

**IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
FAMILY COURT, JUVENILE DIVISION**

IN THE INTEREST OF:)	
)	
J.E.R.)	
(DOB: 31 DEC 2009))	Case No.
)	
A minor child under seventeen)	
years of age)	

JUDGMENT AND ORDER TERMINATING PARENTAL RIGHTS

On October 25, 2016, February 2, 2017, and May 16, 2017, the Court held a hearing on the Petition to Terminate Parental Rights filed herein. On October 25, 2016, the Court took up for hearing the mother’s voluntary consent to termination parental rights and adoption. B.R., Deputy Juvenile Officer, appeared in person and with her attorney B.D. The minor child appeared by his Guardian ad Litem, Attorney L.M.. S.J.W., mother of the child, appeared by her attorney, M.C.. The supervising agency, Greene County Children’s Division, appeared by its duly authorized representative, K.N. There were no other appearances on October 25, 2016.

On February 2, 2017, and May 16, 2017, the Court took up for hearing and determination the said petition to terminate parental rights as to the father. Deputy Juvenile Officer B.R. appeared in person and with her attorney, P.S. The minor child appeared by his Guardian ad Litem, attorney L.M. S.J.W., mother of the child, appeared by her attorney K.E.. C.H., attorney for the father J.R. appeared. On February 2, 2017, the father, J.R., appeared in person by video conference. On May 16, 2017, the father, J.R., appeared in person in the courtroom. The supervising agency, Greene

County Children's Division, appeared by its duly authorized representative, K.N.

FINDINGS OF FACT

The Court finds from clear, cogent and convincing evidence that:

1. The Circuit Court of Greene County, Missouri, Juvenile Division, has jurisdiction in this proceeding for termination of the parental rights of the mother and for termination of the parental rights of the father in, to, and over the minor child, J.E.R. ("child" or "minor child").
2. J.E.R. is a male minor child born on , in Greene County, Missouri. The mother of the minor child is S.J.W. ("mother"), whose date of birth is , and the father of the child is J.R. ("father"), whose date of birth is .
3. The minor child was under the jurisdiction of this Court at the time Petitioner's Petition to Terminate Parental Rights was filed. The mother, the father, the minor child's legal and physical custodians, and the minor child's guardian ad litem were all duly served with summons and a copy of Petitioner's petition to terminate parental rights (either in person or by publication) along with a notice of this hearing as according to law.
4. The minor child has been under the care and supervision of this Court and in the temporary legal custody of the Missouri Children's Division since on or about April 27, 2015, pursuant to an order of the Circuit Court of Greene County, Missouri, Juvenile Division, in Case Number . The Court took judicial notice of the appropriate contents of that court file in this termination proceeding.
5. Deputy Juvenile Officer B.R. is not related to the child who is the subject of this Petition.
6. The minor child was adjudicated as neglected in a jurisdictional hearing held in the Circuit Court of Greene County, Missouri, Juvenile Division.
7. The Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., does not apply in this matter. The minor child is not an Indian child within the meaning of the act.
8. On September 23, 2016, the mother appeared before a Notary Public in Greene County, Missouri, at Springfield, Missouri, and under oath, executed her General Consent to Termination of Parental Rights and Adoption in, to, and over the child. On October 25, 2016, the Court reviewed, accepted, and approved this document. Based upon said document and the statements and representations made by the mother's attorney, M.C., the Court finds that the mother has knowingly, freely, and voluntarily consented in writing to the termination of her parental rights pursuant to Section 211.444 RSMo.

9. In compliance with Section 211.447 RSMo., this Court considers and makes findings on the following factors:

a. The child has been neglected by the father. In Case Number , the Circuit Court of Greene County, Missouri, Juvenile Division, entered findings and a judgment that the child had been neglected. At the time the child came into alternative care, some of the concerns included the father being in custody in the Greene County Jail, and there was a history of domestic violence by the father against the mother. These concerns and other issues remain today. The Court also considered and makes the following findings in compliance with Section 211.447.5(2) (a)-(d) RSMo:

i. Whether or not a parent suffers from a mental condition that is either permanent or has no reasonable likelihood of being reversed and that would render the parent unable to knowingly provide the child with the necessary care, custody and control: Clear, cogent, and convincing evidence was presented which established that the father suffers from such a mental condition.

