

10484-1

ENDORSED  
FILED IN MY OFFICE THIS

JUL 25 2011

*Quantita M. Duran*  
CLERK DISTRICT COURT

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

CAUSE NO. JQ.

**CARLA M GARCIA**

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.

**COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THIS MATTER having come before the Honorable M. Monica Zamora, District Court Judge, for the Termination of Parental Rights trial for both Respondents on May 9, 2011. The Children, Youth and Families Department (Department) appeared by Kelly O'Neill, Children's Court Attorney; the child appeared by Katherine Terry, Guardian ad litem; Respondent [REDACTED] appeared telephonically and by his attorney, Renae Richards-Charney; and Respondent [REDACTED] appeared through her attorney, Carol Kirk Rodriguez, but not in person.

The Court makes the following Findings of Fact and sets forth the following Conclusions of Law:

**Findings of Fact**

1. The children in this cause and their respective dates of birth are: [REDACTED] (5/26/ [REDACTED]) (9/15/ [REDACTED]) and [REDACTED] (1/26/ [REDACTED]) and [REDACTED] (1/21/ [REDACTED])
2. The biological mother of the children is Respondent [REDACTED]

3. The biological father of the children is Respondent

4. The children are neither members of a federally recognized Indian tribe nor are their parents members of a federally recognized tribe as defined by the Indian Child Welfare Act, 25 U.S.C. §1903(4).

5. The children were brought into state's custody because of concerns with [redacted] mental health; [redacted] leaving the children with [redacted] despite [redacted] knowledge of [redacted] mental health issues that interfered with her ability to safely parent the children; and possible substance abuse issues with [redacted]

6. On July 15, 2010, this Court found there was clear and convincing evidence Respondent [redacted] had abused her children under NMSA 1978 § 32A-4-2 (B)(1), specifically, the children were at risk of suffering serious harm because of [redacted] mental health issues and her unwillingness to obtain help for her mental health issues as well as her unwillingness to obtain help from Colorado and New Mexico child protective services when offered to her to ensure her children's safety.

7. On July 15, 2010, this Court found there was clear and convincing evidence Respondent [redacted] had abused her children under NMSA 1978 § 32A-4-2 (B)(4), specifically, [redacted] knowingly placed the children in a situation that may endanger the children's lives as she repeatedly left the four children—who were all under the age of seven at all relevant times hereto—unsupervised while she was asleep or otherwise incapacitated due to mental health issues.

8. On July 15, 2010, this Court found there was clear and convincing evidence Respondent [REDACTED] had neglected her children under NMSA 1978 § 32A-4-2 (E)(2), specifically, the children were without proper parental care, control, or supervision due to [REDACTED] ongoing, untreated mental health issues.

9. On July 15, 2010, this Court found there was clear and convincing evidence Respondent [REDACTED] had neglected her children under NMSA 1978 § 32A-4-2 (E)(4), specifically, [REDACTED] was unable to discharge her responsibilities to and for the children because of mental disorder in that [REDACTED] failed to adequately address her mental health issues so she could safely parent her children.

10. On July 15, 2010, this Court found there was clear and convincing evidence Respondent [REDACTED] had abused his children under NMSA 1978 § 32A-4-2 (B)(1), specifically, the children were at risk of suffering serious harm because [REDACTED] actively placed the children in the care of their mother and never did anything to get his children despite repeated warnings that [REDACTED] was mentally unstable and repeated warnings that the children were unsafe in [REDACTED] care.

11. On July 15, 2010, this Court found there was clear and convincing evidence Respondent [REDACTED] had abused his children under NMSA 1978 § 32A-4-2 (B)(4), specifically, [REDACTED] knowingly placed the children in a situation that may endanger the children's lives as he placed the children in the care of their mother and never did anything to get his children despite repeated warning that [REDACTED] was mentally unstable and repeated warnings that the children were unsafe in [REDACTED] care.

12. On July 15, 2010, this Court found there was clear and convincing evidence Respondent [REDACTED] had neglected his children under NMSA 1978 § 32A-4-2 (E)(2), specifically, the children were without proper parental care, control, or supervision because of [REDACTED] issues with anger management and because [REDACTED], left the children in their mother's care when he knew or should have known [REDACTED] had mental health issues that interfered with her ability to parent the children.

