

170.1

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____

Case No. _____

Year of Birth _____ A ☐ male ☐ female***PERMANENCY HEARING JOURNAL ENTRY AND ORDER**Pursuant to K.S.A. 38-2264 and 42 U.S.C. §671 *et seq.**(Orders pertaining to more than one child must include findings specific to each child listed in the caption.)**(If this is the first order removing a child from parental custody, complete and attach Form 107.)*

NOW on this _____ day of _____, 20____, the above-captioned matters come before the Court to determine progress being made to achieve the current permanency plan goal(s) of _____.

THE COURT FINDS jurisdiction and venue are proper. Notice to parties, interested parties and those required to receive notice has been given as required by law.

☐ The child is 14 years of age or older and has been given notice of the time and place of the permanency hearing as required by law.

The Court finds that the Indian Child Welfare Act (ICWA) is not applicable. *(If there is reason to know the child is an Indian child, use the appropriate ICWA form.)* ~~*(If ICWA applies please use the appropriate ICWA permanency hearing form.)*~~

☐ The petitioner appears by _____ ☐ County/District Attorney or designee ☐ other _____.

☐ The child appears ☐ in person and ☐ not in person, but by the child'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.

☐ *(Other parent appearances)* _____

☐ Interested parties appearing are: _____

☐ The Secretary appears ~~is present~~ through: _____

☐ Also present: _____

THE COURT FURTHER FINDS AND ORDERS:

1. ☐ a. Appropriate public or private agencies have made reasonable efforts to assist and support the family to accomplish the current permanency goal(s) set out in the permanency plan.

OR

- ☐ b. Appropriate public or private agencies have not made reasonable efforts to assist and support the family to accomplish the current permanency goal(s) set out in the permanency plan.
2. The progress of the parents or child to achieve the permanency plan goal(s) of _____ is ☐ **is not** adequate.
3. The child's needs ☐ **are** ☐ **are not** being adequately met. (*If the child's needs are not being met, explain.*) _____
4. The reasonable and prudent parenting standard ☐ **has been** ☐ **has not been** met. _____
5. The child ☐ **has had** ☐ **has not had** regular, on-going opportunities to engage in age or developmentally appropriate activities. _____
6. The Court has considered in-state and out-of-state permanent placement options. The

child ☐ **is** ☐ **is not** in out of state placement, and such placement ☐ **continues** ☐ **does not continue** to be appropriate and in the best interest of the child.

7. ☐ a. Reintegration **continues to be** a viable goal and (*Check choice(s).*)
- ☐ the child should not be reintegrated until further order of the Court.
 - ☐ the child may return home ☐ **immediately** ☐ **with a target date of _____ day of _____, 20____, ☐ if the following conditions are met: _____**
 - ☐ within 30 days, a new plan for reintegration should be prepared and submitted to the Court with measurable goals, objectives and time frames.
 - ☐ the new plan for reintegration shall include a concurrent goal of:
 - ☐ adoption.
 - ☐ permanent custodianship.
 - ☐ placement with a relative.

OR

- ☐ b. Reintegration **is no longer** a viable goal and (*Check choice(s).*)
- ☐ the child is in a stable placement with a relative.
 - ☐ either adoption or permanent custodianship might be in the best interests of the child; services set out in the permanency plan necessary for the safe return of the child have been made available to the parent(s) with whom reintegration was planned; the County/District Attorney or designee shall file a pleading to terminate parental rights or a pleading to establish a permanent custodianship within 30 days; a new plan should be prepared and submitted to the Court with measurable goals, objectives and time frames to achieve ☐ **adoption** ☐ **permanent custodianship**.
 - ☐ adoption and permanent custodianship have been considered but are not in the child's best interest at this time, and a new plan should be prepared and submitted to the Court with measurable goals, objectives and time frames to achieve another planned permanent living arrangement of (*Identify*) _____

8. ☐ **The child is 14 years of age** or older and the court finds that the Secretary has made the following efforts to help the child prepare for the transition from custody to a successful adulthood. _____

9. The previous orders of this Court ☐ shall continue in full force and effect ☐ except as hereby modified ☐ are hereby rescinded and the following orders are hereby issued pursuant to K.S.A. 38-2255: _____
- _____
- _____

THE COURT FURTHER FINDS:

THE COURT FURTHER ORDERS:

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).

