

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

IN THE INTEREST OF D.M.D., A CHILD.

State of North Dakota, Petitioner and)	
Appellee.)	Supreme Court No. 20190299
v.)	District Court No.18-2019-JV-00172
)	
D.M.D., a child, J.A, biological father,)	
K.D., Legal father, and Emily Simmons,)	
Guardian Ad Litem, Respondents)	
And)	
J.M.D., mother, Respondent and Appellant.)	

ON APPEAL FROM THE JULY 8, 2019, JUVENILE FINDINGS OF FACT AND ORDER
FOR DISPOSITION (IN CUSTODY)
FROM THE DISTRICT COURT
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA
THE HONORABLE JASON MCCARTHY, PRESIDING

AND

ON APPEAL FROM THE AUGUST 1, 2019, ORDER AFFIRMING AGGRAVATED
CIRCUMSTANCES (IN CUSTODY)
FROM THE DISTRICT COURT
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA
THE HONORABLE LOLITA HARTL ROMANICK, PRESIDING.

BRIEF OF APPELLEE

Jacqueline A. Gaddie (04962)
Assistant States Attorney
Grand Forks County
P. O. Box 5607
Grand Forks, ND 58206-5607
[701] 780-8281

TABLE OF CONTENTS

Table of Contents..... ¶2

Table of Authorities..... ¶3

Statement of the Issues ¶4

Statement of Case ¶5

Statement of the Facts..... ¶6

Standard of Review ¶16

Argument ¶16

I. The District Court’s Finding of Aggravated Circumstances is not clearly Erroneous ¶16

A. J.D.’s background, including previous incidents of abuse and Deprivation show that deprivation is likely to continue and warrants a Finding of aggravated circumstances. ¶19

Conclusion..... ¶21

TABLE OF AUTHORITIES

NORTH DAKOTA COURT CASES

In re A.K., 2005 ND APP 3, 696 N.W.2d 160 ¶32

Interest of A.S., 1998 ND 181, 584 N.W.2d 853 ¶29

In the Interest of C.D., Case No. 18-2011-JV-00244 ¶37

In the Interest of J.D., Case No. 18-2011-JV-00243 ¶37

In the Interest of J.D.D., Case No. 18-2013-JV-00233 ¶37

In the Interest of K.D.J., Case No. 18-2011-JV-00242 ¶37

In the Interest of L.D., Case No. 18-2017-JV-00314 ¶37

Interest of L.F., 1998 ND 129 580 N.W.2d 573 ¶29

In re T.A., 2006 ND 210, 722 N.W.2d 548 ¶32

Interest of T.F., 2004 N.D. 126, 681 N.W.2d 786 ¶30

In re T.H., 2012 ND 38, 812 N.W.2d 373 ¶37

Striefel v. Striefel, 2004 ND 210, 689 N.W.2d 415 ¶32

NORTH DAKOTA CENTURY CODE

N.D.C.C. § 27-20-02(3) ¶33, 38

N.D.C.C. § 27-20-02(8)(a) ¶3, 38

N.D.C.C. § 27-20-32.2(4) ¶35

N.D.C.C. § 27-20-36(2)(b) ¶12, 34

N.D.C.C. § 27-20-56(1) ¶29, 36

NORTH DAKOTA RULES OF CIVIL PROCEDURE

N.D.R.Civ.P. 52(a) ¶32, 36

STATEMENT OF THE ISSUES

- 1. The District Court's Finding of Aggravated Circumstances is not clearly erroneous.**

STATEMENT OF THE CASE

[¶1] The State is substantially in agreement with the Statement of the Case as included in Appellant's brief.

STATEMENT OF THE FACTS

¶2] This is a child deprivation case involving a finding of aggravated circumstances. J.D. has six (6) children, D.D. being her sixth. All prior five (5) children have been found to be deprived children, and parental rights of these five (5) children were terminated. J.D. has been involved with Grand Forks County Social Service Center for approximately the last twelve (12) years. (*See generally* Case No. 18-2011-CR-02149). J.D. has received twelve (12) years of extensive services from Social Services, and has made numerous attempts at chemical dependency treatment. However, none of those attempts have been successful.

