

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,**

Petitioners and Appellee,

vs.

C.A., mother,

Respondent and Appellant.

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**Supreme Court No.
20220381**

**District Court No.
45-2021-JV-00088**

APPELLANT'S BRIEF

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

ORAL ARGUMENTS REQUESTED

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[¶ 2] TABLE OF AUTHORITIES

<u>North Dakota Supreme Court Cases</u>	<u>¶ #</u>
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N.D.R.App.P.	¶ 4
N.D.R.Civ.P.	¶ 18
<u>Constitutional Provisions</u>	<u>¶ #</u>
N.D. Const. art. VI, § 2	¶ 4
N.D. Const. art. VI, § 6	¶ 4

NOTES:

- The names of the child and the parents in this brief are pseudonyms.
- Transcripts were purposely not requested in this matter, as the district court's Memorandum Opinion and Order Terminating Parental Rights, as well as all other documents contained in the Record on Appeal address the issues raised in this appeal.

[¶ 3] JURISDICTION

[¶ 4] This Court has jurisdiction to hear this appeal under N.D. Const. art. VI, §§ 2 and 6. “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 judgement 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). An appeal, filed within thirty days of a lower court’s order, is timely under N.D.R.App.P. 2.2 and N.D.R.App.P. 26

[¶ 5] STATEMENT OF THE ISSUES

[¶ 6] The Juvenile Court erred in finding that the child was in need of protection.

[¶ 7] The Juvenile Court erred when calculating the number of days the child was in care.

[¶ 8] ORAL ARGUMENT JUSTIFICATION

[¶ 9] Oral argument has been requested to emphasize and clarify the Appellant’s written arguments on their merits.

[¶ 10] STATEMENT OF THE CASE

[¶ 11] C.A. (Claire) is the mother of V.C. (Violet). At the time of trial, Violet was four years old. Claire has two other children, not subject to this case. Violet was taken into custody of the Roughrider North Human Service Zone (hereinafter “RNHSZ”) on February 7, 2019. (R1:¶2).

[¶ 12] The petition to terminate parental rights was filed on October 18, 2021. *Id.* Following numerous continuances, the trial in this matter occurred on October 26, 2022. (R114:¶1). After all testimony was received, the juvenile court issued its memorandum opinion on November 14, 2022. (R114). The juvenile court then issued the Juvenile Findings and Order Terminating Parental Rights on December 1, 2022. (R119). This appeal follows in compliance with N.D.R.App.P. 2.2

[¶ 13] STATEMENT OF THE FACTS

[¶ 14] Violet was born in 2018, shortly before Violet was one year old, Claire placed Violet with Claire’s mother and the father of one of Claire’s other children (hereinafter “Ann & Bob”). (R114¶2). This placement was based on the fact that Claire was to begin a period of incarceration in Wyoming where she lived and still lives. *Id.* Ann & Bob resided in Wyoming as well. *Id.* at ¶3. At some point after Violet was placed with Ann & Bob, they in-turn placed violet with Claire’s sister (June). June lived in Dickinson, North Dakota, this is the first interaction Violet has with North Dakota.

[¶ 15] Violet only stayed with June for approximately two-to-five months, when just before Violet’s second birthday, June had an interaction with law enforcement that resulted in Violet being placed in foster care. *Id.* at ¶¶2-3. Violet was placed with Ann, her grandmother, back in Wyoming for approximately two-weeks before returning to North Dakota on February 29, 2019, due to Ann’s arrest for a DUI in Wyoming. *Id.* at ¶3.¹

[¶ 16] Claire was ultimately released from incarceration in March of 2021. (R114¶5). In August 2021, Claire was approved for placement of her daughter via the ICPC

¹ On February 29, 2019, Violet could not possibly have been close to her second birthday, being born in 2018, yet pursuant to the juvenile court’s own Memorandum, Violet was not taken into custody of the RNHSZ until ‘[j]ust before [Violet’s] second birthday’.

on conditions she reside at a sober living facility for six months. *Id.* Shortly after placement, Claire was evicted from the sober living facility for failing to comply with requirements of the facility, failure to pay fees, and a positive test for opiates. *Id.* Subsequently, Claire has struggled with her addiction, facing more criminal charges, all for controlled substances. *Id.* The juvenile court then declared Violet has been in the same foster care for 1,357 days since February 7, 2019, which is contrary the juvenile court's own articulation of Violet's return to North Dakota on February 29, 2019. *Ibid.* ¶15.

