

10-531. Initial permanency order.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT

STATE OF NEW MEXICO ex rel.
CHILDREN, YOUTH AND FAMILIES DEPARTMENT

No. _____

In the Matter of

_____, (a) Child(ren), and Concerning
_____, Respondent(s).

INITIAL PERMANENCY ORDER

This matter came before the [Honorable _____] [Special Master _____], on _____ (date) for initial permanency hearing. The New Mexico Children, Youth and Families Department (CYFD) was represented by _____, children's court attorney. _____ (name(s) of child(ren)) was/were [not] present [and] [but] was/were represented by _____, (guardian *ad litem*/attorney). (Expand as necessary) Respondent(s) _____ was/were [not] present [by telephone] [and] [but] was/were represented by attorney _____. (Expand-modify as necessary) The CASA was [not] present. (If applicable) A court certified interpreter did [not] provide interpretation services for the hearing.

The Court has heard the [evidence] [stipulation of the parties], reviewed the pleadings, is fully advised in the matter, and FINDS:

1. The Court has jurisdiction over the subject matter of this cause and the parties in this cause, except _____, who has/have not yet been served and has/have not otherwise made a voluntary appearance or waived service of summons.¹

2. [_____ (name(s) of child(ren)) is/are [not] subject to the Indian Child Welfare Act (ICWA).] [It is undetermined if ICWA applies, so at the present time, _____ (name(s) of child(ren)) is/are not subject to ICWA.]

3. (If ICWA applies, select one of the following and delete the others; otherwise, delete this paragraph)

a. _____ (name(s) of child(ren)) is/are placed with a member of the child(ren)'s extended family.

b. _____ (name(s) of child(ren)) is/are placed in a foster home licensed, approved, or specified by the Indian child(ren)'s tribe.

c. _____ (name(s) of child(ren)) is/are placed in an Indian foster home licensed or approved or authorized by a non-Indian licensing authority.

d. _____ (*name(s) of child(ren)*) is/are placed in an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child(ren)'s needs.

AND

_____ 's (*name(s) of child(ren)*) tribe was notified of this hearing and a representative of the child(ren)'s tribe did [not] participate in the hearing.

4. The substitute care provider was notified of this hearing and [was not present] [was present and given the opportunity to be heard].

5. CYFD has made reasonable efforts to implement the treatment plan previously ordered by the Court.

6. CYFD has made reasonable efforts to finalize the permanency plan currently in effect, which is _____, as follows: (*be factually specific in enunciating what CYFD has done to accomplish the goal inherent in the permanency plan identified above*)

7. With respect to Respondent _____:

a. This Respondent has complied with the treatment plan as follows:

_____;

b. This Respondent has failed to comply with the treatment plan as follows:

_____;

c. This Respondent has progressed in the following ways:

_____;

d. This Respondent needs to make further progress in the following areas:

_____.

e. (*If applicable*) The trial home visit which commenced on _____ should be extended for a period not to exceed six (6) months.

(*Repeat as necessary for each Respondent and adjust paragraph numbers accordingly*)

Further detail regarding the efforts and activities of the parties with respect to the treatment plan are found in the court report for this hearing, [filed on _____] [attached hereto] and incorporated by reference.

8. The treatment plan proposed by CYFD in its court report for this hearing, [filed on _____] [attached to this Order], is appropriate in the circumstances of this case and should be adopted by the Court for implementation by CYFD, subject to the following modifications/additions: _____.

9. The permanency plan proposed by CYFD is _____; the Court finds that this plan is [not] appropriate (and a plan of _____ is in the best interests of _____ (*name(s) of child(ren)*)). (*Modify as appropriate if all of the children do not have the same permanency plan*)

10. (*If the plan is reunification and custody is not returned*) The plan proposed by CYFD to transition _____ (*name(s) of child(ren)*) home within three (3) months, as required by statute, as set forth in the court report for this hearing, is appropriate and adopted by the Court, with the following modifications:

_____.

AND

There should be a permanency review hearing scheduled within three (3) months, as required in the circumstances of this case by Section 32A-4-25.1(C) NMSA 1978.

