IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Charles R. Sheeley, Richland County
Juvenile Supervisor,

*Petitioner/Appellee,*

vs.

C.R.C., a child, C.A.M.C. and S.B.,

*Respondents/Appellants.*

**Case No. 20000286**

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APPEAL FROM JUDGMENT ENTERED ON AUGUST 16, 2000, AND LATER REVISED ON AUGUST 21, 2000, IN RICHLAND COUNTY JUVENILE COURT

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# APPELLANT'S BRIEF

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## STATEMENT OF ISSUES

Whether there was clear and convincing evidence that:

(1) the child is a deprived child;

(2) that the conditions and causes of deprivation are likely to continue; and

(3) that the child is suffering, or will in the future suffer serious physical, mental, moral, or emotional harm?

## STATEMENT OF CASE

### A. Nature of Case and Course of Proceedings.

This is an appeal from an order terminating the parental rights of C.A.M.C., mother, to C.R.C., a minor child. On October 29, 1999, C.R.C. was placed in the temporary care and control of Richland County Social Services and placed in foster care pursuant to a Temporary Order issued by Charles Sheeley, Richland County Juvenile Supervisor. (Appendix p. A-3.) A shelter care hearing was held on November 1, 1999, to determine whether shelter care placement was appropriate. On November 8, 1999, Judge Goodman signed an Order for Further Shelter Care. (Appendix p. A-6.) Charles Sheeley filed a Petition with the Court on November 9, 1999, requesting that the Court make an Order of Disposition to protect the physical, mental and moral welfare of the child. (Appendix p. A-8.) On

December 16, 1999, a Temporary Order of Disposition was signed by the Judge continuing foster care placement until a hearing could be held. (Appendix p. A-16.) On January 14, 2000, Charles Sheeley filed a Petition to Terminate Parental Rights. (Appendix p. A-20.) On February 2, 2000, S.B., the father of C.R.C., signed a Relinquishment of Parental Rights, thereby voluntarily terminating his parental rights. Charles Sheeley then filed an Amended Petition to Terminate Parental Rights on February 3, 2000. (Appendix p. A-27.)

The Amended Petition alleged the following:

(1) That the mother is unable to provide C.R.C. with proper parental care or control, subsistence, education as required by law, or other care or control necessary for her physical, mental, emotional health or morals;

(2) That the child comes within the provisions of the Uniform Juvenile Court Act as a deprived child; and

(3) That the conditions and causes of the deprivation are likely to continue or would not be remedied and therefore the child is suffering and would probably suffer from physical, mental, or emotional harm.

The mother denied these allegations and this action came on for trial before the District Court in Richland County, the Honorable Ronald E. Goodman

presiding, on March 27, 2000. The trial court terminated C.A.M.C.'s parental rights in an Order dated August 21, 2000. (Appendix p. A-52.)

C.A.M.C. filed this appeal of the trial court's order terminating her parental rights.

B. **Statement of Facts**.

C.R.C. was born March 5, 1994, to C.A.M.C. and S.B. C.A.M.C. and S.B. were never married. C.R.C. is 6 years of age. S.B. never really had a father/daughter relationship with C.R.C. and voluntarily terminated his parental rights during this proceeding.

C.A.M.C. was married to S.M. on November 25, 1994. They were later divorced on July 20, 1999. (Transcript page 162, lines 15-18.) They have two children together, C.J.M., born July 11, 1995, and J.C., born August 8, 1999. C.A.M.C. and S.M. along with C.R.C. and C.J.M. lived in Breckenridge, Wilkin County, Minnesota from 1995 to 1997. From 1997 through September 1998, they resided in Wheaton, Traverse County, Minnesota. C.A.M.C. worked closely with Social Services in both Wilkin County and Traverse County for assistance with parenting. In fact, C.A.M.C. voluntarily requested assistance shortly after moving to Wheaton in 1997. (Transcript page 83, lines 9-14.)

In September or October of 1998, C.A.M.C. moved to Wahpeton with C.R.C. At the time she was having marital problems with S.M., was homeless, and

had not yet found a job. Realizing she would not be able to provide adequately for C.R.C.'s needs, she placed her with C.R.C.'s paternal aunt, G.M. (Transcript page 165.) The arrangement went very well in the beginning as C.A.M.C. had as much contact as she wanted with C.R.C. However, as time went on, C.A.M.C.'s requests for visitation were being denied as a result of alleged scheduling conflicts, and later C.A.M.C. was unable to travel to Wahpeton for visitation because of pregnancy complications.

