

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

No.]

STATE OF NEW MEXICO, ex rel
CHILDREN, YOUTH AND FAMILIES DEPARTMENT
IN THE MATTER OF [REDACTED] AND [REDACTED]
[REDACTED], CHILDREN, AND CONCERNING [REDACTED]
[REDACTED], RESPONDENT.

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 Respondent [REDACTED] on April 19, 2012 and June 18, 2012. The Children, Youth and Families Department (Department) appeared by Sandy Barnhart y Chavez, Children's Court Attorney; the children appeared by Karen Cantrell, Guardian ad Litem, and Respondent [REDACTED] appeared in person and through her attorneys, Alex Chisholm and Michael Prinz. Also present in the courtroom was Karen Jaramillo, paralegal for Mr. Chisholm and Mr. Prinz; and Victoria Stanley, Treatment Coordinator.

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

FINDINGS OF FACT

1. The Children, Youth and Families Department ("Department") filed an Abuse and Neglect Petition on February 7, 2011.
2. [REDACTED] was born on July 20, 2006 in Boise, Idaho. She is the biological child of Respondent [REDACTED]. The biological father of [REDACTED] is deceased.

3. [redacted] was born on November 3, 2007 in Ada County, Idaho. He is the biological child of Respondent [redacted] and Respondent [redacted]. Respondent [redacted] voluntarily relinquished his parental rights in the child on February 13, 2012.

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

5. On March 9, 2011, Respondent [redacted] pled no contest to NMSA 1978, §32A-4-2 E(2)(1994), as she had unresolved substance abuse issues that negatively impacted her ability to parent her children.

6. At Disposition, also on March 9, 2011, the Court adopted and ordered that the Department's proposed treatment plan for Respondent [redacted] be implemented.

7. Respondent [redacted] was ordered to comply with a treatment plan that included, among other things, meeting with her assigned planned permanency worker (PPW) once a month; participate in a psychological evaluation and follow recommendations; attend parenting classes; attend individual and group therapy; attend AA meetings; random urinalysis (U.A.); and participate in family time (visitation).

8. James Masica was accepted as an expert witness, without objection, in the area of Counseling. He has extensive experience in the area of Post-Traumatic Stress Disorder (PTSD)

9. In March 2011, Mr. Masica identified Respondent [redacted] issues with alcoholism; child neglect/abuse; a series of psychological trauma resulting in depression (sexual abuse by father; mother did not protect; domestic violence relationship as an adult); and PTSD. His goals were to establish a therapeutic relationship with Respondent [redacted] and to resolve the earlier trauma. He recommended weekly sessions.

10. Respondent _____ never completed a course of therapy for domestic violence. She did complete a process group for substance abuse, though he was not sure if she had completed the substance abuse education group.

11. Sometime in June 2011, Respondent(_____) told Mr. Masica that the past was the past and there was no reason to bring it up again. Mr. Masica opined that direct treatment for PTSD is hard to accomplish if things in the past were not addressed.

12. Respondent(_____) 's alcoholism has its roots in her psychological childhood trauma.

13. Respondent(_____) was assigned to Josie Jackson in July 2011 as Mr. Masica did not feel that he and Ms.(_____) had connected as much as he thought they should have. She was transferred with hopes of forming a more comfortable therapeutic relationship.

14. Respondent _____ did not make much progress with Ms. Jackson.

15. Respondent _____ was difficult to engage in treatment and contact was intermittent.

16. Respondent _____relapsed in July 2011 and January 2012. She was incarcerated in November 2011. She reengaged with Ms. Jackson in January 2012.

17. As of April 19, 2012, her engagement with Aliviar was still in the beginning stages.

18. Mr. Masica opined that it would take anywhere from 12 to 24 months to see any significant progress and that would happen only if Respondent was fully engaged.

