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STATE OF NORTH DAKOTA

NO. 20100109
JUVENILE

NORTH DAKOTA SUPREME COURT

In The Interest of D.H., a Child	)	
	)	
Heather Pautz, Barnes County Director of Social Services,	)	
	)	
Petitioner/Appellee,	)	**Supreme Court No. 20100109**
	)	
vs.	)	**Juvenile Court No. 02-09-R-72**
	)	
D.H., T.H. Mother,	)	
	)	
Respondents,	)	
	)	
E.H., Father of the above-named Child,	)	
	)	
Respondent/Appellant.	)	

Appeal from the Juvenile Court, County of Barnes, State of North Dakota

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The Honorable Daniel D. Narum
District Court Judge
Southeast Judicial District

PETITIONER/APPELLEE BRIEF

FALLON M. KELLY, ND ID#05966
BARNES COUNTY SPECIAL ASSISTANT
STATE'S ATTORNEY
316 Main Street
P.O. Box 391
Lisbon, ND 58054-0391
Telephone: 701.638.4123
Facsimile: 701.683.4124
ATTORNEY FOR APPELLEE

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1. **Whether the trial court's finding that the minor child "continues to be a deprived child and [the minor child] has been in foster care for more than 450 of the last 660 nights and has been continuously in foster care since January 3, 2008 is clearly erroneous?**

2. **Whether the trial court's finding that the minor child is a deprived child and such deprivation is likely to continue if [the minor child] is placed with E.H. and that [the minor child] is suffering or will probably suffer serious physical, mental, moral or emotional harm if placed with E.H. is clearly erroneous?**

I.

¶4 STATEMENT OF THE CASE

¶5 This is an appeal by E.H. who is the father of the child, D.H., from the Findings of Fact, Conclusions of Law and Order and Disposition entered March 9, 2010, in Juvenile Court, County of Barnes, State of North Dakota, The Honorable Daniel D. Narum, which terminated his parental rights to D.H. (Appellant's Appendix 11; Docket No. 47).[1] On May 8, 2008 the Juvenile Court adjudicated D.H. as deprived and placed D.H. in the full custody of Barnes County Social Services for a period of one year. (D.23, App.21). On October 8, 2008, Notice of a Permanency hearing was issued. (D. 25, App. 25). On December 11, 2008, Findings of Fact and Order for Disposition was entered, continuing custody of D.H. with Barnes County Social Services for one more year. (D. 24, App.30). On October 6, 2009, a Petition for Termination of Parental Rights,

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In the brief, the Docket will be abbreviated D, the Appellant's Appendix as App., and the Trial Transcript of December 17, 2009 as T1, and the Trial Transcript of February 2, 2010 as T2.

supported by an Affidavit by Sheila Oye, LSW, of Barnes County Social Services, was filed in the Juvenile Court, seeking to terminate the parental rights of E.H. and of the children's mother, T.H. (D. 1, 2, 3, App. 3-10). Trial on the petition was commenced before the Juvenile Court, on December 17, 2009, and continued on February 2, 2010. On March 9, 2010, Findings of Fact, Conclusions of Law and Order and Disposition were docketed and which ordered the termination of parental rights of D.H. and T.H. (D.47; App. 11-20). On April 7, 2010, counsel for E.H. filed in the District Court a Notice of Expedited Appeal pursuant to N.D.R.App. P. 2.2. together with an Order for Transcripts (App.34-36)

II.

¶6 STATEMENT OF THE FACTS

¶7 D.H, born in 1998, is the biological child of E.H. who was born in 1978. (App. 4; T2:5). E.H. has lived in various places including Buchanan, Medina, Nome, Valley City, Montana, California and in prison. (T2:7, 10, 51). When E.H. was 5 years old his parents were divorced and E.H. and his siblings were separated into two groups and removed from their father and put into foster care. (T2:7-8). After E.H.'s father completed parenting classes E.H. and his siblings again lived with E.H.'s father. (T2:8). E.H. was adjudicated a juvenile delinquent, for what would be burglary if committed as an adult, when he was 15 years old and was placed in the State's custody. (T2:8; T2:48). E.H. then remained in the juvenile system in the custody of the State until he was 18 years old. (T2:48).

¶8 At around the age of 19, E.H. met T.H., and lived with T.H., the biological mother of D.H. (T2:10). In 1997 T.H. left E.H. and D.H. had not been born at that time.

