

07/15/2016

107

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

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

**INITIAL ORDER REMOVING CHILD FROM CUSTODY OF PARENT
AND AUTHORIZING OUT OF HOME PLACEMENT**

K.S.A. 38-2244, 38-2251, 38-2255, 38-2258, 38-2259 and 42 U.S.C. §671 *et seq.*

Separate journal entry or order must be attached.

(Orders pertaining to more than one child must include findings specific to each child listed in the caption.)

(If the court knows or has reason to know the child is an Indian child, Form 209 must be used.)

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

THE COURT HEREBY FINDS:

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 **or** reasonable efforts are not required to maintain the child in the home because an emergency exists which threatens the safety of the child as follows: (*Specific findings of fact must be written here* ~~List findings of fact~~) _____

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Comment [LN1]: Changed this language in the JO Removal Order Form 309

AND

The child is likely to sustain harm if not immediately removed from the home; remaining in the home or returning to the home would be contrary to the welfare of the child; **and/or**, immediate placement is in the best interest of the child. (*Specific findings of fact must be written here* ~~List finding of facts~~) _____

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- ☐ 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 (1) the wishes of the parents, child, and grandparent; (2) the extent that the grandparent has cared for the child; the intent and circumstances under which the child is placed; and (3) the physical and mental health of all involved individuals.

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THE COURT THEREFORE ORDERS that the above named child shall immediately be placed in the custody of:

- ☐ _____, relative; a person who need not be licensed; a youth residential facility; a shelter facility; a staff secure facility; juvenile crisis intervention center;

Comment [LN2]: Added per K.S.A. 38-2242(c)(1)

OR

- ☐ The Secretary if the child is 15 years of age or younger, or if the child is 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.

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 _____ 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 informational materials pertaining to their respective rights and responsibilities in connection with the proceedings.

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Authority

K.S.A. 38-2244, 38-2251, 38-2255, 38-2258, 38-2259 and 42 U.S.C. §671 *et seq.*

Notes on Use

Form 107 is designed to serve as the first order removing the child from the home 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). In such cases, Supreme Court Rule 174 requires the use of this form or another form approved by the Supreme Court as meeting Adoption and Safe Family Act (ASFA) requirements. Failure to make and properly document the findings required by ASFA will result in the loss of federal funding for the placement and 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 **because an emergency exists**. If reasonable efforts have not been made and no emergency exists a removal should not be ordered.

Specific findings of fact regarding reasonable efforts or the emergency, and the likelihood of sustaining harm must be written after the first two paragraphs on this form. Identical findings may be made for both paragraphs.

Comment [LN3]: Same language added for JO Removal form Form 309 and to Form 106

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 209 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 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. 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.~~

If a grandparent requests custody, the form facilitates documentation required by K.S.A. 38-2286L-2012, SB-262, 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 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).