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STATE OF MICHIGAN
IN THE SUPREME COURT
FROM THE COURT OF APPEALS

IN RE BARBER/ESPINOZA MINORS

Supreme Court Case No. 167745

Court of Appeals Case No. 369359

Lenawee County Circuit Court, Juvenile Division Case No. 23-00033-NA

_____/

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APPELLEE-MOTHER'S APPENDIX TO SUPPLEMENTAL BRIEF

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STATE OF MICHIGAN 39TH JUDICIAL CIRCUIT LENAWEE COUNTY	**JUDGMENT OF SUPPORT**	CASE NO. 2011-037423-DS
425 North Main Street Adrian, MI 49221	Telephone: (517) 264-4706	Hon. Timothy P Pickard

CRYSTAL ESPINOZA
Plaintiff

v

RICHARD BARBER
Defendant

R. BURKE CASTLEBERRY, JR P72093
PROSECUTING ATTORNEY
BY: MARK A BRUGGEMAN P66065
Assistant Prosecuting Attorney
126 E. Church St.
Adrian , MI 49221
(517) 264-1195

FILED
39TH CIRCUIT COURT
JAN 19 2012
Lenawee County Clerk
Adrian, Michigan

Upon the Complaint of the Plaintiff and upon reading and filing the foregoing recommendation, and the Court being fully advised in the premises:

IT IS ORDERED:

CUSTODY

CRYSTAL MARIE ESPINOZA shall have sole physical custody of said minor child(ren) and the parties shall have joint legal custody until further order of the Court.

The parents shall cooperate with respect to the child(ren) so as, in a maximum degree, to advance the child(ren)'s health, emotional and physical well-being, and to give and afford the child(ren) the affection of both parents and a sense of security. Neither parent will directly or indirectly influence the child(ren) so as to prejudice the child(ren) against the affectionate relationship between the child(ren) and the father and the child(ren) and the mother. Neither party will do anything which may estrange the other from the child(ren) or injure the opinion of the child(ren) to the other party, or which will hamper the free and natural development of the child(ren) for the other party.

DOMICILE

The domicile or residence of the child(ren) may not be moved from Michigan without the approval of this Court and the custodian shall promptly notify the Court when the child is moved to another address.

PARENTING TIME

Parenting time shall be as the parties agree. If they are unable to agree, upon the written request of either party, the Friend of the Court shall conduct an investigation and make a recommendation for parenting time, which shall be binding upon the parties if no objection is filed within 21 days of issuance of the recommendation.

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The Plaintiff and Defendant shall both attend the ***"Forget Me Not Program"*** presented at the Human Service Building, River Raisin Room, 1040 S. Winter Street, Adrian, MI 49221. The parties must contact the ***Lenawee County Friend of the Court at (517) 264-4708*** to set up the date and time to attend said program.

CHILD SUPPORT

No Uniform Support Order is required because child support is reserved.

SUPPORT RESERVED

Payment of support is reserved commencing 01-10-2012, until further order of the Court because RICHARD NEIL BARBER presently resides with the minor child(ren) who are the subject of this action.

RICHARD NEIL BARBER shall report to the Office of the Friend of the Court within 72 hours of the date RICHARD NEIL BARBER ceases to reside in the same household with the minor child.

PREGNANCY AND BIRTH EXPENSES

The pregnancy and birth expenses contained in this order are in accordance with the Birth Expense Obligation Formula, which is published by the Michigan Title IV-D agency.

Upon receipt of the birth expense report from the Department of Community Health, and upon notification to RICHARD NEIL BARBER, the Friend of the Court, shall set the total pregnancy and birth expenses obligation pursuant to this order and the monthly payment amount in accordance with the Michigan Child Support Formula, without further order of the court.

If the father marries the mother after the birth of the child(ren) and provides documentation of the marriage to the friend of the court, the father's obligation for payment of any remaining unpaid pregnancy and birth expenses is abated subject to reinstatement after notice and hearing for good cause shown, including, but not limited to, dissolution of the marriage. The remaining unpaid amount of the pregnancy and birth expenses owed by the father is abated as of the date that documentation of the marriage is provided to the friend of the court.

NOTICE OF LIEN

Pursuant to MCL 552.625a, liens may be imposed by operation of law against the real and personal property of the payer of support if an arrearage accrues in an amount greater than the amount of periodic support payments payable for two months under the payer's support order, in which case such real and personal property can be encumbered or seized.

REFEREE HEARING

IT IS FURTHER ORDERED, That within twenty-one (21) days of this Judgment, either party

may request a referee hearing to change provisions herein concerning custody, support and parenting time by completing a written request at the Office of the Friend of the Court, 425 N. Main Street, Adrian, MI 49221.

1-18-12
Date

TIMOTHY P PICKARD P24114
ASSIGNED JUDGE

January 10, 2012

MARK A BRUGGEMAN P66065
ASSISTANT PROSECUTING ATTORNEY

THIS PROPOSED ORDER FILED UNDER THE 7-DAY COURT RULE WAS RECEIVED IN THE OFFICE OF THE COURT CLERK/ DEPUTY CLERK
THERE ARE NO OBJECTIONS FILED AS OF 1-17-12

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THE COURT: Kelly? Spell Kelly.

MS. KELLY: K-e-l-l-y. My first name is B-r-i-t-t-a-n-y.

THE COURT: All right. Then I have Mr. William Amadeo appearing on behalf of the Department today. So this is an emergency hearing, and what would this hearing be called?

MR. BROOKS: Emergency removal hearing.

THE COURT: Okay. Where is the child and the children now?

MR. BROOKS: With father.

THE COURT: With the father. All right. Is the request to remove them from father or request to remove them from Miss Espinoza?

MR. BROOKS: Request to remove the children from the mother and leave them with their father, who is not a respondent in this case.

THE COURT: Okay, so let me find ... as always, every time -- I don't typically do these neglect cases. Because the case was assigned to me, I -- I got this case because I have the civil case as well. So I'm not a probate judge, so it always takes me a couple minutes to look up my scripts to figure out what I'm supposed to do on this one. Is there a -- Mr. Brooks, did you receive a copy of the petition?

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(Witness called at 9:42 a.m.)

DIRECT EXAMINATION

BY MR. AMADEO:

Q. Good morning, Miss Kelly, how are you?

A. Good. How are you?

Q. Good. Did you write this petition?

A. I did.

Q. Would it be fair to say that you're very familiar with this case?

A. Yes, I am.

Q. How long have you been working on this case?

A. I received the case this Monday.

Q. Okay, and who is Crystal Espinoza?

A. Crystal Espinoza is the mother on the complaint.

Q. And is she the reason the petition was filed?

A. Yes.

Q. Okay, what do you mean when you say that she's the reason the petition was filed? Can you elaborate?

A. There are allegations that have been made against Miss Espinoza by her child that have led, per our policy, for a request of termination of parental rights.

Q. Can you explain what those reasons were?

A. So there were allegations of sexual abuse, sex trafficking, and improper supervision, and it's an unfit home environment for the children.

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the objection. Continue.
A. Do you want me to kind of --
Q. What --
A. Oh, I'm sorry. Do you want me to go into detail or do you want me to just state the simple facts?
Q. Simple facts would be fine. What disclosures were made by the child against Miss Espinoza?
A. So the child disclosed sexual abuse by two different men that were friends of her mother. She disclosed that her mother was aware of the abuse, that she had walked in on these two different incidents and walked right out.

She also disclosed that she believed her mother allowed one of the these acts to happen so that the man would give her drugs. She disclosed that she has seen her mother use the drugs. And she explained that she believes her mother used heroin. She explained that as she strapped the band around her arm and used a needle and syringe to inject the drugs into her arm.
Q. Have you ever investigated Miss Espinoza for CPS before?
A. I have.
Q. How many times?
A. I've worked with the family one time, but there have

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with the children going with their mother.

MR. AMADEO: Nothing further from me, Your Honor.

THE COURT: So the allegation, Miss Kelly, against Miss Espinoza stems from the time period of 2010 through 2021; is that correct?

THE WITNESS: Um --

THE COURT: As I go through the CPS history? Or what is the time period of these allegations?