(T2:50, 53). D.H. Was born in 1998 after T.H. left E.H. and it was not until 2006 that E.H. learned D.H. was his biological child. (T2:53).

¶9 After turning 18 years of age, E.H. became incarcerated as an adult and completed a GED while in jail at the age of 19. (T2:48). Then in a later incarceration, E.H. received some college credit. (T2:49). Receiving education while incarcerated did not keep E.H. from again becoming incarcerated. (T2:49-50). In 1999 after once again being released from prison, E.H. decided to go hitch hiking for approximately 4 years. (T2:50). E.H. has been charged with the commission of crimes more than 10 times and some of those have been charges of misdemeanors and some have been felonies. (T2:52).

¶10 In approximately 2003, E.H. learned of another child that he had in Montana. (T2:61). The longest E.H. has ever lived with that child was 7 months. (T2:61). That child was in foster care and is now in kinship care. (T2:38). E.H. responded as follows to one of his attorney's questions at the trial as follows:

> Q: … . You know, you've gone from basically the age of 15 to the age of 31 in and out of institutions, you're in an institution right now, how can you convince this court that that's not gonna just continue, which would obviously be disruptive to – D.H.?
>
> A.: That – well, that's – that's just it. I mean, I know the statistics and I know that it doesn't look good in my favor, but this – this is the end of it for me. This is the end of the line. I'm – it just takes some people longer to grow up and like – like you stated before, I only had me really as a concern before and now I have – I

have a son and that – that changes the playing field. I'm no longer in it for me. I'm in it for him. (T2:37).

However, E.H. admitted that even though he knew of his other child for the last 7 years, he had to admit that he kept finding himself in jail after that child was born and that he was incarcerated for felonies even after that child was born and after he knew of that child. (T2:60-61). He also admitted that the most time he ever lived with that child was 7 months. (T2:61). E.H. admitted that in the latest round of education while incarcerated, he received a certificate for a course called "Staying in Touch" where he learned that lack of close relationship "would be harmful for the [parent-child] relationship." (T2:61-62).

¶11 After E.H. learned of D.H.'s existence in 2006 he has lived in Bismarck, Miles City Montana, Nome, then in Valley City and he had different jobs at each one of those places. (T2:56-57). His idea of a stable environment is one where "if you get a place as soon as you move to another place and get a job I believe that's stability." (T2:57).

¶12 D.H. was initially placed in temporary custody of Barnes County Social Services on January 2, 2008. (T1:15-16). D.H. has been in the full custody of Barnes County Social Services since he was adjudicated as deprived on May 8, 2009. (D.23; App.21).

¶13 Permanency planning meetings started on January 8, 2008. (T1:16). E.H. was not given notice of that first meeting because his whereabouts were not known. (T1:21). However, E.H. was given written notice of permanency planning meetings that were held on March 11, 2008 (T1:22), April 15, 2008 (T1:25); June 26, 2008 (T1:28);

September 25, 2008 (T1:32); December 18, 2008 (T1:33); March 26, 2009 (T1:49); June 25, 2009 (T1:55); and September 24, 2009 (T1:59). He only showed up for the June 26, 2008, the December 18, 2008 and the September 24, 2009 permanency planning meetings. (T1:29; T1:33-34; T1:59). At the June 26, 2008 meeting, Sheila Oye with Social Services discussed with E.H. the permanency plan and he understood the plan. (T1:30). The permanency planning report of June 26, 2008, which E.H. attended, has written on page 7 of the report that the natural parents are to participate in family team meetings and to cooperate with Barnes County Social Services. (D.13—Petitioner's Exhibit 15, page 7). The permanency planning report of December 18, 2008, which E.H. attended shows that the plan was attempting at reunification and if that is not possible, considering guardianship or adoption and that everyone was in agreement of the plan and that natural parents were to continue to cooperate with social services. (D.20—Petitioners Exhibit 17, page 5, 7 and 9). The permanency planning report of September 24, 2009, which E.H. attended telephonically from incarceration, shows that everyone was in agreement with the plan and that family members are to cooperate with Social Services (D.19—Petitioner's Exhibit 19, pages 5 and 6).

