

IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI
FAMILY COURT (JUVENILE)

FILED
JUL 18 2012
CIRCUIT CLERK
GREENE COUNTY

IN RE THE ADOPTION OF)
Carlos Romero, aka,)
)
Carlos Jamison Moser,) Case No. 07AO-JU00477
A Male Minor Child born 10-17-06)
)

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND JUDGMENT AND ORDER TERMINATING
PARENTAL RIGHTS**

In 2007, an action was filed in which Seth and Melinda Moser sought to adopt Carlos Romero, aka Carlos Jamison Moser, the minor child. Subsequently, that petition was granted. However, the biological mother later sought to set aside the adoption. The Supreme Court of Missouri granted that request and remanded the action to this Court for a retrial of the matter. Prior to that retrial, the Petitioners, Seth and Melinda Moser amended their original adoption action.

On February 28, 2012, the trial of this matter commenced and continued until March 2, 2012 at which time it was adjourned due to counsels' schedule. Trial recommenced on April 9, 2012, and was finally completed on April 13, 2012.

At the trial, the Petitioners, Seth and Melinda Moser, were present and were represented by retained counsel, Joseph L. Hensley. The minor child, Carlos Romero, aka, Carlos Jamison Moser, was represented by his

Court Appointed Guardian, Linda Thomas. The Jasper County Juvenile Office was represented by its legal counsel, Belinda Elliston. The biological mother, Encarnacion Maria Bail Romero, was present at the trial and was represented by attorneys, Curtis Woods, William Fleischaker, Omar Riojas, and Christopher Huck¹.

Initially, this matter was set for trial at an earlier date in accordance with the Supreme Court's mandate. However, due to the volume of evidence and the need for additional discovery, the parties requested and consented to a continuance of the trial date. In order to allow the parties ample opportunity to conduct discovery and prepare this matter for trial, this Court reluctantly granted the request for a continuance. At the commencement of the trial, all of the parties announced that they were prepared to proceed.

Prior to trial, there was a great deal of discussion over whether the trial should be open or closed to the public. Ms. Romero's counsel argued that since Count II of the petition was a termination action, the matter should be open to the public and the news media. Counsel for the Mosers, together with the Guardian and the Juvenile Office argued that the matter should be closed. The Court received several requests from the media to attend the trial and some were present at the Courthouse on the day of trial although the

¹ The biological father's parental rights were previously terminated and that termination was affirmed by the Supreme Court.

Court is unaware of how the media knew of the time or date of the trial. The Court did learn that one of the national media outlets aired one or more news stories on the trial but the Court did not view those stories or know any details of their contents.

The Court considered the arguments of the parties and denied the request to open the trial to the public. The Court agreed to postpone the trial in order to allow Ms. Romero to seek appellate review of its decision. Ms. Romero's counsel declined that option. In accordance with the Vienna Convention on Consular Relations and with the agreement of all of the parties, the Court did permit a consular representative of Guatemala to be present at the proceedings for Ms. Romero.

When the case was first assigned, this Court was of the understanding that Ms. Romero was unable to speak English. As a result, an interpreter was utilized for all of the proceedings at which Ms. Romero was present. Later on, it became apparent that Ms. Romero could speak some English. Nonetheless, an interpreter was utilized throughout the trial for her. At trial, the interpreter sat next to Ms. Romero and translated the Court's proceedings as well as attorney-client communications between Ms. Romero and her attorneys. In addition, at least one of Ms. Romero's attorneys could speak Spanish and was able to converse with her throughout the proceedings

The Court also provided a separate translator for several witnesses who were unable to speak English.

During the nine days of trial, the Court had an opportunity to carefully observe and listen to each witness including the Mosers and Ms. Romero. The Court also considered each of the exhibits that were admitted, the arguments of counsel, the stipulations that were agreed to by the parties, and the relevant portions of the file.

At the conclusion of the trial, the parties were invited by the Court to submit proposed suggestions, findings, and orders. The Court also ordered that the transcript be prepared in this matter so that the parties and this Court would have it available. That transcript was received by the Court in June of 2012.

Following the trial, the parties submitted various pleadings. This Court has carefully reviewed those submissions. In addition, the Court has reviewed the transcript of trial, the exhibits and stipulations previously submitted, together with the case file.

This is a difficult case. The Court is extremely sensitive to the fact that the issues before it and the decision that it will issue will have a lifetime impact on the minor child, Ms. Romero and the Mosers. For that reason, the Court has attempted to give ample opportunity to each of the parties to develop their portion of the case.

When this case was remanded, there was a genuine dispute about many critical facts. Ms. Romero alleged facts in her pleadings before the Court of Appeals and the Supreme Court that were not presented to the original trial court. Many of those facts were disputed by the Petitioners. As a result, this Court felt that it was important for the record to be fully developed so that this Court could ascertain what actually happened during the first months of the minor child's life including the circumstances surrounding Ms. Romero's incarceration and the events that occurred during the first adoption proceedings. In listening to this evidence, the Court, as trier of the facts, reached certain decisions concerning the candor and credibility of the parties and the other witnesses.

Pursuant to 453.040(7) R.S.Mo., the consent of the biological mother is not necessary in an adoption action for a child under one year of age if, for a period of at least sixty days prior to the filing of the petition in this cause, the biological mother has willfully abandoned the child. Previously, the Supreme Court held that the adoption petition in this matter was filed October 5, 2007. As such, the relevant 60 day period began on August 5, 2007.

In deciding the issue of abandonment, a trial Court is instructed to look at all of the evidence concerning the parent's conduct but to give the

greatest weight to conduct that occurred within that 60 day period and the least weight to conduct that occurred before and after that statutory period.

Pursuant to 211.447.2(2)(b) R.S.Mo, abandonment can also be grounds for the termination of parental rights if the biological mother has, without good cause, left the child, who is younger than one year of age, without any provision for parental support and without making arrangements to visit or communicate with the child, although able to do so.

Unlike abandonment under Chapter 453, R.S.Mo, the look back period of abandonment under Chapter 211 R.S.Mo. does not specify a particular period that the Court must examine to make a finding of abandonment of an infant

This Court is aware that incarceration in and of itself is not grounds for termination. However, this Court may consider the fact that the mother continued to engage in criminal following the birth of her child which exposed her to the risk of arrest, incarceration, and deportation. In addition, the Court may also consider what advance arrangements, if any, the mother made for her child in case she was arrested. The Court may also consider what steps the mother took following her arrest including but not limited to whether the mother attempted to stay in communication with her child and provide support to him, however minimal, while she was incarcerated.

Pursuant to 453.040(7) R.S.Mo., the consent of the biological mother is also not required in an adoption action if, for a period of at least six months prior to the filing of the petition for adoption, the mother willfully, substantially and continuously neglected to provide him with necessary care and protection.

Similarly, 211.447.5(2) R.S.Mo. provides that grounds may exist for the termination of the mother's parental rights if the child has been neglected by her.

Again, there are differing look back periods depending on whether the Court is considering neglect under Chapter 453 R.S.Mo., or Chapter 211 R.S.Mo. Chapter 453 R.S.Mo. specifically requires a look back period of six months from the filing date of the adoption petition which occurred on October 5, 2007. Therefore, the applicable look back date for this issue began on April 5, 2007. Chapter 211 R.S.Mo. does not specify a look back period, but requires the Court to examine various issues in making a determination of neglect.

Having considered the totality of the record in this matter, it is the opinion of this Court that the Ms. Romero's consent was not required for the adoption of the minor child by the Mosers since she both abandoned and neglected the minor child during the applicable periods preceding the filing

of the adoption petition and that such abandonment and neglect was established by clear, cogent and convincing evidence.

Furthermore, the Court finds that the Mosers have, by clear, cogent and convincing evidence, established that statutory grounds exist for the termination of the parental rights of Ms. Romero under Chapter 211 R.S.Mo., and that termination of those rights would be in the best interests of the minor child.

Finally, the Court finds that adoption of the minor child by the Mosers would be in his best interests under the applicable standard as well as the higher standard of clear, cogent and convincing evidence.