THE WITNESS: Are you asking as the CPS history of those times?

THE COURT: I guess the allegations against her today.

THE WITNESS: They were from the ages of when the child was 2 until about 9. But there's been more recent CPS cases against Miss Espinoza in recent years.

THE COURT: All right. Any other questions, Mr. Amadeo?

MR. AMADEO: No, thank you, Judge.

THE COURT: All right, Mr. Brooks?

- - -

CROSS-EXAMINATION

BY MR. BROOKS:

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Q. How old is this child?
A. She's 13.
Q. You're telling me the allegations regarding sexual abuse and drug use of the child took place between ages of 2 and 9; is that accurate?
A. I'm -- no, not drug use by the child, drug use by the mother. And the sexual abuse concerns, yes, they were between ages 2 and 9.
Q. So we're talking about at least four years ago and perhaps much younger; is that right?
A. Yes.
Q. Isn't it a fact that this young lady herself has been treated for pretty significant mental health issues of her own?
A. Yes.
Q. Schizophrenia?
A. I'm not aware of all her mental health diagnoses, but I know she's had mental health treatment.
Q. Now, apparently someone has been told apparently by this child of these allegations; is that right?
A. Correct.
Q. Has anyone prior to either beginning that examination checked to see whether this child's mental condition would make her even credible as a witness?
A. We're not legally made to do that.

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Q. What's the actual greatest concern for you as the ongoing worker?
A. The safety of the children and the sex trafficking allegations.
Q. What's the Department asking for?
A. Removal of both subject minor children and termination of parental rights.
Q. Is there a non-respondent parent that can take the children?
A. Yes, there is.
Q. Who is that?
A. Richard Barber.
Q. What is your opinion of Mr. Barber?
A. Mr. Barber has been completely compliant in my case. He's done everything that he needs to do for Cecelia. He's gotten Cecelia into a lot of services and he is a good placement for these children.
Q. If the Court were to authorize this petition and provide relief for request, what is the recommendation for parenting time?
A. Suspended parenting time.

MR. AMADEO: Nothing further, Your Honor.

THE COURT: Mr. Brooks?

- - -

CROSS-EXAMINATION

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BY MR. BROOKS:

Q. There is a companion case though in this same court; is that correct?

A. As far as I know, yes.

Q. All right. In that companion case, what parenting time rights does my client have?

A. Three weekends a month Miss Espinoza has the child Matthew, and therapeutic parenting time for Cecelia.

Q. And how long have these children been placed in that other case in their father's care?

A. I do not know the answer to that question.

Q. Has -- have they been -- you said you started in November.

A. Correct.

Q. Were they there then?

A. To my knowledge, yes.

Q. And has that been a continuous thing or have they ever been moved back in with my client?

A. Not to my knowledge during my case. I don't know prior to that.

Q. Okay. That's all. Thank you.

THE COURT: Miss Heise?

MS. HEISE: No questions, thank you.

THE COURT: Miss Underwood?

MS. UNDERWOOD: No questions, thank you.

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you.

THE COURT: Mr. Amadeo, if the petition is requesting movement directly to termination, does a case service plan get put in place?

MR. AMADEO: No. With termination petitions we do not offer case service plans. And I'm going to reiterate what Miss Heise said as far as suspending parenting time. There is a potential danger to this child that's been going on for a long time. We would ask it be suspended.

MS. HEISE: I will get the legal cite that requires the 30 -- within 30 days to have a case service plan and I'll present that to Mr. Amadeo at a later time, Your Honor. Thank you.

THE COURT: Okay. Miss Underwood, not withstanding the fact I'm assuming an ex parte petition is going to be coming across my desk in the next day or so, anything you'd like to say?

MS. UNDERWOOD: Your Honor, I guess that was one of the issues is that if you're, in this file, suspending parenting time, that it would be necessary for me to do so, I will in fact require nor need it (sic).

But we do believe at this point in time that -- for the safety of both children, that all

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two minor children. Cecilia Barber has therapeutic parenting time or counseling, and then Matthew Espinoza actually did have parenting time.

I will be suspending all parenting time of Miss Espinoza with both of her children. That does include communication in any way, shape, or form. There's not to be texting, FaceTiming, showing up at school. Zero contact with the minor children. The children are placed in Mr. Barber's care and will remain there.

The Court does find that there is probable cause to substantiate the allegations based on the testimony of the case workers here today and the investigators, based on the CAC interview, as well as the case worker observing the CAC interview, and the statements made on the record today. I do feel it is in the best interest of both minor children to have parenting time with Miss Espinoza suspended.

I do find that any contact would constitute a substantial risk of harm to both children's life, physical health, or mental wellbeing in light of the fact that -- well, because the children are not placed with mother, some of the findings are not necessary, but I do find that that contact is not in the best interest and in danger to the children.

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We have the legal father and the Court does have jurisdiction over the DS files with both of these children. I do not find that any contact is appropriate. The siblings are residing in the same environment, so that's not an issue.

So, Mr. Amadeo, I would ask the Department as well, because the request is to move towards termination, there would be no case service plan?

MS. PELHAM: That's my understanding.

MR. AMADEO: That's correct.

THE COURT: I'm not going to order a case service plan at this time. So what would the next hearing be? So she's already -- the children are already under the Court's jurisdiction. This is the initial petition. Do I set a dispo hearing or --

MS. HEISE: Adjudication trial.

THE COURT: Adjudication trial? And when does that have to be held? Give me a timeline on that.

MR. AMADEO: Usually within 30 days I believe.

THE COURT: Okay, I can do 30 days because this would trump any other hearings that I have. So today's Friday. So it has to be before the 17th. Mr. Brooks, could your office staff give me a call and

PCS Code: PRH/PHR/PHN
TCS Code: PRH/OFPH

STATE OF MICHIGAN 39th JUDICIAL CIRCUIT - FAMILY DIVISION LENAWEE COUNTY	ORDER AFTER PRELIMINARY HEARING (CHILD PROTECTIVE PROCEEDINGS) ORDER ____ OF ____	CASE NO. 23-000033-NA PETITION NO. 1 JUDGE ANNA MARIE ANZALONE

Court address: 425 N. MAIN STREET, ADRIAN, MI 49221
Court telephone no.: 517-264-4622

In the matter of CECELIA BARBER, MATTHEW ESPINOZA
First and last name(s), alias(es)

1. Date of hearing: FEBRUARY 17, 2023 Judge/Referee: HON. ANNA MARIE ANZALONE

☑ 2. Removal date: FEBRUARY 17, 2023 (Specify for each child if different.)

☐ 3. Military/nonmilitary affidavit attached.

THE COURT FINDS:

4. A petition has been submitted alleging that the above child(ren) come(s) within the provisions of MCL 712A.2(b).
☐ The child(ren) is/are alleged dependent under MCL 712A.2(b)(3).

5. The child(ren) ☑ is/are ☐ is not/are not subject to the continuing jurisdiction of another court.
Court: 11-37423-DS

6. ☑ Notice of hearing was given as required by law. ☐ Notice of proceedings is to be given as required by law.

7. ☑ a. There is probable cause to believe the legal/putative father(s) is/are: (Name each child, his/her father, and whether legal or putative.)
CECELIA BARBER - RICHARD BARBER, LEGAL PER COURT ORDER IN FILE 11-37423-DS
MATTHEW ESPINOZA - RICHARD BARBER, LEGAL PER COURT ORDER IN FILE 11-37423-DS

☐ b. The putative father of _____ is unknown and cannot be identified.

☐ 8. The probable-cause determination was waived by all parties present.

9. There ☑ is ☐ is not probable cause that one or more of the allegations in the petition are true.

☐ 10. There is good cause to adjourn the preliminary hearing because _____.
☐ Petitioner recommends removal of the child(ren) from the home to assure the immediate safety of the child(ren).

☐ 11. There is probable cause the ☐ parent ☐ guardian ☐ legal custodian ☐ other person residing in the child(ren)'s home abused the child(ren). Presence of the alleged abuser in the home ☐ does ☐ does not present a substantial risk of harm to the child(ren)'s life, physical health, or mental well-being and he/she ☐ should ☐ should not be ordered out of the home. (**Use form JC 65**, Order Removing Alleged Abuser from Child's Home, as appropriate.)