¶14 In the time period from January 3, 2008 to December 18, 2008 Social Services was offering services with a goal of reunification with E.H. including: supervised visits, drug testing, requesting a parental capacity evaluation, requesting a drug and alcohol evaluation and follow all recommendations of evaluations. (T1:35). Social Services arranged a supervised visit with E.H. and D.H. on February 29, 2008 and E.H. tested positive for marijuana use prior to that visit. (T1:35). At that supervised visit E.H. was told he would have to complete a parental capacity evaluation and a drug and

alcohol evaluation and follow recommendations. (T1:35). There was a supervised visit on March 1, 2008 and on March 4, 2008 E.H. visited with social services and reviewed the case plan and discussed arrangement of the two evaluations. (T1:36). E.H. was to come into social services on March 5, 2008 to schedule the evaluations and he never showed up. (T1:36). E.H. was also told on March 4, 2008 of the upcoming permanency planning meeting to be held on March 11, 2008 and he did not show up for that either. (T1:36). Social Services then lost contact with E.H. some time after March 18, 2008 and they only became aware of his whereabouts when they saw police records indicating a domestic assault E.H. committed on a woman in Valley City. (T1:37-38). From March 4, 2008 until June 26, 2008, E.H. made no contact with Social Services. (T1:37-39). He did meet with Social Services just prior to the June 26, 2008 meeting as stated above. (T1:40). Then E.H. made no contact with Social Services until December 4, 2008 when a hearing was scheduled and on that date he tested positive again for marijuana use. (T1:40). At that time Social Services told E.H. that he still needed to complete a parental capacity evaluation, complete a drug and alcohol evaluations and follow all recommendations stemming from those evaluations and to inform Social Services of his location so that supervised visitations could be arranged. (T1:41). E.H. stated he was willing to do those services. (T1: 41-42). The marijuana test results show that E.H. signed those documents and was made aware of them and that he tested positive for use of marijuana on February 29, 2008 and again on December 4, 2008. (D.15—Petitioner's Exhibit 7; D.16—Petitioner's Exhibit 8; T1:42-45). Social Services discussed with E.H. why his marijuana use was the reason for the requirement that he complete a drug and alcohol evaluation and this discussion took place long before his second test, which he

also failed as having used marijuana. (T1:45-46). In Social Service's opinion this showed that E.H. was not cooperating with the reunification process. (T1:46).

¶15 Following the December 18, 2008 permanency planning meeting, E.H. missed two scheduled drug and alcohol evaluation appointments that Social Services had scheduled and wherein Social Services was going to drive him to the evaluation since he did not have his own transportation. (T1:47-48). After January 20, 2009 E.H. did not attend meetings or supervised visitations with Social Services until after he was charged with aggravated assault (T1:50) and imprisoned and there was a supervised visitation on October 23, 2009 while E.H. was incarcerated. (T1:58). Social Service's reading of the police reports showed that E.H. allegedly committed a "very violent act" and was charged initially with aggravated assault, domestic violence. (T1:53). Social Services has kept trying to provide services for E.H. while he has been incarcerated. (T1:56-58). Social Services has indicated that E.H.'s criminal behavior has been escalating over the years, meaning he has been getting more violent. (T1:67). In January of 2009, Social Services received a 960 report showing that while E.H. was the only adult present to supervise a minor child, he was highly intoxicated or under the influence of drugs or alcohol. (T1:69).

¶16 Prior to December of 2007, E.H. had only one visit with D.H. (T2:12; T1:75). After December of 2007, E.H. has only had three or four visits with D.H. (T1:72). E.H. had opportunities to have more visits than that, but he did not show up for some visits. (T1:72). Also, Social Services was trying to arrange more visits and more visits would have occurred if E.H. had participated in the services being offered. (T1:72). E.H. has only written one letter to D.H. and that letter could not be delivered to D.H. by

Social Services because of inappropriate statements by E.H. in that letter. (T1:74; T1:61-63). E.H. only telephoned D.H. one time shortly after D.H. started living at foster care. (T1:136). The foster mother testified about how she and the foster father would have to shield D.H. as to upcoming visits because E.H. did not always show up for visitations. (T1:135, 141). The foster mother testified that while living in foster care, D.H. saw E.H. on the news after being arrested for "beating somebody up and D.H. cried and was sure that was his father." (T1:135). E.H. did not show up for at least 2 scheduled visitations while D.H. was living with the foster parents. (T1:134).

¶17 E.H. entered an Alford Plea in 2009 for assault. He admitted that he was originally charged with aggravated assault (which is by definition a felony under N.D.C.C. §12.1-17-02), but that he entered an Alford Plea to assault. (T2:59). He stated that he thought he was charged with that crime because the officer thought that he was banging a woman's head against the floor. (T2:59). He admitted that the police report showed several times that the victim's statement was that "he's killing me." (T2:60). At the time of the trial of this petition to terminate parental rights matter, E.H. was incarcerated. (T2:37).

