

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUELA HERNANDEZ,

Petitioner

vs.

EIGHTH JUDICIAL DISTRICT
COURT JUDGE; THE HONORABLE
ROBERT W. TEUTON, DISTRICT
COURT JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

Supreme Court No. _____

District Court No. J-14

Electronically Filed
Dec 29 2014 03:12 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**APPENDIX TO PETITION FOR WRIT OF MANDAMUS
OR, IN THE ALTERNATIVE, WRIT OF PROHIBITION**

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CERTIFICATE OF SERVICE

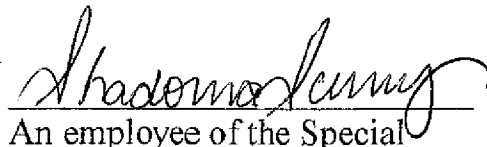
The undersigned does hereby certify that on the 29th day of December 2014
a copy of the Appendix Petition for Writ of Mandamus or, in the Alternative, Writ
of Prohibition was served as follows:

BY ELECTRONIC FILING TO

Felicia Quinlan, Esq.
District Attorney's Office
601 N. Pecos
Las Vegas, NV 89101

BY HAND DELIVERY TO

The Honorable Robert Teuton
601 N. Pecos
Las Vegas NV 89101


An employee of the Special
Public Defender

EIGHTH JUDICIAL DISTRICT COURT

CLERK OF THE COURT

FAMILY DIVISION - JUVENILE

CLARK COUNTY, NEVADA

In the Matter of:
ANALIA HERNANDEZ
Date of Birth: 10.03.2011 Age: 2 yrs. 08 months
KELSSY HERNANDEZ
Date of Birth: 10.14.12 Age: 15 months

CASE NO.: J-14-332774-PC
DEPT. NO.: JUVENILE
COURTROOM: D

Natural Mother's Name: Manuela Hernandez

Natural Father's Name: William Troilo-Laszlo

PROTECTIVE CUSTODY FINDINGS AND ORDER

This matter having come before the Court on February 6, 2014, for a protective custody hearing pursuant to NRS 432B.470 and NRS 432B.480. Present in Court for the hearing were Joanna Watts of the Department of Family Services, Deputy District Attorney Felicia Quinlan, and William Troilo-Laszlo, and based on the statements made and the report that was submitted:

THE COURT FINDS that the mother of the child(ren) is Manuela Hernandez.

THE COURT FURTHER FINDS that the above-named father is not listed on the child's(ren's) birth certificate(s).

THE COURT FURTHER FINDS that notification of this protective custody hearing to the mother, Ms. Hernandez, was made by:

☒ personal service of written notice; natural mother is in custody and was not present due to a conflicting court hearing.

THE COURT FURTHER FINDS that:

☒ an inquiry was made into whether the Indian Child Welfare Act applies to this family and natural father denied that there is any Native American heritage.

1 **THE COURT FURTHER FINDS** that Mr. Troilo-Laszlo has been advised of his right to be
2 represented by an attorney and his right to present statements regarding the protective custody of the
3 child(ren).

4 **THE COURT FURTHER FINDS** that natural mother has not been advised of her right to be
5 represented by an attorney and her right to present statements regarding the protective custody of the
6 child(ren) because she were not present at the hearing.

7 **THE COURT FURTHER FINDS** there is reasonable cause to believe that it would be contrary
8 to the welfare of the children to remain at their home. Specifically, the Court finds that there are concerns
9 of physical abuse of children. Kelssy presented for medical intervention with the babysitter for bruising
10 on her face. She has significant bruising. The babysitter brought Kelssy to the hospital at 12:02.

11 She said the stepfather dropped her off at 10:15am and said the bruising was the result of fighting with
12 the two year old sister. The babysitter called mom and said she needed to be seen by the doctor. Mom
13 said she couldn't leave work and said Kelssy fell off the bed yesterday, causing the bruising to her face.
14 Dr. Ceti was consulted and stated that the injuries are not consistent with the story. The babysitter said
15 this is her third time watching the child and she has never seen any concerning marks on her. The
16 previous time she watched her was on 1-31-14. A CAT scan has been done and a skeletal survey-no
17 results yet.

18
19 **THE COURT FURTHER FINDS** the child(ren) were placed in protective custody on 2.4.14.

20 **THE COURT FURTHER FINDS** that

21 X the children remain with Grady's Esoto, maternal grandmother pending a disposition by the
22 Court

23 **THE COURT FURTHER FINDS** that it is in the best interest of the subject minors to be
24 placed together pursuant to NRS 432B.550.

25 **THE COURT FURTHER FINDS** that the Clark County Department of Family Services
26 provide for the placement, care and supervision of the above-named subject minor(s).


1 **THE COURT FURTHER FINDS** that the following reasonable efforts have been made to
2 prevent the removal of the child(ren): A Safety and Risk assessment has been completed. (Active Efforts
3 - 25 USC 1912(d))

4 **THE COURT FURTHER FINDS** that visitation between Ms. Hernandez and Mr. Troilo-
5 Laszlo with the child(ren) shall be supervised by the Department of Family Services and Child Haven.

6 **IT IS FURTHER ORDERED** that the Special Public Defender be appointed to represent the
7 natural mother, Manuela Hernandez and Denise Gallagher, Esq., be appointed to represent the
8 natural/putative father, William Troilo-Laszlo.

9 **IT IS FURTHER ORDERED** that a PLEA/REVIEW is set for February 20, 2014 at 9:00 a.m.
10 in Courtroom 23.

11 Dated: February 6, 2014.


ROBERT W. TEUTON, ABUSE/NEGLECT
DISTRICT JUDGE-JUVENILE DIVISION

14
15 **CERTIFICATE OF SERVICE**

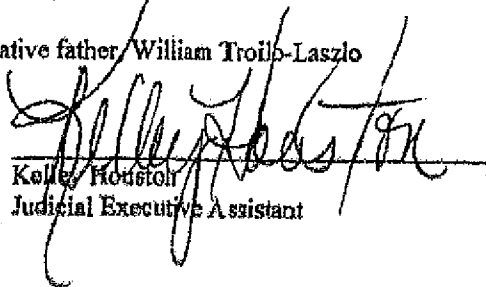
16 I hereby certify that on the above stamped date, I placed a copy of the foregoing in the folder(s)
17 of Attorney(s):

18 Felicia Quinlan, DDA

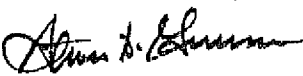
19 Special Public Defender, attorney for natural mother, Manuela Hernandez

20 Denise Gallagher, Esq. attorney for natural/putative father, William Troilo-Laszlo

21 in the Office of the Clerk of the Court.


Kelley Houston
Judicial Executive Assistant

**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA**


CLERK OF THE COURT

In the Matter of Children:

ANALIA HERNANDEZ **DOB: 10-03-2011**

KELSSY HERNANDEZ **DOB: 10-14-2012**

Minors Under 18 Years of Age.

COURT CASE NO.: J-14-332774-U1

UNITY CASE # 1381751

DEPT.: FAMILY JUVENILE

COURTROOM: HM KURTZ - #14

PETITION: 1 - PHYSICAL

ABUSE/NEGLECT

PLEA: 02-20-2014 AT 9:00 A.M.

PETITION - ABUSE/NEGLECT

The Petitioner, a duly appointed and qualified Deputy District Attorney for the County of Clark, State of Nevada, makes the following declaration:

There are now living or found within the County of Clark, State of Nevada, minor children whose residence address is: **1064 SIERRA VISTA, LAS VEGAS, NEVADA 89169.**

MOTHER:	MANUELA HERNANDEZ	DOB: 05-05-1993
FATHER:	WILLIAM TROILO-LASZLO (KELSSY)	DOB: 07-13-1992
FATHER:	ISRAEL PIZZARO-ULLAURI (ANALIA)	DOB: 06-03-1990
BOYFRIEND:	JONATHAN BALDERAS	DOB: 09-09-1993

The Petitioner is informed and believes, and therefore on information and belief alleges, that the facts bringing the subject minors within the jurisdiction of the Juvenile Court are:

The subject minors are children in need of protection and this action is within the jurisdiction of the Court pursuant to N.R.S. 432B, et sec., in that:

(a) The mother is MANUELA HERNANDEZ. The father is WILLIAM TROILO-LASZLO. JONATHAN BALDERAS is a person regularly found in the home;

(b) On or about February 4, 2014, subject minor KELSSY HERNANDEZ, (hereinafter "KELSSY"), presented at Sunrise Children's Hospital with multiple injuries, to-wit: diffuse bruising to the cheeks of the face that were red and purple in color; swelling to the left cheek; diffuse bruising to the entire forehead exhibiting purple, yellow, and brown colors; red bruising to inside the pinna; linear and superficial scratch

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marks on shoulders and back; inner surface of the lower lip is purple and/or red with contusion; and purple bruise to the dorsal foot. Dr. Sandra Cetl noted that KELSSY's contusions to the face, forehead, and ears are too numerous and diffuse to count. KELSSY's injuries were such that they could not have been sustained without negligence, or a deliberate but unreasonable act, or a failure to act by the persons responsible for his care and welfare pursuant to NRS 432B.450;

(c) MANUELA HERNANDEZ (hereinafter "MANUELA") failed to protect KELSSY from physical abuse as described in paragraph "b", and/or lacks protective capacity, as demonstrated by MANUELA leaving the subject minors in the care of JONATHAN BALDERAS (hereinafter "JONATHAN") despite observing and or/knowning JONATHAN slapped each subject minor twice in the face on or about January 3, 2014. See NRS 432B.020, NRS 432B.090;

(d) MANUELA's engagement in acts constituting domestic violence, as the victim as well as the perpetrator, affects her ability to provide care, safety and well being for the subject minors, to-wit: MANUELA reports that WILLIAM TROILO-LASZLO (hereinafter "WILLIAM") had been violent towards her and that ANALIA witnessed the domestic violence which has resulted in ANALIA having nightmares. MANUELA also perpetrated domestic violence against WILLIAM on or about December 2013 resulting her arrest and incarceration. See NRS 432B.020, 432B.140, 43B.330; 432B.157;

(e) MANUELA physically abused the subject minors resulting in injuries as described in paragraph "b" as to KELSSY. See NRS 432B.090;

(f) MANUELA is unable to provide for the care, control, supervision, or other care necessary for the welfare of the subject minors due to her incarceration, to-wit: on or about January 4, 2014, MANUELA was arrested and incarcerated for Child Abuse and Neglect. NRS 432B.330;

(g) MANUELA and JONATHAN medically neglected the subject minors, to-wit: on or about January 3, 2014, MANUELA and JONATHAN observed bruising to KELSSY but failed to seek medical attention for the subject minor. See NRS 432B.140;

(h) MANUELA and JONATHAN did not provide a medically consistent explanation for the injuries sustained by KELSSY;

(i) JONATHAN physically abused the subject minors resulting in injuries as described in paragraph "b" as to KELSSY, and he further

admitted to slapping both subject minors twice in the face. See NRS 432B.090;

(j) JONATHAN is unable to provide for the care, control, supervision, or other care necessary for the welfare of the subject minors due to his incarceration, to-wit: on or about January 4, 2014, JONATHAN was arrested and incarcerated for Child Abuse and Neglect. NRS 432B.330;

(k) WILLIAM's engagement in acts constituting domestic violence as the perpetrator and as the victim affects his ability to provide care, safety and well being for the subject minors, to-wit: MANUELA reports that WILLIAM had been violent towards her and that ANALIA witnessed the domestic violence which has resulted in ANALIA having nightmares. MANUELA also perpetrated domestic violence against WILLIAM on or about December 2013 resulting MANUELA's arrest and incarceration. See NRS 432B.020, 432B.140, 43B.330; 432B.157;

(l) WILLIAM's abuse of drugs affects his ability to provide care for KELSSY to-wit: WILLIAM admits to methamphetamine use. NRS 432B.140;

(m) ISRAEL PIZZARO-ULLAURI does not provide for the care, control, supervision, or subsistence of ANALIA. NRS 432B.140;

(n) The subject minors are in need of protection in accordance with NRS 432B and as a result of the abuse/neglect described above;

Therefore, Petitioner prays that: upon the admission to/or proving of this Petition, or any part thereof, the subject minors be declared Wards of this Honorable Court.

The minors are in protective custody, having been placed there by the Department of Family Services.

THEREFORE, your Petitioner prays that this matter be set for hearing to determine the need for protection of the minors and for the Court to take such further action as is deemed fit and proper under the circumstances and in accordance with the law concerning protection of children.

I declare that I am the Petitioner named in the foregoing Petition and know the contents thereof, that this petition is true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 18th day of February, 2014

STEVEN B. WOLFSON
DISTRICT ATTORNEY

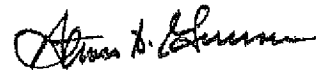
BY: 

Deputy District Attorney
Petitioner

UNITY Doc.
JKim/pf
CPS 5 and under B
PC Held
Removal Date: 02-04-2014

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**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA**


CLERK OF THE COURT

In the Matter of Children:

ANALIA HERNANDEZ	DOB: 10-03-2011	COURT CASE NO.: J-14-332774-U1
		UNITY CASE # 1381751
KELSSY HERNANDEZ	DOB: 10-14-2012	DEPT.: FAMILY JUVENILE
		COURTROOM: JUDGE TEUTON - #11
Minors Under 18 Years of Age.		AMD PETITION: 1 - PHYSICAL
		ABUSE/NEGLECT
		R&D: 3-31-2014 AT 10:00 A.M.

AMENDED PETITION - ABUSE/NEGLECT

The Petitioner, a duly appointed and qualified Deputy District Attorney for the County of Clark, State of Nevada, makes the following declaration:

There are now living or found within the County of Clark, State of Nevada, minor children whose residence address is: **1064 SIERRA VISTA, LAS VEGAS, NEVADA 89169.**

MOTHER:	MANUELA HERNANDEZ	DOB: 05-05-1993
FATHER:	WILLIAM TROILO-LASZLO (KELSSY)	DOB: 07-13-1992
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(b) On or about February 4, 2014, subject minor KELSSY HERNANDEZ, (hereinafter "KELSSY"), presented at Sunrise Children's Hospital with multiple injuries, to-wit: diffuse bruising to the cheeks of the face that were red and purple in color; swelling to the left cheek; diffuse bruising to the entire forehead exhibiting purple, yellow, and brown colors; red bruising to inside the pinna; inner surface of the lower lip

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is purple and/or red with contusion. Dr. Sandra Cetl noted that KELSSY's contusions to the face, forehead, and ears are too numerous and diffuse to count. KELSSY's injuries were such that they could not have been sustained without negligence, or a deliberate but unreasonable act, or a failure to act by the persons responsible for his care and welfare pursuant to NRS 432B.450;

(c) MANUELA HERNANDEZ (hereinafter "MANUELA") failed to protect KELSSY from physical abuse as described in paragraph "b", and/or lacks protective capacity, as demonstrated by MANUELA leaving the subject minors in the care of JONATHAN BALDERAS (hereinafter "JONATHAN") despite observing and or/knowning JONATHAN slapped each subject minor twice in the face on or about January 3, 2014. See NRS 432B.020, NRS 432B.090;

(d) MANUELA's engagement in acts constituting domestic violence, as the victim as well as the perpetrator, affects her ability to provide care, safety and well being for the subject minors;

(e) JONATHAN medically neglected the subject minors, to-wit: on or about January 3, 2014, JONATHAN observed bruising to KELSSY but failed to seek medical attention for the subject minor. See NRS 432B.140;

(f) JONATHAN did not provide a medically consistent explanation for the injuries sustained by KELSSY;

(g) JONATHAN physically abused the subject minors resulting in injuries as described in paragraph "b" as to KELSSY, and he further admitted to slapping both subject minors twice in the face. See NRS 432B.090;

(h) WILLIAM's engagement in acts constituting domestic violence as the perpetrator and as the victim affects his ability to provide care, safety and well being for the subject minors, to-wit: MANUELA reports that WILLIAM had been violent towards her and that ANALIA witnessed the domestic violence which has resulted in ANALIA having nightmares. MANUELA also perpetrated domestic violence against WILLIAM on or about December 2013 resulting in MANUELA's arrest and incarceration. See NRS 432B.020, 432B.140, 43B.330; 432B.157;

(i) WILLIAM's abuse of drugs affects his ability to provide care for KELSSY to-wit: WILLIAM admits to methamphetamine use. NRS 432B.140;

(j) The subject minors are in need of protection in accordance with NRS 432B and as a result of the abuse/neglect described above;

Therefore, Petitioner prays that: upon the admission to/or proving of this Petition, or any part thereof, the subject minors be declared Wards of this Honorable Court.