Use Note: Do not use this form for removals if a petition has already been authorized in this case. Use JC 75 instead.
Reference Note: The term "department" refers to the Michigan Department of Health and Human Services.

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FEB 17 2023
FAMILY DIVISION, LENAWEE COUNTY

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☑ 12. The child(ren) has not/have not been removed prior to this hearing and an order to take the child(ren) into protective custody is necessary because:
a. the child(ren) is/are at substantial risk of harm or is/are in surroundings that present an imminent risk of harm and the child(ren)'s immediate removal from those surroundings is necessary to protect the child(ren)'s health and safety,
b. the circumstances warrant issuing this order; and
c. no remedy other than protective custody is reasonably available to protect the child(ren).
(If item 12 is checked, contrary to the welfare and reasonable efforts findings must be made. See items 14 and 15.)

☐ 13. The child(ren) is/are Indian as defined in MCR 3.002(12). The petitioner ☐ has ☐ has not given notice of the preliminary hearing as required by MCR 3.920(C)(1).
☐ The preliminary hearing must be adjourned pending conclusion of a removal hearing required by MCR 3.967.
☐ The removal hearing required by MCR 3.967 was conducted in conjunction with this hearing (see required findings in item 15).

A qualified expert, _____, testified as required by law.

14. ☐ a. Contrary to the welfare findings were made in a prior order.
☑ b. It is contrary to the welfare of the child(ren) to remain in the home because: (Attach separate sheets as necessary.)
MOTHER HAS FAILED TO PROTECT HER CHILDREN FROM SEXUAL ABUSE WHEN ABLE TO DO SO, THERE IS A PENDING LAW ENFORCEMENT INVESTIGATION FOR SEXUAL ABUSE AND SEX TRAFFICKING CHARGES, CHILD ADMISSIONS IN CAC INTERVIEW AND OBSERVATIONS OF CASEWORKER PROVIDE ENOUGH PROBABLE CAUSE THAT THE ALLEGATIONS ARE SUBSTANTIATED

☐ 15. ☐ a. Consistent with the circumstances, reasonable efforts to prevent or eliminate removal of the child(ren) from the home were made as determined in a prior order. **OR**
☐ b. Consistent with the circumstances, reasonable efforts were made to prevent or eliminate removal of the child(ren) from the home. Those efforts include: (Specify below.) **OR**
☐ c. The child(ren) is/are Indian, and the court finds by clear and convincing evidence and the testimony of a qualified expert witness who has knowledge about the child-rearing practices of the Indian child's tribe, that active efforts ☐ have ☐ have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. These efforts have proved ☐ unsuccessful, ☐ successful, the continued custody of the child(ren) by the parent or Indian custodian ☐ is ☐ is not likely to result in serious emotional or physical damage to the child(ren), and the child(ren) ☐ should ☐ should not be removed from the home. (Specify below.)
The efforts for 15b. or 15c. are: (Specify the efforts from 15b. or 15c. here. If the child is an Indian child, specify active efforts as defined by MCR 3.002[1] and MCL 712B.3[a].)

☐ d. Reasonable efforts to prevent or eliminate removal of the child(ren) from the home were not made.

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☑ 16. a. Reasonable efforts are not required to prevent or eliminate the child(ren)'s removal from the home due to the
☑ mother ☐ father subjecting the child(ren) to the aggravated circumstance(s) of _____ as provided in section MCL 722.638(1) and (2), and as evidenced by ALLEGATIONS OF SEXUAL ABUSE AS EVIDENCED BY CAC INTERVIEW _____.

☐ mother's ☐ father's conviction for murder of another child of the parent.
☐ mother's ☐ father's conviction for voluntary manslaughter of another child of the parent.
☐ mother's ☐ father's conviction for aiding or abetting in the murder or manslaughter of another child of the parent, attempting to murder the child(ren) or another child of the parent, or conspiring or soliciting to commit the murder of the child(ren) or another child of the parent.
☐ mother's ☐ father's conviction for felony assault that resulted in serious bodily injury to the child(ren) or another child of the parent.
☐ mother's ☐ father's involuntary termination of parental rights to a sibling of the child(ren) and failure by that parent to rectify the conditions that led to that termination.
☐ mother ☐ father being required to register under the Sex Offender Registration Act.

b. Reasonable efforts to preserve and reunify the family to make it possible for the child(ren) to safely return home are
☐ not required because the parent subjected the child or another child of the parent to one of the circumstances stated above.
OR
☐ still recommended because:

(When item 16 is checked, either complete item 18 below or schedule a permanency planning hearing within 28 days of this determination.)

☑ 17. ☐ a. Reasonable efforts shall be made to preserve and reunify the family to make it possible for the child(ren) to safely return home.
☑ b. Reasonable efforts shall not be made to preserve and reunify the family because it would be detrimental to the child(ren)'s health and safety.

☐ 18. Because reasonable efforts to prevent or eliminate removal or to reunite the child(ren) and family are not required, a permanency planning hearing was conducted. (**Use and attach form JC 19**, Order Following Dispositional Review/Permanency Planning Hearing.)

19. Custody of the child(ren) with the parent/guardian/legal custodian
☑ a. presents a substantial risk of harm to the child(ren)'s life, physical health, or mental well-being.
☑ No provision of service or other arrangement except removal of the child(ren) is reasonably available to adequately safeguard the child(ren) from the risk of harm to the child(ren)'s life, physical health, or mental well-being.
WITH RESPONDENT MOTHER
☑ Conditions of custody at the placement away from the home and with the individual with whom the child(ren) is/are placed are adequate to safeguard the child(ren)'s health and welfare.
☐ b. does not present a substantial risk of harm to the child(ren)'s life, physical health, or mental well-being.

☑ 20. ☑ a. All siblings are in joint placement.
☐ b. All siblings are not in joint placement because:

Sibling contact ☑ is occurring according to law. ☐ is not occurring because (see item 27 to order sibling contact):

☑ 21. Parenting time with CRYSTAL ESPINOZA, even if supervised, may be harmful to the child(ren).

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IT IS ORDERED:

22. The petition ☑ is authorized. ☐ is not authorized. ☐ is not authorized pending resumption of the preliminary hearing.

☐ 23. Notice is to be given to the legal/putative father(s) as required by law. ☐ The father was not present and must appear at the next hearing. ☐ The putative father was present at this hearing and shall establish paternity within 14 days.

☐ 24. This matter is set for a continued preliminary/removal hearing on _____ pursuant to MCR 3.967. The petitioner shall give notice of these proceedings as required by MCR 3.920(C)(1). (Use form JC 48.)

☑ 25. The child(ren)

☐ a. is/are placed with the department for care and supervision, and

1) the parent(s), guardian, or legal custodian shall execute all documents necessary to release confidential information regarding the child(ren) including medical, mental, and educational reports, and shall also, within 7 days, provide the department with the name(s) and address(es) of the medical provider(s) for the child(ren). Any medical provider for the child(ren) shall release the medical records of the child(ren) to the department.
2) if the child(ren) is/are placed in the home of a relative, a home study shall be performed by the department and a copy of the home study submitted to the court not more than 30 days after the placement.
3) upon request, the department shall release to the foster parent the information concerning the child(ren) in accordance with MCL 712A.13a(18).

☐ The child(ren) shall be taken into protective custody. To effect this order, _____ is authorized to enter the premises located at _____. This authorization to enter the premises and take the child(ren) into protective custody expires _____.
☐ Enter on LEIN

☑ b. is/are released to Richard Barber - Non-Respondent Parent (Name(s) of parent(s), guardian, or legal custodian) under the supervision of the department.

☐ The following terms and conditions apply to the parent(s), guardian, or legal custodian:

☐ 26. The child(ren) named _____ shall have ☐ a psychological evaluation ☐ counseling to determine appropriateness and conditions of parenting time.

☐ 27. Sibling contact shall be as follows:

☐ 28. ☐ a. Parenting time of _____ is
☐ unsupervised. ☐ supervised until further order of the court.
☐ The department has discretion to allow unsupervised or supervised parenting time by its designee.

