

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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In the Interest of R.R., a Child.

State of North Dakota,  
Petitioner and Appellee,  
v.

Grand Forks Case No. 18-2017-JV-00313  
Supreme Court No. 2018\_\_\_\_\_

R.R. child, C.R., father,  
Respondents/Appellees,  
R.S., mother,  
Respondent/Appellant.

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In the Interest of J.R., a Child.

State of North Dakota,  
Petitioner and Appellee,  
v.

Grand Forks Case No. 18-2017-JV-00314  
Supreme Court No. 2018\_\_\_\_\_

J.R. child, C.R., father,  
Respondents/Appellees,  
R.S., mother,  
Respondent/Appellant.

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In the Interest of A.R., a Child.

State of North Dakota,  
Petitioner and Appellee,  
v.

Grand Forks Case No. 18-2017-JV-00315  
Supreme Court No. 2018\_\_\_\_\_

A.R. child, C.R., father,  
Respondents/Appellees,  
R.S., mother,  
Respondent/Appellant.

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In the Interest of D.R., a Child.

State of North Dakota,  
Petitioner and Appellee,  
v.

Grand Forks Case No. 18-2017-JV-00316  
Supreme Court No. 2018\_\_\_\_\_

A.R. child, C.R., father,

Respondents/Appellees,  
R.S., mother,  
Respondent/Appellant.

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In the Interest of Z.T., a Child.

State of North Dakota,  
Petitioner and Appellee,  
v.

Grand Forks Case No. 18-2017-JV-00317  
Supreme Court No. 2018\_\_\_\_\_

Z.T. child, R.T., father,  
Respondents/Appellees,  
R.S., mother,  
Respondent/Appellant.

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**APPELLANT'S BRIEF**

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Appeal from the Order for Judgment Terminating Parental Rights entered April 5, 2018,  
and the Judgment Terminating Parental Rights entered April 9, 2018, the Honorable Jay  
Knudson, Judge of the District Court.

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**Statement of Issue Presented for Review**

- I. The District Court erred in finding there was clear and convincing evidence to support termination of R.S.'s parental rights
- II. The District Court erred in finding that reasonable efforts were made to preserve and reunify the family

### **Nature of the Case and Procedural History**

¶1 This is an appeal from the Order for Judgment Terminating Parental Rights by the Grand Forks County District Court, terminating the parental rights of R.S. [Docket 114; App. 105-148]. On October 6, 2017, a Summons [Docket 1; App. 21] and a Petition for Involuntary Termination of Parental Rights was filed in the Juvenile Court, asking the court to terminate the parental rights of R.S. [Docket 2; App. 22-41]. The petition was amended on November 3, 2017, to correct a name. [Docket 23; App. 42-60].

¶2 The petition to terminate was tried on March 21 -22, 2018, before the Honorable Jay Knudson, Judge of the District Court. (See Trial Recording (“Tr.”). An Order for Judgment Terminating Parental Rights was filed on April 5, 2018, [Docket 114; App. 105-148] and the Judgment Terminating Parental Rights was filed on April 9, 2018. [Docket 115; App. 149-151]. R.S. timely filed her appeal. [App. 152].

### Statement of the Facts

¶3 On September 22, 2009, Grand Forks County Social Services (GFCSS) first became involved with the family when they received a report of suspected child abuse involving R.S., C.R., and the older four children at issue. [03-21-18 Tr 1. 12:50].

Additional reports were made in October of 2009, [03-21-18 Tr 1. 18:40], November of 2009, [03-21-18 Tr 1. 26:32], December of 2009, [03-21-18 Tr 1. 31:05], January of 2010, [03-21-18 Tr 1. 35:36], May of 2010, [03-21-18 Tr 1. 40:19], and August of 2013 [03-21-18 Tr 1. 44:18].

¶4 The children were removed by GFCSS on November 7, 2013, and placed into foster care. [03-21-18 Tr 1. 48:33]. Additional reports were made in September of 2014, [03-21-18 Tr 1. 51:37], February of 2015 [03-21-18 Tr 1. 55:05], and October of 2015 [03-21-18 Tr 1. 57:05]. In March of 2016, the children were placed back into the care of R.S. [03-21-18 Tr 1. 2:00:22]. In September of 2016 [03-21-18 Tr 1. 1:01:18], January of 2017 [03-21-18 Tr 1. 1:03:35], March of 2017 [03-21-18 Tr 1. 1:05:03], and May of 2017 [03-21-18 Tr 1. 1:07:09], reports regarding the family were made to GFCSS. On May 24, 2017, all five of the children were placed into foster care under an emergency placement. [03-21-18 Tr 1. 1:07:09].

