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IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

IN THE INTEREST OF N.F., A CHILD
IN THE INTEREST OF N.F., A CHILD
IN THE INTEREST OF N.T., A CHILD

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
MAY 29, 2018
STATE OF NORTH DAKOTA

| | | |
|--|---|------------------------------------|
| Danielle Tinquist, L.S.W., |) | |
| Cass County and the |) | |
| State of North Dakota |) | Cass Co. Case Nos.: 09-2017-JV-702 |
| |) | 09-2017-JV-703 |
| Petitioner and Appellee, |) | 09-2017-JV-704 |
| |) | |
| vs. |) | |
| |) | Supreme Ct. No.: |
| N.F., child, N.F., a child, N.T., a child, |) | |
| M.F., father, and Lisa Borseth, |) | |
| Guardian ad Litem, |) | |
| |) | |
| Respondents |) | |
| and |) | |
| |) | |
| H.T., mother |) | |
| |) | |
| Respondent/Appellant. |) | |

APPELLANT'S BRIEF

Appeal from the Juvenile Findings of Fact and Order Terminating Parental Rights. Dated
and Filed April 26, 2018.

By: Hon. Scott Griffeth, Judicial Referee, Cass County Juvenile Court

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| <u>In the Interest of Z.R. and J.V.</u> , 1999 N.D. 214, 602 N.W.2d 723 | ¶11 |

JURISDICTIONAL STATEMENT

[¶1] "Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law." North Dakota Constitution, Article VI, Section 6. "A judgment or order in a civil action may be removed to the Supreme Court by appeal as provided in this chapter." N.D.C.C., § 28-27-01. A final Judgment terminating parental rights is appealable. N.D.C.C. § 28-27-02(2). This appeal is timely under N.D.R.App.P. 2.2 and N.D.R.App.P. 26.

STATEMENT OF THE ISSUES

[¶2] Whether there was clear and convincing evidence to support a finding that the children were deprived, and that the conditions and causes of deprivation are likely to continue.

STATEMENT OF THE CASE

[¶3] Cass County Social Services filed a Petition for Deprivation and the children, N.F. and N.F. were adjudicated to be deprived on November April 28, 2017. N.T. and N.T. were placed into the custody of Cass County Social Services for a period of 12 months. The child N.T. was adjudicated to be deprived on September 6, 2017. N.T. was placed in the custody of Cass County Social Services until April 26, 2018.

[¶4] On December 26, 2017 a Petition for Termination of parental rights was filed in all cases. Trial on the Petition for Termination of Parental Rights was held on April 18, 2018. The Judgment terminating parental rights was signed and filed April 26, 2018. This appeal follows.

STATEMENT OF THE FACTS

[¶5] N.T. and N.T. (twins) were placed into protective custody on January 6, 2017 as a result of concerns regarding H.T.'s ability to supervise the children. Originally, the children were placed with the Father, M.F., and a safety plan was put in place where the Mother, N.T., was not to be alone with the children. It was subsequently discovered that the Father returned the children to the mother.

[¶6] A little more than 1 month later N.T. was born prematurely. N.T. was removed from N.T.'s care while the child was still in the hospital after birth.

[¶7] Testimony in this case established that H.T. immigrated from Burundi prior to her 18th Birthday. H.T. is a member of a minority tribe, the Twa, in Burundi. That tribe was often the victim of violence and oppression within Burundi. The Twa are one of the oldest surviving tribes in Africa. In 2000, there were estimated to be only 80,000 Twa people. At age 7, H.T. was forced to flee her home in Burundi after returning home and finding her parents had been murdered along with most of the residents of the community in which H.T. resided at the time. H.T. traveled with other relatives to a refugee camp where she was denied education, and abused both physically and sexually. H.T. eventually immigrated to the United States, unaccompanied, while still a minor.

[¶8] Testimony was provided by Ryan Oberg, H.T.'s social worker at Off Main in Fargo, a division of the South East Human Service Center. Oberg testified that at the time of trial, H.T. was staying in crisis housing at Off Main, and that H.T. had been engaged in services for some time. H.T. was engaged in therapy and working with an addiction counselor. H.T. had maintained a job over the past 6 months and was looking to work

even more hours. When asked if H.T. could care for her children, Oberg testified that she would still need support but she could be successful.

ARGUMENT

[¶9] Rule 52(a) N.D.R.Civ.P provides that finds of fact in juvenile matters shall not be set aside by this Court unless they are clearly erroneous. In the Interest of T.F., 2004 ND 126, ¶ 8, 681 N.W.2d 786. The juvenile court's conclusions of law are fully reviewable by this court. Id.