☐ b. Parenting time of _____ is
☐ unsupervised. ☐ supervised until further order of the court.
☐ The department has discretion to allow unsupervised or supervised parenting time by its designee.

☐ c. Parenting time of _____ is
☐ unsupervised. ☐ supervised until further order of the court.
☐ The department has discretion to allow unsupervised or supervised parenting time by its designee.

☐ d.

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Order After Preliminary Hearing (Child Protective Proceedings) (12/22) **Case No.** 23-000033-NA
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IT IS ORDERED: (continued)

29. Until further order of the court, placement shall continue pending ☐ resumption of the preliminary hearing

☐ pretrial ☑ trial ☐ disposition on MARCH 16, 2023 AT 9:00 AM .
Date and time

☑ 30. Other:

ALL PARTIES PRESENT:
WILLIAM AMADEO, ATTORNEY FOR DHHS; BRITTANY KELLY, CPS
LEIGH JAMESON-HEISE, LGAL
MICHAEL BROOKS, ATTORNEY FOR MOTHER; CRYSTAL ESPINOZA, MOTHER
NICOLE UNDERWOOD, ATTORNEY FOR FATHER; RICHARD BARBER, NON-RESPONDENT FATHER

Recommended by: _____
Referee signature and date

Judge signature and date HON. ANNA MARIE ANZALONE (P63267)
2-17-23

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THE COURT: Do we have a microphone?

BAILIFF GORNEY: Yeah.

THE COURT: Yeah.

THE WITNESS: Well, I can be louder now.

MR. BROOKS: Thank you.

THE COURT: Okay, she can, okay. Very good, thank you so much. All right, Mr. Amadeo?

DIRECT EXAMINATION

BY MR. AMADEO:

Q. Good morning Cecelia, how are you?

A. I'm good.

Q. Please, state and spell your full name for the record.

A. Cecelia Mae Barber.

Q. How old are you?

A. Fourteen.

Q. What grade are you in?

A. Ninth grade.

Q. Who is Crystal Espinoza?

A. My mom.

Q. Do you see her in court today?

A. Yeah, right over.

MR. AMADEO: The record, reflect that Cecelia Barber point at Crystal Espinoza who is seated at Counsel's table.

THE COURT: The record will so reflect.

BY MR. AMADEO:

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THE COURT: No.

BAILIFF GORNEY: No, okay.

MR. BROOKS: Why don't you let me move, Your Honor?

THE COURT: Charge the batteries?

BAILIFF GORNEY: It might be, I don't know.

THE COURT: Yep. All right, so we're gonna try, again, okay. I'm sorry about this. All right, go ahead Mr. Amadeo.

BY MR. AMADEO:

Q. You okay?

A. Yes.

Q. Okay. Do you have any bad memories of your Mom?

A. Yes, I do.

Q. Can you tell the Judge about that?

A. My mom has like -- be neglected, she has abused me and let me be sexually assaulted and she has used drugs in front of me and (indiscernible) in front of me and overdosed in front me and not be -- car accident with me, (indiscernible).

Q. Do you know somebody named Patrick?

A. Yes, I do.

Q. Who's he?

A. Patrick is one of my mom's friends.

Q. You remember anything with Patrick?

A. Yes, I do.

Q. Can you tell the Court about that?

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A. When I was younger, I was about eight-years-old, my mom let me get sexually assaulted by him and he stuck his penis in my butt.
Q. So, did he sexually assault you?
A. Yes, he did.
Q. When he did that, were you in pain?
A. Yes, I was.
Q. Did you tell your mom about it?
A. I told her (indiscernible 10:35:17)
Q. What did she tell you?
A. She gave me, he ain't doin' it and toilet paper and she (indiscernible).
Q. She, ever take you to the hospital?
A. No, she didn't.
Q. And, you said, has your mom used drugs in front of you?
A. Yes, she has.
Q. Can you tell our Judge what you saw?
A. My mom has smoked right in front of me. She has shot up, in front of me, she has snorted stuff in front of me but, I don't know what sort of stuff. But -- and she has like, over taken her medication a lot, you know, what I mean.
Q. Was your mom's wife ever there when this happened?
A. Yes.
Q. Your mom's wife, Alysia Bowman?
A. Alysia?

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MR. BROOKS: May I see the document, again?

THE COURT: I don't have it.

MR. BROOKS: Oh. I want you to look -- again, may I approach?

THE COURT: Yes.

MR. BROOKS: The young lady.

BY MR. BROOKS:

Q. It's high-lighted, it's not in cursive, it's a printed thing with a box is -- can you see that?

A. It says, Pt at risk for sexual abuse.

Q. No, ma'am, right here.

A. Sexual abuse?

Q. Yes.

A. Yeah, that was not checked.

Q. That is my question. Was that box checked by the interviewer?

A. No, it was not.

Q. Did you complain of being sexually -- you were there last year, 2022, right?

A. Yes.

Q. Did you advise them that you had been sexually abused in the manner you described?

A. No, I did not.

Q. Why.

A. Because, I -- it takes a long time to come out about this stuff that you're not -- that you're not comfortable telling.

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A. No, I did not.
Q. That is the point, at which the issues that we're about -- here about today, became official court concerns, right?
A. Yes.
Q. Not before?
A. Well, my mom did turn in my Snapchat to the police.
Q. All right.
A. And, then that's what got me put on probation. Well, actually, she got me drug-tested after she had given me Airborne.
Q. All right. In making that allegation, that pretty much brought the probation violation and then consequences from that probation violation to a halt pending this investigation of your allegations of sex abuse, is that right?
A. Yes.
Q. That was in February and we're sitting here in December of the same year and that has not proceeded any further, is that right?
A. What do you mean, it hasn't?
Q. No decision's been made on the probation violation, at this point?
A. I don't think so.
Q. Okay.
A. Yeah, it has. Oh, wait --
Q. Wait a minute. Somebody say, yeah?

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THE COURT: I don't know. If you're in the gallery, you can never speak, ever. So, Mr. Brooks, continue.

MR. BROOKS: Thank you.

THE COURT: I'm gonna strike the response in response to, someone said something in the courtroom, you can't repeat it, okay?

THE WITNESS: Okay, well, I don't know for sure, then.

BY MR. BROOKS:

Q. All right, thank you. Now, isn't it possible that you did that, made those allegations specifically, so that that hearing would stop and the consequences would not happen to you?

A. No, that is not what -- I would not do that.

Q. Were you angry with your mother turning you in?

A. Yes, I was.

Q. Did that have any influence on you raising that issue, the sexual molestation?

A. I think, maybe a little bit, yeah. But, I did not make it up because of that.

Q. The -- I believe, the cursive handwriting on that report, which has been stipulated to, states that you reported being sexually molested by a cousin at age four, is that right?

A. Yes.

Q. And, how old are you today?

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A. Fourteen.
Q. So, we're talking about something that occurred 10 years ago, is that right?
A. Yes.
Q. While, all this was going on and with the probation violation and the allegations, there was and continues to be, I guess and not a part of it, a custody fight going on between your parents, is that right? A court custody fight?
A. Yes.
Q. Is it ugly?

MR. AMADEO: Objection, speculation.

THE WITNESS: I don't really know, because my --

THE COURT: So, hold on one second. Mr. Amadeo, your objection?

MR. AMADEO: Objection's speculation. How would she be able to determine if it's ugly or not, that's.

THE COURT: So, Mr. Brooks, perhaps you can rephrase the question so it doesn't --

BY MR. BROOKS:
Q. Are you aware of the dispute between your mother and your father?
A. I know it's going on, but, I don't get information about it.

MR. BROOKS: Thank you. I have no further questions. Thank you, I can have that back.

THE COURT: So, can we mark that as Defendant's

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opened up my legs and then he had flipped me around on my back -- no, on my stomach, (indiscernible) and then, he had like, stuck his penis in my butt and, uh -- proceeded to like, grab like my side, (indiscernible) and stuff. And, like, I explained in there, in the thing, is that like, with every stroke I could like, feel like oil and then, uh -- he got. I'm sorry.

THE COURT: It's okay.

