

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____ Case No. _____

Year of Birth _____ A male female

***INDIAN CHILD WELFARE ACT**
PERMANENCY HEARING ORDER FOR CHILD IN NEED OF CARE
POST-TERMINATION

Pursuant to K.S.A. 38-2203(a), 38-2264, 42 U.S.C. 671 *et seq.* and 25 U.S.C. § 1901 *et seq.*
(Orders pertaining to more than one child must include findings specific to each child listed in the caption.)

NOW on this _____ day of _____, 20_____, the above-captioned matters come before the Court to **determine progress being made to achieve the current permanency plan goal(s) of _____.**

THE COURT FINDS jurisdiction and venue are proper. Notice to parties, interested parties and those required to receive notice has been given as required by law.

The child is 14 years of age or older and has been given notice of the time and place of the permanency hearing.

The Court finds that **each child named above or** **the child** _____ is an Indian child as defined by the Indian Child Welfare Act (ICWA) **the Court has the following reason to know the child is an Indian child:**

Copies of the petition, reports, other information concerning the child, and notice of this hearing as required by ICWA have been timely provided to the Tribe. The Tribe has been given a full opportunity to participate in this proceeding.

The petitioner appears by _____ **County/District Attorney or designee** **other** _____.

The child appears **in person, and** **not in person, but** by the child guardian *ad litem*, _____

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

- Interested parties appearing are: _____

- The Secretary appears through: _____

- Also present: _____

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

The Court has received and considered evidence.

1. 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 to _____ was granted. See
attached Order Transferring Jurisdiction (Form 214).
2. Termination/relinquishment of parental rights occurred on _____

3. a. Appropriate public or private agencies have made reasonable efforts to
accomplish the current permanency goal(s) set out in the permanency plan.
OR
 b. Appropriate public or private agencies have not made reasonable efforts to
accomplish the current permanency goal(s) set out in the permanency plan.

4. The progress toward achieving the permanency plan goal(s) of _____
 _____ **is** **is not** adequate.
5. The child's needs **are** **are not** being adequately met. *(If the child's needs are not being met, explain.)* _____

6. The reasonable and prudent parenting standard **has been** **has not been** met. _____

7. The child **has had** **has not had** regular, on-going opportunities to engage in age or developmentally appropriate activities. _____

8. **Custody**

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

- _____, 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 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 none has been located.

(Specific findings of fact must be written here)

9. **The child is 14 years of age** or older and the court finds that Secretary had made the following efforts to help the child prepare for the transition from custody to a successful adulthood. *(Identify)* _____

10. 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.**
11. The previous orders of this Court **shall continue in full force and effect** **except as hereby modified** **are hereby rescinded and the following orders are hereby issued pursuant to K.S.A. 38-2255.**

THE COURT FURTHER FINDS:

THE COURT ORDERS:

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).

The Secretary Court Services _____ shall complete reports and submit them to the Court by _____.

THE COURT FURTHER ORDERS this matter set for _____ hearing before **the Court** **the CRB** on the ____ day of _____, 20____, at _____: _____ **a.m.** **p.m.**

IT IS SO ORDERED THIS _____ day of _____, 20_____.

Authority

K.S.A. 38-2203(a), 38-2264, 42 U.S.C. 671, 25 U.S.C. § 1901 *et seq.*, and 25 C.F.R. 23.

Notes on Use

Supreme Court Rule 174 requires the use of this form or another form approved by the Supreme Court as meeting Adoption and Safe Families Act (ASFA) requirements. “An additional order or supplemental affidavit may be attached to a form.” Kansas Supreme Court Rule 174(b). Failure to make and properly document the findings required by ASFA will result in the loss of federal funding. 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. The loss of federal funding continues until the court finds reasonable efforts have been made and the court’s findings are properly documented.

At the time of the permanency hearing, if the child is placed in a qualified residential treatment program, Form 221.5 must be used.

Timing of permanency hearing

After termination of parental rights, permanency hearings continue to be required at least every 12 months from the date the child first entered out of home placement. Termination of parental rights does not change the requirement for permanency hearings, and they shall continue until the child is adopted or a permanent custodian is appointed. During the permanency hearing the court shall consider whether reasonable efforts have been made to achieve the case plan goals. If the court determines that reasonable efforts have not been made or progress is not sufficient, the court may rescind its prior orders and enter other orders regarding custody and adoption that are appropriate under the circumstances. K.S.A. 38-2264(h).

