West Union Juvenile Law Training
Juvenile Case Law Update
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CINA Adjudication/Dispositional Hearing Appeals:

In the Interest of D.A., Affirmed (July 3, 2024)

A mother appeals the CINA adjudication and removal of her child. Specifically, the mother challenges that the child was "imminently likely to suffer harmful effects as a result of the failure of the mother to exercise a reasonable degree of care in supervision of the child." At the adjudication hearing, the CPW testified that the mother refused HHS coordinated drug testing three different times. Additionally, the CPW testified that the mother's sweat patch had been tampered with. This was concerning given the mother's history of methamphetamine use. The mother claims that she supplemented those requested tests by providing independent drug screens from the same time. She submitted negative hair, urine, and blood tests.

Ultimately, the juvenile court determined that the independent drug screenings, while negative, lacked validity due to their unsupervised nature. Further, the court held that precedent allows tampered sweat patches to qualify as positive results, as well as deeming refusals for HHS requested drug testing as a positive result. The juvenile court agreed with the State that the mother was not "cooperating with the department to ensure the child is safe".

After review, the appellate court ruled, "[i]t is close, but we think there is sufficient proof" that the child is likely to suffer harm under the mother's care. Factors that weighed against the mother included: the refused HHS coordinated drug tests, the tampered with sweat patch, her independent drug tests lacked validity and credibility due to their unsupervised nature, and her general lack of cooperation with HHS during the life of the case. While it was a close call, those compounding factors pushed the appellate court to side with the juvenile court.

In the Interest of N.S., No. 23-1865 (March 27, 2024) Affirmed (evidentiary too)

Does not directly appeal the adjudication of the child as CINA, she does challenge the juvenile court's denial of her motion to reopen the record of the adjudicatory hearing to allow the child to testify. Also challenges the court's dispositional decision to place custody of the child with the child's father and denial of her motion to change her service provider. However when reviewing

the denial of a motion to reopen the record, we review for an abuse of discretion. In re L.T., 924 N.W.2d 521, 526 (Iowa 2019). "In order to show an abuse of discretion, a party must show the juvenile court's action was unreasonable under the attendant circumstances." The therapist explained that the mother continues to manipulate and emotionally abuse the child, even during their supervised visits. The juvenile court found the therapist to be credible. We defer to the juvenile court's credibility determination and, given the therapist's concerns, conclude the juvenile court did not abuse its discretion when it denied the mother's motion to reopen the adjudicatory record to permit the child to testify. However, custody should be changed when the court finds by clear and convincing evidence that "[t]he child cannot be protected from some harm which would justify the adjudication of the child as a [CINA] and an adequate placement is available." Rather, the mother would simply prefer a different service provider. But the mother is not entitled to set the particular terms of services. Instead, it is her obligation to avail herself of all services provided and request additional services as necessary.

In the Interest of E.K., Affirmed (March 6, 2024)

A mother appealed a child in need of assistance adjudication order. The court of appeals affirmed the trial court. With regard to the supervision ground, the court of appeals cited a long line of cases recognizing the danger of children being supervised poorly near traffic. *See In re J.S.*, 427 N.W.2d 162, 165 (Iowa 1988)(concluding parents failed to supervise children playing outside in the street); *In re R.E.*, No. 12-0360, 2012 WL 1612495, at *4 (Iowa Ct. App. May 9, 2012) (explaining that it is dangerous for children to cross the street without proper supervision); and *In re D.T.*, 435 N.W.2d 323, 331 (Iowa 1989) (adjudicating children in need of assistance when they were observed playing unsupervised in the street). Does anyone else wonder how they avoided being a child in need of assistance under this standard?

The mother also argued that adjudication was improper because the child resided with his grandmother- not the mother. The court's aid was not required if there was no plan to reunify the child with the mother. But the court of appeals explained that the mother is still the mother… and that because there is no formal guardianship with the grandmother, the child is "at the mercy of the mother's whims."

In the Interest of B.G. and A.G. No. 23-1533 (March 6, 2024) Affirmed

He asserts the allegations of sexual abuse arose as a tactic by the mother in the parents' ongoing custody dispute. He notes the court found the mother was not a credible witness. The father also points out that the State did not present the child's forensic interview as an exhibit. He contends the allegations of sexual abuse were later denied by A.G. The father denies he sexually abused A.G. Although the court did not find the mother and grandmother credible, they found the child credible. The father indicated it was all fabricated by the grandmother and mother to harm in in their district court cases.

In the Interest of J.B., No. 23-1877 (March 6, 2024) Affirmed in Part, Reversed in part.

A court may enter a CINA adjudication if the court "concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence and that its aid is required." Iowa Code § 232.96(9) Under this section, the CINA adjudication requires a determination that a "parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to physically abuse or neglect

the child." Iowa Code § 232.96A(2) In the adjudicatory order, the district court did not make any findings that the child had been physically abused or neglected or was imminently likely to be physically abused or neglected, and on our de novo review of the evidence, we have found no support for such finding in the record. And while the State sets out the applicable law on section 232.96A(2), it does not provide any evidence of "specific prior incidents of abuse or neglect," nor any evidence to support that the child was imminently likely to suffer from physical abuse or neglect. The court confirmed on the other adjudication sections but overturned on this one.

