

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

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**In the Interest of A.P.D.S.P.-G., a Child.**

<b>Grand Forks County Social</b>	)	
<b>Service Center,</b>	)	
<b>Petitioner and Appellee,</b>	)	<b>Supreme Court No. 20200015</b>
	)	
<b>vs.</b>	)	
	)	
<b>A.P.D.S.P.-G, Child,</b>	)	<b>Grand Forks County District Court</b>
<b>T.C., Father</b>	)	<b>Case No. 18-2019-JV-00234</b>
<b>Respondents,</b>	)	
<b>and</b>	)	
<b>T.P.-G., Mother,</b>	)	
<b>Respondent and Appellant. )</b>	)	

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ON APPEAL FROM THE JUDGMENT TERMINATING PARENTAL RIGHTS  
ENTERED DECEMBER 18, 2019  
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE M. JASON MCCARTHY, PRESIDING

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**APPELLEE'S BRIEF**

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Thomas A. Gehrz  
ND Bar ID #06806  
Assistant State's Attorney  
Grand Forks County State's Attorney's Office  
124 South 4th Street  
P.O. Box 5607  
Grand Forks, ND 58206-5607  
(701) 780-8281  
E-Service Address: [sasupportstaff@gfcounty.org](mailto:sasupportstaff@gfcounty.org)

## **TABLE OF CONTENTS**

Table of Contents .....	p. 1
Table of Authorities .....	p. 2
Statement of Issue .....	p. 3
<b>I. T.P. was not denied due process and the Trial Court did not err by denying T.P.’s request to appear by telephone</b>	
Standard of Review .....	¶ 1
Law and Argument .....	¶ 2
Conclusion .....	¶ 6

## **TABLE OF AUTHORITIES**

### **North Dakota State Cases**

<i>Interest of D.M.</i> , 2007 ND 62, 730 N.W.2d 604.....	¶ 1
<i>Interest of M.B.</i> , 2006 ND 19, 709 N.W.2d 11 .....	¶ 1
<i>Interest of D.C.S.H.C.</i> , 2007 ND 102, 733 N.W.2d 902 .....	¶ 1
<i>State v. Guthmiller</i> , 2004 ND 100, 680 N.W.2d 235.....	¶ 4
<i>State v. Hennings</i> , 2015 ND 283, ¶ 9, 871 N.W.2d 473 .....	¶ 4
<i>State v. Stoppleworth</i> , 2003 ND 137, 667 N.W.2d 586.....	¶ 1
<i>Matter of Adoption of J.M.H.</i> , 1997 ND 99, 564 N.W.2d 623 .....	¶¶ 2, 5
<i>Matter of Adoption of J.W.M.</i> , 532 N.W.2d 372 (N.D. 1995) .....	¶ 2

### **North Dakota Rules**

N.D.R.Civ.P. 30 .....	¶ 3
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### **STATEMENT OF THE ISSUE**

- I. T.P. was not denied due process and the Trial Court did not err by denying T.P.'s request to appear by telephone.**

### **STANDARD OF REVIEW**

[¶1] “A lower court’s decision to terminate parental rights is a question of fact that will not be overturned unless the decision is clearly erroneous.” *Interest of D.M.*, 2007 ND 62, ¶ 6, 730 N.W.2d 604 (quoting *Interest of M.B.*, 2006 ND 19, ¶ 13, 709 N.W.2d 11). “A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support the finding, or if, on the entire record, we are left with a definite and firm conviction a mistake has been made.” *Id.* (quoting *Interest of M.B.*, at ¶ 13). In addition, “A trial court abuses its discretion only when it acts in an arbitrary, unreasonable, or capricious manner, or misinterprets or misapplies the law.” *Interest of D.C.S.H.C.*, 2007 ND 102, ¶ 6, 733 N.W.2d 902 (quoting *State v. Stoppleworth*, 2003 ND 137, ¶ 6, 667 N.W.2d 586).

## **LAW AND ARGUMENT**

### **I. T.P. appeared through counsel, did not submit evidence of her financial inability to attend the trial in person, and had every opportunity to appear by deposition or other discovery technique.**

[¶2] The North Dakota Supreme Court stated as follows in a case involving an incarcerated parent whose parental rights were terminated:

Prisoners do not have a constitutional due process right to personally appear at a proceeding for the termination of their parental rights. *Matter of Adoption of J.W.M.*, 532 N.W.2d 372, 376–377. Prisoners’ due process rights generally are satisfied if they are represented by counsel and have an opportunity to appear by deposition or other discovery technique. *Id.*, at 376.