¶5 A child and family team meeting was held on June 20, 2017. [3-21-18 Tr 2. 36:37]. During that meeting, the singular goal of adoption was made. *Id.* The decision for the singular goal was made by a team that did not include any of the children's therapists, R.S.'s therapist, or either's service providers. *See generally Id.* The permanent plan for all five children is adoption. [3-22-18 Tr 2. 9:08]. However, none of the children are in an adoptive placement. [3-21-18 Tr 2. 12:25-16:16]. Tracy Van Beek, a supervisor in the

GFCSS foster care department, testified that in her experience, goals of adoption can be changed. [3-22-18 Tr 1. 3:07:52]. Ms. Van Beek testified that when asked by R.S. what would need to be done to change the goal of adoption, she responded that R.S. would need to “convince social services that this was a permanent lifestyle change.” [3-22-18 Tr 1. 3:29:42]. This unattainable position of Ms. Van Beek and GFCSS was made despite the fact that R.S. completed the tasks GFCSS asked of her [3-22-18 Tr 1. 3:27:20], and there was nothing more that R.S. could have done [3-22-18 Tr 1. 3:30:10].

¶6 Amy Wesley, the family’s foster care case manager, testified that reasonable efforts were provided to the family. [3-21-18 Tr . 3:10:20]. She testified that the community provided services for the family that included housing from Red River Community Action and CVIC, and help from churches, Grand Forks County, Northeast Human Service Center, and R.S.’s probation officer. [3-21-18 Tr . 3:10:30].

¶7 Ms. Wesley testified regarding all five of the children. R.R. is in therapy with Lucas Nelson and has an adjustment disorder diagnosis. [3-21-18 Tr 1. 2:11:05]. Ms. Wesley expressed concern for R.R. being parentified and caring for his siblings. [3-21-18 Tr 1. 2:06:06]. J.R. has a history of mental health issues [3-21-18 Tr 1. 2:17:55], and is currently placed at Ruth Myers Adolescent Center where he sees a therapist [3-21-18 Tr 1 . 2:18:45]. D.R. is on an IEP through the school for behavior. [3-21-18 Tr 1. 2:28:59]. He sees a therapist, Jessica Hermanson. [3-21-18 Tr 1. 2:29:25]. A.R. is also on an IEP and sees Jessica Hermanson for therapy. [3-21-18 Tr 1. 2:32:08]. A.R. has been diagnosed with a mood disorder. [3-21-18 Tr 1. 2:32:24]. Z.T. he is on track developmentally and does not have any issues. [3-21-18 Tr 1. 2:36:10]. The children also engage in “brother’s therapy”. [3-21-18 Tr 1. 3:11:10].



¶8 R.S. has regular visitation with the children. R.S. has not missed any visits. [3-21-18 Tr 2. 34:14]. R.S. asked for her visitation with the children to be increased. GFCSS denied her request, stating that when there is a singular goal of adoption, they do not increase visitation. GFCSS went on to add that in this case specifically, they would not increase visitation because it would give hope to the children that they were going home and going home is not the goal of GFCSS. Id. R.S. asked to attend the children's activities and was denied by GFCSS for the same reason. [3-21-18 Tr 2. 35:00]. R.S. has remained active in the children's lives as much as GFCSS would allow. [3-21-18 Tr 2. 36:00].

¶9 Tammy Knudson, the supervisor for the child and protection department, testified that the children are deprived in regard to R.S., on the basis that there is a showing of a pattern of domestic violence, drug use, and neglect. [3-21-18 Tr 1. 1:15:15]. Ms. Wesley testified that the children are deprived; for the older four children, the deprivation is related to being in foster care, continued drug use, domestic violence. [3-21-18 Tr 2. 3:30]. For Z.T., it is because R.T. is unavailable to parent the child due to his incarceration. [3-21-18 Tr 2. 4:20].

¶10 In June of 2017, a service agreement was developed for R.S. by GFCSS. [3-21-18 Tr 2. 33:48]. R.S. has completed everything in the service plan. [3-21-18 Tr 2. 19:02; 36:12]. The service plan required that R.S. engage in individual therapy, which she is doing [3-21-18 Tr 2. 33:00]; remain sober, which she is doing [3-21-18 Tr 2. 34:02]; submit to random drug screen, which she is doing [3-21-18 Tr 2. 34:02]; participate in visitation with the children, which she is doing [3-21-18 Tr 2. 34:14]; address her addiction issues, which she is doing [3-22-18 Tr 2. 3:24:08]; address

medication services, which she is doing, and maintain stable housing, which she is doing, Id.

¶11 R.S. is a domestic violence survivor. The reports from September [03-21-18 Tr 1. 14:00], October [03-21-18 Tr 1. 18:50], and November [03-21-18 Tr 1. 26:32], of 2009, and from August of 2013 [03-21-18 Tr 1. 44:25], disclosed C.R. abused R.S. R.S. took steps to protect herself and her children from continued domestic violence. In August of 2013, R.S. separated from C.R. [3-22-18 Tr 1. 1:25:40]. She initiated divorce proceedings in January 2014, [3-22-18 Tr 1. 1:26:03], the divorce was finalized in December of 2015, Id., and they have not resided together since. [3-22-18 Tr 1. 1:26:40].