¶18 Shelia Oye of Social Services summarized the efforts of reunification between D.H. and E.H. as follows:

> Our first steps were the parental capacity evaluation and the drug and alcohol evaluations. We helped arrange those appointments. I was providing transportation for him. He didn't show up to those. To my knowledge he has not completed those to this date. I did supervised visits to try to work towards unsupervised visits and he didn't—we had the two

supervised visits and then we had a couple where he didn't show up. [E.H.] has not kept Social Services informed of his residence. We had no knowledge he was in Fargo until we saw the incident on the news, is one example of that. So it's been difficult to provide [E.H.] with services. (T1:78-79).

¶19 Another strong consideration of Social Services was the desire not to split up D.H. and his sibling A.N. who were living together in foster care because that is really the only thing that has been consistent in the children's lives and E.H. cannot have custody of the sibling A.N. (T1:80-81).

¶20 Social Services testified that D.H. suffers from Adjustment Disorder with depressed mood, ruling out attention deficit, hyperactivity and Social Services testified that D.H. is not likely to improve in the care of E.H. because of E.H.'s continued use of marijuana, criminal activity, lack of stable employment and housing. (T1:83).

¶21 Discussions of placing D.H. with E.H. were discussed during the span of the Social Services case, but E.H. failed to meet the requirements. (T1:110; T1:113). Petitioner's Exhibit 21, dated March 11, 2008, shows that the goal was "reunification of the children with a parent" not necessarily T.H., but "a" parent and specific goals were set for each parent. (T1:114; D.22—Petitioner's Exhibit 21). Petitioner's Exhibit 21, called a single plan of care listed E.H.'s requirements as including completion of a parental capacity evaluation and follow all the recommendations; have supervised visitations arranged through a social worker; and complete a drug and alcohol evaluation and complete all recommendations. (T1:115; D.22—Petitioner's Exhibit 21, page 1).

These requirements were discussed face to face between the social service worker and E.H. (T1:117).

¶22 E.H. told Social Services that he got his own chemical dependency evaluation done at Positive Solutions. (T2:67). However, E.H. signed a release of information form giving Social Services permission to receive records from Positive Solutions and when Social Services sent off for proof that E.H. completed the evaluation social services never received any proof of completion from Positive Solutions. (T2:67). However, E.H. then tested positive after the time period that he said he had an evaluation at Positive Solutions. (T2:67). In addition to what Sheila Oye, the case worker from Social Services, testified to, the guardian ad litem also testified that E.H. attended at least one permanency planning meeting and that the plan was discussed and E.H. appeared to be aware of what was happening in the room and that he participated in the discussion. (T2:69).

III.

¶23 LAW AND ARGUMENT

¶24 The trial court's finding that the minor child continues to be a deprived child and [the minor child] has been in foster care for more than 450 of the last 660 nights and has been continuously in foster care since January 3, 2008 is NOT clearly erroneous.

¶25 This court has jurisdiction to hear this appeal under **N.D. Const. Art. VI, §§ 2 and 6**, under **N.D.C.C. § 27-20-56(1)** and **N.D.R.App. P. 2.2**. A lower court's decision to terminate parental rights is a question of fact that will not be overturned unless the decision is clearly erroneous, *and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.* **N.D.R.Civ.P. 52(a) (emphasis**

added). "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, [the reviewing court is] left with a definite and firm conviction a mistake has been made." ***Interest of D.M.*, 2007 ND 62, ¶6, 730 N.W. 2d 604 (citations omitted).**

¶26 The judge of the juvenile court was present during all testimony and is the best judge of the credibility of the witnesses and therefore, statements by counsel regarding the credibility of witnesses should be disregarded in favor of the juvenile court judge's findings which are based on the judge's observations during the court proceedings.

¶27 Parental rights may be terminated in more than just one situation. In one situation, parental rights may be terminated if a child is deprived and the court finds "the child has been in foster care, in the care, custody, and control of the department, or a county social service board, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights." **N.D.C.C. § 27-20-44(1)(c)(2).**

¶28 Parental rights may also be terminated if a child is deprived and the court finds the "conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm." ***Interest of D.M.*, 2007 ND 62, ¶7, 730 N.W. 2d 604 (citing to N.D.C.C. § 27-20-44(1)(b)(1)).** This second standard for termination is now found in **N.D.C.C. § 27-20-44(1)(c)(1).** "Clear and convincing evidence means evidence that leads to a firm belief or conviction the allegations are true."