*Matter of Adoption of J.M.H.*, 1997 ND 99, ¶ 18, 564 N.W.2d 623. In this case, not only was T.P. represented by counsel at the trial on December 5, 2019, she was also not incarcerated. According to her attorney, she was financially unable to attend the trial in person as she was saving money for travel to see A.P. in person at the end of December. T.P. did not, however, submit any evidence to the Court, either by affidavit or otherwise, to demonstrate that she was financially unable to attend the December 5, 2019 trial.

[¶3] Appellant argues in her brief “there was not an opportunity to appear by deposition or other discovery technique in place of appearing by telephone.” Appellant’s Brief, ¶ 17. As can be seen from the Register of Actions in this case, that assertion is not true. The Petition for Involuntary Termination of Parental Rights was filed with the trial court in this case on June 21, 2019. (Docket Index #1). Appellant was assigned counsel on September 20, 2019. (Docket Index #31). Trial was continued on November 1, 2019, as well as on November 13, 2019. (Docket Index #48 and Docket Index #53). Trial was ultimately held on December 5, 2019, seventy-six (76) days after Appellant’s counsel was assigned to her case. (Docket Index #55). At no point did Appellant seek to conduct a

deposition by remote means, as permitted under Rule 30 of the North Dakota Rules of Civil Procedure. Appellant did not submit any evidence to the Court in the form of an affidavit or other instrument in support of her opposition to termination of her parental rights. T.P. moved to appear by telephone at the trial in this case, had her attorney assert financial inability to appear in person, and no more.

[¶4] In addition, the Court denied T.P.’s request to appear by telephone because it could not assess T.P.’s credibility telephonically. As this Court has previously stated, “[l]ike a jury, the district court is the finder of fact and is in a superior position to assess the credibility of witnesses and weigh the evidence.” *State v. Hennings*, 2015 ND 283, ¶ 9, 871 N.W.2d 473. Further, “[t]he trial court hears the witnesses, sees their demeanor on the stand, and is in a position to determine the credibility of witnesses.” *State v. Guthmiller*, 2004 ND 100, ¶ 7, 680 N.W.2d 235.

[¶5] Appellant essentially asks this Court to hold that requests to appear telephonically at a termination of parental rights trial should always be granted, that denials of such requests are highly disfavored (if not presumptively abuses of discretion), and that the trial court should have no hesitancy in its willingness to assess a witness’s credibility simply by telephonic means. Such a rule would undermine the trial court’s ability to observe the demeanor of witnesses by opening the door to telephonic appearance wherever alleged to be convenient. Unsubstantiated allegations of financial difficulty are not equivalent to incarceration, such as was a parent’s predicament in *Matter of Adoption of J.M.H.*, 1997 ND 99, 564 N.W.2d 623. Therefore, this Court should hold that the Trial Court did not abuse its discretion in denying T.P.’s motion to appear at the trial by telephone.

## **CONCLUSION**

[¶6] For the above-stated reasons, the State respectfully requests that this Court affirm the juvenile court's order and judgment terminating parental rights.

DATED this 7th day of February, 2020.

/s/ Thomas A. Gehrz  
Thomas A. Gehrz  
Assistant State's Attorney  
ND Bar ID #06806  
124 South 4<sup>th</sup> Street  
PO Box 5607  
Grand Forks, ND 58206-5607  
(701) 780-8281  
E-Service Address: [sasupportstaff@gfcounty.org](mailto:sasupportstaff@gfcounty.org)

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<b>T.C., Father</b>	)	<b>Case No. 18-2019-JV-00234</b>
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<b>and</b>	)	
<b>T.P.-G., Mother,</b>	)	
<b>Respondent and Appellant.</b>	)	

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**CERTIFICATE OF COMPLIANCE**

SA#149414

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¶1 The State of North Dakota, by and through Assistant State's Attorney Thomas A Gehrz hereby certifies that the attached brief complies with the page limitation as set forth in Rule 32 of the North Dakota Rules of Appellate Procedure. The electronically filed brief contains 8 pages.

Dated this 7th day of February, 2020.

/s/ Thomas A Gehrz

Thomas A Gehrz  
Assistant State's Attorney  
ND Bar ID #06806  
124 South 4<sup>th</sup> Street  
PO Box 5607  
Grand Forks, ND 58206-5607  
(701) 780-8281  
E-Service Address: sasupportstaff@gfcounty.org

Julie A. Swangler  
Notary Public