DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Street Colorado Springs, Colorado 80903	
THE PEOPLE OF THE STATE OF COLORADO In the Interest of: [redacted] Children, Alleged To Be Dependent And Neglected Children, EL PASO COUNTY DEPARTMENT OF HUMAN SERVICES, Petitioner, And Concerning: [redacted] Respondents,	**▲ COURT USE ONLY ▲**
Daniel M. Jackson, Esq. LAW OFFICE OF DANIEL M. JACKSON, LLC 301 South Weber, Colorado Springs, CO 80903 Phone Number: 720-460-8926 E-mail: danny@jacksonlawyer.org Atty. Reg.#: 45300	Case Number: [redacted] Division: 9 Courtroom: S501
RESPONDENT MOTHER'S MOTION OBJECTING TO THE AMENDED PHASE II TREATMENT PLAN	

COMES NOW, Respondent Mother, [redacted] by and through her counsel, Daniel M. Jackson, hereby submits her objections to the Amended Phase Two Treatment Plan, and as grounds states as follows:

Facts

1. On January 19, 2018, the El Paso County Department of Human Services ("The Department") filed a petition in dependency and neglect.

2. The Department alleged the family was homeless, and there was a history of domestic violence between Respondent Mother and Respondent Father [redacted].

3. The children were adjudicated dependent and neglected for Respondent Mother on February 1, 2018.

4. Housing has been an issue for Respondent Mother. Respondent Mother has custody of her other seven children–ranging from eighteen-to-one years old. Respondent Mother is also pregnant.

5. Respondent Mother is resourceful. Respondent Mother provides food, clothing, and shelter for her children.

6. The child, [redacted], has a history of mental health. The child has been placed at Cedar Springs and has been diagnosed with a mood disorder.

7. Respondent Mother is a devout Christian. [redacted] identifies as a male and prefers to be called "[redacted]"

8. Respondent Mother does not agree with [redacted] identifying as a male and will not refer [redacted] as "[redacted]." The Department believes Respondent Mother is emotionally abusing [redacted] because Respondent Mother does not accept [redacted]s sexual identity.

9. On July 20, 2018, the Department filed an amended treatment plan. Action Step Two states "Ms. [redacted] will make progress to mitigate the parent-child conflict surrounding [redacted]'s gender identity." Additionally, Measurement of Success Three states "Mrs. [redacted] will be able to demonstrate an understanding of and be able to take accountably for the reason [redacted] was placed out of the home."

Legal Authority

10. Pursuant to Colo. Const. art. II, § 4, "The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness or justify practices inconsistent with the good order, peace or safety of the state. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship."

11. The First Amendment to the United States Constitution, applicable to the states by virtue of the Due Process Clause of the Fourteenth Amendment, and article II, § 4 of the Colorado Constitution guarantee the free exercise of religion. See In re Marriage of Short, 698 P.2d 1310 (Colo.1985). In re E.L.M.C., 100 P.3d 546, 563 (Colo.App. 2004).

12. The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. It also includes performing (or abstaining from) physical acts, such as assembling with others for a worship service, proselytizing, or observing dietary restrictions. Employment Div. v. Smith, 494 U.S. 872, 108 L.Ed.2d 876 (1990).

13. Parents have a fundamental right to make decisions concerning the care, custody, and control of their children. Troxel v. Granville, 530 U.S. 57, (2000). A parent's right to determine the religious upbringing of a child derives from the parent's right both to exercise religion freely and to the care, custody, and control of a child. See, e.g., Wisconsin v. Yoder, 406 U.S. 205, (1972).

14. The right of a parent with decision-making authority to determine the religious upbringing of the child has been recognized in Colorado. In re Marriage of McSoud, 131 P.3d 1208, 1215 (Colo.App. 2006). Additionally, the court has stated "We recognize that the United States Supreme Court has placed a heavy burden upon the state and the courts to justify any infringement of an individual's First Amendment freedoms. See, e.g., Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) (state interference with religious practices is warranted only when the practice constitutes a substantial threat to public safety, peace or order). People in Interest of D. L. E., 645 P.2d 271, 275–76 (Colo. 1982).

15. The court has articulated that when "Governmental interference with the constitutional rights of a fit, legal parent is subject to strict scrutiny. Thus, a legislative enactment or other state action, such as a parental responsibilities order, that infringes on such a constitutional right is permissible only if it is necessary to promote a compelling state interest and does so in the least restrictive manner possible." See In re Marriage of Ciesluk, supra*;* In Interest of E.L.M.C.*,* 100 P.3d 546 (Colo.App.2004). This is particularly so as to religious liberty. See Wisconsin v. Yoder, supra*,* 406 U.S. at 215 ("The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion."). In re Marriage of McSoud, 131 P.3d 1208, 1216 (Colo.App. 2006).

