No.

IN THE

Supreme Court of the United States

IN RE P.S., MINOR CHILD

K. S., FATHER, PETITIONER

v.

IOWA DEPARTMENT OF HUMAN SERVICES;
K.S., MOTHER, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF IOWA

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

In terminating petitioner's relationship with his child, the State's juvenile court held a permanency hearing at the same time as the hearing to terminate his rights as a parent. Does this consolidated permanency/termination hearing violate petitioner's rights to procedural or substantive due process or his right to the equal protection of the laws?

PARTIES TO THE PROCEEDING

All the parties in this proceeding are listed in the caption.

STATEMENT OF RELATED CASES

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The unpublished and unreported *en banc* Order of the Supreme Court of Iowa in *In re P.S.*, Docket No. 21-0779, filed February 4, 2022, denying petitioner's application for further review of the Iowa Court of Appeals' decision of January 12, 2022, affirming the termination of his parental rights, is set forth in the Appendix hereto (App. 1).

The unpublished Decision of the Court of Appeals of Iowa in *In the Interest of P.S.*, Docket Nos. 21-0395 & 21-0779,filed January 12, 2022, and reported at 2022 WL 120411 (Iowa Ct. App. 1/12/2022), affirming the termination of petitioner's parental rights and the parental rights of the Mother, is set forth in the Appendix hereto (App. 2-18).

The unpublished and unreported Order of the Iowa District Court for Madison County (Juvenile Division) in *In the Interest of* [redacted] *A Child*, Case Nos. JVJV002339 & JVJV002360, dated May 26, 2021, denying petitioner's motion to reopen, enlarge and reconsider its decision to terminate petitioner's parental rights, is set forth in the Appendix hereto (App. 19).

The unpublished and unreported Findings of Fact, Conclusions of Law and Order of the Iowa District Court for Madison County (Juvenile Division) in *In the Interest of* [redacted] *A Child*, Case No. JVJV002360, dated March 10, 2021, finding that petitioner's parental rights should be terminated, is set forth in the Appendix hereto (App. 20-31).

The unpublished and unreported Order containing Findings of Fact and Conclusions of Law of the Iowa District Court for Madison County (Juvenile Division) in *In the Interest of* [redacted], *A Child*, Case No. JVJV002339, dated March 10, 2021, denying petitioner's motion for reasonable efforts, is set forth in the Appendix hereto (App. 32-36).

JURISDICTION

The decision of the Supreme Court of Iowa, the State court of last resort having jurisdiction to review the decisions of all inferior State courts, denying petitioner's application for further review of the Iowa Court of Appeals' decision terminating petitioner's parental rights, was decided and filed on February 4, 2022 (App. 1).

This petition for writ of certiorari by the petitioner is filed within ninety (90) days from the date of the order of the Supreme Court of Iowa denying the petitioner's application for further review of the Iowa Court of Appeals' decision terminating petitioner's parental rights. 28 U.S.C. § 2101(c). *American Railway Express Co. v. Levee*, 263 U.S. 19, 20-21 (1923).

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1257(a).

RELEVANT PROVISIONS INVOLVED

United States Constitution, Amendment XIV, § 1:

> ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law....

Iowa Constitution, art. I, § 9:

> The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law.

42 U.S.C. § 671(a)(15) (Adoption and Safe Families Act [ASFA]):

> State plan for foster care and adoption assistance
> (a) Requisite features of State plan
> In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—
> ....
> (15) provides that—
> (A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under section 1111(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, if the offense had occurred in the

special maritime or territorial jurisdiction of the United States) of another child of the parent;
(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
(iii) the parental rights of the parent to a sibling have been terminated involuntarily;
(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—
(i) a permanency hearing (as described in section 675(5)(C) of this title) shall be held for the child within 30 days after the determination; and
(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and
(F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);

42 U.S.C. § 671(5)(C):
Definitions

As used in this part or part B of this subchapter:
....
(5) The term "case review system" means a procedure for assuring that—

....
(C) with respect to each such child, (i) procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship....

Iowa Code §§ 232.102(4)(a) & (b);(7); and (9):

4. a. Whenever possible the court should permit the child to remain at home with the child's parent, guardian, or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:
(1) The child cannot be protected from physical abuse without transfer of custody; or
(2) The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

b. In order to transfer custody of the child under this subsection, the court must make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and shall identify the reasonable efforts that have been made. The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis....

....

7. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility....

....

> 9. An agency, facility, institution, or person to whom custody of the child has been transferred pursuant to this section shall file a written report with the court at least every six months concerning the status and progress of the child. The court shall hold a periodic dispositional review hearing for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted. The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6. If the placement is extended, the court shall determine whether additional services are necessary to facilitate the return of the child to the child's home, and if the court determines such services are needed, the court shall order the provision of such services....

Iowa Code §§ 232.104(1)(b) & (c); (2)(a);(b); (c); and (d):

> 1. b. The permanency hearing may be held concurrently with a hearing under section 232.103 to review, modify, substitute, vacate, or terminate a dispositional order.
> 1.c. Reasonable notice of a permanency hearing shall be provided to the parties. A permanency hearing shall be conducted in substantial conformance with the provisions of section

232.99. During the hearing, the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court and the reasonable efforts made concerning the child. Upon completion of the hearing, the court shall enter written findings and make a determination identifying a primary permanency goal for the child. If a permanency plan is in effect at the time of the hearing, the court shall also make a determination as to whether reasonable progress is being made in achieving the permanency goal and complying with the other provisions of that permanency plan.

2. After a permanency hearing the court shall do one of the following:

a. Enter an order pursuant to section 232.102 to return the child to the child's home.

b. Enter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

c. Direct the county attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship.

d. Enter an order, pursuant to findings required by subsection 4, to do one of the following:

(1) Transfer guardianship and custody of the child to a suitable person.
(2) Transfer sole custody of the child from one parent to another parent.
(3) Transfer custody of the child to a suitable person for the purpose of long-term care....

Iowa Code §§ 232.116(1)(h) & (l):

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:
....
h. The court finds that all of the following have occurred:
(1) The child is three years of age or younger.
(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.
....
l. The court finds that all of the following have occurred:
(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's

parents for placement pursuant to section 232.102.
(2) The parent has a severe substance-related disorder and presents a danger to self or others as evidenced by prior acts.
(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

Iowa Code § 232.117(5):

5. If after a hearing the court does not order the termination of parental rights but finds that there is clear and convincing evidence that the child is a child in need of assistance, under section 232.2, subsection 6, due to the acts or omissions of one or both of the child's parents the court may adjudicate the child to be a child in need of assistance and may enter an order in accordance with the provisions of section 232.100, 232.101, 232.102, or 232.104.

STATEMENT

The pronounced statutory goal of the Iowa Code relating to proceedings which address children in need of assistance is the reunification of the parent with the child. The entire statutory scheme of Iowa Code chapter 232 is to ensure that a parent receive both the services necessary to reunify with the child *and* the time necessary to employ those services. Only after these two factors are meaningfully applied *together* to

their fullest extent may the Iowa courts legally terminate the constitutionally recognized bond between a parent and his child.

In this case, petitioner, a first-time father with a troubled past, took every step instructed by the State's Department of Human Services to reunify with his child. But he was cut off at each pass by the very State agency (DHS) which was statutorily charged to assist him in regaining custody. Visits were cancelled; and his requests for assistance and services were ignored. Even the Juvenile Court refused to respond to his pleas for assistance. Only five months after learning that he was a father, the Juvenile Court held a joint hearing on permanency and termination in order to decide whether his parental rights would be terminated. Three months later, without any consideration of the significant steps petitioner had made both before and after the consolidated hearing in achieving sobriety and in creating a suitable home for the child, the Juvenile Court terminated his parental rights.

P.S. ("the child") was born on February [redacted], 2020. Both the biological mother ("K.S." or "Mother") and petitioner, the then-putative biological father ("petitioner" or "Father"), lived in Warren County, Iowa. The child tested positive for methamphetamine at birth. Shortly after birth and before the child left the hospital, the parents consented to removal of the child from their care. Mother claimed that she last used methamphetamine two months before the child's birth; respondent Iowa Department of Human Services ("DHS" or "the State") recommended that she undergo substance-abuse and mental health evaluations and treatment.

Those evaluations led to the recommendation that Mother undergo inpatient substance-abuse treatment. She decided to pursue outpatient treatment instead and then attended appointments only sporadically; she was unsuccessfully discharged because of poor attendance. When DHS asked her to submit to drug testing, she failed to appear consistently at the testing facility claiming that she lacked transportation.

