

141b

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____
DOB xx /xx / ____ A male female

Case No. _____

Name _____
DOB xx /xx / ____ A male female

Case No. _____

Name _____
DOB xx /xx / ____ A male female

Case No. _____

***COMBINED JOURNAL ENTRY AND ORDERS
OF ADJUDICATION AND DISPOSITION**

Pursuant to K.S.A. 38-2251, 38-2253, 38-2255 and 42 U.S.C. §671 *et seq.*

Now on this _____ day of _____, _____, the above-captioned matter comes on for adjudication before Judge _____.

The Court finds that **the Indian Child Welfare Act (ICWA) is not applicable.** **ICWA is applicable, the tribe has been given notice, and an ICWA Supplemental Order (Form 222) is attached.** (*If ICWA is applicable use Form 216b in lieu of this form or Form 222 in conjunction with this form.*)

The Court finds that jurisdiction and venue are proper. Notice to parties, interested parties and those required to receive notice has been given as required by law.

- The petitioner appears by _____ **County/District Attorney or designee** **other** _____.
- The child(ren) appears** **in person and** **not in person, but by the child(ren's) guardian ad litem,** _____.
- Name of Mother, the mother **appears in person pro se** **appears in person, and through her attorney,** _____ **appears not in person, but by and through her attorney** _____ **does not appear.**
- Name of Father, the **father** **putative father of** Name of child, **appears in person pro se** **appears in person, and through his attorney,** _____ **appears not in person, but by and through his attorney,** _____ **does not appear.**
- Name of Father, the **father** **putative father of** Name of child, **appears in person pro se** **appears in person, and through his attorney,** _____ **appears not in person, but by and through his attorney,** _____ **does not appear.**

- is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

- except in the case of a violation of K.S.A. 21-4204a, 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in K.S.A. 38-2202(d) (12), did an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult; _____

- while less than 10 years of age, committed an act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto; _____

- is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian; _____

- is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee; _____

- has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused; _____

- while less than 10 years of age committed the offense defined in K.S.A. 21-4204a, and amendments thereto; _____

- has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve; _____

and each child named above is a Child in Need of Care.

or

- that there is not sufficient evidence to support the petition, and all parties are discharged.

3. HAVING SO FOUND, THE COURT ORDERS:

The following parties are discharged:

_____.

The Court proceeds to enter dispositional orders, forthwith. Notice has been given as required by K.S.A. 38-2254.

4. THE COURT FURTHER FINDS THAT the Court’s previous findings and orders:

- shall remain of full force and effect.
- shall remain of full force and effect to the extent that they are not inconsistent with any findings or orders in the present order, and except that it is now in the best interest of the child(ren) for custody to be placed with _____ and that: *(if this is the first order removing custody, complete “reasonable efforts” and “contrary to welfare” findings below)*

Reasonable efforts have been made and have failed to maintain the family and prevent the removal of the child(ren) from the child(ren)’s home as follows: *(Specify basis for finding for each child.)* _____

or

Reasonable efforts are not required to maintain the child(ren) in the home because an emergency exists which threatens the safety of the child(ren). *(Specify basis for finding for each child.)* _____

or

- Reasonable efforts are not required with respect to a parent because the parent has been found by a court to have:
- committed murder in the first degree, K.S.A. 21-3401, and amendments thereto; murder in the second degree, K.S.A. 21-3402, and amendments thereto; capital murder, K.S.A. 21-3439, and amendments thereto; voluntary manslaughter, K.S.A. 21-3403, and amendments thereto; or violated a law of another state which prohibits such murder or manslaughter; of another child of the parent;
 - aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter of another child of the parent as provided above;
 - committed a felony battery that resulted in bodily injury to the child or another

child of the parent;

- subjected the child to aggravated circumstances as defined in K.S.A. 38-2202(c);
- parental rights of the parent to a sibling have been terminated involuntarily.