FINDINGS OF FACT

The Court finds from clear, cogent and convincing evidence that:

1. The Circuit Court of Jasper County, Missouri, Juvenile Division has jurisdiction in this proceeding.
2. Carlos Romero, aka, Carlos Jamison Moser, the minor child was born on October 17, 2006, in Joplin, Newton County, Missouri.
3. The biological mother of the minor child is Encarnacion Maria Bail Romero, a citizen of Guatemala. There is some confusion on the birth certificate since the biological mother stated that she was 30 years of age at the time of the child's birth on October 17, 2006. However, in her plea agreement on the federal charges, she stated that she was born

March 26, 1975. Identification papers in the Jasper County Juvenile Court's file prepared by Mr. Romero or someone on her behalf state that she was born March 26, 1976. Despite the difference in birthdates on these various documents, the Court finds that Encarnacion Maria Bail Romero is in fact the mother of the minor child.

4. The Petitioners Seth and Melinda Moser, husband and wife, are Jasper County, Missouri residents.
5. This Court received properly authenticated copies and takes judicial notice of the various documents from the file of the United States District Court for the Western District of Missouri, Southern Division, in the case of *United States of America v. Angelica Alvarado-Romero*, Western District of Missouri Federal Case No. 07-05049-01-CR-SW-RED. In that matter, the biological mother, Ms. Romero (a.k.a. Angelica Alvarado, Angelica Alvarado-Romero and Rachel Leal) pled guilty to a violation of 18 U.S.C. Section 1028A on October 11, 2007, and was subsequently sentenced to incarceration in a federal prison.
6. Ms. Romero is from a rural village in Guatemala. Her mother is deceased but her father and several siblings still reside in Guatemala near her birth place. One of her brothers, Bartolome Bail, and a sister, Maria Elodia Bail Romero, are illegal aliens living in Carthage, Missouri.

7. Ms. Romero's brother, Bartolome Bail, came to the United States illegally. He was subsequently deported from the United States but has since returned and is now residing in Carthage, Missouri. Although Ms. Romero and her family claim that they have never been to his house and do not know where he or his children live in Carthage, the Court does not find their testimony to be credible on this issue.
8. Ms. Romero has two other children in addition to the minor child. They reside in Guatemala with two different sisters of Ms. Romero. The oldest is a boy, age 14. The youngest is a girl, age 8. Neither has seen their mother for approximately seven years. Each child has a different father but neither of the fathers provides support to their child. Ms. Romero's daughter has experienced significant psychological issues due to her separation from her mother and is currently receiving treatment for those issues. Since her release from prison and having sufficient resources and the ability to do so, Ms. Romero has made no efforts to travel to Guatemala to see either of her children. In addition, Ms. Romero does not have any plans to see her children in Guatemala in the foreseeable future unless she is involuntarily deported from the United States. Even then, she does not plan to reside with them in Guatemala without the minor child. Instead, she testified that she will attempt to smuggle them

along with herself into the United States despite the fact that she may be arrested, imprisoned, or even killed in the process.

9. Ms. Romero has illegally entered the United States on at least two occasions. The first time occurred in June of 2005 when she was smuggled across the border by a “coyote” paid for by her sister. However, she was caught, detained for a month, and then deported to Guatemala. She remained there for about a month and then reentered the United States illegally. According to this timeline, the second reentry would have occurred in approximately August or September of 2005.
10. However, her story about the second reentry has changed several times. In her plea agreement in Federal Court, she stated that her second illegal entry into the United States was on May 10, 2006 at Hidalgo, Texas, nearly a year after her first attempt. This is significant since Ms. Romero now claims that she became pregnant with the minor child after returning to the United States the second time. However, if she returned in May of 2006 as she admitted in Federal Court, she would have already been pregnant with the minor child and returned illegally to the United States while pregnant.
11. In two separate filings by Ms. Romero with the United States Department of Homeland Security, U.S. Immigration and Customs Enforcement, Ms. Romero claimed yet another date for the second

reentry by stating that she illegally reentered on January 1, 2006, at Nogales, Arizona, which is some distance from Hidalgo, Texas.

12. Ms. Romero testified that she met the minor child's biological father, an illegal alien, while working at George's in Monett. She later had a child by him. Prior to the birth of the minor child, the biological father began to drink heavily and became abusive to Ms. Romero. At some point, he was arrested by Immigration officials and deported.

13. The minor child was born as a full term child on October 17, 2006.

Therefore, Ms. Romero's stated date of reentry in Federal Court as well as to the Department of Homeland Security is incorrect. This finding is also supported by the fact that she applied for a job at George's Poultry plant on November 23, 2005, which would have been months before the reentry dates she claimed in Federal Court and to the Department of Homeland Security.

14. Prior to and after the birth of the minor child, Ms. Romero lived with her brother Jose, an illegal alien, and another man in a one room apartment in Carthage, Missouri. While living there, Ms. Romero met with Laura Davenport, a Parents As Teachers educator who spoke Spanish. The first meeting took place on September 27, 2006, shortly before the minor child was born. Mrs. Davenport described the living conditions at the apartment as being very poor. After the minor child was

born, there was no place for him to sleep so Ms. Romero and the minor child slept on a pallet on the floor while her brother and the other man shared a mattress. Ms. Romero had no prenatal care other than a WIC appointment necessary for her to obtain food stamps.

15. Mrs. Davenport again visited Ms. Romero and the minor child at that apartment on October 25, 2006, seven days after the minor child was born. She returned a few days later and dropped off a crib because Ms. Romero had not yet obtained a crib even though cribs could have been available to her for free from other sources. While visiting with Ms. Romero and the minor child, Mrs. Davenport noticed that the minor child seemed weak and she instructed Ms. Romero on some exercises that she could do with the minor child to improve his range of motion. Mrs. Davenport also attempted to educate her about services available to her to help her in raising the minor child.

16. Ms. Davenport's last visit with Ms. Romero at that location occurred on November 15, 2006. Afterwards, Ms. Romero moved to an unknown location and Ms. Davenport could not locate her or the minor child.

17. Sometime after this, Ms. Romero's brother, Jose, moved back to Guatemala and Ms. Romero moved in with her brother, Bartolome Diaz, his girlfriend, and their three children in Carthage, Missouri. Both

Bartolome and his girlfriend were illegally in the United States and subject to deportation.

18. Mrs. Davenport would go to Bartolome's home for his three children as part of the Parents as Teachers Program. While there in April of 2007 for Bartolonme's three children, she unexpectedly encountered the minor child who was now living in that home. As a result, she had an opportunity to interact with him.
19. Mrs. Davenport observed that the living conditions in this new home were also poor. At this point, the minor child was approximately five months old. He was not getting proper nutrition as he was being fed whole milk instead of formula. The minor child also had not received the proper immunizations. He was developmentally delayed for his age and was slow both to sit up and to crawl. The minor child also had trouble supporting his head and had poor muscle development.
20. At the time of Ms. Romero's arrest on May 22, 2007, she was still residing in her brother's home. At the time of her arrest, Ms. Romero did not advise officials that she had a child living with her. Instead, she called her sister, Maria Elodia, and asked her to pick the minor child at the babysitter. The minor child spent that night with Maria and her husband, Geronimo Ignacio Diaz, both of whom are illegally in the United States, and their two children. The next day, Maria took the

minor child back to Bartolome's home. However, Bartolome was unable to care for the minor child and returned him to Maria's home several days later.

21. By the end of May of 2007, the minor child was living with Maria and Geronimo in Carthage. On June 8, 2017, Mrs. Davenport visited that home to see Maria's two children. There, she again unexpectedly encountered the minor child. She was not aware that he had been moved to one-bedroom apartment where Maria and her husband lived with their children. As with her prior encounters with the minor child, Mrs. Davenport was concerned with the care that the minor child was receiving. He was still not receiving proper nutrition and was still developmentally delayed. Maria admitted that she was not feeding formula to the minor child. Instead, she was giving him whole milk. Due to her concerns, Ms. Davenport left the home and went back to the PAT office where she collected as much formula as she could. She also stopped on the way back to Maria's home and purchased some formula for the minor child with her own money.
22. Due to her concerns about the minor child's well being, Ms. Davenport contacted Jennifer and Oswaldo Velazco to see if they would be willing to assist in the care of the minor child. Mrs. Davenport was familiar with

the Velazcos and was aware that they had assisted with childcare for another mother who went to prison.

23. The Velazcos agreed to meet the minor child, Maria and Geronimo, and did so near the middle of June of 2007. Maria and Geronimo agreed to accept the Velazcos' offer of free childcare for the minor child. The Velazcos did not take the minor child with them on that day but began to do so several days later. Initially the plan was for the Velazcos to provide only daytime childcare. Under the plan, Jennifer Velazco was to pick up the minor child in the morning from Maria. After finishing work, Maria would then go to the Velazco home and pick up the minor child.