Notice

Notice of a permanency hearing is dictated by K.S.A. 38-2265. If the permanency hearing is for a child 14 years of age or older, the court shall require notice of the time and place of the permanency hearing be sent to the child. K.S.A. 38-2265(a)(2). The notice shall request the child’s participation in the hearing by attendance or by report to the court. A sample report form may be obtained on the Kansas Judicial Council website or through the Office of Judicial Administration.

Identifying the Tribe(s)

The court must determine whether the child’s Tribe has been identified and whether the Tribe has been afforded a full opportunity to participate in the proceedings. If so, the court must determine whether the agency provided the child’s Tribe with copies of the petition, reports, and information concerning the child in a timely manner. 25 U.S.C. 1911(c) & (d); 25 U.S.C. 1912(a).

Prior Termination of Parental Rights

The date of termination or relinquishment of parental rights should be recited for each child and parent as set out in the form. If the parent of an Indian child voluntarily relinquishes parental rights or consents to an adoption, 25 U.S.C. 1913 provides the parent may withdraw the relinquishment for consent for any reason prior to a final decree of termination or adoption.

In the court's termination of parental rights order, the court found that active efforts had failed to prevent the breakup of the Indian family and 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. Therefore, it is unnecessary for the court to make those findings again at this permanency hearing. BIA Guidelines for Implementing the Indian Child Welfare Act, December 2016, Section E.5.

If the court finds that (1) appropriate public or private agencies have not made reasonable efforts to assist and support the family to accomplish the current permanency goal(s) set out in the permanency plan, (2) the reasonable and prudent parenting standard has not been met, or (3) the child does not have regular, ongoing opportunities to engage in age or developmentally appropriate activities, then the court will hold another permanency hearing no later than 60 days following the finding. K.S.A. 38-2264(f).

Preferred Placement

The Court must document where the child is placed. The Court must complete section A, B, or C under the "Placement" section. The Court must consider each category of preferred placement individually in descending order. Starting with the first preferred placement category (a member of the child's extended family), if the child is not in that category of preferred placement, the Court must make specific findings explaining why the child is not placed within that category of preferred placement before moving to the next category of preferred placement. For example, if a child is placed in an Indian foster home that is licensed by a non-Indian licensing authority (#3), the court must first make finding explaining why the child is not placed with a member of the child's extended family (#1). Then, the court must make findings explaining why the child is not placed in a foster home that is licensed by the child's Tribe (#2).

An Indian child must be placed in the least-restrictive setting that: (1) most approximates a family, taking into consideration sibling attachment; (2) allows the Indian child's special needs (if any) to be met; and (3) is in reasonable proximity to the Indian child's home, extended family, or siblings. 25 C.F.R. 23.131(a). Unless the child's Tribe has established a different order of preference, preference to placement of the child with the following people must be given, in descending order as listed below:

- (1) A member of the Indian child's extended family;
- (2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs. 25 U.S.C. 1915; 25 C.F.R. 23.131(b).

The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent. 25 C.F.R. 23.131(d).

If a party argues there is good cause to deviate from the placement preferences, the court must allow for all parties to provide evidence and make arguments to the court regarding whether there is good cause to deviate. The court must make findings on the record or in writing about whether the party seeking the departure from the placement preferences has proven this through clear and convincing evidence. 25 C.F.R. 23.132(b). The court's finding of good cause should be based on one or more of the following considerations:

- (1) 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;
- (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
- (3) The presence of a sibling attachment that can be maintained only through a particular placement;
- (4) 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; and/or
- (5) 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 have been located. The standard for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the parents or extended family maintains social and cultural ties. 25 C.F.R. 23.132(c).

A placement may not depart from the preferences based on socioeconomic statuses of any placement relative to another placement; or based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA. 25 C.F.R. 23.132(d) and (e). The court should make detailed findings as to whether the agency has made an ongoing, diligent search to locate extended family, a tribal member, or other Indian family for placement if the child is not already with a preferred placement pursuant to 25 U.S.C. 1915(b); 25 C.F.R. 23.130 and 23.131.

Compliance with ICWA is jurisdictional. Failure to comply with ICWA may render orders devoid of authority.