

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,

vs.

J.V., Mother,
Respondent-Appellee

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HONORABLE SAMANTHA GRONEWALD,
DISTRICT COURT JUDGE
Polk County No. JVJV251326

UPON FURTHER REVIEW OF THE IOWA COURT OF APPEALS
DECISION RENDERED MARCH 27, 2024

APPELLEE’S APPLICATION FOR FURTHER REVIEW and
BRIEF IN SUPPORT OF FURTHER REVIEW

CERTIFICATE OF CONFIDENTIALITY

Pursuant to Iowa R.App.P. 6.110(2), the Undersigned hereby certifies this document and any attachments should be deemed confidential pursuant to Iowa Code Section 232.147.



Cathleen J. Siebrecht, AT0007320
Siebrecht Law Firm
PO Box 57647
Pleasant Hill, Iowa 50327
Phone: 515-288-4005
Email: Siebrechtlaw@gmail.com
ATTORNEY FOR APPELLEE

QUESTION PRESENTED FOR REVIEW

WHETHER THE COURT OF APPEALS ERRED IN REVERSING THE DISMISSAL OF A PETITION FOR TERMINATION OF PARENTAL RIGHTS WHEN THE GUARDIANS PREVENTED CONTACT BETWEEN THE MOTHER AND CHILD AND REFUSED FINANCIAL SUPPORT IN DISREGARD OF ESTABLISHED LEGAL PRECEDENCE?

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ATTACHMENTS:

- Order re Petition for Termination of Parental Rights (March 30, 2023)
- Court of Appeals Opinion (March 27, 2024)

STATEMENT SUPPORTING FURTHER REVIEW

This Supreme Court should grant further review in this matter because the Court of Appeals has entered a decision in conflict with decisions of the Iowa Supreme Court and Court of Appeals in the most serious of proceedings – termination of parental rights. (Iowa Rule of Appellate Procedure 6.1103(b)(1)). The Court of Appeals reversed the District Court’s dismissal of the Guardian’s Petition for Termination of Parental Rights and remanded with instructions to terminate the Mother’s parental rights. The majority opinion of the Court of Appeals conflicts with a number of appellate decisions, including: *In re Burney*, 259 N.W.2d 322 (Iowa 1977); *In re Guardianship of Sams*, 256 N.W.2d 570 (Iowa 1977); *In the Interest of Chad*, 318 N.W.2d 213 (Iowa 1992); *In re L.Y.*, 968 N.W.2d 882 (Iowa 2022); *In re K.R.L.*, No. 02-1586, 2003 WL 21244297 (Iowa Ct. App. May 29, 2003); *In re K.P.*, No. 14-2068, 2015 WL 4644800 (Iowa Ct. App. Aug. 5, 2014); *In the Interest of S.S.* No. 19-0291 (Iowa Ct. App. Dec. 18, 2019); *In re K.K.*, No. 20-0347, 2020 WL 5946085 (Iowa Ct. App. Oct. 7, 2020); and *In re R.G.*, No. 21-1744, 2022 WL 2160691 (Iowa Ct. App. June 15, 2022).

BRIEF IN SUPPORT OF FURTHER REVIEW

STATEMENT OF THE CASE

Nature of the Case:

This is an appeal by the legal Guardians of a minor Child following their multiple unsuccessful attempts to terminate his Mother's parental rights. (Order 3/30/2023). (App. 48-51). In their appeal, the Guardians argued: 1) The Trial Court erred in determining the Mother did not abandon the child; 2) The Child would be at risk of abuse and neglect if returned to the Mother's custody; and 3) Termination of the Mother's parental rights is in the Child's best interests.

The Court of Appeals reversed the Juvenile Court's decision. The Mother/Appellee now seeks further review.

