20180341
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SEPTEMBER 10, 2018
STATE OF NORTH DAKOTA

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

IN THE INTEREST OF A.L.E., A CHILD

Grand Forks County Social Services,	)	
Petitioner and Appellee,	)	**SUPREME COURT CASE NO.:**
	)	**20180341**
vs.	)	
	)	**DISTRICT COURT NO.:**
A.E., Biological Mother,	)	**18-2018-JV-00083**
Respondent and Appellant,	)	
	)	
A.A.A.. Biological Father,	)	
Respondent.	)	

BRIEF FOR RESPONDENT/APPELLANT

EXPEDITED APPEAL FROM THE DISTRICT COURT OF GRAND FORKS COUNTY

NORTHEAST CENTRAL JUDICIAL DISTRICT

DISTRICT COURT NO. 18-2018-JV-00083

JUDGMENT TERMINATING PARENTAL RIGHTS

THE HONORABLE LOLITA HARTL ROMANICK

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[¶1]

STATEMENT OF JURISDICTION

The judgment of the District Court for the Northeast Central Judicial District of Grand Forks was entered on August 20, 2018. Appellant filed Notice of Expedited Appeal on September 10, 2018. The District Court's jurisdiction was based on N.D.C.C. §§ 28-04-05 and 14-14.1-12. The jurisdiction of this Court is invoked under N.D.R.App.P. 2.2(a).

[¶2]

STATEMENT OF THE ISSUES

1. The District Court erred in their finding of deprivation of the minor child as to her mother, A.E.
2. The District Court erred in their finding as to A.L.E.'s mother that the causes of deprivation with resulting harm to A.L.E. are likely to continue.
3. N.D.C.C. § 27-20-20.1 allows for the postponement of termination of parental rights when the child is being cared for by a relative.
4. Grand Forks County Social Services failed to use reasonable efforts to reunify the minor child with her mother A.E.

[¶3]

STATEMENT OF THE CASE

The Court found that the minor child, A.L.E., was placed in custody of Grand Forks County Social Services on August 11, 2016, and had remained in custody as of the trial date, July 24, 2018. (App. p. 11-12) A.L.E. was placed in a kinship care placement with her maternal aunt, A.G. on August 16, 2016. (App. p. 11-12). The child has remained in her maternal aunt's home since that

time. Id. A.L.E. has been under the custody of Grand Forks County Social Services for seven hundred and seven days (707) (App. p. 13).

[¶4] A Petition for Involuntary Termination of Parental Rights was filed on March 2, 2018. (App. p. 41-42). The Petition alleges that the minor child is deprived, and abandoned child and those conditions of deprivation are likely to continue. (App. p. 34). The trial was held July 24, 2018, before the Honorable Lolita Hartl Romanick. The Respondent, A.E. mother of the minor child, testified in person at the contested Termination of Parental Rights trial. The Father of the child, A.A.A. was not present for the Trial. The Findings of Fact, Conclusion of Law and Order for Termination of Parental Rights were incorporated in the Judgment Terminating Parental Rights, and the District Court terminated the parental rights of A.E. and A.A.A. (App. p. 9, 20). A.E. filed a Notice of Expedited Appeal on September 10, 2018. (App. p. 8).

[¶5]

STATEMENT OF THE FACTS

A.E. is the biological mother of the minor child A.L.E. is almost three (3) years old. A.L.E. is an only child. A.A.A. is the biological father of A.L.E. He had no contact with the child since she was five (5) weeks old. Audio Tape: Audio Transcript of Trial (July 24 2018) (on file with District Court of Grand Forks County) (1:56 to 1:57) He resides out of State and did not participate in the Termination of Parental Rights trial. He has provided no monetary support for his daughter throughout her life. A.E. testified that A.A.A. left her and their five (5) week old daughter penniless and homeless having taken their rent money causing serious financial and emotional stressors on a new mother and their infant child. Audio Transcript of Trial (1:56 to 1:57). A.E. was the sole caregiver to A.L.E. until A.E. was arrested on August 11, 2016, after a probation search. (App. p. 11-12,). The minor child A.L.E. was not in the home at the time of the probation

search as she was visiting with her maternal aunt, A.G. and her family for the few days prior to the search. Id.

