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RAMSEY COUNTY STATES ATTORNEY
DEVILS LAKE, NORTH DAKOTA

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RAMSEY COUNTY STATES ATTORNEY
DEVILS LAKE, NORTH DAKOTA

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STATEMENT OF THE ISSUES

This is an action in which the petitioner seeks to terminate the parental rights of K.M. as they pertain to her minor daughters, C.M. and A.M. The Juvenile Court, in its findings and recommendations of disposition, dated November 30, 1998, found that the children were deprived, that such deprivation was not primarily due to lack of financial means of the mother, that the deprivation is likely to continue, and that the children are suffering or will suffer serious physical, mental, or emotional harm. The District Court confirmed the findings and recommendations of the Judicial Referee on January 5, 1999. K.M. appeals.

STATEMENT OF THE FACTS

C.M. had originally been placed in foster care in Washington. Transcript at page 13. (Hereinafter Tr. 13.) At that point A.M. had not been born. C.M. had been placed in shelter care on February 25, 1992, in King County, Washington. See generally exhibits 1.2, and 3 of Record on Appeal. At the shelter care hearing in Washington, which was held on February 27, 1992, the court authorized continued shelter care, and ordered that K.M. have a drug and alcohol evaluation and attend parenting classes. As of June 8, 1994, the child was still in the jurisdiction of the court, and at permanency planning hearing, the court found that K.M. had failed to obtain the alcohol and drug evaluation, failed to maintain a home, failed to attend parenting classes, failed to maintain contact with the custodial agency, and maintained only minimal contact with the child. Id. At that time, the Court ordered that C.M. was to be placed in long term relative placement. C.M. was in out of home placement from February 25, 1992, and continuing through

1 June 8, 1994. The initial placement had been with her maternal grandmother, however
2 the grandmother requested that the child be placed in foster care. That foster care
3 placement did not work out, and the child was returned to the grandmother. By this time,
4 K.M. had moved to New Ulm, Minnesota, where A.M. was born. Somehow, in late
5 1994, C.M. was sent from Washington to K.M.'s home in New Ulm. This had been done
6 without the knowledge of the King County courts, or King County Social Services
7 Agency.
8

9 On August 28, 1994, Brown County Social Services Agency became involved
10 with K.M., due to her use of alcohol and a domestic argument with a boyfriend. On
11 September 1, 1994, a hearing was held in Brown County, Minnesota, wherein the
12 children were found to be in need of services and protection. See generally exhibits 4
13 through 15. The children were returned to K.M.'s home on the condition that K.M.
14 accept services and obtain a drug and alcohol evaluation. K.M. disputed that as to what
15 sort of a program she would decide to participate in. On October 24, 1994, the Brown
16 County Court ordered K.M. to complete an outpatient treatment program, which had been
17 suggested and proposed by K.M. herself. On November 11, 1994, K.M. had been
18 discharged from the outpatient program due to her own failure to cooperate. The
19 problems continued, and a third hearing was held on December 12, 1994. The court
20 determined that there was no need to remove the children from the home, but inpatient
21 treatment was ordered this time. See generally exhibits 16 through 42. She was
22 scheduled to start inpatient drug and alcohol treatment on December 28, 1994, but
23 refused to do so. Two days later, on December 30, 1994, she moved with her children to
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1 Devils Lake, Ramsey County, North Dakota. On March 12, 1995, Ramsey County Social
2 Services received a report and was investigating a report regarding K.M.'s use of alcohol
3 and lack of care of the children. In May, 1995, a petition alleging deprivation was heard
4 before the court, wherein the petition was dismissed based upon a finding that although
5 she had an alcohol problem, the children had been placed in the care of responsible
6 persons during the times which she had been consuming alcohol. By 1996, she was no
7 longer caring for the children, or placing them in the care of responsible people while she
8 was consuming alcohol. The children were removed from the home.
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11 On January 17, 1996, the Juvenile Court found the children to be deprived
12 children, and placed them in shelter care, and ordered that a hearing be held in 30 days of
13 January 13, 1996. Considering her history of running from prior juvenile court orders,
14 the Court particularly took note and ordered that should she attempt to take the children
15 and leave the Devils Lake area, a warrant would be issued for her arrest. See paragraph 5
16 of January 17, 1996 order. On April 10, 1996, the children were found to be deprived
17 children, based upon the mother not providing adequate care due to her alcohol and drug
18 usage. They were placed in foster care. By this time, the mother had moved to
19 Aberdeen, South Dakota, however she did not take off out of state with the children as the
20 Court had feared on January 17, 1996. The Court found that as a result of her move, the
21 contact with the children had been severely limited. This was further proven at the
22 hearing on the petition for termination. At that point, the respondent had apparently
23 completed alcohol treatment and the twelve week aftercare program, and was attending
24 AA. She was supposed to be involved with a therapist and was scheduled to start a
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1 parenting class. However, problems soon developed in South Dakota. See exhibits 45
2 through 52. By this time, she was pregnant again. The Court took particular note of the
3 putative father's extensive alcohol history, including nine prior DUI convictions. The
4 Court took particular notice of the 1991 court order in which the putative father had
5 already been prohibited to have contact with his own children with a prior woman. The
6 move to Aberdeen, South Dakota in the first place was done without the knowledge of
7 Ramsey County Social Services, and without the mother making any arrangements to
8 maintain contact with her children. During this time, only a couple letters were sent from
9 her to her child, C.M. Tr.122. Social Services in Aberdeen, South Dakota, recommended
10 that the children not be returned to the mother. This recommendation was well founded,
11 as by August, 1996, K.M. was again using alcohol. In fact, in September, 1996, Brown
12 County, South Dakota Court placed her on probation for a number of alcohol related
13 misdemeanors.
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16 The matter was again reviewed in January, 1997. At that time, the Court found
17 that K.M. was not involved in AA, or aftercare, as had been recommended when she
18 completed her treatment. She was using prescription anti-depressants which had been
19 given to her by a friend. She had not visited the children since April, 1996. The
20 reunification plan continued to require her to work on alcohol issues and maintain a sober
21 and stable home.
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24 In late February, 1997, arrangements were made for the mother to visit the
25 children in Devils Lake. She was advised that this would be a supervised visit. She
26 refused to participate in the visit, and met with the children for only about ten minutes
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and then left. That was the last time she saw her children.