At the time of the child's birth, Father provided a negative drug screen. His paternity was initially in doubt and in the immediate aftermath of the child's birth, he refused any services offered by DHS. However, on July 15, 2020, his paternity was established and, as a first-time parent with a criminal history including substance abuse, he immediately requested services from DHS. Specifically, on July 20, 2020, Father provided written requests for placement of the child with the paternal grandmother (who was and remains a foster parent approved by the State) or, if this was not possible, regular in-person monitored visits to establish his parenting abilities and to bond with the child. He also sought daily video interactions with the child, appointment of a Court Appointed Special Advocate (CASA), provision of a Parent Partner, a written list of expectations from DHS and matriculation in a SafeCare curriculum by which he would receive weekly instruction to improve his skills in home safety, health care, and parent-child interactions.

DHS failed to respond to any of these requested services by Father with the exception of the SafeCare curriculum which Father completed. DHS cancelled nearly half of Father's scheduled visits with the child,

sometimes citing in-person restrictions occasioned by the public health emergency of the COVID-19 pandemic. DHS failed to provide alternate visitation schedules for his cancelled visits with the child. Despite Father's continued request that it do so, DHS failed to employ reasonable efforts to provide even minimal services to him.

Despite failing to offer adequate visits, DHS did, however, ask Father to submit to a drug screen. Father was five minutes late for the testing but requested a test the next day. In August of 2020, soon after his paternity was established, he voluntarily entered an intensive long-term inpatient substance-abuse treatment facility (Bridges of Iowa). Soon after, Father was able to: maintain his sobriety; create a suitable home; sever his relationship with Mother (who continued to struggle with substance abuse); actively participate in visitations with the child when DHS did not cancel same; join Recovery Court (and graduate from same); complete Dads With a Purpose; gain employment and be promoted twice; and participate in therapy. Each drug test Father provided was negative for substance abuse. Father continued to progress at Bridges of Iowa where he voluntarily lived through the end of the permanency/termination hearing in December of 2020.

In the meantime, on August 24, 2020, despite Father's emergent progress at Bridges of Iowa in achieving sobriety and accumulating his parenting skills, and even though it was failing to employ reasonable efforts to provide even minimal services to him as a parent seeking reunification with his child, the State petitioned the District Court for Madison County

(Juvenile Court Division) ("Juvenile Court") seeking to terminate the parental rights of both Father and Mother at the permanency stage.

As for Father, the State sought termination pursuant to Iowa Code §§ 232.116(h) and (l), i.e., that the child had been removed from the physical custody of Mother for at least six consecutive months of the last twelve preceding months; that Father has "a severe, chronic substance abuse problem, and presents a danger to self and others as evidenced by prior acts;" and that there is clear and convincing evidence that Father's prognosis indicates that the child "will not be able to be returned to the custody of [Father] within a reasonable time considering the child's age and need for a permanent home."

All these allegations about Father's behavior *pre-date* the establishment of his paternity on July 15, 2020; *none* of Father's progress in achieving sobriety and accumulating parental skills at Bridges of Iowa was cited; and even after the filing of its petition, DHS and the State continued to hamper Father's attempts to reunify with his child. In fact, despite Father's steady progress in treatment and his establishment of a safe meeting place for visitation, DHS delayed approving supervised visits between Father and the child until September 28, 2020 (even though the proposed supervisor was a pre-approved foster parent and the biological paternal grandparent of the child). As a result, Father had only two months of visits with the child (with half of these visits cancelled by DHS) prior to the termination hearing, a remarkable lack of reasonable efforts by DHS to provide services to a first-time parent.

The Juvenile Court first held a permanency hearing on August 27, 2020, a crucial stage in abuse/neglect proceedings where the court must decide whether Father has made sufficient progress to allow the child to return home, whether there is a path forward towards reunification between the child and the parent, or whether given the identified goals, a six-month extension should be granted Father to foster reunification. During the hearing, all parties agreed to continuing the permanency hearing until October 12, 2020, when it would be held concurrently with the termination hearing.

On October 11, 2020, Father sought a continuance of sixty days on the grounds that "[a]dditional time would allow [Father] to demonstrate he can parent [the child] and would allow the state to provide reasonable efforts." As he alleged, DHS provided none of the services he requested back on July 20, 2020, and since entering the Bridges of Iowa program in August of 2020, he continues to advance; and a 60-day continuance would therefore allow him to demonstrate his accumulating parental abilities as well as permit DHS to fulfill its statutory obligation to provide reasonable efforts and additional information toward reunifying him with his child.

The combined permanency/termination hearing was rescheduled for November 19, 2020. On November 17, 2020, Father moved to sever these two hearings. He contended that holding the permanency hearing at the same time as the termination hearing would prejudice his attempt to prove that he is eligible to reunify with the child inasmuch as the respective goals of these two hearings are dramatically inconsistent, invoke

opposing goals of reunification or termination, and call upon the Juvenile Court to reach diametrically different conclusions about the ability of Father to parent and then reunify with the child. Father claimed that this concurrent hearing deprives him of procedural or substantive due process as well as the equal protection of the laws. The Juvenile Court denied Father's motion.

The combined permanency/termination hearing took place on November 19, 2020, December 7, 2020, and on December 14, 2020 (App. 20;32). At its conclusion, Father argued with respect to the permanency issues that he has made significant progress at Bridges of Iowa and has begun to participate in Recovery Court; that he has released all his drug tests to the State; and that despite his demonstrated progress, the State has failed to employ reasonable efforts to provide the services that he requested or to allow sufficient visits with the child to promote reunification. He asked for an order changing the Court's permanency plan to reunification together with a six-month extension to allow him to show the court and parties that he can take custody of and appropriately care for his child.

As for the termination hearing, Father argued that this combined hearing is unauthorized by statute, pits markedly different factors against each other to Father's detriment, robbing him of the opportunity for the Juvenile Court to consider his progress toward parenthood unencumbered by the State's insistence that instead termination is warranted. As Father asserted, the permanency hearing considers preponderant proof in order to inform a parent what is needed in order to unify with a removed child while

allowing a six-month extension to do so. A termination proceeding, however, provides no opportunity for the court to provide extensions; the court's only focus is whether the State has adduced clear and convincing evidence to deprive Father of his right to parent his child, a decisive and conclusive pronouncement. He argued that because of these incompatible goals, the two hearings should be held at separate times and that the permanency hearing occur first.

On March 10, 2021, the Juvenile Court issued an Order addressing the issues raised by the permanency component of the hearing (App. 32-36). Adopting all of the findings of fact it made for the termination component of the hearing, see *infra*, the Juvenile Court found that the State provided sufficient services to Father and Mother but that they did not fully use the services provided (App. 33). It also found that Father "did not end his drug use or enter treatment until after the termination petition was filed" (*Id.*). It therefore denied any relief to Father in this permanency proceeding and denied his motion filed on October 11, 2020, to compel the State to use reasonable efforts in reunifying Father with the child (App. 35-36).

In its ruling addressing the termination component of the proceeding filed the same day, the Juvenile Court found that Father is a long-tine illegal drug user who quit using methamphetamine since the child's birth and until he entered treatment at Bridges of Iowa (App. 23). He has a lengthy criminal record and now lives in the home of a friend who is now in prison (*Id.*). While he has visited with the child since his paternity was established, Father last used methamphetamine on August 18, 2020; he has used this

drug for a number of years and "it appears that he is not in a position to end his use" (App. 24). According to the hearing judge, drug use has affected his ability to reason and function; he is disconnected from the needs of the child; and his actions as a parent would create an extremely dangerous situation for the child (*Id.*).

The Juvenile Court found that Father "does not appear to be serious this time" about his sobriety and has been disingenuous about releasing his drug results to DHS (*Id.*). Accordingly, it determined that the child's best interests warranted that his parental rights be terminated (App. 24-25). Moreover, it found clear and convincing evidence that the child cannot be returned to the custody of either of the child's parents "at the present time" (App. 25;28). It thereby ordered Father's parental rights be terminated for the grounds set forth in Iowa Code §§ 232.116(1)(h) and 232.116(1)(l) (App. 30).

On March 14, 2021, Father moved to reopen the record and enlarge it in order to consider his continuing performance and attendance at Recovery Court—even after the Juvenile Court terminated his parental rights—as well as all the other relevant information since the combined permanency/termination hearing concluded on December 14, 2020. On May 26, 2021, the Juvenile Court denied Father's motion in all respects while noting that "the father has made progress since the termination petition was filed and since the hearings....[but] ignored the DHS prior to the termination petition's filing." (App. 19).

