

11044-T  
ENDORSED  
FILED IN MY OFFICE THIS

OCT - 2 2013

Am T. Child  
CLERK DISTRICT COURT

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT  
IN THE CHILDREN'S COURT DIVISION

NO. JQ-2012-00000 Consolidated  
with NO. JQ-2012-00000

Bernillo County

STATE OF NEW MEXICO, ex. rel  
CHILDREN, YOUTH and FAMILIES DEPARTMENT  
IN THE MATTER OF [REDACTED] and  
[REDACTED] Children, and CONCERNING  
[REDACTED],  
and [REDACTED] Respondents.

FINDINGS of FACT and CONCLUSIONS OF LAW

FINDINGS of FACT

1. The *Neglect and Abuse Petition* in JQ 2012-00000 as filed on March 6, 2012.
2. The child [REDACTED] age twenty-three (23) months at the time of the Termination of Parental Rights trial, was born September 19, 2011 in Bernalillo County, New Mexico.
3. Respondent [REDACTED] biological mother. Respondent [REDACTED] is [REDACTED] biological father.
4. [REDACTED] does not have Native American heritage and is not an Indian child.
5. All parties were properly served with process, were made aware of the proceedings and were represented by counsel at all times relevant hereto.
6. On March 6, 2012 [REDACTED] was placed in the custody of the Children, Youth and Families Department (the "Department") pursuant to the court's *Ex Parte Custody Order*.
7. Following Adjudicatory Hearing held May 2, 2012, May 23, 2012, and July 3, 2012,

the court adjudicated \_\_\_\_\_ an abused child as to Respondent father \_\_\_\_\_ pursuant to NMSA 1978, §32A-4-2 B(1) and as a neglected child as to Respondent father \_\_\_\_\_ pursuant to NMSA 1978, §32A-4-2 E(4).

8. The *Court's Findings of Fact and Conclusions of Law* concerning Respondent father \_\_\_\_\_ adjudicatory hearing were admitted in the Termination of Parental Rights Trial as Petitioner's Exhibit 10 and are incorporated herein by reference.

9. At the Dispositional Hearing of July 3, 2012, the court adopted the Department's proposed treatment plan as to Respondent father \_\_\_\_\_

10. The court-ordered treatment plan for Respondent father \_\_\_\_\_ included the following requirements:

- a. maintain weekly contact with the Department and provide contact information;
- b. sign releases of information;
- c. provide names of relatives for possible relative placement of \_\_\_\_\_
- d. participate in random drug screens;
- e. complete a mental health assessment and follow treatment recommendations to include individual therapy services to address substance use and domestic violence;
- f. maintain a safe and stable living environment;
- g. participate in family time with \_\_\_\_\_ at the Department's discretion;
- h. attend \_\_\_\_\_ non-emergency medical and developmental appointments; and
- i. provide pictures and memorabilia for \_\_\_\_\_ fee book.

11. During the case, no items were added to Respondent father \_\_\_\_\_ treatment plan.

12. The Department had three permanency planning workers assigned to the case:

- a. from the custody hearing through June 2012, Cantrell Mosley was the

Department's Permanency Planning Worker (PPW) assigned to work with Respondent father \_\_\_\_\_

b. from June 2012 through August 2012, Daniel Crotwell was the Department's PPW assigned to work with Respondent father \_\_\_\_\_ and

c. from August 2012, through the date of termination or parental rights trial, Natalie Tavitas was the Department's PPW assigned to work with Respondent father \_\_\_\_\_

13. Crystal Graham was the Department's permanency planning supervisor on this case.

14. Cantrell Mosley initially reviewed and discussed the treatment plan with Respondent father \_\_\_\_\_ at their face-to-face meetings.

15. Ms. Tavitas reviewed and discussed Respondent father \_\_\_\_\_ treatment plan with him during her face-to-face home visits, office visits, and jail visits.

16. Respondent father \_\_\_\_\_ was informed that the ultimate goal of the treatment plan was to reunify \_\_\_\_\_ with him.

#### Incarceration and Lack of Parenting Plan

17. Respondent father \_\_\_\_\_ was incarcerated three (3) times during the course of the case:

a. at the inception of the case on March 6, 2012;

b. from June 2012 through November 2012; and

c. from April 21, 2013 and he remained incarcerated on August 28, 2013, the final date of the termination of parental rights trial.