In the Interest of C.F., C.D., and N.H., No. 23-1552 (April 10, 2024)
A mother appeals a dispositional order denying modification of placement. "Biological ties are not the only ties that are important." That's how the State summarized its argument for leaving six-year-old C.F., four-year-old C.D., and one-year-old N.H. in the care of Melesa, a woman the children view as their aunt. The mother requested placement with maternal grandmother rather than fictive kin. The court found that it was not in the children's best interest to move them to maternal grandmother. Children had been with fictive kin for an extended period of time, were very integrated, and there were concerns with maternal grandmother and being a safe placement. Although the law indicates that family homes are preferred over fictive kin homes, best interest will always be the controlling factor.

Procedural/Evidentiary

In the Interest of T.O., Affirmed, No. 23-1163 (November 8, 2023)
A mother's counsel filed a notice of appeal, but the mother did not sign it. The state moved to dismiss for lack of jurisdiction because the notice of appeal did not meet the requirements of Iowa Rule of Appellate Procedure 6.102(1)(a). Normally this would be a pretty uninteresting case, but there was an interesting wrinkle: the mother had recently been found not competent in a criminal case. The attorney tried to get her signature, but she would not sign it- or even recognize that the child in interest was her son. Her attorney asked the court of appeals to allow the appeal to proceed because he was acting as her GAL and she did not have "capacity" to understand the proceedings and decide whether to appeal.

All three judges agreed the appeal should be dismissed for lack of compliance with the appellate rules. The signature was missing. No amended notice fixed it later. And there was not even any indication that the parent "intended" to appeal. But Judge Greer wrote a really interesting concurring opinion expressing concern about the fundamental fairness of the rule- and querying whether parents need protection in cases where a medical professional finds a parent in incapable of participating. The problem is not just what to do in cases where parents have mental health issues- what about a parent who is unconscious after a car accident? In a coma? Judge Greer suggested more might need to be done to ensure appeal rights were protected.

In the Interest of K.P. No. 23-1509 (Dec. 6, 2023)

Not a set of interesting facts per se, but the father asserted in a motion to reconsider after TPR and in his appeal that he had been released from prison and could resume custody of the children. However, he had never requested to reopen the record and put that new evidence in. Therefore, it was not ever considered. This is a note to always ensure you're filing the correct motions to preserve your record on appeal.

In the Interest of K.C.-P., No. 23-1730 (January 24, 2024) Affirmed

Father appealed TPR, however, he was one day late on his appeal. After supreme court ordered him to file a reason as to why it was late, he requested a delayed appeal based on excusable neglect or inadvertence. He asserted he lived out of state and communication is sometimes delayed with his attorney, and that the untimely filing was out of his control, and the one day delay is negligible. The state did not resist the fathers request, and the supreme court ordered the issue to be submitted with the appeal. Based on the assertions AND the lack of resistance from the State, they granted the delayed appeal.

In The Interest of L.S., No. 23-1511 (January 10, 2024) Affirmed.

But does the importance given to that relationship mean the Iowa Department of Health and Human Services acts unreasonably and irresponsibly when it fails to place a child with the adoptive parents of a half-sibling? Because of the deference given to the department's decision for placement of a child, and the overriding concern for the child's best interests, we conclude the answer to that question is no. L.S. born Nov. 2022. Half sibling being adopted by intervenors. Intervenors told caseworker they'd be interested. March 2023 removal. Placed with paternal aunt and uncle who had cared for him on consistent bases since before removal. Though the court agreed the department "admittedly at times did not follow its own policies and procedures, their failure to do so does not amount to a lack in providing for the child's best interest nor calls for a remedy of the child's change in placement." Intervenors would need to prove that the department acted unreasonably or irresponsibly and contrary to the child's best interests in selecting a placement. Because there is no affirmative evidence in the record to support a finding that the placement is not suitable or is contrary to the child's best interests, we affirm the juvenile court's denial of the intervenors' motion for modification of placement.

In the Interest of A.G., Affirmed (April 24, 2024)

A mother appealed the modification of a dispositional order in a CINA proceeding. The mother argues that the court lacked authority to order a modification of the order without a hearing. A September 2023 disposition order retained the mother's custody of A.G. and introduced HHS supervision. However, due to growing concerns with the mother, the State filed a motion to modify the dispositional order in December 2023. The court granted the motion to modify, the mother moved to reconsider, the court denied the mother's motion, and A.G. was removed from her mother's custody and placed with HHS. A dispositional review hearing had been previously set for January 2024; at which time, the modification was planned to also be reviewed.

The mother argued that the modification was "done in secret" and Iowa Code section 232.103 states that, "[a] hearing shall be held on a motion to terminate or modify a dispositional order except that a hearing on a motion to terminate or modify an order may be waived upon agreement by all parties." She claimed that notice was not given, no hearing was held, and the hearing was *not* waived by parties; indicating that the court did not have the authority to modify the disposition.

In the mother's interpretation of the statute, she overlooked a crucial precedent set by the Iowa Supreme Court. The Supreme Court has found "it is implicit in the power of the juvenile court in monitoring its prior CINA orders to temporarily, even summarily, remove a child bending a hearing on the modification." *In re R.F.*, 471 N.W.2d 821, 823 (Iowa 1991). The appellate court found that the juvenile court did have the authority to modify the disposition, and the court properly granted the motion to modify pending the scheduled hearing.

