

District Court, Jefferson County, Colorado 100 Jefferson County Parkway Golden, CO 80401 (720) 772-2500	<div style="text-align: right;">2018 MAR -8 PM 1:24</div> <div style="text-align: center;">           FILED            COMBINED COURT            JEFFERSON COUNTY CO         </div> <div style="text-align: center;">▲ COURT USE ONLY ▲</div> <div>Case Number:</div> <div>Div.                      Ctrm.</div>	
THE PEOPLE OF THE STATE OF COLORADO In the Interest of <b>Child:</b> <b>Petitioner:</b> JEFFERSON COUNTY DIVISION OF CHILDREN, YOUTH AND FAMILIES <b>Respondents:</b> (		
Melanie Jordan, Atty. Reg. #41229 14143 Denver West Pkwy, Ste. 100 Golden, CO 80401 Phone: (720) 689-8861		
<b>FORTHWITH MOTION FOR CONTINUANCE OF TERMINATION OF          PARENTAL RIGHTS HEARING</b>		

Respondent Father \_\_\_\_\_, through counsel, hereby requests that the Court continue the Termination of Parental Rights hearing set for March 27, 2018. As grounds therefore, Father states:

1. Counsel was appointed to represent Father on March 1, 2018. Counsel is available for the termination hearing set for March 27, 2018, but for the reasons set forth below, holding a termination hearing on March 27, 2018 as to Father would result in a manifest injustice. Father has a due process right to a reasonable amount of time to comply with a treatment plan. Because he does not currently have a treatment plan that is reasonable and appropriate, and capable of success with a reasonable amount of time, a continuance is necessary. It is also in the best interests of the child to ensure that Father has a reasonable opportunity to reunify with him.
2. The county and GAL object to a continuance. Respondent Mother does not object.

#### Factual Background

3. It appears that \_\_\_\_\_ was served via publication on April 13, 2017. However, the court did not enter adjudications on April 18, 2017 because Mother indicated that she had addresses for all of the potential fathers and that personal service may be possible.
4. The Court then adjudicated Respondent Father \_\_\_\_\_ based on service by publication, presumably from April 13, 2017, and an offer of proof from the caseworker on December 12, 2017. The Court found that \_\_\_\_\_ had abandoned the child and not made

arrangements for his care or support. The court adopted a treatment plan requiring to contact the caseworker to arrange for visitation and to work on a more complete treatment plan. It also required him to submit a relative affidavit. He has fully complied with that limited treatment plan.

5. Just six weeks ago, in mid-January, the county filed a Motion for Paternity Testing stating that Mother had alleged that a different man, [REDACTED], was the child's biological father. The Motion alleged that [REDACTED] was in jail and that paternity testing could easily be accomplished.
6. At some point in January or February 2018, paternity testing determined that [REDACTED] was the biological father of the child. The court file does not contain the paternity testing results.
7. [REDACTED] was arrested on August 13, 2017 on an outstanding warrant in Arapahoe County. He stayed in jail in Arapahoe County from that date until December 15, 2017, when he was sentenced to probation and participation in the Recovery Court there.
8. For four months, including on the date that [REDACTED] was adjudicated, he could have been easily found through a search of Data Access or a search of the jails. He could have been personally served in jail and writted from the Arapahoe County Jail. Since his release, he has had regular court dates. It also appears the Department was able to locate him shortly after the adjudicatory hearing in order to complete paternity testing.
9. [REDACTED] completed a 28-day inpatient substance abuse treatment program at Sobriety House. He is now living in their Step 2 program. He actively participates in 12-step meetings and treatment. A review of the record in [REDACTED] indicates full compliance with drug court since he entered the program on December 15, 2017.
10. [REDACTED] just completed his first visit with [REDACTED]. [REDACTED] has been thoughtful about his visitation and the transition [REDACTED] is going through. He has been able to identify that the visit was hard for [REDACTED] and for him, possibly due to [REDACTED] having a visit with his mother just prior to [REDACTED]'s visit, and obviously due to the length of separation between [REDACTED] and [REDACTED].
11. [REDACTED] is committed to maintaining his sobriety and to obtaining housing appropriate for himself and [REDACTED]. He has the permission of his probation officer to leave the Step 2 program if necessary in order to be able to secure housing that is appropriate for [REDACTED].
12. [REDACTED] may be able to live with his sister, who is also an appropriate caregiver for [REDACTED].
13. [REDACTED] is also seeking out parenting education through the Fatherhood Program and other resources.

