

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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2025 ND 217

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In the Interest of J.C., Minor Child

State of North Dakota,

Petitioner and Appellee

v.

J.C., child; A.Y. a/k/a A.Y.B., father, deceased,  
and

Respondents

P.D., mother,

Respondent and Appellant

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Nos. 20250378

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In the Interest of S.C.Y., Minor Child

State of North Dakota,

Petitioner and Appellee

v.

S.C.Y. a/k/a S.C.Y.B., child; A.Y. a/k/a A.Y.B.,  
father, deceased,  
and

Respondents

P.D., mother,

Respondent and Appellant

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Nos. 20250379

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Appeals from the Juvenile Court of Ward County, North Central Judicial District,  
the Honorable Kelly A. Dillon, Judicial Referee.

REMANDED.

Opinion of the Court by Crothers, Justice.

Rozanna C. Larson, State's Attorney, Minot, ND, for petitioner and appellee.

Meredith K. Childress, Rugby, ND, for respondent and appellant.

**Interest of J.C. and S.C.Y.  
Nos. 20250378 and 20250379**

**Crothers, Justice.**

[¶1] P.D., a mother, appeals from a juvenile court order terminating her parental rights, claiming the juvenile court erred in finding the children were in need of protection, the causes of the need for protection are likely to continue and will not be remedied, and the children have suffered harm as a result. She also argues the court erred in terminating her parental rights without finding that active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family, and that these efforts have proved unsuccessful. We retain jurisdiction and remand for specified findings on active efforts under N.D.C.C. § 27-19.1-01(2).

**I**

[¶2] J.C., born in 2016, and S.C.Y., born in 2017, were placed into the care of the Ward County Human Service Zone on March 20, 2025. The juvenile court found the children in need of protection on April 17, 2025, and placed them in care for up to 12 months. Beginning in 2019, the children had been placed into the care of the Ward County Human Service Zone on three occasions prior to the March 20, 2025 removal. Both the state and federal Indian Child Welfare Acts apply.

[¶3] Petitions to terminate P.D.'s parental rights were filed on June 4, 2025. Trial was held on September 5, 2025. The juvenile court heard testimony from P.D.'s clinical psychologist, the qualified expert witness (QEW) for the Mandan Hidatsa Arikara Nation, two Human Service Zone workers, the guardian ad litem for the children and P.D. The court received nine exhibits, and took judicial notice of the underlying children in need of protection files. *See* 51-2025-JV-00037, 51-2025-JV-00038, 51-2024-JV-00027, 51-2024-JV-00028, 51-2023-JV-00136, 51-2023-JV-00142, 51-2019-JV-00060 and 51-2019-JV-00061. The juvenile court terminated P.D.'s parental rights. P.D. appeals.

## II

[¶4] Section 27-20.3-20, N.D.C.C., authorizes a juvenile court to terminate parental rights if 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[.]

N.D.C.C. § 27-20.3-20(1)(c). A “child in need of protection” is “a child who . . . [i]s 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 . . .” N.D.C.C. § 27-20.3-01(5). “These elements must be established by clear and convincing evidence.” *Interest of A.L.E.*, 2018 ND 257, ¶ 4, 920 N.W.2d 461.

[¶5] Because the children involved in this matter are enrolled members of the Mandan Hidatsa Arikara Nation, the Indian Child Welfare Act, 25 U.S.C. § 1912, codified in N.D.C.C. ch. 27-19.1, requires specific findings. *Interest of B.V.*, 2025 ND 28, ¶ 11, 17 N.W.3d 549; *see also Interest of K.S.D.*, 2017 ND 289, ¶ 6, 904 N.W.2d 479 (“When Indian children are involved in proceedings such as this, state and federal law create a dual burden of proof for the party seeking termination of parental rights.”). “The court may order the termination of parental rights over the Indian child only if the court determines, by evidence beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.” N.D.C.C. § 27-19.1-01(4); *see also* 25 U.S.C. § 1912(f). “Before . . . the termination of parental rights over an Indian child, the court shall find that active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” N.D.C.C. § 27-19.1-01(2); *see also* 25 U.S.C. § 1912(d).