(Specify determining factors.) _____

or

- Reasonable efforts have not been made. (Specify basis for finding for each child.)

or

- Reasonable efforts **have been made** **have not been made** to facilitate the permanency plan. (Specify basis for finding for each child.) _____

5. THE COURT FURTHER FINDS THAT **the child(ren) is likely to sustain harm if not immediately removed from the home;** **remaining in the home or returning home would be contrary to the welfare of the child(ren);** and/or **immediate placement is in the best interest of the child(ren),** specifically: (Specify basis for finding for each child.) _____

Name: _____

Name: _____

Name: _____

6. The Court **approves and adopts the proposed permanency plan as the plan for permanency in the present matter or** **does not approve the proposed permanency plan and orders a new permanency plan submitted to the Court within 30 days.**

7. THE COURT FURTHER FINDS:

8. THE COURT THEREFORE ORDERS THAT the above named child(ren) **shall be** **shall remain** placed in the custody of:

- The Secretary, or

_____.

and

A child support order shall issue.

Each parent shall submit information to the child support office for a child support order to be prepared, or present documentation of a current child support order within ____ days.

9. THE COURT ORDERS all providers of services including educational services, treatment, education or care of the child and family, even if not specifically referred to herein, to provide information including any and all educational records to the secretary, any entity providing services to the child and family, counsel for the parties including the county or district attorney, appointed CASA, Citizen Review Board members, the court, and each other to the extent needed to ensure the safety of the child, prevent further abuse or neglect, and to provide appropriate treatment, care and services to the child and family. This order encompasses and complies with the provisions of the Family Education Rights and Privacy Act (20 U.S.C. 1232g; 34 C.F.R. 99 and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. 164.512(e)(1).

THE COURT FURTHER ORDERS:

A restraining order shall be filed against _____.

The Secretary **Court Services** _____ shall complete reports and submit them to the Court by _____.

THE COURT FURTHER ORDERS this matter set for review hearing before **the Court** **the CRB** on the ____ day of _____, _____, at _____ **a.m.** **p.m.** and for permanency hearing before **the Court** **the CRB** on the ____ day of _____, _____, at _____ **a.m.** **p.m.**

IT IS SO ORDERED THIS ____ day of _____, _____.

Judge of the District Court

Authority

K.S.A. 38-2247, 38-2251, 38-2253, 38-2255 and 42 U.S.C. §671 *et seq.*

Notes on Use

This is the long form and no other journal entry is required or advised. This form is complete in and of itself, reciting appearances and allowing space for findings and orders of the court.

If the court, in issuing this order, removes the child from the home, and if it is the first order removing the child from the home or the first order of removal when the child has been home for six months or longer (as in an informal supervision), Supreme Court Administrative Order No. 155 applies and requires the use of this form or another form approved by the Supreme Court as meeting ASFA requirements. Failure to make and properly document the findings required by ASFA will result in the loss of federal funding for the placement, or any subsequent placement, of the child in the present case. Federal funding is not available when the court finds reasonable efforts have not been made unless the court also finds the efforts were not required. Finding that reasonable efforts were not made does not bar the court from removing the child and failure to make these findings does not bar the court from removing the child.

When a court has reason to believe a child involved in a child in need of care proceeding is an Indian child, ICWA applies; notice requirements, findings and procedure are dictated by ICWA, and the ICWA forms (Forms 210 – 223) must be used. The circumstances under which a court has reason to believe a child is an Indian child include, but are not limited to, the following: any party to the case, Indian tribe, or agency informs the court that the child is an Indian child; any agency involved in child protection services or family support has discovered information suggesting that the child is an Indian child; the child gives the court reason to believe he or she is an Indian child; the residence of the child, parent(s), or custodian is known to be a predominantly Indian community; a parent of the child is enrolled in a tribe; or an officer of the court has knowledge that the child may be an Indian child. Removal of an Indian child from the home is prohibited without the specific findings required by ICWA either entered with the order of removal, or within 90 days if the removal was due to an emergency. Department of the Interior, BIA Guidelines for State Courts, Indian Child Custody Proceedings.

