

Cherokee Nation Code Annotated

Title 10: Children

Chapter 1: General Provisions

§ 21.1. Custody—Order of preference—Death of custodial parent—Preference of child

Cite as: 10 CNCA § 21.1

A. Custody should be awarded in the following order of preference according to the best interests of the child to:

1. a parent or to both parents jointly except as otherwise provided in subsection (B) of this section;
2. a grandparent;
3. a person who was indicated by the wishes of a deceased parent;
4. a relative of either parent;
5. the person in whose home the child has been living in a wholesome and stable environment; or
6. any other person deemed by the Court to be suitable and able to provide adequate and proper care and guidance for the child.

B. When a parent having physical custody and providing support to a child becomes deceased, in awarding custody or appointing as guardian of the child the noncustodial parent, the Court may deny the custody or guardianship only if:

1. the noncustodial parent has willfully failed, refused, or neglected to contribute to the support of the child for a period of at least twelve (12) months immediately preceding the determination of custody or guardianship action:
 - a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or
 - b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto;

2. the noncustodial parent has abandoned the child; or

3. the Court finds it would be detrimental to the health or safety of the child for the noncustodial parent to have custody or be appointed guardian.

C. The Court may consider the preference of the child in awarding custody of said child if the child is of sufficient age to form an intelligent preference.