

IN THE SUPREME COURT
STATE OF NORTH DAKOTA
In the Interest of C.G., a child
In the Interest of K.K., a child

State of North Dakota,)	
)	Sup. Court No.
Petitioner/Appellee,)	
)	
-vs-)	
)	
B.G., mother,)	Barnes County Nos.
D.B., father, and)	
R.M., father,)	02-2020-JV-00026
)	02-2020-JV-00027
Respondent/Appellant.)	
)	

BRIEF of RespondentAppellant B.G.

**Appeal from the Juvenile Findings and Order Terminating
Parental Rights dated April 6, 2021**

**In Juvenile Court, County of Barnes, State of North Dakota
The Honorable Jay Schmitz**

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[¶ 3] Statement of Issue

[¶ 4] I. The Juvenile Court erred in finding the children are deprived and that the deprivation would continue warranting a termination of parental rights.

II. The Juvenile Court erred in termination of parental rights as it is not in the children's best interests.

[¶ 5] Jurisdictional Statement

[¶ 6] Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. Pursuant to constitutional provision article VI § 6, the North Dakota legislature enacted Section 27-20-56, that provides, "An aggrieved party, including the state or a subdivision of the state, may appeal from a final order, judgment, or decree of the juvenile court to the Supreme Court by filing written notice of appeal within thirty days after entry of the order, judgment or decree..." *Id.* A final judgment terminating parental rights is appealable. N.D.C.C. § 28-27-02

[¶ 7] Statement of the Case

[¶ 8] On September 22, 2020, a Petition for Termination of Parental Rights was filed. Petition for Termination of Parental Rights, Appellant Appendix ("A")9-12. An Affidavit in Support of Termination of Parental Rights was simultaneously filed. Affidavit, A13-29. A Summons was served on the required parties. Register of Action, Summons, Doc ID #5 and Service Document, Doc ID #7. A4, 7. The Guardian ad Litem Report was filed on October 13, 2020. Report of Guardian ad Litem, A30-33.

[¶ 9] A Juvenile Initial Hearing was held on November 17, 2020. Register of Actions, Juvenile Initial Hearing, A5, 8. At that hearing, the hearing on the Petition was scheduled for February 5, 2021. Register of Actions, Notice of Hearing, Doc ID #27, A5, 8. The

Juvenile Adjudication Hearing occurred on February 5, 2021. Register of Actions, Juvenile Adjudication Hearing, A5, 8.

[¶ 10] On February 12, 2021, the State filed a Brief in support of termination of parental rights. Register of Actions, Brief, Doc ID #40, A5, 8. B.G.'s Attorney, Scott Sandness, filed a Brief in opposition to the termination on February 25, 2021. Register of Actions, Brief, Doc ID #42, A5, 8. On February 26, 2021, R.M.'s Attorney filed his Brief in opposition of the termination. Register of Actions, Brief, Doc ID # 44, A5, 8.

[¶ 11] On March 3, 2021, the Court issued a Notice of Hearing setting an additional Adjudication Hearing. Register of Actions, Notice of Hearing, Doc ID #47, A5, 8. On March 12, 2021, an additional Juvenile Adjudication Hearing was held. Register of Actions, Juvenile Adjudication Hearing, A5, 8.

[¶ 12] On April 6, 2021, the Juvenile Court issued its Juvenile Findings and Order Terminating Parental Rights. Register of Actions, Order, A5, 8. B.G. filed a Notice of Appeal on May 4th, 2021. contemporaneous with this Brief. This Appeal follows.

[¶ 13] Statement of the Facts

[¶ 14] C.G. is one of the minor children involved in this matter who is 7 years old. Juvenile Findings of Fact and Order for Termination, ¶ 5, A57-62. K.K. is the other minor child involved who turned 4 during the pendency of this case. *Id.*, at ¶ 6. C.G.'s and K.K.'s mother is B.G., the appellant. *Id.*, at ¶¶ 5, 6.

[¶ 15] This matter first commenced on August 1, 2018, when a report was received by Barned County Social Services. *Id.*, at ¶ 7. The report was due to a search warrant being executed at B.G.'s residence and drug paraphernalia being located in the residence. *Id.* As a result, C.G. and K.K. were placed in shelter care. *Id.* On October 22, 2018, C.G. and

K.K. were found to be deprived. *Id.* The children were placed in the custody of Buffalo Bridges Human Service Zone (formerly Barnes County Social Services). *Id.*

[¶ 16] On September 22, 2020, a Petition for Termination of Parental Rights with respect to the parents of C.G. and K.K. was filed. Petition for Termination of Parental Rights, A9-12. The Court found that the children were deprived and without proper parental care and control. *Juvenile Findings*, A57-62. The Court further found this was due to B.G.’s addiction. *Id.* B.G. is unable to maintain housing and a job. *Id.* B.G. has also maintained an abusive relationship. *Id.* In addition, the children in these matters have high needs. *Id.*

