

IN THE SUPREME COURT OF IOWA

NO. 23-0579

**IN THE INTEREST OF J.V.,
Minor Child,
D.B. and M.B., Guardians,
Petitioners-Appellants,
v.
J.V., Mother,
Respondent/Appellee.**

**ON APPEAL FROM THE ORDER DENYING PETITION FOR TERMINATION OF
PARENTAL RIGHTS ENTERED BY THE HONORABLE SAMANTHA GRONEWALD
ON MARCH 30, 2023.**

BRIEF OF APPELLANTS D.B. AND M.B.

**MARK R. HINSHAW
THE LAW OFFICES OF MARK R. HINSHAW
1200 VALLEY WEST DRIVE, SUITE 208
WEST DES MOINES, IA 50266
PHONE: (515) 222-1410
FAX: (515) 222-1408
EMAIL: MARK@HAWKEYEDIVORCE.COM**

ATTORNEY FOR APPELLANTS

November 10, 2023

TABLE OF CONTENTS

Table of Authorities.....	3
Statement of the Issues Presented for Review	4
Statement of the Case.....	5
Argument.....	10
I. Standard of review and preservation of error.	
II. The trial court erred in determining that J.V. did not abandon J.L.V.	
III. J.L.V. would be at risk of abuse and neglect if returned to J.V.'s Custody.	
IV. Termination of J.V.'s parental rights is in J.L.V.'s best interests.	
Conclusion	23
Request for Oral Argument	24
Cost Certificate	25
Certificate of Compliance	26
Certification of Service	27

TABLE OF AUTHORITIES

Cases

<i>In the Interest of D.J.R.</i> , 454 N.W.2d 838, 839 (Iowa 1990)	11-12, 16
<i>In re D.M.</i> , 516 N.W.2d 888, 891 (Iowa 1994).....	12-13, 18
<i>In re Goettsch</i> , 311 N.W.2d 104 (Iowa 1981)	12-13
<i>In re J.B.</i> , No. 21-1420, 2022 WL 951053, at *6 (Iowa Ct. App. Mar. 30, 2022)	14
<i>Interest of J.D.</i> , No. 22-1779, (May 24, 2023 Iowa Ct. App.).....	18
<i>Interest of R.G.</i> , No. 21-1744 (Iowa App. Ct. June 15, 2022)	18-19
<i>In re S.K.C.</i> , 435 N.W.2d 403 (Iowa App. 1988)	13

Statutes

Iowa Code section 232.116(1)(b)	12, 21-22
Iowa Code section 232.116(2).....	12, 21-22
Iowa Code section 232.2(1).....	12
Iowa Code § 232D.402	15
Iowa Code section 600A.8(3)(b).....	13-14

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. THE TRIAL COURT ERRED IN DETERMINING THAT J.V. DID NOT ABANDON J.L.V.

In re S.K.C., 435 N.W.2d 403 (Iowa App. 1988)

Interest of K.D., No. 22-1396 (June 21, 2023 Ia. Ct. App.)

In re J.B., No. 21-1420, 2022 WL 951053, at *6 (Iowa Ct. App. Mar. 30, 2022)

Interest of J.D., No. 22-1779, (May 24, 2023 Iowa Ct. App.)

Interest of R.G., No. 21-1744 (Iowa App. Ct. June 15, 2022)

Iowa Code section 232.116(1)(b)

Iowa Code section 232.2(1)

Iowa Code § 232D.402

Iowa Code section 600A.8(3)(b)

II. J.L.V. WOULD BE AT RISK OF ABUSE AND NEGLECT IF RETURNED TO J.V.'S CUSTODY.

III. TERMINATION OF J.V.'S PARENTAL RIGHTS IS IN J.L.V.'S BEST INTERESTS.

Authorities

In the Interest of L.M.F., 490 N.W.2d 66, 68 (Iowa App. 1992)

In the Interest of M.R., 487 N.W.2d 99, 102 (Iowa App. 1992)

Iowa Code section 232.116(2)

STATEMENT OF THE CASE

Nature of the Case and Course of Proceedings:

