

IN THE SUPREME COURT  
OF THE STATE OF NORTH DAKOTA

**In the Interest of J.G., minor child**

State of North Dakota,	Petitioner and Appellee,	)	
		)	Supreme Court No.
vs.		)	20220189
		)	
J.G., child,		)	Ward Co. Court No.
T.R., father,	Respondents and Appellees,	)	51-2021-JV-00136
and		)	
M.G., mother,	Respondent and Appellant.	)	

**In the Interest of M.G., minor child**

State of North Dakota,	Petitioner and Appellee,	)	
		)	Supreme Court No.
vs.		)	20220190
		)	
M.G., child,		)	Ward Co. Court No.
T.R., father,	Respondents and Appellees,	)	51-2021-JV-00137
and		)	
M.G., mother,	Respondent and Appellant.	)	

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**APPELLEE’S BRIEF**

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On appeal from the June 3, 2022 Order Terminating Parental Rights.  
Ward County Juvenile Court  
North Central Judicial District  
State of North Dakota  
The Honorable Connie Portscheller, Presiding

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### **STATEMENT OF ISSUES**

- [¶1] I. Juvenile court did not err in terminating Appellant's parental rights.
- II. The children are deprived.
- III. The deprivation is likely to continue.
- IV. Children likely to suffer, or will suffer serious physical, mental, moral or emotional harm.

### **STATEMENT OF CASE**

[¶2] The minor children, J.G. and M.G. were placed into foster care on September 25, 2018. Permanency hearings were held on September 24, 2019, August 6, 2020, September 14, 2020, and August 2021.

[¶3] Prior petitions to terminate parental rights were filed on July 8, 2020 (51-2020-JV-00111 and 51-2020-JV-112). The petitions were denied on January 26, 2021. The juvenile court, in its order denying the petition to terminate parental rights, specifically allowed for another petition to be filed within 90 days "if real progress is not timely made involving good decision making and there is actual proof Appellant, not maintaining sobriety and being able to parent her children."

[¶4] New petitions to terminate parental rights were filed on February 4, 2021, nine (9) days after the denial of the previous petitions. (51-2021-JV-00038 and 51-2021-JV-00039). The new petitions were filed due to confirmed drug usage, as well as Appellant admitting to using methamphetamine weekly after the children leave her home. The petitions to terminate parental rights filed on February 4, 2021 were withdrawn due to insufficient evidence that the positive drug tests were due to usage after the January 26, 2021 denial.

[¶5] These petitions to terminate parental rights were filed on June 16, 2021. The primary reasons for the renewed petitions were the lack of sobriety from Appellant, and

her inability to parent her children. A hearing on these petitions was held on May 2, 2022, and the Court granted the petition, terminating the parental rights on June 3, 2022.

### **LAW AND ARGUMENT**

#### **I. Juvenile court did not err in terminating Appellant's parental rights.**

[¶6] Appellant asserts the juvenile court erred in terminating her rights. Appellant claims the juvenile court did not take into consideration her recent positive progress and sobriety.

[¶7] When reviewing an order terminating parental rights, we review the files, records, and minutes or transcript of the evidence of the juvenile court, giving appreciable weight to the findings of the juvenile court. Cleveland v. Dir., Cass Cty. Soc. Servs. (In the Interest of W.E.), 2000 ND 208, ¶ 6, 619 N.W.2d 494. "Although the review is similar to trial de novo, we give deference to the juvenile court's decision, because that court has had the opportunity to observe the candor and demeanor of the witnesses." In the Interest of D.F.G., 1999 ND 216, P12, 602 N.W.2d 697 (citing In the Interest of A.S., 1998 ND 181, P13, 584 N.W.2d 853; N.D.C.C. § 27-20-56(1)). Id. The juvenile court in this matter had an opportunity to observe the candor and demeanor of the witnesses. The juvenile court found each witness to be credible and sincere in their testimony.

[¶8] The juvenile court found, given the totality of the circumstances in this case, given the history of this matter, that the only real solution in this matter is the termination of parental rights. The Court found by clear and convincing evidence the State had met its burden.

[¶9] The juvenile court may terminate parental rights providing: (1) the child is a deprived child; (2) the conditions and causes of the deprivation are likely to continue; and (3) the child is suffering, or will in the future probably suffer serious physical,

mental, moral or emotional harm. N.D.C.C. § 27-20-44(1)(b). A party seeking termination of parental rights must prove all elements by clear and convincing evidence. Larson v. Dir., Traill Cty. Soc. Servs. (In re T.F.), 2004 ND 126, ¶ 7, 681 N.W.2d 786.

**II. The children are deprived.**

[¶10] In this case the juvenile court made specific findings that J.G. and M.G. were deprived or children in need of protection. (R147:6:¶18). The children had been in care for the past 1531 days of their lives. The juvenile court also specifically found the parents, M.G. and T.R. admitted the children were in need of protection. (R147:6:¶18).

**III. The deprivation is likely to continue.**

[¶11] After finding the children were in need of protection, the juvenile court then found the conditions and causes of deprivation (need for protection) were likely to continue.

To prove deprivation is likely to continue or will not be remedied, the State must offer prognostic evidence that demonstrates deprivation will continue. *Olsen v. T.K. (In the Interest of T.K.)*, 2001 ND 127, P14, 630 N.W.2d 38. Past deprivation alone is not sufficient to prove deprivation will continue. *Interest of T.K.*, at P14. However, any prediction of the future requires some reflection on the party's past conduct. *Interest of T.F.*, 2004 ND 126, P19, 681 N.W.2d 786. "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." *Cleveland v. Dir., Cass County Soc. Servs. (In the Interest of D.Q.)*, 2002 ND 188, P21, 653 N.W.2d 713.