[¶ 17] At the conclusion of all the testimony and receipt of evidence, submission of briefs, and a subsequent hearing, the Juvenile Court found that the rights of B.G. to her children should be terminates. *Id.*

[¶ 18] **Standard of Review**

[¶ 19] The standard of review on questions of law in juvenile court is de novo, whereas questions of fact are reviewed under the clearly erroneous standard. *Interest of K.H.*, 2006 ND 56, ¶7, 718 N.W.2d 575, 577-578 (N.D. 2006). When a matter is tried before a court, without a jury, N.D.R.Civ.P. 52(a) requires that a court makes its findings of facts and conclusions of law specifically, so as to provide a “clear understanding of the court’s decision.” *Interest of J.A.H.*, 2014 ND 196, ¶12, 855 N.W.2d 394, 398 (N.D. 2014_ (citing *Interest of T.R.C.*, 2014 ND 172, ¶9, 852 N.W.2d 408 (N.D. 2014)).

[¶ 20] The North Dakota Supreme Court has indicated that “[c]lear and convincing evidence means evidence that leads to a firm belief or conviction the allegations are true.” *In re Adoption of S.R.F.*, 2004 ND 150, ¶7, 683 N.W.2d 913, 916 (N.D. 2004). A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, there

is no evidence to support the finding, or the Court is convinced, on the basis of the entire record, that a mistake has been made. *In re B.B.I.*, 2008 ND 51, ¶ 4, 746 N.W.2d 411 (N.D. 2008).

[¶ 21] **Argument**

[¶ 22] When reviewing a juvenile court order, the Supreme Court reviews “the files, record, and minutes or transcript of the evidence,” and gives “appreciable weight to the findings of the juvenile court.” N.D.C.C. § 27-20-56(1). N.D.C.C. § 27-20-44(1) provides the following for the termination of parental rights:

1. The court by order may terminate the parental rights of a parent with respect to the parent’s child if:
 - a. The parent has abandoned the child;
 - b. The child is subjected to aggravated circumstances as defined under subsection 3 of section 27-20-02;
 - c. The child is a deprived child and the court finds:
 - (1) 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; or
 - (2) The child has been in foster care, in the care, custody, and control of the department, a county social service board, or human service zone 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 four of the previous six hundred sixty nights;
 - d. The written consent of the parent acknowledged before the court has been given; or
 - e. The parent has pled guilty or nolo contendere to, or has been found guilty of engaging in a sexual act under section 12.1-20-03 or 12.1-20-04, the sexual act led to the birth of the parent’s child, and termination of the parental rights of the parent is in the best interests of the child.

[¶ 23] Section 27-20-44, N.D.C.C., provides a district court may order termination of parental rights. When used in a statute, the word “may” is ordinarily understood as permissive rather than mandatory and operates to confer discretion. *Matter of Adoption of*

K.S.H., 442 N.W.2d 417, 420 (N.D. 1989) (stating that because N.D.C.C. § 27-20-44 uses the word “may,” a court’s decision to terminate parental rights under that statute is discretionary).

[¶ 24] Natural parents have a fundamental right to their children, “which is of a constitutional dimension.” *In the Interest of W.E.*, 2000 ND 208, ¶ 30, 616 N.W.2d 494 (N.D. 2000). The constitutional protections, although not absolute, require 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.” *Id.* There is a presumption that the parents are fit and the burden of disproving this presumption is on the person challenging it. *In the Interest of K.R.A.G.*, 420 N.W.2d 325 (N.D. 1988).

[¶ 25] I. The Juvenile Court erred in finding the children are deprived and that the deprivation would continue warranting a termination of parental rights.

[¶ 26] Pursuant to N.D.C.C. § 27-20-02(8)(a), a deprived child is defined as follows:

“Deprived child” means a child who:

- a. 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...

Proper parental care is defined as the minimum standard of care which the community will tolerate. *In the Interest of R.S.*, 2010 ND 147, ¶ 8, 787 N.W.2d 277 (N.D. 2010).

[¶ 27] “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.*, at ¶ 36. “Any 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." *In the Interest of Z.R. and J.V.*, 1999 ND 214, 602 N.W.2d 723 (ND 1999).

[¶ 28] Evidence of past or present deprivation alone is not sufficient to terminate parental rights. *In the Interest of L.F.*, 1998 ND129, ¶ 16, 580 N.W.2d 573 (N.D. 1998) (citing *In the Interest of J.L.D.*, 539 N.W.2d 73, 77 (N.D. 1995)). However, evidence of the parent's background, including previous abuse or deprivation, may be considered in determining whether deprivation is likely to continue. *Id.* Therefore, prognostic evidence is evaluated to determine continued or future deprivation. *Id.* Prognostic evidence is "evidence that forms the basis for a reasonable prediction as to future behavior." *McBeth v. M.D.K.*, 477 N.W.2d 318, 321 (N.D. 1989). "Prognostic evidence, including reports and opinions of the professionals involved, that forms the bases for a reasonable prediction as to future behavior must be evaluated in determining if a child's deprivation is likely to continue." *In re M.B.*, 709 N.W.2d 11, 18 (N.D. 2006).

