

# Iowa Association of Criminal Defense Attorneys Annual Meeting November 10, 2022

## Juvenile Case Law Update November 2021-November 2022

Presented by  
The Honorable Judge Brent Pattison

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the Youth Law Center\*

### **CINA Adjudication:**

#### **In the Interest of A.H. and A.H., Reversed and Remanded (March 30, 2022)**

The State appealed dismissal of CINA adjudication petitions. The petitions were filed after a mental health emergency for the mother- as well as evidence of substance abuse by both parents. The Court of Appeals agreed with dismissal of the (n) ground but found the (c)(2) ground proven by clear and convincing evidence in light of the mother's unresolved substance abuse issues and the father's minimization of his own issues- as well as history of leaving the children with the mother in spite of her problems. The children may have their basic needs met while living in the father's home, but they were not safe there without court supervision under the circumstances.

#### **In the Interest of J.A., Affirmed in Part & Reversed in Part (February 16, 2022)**

A father appealed adjudication of his child as a child in need of assistance. The juvenile court adjudicated under (b), (c)(1) and (2), and (e). The child had severe asthma, and the parents unilaterally decided to reduce his medicine after a severe asthma attack- leading to an even more severe attack that led to intubation and hospitalization. The Court of Appeals agreed with the juvenile court on all the grounds except c(1)- the record did not include enough evidence of any mental injury. There was little evidence presented about his injuries related to the child's intellectual or psychological condition- it appears the state and DHS simply relied on the common sense notion that the parents' failure to follow medical advice and the resulting hospitalization would have caused trauma. Contrary to that assumption, the evidence before the court was that he was in good mental health under the circumstances and had no behavioral concerns. The Court of Appeals summarized a handful of cases that nicely summarized the different ways the State can prove the c(1) ground. The Court of Appeals also affirmed the (b) ground- noting that a failure to provide needed medical care could cause a nonaccidental physical injury.

### **In the Interest of H.K., Affirmed in Part and Reversed in Part (February 16, 2022)**

A mother appealed adjudication of her child as a child in need of assistance. The Court of Appeals agreed with adjudication under (c)(2) and (n)- concluding that the evidence of the mother's methamphetamine and alcohol use led to harmful effects for the child. But the Court of Appeals reversed on the (p) ground. The Court of Appeals reasoned that the (p) ground requires more than merely evidence that the parent was under the influence while caring for the child- it requires evidence of use or possession in the presence of the child or in the child's home. While there may have been some circumstantial evidence of use by the parent while the child was present- it was not enough to provide clear and convincing evidence for the (p) ground- even when liberally construing the statute as required by 232.1.

### **In the Interest of K.G., Affirmed in Part and Reversed in Part (January 27, 2022)**

A mother appealed adjudication under 232.2(6)(b) and removal of the child from her care. The Court of Appeals agreed with her that there was not clear and convincing evidence of nonaccidental injury when the medical opinions offered were not of a high degree of certainty and no one witnessed any physical abuse, and there was no history of physical abuse by the mother. With only one injury and conflicting evidence about whether it was nonaccidental, the state failed to meet its burden.

The Court of Appeals nonetheless affirmed the removal. The parents were in the midst of a high conflict divorce and both parents made multiple allegations against each other to DHS. The department worker testified that he had no safety concerns with the father, but there were safety issues in the mother's home. Her "single-minded" focus on the father and his conduct- at the expense of the child's well being- provided the basis for ongoing removal.

In a combined concurrence and dissent, Judge Greer agreed that the State failed to meet its burden on the (b) ground, but also noted that an important basis for the removal was the injury sustained by the child- and if it was not enough for an adjudication, it is not enough to support removal. Judge Greer also took issue with the way the state and DHS focused on the mother's anger with and behavior toward others as the reasons for the removal- rather than any particular harmful effects experienced by the child.

