

IN THE SUPREME COURT
 STATE OF NORTH DAKOTA

In the Interest of A.G., a Child, Supreme Court No. 20210345
 In the Interest of A.G., a Child, Supreme Court No. 20210346

Jacqueline A. Gaddie,)	Grand Forks County Juvenile
Assistant State's Attorney,)	Court Case Nos.
)	18-2021-JV-00182
Petitioner and Appellee,)	18-2021-JV-00183
)	
v.)	
)	
A.G., Father)	
)	
Respondent and Appellant,)	
and)	
)	
A.G., a Child, and T.E.C., Mother,)	
)	
)	
Respondents.)	

APPEAL FROM ORDER ENTERED ON NOVEMBER 30, 2021, IN DISTRICT
 COURT, GRAND FORKS COUNTY, STATE OF NORTH DAKOTA
 THE HONORABLE DONALD HAGER

BRIEF OF APPELLEE-ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	p. 3
STATEMENT OF THE ISSUE.....	¶ 1
STATEMENT OF THE CASE.....	¶ 2
STATEMENT OF THE FACTS.....	¶ 3
CONTROLLING LEGAL PRINCIPLES.....	¶ 12
STANDARD OF REVIEW.....	¶ 16
ARGUMENT.....	¶ 18
I. There was clear and convincing evidence to support the finding that the children were in need of protection.....	¶ 18
CONCLUSION.....	¶ 24

TABLE OF AUTHORITIES

NORTH DAKOTA CASES

<i>Adoption of J.M.H.</i> , 1997 ND 99, 564 N.W.2d 623	¶ 15
<i>In re Adoption S.R.F.</i> , 2004 ND 150, 683 N.W.2d 913	¶ 15
<i>In re A.K.</i> , 2005 ND APP 3, 696 N.W.2d 160.....	¶ 12
<i>In Interest of A.S.</i> , 1998 ND 181, 584 N.W.2d 853,856 (1998).....	¶ 16
<i>In re B.B.</i> , 2008 ND 51, 746 N.W.2d 411	¶ 15, 20, 21
<i>In Interest of K.R.A.G.</i> , 420 N.W.2d 325 (N.D. 1988).....	¶ 14, 16
<i>In Interest of L.F.</i> , 1998 ND 129, 580 N.W.2d 573	¶ 16, 20
<i>In re N.W.</i> , 510 N.W.2d 580, 582 (N.D. 1994)	¶ 20
<i>Striefel v. Striefel</i> , 2004 ND 210 ¶8, 689 N.W.2d 415.	¶ 12
<i>In re T.A.</i> , 2006 ND 210, 722 N.W.2d 584.....	¶ 12
<i>In the Interest of T.F.</i> , 2004 ND 126, 681 N.W.2d 786 (2004).....	¶ 17

NORTH DAKOTA STATUTES

N.D.C.C. §27-20.3-01.....	¶ 2, 5, 14, 15
N.D.C.C. §27-20-02.....	¶ 14

NORTH DAKOTA RULES

N.D.R.Civ.P. 52(a).....	¶ 12, 13
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STATEMENT OF THE ISSUE

[¶1] The District Court properly found, based upon clear and convincing evidence, that A.G. (“Jane Doe”) and A.G (“Joan Doe”) are Children in Need of Protection.

STATEMENT OF THE CASE

[¶2] This is an appeal of the Northeast Central Judicial District finding that Jane Doe and Joan Doe are Children in Need of Protection pursuant to N.D.C.C. § 27-20.3-01(5). This is a child in need of protection case where Jane Doe and Joan Doe have been removed from their parents, T.E.C. and A.G. Juvenile Findings of Fact and Order for Disposition, Index 57. A trial was held on November 10, 2021. *Id.* The Court determined that Jane Doe and Joan Doe were children in need of protection within the meaning of N.D.C.C. § 27-20.3-01(5) and ordered the children be placed under the care, custody, and control of Grand Forks County Human Service Zone for appropriate placement. *Id.* The father, A.G., timely files this appeal. Notice of Appeal, Index 59.