THE WITNESS: And, then, after that he had put a cap, he put his penis in my mouth and then, uh, he had -- I don't know what the (indiscernible) is. I, only like, if the sperm, his sperm, I (indiscernible). And, then we would have, (indiscernible), then, uh, (indiscernible).

BY MR. AMADEO:

Q. Did you tell your mom about this?

A. No, I told her that my butt was bleeding, but, I was pretty sure she knew because when she came in, she had like, a soft voice and she did sound like she felt bad. And, so I'm pretty sure she knew what had happened. Because, you don't just leave your daughter in a room with a guy. Especially, when like, I don't know, it's not just something a mom would do.

Q. Is one of the reasons, you came forward because you're scared about your brother's safety?

A. Yes.

Q. You love your brother, don't you?

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like it is not a good place for any child to be because you either grow with love and support. Yes, my mom is love, yes, she has support but, she also, there's something that like her way, she doesn't work.

Q. She doesn't what?

A. She doesn't want it done.

Q. I see. Now, one of the allegations is that, you had been traded for drugs for your mother. Do you understand that?

A. Yes, sir.

Q. Did you, personally, see that kind of a transaction occur?

A. Before, my mom had -- so, Patrick had came over and my -- and Patrick had pulled out his spoon, a little spoon and he had put in, pretty sure it's heroin, in it and (indiscernible) with it and then they sucked it up in a syringe and then, my mom tied, like, a thing around her arm, she had like a tourniquet, but I don't know if was a tourniquet. I just know it was to use (indiscernible). And, then they shot it into arm and she -- and then, Patrick (indiscernible). Patrick had half (indiscernible), they had like, put like, pressure on it to get blood stopped. And, then, they had smoked, well, I don't know (indiscernible) cocaine first, but, they had smoked meth and then, either after or before they had put in, I think, maybe cocaine but, I don't know for sure it was on the table. And, my mom had rolled out the (indiscernible) she had (indiscernible) and she went to that one table and then, like

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a couple minutes after that is when she had left. So, that's why I believe, that's what.

MR. BROOKS: I have no further questions, thank you.

THE COURT: Mr. Amadeo?

MR. AMADEO: No, thank you, Your Honor.

THE COURT: All right. Thank you, very much. So, you're excused. May she --

THE WITNESS: Am I allowed to speak?

MR. AMADEO: If the Judge allows it, sure.

THE COURT: Any objection?

MR. BROOKS: Well, I kinda do, because I don't know what's coming, Your Honor.

THE COURT: Is it about something you've already testified about?

THE WITNESS: It's just how I feel. I just want to -- I can't really say without saying it. It's nothing bad, it's like, actually --

MR. AMADEO: Maybe I should just ask one question?

THE COURT: Why don't you ask that question?

REDIRECT EXAMINATION

BY MR. AMADEO:

Q. Cecelia, is there anything you feel the Court needs to know?

A. Uh.

Q. You said how you feel. Do you want to tell the Court how you feel?

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A. I want to kinda say something, like, to my mom and I love you, Dad.
Q. What do you want to say to them?
A. I wanted to tell her that I do love and I miss her and I know that she can do this and I really believe in you. And, I just want you to get the help and I don't want this to be the end of it. I do, really, want to see you and I do really love you and I just want you to succeed. I think you just need to learn to love yourself before you could really be able to help me and Matthew. I know you try so hard and I know you try, so hard with, your addiction. I know it's so, so, so hard, but, I know you can do this. And, I really believe in you.

MR. AMADEO: Nothing further, Your Honor.

THE COURT: All right. Thank you. So, is this Witness excused?

MR. AMADEO: Yes.

MS. HEISE: Yes.

MR. BROOKS: No objection.

THE COURT: All right, so you can leave. Thank you.

(At 11:15 a.m., Witness excused)

THE COURT: Mr. Amadeo?

MR. AMADEO: Thank you, Your Honor.

THE COURT: Call your next witness.

MR. AMADEO: Department calls Chelsee Pelham, please.

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Q. Is there a trauma report done on him?
A. Yes.
Q. Is there any criminal history for Ms. Espinoza?
A. Yes, she has a significant criminal history.
Q. You concerned about that?
A. Very much so.
Q. Have new charges been (indiscernible) against Ms. Espinoza since the start of this case?
A. Yes, to my knowledge, there's four. One is a felony for Uttering and Publishing, I believe, maybe Forgery and then, three other misdemeanors for Retail Fraud and Domestic Violence.
Q. To your knowledge, are they crimes that involve dishonesty?
A. Yes.
Q. Okay. Was there an on-going investigation at the time of this Petition?
A. Yes.
Q. All right. Do you know anything became of that?
A. I don't believe so.
Q. Based on your experience, what's the actual, greatest concern you have for a child like this?
A. Sexual abuse and sex-trafficking further.
Q. Is this the first time, Ms. Espinoza's been investigated by CPS?
A. No.

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Q. Can you explain what previous CPS investigation that she's had?
A. Ms. Espinoza has had approximately, seven other investigations, three of those turned out to be Category 2's, which is a substantiation that there's a preponderance of evidence of abuse and neglect. And, then I believe, four of them were Category 4's, which is basically, means that there, was allegations but they were not confirmed.
Q. So, kind of jumped ahead. Based on your knowledge, quite a different levels of CPS investigations?
A. Yes.
Q. All right. And, can you briefly explain, are there four?
A. There's technically, five.
Q. Okay. Can, you briefly explain each one.
A. Yeah, so Five, is when there's allegations, but there might not be any kind of evidence, whatsoever or we can' find the family. Four, is when there's allegations, but, they are denied. We didn't find evidence of abuse or neglect. Three is, there is evidence of potentional abuse and neglect but we're not gonna give them services. Well, they might get some services but, it's more voluntary. Two, is there's definitely confirmed abuse and neglect and services are mandatory. And, then One is, court involvement.
Q. Which level is this?
A. One.

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facts that existed at that time and not since.

MR. BROOKS: Your Honor, this all goes to the motives the client -- or the child, would have for lying about the sexual abuse that she suffered at the hands or in the presence of her Mother. It is very relevant.

THE COURT: Mr. Amadeo?

MR. AMADEO: Your Honor, I'll object. I'm not sure what relevancy allegedly, Cecelia's drug use has to do with her being raped as she testified to. I don't think it's relevant.

THE COURT: Mr. Brooks?

MR. BROOKS: It is relevant to the fact that the young lady, the child, has -- is angry with her mother and I want to lay out for the Court how she demonstrated that anger, which, up to and included, lying about being sexually molested.

THE COURT: So, these events occurred before the Petition was filed or after?

MR. BROOKS: These occurred almost contemporaneously, within a day or two of when the Petition was filed.

THE COURT: I'll allow it.

THE WITNESS: So, I called CPS letting them know that Cecelia had been smoking weed. I, also, called the cops. But, right prior to this, I had taken Cecelia to the doctor's

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and got her, drug tested. She tested positive and that's when I called CPS and everybody else. And, it was on -- Cecelia ended up finding out about me getting her drug tested and she was mad at me about -- and she expressed her anger about that because, she thinks I did it behind her back. She was mad at the doctor, too.

BY MR. BROOKS:

Q. All right. So, you get to the hearing on the Probation Violation, right?

A. Uh-huh.

Q. 'Cause she was --

THE COURT: That yes?

THE WITNESS: Yes.

THE COURT: I need a yes or no.

THE WITNESS: Yes, sorry.