Course of the Proceedings:

On April 19, 2019, Appellants filed a petition for guardianship of the minor child in interest in Polk County GCPR074793. (Trans. Vol. 1, Part 2, p. 5:22-24; App. 42). The petition for guardianship was granted on November 1, 2019. (Tran. Vol. 1, Part 2, p. 5:25-6:3). The Appellants then filed a petition for termination of parental rights in Dallas County JVJV005781. (App. 6-9). An Order was entered

terminating the Appellee's parental rights on February 23, 2021. (App. 40-47). Appellee filed Notice of Appeal on March 25, 2021. (App. 12). The Court of Appeals reversed the termination of parental rights with an opinion entered on March 2, 2022 in Sup. Ct. No. 21-0437 and remanded the matter. The Court of Appeals held that the Mother had not been provided with notice of the right to the assistance of counsel. The Dallas County Court transferred venue to Polk County on September 20, 2022. Venue was then accepted by Polk County on September 21, 2022. Trial on the termination of the Mother's parental rights was held for a second time on January 19, 2023 and February 3, 2023. (Trans. Vol. 1, Part I, p.1). The Polk County District Court entered an Order dismissing the Petition for Termination of Parental Rights on March 30, 2023. (App. 48-51).

The Appellants filed their Notice of Appeal on April 6, 2023. (Notice of Appeal). The Court of Appeals reversed the Juvenile Court's dismissal of the Petition for Termination of Parental Rights, with an opinion filed on March 27, 2024. The Appellee now seeks further review.

Statement of Relevant Facts:

J.V. is the Appellee and the biological Mother of J.L.V., born in 2017. D.B. and M.B. are the Appellants and current legal Guardians of J.V. (TPR Petition 10/20/2020). (App. 6-9). At the time of trial in 2023, the Child was 5 years of age.

The Mother was incarcerated when the Child was born. (Trans. Vol. I, part 1, p. 8-9). (Trans. Vol. I, part 2, p. 4, 39). She needed a safe home for her son until she was able to take him back into her care upon her release. (Trans. Vol. I, part 1, p. 8-9). (Trans. Vol. I, part 2, p. 4, 38-39). The Mother met D.B. and M.B. through Safe Families, an agency that assists families in crisis to provide care for children with the goal of keeping families together. (Trans. Vol. I, part 1, p. 8-9). (Trans. Vol. I, part 2, p. 38). Three days after his birth, the Mother returned to prison and D.B. and M.B. took the Child into their home. (Trans. Vol. I, part 2, p. 38-39).

After she was released from custody, the Mother went to live at the House of Mercy in Des Moines. The Child returned to the Mother's care while at the House of Mercy and remained with her for approximately 18 months. (Trans. Vol. 1, part 2, p. 20). (App. 20, 27, 38-39). Although the Child was no longer living with D.B. and M.B. they continued their supportive relationship with J.V. and his Mother. D.B. and M.B. occasionally provided care for the Child at his Mother's request. The Mother admittedly began to struggle with her drug addiction. She relapsed.

However, she made the safe decision for D.B. and M.B. to take the child back into their home again. (Trans. Vol. I, part 2, p. 24, 42, 43).

On April 19, 2019, D.B. and M.B. filed a Petition for Guardianship of the child in Polk County GCPR074793. The Mother resisted the guardianship proceeding. She wanted to maintain custody of her son. Despite her resistance, D.B. and M.B. were appointed Guardians on November 1, 2019. The Mother was granted a visitation schedule and regular contact with the Child pursuant to the Guardianship Order. As newly appointed Guardians, D.B. and M.B. did not follow the Court's visitation order. Instead, they determined that they could dictate the Mother's contact with the Child. They began restricting her visits, and then eventually denied her visits altogether. At some point D.B. and M.B. moved from the state of Iowa to Colorado, then to Texas, taking the child with them. They did not seek permission from the guardianship Court to move the child out of state; they did not notify the Mother of their intention; and they did not file the statutorily required annual guardianship reports. (Trans. Vol. I, part 1, p. 9, 12, 14). (Trans. Vol. I, part 2, p. 4-11, 20, 24, 29, 40, 42-44, 46-47).