¶12 Since her separation, R.S. has not sought out contact with C.R. [3-22-18 Tr 1. 2:51:48]. There was unintentional contact between C.R. and R.S. last summer when C.R. picked her up instead of his father. [3-22-18 Tr 1. 2:51:18]. When C.R. attempted to contact her, R.S. contacted law enforcement and reported the incident to her probation officer and social services. [3-22-18 Tr 1. 2:25:54; 2:52:23]. R.S. denies that there was a possibility that C.R. was the father of Z.T. [3-22-18 Tr 1. 2:42:04].

¶13 After the separation, R.S. initially sought help from Community Violence Intervention Center (CVIC) and from GFCSS. [3-22-18 Tr 1. 1:28:40]. As a survivor of domestic violence, R.S. continues to engage in services through CVIC, Beven Casavant, Kelly White, and the 12 step program. [3-22-18 Tr 1. 2:18:53].

¶14 R.S. has completed treatment for addiction. [3-22-18 Tr 1. 1:44:30]. In 2013, R.S. completed the Matrix program. [3-22-18 Tr 1. 1:45:00]. In 2014, she successfully completed a program through Centre, Inc. in Grand Forks. [3-22-18 Tr 1. 21:48:15]. R.S. completed a program in 2015 while at Centre in Fargo. [3-22-18 Tr 1. 1:49:45].

¶15 R.S. is not presently in treatment, she is in recovery. [3-22-18 Tr 1. 1:52:37]. Working a program for recovery is different than staying clean and sober. [3-22-18 Tr 1. 2:21:10]. R.S. is committed to continuing her recovery path when the children are returned to her care. [3-22-18 Tr 1. 2:13:22].

¶16 As part of her recovery program, R.S. attends 12 step meetings, up to 4 per day as needed [3-22-18 Tr 1. 1:53:25]. She has supports in place who are willing to care for the children so she can attend meetings. [3-22-18 Tr 1. 2:00:20]. While R.S. attended meeting in the past, she has never done the 12 step process. [3-22-18 Tr 1. 1:57:38]. R.S. is going through the steps with her sponsor, Emberlie Anderson, [3-22-18 Tr 1. 1:55:33], and has a home group [3-22-18 Tr 1. 2:11:15]. Ms. Anderson is a sober support for R.S. and has contact with her daily. [3-22-18 Tr 1. 51:30]. Ms. Anderson has prior experience as a sponsor, [3-22-18 Tr 1. 55:20], and sees R.S. making changes. [3-22-18 Tr 1. 57:00]. Those changes include R.S.'s relationship with people, [3-22-18 Tr 1. 57:20], choosing to surround herself with women in recovery, [3-22-18 Tr 1. 59:08], recognizing problem behavior and changing it, [3-22-18 Tr 1. 58:00], and reaching out to others. [3-22-18 Tr 1. 59:53].

¶17 R.S. has sober supports. [3-22-18 Tr 1. 1:01:08]. Those supports include, among others, Ms. Anderson, [3-22-18 Tr 1. 1:01:36], and Jordan Hjeldness. [3-21-18-Tr 2. 1:29:49]. Ms. Hjeldness has known R.S. for 4-5 years [3-21-18-Tr 2. 122:11], when R.S. has been sober and when she has been using. [3-21-18-Tr 2. 1:24:00]. Ms. Hjeldness testified to the difference she has seen between R.S.'s past periods of sobriety and the current behavior of R.S. [3-21-18-Tr 2. 1:25:24]. Of significance, is the personality

switch she has seen in other successful people that she now sees in R.S. [3-21-18-Tr 2. 1:31:20].

¶18 R.S. has seen Kelly White, a licensed addiction counselor with almost 30 years of experience, [3-22-18 Tr 1. 3:05], weekly since June of 2017, for individual therapy to address addiction and mental health issues. [3-22-18 Tr 1. 5:28]. Ms. White testified that addiction is a medical condition; it is a disease and as such there are ways to manage it. [3-22-18 Tr 1. 6:05]. She testified that the treatment for addiction is working a personal recovery program, attending meetings, getting involved in helping others, and changing your thinking. [3-22-18 Tr 1. 6:27]. R.S. is following through with her recovery process; she is not just going through the motions. [3-22-18 Tr 1. 19:40]. Ms. White stated that R.S. is attending meetings, working the steps, has a sponsor, is helping others, is changing her thinking and becoming very transparent, is dealing with past trauma, and is hanging out with healthy people. [3-22-18 Tr 1. 7:18-11:30].