¶3] At the first hearing on July 3, 2019, the Honorable Jason McCarthy made the finding that D.D. was a deprived child pursuant to N.D.C.C. § 27-20-02(8)(a). Judge McCarthy also ordered that aggravated circumstances be found against J.D. in this matter. (*See Juvenile Findings of Fact and Order for Disposition (In Custody)*, Register of Actions, Index #30).

¶4] At the July 3, 2019, hearing, Sonja Olson, a child protection worker and licensed social worker for the State of North Dakota, was qualified as an expert witness. Olson testified that she was assigned a report against J.D. in March of 2018, for a pregnant women assessment after Grand Forks County Social Services received a report of J.D. using illegal substances while pregnant. *Id.* Olson again met with J.D. in November 2018, when a report of domestic violence occurred between her and a live in boyfriend. *Id.* Olson made a home visit and completed a safety plan for J.D. At that time, no further services were required. *Id.* J.D. gave birth to D.D. in 2018. Olson's next

contact with J.D. occurred in January of 2019, in response to another report of domestic abuse committed against her. *Id.* At this time, it was determined no further services were required. Olson testified that there were six (6) reports of domestic abuse involving J.D. from November 2018 until March 2019. (Trial Tr. Pg. 4-7). Olson made contact with J.D. after the March report was received. (Trial Tr. Pg. 8). On March 19, 2019, around 1:00 p.m., J.D. informed Olson by telephone that she was ready to leave her abusive relationship, asking for a placement at the Community Violence Intervention Center (CVIC), and transportation assistance. *Id.* When Olson called J.D. around 1:25 p.m., Olson heard J.D. screaming for help and heard D.D. crying. *Id.* Olson also heard the live-in boyfriend screaming in the background, but could not make out his words. *Id.* Olson then called 9-1-1. During Olson's next contact with J.D., she told Olson that the live-in boyfriend had gotten angry that J.D. had spoken with social services. *Id.* While J.D. was holding D.D. in her arms, the live-in boyfriend grabbed the telephone away from her as it rang. *Id.* J.D. told the live-in boyfriend that if she did not answer the phone, Social Services would call 9-1-1, and he then threw the phone back at her, and told her "I'm going to kill you." *Id.* The live-in boyfriend was arrested for terrorizing and aggravated assault. A No Contact Order was entered as a result of these criminal charges upon the live-in boyfriend. (Trial Tr. Pg. 8-9).

[¶5] J.D. did follow the safety plan and moved to the CVIC shelter. (Trial Tr. Pg. 9). The case decision by the child protection team was determined to be no services required. *Id.* However, a referral was made for J.D. to work with wraparound case

management, and to engage in counseling as a victim of domestic abuse. J.D. did not follow through with either. *Id.*

[¶6] On May 7, 2019, there was a violation of the No Contact Order, and Social Services obtained a temporary custody order for D.D. due to the continued failure to protect the child, and the child's continued exposure to domestic violence. (Trial Tr. pg. 10). Additionally, Olson testified to her concerns about J.D. not following through with her safety plan despite knowing exactly what was required. *Id.* J.D. reported to Olson that the live-in boyfriend and J.D. had contact prior to the May 7, 2019, in violation of the No Contact Order, and that J.D. also used methamphetamine on June 3-5, 2019. *Id.* J.D. was also present at an apartment in Larimore when her live-in boyfriend was stabbed eight times by J.A., the Respondent in the above action, and natural father the D.D. (Trial Tr. pg. 11). On June 18, 2019, the Child Protection Team found that services were required for J.D.'s failure to protect D.D. (Trial Tr. pg. 12).

[¶7] Olson testified that in her expert opinion, she believed D.D. was deprived, based upon J.D.'s failure to protect D.D. *Id.* Olson also testified she is concerned about J.D. relapsing, and asked for a 12-month order for care, custody, and control of D.D. to Grand Forks County Social Service Center from the date of removal. (Trial Tr. pg. 12-13).

