

### Termination of Parental Rights Memo

\_\_\_\_\_ v. \_\_\_\_\_

Docket No. \_\_\_\_\_ Date of Trial \_\_\_\_\_

Petitioner's Attorney \_\_\_\_\_

Mother's Attorney \_\_\_\_\_

Father's Attorney \_\_\_\_\_

Guardian Ad Litem \_\_\_\_\_

#### Procedural Posture:

This case came to be heard upon the Petition to Terminate Parental Rights filed by \_\_\_\_\_ on (date) \_\_\_\_\_ upon the grounds of \_\_\_\_\_.

An answer was filed by (Mother/Father) \_\_\_\_\_ on (date) \_\_\_\_\_. (Optional: The parental rights of (Mother/Father) were terminated prior to this hearing on (date) \_\_\_\_\_.) The Court appointed a Guardian ad Litem on (date) \_\_\_\_\_.

#### Evidence Proffered and Received:

This case was heard upon the testimony of the parties and other witnesses:

##### For Petitioner(s)

- 1.
- 2.
- 3.
- 4.
- 5.

##### For Respondent (Mother/Father)

- 1.

- 2.
- 3.
- 4.
- 5.

This case was additionally heard upon the exhibits received into evidence:

- |    |     |
|----|-----|
| 1. | 9.  |
| 2. | 10. |
| 3. | 11. |
| 4. | 12. |
| 5. | 13. |
| 6. | 14. |
| 7. | 15. |
| 8. | 16. |

**Findings of Fact**

Were the parents married: \_\_\_\_\_ How many children: \_\_\_\_\_

Names/Ages: \_\_\_\_\_  
\_\_\_\_\_

Date Petitioners obtained custody: \_\_\_\_\_ (DCS Placement/Order/Emergency)

Length of time child(ren) have been in custody of Petitioners: \_\_\_\_\_

**Timeliness:** A hearing on a Petition for Termination of Parental Rights should be held *within six (6) months* after the date the petition is filed unless the court determines an extension is in the best interests of the child. The court shall enter its order *within thirty (30) days* of the conclusion of the hearing.

**Writing Requirements:** Whether or not requested, the court must produce a written order with findings of fact and conclusions of law regarding: (1) whether clear and convincing evidence exists as to each termination ground asserted; and (2) whether clear and convincing evidence established termination is in the child's best interest.

A trial court cannot make oral findings from the bench and later adopt them by reference in its final order.

**(Step 1) Grounds:**

1. First, a trial court must determine whether any grounds have been established for the termination of parental rights by *clear and convincing evidence*. The termination grounds are set out in Tennessee Code Annotated section 36-1-113(g):

1. Abandonment by the parent or guardian, as defined in § 36-1-102 (failure to support or failure to visit), has occurred;	
2. There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to title 37, chapter 2, part 4;	
3. The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months (the six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard) and: <ol style="list-style-type: none"> <li>i. The conditions that led to the child's removal still persist, preventing the child's safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child's safe return to the care of the parent or guardian;</li> <li>ii. There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or parents or the guardian or guardians in the near future; and</li> <li>iii. The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home;</li> </ol>	
4. The parent or guardian has been found to have committed severe child abuse, as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against any child;	
5. The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian, that has been found under any prior order of a court or that is found by the court hearing the petition to be severe child abuse, as defined in § 37-1-102. Unless otherwise stated, for purposes of this subdivision (g)(5), "sentenced" shall not be construed to mean that the parent or guardian must have actually served more than two (2) years in confinement, but shall only be construed to mean that the court had imposed a sentence of two (2) or more years upon the parent or guardian;	

6. The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court;	
7. The parent has been: (A) Convicted of first degree or second degree murder of the child's other parent or legal guardian; or (B) Found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian;	
8. (A) The chancery and circuit courts shall have jurisdiction in an adoption proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further care and supervision of the child, and to terminate that parent's or guardian's rights to the child; (B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that: (i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future; and (ii) That termination of parental or guardian rights is in the best interest of the child; (C) In the circumstances described under subdivisions (8)(A) and (B), no willfulness in the failure of the parent or guardian to establish the parent's or guardian's ability to care for the child need be shown to establish that the parental or guardianship rights should be terminated;	
9. (A) The parental rights of any person who, at the time of the filing of a petition to terminate the parental rights of such person, or if no such petition is filed, at the time of the filing of a petition to adopt a child, is the putative father of the child may also be terminated based upon any one (1) or more of the following additional grounds: (i) The person has failed, without good cause or excuse, to pay a reasonable share of prenatal, natal, and postnatal expenses involving the birth of the child in accordance with the person's financial means	

