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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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MALYSSA Q. CASTRO, and Elialyn Maria)
Castro Naputi (d.o.b. 2/24/07), Ziggy John)
Castro Naputi (d.o.b. 11/12/09), and Zayne)
Jesse Castro Naputi (d.o.B. 11/12/09), minor)
children, by and through Josephine Mesta as)
the minor children’s guardian ad litem,)

FCD-PA NO.: 12-0424

ORDER TERMINATING PARENT-
CHILD RELATIONSHIP AND
GRANTING CHANGE OF NAMES

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Petitioners,

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vs.

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JOHN NAPUTI,

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Respondent.

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I. INTRODUCTION

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THIS MATTER came before the Court on October 26, 2015, on Petitioners’ Motions for
an Order Terminating the Parental Rights of the Respondent John Naputi and for the Change of
Names for the Minor Children, named as Petitioners herein. Petitioners were represented by
Attorney Steven J. Nutting. The Court was advised that Respondent is incarcerated on Guam and
could not appear. Respondent was duly served with the Motions and has failed to file any
opposition to Petitioners’ Motions.

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After a careful review of the applicable laws, Petitioners’ memoranda, and testimony, the
Court **GRANTS** (1) Petitioners’ Motion to terminate Respondent’s parental rights, and (2)
Petitioners’ Motion to change the last names of the minor children.

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1 **II. FINDINGS OF FACT**

2 On December 10, 2012, the Court entered a Decree of Paternity and Order for Support
3 (“Decree”), declaring Respondent the natural father of the minor children, namely, Elialyn Maria
4 Castro Naputi (d.o.b. 2/24/07), Ziggy John Castro Naputi (d.ob. 11/12/09), and Zayne Jesse Castro
5 Naputi (d.o.b. 11/12/09).

6 The Decree ordered Respondent to pay permanent child support in the amount of \$500 per
7 month and entered judgment for retroactive support in the amount of \$14,440. The Decree further
8 gave Petitioner Malysa Q. Castro sole legal and physical custody of the minor child, subject to
9 visitation rights as to Respondent. Since the entry of the Decree, however, Respondent has only
10 exercised his visitation rights once, sometime in 2012 or 2013. Respondent has not had any other
11 contact with the minor children.

12 The Court finds that Respondent has failed to provide any child support for the minor
13 children and has back child support totaling \$30,940.

14 The Court further finds that Respondent has abandoned the minor children as a result of his
15 failure to provide support, exercise his visitation rights, or maintain contact with the minor children.

16 **III. DISCUSSION**

17 Although Petitioners request this Court to terminate Respondent’s parental rights pursuant to
18 8 CMC § 1418(a)¹ and (c),² the established rule in the Commonwealth considers the best interest of
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20 ¹ 8 CMC § 1418(a) provides: “The rights of a parent with reference to a child, including parental right to
21 control the child or to withhold consent to an adoption, may be relinquished and the relationship of the parent and child
terminated in or prior to an adoption proceeding as provided in this section.”

22 ² 8 CMC § 1418(c) provides:

23 In addition to any other proceeding provided by law, the relationship of parent and child may be
24 terminated by a court order issued in connection with an adoption proceeding under this chapter on any
ground provided by other law for termination of the relationship, and in any event on the ground:

- (1) That the minor has been abandoned by the parent;

1 the child in a parental rights termination proceeding. *In re Adoption of Olopai*, 2 NMI 91, 102-03
2 (1991).

3 **1. A Proceeding to Terminate Parental Right Considers the Best Interest of the Child.**

4 While the CNMI does not have and *should have* a specific statute for a proceeding to
5 terminate parental rights, the Commonwealth Supreme Court gave some guidance in *In re Adoption*
6 *of Olopai*, 2 NMI 91 (2012). In *Olopai*, the Supreme Court extended the best interest of the child
7 criteria in an adoption proceeding to a termination of parental rights proceeding.³ *In re Adoption of*
8 *Olopai*, 2 NMI at 102. The Supreme Court decided that consideration of the best interest of the
9 child fills in the gaps of the Uniform Parentage Act, 8 CMC §§ 1700-1726: “We are filling in
10 certain gaps in the Uniform Parentage Act to make it more meaningful and workable This is
11 statutory interpretation. Absent specific statutory factors to be considered in this type of parental
12 rights termination proceedings, we are duty-bound to do so.” *Id.*, 102 n.3.

