

**IN THE SUPREME COURT**  
**STATE OF NORTH DAKOTA**

State of North Dakota,	)	Supreme Court No.
	)	
Petitioner/Appellee	)	
	)	
vs.	)	Ward County District
	)	Court Case No. 51-2021-JV-00136
MG,	)	51-2021-JV-00137
	)	
Respondent/Appellant	)	
	)	

Appeal from the

Order Terminating Parental Rights dated June 3, 2022

District Court, Ward, North Dakota  
The Honorable Connie Portscheller, Presiding

**BRIEF OF APPELLANT**

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## **I. Jurisdictional Statement**

[¶1] "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).

## **II. Statement of the Issues**

- I. [¶2] Whether the juvenile court erred in terminating MG's parental rights.

## **III. Statement of the Case**

[¶3] MG is the biological mother of M.G. DOB 2013 and J.G. DOB 2013. (Herein after "minor children"). The minor children were found in need of protection on September 25<sup>th</sup>, 2018 and have continued to be in care since the date of that Order. Permanency hearings were held on September 24<sup>th</sup>, 2019, August 6<sup>th</sup>, 2020, September 14<sup>th</sup>, 2020, and August 10<sup>th</sup>, 2021. On June 16<sup>th</sup>, 2021, the State of North Dakota filed a petition to terminate the parental rights of M.G., alleging that the minor children were deprived and the cause of deprivation was likely to continue, and that the minor children had been in foster care at least 450 out of the previous 660 nights. Following a number of continuances, an Adjudication Hearing was held on May 5<sup>th</sup>, 2022. Following that hearing, the Court concluded that the minor children were deprived, that the cause of deprivation was likely to continue, and that the children would likely suffer if

termination was not ordered and terminated the parental rights of M.G. M.G. appeals from the Juvenile Court final order and seeks reversal.

#### **IV. Statement of the Facts**

[¶4] The minor children were found to be children in need of protection on September 25<sup>th</sup>, 2018 and have been in foster care continuously since that date. A number of different permanency hearings were held on September 24<sup>th</sup>, 2019, August 6<sup>th</sup>, 2020, September 14<sup>th</sup>, 2020, and August 10<sup>th</sup>, 2021. The minor children were originally removed from M.G.'s care due to ongoing concerns about chemical dependency issues and stability in the household. The adjudication hearing focused largely on M.G.'s history of struggling with that chemical dependency.

[¶5] The Court received testimony from a Randall Lee, who is a licensed addiction counsellor at North Central Human Service and has known M.G. on and off since 2018. Mr. Lee has been M.G.'s primary counsellor since June of 2021 and is familiar with M.G.'s chemical dependency diagnoses. Mr. Lee testified to M.G.'s ongoing chemical dependency treatment and stated that M.G. has been working well on an outpatient basis doing group and individual therapy, doing emotional health therapy and emotional regulation. M.G. has been working with her therapist on boundaries, relapse prevention, emotional regulation and making good choices. Mr. Lee testified that M.G. is making good progress with her treatment, but wanted to see a more prolonged period of sobriety from her.

[¶6] The Court also heard testimony from Rebecca Eman who is a therapist who works with M.G. on trauma and emotional response. Ms. Eman testified

regarding M.G.'s strong desire to get her children returned to her and the progress that she is making towards her goals. Ms. Eman testified to M.G.'s improved ability to handle emotional or stressful situations and testified that M.G. had been making progress with her chemical dependency and emotional health issues.

[¶7] Meanwhile, when presenting its case, the State focused heavily on the prolonged amount of time that the children were in care and the testimony of witnesses who all desired a longer period of demonstrable sobriety from M.G.

[¶8] After hearing all of the evidence, the Court found by clear and convincing evidence that the children were in need of protection based on 1. The children had been in care 1,531 continuous days at the time of the hearing. 2. That significant efforts had been put in place to reunify the minor children with their parents and those efforts did not work. 3. On several occasions, the parents had admitted the children were in need of protection and agreed they were not in the position to care for the children. The Court further found that the conditions of deprivation were likely to continue because the minor children had not been reunited with their parents and that although M.G. had recently obtained sobriety, she needs 18-24 additional months of sobriety and struggles maintaining herself at this time. The Court additionally found that there was a likelihood of harm to the children because of lack of permanency and that it was in their best interests to maintain that continuity. All of which led the Court to the regrettable conclusion that it must terminate M.G.'s parental rights.

