

151a
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 DISPOSITION**

Pursuant to K.S.A. 38-2253, 38-2255 and 42 U.S.C. §671 *et seq.*
Separate journal entry must be attached

Now on this _____ day of _____, _____, the above-captioned matter comes on for disposition 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 217a in lieu of this form or Form 222 in conjunction with this form.)*

1. A journal entry fully setting out the appearances, findings and orders is attached.
2. THE COURT FURTHER FINDS 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.) _____

3. 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: _____

4. 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.**

5. 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.

6. 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 filed against _____.

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

Notes on Use

This is the short form for use in conjunction with a journal entry drafted by counsel that recites the appearances, findings and orders of the court. Form 151b, the long form, may be used without a separate journal entry, as it includes a recitation of appearances and 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.

K.S.A. 38-2253 requires that an order of disposition be entered within 30 days following adjudication. 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.

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).

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).