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

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

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

Judge of the District Court

Authority

K.S.A. 38-2264, and 42 U.S.C. §671 *et seq.*

Notes on Use

No other journal entry is required or ~~advised~~ ~~This~~ advised. This form is complete in and of itself, reciting appearances and allowing space for findings and orders of the court. Supreme Court Rule 174 requires the use of this form or another form approved by the Supreme Court as meeting ASFA requirements. “An additional order or supplemental affidavit may be attached to a form.” S.C.R. 174(b). Failure to make and properly document the findings required by the Adoption and Safe Families Act (ASFA) will result in the loss of federal funding. Federal funding is not available when the court finds reasonable efforts have not been made. The loss of federal funding continues until the court finds reasonable efforts have been made and the court’s findings are properly documented. **If this is the first order relieving a parent of custody and authorizing out of home placement** or the first order of removal after a previously removed child has been home for six months or longer (as in an informal supervision or trial home placement), **Form 107 must be used.** Failure to make and properly document the findings required by ASFA in the initial order authorizing out of home placement will result in the loss of federal funding for the placement, or any subsequent placement, of the child in the present case.

When a court has reason to know a child involved in a child in need of care proceeding is an Indian child, the Indian Child Welfare Act (ICWA) applies; notice requirements, findings and procedure are dictated by ICWA, and the ICWA forms must be used. If ICWA applies, use form 219.1 instead of this form. In addition to the federal ICWA statutes, all federal regulations (25 C.F.R. 23) must be followed. The court should also consult the BIA December 2016 guidelines (www.bia.gov/bia/ois/dhs/icwa).

The court must ask each participant in the case whether the participant knows or has reason to know that the child is an Indian child. The inquiry and all responses should be on the record. The term “participant” is used in the regulations and is meant to be very broad. The goal is to encourage anyone, not just parties, to provide information to the court. The court must also instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child. 25 C.F.R. 23.107(a). **If there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court must treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an Indian child. 25 C.F.R. 23.107(b).** The court “has reason to know” a child is an Indian child if:

- “(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
- (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
- (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

- (4) The court is informed that the domicile or residence of the child, the child's parents, or the child's Indian custodian is on a reservation or in an Alaska Native village;
- (5) The court is informed that the child is or has been a ward of a Tribal court; or
- (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.” 25 C.F.R. 23.107(c).

~~When a court has reason to believe a child involved in a child in need of care proceeding is an Indian child, the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 *et seq.* applies; notice requirements, findings and procedure are dictated by ICWA, and the ICWA forms (Forms 209—223) must be used. The circumstances under which a court has reason to believe a child is an Indian child as defined by 25 U.S.C. 1903(5) 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. Compliance with ICWA is jurisdictional. Failure to comply with ICWA may render orders devoid of authority. Department of the Interior, BIA Guidelines for State Courts, Indian Child Custody Proceedings.~~

A permanency hearing shall be held within 12 months of the date the child entered out of home placement, and at least every 12 months thereafter. If the court finds at any time other than during a permanency hearing (as in a review hearing) that reintegration may not be a viable goal, then a permanency hearing shall be held within 30 days of that determination. A permanency hearing may be conducted by the court or by a citizen review board; K.S.A. 38-2208(c) requires a hearing before the court at least once a year. The purpose of the permanency hearing is to determine progress toward the goals of the permanency plan, as defined by K.S.A. 38-2263. Notice of a permanency hearing is dictated by K.S.A. 38-2265.

If the permanency hearing is for a child 14 years of age or older, the court shall require notice of the time and place of the permanency hearing. The notice shall request the child's participation in the hearing by attendance or by report to the court. A sample report form may be obtained [on the Kansas Judicial Council website or](#) through the Office of Judicial Administration.

If a grandparent requests custody, the form facilitates documentation required by K.S.A.38-2286, which specified requirements concerning grandparents as potential custodians. If the court does not award custody of the child to a parent and, if a grandparent requests custody, the court shall give substantial consideration when evaluating what custody, visitation or residency arrangements are in the best interests of the child. Relevant factors to be considered include wishes of the parents, child and grandparent; the extent to which the grandparent has cared for, nurtured and supported the child; the intent and circumstances under which the child is placed with the grandparent, including whether domestic violence is a factor and whether the child is placed to allow the parent to seek work or attend school; and the physical and mental

health of all individuals involved.

The court, after hearing or based on citizen review board recommendations, shall determine whether the child will be reintegrated with a parent, placed for adoption, placed with a permanent custodian, or placed in another planned permanent living arrangement. As set out in the form, the court shall make reasonable efforts findings. Upon finding that reintegration continues to be a viable alternative, the court may rescind prior dispositional orders and enter any dispositional order authorized by the code, or order that a new reintegration plan be prepared. Upon finding that reintegration is no longer a viable alternative, the court shall make the considerations and findings set out in the form. If reintegration is not a viable alternative and either adoption or appointment of a permanent custodian might be in the best interests of the child, then the county or district attorney shall file a motion to terminate parental rights or a motion to appoint a permanent custodian within 30 days, and the court shall set a hearing on such motion within 90 days of the filing of the motion.

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.*