The minors are in protective custody, having been placed there by the Department of Family Services.

THEREFORE, your Petitioner prays that this matter be set for hearing to determine the need for protection of the minors and for the Court to take such further action as is deemed fit and proper under the circumstances and in accordance with the law concerning protection of children.

I declare that I am the Petitioner named in the foregoing Petition and know the contents thereof; that this petition is true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 26th day of March, 2014

STEVEN B. WOLFSON
DISTRICT ATTORNEY

BY: 

Deputy District Attorney
Petitioner

UNITY Doc.
JKim/pf
CPS 5 and under B
PC Held
Removal Date: 02-04-2014

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FILED

APR 25 2014

CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

JUVENILE DIVISION

CLARK COUNTY, NEVADA

In the Matter of Children:) CASE NO. J-14-332774-U1
ANALIA HERNANDEZ) DEPT. D
DOB: 10-03-2011)
KELSSY HERNANDEZ) SEALED
DOB: 10-14-2012)
Minors Under 18 Years of Age.)

BEFORE THE HONORABLE ROBERT W. TEUTON, DISTRICT COURT JUDGE

TRANSCRIPT RE: DISPOSITION HEARING

MONDAY, MARCH 31, 2014

1 APPEARANCES:

2 For the State of Nevada: JIN KIM, ESQ.
3 Deputy District Attorney
4 Juvenile Division
5 601 North Pecos Rd.
6 Las Vegas, Nevada 89101
7 (702) 455-5320

8 The Natural Mother: MANUELA HERNANDEZ
9 For the Natural Mother: ABIRA GRIGSBY, ESQ.
10 Deputy Special Public Defender
11 601 North Pecos Rd.
12 Las Vegas, Nevada 89101
13 (702) 455-6265

14 The Father: WILLIAM TROILO (Not Present)
15 For the Father: DENISE A. GALLAGHER, ESQ.
16 8961 W. Sahara Ave., #102
17 Las Vegas, Nevada 89117
18 (702) 240-4447

19 Also Present: CHANDLER LEVRICH
20 Department of Family Services

21 JONATHAN BALDERAS
22
23
24

2 PROCEEDINGS

3 (THE PROCEEDING BEGAN AT 10:34:30.)

4 THE COURT: Okay. We're on the record in Case Number
5 332774.

6 Appearances, please.

7 MR. LEVRICH: Chandler Levrich, DFS.

8 MS. KIM: Jin Kim on behalf of State.

9 MS. GRIGSBY: Good morning, Your Honor. Abira Grigsby,
10 Bar Number 10308, appearing for Manuela Hernandez who is
11 present.

12 THE COURT: All right. And you, Sir, are Jonathan
13 Balderas?

14 MR. BALDERAS: Yes, Sir.

15 THE COURT: All right. Let me start with you, Mr.
16 Balderas. Did you receive a copy of the report and the
17 proposed case plan?

18 MR. BALDERAS: Yes, Your Honor.

19 THE COURT: All right. Do you have any issues with
20 either one?

21 MR. BALDERAS: I haven't had a chance to go through the
22 disposition report. I was just actually going through the
23 case plan while I was outside waiting.

24 THE COURT: All right. I've got a question about the

1 case plan as to Mr. Balderas. The first objective is that
2 he'll meet Kelssy and Analia's needs. We're -- he's not
3 related to either child biologically, correct?

4 MS. KIM: He -- no, Your Honor. My understanding is he
5 is likely somebody who may be involved and remain involved
6 with Ms. Hernandez who is potentially pregnant with his child.
7 So he may -- that part that does cause me some concern. If
8 they are going to remain an intact couple, and -- The Court
9 can strike that.

10 We just want to ensure that he has awareness,
11 protective capacity in terms of being responsible for their
12 physical care and well being and medical needs. I'd submit
13 that to The Court. We just want to ensure that his case plan
14 is thorough. And that if Ms. Hernandez stays in a
15 relationship with Mr. Balderas, that he complies with the case
16 plan as to these children. So that if she's going to reunify
17 and he's going to remain in their lives, that he completes all
18 aspects of it. But I'd submit to The Court about Mr. Balderas
19 being responsible for them going to --

20 THE COURT: A pediatrician.

21 MS. KIM: Yes.

22 THE COURT: Medicaid.

23 MS. KIM: Absolutely.

24 THE COURT: I mean, he can't even apply for Medicaid --

1 MS. KIM: No.

2 THE COURT: -- for these kids.

3 MS. KIM: Um-hmm (in the affirmative). And the -- he
4 does need to address his -- the forthright manner. The most
5 important measurement for success would be comprehensively,
6 convincingly in a forthright manner addressing the
7 precipitating risk factors and triggers --

8 THE COURT: Right.

9 MS. KIM: -- and sequence of the events. But as for the
10 other steps, I agree.

11 THE COURT: Okay. All right. Well let's get it on the
12 table. Are you -- do the two of you intend to remain as a
13 couple?

14 MS. HERNANDEZ: No.

15 MR. BALDERAS: No, not until we find out the paternity of
16 the other kid. But for right now as of right now we're not
17 together. She's staying at my apartment. I'm paying
18 everything else for her. And I'm just bouncing off from house
19 -- from my parents' house, family members' house, friends'
20 house. I actually have a job offer to go to Salt Lake City
21 which I was supposed to leave a week and a half ago, but I
22 waited till this court date. And I still got to go talk to my
23 lawyer from the criminal case about this case, but the
24 criminal court.

1 THE COURT: Who's your lawyer?

2 MR. BALDERAS: I don't know on (sic) the top of my head.
3 I have -- I've got paperwork and -- downstairs in the car in
4 the parking lot.

5 THE COURT: Is it a public defender?

6 MR. BALDERAS: No, it's from Half Price Lawyers. He's a
7 hired lawyer.

8 THE COURT: All right. All right.

9 Okay. And it's a child -- the unborn child is
10 yours, then you will continue your relationship?

11 MR. BALDERAS: Yes.

12 THE COURT: Is that right?

13 MS. HERNANDEZ: We'll have to figure out patern -- the
14 paternity test. Because if it's his, he's gonna have to be
15 involved in some way or how like -- as well as the other
16 fathers. So we're trying to manage something where he will be
17 involved and try to figure out from there to see if we can
18 work as a couple. If not, then there's no way or form that we
19 will be a couple.

20 THE COURT: All right.

21 MS. KIM: Regarding Mr. Balderas' case plan, Judge, I'd
22 ask The Court to add one more component. I'd ask for a mental
23 health or cognitive eval. During his closing statement, Mr.
24 Balderas represented that he -- when he becomes angry he

1 THE COURT: All right. So why don't we -- I mean, I just
2 as soon strike the whole obj -- that very first objective as
3 to Mr. Balderas in so far as these two children are concerned.
4 Obviously, you'll have those obligations if the unborn child
5 is yours. But the child is yet unborn so we're not yet
6 involved.

7 As to the objective concerning physical abuse issues
8 as an offending person, The Court is going to adopt that as
9 well as the parenting issues and the substance abuse testing.
10 I am going to also include another requirement as requested by
11 the District Attorney that you complete -- what sort of
12 testing did you want?

13 MS. KIM: Cognitive and mental health eval. We're not
14 sure what the blackouts are regarding. I'd like a
15 psychological eval, Judge, if The Court will submit it.

16 THE COURT: All right.

17 Okay, so whether or not you -- the two of you
18 maintain a relationship -- and I understand it's somewhat
19 dependent upon the parent -- the paternity of the unborn
20 child, The Court is gonna order that you undergo a cognitive
21 mental health evaluation to try to determine what the source
22 of your blackouts are and your anger. Whether it's these
23 children, the unborn child or some future child, we want to
24 make sure that your issues get appropriately addressed so that

1 what happened in this case doesn't happen again. All right.
2 With that understanding, the case plan as to Mr. Balderas will
3 be adopted.

4 Okay. Ms. Grigsby, as to your client, have you had
5 a chance to review the --

6 MS. GRIGSBY: Yes, Judge. Okay, with the objective with
7 the non-offending parenting classes. Then after that it's
8 anger management and DV is the one after the anger management.
9 I don't see why he's going to have to do both. Usually, DV
10 was what was alleged in the petitions. Though I think the DV
11 is appropriate, I don't know why she would need to do anger
12 management as well.

13 MS. KIM: In speaking with Mr. Chandler, Natural Mother
14 has represented when she gets angry she, quote, whales on her
15 boyfriend, Mr. Balderas. Domestic violence whereas it would
16 assess her and her needs, she can come back as a perpetrator
17 or a victim or both. So we're not sure what the assessment
18 will essentially state.

19 THE COURT: Right.

20 MS. KIM: And I don't believe domestic violence always is
21 -- or will necessarily be appropriate to address her specific
22 anger management issues.

23 MS. GRIGSBY: So we do anger management and not the
24 domestic violence.

1 MS. KIM: The domestic --

2 MS. GRIGSBY: What we're talking about as far as DV with
3 Mr. Balderas, then we're saying that it's not --

4 MS. HERNANDEZ: No, it's actually with Troilo.

5 THE COURT: No, I think she indicated her DV was with...

6 MS. HERNANDEZ: William Troilo.

7 THE COURT: Was with William.

8 MS. HERNANDEZ: The father of Kelssy.

9 THE COURT: Yeah.

10 MS. GRIGSBY: Okay. So if we're talking about that DV,
11 we can't say she needs -- DV is the issue. But she needs DV
12 and anger management. It should be one or the other.

13 MS. KIM: Not necessarily.

14 THE COURT: Well I don't know. I mean, domestic violence
15 really deals more with the -- interrelationship between people
16 at the same level. And the assessment may come back that
17 she's more of a victim than an enabler by failing to respond
18 appropriately, and she needs DV counseling to address that
19 issue rather than as a perpetrator. I tend to agree a little
20 bit if she's found to be a perpetrator of DV rather than a
21 victim of DV in that as a perp, the anger issues -- anger
22 management would be -- would seem likely be addressing both at
23 the same time.

24 I think the real concern here though is that if

1 she's got an anger management issue it may be directed towards
2 an adult at the present time. But it may also end up being
3 directed at a child in the future. And I don't know that that
4 necessarily -- I mean, it really sounds like we may need more
5 of an assessment first and then a series of appropriate
6 interventions, DV and perhaps anger management being an
7 appropriate intervention either in connection with that or in
8 connection with her parenting abilities. I just don't know
9 how we write a case plan that is contingent on so many
10 options.

11 MS. GRIGSBY: Well -- so are you saying if she does the
12 DV assessment, it comes back that she needs counseling as a
13 perpetrator, then she doesn't need an assessment for the anger
14 management?

15 THE COURT: Wouldn't those two be the same counseling
16 track?

17 MS. KIM: The DV assessment will essentially, as The
18 Court noted, focus on her relationship skills. Here, the DV
19 relationship was with Mr. Troilo, our -- and whereas I
20 understand what Ms. Grigsby's saying, well isn't DV always
21 anger related. Again, it would -- I think the domestic
22 violence aspect would not necessarily address her anger
23 management which are two separate and asides. We have two
24 different relationship where she responds similarly. However,

1 the DV -- impulse control would be more akin to the anger
2 management which would -- the domestic violence may give her
3 coping skills as a perpetrator and a victim. But the impulse
4 control/anger management would potentially address other
5 aspects that we're not aware of in terms of why she reacts the
6 way she does.

7 THE COURT: All right.

8 MS. KIM: I'd submit it to The Court on that.

9 THE COURT: All right. What's the underlying conduct
10 that the anger management objective --

11 MS. KIM: She rep --

12 THE COURT: -- is supposed to address?

13 MS. KIM: She represented to Mr. Chandler that she gets
14 so angry she explodes and then whales on Mr. Balderas. Again,
15 what that impulse control may be regarding, domestic violence
16 may be able to address that if we incorporate that into the
17 assessment or the referral for DV.

18 THE COURT: Why don't we do this? Why don't we do a DV
19 assessment. And if, as a result of that assessment, they
20 think she needs anger management skills, then we'll kick in
21 the anger management as a secondary service requirement. But
22 make it contingent upon some assessment that it's needed.
23 Does that make sense?

24 MS. KIM: Yes, Your Honor.

1 Judge, I would ask to add a component of one,
2 resolving any criminal matters because she will -- she does
3 have a criminal case pending.

4 MS. GRIGSBY: It's in there.

5 MS. KIM: It's in there; I apologize. And to truthfully
6 and honestly engage with the caseworker or DFS, my concern
7 here is Ms. Hernandez -- or Mr. Balderas is representing that
8 they're no longer an intact couple. However, after the trial
9 on this matter -- although the natural mother had already
10 admitted to the allegation and gone to her visit an hour or so
11 after the -- her visit. When we came out she was still
12 waiting for Mr. Balderas. And, moreover, in the -- she has
13 this history of not exactly being forthright.

14 Part of her allegation criminally is that she lied
15 to the police officer about Mr. Balderas' acts. So we do need
16 her to be forthright and honest. We haven't had a whole lot
17 of that in this case thus far. So we would ask for that as an
18 objective also. Cooperation and honesty.

19 MS. GRIGSBY: Judge, I'm really not sure how you -- how
20 that would be a component of a case plan. How do you enforce
21 that? I guess that's my issue. How do you enforce that?

22 MS. KIM: Well, understanding that if she is being
23 dishonest about her ongoing relationship with Mr. Balderas and
24 what her intent there is, then that is a failure on her part

1 to be forthright and honest with the Department. How are we
2 to help the family when she is not being truthful?

3 MS. GRIGSBY: Well, here's my concern. How does that
4 relate to the safety of the children?

5 MS. KIM: Mr. Balderas has been found to be a danger to
6 the children.

7 MS. GRIGSBY: But if he does his case plan, she does her
8 case plan, how are we going to determine that he's -- because
9 these -- the case plans are designed to address the safety
10 concerns that brought the children into the care of the --
11 brought them into these courtrooms. If both parents -- well
12 not parents -- but if both parties addressed their case plans,
13 where's the safety concern?

14 MS. KIM: Well if you can perfunctorily perform the case
15 plan, that if you're not truly engaging in honest and changing
16 behavior by being forthright about where your current status
17 is, obviously it affects the safety of the children.

