West Union Fall CLE Event
Juvenile Case Law Update
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Before the United States Supreme Court
Brackeen v. Haaland (Expected Decision End June 2023)

Brackeen v. Haaland is pending to determine the constitutionality of the Indian Child Welfare Act that was argued before the Supreme Court of the United States on November 9, 2022. It was consolidated with *Cherokee Nation v. Brackeen*, *Texas v. Haaland*, and *Brackeen v. Haaland*. The Indian Child Welfare Act was established by the United States Congress in 1978 in response to American Indian children being removed from their homes and communities at a much higher rate than non-Native children and placed into foster care and adoption cases. ICWA was enacted to keep Native American children connected to their families and Tribes, to protect the rights and culture of American Indian and Alaska Native children and families.

CINA Adjudication/Dispositional Hearing Appeals:

Reasonable Efforts-Dispositional Appeal

In the Interest of L.S. and C.S. (Iowa App. February 8, 2023)-Affirmed
No. 22-1839

The mother appealed the juvenile court's dispositional finding that the State had provided reasonable efforts to return her children to her custody. The children were adjudicated CINA and placed into their father's custody in July and the dispositional hearing was not held until October. The first two months, the father supervised the mother's visitation without any concerns reported. The assigned case worker did not contact the mother from July until September when a new case worker was assigned. The new worker then stopped the visitation supervised by the father and reduced her visitation to two weekly sessions for two-hours. Mother's attorney argued DHHS was not making reasonable efforts because the department did not set up visitation for three or four weeks despite the mother's request and her repeated cooperation in providing the department with her employment timesheets. The juvenile court agreed with the new worker to have a service

provider supervise visits with the intent to move forward quickly and to utilize a neutral party who understands parenting and any kind of risk to safety. The juvenile court found reasonable efforts were met because, "taking a careful approach is necessary for the safety of these children due to their age and inability to self-protect or care for themselves if their mother is again ill." The department also approved the maternal grandmother to supervise additional visits. The court of Appeals defined reasonable efforts as, "the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home." Iowa Code section 232.102A(1)(a)(2022). The court further held, "Indeed, "[v]isitation between a parent and child is an important ingredient to the goal of reunification." M.B., 533 N.W.2d at 345. Experts maintain that the frequency of family time is a "strong predictor of children being united with their parents." See Leonard Edwards, Reasonable Efforts: A Judicial Perspective (2d ed. 2021) at 49. Still, "the nature and extent of visitation is always controlled by the best interests of the child." M.B., 533 N.W.2d at 345." Ultimately the Court of Appeals determined, "Like the mother, we find the department should have acted with more urgency in scheduling visitation with her children early in the case. But we also agree with the juvenile court that circumstances required "taking a careful approach . . . for the safety of these children." At this time, we reject the mother's reasonable-efforts challenge."

Procedural/Evidentiary

Written Guardian ad Litem Reports

In the Interest of N.W. (Iowa App. February 8, 2023)-Affirmed
No. 22-1948

The mother appeals the termination of her parental rights. On appeal, she additionally argues that the court erred when denying her motion to continue because the Guardian ad Litem failed to file a Guardian ad Litem report as set forth in Iowa Code section 232.2(22) (Supp. 2022) and alleged the court did not make the necessary good cause exceptions to the filing of said report. The appellate court disagreed with the mother's argument because the trial court had made the finding that due to the GAL's injury to her wrist, she did not need to provide written reports but could provide an oral update, which the GAL did do. The Court of Appeals also noted, "The juvenile court also stated at the hearing that the GAL report was "not a necessary piece to the evidentiary requirements of a termination proceeding." That question has yet to be answered considering the language of the new legislation. But Brittney does not raise this issue. So we need not address it today."

In the Interest of L.S. and C.S. (Iowa App. February 8, 2023)-Affirmed on Both
No. 22-1851

The children's mother and father appeal the order adjudicating their children CINA. At the adjudication hearing, the State offered ten exhibits (which the parents stipulated to their admissibility) and no further evidentiary record was made. The Court of Appeals noted, "We have discouraged and continue to discourage the practice of conducting juvenile hearings based on written reports rather than testimony, as it makes review more challenging, and it presumably makes it more difficult for the juvenile court to make necessary factual findings. See, e.g., In re H.V., No. 20-0934, 2020 WL 6157826, at *4–6 (Iowa Ct. App. Oct. 21, 2020) (reversing juvenile court's order terminating parental rights due to the State's failure to prove its case when its evidence consisted exclusively of exhibits for which inadequate foundation was lain). As the parties stipulated to admissibility of the exhibits here, we have a different outcome than in H.V., but we continue to discourage the practice of trying the case on exhibits only."

