# STATE JUDICIAL NOMINATION COMMISSION
# AND OFFICE OF THE GOVERNOR
# JOINT JUDICIAL APPLICATION

*Please complete this application by placing your responses in normal type, immediately beneath each request for information. Requested documents should be attached at the end of the application or in separate PDF files, clearly identifying the numbered request to which each document is responsive. Completed applications are public records. If you cannot fully respond to a question without disclosing information that is confidential under state or federal law, please submit that portion of your answer separately, along with your legal basis for considering the information confidential. Do not submit opinions or other writing samples containing confidential information unless you are able to appropriately redact the document to avoid disclosing the identity of the parties or other confidential information.*

## PERSONAL INFORMATION

**1. State your full name.**

Jennifer Benson Bahr

**2. State your current occupation or title. (Lawyers: identify name of firm, organization, or government agency; judicial officers: identify title and judicial election district.)**

District Associate Judge, Fourth Judicial District of Iowa

**3. State your date of birth (to determine statutory eligibility).**

March 7, 1980 (41 years old)

**4. State your current city and county of residence.**

Crescent, Pottawattamie County

## PROFESSIONAL AND EDUCATIONAL HISTORY

**List in reverse chronological order each college and law school you attended including the dates of attendance, the degree awarded, and your reason for leaving each school if no degree from that institution was awarded.**

Drake University Law School
Attended August 2002 – May 2005
J.D., May 2005

University of Iowa
Attended August 1998 – May 2002
B.A. in History, May 2002

**5. Describe in reverse chronological order all of your work experience since graduating from college, including:**

**a. Your position, dates (beginning and end) of your employment, addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the name of your supervisor or a knowledgeable colleague if possible.**

**b. Your periods of military service, if any, including active duty, reserves or other status. Give the date, branch of service, your rank or rating, and present status or discharge status.**

Fourth Judicial District of Iowa
Position: District Associate Judge
Dates: May 3, 2019 to Present
Address: Harrison County Courthouse
111 N. 2nd Ave.
Logan, IA 51546
Supervisor: The Honorable Jeffrey L. Larson, Chief Judge (712-755-2039)
Colleague: The Honorable Eric J. Nelson, District Associate Judge (712-328-5795)

Pottawattamie County Attorney's Office
Position: Assistant County Attorney
Dates: January 2018 to May 2019
Address: Pottawattamie County Courthouse
227 S. 6th St., 5th Floor
Council Bluffs, IA 51501
Supervisor: Matthew D. Wilber, County Attorney (712-328-5649)
Supervisor: The Honorable Margaret "Maggie" Reyes (712-328-5794)
Colleague: Patrick J. Eppler, Assistant County Attorney (712-328-5649)

Webster County Attorney's Office
Position: County Attorney
Dates: January 2015 to January 2018
Address: 723 1st Ave. S.
Fort Dodge, IA 50501
Colleagues: Ryan Baldridge, First Assistant County Attorney (515-573-1452)
Brad M. McIntyre, Assistant County Attorney (515-573-1452)

Webster County Attorney's Office
Position: Assistant County Attorney
Dates: August 2011 to January 2015
Address: 723 1st Ave. S.
Fort Dodge, IA 50501
Supervisor: Ricki L. Osborn, Former Webster County Attorney (515-955-5585)

Iowa Central Community College
Position: Adjunct Instructor of Constitutional Law
Dates: August 2013 to January 2015
Address: 1 Triton Circle
Fort Dodge, IA 50501
Supervisor: Joe Wright, Coordinator for Criminal Justice and Campus Security

Humboldt County Attorney's Office
Position: County Attorney
Dates: January 2007 to July 2011
Address: 203 Main St.
Dakota City, IA 50529
Colleague: Ricki L. Osborn, Former Webster County Attorney (515-955-5585)

City of Fort Dodge
Position: Special Prosecutor
Dates: 2010 to 2011 (approx.)
Address: 819 1st Ave. S.
Fort Dodge, IA 50504
Supervisor: Maurice Breen (deceased)

Walker Law Office
Position: Associate Attorney
Dates: August 2006 to December 2006
Address: 320 South 12th St.
Fort Dodge, IA 50501
Supervisor: Charles A. Walker

Second Judicial District of Iowa
Position: Law Clerk
Dates: August 2005 to August 2006
Address: Webster County Courthouse
701 Central Ave.
Fort Dodge, IA 50501
Supervisor: The Honorable Kurt L. Wilke, Former Chief Judge (515-576-0581)

Dallas County Attorney's Office
Position: Prosecuting Intern
Dates: January 2005 to May 2005
Address: 207 N. 9th St. #1
Adel, IA 50003
Supervisor: The Honorable Stacy Ritchie (Former Assistant County Attorney)

Lawyer, Lawyer, Dutton, Drake & Conklin, LLP
Position: Law Clerk
Dates: March 2004 to March 2005
Address: 2469 106th St.
Urbandale, IA 50322
Supervisor: Channing L. Dutton

Drake Legal Clinic, Criminal Defense Program
Position: Student Attorney
Dates: January 2004 to August 2004
Address: 2400 University Ave.
Des Moines, IA 50311
Supervisor: Robert Rigg, Professor of Law and Director of Criminal Defense Program

Marks Law Firm, P.C.
Position: Law Clerk
Dates: March 2003 to March 2004
Address: 4225 University Ave.
Des Moines, IA 50311
Supervisor: Samuel Z. Marks

Iowa State University Extension and Outreach
Position: 4-H Summer Program Intern
Dates: May 2002 to August 2002
Address: 906 6th St.
Harlan, IA 51537
Supervisor: Patti Blum, Former 4-H Program Assistant

**6. List the dates you were admitted to the bar of any state and any lapses or terminations of membership. Please explain the reason for any lapse or termination of membership.**

I was admitted to the Iowa bar in 2006 with no lapses or terminations in membership.

**7. Describe the general character of your legal experience, dividing it into periods with dates if its character has changed over the years, including:**

**a. A description of your typical clients and the areas of the law in which you have focused, including the approximate percentage of time spent in each area of practice.**

**b. The approximate percentage of your practice that has been in areas other than appearance before courts or other tribunals and a description of the nature of that practice.**

**c. The approximate percentage of your practice that involved litigation in court or other tribunals.**

**d. The approximate percentage of your litigation that was: Administrative, Civil, and Criminal.**

**e. The approximate number of cases or contested matters you tried (rather than settled) in the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel, and whether the matter was tried to a jury or directly to the court or other tribunal. If desired, you may also provide separate data for experience beyond the last 10 years.**

**f. The approximate number of appeals in which you participated within the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel. If desired, you may also provide separate data for experience beyond the last 10 years.**

Law Clerk Positions:

While in law school and immediately following graduation, I held various law clerk positions to gain exposure to different areas of law and help define my career path. Each of these experiences provided insight into the daily work of a practicing lawyer, and growth in my knowledge and skills.

As a law clerk at the Marks Law Firm, P.C., from March 2003 to March 2004, I assisted the firm's attorneys with case preparation and research primarily related to court-appointed criminal and juvenile matters. I drafted case summaries and memorandums analyzing issues presented in cases. I prepared and edited various pleadings and motions, discovery documents, and probate and real estate documents. I also accompanied attorneys to hearings and trials.

From March 2004 to March 2005, I worked as a law clerk at Lawyer, Lawyer, Dutton, Drake & Conklin, LLP. I carefully reviewed insurance policies and performed research related to personal injury and workers' compensation cases. I also drafted briefs, completed discovery materials, and assisted with trial preparation.

Following graduation from law school, I worked as a law clerk for the judges of the Second Judicial District of Iowa. My office was located in the Webster County Courthouse in Fort Dodge, but I traveled with judges throughout sub-district 2B. From August 2005 to August 2006, I worked with multiple district court judges on a wide variety of civil and criminal cases. I performed research, prepared memorandums summarizing and analyzing issues presented in motion hearings and trials, and helped draft rulings.

During the times when I was working as a law clerk, I did not have clients. Although I attended court with the judges and lawyers I was assisting, I did not litigate any cases in these positions and I did not participate in any appellate cases. Approximately 80% of my time was spent handling civil matters, and 20% was spent handling criminal matters.

Student Attorney Positions:

In my final semesters of law school, I was certified to practice law under the Iowa Supreme Court Student Practice Rule. As a student attorney, I became passionate about criminal practice and seeking justice.

At the Drake Legal Clinic, I represented indigent clients in all stages of criminal defense and dissolution of marriage court proceedings from January 2004 to August 2004. All cases were

court appointed. My clients were at critical stages in their lives due to their involvement with the legal system, potential for incarceration, poverty, the ending of relationships, substance abuse issues, mental illness, or a combination of these issues. Approximately 30% of my time was spent litigating matters in court at various hearings or bench trials. The remainder of my time was spent meeting with clients, reviewing files, and preparing for hearings. Approximately 80% of my time was dedicated to criminal matters, and 20% was spent handling civil matters. I did not participate in any appellate cases.

As a prosecuting intern at the Dallas County Attorney's Office from January 2005 to May 2005, I was solely responsible for all stages of simple misdemeanor prosecution within the county. I also assisted the attorneys in the office with trial preparation and observed district court and juvenile court proceedings. Approximately 40% of my time was spent litigating matters in magistrate court. I did not participate in any appellate cases. My "client" was the State of Iowa, and I worked primarily with crime victims and law enforcement officers.

Associate Attorney:

My position as a law clerk for the Second Judicial District was one year term. When my term expired, I gained employment at the Walker Law Office in Fort Dodge. I worked as an associate attorney from August 2006 to December 2006, when I was elected as the Humboldt County Attorney.

As an associate attorney, I practiced primarily in family and juvenile law, and also handled misdemeanor criminal cases. The majority of my cases were dissolution of marriage and child custody actions. I represented a broad range of people from the community across all economic and social levels.

During this time, I handled a large caseload of court-appointed juvenile cases, including child in need of assistance actions, termination of parental rights, and juvenile delinquencies. I represented all types of clients, from abused and neglected children to parents with substance use disorders or who were incarcerated. I also represented minors who were charged with criminal offenses in juvenile delinquency proceedings.

I was frequently court-appointed to represent respondents in mental health and substance abuse commitment proceedings. My practice also included some probate cases, as well as real estate and business contracts.

At the Walker Law Office, 100% of my practice involved litigation in state court. I was admitted to practice in the United States District Court for the Southern and Northern Districts of Iowa with the intention to handle bankruptcy cases. However, due to the short period of time I worked in this office prior to my election as county attorney, I did not litigate any cases in Federal court.

As an associate attorney, I was frequently in court for juvenile matters and other routine hearings including guilty pleas and sentencings, motions to dismiss, summary judgment motions, and temporary matters in family law cases. Approximately 40% of my time was spent handling family law matters, 40% handling juvenile matters, 10% handling criminal matters, and the remaining 10% was spent handling other various matters related to a general law practice. I did not participate in any appellate cases.

Prosecutor Positions:

While working as a law clerk and associate attorney, I was encouraged to seek the position of Humboldt County Attorney. I defeated the incumbent after a write-in campaign in the November 2006 election. I served as the Humboldt County Attorney from January 2007 to July 2011, when I was hired as an Assistant Webster County Attorney. I left my position in Humboldt County to in a busier office and learn from more experienced prosecutors.

My initial responsibilities in the Webster County Attorney's Office were the prosecution of felony offenses and juvenile cases. In June 2013, I was appointed to the position of First Assistant County Attorney. With that promotion, my responsibilities shifted to prosecution of the most serious felony offenses, including homicide and sexual assault, as well as the prosecution of all drug-related felonies. I also took on a supervisory roll over staff and mentored less experienced attorneys in the office.

In November 2015, I was elected as the Webster County Attorney in a contested election. As Webster County Attorney, my main responsibility was criminal prosecution. Webster County is a community that faces unique challenges. With a population of approximately 40,000 people, the community sees an unusually high amount of violent and gang-related crime. I personally assisted in the investigation of and prosecuted all serious and high profile felony cases, including homicides, sexual abuse offenses, and other violent crimes. Additionally, I handled postconviction relief actions related to serious felony cases and provided legal advice to the Webster County Board of Supervisors and other elected officials and department heads. I also managed the day-to-day operations of the County Attorney's Office and the direct supervision of six support staff and four attorneys.

I held the position of Webster County Attorney until January 2018, when I moved back to Pottawattamie County to be closer to my family. As an Assistant Pottawattamie County Attorney, I was frequently assigned high profile or complex cases. For example, I was assigned to dispose of a large backlog of sexual abuse cases, and I was also assigned cases of great public interest such as animal abuse cases. I was also responsible for the prosecution of all felony drug cases in Pottawattamie County, as they require specialized knowledge and experience. I worked as an Assistant Pottawattamie County Attorney from January 2018 until my appointment to the bench in May 2019.

As county attorney, I was the chief law enforcement official of the county and solely responsible for the prosecution of all criminal, juvenile, and civil matters. I was also responsible for all other duties set out in Iowa Code Section 331.756. I managed the day-to-day operations of the County Attorney's Office including the direct supervision of all employees including assistant county attorneys, legal assistants, collections personnel, and victim/witness coordinators.

In criminal proceedings, I represented the State of Iowa. The individuals with whom I worked on a daily basis included law enforcement (city, county, state, and federal), juvenile court officers, Department of Human Services, and Department of Corrections.

As county attorney, I was also the legal advisor to the County on civil matters. In that respect, the county elected officials and department heads were my clients. I performed civil litigation on behalf of the county and provided legal advice to the county's elected officials and department heads on issues such as county policies, real estate, contracts, employment, and other civil legal matters. I frequently reviewed contracts, drafted ordinances, and worked to ensure transparency in government.

As county attorney and assistant county attorney, 100% of my practice involved litigation in state court. Because criminal and juvenile appeals are handled by the Attorney General's Office, I did not participate in any appellate cases. The breakdown of my litigation experience through my employment in county attorney's offices was 65% criminal, 15% juvenile, 15% civil/criminal (postconviction and forfeiture cases), and 5% general civil litigation.

As a prosecutor, I litigated contested matters to the court on a weekly, if not daily, basis. I was frequently in court on criminal matters, including countless suppression, guilty plea, and sentencing hearings in district court. I tried 26 criminal cases to conclusion to a jury. These trials spanned the entire range of criminal charges, including murder, sexual assault, and robbery, all the way down to bad checks and speeding tickets. The juries returned guilty verdicts in all but one of my 26 jury trials – a serious misdemeanor assault stemming from a bar fight.

I also tried three criminal "bench trials" to district court judges. The defendant was convicted in each matter, with charges ranging from vehicular homicide to stalking to indecent contact with a minor.

In many of my criminal trials, I presented scientific testimony related to DNA testing or complex medical evidence related to injuries or causes of death. I have substantial practical experience with the Rules of Evidence as a trial lawyer. I also worked with victims of all ages and social and economic backgrounds.

Two of the cases I tried resulted in class A felony convictions in which the defendants were sentenced to spend the rest of their lives in prison. Two of the cases resulted in class B felony convictions and 25 year prison sentences. Seven of the cases resulted in class C felony convictions and ten year prison sentences. Seven of the cases resulted in class D felony convictions and five year prison sentences. The remaining cases were misdemeanors.

Of my 29 criminal trials, I acted as sole counsel in eight cases and chief counsel in 16 cases. On five occasions, I acted as associate counsel. Most recently, I acted as associate counsel in a supervisory role over a less experienced Assistant Pottawattamie County Attorney.

As a prosecutor, I also tried hundreds of bench trials in magistrate court and juvenile court, including multi-day child in need of assistance, termination of parental rights, and delinquency matters. I also tried at least 30 civil bench trials related to forfeiture and postconviction relief actions.

<u>District Associate Judge</u>:

Since May 2019, I have served as a district associate judge. I am currently assigned to handle primarily juvenile court cases in five counties (Audubon, Cass, Harrison, Montgomery, and Page). At the time this application was authored, I had 225 active juvenile cases. Approximately 85% of my time is spent handling juvenile proceedings including child in need of assistance actions, juvenile delinquency proceedings, private terminations of parental rights, adoptions, minor guardianships, and juvenile involuntary hospitalizations. I do all of my own research and draft all of my own orders.

The remaining 15% of my time is spent handling criminal matters. I am frequently assigned to handle conflict cases and criminal trials throughout the Fourth Judicial District. I have presided over four jury trials that were tried to conclusion.

**8. Describe your pro bono work over at least the past 10 years, including:**

**a. Approximate number of pro bono cases you've handled.**

**b. Average number of hours of pro bono service per year.**

**c. Types of pro bono cases.**

Over the past 10 years, I have worked as a district associate judge and a full-time county attorney or assistant county attorney. In those positions, I was precluded from providing pro bono services.

**9. If you have ever held judicial office or served in a quasi-judicial position:**

**a. Describe the details, including the title of the position, the courts or other tribunals involved, the method of selection, the periods of service, and a description of the jurisdiction of each of court or tribunal.**

I currently serve as a district associate judge for the Fourth Judicial District of Iowa. My position is unique as I am the only District Association judge having jurisdiction in each of the nine counties in the Fourth Judicial District. As such, I was nominated by a district-wide commission led by a district court judge and consisting of two lawyers and three non-lawyers representing each of the nine counties in the district. Thus, I was interviewed by a commission consisting of eighteen lawyers and twenty-seven non-lawyers. The 45 person commission chose three of the applicants as nominees for the position.[1] The three nominees were then interviewed by the nine district court judge from the Fourth Judicial District. On May 3, 2019, the panel of judges appointed me to the position of district associate judge from the pool of nominees.

Because I have district-wide jurisdiction, I preside primarily in Audubon (Audubon), Cass (Atlantic), Harrison (Logan), Montgomery (Red Oak), and Page (Clarinda) counties. I am frequently assigned to handle criminal jury trials or cover conflict cases in other counties in the Fourth District as well.

As a district associate judge, I have jurisdiction over misdemeanor and class D felony criminal cases, juvenile matters, and involuntary hospitalizations.[2] At the time this application was authored, I handled primarily juvenile matters including child in need of assistance actions, juvenile delinquency proceedings, private terminations of parental rights, adoptions, minor guardianships, and juvenile involuntary hospitalizations. Beginning in 2022, I will also be assigned a criminal docket.

**b. List any cases in which your decision was reversed by a court or other reviewing entity. For each case, include a citation for your reversed opinion**

[1] Not all members were present on the date of the commission interview.
[2] Iowa Code Section 602.6306.

**and the reviewing entity's or court's opinion and attach a copy of each opinion.**

Of the several hundred rulings I have issued as a district associate judge, 14 have been appealed. Eleven of these rulings were affirmed by the Iowa Court of Appeals. Three are currently pending.

**c. List any case in which you wrote a significant opinion on federal or state constitutional issues. For each case, include a citation for your opinion and any reviewing entity's or court's opinion and attach a copy of each opinion.**

***In the Guardianship of E.J. (a minor)***

**Page County Case Number JVJV001770**

**Order Dismissing Guardianship Petition filed on June 6, 2021**[3]

**Reason for Selection:** The Iowa Supreme Court has long recognized that a parents' interest in the care, custody, and control of their children is one of the oldest fundamental liberty interests. As such, the court recognizes in every termination of parental rights and involuntary guardianship proceeding that there is a fundamental right to parent under the Iowa Constitution. Each time the court considers a request for termination or involuntary guardianship, a constitutional issue is presented. The ruling from this case demonstrates my adherence to the law in this context. This ruling was not appealed.

**10. If you have been subject to the reporting requirements of Court Rule 22.10:**

**a. State the number of times you have failed to file timely rule 22.10 reports.**

I have failed to timely file my Rule 22.10 report on five occasions. Following my marriage in 2020, my legal name change caused some issues within the reporting system, requiring me to refile some reports after the filing deadline. These technical difficulties persisted for multiple months before they were fixed.

**b. State the number of matters, along with an explanation of the delay, that you have taken under advisement for longer than:**

**i. 120 days.** None.
**ii. 180 days.** None.
**iii. 240 days.** None.
**iv. One year.** None.

**11. Describe at least three of the most significant legal matters in which you have participated as an attorney or presided over as a judge or other impartial decision**

[3] *See* Attachment A.

**maker. If they were litigated matters, give the citation if available. For each matter please state the following:**

**a. Title of the case and venue,**
**b. A brief summary of the substance of each matter,**
**c. A succinct statement of what you believe to be the significance of it,**
**d. The name of the party you represented, if applicable,**
**e. The nature of your participation in the case,**
**f. Dates of your involvement,**
**g. The outcome of the case,**
**h. Name(s) and address(es) [city, state] of co-counsel (if any),**
**i. Name(s) of counsel for opposing parties in the case, and**
**j. Name of the judge before whom you tried the case, if applicable.**

**Significant legal matter #1:**

**a. Title of Case and County/State of Venue:** *In the Interest of P.S.* (Page County Case Numbers JVJV101772 and JVJV101774)

**b. Summary of the Substance of the Matter:** Thirteen year old P.S. became involved with the court through a juvenile delinquency case on September 6, 2019, when he was charged with Sexual Abuse in the Second Degree, a class B felony. Days later, P.S. and his two siblings, ages 11 and 15, were removed from the custody of their parents in a child in need of assistance action. The Iowa Department of Human Services determined that the family had been living in a tent and that the parents were using methamphetamine. In addition, truancy proceedings were initiated due to the children's failure to attend school.

A contested delinquency adjudication hearing was held, and I found that P.S. performed a sex act upon a child who was three years old. Due to P.S.'s young age and need for and likelihood of rehabilitation with appropriate treatment, he was granted a consent decree. At the conclusion of his probationary term, the court was required to determine if P.S. should be required to register as a sex offender.

**c. Succinct Statement of What you Believe to be of Significance:** The contested hearing presented challenges due to the P.S.'s emotional immaturity and the victim's young age, speech impediment, and the circumstances surrounding his testimony. During the hearing, the state offered a recording of the victim's forensic interview conducted at Project Harmony. After a complex evidentiary analysis, I determined that the recording was admissible as evidence.

As noted above, P.S. was granted a consent decree. If successful, then the delinquent act will not appear on the child's record. The idea behind a consent decree is if the child can be successfully rehabilitated, then having this offense on his permanent record would unnecessary. It is well-established that children have an inherent capacity for rehabilitation. The goal of juvenile court is to help children become successful adults, rather than impose punishment.

After 16 months, P.S. successfully completed inpatient sex offender treatment and was discharged to the custody of his parents. P.S. was then required to successfully complete outpatient sex offender treatment in a therapeutic setting.

Approximately two months after P.S. was discharged from group foster care, Juvenile Court Services requested that his consent decree be revoked. This hearing was significant because P.S. was 15 years old on the date of the revocation hearing. Revoking his consent decree would mean that a class B felony sex offense would be placed on his permanent record. Additionally, I was required to determine whether or not placement on the sex offender registry was warranted. This question was difficult as placement on the sex offender registry would undoubtedly be stigmatizing and result in harmful

consequences to P.S., including residency restrictions, exclusions from employment, and perhaps even psychological harm.

The underlying issues facing this family were significant. P.S.'s parents experienced extreme poverty and struggled with homelessness and methamphetamine addiction. P.S. would have had a much greater opportunity to be successfully rehabilitated if his parents had ensured that he complied with his outpatient treatment recommendations. At 15, P.S. was completely reliant on his parents for assistance in scheduling and getting to appointments. Unfortunately, they were either unable or unwilling to provide support to him.

While in treatment, P.S. admitted that he had committed sexual abuse on at least three other victims, including his younger sister. It was also revealed that P.S. himself was a victim of sexual assault. Because P.S. had not been successfully rehabilitated, he presented a very serious risk to reoffend by committing another sex offense. For that reason, I revoked his consent decree, adjudicating him delinquent of Sexual Abuse in the Second Degree, a class B felony. I also ordered that he register as a sex offender for a period of 10 years. This decision was significant because placement of this offense on P.S.'s permanent record and the registry requirement would be detrimental to his future, but necessary when weighed against the potential danger he presented to others.

**d. Name of the Party You Represented:** None, I was the presiding judge.

**e. Nature of Your Participation in the Case:** As the presiding judge, I handled all motions, hearings, and other issues that arose during the delinquency and child in need of assistance cases. Approximately 14 hearings were held during this family's involvement with the juvenile court.

**f. Dates of Your Involvement:** September 6, 2019, to September 23, 2021.

**g. Outcome of the Case:** P.S. was adjudicated delinquent of Sexual Abuse in the Second Degree, a class B felony, and is required to register as a sex offender.[4] The children were ultimately returned to the custody of their parents.

**h. Name(s) of Counsel for Parties:** Carl Sonksen and James Varley, Page County Attorney and Assistant Page County Attorney, for the State; Justin Wyatt, attorney for P.S; Vicki Danley, guardian ad litem for the children; Ryan Dale, attorney for the mother; Eric Checketts, attorney for the father.

**i. Name of the judge before whom you tried the case:** Not applicable.

## Significant legal matter #2:

**a. Title of Case and County/State of Venue:** *In the Interest of D.G. and G.G.*, Page County Case Numbers JVJV101613, JVJV101614 (CINA), JVJV101784, JVJV101785 (Second Termination of Parental Rights (TPR)).

**b. Summary of the Substance of the Matter:** G.G. was removed from his parents' care in February 2015 after testing positive for methamphetamine at birth and suffering withdrawals. His mother tested positive for methamphetamine and marijuana. The parents completed substance abuse treatment and G.G. was returned to their care; however, less than one year later, D.G. was born with marijuana in his system. The children were removed from their parents care on July 6, 2017, due to the parents' testing positive for methamphetamine at a court hearing. Very little progress was made by the parents to address their substance abuse issues, and their parental rights to D.G. and G.G. were terminated on August 14, 2018. D.G. and G.G. had no contact with their parents after that date.

On March 20, 2019, the termination ruling was reversed by the Iowa Court of Appeals, who directed that reasonable efforts towards reunification resume. Upon having contact with their biological parents, the children experienced extreme emotional distress and behavioral setbacks, while the parents

[4] *See* Attachment B.

continued to struggle with substance abuse. Due to lack of progress towards reunification, their parental rights were again terminated on March 23, 2020.

**c. Succinct Statement of What you Believe to be of Significance:** I was appointed to the bench in May 2019 – less than two months after the first termination of parental rights ruling was overturned by the Court of Appeals. Upon remand, I was tasked with navigating the complex issues related to attempting to reunify two young children with their parents after nearly a year of separation. The parents' attorneys argued that the state destroyed the bond between D.G. and G.G. and their parents because reunification efforts were not provided while the appeal was pending. Additionally, there were three older children who remained in the family home whose relationships with D.G. and G.G. would also be severed if parental rights were terminated. Ultimately, D.G. and G.G.'s need for permanency was the defining element of this case. It was a somber illustration of why children, especially very young children like D.G. and G.G, urgently need permanency due to their deep emotional and psychological need for a permanent home and stability.

**d. Name of the Party You Represented:** None, I was the presiding judge.

**e. Nature of Your Participation in the Case:** As the presiding judge, I handled all of the motions, hearings, and other issues that arose during this family's involvement with the juvenile court.

**f. Dates of Your Involvement:** May 16, 2019, to April 1, 2021.

**g. Outcome of the Case:** I entered an order terminating parental rights on March 23, 2020.[5] The order was affirmed by the Iowa Court of Appeals on August 5, 2020.[6] The children were adopted on April 1, 2021.

**h. Name(s) of Counsel for Parties:** Carl Sonksen, Page County Attorney, for the State; Vicki Danley, guardian ad litem for the children; Ken Whitacre, attorney for the mother; Justin Wyatt, attorney for the father.

**i. Name of the judge before whom you tried the case:** Not applicable.

**Significant legal matter #3:**

**a. Title of Case and County/State of Venue:** *State vs. Michael Richard Swanson* (Humboldt County Case No. FECR008863)

**b. Summary of the Substance of the Matter:** On November 15, 2010, 17-year-old Michael Swanson entered a convenience store in Algona, Iowa, and told the cashier, 47-year-old Vicky Bowman-Hall, to empty the cash drawer. After Bowman-Hall gave him the money, Swanson shot and killed her. Swanson then drove into Humboldt, Iowa, where he stopped at another convenience store. Sixty-one year old Shelia Myers was working behind the counter. Swanson pointed a handgun at her head and demanded money. Myers handed over $31. Swanson then pulled the trigger, killing Myers instantly.

Swanson was apprehended by law enforcement in Webster City, Iowa. As Humboldt County Attorney, I charged Michael Swanson with Murder in the First Degree, a class A felony, and Robbery in the first Degree, a class B felony, for the slaying of Shelia Myers. He was convicted by jury of both counts and sentenced to life plus twenty-five years in prison.[7]

**c. Succinct Statement of What you Believe to be of Significance:** This case was significant for many reasons. First, it received national media attention. I had been a practicing attorney for only four years, and I held press conferences, appeared on television, and all of my comments about the case were

[5] *See* Attachment B.

[6] *See* Attachment B.

[7] Following the Humboldt County trial, Michael Swanson pled guilty to and was sentenced on the same charges in Kossuth County related to the killing of Vicky Bowman-Hall.

publicized. Swanson's apparent lack of remorse was displayed throughout the proceedings, fueling the media frenzy. This case not only taught me the importance of maintaining my composure and professionalism, but also required me to work within ethical constraints when speaking with the media.

The media attention this case received forced venue to be transferred to Carroll County. I learned the rules associated with venue changes and also the importance of picking a jury that could listen to the evidence and be fair and impartial to all parties involved.

The issues presented during the prosecution of this case were complex especially due to Swanson's age and insanity defense. The defense sought to exclude Swanson's admissions because he was a minor without a parent present at the time of the interview. The defense also claimed that a mental condition prevented Swanson from knowing the nature and quality of his acts or distinguishing right from wrong. Swanson's mother testified that her son displayed troubled behaviors even as a toddler. His behavior became progressively destructive and unpredictable, and his parents sought mental health services for him throughout his childhood. Swanson was evaluated by a psychiatrist who denounced the insanity defense. This case laid the foundation for the complexities of criminal law that I would experience throughout my career.

**d. Name of the Party You Represented:** The State of Iowa as Humboldt County Attorney.

**e. Nature of Your Participation in the Case:** Lead Prosecutor.

**f. Dates of Your Involvement:** November 15, 2010, to August 14, 2011.

**g. Outcome of the Case:** Swanson was convicted by jury of Murder in the First Degree and Robbery in the First Degree and sentenced to life plus twenty-five years in prison.

**h. Name/Address of Co-Counsel (if any):** The Honorable Becky Goettsch (former Assistant Attorney General, Area Prosecutions Division).

**i. Name(s) of Counsel for Opposing Parties in the Case:** Charles Kenville and the Honorable Joseph B. McCarville (former Public Defender).

**j. Name of the judge before whom you tried the case:** The Honorable Thomas J. Bice, District Court Judge, Second Judicial District of Iowa.

**Significant legal matter #4:**

**a. Title of Case and County/State of Venue:** *State vs. Colten Dean Bills* (Webster County Case No. FECR352302)

**b. Brief Summary of the Substance of the Matter:** On May 8, 2015, 21-year-old Colten Bills was driving a pickup truck that collided with an automobile carrying two occupants who died as a result of injuries suffered in the collision. Evidence from Bills' cell phone showed that at the time of the collision, he was sending and receiving text messages. An investigator from the Iowa State Patrol testified that there was no evidence Bills braked or swerved to avoid the other vehicle. As Webster County Attorney, I charged Colten Bills with two counts of Vehicular Homicide by Reckless Driving, a class C felony. He was convicted of both counts following a bench trial.

**c. Succinct Statement of What you Believe to be of Significance:** This case was significant because it was one of the first vehicular homicide cases involving text messaging that was tried in the State of Iowa. The defense argued that texting does not rise to the level of reckless driving envisioned in Iowa Code section 707.6A(2)(a). The State presented expert testimony from Dr. Daniel McGehee, a human factors expert specializing in the study of driver attention and distraction. Dr. McGehee clearly and unequivocally described the unique dangers posed by the distractions related to texting and driving. Additionally, Dr. McGehee explained that the attention and time demand required by the task of texting differs markedly from the other types of distractions. This testimony provided support for a finding that

Defendant's conduct in this case of texting and driving was fraught with a high degree of danger and thus, was reckless.

The court held that Bills' diverted attention was self-imposed and intentional. The court stated, "If the defendant had placed a blindfold over his eyes as he approached the intersection . . . such conduct would be considered fraught with a high degree of danger and so obvious that he should know that harm is reasonably foreseeable. That is, in essence, exactly what the defendant did by intentionally diverting his attention from driving to texting, and the result was disastrous." *State v. Colten Dean Bills*, Webster County FECR352302, Order of the Honorable Kurt L. Wilke (January 9, 2017).

This case was significant because it addressed the increasingly "hot-button" issue of texting while driving and presented issues affecting all Iowans, not just those in the Webster County community. Following this case, I was contacted by members of the media, lay people, and legislators wanting seeking to strengthen laws to curb distracted driving caused by texting.

**d. Name of the Party You Represented:** The State of Iowa as Webster County Attorney.

**e. Nature of Your Participation in the Case:** Lead Prosecutor.

**f. Dates of Your Involvement:** May 8, 2015, to February 15, 2017.

**g. Outcome of the Case:** Colten Bills was convicted of two counts of Vehicular Homicide by Reckless Driving, a class C felony. The prison sentences were suspended and he was placed on supervised probation for a period of two years.

**h. Name/Address of Co-Counsel (if any):** The Honorable Coleman J. McAllister (former Assistant Attorney General, Area Prosecutions Division).

**i. Name(s) of Counsel for Opposing Parties in the Case:** The Honorable Derek Johnson (formerly of the Johnson Law Office) and Charles Kenville.

**j. Name of the judge before whom you tried the case:** The Honorable Kurt L. Wilke, District Court Judge, Second Judicial District of Iowa.

**12. Describe how your non-litigation legal experience, if any, would enhance your ability to serve as a judge.**

Being a county attorney gave me unique insight into some of the pressures that judges face. The ultimate role of the county attorney to seek justice is akin to that of a judge. Over the past 16 years, each of my roles has required me to determine the facts, apply the law, and act as justice demands regardless of the popularity of the decision. I have always been very deliberate to not allow public and political influences to affect my decisions. While upholding the laws of the State of Iowa, I have often dealt with public scrutiny and media attention. The stakes are very high when you are seeking justice. As county attorney, for example, declining to prosecute a case may be criticized by the public and encourage someone to challenge me in the next election. As a judge, every time I sign my name to an order, I am affecting someone's life. These decisions often attract public attention or scrutiny. The pursuit of justice requires strength and integrity, which are attributes that I possess.

The nature of district associate court provides many opportunities to interact with and make an impact on members of the community. This is enhanced by my participation in the Cass-Audubon Family Treatment Court, which has been one of the most rewarding aspects of my career. Family Treatment Court has given me the opportunity to interact

personally with parents and see their daily struggles to overcome addiction and other obstacles. This has given me insight into the impact that my decisions make on real people and their families.

Family Treatment Court has also increased my empathy towards the people who appear before me. I have found that understanding and identifying with the hopes and struggles of people from all walks of life leads to increased fairness in the courtroom.

Family Treatment Court as well as my role as a juvenile court judge constantly reminds me that my role is not just to "judge," but to strive to help all who come before me. I recognize that as a judge, I am dealing with people at some of the most difficult times in their lives. It is my job to ensure that the law is applied accurately and fairly. Often times, simply treating people in a respectful and courteous manner can make it possible for them feel a measure of justice and closure even when a case is decided against them. My overarching goal is always to seek justice and make a positive difference in my community through its proper administration.

My litigation experience as county attorney and now a district associate judge qualifies me for the position of district court judge from a technical standpoint. However, it is the non-litigation experience described above that makes me a more astute and well-rounded judge.

**13. If you have ever held public office or have you ever been a candidate for public office, describe the public office held or sought, the location of the public office, and the dates of service.**

| Dates (From – To) | Public Offices |
|---|---|
| 11/10/2014 – 1/14/2018 | **Webster County Attorney, Fort Dodge, Iowa**<br>Sought and Held – Elected November 14, 2014 |
| 1/2/2007 – 8/14/2011 | **Humboldt County Attorney, Dakota City, Iowa**<br>Sought and Held – Re-Elected November 2, 2010<br>Sought and Held – Elected November 7, 2006 |

**14. If you are currently an officer, director, partner, sole proprietor, or otherwise engaged in the management of any business enterprise or nonprofit organization other than a law practice, provide the following information about your position(s) and title(s):**

**a. Name of business / organization.**
**b. Your title.**
**c. Your duties.**
**d. Dates of involvement.**

Not applicable.

**15. List all bar associations and legal- or judicial-related committees or groups of which you are or have been a member and give the titles and dates of any offices that you held in those groups.**

| Bar Associations and Legal or Judicial Committees or Groups | Nature of Involvement | Dates |
|---|---|---|
| Iowa Supreme Court Advisory Committee on the Rules of Juvenile Procedure | Committee Member | 10/2020 – Present |
| Iowa Judicial Branch Children in the Middle Advisory Committee | Committee Member | 9/2020 – Present |
| Iowa Judicial Branch Pandemic Legal Issues Committee | Committee Member | 3/2020 – Present |
| Iowa Judge's Association | Member | 2019 – Present |
| National Association of Women Judges | Member | 2021 – Present |
| National Council of Juvenile and Family Court Judges | Member | 2020 – Present |
| Iowa State Bar Association | Member<br>Sections: Criminal Law and Juvenile Law | 2007 – Present |
| Southwest Iowa Bar Association (formerly Pottawattamie County Bar) | Member | 2018 – Present |
| Iowa County Attorney's Association | Member<br>Juvenile Justice Committee (2007 - 2011) | 1/2007 – 5/2019 |
| Pottawattamie County Sexual Abuse Cold Case Review Team | Member | 1/2018 – 5/2019 |
| Southwest Iowa Child Abuse Response Team | Member | 1/2018 – 5/2019 |
| Southwest Iowa Coalition on Human Trafficking | Member | 1/2018 – 5/2019 |
| Iowa Organization of Women Attorneys | Member | 2018 – 2019 |
| National District Attorney's Association | Member<br>Women Prosecutor Division | 2007 – 2019 |
| Webster County Drug Task Force | Member | 6/2013 – 1/2018 |
| Webster County Sexual Abuse Response Team | Member | 8/2014 – 1/2018 |

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|---|---|---|
| Webster County Domestic Violence Coalition | Member | 8/2014 – 1/2018 |
| Iowa Drug Policy Advisory Council | Member | 8/2005 – 12/2007 |
| Webster County Bar Association | Member<br>Memorial Committee | 7/2011 – 1/2018 |
| Humboldt County Bar Association | President | 1/2007 – 7/2011 |

**16. List all other professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed above, to which you have participated, since graduation from law school. Provide dates of membership or participation and indicate any office you held. "Participation" means consistent or repeated involvement in a given organization, membership, or regular attendance at events or meetings.**

| Organization Name | Nature of Involvement | Dates |
|---|---|---|
| Webster County Crimestoppers | Member | 6/2014 – 1/2018 |
| Domestic and Sexual Assault Outreach Center (D/SAOC) | Board of Directors, Executive Board, President, Vice President, and Secretary | 1/2007 – 1/2013 |
| West River Recreation Center | Board of Directors | 1/2009 – 8/2011 |
| Humboldt Business and Professional Women | Member | 1/2007 – 8/2011 |
| Girl Scouts of Lakota Council | Volunteer | 1/2009 – 8/2011 |
| Habitat for Humanity | Volunteer | 1/2009 – 8/2011 |
| Fort Dodge Young Professionals | Member | 1/2009 – 8/2011 |

**17. If you have held judicial office, list at least three opinions that best reflect your approach to writing and deciding cases. For each case, include a brief explanation as to why you selected the opinion and a citation for your opinion and any reviewing entity's or court's opinion. If either opinion is not publicly available (i.e., available on Westlaw or a public website other than the court's electronic filing system), please attach a copy of the opinion.**

**Ruling #1:**

***In the Interest of D.G. and G.G.***

**Page County Case Numbers JVJV101784 and JVJV101785**

**Order Terminating Parental Rights filed on March 23, 2020**[8]

***Int. of D.G. and G.G.*, 949 N.W.2d 662, 2020 WL 4499773 (Iowa Ct. App. August 5, 2020)**[9]

This case is identified as "Significant Legal Matter #2" in response to question number 11, where I discussed the background of the case. I chose this case as a reflection of my approach to writing and deciding cases. This case in particular involved a great deal of history, testimony, and multilayered issues. The ruling emphasizes my attention to detail and effort to address every argument made. I do so in order to provide the appellate court with multiple grounds on which to base their decision, as well as so the litigants know that I fully and fairly considered every issue put before me. This ruling was affirmed on appeal.