On April 19, 2019, Appellants filed for a stand-alone guardianship over J.L.V., born in 2017, in Polk County case GCPR074793. (Tran. Volume 1, Part 2, p. 5:22-24; App. 42). After hearing the testimony of the parties and having reviewed the evidence the probate court granted the guardianship on November 1, 2019. (Tran. Volume 1, Part 2, p. 5:25-6:3). On October 20, 2020, D.B. and M.B. filed a Petition for Termination of Parental Rights in Dallas County case JVJV005781. (App. 6-9). On January 13, 2021, J.G. signed a consent to the termination of his parental rights to J.L.V. (App. 10-11). On February 23, 2021, the district court in Dallas County terminated J.V.'s parental rights to J.L.V. (App. 40-47). On March 25, 2021, J.V. filed a notice of appeal and subsequently appealed the termination of her parental rights. (App. 12). On March 2, 2022, the Court of Appeals overturned the termination, as J.V. was not provided with notice of the right to the assistance of counsel. On June 1, 2022, J.V. was appointed counsel Alexis Dalhauser. (App. 54-56). On July 29, 2022, J.V. was appointed counsel Joel Fenton. (App. 57-58). On September 20, 2022, the Dallas County court transferred the venue to Polk County on grounds that the guardianship case was in Polk County. (App. 59-61). Polk County accepted the case on September 21, 2022. On October 17, 2022, J.V. was again appointed attorney Joel Fenton. (App. 62-64). On November 21, 2022, J.V. was appointed attorney Cathleen

Seibrecht. (App. 65-67). Trial was ultimately held on Appellants' Petition to Terminate Parental Rights on January 19, 2023, and February 3, 2023. (Tran. Vol. 1, Part 1, p. 1). J.V. appeared with her counsel Cathleen Seibrecht. (Tran. Vol. 1, Part 1, p. 4:10-12). On March 30, 2023, the district court entered an Order re: Petition for Termination of Parental Rights. (App. 48-51). The court declined to terminate J.V.'s parental rights to J.L.V. (App. 50). The court concluded that J.V. did not abandon J.L.V. *Id.*

Statement of Facts:

J.V., age 36, is the biological mother of J.L.V. J.V. has two other biological children, whom her rights were terminated to. (Tran. Vol II, p. 5:13-19; 6:7-22). At the time of trial J.V. resided in Davenport, Iowa by herself. (Tran. Vol. II, p. 7:11-14). J.G., age 43 is the biological father of J.L.V. (App. 10-11). J.V. reports that J.L.V. has no Native American heritage. (Tran. Vol. II, p. 33:3-4). D.B. age 41, and M.B., age 41, have had custody of J.L.V. since April of 2019. (Tran. Vol. I, Part 1, p. 5:15-17). J.V. gave birth to J.L.V. in 2017 while incarcerated for forgery charges in Scott County case FECR379032. (Tran. Vol. I, Part 2, p. 38:15-40:1). Immediately after his birth J.L.V. was placed with D.B. and M.B. through Family Connection of Iowa. (Tran. Vol. I, Part 2, p. 39:21-23). D.B. is the Vice President of North American Mineral Corporation. (Tran. Vol. I, Part 2, p. 17:4-5). She graduated from Iowa State

University with a B.S. in 2005. (Tran. Vol. I, Part 2, p. 16:24-25). M.B. is employed at GridRival as a director of engineering. (Tran. Vol. I, Part, p. 6:12-13). He also graduated from Iowa State University in 2005 with a B.S. in engineering. (Tran. Vol. I, Part 1, p. 6:5-11). M.B. and D.B. reside in Austin, Texas, with their three minor daughters, ages, 12, 13, and 18, and J.L.V. (Tran. Vol. I, Part 1, p. 5:23; 7:7). M.B. and D.B. have no criminal history, have never been investigated by the Department of Human Services, and are not on the child abuse registry. (Tran. Vol. I, Part 1, p. 7:11-22). They are both of sound mind and do not suffer from any substance abuse issues. *Id.* M.B. and D.B. intend to adopt J.L.V. if J.V.'s parental rights are terminated. (Tran. Vol. I, Part 1, p. 21:15-24).