18. Respondent father \_\_\_\_\_ was incarcerated for nine (9) of the seventeen (17) months of

the case.

19. Respondent father \_\_\_\_\_ had been incarcerated almost half (1/2) of \_\_\_\_\_ life by the time the termination of parental rights trial was completed on August 28, 2013.

20. On the final date of the termination of parental rights trial, Respondent father \_\_\_\_\_ remained incarcerated and did not have an anticipated release date.

21. Respondent father \_\_\_\_\_ only plan for \_\_\_\_\_ if legal custody was to be returned to him was that \_\_\_\_\_ be forced to wait until he was released from jail and then go and live with him and his fiancé.

22. Respondent father \_\_\_\_\_ plan was inappropriate for the following reasons:

- a. He did not have an anticipated release date and could not ensure \_\_\_\_\_ safety, permanency, and well-being;
- b. He had made no progress with regard to addressing his ongoing issues with domestic violence;
- c. the Department had not initiated a background check on Respondent father \_\_\_\_\_ ; fiancé and would not reasonably be expected to do so until it was closer in time to the date when \_\_\_\_\_ would go there;
- d. the Department had not gone to the proposed residence and would not reasonably be expected to do so until it was closer in time to the date when \_\_\_\_\_ would go there; and
- e. Responder \_\_\_\_\_ plan reinforced the Department's view that he was unable to put \_\_\_\_\_ needs ahead of his own.

No Contact Order between Respondent \_\_\_\_\_ and Respondent \_\_\_\_\_  
and April 21, 2013 Incident

23. At the Permanency Hearing of March 21, 2013, Respondent father \_\_\_\_\_ was court-ordered not to have any contact with Respondent mother \_\_\_\_\_.

24. On April 21, 2013, Respondent father \_\_\_\_\_ violated that court order.

25. On April 21, 2013, Officer Jerry Rauch of the Albuquerque Police Department responded to a domestic violence call involving Respondent mother \_\_\_\_\_.

26. Officer Rauch responded to a Phillips 66 gas station and located Respondent \_\_\_\_\_.

27. Officer Rauch observed the following on Respondent \_\_\_\_\_ bruises on her face, arms, and legs and a cut on her lip.

28. Officer Rauch ensured Respondent \_\_\_\_\_ was transported to University of New Mexico Hospital for treatment and ensured she had access to a domestic violence advocate.

29. Officer Rauch obtained a "restraining order" against Respondent \_\_\_\_\_ from District Court Judge Nash.

30. Officer Rauch located Respondent father \_\_\_\_\_ and arrested him on domestic violence charges.

31. Respondent father \_\_\_\_\_ was incarcerated at the Metropolitan Detention Center on the domestic violence charges on April 21, 2013 and remained incarcerated on the final date of the termination of parental rights trial. On August 28, 2013 Respondent \_\_\_\_\_ did not have an anticipated release date.

The Department's Efforts, [REDACTED] Compliance, and [REDACTED] Lack of Progress  
Regarding his Treatment Plan

32. Respondent father [REDACTED] was generally compliant with his treatment plan. However, he did not make progress in addressing the causes and conditions that caused the child to be placed in the Department's custody.

33. At the inception of the case, Respondent [REDACTED] resided in Valencia County, New Mexico and was referred to Valencia Counseling Services for individual therapy, substance abuse treatment, and domestic violence treatment.

34. Respondent father [REDACTED] engaged with Valencia Counseling Services for the specified treatment from April, 2012 until he was incarcerated again in June, 2012.

35. When Respondent [REDACTED] was released from jail in November, 2012, PPW Tavitas conducted a home visit and referred Respondent [REDACTED] to Conflict Management for individual therapy, substance abuse treatment, and domestic violence treatment.

36. Respondent [REDACTED] engaged with Conflict Management for treatment soon after the referral until he was incarcerated in April, 2013.

37. During the case the Department referred Respondent [REDACTED] to Forensic Drug Testing and to Mobile Blood for random drug screening.

38. Respondent [REDACTED] was generally compliant with random drug testing but missed two tests before he was incarcerated.

39. PPW Tavitas sought monthly reports from providers and reviewed those reports to monitor Respondent [REDACTED] compliance and progress with regard to treatment plan items.

40. Respondent father [REDACTED] did not make progress in the area of domestic violence, which was a basis for removal of the child from the home.