Father and Mother separately appealed this disposition to the Supreme Court of Iowa which

assigned the case to the Iowa Court of Appeals(App. 2-18). A unanimous three-judge Panel rejected Father's argument that the combined permanency/termination hearing denied him procedural or substantive due process or the equal protection of the laws (App. 5-7). It concluded that Father had notice and fully participated in the dual hearings and was not denied a meaningful opportunity to be heard; that DHS provided a statutory ground for termination; and that the concurrent hearings served the compelling state interest to place the child in a permanent home as soon as possible while providing Father with a full opportunity to challenge the termination (*Id.*). It therefore found no constitutional deprivation caused by the concurrent hearing (App. 7).

The Panel also affirmed the Juvenile Court's refusal to reopen the record citing the time given Father before the combined hearing to adduce evidence of his progress toward fitness for parenthood (App. 7-8). As for the statutory grounds shown for terminating Father's parental rights, it recognized "the father's progress in substance-abuse treatment" but concluded that it came too late in the termination process "after the father ignored the DHS's offered services for months" (App. 10-11). Given his perceived substance-abuse and mental health problems, the Panel agreed with the Juvenile Court that the child could not be returned to his care (App. 11).

Finally, the Panel acknowledged that Father (as opposed to Mother) "appears to state a better case for a six-month extension" in order to show the court and parties the improvement in his accumulated parenting abilities because he was in treatment at the time of the

termination hearing, supporting his claim that additional time was warranted in order to continue his progress (App. 12). But it ruled that Father's four months of progress in substance-abuse treatment "comes too late after failing to engage in services for the first five months of the child's life" (*Id.*). In this latter respect, the Panel concluded that DHS had engaged in reasonable efforts to offer Father reunification services so that out-of-home placement could be avoided but that he failed to take full advantage of these services (App. 13-14). It accordingly affirmed the Juvenile Court's rulings in all respects (App. 14).

On February 4, 2022, the Supreme Court of Iowa denied Father's application for further review of the Iowa Court of Appeals' ruling affirming the Juvenile Court's termination of his parental rights (App. 1).

REASONS FOR GRANTING THE PETITION

The State's Proceeding Which Consolidated Both The Permanency Hearing And The Termination Hearing To Consider Petitioner's Right To Continue His Relationship With His Child Violates His Right To Procedural Or Substantive Due Process As Well As His Right To The Equal Protection Of The Laws.

A permanency hearing in Juvenile Court conducted pursuant to Iowa Code §§ 232.104(1) & (2) is to determine a path forward for the parents in child abuse/neglect cases so that the court can determine whether or not the child can be safely returned to the home. It is a fluid and evolving procedure which

requires a continually refreshed assessment of the situation existing with the parent as he addresses the cause of the out-of-home placement and seeks to achieve through work the skills and circumstances necessary to warrant reunification. The focus is to bring about a placement plan for the child with steps and timelines and to determine what will bring the parent closer to this goal; it addresses whether he is making progress since the last hearing; and, if so, whether a six-month extension authorized by§ 232.104(2)(b) is warranted in order to foster his ongoing progress toward parenthood and the permanency plan.

At the hearing, the parent has an opportunity to present his side of the story unfettered by the State's insistence that termination should instead be the only outcome. He can accumulate evidence showing his gradual but meaningful progress toward sobriety and fitness in order to make the case that he can provide a safe home for the child and that he is making reasonable progress in achieving the permanency goal. This preponderant proof of progress can also provide a defense if termination of his parental rights is in the offing; or it can be used to avoid a termination proceeding altogether if enough progress is shown toward the permanency goal so that reunification is possible.

Effective cross-examination by counsel of State witnesses might also expose at this hearing weaknesses in the State's case against the parent, e.g., whether its "reasonable efforts" to provide services to the parent, including visitations with the child, were robust enough or merely empty gestures—frustrated as they were by DHS's repeated cancellations caused by the COVID-19

pandemic or by its own intransigent refusal to acknowledge the parent's authentic attempts to rehabilitate. Testimony from the parent about his progress toward sobriety and family-building might also influence the court's decision on permanency where credibility is at issue; and the parent might seek to invoke the court's discretion to obtain additional services or visitations, to seek a continuance of six months so that the permanency goal can be achieved, or to reinstate contact with the child in order to increase the chances of reunification. The Juvenile Court possesses a host of options in this regard in order to keep the permanency plan on track; and only if the permanency plan becomes irremediably broken will the court as a last resort order the future filing of a termination petition.

A termination proceeding conducted pursuant to Iowa Code § 232.116, on the other hand, is the present execution of a petition to terminate irrevocably a person's parenting rights. It possesses none of the forward-looking, fluid characteristics of a permanency hearing. It focuses not on a parent's present and future progress toward a permanency plan but only on an excavation of past acts which led to the out-of-home placement of the child in the first place. The burden is on the State to show these past acts present clear and convincing evidence to terminate a person's constitutional right to parent his child pursuant under § 232.116.

Combining into one proceeding these two incompatible hearings with incompatible goals denies the parent the opportunity to "keep working" toward reunification because termination—*not* reunification by

way of a permanency plan—is the primary goal realistically contemplated by the consolidated proceedings. In contrast to a permanency hearing, the State's interest in termination in these concurrent proceedings becomes paramount; it "leapfrogs" any serious consideration of a permanency plan and makes termination a primary, foregone conclusion. Any analysis of DHS's "reasonable efforts" is understandably diluted since there is little incentive to provide meaningful services to a parent the State believes should not be reunited with his child in the first place.

Furthermore, since reunifying with the child is not a probable outcome of these concurrent proceedings, the parent loses his opportunity to receive any further services from DHS, to obtain a six-month extension from the court under § 232.104(2)(b) so that his progress toward parenthood can continue, to present his ongoing rehabilitation as a measure of his progress, or to seek to reinstate contact with the child to increase the chances of reunification.

Father submits that the State's practice of holding a permanency hearing under Iowa Code §§ 232.104(1) & (2) at the same time as the hearing to terminate his rights as a parent under Iowa Code § 232.116 is unauthorized by Iowa state law, at odds with recommendations by other State courts which have addressed the question, and contrary to the guidance given by the National Council of Juvenile and Family Court Judges. More important, this practice— which appears to have been recently discontinued by Iowa courts shortly after Father's appeal became final— deprived him of his federal and State rights to

procedural or substantive due process as well as his right to the equal protection of the laws.

The constitutional legitimacy of this practice is one of national significance because several other States continue to maintain this practice of consolidation as a matter of convenience for the court. The issue comes within Supreme Court Rule 10(c)'s guidance about the considerations which point toward the Court's granting a petition for certiorari, i.e., that "a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by th[e] Court, or has decided an important federal question in a way that conflicts with relevant decisions of th[e] Court."

First, Iowa Code § 232.104(1)(b) provides that "[t]he permanency hearing may be held concurrently with a hearing under section 232.103 to review, modify, substitute, vacate, or terminate a dispositional order." Because this section's plain language permits a permanency hearing to be held only in conjunction with a hearing under § 232.103, the Iowa Legislature has clearly expressed its intention that this is the *only* kind of hearing which can be concurrently held together with a permanency hearing.

Applying the canon of statutory construction *expressio unius est exclusio alterius*, i.e., the expression of one thing is the exclusion of others, the statute's language does not authorize the concurrent holding of a permanency hearing with a termination hearing. *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (canon has force when the items expressed are members of an "associated group or series" like

subsections of the same statutory scheme, justifying the inference that items not mentioned were excluded by deliberate choice rather than inadvertence). *U.S. v. Vonn*, 535 U.S. 55, 64 (2002). Lacking statutory authority to conduct these hearings simultaneously, the judgment below should have been vacated and remanded to the Juvenile Court for this reason alone.

Second, the other State courts which addressed the issue have either concluded that this practice fails to appreciate the fundamentally different nature of these proceedings or have assumed that because of this dramatic difference, a concurrent hearing addressing both permanency and termination cannot possibly provide a fair hearing for either issue and therefore must be heard separately, even by different courts. See *KC v. State (In re GC)*, 351 P.3d 236, 243-247 (Wyo. 2015) (permanency hearing conducted in juvenile court while termination hearing is a separate action filed in district court). See also *In re L.M.T.*, 752 S.E.2d 453, 462 (N.C. 2013) (Beasley, J., concurring) (findings in a termination order cannot substitute or supplement the factual findings in a permanency hearing necessary to cease reunification efforts); *State of New Mexico v. Maria C.*, 94 P.3d 236, 805-807 (N.M. App. 2004) (differences in the two separate hearings discussed in the context of applying due process safeguards to each proceeding). *Cf. Santosky v. Kramer*, 455 U.S. 745, 762-764 (1982) (State's enhanced power to shape the historical facts at the termination stage of neglect proceedings justifies a clear and convincing standard of proof).