M.B. and D.B. reside in the Austin Independent School District. (Tran. Vol. I, Part 1, p. 7:23-8:4). Their older two children attend Bailey Middle School, while J.L.V. and their youngest biological child attend Kocurek Elementary School. (Tran. Vol. I, Part 1, p. 7:23-8:4).

In 2017 D.B. and M.B. were volunteering with a program called Safe Families in Iowa. (Tran. Vol. I, Part 1, p. 8:5-7). The organization was set up to help families in crisis. (Tran. Vol. I, Part 1, p. 8:13-15). Over the years they took in a number of children for various reasons through the program. *Id.* In 2017, they took in J.L.V., as

J.V. was incarcerated.¹ (Tran. Vol. I., Part 1, p. 8:16-20). After he was born, D.B. and M.B. took J.L.V. home with them from the hospital. (Tran. Vol. I., Part 1, p. 9:10-11). Upon being paroled in October of 2017, J.V. went to the House of Mercy in Des Moines, Iowa. (Tran. Vol. I., Part 1, p. 9:19-10:11). She graduated from the program after two months. *Id.* In the beginning of 2018 J.V. relapsed on methamphetamines. (Tran. Vol. I., Part 1, p. 10:12-11:12). She requested that D.B. and M.B. care for J.L.V. *Id.* She went back to the House of Mercy in Des Moines. *Id.* She then graduated a second time and J.L.V. went back to live with her. (Tran. Vol. I., Part 1, p. 11:12-14). In April of 2019 J.V. again relapsed on methamphetamines. (Tran. Vol. I., Part 1, p. 11:15-19). The Iowa Department of Human Services became involved and J.L.V. was placed with D.B. and M.B. again. (Tran. Vol. I., Part 1, p. 11:20-12:5). A Children in Need of Assistance case was initiated, but was closed upon D.B. and M.B. obtaining legal guardianship over J.L.V. *Id.*

J.V. initially consented to the guardianship; however, at the last minute she contested it. (Tran. Vol. I., Part 1, p. 12:9-13:18). A hearing was held and the court granted D.B. and M.B. with a permanent guardianship over J.L.V. (Tran. Vol. I., Part 1, p. 13:21-23). In reaching its decision the court noted that, “J.V. continues to recover from substance abuse and mental health issues.” The court granted J.V. visitation with J.L.V. every Wednesday from 3:30 p.m. to 7:00 p.m. and every Sunday

¹ J.V. was charged with seven different counts of forgery in Scott County Case FECR379032 in 2016. She pled guilty to one count of theft in the second degree and one count of forgery. (Tran. Vol. II, p. 26:10-20).

from 11:30 a.m. to 2:00 p.m. (Tran. Vol. I, Part 1, p. 13:24-14:8). After the entry of the guardianship in November of 2019, J.V. again started using methamphetamines.² She sporadically exercised visitation with J.L.V. until March 9, 2020. (Tran. Vol. I, Part 1, p. 14:10-17). At that point she moved to Davenport to live with her boyfriend, who is also an addict. (Tran. Vol. I, Part 1, p. 14:18-24; Tran. Vol. II, p. 29:1-9). D.B. and M.B. continued to live in Waukee, Iowa until the summer of 2021. (Tran. Vol. I, Part 1, p. 21:23-22:3). In that year and a half window when J.V. was in Davenport and D.B. and M.B. were in Waukee J.V. only planned one visit with J.L.V. (Tran. Vol. I, Part 1, p. 22:8-22:20). Prior to the visit M.B. met with J.V. and her boyfriend at McDonald's to make sure they were not using methamphetamines. *Id.* They then agreed that J.V. would come visit J.L.V. the next Sunday. *Id.* J.V. no-call no-showed for the visit. *Id.* Despite never blocking her phone number, the last time that J.V. called M.B. was in 2020. (Tran. Vol. I, Part 1, p. 24:12-21). The last time D.B. spoke with J.V. was in October of 2022. (Tran. Vol. I, Part 2, p. 26:2-9). The last time J.V. spoke to J.L.V. on the phone was on his birthday in April of 2022. (Tran. Vol. I, Part 2, p. 47:20-22). J.L.V. did not recognize who she was on the phone and was thrown off by it. (Tran. Vol. I, Part 2, p. 20:6-8). At that time D.B. tried to setup regular communication between J.V. and J.L.V., but she refused. (Tran. Vol. I,