It was then agreed that G.M. and her husband would adopt C.R.C. and C.A.M.C. would have liberal contact with C.R.C. Knowing that G.M. was in a better position than she was to raise C.R.C. at that time, that C.R.C. would be with family, and with the understanding that she would have unlimited contact with her daughter, C.A.M.C. consented to the adoption. Unfortunately, G.M. and her husband decided that C.R.C. was a bad influence on their own child and she was becoming too difficult to manage, so they decided not to adopt her and instead planned to turn custody back to C.A.M.C. At which point, Richland County Social Services intervened without notifying C.A.M.C. on October 31, 1999.

In preparation for the return of C.R.C., C.A.M.C. met with school officials in Fargo, North Dakota, where she had been residing since June 1999, to arrange for C.R.C. to start school and she made various other arrangements to bring her

daughter home with her and to insure that the transition was as smooth as possible. (Transcript page 167, line 11 to page 168, line 8.)

C.A.M.C. was shocked to find out that instead of being returned to her, C.R.C. had instead been placed in foster care by Richland County Social Services. Sometime shortly after her placement in foster care, C.R.C. had some problems adapting to her foster care environment and exhibited behaviors that caused her to be hospitalized in the Prairie Psychiatric Center in Fargo. As soon as she was given clearance for a visitation, C.A.M.C. went to spend time with C.R.C. Eventually, these visitations were cut off by Richland County Social Services.

On August 8, 1999, C.A.M.C. gave birth to J.C., a baby girl. Unfortunately, C.A.M.C. had complications with her pregnancy and as a result of her condition, her doctor restricted her ability to travel. This made visits to see C.R.C. impossible during the summer of 1999, as C.A.M.C. lived in Fargo and would have to travel to Wahpeton for her visits. After the baby was born, C.A.M.C. requested visitation so C.R.C. could meet her baby sister, but C.A.M.C.'s requests were denied by G.M.. As a result, C.A.M.C. went several months without being able to see her daughter. She was eventually allowed supervised visitation and those visitation sessions went very well. (Transcript page 170, line 8, to page 171, line 2.)

C.R.C. has never been in C.A.M.C.'s physical custody in Richland County. (Transcript page 169, lines 2-4.) There is not one complaint regarding C.A.M.C.'s care of C.R.C. in Richland County. (Transcript page 169, lines 2-4.) With no complaints regarding her parenting of C.R.C. in Richland County, a petition was filed to terminate her parental rights. No reunification plan was provided to C.A.M.C., nor was any opportunity given to her to get her daughter back.

C.A.M.C. was examined by Dr. John Molstre, Licensed Psychologist, in February and March of 1999. At that time it was determined that C.A.M.C.'s cognitive abilities are in the "low average" range and he characterized her as being "dependant, isolated, vulnerable and in some respects [an] inadequate person". C.A.M.C.'s past reflects learning disabilities. She received special education assistance while enrolled in school and she suffers from a significant hearing loss. (Appendix p. A-59.)

C.A.M.C. married R.S. in February of 2000, but intends to have that marriage annulled. (Transcript page 162, lines 3-5.) She previously enjoyed a relationship with M.E. and she intends to continue that relationship. (Transcript page 162, lines 8-14.) C.A.M.C. was residing in Fargo at the time of the trial. She was residing in an apartment with R.S. and M.E. until she and M.E. were able to get an apartment of their own, with adequate space for them and C.A.M.C.'s daughters. (Transcript, page 161, line 17, to page 162, line 2.) C.A.M.C. is

employed by Executive Cleaning Services as a part-time cleaning person, and she has licensed day care when necessary. (Transcript page 162, lines 19-22.)

C.A.M.C. could like to have custody of C.R.C. and feels that with the assistance of social services, she would be able to adequately provide for her daughter. Therefore, she has filed this appeal of the termination of her parental rights.

## ARGUMENT

The State has failed to prove, by clear and convincing evidence, that the child is a deprived child; that the conditions and causes of deprivation are likely to continue; and that the child is suffering, or will in the future suffer serious physical, mental, moral, or emotional harm?