24. However, from the onset of this arrangement, there were problems. On the first day that Ms. Velazco attempted to pick up the minor child at Maria's home, no one answered the door. Maria had already left to take her own children to daycare. When Maria arrived back home, the minor child was not with her and Mrs. Velazco realized that Maria had left the minor child, then approximately 8 months old, alone by himself in the home.

25. The arrangement where the Velazcos watched the minor child during the day only lasted a week or two. Maria and her husband were finding it inconvenient to pick up the minor child from the Velazcos at night. So, the Velazcos agreed that they would watch the minor child from Sunday

night or Monday through Friday night, and then Maria and Geronimo would watch the minor child on the weekends.

26. However, even with those concessions, Maria and her husband still found it inconvenient to have the minor child with them and complied with this new schedule for only a few weeks. At some point during the summer of 2007, the Velazcos became a full time placement for the minor child. Although the witnesses disagreed as to when that actually occurred, the Court finds Ms. Velazco's version to be credible.

According to her, she believes that the first weekend they kept the minor child was the weekend of July 7, 2007. Maria and Geronimo dispute that date and the circumstances under which this arrangement occurred but the Court does not find their testimony on these issues to be credible.

27. At the time that the minor child came into the Velazcos' temporary care from Maria, he had not been receiving the proper care and nutrition from Maria and her husband. In fact, it appeared that little care or attention to the minor child. Instead, he was left to languish in a car seat in Maria's home. The minor child had developed a flat spot on the back of his head and did not have proper muscle tone and control for a child his age. Instead, he was weak, lethargic, and suffering from a severe rash that bled on his face and arms.

28. During this time, the minor child had a cousin living in the same residence who was only slightly older than the minor child. This child was Maria's child. There was no evidence that he was malnourished or developmentally delayed like his cousin, the minor child.
29. While the minor child was with the Velazcos, neither Maria nor Geronimo provided any support for the minor child except for a package of diapers. Maria did not come by to see the minor child at the home, a fact that she related to Ms. Romero in a telephone call from the prison on October 10, 2007. Eventually, Geronimo also stopped going by the Velazco home.
30. From the evidence presented, it was apparent that Maria viewed the minor child as a burden to her and her family and that she and her husband did not properly care for him during this time. Instead, he was neglected by them. The Court finds that Ms. Davenport's and Ms. Velazco's testimony on the issue of the minor child's condition and care to be credible and the testimony of Maria and Geronimo to not be credible. Moreover, Maria and Geronimo's version of the facts, including dates and rationale, surrounding the placement and care of the minor child by the Velazcos is different than the Velazco and Davenport version. However, the Court does not find Maria or Geronimo's version to be credible or consistent with the other evidence submitted. Instead, it

finds the facts support the Velazco and Davenport version of events and further finds their version to be the credible version of events.

31. Although Maria may have professed her love and caring for the minor child at trial, the facts support the finding that she was happy to give the minor child to the Velazco family or anyone else who would have him. She resented the fact that her sister had put her in the situation of having to care for him and in telephone calls to her sister, she referred to her sister, Ms. Romero, as stupid and irresponsible

32. During the time period while the minor child was with her sister Maria and then the Velazcos, Ms. Romero also expressed little, if any, interest in the welfare of the minor child. Although she made several calls to Maria during the summer of 2007, Ms. Romero made little inquiry about the minor child and did not ask to speak to him. Instead, she seemed more focused on her pending criminal case and other people in her life.

33. While caring for the minor child, the Velazcos received no communication from Ms. Romero although Ms. Romero was aware of the fact that the minor child was being cared for by the Velazcos. Although Ms. Romero later denied that knowledge, the Court does not find her denials on that issue to be credible.

34. Ms. Velazco testified that if they had received a phone call, even a collect phone call, they would have taken the call but no such call was

made. Furthermore, they received no support for the minor child, however minimal, from Ms. Romero or her family.

35. Even when Ms. Romero learned in October of 2007 that Maria had not been staying in touch with the Velazcos and did not know how the minor child was doing, Ms. Romero made no attempt to have contact with the minor child or to have someone else check on his well being. No letters were written by her. Instead, her only attempt to contact the Velazcos occurred after the adoption petition was filed. Even then, those attempts were minimal in effort and the Court gives little, if any weight, to them. After those few attempts of contact by Ms. Romero, there were no further attempts of contact by Ms. Romero or any member of her family.

36. The Court would note that at this point in time, Ms. Romero was represented by a federal public defender who met with her regularly and could have provided Ms. Romero with contact information for child welfare authorities had she so requested. In addition, there was a volunteer at the jail who spoke Spanish and who could have assisted Ms. Romero. However, Ms. Romero did not avail herself of either of these resources to check on the well being of the minor child.

37. On September 19, 2007, Ms. Davenport visited Ms. Romero at the Osceola Jail where Ms. Romero was then being held. That meeting was

recorded by jail officials. During that meeting, Mrs. Davenport explained that there was a couple taking care of the minor child. Ms. Romero stated that she had known that for some time. In that conversation, Ms. Romero admitted that the minor child had not received proper care or attention from her.

38. Initially, the Velazcos did consider adopting the minor child but later decided otherwise. However, they became aware of another couple, the Mosers, who might be willing to adopt the minor child. The Mosers were a childless couple who were going through foster care training during this time to become licensed foster parents in the hopes of eventually adopting. They were interested in adopting a Hispanic child since they perceived this to be the need in their area.

39. In September of 2007, the Mosers met the Velazcos and the minor child through a family member. The first visit with the minor child was on September 25, 2007, and by October 5, 2007, they had an overnight visit with him. On that same date, they filed a petition for adoption. By October 7, 2007, they began caring for the minor child full time and have continued to do so ever since.

40. During this same time period, the Velazco family had not seen Geronimo for several weeks. As a result, they wrote a letter to Geronimo on October 8, 2007. The letter was in both English and Spanish. In that

letter, the Velazcos informed Geronimo and Maria that the minor child was living with the Mosers.

41. After the letter was sent, the Velazco family did not have any contact from Maria or Geronimo. During a telephone conversation several days later on October 10, 2007, Maria informed Ms. Romero of the letter from the Velazcos. At this point, Ms. Romero clearly knew that the minor child was not with the Velazcos anymore. However, Ms. Romero did not ask her sister for the Velazcos' phone number. This fact is significant since it is clear to this Court that Ms. Romero already knew the phone number for the Velazcos and later used it to call the Velazcos. As noted, Ms. Romero made a total of three attempts to call the Velazcos. These were the first and only times since she was arrested that she attempted to reach the Velazcos. After the third attempt, she never called again.
42. At some point thereafter, the Velazcos saw Maria and Geronimo at a store. The meeting was described as pleasant. Neither Maria nor her husband voiced any concern about the placement of the minor child with the Mosers. In addition, they did not advise the Velazcos that Ms. Romero had any objection to that placement.
43. At the time of the filing of the adoption petition on October 5, 2007, Ms. Romero was still incarcerated in St. Clair County Jail in Osceola, St. Clair County, Missouri. On October 10, 2007, Ms. Romero appeared in

Federal Court in Springfield and plead guilty to a felony offense. During that proceeding, she made no mention of having a child during that hearing or express any concerns about his well being.

44. The following week, October 16, 2007, Ms. Romero was served with the adoption petition by the St. Clair County Sheriff. Although the petition was in English, Ms. Romero had access to bilingual inmates, jail volunteers, the Federal Public Defender's translator, and federal prison officials who could have assisted her in translating the document.

45. In her appeal of the original order, Ms. Romero claimed that she was not served with the Petition. However, during the retrial of this matter, her claim that she had not received the petition was clearly discredited. In fact, she had been served with a copy of the petition. At trial, the St. Clair County Sheriff testified that when Ms. Romero was transferred from his jail to federal prison, her cell was cleaned. During that cleaning, the original petition that had been previously served on Ms. Romero was discovered by jail officials in her cell. According to the testimony, the adoption petition had been left behind in her cell along with other materials belonging to her. This document was subsequently admitted into evidence as Petitioners' Exhibit 25 and seriously calls into question the truthfulness of Ms. Romero's claims in this matter and her credibility as a witness.