[¶8] On cross examination, Olson testified that no services were determined to be required for J.D. until June of 2019, although there was a temporary custody order obtained for D.D. in May 2019. *Id.* Olson also testified that no physical injuries occurred to D.D. (Trial Tr. pg. 13). Additionally, Olson testified that she is unaware of any

incidents other than the domestic abuse in March 2019, which D.D. had been present for. (Trial Tr. pg. 14). At the time of this evidentiary hearing, J.D. was in custody on a child support warrant, and was not present at the hearing. *Id.*

[¶9] The State requested that the Court find, based upon Olson's testimony, J.D.'s admissions to relapsing and continued use of methamphetamines, J.D.'s continued involvement in domestic violence situations with D.D. present in the home, and the concerns that led to the removal of D.D., that D.D. was deprived, that it was contrary to D.D.'s welfare to return to the parental home, and that D.D. should continue in the Custody of Grand Forks County Social Service Center for a period up to one (1) year from May 8, 2019. *Id.* Based upon the years of services that have been provided to J.D., and her failure to make any substantive changes in her life over twelve (12) years, the State requested a finding of aggravated circumstances. (Trial Tr. pg. 15)

[¶10] J.D.'s counsel argued that since J.D. was not present, she could not refute the allegations of relapsing. Defense Counsel also argued that the testimony presented only verified one instance of D.D. crying due to an environmental circumstance, and there had been no physical violence done to D.D. (Trial Tr. pg. 16). The evidentiary hearing was then closed. (Trial Tr. pg. 15).

[¶11] Judge McCarthy then made specific oral findings and orders on the record, which were incorporated into the Juvenile Findings of Fact and Order for Disposition (In Custody), which was filed July 9, 2019. (Trial Tr. pg. 16; Register of Actions, Index #30).

[¶12] A Permanency Review Hearing was timely held on August 1, 2019, in front of the Honorable Lolita Hartl Romanick, in accordance with N.D.C.C. § 27-20-36(2)(b). (For clarity purposes, this transcript will be referred to as the “R.H. Tr.”).

[¶13] At the review hearing, Amy Suedel, a foster care case manager for Grand Forks County Social Service Center, testified and was qualified as an expert witness. (R.H. Tr. pg. 5). Suedel testified that aggravated circumstances should apply in this case because J.D. has five (5) prior involuntary terminations of parental rights. (R.H. Tr. pg. 6). Suedel also testified with a finding of aggravated circumstances, Social Services could make the determination to discontinue reasonable efforts of offering J.D. services as well as visitation with D.D. (R.H. Tr. pg. 7). Suedel stated the request for aggravated circumstances was due to J.D.’s continued substance use for the last twelve (12) years and continuing to show up at events of her other children after her parental rights had been terminated and the children adopted. (R.H. Tr. pg. 8).

[¶14] Furthermore, Suedel testified as to the statutorily defined aggravated circumstances, and which instances she believed J.D. engaged in that would meet that definition. (R. H. Tr. pg. 9). This included a lifestyle of continued substance use and domestic violence. (R.H. Tr. pg. 11). Specifically, an admission to using methamphetamines on June 3-5, 2019, and J.D. testing positive for methamphetamine and marijuana from a mouth swab on July 3, 2019. *Id.* J.D. also signed an admission form with the probation office on July 10, 2019, stating she had used methamphetamine and marijuana. J.D. spoke with Suedel on July 19, 2019, and told Suedel her last usage date

was July 16, 2019. Suedel testified that she believes J.D. will continue using. (R.H. Tr. pg. 12).

[¶15] Suedel also testified that ending services will not affect the father's right to services; and that she is requesting the trial court allow Grand Forks County Social Service Center to end case management services to J.D., including visitations with D.D. *Id.* The direct examination of Suedel ended with her explaining her recant concern for J.D., stating she has lost a significant amount of weight over the last two (2) months, and the concerning manner in which she would show up to visitation, including wearing a long-sleeved shirt when it was 90-degrees out and being distraught and crying, with red circles around her eyes. (R.H. Tr. pg. 12-13).

[¶16] Suedel testified to her request for aggravated circumstances being based off the five previous involuntary termination of parental rights, J.D.'s continued drug usage, the pattern of domestic violence, and a cycle of instability. (R.H. Tr. pg. 13-14). Suedel further testified that she was concerned about the state in which J.D. was coming to visitations, and how that will impact D.D. in the future. (R.H. Tr. pg. 15). Suedel testified that J.D. was breastfeeding D.D. before placement began, and there was a slight adjustment period to bottle feeding for D.D. when placed with a foster family, but that ultimately it would not have a negative effect for the future. (R.H. Tr. pg. 17).

