

TABLED

Cherokee Council House
Cherokee North Carolina

Date: NOV 15 2022

Ordinance No.: 448 (2022)

Short Title: An ordinance to amend Ch. 50 making certain acts relevant under rules of evidence.

WHEREAS the Eastern Band of Cherokee Indians prioritize safe, healthy, and happy homes for children; and

WHEREAS, in private child custody disputes in the Cherokee Court the North Carolina Rules of Evidence apply unless the Tribe specifically legislates differently; and

WHEREAS rule 404 of the Rules of Evidence should never be a bar to evidence any past child or family violence when the question before the court is whether someone is fit to be a parent or what is the best interest of a child.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians in Council assembled at which a quorum is present, that Tribal Council hereby amends Chapter 50 as set forth in Exhibit A.

BE IT FINALLY ORDAINED, that all resolutions and ordinances inconsistent with this ordinance are rescinded, and this ordinance shall become effective upon ratification by the Principal Chief.

Sec. 50-12. Other family law issues.

(a) Either spouse may file an action for child custody, child support, and spousal support. An action for child custody or child support shall be filed on or before the date the child reaches age 18. An action for spousal support shall be filed no later than three years after a judgment for divorce has been entered.

(b) There shall be no action for divorce from bed and board.

(c) Actions for protection from domestic violence shall be filed pursuant to chapter 50B of the Cherokee Code.

(d) Death of a biological or adoptive parent will constitute grounds for a biological or adoptive grandparent to petition the court for visitation with a biological or adoptive grandchild if it is established by clear and convincing evidence that the grandchild enjoyed a significant bond and relationship with the grandparent prior to the death of the child's biological or adoptive parent.

Upon establishing by clear and convincing evidence that a grandchild enjoyed a significant bond and relationship with the biological or adoptive grandparent before the death of the child's biological or adoptive parent, the court may order visitation with the grandparent if in the court's discretion it is in the best interests of the child.

(e) It shall be grounds for denial of child custody and/or visitation to a party in a child custody action if such party to the action has been convicted of, entered a plea of guilty or no contest, or guilty pursuant to *Alford*, to any crime that is covered by Title I of the Adam Walsh Act (otherwise known as the Sex Offender Registration and Notification Act, 42 U.S.C. § 16911 et seq.), as amended, or by Article X of the Cherokee Code, entitled "Sex Offenders," as amended, regardless of where the crime took place or the sentence issued.

An "Alford plea" is a plea under which a defendant may choose to plead guilty, not because of an admission to the crime, but because the prosecutor has sufficient evidence to place a charge and to obtain conviction in court.

(f) If a party to a child custody action is formally charged with any crime that is covered by Title I of the Adam Walsh Act (otherwise known as the Sex Offender Registration and Notification Act, 42 U.S.C. § 16911 et seq.) as amended, or by Article X of the Cherokee Code, entitled "Sex Offenders," as amended, regardless of where the alleged crime took place or where it is charged, such charge shall be grounds for requiring supervised custody and/or visitation until the merits of the allegation have been fully adjudicated, tried, or finally resolved.

(g) There is a rebuttable presumption, consistent with Cherokee culture, that it is in the best interest of a child to have the love and support of grandparents through reasonable contact with a grandparent.

(h) Evidence of the following is relevant and must be considered by the court, in determining whether a party in the present suit is fit and proper to have legal or physical custody of, or visitation rights with, the minor child who is the subject of the present suit, and this evidence is also relevant in determining the best interests of the minor child who is the subject of the present suit. The Court shall not be barred by Rule 404 of the Rules of Evidence from considering this evidence:

(i) any maltreatment, as defined in the Cherokee Code Chapter 7B, regardless of whether the alleged maltreatment was committed against a party in the present suit, a minor child who is the subject of the present suit, or any past intimate partner, family or household member, or minor child, and

(ii) any domestic violence crimes, or any similar wrongs, acts or patterns of behavior regardless of whether the alleged domestic violence crimes, or similar wrongs, acts or patterns of behavior were committed against a party in the present suit, a minor child who is the subject of the present suit, or any past intimate partner, family or household member, or minor child.