[¶6] On August 16, 2016, Grand Forks County Social Services was contacted by the Appellant's family stating that her "family was no longer able to provide care financially or medically for A.L.E. without further financial assistance of Grand Forks County."(App. p. 11-12). As a result of that contact, a Temporary Custody Order was issued on behalf of A.L.E. on August 16, 2016, and she was placed with the same maternal aunt, A.G. which she was with prior to A.E.'s arrest. Id. A.L.E. has remained in her maternal aunt's home since that time. A.E. underwent a chemical dependency evaluation while in custody and entered directly into a residential chemical dependency program through Northeast Human Service Center on October 5, 2016, A.E. successfully completed her treatment program on November 17, 2016. (App. P. 51). In September of 2017, A.E. was arrested on a probation violation after relapsing and entered chemical dependency program through Northeast Human Service Center. Audio Transcript of Trial 1:58 to 2:03. A.E. also contacted a Fargo physician, Dr. Cooper, in April of 2017 for treatment with Suboxone to aid with her opioid addiction, as Suboxone was not available in Grand Forks at that time. Id. Audio Transcript of Trial 2:10 to 2:14. Since being on the medication, A.E. testified that she has remained clean and sober. Id. Plan to be weaned off with Dr. Cooper to wean herself on the Suboxone in the next year. A.E. also takes medications for anxiety as prescribed by Dr. Cooper. Id.

[¶7] A.E. has no new criminal charges since August of 2016. (App. P. 13) A.E. remains on probation from a 10/14/2014 Felony 5th Degree Possession of a Controlled Substance conviction from the State of Minnesota in which the Court imposed a 10-year probation term. Id.

Audio Transcript of Trial 2.09 to 2.11. She was only violated once on probation for the 2016 ND charges. Id.

[¶8] The Indian Child Welfare Act does not apply in this case.

STATEMENT OF THE STANDARD OF REVIEW

[¶9] North Dakota Century Code. § 27-20-44(1)(c)(1) "authorizes a juvenile court to terminate parental rights if a "child is a deprived child and the court finds . . . [t]he 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[.]'" A.B. v. A.B., 2017 ND 178, ¶ 11, 898 N.W.2d 676, 680. The other avenue to a finding of termination of parental rights are if the Court "finds the child is a deprived child and "[t]he child has been in foster care, in the care, custody, and control of the department, or a county social service board, . . . for at least four hundred fifty out of the previous six hundred sixty nights." N.D.C.C. § 27-20-44(1)(c)(2); Cass County Soc. Serv. Ctr. v. N.M. (In re K.B.), 2011 ND 152, ¶ 7, 801 N.W.2d 416, 421.

[¶10] The State as petitioner "must establish all of the elements for termination by clear and convincing evidence." In re A.L, 2011 ND 189, ¶ 8, 803 N.W.2d 597. Clear and convincing evidence is evidence that leads to a firm belief or conviction the allegations are true. In re C.N., 2013 ND 205, ¶ 6, 839 N.W.2d 841. The Appellant asserts that the State has not met its burden.

ARGUMENT

I. THE DISTRICT COURT ERRED IN THEIR FINDING OF DEPRIVATION OF THE MINOR CHILD AS TO HER MOTHER A.E.

[¶11] "It is well established that parents have a constitutional right to the custody and companionship of their child. However, this right is not absolute, and parents are not entitled to

custody of their child under all circumstances. There is a presumption that parents are fit and the burden of disproving this presumption of parental fitness is on the person challenging it." In Interest of K.R.A.G., 420 N.W.2d 325, 327 (Citations Omitted). North Dakota Century Code § 27-20-02(8)(a) defines a deprived child is one that is "without proper parental care or 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 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) (2018).

