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## **I. Jurisdictional Statement**

[¶1] "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 judgment 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).

## **II. Statement of the Issues**

- I. [¶2] Whether the juvenile court erred in terminating JT's parental rights.

## **III. Statement of the Case**

[¶3] JT is the biological father of AT. The minor child was originally found deprived in November 2, 2018 and were placed in the care, custody and control of the Ward County Social Services ("WCSS"). (App. 4). AT has been under the care of her grandparents since April 3<sup>rd</sup>, 2018. On October 3<sup>rd</sup>, 2019, the State of North Dakota filed a petition to terminate the parental rights of JT, alleging that the child was deprived and the cause of deprivation was likely to continue and that the child had been in foster care for at least 463 days, which was over 26% of AT's life. (App. 4). An Adjudication hearing was held in Ward County on January 21<sup>st</sup>, 2020. Following that hearing, the Court concluded that the child was deprived, that the cause of the deprivation would likely continue, and that the child would likely suffer harm if termination as not ordered, and terminated the

parental rights of JT. (App. 12). JT appeals from the juvenile court final order and seeks reversal.

#### **IV. Statement of the Facts**

[¶4] AT was found to be a deprived child on November 2<sup>nd</sup>, 2018 and placed under the care, custody, and control of Ward County Social Services. (App.4). A Permanency hearing was held in July of 2019 and AT was continued in care following that hearing. Id. The basis for the original removal were allegations of drug use on the part of the child's mother, and that the mother had effectively abandoned the child. At the dispositional hearing held on January 21<sup>st</sup>, 2020, nearly the entirety of testimony presented focused on criminal convictions JT had received in August of 2017. JT testified at the hearing he accepted full responsibility for his actions, and had taken significant steps towards rehabilitating himself. Specifically, JT had taken advantage of any and all programs available to him in the Department of Corrections, such as anger management, substance abuse rehabilitation, and domestic violence courses. He has been, by all accounts, a model prisoner. Furthermore, the uncontested evidence at the hearing was that JT had fully complied with all requirements of social services.

[¶5] In its decision, the juvenile court found that while JT was in fact complying with the requirements of social services, his continued incarceration was a cause for concern. Specifically, the juvenile court further found that the deprivation of the child likely to continue based on JT's continuing incarceration, which coupled

with the length of foster care the minor child had been in, and the likelihood of further criminal conduct by JT, justified termination. Id.

## **V. Statement of Jurisdiction**

[¶6] The juvenile court had jurisdiction under N.D.C.C. § 27-20-03(1)(a) because this matter concerned allegations of deprived children. The juvenile court's Order became a final Order, as no review was requested by a district judge and this *Notice of Appeal* was timely filed within 30 days of notice of entry of the final order under N.D.C.C. § 27-20-56(1) and N.D.R.App.P 4(a). The North Dakota Supreme Court has jurisdiction under N.D. Const. art. VI, §§ 2, 6, and N.D.C.C. § 27-20-56(1).

### **LAW AND ARGUMENT:**

#### **I. Juvenile Court Erred In Terminating JT's Parental Rights.**

[¶7] The juvenile court's order concluded the child was deprived without and that termination was warranted based exclusively on JT's incarceration, which this Court has deemed impermissible. Accordingly, the Supreme Court should reverse and remand.

[¶8] A juvenile court order is subject to the clearly erroneous standard of review set forth in Rule 52(a) of the North Dakota Rules of Civil Procedure. This Court has explained that under this standard the court's findings should be "sufficient specificity to enable a reviewing court to understand the factual basis for the trial court's decision." In re K.B., 2011 ND 152, ¶8, 801 N.W.2d 416. Brandt v. Somerville, 2005 ND 35, ¶12, 692 N.W.2d 144. The juvenile court's findings are insufficiently explained under this standard.

[¶9] A *deprived child* is a child 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 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).

[¶10] 'Proper parental care' means minimum standards of care which the community will tolerate." In re M.B., 2006 ND 19, ¶14 (quoting *In re D.Q.*, 2002 ND 188, ¶12, 653 N.W.2d 713 (quoting In re J.R., 2002 ND 78, ¶9, 643 N.W.2d 699)) (original quotations omitted).

[¶11] The State's only evidence in support of termination related to criminal convictions from August of 2017 which resulted in JT's present incarceration. The State's own witnesses from Ward County Social Services had to concede on cross that JT has completed all services and complied with all directives, and that the only concern with JT was his present incarceration.

[¶12] As noted above, a juvenile court's order is subject to clearly erroneous standard under Rule 52(a). In re K.B., 2011 ND 152 ¶8, 801 NW.2d 416. A finding is clearly erroneous where it is induced by an erroneous view of the law, no evidence supports the finding, or if, based on the entire record, this court is left with a definite and firm conviction a mistake has been made. Id. This court has explained that it will not reweigh evidence presented to the Juvenile court, and it will give due regard for the trial court's opportunity to judge the witnesses' credibility. Id. Under the clearly erroneous standard, the Juvenile court has

discretion to choose between two permissible views of the evidence. Id. In this case however, the Supreme Court should reverse because no evidence supports the Juvenile court's finding of deprivation. As the juvenile court summarized in its order, the case worker conceded that the only issue with JT was his present incarceration.

[¶13] "Incarceration does not alone constitute continued deprivation." Interest of T.A., 2006 ND ¶ 16, 722 N.W.2d 548. Additionally, "past deprivation alone is not sufficient to prove deprivation will continue." Interest of T.K., 2001 ND 127, ¶ 14, 630 N.W.2d 38. In this case however, this is precisely what the juvenile court did and relied on a past instance of deprivation, coupled with present incarceration to reach the unsupportable conclusion that JT was incapable of caring for his child and that she was accordingly deprived.

[¶14] The State had the burden to prove by clear and convincing evidence that the minor children at issue were deprived. The State failed to do so and did not provide any adequate basis for the juvenile court to reach its eventual conclusion. Therefore, the juvenile court's order is unsupported in the record and is clearly erroneous. Accordingly, this Court should reverse and remand the juvenile court's Order.

#### **CONCLUSION:**

[¶15] For the reasons set forth above, JT respectfully requests the Court reverse the juvenile court's orders; dismiss the juvenile petitions; and any further and additional relief deemed just and equitable.

[¶16] Dated this 18<sup>th</sup> day of March, 2020.



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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

In the Interest of A.T., Minor Child

State of North Dakota,

Petitioner/Appellee,

Supreme Court No. 202000092

v.

A.T., Child  
T.T. Mother  
JT,

Ward Co. Case No. 51-2019-JV-00160

Respondent/Appellant

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CERTIFICATE OF SERVICE

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[¶1] I hereby certify that on March 23, 2020, the following documents:

NOTICE OF APPEAL, ORDER FOR TRANSCRIPTS, APPELLANT'S BRIEF, AND  
APPELLANT'S APPENDIX

Were emailed to the Clerk of the North Dakota Supreme Court @

supclerkofcourt@ndcourts.gov and courtesy copies were emailed to the following:

T.T. at tina.c.187614@gmail.com  
Respondent

Dena Penton at galdena@srt.com  
Guardian Ad Litem

Christopher D. Jones at chrisdjones@nd.gov  
Executive Director  
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