13 In evaluating the best interest of the child criteria, the Supreme Court noted that this
14 approach is the most comprehensive as it takes into consideration the balance of three interests –
15 “the rights of the parents in a parent-child relationship, the rights of the minor children in such a
16 relationship, and society’s interest in maintaining harmony in, and fostering, such relationship.” *Id.*,
17 103 n. 4. Since the termination of parental rights is a serious and sensitive judicial action, the best

20 (2) That by reason of the misconduct, faults, habits of the parent, the minor is without proper parental
21 care and control, subsistence, education, . . . and the court finds that the conditions and causes of
22 the behavior, neglect, or incapacity are irremediable or will not be remedied by the parent, and that
by reason thereof, the minor is suffering or probably will suffer serious physical, mental, moral, or
emotional harm

23 ³ Other courts have utilized the best interest of the child criteria in a proceeding for terminating parental rights.
24 *See, e.g., Hannah B. v. State*, 289 P.3d 924, 932 (Alaska 2012) (“Before terminating parental rights, a superior court
must find termination to be in the child’s best interest”); *Idaho Dep’t of Health & Welfare v. Doe*, 342 P.3d 632,
635 (Idaho 2015) (“[A] court may terminate parental rights if it finds that doing so is in the best interests of the child
and that at least one of five grounds for termination is satisfied. Those grounds include abandonment or neglect of the
child.”).

1 interest of the child criteria considers the natural and fundamental relationship of parent(s) and
2 child(ren).⁴

3 The best interest of the child evaluates non-exclusive factors:

4 The age of the child; the extent of the bond, or potential bond, between each natural
5 parent to the child; the fitness or unfitness of either or both natural parents, taking
6 into account whether the child has been abandoned, . . . whether either parent is a
7 habitual user of alcohol or drugs, whether either parent has been convicted of a
8 felony where the nature of the crime is inconsistent with being a fit parent, etc.; . . .
9 the ability of the natural parent(s) to provide adequate and proper love, care,
10 attention, and guidance to the child.

11 *In re Olopai*, 2 NMI at 104. Furthermore, an examination of these factors must be supported by
12 clear and convincing evidence. *Id.* at 100; *see In re Jeremy*, 1992 Conn. Super. LEXIS 670, *4
13 (Conn. Super. Ct. Mar. 6, 1992) (“To effectuate a non-consensual termination of parental rights a
14 petitioner must prove first, by clear and convincing evidence, the existence of at least one of three
15 statutory grounds for termination”); *see also Doe v. Doe*, 339 P.3d 1169, 1174 (Idaho 2014)

16 ⁴ While *In re Olopai* examines the best interest of the child exclusively because the Commonwealth Supreme
17 Court noted that it is the most comprehensive analysis for a termination of parental rights proceeding, other states have
18 found that it is only one part of the analysis. Idaho, for example, codified a two-step approach when determining
19 whether parental rights may be terminated: (1) whether an enumerated ground exists, and (2) whether termination is in
20 the best interest of the child. Idaho’s stand-alone provision provides a statutory basis for the termination of parental
21 rights outside an adoption proceeding:

22 CHAPTER 20. TERMINATION OF PARENT AND RELATIONSHIP

23 § 16-2005. Conditions under which termination may be granted

24 (1)The court may grant an order terminating the relationship where it finds that termination of
parental rights is in the best interests of the child and at that one (1) or more of the following
conditions exist:

- (a) The parent has abandoned the child.
- (b) The parent has neglected or abused the child.
- (c) The presumptive parent is not the biological parent of the child.
- (d) The parent is unable to discharge parental responsibilities and such inability will continue
for a prolonged indeterminate period and will be injurious to the health, morals or well-
being of the child.
- (e) The parent has been incarcerated and is likely to remain incarcerated for a substantial
period of time during the child’s minority.

Idaho Code § 16-2005.

Similarly, Section 8-533 of the Arizona Revised Statutes identifies several grounds for the termination of
parental rights in addition to the best interest of the child standard. *See generally* A.R.S. § 8-533 (2015).

1 (“Grounds for termination of parental rights must be shown by clear and convincing evidence
2 because each parent has a fundamental liberty interest in maintaining a relationship with his or her
3 child.”).