[¶ 17] STANDARD OF REVIEW

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

[¶ 19] A finding of fact is not clearly erroneous unless it is induced by an erroneous view of the law, if there is no evidence to support it, or if, on the entire record, this Court is left with a definite and firm conviction a mistake has been made. *Interest of A.C.*, 2022 ND 123, ¶5, 975 N.W.2d 567.

[¶ 20] LAW AND ARGUMENT

[¶ 21] N.D.C.C. § 27-20.3-20 permits termination of parental rights for one of the following:

- 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:
 - (1) 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
 - (2) 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;

[¶ 22] In the case at bar, the juvenile court ordered the termination of parental rights pursuant to Violet needing protection and the fact that Violet has been in the custody of RNHSZ for 1,357 days out of the past 1,357 days at the time of the trial. (R119¶¶4-6). There was no finding by the juvenile court of abandonment, aggravating circumstances, consent of the parent, or that the circumstances surrounding the need for protection cannot be remedied.

[¶ 23] A child is in need of protection is one who:

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 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).

[¶ 24] The juvenile court further narrowed its finding in that Violet's need for protection was based on her lacking "proper parental care" and not any other factor contained in N.D.C.C. § 27-20.3-01(5). *See* (R114¶¶8-9).

[¶ 25] The juvenile court reason that proper parental care means the "minimum standards of care the community will tolerate." (R113¶9) *citing In re A.B.*, 2010 ND 249, ¶16, 792 N.W.2d 539. The problem with this limited finding, is that the juvenile court failed to consider what the minimum standards are when a biological parent is unable to care for the child due to the red tape and bureaucracy of the Interstate Compact on Placement of Children (hereinafter "ICPC").

[¶ 26] The juvenile court began its analysis of the issues surrounding Claire through a subjective lens of indignation because Claire "has been in at least three

relationships...[s]he has three daughters with three different fathers.” (R114¶16). The juvenile court was well aware that parental rights of Claire’s two older daughters has not been terminated. *Id.* at ¶19. Therefore, the only outlying factor in Claire’s life between her two other daughters and Violet, is that Violet has been subject to the ICPC and the other two have not. The juvenile court fails to recognize this issue of the red tape bureaucracy the ICPC places in the way of gaining a true and accurate measure of the “minimum standards of care the community will tolerate,” because the ICPC interferes with immediate and objective reunification efforts between parent and child.

[¶ 27] Therefore, a more accurate assessment, would be to measure whether Claire’s parental rights have been terminated with respect to her two older children. The older children who have been subject to longer periods of Claire’s legal troubles and addiction issues but have nonetheless been in the same state as Claire and not subject to the red tape bureaucracy of the ICPC. As the juvenile court notes, in neither case, as Claire’s parental rights been terminated. Furthermore, if the minimum standards of care that Claire’s community in Wyoming will tolerate, permit her to maintain parental rights to the older children, then the juvenile court here is applying the wrong ‘subjective’ community standards.

[¶ 28] Finally, based on the juvenile court’s own memorandum opinion, the number of days violet has been in custody of RNHSZ cannot be accurate. *Ibid.* footnote 1. Pursuant to the juvenile court’s own memorandum, the timeline of Violet’s custody by the State of North Dakota began shortly before Violets second birthday. (R114¶¶2-3). Yet, the juvenile court used February 7, 2019, as the day to begin its calculation. Given Violet’s birthyear of 2018, Violet could not have been anywhere close to her second birthday in

February of 2019. The February 7, 2019, date appears in the original petition and the affidavit in support as the beginning date of custody. (R1&2). However, the juvenile court discussed its own timeline of events based on testimony it heard on October 26, 2022. *See* (R114¶¶2-3). Therefore, the juvenile court's calculation of days in custody is not supported by its own evaluation of the timeline.

[¶ 29] CONCLUSION

[¶ 30] For the foregoing reasons, in that the juvenile court utilized a very subjective analysis of the minimum standards of care that the juvenile court's community will tolerate, and that the juvenile court's 'days in custody' calculation cannot be supported by its own analysis, Appellant respectfully requests this Court vacate the juvenile court's order terminating the parental rights.

Respectfully submitted this Friday, December 30, 2022.

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CERTIFICATE OF SERVICE

I, Samuel A. Gereszek, attorney for the Defendant, and officer of the court, hereby certify that a true and correct copy of the following:

1. *Notice of Expedited Appeal*
2. *Appellant's Brief*
3. *Certificate of Compliance*

was filed via **electronically through the Court Electronic Filing System** on Friday, January 6, 2023, and served upon:

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Dated this Thursday, January 5, 2023.

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