In the Interest of A.A. and S.A., Affirmed (Iowa Ct. App. November 2, 2022)
Mother's counsel did not object to foundation or the admissibility of laboratory results of a positive drug test without further testimony required to be presented. However the state objected to the mother offering the results of a hair stat test citing lack of foundation. The mother argued section 232.99(2), allowing juvenile courts to admit "all relevant and material evidence," would let the exhibit be admitted without the need for the mother to lay foundation for the hair stat test's authenticity. The Court has held "foundational witnesses are necessary in CINA cases. See, e.g., In re A.B., No. 21-1495, 2022 WL 108586, at *3 (Iowa Ct. App. Jan. 12, 2022); In re A.C., No. 13-1045, 2013 WL 5962918, at *2 (Iowa Ct. App. Nov. 6, 2013)." The court of appeals held the trial court was correct in sustaining the State's objection.

However, the trial court also found, the state did not need to lay foundation for its exhibit (the positive drug screen) because the mother agreed to its admissibility, and it was offered by a laboratory which is used by the Department of Human Services in all cases. The Court of Appeals held, "We are unaware of any authority supporting the court's latter proposition—that the State is excused from laying foundation for exhibits from certain approved laboratories. S*ee generally In re H.V.*, No. 20-0934, 2020 WL 6157826, at *5 (Iowa Ct. App. 2020) (noting that Iowa Rule of Evidence 5.901(a) requires proponent of exhibit to produce evidence to support finding that item is what proponent claims it is).

In the Interest of M.B.-S. and K.S., Affirmed (Iowa Ct. App Sept. 21, 2022)
Both parents consented to TPR but in trial dad said, "it's just forced on me" and he "gave up." Fathers consent was not withdrawn. He asked this Court to infer withdrawal from testimony during the hearing when he said he felt that he had to. The court held, that despite the fact the father changed his mind after the termination does not invalidate his earlier consent.

In re M.W., 23-0351 (Iowa App April 26, 2023)
The court of appeals was not satisfied with the brief filed by the parent's attorney affirming the trial court's decision. The Court of Appeals stated, "We find the father's challenge—consisting of only conclusory statements without citations to the record or any meaningful substantive

argument— insufficient to facilitate our review and therefore waived. See Iowa Rs. App. P. 6.201(1)(d)"

ICWA

In the Interest of Z.K., Affirmed COA and District Court (Iowa April 8, 2022)
The main issue before the Supreme Court was the definition of "Indian Child" under the "Indian Child Welfare Act (ICWA). If ZK was an Indian child then different, substantive standards apply in termination proceedings (mandating state prove by clear and convincing evidence that continued custody of the child by the parent or "Indian custodian" is likely to result in serious emotional or physical damage to the child). The court found that federal law required either the biological parent or the child must be a member of an Indian tribe to trigger federal ICWA and that the statutory construction indicates a "present tense" meaning they must be a "current" member and does not matter if the child is eligible in the future for membership. The trial court had found, consistent with letters from the Standing Rock and Oglala Sioux tribes indicating the child was not a member of the tribe. Testimony at the trial from a new ICWA director of the Oglala Sioux tribe showed he believed the child was eligible for enrollment. But given the previous statement of ineligibility from the tribe- and the new ICWA director's lack of authority to make a final determination on eligibility, the Court of Appeals determined there was not enough evidence to make a finding the child was an Indian child, and deemed ICWA inapplicable. The dissent would have accepted the ICWA director's statement of eligibility as conclusive evidence that Z.K. was an Indian child pursuant to Iowa Code Section 232B.4(3). This result is also consistent with ICWA's directive that, once the possibility of tribal membership is raised, to treat the child as an Indian child until proven otherwise.

See also, In re J.C. and S.C., Affirmed (Iowa Ct. App. March 29, 2023)-Affirmed
For the ICWA to apply, the child must (1) either be eligible for membership or a member of a tribe AND (2) the child's biological parent is a tribal member.