### A. Standard of Review

"When reviewing on order terminating parental rights, the Court must review the files, records, and minutes or transcript of the evidence of the juvenile court, giving appreciable weight to the findings of the juvenile court." In the Interest of W.E, 2000 N.D. 208, 619 N.W.2d 494, 496. Although the review is similar to a trial de novo, the Court gives deference to the juvenile court's decision, because the court has had the opportunity to observe the candor and demeanor of the witnesses. In the Interests of D.F.G., 1999 N.D. 216, 602 N.W.2d 697.

## B. Standard for Termination

Termination of parental rights is not a matter to be taken lightly. The standard is not whether or not the parents involved are ideal or whether there is someone else that could do a better job of raising the children. The standard in parental termination cases is set out in N.D.C.C. § 27-20-44. The statute provides:

> 27-20-44. **Termination of parental rights.**
> 1. The court by order may terminate the parental rights of a parent with respect to his child if:
>    a. The parent has abandoned the child;
>    b. The child is a deprived child and the court finds that the conditions and causes of deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or
>    c. The written consent of the parent acknowledged before the court has been given.
> 2. If the court does not make an order of termination of parental rights, it may grant an order under section 27-20-30 if the court finds from clear and convincing evidence that the child is a deprived child.

The State had the burden in this proceeding and had to show by clear and convincing evidence that the child is deprived, that the deprivation is likely to continue and the child has or will suffer serious physical, mental, moral, or emotional harm. In Re J.L.D., 539 N.W.2d 73 (N.D. 1995).

In applying that statute, the Court should review those elements in hopes of keeping the family together if at all possible. We must start with the understanding

that a parent's right is paramount and superior to that of any other person and the burden of disproving the presumption that a parent is a fit and suitable person to be entrusted with the care of his child rests upon the person challenging it. In the Interest of M.M.C., 277 N.W.2d 281. 284 (N.D. 1979). The Court has recognized the difficulty in terminating parental rights. "especially when there has been no claim of intentional deprivation." In Interests of W.E., supra at 499; citing In the Interest of L.F., 1998 N.D. 129. 580 N.W.2d 573. When an alternative exists in the best interests of the children, this Court has stated that it prefers the alternative over termination of parental rights. In the Interest of M.N., 294 N.W.2d 635, 638 (N.D. 1980). It was those alternatives that Richland County Social Services, and later the trial court, failed to consider in this case.

**1. Is C.R.C. a Deprived Child?**

The evidence presented at the trial did not indicate that C.R.C. is a deprived child. The evidence presented at the trial demonstrated that she has a mother who is willing and able to provide for her care when given the opportunity and the support of outside agencies.

**a. Previous Interaction with Social Service Agencies:**

The only testimony offered at the trial regarding observations of C.A.M.C.'s parenting skills was from Social Services in Wilkin County. Traverse County, and Cass County. None was presented from social services in Richland

County, who initiated termination proceedings, because they have no observations of this mother's ability to parent this child. Both Wilkin and Traverse counties worked closely with C.A.M.C. and C.R.C. and none of them observed anything grave enough to terminate C.A.M.C.'s parental rights to C.R.C. Nancy Pillen, the Cass County social worker, who was working with C.A.M.C. and her newborn, J.C., at the time of the trial stated that she would need something more before she would file a petition to terminate C.A.M.C.'s parental rights. (Transcript page 132, line 17 to page 133, line 1.) In fact, Ms. Pillen testified that it was always the "first goal" of Cass County Social Services to keep the family together. (Transcript page 132, lines 11-16.)

When C.A.M.C. resided in Traverse County, a Service Plan was provided to her and her husband at the time, S.M., which set parenting goals and outlined services that would be provided to assist them in obtaining those goals. The case worker assigned in Traverse County, Dona Grenier, testified that they "worked really, really hard" on those goals and followed the County's instructions. (Transcript page 91, lines 3 - 24.) Traverse County worked with the family to try to keep the children in the home, which was apparent from the services and guidance they provided. At no time during their residency in Traverse County was an action initiated by the County to remove the children from the home, yet

that is the history Richland County relied on in bringing its petition for termination.

Richland County had to rely on the history of other counties, as it had **no history** with C.A.M.C. and C.R.C. The two never lived in Richland County together. The only interaction Richland County social services had with C.A.M.C. and C.R.C. was the foster care case manager who supervised C.R.C.'s foster care placement. Yet with no history with this mother and this child, they sought to permanently sever the relationship between C.A.M.C. and her daughter C.R.C.

