

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

**IN THE INTEREST OF M.S.H., A CHILD.
IN THE INTEREST OF C.H.H., A CHILD.
IN THE INTEREST OF A.R.G., A CHILD.**

Grand Forks County Social Services,)	
)	Supreme Court No. 20180172
Petitioner and Appellee,)	Supreme Court No. 20180173
)	Supreme Court No. 20180174
vs.)	
)	District Court No. 18-2017-JV-00132
F.R.O., Biological Mother,)	District Court No. 18-2017-JV-00133
)	District Court No. 18-2017-JV-00134
Respondent and Appellant,)	

ON APPEAL FROM JUVENILE COURT, GRAND FORKS COUNTY
FEBRUARY 2, 2018
WITH THE DISTRICT COURT
NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE LOLITA HARTL ROMANICK PRESIDING.

BRIEF OF APPELLEE

Jacqueline A. Gaddie (#04962)
Assistant State's Attorney
Grand Forks County
P.O Box 5607
Grand Forks, ND 58206
(701) 780-8281
E-Service Address: sasupportstaff@gfcounty.org

Corey Haller
Senior Legal Intern
Certified under the Rule for
Limited Practice of Law by
Law Students (On-Brief)

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STATEMENT OF THE ISSUES

- I. The Juvenile Court did not err in finding that there was evidence to support the termination of F.R.O.'s parental rights as there was sufficient evidence presented to support the Court's findings.**
- II. The Juvenile Court did not err in finding that there was evidence to support the State made reasonable efforts to keep the family together.**

STATEMENT OF THE CASE

[¶1] This appeal is from the Order Terminating Parental Rights by Grand Forks County Juvenile Court, terminating the parental rights of F.R.O. to her children M.S.H., C.H.H., and A.R.G. (File 18-2017-JV-00132, Register of Actions¹ at Index 184; File 18-2017-JV-00133², Register of Actions at Index 178; File 18-2017-JV-00134, Register of Actions³ at Index 171).

[¶2] On April 20, 2017, a Petition for Involuntary Termination of Parental Rights was filed. (File 132 at Index 001; File 133 at Index 001; File 134 at Index 001). The petition to terminate was tried on February 2, 2018, before the Honorable Lolita Hartl Romanick, Judge of the District Court. (See 02-02-18 Trial Recording (“Tr.”) at 00:00:50).

[¶3] On April 3, 2018, the Court’s Findings of Fact and Order Terminating Parental Rights were filed. (File 132 at Index 182); (File 133 at Index 176); (File 134 at Index 169)⁴. On April 4th, 2018, the Judgment Terminating Parental Rights of F.R.O. was filed. (File 132 at Index 184); (File 133 at Index 178); (File 134 at Index 171).

[¶4] The Respondent, F.R.O., filed a Notice of Appeal on May 7, 2018, in each of the above-mentioned cases. (File 132 at Index 185); (File 133 at Index 179); (File 134 at Index 172).

¹ File 18-2017-JV-00132, Register of Actions: hereafter “File 132”.

² File 18-2017-JV-00133, Register of Actions: hereafter “File 133”.

³ File 18-2017-JV-00134, Register of Actions: hereafter “File 134”.

⁴ (File 132, Index 182); (File 133, Index 176); (File 134, Index 169): hereafter “Order”.

STATEMENT OF THE FACTS

[¶5] On November 18, 2014, Grand Forks County Social Service Center (“GFCSSC”) received a report of suspected child abuse and neglect regarding the children M.S.H. and C.H.H. (Order at ¶19(a, b)). The report indicated that M.S.H. and C.H.H. were left unsupervised in a vehicle outside of Hugo’s on South Washington Street in Grand Forks, North Dakota. (Tr. at 00:09:05). It was 13 degrees outside and the youngest child, C.H.H., was only wearing a diaper. (Tr. at 00:09:15; See also Order at ¶19(a)). Grand Forks County Police determined that M.S.H. and C.H.H. had been left alone in the vehicle for approximately one (1) hour. (Order at ¶19(a)). During that time, C.H.H. had been opening and closing the door to the vehicle while only wearing a diaper in the 13 degree weather. (Order at ¶19(a)). A check on the driver of the vehicle revealed that it was F.R.O. and that she had an active warrant out for her arrest. (Order at ¶19(a)). F.R.O. was arrested and the children were transported to their grandmother’s home in Crookston, Minnesota. (Order at ¶19(a)).

[¶6] The children’s mother, F.R.O., testified she had been doing laundry ran to Hugo’s to and purchase food for the children while they were left in the vehicle. (Order at ¶19(a)). F.R.O. claimed that the children were only left in the vehicle for a few minutes. (Order at ¶19(a)). Nevertheless, the juvenile court found that leaving these children alone in a vehicle and improperly dressed for the weather was unquestionably inappropriate. (Order at ¶19(a)).

[¶7] While investigating the report, further concerns developed regarding the children’s wellbeing. (Tr. at 00:09:45). There were concerns that the children were exposed to drugs, drug paraphernalia, and drug activity. (Tr. at 00:11:00). It had been

reported that F.R.O. used methamphetamine in front to her children, and there were concerns she had picked up M.S.H. by her hair and threw her across the room. (Order at ¶19(b)). There were additional concerns for the children's supervision: further investigation revealed that F.R.O. had asked her mother to watch the children so that she could go to Minneapolis to "score some shit." *Id.* Moreover, during this investigation, F.R.O. had a warrant out for her arrest and was later incarcerated. (Tr. at 00:11:08).

[¶8] At the time of the report in Grand Forks County, Polk County also had an open assessment with respect to F.R.O. and her children. (Order at ¶19(b)). Through further investigation, M.S.H.:

[D]isclosed that F.R.O. would leave her and C.H.H. alone in different hotel rooms in Grand Forks and go to the bar to find a new boyfriend to bring home to have sex with . . . [Described the] sounds her mother made during sex and words that [F.R.O.] and her male friends called each other . . . [and] described her mother having sex in their vehicle while she and [C.H.H.] were supposed to be asleep in the front seat.

