

SUPREME COURT OF THE STATE OF NORTH DAKOTA

IN THE INTEREST OF W.C., A CHILD
IN THE INTEREST OF I.C., A CHILD
IN THE INTEREST OF M.C., A CHILD
IN THE INTEREST OF W.C., a CHILD

Marlene Sorum, L.S.W., M.A.,)	
Cass County Social Services)	
)Cass Cty. Nos:09-2016-JV-00326
) 09-2016-JV-00327
Petitioner and)	09-2016-JV-00328
Appellee,)	09-2016-JV-00329
)
)Sup. Ct. No.:
v.)	
M.M., mother,)	
J.C., father,)	
)
Respondents,)	
-----)	
M.M., mother,)	
)
Appellant.)	

APPELLANT'S BRIEF

APPEAL FROM THE ORDER TERMINATING PARENTAL RIGHTS AND REQUEST FOR REVIEW ENTERED ON APRIL 5, 2017 and MAY 5, 2017, RESPECTIVELY.

CASE NO.: 09-2016-JV-00326; 00327; 00328; and 00329
COUNTY OF CASS
EAST-CENTRAL JUDICIAL DISTRICT
HONORABLE SCOTT GRIFFITH

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STATEMENT OF THE ISSUES

- I. Whether the trial court erred in finding there was clear and convincing evidence to support a finding of deprivation that was likely to continue.
- II. Whether the trial court erred in finding there was clear and convincing evidence that the children would likely suffer harm absent a termination of parental rights.
- III. Whether reasonable efforts were made to prevent removal of the children and to reunify the family once the children were removed.
- IV. Whether the parents subjected the children to "Aggravated Circumstances" as defined by N.D.C.C. 27-20-02(3).

STATEMENT OF THE CASE

[1] This is an appeal from an order of the juvenile court, Cass County, terminating the parental rights of M.M. and J.C. to the children, W.C., I.C., M.C. and W.C.. On July 7, 2016, a petition and affidavit were filed by Cass County Social Services asking the court to terminate the parental rights of M.M. and J.C. to the children, referenced above (Files 09-2016-JV-00326, 00327, 00328 and 00329, docket # 1; Appellant's Appendix [hereinafter App.] at 1). The matter was tried on March 8, 2017, before the juvenile court, with the Honorable Referee Scott Griffith presiding. On April 5, 2017, the referee issued "FINDINGS AND ORDER TERMINATING PARENTAL RIGHTS" terminating M.M. and J.C.'s parental rights. (Files 09-2016-JV-00326, 00327, 00328 and 00329, docket #114; App. at 4). Respondent M.M. hereby files this timely Notice of Appeal and associated brief.

STATEMENT OF FACTS

[2] W.C. is a child born XX-XX-2003. (Findings and Order Terminating Parental Rights at 2; App at 18). I.C. is a child born XX-XX-2006. (Id.) M.C. is a child born XX-XX-2010. (Id.) W.C. is a child born XX-XX-2013. (Id.) M.M. is the mother of the above referenced children. (Id.) J.C. is the father of the

above referenced children. (Id.) J.C. and M.M. were both the primary care givers of the children.

[3] The children were adjudicated deprived in August of 2015. They were placed in the custody of Cass County Social Services for a period of one year. (Findings and Order Terminating Parental Rights at 2; App at 18.) Following the finding of deprivation, a care plan was established to facilitate reunification of the children with the parents. In July of 2017, a petition for termination of parental rights was filed. (App at 1.) A trial was held on March 8, 2017. Numerous witnesses testified. The Findings and Order Terminating Parental Rights was filed April 5, 2017. (Files 09-2016-JV-00326, 00327, 00328 and 00329, docket #114; App. at 4. Both M.M. and J.C. requested review of the referee's order on April 11, 2017. (Files 09-2016-JV-00326, 00327, 00328 and 00329, docket #117; App. at 4).

ARGUMENT

[4] This court may set aside the findings of fact by the juvenile court when they are clearly erroneous. N.D.R.Civ.P. 52(a); *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. *Interest of A.B.*, 2003 ND 98, ¶4, 663 N.W.2d 625, 628.

[5] Section 27-20-44(1)(b)(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. *E.g., Interest of T.J.L.,* 2004 ND 142, ¶ 2, 682 N.W.2d 735. Incarceration, by itself, is not a sufficient reason to terminate parental rights. *E.g., Matter of Adoption of J.S.P.L.,* 532 N.W.2d 653 (N.D. 1995).

I. Whether the trial court erred in finding there was clear and convincing evidence to support a finding of deprivation that was likely to continue.

[6] 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.* The children were previously adjudicated deprived. However, Appellee here failed to prove that the deprivation is likely to continue.

[7] M.M.'s troubles are, and have always been, due primarily to the lack of financial means. Financial instability was the foundation of the original deprivation finding. Her troubles began when the family fell behind on their monthly bills. Until that time, they had lived without

incident at the family home for 15 years. However, the financial struggles eventually led to their living conditions deteriorating and ultimately, their eviction from the residence. This, in turn, made finding appropriate replacement housing nearly impossible. Her financial struggles led directly to an inability to secure employment due to her lack of transportation. She was neither able to afford necessary repairs to her own vehicle nor to afford public transportation.