Third, nationally recognized court guidance instructs that the factors which a court considers in these two hearings are incompatible with each other

and may not be simultaneously considered in the same proceeding. See National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (2016) available at https://www.ncjfcj.org/wpcontent/uploads/2016/05/NCJFCJ-Enhanced-Resource-Guidelines-05-2016.pdf. These national resources recognize that the purpose of a permanency hearing is to determine a path forward for the parties, including whether a termination petition may be filed in the future, whether the child can be returned to the home following the hearing, and whether a six-month extension should be granted. The focus is on "determining what will bring the [parent] closer to his or her goal" considering the progress demonstrated. Donald N. Duquette *et al.*, *Child Welfare Law and Practice* ("Juvenile Red Book") § 18.8.4, pg. 465 (3d ed. 2016).

Even when a permanency hearing eventually leads to a termination proceeding, the questions before the court there are entirely different: (1) has the State met its burden of proving the statutory elements for termination by clear and convincing evidence?; (2) have all the constitutional elements of notice and process been satisfied?; and (3) have the best interests of the child been served? *None* of these questions implicate the core focus of a permanency hearing, i.e., the identification of "a clear, permanent goal [of reunification]...along with steps and timelines to accomplish the goal." S. J. Gatowski et al., *Nat'l Council of Juvenile and Family Court Judges, Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, at 299 (2016).

Finally, the concurrent hearings deprived Father of his federal and State rights to procedural or substantive due process as well as his right to the equal protection of the laws:

Procedural Due Process.

Father's right to have his claim for reunification with his child heard and decided by the Iowa courts—to have his day in court in this abuse and neglect case—is a valuable, fundamental right entitled to due process protection. *Troxel v. Granville*, 530 U.S. 57, 65;68-69 (2000). *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). Once the Due Process Clause applies to the proceedings below, "the question remains what process is due." *Mathews v. Eldridge*, 424 U.S. 319, 333-335 (1976). The process due consists at a minimum of a reasonable opportunity to be heard "at a meaningful time," to marshal the relevant evidence in support of his claim at that meaningful time and to have a fair hearing on the proof adduced. *Id.* at 333, quoting *Armstrong v. Manzo*, 380 U.S. 545, 551-552 (1965).

When a permanency hearing shapes the facts which will determine whether a termination proceeding will eventually take place, "the meaningful time" for due process protections in the form of an unfettered right to marshal the relevant evidence in support of his claim is at the permanency hearing itself, a hearing dedicated *solely* to the issues of permanency unencumbered by the State's interest in termination. See Gupta-Kagan, J., *Filling the Due Process Donut Hole: Abuse and Neglect Cases Between Disposition and Permanency*, 10 Conn. Pub. Int. L.J. 13, 36;40;48 (2010). To combine this permanency hearing with a

termination proceeding is to deny Father a meaningful opportunity to present his case for fatherhood at a meaningful time, i.e., at the permanency hearing dedicated solely to address his permanency plan. See *Mathews v. Eldridge*, 424 U.S. at 335. The State's denial of this opportunity to the Father deprives him of his parental rights when substitute procedural safeguards of an unencumbered hearing are clearly available; and its resort to a combined hearing therefore denies him procedural due process.

While freestanding hearings addressing only a permanency plan may take additional time to complete in the usual run of cases, and while "[i]t is in the best interests of children for the court process to proceed without delay,...it is also in the best interests of children that their parents have a full and fair opportunity to resist the termination of parental rights." *In re M.D.*, 921 N.W.2d 229, 236 (Iowa 2018).

Substantive Due Process.

The essence of substantive due process is an individual's right to be free from the arbitrary action of government, regardless of the superficial fairness of the procedures employed to implement that action. *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992). *Daniels v. Williams*, 474 U.S. 327, 331 (1986). It thus serves to prevent governmental power from trenching upon fundamental liberty interests such as Father's right to the care and custody of his child "for purposes of oppression." *Daniels*, 474 U.S. at 331-332 (1986). Father submits that the State's systemic use of consolidated permanency and termination hearings in child abuse and neglect cases simply for the reason of the convenience of the court is not narrowly tailored to

serve a compelling governmental interest and it therefore violates his right to substantive due process. See *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

Equal Protection of the Laws

Father submits that the State's insistence of combining both the permanency and termination hearings into one proceeding and refusing to allow him appropriate extensions in order to demonstrate his continuing progress in achieving fitness as parent to care for his child—while at the same time allowing extensions in other proceedings on account of the public emergency caused by the COVID-19 pandemic—is unequal treatment in violation of the equal protection guarantees of the Fourteenth Amendment. He was treated differently than other persons who participated in discrete hearings which separately addressed the permanency and termination issues. He was also denied the extensions given to other litigants, including similarly situated mothers who are routinely granted at least one, if not more, extensions(s), on account of COVID-19 restrictions.

This unequal treatment by the State deprived him of his fundamental liberty interest as a parent in the care and custody of his child. Once Iowa provides a procedural framework for disposing of litigation of whatever kind within its system, those remedies must comport with the demands of the due process and equal protection clauses of the federal constitution. *Evitts v. Lucey*, 469 U.S. 387, 393 (1985). See *Ortwein v. Schwab*, 410 U.S. 656, 660 (1973). This disparate treatment — caused in part by the public health protocols incident to

the COVID-19 pandemic and imposed for the convenience of the court—was not narrowly tailored to serve a compelling governmental interest. See *In re CM*, 652 N.W.2d 204, 210 (Iowa 2002). It therefore violates Father's right to the equal protection of the laws. *Allegheny Pittsburgh Coal v. Webster County*, 488 U.S. 336, 343-344 (1989). *Kahn v. Shevin*, 416 U.S.351, 355 (1974). *Johnson v. Robison*, 415 U.S. 361, 374-375 (1974).

CONCLUSION

For the reasons identified herein, a writ of certiorari should issue to review the judgment of the Iowa Court of Appeals, to vacate and reverse that judgment and to remand the case to the District Court for Madison County (Juvenile Division) in order that petitioner be provided a renewed permanency hearing unencumbered by any termination proceeding the State may bring in the future; or provide petitioner with such further relief as is fair and just in the circumstances of this case.

Respectfully submitted,

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2/4/22

IN THE SUPREME COURT OF IOWA

No. 21–0779
Madison County No. JVJV002339
Madison County No. JVJV002360

ORDER

IN THE INTEREST OF P.S., Minor Child,

K.S., Father, Appellant.

After consideration by this court, en banc, further review of the above-captioned case is denied

So ordered

Susan Larson Christensen, Chief Justice

IN THE COURT OF APPEALS OF IOWA

No. 21-0395
No. 21-0779
Filed January 12, 2022

IN THE INTEREST OF P.S., Minor Child,

K.S., Mother, Appellant,

K.S., Father, Appellant.

Appeal from the Iowa District Court for Madison County, Kevin Parker, District Associate Judge.

The mother and father separately appeal the termination of their parental rights. AFFIRMED ON BOTH APPEALS.

Raya D. Dimitrova of Carr Law Firm, P.L.C., Des Moines for appellant mother.

Christine E. Branstad of Branstad & Olson Law Office, Des Moines for appellant father.

Thomas J. Miller, Attorney General, and Natalie Deerr, Assistant Attorney General, for appellee State.

Erica D. Parkey, Des Moines, attorney and guardian ad litem for minor child.

Considered by Mullins, P.J., and Schumacher and Ahlers, JJ.

AHLERS, Judge.

The mother and father separately appeal the termination of their parental rights to P.S., who was born in February 2020. The child tested positive for methamphetamine at birth. Shortly after birth and before the child left the hospital, the parents consented to removal of the child from their care. The child was soon adjudicated in need of assistance.

The Iowa Department of Human Services (DHS) has been involved with the mother since December 2018, when she gave birth to another child[1] who also tested positive for methamphetamine. Shortly after P.S.'s birth in February 2020, the mother claimed she last used methamphetamine "a couple months" ago, and the DHS recommended the mother undergo substance-abuse and mental-health evaluations and treatment. The mother obtained a substance-abuse evaluation, which recommended inpatient treatment. The mother enrolled in outpatient treatment instead, which she only attended sporadically. She was unsuccessfully discharged due to lack of attendance. After discharge, the DHS asked the mother to submit to a drug test. The mother failed to attend testing, claiming she lacked transportation and it would be an "inconvenience" to travel to the testing facility.