(Order at ¶19(b); see also Tr. at 00:11:25). Polk County Social Services also reported:

[P]rior reports of concerns regarding supervision of the children and physical abuse by [C.H.]. There were also allegations of neglect due to drug usage and driving under the influence while the children were inside the vehicle.

(Order at ¶19(d)).

[¶9] Following the November 18, 2014, report of child abuse and neglect, GFCSSC completed a Child Protection Service Assessment Report; a finding of maltreatment in the form of physical neglect and psychological maltreatment was made. (Tr. at 00:12:10). The basis of the physical neglect finding was due to F.R.O.'s supervision and overall care of the children with the specific examples of leaving the children in the car unsupervised and improperly dressed for the weather and leaving the

children alone in hotel rooms for unknown periods of time. (Order at ¶19(c); see also Tr. at 00:12:25). The basis of the psychological maltreatment finding was due to the children's exposure to drug use, drug activity, and F.R.O. having sexual intercourse in the presence of the children. Id.

[¶10] On January 29, 2015, there was a Temporary Custody Order granted to Social Services, but the children could not be located. M.S.H. and C.H.H. were taken into custody on February 9, 2015. (Tr. at 00:10:20). When the children were found on February 9, 2015, they were located with their grandmother—not with F.R.O. (Tr. at 00:11:38). M.S.H. was four (4) years old when she entered care, shortly turning five (5) thereafter, and C.H.H. was one (1) year old when he entered care. (Tr. at 00:40:20). At the time of the termination of parental rights trial on February 2, 2018, the children had been in continuous care for 1089 days. (Tr. at 00:36:40). This time amounted to thirty-six (36) percent of M.S.H.'s life and sixty-three (63) percent of C.H.H.'s life. (Tr. at 00:37:18). Since M.S.H. and C.H.H.'s time in GFSCCS's custody, there have been no trial home placements with the mother, F.R.O. (Tr. at 00:37:50). The biological father of the above-named children is C.H. (Order at ¶13). At the time of the February 2, 2018, trial, it was believed that he was incarcerated in the Tri-County Correctional Center in Crookston, MN. Id. Additionally, there have been no trial home placements with the father, C.H. (Tr. at 00:37:50).

[¶11] On August 19, 2015, GFCSSC received another report of suspected child abuse and neglect indicating that there were concerns that F.R.O. was smoking marijuana while pregnant with A.R.G—who would be born on February 14, 2016. (Tr. at 00:13:30; see also Order at ¶19(e); Order at ¶11). Because F.R.O. was pregnant, a full assessment

was not completed, and the information was forwarded on to the case manager to address risks and concerns. (Tr. at 00:14:24; see also Order at ¶19(e)). F.R.O. later admitted that she was using methamphetamine while pregnant with A.R.G.; F.R.O. stated it was a reduced amount for her at one (1) to two (2) grams per day. (Order at ¶19(i) see also Tr. at 00:00:00).

[¶12] A deprivation hearing was held on September 26, 2015, with respect to M.S.H. and C.H.H; F.R.O. and C.H. were present. (Order at ¶19(q)). The parties stipulated to the finding of deprivation of M.S.H. and C.H.H. and to continue their placement in foster care for a period of one (1) year from February 9, 2015. Id. As of the juvenile court's Order, F.R.O. last saw M.S.H. and C.H.H. in September 2015; as of March 31, 2018, F.R.O. had been incarcerated for twenty-six (26) of the thirty-six (36) months M.S.H. and C.H.H. had been in the care of GFSCCS. (Order at ¶17).

[F.R.O.] had been evaluated at Northeast Human Services in 2015 and was recommended for intensive outpatient services due to her diagnoses for severe amphetamine use disorder, severe opioid use disorder, and moderate cannabis use disorder. She did not follow through with that treatment. Consequently, in August, 2015, a meeting was set to address these continuing concerns. [F.R.O.] was late. Subsequently, she did not show for meetings; she then stopped attending at all, so she did not finish the program.

(Order at ¶17).

[¶13] On December 12, 2015, F.R.O. was incarcerated and placed at the Woman's Correctional Facility in Shakopee, Minnesota. (File 132 at Index 184 p. 5; File 133 at Index 178 p. 5; File 134 at Index 171 p. 5). Her sentence was for 86 months with credit for 369 days. Id.

[¶14] On February 1, 2016, a Permanency Hearing was held—F.R.O., C.H., and A.G. were not present. (Order at ¶19(r)). At that time, an Order of Disposition was entered extending the care, custody and control of M.S.H. and C.H.H. for no more than twelve (12) months from February 1, 2016. Id.

[¶15] On February 14, 2016, A.R.G. was born. (Order at ¶11). At the time of A.R.G.'s birth, F.R.O. was incarcerated. (Order at ¶17). The biological father of A.R.G. is C.H. (Order at ¶13). The legal father of A.R.G. is A.G, but he has been excluded as the biological father through DNA testing. (Order at ¶14).

[¶16] On February 15, 2016, GFCSSC received another report of suspected child abuse and neglect with respect to the newborn, A.R.G. (Tr. at 00:15:20). The report indicated that F.R.O. tested positive for amphetamines before delivering A.R.G. (Tr. at 00:15:25; see also Order at ¶19(f)). A.R.G. tested positive for amphetamine, methamphetamine, and tetrahydrocannabinol (THC). (Tr. at 00:15:52). As a result, a Temporary Custody Order was issued. (Tr. at 00:16:46). GFCSSC intervened and A.R.G. was taken into custody following A.R.G.'s release from the hospital—two days after her birth. (Tr. at 00:16:30; File 132 at Index 184 p. 5; File 133 at Index 178 p. 5; File 134 at Index 171 p. 5). A.R.G. has not had any trial home placements with any of her parents since being taken into custody. See Order; supra ¶¶15, 16; infra ¶¶17, 18, 23, 24.