18 This case came in because the babysitter brought the
19 child in, who was abused. Natural Mom lied to CPS and to the
20 police about knowing about the abuse, until it was revealed to
21 her, wait a minute, Mr. Balderas just confessed to CPS and the
22 police that he abused Kelssy in front of the natural mother,
23 in which she said, yeah okay I lied because I didn't want him
24 to go to jail and to have the children removed.

1 She has a history of this. In the domestic violence
2 with Mr. Troilo, when the police became involved, Natural Mom
3 initially lied and told the police, hey he attacked me. And
4 when they confronted her with the fact that he's the one with
5 the injury, she's like, okay I lied, that's not exactly how it
6 happened. She has this history of not being forthright and
7 her being honest. She can do all the case plan. She can do
8 the parenting. But it doesn't necessarily mean that she will
9 actually change or show the protective capacity that she
10 needs. Mr. Balderas has been found to be a danger, has hurt
11 Kelssy. So we do need her to be honest about what her status
12 is with Mr. Balderas at all time.

13 MS. GRIGSBY: And, Judge, I don't think that's --

14 THE COURT: Okay.

15 MS. GRIGSBY: -- that's something you put in a case plan.

16 THE COURT: Okay. Well I just penned something out.
17 It's kind of implicit in everything we do that people are
18 gonna be honest and truthful. You know, given the represented
19 facts of this case, the fact that the mother has not always
20 done so, I'm gonna make a explicit statement of what's, I
21 think, implied in all sorts of human conduct. And I'm going
22 to amend -- the objective, Ms. Hernandez, will cooperate with
23 the Department of Family Services. The second action step
24 currently reads:

1 (Reading from document) Ms. Hernandez will have met
2 with assigned caseworker as needed (end).

3 I'm gonna add to that sentence: And provide
4 truthful and accurate information regarding her lifestyle as
5 it relates to safety of the children.

6 So the -- kind of the bottom line is, if she omits
7 to tell the worker something that's important to the safety
8 such as Mr. Balderas is living with her or some other
9 perpetrator is living with her, if she fails to disclose that
10 fact, then it'd be a violation of that action step. Kind of
11 the bottom line, Ms. Hernandez, is we want to get out of your
12 life, but we want to make sure your children are safe.

13 MS. HERNANDEZ: Understandable.

14 THE COURT: And if you're doing something that is
15 jeopardizing their safety, we need to know about it --

16 MS. HERNANDEZ: Yeah.

17 THE COURT: -- so that you can be appropriately
18 counseled.

19 MS. HERNANDEZ: I have a quick question towards that as
20 well. Mr. Balderas here, he is the only one that gives me
21 rides to where I have to go. He's the one that takes me to
22 the places where I have to go. Is that a concern right now
23 that he is the one paying for my bills, doing everything for
24 me for the child, that he's still is not sure if it's his or

1 not. Is that a concern right now or how is his...

2 THE COURT: Well, in so far as it pertains to you, I
3 guess not. If the children were around, it would be a
4 problem. And it will be a problem upon birth if he's, in
5 fact, found to be the father.

6 MS. HERNANDEZ: Okay.

7 MS. GRIGSBY: And, Judge, I have one last thing regarding
8 the case plan.

9 THE COURT: All right.

10 MS. GRIGSBY: The last action step to the objective that
11 Ms. Hernandez will cooperate with the Department of Family
12 Services.

13 THE COURT: Right. Submit to drug testing?

14 MS. GRIGSBY: It says, Ms. Hernandez will submit to drug
15 testing. There were no allegations in the petition regarding
16 substance abuse. Also, she took a drug test. She's been
17 clean. So this does not relate in any way to the safety of
18 the children when she's tested clean. There are no
19 allegations. There's no nexus between what they're asking her

20 --

21 THE COURT: All right, I get it. I get it.

22 MS. GRIGSBY: -- to do and the petition.

23 THE COURT: What's the reason for the drug testing?

24 MR. LEVRICH: Your Honor, she is habitually in the

1 presence of people that are using drugs, and the fact that she
2 may not be an ongoing and continuous user does bring up the
3 possibility that she may be nevertheless an infrequent user.
4 So that -- she has submitted to drug testing. I intend to
5 continue drug testing to make sure that she is drug free. And
6 all this does is in her benefit create -- create evidence that
7 she is not using.

8 Ultimately, it works into her benefit for her to
9 cooperate. Likewise, if I am testing her regularly and she is
10 -- and she does show positive, it gives us the option of
11 referring for an assessment.

12 MS. GRIGSBY: And, Judge, that's a huge intrusion on her,
13 requiring her to drug test when she -- there are no
14 allegations in the petition regarding drug use. She's never
15 shown that she's used by testing clean. That one test was
16 even intrusive enough. But now we're gonna have her randomly
17 drug test just because we think she may test positive? That's
18 ridiculous.

19 MS. KIM: I appreciate Mr. -- I understand DFS's concern
20 here given Natural Mom's association with Mr. Hernandez, who
21 is testing positive. Perhaps we can just modify that to
22 ensure that the subject minors will not be around Mr. --

23 THE COURT: Well I was gonna modify it by imposing a
24 reasonable belief standard that she'll submit to drug testing

1 if there's reason to believe that she is using non-prescribed
2 controlled substances.

3 MS. KIM: Fair enough, Your Honor. Thank you.

4 THE COURT: See if she's got the protection that she'd
5 otherwise have, but it's not -- you can't just arb --

6 MS. GRIGSBY: Well, Judge, I think it should be more than
7 reasonable belief.

8 THE COURT: I'm sorry?

9 MS. GRIGSBY: There should be probable cause to give her
10 a drug test.

11 THE COURT: Well, this isn't a criminal proceeding. I
12 think reasonable belief --

13 MS. GRIGSBY: Will she still have her Constitutional
14 rights?

15 THE COURT: First of all, he's not gonna be able to call
16 her up and say you've got twenty-four hours to submit to a
17 test. That's pretty intrusive given the facts here. If he's
18 meeting with her and she's got slurred speech or she's
19 otherwise exhibiting that she's under the influence of some
20 controlled substance, I'm not gonna require him to go get a
21 warrant. That's good enough for me to say, submit to a drug
22 test.

23 So it's kind of a half way between not doing
24 anything and doing something if it's deemed appropriate at the

1 time.

2 MS. GRIGSBY: Well, Judge, if I could just have written
3 findings on that, please.

4 THE COURT: I'm sorry?

5 MS. GRIGSBY: If I could have written findings on that
6 objective requiring --

7 THE COURT: Yeah, I just changed the objective. You can
8 do what you want.

9 MS. GRIGSBY: Okay.

10 THE COURT: So that'll be submit to drug testing if
11 there's reason to believe that she is under the influence of a
12 non -- actually, under the influence of a controlled
13 substance.

14 All right?

15 MS. KIM: Thank you. And we do have one update on
16 placement.

17 THE COURT: All right, hold on before you go there. With
18 that I am -- I guess, number one, I am making the children
19 wards of The Court.

20 MS. KIM: Thank you.

21 THE COURT: With legal and physical custody placed in the
22 Department of Family Services. I'm adopting the case plans as
23 amended today in court.

24 All right. Update on placement.

1 MS. KIM: On March 27th we came before Hearing Master
2 Kurtz on placement issue. Kelssy Hernandez, the biological
3 father, Mr. Troilo, has placement of Kelssy and he was given
4 further proceedings. However, the oldest child, Analia, whom
5 Mr. Troilo is not the biological father of, we -- the hearing
6 master ordered placement of Analia with Mr. Troilo because
7 fictive kin. And we wanted -- the siblings would be
8 preferable to be placed together. The mat -- Mr. Troilo's
9 mother had her old substantiated counts, and we couldn't do
10 it. And the hearing master overrode that.

11 At the time there -- we were not aware that Mr.
12 Troilo tested positive. He was tested in February and his
13 results came back just too high. It's like sixty-two hundred.
14 It's -- sixty-five hundred is what the report shows. Anyway,
15 he would be fictive kin as to Analia, and I think had the
16 department as well as Hearing Master Kurtz were aware how high
17 Mr. Troilo's drug results were. I don't think --

18 THE COURT: From his hair?

19 MS. KIM: Yes, in his hair. I don't think The Court
20 would have approved. At that hearing the natural mother was
21 not opposed to Analia being placed with her sibling Kelssy
22 with Mr. Troilo. But we explained subsequently that -- with
23 that result from Mr. Troilo we -- the Department cannot place
24 the siblings together. We are monitoring to see if Mr.

1 Troilo's results come down, what that -- with the hair. We
2 are looking for a steep decline and a steady decline.

3 THE COURT: Sure.

4 MS. KIM: We might revisit it as a sibling placement
5 potentially as a fictive. But currently, Judge, Hearing
6 Master Kurtz nor, I don't think, Ms. Hernandez was aware of
7 the level of drugs in Mr. Troilo's hair.

8 THE COURT: All right, hold on. All right. So the
9 original petition as well as the amended petition both recite
10 that William's use of drugs affects his ability to provide
11 care for Kelssy. He admits to methamphetamine use. So we're
12 not surprised that he had tested positive for methamphetamine.

13 MS. KIM: He was given further proceedings. And at that
14 --

15 THE COURT: No I understand all that. I'm just saying
16 hair is residual use. It's generally an indication of --

17 Oh, just in time, Ms. Gallagher.

18 MS. GALLAGHER: Yeah, I didn't realize you were gonna be
19 talking about placement. I had another ten o'clock hearing.
20 So maybe you can catch me up.

21 THE COURT: They're asking that Analia be removed from
22 your client's --

23 MS. GALLAGHER: Actually, she was never placed. But the
24 -- but Hearing Master Kurtz --

1 THE COURT: Ordered it.

2 MS. GALLAGHER: -- approved. Yes, approved placement.

3 His further proceedings are that he admitted that he had used
4 prior. And his further proceedings are that he has to remain
5 drug free as per the Department. And his urine was clean I
6 understand. So I think that that is in line with what he
7 said, and that it was approval for placement based on those
8 facts. So I had asked Mr. Levrach if he had tested him again
9 to make sure that he had not used recently. And he hadn't
10 yet, but I don't think my client has violated his further
11 proceedings. And I think he was very honest with the
12 Department, and we got approval to place her even based on
13 those facts.

14 MS. KIM: We're not saying he's in violation --

15 MS. GALLAGHER: Right.

16 MS. KIM: -- of his further proceedings. Mr. Troilo's
17 the one who was honest about his drug use --

18 MS. GALLAGHER: Right.

19 MS. KIM: -- and that's how he alleged it.

20 MS. GALLAGHER: Right.

21 MS. KIM: And he believe that -- we believed that it
22 deserves the benefit of his negotiations as far as complying
23 with the -- with DFS. Our concern here is, prior to going
24 before the hearing master on placement, we were not aware how

1 substantiated slap to the face twenty years ago?

2 MS. GALLAGHER: Twenty years ago.

3 MS. KIM: There are CANS history. Again, that was again
4 overridden by Hearing Master Kurtz.

5 THE COURT: Yeah.

6 MS. KIM: But at that time we had not had the results of
7 Mr. Troilo. Now we have two safety concerns in that of, the
8 CANS which was overridden by Hearing Master. But now the
9 substance abuse -- the substance in his hair would be
10 something that the Department essentially cannot be -- abide
11 by.

12 THE COURT: Well I -- I understand. But quite frankly if
13 it's one, two or fifteen, if the probative value of those
14 concerns is not that paramount, it doesn't make any
15 difference.

16 MS. KIM: And I do -- I would object that -- in that this
17 is to -- again, whereas safety concerns regarding Kelssy with
18 the natural father has something that he can work on his case
19 plan regarding Analia because this is not his biological
20 child.

21 Judge, I would ask that we hold off. We're not
22 saying this placement cannot be. We still want to keep the
23 siblings together or try to place them together. But we're
24 gonna have a subsequent test to see if there's decline. This

1 is something that the Department cannot do currently. And
2 we're asking The Court work with us and that Mr. Troilo
3 understands. I believe Chandler's spoken with Mr. Troilo
4 about the concerns and as well as Ms. Gallagher. It's not
5 affecting his placement of Kelssy. But however if --

6 THE COURT: All right. All right, I'm gonna -- I'm not
7 gonna change it. I may modify what Hearing Master Kurtz did
8 and just state that Analia may continue to reside with fictive
9 kin William, so long as William continues to reside with his
10 parents and so long as the drug testing of William reflects
11 any urine test is negative for controlled substances and that
12 his hair tests remain at the same or lower levels --

13 MS. GALLAGHER: Okay.

14 THE COURT: -- over time.

15 MS. GALLAGHER: Thank you, Your Honor.

16 THE COURT: All right.

17 MS. KIM: Kelssy's --

18 THE COURT: Well --

19 MS. KIM: Analia's not placed currently.

20 MS. GALLAGHER: Well then they never -- you never flip --

21 THE COURT: Followed through.

22 MS. GALLAGHER: It was approval, but they never moved her
23 in because they found out about the drug test.

24 THE COURT: Right.

1 MS. KIM: We were waiting for your Court's ruling.
2 MS. GALLAGHER: Correct.
3 MS. KIM: So --
4 THE COURT: Okay. That's --
5 MS. KIM: Judge, we will do another -- currently,
6 Analia's not placed. We're gonna do another urine test. So
7 if my understanding is clear, if Mr. Troilo submits to a UA
8 and it's clean and his hair remains or declines --
9 THE COURT: It's consider --
10 MS. KIM: -- then placement is appropriate.
11 THE COURT: Yeah, I just said the same or declining.
12 MS. KIM: Okay, same.
13 THE COURT: And it -- it can't be the same.
14 MS. KIM: Thank you.
15 THE COURT: So long as the hair testing is consistent
16 with no new use.
17 MS. GALLAGHER: Okay.
18 MS. KIM: And then the child can be placed. Thank you.
19 THE COURT: Then the child can be placed.
20 MS. KIM: Thank you.
21 MS. GALLAGHER: Okay.
22 THE COURT: All right. We good?
23 MS. KIM: Thank you.
24 THE COURT: So we need a review date?

1 MS. KIM: Please.

2 THE COURT: I've got a February 4th removal. So --

3 THE CLERK: August 8. August 8 at one-thirty in
4 Courtroom 14.

5 THE COURT: It's gotta be before August 4th. Is February
6 4th --

7 THE CLERK: Oh, I'm sorry, Judge. August 4th.

8 THE COURT: Okay.

9 THE CLERK: I'm reading it. August 4th at one-thirty in
10 Courtroom 14. Yes.

11 THE COURT: That's the review date. August 4th, one-
12 thirty, Courtroom 14.

13 When are you due?

14 MS. HERNANDEZ: Excuse me?

15 THE COURT: What's your due date?

16 MS. HERNANDEZ: July 27th. But then I went to the
17 ultrasound and they told me August 3rd. So we're in between
18 the (laughing).

19 THE COURT: Well it would be nice to find out before we
20 come back whether or not the present child is --

21 MS. HERNANDEZ: Uh-huh (in the affirmative).

22 THE COURT: -- Balderas'.

23 (THE MARSHAL HANDS DOCUMENTS TO MS. HERNANDEZ AND MR.
24 BALDERAS.)

1 MR. BALDERAS: Thank you.

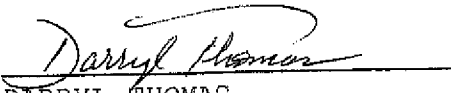
2 MS. HERNANDEZ: Thank you.

3 THE COURT: Ms. Kim, do you want these?
4

5 (THE PROCEEDING ENDED AT 11:06:22.)