There was no evidence offered that C.A.M.C. was unwilling to work with Richland County Social Services to become a better parent to C.R.C., as no such services were ever offered. Not one case worker from Richland County testified about the grounds for the termination. The only testimony offered by Richland County Social Services was from Rachel Gerber, Foster Care Coordinator, whose only involvement in the case was to oversee the foster placement. As she testified, there was no reunification plan presented to C.A.M.C. in order for her to get her daughter back, as the county was already proceeding with termination. (Transcript at page 158, lines 4-7.) As Rachel Gerber testified:

Q. Okay. So Richland County, as far as you know, never made any attempt to reunify [C.R.C.] with her mother, C.A.M.C., correct?

A. No, because they were going for termination.

(Transcript page 158, line 4-7.) There was no reunification plan, no goals to achieve, no offer of assistance, nothing. Richland County sought only to separate this child and this mother using outdated information obtained from other counties, in which no action to terminate parental rights was pursued.

The Court in In the Interest of W.E. found that with the assistance of the mother's family, church, and trained social services professionals, she could properly care for her children. In the Interest of W.E., supra. In that case the court found that the termination of parental rights was premature. Id. at 500. The Court went on to state that if later there were signs of continuing deprivation and harm resulted or if the support network on which the mother was relying was no longer viable, a new petition for termination could be brought. Id.

As in In the Interest of W.E., the termination of parental rights in this case was premature. It was demonstrated by the testimony of the Traverse County, Wilkin County and Cass County Social Service workers that C.A.M.C. was able to provide adequately for her children when she had their regular, ongoing assistance. But no offer to assist was made by Richland County. The County's first action involving C.A.M.C. and C.R.C. was to place the child in shelter care and proceed with termination of parental rights.

Without a single complaint about C.A.M.C.'s care of C.R.C. and without any current professional assessment of C.A.M.C.'s ability to parent, Richland County proceeded with termination without looking at any other options.

b. **Reliance on Outdated Evaluation of C.A.M.C.**:

The State relied on a parental capacity evaluation completed by Dr. Molstre in February 1999, to support their petition for termination. This matter came on for trial on March 27, 2000. The test was more than one year old and referenced stressors and issues that were no longer in existence and were not relevant to this case. All references in the evaluation to C.A.M.C.'s home life pertained to her life with S.M., from whom she was divorced at the time of the trial. There were several references in the report to the stress her relationship with S.M. created in her life and the negative impact that stress had on her ability to parent. (Appendix page A-59.)

Dr. Molstre testified that things such as maturity, changes in relationships, lifestyle and employment could change the test results. (Transcript page 25, line 13 - 21.) He also testified that perhaps his evaluation would be more accurate if it would have been administered more closely to the time of trial. (Transcript page 25, line 4 - 9.)

Dr. Molstre's conclusions and opinions in this case should have been given little, if any weight, as the information he relied on was outdated and was based on

C.A.M.C.'s life as it existed prior to her making several very significant changes. Fran Larson, the case manager from Social Services in Traverse County, indicated that in her practice she would want a current parental capacity evaluation to review before she would recommend termination of parental rights. (Transcript page 20, line 24.)

At the trial in this matter, there was no evaluation offered that took into account the changes C.A.M.C. had made in her life. C.A.M.C. testified that she had taken several steps to be a good mother to C.R.C. She had educated herself about C.R.C.'s health problems, she had learned how to manage C.R.C.'s health issues, and was seeing to it that her educational needs were going to be met. (Transcript page 171, lines 8-17 and page 166, line 19 to page 168, line 8.) At the time of trial, she had a new baby with whom she was closely bonded, she had removed herself from an abusive and dysfunctional relationship, she had established a residence in a new city, and she had a new job. None of which was considered by the earlier evaluation done by Dr. Molstre.

c. **Existence of Mother/Daughter Bond**:

As both C.A.M.C. and Rachel Gerber, the Richland County Foster Care Case Manager, testified, the supervised visitation sessions prior to the trial went very well. (Transcript page 154, line 17.) C.R.C. seemed excited to see her mother, asked when she could see her again and was reluctant to end the visit.

(Transcript page 154, line 24 to page 155, line 16.) The evidence presented at the trial clearly indicates the existence of a mother/daughter bond between C.A.M.C. and C.R.C.