[¶17] On April 13, 2016, a Juvenile Deprivation Hearing was held regarding A.R.G.—F.R.O., C.H., and A.G. were not present. (Order at ¶19(s)).

Based upon the testimony provided, the [juvenile] court found that [A.R.G.] was a deprived child, that it was contrary to her welfare to return to the parental home, and that she should remain in the care of Grand Forks County for no more than one year from February 16, 2016.

Id.

[¶18] On December 13, 2016, a Permanency Hearing was held regarding M.S.H., C.H.H., and A.R.G. (Order at ¶19(t)). F.R.O. appeared without counsel; neither father was present. Id. “Upon stipulation from [F.R.O.], the court found the children continued to be DEPRIVED and that it continued to be contrary to the children’s welfare to return to the parental home.” Id. “As a result, an Order was issued maintaining the children in care for no more than twelve (12) months from December 13, 2016.” Id.

[¶19] When M.S.H. came into care:

[M.S.H.] had a speech delay and head lice. Additionally, she had an abscessed tooth that required dental work. Once [M.S.H.] was seen by a dentist, it was determined that she needed to have seven teeth pulled and the rest required capping. [M.S.H.] also required four immunizations that had been missed.

[F.R.O.] testified that she had obtained dental care for the children but, because they did not sit still, no dental work could be performed until they got older . . .

While in foster care, [M.S.H.] displayed sexualized behavior and placed her naked dolls in sexual positions. [M.S.H.] also participated in self-stimulation and attempted to snort Play-Doh up her nose. [M.S.H.] also talked about choking a dog and stabbing a dog and other people. [M.S.H.] was required to repeat Kindergarten while in foster care due to a lack of understanding of the concepts of colors, shapes, numbers, and letters. Following placement in to foster care, [M.S.H.] was diagnosed with Acute Post-Traumatic Stress Disorder. [M.S.H.] required speech therapy, occupational therapy, and physical therapy to address her delays.

(Order at ¶19(g); see also Tr. at 00:23:39-00:26:54, 00:37:57-00:48:15; 02:23:35).

[¶20] As a result of her inadequate physical and emotional care, M.S.H. has been in play therapy during her entire time in Waseca, Minnesota, as well as six months in Grand Forks to address these issues. (Tr. at 00:46:01). M.S.H. is currently eight (8) years of age, having been born on February 18, 2010. (Order at ¶7). As of February 2, 2018,

M.S.H. is staying with her paternal grandparents in Waseca, Minnesota. (Tr. at 00:46:34). When M.S.H. came into care, she needed two doses of antibiotics for two tooth infections. (Tr. at 00:39:50). F.R.O. testified that M.S.H. would not sit still for dental work and that is why she had tooth infections and extensive dental work required. (Order at 19(g)). The juvenile court did not find F.R.O.'s explanation for M.S.H.'s lack of dental care as credible. Id. Also of concern, M.S.H. asked her foster parent if the foster parent would like to touch M.S.H.'s "pee pee." (Tr. at 00:38:50). M.S.H. has also been diagnosed with a speech delay with expressive and receptive language. (Tr. at 00:45:43). The State's witnesses testified that M.S.H. is still having struggles—occasionally cycling into behaviors where she's lying, or not following directions, or yelling at the grandparents that they are not in charge of her or that she does not have to listen to them. (Tr. at 00:46:47).

[¶21] At the time of C.H.H.'s removal:

[C.H.H.] was experiencing global delays, which required occupational therapy, physical therapy and speech therapy. [C.H.H.] also required six immunizations to get up-to-date and required orthopedic care for his feet. [C.H.H.] was one year of age when he came into care. He had decay on his front teeth to the point that he was unable to bite with his front teeth. As a result, C.H.H.'s speech was impaired as was his ability to eat. [C.H.H.]'s ability to chew food was greatly impacted by his dental decay and the pain resulting from it. Additionally, [C.H.H.] had severe attachment issues and would frequently tantrum with inconsolable crying. He did not know how to play with toys and experienced frequent night terrors. Since his placement into foster care, [C.H.H.] has thrived.

(Order at ¶19(h); see also Tr. at 00:23:39-00:27:14, 00:37:57-00:48:15; 02:23:35). The State's witnesses also testified that C.H.H. wouldn't bite with his front teeth, he could cry when trying to brush his teeth, and he would squirm when his face was wiped in that

area. (Tr. at 00:41:43). To treat the dental issues, C.H.H.'s foster parents would put fluoride on his teeth nightly, and he wouldn't bite with those teeth. (Tr. at 00:42:50). Given the young age and the extent of dental work required, again, the juvenile court found that F.R.O. did not provide a credible explanation for C.H.H.'s extremely poor dental health. (Order at ¶19(h)). Additionally, the State's witnesses testified that C.H.H. was behind on 16 immunizations as well as the flu vaccination. (Tr. at 00:43:58). Regarding the attachment issues, the State's witnesses testified that when C.H.H. entered care he would seek comfort from complete strangers; when he would be separated from these strangers, he would tantrum, kick, scream, cry, turn red, and sweat, thus confirming abandonment and attachment issues. (Tr. at 00:44:58).

[¶22] The State's witnesses testified that C.H.H. has been diagnosed with speech and language delays. (Tr. at 00:47:49). Ms. Suedel stated that C.H.H. has otherwise improved and currently has little to no ongoing issues. (02-02-18, Tr. 00:47:14). C.H.H. is currently five (5) years of age, having been born on April 27, 2013. (Order at ¶8). As of February 2, C.H.H. is staying with his paternal grandparents in Waseca, Minnesota. (Tr. at 00:46:34).

[¶23] When A.R.G. was born:

It was [A.R.G.] it was determined she had received no prenatal care and had experience significant prenatal drug exposure. While [F.R.O.] disputed the lack of prenatal care, she provided no evidence to the contrary. [A.R.G.] was born with methamphetamine, amphetamines and THC in her meconium and experienced sucking issues at the time of her birth. She was also born with a capillary hemangioma beneath her right eye that has required significant and ongoing medical attention. Felicia admitted that she had reduced her methamphetamine usage while pregnant with [A.R.G.] to one or two grams per day.

