

10-522D. Adjudicatory judgment and dispositional order.
(Contested/ICWA Version)

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).

ADJUDICATORY JUDGMENT AND DISPOSITIONAL ORDER
AS TO _____

This matter came before the [Honorable _____] [Special Master _____], on _____ (date) for adjudicatory hearing. The New Mexico Children, Youth and Families Department (CYFD) was represented by _____, children's court attorney. _____ (names(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. The Indian Child Welfare Act applies to _____ (name(s) of child(ren)).

3. Pursuant to 25 U.S.C. § 1912(a), Petitioner has provided written notification of these proceedings to _____'s (name(s) of child(ren)) Indian tribe.

4. The Indian tribe of _____ (name(s) of child(ren)) has [not] appeared for this hearing.

5. CYFD has proven by clear and convincing evidence that as to Respondent _____, _____ (name(s) of child(ren)) is/are a/an [abused] [and] [neglected] child(ren) as follows: (Select the appropriate finding(s) and delete those not applicable)

a. _____ (name(s) of child(ren)) has/have suffered or is/are at risk of suffering serious harm because of the action or inaction of the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(1) NMSA 1978.

b. _____ (name(s) of child(ren)) has/have suffered physical abuse, emotional abuse, or psychological abuse inflicted or caused by the child/ren's parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(2) NMSA 1978.

c. _____ (name(s) of child(ren)) has/have suffered sexual abuse or sexual exploitation inflicted by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(B)(3) NMSA 1978.

d. _____'s (name(s) of child(ren)) parent, guardian, or custodian has knowingly, intentionally, or negligently placed the child(ren) in a situation that may endanger the child(ren)'s life or health, pursuant to Section 32A-4-2(B)(4) NMSA 1978.

e. _____'s (name(s) of child(ren)) parent, guardian, or custodian has knowingly or intentionally tortured, cruelly confined, or cruelly punished the child(ren), pursuant to Section 32A-4-2(B)(5) NMSA 1978.

f. _____ (name(s) of child(ren)) has/have been abandoned by his/her/their parent, pursuant to Section 32A-4-2(E)(1) NMSA 1978.

g. _____ (name(s) of child(ren)) is/are without proper parental care and control or subsistence, education, medical, or other care or control necessary for the child(ren)'s well-being because of the faults or habits of the child(ren)'s parent, guardian, or custodian, or the neglect or refusal of the child(ren)'s parent, guardian, or custodian, when able to do so, to provide them, pursuant to Section 32A-4-2(E)(2) NMSA 1978.

h. _____ (name(s) of child(ren)) has/have been physically or sexually abused, when the child(ren)'s parent, guardian, or custodian, knew or should have known of the abuse and failed to take reasonable steps to protect the child(ren) from further harm, pursuant to Section 32A-4-2(E)(3) NMSA 1978.

i. The child(ren)'s parent, guardian, or custodian is unable to discharge (his/her) parental responsibilities to and for _____ (name(s) of child(ren)) because of incarceration, hospitalization, or other physical or mental disorder or incapacity, pursuant to Section 32A-4-2(E)(4) NMSA 1978.

j. _____ (name(s) of child(ren)) has/have been placed for care or adoption in violation of the law by the child(ren)'s parent, guardian, or custodian, pursuant to Section 32A-4-2(E)(5) NMSA 1978.

6. (If applicable) CYFD has proven by clear and convincing evidence the following aggravated circumstances as to Respondent _____: (Select the appropriate circumstance(s) and delete those not applicable)

a. _____'s (name(s) of child(ren)) parent, guardian, or custodian has attempted, conspired to cause, or caused great bodily harm to the child(ren) or great bodily harm or death to the child(ren)'s sibling, pursuant to Section 32A-4-2(C)(1) NMSA 1978.

b. _____'s (name(s) of child(ren)) parent, guardian, or custodian has attempted, conspired to cause, or caused great bodily harm or death to another parent, guardian, or custodian of the child(ren), pursuant to Section 32A-4-2(C)(2) NMSA 1978.

c. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian has attempted, conspired to subject, or has subjected the child(ren) to torture, chronic abuse, or sexual abuse, pursuant to Section 32A-4-2(C)(3) NMSA 1978.

d. _____'s (*name(s) of child(ren)*) parent, guardian, or custodian had parental rights over a sibling of the child(ren) terminated involuntarily, pursuant to Section 32A-4-2(C)(4) NMSA 1978.

