

STATE OF NORTH DAKOTA
COUNTY OF CASS

IN JUVENILE COURT
EAST CENTRAL JUDICIAL DISTRICT

IN THE INTEREST OF: C.V., A CHILD; YOB: 2019
IN THE INTEREST OF: J.V., A CHILD; YOB: 2020

ETHAN HINZE, L.B.S.W.,)	
Cass County Human Service Zone,)	Cass County Case No.: 09-2022-JV-299
)	09-2022-JV-300
PETITIONER/APPELLEE,)	
)	Supreme Ct. Case No.:
VS.)	
)	
C.B., K.V., D.N., and J.S.,)	
)	
RESPONDENT/APPELLANT.)	

Appeal from the “CORRECTED JUVENILE FINDINGS OF FACT AND ORDER FOR DISPOSITION (IN CUSTODY)” filed in these two (2) cases on January 9, 2023. By: Honorable Daniel Gast, Juvenile Referee, Cass County Juvenile Court.

APPELLANT K.V.’S BRIEF

Date: February 8, 2023

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[¶1] JURISDICTIONAL STATEMENT

[¶2] “Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law.” North Dakota Constitution, Article VI, Section 6. “A judgment or order in a civil action or in a special proceeding in any of the district courts may be removed to the Supreme Court by appeal as provided in this chapter.” N.D.C.C. §28-27-01. A final order terminating parental rights is appealable. N.D.C.C. §27-20.26(1).

[¶3] STATEMENT OF THE ISSUES

1. Whether the trial court abused its discretion in terminating the parental rights of K.V., mother of the two minor children C.V. and J.V., when the rights of the fathers were not terminated.
2. Whether the trial court abused its discretion in terminating the parental rights of K.V. to the children when the children had been previously returned to her early after having been placed in custody, due to K.V.’s completion of the case plan requirements.

[¶4] STATEMENT OF THE CASE

[¶5] K.V. entered an admission to an Amended Petition for Deprivation on March 13, 2020, with regard to C.V.; as a result, a dispositional order placing the child in

the care, custody and control of the Cass County Human Service Zone for a period of nine months was entered. Juvenile Findings of Fact and Order for Disposition (In Custody) R.130. (All references are to the Register of Actions in File No. 09-2022-JV-299.) That order was extended an additional nine months on March 2, 2021 as the aims and goals of the prior order had not been met. Corrected Juvenile Findings of Fact and Order for Disposition (In Custody) R.158: 3. K.V. entered an admission to a Petition for Deprivation on February 5, 2021 with regard to J.V, and custody of that child was also granted to the Cass County Human Service Zone for a period of nine months. Juvenile Findings of Fact and Order for Disposition (In Custody) R.133.

[¶6] A Petition to Terminate Parental Rights was filed in these cases on August 2, 2022. Petition for Termination of Parental Rights, R.13. Trial was held on November 3, 4, and 6, 2022. The Court entered its Corrected Order terminating K.V's parental rights on January 9, 2023. R.158. This expedited appeal follows.

[¶7] STATEMENT OF THE FACTS

[¶8] K.V. has three children, C.V., possible father C.B.; J.V., possible father D.N.; and J.S., Jr., father J.S. Corrected Juvenile Findings of Fact and Order for Disposition (In Custody) R.158. Originally, the Petitioner requested termination of all parties' parental rights, but later amended the Petition to eliminate that request as to C.B. and D.N. and requested that the Court find the children in need of protection as to those two parents. D.N. entered an admission and the Court ordered

a concurrent permanency plan of reunification with him and termination of parental rights. C.B. participated in part of the trial. The Court also ordered a concurrent plan for C.V. and C.B. The Court terminated K.V.'s and J.S.'s rights to J.S., Jr., along with K.V.'s rights to C.V and J.V. Id. J.S., Jr.'s case is pending review by a District Court Judge so is not included in this appeal.