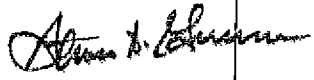
6 * * * * *

7 ATTEST: I do hereby certify that I have truly and correctly
8 transcribed the digital proceedings in the above-entitled case
9 to the best of my ability.

10 
11 DARRYL THOMAS,
12 Transcriber II
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**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA**

In the Matter of:
ANALIA HERNANDEZ
Date of Birth: 10-08-2011
A Minor, 2 Years and 05 Month(s) of Age

COURT CASE NO.: J-14-332774-
U1
DEPT.: FAMILY JUVENILE

KELSSY HERNANDEZ
Date of Birth: 10-14-2012
A Minor, 1 Years and 05 Months of Age

CASE PLAN

Date of Hearing: 03-31-2014

Time of Hearing: 10:00 AM

Courtroom: JUDGE TEUTON - #11

CASE PLAN: Please see Attachment: Manuela Hernandez

Submitted by:



CHANDLER LEVRICH
CASE MANAGER
DEPARTMENT OF FAMILY SERVICES

DATE: 03-31-2014

Hay servicios gratis de ayuda con otros idiomas. Para pedir un intérprete, llame por favor al Coordinador de Servicios de Intérpretes al 671-4578.

Free language assistance services are available. To request an interpreter, please call the Language Assistance Coordinator at 671-4578.

Case Plan Information

Case: 1381751 - HERNANDEZ, MANUELA, E.	Opened Date: 09-12-2012	Closed Date:
Status: Draft	Effective: 03-31-2014	Review Due: 10-30-2014
Author: LEVRICH, CHANDLER	Approved:	Court Approved:
Plan Created: 03/28/2014 17:36:24	Plan Last Modified: 03/28/2014 17:36:24	Court Case: J-14-332774-UI

Permanency Goal Summary

Child	Goal	Targeted Completion	**Prevent Removal**
1921993 - HERNANDEZ, ANALIA, I.	Reunification	02-04-2015	N
1982426 - HERNANDEZ, KELSSY	Reunification	02-04-2015	N

**For Permanency Goal A, the undersigned caseworker has determined that 'without the preventive services described in this Case Plan, the child(ren) are at imminent risk of removal and placement into foster care.' **

Assessment Summary**1. Describe the parent's perception of his/her problems and service needs.**

Participant: HERNANDEZ, MANUELA, E.

Ms. Hernandez needs to address non-offending parent physical abuse classes, demonstration of protective capacity, anger management classes domestic violence classes, needs to address her legal matters, and to cooperate with DFS.

2. Describe the strengths of the family and child(ren) that will help the family achieve their permanency goal.

Ms. Hernandez loves her children, is pregnant again and wants to create a stable home for her children. Her children are attached to her.

3. Describe assessed safety and/or risk factors identified with each parent. (Ensure these services are included in the Case Plan.)

Participant: HERNANDEZ, MANUELA, E.

Ms. Hernandez has a lack of protective capacity and has diminished the abuse that Mr. Baldoras inflicted on KELSSY as a result of him not liking KELSSY'S natural father. Ms. Hernandez is in need of non-offending parent physical abuse therapy. Ms. Hernandez needs to demonstrate her protective capacity, and address her anger management. She will have to address her domestic violence and her legal matters. In cooperating with DFS, she will submit to drug testing and if positive, will have to submit to substance abuse assessment.

4. A history of services offered or provided to the family to prevent removal. If services were not provided, state why.

Referrals were made to non-offending parents classes, drug tests were given, the children were placed into foster care and then KELSSY was placed with her natural father.

Objective: MS. HERNANDEZ WILL ADDRESS HER PHYSICAL ABUSE ISSUES AS A NON-OFFENDING PARENT.

Measurement for Success: Ms. Hernandez will thoroughly, comprehensively, convincingly, and in a forthright manner, address the precipitating risk factors, triggers, and sequence of antecedent events which led to the physical abuse sustained by KELSSY, and actively participate in the development of a safety plan to prevent recurrence

Objective Completion Result:

Action Step	For	Start	Target	Result
Ms. Hernandez will have completed an assessment to determine her need for individual and/or group counseling to address the issues of protective capacity	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will follow any and all recommendations of the assessment	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will attend individual and/or group counseling, with a provider approved by DFS, to identify the cause of the traumatic non-accidental injuries inflicted to KELSSY as well as the precipitating factors, risk factors, triggers, coping and parenting skills deficits which caused same.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will consistently demonstrate the acquisition and application of a safe, non-abusive parenting philosophy and practice, enhanced knowledge of age appropriate expectations and behavior of children, parenting competencies and increased protective capacity to ensure the safety of the children.	HERNANDEZ, MANUELA, E.	03-31-2014		

000041

Ms. Hernandez will show empathy for the inju children suffered and not minimize the abuse

HERNANDEZ, MANUELA, E.

03-31-20

Objective: MS. HERNANDEZ WILL ADDRESS HER DOMESTIC VIOLENCE ISSUES SO THAT DOMESTIC VIOLENCE NO LONGER OCCURS.

Measurement for Success:

Ms. Hernandez is able to verbalize to the case manager and other family supports the underlying reasons why domestic violence has occurred. She is able to verbalize the affects of physical and emotional domestic violence on her children at CFT's.

Objective Completion

Result:

Action Step	For	Start	Target	Result
Ms. Hernandez will complete an intake assessment for domestic violence and follow the recommendations of the therapist. This assessment will include any secondary referral for anger management if determined necessary.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will participate in additional therapy/individual counseling if it is determined by the therapist including anger management.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will sign a release of information form in order for DFS to obtain treatment information and report it to the Court	HERNANDEZ, MANUELA, E.	03-31-2014		

Objective: MS. HERNANDEZ WILL ADDRESS LEGAL MATTERS.

Measurement for Success:

Ms. Hernandez has refrained from criminal activity and addressed legal matters. Ms. Hernandez has shown that she is refraining from criminal arrests. Ms. Hernandez will have shown that she has refrained from criminal offenses that impair her ability to protect and supervise her children.

Objective Completion

Result:

Action Step	For	Start	Target	Result
While the case is open, DFS will not receive any new reports of law enforcement engagement that result in or place the subject minors at risk of harm or in danger.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will cooperate with law enforcement regarding her charges of domestic violence.	HERNANDEZ, MANUELA, E.	03-31-2014		

Objective: MS. HERNANDEZ WILL COOPERATE WITH THE DEPARTMENT OF FAMILY SERVICES

Measurement for Success:

Ms. Hernandez has allowed the Department of Family Services to conduct home visits, announced and unannounced. All documentation has been provided to the Department of Family Services as requested. Release of information forms have been signed for all service providers. Ms. Hernandez has maintained regular contact with the Department of Family Services and participated in Child and Family Team meetings.

Objective Completion

Result:

Action Step	For	Start	Target	Result
Ms. Hernandez has signed a Release of Information form for all service providers and allowed DFS to obtain information on treatment progress.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will have met with assigned caseworker as needed and will provide truthful and accurate information regarding her lifestyle as it relates to the safety of the children.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez has notified DFS of any change of phone number, address or household composition within 24 hours of the change having taken place.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will allow DFS to enter home and inspect for safety of child at announced and unannounced visits.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will participate in Child and Family Team meetings as scheduled.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will submit to drug testing if there is reason to believe that she is under the influence of	HERNANDEZ, MANUELA, E.	03-31-2014		

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controlled substances, and if positive at any time submit to a substance abuse assessment and follow recommendations.

Objective: MS. HERNANDEZ WILL ADDRESS HER PARENTING ISSUES.

Measurement for Success:

Ms. Hernandez will demonstrate new learned parenting skills during visitation or during home visits by the case manager. Visitation has occurred on a regular basis. Ms. Hernandez will be observed to respond appropriately through both verbal and non-verbal communication to her children during visitation and during home visits. Ms. Hernandez refers to her children in positive terms. Ms. Hernandez will respond positively and actively participates to services her children are involved in.

Objective Completion Result:

Action Step	For	Start	Target	Result
Ms. Hernandez will be able to discuss the needs and abilities of her children with the Department and other service providers.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will regularly attend visitation and have positive reports from visitation supervisors if at the visitation center.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will enroll in parenting courses through a DFS approved provider.	HERNANDEZ, MANUELA, E.	03-31-2014		
Ms. Hernandez will display appropriate parenting skills and techniques during her supervised visitations.	HERNANDEZ, MANUELA, E.	03-31-2014		

Child: 1921903 - HERNANDEZ, ANALIA, I.

Permanency Goal for this child: Reunification

Target Date: 02-04-2015

Concurrent Goal: Adoption

Placement: Licensed foster home

1. Describe the adjustment of the child to placement

Is adjusting to placement but is missing her sister.

2. What medical, mental health, behavioral or educational care needs have been identified for this child?

No medical, mental health, behavioral or educational needs have been identified for this toddler at this time. ANALIA is being monitored for emerging issues and is receiving regular medical care.

3. What services are in place to ensure the above needs are met?

Regular Medicaid is provided and she is being assessed for services as appropriate.

4. Describe the services provided to the caregiver to address the specific needs of the child.

Medicaid is provided as well as regular case management provided by the Case manager who visits monthly.

5. How is the case worker going to monitor the child's care and services (including routine medical, behavioral and education care)?

Through monthly home visits, medical record ordering and by attending CFTs and TTM's.

6. Is this child placed in a NRS432B.3905 compliant placement? Yes if not, explain why.

Child: 1982426 - HERNANDEZ, KELSSY

Permanency Goal for this child: Reunification

Target Date: 02-04-2015

Concurrent Goal: Permanent Placement with a fit and willing relative

Placement: Natural father

1. Describe the adjustment of the child to placement

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KELSSY has been placed with her natural father. She is well adjusted to him and the home.

2. What medical, mental health, behavioral or educational care needs have been identified for this child?

Mr. Troilo-Laszlo needs to apply for Nevada Medicaid, if he hasn't already done so.

3. What services are in place to ensure the above needs are met?

Through monthly in home visits with the child and caretaker to monitor services and to provide referrals as necessary.

4. Describe the services provided to the caregiver to address the specific needs of the child.

In home case management and case monitoring on an ongoing basis and for redetermination of needed services and referrals.

5. How is the case worker going to monitor the child's care and services (including routine medical, behavioral and education care)?

Through in home visits, ordering medical records and reevaluating needs and referring for services.

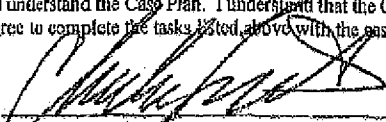
6. Is this child placed in a NRS432B.3905 compliant placement? Yes. If not, explain why.

Education Information

Child	Current Grade	Started	Completed	Likely Graduation	School
1921993 - HERNANDEZ, ANALIA, I.					Not of school age
1982426 - HERNANDEZ, KELSSY					Not of school age

This case plan is a collaborative effort between the family and the child welfare agency to discuss the circumstances that led to your child(ren)'s removal and the goals that are necessary for you to maintain your child(ren) in the home or to safely return your child(ren) to your home.

I have read and understand the Case Plan. I understand that the Case Plan is a living document which is subject to revision based on any risk and safety factors not previously identified. I agree to complete the tasks listed above with the case manager from the Clark County Department of Family Services (DFS).



DFS Permanency Worker

DFS Supervisor

Participant	Role	Signature
1921993 - HERNANDEZ, ANA LIA, I.	Child	
1982426 - HERNANDEZ, KELSSY	Child	
1921989 - HERNANDEZ, MANUELA, E.	Parent	

In-Home Case:

☐ Please be advised that while you are entering into this agreement voluntarily, there are circumstances that result in harm to a child presented by both federal law and state law that may require the Clark County Department of Family Services to initiate legal proceedings to find a home for your children outside of your care.

Parent Initials: _____; Worker Initials: _____ Date Initialed: ____/____/____

☐ If you do not take the Action Steps and meet your Objectives that are stated in the case plan or follow through with the services offered and provided, DFS may take actions to protect and remove the child(ren) from your care and place them in foster care.

Parent Initials: _____; Worker Initials: _____ Date Initialed: ____/____/____

☐ This case plan will be reviewed every 30 days. New objectives can be added at the review to address any identified safety threats or any moderate or serious problems based on assessments.

Parent Initials: _____; Worker Initials: _____ Date Initialed: ____/____/____

Out of Home Case:

☐ The Adoption and Safe Families Act (ASFA) requires that all children in foster care must have a court approved permanency plan within 12 months after removal from the home. A court approved permanency plan will meet a child's basic health and safety needs in one of the following ways: Maintaining the children in the home/preventing removal, Reunification, Adoption, Legal Guardianship, Permanency placement with a relative, Other Planned Permanent Living Arrangement (OPPLA). As stated in the NRS 432B.590 if a child has been placed outside his home and has resided outside his home pursuant to that placement for 14 months of any 20 consecutive months, the best interest of the child must be presumed to be termination of parental rights and placement for adoption. The 14th month from the most recent removal is ____/20____ (month/year).

Parent Initials: _____; Worker Initials: _____ Date Initialed: ____/____/____

☐ Substantial achievement of these objectives identified in the case plan may not prevent a court from terminating your parental rights based on the legal factors, such as abandonment, neglect, parental unfitness or unreasonable risk of harm to the child. In addition the District Attorney's office or the Department of Family Services may request a waiver of reasonable efforts by the court based on the above plus the occurrence of previous adjudication and/or termination of parental rights by the court.

Parent Initials: _____; Worker Initials: _____ Date Initialed: ____/____/____

☐ This case plan will be reviewed with the family every 90 days, prior to reunification, or at the time the permanency goal(s) has changed. New objectives can be added at the review to address any identified safety threats or any moderate or serious problems based on assessments.

Parent Initials: _____; Worker Initials: _____ Date Initialed: ____/____/____

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REGISTER OF ACTIONS

CASE NO. J-14-332774-UI

Hernandez, Manuela Elvira, Mother

Case Type: Juvenile Protection - Under 6

Case Type: Juvenile Protection - Under 6

Date Filed: 02/19/2014

Location: Family Juvenile

Cross-Reference Case Number: J332774

Number:

UNITY Case Number: 1381781

PARTY INFORMATION

Lead Attorneys

Father	Balderas, Jonathan	DOB: 09/09/1993	
Father	Pizzaro-Ullauri, Israel	DOB: 08/03/1990	
Father	Trolio-Laszlo, William	DOB: 07/13/1992	Denise A Gallagher, ESQ Court Appointed 702-240-4447(W)
Juvenile Subject Minor	Hernandez, Analia	DOB: 10/03/2011	
Juvenile Subject Minor	Hernandez, Kelsay	DOB: 10/14/2012	
Mother	Hernandez, Manuela Elvira	DOB: 05/05/1993	Special Public Defender Court Appointed
State of Nevada	State of Nevada		Steven B Wolfson Retained 702-455-5320(W)

EVENTS & ORDERS OF THE COURT

03/13/2014 Adjudicatory Trial (1:30 PM) (Magistrate Kurtz, Thomas G.)
Parents

Minutes

03/13/2014 1:30 PM

- (Analia and Kelsay Hernandez) Department of Family Services (DFS) represented by Joanna Watts. Ms. Kim stated Mother will enter a plea of ADMITTED with the STANDARD STIPULATION to the following; allegation "B" - the second sentence will be STRICKEN from the Petition, allegation "C" shall remain, allegation "D" a portion of the language will be STRICKEN from the petition as stated on the record by counsel, allegation "E" will be STRICKEN as to Mother, allegation "F" will be STRICKEN as to the Mother, allegation "G" - the allegations as to Mother will STAND, allegation "H" - will be STRICKEN as to Mother. As to Mr. Lazlo, allegations "K" and "L" will be STRICKEN and the Petition will be DISMISSED as to Mr. Lazlo with a FURTHER PROCEEDINGS in 120 days. Father will be required to do a substance abuse assessment as well as a domestic violence assessment and follow all recommendations. As to Mr. Pizzaro-Ullauri, the State has attempted to serve him and as he has not appeared today the State is requesting to go forward with the prove-up as to Mr.