STATEMENT OF FACTS

[¶3] That the above-named Jane Doe, currently age three, and Joan Doe, currently age one, are minor children. Juvenile Findings of Fact and Order for Disposition, Index 57. T.E.C. is the biological mother and A.G. is the biological father to both children. Both children were taken under the care, custody, and control of the Director of the Grand Forks County Human Service Zone (GFCHSZ) on July 14, 2021, pursuant to an emergency police removal. Juvenile Order for Shelter Care, Index 31. On July 16, 2021, a Shelter Care Hearing was held. Juvenile Order for Shelter Care, Index 31. At the Shelter Care Hearing, it was testified to by Genevieve Olson, a child protection worker for GFCHSZ, that the children were emergently removed from T.E.C.'s home due to feces smeared throughout the home, dead and live flies all over the home, lack of electricity in the home, bugs in the children's hair, severe diaper rash on Joan Doe, and Jane Doe's feet were so full of rotting food and sticky substances that you could not see her arches. Tr. p. 12-13, lns. 4-20; July 16, 2021. The Court at the Shelter Care Hearing found that Jane and Joan Doe are children in need of protection, and it is contrary to their welfare to remain in or return to the parental home. Juvenile Order for Shelter Care, Index 31.

[¶4] A trial was held on November 10, 2021. Juvenile Findings of Fact and Order for Disposition, Index 57. The children are currently residing under the care, custody, and control of the Director of the GFCHSZ pursuant to a Juvenile Order for Shelter Care issued by the court on July 16, 2021, Juvenile Order for Shelter Care, Index 31, as well as pursuant to a Juvenile Interim Order issued September 9, 2021. Juvenile Interim Order (Shelter Care), Index 47.

[¶5] T.E.C. appeared with her attorney, Tyler Morrow. Tr. p. 3, lns. 6-7; Nov. 10, 2021. A.G. was not present for the beginning of the trial, but arrived late and was represented by his attorney, Rhiannon Gorham, for the entire trial. Tr. p. 6, lns. 14-21; Nov. 10, 2021. T.E.C.

stipulated to the allegations that the children are in need of protection. Tr. p. 4-5, lns. 4-3; Nov. 10, 2021. Testimony was taken of the State's witnesses Genevieve Olson and Kim Solarski who were both qualified, without objection, as expert witnesses in child welfare. Juvenile Findings of Fact and Order for Disposition, Index 57. A.G. testified on his own behalf and was subject to cross-examination. Juvenile Findings of Fact and Order for Disposition, Index 57. Based upon the testimony of all the witnesses, as well as the Affidavit for Shelter Care filed by Genevieve Olson, the court found, by clear and convincing evidence and proof beyond a reasonable doubt, the above-named children are CHILDREN IN NEED OF PROTECTION pursuant to North Dakota Century Code § 27-20.3-01(5). Juvenile Findings of Fact and Order for Disposition, Index 57.

[¶6] At trial on November 10, 2021, it was testified to by Ms. Olson that T.E.C. had a no contact order with A.G. and she seemed fearful of A.G. T.E.C. seemed fearful of A.G. driving by T.E.C.'s residence often, and of A.G. trying to contact T.E.C. Tr. p. 13 lns. 6-12; Nov. 10, 2021. Ms. Olson testified A.G. has a criminal record including domestic violence and child neglect from August of 2020, which led to the children being in a foster care placement previously. Tr. p. 13, lns. 18-22; Nov. 10, 2021. Ms. Olson also testified that A.G. was considered as a potential placement for Jane and Joan Doe, when they were removed from T.E.C.'s home in July of 2021, but determined that a placement was not appropriate with A.G. due to an ongoing pattern of violence by A.G., A.G.'s lack of understanding of the impact the domestic violence has caused to the children, and A.G.'s lack of honesty with GFCHSZ regarding the domestic violence concerns. Tr. p. 14, lns. 4-23; Nov. 10, 2021. During cross-examination, Ms. Olson testified that A.G. did not complete his first round of classes for the New Choices program at the Community Violence and Intervention Center (CVIC), had to restart the

course entirely, and has still not graduated from the course. Tr. p. 19, lns. 3- 8; Nov. 10, 2021. Additionally, Ms. Olson made clear that domestic violence is concerning regardless of whether the violence was perpetrated against the children or another adult. Tr. p. 18, lns. 7-12; Nov. 10, 2021. Ms. Olson provided an unrefuted expert opinion to the Court that Jane and Joan Doe are children in need of protection and asked that the children remain in the care, custody, and control of the GFCHSZ, as it is contrary for the children to return to the parental home. Tr. p. 15, lns. 8-17; Nov. 10, 2021.