Interest of D.M., **2007 ND 62, ¶7, 730 N.W. 2d 604 (citing to *Adoption of S.R.F.*, 2004 ND 150, P7, 683 N.W.2d 913).**

¶29 In the case of ***In re L.J.*, 2007 ND 74, ¶2, 734 N.W.2d 342** this court stated:

> On appeal, S.J. argues there was insufficient evidence to support the court's findings of fact that the children were deprived, and the court erred in terminating S.J.'s parental rights based on the number of days the children had been in foster care. S.J. conceded the children were deprived because he could not presently care for them while he was incarcerated. We have said: "Under [**N.D.C.C. § 27-20-44(1)(b)(2)**], a court may terminate parental rights solely on a finding of (1) deprivation and (2) that '[t]he child has been in foster care . . . for at least four hundred fifty out of the previous six hundred sixty nights.'" ***Interest of F.F.*, 2006 ND 47, P14, 711 N.W.2d 144**. The juvenile court's findings under **N.D.C.C. § 27-20-44(1)(b)(2)** were not clearly erroneous. We summarily affirm under **N.D.R.App.P. 35.1(a)(2) and (7).**

N.D.C.C. § 27-20-44(1)(b)(2) as written at the time of ***In re L.J.*** is now found in **N.D.C.C. § 27-20-44(1)(c)(2)**. Under the reasoning of ***In re L.J.***, this court may summarily affirm the juvenile court's findings and order terminating E.H.'s parental rights because in this case it is clearly established that the child was deprived for various reasons listed in the facts above, most notably the fact that E.H. was incarcerated at the time of the hearing just as was the case in ***In re L.J.*** Furthermore, the child had been placed in foster care in January of 2008, was originally adjudicated as deprived on May 8, 2008 and had continued to be deprived and was still in foster care for at least four hundred fifty out of the previous six hundred sixty nights as of the date of the first hearing on this matter, which was held on December 17, 2009.

¶30 For these reasons, the court need not even decide whether the second standard for terminating parental rights, found in **N.D.C.C. § 27-20-44(1)(c)(1)** has been proven by clear and convincing evidence.

¶31 The trial court's finding that the minor child is a deprived child and such deprivation is likely to continue if [the minor child] is placed with E.H. and that [the minor child] is suffering or will probably suffer serious physical, mental, moral or emotional harm if placed with E.H. is NOT clearly erroneous.

¶32 Even if this court does not summarily affirm based on the juvenile court's findings under **N.D.C.C. § 27-20-44(1)(c)(2)**, this court may still affirm the juvenile court's findings under the standard set forth in **N.D.C.C. § 27-20-44(1)(c)(1)**. Parental rights may also be terminated if a child is deprived and the court finds the "conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm." **N.D.C.C. § 27-20-44(1)(c)(1)**.

¶33 This court has held that a juvenile court did not err in terminating a parent's rights where pattern of incarceration and a failure to avail oneself of assistance from social services led to suffering of children and a history of incarceration indicated that the children's deprivation would not end in a reasonable amount of time and the parent had little to do with raising the children. ***In the Interest of T.A.*, 2006 ND 210, ¶14-19, 722 N.W.2d 548.** "When a parent, voluntarily and without reasonable justification, makes himself unavailable to care for and parent young children, the children should not be expected to wait or assume the risk involved in waiting for permanency and stability in their lives." ***In the Interest of T.A.*, 2006 ND 210, ¶16; 722 N.W.2d 548 (citing to *Interest of E.R.*, 2004 ND 202, P9, 688 N.W.2d 384)**. "'A parent's lack of cooperation in parenting classes or with social workers is probative, as is the parent's background.'" ***In the Interest of T.A.*, 2006 ND 210, ¶16; 722 N.W.2d 548 (citing to *Interest of E.G.*, 2006 ND 126, P10, 716 N.W.2d 469)**. "Such lack of parental cooperation is indicative of

the likelihood deprivation will continue." ***In the Interest of T.A.*, 2006 ND 210, ¶16; 722 N.W.2d 548 (citing to *Cleveland v. Dir., Cass County Soc. Servs. (In the Interest of D.Q.)*, 2002 ND 188, P21, 653 N.W.2d 713).** "Deprivation can result from habitual absence from the children's lives. 'To terminate parental rights, a court need not await the happening of a tragic event.'" ***In the Interest of T.A.*, 2006 ND 210, ¶18; 722 N.W.2d 548 (citing to *Olsen v. T.K. (In the Interest of T.K.)*, 2001 ND 127, P17, 630).**