Adjudication-Disposition

In re VG, 23-0410 (Iowa App. July 26, 2023)-Reversed and Remanded

The Child suffers from Cystic-fibrosis which has no cure, but does have therapies available to slow its progression and greatly extend the child's life expectancy. The parents refused to follow the Blank medical teams' recommendations, resulting in multiple hospitalizations, diagnosis for failure to thrive, infections and finally lead to the child being hospitalized for two weeks. The parents sought other medical providers who were either unqualified or made the same recommendations the Blank medical team did. Upon admission, the child's weight had dropped and was very below the growth chart with a weight for her length at the 2% when the child needed to be in the 50th percentile. The child was removed upon her discharge from the hospital and did very well in the care of a relative where the parents could visit daily. The child's specialist testified that the child would die a slow death within six months to three years if the recommended courses of treatment were not followed. If properly administered the child's life expectancy would be extended to 53 years of age. The adjudication hearing finished after six months, and the trial court returned the child and dismissed the CINA petition. The trial court felt this was a disagreement between the medical

team and the parents who both were concerned the other party was not doing enough and that the medical team was unaware the child had had COVID (medical records reflect that both Blank and the University of Iowa medical teams were aware the child had COVID and did not attribute the child's poor health to COVID. The supreme court entered an emergency pending the outcome of the appeal. The court of appeals found that the child should be adjudicated and that the state's interest in the child receiving proper medical care trumped the parent's rights to determine what medical care the child received.

In re O.F., G.F., 23-0814 (July 31, 2023)
The child had extensive, unexplained physical injuries including two broken legs and head injuries that were "non accidental" injuries indicative of child abuse. The parents did not seek immediate medical attention despite the mother being an RN. Neither parent took responsibility except for a story the father told medical providers that did not match the injuries the child endured. Against the recommendation of the state, DHS and the GAL, the court allowed the mother to have semi-supervised visitation with the child. The parents participated in every service available, helped the placement daily with parenting the children with minimal concerns other than the parents have not provided a reasonable explanation for the child's injuries. The trial court concluded the best interests of the children required the transition to semi-supervised visits for the mother and allowing the mother to supervise the father's contact with the children. The Court of Appeals overturned the district court's decision to allow semi-supervised visitation and held, "And while the State and GAL may, at first blush, have seemed obstinate in their positions that the case not progress until more was known about how G.F. was injured, when a parent refuses to make the necessary change to keep their children safe, then "[the parent]—not the system—has drawn a harsh line in the sand that precludes reunification." Id. at 197 (Christensen, C.J., concurring specially); see also In re K.C., No. 18-1249, 2019 WL 325863, at *3 10 (Iowa Ct. App. Jan. 23, 2019) (recognizing it was the parent who failed to address their role in the child's injuries that was the barrier to reunification"

Permanency

In the Interest of A.A. and S.A., Affirmed (Iowa Ct. App. November 2, 2022)
A mother appealed a permanency order denying her a six-month extension and placing guardianship with a relative. The interesting part of this case is that a guardianship was directed instead of a termination petition for two very young children- aged 3 and 1. Traditionally, appellate courts have been skeptical of long-term guardianships for very young children because guardianship is not legally preferrable to termination. *See In re W.M*, 957 N.W.2d 305, 315 (Iowa 2021). But the unique circumstances of this case warranted a guardianship (mother's relationship with the children, guardian was a relative, and other relatives were also caring for the mother's other children). There was a also a good discussion about the need for parties to provide foundation or authentication for exhibits- even in permanency hearings where "all relevant and material evidence" is admissible.

TPR: Grounds

In the Interest of A.B., 23-0092 (Iowa App. March 29, 2023)-Affirmed

The mother appealed the order terminating her parental rights. The Court of Appeals acknowledged that the mother did have some periods of sobriety, they found, "we cannot overlook her persistent denial of addiction, not just to methamphetamine but to marijuana and alcohol as well." The mother had a medical marijuana card for anxiety. The mother waited until just before the termination to obtain a mental-health evaluation. The opinion stated, "she had no intention of participating in therapy because she felt her anxiety was completely controlled with the "cannabis, the THC." The department, however, suspected she was using "regular old marijuana" given her high test levels and her house smelling like marijuana, which the mother tried to blame on a dead mouse under her couch. As for the alcohol, the mother testified that she "barely drink[s]," despite six positive urinalyses for alcohol and a past conviction for operating while intoxicated. Given the harm the mother's unaddressed addiction already caused the child, her refusal to accept any responsibility for that harm, and her unabated use of substances, we find clear and convincing evidence that the child could not be safely returned to her custody."

In the Interest of R.D. and A.D. (Iowa App. March 29, 2023Affirmed on Mother's Appeal; Reversed and Remanded on Father's Appeal
No. 22-1966

The children's mother and father of one of the girls appealed separately to the order terminating their parental rights. The father's attorney did an excellent job of preserving the record for appeal on the issue of reasonable efforts. As part of their reasonable-efforts challenge, the mother and father challenge the constitutionality of Iowa Code section 232.102A(2) (Supp. 2022), which provides, "Family interactions shall continue regardless of a parent's failure to comply with the requirements of a court order or the department, provided there is no finding by a court or the department that such interaction would be detrimental to the child." They allege the statute violates procedural and substantive Due Process and they each challenge it both facially and as applied.
The juvenile court had found reasonable efforts were being provided to this father, even though DHHS did not arrange for in-person visits while he was in prison (left it up to the foster parents and father to figure out), then limited visitation upon his release and ultimately decided to not allow visitation between the father and children.

