

IN THE SUPREME COURT
 STATE OF NORTH DAKOTA

IN THE INTEREST OF J.B., A CHILD.

| | | |
|---|---|-----------------------------------|
| Ashley Lill, L.S.W., |) | |
| Cass County Social Services |) | |
| |) | |
| PETITIONER/APPELLEE, |) | |
| |) | Supreme Court No. 20170460 |
| v. |) | |
| |) | |
| J.B., child; Lisa Borseth, Guardian ad Litem, |) | |
| |) | Cass County No. 09-2017-JV- 00463 |
| RESPONDENTS, |) | |
| |) | |
| and |) | |
| |) | |
| N.B., father, and J.G., mother, |) | |
| |) | |
| RESPONDENTS.APPELLANTS. |) | |
| |) | |

APPELLEE'S BRIEF

APPEAL FROM THE JUVENILE FINDINGS OF FACT AND ORDER FOR
 DISPOSITION (IN LEGAL CUSTODY), SCOTT GRIFFETH, JUDICIAL REFEREE,
 PRESIDING, EAST CENTRAL JUDICIAL DISTRICT
 DATED DECEMBER 6, 2017.

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| <u>Interest of T.J.O.</u> , 462 N.W.2d 631 (N.D. 1990). | ¶25 |
| <u>In the Interest of T.K.</u> , 2001 ND 127, 630 N.W.2d 38 | ¶14 |
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[¶2] ISSUE PRESENTED

- I. Whether clear and convincing evidence of deprivation was presented to the trial court where the mother's parental rights were involuntarily terminated on two other biological children less than fifteen months prior to removal of a newborn, there was a history of child protection issues dating back ten years and the mother had not done recommended services to address the deprivation of her older children, and the court terminating her rights specifically found that the mother lacked insight into emotionally and physically abusive behaviors?

STATEMENT OF FACTS

[¶3] J.G. is the mother of J.B. N.B. is the father of J.B.

[¶4] J.G.'s rights to two other biological children were terminated in Northeast Central Judicial District Court in Grand Forks North Dakota on May 12, 2016, following a contested trial. J.G.'s sister's rights to four of her children were also terminated in that same proceeding.

[¶5] J.G. was convicted of four felony child neglect and abuse charges on October 23, 2014, relating to the above referenced children.

[¶6] In making its findings terminating J.G.'s parental rights to her two children, the District Court found that abuse and neglect of the six children was videotaped and no adult present, including J.G., took steps to protect the children from the abuse. The Court specifically found that J.G. was present during the videotaping and "did nothing" to stop either the abuse or the videotaping. The Court further found that when Grand Forks County Social Services took custody of the children, they had head lice, tuberculosis, dental issues, psychological issues and anxieties. The Court noted that Grand Forks County Social Services had made many interventions with the family and that over a six year period, "J. did not avail herself of therapy, counseling or any of the services which GFCSS had

recommended to her.” The Court noted that J. was in required residential chemical dependency treatment and took parenting classes while incarcerated but her statements continued to show a” lack of understanding of parent-child relationships and consequences of parental behaviors, particularly emotionally and physically abusive behaviors.” [Emphasis added.] The Court concluded J.G. had not “demonstrated any long-term, sustainable changes.”

[¶7] On February 14, 2017, J.G. was charged with failing to register as an offender against children. On September 18, 2017, she pled guilty to the charge and was sentenced to serve 90 days, making herself unavailable to parent her newborn.

[¶8] On November 30, 2017, J.B. was adjudicated to be a deprived child and placed into the legal custody of Cass County Social Services for a period of nine months. N.B. was aware of the child protection history and termination of J.G.’s parental rights to her two other children. N.B. is a relative on one of J.G.’s children to whom her rights were terminated and had knowledge of the child protection proceedings and the termination of parental rights. At the time of trial, N.B. stated that he planned to continue his relationship with J.G., and parent the child J.B., together with J.G. N.B. stated to the case manager that he had no concerns about J.G.’s ability to provide care for N.B.

ARGUMENT

[¶9] A deprived child is defined as a child who is ... “without proper parental care or control subsistence, education as required by, or other care or control necessary for the child’s physical, mental, emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child’s parents, guardian, or other custodian.” N.D.C.C. §27-20-02(8)(a).

“The definition of a deprived child is broad enough to encompass a child whose parent, while never having had the opportunity to care for the child, is shown to be presently incapable of providing proper parental care for the child.” Interest of T.J.O., 462 N.W.2d 631 (N.D. 1990).

[¶10] In March, 2004, N.D.R.Civ.P 52(a) was amended to provide that the findings of fact in a juvenile matter should not be set aside unless they are clearly erroneous. Interest of D.D., 2006 ND 30, ¶18, 708 N.W.2d 900. The party appealing a juvenile court decision has the burden of showing that the findings of fact are clearly erroneous. Striefel v. Striefel, 2004 ND 210, ¶8, 689 N.W.2d 415. On review, the evidence is viewed in the light most favorable to the findings without reweighing the evidence or reassessing the credibility if there is evidence supporting the findings in the record. Id.