13. On July 15, 2010, the Court adopted and ordered that the Department's proposed treatment plan for both Respondents be implemented.

14. The treatment plan is developed to address and alleviate the causes and conditions that brought the children into the custody of the Department. The ultimate goal of the treatment plan was to reunify the parents with their children by alleviating the causes and conditions that brought the children into the Department's custody.

15. The Permanency Planning Worker assigned to the case, Lisa Lukach, had the duty to implement the treatment plans by working with the Respondents and the children on referrals for services and monitoring those services.

16. Ms. Lukach went over the treatment plan with [REDACTED] at their face-to-face meetings. She explained to her that the ultimate goal of the treatment plan was to reunify [REDACTED] with her children by alleviating the causes and conditions that brought the children in custody.

17. Ms. Lukach informed [REDACTED] of his treatment plan through written correspondence and telephonic contact. She explained to [REDACTED] that the goal of the treatment plan was to reunify [REDACTED] with his children.

Respondent

18. [redacted] was supposed to maintain regular contact with Ms. Lukach.

19. Ms. Lukach regularly called [redacted] when [redacted] had a working cell phone. Ms. Lukach scheduled face-to-face meetings with [redacted] if [redacted] was at the CYFD office to visit her children. Ms. Lukach also wrote letters to

Towards the end of the case, the only communication method by which [redacted] could be contacted was by electronic mail. Ms. Lukach regularly emailed [redacted]

20. [redacted] signed releases of information as provided.

21. [redacted] never provided the names of any relatives for placement while the children were in the Department's custody.

22. The purpose of a psychosocial assessment on [redacted], treatment plan was so Ms. Lukach could evaluate [redacted] service needs, including but not limited to criminal history, substance abuse, mental health, and employment.

23. It took about seven weeks for [redacted] to complete her psychosocial. She arrived late for the initial assessment on June 4, 2010 and then either canceled or was a no show/no call for the rest of the appointments. It was finally completed on July 22, 2010.

24. Ms. Lukach scheduled appointments to coincide with [redacted] visits with her children and provided her with a bus pass in order to get the psychosocial assessment completed.

25. Ms. Lukach recommended that [redacted] complete a psychological evaluation because [redacted] had an extensive history of mental illness including a

mental breakdown in January 2010. Ms. Lukach also wanted a better understanding of her diagnosis as well as recommendations from a psychologist on how to address those diagnosis.

26. [REDACTED] participated in a psychological evaluation on September 9, 2010 with Dr. Nesha Morse at the Department's office.

27. The psychological evaluation recommended random drug testing as well as a physical examination since [REDACTED] had so many somatic complaints that corresponded with mental health issues.

28. [REDACTED] needed to have regular contact with a psychiatrist for purposes of medication management and to adjust the medications as needed because of her continued mental health issues.

29. Ms. Lukach would regularly address this treatment item with [REDACTED] to ensure that she was attending scheduled appointments with the psychiatrist and whether there were any changes to her medication.

30. [REDACTED] was not compliant with her medication management treatment plan item as she went on-and-off her medications, did not keep her doctor's appointments, and failed to get Medicaid through the State of New Mexico.

31. [REDACTED] lived with her mother, however, there were problems between them.

32. When [REDACTED] mother moved out of the apartment, there were concerns whether [REDACTED] could afford the apartment.

33. Early in the case, Ms. Lukach referred [REDACTED] to the Bernalillo County Housing Authority for the family reunification housing program. [REDACTED]

completed the application form and returned it to Ms. Lukach on or about July 20, 2010. Ms. Lukach in turn submitted the application to the Bernalillo County Housing Authority on the same day.

34. The Housing Authority sought clarification on possession of marijuana charges and whether [REDACTED] had been rehabilitated.

35. [REDACTED] missed her deadline for completing the supplemental paperwork required by the Housing Authority for clarification. Ms. Lukach asked the Bernalillo County Housing Authority for an extension to submit the supplemental information.

36. The Housing Authority denied the application.

37. Family time, a minimum of two times per week, was on the treatment plan to assist [REDACTED] with maintaining a familial connection with her children, continuing the bond, and evaluating parenting skills.