² She testified that she relapsed in February of 2020. (Tran. Vol. 1, Part 2, p. 43:2-3). She then testified to a sobriety date of November 3, 2019. (Tran. Vol. 1, Part 2, p. 44:5-10). However, in her meeting with the guardian ad litem she provided a sobriety date of November 28, 2020. (Tran. Vol. II, p. 38:12-18).

Part 2, p. 20:16-24). In total, J.L.V. has spent less than three months of his life in the care of J.V. (Tran. Vol. I, Part 2, p. 23:17-21). Despite this, J.V. conceded that the D.B. and M.B., “have always pushed – wanted me to see my son... .” (Tran. Vol. I, Part 2, p. 42:7-8).

As noted above, on October 20, 2020, D.B. and M.B. filed a Petition for Termination of Parental Rights in Dallas County case JVJV005781. Shortly thereafter attorney Jeremy Feitelson was appointed as the guardian ad litem to J.L.V. (App. 52-53). On February 19, 2021, Feitelson filed his first Guardian Ad Litem Report. (App. 13-15). He noted that he met with J.V. at her apartment in West Des Moines on December 15, 2020. *Id.* At that time she did not have a valid driver’s license, working phone or working car. *Id.* She reported to Feitelson having a sobriety date of November 28, 2020. *Id.* She further indicated that D.B. and M.B. had encouraged her to see J.L.V., but that she just hadn’t exerted much effort to do that. *Id.* She finally reported that she recently had been admitted to Broadlawns for PTSD and schizophrenia. *Id.* Feitelson concluded that J.V. was having difficulty providing for herself and was in no position to care for a child. *Id.* Additionally, he opined that it was in J.L.V.’s best interests to have the parental rights of his mother, J.V., and father, J.G., terminated. *Id.* On September 15, 2022, Feitelson filed a Guardian Ad Litem Addendum Report. (App. 16-17). He again concluded that it was in J.L.V.’s best interests to have the parental rights of J.V. and J.G. terminated. *Id.*

J.L.V. is completely integrated into D.B. and M.B.'s family. (Tran. Vol. I, Part 1, p. 16:22-23). He is a happy six year-old boy. (Tran. Vol. I, Part 1, p. 22:21-23). He has spent less than an entire year of his life with J.V. (Tran. Vol. I, Part 1, p. 22:24-23:3). He views D.B. and M.B. as his mom and dad. (Tran. Vol. I, Part 1, p. 18:4-11). He refers to M.B. as dad and D.B. as mom. *Id.* He just completed his first year of kindergarten. (Tran. Vol. I, Part 1, p. 16:24-25). He has some issues with learning that they are assessing, but he's a healthy, well-developed child. (Tran. Vol. I, Part 1, p. 17:1-3). He is mentally and physically healthy. (Tran. Vol. I, Part 1, p. 17:4-9). He is extremely bonded with D.B. and M.B.'s children and considers them his sisters. (Tran. Vol. I, Part 1, p. 17:10-16).

ARGUMENT

I. STANDARD OF REVIEW AND PRESERVATION OF ERROR.

Appellate court review of termination of parental rights proceedings is de novo. *In the Interest of D.J.R.*, 454 N.W.2d 838, 839 (Iowa 1990). The best interest of the child is the overriding concern in a case of this nature. *D.J.R.*, 454 N.W.2d 838, 839.

Appellants preserved error by timely filing a Notice of Appeal on April 6, 2023. The order denying their petition for termination of parental rights was denied seven days earlier on March 30, 2023.