The focus should have been on trying to preserve that mother/daughter bond. Proceeding straight to termination without allowing C.A.M.C. an opportunity to improve herself and demonstrate her ability to be a parent to C.R.C. was premature. Every opportunity should be allowed before the finality and permanency of parental termination is ordered.

**d. <u>Guardian ad Litem Report:</u>**

The Guardian ad Litem did not testify at the hearing in this matter, however her report was submitted as an exhibit. (Appendix p. A-13.) Nothing in that report supports that C.R.C. is a deprived child. It references problems C.R.C. had when she was originally placed in foster care in October 1999, adjusting to her new environment and routine. The report alleges that C.R.C. had problems that were evidenced by her difficulties getting along with others, throwing fits and being very disruptive at home and at school.

The Guardian ad Litem's report references C.R.C.'s problems adapting to change. The paternal aunt, with whom C.R.C. was previously living, testified that after sharing her plans to adopt C.R.C. with C.R.C., she changed her mind. (Transcript page 55, line 22-56 to page 56, line 1.) Then to add to the rejection,

C.R.C. was told that she would be reunited with her mother, but was forced to move in with strangers in a foster care placement. In addition to this rejection, there were changes in her school schedule and the addition of a foster sibling during the same time frame as the visitations with C.A.M.C. (Transcript page 156, lines 2-16.) It would be unreasonable to believe that this rejection and the changes to her environment had no impact on C.R.C. and that all of the acting out behaviors she had were the result of any contact she had with C.A.M.C.

e. **No Deprivation Shown**.

Deprivation must be shown by clear and convincing evidence and ***any doubt should be resolved in favor of the natural parent.*** Bjerke v. D.T., 248 N.W.2d 808, 811 (N.D. 1976) (Emphasis added.). The State failed to demonstrate that this child is a deprived child. Richland County relied on information from other counties that was more than a year and a half old at the time of trial and which did not present sufficient grounds in those counties to terminate parental rights. In the very least there has to be some doubt as to what C.A.M.C.'s current ability to parent would be with the help of social services. This doubt should have been resolved in favor of the mother.

C.A.M.C. always tried to ensure that her daughter's needs would be provided for. At those times that C.A.M.C. was unable to provide for her daughter's needs, she was able to recognize her limitations and ask for the

assistance she needed. She placed C.R.C. with G.M., the paternal aunt, when she felt she was unable to provide for her. When G.M. contacted her regarding the return of C.R.C., C.A.M.C. made arrangements to ensure that she could provide for her daughter's needs. The State did not carry its burden in proving that C.R.C. was a deprived child at the time of the trial.

In a case very similar to this one, In Interest of L.N., 319 N.W.2d 801 (N.D. 1982), the trial court's order terminating parental rights was reversed. The mother in that case had limited intelligence, functioning at a "borderline defective range" and was the subject of numerous abuse and neglect reports. Id. at 805. The court recognized that the record in that case demonstrated deficiencies in her parenting skills which indicated a continuing need for assistance from the organizations she had received support from in the past. The court went on to indicate that it would be unfortunate if those organizations simply gave up and refused to assist her anymore. Id. The mother in that case generally cooperated with those organizations and although her progress was "painfully slow", the record did not establish that the child was deprived. Id. at 806.

**2. Is the Alleged Deprivation Likely to Continue?**

**a. Evidence of Future Deprivation.**

The State has also failed to prove by clear and convincing evidence that the deprivation they allege is likely to continue or will not be remedied. "Evidence of

past or present deprivation . . . is not alone sufficient to terminate parental rights, rather there must be prognostic evidence." In Interest of L.F., 580 N.W.2d 573, 578 (N.D. 1998). Prognostic evidence is "evidence that forms the basis for a reasonable prediction as to future behavior." McBeth v. M.D.K., 447 N.W.2d 318, 321 (N.D. 1989). "Prognostic evidence must demonstrate the parent is presently unable to provide physical and emotional care for the child, with the aid of available social agencies if necessary, and that this 'inability to care for the child would continue for sufficient time to render improbable the successful assimilation of the child into a family if that parent's rights were not presently terminated.'" In Interest of L.F., supra; citing In Interest of J.L.D., 539 N.W.2d 73, 75 (N.D.1995).