**Ruling #2:**

***In the Interest of M.S. and E.S.***

**Harrison County Case Numbers JVJV001770 and JVJV001771**

**Order Terminating Parental Rights filed on February 15, 2020**[10]

***Int. of M.S. and E.S.*, 952 N.W.2d 186, 2020 WL 4814168 (Iowa Ct. App. August 19, 2020)**[11]

This is an example of a ruling from a private action for termination of parental rights. Such cases are distinguishable from termination of parental rights proceedings originating from child in need of assistance actions because there are rarely detailed records or professionals involved with the family. As a judge, I cannot simply fall back on the previous findings of the court or reports authored by social work professionals. Rather, I am required to make factual findings based solely on the testimony and evidence presented during the hearing. As such, these proceedings are akin to child custody and dissolution matters handled by district court judges.

The ruling emphasizes my attention to detail and thorough factual findings. After making my findings, I then analyze the relevant statutory provisions and the case law interpreting the same, and make conclusions to reach appropriate results.

This case was affirmed on appeal. In its opinion, the Iowa Court of Appeals highlighted my approach to writing and deciding cases by stating, "We start our discussion by noting the juvenile court issued a thorough and detailed ruling setting forth factual findings and legal conclusions. Following our de novo review, we are in substantial agreement with all significant factual findings made by the juvenile court. We will highlight some of those significant facts." *Int. of M.S.*, 952 N.W.2d 186 (Iowa Ct. App. 2020).

[8] *See* Separate Attachment – Writing Sample #1.
[9] *See* Separate Attachment – Writing Sample #1.
[10] *See* Separate Attachment – Writing Sample #2.
[11] *See* Separate Attachment – Writing Sample #2.

**Ruling #3:**

***In the Interest of P.S.***
**Page County Case Number JVJV001770**
**Delinquency Adjudication Order filed on December 20, 2019.**[12]
This case is identified as "Significant Legal Matter #1" in response to question number 11, where I discussed the background of the case. I chose this order as an example of my aptitude in deciding criminal matters. The ruling reflects my ability to listen carefully to the testimony presented and make determinations regarding the credibility and reliability of the witnesses. It also highlights my ability to make effective factual findings and fashion legal conclusions based upon the statutory provisions and precedent. This ruling was not appealed.

**Ruling #4:**

***In the Interest of K.R.***
**Harrison County Case Number JVJV001800**
**Permanency Order filed on May 26, 2021.**[13]
**Appellate Opinion:** *Int. of K.R.*, No. 21-1120, 2021 WL 4891039 (Iowa Ct. App. Oct. 20, 2021).[14]
I selected this order to highlight my thorough factual findings and analysis of the issues presented. This order also addresses the constitutional issue of a parents' fundamental right to raise their child as discussed in question number 9c. While the law as argued by the state was on-point, I found the facts of this case to be distinguishable due to the child's age, wishes, and history of trauma. The facts made this case a difficult legal decision, so I crafted this ruling very deliberately to both explain the reasoning for my decision to the family and also to withstand appellate scrutiny. Ultimately, I determined that the best interests of the child demanded that permanency be established through guardianship. This ruling was affirmed on appeal.

**18. If you have not held judicial office or served in a quasi-judicial position, provide at least three writing samples (brief, article, book, etc.) that reflect your work.**

Not applicable.

## OTHER INFORMATION

**19. If any member of the State Judicial Nominating Commission is your spouse, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, father, mother, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister, state the Commissioner's name and his or her familial relationship with you.**

Not applicable.

[12] *See* Separate Attachment – Writing Sample #3.
[13] *See* Separate Attachment – Writing Sample #4.
[14] *See* Separate Attachment – Writing Sample #4.

**20. If any member of the State Judicial Nominating Commission is a current law partner or business partner, state the Commissioner's name and describe his or her professional relationship with you.**

Not applicable.

**21. List the titles, publishers, and dates of books, articles, blog posts, letters to the editor, editorial pieces, or other published material you have written or edited.**

None.

**22. List all speeches, talks, or other public presentations that you have delivered for at least the last ten years, including the title of the presentation or a brief summary of the subject matter of the presentation, the group to whom the presentation was delivered, and the date of the presentation.**

Throughout my career, I have regularly given presentations to a variety of service groups and members of the public. These presentations pertained to the duties of the County Attorney's Office as well as other general areas of the law. Additionally, I have presented at trainings for local law enforcement, Department of Human Services, hospital staff, and more. As a prosecutor, I was certified as an instructor for Reserve Law Enforcement Officers by the Iowa Law Enforcement Academy. I have presented on topics such as testifying in court and interview techniques, provided case law updates, and trained on other areas of the law as requested by different agencies.

As county attorney, I also gave numerous presentations and speeches as part of my campaigns. These included public candidate forums, panel discussions, remarks at political fundraisers, and campaign events. I also gave detailed presentations regarding the office budget each year and other presentations to elected officials and members of the public.

Specific speeches, talks, or other public presentations that I have delivered are set out below:

| Title of Presentation & Event Sponsor | City, State | Presented To | Date |
|---|---|---|---|
| Words Matter: Using Recovery-Oriented Language<br>*Sponsored by Iowa Children's Justice* | Council Bluffs, Iowa (via Zoom) | Iowa Family Treatment Court Team Members | 10/12/2021 |
| Using Recovery-Oriented Language in Our Family Treatment Court | Atlantic, Iowa (via Zoom) | Cass-Audubon Family Treatment Court Team | 8/30/2021 |

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| Reasonable Efforts to Prevent Removal | Council Bluffs, Iowa | Judges and lawyers attending SWILL[15] Annual Seminar | 4/30/2021 |
| Nuts and Bolts of Reasonable Efforts to Prevent Removal | Council Bluffs, Iowa (via Zoom) | 4th Judicial District Judges, attorneys, and social workers | 3/05/2021 |
| Testifying in Court<br>*Sponsored by the 4th Judicial District* | Council Bluffs, Iowa | DHS workers, FSRP providers, and attorneys | 8/23/2019 |
| Stalked: Living a Life Sentence (Emcee)<br>*Sponsored by the 4th Judicial District Department of Correctional Services' Victim Advisory Committee* | Council Bluffs, Iowa | 12th Annual Crime Victims' Rights Week Luncheon | 4/2019 |
| Sexual Assault Nurse Examiners and Judicial Proceedings<br>*Sponsored by the International Association of Forensic Nurses – Sexual Assault Nurse Examiner Training Program* | Council Bluffs, Iowa | Sexual Assault Nurse Examiners | 3/2018 |
| Iowa Law and Human Trafficking<br>*Sponsored by the Iowa Law Enforcement Academy & Council Bluffs Police Department* | Council Bluffs, Iowa | Social workers, advocates, attorneys, and law enforcement | 8/2018 |
| The County Attorney's Office and Our Judicial System<br>*Sponsored by Leadership Fort Dodge (Greater Fort Dodge Growth Alliance)* | Fort Dodge, Iowa | Citizens participating in Leadership Fort Dodge | 1/2015, 1/2016, 1/2017, 1/2018 |
| Fort Dodge Police Department Training[16]<br>*Sponsored by the Fort Dodge Police Department & the Webster County Attorney's Office* | Fort Dodge, Iowa | Fort Dodge Police Department | Quarterly in 2016, 2017, and 2018 |
| Structure and Responsibilities of the County Attorney's Office and Our Judicial System<br>*Sponsored by the Fort Dodge Police Department* | Fort Dodge, Iowa | Citizens participating in the Citizen's Academy program | 5/2013, 10/2013, 5/2014, 10/2014, 5/2015, 10/2015, 5/2016, 10/2016, and 5/2017 |
| Drugs, Gangs, and Guns – Fighting Crime in Webster County | Fort Dodge, Iowa | Fort Dodge Noon Rotary | 10/2016 |

[15] Southwest Iowa Lawyer League.
[16] Topics included search and seizure, traffic stops, interviewing techniques, testifying in court, etc.

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| Iowa Law and Hate Crimes and Panel Discussion on Preventing and Responding to Bias Incidents and Hate Crimes<br>*Sponsored by the U.S. Attorney's Office, Northern District of Iowa* | Fort Dodge, Iowa | Interested Citizens | 8/2016 |
| The County Attorney's Office | Fort Dodge, Iowa | Fort Dodge Noon Lions | 7/2016 |
| The County Attorney's Office | Fort Dodge, Iowa | Fort Dodge Noon Sertoma | 7/2016 |
| The County Attorney's Office | Fort Dodge, Iowa | Fort Dodge Daybreak Rotary | 7/2016 |
| The Challenges of Domestic Violence from a Prosecution Standpoint<br>*Sponsored by the Domestic and Sexual Assault Outreach Center* | Fort Dodge, Iowa | Interested Citizens at Annual Domestic Violence Vigil | 10/2014 |
| Choosing Law as a Career | Lake City, Iowa | South Central Calhoun High School Students | 5/2014 |
| Law Enforcement Update | Fort Dodge, Iowa | Officers of the Fort Dodge Police Department | 2/2014 |
| Domestic and Sexual Assault Outreach Center (D/SAOC) Strategic Plan | Fort Dodge, Iowa | D/SAOC Foundation Board | 8/2012 |
| Panel on Bullying<br>*Sponsored by the Humboldt High School* | Humboldt, Iowa | Members of the Public | 2011 |
| Presentation of Bar Association Scholarships at Humboldt High School and Twin River Valley High School | Humboldt and Livermore, Iowa | Students, parents, school staff, and interested citizens | 5/2007, 5/2008, 5/2009, 5/2010, and 5/2011 |

**23. List all the social media applications (e.g., Facebook, Twitter, Snapchat, Instagram, LinkedIn) that you have used in the past five years and your account name or other identifying information (excluding passwords) for each account.**

LinkedIn – Jennifer Benson Bahr
Facebook – Jennifer Benson Bahr
Instagram – jenbensonbahr
Twitter – bens45
Snapchat – bens45

**24. List any honors, prizes, awards or other forms of recognition which you have received (including any indication of academic distinction in college or law school) other than those mentioned in answers to the foregoing questions.**

As noted above, I participated in the Criminal Defense Legal Clinic while in law school. In May 2004, following my initial semester as a student attorney, I was awarded a Howard Fellowship. The recipient of the fellowship award was determined by the Director of Clinical Programs in consultation with the Director of the Criminal Defense Clinic. The fellowship provided a scholarship that funded four hours of summer tuition, valued at approximately $4,000.

As a recipient of the Howard Fellowship, I was admitted to the Advanced Criminal Defense Clinic where I continued to represent clients in all stages of criminal defense and dissolution of marriage proceedings. In the Advanced Clinic, I handled more serious criminal offenses and had the opportunity to participate in trials under the supervision of the Director of the Criminal Defense Clinic. I was authorized to practice law under the Iowa Supreme Court Student Practice Rule and was required to commit to a minimum of 10 weeks and 200 hours of client representation.

**25. Provide the names and telephone numbers of at least five people who would be able to comment on your qualifications to serve in judicial office. Briefly state the nature of your relationship with each person.**

| Name | Contact Information | Nature of Relationship |
|---|---|---|
| **Honorable Susan Christensen**<br>Chief Justice<br>Iowa Supreme Court | Iowa Judicial Branch Building<br>1111 East Court Avenue<br>Des Moines, IA 50319<br>Susan.Christensen@iowacourts.gov<br>(515) 348-4962 | I have known Chief Justice Christensen personally for several years, and practiced in front of her during my time at the Pottawattamie County Attorney's Office. |
| **Honorable Margaret "Maggie" Popp Reyes**<br>District Court Judge<br>Fourth Judicial District | Pottawattamie County Courthouse<br>227 S. 6th St., 4th Floor<br>Council Bluffs, IA 51501<br>Maggie.Poppreyes@iowacourts.gov<br>(712) 328-5794 | Judge Reyes served as my supervisor in the Pottawattamie County Attorney's Office. We are now judicial colleagues and she continues to be a friend and mentor. |
| **Honorable Eric J. Nelson**<br>District Associate Judge<br>Fourth Judicial District | Pottawattamie County Courthouse<br>227 S. 6th St., 3rd Floor<br>Council Bluffs, IA 51501<br>Eric.Nelson@iowacourts.gov<br>(712) 328-5795 | Judge Nelson defended many of the cases that I prosecuted when he was employed at the Public Defender's Office. We are now judicial colleagues. |
| **Matthew Wilber**<br>Pottawattamie County Attorney | Pottawattamie County Attorney's Office<br>227 S. 6th St., 5th Floor<br>Council Bluffs, IA 51501<br>matthew.wilber@pottcounty-ia.gov<br>(712) 328-5649 | Mr. Wilber reached out to me when I was elected as Humboldt County Attorney because he knew I was originally from Pottawattamie County. He advised me on many different cases and issues an elected official faces. He later hired me as an Assistant County Attorney. |
| **Justin R. Wyatt**<br>Attorney | Woods & Wyatt, P.L.L.C<br>10 N. Walnut St.<br>Glenwood, IA 51534<br>justin.wyatt@woodswyattlaw.com<br>(712) 527-4877 | Mr. Wyatt appears in front of me almost daily as he handles juvenile and criminal cases in the counties I am assigned to. |

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| **Honorable Angela L. Doyle**<br>District Court Judge<br>Second Judicial District | Webster County Courthouse<br>701 Central Ave.<br>Fort Dodge, IA 50501<br>Angela.Doyle@iowacourts.gov<br>(515) 576-0581 | Judge Doyle presided over numerous criminal jury trials and contested juvenile matters that I prosecuted. She is a friend and mentor. |
| **Honorable Thomas J. Bice**<br>Senior Judge<br>Second Judicial District | Webster County Courthouse<br>701 Central Ave.<br>Fort Dodge, IA 50501<br>Thomas.Bice@iowacourts.gov<br>(515) 576-0581 | Judge Bice presided over many of the cases I prosecuted as County Attorney. He is a judge that I seek to emulate because of his deep respect and admiration for our justice system. |
| **Todd Weddum**<br>Captain<br>Criminal Investigation Division | Council Bluffs Police Department<br>227 South 6th Street<br>Council Bluffs, IA 51503<br>taweddum@councilbluffs-ia.gov<br>(712) 890-5230 | Captain Weddum is a family friend. We worked together closely when I was an Assistant County Attorney because he supervises the Criminal Investigation Division of the Council Bluffs Police Department. |

**26. Explain why you are seeking this judicial position.**

I am seeking appointment to the district court bench because I feel a call to service, and I have the experience, ability, and integrity to contribute to our justice system. For the last 16 years, I have dedicated myself completely to the service of Iowans in whatever role I filled. At every phase of my career, I have always sought more responsibility. At this time, my particular skill set and experience lends itself to the role of district court judge, and I aspire to continue to challenge myself and work district-wide.

It is my firm belief that the strength of Iowa's judiciary is dependent on the most qualified applicants stepping up for consideration. I possess the attributes and experience that both lawyers and citizens seek in a district court judge. I conduct myself in a professional manner and with personal integrity. I have seen how my decisions impact the lives of other people, and I constantly strive to better my community. I have the fortitude to handle tough cases and make difficult decisions. I am a person of utmost fairness and impartiality and I have the appropriate temperament for the job. Finally, I am passionate about the law and driven to seek fairness and justice. For these reasons, I feel it is both my duty and honor to place myself into consideration this position to serve the citizens of the Fourth Judicial District of Iowa.

**27. Explain how your appointment would enhance the court.**

My appointment to the district court bench would enhance the court because of the practical insights I have gained over the course of my career. Added to my years of practice "in the trenches" as a prosecutor is the knowledge and confidence I have gained while on the district associate bench. Not only do I have extensive experience in juvenile and criminal law, but I have the ability to apply that experience to the other types of cases that a district court judge presides over.

It is undeniably important for members of the district court bench to have a strong work ethic. My hardworking and dependable nature would also enhance the court. For example, Pottawattamie County Attorney Matt Wilber often described me as a "work horse." While that may not be the most physically flattering comparison, he knew that I had the ability and experience to handle any case that was assigned to me. On multiple occasions, I was assigned entire caseloads from attorneys who have resigned because I had the level of experience necessary to handle all

types of cases efficiently and appropriately. Similarly, as a district associate judge, I am frequently assigned conflict cases and jury trials throughout our district.

As county attorney, I managed the day-to-day operations of the county attorney's office including the direct supervision of all employees. In Webster County, for example, that included four assistant county attorneys, five legal assistants, one collections employee, and a victim/witness coordinator. My management experience was also recognized in the Pottawattamie County Attorney's Office, where I was assigned to supervise a less experienced assistant county attorney. Because I have been in a supervisory role during the majority of my career, I have the ability to work independently and efficiently, as well as to solve problems fairly and consistently.

I would bring to the bench a high standard of ethics and professional demeanor that is expected of a district court judge. The position is one of honor and great responsibility, and I understand the need for a person of irrefutable character. I have earned the respect of my colleagues as someone whose temperament, decisiveness, and sense of fairness are exemplary of the judiciary. Regardless of whether I am working with attorneys or pro-se litigants, I have the ability to maintain civility, patience, and composure. I treat each case with dignity, patience, thoughtful consideration, and accurate application of the law.

During my career as a public servant, I have worked tirelessly to develop and maintain a reputation for personal and professional integrity. Such conduct is critical to maintain the public's confidence in the courts and the legal profession in general.

I have a deep respect for, and am dedicated to upholding, our Constitution and the rule of law. I strongly believe that my duty as a judge is to apply the law, and interpret it as written. I am also committed to ensuring that each of our citizens has access to a fair and just court system. Each of my attributes and experiences will strengthen and enhance the Fourth Judicial District bench and provide a needed perspective.

**28. Provide any additional information that you believe the Commission or the Governor should know in considering your application.**

By way of additional background information, I am married with twin step-sons. Connor will graduate from Iowa State University in May with a degree in Anthropology. Colton also lives and works in Ames. My primary interests outside of the law include playing golf, crafting, gardening, and attending and watching sporting events. I enjoy spending time with my family, and I am extremely excited to become an aunt in April.

I grew up in Avoca, where my parents were both teachers. After law school, I got my first job as a law clerk in Fort Dodge. I remained in that area for the next twelve years primarily due to the professional opportunities that presented themselves.

When my mother passed away, I was reminded of what is most important in life – family. After my step-sons graduated from high school, my husband and I returned to Pottawattamie County to be close to my father, brother, and extended family.

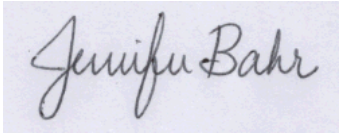
I have now lived in Pottawattamie County for just shy of four years. I grew up here and the Fourth Judicial District is my home. In addition, the experience I gained working in another Iowa judicial district has given me a unique perspective that will enhance my work on the district court bench. I believe that my experience outside of this district is a positive aspect of my candidacy.

I have been a district associate judge for almost three years and have presided over

hundreds of juvenile proceedings and multiple criminal jury trials during that time. I have significant daily experience working within the electronic court system. My judicial experience in addition to my deep and varied legal experience would allow me to immediately take on a district court case load and make an immediate positive impact on the district court.

Iowa Supreme Court Justice Harvey Uhlenhopp stated that, "The objective of a sound judicial selection system is the nomination and appointment of the best qualified individuals who are available to be judges, in terms of such qualities as integrity, intelligence, industry, impartiality, education, and experience." The selection of judges based upon their professional qualities is of the utmost importance. All citizens want the best candidates with the most merit to be district court judges. My wide variety of legal experience, background in Iowa law, and dedication to serving the citizens of this judicial district make me uniquely qualified to be a district court judge for the Fourth Judicial District.

I hereby certify all the information in this joint judicial application is true and correct to the best of my knowledge.

Signed:  Date: December 6, 2021

Printed name: Jennifer Bahr

# ATTACHMENT A – QUESTION 9(C)

*In the Guardianship of E.J. (a minor)*
Order Dismissing Guardianship Petition

**IN THE IOWA DISTRICT COURT IN AND FOR CASS COUNTY**
**(JUVENILE DIVISION)**

| | | |
|---|---|---|
| **IN THE GUARDIANSHIP OF** | **)** | **Juvenile No. JGJV002930** |
| | **)** | |
| **E.J.,** | **)** | |
| | **)** | **ORDER DISMISSING PETITION** |
| **A PROTECTED MINOR.** | **)** | |

On April 6, 2021, this matter came before the Court for hearing on the Petition for Guardianship. The proceeding was reported by Laura Andersen. Petitioner, Kaitlyn XXXX, appeared with her attorney, Andrew Knuth. Respondents, Madison XXXX and Nicholas XXXX, appeared with their attorney, Donna Bothwell. Attorney Jonathan Mailander appeared as court visitor for the minor child.

The Court heard the testimony of Kaitlyn XXXX, Kate XXXX, Darrell XXXX, Madison XXXX, and Nicholas XXXX. Exhibits 1, 4, 5, 6, and 7 were offered and received into evidence. The Court also reviewed and considered the report of the court visitor filed on April 5, 2021, the previous pleadings and orders which have been filed in this case, and the statements and arguments of counsel. The Court now finds as follows:

The minor child, E.J., was born on April 30, 2020, making her just under one year old on the date of the hearing. E.J.'s parents are Madison XXXX and Nicholas XXXX. Her father, Nicholas, is 23 years old, having been born on October 8, 1997. E.J.'s mother, Madison, is 22 years old, having been born on March 14, 1999. Madison's sister, Kaitlyn XXXX, is the petitioner in this matter.

On November 15, 2020, Nicholas and Madison reached out to Kaitlin to provide care for E.J. on a short-term basis. At that time, Nicholas and Madison were living with Nicholas' brother in Cherokee. After living with him for a few weeks, they had determined that the brother's home was an unsafe or otherwise inappropriate environment. They found themselves in a position where they had only a few hours to move their belongings out of the residence. Madison and Nicholas turned to Kaitlyn for help with E.J. during this time.

Kaitlyn and her "mother figure," Kate XXXX, drove to Cherokee with another friend or friends to pick E.J. up. Kaitlyn, Kate, Madison, and Nicholas signed a "Housing Agreement"

admitted as Exhibit 6. The agreements states that Madison and Nicholas agreed to let Kaitlyn or Kate "help give E.J. a temporary home" while the parents located housing and gained stability.

Kaitlyn and Kate testified that when they arrived at Nicholas' brother's house, the house was unclean and smelled of cat urine and smoke. They also testified that E.J. was dirty, there was a "film" on her skin, and that the back of her head was flat. The parents did not have any clean clothes for E.J. to wear and that she was wearing a "Tigger" Halloween costume. Kaitlyn and Kate described E.J. as fussy and crying during the drive back to Atlantic. Kaitlyn testified that when she took E.J. out of the car seat, she found the base of the car seat to contain urine and mold. She also testified that E.J.'s diaper contained dried feces and she believed that her diaper had not been changed in some time. Kaitlyn also testified that the diapers and bottle provided by the parents were not the appropriate size for the child. In addition, E.J. would not take a bottle.

Kaitlyn also paid for Madison and Nicholas to stay in a hotel for one or two nights. After that, Madison and Nicholas stayed at Kaitlyn's home while Kaitlyn helped them get back on their feet. Eventually, Madison and Nicholas moved into a duplex in Atlantic. E.J. remained in Kaitlyn's care.

When Nicholas gained employment, Madison and Nicholas requested that E.J. be returned to their care. After spending a total of 14 days with Kaitlyn, E.J. was returned to her parents' care.

On November 28, 2020, the Iowa Department of Human Services received a report regarding Madison and Nicholas on the Child Abuse Hotline. It was reported that Madison "has had a recent suicidal ideation and has not sought mental health treatment." The reporter also stated that Madison and Nicholas had agreed to have another person care for E.J. "until they could provide stability. The Department initiated a Child in Need of Assistance Assessment.

Following their investigation, the Department determined that the assessment would not be founded nor referred for the filing of a child in need of assistance petition. Exhibit 4, the report of Child Protective Worker (CPW) Kelly Monthei, indicated that "E.J. is safe and healthy" and bonded to her parents. Ms. Monthei concluded that "[t]here are currently no safety concerns for E.J."

Since November 29, 2020, there has been little to no communication between E.J.'s parents and Kaitlyn. In fact, Kaitlyn has not seen E.J. since that date. Despite this, Kaitlyn had concerns regarding Madison's and Nicholas' ability to provide appropriate care for E.J. On December 21, 2020, Kaitlyn filed a Petition for Appointment of Guardian for Minor. The Petition asserts that the

parents have a physical or mental illness that prevents them from providing care and supervision to E.J. In addition, the Petition alleges that a guardianship is necessary because "the proposed ward is in danger due to the conditions of the home and care given by the natural parents."

Iowa Code 232D.204 allows for the entry of a guardianship without parental consent in two limited circumstances. Under Iowa Code Section 232D.204(1), the Court may appoint a guardian if (a) there is a person serving as a de facto guardian of the minor *and* (b) there has been a demonstrated lack of consistent parental participation in the life of the minor by the parent.

The statute anticipates the minor child living with the person petitioning the Court, but in this case, E.J. is in the custody of her parents. Additionally, the petitioner has not seen E.J. since November 29, 2020. Thus, the petitioner is not acting as de facto guardian for the child. In addition, no evidence was presented that there has been a demonstrated lack of consistent parental participation by Nicholas or Madison. They are currently raising their child, and have only been away from her for a period of less than two weeks. Thus, guardianship cannot be granted pursuant to Iowa Code Section 232D.204(1) because the factors set forth in subsection (a) and (b) have not been met.

The second way in which the Court may enter a guardianship for a minor without parental consent is set out in Iowa Code Section 232D.204(2). Under that subsection, the Court may appoint a guardian if (a) no parent is willing or able to exercise the power the Court will grant to the guardian if the Court appointed a guardian *and* (b) doing so would be in the best interest of the minor.

In this case, the petitioner has not proven that no parent is willing or able to exercise the power the Court will grant to the guardian. Iowa Code Section 232D.401(3) sets out the powers that the Court may grant a guardian, including taking custody of a child and establishing a permanent residence for the child, consenting to medical, dental, and other health care treatment and services for the child, providing or arranging for education for the child, consenting to professional services for the minor to ensure her safety and welfare, and applying for and receiving funds and benefits for the child's support.

Additionally, there is no evidence that either parent is refusing to comply with the duties and responsibilities imposed upon a parent by the parent-child relationship. Iowa Code Section 232D.102(4) recognizes that these duties include providing children with necessary food, clothing, shelter, health care, education, and other care and supervision.

Madison testified that she and Nicholas provide E.J. with food and all other necessities. They have reached out to local food banks, churches, and other community supports to get things they need such as diapers and a crib. E.J. has a pediatrician, who has expressed no concerns regarding development or weight. The Department of Human Services confirmed that E.J. is current with immunizations and is on track for development. Madison and Nicholas also have a stable residence, which CPW Kelly Monthei "observed to be clean and had all of the basic needs for the family." The family also has transportation. Madison is employed as a CNA. Nicholas cares for E.J. while Madison is at work.

Because the factors set forth in Iowa Code Section 232D.204(2)(a) have not been met, a lengthy analysis of subsection (b) is unnecessary. However, in every case, the best interest of the child is the Court's primary concern. There is a presumption that it is in the best interest of a child to be raised by their natural parents. In order to overcome that presumption, the petitioner must prove that Madison and Nicholas are not "qualified and suitable" caregivers.

Petitioner argued that Madison and Nicholas reaching out to Kaitlyn for help pointed to their instability and inability to appropriately parent their child. However, this Court cannot fault two very young parents for reaching out to family members for help. From the testimony presented, it was evident that the young family was in crisis and had nowhere else to turn. Their first task was to make sure that their infant daughter was safe and cared for.

Kaitlyn and Kate detailed their concerns regarding E.J.'s physical appearance on November 15, 2020. Both testified that she was underweight, dirty, and had a film on her skin. They also thought that E.J. was crying excessively, even though the infant was in a vehicle with complete strangers. Kaitlyn and Kate through the back of E.J.'s head was flat and they were worried because she would only drink two ounces at a time. Despite these concerns, they did not call the Department of Human Services or take the child to the hospital, which casts doubt on their credibility.

Kaitlyn also expressed concern regarding both Madison and Nicholas' mental health. However, no evidence or testimony was presented to indicate that any mental health issues prevent the parents from providing proper care to their daughter.

Like CPW Kelly Monthei, the court visitor also observed E.J. to be happy, healthy, and bonded to her parents. He reported that both Madison and Nicholas appeared to be able to meet E.J.'s needs.

Petitioner seems to allege that she can provide E.J. with a better home than her parents can. However, the United States Supreme Court has recognized the right of parents to be and active and integral part of their children's lives as "perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court." *Troxel v. Granville*, 530 U.S. 57 (U.S. 2000). The familial right of association is based on the "concept of liberty in the Fourteenth Amendment." *see Kraft v. Jacka*, 872 F.2d 862, 871 (9th Cir. 1989) (basing protection of intimate associational rights on the fourteenth amendment). Thus, our courts have long recognized a parents' right to raise their children without government interference. This right is not absolute and must be weighed against the best interests of the child. As noted above, there is a presumption that it is in the best interest of a child to be raised by their natural parents. In order to overcome that presumption, the petitioner must prove that the parents are not "qualified and suitable" caregivers in order for an involuntary guardianship to be established. A person cannot simply keep a child from her parents because they believe that they would be better parents or provide a better home.

Even if all of the allegations made by the petitioner are accepted as true, she has failed to allege any facts that would meet the standards for establishment of a minor guardianship without parental consent under Iowa Code Section 232D.204. The Court therefore finds that the petition to establish guardianship should be denied.

Petitioner argued that if the Court was not inclined to establish a guardianship for E.J., the Court should refer the family to the Department of Human Services for the filing of a child in need of assistance petition. However, the Court notes that Iowa Code Section 232D.204(3) directs the Court to consider the appropriateness of a child in need of assistance action only prior to *granting* a petition for guardianship. Further, the Department of Human Services has already determined that a child in need of assistance petition is not warranted. This Court concurs because there are no noted safety concerns at this time. Petitioner's request for the filing of a child in need of assistance petition is denied.

**IT IS THEREFORE ORDERED** that the petition to establish guardianship is denied and the case is dismissed with court costs taxed to the petitioner, Kaitlyn XXXX.

**IT IS FURTHER ORDERED** based on a review of the financial affidavit filed by Kaitlyn XXXX on January 11, 2021, that the expenses and fees of the court visitor and attorney for the respondents are assessed against the petitioner, Kaitlyn XXXX.

**SO ORDERED** this June 4, 2021.

# ATTACHMENT B – QUESTION 11

*In the Interest of P.S.*
Delinquency Revocation Order

*In the Interest of D.G. and G.G.*
Order Terminating Parental Rights

*Int. of D.G.* and G.G.
Iowa Court of Appeals Opinion

IN THE JUVENILE COURT OF PAGE COUNTY, IOWA

| | | |
|---|---|---|
| IN THE INTEREST OF | : | JUVENILE NO. 101782 |
| P.S., | : | DELINQUENCY REVOCATION ORDER |
| A CHILD. | : | |

The above-entitled matter came on for delinquency revocation hearing on the 15th day of September, 2021, with the proceedings being reported by Laura Andersen. The minor child appeared with his attorney, Justin Wyatt. His mother, C.S., appeared. His father did not appear. The State of Iowa appeared by Jim Varley, Assistant Page County Attorney, and accompanying him were Mindy Orme and Debra Wittrock, Juvenile Court Services.

The Court notes that a Revocation Hearing Report prepared by Mindy Orme, Juvenile Court Services, dated September 8, 2021, was electronically filed.

Exhibits 12 through 16 were offered and received into evidence.

The Court heard the testimony of the child's mother as well as statements and arguments from counsel and the child.

The Court finds that on December 20, 2019, P.S. was found to have committed the delinquent act of Sexual Abuse in the Second Degree, a class B felony, in violation of Iowa Code Sections 709.3(1)(b) and 709.3(2). Following a contested adjudication hearing, the Court found that on July 17, 2019, P.S. performed a sex act upon a child under the age of twelve. Specifically, the Court found that P.S. put his mouth on the penis of a child who was three years old on the date of the incident. P.S. was thirteen years old at the time.

On January 16, 2020, a Consent Decree was entered of record pursuant to the recommendation of the parties. The Court noted that P.S. was eligible for a Consent Decree based on his age and lack of prior involvement with Juvenile Court Services. P.S. was placed under the supervision of the Fourth Judicial District Juvenile Court Services upon the terms and conditions of probation. The Court further ordered that P.S. be placed in the care, custody, and control of the Fourth Judicial District Juvenile Court Services for placement in group foster care for sex offender treatment.

At the time of the dispositional hearing, Juvenile Court Officer Mindy Orme recommended that P.S. be placed in secure detention until a group foster home placement was secured. In the Predisposition Report filed on January 10, 2021, JCO Orme set forth numerous concerns regarding P.S.'s behavior in the home, including aggressive and assaultive behavior towards siblings, smoking, and committing thefts. In order to ensure the safety of the community, the Court ordered that P.S. be placed in secure detention pending placement in an appropriate group foster home.

P.S. entered group foster care at Midwest Christian Services on February 18, 2020. While at Midwest Christian, P.S. worked with the treatment team to identify and accept responsibility for his sexual offending and behavioral issues. At Midwest Christian, P.S. admitted to sexually abusing the three-year-old victim in this case. He also admitted to sexually abusing two other victims. P.S. further disclosed that he was sexually abused by a friend of his brother's when he was twelve years old.

At the permanency hearing on February 4, 2021, the Court extended P.S.'s Consent Decree for an additional year pursuant to Iowa Code Section 232.46(4). The Court noted that while P.S. had made some progress at Midwest Christian, he struggled with behavioral issues. Staff reported noticing an increase in secretive behaviors. P.S. also exhibited poor boundaries with others, placing himself in high-risk situations. He also argued with and attempted to manipulate staff members. Staff noted that P.S. struggled with these behaviors after return from home passes while attempting to re-acclimate to a highly structured environment.

Sixteen months after entering Midwest Christian, on June 17, 2021, P.S. was discharged after successfully completing four phases of sexual offender treatment. He was returned to the care, custody, and control of his parents under the supervision of Juvenile Court Services. Tracking and monitoring as well as Family Centered Services with Boys Town were implemented. As part of his treatment plan, P.S. was also required to continue with sex offender treatment on an intensive outpatient basis following his discharge from Midwest Christian. Therapeutic services were to include individual, family, and group therapy. Midwest Christian reported that this outpatient treatment could be completed within two months of his discharge.[17]

However, P.S. did not begin outpatient sex offender treatment for approximately six weeks after his discharge from Midwest Christian. He began services with therapist Windy DiSalvo at Your Story Matters on July 27, 2021. P.S. was to meet with Ms. DiSalvo each week. However,

[17] Exhibit 12, Midwest Christian Services Discharge Summary dated June 17, 2021.

P.S. only participated in two sessions with Ms. DiSalvo on July 28, 2021, and on August 4, 2021. His appointment on August 11, 2021, was canceled by his mother. P.S. next had an appointment on August 18, 2021, but Ms. DiSalvo spoke primarily to P.S.'s mother via the phone during this session, while P.S. could be heard talking to other people in the background. P.S. was to have another appointment on August 25, 2021, but the session was canceled due to P.S.'s failure to confirm his appointment. On August 25, 2021, P.S. was unsuccessfully discharged from Ms. DiSalvo's caseload due to "unresponsiveness, hostility, and lack of participation."[18]

In the discharge letter dated August 26, 2021, Ms. DiSalvo states, "If successful participation and graduation was a requirement for P.S. to not be placed on the sex offender registry or to limit the length of time on the registry this therapist would have to state that he did not meet this requirement. P.S.'s behavior during therapy was not indicative of someone who had completed over 18 months of previous treatment for problematic sexual behavior. Instead during his very brief period of time with this therapist both P.S. and his mother were both hostile towards this therapist as well as dismissive towards his victim."

Ms. DiSalvo went on to explain that P.S. was "extremely aggressive during his sessions" and described incidents where P.S. became angry and use profanity. P.S. also swore at and insulted his mother during sessions. He refused to fully participate in the two sessions he did attend. Perhaps most disturbing to this Court, both P.S. and his mother described his victim as the "alleged victim" and referred to therapy as punishment for "what he supposedly did to that kid." Based on her interactions with P.S. and his family, Ms. DiSalvo assessed P.S. as a "very high risk to offend again."

As part of P.S.'s treatment plan, the family was required to participate with in-home services from Boys Town designed to assist P.S.'s transition home from Midwest Christian. Boys Town would also provide skill-building to P.S. and assist the parents in developing enhanced parenting skills.

Boys Town Family Services Consultant, Allison Lake, reported that the family was initially engaged in services. For example, on July 6, 2021, Ms. Lake reported that "P.S. has been present for every session thus far and does appear to be engaged when I interact with him." However, Ms. Lake quickly began to see a decline in engagement with services. In her notes from the July 29, 2021, session, Ms. Lake stated concern regarding "P.S.'s motivation to complete probation

[18] Exhibit 15, Discharge Letter from Your Story Matters dated August 26, 2021.

requirements as well as the parent's openness to the requirements of probation." She further stated that she "observed some ambivalence to the family's understanding of the level of seriousness associated with the situation." Ms. Lake provided teaching to the family to address these concerns.

During the months of July and August, the family's participation in Boys Town services was inconsistent. On some occasions, Ms. Lake reported that P.S. and his family were engaged and receptive to services. However, the family became more difficult to meet with as time went on. Most recently, on August 31, 2021, the family declined Ms. Lake's request to meet via tele-health. On September 2, 2021, Ms. Lake reported that P.S. was rude and did not want to engage during a virtual appointment with the family.

Due to P.S.'s noncompliance with probation, specifically his failure to participate in outpatient sexual offender treatment and related services, Juvenile Court Officer Mindy Orme recommended that the Consent Decree be revoked, the dispositional order in this matter be terminated, and the case closed. JCO Orme also recommended that P.S. be ordered to register as a sex offender for a period of 10 years. The County Attorney concurred with JCO Orme's recommendation.

Counsel for the child argued that the Consent Decree remain in place and that the registry requirement should be waived. He requested that the case remain open for an additional period of time to allow P.S. additional time to comply with outpatient sex offender treatment.

This Court first considers whether or not P.S. has complied with the terms and conditions of his Consent Decree. P.S. was granted a Consent Decree on January 16, 2020. Twenty months passed between the entry of the Consent Decree and the Revocation Hearing held on September 15, 2021. During that time, P.S. successfully completed inpatient sex offender treatment at Midwest Christian. However, the reports filed by Midwest Christian since his placement there in February 2020 paint a picture of minimal compliance, at best. Although P.S. ultimately completed the four phases, he struggled with behavioral issues throughout his time at Midwest Christian. Undoubtedly, these issues led to his lengthy stay at the program.

Shortly after returning home from Midwest Christian, P.S. began to struggle with abiding by the terms and conditions of his probation. Most notably, he was uncooperative with outpatient sex offender treatment. He did not sign up for outpatient treatment for six weeks following his return home. Then P.S. only attended two sessions, where he was verbally aggressive, defiant, and dishonest with the therapist. Both he and his mother refused to acknowledge his sexual

misconduct, despite his previous admissions at Midwest Christian. In addition, P.S. was not attending school and was uncooperative with transition services offered by Boys Town.

P.S.'s attorney argued that P.S. should be given another chance to comply with probation. P.S. stated that he now understood that he "needed to be rehabilitated." However, this Court is unable to ignore P.S.'s unwillingness to comply with the terms and conditions of his probation over the past twenty months. This Court is dubious that P.S. would suddenly begin to take his probation seriously if granted additional time. This Court concurs with the statement made by Juvenile Court Officer Mindy Orme in her Revocation Report that "P.S. does not appear to want to be cooperative with the terms and conditions of his probation, nor does his family appear to want to help him successfully complete terms and conditions of his probation." She further noted that P.S. presented a risk to the safety of others and was not amenable to change.

This Court recognizes that P.S. is only 15 years old and that his home environment is difficult. His parents have a history of methamphetamine addiction. At Midwest Christian, P.S. shared that he feels it is his responsibility to keep his parents sober. His family has also struggled with homelessness. His parents did not ensure that P.S. attended school for years prior to his involvement with Juvenile Court Services. P.S. also is a victim of sexual abuse. P.S.'s therapist at Midwest Christian noted that P.S. had missed several treatment sessions because he had not returned from home visits in a timely manner. His parents also refused to schedule a family session to process home visits or review the safety contracts. In P.S.'s discharge report from Midwest Christian, his therapist reported that "[P.S.'s] family continues to play a huge role in his motivation."