Based upon the evidence presented, the Court finds that on or about May 29, 2015 and June 1, 2015, Dr. M.B. conducted a Psychological Assessment on the father. During the evaluation, the father reported to Dr. M.B. that he has been hearing voices his entire life, he has seen stuff that is not present, and he has had a lot of out of body experiences. The father further reported he has sensed spirits talking to him, and has wild mood swings.

Dr. M.B. reported the father is a young man with a long history of antisocial behavior. Dr. M.B. opined if the father used drugs or if the father was not on medication for his mental health issues, then the father's behavior could become unpredictable. Dr. M.B. further reported the father is a man who can clearly become involved in aggressive behavior, and the risk of father engaging in violent behavior is increased in part by father's psychotic symptoms.

Dr. M.B. diagnosed the father as having the following: Schizophrenia, Paranoid Type (Provisional); Schizoaffective Disorder, Bipolar Type (a primary diagnosis); Bipolar Disorder with Psychotic Tendencies/Paranoid Tendencies; Polysubstance Abuse; and Antisocial Personality Disorder. Dr. M.B. testified at the time of the evaluation, the father did not meet minimum parenting standards. Dr. M.B. further testified if the father did not address his mental health issues successfully, then he would have concerns about the safety and welfare of the child if the child were returned to the father.

Dr. M.B. further reported the father's psychological profile is usually associated with marked distress and severe impairment of functioning. Dr. M.B. opined the father is at risk for self-harm and the father probably experiences episodes of poorly controlled anger. Dr. M.B. further reported the father's behavior is likely to be reckless and impulsive and the father can be

expected to entertain risks which are potentially dangerous to the father and to others around the father.

Dr. M.B. recommended the father seek psychiatric medication treatment for his mental conditions and that the father engage in anger management and individual therapy. Dr. M.B. recommended to the father that he seek mental health treatment at Burrell Behavioral Health. Dr. M.B. further testified that he did not discuss the child with the father due to the father's pressing mental health issues.

Dr. M.B. testified the father needed 9 to 12 months of treatment for his mental conditions and then the father would need to be reassessed to determine if the father could parent the child. Dr. M.B. reported the father has a multitude of issues which he needs to address before he could be considered to be a caretaker for the child. Dr. M.B. opined treatment would be difficult for the father. Noting that the father has never really cared for a child up to this time, Dr. M.B. testified the father's unresolved mental health issues would adversely impact his parenting even if the father had a good support group.

The case manager testified the father has not engaged in anger management or individual therapy. The case manager further testified the father has not followed through with Dr. M.B.'s recommendations. The case manager further testified she does not believe the father is taking medication for his mental health issues.

The father testified he is currently incarcerated for robbery, burglary, and felony domestic assault on the mother. The evidence presented established the father broke the mother's nose and broke the mother's dentures in two places. The evidence presented established the mother had to be hospitalized due to father's physical abuse of the mother. Based upon all of the evidence presented, the Court finds the father's assaults on the mother were severe and the mother was required to have surgery. The evidence presented established the mother wanted the child to come into care for her safety and the safety of the child.

The father further testified he knows he has anger problems, but is working on them. The father further testified he knows the child witnessed the domestic violence, which the father perpetrated upon the mother. Based upon all of the evidence presented, the Court finds the child witnessed severe domestic violence, and the child continues to be adversely affected by witnessing the domestic violence.

The father testified during the aforesaid psychological evaluation, he lied to Dr. M.B., because the father did not believe the evaluation was important and that he does not like professionals. The Court finds the father's testimony on this issue was not credible. Based upon all of the evidence presented, the Court finds Dr. M.B.'s report and Dr. M.B.'s testimony to be extremely credible.

Based upon all of the evidence presented, the Court finds the father has multiple mental conditions, which render the father unable to knowingly provide the child with necessary care, custody, and control. Furthermore, the Court finds due to the father's mental conditions, the child would be placed at imminent risk of mental, psychological, emotional and physical harm if the child were placed with the father.