(Order at ¶19(i); see also Tr. at 00:23:39-00:27:14, 00:37:57-00:50:30; 02:23:35).

Regarding the ocular hemangioma the State's witnesses testified that this condition develops as a bulge under the eye causing a purple discoloration—looking as if A.R.G. has a marble under her eyelid. (Tr. at 00:48:50). When A.R.G. cries, it looks like the ocular hemangioma is growing. (Tr. at 00:49:13). This condition has required trips to the Mayo Clinic, and A.R.G. has also received care in Grand Forks and in Minnesota. (Tr. at 00:49:19). As a result of the condition, A.R.G. has used a patch to correct an astigmatism, has received steroid injections, and has used eye drops, cream, and oral medicine for her eye. (Tr. at 00:49:33).

[¶24] The State's witnesses testified that A.R.G., aside from her ocular hemangioma, has little to no ongoing issues. (Tr. at 00:00:00). A.R.G. is currently two (2) years of age, having been born on February 14, 2013. (Order at ¶9). As of February 2, 2018, A.R.G. is staying with her paternal grandparents in Waseca, Minnesota. (Tr. at 00:46:34).

[¶25] Regarding F.R.O., the juvenile court found:

[F.R.O.] has a long history of drug abuse and failed treatments that have resulted in a significant criminal history in Minnesota and North Dakota. Grand Forks County has five extraditions on file for [F.R.O.] to Polk County. When M.S.H. and C.H.H. came into care, [F.R.O.] was incarcerated. In the 1,089 days, or 36 months, that the children have been in foster care, [F.R.O.] has been incarcerated 26 months of that time. As a result of her significant criminal behavior, [F.R.O.] has voluntarily made herself unavailable to care for her children. At the time of trial, [F.R.O.] was incarcerated in Shakopee Women's Prison. [F.R.O.]'s own testimony indicated that once released in February of 2018, [F.R.O.] would be required to participate in an intensive supervisory program for six months. [F.R.O.] described the program as very strict, structured and includes a 40-hour work week. In addition,

she would be required to work a 12 Step Program, attend individual counseling, and then participate in six additional months of less invasive supervision. If [F.R.O.] fails in this program in any way, she may be returned to prison to complete her sentence . . .

Following the removal of her children from her home, [F.R.O.] was referred through [GFSCCS] for drug screenings through Community Services & Restitution. [F.R.O.] was referred in June of 2015, and her referral was closed two months later for non-compliance. Another referral was made in September of 2015, and her referral was closed shortly thereafter due to non-compliance. [F.R.O.] has been diagnosed with severe amphetamine abuse, severe opiate abuse and moderate cannabis abuse. [F.R.O.] has had criminal charges in Minnesota and North Dakota to include the following charges: Obstruction or Interference with a Peace officer, Controlled Substance Crime in the Fifth Degree – Sale of Marijuana, Controlled Substance Crime in the First Degree – Sale of Methamphetamine, Controlled Substance Crime in the Second Degree – Possession of Methamphetamine, Controlled Substance Crime in the Second Degree – Possession of Methamphetamine, Controlled Substance Crime in the Third Degree – Sale of Methamphetamine, Controlled Substance Crime in the Third Degree – Possession of Methamphetamine, Controlled Substance Crime in the Third Degree – Sale of Methamphetamine, Burglary in the Second Degree – Felony, Felony Theft, Felony Possession of Stolen Property, Felony Failure to Appear for Court, Possession of Methamphetamine – Felony, Possession of Drug Paraphernalia (Methamphetamine), and Fleeing or Attempting to Elude a Police Officer . . .

Additionally, [F.R.O.] has failed to follow through with chemical dependency treatment as required by [GFSCCS] for reunification with her children. A chemical dependency evaluation was completed in 2015 with a recommendation of intensive out-patient treatment. [F.R.O.] entered the STEP Program and left after one (1) day. [F.R.O.] again started outpatient treatment in Waverly, Minnesota, in August of 2016. She testified she had a hard time with transportation and while in treatment, her father was killed in an automobile accident. As a result of this tragedy, she immediately relapsed and failed in her treatment again . . .

(Order at ¶19(j-1); see also Tr. at 00:50:45, 00:58:31-2:19:00). For the February 2, 2018, trial, F.R.O. testified while incarcerated. See (Order at ¶32). The juvenile court recognized that during her recent incarceration, F.R.O. maintained sobriety. However, the juvenile court noted that she had done so in a controlled environment without any of the stresses of daily living in the community, parenting, and employment. (Order at ¶19(l)). The juvenile court additionally noted that F.R.O. had previously completed chemical addiction treatment. (Order at ¶26).

[¶26] The Appellant has stated that there is clear and convincing evidence that her children are deprived based upon her not providing proper parental care for M.S.H. and C.H.H. since she was incarcerated on December 12, 2015, and not having been able to care for A.R.G. since two (2) days after her birth. (Order at ¶24; see also Appellant's Brief at ¶20). F.R.O. stated that prior to being incarcerated, she was "lost, hopeless, in addiction, and had no ambition." (Id., see also Tr. at 01:16:00-01:24-33). She attributed her fall into addiction due to her father's death. (Id., see also Tr. at 01:16:00-01:24-33)

F.R.O. claims to have been the children's primary and only constant caregiver prior to incarceration. However, she also acknowledged that one of her prior significant others had been the primary support for her and their children. Additionally, she acknowledges that she "started dating a man who introduced her to a very negative lifestyle of drug addiction which caused a further spiral of her life.

(Order at ¶25).

[¶27] The juvenile court concluded that, on the whole, throughout the time the children have been in foster care, F.R.O. had been struggling with her addiction issues, failed in her treatment programs, was homeless, unemployed, or incarcerated. (Order at ¶19(l)).

