

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

**In the Interest of V.C., a child**

Roughrider North Human Service Zone and State of North Dakota,  Petitioner/Appellee,  v.  C.A. mother,  Respondent/Appellant.	Supreme Court No.: 20220381  Stark County District Court No.: 45-2021-JV-00088
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**BRIEF OF THE APPELLEE, THE STATE OF NORTH DAKOTA**

Appeal from Juvenile Finding of Fact and Order Terminating Parental Rights Entered on  
December 1, 2022  
In the County of Stark, State of North Dakota, Southwest Judicial District  
Honorable James D. Gion, Presiding

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### **JURISDICTIONAL STATEMENT**

[¶1] The Appellee agrees with the Appellant that this Court has jurisdiction to hear this appeal.

### **STATEMENT OF THE ISSUES**

[¶2] Did the trial court commit reversible error in terminating the parental rights of the Appellant?

### **STATEMENT OF THE CASE**

[¶3] The Appellee has no issue with the Statement of the Case presented by the Appellant in her brief.

### **STATEMENT OF THE FACTS**

[¶4] The Appellee agrees with the Appellant's statement of the facts except to clarify that the Respondent child's initial foster care placement took place on February 7, 2019, which was just before this child's first birthday.

### **STATEMENT OF REVIEW**

[¶5] The Appellee agrees with the Appellant's Standard of Review set forth in her brief.

### **LAW AND ARGUMENT**

[¶6] The trial court committed no error. The facts in this case are largely, if not entirely, undisputed. The Respondent mother has struggled with addiction issues. These issues have resulted in incarceration, arrests and stints in treatment. She has had minimal contact with her child. Because of these issues, the trial court concluded that the Respondent child was a child in need of protection, that the conditions causing such were

likely to continue and that the Respondent child had been in foster care for a time greatly in excess of the legal requirement for termination.

[¶7] As stated by the Appellant in her brief, N.D.C.C. § 27-20.3-20 permits the termination of parental rights under the following circumstance:

- a. The parent has abandoned the child;
- b. The child is subjected to aggravated circumstances;
- c. The child is in need of protection and the court finds:
  - a. The conditions and causes of the need for protection are likely to continue or will not be remedied and for that reason the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or
  - b. The child has been in foster care, in the care, custody, and control of the department or human service zone for at least four hundred fifty out of the previous six hundred sixty nights;
- d. The written consent of the parent acknowledged before the court has been given

[¶8] In reaching its decision in this matter, the trial court considered the testimony, the guardian ad litem reports and took judicial notice of the orders entered in Stark County Case No. 45-2019-JV-15. R114: 2: ¶2.

[¶9] The trial court concluded that this was a case of “too little, too late.” R114: 10 ¶23.

[¶10] The trial court found that the Respondent child was born on February 9, 2018, and that “Violet”, a pseudonym for the Respondent child, and that the Respondent mother, “Claire”, a pseudonym, placed Violet with her mother and the father of Claire’s second child. (Violet is her youngest child, R114: 2: ¶2.) At some point, Violet ended up being placed with the Respondent mother’s sister, June, a pseudonym.

[¶11] On February 7, 2019, Violet was removed from June’s care and placed in foster care. She remained in foster care continuously until the court trial on October 26, 2022, a total of 1, 357 days. R114: 5: ¶6. During this period of time, the Respondent mother

was unable to bring herself to a condition where she could parent Violet. This is far in excess of the 450 out of 660 nights requirement.

[¶12] The Respondent mother did not get out of prison until March 5, 2021, at which point Violet had been in foster care for over two years.

[¶13] But instead of commencing a termination case, the Roughrider North Human Service Zone (hereinafter referred to as “RNHSZ”) chose to attempt to reunite Violet with her mother. It did not go well. RNHSZ attempted, through an ICPC, to place Violet with her grandmother and/or the father of her half-sister. They were denied. An ICPC was subsequently approved for Claire but she was evicted from her residential facility and the ICPC was revoked or denied. Drug arrests subsequently followed and the trial court terminated parental rights. R114: 4: ¶5.

[¶14] In addressing the arguments of appellate counsel, the undersigned does not believe for a second that the ICPC process hindered the reunification efforts. It was Claire’s conduct. Second, what happened to Claire’s other children is irrelevant. The situation of each child should be addressed on his or her own. Claire’s older children probably developed a sufficient connection with Claire to make termination unwarranted. With respect to Violet, who at the time of the hearing, was closing in on her fifth birthday, she had not developed any connection with Claire. The trial court concluded that Claire’s situation was similar to that in State v. T.L. 2008 ND 131, 751 N.W. 2d 677, in which a parent struggled with addiction unsuccessfully.

[¶15] With respect to the argument that the Court miscalculated the number of nights, it is obvious that the trial court erred when it stated Violet’s foster care

placement began shortly before her second birthday. There is no question she was removed before her first birthday.

### **CONCLUSION**

[¶16] In this trial court's lengthy, well researched and well-reasoned opinion, the court concluded that Violet was a child in need of protection stating that Claire's interactions with Violet were intermittent and did not meet the minimum standards of the community. R114: 6: ¶10. Nor does the continued use of controlled substances meet the minimum standards of the community. Violet had been in foster care, on the day of the trial, for 1, 357 days, far in excess of the 450 out of 660-night requirement.

[¶17] At some point, a parent runs out of time. This occurred here. Claire's history persuaded the trial court that the past was prologue and things were not going to change. This conclusion was not erroneous in any way and the order for termination should be affirmed.

Dated this 19th day of January, 2023.

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Roughrider North Human Service  
Zone and State of North Dakota,

Petitioner/Appellee,

v.

C.A. mother,

Respondent/Appellant.

Supreme Court No.:  
20220381

Stark County District Court No.:  
45-2021-JV-00088

**CERTIFICATE OF COMPLIANCE FOR BRIEF OF THE APPELLEE**

[¶1] The undersigned hereby certifies, in compliance with N.D.R.App.P. 32(a)(8)(A), that the Brief of the Appellee is 7 pages in length, including the Cover Page, the Table of Contents, and the Table of Authorities.

Dated this 19th day of January, 2023.

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**CERTIFICATE OF SERVICE FOR BRIEF OF THE APPELLEE AND  
CERTIFICATE OF COMPLIANCE**

[¶1] I certify that on the 19th day of January, 2023, I caused copies of the Brief of the Appellee, The State of North Dakota, and Certificate of Compliance for Brief of the Appellee, to be served electronically, via Supreme Court’s efilng portal upon the following:

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Dated this 19th day of January, 2023.

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CERTIFICATE OF SERVICE FOR BRIEF OF THE APPELLEE

[¶1] I certify that on the 20th day of January, 2023, I caused copies of the Brief of the Appellee, The State of North Dakota, of the Appellee, to be served electronically, via email upon the following:

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Dated this 20th day of January, 2023.

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