I. THE TRIAL COURT ERRED IN DETERMINING THAT J.V. DID NOT ABANDON J.L.V.

Appellate court review of termination of parental rights proceedings is de novo. *In the Interest of D.J.R.*, 454 N.W.2d 838, 839 (Iowa 1990). The best interest of the child is the overriding concern in a case of this nature. *D.J.R.*, 454 N.W.2d 838, 839. In order to terminate a person's parental rights, the moving party must prove the existence of a valid ground for termination by clear and convincing evidence. *D.J.R.*, 454 N.W.2d 838, 841. The district court erroneously concluded that J.V. did not abandon J.L.V. within the meaning of Iowa Code section 232.116(1)(b), despite Appellants meeting their heavy burden.

Abandonment is defined in Iowa Code section 232.2(1) and means the "relinquishment or surrender ... of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced."

The Iowa Supreme Court has stated that abandonment requires two elements, "[f]irst the giving up of parental rights and responsibilities refers to the conduct. Second, the intent element refers to the accompanying state of mind." *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994); *see also In re Goettsch*, 311 N.W.2d 104 (Iowa 1981). The conduct required in maintaining parental responsibilities includes parenting to the extent that is practical and feasible given the particular circumstances. *In re Goettsch*, 311 N.W.2d 104, 106 (Iowa 1981).

In determining whether a parent had the intent to abandon their child, the court has looked at the parent's behaviors. In *In re D.M.*, 516 N.W.2d 888, 892 (Iowa 1994) the court found that although the mother claimed she had no intent to abandon her children, her actions said otherwise. *See also In re S.K.C.*, 435 N.W.2d 403 (Iowa App. 1988) (no genuine effort to maintain communication precluded parent's claim of no intent to); *see also Interest of K.D.*, No. 22-1396 (June 21, 2023 Ia. Ct. App.)(failing to send cards, letters, or presents proves intent to abandon).

Here the juvenile court declined to terminate the mother's rights under Iowa Code section 600A.8(3)(b). That section permits termination of a parent's rights to a child who is six months of age or older at the time of the termination hearing when abandonment is found as follows: "[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. Iowa Code § 600A.8(3)(b).” “A parent is deemed to have abandoned their child unless they *both* make reasonable financial contributions *and* maintain monthly contact, so the [party seeking termination] only needs to prove the [mother] failed at one of the two prongs to show [s]he abandoned” the child. *In re J.B.*, No. 21-1420, 2022 WL 951053, at *6 (Iowa Ct. App. Mar. 30, 2022) (emphasis added).

In support of finding no abandonment the trial court held (1) that J.V.’s failure to maintain contact with J.L.V. was excused, as D.B. and M.B. placed restrictions on her visitation, and (2) that J.V. provided gifts, food, and supplies for J.L.V. when she was financially able to. In so holding the court erred in fact and law. (App. 49-50).

i. The trial court erred in determining that J.V.’s failure to maintain contact was excused.

In holding that J.V. did not abandon J.L.V. the trial court opined,

“When Petitioners initiated this matter, they resided with their family and the minor child in Waukee, Iowa. During this period of time, Petitioners were hesitant to allow Respondent contact with the minor child given some of her life choices and placed certain terms and conditions on her visits. They placed similar restrictions on Respondent’s ability to communicate with the minor child as well.

While the Court does not fault Petitioners for their decision, the Court also cannot fault Respondent for not maintaining regular visits or communication with the minor child as a result of these decisions.”

(App. 48-51).

Glaringly absent from the trial court’s ruling was any mention of J.V.’s methamphetamine addiction. To the extent that any restrictions were placed on J.V.’s visitation, they were solely put in place to ensure that J.V. was not actively using methamphetamines; a duty D.B. and M.B. were statutorily obligated to fulfill. Specifically, Iowa Code § 232D.402 provides that the D.B. and M.B., as J.L.V.’s guardians, were charged with the duty and responsibility to ensure his health, education, safety, welfare, and support. As such, the court erred in concluding that any restrictions excused J.V.’s lack of participation in J.L.V.’s life.

