In the Iowa Supreme Court

No. 25–1385

Submitted September 10, 2026—Filed October 16, 2026

In the interest of **E.S.,** minor child.

B.S., mother,

Appellant.

On review from the Iowa Court of Appeals.

Appeal from the Iowa District Court for Jones County, Joan M. Black, district associate judge.

In a child welfare case, the mother challenges the juvenile court's permanency rulings.

Court of appeals decision affirmed, and appeal dismissed.

May, J., delivered the opinion of the court, in which all justices joined.

B.S., Anamosa, pro se.

Brenna Bird, Attorney General, and Mackenzie L. Moran, Assistant Attorney General, for appellee.

May, Justice.

A "delayed appeal" is "[a]n appeal that takes place after the time for appealing has expired, but only when the reviewing court has granted permission because of special circumstances." *Appeal*, *Black's Law Dictionary* 120 (12th ed. 2024). Until recently, Iowa courts allowed delayed appeals only in certain criminal cases. *See, e.g.*, *Jones v. State*, 981 N.W.2d 141, 145 (Iowa 2022) (declining to allow delayed appeals in postconviction proceedings). But since our 2021 opinion in *In re A.B.*, we have also allowed delayed appeals in certain child welfare cases under Iowa Code chapter 232 (2025). 957 N.W.2d 280, 292 (Iowa 2021). So far, though, we have only allowed those delayed appeals where, as in *A.B.*, the juvenile court has terminated the parental rights of the appealing parent. *Id.*; *see also In re T.F.*, 972 N.W.2d 1, 8 (Iowa 2022) (permitting delayed appeal from a termination of parental rights); *In re W.T.*, 967 N.W.2d 315, 318–22 (Iowa 2021) (same); *In re W.M.*, 957 N.W.2d 305, 316–17 (Iowa 2021) (same). In this case, we must decide whether *A.B.*'s delayed-appeal mechanism can also apply where, as here, the juvenile court *has not* terminated the appealing parent's rights. We answer that question in the negative. Therefore, we affirm the court of appeals' refusal to grant a delayed appeal and its dismissal of the parent's untimely appeal.

I. Background.

E.S. was born in 2012. He lived with his mother for most of his childhood. But in December 2023, E.S. came to the attention of the Iowa Department of Health and Human Services (HHS). His mother had been arrested for possession of methamphetamine. And a witness reported seeing illegal substances in the mother's home. Also, the mother had been running an unregistered daycare

business in the home. Several children in her daycare were tested for illegal substances. Two of them tested positive for methamphetamine exposure.

E.S. was removed and placed with his father. Child-in-need-of-assistance (CINA) proceedings were commenced. It was stipulated that E.S. was in need of assistance.

Early in the CINA proceedings, the mother requested appointment of counsel, and the court complied. But the mother clashed with one appointed attorney after another. Ultimately, she moved for permission to represent herself. After a hearing, the court entered an order granting the mother's motion "to appear pro se" and directing the mother's former attorney to serve "as stand-by counsel" going forward. The order also recounted these details from the hearing:

> The Court reviewed with [the mother] the expectations and risks of self-representation. The Court explained that she would be expected to follow the rules of the Court and the proper procedures for filing documents and questioning witnesses. The Court thoroughly explained the dangers of representing herself. [The mother] explained that she is aware of the responsibilities and risks of representing herself and affirmed that she does wish to go forward pro se.

As the CINA case proceeded, HHS provided services to the mother. But she made limited progress. Concerns about her continued drug use were not resolved. Visits remained supervised. E.S. was not returned to the mother's home.

In February 2025, the court scheduled a permanency hearing for May. Soon after that hearing was scheduled, the State filed a petition to terminate the mother's parental rights. The termination petition was heard together with the permanency issue.

The juvenile court resolved both issues in one order. As for the termination issue, the court found that the State had established grounds for termination

under Iowa Code section 232.116(1)(*f*). Even so, the court found that termination was not in E.S.'s best interests. The court based this largely on the live testimony of E.S., who displayed a nuanced appreciation of his mother's struggles and the implications of termination.

As for permanency, the court changed the goal from reunification with the mother to sole custody with the father. *See id.* § 232.104(2)(*d*)(2). The court also placed the child in the father's care and custody, retained jurisdiction of the matter, scheduled a hearing to address the mother's visitation, and scheduled an annual review hearing.

The mother timely filed a notice of appeal on September 11.[1] On September 15, our court issued an order stating that "the petition on appeal shall be filed within 15 days of" the September 11 notice of appeal. This established September 26 as the deadline for the mother's petition on appeal. But the mother did not file it until September 27.

Our court then issued an order noting that the mother's petition was untimely. The order gave the mother seven days to file a statement "explaining why the appeal should not be dismissed."