Moreover, the Court finds the father's mental conditions cannot be reversed or improved upon within the near, foreseeable future, because the father refuses to participate consistently in mental health treatment, the father is not on psychiatric medication, and the father denies he suffers from these mental conditions, except for anger issues.

- ii. Whether or not there is a chemical dependency that would prevent the parent from consistently providing the necessary care, custody, and control of the minor child and that cannot be treated so as to enable the parent to consistently provide such care, custody and control: No such evidence was presented as to the father.

The Court notes, however, that evidence was presented the father has used and sold illegal drugs in the past. The father reported to Dr. M.B. that at one point, he was making more than \$5,000.00 per week by selling illegal drugs.

In addition, the case manager testified she detected a very strong smell of marijuana in the home when she went to do a home visit while the father was living at R.J.'s house. Based upon the evidence presented, the Court finds the father did not submit to a substance abuse assessment.

- iii. Whether or not there was a severe act or recurrent acts of physical, emotional or sexual abuse toward the child or any child in the family by the parent, including an act of incest, or by another person under circumstances that would indicate that the parent knew or should have known that such acts were being committed: Clear, cogent, and convincing evidence was presented that established the father engaged in a consistent pattern of inflicting physical abuse upon the child's mother in front of the child and as a result, the child suffered from severe and recurrent acts of emotional abuse.

S.S., the child's counselor from approximately February 2016 to January 4, 2017, testified the child disclosed in counseling about witnessing the father chase and hit his mother. S.S. further testified that the child was fearful of the father and that the child described the father as a "bad man." S.S. further opined the child did not have healthy emotional ties to the father.

S.S. testified he was no longer seeing the child in therapy, because the child was transitioned to EMDR therapy. S.S. further testified the child

went to EMDR therapy so the child could process the trauma he has suffered from witnessing the domestic violence.

The case manager testified the father visited the child on three occasions at the Children's Division building, one time at a library, and one time for a therapeutic visit. The case manager further testified she attended these five visits. The case manager testified the child did not want to go to the visits and the child would cry on the way to the visits. The case manager further testified that at the visits the child would hug the father and exchange "I love you" with the father. The case manager further testified during the one visit at the counselor's office, the child reported the father threatened him while father hugged him.

The case manager further testified after each visit the child was uncontrollable and the child would have meltdowns which included screaming and running for hours. The case manager testified the child was admitted to Lakeland in August 2015. The case manager further testified after the visits stopped between the child and the father, the child's behaviors never reached these extreme levels again.

The case manager further testified during three of these visits, the father became volatile towards her. The case manager further testified that she ended multiple conversations with the father, because of the father's anger.

As set forth previously, the father admitted the child had witnessed domestic violence in the home. Based upon all of the evidence presented, and carefully observing the father's demeanor during his testimony, the Court finds the father does not appreciate or understand the emotional, mental, and psychological impact the domestic violence has had and continues to have on this child.

The Court finds further when the father discussed his childhood with Dr. M.B., the father reported that he did not communicate with his father, the paternal grandfather of the child. The father reported to Dr. M.B., "I just remember him beating my mom. That's about it."

The father testified he did not believe the physical abuse he inflicted upon the child's mother should dictate the relationship he has with the child. Based upon all of the evidence presented, the Court finds the child's memories of the father are the father beating and abusing his mother.

- iv. Whether or not there was a repeated or continuous failure by the parent, although physically or financially able, to provide the child with adequate food, clothing, shelter, or education as defined by law, or other care and control necessary for the child's physical, mental, or emotional health and development: clear, cogent, and convincing evidence was presented which established that that the father so neglected the minor child.

Based upon the evidence presented, the Court finds since the child came into alternative care, the father been in custody in the Greene County Jail or incarcerated in the Missouri Department of Corrections except for for a total of approximately eleven (11) weeks while awaiting sentencing. The evidence presented established that when the father was not in jail or in prison, the father did not contribute any financial support for the child or provide any in kind support for the child. The father did not provide proof of income. The Court further finds the father did not have a stable, appropriate residence of his own and the father did not have stable employment. Based upon the evidence presented, the Court finds the father had only five supervised visits with the child during this 11-week time period.