38. [REDACTED] attended approximately sixty-five percent of those visits. The children were very hurt by [REDACTED] failure to appear at visits.

39. [REDACTED] missed the last week of visits prior to the termination of parental rights.

40. During the summer of 2010, Ms. Lukach referred the family to a summer recreation program through All Faiths Receiving Home, and this added two more visits each week. [REDACTED] attended almost every visit through the summer recreation program.

41. At the beginning of the case, the children were split in foster homes with the older two children placed in one home and the younger two children placed in another home.

42. The foster parents of the older two children invited \_\_\_\_\_ to additional family outings, including picnics at the park on weekends. Her attendance was sporadic.

43. When the children moved into the same foster home, the current foster parents invited \_\_\_\_\_ to birthday celebrations and picnics. \_\_\_\_\_ had some inappropriate behavior at these visits, including bringing a roommate's child to the visit, which was particularly troubling for the younger two boys.

44. \_\_\_\_\_ was asked to not bring anyone else to the boys' birthday parties in January 2011. She showed up with fifteen minutes left and complained about not being able to bring a friend's child.

45. Ms. Lukach requested the foster parents limit these visits because \_\_\_\_\_ would attend those visits and then miss the CYFD office visits.

46. The family was also referred to RCI crafts and therapy so \_\_\_\_\_ could spend time with one child while the other children were preoccupied with another task and \_\_\_\_\_ had someone to assist her with the children during visits.

47. \_\_\_\_\_ parenting abilities, observed during visits with the children, were very inconsistent.

48. Attendance at the children's non-emergency medical appointments was on \_\_\_\_\_ treatment plan so she could be aware of any medical issues with the children and to keep her current on the children's medical and dental care.

49. \_\_\_\_\_ was notified of upcoming medical appointments. Her attendance was sporadic.

50. In January 2011, Jake had a seizure at the daycare and was transported to the hospital where he stayed for several days. \_\_\_\_\_ was informed of the emergency but she went to Colorado anyway.

51. In January 2011, \_\_\_\_\_ sought substance abuse counseling in Colorado at the same mental health facility that had treated \_\_\_\_\_ for her January 2010 mental breakdown.

52. \_\_\_\_\_ attended the detoxification portion of the substance abuse treatment program at the Colorado facility, which lasted a few days. Ms. Lukach helped \_\_\_\_\_ print out the application form for the rest of the program so \_\_\_\_\_ could return to the facility.

53. \_\_\_\_\_ psychological evaluation included a recommendation for urinalysis testing because of her criminal history involving marijuana possession and because this was a possible issue that led to the children being brought into custody.

54. \_\_\_\_\_ agreed to complete random drug screens following a discussion of the recommendations of the psychological evaluation.

55. On October 6, 2011, Ms. Lukach referred \_\_\_\_\_ to Mobile Blood for random urinalysis testing. Ms. Lukach explained to \_\_\_\_\_ verbally and in writing, how the random drug tests worked. She also explained to \_\_\_\_\_ that missed tests were considered positive.

56. On October 11, 2011, [REDACTED] was scheduled to begin calling in for the random drug tests. Over the life of the case, she was scheduled for twenty-four tests, but only participated in four or five tests.

57. On February 24, 2011, [REDACTED] tested positive for methamphetamines and marijuana.

58. At the time of trial, Ms. Lukach still had concerns with [REDACTED] substance abuse since [REDACTED] did not complete any recent drug tests prior to the termination trial nor did she complete any substance abuse counseling.

59. [REDACTED] treatment plan included individual therapy to address her lack of support, reported anxiety and because she had been through a lot in her life.

60. Since [REDACTED] had insurance coverage through UNM Care, she needed to complete a physical exam in order to get a referral to UNM Behavioral Sciences for individual therapy.

61. On October 13, 2010, Ms. Lukach referred [REDACTED] to Almas de Amistad for parenting groups and individual therapy. Ms. Lukach could receive individual therapy for free at Almas de Amistad so long as [REDACTED] participated in one group. Ms. Lukach suggested the parenting groups since parenting was also on her treatment plan.

62. [REDACTED] told Ms. Lukach that [REDACTED] would walk-in to Almas de Amistad the following week. As of March 2011, [REDACTED] never went to Almas de Amistad, despite Ms. Lukach's face to face direction to go; offers to transport her there; and constant reminders.