I. Whether clear and convincing evidence of deprivation was presented to the trial court where the mother’s parental rights were involuntarily terminated on two other biological children less than fifteen months prior to removal of a newborn, there was a history of child protection issues dating back ten years and the mother had not done recommended services to address the deprivation of her older children, and the court terminating her rights specifically found that the mother lacked insight into emotionally and physically abusive behaviors?

[¶11] Appellants argue that “the child has not suffered any real harm” and “no evidence of real physical or emotional harm was presented at trial,” similar to the argument made in In the Interest of D.M., 2007 ND 62, 730 N.W.2d 604, ¶24, The respondent mother in In the Interest of D.M. argued that her past behavior was repeated over and over as the cause for concern.” In the present case, Court had evidence that J.G.’s failure to follow simple required steps for her probation led to a 90 day sentence. The Court also had extensive evidence from the social workers in Grand Forks County about the history of

prior child protection concerns and the level of physical and emotional abuse as well as neglect the six children living in the home shared with J.G., her partner and her mother. The Court heard testimony about J.G.'s denials of her participation and involvement in the abuse when there were conflicting statements in the findings of the District Court terminating her rights, as well as an extensive history of non cooperation in services.

[¶12] This is not a case where a teen age mother leaves the home of her parent with her new born. In the Interest of R.S., 2010 ND 147, 787 N.W.2d 277. This is a baby about to be in the custody of someone convicted of felony child abuse and whose rights to two other biological children are involuntarily terminated within the prior fifteen months. Appellant fails to note that two justices dissented in R.S., and would have found that the baby was deprived. *See In the Interest of R.S.*, 2010 ND 147, ¶19-29, Mary Muehlen Maring and Dale V. Sandstrom, dissenting. The evidence presented in In the Interest of R.S. was a much finer distinction than the evidence presented to the Court in this case.

[¶13] The Court in the present case also heard evidence raising a concern that a parent who knows of a prior involuntary termination of parental rights, has family ties to that situation, yet asserts he wants to continue a relationship with the mother and parent with her. *See In the Interest of B.J.K.*, 2005 ND 138, 701 N.W.2d 924, ¶15, (failure of one parent to separate from the other parent justifies termination of a parental relationship if the one spouse creates a dangerous environment for the child) citations omitted.

[¶14] In In the Interest of T.K., 2001 ND 127, 630 N.W.2d 38, this Court held that a court need not await a tragic event before terminating a parent's rights, especially where abuse has occurred to other siblings. Interest of T.K., at ¶17 (Citations omitted). This Court cited case law from other jurisdictions for the position that a parent does not have

the “privilege of inflicting brutal treatment upon each of his children in succession before they may individually obtain the protection of the state.” In the Interest of K.B., 2011 ND 152, ¶19, 801 N.W.2d 416, citing In re T.Y.K., 598 P.2d 593, 595 (Mont. 1979).

CONCLUSION

[¶15] For the foregoing reasons, the Appellee respectfully requests that this Court affirm the Juvenile Findings of Fact and Order for Disposition (In Legal Custody), dated December 6, 2017.

Respectfully submitted this 7th day of May, 2018.

_____/s/ Pam H. Ormand_____
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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

IN THE INTEREST OF J.B., A CHILD

Ashley Lill, L.S.W.,

PETITIONER/APPELLEE,

v.

J.B. a child,

RESPONDENT

and

J.G., mother, N.B., father,

RESPONDENTS/APPELLANTS.)

Supreme Court No's. 20170460

Cass County No's. 09-2017-JV-00463

AFFIDAVIT OF SERVICE

[¶1] Nicholas Benjamin, being first duly sworn on oath, deposes and states that he is of legal age and that on this date I served the following document:

1. APPELLEE'S BRIEF

Upon the individuals listed below by sending electronically to the email address given:

Daniel Gast
Attorney at Law
GastLawOffice@gmail.com

Jay Greenwood
Attorney at Law
jgreenwood@jrmlawfirm.com

Lisa Borseth
Lay Guardian ad Litem
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Christopher Jones
Executive Director of NDDHS
chrisdjones@nd.gov

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

[¶3] And, being duly sworn on oath, deposes and states that on April 23, 2018, he served the documents mentioned above on the following person(s) by placing true and correct copies of the same in envelopes addressed as follows:

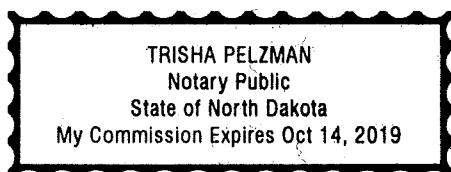
Spirit Lake Tribe
c/o Marie Martin, ICWA Director
PO Box 356
Fort Totten, ND 58335

Dated this 7th day of May, 2018.



Nicholas Benjamin

Subscribed and sworn to before me on this 7th day of May, 2018.





Notary Public