16. If the state regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance permissible goals of the state, a statute may be valid despite its indirect burden on religious observance unless the state can accomplish its purpose by means which do not impose such a burden. Braunfeld v. Brown, *supra.* In cases where a significant conflict between permissible goals of the state and religious practices exist, a balancing test is used to measure whether the state has exceeded its constitutional power. Thomas v. Review Board, *supra*; Sherbert v. Verner, *supra.* In order to outweigh a substantial burden on religiously motivated activity, the state aim involved must be compelling and the state action must be the least restrictive means of achieving the goal. United States v. Lee*, supra;* Thomas v. Review Board*, supra*; Wisconsin v. Yoder*, supra;* Sherbert v. Verner*, supra;* Johnson v. Motor Vehicle Division*,* 197 Colo. 455, 593 P.2d 1363 (1979), *cert. denied* 444 U.S. 885, 100 S.Ct. 179, 62 L.Ed.2d 116. Young Life v. Div. of Employment & Training, 650 P.2d 515, 524 (Colo. 1982).

17. The court made clear that the government, if it is to respect the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes

the illegitimacy of religious beliefs and practices. Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n, 138 S. Ct. 1719, 1731 (2018).

18. This rule is not absolute. Limitations on a parent's fundamental right to control a child's upbringing arise out of the state's interest as parens patriae (parent of the country). As parens patriae, a state has a compelling interest in guarding children against substantial physical or emotional harm. In re Marriage of McSoud, 131 P.3d 1208, 1216 (Colo.App. 2006). Thus, a state may exercise its parens patriae authority to guard children against imminent physical harm. See, e.g., Prince v. Massachusetts, supra, 321 U.S. at 166–67, 64 S.Ct. at 442 (recognizing when circumstances place child in imminent danger, or affect the child's well-being, state could properly intrude on that "private realm of family life" to protect child from harm).

19. Courts are precluded by the free exercise of religion clause from weighing the comparative merits of the religious tenets of the various faiths or basing its custody decisions solely on religious considerations. Compton v. Gilmore, 98 Idaho 190, 560 P.2d 861 (1977); Quiner v. Quiner, 59 Cal.Rptr. 503 (Cal.App.1967). However, the religious beliefs and practices of the parent may be a relevant factor, along with other circumstances, which bears upon the child's best interests and general welfare. Hilley v. Hilley, 405 So.2d 708 (Ala.1981); Morris v. Morris, 271 Pa.Super. 19, 412 A.2d 139 (1979); Sinclair v. Sinclair, 204 Kan. 240, 461 P.2d 750 (1969);

20. While "[c]ourts are precluded by the free exercise of religion clause from weighing the comparative merits of the religious tenets of the various faiths or basing [their] custody decisions solely on religious considerations," the family "is not beyond regulation in the public interest as against a claim of religious liberty, and neither the rights of religion nor rights of parenthood are beyond limitation." In re Marriage of Short, supra, 698 P.2d at 1312–13. Thus, "evidence of beliefs or practices which are reasonably likely to cause present or future harm to the child is admissible in a custody proceeding." In re Marriage of Short, supra, 698 P.2d at 1313. In re E.L.M.C., 100 P.3d 546, 563 (Colo.App. 2004).

21. Pursuant to C.R.S. Section 19-3-508 and C.R.S. Section 19-1-103(10), the court has declared "a treatment plan is appropriate if it 'is reasonably calculated to render the particular [parent] fit to provide adequate parenting to the child within a reasonable time' and 'relates to the child's needs'" and the "appropriateness is measured by the likelihood of success in reuniting the family, which must be assessed in light of the facts existing at the time of the plan's approval." People ex rel. B.C., 122 P.3d 1067, 1071 (Colo.App.2005).

22. The chief criterion for judging the success of a treatment plan is whether it corrects or improves the original conduct or condition which led to intervention by the state. *See* People in Interest of L.D., 671 P.2d 940 (Colo.1983); People in Interest of C.A.K., 652 P.2d 603 (Colo.1982). Parents are not required to comply absolutely with every provision of a treatment plan, and a dependency and neglect petition or termination should not be devised as punishment for failure to comply completely with the plan, but

rather as a device to correct the problem within the family. People in Interest of C.L.I., 710 P.2d 1183, 1185 (Colo.App.1985).

23. A parent is responsible for assuring compliance with and success of the services provided, yet, the state must afford a parent a reasonable amount of time to comply with a court approved treatment plan. People ex rel. J.C.R., 259 P.3d 1279, 1284 (Colo.App.2011). A reasonable time is not an indefinite time, and it must be determined by considering the child's physical, mental, and emotional needs. Id.

