

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

In the Interest of D.H., a Child

State of North Dakota, by and through  
Grand Forks County Social Services

Petitioner and Appellee,

v.

D.H., a child,  
S.H., father,

Respondents,

E.H., mother,

Respondent and Appellant.

Case No. 2021\_\_\_\_\_

District Court Case No: 18-2021-JV-57

**APPELLANT BRIEF**

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BRIEF OF RESPONDENT-APPELLANT, E.H.  
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Appeal from Juvenile Findings of Fact and the Order Terminating Parental Rights

Entered on the 4<sup>th</sup> day of August, 2021.

In District Court, Grand Forks County, State of North Dakota

The Honorable Jay Knudson

ORAL ARGUMENT REQUESTED

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N.D.C.C. 27-20.3-20 ..... ¶34

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ORAL ARGUMENT:

Oral argument has been requested to emphasize and clarify the Appellant’s written arguments on their merits.

Abbreviations:

S.H. – Respondent and father of D.H. (child)

E.H. – Respondent and mother of D.H. (child)

D.H. – Respondent, child

## JURISDICTIONAL STATEMENT

[¶1] According to J.E. v. A.P. (In re C.D.G.E.), 889 N.W.2d 863 (N.D. 2017):

“A district court exercising its discretion to grant or deny a parental-termination petition is reviewed under the abuse of discretion standard. In re A.L., 2011 ND 189, ¶ 12, 803 N.W.2d 597. The abuse of discretion standard is as follows:

“A district court abuses its discretion if it acts in an arbitrary, unconscionable, or unreasonable manner, if its decision is not the product of a rational mental process leading to a reasonable determination, or if it misinterprets or misapplies the law. An abuse of discretion is never assumed and must be affirmatively established, and this Court will not reverse a district court's decision merely because it is not the one it would have made had it been deciding the motion Anderson v. Baker, 2015 ND 269, ¶ 7, 871 N.W.2d 830.”

[¶2] According to J.E. v. A.P. (In re C.D.G.E.), 889 N.W.2d 863 (N.D. 2017):

“Where at least one of the required factors is present, a district court does not abuse its discretion in denying a parental-termination petition unless the petitioner establishes that denying the petition would seriously affect the child's welfare.”

[¶3] “Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. North Dakota Constitution, Article VI, Section 6.” A judgment or order in a civil action may be removed to the Supreme Court by appeal as provided in this chapter.” N.D.C.C., § 28-27-01. A final Judgment terminating parental rights is appealable. N.D.C.C. § 28-27-02(2).

## STATEMENT OF THE ISSUES

- [¶4] **ISSUE I.** During the trial was there clear and convincing evidence that established that there were causes and conditions of deprivation that would continue and/or occur in the future which required E.H.'s parental rights be terminated?
- ISSUE II.** Would the termination of E.H.'s parental rights seriously effect D.H.'s welfare?

## NATURE OF THE CASE

¶5 This is a case from the Juvenile Court of Grand Forks County, North Dakota, involving a deprived child and the involuntary termination of parental rights.

¶6 The following documents were filed on 02/25/2021; a Juvenile Petition for Termination of Parental Rights, Order appointing Guardian ad Litem (AnneMarie Studer), Exhibit #1 – Affidavit for Termination of Parental Rights, Summons, Scheduling Order, and Notice of Juvenile Teleconference Hearing via Zoom Video Conference.

¶7 The North Dakota Department of Human Services filed a letter in Response to the Petition for Involuntary Termination of Parental Rights was filed on 03/02/2021.

¶8 An Order granting state's motion for service by publication with respect to the father, S.H., was filed on 03/09/2021.

¶9 An amended summons (by publication) was filed on 03/15/2021.

¶10 A juvenile pre-trial hearing was held via zoom on 04/19/2021.

¶11 A report of Guardian ad Litem (AnneMarie Studer) was filed on 05/11/2011

¶12 On 05/18/2021 a termination of parental rights trial was scheduled. At the beginning of this trial E.H. requested legal counsel and an application for indigent defense services was filed and approved. Attorney Rhiannon Gorham was assigned to represent E.H.

¶13 A demand for discovery was filed on 05/19/2021.

¶14 A notice of trial was filed on 05/21/2021.

¶15 A report of Guardian ad Litem (AnneMarie Studer) was filed on 07/07/2021.

¶16] A juvenile trial was held on the Involuntary Termination of Parental Rights on July 14, 2021.

¶17] On 08/05/2021 judgment terminating parental rights was entered.

¶18] A notice of appeal and order for audio transcript was filed on 08/26/2021.

¶19] This matter is now before the North Dakota Supreme Court.

#### STATEMENT OF THE FACTS

¶20] The past and future lives of three people are involved in this case. These people are, S.H., the father of D.H. (2016), E.H., the mother of D.H., and D.H., the child. The father, S.H., has abandoned D.H. and made no appearance at the Termination of Parental Rights Hearing on July 14, 2021.