Relying on Iowa Code § 232.107 (2022), the former statute prior to July 1, 2022, the father argued the therapist's opinion that visits "could lead to increased behavioral and emotional responses and difficulty regulating physically and emotionally" did not meet the standard to cease visits—that "supervised visitation would cause an imminent risk to the child's life or health." Iowa Code § 232.107 (2022). Permitting the father to attempt to make contact with his child is not the same thing as providing visits to facilitate reunification; the reasonable-efforts mandate requires more of the department than just getting out of the incarcerated parent's way. See In re T.A., No. 03-0452, 2003 WL 21459553, at *4–5 (Iowa Ct. App. June 25, 2003) (finding the department failed to make reasonable efforts when it failed to provide "[t]he key service" an incarcerated parent "required to facilitate reunification with her children," which was visitation). "To establish reasonable efforts, the [department] must either present a definitive plan with the ultimate goal of visitation or make a showing that visitation is not in the children's best interests." In re S.P., No. 16-1919, 2017 WL 108798, at *5 (Iowa Ct. App. Jan. 11, 2017). A.D. should also be included in reunification services. See, e.g., In re A.M.S., 419 N.W.2d 723, 734 (Iowa 1988) ("[S]iblings

should not be separated without good cause and compelling reasons."). Because we resolve the issues on the statutory grounds, we do not reach the father's constitutional arguments. See In re S.P., No. 03-0868, 2003 WL 22092477, at *2 (Iowa Ct. App. Sept. 10, 2003), affirmed by In re S.P., 672 N.W.2d 842, 846 (Iowa 2003). State failed to make reasonable efforts at reunification. The father was given a six-month extension to work towards reunification.

In the Interest of O.W. (Iowa App. March 29, 2023)-Affirmed
No. 22-2095

The father appeals the termination of his parental rights. The father refused to participate in psycho-sexual evaluation until after his pending criminal matter was resolved for sexually abusing O.W.'s half-sibling. Even after the father completed a psycho-sexual evaluation in July and filed the results with the court in August the juvenile court found this report did not comply with the case plan due to the father's dishonestly with the evaluator. The father refused to complete another evaluation. Despite the invalidity of the first evaluation, the evaluator recommended the father to father continue seeing his therapist and that sessions should focus on sexual education, risk management, appropriate sexual boundaries, and any issues around sexual curiosity. The father's sessions did not focus on that but on his sadness, anxiety and managing his emotions".

In the Interest of E.W. (Iowa App. February 22, 2023)-Affirmed
No. 22-1819

The father appeals the permanency order in a CINA proceeding alleging lack of reasonable efforts and requesting more time. The court found that the state provided reasonable efforts, including two psychological evaluations, but that the deficiencies in services and recommendations were a result of the father's dishonest with evaluators. "The results of the psychosocial and psychosexual evaluations simply reflect the overall record, which shows the father is unwilling to cooperate with services aimed at addressing the sexual-abuse allegations against him." The father was also not forthcoming in other services such as therapy to help him remedy the situation that brought him to juvenile court. As a result, the court was correct in not granting him a six-month extension.

In the Interest of S.P. and T.P., Affirmed (Iowa Ct. App. Sept. 21, 2022)
The mother continued to reside and eventually marry her abuser, and the abuser of her children. The paramour had been arrested multiple times throughout the case for his alcohol use, as well as having a NCO entered against him by the Court. The mother eventually bonded him out, and did not "notice" injuries on her child that the paramour had caused. Mother did not follow through on MH services in the case. At time of TPR hearing, mother was pregnant again and living in a one bedroom apartment with her husband, daughter, and a dog. She worked as a daycare provider at a licensed day care facility. The court found that the mother continued to choose her husband over her children. She was not forthcoming about their relationship and lied about their marriage. She continues to minimize his actions, and the mother failed to progress beyond supervised visits. The mother points to the lack of removal of her daughter as evidence that S.P. and T.P. can be returned to her care. However, the presence of another child in the mother's home, who is also under supervision of the DHS, does not compel a finding that her other children can be safely returned. Court found reunification is a goal, not a mandate. The mother did not prove that there were

specific factors that provided a basis for a 6-month extension. The mother has failed to place the needs of her children above her romantic relationship.

See also **In the Interest of T.D. and T.D. (Iowa Ct. App. October 5, 2022)** where the court held that the ability to care for one child does not equate to the ability to care for other children.