A. COURT ERRED IN CITING A.E.'S LEGAL AND PROPER USE OF A PRESCRIPTION AS A FACTOR SHOWING DEPRIVATION

[¶12] A.E. admitted that in the beginning of her pregnancy in 2015, she was smoking marijuana until the seventeenth week. A.E. voluntarily entered and successfully completed a outpatient chemical dependency treatment program and remained sober throughout the remainder of her pregnancy. (App. p. 10-11; Audio Transcript of Trial 2:18 to 2:21). As to the allegations by the State and finding of the Court that A.L.E. was deprived due to her prenatal exposure to a controlled substance of prescription Percocet, that is clearly a misinterpretation of the statute. (App. p. 11,14). North Dakota Century Code § 27-20-02(8)(f) states that deprivation is "prenatal exposure to any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner." N.D.C.C. § 27-20-02(8)(f) (2018). The State presented no evidence that the controlled substance Percocet was not prescribed by A.E.'s Doctor, Dr. Michael Brown of Altru throughout the eighth to ninth month of her pregnancy. Audio Transcript of Trial 1:58 to 2:01. The State did not present any medical experts outlining any side effects or negative effects to A.L.E. of by A.E taking Percocet. A.E. testified that Dr. Brown gave them to her to help her sleep which would be beneficial to her unborn child. Id. The Court found that the minor child did

not exhibit withdrawal symptoms upon birth and was "healthy with respect to growth and development in that week following her birth." Id. (App. p. 11).

[¶13] The Court further accepts as facts the huge assumptions in the testimony by Social Services that A.L.E.'s exposure to THC and opioids caused alleged medical and sensory issues. (App. p. 14). There was no expert medical testimony presented by the State to back these assumptions besides the hearsay of the social services and third hand information that was not entered into in evidence at trial by the State. Id. The foster family was not called to testify by the State regarding any alleged concerns. This lack of prognostic evidence strengthens A.E's assertion that the District Court was in error in their finding of deprivation.

[¶14] The Court further indicated in its Judgment that all allegations of A.E.'s "possible misuse or abuse" of A.E.'s prescription Percocet were investigated by the G.F. County Social Services Child Protection Team and they found there were "No Services Required." However, the Court's findings in Paragraph 32 specifically notes that A.E. "breastfed while taking opioids." (App. p. 10-11,15). This completely disregards the fact once again this medication was prescribed and monitored by A.E.'s doctor and A.E. testified that she had gone to her doctors voluntarily with concerns and with his assistance and A.E. had discontinued breastfeeding and weaned herself off the medication. (App. p. 15; Audio Transcript of Trial 1:58 to 2:02).

B. COURT ERRED IN CITING THAT A.E. SUBJECTED THE MINOR CHILD TO AN ENVIRONMENT WHICH EXPOSED HER TO CONTROLLED SUBSTANCES OR DRUG PARAPHERNALIA.

[¶15] Deprivation can also be shown "if the minor child was present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2." N.D.C.C. § 27-20-02(8)(g) (2018). Court notes in its Findings that on August 11, 2016, A.E.'s residence was subject to a probation search on August 11, 2016, where Methamphetamine and Marijuana was found in the home. (App. p. 11-

12; Audio Transcript of Trial 2:01 to 2:02). However, the Court keeps bypassing the fact that the minor child was not in the home at the time of the search and there was no other evidence presented by the State showing A.E.'s home was unsuitable or the minor child was exposed to controlled substances was while the child was in A.E.'s home. Id.

II. THE DISTRICT COURT ERRED IN THEIR FINDING AS TO A.L.E.'S MOTHER THAT THE CAUSES OF DEPRIVATION WITH RESULTING HARM TO A.L.E. ARE LIKELY TO CONTINUE

[¶16] "Evidence of past deprivation is not enough to determine whether the causes and conditions of deprivation will continue; rather, there must also be prognostic evidence. *In re A.B.*, 2010 ND 249, ¶ 22, 792 N.W.2d 539. Prognostic evidence is that which "forms the basis for a reasonable prediction as to future behavior." *In re A.S.*, 2007 ND 83, ¶ 19, 733 N.W.2d 232 (quoting *In re L.F.*, 1998 ND 129, ¶ 16, 580 N.W.2d 573). Evidence of a parent's background or history may be considered in determining whether the deprivation is likely to continue. In Re. K.B.., 2011 ND 152, ¶ 12, 801 N.W.2d 416. A.B. v. A.B. (2017 ND 178, ¶¶ 15-16).