¶21] The mother, E.H., and the child, D.H., have been residing in Grand Forks, North Dakota, at all times relevant to this case. This case began after authorities learned that E.H. did not have the parenting ability to care for D.H. This resulted in the Grand Forks County Human Service Zone (GFCHSZ) getting involved with E.H. and her ability to properly raise D.H. After GFCHSZ got involved D.H. was placed in foster care.

¶22] When these Termination of Parental Rights hearings began their goal was to get E.H. the treatment and education she needed to have the proper parental skills to raise D.H. and to deal with her mental and chemical problems.

¶23] After the first Termination of Parental Rights hearing E.H.'s parenting skills began to improve and she was learning how to deal with her mental health and chemical problems. Then E.H.'s progress in all these areas started to slow down. Because of the slow down the state decided to and did on February 25, 2021 file another Petition for Involuntary Termination of Parental Rights. This petition alleged that D.H. is deprived and neglected

and that the causes of this deprivation and neglect of D.H. will not be remedied and by this reason thereof D.H. is suffering or will probably suffer serious physical, mental, moral, or emotional harm.

[¶24] The hearing on this above petition was held on July 14, 2021. At that hearing the state's first witness was Tammy Knudson, Licensed Social Worker. Ms. Knudson testified about the history of the Grand Forks County Human Service Zone (GFCHSZ) and their involvement in this case. In her testimony she told about what she had learned from her talking to E.H. about E.H.'s ability to care for D.H., E.H.'s mental and chemical problems, and the condition of E.H.'s home.

[¶25] The state's next witness was Jolene McEarchern, Licensed Social Worker. Ms. McEarchern had been assigned in December of 2019 to be the foster care case manager for E.H. As a foster case manager she was to assist E.H. with E.H.'s mental health and chemical problems.

[¶26] Ms. McEarchern as foster care case manager worked out a service agreement with E.H. In that agreement E.H. was the primary care giver of D.H. It also addressed: marijuana usage, drinking, parenting classes, mental health evaluations, and housing.

[¶27] Ms. McEarchern's testimony included the problems E.H. was having with her mental health, chemical dependency, and parenting of D.H.

[¶28] On the plus side for E.H. Ms. McEarchern admitted:

1. That E.H. had no positive drug screens in the past year;
2. That E.H. was employed by Roadhouse Inn since March of 2021;
3. That E.H. had consistent housing for the past year;

4. That E.H. loved D.H. and the two had a strong parent-child bond between them;
5. That D.H. had graduated from all his therapeutic services for speech, expressive disorder, generalized muscle weakness, and fine motor dysfunction disorder.

¶29 Ms. McEarchern also testified about a permanent placement GFCHSZ was exploring that included the foster home or placement with a family member.

¶30 The next witness was E.H. She testified as follows:

1. That she recognized the concerns for D.H.'s care.
2. That she is not faultless, and that she does have significant mental health issues. However, E.H. stated that having mental health issues does not prohibit her from being a great parent and does not justify terminating her parental rights.
3. That she has been seeing a psychiatrist once per month.
4. That she was working at the motel recently, but due to a health emergency requiring surgery and additional medical follow up that caused her to miss work, was let go. Otherwise, she testified that she has maintained employment though permanent or temporary positions.
5. That she has maintained stable housing, and any issues about cleanliness have been addressed. E.H. stated that she resides alone, or plans to reside with D.H.
6. That she has a support group of friends that stop by to check on her.

¶31 The next witness was Guardian ad Litem AnneMarie Studer. Ms. Studer recommended termination of parental rights. However, her testimony stated that because D.H. had a connection with E.H. therapy would be beneficial to determine how the termination would affect him.



[¶32] At the end of the hearing on the involuntary termination of E.H.’s parental rights the Court in its judgment terminated E.H.’s parental rights. From this judgment E.H. has appealed.

### STANDARD OF REVIEW

[¶33] The standard of review in a juvenile court judgment is set out in In Interest of J.N.R., 322 N.W.2d 465 (N.D. 1982):

“Our scope of review of decisions under the Uniform Juvenile Court Act, Chapter 27-20, N.D.C.C., is governed by 27-20-56(1), N.D.C.C., which provides that review is based upon the files, records, and minutes or transcript of the evidence of the juvenile court. Our review is not limited to a determination of whether or not the juvenile court's findings are clearly erroneous; rather, we are allowed to reexamine the evidence in a manner similar to the former procedure of trial de novo, giving appreciable weight to the findings of the juvenile court. § 27-20-56(1), N.D.C.C.; In Interest of L.N., 319 N.W.2d 801, 803 (N.D. 1982); In Interest of S.W., 290 N.W.2d 675.”

### ARGUMENT

**ISSUE I.** During the trial was there clear and convincing evidence that established that there were causes and conditions of deprivation that would continue and/or occur in the future which required E.H.’s parental rights be terminated?