In the Interest of L.F., Affirmed on Mother's Appeal; Reversed and Remanded on Potential Father's Appeal (Iowa Ct. App. Sept. 21, 2022)

Mother has a long history of using meth with multiple children were terminated on previously. The mother gave multiple options for a biological father of the minor child. She provided the father's name by January 14, 2022 and nothing was done with this information until March 23, when the county attorney filed notice that the mother had named "K.A. as a potential biological father" and that the county attorney "intend[ed] to serve [K.A.] with a petition and summons for appearance at the review hearing set for May 6, 2022." A summons and notice of hearing issued for K.A. that same day. K.A. applied for appointed counsel, which the juvenile court approved on April 12. DHS failed to test the father. The caseworker's supervisor did not immediately approve the request, so the caseworker followed up with the supervisor multiple times that month. At some point before the termination trial, the supervisor told the caseworker "she had not sent [the approval] on" and that "she was not going send that on because it would be the end of our fiscal year and the funding—or the testing would not have gotten done before the end of the fiscal year so she was going to wait." The supervisor reported she would authorize the testing when she returned from vacation on July 5—about a week after the termination trial was taking place. DHHS failed in spite of a court order to do so, and left paternity in the air, and prevented K.A. from receiving services from DHS. The court held, because DHS failed to satisfy its reasonable-efforts requirement, the termination of K.A.'s possible parental rights cannot stand. We reverse the termination of K.A.'s potential rights and remand; DHS must immediately authorize paternity testing for K.A. If K.A. is not the biological father of L.F., then he is without any parental rights to L.F. If K.A. is the biological father, we expect K.A. will receive services meant "to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home."

In the Interest of T.P. and H.P., Affirmed on both Appeals (Iowa Ct. App. Sept. 21, 2022)

The father was incarcerated at the beginning of the case, was then on work release, but then absconded and then was arrested for eluding and other charges. At the time of the trial, he was incarcerated. The father argued an exception under 232.116(3)(e). Which affords the court discretion not to terminate parental rights if it finds: "The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces." However, appellate clarified the term "institution" in this provision does not include penal institutions.

In the Interest of G.B., Reversed and Remanded on Both Appeals (May 25, 2022)

Each parent granted a 6-month extension. Parents do reside together. While there has been drug use by each parent, "past positive drug tests alone are not sufficient to terminate parental rights." Displeasure and frustration from DHS from parent behavior is not enough to terminate. "'The failure to comply with the case plan is not enough [to terminate parental rights].'" In this case positive drug tests by each parent were the real issue, not their capacity to safely parent G.B. DHS

wanted the mother to take responsibility and admit to the use that would have resulted in the three positive drug screens for meth during the case. The COA held, "But we do not terminate parental rights because a parent refuses to make certain admissions." The court focused less on "how" the mother achieved sobriety but "how long" she had been sober.

In the Interest of L.M., Mother's Appeal Affirmed; Father's Appeal Reversed and Remanded (Iowa Ct. App. April 27, 2022)

DHS informally involved with the mother at child's birth (July 2020) but child was not formally removed until the court granted the state's CINA petition (adjudicated) and removed LM from his parents care in March 2021. Biological Father of the child participated in visitation prior to pleading guilty to charges (incurred prior to the child's birth) from Sept. 2020 until he went to prison in March 2021. While in prison, the father had weekly visits (one time/mo. in-person and the rest video visits) facilitated by the maternal aunt/placement. Beyond visitation, he profited from support groups (AA, NA (Chaired), parenting classes (DHS 101, Incarcerated Fathers, 24/7 Dads) and completed MRT. He was a model inmate and he secured a "positive transfer". DHS testified he wouldn't be ruled out as a placement option if he was in the community. The state petitioned to terminate his parental rights under 232.116(1)(g) and (h). The father only appealed (g) and argued that while he received quality reasonable efforts, the services were too short (court treated this as a request for an additional six months) and that termination was not necessary pursuant to 232.116(3) as the child was placed with a relative. The court discusses that "placement with a relative" and "legal custody" of a child are two different things. The COA found that the child was "placed by DHS with a relative" so 232.116(3)(a) exception was "not in play" they found this information relevant to the father's request for an additional six months. The COA reversed the decision to terminate his parental rights despite his release date being June 2023.

In re Z.J., 23-0254 (Iowa App April 26, 2023)

The child's parent lived in New York and used marijuana where it is legal. The court of appeals held, "As the juvenile court observed, use of marijuana is legal in New York. Even so, abuse of the substance may interfere with parenting, as with any other mind□altering substances including alcohol, and there is some evidence here that the father's consumption of the substance may exceed casual use." and upheld the termination.