On October 10, 2020, less than a year after obtaining legal guardianship, D.B. and M.B. filed their first Petition for Termination of Parental Rights in Dallas County JVJV005781. (TPR Petition 10/10/2020). (App. 6-9). The Mother again attempted to resist the legal proceedings brought against her. The Dallas County

Court granted the termination and on February 23, 2021, issued an Order terminating the Mother's parental rights. However, the Mother had not been informed of her right to counsel and was not provided proper notice. The Mother appealed and counsel was appointed to her for the first time in her legal dealings with D.B. and M.B. The Iowa Court of Appeals reversed the Dallas County Juvenile Court, and remanded the case for compliance with the appropriate notice requirements including notifying the Mother of her right to be represented by counsel at the time of the termination hearing. Procedendo issued on April 4, 2022. (Court of Appeals Opinion 21-0437). (Procedendo 21-0437).

Shortly after procedendo issued the Guardians again pursued termination of the Mother's parental rights. At their request, a Trial Scheduling Conference was scheduled. The Mother made application and was appointed counsel; trial was scheduled; and venue was transferred to Polk County. Trial was ultimately held on January 19 and February 3, 2023. Following trial, the Court refused to terminate the Mother's parental rights and dismissed the Petition. (Order 3/30/2023). (App. 48-51).

The Guardians filed Notice of Appeal on April 6, 2023. (NOA 4/6/2023). They argued that the Court erred in failing to find the Mother abandoned her son; the Child was at risk of abuse and neglect if he was returned to his Mother; and that termination was in the Child's best interests.

The Mother argued that the Court was correct in finding she had not abandoned her son because there was not clear and convincing evidence supporting the claim of abandonment. The record showed the Mother intended to maintain a relationship with her son and have him return to her care after turning to the Guardians for assistance from time to time, and that she was ready willing and able to assume her parental role. However, she was prevented from doing so by the Guardians as they thwarted her efforts at contact and refused her attempts to provide monetary support.

The Court of Appeals reversed the District Court's dismissal of the Petition for Termination of Parental Rights with a 2-1 opinion filed on March 27, 2024 and remanded the matter with directions to terminate the Mother's parental rights. The majority found that the "mother made feeble attempts to provide support for the child" and that her "actions failed the first element of 'substantial and continuous or repeated contact with the child.'" The majority further found that her "meager efforts to demonstrate her parental responsibilities and maintain a place in the child's life were inadequate." It concluded the Guardians proved abandonment by clear and convincing evidence, and that termination was in the best interest of the child. Finally, it determined that it need not address the Guardian's issue of risk of abuse and neglect as it was neither ripe nor relevant.

The Dissent argued that the Guardians had not met the heavy burden to prove abandonment by clear and convincing evidence “mainly because of their prevention of contact between the mother and child and their refusal of financial support from the mother.”

The Mother now seeks further review.

ARGUMENT

THE COURT OF APPEALS ERRED IN REVERSING THE DISMISSAL OF A PETITION FOR TERMINATION OF PARENTAL RIGHTS WHEN THE GUARDIANS PREVENTED CONTACT BETWEEN THE MOTHER AND CHILD AND REFUSED FINANCIAL SUPPORT IN DISREGARD OF ESTABLISHED LEGAL PRECEDENCE.

Standard of Review:

Private termination proceedings under Iowa Code Chapter 600A are reviewed *de novo*. In re R.K.B., 572 N.W.2d 600, 601 (Iowa 1998); Iowa R.App.P. 4. The District Court “is greatly helped in making a wise decision about the parties by listening to them and watching them.” In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). The grounds for termination must be proven by clear and convincing evidence. In re E.K., 568 N.W.2d 829, 830 (Iowa Ct. App. 1997). In equity cases, especially when considering the credibility of witnesses, the Appellate

Court gives weight to the fact findings of the District Court but is not bound by them. In re Estate of Rutter, 633 N.W.2d 740, 746 (Iowa 2001); Iowa R. App. P. 6.14(6)(g). The primary interest in termination proceedings is the best interests of the child. In re R.K.B., 572 N.W.2d 600, 601 (Iowa 1998).