The case manager testified after father's incarceration, the father has written six letters to the child, with the last letter being dated on or about October 15, 2015. The case manager further testified one of the letters was not appropriate. The evidence presented established the father had a few telephone calls with the child after his incarceration. The evidence presented established the father will not be released from prison until December 23, 2019.

The case manager further testified the father has not provided any financial support or in kind support for the child since the child came under juvenile court jurisdiction. The father's sister provided some clothing items for the child. The Court finds that even though the father is incarcerated, the father has a duty to provide a minimal amount of financial support.

- b. The minor child has been under the jurisdiction of the Court for more than one year and the conditions that led to the assumption of jurisdiction or conditions of a potentially harmful nature continue to exist and there is little likelihood that those conditions can be remedied at an early date so that the child could be returned to the father in the near future. Those conditions include: Continuing neglect by the father, the father's mental conditions, the inability of the father to provide the child with appropriate care and parenting. Unfortunately, all of these problems are serious and driven in significant measure by the father's mental conditions. Continuation of the parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent home. In terminating parental rights based on this ground, the Court considered and makes findings on the following factors in compliance with Section 211.447.5(3)(a)-(d) RSMo.:
 - i. The terms of a social services contract entered into between the parent and the Children's Division and the extent to which the parties have made progress in complying with those terms: The evidence presented was the father was subject to a court-ordered treatment plan and an incarcerated treatment plan, but the father failed to make any progress on the goals of his court-ordered treatment plans.

The evidence presented established the father did not complete a substance abuse assessment, the father has not completed individual therapy or anger management, the father did not follow through with Dr. M.B.'s recommendations, the father is not on psychiatric medications, and the father has not had a stable source of income.

Based upon the evidence presented, the Court finds the father has not communicated with the case manager consistently. The case manager testified from August 2015 to February 2017, the father called the case manager ten times. The case manager testified that during some of these calls, the father used the "F word" a lot and in reference to team members. The case manager testified that she did not hear from the father from September 30, 2016 to January 3, 2017, because he was "in the hole" in prison.

The case manager testified she has not received written confirmation the father has completed any services while the father has been incarcerated. The case manager testified the father has written a total of six letters to the child and that the last letter was written on or about October 15, 2015. The evidence presented established that the father has not contacted the child consistently.

Based upon all of the evidence presented, the Court finds the father has not made progress on the goals of his court-ordered treatment plans.

- ii. The success or failure of the efforts of the juvenile officer, the Children's Division, or any other agency to aid the parent on a continuing basis in adjusting the parent's circumstances or conduct to provide a proper home for the child: The evidence presented established the father, prior to his incarceration, was offered extensive services after the child was taken into care. The father has failed to address successfully his mental conditions and other issues which adversely impact his ability to provide proper care for the child.

The father has failed to demonstrate that he can adjust his circumstances to provide a proper home for the minor child. Based upon all of the evidence presented, the Court concludes the father, due to his mental conditions and other issues, is unable to change his lifestyle and circumstances so he can provide a proper home for the child.

- iii. Whether or not a parent suffers from a mental condition which is either permanent or has no reasonable likelihood of being reversed and which would render the parent unable to knowingly provide the child with the necessary care, custody and control: As set forth previously, clear, cogent, and convincing evidence was presented which established the father suffers from such a mental condition. Based upon all of the evidence presented, the Court finds due to the father's mental conditions, the child would be placed at

imminent risk of mental, emotional, physical, and psychological harm if the child were placed with the father.

- iv. Whether or not a parent suffers from a chemical dependency which would prevent the parent from consistently providing the necessary care, custody and control of the minor child and which cannot be treated so as to enable the parent to consistently provide such care, custody and control: As set forth previously, the Court finds that no such evidence was presented as to the father.