The police reports from Aberdeen, South Dakota, indicate that the mother's home environment was chaotic.

The Court again reviewed the matter on October 7, 1997. This time, the mother had finished aftercare, was attending AA, and had maintained a home for several months. The Court took particular note of the father of the new child presence in the home, and took particular note of his chemical usage problems. By December 1997, a domestic argument/assault took place between the mother and her new boyfriend, and the mother discontinued her involvement in parenting classes. On January 9, 1998, the mother decided to move to Florida with the father and the new child. Again she made no prior notice to Ramsey County, or South Dakota agencies with whom she had been working.

After arriving at Florida the mother testified that she completed a parenting class. She was again consuming alcohol, as verified in a March 1998 incident, wherein she was arrested for domestic assault on the new boyfriend. She was placed on one year of probation in Florida, and the probation was supervised. A second domestic assault occurred regarding the mother on July 25, 1998. The mother testified that she completed AA, and had a witness testify as to her AA attendance. The trial court found that the testimony and the documents did not have any credibility. At that time, the petitioner pointed out the signature of the purported sponsor at the various meetings all were identical, not changing any handwriting style, or even the color of ink. A statement from the respondent's witness was also pointed out to even misspelled the witness's name. On August 16, 1998, the youngest child, which was born in South Dakota, was placed in

1 shelter care in Florida. At the time of the hearing for the petition for termination of
2 parental rights, the matter pertained to emersion burns on the eight to ten month old child
3 which occurred in Florida. Tr.138 to 140. A.M. was born on August 4, 1994, and has
4 spent all but 16 months of her life in foster care. At the last visit she had with her mother,
5 on July 6, 1998, which occurred due to the mother coming back to North Dakota to fight
6 the petition for termination, the child did not recognize her. C.M., who is slightly older,
7 has spend approximately half of her life in relative placement, or in foster care. C.M. has
8 experienced significant anxiety, and has gone through extensive evaluations in therapy at
9 United Hospital in Grand Forks, and at the Lake Region Human Service Center in Devils
10 Lake. She is now recovering from the anxiety, and has accepted the fact that her natural
11 mother will not be there for her. See generally Tr. 64 through 72. Much of her
12 counseling at the Lake Region Human Service Center pertains to post traumatic stress
13 disorder, which was a result effect from being severely beaten by her mother or by people
14 with her mother while she was in her mother's care. Tr. 73.

17
18 LAW AND ARGUMENT

19 The petitioner proved by clear and convincing evidence that the respondent's
20 parental rights should be terminated. At a hearing for petition for termination of parental
21 rights, the petitioner has the burden of proving by clear and convincing evidence that the
22 child is a deprived child, that the conditions of the deprivation are likely to continue, or
23 will not be remedied and that by reason thereof the child is suffering or will probably
24 suffer serious physical, mental, moral, or emotional harm. N.D.C.C., Section 27-20-
25 44(1)(b). The Court has held that the statute provides a three part test for determining

1 whether the juvenile court may terminate parental rights:

- 2 1. Is the child deprived?
- 3 2. Are the conditions and causes of deprivation likely to continue?
- 4 3. Is the child suffering or will the child in the future probably suffer serious,
- 5 physical, mental, moral, or emotional harm?
- 6