Merits:

The United States Supreme Court has determined that a Mother's interest in parenting her son is a fundamental right that is of the utmost importance. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). This Court has long held that termination of parental rights may not occur except upon a showing of one or more of the statutory grounds that the State legislature has established. *In the Interest of L.H.*, 480 N.W.2d 43, 47 (Iowa 1992). Additionally, the statutory grounds for the termination of parental rights must be proven by clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 770; 102 S. Ct. 1388; 71 L. Ed. 2d 599, 617 (1982). Clear and convincing evidence is the highest evidentiary burden in a civil case. *In re M.S.*, 889 N.W.2d 675, 679 (Iowa Ct. App. 2016). The burden to prove abandonment remains at all times on the party seeking to terminate a parent's rights. *In re R.K.B.*, 572 N.W.2d 600, 601-02 (Iowa 1998).

The allegation in the Petition relevant to this appeal is that the biological Mother had abandoned her child within the meaning of Iowa Code 600A.8(3)(b).

(TPR Petition 10/20/2020). (App. 6-9). The Iowa Code enumerates the ways in which a parent can be deemed to have abandoned a minor child. Iowa Code Section 600A.8(3)(b) provides:

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...(portions omitted due to lack of relevance in this action); Iowa Code, § 600A.8(3)(b)(1)-(3) (2021). See also Iowa code section 600A.2(19) (2021) (definition of "to abandon a minor child").

Although total desertion is not necessary to establish abandonment, it does require clear and convincing evidence of giving up parental rights and responsibilities accompanied by an intent to forego them. In re Goettsche, 311 N.W.2d 104, 106 (1981). *See also* In re D.M., 516 N.W.2d 888, 891 (Iowa 1994). Here, the record demonstrates the Mother intended to maintain a relationship with her son and eventually have him return to her care, rather than abandon him.

This Mother should not be punished for having sought assistance from the Guardians when her son was born, or when she relapsed. (Trans. Vol. I, part 1, p.8-12, 36, 40). (Trans. Vol. 1, part 2, p. 4, 27, 38-40, 43). Parents should be encouraged to look for help in caring for their children in time of need without risking the loss of custody. In re Guardianship of Sams, 256 N.W.2d 570, 573 (Iowa 1977). “It is ironic that [the mother’s] very act of obtaining excellent care for [her child] by placing him with the [guardians] should now be turned against her as a manifestation of neglect of parental duty.” In re Burney, 259 N.W.2d 322, 324 (Iowa 1977). “It is particularly inappropriate to focus solely on a parent’s failure to discharge the duties of parental care and protection [when the child is under a guardianship] because guardianships are designed to temporarily relieve parents of the rigors of raising a child.” In re L.Y., 968 N.W.2d 882, 900 (Iowa 2022).

This case is akin to *In the Interest of Chad*, 318 N.W.2d 213, (Iowa 1992), where this Supreme Court held that a mother’s parental rights could not be terminated on the basis of statutory provision pertaining to refusal or neglect of parental duties, since there was no clear and convincing proof that the mother substantially, continuously, or repeatedly refused or neglected to comply with the duties engendered by the parent-child relationship but, on the contrary, the mother was ready, willing and able to assume her parental role, though she had been prevented from doing so by the Guardians and the prolonged pendency of the legal

proceedings. (Trans. Vol. I, part 1, p. 15, 16, 21, 23). (Trans. Vol I, part 2, p. 6, 7, 8, 9, 10, 11, 13, 14, 15, 20, 26, 29, 32). (Trans. Vol. II, p. 8, 23, 24).

To prove abandonment both the economic and contact component under Iowa Code 600A.8(3)(b)(1) and (2) must be proven by clear and convincing evidence. The District Court was correct in finding that the Guardians failed to meet that burden through either.

The Guardians prevented the Mother from having contact with her son by refusing to allow visits and phone calls and by secretly moving the child from Iowa to multiple states. (Trans. Vol. I, part 1, p. 15, 16, 21, 23). (Trans. Vol I, part 2, p. 6, 7, 8, 9, 10, 11, 13, 14, 20, 26, 29, 32). (Trans. Vol. II, p. 8, 23, 24). The Mother attempted to communicate with both the Guardians and her son via calls and text messages. She continued her attempts at contact even when ignored by the Guardians. (Trans. Vol. I, part 1, p. 15, 16, 21, 23). (Trans. Vol I, part 2, p. 6, 7, 8, 9, 10, 11, 13, 14, 20, 26, 29, 32). (Trans. Vol. II, p. 8, 23, 24).