19. On May 12, 2011, Respondent _____ was evaluated by Michael Rodriguez, Ph.D., a clinical psychologist. Dr. Rodriguez diagnosed Respondent _____ with PTSD, Alcohol Dependence, and Dysthymic Disorder (long term depression). She also had a histrionic

personality style; experienced psychosocial trauma, and had significant impairments with adaptive functioning.

20. Some of the results of Dr. Rodriguez's testing showed that her overall elevation of abuse scale indicated a rigid view of parenting. She had a hard time recognizing the difference between regular behavior and when the kids were misbehaving. There was also a concern for her ability to parent and protect the children.

21. Respondent [redacted] did not have any cognitive issues and would benefit from therapy.

22. Dr. Rodriguez's recommendations were to address her diagnosis through individual and group therapy, for alcohol use. He felt that Aliviar was in the best position to coordinate services and Aliviar had a good reputation for addressing alcohol dependence. She also needed to be involved in AA, because of her isolation. He recommended regular urinalysis (UAs) tests as well. If that did not work, then she should go to in-patient treatment, which would address all of her disorders. He also recommended specialized group therapy to address her PTSD, particularly the domestic violence, the childhood molestation and rape by her husband.

23. Dr. Rodriguez also made recommendations for Respondent [redacted] to work with Peanut Butter & Jelly to look at her sensitivity to her children's behavior.

24. Dr. Rodriguez recommended that she see a skilled psychiatrist for the dysthymia, as a good psychiatrist could bolster her treatment with medication.

25. Dr. Rodriguez's prognosis for her was guarded. Specifically, Dr. Rodriguez reported that she needed to be abstinent from alcohol and work on her PTSD, which could take many months before she could effectively parent. She must also show significant change.

26. The realities of recovery are that relapses are going to happen. Improvement with substance abuse is not always linear.

27. As of 5/12/11, Respondent _____ was comfortable with her therapist at Aliviar.

28. Kim Cantrell was accepted, without objection, as an Expert Witness in Social Work and Child Therapy.

29. Ms. Cantrell began providing therapy for _____ and _____ in March of 2011. Ms. Cantrell reported that the children have high needs and demonstrated very concerning behaviors while she worked with them.

30. _____'s diagnosis was PTSD; Mixed receptive/expressive language; rule out sexual abuse; partial fetal alcohol syndrome; issues of trauma; delayed speech; and behaviors on the autism spectrum.

31. _____ had nine sessions with sexualized, repetitive themes. She used objects to attack the genitals of the dolls.

32. _____ had a fearfulness of using the toilet and fearfulness of getting in the bath. During water play therapy, _____ played out themes with the figure's face held in the water. In August 2011, a figure she called Momma held down a figure named _____ under water. _____ stated she was scared of Momma.

33. _____'s diagnosis was PTSD with autistic features; receptive language disorder and rule out sexual abuse.

34. _____ had sessions with sexualized themes where he would point to the buttocks of the male figure and his own genital and buttocks areas and say "owwy", repetitively.

35. _____ also had a fearfulness of water. During water play therapy, he held figures underwater, saying “no, no”. At one point he had a reaction to his play and got so scared, he wet his pants.

36. _____ exhibits repetitive movement and repetitive play. His repetitive play involves detailed activity and no imaginative play. When he is in a repetitive mode, he has to be gently nudged out of his safety zone; otherwise he will go into a tantrum.

37. Respondent _____ has failed to acknowledge or understand the needs and behaviors of the children. She would not engage in discussions of what the children have brought up in therapy. She has no answers for the sexual abuse or the bathroom issues. She did acknowledge the domestic violence.

38. Respondent _____ has not consistently attended treatment team meetings or family time provided by the Department. She did not begin to attend treatment team meetings until late September 2011. She did not attend any meetings from October 27, 2011 to January 13, 2012.

39. Ms. Cantrell had concerns about Respondent _____’s ability to parent these high needs children and to consistently provide a safe, stable environment, structure and concise rules.

40. Rey Gallegos was the Permanency Planning Worker (PPW) assigned to work with Respondent _____ to implement and monitor the treatment plan that was designed for her.