[¶10] In order for the State to be successful in terminating parental rights to children, N.D.C.C. 27-20-44 creates a three part test. First, the petitioner must prove the child is deprived. Second, the petitioner must show that the conditions and causes of deprivation are likely to continue. Third, the petitioner must prove that the child is suffering or will in the future, probably suffer serious physical, mental, moral, or emotional harm. These factors must be proven by clear and convincing evidence. A deprived child is one who is without proper parental care, control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals and the deprivation is not due to the lack of financial means of the child's parents, guardian or other custodian. N.D.C.C. 27-20-02(8).

[¶11] Natural parents have a fundamental right to their children, "which is of a constitutional dimension." In the Interest of W.E., 2000 N.D. 208, ¶ 30, 616 N.W.2d 494. The constitutional protections, although not absolute, require that "[a]ny doubts should be resolved in favor of the natural parent and parental rights should be terminated only when necessary for the child's welfare or in the interest of public safety." Id. There is a presumption that the parents are fit and the burden of disproving this presumption is on

the person challenging it. In the Interest of K.R.A.G., 420 N.W. 2d 325 (N.D. 1988). “It is not reason enough to deprive 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 W.E., 2000 ND 208 ¶36. Proper parental case is defined as the minimum standard of care which the community will tolerate. In the Interest of R.S., 2010 ND 147, ¶8, 787 N.W.2d 277. “Any doubts should be resolved in favor of the natural parent, and parental rights should be terminated only when necessary for the child’s welfare or in the interest of public safety.” In the Interest of Z.R. and J.V., 1999 N.D. 214, 602 N.W.2d 723 (N.D. 1999).

[¶12] There was not clear and convincing evidence to support a finding that the children were deprived, and that the conditions and causes of deprivation are likely to continue. In its order terminating parental rights the Court writes,

The children are deprived children in that the conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the children are suffering or will probably suffer serious physical, mental, moral or emotional harm as more fully stated in the Petition for Termination of Parental Rights on file herein.

The Petition for termination states, in relevant part,

[H.T.] has been unable to establish stability in housing, employment and relationships. [H.T.] has mental health and/or chemical dependency issues which she has been unable to successfully address and which adversely affect her ability to appropriately parent the children. [H.T.] has been unable to demonstrate that she has the ability to maintain an appropriate environment for the children.

This case is unlike most termination cases. In this case the mother is a product of unimaginable violence, and trauma. It is outrageous that this Country accepts a child from a war torn country, a child who has no education, has seen unimaginable atrocities,

and holds her to the exact same standard as a native of the United States. If the termination of her parental rights is upheld, it is likely that these children will never know of their Twa heritage or have any connection to their ancestry. In this case, the circumstances require additional time before committing to a permanent termination of parental rights. Oberg, the mental health worker closest to H.T.s case, testified that he felt H.T. could be a successful parent with support. It is appropriate to give N.T. that opportunity in this case.

[¶13] On appeal, the Supreme Court reviews the juvenile court's decision regarding termination of parental rights and examine the evidence in a manner similar to a trial de novo. In Interest of A.S., 1998 ND 181, ¶13, 584 N.W.2d 853. The Court reviews the files, records, and minutes or transcript of the evidence of the juvenile court, giving appreciable weight to the findings of the juvenile court. N.D.C.C. § 27-20-56(1). While the Supreme Court is not bound by them, it affords the juvenile court's findings appreciable weight, because the juvenile court has had an opportunity to observe the candor and demeanor of the witnesses. In Interest of L.F., 1998 ND 129, ¶12, 580 N.W.2d 573. In this case the interest of justice require this court to overturn the decision of the Juvenile Court.

CONCLUSION

[¶14] For the preceding reasons the Appellant requests that this Court reverse the Order Terminating Parental rights as it relates to the Appellant, H.T.

Respectfully submitted this 29th Day of May, 2018

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and

H.T., mother

Respondent/Appellant.

Cass Co. Case Nos.: 09-2017-JV-702

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09-2017-JV-704

Supreme Ct. No.:

CERTIFICATE OF SERVICE

[¶ 1] Daniel Gast hereby certifies that he is the Attorney for the Appellant/Respondent in the above entitled matter.

On May29, 2018 the following documents

Notice of Appeal, Order for Transcripts, Brief of Appellant, and Appendix to Brief of Appellant

were filed electronically with the Clerk of Court through Odyssey for electronic service through Odyssey on the following:

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Dated this 29th Day of May, 2018

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