46. During the trial of this case, Ms. Romero also claimed that she could not speak English. However, she inadvertently responded to the Court's inquiry to her at one point in English before it was interpreted to her in Spanish. At another point in the trial, she claimed that she could not read. However, while on the stand, the Court observed that she was reading the documents to herself. Later, Ms. Romero admitted that she could read and write, although it was apparent that her reading and writing skills in Spanish as well as her English language skills were somewhat limited. Nonetheless, the fact that she could read and write Spanish, speak English, and had access to translators and bilingual individuals throughout the critical time period is clearly opposite the facts previously submitted by Ms. Romero in having the earlier matter overturned on appeal and calls into question her credibility in this matter.
47. While in Osceola, Ms. Romero was able to make unlimited telephone calls from a telephone in the common area of their cell that was available through the day and evening until the women had to retire to their individual cells for the night. The phone was available to the inmates every day with the exception of when a prisoner was being transferred. Ms. Romero frequently utilized the phone and made calls to her sister Maria. She did this by calling collect and by placing the calls by way of a calling card that she was given or purchased from the commissary.

48. Ms. Romero was also able to send letters from the jail. The jail provided stationary and postage for up to three letters per week, free of charge. One of her cell mates was from Mexico and was bilingual in Spanish and English. Ms. Romero used her to translate for her. Ms. Romero also attended church services at the jail and went to a church service weekly that was presented by bilingual volunteers. One such volunteer was Reta Dyson, who was a Spanish teacher at the local high school. She had assisted Spanish speaking prisoners with translation services in the past, free of charge, and would have been willing to assist Ms. Romero, had she asked.
49. However, Ms. Romero failed to avail herself of these free resources to inquire about the well being of the minor child or to contact authorities in connection with the adoption petition served on her. In fact, the only facet of the minor child's life which appeared to interest her was whether or not she could get a U.S. passport for him.
50. After her sentencing hearing on June 13, 2008, Ms. Romero was sentenced to federal prison and was later moved to Hazelton Federal Penitentiary in West Virginia. There, she was incarcerated at the time of the trial before Judge David Dally on October 7, 2008, nearly a year after she was served with the original petition. She was released from federal prison on or about February 15, 2009.

51. During her incarceration at Osceola and later while at the federal prison, Ms. Romero did not make a single attempt to contact the minor child or provide for his support, even though she had money in her commissary account to do so. Even after her release from federal prison, Ms. Romero did not attempt to contact the minor child or provide support to him until more than a year later when she sent several notes to him.
52. Following her release from prison, Ms. Romero was on supervised release for one year. Since Maria and Geronimo were illegally in the United States, she could not live with them while on supervised release. Although she claimed to be living in Monett with different people at the time, she apparently began to live with Geronimo and Maria at some point and continues to do so even now. Since Maria and Geronimo's illegal status has not changed, they are subject to deportation. As part of their living arrangements, Ms. Romero pays money to Geronimo and Maria them to support the household.²
53. In deciding Ms. Romero's appeal from the original order in this matter, the Missouri Supreme Court held that the evidence of abandonment of

² Due to Maria and Geronimo's illegal alien status, Ms. Romero's payments to them could be construed as an act of harboring by Immigration officials in violation of 8 U.S.C. Section 1324. This could subject Ms. Romero to revocation of her temporary visa, further prosecution, imprisonment, and immediate deportation. However, that is for another Court to decide.

the minor child by Ms. Romero was clear, cogent and convincing under both Section 211.447.2(2)(b) and Section 453.040(7). This Court agrees with that finding.

54. During the retrial of this matter, the evidence clearly showed that Ms. Romero knew where the minor child was during her incarceration but that she did nothing to be in communication with him or to provide for his support. Moreover, the evidence also established that she was served with the adoption petition and knew of the Mosers and their attorney. However, even with this information and having the resources to do so, she failed to contact them, inquire about the well being of her son, attempt to contact the minor child, or provide any support to him. Instead, she did nothing.

55. At the retrial of this matter, it was quite apparent to this Court that Ms. Romero had little if any concern for her minor child while at the St. Clair County Jail. From August 5, 2007, to October 5, 2007, despite having calling cards, access to a phone, and the ability to send up to three letters per week for free from that jail, she did nothing. This same course of conduct continued while she was incarcerated in a federal prison. There, she worked and earned money for her commissary account. She had mail, and phone privileges. However, she never provided anything to the

minor child during this period of incarceration and did not attempt to reach out to him or to check on his well being.

56. Even after she was released from prison and working full time, Ms. Romero waited for more than a year before trying to contact him or provide support. Even then, her efforts were *de minimis*.

57. When she got out of jail in February of 2009, Ms. Romero obtained authorization to work from the United States government, was issued a work permit and temporary social security number, and started working full time. Eventually, she was making over \$10.00 per hour. While working overtime, she earned even more. At the time of trial, Ms. Romero had a net monthly net income of \$1,365.00, after necessities and the modest support that sent to her other children in Guatemala.

58. Ms. Romero also received additional benefits from the Government following her release from prison. Although not entitled to do so, Ms. Romero sought and received child credits for the minor. In doing so, she received nearly \$10,000.00 in refunds. This money was sent out of the country to a foreign account. When she finally did send support for the minor child in 2011, she only made only token \$20.00 payments to him

although she clearly had sufficient income and resources to make larger payments on behalf of the minor child.³

59. While incarcerated, Ms. Romero did maintain phone contact with her sister, Maria. From May 22, 2007 until October 5, 2007, Ms. Romero frequently called Maria on the telephone, but made only minimal inquiries about the minor child. In reviewing the calls made during the sixty day time look back period from August 5, 2007 until October 5, 2007, Ms. Romero made only minimal inquiries about the minor child in these phone calls. The Court gives little, if any, weight to these minimal efforts.

60. During the 60 day look back day period, Ms. Romero knew where the minor child was living and had the ability to contact the Velazcos by either writing to them or by telephone. However, she did neither. As previously noted, there was a difference in testimony as to when the minor child began living with the Velazco family. During the trial, Maria and Geronimo testified that the minor child was still living with them

³ The mother sent five \$20.00 payments for the support of the minor child in 2011. This \$100 was the only money that she provided for his support over nearly four years despite having the resources to do so. Following those five payments, this Court suspended payments by the mother due to an issue over the processing of the checks by the Clerk. The Court advised counsel that it would not adversely consider any nonpayment by her after that date when it suspended payments but that it would consider the fact that she had not made payments in the four years before the start up of payments in 2011.

during much of the critical period in question. However, the Court does not find their testimony to be credible. Instead, it believes Ms. Velazco who testified that the minor child resided with her and her family during the 60 day look back period until he began living with the Mosers in October of 2007.

61. Ms. Romero did attempt to contact the Velazcos on October 10, 2007.

However, this is outside the applicable 60 day period. After making those few attempts, she did nothing further. Moreover, she did not make an attempt to contact the Mosers in the intervening year before the adoption petition was finally granted. Instead, she simply disappeared from the minor child's young life.

62. This Court may attach little or no weight to these infrequent or token contacts or support where the parent has a history of the same, but attempts to repent shortly before trial. This is particularly true when the attempted repentance comes after the petition to terminate parental rights is filed. In this case, there were no attempts at repentance other than a few letters and five \$20.00 support payments that were made years after Ms. Romero was arrested. For years, she made no attempt to reach out to him or the Mosers although their names and address were in the first paragraph of the adoption petition, as well as the name, address, and telephone number of their attorney. She made no attempt to provide

support to him, however minimal, although she clearly had the means and ability to do so. In short, the record is clear that Ms. Romero, for all intents and purposes, abandoned the minor child while he was an infant.

63. Ms. Romero had custody of the minor child from his birth on October 17, 2006 until she was arrested on May 22, 2007. During that time, she lived in multiple homes, all of which were substandard. She slept on the floor with her newborn son in a room with her brother and another man until Ms. Davenport provided a crib to her. However, up until shortly before the minor child's birth, Ms. Romero was working and had the resources to provide more for him including a crib. She could have also obtained one for free from various agencies. However, she did not do so.
64. Later, Ms. Romero moved in with Bartolome, his girlfriend and their three children and assisted them with childcare. Due to their illegal status, Ms. Romero and her family were always at risk of being arrested and deported. Yet, even with a newborn son, she elected to remain at risk in the United States instead of returning to Guatemala where she had two other children that she had not seen for years, an extended family and, perhaps most importantly, lawful residency.
65. Despite her knowledge that she could be arrested and deported at a moment's notice, Ms. Romero made no arrangements in advance to arrange for care for the minor child should those events occur. Moreover,

there is no indication that she had set aside any money to provide for his care or transport to Guatemala. Instead, she merely left his care to the hands of fate, well knowing that her other relatives who might assume care for him were financially limited and were also subject to immediate arrest and deportation due to their illegal status in the United States.