Boehmer v. T.A. (In the Interest of T.A.), 2006 ND 210, ¶ 15, 722 N.W.2d 548.

[¶12] In this matter, the Juvenile Court heard the testimony of Appellant's recently obtained sobriety. (R147:7:¶18). The State cannot rely on past deprivation alone, but must provide prognostic evidence, demonstrating the deprivation will continue. Interest of T.K., 2001 ND 127, P14, 630 N.W.2d 38. A parent's lack of cooperation is probative. Id. The juvenile court may also examine the parent's background. Interest of A.S., 1998 ND 181, P19, 584 N.W.2d 853. Sorum v. Dir., Cass Cty. Soc. Servs. (In the Interest of M.B.), 2006

ND 19, ¶ 16, 709 N.W.2d 11. In this matter, the State did not rely on past deprivation alone, but also provided prognostic evidence in the form of testimony from Appellant's, counselors. The juvenile court found Appellant had entered treatment several times over the last several years without success. (R147:4:¶11). The juvenile court found the parents failed to complete all the recommended services despite the assistance offered by Ward County Human Service Zone. (R147:7:¶18).

[¶13] "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, P21, 653 N.W.2d 713 (citing Interest of D.F.G., 1999 ND 216, P20, 602 N.W.2d 697). Id., at ¶ 16, 709 N.W.2d 11. In this case, juvenile court heard testimony from Appellant's, treatment providers. Juvenile Court specifically noted both counselors testified that at the present time Appellant needed continued treatment and to address issues before she would be capable of parenting her children.

[¶14] Juvenile Court specifically noted, Randal Lee, Appellant's primary counselor since June 2021 (and prior provider), stated it would take "18-24 months to develop chemical balance with M.G., mother, there is a high relapse concern." (R147:4:¶11). Juvenile Court also heard from Rebecca Eman, another counselor for Appellant. Eman testified that, "Appellant, is making progress and improving there are still issues that need to continue to be addressed." (R147:5:¶15). Juvenile Court found by clear and convincing evidence the children would likely continue to be in need of protection.

**IV. Children likely to suffer, or will suffer serious physical, mental, moral or emotional harm.**

[¶15] Having found two of the factors necessary to terminate the parental rights, the juvenile court then went on to determine whether the children were suffering or will probably suffer serious physical, mental, moral or emotional harm. In its order, the juvenile court found the State had met its burden on this factor. To terminate parental rights, evidence must show that as a result of the continued deprivation, the child is suffering, or will in the future probably suffer physical, mental, moral, or emotional harm. Interest of E.R., 2004 ND 202, P10, 688 N.W.2d 384. "Assisting a parent to establish an adequate environment for the child by offering long-term and intensive treatment is not mandated if it cannot be successfully undertaken in a time frame that would enable the child to return to the parental home without causing severe dislocation from emotional attachments formed during long-term foster care." Id. at P11; see also Interest of T.K., 2001 ND 127, P15, 630 N.W.2d 38; Interest of L.F., 1998 ND 129, P28, 580 N.W.2d 573. D.D. v. Dir., Cass Cty. Soc. Servs., 2006 ND 30, ¶ 23, 708 N.W.2d 900. In this case, the juvenile court heard from Appellant's, counselors. Both counselors testified that, even with the progress made, at the present time Appellant, needs more time. The juvenile court found J.G. and M.G. are at critical stages in their lives. They have developed strong emotional attachments with the foster mother. The Guardian-ad-litem's report indicates both children stated they wanted to live with their foster mom. (R135:2-3:¶¶8-9). The juvenile court found the parents have had over 1500 days to be an option for their children. The juvenile court found if there was a delay in permanency for the children serious mental health and emotional harm would be committed. (R147:8:¶18). The State met its burden by clear and convincing evidence the children were likely to suffer harm.



## CONCLUSION

[¶16] Based upon argument above and the findings of the juvenile court, the State requests the Court affirm the juvenile courts order terminating the parental rights in this matter.

Dated this 18<sup>th</sup> day of July, 2022.

/s/ Rozanna C. Larson  
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M.G., mother,	Respondent and Appellant.	)	

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CERTIFICATE OF COMPLIANCE

[1] The undersigned hereby certifies that the Brief of Petitioner/Appellee, is in compliance with Rule 32 of North Dakota Rules of Appellate Procedure and the brief contains 9 pages.

Dated 18<sup>th</sup> this day of July, 2022.

/s/Rozanna C. Larson  
Rozanna C. Larson (05294)

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**AFFIDAVIT OF SERVICE**

Lynnae Rudland, being first duly sworn, deposes and says:

That she is a citizen of the United States of America, over the age of twenty-one years, and is not a party to nor interested in the above entitled action; that on the 18<sup>th</sup> day of July, 2022, this Affiant provided a true and correct copy of the following documents in the above entitled action:

**Appellee's Brief**

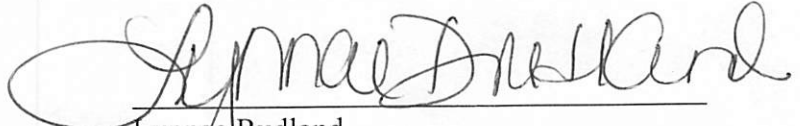
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\_\_\_\_\_  
Lynnae Rudland

Subscribed and sworn to before me this 18<sup>th</sup> day of July, 2022, by Lynnae  
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\_\_\_\_\_  
Notary Public

