

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 23-0214

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IN THE INTEREST OF K.C.,  
A Child,  
Plaintiff-Appellant,  
vs.

THE IOWA DISTRICT COURT FOR POLK COUNTY JUVENILE  
DIVISION,  
Defendant-Appellee.

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ON WRIT OF CERTIORARI FROM THE IOWA DISTRICT COURT  
FOR POLK COUNTY  
THE HONORABLE RACHAEL E. SEYMOUR

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**APPELLANT’S FINAL REPLY BRIEF**

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. **De novo review is the proper standard of review given the inextricably linked constitutional icebergs in K.C.’s case as an indigent juvenile defendant and the special nature of juvenile proceedings.**

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*Ake v. Oklahoma*, 470 U.S. 68 (1985)

*Eddings v. Oklahoma*, 455 U.S. 104 (1982)

*J.D.B. v. North Carolina*, 564 U.S. 261 (2011)

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*State v. Lyle*, 854 N.W.2d 378 (Iowa 2014), as amended (Sept. 30, 2014)

- II. **Reasonableness, not necessity, governs compensation of expert witnesses. Compensation for the expert’s travel from Ames to Des Moines to interview K.C. in a familiar setting was reasonable given K.C.’s age and circumstances.**

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**III. K.C. preserved his constitutional claims of due process and equal protection.**

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Iowa Const. art I, § 9

U.S. Const. amend. XIV, § 1

## ARGUMENT

COMES NOW the Plaintiff-Appellant K.C., pursuant to Iowa Rule of Appellate Procedure 6.903(4), and hereby submits the following argument in reply to the Defendant-Appellee's proof brief filed on December 11, 2023. While K.C.'s brief adequately addresses the issues presented for review, a short reply is necessary to address three specific contentions raised by the Defendant-Appellee ("the State").

This reply is also necessary to highlight the fact that this is a *juvenile* case. Contrary to the State's assertions, K.C.'s youth is relevant to both the reasonableness of certain expert witness expenditures and the standard of review. *Compare* State's Br. 13, 18, 22 (failing to account for K.C.'s youth in: (1) determining the standard of review, (2) assessing the reasonableness of driving time from Ames to Des Moines, and (3) generally as a relevant factor for reasonableness), *with* JLC-NCYL Br. 9 (emphasizing the importance of considering "the characteristics of the young person, including their lack of financial resources," when assessing reasonableness of fees in juvenile proceedings), *and* ACLU Br. 6 ("[J]uveniles are constitutionally and statutorily entitled to extra protections under the law[.]"), *and* SPD Br. 26-27 (noting the experiences of juveniles in the legal system are unique from those of adults). The State's arguments fail to

account for the fact that K.C. was a minor child when his juvenile court case began and that juvenile delinquency proceedings are special proceedings requiring a youth-centered lens.

**I. De novo review is the proper standard of review given the inextricably linked constitutional icebergs in K.C.’s case as an indigent juvenile defendant and the special nature of juvenile proceedings.**

The proper standard of review regarding the reasonable compensation of K.C.’s expert is disputed. The State argues abuse of discretion is proper. State’s Br. 12. The ACLU as amici argues for de novo review consistent with how this Court otherwise reviews juvenile delinquency proceedings and rules implicating constitutional rights given this Court’s routine recognition that “juveniles are constitutionally and statutorily entitled to extra protections under the law.” ACLU Br. 7, 12. K.C. agrees with the ACLU. The State does not. State’s Br. 13.

While the State concedes “juveniles are often entitled to greater protection than adults,” the State supports its position by asserting “nothing about a juvenile’s youth affects the reasonable pay rate for an expert.” State’s Br. 13. The issue is not whether the expert’s hourly pay rate is reasonable. Instead, the question is whether the expenditures requested for particular services the expert provided to K.C. are reasonable. (Order Setting Expert Witness Fees; App. 59-60) (denying the full amount of requested



expert fees based on four particular expenditures including driving time to evaluate K.C., records review, in-person testimony, and testing to be administered).