66. After the birth of the minor child, Ms. Romero did not provide him with proper nutrition. Instead, she fed the minor child whole milk even though formula was available to her free of charge if she had taken advantages of WIC. In her testimony, Ms. Romero claimed that she could not get to the WIC office for her appointments but the Court finds this testimony to not be credible. The Court would note that Ms. Romero missed key appointments after the minor child was born which would have allowed her to pick up vouchers for free formula at the health department in Carthage that was a few blocks away from the various homes where she lived at the time. Her sister, Maria, made use of these services despite the fact that she was also an illegal alien, without a driver's license, and living further away from the health department in Carthage than Ms. Romero.

67. Even at trial, Ms. Romero seemed unconcerned about the fact that she fed her infant son whole milk instead of formula. Instead, she attempted to portray that practice as merely a difference in cultures. However,

Geronimo confirmed that while the minor child was being fed whole milk, he had severe digestive problems which resulted in him spitting up and having diarrhea.

68. The minor child's lack of medical treatment while in the mother's care and subsequently, Maria's care, is also very probative on the issue of neglect. Ms. Romero missed multiple doctor appointments for the minor child even though they were being provided to her free of charge. These missed appointments had a direct effect on the child since the minor child did not receive all of his early childhood immunizations. He also had poor development, folded ears, and a flat head, again evidence of neglect and lack of care, concern, and nurturing on the part of his caregivers.
69. When he arrived at the Velazco home, the minor child was also suffering from a rash on his face and arms that was so severe that it bled. This rash subsequently cleared up once he began to receive simple basic nutrition and medical treatment.
70. The minor child also suffered from dental neglect at an early age. After he began to live the Mosers, his teeth were examined. During that exam, the minor child was found to be suffering from baby bottle tooth decay syndrome, a syndrome often found in neglected children who are propped up with bottles.

71. Ms. Romero's neglect of the minor child was chronic. In fact, it began shortly after the minor child was born. Hospital records show that on October 19, 2006 the minor child was brought from the nursery to Ms. Romero to nurse. However, Ms. Romero was missing from her room. Later, the hospital determined that she had left the hospital without notifying staff and without making any provisions for her newborn child.

72. By the next day, Ms. Romero had still not returned and the hospital and to the care of her newborn son who was still hospitalized. She did not contact the hospital to let them know if she was dead or alive. Since the hospital was unable to locate her and did not know what to do with her newborn son, the staff at the hospital notified Social Services. Eventually, Ms. Romero was located by Social Services and agreed to return to the hospital to pick up her newborn son. However, even then, she arrived an hour late and no explanation was ever given as to why she left the hospital, why she abandoned her son, or even where she went missing during those first hours of her newborn son's life. Instead, all that is known is that Ms. Romero abandoned her newborn son for parts unknown without the slightest regard for his care, safety, or well being. There is no justification for the irresponsibility that was exhibited by Ms. Romero after she gave birth to her newborn child. Sadly, her behavior and lack of caring during these first critical hours of his life is consistent

with and foreshadows the pattern of abandonment and neglect that she subjected the minor child to in the years that followed.

73. When the minor child was seen by Ms. Davenport in April of 2007, he was still like a newborn in many ways. He was unable to sit up on his own or hold his head up. He was developmentally delayed in both in both muscle tone and strength. By this point, he had been in Ms. Romero's care for nearly six months.

74. Upon arriving at the Velazco home several months later, the minor child was still exhibiting these same issues. His health had not improved during the intervening months that he had been living with Maria following Ms. Romero's incarceration.

75. In terms of support or communication, in the past 5 years, Ms. Romero has sent only four brief notes to the minor child, and these notes occurred years after she last saw him. Despite having a full time job and working more than 40 hours a week from \$9.00 to \$10.77 per hour, and having several thousand dollars in her bank account at any given time, she sent no cards, support, necessities or gifts to the minor child until June of 2011.

76. Pursuant to 211.447.5(6) R.S.Mo., the biological mother is unfit to be a party to the parent and child relationship because of specific conditions directly relating to the parent and child relationship that are of such a

duration or nature as to prevent the biological mother from providing for the mental, emotional, and physical needs of the child for the reasonably foreseeable future.

77. This Court is aware that the determination of whether a parent is unfit must be determined by a totality of the circumstances. In this matter, the Court has considered those circumstances, which include the facts set forth in this Order. Those facts include but are not limited to Ms. Romero's continued engagement in criminal activity after the birth of the minor child, her continued failure to seek information about him, her medical, physical and nutritional neglect of him, her continued failure to provide support for him, her continued failure to attempt to communicate or contact him, and her expressed intentions to reengage in new criminal activity along with her two children from Guatemala should be deported in the future.

78. As of the date of trial, Ms. Romero's ability to parent the minor child has not substantially improved from her condition in 2007. If anything, it has worsened, especially if she is deported to Guatemala as she likely will be at the conclusion of this case. She is a single mother of three without support from any of the children's' fathers.

79. She is also now a convicted felon who is barred from entry into the United States. She is still willing to commit criminal offenses

in the future. In fact, she has vowed that she will illegally reenter the United States if she is deported and will also drag her two children from Guatemala with her across the border despite the risks that she knows the three of them will face in crossing illegally.

80. She has no appreciable job skills and Ms. Romero offered no concrete evidence as to how she would support herself and the minor child if deported. She does not know where she will live in Guatemala, other than possibly in the Capital. She believes that she might be able to get work at a pencil factory in Guatemala. Other than that, she has no plans for employment.

81. Although the minor child speaks only a little Spanish, Ms. Romero has not made a concentrated effort to learn English although she does speak some English as she inadvertently demonstrated in Court. In Guatemala, she knows nobody who speaks English.

82. If Ms. Romero remains in the United States, she plans to have her seven-year-old niece in the United States act as a translator for her and teach Spanish to the minor child. Clearly, this would not be sufficient given the emotional and psychological issues that will result if the minor child is returned to Ms. Romero.

83. The Court recognizes that Ms. Romero's prior incarceration is not, in and of itself, a ground for termination of parental rights. Similarly, the

fact that she entered the country illegally, is not well educated, and speaks Spanish as her primary language, cannot be grounds for termination.

84. Nonetheless, the fact that she was incarcerated shortly after giving birth to the minor child, was not well educated, was not lawfully in the country, and spoke Spanish as her primary language, also does not discharge her from her duties and obligations as a parent to provide the minor child with a continuing financial and emotional relationship, however minimal.

85. However, it is clear to this Court that despite having the means and ability to provide for the minor child's care and well being, however minimal, Ms. Romero simply chose not to do so and has continued to fail in her obligations as a parent to the minor child in the years that followed.

86. Ms. Romero has had no contact with the minor child since May of 2007 and it was not until July of 2010 that she even first requested any such contact. By this time, more than three years had elapsed.

87. Although the Mosers did nothing to prevent such contact, the Court understands that Ms. Romero may have been reluctant to attempt contact

after the minor child was adopted by the Mosers in the fall of 2008.⁴

Nonetheless, any such act on her part would have at least demonstrated a desire and intent to establish and maintain a parent-child relationship.

88. Moreover, in the nearly 17 months between her arrest and the finalization of the adoption, Ms. Romero did not attempt any contact with the minor child or attempt to communicate with him through phone calls, cards, letters, drawings, gifts, or support. She simply did nothing to maintain her relationship with him. Ms. Romero is, for all intents and purposes a stranger to the minor child, just as he is a stranger to her. Try as she might, there is no valid excuse for this course of conduct by Ms. Romero.

89. At trial, Dr. Mark Bradford testified that he met with the Mosers and the minor child and conducted various assessments and tests. Dr. Bradford frequently testifies before this Court as an expert witness and this Court finds his testimony in this matter to be extremely credible.

⁴ The Court does not find her claim that she was unaware of the minor child's location in Carthage to be credible. Carthage is a relatively small town and the Guatemalan population is close knit. The Mosers are active in the Guatemalan community and live next to the Guatemalan bakery. Their phone number is in the phone book and during the trial, evidence was received that a vehicle belonging to Maria's family was frequently parked outside of the Moser residence.

