

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____

Case No. _____

Year of Birth _____ A male female

INDIAN CHILD WELFARE ACT
FINDING OF UNFITNESS
AND ORDER TERMINATING PARENTAL RIGHTS
OR APPOINTING PERMANENT CUSTODIAN

Pursuant to K.S.A. 38-2203(a), 38-2269, 38-2270, 38-2271, 38-2272 and 25 U.S.C. § 1901 *et seq.*

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

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.**

(*Other parent appearances*) _____

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

Interested parties appearing are: _____

The Secretary appears through _____

Also present is/are: _____

THE COURT FINDS:

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. The proper notice hearing was provided to all parties, interested parties and those required to receive notice as required by K.S.A. 38-2267.

4. The Court finds that jurisdiction and venue are proper.

5. 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.)

6. A request to transfer of 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).

7. The Court received testimony from the following witness(s), whom the Court finds to be a qualified expert witness under ICWA:

8. The evidence is clear and convincing that the **mother** _____ 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:

9. The evidence is clear and convincing that _____ **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:

10. Reasonable and active efforts have been made to prevent the breakup of the Indian family and those efforts have been unsuccessful. *(Specific findings of fact regarding what active efforts were provided must be written here.)*

11. There is evidence beyond a reasonable doubt that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *(Provide specific findings. Include evidence provided by the qualified expert witness.)*

12. Considering the physical, mental or emotional health of each 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. Parental rights should not be terminated.

13. THE COURT FURTHER FINDS:

IT IS THEREFORE ORDERED:

1. The parental rights to the child named above of the following persons are

terminated: _____

_____.

2. 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. The adoptive placement complies with the ICWA adoptive placement preferences as set forth below. (*Complete section 3- Adoptive Placement.*)

OR

Other _____

_____.

3. (*Complete either the Adoptive Placement or the Foster Care Placement section*)
Adoptive Placement (*Complete either section A, B, or C.*)

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 **member of the child's Tribe** _____ . If child is not placed with a member of the child's Tribe, it is because: (*Specific findings of fact must be written here*)

(3) is is not placed with the following **member of an Indian family** _____ . If child is not placed with a member of an Indian family, 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 none has been located.

(Specific findings of fact must be written here)

OR

Foster Care Placement *(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** (foster care placement)

The child:

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

- (4) is is not placed with the following **a 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)*

- (5) 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)*

- (6) 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)*

- (7) 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 none has been located.

(Specific findings of fact must be written here)

5. 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 _____, _____.