Certainly, P.S.'s mother is to blame for some of P.S.'s troubles since discharge. She waited six weeks after his discharge from Midwest Christian to sign him up for outpatient sex offender treatment. She did not sign him up for school. She canceled or simply did not attend many of the appointments with P.S.'s therapist and the Boys Town worker. Therapist Windy DeSalvo reported that both P.S. *and his mother* were hostile towards her as well as dismissive towards his victim.

However, even if this Court were to disregard the problems caused by the mother, P.S.'s behavior over the past twenty months has not been that of someone willing to comply with the terms and conditions of his probation. Likewise, P.S. has not demonstrated that he is amenable to the rehabilitative services that have been offered to him. The Court therefore finds that an additional period of time to allow P.S. to comply with probation is unwarranted. This Court has

no reason to believe that P.S. will suddenly begin to take his probation and treatment seriously if this case was to remain open.

The burden of proof for revocation of the Consent Decree is upon the State by substantial evidence. Based upon the foregoing, the Court finds that the State has met its burden to prove that P.S. has failed to comply with the terms and conditions of the Consent Decree, and that the Consent Decree should be revoked and P.S. held accountable as if the Consent Decree had not been entered. Further, an order of adjudication should be entered upon the findings made by this Court in Order filed on December 20, 2019. P.S. is therefore adjudicated to have committed the delinquent act of Sexual Abuse in the Second Degree, a class B felony, in violation of Iowa Code Sections 709.3(1)(b) and 709.3(2).

As stated above, the Court does not believe that an additional period of time to allow P.S. to comply with probation is warranted. P.S. has achieved maximum benefits out of supervision by Juvenile Court Services. Not only has he been unwilling to comply with the terms and conditions of his probation, he has not been amenable to the rehabilitative services that have been offered to him. The Court accordingly finds that the dispositional order in this matter should be terminated and the juvenile case closed.

When a dispositional order is terminated, the Juvenile Court is required to determine whether or not a child should be placed on the sex offender registry and for what duration. The Court must consider the best interests of the child as well as the best interest of society. *In Int. of T.H.*, 913 N.W.2d 578, 597 (Iowa 2018). The Court may only relieve a juvenile sex offender from the registration requirements if it finds that the child has been rehabilitated. *Id.* at 584.

In determining whether or not P.S. has been successfully rehabilitated, the Court considers whether or not he was remorseful, efforts and progress made towards rehabilitating himself, and the risk that he will reoffend. Here, P.S. has not shown the Court that he is remorseful or that he wants to change and rehabilitate himself. He was not compliant with outpatient sex offender treatment or the terms and conditions of probation. He was hostile and rude to his therapist and Boys Town provider. Perhaps most disturbingly, he was "dismissive towards his victim" and refused to acknowledge the sexual abuse he committed in outpatient therapy.

In addition, an Iowa Delinquency Risk Assessment was completed on P.S. on August 30, 2021, and he scored at a high risk level to reoffend. JCO Orme, who has supervised P.S. since January 16, 2020, opined that P.S. has not been successfully rehabilitated. This Court also cannot

ignore P.S.'s history prior to this sexual offense. At Midwest Christian, he admitted to committing sexual abuse on three victims. Without successful completion of treatment, this Court is unable to find that P.S. has been rehabilitated. Therefore, he presents a very serious risk of re-offense by committing another sex offense.

For these reasons, the Court finds that P.S. should be required to register on the sex offender registry pursuant to Iowa Code Chapter 692A for a period of 10 years. Because P.S. has been convicted of a sex offense against a minor, the exclusion zones and prohibition of certain employment-related activities set out therein are applicable and shall be enforced for a period of 10 years. This Court specifically notes that the imposition of these requirements is not punitive in nature. Rather, they are necessary to protect the community from future sexual offenses that may be committed by P.S. The Court further finds that a no contact order between P.S. and the victim of his offense, D.B., shall be in effect for a period of five years.

The Court finds the recommendations contained within the Revocation Hearing Report prepared by Mindy Orme, Juvenile Court Services, dated September 8, 2021, to be appropriate and adopts the same.

IT IS THEREFORE ORDERED as follows:

1. Revocation of Consent Decree. The Consent Decree entered herein on January 16, 2020, is hereby revoked.
2. Reinstatement of Petition. The child in interest shall be held accountable for the allegations contained in the Delinquency Petition filed on September 6, 2019, as if the Consent Decree had not been entered and said Petition is hereby reinstated.
3. Adjudication. The child in interest, P.S., is hereby adjudicated to have committed a delinquent act as defined in Iowa Code Section 232.2(12)(a), which were the child an adult would have been the crime of Sexual Abuse in the Second Degree, a class B felony, in violation of Iowa Code Sections 709.3(1)(b) and 709.3(2).
4. Dispositional Order: The dispositional order in this matter is terminated.
5. Sex Offender Registry. Pursuant to Iowa Code Section 692A.104, P.S. shall register with the sheriff of each county where he has a residence, maintains employment, or is in attendance as a student within five (5) business days from this date, and pursuant to Iowa Code Section 692A.110(1), shall pay the $25.00 annual sex offender registration fee beginning with his initial registration. P.S. shall register for a period of ten (10) years from

this date. Pursuant to Iowa Code § 692A.105(2)-(6), P.S. is informed of his duty to notify the County Sheriff of any changes of address in this or any other state within five days of said change. The County Attorney shall pursuant to Iowa Code Section 692A.109(4) perform the requirements of Iowa Code Section 692A.109(1) & (2).

6. Civil Penalty. Pursuant to Iowa Code Section 692A.110(2), P.S. shall pay a civil penalty in the amount of $250.00.
7. Special Sentence. The special sentence pursuant to Iowa Code Section 903B.1 does not apply to P.S.'s age.
8. Exclusion Zones and Residency Restrictions. For purposes of Iowa Code Sections 692A.113, P.S. has been convicted of a sex offense against a minor. The exclusion zones and prohibition of certain employment-related activities set out therein are applicable and shall be enforced for a period of ten (10) years from this date.
9. Residency Restrictions. The requirements of Iowa Code Sections 692A.114 (2000' foot rule) are WAIVED due to the nature of the offense and P.S.'s age.
10. DNA Sample: Pursuant to Iowa Code Sections 81.2 and 901.5(8A)(a), P.S. shall submit a DNA sample for analysis as directed by the sheriff's department or the Iowa Department of Public Safety if he has not previously provided said DNA sample in the proceedings leading to an adjudication herein
11. No Contact Order. Pursuant to Iowa Code Sections 664A.2 and 664A.5, P.S. shall have no contact of any nature, including in person, by telephone, in writing, or otherwise with D.B. (DOB: 7/29/2015), the victim of his offense. P.S. shall not be on or adjacent to the residence, place of employment, or school of the protected party. P.S. shall not personally or through a third party threaten, assault, stalk, molest, attack, harass, or otherwise abuse the protected party, any person residing with the protected party, or any member of the protected party's family. This protective order is in effect immediately and shall remain in effect for a period of five (5) years from this date.

IT IS FURTHER ORDERED that Juvenile Court jurisdiction in this matter is hereby terminated, and Juvenile Court Services is relieved of further responsibility.

IT IS FURTHER ORDERED that the matter(s) referenced above shall be sealed two years after the child's case is terminated or dismissed or on the child's eighteenth birthday, whichever is later. The record shall be sealed so long as the child has committed no disqualifying offenses.

District Court administration shall schedule a hearing in compliance with Iowa Code Section 232.150. Notice of this hearing shall be sent to the child, the County Attorney, Juvenile Court Services, and the Iowa Department of Corrections. The Court deems that sufficient notice to the child shall be by mailing the order scheduling the hearing to the last known address of the child unless the child provides the Clerk of Court with current contact information.

Notice of Deadline for Appeal: Any party who wishes to appeal from this order must file notice of appeal pursuant to Iowa Rules of Appellate Procedure within 15 days of the entry of this order, and a petition on appeal must be filed within 15 days thereafter. Failure to comply with the time deadlines will result in the loss of the right to appeal and the dismissal of an appeal

IN THE DISTRICT COURT OF IOWA, IN AND FOR PAGE COUNTY
(JUVENILE DIVISION)

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| IN THE INTEREST OF | : | CASE NOS. JVJV101784<br>JVJV101785 |
| D.G.,<br>G.G., | : | |
| CHILDREN. | : | **ORDER FOR TERMINATION OF PARENTAL RIGHTS** |

The above-entitled matters came on for termination of parental rights hearing on January 16, 2020, and January 21, 2020, with the proceedings being reported by Laura Andersen. The minor children appeared by their attorney and guardian ad litem, Vicki Danley. Their mother, Laura XXXX, appeared in person and with her attorney, Ken Whitacre. Their father, Justin XXXX, appeared in person and with his attorney, Justin Wyatt. The State of Iowa appeared by Carl Sonksen, Page County Attorney, and accompanying him were Kati England, Justina Reeves, and Corinne Schram, Iowa Department of Human Services. Also present were Alex King and Lisa Pearce, Boys Town. Deb and Jim XXXX, relative placement for the children, appeared in person. Tammy XXXX, maternal grandmother, also appeared in person.

A Petition for Termination of Parental Rights was filed on November 26, 2019, asking that the parental rights and the parent-child relationship existing between the children and their parents be terminated. An amendment to the Petition for Termination of Parental Rights was filed on December 10, 2019. The State requested that the parental rights of both parents be terminated pursuant to Iowa Code Sections 232.116(1)(a), (e), (f), and (h). The Guardian ad Litem was in agreement with the State's request. The parents denied the allegations and requested additional time to achieve reunification.

Testimony was presented on behalf of the State by Kati England. The following exhibits were offered by the State and admitted as evidence: Exhibit 1, Report to the Court by Kati England, Iowa Department of Human Services; Exhibit 2, FSRP Reports of Alexandria King, Boys Town, 12/17/2019; Exhibit 3, FSRP Reports of Morgan Smith, Boys Town, 11/18/2019; and Exhibit 6, Birth Certificates for each child in their respective cases. At the request of the State, the Court also took judicial notice of the following orders in the underlying CINA files, Page Co. Case Nos. JVJV101613 and JVJV101614:

- Order from July 6, 2017, Adjudication Hearing (filed July 8, 2017);
- Order from August 17, 2017, Disposition Hearing (filed August 21, 2017);
- Order from November 2, 2017, Review/Modification Hearing (filed November 3, 2017);
- Order from February 1, 2018, Review/Modification Hearing (filed February 2, 2018);
- Order from March 15, 2018, Permanency Hearing (filed March 19, 2018);
- Order from June 21, 2018, Permanency Review Hearing (filed August 14, 2018);
- Order from May 16, 2019, Permanency Review Hearing (filed May 16, 2019);
- Order from July 18, 2019, Permanency Review Hearing (filed July 29, 2019); and
- Order from November 15, 2019, Permanency Review Hearing (filed November 19, 2019).

Testimony was presented on behalf of the Guardian ad Litem by Tracy Van Zee, Christina Wessel, Jim XXXX, and Deb XXXX. The following exhibits were offered by the Guardian ad Litem and admitted as evidence: Exhibit 4, Curriculum Vitae of Tracy Van Zee; Exhibit 5, Report of Tracy Van Zee dated 01/9/2020.

Testimony was presented on behalf of the mother by Tammy XXXX and Laura XXXX.

Testimony was presented on behalf of the father by Justin XXXX. The following exhibit was offered by the father and admitted as evidence: Exhibit 7, Letter from Justin XXXX's employer dated 10/19/2019.

Rebuttal testimony was presented on behalf of the State by Justina Reeves.

Rebuttal testimony was presented on behalf of the mother by Laura XXXX.

The Court considered the exhibits, the testimony of the witnesses, and the statements and arguments of counsel. The Court now makes the following findings of fact which have been established by clear and convincing evidence, conclusions of law, and order terminating parental rights.

**FACTS AND PRIOR PROCEEDINGS**

Laura XXXX and Justin XXXX are the parents of five children: D.G. XXXX, who is two years old (DOB 3/30/2017); G.G., who is five years old (DOB 2/7/2015); E.G.; who is six years old (DOB 2/10/2014); O.G., who is nine years old (DOB 6/4/2010); and M.G. who is twelve years old (DOB 11/21/2007).[19]

The XXXX family first became involved with the Department of Human Services in 2014. A child protective assessment was founded against Justin and Laura for denial of critical care,

[19] Justin XXXX and Laura XXXX purport that Justin is G.G.'s biological father. Justin is not married to the mother, and his name does not appear on the birth certificate. He has acknowledged that he is G.G.'s biological father on the record. The parental rights of all unknown fathers were terminated in the August 14, 2018, termination order.

failure to provide proper supervision, due to their methamphetamine use while caring for the children. The family agreed to voluntarily participate in services in December, 2014.

The children were removed from their parents' care on February 8, 2015, due to G.G. testing positive for methamphetamine and amphetamine at birth and suffering withdrawals. Laura tested positive for methamphetamine, amphetamine, and THC. G.G. was placed with his maternal uncle and aunt, Deb and Jim XXXX. G.G.'s siblings were placed with their maternal grandmother, Tammy XXXX. A child protective assessment was founded against Laura for denial of critical care and presence of illegal drugs in a child. The parents completed substance abuse treatment and the children, including G.G., were returned to their parents' care on January 21, 2016, shortly before G.G.'s first birthday. The Court ultimately closed the CINA case.

Less than one year later, the family again became involved with the Department when their fifth child, D.G., was born with marijuana in his system. A child protective assessment, Incident No. 2017093105, was founded against Laura for presence of illegal drugs in a child on May 1, 2017. Throughout the child abuse assessment, the parents refused to submit to drug testing. Initially, the children were not removed from their parents' care, but the State filed a petition to have all five children adjudicated in need of assistance.

Immediately prior to the CINA adjudication hearing on July 6, 2017, the parents were drug tested and both were found to have methamphetamine and amphetamine in their systems. Laura was also arrested on outstanding warrants. The Court granted the adjudication petition and ordered the removal of the children from the parents' care.

The older three children, Michael, Ellnorah, and Owen, were placed with maternal grandmother, Tammy XXXX. G.G., who was then two years old, was again placed with maternal aunt and uncle, Deb and Jim XXXX. D.G. was initially placed with suitable others Dan and Jackie Autry in Coin, Iowa, to allow the infant daily contact with his parents, who also lived in Coin. The parents failed to participate in *any* interactions with their three-month-old baby despite living in close physical proximity to him, so D.G. joined G.G. at the home of Deb and Jim XXXX on August 14, 2017. Upon receiving the children, caregivers reported that all of the children had head lice and some were behind on immunizations. Another child protective assessment was founded against Justin and Laura for dangerous substances on August 3, 2017.

At the dispositional hearing on August 17, 2017, Justin again tested positive for methamphetamine and amphetamine. Laura did not attend the hearing. Justin and Laura were both

unemployed and requested assistance from the Department in paying their rent. The parents had not completed chemical dependency or mental health evaluations at the time of the hearing, but were reported to be cooperative with Family Safety, Risk and Permanency (FSRP) Services. FSRP provided two supervised visits per week. The children remained out of the care, custody, and control of their parents. The Court ordered numerous services in an effort to work toward the permanency goal of reunification.

At the permanency hearing on March 15, 2018, the Court noted that very little progress had been made since the previous hearing. Interactions with D.G. and G.G. continued to be fully supervised and were not taking place in the family home due to a strong chemical odor in the home and ongoing concerns of illegal drug use by the parents. Justin and Laura's drug screens continued to be positive for methamphetamine and amphetamine, and Laura also tested positive for marijuana. Neither parent was consistent with substance abuse treatment and Laura stopped participating in mental health services. The Court modified the permanency goal from reunification to adoption. D.G. and G.G. now eleven months and three years old, respectively, remained in the home of Deb and Jim XXXX.

Justin and Laura's parental rights to D.G. and G.G. were terminated on August 14, 2018, and reunification efforts ceased.[20] Deb and Jim XXXX expressed that they wanted to adopt the children. On March 20, 2019, the termination ruling was reversed by the Iowa Court of Appeals, who directed that reasonable efforts towards reunification resume. *Interest of D.G.*, 928 N.W.2d 163 (Iowa Ct. App. 2019).

Social Work Case Manager (SWCM) Kati England testified that following the issuance of Procedendo on April 11, 2019, the Department immediately resumed reunification efforts. The Department and FSRP provider worked to schedule visitation between D.G., G.G., and their biological parents. The first visit for D.G. and G.G. was scheduled for April 28, 2019. On the way to the visit, four-year-old G.G. began "vomiting profusely" in the FSRP provider's vehicle. The FSRP provider communicated with Justin and Laura, who indicated that the visit should be canceled so that G.G.'s purported illness did not spread to the other children. The visit was rescheduled for May 2, 2019.

Prior to the visit on May 2, 2019, G.G.'s Head Start teacher observed G.G. to have a nightmare during naptime as evidenced by whimpering and yelling that he did not want to go back.

[20] Page County Case Nos. JVJV101680 and JVJV101680.

When staff woke G.G. up to comfort him, they became aware he had defecated in his pants. Staff attempted to calm G.G. down but sent him home when attempts to ease his anxiety were unsuccessful. After consultation with the guardian ad litem and DHS Supervisor Connie Jones, it was determined that G.G. should not attend the interaction on May 2, 2019, to allow for an examination by his physician. D.G. did participate in the interaction with Justin and Laura.

Claudia M. Balta, PA-C, examined G.G. In a report dated May 3, 2019, the medical provider stated, "I see no evidence on exam of acute illness. I think these episodes of vomiting and bowel incontinence were likely stress induced relating to his parental visits." On May 3, 2019, the Court ordered that all visits between G.G. and his parents cease pending the completion of a mental health evaluation for the child. The Court further ordered that interactions with the parents would begin only in a therapeutic and fully-supervised setting upon the recommendation of G.G.'s therapist.

In the Permanency Review Order filed May 16, 2019, the Court relied upon the May 3, 2019, report of Ms. Balta and confirmed its previous order suspending visits until G.G. participated in therapy and visitation with the parents was recommended by his therapist. The Court ordered that the permanency goal remain adoption with reunification efforts being provided in accordance with the decision of the Iowa Court of Appeals.

Tracy Van Zee, MA, TLMHC, of Healthy Homes Family Services began working with G.G. on May 15, 2019. In the Permanency Review Order filed November 19, 2019, the Court noted Ms. Van Zee's observations of intermittent anxiety behaviors and diagnosis of Adjustment Disorder with Anxiety. Ms. Van Zee stated that G.G.'s symptoms were directly related to the ongoing custody issues within his family. She expected that his symptoms would diminish when his circumstances became more stable. Ms. Van Zee also reported that G.G. struggled to discuss emotions such as fear and worry, then he quickly changed the subject.

At the time of the permanency review hearing on July 18, 2019, interactions between two-year-old D.G. and his parents continued to be professionally supervised. Visits had previously occurred at a neutral location in the community due to the child's young age and safety concerns within the family home. However, the Court noted that the parents had since remedied the safety concerns, which allowed supervised visits with D.G. to begin in the family home on June 30, 2019. At that point, the parents had still not had interactions with G.G. due to the Court's order suspending visits pending recommendation of his therapist.

At the permanency review hearing on July 18, 2019, this Court spoke with the parents directly regarding what they needed to do to have the children returned to their care. The Court set forth objective requirements including compliance with drug screens, substance abuse treatment, and full communication with the Department. Both parents indicated to the Court on the record that they understood what was expected of them in order to achieve reunification with their children. Based on the parents' concurrence, the Court modified the permanency goal for D.G. and G.G. to reunification.

In approximately July of 2019, Ms. Van Zee recommended that G.G. participate in visits in the family home. However, she directed that all interactions between G.G. and his parents be fully supervised by FSRP as well as the BHIS provider. Ms. Van Zee attended two interactions in the family home.

Along with therapeutic sessions with Ms. Van Zee, G.G. also participated in regular BHIS sessions with Cyndi Mitchell. These sessions focus on alleviating G.G.'s anxiety symptoms. On August 14, 2019, Ms. Mitchell accompanied the FSRP worker to the family home during a scheduled, supervised visit. Ms. Mitchell reported that Laura and Justin declined to create goals for G.G.'s BHIS services because "they did not know their son well at this point and had only seen him a few times in the last year." Laura and Justin voiced opposition to participation in BHIS services because it disrupted their time with G.G. and D.G. Ms. Mitchell continued to offer weekly BHIS sessions during supervised visits, but struggled to make progress with the family due to the parents' resistance.

In August of 2019, Ms. Van Zee recommended that Justin and Laura begin having family therapy sessions with G.G. Ms. Van Zee noted that visits in the home were chaotic, and G.G. was too distracted to concentrate on improving their relationships. She noted that if reunification was to be successful and not detrimental to G.G., it was of utmost importance that he develop attachment relationships with Justin and Laura. The process of forming attachment bonds would take time, repeated contact with Justin and Laura, and careful guidance. Due to the trauma G.G. has suffered due to the instability in his young life, he would need help managing the stress of the reunification process even if he had positive feelings towards all involved. Ms. Van Zee opined that family therapy was necessary to facilitate the development of familial attachment and to support G.G.'s parents in helping him manage the stress and anxiety of the situation. Ms. Van Zee had confidence that following family therapy sessions with noted progress in attachment dynamics,

she would recommend increased visits and that eventually, therapeutic oversight would be unnecessary.

Ms. Van Zee requested that the parents meet G.G. at her office in Red Oak to participate in family therapy sessions. Justin and Laura met with Ms. Van Zee on one occasion and discussed the goals for G.G.'s therapy as well as their concerns regarding the DHS case. Following that meeting, Justin and Laura stated that they were unable to attend sessions in Red Oak as it was too far to drive. The parents requested that G.G.'s therapy appointments be transferred from Healthy Homes in Red Oak to Midwest Mental Health in Shenandoah, which was 13 miles closer to their home in Coin. The Department, in consultation with the Guardian ad Litem, denied their request, maintaining that it was in G.G.'s best interest to remain engaged with Ms. Van Zee at Healthy Homes as he had established a therapeutic relationship with her. Bringing a new therapist into his life at this point would undoubtedly cause further emotional setbacks and increase the delay in reunifying the family. Disturbingly, Laura testified at the termination of parental rights hearing that she was "not concerned about the effect [changing therapists] might have on G.G."

Instead, the Department continued to work with FSRP to assist the parents in obtaining resources to overcome their transportation barriers. In effort to accommodate the family, Ms. Van Zee offered flexible scheduling and evening appointments so that Justin could drive himself and Laura after he got off work. Still, the parents refused to participate. The Department and FSRP worked with Justin and Laura to problem-solve and overcome barriers by providing gas cards as well as other resources that could provide those transportation assistance, and worked with their Medicaid provider to authorize transportation. Still, the parents refused to participate.

In a therapeutic interaction with G.G. on October 24, 2019, Ms. Van Zee observed G.G. to be shy, avoiding eye contact, and appearing nervous. When Ms. Van Zee inquired about visits, G.G. referred to them as "going to Michael's house." He refused to identify any other persons at the house. When Ms. Van Zee inquired about his feelings when he "goes to Michael's house," G.G. stated, "I do not like to go" and "I want to stay here."

The family next came before the Court at the permanency review hearing on November 15, 2019. The Department recommended modification of the permanency goal from reunification to adoption. The Department cited Justin and Laura's unwillingness to abstain from the use of controlled substances, to attend substance abuse treatment, to participate in mental health services, and failure to participate in therapeutic interactions with G.G. The Department expressed grave

concern that the children, especially G.G., lacked an attachment bond to their biological parents. Further, based on the Department's concerns, interactions between D.G. and G.G. and their parents remained professionally supervised.

SWCM England testified that since reasonable efforts towards reunification resumed in April of 2019, Justin and Laura have failed to comply with recommendations to abstain from the use of controlled substances, attend substance abuse treatment, and participate in mental health services. Laura completed a new substance abuse evaluation with Alan Mortimore at Zion Recovery on June 26, 2019. Mr. Mortimore recommended that Laura attend one group per week for Continuing Care with an emphasis on relapse prevention. Laura was unsuccessfully discharged on September 27, 2019, having attended no sessions since July 8, 2019.

Justin initially engaged with Zion Recovery in August of 2017 and was recommended to attend extended outpatient treatment. Justin failed to comply with the recommendations, citing his work schedule as a barrier. FSRP offered transportation assistance to help Justin get to appointments after his workday had ended and Mr. Mortimore offered to allow Justin to attend appointments over his lunch breaks. Despite these compromises, Justin failed to participate substance abuse treatment.

At the direction of the Department, Justin obtained a new substance abuse evaluation on February 6, 2018, and was again recommended to attend extended outpatient treatment, which consisted of two to three groups per month. Justin participated in the groups from June through August of 2018, but was ultimately discharged for failing to attend sessions after that time.

In March of 2019, Justin was instructed to obtain an updated substance abuse evaluation following his positive UAs for THC on March 2, 2019, and March 13, 2019. Two months passed before Justin finally reported to Zion Recovery for his substance abuse evaluation. The evaluation was completed with Mr. Mortimore on July 11, 2019. Justin returned for recommendations on July 25, 2019, but failed to attend any sessions at Zion Recovery after that date. He was discharged on September 26, 2019, for failure to maintain contact for over 60 days.

During a supervised interaction on September 22, 2019, Laura and Justin informed SWCM England that they intended to "sign themselves out" of Zion Recovery services. SWCM England testified that Laura and Justin were very agitated at the time and did not provide any further explanation.

Justin and Laura's failure to comply with substance abuse treatment is problematic due to their extensive histories of substance abuse. Perhaps even more concerning is that neither parent has been able to maintain sobriety since reunification efforts resumed. Laura has been inconsistent with drug screens, but those she has cooperated with have been positive for marijuana. Laura tested positive for THC through random drug screens on March 2, 2019 (251ng/mL), March 10, 2019 (279ng/mL), and May 20, 2019 (75ng/mL).

Justin also tested positive for THC through a UA on March 2, 2019 (170ng/mL) and via hair test on March 13, 2019 (12.3pg/10mg). Justin provided another UA on May 20, 2019, that was positive for THC (27ng/mL).

The Department set up in-home drug testing to accommodate Laura's lack of transportation and Justin's work schedule. The testing agency attempted to complete in-home testing on June 18, 2019, and June 26, 2019. Both attempts were unsuccessful as no one answered the door at the family home. Justin was reportedly working on June 26, 2019. On July 14, 2019, Laura provided a drug screen with a low creatinine level, which is considered by the Department and this Court to be a positive drug screen. Justin provided a clean UA for Zion Recovery on July 25, 2019.

The Department attempted to obtain drug screens through in-home testing on September 16, 2019, and September 21, 2019. The testing agency reported that Laura was not able to provide a urine specimen on September 16, 2019. Justin was at work on September 16, 2019, and therefore, a sample from him was not received. Laura provided a urine specimen on September 21, 2019, which was positive for THC (302ng/mL). Justin provided a urine specimen on September 21, 2019, which was positive for THC (161ng/mL). On October 24, 2019, an in-home test was attempted. The testing agency reported that Laura stated that she was ill and refused the test.

The parents have also failed to comply with recommended mental health treatment since reunification efforts resumed in April of 2019. Laura testified that she completed an updated mental health evaluation at Midwest Mental Health in Shenandoah and had been attending therapeutic sessions since July. She also reported that she had signed a consent for the Department to obtain this information "over a month ago." The Department requested verification of the evaluation to include diagnosis and recommendations on September 26, 2019; however, the agency was unable to verify this information because Laura had not signed a release of information. SWCM England testified that she informed Laura on multiple occasions that Laura needed to sign a release of information.

Justin also reported that he completed an updated mental health evaluation at Midwest Mental Health. Again, the Department requested verification of the evaluation to include diagnosis and recommendations on September 26, 2019; however, the agency was unable to verify this information because Justin had not signed a release of information. As of January 21, 2020, the date of the second day of the termination proceeding, neither Justin nor Laura had signed releases of information at Midwest Mental Health.

Along with the parents' unwillingness to abstain from the use of controlled substances and their failure to participate in substance abuse treatment and mental health services, the Department expressed grave concern regarding emotional and behavioral setbacks observed in both D.G. and G.G. since attempts to resume parent-child interactions. Further, Justin and Laura still refused to participate in therapeutic interactions with G.G.

In the Permanency Review Order filed November 19, 2019, the Court cited a letter from Sunshine 'N Rainbows Daycare Director, Alex McFarland. Ms. McFarland explained that since attempts to resume parent-child interactions, G.G. had exhibited unusual behaviors such as aggressiveness toward staff and children, defiance with rules he was previously able to follow, and emotional outbursts. G.G. continued to become physically ill prior to interactions with Justin and Laura. He also clung to staff when the DHS or FSRP worker arrived to pick him up, was territorial with his belongings, and did not react well to transition and/or change. Ms. McFarland also reported that G.G. had developed a stutter when speaking to staff and other children.

Since attempts to resume parent-child interactions, D.G. also exhibited negative behaviors to include unprovoked aggressiveness towards staff and children such as biting (multiple times per day) and unprovoked hitting, kicking, and screaming. On one occasion when a service provider arrived to pick him up for a visit, D.G. recognized the vehicle and immediately bit two children and proceeded to have a screaming fit. Ms. McFarland stated that D.G. also does not react well to transition and/or change.

At the permanency review hearing on November 15, 2019, Deb XXXX testified regarding negative behaviors exhibited by D.G. and G.G. related to interactions with their parents. Ms. XXXX testified that G.G. no longer sleeps through the night and refuses to sleep in his own bed. He developed a stutter and is aggressive at school and day care. Ms. XXXX also reported that G.G. frequently soils himself, which he had not done since being potty-trained.

Ms. XXXX testified that D.G. also refuses to sleep in his bed and will only sleep in his play pen. She reported that both children exhibited increased neediness when they returned to her home after a visit, and D.G. will not let Ms. XXXX or her husband put him down. D.G. has also exhibited aggressiveness towards G.G. upon returning to the XXXX's home after visits.

Morgan Smith, FSRP provider from Boys Town, also reported to SWCM Kati England that she has observed similar adverse effects to the children following visitation with Justin and Laura.

In the Permanency Review Order filed November 19, 2019, the Court noted Justin and Laura's unwillingness to abstain from the use of controlled substances and their failure attend substance abuse treatment and participate in mental health services. The Court emphasized that despite D.G.'s and G.G.'s severe emotional and behavioral manifestations related to visitation with their parents, Justin and Laura remained unwilling to participate in therapeutic interactions with G.G., despite their knowledge that participation in those sessions were necessary for reunification to occur. Simply put, no progress had been made in attachment dynamics between Justin and Laura and their two youngest children. Now two years and four months after the children had been removed from their parents care, the parents had not yet moved past fully supervised interactions with D.G. and G.G.

Based on these concerns, the Court determined that allowing Justin and Laura additional time to work towards reunification was not in D.G.'s and G.G.'s best interests. The Court ordered that the permanency goal be modified to adoption and directed the County Attorney to file a petition to terminate the parental rights of Laura XXXX and Justin XXXX as to D.G. and G.G.

On November 26, 2019, the State filed a Petition for Termination of Parental Rights of Justin XXXX and Laura XXXX to their children, D.G. and G.G.. Hearing on the State's Petition was scheduled to begin on January 16, 2020.

Despite the filing of a petition to terminate their parental rights, Justin and Laura continued to fail to comply with reunification services offered by the Department. For example, in-home drug testing was attempted on November 29, December 22, December 23, and December 24, 2019. The testing agency reported that there was no answer at the door despite a vehicle being in the driveway and the TV being on. The Department next attempted to obtain a drug screen from Laura through in-home testing on January 10, 2020. The testing agency reported that there was no answer at the door. Laura later reported that she was at the grocery store at that time. The Court notes that

during the months of December, 2019, and January, 2020, Laura was a stay-at-home mother caring for three children and did not have transportation.

Laura testified at both the permanency review and termination of parental rights hearings that she used marijuana for medicinal purposes despite it being illegal in the state of Iowa. Laura suffers from a myriad of physical ailments including congestive heart failure and Camurati-Engelmann disease. She sees her primary physician to manage symptoms related to her medical ailments. Laura testified that her physician recently informed her that she may also have lupus. Laura informed the Court that she would continue to use marijuana until she found an alternative to manage her pain. At the permanency review hearing, Laura also testified that she planned to "re-engage in substance abuse treatment when her ride, her mother, Tammy, gets over her pneumonia." The Court noted that Tammy XXXX was present in the courtroom during both the permanency review hearing and the termination of parental rights proceedings.

Most troubling, Laura and Justin continued to refuse to participate in family therapy with G.G. pending the termination of parental rights hearing. Laura did attend one session with G.G. on December 30, 2019, after she was informed by Ms. Van Zee that BHIS sessions (and thus visits with G.G.) would stop on January 1, 2020, without a new Medicaid authorization. Justin and Laura were otherwise unwilling to participate in therapeutic sessions with G.G., and as such, drastically limited their ability to facilitate an attachment bond with him. SWCM England testified Laura's and Justin's refusal to participate in family therapy with G.G. was the biggest barrier to reunification, and ultimately, the reason she changed the permanency recommendation to adoption. In her words, Justin and Laura were unwilling to place G.G.'s needs before their own.

SWCM England, who has been involved with the family since D.G.'s birth, testified that since resuming reunification efforts, Justin and Laura have been very agitated, angry, and resistant to the Department's recommendations. They have denied SWCM England access to their home, have refused to allow her to check on the children during a visit supervised by other providers, and have abruptly ended at least two interactions with her. These factors along with Justin and Laura's continued use of illegal substances and their unwillingness to comply with recommendations for substance abuse treatment and mental health services leads this Court to have grave concerns regarding the parents' lack of insight into their problems and unwillingness to change.

Additionally, it would not be prudent to ignore the parents' history with the Department. Justin and Laura's children have been removed from their care and custody on multiple occasions

for concerns related to drug use. Both D.G. and G.G. were born with drugs in their systems. It is well-established that a parent's past performance is indicative of the future. Justin and Laura have not made any good faith efforts to address the issues that cause them to repeatedly come to the attention of the Department. Given their history and lack of cooperation with services, it is unlikely, if not impossible, that reunification could occur within a reasonable period of time.

## ANALYSIS

### a. Statutory Grounds for Termination

**Section 232.116(1)(a).** Section 232.116(1)(a) provides that termination of parental rights is authorized when the parents voluntarily and intelligently consent to the termination of parental rights and the parent/child relationship and for good cause desire the termination. The Court finds that the State has not proven a ground for termination of parental rights of either Justin XXXX or Laura XXXX within the scope and meaning of Iowa Code Section 232.116(1)(a).

**Section 232.116(1)(e).** D.G. and G.G. were adjudicated to be children in need of assistance on July 6, 2017. Both children have remained out of the care of their parents since that date. Thus, the first two elements under Iowa Code Section 232.116(1)(e) have been met.

In order to support the allegations under 232.116(1)(e), this Court also must find that the parent failed to maintain significant and meaningful contact with the children for the last six months and has made no reasonable efforts to resume care of the children despite being given the opportunity to do so. The Iowa Code defines "significant and meaningful" contact to include but not be limited to the "affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to the financial obligations, requires continued interest in the children, a genuine effort to maintain the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the children, and requires that the parents establish and maintain a place of importance in the children's life." Iowa Code § 232.116(1)(e)(3).

Here, the parents have not maintained significant and meaningful contact with the D.G. and G.G. during the previous six months because they have not made reasonable efforts to resume care of the children despite being given the opportunity to do so. At the time of the termination hearing, all visits between Justin, Laura, and D.G. and G.G. remained professionally supervised. The parents had not had any unsupervised time with their children during the pendency of this case. Further, the parents had made no genuine effort to move towards additional or unsupervised

visitation because they refused to participate in therapeutic family sessions with G.G. Although the parents maintained that transportation and financial barriers existed, they were offered services such as transportation assistance, gas cards, and flexible scheduling to overcome those barriers. Still, the parents refused to participate in therapy family sessions with their son to achieve reunification. For children as young as G.G., the law has recognized that parents must move quickly to rectify their personal deficiencies. Here, not only did Laura and Justin fail to move quickly, but they failed to make any reasonable effort to reunify with G.G.

Further, significant and meaningful contact contemplates more than simply physical contact. Justin and Laura also have not attempted to maintain a place of importance in their children's lives. They do not call Jim or Deb XXXX to talk to their children or even to inquire about how their children are doing. They do not stop by the XXXX residence to see their children despite Deb and Jim's open door policy. Further, neither parent has demonstrated the capacity to appropriately care for D.G. and G.G. or provide for their complex psychological and emotional needs.

Neither Justin nor Laura have made a genuine effort to address their substance abuse or mental health issues. Further, both parents, Laura in particular, remain unwilling to abstain from the use of illegal substances. Justin and Laura simply have not made affirmative efforts to comply with the mandates of the case permanency plan so they could assume the role of parents to D.G. and G.G.

The Court finds that the State has proved by clear and convincing evidence that Justin XXXX and Laura XXXX have not maintained significant and meaningful contact with their children, D.G. and G.G., during the previous six consecutive months. Accordingly, the State has met its burden of establishing clear and convincing facts to prove a ground for termination of parental rights as to Justin XXXX and Laura XXXX within the scope and meaning of Iowa Code Section 232.116(1)(e).

**Section 232.116(1)(f).** Section 232.116(1)(f) allows termination of parental rights when the child is four years of age or older, has been adjudicated in need of assistance, has been removed from the parent's custody for at least twelve of the previous eighteen months or for the last twelve consecutive months and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parent at the present time.

There is no question that the first three requirements have been met as to G.G. The child is five years old, having been born on February 7, 2015. G.G. has been continuously removed from his parent's physical custody since July 6, 2017. He was adjudicated in need of assistance on the same date.

The Court next must determine whether G.G. can be returned to the custody of his parents as provided in Iowa Code Section 232.102. Our Courts have interpreted this to require "clear and convincing evidence the children would be exposed to an appreciable risk of adjudicatory harm if returned to the parent's custody at the time of the termination hearing." *In Interest of L.S.*, 912 N.W.2d 857 (Iowa Ct. App. 2018).

The record reflects that the family has almost continuously been involved with the Iowa Department of Human Services in the past six years. The Department founded at least four separate child protective assessments against one or both of the parents during that time. Each of the founded reports was related to the use of illegal substances. Additionally, both G.G. and D.G. were born with illegal substances in their systems.

Since the most recent adjudicatory hearing on July 6, 2017, Justin and Laura have continually been ordered to engage in drug testing, substance abuse treatment, mental health treatment, and to comply with other services as requested. Justin and Laura have failed to consistently comply with services throughout the life of this case. Neither parent successfully completed substance abuse treatment. In fact, both parents were unsuccessfully discharged from treatment due to lack of attendance on September 27, 2019. Laura arbitrarily decided not to continue with mental health therapy. Neither Laura nor Justin were compliant with drug screens in the months leading up to the termination proceeding. The Court presumes that the missed drug screens would have resulted in positive screens, especially given Laura's admissions that she used marijuana and would continue to do so.

Both Laura and Justin have been unable to abstain from marijuana use despite knowing that it affects their ability to reunify with their children. When the Court confronted the parents about their illegal drug use at the permanency review hearing on May 16, 2019, Laura stated that she and Justin are "recovering drug addicts and will always backslide." Despite this acknowledgement, Justin and Laura refused to attend substance abuse counseling and other services designed to address their substance abuse and relapse prevention.

Some may argue that marijuana use may not, by itself, establish adjudicatory harm. However, Justin and Laura's complete failure to address their substance abuse issues combined with their histories of methamphetamine and marijuana use certainly creates an appreciable risk of harm to their children, particularly D.G. and G.G. due to their young ages, special needs, and inability to self-protect. Simply put, their untreated substance abuse and lack of insight towards the same precludes Laura and Justin from being able to provide a safe and stable home for D.G. and G.G. *See, e.g., In re L.S.*, 2018 WL 540968, at *1 (Iowa Ct. App. 2018) (providing untreated substance abuse can create a risk of harm to the children); *In re R.P.*, 2016 WL 4544426, at *2 (Iowa Ct. App. 2016) (affirming termination of parental rights of parent with history of drug abuse); *In re H.L.*, 2014 WL 3513262, at *3 (Iowa Ct. App. 2014) (affirming termination of parental rights when parent had history of substance abuse).

The evidence also shows that G.G. cannot be returned to his parents' care at this time due to the lack of attachment bond between G.G. and his parents. The Court is required to consider the mental and emotional condition and needs of the child. Here, termination of parental rights is in G.G.'s best interest and would be less detrimental than the harm that would be caused to him by further attempts to cultivate a parent-child relationship.