¶19 Ms. White worked with R.S. in the past and she testified that R.S. did not show the same management of her disease in the past that she shows now. [3-22-18 Tr 1. 11:55]. To Ms. White, the actions and changes of R.S. indicate a great deal of internalized motivation to do things differently regarding her addiction. [3-22-18 Tr 1. 12:10]. Being in a recovery program decreases the likelihood of a relapse in the future. [3-22-18 Tr 1. 17:34]. R.S.'s behaviors demonstrate that she is more likely to stop a relapse before it happens; she is being proactive rather than reactive. [3-22-18 Tr 1. 18:32]. Ms. White stated that she did not believe having the children returned to R.S. would have an impact on her sobriety. [3-22-18 Tr 1. 21:05]. Ms. White testified that she

believes that R.S. will continue her recovery because of an “indefinable” change she has seen in R.S. that she recognizes through her years of experience. [3-22-18 Tr 1. 35:18].

¶20 R.S. has verified her continued sobriety through drug testing. R.S. has been testing twice weekly since September of 2017 through Community Service in Grand Forks. [03-22-18 Tr 1. 40:05]. R.S. has taken 50 tests since September of 2017 and has had no positive tests. [03-22-18 Tr 1. 40:37].

¶21 R.S. is addressing her mental health and addiction through trauma based therapy. [03-21-18 Tr 2. 18:45]. Beven Casavant is an advanced clinical specialist at Northeast Human Service Center with specialized training in Eye Movement Desensitization and Reprocessing (EMDR). [03-21-18 Tr 2. 1:41:49]. EMDR is a treatment for individuals with traumatic events and PTSD which helps to desensitize the patient from the flight or fight response, helping them deal with the past trauma and resolve it. [03-21-18 Tr 2. 1:44:25]. Additional benefits of the treatment include changing how patients react and providing new insight into the patient’s behavior. [03-21-18 Tr 2. 1:53:00]. This treatment has a high success rate when completed. [03-21-18 Tr 2. 1:47:50]. Mr. Casavant began treating R.S. in the summer of 2017. [03-21-18 Tr 2. 1:43:33]. R.S. meets with Mr. Casavant weekly for treatment, has been consistent with meeting with him, and is approximately half way through the program. [03-21-18 Tr 2. 1:48:18].

¶22 R.S. is currently on probation with Mardee Spurgeon. [03-22-18 Tr 1. 1:09:28]. Ms. Spurgeon previously supervised R.S. in January of 2015 for approximately a year and a half. [03-22-18 Tr 1. 1:09:44]. R.S. has met with Ms. Spurgeon as required, including ten office and five home visits. [03-22-18 Tr 1. 1:09:58].

Ms. Spurgeon testified that R.S. has made all appointments, signed releases of information, followed through with recommendations and has been compliant with all of her terms of probation. [03-22-18 Tr 1. 1:10:12]. A positive difference between R.S.'s probation in 2015 and now was noted by Ms. Spurgeon. [03-22-18 Tr 1. 1:11:19].

**Jurisdictional Statement**

¶23 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.

### **Standard of Review**

¶24 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. A Court may also terminate the parental rights of a parent with respect to the parent’s child if “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)(2). If the court does not make an order of termination of parental rights, it may grant an order under section 27-20-30 if the court finds from clear and convincing evidence that the child is a deprived child. N.D.C.C. § 27-20-44(2).

¶25 A juvenile court's finding of deprivation will not be set aside unless it is clearly erroneous. N.D.R.Civ.P. 52(a); Interest of T.F., 2004 N.D. 126, ¶ 8, 681 N.W.2d 786, 789. A finding of fact is clearly erroneous if there is no evidence to support it, if the reviewing court is left with a definite and firm conviction that a mistake has been made, or if the finding was induced by an erroneous view of the law. Interest of T.T., 2004 ND 138, ¶ 5, 681 N.W.2d 779, 781. 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.



## **Law and Argument**

I. The District Court erred in finding there was clear and convincing evidence to support termination of R.S.'s parental rights

¶26 The North Dakota Century Code requires the petitioner prove by clear and convincing evidence that: (1) the child is deprived; (2) the deprivation is likely to continue; and (3) absent a termination, the child will suffer, or probably suffer, serious physical, mental, moral, or emotional harm. N.D.C.C. § 27-20-44(1)(b)(1). The North Dakota Supreme Court has solidified the rights of parents regarding their children, stating that a natural parent's right to their children is a fundamental right "which is of a constitutional dimension." Interest of W.E., 2000 ND 208, ¶30, 619 N.W.2d 494, citing In the Interest of L.F., 1998 ND 129, ¶9, 580 N.W.2d 573. This right should not be terminated unless it is necessary for the child's welfare or in the interest of public safety, and doubts should be resolved in favor of the parent, not the petitioner. Id. Furthermore, there is a presumption that the children's parents are fit and the burden of disproving this presumption is on the petitioner. In the Interest of K.R.A.G., 420 N.W. 2d 325 (N.D. 1988). "It is not reason enough to deprive parents of custody that their home is not the best, or even that they are not the best parents that could be offered to the child, so long as the child does not suffer physical or moral harm, or lack of food or clothing." In the Interest of W.E., 2000 ND 208 ¶36 (quoting In the Interest of M.M.C., 277 N.W. 2d 281, 286 (N.D. 1979) (additional citations omitted).

