

IN THE YOUTH COURT OF _____ COUNTY, MISSISSIPPI

In the Interest of:

XXXXXXXXXXXXXXXXXX, a minor

(date of birth: XXXXXXXXXXXXX)

Youth Court Case No. _____

XXXXXXXXXXXXXXXXXX

PETITIONER

**PETITIONER’S MOTION REQUESTING TRANSFER OF JURISDICTION
TO THE CHANCERY COURT OF XXXXXXXXXXXXXXXXXXXX COUNTY**

COMES NOW, Petitioner, _____, duly appointed durable legal custodian of the minor child, _____, pursuant to Rule 27(c) of the Uniform Rules of Youth Court Practice, and Miss. Code Ann. §§ 43–21–151(2) and 43–21–613(3)(a), filing this Motion Requesting Transfer of Jurisdiction to the Chancery Court of _____ County, Mississippi, where adoption proceedings concerning the minor child are pending, and in support of this Motion, Petitioner would state as follows:

1. Petitioner _____ currently has durable legal custody of the minor child _____ pursuant to an Order entered by this Court in this case on _____.

2. Petitioner now seeks to adopt the minor child _____ in a proceeding that has been initiated in Cause No. _____ which is pending in the Chancery Court of _____ County. A copy of that Adoption Petition is attached as Exhibit “A.”

3. Durable legal custody is defined as follows: "'Durable legal custody' means the legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care, nurture, welfare, food, shelter, education and reasonable medical care. All these duties as enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children." Miss. Code Ann. § 43–21–105(y) (West 2020).

4. "Durable legal custody was enacted by the Legislature to serve as an alternative to termination of parental rights." *May v. Harrison County Dept. of Human Services*, 883 So.2d 74, 80 (¶ 20) (Miss. 2004). See Miss. Code Ann. § 43–21–609 (West 2020) (durable legal custody statute). When a third party is awarded durable legal custody of a child, the biological parents retain residual rights concerning their minor child. *In re S.A.M.*, 826 So.2d 1266, 1278 (¶ 23) (Miss.2002).

5. In *Barnett v. Oathout*, 883 So.2d 563, 569 (¶ 11) (Miss. 2004) the Court held that a grant of durable legal custody does not grant the custodian "... any greater rights than those possessed by a foster parent."

6. A Youth Court's "decision to grant durable legal custody is not permanent and is, therefore, subject to further review and modification by the courts." *In re S.A.M.*, 826 So.2d 1266, 1279(¶ 39) (Miss. 2002). "[T]he intent of durable legal custody is merely to avoid the required annual dispositional reviews by the youth court." *In re Sam*, 826 So.2d at 1280 (¶ 40) (Miss. 2002).

7. Miss. Code Ann. § 43–21–613(3)(a) (West 2020) provides: "Unless the youth court's jurisdiction has been terminated, all disposition orders for supervision, probation or placement of a child with an individual or an agency shall be reviewed by the youth court judge or referee at

least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public...." (emphasis added).

8. "However, Miss. Code Ann. § 43–21–609(b) specifically removes the requirements of annual dispositional reviews under Miss. Code Ann. § 43–21–609(3)(a) when the youth court has granted durable legal custody." *In re S.A.M.*, 826 So.2d 1266, 1279-80 (¶ 40) (Miss. 2002). Miss. Code Ann. § 43-21-609(b) provides in part: "The requirements of Section 43-21-613 as to disposition review hearings do not apply to those matters in which the court has granted durable legal custody."

9. In addition, the Supreme Court has held: "A grant of durable legal custody does not preclude the [youth] court from retaining jurisdiction over a matter." *In re M.I.*, 85 So.3d 856, 860 (¶ 15) (Miss. 2012). Thus, a youth court does not terminate its jurisdiction over minor children when durable legal custody is granted. *In re M.I.*, 85 So.3d at 860 (¶ 15).

10. Under the Youth Court Rules and statutes, in the case at bar, this Court retains priority jurisdiction over matters relating to the minor child, _____. Miss. Code Ann. § 43–21–151(1) (West 2020).