In the Interest of H.P., L.P. & L.P., Affirmed (July 24, 2024)
Parents appealed termination of their parental rights. One of their complaints was that the trial court should have granted a continuance because they retained private counsel just before the termination trial. New counsel filed an appearance about a week before the TPR hearing was to begin. The trial court denied the motion because the parents were warned when they fired their appointed counsel that retaining new counsel would not be grounds for a continuance. The court of appeals found there was no abuse of discretion in denying the continuance, explaining that it was the parents' own choice to fire competent appointed counsel on the eve of trial. The court of appeals also noted that the trial court was right to consider the need to prevent undue delays in achieving permanency.

See also In the Interest of D.D., M.D. & J.D (discussed further below). In that case the court of appeals found no abuse of discretion when a trial court denied a motion to continue a TPR hearing because of the parent's work schedule. There had been enough notice of the hearing for the parent to make arrangements to attend, that her work shift was not until 11am (and the hearing started at 9am), and that she could have participated by phone but chose not to do so.

See also In the Interest of R.F., Affirmed (June 5, 2024) in which the court of appeals upheld a trial court's decision denying a mother's request to continue a TPR hearing due to illness. The court of appeals found there was no abuse of discretion because the parent could have participated virtually (noting that there was no absolute right to attend TPR hearings in person (*citing In re M.D.*, 921 N.W.2d 229, 232 (Iowa 2018)).

ICWA

In the Interest of M.W.T. and C.W.T., Reversed and Remanded (August 7, 2024)
A mother appealed termination of her parental rights, alleging that active efforts were not made and challenging whether there was sufficient evidence provided by the QEW that the tribe's "culture, custom, and laws" would support termination. The court of appeals found the record deficient on the second claim and reversed.

In order to terminate parental rights in an ICWA case, there must be testimony by a QEW about:

> Whether the tribe's culture, customs, and laws would support the placement of the child in foster care or the termination of parental rights on the grounds 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. Iowa Code Section 232B.10(2).

The mother did not challenge the qualifications of the QEW- just that the QEW's testimony did not address whether the tribe's culture, customs, or laws supported termination. The court of appeals complained that the expert's testimony did not directly (or even indirectly) address that question. General testimony about whether the children could enroll in the future, or whether a tribal customary adoption was appropriate was not enough. This is especially true when the requirements of the law are so specific- and courts must "strictly construe" the ICWA requirements. The court of appeals also took issue with the juvenile court's finding that the expert testified in support of termination- the court of appeals could not find evidence of that in the record.

Reasonable Efforts

In the Interest of M.H., Affirmed (June 5, 2024)

Parents appealed termination of their parental rights. The court of appeals affirmed the termination and one part of the opinion addressed waiver of reasonable efforts. The court of appeals agreed with the trial court that reasonable efforts should have been waived. The parents' rights had previously been terminated and the parents were once again abusing substances, denying use, and failing to take steps toward sobriety. There was a string cite to a line of similar cases- *In re R.B.*, No. 22-1346, 2022 WL 16631199 at *3 (Iowa Ct. App. Nov. 2, 2022); *In re I.W.*, No. 12-1602, 2012 WL 5356192 at *1-2 (Iowa Ct. App., Oct. 31, 2012); and *In re D.S.R.*, No. 01-1042, 2002 WL 100668, at *1-2 (Iowa Ct. App., Jan. 28, 2002).

The court of appeals also rejected the state's argument that the waiver of reasonable efforts order was a "final order" (requiring the parents to appeal that order separately. While some cases have considered waiver of reasonable efforts orders immediately appealable when part of a dispositional order, the broader authority on point holds that waiver of reasonable efforts is reviewable as part of any subsequent termination order. *See e.g. In re A.W.*, No. 04-1468, 2005 WL 67766, at *2 (Iowa Ct. App. Jan. 5, 2005).

Finally, the court noted the new provision in Chapter 232 forbidding courts from considering prior services offered to parents when making a decision to waive reasonable efforts. *See* Iowa Code Section 232.102A. Although the parents made no complaint regarding that rule, the court of appeals noted that the provision does not prevent the court from considering the parents "prior and current behavior and tendencies like we are considering here."

Permanency

In the Interest of L.S. and C.S., Affirmed (December 20, 2023)

A mother appealed a permanency order continuing placement of her two children in the sole custody of their father. The court of appeals affirmed the order- in spite of the fact that there was no evidence that the mother placed the children in harm's way and the evidence indicated that she had good parenting skills. The mother's inability to regulate her emotions- even after extensive mental health services- was the reason the children could not be returned to her custody. She made numerous unsubstantiated allegations of abuse by the father. She made similar unsubstantiated allegations to the police as well. The court of appeals explained that "continuous unfounded abuse reports operates a significant emotional harm to these children." *Knotek v. Mellin*, No. 191600, 2020 WL 5229429, at *8 (Iowa Ct. App. Sept. 2, 2020); *In re B.O.*, Nos. 1999-2649, 9-494, 98-1479, 1999 WL 1020536, at *3 (Iowa Ct. App. Nov. 10, 1999). An "inability to regulate emotions and interact with other impedes [the] ability to provide adequate care for … children." *In re K.S.,* No. 18-1759, 2018 WL 6705523 at *2 (Iowa Ct. App. Dec. 19, 2018).