In re A.M., 23-0631 (Iowa App. June 21, 2023)

The father seeks a permissive exception to the termination of his parental rights pursuant to Iowa Code Section 232.116(3)(a) which the court found does not apply despite the child living with a relative and stated, "While the child was placed with a relative, legal custody remained with the department, so the exception in section 232.116(3)(a) is not applicable." This change is a result of the 2022 legislative changes requiring all child removed from a parent's care must be placed in the department's custody and the trial court can only determine the category of care.

In re B.W., K.M., S.M., 23-0518 (July 26, 2023)-Reversed

This family has been involved with the department on and off since 2018. In 2018 the court was involved because of the mother's THC and methamphetamine use (oldest child born positive for THC). In 2020 juvenile court was involved because a three-month-old child had to have emergency surgery to have a large

wooden screw removed from his throat, that child tested positive for cocaine, methamphetamine, amphetamines, THC,2 and heroin. Another child in the home tested positive for THC. The mother admitted to the drug use (except for using heroin) and the children stayed in the mother's care. Less than a year after the emergency surgery a third child is born who is also positive for THC. Shortly after that, one of the children accesses Fentanyl pills left within his reach in the family's living room. It took three doses of Narcan by emergency responders and an eight-hour drip at the hospital to revive the child. One of the father's took the blame for leaving the fentanyl pills within the child's reach but the children were removed; the mother continued to use drugs for ten months after the removal. The mother successfully completed inpatient substance abuse treatment, was engaged in aftercare and participated in mental health treatment. The mother had been clean and sober for four months at the time of the termination hearing. The court of appeals found, "the State did not offer clear and convincing evidence that the children could not be returned to Jessica's custody, we reverse the order terminating her parental rights."

In re J.M., 23-0907 (Iowa App August 30, 2023)

Father confirmed through paternity testing 7 weeks before TPR despite initially saying he wanted nothing to do with the CINA case but changed his mind four days later. The Court of Appeals gave the dad a six month extension of time stating, "J.M.'s placement should continue for another six months from the date of procedendo to give C.B. an opportunity to receive appropriate visitation and services and demonstrate he can be a sober and safe parent"

In re KB-S, JB, 23-0954 (Iowa App. September 13, 2023)-Reversed

In early 2020 the mother sought help from the maternal grandfather and his paramour Vicki when she was struggling with her mental health. The guardianship court had concerns and ordered DHS to investigate if a CINA action was necessary for the child. DHS said a CINA was not necessary. Seven months later, the guardianship court again asked DHS to do a CINA assessment. A child was filed and the children remained in the custody of the maternal grandfathers now ex-paramour. The first year of the CINA case, the mother struggled with her mental health and with substance abuse. Eighteen months into the CINA case, the mother started showed significant progress, however provided two positive drug screens for methamphetamine use despite denying use. The mother also had another child and had domestic violence issues with that child's father. Despite progressing to semi-supervised visits with the two oldest children and being allowed to live with the new baby and the maternal grandfather, by the time the termination hearing was held, the mother was no longer able to live with the maternal grandfather and had only fully supervised visitation. The Court of Appeals held that the time the children spent in the guardianship should not count against the mother because parents should be encouraged to take steps to protect their children and the mother was not being provided services by DHS. The court also did not count one year of the CINA case against the mother because the oldest children had been removed from the maternal grandfather's ex-paramour's care because she was impeding reunification efforts. At the time of TPR the mother had been sober for just more than six months and only had had the one incident of domestic violence with the youngest child's father which was four months prior to the TPR hearing.

TPR: Best Interests/Discretionary Exceptions Removal of DHS as Guardian

Separated Siblings:

In the Interest of A.M., 22-2001 (Iowa App. January 25, 2023)-Affirmed

The mother appealed the order terminating her parental rights to A.M. the mother argued that termination would separate A.M. from his twin warranting an extension because her transportation issues would soon be resolved. A.M. was born positive for THC at birth and spent most of his life hospitalized with significant health issues that required an unusually high level of attentiveness and care compared to a typical infant. The mother rarely visited the child in the hospital, failed to complete the necessary education for his safe discharge, repeatedly failed to attend medical appointments and could not be reached for two days to give consent to the child's heart surgery. Service providers supervising her visits would remind her of A.M.'s feeding and medication schedule and the mother still would fail to meet the child's needs and service providers would have to intervene to ensure A.M's needs were met. The Court of Appeals found, "While attempting to avoid the potential separation of siblings may be a factor in considering whether termination is in the child's best interests, it is not a statutory basis for granting additional time. Instead, we look to see if there is reason to believe the parent will improve to the point the child can be returned to the parent's care." Furthermore, the appellate court found, "…We find termination is still in the child's best interests, as the undesirability of separating the twins is outweighed by the need to meet the child's medical needs. We agree with the juvenile court's observation that "[w]hile separating twins is certainly not a desired outcome, . . . the priority in the present situation is maintaining [the child]'s life, not the twin sibling relationship."