The DHS also became involved with the father in December 2018 when the older child was born. Paternity testing showed he was not the biological father of the older child, so services stopped. He acknowledges he continued to use drugs after he was excluded as the older child's father. The DHS became involved with the father again in February 2020 when P.S. was born, and the father provided a negative drug test at the time. P.S.'s paternity was initially in question, and the father largely refused the DHS services after P.S. was born. In June, a paternity test

showed the father was P.S.'s biological father, and the father began to reengage with the DHS. In July, the DHS requested the father submit to a drug screen. The father failed to attend testing. In August, the father entered a residential substance-abuse treatment facility. The father testified he last used illegal substances about two weeks before entering the residential facility. The father continued living in the residential facility through the end of the termination hearing.

The State filed a petition to terminate parental rights of both parents in August 2020. The juvenile court held a concurrent permanency and termination hearing on November 19, December 7, and December 14. The court filed its order terminating the rights of both parents in March 2021. The court issued a corresponding permanency order on the same date. The mother appealed shortly after the termination order, and the father filed post-termination motions asking the court to reopen the record and reconsider its termination order. The court denied the father's motions, and the father appealed. We address both parents' appeals in this consolidated opinion.

I. Standard of Review

We review termination-of-parental-rights proceedings de novo.[2] We give weight to the juvenile court's findings of fact, especially as to witness credibility, but we are not bound by them.[3] "We will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116 (2020). Evidence is 'clear and convincing' when there are no

'serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.'"[4]

II. The Father's Procedural Claims

Before proceeding to the merits of termination, we address the father's procedural claims.

A. Combined Hearing

The father argues the juvenile court should have granted his motion to sever the concurrent permanency and termination hearing on both statutory and constitutional grounds. As to the statutory grounds, we have already held "our statutory scheme does not bar holding a concurrent permanency and termination hearing."[5] We continue to hold nothing in the statutes or rules prohibits a concurrent permanency and termination hearing.

To the extent the father challenges the juvenile court's discretion in denying his motion to sever, a court may sever proceedings "for convenience or to avoid prejudice."[6] The court first held a permanency hearing on August 27, 2020. During the hearing, all parties—including the father—agreed to continue the permanency hearing and hold a concurrent hearing in October. The concurrent hearing aided in judicial economy and in placing the child in a permanent home as soon as possible. On the father's motion, the concurrent hearing was then continued to November. The father filed his motion to sever the hearing on November 17, two days before the beginning of the rescheduled concurrent hearing. Considering the delay in the concurrent hearing on the father's motion and his

late request to sever the hearing, we find no abuse of discretion in the court's refusal to sever the hearing.

On constitutional grounds, the father objects to the concurrent hearing on procedural due process, substantive due process, and equal protection grounds. We review these constitutional claims de novo.[7] Procedural due process entitles the father to "notice and a meaningful opportunity to be heard."[8] The father does not explain how the concurrent hearing deprived him of notice or a meaningful opportunity to be heard, as the father had notice of and fully participated in the entire concurrent hearing. Thus, we find no violation of his procedural due process rights.

Substantive due process prohibits state action that is not "narrowly tailored to serve a compelling state interest" or that "shocks the conscience or otherwise offends judicial concepts of fairness and human dignity."[9] The father asserts the concurrent hearing created "risks of hurrying, miscommunications, and failures by witnesses, parties and counsel to appropriately address testimony and arguments towards one hearing or issue versus another." While parental rights are fundamental and terminating parental rights always invokes substantive due process, substantive due process is satisfied if at least "one of the 'statutory grounds for termination . . . [is] established by clear and convincing evidence.'"[10] Despite the father's concerns, the concurrent hearing did not prevent the father from contesting the statutory grounds for termination. Again, the father fully participated in the entire concurrent hearing and, as explained below, the State proved a statutory ground for termination. Thus, we find no violation of substantive due process.

Finally, equal protection requires "that similarly-situated persons be treated alike."[11] A heightened level of scrutiny applies when government action "classifies persons in terms of their ability to exercise a fundamental right."[12] Under this highest level of scrutiny, "the State must show 'that the classification is narrowly tailored to serve a compelling government interest.'"[13] The father asserts he was treated differently from parents with separate permanency and termination proceedings. Even assuming the father's claim triggers the highest level of scrutiny, our supreme court has found "the State's interest in obtaining a permanent home for a child as soon as possible is a compelling governmental interest."[14] The concurrent hearing allowed the child to be placed in a permanent home as soon as possible while providing the father with a full opportunity to challenge termination. Thus, we find no equal protection violation. We therefore reject the father's constitutional challenges to the concurrent hearing.

B. Reopening the Record

The father argues the juvenile court should have granted his motion to reopen the record after the termination order so he could introduce evidence of his progress in substance-abuse treatment. "When a juvenile court diligently enters a termination order after a hearing, there is generally no basis to complain about a discretionary refusal of the juvenile court to reopen the record . . . ."[15] The father asserts his situation is similar to L.T., where the supreme court found an abuse of discretion in denying the parent's motion to reopen the record based on "the long delay between the original hearing and the [parent's] motion

to reopen the record, the fact that no final order had been entered, the germaneness of the matters that the [parent] sought to introduce, and the juvenile court's willingness to grant a similar motion to the State."[16] Most of the factors in L.T. are absent here. Almost twenty months passed between the end of the termination hearing and the motion to reopen in L.T., compared to only three months here.[17] While the father sought to introduce germane evidence here, he filed his motion after entry of the termination order, and the juvenile court never allowed the State to reopen the record.[18] Also, the concurrent hearing, originally scheduled for October, concluded in December, providing the father additional time to introduce evidence of his progress. We find no abuse of discretion in denying the father's motion to reopen the record.

III. Statutory Grounds for Termination.

Both parents challenge the statutory grounds for termination. The juvenile court terminated the mother's parental rights under Iowa Code section 232.116(1)(e), (g), (h), and (l). The court terminated the father's parental rights under section 232.116(1)(h) and (l). "When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court's order on any ground we find supported by the record."[19] We choose to examine termination under section 232.116(1)(h).

Under section 232.116(1)(h), the juvenile court may terminate parental rights if it finds all of the following:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96. (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Both parents challenge only the fourth element—that the child could not be returned to the parent's care at the end of the termination hearing without suffering adjudicatory harm.[20]

The mother argues the child could be returned to her care because she has maintained sobriety, is employed, and has housing and all other essentials to meet the child's needs. The mother's claims of sobriety are wholly unverified, as the mother failed to submit to drug testing and has not successfully participated in substance-abuse treatment. The mother has been vague about her sobriety throughout DHS involvement. Even though the DHS has been involved with the mother since December 2018, a DHS worker testified the mother consistently claims she has been sober for at most six months and the mother only acknowledges past substance abuse. A service provider noted that the mother did not appear sober during some interactions, and the mother showed a tendency to unexpectedly fall asleep during visits and services throughout DHS involvement. The mother inconsistently participated in substance-abuse treatment and was involuntary discharged due to lack of attendance. The mother only recently reengaged with substance-abuse treatment,

and she has still not undergone a requested mental-health evaluation. Due to ongoing concerns about the mother's mental health and substance abuse, we agree the child cannot be safely placed in her care, and the State proved a ground to terminate her parental rights under section 232.116(1)(h).[21]

Regarding the father, he testified on the final day of the hearing that he was still living at the residential treatment facility and unable to live with the child at the time. For this reason alone, the child could not be placed in his care at the time of the termination hearing, and the father's challenge fails. However, even if the father were living independently in a location where the child could also live, the risk of adjudicatory harm is too great to allow the child to be placed in his care.

As with the mother, the DHS requested the father undergo substance-abuse and mental-health evaluations and treatment shortly after the child's birth in February 2020. Despite these requests, the father largely failed to engage with services until paternity was established in July.[22] The father has never undergone a mental-health evaluation. The father has not addressed allegations he committed domestic violence.[23] The father entered substance-abuse treatment in August, around the same time the State filed the petition to terminate parental rights, but the father has not provided a full release of information for the DHS to monitor his progress.[24] Other than a test soon after the child was born, the father has never submitted to drug testing at the DHS's request. The father offered into evidence a printed summary of his drug test results for the treatment facility, which shows fourteen negatives and no positives during September and October. However, the father has not allowed the

DHS to verify the accuracy of this summary with the facility. Even assuming the summary is accurate—a dubious assumption given the father's efforts to avoid DHS access to his records—the summary does not show the type of tests administered or the substances covered by the tests. Accepting as true the father's testimony that he has maintained sobriety since August, he only claims four months of sobriety after he has admittedly struggled with substance abuse since he was a teenager. On the final day of the termination hearing, the father testified he believes he could take care of the child while under the influence, indicating he still does not understand the effects of his substance abuse. We recognize the father's progress in substance-abuse treatment, but it simply comes too late in the termination process, after the father ignored the DHS's offered services for months.[25]

Due to the father's living situation and ongoing substance-abuse and mental-health concerns, we agree the child could not be returned to his care, and the State proved a ground to terminate his parental rights under section 232.116(1)(h).