Adjudication hearings are now open to the public, unless the court determines that closed proceedings, or the exclusion of a specific person, are in the best interests of the child or are necessary to protect the privacy rights of the parents. The court may exclude the public during the presentation of evidence that is confidential (see K.S.A. 38-2209) or conduct an *in camera* inspection. The court may not exclude the guardian *ad litem*, parties or interested parties. Dispositional hearings shall be closed except the parties, the guardian *ad litem*, interested parties, officers of the court, CASA and the custodian may attend. Other persons may be permitted to attend by consent of the parties or order of the court, if the court determines that their attendance would be in the best interests of the child or the conduct of the proceedings. The court may impose limitations as appropriate. In addition, the court shall permit the attendance of up to two people who have been designated by the parent as allies, if they have participated in a parent ally orientation program approved by the judicial administrator. An ally may be removed if the ally becomes disruptive or has been disruptive in a prior proceeding. K.S.A. 38-2247.

Once a case is filed, an adjudicatory hearing shall be held without undue delay, and within 60 days from the date the child was removed from the home, if applicable. K.S.A. 38-2251(c) The standard of proof in an adjudication hearing is clear and convincing. K.S.A. 38-2250.

The court may proceed to disposition at the same hearing, if notice requirements have been

met. K.S.A. 38-2254 requires notice of the dispositional hearing be given to the parties and the following: foster parents or permanent custodian, preadoptive parents, the person who has custody of the child, any person with close emotional ties to the child who has requested notice and is deemed by the court to be essential to the deliberations, the grandparents or the closest relative of the child's parent if a grandparent is not living or the address is not known. Notice shall be given by first class mail no less than 10 business days before the hearing.

K.S.A. 38-2255(a) sets out the considerations that the court must make prior to entering a dispositional order. In addition to entering a custody order, the court may impose terms and conditions which may include participation by the parent and child in programs and treatment for the child. The dispositional hearing may serve as a permanency hearing, if the requirements of K.S.A. 38-2265 have been met. Those requirements are notice requirements.

If the court makes the required findings and removes the child from a parent's custody, the court may award custody of the child to a relative, to a person with whom the child has close emotional ties, to any other suitable person, to a shelter facility, to a youth residential facility or to the secretary. If the court awards custody of the child to the secretary then the secretary shall have the authority to place the child, and the court may make placement recommendations. The court shall provide the secretary with a copy of any orders entered. The court may determine, after notice and hearing, that the secretary's placement is contrary to the welfare or best interests of the child, considering the health and safety needs of the child and the resources available. If the court determines that the placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

The court may enter an order for one or both parents to pay child support if the child is placed with a person other than a parent, and shall enter a child support order if the secretary is granted custody of the child. The court shall issue an income withholding order, regardless of whether a payor/employer has been identified. The parent shall be given notice that the order may be registered pursuant to K.S.A. 38-2279, that the withholding order may be served on the parent's employer without further notice, and the child support order may be enforced by any method allowed by law. K.S.A. 38-2256 provides that a child support order that has been registered under K.S.A. 38-2279 may only be modified pursuant to that statute.

If the court awards custody of the child to a person other than a parent, the custodian shall notify the court in writing at least 10 days prior to any planned placement with a parent, stating the basis for the custodian's belief that placement with a parent is no longer contrary to the welfare of the child. The court may set the proposed placement with a parent for hearing to determine if the child should be allowed to return home. If the matter is set for hearing, the custodian shall not return the child home without the written consent of the court (Form 165). K.S.A. 38-2255(d)(2).

The court may enter a restraining order (Form 134) against any alleged perpetrator of physical, sexual, mental or emotional abuse of the child. There is a provision in this form directing that a restraining order issue pursuant to K.S.A. 38-2255(d)(4).

When the term "or" stands alone between optional findings/orders, more than one choice may be checked. Each choice checked must be justified as instructed, e.g. *specify basis for finding*.

Comments

The findings required in a dispositional order after the court makes the child in need of care

determination are examined. *In re A.B.*, 12 Kan. App. 2d 391, 746 P.2d 96 (1987).

An adjudication hearing is required when a party files a CINC petition and no stipulation has been entered. *In re K.W.*, 24 Kan. App. 2d 724, 953 P.2d 229 (1998).

A court may order that a child be counseled by a specific counselor. *In re T.D.*, 27 Kan. App. 2d 331, 3 P.3d 590 (2000).

A court is not required to determine whether reintegration with the custodial parent is a viable alternative before placing the child with the noncustodial parent. *In re T.S.*, 276 Kan. 282, 74 P.3d 1009 (2003).