

SUPREME COURT OF NORTH DAKOTA

In the Interest of M.B. and N.B., Children

709 N.W.2d 11 (N.D. 2006) · No. No. 20050206 · Decided January 31, 2006

SUMMARY

The Supreme Court of North Dakota affirmed orders terminating I.B.'s parental rights to two children and denying his request for continued visitation. The court held that I.B. received sufficient notice, that the referee's adoption of proposed findings did not require reversal, and that clear and convincing evidence supported findings of deprivation, likely continued deprivation, and probable harm. The court also held that reasonable reunification efforts had been made and deemed the visitation issue moot.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Sandstrom, Justice; Gerald W. VandeWalle, Chief Justice; Daniel J. Crothers, Justice; Mary Muehlen Maring, Justice; Carol Ronning Kapsner, Justice
JURISDICTION	North Dakota
DECIDED	January 31, 2006
DOCKET	No. 20050206
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed juvenile court orders terminating his parental rights and denying his motion for continued visitation. The district judge adopted the juvenile referee's orders.
STANDARD OF REVIEW	Findings supporting termination of parental rights are reviewed under the clearly erroneous standard. The petitioner must prove the statutory termination elements by clear and convincing evidence. 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 has been made.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	I.B., Respondent v. Marlene Sorum, L.S.W., Petitioner

TOPICS

termination of parental rights

parental rights

family law procedure

due process

mootness

PRACTICE AREAS

juvenile law

termination of parental rights

family law

appellate procedure

constitutional due process

QUESTIONS PRESENTED

1. Whether the termination petition and supporting affidavit gave I.B. constitutionally and statutorily sufficient notice of the factual grounds for terminating his parental rights.
2. Whether the juvenile referee improperly delegated judicial authority by directing the prevailing party to prepare proposed findings of fact, conclusions of law, and an order, which the referee adopted.
3. Whether clear and convincing evidence established that the children were deprived, that the causes and conditions of deprivation were likely to continue or not be remedied, and that the children were suffering or would probably suffer serious harm.
4. Whether the State and Cass County Social Services made reasonable efforts to preserve and reunify the family as required by N.D.C.C. § 27-20-32.2.
5. Whether the denial of I.B.'s request for visitation during review of the termination order presented a justiciable issue.

HOLDINGS

1. A petition to terminate parental rights must provide specific factual circumstances supporting termination, rather than merely reciting statutory language. The petition and incorporated affidavit provided I.B. sufficient notice of the facts the petitioner would use, and his due process rights were not violated.
2. A juvenile referee does not improperly delegate judicial authority merely by assigning a party to prepare proposed findings, conclusions, and an order and then adopting them, even when the adoption is verbatim, provided the findings are signed or adopted by the court and are reviewed for clear error.
3. The juvenile court properly terminated I.B.'s parental rights because clear and convincing evidence established that the children were deprived, the deprivation was likely to continue or not be remedied, and the children were suffering or would probably suffer serious physical, mental, moral, or emotional harm.
4. The juvenile court properly found that Cass County Social Services made reasonable efforts to preserve and reunify the family, while I.B. failed to participate meaningfully in the available parenting assistance, therapy, and treatment services.
5. The visitation issue was moot because the Supreme Court affirmed the termination of I.B.'s parental rights.

KEY QUOTATIONS

“The petitioner must provide specific facts the petitioner will rely on to terminate the parental rights so that the respondent parent has notice and is able to meaningfully prepare a defense against the petition.” (¶ 7)

“Although we prefer that trial courts prepare their own findings of fact, we reject [the appellant's] argument that the court's wholesale adoption of [the appellee's] proposed findings of fact, by itself, is reason to reverse the court's decision.” (¶ 11)

“A lower court's decision to terminate parental rights is a question of fact that will not be overturned unless the decision is clearly erroneous.” (¶ 13)

“To show this, the State cannot rely on past deprivation alone, but must provide prognostic evidence, demonstrating the deprivation will continue.” (¶ 16)

“The evidence before the referee was sufficient to conclude Cass County Social Services made reasonable efforts to keep this family intact, but the father chose not to participate in them.” (¶ 21)

FACTUAL BACKGROUND

I.B. and K.S. had two children who were repeatedly adjudicated deprived and placed in social-services care. The record included domestic violence, alleged abuse, exposure to pornographic and horror films and sexual activity, inadequate care and supervision, disrupted therapy, and the children's special behavioral and mental-health needs. Although social services provided parenting assistance and counseling opportunities, I.B. participated minimally and expressed at various times that he could not provide care for the children or wanted his parental rights terminated.

PROCEDURAL HISTORY

The children were adjudicated deprived on multiple occasions and placed in social-services care. The petitioner filed a termination petition; after a three-day trial, the juvenile referee ordered termination of the father's parental rights and denied continued visitation. The district judge adopted both orders, and the North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Thompson v. King, 393 N.W.2d 733, 738-39 (N.D. 1986)
- Interest of T.M.M., 267 N.W.2d 807, 813 (N.D. 1978)
- Smith Enters., Inc. v. In-Touch Phone Cards, Inc., 2004 ND 169, ¶ 11, 685 N.W.2d 741
- Schmidkunz v. Schmidkunz, 529 N.W.2d 857, 859 (N.D. 1995)
- Foster v. Foster, 2004 ND 226, ¶¶ 7, 10, 690 N.W.2d 197
- Interest of M.M.S., 449 N.W.2d 574, 577 (N.D. 1989)
- Adoption of S.R.F., 2004 ND 150, ¶¶ 7-8, 683 N.W.2d 913
- Interest of D.Q., 2002 ND 188, ¶¶ 12, 21, 653 N.W.2d 713
- Interest of J.R., 2002 ND 78, ¶ 9, 643 N.W.2d 699
- Interest of T.K., 2001 ND 127, ¶ 14, 630 N.W.2d 38

- Interest of A.S., 1998 ND 181, ¶¶ 19, 31, 584 N.W.2d 853
- Interest of D.F.G., 1999 ND 216, ¶ 20, 602 N.W.2d 697
- Interest of L.B.B., 2005 ND 220, ¶ 9, 707 N.W.2d 469
- Wanner v. N.D. Workers Comp. Bureau, 2002 ND 201, ¶ 31, 654 N.W.2d 760

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