90. Dr. Bradford testified that the minor child demonstrated features of Reactive Attachment Disorder which were most likely caused by the separation and multiple placements he endured during the first year of his life. Dr. Bradford testified that it would be difficult at this point for the minor child to bond with Ms. Romero, particularly when he does not know her and they do not speak the same language.

91. Dr. Bradford also testified that a process of reunification with Ms. Romero, if it could occur at all, would take years. He further testified that the first four years of life are critical for attachment and that separating the minor child from his current placement with the Mosers, whom he considers his parents, and attempting to create a bond with Ms. Romero would be damaging to the child and could negatively affect him for the rest of his life.

92. The Court has considered the testimony of Ms. Romero's expert, Ms. Antuna. Ms. Antuna also agrees with Dr. Bradford that reunification in this matter could be complicated. However she is of the opinion that reunification between the biological mother and the minor child should take place. After due consideration of the entirety of the evidence presented in this matter, the Court does not believe that reunification could take place as easily as suggested by Ms. Antuna or that reunification would be in the best interests of the minor child. Instead,

the Court concludes that termination of the Ms. Romero's parental rights is supported by the evidence and is in the best interests of the child.

93. Despite sitting through trial and hearing the testimony of Dr. Bradford, Ms. Romero testified that she does not believe that there will be any issues with the minor child if he is reunified with her. It is apparent to this Court that Ms. Romero either does not understand how difficult and time consuming it would be for the minor child to be reunited with her or she simply doesn't care about the impact that this would have on the minor child's psychological and emotional well being when he is removed from the two people that he considers to be his mother and father. The Court is aware that that following the initial decision by the Court of Appeals, Ms. Romero demanded that the minor child be immediately returned to her. At that time, she showed absolutely no regard to the impact that her demand for immediate removal of the minor child from the Mosers would have had on her son. Although she has since modified her stance on this and is now amenable to some reunification process, the Court is not convinced that she would be willing to engage in a lengthy period of reunification efforts that would be required. In any event, the biological mother's cavalier attitude towards this issue is very telling to this Court and seriously calls into

question her ability to properly parent and care for child at this time or in the reasonably foreseeable future.

94. The Court agrees with Dr. Bradford that it could, at best, take years, and might not ever occur. These are simply years that the minor child no longer has available to him to be in a “holding pattern” while he waits for the highly unlikely possibility that his biological mother will somehow transform herself into a fit and able parent.
95. At trial, Ms. Romero did not provide any evidence to the Court of her ability to maintain suitable independent housing, nor has she shown the ability to provide for the minor child’s financial or emotional support in the near future.
96. Although she has been in the United States since being released from prison due to a special exemption from Immigration, it appears to this Court that she has engaged in behavior which, if made known to the Department of Homeland Security, might cause her to be deported immediately to Guatemala or subject her to further prosecution.
97. Although earning a good living, Ms. Romero has continued to move from residence to residence and often resides with individuals who are illegally in the United States. As noted, she may well be committing a new federal offense by providing them with money.

98. It is apparent to this Court that Ms. Romero that she sought help from her sister to obtain another false identity before she was granted leave to remain in the United States. Although Ms. Romero and Maria deny this, the Court does not find their denials to be credible.

99. Moreover, Ms. Romero collected substantial benefits from the IRS by filing tax returns with the IRS that contained information that was not true. This Court is making no finding that Ms. Romero knowingly filed false tax returns for the years in question to warrant prosecution. It is for another Court to determine who is to blame for the false returns.

Nonetheless, it is clear that the information contained in the returns which she executed under penalties of perjury was clearly incorrect and resulted in her receiving nearly \$10,000.

100. In terms of current stability, Ms. Romero is currently residing with two illegal aliens. Her address has changed multiple times since coming to the United States and several times since she has been out of jail. Her temporary visa in the United States terminates when this matter concludes and unless she is granted some special exemption, she will be deported to Guatemala due to her aggravated felon status.

101. Ms. Romero has offered no reason for why she chose to remain in the United States instead of returning to Guatemala following her release from prison. If she had done so, she could have sought employment and

housing. More importantly, she could have seen the children who she has not seen for seven years including her daughter who is experiencing significant psychological issues. Perhaps it is because, as she now claims, there is a man in Guatemala who has threatened to kill her if she returns to Guatemala.

102. Based on the evidence submitted at trial, the Court believes Ms. Romero's absence from the minor child and the lack of a bond between her and the minor child renders her unable, for the reasonably foreseeable future, to care appropriately for the minor child's ongoing physical, mental, or emotional needs.

103. Every child is entitled to a permanent and stable home and it is this Court's solemn duty and responsibility to ensure that a child is given such a home. This Court has considered the evidence in this case to determine whether or not Ms. Romero could provide such a home in the reasonably foreseeable future. In weighing all of the evidence and considering the credibility, or lack thereof, of the witnesses who testified as to this issue, this Court is convinced that Ms. Romero will be unable to provide such a home for the minor child in the reasonably foreseeable future. In addition, there is no bond between the two and it questionable whether one could ever be established. At best, it would be a lengthy and uncertain process that could take years-years that the minor

child does not have available for him to waste while Ms. Romero tries to make an effort to reunite with him. Finally, the Court finds that there is significant likelihood of future harm to the child if parental rights are not terminated because the mother is at risk of being deported to Guatemala at the conclusion of this matter. There, she has few resources available to her to provide for the child's support and well being.

104. An essential part of any determination whether to terminate parental rights is whether, considered at the time of the termination and looking to the future, the child would be harmed by a continued relationship with the biological parent. The Court is mindful that it must not only consider the past facts but also consider Ms. Romero's current conditions but the past does aid the Court in providing vital clues to the present and future. In short, it must look to the totality of a parent's conduct including conduct before and after the filing of the petition to terminate. Otherwise, a parent can always argue that he has reformed since the filing of the petition.

105. In this case, Ms. Romero testified that she was deported after her first illegal entry and after having been detained for approximately one month. Shortly after her release, she assumed a false identity and a social security number that was stolen. Because of this, she was again arrested. However, this time, she was sent to a federal prison and separated from

her infant son. Despite this, she still does not intend to return to Guatemala and live with her family and her other two children that she has not seen in almost seven years if her minor child is not with her. Instead, if she is deported, she again plans to illegally enter the United States with full knowledge of the risks and consequences that she faces.

106. This time, she will also expose her two minor children including the eight year old daughter with psychological problems, to these risks. At trial, she admitted that if she was deported, she would again reenter the United States illegally and bring her other two children with her. This testimony speaks volumes to the Court about the suitability of Ms. Romero as a mother to the minor child or to any other child.

107. From her testimony, it is clear that Ms. Romero is well aware that she and her children could be harmed or even killed if she attempts to illegally reenter the United States. She is also aware that she is at risk of being apprehended, prosecuted, and again sent to prison if she is apprehended in the United States. If this happens, her children would either be deported or placed into foster care in the United States. Despite these significant risks, she is willing to expose her children to these dangers rather than remaining in Guatemala.

108. Ms. Romero's testimony on this issue is extremely disturbing and is clearly proof that the risk of future harm exists for the minor child if he is

reunited with his biological mother. Frankly, she is not only a risk to herself but a risk to the minor child and her other children if she persists in this plan.

109. The Court would note that parental unfitness by a parent is oftentimes usually determined by past and present actions. The Court does not have a crystal ball to gaze into the future. Generally, parents in termination actions don't announce that their intention to commit future crimes and put their children at risk of harm. However, in essence, Ms. Romero has done just that. Her testimony on this issue again calls into question her potential fitness as a parent in the future if she is willing to expose herself and her children to incarceration, prosecution, deportation, and other legal and physical risks by entering the country illegally.

110. Of even more concern is the fact that if the minor child is placed with her, he will be returned with her to Guatemala. However, what will become of him if that happens? Will he be consigned to yet another family member for surrogate parenting like his siblings in Guatemala while Ms. Romero returns to leading her life as a single person in the United States, free of the responsibilities and obligations of raising the three children that she gave birth to years before? Or, will he be forced to follow her across the desert as she as again attempts her third illegal entry into the United States, this time as an aggravated felon? Under

either scenario, the future does not look bright for this little boy if he is reunited with Ms. Romero.⁵

111. The record in this matter clearly demonstrates to this Court by the applicable standard that she did not properly care for the minor child. She neglected his health, his nutrition, and his overall well being during the time that he was in her custody.