## **Delayed Appeals**

### **In the Interest of K.P., Affirmed (February 16, 2022)**

A father and mother appealed termination of their parental rights. The Father's appeal was dismissed and the mother's was affirmed. The father's appeal was dismissed because it was not filed until a few days after the appeal deadline. While it was clear the father intended to appeal, there was nothing other than the attorney's speculation (the complications of mailing the document from prison) to support that the failure to file a timely notice of appeal was beyond the father's control. And the burden is on the party seeking the delayed appeal to demonstrate it should be granted. Even if there was proof on that point, a four day delay was likely not "negligible." In another case decided the same day (*In the Interest of B.W. et al*), the Court of Appeals determined a three day delay was pushing the limits, but still allowed the delayed appeal.

### **In the Interest of O.W., Affirmed (December 15, 2021)**

A mother appealed termination of her parental rights. At the outset, the Court considered whether a delayed appeal should be granted. Her petition on appeal was one day late. Counsel explained that the petitioner was ready to be filed on the right day- but exposure to an individual with COVID 19 resulted in counsel quarantining- until a medical professional explained further quarantine was not necessary the next day. Relying on *In re A.B.*, 957 NW2d 280 (Iowa 2021), the court granted the delayed appeal because the parent clearly intended to appeal, the delay was outside the parent's control, and the delay was negligible.

### **In the Interest of W.T., Decision of COA Vacated, Juvenile Court Affirmed (Dec. 3, 2021)**

The Iowa Supreme Court reviewed a Court of Appeals decision denying the father a delayed appeal related to termination of his parental rights. The father's notice of appeal had been one day late due to a calendaring error by his lawyer. The Court of Appeals noted there were no extenuating circumstances supporting delayed appeal for this kind of attorney error- and read the Iowa Supreme Court's decision in *In re A.B.* to require something more than inadvertent error. The Supreme Court disagreed- ruling that delayed appeals should be granted when the parent clearly intended to appeal, the delay was outside the parent's control, and the delay is negligible- no matter whether there were extenuating circumstances or merely an inadvertent error. The majority opinion contains a great summary of all the COA cases that had addressed the issue of delayed appeal- and how they came out. The "poster child" for no "extenuating circumstances requirement" was a case where the petition was filed 32 seconds late- but the delayed appeal was denied.

Two dissenting opinions were filed. Justice Waterman disagreed that there was no "extenuating circumstances" requirement in the test from *In re A.B.* He noted that a "common denominator in all appeals is the need for clarity, predictability, and even handed enforcement of the rules." These values support imposing strict deadlines- just like in other areas of litigation. He called the delayed appeal doctrine in CINA/TPR cases a "fool's errand." Justice McDermott's shorter dissent explained that the law requires dismissal of late appeals based on lack of jurisdiction- without resorting to *ad hoc* exceptions.

## **Procedural/Evidentiary**

### **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. *See 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 the Interest of R.S.-W, Affirmed on both Appeals (Iowa Ct. App. August 17, 2022)**

The parents suggested the State used prior proceedings to prove termination despite the Supreme Court recently holding that an adjudication in a prior closed case could not establish the adjudication requirement in the present case. *See In re L.B.*, 970 N.W.2d 311, 314 (Iowa 2022) However, the court held that since the child was already adjudicated in these proceedings, that holding did not apply and that previous DHS involvement and CINA cases can be used to meet the statutory requirements of Iowa Code section 232.116(1)(f) and (g).

**In the Interest of J.B., Reversed and Remanded (March 30, 2022).**

Parents appealed a TPR decision. The Court of Appeals reversed the TPR because the parents had not been provided proper notice of the TPR hearing. The parents had been served by publication, but Iowa Code Section 232.112 requires specific types of notice unless notice is dispensed with when a parent cannot be located by a diligent search. There was no evidence offered at the TPR hearing about a diligent search- and there were plenty of ways the parents might have been located. The parents also argued on appeal that the termination proceeding happened before a CINA dispositional hearing in the case. The Court did not reach the question of whether that would violate due process.