BY MR. BROOKS:

Q. All right. 'Cause she was on probation, correct?

A. Yes.

Q. And, what did she tell the Court, at that point?

A. That's when she told the Court that I had sold her for drugs.

Q. Had you ever heard that accusation before, ever?

A. Not on me.

Q. All right. On someone else?

A. Yes.

Q. All right. What did the Court do, at that point?

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A. Barber.
Q. Barber. So, she says, you traded her for sex when she was nine-years-old?
A. Yes.
Q. She is now 14-years-old?
A. Yes.
Q. And, point of fact, you heard her testify here in -- a couple weeks ago, right?
A. Yes.
Q. I think, she said that she was abused more recently than when she was nine-years-old didn't she?
A. I'm not sure because I was never really told dates of when she -- this happened, but, I was told first that it was a couple different men and now, recently, she had said, it was only one man.
Q. I suppose to cover the base, I should ask this question, is there any truth to that allegation?
A. No.
Q. Why was your daughter at Havenwyck?
A. She got admitted because she said that she was hearing voices in her head and voices with her Dad yelling at her, screaming at her. She was admitted February of 2022 and she was just having a lot of issues. Then, she didn't want to be at her Dad's, she wanted to be with me. And, she stated this in the records, like (indiscernible) she went as a result of hearing

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Q. Is there anything else you'd like the Court to know?
A. Oh, as a note, after that, just --
Q. After what?
A. After you talked to me about that paper.
Q. Yeah.
A. It (indiscernible). Just because I didn't work with CPS, does not mean I wasn't going and doing any. I was in drug classes. I was in counselling, I'm still in counselling and you know, just because I wasn't working with them, doesn't mean I wasn't doing anything. I got a job now, I was working on getting a second job. We have our own place. I think I've come a very long ways just in the past couple months. I've made a complete, you know, 360, so.

MR. BROOKS: All right. Thank you, ma'am.

THE COURT: Mr. Amadeo?

MR. AMADEO: Thank you.

CROSS-EXAMINATION

BY MR. AMADEO:

Q. Ms. Espinoza, did you hear your daughter testify a couple weeks ago?
A. Yes.
Q. What did you think of that testimony? Can you explain to the Court what your position is on that?
A. My honest (indiscernible)?
Q. You're under oath, so I'd hope you'd be honest.

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A. I thought it was award-winning.
Q. So, your daughter's a liar?
A. Yeah.
Q. Okay.
A. I didn't know my daughter did that, but, it's not okay what she's doing.
Q. So, you didn't find her believable?
A. No, I found her story to be believable, but, it wasn't.
Q. So, you never took her to Tecumseh Inn?
A. Yeah, I took her to Tecumseh Inn.
Q. You ever try to commit suicide in front of her?
A. It wasn't in front of her.
Q. Was she present anywhere, when --
A. She was in the other room, yes.
Q. So, to be clear, is it accurate that your daughter's a liar, but, you tried to commit suicide while she was in the other room? And, you feel you're stable for this child, is that correct?
A. I am.
Q. Did you ever use drugs in front of her?
THE COURT: (Indiscernible) in a hotel, correct?
A. Correct. Yes. I was in the bathroom, that makes it (indiscernible).
Q. Can I ask you, at the risk of speculation, if you did commit suicide, who else was there with the child?

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A. Alysia.
Q. And, what would the child have done if they found you committing suicide in the bathroom? What do you think?
A. It would've been really bad.
Q. All right. And, you put your child in that situation, correct? Did you ever use drugs in front of her?
A. No, not in front of her.
Q. Did you use drugs when you had control of her, when you had possession of her, when you had custody of her?
A. Yes.
Q. So, just for the record, is it accurate that you just said under oath, that you have used drugs while you were caring for her and you tried to commit suicide while you were caring for her?
A. Yes.
Q. And, you also, stand by the fact that your daughter lied about being raped by somebody you knew.

THE COURT: Hold on, hold on. Ms. Espinoza, so, we're keeping a record and you know, for appellate purposes, so, you need to speak loud enough into that microphone.

THE WITNESS: Okay.

BY MR. AMADEO:
Q. You ever been charged criminally?
A. Yes, I have.

THE COURT: What drugs did you typically use in

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THE COURT: And, you were still taking diet pills?
THE WITNESS: Yeah, as prescribed.
THE COURT: Okay. Do you have that prescription?
THE WITNESS: Yes, I'm pretty sure.
THE COURT: I'm just -- okay.
BY MR. AMADEO:
Q. Do you have any active criminal cases, Ms. Espinoza?
A. Yes, I do.
Q. What are they?
A. One's forgery, two domestics and retail.
Q. Retail Fraud, First, is that accurate?
A. What?
Q. Is it accurate, it's a Retail Fraud, First Degree?
A. I believe so.
THE COURT: For the record, the Court did take judicial notice that she has a third offense notice, so, she would be looking at life (indiscernible).
BY MR. AMADEO:
Q. You said you have two domestics, is that accurate?
A. Yes.
Q. Who's the victim in the domestics?
A. It's my wife, considered my wife.
Q. Okay. Is that Alysia Bowman?
A. Yes.
Q. Okay. So, you beat Alyisa Bowman?

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Q. Okay. Yes or no, is Ms. Bow --
A. Yes.
Q. -- can I finish my next question, if you allow me to, it'd be great. Ms. Bowman, your wife, is she on the Sex Offender Registry?
A. Yes.
Q. Did you try to kill yourself while you had custody of your child?
A. Yes.
Q. Did you use drugs while you had custody of your child?
A. Yes.
Q. And, you feel you are a better option for this child, based on those factors?
A. I didn't say that.

MR. AMADEO: I have nothing further.

THE COURT: Ms. Heise.

MS. HEISE: Just a couple.

CROSS-EXAMINATION

BY MS. HEISE:

Q. Those domestic violence misdemeanors, those are still pending? They were dismissed?
A. They were dismissed.
Q. And, then they were reinstated?
A. I think so.
Q. You know so or you think so?

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so that way I could get clean.

THE COURT: So, you've never gotten clean, though, because you've been using suboxone for that amount of time?

THE WITNESS: That's still considered clean, though, I'm not using street drugs.

THE COURT: So, suboxone, the purpose of it is to wean off, not stay on it for five years.

THE WITNESS: Yeah, and I'm actually, on the Sublocade shot, now. So, I'm on the shot and its -- everyone process where you take a certain amount in the shot, it lasts a month and then the next shot, it's the same amount and then, a month later, you take one more shot, it weans you off.

THE COURT: Okay. But, for four years you were just using suboxone?

THE WITNESS: Yes.

THE COURT: Which, can create the same high, can be abused.

THE WITNESS: It can be abused, yes.

THE COURT: And, that's --

THE WITNESS: I never abused it.

THE COURT: Okay. Mr. Brooks?

MR. BROOKS: No, no further questions, Your Honor.

MR. AMADEO: Your Honor, just as an offer of proof, when we came to the trial, initially, her DV's were dismissed. Apparently, they are active right now. So, there's two active

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THE COURT: All right. Now, come around, sit down by the microphone and adjust the microphone. Now, can you state your full name for the record.

THE WITNESS: Teresa Ann Pate.

THE COURT: Spell your first and last name.

THE WITNESS: T-e-r-e-s-a, P-a-t-e.

THE COURT: All right, thank you. Mr. Brooks?

DIRECT EXAMINATION

BY MR. BROOKS:

Q. You are the Mother of Mrs. Espinoza, is that right?

A. Yes.

Q. And, you are the grandmother of Cecelia Barber?

A. Correct.

Q. Are you aware of the allegations that Cecelia Barber has lodged against your daughter?

A. (Inaudible).

Q. Some of them are alleged to have occurred in -- while they were living in your home, is that right?

A. Correct.

Q. When she was around four-years-old?

A. Correct.

Q. Do you have an opinion and what is it based on, whether or not that is a believable scenario or not?

MR. AMADEO: I'm going to object. She's not an expert, she cannot testify to her opinion. Can ask her a

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questions, but --

MS. HEISE: (Indiscernible).

MR. AMADEO: -- flat out opinion, Judge.

MR. BROOKS: I can ask her on what she basis for that opinion.

THE COURT: All right. Weigh in, Ms. Heise?

MS. HEISE: I take no position, Judge.

THE COURT: All right. I guess, I'll let you ask that, but then, he can renew his objection.

BY MR. BROOKS:

Q. How long did they live with you?

A. When Cecelia was two and Matthew, his whole life.

Q. All right. And, were you working at the time?

A. No.

Q. You were living at home full time?

A. Correct.

Q. And, the children were, again, how old?

A. Cecelia would've been two and Matthew started off from the day he was born.

Q. And, they lived there for how long after then?

A. 2021, all this started.

Q. Was the child, and the child being, Cecelia, had she attained the age of four-years and was she still living with you, then?

