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IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____

Case No. _____

Year of Birth _____ A ☐ male ☐ female

FINDING OF UNFITNESS
AND ORDER TERMINATING PARENTAL RIGHTS
OR APPOINTING PERMANENT CUSTODIAN

Pursuant to K.S.A. 38-2269, 38-2270, 38-2271, 38-2272

Now on this _____ day of _____, _____, the above-captioned matter comes on for hearing of the Motion for Finding of Unfitness before Judge _____.

The Court finds that the child named above has been adjudicated a Child in Need of Care. The Court asked each participant if the participant knows or has a reason to know the child is an Indian child. The Court finds there is no reason to know that the child is an Indian child and the Indian Child Welfare Act does not apply. (If there is a reason to know or know that the child is an Indian child, use ICWA Form 230.); and that the Indian Child Welfare Act (ICWA) is not applicable. (If ICWA is applicable use form 230.)

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.
- ☐ (Other parent appearances) _____
- _____
- _____
- ☐ Interested parties appearing are: _____

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

☐ Also present is/are: _____

THE COURT FINDS:

1. The evidence is clear and convincing that the ☐ **mother** _____
☐ **father** _____ ☐ **putative father** _____ of the
 child named above is unfit by reason of conduct or condition which renders the parent unable to
 care properly for a child and the conduct or condition is unlikely to change in the foreseeable
 future. The finding is based on the following facts:

2. ☐ Considering the physical, mental or emotional health of the child, termination of parental
 rights is in the best interests of the child named above and the physical, mental or emotional
 needs of the child would best be served by termination of parental rights. The parental rights of
 _____ should be
 terminated.

or

☐ The Court has considered whether termination of parental rights is in the best interests of
 the child, but parental rights should not be terminated.

☐ THE COURT FURTHER FINDS:

 _____.

IT IS THEREFORE ORDERED:

- ☐ The parental rights to the child named above of the following persons are terminated:

- ☐ A permanent custodian shall be appointed for _____.

or

- ☐ Custody of _____ shall be granted for adoption proceedings to ☐ **the Secretary** ☐ **other agency** _____.

or

- ☐ Custody of _____ shall be granted to proposed adoptive parents _____ for adoption proceedings. The Court hereby consents to the adoption of the child by the proposed adoptive parents.

or

- ☐ Other _____

- ☐ THE COURT FURTHER ORDERS:

THE COURT FURTHER ORDERS this matter set 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. 38-2269 through 38-2272.

Notes on Use

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 220 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).

The court may terminate parental rights or appoint a permanent custodian when the child has been adjudicated a child in need of care. -The standard is clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future. K.S.A. 38-2269 sets out specific considerations that the court is required to make, in addition to factors that may establish grounds for termination of parental rights. -K.S.A. 38-2271 defines the

terms and conditions under which the presumption of unfitness shifts the burden of proof to the parent.

If the court makes a finding of unfitness, the court shall consider whether termination of parental rights is in the best interest of the child, if requested, giving primary consideration to the physical, mental and emotional health of the child. If the court terminates parental rights the court may authorize adoption, appointment of a permanent custodian, or continued permanency planning. If the court does not terminate parental rights, the court may authorize appointment of a permanent custodian or continued permanency planning.

When custody has been granted for adoption, appointment of a permanent custodian or continued permanency planning, the custodian shall submit a written plan for permanent placement of the child within 30 days.

After termination of parental rights, the court may enter an order granting custody of the child to the secretary or a Kansas adoption corporation (authorized by K.S.A. 38-112) for adoption proceedings. The secretary or corporation shall have authority to place the child and give consent for the adoption of the child. Or the court may grant custody of the child to proposed adoptive parents and consent to the adoption. The court shall give preference first to granting custody for adoption to a relative of the child and second to a person with whom the child has close emotional ties, to the extent that it is in the best interest of the child. The court's jurisdiction over the child shall cease when an adoption decree is filed, and the court shall enter an order to that effect, Form 190.

The court may appoint a permanent custodian after making a finding of unfitness, whether or not the parental rights are terminated. A permanent custodian may also be appointed by the consent of the parents. K.S.A. 38-2272 provides that the secretary's custody of the child shall cease and the court may, but is not required to, terminate jurisdiction over the child upon appointment of the permanent custodian. If an order terminating jurisdiction is not entered, the court may impose limitations or conditions upon the rights and responsibilities of the permanent custodian, some of which are set out in K.S.A. 38-2272(d). Those shall be set out in the order of appointment.

Comments

Termination of parental rights is reversed where the court improperly evaluated factors to be considered. *In re M.M.*, 19 Kan. App. 2d 600, 873 P.2d 947 (1993).

The level of unfitness necessary in successful child in need of care proceeding does not rise to the level necessary to terminate parental rights. *In re R.C.*, 21 Kan. App. 2d 702, 907 P.2d 901 (1995).

The court is authorized to rescind its prior custody order or adoptive placement when it determines the agency responsible for placement has not expended reasonable efforts to do so. *In re D.C.*, 32 Kan. App. 2d 962, 92 P.3d 1138 (2004).

This case discusses the requirements of due process in a termination case, including a discussion of due diligence. Under the facts of the case, actual notice one week before the hearing was inadequate. *In re S.R.*, 34 Kan. App. 2d 202, 116 P.3d 43 (2005).