63. [REDACTED] psychological evaluation recommended parenting classes.

64. On October 13, 2010, Ms. Lukach referred \_\_\_\_\_ to Almas de Amistad for parenting groups.

65. Again, as of March 2011, \_\_\_\_\_ never went to Almas de Amistad, despite Ms. Lukach's face to face direction to go; offers to transport her there; and constant reminders.

66. In September 2010, Ms. Lukach referred \_\_\_\_\_ to RCI crafts class and family therapy, and \_\_\_\_\_ participated off-and-on with RCI from October 2010 through April 2011.

67. \_\_\_\_\_ was also supposed to get parenting help with the RCI crafts class and RCI family therapy.

68. Ms. Lukach asked that \_\_\_\_\_ and her children be provided with family therapy, and this was provided with Roxanne Pratt of RCI.

69. Ms. Pratt had fourteen scheduled sessions with the \_\_\_\_\_ children and \_\_\_\_\_, from January 2011 until April 2011. She attended only seven of those scheduled sessions.

70. Some sessions were held without \_\_\_\_\_ but in the presence of the children's maternal grandmother.

71. \_\_\_\_\_ did not say much to Ms. Pratt until the last two sessions. When she did, she revealed that she had been sexually abused as a child; Respondent \_\_\_\_\_ imprisoned her in their family apartment; and that there was domestic violence during their marriage.

72. In December 2010, \_\_\_\_\_ told Ms. Lukach that she would not know what to do if CYFD returned her children to her at that point.

73. Ms. Lukach added participation in relinquishment counseling to \_\_\_\_\_ treatment plan at the initial permanency hearing because the Department was going to be asking the Court to change the children's permanency plan to adoption.

74. Ms. Lukach never referred \_\_\_\_\_ to relinquishment counseling because \_\_\_\_\_ did not want to "give up" on her children.

Respondent \_\_\_\_\_

75. Ms. Lukach emphasized the importance to \_\_\_\_\_ of maintaining weekly contact with her and providing updated contact information, especially since he resided in Colorado.

76. The purpose of the weekly contact was so that \_\_\_\_\_ could discuss progress on the treatment plan and any additional issues with Ms. Lukach.

77. Ms. Lukach provided \_\_\_\_\_ with self-addressed stamped envelopes so \_\_\_\_\_ could write Ms. Lukach or the children. He never wrote Ms. Lukach.

78. Ms. Lukach never had face-to-face contact with \_\_\_\_\_

79. Ms. Lukach had better contact with \_\_\_\_\_ at the beginning of the case.

80. From August 10, 2010 until February 2011, Ms. Lukach only had a post office box where she could contact \_\_\_\_\_. Ms. Lukach was unable to call \_\_\_\_\_

81. Ms. Lukach had several addresses for \_\_\_\_\_ during the case. In February 2011, \_\_\_\_\_ gave Ms. Lukach a physical address and a phone number to the children's paternal grandparents' home.

82. The children's paternal grandparents would get the phone messages to \_\_\_\_\_

83. \_\_\_\_\_ would call periodically if there was an issue with visitation.

84. \_\_\_\_\_ came to Albuquerque twice during the course of this case, without notifying the Department ahead of time and left both times before a visit could be scheduled.

85. \_\_\_\_\_ was required to sign releases of information so the permanency planning worker can maintain contact with providers. He eventually returned a signed release of information for the San Luis Valley Comprehensive Community Mental Health Center in Monte Vista, Colorado.

86. Ms. Lukach requested the names of relatives during the psychosocial assessment so the Department could place the children with relatives while they are in foster care to maintain familial connections. \_\_\_\_\_ provided the name of his girlfriend.

87. The purpose of the psychosocial assessment was so Ms. Lukach could obtain \_\_\_\_\_ history to assist with specific issues that arise during the assessment.

88. On July 22, 2010, \_\_\_\_\_ completed the psychosocial assessment telephonically with Ms. Lukach. The recommendations of the psychosocial assessment were that \_\_\_\_\_ treatment plan items were appropriate, including substance abuse assessment and domestic violence assessment.