[¶9] C.V. was placed into custody on November 14, 2019 due to concerns from being born testing positive to controlled substances. Corrected Juvenile Findings of Fact and Order for Disposition (In Custody) R.158:3. J.V. was removed from K.V's care shortly after birth, as K.V. had tested positive for marijuana, amphetamines and methamphetamines multiple times while pregnant with J.V. Juvenile Findings of Fact and Order for Disposition (In Custody) R. 133. Both actions resulted in nine-month orders transferring custody to the Cass County Human Service Zone, and because K.V. had not succeeded in reaching the aims and goals in time, the order was extended. However, that order was terminated early at the request of the social worker, Megan Dahl. Affidavit of Megan Dahl, L.B.S.W. in Support of Motion to Terminate Order. R. 137.

[¶10] According to Ms. Dahl, by August 20, 2021, K.V. had completed treatment at Southeast Human Service Zone, completed a parenting class, obtained stable housing, obtained a job, and had the children placed in her home on July 6, 2021. Based upon those factors, she believed the aims and goals of the order had been met. Id. Subsequently, J.S., Jr. was born. Upon birth, he tested positive for THC and

amphetamines, but the children were not removed from the home at that time. Corrected Juvenile Findings of Fact and Order for Disposition (In Custody) R.158:5.

[¶11] On June 26, 2022, there was an incident between J.S. and K.V. J.S. was arrested, and K.V. was transported by the police to a hospital for a mental health evaluation. She was released about an hour later. Testimony of K.V. The children were placed into custody. Both parents were charged with contributing to the deprivation or delinquency of a minor. J.S. pled guilty; at the time of trial there was a warrant out for K.V.'s arrest on that charge. Id.

[¶12] The Court found that J.S., Jr., sustained a bruise to his abdomen during the incident, but also found that the children were examined by medical professionals because of concern for non-accidental trauma but a definitive cause was unable to be determined. Id. Of greater concern to the Court was the fact that C.V. and J.V. had been exposed to THC and methamphetamine; J.V.'s test indicated that he had ingested methamphetamine. Corrected Juvenile Findings of Fact and Order for Disposition (In Custody) R.158:6. K.V. denied any knowledge of how the child could have had access to the drug while in her care. Testimony of K.V.

[¶13] ARGUMENT

[¶14] The court by order may terminate the parental rights of a parent with respect to the parent's child if:

1. The parent has abandoned the child;

2. The child is subjected to aggravated circumstances;
3. The child is in need of protection and the court finds:
 - (1) The conditions and causes of the need for protection are likely to continue or will not be remedied and for that reason the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm, or
 - (2) The child has been in foster care, in the care, custody, and control of the department of human service zone for at least four hundred fifty out of the previous six hundred sixty nights;
 - (3) The written consent of the parent acknowledged before the court has been given; or
 - (4) The parent has pled guilty or nolo contendere to, or has been found guilty of engaging in a sexual act under section 12.1-20-03 or 12.1-20-04, the sexual act led to the birth of the parent's child, and termination of the parental rights of the parent is in the best interest of the child. otherwise convicted of certain crimes or impregnating the parent's child (leading to the birth of a child) and termination is in the best interests of the child.

N.D.C.C §27-20.3-20(1) (emphasis added)

[¶15] Natural parents have a fundamental right to their children, “which is of a constitutional dimension”. In the Interest of W.E., 2000 ND 208 ¶30, 616 N.W.2d 494. The constitutional protections although not absolute, require that “[a]ny doubts should be resolved in favor of the natural parent and parental rights should be terminated only when necessary for the children's welfare or in the interest of public

safety”. Id.

[¶16] In this case, K.V. is not challenging the court’s findings, but rather asserts the trial court abused its discretion by terminating her parental rights to C.V. and J.V. when the father’s rights were not terminated. It is not necessary for the children’s welfare for K.V.’s rights to be terminated; if the children are reunited with their fathers, there are civil remedies to assure the children’s safety, such as supervised visitation orders, until such time as a court may determine K.V. is safe to be with the children unsupervised. In addition, by terminating K.V.’s parental rights, the Court eliminated many benefits that may be available to the children, such as child support, medical support, social security benefits, and worker compensation benefits, among others. And lastly, termination of K.V.’s parental rights severs the relationship between the siblings.

