

132a
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. _____

***ORDER OF TEMPORARY CUSTODY**

Pursuant to K.S.A. 38-2243, K.S.A. 38-2258, or K.S.A. 38-2259 and 42 U.S.C. § 671 *et seq.*
Separate journal entry must be attached.

On this _____ day of _____, 20____ the above captioned matter comes before the Court.

The Court finds that the Indian Child Welfare Act (ICWA) **is applicable** **is not applicable** **applicability is undetermined.** Petitioner **need not give** **has given** **shall give** notice to the Tribe and the Court has jurisdiction to proceed to hearing.

A journal entry fully setting out the appearances, findings and orders is attached.

THE COURT FURTHER FINDS there is probable cause to believe that the allegations in the application for custody are true and that:

- Appropriate public or private agencies have made reasonable efforts but have failed to maintain the family and prevent the removal of the child from the child's home as follows:
(Specify basis for finding for each child.) _____

_____.

OR

- Appropriate public or private agencies are not required to make reasonable efforts to maintain the child in the home because an emergency exists which threatens the safety of the child. *(Specify basis for findings for each child.)* _____

OR

- Appropriate public or private agencies are not required to make reasonable efforts 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;
 - 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 basis for finding for each child)* _____

OR

- Appropriate public or private agencies have not made reasonable efforts. *(Specify basis for finding for each child.)* _____

AND

- There is probable cause to believe that: **the child 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; and/or immediate placement is in the best interest of the child, specifically: (*Specify basis for findings.*)_____

_____.

THE COURT THEREFORE ORDERS THAT the above named child **shall be** placed in the temporary custody of:

- _____, a parent.
- _____, a relative.
- _____, an unlicensed person with close emotional ties to the child.
- _____, a youth residential facility.
- _____, a shelter facility.
- The Secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse.

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.

THE COURT FURTHER 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).

- A restraining order shall be prepared by _____, filed, and served upon _____.

THE COURT FURTHER ORDERS this matter set for _____ hearing before the Court on the _____ day of _____, 20____, at ____:____ a.m. p.m.

IT IS SO ORDERED THIS _____ day of _____, 20_____.

Judge of the District Court

The court provided the parents, grandparents and/or interested parties, who were present at this hearing and who had not previously received them, with information materials pertaining to their respective rights and responsibilities in connection with the proceedings.

Authority

K.S.A. 38-2243 and 42 U.S.C. § 671 *et seq.*

Notes on Use

This is the short temporary custody form for use in conjunction with a journal entry drafted by counsel that recites the appearances, findings and orders of the court. Form 132b, the long temporary custody form, may be used without a separate journal entry, as it includes a recitation of appearances and space for findings and order 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, 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 unless the court finds both that it is contrary to the welfare of the child to remain in the home and reasonable efforts have been made or were not required. 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. 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. 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. Department of the Interior, BIA Guidelines for State Courts, Indian Child Custody Proceedings. The court should inquire about possible Indian heritage of the child, and the state and the secretary should be pursuing ICWA information at this time.

The court may issue a temporary custody order after a hearing and upon making probable cause findings as required by ASFA and K.S.A. 38-2243(i), which are set out in this form. The statute requires that the temporary custody hearing take place within 72 hours (not including Saturday, Sunday, legal holidays and days on which the clerk of the court is not available) of the execution of a protective custody order (Form 106) or of a child's being admitted to a placement while in police protective custody pursuant to K.S.A. 38-2232(e). Notice of the temporary custody hearing shall be given to all parties and interested parties at least 24 hours prior to the hearing. Oral notice may be used if there is insufficient time to give written notice. Oral notice is completed upon the filing of a certificate of oral notice (Form 131).

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. 38-2243(h).

If the petition alleges that the child is a runaway pursuant to K.S.A. 38-2202(d)(9) or (d)(10), but the child has not yet been adjudicated as a runaway, then the order may direct that the child be detained in a secure facility, which may be a juvenile detention facility, but not for more than 24 hours, not including Saturdays, Sundays, legal holidays and days on which the clerk of the court is not available. The time limitation of 24 hours is the total time permitted in a secure facility whether by police protective custody or court order. 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. If the court awards custody to the secretary, then the court is required to provide the secretary with a copy of any orders entered.

The order of temporary custody shall remain in effect until modified or rescinded or until a disposition order is entered, but not exceeding 60 days, unless good cause is shown and stated on

11/23/10

the record. The court shall make a child support determination if the child is placed with a person other than the parent.

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 for each child.*

Comments

An order of temporary custody is a final order that must be appealed within 30 days after entry of judgment. *In re D.I.G.*, 34 Kan. App. 2d 34, 114 P.3d 173 (2005).