¶34 Other cases that have determined that deprivation was likely to continue based on a parent's failure to take advantage of services offered are ***In the Interests of A.S.*, 2007 ND 83, 733 N.W.2d 232; and *In re J.S.*, 2008 ND 9, 743 N.W.2d 808.**

¶35 Therefore, past behavior, such as failure of a parent to have in the past availed him/herself of services being provided, can in fact be prognostic evidence that can form the basis for a reasonable prediction as to future behavior.

¶36 In this case the juvenile court determined that D.H. "is likely to continue to be deprived and placement of the child with [E.H.], is not reasonable, and is contrary to the health, safety and welfare of the child, because of the following facts: [E.H.]:

- Is currently incarcerated,
- Has an extensive criminal record,
- Has not maintained stable housing,
- Has tested positive for marijuana every time social services has tested him,
- Has been convicted of a felony level violent crime,
- Has failed to attend several permanency planning meetings,
- Knew what the permanency plan was but he failed to follow the plan,

- Failed to complete his requirements set forth in the permanency planning meetings, including, but not limited to, failure to complete a required parental capacity evaluation, failure to complete a chemical dependency evaluation, failure to attend supervised visitations with the child,
- Failed to have regular contact with the child and missed several scheduled visitations,
- Has had minimal contacts with the child and only attended several supervised visitations and only telephoned the child once since March of 2008,
- Knew of the existence of the child and that he was the father since 2006 and he has only had sporadic contact with the child and only several contacts in that time period.

(D.47—Findings and Order, pages 3-4).

¶37 The juvenile court went on to state "[f]urther, if [E.H.] were to be reunited with the child, the child would be separated from the child's sibling due to the fact that the sibling is not related to [E.H.] and placement of that sibling with [E.H.] is not possible under the circumstances of this case as a matter of law. (D.47—Findings and Order, page 4). The juvenile court also found that "[t]he child is suffering from Adjustment Disorder with Depressed Mood and [E.H.'s] actions and failures to act are likely to continue based on his history and therefore likely to continue to contribute to the Adjustment Disorder with Depressed Mood. [E.H.'s] lack of stable residence and employment are also likely to continue to contribute to the child's mental health problems." (D.47—Findings and Order, page 4). Citing to the above specific findings the juvenile court went on to state: "The conditions and causes of the deprivation are likely to continue or will not be

remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral or emotional harm because of the pattern of behavior or lack of action on the part of [E.H.] as described in the preceding paragraphs.

¶38 The juvenile court also made specific findings regarding the reasonable efforts that were made with respect to E.H. (D.47—Findings and Order, pages 4-5). These findings of the juvenile court regarding reasonable efforts are supported throughout the factual statement made in the first part of this response.

IV.

¶39 CONCLUSION

¶40 The juvenile court's finding that the minor child continues to be a deprived child and that the minor child has been in foster care for more than 450 of the last 660 nights and has been continuously in foster care since January 3, 2008 is NOT clearly erroneous. This court may summarily affirm the juvenile court's order based on this finding alone.

¶41 Even if this court decides not to summarily affirm the juvenile court's order under N.D.C.C. § 27-20-44(1)(c)(2), there is ample evidence on the record for this court to conclude that the juvenile court was able to find by clear and convincing proof that termination was proper under N.D.C.C. § 27-20-44(1)(c)(1). E.H. has known of the existence of D.H. since 2006 and for whatever reasons, he has not taken steps to avail himself of services being offered by social services. If E.H. has not been able to avail himself of services in the last 3 to 4 years, it is reasonable to conclude that he will continue to fail to seek out and utilize those offered services.

¶ 42 The State respectfully requests that this court affirm the juvenile court's Order Terminating Parental Rights dated March 5, 2010.

Respectfully submitted this 22nd day of April, 2010.

BARNES COUNTY SPECIAL ASSISTANT
STATE'S ATTORNEY

Fallon Kelly (ID #05966)
316 Main Street
Lisbon, ND 58054
Phone: 701-683-4123
Fax: 701-683-4124
e-mail: fkelly@drtel.net
ATTORNEY FOR PETITIONER/APPELLEE