### **Legal Analysis**

14. Termination of parental rights hearings involve a parent's fundamental liberty interest to care for her child. See, e.g., *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Accordingly, parents must be afforded due process at all stages of the proceeding. *Id.* at 753-54; see also *People in Interest of K.J.B.*, 342 P.3d 597, 601 (Colo. 2014). The due process clause of the fourteenth amendment of the United States Constitution "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 719-20 (1997).
15. C.R.S. § 19-3-104 provides that a continuance may be granted if there is good cause and if the continuance is in the children's best interests.
16. Chief Justice Directive 96-08(4) requires a finding that a manifest injustice would occur in the absence of a continuance.
17. The Department must conduct a diligent search for noncustodial parents within three working days. 12 Colo. Code Regs. § 2509-4-7.304.52(B)(1). The diligent search must occur every six months throughout the case until the child has achieved permanency. 12 Colo. Code Regs. § 2509-4-7.304.52(C)(3).
18. If a parent cannot be located after the department has exercised due diligence to locate the parent, service can be by publication. § 19-3-503(8)(b), C.R.S. (2017).
19. A default adjudication is only permitted where the Department can demonstrate the parent had notice of the proceedings and failed to participate or otherwise defend in the proceedings. See *in Interest of K.J.B.*, 342 P.3d 597 (Colo. App. 2014).
20. A child's relationship with his parent may not be terminated merely because the child's condition might improve with the termination. *People in Interest of E.A.*, 638 P.2d 278, 285 (Colo. 1981). Prior to terminating parental rights, the court must consider less drastic alternatives to termination, ensuring "that the extreme remedy of termination will be reserved for those situations in which there are no other reasonable means of preserving the relationship." *People in Interest of M.M.*, 726 P.2d 1108, 1122 (Colo. 1986).
21. The Court must approve an appropriate treatment plan. C.R.S. § 19-3-508(1)(e)(I) (2017).
22. For "a parent's 'treatment plan' to be 'appropriate,' it must be 'approved by the court' at a dispositional hearing and, based on the risk assessment, it must 'relate [] to the child's needs' and provide treatment objectives that are 'reasonably calculated to render the particular respondent fit to provide adequate parenting to the child within a reasonable time.'" *People in Interest of K.B.*, 369 P.3d 822, 826-828 (Colo. App. 2016) (citing Section 19-1-103(1), C.R.S. 2015; *People ex rel. S.N.-V.*, 300 P.3d 911, 915 (Colo. App. 2011)).

23. A parent must be given a reasonable amount of time to comply with the provisions of a treatment plan. *People ex rel. D.Y.*, 176 P.3d 874, 876 (Colo. App. 2007).