A juvenile’s youth can indeed be relevant to analyzing whether particular expert expenditures are reasonable. *See* JLC-NCYL Br. 9-10 (highlighting youth’s lack of financial resources and independence and limited control over their environment). Furthermore, in assessing reasonableness for expert witness expenditures, it is relevant that this is a juvenile case—not an adult case—and a juvenile lens should apply. *See J.D.B. v. North Carolina*, 564 U.S. 261, 263 (2011) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)) (emphasizing the legal history acknowledging “children cannot be viewed simply as miniature adults”); *State v. Lyle*, 854 N.W.2d 378, 388 (Iowa 2014), as amended (Sept. 30, 2014) (noting the consensus in Iowa to “treat juveniles in our courts differently than adults”); ACLU Br. 11 (arguing that applying adult criminal standards, including standards for expert remuneration, “contravenes precedent by this Court holding that delinquency proceedings are not criminal in nature.”). Consequently, de novo review is proper.

The State claims the juvenile court’s denial of K.C.’s request to reconsider his expert’s compensation “is not a constitutional issue.” State’s

Br. 14. However, the constitutional right at issue is not simply the right to hire and utilize an expert as the State implies. *Id.* It is the right to utilize expert assistance *at the State's expense*. *Ake v. Oklahoma*, 470 U.S. 68, 84 (1985) (recognizing a defendant's due process right to competent expert assistance at the State's expense); *State Pub. Def. v. Amaya*, 977 N.W.2d 22, 32 (Iowa 2022), as amended (June 30, 2022) (recognizing a defendant's due process right to state-funded ancillary litigation services).

Whether K.C. was afforded meaningful access to such a right is necessarily intertwined with any reasonableness analysis of requested expert fees. The State fails to acknowledge that the juvenile court's arbitrary capping of expert compensation thousands of dollars below both the market rate and the actual expenses incurred effectively denied K.C. assistance *at the State's expense*. State's Br. 14 (stating "[t]he question is not whether the constitution entitled KC to the expert" without reference to K.C.'s more specific right to expert assistance at the State's expense); *see also* SPD Br. 21 (citations omitted) (arguing that it is unconstitutional to make an indigent defendant's right to ancillary services at State expense "merely symbolic or transient" and that a "cap on compensated expert fees is unreasonable when it comes at the expense of indigent defendant's rights."). De novo review is proper given the inextricable link between K.C.'s constitutional right to

expert assistance *at State expense* as an indigent juvenile defendant and the juvenile court's assessment of the reasonableness of expert fees. *See Simmons v. State Public Defender*, 791 N.W.2d 69, 73 (Iowa 2010) (applying de novo review given the "constitutional icebergs" of the case).

**II. Reasonableness, not necessity, governs compensation of expert witnesses. Compensation for the expert's travel from Ames to Des Moines to interview K.C. in a familiar setting was reasonable given K.C.'s age and circumstances.**

The juvenile court did not properly apply the law when assessing the reasonableness of K.C.'s requested expert fees at the State's expense. First, the juvenile court incorrectly assessed reasonableness when stating that "it is not a reasonable expense for defense counsel to include any expense[s] that are not *needed* to be expended by the expert." (Order Setting Expert Witness Fees; App. 60) (emphasis added) (citing *Hulse v. Wifvat*, 306 N.W.2d 707, 710 (Iowa 1981)). The State repeats this "necessity" framing error of the juvenile court, using similar language of "unnecessary" drive time as the standard for unreasonableness. State's Br. 18. However, the proper standard is whether requested expert fees were *reasonably necessary* and not whether there is an absence of a cheaper alternative to render requested fees *absolutely necessary*. *Churchill Truck Lines, Inc. v. Transp. Regulation Bd. of the Iowa Dep't of Transp.*, 274 N.W.2d 295, 300 (Iowa 1979) (citations

omitted) (defining unreasonable); *Hulse*, 306 N.W.2d at 709 (employing the “reasonably necessary” standard).

Dr. Thomas’ charge for driving time from Ames to Des Moines is not a valid reason to reduce the duly earned and reasonable expert fees of Dr. Thomas. The substantial evidence before the juvenile court demonstrated the reasonableness of charges for Dr. Thomas to travel to Des Moines to conduct her evaluation of K.C., particularly given K.C.’s age, the nature of juvenile court proceedings, K.C.’s lack of a driver’s license, and the benefits of a youth-centered, trauma-informed approach. (Child’s Mot. for Additional Expert Fees, D0053; App. 63). K.C.’s request for expert fees at the State’s expense for driving time from Ames to Des Moines was reasonable given the reasonably necessary evaluation and K.C.’s particular needs as an indigent juvenile.