**In the Interest of G.E., Affirmed (November 2021)**

A half-sister appealed denial of her motion to intervene in a child in need of assistance case during a joint permanency and TPR hearing. The Court of Appeals affirmed the trial court, explaining that the district court has some discretion with regard to the question of whether an intervenor is “interested” in the litigation. *In re E.G.*, 738 N.W.2d 653, 655 (Iowa Ct. App. 2007)(“The juvenile court is accorded a certain amount of discretion to deny intervention in proper cases.”). “The closeness of the relationship between the child in interest and intervenor is a critical factor in determining the sufficiency of the interest of an intervenor.” *In re D.H.*, 20210 WL 1375197, at \*1 (Iowa Ct. App. Apr. 8, 2010). In this case, even though the half sibling was a relative, the evidence did not demonstrate that she had meaningful involvement in the child’s life prior to the motion to intervene.

## **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.

### **In the Interest of T.F. and T.F., COA Decision Vacated, Juvenile Court Judgement Reversed and Remanded with Instructions (Iowa March 11, 2022)**

The father and Tribe sought further review of a Court of Appeals decision (see below) affirming a juvenile court’s order terminating parental rights after denying transfer of jurisdiction requested by the Tribe. The Supreme Court unanimously agreed that that the juvenile court erred when it denied the Tribe’s motion to transfer jurisdiction, and given that conclusion, the Supreme Court vacated the termination order and remanded the case for transfer to the tribal court. There were a host of issues on appeal- one threshold issue being whether the denial of a transfer motion is a final, appealable order. The Supreme Court determined that denial of a transfer order is not an appealable final order- because it does not dispose of all the issues in the case. The Supreme Court analogized the order to a ruling on *forum non conveniens*.

Another issue was whether there was good cause to deny transfer, the Supreme Court unanimously agreed that the Juvenile Court erred when it found there was. The opinion also discussed the two relevant Iowa cases on transfer. The Supreme Court found “transfer” deals with a threshold, limited question of jurisdiction- and allowing the state court to decide that it is not in the best interests of a child to have a tribal court decide what is in the child’s best interests is simply unacceptable given the history and statutory language in ICWA. The case might have been different if the children were over the age of 12 and objected- BIA guidelines give children the right to object in that context- but neither of these children were over the age of 12. As a result, *J.L.* was overruled.

### **In the Interest of C.C., Reversed and Remanded (November 23, 2021)**

A mother appealed termination of her parental rights arguing that the father failed to meet the requirements of 600A and ICWA's qualified expert witness requirement. The Court of Appeals agreed with regard to the ICWA claim. While a qualified expert witness testified, she did not give an opinion on whether or not terminating the mother's rights would cause severe emotional or physical damage to the child- which is a required element for TPR. There was a nice summary of ICWA case law surrounding the importance of avoiding cultural bias- and the court found no evidence of such bias in the trial- but a strict reading of the statute required specific testimony relating to the harm TPR might cause- and it was not addressed.

## **TPR: Grounds**

### **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 the Interest of L.B. COA Decision Vacated, Juvenile Court Judgment Reversed and Remanded, (February 18, 2022)**

A father appealed a juvenile court’s order terminating his parental rights. The Court of Appeals had affirmed the decision (see summary below) and so the father sought further review. The dispositive issue was whether a juvenile court may rely on a previous CINA adjudication as the basis for a TPR under Iowa Code Section 232.116(1)(f) or (g) when there is no current CINA adjudication in place at the time of termination. The Supreme Court answered that question in the negative.

