

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI

IN THE MATTER OF THE PETITION OF
[PETITIONERS] FOR ADOPTION
OF THE MINOR CHILD NAMED HEREIN

[PETITIONERS]

PETITIONERS

CAUSE NO. _____

**MEMORANDUM OPINION ESTABLISHING FINDINGS FOR
TERMINATION OF PARENTAL RIGHTS AND ADOPTION**

This Cause came on for hearing this day on the Petition for Termination of Parental Rights, and Adoption filed by Petitioners, [xxxxxxx], concerning the minor child, [xxxxxxx]. After considering the testimony, affidavits, and other evidence presented in support of the Petition, and based on the documents that have been filed in this matter, this Court is of the opinion that termination of parental rights is appropriate in this matter, and that Petitioners should be allowed to adopt the minor child. In support of this decision, this Court makes the following findings of fact and conclusions of law:

1. Petitioners [xxxxxxxxxxxx] are married adult residents of _____ County, and they have resided in this county for more than six months prior to the commencement of this proceeding.

2. The minor child [xxxxxxx] was born on _____, 20 __, and is currently ___ years old. A true and correct copy of the minor child’s birth certificate was attached to the Petition as “Exhibit A.”

3. Petitioners are [relation?? Foster parents??? Etc.] of the minor child, and they have had physical custody of the minor child [for how long and why? Maybe by agreement w/parents? Placement by DCPS?]. Petitioners now desire to adopt the minor child.

4. [Mother] is the biological mother of the minor child, and she has filed her affidavit voluntarily surrendering her parental rights, waiving service of process in this case, and joining in these proceedings, as provided under MISS. R. CIV. P. Rule 4(e), and she has voluntarily submitted to the jurisdiction of this Court and waived any further notice of hearings in this matter. [**OR, instead of waiver:** [Mother] was properly served with a Rule 81 Summons (or Rule 81 Summons by Publication), the proof of which was filed with this Court. On the day scheduled for the initial hearing, Mother's name was called three time, and she failed to appeal or otherwise respond. The Court finds that [Mother] has not appeared or contested the termination of her parental rights in this case.]

5. [Father] is the natural father of the minor child, and he has filed his affidavit voluntarily surrendering his parental rights, waiving service of process in this case, and joining in these proceedings, as provided under MISS. R. CIV. P. Rule 4(e), and he has voluntarily submitted to the jurisdiction of this Court and waived any further notice of hearings in this matter. [**OR, instead of waiver:** [Father] was properly served with a Rule 81 Summons (or Rule 81 Summons by Publication), the proof of which was filed with this Court. On the day scheduled for the initial hearing, Father's name was called three time, and he failed to appeal or otherwise respond. The Court finds that [Father] has not appeared or contested the termination of his parental rights in this case.]

6. This Court has personal jurisdiction over the parties, and subject matter jurisdiction over these proceedings, and venue is proper in this County. Miss. Code Ann. §§ 93-15-105 and 93-17-3 (West 20___).

7. As required by Miss. Code Ann. §§ 93-15-125 and 93-17-3(8) (West 20___), the Court finds that the provisions of the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq., do not apply in this case, as none of the parties have Native American heritage or tribal membership.

8. Petitioners have affirmed in their affidavits that there are no other proceedings currently pending in any court involving issues concerning the custody or adoption of the minor child. Therefore, the Court finds that no other person or entity is entitled to notice of this proceeding, as all necessary parties have been properly joined, as required by Miss. Code Ann. § 93-15-107 (West 20___).

9. [Mother] has voluntarily surrendered her parental rights and consented to the adoption of the minor child by her affidavit that has been filed with this Court. The Court finds that this affidavit complies with the statutory requirements set forth in Miss. Code Ann. § 93-15-111(1) (West 20___). [Mother's] voluntary surrender of parental rights is accepted by this Court, and the Court finds that this terminates all of [Mother]'s parental rights to the minor child, including, but not limited to, her right to control or withhold consent to this adoption. Miss. Code Ann. § 93-15-111(2) (West 20___). [**OR**, if accepted previously “was accepted by the Court by Order dated _____, etc. **Note, this may be the best practice, as the voluntary surrender can be withdrawn at any time before it is formally “accepted” by the Court.**]

10. [Father] has voluntarily surrendered his parental rights and consented to the adoption of the minor child by his affidavit that has been filed with this Court. The Court finds

that this affidavit complies with the statutory requirements set forth in Miss. Code Ann. § 93-15-111(1) (West 20____). The voluntary surrender of parental rights is accepted by this Court, and the Court finds that this terminates all of [Father]’s parental rights to the minor child, including, but not limited to, his right to control or withhold consent to this adoption. Miss. Code Ann. § 93-15-111(2) (West 20____). [OR, if accepted previously “was accepted by the Court by Order dated _____, etc.]