[¶ 29] No testimony was presented regarding B.G.'s parenting ability or mental health. The only information was simple statements about past diagnoses. No psychological report was put forth by the State to provide the Court with B.G.'s prognosis. No testimony was provided by the State regarding B.G.'s chemical dependency treatment and/or prognosis. The State relied solely on the testimony of S.M, B.G.'s social worker. This testimony consisted of B.G. being unsuccessful in her sobriety in the past and then concluded that she will therefore be unsuccessful in her treatment in the future. Without the proper professionals to provide that actual framework regarding B.G.'s prognosis,

there is not clear and convincing evidence that B.G. has not met her goals to remedy the children's deprivation.

[¶ 30] II. The Juvenile Court erred in termination of parental rights as it is not in the children's best interests.

[¶ 31] B.G. concedes that the children have been in foster care for more than 450 out of the previous 660 nights. Under the framework of the statute though, that does not make it mandatory that the court terminate an individual's parental rights; it is permissive.

[¶ 32] B.G. testified that she has made arrangements for treatment at the New Freedom Center in Bismarck. Her treatment plan included approximately one month of treatment with aftercare to follow. B.G. also testified to utilize case management type services through Sanford Health. Those services have been helpful to B.G. in her battle against her addiction and her mental health.

[¶ 33] B.G. further testified that she began taking her medications for her depression and anxiety. During her testimony, she had previously been on her medication for two weeks and was already noticing improvements. B.G. informed the court that her medication helps her mental health symptoms.

[¶ 34] Another concern was B.G.'s abusive relationship. However, B.G. testified that she has left that abusive relationship. B.G.'s mother, S.P. testified in support of this. S.P. provided to the court that this was an important step for B.G. and that it is beneficial not only for B.G. but her family as well. B.G. was around domestic violence while she was growing up. It has also been an unfortunate part of her adult relationships. B.G. has had the positive development of breaking that cycle and no longer being in that relationship.

[¶ 35] The testimony presented to the court included that B.G. was addressing her chemical dependency issues, mental health and domestic violence concerns. B.G. has taken strides forward. S.P. has been a support for B.G. and is willing to assist B.G. with the transition of her children back to her home. S.P. testified she believes B.G. can parent her children and provide a safe and nurturing home.

[¶ 36] In addition, B.G. testified that she has had limited contact with her children within the past 15 months. Visit requests by B.G. have been denied by Social Services. Admittedly, this has had an impact on B.G.'s mental health. Nonetheless, B.G. has still been working on her mental health and taking her medication. It is B.G.'s and S.P.'s testimony that should the children be returned to B.G., the deprivation will not continue and that B.G. would continue to work with Social Services.

[¶ 37] The evidence presented during the trial does not support a finding, by clear and convincing evidence, that it is in the children's best interests for B.G.'s rights to be terminated even given the time in care.

[¶ 38] **Conclusion**

[¶ 39] Based on all the foregoing reasons, B.G. respectfully requests that this Court reverse the Juvenile Findings and Order Terminating Parental Rights as it relates to B.G. and her children.

[¶ 40] Respectfully submitted this 4th day of May, 2021.

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[¶ 41] CERTIFICATE OF COMPLIANCE

[¶ 42] The undersigned hereby certifies, in compliance with N.D.R.App.P. 32(a)(8)(A), that this *Brief of Appellant* was prepared with proportional typeface, 12-point font, and the total number of pages in the above Brief, including the table of contents, the table of authorities, the certificate of compliance, and the certificate of service is 14 pages.

[¶ 43] Dated this 4th day of May, 2021.

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In the Interest of C.G., a child
In the Interest of K.K., a child

State of North Dakota,)	
)	Sup. Court No. _____
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)	
-vs-)	CERTIFICATE OF SERVICE
)	
B.G., mother, and)	District Court #. 02-2020-JV-00026
)	02-2020-JV-00027
D.B., father, and)	
R.M. father,)	
Respondent/Appellant.)	
)	

[¶ 1] I, Patricia Pangelinan, an employee of the Williston Public Defender Office, hereby certify that on **May 3, 2021**, the following documents, **APPELLANT/RESPONDENT’S BRIEF AND APPENDIX; NOTICE OF APPEAL; AND ORDER FOR TRANSCRIPTION** were filed with the Supreme Court Clerk of Court. A copy of this document was served electronically on all separately represented parties at the e-mail addresses pursuant to N.D.R.Ct. 3.5 to the party below:

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Dated: May 3, 2021.

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Petitioner/Appellee,)
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-vs-)
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Respondent/Appellant.)
)

Sup. Court No. _____

CERTIFICATE OF SERVICE

District Court #. **02-2020-JV-00026**
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