[¶6] “We apply the clearly erroneous standard of review to the juvenile court’s findings.” *Interest of A.L.E.*, 2018 ND 257, ¶ 4; *Interest of J.C.*, 2024 ND 9, ¶ 7, 2 N.W.3d 228 (citation omitted) (“We will not overturn a juvenile court’s findings of fact in a termination proceeding unless the findings are clearly erroneous under N.D.R.Civ.P. 52(a).”). “A finding of fact is clearly erroneous under N.D.R.Civ.P. 52(a) if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, on the entire record, we are left with a definite and firm conviction a mistake has been made.” *Interest of J.C.*, ¶ 7 (citation omitted).

### III

[¶7] P.D. argues the juvenile court erred in finding the children were in need of protection, the causes of the need for protection are likely to continue and will not be remedied, and the children have suffered harm as a result.

[¶8] P.D. does not argue her children are not in need of protection. A “child in need of protection” is “a child who . . . [i]s 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 . . . .” N.D.C.C. § 27-20.3-01(5). The juvenile court found P.D. “has not demonstrated a present ability to perform parental duties, and acknowledges that she is not currently in a position to parent her children.” The record supports a finding P.D. acknowledged she has not completed the goals and tasks requested of her, including mental health services, and she does not have a stable place to live. The court did not clearly err finding the children are “in need of protection” as defined in N.D.C.C. § 27-20.3-01(5).

[¶9] Section 27-20.3-20, N.D.C.C., authorized the juvenile court to terminate parental rights because the children are “in need of protection” and have “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.” N.D.C.C. § 27-20.3-20(1)(c)(2). The juvenile court found:

At the time of trial on September 5, 2025, the children had been in the physical custody of the Ward County Human Service Zone for 508 of the previous 660 nights, and in the legal custody for 528 of the

previous 660 nights. This is calculated from November 15, 2023, the 660th day before trial. Considering only the two most recent foster care placements, those in File Nos. 51-2024-JV-00027, 51-2024-JV-00028, 51-2025-JV-00037, and 51-2025-JV-00038, the children have been in the physical custody of the Zone for 478 days, and in the legal custody for 498 days. The State has satisfied the requirements of this statute. The minor children have been in the legal custody of the Zone for 1469 days of their lives. That is 46% for [J.C.] and 51% for [S.J.Y.].

P.D. does not dispute this finding.

[¶10] P.D. argues the causes of the need for protection are not likely to continue. P.D. testified she understands the goals and tasks required of her before reunification can occur, and she testified regarding the steps she has taken to complete those tasks. She further asserts only 169 days have passed since the date of removal and only 81 days since the petition to terminate parental rights, and that she “spent a portion of that time period incarcerated . . . and was released only days before trial.” She argues in “less than [a] week from her release she managed to make contact regarding counseling, sign up for parenting classes, and made efforts to secure suitable housing for herself and her children.”

[¶11] The juvenile court found:

The progress reports, Petitioner’s Exhibits 2-9, demonstrate [P.D.’s] compliance with Zone recommendations, including involvement in services and utilization of community supports. Each time [P.D.] was reunified with the children, the behaviors and the conditions and causes of the need for protection resumed shortly after reunification. Following the most recent reunification, [P.D.] removed the children from school where they were receiving needed services, including occupational therapy, in order to home school them. Her testimony as to why she made that choice is illogical at best. She testified that she elected to home school the children because she was busy with other things. How is a parent to home school her children when she is already busy with other things while the children are in school? [P.D.] had her days free to work on her own services while the children were in school where they received beneficial services. Removing the children from school to

home school when she was already overwhelmed is an example of [P.D.'s] inability to make responsible decisions for the well-being and safety of her children. She has not demonstrated stability in her life. On the contrary, she has demonstrated a pattern of doing just enough for her children to be returned to her care, then resumed a life of drug use and domestic violence as soon as the eyes of the Human Service Zone were no longer on her. Even in the months preceding trial, [P.D.] engaged in unlawful activity as evidenced by her three arrests. She has not demonstrated a present ability to perform parental duties, and acknowledges that she is not currently in a position to parent her children. The Court is convinced the conditions and causes of the need for protection are likely to continue or will not be remedied and for that reason, the children are suffering or will probably suffer serious physical, mental, moral, or emotional harm. The evidence of [P.D.'s] patterns of behavior and inability to utilize skills to improve her life is prognostic evidence that forms the basis for a reasonable prediction as to future behavior that will cause the children's need for protection to continue, and for the likelihood that the children will probably suffer serious harm as a result.

These findings are supported by the evidence in the record.