The TPR was filed after a lengthy CINA case had closed with the child in the guardianship of her grandmother- and then the guardianship was disrupted by the mother’s failure to cooperate with it- including refusing to return the child to the guardian at one point. The juvenile court moved forward with a second CINA adjudication and TPR hearing held together- adjudicating the child again and terminating based on the length of time the child had been out of the home and the prior adjudication. The Supreme Court concluded that a past CINA adjudication in a closed CINA proceeding cannot be the necessary predicate for proving the (f) or (g) grounds under 232.116(1). Justice Appel wrote that while nothing in (f) or (g) require a present adjudication, 232’s appropriate focus on reunifying families makes it insensible to permit an adjudication in a prior, closed proceeding to be used to support a new termination petition. Termination of parental rights is the “death penalty” of civil proceedings- and as such, “short cuts eliminating the need for adjudication in a current proceeding are inappropriate given the dire consequences of parental termination.”

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

**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 one 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".

**In the Interest of E.W. and J.F., Affirmed (March 2, 2022)**

A mother appealed termination of her parental rights to two children. She did not challenge the grounds alleged in the petition, but argued termination was not in their best interests. The most interesting aspect of the appeal was the argument that 15 year old E.W. should not have been excluded from the Courtroom for parts of the hearing- and that E.W.'s objection to TPR (as well as her close bond with her mother) should have led to the Court invoking a permissive exception to TPR. E.W. also appealed- as did her GAL.

At the Termination Hearing, the Court allowed E.W. to testify and allowed time for her counsel to communicate with her between witnesses- but she was not permitted in the courtroom during the State's presentation of evidence. The Court of Appeals agreed with the juvenile court's handling of E.W.'s participation. The Court explained it might not have been properly preserved for review because the juvenile court essentially gave E.W. exactly what her attorney asked for in terms of participation. In addition, the statute on child participation (which states only the attorney for the child can excuse participation), implies that full participation is not always necessary because there

is only a “presumption” of participation for children 14 and older. In addition, the Court of Appeals concluded, like the juvenile court, that while E.W.’s position was important, the pole star for the Court was E.W.’s best interests- and termination served those interests in a case in which E.W. experienced an “extensive history of trauma” in her mother’s care.

**In the Interest of C.S., Reversed and Remanded (February 16, 2022)**

A mother appealed termination of her parental rights. The case involved an older teenager- who was 17 at the time of the termination hearing. The mother made no argument regarding the grounds for termination, but argued termination was not in the child’s best interests. The child was thriving in his foster home and wanted to stay there, but the foster parents did not want to adopt the child, and he did not want his mother’s rights to be terminated. The Court of Appeals rejected the idea of creating a legal orphan, and noted that termination of the mother’s rights did not serve the child’s interests at this late stage in his adolescence. It could even make things worse- leading him to “idealize” her and “impede [his] ability to form realistic current relationships.” Marsha Garrison, *Why Terminate Parental Rights?*, 35 STAN. LAW. REV. 423, 461 (1983). Under these circumstances, the Court found not only that TPR was not in his best interests, but found the mother met her burden for a discretionary exception to TPR under 232.116 (3) (b) and (c). Instead, the Court found Another Planned Permanent Living Arrangement to be the better permanency outcome and remanded for an order dismissing the TPR petition.

**In the Interest of J.L., Affirmed (Iowa Ct. App. January 27, 2022)**

Intervenor maternal relatives appealed the juvenile court ruling removing DHS as guardian and appointing foster parent intervenor instead. The Court of Appeals affirmed the juvenile court ruling, concluding that “a “forever home” requires more thought than rote application of a rule.” The young child had been with his foster parent since shortly after his birth, but DHS decided to move the child to maternal relatives after an adoption selection committee meeting. The adoption worker was unable to testify about any of the factors considered aside from placing the child with relatives. She was not aware of the administrative rules related to placement selection. In addition, the adoption worker did not seek out input from others who were more knowledgeable about this child’s needs.

The case provides an excellent summary of the case law when a party seeks removal of DHS as guardian, and a concurrence that stressed how this case was different than other cases where the Court of Appeals has refused to remove DHS as guardian: “the common denominator in those cases is the thorough, thoughtful and detailed decision by the department.” DHS does not have to agree with therapists, CASAs or GALs about who should be the adoptive family, but they do have to demonstrate that they considered all of those viewpoints and have a well thought out reason to pick a different family. Mere platitudes about keeping children with family are not enough.