[¶17] The primary factors a trial court may consider in determining whether the deprivation is likely to continue are outlined in A.B. v. A.B, with the overarching principle being that a parent's past conduct can form the basis for a reasonable prediction of a parent's future behavior. In this case, A.E. testified that prior to her arrest on August 16, 2016, there had been no issues with her parenting and care of her minor child. She was the full-time caregiver for A.L.E. until she was eleven (11) months old. Audio Transcript of Trial (1.56 to 1.57) She took her to doctor's appointments, fed, clothed her and put her daughter to bed on a daily basis. Audio Transcript of Trial (1.56 to 1.57)

A. COURT ERRED IN ITS FINDING THAT A.E. HAS FAILED TO ESTABLISH THAT SHE WILL BE ABLE TO PROVIDE A SAFE, SECURE, AND STABLE HOME FOR A.L.E. IN THE FUTURE

[¶18] The Supreme Court has found previously that the term "proper care as used in Section 27-20-02(5)(a), N.D.C.C., means that the parents' conduct in raising their children must satisfy the minimum standards of care which the community will tolerate." N.D.C.C. § 27-20-02(5)(a), (2018). In the 2018 case, In the Interest of B.H., the Supreme Court of North Dakota upheld the trial court's decision to deny the termination of the parties' parental rights because the mother was gainfully employed and had established stable housing for the child and the parents had "demonstrated a willingness to engage in chemical dependency treatment, maintain[ed] contact with family support networks to ensure monitoring and safety, as well as, demonstrate[d] an ability to maintain periods of sobriety." L.S.W. v. B.H. (In the Interest of B.H.), 2018 ND 178, ¶ 7.

[¶19] A.E. testified that has never had the benefit of child support from A.L.E.'s Father and did her best to care for her daughter through the first eleven (11) months of her daughter's life before she went into Kinship care. A.E. provided evidence that she had obtained education, certifications, and training in the last six (6) months and now has started a business working as a massage therapist. (App. P 45-46; Audio Transcript of Trial (2.21 to 2.23). She was working part-time primarily expanding her clientele. She also testified that she was working on securing a second part-time job to help supplement her income while she built up her main business. Audio Transcript of Trial (2:23 to 2:24). A.E. provided photographic evidence that she had secured a two-bedroom apartment for her and her daughter and was working on furnishing it. (App. p. 47-50). The Supreme Court has previously found that "poverty or lack of education or culture is not suffice to establish deprivation. "In Interest of N. 294 N.W.2d 635, 637-38 (N.D. 1980). Clearly, A.E.'s lack of initial income when starting a business should not be a deciding factor towards the Court's finding of deprivation as it points directly to A.E.'s limited income not being "good enough."

There are lots of Federal and State social services programs in the community financially assist mothers and child such as A.E. and her daughter while A.E. works on establishing her business.

B. INCARCERATION OF MOTHER SHOULD NOT BE A DECIDING FACTOR IN THIS CASE

[¶20] The Supreme Court has held when considering an intent to abandon a child due to an incarcerated parent that "such a parent is obligated, due to 'the separation caused by' the orders, to make 'an even greater effort to foster a nurturing relationship' with the child 'using the means available' if he or she wants to maintain a parental relationship with the child." (internal citations omitted). A.M.W. v. N.D. Dep't of Human Servs. (In re A.M.W.), 2010 ND 154, ¶ 9, 786 N.W.2d 727, 730-731. Imprisonment alone does not justify parental termination. J.L.D. v. J.L.D., 539 N.W.2d at 79.

[¶21] A.E.'s incarceration has been a total of 55 days which is minimal in terms of the overall amount of 707 days her daughter was in care. She was arrested on the probation search in August 11, 2016, until her release from treatment on October 5, 2016; and on September 29, 2017 until November 28, 2017. (App. p. 51;) Ms. A.E. had two (2) periods of short incarceration since 2016. She has not had any new or pending criminal charges since 2016. During her incarceration, A.E. testified that she was able to contact her young daughter by phone to maintain regular contact. Audio Transcript of Trial (2:36 to 2:37).

[¶22] A.E. remains on probation from an October 14, 2014 Felony 5th Degree Possession of a Controlled Substance conviction from the State of Minnesota in which the Court imposed a 10-year probation term. Audio Transcript of Trial (2.02.- 2.03) The District Court focused only on the negative of probation that should A.E. could possibly have her sentence revoked at future date. (App. p. 47-50). But there are distinct positives from probation that include A.E.'s continued monitoring for drug and alcohol use, support and general referral from her probation officer in

contacting social service agencies for assistance with child care, mental health or parenting skills. Audio Transcript of Trial (2:16 to 2:17).