The next day, the mother filed a statement requesting a delayed appeal. The mother claimed that the tardy filing of her petition on appeal was caused by two "circumstances beyond [her] control." For starters, the mother claimed that she had experienced "a technical issue in converting" her petition "to PDF." In addition, she claimed that she had relied on an erroneous representation by her

[1]There were several other procedural events, including prior notices of appeal, that we have not addressed here. A more thorough explanation is found in the court of appeals opinion, *In re E.S.*, No. 25–1385, 2026 WL 221611 (Iowa Ct. App. Jan. 28, 2026).

standby counsel. According to the mother, standby counsel had confirmed that the deadline was actually September 27, not September 26.[2]

We ordered the mother's delayed-appeal request to be submitted with her appeal. And we transferred her appeal to the court of appeals.

The court of appeals dismissed the mother's appeal. The court noted that a delayed appeal cannot be granted where the cause of the delay is within the appellant's control. But here, the court found, the mother's tardiness was due to matters within her control. So a delayed appeal could not be granted.

The mother sought further review. We granted her request.

II. Issue Presented.

When our court grants further review, we may address any issue that was properly raised in the appeal. *State v. Meisheid*, 26 N.W.3d 800, 802 (Iowa 2025). Here we address only the court of appeals' denial of the mother's request for delayed appeal.

III. Analysis.

A. Background Principles. Delays in resolving child welfare cases are "decidedly antagonistic to the children's best interest." *In re C.M.*, 652 N.W.2d 204, 211 (Iowa 2002) (quoting *In re A.C.*, 415 N.W.2d 609, 615 (Iowa 1987)). To help minimize those delays, our law requires expedited appellate proceedings for CINA and termination cases under Iowa Code chapter 232. Iowa Rs. App. P. 6.101, 6.201. Although a litigant usually has thirty days to file their notice of appeal, a parent in a chapter 232 case has only fifteen days. *Id.* r. 6.101(1)(*a*)–(*b*). Then the parent must complete a second step—the filing of the petition on appeal—"before the appeal is deemed properly perfected." *A.B.*, 957 N.W.2d at

[2]We need not—and, therefore, we do not—decide whether standby counsel committed the error claimed by the mother. For the reasons explained below, even if we were to assume that counsel made such an error, the mother still could not obtain a delayed appeal.

289. That petition on appeal must be filed "within 15 days after the filing of the notice of appeal." Iowa R. App. P. 6.201(1)(*b*). And our rules are clear that the fifteen-day time period cannot be extended. *Id.* Rather, as our rules make clear, if the petition on appeal is not filed within that fifteen-day period, "the supreme court will dismiss the appeal." *Id.* r. 6.201(3).[3]

So, if we were to look only at our rules, we would say that because the mother's petition on appeal was late, her appeal must be dismissed. In *A.B.*, however, we recognized that constitutional concerns sometimes require us to permit appeals notwithstanding our rules. 957 N.W.2d at 292. We noted that in the criminal context, we sometimes permit delayed appeals, although only in those "limited" circumstances where denying the appeal could violate due process. *Id.* at 290 (quoting *Swanson v. State*, 406 N.W.2d 792, 793 (Iowa 1987)). We also recognized that "the termination of parental rights, including the appeal process, clearly implicates protected liberty interests for parents to which due process protections attach." *Id.* at 291. And we recognized that just as appointed counsel helps protect the defendant's due process rights in a criminal case, appointed counsel also provides "[o]ne of the important safeguards of a parent's due process rights" in a termination proceeding. *Id.* at 292.

"But what happens," we asked, if appointed counsel fails to timely perfect their client's appeal and, as a result, "the appeal is summarily dismissed?" *Id.* In the criminal context, the attorney's untimely filing could very well constitute ineffective assistance of counsel. *See State v. Davis*, 969 N.W.2d 783, 788 (Iowa

[3]We note that on September 28, 2026, our court entered an order adopting revisions to the rules governing CINA and termination-of-parental-rights appeals. Iowa Sup. Ct. Order, *In the Matter of Adopting Amendments to Chapter 6, Iowa Rules of Appellate Procedure, and Chapter 8, Iowa Rules of Juvenile Procedure* (Sep. 28, 2026), https://www.iowacourts.gov/collections/1024/files/2293/embedDocument. Those amendments become effective on January 1, 2027. *Id.* They do not impact this case.

2022). And so, even if a defendant's appeal were dismissed, they could still have their conviction reviewed—and perhaps reversed—through a postconviction-relief action.