As the Dissent concluded, the Guardians cannot meet their burden when they prevented or interfered with the Mother's attempts to visit the child or communicate with them and the child. See § 600A.8(3)(b)(1) (excusing failure to visit monthly when 'prevented from doing so by the person having lawful custody of the child'); *In re R.G.*, No. 21-744, 2022 WL 2160691, at *3-4 (Iowa Ct. App. June 15, 2022)

(reversing district court and finding no abandonment based in part on custodian's rejections of some attempts at contact through letter and phone and her moving without providing her new address to the parent.); In re K.K., No. 20-0347, 2020 WL 5946085, at *4 (Iowa Ct. App. Oct. 7, 2020) (affirming dismissal for failing to prove abandonment where custodian "thwarted" phone and text communication and in-person visitation); in re K.R.L., No. 02-1586, 2003 WL 21244297, at *2-3 (Iowa Ct. App. May 29, 2003) (reversing district court and finding no abandonment where parent's efforts at contact were "rebuffed by custodian).

The Guardians acknowledged they denied the Mother the ability to maintain a meaningful relationship. They would not allow visits between the time they filed for guardianship until they were appointed Guardians. Then they put restrictions on her visits. They denied visits. They moved to different states without informing the Mother or even the Court. They came back to Iowa monthly without informing the Mother. They refused calls and would not return messages. They did not request financial support and refused gifts. They put the young child in the middle by leaving the decision to him as to whether they would allow his Mother to speak with him and by telling him they would change his name to their name. Letting the Child decide whether he would have contact with his Mother effectively prevented contact and placed him in the middle of the Guardian's conflict with his Mother and undermined his relationship with her. K.K., 2020 WL 5946085. (Trans. Vol. I, part

1, p. 15-19, 21, 23). (Trans. Vol. I, part 2, p. 6, 7-11, 13-14, 20-21, 25-26, 29-32, 44, 46-48). (Trans. Vol. II, p. 23).

One cannot prove abandonment “when his or her own actions prevented the other parent from contacting the child.” *In re K.P.*, No. 14-2068, 2015 WL 4644800, at *3 (Iowa Ct. App. Aug. 5, 2014); *In the Interest of S.S.* No. 19-0291 (Iowa Ct. App. Filed December 18, 2019). The Guardians testified they denied the Mother visits and contact with her Child when it was not on their terms. They admitted to moving the Child’s residence out of state multiple times without first notifying the Mother or obtaining permission from the Court through the guardianship case. *See* Iowa Code 232D.401(4)(b) (requiring “prior court approval” before a guardian can exercise the power of “establishing the residence of the minor outside of the state”). The Guardians would not even provide the child’s new addresses to her. The Guardians’ refusal to allow the Mother information and contact cannot now be used to bootstrap a claim of abandonment. The Mother did not voluntarily abandon her son when she was prevented from having a meaningful relationship and contact with him. She resisted the multiple legal actions against her. She attempted to maintain contact and obtain information. When contact was not allowed, she gained what information she could through her own mother. The record shows the Guardians prevented the Mother from having any contact with her son for a over a year to the time of the termination trial where they then claimed abandonment. (Trans. Vol. I,

part 1, p. 15, 16, 21, 23). (Trans. Vol I, part 2, p. 6, 7, 8, 9, 10, 11, 13, 14, 20, 26, 29, 32). (Trans. Vol. II, p. 8, 23, 24).

The Mother did her best to try to provide for her Child during the times he was out of her care as well as she could. She provided supplies, food, and gifts when the Guardians allowed. She purchased gifts and saved them when they forbid her to do so. The Guardians knew she did not have the means to provide regular financial support; they discouraged it and would not accept it. (Trans. Vol. I, part 1, p. 16, 19). (Trans. Vol. I, part 2, p. 9, 11, 30-32). (Trans. Vol. II, p. 48, 51).