Ultimately, the juvenile court failed to engage with any reasonableness factors, such as those laid out in *Pierce v. Nelson*, in assessing K.C.’s reasonably requested expert fees at the State’s expense. 509 N.W.2d 471, 474 (Iowa 1993); (Memorandum in Supp. of the Child’s Mot. for Expert Assistance at the State’s Expense; Order Setting Expert Witness Fees; App. 48-49, 58-60). Furthermore, while the juvenile court ruled that K.C. had a constitutional right to expert assistance, the juvenile court failed

to give K.C.’s constitutional right to expert assistance and the special nature of juvenile proceedings due weight when assessing the reasonableness of the compensation for K.C.’s expert. (Order Setting Expert Witness Fees; App. 58-60). The State argues this Court “need not adopt a factored test to resolve this case” because the juvenile court erred “irrespective of any factors that might be prudent to apply when assessing an expert fee’s reasonableness.” State’s Br. 21. K.C. agrees with the State’s ultimate conclusion that the juvenile court erred but notes that the lack of guidance from the courts on how reasonableness is assessed, particularly in the juvenile context, poses a significant challenge for K.C. and similarly situated indigent youth. SPD Br. 17 (citations omitted) (“Without equitable compensation, contract defense attorneys are going to have a hard time convincing an already limited number of experts to take indigent cases. . . . Without qualified experts, the contract attorneys are then weary of the risk to both their client and their professional credentials in taking the case.”).

**III. K.C. preserved error on his constitutional claims of due process and equal protection under the United States and Iowa constitutions.**

K.C.’s constitutional rights to procedural due process and equal protection were violated by the juvenile court’s arbitrary cap on expert fees substantially below the full amount reasonably requested. The juvenile

court's cap on expert fees violated K.C.'s due process right as an indigent defendant to ancillary services at the State's expense under the 14th Amendment of the United States Constitution and Article 1, Section 9 of the Iowa Constitution. *See also Amaya*, 977 N.W.2d at 32. The juvenile court's cap on expert fees violated K.C.'s equal protection rights as a Black indigent juvenile under the 14th Amendment of the United States Constitution and Article I, Section 6 of the Iowa Constitution which require "that all persons similarly situated should be treated alike." *Varnum v. Brien*, 763 N.W.2d 862, 878-79 (Iowa 2009) (citations omitted).

K.C. preserved error on his constitutional claims regarding due process and equal protection through his motions before the juvenile court and the juvenile court's related orders. The State recognized that K.C. adequately raised his due process and equal protection claims before the juvenile court. State's Br. 23. Indeed, K.C. explicitly raised both his constitutional due process rights and equal protection rights in his motions and the supporting memorandum which he then renewed in his amended motion. (Child's Mot. for Expert Assistance at the State's Expense; Memorandum in Supp. of the Child's Mot. for Expert Assistance at the State's Expense; Child's Mot. for Additional Expert Fees; Child's Amended Mot. for Additional Expert Fees; App. 17-18, 49-50, 64, 153). Although

K.C. repeatedly raised his constitutional claims before the juvenile court, the State argues K.C. failed to preserve error on these issues because “he failed to secure a ruling.” State’s Br. 23. The State’s definition of a ruling is too narrow. This Court has held that a district court ruling need not be complete or clearly articulated and a district court’s decision acknowledging an issue had been argued before it is sufficient. *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Here, the juvenile court’s original Order Setting Expert Witness Fees discusses K.C.’s due process rights as an indigent juvenile and alludes to K.C.’s equal protection rights in discussing the difference between an indigent and wealthy defendant’s entitlement to expert services. (App. 58-59). The juvenile court’s subsequent rulings on expert fees all refer to this initial order and the reasonings included therein. (Order Regarding Child’s Mot. for Additional Expert Fees; Order Denying Child’s Mot. to Reconsider; App. 157, 163) Therefore, the juvenile court’s ruling indicates it considered the constitutional issues and necessarily ruled on them, and the fact that the juvenile court’s order is “incomplete or sparse” is not fatal to preserving error. *See Lamasters*, 821 N.W.2d at 864. K.C.’s motions for additional expert fees and his subsequent motion to reconsider were at their core a challenge to the de facto denial of K.C.’s right to expert assistance at the

State's expense. (Child's Mot. for Expert Assistance at the State's Expense; Child's Mot. for Additional Expert Fees; Child's Amended Mot. for Additional Expert Fees; Child's Mot. to Reconsider, Enlarge, or Amend; App. 17-18, 64, 153, 162).