7 In the Interest of J.L.D., 539 N.W.2d 73, 75 (N.D. 1995). On appeal, the Supreme Court
8 reviewed the juvenile court's decision to terminate parental rights in a manner in which it
9 examines the evidence similar to a trial de novo. In the Interest of L.J., 436 N.W.2d 558,
10 560 (N.D. 1989). The Court gives appreciable weight to the findings of the juvenile
11 court. N.D.C.C., Section 27-20-56(1). The Court recognizes the trial court's opportunity
12 to observe the candor and demeanor of the witnesses. In the Interest of J.L.D., 539
13 N.W.2d 73, 75 (N.D. 1995). K.M. has a long history of alcohol abuse and deprivation of
14 her children. The matter with C.M. began in King County, Washington, wherein the
15 older child in these proceedings, C.M., was found to be deprived due to the respondent's
16 alcohol abuse. She was placed in foster care. The mother did not cooperate. In fact, she
17 absconded to the area to New Ulm, Minnesota. The respondent's mother obtained
18 custody through a relative placement arising out of the juvenile court matter, and then
19 returned the child to the respondent in Minnesota without any prior notification of the
20 Washington child protection agencies. For some reason, the Washington agencies then
21 terminated their case. The mother continued her neglectful and apparently abusive ways
22 in New Ulm, Minnesota. The children, as A.M. had been born by this time, were again
23 found to be deprived children, and the respondent again failed to cooperate in any way,
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1 shape, or form with the child protection people. This time, the respondent absconded to
2 Devils Lake, North Dakota. This time, however, the children had not been removed from
3 the home, but had been continued in the mother's care. Following Washington's lead, the
4 New Ulm court dismissed it's case. The respondent promptly was investigated in Devils
5 Lake for neglecting her children, based upon the same problems she exhibited in
6 Minnesota and Washington. Eventually, the children were again found to be deprived
7 children. She entirely, completely, and wholly, refused to cooperate in rectifying the
8 problems which caused the deprivation. She absconded to Aberdeen, South
9 Dakota. This time, however, the matter was not dismissed. In Aberdeen, South Dakota,
10 the respondent continued with her alcohol and drug usage, and began to get involved in
11 criminal activity. This was something she had not much shown in Devils Lake or New
12 Ulm, Minnesota. She got involved with a severe alcoholic, who had already been ordered
13 to not have any contact with his own children from prior relationships. She had a child
14 with this man. Rather than deal with the juvenile court matters which had been ordered
15 upon her, and which the Aberdeen agency had assisted the Ramsey County Social Service
16 Agency, the respondent absconded to Florida. The respondent's drug and alcohol abuse
17 continued, and she now began to get violent, having been arrested on two occasions for
18 assaulting her "significant other". The child she had with this "significant other" was
19 placed in foster care due to emersion burns, the child protection matter in Florida on that
20 issue had not been resolved at the time of the hearing in this case.

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25 The lack of contact between the mother and her children is caused by the mother's
26 own attempts to run from the problems, and not deal with any of the issues. Thus the
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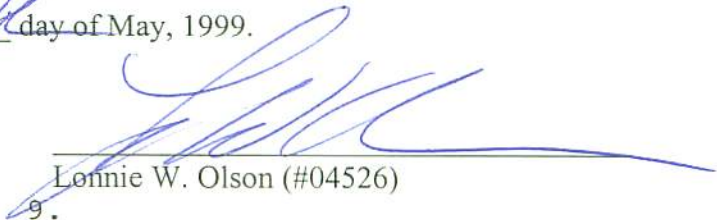
1 children are deprived, that is they are without the proper parental care and control on the
2 part of their mother, and that it is not due to her lack of financial means. The trial court
3 properly found that the conditions and causes of this deprivation were likely to continue,
4 not just by clear and convincing evidence, but by evidence beyond a reasonable doubt.
5 This is clearly the case, as the causes of deprivation are entirely and completely caused by
6 the mother. The issue as to whether the children are suffering or will suffer in the future
7 of serious physical, mental, moral, or emotional harm, in that the mother has refused to
8 undergo treatment, and change any of her errant ways. This history goes back at least as
9 far as 1992 as shown in the record.
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12 The significant history of past deprivation clearly shows that the mother will
13 continue the deprivation. In fact, due to the deprivation caused by the mother, it would
14 be counterproductive, and cause significant emotional pain and anguish on C.M. to be
15 returned to her mother. Further, A.M. would be severely traumatized by being returned
16 to her mother, as the last time she had seen her mother, in 1998, she did not recognize her
17 mother.
18

19 CONCLUSION

20 The petitioner has proven by clear and convincing evidence that the children are
21 deprived, that deprivation is likely to continue, and that the children will suffer future
22 serious physical, mental, moral, and emotional harm, as a result of the neglectful behavior
23 of their mother. The petitioner asks that the Court affirm the trial court's finding.
24

25 Respectfully submitted this 27 day of May, 1999.

26
27 
28 Lonnie W. Olson (#04526)

Ramsey County State's Attorney
524 4th Ave. #16
Devils Lake, ND 58301
(701) 662-7077

RAMSEY COUNTY STATES ATTORNEY
DEVILS LAKE, NORTH DAKOTA

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