A. Yes.

Q. And, they were -- you were there 24 hours a day?

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A. Correct.
Q. And, they were there 24 hours a day?
A. Yes.
Q. Do you recall any incidents? I know, you weren't present in the room when testimony was given, but, you can -- you know what she's claiming happened in your home?
A. Nothing happened when she was four-years-old or any other time.
Q. Well, let's start with what she said?
A. Okay.
Q. Four-years-old, how do you know nothing happened?
A. Because she was with me. They didn't -- she didn't go live with Crystal. She didn't live with Richard, she was with Richie on weekends and she was with me, at the time. She didn't go with Crystal.
Q. Okay. So, if she said that she was traded for drugs at age four, what is your reaction?
A. She was treated for drugs at age four, Cecelia was?
Q. Yes.
A. She wasn't treated for drugs at age four.

MS. HEISE: I think there's a breakdown in communication, traded not treated.

THE COURT: Traded, not treated.

THE WITNESS: Oh, okay. No, definitely not. She was not traded for drugs at age four.

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A. I had third-party guardianship.
Q. What was -- why couldn't they be parented by Crystal?
A. Because, both Crystal and Richard were on drugs, at the time.
Q. So, you didn't allow the children around Crystal because she wasn't safe?
A. Correct, at that time.
Q. So, at the time --
A. It wasn't that she wasn't safe. She wasn't making, I don't feel that she -- it was in good interest for the kids to be around that.
Q. So --
A. I don't think she would ever harm them or allow harm to happen.
Q. So, in your discussion, you said something about, you were home 24/7, are you a stay-at-home person?
A. Yes.
Q. Is there another adult in the home that works outside the home?
A. I'm disabled. I'm --
Q. Okay.
A. At the time, when the children were really young, I had (indiscernible), who has now passed away. He was retired and disabled and there was no (indiscernible).
Q. Were there --
A. I, also, worked from home, at the time.

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Q. Okay.
A. I worked from home up until 2020.
Q. Okay. And, then, were there other children that lived in the home with you, as well?
A. When?
Q. When Cecelia and Matthew lived with you?
A. No.
Q. Other adults live there?
A. My fiancee', my oldest son -- or, my middle son. When, I -- I did live at my other son's home. We just lived there from, like, to -- after Jerry died, we lived there from 2015 to 2018 and my oldest son and a roommate was living there, as well.
Q. Okay. When did the third-party, you said, guardianship or something, when did that end?
A. Crys -- I don't know how it got ended, but, Crystal and Richard both, had it squashed out. Crystal was living with me, so, I'm thinking it was '21.
Q. So, Crystal was living with you on and off throughout the years?
A. No, 2019, she moved in with me, yes. Back in, I wanna say, 2000 -- 2014, she was living with me, at that time.
Q. So, you can't say that Crystal didn't have access to the children when you were asleep --
A. She wasn't allowed to take them.
Q. Right, take them by herself. Do you know this Patrick guy,

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minutes. If not, I can always re-schedule.

MR. FREY: No, we want to get this done today, Your Honor, we'll be back.

THE COURT: Okay. Ms. Borders, can you?

MS. BORDERS: Yep, I'll be there.

THE COURT: Okay.

MR. RAINS: All right. So, Your Honor, about 2:00, 2:05?

THE COURT: Two o'clock's, fine.

MR. RAINS: Two o'clock, we'll see you, then. Thank you, Judge.

THE COURT: Thank you.

MS. BORDERS: Thank you.

THE COURT: All right. So, I have Rachelle VanAken and Mr. Brooks, you're going -- Mr. Amadeo, no objection?

MR. AMADEO: No objection, Your Honor.

THE COURT: We'll bring her in.

MR. BROOKS: Oh, we have a nice view of her filing cabinet.

THE COURT: All right, Rachelle VanAken, you're a doctor, yes?

MS. VANAKEN: Nurse Practitioner, yes.

THE COURT: Say, again?

MS. VANAKEN: Nurse Practitioner.

THE COURT: Okay, very good. So, can you raise your

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A. Yes. As a Forensic Nurse, I also -- so, I'm certified in adult and adolescent sexual assault exams. So, I do sexual assault exams, domestic violence, child abuse, human trafficking.
Q. All right. And, how long have you been doing that, particularly with, as it relates to sexual abuse cases?
A. Since 2014.
Q. Almost 10 years. Okay.
A. Almost 10 years.
Q. Okay. Are you professionally acquainted with my client, Crystal Espinoza?
A. Yes.
Q. Are you professionally acquainted with her daughter, Cecelia Barber?
A. Yes, I was.
Q. And, referring specifically to Cecelia Barber, how did you happen to encounter her in your profession?
A. The first time, yep, the first time I encountered her professionally, was both her and her brother were brought into the ER for a sexual assault exam.
Q. Do you know approximately, when that would've been?
A. Unfortunately, I do not. I want to say it was a couple years ago, but I don't know the exact date. I am not with Promedica anymore, so I can't look the chart up.
Q. Too much dependent on computers, right?

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A. I know. I know.
Q. All right. Both children were complaining or, at least, were brought in, more accurately on allegations of sexual assault, is that right?
A. Correct. Her brother was brought in for an allegation of sexual assault and she was seen as -- to ensure, like, there wasn't any other things going on with her, as well.
Q. Was she complaining of any sexual assault, at that time?
A. No.
Q. Did you do a physical examination of this young lady, at that time?
A. Yes, of both children.
Q. All right.
A. I did not do a vag -- I did not do a vaginal exam of her. She did not want to do that.
Q. What evidence, if any, physical evidence, did you find of a sexual abuse of this child?
A. There wasn't any physical of that, at that time. And, like I said, I did not see her vaginal area, so.
Q. All right. Why was she brought in?
A. Matthew, there was a allegation of sexual abuse by his father.
Q. Uh-huh.
A. And, because both children resided, you know, at times with their father, that's why both kids were brought in to have a forensic exam performed.

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Q. Have you seen this young lady, that being, Cecelia Barber, since that first meeting?
A. I'm sorry, repeat that. I apologize.
Q. Have you seen her more than one time or just that one incident?
A. No, I've seen her as a patient in primary care after that.
Q. Thank you. At, any point in time, has she complained to you of sexual abuse perpetrated against her person?
A. No.
Q. And, that time frame, you think, would've been over the last, how many years, roughly?
A. I think it was, roughly, a couple years ago where I first saw the kids, maybe three -- two or three years ago. And, then for primary care I saw her, for well over a year.
Q. Has she behaved in such a manner or said things to you, that would lead you to believe she is or was currently being sexually abused?
A. Not during the time period that I was seeing her, no.

MR. BROOKS: Thank you. That's all I have.

THE WITNESS: Okay.

THE COURT: Mr. Amadeo?

CROSS-EXAMINATION

BY MR. AMADEO:

Q. Good afternoon, Doctor VanAken. I'm William Amadeo, I'm just gonna ask you a few follow-up questions.

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A. Absolutely.
Q. When -- What was the time frame you saw Cecelia as a patient?
A. I, please forgive me, I don't know the exact time frame, only because I don't have access to Promedica's charts, anymore. The first time I saw her would've been when Matthew and her, both, came to the ER for a sexual assault exam. I, in my -- I think it was two or three years ago. And, then after that, starting in 2020 I was a primary care nurse practitioner and so, after I started working in that role as a primary care, she started coming as a patient. So, I know it was well over a year that I saw her as her primary care provider.
Q. In the course of your career, have you seen young victims who did not want their vagina area examined?
A. Oh, absolutely.
Q. So, that's not unusual, is it, Doctor VanAken?
A. No, no.
Q. In fact, would it be fair to say, based on your experience that there could've been a lot of shame there with the child and she could've been molested?

MR. BROOKS: I'm going to raise an objection here, it calls for speculation, on the part of the Witness.

MR. AMADEO: Well, Your Honor, I think the door's been opened to that. His whole examination was speculation. If she is deemed a doctor, examined, I think it's beyond a fair question.

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interest to terminate said rights.

So, we ask the Court to ensure the finds are bifurcated in the two parts and we turn *In Re Mota* for that.