In denying K.C.'s motions for "reasons previously noted," the juvenile court necessarily upheld the constitutionality of such a significant fee cap. (Order Regarding Child's Mot. for Additional Expert Fees; Order Denying Child's Mot. to Reconsider; App. 157, 163). Furthermore, the juvenile court's Order Denying Child's Motion to Reconsider states that it was entered after "having reviewed the motion, the Court files, and, being otherwise fully advised in the premises." (App. 163). Therefore, in both subsequent orders, the juvenile court necessarily considered the constitutional claims of due process and equal protection raised by K.C. in his motions as the juvenile court's original order expressly engaged with K.C.'s constitutional claims. (Order Setting Expert Witness Fees; App. 58-59).

K.C.'s motion and amended motion for additional expert fees argued the juvenile court's cap on fees violated his equal protection rights under the United States and Iowa constitutions given his indigency and inability to access the same defensive resources as a nonindigent juvenile defendant.



(Child’s Mot. for Additional Expert Fees; Child’s Amended Mot. for Additional Expert Fees; App. 64, 153). Contrary to the State’s claim, this equal protection argument, along with K.C.’s due process claim, was raised to the juvenile court again in his Motion to Reconsider when K.C. reiterated his indigency and the need for expert assistance to aid in his defense. State’s Br. 24; (Child’s Mot. to Reconsider, Enlarge, or Amend; App. 162); *see also In re Est. of Franken*, 944 N.W.2d 853, 863 (Iowa 2020), *as amended* (Aug. 17, 2020) (Appel, J., dissenting) (“We do not require specific verbal formulation to preserve error when the issue can be fairly gleaned from the language used by a party.”).

The principles of error preservation have been met, and the juvenile court was not ambushed by K.C.’s due process and equal protection claims on appeal. *State v. Ambrose*, 861 N.W.2d 550, 555 (Iowa 2015) (noting the principles of error preservation are based upon fairness and giving an opportunity to the district court to correctly rule on an issue); *DeVoss v. State*, 648 N.W.2d 56, 63 (Iowa 2022) (“Ordinarily, we attempt to protect the district court from being ambushed by parties raising issues on appeal that were not raised in the district court.”). K.C.’s due process and equal protection rights were necessarily ruled upon by the juvenile court in its

initial order capping expert fees and such rulings were maintained in subsequent orders.

Lastly, the Court should review K.C.'s constitutional claims regardless, even if a relaxation of error preservation is necessary to do so. This case raises the issue of K.C.'s fundamental rights as a juvenile and justifies the use of this Court's discretion in relaxing the rules of error preservation when considering the best interests of K.C. as a juvenile defendant. *See Spiker v. Spiker*, 708, N.W.2d 347, 356 (Iowa 2006) (applying a similar "relaxation of the res judicata standard in child custody cases . . . because our goal in such cases is always to serve the best interests of the child."). Additionally, the juvenile court was given three opportunities to uphold K.C.'s constitutional rights, so as a matter of judicial economy and efficiency, reaching these issues is proper. *Feld v. Borkowski*, 790 N.W.2d 72, 84 (Iowa 2010) (Appel, J., dissenting) ("Indeed, we have been willing to relax ordinary rules of issue preservation based on notions of judicial economy and efficiency."). Similarly, the constitutional issues should be reviewed given the inextricable link between the juvenile court's reasonableness determination and the constitutional issues raised by K.C. *Id.* ("We have also stated that we will address issues that are 'incident' to a

determination of other issues properly presented.”) (citing *Presbytery of Se. Iowa v. Harris*, 226 N.W.2d 232, 234 (Iowa 1975)).

## CONCLUSION

K.C. agrees with the State that this Court should grant his writ of certiorari and reverse the juvenile court order declining to award additional fees. In the interest of judicial economy, K.C. requests this Court remand with instruction to approve full expert compensation given the juvenile court’s multiple opportunities to correct their errors. In the alternative, K.C. respectfully requests instructions for the juvenile court to: (1) review de novo the reasonableness of \$541.20 in requested fees for driving from Ames to Des Moines and (2) award the full amount of remaining requested fees of \$7,250.00.

Respectfully Submitted,

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**ATTORNEY'S COST CERTIFICATE**

The undersigned hereby certifies that the true cost of producing the necessary copies of the foregoing Final Reply Brief was \$0.00, and that amount has been paid in full by the Drake Legal Clinic.

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**CERTIFICATE OF FILING AND SERVICE**

I, Nickole Miller, hereby certify that on December 31, 2023, I filed this Final Reply Brief and served it on counsel of record to this appeal via EDMS.

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