In the Interest of L.H., Reversed and Remanded with Directions (January 10, 2024)

A 17-year-old child appealed the trial court's permanency order granting a six month extension for the mother to work toward reunification. The youth asked that termination proceedings be initiated immediately. The court of appeals agreed. The court of appeals relied on the youth's clear and thoughtful statements about "the historic lack of safety and consistency in her life due to her mother's [challenges]." While the court noted that the youth's wishes were not controlling- they are relevant and cannot be ignored." *In re A.R.*, 932 N.W.2d 588, 592 (Iowa Ct. App. 2019). And the court of appeals was unconvinced that an additional six months would lead to reunification in light of the mother's recent positive drug test and lack of compliance with expectations for improving her relationship with L.H. Parties in the related cases of L.H.'s siblings cases did not appeal the order, so the six month extension was undisturbed in those cases.

In the Interest of A.D., Reversed and Remanded (May 8, 2024)

A father appealed termination of his parental rights- but this case is in the permanency section of the case law update because the court of appeals reversed the juvenile court's TPR order and concluded a six month extension was warranted. Although the father struggled to address his substance abuse and mental health issues early in the case, the court of appeals gave more weight to his improved performance leading up to the hearing (substance abuse evaluation and treatment, medication management, increased participation in visits, and stable housing) than the trial court did. The trial court's reliance on the GAL's recommendation was misplaced when the GAL filed a barebones report and did not follow the mandates of Iowa Code Section 232.2(25). And the social work case manager's recommendation was entitled to less weight when she had limited contact with the father, was unwilling to give any weight to his negative hair stat test, and failed to move him to less supervision in visits in spite of his progress.

There was also an interesting section on drug testing. The court of appeals based its decision to grant an extension in part on the department's drug testing choices (related to a reasonable efforts argument made by the father). The father tested positive for methamphetamine via sweat patch on several occasions late in the case- but blamed a prescription drug for a false positive. Nonetheless, the department failed to perform any further testing on those positive tests, initially declined to provide a hair stat test at the father's request, and discounted other negative drug tests. They tried

to present expert testimony on the sweat patches, but the trial court denied the request because they did not give enough notice to the other parties.

There was a concurrence by Judge Buller explaining that any issues with the GAL's reporting should not have been considered by the court of appeals because error was not preserved. The father did not move for a continuance, move to compel a report to be filed, or seek to exclude the GAL's opinion. Merely complaining about the lack of a report is not preserving error. Judge Buller also expressed concern that the court's opinion implied that a GAL's failure to file a report could be viewed as reversible error- something he does not think the law contemplates, or legislature intended.

In the Interest of M.H., Affirmed (June 19, 2024)

A father appealed termination of his parental rights, arguing in part that a guardianship would be a better permanency approach. During the termination hearing, the father did not request a guardianship or name a particular proposed guardian (but the court still ruled out the idea in the TPR order). Without that information, the court could not review the factors that are generally considered to determine whether a guardianship was appropriate. *See e.g. In re A.S.,* 906 N.W.2d 467, 478 (Iowa 2018)(noting physical and verbal aggression between the parent and proposed guardian as a reason termination was in the child's best interests); *In re O.L.*, No. 23-1109, 2023 WL 6290677, at *3 (Iowa Ct. App. Sept. 27, 2023)(declining to impose a guardianship when there were concerns about the potential guardian's ability to set boundaries with a parent- and the potential guardian had not been asked whether she was willing to be the child's guardian.).

In the Interest of T.S., Affirmed in Part, Vacated in Part (August 21, 2024)

A mother appealed a bridge order entered in a child in need of assistance proceeding. The court affirmed the portion of the bridge order placing the child in the primary physical care of the father, but vacated the portion of the order placing conditions related to the mother's mental health treatment on the mother's visitation. The order allowed the father to receive information from the mother's doctor on her medication compliance and required the mother to execute a release to allow the father to review records related to evaluation or ongoing treatment. The court of appeals ruled that the child's best interests do not outweigh the mother's constitutional right of privacy in her medical and mental health records- and that if the case was ready to safely close (a precondition for a bridge order), these kinds of restrictions should not be necessary.

The court also addressed another interesting issue: whether an inaudible recording (as opposed to written transcript prepared by a court reporter) denied the mother due process. The court found there was no due process violation because the inaudible parts were largely parts where mother's counsel was speaking and the same counsel represented her on appeal. In addition, the mother could have used the procedures for recreating a record (under Iowa Rules of Procedure 6.806 or 6.807, but did not do so.

In the Interest of K.B.-S. and J.B., Reversed 23-0954 (September 13, 2023)

A mother appealed termination of her parental rights and the Court of Appeals reversed the trial court and granted a six-month extension. In early 2020, the mother was struggling with mental illness and consented to a guardianship. The judge supervising the guardianship directed HHS to investigate whether a CINA was needed. Initially, HHS did not want to get involved, but when

circumstances changed in early 2021, a CINA was sought. After about a year of court involvement, the mother' mental health improved, but she struggled with substance use. The juvenile court ultimately terminated her parental rights. The Court of Appeals noted that in the six or so months leading up to the termination hearing, the mother maintained her sobriety and took her mental health medications.