Pizzaro-Ullauri. Court canvassed the Mother and Mr. Lazlo. Court explained their rights. Court ACCEPTED Mother's ADMITTED plea as to Amended Petition 1. Court explained the Further Proceedings to Mr. Lazlo and notified him that a court date will be set in 120 days to see if he has complied with the requirements and that if he has, the allegations against him will be Dismissed from the Petition. Ms. Gallagher requested the matter be set for a Status Check regarding placement as her client's mother would like to be placement but she has a very, very old substantiation against her and the Department is staffing the request for placement with the paternal grandmother due to this old substantiation. Court asked Mr. Balderas if he was ready to enter a plea. Mr. Balderas stated he feels he should have counsel appointed as he cannot represent himself. Court noted counsel has been offered to him at which time he stated he would retain his own counsel. This matter is set for trial and will go forward today. Opening statements waived. Witnesses sworn and testified. The Court heard testimony from State's witnesses; Renee Ramirez, Jonathan Balderas, and DFS caseworker, Joanna Watts. Closing argument by Ms. Kim. Ms. Kim asked the court to substantiate the Petition as to Mr. Balderas. Following testimony, COURT FINDS, State has met its burden of proof by a preponderance of the evidence and FOUND Petition 1 to be True as to Mr. Balderas. COURT RECOMMENDED, subject minors ADJUDICATED Abuse/Neglected Children and placed under the jurisdiction of the Dependency Court and that legal custody is placed with the Clark County Department of Family Services. Matter set for DISPOSITION as to Mother and Mr. Balderas, FURTHER PROCEEDINGS as to Mr. Lazlo, and STATUS CHECK regarding placement with the paternal grandmother.

Parties Present

Return to Register of Actions

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1 **MOT**

2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER

4 Nevada Bar No. 0824

5 ABIRA GRIGSBY, ESQ.

6 DEPUTY SPECIAL PUBLIC DEFENDER

7 Nevada Bar No. 10308

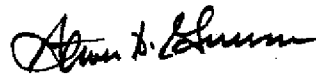
8 330 South Third Street, 8th Floor

9 Las Vegas, Nevada 89155

10 Tel: (702) 455-6265

11 Fax: (702) 380-6948

12 Abira.grigsby@clarkcountynv.gov



CLERK OF THE COURT

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **FAMILY DIVISION - JUVENILE**
10 **CLARK COUNTY, NEVADA**

11 In the Matter of:)

CASE NO: J-14-332774-U1

12 ANALIA HERNANDEZ,)

DEPT. NO.: D

13 Date of Birth: 10/03/2011)

14 KELSSY HERNANDEZ)

15 Date of Birth: 10/14/2012)

16 Minor.)

17 ORAL ARGUMENT REQUESTED: Yes ☐ No ☒

18 **NOTICE YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO**
19 **THIS MOTION WITH THE CLERK AND TO PROVIDE THE**
20 **UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN**
21 **(10) DAYS OF YOUR RECEIPT OF THIS MOTION FAILURE TO FILE A**
22 **WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN**
23 **TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT**
24 **IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT**
25 **WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

22 **MOTION TO AMEND CASE PLAN**

23 COMES NOW Manuela Hernandez, through her attorney, DAVID M. SCHIECK, ESQ.
24 SPECIAL PUBLIC DEFENDER, and ABIRA GRIGSBY, ESQ. Deputy Special Public
25 Defender, hereby moves this Honorable Court for an order amending the case plan filed on April
24, 2014.

1 This Motion is made and based upon based upon the attached Points and Authorities,
2 Pleadings and papers on file in this action.

3 **NOTICE OF MOTION**

4 TO: JIN KIM, ESQ., District Attorney; and

5 TO: MARY MCCARTHY, ESQ., Counsel for minor child.

6 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the above and
7 10/13/2014 11:00 AM
foregoing Objection will be heard on the ____ day of ____, 2014 at ____ o'clock
8 ____, M. in Dept D.

9 DATED this 18th day of September, 2014

10
11 DAVID M. SCHIECK
12 SPECIAL PUBLIC DEFENDER

13
14 By 

15 ABIRA GARGSEY, ESQ.

16 Deputy Special Public Defender

17 Nevada Bar # 10308

18 330 S. Third St., 8th Floor

19 Las Vegas, Nevada 89155

20 (702) 455-6265

21 Attorney for Respondent
22
23
24
25

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 A protective custody hearing was held on February 6, 2014 before District Court Judge,
4 Robert Teuton. The District Court made a finding that it was contrary to the welfare of the
5 children to remain in their home due to concerns of physical abuse. The concern regarding Ms.
6 Hernandez was her failure to protect the children from physical abuse by her boyfriend. A
7 Petition was filed on February 19, 2014. An adjudicatory trial was set for March 13, 2014. At
8 that time, Ms. Hernandez plead to the Petition pursuant to negotiations. An amended petition
9 was filed on March 26, 2016, reflecting the revisions in the Petition that were negotiated. A
Report and Disposition hearing was held on March 31, 2014.

10 At the Review and Disposition hearing, Ms. Hernandez was presented with her case plan
11 and the District Court reviewed it with her. Ms. Hernandez objected to random drug testing as
12 listed as an action step under the Objective to cooperate with the Department of Family Services.
13 Ms. Hernandez argued that there were not any allegations in the Petition regarding substance
14 abuse and Ms. Hernandez already submitted to a clean drug test, which was intrusive enough.
15 There is no nexus between the drug testing and the negotiated amended petition.

16 The District Court asked the reasoning for the action step of drug testing. The
17 caseworker, Chandler Levrich responded that "she is habitually in the presence of people that are
18 using drugs, and the fact that she may not be an ongoing and continuous user does bring up the
19 possibility that she may be nevertheless an infrequent use." Ms. Hernandez argued that there is
not any evidence that she has ever used drugs.

20 The District Court amended the case plan to state that Ms. Hernandez will submit to drug
21 testing if there is a reasonable belief that she is using non-prescribed controlled substances. Ms.
22 Hernandez argued that it should be probable cause standard not a reasonable belief. The District
23 Court kept it as a reasonable belief test in the case plan.

24 Thereafter, Ms. Hernandez filed a Writ with the Supreme Court. The Nevada Supreme
25 Court denied the Writ on September 16, 2014 finding that Ms. Hernandez has an adequate legal
remedy by which is to challenge the drug-testing portion of her case plan in the form of a motion

1 to revoke or modify the case plan under NRS 432B.570(1). Therefore, Ms. Hernandez is filing
2 this Motion.

3 ARGUMENT

4 NRS 432B.570 provides:

- 5 1. A motion for revocation or modification of an order issued pursuant to NRS
6 432B.550 or 432B.560 may be filed by the custodian of the child, the
7 governmental organization or person responsible for supervising the care of the
8 child, the guardian ad litem of the child or a parent or guardian. Notice of this
9 motion must be given by registered or certified mail to all parties of the
10 adjudicatory hearing, the custodian and the governmental organization or person
11 responsible for supervising the care of the child.
- 12 2. The court shall hold a hearing on the motion and may dismiss the motion or
13 revoke or modify any order as it determines is in the best interest of the child.

14 Ms. Hernandez is requesting that this Court modify her case plan to delete the
15 requirement of drug testing. The Nevada Supreme Court in its Order denying the Petition for
16 Writ in this case cited to In Re Sergio C., 83 Cal. Rptr. 2d 51, 53 (Cl. App. 1999). In that case,
17 the Appellant argued that there was not sufficient evidence to require drug testing and the
18 Appellate Court agreed. The California Appellate Court found that the only evidence of the
19 Appellant's alleged drug use was the mother's unsworn and unconfirmed allegation, which was
20 flatly denied by Appellant. The Court held that drug testing cannot be imposed based solely on
21 the unsworn and uncorroborated allegation of an admitted drug addict who has abandoned her
22 children. There must be some investigation by DCFS to warrant the kind of invasive order that
23 was made. For that reason, the Court reversed the order and remanded to the dependency court
24 with directions to order a further investigation before deciding whether, in fact, drug testing is
25 necessary. Id.

26 In this case, there is not any evidence that Ms. Hernandez uses drugs. In fact, she has
27 submitted to a negative drug test. There is nothing that was presented to the Court that would be
28 sufficient to warrant drug testing in the case plan. In addition, the requirement to drug test
29 without probable cause violated Ms. Hernandez's Fourth Amendment rights.

30 The Fourth Amendment protects only against unreasonable invasions of privacy.
31 Traditionally, in resolving issues implicating the Fourth Amendment right to privacy, the

1 touchstone question is whether the invasion of privacy is reasonable. The reasonableness of an
2 intrusion on the Fourth Amendment right to privacy is determined by balancing the public
3 interest and the individual's right to personal security free from arbitrary interference by law
4 officers¹.

5 A primary concern, when determining the reasonableness of an intrusion on the Fourth
6 Amendment right to privacy, is to assure that an individual's reasonable expectation of privacy is
7 not subject to arbitrary invasions solely at the unfettered discretion of officers in the field².
8 However, this right to privacy is not absolute³. Like all freedoms we enjoy, it includes both
9 limitations and responsibilities.

10 The overriding purpose of the Fourth Amendment is to protect personal privacy and
11 dignity against unwarranted intrusions⁴. A Fourth Amendment search for evidence must be
12 based on probable cause⁵. In Missouri v. McNeely, the United States Supreme Court ruled that
13 an officer must obtain a search warrant to forcibly draw a sample of a DUI suspect's blood for
14 testing. In addition, a Fourth Amendment police search for evidence must be based on probable
15 cause⁶.

16 This Court in Bolin v. State stated, "acquiring blood samples constituted searches within
17 the ambit of the Fourth Amendment and were thus subject to its stringent probable cause
18 requirements⁷." Evidence and the "fruits" thereof obtained in violation of the Fourth
19 Amendment are inadmissible⁸. The Fourth Amendment is controlling on the States through the
20 Fourteenth Amendment of the United States Constitution⁹.

21 The taking of blood from an individual for evidence in a criminal prosecution triggers
22 Fourth Amendment protections. The Court in Schmerber v. California, stated:

23 ¹ Pennsylvania v. Mimms, 434 U.S. 106, 109, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977)

24 ² Delaware v. Prouse, 440 U.S. 648, 654-55, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979)

25 ³ Id.

⁴ Schmerber v. California, 384 U.S. 757, 767 (1966)

⁵ Henry v. United States, 361 U.S. 98 (1959); Schmerber v. California, *supra* and Bolin v. State, *supra* at 523

⁶ Henry v. United States, 361 U.S. 98 (1959)

⁷ Bolin v. State, 114 Nev. 503, 960 P.2d 784 (1998)

⁸ Wong Sun v. United States, 371 U.S. 471 (1963)

⁹ Mapp v. Ohio, 367 U.S. 643 (1961)

1 The values protected by the Fourth Amendment thus substantially overlap those
2 of the Fifth Amendment helps to protect. History and precedent have required
3 that we today reject the claim that the Self-Incrimination Clause of the Fifth
4 Amendment requires the human body in all circumstances to be held inviolate
5 against state expeditions seeking evidence of crime. But if compulsory
6 administration of a blood test does not implicate the Fifth Amendment, it plainly
7 involves the broadly conceived reach of a search and seizure under the Fourth
8 Amendment. The Amendment expressly provides that "[t]he right of the people
9 to be secure in their persons, houses, papers, and effects, against unreasonable
10 searches and seizures shall not be violated." It could not reasonably be argued,
11 and indeed respondent does not argue, that the administration of the blood test in
12 this case was free of the constraints of the Fourth Amendment. Such testing
13 procedures plainly constitute searches of "persons," and depend antecedently
14 upon seizures of "persons," with the meaning of that Amendment¹⁰.

15 The United States Supreme Court has set a "special needs" exception to the both the
16 probable cause and warrant requirement. "A search unsupported by probable cause can be
17 constitutional [the Court] when special needs beyond the normal need for law enforcement¹¹,
18 make the warrant and probable cause requirement impracticable¹². An emergency is one of the
19 narrow exceptions to the warrant requirement.¹³ An "inchoate and unparticularized suspicion or
20 hunch cannot withstand scrutiny under the Fourth Amendment¹⁴. The United States Supreme
21 Court has criticized assertions of special needs based on hypothetical hazards that are

22 ¹⁰ Schmerber, at 467

23 ¹¹ "(emphasis added) Griffin v. Wisconsin, 483 U.S. 868, 873, 107 S.Ct. 3164 (1987)

24 ¹² Special needs have been found to exist in primarily government administrative actions such as railroad operators
25 who were involved in accidents, Skinner, *supra*; automobile checkpoints to discover drunk drivers and illegal
immigrants, Michigan Dept of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481 (1990); United States v. Martinez-
Fuerte, 428 U.S. 543, 96 S.Ct. 3074 (1976); inventory searches of an automobile after a suspect is taken into
custody, Colorado v. Bertine, 479 U.S. 367, 107 S. Ct. 738 (1987).

¹³ State v. Rodriguez, 156 P.3d 771, 775 (Utah 2007)

¹⁴ United States v. Sokolow, 490 U.S. 1, 7, 104 L. Ed. 2d1, 109 S. Ct. 1581 (1989) (quoting Terry, 392 U.S. at 27)

1 unsupported by any indication of concrete danger demanding departure from the Fourth
2 Amendment's main rule.¹⁵

3 In U.S. v. Scott¹⁶, Defendant was arrested on charges of drug possession and released on
4 his own recognizance. One of the conditions of Defendant's release was random drug testing
5 without a warrant. Acting on an informant's tip, state officers went to defendant's home and
6 drug tested him without a warrant. The government conceded there was no probable cause to
7 test defendant for drugs. The Ninth Circuit found that the warrantless drug test violated the
8 Fourth Amendment as it was not supported by probable cause.

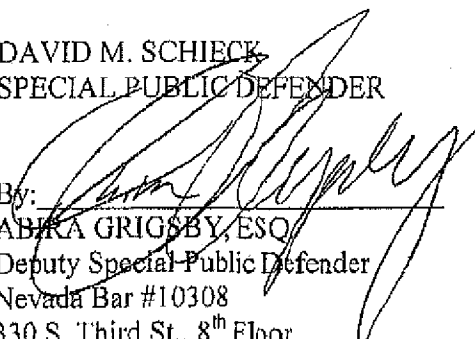
9 In the instant case, the District Court has given Department of Family Services the
10 authority to drug test Ms. Hernandez if the worker has reasonable belief that Ms. Hernandez is
11 using illegal drugs. The only reason presented for the requirement that Ms. Hernandez submit to
12 drug testing was that Ms. Hernandez may use drugs because Ms. Hernandez is around people
13 who abuse drugs. This clearly does not rise to probable cause. Ms. Hernandez has a Fourth
14 Amendment right to privacy. Parents do not lose their constitutional rights because they have
15 temporarily lost custody of their children. To require that Ms. Hernandez submit to random drug
16 testing without probable cause violates the Fourth Amendment of the Constitution.