C. MOTHER'S ADDICTION ISSUES WERE BEING ACTIVELY ADDRESSED AND SHOULD NOT BE A STRICTLY NEGATIVE FACTOR IN THIS CASE

[¶23] The Supreme Court has acknowledged that it is appropriate to terminate parental rights when the parents of the child were using controlled substances and showed little or no signs of improving." Knoll v. D.M. (In the Interest of D.M.) 2007 ND 62, ¶19, 730 N.W.2d 604, 609. In that case, the trial court found that "[L.M.]'s history of alcohol and drug abuse with numerous failed attempts at controlling her addiction, together with evidence of [her] failure to fully cooperate with social service workers to receive the necessary treatment and services for her to become a fit parent, demonstrate a very poor prognosis for [her] ability to provide minimally adequate care for [D.M.]." Id. A parent must be able to demonstrate present capability, or capability within the near future, to be an adequate parent." Id. at ¶22 (quoting Interest of M.D.K., 447 N.W.2d 318, 322 (N.D. 1989)).

[¶24] A.E. has used any route available to her to keep A.LE. in her life including baby sitting A.L.E. on the weekend at her mother's home just to get extra time her daughter. (App. p. 14; Audio Transcript of Trial (2.08 to 2.10). The longest periods of time spent away from her daughter was A.E.'s need for long-term chemical dependency treatment. However, A.E. was allowed regular visitation during these periods as these treatment programs were completed while A.L.E. was in care. Her addiction to prescription medication was difficult to get a handle on but her second successful completion of residential chemical dependency treatment in 2017 was extremely beneficial and A.E. has returned a focused and motivated parent. Audio Transcript of Trial (2:14 to 2:16). She has completed vocational education and training and executed a career

path which includes increasing her small business knowledge from creating business cards to modifying and tracking appointments. (App. p. 45-46). She has also obtained a new two-bedroom apartment in June of 2018 to allow her daughter to transition home. (App. p. 47, 50).

D. PARENT MUST BE ABLE TO DEMONSTRATE PRESENT CAPABILITY, OR CAPABILITY WITHIN THE NEAR FUTURE, TO BE AN ADEQUATE PARENT.

[¶25] The Supreme Court held that, "[p]rognostic evidence may be relied upon to find that a child is a deprived child if it shows that the parent, although not having custody of the child, would be presently unable to supply physical and emotional care for the child, with the aid of available social agencies, if necessary, and that the inability 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." Cass County Soc. Serv. Ctr. v. N.M. (In re K.B.), 2011 ND 152, ¶ 11, 801 N.W.2d 416, 422.

[¶26] The Supreme Court previously upheld a decision from the trial court that waiting over twenty-one (21) additional months for a parent to be ready to parent his two year old daughter, "will be difficult enough now and perhaps severely harmful to [minor child] if she is forced to wait nearly two more years for permanent placement." Reed v. C.R. (In re C.R.), 1999 ND 221, ¶ 12, 602 N.W.2d 520 (emphasis added). The District Court's Opinion in this case focuses on A.E.'s testimony that she believes that her minor child could come back home to reside with her within six (6) to twelve (12) months. (App. p. 17-18). A.E. testified that she would like for her daughter to immediately return home but understood realistically that A.L.E.'s transition home would be dictated by Grand Forks County Social Services, starting with increased hours of visitations, then overnights, and eventual temporary in-home placements. Audio Transcript of Trial (2:32 to 2:34).

[¶27] A.E. outlined in her testimony a plan for her daughter's enrollment in her local Head Start program and other social service programs, reengagement with her child's pediatrist, decorating her daughter's new room, also indicate that A.E. has demonstrated the present capability to be an adequate parent. Id. A.E. has made remarkable progress in the last seven (7) months that seems to go unnoticed by the Court, State and Grand Forks Co. Social Services. She has not relapsed since her release from custody and continues to comply with her probationary requirements. Id. The child will not be disengaged from her foster family as she is A.E.'s older sister and her family. They are a permanent part of the child's life and will remain as a positive role model.