But the same is not true in a termination case. *A.B.*, 957 N.W.2d at 292. Iowa law allows no "post-termination relief action" for parents. So, if an appeal from a termination is summarily dismissed because of counsel's error, then the termination will become "final," and the parent generally "has no further recourse."[4] *Id.*

Thus the due process concerns that justify delayed appeals in criminal cases can apply with the same force—if not more force—in an appeal from a termination of parental rights. Because of these concerns, we decided in *A.B.* that delayed appeals should be allowed "in termination proceedings . . . similar to what we have long recognized in criminal cases." *Id.* Even so, we emphasized that "the delayed appeal standard should be strictly circumscribed." *Id.* Under this strictly circumscribed standard, a delayed appeal can be allowed "only where the parent clearly intended to appeal and the failure to timely perfect the appeal was outside of the parent's control." *Id.* And even when those "prerequisites are met," late appeals can "be allowed to proceed only if the resulting delay is no more than negligible." *Id.*

This strictly circumscribed standard is usually summarized as a three-part test, under which a delayed appeal from a termination of parental rights can be allowed only if: (1) "the parent clearly intended to appeal," (2) the "failure

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[4]We say "generally" because there are limited circumstances in which the juvenile court may vacate a termination. *See* Iowa Code § 600A.9(2)(*a*); *In re F.E.Z.*, 434 N.W.2d 912, 913 (Iowa Ct. App. 1988) (holding that section 600A.9(2) (1987) applies to terminations under chapter 232); *Fredericksen v. Olsen*, No. 15–0779, 2016 WL 5930432, at *5 (Iowa Ct. App. Oct. 12, 2016) (acknowledging that a termination of parental rights can be vacated under Iowa Rule of Civil Procedure 1.1012 and citing *In re Adoption of B.J.H.*, 564 N.W.2d 387, 392 (Iowa 1997)).

to timely perfect the appeal was outside of the parent's control," and (3) the delay was "no more than negligible." *W.T.*, 967 N.W.2d at 322 (quoting *A.B.*, 957 N.W.2d at 292); *accord In re D.M.-W.*, No. 26–0246, 2026 WL 1329888, at *1–2 (Iowa Ct. App. May 13, 2026) (applying the three-part test and dismissing parent's appeal); *In re K.P.*, No. 25–0924, 2025 WL 2237960, at *1 (Iowa Ct. App. Aug. 6, 2025) (same); *In re K.W.*, No. 24–1607, 2025 WL 271370, at *3 (Iowa Ct. App. Jan. 23, 2025) (same).

B. The Present Case. With this background in mind, we return to the case before us. As we mentioned at the outset, the most significant fact here is that—unlike in *A.B.*—this mother's parental rights *were not* terminated. Indeed, the juvenile court *dismissed* the termination petition because the court found that termination *was not* in the child's best interests. Instead of terminating, the court changed the permanency goal in the CINA proceeding from reunification with the mother to sole custody with the father. The court also placed the child in the father's care and custody, retained jurisdiction of the matter, scheduled a hearing to address the mother's visitation, and scheduled an annual review hearing. These permanency rulings—all made within the CINA proceeding—are the target of the mother's appeal. She is *not* challenging the court's termination ruling, which was *favorable* to her.

Because the mother is not appealing from a termination of her parental rights, there are good reasons to doubt that *A.B.*'s delayed-appeal mechanism should apply here. After all, *A.B.* responded to the due process implications of denying an appeal from a "*termination* of parental rights," an event we said would be "final" if no appeal were allowed. 957 N.W.2d at 292 (emphasis added). But where, as here, there is no termination of parental rights, those same finality concerns are not present. *See, e.g.*, *In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa

1994) ("Although a CINA proceeding may be the first step toward the termination of fundamental parental rights, 'we refuse to equate the consequences of a CINA proceeding with those of parental termination.' " (quoting *In re L.K.S.*, 451 N.W.2d 819, 822 (Iowa 1990))).

Indeed, permanency rulings within a CINA proceeding are not final at all. They are plainly subject to modification by the juvenile court. Iowa Code section 232.104(9)(*a*) expressly provides that when the juvenile court issues a permanency order that places a child in the custody of another person—such as the father here—the court "shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served." And if, after notice and hearing, the juvenile court determines that the child's best interests require a different arrangement, the court can and should modify its permanency determination. *Id.*; *see also In re E.R.*, 973 N.W.2d 889, 893 (Iowa Ct. App. 2021) ("[O]ur responsibility in a modification of a permanency order is to look solely at the best interests of the children from whom the permanency order was previously entered." (alteration in original) (quoting *In re A.S.T.*, 508 N.W.2d 735, 737 (Iowa Ct. App. 1993))).

We conclude that because the mother is only appealing from permanency rulings that remain subject to modification by the juvenile court, *A.B.*'s delayed-appeal mechanism should not apply. Rather, in the context of child welfare cases, the delayed-appeal mechanism applies only when the juvenile court has terminated the appealing parent's rights—an event that "dispositively end[s]" the parent's "future involvement with the child," *In re I.T.*, No. 24–1005, 2024 WL 4965872, at *2 n.2 (Iowa Ct. App. Dec. 4, 2024), and is presumptively "final" if we refuse to allow an appeal, *A.B.*, 957 N.W.2d at 292. And we reiterate that even when the appealing parent's rights have been terminated, a delayed appeal can

only be permitted if *A.B.*'s "strictly circumscribed" three-part standard is satisfied. *Id.*

IV. Disposition.

Although we adopt a different rationale, we agree with the court of appeals' disposition of this case. The court of appeals was correct to deny a delayed appeal and dismiss the mother's appeal.

Court of appeals decision affirmed, and appeal dismissed.