[8] M.M. has worked to remedy the situation but has been met with numerous obstacles. The State points to M.M.'s unwillingness to work with Social Service as evidence of continued deprivation. However, Social Services will not work with M.M.. First, she was trespassed from the Social Services building for what Social Services deemed inappropriate behavior. She has complied with that order. However, instead of scheduling parenting time at a location other than Cass County Social Services, they refused to do so and effectively terminated her parenting time altogether. Consequently, she has not seen her children since November of 2016. Second, Marlene Sorum testified that M.M. was required to do an addiction evaluation as part of her family plan, and had a detailed justification for this requirement in direct examination. However, under cross-examination she admitted

that M.M. was told specifically that the evaluation was not necessary. More specifically, she was deemed non-compliant with her family plan for not completing something she was previously told she needn't complete. Third, Ms. Sorum stated that M.M.'s family plan required her to complete a Parental Capacity Evaluation. However, under cross-examination, Ms. Sorum admitted that she had never made the required referral to allow M.M. to complete this evaluation. Again, she was deemed non-compliant with her family plan for not doing something for which Ms. Sorum never made possible. Finally, the State argues that M.M.'s inability to secure housing was due to her unwillingness to seek out and find it. However, under cross-examination it was shown that she did, indeed, follow up with the recommendations of Social Services to discuss housing with Rape and Abuse Crisis Center, Fargo Housing Authority and local shelters, but was told, under most circumstances, that her criminal record, financial constraints and past eviction barred her admittance. Rather than pursue alternatives, Social Services essentially washed their hands of M.M. and again deemed her non-complaint. Despite all the meandering recommendations and requirements of Social Services, M.M. remained heavily involved with parenting times until her those meetings were effectively terminated. She remained involved in

their schooling and treatment needs until that time as well. She has never been accused of physically harming her children. She has never caused any emotional, mental or educational harm or any kind. True, she did not respond well to Social Services intervention in her life and the lives of her children. She was quite vocal about this fact. But her unwillingness to believe Social Services was there to help her, and unwillingness to believe their recommendations were helpful TO her, does not render her unable to parent her children. Quite the contrary. It evidences that despite the obstacles that were present, M.M. is willing to work and ameliorate the issues present. Clearly M.M. has tried repeatedly to remedy the ills that contributed to the original finding of deprivation. The solutions are available to her, should Social Services reasonably assist her in doing so.

[9] In short, Appellee failed to prove by clear and convincing evidence that there existed deprivation that would likely continue absent a termination of 's paternal rights. In the alternative, should Social Services have acted reasonably and with due diligence to assist M.M. in finding employment and suitable housing, the problems would likely have solved themselves.

II. Whether the trial court erred in finding there was

clear and convincing evidence that the children would likely suffer harm absent a termination of parental rights.

[10] In order to terminate, Appellee 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. Appellee failed to meet that burden.

[11] There was no medical evidence provided that would assist the trier of fact to determine whether the children were malnourished. There was no evidence to suggest that the children suffered from physical abuse of any kind. There are no allegations or evidence that M.M. ever used controlled substances. There is no credible evidence that M.M. ever suffered from mental health disorders. The parties both participated in and completed Nurturing parenting classes. The children do all have special needs. However, there has been no evidence presented to show that M.M. cannot address those needs as she had been prior to falling under financial distress. Finally, no trial home visit or extended visitation schedule has ever been attempted while these children have been in foster care. Quite the opposite, in fact. As stated above, M.M.'s visitation was effectively terminated by Cass County

Social Services and she hasn't been allowed to see her children for quite some time.

[12] There is quite literally no evidence to suggest that the children would suffer harm absent termination. The findings of the judicial referee are speculative in nature and do not survive the required scrutiny.

III. Whether reasonable efforts were made to prevent removal of the children and to reunify the family once the children were removed.

[13] Section 27-20-32.2(2) of the North Dakota Century Code requires that reasonable efforts must be made to preserve and reunify families. *Interest of E.R.*, 2004 ND 202, ¶ 12, 688 N.W.2d 384, 389.

"Reasonable efforts" means the exercise of due diligence, by the agency granted the authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent the removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal and to reunite the child and the child's family.

N.D.C.C. § 27-20-32.2(1).

[14] The Court outlined the litany of programs it believes Social Services employed to prevent removal and to reunify the children. (Findings and Order Terminating Parental Rights at 5-6; App at 21-22). As shown by the evidence, however, Social Services did not work with M.M. adequately to address the issues clearly preventing reunification. As stated above, they recommended services that were not available to her. They complained of failure to complete services for which she was not referred. Conversely, they referred her for services that were not needed. And they refused to move visitation to a place where she could see her children.

IV. Whether the parents subjected the children to "Aggravated Circumstances" as defined by N.D.C.C. 27-20-02(3).

[15] North Dakota Century Code section 27-20-02(3) defines "aggravated circumstances", in relevant part, as when a parent:

"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."

[16] In this instance, the trial Court determined that M.M. and J.C. had subjected the children to aggravated circumstances based on the fact that they "failed to make substantial, meaningful efforts to secure treatment for [her] addictions, mental illness, behavior disorders, for a period of one year". (Findings and Order Terminating Parental Rights at 4; App at 20.) This finding is not supported by the record.

[17] There is no evidence to suggest that M.M. uses or has used controlled substances or that there are "addiction issues" that need to be addressed. In fact, the record shows she was told by Ms. Sorum that a controlled substance evaluation was unnecessary in her situation. Likewise, there is no evidence to suggest that M.M. has a lingering Mental Health issue that needs to be addressed. To the contrary, her mental health evaluation from Lakeland Mental Health shows that she has no mental health issues that require any immediate remedy. And while it is clear that M.M. did not get along with Cass County Social Services and was quite vocal in her distaste for their treatment of her case, there is no medical opinion or expert testimony to suggest that she suffers from any recognizable "behavior disorder" as is contemplated by statute. The Court's findings with respect

to these "Aggravated Circumstances" are without any support in the record.

CONCLUSION

[18] In conclusion, the Appellee did not meet its burden of proof for terminating the parental rights of M.M.. This court should reverse the order of the juvenile court and remand for further proceedings regarding deprivation.

[19] Respectfully submitted this 5th day of June, 2017.

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