Thus, clear and convincing evidence shows that G.G. would have been exposed to an appreciable risk of adjudicatory harm if returned to Justin and Laura's care at the time of the termination hearing due to their untreated substance abuse issues and G.G.'s emotional condition and needs. The State has met its burden to prove a ground for termination of parental rights as to Justin XXXX and Laura XXXX to G.G. within the scope and meaning of Iowa Code Section 232.116(1)(f).

**Iowa Code Section 232.116(1)(h).** Section 232.116(1)(h) allows termination of parental rights when the child is three years of age or younger, has been adjudicated in need of assistance, has been removed from the parent's custody for at least six of the previous twelve months, and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parent at the present time.

There is no question that the first three requirements have been met as to D.G. The child is two years old, having been born on March 30, 2017. D.G. has been continuously removed from his parent's physical custody since July 6, 2017. He was adjudicated in need of assistance on the same date.

With respect to the last element, the Court's discussion above applies equally to D.G. The Court must determine whether D.G. would be exposed to an appreciable risk of adjudicatory harm if returned to the parent's custody at the time of the termination hearing. All of the issues related to the parents' failure to address their substance abuse and abstain from the use of controlled substances relate to D.G. as well. Even more concerning to this Court, D.G. is only two years old and has no ability to self-protect from potential harm.

Thus, clear and convincing evidence shows that D.G. would have been exposed to an appreciable risk of adjudicatory harm if returned to Justin and Laura's care at the time of the termination hearing due to their untreated substance abuse issues and his inability to self-protect. The State has met its burden to prove a ground for termination of parental rights as to Justin XXXX and Laura XXXX to D.G. within the scope and meaning of Iowa Code Section 232.116(1)(f).

**b. Reasonable Efforts.**

The State must demonstrate reasonable efforts as a part of its ultimate proof that D.G. and G.G. cannot be safely returned to the care of their parents. *In re L.M.*, 904 N.W.2d 835, 839 (Iowa 2017) (quoting *In re C.B.*, 611 N.W.2d at 493). Our law requires that the Department "make every reasonable effort to return the children to the children's home as quickly as possible consistent with the best interests of the children." Iowa Code § 232.102(7); *see also In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996); *In re A.Y.H.*, 508 N.W.2d 92, 95 (Iowa Ct. App. 1993). The concept covers both the efforts to prevent and eliminate the need for removal. Iowa Code § 232.102(10)(a). The focus is on services to improve parenting. However, it also includes visitation designed to facilitate reunification while providing adequate protection for the child. *In re C.B.*, 611 N.W.2d at 493.

Over the past six years, Justin and Laura have been provided with countless services focused on improving their parenting skills, obtaining and maintaining sobriety, and stabilizing their mental health. Since the most recent adjudication on July 6, 2017, these services have focused on remedying parental deficiencies to return the D.G. and G.G. to the parental home as quickly as possible. After the original termination was reversed in April of 2019, these services shifted to focus primarily on safely transitioning G.G. and D.G. back to their parents' care.

Therapeutic services for G.G. aimed at helping him manage the stress and anxiety of reunification. BHIS sessions focused on alleviating G.G.'s anxiety symptoms. Family therapy was offered, though not accepted by Laura and Justin, to facilitate the development of familial

attachment and to support G.G.'s parents in reunification efforts. Supervised visitation was designed to facilitate reunification and develop familial attachment bonds while ensuring the children's safety.

The parents maintained throughout the life of this case that transportation was a barrier to their participation in services. The family owned one operational vehicle. Justin used that vehicle to travel to and from his job in Shenandoah. Laura, who is not employed outside the home, does not have a valid driver's license due to previous OWI charges.

In effort to overcome the family's transportation barriers, the Department and FSRP worked continuously with the family to problem solve and obtain resources. FSRP provided the family with gas cards and resources to provide transportation assistance. The Department and FSRP also worked with the family's Medicaid provider to authorize transportation. Laura's mother, Tammy XXXX, was also a tremendous support in providing transportation for Laura and the children. Previously, the family was willing to utilize informal supports such as friends to provide transportation as well. Service providers such as Alan Mortimore at Zion Recovery and Therapist Tracy Van Zee also offered flexible scheduling options for the family. In-home drug screens were also set up so that the family would not be required to travel.

Ultimately, Justin and Laura simply refused to take advantage of the transportation assistance offered to them. Instead, the family used their purported lack of transportation as another excuse to blame the State for their inability to reunify with D.G. and G.G.

The specific services offered to Justin and Laura include the following:

- Relative Placement;
- Suitable Other Placement;
- Family Safety, Risk and Permanency (FSRP) Services;
- Professionally Supervised Family Interactions;
- Family Team Meetings;
- Chemical Dependency Evaluations;
- Chemical Dependency Treatment;
- Random Drug Screening;
- In-Home Drug Screening;
- Mental Health Evaluations;
- Mental Health Treatment;
- Rental Assistance;
- Transportation Assistance;
- Behavioral Health Intervention Services (BHIS);
- Therapeutic Services for G.G.;
- Family Therapy;

• Social Work Case Management;
• Page County Juvenile Court;

In this case, the issue was not lack of reasonable efforts provided to the family. Rather, the parents chose not to consistently avail themselves of the reunification services that were offered. This Court specifically finds that the testimony of Laura XXXX, Justin XXXX, and Tammy XXXX was not credible as it related to their "efforts" to work towards reunification. Rather, the Court found their testimony to be wrought with excuses and attempts to blame the State for their predicament. In reality, Justin and Laura are simply unwilling to place their children's needs before their own. Unfortunately, there is no pause button for these young children to wait for their parents to make the decisions and take the steps necessary to become safe and stable parents.

The Court finds that reasonable efforts were provided to make it possible to safely return the children to the family's home. Iowa Code Section 232.102(5)(b).

**c. Permissible Exceptions to Termination**

Next, the Court looks at the permissible exceptions to termination of parental rights under Iowa Code Section 232.116(3). The parent bears the burden of proving that an exception exists. Further, the provisions of Section 232.116(3) are permissive, not mandatory. The Court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in Section 232.116(3) to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993), *overruled on other grounds by P.L.*, 778 N.W.2d at 39-40.

Two statutory provisions warrant consideration in this matter: Iowa Code Sections 232.116(3)(a) and (c). The first states that a Court need not terminate parental rights if "[a] relative has legal custody of the child." Iowa Code § 232.116(3)(a). The second states the Court need not terminate parental rights if "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c).

**Section 232.116(3)(a).** D.G. and G.G. have been placed with their maternal aunt and uncle, Deb and Jim XXXX, for over thirty consecutive months. However, Iowa Code Section 232.116(3)(a) is not applicable in this case because Deb and Jim do not have "legal custody" of D.G. and G.G. Since the adjudication hearing on July 6, 2017, the children have remained in the care, custody, and control of the Iowa Department of Human Services and are merely placed with

a relative. Placement does not equate to legal custody. *See In re C.N.*, 2020 WL 567283, at *2 (Iowa Ct. App. 2020) (finding Section 232.116(3)(a) does not apply when DHS has legal custody of the children and places them in the physical care of a relative).

**Section 232.116(3)(c).** Justin and Laura point out that the Iowa Court of Appeals reversed the August 14, 2018, termination order basis of the statutory exception to termination set forth in section 232.116(3)(c). Indeed, at the first termination hearing, the Department caseworker also testified that the bond between D.G. and G.G. and the father increased in the two months preceding the termination hearing. Similarly, the FSRP provider who supervised visits agreed, testifying interactions went "very well" and she saw a much stronger bond between the parents and youngest two children in the three to four weeks preceding the termination hearing. In her words, the children "both jump right out of my van and towards their mom and dad."

Justin and Laura argue that the bond they shared with D.G. and G.G. was destroyed in the eight months that passed between the August 14, 2018, termination order and the reinitiation of reunification services in April of 2019. Recognizing that any bond that previously may have existed with their children was longer present, Justin and Laura blamed the State for the breakdown in their relationships with their children.

First, the Court considers whether the State was required to provide reunification services while the August 14, 2018, termination order was on appeal. The Iowa Supreme Court has held that the Department's obligation to provide reasonable efforts runs until the juvenile court has entered a final written order of termination. *Interest of L.T.*, 924 N.W.2d 521, 528 (Iowa 2019); Iowa Code § 232.102(12). "'Termination of the parent-child relationship' means the divestment by the court of the parent's and child's privileges, duties, and powers with respect to each other." Iowa Code § 232.2(57). Thus, this Court finds that the State was not required to provide reunification services to Justin and Laura following the entry of the August 14, 2018, termination order.

The Court next considers the parents' argument that the State destroyed their bond with D.G. and G.G., thus warranting a grant of additional time to work towards reunification. This Court respectfully disagrees with the conclusion of the Iowa Court of Appeals in their April, 2019, opinion regarding a bond between D.G. and G.G. and their parents. At the original termination hearing, the Department caseworker testified that the bond between D.G. and G.G. and their father *increased in the two months preceding the termination hearing*. The FSRP provider testified that

she saw a *stronger bond* between the parents and youngest two children *in the three to four weeks preceding the termination hearing*. This Court does not find a closeness of the parent-child relationship. At that time, D.G. and G.G. had been removed from their parent's care for over a year. D.G. had been removed from his parents care his entire life. G.G. had lived with Deb and Jim for two-thirds of his life. D.G. and G.G. were not *bonded* to their parents. They were just getting to know each other. Accordingly, this budding relationship was not the type of parental bond that militates against termination, especially given the very young ages of the children in interest.

Ms. Van Zee has recently noted that G.G. does not view Justin and Laura as his parents. He does not refer to the as Mom or Dad, even when they are present. Justin and Laura have not consistently scheduled or attended family sessions. In fact, Justin has never attended a family therapy session with G.G. At the termination hearing, Justin testified that he does not respect Ms. Van Zee's opinion that neither D.G. nor G.G. could be returned to the family home without damage. Laura finally scheduled a family session after she was informed that BHIS sessions (and thus visits with G.G.) would stop on January 1, 2020, without a new Medicaid authorization.

The Iowa Court of Appeals also mentioned the bond among the five children as a factor weighing against termination. While sibling relationships are not considered under Iowa Code Section 232.116(3), this Court does not take lightly the bond between D.G., G.G., and their siblings who remain in the parental home. There is evidence of a connection especially between D.G. and G.G. and their oldest brother, Michael. Although the middle two children tended to play on their own during visits, there was scant, if any, indication of alienation among the siblings.

This Court concurs that whenever possible, siblings should be kept together and should not be separated without good and compelling reasons. *In Interest of A.M.S.*, 419 N.W.2d 723, 734 (Iowa 1988). However, the paramount concern in these cases must be the child's best interests. *In Interest of T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). In this case, the children have not lived with their siblings for any significant period of time. D.G., in fact, has never lived with any of his siblings besides G.G.

This Court is also persuaded by evidence that Deb and Jim understand the importance of facilitating a relationship between D.G. and G.G. and their siblings. Between the filing of the original termination order and the Court of Appeals opinion, D.G. and G.G. interacted with their biological parents and siblings at family functions on multiple occasions. The evidence clearly

showed that all of Justin and Laura's children are loved by immediate and extended family members. By all accounts, the relationship between Deb and Jim and Laura and Justin was good. D.G. and G.G. were happy and stable as they were assured that Deb and Jim were their parents and that their home was "theirs." Everyone existed symbiotically, and by all accounts, both families thrived.

After the original termination was reversed, there was an immediate and significant breakdown in the relationship between Deb and Jim and Justin and Laura. D.G. and G.G. were suddenly thrust into interactions with their biological parents without the comfort and safety of Deb and Jim. Of course, after months of stability, such a change was traumatic for the young children, and they suffered serious emotional and behavioral setbacks as a result.

Thus, while there may be some connection between the D.G., G.G., and their biological parents, it is not strong enough to forestall termination, especially considering that the parents had not moved beyond fully supervised visits with the children. Likewise, any connection they have with their biological siblings does not militate against termination. The exception under Iowa Code § 232.116(3)(c) provides that "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." In this case, only the failure to terminate Justin and Laura's parental rights would be traumatic and detrimental to D.G.'s and G.G.'s futures. Accordingly, the Court finds that no exception under Iowa Code Section 232.116(3) precludes termination.

**Closure of Siblings' Cases.** In addition to the statutory exceptions to termination of parental rights, the parents argue that termination is not warranted due to the closure of D.G. and G.G.'s siblings' CINA cases. On February 8, 2019, Michael, Ellnorah, and Owen were returned to their parents' care. On August 15, 2019, the CINA cases regarding Michael, Ellnorah, and Owen were closed because the permanency goal of maintaining reunification had been achieved.

Justin and Laura contend that additional time to work towards reunification should be granted because the Court had closed the older children's case after determining that Justin and Laura were able to sufficiently care for those children. In other words, they are argued that if they can parent their older children, they must have the ability to parent D.G. and G.G.

This contention ignores D.G. and G.G.'s ages and special needs. Even though a parent may be able to parent some of his or her children does not necessarily mean he or she is capable of providing appropriate care to all children. The special needs and best interests of each child must

be evaluated. *In re J.E.*, 723 N.W.2d 793, 799 (Iowa 2006). At the time of the termination hearing, G.G. and D.G.'s siblings were twelve (M.G.), nine (O.G.), and six (E.G). G.G. was five and D.G. was two.

Unlike their older siblings, D.G. and G.G. had suffered trauma due to being removed from their parent's care at such young ages. This trauma created special needs that requires extra attention. While their older siblings may be able to fend for themselves, D.G. and G.G. cannot.

Additionally, this Court felt comfortable closing the older children's cases because the family continued to be monitored by numerous service providers due to the Department's involvement with D.G. and G.G. The older children were also in school, where they were observed by professionals on an almost-daily basis.

Further, unlike D.G. and G.G., the older children share a strong bond with their parents and look to them to meet their physical and emotional needs. Conversely, Deb and Jim are D.G.'s and G.G.'s primary attachment figures. Ms. Van Zee noted, for example, that G.G. is only four years old and does not understand the complexity of his family structure. He only understands Deb and Jim to be his parents, caregivers, safety, and his home.

Our courts have stated a preference to keep siblings together. *In re A.M.S.*, 419 N.W.2d at 734 (stating "siblings should not be separated without good and compelling reasons"). However, this preference is not absolute. The ultimate concern is the best interests of the child.

Justin and Laura will undoubtedly argue that it is in D.G.'s and G.G.'s best interests to be with their siblings. This Court is certainly cognizant of the importance of family integrity. However, this consideration, although valid, cannot overcome the clear and convincing evidence that it is in D.G. and G.G.'s best future interests to be free for adoption so they may be placed in a permanent and stable home with consistent care. D.G. and G.G. deserve the opportunity to start a new life even if it means they have to leave behind relationships with their siblings and parents. Accordingly, the Court finds that the closure of Michael, Ellnorah, and Owen's CINA cases does not preclude termination.

**d. Best Interests**

Finally, the Court considers whether termination of parental rights is in D.G. and G.G.'s best interests. In considering the best interest of a child, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *P.L.*, 778 N.W.2d at

40 (quoting Iowa Code § 232.116(2)). "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *Id.* at 41.

**Safety.** Our law recognizes that the primary consideration in determining a child's best interest is "the child's safety." *See P.L.*, 778 N.W.2d at 37. Justin and Laura have not demonstrated behavioral changes necessary to keep D.G. and G.G. safe. Most notably, they have not maintained sobriety and have not followed recommendations related to continuing care and relapse prevention. Justin and Laura are simply unable to provide D.G. and G.G. with a safe home due to their unresolved substance abuse issues. They have likewise not demonstrated that they have knowledge and understanding of D.G. and G.G.'s special emotional and behavioral needs related to the trauma caused by the instability in their young lives. This is especially evidenced by the fact that Justin and Laura have been unwilling to participate in therapeutic family sessions with G.G.

**Long-term Nurturing and Growth.** Considering Justin and Laura's history of methamphetamine and marijuana use, their failure to participate in substance abuse treatment, and their inability to move past fully supervised interactions with their children as indicators of what the future likely holds, the Court foresees an unsteady and unreliable future that is not suitable for D.G. or G.G. "Insight for the determination of the child's long-range best interests can be gleaned from 'evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.'" *In re Interest of C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (quoting *In re Interest of Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

**Physical, Mental, and Emotional Condition and Needs.** Therapist Tracy Van Zee explained that for D.G. and G.G., being transitioned into Justin and Laura's home is like being removed from their home and placed elsewhere. Ms. Van Zee opined that if reunification was to be successful and not detrimental to the children, they must first develop attachment relationships with Justin and Laura. The process of forming attachment bonds would take time, repeated contact with Justin and Laura, and careful professional guidance. Ms. Van Zee stated that even if the children had positive feelings towards all involved, they would still need managing the stress and anxiety of the process.

Both D.G. and G.G. have suffered ongoing behavioral and emotional setbacks after reunification efforts resumed. At this time, D.G. and G.G. need and deserve a stable, safe, and

permanent home. As stated above, only the failure to terminate Justin and Laura's parental rights would be traumatic and detrimental to D.G. and G.G.'s futures.

**Permanency.** D.G. and G.G.'s need for permanency is the defining element of this case. G.G. was placed with Deb and Jim from February 8, 2015, through January 21, 2016. He was again placed with Deb and Jim on July 6, 2017, and has remained in their care since that date. D.G. has been removed from his parents care since he was three months old. He has been placed with Deb and Jim since August 14, 2017.

The children have experienced serious emotional and behavioral setbacks since visitation with their parents have resumed. Jim testified that D.G. needs constant reassurance that their home is "his" home, and that his bedroom is "his" bedroom. This case is a somber illustration of why children, especially very young children like D.G. and G.G., urgently need permanency. Children have a deep emotional and psychological need for a permanent home.

However, permanency is more than just a place to call home. Permanency includes stability. If D.G. and G.G. were returned to Justin and Laura's care, they would face a life of uncertainty and instability. Given the parents' history, they would likely face removal when Justin and Laura again find themselves in crisis. Real permanency lasts a lifetime, and that's what D.G. and G.G. need and deserve. Children need to have their needs met consistently over time to develop, learn, grow, and especially to overcome trauma. Safety and permanency in children's lives are a prerequisite to their well-being.

Overwhelming evidence was presented that both G.G. and D.G. are bonded to their maternal aunt and uncle. They have been placed with the Deb and Jim for over thirty months. They view Deb and Jim as their actual, permanent mother and father and look to them to meet their physical and emotional needs. Ms. Van Zee has stated that G.G. and D.G. have formed familial attachment relationships with Deb and Jim. They view Deb as their mother and rely upon her to help them navigate life's stressors. Deb and Jim provide D.G. and G.G. with nurturing and encouragement to grow. In Deb and Jim's care, they are happy and safe.

While this Court recognizes that courts are not free to take children from parents simply because another home offers more advantages, removing these children from Deb and Jim's home would be devastating and likely cause irreparable harm in dealing with separation and abandonment issues. D.G.'s and G.G.'s short lives have already been marred by chaos and confusion such that trust and security issues will be difficult for them to overcome as they grow

older. After over thirty months of waiting, D.G. and G.G. deserve permanency. They deserve to wake up every morning knowing that they are in "their" bedroom in "their" home. They deserve parents who have proven that they are capable and willing to meet their needs. They deserve parents who are willing to do whatever it takes to keep them safe. Justin and Laura are not those parents.

At the time of the permanency review hearing, Laura testified that a healthy and safe reunification with G.G. may take years. This Court agrees. Our courts have long held that "[a] parent does not have an unlimited amount of time in which to correct his deficiencies." *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). While patience is allowed for parents to remedy their deficiencies, that time must be limited because the delay may translate into intolerable hardship for the children. *In Interest of A.C.*, 415 N.W.2d 609, 613-614 (Iowa 1987). It is well-settled that the Court cannot deprive a child of permanency after the State has proved a ground for termination by hoping someday a parent will be able to provide a stable home for the child. *In re A.M.*, 843 N.W.2d at 112 (quoting *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010)).

"It is simply not in the best interests of children to continue to keep them in temporary foster homes while the natural parents get their lives together." *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989). Justin and Laura have been granted over thirty months to demonstrate their ability to care for D.G. and G.G. They have received services from the Department almost constantly since 2014, yet they continue to struggle with the same problems identified at the beginning of the juvenile court proceedings. They have been resistant to services and have continued to use drugs throughout the life of the case. They have shown no insight as to what is necessary to achieve reunification. Instead, they continued to blame the State and others. Simply put, Justin and Laura have not benefited from DHS's services and D.G. and G.G. continue to suffer. D.G. and G.G. deserve to live in a home with structure and consistency where they are safe and able to reach their full potential.

The State has proven by clear and convincing evidence that after thirty months of being removed from their parents' care, D.G. and G.G. cannot be returned to Justin and Laura's custody presently or in the near future. It is in D.G. and G.G.'s best interests to terminate Justin and Laura's parental rights so they may be placed in a safe and stable home with adults who can properly and permanently care for them.

Termination of parental rights would free D.G. and G.G. for adoption. Deb and Jim, who have care for D.G. for thirty of the thirty-three months since his birth, and G.G. for forty-one of the fifty-nine months since his birth, have expressed interest in adoption. Adoption would provide D.G. and G.G. with a safe and stable forever home. Deb and Jim will provide the necessary environment for the children to successfully accomplish developmental milestones, and also a lifelong support system for the children.

Termination and adoption is the preferred method of establishing permanency children who cannot be safely returned home. *In Interest of R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995). Accordingly, this Court concludes that termination is in D.G.'s and G.G.'s best interests so that they can be freed for adoption.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:**

1. **Petition Granted and Parental Rights Terminated as to Mother:** The Petition filed on November 26, 2019, and amended on December 10, 2019, asking that the parental rights of Laura XXXX as biological mother of D.G. and G.G., the children in interest, is hereby **granted** upon the grounds set forth in Iowa Code Sections 232.116(1)(e), (f), and (h). Laura XXXX shall, from this date forward, have no further interests in said children.
2. **Petition Granted and Parental Rights Terminated as to Father:** The Petition filed on November 26, 2019, and amended on December 10, 2019, asking that the parental rights of Justin XXXX as biological father of D.G. and G.G., the children in interest, is hereby **granted** upon the grounds set forth in Iowa Code Sections 232.116(1)(e), (f), and (h). Justin XXXX shall, from this date forward, have no further interests in said children.
3. **Iowa Code Section 232.116(1)(a):** The allegations under Iowa Code Section 232.116(1)(a) are **dismissed** as to Justin XXXX and Laura XXXX.
4. **Guardian/Custodian:** D.G. and G.G. are placed in the care, custody, and control of the Commissioner of the Iowa Department of Human Services for pre-adoptive placement. The Iowa Department of Human Services is appointed to act as **guardian** and **custodian** of the children in interest until further order of this Court. Approved placements include family foster care, relative care, suitable other care, or shelter care.
5. **Guardian ad Litem:** Vicki Danley continue to act as Guardian ad Litem for the children until further order of this Court.

6. **Case Permanency Plan:** The Iowa Department of Human Services shall submit a case permanency plan to the Court and make every effort to secure a permanent placement for the children by adoption or other permanent placement.
7. **Report Regarding Reasonable Efforts:** Within 45 days of the date of this order and every 45 days thereafter until further order, the Iowa Department of Human Services shall report to this Court regarding reasonable efforts to place the children for adoption or shall provide rationale as to why adoption would not be in the children's best interest.
8. **Review Hearing:** A termination of parental rights review hearing is scheduled for **October 1, 2020, at 10:00 a.m.**, at the Page County Courthouse in Clarinda, Iowa, unless the children are legally adopted before that date.
9. **Counsel to Remain as Attorneys of Record:** The Clerk of Court shall not remove any attorney of record from this case until either the appeal time has run and no appeal has been taken or if an appeal has occurred, until the appeal process is completed.
10. **Order Shall be Provided to Attorneys:** The Clerk of Court shall provide a copy of this order to the children, the children's parent(s), counsel of record, Iowa Department of Human Services, and the children's placement.
11. **NOTICE OF APPEAL RIGHTS:** Any aggrieved party must appeal pursuant to Iowa Rule of Appellate Procedure 6.101(1)(a) by filing a notice of appeal within 15 days of the entry of this order and by filing a petition on appeal within 15 days thereafter.

**SO ORDERED** this 23rd day of March, 2020.

**IN THE COURT OF APPEALS OF IOWA**

No. 20-0587
Filed August 5, 2020

**IN THE INTEREST OF D.G. and G.G.,**
**Minor Children,**

**L.H., Mother,**
Appellant,

**J.G., Father,**
Appellant.

---

Appeal from the Iowa District Court for Page County, Jennifer A. Benson, District Associate Judge.

A mother and father separately appeal the termination of their respective parental rights to two of their children. **AFFIRMED ON BOTH APPEALS.**

C. Kenneth Whitacre, Glenwood, for appellant mother.

Justin R. Wyatt of Woods, Wyatt, & Tucker PLLC, Glenwood, for appellant father.

Thomas J. Miller, Attorney General, and Ellen Ramsey-Kacena, Assistant Attorney General, for appellee State.

Vicki R. Danley, Sidney, attorney and guardian ad litem for minor children.

Considered by Mullins, P.J., May, J., and Gamble, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2020).

**GAMBLE, Senior Judge.**

A mother and father separately appeal the termination of their parental right to their children, D.G. and G.G.[1] Both parents challenges the statutory grounds authorizing termination and whether termination is in the children's best interests. We affirm.

## I. Facts and Prior Proceedings

This is the second appeal involving this family. We set out the following facts relating to the parents' rights to the youngest two of their five children in our first opinion:

> The department of human services [(DHS)] intervened in 2015, following the birth of the parents' fourth child[, G.G]. The department instituted a safety plan based on concerns of drug use by the mother. [G.G.] stayed with relatives for approximately two months, then was formally removed from the parents' care in a separate proceeding. He was ultimately reunited with his parents, and the district court closed the case.
>
> Less than one year later, the youngest child[, D.G.,] was born with marijuana in his system. The State filed a petition to have all five children adjudicated in need of assistance.
>
> On the date of the scheduled adjudicatory hearing, the department drug-tested the parents and found they had methamphetamine in their systems. The district court granted the adjudication petition and ordered the children removed from parental care. The department placed the older three children with their maternal grandmother. The youngest two children, who are the subject of this appeal, ended up with their maternal great-aunt.

[1] We note the father is not listed on G.G.'s birth certificate, and he is not married to the mother. *See* Iowa Code § 232.2(39) (2019) (defining parent). Both the mother and father report that the father is G.G.'s biological father. No party takes issue with the father participating or suggests he does not have established parental rights to terminate. The juvenile court terminated the parental rights of any unknown father to G.G. in an August 2018 termination order. In a prior appeal involving this family, we addressed the father's parental rights to G.G. noting he personally acknowledged that he is G.G.'s biological father. *See In re D.G.*, No. 18-1480, 2019 WL 1294228, at *2–3 (Iowa Ct. App. Mar. 20, 2019). Following this reasoning, we again address the father's rights to G.G. because he acknowledged he is G.G.'s biological father.

> The parents continued to test positive for methamphetamine and marijuana for several months, but, in time, their drug use declined. Beginning four months before the termination hearing, they tested negative for methamphetamine. Although the father tested positive for marijuana after that date, a hair test administered in the month preceding the termination hearing tested negative for all substances, and the father testified he stopped using marijuana. The mother equivocated on whether she curtailed use of the drug. But the department caseworker agreed the department typically does not remove children for marijuana use by the parents. Both parents attended substance-abuse counseling and participated in other services designed to address their substance abuse. They also participated in several weekly visits with their children.
>
> Ultimately, the State recommended against termination of parental rights to the older three children but petitioned to terminate parental rights to the youngest two children. Following a two-day termination hearing, the district court granted the termination petition pursuant to Iowa Code section 232.116(1)(e) and (h) [(2018)] (allowing the court to terminate parental rights where there is an absence of significant and meaningful contact or where the children cannot be returned to parental custody, respectively).

*D.G.*, 2019 WL 1294228, at *1–2 (footnote omitted).

Both parents appealed. The father challenged both statutory grounds relied upon by the juvenile court, but the mother only challenged one ground. *Id.* at *2–3. We found Iowa Code section 232.116(1)(h) satisfied as to the father and the mother. *Id.* (finding the children could not return safely to the father's care and affirming the statutory grounds as to the mother based on the unchallenged ground found by the juvenile court). But both parents argued termination was not in the children's best interests due to the familial bond. *Id.* We agreed, noting the children's strong bonds with their parents as well as their bonds with their older three siblings. *Id.* We reversed the termination orders as to both parents. *Id.* at *3.

Following reversal of the first termination order in March 2019, the juvenile court ordered reasonable efforts toward reunification to resume. On the way to the

first visit following the court's order, G.G. began to vomit. The parents agreed to cancel the visit due to G.G.'s vomiting. The day of the next scheduled visit, G.G. had a nightmare at daycare. Care providers observed him "whimpering and yelling that he did not want to go back." When care providers woke G.G., they discovered that he had soiled himself. The guardian ad litem and a DHS worker agreed G.G. should not attend visitation with the parents that evening. However, D.G. attended the visitation.

A doctor examined G.G. and found G.G. "did not demonstrate any signs of illness" to explain his vomiting and soiling. So DHS obtained a mental-health evaluation for G.G. to determine if G.G. had mental-health needs that needed to be addressed. G.G.'s therapist recommended visitations between both G.G. and D.G. and the parents be fully supervised until the parents completed family therapy with G.G. However, the parents have not consistently participated in family therapy, and visitations remain supervised.

The mother claims she received an updated mental-health evaluation in September 2019. However, because the mother did not sign a release for DHS to communicate with the facility, DHS could not confirm the mother completed an evaluation or received any recent treatment. Similarly, the father claims he had engaged in mental-health services, but this could not be confirmed.

Both parents also obtained updated substance-abuse evaluations. However, they were both discharged from treatment due to lack of attendance.

The parents expressed difficulty obtaining transportation to drug screens, so DHS arranged for in-home drug testing. However, the mother tested positive for THC twice and missed several drug screens since reasonable efforts resumed.

The father also tested positive for THC. And the father failed to complete some of the in-home drug testing provided, though we note some tests occurred while he was at work.

So the State once again petitioned for termination of the parents' parental rights in November 2019. And the juvenile court terminated the parents' parental rights to both children. Again, both parents appeal.

**II. Scope and Standard of Review**

We review termination proceedings de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). "We give weight to the factual determinations of the juvenile court but we are not bound by them. Grounds for termination must be proven by clear and convincing evidence. Our primary concern is the best interests of the child[ren]." *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (citations omitted).

We use a three-step process to review the termination of a parent's rights. *In re A.S.*, 906 N.W.2d 467, 472 (Iowa 2018). First, we determine whether a ground for termination under Iowa section 232.116(1) (2019) has been established. *See id*. at 472–73. If a ground for termination has been established, then we consider "whether the best-interest framework as laid out in section 232.116(2) supports the termination of parental rights." *Id*. at 473 (citation omitted). Then we consider "whether any exceptions in section 232.116(3) apply to preclude termination of parental rights." *Id*. (quoting *In re M.W.*, 876 N.W.2d 212, 220 (Iowa 2016)).

## III. Discussion

### A. Statutory Grounds

Both parents challenge the statutory grounds authorizing termination. The juvenile court authorized termination pursuant to Iowa Code section 232.116(1)(d), (f), and (h). When, as here, the juvenile court terminates on multiple statutory grounds, we may affirm on any ground we find supported by sufficient evidence. *See In re A.B.*, 815 N.W.2d 764, 774 (Iowa 2012). We will address paragraph (f) as to G.G. and paragraph (h) as to D.G. These paragraphs differ slightly. Paragraph (f) authorizes termination of a parent's parental rights when:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The child has been removed from the physical custody of the child's parents 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.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Paragraph (h) is nearly identical except it applies to a child who is "three years of age or younger" and only requires the child be removed "for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days." But the parents only challenge the fourth

element under both paragraphs.[2] As we found on the parents' first appeals, we conclude the children cannot be safely returned to either parent.[3]

Substance abuse remains a concern for us. Both parents tested positive for THC following our first reversal and remand.

This is concerning with respect to the father because he testified at the first termination hearing that he stopped using marijuana and recent testing supported that. *See D.G.*, 2019 WL 1294228, at *1. But he resumed his drug use following our reversal, testing positive for THC twice. And he missed some drug testing. We presume those tests, at least the ones he did not miss because of his work schedule, would have resulted in positive tests. *See, e.g.*, *In re L.B.*, No. 17-1439, 2017 WL 6027747, at *2 (Iowa Ct. App. Nov. 22, 2017); *In re C.W.*, No. 14-1501, 2014 WL 5865351, at *2 (Iowa Ct. App. Nov. 13, 2014) ("She has missed several drug screens, which are thus presumed 'dirty,' i.e., they would have been positive for illegal substances."). Given the father's backslide into marijuana use and his fairly recent history with methamphetamine, we are concerned he may resume methamphetamine use as he did marijuana use. *See In re R.O.*, No. 17-1408, 2017 WL 6517532, at *2 (Iowa Ct. App. Dec. 20, 2017) (describing periods of methamphetamine sobriety of up to two-and-a-half years as "relatively short

[2] The mother's petition on appeal only challenges paragraphs (d) and (h). Her petition does not challenge paragraph (f), which is applicable to G.G. But we note the elements to paragraph (f) are largely similar to paragraph (h); and the only element she challenges under paragraph (h) is substantively identical to the fourth element of paragraph (f). So, if she would have challenged, or intended to challenge, paragraph (f) under the fourth element, our analysis would be the same.
[3] Both parents argue it is safe for the children to return home because the juvenile court closed the child-in-need-of-assistance proceedings for their three oldest children. But we review this case independently of those cases that are not before this court.

periods of sobriety"); *see also In re J.P.*, No. 19-11633, 2020 WL 110425, at *2 (Iowa Ct. App. Jan. 9, 2020) (noting "[m]ethamphetamine is a scourge"). This concern is compounded by the father's lack of participation in and dismissal from substance-abuse treatment. *See, e.g.*, *In re D.W.*, No. 19-0438, 2019 WL 2145856, at *1 (Iowa Ct. App. May 15, 2019); *In re K.S.*, No. 13-1420, 2014 WL 1234472, at *3 (Iowa Ct. App. Mar. 26, 2014) (considering the father's lack of substance-abuse treatment participation as a factor weighing in favor of termination).

And like with the father, we have concerns about the mother's sobriety. She admits to continued marijuana use as a means to address pain associated with various medical conditions. Her testimony suggests she feels her drug use is necessary to avoid use of prescription opiates. *See In re A.M.*, No. 20-0116, 2020 WL 1881109, at *2 (Iowa Ct. App. Apr. 15, 2020) (considering a mother's self-medication with marijuana as a factor weighing in favor of determining her children could not return to her care). And we presume her missed drug tests also would have resulted in positive tests. *See, e.g.*, *L.B.*, 2017 WL 6027747, at *2; *C.W.*, 2014 WL 5865351, at *2. The mother's continued self-medication practices coupled with her history of methamphetamine use and lack of substance-abuse treatment leave us concerned about her future drug use.

We also note the parents have not progressed past supervised visitation. *See In re C.N.*, No. 19-1961, 2020 WL 567283, at *1 (Iowa Ct. App. Feb. 5, 2020) (recognizing visitations should progress and require less supervision before reunification can occur). This is because the parents have not participated in the recommended family therapy, which is also concerning. We understand that the

parents faced certain obstacles to the therapy, those being transportation and the father's work schedule. But the parents had access to one vehicle, DHS provided gas cards to the family, and the therapist offered to make herself available on evenings and weekends in order to work around the father's work schedule. In short, others involved in this case made every attempt to facilitate the needed family therapy, but the parents did not meaningfully participate.[4]

For these reasons, we find the first step in our review reveals the State established grounds for termination under section 232.116(1) as to both parents.

**B. Best Interests**

Next, we consider whether termination is in the children's best interests. In considering the best interests of children, we "give primary consideration to the child[ren]'s safety, to the best placement for furthering the long-term nurturing and growth of the child[ren], and to the physical, mental, and emotional condition and needs of the child[ren]." *P.L.*, 778 N.W.2d at 40 (quoting Iowa Code § 232.116(2)). "It is well-settled law that we cannot deprive [children] of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child[ren]." *Id.* at 41.

With respect to both parents, we conclude termination is in the children's best interests. The parents' lack of participation in family therapy demonstrates, intentionally or not, that the parents are not willing to put in the work to rebuild their relationships with the children. The children are integrated into their family foster

[4] The mother participated in one session in December 2019.

placement and look to them to meet their physical and emotional needs. In fact, they refer to their foster placements as "Mom" and "Dad." And their foster parents would like to adopt the children. *See* Iowa Code § 232.116(2)(b).

**C. Exceptions to Termination**

We complete our three-step analysis by considering if section 232.116(3) should be applied to preclude termination. "[T]he parent resisting termination bears the burden to establish an exception to termination" under section 232.116(3). *A.S.*, 906 N.W.2d at 476. Even if the parent proves an exception, we are not required to apply the exception. *In re A.M.*, 843 N.W.2d 100, 113 (Iowa 2014). We exercise our discretion, "based on the unique circumstances of each case and the best interests of the child[ren]," to determine whether the parent-child relationships should be saved. *Id.* (citation omitted).

Both parents contend the juvenile court should have applied section 232.116(3)(c) to forgo termination. Section 232.116(3)(c) permits the court to forgo termination when "[t]here is clear and convincing evidence that the termination would be detrimental to the child[ren] at the time due to the closeness of the parent-child relationship[s]." We recognize we previously applied the exception to preclude termination with respect to this family. *D.G.*, 2019 WL 1294228, at *3. And in doing so we considered the children's relationships not only with the parents but their older siblings as well. *Id.* We provided the parents a second chance at reunification, but the parent-child relationships have since diminished. The parents place blame for this on the guardian ad litem and DHS, noting the lack of services they received while the first appeal was pending. But we recognize once services resumed, DHS arranged for services specifically intended to build and strengthen

the familial bonds. However, those bonds are not what they once were, and we cannot say they are now so strong to justify precluding termination. Therefore, we decline to apply this permissive exception to either parent.

**IV. Conclusion**

The juvenile court was correct in terminating both parents' parental rights.

**AFFIRMED ON BOTH APPEALS.**


State of Iowa Courts

| **Case Number** | **Case Title** |
|---|---|
| 20-0587 | In re D.G. and G.G. |

Electronically signed on 2020-08-05 09:35:17

# WRITING SAMPLE #1

*In the Interest of D.G. and G.G.*
Order Terminating Parental Rights

*Int. of D.G. and G.G.*
Iowa Court of Appeals Opinion

IN THE DISTRICT COURT OF IOWA, IN AND FOR PAGE COUNTY
(JUVENILE DIVISION)

| | | |
|---|---|---|
| IN THE INTEREST OF | : | CASE NOS. JVJV101784<br>JVJV101785 |
| D.G.,<br>G.G., | : | |
| CHILDREN. | : | **ORDER FOR TERMINATION OF PARENTAL RIGHTS** |

The above-entitled matters came on for termination of parental rights hearing on January 16, 2020, and January 21, 2020, with the proceedings being reported by Laura Andersen. The minor children appeared by their attorney and guardian ad litem, Vicki Danley. Their mother, Laura XXXX, appeared in person and with her attorney, Ken Whitacre. Their father, Justin XXXX, appeared in person and with his attorney, Justin Wyatt. The State of Iowa appeared by Carl Sonksen, Page County Attorney, and accompanying him were Kati England, Justina Reeves, and Corinne Schram, Iowa Department of Human Services. Also present were Alex King and Lisa Pearce, Boys Town. Deb and Jim XXXX, relative placement for the children, appeared in person. Tammy XXXX, maternal grandmother, also appeared in person.

A Petition for Termination of Parental Rights was filed on November 26, 2019, asking that the parental rights and the parent-child relationship existing between the children and their parents be terminated. An amendment to the Petition for Termination of Parental Rights was filed on December 10, 2019. The State requested that the parental rights of both parents be terminated pursuant to Iowa Code Sections 232.116(1)(a), (e), (f), and (h). The Guardian ad Litem was in agreement with the State's request. The parents denied the allegations and requested additional time to achieve reunification.

