

IN THE SUPREME COURT STATE OF NORTH DAKOTA

ND Supreme Court Case No.: 20200054

Williams County Court No.: 53-2019-JV-00023

In the Interest of M.M., a child

State of North Dakota,

Petitioner and Appellee

v.

M.M., a Child;

M.M., Mother

Tracy Horob, Guardian ad Litem;

Executive Director ND DHS;

Respondents

and

J.J., Father

Respondent and Appellant

Petition for Rehearing

/S/ Benjamin C. Pulkrabek
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Abbreviations:

M.M – Respondent and mother of M. (child)

J.J. – Respondent, Appellant, and father of M. (child)

M. – Respondent, child

PETITION FOR REHEARING

[¶1] COMES NOW the father, Respondent/Appellant, J.J., petitions the court for a rehearing.

JURISDICTION

[¶2] Respondent/Appellant, J.J., the father of M., timely petitions for rehearing in accordance with N.D.R.App.P.40.

STATEMENT OF THE ISSUES

[¶3] **ISSUE I.** Did the facts in this case establish by clear and convincing evidence that the causes and conditions of deprivation would continue and/or occur in the future?

LAW AND ARGUMENT

I. *Did the facts in this case establish by clear and convincing evidence that the causes and conditions of deprivation would continue and/or occur in the future?*

[¶4] According to In the Interest of J.N.R. and D.L.C. 322 N.W.2d 465 (N.D. 1982) page 469: “Before the juvenile court may terminate the parental rights of a parent pursuant to § 27-20-44(1)(b), N.D.C.C., the State must establish each of the following three factors by clear and convincing evidence:

- 1.) the child is a deprived child;
- 2.) the conditions and causes of deprivation are likely to continue or will not be remedied; and
- 3.) by reason of the continuous or irremedial conditions and causes, the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm. *Kleingartner v. D. P. A. B.*, 310 N.W.2d 575, 578 (N.D.1981).”

[¶5] In this case it took J.J. a long time to figure out the proper way to raise and nurture a child. However, by trial time he had made the changes in his life necessary to be a good parent.

[¶6] According to In the Interest of D.S., Jr., M.S., S.S., C.S., and H.S., 325 N.W.2d 654 (N.D. 1982):

“Cases involving the termination of parental rights are always difficult, especially when there has been no claim of intentional deprivation. It is axiomatic that “[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” Santosky v. Kramer, --- U.S. ----, ----, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599, 606 (1982). Although we have repeatedly recognized that parents have a fundamental, natural right to their children which is of constitutional dimensions, that right is not absolute. Kleingartner v. D.P.A.B., supra; In Interest of M.N., 294 N.W.2d 635, 637 (N.D. 1980); Interest of R.W.B., 241 N.W.2d 546, 552 (N.D.1976); McGurren v. S.T., 241 N.W.2d 690, 695 (N.D.1976). The primary purpose of the Uniform Juvenile Court Act is to protect the welfare of the child and, thus, the best interest of the child is one factor to be considered in determining the necessity of terminating parental rights. Kleingartner v. D.P.A.B., supra, 310 N.W.2d at 578-579.”

[¶7] There is no question that J.J. has not in the past been a model parent. However, at trial time J.J. understood what a good parent of a child should do and he was doing it.

[¶8] A parent has a fundamental right to his child which is of constitutional dimensions. J.J. has turned his life around and is now ready to be a proper parent.

[¶9] Whenever possible and reasonable a child should be raised by his birth parent or parents.

CONCLUSION

[¶10] J.J.’s petition for rehearing should be granted.

Respectfully submitted this 13th day of May, 2020.

/S/ Benjamin C. Pulkrabek _____

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Petitioner and Appellee,)	
)	Williams County No.
v.)	53-2019-JV-00023
)	
M.M., Child, M.M., Mother, and)	CERTIFICATE OF SERVICE
J.J., Father.)	
Respondent and Appellant.)	

[¶1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

Petition for Rehearing

By efilng at the below address upon:

Marlyce Ann Wilder
Williams County States Attorney
53sa@co.williams.nd.us

Chanara C. Allen
Trial Counsel
challen@nd.gov

North Dakota Supreme Court
supclerkofcourt@ndcourts.gov

Kathleen Grace Coleman
Counsel for Respondent (Mother)
kathy@kathycolemanlaw.com

And by placing a true and correct copy of said items in a sealed envelope with USPS mail to:

J.J.
2 Main Street S.
Minot, ND 58702

Dated this 13th day of May, 2020

/S/ Cassy Larson
Cassy Larson
Legal Assistant to Benjamin C. Pulkrabek
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M.M., Child, M.M.,Mother, and)	CERTIFICATE OF COMPLIANCE
J.J.,Father.)	
Respondent and Appellant.)	

[¶1] This Petition for Rehearing complies with the pages limit of 10 as set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure.

Dated this 13th day of May, 2020

/S/ Benjamin C. Pulkrabek
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J.J., Father.)	
Respondent and Appellant.)	

[¶1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

- Table of Contents for Petition for Rehearing
- Certificate of Compliance for Petition for Rehearing

By efilng at the below address upon:

Marlyce Ann Wilder
Williams County States Attorney
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Chanara C. Allen
Trial Counsel
challen@nd.gov

North Dakota Supreme Court
supclerkofcourt@ndcourts.gov

Kathleen Grace Coleman
Counsel for Respondent (Mother)
kathy@kathycolemanlaw.com

And by placing a true and correct copy of said items in a sealed envelope with USPS mail to:

J.J.
2 Main Street S.
Minot, ND 58702

Dated this 13th day of May, 2020

/S/ Cassy Larson
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