41. At the completion of the termination of parental rights trial on August 28, 2013, it remained unclear whether Respondent [redacted] could maintain a drug-free lifestyle, given all the time he had been incarcerated and an inability to assess his sobriety because of the periods of incarceration.

42. By the completion of the termination of parental rights trial, Respondent father [redacted] continued to demonstrate poor decision-making, including violating a court order and placing his own needs and wants ahead of [redacted] needs.

43. By August 28, 2013, Respondent [redacted] failure to acknowledge that his problems with substance abuse and domestic violence were factors resulting in child's placement in the Department's custody, demonstrated Respondent [redacted] lack of progress in addressing the causes and conditions of custody. Further, the Department was unable to ensure [redacted] safety if she were returned to his custody.

44. At the completion of the termination of parental rights trial [redacted] was in a relative foster care placement with her half-brother and their maternal grandmother.

45. [redacted] is adoptable and the maternal grandmother has expressed an interest in adopting [redacted] and her half-brother.

46. [redacted] is unable to self-protect.

47. [redacted] is dependent on others for care.

48. Freeing [redacted] for adoption would promote her physical, mental, and emotional well-being and needs because she could obtain permanency and be able to reside in a safe and stable environment with a caregiver who would put [redacted] needs first.

Causes and Conditions

49. Based upon the evidence presented at the termination of parental rights trial [redacted] cannot be returned to Respondent [redacted] legal custody because he has failed to meaningfully address his substance abuse and domestic violence issues. [redacted] safety could not be ensured if she were reunified with Respondent [redacted]. Additionally, Respondent [redacted] failure to understand the reasons for his daughter's removal from his custody is an additional barrier to returning legal custody to [redacted] Respondent father [redacted].

50. It is unlikely Respondent [redacted] will be able to alleviate the causes and conditions that caused [redacted] to be placed in foster care in the foreseeable future because he remains incarcerated with no discharge date and no viable plan for the child. Further, the treatment needs of Respondent [redacted] substance abuse and domestic violence issues remain an obstacle, as treatment would require a significant amount of time.

CONCLUSIONS OF LAW

- A. The Court has jurisdiction over the parties and subject matter.
- B. The child, [redacted] is not subject to the *Indian Child Welfare Act*, 25 U.S.C. §1901 *et seq.*
- C. There is clear and convincing evidence that [redacted] is an abused and neglected child as to Respondent father [redacted] pursuant to NMSA 1978, §32A-4-2 B(1) and E(4) of the New Mexico Children's Code.
- D. There is clear and convincing evidence that the Department made reasonable efforts to assist Respondent [redacted] in alleviating the causes and conditions that brought [redacted] to custody.

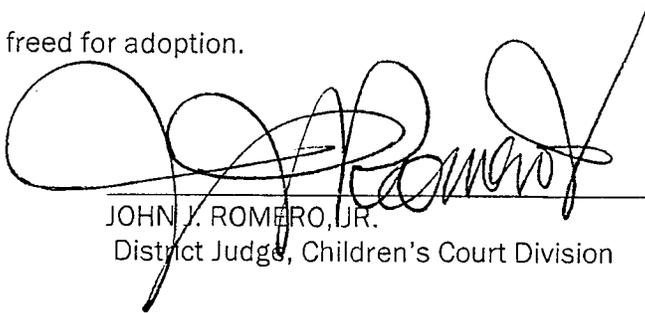
E. There is clear and convincing evidence that the causes and conditions of abuse and neglect of \_\_\_\_\_ have not changed and are unlikely to change in the foreseeable future despite reasonable efforts by the Children, Youth and Families Department and other appropriate agencies to assist Respondent \_\_\_\_\_ adjusting the conditions which render him unable to safely parent his child.

F. There is clear and convincing evidence that termination of the parental rights of Respondent \_\_\_\_\_ to his child \_\_\_\_\_, is in the child's best interests as it will promote her physical, mental and emotional welfare and needs.

G. The parental rights of \_\_\_\_\_ should be terminated and \_\_\_\_\_ should be dismissed from this case and should no longer be entitled to notice in this matter.

H. Legal custody of the child should remain with the Department until further order of the Court, and the Department should have the authority to determine the physical placement of the child for her safety and welfare.

I. \_\_\_\_\_ should be freed for adoption.



JOHN J. ROMERO, JR.  
District Judge, Children's Court Division

I certify that a true and correct copy of the foregoing pleading was mailed or delivered to all counsel of record this 27th day of October, 2013.

CAH