In addition, the court erred in fact. To be clear, D.B. and M.B. placed no restrictions on J.V.’s visitation from November 1, 2019, through the time of GAL’s February 19, 2021, report. Rather, as J.V. reported, despite D.B. and M.B. encouraging her to see J.L.V., she simply didn’t exert much effort to see him. (App. 13-15). As the GAL noted, she didn’t even have a vehicle to exercise visitation with J.L.V. in February of 2021. (App. 13-15). After her last visit with J.L.V. on March 9, 2020, J.V. remained seventeen minutes away from D.B. and M.B. until she relocated to Davenport in February of 2021. (Tran. Vol. I, Part 1, p. 22:4-10). Despite this, she

never even requested visitation. (Tran. Vol. I, Part 1, p. 22:8-20). Sometime after her relocation to Davenport she requested to see J.L.V. *Id.* Her prolonged absence, coupled with reports of her methamphetamine usage from her family, caused M.B. to put a condition on her requested visit. *Id.* Specifically, he wanted to meet with her to make sure she was in a position to see J.L.V. *Id.* By that point though, J.V. had long abandoned J.L.V. She took no affirmative steps to parent or maintain contact with J.L.V. from March 9, 2020, to February 19, 2021. (App. 13-15). Even after being served with the Petition for Termination of Parental Rights on December 13, 2020, J.L.V. failed to maintain contact with him. As D.B. reported to the guardian ad litem around September of 2022, she repeatedly reached out to J.V. for her to have contact with J.L.V., but J.V. continually failed to follow through. (App. 16-17). Time and time again J.V. chose methamphetamines over any relationship with J.L.V.

Her disinterest in J.L.V. closely parallels that of the father in *In Interest of D.J.R.*, 454 N.W.2d 838 (Iowa 1990). In that case a no-contact order was entered that provided the biological father with visitation with his son in a therapeutic setting. *Id.* at 842. Thirty months passed between the removal and the filing of the petition for termination and the biological father failed to visit his child even in a therapeutic setting. *Id.* The court ultimately determined that the father had abandoned his child. *Id.* at 843. They held that his failure to exercise even his limited visitation rights constituted abandonment. *Id.*

J.V.'s circumstances are analogous. The November 1, 2019, guardianship order granted J.V. visitation with J.L.V. every Wednesday from 3:30 p.m. to 7:00 p.m. and every Sunday from 11:30 a.m. to 2:00 p.m. (Tran. Vol. I, Part 1, p. 14:1-9) However, J.V. relapsed on methamphetamines immediately after its entry. As she testified, "I probably used about a week after I found out. I stopped. And there was a week in November where I messed up again... ." (Tran. Vol. II, p. 28:5-7). This caused her visitation to be sporadic. Then four months after the entry of the order, in March of 2020, she stopped visiting J.L.V. period. At that time J.V. was living in West Des Moines, Iowa, a mere seventeen minute drive to D.B. and M.B.'s residence in Waukee. (Tran. Vol. I, Part 1, p. 22:4-20). D.B. and M.B. continued to reside at their Waukee residence until the summer of 2021. *Id.* In over that year long period J.V. never exercised her court ordered visitation. Rather, as she testified to, she continued to use methamphetamines up until November of 2020. (Tran. Vol. II, p. 38:12-18).

J.V. attempted to excuse her lack of contact with J.L.V. by claiming that D.B. and M.B. blocked her access to him. However, the only evidence supporting her contention was her own testimony. She didn't introduce any text messages, e-mails, phone records or corroborating evidence in support of her claim. Vague testimony regarding blocked access coupled with a lack of evidence is insufficient to establish that a mother's prolonged absence from their child's life was caused by another's

actions as opposed to the mother's lack of interest. *Interest of J.D.*, No. 22-1779, (May 24, 2023 Iowa Ct. App.). Accordingly, the trial court erred in concluding that her lack of parenting was excusable.

ii. J.V. intended to abandon J.L.V.