[¶17] Suedel testified to the negative affect on a child who was breastfeeding while the mother is using methamphetamine, and that J.D. had engaged in multiple relationships, most of which included domestic violence situations. (R.H. Tr. pg. 18).

[¶18] The State then called Kress Germundson, the foster care case manager from Grand Forks County Social Service Center for the previous five (5) children, who was also qualified as an expert witness in child welfare. (R.H. Tr. pg. 22). Germundson testified that she began working with J.D. and her older children in 2014. *Id.* Germundson testified that the parental rights of J.D. and her husband had been terminated due to neither of them making the necessary lifestyle changes to allow for reunification, nor did either follow through with the reunification plan. *Id.* Germundson testified to her concerns with J.D. and D.D. being similar to her concerns on prior cases involving J.D. *Id.* These concerns include J.D.'s continued pattern of addictive behavior, dating back to 2009, and her inability to parent children, or maintain a sober and/or stable lifestyle. (R.H. Tr. pg. 23). Germundson testified that J.D. first began her involvement with Social Services back in 2009. *Id.* Her three (3) children were placed in foster care in 2011 until they were adopted in July of 2019. (R. H. Tr. pg. 24). Germundson testified to J.D.'s pattern of behavior, which includes becoming involved in domestically-violent situations with an intimate partner, and with her mother. *Id.* Of J.D.'s three (3) relationships where children were produced, all of them were domestically violent. *Id.* Germundson also testified that J.D. continues to use illegal substances; consistently relapses, is unable to understand her children's needs, and causes mental anguish for her three (3) oldest children. (R.H. Tr. pg. 25). J.D.'s addicted lifestyle has caused various issues for her children including anger and acting out, and suicidal ideations, requiring hospitalization. (R.H. Tr. pg. 27).

[¶19] On cross examination, Germundson testified she was the case worker for J.D.'s other children, but has no involvement currently with D.D. (R.H. Tr. pg. 28). Germundson also testified it had been about a year since her last meaningful conversation with J.D. (R.H. Tr. pg. 28). Germundson also explained her continuing involvement in J.D.'s other children, and their respective cases. *Id.* Her involvement ranged from dealing with complaints from foster families, that J.D. was still making contact with her other children after her rights were terminated. *Id.* J.D.'s contact included showing up at events and manipulating the situation to her advantage. *Id.* Germundson also testified about the difficulty of keeping in touch with J.D., as she did not always have a working phone number, would ignore phone calls, would not show for office visits, and ultimately, after the termination, Germundson lost access to J.D. (R.H. Tr. pg. 29).

[¶20] Next the State called Traci Van Beek, the foster care supervisor for Grand Forks County Social Service Center. She was qualified as an expert witness in child welfare. (R.H. Tr. pg. 34). Van Beek testified to being the supervisor for the workers who have handled the cases for the children of J.D., and that the decision to enforce the aggravated circumstances was not taken lightly. (R. H. Tr. pg. 35). Van Beek stated that a larger planning team gave considerable thought and discussion regarding this issue, and ultimately decided that the enforcement of the aggravated circumstances was the right decision for this case. (R.H. Tr. pg. 35-36). Van Beek also testified to her concerns about J.D., which were consistent with the two (2) previous witness's concerns regarding J.D.'s lifestyle and continued drug usage. *Id.* Van Beek testified that she believed twelve (12) years of intense services and case management provided to J.D., was sufficient for J.D. to

demonstrate an ability to parent. Additionally, Van Beek suspected J.D. was under the influence of methamphetamine during the court hearing on August 1, 2019, based upon her observations of J.D. *Id.* Van Beek testified the primary goal in this case had changed from reunification to adoption. (R.H. Tr. pg. 37).