4 **Abandonment and Failure to Provide Parental Care or Support**

5 Abandonment is defined as a “conduct which evinces a settled purpose to forego all
6 parental duties.” 8 CMC § 1401(a). Other courts have defined the term “abandonment” in some
7 degree of specificity to include, for example, the “failure of a parent to provide reasonable support
8 and to maintain regular contact with the child, including normal supervision.” *Michael J. v. Ariz.*
9 *Dep’t of Econ. Sec.*, 995 P.2d 682, 685 (Ariz. 2000) (further stating, “abandonment includes a
10 judicial finding that a parent has made only minimal efforts to support and communicate with the
11 child.”); *see also In re Jeremy*, 1992 Conn. Super. LEXIS at *4 (defining abandonment as “the
12 parents’ failure to maintain a degree of interest, concern or responsibility as to the welfare of the
13 child. Where a parent fails to visit a child, fails to display any love or affection for the child, has no
14 affection for the child, has no personal interaction with the child and no concern for the child’s
15 welfare, . . . abandonment has occurred.”). Historically, the termination of parental rights has been
16 reserved for severe situations, such as abandonment. *In re the Adoption of B.G.S.*, Civ. No. 05-
17 0050B (NMI Super. Ct. May 15, 2006) (Order Den. Pet. for Adoption at 2).

18 Moreover, parental care or support may be characterized as a subset of “abandonment” that
19 takes into account the best interest of the child. Indeed, “the best interest analysis takes into account
20 the reality that children need stability and certainty.” *Doe v. Doe*, 339 P.3d at 1176. This may
21 include an inquiry as to whether the parent is unemployed, the financial contribution of the parent to
22 the child’s care, the parent’s effort to improve his or her situation, and the parent’s continuing
23 problems with the law. *Id.*

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1 Based on the above considerations, the Court finds that there is clear and convincing
2 evidence that Respondent has abandoned the children. He has failed to provide support, exercise his
3 visitation rights, or maintain contact with his minor children. While the fact shows that Respondent
4 is incarcerated on Guam, which currently prevents him from fulfilling his parental obligations
5 towards his children, Respondent has neither shown any interest in establishing a relationship with
6 his children nor has he ever attempted to assert his legal rights to the extent necessary. *See Michael*
7 *J. v. Ariz. Dep't of Econ. Sec.*, 995 P.2d at 686 (“[I]ncarceration is merely one factor to be
8 considered in evaluating the father’s ability to perform his obligations. When circumstances prevent
9 the father from exercising traditional methods of bonding with his child, he must act persistently to
10 establish the relationship however possible and must vigorously assert his legal rights to the extent
11 necessary.”).

12 Therefore, the Court finds that Petitioners are entitled to an Order Terminating the
13 Respondent’s Parental Rights. Additionally, the minor children may change their last name
14 “Naputi.”

15 **IV. CONCLUSION**

16 NOW THEREFORE the Court enters the following Orders:

- 17 1. Any rights afforded to Respondent previously granted in this proceeding or to which
18 Respondent may otherwise be entitled resulting from his biological parentage of the minor
19 children are hereby terminated.
- 20 2. Petitioner shall continue to have sole legal and physical custody of the minor children,
21 unimpeded by any rights Respondent may have had as the natural parent of the minor
22 children prior to his abandonment of them.
- 23 3. The minor children’s names shall be changed as follows:
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- a. From Elialyn Maria Castro Naputi (d.o.b. 2/24/07) to Elialyn Maria Quichocho Castro;
- b. From Ziggy John Castro Naputi (d.o.b. 11/12/09) to Ziggy John Quichocho Castro; and
- c. From Zayne Jesse Castro Naputi (d.o.b. 11/12/09) to Zayne Jesse Quichocho Castro.

4. It is FURTHER ORDERED that the Clerk of the Superior Court shall serve a certified copy of this Decree upon the Commonwealth Recorder’s Office pursuant to 8 CMC § 1417, and a new birth certificate shall be issued with the names of the Petitioners and made a part of the public record. The original birth certificates shall be sealed and filed with the Decree, and shall be opened only as provided under 8 CMC § 1414.

5. Judgment is hereby entered in the amount of \$30,940 for unpaid child support as of the date of this Order. With the termination of parental rights, Respondent shall not be further obligated to provide additional and ongoing support for the minor children. At the same time, Petitioner may take such action as she sees fit to collect on the judgment entered herein.

SO ORDERED this _____ day of November, 2015.

/s/
KENNETH L. GOVENDO
ASSOCIATE JUDGE