Based upon all of the evidence presented, the Court finds the child has been under juvenile court jurisdiction for over two years. Furthermore, the Court finds the conditions that led to the assumption of jurisdiction over the child continue to exist, including but not limited to, the father's mental conditions and the child's unhealthy emotional ties to the father due to witnessing domestic violence in the home, and as set forth in this judgment, there is very little likelihood those conditions will be remedied at an early date so the child can be returned to the father.

Based upon all of the evidence presented, the Court finds further the father is incarcerated and is unable to care appropriately for the child or to provide the child with a safe, stable, and healthy home environment. The father is not scheduled to be released from prison until December 2019. The Court finds that the child will be 10 years of age when the father is released from prison. It is the Court's opinion the child needs permanency now and requiring the child to wait another two and one-half years for permanency is detrimental to the child.

Based upon all of the evidence presented, the Court finds that all of these conditions are of a potentially harmful nature and these conditions continue to exist. Based upon all of the evidence presented, the Court finds that the continuation of the parent-child relationship between the father and the child greatly diminishes this child's prospects for early integration into a permanent and stable home.

- c. As to the acts and conditions of the father supporting termination of parental rights, the Court finds that:
 - i. The acts had a negative impact on the child, due to continuing neglect of the child by the father, the father's untreated mental health conditions, the father's overall instability, and the father's failure to rectify the circumstances which caused the child to come into care, have deprived the child of parental relationships and financial support.
 - ii. The Court previously found the child had been neglected. As set forth above, the Court finds the acts and conditions of the father constituted neglect of the minor child since the entry of the Court's previous order of neglect.

- iii. There is significant likelihood of future harm to the child if parental rights are not terminated because of the continuing neglect of the child by the father, the father's untreated mental conditions, the father's failure to rectify the circumstances that caused the child to come into care, and the father's failure to demonstrate an ability to provide the child with appropriate care and parenting.

10. In deciding whether or not to terminate the parent-child relationship, the Court considered and makes findings on the following factors in compliance with section 211.447.7 RSMo.:

- a. The emotional ties to the birth parent: The evidence presented established the child does not have healthy emotional ties to the father. The evidence presented established the child did not want to visit the father and the child suffered emotionally after visiting the father. The child is placed in a relative foster home with the child's sibling and the child needs permanency as soon as possible. The case manager testified the plan is for the relative placement to adopt the child.

In making findings regarding the child's emotional ties to the father, the Court gave careful consideration to father's Exhibits A1 through A24, which are photographs, but ultimately attached little weight to the photographs. The evidence presented established most of the photographs were taken by the child's mother or taken when the children were in Chicago visiting relatives.

Furthermore, although the Court was very impressed with the demeanor and testimony of the father's aunt, based upon the evidence presented, the Court finds she did not request placement of the child. Likewise, the father's biological sister was equally impressive, but based upon the evidence presented, the Court further finds she was offered placement of the child, but unfortunately declined.

- b. The extent to which the parent has maintained regular visitation or other contact with the child: the evidence presented established that the father was not consistent in his visitation or contact with the child. The evidence presented established the father had five visits with the child prior to his incarceration. Since the father's incarceration, the father has written 6 letters to the child. The father last wrote a letter to the child on or about October 15, 2015. The evidence presented established the father had at least one telephone visit with the child when the child was visiting relatives.
- c. The extent of payment by parent for the cost of care and maintenance of the minor child when financially able to do so including the time that the minor child was in the custody of the Division or other child-placing agency: The evidence presented established the father has not provided any financial support for the child while the child has been under juvenile court jurisdiction. There was no credible evidence presented which would establish the father was unable to provide minimal financial support for the child.
- d. Additional services would not be likely to bring about a lasting parental adjustment so as to enable a return of the child to a parent within an ascertainable period of time: The

evidence presented established the father failed to follow through with any services provided to him prior to his incarceration. The evidence presented established the father has not provided written proof he has completed services or programs while he has been incarcerated. The case manager testified there were no additional services which could be provided to the father to assist him in bringing about a lasting parental adjustment in his circumstances or parenting so the child could be returned to the father within an ascertainable period of time.