17 CONCLUSION

18 Based on the foregoing, Ms. Hernandez respectfully requests this Court grant her Motion
19 in its entirety.

20 DATED this 18th day of September, 2014

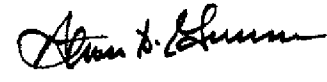
21 DAVID M. SCHIECK
22 SPECIAL PUBLIC DEFENDER

23 By: 
24 ABIRA GRIGSBY, ESQ.
25 Deputy Special Public Defender
Nevada Bar #10308
330 S. Third St., 8th Floor
Las Vegas, Nevada 89155
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¹⁵ Chandler v. Miller, 520 U.S. 305, 319, 117 S. Ct. 1295

¹⁶ United States v. Scott, 450 F.3d 863 (9th Cir. Nev. 2006)

1 OPP
2 STEVEN B. WOLFSON
3 District Attorney
4 Nevada Bar No. 1565
5 By: JIN KIM
6 Deputy District Attorney
7 Nevada Bar No. 9603
8 601 N. Pecos Rd., Ste. 470
9 Las Vegas, NV 89101
10 (702) 455-5879


CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

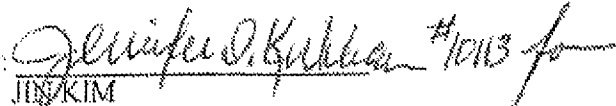
In the Matter of:)	Case No.: J-14-332774-UI
ANALIA HERNANDEZ,)	Courtroom: 14
DOB: 10-03-2011)	
KELSSY HERNADEZ)	Hearing Date: October 14, 2014
DOB: 10-14-2012)	Time of Hearing: 11:00 a.m.
Minors.)	

OPPOSITION TO AMEND CASE PLAN

COMES NOW the State of Nevada, by and through District Attorney, STEVEN B. WOLFSON, by and through Deputy District Attorney, JIN KIM, and files this OPPOSITION TO AMEND THE CAPSE PLAN. This OPPOSITION is based upon the following points and authorities.

DATED this 15th day of October, 2014.

STEVEN B. WOLFSON
DISTRICT ATTORNEY

By:  #10113 for
JIN KIM
Deputy District Attorney
Nevada Bar No. 9603
601 N. Pecos Rd., Ste. 470
Las Vegas, NV 89101

FACTUAL BACKGROUND

Minors Analia Hernandez (hereinafter, "Analia") and Kelssy Hernandez (hereinafter, "Kelssy") were removed from Petitioner's care on or about February 4, 2014, because Kelssy presented at the Sunrise Children's Hospital exhibiting bruising to the cheeks, swelling to the left cheek, diffuse bruising to the entire forehead, bruising to the inside of the pinna, inner lip contusion, and bruising to the dorsal foot. Dr. Cetl noted that Kelssy's bruising to the face, forehead, and ears were too numerous and diffused to count. Kelssy was merely two years old at the time the injuries were discovered.

Kelssy came to the attention of DFS because the babysitter sought medical intervention for the two year old child; Petitioner did not seek medical care for the minor because she claimed she was working. Petitioner then claimed that the bruising was the result of an accident. On or about February 19, 2014, an abuse and neglect petition was filed against Petitioner and her boyfriend, Jonathan Balderas.

Petitioner Admitted to the Amended Petition on or about March 13, 2014, which was filed on March 26, 2014. Petitioner Admitted that she left the minors in the care of Jonathan Balderas even though she saw and/or knew that he slapped Kelssy twice in the face on or about January 3, 2014. Jonathan Balderas proceeded to trial and was found to have abused Kelssy resulting in the injuries as alleged in Petition number 1.

Amended Petition was found to be true as to Petitioner and Jonathan Balderas and the case plan was submitted to the district court for approval on March 31, 2014. The case plan proposed that Petitioner attend physical abuse assessment, domestic violence classes, cooperation with DFS, and randomly drug testing based on her diminished protective capacity and being around people who are using drugs. Petitioner's counsel opposed the random drug testing because Petitioner tested clean previously. This Court modified the case plan and deleted the random testing, but permitted DFS to test Petitioner if there was reasonable belief that Petitioner was under the influence of non-prescribed drugs. The Court further provided guidance of reasonable belief to include slurred speech or otherwise exhibiting that she is under the influence. The Court found that requiring a warrant for a drug test was unnecessary and that reasonable belief and court order would suffice.

The Court: First of all, he's not gonna be able to call her up and say you've got twenty-four hours to submit to a test. That's pretty intrusive given the facts here. If he's meeting with her and she's got slurred speech or she's otherwise exhibiting that she's under the influence of some

1 controlled substance, I'm not gonna require him to go get a warrant. That's good enough for me
2 to say, submit to a drug test. (AA, 00029, lines 15-22).

3 In approving drug testing if there is reasonable belief that Petitioner is under the influence, the
4 court noted that Petitioner already lacked protective capacity that she would otherwise possess.

5 POINTS AND AUTHORITIES

6 ARGUMENT

7 8 **I. The Case Plan comports with the law; it is designed to facilitate a safe and 9 permanent placement with Petitioner and therefore this motion must be denied.**

10 "[T]he state has a compelling interest in assuring that abused and neglected children
11 achieve safe, stable and permanent home environments within which to be reared." In re Parental Rights
12 as to D.R.H., 120 Nev. 422, 427, 92 P.3d 1230, 1233 (2004). NRS 432B.540 provides that if a child is
13 removed from the parent, a plan must be submitted designed to achieve a safe placement of the child
14 consistent with the best interests and special needs of the child. NRS 432B.540(2). The plan must
15 include *without limitation*: a description of the services to be provided to the child and the parent to
16 facilitate the return of the child to the custody of the parent or ensure the permanent placement. NRS
17 432B.540(2)(b) (emphasis added).

18 Chapter 432B is dedicated to protection of children and every statute contained therein must be
19 *construed liberally* to be afforded its purpose and meaning. Edgington v. Edgington, 119 Nev. 577,
20 582-83, 80 P.3d 1282, 1286-87 (2003) (emphasis added).

21 "[T]he construction of a statute is a question of law." In interpreting a statute, "words ... should
22 be given their plain meaning unless this violates the spirit of the act." Thus, when a statute's language is
23 clear and unambiguous, the apparent intent must be given effect, as there is no room for construction. If,
24 however, a statute is susceptible to more than one reasonable meaning, it is ambiguous, and the plain
25 meaning rule does not apply. Instead, the legislative intent must be ascertained from the statute's terms,
26 the objectives and purpose, " 'in line with what reason and public policy' " dictate. Statutory
27 interpretation should avoid meaningless or unreasonable results, and "[s]tatutes with a protective
28 purpose should be liberally construed in order to effectuate the benefits intended to be obtained."

1 Additionally, "[w]hen construing a specific portion of a statute, the statute should be read as a whole,
2 and, where possible, the statute should be read to give meaning to all of its parts." *Id.*

3 The plain language of NRS 432B.540 mandates that if the child is removed from the home, a
4 plan without limitation must provide services to the parent and the child to *ensure permanent*
5 *placement*. NRS 432B.560(1) also grants the district court the ability to order the parent into any
6 treatment that is in the best interest of the child. The case plan comports with the law and the district
7 court did not abuse its discretion in ordering Petitioner to submit to drug testing if she is exhibiting
8 signs that she is under the influence of drugs.

9 Petitioner cites to *In re Sergio*, 70 Cal.Appt.4th 957, to limit this Court's broad discretion but *In*
10 *re Sergio* is factually distinguishable and not persuasive. *In re Sergio*, the petitioner was the custodial
11 father who pled no contest to the underlying abuse and neglect petition. The child remained in home
12 and the court ordered the father to submit to *random* drug tests and other requirements. After the father
13 appealed DCFS conceded that the underlying petition should not have been sustained.

14 Here, the petition was substantiated and there is no challenge to the sufficiency of the abuse and
15 neglect petition as to Petitioner. Moreover, this Court's permitting drug test if there is reasonable
16 suspicion that Petitioner is exhibiting signs of being under the influence is within the Court's discretion.

17 Petitioner argues that the court cannot order her to submit to drug testing if reasonable suspicion
18 is present because the abuse and neglect petition did not allege that she used drugs and that the petition
19 is the only basis for State's interference. This argument ignores the court's broad discretion in ensuring
20 that the case plan effectively achieves the goal of *permanent* and safe reunification pursuant to NRS
21 432B.540 and 432B.560(1)(a)(b)(1). If Petitioner's argument is permitted, DFS and the court are to
22 only look at the family's problems in a tunnel and ignore other obvious problems which create barriers
23 to the child returning home safely and permanently. Essentially, even if Petitioner shows signs of
24 substance abuse as the case progresses, DFS and the Court cannot address the problem as it arises.

25 Petitioner's argument promotes an irrational result, that the case plan can only myopically
26 address the known problem of the parent at the time of the child's removal and ignore other problems
27 that become obvious as the case progresses regardless of the safety and permanency goal. Petitioner's
28 argument is contrary to the legislative intent and plain language of the statutes.

1 Because the Court conditioned the drug test with a showing of reasonable suspicion, there is no
2 violation of the Fourth Amendment and the Court is within its discretion.

3 A. Petitioner's requirement that she submit to drug testing if there is reason to believe she is
4 under the influence of controlled substance is reasonable and not violative of the Fourth
5 Amendment.

6 The Fourth Amendment proscribes only unreasonable search and seizure. What is reasonable,
7 of course, "depends on all of the circumstances surrounding the search or seizure and the nature of the
8 search or seizure itself." United States v. Montoya de Hernandez, 473 U.S. 531, 537, 105 S.Ct. 3304,
9 3308, 87 L.Ed.2d 381 (1985). Thus, the permissibility of a particular practice "is judged by balancing its
10 intrusion on the individual's Fourth Amendment interests against its promotion of legitimate
11 governmental interests." Delaware v. Prouse, 440 U.S., at 654, 99 S.Ct., at 1396; United States v.
Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976).

12 Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 619, 109 S. Ct. 1402, 1414, 103 L. Ed. 2d
13 639 (1989); Chandler v. Miller, 520 U.S. 305, 117 S.Ct. 1295, 1297 (1997) (the pivotal question is
14 whether or the searches are reasonable; to be reasonable under the Fourth Amendment, a search
15 *ordinarily must be based on individualized suspicion of wrong doing*) (emphasis added).

16 In most criminal matters, the balance may favor the need for warrants. Id. However, the
17 "special needs exception" permits departure from the warrant and probable cause determination.
18 "[D]ispensing of the warrant requirement is at its strongest when, as here, 'the burden of obtaining a
19 warrant is likely to frustrate the governmental purpose behind the search.'"

20 In Skinner, the Court found toxicological tests for railroad employees for the purpose of public
21 safety and not for the purpose of prosecution, justified privacy intrusion *without a warrant or*
22 *individualized suspicion*. (Id. at 620-621) (emphasis added). The High Court validated regulating
23 railroad employees' conduct and likened it to that of supervising probationers for the purpose of public
24 safety and that the drug tests fell within the special needs exception. (Id. at 620). The Supreme Court
25 noted that alcohol and drugs are eliminated from the bloodstream at a constant rate and blood and
26 breath samples are necessary to measure the presence of substances at the time of the incident. Id. The
27 Court further found that railroad supervisors were not in the business of investigating criminal
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1 violations or enforcing administrative codes and imposing warrant procedures were unreasonable. Id. at
2 623-624.

3 In Chandler v. Miller, the High Court held that a search based on individualized suspicion is
4 reasonable. Here, the instant case falls under the special needs exception which does not require
5 probable cause. Nonetheless this Court ordered that the test must be based on individualized suspicion
6 before permitting drug testing, therefore Petitioner's rights are not violated.

7 The circumstances surrounding the need for testing and the nature of the test are reasonable in
8 this instance and, because the Court is permitting testing only if reasonable suspicion exists, Petitioner's
9 Fourth Amendment Rights are not violated. Jonathan Balderas physically abused Kelssy and Petitioner
10 failed to protect the children despite observing the abuse. Petitioner Admitted to the Amended Petition
11 which outlines that she knew about her boyfriend's abuse. Petitioner further failed to seek medical
12 attention for the minor and but for the intervention of the babysitter, the abuse would have continued.
13 The abuse would have continued without the babysitter's action because Petitioner minimized the abuse
14 and claimed that it was an accident. Petitioner lacked the protective capacity at the time of Kelssy's and
15 Analia's removal and the reasons that led to Petitioner's choices at that time are unknown. No plan can
16 immediately identify and calculate all of Petitioner's service needs and a case plan must to evolve as the
17 problems in the family that led to removal become known.

18 The court ordered Petitioner to undergo drug testing if DFS has reason to believe Petitioner is
19 under the influence so that her parenting can be addressed with a sober and sound mind. The drug test
20 is in the form of urine and/or hair and the nature of the tests is not overtly invasive. The circumstances
21 that led to a case plan formation and drug testing based on reasonable belief standard does not violate
22 the Fourth Amendment.

23 The United States Supreme Court in Skinner held that drug tests to promote public safety are
24 reasonable even without a warrantless or individualized suspicion. Petitioner is not required to undergo
25 random drug testing without any justification as she claims. DFS is permitted to drug test only if there
26 is reason to believe that Petitioner is under the influence of controlled substance, as in slurred speech or
27 other manifestation that she is under the influence of controlled substance, DFS may drug test
28 Petitioner. The drug tests are for the purpose of creating a plan to safely and permanently reunify with

1 the subject minors and not for the purpose of criminal prosecution; therefore the tests fall under the
2 special needs exception departing from the warrant requirement. A warrant requirement is onerous in
3 the instant case because as held in *Skinner*, the purpose of the test is frustrated due to the elimination of
4 drugs in the system at a constant rate.

5 Petitioner correctly asserts that arbitrary invasions solely at the unfettered discretions of the
6 officers in the field are unconstitutional. Petitioner also correctly states that blood draws can be subject
7 to stringent probable cause requirements. None of those factors exists here.

8 Petitioner cites to *U.S. v. Scott*, 450, F.3d 863, which held that warrantless searches of a pretrial
9 defendant was unconstitutional. Again, the facts are distinguishable. This is not a criminal matter and
10 in *Scott*, the pretrial detainee agreed to random drug tests as a condition of release. In finding that
11 random drug tests were unreasonable in pretrial detainees, the 9th Circuit reasoned that pretrial detainees
12 unlike parolees are still presumed innocent and does not have a diminished expectation of privacy. *Id* at
13 872.

14 Petitioner is not required to submit to a random drug test and the test is subject to reasonable
15 suspicion. Also, Petitioner is adjudicated of abuse and neglect and she has decreased expectation of
16 privacy while working her case plan which requires home visits and releases from her treatment
17 provider.

18 The instant matter falls soundly within the special needs exception because the goal is safe
19 return of Petitioner's children. In *Skinner*, the Court likened regulating railroad employees' conduct to
20 that of "supervision of probationers or regulated industries, or its operation of a government office,
21 school, or prison, "likewise presents 'special needs' beyond normal law enforcement that may justify
22 departures from the usual warrant and probable-cause requirements." 489 U.S. at 620.

23 Petitioner is currently under the jurisdiction of the family court due to her abuse and neglect of
24 the children. Like a probationer or a person regulated due to safety impact on the public, Petitioner is
25 subject to supervision and the court's order to test with reasonable suspicion. Petitioner has diminished
26 expectation of privacy because she is currently under the family court jurisdiction based on the ongoing
27 juvenile case and her case plan requirements. The case plan requires her to cooperate with DFS and
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1 permit DFS to conduct random home visits and sign releases to monitor her domestic violence
2 counseling and physical abuse/non-offending classes.