[¶7] During the November 10, 2021, trial, Ms. Solarski, foster care case manager, provided testimony stating her concerns about A.G.'s compliance with the County. A.G. was not compliant with services during the children's prior placement in foster care. Tr. p. 28, lns. 2-18; Nov. 10, 2021. Furthermore, A.G. had not fully completed his required New Choices program at the time of trial, and had not yet signed a required release of information for a referral for the necessary parenting and psychological evaluation. *Id.* Additionally, A.G. did not appear at a review hearing for domestic violence court and was subsequently arrested on October 15, 2021, for that failure to appear. Tr. p. 28, lns. 18-24; Nov. 10, 2021. Ms. Solarski also testified to A.G.'s fatherly abilities and his relationship with his children. At in-person visits between A.G. and the children there was an intervention at one point due to one of the children falling off of something and A.G. had not noticed. Tr. p. 31, lns. 3-22; Nov. 10, 2021. Ms. Solarski testified that the children have a flat affect around A.G. at the visits and the children become very excited when the foster parents pick them up from visits with A.G.. *Id.* Furthermore, A.G. was taken off the visit schedule for a couple of weeks due to not showing up to a scheduled visit. *Id.* Ms. Solarski then provided the court with an unrefuted expert opinion that the children are in need of protection due to the domestic violence concerns with A.G., A.G.'s lack of compliance with

services, and the condition of T.E.C.'s home. Tr. p. 32, lns. 3-13; Nov. 10, 2021. Additionally, Ms. Solariski testified that the children are doing very well in their foster home. Tr. p. 32, lns. 17-20; Nov. 10, 2021.

[¶8] On cross-examination, Ms. Solariski testified that A.G. has a girlfriend, and that A.G. has a history of domestic violence with three women in addition to his history of domestic violence with T.E.C. Tr. p. 37, lns. 5-13; Nov. 10, 2021. Ms. Solariski also testified that A.G. had commented that, if he were given the chance, A.G. would take the children and flee to New York where T.E.C. would never see them again. Ms. Solariski found this concerning. Tr. p. 40, lns. 3-13; Nov. 10, 2021.

[¶9] The defense's only witness, A.G., testified on his own behalf. During his testimony, A.G. admitted to simple assault against a domestic partner. Tr. p. 47-48, lns. 24-8; Nov. 10, 2021. A.G. also admitted that the GFCHSZ explained their concerns to A.G. about the impact of his children being exposed to domestic violence in the home. Tr. p. 48, lns. 18-25; Nov. 10, 2021. Additionally, A.G. testified that, at the time of trial, he resided in only a one-bedroom apartment. Tr. p. 51, lns. 1-6; Nov. 10, 2021. On cross-examination, A.G. admitted that the children were not residing with him due to the domestic violence incident, and removal that occurred in August of 2020 and that the children were living with T.E.C. in July of 2021 as a result of A.G. having a no contact order with T.E.C. Tr. p. 57, lns. 19-6; Nov. 10, 2021.

[¶10] Grand Forks County Human Service Zone made reasonable efforts to prevent or eliminate the need to remove the children from the parental home. Juvenile Findings of Fact and Order for Disposition, Index 57.

[Reasonable efforts include] multiple Child Protection Assessments, previous Foster Care Placement that only ended in May 2021, past and current Law Enforcement Involvement, Domestic Violence Services, Supervised Probation Services, Educational Services,

Services through CVIC, Guardian a Litem Services, Foster Care
Case Management Services, and Juvenile Court Intervention.

(Juvenile Findings of Fact and Order for Disposition, Index 57.)

