

10-520. Custody 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).

CUSTODY ORDER

This matter came before [the Honorable _____] [Special Master _____], on _____ (date) for a hearing to determine if the above-named child(ren) should remain in the custody of the New Mexico Children, Youth and Families Department (CYFD) pending adjudication of this matter. 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*/youth attorney). (Expand-modify 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, the _____ (name(s) of child(ren)) is/are not subject to ICWA.]

3. Respondent(s) _____ was/were advised of his/her/their first appearance rights, either by the Court or by his/her/their attorneys, as required by Rule 10-314 NMRA.

4. An indigency determination has been made and Respondent(s) _____ remain(s) entitled to court appointed counsel.

(Or)

An indigency determination has been made and Respondent(s)
_____ is/are [not] entitled to court appointed counsel.

(Or)

In the interests of justice, appointment of counsel for Respondent(s)
_____ is required.

5. There is probable cause to believe that, as provided in Section 32A-4-18(C) NMSA 1978, (*Select the appropriate provision(s) for each child and delete those not applicable.*)

a. _____ (*name(s) of child(ren)*) is/are suffering from an illness or injury, and no parent, guardian, or custodian is providing adequate care for the child(ren);

b. _____ (*name(s) of child(ren)*) is/are in immediate danger from his/her/their surroundings, and removal from those surroundings is necessary for the child(ren)'s safety or well-being;

c. _____ (*name(s) of child(ren)*) will be subject to injury by others if not placed in the custody of CYFD;

d. _____ (*name(s) of child(ren)*) has/have been abandoned by his/her/their parent, guardian, or custodian; or

e. the parent, guardian, or custodian is not able or willing to provide adequate supervision and care for _____ (*name(s) of child(ren)*).

6. It is in _____'s (*name(s) of child(ren)*) best interest that he/she/they remain in the legal custody of CYFD.

(And/Or)

It is in _____'s (*name(s) of child(ren)*) best interest that he/she/they be returned to the legal custody of _____, the child(ren)'s parent(s)/guardian(s)/custodian(s), under the following conditions to reasonably assure the safety and well-being of the child(ren): (*List conditions, including protective supervision if ordered. If different placements or conditions are appropriate, repeat and modify as necessary.*)

OR

(*If probable cause is not found, use the following alternates to Paragraphs 5 and 6, above.*)

5. There is no probable cause to believe that any of the factors listed in Section 32A-4-18(C) NMSA 1978 exist.

6. The Court retains jurisdiction and the following conditions should be imposed:

a. Unless the Court permits otherwise, Respondent(s) _____ and _____ (*name(s) of child(ren)*) should remain in the jurisdiction of the Court pending adjudication;

b. Legal custody of _____ (*name(s) of child(ren)*) should be returned to the child(ren)'s parent(s)/guardian(s)/custodian(s), _____, (under the following conditions to provide for the safety and well-being of the child(ren): (*list conditions*); and

c. _____, _____'s (name(s) of child(ren)) parent(s)/guardian(s)/custodian(s), should allow the child(ren) necessary contact with the child(ren)'s guardian *ad litem*/youth attorney.

7. The following diagnostic evaluations and examinations are appropriate as to each Respondent: _____.

8. (To be used if reasonable efforts to prevent removal was not a finding in the *ex parte* custody order.) CYFD has made the following reasonable efforts to prevent the removal of _____ (name(s) of child(ren)) from the home: (A factual recitation is required.)

9. Respondent(s) should maintain regular communication with his/her/their attorney(s) and CYFD worker to inform him/her/themselves about the dates and times of any court hearings or mandatory meetings requiring his/her/their attendance.

10. Respondent(s) should [not] sign the following releases as requested by CYFD:² (List the requested releases)

11. Youth of the age of fourteen (14) and older should [not] sign the following releases as requested by CYFD.² (List the requested releases)

12. Respondent(s) should [not] attend all school meetings regarding education for _____ (name(s) of child(ren)).

13. Respondent(s) should [not] make educational decisions regarding _____ (name(s) of child(ren)) and should [not] continue to have authority as the parent for the purposes of the Family Educational Rights and Privacy Act (FERPA). (If not, identify who should make educational decisions here and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.)

14. Respondent(s) should identify any and all relatives known to them who are or may be interested in providing permanency or placement for the child(ren) and provide this information to the CYFD worker within five (5) days of this hearing.³

15. (If applicable) The parties do not object to the special master presenting this recommendation to the Court on the issues herein as a proposed order, in lieu of the procedures required by Rule 10-163(E) and (F) NMRA.

16. The initial assessment plan proposed by CYFD, attached as exhibit A, is reasonable and should be implemented.

IT IS THEREFORE ORDERED:

1. _____ (name(s) of child(ren)) shall remain in the legal custody of CYFD pending adjudication. (Or other order consistent with the findings in Paragraphs 5 and 6, above.)

2. The initial assessment plan proposed by CYFD, attached as exhibit A, is reasonable and shall be implemented.

3. Respondent(s) _____ shall undergo appropriate diagnostic evaluations and examinations as follows:

_____. Copies of any diagnostic evaluations or examinations and evaluation reports shall be provided to counsel for the parties at least five days before the adjudicatory hearing, further redisclosure of such being subject to the limitations set forth in Section 32A-4-33 NMSA 1978.

4. Visitation, if any, shall be as follows: _____.

5. 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.

6. Respondent(s) shall maintain regular communication with his/her/their attorney(s) and CYFD worker in order to inform him/her/themselves about the dates and times of any court hearings or mandatory meetings requiring his/her/their attendance.

7. *(If applicable)* A separate order shall issue appointing _____'s *(name(s) of child(ren))* educational decision maker and parent for the purposes of FERPA.⁴

8. Respondents shall identify all relatives known to them who are or may be interested in providing permanency and/or placement for the child(ren) and provide this information to the CYFD worker within five (5) days of this hearing.

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.
2. If youth or respondents refuse to sign releases, practitioners should consider the applicability of the Mental Health and Developmental Disabilities Code, Sections 43-1-1 to 43-1-25 NMSA 1978, the Children's Mental Health and Developmental Disabilities Act, Sections 32A-6A-1 to 32A-6A-30 NMSA 1978, the Health Insurance Portability and Accountability Act (HIPAA), and other state and federal regulations for accessing medical and mental health records over the objection of a party.
3. The reference to relative placement is not required by state statute until the initial permanency hearing. See NMSA 1978, § 32A-4-25.1(D). However, early efforts to identify and locate relatives are consistent with best practices and are required by federal statutes and regulations. See, e.g., Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 103, 122 Stat. 3949, 3956 (2008) (requiring the state to provide notice to "all adult grandparents and other adult relatives" within thirty (30) days of a child's removal).
4. 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.]