
 IN THE SUPREME COURT OF NORTH DAKOTA

In the Interest of L.L.D.R., a child

M.A., Mother)	Supreme Court File No.
)	20210130
)	
Petitioner and Appellant,)	Burleigh County No.
)	08-2020-JV-00171
v.)	
)	
Burleigh Cnty. Human Service Zone;)	
A.R., Father)	
)	APPELLEE'S BRIEF
)	
Respondent and Appellee.)	

**Appeal from the findings of fact and order entered March
31, 2021 in Burleigh County Juvenile Court, South
Central judicial district, North Dakota the Honorable
Jason Hammes, presiding.**

ORAL ARGUMENT REQUESTED

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Oral Argument:

Oral argument has been requested to emphasize and clarify the Respondent's written arguments on their merits.

Transcript References:

The names of the child and her father in this brief are pseudonyms. The trial for this matter was conducted on February 22 through the 23, 2021. The transcripts of that trial are referred to as "Tr." in this brief.

STATEMENT OF THE ISSUE

[¶ 1] I. The juvenile court was not clearly erroneous by determining

L.L.D.R “Lucy” was not abandoned.

II. The juvenile court did not abuse its discretion under N.D.C.C

§ 27-20-44.

STATEMENT OF CASE

[¶ 2] The Respondent accepts the Appellant’s statement of the case.

STATEMENT OF FACTS

[¶ 3] The Respondent generally accepts the Appellant’s statement of the facts with the following additions and corrections:

[¶ 4] A.R. “Alex” disputes the Appellant’s position that he did not provide for Lucy physically, emotionally, or financially from infancy to the present. Tr. Day 2 pp. 10-11, 13, 22. Alex also disputes that no contacts or efforts were made to establish a relationship and care for Lucy. Tr. Day 2 pp. 19-20.

LAW AND ARGUMENT

I. The juvenile court was not clearly erroneous by determining L.L.D.R “Lucy” was not abandoned.

[¶ 5] In juvenile proceedings, including termination of parental rights cases, findings of fact are reviewed under the clearly erroneous standard. *In re A.L.E.* , 2018 ND 257, ¶ 4, 920 N.W.2d 461. A finding is clearly erroneous when it is made by an erroneous view of the law, the evidence does not

support the finding, or if, on the entire record, the Court is left with a definite and firm conviction a mistake has been made. *Id.* Questions of law are fully reviewable. *See In re C.R.H.* , 2000 ND 222, ¶ 6, 620 N.W.2d 175.

[¶ 6] Both of the Appellant's issues turn on the juvenile court's finding that that Alex unjustifiably failed to communicate and/or provide financial support to Lucy. Both issues challenge whether she was intentionally abandoned by Alex. This is a factual issue. There is testimony on the record that supports the court's findings, therefore they were not clearly erroneous.

[¶ 7] Alex sporadically saw his daughter. Alex testified he did not want to be around his daughter while he was involved with drugs. Additionally, he testified that for a period of time there was a no contact order in place between he and Lucy's mother and that Lucy's mother changed her residence and he did not have her contact information, phone or address. The juvenile court in its Order found that, "The Father testified that he would change diapers, give bottles, and interact with [Lucy] when he was present. The Court finds the Father's testimony to be credible, that he provided some care and interaction with the child when he was present." *FoF & Order*, ¶ 10. The Appellant argues in their brief that the court gave too much credence to the Alex's testimony, however that is the role of the court. By appropriately weighing the credibility and evidence to reach a legal conclusion its decision was not clearly erroneous.

[¶ 8] The juvenile court found that there were irregular requests by Alex to have contact with Lucy in 2017. Near the end of 2017, Alex asked for an overnight visit with Lucy, and that visit did take place. The juvenile court also found that before this action, there was “no indication the Father was provided or had knowledge of the Mother’s current address or phone number.” *FoF & Order*, ¶ 14. While the court did acknowledge the lack of contact with Lucy, it found based on credible testimony that Alex attempted to locate and contact Lucy and her mother through friends and relatives. Tr. Day 2 p. 19, ln 20-25; p. 20, ln 1-5. *FoF & Order*, ¶ 17. This is not a clearly erroneous decision, it is an exercise of the court’s considered reasoning, weighing specific facts of the case before it and coming to a conclusion based on those facts. There is no statute or case that **requires** the court to conclude that lack of contact with a child because their contact information was unknown is per se intentional abandonment. Therefore, the court’s finding was not clearly erroneous.