**b. Impact of Willingness to Participate with Social Services.**

In In the Interest of Z.R., 1999 N.D. 214, 602 N.W.2d 723, this Court upheld a district court ruling that the State failed to prove by clear and convincing evidence that the causes and conditions of deprivation were likely to continue if the children in that case were returned to their parents. One of the children was the victim of significant physical abuse by his parents, resulting in numerous bone fractures and other serious injuries. There was testimony about the mother's personality disorders including a lack of empathy for her children and the existence of physical abuse between the parents. However, the parties were willing to cooperate with social services to improve their parenting skills and therefore the Supreme Court

agreed that the State had not carried its burden to show the causes and conditions of deprivation would continue. The case was remanded with instructions that the District Court monitor the parties' parenting for a period of two years. Then if the parties' failed in that case, the court pointed out that termination or other appropriate proceedings would be initiated. Id. at 729.

The parents in In the Interest of Z.R. had abused at least one of their children. The allegations in this case are nowhere near as serious. Despite the fact that the parents in that case had done significant physical harm to their child, they were given a second chance because they were willing to work with social services. C.A.M.C. has demonstrated the same willingness to work with social services and she should also be given another chance.

**c. Impact of Positive Changes.**

C.A.M.C.'s life now is far different from what it was when she was evaluated by Dr. Molstre and when she was living in Wilkin and Traverse Counties. The most significant of those changes is her divorce from S.M.. It was indicated several times at the hearing of this matter that there was a great deal of marital stress which caused problems in the parties' ability to parent effectively. Dr. Molstre testified that C.A.M.C.'s tests results were impacted by the stress of her relationship with S.M., and it was those results on which he bases his conclusions.

The Traverse County Social Services workers identified marriage and finances as the major sources of stress in C.A.M.C. and S.M.'s lives during the time they were in Traverse County, Minnesota. C.A.M.C.'s marriage to S.M. is over and she has a job. The two major sources of stress in her life have been removed. The changes put C.A.M.C. in a better position to succeed as a parent.

If the court finds there is sufficient evidence to find that C.R.C. is a deprived child, there is no evidence to support that the alleged deprivation will continue. There is no evidence that with some assistance C.A.M.C. could not accomplish the things she needs in order to provide an adequate home for C.R.C. in the future.

The trial court in In Interest of J.N.R., 322 N.W.2d 465 (N.D. 1982), found the children to be deprived based on: the fighting between the parents, filthy living conditions in the family home, the mother's drug problem, and the father's criminal record and alcohol problems. Id. at 468. In that case, those conditions, with the exception of the father's criminal record and alcohol problem, had been remedied. The Court recognized that the State had failed to establish by clear and convincing evidence that the conditions and causes of deprivation were likely to continue or would not be remedied, as the parents were divorced, the mother received custody of the children, and she had greatly improved her life.

The court in In Interest of M.M.C. reversed a finding of deprivation by the trial court as there was a reasonable likelihood that the mother was capable of providing for her daughter after making many improvements in her life. The mother's success in that case was heavily dependant upon the assistance she would receive from social services and others. In Interest of M.M.C., 277 N.W.2d 281, 286 (N.D. 1979).

Where the likelihood exists that a parent may be capable of providing for the necessary care and support of her child, the court cannot allow the continued removal of the child from the parent's custody. In Interest of M.M.C., supra.

Does the fact that C.A.M.C. needs some assistance mean that she isn't entitled to an opportunity to raise her own child? Her limitations do not disqualify her from parenting. "[P]rognostic evidence must show that the parent is presently unable to supply physical and emotional care for the child, **with the aid of available social agencies if necessary**, and that this inability of a parent will continue for time enough to render improbable the successful assimilation of the child into a family if the parent's rights are not terminated." In Interest of J.A.L., 432 N.W.2d 876,878 (N.D. 1988) (Emphasis Added). The Petitioner has not demonstrated that C.A.M.C. with the aid of social services cannot provide for C.R.C.'s care, **and** that the inability will continue for so long that the child can't be assimilated into the family.

### d. Lack of Follow Through By Richland County

There was an Order for Further Shelter Care extended on the 8th day of November, 1999, in which it was ordered that "Richland County Social Services shall make reasonable efforts to transfer foster care to Cass County, North Dakota, the County in which the mother currently resides". (Appendix p. A-6.) Rachel Gerber, the foster care coordinator with Richland County Social Services, indicated that she made no attempt to locate a foster home in Cass County, that she was not aware of any attempts made by others, and that she wasn't even aware of the Order requiring that she do so. (Transcript page 157, line 6 - 22.)