41. As a result of her psychosocial, Respondent _____ was assigned parenting classes; a substance abuse and alcohol assessment and follow all recommendations; a domestic violence assessment, and follow all recommendations; individual therapy; and random UAs. She was also required to meet with Mr. Gallegos once a month.

42. Respondent _____ was inconsistent in working her treatment plan. She did not provide evidence of her attendance at AA meetings; she missed greater than one-third of her

scheduled UA's and tested positive for drugs during the life of this case; she has not secured appropriate and safe housing; she has not successfully completed domestic violence counseling; she has not successfully completed substance abuse counseling; she has not successfully completed counseling for her own history of sexual abuse; she has not successfully completed mental health counseling; she has not consistently attended family therapy with her children; she has not consistently attended treatment team meetings for her children; and she has not consistently attended family time with her children. There were episodes where family time had to be placed on hold and otherwise modified due to Respondent's sporadic attendance.

43. She never told Mr. Gallegos or Mr. Masica about any adverse affects to her prescribed medication. She was never told by the Department that it would not pay for her medication management.

44. There are concerns about the children being returned to the care of Respondent because she was unable to meaningfully address her issues with mental health and history of sexual abuse; and there are remaining concerns regarding substance abuse.

45. Respondent saw Dr. Gonzales in early October or November of 2011. He prescribed her medications. She let Dr. Gonzales know about the side effects of the prescribed medications. He lowered the dosage.

46. Respondent has failed to sufficiently address much less alleviate the causes and conditions that brought the children into custody.

47. Respondent had failed to demonstrate that she could take care of herself.

48. Respondent has failed to demonstrate that she could provide safe and appropriate housing for her children.

49. Respondent [redacted] has failed to demonstrate that she could provide for her children.
50. Respondent [redacted] has not made progress in recognizing the special needs of her children.
51. Respondent [redacted] has failed to demonstrate she could appropriately parent her children and meet their special needs.
52. Respondent [redacted] has not made progress in addressing her own mental health needs, her own history of domestic violence or her own history of sexual abuse.
53. Respondent [redacted] failed to participate in services until shortly before the Termination of Parental Rights Trial began on April 19, 2012.
54. The children have been in the Department's custody for over 16 months by the time the Termination of Parental Rights Trial concluded.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter herein.
2. The children are not subject to the Indian Child Welfare Act, 25 U.S.C. §1901 *et seq.*
3. The Department has proved its case by clear and convincing evidence.
4. The children [redacted] and [redacted] were neglected by Respondent [redacted]. Pursuant to NMSA 1978, §32A-4-2 E(2)(2009), the children were neglected as they were without proper parental care and control or subsistence, education, medical or other care or control necessary for the children's well-being because of the faults or habits of their mother, or failure or refusal of the mother, when able to do so, to provide for them.

5. The Department made reasonable efforts to assist Respondent _____ in alleviating the causes and conditions that brought the children into the custody of the Department.

6. Despite the reasonable efforts of the Department and services providers, Respondent _____ has not alleviated the causes and conditions that brought the children into the custody of the Department and will not alleviate them in the foreseeable future.

7. Respondent _____ cannot meet the physical, emotional and mental needs of the children. Consequently, she cannot now or in the foreseeable future appropriately parent the children.

8. The needs of the children are paramount. In consideration of the children's mental, physical, and emotional welfare, it is in the best interests of the children that the parental rights of Respondent _____, in her children _____, _____ be terminated.

9. The parental rights of _____ in the children, _____ and _____, are hereby terminated. Consequently, Respondent _____ is divested of all legal rights and privileges in the children. Furthermore, Respondent _____ is not entitled to notice of future adoption proceedings.

10. The children are adoptable children.

11. Legal custody of the child 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.

12. Respondent has failed to timely raise or establish that she is a “qualified individual with a disability” under the Americans with Disabilities Act, (42 U.S.C. 12132).

M. MONICA ZAMORA
DISTRICT COURT JUDGE