Actions speak louder than words. Despite pointing the finger at D.B. and M.B., J.V.'s repeated bad decisions resulted in her abandoning J.L.V. First, there was no affirmative parenting of J.L.V. by J.V. in over three years. (Tran. Vol. II, p. 32:21-33:2). She did not provide J.L.V. with any financial support. (Tran. Vol. II, p. 31:13-15). Her absence was so pronounced that J.L.V. didn't even recognize her in a video call in April of 2022. (Tran. Vol. I, Part 2, p. 20:5-24). In short, J.V. never parented J.L.V. in any meaningful way. J.V.'s efforts at this point are an eleventh hour attempt to prevent termination of parental rights. See *In the Interest of D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). She has not provided any real care or assistance, financial or emotional, to this child. See *In the Interest of M.L.M.*, 464 N.W.2d 688, 690 (Iowa App. 1990).

Similarly, J.V.'s drug addiction supports a finding of abandonment. Just last year this Court addressed what impact a parent's lifestyle decision has on a finding of abandonment in *Interest of R.G.*, No. 21-1744 (Iowa App. Ct. June 15, 2022). Said case involved a termination action where the father was incarcerated at the time of

the child's birth in August of 2017 up until May of 2018. Upon his release, the father exercised regular visitation with the child up until his return to prison in January of 2020. The father was released from prison in the summer of 2020 and resumed visits. However, the mother petitioned to have his rights terminated. The district court terminated the father's rights on abandonment grounds, finding his drug-related incarcerations "rendered him functionally absent" from his daughter's life. The father appealed. He argued that while his contact was inconsistent, he made continued repeated attempts at contact, and the mother frustrated his efforts. The mother contended that the father's repeated incarcerations were tantamount to abandonment. This court determined that the father had not abandoned his child for termination purposes. The court noted that even while incarcerated the father acted to remain in the child's life. He regularly wrote letters, made phone calls, asked for visitation, and sought updates. Further, when he wasn't incarcerated he regularly exercised visitation with the minor child. Accordingly, this court concluded that the father vigorously asserted his parental rights and that the trial court erred in finding abandonment. *Id.*

Unlike the father in *Interest of R.G.*, J.V.'s contacts with J.L.V. from November of 2019 to the time of trial were feeble at best and non-existent at worst. The overwhelming credible evidence demonstrated that she chose a life of methamphetamine addiction in preference to, and at the expense of a parental

relationship with J.L.V. Again, immediately after the court entered the permanent guardianship J.V. chose to start using methamphetamines. She disappeared from J.L.V.'s life five months later in March of 2020 to go live with her boyfriend in Davenport, Iowa. She then reported using methamphetamines up until November of 2020. This choice of drugs over parenting constitutes abandonment for purposes of the termination action.

iii. The trial court erred in determining that J.V. provided financial support to J.L.V. when able to do so.

J.V. provided little to no financial support to D.B. and M.B. for J.L.V. (Tran. Vol. II, p. 31:13-15). From November 11, 2019 up until the summer of 2021 D.B. and M.B. lived at their house in Waukee, Iowa. J.V. knew their address at all times. Despite this, as M.B. testified, she never gave them even \$10 or \$20 for J.L.V.'s needs. (Tran. Vol. II, p. 19:1-11). On one or two occasions when they were doing visits after the November 11, 2019 Guardianship was entered J.V. brought diapers. *Id.* However, after that she provided no support. It is interesting to note that she was able to financially support her methamphetamine addiction up until November of 2020. On the balance, J.V. has not provided financial support for her son, which on its own constitutes abandonment.

She has not supported him financially and has not provided any type of consistent care for him. Further, she has given no reason to justify or explain her

complete lack of involvement in her son's life. In sum, J.V.'s conduct falls squarely within the statutory definition of abandonment.

III. J.L.V. WOULD BE AT RISK OF ABUSE AND NEGLECT IF RETURNED TO J.V.'S CUSTODY.

J.V. is a methamphetamine addict. At trial she provided no drug test results, treatment records, therapy records or any evidence that would tend to prove her sobriety. Further troubling are the conflicting sobriety dates she provided the court. Coupled with her felony conviction for forgery, her credibility is weak at best. What is known is that she was admitted to Broadlawns for substance abuse and/or mental health issues in the beginning of 2021. (App. p. 14). She specifically reported to the GAL that she was treated for PTSD and schizophrenia. *Id.* Like her sobriety, she failed to provide the court with any evidence demonstrating compliance with her mental health treatment. Given the above, it would be reckless at best to return J.L.V. to J.V.'s custody.