### **The Children Are Not Deprived**

¶27 A deprived child is one 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).

¶28 The North Dakota Supreme Court has provided guidance for determining deprivation, stating:

Prognostic evidence may be relied upon to find that a child is a deprived child if it shows that the parent, although not having custody of the child, would be presently unable to supply physical and emotional care for the child, with the aid of available social agencies, if necessary, and that the inability would continue for sufficient time to render improbable the successful assimilation of the child into a family if that parent's rights were not presently terminated. . . . Prognostic evidence must also demonstrate the parent's inability to care for the child would continue for sufficient time to render improbable the successful assimilation of the child into a family if that parent's rights were not presently terminated. Evidence of the parent's background, including previous incidents of abuse and deprivation, may be considered in determining whether deprivation is likely to continue. Evidence of past or present deprivation, however, is not alone sufficient to terminate parental rights, rather there must be prognostic evidence. Lack of parental cooperation is relevant to whether deprivation will continue. Prognostic evidence includes the reports and opinions of the professionals involved.

In re K.B., 2011 ND 152, ¶¶ 11-12, 801 N.W.2d 416, 422 (internal citations omitted).

¶29 At trial, the petitioner alleged that the children were deprived as it related to R.S. for the following reasons: domestic violence, drug use, past deprivation, and failed trial home placements. All of these reasons are concerns from the past and are not current issues for R.S.

¶30 The domestic violence alleged to contribute to derivation in this case was perpetrated by C.R. against both R.S. and C.R.’s past girlfriend. The first report made to GFCSS regarding this family in 2009, contained an allegation of domestic violence between C.R. and R.S. The following two reports in 2009 and a report in 2013 also contained similar reports of C.R. perpetrating domestic violence against R.S. Since the report in 2013, five

years ago, there have been no further reports of R.S. being involved in domestic violence as either the victim or perpetrator. As a victim of past domestic violence, R.S. took action to protect herself and her children. R.S. went to a shelter, sought services through Community Violence Intervention Center (CVIC), separated from C.R., and ultimately divorced C.R. in 2015.

¶31 Evidence that R.S. was a victim of domestic violence five years ago is not sufficient to find that the children are deprived. R.S. took action to leave the relationship with C.R., legally severing it. She sought services for herself and for her children regarding domestic violence. R.S. continues to engage in services related to the impact of the past domestic violence as do the children. The petitioner has not shown anything to support an assumption that domestic violence is a current issue for R.S. or the children, or that it will occur again.

¶32 The petitioner asserts that the children are deprived due to drug use by R.S. This concern has been remedied and is not a cause of present or ongoing deprivation for the children. R.S. has completed treatment for addiction and attended AA/NA meetings in the past. R.S. is not using drugs. She has been randomly drug tested twice per week since September of 2017, with no positive tests. She attends 12 step meetings, has a sponsor, is active in her recovery program, is addressing past trauma, is engaged in individual therapy, has followed through with all recommendations, and has developed and utilized a sober support system. All of these actions, in conjunction with her ongoing sobriety, demonstrate that she is addressing her disease; the children are not deprived based on her past drug usage.

¶33 Addiction is a treatable disease. Ms. White testified that R.S. is following the treatment plan for addiction. Ms. Hjeldnes, Ms. Anderson, Ms. White, and Ms. Spurgeon all testified to the positive change in R.S. regarding her addiction; the same changes they see in people who are successful in treating their addiction. This is all prognostic evidence that the children are not deprived based on drug use by R.S. R.S. is currently in a recovery program, treating her addiction, and is able to immediately parent the children in a sober home.

¶34 There was no testimony outside of past behavior to show that R.S.'s alleged inability to care for the children would continue to a point where they would not be able to be assimilated into an adoptive family if R.S.'s rights were not immediately terminated. The permanent plan for each of the children is adoption. Ms. Wesley testified that the children are adoptable.

¶35 The burden is on the petitioner to show that the children are deprived and overcome the presumption that R.S. is a fit parent. The petitioner failed to do either. R.S. is able to provide physical and emotional care for the children. R.S. has been cooperative with services through GFCSS and her providers. She has done everything that social services has asked of her. R.S. has completed and complied with all of the recommendations of her providers and with the service plan laid out by GFCSS. The service plan included having stable employment, maintaining stable housing, having a support system, remaining sober and addressing her addiction issues, completing random drug screens, being involved in the children's medical needs (as permitted), participating in visitation with the children, meeting with her case worker, and participating in individual therapy.

¶36 The petitioner relied solely upon past behavior and did not provide prognostic evidence that R.S. is unable to care for the children, that the children would not be able to

be assimilated into an adoptive family absent immediate termination of R.S.'s parental rights, or that she is unable to care for the children without the aid of available services if necessary. The North Dakota Supreme Court has stated that past or present deprivation alone is not sufficient, there must be prognostic evidence to terminate parental rights. Id. at ¶12. In the case at hand, there was not sufficient evidence to support a finding of deprivation for the children. Accordingly, the trial court erred in finding that the children were deprived by clear and convincing evidence.