89. During the psychosocial assessment, \_\_\_\_\_ was not forthcoming with regard to his criminal and substance abuse history. \_\_\_\_\_ revealed only one

driving under the influence conviction during the psychosocial but his criminal records indicated he had been convicted of driving under the influence several times.

90. During the psychosocial assessment, \_\_\_\_\_ also minimized his history of domestic violence.

91. \_\_\_\_\_ was required to participate in a substance abuse assessment because of his substance abuse history and his history of convictions for driving under the influence.

92. On or about July 27, 2010, Ms. Lukach referred \_\_\_\_\_ San Luis Valley Comprehensive Community Mental Health Center for substance abuse assessment because this facility was located in Monte Vista, Colorado, where \_\_\_\_\_ sides.

93. The San Luis Valley Comprehensive Community Mental Health Center was a comprehensive center that could provide any services \_\_\_\_\_ night need.

94. On or about July 27, 2010, Ms. Lukach mailed a release of information for San Luis Valley Comprehensive Community Mental Health Center for \_\_\_\_\_ signature to the address \_\_\_\_\_ provided to Ms. Lukach.

95. \_\_\_\_\_, did not return that release of information timely.

96. On or about August 23, 2010, Ms. Lukach mailed another release of information for San Luis Valley Comprehensive Community Mental Health Center for \_\_\_\_\_ signature to another address provided by \_\_\_\_\_

97. Along with the release mailed on August 23, 2010, Ms. Lukach also included a letter stating the assessments for which Ms. Lukach was referring \_\_\_\_\_ to San Luis Valley Comprehensive Community Mental Health Center.

98. It wasn't until early September 2011, when ██████ returned the second release.

99. Ms. Lukach followed up with written and telephonic communication to determine whether ██████ had completed a substance abuse assessment at San Luis Valley Comprehensive Community Mental Health Center.

100. ██████ ever completed a substance abuse assessment at San Luis Valley Comprehensive Community Mental Health Center or any other facility.

101. Ms. Lukach was concerned about ██████ claim that he did not have any issues with substance abuse, but refused to participate in a substance abuse assessment that would have clarified the issue.

102. Since ██████ had at least one domestic violence arrest, a domestic violence assessment was placed on his treatment plan. This was the incident reported by ██████ to the family therapist Roxanne Pratt.

103. The referral to San Luis Valley Comprehensive Community Mental Health Center included a domestic violence assessment.

104. Ms. Lukach followed up with written and telephonic communication to determine whether ██████ had completed a domestic violence assessment. He never completed the domestic violence assessment at San Luis Valley Comprehensive Community Mental Health Center or any other facility.

105. Ms. Lukach has concerns regarding ██████ involvement in domestic violence because ██████ claimed he did not have any issues with domestic violence; however, he refused to participate in a domestic violence assessment, which would have clarified the issue.

106. Obtaining and maintaining housing was on the treatment plan because Colorado Department of Social Services representatives testified at custody hearing and adjudicatory hearing that [redacted] did not have appropriate housing for the children.

107. Ms. Lukach would have liked to complete a home visit, but she only had a post office box for [redacted] during much of the case. [redacted] lack of participation in his treatment plan and lack of face-to-face visitation with his children did not warrant a home visit as it was unlikely the children could be reunified with [redacted]

108. Ms. Lukach does not know with whom [redacted] sides.

109. Participation in family time was placed on the treatment plan to ensure the parent-child bond between [redacted] and his children is maintained and so the Department can evaluate the relationship between [redacted] and his children.

110. Family time occurred telephonically during the children's scheduled visits with their mother at CYFD. [redacted] never saw his children face-to-face during the entire abuse/neglect legal case.

111. The telephonic communication between [redacted] and his children was mostly appropriate. There were some problems with [redacted] promising the older two boys that he was going to come down and see the children; get them; and they were going to live with him. There were also problems with the younger two boys communicating telephonically because of their ages.

112. The children sometimes did not want to be pulled from visits with [redacted] to have telephonic visitation with their father.

113. There were visits when [REDACTED] was unable to participate telephonically because he was working.

114. If the children's mother was not going to be present, the visits, including the telephonic visits between the children and their father, were cancelled.

115. Sometimes if there was a missed telephonic visit, Ms. Lukach would either have the children call their father if their mother did not show or she would bring a unit phone to the foster home so the children would speak with their father that week.