[OR ALTERNATE ¶¶ 9 & 10. IF THE CASE DOES NOT HAVE VOLUNTARY SURRENDERS BY THE PARENTS, SET FORTH THE GROUNDS FOR TPR OF EACH PARENT.]

Alt #9. At the hearing for termination of parental rights, [Mother] failed to appear even though she was duly summoned, and therefore this Court proceeded with the hearing to determine whether there were grounds for terminating her parental rights. [OR, [Mother] appeared at the hearing for termination of her parental rights, and she was duly informed of her procedural due process rights, as required in Miss. Code Ann. § 93-15-113 (West 20____).] Pursuant to the authority set forth in Miss. Code Ann. §§ 93-15-119 and 93-15-121 (West 20____), the Court finds that the following statutory grounds for termination of the parental rights of [Mother] have been proven by clear and convincing evidence: **[state the grounds alleged in the Petition or proven at trial]**. [E.g., [Mother] has engaged in conduct constituting abandonment and desertion, because she has failed to have any contact or communications with the minor child, and she has failed to provide for the support and maintenance of the minor child. Miss. Code Ann. §§ 93-15-119(1)(a) and 93-15-121(d) & (e) (West 20____.) Further, pursuant to the authority set forth in Miss. Code Ann. § 93-15-121(f), the Court finds by clear and convincing

evidence, that [Mother] has engaged in conduct that has caused a substantial erosion of the relationship between the parent and the child.]

Alt. #10. At the hearing for termination of parental rights, [Father] failed to appear even though he was duly summoned, and therefore this Court proceeded with the hearing to determine whether there were grounds for terminating his parental rights. Pursuant to the authority set forth in Miss. Code Ann. §§ 93-15-119 and 93-15-121, the Court finds that the following statutory grounds for termination of the parental rights of [Father] have been proven by clear and convincing evidence: **[state the grounds alleged in the Petition or proven at trial]**. [E.g., [Father] has engaged in conduct constituting abandonment and desertion, because he has failed to have any contact or communications with the minor child, and he has failed to provide for the support and maintenance of the minor child. Miss. Code Ann. §§ 93-15-119(1)(a) and 93-15-121(d) & (e) (West 20____.) Further, pursuant to the authority set forth in Miss. Code Ann. § 93-15-121(f), the Court finds by clear and convincing evidence, that [Father] has engaged in conduct that has caused a substantial erosion of the relationship between the parent and the child.]

11. The Court finds that the adoption of the minor child by [Petitioners] is based on the consent of both biological parents, as provided under Miss. Code Ann. § 93-17-5(1)(a) (West 20____). **[IF CONSENT DOES NOT APPLY:** Accordingly, the Court finds that there is clear and convincing evidence supports the termination of the parental rights of [Mother] and [Father], including, but not limited to, their right to control or withhold consent to the adoption of the minor child by Petitioners.]

12. The Court is of the opinion that clear and convincing evidence has established that the best interests and welfare of the minor child will be served if this Court terminates the parental rights of [Mother and Father] so that Petitioners may adopt the minor child. Miss. Code Ann. § 93-17-3(4) (West 20____).

13. Petitioners shall confer upon the minor child all of the rights of inheritance from Petitioners and their family members, as if the minor child was Petitioners' biological child and natural heir at law, and Petitioners and their family members are likewise granted mutual rights of inheritance from the minor child, and they are hereby entitled to inherit from the minor child, as provided under Miss. Code Ann. §§ 93-17-13(2) and 11-7-13 (West 20____).

14. The biological parents and their family members are hereafter precluded from inheriting from the minor child. However, after the adoption is finalized, the minor child shall continue to be entitled to inherit from the biological parents, as provided under Mississippi law. *See, e.g., Matter of Underhill*, 262 So.3d 1111, 1117 (Miss. 2019); *Estate of Jones v. Howell*, 687 So.2d 1171, 1173 (Miss. 1996); Miss. Code Ann. § 93-15-111(f) (West 20____).

15. The minor child owns no property, either real, personal, or mixed, within or without the State of Mississippi, save and except personal clothing and other minor items of necessity which are of minimal value, as shown in the sworn Affidavits filed with this Court by Petitioners, as required under Miss. Code Ann. § 93-17-3(4) (West 20____).

16. Petitioners are fully aware of the child's medical condition and have filed with this Court the appropriate Certificate of Attending Physician disclosing any known conditions, as required under Miss. Code Ann. § 93-17-3(4) (West 20____).