### **Deprivation is Not Likely to Continue**

¶37 As outlined above, the children are not deprived. Nevertheless, in order to terminate a parent's rights, a finding of deprivation is not enough. E.g., In Re M.S., 2001 N.D. 68 ¶ 4, 624 N.W.2d 678, 681. The State must provide prognostic evidence that demonstrates that the deprivation is likely to continue. In re T.A., 2006 ND 210, ¶ 15, 722 N.W.2d 548 (*citing* Interest of T.K., 2001 ND 127, ¶1, 630 N.W.2d 38). When the court considers whether deprivation will continue, evidence of past deprivation alone is not enough; there must also be prognostic evidence that forms a basis for a reasonable prediction of continued or future deprivation. In Re D.D., 2006 N.D. 30, 708 N.W.2d 900, 907. "Prognostic evidence, including reports and opinions of the professionals involved, that forms the basis for a reasonable prediction as to future behavior must be evaluated in determining if a child's deprivation is likely to continue." Interest of D.Q., 2002 ND 188, ¶ 21, 653 N.W.2d 713 (*citing* Interest of D.F.G., 1999 ND 216, ¶ 20, 602 N.W.2d 697).

¶38 The petitioner failed to prove by clear and convincing evidence that the deprivation is likely to continue and the court erred in making such a finding. The petitioner's witnesses all rendered an opinion that the deprivation is likely to continue. Ms.

Knudson testified about looking at the history and past behavior to determine the future for the children, and concluded that the deprivation would continue. Ms. Wesley testified that the fact that the children had been removed three times is an indicator that they will likely come back into foster care and that the deprivation would continue. She testified that her opinion is based on past behavior, stating “the past behavior speaks for itself, the pattern of doing well and having removals, doing well and having removals” (3-21-18 TR 2. 38:12). Ms. Van Beek testified that she believed if the children were returned to the care of R.S. that the pattern of violence and addiction would continue. She testified that “none of us are able to predict the future but the best chance of looking forward and seeing what might be in our future is looking back at our past regardless of compliance”. (3-22-18 Tr. 1 3:40:30). The petitioner clearly relied on past deprivation, failing to provide the requisite prognostic evidence.

¶39 The causes of deprivation regarding R.S. were predominately drug use and domestic violence. R.S. is a domestic violence survivor. She sought assistance from CVIC and separated from C.R. in 2013. She began the divorce process in 2014 and it was finalized in 2015. There have not been any reports of domestic violence involving R.S. for approximately 5 years. There was testimony that C.R. was a possible father of Z.T. This was denied by R.S. Even it was correct, the interaction would have occurred in 2015, approximately 3 years ago. R.S. has not sought contact with C.R. In fact, when C.R. attempted to contact R.S., R.S. reported the incidents to law enforcement, her probation officer, and social services. There was no evidence put forth of a prognostic nature regarding any sort of reasonably predicted continued or future domestic violence of R.S. The petitioner relied on the fact that R.S. is a survivor of domestic violence, who has been

victimized by her former husband. Accordingly, a finding that deprivation is likely to continue due to domestic violence would have to have been erroneously based on past behavior alone, and not on prognostic evidence as required.

¶40 The petitioner's assertion, and the court's corresponding finding of deprivation on the basis of drug use by R.S., is not supported. R.S. has made changes to her life and presented prognostic evidence that past deprivation based on drug use is not likely to continue. Jordan Hjeldness was the first witness on behalf of R.S. that provided such evidence. Ms. Hjeldness testified that she sees a difference in R.S. She testified about the difference in R.S.'s participation in meetings, her acceptance of responsibility, and the personality switch she was seen in successful people that R.S. is now also exhibiting.

¶41 Bevan Casavant testified about the role of EMDR in R.S.'s addiction treatment. The therapy he is leading R.S. in is designed to deal with past trauma and resolve it. It changes how people react to things in their life and provides new insights into their behavior. EMDR treatment is something that R.S. has not done in the past; therefore, it is an indication that R.S. is addressing past issues to prevent future addiction issues that would lead to deprivation, breaking the pattern.

¶42 Kelly White next testified that she is addressing a combination of chemical dependency and mental health issues with R.S. She testified about the change she has seen in R.S. currently versus her past treatment of R.S. Specifically, there is a motivation on the part of R.S. to do things differently and the actions of R.S. decrease the likelihood of relapse. Ms. White provided further prognostic evidence that she believes R.S. will continue the services and recovery program she is active in. Ms. White also stated she has seen an "indefinable change" in R.S. she recognizes in other successful individuals.

¶43 R.S.'s sponsor, Emberlie Anderson, testified to the actions and changes that R.S. is taking to ensure her continued success and progression through her 12 step program. She testified that in her experience, she is able to recognize the changes being made by R.S. as those of someone who is successful in a recovery program.