[¶28] At the February 2, 2018 trial, the State's expert witness, Tammy Knudson, testified that M.S.H., C.H.H., and A.R.G. were deprived and will continue to be deprived unless parental rights are terminated. (Tr. at 00:23:32; see also Order at ¶19(o)). The basis for this testimony was supported with facts that demonstrate that all three (3) parents have refused services offered to them. (Order at ¶19(o); see also Tr. at 00:23:37). Ms. Knudson stated that the fact that the children have had continuous foster care since February 9, 2015, and that F.R.O. had limited contact with the children, therefore indicating a disruption in the parent child relationship, was a factor in her conclusion. (Tr. at 00:23:37; see also Order at ¶19(o); supra ¶¶19-27). Moreover, Ms. Knudson testified that there was no indication that any of the parents, F.R.O., C.H., or A.G., would be able to provide a safe, stable home environment for the children. (Tr. at 00:24:24; see also Order at ¶19(o); supra ¶¶19-27). Ms. Knudson explained her reasoning stating that F.R.O. had exposed the children to drugs and alcohol and used methamphetamine while caring for her children and while pregnant with A.R.G., and F.R.O. and C.H. have significant criminal histories that have resulted in their incarceration which has removed them from their ability to parent their children. (Tr. at 00:24:24; see also Order at ¶19(o), supra ¶¶19-27). In addition, Ms. Knudson concluded that the children have suffered as a result of their deprivation. (Tr. at 00:26:05). To support her conclusion, Ms. Knudson cited M.S.H.'s exposure to drug use and sexual activity, C.H.H. needing a great deal of dental work, A.R.G.'s exposure to prenatal drug use, and all three children's potential need for continued trauma services or services that address their development. (Tr. at 00:26:17). Ms. Knudson recommended termination of parental rights of F.R.O., C.H., and A.G. (Tr. at 00:26:57; see also Order at ¶19(o)).

[¶29] Additionally, the State’s witness, Amy Suedel, the Case Manager for M.S.H., C.H.H., and A.R.G., since they came into foster care, testified that, in her opinion, the children are deprived and abandoned children, and therefore, the parental rights of the F.R.O., C.H., and A.G. should be terminated. (Tr. at 02:24:41; see also Order at ¶19(p)).

Ms. Suedel testified that the children have suffered as a result of the failure of their deprivation and that the deprivation will continue into the future as a result of the failure of the parents to follow through with services, maintain a stable living environment, and to demonstrate the ability to provide sober caregiving to the children.

(Order at ¶19(p); Tr. at 02:22:04, 02:23:35); see also supra ¶¶19-27). Ms. Suedel supported her conclusions with facts indicating that the children had significant needs when they came into care that have impacted the children’s development and education. (Order at ¶19(p); Tr. at 02:22:04, 02:23:35); see also supra ¶¶19-24). Moreover, Ms. Suedel cited the children’s exposure to substance and sexual activity, immunizations, dental work, speech delays, and M.S.H’s acute post-traumatic stress disorder as evidence of the children suffering. (Tr. At 02:22:03). Regarding the fathers, Ms. Suedel testified that that they have “abandoned the children because they have had no involvement or relationship with the children and did not cooperate with [GFSCCS] to complete services to allow for reunification.” (Order at ¶19(p); see also Tr. at 02:21:05; supra ¶10). Ms. Suedel recommended termination of parental rights of F.R.O., C.H., and A.G. (Tr. at 02:24:42; see also Order at ¶19(p)).

[¶30] Lisa Larsen, Lay Guardian ad Litem for the children, also testified at the February 2, 2018 hearing and filed reports recommending that the parental rights of the three parents be terminated and that the children be made available for adoption. (Tr. at 03:05:31, Order at ¶19(v)).

[¶31] The Juvenile Court found that the Indian Child Welfare Act does not apply to any of these children. (Order at ¶44).

STANDARD OF REVIEW

[¶32] On appeal, findings of fact are not overturned unless they are clearly erroneous. N.D.R.Civ.P. 52(a). “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.” In re T.A., 2006 ND 210, ¶11, 722 N.W.2d 548 (citation omitted). “On appeal, the complaining party has the burden of showing that findings of fact are clearly erroneous.” In re A.K., 2005 ND APP 3, ¶7, 696 N.W.2d 160, (citing Striefel v. Striefel, 2004 ND 210, ¶8, 689 N.W.2d 415).

[¶33] Additionally, the reviewing court shall “[give] appreciable weight to the findings of the juvenile court.” N.D.C.C. § 27-20-56(1). A trial court’s findings of fact are presumptively correct, and on appeal we view the evidence in the light most favorable to the findings, without reweighing the evidence or reassessing credibility if there is evidence supporting the findings. Id. Due regard shall be given to the trial court to judge the credibility of the witnesses. N.D.R.Civ.P. 52(a).

LAW AND ARGUMENT

I. THE JUVENILE COURT PROPERLY FOUND THAT THERE WAS EVIDENCE TO SUPPORT THE TERMINATION OF F.R.O.'S PARENTAL RIGHTS AS THERE WAS SUFFICIENT EVIDENCE PRESENTED TO SUPPORT THE COURT'S FINDINGS.

[¶34] Termination of parental rights are addressed in N.D.C.C. § 27-20-44 which provides as follows:

1. 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;
 - b. The child is subjected to aggravated circumstances as defined under subsection 3 of Section 27-20-02;
 - c. The child is a deprived child and the court finds:
 - (1) The conditions and causes of the 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
 - (2) The child has been in foster care, in the care, custody, and control of the department of county social service center, or, in cases arising out of an adjudication by the Juvenile court that a child is an unruly child, the Division of Juvenile Services, for at least four hundred fifty out of the previous six hundred sixty nights; or
 - d. The written consent of the parent acknowledged before the court has been given.