[¶11] The Honorable Donald Hager found that there was clear and convincing evidence
and proof beyond a reasonable doubt that A.G.'s children are children in need of protection.
Juvenile Findings of Fact and Order for Disposition, Index 57.

CONTROLLING LEGAL PRINCIPLES

[¶12] 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).

[¶13] Additionally, the reviewing court shall “[give] appreciable weight to the findings of the juvenile court.” *In Interest of K.R.A.G.*, 420 N.W.2d 325, 327 (N.D. 1988). 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).

[¶14] Case law may refer to a child in need of protection as a deprived child. Prior to August 1, 2021, statutory language referred to children in need of protection as deprived children. N.D.C.C. § 27-20-02. The subsequent effective statute changed the language of a deprived child to mean a child in need of protection. N.D.C.C. § 27-20.3-01(5). Phrases referring to deprived children or findings of deprivation are applicable to the new statutory language under N.D.C.C. § 27-20.3-01(5).

[¶15] “Clear and convincing evidence must support a finding of deprivation.” *In re B.B.*, 2008 ND 51, ¶ 6, 746 N.W.2d 411. “Clear and convincing evidence means evidence that leads to a firm belief or conviction the allegations are true.” *In re Adoption of S.R.F.*, 2004 ND

150, ¶ 7, 683 N.W.2d 913, (citing *Adoption of J.M.H.*, 1997 ND 99, ¶ 7, 564 N.W.2d 623). A child is in need of protection if the child “[i]s 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 need for services or protection is not due primarily to the lack of financial means of the child’s parents, guardian, or other custodian[.]” N.D.C.C. 27-20.3-01(5).

STANDARD OF REVIEW

[¶16] On appeal, this Court may examine the evidence presented to the juvenile court in a manner similar to a trial de novo. *In Interest of A.S.*, 1998 ND 181, ¶ 13 584 N.W.2d 853, 856 (quoting *Interest of L.F.*, 1998 ND 129, ¶ 12, 580 N.W.2d 573). This Court's "review shall be based upon the files, records, and minutes or transcript of the evidence of the juvenile court, giving appreciable weight to the findings of the juvenile court." *In Interest of K.R.A.G.*, 420 N.W.2d 325, 327 (N.D. 1988).

[¶17] Rule 52(a) of the North Dakota Rules of Civil Procedure provides, "findings of fact in juvenile matters shall not be set aside by this Court unless they are clearly erroneous." *Interest of T.F.*, 2004 N.D. 126, ¶ 8, 681 N.W.2d 786, 789.

ARGUMENT

I. There was clear and convincing evidence to support the finding that the children were in need of protection.

[¶18] The Court properly found that Jane and Joan Doe are children in need of protection. A.G.'s actions reflect a pattern of poor parental decisions and these decisions have directly impacted Jane and Joan Doe. Jane and Joan Doe were in the care of their mother at the time of their removal due to A.G.'s domestic violence. Tr. p. 57, lns. 19-6; Nov. 10, 2021. A.G.'s domestic violence incident led to the children's first removal and placement, which had happened in August of 2020. *Id.* A.G., at the time of trial, had also not completed his requirements for domestic violence court, and had recently been arrested on October 15, 2021, for failing to appear at a required hearing for domestic violence court. Tr. p. 28, lns. 18-24; Nov. 10, 2021. Failing to show up for and complete required domestic violence court hearings shows a recent pattern of poor parental choices.

[¶19] GFCHSZ considered A.G. as a potential placement for the children. Tr. p. 14, lns. 4-23; Nov. 10, 2021. Ultimately, it was decided to not place the children with A.G. due to his pattern of domestic violence, A.G.'s lack of understanding of the impact the domestic violence has caused the children, and his lack of honesty regarding the domestic violence concerns with GFCHSZ. *Id.* A.G. also had to restart his classes in the New Choices program with CVIC due to not completing his first round of classes with CVIC. Tr. p. 19, lns. 3- 8; Nov. 10, 2021. At the time of trial, A.G. had still not graduated from the course. *Id.* Due to A.G.'s pattern of failing to complete required programs, his dishonesty, and his lack of understanding the impact his choices have on his children, it was determined that A.G. was not an appropriate option for placement of the children. Due to this, A.G.'s children are in need of protection.