Testimony was presented on behalf of the State by Kati England. The following exhibits were offered by the State and admitted as evidence: Exhibit 1, Report to the Court by Kati England, Iowa Department of Human Services; Exhibit 2, FSRP Reports of Alexandria King, Boys Town, 12/17/2019; Exhibit 3, FSRP Reports of Morgan Smith, Boys Town, 11/18/2019; and Exhibit 6, Birth Certificates for each child in their respective cases. At the request of the State, the Court also took judicial notice of the following orders in the underlying CINA files, Page Co. Case Nos. JVJV101613 and JVJV101614:

- Order from July 6, 2017, Adjudication Hearing (filed July 8, 2017);
- Order from August 17, 2017, Disposition Hearing (filed August 21, 2017);
- Order from November 2, 2017, Review/Modification Hearing (filed November 3, 2017);
- Order from February 1, 2018, Review/Modification Hearing (filed February 2, 2018);
- Order from March 15, 2018, Permanency Hearing (filed March 19, 2018);
- Order from June 21, 2018, Permanency Review Hearing (filed August 14, 2018);
- Order from May 16, 2019, Permanency Review Hearing (filed May 16, 2019);
- Order from July 18, 2019, Permanency Review Hearing (filed July 29, 2019); and
- Order from November 15, 2019, Permanency Review Hearing (filed November 19, 2019).

Testimony was presented on behalf of the Guardian ad Litem by Tracy Van Zee, Christina Wessel, Jim XXXX, and Deb XXXX. The following exhibits were offered by the Guardian ad Litem and admitted as evidence: Exhibit 4, Curriculum Vitae of Tracy Van Zee; Exhibit 5, Report of Tracy Van Zee dated 01/9/2020.

Testimony was presented on behalf of the mother by Tammy XXXX and Laura XXXX.

Testimony was presented on behalf of the father by Justin XXXX. The following exhibit was offered by the father and admitted as evidence: Exhibit 7, Letter from Justin XXXX's employer dated 10/19/2019.

Rebuttal testimony was presented on behalf of the State by Justina Reeves.

Rebuttal testimony was presented on behalf of the mother by Laura XXXX.

The Court considered the exhibits, the testimony of the witnesses, and the statements and arguments of counsel. The Court now makes the following findings of fact which have been established by clear and convincing evidence, conclusions of law, and order terminating parental rights.

## FACTS AND PRIOR PROCEEDINGS

Laura XXXX and Justin XXXX are the parents of five children: D.G. XXXX, who is two years old (DOB 3/30/2017); G.G., who is five years old (DOB 2/7/2015); E.G.; who is six years old (DOB 2/10/2014); O.G., who is nine years old (DOB 6/4/2010); and M.G. who is twelve years old (DOB 11/21/2007).[1]

The XXXX family first became involved with the Department of Human Services in 2014. A child protective assessment was founded against Justin and Laura for denial of critical care,

[1] Justin XXXX and Laura XXXX purport that Justin is G.G.'s biological father. Justin is not married to the mother, and his name does not appear on the birth certificate. He has acknowledged that he is G.G.'s biological father on the record. The parental rights of all unknown fathers were terminated in the August 14, 2018, termination order.

failure to provide proper supervision, due to their methamphetamine use while caring for the children. The family agreed to voluntarily participate in services in December, 2014.

The children were removed from their parents' care on February 8, 2015, due to G.G. testing positive for methamphetamine and amphetamine at birth and suffering withdrawals. Laura tested positive for methamphetamine, amphetamine, and THC. G.G. was placed with his maternal uncle and aunt, Deb and Jim XXXX. G.G.'s siblings were placed with their maternal grandmother, Tammy XXXX. A child protective assessment was founded against Laura for denial of critical care and presence of illegal drugs in a child. The parents completed substance abuse treatment and the children, including G.G., were returned to their parents' care on January 21, 2016, shortly before G.G.'s first birthday. The Court ultimately closed the CINA case.

Less than one year later, the family again became involved with the Department when their fifth child, D.G., was born with marijuana in his system. A child protective assessment, Incident No. 2017093105, was founded against Laura for presence of illegal drugs in a child on May 1, 2017. Throughout the child abuse assessment, the parents refused to submit to drug testing. Initially, the children were not removed from their parents' care, but the State filed a petition to have all five children adjudicated in need of assistance.

Immediately prior to the CINA adjudication hearing on July 6, 2017, the parents were drug tested and both were found to have methamphetamine and amphetamine in their systems. Laura was also arrested on outstanding warrants. The Court granted the adjudication petition and ordered the removal of the children from the parents' care.

The older three children, Michael, Ellnorah, and Owen, were placed with maternal grandmother, Tammy XXXX. G.G., who was then two years old, was again placed with maternal aunt and uncle, Deb and Jim XXXX. D.G. was initially placed with suitable others Dan and Jackie Autry in Coin, Iowa, to allow the infant daily contact with his parents, who also lived in Coin. The parents failed to participate in *any* interactions with their three-month-old baby despite living in close physical proximity to him, so D.G. joined G.G. at the home of Deb and Jim XXXX on August 14, 2017. Upon receiving the children, caregivers reported that all of the children had head lice and some were behind on immunizations. Another child protective assessment was founded against Justin and Laura for dangerous substances on August 3, 2017.

At the dispositional hearing on August 17, 2017, Justin again tested positive for methamphetamine and amphetamine. Laura did not attend the hearing. Justin and Laura were both

unemployed and requested assistance from the Department in paying their rent. The parents had not completed chemical dependency or mental health evaluations at the time of the hearing, but were reported to be cooperative with Family Safety, Risk and Permanency (FSRP) Services. FSRP provided two supervised visits per week. The children remained out of the care, custody, and control of their parents. The Court ordered numerous services in an effort to work toward the permanency goal of reunification.

At the permanency hearing on March 15, 2018, the Court noted that very little progress had been made since the previous hearing. Interactions with D.G. and G.G. continued to be fully supervised and were not taking place in the family home due to a strong chemical odor in the home and ongoing concerns of illegal drug use by the parents. Justin and Laura's drug screens continued to be positive for methamphetamine and amphetamine, and Laura also tested positive for marijuana. Neither parent was consistent with substance abuse treatment and Laura stopped participating in mental health services. The Court modified the permanency goal from reunification to adoption. D.G. and G.G. now eleven months and three years old, respectively, remained in the home of Deb and Jim XXXX.

Justin and Laura's parental rights to D.G. and G.G. were terminated on August 14, 2018, and reunification efforts ceased.[2] Deb and Jim XXXX expressed that they wanted to adopt the children. On March 20, 2019, the termination ruling was reversed by the Iowa Court of Appeals, who directed that reasonable efforts towards reunification resume. *Interest of D.G.*, 928 N.W.2d 163 (Iowa Ct. App. 2019).

Social Work Case Manager (SWCM) Kati England testified that following the issuance of Procedendo on April 11, 2019, the Department immediately resumed reunification efforts. The Department and FSRP provider worked to schedule visitation between D.G., G.G., and their biological parents. The first visit for D.G. and G.G. was scheduled for April 28, 2019. On the way to the visit, four-year-old G.G. began "vomiting profusely" in the FSRP provider's vehicle. The FSRP provider communicated with Justin and Laura, who indicated that the visit should be canceled so that G.G.'s purported illness did not spread to the other children. The visit was rescheduled for May 2, 2019.

Prior to the visit on May 2, 2019, G.G.'s Head Start teacher observed G.G. to have a nightmare during naptime as evidenced by whimpering and yelling that he did not want to go back.

[2] Page County Case Nos. JVJV101680 and JVJV101680.

When staff woke G.G. up to comfort him, they became aware he had defecated in his pants. Staff attempted to calm G.G. down but sent him home when attempts to ease his anxiety were unsuccessful. After consultation with the guardian ad litem and DHS Supervisor Connie Jones, it was determined that G.G. should not attend the interaction on May 2, 2019, to allow for an examination by his physician. D.G. did participate in the interaction with Justin and Laura.

Claudia M. Balta, PA-C, examined G.G. In a report dated May 3, 2019, the medical provider stated, "I see no evidence on exam of acute illness. I think these episodes of vomiting and bowel incontinence were likely stress induced relating to his parental visits." On May 3, 2019, the Court ordered that all visits between G.G. and his parents cease pending the completion of a mental health evaluation for the child. The Court further ordered that interactions with the parents would begin only in a therapeutic and fully-supervised setting upon the recommendation of G.G.'s therapist.

In the Permanency Review Order filed May 16, 2019, the Court relied upon the May 3, 2019, report of Ms. Balta and confirmed its previous order suspending visits until G.G. participated in therapy and visitation with the parents was recommended by his therapist. The Court ordered that the permanency goal remain adoption with reunification efforts being provided in accordance with the decision of the Iowa Court of Appeals.

Tracy Van Zee, MA, TLMHC, of Healthy Homes Family Services began working with G.G. on May 15, 2019. In the Permanency Review Order filed November 19, 2019, the Court noted Ms. Van Zee's observations of intermittent anxiety behaviors and diagnosis of Adjustment Disorder with Anxiety. Ms. Van Zee stated that G.G.'s symptoms were directly related to the ongoing custody issues within his family. She expected that his symptoms would diminish when his circumstances became more stable. Ms. Van Zee also reported that G.G. struggled to discuss emotions such as fear and worry, then he quickly changed the subject.

At the time of the permanency review hearing on July 18, 2019, interactions between two-year-old D.G. and his parents continued to be professionally supervised. Visits had previously occurred at a neutral location in the community due to the child's young age and safety concerns within the family home. However, the Court noted that the parents had since remedied the safety concerns, which allowed supervised visits with D.G. to begin in the family home on June 30, 2019. At that point, the parents had still not had interactions with G.G. due to the Court's order suspending visits pending recommendation of his therapist.

At the permanency review hearing on July 18, 2019, this Court spoke with the parents directly regarding what they needed to do to have the children returned to their care. The Court set forth objective requirements including compliance with drug screens, substance abuse treatment, and full communication with the Department. Both parents indicated to the Court on the record that they understood what was expected of them in order to achieve reunification with their children. Based on the parents' concurrence, the Court modified the permanency goal for D.G. and G.G. to reunification.

In approximately July of 2019, Ms. Van Zee recommended that G.G. participate in visits in the family home. However, she directed that all interactions between G.G. and his parents be fully supervised by FSRP as well as the BHIS provider. Ms. Van Zee attended two interactions in the family home.

Along with therapeutic sessions with Ms. Van Zee, G.G. also participated in regular BHIS sessions with Cyndi Mitchell. These sessions focus on alleviating G.G.'s anxiety symptoms. On August 14, 2019, Ms. Mitchell accompanied the FSRP worker to the family home during a scheduled, supervised visit. Ms. Mitchell reported that Laura and Justin declined to create goals for G.G.'s BHIS services because "they did not know their son well at this point and had only seen him a few times in the last year." Laura and Justin voiced opposition to participation in BHIS services because it disrupted their time with G.G. and D.G. Ms. Mitchell continued to offer weekly BHIS sessions during supervised visits, but struggled to make progress with the family due to the parents' resistance.

In August of 2019, Ms. Van Zee recommended that Justin and Laura begin having family therapy sessions with G.G. Ms. Van Zee noted that visits in the home were chaotic, and G.G. was too distracted to concentrate on improving their relationships. She noted that if reunification was to be successful and not detrimental to G.G., it was of utmost importance that he develop attachment relationships with Justin and Laura. The process of forming attachment bonds would take time, repeated contact with Justin and Laura, and careful guidance. Due to the trauma G.G. has suffered due to the instability in his young life, he would need help managing the stress of the reunification process even if he had positive feelings towards all involved. Ms. Van Zee opined that family therapy was necessary to facilitate the development of familial attachment and to support G.G.'s parents in helping him manage the stress and anxiety of the situation. Ms. Van Zee had confidence that following family therapy sessions with noted progress in attachment dynamics,

she would recommend increased visits and that eventually, therapeutic oversight would be unnecessary.

Ms. Van Zee requested that the parents meet G.G. at her office in Red Oak to participate in family therapy sessions. Justin and Laura met with Ms. Van Zee on one occasion and discussed the goals for G.G.'s therapy as well as their concerns regarding the DHS case. Following that meeting, Justin and Laura stated that they were unable to attend sessions in Red Oak as it was too far to drive. The parents requested that G.G.'s therapy appointments be transferred from Healthy Homes in Red Oak to Midwest Mental Health in Shenandoah, which was 13 miles closer to their home in Coin. The Department, in consultation with the Guardian ad Litem, denied their request, maintaining that it was in G.G.'s best interest to remain engaged with Ms. Van Zee at Healthy Homes as he had established a therapeutic relationship with her. Bringing a new therapist into his life at this point would undoubtedly cause further emotional setbacks and increase the delay in reunifying the family. Disturbingly, Laura testified at the termination of parental rights hearing that she was "not concerned about the effect [changing therapists] might have on G.G."

Instead, the Department continued to work with FSRP to assist the parents in obtaining resources to overcome their transportation barriers. In effort to accommodate the family, Ms. Van Zee offered flexible scheduling and evening appointments so that Justin could drive himself and Laura after he got off work. Still, the parents refused to participate. The Department and FSRP worked with Justin and Laura to problem-solve and overcome barriers by providing gas cards as well as other resources that could provide those transportation assistance, and worked with their Medicaid provider to authorize transportation. Still, the parents refused to participate.

In a therapeutic interaction with G.G. on October 24, 2019, Ms. Van Zee observed G.G. to be shy, avoiding eye contact, and appearing nervous. When Ms. Van Zee inquired about visits, G.G. referred to them as "going to Michael's house." He refused to identify any other persons at the house. When Ms. Van Zee inquired about his feelings when he "goes to Michael's house," G.G. stated, "I do not like to go" and "I want to stay here."

The family next came before the Court at the permanency review hearing on November 15, 2019. The Department recommended modification of the permanency goal from reunification to adoption. The Department cited Justin and Laura's unwillingness to abstain from the use of controlled substances, to attend substance abuse treatment, to participate in mental health services, and failure to participate in therapeutic interactions with G.G. The Department expressed grave

concern that the children, especially G.G., lacked an attachment bond to their biological parents. Further, based on the Department's concerns, interactions between D.G. and G.G. and their parents remained professionally supervised.

SWCM England testified that since reasonable efforts towards reunification resumed in April of 2019, Justin and Laura have failed to comply with recommendations to abstain from the use of controlled substances, attend substance abuse treatment, and participate in mental health services. Laura completed a new substance abuse evaluation with Alan Mortimore at Zion Recovery on June 26, 2019. Mr. Mortimore recommended that Laura attend one group per week for Continuing Care with an emphasis on relapse prevention. Laura was unsuccessfully discharged on September 27, 2019, having attended no sessions since July 8, 2019.

Justin initially engaged with Zion Recovery in August of 2017 and was recommended to attend extended outpatient treatment. Justin failed to comply with the recommendations, citing his work schedule as a barrier. FSRP offered transportation assistance to help Justin get to appointments after his workday had ended and Mr. Mortimore offered to allow Justin to attend appointments over his lunch breaks. Despite these compromises, Justin failed to participate substance abuse treatment.

At the direction of the Department, Justin obtained a new substance abuse evaluation on February 6, 2018, and was again recommended to attend extended outpatient treatment, which consisted of two to three groups per month. Justin participated in the groups from June through August of 2018, but was ultimately discharged for failing to attend sessions after that time.

In March of 2019, Justin was instructed to obtain an updated substance abuse evaluation following his positive UAs for THC on March 2, 2019, and March 13, 2019. Two months passed before Justin finally reported to Zion Recovery for his substance abuse evaluation. The evaluation was completed with Mr. Mortimore on July 11, 2019. Justin returned for recommendations on July 25, 2019, but failed to attend any sessions at Zion Recovery after that date. He was discharged on September 26, 2019, for failure to maintain contact for over 60 days.

During a supervised interaction on September 22, 2019, Laura and Justin informed SWCM England that they intended to "sign themselves out" of Zion Recovery services. SWCM England testified that Laura and Justin were very agitated at the time and did not provide any further explanation.

Justin and Laura's failure to comply with substance abuse treatment is problematic due to their extensive histories of substance abuse. Perhaps even more concerning is that neither parent has been able to maintain sobriety since reunification efforts resumed. Laura has been inconsistent with drug screens, but those she has cooperated with have been positive for marijuana. Laura tested positive for THC through random drug screens on March 2, 2019 (251ng/mL), March 10, 2019 (279ng/mL), and May 20, 2019 (75ng/mL).

Justin also tested positive for THC through a UA on March 2, 2019 (170ng/mL) and via hair test on March 13, 2019 (12.3pg/10mg). Justin provided another UA on May 20, 2019, that was positive for THC (27ng/mL).

The Department set up in-home drug testing to accommodate Laura's lack of transportation and Justin's work schedule. The testing agency attempted to complete in-home testing on June 18, 2019, and June 26, 2019. Both attempts were unsuccessful as no one answered the door at the family home. Justin was reportedly working on June 26, 2019. On July 14, 2019, Laura provided a drug screen with a low creatinine level, which is considered by the Department and this Court to be a positive drug screen. Justin provided a clean UA for Zion Recovery on July 25, 2019.

The Department attempted to obtain drug screens through in-home testing on September 16, 2019, and September 21, 2019. The testing agency reported that Laura was not able to provide a urine specimen on September 16, 2019. Justin was at work on September 16, 2019, and therefore, a sample from him was not received. Laura provided a urine specimen on September 21, 2019, which was positive for THC (302ng/mL). Justin provided a urine specimen on September 21, 2019, which was positive for THC (161ng/mL). On October 24, 2019, an in-home test was attempted. The testing agency reported that Laura stated that she was ill and refused the test.

The parents have also failed to comply with recommended mental health treatment since reunification efforts resumed in April of 2019. Laura testified that she completed an updated mental health evaluation at Midwest Mental Health in Shenandoah and had been attending therapeutic sessions since July. She also reported that she had signed a consent for the Department to obtain this information "over a month ago." The Department requested verification of the evaluation to include diagnosis and recommendations on September 26, 2019; however, the agency was unable to verify this information because Laura had not signed a release of information. SWCM England testified that she informed Laura on multiple occasions that Laura needed to sign a release of information.

Justin also reported that he completed an updated mental health evaluation at Midwest Mental Health. Again, the Department requested verification of the evaluation to include diagnosis and recommendations on September 26, 2019; however, the agency was unable to verify this information because Justin had not signed a release of information. As of January 21, 2020, the date of the second day of the termination proceeding, neither Justin nor Laura had signed releases of information at Midwest Mental Health.

Along with the parents' unwillingness to abstain from the use of controlled substances and their failure to participate in substance abuse treatment and mental health services, the Department expressed grave concern regarding emotional and behavioral setbacks observed in both D.G. and G.G. since attempts to resume parent-child interactions. Further, Justin and Laura still refused to participate in therapeutic interactions with G.G.

In the Permanency Review Order filed November 19, 2019, the Court cited a letter from Sunshine 'N Rainbows Daycare Director, Alex McFarland. Ms. McFarland explained that since attempts to resume parent-child interactions, G.G. had exhibited unusual behaviors such as aggressiveness toward staff and children, defiance with rules he was previously able to follow, and emotional outbursts. G.G. continued to become physically ill prior to interactions with Justin and Laura. He also clung to staff when the DHS or FSRP worker arrived to pick him up, was territorial with his belongings, and did not react well to transition and/or change. Ms. McFarland also reported that G.G. had developed a stutter when speaking to staff and other children.

Since attempts to resume parent-child interactions, D.G. also exhibited negative behaviors to include unprovoked aggressiveness towards staff and children such as biting (multiple times per day) and unprovoked hitting, kicking, and screaming. On one occasion when a service provider arrived to pick him up for a visit, D.G. recognized the vehicle and immediately bit two children and proceeded to have a screaming fit. Ms. McFarland stated that D.G. also does not react well to transition and/or change.

At the permanency review hearing on November 15, 2019, Deb XXXX testified regarding negative behaviors exhibited by D.G. and G.G. related to interactions with their parents. Ms. XXXX testified that G.G. no longer sleeps through the night and refuses to sleep in his own bed. He developed a stutter and is aggressive at school and day care. Ms. XXXX also reported that G.G. frequently soils himself, which he had not done since being potty-trained.

Ms. XXXX testified that D.G. also refuses to sleep in his bed and will only sleep in his play pen. She reported that both children exhibited increased neediness when they returned to her home after a visit, and D.G. will not let Ms. XXXX or her husband put him down. D.G. has also exhibited aggressiveness towards G.G. upon returning to the XXXX's home after visits.

Morgan Smith, FSRP provider from Boys Town, also reported to SWCM Kati England that she has observed similar adverse effects to the children following visitation with Justin and Laura.

In the Permanency Review Order filed November 19, 2019, the Court noted Justin and Laura's unwillingness to abstain from the use of controlled substances and their failure attend substance abuse treatment and participate in mental health services. The Court emphasized that despite D.G.'s and G.G.'s severe emotional and behavioral manifestations related to visitation with their parents, Justin and Laura remained unwilling to participate in therapeutic interactions with G.G., despite their knowledge that participation in those sessions were necessary for reunification to occur. Simply put, no progress had been made in attachment dynamics between Justin and Laura and their two youngest children. Now two years and four months after the children had been removed from their parents care, the parents had not yet moved past fully supervised interactions with D.G. and G.G.

Based on these concerns, the Court determined that allowing Justin and Laura additional time to work towards reunification was not in D.G.'s and G.G.'s best interests. The Court ordered that the permanency goal be modified to adoption and directed the County Attorney to file a petition to terminate the parental rights of Laura XXXX and Justin XXXX as to D.G. and G.G.

On November 26, 2019, the State filed a Petition for Termination of Parental Rights of Justin XXXX and Laura XXXX to their children, D.G. and G.G.. Hearing on the State's Petition was scheduled to begin on January 16, 2020.

Despite the filing of a petition to terminate their parental rights, Justin and Laura continued to fail to comply with reunification services offered by the Department. For example, in-home drug testing was attempted on November 29, December 22, December 23, and December 24, 2019. The testing agency reported that there was no answer at the door despite a vehicle being in the driveway and the TV being on. The Department next attempted to obtain a drug screen from Laura through in-home testing on January 10, 2020. The testing agency reported that there was no answer at the door. Laura later reported that she was at the grocery store at that time. The Court notes that

during the months of December, 2019, and January, 2020, Laura was a stay-at-home mother caring for three children and did not have transportation.

Laura testified at both the permanency review and termination of parental rights hearings that she used marijuana for medicinal purposes despite it being illegal in the state of Iowa. Laura suffers from a myriad of physical ailments including congestive heart failure and Camurati-Engelmann disease. She sees her primary physician to manage symptoms related to her medical ailments. Laura testified that her physician recently informed her that she may also have lupus. Laura informed the Court that she would continue to use marijuana until she found an alternative to manage her pain. At the permanency review hearing, Laura also testified that she planned to "re-engage in substance abuse treatment when her ride, her mother, Tammy, gets over her pneumonia." The Court noted that Tammy XXXX was present in the courtroom during both the permanency review hearing and the termination of parental rights proceedings.

Most troubling, Laura and Justin continued to refuse to participate in family therapy with G.G. pending the termination of parental rights hearing. Laura did attend one session with G.G. on December 30, 2019, after she was informed by Ms. Van Zee that BHIS sessions (and thus visits with G.G.) would stop on January 1, 2020, without a new Medicaid authorization. Justin and Laura were otherwise unwilling to participate in therapeutic sessions with G.G., and as such, drastically limited their ability to facilitate an attachment bond with him. SWCM England testified Laura's and Justin's refusal to participate in family therapy with G.G. was the biggest barrier to reunification, and ultimately, the reason she changed the permanency recommendation to adoption. In her words, Justin and Laura were unwilling to place G.G.'s needs before their own.

SWCM England, who has been involved with the family since D.G.'s birth, testified that since resuming reunification efforts, Justin and Laura have been very agitated, angry, and resistant to the Department's recommendations. They have denied SWCM England access to their home, have refused to allow her to check on the children during a visit supervised by other providers, and have abruptly ended at least two interactions with her. These factors along with Justin and Laura's continued use of illegal substances and their unwillingness to comply with recommendations for substance abuse treatment and mental health services leads this Court to have grave concerns regarding the parents' lack of insight into their problems and unwillingness to change.

Additionally, it would not be prudent to ignore the parents' history with the Department. Justin and Laura's children have been removed from their care and custody on multiple occasions

for concerns related to drug use. Both D.G. and G.G. were born with drugs in their systems. It is well-established that a parent's past performance is indicative of the future. Justin and Laura have not made any good faith efforts to address the issues that cause them to repeatedly come to the attention of the Department. Given their history and lack of cooperation with services, it is unlikely, if not impossible, that reunification could occur within a reasonable period of time.

## ANALYSIS

### a. Statutory Grounds for Termination

**Section 232.116(1)(a).** Section 232.116(1)(a) provides that termination of parental rights is authorized when the parents voluntarily and intelligently consent to the termination of parental rights and the parent/child relationship and for good cause desire the termination. The Court finds that the State has not proven a ground for termination of parental rights of either Justin XXXX or Laura XXXX within the scope and meaning of Iowa Code Section 232.116(1)(a).

**Section 232.116(1)(e).** D.G. and G.G. were adjudicated to be children in need of assistance on July 6, 2017. Both children have remained out of the care of their parents since that date. Thus, the first two elements under Iowa Code Section 232.116(1)(e) have been met.

In order to support the allegations under 232.116(1)(e), this Court also must find that the parent failed to maintain significant and meaningful contact with the children for the last six months and has made no reasonable efforts to resume care of the children despite being given the opportunity to do so. The Iowa Code defines "significant and meaningful" contact to include but not be limited to the "affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to the financial obligations, requires continued interest in the children, a genuine effort to maintain the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the children, and requires that the parents establish and maintain a place of importance in the children's life." Iowa Code § 232.116(1)(e)(3).

Here, the parents have not maintained significant and meaningful contact with the D.G. and G.G. during the previous six months because they have not made reasonable efforts to resume care of the children despite being given the opportunity to do so. At the time of the termination hearing, all visits between Justin, Laura, and D.G. and G.G. remained professionally supervised. The parents had not had any unsupervised time with their children during the pendency of this case. Further, the parents had made no genuine effort to move towards additional or unsupervised

visitation because they refused to participate in therapeutic family sessions with G.G. Although the parents maintained that transportation and financial barriers existed, they were offered services such as transportation assistance, gas cards, and flexible scheduling to overcome those barriers. Still, the parents refused to participate in therapy family sessions with their son to achieve reunification. For children as young as G.G., the law has recognized that parents must move quickly to rectify their personal deficiencies. Here, not only did Laura and Justin fail to move quickly, but they failed to make any reasonable effort to reunify with G.G.

Further, significant and meaningful contact contemplates more than simply physical contact. Justin and Laura also have not attempted to maintain a place of importance in their children's lives. They do not call Jim or Deb XXXX to talk to their children or even to inquire about how their children are doing. They do not stop by the XXXX residence to see their children despite Deb and Jim's open door policy. Further, neither parent has demonstrated the capacity to appropriately care for D.G. and G.G. or provide for their complex psychological and emotional needs.

Neither Justin nor Laura have made a genuine effort to address their substance abuse or mental health issues. Further, both parents, Laura in particular, remain unwilling to abstain from the use of illegal substances. Justin and Laura simply have not made affirmative efforts to comply with the mandates of the case permanency plan so they could assume the role of parents to D.G. and G.G.

The Court finds that the State has proved by clear and convincing evidence that Justin XXXX and Laura XXXX have not maintained significant and meaningful contact with their children, D.G. and G.G., during the previous six consecutive months. Accordingly, the State has met its burden of establishing clear and convincing facts to prove a ground for termination of parental rights as to Justin XXXX and Laura XXXX within the scope and meaning of Iowa Code Section 232.116(1)(e).

**Section 232.116(1)(f).** Section 232.116(1)(f) allows termination of parental rights when the child is four years of age or older, has been adjudicated in need of assistance, has been removed from the parent's custody for at least twelve of the previous eighteen months or for the last twelve consecutive months and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parent at the present time.

There is no question that the first three requirements have been met as to G.G. The child is five years old, having been born on February 7, 2015. G.G. has been continuously removed from his parent's physical custody since July 6, 2017. He was adjudicated in need of assistance on the same date.

The Court next must determine whether G.G. can be returned to the custody of his parents as provided in Iowa Code Section 232.102. Our Courts have interpreted this to require "clear and convincing evidence the children would be exposed to an appreciable risk of adjudicatory harm if returned to the parent's custody at the time of the termination hearing." *In Interest of L.S.*, 912 N.W.2d 857 (Iowa Ct. App. 2018).

The record reflects that the family has almost continuously been involved with the Iowa Department of Human Services in the past six years. The Department founded at least four separate child protective assessments against one or both of the parents during that time. Each of the founded reports was related to the use of illegal substances. Additionally, both G.G. and D.G. were born with illegal substances in their systems.

Since the most recent adjudicatory hearing on July 6, 2017, Justin and Laura have continually been ordered to engage in drug testing, substance abuse treatment, mental health treatment, and to comply with other services as requested. Justin and Laura have failed to consistently comply with services throughout the life of this case. Neither parent successfully completed substance abuse treatment. In fact, both parents were unsuccessfully discharged from treatment due to lack of attendance on September 27, 2019. Laura arbitrarily decided not to continue with mental health therapy. Neither Laura nor Justin were compliant with drug screens in the months leading up to the termination proceeding. The Court presumes that the missed drug screens would have resulted in positive screens, especially given Laura's admissions that she used marijuana and would continue to do so.

Both Laura and Justin have been unable to abstain from marijuana use despite knowing that it affects their ability to reunify with their children. When the Court confronted the parents about their illegal drug use at the permanency review hearing on May 16, 2019, Laura stated that she and Justin are "recovering drug addicts and will always backslide." Despite this acknowledgement, Justin and Laura refused to attend substance abuse counseling and other services designed to address their substance abuse and relapse prevention.

Some may argue that marijuana use may not, by itself, establish adjudicatory harm. However, Justin and Laura's complete failure to address their substance abuse issues combined with their histories of methamphetamine and marijuana use certainly creates an appreciable risk of harm to their children, particularly D.G. and G.G. due to their young ages, special needs, and inability to self-protect. Simply put, their untreated substance abuse and lack of insight towards the same precludes Laura and Justin from being able to provide a safe and stable home for D.G. and G.G. *See, e.g., In re L.S.*, 2018 WL 540968, at *1 (Iowa Ct. App. 2018) (providing untreated substance abuse can create a risk of harm to the children); *In re R.P.*, 2016 WL 4544426, at *2 (Iowa Ct. App. 2016) (affirming termination of parental rights of parent with history of drug abuse); *In re H.L.*, 2014 WL 3513262, at *3 (Iowa Ct. App. 2014) (affirming termination of parental rights when parent had history of substance abuse).

The evidence also shows that G.G. cannot be returned to his parents' care at this time due to the lack of attachment bond between G.G. and his parents. The Court is required to consider the mental and emotional condition and needs of the child. Here, termination of parental rights is in G.G.'s best interest and would be less detrimental than the harm that would be caused to him by further attempts to cultivate a parent-child relationship.

Thus, clear and convincing evidence shows that G.G. would have been exposed to an appreciable risk of adjudicatory harm if returned to Justin and Laura's care at the time of the termination hearing due to their untreated substance abuse issues and G.G.'s emotional condition and needs. The State has met its burden to prove a ground for termination of parental rights as to Justin XXXX and Laura XXXX to G.G. within the scope and meaning of Iowa Code Section 232.116(1)(f).

**Iowa Code Section 232.116(1)(h).** Section 232.116(1)(h) allows termination of parental rights when the child is three years of age or younger, has been adjudicated in need of assistance, has been removed from the parent's custody for at least six of the previous twelve months, and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parent at the present time.

There is no question that the first three requirements have been met as to D.G. The child is two years old, having been born on March 30, 2017. D.G. has been continuously removed from his parent's physical custody since July 6, 2017. He was adjudicated in need of assistance on the same date.

With respect to the last element, the Court's discussion above applies equally to D.G. The Court must determine whether D.G. would be exposed to an appreciable risk of adjudicatory harm if returned to the parent's custody at the time of the termination hearing. All of the issues related to the parents' failure to address their substance abuse and abstain from the use of controlled substances relate to D.G. as well. Even more concerning to this Court, D.G. is only two years old and has no ability to self-protect from potential harm.

Thus, clear and convincing evidence shows that D.G. would have been exposed to an appreciable risk of adjudicatory harm if returned to Justin and Laura's care at the time of the termination hearing due to their untreated substance abuse issues and his inability to self-protect. The State has met its burden to prove a ground for termination of parental rights as to Justin XXXX and Laura XXXX to D.G. within the scope and meaning of Iowa Code Section 232.116(1)(f).

**b. Reasonable Efforts.**

The State must demonstrate reasonable efforts as a part of its ultimate proof that D.G. and G.G. cannot be safely returned to the care of their parents. *In re L.M.*, 904 N.W.2d 835, 839 (Iowa 2017) (quoting *In re C.B.*, 611 N.W.2d at 493). Our law requires that the Department "make every reasonable effort to return the children to the children's home as quickly as possible consistent with the best interests of the children." Iowa Code § 232.102(7); *see also In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996); *In re A.Y.H.*, 508 N.W.2d 92, 95 (Iowa Ct. App. 1993). The concept covers both the efforts to prevent and eliminate the need for removal. Iowa Code § 232.102(10)(a). The focus is on services to improve parenting. However, it also includes visitation designed to facilitate reunification while providing adequate protection for the child. *In re C.B.*, 611 N.W.2d at 493.

Over the past six years, Justin and Laura have been provided with countless services focused on improving their parenting skills, obtaining and maintaining sobriety, and stabilizing their mental health. Since the most recent adjudication on July 6, 2017, these services have focused on remedying parental deficiencies to return the D.G. and G.G. to the parental home as quickly as possible. After the original termination was reversed in April of 2019, these services shifted to focus primarily on safely transitioning G.G. and D.G. back to their parents' care.

Therapeutic services for G.G. aimed at helping him manage the stress and anxiety of reunification. BHIS sessions focused on alleviating G.G.'s anxiety symptoms. Family therapy was offered, though not accepted by Laura and Justin, to facilitate the development of familial

attachment and to support G.G.'s parents in reunification efforts. Supervised visitation was designed to facilitate reunification and develop familial attachment bonds while ensuring the children's safety.

The parents maintained throughout the life of this case that transportation was a barrier to their participation in services. The family owned one operational vehicle. Justin used that vehicle to travel to and from his job in Shenandoah. Laura, who is not employed outside the home, does not have a valid driver's license due to previous OWI charges.

In effort to overcome the family's transportation barriers, the Department and FSRP worked continuously with the family to problem solve and obtain resources. FSRP provided the family with gas cards and resources to provide transportation assistance. The Department and FSRP also worked with the family's Medicaid provider to authorize transportation. Laura's mother, Tammy XXXX, was also a tremendous support in providing transportation for Laura and the children. Previously, the family was willing to utilize informal supports such as friends to provide transportation as well. Service providers such as Alan Mortimore at Zion Recovery and Therapist Tracy Van Zee also offered flexible scheduling options for the family. In-home drug screens were also set up so that the family would not be required to travel.

Ultimately, Justin and Laura simply refused to take advantage of the transportation assistance offered to them. Instead, the family used their purported lack of transportation as another excuse to blame the State for their inability to reunify with D.G. and G.G.

The specific services offered to Justin and Laura include the following:

- Relative Placement;
- Suitable Other Placement;
- Family Safety, Risk and Permanency (FSRP) Services;
- Professionally Supervised Family Interactions;
- Family Team Meetings;
- Chemical Dependency Evaluations;
- Chemical Dependency Treatment;
- Random Drug Screening;
- In-Home Drug Screening;
- Mental Health Evaluations;
- Mental Health Treatment;
- Rental Assistance;
- Transportation Assistance;
- Behavioral Health Intervention Services (BHIS);
- Therapeutic Services for G.G.;
- Family Therapy;

• Social Work Case Management;
• Page County Juvenile Court;

In this case, the issue was not lack of reasonable efforts provided to the family. Rather, the parents chose not to consistently avail themselves of the reunification services that were offered. This Court specifically finds that the testimony of Laura XXXX, Justin XXXX, and Tammy XXXX was not credible as it related to their "efforts" to work towards reunification. Rather, the Court found their testimony to be wrought with excuses and attempts to blame the State for their predicament. In reality, Justin and Laura are simply unwilling to place their children's needs before their own. Unfortunately, there is no pause button for these young children to wait for their parents to make the decisions and take the steps necessary to become safe and stable parents.

The Court finds that reasonable efforts were provided to make it possible to safely return the children to the family's home. Iowa Code Section 232.102(5)(b).

**c. Permissible Exceptions to Termination**

Next, the Court looks at the permissible exceptions to termination of parental rights under Iowa Code Section 232.116(3). The parent bears the burden of proving that an exception exists. Further, the provisions of Section 232.116(3) are permissive, not mandatory. The Court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in Section 232.116(3) to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993), *overruled on other grounds by P.L.*, 778 N.W.2d at 39-40.

Two statutory provisions warrant consideration in this matter: Iowa Code Sections 232.116(3)(a) and (c). The first states that a Court need not terminate parental rights if "[a] relative has legal custody of the child." Iowa Code § 232.116(3)(a). The second states the Court need not terminate parental rights if "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c).

**Section 232.116(3)(a).** D.G. and G.G. have been placed with their maternal aunt and uncle, Deb and Jim XXXX, for over thirty consecutive months. However, Iowa Code Section 232.116(3)(a) is not applicable in this case because Deb and Jim do not have "legal custody" of D.G. and G.G. Since the adjudication hearing on July 6, 2017, the children have remained in the care, custody, and control of the Iowa Department of Human Services and are merely placed with

a relative. Placement does not equate to legal custody. *See In re C.N.*, 2020 WL 567283, at *2 (Iowa Ct. App. 2020) (finding Section 232.116(3)(a) does not apply when DHS has legal custody of the children and places them in the physical care of a relative).

**Section 232.116(3)(c).** Justin and Laura point out that the Iowa Court of Appeals reversed the August 14, 2018, termination order basis of the statutory exception to termination set forth in section 232.116(3)(c). Indeed, at the first termination hearing, the Department caseworker also testified that the bond between D.G. and G.G. and the father increased in the two months preceding the termination hearing. Similarly, the FSRP provider who supervised visits agreed, testifying interactions went "very well" and she saw a much stronger bond between the parents and youngest two children in the three to four weeks preceding the termination hearing. In her words, the children "both jump right out of my van and towards their mom and dad."

Justin and Laura argue that the bond they shared with D.G. and G.G. was destroyed in the eight months that passed between the August 14, 2018, termination order and the reinitiation of reunification services in April of 2019. Recognizing that any bond that previously may have existed with their children was longer present, Justin and Laura blamed the State for the breakdown in their relationships with their children.

First, the Court considers whether the State was required to provide reunification services while the August 14, 2018, termination order was on appeal. The Iowa Supreme Court has held that the Department's obligation to provide reasonable efforts runs until the juvenile court has entered a final written order of termination. *Interest of L.T.*, 924 N.W.2d 521, 528 (Iowa 2019); Iowa Code § 232.102(12). "'Termination of the parent-child relationship' means the divestment by the court of the parent's and child's privileges, duties, and powers with respect to each other." Iowa Code § 232.2(57). Thus, this Court finds that the State was not required to provide reunification services to Justin and Laura following the entry of the August 14, 2018, termination order.

The Court next considers the parents' argument that the State destroyed their bond with D.G. and G.G., thus warranting a grant of additional time to work towards reunification. This Court respectfully disagrees with the conclusion of the Iowa Court of Appeals in their April, 2019, opinion regarding a bond between D.G. and G.G. and their parents. At the original termination hearing, the Department caseworker testified that the bond between D.G. and G.G. and their father *increased in the two months preceding the termination hearing*. The FSRP provider testified that

she saw a *stronger bond* between the parents and youngest two children *in the three to four weeks preceding the termination hearing*. This Court does not find a closeness of the parent-child relationship. At that time, D.G. and G.G. had been removed from their parent's care for over a year. D.G. had been removed from his parents care his entire life. G.G. had lived with Deb and Jim for two-thirds of his life. D.G. and G.G. were not *bonded* to their parents. They were just getting to know each other. Accordingly, this budding relationship was not the type of parental bond that militates against termination, especially given the very young ages of the children in interest.

Ms. Van Zee has recently noted that G.G. does not view Justin and Laura as his parents. He does not refer to the as Mom or Dad, even when they are present. Justin and Laura have not consistently scheduled or attended family sessions. In fact, Justin has never attended a family therapy session with G.G. At the termination hearing, Justin testified that he does not respect Ms. Van Zee's opinion that neither D.G. nor G.G. could be returned to the family home without damage. Laura finally scheduled a family session after she was informed that BHIS sessions (and thus visits with G.G.) would stop on January 1, 2020, without a new Medicaid authorization.