## **Guardianship**

### **In the Interest of C.S., Affirmed in Part, Reversed in Part, and Vacated in Part (Iowa Ct. App. May 11, 2022)**

The Court of Appeals reversed the denial of the father's motion to terminate the guardianship and vacated the guardianship order because despite the father signing a "consent" to the guardianship he was not given a copy of the petition nor was he ever served with notice of the petition by personal service as required by the minor guardianship statute. Absent proper service the court did not have jurisdiction to enter a guardianship order. However, the father's rights were terminated pursuant to 600A because the relatives had still been "custodian" of the child which gave them standing despite not being the child's guardians and they met the statutory grounds to terminate and found it was in the child's best interest.

### **In the Matter of the Guardianship of BB, Affirmed (February 22, 2022)**

A father appealed appointment of the child's maternal aunt as guardian, arguing that the statutory requirements for guardianship had not been met and too little weight was given to the parental preference. The Court of Appeals disagreed. While the constitutionally based parental preference survived the redrafted guardianship code in Iowa, a parent who has taken an extended holiday from the responsibilities of parenthood may not take advantage of the preference. *See In re Guardianship of Stewart*, 369 N.W.2d 820, 823 (Iowa 1985). The principle of an "extended holiday" is embodied in 232D.204(1)(b)- in which a guardianship can be established when there has been a demonstrated lack of consistent participation in the child's life. Here, the father had not been meaningfully engaged in the child's life- essentially ceding custody of the child to the aunt since 2018.

### **In the Matter of the Guardianship of L.Y., Decision of the Court of Appeals Vacated; Juvenile Court Judgment Affirmed (Iowa January 14, 2022).**

Guardians appealed from an order terminating a minor guardianship. The mother had consented to the original entry of the guardianship. The court of appeals noted terminating the guardianship would be harmful to the child because the mother had played little role in the "nitty gritty" of caring for the child. It would also remove the child from the only home she has known for 10 of her 11 years. Under those circumstances, the guardianship should not have been terminated. The Supreme Court explained in it's opinion vacating that of the Court of Appeals, that there is a rebuttable presumption that a guardianship based on consent should end when consent is revoked- just like under prior law (in spite of no mention of "parental preference" in 232D). Given the important constitutional rights at stake, the burden should be on the guardian to rebut the presumption of parental fitness when consent is withdrawn. In this case, the guardian failed to present clear and convincing evidence (the new statute was silent on the burden) that the guardianship should continue because it would be harmful to the minor to terminate it and the minor's interest in continuation of the guardianship outweighs the parent's interest in terminating it. *See Iowa Code Section 232D.503* Evidence that the child would be better off with the grandparents was not enough.

## **Private Termination per Chapter 600A**

### **In the Interest of N.C., Reversed and Remanded (June 15, 2022)**

Child's legal guardian appealed juvenile court order dismissing her petition to terminate father's parental rights claiming father abandoned the child and termination of his parental rights are in the child's best interest. The father had paid child support during the life of the guardianship through his wages being garnished. "We reverse the juvenile court order and remand with instructions to enter an order terminating the parental rights of both parents." Child's legal guardian is the maternal grandmother. Father relied on mother to communicate and visit the child. "The father took minimal affirmative action of his own to be a part of the child's life, much less 'maintain[ ] substantial and continuous or repeated contact with the child.'" "While he may have been interested in the child, we find the father's meager efforts to demonstrate his parental responsibilities and maintain a place in the child's life are insufficient."

### **In the Interest of R.G., Reversed and Remanded (June 15, 2022)**

Father appealed the termination of his parental rights under 600A.8 (2020) contending he did not abandon his daughter and termination was not in her best interests. Termination reversed due to R.G.'s mother's failure "to offer clear and convincing evidence of abandonment." While father was inconsistent with contact and visits due to being in and out of incarceration, the court determined his actions manifested that subjective desire to be a parent. Mother continuously rejected and blocked father's efforts to communicate and see his daughter even though he was inconsistent with his visitation and struggled with substance abuse.

