

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

In the Interest of D.D. and H.D., )  
)  
Mckenzie County )  
Department of Social Services, )  
)  
Petitioner/Appellee, )  
)  
vs. ) Juvenile Court No. 27-2014-cr-9  
27-2014-cr-10  
) Supreme Court No: 20140456  
C.R. Mother, ) 20140457  
D.D., a child; )  
H.D., a child; )  
D.D., father, )  
Respondents, )  
)  
C.R., Mother of the above-named )  
Children, )  
)  
Respondent/Appellant. )  
\_\_\_\_\_ )

## Brief of Respondent/Appellant C.R.

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Appeal from Findings of Fact, Conclusions of Law and Order and  
Disposition entered November 7, 2014 in Juvenile Court, County of  
Mckenzie, State of North Dakota, The Honorable Robin Schmidt

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*Interest of T.J.L.*, 2004 ND 142, 682 N.W.2d 735

¶ 17

North Dakota Statutes and Rules

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¶ 9

N.D.C.C. 27-20-44(1)(c)(1)

¶10

## STATEMENT OF THE ISSUES

[1]

I. Whether there was clear and convincing evidence to support a finding of deprivation that was likely to continue.

[2]

II. Whether there was clear and convincing evidence that the child would likely suffer harm absent a termination of parental rights.

## STATEMENT OF THE CASE

[3] This is an appeal from an order of the juvenile court, Mckenzie County, terminating the parental rights of C.R. to her two (2) children. On March 20, 2012, petitions were filed asking the court to terminate the parental rights of C.R. and DD. to their children, D.D and H.D (Appendix 8-11, Docket 1). The petitions to terminate were tried on October 15, 2014 before the juvenile court, the Honorable Robin Schmidt E. On October 20, 2014 Judge Schmidt issued the Order to Terminate Parental Rights (Appendix 14-21) Amended Memorandum Decisions of Adjudication and Orders which ordered the termination of C.R and D.D. parental rights.

## STATEMENT OF FACTS

[4] The two children subject to these proceedings are twins at the age of 2. (Transcript

Page 3)

[5]Mckenzie County Social Services first became involved with the family when the children were born and allegedly had meth in their systems. The day after their birth, the children were removed from the home. (Transcript Page 3)

[6]The children remained out of the home and in foster care until the time of termination. The children are still in that same foster home.

[7] Visitations were set up for C.R and D.D to see their children but these times were not convenient and many times C.R. could not make the visits. Furthermore, there is not clear and convincing evidence that C.R received notice of these visitations (Transcript Page 16 Paragraph 11- Appendix 27).

[8] C.R. and D.D. do not feel that there was adequate proof of C.R. using meth during the pregnancy. There were discrepancies in hospital records showing another name for a mom. There was never proof provided stating that C.R. was, by any certainty, the mother of the child that tested positive for methamphetamines (Appendix 13; Docket ID 31). Furthermore, billing from the hospital which showed bills for all kinds of things never showed any billing for drug testing of the meconium which allegedly tested positive for methamphetamines. (Appendix 12; Docket ID 30)

### ARGUMENT

[9]Rule 52(a), N.D.R.Civ. P., was amended, effective March 1, 2004, to provide that 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. The juvenile court's conclusions of law are fully reviewable by this court. *Id.*

[10]Section 27-20-44(1)(c)(1) of the North Dakota Century Code requires a petitioner for the termination of parental rights to prove by clear and convincing evidence that the child is deprived, the deprivation is likely to continue, and that, absent a termination, the child will suffer, or probably suffer, "serious physical, mental, moral, or emotional harm."

[11]I. Whether there was clear and convincing evidence to support a finding of deprivation that was likely to continue.

[12]In order to terminate a parent's rights, a finding of deprivation is not enough. *E.g., In re M.S.*, 2001 ND 68, ¶ 4, 624 N.W.2d 678, 681. Petitioner must also prove by clear and convincing evidence that the deprivation is likely to continue. *Id.* Petitioner failed to prove that the deprivation is likely to continue.

[13]Respondent, C.R., maintains that Petitioner has not proved by clear and convincing evidence that the deprivation is likely to continue. She is available to care for her children.

[14]C.R. has lived in a stable home and been in the same relationship for many years. She loves her children and maintains that she does not use drugs. The County has yet to provide actual and substantial proof that she was using meth during the pregnancy.

[15]In short, Petitioner has failed to prove by clear and convincing evidence that there existed deprivation that would likely continue absent a termination of C.R.'s parental rights.

**[16]II. Whether the trial court erred in finding there was clear and convincing evidence that the child would likely suffer harm absent a termination of parental rights.**

[17]In order to terminate, Petitioner must prove by clear and convincing evidence that the child will likely suffer harm absent a termination of parental rights. *Interest of T.J.L.*, 2004 ND 142, ¶ 2, 682 N.W.2d 735. Petitioner failed to meet that burden.

[18]The evidence is clear that C.R. has consistently maintained interest in her children despite the roadblocks set by the County. Furthermore, evidence shows that C.R. wasn't, beyond a preponderance of the evidence, using drugs during the pregnancy. There is no need for terminating parental rights.

[19]Other than the standard testimony regarding "permanency", there is little evidence on which to find that any of the children would be harmed absent a termination. Permanency is not just about placement, but is also about family,, about relationships and not giving up on them.

[20]The trial court's finding that the children would likely be harmed absent a termination is clearly erroneous.

CONCLUSION

[21]In conclusion, the state has not met its burden of proof for terminating C.R.'s parental rights. This Court should reverse the order of the juvenile court and remand for an order requiring Mckenzie County Social Services to work with her toward achieving the ability for her to be reunited with all of her children and work on a plan to transition the children to her home

Respectfully submitted this 31st day of December, 2014.

/s/ASHLEY GULKE

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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

In the Interest of D.D. and H.D.,	)		
	)		
Mckenzie County	)		
Department of Social Services,	)	CERTIFICATE OF SERVICE	
	)		
Petitioner/Appellee,	)		
	)		
vs.	)	Juvenile Court No.	27-2014-cr-9
	)		27-2014-cr-10
	)	Supreme Court No:	20140456
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D.D., a child;	)		
H.D., a child;	)		
D.D., father,	)		
Respondents,	)		
	)		
C.R., Mother of the above-named	)		
Children,	)		
	)		
Respondent/Appellant.	)		

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[¶1] I certify that a true and correct copy of the foregoing document was filed on the 6th day of January 2014, with the North Dakota Clerk of the Supreme Court through email:

1. APPELLANT'S BRIEF; AND

2. APPENDIX TO APPELLANT'S BRIEF;

with the Clerk of the Supreme Court through email to the following:

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And via USPS to client C.R. at PO BOX 1737, Watford City, ND 58854 and email:  
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