[¶21] On cross examination, Van Beek testified there was another supervisor in her department who had handled J.D.'s cases over the years. (R.H. Tr. pg. 38). However, she testified she had reviewed all twenty-nine (29) child protection assessments in J.D.'s history. *Id.* Van Beek testified this was the first time her agency had ever enforced aggravated circumstances because of chronic abuse and neglect, with the failure to make changes, and that J.D. was not included in the decision making process because it was a custodial decision that needed to be made by professionals tasked with overseeing the best interests of D.D. (R.H. Tr. pg. 39).

[¶22] The State offered certified copies of the orders which terminated J.D.'s parental rights for the five (5) older children, which were admitted without objection. (R.H. Tr. pg. 44). The State rested.

[¶23] J.D. then testified on her own behalf. (R. H. Tr. pg. 45). J.D. admitted there were times when she was late or missed visitation with D.D. due to the lack of transportation or a phone to call. (R.H. Tr. pg. 46). J.D. also testified to a time she missed visitation because she was in jail. (R.H. Tr. pg. 47). J.D. stated she only missed around four (4) other visits with J.D. *Id.* J.D. testified she felt Social Services was not supporting her. (R.H. Tr. pg. 50-51). J.D. testified that she attended a team meeting and established goals, but did not agree to sign the safety plan because she wanted to talk to her attorney.

Id. Specifically, J.D. refused to drug test twice a week and submit to random drug tests. (R. H. Tr. pg. 52).

[¶24] On cross examination, J.D. testified that she was not under the influence in court on August 1, 2019. (R. H. Tr. pg. 56). When asked when the last time she had used methamphetamine, she refused to testify, citing the Fifth Amendment to the United States Constitution. *Id.* At that point, her trial counsel moved for permission to withdraw from representation of J.D., citing professional ethics reasons. *Id.* There was no objection, from J.D., and Judge Hartl Romanick granted the Motion. *Id.* J.D. then testified that the last time she used methamphetamine was the prior morning. (R. H. Tr. pg. 57). She testified she had been in treatment programs nine (9) times in one (1) year, and maybe completed treatment three (3) times. *Id.*

[¶25] J.D. requested to recall Van Beek, which was objected to by the State and denied by Judge Hartl Romanick. (R.H. Tr. pg. 58-59). J.D. also requested to recall Suedel or another person not previously called by the State, which was also denied. *Id.*

[¶26] J.D. was allowed to present her own further testimony, which included her apparent diagnosis for post-traumatic stress disorder (PTSD), which was objected to by the State, and sustained, for lack of foundation. (R.H. Tr. pg. 63). J.D. requested that she be given ninety (90) days of visitation, then have a review. (R.H. Tr. 65-66).

[¶27] Judge Hartl Romanick made oral findings on the record that, based on the testimony presented at the Review Hearing, there are ongoing concerns that do justify a finding of aggravated circumstances and the suspension of parenting time and providing

of services by Social Services. (R.H. Tr. pg. 69-70; *See also* Juvenile Order Affirming Aggravated Circumstances (In Custody), Register of Actions, Index # 38).

[¶28] J.D. filed a Notice of Appeal on October 1, 2019. (Register of Actions, Index # 48). J.D. also filed two letters with the court. The first letter indicated that she was unhappy with her representation at the August 1, 2019, hearing, and would like to appeal. The second letter was for clarity that she was indeed appealing the findings from the August 1, 2019, hearing. (Register of Actions Index # 64 7 65).

STANDARD OF REVIEW

[¶29] 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 shall “review the files, records, and minutes or transcript of the evidence of the juvenile court, giving appreciable weight to the findings of the juvenile court.” Id. (quoting N.D.C.C. § 27-20-56(1)).

[¶30] 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. The district court’s finding of aggravated circumstances is not clearly erroneous.

[¶31] J.D. states, without any legal authority, simply that the findings of aggravated circumstances are clearly erroneous.

[¶32] 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).