The Mother did not have the financial means to provide ongoing monetary support for the child. The Guardians acknowledge this. But she did provide gifts, food and supplies when she could and was allowed to do so. The Guardians each testified that they did not want, need, or even request that the Mother provide any monetary support for the child because they knew she did not have the means and they did not need it. They should not be allowed to make the Mother believe her financial support was not needed or necessary for nearly five years, and then turn around and use it against her. (Trans. Vol. I, part 1, p. 16, 19). (Trans. Vol I, part 2, p. 9-11, 30-32). (Trans. Vol. II, p. 48, 51).

The Mother contributed to the Child's support when she was able to do so financially and when she was allowed to do so by the Guardians. Just as the

Guardians prevented the Mother from contact, the record shows they discouraged and refused financial support from the Mother. Then they used that lack of support to reach their burden in proving abandonment.

The District Court's findings should be given much weight by this Court. As noted by the Dissent, "while these findings do not bind us on de novo review, I would give them much weight, especially since they are based implicitly on an assessment of the credibility of the parties' in-court testimony . . . [t]his is because the district court 'is greatly helped in making a wise decision about the parties by listening to them and watching them' – via videoconference, here – while we are limited to the cold, printed record and thus 'denied the impression created by the demeanor of each and every witness.'" *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984); *In re J.L.W.*, 496 N.W.2d 280, 281 (Iowa Ct. App. 1992). Further, "the district court is in the better position to weigh the conflicting testimony to judge whether the mother is sincere or whether the guardians appeared evasive as they answered questions in ways that may not be apparent on the written page."

Since the establishment of the guardianship, the Mother has made substantial improvements in her life. She maintained her sobriety. She went back to school. She obtained employment. She obtained her own residence appropriate for her Child. She sought out schooling as well as medical and dental care providers. She has cared for her own mental health needs. She has sought out programming to

improve her parenting. (Trans. Vol. I, part 2, p. 37, 38, 44,). (Trans. Vol. II, p. 5-6, 8-9, 14-15, 17-22). (Mother's Exhibits A-G). (App. 18-37). She has a fundamental liberty interest in maintaining her parental rights, and such maintenance is in the child's best interests.

CONCLUSION

For the reasons stated herein, the Mother respectfully request that this Court grant further review, reverse the decision of the Court of Appeals and affirm the District Court's dismissal of the Petition for Termination of Parental Rights. In the alternative, the Mother requests that this Court enter an Order setting this case for full briefing.

Respectfully Submitted:

/s/ Cathleen J. Siebrecht

Cathleen J. Siebrecht AT0007320

Siebrecht Law Firm

PO Box 57647

Pleasant Hill, Iowa 50327

Phone: 515-288-4005

Email: Siebrechtlaw@gmail.com

ATTORNEY FOR APPELLEE

**Certificate of Compliance with Type-Volume Limitation,
Typeface Requirements, and Type-Style Requirements**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g) because this brief contains 3,998 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 14 point Times New Roman.

Respectfully Submitted:

/s/ Cathleen J. Siebrecht

Cathleen J. Siebrecht AT0007320
Siebrecht Law Firm
PO Box 57647
Pleasant Hill, Iowa 50327
Phone: 515-288-4005
Email: Siebrechtlaw@gmail.com
ATTORNEY FOR APPELLEE

April 7, 2024

Date

PROOF OF SERVICE and CERTIFICATE OF FILING

On the 7th day of April, 2024, the undersigned hereby certifies that she electronically filed this Application for Further Review with the Clerk of the Iowa Supreme Court and service was made electronically via EDMS on all counsel of record for the parties herein:

Mark Hinshaw
1200 Valley West Drive, Suite 208
West Des Moines, IA 50266
mark@hawkeyedivorce.com
Attorney for Guardians-Appellants

Jeremy Feitelson
1200 Valley West Drive, Suite 606
West Des Moines, IA 50266
jeremy@feitelsonlaw.com
Guardian ad Litem

Respectfully Submitted:

/s/ Cathleen J. Siebrecht

Cathleen J. Siebrecht AT0007320
Siebrecht Law Firm
PO Box 57647
Pleasant Hill, Iowa 50327
Phone: 515-288-4005
Email: Siebrechtlaw@gmail.com
ATTORNEY FOR APPELLEE