### **Argument**

24. In this case, a manifest injustice would result to both Father and his son if the termination hearing is not continued. Father was just informed that he is the biological father of the child about two months before a termination hearing. His treatment plan recognizes that he will need to work with the caseworker to adopt a more appropriate treatment plan. He had no formal notice regarding the case despite having been incarcerated for four months during the case, including on the date of the default adjudication. He was deprived of access to counsel to represent him during the adjudicatory and dispositional stages of these proceedings because Petitioner failed to comply with its efforts to conduct a diligent search which would have presumably located Father in the Arapahoe County jail. Throughout these proceedings, he has been denied his due process rights. To proceed with a termination hearing under such circumstances would present a manifest injustice.
25. For [redacted] he deserves a meaningful opportunity to reunify with a parent, which he has not had due to his biological father being identified only recently. Father has not had an adequate opportunity to comply with his treatment plan, and there are less drastic alternatives to termination. Should the Court not grant Father an opportunity to have an appropriate treatment plan and to have a reasonable amount of time to comply with the treatment plan, [redacted] will be deprived of an opportunity to reunify with his father.
26. It is also in the best interests of [redacted] that his father have adequate time to comply with a reasonable treatment plan. [redacted] deserves to know his father and to have a chance to reunify with him. Also, where Father has been given less than three months to comply with a treatment plan and the treatment plan was not reasonably calculated to reunify him with his son, the *D.Y.* case, 176 P.3d at 876, suggests that a termination under such circumstances may be reversed, further disrupting permanency for [redacted]. While it is regrettable that [redacted] was not located while he was in jail and appointed counsel at that time, the passage of time alone is not sufficient to justify a termination.
27. Father asserts that the default adjudication entered in December 2017 is invalid because it was based on a publication that occurred eight months prior to the December court date. From August to December, Father was in jail in Arapahoe County and could have received actual notice of the court proceedings, but he was not served during that time. He should have been served in jail or writted for the adjudicatory hearing and was not.
28. Father also requests that a dispositional hearing be set to adopt an appropriate treatment plan and to address the issue of the default adjudication.
29. Father requests that the Motion for Termination of Parent-Child Legal Relationships be denied as to him because two of the required elements under § 19-3-604, C.R.S. (2017) cannot be met because there is not a valid adjudication or reasonable and appropriate

treatment plan as to him. In the alternative, Father would request a continuance in order to permit him to have a reasonable amount of time to comply with the treatment plan.

30. Father is aware this case has been open for one year and that [redacted] is in need of permanency. He is prepared to move at [redacted] s pace, and as [redacted] becomes comfortable with him and ready to return home to him, Father intends to continue to demonstrate his sobriety, participate in treatment, and move to appropriate housing.

WHEREFORE, Father respectfully requests the TPR hearing set for March 27, 2018 be continued and that this matter be set for an advisement and dispositional hearing within the next thirty days, or that an adjudicatory and dispositional hearing occur on March 27, 2018.

Respectfully submitted this 8<sup>th</sup> day of March, 2018,

  
\_\_\_\_\_  
Melanie Jordan, #41229

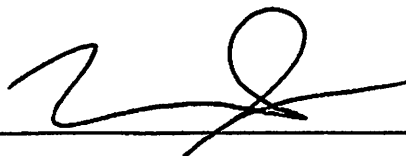
#### **CERTIFICATE OF SERVICE**

On March 8, 2018, I served a copy of this Forthwith Motion for Continuance on the parties, or their attorneys, as indicated below:

[redacted], via e-mail

[redacted] via e-mail

[redacted], via e-mail

  
\_\_\_\_\_

District Court, Jefferson County, Colorado 100 Jefferson County Parkway Golden, CO 80401 (720) 772-2500	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> Case Number: 17JV197  Div. 10      Ctrm. 4C
<b>THE PEOPLE OF THE STATE OF COLORADO</b> In the Interest of  <b>Child: MAX LANE</b>  <b>Petitioner: JEFFERSON COUNTY DIVISION OF CHILDREN, YOUTH AND FAMILIES</b>  <b>Respondents: COLEEN LANE AND JOHN BUGARING</b>	
<p style="text-align: center;"><b>ORDER RE: FATHER'S FORTHWITH MOTION FOR CONTINUANCE OF TPR HEARING</b></p>	

**THIS COURT**, having reviewed Respondent Father's Motion for a Continuance, the Court file, and being fully advised in the premises,

**HEREBY ORDERS** that Respondent Father's Motion for Continuance is:

\_\_\_\_\_ **GRANTED.** The Court further states: \_\_\_\_\_

\_\_\_\_\_ **DENIED.**

\_\_\_\_\_ **ORDERS THE MOVING PARTY TO SET A HEARING ON THIS MATTER.**

**DONE BY THE COURT** this \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
**DISTRICT COURT JUDGE**