[¶20] “[A] pattern of parental conduct can form a basis for a reasonable prediction of future behavior.” *In re B.B.*, 2008 ND 51, ¶ 9, 746 N.W.2d 411. “[E]vidence of the parent’s background, including previous incidents of abuse and deprivation, may be considered in determining whether deprivation is likely to continue.” *Id.*, (quoting *In re L.F.*, 1998 ND 129, ¶ 16, 580 N.W.2d 573). Parental cooperation, or lack thereof, with Human Services should also be considered in determining if deprivation will continue. *See In re N.W.*, 510 N.W.2d 580, 582 (N.D. 1994) (emphasizing that the parents needed to “knock that chip off [their] shoulder[s] about dealing with the Human Services agency” and continue to cooperate with the agency). As discussed above, A.G. has a history with the GFCHSZ, has a confirmed find of neglect against him, and has demonstrated a pattern of parental conduct that is contrary to the welfare of his children. Furthermore, testimony was provided at trial that showed A.G. was not compliant during the children’s first placement in foster care. Tr. p. 28, lns. 2-18; Nov. 10, 2021. GFCHSZ can use A.G.’s past conduct of non-compliance to form a basis of predicting A.G.’s future behavior.

[¶21] Testimony at trial provided that A.G. has a history of domestic violence with three women in addition to T.E.C. Tr. p. 37, lns. 5-13; Nov. 10, 2021. At the time of trial, A.G. had a new girlfriend in his life. *Id.* Due to the demonstrated pattern of domestic violence with women in A.G.’s life, a reasonable prediction could be made that A.G. might expose his children to domestic violence again. A pattern such as A.G.’s domestic violence can be considered reflective of A.G.’s future behavior. *In re B.B.*, 2008 ND 51, ¶ 9, 746 N.W.2d 411. A.G.’s pattern of domestic violence indicates that Jane and Joan Doe are children in need of protection, as violence is concerning whether perpetrated on another adult or a child.

[¶22] Appellant asserted at the Shelter Care Hearing that he “go[es] to all my Kids First meetings. . . I’m jumping through every hoops [sic] you guys ask.” Tr. p. 19, Ins. 19-23; July 16, 2021. However, at trial, this was refuted by the expert witness, Ms. Solarski, when she said that A.G. had cancelled a visit with his children at Kids First, resulting in being taken off the schedule. Tr. p. 31, Ins. 3-22; Nov. 10, 2021. A.G. has also not appeared to be an involved father at his Kids First visits. On one occasion, one of the children fell off of something and A.G. had not noticed, requiring an intervention by the visit supervisor. *Id.* Additionally, A.G. had mentioned that if he were given an opportunity, he would take his children to New York where their mother, T.E.C. would never see them again. Tr. p. 40, Ins. 3-13; Nov. 10, 2021. This statement, especially in combination with his history of non-compliance with social services, is concerning as A.G. would have the opportunity to flee to New York if he had the children placed with him. Because of A.G.’s lack of honesty, lack of involvement with his children, and his unsettling statement that he made, about fleeing with the children, to GFCHSZ, Jane and Joan Doe are children in need of protection.

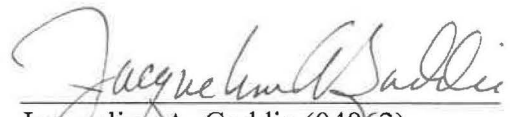
[¶23] Due to the unrefuted expert testimony provided at trial, the District Court was provided with clear and convincing evidence that showed the above-named children are children in need of protection. Consequently, the District Court was proper in ruling that the Jane and Joan Doe are children in need of protection.

CONCLUSION

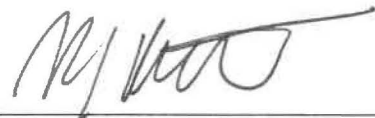
[¶24] For all of the foregoing reasons, the State respectfully requests that this Court affirm the District Court's finding that the minor children are children in need of protection and its Order placing Jane and Joan Doe in the care, custody, and control of the Director of the Grand Forks County Human Service Zone.