[¶33] Under N.D.C.C. § 27-20-02(3), “aggravated circumstances” is defined as:

Circumstances in which a parent:

- a. Abandons, tortures, chronically abuses, or sexually abuses a child;
- b. Fails to make substantial, meaningful efforts to secure treatment for the parent’s addiction, mental illness, behavior disorder, or any combination of those conditions for a period equal to the lesser of:
 - (1) One year; or
 - (2) One-half of the child’s lifetime, measured in days, as of the date a petition alleging aggravated circumstances is filed
- c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim or intended victim;
- d. Engages in conduct that constitutes one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
 - (1) A violation of section 12.1-16-01, 12.1-16-02, 12.1-16-03, or 14-09-22 in which the victim is another child of the parent;
 - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or

- (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury;
- e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim;
- f. Has been incarcerated under a sentence for which the latest release date is
 - (1) In the case of a child age nine or older, after the child's majority; or
 - (2) In the case of a child, after the child is twice the child's current age, measured in days
- g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or
- h. Allows the child to be 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(3) (Effective through December 31, 2019).

[¶34] If a finding of aggravated circumstances has been found, a permanency hearing must be held within thirty (30) days of the hearing in which aggravated circumstances were found. N.D.C.C. § 27-20-36(2)(b).

[¶35] Reasonable efforts for reunification of the family are presumed, but there is a statutory exception to this presumption:

Reasonable efforts of the type described in subsection 2 are not required if:

- a. A court of competent jurisdiction has determined that a parent has subjected a child to aggravated circumstances; or
- b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.

N.D.C.C. § 27-20-32.2(4).

[¶36] Additionally, the reviewing Court shall “[give] appreciable weight to the findings of the juvenile court.” N.D.C.C. § 27-20-56(1). 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).

A. J.D.’s background, including previous incidents of abuse and deprivation show that deprivation is likely to continue and warrants a finding of aggravated circumstances.

[¶37] The State asserts that J.D.’s history, including previous incidents of abuse and deprivation, has demonstrated that she is unwilling or unable to care for her children. All five of her previous children have been found to be deprived, and rights have been terminated. (See In the Interest of K.D.J., Case No. 18-2011-JV-00242, In the Interest of J.D., Case No. 18-2011-JV-00243, In the Interest of C.D., Case No. 18-2011-JV-00244, In the Interest of J.D.D., Case No. 18-2013-JV-00233, In the Interest of L.D., Case No. 18-2017-JV-00314) (copies of the above cases were offered as exhibits at trial.) J.D. has exposed the children to repeated domestic violence situations. (*See generally* Juvenile Findings of Fact and Order for Disposition (In Custody), Register of Actions #30). J.D. has also exposed the children to continued controlled substance abuse. *Id.* The fact that all of J.D.’s older children have been found to be deprived and parental rights have been terminated, that J.D. continues to place herself in abusive relationships, and that J.D. cannot maintain sobriety, shows that deprivation is likely to continue. According to this Court’s holding in T.H., evidence of previous incidents of abuse and deprivation can be

used to show that deprivation is likely to continue. In re T.H., 2012 ND 38, ¶ 29, 812 N.W.2d 373, 379.

[¶38] The finding of aggravated circumstances from the July 3, 2019, hearing is warranted due to the years of services provided to the family and the finding of D.D. being a deprived child pursuant to N.D.C.C. §27-20-02(8)(a). A finding of aggravated circumstances and termination of visits was properly affirmed due to J.D. displaying multiple factors under N.D.C.C. § 27-20-02(3), such as her being under the influence at the time of the hearing, her continued pattern of chemical abuse, and the chronic neglect of her children. (*See* Order affirming aggravated circumstances, Register of Actions # 38).

CONCLUSION

[¶39] J.D. has failed to present facts and evidence sufficient to overturn the findings of aggravated circumstances.

[¶40] The district court properly found that D.D. is a deprived child, and the finding of aggravated circumstances is not clearly erroneous. J.D. continues to display a pattern of chemical abuse, involvement in domestic violence, and neglect of her children.

[¶41] Based on the foregoing, the State respectfully requests this Court affirm the District Court's finding of aggravated circumstances.

Respectfully submitted this 15th day of January, 2020.

/s/ Jacqueline A. Gaddie
Jacqueline A. Gaddie (04962)
Assistant State's Attorney
Grand Forks County
P. O. Box 5607
Grand Forks, ND 58206-5607
(701) 780-8281

/s/ Elizabeth Kriz
Elizabeth Kriz
Senior Legal Intern

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

IN THE INTEREST OF D.M.D., A CHILD.)	
State of North Dakota, Petitioner and)	
Appellee.)	Supreme Court No. 20190299
v.)	District Court No.18-2019-JV-00172
)	
D.M.D., a child, J.A, biological father,)	
K.D., Legal father, and Emily Simmons,)	
Guardian Ad Litem, Respondents)	
and)	
J.M.D., mother, Respondent and Appellant.)	