Judge Buller dissented. In his view, whether an extension should have been granted was not properly before the court because it was not argued in the petition on appeal. And, it was never requested in the hearings leading up to the termination. But even if it had been, the children had been out of the mother's custody for more than three years and there continued to be substance abuse, domestic violence, and mental health concerns.

In the Interest of L.S. and C.S., 23-1564 (Dec. 20, 2023)

After a 4-day permanency hearing, the Court ordered custody of the children to the father, with the mother having supervised visitation. On appeal, the mother argues that the juvenile court should have returned the children to her custody as the State failed to demonstrate by clear and convincing evidence both that the children could not be returned to her home and that placement of the children in the sole custody of their father was in their best interests.

In the end, the mother's inability to regulate her emotions even with the extensive mental-health therapy accessed over the life of this case works against her claim that she can parent without harm to the children. The numerous calls complaining about the actions of the father and alleging unsubstantiated instances of child abuse have demonstrated that the children could not be returned to her custody without harm as such calls and investigations themselves constitute harm. Likewise, placement of the children in the custody of the father was in their best interests to protect them from any harm that might stem from the mother's unregulated anxiety over her unhealthy focus on the father, and his relationships.

In the Interest of L.H. No. 23-1857 (January 10, 2024) Reversed and Remanded with directions

17 year old appeals the juveniles court order giving her mother 6 more months. L.H. argues that TPR be initiated immediately. L.H. wrote a letter to the court indicating she was safe in her foster home for the first time in her life basically, going to school (hadn't been since 6th grade), going to prom, doing things she would never be able to do with her mom. She felt safe and support and loved in the foster home- things she identified not having with mom. Other child, D.H., also agreed with TPR of his moms rights. Everyone in agreement to termination except mother. Court gave mom 6 more months. L.H. opposes the delay in permanency and wishes for termination proceedings to be initiated. Her wishes are not controlling, but they "are relevant and cannot be ignored." In re A.R., 932 N.W.2d 588, 592 (Iowa Ct. App. 2019) Bottom line, the mothers progress or steps forward was not enough to outweigh the best interests of the child for termination.

TERMINATION OF PARENTAL RIGHTS

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.

In the Interest of C.G. and W.G., No. 23-1234 (January 24, 2024) Affirmed

Father murdered the mother. State terminated on father. Father appealed on reasonable efforts. While not a strict substantive requirement for termination, "where the elements of termination require reasonable efforts by [the department], the scope of [the department]'s efforts after removal impacts the burden of proving those elements." In re L.T., 924 N.W.2d 521, 527 (Iowa 2019). So the State must establish the department made reasonable efforts to provide the parent with reunification services as part of its ultimate proof of a statutory ground when that ground requires such efforts. See id. At its core, a parent's reasonable-efforts challenge functions as a challenge to a component of the statutory grounds. Father did preserve error on this by filing a motion for visitation, despite his incarceration. Juvenile court denied the motion, but because he filed the motion he has preserved error. Father says state had obligation to seek modification of NCO to permit visitation as part of reasonable efforts. Father did this, court denied it in criminal court. Doesn't explain how state could make that successful when he was not. Further, reasonable efforts challenges must be related to services that would eliminate the need for removal. Father advances no argument to show how providing him with visits would have eliminated the need for removal when he was in prison for the rest of his life.

In the Interest of F.H., W.H. and B.H., No. 23-1686 (January 24, 2024) Affirmed in part, vacated in part

In march of 2022, mom applied for court appointed counsel and swore in an affidavit she was making 10$ at a pizzeria. Court approved her request as her income was "at or below 125% of the poverty guidelines." In July of 2023, court reappointed counsel for the termination proceedings. The order stated, "Per Iowa Code section 815.9, you may be required to reimburse the State for all or a portion of the attorneys fees and costs." In TPR order, Judge said mom claimed to be gainfully

employed and as such shall be responsible for her attorney fees. The language of the statue is clear "the juvenile court is to make an inquiry which includes notice and reasonable opportunity to be heard" before assessing costs against a parent. The court did not give Mom notice or ask about her reasonable ability to pay. Because the juvenile court did not comply with section 815.9(6), the court vacated the part of its order assessing attorney fees.

In the Interest of J.M., No. 23-1700 (February 21, 2024) Affirmed

Adoptive mother appeals TPR of her rights. Adopted mother allowed child to go back with biological mother. Grandmother lived with the grandfather who had a history of substance abuse and mental health concerns, as well as criminal problems. The mother is unable to protect the child in this environment because she does not think the grandfather presents any danger to the child.