11. *(To be used if the permanency plan is not reunification)* CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any appropriate relatives expressing an interest in providing permanency for _____ *(name(s) of child(ren))*.

12. *(To be used if the plan is not reunification and the Court finds that reasonable efforts on relative placement have not been made)* There should be a permanency review hearing scheduled within sixty (60) days, as required in the circumstances of this case by Section 32A-4-25.1(D) NMSA 1978 to determine whether an appropriate relative placement has been made.

13. *(To be used if the child(ren) has/have been in foster care for not less than fifteen (15) of the last twenty-two (22) months)* A motion to terminate parental rights in not in _____'s *(name(s) of child(ren))* best interest and will not be filed because of the following compelling reason: *(Select the applicable reason and delete the others – there are other possible reasons, but they are rarely, if ever, used)*

a. The parent(s) _____, has/have made substantial progress toward eliminating the problem that caused _____'s *(name(s) of child(ren))* placement in foster care; it is likely that the child(ren) will be able to safely return to the parent's home within three (3) months and the child(ren)'s return to the home will be in the child(ren)'s best interests;

b. _____ *(name(s) of child(ren))* has/have a close and positive relationship with a parent and a permanency plan that does not include termination of parental rights will provide the most secure and appropriate placement for the child(ren).

c. _____ *(name(s) of child(ren))* is fourteen (14) years of age or older, is firmly opposed to termination of parental rights and is likely to disrupt an attempt to place [him] [her] with an adoptive family;

d. _____ *(name(s) of child(ren))* is not capable of functioning if placed in a family setting. *(To be re-evaluated every ninety (90) days unless there is a final court determination that the child cannot be placed in a family setting)*

e. The parent's incarceration or participation in a court ordered residential substance abuse treatment program constitutes the primary factor in _____'s *(name(s) of child(ren))* placement in substitute care and termination of parental rights is not in the child's best interests.

f. Grounds do not exist for termination of parental rights because _____. *(Boilerplate is not adequate . . . the reason should amount to a failure to make reasonable efforts to offer treatment plan services to a Respondent)*

14. *(To be used if the Court-ordered permanency plan is another planned permanent living arrangement)* Placement in the legal custody of the Department under a permanency plan of planned permanent living arrangement is appropriate due to the following compelling reasons: Reunification is not appropriate because _____;

adoption is not appropriate because _____; permanent guardianship is not appropriate because _____; placement with a fit and willing relative is not appropriate because _____.

15. *(Include this finding only if ICWA applies; otherwise delete)* CYFD has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.

16. *(Select appropriate option and delete the rest)*

a. CYFD has made reasonable efforts to place siblings in custody together and they have been placed together.

b. The Department has made reasonable efforts to place the siblings in custody together but has not been able to do so. The siblings have not been placed together as placement would be contrary to the safety or well-being of the siblings because _____ and the siblings have been provided reasonable visitation or other interaction, as follows: _____.

c. The siblings have not been placed together or provided visitation or other ongoing interaction as such visitation or other interaction would be contrary to the safety or well-being of any of the siblings because _____.

17. *(Select appropriate option and delete the other)*

a. _____ *(name(s) of child(ren))* has/have been placed with an appropriate relative.

b. _____ *(name(s) of child(ren))* has/have not been placed with an appropriate relative; further, CYFD has [not] made reasonable efforts to identify and locate all grandparents and other relatives and reasonable efforts to conduct home studies on any appropriate relatives expressing an interest in providing permanency for the child(ren).

18. *(Select appropriate custody option and delete the rest)*

a. It is in the best interest of _____ *(name(s) of child(ren))* that the child(ren) remain(s) in the legal custody of CYFD subject to judicial review as required by law.

b. Legal custody of _____ *(name(s) of child(ren))* is returned to the child(ren)'s parent, guardian or custodian and the case dismissed.

c. Legal custody of _____ *(name(s) of child(ren))* is/are returned to the child(ren)'s parent, guardian or custodian, subject to protective supervision of the child(ren) by CYFD for a period not to exceed six (6) months and subject to the following additional conditions or limitations as follows:
_____.