IV. Additional Time for Reunification

Both parents argue the juvenile court should have granted their requests for additional time for reunification.[26] In granting an extension, the court must "enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period."[27] However, "[w]e will not gamble with a child's future by asking [the child] to continuously wait for a stable biological parent,

particularly at such a tender age."[28] In evaluating the parents' requests for additional time, we recognize the termination hearing was originally scheduled to begin in October and concluded in December, providing the parents with an additional two months to demonstrate their progress.

The mother has ongoing mental-health and substance-abuse concerns, as described above. She has not addressed her mental-health issues. She has sporadically addressed her substance abuse and only recently reengaged with substance-abuse treatment. Therefore, we are not confident the need for removal will no longer exist after an additional six months, and we agree with the denial of the mother's request for additional time.

At first glance, the father appears to state a better case for a six-month extension. He was in treatment at the time of the termination hearing, supporting his claim that some additional time is warranted. However, after a deeper look, we reject the father's claim as well. Like the mother, the father has ongoing mental-health and substance-abuse concerns. As explained above, the father's four months of progress in substance-abuse treatment comes too late after failing to engage in services for the first five months of the child's life. We also take into account that the father has been at least wily, if not downright obstructive, in his efforts to keep the DHS from having full access to his substance-abuse treatment details. Considering the child's need for permanency and the father's delay in seeking treatment for his long-standing substance-abuse issues, we are not confident the need for removal will no longer exist after an additional six months. So, we agree with the denial of the father's request for additional time.

V. Reasonable Efforts

For his final issue, the father argues the juvenile court should have ordered the DHS to provide him with additional reunification services as part of his challenge to the DHS's obligation to make reasonable efforts.[29] The father filed a request for services right after paternity was established. The father filed a motion for reasonable efforts about three months later, which was before the termination hearing. The motion renewed his earlier request for services. The court denied his motion for reasonable efforts at the same time it ordered the termination of his parental rights.

The DHS must "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child."[30] This "reasonable efforts requirement is not viewed as a strict substantive requirement of termination. Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts."[31] "The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent."[32]

The DHS offered numerous services to the father, including a child protective assessment; flex funds; parenting curriculum; visitation; mental-health evaluation and treatment; and substance-abuse evaluation and treatment. As explained above, the father failed to take full advantage of these offered services.[33] Furthermore, the DHS provided some of the services the father requested in his initial request when he reengaged with the DHS, including visitation and the parenting curriculum. The father particularly

complains about the frequency of his visitation with the child, but the DHS worker testified the father often refused visitation before paternity was established and his treatment facility prevented him from attending visitation during the orientation phase. Considering all of the services provided to the father and his failure to take full advantage of those services, we find reasonable efforts were made to avoid out-of-home placement, but placement with the father could not occur despite those reasonable efforts. The failure to provide additional services does not prevent termination of the father's rights.

VI. Conclusion

Due to ongoing concerns about the parents' mental health and substance abuse, we find the State proved a statutory ground for termination, and we reject their requests for an additional six months for reunification. We also reject the father's statutory and constitutional objections to holding concurrent permanency and termination proceedings, find no abuse of discretion in denying the father's motion to reopen the record, and conclude reasonable efforts were made to avoid out-of-home placement. AFFIRMED ON BOTH APPEALS.

Footnotes

1The rights of both parents of this older child were separately terminated in January 2021. The father of P.S. is not the father of the older child. Neither parent of the older child appealed the termination.
2 In re A.B., 957 N.W.2d 280, 293 (Iowa 2021).
3 Id.

4 In re D.W., 791 N.W.2d 703, 706 (Iowa 2010) (quoting In re C.B., 611 N.W.2d 489, 492 (Iowa 2000)).
5 In re H.V., No. 15-1481, 2015 WL 6507559, at *1 (Iowa Ct. App. Oct. 28, 2015); accord Iowa R. Civ. P. 1.913 (allowing the court to consolidate separate actions involving "common questions of law or fact," unless a party shows prejudice).
6 Iowa R. Civ. P. 1.914; accord Handley v. Farm Bureau Mut. Ins. Co., 467 N.W.2d 247, 249 (Iowa 1991) (reviewing a ruling on a motion to sever for abuse of discretion).
7In re C.M., 652 N.W.2d 204, 209 (Iowa 2002).
8 In re K.M., 653 N.W.2d 602, 607 (Iowa 2002).
9 Id.
10Id. at 608 (alterations in original) (quoting In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990)).
11 C.M., 652 N.W.2d at 210 (quoting Bowers v. Polk Cnty. Bd. of Supervisors, 638 N.W.2d 688, 689 (Iowa 2002)).
12 Id. (quoting In re Det. Of Williams, 628 N.W.2d 447, 452 (Iowa 2001)).
13 Id. (quoting Williams, 628 N.W.2d at 452).
14Id.
15 In re L.T., 924 N.W.2d 521, 526 (Iowa 2019).
16 Id. at 526–27.
17 See id.
18See id.
19 In re A.B., 815 N.W.2d 764, 774 (Iowa 2012).
20See D.W., 791 N.W.2d at 707 (interpreting the statutory language "at the present time" to mean "at the time of the termination hearing"); In re M.M., 483 N.W.2d 812, 814 (Iowa 1992) ("[A] child cannot be returned to the custody of the child's parent under section 232.102 if by doing so the child would be

exposed to any harm amounting to a new child in need of assistance adjudication.").

21See In re D.H., No. 18-1552, 2019 WL 156668, at *2 (Iowa Ct. App. Jan. 9, 2019) (collecting cases and finding failure to meaningfully address mental-health issues to be a valid basis for terminating parental rights); A.B., 815 N.W.2d at 776 ("We have long recognized that an unresolved, severe, and chronic drug addiction can render a parent unfit to raise children.").

22 Given the father's continued involvement with the mother, his knowledge of her pregnancy, his belief that he was the father, his knowledge of the child's birth, and the offering of services to him before paternity was established, we consider the father's efforts before paternity was formally established. See In re T.O., No. 16-1963, 2017 WL 710560, at *2 (Iowa Ct. App. Feb. 22, 2017) (considering actions by the father prior to paternity being established when the father was still involved with the mother, knew she was pregnant, suspected he was the father, and was offered services).

23 See In re J.R., No. 17-0556, 2017 WL 2684405, at *3 (Iowa Ct. App. June 21, 2017) ("The threat to children posed by domestic violence in their home may serve as the basis for terminating parental rights.").

24There was disagreement during the termination hearing as to whether the father provided a release so the DHS could monitor his progress at the substance-abuse treatment facility. Despite the father's testimony that he submitted releases to the facility, the DHS worker testified the facility said the father had not authorized the release of his information. The father submitted as evidence copies of two releases he claims he provided to the facility. Both of these documents only allow a partial release of information to the DHS, most notably refusing to release test results to the

DHS. Even if we assume the father provided these releases to the facility and the facility erroneously declined to share some of the father's information, the father still refused to allow the DHS to fully monitor his progress in treatment.

25See C.B., 611 N.W.2d at 495 ("Time is a critical element. A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.").

26 See Iowa Code §§ 232.117(5) (permitting the court to enter a permanency order pursuant to section 232.104 if the court decides to not terminate parental rights); see also id. § 232.104(2)(b) (establishing a permanency option to authorize a six-month extension of time if the court determines "the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period").

27 Id. § 232.104(2)(b).

28 In re D.S., 806 N.W.2d 458, 474 (Iowa Ct. App. 2011).

29Within a heading in her petition to us, the mother also mentions she should have been provided additional services. However, she makes no argument on a reasonable-efforts issue. See Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). Also, it does not appear the mother requested additional services or otherwise challenged the DHS's efforts prior to the termination hearing. See C.B., 611 N.W.2d at 493–94 ("We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made."). For these reasons, the mother has not properly presented a reasonable-efforts claim on appeal. Even if the mother did properly raise a reasonable-efforts challenge, we

would reject her challenge for the same reasons we reject the father's challenge.

30 Iowa Code § 232.102(7).

31 C.B., 611 N.W.2d at 493.

32 Id.

33See In re C.P., No. 2018 WL 6131242, at *3 (Iowa Ct. App. Nov. 21, 2018) (finding a parent's "failure to use the services provided defeats [a] reasonable-efforts claim").

5/26/21

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY (Juvenile Division)

CASE NOS.: JVJV002339, JVJV002360

IN THE INTEREST OF: [redacted], A CHILD.

ORDER

Hearing was held on March 25, 2021, on the father's Motion to Reopen the Record and Motion to Enlarge, Amend and Reconsider filed March 14, 2021, March 25, 2021 and May 10, 2021.