[¶17] The Court also abused its discretion by terminating K.V.’s parental rights to the children, when the children had previously been returned to her early, at the request of the Human Service Zone, because she had completed the requirements of the case plan, including treatment. K.V. had proved she was capable of rehabilitation and taking care of the children. It was in all the children’s best interests that K.V. given supports by way of a new case plan with a goal of reunification. Although K.V. admitted to the use of marijuana, she denied the use of methamphetamine and had no idea where J.V. could have obtained the drug. If it was from J.S., then the case plan should have been developed, keeping J.S. away from the children. The children were not physically abused. Their needs were being adequately met. The

social worker testified that the children were falling behind developmentally, but there was no evidence that this was attributable to K.C.'s care. Children are not entitled to perfect parents. K.V. was at least an adequate parent, with happy, healthy children, with the exception of J.V. ingesting drugs on one occasion. Exposure to THC , in and of itself, does not constitute aggravated circumstances.

[¶18] The relevant statute uses the term “may” terminate the parental rights in this case. “May” is ordinarily understood in a statute to be permissive and not mandatory; it operates to confer discretion upon the court. In the Interest of B.H., 2018 ND 178 ¶6, 915 N.W.2d 668. The decision to terminate parental rights is reviewed by the Court under the abuse of discretion standard. In the Interest of B.H., ¶7. The court abuses its discretion if it acts, among other things, in an arbitrary, unconscionable, or unreasonable manner. An abuse of discretion is never assumed and must be affirmatively established. This Court will not reverse a decision merely because it was not the decision the Court would have made. Id. (quoting Anderson v. Baker, 2015 ND 269 ¶7, 871 N.W.2d 830.

[¶19] In this case, the court acted in an unreasonable manner by terminating K.V.'s rights because the decision was not in the best interests of the children, and the children's safety could be assured without termination.

[¶20] CONCLUSION

[¶21] For the preceding reasons Appellant K.V. respectfully requests that this Court reverse the Order Terminating Parental Rights as it relates to the Appellant, K.V. and remand for further proceedings regarding a child in need of protection.

[¶22] Date: February 8, 2023

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[¶23] CERTIFICATE OF COMPLIANCE

[¶24] The undersigned, as attorney for the Appellant, K.V., in the above matter, and as the author of the above brief, hereby certify, in compliance with Rule 32(a) of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportional type face and that the total number of pages in the above brief totals 11.

[¶25] Date: February 8, 2023

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RESPONDENT/APPELLANT.)	

DECLARATION OF SERVICE

[¶1] I hereby certify that on the 8th day of February, 2023, the following documents:

1. Notice of Appeal;
2. Request for Transcripts;
3. Appellant's Brief; and
4. Declaration of Service.

were served, via electronic filing system, upon the following individual(s):

1. The Supreme Court of North Dakota
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[¶2] To the best of the undersigned's knowledge, the electronic address given was the actual e-mail address of the party intended to be so served.

[¶3] I further certify that I served a copy of the above documents via US mail, postage prepaid, on the following:

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222 W Lawson Dr
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[¶4] I declare under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

[¶5] Date: February 8, 2023

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RESPONDENT/APPELLANT.)	

DECLARATION OF SERVICE

[¶1] I hereby certify that on the 14th day of February, 2023, the following documents:

1. Appellant's Brief; and
2. Declaration of Service.

were served, via electronic filing system, upon the following individual(s):

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[¶2] To the best of the undersigned's knowledge, the electronic address given was the actual e-mail address of the party intended to be so served.

[¶3] I further certify that I served a copy of the above documents via US mail, postage prepaid, on the following:

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[¶4] I declare under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

[¶5] Date: February 14, 2023

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