III. N.D.C.C. § 27-20-20.1 ALLOWS THE POSTPONEMENT OF TERMINATION OF PARENTAL RIGHTS WHEN THE CHILD IS BEING CARED FOR BY A RELATIVE

[¶28] A trial court that "finds the criteria for termination is present, they may instead make an order for disposition under N.D.C.C. § 27-20-30 if it is in the child's best interest. We recognized the purpose of the language in N.D.C.C. § 27-20-44(1)(c)(2) was to implement the requirements of the federal Adoption and Safe Families Act of 1997, and it was not required that a State terminate parental rights based on a mathematical calculation of a child's time in foster care, but the State must initiate termination proceedings in that situation. F.F., at ¶ 17. Under F.F. and N.D.C.C. § 27-20-44(1)(c)(2), a juvenile court has discretion to terminate parental rights if the court finds the child is deprived and has been in the custody of social services for 450 out of the previous 660 nights." A.L. v. R.G., 2011 ND 189, ¶ 10, 803 N.W.2d 597, 600-601

[¶29] The Court in A.L. v. R.G., considered the following factors in determining the appropriateness of the termination of parental rights. "given the age of these child, the length of time the child have already been in the custody of social services, the evidence of R.G.'s voluntary conduct that resulted in the extension of his time in prison, the uncertainty about his release from

prison and reunification with the child, and the court's finding about the probability of harm from the lack of permanency and continuation in foster care. A.L. v. R.G.,2011 ND 189, ¶ 12, 803 N.W.2d 597, 601.

[¶30] The N.D. Century Code makes a specific exception to the need for a petition for termination of parental rights to be filed when the "child is being cared for by a relative approved by the department." N.D.C.C. § 27-20-20.1(3)(a) (2018). The Supreme Court upheld the lower court's decision in A.L. v. R.G., which specifically held that it wasn't just that the child was in foster care for an extended amount of time, but because the child was not placed in a relative placement, they would continue to suffer harm by remaining a non-relative foster care placement. A.L. v. R.G, 2011 ND 189, ¶ 5, 803 N.W.2d 597, 599. (emphasis added)

[¶31] A.L.E. was placed in a kinship care placement with their maternal aunt, A.G. on August 16, 2016. (App. p. 11-12). The child has remained in her maternal aunt's home since that time. Id. Grand Forks Social Services have clearly shown preference for A.E.'s family to continue care for A.L.E. mostly to the determinant of A.E.'s reunification with her daughter.

IV. GRAND FORKS COUNTY SOCIAL SERVICES FAILED TO USE REASONABLE EFFORTS TO REUNIFY THE MINOR CHILD WITH HER MOTHER, A.E.

[¶32] Under N.D.C.C. 27-20-32.2, Social Services must make reasonable efforts to reunite the parents with the child. As used in this statutory provision, "1. "reasonable efforts" means 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 effort to be made with respect to the child under this section and in making reasonable efforts, the child's health

and safety must be the paramount concern. 2. Except as provided in subsection 4, reasonable efforts must be made to preserve families, reunify families, and maintain family connections: b. to make it possible for a child to return safely to the child's home." N.D.C.C. 27-20-32.2. A parent's failure to take advantage of provided services is not the fault of social services, and a parent's failure to participate in offered services does not constitute a failure to make reasonable efforts by social services. In re K.L., 2008 ND 131, 20, 751 N.W.2d 677.

[¶33] There were no reasonable efforts made by Social Services to keep A.E. with her child as required under statutory law. There is nothing in the record to suggest Social Services was willing to give A.E. a chance by providing services to help her remain in contact with her child or to improve her parenting skills. Social Services has not done their due diligence through this entire process. When A.E. was trying to see her child since November of 2017, Social Services did not do their due diligence to ensure the even once weekly visitations occurred, so the child could maintain the mother-child bond, A.E. Audio Transcript of Trial (2:35 to 2:37).Furthermore, Social Services has made negative, future-looking, assumptions about A.E. and her positive progresses in her chemical dependency treatment, stable employment, and obtaining a stable residence which stifled any ability for reunification to even be contemplated. (App. p. 2-10). Their lack of communication as well as a Social Services' clear path towards adoption a little over a year after A.L.E. was put into custody frustrated the process. Reunification was left behind even as A.E. showed exemplar progress in late 2017 and 2018. These assumptions were clearly used as the basis of the termination of her parental rights.