The Iowa Court of Appeals also mentioned the bond among the five children as a factor weighing against termination. While sibling relationships are not considered under Iowa Code Section 232.116(3), this Court does not take lightly the bond between D.G., G.G., and their siblings who remain in the parental home. There is evidence of a connection especially between D.G. and G.G. and their oldest brother, Michael. Although the middle two children tended to play on their own during visits, there was scant, if any, indication of alienation among the siblings.

This Court concurs that whenever possible, siblings should be kept together and should not be separated without good and compelling reasons. *In Interest of A.M.S.*, 419 N.W.2d 723, 734 (Iowa 1988). However, the paramount concern in these cases must be the child's best interests. *In Interest of T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). In this case, the children have not lived with their siblings for any significant period of time. D.G., in fact, has never lived with any of his siblings besides G.G.

This Court is also persuaded by evidence that Deb and Jim understand the importance of facilitating a relationship between D.G. and G.G. and their siblings. Between the filing of the original termination order and the Court of Appeals opinion, D.G. and G.G. interacted with their biological parents and siblings at family functions on multiple occasions. The evidence clearly

showed that all of Justin and Laura's children are loved by immediate and extended family members. By all accounts, the relationship between Deb and Jim and Laura and Justin was good. D.G. and G.G. were happy and stable as they were assured that Deb and Jim were their parents and that their home was "theirs." Everyone existed symbiotically, and by all accounts, both families thrived.

After the original termination was reversed, there was an immediate and significant breakdown in the relationship between Deb and Jim and Justin and Laura. D.G. and G.G. were suddenly thrust into interactions with their biological parents without the comfort and safety of Deb and Jim. Of course, after months of stability, such a change was traumatic for the young children, and they suffered serious emotional and behavioral setbacks as a result.

Thus, while there may be some connection between the D.G., G.G., and their biological parents, it is not strong enough to forestall termination, especially considering that the parents had not moved beyond fully supervised visits with the children. Likewise, any connection they have with their biological siblings does not militate against termination. The exception under Iowa Code § 232.116(3)(c) provides that "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." In this case, only the failure to terminate Justin and Laura's parental rights would be traumatic and detrimental to D.G.'s and G.G.'s futures. Accordingly, the Court finds that no exception under Iowa Code Section 232.116(3) precludes termination.

**Closure of Siblings' Cases.** In addition to the statutory exceptions to termination of parental rights, the parents argue that termination is not warranted due to the closure of D.G. and G.G.'s siblings' CINA cases. On February 8, 2019, Michael, Ellnorah, and Owen were returned to their parents' care. On August 15, 2019, the CINA cases regarding Michael, Ellnorah, and Owen were closed because the permanency goal of maintaining reunification had been achieved.

Justin and Laura contend that additional time to work towards reunification should be granted because the Court had closed the older children's case after determining that Justin and Laura were able to sufficiently care for those children. In other words, they are argued that if they can parent their older children, they must have the ability to parent D.G. and G.G.

This contention ignores D.G. and G.G.'s ages and special needs. Even though a parent may be able to parent some of his or her children does not necessarily mean he or she is capable of providing appropriate care to all children. The special needs and best interests of each child must

be evaluated. *In re J.E.*, 723 N.W.2d 793, 799 (Iowa 2006). At the time of the termination hearing, G.G. and D.G.'s siblings were twelve (M.G.), nine (O.G.), and six (E.G). G.G. was five and D.G. was two.

Unlike their older siblings, D.G. and G.G. had suffered trauma due to being removed from their parent's care at such young ages. This trauma created special needs that requires extra attention. While their older siblings may be able to fend for themselves, D.G. and G.G. cannot.

Additionally, this Court felt comfortable closing the older children's cases because the family continued to be monitored by numerous service providers due to the Department's involvement with D.G. and G.G. The older children were also in school, where they were observed by professionals on an almost-daily basis.

Further, unlike D.G. and G.G., the older children share a strong bond with their parents and look to them to meet their physical and emotional needs. Conversely, Deb and Jim are D.G.'s and G.G.'s primary attachment figures. Ms. Van Zee noted, for example, that G.G. is only four years old and does not understand the complexity of his family structure. He only understands Deb and Jim to be his parents, caregivers, safety, and his home.

Our courts have stated a preference to keep siblings together. *In re A.M.S.*, 419 N.W.2d at 734 (stating "siblings should not be separated without good and compelling reasons"). However, this preference is not absolute. The ultimate concern is the best interests of the child.

Justin and Laura will undoubtedly argue that it is in D.G.'s and G.G.'s best interests to be with their siblings. This Court is certainly cognizant of the importance of family integrity. However, this consideration, although valid, cannot overcome the clear and convincing evidence that it is in D.G. and G.G.'s best future interests to be free for adoption so they may be placed in a permanent and stable home with consistent care. D.G. and G.G. deserve the opportunity to start a new life even if it means they have to leave behind relationships with their siblings and parents. Accordingly, the Court finds that the closure of Michael, Ellnorah, and Owen's CINA cases does not preclude termination.

**d. Best Interests**

Finally, the Court considers whether termination of parental rights is in D.G. and G.G.'s best interests. In considering the best interest of a child, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *P.L.*, 778 N.W.2d at

40 (quoting Iowa Code § 232.116(2)). "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *Id.* at 41.

**Safety.** Our law recognizes that the primary consideration in determining a child's best interest is "the child's safety." *See P.L.*, 778 N.W.2d at 37. Justin and Laura have not demonstrated behavioral changes necessary to keep D.G. and G.G. safe. Most notably, they have not maintained sobriety and have not followed recommendations related to continuing care and relapse prevention. Justin and Laura are simply unable to provide D.G. and G.G. with a safe home due to their unresolved substance abuse issues. They have likewise not demonstrated that they have knowledge and understanding of D.G. and G.G.'s special emotional and behavioral needs related to the trauma caused by the instability in their young lives. This is especially evidenced by the fact that Justin and Laura have been unwilling to participate in therapeutic family sessions with G.G.

**Long-term Nurturing and Growth.** Considering Justin and Laura's history of methamphetamine and marijuana use, their failure to participate in substance abuse treatment, and their inability to move past fully supervised interactions with their children as indicators of what the future likely holds, the Court foresees an unsteady and unreliable future that is not suitable for D.G. or G.G. "Insight for the determination of the child's long-range best interests can be gleaned from 'evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.'" *In re Interest of C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (quoting *In re Interest of Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

**Physical, Mental, and Emotional Condition and Needs.** Therapist Tracy Van Zee explained that for D.G. and G.G., being transitioned into Justin and Laura's home is like being removed from their home and placed elsewhere. Ms. Van Zee opined that if reunification was to be successful and not detrimental to the children, they must first develop attachment relationships with Justin and Laura. The process of forming attachment bonds would take time, repeated contact with Justin and Laura, and careful professional guidance. Ms. Van Zee stated that even if the children had positive feelings towards all involved, they would still need managing the stress and anxiety of the process.

Both D.G. and G.G. have suffered ongoing behavioral and emotional setbacks after reunification efforts resumed. At this time, D.G. and G.G. need and deserve a stable, safe, and

permanent home. As stated above, only the failure to terminate Justin and Laura's parental rights would be traumatic and detrimental to D.G. and G.G.'s futures.

**Permanency.** D.G. and G.G.'s need for permanency is the defining element of this case. G.G. was placed with Deb and Jim from February 8, 2015, through January 21, 2016. He was again placed with Deb and Jim on July 6, 2017, and has remained in their care since that date. D.G. has been removed from his parents care since he was three months old. He has been placed with Deb and Jim since August 14, 2017.

The children have experienced serious emotional and behavioral setbacks since visitation with their parents have resumed. Jim testified that D.G. needs constant reassurance that their home is "his" home, and that his bedroom is "his" bedroom. This case is a somber illustration of why children, especially very young children like D.G. and G.G., urgently need permanency. Children have a deep emotional and psychological need for a permanent home.

However, permanency is more than just a place to call home. Permanency includes stability. If D.G. and G.G. were returned to Justin and Laura's care, they would face a life of uncertainty and instability. Given the parents' history, they would likely face removal when Justin and Laura again find themselves in crisis. Real permanency lasts a lifetime, and that's what D.G. and G.G. need and deserve. Children need to have their needs met consistently over time to develop, learn, grow, and especially to overcome trauma. Safety and permanency in children's lives are a prerequisite to their well-being.

Overwhelming evidence was presented that both G.G. and D.G. are bonded to their maternal aunt and uncle. They have been placed with the Deb and Jim for over thirty months. They view Deb and Jim as their actual, permanent mother and father and look to them to meet their physical and emotional needs. Ms. Van Zee has stated that G.G. and D.G. have formed familial attachment relationships with Deb and Jim. They view Deb as their mother and rely upon her to help them navigate life's stressors. Deb and Jim provide D.G. and G.G. with nurturing and encouragement to grow. In Deb and Jim's care, they are happy and safe.

While this Court recognizes that courts are not free to take children from parents simply because another home offers more advantages, removing these children from Deb and Jim's home would be devastating and likely cause irreparable harm in dealing with separation and abandonment issues. D.G.'s and G.G.'s short lives have already been marred by chaos and confusion such that trust and security issues will be difficult for them to overcome as they grow

older. After over thirty months of waiting, D.G. and G.G. deserve permanency. They deserve to wake up every morning knowing that they are in "their" bedroom in "their" home. They deserve parents who have proven that they are capable and willing to meet their needs. They deserve parents who are willing to do whatever it takes to keep them safe. Justin and Laura are not those parents.

At the time of the permanency review hearing, Laura testified that a healthy and safe reunification with G.G. may take years. This Court agrees. Our courts have long held that "[a] parent does not have an unlimited amount of time in which to correct his deficiencies." *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). While patience is allowed for parents to remedy their deficiencies, that time must be limited because the delay may translate into intolerable hardship for the children. *In Interest of A.C.*, 415 N.W.2d 609, 613-614 (Iowa 1987). It is well-settled that the Court cannot deprive a child of permanency after the State has proved a ground for termination by hoping someday a parent will be able to provide a stable home for the child. *In re A.M.*, 843 N.W.2d at 112 (quoting *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010)).

"It is simply not in the best interests of children to continue to keep them in temporary foster homes while the natural parents get their lives together." *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989). Justin and Laura have been granted over thirty months to demonstrate their ability to care for D.G. and G.G. They have received services from the Department almost constantly since 2014, yet they continue to struggle with the same problems identified at the beginning of the juvenile court proceedings. They have been resistant to services and have continued to use drugs throughout the life of the case. They have shown no insight as to what is necessary to achieve reunification. Instead, they continued to blame the State and others. Simply put, Justin and Laura have not benefited from DHS's services and D.G. and G.G. continue to suffer. D.G. and G.G. deserve to live in a home with structure and consistency where they are safe and able to reach their full potential.

The State has proven by clear and convincing evidence that after thirty months of being removed from their parents' care, D.G. and G.G. cannot be returned to Justin and Laura's custody presently or in the near future. It is in D.G. and G.G.'s best interests to terminate Justin and Laura's parental rights so they may be placed in a safe and stable home with adults who can properly and permanently care for them.

Termination of parental rights would free D.G. and G.G. for adoption. Deb and Jim, who have care for D.G. for thirty of the thirty-three months since his birth, and G.G. for forty-one of the fifty-nine months since his birth, have expressed interest in adoption. Adoption would provide D.G. and G.G. with a safe and stable forever home. Deb and Jim will provide the necessary environment for the children to successfully accomplish developmental milestones, and also a lifelong support system for the children.

Termination and adoption is the preferred method of establishing permanency children who cannot be safely returned home. *In Interest of R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995). Accordingly, this Court concludes that termination is in D.G.'s and G.G.'s best interests so that they can be freed for adoption.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:**

1. **Petition Granted and Parental Rights Terminated as to Mother:** The Petition filed on November 26, 2019, and amended on December 10, 2019, asking that the parental rights of Laura XXXX as biological mother of D.G. and G.G., the children in interest, is hereby **granted** upon the grounds set forth in Iowa Code Sections 232.116(1)(e), (f), and (h). Laura XXXX shall, from this date forward, have no further interests in said children.
2. **Petition Granted and Parental Rights Terminated as to Father:** The Petition filed on November 26, 2019, and amended on December 10, 2019, asking that the parental rights of Justin XXXX as biological father of D.G. and G.G., the children in interest, is hereby **granted** upon the grounds set forth in Iowa Code Sections 232.116(1)(e), (f), and (h). Justin XXXX shall, from this date forward, have no further interests in said children.
3. **Iowa Code Section 232.116(1)(a):** The allegations under Iowa Code Section 232.116(1)(a) are **dismissed** as to Justin XXXX and Laura XXXX.
4. **Guardian/Custodian:** D.G. and G.G. are placed in the care, custody, and control of the Commissioner of the Iowa Department of Human Services for pre-adoptive placement. The Iowa Department of Human Services is appointed to act as **guardian** and **custodian** of the children in interest until further order of this Court. Approved placements include family foster care, relative care, suitable other care, or shelter care.
5. **Guardian ad Litem:** Vicki Danley continue to act as Guardian ad Litem for the children until further order of this Court.

6. **Case Permanency Plan:** The Iowa Department of Human Services shall submit a case permanency plan to the Court and make every effort to secure a permanent placement for the children by adoption or other permanent placement.
7. **Report Regarding Reasonable Efforts:** Within 45 days of the date of this order and every 45 days thereafter until further order, the Iowa Department of Human Services shall report to this Court regarding reasonable efforts to place the children for adoption or shall provide rationale as to why adoption would not be in the children's best interest.
8. **Review Hearing:** A termination of parental rights review hearing is scheduled for **October 1, 2020, at 10:00 a.m.**, at the Page County Courthouse in Clarinda, Iowa, unless the children are legally adopted before that date.
9. **Counsel to Remain as Attorneys of Record:** The Clerk of Court shall not remove any attorney of record from this case until either the appeal time has run and no appeal has been taken or if an appeal has occurred, until the appeal process is completed.
10. **Order Shall be Provided to Attorneys:** The Clerk of Court shall provide a copy of this order to the children, the children's parent(s), counsel of record, Iowa Department of Human Services, and the children's placement.
11. **NOTICE OF APPEAL RIGHTS:** Any aggrieved party must appeal pursuant to Iowa Rule of Appellate Procedure 6.101(1)(a) by filing a notice of appeal within 15 days of the entry of this order and by filing a petition on appeal within 15 days thereafter.

**SO ORDERED** this 23rd day of March, 2020.

**IN THE COURT OF APPEALS OF IOWA**

No. 20-0587
Filed August 5, 2020

**IN THE INTEREST OF D.G. and G.G.,**
**Minor Children,**

**L.H., Mother,**
Appellant,

**J.G., Father,**
Appellant.

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Appeal from the Iowa District Court for Page County, Jennifer A. Benson, District Associate Judge.

A mother and father separately appeal the termination of their respective parental rights to two of their children. **AFFIRMED ON BOTH APPEALS.**

C. Kenneth Whitacre, Glenwood, for appellant mother.

Justin R. Wyatt of Woods, Wyatt, & Tucker PLLC, Glenwood, for appellant father.

Thomas J. Miller, Attorney General, and Ellen Ramsey-Kacena, Assistant Attorney General, for appellee State.

Vicki R. Danley, Sidney, attorney and guardian ad litem for minor children.

Considered by Mullins, P.J., May, J., and Gamble, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2020).

**GAMBLE, Senior Judge.**

A mother and father separately appeal the termination of their parental right to their children, D.G. and G.G.[1] Both parents challenges the statutory grounds authorizing termination and whether termination is in the children's best interests. We affirm.

## I. Facts and Prior Proceedings

This is the second appeal involving this family. We set out the following facts relating to the parents' rights to the youngest two of their five children in our first opinion:

> The department of human services [(DHS)] intervened in 2015, following the birth of the parents' fourth child[, G.G]. The department instituted a safety plan based on concerns of drug use by the mother. [G.G.] stayed with relatives for approximately two months, then was formally removed from the parents' care in a separate proceeding. He was ultimately reunited with his parents, and the district court closed the case.
>
> Less than one year later, the youngest child[, D.G.,] was born with marijuana in his system. The State filed a petition to have all five children adjudicated in need of assistance.
>
> On the date of the scheduled adjudicatory hearing, the department drug-tested the parents and found they had methamphetamine in their systems. The district court granted the adjudication petition and ordered the children removed from parental care. The department placed the older three children with their maternal grandmother. The youngest two children, who are the subject of this appeal, ended up with their maternal great-aunt.

[1] We note the father is not listed on G.G.'s birth certificate, and he is not married to the mother. *See* Iowa Code § 232.2(39) (2019) (defining parent). Both the mother and father report that the father is G.G.'s biological father. No party takes issue with the father participating or suggests he does not have established parental rights to terminate. The juvenile court terminated the parental rights of any unknown father to G.G. in an August 2018 termination order. In a prior appeal involving this family, we addressed the father's parental rights to G.G. noting he personally acknowledged that he is G.G.'s biological father. *See In re D.G.*, No. 18-1480, 2019 WL 1294228, at *2–3 (Iowa Ct. App. Mar. 20, 2019). Following this reasoning, we again address the father's rights to G.G. because he acknowledged he is G.G.'s biological father.

> The parents continued to test positive for methamphetamine and marijuana for several months, but, in time, their drug use declined. Beginning four months before the termination hearing, they tested negative for methamphetamine. Although the father tested positive for marijuana after that date, a hair test administered in the month preceding the termination hearing tested negative for all substances, and the father testified he stopped using marijuana. The mother equivocated on whether she curtailed use of the drug. But the department caseworker agreed the department typically does not remove children for marijuana use by the parents. Both parents attended substance-abuse counseling and participated in other services designed to address their substance abuse. They also participated in several weekly visits with their children.
>
> Ultimately, the State recommended against termination of parental rights to the older three children but petitioned to terminate parental rights to the youngest two children. Following a two-day termination hearing, the district court granted the termination petition pursuant to Iowa Code section 232.116(1)(e) and (h) [(2018)] (allowing the court to terminate parental rights where there is an absence of significant and meaningful contact or where the children cannot be returned to parental custody, respectively).

*D.G.*, 2019 WL 1294228, at *1–2 (footnote omitted).

Both parents appealed. The father challenged both statutory grounds relied upon by the juvenile court, but the mother only challenged one ground. *Id.* at *2–3. We found Iowa Code section 232.116(1)(h) satisfied as to the father and the mother. *Id.* (finding the children could not return safely to the father's care and affirming the statutory grounds as to the mother based on the unchallenged ground found by the juvenile court). But both parents argued termination was not in the children's best interests due to the familial bond. *Id.* We agreed, noting the children's strong bonds with their parents as well as their bonds with their older three siblings. *Id.* We reversed the termination orders as to both parents. *Id.* at *3.

Following reversal of the first termination order in March 2019, the juvenile court ordered reasonable efforts toward reunification to resume. On the way to the

first visit following the court's order, G.G. began to vomit. The parents agreed to cancel the visit due to G.G.'s vomiting. The day of the next scheduled visit, G.G. had a nightmare at daycare. Care providers observed him "whimpering and yelling that he did not want to go back." When care providers woke G.G., they discovered that he had soiled himself. The guardian ad litem and a DHS worker agreed G.G. should not attend visitation with the parents that evening. However, D.G. attended the visitation.

A doctor examined G.G. and found G.G. "did not demonstrate any signs of illness" to explain his vomiting and soiling. So DHS obtained a mental-health evaluation for G.G. to determine if G.G. had mental-health needs that needed to be addressed. G.G.'s therapist recommended visitations between both G.G. and D.G. and the parents be fully supervised until the parents completed family therapy with G.G. However, the parents have not consistently participated in family therapy, and visitations remain supervised.

The mother claims she received an updated mental-health evaluation in September 2019. However, because the mother did not sign a release for DHS to communicate with the facility, DHS could not confirm the mother completed an evaluation or received any recent treatment. Similarly, the father claims he had engaged in mental-health services, but this could not be confirmed.

Both parents also obtained updated substance-abuse evaluations. However, they were both discharged from treatment due to lack of attendance.

The parents expressed difficulty obtaining transportation to drug screens, so DHS arranged for in-home drug testing. However, the mother tested positive for THC twice and missed several drug screens since reasonable efforts resumed.

The father also tested positive for THC. And the father failed to complete some of the in-home drug testing provided, though we note some tests occurred while he was at work.

So the State once again petitioned for termination of the parents' parental rights in November 2019. And the juvenile court terminated the parents' parental rights to both children. Again, both parents appeal.

**II. Scope and Standard of Review**

We review termination proceedings de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). "We give weight to the factual determinations of the juvenile court but we are not bound by them. Grounds for termination must be proven by clear and convincing evidence. Our primary concern is the best interests of the child[ren]." *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (citations omitted).

We use a three-step process to review the termination of a parent's rights. *In re A.S.*, 906 N.W.2d 467, 472 (Iowa 2018). First, we determine whether a ground for termination under Iowa section 232.116(1) (2019) has been established. *See id*. at 472–73. If a ground for termination has been established, then we consider "whether the best-interest framework as laid out in section 232.116(2) supports the termination of parental rights." *Id*. at 473 (citation omitted). Then we consider "whether any exceptions in section 232.116(3) apply to preclude termination of parental rights." *Id*. (quoting *In re M.W.*, 876 N.W.2d 212, 220 (Iowa 2016)).

## III. Discussion

### A. Statutory Grounds

Both parents challenge the statutory grounds authorizing termination. The juvenile court authorized termination pursuant to Iowa Code section 232.116(1)(d), (f), and (h). When, as here, the juvenile court terminates on multiple statutory grounds, we may affirm on any ground we find supported by sufficient evidence. *See In re A.B.*, 815 N.W.2d 764, 774 (Iowa 2012). We will address paragraph (f) as to G.G. and paragraph (h) as to D.G. These paragraphs differ slightly. Paragraph (f) authorizes termination of a parent's parental rights when:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The child has been removed from the physical custody of the child's parents 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.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Paragraph (h) is nearly identical except it applies to a child who is "three years of age or younger" and only requires the child be removed "for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days." But the parents only challenge the fourth

element under both paragraphs.[2] As we found on the parents' first appeals, we conclude the children cannot be safely returned to either parent.[3]

Substance abuse remains a concern for us. Both parents tested positive for THC following our first reversal and remand.

This is concerning with respect to the father because he testified at the first termination hearing that he stopped using marijuana and recent testing supported that. *See D.G.*, 2019 WL 1294228, at *1. But he resumed his drug use following our reversal, testing positive for THC twice. And he missed some drug testing. We presume those tests, at least the ones he did not miss because of his work schedule, would have resulted in positive tests. *See, e.g.*, *In re L.B.*, No. 17-1439, 2017 WL 6027747, at *2 (Iowa Ct. App. Nov. 22, 2017); *In re C.W.*, No. 14-1501, 2014 WL 5865351, at *2 (Iowa Ct. App. Nov. 13, 2014) ("She has missed several drug screens, which are thus presumed 'dirty,' i.e., they would have been positive for illegal substances."). Given the father's backslide into marijuana use and his fairly recent history with methamphetamine, we are concerned he may resume methamphetamine use as he did marijuana use. *See In re R.O.*, No. 17-1408, 2017 WL 6517532, at *2 (Iowa Ct. App. Dec. 20, 2017) (describing periods of methamphetamine sobriety of up to two-and-a-half years as "relatively short

[2] The mother's petition on appeal only challenges paragraphs (d) and (h). Her petition does not challenge paragraph (f), which is applicable to G.G. But we note the elements to paragraph (f) are largely similar to paragraph (h); and the only element she challenges under paragraph (h) is substantively identical to the fourth element of paragraph (f). So, if she would have challenged, or intended to challenge, paragraph (f) under the fourth element, our analysis would be the same.
[3] Both parents argue it is safe for the children to return home because the juvenile court closed the child-in-need-of-assistance proceedings for their three oldest children. But we review this case independently of those cases that are not before this court.

periods of sobriety"); *see also In re J.P.*, No. 19-11633, 2020 WL 110425, at *2 (Iowa Ct. App. Jan. 9, 2020) (noting "[m]ethamphetamine is a scourge"). This concern is compounded by the father's lack of participation in and dismissal from substance-abuse treatment. *See, e.g.*, *In re D.W.*, No. 19-0438, 2019 WL 2145856, at *1 (Iowa Ct. App. May 15, 2019); *In re K.S.*, No. 13-1420, 2014 WL 1234472, at *3 (Iowa Ct. App. Mar. 26, 2014) (considering the father's lack of substance-abuse treatment participation as a factor weighing in favor of termination).

And like with the father, we have concerns about the mother's sobriety. She admits to continued marijuana use as a means to address pain associated with various medical conditions. Her testimony suggests she feels her drug use is necessary to avoid use of prescription opiates. *See In re A.M.*, No. 20-0116, 2020 WL 1881109, at *2 (Iowa Ct. App. Apr. 15, 2020) (considering a mother's self-medication with marijuana as a factor weighing in favor of determining her children could not return to her care). And we presume her missed drug tests also would have resulted in positive tests. *See, e.g.*, *L.B.*, 2017 WL 6027747, at *2; *C.W.*, 2014 WL 5865351, at *2. The mother's continued self-medication practices coupled with her history of methamphetamine use and lack of substance-abuse treatment leave us concerned about her future drug use.

We also note the parents have not progressed past supervised visitation. *See In re C.N.*, No. 19-1961, 2020 WL 567283, at *1 (Iowa Ct. App. Feb. 5, 2020) (recognizing visitations should progress and require less supervision before reunification can occur). This is because the parents have not participated in the recommended family therapy, which is also concerning. We understand that the

parents faced certain obstacles to the therapy, those being transportation and the father's work schedule. But the parents had access to one vehicle, DHS provided gas cards to the family, and the therapist offered to make herself available on evenings and weekends in order to work around the father's work schedule. In short, others involved in this case made every attempt to facilitate the needed family therapy, but the parents did not meaningfully participate.[4]

For these reasons, we find the first step in our review reveals the State established grounds for termination under section 232.116(1) as to both parents.

**B. Best Interests**

Next, we consider whether termination is in the children's best interests. In considering the best interests of children, we "give primary consideration to the child[ren]'s safety, to the best placement for furthering the long-term nurturing and growth of the child[ren], and to the physical, mental, and emotional condition and needs of the child[ren]." *P.L.*, 778 N.W.2d at 40 (quoting Iowa Code § 232.116(2)). "It is well-settled law that we cannot deprive [children] of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child[ren]." *Id.* at 41.

With respect to both parents, we conclude termination is in the children's best interests. The parents' lack of participation in family therapy demonstrates, intentionally or not, that the parents are not willing to put in the work to rebuild their relationships with the children. The children are integrated into their family foster

[4] The mother participated in one session in December 2019.

placement and look to them to meet their physical and emotional needs. In fact, they refer to their foster placements as "Mom" and "Dad." And their foster parents would like to adopt the children. *See* Iowa Code § 232.116(2)(b).

**C. Exceptions to Termination**

We complete our three-step analysis by considering if section 232.116(3) should be applied to preclude termination. "[T]he parent resisting termination bears the burden to establish an exception to termination" under section 232.116(3). *A.S.*, 906 N.W.2d at 476. Even if the parent proves an exception, we are not required to apply the exception. *In re A.M.*, 843 N.W.2d 100, 113 (Iowa 2014). We exercise our discretion, "based on the unique circumstances of each case and the best interests of the child[ren]," to determine whether the parent-child relationships should be saved. *Id.* (citation omitted).

Both parents contend the juvenile court should have applied section 232.116(3)(c) to forgo termination. Section 232.116(3)(c) permits the court to forgo termination when "[t]here is clear and convincing evidence that the termination would be detrimental to the child[ren] at the time due to the closeness of the parent-child relationship[s]." We recognize we previously applied the exception to preclude termination with respect to this family. *D.G.*, 2019 WL 1294228, at *3. And in doing so we considered the children's relationships not only with the parents but their older siblings as well. *Id.* We provided the parents a second chance at reunification, but the parent-child relationships have since diminished. The parents place blame for this on the guardian ad litem and DHS, noting the lack of services they received while the first appeal was pending. But we recognize once services resumed, DHS arranged for services specifically intended to build and strengthen

the familial bonds. However, those bonds are not what they once were, and we cannot say they are now so strong to justify precluding termination. Therefore, we decline to apply this permissive exception to either parent.

**IV. Conclusion**

The juvenile court was correct in terminating both parents' parental rights.

**AFFIRMED ON BOTH APPEALS.**


State of Iowa Courts

| **Case Number** | **Case Title** |
|---|---|
| 20-0587 | In re D.G. and G.G. |

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# WRITING SAMPLE #2

*In the Interest of M.S. and E.S.*
Order Terminating Parental Rights

*Int. of M.S. and E.S.*
Iowa Court of Appeals Opinion

**IN THE DISTRICT COURT OF IOWA IN AND FOR HARRISON COUNTY**
**(JUVENILE DIVISION)**

| | | |
|---|---|---|
| **IN THE INTEREST OF** | **)** | **Juvenile No. JVJV001770** |
| | **)** | **JVJV001771** |
| **M.S.,** | **)** | |
| **E.S.,** | **)** | **ORDER TERMINATING** |
| | **)** | **PARENTAL RIGHTS** |
| **Children.** | **)** | **[CHAPTER 600A]** |

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This matter came before the Court on the 17th day of December, 2019, for termination hearing held pursuant to Iowa Code Section 600A.7 to determine whether the parent-child relationships between M.S. and E.S., the children in interest, and Britney XXXX, their biological mother, and John XXXX, their natural father, should be terminated. The proceeding was reported by Jodi Vanderheiden.

Petitioners David and Sue XXXX appeared personally and with their attorney, Ashley West. Britney XXXX, the biological mother of the children in interest, appeared personally and with her attorney, Donna Bothwell. John XXXX, the biological father of the children in interest, did not appear. The guardian ad litem, Justin Wyatt, appeared personally.

On September 13, 2019, David and Sue XXXX filed a Petition for Termination of Parental Rights of Britney XXXX and John XXXX to their children, M.S. and E.S. The Petition alleges grounds for termination based on abandonment pursuant to Iowa Code Section 600A.8(3)(b).

A formal and contested hearing was held. Testimony was heard by the following individuals: Sue XXXX, David XXXX, Britney XXXX, and Rayne XXXX (a.k.a. Brian XXXX). Exhibit 1: Tax Return was offered and admitted into evidence. The Court also considered the Report of the Guardian ad Litem filed on December 17, 2019.

The Court, having heard arguments by counsel and having otherwise been informed in the premises, makes the following **FINDINGS OF FACT:**

Approximately three to five years ago, John XXXX and Britney XXXX were involved in a romantic relationship. Two children were born during their relationship. M.S. is four years of age (born March 20, 2015) and E.S. is three years of age (born April 22, 2016).

John's parents, David and Sue XXXX, have been the primary caretakers for M.S. and E.S. for the majority of their young lives. Prior to 2017, John, Britney, and the girls lived across the street from David and Sue's home. At that time, David and Sue provided daily assistance in caring

for the children.

In approximately April of 2017, John, Britney, and the girls moved into David and Sue's home. David and Sue found the parents to be oddly uninvolved in parenting the children, and they assumed the parenting obligations and duties. David and Sue report that they have cared for M.S. and E.S. continuously since April of 2017.

At some point in 2017, John moved out of David and Sue's home. They allowed Britney remain in the home to gain enough stability to live independently. The children also remained in the home. Britney planned to move out and get a roommate. According to Sue, Britney did not intend to take the children with her when she moved, but rather, she planned to leave the children David and Sue.

In January of 2019, Britney and John consented to the establishment of an informal guardianship for E.S. and M.S. with David and Sue. Sue testified that all agreed that the guardianship was established to allow Britney to gain stability until she was able to provide a safe living environment for the children. The guardianship was not filed with the Court.

In February of 2019, Britney moved into a "sleeping room" in an old motel approximately two and a half blocks David and Sue's home. They provided Britney with basic necessities to set up an apartment such as a bed and bedding. At some point, David and Sue offered assistance, though not financial, to Britney in obtaining a two bedroom apartment. Their intention was to set up the apartment so that the children could return to Britney's care. For reasons that were not disclosed to the Court, Britney never obtained a two bedroom apartment.

Sue testified that she attempted to schedule interactions between Britney and the children following Britney's move. David and Sue lined up a family dinner once a month, but only one of those dinners were successful. One visit also occurred at a park. Sue testified that arranging visits was difficult due to Britney's schedule, so David and Sue eventually left it up to Britney to contact them to see her children. They also allowed Britney to stop by at any time to see the girls.

Since February of 2019, Britney has not scheduled visitation with the girls, she has not dropped by the house to see the girls, and she has only called on a few of occasions to speak to the girls. Sue explained that Britney did call frequently, but only when she needed things. Britney often called requesting food and money, and sometimes requested things that David and Sue found odd, such as Tylenol for her roommate. Sue testified that Britney never inquired about the girls or spoke of anything pertaining to the girls after February of 2019.

Sue later admitted that Britney had asked to see the children on some occasions, but that Sue did not allow the visits because she believed her requests were inappropriate. On one occasion, for example, Sue did not allow Britney to come to the house to visit the children because Britney had the flu. On other occasions, Britney would call or show up unannounced late in the evening after the girls were already asleep. When this occurred, Sue would suggest that Britney come back the next day when the girls were awake. Sue stated that Britney never came back the following day. This Court finds that the boundaries established by Sue were appropriate, especially given the young and vulnerable ages of the children.

Sue testified that Britney's contact with the children was "hit or miss." Sometimes, Britney would interact with the girls every two or three weeks, but other times, months would pass with no contact from Britney. For example, following the visit at the park in May of 2019, approximately three months passed until David and Sue heard from Britney again. Sue testified that Britney has seen E.S. and M.S. three times since February of 2019. These interactions occurred in the park in May, in David and Sue's backyard, and on Halloween.

David confirmed his wife's testimony. He explained that he has a very good relationship with Britney and that Britney is aware that she can stop at the house anytime, especially when he is there. David testified that Britney sends him text messages asking for food or asking to borrow money, but she has never sent him a text message about her daughters at least since February of 2019. Britney never reached out to David in any manner to schedule an interaction with the girls. David and Sue claimed both M.S. and E.S. on their taxes for the last two years.

Britney disputed David and Sue's testimony. Britney stated that she repeatedly called and texted Sue to see the girls. However, Britney gave conflicting and somewhat jumbled testimony regarding when and where the visits occurred. Ultimately, Britney testified that she had spent time with E.S. and M.S. on three to four separate occasions since February of 2019. Each visit was between 30 to 45 minutes in length. Britney testified that she also went trick or treating with the girls on Halloween, but she did not remember the last time she saw the children before that.

Britney claimed that she called David and Sue four times per month to see the children from May to September of 2019. She admitted that David and Sue never told her that she could not see the children, but she believed that they always "seemed to be busy" when she called.

Britney testified that between May and September of 2019, she texted Sue to see if the children needed clothes or diapers. According to Britney, Sue declined, telling Britney that the

children had adequate clothing and diapers. Britney admitted that she never offered money to David and Sue because she needed the money to pay her own bills. Britney also conceded that she often sent text messages to David and Sue to ask for food and money for herself. The evidence was undisputed that Britney has not contributed financially to the girls since she left David and Sue's home in February of 2019. Prior to that, she contributed when she could because she received food stamps, but the amount was not significant.

Britney testified that she knew that she could stop by David and Sue's house and see the girls anytime that she wanted. She admitted that she had never done so, despite only living two and a half blocks away from David and Sue's, which was only a 5 minute walk. Britney explained that she often got off of work at 1:00 p.m. and did not know if the girls were napping at that time. At another point, Britney stated that she worked from 4:00 a.m. to 3:00 p.m. and that she did not know what time the children got home from school. When the guardian ad litem inquired as to what prevented Britney from seeing the girls since she lives in such close proximity to them, Britney replied that she is often exhausted from her work at McDonald's, needs to do laundry, or has other appointments.

Britney testified that she believed that she was not allowed to take the girls when she moved out of David and Sue's home because of the guardianship. Britney testified that she has thought about taking the girls from David and Sue's more recently, but that she did not do so because she was afraid that Sue would call the police. Britney referenced an incident in early October where Sue sent a text message to Britney indicating that if Britney showed up at the house, Sue would contact the police. Sue explained that prior to sending the text message, she had asked Britney to consent to the termination of her parental rights. Apparently, an argument ensued that became so heated that Sue threatened to contact the police if Britney came to the house. The Court is uncertain of the significance of this event, since Britney saw M.S. and E.S. later that month when they went trick-or-treating. All witnesses agreed that aside from this incident, Britney was welcome at David and Sue's house at any time to see the girls.

Sue opined that Britney could not resume care of M.S. and E.S. on the date of the hearing due to the inappropriate living conditions at the motel. Britney uses a hot plate to cook meals at the motel, which could be hazardous to the children. Sue also testified that there was not enough space for the children in the motel suite. However, Britney explained to the guardian ad litem that she lives at the motel with her girlfriend, Rayne XXXX, but that there is an extra bed for the girls.

The guardian ad litem observed the motel from the outside, and concluded that the home was not suitable for children. While Britney did not testify regarding her living conditions at the motel, she did admit that there were areas of parenting that she "needs to work on."

Britney testified that she never intended to abandon her children. However, Britney's subjective statements of her interest in parenting her children are contradicted by her actions. Britney further maintains that she has been isolated from the children by the grandparents, but the evidence presented suggests otherwise. Britney testified that she knew she was welcome at the home. She chose not to visit her children because she was tired, had laundry to do, or other excuses. She chose not to see her children even though she was off work by the time her children were home from school. She chose not to see her children even though they lived within a five minute walk from her home. While Britney did show some interest in her children, having seen them three or four times since February of 2019, her 30 to 45 minutes interactions with them certainly do not amount to the maintenance of significant or meaningful contact with them.

By all accounts, the children are thriving in their grandparent's care. David and Sue have enrolled the girls in preschool and speech therapy. They provide all transportation for the girls to school and appointments. David and Sue provide for all of the children's needs. They provide the girls with basic care and necessities such as food, clothing, shelter, school supplies, and medication. David and Sue also provide M.S. and E.S. with parental supervision and emotional support. David and Sue's home is the home that the girls have known for most of their young lives.

The grounds for termination of parental rights are set out in Iowa Code Section 600A.8. The Court notes that M.S. and E.S.'s father, John XXXX, filed a consent to the termination of his parental rights and subsequent adoption. The Court accepts John's consent and finds that termination of his parental rights with respect to M.S. and E.S. is proper pursuant to Iowa Code Section 600A.8(5). John has been given the opportunity to object to the termination and has decided to consent instead. Further, in conversation with the guardian ad litem, John agreed that termination of his parental rights was in the children's best interests. Finally, John's consent to the termination of his parental rights has not been revoked by him.

As to Britney, termination of parental rights is permitted if a parent has been determined to have abandoned her child. Under Iowa Code Section 600A.2(19), a parent has abandoned a minor child when the parent "rejects the duties imposed by the parent-child relationship ... which may be evinced by the person, while being able to do so, making no provision or making only a

marginal effort to provide for the support of the child or to communicate with the child." The Court may find abandonment in cases of children older than six months if the parent fails to maintain "substantial and continuous or repeated contact with the child as demonstrated by contribution toward support of the child of a reasonable amount, according to the parent's means," and if the parent has not lived with the child in the year before the termination hearing, by (1) visits with the child at least once a month when physically and financially able and when not prevented by the child's custodian or (2) regular communication with the child or their custodian when physically and financially unable to visit or when visits are prevented by the child's custodian. *See* Iowa Code § 600A.8(3)(b).

Given Britney's apparent need to gain stability to appropriately care for the children, it could be said that she made a responsible decision in consenting to the establishment of a guardianship for M.S. and E.S. with their financially stable paternal grandparents, thereby ensuring the children's monetary needs were met and safeguarding the children's wellbeing. However, placing M.S. and E.S. in a voluntary guardianship does not forever insulate Britney from termination of her parental rights if David and Sue have proven the relevant statutory grounds. *See, e.g., In re G.B.*, 2015 WL 4493354 (Iowa Ct. App. 2015); *In re B.B.*, 2013 WL 99136 (Iowa Ct. App. 2013).