(Redo paragraphs 4 and 5 above for each Respondent covered by this pleading and adjust paragraph numbering as necessary.)

7. There is clear and convincing evidence, including testimony of a qualified expert witness, that the continued care of _____ (*name(s) of child(ren)*) by the Respondent(s) is likely to result in serious emotional or physical damage to the child(ren).

8. Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and these efforts have been unsuccessful.

9. The Court makes the following findings and conclusions: *(At this point, make appropriate provision for inclusion of findings of fact and conclusions of law.)*

DISPOSITIONAL FINDINGS²

10. The substitute care provider was notified of the dispositional hearing, was [not] present, and was given an opportunity to be heard.

11. *(Select appropriate option(s) and delete the rest)*

a. The treatment plan contained within the Family Treatment Plan and Predispositional Study, attached to this order as Exhibit A, is reasonable and should be ordered by the Court.

b. The Court finds that reasonable efforts to preserve and reunify the family are not necessary as to Respondent _____, as such efforts would be futile.

c. Respondent _____ has subjected _____ (*name(s) of child(ren)*) to aggravated circumstances.

12. Pursuant to Section 32A-4-22(A) NMSA 1978, the Court makes the dispositional findings of fact attached as Exhibit B and incorporated by reference into this order.

13. *(The next three paragraphs are used only if CYFD retains legal custody of the child(ren).)* _____ (*name(s) of child(ren)*) is/are [not] placed in accordance with the placement preferences of 25 U.S.C. § 1915(b) [but there is good cause to deviate from those placement preferences].

14. *(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 siblings have not been placed together because _____, and the siblings have been provided reasonable visitation or other interaction, as follows: _____.

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

15. _____ (name(s) of child(ren)) has/have [not] been placed with a relative. 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).³

16. It is in the best interest of _____ (name(s) of child(ren)) that he/she/they be in the legal custody of CYFD.

17. Visitation should be as set forth in the treatment plan adopted by the court.

18. Respondent(s) should [not] sign the following releases as requested by CYFD:⁴ (*List the requested releases*)

19. Youth of the age of fourteen (14) and older should [not] sign the following releases as requested by CYFD:⁴ (*List the requested releases*)

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

21. 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.⁵ (*If not, identify who should make educational decisions and who should be considered a parent for purposes of FERPA. Repeat or modify as necessary.*)

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. As to Respondent _____, _____ (name(s) of child(ren)) is/are a/an [abused] [and] [neglected] child(ren) as defined in the Children's Code, as found above.

(*Repeat paragraph 1 above as necessary for each Respondent and adjust paragraph numbering as necessary.*)

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

a. Legal custody of _____ (name(s) of child(ren)) shall be with CYFD for a period of up to two (2) years from the date of this order, subject to judicial review.

b. Legal custody of _____ (name(s) of child(ren)) shall be with Respondent(s) _____ with protective supervision in CYFD.

c. Legal custody of _____ (name(s) of child(ren)) shall be with _____ (*formerly non-custodial parent*) [with] [without] CYFD retaining protective supervision of the child(ren).

3. CYFD shall continue to place _____ (name(s) of child(ren)) in accordance with ICWA. (*This paragraph is used only if CYFD retains legal custody of the child(ren).*)

4. The treatment plan is adopted, and CYFD shall make reasonable efforts to implement the treatment plan.

5. Respondent(s) _____ shall make reasonable efforts to comply with the treatment plan and achieve the desired outcomes in the treatment plan. (*Or, if futility of efforts or aggravated circumstances are found for both Respondents, the Court will schedule a Permanency Hearing within thirty (30) days.*)

6. Visitation shall be as set forth in the treatment plan.

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. This matter shall be referred to the Child Support Enforcement Division of the New Mexico Human Services Department (CSED) for determination of ongoing child support as to Respondent(s) _____. As required by federal and state law, Respondent(s) shall pay the reasonable costs of support and maintenance of the child that the parent(s) are financially able to pay as provided by Section 32A-4-26 NMSA 1978, and CYFD shall refer this matter to CSED for determination of ongoing support obligations.

9. Respondent(s) shall 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 meetings requiring his/her/their attendance.

10. *(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.⁵

11. Respondent(s) shall identify any and all relatives known to them who are or may be interested in providing permanency and/or placement for _____ *(name(s) of child(ren))*.

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. Dispositional findings may be in a separate order.

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. 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 that may affect access to medical and mental health records. Practitioners should review specific proposed release language, with special attention to the scope of the release sought, to ensure the release conforms to state and federal law.

5. 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.]