[¶34] This case has moved forward inordinately fast, not giving A.E. time to adequately show that she can achieve what is expected of her. Social Services has rubber stamped her case too quickly labeling her an inadequate parent. The child is not harmed by waiting because her situation

does not change whether she waits an additional six (6) months to transition home because the foster parents are her blood relatives. A.E. has once again become a productive member of society and deserves a chance to be able to raise her daughter.

CONCLUSION

[¶35] In conclusion, the appellant/respondent asks that the District Court's decision be reversed, and A.E.'s parental rights be reinstated. The State/Appellee has failed to prove by clear and convincing evidence that the child continues to be deprived and that the causes of deprivation are likely to continue with resulting harm to the child. Furthermore, Grand Forks County Social Services failed to fulfill their statutory obligation to use reasonable efforts to reunite the child with their parent. For these reasons, it is not appropriate to terminate parental rights at this time.

Dated this 12th day of September 2018.

/s/ Darla J. Schuman

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IN THE INTEREST OF A.L.E., A CHILD

Grand Forks County Social Services, Petitioner and Appellee,	)	Supreme Court Case No.:
vs.	)	District Court No.: 18-2018-JV-00083
A.E., Biological Mother, Respondent and Appellant,	)	

CERTIFICATE OF SERVICE BY EMAIL

I, Darla J. Schuman, hereby certify that on the 10TH Day of September, 2018, I served the attached: NOTICE OF EXPEDITED APPEAL, BRIEF FOR RESPONDENT/APPELLANT and APPENDIX, on Petitioner and Appellee, Ms. Jacqueline Gaddie, Assistant State's Attorney, representing Grand Forks County Social Services, by electronically transmitting the documents by email to the following email addresses: jacqueline.gaddie@gfcounty.org and sasupportstaff@gfcounty.org, This service by the Respondent/Appellant bears the return email address of lawfirmmaildjs@aol.com and filed from the offices of Darla J. Schuman, Schuman Law Office, 2860 10th Ave. N., Suite 500, Grand Forks, N.D, 58203.

Dated this 10TH Day of September, 2018.

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IN THE INTEREST OF A.L.E., A CHILD

Grand Forks County Social Services, Petitioner and Appellee,	)	Supreme Court Case No.: 20180341
vs.	)	District Court No.: 18-2018-JV-00083
A.E., Biological Mother, Respondent and Appellant,	)	

CERTIFICATE OF SERVICE BY EMAIL

I, Darla J. Schuman, hereby certify that on the 12TH Day of September, 2018, I served the attached: BRIEF FOR RESPONDENT/APPELLANT and APPENDIX, on Christopher Jones, Exec. Director of N.D. Dep't of Human Services; and Lauren Bosch, Program Director for Youth Works on behalf of former Lay Guardian Ad Litem Sharilyn Richtsmeier, by electronically transmitting the documents by email to the following email addresses: cdjones@nd.gov; and lbosch@youthworksnd.org. This service by the Respondent/Appellant bears the return email address of lawfirmmaildjs@aol.com and filed from the offices of Darla J. Schuman, Schuman Law Office, 2860 10th Ave. N., Suite 500, Grand Forks, N.D, 58203.

Dated this 12TH Day of September, 2018.

Darla J. Schuman
ND ID# 06152
Schuman Law Office
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IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA
IN THE INTEREST OF A.L.E., A CHILD

Grand Forks County Social Services, Petitioner and Appellee,	)	Supreme Court Case No.: 20180341
vs. A.E., Biological Mother, Respondent and Appellant,	)	District Court No.: 18-2018-JV-00083

CERTIFICATE OF SERVICE BY EMAIL

I, Darla J. Schuman, hereby certify that on the 12TH Day of September, 2018, I served the attached: (redacted) BRIEF FOR RESPONDENT/APPELLANT, on Petitioner and Appellee, Ms. Jacqueline Gaddie, Assistant State's Attorney, representing Grand Forks County Social Services, by electronically transmitting the documents by email to the following email addresses: jacqueline.gaddie@gfcounty.org and sasupportstaff@gfcounty.org, This service by the Respondent/Appellant bears the return email address of lawfirmmaildjs@aol.com and filed from the offices of Darla J. Schuman, Schuman Law Office, 2860 10th Ave. N., Suite 500, Grand Forks, N.D, 58203.

Dated this 12 Day of September, 2018.

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