

SUPREME COURT OF NORTH DAKOTA

Interest of K.L., a Child; Interest of M.S., a Child

751 N.W.2d 677 (N.D. 2008) · No. Nos. 20070309, 20070310 · Decided June 26, 2008

SUMMARY

The Supreme Court of North Dakota affirmed an order terminating T.L.'s parental rights to her two children. The court held that clear and convincing evidence established the children were deprived, the conditions of deprivation were likely to continue, and the children would probably suffer serious harm. The court also recognized ineffective assistance of counsel claims in parental-rights termination proceedings under the Strickland standard, but concluded the record did not establish deficient performance or prejudice.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Kapsner, Justice; Gerald W. VandeWalle, Chief Justice; Mary Muehlen Maring, Justice; Daniel J. Crothers, Justice; Dale V. Sandstrom, Justice
JURISDICTION	North Dakota
DECIDED	June 26, 2008
DOCKET	Nos. 20070309, 20070310
DISPOSITION	affirmed
PROCEDURAL POSTURE	T.L. appealed a juvenile court order terminating her parental rights to K.L. and M.S. after the juvenile court adopted a judicial referee's findings and conclusions. She challenged the sufficiency of the evidence supporting termination and asserted ineffective assistance of counsel.
STANDARD OF REVIEW	Termination of parental rights is reviewed as a question of fact and will not be overturned unless clearly erroneous. A finding is clearly erroneous if it is induced by an erroneous view of the law, unsupported by evidence, or leaves the reviewing court with a definite and firm conviction that a mistake was made. The State must prove the termination elements by clear and convincing evidence.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	T.L., Mother v. State of North Dakota

TOPICS

termination of parental rights parental rights family law procedure appellate procedure standard of review

PRACTICE AREAS

family law juvenile law termination of parental rights appellate procedure
ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that the children were deprived, that the conditions and causes of deprivation were likely to continue or would not be remedied, and that the children would probably suffer serious physical, mental, moral, or emotional harm.
2. Whether Social Services made reasonable efforts to preserve and reunify the family.
3. Whether North Dakota recognizes an ineffective-assistance-of-counsel claim in parental-rights termination proceedings and, if so, whether T.L. established such a claim on direct appeal.

HOLDINGS

1. Termination of parental rights was proper because the children were deprived, the causes and conditions of deprivation were likely to continue, and the children would probably suffer serious physical, mental, moral, or emotional harm, all established by clear and convincing evidence.
2. Social Services made reasonable efforts to preserve and reunify the family; it was required to provide appropriate and available services and assistance, but was not required to assume T.L.'s responsibility to follow through with those services.
3. North Dakota recognizes an ineffective-assistance-of-counsel claim in parental-rights termination proceedings and applies the Strickland standard.
4. T.L. did not establish ineffective assistance because the record did not show objectively unreasonable performance or prejudice, and counsel's decision not to introduce evidence of a second treatment program could have been a reasonable strategic choice.

KEY QUOTATIONS

"Reasonable efforts," as defined by N.D.C.C. § 27-20-32.2(1), requires Social Services to provide available and appropriate services to assist the family in reunification, but Social Services is not required to assume the parent's responsibility in following through with the services offered." (682)

"A parent must be able to demonstrate present capability, or capability within the near future, to be an adequate parent." (683)

"Therefore, we acknowledge the need to recognize an ineffective assistance of counsel claim and apply the test announced in Strickland." (685)

FACTUAL BACKGROUND

K.L. and M.S. were removed from T.L.'s home after officers found drug paraphernalia, needles, pills, and alcohol within the children's reach; both children tested positive for exposure to controlled substances. T.L. was diagnosed with methamphetamine addiction, repeatedly failed to complete outpatient treatment, continued to test positive for methamphetamine or admitted using it, and had untreated mental-health and domestic-violence-related issues. Although Social Services developed a reunification plan and provided information and assistance concerning treatment, T.L. did not pursue inpatient treatment until termination proceedings were underway.

PROCEDURAL HISTORY

The children were removed from T.L.'s home in June 2006 after officers found drugs and unsafe conditions, and the juvenile court adjudicated them deprived in October 2006. Following T.L.'s failure to complete recommended drug-treatment programs and continued drug use, the State petitioned to terminate her parental rights. A judicial referee ordered termination in August 2007, the juvenile court adopted the referee's findings and conclusions, and the North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Interest of I.B.A. and C.B.A., 2008 ND 89, ¶ 15, 748 N.W.2d 688
- Interest of T.A., 2006 ND 210, ¶ 10, 722 N.W.2d 548
- Interest of D.M., 2007 ND 62, ¶¶ 6, 8, 11, 730 N.W.2d 604
- Interest of M.B., 2006 ND 19, ¶¶ 13, 14, 16, 18, 21, 709 N.W.2d 11
- Interest of D.D., 2006 ND 30, ¶¶ 25-26, 708 N.W.2d 900
- *McBeth v. M.D.K.*, 447 N.W.2d 318, 322 (N.D. 1989)
- *Adoption of K.A.S.*, 499 N.W.2d 558, 563 (N.D. 1993)
- *Adoption of J.M.H.*, 1997 ND 99, ¶¶ 21-22, 564 N.W.2d 623
- *Strickland v. Washington*, 466 U.S. 668, 688 (1984)
- *Johnson v. State*, 2004 ND 130, ¶¶ 16-17, 681 N.W.2d 769
- *State v. Torres*, 529 N.W.2d 853, 856 (N.D. 1995)
- *State v. Bengson*, 541 N.W.2d 702, 703 (N.D. 1996)
- *Garcia v. State*, 2004 ND 81, ¶ 8, 678 N.W.2d 568
- *Breding v. State*, 1998 ND 170, ¶ 9, 584 N.W.2d 493
- *DeCoteau v. State*, 2000 ND 44, ¶ 8, 608 N.W.2d 240
- *In re Geist*, 310 Or. 176, 796 P.2d 1193, 1203 (1990)
- *In re K.L.*, 91 S.W.3d 1, 11 (Tex. App. 2002)

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