

151.1  
IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

IN THE INTEREST OF

Name \_\_\_\_\_ Case No. \_\_\_\_\_  
Year of Birth \_\_\_\_\_ A  male  female

**JOURNAL ENTRY AND ORDER OF DISPOSITION**

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

Now on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the above-captioned matter comes on for disposition.

The Court finds that the child named above has been adjudicated a Child in Need of Care. 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 ICWA Form 217.1*)

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*,** \_\_\_\_\_.

\_\_\_\_\_, 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.**

\_\_\_\_\_, the  **father**  **putative father of** \_\_\_\_\_,  **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 through:

\_\_\_\_\_

Also present:

\_\_\_\_\_

**THE COURT FINDS:**

1. The child named above has been adjudicated a Child in Need of Care and the Court's previous findings and orders:

- shall remain in full force and effect.
- shall remain in full force and effect to the extent that they are not inconsistent with any findings or orders in the present order, and except that it is now in the best interest of the child.

2. Appropriate public and private agencies  **have made**  **have not made** reasonable efforts to facilitate the permanency plan. (*Specify basis for the finding.*)

\_\_\_\_\_

3. 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.**

4. THE COURT FURTHER FINDS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

5. 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.

6. THE COURT 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).

7. THE COURT FURTHER ORDERS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8.  A restraining order shall be filed against \_\_\_\_\_.

9.  **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 \_\_\_\_\_, \_\_\_\_\_.

## Authority

K.S.A. 38-2247, 38-2253, 38-2255, and 42 U.S.C. §671 *et seq.*

## Notes on Use

**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 and attached.** 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 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 217 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](http://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).

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 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 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 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 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. This form includes a provision allowing for issuance of a restraining order 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).