for good cause shown the Court hereby finds the following:

FINDINGS OF FACT

1. Notice has been provided by all reasonable means to all interested parties as further stated in the Petition for Appointment of Guardian of a Minor as required by SDCL § 29A-5-204. In accordance with SDCL § 29A-1-401, notice has been provided by mailing all interested parties at their last known address including the legation of Guatemala in Washington D.C. a copy of the Petition and Notice of Hearing more than fourteen days prior to the hearing. Alternatively, the Court finds that it is in the best interests of [REDACTED] to proceed without notice.

2. An immediate need exists to protect [REDACTED], a minor, and it is in her best interest that the Court appoint [REDACTED] ("Petitioner" or "[REDACTED]" as [REDACTED]'s guardian.

3. The Petition and the supporting Affidavit is incorporated herein as findings of fact.

4. [REDACTED] was born in Guatemala [REDACTED]

5. [REDACTED] is dependent upon this Court for an Order of Guardianship to protect the minor's interests.

6. [REDACTED], [REDACTED]'s brother and Petitioner, is an adult capable of providing for [REDACTED] and is an individual who will act in [REDACTED]'s best interests, given his geographical location, ability, and commitment to protecting [REDACTED]'s welfare.

7. The guardianship is needed for identification and travel purposes and in order for [REDACTED] to make decisions for [REDACTED]'s support, care, health, and other decisions, including, but not limited to, medical/surgical care and treatment, and any other decisions that would be in [REDACTED]'s best interests.

8. [REDACTED] has provided and will continue to provide a stable home for [REDACTED] to live without fear of physical and emotional abuse and neglect and with access to plenty of food, education, and medical care.

9. [REDACTED] has provided and will continue to provide financial support to [REDACTED] so that she may remain in school. [REDACTED] is dependent on [REDACTED] for financial support and is likely to remain dependent on [REDACTED] at least until she graduates from high school or college and finds a full-time job.

10. That any Findings of Fact contained herein which is more properly considered a Conclusion of Law shall hereafter be considered a Conclusion of Law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the care and custody of minors in need of guardianships pursuant to SDCL Ch. 29A-5, and venue in this county is proper as Petitioner and the minor both reside in Minnehaha County, South Dakota. This court places the minor child under the custody of an agency, department, individual, or entity chosen by the Court. Specifically, this court places [REDACTED] under the guardianship of a minor of the Petitioner.

2. Reunification of [REDACTED] with one or both parents is not viable. Reunification with [REDACTED]'s father is not viable due to her father's abandonment, as that term is defined under South Dakota law. SDCL § 26-8A-2 (1) provides: "the term, abused or neglected child, means a child: (1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse". According to SDCL § 25-7-17, "Proof of abandonment or desertion of a child by a parent, or the omission by a parent to furnish necessary food, clothing, shelter, medical attendance, other remedial care, or other means of support for his child is prima facie evidence that the abandonment, desertion, or omission is intentional and without lawful excuse." [REDACTED] has suffered abuse and neglect by her father because of his abandonment. [REDACTED]'s father never returned to ensure that [REDACTED] was being cared for nor did he send money to provide for her, and [REDACTED] suffered abuse and neglect as a result of lacking any parent who would care for and supervise her. Reunification with [REDACTED]'s mother is not viable due to death, a similar basis to abuse, neglect, or abandonment because [REDACTED]'s mother died on June 10, 2010.

3. It is not in [REDACTED]'s best interests to be returned to Guatemala, her country of nationality and last habitual residence, and it is in [REDACTED]'s best interests to remain in South Dakota with Petitioner as her legal guardian. There has been harmful parental misconduct by [REDACTED]'s father because he abandoned [REDACTED] when she was very young. [REDACTED] has no caregiver available to her in a safe home in Guatemala, and would be forced to return to an abusive home if she returned to Guatemala. [REDACTED]'s preference is to live with the Petitioner. The Petitioner is fit, able to provide a stable home environment, and will also provide consistency to [REDACTED]

because Petitioner has been the primary caretaker of [REDACTED] since October 13, 2018. It is in [REDACTED]'s best interests to remain in South Dakota with Petitioner.

4. South Dakota finds that this guardianship petition is in the best interest of [REDACTED] pursuant to SDCL § 29A-5-201-210 (the minor statutes) in this situation, namely one in which she does not speak English fluently, is still enrolled in high school, will be subjected to further abuse and neglect in Guatemala, and is dependent on Petitioner.

5. This Court finds that the child, [REDACTED] is dependent on the court within the meaning of the statute, because of the request that [REDACTED] be appointed a guardian of a minor. This Court also finds that [REDACTED] is legally committed to, or placed under the care and custody of an individual appointed by the Court. Specifically, by means of this Order, this Court places the child in the guardianship of [REDACTED], pursuant to SDCL § 29A-5-201 for so long as she continues to be a minor within the meaning of South Dakota state law.

6. That any Conclusion of Law contained herein which is more properly considered a Finding of Fact shall hereafter be considered a Finding of Fact.

**BASED UPON THE ABOVE-STATED FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FOR GOOD CAUSE SHOWN
IT IS HEREBY ORDERED:**

1. [REDACTED] is appointed as permanent guardian of [REDACTED] by the State of South Dakota under SDCL § 29A-5-201-210 (the minor statutes). The appointment shall continue until terminated or until resignation by the guardian or further order of the Court.

2. Letters of Guardianship shall be issued to [REDACTED]. The Court determines that no bond is necessary.

3. The guardian shall have all the authority and responsibilities set forth in the South Dakota Guardianship and Conservatorship Act, SDCL Ch. 29A-5.

4. The guardian shall maintain sufficient contact with the minor to know of the minor's capabilities, limitations, needs, and opportunities. The guardian shall at all times act in the minor's best interest, shall exercise reasonable care, diligence and prudence, and shall report on the condition of the minor as ordered by the Court.

5. The Court will retain continuing jurisdiction over this matter until a time when a guardianship over [REDACTED] is no longer necessary. At that time, [REDACTED] and/or [REDACTED] will so notify the Court.

Dated this 8th day of July, 2019.

BY THE COURT:

Circuit Court Judge

ATTEST: CLERK OF COURTS/ DEPUTY

[REDACTED]

By _____

(SEAL)