Likewise, the act of placing a child in a guardianship does not automatically relieve a parent from providing financial support. *See In re P.N.*, 2014 WL 4937995 (Iowa Ct. App. 2014) (considering father's economic support in abandonment analysis when the son was under a guardianship with his maternal grandparents). In analyzing the facts of this case under the framework of Section 600A.8(3)(b), the Court first considers Britney's economic contributions to M.S. and E.S., the threshold element of "substantial and continuous or repeated contact." *See* Iowa Code § 600A.8(3)(b); *see also In re W.W.*, 826 N.W.2d 706, 710 (Iowa Ct. App. 2012). This element requires Britney to contribute a reasonable amount toward M.S. and E.S.'s support in accordance with her means. *See* Iowa Code § 600A.8(3)(b). The amount is not limited to court-ordered support, which is the subject of a separate provision. *See W.W.*, 826 N.W.2d at 710; *see also* Iowa Code § 600A.8(4).

The parties agreed that Britney provided some food for the children that she purchased using food stamps when she and the children were living with David and Sue. However, it is undisputed that Britney did not provide M.S. and E.S. with any monetary support after she moved

out of David and Sue's home in February of 2019. Britney argued that she had inquired as to the children's need for clothing or diapers. According to Britney, Sue stated the girls had enough clothing and diapers. Britney then admitted that she never offered money to David and Sue because she needed her money to pay her own bills. Britney also conceded that she often sent text messages to David and Sue to ask for food and money for herself.

At the time that the guardianship was established, the record would suggest that Britney did not have the means to provide for M.S. and E.S. David and Sue had to provide Britney with a bed and bedding when she moved out, and after that time, Britney continued to request food and to borrow money from them. Britney testified that she was employed full-time at McDonalds. According to the financial affidavit filed on October 11, 2019, she was paid $11.75 an hour. Iowa Code Section 600A.8(3)(b) requires Britney to contribute a *reasonable amount* toward M.S. and E.S.'s support *in accordance with her means*. Although Britney earned a relatively meager amount at McDonalds, she has failed to contribute *any* financial support to her children. Because Britney was employed, the Court finds that she could have contributed something, however minimal, in the way of economic support for her children. No evidence was presented to indicate that Britney was absolutely unable to contribute to their support.

The Court recognizes that a child support order was not established in this case and that the guardians did not request any financial assistance from Britney. However, Britney did not even make a marginal effort to provide anything for her children. She did not purchase any food, clothing, or other necessary supplies for her children, despite having a steady, though meager, income. No evidence was presented that she gave her children gifts of any kind. Here, Britney's overall lack of concern about her children, not her level of resources, is the fundamental problem. Because Britney has failed to contribute in any way to the support of her children, the Court finds that the threshold element for termination has been met.

The Court next considers whether Britney's sporadic and inconsistent visitation with M.S. and E.S. precludes a finding of abandonment. *See* Iowa Code § 600A.8(3)(b)(1). The testimony of the witnesses was inconsistent regarding the exact number of interactions that Britney had with her children since February of 2019, it was undisputed that the number of visits between February and October constituted far less than one per month.

Further, the quality of the visits was anemic when it comes to affirmative parenting. Britney admitted that her visits only lasted 30 to 45 minutes, often because she was tired. However, the

fact that Britney only lived two and a half blocks, or a five minute walk, from her children and only saw them three to four times over a period of at least eleven months is compelling.

Superficial visitation can demonstrate a parent's intent to abandon a child. *In re C.A.V.*, 787 N.W.2d 96, 101 (Iowa Ct. App. 2010). Britney's attempts at contact with her children could, at best, be described as feeble attempts to see them. Further, Sue testified that when Britney was present, the children did not interact with their mother. The children do not look to Britney as a parent, and she has had no role in providing them with basic care or supervision.

This Court has considered the possibility that this action was premature, as it was brought before the Court less than one year after the guardianship was established. However, M.S. and E.S. are very young children. At least since the beginning of 2017, David and Sue report that they were the children's primary caregivers. Prior to that, their assistance in caring for the children was needed on a daily basis. Further, this Court believes that Britney's almost complete lack of contact with the children since February of 2019 constitutes a prolonged absence to support a finding of abandonment, especially given the children's tender ages. Accordingly, this Court finds that David and Sue have met their burden of proving abandonment under section 600A.8(3)(b).

Finally, the Court must determine whether or not termination of Britney's parental rights is in M.S. and E.S.'s best interests. The children's best interests require that Britney "affirmatively assume[s] the duties encompassed by the role of being a parent." *See* Iowa Code § 600A.1. The Court considers "the fulfillment of financial obligations, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life." *See id.* In addition, the Court considers the physical, mental, and emotional needs of the child and the strength of the parent-child bond. *See In re A.H.B.*, 791 N.W.2d 687, 690–91 (Iowa 2010).

The record contains little information regarding any bond between Britney and her children. However, since at least April of 2017 when John, Britney, and the children moved in with David and Sue, the grandparents have acted as the primary caregivers of the children. In April of 2017, M.S. was two years old and E.S. was eleven months old. Prior to that, David and Sue provided daily assistance in caring for the children. Given the very young ages of the children, this Court believes that the children's strongest bonds are with David and Sue, with whom they have spent much more time. The children look to David and Sue to provide their needs. M.S. and E.S. need the stability and permanency that David and Sue can offer.

Britney has shown some interest in her children over the past year. However, on the few occasions that she has spent time with M.S. and E.S., the interactions only lasted 30 to 45 minutes, often because Britney was tired. During the visits, Britney testified that she and the children played with blocks or watched TV. Sue testified that when Britney is present, the children do not interact with their mother, and they do not look to her as a parent. The record demonstrates that Britney has not maintained a place of importance in M.S. and E.S.'s lives, which is especially critical given their tender ages.

This Court believes that Britney has used the guardianship by David and Sue as a safety net and has relied upon them to care for her children. The guardianship has now been in place for a year and Britney has made no changes to her life to indicate that she is ready to assume the responsibilities of caring for two young children. Although M.S. and E.S. are thriving under the guardianship, it is certainly not the best permanent arrangement for their long-term care especially given their young ages.

However, Britney has not taken advantage of the generosity and willingness of David and Sue to take on the responsibility for M.S. and E.S.'s care. She has not used the last year to build a relationship with her daughters, provide for their support, or otherwise attempt to parent the children. She has not maintained regular contact with her children. Nor has she provided any economic support in any amount.

Abandonment under Chapter 600A does not require total desertion. Britney, however, has failed to engage in "affirmative parenting to the extent practical and feasible in the circumstances." *See In re J.L.Z.*, 492 Pa. 7, 421 A.2d 1064, 1064 -1065 (1980) which held "this affirmative duty … requires continuing interest in the child and a genuine effort to maintain communication and association with the child." This Court will not allow Britney to use the support of David and Sue and the guardianship as justification for her lack of relationship with the children. Britney has failed to express significant interest in her children's welfare. She has chosen lifestyle that does not involve her children, in preference to, and at the expense of, a relationship with them.

This Court agrees with the guardian ad litem's determination that termination of the parent's parental rights is in the best interests of M.S. and E.S. The children are in a caring home. Their grandparents have provided the children stability and offer them the permanence of adoption. Any relationship they have with Britney is not that of a parent and a child. This Court recognizes the severity of termination of parental rights. However, Britney has not made any effort to be a

meaningful part of her children's lives as a parent for at least two years, which is over half of the children's young lives. By failing to maintain meaningful communication and association with the children, Britney relinquished her parental rights and privileges. *Interest of Goettsche*, 311 N.W.2d 104, 107 (Iowa 1981).

For the reasons set forth above, this Court finds that the Petitioners have shown by clear and convincing evidence that the allegations under Iowa Code Section 600A.8(3)(b) have been met as to Britney XXXX.

**IT IS THEREFORE ORDERED** that the Petition filed on September 13, 2019, asking that the parental rights of Britney XXXX and John XXXX, biological parents of the children in interest, is hereby **granted**.

**IT IS FURTHER ORDERED** that the parental rights and parent-child relationship between M.S. and E.S. and their biological father, John XXXX, are hereby **terminated** upon the grounds set forth in Iowa Code Section 600A.8(5). John XXXX shall, from this date forward, have no further interests or rights in said children.

**IT IS FURTHER ORDERED** that the parental rights and parent-child relationship between M.S. and E.S. and their biological mother, Britney XXXX, are hereby **terminated** upon the grounds set forth in Iowa Code Section 600A.8(3)(b). Britney XXXX shall, from this date forward, have no further interests or rights in said children.

**IT IS FURTHER ORDERED** that David and Sue XXXX, the children's guardians and paternal grandparents, shall continue to act as **custodians** of the children in interest and are hereby appointed to act as **guardians** of said children until further order of this court.

**IT IS FURTHER ORDERED** that Justin Wyatt, attorney at law, Glenwood, Iowa, shall continue to act as guardian ad litem for the children until further order of this Court.

**IT IS FURTHER ORDERED** that the costs of this action including reasonable attorney fees for the Respondent Britney XXXX's court-appointed counsel, Donna Bothwell, and reasonable attorney fees for the guardian ad litem, Justin Wyatt, are taxed to the Petitioners. Counsel shall submit a claim for fees and expenses to this Court for approval.

**IT IS FURTHER ORDERED** that pending appeal in this matter, or until time for appeal has passed and no appeal has been filed, the Clerk of Court shall not remove any counsel as attorney of record for the parents in this matter.

**IT IS FURTHER ORDERED** that pending appeal in this matter, or until time for appeal has passed and no appeal has been filed, the Clerk of Court shall provide to the attorneys of record a copy of this order and any subsequent orders/pleadings filed in this matter.

**NOTICE OF APPEAL RIGHTS:** Any aggrieved party must appeal pursuant to Iowa Rule of Appellate Procedure 6.101 by filing a notice of appeal within **30 days** of the entry of this order.

**SO ORDERED** this 15th day of February, 2020.

**IN THE COURT OF APPEALS OF IOWA**

No. 20-0428
Filed August 19, 2020

**IN THE INTEREST OF M.S. and E.S.,**
**Minor Children,**

**B.G., Mother,**
Appellant,

**D.L. and S.L., Grandparents,**
Appellees.

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Appeal from the Iowa District Court for Harrison County, Jennifer A. Benson, District Associate Judge.

A mother appeals termination of her parental rights to the children in this private termination proceeding. **AFFIRMED**.

Donna K. Bothwell of Bothwell Law Office, Logan, for appellant.

Ashley N. West of Mumm Law Firm, Missouri Valley, for appellees.

Justin R. Wyatt of Woods & Wyatt, PLLC, Glenwood, attorney and guardian ad litem for minor children.

Considered by Bower, C.J., and May and Ahlers, JJ.

**AHLERS, Judge.**

The parents of these young children, ages three and four at the time of the termination hearing, delegated their parenting responsibilities to the children's paternal grandparents for the majority of the children's lives. The grandparents eventually filed petitions seeking to terminate the parental rights of the parents pursuant to Iowa Code chapter 600A (2019). The juvenile court terminated the rights of both parents. In doing so, the juvenile court determined the mother abandoned the child within the context of Iowa Code section 600A.8(3)(b). The mother appeals, challenging the juvenile court's findings that the statutory ground of abandonment was established and termination of the mother's rights was in the best interest of the children.[1]

## I. Standard of Review.

We review termination proceedings under chapter 600A de novo. *See In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). As in all termination proceedings, our primary concern is the children's best interest. *See* Iowa Code § 600A.1(2); *R.K.B.*, 572 N.W.2d at 601. Though the juvenile court's fact findings are not binding, we give them weight. *See R.K.B.*, 572 N.W.2d at 601. This is especially true with regard to credibility findings. *See id*.

## II. Background Facts and Proceedings.

We start our discussion by noting the juvenile court issued a thorough and detailed ruling setting forth factual findings and legal conclusions. Following our

[1] The father consented to the termination of his rights. He did not appeal.

de novo review, we are in substantial agreement with all significant factual findings made by the juvenile court. We will highlight some of those significant facts.

M.S. was born in 2015, and E.S. was born in 2016. Starting in April 2017, both parents and both children moved into the home of the children's paternal grandparents. Later in 2017, the father moved out, but the mother remained. During the time both parents and then just the mother resided with the grandparents, responsibilities for the children were delegated to the grandparents. The mother moved out in February 2019, leaving the children behind with the grandparents. Although no formal guardianship was established, the mother signed papers acknowledging the mother's agreement for the children to remain in the grandparents' care. At the time the mother left the grandparents' home, the mother's stated plan was to get an apartment, pursue an education, and establish a foundation to provide a stable home for the children.

The mother's plan did not materialize. While the mother maintained employment and moved into a room at a motel, the mother acknowledged it was not a suitable place to house the children. In spite of the fact the motel was two and one-half blocks away from the residence where the children resided and the mother was told she could visit whenever she wanted, the mother maintained minimal contact with the children. When efforts were made by the grandparents to encourage visits, the mother frequently blamed her work schedule or being tired from work as excuses to not exercise visitation. On the infrequent occasions when the mother reached out to the grandparents, it was often to ask for money or other assistance, rather than to arrange time to see the children or even talk to them.

The mother also made no financial contributions for the care of the children, either in money or in kind.

In September 2019, the grandparents filed the petitions initiating these termination proceedings.[2] Even after the petitions were filed, there was no significant increase in the mother's efforts to fulfill her parenting responsibilities or to maintain contact with the children. After a contested termination hearing held in December 2019, the mother's rights to both children were terminated based on a finding of abandonment.

## III. Discussion.

As previously noted, the mother challenges both the finding that the statutory ground of abandonment was met and the finding that it was in the best interest of the children to terminate the mother's rights. We address each of those challenges.

### A. Statutory Grounds.

Iowa Code section 600A.8(3)(b) sets forth the following ground for termination:

[2] In their petitions, the grandparents alleged they were the guardians of the children. "Guardian" is defined by Iowa Code section 600A.2(10), in relevant part, as "a person who is not the parent of a minor child" and "who has been appointed by a court or juvenile court" to make important decisions for the child. As previously noted, formal guardianship proceedings did not take place. Therefore, it does not appear the grandparents meet the definition of "guardian" under chapter 600A. They do, however, appear to meet the definition of "custodian" set forth in section 600A.2(8), as they are relatives within the fourth degree of consanguinity to the children and had "assumed responsibility for" the children. As custodians, the grandparents would have been persons statutorily authorized to file petitions in this matter. *See* Iowa Code § 600A.5(1) (listing a "parent or prospective parent" or "custodian or guardian of the child" as persons authorized to file a termination petition). Regardless, the mother does not challenge the grandparents' authority to file the petitions under chapter 600A.

> If the child is six months of age or older when the termination hearing is held, a parent is deemed to have abandoned the child unless the parent maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward support of the child of a reasonable amount, according to the parent's means, and as demonstrated by any of the following:
>
> (1) Visiting the child at least monthly when physically and financially able to do so and when not prevented from doing so by the person having lawful custody of the child.
>
> (2) Regular communication with the child or with the person having the care or custody of the child, when physically and financially unable to visit the child or when prevented from visiting the child by the person having lawful custody of the child.
>
> (3) Openly living with the child for a period of six months within the one-year period immediately preceding the termination of parental rights hearing and during that period openly holding himself or herself out to be the parent of the child.

The phrase "to abandon a minor child" means a parent "rejects the duties imposed by the parent-child relationship . . . which may be evinced by the person, while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child." Iowa Code § 600A.2(20).

The juvenile court determined the grandparents established this ground by clear and convincing evidence. In challenging this determination, the mother asserts: (1) the mother was of limited means, was never ordered to provide support, and offered to provide diapers and clothes; (2) the grandparents interfered with her efforts to maintain contact with the children; and (3) she openly lived with the children during a six-month period during the one-year period prior to the filing of the termination petitions. We find none of the mother's challenges persuasive.

**(1) Lack of Financial Support.**

With respect to the mother's lack of financial support, the juvenile court made the following findings:

> Iowa Code [s]ection 600A.8(3)(b) requires [the mother] to contribute a *reasonable amount* toward [the children's] support *in accordance with her means*. Although [the mother] earned a relatively meager amount at [the fast food restaurant at which she worked], she has failed to contribute *any* financial support to her children. Because [the mother] was employed, the Court finds that she could have contributed something, however minimal, in the way of economic support for her children. No evidence was presented to indicate that [the mother] was absolutely unable to contribute to their support.
>
> The Court recognizes that a child support order was not established in this case and that the [grandparents] did not request any financial assistance from [the mother]. However, [the mother] did not even make a marginal effort to provide anything for her children. She did not purchase any food, clothing, or other necessary supplies for her children, despite having a steady, though meager, income. No evidence was presented that she gave her children gifts of any kind. Here, [the mother's] overall lack of concern about her children, not her level of resources, is the fundamental problem. Because [the mother] has failed to contribute in any way to the support of her children, the Court finds that the threshold element for termination has been met.

On our de novo review, we agree with these findings. In addition, we note the lack of a child support order did not relieve the mother of her obligation to support the children. *See In re W.W.*, 826 N.W.2d 706, 710 (Iowa Ct. App. 2012) (finding the financial support referenced in section 600A.8(3)(b) is not limited to court-ordered support payments, as court-ordered payments are the subject of a separate ground for termination under section 600A.8(4)). Likewise, her isolated offer to provide diapers and clothing did not constitute financial support of a "reasonable amount," as required by section 600A.8(3)(b).

**(2) Lack of Contact & Claimed Interference.**

While the failure to provide financial support by itself satisfies the ground of abandonment set forth in section 600A.8(3)(b), we will also address the lack of contact provisions set forth in section 600A.8(3)(b)(1) through (3).

We will start with a discussion of section 600A.8(3)(b)(1) and (2). On our de novo review, the record establishes that the mother did not satisfy any of the contact provisions set forth in those provisions. In spite of the fact she only lived two and one-half blocks from the children and the mother usually got off work by late afternoon, the mother only visited the children a handful of times during the ten-month period between when she moved out of the grandparents' home in February 2019 and the termination hearing in December 2019. On the rare occasions she made other contact with the grandparents, it was generally to ask for food or money for herself rather than to catch up on the children's lives. These facts show lack of fulfillment of the contact requirements set forth in section 600A.8(3)(b)(1) and (2).

Contrary to the mother's assertions, the grandparents did not prevent the mother's contact with the children. The record shows the grandparents did nothing unreasonable to limit the mother's access to the children. In fact, they openly encouraged the mother to visit the children. The grandparents' refusal to awaken the children when the mother stopped in unannounced after the children's known bedtime was reasonable. Likewise, the grandparents' request to set some type of schedule for the mother's time with the children was not unreasonable, as the request was made after repeated failures of the mother to follow through with informally planned time with the children.

The mother's reliance on a claimed threat to contact the police if the mother came on the grandparents' property is not persuasive due to the temporary and isolated nature of the claimed threat. A text message was sent from one of the grandparents to the mother in early October 2019 indicating the police would be

called if the mother came on the grandparents' property. This event would cause concern if it was not put in context. The context of this event is that there was a heated exchange between the grandparents and the mother in early October 2019. Determining who was responsible for the heated exchange or what prompted it is largely unnecessary. At a time when both sides were worked up over the situation, the text message was sent. However, the record reveals no other hostility between the parties and no restrictions placed on the mother's contact after the text was sent. In fact, one of the mother's rare visits occurred on Halloween, after the text message at issue had been sent. When put in perspective, this one-time text message does not excuse the mother's ongoing lack of contact with the children.

**(3) Time Spent Living With the Children.**

The mother's final argument regarding the statutory ground of abandonment is that, since the mother lived with the children from April 2017 through February 2019, she satisfied the requirements of section 600A.8(3)(b)(3), that she "[o]penly liv[ed] with the child[ren] for a period of six months within the one-year period immediately preceding the termination of parental rights hearing." This argument fails for two reasons. First, by the plain language of the statute, the applicable period is the one-year period preceding the termination of parental rights hearing, not the filing of the termination petition, as asserted by the mother. Due to the termination hearing being held in December 2019, the one-year period at issue was from December 2018 to December 2019. There is no dispute the mother only lived with the children during two months of that one-year period. Second, even if we measured from the date of filing the petition, as suggested by the mother in spite of the plain language of the statute, the mother still does not

satisfy this requirement. The petitions were filed in mid-September 2019, so the twelve-month period suggested by the mother would be from mid-September 2018 through mid-September 2019. Within that time period, it is uncontroverted the mother only openly lived with the children from September 2018 to February 2019, a period of five months, not the six months required by section 600A.8(3)(b)(3).

**B. Best Interest of the Children.**

Having determined the grandparents met their burden of establishing abandonment, we turn to the mother's claim that termination is not in the children's best interest. *See In re A.H.B.*, 791 N.W.2d 687, 690 (Iowa 2010) ("Once the court has found a statutory ground for termination under a chapter 600A termination, the court must further determine whether the termination is in the best interest of the child[ren]."). The primary theme of the mother's argument is the children were only out of her care for seven months when the termination petitions were filed and such a short period of time would be of insufficient length to support termination proceedings under Iowa Code chapter 232 following child-in-need-of-assistance (CINA) proceedings. *See* Iowa Code § 232.116(1)(f)(3) (requiring children to be out of the custody of a parent for twelve months to support termination of a parent's rights to a child four years of age or older). *But see id.* § 232.116(1)(b) (allowing the juvenile court to terminate the parental rights to a child who "has been abandoned or deserted"). She also argues reasonable efforts to reunify would have been required in CINA proceedings, but no such reasonable efforts were taken in this case. *See id.* § 232.102(7) (requiring reasonable efforts to safely return a child to a parent in CINA proceedings). *But see id.* § 232.102(12)(a)

(allowing the juvenile court to waive the reasonable-efforts requirement in case of abandonment).

There is certainly incongruity between the requirements for establishing grounds for termination when filed by the State under Iowa Code chapter 232 and the requirements when filed by a parent, prospective parent, custodian, or guardian under chapter 600A. However, any perceived unfairness of this incongruity would need to be remedied by legislative action, not judicial action, as the legislature has the authority and responsibility for establishing the terms of legislation, not the courts. *See City of Iowa City v. Iowa City Bd. of Review*, 863 N.W.2d 663, 666 (Iowa 2015) (explaining courts are not free to "'extend, enlarge or otherwise change the meaning of a statute' under the guise of construction." (quoting *Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 337 (Iowa 2008))). Therefore, we will not read requirements for termination found in chapter 232 into the requirements set forth in chapter 600A. Likewise, we will not do so indirectly by implicitly imposing such requirements under the guise of assessing the best-interest-of-the-children requirement.

The juvenile court acknowledged concern that this action may have been premature given the relatively short period of time between when the mother left the children's home and the filing of these proceedings. However, the juvenile court dismissed this concern due to the mother's lack of involvement with parenting even before she moved out. We agree with the juvenile court on this point. The record establishes that, during the nearly two-year period between when the mother moved into the grandparents' home and when she moved out, the mother left the bulk of the parenting responsibilities to the grandparents. This

abandonment of her parenting responsibilities became even greater after the mother moved out. Since moving out, the juvenile court accurately described the mother's lack of involvement and responsibility as follows:

> [The mother] has shown some interest in her children over the past year. However, on the few occasions that she has spent time with [the children], the interactions only lasted 30 to 45 minutes, often because [the mother] was tired. During the visits, [the mother] testified that she and the children played with blocks or watched TV. [The grandmother] testified that when [the mother] is present, the children do not interact with their mother, and they do not look to her as a parent. The record demonstrates that [the mother] has not maintained a place of importance in [the children's] lives, which is especially critical given their tender ages.
>
> This Court believes that [the mother] has used the [arrangement with the grandparents] as a safety net and has relied upon them to care for her children. The [informal] guardianship has now been in place for a year and [the mother] has made no changes to her life to indicate that she is ready to assume the responsibilities of caring for two young children. . . .
>
> [The mother] has not taken advantage of the generosity and willingness of the [grandparents] to take on the responsibility for [the children's] care. She has not used the last year to build a relationship with her [children], provide for their support, or otherwise attempt to parent the children. She has not maintained regular contact with her children. Nor has she provided any economic support in any amount.
>
> Abandonment under [chapter] 600A does not require total desertion. [The mother], however, has failed to engage in "affirmative parenting to the extent practical and feasible in the circumstances." [(Citation omitted.)] This Court will not allow [the mother] to use the support of [the grandparents and the arrangement with them] as justification for her lack of relationship with the children. [The mother] has failed to express significant interest in her children's welfare. She has chosen [a] lifestyle that does not involve her children, in preference to, and at the expense of, a relationship with them.
>
> This Court agrees with the guardian ad litem's determination that termination of the [parents'] parental rights is in the best interests of [the children]. The children are in a caring home. Their grandparents have provided the children stability and offer them the permanence of adoption. Any relationship they have with [the mother] is not that of a parent and a child. This Court recognizes the severity of termination of parental rights. However, [the mother] has not made any effort to be a meaningful part of her children's lives as

> a parent for at least two years, which is over half of the children's young lives.

Upon our de novo review, we agree with these findings of the juvenile court and determine the grandparents have met their burden of establishing termination of the mother's parental rights is in the children's best interest.

**AFFIRMED.**

IOWA APPELLATE COURTS

State of Iowa Courts

| **Case Number** | **Case Title** |
| --- | --- |
| 20-0428 | In re M.S. and E.S. |

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# WRITING SAMPLE #3

*In the Interest of P.S.*
Delinquency Adjudication Order

IN THE JUVENILE COURT OF PAGE COUNTY, IOWA

| | | |
|---|---|---|
| IN THE INTEREST OF | : | JUVENILE NO. 101772 |
| P.S., | : | |
| A CHILD. | : | DELINQUENCY ADJUDICATION ORDER |

The above-entitled matter came on for contested delinquency adjudication hearing on the 25th day of October, 2019, with the proceedings being reported by Laura Andersen. The minor child appeared in person and with his attorney, Justin Wyatt. His parents did not appear. His aunt, Amber XXXX, appeared in person. The State of Iowa appeared by Jim Varley, Assistant Page County Attorney, and accompanying him was Mindy Orme, Juvenile Court Services.

On September 6, 2019, a Petition was filed alleging that the child committed a delinquent act, which were the child an adult would consist of the following offense: Sexual Abuse in the Second Degree, a class B felony, in violation of Iowa Code Sections 709.3(1)(b) and 709.3(2).

A formal hearing was held. The Court received Exhibit 1: Citation and Police Reports; Exhibit 2: Curriculum Vitae of Jessica Martinez; and Exhibit 3: Project Harmony Interview DVD. Tesimony was received from D.B., Aleacha XXXX, Jessica Martinez, and Officer Mitchell Nicholas. The Court also considered the statements and arguments of counsel.

The Court now makes the following **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

D.B. was 3 years old at the time of the incident alleged in the Petition. His date of birth is July 29, 2015. D.B. is the grandson of Aleacha XXXX. D.B. frequently stayed at Aleacha's home, often for a week at a time over the summer. D.B. enjoyed swimming in the pool in Aleacha's backyard. Aleacha described the pool as an above-ground, rectangular-shaped swimming pool that was about two to three feet deep.

P.S., the child in interest, was 13 years old at the time of the incident alleged in the Petition. His date of birth is October 13, 2005. P.S. ordinarily resides with his parents, Shawn and Christy XXXX, in Clarinda, Page County, Iowa. P.S. lives in Aleacha's neighborhood and often came over to Aleacha's house to play.

On July 17, 2019, D.B., P.S., and P.S.'s cousin were swimming at Aleacha's backyard pool. The boys were supervised by Aleacha's husband, Randy. Aleacha testified that Randy came into the house for a couple of minutes to use the restroom during that time. At some point D.B. came inside, and the other boys went home.

At approximately 10:00 that evening as Aleacha was preparing D.B.'s bath, D.B. spontaneously stated, "Grandma, that big boy in the pool put his mouth on my peepee." Aleacha asked D.B. to repeat what he had said three different times. Each time, D.B. stated that "the big boy in the pool put his mouth on my peepee." Aleacha then retrieved one of her porcelain dolls and asked D.B. to use the doll to show her what happened. D.B. pulled the doll's pants down and put his mouth to the doll's private area. Aleacha then asked D.B. to tell her husband what happened, and he again repeated his previous statement.

Aleacha and her husband then took D.B. to P.S.'s home to confront the boys who had been playing in the pool with D.B. P.S.'s cousin was present at the home when they arrived. When asked to identify which of the two boys had done this to him, D.B. pointed at P.S. and said, "It was him."

The State called D.B. to testify, which was conducted in chambers. Present in chambers for D.B.'s questioning along with this Court and the court reporter were D.B., his mother, Jim Varley, Mindy Orme, P.S., and P.S.'s attorney. Although the Court's chambers are much smaller than the courtroom, it was certainly an intimidating environment for a four year old.

D.B. was visibly uncomfortable during questioning and frequently attempted to hide his face. He was soft-spoken and also appeared to have a speech impediment. The majority of D.B.'s testimony was very difficult to understand. There were also inconsistencies in his testimony. For example, when asked what "that boy" was doing, D.B. stated "he was sucking on me." However, when asked by the State directly if P.S. sucked on his peepee, D.B. looked up, looked directly at P.S., and said, "He didn't."

On July 19, 2019, D.B. participated in a forensic interview at Project Harmony. The video of that interview was admitted as Exhibit 3 through Jessica Martinez, who conducted the interview. Ms. Martinez testified that she asked D.B. only non-leading questions. Non-leading questions asked by the trained interviewers at Project Harmony are of the type that would not prompt a child to fabricate the responses. In this case, the detailed account of sexual activity perpetrated by P.S. is generally beyond the realm of a 3 year old's experience and, for that reason, deemed to be

reliable. Ms. Martinez described D.B. as being comparable to other three year olds she had interviewed but noted difficulties with his speech.

On the evening of July 17, 2019, Shenandoah Police Officer Mitchell Nicholas was called to the 1200 block of West Valley Avenue to take a report of sexual abuse involving a child. Aleacha and her husband, Randy, relayed the preceding events, including that D.B. had identified P.S. as the boy who had performed the sex act on him. P.S. stated to Officer Nicholas that he had been at the residence in the pool with D.B. and that he had tickled D.B.

On July 26, 2019, Officer Nicholas conducted an interview with P.S. with his mother, Christy, present. Officer Nicholas informed P.S. of the accusations being made against him and asked for his version. P.S. initially denied having any physical contact with D.B. and claimed that Randy was outside supervising the boys in the pool the entire day. However, P.S. eventually admitted that Randy had gone inside for a short period of time. P.S. then stated that was on his knees in front of D.B. and that he was tickling D.B. in his abdomen area.

In order to adjudicate P.S. to have committed the delinquent act of Sexual Abuse in the Second Degree, the State is required to establish the performance of a sex act with a child under the age of twelve. Iowa Code §§ 709.3(1)(b), 709.3(2). A sex act is defined in Iowa Code Section 702.17(3) as "any sexual contact … between the mouth and genitalia." Thus, the conduct described by D.B. qualifies as a sex act by statutory definition. In regards to the second element, it is undisputed that D.B. is a child who was 3 years old on the date of the alleged incident.

The issue before the Court, then, is whether or not D.B.'s account of what happened is true. In order to make that determination, the Court must assess the credibility of the witnesses. This Court had the opportunity to hear and observe the testimony of the witnesses. Assessing the credibility of the witnesses is especially important given the fact that D.B. specifically stated "no" when asked if P.S. was the person who assaulted him.

D.B.'s description of the circumstances of the sex act itself was detailed and consistent when repeated to Aleacha, Randy, and Ms. Martinez at Project Harmony. His demonstration of the conduct on Aleacha's porcelain doll was consistent with his statement. He identified P.S. as the perpetrator by pointing to P.S. and saying, "it was him."

However, when testifying in a room full of strangers and P.S., D.B.'s description of the conduct was not as clear and contained inconsistencies. D.B. indicated that P.S. had been swimming with him before. When he prosecutor asked, "Did he touch you?" D.B. responded, "No,

at his house." When asked if it was at Aleacha's house, D.B. responded, "yeah." The prosecutor then asked, "What was he doing?" D.B. responded, "he was sucking on me." Later in his testimony, the prosecutor asked, "Did he suck on your peepee?" D.B. responded, "he didn't."

This Court does not believe that these differences render D.B.'s testimony unbelievable with respect to the nature of his contact with P.S. D.B. is four years old. He appeared to be very shy and overwhelmed by the circumstances surrounding his testimony. Further, it is not surprising that a child may be unwilling to disclose what happened to him when the perpetrator is sitting in the same room. His description of the sexual contact by P.S. to his grandmother, Randy, and Ms. Martinez was clear, concise, and consistent. Having the opportunity to observe D.B. and his demeanor, the Court finds the limited statements D.B. made during his testimony to be consistent with his previous accounts.

D.B.'s description of the circumstances of the sex act were further corroborated by P.S.'s admissions. P.S. admitted that the children were left unsupervised when Randy when inside. Aleacha confirmed that Randy had been in the house for a short period of time to use the restroom. Most notably, P.S. stated to Officer Nicholas that he was on his knees in front of D.B. and that he was tickling D.B. in his abdomen area. Although P.S. did not admit that he committed the sex act, his corroboration of the remaining facts is significant.

The Court therefore FINDS from the testimony of the witnesses as well as a review of the exhibits that the State has proven beyond a reasonable doubt that the child committed the delinquent act alleged in the Petition.

IT IS THEREFORE ORDERED that the minor child, P.S., is found to have committed a delinquent act as defined in Iowa Code Section 232.2(12)(a), which were the child an adult would consist of the following offense: Sexual Abuse in the Second Degree, a class B felony, in violation of Iowa Code Sections 709.3(1)(b) and 709.3(2). Adjudication is withheld pending disposition.

IT IS FURTHER ORDERED that the delinquency disposition hearing is scheduled for **January 16, 2020, at 11:00 a.m.**, at the Page County Courthouse in Clarinda, Iowa.

IT IS FURTHER ORDERED that the minor child, P.S., undergo a psychological evaluation prior to the disposition hearing to be paid for by Iowa Code Section 232.141.

IT IS FURTHER ORDERED that the minor child, P.S., have no contact with the victim of this matter.

# WRITING SAMPLE #4

*In the Interest of K.R.*
Permanency Order

*Int. of K.R.*
Iowa Court of Appeals Opinion

IN THE JUVENILE COURT OF HARRISON COUNTY, IOWA

| | | |
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| IN THE INTEREST OF | : | CASE NO. JVJV001800 |
| K.R., | : | **PERMENANCY ORDER** |
| A CHILD. | : | |

The above-entitled matter came on for CINA permanency hearing on the 26th day of May, 2021, with the proceedings being reported by Laura Andersen. The minor child K.R. appeared with her attorney and guardian ad litem, Sara Benson. Her mother, Rachel XXXX, appeared with her attorney, Kyle Focht. Her father, Russell "Rusty" XXXX, appeared with his attorney, Justin W.W. The State of Iowa was represented by Assistant Attorney General, Diane Murphy Smith. Accompanying Ms. Smith from the Iowa Department of Human Services were Angie Hill, Michelle Woolworth, Kimberly Nelson, and Katie Johnson. Harrison County Attorney Jennifer Mumm appeared. Also appearing before the Court were Ginger and Casey XXXX, maternal great-aunt and great-uncle and placement for the minor children; Alysha Puls, Family Access Center; and Jonathan Johnson, K.R.'s half-brother.

A formal and contested hearing was held. Testimony was presented on behalf of the State by Social Work Case Manager (SWCM) Angie Hill. The minor child, K.R., and Ginger XXXX testified on the child's behalf. The father testified on his own behalf. Offered and admitted into evidence were the following exhibits: Exhibit 13: Family Centered Services (FCS) Reports from December 2020 through February 2021; Exhibit 14: Rusty XXXX's Mental Health Evaluation dated March 3, 2021; Exhibit 15: Family Therapy Update for Rusty and K.R. dated March 23, 2021; Exhibit 16: Rachel XXXX's March 9, 2021, Drug Test Results; and Exhibit 17: Officer Narrative dated April 23, 2021.

For purposes of this proceeding, the Court reviewed and considered the reports previously furnished to the Court, reviewed the previous pleadings and orders which have been filed in this case, and considered the other evidence presented to the Court. The Court also specifically reviewed and considered the Social Investigation Report - Case Permanency Plan prepared by Angie Hill, Iowa Department of Human Services, e-filed March 18, 2021, and the Addendum

prepared by Angie Hill, Iowa Department of Human Services, e-filed May 21, 2021. The Court, having heard arguments by counsel and having otherwise been informed in the premises, makes the following findings of fact and conclusions of law.

**BACKGROUND FACTS AND PROCEDURAL HISTORY**

K.R. is a child 16 years of age who was born on January 1, 2005. Her mother is Rachel XXXX and her father is Russell "Rusty" XXXX. Rachel XXXX is also the mother to K.R.'s two younger half-siblings, D.W. and W.W. D.W. is five years old, having been born on October 4, 2015. W.W. is four years old, having been born October 1, 2016.

K.R., D.W., and W.W. came to the attention of the Iowa Department of Human Services ("the Department") on January 30, 2020, due to reports that Rachel was using methamphetamine and abusing alcohol while being a caretaker for her children.

Rachel initially denied methamphetamine use. However, she tested positive for methamphetamine and admitted to using methamphetamine in February 2020. A Child Abuse Assessment, Incident Number 2020030141, was founded for denial of critical care and dangerous substances. The assessment named Rachel as the person responsible for the abuse.

In effort to avoid removal of the children from the familial home, the Department implemented a safety plan that outlined constant supervision between the mother and the children. Rachel continued to use mood-altering substances and did not follow the safety plan, thus placing the children at risk of harm.

K.R., D.W., and W.W. were formally removed from their mother's care by ex-parte order on March 6, 2020. A CINA adjudication hearing was held on July 24, 2020. K.R., D.W., and W.W. were adjudicated to be children in need of assistance as defined in Iowa Code Sections 232.2(6)(c)(2) and (n).

Since case onset, Rachel has continued to struggle with maintaining sobriety, utilizing sober supports, and following through with recommended treatment. Throughout the pendency of this case, she has both refused testing and tested positive for methamphetamine, marijuana, and cocaine on multiple occasions. She has been observed at local bars drinking alcohol. The Department has also noted physical indicators that suggest Rachel continues to use methamphetamine. Rachel's most recent positive test for methamphetamine was April 5, 2021. Since that date, Rachel has not participated in drug testing when requested. Simply put, Rachel has not made any progress towards addressing the safety concerns that led to her children's removal.

This Court has modified the permanency goal of D.W. and W.W. from reunification to adoption through termination of parental rights.[1] However, the matter of permanency for K.R. is more complex given her age, ability to articulate her wishes, and strained relationship with both of her parents. The issue of permanency for K.R. was the disputed issue at the permanency hearing and thus, will be the focus of this order.

As stated above, K.R. was formally removed from her mother's care on March 6, 2020. She was initially placed with her maternal aunt, Ashley XXXX.[2] K.R.'s biological father Rusty lives in Omaha, Nebraska. At case onset, Rusty requested that K.R. be placed with him. However, an approved ICPC Home Study was necessary for placement since Rusty lived out of state. At the temporary removal hearing on March 16, 2020, an ICPC Home Study was ordered to be completed on Rusty's residence.

While awaiting the completion of the home study, the Department approved K.R. to have weekend visitations with Rusty at his home. Prior to the present CINA proceeding, K.R. had a relationship with her father that was described by Social Work Case Manager (SWCM) Angie Hill as "off and on." K.R. also lived in Rusty's home for a little over seven months during a 2015 CINA case. K.R. was 10 and 11 years old when she lived with Rusty from March 5, 2015, through August 26, 2015, and again from April 11, 2016, through May 28, 2016. From May 28, 2016, until she was reunified with her mother on November 30, 2016, K.R. lived with the Ginger and Casey XXXX, her maternal great-aunt and great-uncle.[3]

Prior to the March 16, 2020, hearing, K.R. indicated to Child Protection Worker (CPW) Brooke Prucha that she was "okay" visiting her father, but she immediately expressed a desire to remain living in Missouri Valley permanently. K.R. reported feeling more comfortable in Missouri Valley where she has always lived and around maternal relatives. The Department specifically requested that K.R.'s opinion be taken into consideration by this Court.[4]

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[1] Interest of D.W. and W.W., Harrison County Case Numbers JVJV001796 and JVJV001797.
[2] D.W. and W.W. were placed with their maternal great-aunt and great-uncle, Ginger and Casey XXXX.
[3] The Court, sua sponte, took judicial notice of K.R.'s prior CINA file, Harrison County Case Number JVJV001495 for the limited purpose of determining the dates that K.R. was previously placed with her father and Ginger and Casey. Testimony was presented regarding K.R.'s previous placements, but the dates were uncertain. This Court's review of the prior file to determine the exact amount of time that K.R. lived with her father and Ginger and Casey is not prejudicial to any party and is an integral detail to the background of this case.
[4] Page 5, Social Investigation Report - Case Permanency Plan prepared by Brooke Prucha, Iowa Department of Human Services, e-filed March 12, 2020.