116. On or about June 3, 2010, [REDACTED] sent a package with letters to the children, including a gift for [REDACTED]. Some of the letters were from [REDACTED] girlfriend and her children.

117. [REDACTED] also sent a package to [REDACTED] and she brought that to a visit.

118. [REDACTED] needed to address outstanding legal issues, particularly outstanding warrants in Colorado and New Mexico. Ms. Lukach never received any information that [REDACTED] had addressed or was addressing these matters.

119. At the initial permanency hearing, Ms. Lukach added Relinquishment Counseling to the treatment plan since the Department was going to be asking the Court to change the children's permanency plan to adoption.

120. [REDACTED] never participated in relinquishment counseling.

121. The children are all placed in the same non-relative, regular foster care placement.

122. The current foster parents are interested in adopting all four children.

123. Freeing the children for adoption would promote their physical, mental, and emotional well-being because the children would be freed to obtain permanency.

124. There are concerns about the children being returned to the care of [REDACTED] because [REDACTED] was unable to meaningfully address her issues with mental health and there are remaining concerns regarding substance abuse.

125. It is unlikely [REDACTED] will be able to alleviate the causes and conditions that brought the children into foster care in the foreseeable future because [REDACTED] mental health has been unstable throughout this case, and it is unlikely this will change any time soon based on [REDACTED] lack of participation in services in this case.

126. There are concerns about the children being returned to the care of [REDACTED] because [REDACTED] was noncompliant with his treatment plan items that were tailored to assist him in alleviating the causes and conditions that brought the children in custody, including substance abuse, domestic violence, and sporadic contact with this children.

127. There is also a safety concern with returning the children to [REDACTED] because [REDACTED] does not believe he has done anything wrong and does not see himself at fault in any way.

128. An additional safety concern with returning the children to [REDACTED] would be that he has not seen the children for over a year, and there is no way for the Department to evaluate his interactions with the children.

129. It is unlikely that [REDACTED] will be able to address the issues that caused the children to be brought into foster care in the foreseeable future because [REDACTED] hasn't done much on his treatment plan beyond the psychosocial assessment.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter.
2. There is clear and convincing evidence that [REDACTED], and [REDACTED] were abused and neglected by Respondent [REDACTED] as defined in Section 32A-4-2 (B)(1), (B)(4), (E)(2), and (E)(4) of the New Mexico Children's Code.
3. There is clear and convincing evidence that [REDACTED], and [REDACTED] were abused and neglected by Respondent [REDACTED] as defined in Section 32A-4-2 (B)(1), (B)(4), and (E)(2) of the New Mexico Children's Code.
4. There is clear and convincing evidence that the conditions and causes of abuse and neglect of [REDACTED] and [REDACTED] 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 [REDACTED] and Respondent [REDACTED] in adjusting the conditions which rendered them unable to safely parent the children.
5. There is clear and convincing evidence that termination of the parental rights of Respondent [REDACTED] and Respondent [REDACTED] to their children, [REDACTED], and [REDACTED], is in the children's best interests as it will promote the physical, mental and emotional welfare and needs of the children.

6. Respondent [REDACTED] and Respondent [REDACTED] cannot meet the physical, emotional, and mental needs of the children.

7. The parental rights of [REDACTED] and [REDACTED] in the children, [REDACTED] and [REDACTED], are hereby terminated.

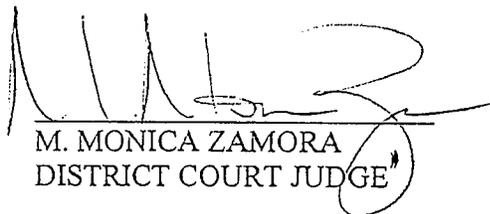
Consequently, Respondents are divested of all legal rights and privileges in the children.

Furthermore, Respondents are not entitled to notice of future adoption proceedings.

8. Legal custody of the children shall remain with the Department until further order of the court and the Department will have authority to determine the physical placement of the children for the purpose of adoption.

9. There is clear and convincing evidence that the children are adoptable.

10. The Indian Child Welfare Act does not apply to the children.

  
M. MONICA ZAMORA  
DISTRICT COURT JUDGE