3 In balancing intrusion against the legitimate government purpose, the safety of the subject
4 minors, Petitioner's privacy intrusion is justified. The focus here is safe and permanent reunification
5 and not for the purpose of criminal prosecution. Petitioner is subject to case plan requirements and the
6 court within its discretion ordered her to submit to drug testing without a warrant as long as DFS has
7 reasonable belief that she is under the influence.

8
9 CONCLUSION

10 Based on the foregoing the State respectfully request that the Petitioner's motion be denied.

11
12 DATED this 15th day of October, 2014.

13 STEVEN B. WOLFSON
14 DISTRICT ATTORNEY

15 By:  #10113

16 JLN KIM
17 Deputy District Attorney
18 Nevada Bar No. 9603
19 601 N. Pecos Rd., Ste. 470
20 Las Vegas, NV 89101
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CERTIFICATE OF SERVICE

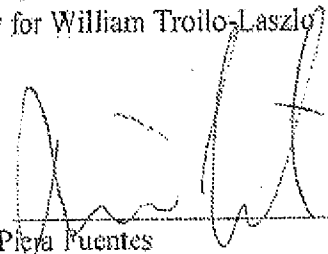
I hereby certify that service of the OPPOSITION TO AMEND CASE PLAN was made this
1st day of October, 2014, by depositing a copy in the U.S. Mail, postage pre-paid and/or via
electronic transmission to the following:

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PTRANS

FILED

NOV 25 2014

Alma L. Williams
CLERK OF COURT

COPY

EIGHTH JUDICIAL DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of)

ANALIA HERNANDEZ,)
DOB 10/03/11)

and)
KELSSY HERNANDEZ,)
DOB 10/14/12)

MINORS.)
_____)

CASE NO. J-14-332774-U1/2

DEPT. D

BEFORE THE HONORABLE ROBERT W. TEUTON,
DISTRICT COURT JUDGE

TRANSCRIPT RE: MOTION TO AMEND CASE PLAN

TUESDAY, OCTOBER 14, 2014

1 APPEARANCES:

2 The Plaintiff:
3 For the Plaintiff:

STATE OF NEVADA
JIN KIM, ESQ.
Deputy District Attorney
Juvenile Division
601 North Pecos Rd.
Las Vegas, Nevada 89101

5 The Natural Mother:
6 For the Natural Mother:

MANUELA ELVIRA HERNANDEZ
(Arrives Late)
ABIRA GRIGSBY, ESQ.
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601 North Pecos Rd.
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9 The Father:
10 For the Father:

JONATHAN BALDERAS
(Not Present)
BYRON L. MILLS, ESQ.
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Las Vegas, Nevada 89101

12 Also Present:

13 CHANDLER LEVRICHE
Department of Family Services
14 MARY MCCARTHY, ESQ.
Children's Attorney Project
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1 LAS VEGAS, NEVADA

TUESDAY, OCTOBER 14, 2014

2 P R O C E E D I N G S

3 (THE PROCEEDING BEGAN AT 11:03:18.)

4 THE COURT: Before we get to the conclusion we might as
5 well restate the facts.

6 (LAUGHTER)

7 This is Case No. 332774.

8 Appearances please.

9 MR. LEVRICHE: Chandler Levriche for DFS.

10 MS. KIM: Jin Kim on behalf of the State.

11 MS. MCCARTHY: Mary McCarthy, CAP.

12 MR. MILLS: Byron Mills, 6745, I guess appearing for
13 Gregory Mills who may --

14 THE COURT: Or may not.

15 MR. MILLS: -- or may not represent Jonathan Balderas.

16 MS. GRIGSBY: Good morning, Your Honor. Abira Grigsby,
17 Bar No. 10308, appearing for Manuela Hernandez, who's not
18 present. I'm not sure why she's not here; she does show up,
19 but she is always very late when she does show up.

20 THE COURT: All right.

21 Let me check one last thing right quick.

22 (PAUSE.)

23 Rosa, when you put a parenthesis around somebody's
24 name it means they're not --

1 THE CLERK: (Indiscernible.)

2 THE COURT: All right. So let me say this, on
3 September 29th...Mr. Balderas was initially made a party to
4 this case because Affidavits of Paternity had been estab -- had
5 been assigned by both the natural mother and Mr. Balderas.

6 The natural mother's, within about six days
7 thereafter, the natural mother no longer was stating that Mr.
8 Balderas was the father, that it may be her prior boyfriend Mr.
9 Trujillo Lazlow (phonetic). Genetic testing was done and Mr.
10 Trujillo Lazlow was found at ninety-nine point nine percent
11 probability to be the father.

12 At the hearing on September 29th -- and that's why
13 I'm a little bit concerned about what Mr. Mills' position is --
14 at the hearing on September 29th Mr. Mills appeared
15 telephonically. Mr. Balderas did not appear at all. And at
16 the time of the hearing The Court found that Mr. Trujillo
17 Lazlow would be the father pursuant to statute and that Mr.
18 Balderas would be removed from the child's birth certificate.

19 Mr. Mills was on the phone during that hearing when
20 the findings were made. It appears that thereafter that
21 afternoon Mr. Mills filed a Notice of Withdrawal. The
22 following morning he filed a Notice of Appearance. So I'm a
23 little concerned that he may have reappeared after confirming
24 with Mr. Balderas. I don't know if there is any communication

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MR. MILLS: And I don't know that, Your Honor.

THE COURT: But I'm reluctant at this point to excuse you, because I don't know -- then perhaps Mr. Balderas wanted Mr. Mills to remain on the case, and that's why we had contradictory notices filed within six hours of each other.

So, in any event, does the State at this point intend to proceed with the case plan as to Mr. Balderas?

MS. KIM: Yes, Judge. We already have one, and it would be the same case plan that was initiated in Petition 1 where he was found to have abused Kelssy. Because, at that time, although he didn't have any parental rights, the natural mother and Mr. Balderas represented they were intact couple, and with the understanding mom understood that if she's going to remain in the relationship with Mr. Balderas and he didn't comply with his case plan, that it would be a potential barrier for reunification.

He has maintained, to my knowledge, at every court hearing that he has attended that he intends to remain in a relationship with the natural mother. So the Petition 2 as to Jossiah (phonetic herein) when he did sign the birth certificate, he would believe we'd presume father, and he was maintaining that he wanted to be the father and stay in Ms. Hernandez' life.

1 So today I would be willing to proceed as to the
2 R and D as to Mr. Balderas. He --

3 THE COURT: And the natural mom?

4 MS. KIM: And the natural mom.

5 The natural mom's case plan is, again, identical to
6 the --

7 THE COURT: The same as before?

8 MS. KIM: -- first one. But I believe there was a motion
9 field by Ms. Grigsby as to modifying that case plan.

10 THE COURT: All right.

11 So I guess at this point, Mr. Mills, do you have any
12 -- did you receive the case plan?

13 MR. MILLS: Again, my office --

14 THE COURT: You haven't received anything?

15 MR. MILLS: -- informed me this wasn't on for us --

16 THE COURT: Right. Right.

17 MR. MILLS: -- that we were --

18 THE COURT: Yeah, yeah, yeah, yeah.

19 MR. MILLS: -- withdrawing, so.

20 THE COURT: Yeah. I understand. I understand.

21 Let me do this, since the case plan in Petition 2 is
22 the same as Petition 1, The Court will adopt the case plan.
23 We'll make Jossaiah a ward of The Court, with legal and
24 physical custody, placed to the Department of Family Services.

1 If Mr. Balderas subjects to the case plan, which he
2 already has in place on this Petition, Mr. Gregory Mills can
3 file -- or you can file a NARD so to put it back on calendar,
4 you know, entertain arguments at that time.

5 MS. MCCARTHY: Your Honor, I have that you had made
6 Jossiah a ward --

7 THE COURT: You have what?

8 MS. MCCARTHY: That you had made Jossiah a ward at the
9 hearing on the twenty-ninth?

10 THE COURT: I did?

11 MS. MCCARTHY: Yes.

12 THE COURT: Jossiah?

13 MS. MCCARTHY: Yes.

14 (PAUSE.)

15 THE COURT: Sure did. Made a ward on the twenty-ninth.

16 All right. We have a review date of February 2nd at
17 eleven a.m. in Courtroom 11.

18 MS. GRIGSBY: And that's for both Petitions, 1 and 2?

19 THE COURT: Yeah, I think it's annual as to Petition 1 and
20 it's probably six month is to Petition 2?

21 UNIDENTIFIED SPEAKER: Correct.

22 MS. KIM: Yes, Your Honor.

23 THE COURT: All right.

24 And then so, Mr. Mills, I think you're done for the

1 morning.

2 MR. MILLS: Okay.

3 THE COURT: And we need to argue the disposition as to the
4 natural mother. And I guess we might as well argue -- I'm
5 assuming perhaps the only objection you have to the proposed
6 case plan in Petition 2 is the reason to believe --

7 UNIDENTIFIED SPEAKER: Yes.

8 THE COURT: -- clause for substance abuse, and in all
9 other respects it's the same, identical to Petition 1, correct?

10 UNIDENTIFIED SPEAKER: Yes.

11 THE COURT: All right. Then I'll entertain argument on
12 your Motion to Amend the Case Plan in Petition 1 as well as
13 include those as your comments, your objection to that
14 provision in the case plan on Petition 2. Does that sound
15 good?

16 MS. GRIGSBY: And I believe the different case plan's been
17 drafted. I believe the understanding was that the same one --
18 it's the same one --

19 THE COURT: Yeah.

20 MS. GRIGSBY: -- from (indiscernible).

21 THE COURT: Yeah, it's the same one.

22 Okay. All right. You can be seated.

23 You may proceed with your --

24 MS. GRIGSBY: Well, since I was just to submit on the

1 pleadings, I believe I've laid out my argument.

2 THE COURT: All right. Okay.

3 MS. GRIGSBY: Everything I wanted to argue is in the
4 pleadings.

5 THE COURT: All right.

6 MS. KIM: And --

7 THE COURT: Ms. Kim, did you want to say anything?

8 MS. KIM: Yes, Judge. I would note that the issue here
9 and what is confounding is that Ms. Grigsby continues to say
10 that this is a violation of due process because the drug
11 testing -- if Mom is, based on reasonable belief, is a
12 constitutional violation, a violation of due process. And in
13 asserting this Ms. Grigsby does not clearly delineate which is
14 The Court's Order, which is that it is only based on reasonable
15 belief that Department may only test Ms. Hernandez if she is in
16 fact -- if the Department has reason to believe she's under the
17 influence. And at that initial case plan hearing The Court
18 gave specific examples of what This Court believed would rise
19 to the level of individual suspicion, that is slurred speech,
20 emanating odor, those factors which would go to reasonable
21 belief, erratic behavior, then and only then can the Department
22 test. It's not a random drug test, which The Court made clear
23 that The Court was not going to allow random drug testing, it
24 had to be based on individual suspicion.

1 Now, in Ms. Grigsby's motion, she glosses over this
2 fact, that in fact with reasonable suspicion it is not
3 warrantless or if not (indiscernible) probable cause.

4 In doing so she cites to a plethora of cases,
5 specifically one about which was referred to by the Supreme
6 Court in its denial of the Writ of Mandamus, and that would be
7 -- The Court's indulgence -- In Re: Sergio, which is a
8 California appellate Fourth Circuit case. That case is
9 uniquely distinguishable and factually distinguishable in our
10 case because it's not persuasive, one, it's not from our
11 jurisdiction, but it's not persuasive because it's so factually
12 different.

13 In In Re: Sergio, the father who was the custodial
14 parent received a Petition, he pled and then later on appealed.
15 At the appellate level DCFS in California agreed that in fact
16 he should not have been substantiated to begin with. And more
17 importantly, the case plan he was ordered to do included random
18 drug testing. What's legally -- I mean, what's factually
19 distinguishable from In Re: Sergio in this case is no one
20 refutes that Mom is not the custodial parent currently, the
21 child was removed, nor that the Petition insufficient in any
22 way. The child came in because of injuries that she knew that
23 her boyfriend Valdarez (phonetic) abused the child and she
24 failed to protect that child and then tried to minimize and lie

1 about that.

2 So here no one is disputing that petition was
3 appropriate as to Mom as to Petition 1 or Petition 2. What is
4 being disputed is the individualized suspicion that This Court
5 said was necessary in order to attest. Nonetheless, Counsel
6 continues to argue that this is somehow a violation of the
7 Constitution. But in citing Skinner versus a Railroad
8 Executive Association, and Chandler versus Miller, a US Supreme
9 Court case which is cited in my brief, 117 Supreme Court 1295,
10 the pivotal question is whether the searches are reasonable and
11 to be reasonable under the Fourth Amendment, search ordinarily
12 must be based on individualized suspicion of wrongdoing.

13 So Chandler also cites that random, without
14 individualized suspicion, is not appropriate. Skinner v
15 Railroad goes on to delineate even without individualized
16 suspicion or warrant there are special exceptions to testing.
17 And, again, the reason the testing is necessary and the
18 surrounding circumstances more than the factors looked at is,
19 is it criminally involved. And, two, is there a special
20 exception because of safety to the public? In this instance it
21 was safety to the child. What's being challenged here --

22 (NATURAL MOTHER ENTERS COURTROOM.)

23 -- is This Court's discretion in able to order drug
24 testing with individualized coun -- individualized suspicion,

1 which again Ms. Grigsby fails to cite to Chandler v Miller or
2 that the fact that this factual pattern falls squarely within
3 Skinner versus Railroad Executives.

4 I would submit it on my argument that in fact it does
5 fall within Skinner's exception because Ms. Hernandez is
6 already Court substantiated on abuse and neglect. Her case
7 plan involves and including home checks, appropriateness of the
8 people in the home. She already has a diminished expectation
9 of privacy. Skinner likened (indiscernible) under
10 circumstances when somebody's already been adjudicated and is
11 under Parole & Probation and they have a less expectation of
12 privacy and under those facets also appropriate.

13 Judge, what we have before The Court is essentially a
14 challenge to This Court's discretion regarding ability to order
15 any treatment that The Court deems necessary for permanent and
16 safe reunification of the child. The policy argument here is
17 we're about the best interest of children, protection of
18 children, which is (indiscernible) to 432B, Edinger v Edinger,
19 which is a Supreme -- Nevada Supreme Court Case, says when
20 statutes exists to protect children, every reasonable deference
21 will be given to that statute to ensure that those objectives
22 are met. Here This Court's Order that individualized suspicion
23 is a basis to test the Mom is, again, based on the safety and
24 permanent reunification of the child.

1 What Ms. Grigsby posits by her Motion is that even if
2 the Department becomes aware or has concerns about, say, mental
3 health or drug consumption by the parent, which was not known
4 at the time that the child came into care, but This Court and
5 DFS would not be able to address it because it was not known at
6 the time of the Petition because it wasn't plead as such.

7 However, our case plan is an evolving document
8 because we have to be able to, again, place the child in a
9 permanent and safe reunification. Only looking at the myopic
10 issues that we knew of at the time of the removal and limiting
11 This Court's discretion to ensure the permanent and safe
12 reunification is contrary to what 432B stands for, saying whoa
13 it's clear that the mom is exhibiting signs of influence but
14 the Department cannot test and then order further for
15 additional services, again, would not warrant a safe and
16 permanent return of the child.