In the Interests of J.R., Reversed and Remanded, (Iowa Ct. App. December 7, 2022)

A federally incarcerated parent appealed termination of his parental rights and the Court of Appeals applied the discretionary exception allowing preservation of a parent's rights when a relative has legal custody of the child. The father, Kenneth, had been in Leavenworth Prison for the entire length of the CINA and TPR matters, but the child had lived with him for some period of time before he went to prison. Kenneth requested visitation while he was in prison, but it never happened in the lead up to the termination hearing- even after he wrote to the department objecting to termination and letting them know his discharge date would be sooner than previously expected. His social worker, and even his lawyer, had trouble contacting him at the prison- at the termination hearing his attorney explained that, in spite of many attempted phone calls, he had never been able to talk to Kenneth at Leavenworth. Kenneth's TPR hearing was delayed so that he could be served notice of the proceedings and when he appeared for the hearing, it was the first time had had participated in any of the hearings during the CINA or termination proceedings. After keeping the record open for input from the child (he wished to remain with his uncle), the juvenile court judge terminated Kenneth's rights.

The Court of Appeals noted that the parent has the burden of proving the applicability of the discretionary exception. *In re A.S.*, 906 N.W.2d 467, 476 (Iowa 2018). And J.R. was in the "temporary legal custody" of his uncle. Furthermore, Kenneth had a relationship with J.R. prior to going to prison and took advantage of all services available there. He also sent J.R. letters while in prison, and was actively planning for how to resume custody upon his release. Meanwhile, the department neglected its duty to assess appropriateness of visitation (under *In re S.J.*, 620 N.W.2d

522, 525 (Iowa Ct. App. 2000). The Court of Appeals opined, "[i]n the frenzy of addressing Ericka's abuse and neglect of the children… the court overlooked Kenneth's potential for parenting." As a result, the court reversed the termination as to Kenneth, maintained the child in the legal custody of his uncle, and directed that visitation and other reasonable reunification services happen.

In the Interest of L.H., L.H. and D.W., Affirmed on both Appeals (Iowa Ct. App. July 20, 2022)

The mother contested the grounds for termination and argued that it was not in the children's best interest and requested the court to use on of the statutory exceptions, including placing the children in a guardianship. The oldest child raised similar objections but also argued the juvenile court failed to consider her "self-protective" capacity; The Court of Appeals found they respected the daughter's desire to be reunited with her mother, the risk of returning home to violence and drug abuse would be too high even for a self-sufficient teenager. The court also stated, while "older children may have more capacity to repel danger. But not even a teenager should "be called to serve as her own guardian" against an adult abuser or a parent using methamphetamine "under her own roof." *See In re D.D*., 955 N.W.2d 186, 194 (Iowa 2021).

In the Interest of K.D. and K.D., COA decision vacated; Juvenile Court Judgment Reversed and Remanded (Iowa June 3, 2022).

DHS acted irresponsibly in the discharge of its duties and acts contrary to the children's best interests for entering the children's home with their step grandmother and abruptly moving them against therapist advice. One of the children was so distraught she vomited, and the other child started shaking. DHS made the move despite the children's GAL filing a motion for hearing due to "unanswered questions and concerns" he had. The court concluded that DHS acted unreasonably in (1) failing to send relative notices and (2) in failing to serve the children's best interests by taking such drastic measures to remove the children from their stepgrandmother's care without warning only to place them in a foster home with no assurance of permanency in that home and for doing little to address the concerns of the grandmother's care and failed to "make every effort to establish a stable placement for the child[ren]" per 232.117(6). The standard to remove a guardian (1) the current guardian's actions were unreasonable or irresponsible; and (2) the current guardian's actions did not serve the children's best interests. The moving party has the burden of proof by "a preponderance of the evidence" The court specifically did not address the argument that the juvenile court did not identify a substantial change in circumstances after the termination order to justify moving the children. The majority opinion suggests that the children's GAL would be at least one capable legal guardian under any "other suitable person" 232.117(3)(c). The majority also points out that DHS still has a federal obligation to provide reasonable efforts despite no longer being the children's guardian.