N.D.C.C. § 27-20-44. The Petitioner must prove all the requirements for Termination of Parental Rights by clear and convincing evidence. In re Adoption of K.J.C., 2016 ND 67, ¶11, 877 N.W.2d 62 (citing In re Adoption of H.G.C., 2009 ND 19, ¶10, 761 N.W.2d 565). Clear and convincing evidence is evidence which leads to a firm belief or conviction that the allegations are true. In re C.N., 2013 ND 205, ¶6, 839 N.W.2d 841; In re Adoption of H.G.C., 2009 ND 19, ¶10, 761 N.W.2d 565.

[¶35] In determining whether a child has been deprived, prognostic evidence is required, in addition to past deprivation. In re A.B., 2010 ND 249, ¶22, 792 N.W.2d 539.

[¶36] Prognostic evidence is evidence which “forms a basis for reasonable prediction as to future behavior.” In re A.S., 2007 ND 83, ¶19, 733 N.W.2d 232.

Prognostic evidence may include opinions of the involved experts, evidence of a parent’s background, including prior incidence of abuse or deprivation toward the children, a parent’s lack of cooperation, and a parent’s lack of contact with the children. Id. It is not sufficient that a parent indicate a desire to improve; rather, to adequately parent, prognostic evidence must show the ability of the parent too presently, or in the near future, parent by providing adequate physical and emotional care for the child, with the aid of available social agencies if necessary. Id. Prognostic evidence must also demonstrate that the parent’s “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.” Id.

A. All Three Children Are Deprived Children.

[¶37] The first of three prongs of the termination test requires the State to show that the child be deprived. N.D.C.C. § 27-20-44(1).

[¶38] M.S.H., C.H.H., and A.R.G. are deprived children because F.R.O. has not maintained proper parental for the children. M.S.H. and C.H.H. did not receive adequate physical and emotional care during the November 18, 2014, incident at the Hugo’s parking lot. Supra ¶¶5-7. Nor did M.S.H. and C.H.H. receive proper parental care when they were exposed to drugs, drug use, and sexual behavior. Supra ¶¶8, 9. Nor did M.S.H. and C.H.H. receive proper parental care when F.R.O. failed to address their dental needs

and immunizations. Supra ¶¶19, 21, 23, 28, 29. M.S.H. did not receive proper parental care when she was thrown across a room by her hair. Supra ¶7. A.R.G. did not receive proper parental care when she was exposed to methamphetamine, amphetamines, and THC in utero. Supra ¶¶11, 15-17, 23, 24.

[¶39] Although she desires to improve her parenting, F.R.O.'s background, prior incidences of abuse, and lack of contact with M.S.H., C.H.H., and A.R.G. indicate an inability for F.R.O. to provide proper parental care for the children. F.R.O. has a long history of drug use, treatment, and relapse. Supra ¶25. This cycle of drug use and incarceration indicates that F.R.O. places her own needs before her children, thus failing to provide proper parental care and control of the children. See Supra ¶¶25-27.

[¶40] Previously, F.R.O. has stipulated that the children, M.S.H., C.H.H., and A.R.G., are all deprived. Supra ¶12.

[¶41] At the February 2, 2018 trial, Ms. Knudson and Ms. Suedel, provided unrefuted expert testimony that the children are deprived. Supra ¶¶28, 29.

[¶42] Finally, on appeal, F.R.O. has conceded that there is clear and convincing evidence that her children are deprived based upon her previous statements. Supra ¶26.

[¶43] For the above-mentioned reasons, the State maintains the juvenile court properly found the children are deprived.

B. Deprivation Is Likely To Continue Absent A Termination.

[¶44] The second prong of the termination test requires the State to show that the conditions and causes of deprivation are likely to continue or will not be remedied. N.D.C.C. § 27-20-44(1)(c)(1).

[¶45] There must be prognostic evidence that forms the basis for a reasonable prediction of continued or future deprivation, which includes the reports and opinions of the professionals involved in the case. In re K.J., 2010 ND 46, ¶8, 779 N.W.2d 635.

[¶46] At the February 2, 2018 trial, Ms. Knudson and Ms. Suedel, the experts who have been involved in this case, testified that the deprivation of M.S.H., C.H.H., and A.R.G. is likely to continue. Supra ¶¶19-24, 28, 29. The juvenile court found the testimony of Ms. Knudson and Ms. Suedel to be credible. (Order at ¶31).

[¶47] Ms. Knudson, explaining her conclusion that the children have suffered as a result of their deprivation, cited M.S.H.'s exposure to drug use and sexual activity, C.H.H. needing a great deal of dental work, A.R.G.'s exposure to prenatal drug use, and all three children's potential need for continued trauma services or services that address their development. Supra ¶28. Ms. Suedel, explaining how the children suffered harm as a result of the deprivation, cited the children's exposure to substance and sexual activity, immunizations, extensive dental work, speech delays, and M.S.H's acute post-traumatic stress disorder as evidence of the children suffering. Supra ¶29. Accordingly, the reports and opinions of the professionals involved with the case have provided sufficient prognostic evidence that forms the basis for a reasonable prediction of continued or future deprivation.

[¶48] Moreover, F.R.O.'s cyclical criminal behavior and drug use indicates a pattern of behavior that does not provide proper parental care or control of the children. Supra ¶¶25-27; In re B.B. II, 2008 ND 51, ¶9, 746 N.W.2d 411 (stating that "a pattern of parental conduct can form a basis for a reasonable prediction of future behavior"). This pattern of criminal behavior includes at least fifteen (15) criminal charges. Supra ¶25.

Accordingly, F.R.O.'s criminal history has provided sufficient evidence that supports the basis for a reasonable prediction of continued or future deprivation.

[¶49] For the above-stated reasons, the State maintains the Juvenile Court properly found that the causes and conditions of the children's deprivations were likely to continue.