17 Here in this instance I had the other concern of this
18 isn't even right. The argument that Ms. Grigsby posits, there
19 has been no request from the Department because it hasn't even
20 risen to the -- for her to argue, one, that there's a due
21 process violation, there has to be essentially a warrantless,
22 in this case, Skinner says you don't need a warrant or even an
23 individualized suspicion when it falls within the exception,
24 or, two, if there's individualized suspicion under Chandler

1 it's warranted.

2 So we have, again, a Court direct Order of
3 individualized suspicion which is necessary and that hasn't yet
4 risen to request that of the mom yet. So what Ms. Grigsby is
5 ordering is again not yet right, it's premature. So I submit
6 to The Court that here the case plan, I'm not opposed to,
7 again, I think the case plan says to test, but I'm more than
8 willing to say it must be individualized suspicion as The Court
9 had articulated. I'd submit it to The Court and the
10 appropriateness and the rightness and the judiciability of the
11 claim of Constitutional violation. One, when they're testing
12 is not being requested, two, when in fact The Court has made
13 the caveat that it must be individualized suspicion.

14 So here the argument, by omitting and overlooking The
15 Court's specific due process safeguards of a required
16 individualized suspicion, is just flatly being ignored.
17 Because This Court has made it abundantly clear, this is not a
18 random drug test as in In Re: Sergio, which the -- that Circuit
19 determined to be inappropriate, especially given that there was
20 no appropriate substantiation as to the parent.

21 The parent's attorney also cites to US v Scott. And
22 then, again, US v Scott is completely distinguishable because
23 that is a criminal matter in which there had yet to been an
24 adjudication, whereas we have such adjudication here.

1 MS. GRIGSBY: And, Judge, if I can briefly respond?

2 THE COURT: Yeah.

3 MS. GRIGSBY: My due process issue is what she's noticed
4 of is at issue as what's contained in the Petition. There's
5 not a single allegation of substance abuse in the Petition. In
6 fact, Madam DA is wrong, she has been drug tested, and that
7 drug test was clean. So she submitted to a drug test, a clean
8 drug test. The issue is whether The Court can require -- and
9 the reason that The Court put the reasonable suspicion in the
10 -- for the drug testing was because DFS represented she's
11 around people who do drugs. That's not enough of a reason to
12 say that she's doing drugs when she's already tested clean for
13 the Department.

14 The issue is she wasn't given an opportunity to
15 litigate the issue of substance abuse to be able to show The
16 Court that there -- that it's not an issue. The Petition is
17 what gives rise to what services are needed and the case plan.
18 Case plan has to be rationally related to the Petition or what
19 the negotiations were. In this case there was nothing that
20 indicated that substance abuse was at issue until I received
21 the case plan, and the case plan had a random drug testing in
22 there. The first time I objected you had put reasonable
23 suspicion in there. But there has to be something to indicate
24 that substance abuse and an issue, which isn't there in this

1 case.

2 My second issue is the Constitutional issue that
3 we're -- that the drug testing is an unreasonable search. She
4 has her -- she has a fundamental right to parent. The State is
5 already interfering with that, which it does have compelling
6 reasons to do so, but it has to be narrowly tailored. When the
7 State argues that case plans can have anything contained in
8 there, it has nothing to do with the Petition, why do we do
9 Petitions if we're going to require the parent to engage in any
10 and all services that DFS can think of?

11 It has -- there has to be some rational basis. There
12 isn't -- it doesn't exist in this case. And when she's been
13 asked to drug test there has to be probable cause when there's
14 nothing in the petish -- if there was substance abuse, there
15 was known substance abuse, then they'll of course they wouldn't
16 -- probable cause wouldn't come in, that would be part of the
17 case plan, without any objection. But when you're requiring
18 her to drug test when there's nothing to show, nothing has been
19 presented to The Court to give an inkling that she might be
20 using, there has to be probable cause for DFS to be able to
21 drug test.

22 THE COURT: Let me ask you a question. Let's assume kind
23 of a different set of facts. Let's assume that she's driving
24 down the street with kids in the car and she's pulled over for

1 DUI and she in fact submits to a test and the test results are
2 found to have been obtained in violation of her Constitutional
3 Rights. Is that finding prohibit the Juvenile Court from
4 proceeding with the dependency action?

5 MS. GRIGSBY: Well --

6 THE COURT: Because evidence was obtained in violation of
7 her rights that show that the children were placed in danger by
8 her conduct.

9 MS. GRIGSBY: Well --

10 THE COURT: We're no longer talking about her liberty
11 interests. We're talking about the best interests of the
12 children.

13 MS. GRIGSBY: And, Judge, I would say that the standard's
14 different, so, yes, the Dependency Court could proceed, but at
15 the same time evidence would have to be presented that the kids
16 were in danger in that scenario if --

17 THE COURT: Well, I just -- in that scenario the evidence
18 is suppressed because it was obtained in violation of her
19 Constitutional Rights.

20 MS. GRIGSBY: But in the criminal case.

21 THE COURT: I'm sorry?

22 MS. GRIGSBY: But in the criminal case there's --

23 THE COURT: Right.

24 MS. GRIGSBY: -- there's different standards in the

1 criminal case than there are in the --

2 THE COURT: So the evidence would be admissible in the
3 Dependency case?

4 MS. GRIGSBY: No. If they can -- if the proper -- they
5 wouldn't necessarily need the drug test. There's -- you know,
6 if she's arrested, if she's -- if there are other things that
7 could be presented to The Court to show that the children were
8 in need of protection, that's a different standard and a lower
9 standard for that.

10 THE COURT: All right. All right. Well, this isn't the
11 first time I've considered this, so.

12 MS. KIM: Judge, can I make one brief factual correction?

13 THE COURT: (No audible response.)

14 MS. KIM: Here Ms. Grigsby argues that there was
15 Constitutional violation already because Mom submitted to a
16 drug test. I believe that was done so voluntarily by the
17 natural mom --

18 THE COURT: I don't know that she said --

19 MS. GRIGSBY: No, I didn't argue that.

20 MS. KIM: Oh.

21 THE COURT: I didn't hear her say that.

22 MS. GRIGSBY: I didn't say that.

23 MS. KIM: -- but that there was prior drug test and she
24 tested --

1 THE COURT: There was drug test at the time of removal.

2 MS. GRIBSBY: Yeah.

3 MS. KIM: -- (indiscernible).

4 MS. GRIGSBY: So I just argued that there was a drug test

5 --

6 THE COURT: All right. Okay.

7 MS. GRIGSBY: -- a contest -- consented (indiscernible).

8 THE COURT: But here's my concern.

9 MS. KIM: Okay.

10 THE COURT: My concern is this, that the purpose of these
11 proceedings and the statutes 432B.540 and .560 are to identify
12 those issues that are preventing a child from remaining with
13 their parents and to address those issues. And quite frankly I
14 recognize that we are intruding on parents' liberty rights and
15 interests when we do these things, and that whatever intrusion
16 there is needs to be minimized based upon the facts of the
17 case.

18 The last thing I want to see is a child removed from
19 a parent, returned to the parent, and then removed a second
20 time or a third time or a fourth time. Because we're just
21 breeding delinquency and we're breeding criminals. Because
22 eventually those children can attach to anybody and they act
23 accordingly.

24 I do think This Court has the authority to tailor

1 case plans to the facts of the individual case. If in fact Ms.
2 Hernandez had tested positive for drugs, then that would have
3 been sufficient indicia I believe for The Court to order random
4 drug testing, that there be not may be any cause whatsoever to
5 force or to submit to a drug test. And she didn't. And This
6 Court didn't.

7 The statute on reporting child abuse and neglect has
8 the predicate burden of proof as the person has reasonable
9 cause to believe that a child is abused and neglected, they're
10 required to report it. And I quite frankly see no distinction
11 between a requirement that a person report abuse and neglect
12 and that the Department have authority to request testing if
13 they have reasonable cause to believe that the person is under
14 the influence of alcohol or controlled substance.

15 I think the analogy to a criminal case, if you have a
16 warrant to go search a room for marijuana or for evidence of a
17 robbery and there's a dead body in the corner, you're not
18 required to back out and get a search warrant for that dead
19 body. The invasion of the person's liberty has already
20 occurred by the issuance of the warrant; the invasion of her
21 liberty is incurred by the fact that The Court has jurisdiction
22 over her children. And the Department quite frankly whether
23 it's actually -- whether it's in the case plan or not, I
24 believe that the Department has reason to believe that she's

1 under the influence, they have the right to request her to
2 submit to a drug test. Here she's just put on notice that they
3 -- that The Court has authorized them to do that and to short
4 circuit things. The actual provision at issue says that she'll
5 submit to drug testing if there's reason to believe that she's
6 under the influence of controlled substance, and if the test is
7 positive she'll submit to a substance abuse assessment and
8 follow recommendations.

9 So I think things are being tailored to minimize
10 intrusion on her, but, nevertheless, they're being tailored in
11 a manner that will preclude a subsequent removal of these
12 children in the event that she is in fact under the influence.

13 So having said that, the Motion to Amend the Case
14 Plan is denied.

15 MS. GRIGSBY: Judge, will you issue the written findings
16 or?

17 THE COURT: Ms. Kim, will you get a copy of the
18 proceedings this morning and just prepare an Order? I'll
19 review the Order. If I need to make changes I will. All
20 right?

21 MS. KIM: All right.

22 THE COURT: So that you'll have something that you can, as
23 a matter of law, appeal to the Supreme Court.

24 UNIDENTIFIED SPEAKER: Thank you.

1 MS. KIM: And Judge, I --

2 THE COURT: All right. And with that the case plan is to
3 Isiah (sic) -- is that right --

4 MS. KIM: Yes.

5 THE COURT: -- is adopted. Let's see...

6 MS. KIM: And, Your Honor, I will note that the case plan
7 currently says, Submit to drug testing. But we're going to
8 amend it to reflect specifically, if natural mother is showing
9 signs of being under the influence.

10 THE COURT: I'm sorry?

11 MS. KIM: Currently the case plan reflects, will submit to
12 drug testing. But I will have it amended to reflect
13 specifically, only and if she is exhibiting signs of being
14 under the influence of all -- of substances.

15 THE COURT: Well, what I read is, if there's reason to
16 believe that she's under the influence of controlled
17 substances.

18 MS. KIM: Well, Court's indulgence. Yes. Yes, I'll --

19 THE COURT: That's language from the case plan itself.

20 UNIDENTIFIED SPEAKER: Um-hmm.

21 THE COURT: Which I think is fine.

22 MS. KIM: Yes, Your Honor.

23 THE COURT: So Jossaiah was removed July 22nd at birth --

24 MS. KIM: Yes.

1 THE COURT: -- is that right, because the pending case?

2 (NO AUDIBLE RESPONSE.)

3 How did we get a February 2nd review date?

4 MS. KIM: I think that's based on Kelssy and Analia's
5 removal.

6 THE COURT: Based on what, I'm sorry?

7 MS. KIM: Kelssy and Analia's removal.

8 THE COURT: Oh, is that a date that was already set as to
9 the other two children?

10 MS. KIM: That February was -- date was set on
11 September 22nd as to Mr. Trujillo.

12 THE COURT: Well, we'll -- all right. Well, that date
13 will stand.

14 All right. The review dates is February 2nd at
15 eleven a.m. in this Department, to be heard in conjunction with
16 the annual review date on Analia and Kelssy.

17 All right. Anything else?

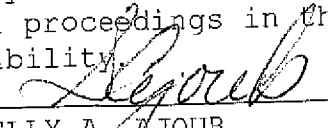
18 MS. MCCARTHY: No.

19 THE COURT: All right. Thank you very much.

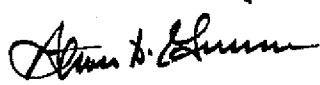
20 (THE PROCEEDING CONCLUDED AT 11:30:52.)

21 * * * * *

22 ATTEST: I do hereby certify that I have truly and
23 correctly transcribed the digital proceedings in the above-
entitled case to the best of my ability.

24 
SHELLY A. AJOUB,
Transcriber II

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CLERK OF THE COURT

**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA**

In the Matter of:

JOSIAH BALDERAS
Date of Birth: 07-23-2014

A Minor.

CASE NO.: J-14-332774-U1
DEPT.: D
COURTROOM: 11

ORDER DENYING MOTION TO AMEND CASE PLAN

THIS MATTER having come on for hearing before the above-entitled Court on the 14th day of October 2014 on the motion to amend case plan, and STEVEN B. WOLFSON, District Attorney by and through his deputy, JIN KIM, being present and the Department of Family Services by and through its representative, CHANDLER LEVRICH, present. BYRON MILLS was present on behalf of the natural father, JONATHAN BALDERAS, but did not remain for the motion argument as his client's case plan was accepted by the court. The natural mother, MANUELA HERNANDEZ, was represented by counsel, ABIRA GRIGSBY, and appeared late for the hearing. Present on behalf of the subject minor was his counsel, MARY MCCARTHY.

THE COURT HEREBY FINDS that the purpose of these proceedings, pursuant to NRS 432B.540 and NRS 432B.560, is to identify and address those issues which are preventing the children from remaining with their parents.

THE COURT FURTHER FINDS that the Court recognizes that they are intruding on the parties' liberty rights and interests and whatever intrusion there is, needs to be minimized based

1 upon the facts of the case. The last thing this Court wants to see is children being removed from a
2 parent, returned to the parent, and removed a second time, or a third time or a fourth time.

3 **THE COURT FURTHER FINDS** that this Court has the authority to tailor case plans to
4 the facts of individual the case. Accordingly, if Ms. Hernandez had tested positive for drugs, that
5 would have been sufficient indicia for the Court to order random drug testing and there not need be
6 any cause to force her submit to a drug test. However, she did not test positive and this Court did
7 not order random testing.
8

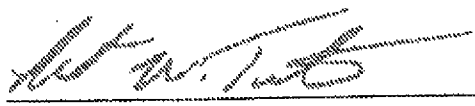

9 **THE COURT FURTHER FINDS** that statute on reporting child abuse and neglect has
10 the burden of proof as: if a person has reasonable cause to believe that a child has been abused or
11 neglected, they are required to report it. This Court sees no distinction between a requirement that
12 a person report abuse and neglect and that the Department of Family Services have authority to
13 request testing if they have reasonable cause to believe that a person is under the influence of
14 alcohol or a controlled substance.
15

16 **THE COURT FURTHER FINDS** that the invasion of Ms. Hernandez's liberty has
17 occurred by the fact that this Court has jurisdiction over her children. Accordingly, whether it is in
18 the case plan or not, the Department of Family Services has the right to request Ms. Hernandez
19 submit to drug testing if they have reason to believe she is under the influence.
20

21 **THE COURT FURTHER FINDS** that Ms. Hernandez is put on notice that the
22 Department of Family Services is authorized to request that she submit to drug testing if they have
23 reason to believe she is under the influence. The actual provision in the case plan is that: Ms.
24 Hernandez will submit to drug testing if there is reason to believe that she is under the influence of
25 a controlled substance and if that test is positive, she will submit to a substance abuse assessment
26 and follow recommendations. The Court finds that this is tailored to lessen the intrusion on Ms.
27 Hernandez and nevertheless is tailored in a manner that will preclude a subsequent removal of
28 these children in the event that she is in fact under the influence.

1 IT IS HEREBY ORDERED that Motion to Amend the Case Plan is DENIED.
2

3 Dated this 7 day of December 2014.
4

5 
6 _____
7 ROBERT TEUTON
8 DISTRICT COURT JUDGE 

9 STEVEN B. WOLFSON
10 District Attorney

11 By: 

12 JIN KIM
13 Deputy District Attorney
14 Nevada Bar Number 9603
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