[¶34] The statute in North Dakota that allows the termination of parental rights is N.D.C.C. 27-20.3-20. The parts of that statute that apply to this case are:

“27-20.3-20. 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;
  - c. The child is in need of protection and the court finds:
    - (1) The conditions and causes of the need for protection are likely to continue or will not be remedied and for that reason 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 or human service zone for at least four hundred fifty out of the previous six hundred sixty nights;”

[¶35] The problem with most involuntary termination of parental rights cases is there is always evidence and testimony that supports termination of parental rights and there is always evidence and testimony that supports denying the termination of parental rights. This is one of those cases. Therefore, the question in this involuntary termination of parental rights case is, will the cause of the need for probation likely to continue or not be remedied and for that reason the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm?

[¶36] Before E.H. answers any of the above question she will concede that the evidence and testimony in this case does support the fact that D.H. has been in foster care and in the care, custody, and control of the human service zone for at least four hundred fifty out of the previous six hundred sixty nights.

[¶37] In support of E.H. claim that the district courts' ruling of termination should be reversed she requests this Court to look at paragraphs [¶28] and [¶30] in the above statement of facts which are supported by the disc recording of the trial.

[¶38] E.H. expects the state in their brief will claim and point out to this Court there is sufficient testimony and evidence in the trial discs that support termination. However, such a claim by the state still will not prevail unless the state at trial produces testimony and evidence that support all of the allegations in the petition by clear and convincing evidence. Matter of C.D.G.E., 2017 ND 13, ¶4, Matter of Adoption of K.S.H., 422 N.W.2d 417 (1989).

**ISSUE II.** Would the termination of E.H.'s parental rights seriously effect D.H.'s welfare?

[¶39] In the case now before the Court there is testimony of three witnesses; Jolene McEarchern, E.H., and Guardian ad Litem AnneMarie Studer, that indicate there is a good parent-child relationship between E.H. and the child, D.H. Therefore, the question is, how would a termination of D.H.'s mother's parental rights effect D.H.?

[¶40] The transcript in this case before the Court shows the issue of how the termination of E.H.'s parental rights could and would effect D.H. However, the trial judge in his judgment, Appellant Appendix page 92 to 94 never rules on this issue.

[¶41] Even if the Court should determine that there is clear and convincing evidence on all of the allegations in the petition the state's proof could still fall short if it is determined that the termination would seriously affect the child's welfare. Id at ¶10, Matter of Adoption of K.S.H., 422 N.W.2d 417 (1989), see also In Interest of B.H., 2018 ND 178, ¶4.

#### CONCLUSION

[¶42] That testimony and evidence in this case at this time are such that there is not clear and convincing evidence that the petition to terminate E.H. parental rights should be granted.

[¶43] The testimony of Jolene McEarchern indicates there is a good parent and child relationship between E.H. and D.H.

[¶44] The testimony by E.H. and the Guardian ad Litem, AnneMarie Studer, clearly shows a termination of E.H.'s parental rights could have a very serious adverse effect on D.H.

[¶45] E.H. and D.H. love each other and have a strong parent-child bond between them. D. H. is doing well and has graduated all his therapeutic services which include

speech, expressive disorder, generalized muscle weakness, and fine motor dysfunction disorder.

[¶46] This case must be remanded to the district court judge with an order that he reverse his order terminating E.H. parental rights and issues and order denying termination of parental rights.

Dated this 26<sup>th</sup> day of August, 2021.

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STATE OF NORTH DAKOTA**

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Petitioner and Appellee,

v.

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S.H., father,

Respondents,

E.H., mother,

Respondent and Appellant.

Supreme Court Case No. 2021\_\_\_\_\_  
District Court Case No. 18-2021-JV-57

**CERTIFICATE OF COMPLIANCE**

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[¶1] This appellant’s brief and appendix complies with the page limit of 38 for the brief and 100 pages for the appendix set forth in N.D. R. App. P. 32(a)(8)(A). The brief in this matter consists of 12 pages and appendix consists of 99 pages.

Dated this 26<sup>th</sup> day of August, 2021.

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Petitioner and Appellee,

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E.H., mother,

Respondent and Appellant.

Supreme Court Case No. 20210238  
District Court Case No. 18-2021-JV-57

**CERTIFICATE OF SERVICE**

[¶1] I certify that a true and correct copy of the following, specifically:

1. Amended Order for Audio Transcripts
2. Appellant Brief
3. Appellant Appendix
4. Certificate of Service

by electronically serving the same through the North Dakota Supreme Court e-filing system and that e-filing will provide service to the following:

AnneMarie Studer  
Guardian ad Litem  
[astuder@youthworksnd.org](mailto:astuder@youthworksnd.org)

Christopher D. Jones  
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Dated this 30<sup>th</sup> day of August, 2021.

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