112. As noted, the Court has had ample opportunity to weigh the credibility of the testimony of each witness. The testimony of Ms. Romero and her family members is riddled with inconsistencies, nonsensical explanations, and outright lies. Simply put, their explanations and excuses to events that are unfavorable to their position or that conflict with the testimony of other witnesses are not credible.

113. As to the acts and conditions of the parent supporting termination of parental rights, the Court finds that the biological mother's abandonment and neglect of the minor child has had a negative impact on the child and has deprived the child of parental and financial relationships. Moreover, as set forth herein, the mother is unfit to further serve as a parent to this

⁵ Ms. Romero claims that she will remain in Guatemala this time if all three children are with her. However, the Court does not find this assertion to be credible. Simply put, her past actions suggest that she will return to the United States illegally instead of remaining in Guatemala. The only question in the Court's mind is whether her children will remain in Guatemala or come with her to the United States.

minor child and there is little likelihood that, within an ascertainable period of time, that she would be able to become a fit and able parent to the minor child.

114. In compliance with Section 211.447, RSMo., this Court considers and makes findings on the following factors:

The minor child has been neglected by the biological mother abused and/or neglected. In reaching this conclusion, the Court has considered and makes the following findings in compliance with Section 211.447.5(2)(a)-(d):

- i. Whether there exists a mental condition that is either permanent or has no reasonable likelihood of being reversed that would render the parent unable to knowingly provide the child with the necessary care, custody and control. No evidence was presented that the mother suffered from such an irreversible or permanent mental condition.
- ii. Whether there is a chemical dependency that would prevent the parent from consistently providing the necessary care, custody and control of the minor child and that cannot be treated so as to enable the parent to consistently provide such care, custody and control. No evidence was presented that the mother suffered from an untreatable chemical dependency.
- iii. Whether there was a severe act or recurrent acts of physical, emotional or sexual abuse toward the child or any child in the family by the parent, including an act of incest, or by another person under circumstances that would indicate that the parent knew or should have known that such acts were being committed. No evidence was presented that the minor child was subjected to such act by the mother.
- iv. Whether there was a repeated or continuous failure by the parent, although physically or financially able, to provide the child with adequate food, clothing, shelter or education as defined by law, or other care and control necessary for the

child's physical, mental, or emotional health and development. As set forth herein, the mother, although physical and financially able, has failed to provide the child with adequate food, clothing, shelter or education as defined by law, and other care and control necessary for the child's physical, mental, or emotional health and development. As further set forth herein, the mother abandoned and neglected the child for nearly three years following her arrest in 2007. There was no evidence presented of an inability on the part of the mother to maintain at least a minimal financial or parental relationship with the child. The mother's failure to stay in contact with the child and support the child appears to be due more to her lack of desire to do so as opposed to an inability to do so.

115. In deciding whether or not to terminate the parent-child relationship, the Court has considered and makes findings on the following factors in compliance with section 211.447 RSMo.

- a. The emotional ties to the birth parent: The evidence that was presented established that the child does not have any emotional ties to his biological mother.
- b. The extent to which the parent has maintained regular visitation or other contact with the child: The minor child has had no visitation or other contact with his mother since May of 2007, when he was an infant.
- c. The extent of payment by parent for the cost of care and maintenance of the minor child when financially able to do so including the time that the minor child. The evidence presented was that the mother failed to provide any voluntary financial or in kind support to the minor child until 2011 at which time she made only token payments of \$20.00.
- d. Whether additional services would be likely to bring about a lasting parental adjustment so as to enable a return of the child to the parent within an ascertainable period of time: As set forth herein, there is little likelihood that within an ascertainable period of time additional

services would be likely to bring about a lasting parental adjustment so as to enable a return of the minor child to the biological mother.

- e. The mother's disinterest in or lack of commitment to the child. As set forth herein, the mother has demonstrated a lack of interest and commitment to the minor child for a number of years. She abandoned and neglected the child and her disinterest and lack of commitment began at the time of the minor child's birth and continued for a number of years thereafter.
- f. The conviction of the parent of a felony offense that the Court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of parental rights: While the mother is no longer incarcerated she is a convicted felon and is subject to deportation as an aggravated felon. As a result, the minor child will either be separated from her or removed to Guatemala along with her. The mother testified that she will attempt to illegally reenter the United States if she is deported with the minor child.
- g. Deliberate acts of the parent or acts of another, of which the parent knew or should have known, that subjected the child to a substantial risk of physical or mental harm. Evidence was presented that the mother abandoned the minor child at the hospital shortly after his birth. Following that, she engaged in criminal behavior with knowledge that such behavior could subject her to incarceration and deportation. However, knowing this, the mother failed to make any advance arrangements for the care of her infant son should she be detained.

116. In a typical termination action brought by the State, the child has been under the care of the Children's Division. As a result, the Court typically analyzes the services offered by the Division to the parent and the parent's success with those services. In this matter, the minor child was never under the care of the Children's Division and the termination of

parental rights action was brought by the Mosers instead of the State in connection with their adoption petition as allowed by law.

117. However, the Court would note that the mother never requested any services from the State. Such services, especially if they had been requested while she was in custody, could have been provided to her. She might have been able to pursue services while in Federal prison.

Generally, those services are available to incarcerated parents. However, she failed to do so and continued to not request services after her release other than a request to visit with the minor child that she made years after she initially abandoned him. Even prior to her arrest, Ms. Romero only made sporadic use of services that could have assisted her with her child such as WIC and medical care for her son. At one point following her disappearance from the hospital, she was even contacted by Social Services but there is no indication that she availed herself of any of the services that they could have offered.

BEST INTERESTS OF THE MINOR CHILD

118. Having considered the statutory grounds for termination of parental rights, and having made the above findings, based on clear, cogent and convincing evidence, this Court must now consider the best interest of the child.

119. The determination of whether termination of parental rights is in the best interests of the child is based on the totality of the circumstances and this Court, in making that determination, relies on the submissions required by the statute together with all of the admissible evidence submitted in this case including, but not limited to all of the facts and evidence set forth in this Order. Having this considered these materials, the Court does believe that it would be in the best interests of the minor child to terminate the parental rights of Ms. Romero and to allow adoption by the Mosers.
120. The minor child has no emotional bond to his biological mother since he last saw her when he was an infant. He is aware that he is adopted and has another “mommy” but beyond that, he is unaware of the existence of Ms. Romero. She is a stranger to him and frankly, he is a stranger to her.
121. The minor child does not know his half-siblings. They live in Guatemala. Even Ms. Romero’s relationship with them is questionable. She has not seen them in seven years and has made no attempt to do so. She has difficulty in remembering their birthdays. Her daughter was also an infant when she last saw her and her son was only 7 or 8.
122. The biological mother has not maintained contact with the minor child. Her last physical contact was in May of 2007. During her period of

incarceration, she had no contact with him. Even after being released from incarceration, her first request for contact did not occur until 2010.

123. Since being separated from the minor child, Ms. Romero has made only minimal attempts to communicate with the minor child. She claims that she did not know where he was but the Court does not find this assertion to be credible. During her entire time in prison, she did not send any cards, notes, letters, or drawings to the minor child. In addition, she did not provide any support to him despite having the resources available to do so. In fact, the only attempts at contact and offers of support came in 2010 and 2011, respectively. However, the Court gives little weight to those token efforts and notes that she had been released from prison for a substantial period before she even made those efforts. During this time, she accumulated nearly \$10,000 in refunds from the IRS and was earning over \$1,300 per month net after sending money to her children in Guatemala.

124. At this point in time, the Court is firmly convinced by the evidence presented to it that there are not sufficient services available which would allow successful reunification of Ms. Romero with the minor child within the reasonably foreseeable future even if she is allowed to remain in the United States. The matter is further complicated if she is deported and returned to Guatemala as her status as an aggravated felon would

appear to dictate. It would be difficult, if not impossible, to ever accomplish reunification at that point without major disruption and possible permanent emotional damage to the minor child.

125. In finding that it would be in the best interests of the minor child for his mother's parental rights to be terminated, this Court has considered many factors, not the least of which is Ms. Romero's disinterest in and lack of commitment to the minor child.

126. The facts of this case speak for themselves and there is no need for this Court to repeat them once more. Suffice it to say that for the vast majority of the minor child's life, the mother has expressed little interest or caring for him. This is consistent with the way she has treated her other children. Although she has two young children in Guatemala, including one with severe psychological issues, she has made it clear that she has no desire to return to Guatemala to visit them, much less return there permanently to be a mother to them.

