

141.1
IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____ Case No. _____
Year of Birth _____ A ☐ male ☐ female

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 hearing.

The Court finds that ☐ the Indian Child Welfare Act (ICWA) is not applicable. ☐
ICWA is applicable, the tribe has been given notice. *(If there is reason to know the child is an Indian child, use ICWA Form 216.1)*

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 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.**
- ☐ Interested parties appearing: _____
- ☐ The Secretary **appears is present** through _____
- ☐ Also present: _____

1. THE COURT FURTHER FINDS:

- ☐ a. the guardian *ad litem* and parents of the child did submit to the Court a stipulation or statement of no contest to the petition pursuant to K.S.A. 38-2248, filed in the captioned matter. Upon inquiry the Court finds that it is knowingly and voluntarily offered and that there is a factual basis and accepts it.

or

- ☐ b. The Court received evidence and considered statements from the parties.

2. WHEREUPON, THE COURT FINDS:

- ☐ a. the evidence is clear and convincing that the child (*Show name of child on line*):
- ☐ is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

 - ☐ is without the care or control necessary for the child's physical, mental or emotional health;

 - ☐ has been physically, mentally or emotionally abused or neglected, or sexually abused;

 - ☐ has been placed for care or adoption in violation of law; _____
 - ☐ has been abandoned or does not have a known living parent; _____
 - ☐ 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., 41-727, K.S.A. 74-8810(j) or of K.S.A. 79-3321(m) or (n), 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. 21-5102, 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. 21-6301(a)(14), and amendments thereto; _____
- ☐ has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve; _____
- ☐ has been subjected to an act which would constitute human trafficking or aggravated human trafficking, as defined by K.S.A. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 21-6422, and amendments thereto, or has committed an act which, if committed by an adult, would constitute selling sexual relations, as defined by K.S.A. 21-6419, and amendments thereto; _____

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

or

- ☐ b. There is not sufficient evidence to support the petition as to _____.

HAVING SO FOUND, the Court ORDERS the following parties discharged:_____.

The Court proceeds to enter dispositional orders, forthwith.

3. THE COURT FURTHER FINDS THAT the Court's previous findings and orders:

- ☐ a. shall remain of full force and effect.
- ☐ b. shall remain of full force and effect to the extent that they are not inconsistent with any findings or orders in the present order.

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 FURTHER FINDS:

6. THE COURT THEREFORE FINDS AND ORDERS:

(If this is the first order removing a child from parental custody, complete and attach Form 107.)

☐ A grandparent has requested custody and, in evaluating what custody, visitation and residency arrangements are in the best interests of the child, substantial consideration is given to the wishes of the parents, child, and grandparent; the extent that the grandparent has cared for the child; the intent and circumstances under which the child is placed; and the physical and mental health of all involved individuals.

The above name child ☐ **shall be** ☐ **shall remain** placed in 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.

7. 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).

8. HAVING SO FOUND, the Court ORDERS the following parties discharged:_____.

☐ 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. 38-2202, 38-2247, 38-2251, 38-2253, 38-2255 and 42 U.S.C. §671 *et seq.*

Notes on Use

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 this is the first order relieving a parent of custody and authorizing out of home placement or the first order of removal when the child has been home for six months or longer (as an informal supervision), **Form 107 must be used.** Failure to make and properly document the findings required by [the Adoption and Safe Families Act \(ASFA\)](#) in the initial order authorizing out of home placement will result in the loss of federal funding for the child throughout 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 216.1 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.~~

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, K.S.A. 38-2251(c) requires that 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. The standard of proof in an adjudication hearing is clear and convincing. K.S.A. 38-2251 provides that if the court does not find by clear and convincing evidence, pursuant to K.S.A. 38-2250, that the child is a child in need of care, then the court shall dismiss the proceedings. This form provides for dismissal as to some parties and adjudication as to others.

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 set out in Form 107 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 this is the first order relieving a parent of custody and authorizing out of home placement** or the first order of removal when the child has been home for six months or longer (as in an informal supervision), **Form 107 must be used.**

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.

If the court awards custody of the child to the secretary, K.S.A. 38-2255(d)(1) provides 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, 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. [This form includes a provision allowing for issuance of a restraining order pursuant to K.S.A. 38-2255\(d\)\(4\).](#) ~~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).