### **In the Interest of J.V., Reversed and Remanded (March 2, 2022)**

A mother appealed termination of her parental rights under Iowa Code Section 600A, complaining that she did not receive statutorily required notice of her right to counsel or a video conference hearing. After the termination petition was filed, notice was served on the parents, but when the hearing was reset as a video conference hearing, no formal hearing was created and thus no order was served on the parent. The GAL reported that he forwarded the link to the parent, but she did not appear for the video hearing. The Court of Appeals reversed the termination because the mother was never served with a notice of the hearing, or her right to counsel as required by statute.

## **Delinquency:**

### **In the Interest of D.R., Affirmed (Iowa Ct. App. July 20, 2022)**

Delinquency Restitution Calculation. The State presented evidence of replacement cost which they argued should be used to determine a juvenile's restitution. The juvenile argued that restitution is limited to the actual value of the property, not the cost to replace it; The court found that in general, the rule in Iowa is, "restitution should be set for the fair and reasonable cost of replacement, but that it is not to exceed the value of the property immediately prior to the loss finding a damage award 'need only bear a reasonable relationship to the loss suffered to be sustained."

### **In the Interest of P.L., Affirmed, (Iowa Ct. App. July 20, 2022)**

The question presented here is whether a consent decree is an available dispositional option for a child on youthful offender status. The juvenile court made no error in determining a consent decree

was not an available dispositional order for a child on youthful offender status. The court found when a youth is waived to district court under Iowa Code section 232.45(7), the youth returns to juvenile court for a disposition hearing. Consent decrees are not dispositional orders. They are a pre-adjudication remedy. The court is limited to the dispositional outcomes included in Iowa Code section 232.52—which include no reference to consent decrees. The best case scenario for a child on youthful offender status is not a consent decree in juvenile court, but rather a deferred judgment in district court.

**In the Interest of N.H., Affirmed in Part, Vacated in Part and Remanded (January 27, 2022)**

A juvenile appealed a restitution order, arguing it was not supported by substantial evidence, fell outside the scope of liability, or both. The case involved an assault during a high school football practice. The state requested restitution in the amount of 2,487.00- representing lost wages by the victim’s mother, costs for a security system, mileage for medical and legal appointments, and the cost of a letterman jacket.

The Court of Appeals provided a really nice summary of the law surrounding restitution orders and explained that restitution orders are reviewed for substantial evidence supporting them, as well as errors of law. At the heart of the restitution question is whether the defendants actions caused the damages suffered by the victim- and the court must consider actual causation as well as whether the damage is within the “scope of liability.”

The Court of Appeals determined the letterman jacket fell outside the scope of liability. It was not damaged during the assault. The parents purchased the letterman’s jacket after the victim changed schools as a result of the parents’ perception that the school was not accommodating the victim’s special needs. The Court of Appeals also limited the mileage claim by the parent because it included some mileage related to meetings with a private attorney the parents hired and because some of it was paid for by Crime Victim Compensation. The Court agreed, however, with the trial court that most of the mileage costs had substantial support- and that there was substantial support for the claim for lost wages.

**In the Interest of B.L., Affirmed (December 15, 2021)**

An adjudicated delinquent appealed the district court’s finding that statute authorizing his delinquency records to be public records was constitutional. The juvenile had been adjudicated delinquent for sexual abuse in the second degree. Although the juvenile was successful in juvenile court services and registry placement was waived, the court denied his request to keep his records confidential until they could be sealed in two years. Counsel for the juvenile argued failing to keep the records confidential was cruel and unusual punishment. Ultimately, the trial court and the COA both held that requiring a two year period before sealing was not “punishment”- so the court did not consider whether it was cruel and unusual.

\* 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.