In the Interest of C.S., No. 23-2011 (February 21, 2024) Affirmed

Despite all of the ongoing concerns, the court initially found termination was not in the best interests of the minor child due to their bond with the child. Instead, court determined establishment of guardianship with the foster family would serve the childs best interests. State filed a motion requesting the court reconsider, pointing out that same of the juvenile's courts conclusions were not supported by the record, no evidence foster willing to serve as guardians, and neither parent presented evidence of a parent-child bond so significant to warrant foregoing termination. The juvenile court reconsidered and agreed tpr would be in the best interests. The appeals court affirmed the decision of the district court. With respect to the juvenile court's initial determination that a guardianship would be in the child's best interests, we are reassured that the court reconsidered its initial determination. "[A] guardianship is not a legally preferable alternative to termination." In re B.T., 894 N.W.2d 29, 32 (Iowa Ct. App. 2017)

In the Interest of D.D. and L.D., Affirmed (February 21, 2024)

Parents appealed a TPR order, arguing in part that the state did not prove that the children could not be safely returned at the time of the TPR hearing. The court of appeals affirmed the trial court's decision, noting that the question of whether the children could be safely returned required consideration of the children's special needs. One of the children was autistic. The other had specialized medical needs. The court of appeals cited *In re J.W.D.*, which explained that:

> "[f]or [the child] to function effectively he will need parents with exceptional parental skills who are able to give him the special love, support, supervision, patience, and discipline necessary for him to overcome his present disabilities. It is not enough for this child to be provided with adequate food, clothing and shelter" 456 N.W.2d 214, 218 (Iowa 1990).

In the Interest of L.H. and L.H., Affirmed (March 27, 2024)

A father appealed termination of his parental rights, arguing (among other things) that the children could be returned to his custody because he had been sober from the start of the case- in spite of a consistently testing positive for cocaine and methamphetamine via sweat patch. Numerous UAs during the same period were negative for drugs. But the father's own expert testified that the UAs were merely a snapshot in time and the sweat patch covered a longer period. The expert testified that the likelihood of a false positive sweat patch was very low. The expert also testified it was unlikely related to a legal prescription drug. The court of appeals agreed with the trial court that

the father demonstrated he could conjure up short periods of sobriety while under the department's supervision, but he was not able to maintain sobriety when not being supervised.

In the Interest of D.W., Affirmed (April 10, 2024)

A mother appeals the termination of her parental rights. The mother challenges the State's evidence in support of Iowa Code section 232.116(1)(f)(3), as well as argues that she was provided with ineffective assistance of counsel. The third element of 232.116(1)(f) requires a child be removed from their parents' custody "for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days". The mother argues that because her child was subject to a trial home period longer than thirty days, this element has not been satisfied. She misinterprets the statute. The condition that "any trial period at home has been less than thirty days" is only applied when the child has only been removed for the last twelve consecutive months, not when the child has been removed for at least twelve of the prior eighteen months. Since the child had been out of her mother's custody from October 2021 to January 2024, the third element was satisfied.

The basis for the mother's ineffective-assistance claim is rooted in the fact that her counsel did not present evidence in support of the mother during the termination hearing. However, the mother does not identify specific evidence that *could* have and *should* have been presented at the hearing. Further, the mother did not attend the hearing, making it impossible for her counsel to call her to testify in order to refute the State's claims. Given these circumstances, the appellate court affirmed the trial court's TPR order.

In the Interest of F.W., Affirmed (May 8, 2024)

A father appealed termination of his parental rights- and made the argument that reasonable efforts had not been made. The court of appeals rejected his argument about reasonable efforts because Iowa Code Section 232.116(1)(b) (abandonment/desertion) does not require any showing that reasonable efforts were made as part of proving the ground (unlike, for example, the timeline grounds- which have been interpreted to require the state prove that services were offered to reunify as part of the state's burden of proving that the child cannot be returned at the time of the TPR hearing. *See In re C.B*. 611 N.W.2d 489 (Iowa 2000)(explaining that the reasonable efforts requirement is not a strict substantive requirement of termination, but the scope of the efforts provided impacts the burden of proving the child cannot be safely returned to the home).

Judge Tabor wrote a compelling concurrence arguing that it was time for the Iowa Supreme Court to "correct our court's practice of snubbing reasonable efforts claims in cases where the juvenile court terminates based on paragraph (b)." Judge Tabor noted that this case provided a perfect example of why… the court relied on the father's incarceration to prove the abandonment and desertion ground- but even incarcerated parents are entitled to reasonable efforts. *See In re S.J*., 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). Judge Tabor also noted that at least one Iowa Supreme Court case has reviewed a reasonable efforts challenge in a TPR appeal which included paragraph (b) as a ground. *See In re L.M*., 904 N.W.2d 835, 838, 840 n.9 (Iowa 2017).

In the Interest of D.W., Affirmed (August 21, 2024)

A mother appealed termination of her parental rights and denial of an extension. The court of appeals affirmed, in spite of a termination order that had some "deficiencies." The court of appeals noted that the TPR order included a summary of the testimony and recitation of the legal standards, but did not do a good job of applying the facts to the law. The best interests section of the order appeared to be "boilerplate that is not case specific." But given the *de novo* review on appeal, and the importance of a timely decision for the parties, the court of appeals did not remand- and applied the fact to the law in its decision. The lesson from this case appears to be that even when the decision seems clear cut to us after hearing the case for a long period of time, we need to include a section applying the facts to the law- and avoid boilerplate.

TPR: Best Interests/Discretionary Exceptions

In the Interest of D.D., M.D., & J.D., Affirmed (July 24, 2024)
Parents (and one of the children) appealed termination of the parents' rights. The case included a good discussion of how courts should analyze a child's objection to TPR. The court of appeals analogized to custody disputes in divorce cases- where preferences of the minor child cannot be ignored by are also not controlling. *See In re A.R.*, 932 N.W.2d 588, 592 (Iowa Ct. App. 2019). Courts should consider the child's age and grade level, the strength of their preference, their intellectual and emotional development, their relationship with family members, the reason for their decision, and the advisability of honoring the child's wishes. In this case, the court of appeals noted that much of the child's behavioral and emotional struggles could be attributed to the father's conduct. The child's "blind allegiance to his father undermined the child's welfare."