C. The Children Are Suffering As A Result Of Deprivation.

[¶50] The final prong of the deprivation test requires the State to show that M.S.H., C.H.H., and A.R.G. are suffering or will probably suffer serious physical mental, moral, or emotional harm. N.D.C.C. § 27-20-44. This Court has found that "[w]hen a parent, through voluntary actions, without reasonable justification, makes [himself or herself] unavailable to care for and parent a young child, the child should not be expected to wait or assume the risk involved in waiting for permanency and stability in [his or her] life." In re E.R., 2004 ND 202, ¶9, 688 N.W.2d 384. Moreover, this Court has stated that "[w]hen there has been an extensive period of time in which efforts have been made to overcome a parent's inabilities to effectively parent, the courts cannot allow the child to remain in this indeterminate status midway between foster care and the obvious need for permanent placement." In re M.S., 2001 ND 68, ¶14, 624 N.W.2d 678.

[¶51] In this case, regarding the children's suffering, the juvenile court found:

As a matter of law, in the future, these children are likely to suffer serious physical, mental, moral or emotional harm if they are returned to their parents, as their parents have failed to follow through with services to demonstrate their ability to safely and properly care for their children. The parents do not present a current ability or a capacity in the near future to provide an adequate and safe home environment for the children. At the time of trial, [F.R.O.] was incarcerated and was looking at six months of intensive parole supervision following her release in February of 2018. These children

have already been in the care of Grand Forks found for 1,089 days as of the February 2, 2018 hearing. They should not be required to wait any longer for their parents to prove they are capable of caring for the children in a sober and stable lifestyle.

(Order at ¶35).

[¶52] Additionally, at the February 2, 2018 trial, Ms. Knudson and Ms. Suedel presented unrefuted expert testimony that M.S.H., C.H.H., and A.R.G. have suffered as a result of their deprivation and that the deprivation will continue into the future as a result of the failure of the parents to follow through with services, maintain a stable living environment, and to demonstrate the ability to provide sober caregiving to the children. Supra ¶¶28, 29. The juvenile court found the testimony of Ms. Knudson and Ms. Suedel to be credible. (Order at ¶31).

[¶53] Accordingly, the reports and opinions of the professionals involved with the case, as well as the above facts, have provided sufficient prognostic evidence that forms the basis for a reasonable conclusion that the children are suffering as a result of deprivation.

D. All Three Children Are Abandoned Children.

[¶54] In addition to deprivation, abandonment also is grounds for termination of parental rights. N.D.C.C. § 27-20-44(1)(a). A child has been abandoned by a noncustodial parent if the parent, without justifiable cause, fails to communicate with the child or fails to provide for the care and support of the child as required by law. N.D.C.C. § 27-20-02(1)(a)(1-2). As to a parent of a child in that parent's custody, a child is abandoned if the parent:

- (1) [Leaves] the child for an indefinite period without making firm and agreed plans, with the child's immediate

- caregiver, for the parent's resumption of physical custody
or,
- (2) Following the child's birth or treatment at a hospital, [fails] to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
 - (3) [Willfully] fails to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.

N.D.C.C. § 27-20-02(1)(b).

[¶55] In determining whether a child has been abandoned, a court should consider the parent's contact and communication with the child, the parent's love, care, and affection towards the child, the parent's intent, and the parent's acceptance of parental obligations such as to provide care, protection, support, education, moral guidance and a home for the child. In re A.W., 2012 ND 153, ¶11, 820 N.W.2d 128. Adequate care from a foster parent or other source other than a parent does not prevent a finding of deprivation. Id. at ¶17.

[¶56] Considering the above facts, F.R.O. has failed to accept the parental obligations to provide care, protection, support, education, moral guidance and a home for her children. Supra ¶¶5-18, 25-29. Instead, F.R.O. left her children in a vehicle in 13 degree weather, exposed them to drugs, drug use, and sexual behavior, and failed to provide adequate dental and medical attention. Id.

[¶57] The juvenile court found that: "Based upon all the above facts, as a matter of law, [M.S.H.], [C.H.H.], and [A.R.G.] . . . are ABANDONED children in that they are without proper parental care and support reasonably sufficient to meet the children's needs for food, shelter, clothing and medical attention." (Order at ¶34); see also supra ¶¶5-18, 25-29. Moreover, F.R.O. was incarcerated at the time of A.R.G.'s birth and remained incarcerated until after the time of the February 2, 2018 trial.

[¶58] Additionally, the juvenile court found: “[C.H.] and [A.G.] have refused to participate in any services or have contact with [GFSCCS]. As a result, they have effectively abandoned their children. (Order at ¶35).

[¶59] Therefore, in accordance with In re A.W., F.R.O., A.G., and C.H. have abandoned the children M.S.H., C.H.H., and A.R.G.

E. The Number Of Days The Children Have Been In The Care, Custody, and Control Of The GFSCCS Statutorily Establishes Them As Deprived.

[¶60] As of February 2, 2018, M.S.H. and C.H.H. had been under the care, custody, and control of the Director of the GFSCCS, or for 1089 days. (Order at ¶27). As of that same date, A.R.G. had been under the care, custody, and control of the Director of the GFSCCS since her birth on February 14, 2016, or for 719 days. Id.

Importantly, [at the time of the juvenile court’s Order, March 31, 2018], [F.R.O.] is unavailable to parent these three children, at a minimum, for at least an additional half year and possibly a year longer if she fails to complete the required intensive supervision upon her release from incarceration. Thus, assuming F.R.O. would be successful in the strict, supervised release, at a minimum, her three children would have to wait up to another one hundred eighty days from the hearing date before she would be able to even attempt maintaining a home for the children with stable employment. For [M.S.H.] and [C.H.H.], that would mean they would have been in the care, custody, and control of GFCSS for a total of 1,269 days and [A.R.G.] would have been in custody for a total of 899 days. If [F.R.O.] is unsuccessful in the next one hundred eighty days of strict, supervised, community placement, the children would be forced to wait an additional three hundred sixty-five days before she might be available to begin parenting them; in that event, GFCSS will have been providing care, custody, and control for 1,454 days for [M.S.H.] and [C.H.H.] and 1,084 days for [A.R.G.]. These time periods are far in excess of the statutory minimum for finding deprivation. [F.R.O.] is unavailable to parent for at least an additional half year and

possibly longer if she fails to complete the intensive supervision from her release.