First, specifically, as it relates to adjudication where there's a violation of juvenile code. And, second, as it specifically relates to disposition of this matter. Whether, at least, one grounds for termination exist and whether it's in the child's best interest to terminate Ms. Espinoza's permanent parental rights. We ask the Court to protect the record on appeal, specifically, outline the facts to find and support the findings.

Today, we are asking the Court to determine that jurisdiction under the juvenile code is established by a preponderance of legally admissible evidence. Clearly, preponderance of evidence supports the conclusion that jurisdiction is appropriate under **MCL 712A.2(b)(1)**, as Ms. Espinoza, the legal parent of these minor children, although able, at one point, to provide proper care and health, refused to do so. And, the children's physical and emotional well-being was put at risk. And, it's appropriate under **Subsection 2** that Ms. Espinoza's home environment, by reason of neglect, cruelty, intoxication, criminality and depraved beyond the part of the Respondent is unfit for the children to live.

During the trial, you heard Cecelia Barber testify and we heard horrifying stories. We heard stories of a child

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who was raped. We heard stories of a child who forgave her mother, despite what she went through, but said under no uncertain terms, she was safe with her father and her step-mother. The child was crying for help in this situation. It was emotional, it was heart-wrenching. It was clear, that that child felt safer with her biological father and her step-mother.

We, also heard, Ms. Espinoza testify, her own words, Judge, that drugs were used while the child was in her custody. Ms. Espinoza tried to commit suicide and Ms. Espinoza has serious criminal matters pending. I, actually, hope that Ms. Espinoza can make it through those criminal matters and get her life together. But, its clear, based on everything, this element's met and its terrifying that Cecelia could be placed back with her.

If the Court finds Petitioner's burdens been met, after it makes its finding, we ask the Court to determine that, although, the aggravating circumstances listed in **MCL 722.638(1)**, do not exist. **MCL 722.638(3)** permits the Department with the concurrence of the LGAL to petition for termination at the initial disposition hearing and that in this case, such relief's appropriate. The law dictates that reasonable efforts were made, all cases except, for this, aggravated circumstances that apply. Although, the governing statute does not specifically outlay sex trafficking and

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the bonds between the children. In this case, because of the allegations, mother was not allowed to have contact with either, Matthew or Cece. So, that in order for her to benefit from the fact that the children were placed with their father, she would have needed to use the case workers, investigation powers, let us know if there's counselling that she succeeded in. Let us know if there's drug classes going on. Those kinds of things would've informed the case to know that these children, who are with their father and their mother is getting better. Let's see drug screens, she says she has a job, now. She has savings. On the other side, the children's view, they don't see child support coming, obviously, children don't know about child support, but, when I look at their side of the ledger, no child support coming during this time, to their placement. So, the fact that this is a family placement, did not benefit this mother to the extent that she was able to reduce the risk of harm to the children during the pendency of this case. The Agency did not offer services to her, did not require her to do services and I submit to the Court, that other than self-report, we don't have any evidence that the mother is any different today than she was when the case started.

So, I would ask you to consider that the children's best interests are best served by the termination. The parent's ability -- we have historic, life-long for these

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analogues, police officer R & O, she pled guilty to those. And, now she has a pending forgery, uttering and publishing and a retail fraud, first degree, there's a habitual offender fourth offense notice. She does have three prior felonies, they are each five-year or over felonies, so, she is facing life in prison, if convicted on any of those.

The statutory grounds for adjudication under **MCL 712A.2(b)(1)**, when parents -- whose parents or other person legally responsible for the care and maintenance of such child, and unable to do so, neglects or refuses to provide proper and necessary support, education as required by law. Medical, surgical or other necessary care for his or her health, morals, who is deprived of emotional well-being or is abandoned by his parents, guardian or other custodian who is otherwise without proper custody or guardianship. And, **MCL 712A.2(b)(2)** whose home or environment, by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of a parent, guardian, non-parent adult or other custodian, is in an unfit place for the juvenile to live in.

The Court finds, based on the testimony that we received there, there is neglect, drug use in the home, domestic violence in the home, attempted suicide and sex trafficking. So, I feel that you -- I wanna say the People, but, the Department has established statutory grounds for adjudication in this case.

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but is not under **Subsection 3**, not as relevant.

But, based on the testimony that I've heard today, it is reasonable that the Department move for termination at initial disposition due to the parent being a suspected perpetrator or suspectful (sic) placing the child at an unreasonable risk and harm due to failure to take reasonable steps to intervene to eliminate that risk.

Statutory grounds for termination of parental rights is authorized under **MCL 7. -- or 712A.19(3)** include the child, or sibling of the child who suffered physical injury or physical or sexual abuse and the parents act caused the pri -- the physical injury or the physical sexual abuse.

The Court finds that there is reasonable likelihood that the court -- the child suffered from injury or foreseeable future if placed in the parent's home. Based on the testimony we received by Cecelia and also, testimony by the Department, that Matthew was present different times. I do find, that the Department has satisfied the requirement that the child or sibling of the child has suffered physical injury or physical or sexual abuse and that based on the testimony heard, that the Court does find credible, that the parents act caused the physical injury or sexual abuse of the child.

The Court, also, finds there is reasonable likelihood the child would suffer injury or abuse in the

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foreseeable future if placed in the parent or the mother's home.

B(2), the Court finds that the child or sibling of the child has suffered physical injury from the sexual abuse and the parent who had the opportunity to prevent that physical injury or physical or sexual abuse, did fail to do so, for both children.

And, let's see, I'm not done yet. Best interest factors, the children need permanency, stability and finality. These children have remained in the main care of the father in the last two years. Mr. Barber, who although, he does have the prior history of drug abuse and criminality, has maintained sobriety and stability for the last five years and also, maintains stability for the children, during -- at least the last two years.

The children do have a close bond with both parents. Cecelia Barber testified that, she does love her mother and at some point, would like a relationship with her mother, but the Court finds that there's a great risk of harm where as a minor for her to have that relationship with her mother, also for the minor child, Matthew.

Parenting ability, based on the testimony received from Ms. Espinoza, from her mother, from Cecelia and from the case worker, the Court does find that, Crystal Espinoza does not have parenting ability, at this time and is not fit to be

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a parent, to these minor children. While she was drug tested and did not test positive for heroin, she did have some other medication in her system and prior record for possession of analogues and no prescription or script was provided to the attorney or the Department. She has (indiscernible) parenting and she does have criminal history. Previously, she had parenting time only due to these issues. Parent's visitation history with the children, Ms. Espinoza has to provide therapeutic parenting time visits (indiscernible). At, one point, unsupervised parenting time with Matthew, but that ceased, how long ago did that stop, about a year ago, or about mid-summer, wasn't it?

MS. HEISE: Your Honor, the removal date is 2-17 of '23.

THE COURT: So, after that.

MS. HEISE: Yeah.

THE COURT: Okay. Since the removal date, there's been no supervised parenting time or placement. And, in fact, Ms. Espinoza has not seen her children.

The children were placed with, their non-respondent father, who based on the reports by the Guardian Ad Litem, who has provided reports as required, they are doing well and thriving.

Cecelia has severe trauma and emotional damage from the events that occurred. She is in a placement right now at

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the Campus and is receiving care and the Campus does tend to provide excellent care possible for these children and we are grateful for that resource.

It is the opinion of the experts, including the Lawyer Guardian Ad Litem, therapist, case worker, testimony has established that Crystal has been -- Espinoza has been provided services in the past and she is still making poor choices. She has placed her children in danger and caused extensive life-long trauma to those minor children. The Court finds that she should not be able to continue in a relationship with her children due to the harm she has caused in their life and well-being, as long as they're minor children. The siblings are in placement together with their biological father.

In this case, reasonable efforts were not made to preserve and reunify the family because, the Court, in previous Order determined that it would be detrimental to the children's health and safety. Based on the testimony heard and what's been placed on the record, the Court finds there's clear and convincing evidence that a statutory basis exists for terminating the parental rights of Crystal Espinoza. The children will continue in the custody of their father. Is there a child support order?

MS. UNDERWOOD: There should be one in the custody file, Judge.