- e. The evidence presented established the father has demonstrated an interest in the child, but the evidence presented established the father has demonstrated a lack of commitment to the child: The evidence presented established the father has shown a lack of commitment to the child by failing to provide financial support for the child, by failing to communicate or contact the child consistently, and by failing to contact the case manager consistently.
 - f. The conviction of the parent of a felony offense that the Court finds is of such a nature that the child will be deprived of a stable home for a period of years with the understanding the incarceration, standing alone, is not a proper ground for termination of parental rights. Clear, cogent, and convincing evidence was presented that established the father is incarcerated for robbery, burglary, and felony domestic assault on the child's mother, and the father will not be released until December 2019. The Court's determination of the father's parental rights does not rest or rely on the fact the father is incarcerated.
 - g. Deliberate acts of the parent or acts of another, of which the parent knew or should have known, that subjected the child to a substantial risk of physical or mental harm: The evidence presented established the father knowingly abused the child's mother on multiple occasions in front of the child. The Court finds the father knew or should have known that such abuse on the mother in front of the child subjected the child to serious mental harm.
11. Due to the failure of the father to take advantage of the services offered to him, the Missouri Children's Division was not successful in rectifying the conditions that led to the removal of the minor child.
 12. The continuation of the parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent home.
 13. The inability of the father to provide proper care, custody, and control for the minor child is potentially harmful to the child should the child be placed with the father.
 14. The minor child's guardian ad litem recommended termination of the parental rights of the mother and father in, to, and over the minor child, as he believed this would be in the best interest of the minor child.

CONCLUSIONS OF LAW

After consideration of the evidence and the findings set forth above, the Court hereby concludes and adjudges as follows:

1. This Court has jurisdiction over the subject matter and the parties to this action.
2. A compliance hearing was held as required under Section 211.455 RSMo., at which time the Court concluded all necessary parties had been properly served with process.
3. Each party was duly served with notice of this action according to law. Summons and a copy of Petitioner's Petition to Terminate Parental Rights were served upon each necessary person as required under Section 211.453 RSMo.
4. The minor child was appointed and was represented by counsel in this action. The father was represented by counsel in this action. The mother was represented by counsel in this action.
5. An investigation and social summary was ordered by the Court and a written report of that investigation was made and presented to the Court with copies made available to all parties as provided by law.
6. Based upon the clear, cogent, and convincing evidence presented in this proceeding, this Court finds and concludes that the allegations contained within the Petition to Terminate Parental Rights are true and that statutory grounds for the termination of parental rights exist, in that:
 - a. The minor child was neglected by the father;
 - b. The father failed to rectify the conditions which led to the minor child coming into care; and,
 - c. The mother consented in writing to the termination of her parental rights.
7. The Court concludes and finds that it would be in the best interests of the minor child to terminate the parental rights of the mother and father in, to, and over the minor child.
8. In making the foregoing Findings of Fact and Conclusions of Law, this Court construed Sections 211.447 to 211.487 RSMo. in the manner provided in Section 211.443 RSMo.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

- a. Pursuant to Section 211.444 RSMo., the parental rights of the mother, S.J.W., in, to, and over the minor child, J.E.R., are forever terminated.
- b. Pursuant to Section 211.447 RSMo., the parental rights of the father, J.R., in, to, and over the minor child, J.E.R., are forever terminated.

- c. Legal custody of the minor child is placed with the Children’s Division for purposes of providing temporary care and to give necessary consent for medical treatment and/or surgery, with authority to recommend to the Court an adoptive home for the child.
- d. Attorney C.H., attorney for the father, will be awarded a reasonable attorney fee upon application. C.H.’s attorney fee shall be taxed as costs.
- e. Attorney L.M., guardian ad litem for the minor child, will be awarded a reasonable attorney fee upon application. L.M.’s attorney fee shall be taxed as costs.
- f. Attorney K.E., counsel for mother, is awarded a reasonable attorney fee in the amount of \$668.59, to be taxed as costs.
- g. All costs of this action, including but not limited to witness fees, service fees, and costs of appeal, are taxed against the Children’s Division.
- h. All fees are found to be reasonable.

SO ORDERED:

Date: _____

Becky J.W. Borthwick
Associate Circuit Court Judge