(Order at ¶27).

[¶61] The appellate argues a statutory exception under N.D.C.C. § 27-20-44 which termination need not be sought when a child is in a relative placement. (Appellant's brief at ¶35). The juvenile court address this issue as well: "[a]lthough there is a statutory exception under which termination need not be sought when a child is in a relative placement, the North Dakota Supreme Court has recognized that adequate care from a foster parent or source other than a parent does not prevent a finding of deprivation." (Order at ¶30) citing In re A.W., 2012 ND 153 ¶17. Having considered the entirety of the evidence in this case, the juvenile court found that the placement of the children with their grandmother does not provide a sufficient basis to find these children are not deprived. Id.

II. THE DISTRICT COURT PROPERLY FOUND THAT THERE WAS EVIDENCE TO SUPPORT THE FINDING THAT THE GFCSSC MADE REASONABLE EFFORTS TO KEEP THE FAMILY TOGETHER AND TO ACHIEVE THE PERMANENT PLAN.

[¶62] N.D.C.C. § 27-20-32.2(2) requires the State to show that reasonable efforts have been made to preserve and reunify the families. In re E.R., 2004 ND 202, ¶12, 688 N.W.2d 384. Reasonable efforts are defined as:

The exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal, to reunite the child and the child's family, and to maintain family connections. In determining reasonable efforts to be made with respect to a child under this section, and in making reasonable efforts, the *child's health and safety* must be the paramount concern.

N.D.C.C. § 27-20-32.2(1) (emphasis added).

[¶63] In this case, reasonable efforts were made to reunify the family members and to achieve the permanent plan in this manner. The juvenile court found that such efforts include:

Occupational therapy, physical therapy, speech therapy, assessments through the Village Family Service Center, school evaluations for special needs, services through the Anne Carlson Center, Early Intervention services, law enforcement intervention, dental care, Right Tracks programs, ICPC services, Child Protection Services, Foster Care Case Management services, chemical dependency evaluations and treatment services, mental health services, AA/NA meetings, Parole and Probation services, legal intervention, services through Northeast Human Service Center, treatment at New Beginnings, Health Tracks screenings, WIC, Early Head Start services, SNAP, individual therapy through the Play Therapy Zone, safety planning, parenting and psychological evaluations, random urinalysis testing through Community Service & Restitution, parenting information classes, regular Child and

Family Team Meetings, Family Team Decision-Making Meetings, drug task force series in Minnesota, visitation through Grand Forks County Social Service Center, referral for parenting classes, medical assistance, safety planning, medical services for shoe orthotics for [C.H.H.], vision screening services, ophthalmology and optometry services for [A.R.G.], Protective Service Alert through North Dakota and Minnesota, housing assistance through Urban Development, and courtesy case management through Minnesota . . .

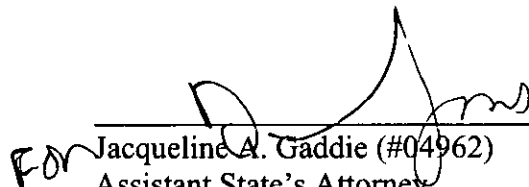
Reasonable efforts have been made to place siblings in the same foster care placement and to maintain contact and interaction between the siblings, as all children are placed together in a family placement and have daily contact.

(Order at ¶37-38). Accordingly, reasonable efforts have been made to preserve and reunify the families.

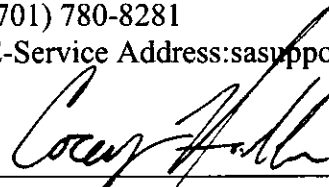
CONCLUSION

[¶64] For all the foregoing reasons, the State respectfully requests that this Court affirm the Juvenile Court's Order terminating the parent-child relationships between F.R.O. and her children, and granting custody of the children to the Department of Human Services for purposes of placing them for adoption.

Respectfully submitted this 5th day of May, 2018.



For Jacqueline A. Gaddie (#04962)
Assistant State's Attorney
Grand Forks County
P.O Box 5607
Grand Forks, ND 58206
(701) 780-8281
E-Service Address: sasupportstaff@gfcounty.org



Corey Haller
Senior Legal Intern

**IN THE INTEREST OF M.S.H., A CHILD.
IN THE INTEREST OF C.H.H., A CHILD.
IN THE INTEREST OF A.R.G., A CHILD.**

Grand Forks County Social Services,))	Supreme Court No. 20180172
Petitioner and Appellee,))	Supreme Court No. 20180173
vs.))	Supreme Court No. 20180174
))	District Court No. 18-2017-JV-00132
F.R.O., Biological Mother,))	District Court No. 18-2017-JV-00133
))	District Court No. 18-2017-JV-00134
Respondent and Appellant,))	

ON APPEAL FROM JUVENILE COURT, GRAND FORKS COUNTY
FEBRUARY 2, 2018
WITH THE DISTRICT COURT
NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE LOLITA HARTL ROMANICK PRESIDING

STATE OF NORTH DAKOTA)
) SS
COUNTY OF GRAND FORKS)

The undersigned, being of legal age, being first duly sworn deposes and says that on the 5th day of June, 2018, she served via e-mail true copies of the following documents:

BRIEF OF APPELLEE
NOTICE OF CERTIFIED STUDENT REPRESENTATION

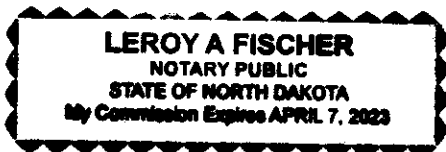
and that said email was served on the address of:

Darla Schuman and said e-mail address is: lawfirmmaildjs@aol.com


At the office of the Grand Forks County States Attorney's Office.

Attorney's Office:
Jessie A. Swangler
States Attorney's Office

Subscribed and sworn to before me this 5th day of June, 2018.



me this 5th day of June, 2018.



Notary Public