24. Lastly, pursuant to C.R.S. Section 19-3-209, "An individual case plan, developed with the input or participation of the family, is required to be in place for all abused and neglected children and the families of such children in each case which is opened for the provision of services beyond the investigation of the report of child abuse or neglect, regardless of whether the child or children involved are placed out of the home or under court supervision."

Argument

25. In this instance, the Department is a state actor, and the Department's proposed amendment to the treatment plan would adversely affect Respondent Mother's First Amendment Free Exercise of Religion under the United States Constitution and the Colorado Constitution.

26. Thus, the Department's actions must be construed through the rigorous lens of strict scrutiny, with the burden shifting to the Department, and the Department showing this amended treatment plan is the least restrictive alternative.

27. Respondent Mother believes this proposed amendment to the treatment plan is the Department requiring Respondent Mother to forfeit her Christian beliefs and require Respondent Mother to accept [redacted]'s proposed gender. Respondent Mother believes the Department has not met its burden through strict scrutiny. Respondent Mother believes the less drastic alternative to how this proposed amendment to the treatment plan is have the Department and [redacted]'s therapist speak to Respondent Mother and inquire Respondent Mother's perspective regarding [redacted]'s gender identity.

28. Another least drastic alternative is for the Department to actively consult with Respondent Mother. Respondent Mother points out that C.R.S. Section 19-3-209 has not been complied with. Respondent Mother has not been consulted regarding [redacted]'s therapy and Respondent Mother does not know what exactly has been discussed between [redacted] and her therapist. Furthermore, it is unknown whether Respondent Mother's religious beliefs have been stated to [redacted]'s therapist or the proposed family therapist. At this time, LAN has not been decided. Respondent Mother believes she should be updated as to how and what is discussed in [redacted]'s therapy.

29. Furthermore, an additional less drastic alternative is for the Department to find a Christian counselor. A Christian counselor could work with [redacted] and Respondent

Mother regarding [redacted]'s gender identity issues. It would allow for Respondent Mother to continue to raise her child according to her religious beliefs while addressing the safety concerns articulated by the Department.

30. An argument could be raised that Respondent Mother's religious beliefs could have a substantial harm on [redacted]'s mental health. Respondent Mother asserts this argument is ripe for several reasons. First, Respondent Mother has not been able to articulate her beliefs to [redacted]'s individual counselor. Second, Respondent Mother and [redacted] have yet to be involved in family counseling. Third, the Department assumes Respondent Mother's Christianity is adverse to [redacted]'s mental health.

31. Respondent Mother also objects to the wording of the amended treatment plan. Respondent Mother further believes the language within the amended treatment plan for family therapy is ambiguous. In Action Step 2, the amended treatment plan states "Ms. [redacted] will make progress to mitigate the parent-child conflict surrounding [redacted]'s gender identity." Respondent Mother does not know what this means. Also, who and what decides "progress?' Respondent Mother is concerned "progress" is defined by her acquiescing to [redacted]s preferred gender and Respondent Mother compromising her faith. Respondent Mother requests clarification for this provision.

32. Respondent Mother objects to Measurement of Success 3, which states "Ms. [redacted] will be able to demonstrate an understanding of and be able to take accountability for the reason [redacted] was placed of the home." Again, Respondent Mother does not know what this means. Respondent Mother does not believe she needs to take accountability for not accepting a lifestyle that is contrary to her religious beliefs. This provision is ambiguous, and Respondent Mother would want this provision struck from the treatment plan.

Conclusion

33. Respondent Mother believes the Department's amended treatment plan is an infringement on her religious liberties and the Department has not met its burden and shown a compelling state interest. Respondent Mother believes there is are less drastic alternatives that the Department must explore. This includes allowing Respondent Mother contacting [redacted]s therapist about Respondent Mother's religious beliefs. Also, the Department must follow the provisions of C.R.S. Section 19-3-209 and allow for Respondent Mother to have some input about the therapy needed to repair parent-child relationship. Lastly, the Department can explore possible Christian therapists. Respondent Mother believes several provisions of the treatment plan are ambiguous, and requests these provisions be clarified or taken out of the treatment plan.

WHEREFORE, Respondent Mother respectfully requests that this court order the Amended Phase II Treatment Plan be amended and the caseworker provided justifications for the objections provided.

Respectfully submitted: July _____, 2018

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Daniel M. Jackson, Esq.
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Atty. Reg.#: 45300

CERTIFICATE OF SERVICE

I hereby certify on July _____, 2018, a true and correct copy of the foregoing **RESPONDENT MOTHER'S OBJECTION TO AMENDED PHASE II OF THE TREATMENT PLAN** was hand-delivered through inter-office mail the following person:

Deborah Pearson, Esq.
Devon Doyle, Esq. – GAL
David Wilson, Esq.
Kevin Major, Esq.

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