IV. TERMINATION OF J.V.'S PARENTAL RIGHTS IS IN J.L.V.'S BEST INTERESTS.

In considering whether to terminate parental rights, the court must give primary consideration to the physical, mental and emotional condition and needs of the child. Iowa Code section 232.116(2). If the child has been placed in foster care voluntarily by the parent, the court may consider whether the child has become

integrated into the foster family to the extent the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. Iowa Code section 232.116(2)(b).

J.L.V. has established a strong bond with D.B. and M.B. and he is thriving in their care. He experienced anxiety and confusion on the limited occasions he interacted with J.V.. (Tran. Vol. I, Part 2, p. 20:5-24). D.B. and M.B. have met all of J.L.V.'s needs and they want to make him a permanent part of their family. (Tran. Vol. I, Part 2, p. 21:15-24). J.L.V. identifies D.B. and M.B. as his parents. By contrast, there was no testimony that there was any bond between J.V. and J.L.V. Sadly, the only party in the proceeding that J.L.V. didn't know was his own biological mother.

The strong bond between J.L.V. and D.B. and M.B., and of the child's familial identity with them supports a finding that termination of J.V.'s rights is in his best interests. See *In the Interest of L.M.F.*, 490 N.W.2d 66, 68 (Iowa App. 1992).

CONCLUSION

There is a rebuttable presumption that the child's best interest is served by parental custody. The Court has long recognized that the right of a parent to raise her child is fundamental. See *In the Interest of M.R.*, 487 N.W.2d 99, 102 (Iowa App. 1992). However, that right is counter-balanced by the State's duty to assure that every child within its borders receives adequate care and treatment. See *M.R.*, 487 N.W.2d 99, 102. The State must intercede when the parent abdicates her

responsibility to provide properly for her child's needs. See *M.R.* 487 N.W.2d 99, 102. J.V. has clearly abdicated her parental responsibilities. J.L.V. should not be forced to wait until J.L.V. gains the maturity to accept and follow through with those responsibilities. See *L.M.F.*, 490 N.W.2d, 66, 68. Termination of parental rights is most definitely in J.L.V.'s best interests.

For all of the reasons stated above, the Appellants respectfully requests that this Court overturn the decision of the trial court and terminate the parental rights of J.V. with respect to J.L.V.

REQUEST FOR ORAL ARGUMENT

The Appellants requests to be heard orally in the above matter.

/s/ Mark Hinshaw
MARK R. HINSHAW AT0009119
1200 VALLEY WEST DRIVE, SUITE 208
WEST DES MOINES, IA 50266
PHONE: (515) 222-1410
FAX: (515) 222-1408
EMAIL: MARK@HAWKEYEDIVORCE.COM

ATTORNEY FOR APPELLANTS

ATTORNEY'S COST CERTIFICATE

The Petitioners-Appellants hereby certifies that there was no cost of printing the above and foregoing brief.

/s/ Mark Hinshaw
Mark R. Hinshaw AT0009119
1200 Valley West Drive, Suite 208
West Des Moines, IA 50266
Telephone: (515) 222-1410
Facsimile: (515) 222-1408
Email: mark@hawkeyedivorce.com
ATTORNEY FOR APPELLANTS

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(d) and type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Cambria in 14 point font size and contains 5,526 number of words, as counted by the word processing application, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Mark Hinshaw

Mark R. Hinshaw

November 10, 2023

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of November, 2023, one (1) copy of Appellant's final brief was filed via EDMS with the Clerk of the Iowa Supreme Court.

/s/ Mark Hinshaw

Mark R. Hinshaw AT0009119

PROOF OF SERVICE

I certify that on November 10, 2023 I e-mailed a copy of this document to the attorneys of record who are listed below.

Jeremy Feitelson

Email: jeremy@feitelsonlaw.com

GUARDIAN AD LITEM

Cathleen J. Siebrecht

Email: siebrechtlaw@gmail.com

ATTORNEY FOR MOTHER

/s/ Mark Hinshaw

Mark R. Hinshaw AT0009119