CERTIFICATE OF COMPLIANCE
SA#150977

[¶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 21 number of pages.

Dated this 15th day of January, 2020.

/s/ Jacqueline A. Gaddie
Jacqueline A. Gaddie
Assistant State's Attorney
ND Bar ID #04962
124 South 4th Street
PO Box 5607
Grand Forks, ND 58206-5607
(701) 780-8281
E-Service Address: sasupportstaff@gfcounty.org

in the above-entitled matter to the following:

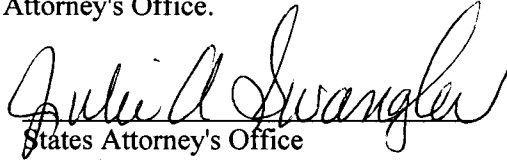
Russell J Myhre and said e-mail address is: efile@myhrelaw.com

Emily Simmons and said e-mail address is: esimmons@youthworksnd.org

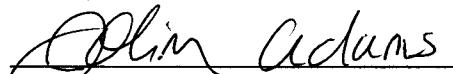
J.A.
1110 22nd Ave S #2
Grand Forks, ND 58201

K. D.
530 Woodland Drive
Thompson, ND 58278

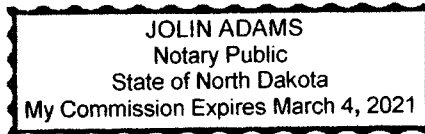
At the office of the Grand Forks County States Attorney's Office.


States Attorney's Office

Subscribed and sworn to before me this 15th day of January, 2020.


Notary Public

jas



IN THE SUPREME COURT
STATE OF NORTH DAKOTA

IN THE INTEREST OF D.M.D., A CHILD.

State of North Dakota, Petitioner and)	
Appellee.)	Supreme Court No. 20190299
v.)	District Court No.18-2019-JV-00172
)	
D.M.D., a child, J.A, biological father,)	
K.D., Legal father, and Emily Simmons,)	
Guardian Ad Litem, Respondents)	
And)	
J.M.D., mother, Respondent and Appellant.)	

ON APPEAL FROM THE JULY 8, 2019, JUVENILE FINDINGS OF FACT AND ORDER
FOR DISPOSITION (IN CUSTODY)
FROM THE DISTRICT COURT
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA
THE HONORABLE JASON MCCARTHY, PRESIDING

AND

ON APPEAL FROM THE AUGUST 1, 2019, ORDER AFFIRMING AGGRAVATED
CIRCUMSTANCES (IN CUSTODY)
FROM THE DISTRICT COURT
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA
THE HONORABLE LOLITA HARTL ROMANICK, PRESIDING.

AFFIDAVIT OF SERVICE

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

The undersigned, being of legal age, being first duly sworn deposes and says that on the 22 day of January, 2020, she served via e-mail and U.S. First Class Mail true copies of the following documents:

(CORRECTED) BRIEF OF APPELLE

in the above-entitled matter to the following:

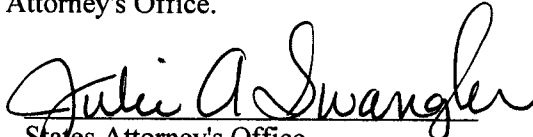
Russell J. Myhre and said e-mail address is: efile@myhrelaw.com

Emily Simmons and said e-mail address is: esimmons@youthworksnd.org

J.A.
1110 22nd Ave S #2
Grand Forks, ND 58201
(U.S. First Class Mail)

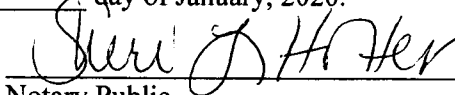
K. D.
530 Woodland Drive
Thompson, ND 58278
(U.S. First Class Mail)

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



States Attorney's Office

Subscribed and sworn to before me this 22nd day of January, 2020.



Notary Public

jas