19. *(If applicable)* Visitation shall be as set forth in the treatment plan adopted by the Court.

20. CYFD has presented a report for this hearing, [filed on _____] [attached hereto], containing the facts involved in this matter which are adopted as further findings of the Court.

21. Other Findings(s): *(Consider whether Findings regarding a transition plan for youth is necessary.) (This is also where other findings made by the Court would be added.)*

22. The appointment(s) of _____ as _____'s *(name(s) of child(ren))* educational decision maker and _____ as _____'s *(name(s) of child(ren))* parent for the purposes of the Family Educational Rights and Privacy Act (FERPA) has/have been reviewed, and should [not] continue.² *(If not,*

identify who should make educational decisions and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.)

IT IS THEREFORE ORDERED:

1. (Select appropriate custody option and delete the rest)
 - a. _____ (name(s) of child(ren)) shall remain in the legal custody of CYFD subject to judicial review as required by law.
 - b. Legal custody of _____ (name(s) of child(ren)) is returned to the child(ren)'s parent, guardian or custodian and the case dismissed.
 - c. Legal custody of _____ (name(s) of child(ren)) is/are returned to the child(ren)'s parent, guardian or custodian, subject to protective supervision of the child(ren) by CYFD for a period not to exceed six (6) months and subject to the following additional conditions or limitations:
2. (Do not use if legal custody is returned) _____'s (name(s) of child(ren)) permanency plan shall be _____.
3. (The next three paragraphs are used only if respondent(s) remain in the case) The treatment plan proposed by CYFD in its court report for this hearing is adopted, and each Respondent shall make reasonable efforts to comply with the treatment plan and achieve the desired outcomes set forth in the treatment plan for that Respondent.
4. CYFD shall make reasonable efforts to implement the treatment plan.
5. Visitation shall be as set forth in the treatment plan.
6. (Include this paragraph only if ICWA applies; otherwise delete) CYFD shall continue to make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.
7. CYFD and attorneys of record shall have, during the pendency of this case, access to all records and reports relating to investigation, treatment, and/or education. Further disclosure of records, reports, writings or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMSA 1978.
8. Respondent(s) shall advise their respective attorneys and case worker of any change in address or phone number and maintain regular communication with them regarding the dates and times of any court hearings or meetings requiring his/her/their attendance and the case in general.
9. (If applicable) The trial home visit which was commenced on _____ is extended for a period not to exceed six (6) months.
10. (Consider whether an order regarding a transition plan for youth is necessary or additional ICWA related orders are necessary. This is also where other orders made by the Court would be added.)
11. (If applicable) A separate order shall issue [appointing] [changing] _____'s (name(s) of child(ren)) educational decision maker and parent for the purposes of FERPA.²

District Court Judge

(Add signature lines for all attorneys in the case)

USE NOTES

1. See Section 32A-1-12(E) NMSA 1978 for jurisdictional considerations. See also *In re Andrea M.*, 2000-NMCA-079, ¶ 6, 129 N.M. 512, 10 P.3d 191 (“If the Indian child resides or is domiciled within the reservation of the child’s tribe, jurisdiction over child custody proceedings is exclusively vested in the tribe.”).

2. The appointment of an educational decision maker implicates significant educational rights for children and must be reviewed throughout the duration of the case. The individual appointed to be the educational decision maker should be a person who knows the child, is willing to accept responsibility for making educational decisions, does not have any personal or professional interests that conflict with the interests of the child, and is able to make any necessary educational decisions, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act. See, e.g., 34 C.F.R. § 300.519(d) (listing criteria for the selection of surrogate parents for wards of the state, which preclude guardians *ad litem* and CYFD caseworkers from serving in this role); see also 34 C.F.R. § 300.30 (defining “Parent” as used in federal Department of Education regulations).

[Adopted by Supreme Court Order No. 14-8300-009, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-017, effective for all cases filed or pending on or after December 31, 2015.]