[¶12] “We have previously recognized that when a parent, through voluntary actions, without reasonable justification, makes herself unavailable to care for and parent a young child, the child should not be expected to wait or assume the risk involved in waiting for permanency and stability in her life.” *Interest of A.L.E.*, 2018 ND 257, ¶ 12 (cleaned up). “A parent must be able to demonstrate present capability, or capability within the near future, to be an adequate parent.” *Interest of A.B.*, 2017 ND 178, ¶ 15, 898 N.W.2d 676 (citation omitted). “Upon a showing that the child is deprived and the causes and conditions of deprivation are likely to continue, a petitioner must also prove the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm.” *Id.* ¶ 17. “The risk of future harm may be based on evidence of past harm and may also be established by prognostic evidence that the parent's current inability to care for the child will continue long enough to make the child's successful assimilation into a family improbable if the parent's rights are not terminated.” *Id.*

[¶13] The juvenile court's findings that the children were in need of protection, that the causes of the need for protection are likely to continue and will not be remedied, and that the children have suffered harm as a result are not clearly erroneous. The juvenile court further found beyond a reasonable doubt the children would likely suffer serious emotional or physical harm or damage if returned to the mother. P.D. does not dispute this finding.

#### IV

[¶14] P.D. argues the juvenile court erred by terminating her parental rights without finding active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful as required by N.D.C.C. § 27-19.1-01(2).

[¶15] Section 27-19.1-01(2), N.D.C.C., provides:

Before removal of an Indian child from the custody of a parent or Indian custodian for purposes of involuntary foster care placement or the termination of parental rights over an Indian child, the court shall find that active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The court may not order the removal unless evidence of active efforts shows there has been a vigorous and concerted level of casework beyond the level that would constitute reasonable efforts under section 27-20.3-26. Reasonable efforts may not be construed to be active efforts. Active efforts must be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts must utilize the available resources of the Indian child's extended family, tribe, tribal and other relevant social service agencies, and individual Indian caregivers.

*See* 25 U.S.C. § 1912(d); 25 C.F.R. § 23.120.

[¶16] "Active efforts" are defined as:



affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the Indian child's family. If an agency is involved in the child custody proceeding, active efforts must involve assisting the parent or a parent or Indian custodian with the steps of a case plan and including accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case. The term includes:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal, with ongoing timely assessment to determine when the threat is resolved and placement of the Indian child can be returned to the custodian.
- (2) Identifying appropriate services and helping a parent or Indian custodian to overcome barriers, including actively assisting a parent or Indian custodian in obtaining such services.
- (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.
- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parent or Indian custodian.
- (5) Offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe.
- (6) Taking steps to keep siblings together, if possible.
- (7) Supporting regular visits with a parent or Indian custodian in the most natural setting possible as well as

trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the Indian child.

(8) Identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parent or Indian custodian or, as appropriate, the Indian child's family, in utilizing and accessing those resources.

(9) Monitoring progress and participation in services.

(10) Considering alternative ways to address the needs of the Indian child's parent or Indian custodian and where appropriate, the family, if the optimum services do not exist or are not available.

(11) Providing post-reunification services and monitoring.

N.D.C.C. § 27-19.1-01(1)(a); *see* 25 C.F.R. § 23.2; 25 C.F.R. § 23.120. "Active efforts must be documented in detail in the record." 25 C.F.R. § 23.120(b).

[¶17] P.D. argues the juvenile court's finding "Ms. Poitra testified that, in her opinion, active efforts to reunite this family have be[en] made by the Zone, including ongoing safety and service plans with home visits to engage the mother, and ongoing measures to prevent removal after reunification" is not a sufficient finding of active efforts for reunification. We have explained findings must be made by the trial judge, not the witness. *Interest of K.B.*, 2021 ND 106, ¶ 7, 961 N.W.2d 293.

[¶18] The juvenile court made findings "the agency has made active efforts to finalize the children's new permanent plan of adoption" and "[t]hat active efforts were made to place the siblings together." The court did not find "active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful" as required by N.D.C.C. § 27-19.1-01(2).

[¶19] We retain jurisdiction under N.D.R.App.P. 35(a)(3)(B) and remand this matter for the juvenile court to make the detailed findings required under N.D.C.C. § 27-19.1-01(2). The juvenile court may receive additional evidence if necessary to make the required findings, provided any further proceedings are completed within 45 days.

[¶20] Jon J. Jensen, C.J.  
Daniel J. Crothers  
Lisa Fair McEvers  
Jerod E. Tufte  
Douglas A. Bahr