## **V. Statement of Jurisdiction**

[¶9] The juvenile court had jurisdiction under N.D.C.C. § 27-20-03(1)(a) because this matter concerned allegations of deprived children. The juvenile court's Order became a final Order, as no review was requested by a district judge and this *Notice of Appeal* was timely filed within 30 days of notice of entry of the final order under N.D.C.C. § 27-20-56(1) and N.D.R.App.P 4(a). The North Dakota Supreme Court has jurisdiction under N.D. Const. art. VI, §§ 2, 6, and N.D.C.C. § 27-20-56(1).

### **LAW AND ARGUMENT:**

#### **I. Juvenile Court Erred in Terminating MG's Parental Rights.**

[¶10] The juvenile court's order concluded the minor children were deprived/in need of protection and that the causes of that deprivation/in need of protection were likely to continue and that it was in the children's best interests for M.G.'s parental rights to be terminated. That conclusion was not supported by the evidence in the record, and the Court did not take into account the significant positive progress that M.G. has made. Accordingly, this Court should reverse and remand.

[¶11] A juvenile court order is subject to the clearly erroneous standard of review set forth in Rule 52(a) of the North Dakota Rules of Civil Procedure. This Court has explained that under this standard the Court's findings should be with "sufficient specificity to enable a reviewing court to understand the factual basis for the trial court's decision." In re K.B., 2011 ND 152, ¶8, 801 N.W.2d

416. Brandt v. Somerville, 2005 ND 35, ¶12, 692 N.W.2d 144. The Juvenile Court's findings are insufficiently explained under this standard.

[¶12] *A deprived child/child in need of protection* is a child 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).

[¶13] 'Proper parental care' means minimum standards of care which the community will tolerate." In re M.B., 2006 ND 19, ¶14 (quoting *In re D.Q.*, 2002 ND 188, ¶12, 653 N.W.2d 713 (quoting In re J.R., 2002 ND 78, ¶9, 643 N.W.2d 699)) (original quotations omitted).

[¶14] In presenting its case, the State focused largely on prior conduct from M.G. relating to a number of years ago and no meaningful attacks were made on the positive progress that M.G. had made for the several months leading up to the adjudication hearing in this matter. In the instant case, the Court erroneously concluded that M.G. was likely to continue to cause her children to be in need of protection or fail to adequately provide for them but did not point to the opinion of any professional who would conclude that she likely would. In fact, the Court heard from only two professionals, Mr. Lee and Ms. Eman, and both agreed that M.G. was making significant progress and was in fact improving. This Court has previously held that prognostic evidence, including the reports and opinions of professionals, should be used as a basis for reasonable predictions for future



behavior. In the interest of D.F.G., 602 NW 2d 697. The District Court's opinion clearly disregarded the opinion of those professionals who believed M.G. was doing well and had witnessed her progress first-hand.

[¶15] The Juvenile Court also ignored that M.G. had been complying with the requirements of Social Services and had been following along with her visitations and complying with chemical dependency and mental health treatment.

[¶16] Because insufficient evidence exists to demonstrate that the children will continue to be in need of protection or deprived due to M.G.'s behavior because M.G. is continuing to make progress, the Juvenile Court's Order terminating M.G.'s parental rights is clearly erroneous. Accordingly, this Court must reverse.

**CONCLUSION:**

[¶17] For the reasons set forth above, M.G. respectfully requests the Court reverse the Juvenile Court's orders; dismiss the juvenile petitions; and any further and additional relief deemed just and equitable.

[¶18] Dated this 1<sup>st</sup> day of July, 2022.

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**CERTIFICATE OF COMPLIANCE**

[¶19] The undersigned, as attorney for the Appellant, MG, in the above-captioned matter, and as the author of the above brief, hereby certifies, in compliance with Rule 32(d) of the North Dakota Rules of Appellate Procedure, that the total number of pages of the above brief does not exceed 38.

[¶19] Dated this 7<sup>th</sup> day of July, 2022.

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Respondent/Appellant

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CERTIFICATE OF SERVICE

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[¶1] I hereby certify that on \_\_\_ day of July, 2022, the following documents:

Notice of Appeal and Order for Transcript

Were emailed to the Clerk of the North Dakota Supreme Court @

supclerkofcourt@ndcourts.gov and courtesy copies were emailed to the following:

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[¶1] I hereby certify that on 6<sup>th</sup> day of July, 2022, the following documents:

Amended Order for Transcript and Amended Appellant Brief

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