Dr. Molstre provided Richland County with a roadmap as to how they could help C.A.M.C. in his 1999 report. He stated that frequent therapy contacts would be helpful, he also recommended parenting skills training, marriage counseling and assistance in building an emotional support network. All of which he indicated would require the assistance of the County. (Transcript page 30, line 14, page 33, line 1.) However, the County did nothing with these suggestions and proceeded head first into the termination process without first extending the assistance recommended. The above information indicates that termination was the only goal in this case.

In In the Interest of W.E., this court referred to the fact that the referee in that case did not consider that social services made no effort to implement the

recommendations rendered by the counselor. Supra at 499. The order terminating parental rights in that case was reversed. In the Interest of W.E. is a case very similar to this case. The State was not able to show that the alleged deprivation was going to continue, when the mother, who had limited intellectual capacity, had the assistance of outside sources.

**3. Is C.R.C. Suffering or Will She Suffer?**

A showing of parental misconduct without a showing that there is a resultant harm to the child is not sufficient. In Interest of J.N.R., supra at 469. Evidence must be presented regarding the impact the alleged conduct has had on the child.

We heard testimony from Dr. Geislehart about C.R.C.'s problems adapting to changes in her life and the fact that she has exhibited some acting out behaviors. These problems are likely the result of her having to deal with changes in her life including: a rejection by her aunt after being told she was going to be adopted, changes in her school schedule, placement in foster care, changes in her foster family dynamics, and being denied almost all contact with her mother. C.R.C. has several physical and mental conditions which make it difficult for her to adapt to change. There have been numerous changes in her life, very few of which even involve C.A.M.C.. We cannot say that C.R.C. is suffering as a result of any alleged deprivation caused by C.A.M.C.

What the record in this case does show is that at any time there was a potential threat to C.R.C.'s well being, C.A.M.C. was able to recognize that danger and either asked for help or sought an alternative placement for her. With her track record, it would be difficult to say that the State met its burden in proving that C.R.C. has or would suffer in C.A.M.C.'s custody.

The evidence presented indicates that there is a bond between C.A.M.C. and C.R.C. which was evident when the two were together for visitation. C.R.C. should have an opportunity to be raised by her natural mother, and C.A.M.C. should be allowed an opportunity to demonstrate what kind of a parent she can be to C.R.C.

G.M. testified that she had every intention to return C.R.C. to her mother and would have done so, had Richland County Social Services not interfered. (Transcript page 61, line 14, page 62, line 6.)

This Court has expressed its reluctance "to remove a child from its parents unless diligent effort has been made to avoid such separation **and** unless it is necessary to prevent serious detriment to the welfare of the child" In the Interest of M.M.C., 277 N.W.2d 281, 286 (N.D. 1979); citing Jacobson v. V.S., 271 N.W.2d 562 (N.D. 1978) (Emphasis added.). There have been no efforts on the part of Richland County Social Services to avoid the separation of C.R.C. from her mother, clearly falling short of the "diligent effort" standard provided in M.M.C..

"It is not enough to deprive the parents of custody that their home is not the best, or even that they are not the best parents that could be offered to the child, so long as the child does not suffer physical or moral harm, or lack of food or clothing." In the Interest of M.M.C., 277 N.W.2d 281, 286 (N.D. 1979). There is no doubt that there is a better home somewhere for C.R.C. and that someone else could do a better job of parenting, but as the Court has said in In the Interest of M.M.C., that is not enough.

## CONCLUSION

The Petitioner has failed to meet its burden in this case. The State has not proven that C.R.C. is a deprived child, that the conditions and causes of deprivation are likely to continue, nor has it shown that C.R.C. is suffering or will suffer serious physical, mental, moral or emotional harm if C.A.M.C.'s parental rights are not terminated in this case. The State was unable to prove all three of these elements by clear and convincing evidence.

Termination of parental rights should be reserved for only the gravest of situations. Where there remains any doubt, that doubt must be resolved in favor of the natural parent. The trial court's decision to terminate C.A.M.C.'s parental rights should be reversed.

Respectfully submitted this 6th day of February, 2001.

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