The Court notes that the father has made progress since the termination petition was filed and since the hearings as to permanency and termination were held. This Court notes that the Father ignored the DHS prior to the termination petition's filing. DHS offered services, but their service plan was ignored by the father. It was in [redacted] best interest that termination occurred.

This Court finds that the case: In the Interest of S.L. 957 N.W. 2d 14 (nonpublished) controls in this matter.

ORDER

The Court denies Father's Motion to Reopen the Record and Motion to Enlarge, Amend and Reconsider filed March 14, March 25, and May 10, 2021.

So ordered
Kevin Parker, DAJ
5th Judicial District of Iowa

3/10/21

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY (Juvenile Division)

CASE NO.: JVJV002360

IN THE INTEREST OF: [redacted], A CHILD.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came before the Court on November 19, December 7 and December 14, 2020, for Termination Hearing held pursuant to Iowa Code Section 232.117 to determine whether the parent-child relationship now existing between the child in interest and the child's parents should be terminated. Present for the hearing were the following:

Erica Parkey, the child's guardian ad litem and attorney;
Andrea Lovig, Assistant Madison County Attorney;
Julie Allen, Department of Human Services;
Kelsie Spears, Child's mother;
Raya Dimitrova, Mother's attorney;
Kirk Simmons, Child's father;
Christine Branstad, Father's attorney.

The child in interest was not present due to her young age.

Proceedings were reported by Tonya Kain, Certified Shorthand Reporter. Testimony was given by

Kelsie Spears, Kirk Simmons, Kylie Ripperger and Julie Allen. Offered and admitted into evidence were State's Exhibits 1 - 3, 17 – 21, 29 and 30; father's exhibits A – N(no letter M) Judicial notice was taken of Madison County Case No. JVJV002339, and all cases listed in State's motion – Judicial Notice filed October 8, 2020.

Pursuant to Iowa Code Section 602.710, the Court makes the following:

FINDINGS OF FACT

1. Notice of this Hearing and a copy of the Petition were served upon all necessary parties.
2. The child was born on February [redacted], 2020.
3. Kelsie Spears is the biological mother of the child in interest, and she resides in Warren County, Iowa.
4. The biological father of the child in interest is Kirk Simmons, and he resides in Warren County, Iowa.
5. Petitioner is the State of Iowa.
6. On August 24, 2020, the State petitioned this Court, pursuant to Iowa Code Section 232.116, for termination of the parental rights of the parents. Further, that said Petition is in the form required by Iowa Code Section 232.111, contains information and statements, and was verified in accordance with the requirements of said Code Section.
7. It is shown by acceptance or proof of service, entries of appearance, and proof of mailing and/or publication that all necessary parties have been given notice of the time, place, and purpose of this

Hearing in accordance with the requirements of Iowa Code Section 232.112 and have been fully advised unless they appear and defend at such time and place, the parental rights of the child's parents may be terminated.

8. By Order entered June 26, 2020, in JVJV002339, the child in interest was adjudicated to be a child in need of assistance as defined in Iowa Code Section 232.2(6)(C)(2) and 232.2(6)(o), by reason that the parents failed to exercise care in supervising the child and substance abuse issues.
9. By Order entered June 26, 2020, placement with Alicia Weithers, under DHS supervision, was appropriate.
10. The case plan adopted at the Dispositional Hearing required the following changes to allow the child to safely return home: Child Protective Assessment, DHS case management services, paternity testing, flex funds, parenting curriculum, supervised interactions, mental health evaluations, ongoing mental health services, substance abuse evaluations and treatment, and FSRP(FCS) services.
11. The Court adopts the facts stated in paragraph 5 of the State's Termination Petition filed August 24, 2020.
12. Mother has been involved in visits, parenting classes and substance abuse evaluations. Recommendation was for inpatient treatment, but Kelsie has failed to participate in the same.
13. Parents are currently residing in a home provided to them by Ernest Martens. Ernest is currently in prison.The parents are repairing the home, but the work is slow. The home is not appropriate for a young child like [redacted].

14. Mother has a number of past criminal charges. The Court has taken judicial notice of the same.
15. Mother has another child ([redacted]); Kelsie's rights as parent have been terminated. (2020) Mother had another child terminated in 2014.
16. Mother has not participated fully in visitation. She has had transportation problems. Mother began Safe Care parenting classes just prior to the termination hearing.
17. Mother was using with [redacted] and was recommended to participate in inpatient treatment. Mother has failed to participate. Mother continued to use after [redacted] birth. Mother testified that she was not using at [redacted] birth, but [redacted] tested positive for methamphetamine at her birth.
18. Mother failed to participate in drug screens as requested. Mother testified that she used with the father. She is a long-time meth user. In her twenty-eight years she used eight of those years.
19. Father is a long-time illegal drug user. He quit in November of 2020 when he entered treatment. He used methamphetamine since [redacted] birth and until he entered treatment at Bridges.
20. Father has a lengthy criminal history and has been incarcerated for drug offenses. The home that he is currently residing in is owned by an Ernest Martens who is in prison.
21. Father has been involved in domestic abuse issues with Kelsie Spears, the mother of [redacted]. 22. Father has participated in visits with [redacted], since paternity was established. Father has driven to visits knowing that his license to operate a motor vehicle is barred. He received three DWB charges in six weeks in 2020.

23. Father failed to sign a release for Bridges in order for DHS to receive information from the program.
24. Father last used methamphetamine on August 18, 2020. He has used for a number of years and it appears he is not in a position to end his use. He used after [redacted] birth and during the pendency of this matter.
25. Father had dirty UAs during the time he was involved in [redacted] case and since the beginning of [redacted] matter.
26. The use of methamphetamine and other drugs has effected father's ability to reason and function. He testified that he can parent [redacted] while he is "high." The father has an extreme disconnect from reality and the needs required by a young child. His actions as a parent would create an extremely dangerous situation for [redacted].
27. Both parents have struggled to participate in visits. The parents had difficulties in travelling to visits (license and transportation). The child was brought to the parents, but visits were a struggle for the parents (home environment, abilities to parent, disengagement).
28. Father has used for 30 years. He does not appear to be serious this time. He has been playing games with DHS (releases not signed).
29. Father has been with Kelsie for four years. He was a part of [redacted] and Kelsie's lives before [redacted] was born. Drugs were rampant in their lives, which caused termination of Kelsie's parental rights to [redacted]. Kirk does not appear to be serious about his sobriety.

30. It is in [redacted] best interest that the parental rights of Kelsie Spears and Kirk Simmons be terminated.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter as provided in Division IV of Iowa Code Chapter 232.
2. The burden of proof is upon the Petitioner by clear and convincing evidence.
3. [redacted], the child in interest, is three years of age or younger, being born February [redacted], 2020. An Order was entered adjudicating the child in interest to be a child in need of assistance pursuant to Iowa Code Section 232.96. An Order was entered which removed physical custody of the child in interest from the child's parents for the last six months. There exists clear and convincing evidence that the child in interest cannot be returned to the custody of the child's parents as provided in Iowa Code Section 232.102 at the present time.
4. A child cannot be returned to the custody of the parent pursuant to Section 232.102 when any of the grounds for adjudicating the child a child in need of assistance as set forth in Section 232.2(6) is proven. In Interest of B.K.J., Jr., 483 N.W.2d 608 (Iowa App. 1992). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the child's initial removal from the home. In Interest of M.M., 483 N.W.2d 812 (Iowa 1992).

5. There exists clear and convincing evidence that to return the child to the parents' custody would subject the child to adjudicatory harm as defined in Iowa Code Section 232.2(6), to wit:

a. whose parent, guardian, custodian, or other member of the household in which the child resides has physically abused or neglected the child or is imminently likely to abuse or neglect the child;

b. who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

(1) mental injury caused by the acts of the child's parent, guardian, custody; or (2) the failure of the child's parent, guardian, custody, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

6. The best interest of the child is the primary concern, both long-range and immediate. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981); In Interest of T.A.L., 505 N.W.2d 480, 482 (Iowa 1993); In Interest of B.M., 532 N.W.2d 504 (Iowa App. 1995).

7. The State, as parens patriae, has the duty to make sure that every child within its border receives appropriate care and treatment and must intercede when a parent fails to provide it. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981); In Interest of J.W.D., 456 N.W.2d 214, 217 (Iowa 1990); In Interest of C.C., 538 N.W.2d 664 (Iowa App. 1995).

8. Our statutory termination provisions are preventative as well as remedial. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981); In

Interest of T.A.L., 505 N.W.2d 480, 483 (Iowa 1993); In Interest of T.C., 522 N.W.2d 106 (Iowa App. 1994).