<p>promptly upon the person's receipt of notice of the child's impending birth;</p> <p>(ii) The person has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the child in accordance with the child support guidelines promulgated by the department pursuant to § 36-5-101;</p> <p>(iii) The person has failed to seek reasonable visitation with the child, and if visitation has been granted, has failed to visit altogether, or has engaged in only token visitation, as defined in § 36-1-102;</p> <p>(iv) The person has failed to manifest an ability and willingness to assume legal and physical custody of the child;</p> <p>(v) Placing custody of the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; or</p> <p>(vi) The person has failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(3);</p> <p>(B) (i) For purposes of this subdivision (g)(9), "notice" means the written statement to a person who is believed to be the biological father or possible biological father of the child. The notice may be made or given by the mother, the department, a licensed child-placing agency, the prospective adoptive parents, a physical custodian of the child, or the legal counsel of any of these people or entities; provided, that actual notice of alleged paternity may be proven to have been given to a person by any means and by any person or entity. The notice may be made or given at any time after the child is conceived and, if not sooner, may include actual notice of a petition to terminate the putative father's parental rights with respect to the child;</p> <p>(ii) "Notice" also means the oral statement to an alleged biological father from a biological mother that the alleged biological father is believed to be the biological father of the biological mother's child;</p>	
<p>10. The parent has been convicted of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, or rape of a child pursuant to § 39-13-522, especially aggravated rape pursuant to § 39-13-534, or especially aggravated rape of a child pursuant to § 39-13-535, from which crime the child was conceived; A certified copy of the conviction suffices to prove this ground.</p>	
<p>11.</p> <p>(A) (i) The parent has been found to have committed severe child sexual abuse under any prior order of a criminal court;</p>	

<p>(ii) For the purposes of this section, “severe child sexual abuse” means the parent is convicted of any of the following offenses towards a child:</p> <ul style="list-style-type: none"> <li>(a) Aggravated child abuse and aggravated child neglect or endangerment, pursuant to § 39-15-402;</li> <li>(b) Aggravated rape of a child, pursuant to § 39-13-531;</li> <li>(c) Aggravated rape, pursuant to § 39-13-502;</li> <li>(d) Aggravated sexual battery, pursuant to § 39-13-504;</li> <li>(e) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004;</li> <li>(f) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;</li> <li>(g) Incest, pursuant to § 39-15-302;</li> <li>(h) Promoting prostitution, pursuant to § 39-13-515;</li> <li>(i) Rape, pursuant to § 39-13-503;</li> <li>(j) Rape of a child, pursuant to § 39-13-522;</li> <li>(k) Sexual battery by an authority figure, pursuant to § 39-13-527;</li> <li>(l) Statutory rape by an authority figure, pursuant to § 39-13-532;</li> <li>(m) Trafficking for commercial sex, pursuant to § 39-13-309.</li> </ul>	
12. The parent or guardian has been convicted of trafficking for commercial sex act under § 39-13-309, or a similar offense in another state;	
13. The parent or guardian has been convicted on or after July 1, 2015, of sex trafficking of children or by force, fraud, or coercion under 18 U.S.C. § 1591, or a sex trafficking of children offense under the laws of another state that is substantially similar to § 39-13-309; and	
14. A legal parent or guardian has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.	
15. The parent or legal guardian has been convicted of attempted first degree murder or attempted second degree murder of the child's other parent or legal guardian.	

**(Step 2) Best Interests:**

2. Second, if the petitioner establishes a ground for termination, then the trial court must determine (and make a written finding) whether the best interest of the child will be served by the termination of parental rights by *clear and convincing evidence*. The (non-exclusive) best interest factors are set out in Tennessee Code Annotated section 36-1-113(i):

A. The effect a termination of parental rights will have on the child's critical need for stability and continuity of placement throughout the child's minority;	
B. The effect a change in caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;	
C. Whether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs;	
D. Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment;	
E. Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child;	
F. Whether the child is fearful of living in the parent's home;	
G. Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms;	
H. Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent;	
I. Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage;	
J. Whether the parent has demonstrated such a lasting adjustment of	

circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner;	
K. Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct or conditions;	
L. Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department;	
M. Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct or conditions that made an award of custody unsafe and not in the child's best interest;	
N. Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional or psychological abuse or neglect toward the child or another child or adult;	
O. Whether the parent has ever provided safe and stable care for the child or any other child;	
P. Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive;	
Q. Whether the parent has demonstrated the ability and commitment to creating	



and maintaining a home that meets the child's basic and specific needs and in which the child can thrive;	
R. Whether the physical environment of the parent's home is healthy and safe for the child;	
S. Whether the parent has consistently provided more than token financial support for the child; and	
T. Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child.	

Notes:

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### Conclusion

Based upon the termination factors enumerated in Tenn. Code Ann. § 36-1-113(g) and the best interest factors set forth in § 36-1-113(i), the Court finds (it is)/(it is not) in the best interest of the child(ren) for (Mother's)/(Father's) parental rights to be terminated and custody to be remain in the care of Petitioner(s).

The adoption of the child(ren) shall be determined at a hearing set \_\_\_\_\_.

Court costs shall be paid by \_\_\_\_\_.

Attorney Fees are awarded to ☐ \_\_\_\_\_ or ☐ each pays their own.

Guardian ad Litem fees shall be paid: \_\_\_\_\_.