¶44 Mardee Spurgeon, R.S.'s probation officer, provided evidence that there is a difference between R.S.'s actions in the past and her current actions. Specifically, that there is a notable positive difference in R.S.

¶45 R.S. testified to the steps she has taken to treat her addiction and her path of recovery. She is committed to remaining drug free, which she has demonstrated by both her words and deeds. R.S. has reached for the things that helped in the past and has implemented new changes and therapy to ensure her future success. Her success is visible to her supports, her therapist, and others around her. She has worked to change her behavior, her thinking, her interactions, her reactions; she has obtained new insight into her behavior and actions and has worked on her past trauma.

¶46 The burden is on the petitioner to provide prognostic evidence showing that the deprivation is likely to continue. In the case at hand, the petitioner failed to do so. The testimony by GFCSS was clear that the opinions on whether deprivation is likely to continue was based on past behavior and past deprivation and did not have a prognostic component. Although not the burden of the respondent, R.S. provided abundant testimony from individuals in a wide range of fields showing that her drug use is not likely to continue. R.S. has made changes, utilized resources, and exhibited different behavior, ensuring deprivation will not continue in the future. Accordingly, the court's finding that there is clear and convincing evidence that the deprivation is likely to continue is erroneous.



### **The Children Will Not Suffer and Will Not Probably Suffer Harm**

¶47 The court made a finding that all five children are suffering and will suffer serious physical, mental, and emotional harm. Such a finding is not supported by the evidence.

¶48 The children are not deprived children and even if there was deprivation, the cause of deprivation is not likely to continue. There was not a showing by the petitioner, by clear and convincing evidence, that all of the children are suffering and will suffer serious, physical, mental, moral, or emotional harm.

¶49 The older four children engage in individual therapy, and all five engage in what GFCSS refers to as “brother’s therapy”. Evidence was presented that R.S. is aware of the needs of the children and has been able to provide for those needs, including mental health, schooling, and medical. R.S. has an extensive support system of friends, family members, sober supports, and professionals in place to assist her. R.S. articulated a plan for when the children return to her care to address their needs. She has, and continues to demonstrate, that she is aware of community resources and is able and willing to access them and engage in them as needed.

¶50 Although the older four children have mental health and/or behavioral concerns, there is not sufficient evidence to support a conclusion that absent termination of R.S.’s parental rights, the child will suffer or would probably suffer harm. The testimony regarding Z.T. in particular was that he was doing well, was on track developmentally, and exhibited no issues. There is no information that he is suffering or would suffer, harm of any sort absent termination of R.S.’s parental rights. Even though most of the children see a therapist, the petitioner failed to call any of them to provide testimony, nor was a report

from any of the therapists admitted into evidence. Ms. Wesley did provide testimony concerning her opinion as an expert in child welfare, but she is not an expert psychologist, psychiatrist, counselor, therapist, or otherwise deemed a mental health professional. Simply, there is insufficient evidence to support a finding, by clear and convincing evidence, that without the immediate termination of R.S.'s parental rights the children will suffer serious physical, mental, and emotional harm.

II. The District Court erred in finding that reasonable efforts were made to preserve and reunify the family

¶51 Section 27-20-32.2(2) of the North Dakota Century Code requires reasonable efforts be made to preserve and reunify families. Interest of E.R., 2004 N.D. 202, ¶ 12, 688 N.W.2d 384, 389. Reasonable efforts are defined as:

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).

¶52 Ms. Wesley testified that the community provided services to the family including Red River Valley Community Action, CVIC, churches, Northeast Human Service Center, and her probation officer. Absent the listing of services the community has provided to R.S., the petitioner failed to specifically identified services GFCSS itself used with this family to prevent the need for removal, eliminate the need for removal, or to reunite the family.

¶53 In this case, GFCSS did not look to provide services to R.S. because of the goal established at the time of removal. At the first child and family team meeting on

June 20, 2017, a decision was made by the team for a singular goal of adoption for all five children. The team that made the decision for a singular goal did not include any of the children's or R.S.'s therapists or service providers. The decision for a singular goal of adoption was made less than one month after the children were removed from R.S.'s care.

¶54 In June of 2017, GFCSS created a service plan for R.S. Service plans commonly lay out the goals and tasks for a parent based on the needs of the family. In this case, those goals and tasks included employment, housing, sobriety, therapy, case management, and visitation with the children. The testimony from the GFCSS workers was that R.S. has completed everything on the service plan. In fact, she has completed more than just the list of tasks, she has made solid lifestyle changes.

¶55 R.S. has not missed any visitations with her children and asked for visitation to be increased. R.S. was denied an increase in visitation because GFCSS stated that when there is a singular goal of adoption, they do not increase visitation. In this case specifically, with the singular goal of adoption, GFCSS would not increase the visits due to the fact that GFCSS believed it would give hope to the children that if they increased the visitation the children would feel like they are going home; the children being returned home was not the stated goal of GFCSS. (3-21-18 Tr 2. 34:14).