[¶25] Oral argument would be helpful to the Appellee's case as Appellant has requested oral argument. It is in Appellee's best interest to also appear for oral argument.

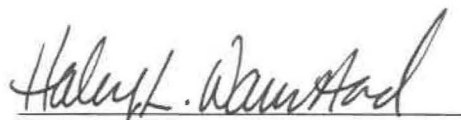
Dated this 28 day of April, 2022.



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CERTIFICATE OF COMPLIANCE

[¶1] The State of North Dakota, by and through Assistant State's Attorney Jacqueline A. Gaddie hereby certifies that the attached brief complies with the page limitation as set forth in Rule 32 of the North Dakota Rules of Appellate Procedure. The electronically filed brief contains (16) number of pages.

Dated this 25th day of April, 2022.

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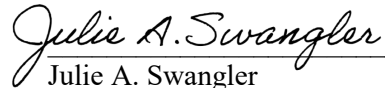
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At the office of the Grand Forks County States Attorney's Office.

Signed on the 25th day of April, 2022, at Grand Forks, North Dakota, United States.



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THE HONORABLE DONALD HAGER

DECLARATION OF SERVICE

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

The undersigned, being of legal age, declares under penalty of perjury under the law of North Dakota, that the foregoing is true and correct, that on the 26th day of April, 2022, she served true copies of the following documents:

BRIEF OF APPELLE
CERTIFICATE OF COMPLIANCE
NOTICE OF CERTIFIED STUDENT REPRESENTATION
NOTICE OF STATE'S INTENT TO PARTICIPATE

electronically through the Court Electronic Filing System to:

Kasey McGough
kmcgough@nd.gov

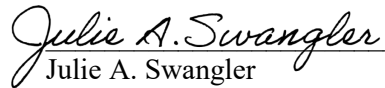
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At the office of the Grand Forks County States Attorney's Office.

Signed on the 26th day of April, 2022, at Grand Forks, North Dakota, United States.



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CLERK OF SUPREME COURT
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Dated this 28th day of April, 2022.

/s/ Jacqueline A. Gaddie
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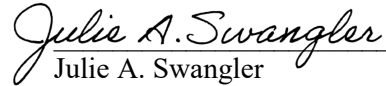
Page 1 of 2

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chrisdjones@nd.gov

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

Signed on the 28th day of April, 2022, at Grand Forks, North Dakota, United States.



Julie A. Swangler
Legal Secretary II
GF County States Attorney's Office
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Grand Forks, ND 58201-5607
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jas

In the Interest of A.G., a Child, Supreme Court No. 20210345
In the Interest of A.G., a Child, Supreme Court No. 20210346

Jacqueline A. Gaddie,)	Grand Forks County Juvenile
Assistant State’s Attorney,)	Court Case Nos.
)	18-2021-JV-00182
Petitioner and Appellee,)	18-2021-JV-00183
)	
v.)	
)	
A.G., Father)	
)	
Respondent and Appellant,)	
and)	
)	
A.G., a Child, and T.E.C., Mother,)	
)	
Respondents.)	

APPEAL FROM ORDER ENTERED ON NOVEMBER 30, 2021, IN DISTRICT COURT,
GRAND FORKS COUNTY, STATE OF NORTH DAKOTA
THE HONORABLE DONALD HAGER

DECLARATION OF SERVICE

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

The undersigned, being of legal age, declares under penalty of perjury under the law of North Dakota, that the foregoing is true and correct, that on the 28th day of April, 2022, she served true copies of the following documents:

BRIEF OF APPELLE - COVER PAGE

electronically through the Court Electronic Filing System to:

Kasey McGough
kmcgough@nd.gov

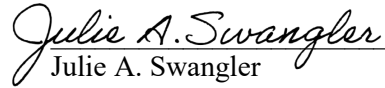
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At the office of the Grand Forks County States Attorney's Office.

Signed on the 28th day of April, 2022, at Grand Forks, North Dakota, United States.



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