127. Finally, Dr. Bradford's testimony clearly establishes that it would be in the best interests of the minor child for the rights of Ms. Romero to be terminated. The Court has considered the testimony of Ms. Antuna but concludes that termination of the biological mother's parental rights would be in the best interests of the minor child. The minor child is clearly bonded with the Mosers and an attempt to reunify him with Ms.

Romero would, at best, be a long and difficult challenge for all involved with no end in sight in the reasonably foreseeable future. At worst, it would have a lifetime negative impact on the minor child.

128. In his pleadings, Petitioners' counsel has suggested that Ms. Romero's true motivation in this entire action is simply a ploy by her to remain in the United States. This argument has not factored into this Court's decision in the instant matter.⁶

129. The minor child's Guardian is an extremely experienced Guardian who has participated in countless termination actions. She has represented parents whose face termination and she has represented children as their Guardian. The Court specifically chose her because it knew that she would enter the case with no preconceived notions as to what should be the outcome. She would also be fair to both the biological mother and to the Petitioners and her recommendation would only be

⁶ Counsel suggests that Ms. Romero's stay of deportation was obtained by fraud and is just another example of Ms. Romero's lack of credibility. Counsel points to several alleged inaccuracies in the stay of deportation to the Immigration authorities such as Ms. Romero's claim that her parental rights were terminated without notice to her and within three days of filing of the petition or that she entered the U.S. on January 1, 2006, at Nogales, Arizona, when she clearly was in the country long before that date. This Court takes no position on the legality of the stay of deportation requests. That is for another Court to decide. The Court does note that the attorneys who represent Ms. Romero for the purpose of these immigration requests are not the same attorneys representing her at the trial in this matter.

based on the evidence was and what she believed to be in the best interests of the child. She too has reviewed all of the evidence in this matter. She has sat through trial as well as a number of depositions. She has met the parties and interacted with them. Having heard all of the evidence and considering all of the factors in this case, she has recommended that the Court terminate the parental rights of the mother as to the minor child. She has also recommended that it would be in the best interests of the minor child to allow the minor child to be adopted by the Mosers.

130. The Juvenile Office was also a party in this matter and after due consideration, they also join in the Guardian's recommendation.

131. The Investigation and Social Summary, as required pursuant to 211.455 R.S.Mo., was prepared by Susan Doyle, as ordered by this Court. The Court considered the content of the Investigation and Social Summary in order to assist it in making a determination as to the best interests of the child. The content of the Investigation and Social Summary also indicate that termination of parental rights is in the minor child's best interests.

132. The Court also considered those who testified about the living conditions in Guatemala, including that of the Guatemalan Ambassador.

The Ambassador clearly loves his country and spoke of it in glowing terms. However, despite that testimony, the Court is still convinced that it would not be in the best interests of the minor child for him to be reunified with the biological mother either in Guatemala or the United States.

133. Having reviewed the file in this matter, the recommendations of the Guardian Ad Litem and the Juvenile Office, and after having considered all of the evidence, testimony, stipulations, and filings in this case, the Court does believe that it would be in the best interests of Carlos Romero, aka Carlos Jamison Romero, the minor child, for this Court to terminate the parental rights of his biological mother, Encarnacion Maria Bail Romero, and to allow the adoption of Carlos Romero, aka Carlos Jamison Romero, the minor child, by Seth and Melinda Moser.

134. In making this determination, this Court, having considered the totality of the record in this matter, finds that Ms. Romero's consent was not required for the adoption of the minor child by the Mosers since she both abandoned and neglected the minor child during the applicable periods preceding the filing of the adoption petition as set forth in Chapter 453 R.S.Mo and that such abandonment and neglect was established by clear, cogent and convincing evidence.

135. Furthermore, the Court finds that the Mosers have, by clear, cogent and convincing evidence, established that statutory grounds exist for the termination of the parental rights of Ms. Romero under Chapter 211 R.S.Mo., and that termination of those rights would be in the best interests of the minor child. As set forth herein, the mother has both abandoned and neglected the minor child. Moreover, as set forth herein, the mother is unfit to further serve as a parent to this minor child and there is little likelihood that, within an ascertainable period of time, that she would be able to become a fit and able parent to the minor child.

136. Seth and Melinda Moser are eager and willing to adopt the minor child. The Court has heard the testimony of the Mosers and has learned a great deal about them through that testimony and the studies that were conducted. The Court finds that the Mosers have the ability and willingness to continue to provide for the minor child. They are committed and devoted to the minor child and there is no doubt in the Court's mind that the Mosers will continue to properly provide him with excellent and consistent care , education, medical attention, and a safe and stable home environment, just as they have done since he first came into their home. Most importantly, they will continue to give him their unconditional love that he so richly deserves. The Court must make it very clear that its observations and findings about the Mosers only

factored into the best interest issue before it since the availability of a ready and willing adoptive home is one of many factors that the Court considers in determining what is in the best interests of the minor child. After considering all of the evidence in this matter, the Court does believe that the Mosers are a suitable adoptive family and that adoption of the minor child by Melinda and Seth Moser would be in the minor child's best interests.

CONCLUSIONS OF LAW

After consideration of the evidence and the findings set forth above, the Court hereby concludes and adjudges as follows:

1. This Court has jurisdiction over the subject matter and the parties to this action.
2. A compliance hearing was held as required under Section 211.445 RSMo., as amended to date, at which time the Court concluded that all necessary parties had been properly served with process.
3. Each party was duly served with notice of this action according to law. The mother appeared in person and was represented by counsel. The biological father's rights were previously terminated.
4. The minor child was appointed and was represented throughout the proceedings by counsel.
5. The Juvenile Office was a party to this matter and was represented throughout the proceedings by counsel.
6. An investigation and social summary was ordered by the Court from the Children's Division and a written report of that investigation was made and presented to the Court with copies made available to all parties as provided by law.


7. Based on the record in this matter and the evidence presented in this proceeding, this Court finds and concludes based upon clear, cogent and convincing evidence that the allegations contained in the Petition to Terminate Parental Rights are true and that statutory grounds for the termination of parental rights exist in that the minor child was abandoned and neglected by his biological mother. The foregoing acts had a negative impact on the child in that the lengthy period of abandonment and neglect by the mother deprived the child of a stable parental, emotional, and financial relationship. For the reasons set forth herein, the mother has not consistently provided the minor child with a parental relationship, there is a significant likelihood of future harm to the minor child if parental rights are not terminated. Simply put, the mother is unfit to further serve as a parent to this minor child and there is little likelihood that, within an ascertainable period of time, that she would be able to become a fit and able parent to the minor child.
8. Based on the record in this matter and the evidence presented in this proceeding, this Court finds and concludes based upon clear, cogent, and convincing evidence that the consent of the biological mother was not required pursuant to Chapter 453 RSMo due to the fact that the mother abandoned and neglected the infant child during the applicable statutory time periods.
9. The conditions of a potentially harmful nature continue to exist and the child could not be successfully reunified within the reasonably foreseeable future.
10. The Court concludes and finds that it would be in the best interests of the minor child to terminate the parental rights of the mother in, to, and over the minor child. The GAL and the Juvenile Officer concur in this finding.
11. In making the foregoing Findings of Fact and Conclusions of Law, this Court has construed Section 211.447 to 211.487 RSMo., in the manner provided in Section 211.443 RSMo.
12. The Court concludes and finds that it would be in the best interests of the minor child for him to be adopted by Melinda and Seth Moser.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:


- a. The parental rights of Encarnacion Maria Bail Romero, biological mother in, to and over the minor child, Carlos Romero, aka, Carlos Jamison Romero, are forever terminated.
- b. The minor child is eligible for adoption immediately. The consent of the biological mother is not required due to her abandonment and neglect of the minor child and due to the instant Order which terminates her parental rights.
- c. The minor child shall remain in the custody and care of Seth and Melinda Moser pending adoption under the continuing supervision of the appropriate agencies. While under their care and custody, they shall provide for his medical care and needs.
- d. The Court assesses costs as previously ordered and finds them to be reasonable. Ms. Romero's request to not pay for the reasonable and necessary Guardian ad Litem fees incurred by Ms. Thomas is denied as his her request for reapportionment of those fees.
- e. All other motions previously filed by Ms. Romero which have not yet been ruled on are hereby denied.

SO ORDERED.

Dated: July 18, 2012.



David C. Jones
Circuit Judge

CERTIFIED COPY
CIRCUIT CLERK GREENE COUNTY
By 
Deputy Clerk
Date 7-18-12