

**10-533. Periodic judicial review order/Permanency order/Extension of 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).

**PERIODIC JUDICIAL REVIEW ORDER  
AND  
PERMANENCY ORDER  
AND  
EXTENSION OF CUSTODY ORDER**

This matter came before the [Honorable \_\_\_\_\_] [Special Master \_\_\_\_\_], on \_\_\_\_\_ (date) for [periodic judicial review] [permanency hearing] [extension of custody]. 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.<sup>1</sup>

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 in the foster care of a member of the child(ren)'s tribe which is a preferential placement in accordance with ICWA.

b. \_\_\_\_\_ (*name(s) of child(ren)*) is/are placed in the foster care of a Native American family which is a preferential placement in accordance with ICWA.

c. \_\_\_\_\_ (*name(s) of child(ren)*) is/are placed in the foster care of their \_\_\_\_\_ (*relationship*) which is a preferential treatment in accordance with ICWA.

d. \_\_\_\_\_ (*name(s) of child(ren)*) is/are not placed in the foster care of a Native American family which is not a preferential placement as defined in ICWA, but there is good cause for the placement because the placement is the least restrictive setting that closely approximates a family in which the child(ren)'s special needs may be met, or the placement is in reasonable proximity to the Indian child(ren)'s home, taking into account any special needs of the Indian child(ren).

AND

CYFD should continue to place the child(ren) with a custodian already selected, so long as the placement remains in \_\_\_\_\_'s (*name(s) of child(ren)*) best interests and in accordance with ICWA.

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 (*and if ICWA applies, add "active"*) efforts to implement the treatment plan previously ordered by the Court.

6. (*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.

7. 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*)

8. 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: \_\_\_\_\_.

(*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 and incorporated by reference].

9. 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 or additions: \_\_\_\_\_.

10. 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)*

11. *(To be used if the ordered permanency is not adoption and the child(ren) will remain in foster care after the hearing and no Motion for Termination of Parental Rights has been or will be filed)* A motion to terminate parental rights will not be filed by CYFD at this time because of the following compelling reasons: *(Select the applicable reason(s) 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 the child(ren)'s placement in foster care; it is likely that \_\_\_\_\_ (name(s) of 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)*

12. *(To be used if the Court-ordered plan is planned permanent living arrangement. Delete if not used.)* The permanency plan of planned permanent living arrangement is justified by 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 \_\_\_\_\_ (and the child affirmatively desires to be independent).

13. *(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).

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

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

b. It is in the best interest of \_\_\_\_\_ (*name(s) of child(ren)*) that the child(ren) be returned to the legal custody of \_\_\_\_\_ and the case be dismissed.

c. It is in the best interests of \_\_\_\_\_ (*name(s) of child(ren)*) that the child(ren) be returned to the legal custody of \_\_\_\_\_ with \_\_\_\_\_ (*up to six (6)*) months of protective supervision by CYFD, which will expire on \_\_\_\_\_. During the period of protective supervision the following limitations to legal custody will be in place: (*indicate limitations, such as compliance with treatment plan, etc.*)

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

17. It is necessary to safeguard the welfare of \_\_\_\_\_ (*name(s) of child(ren)*) that legal custody in CYFD be extended for one year, to \_\_\_\_\_ (*date*) (*Or until adoption or emancipation, whichever occurs first*).

18. CYFD has presented a report for this hearing, [filed on \_\_\_\_\_] [attached hereto], that contains the facts involved in this matter which are adopted as further findings of the Court.

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

20. 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.<sup>2</sup> (*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 other)*
  - a. It is in the best interests of \_\_\_\_\_ *(name(s) of child(ren))* that the child(ren) be returned to the legal custody of \_\_\_\_\_ and the case be dismissed.
  - b. It is in the best interests of \_\_\_\_\_ *(name(s) of child(ren))* that the child(ren) be returned to the legal custody of \_\_\_\_\_ with \_\_\_\_\_ *(up to six (6))* months of protective supervision by CYFD, which will expire on \_\_\_\_\_. During the period of protective supervision the following limitations to legal custody shall be in place: *(Indicate limitations, such as compliance with treatment plan, etc.)*
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 to achieve the desired outcomes set forth in the treatment plan for that Respondent.
4. CYFD shall make reasonable *(and if ICWA applies, "active")* 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, writing, or related information to third parties or persons is prohibited except as provided by Section 32A-4-33 NMRA 1978.
8. Respondents shall maintain regular communication with their attorneys and social worker to inform themselves about the dates and times of any court hearings or meetings requiring their attendance.
9. Respondents shall identify all relatives known to them who are or may be interested in providing permanency or placement for \_\_\_\_\_ *(name(s) of child(ren))*.
10. *(Consider whether an order regarding a transition plan for youth is necessary. This is also where other orders made by the Court may 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.<sup>2</sup>

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District Court Judge

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*(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.]