[¶ 9] Whether Alex, without justifiable cause, failed to provide care and support for Lucy as required by law is a factual issue. The Order indicated there was a justification for not providing financial support because of a lack of ability, due to Alex’s incarceration. *FoF & Order*, ¶ 16. There is testimony that supports Alex provided some financial support at the beginning of Lucy’s life. However, the court noted that support did not continue. The court found that there was “a question of whether [Alex] had

the ability to provide these things while incarcerated.” *Id.* The testimony at trial was that there was no support order established in this case, but that Alex would pay child support moving forward, as it is his responsibility to do so as Lucy’s father. Tr. Day 2 p. 22. Once again this is an exercise of the court’s considered reasoning, where it weighed the specific facts before it and came to a conclusion based on those facts. There is no statute or case that **requires** the court to conclude otherwise. The court’s findings have support in the record, and it did not act in an arbitrary, unconscionable, or unreasonable manner in making its decision, therefore it is not an erroneous decision.

II. The juvenile court did not abuse its discretion under N.D.C.C § 27-20-44.

[¶ 10] At the time of this petition section 27-20-44, N.D.C.C., provided that:

“The court by order **may** terminate the parental rights of a parent with respect to the parent’s child if:

a. The parent has abandoned the child.”

Emphasis added, N.D.C.C. § 27-20-44(1)(a). The word “may” is ordinarily understood as discretionary rather than mandatory. *Matter of Adoption of K.S.H.*, 442 N.W.2d 417, 420 (N.D. 1989) If the petitioner shows by clear and convincing proof their claims, then the court has discretion under N.D.C.C. § 27-20-44 to decide whether to terminate parental rights.

A district court abuses its discretion if it acts in an arbitrary, unconscionable, or unreasonable manner, if its decision is not the

product of a rational mental process leading to a reasonable determination, or if it misinterprets or misapplies the law. An abuse of discretion is never assumed and must be affirmatively established, and this Court will not reverse a district court's decision merely because it is not the one it would have made had it been deciding the motion.

Anderson v. Baker, 2015 ND 269, ¶ 7, 871 N.W.2d 830 (N.D. 2015)

[¶ 11] As the court correctly noted the purpose of the statute is to determine the best interests of the child when deciding whether termination is appropriate. *FoF & Order*, ¶ 19. The juvenile court explained that though it did not find there was abandonment in this case, at this time, even if that had been shown by petitioner it is in the court's discretion to terminate parental rights.

[¶ 12] In this instance the court found that the termination of Alex's parental rights would not be in Lucy's best interests. The court explained the best interests of Lucy was determined primarily upon Mr. Jacobson's, the Guardian ad Litem, report and testimony, which included interviews conducted with the Mother, Father, child, the Father's sister, and the Father's case manager. The court's conclusion was not arbitrary, unconscionable, or unreasonable and its decision was the product of a rational mental process, one the court explained in detail, which then lead to a reasonable determination. Finally, the court did not misinterpret or misapply the law. The law allows for discretion to take into consideration the best interests of the child, which the court did. The Appellant cannot show that there was erroneous fact found or an abuse of the court's discretion.

They simply disagree with the court's ultimate conclusion. This is not the standard for overturning the court's order.

CONCLUSION

[¶ 13] WHEREFORE, the district court did not commit clear error in the case before this Court. There is no violation or erroneous view of applicable law committed by the district court, there is ample evidence to support the district court's findings, and under a totality view of the evidence, no mistake has been made in this case.

Dated this 8th day of October, 2021

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A.R., Father)	
)	Certificate of Compliance
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[¶ 1] This Appellant's Brief complies with the page limit of 38 set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure.

Dated: October 8, 2021.

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