17. The Court finds that Petitioners are fit, suitable and proper persons to adopt the minor child and to continue to have the responsibility for the child's care, custody and control as

if the child had been born to Petitioners. The Court finds that the best interests and welfare of the minor child will be best served if this Court allows Petitioners to adopt the minor child.

18. Pursuant to Miss. Code Ann. § 93-17-13(2)(c) (West 20___), the Court authorizes and directs the Registrar of Vital Records of the Mississippi State Board of Health to record and issue to Petitioners a new Mississippi Certificate of Live Birth for the minor child, changing the minor child's name to "[new name]" and identifying and recording Petitioner [Adoptive Mother] as the mother of the minor child and Petitioner [Adoptive Father] as the father of the minor child.

19. The Court finds that the usual requirement under Miss. Code Ann. § 41-57-23 (West 20___) for joinder of the Mississippi State Department of Health, Office of Vital Records in proceedings to alter birth certificates is not necessary in this case because of the specific provisions concerning changes to birth certificates as the result of an adoption proceeding, as set forth in Miss. Code Ann. § 93-17-21 (West 20___).

20. Because this matter is an adoption by consent, the Court hereby exercises its discretion to waive the usual requirement of appointment of a Guardian ad Litem under Miss. Code Ann. §§ 93-15-107(1)(d) and 93-17-8(5) (West 20___). **[IF THIS DOES NOT APPLY, MENTION THE GAL QUALIFICATIONS AND RECOMMENDATION, AND WHETHER THEIR RECOMMENDATION WAS FOLLOWED OR NOT. IF THE GAL RECOMMENDATIONS ARE NOT FOLLOWED, THE OPINION MUST STATE THE REASONS WHY THE COURT DISAGREED WITH THE GAL.]**

21. Because this matter is an adoption by relatives of the minor child, the Court hereby exercises its discretion to waive the usual requirement of a home study under Miss. Code Ann. § 93-17-11(4) (West 20___). **[ONLY INCLUDE WAIVER OF THE HOME STUDY APPLIES.** Note that if a GAL is appointed, they may be able to conduct the home study. See

MCA 93-17-3(5) “No person may be placed in the home of or adopted by the prospective adopting parties **before a court-ordered or voluntary home study is satisfactorily completed** by a licensed adoption agency, a licensed, experienced social worker approved by the chancery court, **a court-appointed guardian ad litem that has knowledge or training in conducting home studies if so directed by the court**, or by the Department of Human Services on the prospective adoptive parties if required by Section 93-17-11. See Matter of Adoption of C.C.B. v. G.A.K., 306 So.3d 674, 681 (¶22) (Miss., 2020)].

22. Due to the fact that the minor child has been living in Petitioners’ home for more than six months preceding the filing of the Petition, the Court hereby exercises its discretion by waiving and dispensing with the usual requirement of an Interlocutory Decree of Adoption and the six-month waiting period, as allowed under Miss. Code Ann. § 93-17-13(1) (West 20__). Therefore, the Court finds that the immediate entry of a Final Judgment of Adoption would be in the best interests of the minor child.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

- A. This Court has personal jurisdiction over the parties and subject matter jurisdiction over these proceedings, and venue is proper in this County.
- B. No other person or entity was entitled to notice of these proceedings.
- C. The provisions of the Indian Child Welfare Act do not apply in this case.
- D. The parental rights of [Mother and Father] shall be terminated in the Final Judgment Terminating Parental Rights that will be filed contemporaneously with this Memorandum Opinion.
- E. The adoption of the minor child by Petitioners shall be granted in the Final Judgment of Adoption that will be filed contemporaneously with this Memorandum Opinion.

- F. The usual requirement of appointment of a Guardian ad Litem under Miss. Code Ann. §§ 93-15-107(1)(d) and 93-17-8(5) is hereby waived. **[IF THIS DOES NOT APPLY, MENTION WHETHER COURT AGREES WITH THE GAL'S RECOMMENDATION]**
- G. The Clerk of Court shall provide to the Attorney for Petitioners four **(4) certified copies** of this Memorandum Opinion.

SO ORDERED, ADJUDGED, AND DECREED this the _____ day of _____,
20____.

CHANCELLOR

Order prepared by:
David L. Calder, MSB # 7686
University of Mississippi Child Advocacy Clinic
481 Chucky Mullins Drive
University, Mississippi 38677
Cell: (662) 832-1354
Fax: (866) 474-0923
Email: davidcalder23@gmail.com
Attorney for Petitioners