

216.1
IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

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

INDIAN CHILD WELFARE ACT
JOURNAL ENTRY AND ORDERS
OF ADJUDICATION AND DISPOSITION

Pursuant to K.S.A. 38-2203(a), 38-2251, 38-2253, 38-2255, 42 U.S.C. 671 *et seq.*
and 25 U.S.C. §1901 *et seq.*

Now on this _____ day of _____, _____, the above-captioned matter comes on for hearing.

☐ 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.

☐ Indian Custodian _____

☐ The _____ Tribe ☐ appears by _____,
attorney/representative or ☐ does not appear.

☐ Interested parties appearing:

☐ The Secretary appears through _____

☐ Also present: _____

THE COURT FINDS AND ORDERS:

1. The Court asked each participant if the participant knows or has a reason to know the child is an Indian child. The Court has ☐ **sufficient evidence to determine the child is an Indian child as defined in the Indian Child Welfare Act** ☐ **the following reason to know the child is an Indian child:**

2. The ICWA Notice of the proceeding has been received, at least 10 days prior to this hearing, by registered or certified mail, as evidenced by the filed return receipt, to:

- ☐ _____, the mother
☐ _____, the ☐ father ☐ putative father
☐ _____, the child's Indian custodian
☐ the following Tribe(s): _____
☐ _____, the Regional Director of Bureau of Indian Affairs
☐ _____

3. Proper notice of this adjudication and dispositional hearing to parties, interested parties and those required to receive notice has been given as required by K.S.A. 38-2254.

4. The court has advised the parent(s) or Indian custodian that he or she has a right to a court-appointed attorney if he or she is unable to afford an attorney.

5. At the time of removal, the child ☐ **was** ☐ **was not** in the custody of an Indian custodian, as defined in 25 U.S.C. 1903(6).

6. The child does not reside or is not domiciled on an Indian reservation.

7. The child is not a ward of a tribal court.

8. ☐ The child's membership in a Tribe is not yet determined, but the following efforts have been made to identify the child's Tribe:

☐ The child is a member of _____

☐ The child is eligible for membership in _____
_____ (insert names of Tribes).

☐ The child is eligible for membership in more than one Tribe. The child's Tribe in this case is _____ because _____

(See 25 C.F.R. 23.109 for guidelines for determining how the court determines which Tribe is the child's Tribe.)

9. A request to transfer jurisdiction to the Tribe:

- ☐ has not been made.
- ☐ was made on _____ by _____ and the transfer of jurisdiction was declined by the Tribe.
- ☐ was made on _____ by _____ and the transfer of jurisdiction was denied by the Court because:
 - ☐ the following parent(s) object(s) to the transfer: _____
 - ☐ after receiving arguments from all parties, the Court finds good cause exists for denying the transfer. *(Document specific findings that good cause exists.)*
 - ☐ see findings of fact and conclusion of law in the court's order filed _____.
- ☐ was made on _____ by _____ and the transfer of jurisdiction to _____ was granted. See attached Order Transferring Jurisdiction (Form 214).

10. ☐ 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. Upon inquiry the Court finds that it is knowingly and voluntarily offered and that there is a factual basis and accepts it.

☐ The Court also received evidence from a qualified expert witness. *(Required if child is not placed in the custody of a parent or Indian custodian.)*

OR

- ☐ b. the Court held a hearing and received evidence.

☐ The Court also received evidence from a qualified expert witness. *(Required if child is not placed in the custody of a parent or Indian custodian.)*

11. ☐ a. the evidence is clear and convincing that the child *(Write specific findings of fact):*

☐ 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. 72-3421 or 72-3120, and amendments thereto;
- ☐ except in the case of a violation of K.S.A. 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, 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 is a Child in Need of Care.

OR

- ☐ **b.** there is not sufficient evidence to support the petition, and all parties are discharged. HAVING SO FOUND, the Court ORDERS the following parties discharged:

_____.

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

13. The Court ☐ **approves and adopts the proposed permanency plan as the plan for permanency in the present matter and the permanency plan meets the requirements of active efforts or** ☐ **does not approve the proposed permanency plan and orders a new permanency plan submitted to the Court within 30 days.**

14. Custody

(If this order places the child in the custody of someone other than a parent or Indian Custodian, even if this is not the first order of removal in the case, complete and attach Form 209.)

The above named child ☐ **shall be** ☐ **shall remain** placed in the custody of:

☐ _____, a parent. This placement is compliant with ICWA.

☐ _____, an Indian custodian. This placement is compliant with ICWA.

☐ _____, a member of the child's extended family. *(Complete the placement section below.)*

- ☐ _____, an unlicensed person approved or specified by the Tribe with close emotional ties to the child. *(Complete the placement section below.)*
- ☐ _____, a youth residential or shelter facility approved or specified by the Tribe or operated by an Indian organization. *(Complete the placement section below.)*
- ☐ 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 or emotional or sexual abuse. *(Complete the placement section below.)*

Placement (Complete either section A, B, or C.)

(If the child is not placed in the custody of a parent or Indian custodian, complete either section A, B, or C. If the child is placed in the custody of the Secretary, ICWA requires the court to determine if and how the Secretary's choice of placement complies with ICWA.)

☐ **A. ICWA order of preferred placements**

The child:

(Complete each numbered placement option below including and above the placement option where the child is placed.)

- (1) ☐ is ☐ is not placed with the following **member of the child's extended family** _____. If child is not placed with a member of the child's extended family, it is because: *(Specific findings of fact must be written here)*
- (2) ☐ is ☐ is not placed with the following **foster home licensed, approved, or specified by the Indian child's Tribe** _____. If child is not placed with a foster home licensed, approved, or specified by the Indian child's Tribe it is because: *(Specific findings of fact must be written here)*
- (3) ☐ is ☐ is not placed with the following **Indian foster home licensed or approved by an authorized non-Indian licensing authority** _____. If child is not placed with an Indian foster home licensed or approved by an authorized non-Indian licensing authority, it is because: *(Specific findings of fact must be written here)*

- (4) ☐ is ☐ is not placed with the following institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs _____. If child is not placed with an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs, it is because: *(Specific findings of fact must be written here)*

OR

☐ **B. Tribe's order of preferred placement**

The child's Tribe has a different order of placement preferences, which is:

The child is placed _____, pursuant to the child's Tribe's placement preference order.

OR

☐ **C. Child is not in a preferred placement**

The child is placed _____.

The court, after considering evidence and arguments from all parties, finds that there is clear and convincing evidence that there is good cause to deviate from the placement preferences based on one or more of the following considerations:

- ☐ the request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
- ☐ The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made.
- ☐ The presence of a sibling attachment that can be maintained only through a particular placement.
- ☐ The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
- ☐ The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but not has been located.

(Specific findings of fact must be written here)

15. ☐ 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.

16. 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).

17. THE COURT FURTHER ORDERS:

18. THE COURT FURTHER ORDERS all previous orders entered by this Court shall remain in effect except as herein modified.

19. ☐ A restraining order shall be filed against _____.

20. ☐ 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 _____, _____.