9. A parent's past behavior is an important factor in determining what the future holds for a child if returned to the parent's care and custody. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981); In Interest of L.L., 459 N.W.2d 489, 493-494 (Iowa 1990); In Interest of T.T., 541 N.W.2d 552 (Iowa App. 1995).
10. While patience is allowed parents to remedy their deficiencies, that time must be limited because the delay may translate into intolerable hardship for the children. In Interest of A.C., 415 N.W.2d 609, 613-614 (Iowa 1987); In Interest of E.B.L., 501 N.W.2d 547 (Iowa 1993); In Interest of C.D., 524 N.W.2d 432, 435 (Iowa App. 1994).
11. Although there exists a strong parental interest in the integrity of the family, it is not absolute. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981); In Interest of M.M., 483 N.W.2d 812, 814 (Iowa 1992); In Interest of T.C., 522 N.W.2d 106, 108 (Iowa App. 1994).
12. Before any meaningful change can take place, a parent must acknowledge and recognize that abuse occurred. In Interest of H.R.K., 433 N.W.2d 46, 50- (Iowa App. 1988); In Interest of T.J.O., 527 N.W.2d 417, 421 (Iowa App. 1994).
13. Parental responsibilities include more than subjectively maintaining an interest in a child, it requires affirmative parenting to the extent it is practical and feasible in the circumstances. In Interest of Goettsche, 311 N.W.2D 104, 106 (Iowa 1981); In Interest of D.M., 516 N.W.2d 888,

891 (Iowa 1994); In Interest of R.L.F., 437 N.W.2d 599, 601-602 (Iowa App. 1989).

14. Termination is preferred over guardianship. In Interest of K.J. and H.H., 852 N.W.2d 21, 2014 WL 1714952 (Iowa App.).
15. What constitutes reasonable reunification services varies based upon the requirements of each individual case. In making reasonable efforts, the State need not search for unavailable services. This is especially true where the parent presents the awesome challenge of getting treatment for a deficit the parent claims they do not have. A dialogue between the parent and Department may help the parent comply with the case permanency plan; however, if a parent is not satisfied with the Department's response to a request for services, the parent must come to the Court and present this challenge. Voicing complaints about the adequacy of services to a social worker is not sufficient. A parent must inform the Juvenile Court of a challenge to the sufficiency of reunification services. In re C.H., 652 N.W.2d 144 (Iowa 2002).
16. Facts sufficient to establish the grounds for termination of the parental rights of the parents as to the child in interest have been established by clear and convincing evidence.
17. Termination of parental rights is in the best interests of the child in interest. In making that determination, the Court has given primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and

needs of the child. The consideration has also included the following:

a. Whether the parent's ability to provide the needs of the child are affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.

b. For a child who has been placed in foster family care by a Court or has been voluntarily placed in foster family care by a parent or by another person, 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. In considering integration into a foster family, the Court has reviewed the following:

(1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.

(2) The reasonable preference of the child, if the Court determines that the child has sufficient capacity to express a reasonable preference.

c. The relevant testimony or written statement that a foster parent, relative, or other individual with whom the child has been placed for preadoptive care or other care has a right to provide to the Court as provided in Iowa Code Section 232.116(2).

18. There has been no clear and convincing evidence presented to show that termination should not occur due to the existence of one of the following exceptions provided in Iowa Code Section 232.116(3), to wit: a) A relative has legal custody of the child. b) The child is over ten years of age

and objects to the termination. c) There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship. d) It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child. e) The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

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

1. The Petition filed August 24, 2020, asking that the parental rights of Kelsie Spears be terminated as biological mother of the child in interest is granted upon the grounds set forth in Iowa Code Section 232.116(1) (e) (g) (h) and (l).
2. The Petition filed August 24, 2020, asking that the parental rights of Kirk Simmons be terminated as the biological father of the child in interest is granted up the grounds set forth in Iowa Code Section 232.116(1) (h) and (l).
3. The Department of Human Services is appointed as custodian and guardian of the child herein.
4. Erica Parkey shall continue to act as Guardian ad Litem of the child until such time as this Court shall direct.

5. Review Hearing is scheduled for August 26, 2021 at 9:30 a.m

NOTICE is given that an appeal by an aggrieved party from this Order must be taken pursuant to Iowa Rule of Appellate Procedure 6.101(1)(a), the Notice of Appeal must be filed within fifteen days of entry of this Order, and a Petition on Appeal must be filed within fifteen days thereafter.

Kevin Parker, DAJ
5th Judicial District of Iowa

3/10/21

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY (Juvenile Division)

CASE NO.: JVJV002339

IN THE INTEREST OF: [redacted], A CHILD.

ORDER

This matter came before the Court on November 19, December 7 and December 14, 2020, for a Hearing held to determine whether the father's application for reasonable efforts filed October 11, 2020 should be granted. Present for the hearing were the following:

Andrea Lovig, Assistant Madison County Attorney;
Julie Allen, Department of Human Services;
Kelsie Spears, Child's mother;
Raya Dimitrova, Mother's attorney;
Kirk Simmons, Child's father;
Christine Branstad, Father's attorney.
Erica Parkey, the child's guardian ad litem and attorney;

The proceedings were reported. Father's exhibits A –L and N were offered and admitted into evidence. Testimony was given by Kelsie Spears, Julie Allen, Kirk Simmons and Kylie Ripperger.

Pursuant to Iowa Code Section 602.7103, the Court makes the following

FINDINGS OF FACT

1. Notice of this Hearing was given to all parties.
2. The child in interest was adjudicated to be a Child in need of assistance as defined in Iowa Code Sections 232.2(6)(c)(2) and 232.2(6)(o) by Court Order entered June 26, 2020.
3. The Department provided services for the child and parents, but services were not fully utilized.
4. The parents have not requested additional services of this court prior to the permanency hearing.
5. The Court has considered the following in this matter: relevance of services, adequacy of services, coordination of services, accessibility of services, and diligent efforts. There is a serious risk of harm to the child if she is returned to her parents. Additional services would not adequately protect the welfare of the child. Further services would not assist in reuniting the child with her parents.
6. The services offered to the parents have not assisted the parents in parenting of their child, since the parents have failed to take advantage of the services provided.
7. The father was served with the petition on March 8, 2020.. The father did not end his drug use or enter treatment until after the termination petition was filed.
8. The court adopts the findings in JVJV002360' paragraphs 1-30 in this matter.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter under Division III of Iowa Code Chapter 232.
2. The child in interest shall continue to be adjudicated as a child in need of assistance as defined in Iowa Code Chapter 232.
3. The Department has an obligation to make reasonable efforts toward reunification, but a parent has an obligation to demand other, different, or additional services prior to a permanency or termination hearing. In Re: S. R., 600 N.W.2d 63 (Iowa App. 1999).
4. The State has the duty to see every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. In Re: I. L. G. R., 433 N.W.2d 681, 689 (Iowa 1988). In circumstances such as those before us, we consider what the future likely holds for the children if they are returned. Insight for that determination may be gained from evidence of a parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. In Re: L. L., 459 N.W.2d 489, 493 (Iowa 1990); In Re: Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Case history records are entitled to much probative force when a parent's record is being examined. In Re: S. N., 500 N.W.2d 32, 34 (Iowa 1993), as cited In the Interest of A. A. G., 708 N.W.2d 85 (Iowa Court of Appeals 2005).
5. What constitutes reasonable reunification services varies based upon the requirements of

each individual case. In making reasonable efforts, the State need not search for unavailable services. This is especially true where the parent presents the awesome challenge of getting treatment for a deficit the parent claims they do not have. A dialogue between the parent and the Department may help the parent comply with the case permanency plan; however, if a parent is not satisfied with the Department's response to a request for services, the parent must come to court and present this challenge. Voicing complaints about the adequacy of services to a social worker is not sufficient. A parent must inform the juvenile court of a challenge to the sufficiency of reunification services. In Re: C. H., 652 N.W.2d 144 (Iowa 2002).

6. Pursuant to Iowa Code Section 232.102(7) if the court orders the transfer of custody to a parent who does not have physical care of the child, other relative, or other suitable person, the court may direct the department or other agency to provide services to the child's parent .... Services are not mandatory.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

The motion for reasonable efforts filed by the father on October 11, 2020, is denied.

NOTICE is given that an appeal by an aggrieved party from this Order must be taken pursuant to Iowa Rule of Appellate Procedure 6.5(2), the notice of appeal must be filed within 15 days of entry of this Order, and a petition on appeal must be filed within 15 days thereafter.

Kevin Parker, DAJ
5th Judicial District of Iowa