¶56 R.S. has maintained her sobriety and has engaged in services to ensure her continued success. The change in R.S. has been seen by her service providers and those around her. While there is no guarantees with anyone facing addiction issues, R.S. has demonstrated all of the telltale signs of someone who will continue to be successful.

¶57 Ms. Van Beek testified that in her experience adoption goals can be changed. When asked what R.S. was told by GFCSS that she would need to do to have the adoption only goal changed for her children, Ms. Van Beek responded that R.S. would need to “convince social services that this was a lifestyle change.” (3-22-18 Tr 2. 3:32:42). The question which was not answered was how R.S. could accomplish that. R.S. had already completed all of the tasks asked of her by GFCSS, everything her therapists asked her to do, everything her probation officer asked her to do, and demonstrated that this was a permanent change; she was doing things differently and the change was visible to those around her with experience in recognizing it.

¶58 In this case, social services not only failed to provide reasonable efforts to eliminate the need for removal of the children, but unquestionably failed to provide reasonable efforts to reunify the children with their family.

#### CONCLUSION

¶59 While the District Court has considerable discretion in termination cases, the law requires that “[a]ny doubts should be resolved in favor of the natural parent[,] and parental rights should be terminated only when necessary for the child's welfare or in the interest of public safety.” Adoption of K.S.H., 442 N.W.2d 417 (N.D. 1989). In this case the trial court erred in terminating the parental rights of R.S.

¶60 The decision to terminate R.S.’s parental rights was clearly erroneous and R.S. respectfully requests this Court to reverse the District Court’s Order for Judgment Terminating Parental Rights.

Dated this 9<sup>th</sup> day of May, 2018.

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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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In the Interest of R.R., a Child.

State of North Dakota,  
Petitioner and Appellee,  
v.

Grand Forks Case No. 18-2017-JV-00313  
Supreme Court No. 2018 \_\_\_\_\_

R.R. child, C.R., father,  
Respondents/Appellees,  
R.S., mother,  
Respondent/Appellant.

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In the Interest of J.R., a Child.

State of North Dakota,  
Petitioner and Appellee,  
v.

Grand Forks Case No. 18-2017-JV-00314  
Supreme Court No. 2018 \_\_\_\_\_

J.R. child, C.R., father,  
Respondents/Appellees,  
R.S., mother,  
Respondent/Appellant.

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In the Interest of A.R., a Child.

State of North Dakota,  
Petitioner and Appellee,  
v.

Grand Forks Case No. 18-2017-JV-00315  
Supreme Court No. 2018 \_\_\_\_\_

A.R. child, C.R., father,  
Respondents/Appellees,  
R.S., mother,  
Respondent/Appellant.

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In the Interest of D.R., a Child.

State of North Dakota,  
Petitioner and Appellee,  
v.

Grand Forks Case No. 18-2017-JV-00316  
Supreme Court No. 2018 \_\_\_\_\_

A.R. child, C.R., father,

Respondents/Appellees,  
R.S., mother,  
Respondent/Appellant.

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In the Interest of Z.T., a Child.

State of North Dakota,  
Petitioner and Appellee,  
v.

Grand Forks Case No. 18-2017-JV-00317  
Supreme Court No. 2018 \_\_\_\_\_

Z.T. child, R.T., father,  
Respondents/Appellees,  
R.S., mother,  
Respondent/Appellant.

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### AFFIDAVIT OF SERVICE

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The undersigned, being of legal age, being first duly sworn deposes and says that on the 9<sup>th</sup> day of May, 2018, she served true copies of the following documents:

Notice of Appeal  
Order for Digital Recording  
Appellant's Brief  
Appellant's Appendix

And that said copies were served upon:

Jacqueline Gaddie  
Grand Forks County  
Assistant State's Attorney  
Email: [sasupportstaff@gfcounty.org](mailto:sasupportstaff@gfcounty.org)

Kiara Kraus-Parr  
Attorney for Z.T.  
Email: [service@kpmwlaw.com](mailto:service@kpmwlaw.com)

Megan Petersen  
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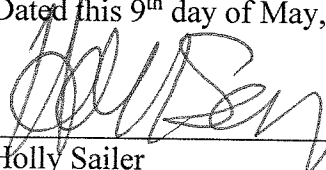
Department of Human Services  
Email: [dhscfadoptunit@nd.gov](mailto:dhscfadoptunit@nd.gov)

by email, and:

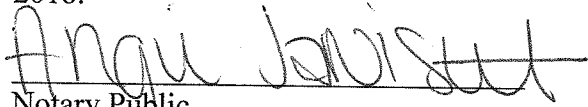
The parents, C.R., R.S.,

by mail.

Dated this 9<sup>th</sup> day of May, 2018.

  
\_\_\_\_\_  
Holly Sailer

Subscribe and sworn to before me this 9<sup>th</sup> day of May, 2018.

  
\_\_\_\_\_  
Notary Public  
County of Grand Forks  
State of North Dakota