See also In the Interest of W.T., L.T. & L.T., Affirmed (June 5, 2024). In that case, the court applied a similar analysis to a child's objection to TPR. In addition, there was an excellent concurring opinion from Judge Greer noting that the child who objected to TPR had slipped through "cracks in the safety system" for children with mental health needs. The child had received minimal services over the last couple of years- and now faced potential institutionalization. She explained that "treatment is not just for reunification purposes but also for dealing with the impact of the breakup of the family."

Guardianship

In the Matter of the Guardianship of E.B., 23-0486, Affirmed (October 11, 2023)
Guardians appealed an order terminating a guardianship. The Court of Appeals affirmed. The opinion is a pretty straightforward application of the Iowa Supreme Court's decision in *In re Guardianship of L.Y.*, 968 N.W.2d 882(892) (Iowa 2022). But there are a couple of interesting things in the opinion: first, there is a good discussion of how *de novo* review does not mean the case is "decided in a vacuum" or "as thought the trial court had never been involved." It explained that great weight is accorded to the findings of the trial court when the testimony is conflicting. Second, the court of appeals treated the guardianship as a consented guardianship (the original guardianship order had been entered—in error—as an involuntary guardianship). The court obviously looked at the intent of the parties in creating the guardianship to decide how to analyze

the termination question. What does that tell you about how the court would analyze termination of a guardianship that was transferred from a CINA matter? If parties were in agreement to establishing permanency through a guardianship, is it voluntary? Or would the original CINA adjudication need to have been stipulated?

In the Matter of the Guardianship of R.T., No. 23-0414 (January 24, 2024) Affirmed
A grandfather appeals a district court order terminating his visitation with his granddaughter that was previously established as part of a guardianship. He argues that although termination of the guardianship was warranted, the court should have ordered his visitation with his granddaughter continue because such was in her best interests. 3 grandparents were co-guardians of the child. In 2017, application filed to modify guardianship and remove D.N. as co-guardian. They then filed application to terminate D.N.'s right to visitation. GAL recommended visitation continue, court denied application to terminate visitation. In 2023, they filed an application to terminate guardianship due to adoption. D.N. filed resistance and requested modifications to the visitation schedule. Citing 232D.503(1), court terminated guardianship due to adoption, and denied visitation due to no authority. Olds v. Olds states general rule grandparents cannot obtain visitation privileges over the objection of the custodial parent.

In the Matter of the Guardianship of A.K. and J.K., No. 23-1102 (January 24, 2024) Affirmed
Aunt and uncle appointed guardianship with parent consent in 2020. Mother later withdrew her consent and asked to terminate the guardianship, and in July 2023, district court terminated guardianships. Aunt and Uncle appealed, court found that the guardians did not show by clear and convincing evidence that terminating the guardianships would cause the girls physical harm or significant, long-term emotional harm sufficient to carry their burden under the rigorous-harm standard. Court reasoned that because mother had withdrawn consent, it had to be terminated unless guardians prove that terminating would result in rigorous harm. Gives express examples of what the rigorous harm could be.

In the Matter of the Guardianship of G.B., Affirmed (July 3, 2024)
The guardian, who is the child's grandmother, appealed the termination of the guardianship established through a CINA case. Less than two years after the guardianship was established, the child's mother petitioned for the termination of the guardianship due to her progress in parental capacity. As the guardianship did not have the mother's formal consent on file, the petition for termination is governed by Iowa Code section 232D.503(3). This section requires the court to terminate a guardianship "if the court finds that the basis for the guardianship set forth in section 232D.204 is not currently satisfied." Therefore, the mother would need to make a "prima facie showing that the guardianship should be terminated." If such a showing is made, it is up to the guardian to produce clear and convincing evidence that shows the guardianship should be maintained.

The grandmother did not claim that the mother failed to make this prima facie showing, so the appellate court therefore analyzed if the grandmother produced clear and convincing evidence in support of guardianship preservation. She did not identify an ongoing basis for the guardianship to be retained, but rather asked the court to keep a few factors in mind: the child's comfortability and familiarity of life in the grandmother's care, the grandmother's unsubstantiated claim that the

mother is still using alcohol, and the grandmother's claim that the mother has been uninvolved in the "nitty gritty" of care such as doctor appointments.

The court found that the mother had shown that the need for the guardianship was no longer present, and the grandmother was unable to establish a need for exception. The court ruled that the stability of a custodian does not outweigh the right of parents to terminate guardianships when warranted. In the court's words, "[t]hat is what our guardianship act envisioned should happen", and, "Mom has done what we've asked…and the reality is, the guardianship served its purpose."

