IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

March 27, 2020

NO. 20-8500-009

IN THE MATTER OF THE STAY OF ALL COURT ORDERS REQUIRING IN-PERSON VISITS BETWEEN CHILDREN IN CUSTODY OF THE NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT AND RESPONDENTS UNDER THE ABUSE AND NEGLECT ACT

ORDER

WHEREAS, this matter having come before the Court upon recommendations to suspend in-person visits between respondents under the Abuse and Neglect Act and children who are in the custody of the New Mexico Children, Youth and Families Department (CYFD) due to allegations of abuse and neglect;

WHEREAS, respondents of children placed in CYFD custody while abuse and neglect proceedings are pending retain a fundamental liberty interest in the care, custody, and control of their children under the federal and state constitutions, and the Court recognizes that separation from caregivers can be a highly traumatic event in a child's life;

WHEREAS, this Court must exercise its power of superintending control over pleading and practice in the New Mexico Judiciary under Article VI, Section 3, of the New Mexico Constitution to balance the need to protect the health and well-being of children in CYFD custody with current directives from public health

authorities emphasizing the need for New Mexicans to avoid unnecessary contact with one another and remain in their homes to the greatest extent possible during the current public health emergency; and

WHEREAS, in light of the foregoing, and the Court being sufficiently advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, Justice Michael E. Vigil, Justice C. Shannon Bacon, and Justice David K. Thomson concurring;

NOW, THEREFORE, IT IS ORDERED that all orders allowing for visitation between children and respondents in pending cases under the Abuse and Neglect Act, NMSA 1978, § 32A-4-1 through -35 (2019), shall be amended to provide the following:

1. All in-person visits shall be temporarily suspended for thirty (30) days unless the period of the temporary suspension is extended or shortened by further order of this Court;

2. CYFD shall make diligent efforts to provide visits between respondents and children through remote means such as by audio-video conferencing, such as FaceTime or a similar service (first preference), or telephone (second preference);

3. CYFD shall provide a report to the district court and all parties on a bi-weekly basis setting forth efforts it has undertaken to maintain contact between respondents and children. The bi-weekly report shall address the following:

a. CYFD's efforts to screen the parties for risk of exposure to the novel coronavirus (COVID-19);

b. If applicable, verification from public health officials that the children were exposed to COVID-19 and the number of days remaining in any quarantine or self-isolation;

c. All efforts made by CYFD to ensure audio-video or telephonic visits have occurred since the suspension of in-person visits, and the frequency of those audio-video or telephonic visits;

d. If audio-video or telephonic visits were not feasible due to available technology between foster parents and respondents, all efforts made by CYFD to arrange for such visitation;

e. Where audio-video or telephonic visits have not been implemented, CYFD shall demonstrate its efforts at providing the respondents with digital photos of the children doing various activities each week; and

f. If a child may have been exposed to a person with a positive test for COVID-19, CYFD shall demonstrate all efforts it undertook to ensure the safety and health of the child, including any and all of the following:

i. Removal from the foster home;

ii. COVID-19 testing for child and household members;

iii. Safety planning if foster parent or caregivers are hospitalized; and

iv. Efforts to identify and place the children with family if the child is removed from the foster parent;

4. The temporary suspension of visitation as a result of the current public health emergency shall not be used against any party in the ultimate determination of parental rights;

5. The district court may exercise its discretion to allow in-person visitation between children and respondents upon the recommendation of CYFD and a showing by a clear and convincing evidence that measures are taken with respect to the in-person visitation to ensure the safety and well-being of the children during the current public health emergency;

6. Before CYFD makes any recommendation to the court regarding reinstatement of in-person visitation during the current public health emergency, CYFD shall at a minimum screen respondents, foster parents, and children to determine if any of them or members of their households have been exposed to COVID-19;

a. In administering such a screening, CYFD shall at a minimum ask and receive responses to the following questions:

i. Have they travelled internationally or to another state within the last fourteen (14) days where COVID-19 cases have been confirmed;

ii. Have they had contact with anyone who has been diagnosed with COVID-19;

iii. Have they worked in a health care facility that treats COVID-19 cases; and

iv. Have they experienced the following symptoms within the last fourteen (14) days: fever and dry cough or shortness of breath;

b. If the answer to any of the foregoing questions is yes, CYFD shall not seek reinstatement of in-person visitation until the person has been in self-isolation for no less than fourteen (14) days or has been otherwise cleared by the New Mexico Department of Health; and

IT IS FURTHER ORDERED that this order shall remain in effect until April 26, 2020, unless extended, amended, or withdrawn by future order of this Court.

IT IS SO ORDERED.

WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 27th day of March, 2020.

Joey D. Moya, Chief Clerk of the Supreme Court of the State of New Mexico