**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

**May 21, 2020**

**NO. 20-8500-018**

**IN THE MATTER OF COURT ORDERS REQUIRING VISITATION BETWEEN CHILDREN IN CUSTODY OF THE NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT AND RESPONDENTS UNDER THE ABUSE AND NEGLECT ACT DURING THE COVID-19 PUBLIC HEALTH EMERGENCY**

**ORDER**

WHEREAS, on March 27, 2020, in the wake of the public health emergency caused by the spread of COVID-19, this Court entered Order No. 20-8500-009 to stay and amend court orders requiring in-person visits between children in custody of the New Mexico Children, Youth, and Families Department (CYFD) and respondents under the Abuse and Neglect Act in accordance with certain terms set forth in Order No. 20-8500-009;

WHEREAS, the provisions in Order No. 20-8500-009 were to remain in effect until April 26, 2020, unless extended, amended, or withdrawn by future order of this Court;

WHEREAS, on April 23, 2020, this Court entered Order No. 20-8500-014 extending Order No. 20-8500-009 until amended or withdrawn by future order of this Court;

WHEREAS, children placed in CYFD custody while abuse and neglect proceedings are pending retain a fundamental liberty interest in their own bodily integrity and general wellbeing, as do all the persons, including foster families and case workers, who care for or provide services to the children and respondents;

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, the Court recognizes the importance of achieving an appropriate balance between protecting the health and well-being of children in CYFD custody and the fundamental liberty interests of respondents to have meaningful, in-person visitation with their children given that the health risks posed by the current public health emergency are likely to persist for an extended but indeterminate period of time;

WHEREAS, the Court recognizes that court-ordered visitations may be occurring within some regions of New Mexico that are experiencing higher rates of COVID-19 infections and deaths than others; and

WHEREAS, the Court having considered the foregoing and 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 reviewed in accordance with the terms of this order;

IT IS FURTHER ORDERED that in counties where the COVID-19 regional transmission rate is 1.15 or less as provided by the Governor's COVID-19 in New Mexico: Epidemiologic Update found at https://cvmodeling.nmhealth.org/ - download the latest modeling update - there is a rebuttable presumption that in-person visits between children in CYFD custody and respondents can be conducted in a safe manner when following New Mexico Department of Health (NMDOH) protocols for minimizing risk of infection. In counties where the COVID-19 regional transmission rate is greater than 1.15, there is a rebuttable presumption that in-person visits between children in CYFD custody and respondents is not safe even when following NMDOH protocols for minimizing risk of infection. Information specific to COVID-19 in New Mexico can be found at the NMDOH website, located at https://cvmodeling.nmhealth.org/, https://cv.nmhealth.org/, and https://www.newmexico.gov/;

IT IS FURTHER ORDERED that any in-person visitation allowed by the district courts under Order No. 20-8500-009 shall continue as ordered, unless and until amended by the district court;

IT IS FURTHER ORDERED that in any case in which in-person visitation was not established or resumed under Order No. 20-8500-009 the parties shall meet and confer to determine whether in-person visitation can be established or resumed in accordance with the terms of this order and NMDOH protocols for minimizing risk of infection;

IT IS FURTHER ORDERED that, if the parties agree to establish or resume in-person visitation, CYFD shall present a stipulated order to the district judge for approval setting forth the details of the in-person visitation that shall begin as soon as practicable;

IT IS FURTHER ORDERED that, if the parties cannot agree to resuming in-person visitation, CYFD shall file a notice in the district court setting forth the criteria that CYFD believes needs to be met for in-person visitation to be established or resumed in accordance with the terms of this order and NMDOH protocols for minimizing risk of infection;

IT IS FURTHER ORDERED that, until an order establishing or resuming in-person visitation is entered by the district court, CYFD shall do the following:

(1) continue to 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); and

(2) file a report in the district court, and provide copies to all parties and directly to the district court judge via email, on a monthly basis setting forth efforts it has undertaken to maintain contact between respondents and children; and

IT IS FURTHER ORDERED that, if the parties cannot agree to in-person visitation, any party may file a motion in the district court to allow or restrict in-person visitation; and

IT IS FURTHER ORDERED that this order shall remain in effect until 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 21st day of May, 2020.

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