In the Matter of the Guardianship of T.K., L.K., and S.K., Affirmed (July 24, 2024)

The guardians and minor children appeal the termination of a voluntary guardianship after the withdrawal of parental consent. The children's parents voluntarily placed the children with their paternal grandparents for purposes of guardianship. however, after 7 years, the mother withdrew her consent and filed to terminate the guardianship in late 2021. In order to prevent the termination of the guardianship, the appellants had to prove by clear and convincing evidence that termination would cause rigorous harm to the children. The appellate court acknowledged that the termination of a 7-year guardianship will surely be a difficult transition for the children. The mother acknowledges this anticipated difficulty as well, which motivated her to agree to a transition plan. Additionally, the guardians are the children's paternal grandparents and an established guardianship is not needed to maintain that connection. While the termination of the guardianship will be difficult, there was no evidence presented to support a conclusion that the transition would result in "rigorous" harm to the children. Finally, "[i]t is not unusual for Iowa's courts to remove children from conscientious, well-intentioned custodians with a history of providing good care to the children and place them with a natural parent. We do so again here because that is what the law requires."

Delinquency:

K.C. v. Iowa District Court for Polk County, Reversed (July 9, 2024).

The Iowa Supreme Court reversed a trial court's decision reducing the amount awarded to an expert in a juvenile delinquency waiver hearing. The court acknowledged that trial courts have discretion to determine reasonable compensation for experts but determined the trial judge abused her discretion when she reduced the amount without good enough reasons. Three of the four original reasons for the reduction (for example, drive time for testimony when the expert could testify virtually) were not relevant after the expert and counsel for the juvenile addressed those concerns. And when those concerns were addressed via a later motion, the motion was summarily denied. Even the state refused to defend the judge's order in the Supreme Court and conceded it should be reversed. The court did not remand the issue for further hearing- it simply directed the trial court to enter an order for the full amount of expert fees: $7,791.20.

State of Iowa v. Iowa Juvenile Court for Plymouth County, No. 22-0326 (December 15, 2023) Sustained and Remanded

A 17 year old child was charged in juvenile court for possession of child pornography. The child had a high GPA, was active in school, and didn't have any other behavioral concerns. However, over 500 photos and videos were found on his phone. A waiver hearing was set, and a therapist wrote a letter saying the child could be rehabilitated in the juvenile Court. The JCO and county attorney requested that the child be waived to adult court. He was waived.

The child requested to be waived down to Juvenile court and the district court denied this request based on a lack of ability to do so. The juvenile filed in Juvenile court asking to have the original waiver hearing overturned due to new evidence he had. Juvenile court vacated their original order. The state appealed, and the Iowa Supreme Court determined that the juvenile court did not have jurisdiction to vacate the order as the case was closed.

In the Interest of T.M. No. 23-0353 (February 21, 2024) Affirmed

T.M. Appeals adjudication. Challenges the admission of evidence in the form of his fathers testimony about the Xbox search history, and argues the evidence is insufficient to support the court's finding that he committed the delinquent act. First, while the challenged evidence was mentioned in the juvenile court's summary of the evidence introduced at trial, the court's ruling does not indicate that it relied on the challenged evidence in reaching its finding that T.M. committed the delinquent act, so it is unnecessary to resolve the challenge to the evidence. His sufficiency challenge rests on the contention that his sister is not a credible witness. We find it important that the court explicitly found the sister's testimony credible. We do not expect a six-year-old to remember minor details such as what she was wearing during the incident or where her family members were in the house while they were out of sight

In the Interest of S.M., No. 23-0898 (March 06, 2024) Affirmed

S.M., a minor child, appeals the juvenile court's adjudication of him as a delinquent child, finding that he committed the delinquent acts of domestic abuse assault causing injury or mental illness and domestic abuse assault while using or displaying a weapon. S.M. contends there was insufficient evidence to find he committed either delinquent act. Specifically, he argues that A.G. was not a credible witness because she "had a motive to fabricate her allegations." The court found S.M.'s witnesses less reliable, partially because it "believe[d] that [S.M's father and stepmother] likely spoke with each other about the photo prior to [the stepmother] being recalled because they used the exact same word, smudge, to describe what they saw." We give great deference to the juvenile court in determining the credibility of witnesses because it "was in the best position to observe [witness] demeanor and judge . . . credibility."

State of Iowa v. Derek Michael White, No. 22-0522 (June 28, 2024).

The Iowa Supreme Court held, in a 4-3 decision, that allowing a child victim to testify via a one-way closed circuit television system violated the defendant's confrontation rights under the Iowa Constitution. When the witness and accused are prevented from seeing each other, the state constitution is violated- even though the US Supreme Court has ruled otherwise in the context of child abuse cases under the federal constitution (that case was *Maryland v. Craig*- but the Supreme Court's later decision in *State v Crawford* may have weakened the strength of that precedent).

While this case was not in juvenile court, the majority opinion analyzed a similar juvenile court case in which an adjudication was affirmed under similar circumstances. The court distinguished that case (*In re J.D.S.*, 436 N.W.2d 342 (Iowa 1989)) by noting that the appeal did not raise that there should be an independent approach to analyzing the issue under the Iowa Constitution- and that a statement in that opinion about one-way mirrors being permitted by the Iowa Constitution were erroneous and should be overruled.

The court did not decide whether a two-way video system would pass constitutional muster.

A dissent by the Chief Justice noted that "[o]riginalism has limits. It cannot account for a technology that didn't exist in 1857- when the Iowa Constitution was ratified- and a type of case that would not have been brought in 1857." The Chief Justice noted White was able to see the boys during testimony. His lawyer was in the room with them. The boys knew he could see them. And given the special vulnerability of young children, they deserved some measure of protection during their testimony.

* 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.