Prior to the disposition hearing on September 23, 2020, K.R. reached out to the Department and requested that she be placed in the home of Ginger and Casey. K.R. reported that she was sleeping on a couch at her aunt Ashley's home or would have to share a bedroom with Ashley's younger children. K.R. wanted her own space and missed her half-siblings, D.W. and W.W., who were placed with Ginger and Casey. Ashley and Ginger agreed to placement of K.R. with Ginger and Casey. Rusty had previously agreed to K.R.'s placement with Ginger and Casey to allow her to remain in the Missouri Valley community. However, Rusty indicated that he would like custody of K.R. if she was not reunified with her mother. K.R. moved into Ginger and Casey's home on August 25, 2020.

At the September 23, 2020, disposition hearing, the Department noted that the ICPC Home Study for Rusty was completed on June 5, 2020.[5] Despite the approved home study, K.R. was not moved to Rusty's home. The Department explained that the permanency goal was reunification of K.R. with her mother and that placing K.R. in Omaha would make reunification efforts difficult. The Department also expressed concern about separating K.R. from her half-siblings, D.W. and W.W. K.R. has an extremely close relationship with the younger children because she acted as their caretaker for most of their lives during their mother's struggle with addiction. The Department noted "concern that Russell would not be willing to facilitate sibling visits given his failure to do so in a past case with the family."[6] In the 2015 CINA case, Rusty refused to facilitate sibling visits even when court-ordered to do so. He also did not allow K.R. to return to Missouri Valley to visit her siblings or extended family. The Department stated, "Russell has given no indication that his attitude regarding sibling visits have changed since that time."[7]

The Department also noted that in 2015, Rusty sought custody of K.R. in Nebraska and failed to notify the Nebraska District Court about the pending juvenile case in Iowa. The Department opined that "Russell acts more to exercise his own power and opinion because he is her father rather than acting in K.R.'s best interest."[8]

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[5] Exhibit 9, e-filed July 24, 2020.
[6] Page 6, Social Investigation Report - Case Permanency Plan prepared by Angie Hill, Iowa Department of Human Services, e-filed September 21, 2020.
[7] Page 6, Social Investigation Report - Case Permanency Plan prepared by Angie Hill, Iowa Department of Human Services, e-filed September 21, 2020.
[8] Page 6, Social Investigation Report - Case Permanency Plan prepared by Angie Hill, Iowa Department of Human Services, e-filed September 21, 2020.

The Department reported that Rusty was not open to feedback on parenting skills or skill-building provided by the Department. Rather, Rusty insisted that he knew what was best for K.R. despite not previously being fully engaged in her life. K.R. and other family members, including Rachel, report that Rusty has gone long periods without making contact with K.R. despite her attempts to engage with her father. The Department described Rusty's pattern of behavior as "hands-off" with minimal contact with K.R. unless Rachel was involved with the Department. When the Department is involved with the family, Rusty then makes demands with little insight into his anemic relationship with his daughter.

In July 2020 while this matter was pending, Rusty became aware of text messages K.R. saved on her phone in which she expressed feelings of depression and suicidal ideation. Rusty reacted by demanding that the Department place K.R. on "house arrest" and take her phone away from her. Rusty then confronted K.R. about the text messages by yelling at her and making sarcastic comments regarding her depression. K.R. was humiliated and felt attacked by Rusty, Rusty's two older daughters, and Rusty's girlfriend.

Rusty has a very different view of his relationship with his daughter than K.R. does. K.R. has difficulty communicating with her father when she believes he will become angry or disagree. She has frequently asked the Department and Ashley to talk to her father on her behalf. Rusty struggles to control his anger in emotionally-charged situations with K.R. The Department opined that Rusty's behavior increases "the risk of causing additional trauma" to K.R.[9] The Department recommended that Rusty learn to better manage his anger and express himself in healthy ways to improve his relationship with his daughter.

Initially, K.R. went to Rusty's home every weekend for a visit from Friday to Sunday. However, as the summer months approached, K.R. asked the Department that Rusty's visits occur every other weekend so she could be available to go camping with Ginger and Casey and her siblings or to go to the pool and other activities with her friends. Rusty expressed to the Department that it was "wrong" to allow this because "you are just giving her what she wants" rather than understanding that these were normal desires for a teenage girl.[10] When Rusty's girlfriend had a baby during the summer, K.R. stated that she wanted to go to Rusty's home more often to see the

[9] Page 7, Social Investigation Report - Case Permanency Plan prepared by Angie Hill, Iowa Department of Human Services, e-filed September 21, 2020.
[10] Page 7, Social Investigation Report - Case Permanency Plan prepared by Angie Hill, Iowa Department of Human Services, e-filed September 21, 2020.

baby. This statement angered Rusty, and he told K.R. that she should be coming to visit *him* and not the baby. At the time of the disposition hearing on September 23, 2020, K.R. had not had a visit with Rusty for over four weeks. Rusty had informed to K.R. that he was busy with work or other activities and unable to take K.R. for the weekend despite her reaching out to him. This type of retaliatory behavior appears to be a pattern in Rusty's relationship with his daughter.

The Department recommended that Rusty address his anger issues and develop healthier communication skills to engage with K.R. in a healthy and positive manner. It was also believed that family therapy would help both K.R. and Rusty practice positive communication skills in a healthy and safe space. The Court concurred and ordered Rusty to complete a mental health evaluation and follow all recommendations. Additionally, the Court ordered Rusty and K.R. to participate in family therapy.[11]

At the CINA review hearing on December 20, 2020, the Department noted that Rusty reported that he had re-engaged in visitation with K.R. and was seeing her regularly. The Court did not find Rusty's claim to be credible, however, because K.R. reported that her last weekend visit with her father was the weekend of November 27, 2020. Prior to that weekend, K.R. had not been to her father's home for over a month. According to K.R., this was Rusty's decision as he had not asked her to come visit and had not come to pick her up. K.R. believed that the only reason her father asked her to come for a visit in late November is because the family therapist suggested a visit prior to the December review hearing. K.R. testified that Rusty has never given her the impression that he would like her see her more often.

K.R. reported that on the weekend visit on November 27, 2020, her dad "lectured" her regarding court and the Department's handling of the case. K.R. stated her father expressed his negative opinion of the Department and SWCM Angie Hill in particular. Rusty informed K.R. that he had requested that the Department assign a new case manager. K.R. reported that her father showed her the Department's Social Investigation Report and accused K.R. of lying to the Court. K.R. expressed frustration with her father's behavior because she "wasn't [at his home] to talk about the case."

At the time of the December review hearing, K.R. was attending individual therapy with Debra Tuttle at CHI Behavioral Health in Missouri Valley. She also participated in family therapy with her father with Sara Batter in Omaha. Rusty offered to assist K.R. in seeing Ms. Batter for

[11] CINA Disposition Order, e-filed November 1, 2020.

individual services. However, K.R. has requested to not change therapists. She reports that she was previously seeing one therapist for both individual therapy and family therapy with her mother.

The therapist would often bring up things K.R. said in individual therapy within the family sessions. K.R. stated that she would prefer to have a separate therapist for individual and family sessions to ensure she is provided a safe space to express her feelings. This Court agreed with K.R.'s assessment and was impressed by her insight.

K.R. expressed frustration regarding family sessions with her father, stating, "we don't ever talk about anything important" and "I feel [the therapist] just wants me to say that I want to go live with my dad, and I don't."[12] SWCM Hill encouraged K.R. to use these sessions as an opportunity to talk to her father about their relationship and process how she feels. K.R. reported that she continues to express to both the therapist and her father that she does not want to live with Rusty and the reasons why. K.R. stated, "I feel like she just tries to tell me how great it will be and they aren't listening to what I want."[13] K.R. believed the family therapy sessions are unnecessary and unproductive because her relationship with her father is "where it's going to be."[14]

The Department noted that Rusty had made a positive step forward in participating in family therapy with K.R. The Department was hopeful that both Rusty and K.R. would continue to take advantage of the opportunity to improve their relationship and communication so that progress could be made towards placement of K.R. in her father's home. But, at the time of the December review hearing, Rusty still had not completed a mental health evaluation as ordered by this Court. The Department, as it had since case onset, did not recommend that K.R. be placed with her father.

**PERMANENCY ANALYSIS**

The case next came before the Court for permanency hearing on May 26, 2021, when *for the first time* the Department recommended that K.R. be placed with her father. After a transition period, the Department opined that custody should be established with Rusty and the CINA case closed. During the hearing, the Department repeatedly cited the Federal Family First legislation as

[12] Page 4, Social Investigation Report - Case Permanency Plan prepared by Angie Hill, Iowa Department of Human Services, e-filed December 14, 2020.
[13] Page 4, Social Investigation Report - Case Permanency Plan prepared by Angie Hill, Iowa Department of Human Services, e-filed December 14, 2020.
[14] Page 4, Social Investigation Report - Case Permanency Plan prepared by Angie Hill, Iowa Department of Human Services, e-filed December 14, 2020.

the reason they were required to recommend that K.R. be placed with her father versus an alternate placement.

The County Attorney disagreed with the Department's permanency recommendation to place K.R. with her father, Rusty, which resulted in the Iowa Attorney General's Office stepping in to represent the Department in this proceeding. Rusty concurred with the Department's recommendation and requested that K.R. be placed with him as soon as possible. The County Attorney, K.R.'s attorney and guardian ad litem, Rachel (K.R.'s mother), and K.R. all requested that K.R. be allowed to remain with Ginger and Casey and that a guardianship be established. The question before the Court is which of the various options for establishing permanency set forth in Iowa Code Section 232.104 is appropriate for K.R. Because all parties agree that K.R. cannot be returned to the care of her mother due to ongoing safety concerns, the focus of the Court's permanency analysis will be in relation to K.R. and her father.

***I. Termination of Parental Rights.***

When a child cannot safely be reunified with her parents, the Court may direct the county attorney to institute proceedings to terminate the parent-child relationship. Iowa Code § 232.104(2)(c). However, termination of the parent-child relationship is not in K.R.'s best interest due to her age and the potential for a future relationship with her father. Although K.R. does not want to live with her father, she does desire to maintain a relationship with him. At the permanency hearing, K.R. specifically requested that her father's parental rights *not* be terminated.

***II. Return Home or Custody to Another Parent.***

At permanency, a child may also be returned "home" to the care and custody of a parent under the continued protective supervision of the Department. Iowa Code § 232.104(2)(a). Here, K.R. was not removed from her father's home so she cannot be "returned" to his home. However, the Court also has the authority to transfer custody of the child to another parent. Iowa Code § 232.104(2)(d)(1). No custody order exists between Rusty and Rachel, although K.R. has always lived with her mother when she was not involved with the Department.

This Court does not believe that a transfer of custody to Rusty is in K.R.'s best interests at this time. Since K.R.'s removal from Rachel's custody, services have been provided to facilitate placement of K.R. in Rusty's home. Although the case has been open for fourteen months, Rusty has not followed through with the services requested by the Department or ordered by this Court. He made only a feeble attempt at family therapy to improve his relationship with his daughter.

Throughout this proceeding, and even before this case was initiated, Rusty never sought a valid custody order. K.R. has remained steadfast that she does not want to live with her father due to their strained relationship caused by his inconsistent participation in her life and his inability to meet her emotional needs. Even the Department admits that additional time is necessary to ensure a healthy transition of K.R. to her father's home.

### *III. Continue Placement for Up to Six Months*

Iowa Code Section 232.104 also allows the Court to continue the child's out-of-home placement if it determines that the need removal will no longer exist at the end of an additional six month period. Iowa Code § 232.104(2)(b). Based on the information presented to the Court, the Department appears to be recommending the entry of a permanency order pursuant to this Code section.

The Department proposes that the CINA case remain open to facilitate K.R.'s placement in her father's home. In order for a healthy transition to occur, Rusty would need to consistently participate in family therapy with K.R. before she could be placed in his home. Once K.R. transitions to Rusty's home, the Department anticipates that ongoing supervision and services such as family therapy and individual therapy for K.R. will still be necessary. Frequent sibling visits would also be scheduled between K.R. and her half-siblings, D.W. and W.W. Rusty would be required to transport K.R. back to Missouri Valley to participate in said visits. SWCM Hill testified that these services would offer stabilization to K.R. and help mitigate potential trauma during the transition to her father's home. However, we know from recent history that Rusty was previously noncompliant with these requirements.

The Department admits that while there are no physical safety concerns in Rusty's home, placing K.R. in her father's care "would be difficult for her" and "would be traumatic." SWCM Hill testified that she made it clear to Rusty throughout the case that he was expected to attend family therapy with K.R. to improve their relationship and develop a bond. However, Rusty only attended three family therapy sessions with K.R. in the nine months between the date he was ordered to do so, September 23, 2020, and the date of the permanency hearing on May 26, 2021.

The family therapist providing services to Rusty and K.R. reported that their sessions have focused on effective communication, identifying any conflict, and addressing barriers. She

recommends that Rusty and K.R. continue to participate in family therapy to assist in processing any barriers or conflict that may occur when K.R. transitions to Rusty's home.[15]

At the dispositional hearing on September 23, 2020, Rusty was also ordered to obtain a mental health evaluation and comply with all recommendations. Rusty finally participated in a mental health evaluation six months later on March 3, 2021. The evaluator noted, "Rusty plans to obtain custody and placement of his daughter, K.R.; therefore, it would be beneficial for Rusty and K.R. to continue to participate in family therapy to address any concerns that may occur during this transition period." The evaluator went on to state that Rusty's progress in family therapy would continue to be monitored and that he would be discharged after demonstrating that all treatment goals were met and maintained over time.[16] Despite this clear recommendation, Rusty failed to follow through.

At the time of the permanency hearing, Rusty had not successfully completed therapeutic services. In fact, Rusty had only participated in three sessions with K.R. during a nine month period. During this time, Rusty was not only encouraged by the Department to participate in family therapy to facilitate reunification, but he was also ordered to do so by this Court. This Court has no reason to believe that Rusty will make family therapy a priority if given additional time to reunify with K.R.

SWCM Hill testified that she believes that it is *possible* for K.R. to form a bond with Rusty and his family unit. However, after fourteen months of services, K.R. still does not have a strong enough bond with her father or his family unit to allow her to be placed in the home without suffering trauma. Furthermore, Rusty retaliated against K.R. by canceling visitation with her and reprimanded her for the Department's actions taken in this proceeding.

Given the lack of progress made by Rusty over the fourteen months since K.R.'s removal from Rachel's home, this Court has no reason to believe that Rusty is interested in or capable of building a trusting and supportive relationship with his daughter if given an additional six months to do so. Rusty does not fully appreciate the trauma that K.R. has experienced in her young life, nor is he equipped to support K.R. in a manner that is healthy and meaningful for K.R. It is apparent through Rusty's testimony as well as statements he has made to the Department and at previous

[15] Exhibit 15, Letter from Sara E. Batter, LICSW, LADC, dated March 23, 2021.
[16] Exhibit 14, Rusty's Mental Health Evaluation completed by Sara E. Batter, LICSW, LADC, dated March 3, 2021.

hearings that he does not grasp the psychological adjustment K.R. would face if she was forced to move away from a community and family where she has built strong bonds and relationships. Rusty has failed to make a genuine effort to participate in family therapy with K.R. to improve their relationship and his ability to communicate with her. Rusty has not consistently participated in visits with K.R. since case onset, and was not a reliable presence in her life before that. Rusty has further demonstrated that he will not support K.R. in visiting with her siblings and maintaining her relationships with Ginger and Casey and other family members. K.R. testified that she does not have much communication with her father unless the Department is involved. For these reasons, this Court is simply unable to make a finding that the need for removal from her father's care will no longer exist six months from now. Thus, entry of a permanency order pursuant to Iowa Code Section 232.104(2)(b) continuing the child's out-of-home placement for ongoing reunification efforts is not appropriate.

The State argues that Rusty's deficiencies as a parent for K.R. are irrelevant because the Court is bound by a statutory presumption for parental custody. Indeed, there is also a strong societal interest in preserving the natural parent-child relationship. In dissolution proceedings, the Court may only grant a nonparent custody of a child over a parent when the nonparent proves that the parent seeking custody is not suitable to have custody. *In re Marriage of Halvorsen*, 521 N.W.2d 725, 729 (Iowa 1994). Our Courts have observed on more than one occasion that "[c]ourts are not free to take children from parents simply by deciding another home offers more advantages." *Id.*, *citing In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977).

However, this statutory presumption is not absolute. The Court's responsibility at permanency is to look solely at the best interests of the child. Inevitably, the long-range and immediate best interests of a child, may, at times, be at odds with a presumption for parental custody. Thus, a parent does not have an absolute right to parent their child when the welfare and best interests of the child warrants alternate placement. Placement with Rusty means that K.R. will be uprooted from her half-siblings, a consistent and loving family, a school community, friends, and activities that she has come to rely on. As the Department itself admits, this would result in additional trauma to K.R. The Court simply cannot find that causing additional trauma to K.R. is in her best interest.

***IV. Guardianship.***

Another option available to the Court at permanency is to transfer guardianship and custody of the child to a suitable person. This is the option that K.R., her attorney and guardian ad litem, the County Attorney, and Rachel (K.R.'s mother) are requesting. Iowa Code § 232.104(2)(d)(1) Historically, minor guardianship proceedings were governed by Iowa's Probate Code, which provided a presumptive preference for parental custody. Iowa Code Section 633.559 (now repealed) provided in part: "The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian." Iowa Code § 633.559.

However, effective January 1, 2020, Iowa Code Section 232D.204 governs the establishment of a minor guardianship without parental consent. While minor guardianship laws continue to provide protections to natural parents, these protections are not absolute when certain criteria are met. For example, a minor guardianship may be established when the potential guardian proves that the biological parent has demonstrated a lack of consistent participation in the minor's life. Iowa Code § 232D.204(1)(b).

Similarly, in CINA proceedings, the Juvenile Court has the authority to transfer guardianship and custody of a child to a suitable person under Iowa Code Section 232.104(2)(d)(1). However, guardianship can only be ordered if the Court first finds that convincing evidence exists showing termination of the parent-child relationship is not in the child's best interests and that the child could not be returned to the child's home even though "[s]ervices were offered to the child's family to correct the situation which led to the child's removal." Iowa Code § 232.104(4); *see also In re A.S.*, 906 N.W.2d 467, 477 (Iowa 2018).

As stated previously, termination of Rusty's parental rights is not in K.R.'s best interests. She is 16 years old and desires to maintain a relationship with her father. Additionally, K.R. still cannot be placed in her father's home even though services were offered to Rusty over the past fourteen months to facilitate their relationship, which the Department admits.

At the permanency hearing, SWCM Hill testified that additional time is necessary to ensure a healthy transition of K.R. to her father's home. However, this Court is dubious that further progress can be made towards reunification through the provision of additional services. Rusty's relationship with K.R. prior to case onset was sporadic despite a prior CINA and known issues with Rachel. During the previous case, Rusty established a track record of failing to support K.R.'s relationship with her siblings and other family members. Since onset of this case, Rusty has been

unwilling to participate in family therapy with K.R. on a regular basis and delayed obtaining a court-ordered mental health evaluation. He has not made visitation with K.R. a priority and denied visits with her as punishment. Fourteen months later, K.R. needs permanency. As in all juvenile proceedings, determining the appropriate permanency plan for children is a best-interests assessment.

### *V. Best Interests of the Child.*

The Court's responsibility at permanency is to look solely at the best interests of the child. Part of that focus may be on parental change, but the overwhelming bulk of the focus is on the child and her needs. *In Interest of A.S.T.*, 508 N.W.2d 735, 737 (Iowa Ct. App. 1993). Therefore, the Court must determine whether allowing Rusty additional time to work towards reunification would be in K.R.'s best interests. In making that determination, the Court considers the best placement for furthering the long-term nurturing and growth of the child and her physical, mental, and emotional condition and needs. *In re M.W.*, 876 N.W.2d 212, 224 (Iowa 2016).

When considering which permanency option is in K.R.'s best interests, it is necessary to consider her history. K.R.'s young life has been marred by chaos, confusion, and danger. K.R. was first removed from her mother's care when she was 10 years old. Approximately one and a half years later, she was returned to her mother's care along with her younger half-siblings, D.W. and W.W., who were then 13 months and one month old, respectively. Due to their mother's pervasive methamphetamine addiction, K.R. has acted as D.W. and W.W.'s primary caregiver for most of their young lives. She has unfortunately been placed in the role of caretaker for her younger siblings and has become more "parentified" than other children her age.

K.R.'s relationship with both of her parents continues to be strained and a source of anxiety for her. K.R. has a long history of watching her mother attempt sobriety, return to using, and placing her children's safety in jeopardy. By all accounts, K.R. has had a sporadic relationship with Rusty. K.R. and other family members, including Rachel, report that Rusty has gone long periods without making contact with K.R. despite her attempts to engage with her father.

K.R.'s care and concern for D.W. and W.W. is an also ongoing source of anxiety for K.R. She is bonded with them and has repeatedly expressed that she wants to remain at Ginger and Casey's with her brother and sister. K.R.'s therapist has reported that "[i]t would be beneficial for K.R. to be placed with her siblings or in Missouri Valley" due to her close relationship with D.W.

and W.W.[17] Similarly, SWCM Hill testified that the biggest trauma for K.R. if she is placed with her father will stem from being separated from D.W. and W.W.

D.W. and W.W. likewise are extremely bonded to K.R. On November 3, 2020, for example, D.W. and W.W. arrived home following a visit with Rachel crying and upset. Rachel had informed the children during the visit that when they moved back home with her, K.R. would not be joining them. Ginger and Casey confirmed that the younger children were visibly upset and wanted to know why K.R. was not going to live with them anymore.

The State argues that K.R.'s bond with half-siblings D.W. and W.W. should not be viewed as more important than her bond with her other half-siblings who reside with her father. However, K.R. and her half-siblings living with her father have not lived together for any significant period of time. In contrast, K.R. has not only lived with D.W. and W.W. for the great majority of their lives, but she has also acted as their primary caregiver. There is no dispute that her bond with D.W. and W.W. is much stronger than any bond with her father's other children. It would be traumatic not only to K.R., but would also traumatize D.W. and W.W. to be separated from K.R., especially now that their mother has also been removed from their lives.

During her testimony, Ginger confirmed that when K.R. was initially placed with her, K.R. had a "parentified" role with regards to D.W. and W.W. Ginger explained that she had to make K.R. step back, and since that time, she has observed K.R. to evolve into a normal teenager and become her own person. Ginger also testified regarding K.R.'s mental health. Ginger described K.R. as experiencing a lot of anxiety, confusion, and heartache as a result of this case. K.R. is diagnosed with ADHD and adjustment disorder.[18] Ginger opined that it is important for K.R. to have stability. She explained that K.R. "doesn't know where she belongs." Ginger testified that K.R. is in need of a permanent home where she can say, "I'm home." Ginger and Casey are willing, and perhaps more importantly, are able, to provide that home for K.R.

K.R. is thriving in Ginger and Casey's care. Her grades have improved dramatically over the last school year with Ginger and Casey's involvement and academic support. For example, Ginger and Casey participate in K.R.'s parent-teacher conferences. Despite being K.R.'s biological father, Rusty, who dropped out of school at age 16, has never chosen to participate in K.R.'s parent-teacher conferences.

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[17] Exhibit 6, Letter from Micaela A. Lee, LISW, dated July 1, 2020.
[18] Exhibit 6, Letter from Micaela A. Lee, LISW, dated July 1, 2020.

SWCM Hill testified that K.R. has been on an IEP (Individualized Educational Plan) for math for the majority of her school career. Recently she earned a 105% on her trigonometry test, which was the highest grade in the class. K.R. has also obtained employment at Pizza Ranch. Due to the stability provided by Ginger and Casey, K.R. has started to become more social and is making friends in the community. SWCM Hill described K.R. as having a great bond to her school, town, and community.

K.R. will be a junior at Missouri Valley High School this fall. She is on the softball team. She is a manager for the football team and is considering going out for volleyball. K.R. will turn 17 years old on January 1, 2022.

K.R. is adamant that she does not want to leave the Missouri Valley School District. She explained that it is hard enough to find friends in high school without having to move to a new place. Additionally, if K.R. were placed with her father, she would have the additional disruption of changing therapists. K.R. informed the Court that "the stuff that helps me be me is in Missouri Valley."

K.R. further testified that she feels safe in Ginger and Casey's home. She explained that at the beginning of the CINA case, she felt sad and depressed. However, she described that living with Ginger and Casey has made her feel loved and happy. K.R. testified, "I love being able to come home to them every day and just talk to them." She feels like she is integrated into Ginger and Casey's home as part of their family. Even Rusty testified that K.R. is "in a comfortable place where she knows and has family."

In contrast, K.R. described herself as an outsider in relation to Rusty's family. In fact, the living situation does not seem conducive to K.R.'s placement in the home. Rusty lives in a three-bedroom, one-and-a-half bathroom home with a basement. K.R. testified that when she visits her father's home, she sleeps on a couch in the basement. Her 18-year-old half-sister, Tierra, also sleeps in the basement. The three upstairs bedrooms are occupied by Rusty, his girlfriend, and K.R.'s half-siblings Hunter (age 6) and Aubrey (almost one year). Rusty's girlfriend was also expecting another child to be born in June. Rusty testified that he has a total of seven children from three different relationships.

This Court has been impressed with K.R.'s maturity and ability to articulate her wishes at every hearing in this matter. Her testimony at the permanency hearing, in particular, was emotional and heartfelt. K.R., at only 16 years old, recognizes that neither of her parents are capable of

providing her with the sort of safe and nurturing environment that she needs. K.R. should be credited for her bravery to stand before this Court, a courtroom full of strangers, and her parents to explain what she believes is best for her. Additionally, given K.R.'s age, this Court places great importance on her wishes.

Our guardianship law does not specifically consider the import a court is to give a child's wishes in K.R.'s exact situation. However, Iowa Code Section 232D.308(3) regarding selection of a guardian states, "In appointing a guardian for a minor, the court shall give preference, if qualified and suitable, to a person requested by a minor fourteen years of age or older."

Additionally, there is a permissive factor set forth in Iowa Code Section 232.116(3)(b) that allows a Juvenile Court to refrain from terminating parental rights if the child "is over ten years of age and objects to the termination." Iowa Code § 232.116(3)(b). Our appellate court's analysis of this permissive factor provides useful framework to address K.R.'s situation.

In *In re. A.R.*, 932 N.W.2d 588, 592 (Iowa Ct. App. 2019), for example, the Court looked to custody disputes in divorce cases and stated, "Preferences of minor children while not controlling are relevant and cannot be ignored." (*citing In re Marriage of Ellerbroek*, 377 N.W.2d 257, 258 (Iowa Ct. App. 1985)). Courts consider a host of factors when weighing children's custody preferences, including (1) their age and education level; (2) the strength of their preference; (3) their intellectual and emotional make-up; (4) their relationship with family members; (5) the reason for their decision; (6) the advisability of honoring the children's desire; and (7) the court's recognition it is not aware of all the factors influencing the children's view. *Id.* at 258–59.

This is not a case of angst-filled 16 year old who is rebelling against her father's rules and wants to live somewhere else. K.R. is a bright and engaging 16 year old who has spent a great deal of time thinking about where she wants to be placed. She is a 16 year old girl whose father has shown little to no interest in her for the majority of her life. This is a case where a 16 year old girl is experiencing stability and safety and a healthy home environment for the first time in her life. Her desire to remain with Ginger and Casey is certainly justified.

K.R.'s mother, Rachel, agrees that Rusty is not an appropriate placement for their daughter. It is clear that K.R. cannot be returned to her mother's care now or in the foreseeable future. However, this Court has observed that Rachel cares deeply about her daughter despite her inability to overcome her addiction issues. Rachel, through counsel, stated that Ginger and Casey have been

a steady presence in K.R.'s life in a way that Rusty has not. Rachel firmly believes that K.R. needs and deserves the stability that Ginger and Casey provide her. Rachel believes that it is in K.R.'s best interests to be placed with Ginger and Casey on a long-term basis.

K.R. has certainly proven that she is a strong and resilient child. However, those qualities do not mean that we should again uproot her and force her to suffer additional trauma. Based on the evidence presented, this Court firmly believes that any further disruptions in K.R.'s home environment are likely to be quite damaging to her emotionally.

Fortunately, uprooting K.R. and forcing her to endure additional trauma is unnecessary. She is currently placed with Ginger and Casey, who provide K.R. with nurturing and encouragement to grow. In Ginger and Casey's care, she is happy and safe. Overwhelming evidence was presented that K.R. is bonded to Ginger and Casey. They have cared for K.R. in the past during the mother's periods of drug use. She has had a close relationship with them her entire life. K.R. sees Ginger and Casey as a safe and stable support. She looks to them to meet her physical and emotional needs. Ginger and Casey understand the importance of facilitating a relationship between K.R. and her father as well as all of her siblings. Additionally, Ginger and Casey appear to have a mature and relationship with Rusty that is free of conflict.

While this Court recognizes that courts are not free to take children from parents simply because another home offers more advantages, removing K.R. from the Ginger and Casey's home and placing her in her father's care will cause her significant emotional stress. After years of living in the chaotic and dangerous environment created by her mother, K.R. certainly deserves permanency. She deserves her own space and a place to say, "I'm home." She deserves to have caretakers who have proven that they are capable and willing to meet her needs, both physically and emotionally.

Assuming, arguendo, that this Court adopts the Department's recommendation and orders that reunification efforts continue. How long do we need to wait for Rusty to foster a healthy relationship with his daughter? If, after another six months, Rusty is still not participating in family therapy, demonstrating an ability to meet K.R.'s emotional needs, or visiting her consistently, do we then consider guardianship? Or do we try another six more months of reunification efforts? At some point, enough is enough. It is not fair for the court system to continue to hold K.R.'s life in limbo. K.R. is 16 years old. She desperately wants to have a "normal" life. After 16 years, she has a home where she feels safe and like part of a family. Her physical and emotional needs are finally

being met. Even the Department agrees that removal of K.R. from that environment would cause her trauma.

This Court recognizes the presumption for parental custody, but it is not enough for a parent to simply say, "I'm her father, so she should live with me." The reason that the Court is granted discretion is because it is the Court's primary responsibility to determine the best interest of the child in each case. "Statutory presumptions" are not absolute. Juvenile cases are not black and white. Each case has unique family dynamics, emotions, and history. Unfortunately, juvenile cases often involve deep-rooted trauma and emotional scars. The Court is granted discretion because it must consider all of these factors, along with the law, in determining which placement best serves the best interests of children.

This Court acknowledges and appreciates a parent's right to raise their children without government interference. However, Rusty has not exercised that right. After he broke up with K.R.'s mother, he never sought a valid custody or visitation agreement. Even after K.R. was placed with him for a period of seven months due to Rachel's methamphetamine use, he never sought custody or participated in regular visitation with his daughter. Other than when the Department was involved in Rachel's life, Rusty has not shown a significant interest in K.R. Even when the Department has been involved, he has not made a genuine effort to see K.R. consistently. Rusty has not participated in parent-teacher conferences, does not pay for his daughter's cell phone, and has not arranged a permanent bedroom for K.R. within his household. Throughout this case, Rusty has been hesitant to engage in therapeutic services to improve his relationship with his daughter. After fourteen months, he has not complied with the recommendations of the Department or therapists to help his daughter transition to his home in a healthy manner.

This Court recognizes that Rusty has a safe and stable housing. He has the ability to meet K.R.'s physical needs. He has expressed that he loves his daughter. However, he simply has not demonstrated consistent engagement in K.R.'s life. At best, Rusty's interest in K.R. has been passive, and at worst, a physical and emotional abandonment. For that reason, he does not have a significant and meaningful relationship with his daughter. He does not fully understand or appreciate her emotional needs. He does not grasp the psychological adjustment K.R. would face if she was forced to move away from a community and family where she has built strong bonds and relationships. Rusty has demonstrated that he will not support K.R. in visiting with her siblings and maintaining her relationships with Ginger and Casey and other family members. Rusty has six

other children, plus another on the way, and a home in Omaha with his girlfriend. K.R. is an "outsider" and not part of that family unit.

Even during the permanency hearing, Rusty seemed to make light of his daughter's fear of change. However, this Court does not find K.R.'s concerns to be unreasonable given the instability she has experienced. This is exactly why our law requires us to make permanency determinations. The purpose of our statutory timeframes are to ensure that children like K.R. who have experienced a lifetime of instability have an "end date" where they do not have to worry about change or uncertain futures anymore.

Over the past fourteen months, this Court has heard from the parties and reviewed all of the evidence. This Court has considered the best placement for furthering K.R.'s long-term nurturing and growth, as well as her physical, mental, and emotional condition and needs. K.R.'s best interests are this Court's primary concern.

There is no question that K.R.'s best interests are served by remaining with Ginger and Casey in the community that she has known her entire life. She has a strong bond with her younger siblings, D.W. and W.W. She has stability and a sense of safety for the first time in her life.

With the enactment of Iowa Code Section 232D in January 2020, establishment of a guardianship would allow this Court to retain jurisdiction over K.R. until she turns 18. K.R. has suffered significant trauma and emotional distress caused by her parents. While this Court has complete confidence in Ginger and Casey to provide K.R. with a safe, stable, and nurturing home, continued Court oversight provides assurance that her needs will be met at least until she reaches the age of majority. This Court will review the guardianship case at least annually to ascertain whether K.R.'s best interests are still being served through the guardianship.

In contrast, if K.R. is returned to her father's care, there is no way to ensure that K.R.'s mental health needs are being met. There would be no recourse if Rusty did not allow K.R. to have contact with Ginger and Casey or D.W. and W.W. as he did in the prior CINA case. There would be no mechanism for K.R. to reach out to the Court for help if she needs it. Even if she did, she would be outside the jurisdiction of this Court while living in Nebraska.

A guardianship, on the other hand, provides an avenue for visitation. A visitation schedule between Rusty and K.R. could be ordered through a guardianship. The guardian must obtain Court approval before denying visitation, communication, or interactions between K.R. and Rusty. A

guardianship would provide K.R. with stability while also ensuring that her relationship with her father continues in a healthy manner.

Children, even those who are 16 years old, need permanency. Children have a deep emotional and psychological need for a permanent home. While patience is allowed for parents to remedy their deficiencies, that time must be limited because the delay may translate into intolerable hardship for the children. *In Interest of A.C.*, 415 N.W.2d 609, 613-614 (Iowa 1987). We are at this point today.

Rusty has failed to show that he is willing to do whatever necessary to have K.R. placed in his care. He has not made a genuine effort to participate in family therapy with K.R. She does not have a room or even a bed of her own at his residence. Rusty only saw K.R. sporadically even while this case was pending, and, prior to that, rarely had contact with her. Even during this case, he has shown a pattern of retaliation against K.R. when she does not behave how he wants her to. Rusty does not understand K.R.'s emotional needs. Rusty demonstrates a lack of insight into his anemic relationship with his daughter and an unwillingness to work to improve that relationship. A parent who fails to develop a relationship with his child, even with the assistance of the Department and at the direction of the Court, should not be automatically entitled to a presumption for parental custody.

This Court has also considered the Family First Prevention Services Act ("Family First"), and believes that establishment of a guardianship for K.R. is consistent with the act's intent. Research has shown that children do best in families, in a safe and stable environment that supports their long-term well-being. Increasing trauma-informed approaches to safety, permanency, and well-being is a primary purpose of Family First, and also, this Court.

After 16 years of almost constant instability and crisis, K.R. deserves to wake up every morning knowing that she is "home." She deserves the stability of living in the community she grew up in and graduating from high school with her friends. She deserves caregivers who have proven that they are capable, nurturing, and willing to meet her needs. For these reasons, along with the tumultuous relationship between K.R. and her natural father and the lack of progress made towards rebuilding their relationship, establishment of a guardianship with Ginger and Casey is in K.R.'s best interest. Although Rusty has the ability to provide a physical home for K.R., he would not be suitable to have custody of her at this time. With K.R.'s best interests being the primary

consideration, this Court finds the need to protect K.R.'s emotional and psychological well-being to be more important than any presumption for parental custody.

Based upon the foregoing, the Court finds that the appropriate permanency order would be an order pursuant to Iowa Code Section 232.104(2)(d)(1) transferring guardianship and custody of K.R. to Ginger and Casey. The Court further finds that convincing evidence exists showing that termination of the parent-child relationship would not be in the best interest of the child due to the child's age and the potential for a future relationship with her parents. As shown by the reports and the case permanency plan, services were offered to the family to correct the situation which led to the removal of the child from her home. However, the Court finds that the child cannot be returned to or placed in the home of either parent.

The Court finds there is clear and convincing evidence that unless there is a transfer of custody, the child could not be protected from some harm that would justify the adjudication of the child as a child in need of assistance. Removal from the family home is the result of a determination that continuation therein would be contrary to the welfare of the child and reasonable efforts have been made to prevent or eliminate the need for removal of the child from her home. The Court finds that reasonable efforts were made to avoid the necessity of continued out-of-home placement and that return of the child to a parental home would be contrary to the well-being of the child.

The children's parents are advised that a consequence of a permanent removal or transfer of custody may be the termination of their parental rights. Any aggrieved party must appeal pursuant to Iowa Rule of Appellate Procedure 6.101(1) by filing a notice of appeal with the Clerk of Court within 15 days of the entry of this order and by filing a petition on appeal within 15 days thereafter. Notice of appeal must be signed by both counsel and the client.

The Court finds reasonable efforts have been made to finalize the permanency plan that is in effect.

**IT IS THEREFORE ORDERED:**

1. That the care, custody, and control of the minor child, K.R., remain with the Iowa Department of Human Services for placement with her maternal great-aunt and great-uncle, Ginger and Casey XXXX.
2. That a guardianship be established for K.R. with Ginger and Casey XXXX, to be established by further order of this Court.

**IN THE COURT OF APPEALS OF IOWA**

No. 21-1120
Filed October 20, 2021

**IN THE INTEREST OF K.R.,**
**Minor Child,**

**R.S., Father,**
Appellant.

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Appeal from the Iowa District Court for Harrison County, Jennifer Bahr, District Associate Judge.

A father appeals a permanency order in a child-in-need-of-assistance proceeding. **AFFIRMED.**

Justin R. Wyatt of Woods & Wyatt, PLLC, Glenwood, for appellant father.

Thomas J. Miller, Attorney General, Diane Murphy Smith, Assistant Attorney General, and Jennifer V. Mumm, Harrison County Attorney, for appellee State.

Sara E. Benson of Meldrum & Benson Law, P.C., Council Bluffs, attorney and guardian ad litem for minor child.

Considered by Mullins, P.J., and May and Ahlers, JJ.

**MULLINS, Presiding Judge.**

A father appeals a permanency order in a child-in-need-of-assistance proceeding setting the permanency goal as establishment of a guardianship in maternal relatives.

The father questions whether the juvenile court erred in not placing the child in his custody and whether the establishment of a guardianship is in the child's best interests. But he only states his disagreement with the juvenile court's factual determinations and legal conclusions. Other than providing conclusory statements without citations to the record, he offers no meaningful substantive argument to facilitate appellate review,[1] so we affirm without further opinion, deeming the arguments waived. *See* Iowa Rs. App. P. 6.201(1)(d) ("The petition on appeal shall substantially comply with form 5 in rule 6.1401."); 6.1401–Form 5 ("[S]tate what findings of fact or conclusions of law the district court made with which you disagree and why, generally referencing a particular part of the record, witnesses' testimony, or exhibits that support your position on appeal . . . . *General conclusions, such as 'the trial court's ruling is not supported by law or the facts' are not acceptable.*"); *see also In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) ("A broad, all encompassing argument is insufficient to identify error in cases of de novo review."); *Hyler v. Garner*, 548 N.W.2d 864, 876 (1996) ("[W]e will not speculate on the arguments [a party] might have made and then search for legal authority and comb the record for facts to support such arguments."); *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974) ("To reach the merits

[1] He cites no case law and only two nominal statutes that reference what the court shall do after a permanency hearing.

of this case would require us to assume a partisan role and undertake the appellant's research and advocacy. This role is one we refuse to assume."); *cf.* Iowa R. App. P. 6.903(2)(g)(3) (requiring arguments in briefs to contain reasoning, citations to authorities, and references to pertinent parts of the record).

**AFFIRMED.**

IOWA APPELLATE COURTS

State of Iowa Courts

| Case Number | Case Title |
| --- | --- |
| 21-1120 | In re K.R. |

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