Mansfield's dissent. Felt the majority opinion did not follow the statute (232.118(1)(2021) and even less good job of giving appropriate deference to the fact-findings made by the experienced juvenile judge who heard this case. He also agreed that it was not in the child's best interests to remove DHS as guardian, he would have affirmed. Mansfield paints a very different picture of the facts.

McDonald's Dissent. Focus on abuse of discretion standard and that it is not their role to "dictate how the department should be managed".

Guardianship

Private Termination per Chapter 600A

In re L.H., 23-0315 (Iowa App. August 9, 2023-Reversed

The Court of Appeals reversed the termination of an incarcerated father's parental rights pursuant to Iowa Code Chapter 600A. The father had exercised his full visitation when he was not incarcerated, reached out to the child weekly for contact, was current in his child support, his parents purchased gifts for the child for special occasions out of the father's bank account when he was incarcerated. The paternal grandparents saw the child monthly and provided the father with phone contact during those visits. The mother had taken the child to visit the father in prison but then stopped after she remarried. The father clearly had not abandoned the child.

Delinquency:

In the Interest of K.C., 23-0243-On Further Review with Iowa Supreme Court
The question presented here is whether the juvenile court its discretion in denying the request for the full amount of expert witness fees requested by the youth. Every young person in the Iowa legal system, regardless of their financial circumstances, has the right to a constitutionally sufficient waiver hearing before being transferred to adult court. In the case of K.C., an indigent Black youth, the juvenile court ruled that an adequate defense during his waiver hearing required expert assistance. (Appellant's Br. p. 15). However, the court's subsequent decision to deny K.C.'s motion to cover the full cost of expenses incurred by his expert undermined the rights of K.C., and all similarly situated youth in the Iowa justice system, to a fair waiver hearing.

In re M.A., 22-1873 (Iowa App. May 10, 2023)
The child appeals a dispositional order in a delinquency matter placing her in a QRTP facility. The child had a history of running, concerns about her being trafficked, her mental health, etc. The Court of Appeals held, "We are not aware of, any requirement that the court must attempt every rung on the dispositional ladder before ordering a restrictive placement. The statute instead contemplates that the court exercise its judgment to select the least restrictive option for a particular child, given the unique facts of each case. See Iowa Code § 232.52(1). We recognize that, like criminal sentencing, this judicial function is more art than science. Given the standard of review, we find the juvenile court exercised its statutory discretion appropriately. Because the child has not offered any evidence of improper factors or clearly untenable reasoning, we affirm."

In re D.L., 22-0174 (Iowa App June 7, 2023)
The child in a delinquency matter seeks a reversal of the trial court finding she committed a delinquent act alleging insufficient evidence. The court of appeals upheld the trial court's decision

and found, ""Juvenile delinquency proceedings are 'special proceedings that provide an alternative to the criminal prosecution of children where the best interest of the child is the objective.'" In re T.H., 913 N.W.2d 578, 582 (Iowa 2018) (quoting In re M.L., 868 N.W.2d 456, 460 (Iowa Ct. App. 2015))"

* These cases are selected based upon the opinions of the presenter and the Youth Law Center as being significantly important either due to factual basis or legal analysis. These materials should not be used as legal authority. Attorneys are encouraged to do their own independent research.

DIVISION IV

ADOPTION NOTICES — HEARINGS

Sec. 9. Section 600.11, subsection 2, paragraph a, subparagraph (7), Code 2023, is amended by striking the subparagraph.

Sec. 10. Section 600.11, subsection 2, Code 2023, is amended by adding the following new paragraph:

NEW PARAGRAPH. *0b.* (1) At least twenty days prior to the adoption hearing, a copy of the order setting the adoption hearing shall be provided to siblings of the person to be adopted when either of the following applies:

(a) The sibling and the person to be adopted have an existing relationship.

(b) There is a court finding that ongoing contact with the person to be adopted is in the best interest of each sibling and the person to be adopted was a minor child when the parents of the person to be adopted had their parental rights terminated subsequent to the person to be adopted having been adjudicated a child in need of assistance.

(2) Notwithstanding subsection 3, a copy of the order setting the adoption hearing may be provided to a sibling via ordinary mail if the sibling's address is known. A copy of an order setting an adoption hearing sent to a sibling under ten years of age shall be addressed to the sibling's custodian or guardian.

(3) This paragraph does not require a copy of the order setting the adoption hearing to be provided to any of the following:

(a) A person whose parental rights have been terminated with regard to the person to be adopted.

(b) Siblings who are placed with the sibling to be adopted at the time the court issued the order setting the adoption hearing.

(c) A previously adopted sibling, unless the siblings were the subjects of child in need of assistance or termination of parental rights proceedings that occurred at the same time.