11. In *B.A.D. v. Finnegan*, 82 So.3d 608, 613 (¶ 18) (Miss. 2012), the Supreme Court explained that a Youth Court may voluntarily relinquish its priority jurisdiction over a minor child to a Chancery Court where custody issues are pending, based on a finding that the Youth Court "lacked the ability to provide long-term relief to the parties." The Court held that Youth Courts cannot simply terminate jurisdiction over matters concerning abuse or neglect that fall within their original jurisdiction in order "to get cases out of their chambers." *B.A.D.* 82 So.3d at 613 (¶ 20). However, the Court also recognized that where the sole remaining matters concerning the minor child relate to issues of permanent custody, and no issues of abuse or

neglect remain, transfer of jurisdiction to chancery court is proper, so that permanency can be achieved for the child. *B.A.D.* 82 So.3d at 613 (¶ 20).

12. The decision to transfer jurisdiction lies within this Court's sound discretion. In the case *In re M.I.*, 85 So.3d 856, 860 (¶ 16) (Miss. 2012), the Supreme Court held that the Youth Court did not err in denying a Motion to Transfer Jurisdiction to Chancery Court. The Court explained that once a child is adjudicated to be abused or neglected, the Youth Court may retain its jurisdiction over the child until he or she reaches the age of twenty. *In re M.I.*, 85 So.3d at 860 (¶ 16). Since a Youth Court does not terminate its jurisdiction by granting durable legal custody, the Court held that the decision concerning a motion to transfer jurisdiction lies within the sound discretion of the Youth Court. *Id.*

13. Although an award of durable legal custody is considered a “permanency plan” for placement of the minor child under the Youth Court Statutes, Rules and DCPS regulations, the Supreme Court has recognized that "a decision to grant durable legal custody is not permanent and is, therefore, subject to further review and modification by the courts." *In re S.A.M.*, 826 So.2d 1266, 1279 (Miss. 2002).

14. In view of the preceding authority, and the facts presented in the case at bar, Petitioner respectfully submits that the proposed adoption will provide permanency for the minor child, and is in the child's best interest. Accordingly, Petitioner respectfully requests that this Court enter a Final Order of Disposition transferring jurisdiction over the minor child, _____, to the Chancery Court of _____ County in Cause No. _____, so that Petitioner may proceed with the pending Petition for Adoption.

15. Petitioner respectfully submits that, under the holding in *B.A.D. v. Finnegan*, 82 So.3d 608, 613 (¶¶ 18-20) (Miss. 2012), it is appropriate for this Court to relinquish jurisdiction

over any further matters pertaining to custody of the minor child to the Chancery Court of _____ County in Cause No. _____, so that the minor child can be legally adopted by Petitioner _____ . .

16. Accordingly, Petitioner respectfully request that this Court enter a Final Order of Disposition, transferring this Court’s jurisdiction over any matters pertaining to custody of the minor child to the Chancery Court of _____ County, thus allowing _____ to proceed with the Petition to adopt the minor child.

17. Petitioner further requests that the transfer of jurisdiction be conditional, so that in the event the Petition for Adoption is denied by the Chancery Court, this case concerning the minor child will be transferred back to this Court.

Respectfully submitted, this the _____ day of _____, 2021.

_____, Petitioner and
Durable Legal Custodian

By: _____
XXXXXXXXXXXX, MSB No. _____
Attorney for XXXXXXXXXXXXX

CERTIFICATE OF SERVICE

This is to certify that the undersigned has delivered copies of the foregoing Motion to Transfer Jurisdiction by electronic communication, e-mail, and/or United States Mail, first class postage prepaid, to the following:

Youth Court Judge

Youth Court Prosecutor

Parents or Attorney for Parents

Guardian ad Litem and any Attorney for the Child

Chancery Clerk/Youth Court Clerk of _____ County

This the _____ day of _____ 2022.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX, MSB No. _____