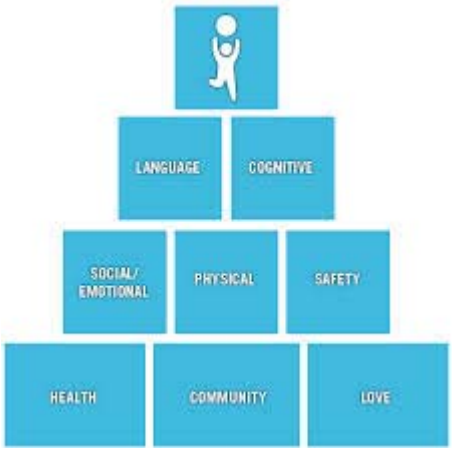
Sponsored by The Iowa State Bar Association's Family Law and Juvenile Law Section

Juvenile Law Seminar

Case Law Update

8:30 a.m.-9:30 a.m.



Presented by
Prof. Jerry Foxhoven
Drake Legal Clinic
2400 University Avenue
Des Moines, IA 50311
Phone: 515-271-2073

Friday, May 1, 2015

2015 Juvenile Law Update

Jerry Foxhoven, Executive Director, Drake Legal Clinic
Drake University Law School

A. Reasonable Efforts:

A Parent's Imprisonment Can Diminish the Amount of Services Available to be Offered: *In re:* W.E. *(Iowa Court of Appeals, June 11, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent's imprisonment may result in his unavailability to take advantage of services offered to prevent termination:

> Ollie also argues he should have been provided more time because the evidence showed he "was turning his life around." There is evidence that Ollie was experiencing success while living at a shelter upon his release from jail. Ollie's limited, positive steps toward rehabilitation do not cure or eliminate his past conduct. . . While the father was not able to use many of the services because he was in custody pending the resolution of the domestic violence charge, he was required to demand other, different, or additional services prior to a permanency or termination hearing that could have been provided to him. . . While those services may have been too little too late, it does not change the fact that Ollie had the obligation to demand other, different, or additional services and failed to do so. *See In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000) ("The only service DHS was able to offer [the father] during his incarceration was supervised visitation. [He] cannot fault DHS for being unable to provide him additional services when his own actions presented him from taking advantage of them.").

Failure to Exercise Visitation and Request Services can Support TPR: *In re: I.L.*, *(Iowa Court of Appeals, September 17, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a father's failure to exercise visitation or request other services supported TPR:

> In our de novo review of the record, we conclude Chris did not take advantage of the interactions with his daughter offered by the DHS and did not ask for more or different services during the CINA case. Chris needed to request additional services to advance a reasonable efforts claim on appeal. *(Citations omitted).* From January 2012 to December 2013, Chris made no contact with DHS despite being represented by counsel and aware of the ongoing CINA proceedings. Because Chris was not in contact with the DHS or participating in

> visitation, the DHS was unable to recommend or provide additional services. The father's inability to assume care of I.L. at the time of the termination hearing is due to his indifference, or at least inaction, and not a lack of reasonable effort by the DHS . . . This record does not reveal a close relationship between I.L. and her father. In fact, Chris has been absent for four of seven years—a majority of her life time. The juvenile court found Chris had "no bond" with I.L. and opined "the parent-child relationship cannot be maintained where there exists only a remote possibility . . . Chris will become [a] consistent parent[ ] sometime in the unknown future." Like the juvenile court, we conclude the father's long absences from I.L.'s life cast doubt on his ability to be a stable parent for her in the long term.

Reasonable Efforts Required Even for Incarcerated Parents: *In re: J*.H., *(Iowa Court of Appeals, September 17, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent's incarceration does not remove the duty of DHS to make reasonable efforts:

> On our de novo review, we are less sanguine about the department's reunification efforts.
>
> The department social worker overseeing the case admitted she did nothing to facilitate reunification while the father was incarcerated. Her only reason for declining to afford services during these periods was that the agency was not requested to do so.
>
> The department's reasonable efforts obligation is not triggered by a request. Although a parent is required to seek new and different services if the original services are deemed inadequate, the department's duty to work towards reunification of parent and child begins at the moment of removal and continues through termination, unless statutorily waived. *(Citations omitted).* While incarceration may render the provision of services more difficult, it does not absolve the department of the obligation to make reasonable reunification efforts. *(Citations omitted).* Notably, the obligation was a substantive requirement of both statutory grounds on which the district court relied in terminating the father's parental rights. *(Citations omitted).* For these reasons, the department could and should have tried to address the concerns that led to the removal of the child, even when the father was behind bars.

> While the department shirked its responsibilities to the father during his periods of incarceration, we nonetheless conclude the agency minimally satisfied its statutory mandate by paying for a psychosocial evaluation and by facilitating the father's participation in a drug treatment program.

Father Cannot Complain with a Criminal No-Contact Order Preventing Visitation: *In re: F.K., (Iowa Court of Appeals, January 28, 2015)*: In this appeal of an order granting a Termination of Parental Rights (TPR) on a father, the Iowa Court of Appeals affirmed the TPR, holding that the fact that a criminal no-contact order prevented the father from demonstrating his ability to parent does not prohibit a TPR:

> We recognize the father was unable to test his progress towards reunification because of the no-contact order. However, the mother had every right to seek an extension of the order and the criminal court had every right to extend it. *See* Iowa Code § 664A.8 (authorizing State or victim to file application for extension of no-contact order). The department was obligated to follow the order. *See* Iowa Code § 664A.3(4) (stating an order "requiring the defendant to have no contact with the alleged victim's children shall prevail over any existing order which may be in conflict with the no-contact order."). Accordingly, the department did not violate its reasonable efforts mandate by declining to facilitate visits between father and child. *(Citation Omitted)*
>
> Nor was a juvenile court order granting the district court concurrent jurisdiction required as a prerequisite to the district court's extension of the no-contact order. While a party to a juvenile court action must obtain permission to concurrently litigate "custody, guardianship, or placement of a child," no mention is made of criminal proceedings. *See* Iowa Code § 232.3(1). The no-contact order was issued in a criminal proceeding.

Reasonable Efforts Complaints Must be Raised Before the TPR Hearing: *In re: T.C. and J.C., (Iowa Court of Appeals, February 11, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the father, the Iowa Court of Appeals affirmed the TPR, holding that a parent who complains about the state's failure to provide reasonable efforts must make that complaint <u>prior to</u> the TPR hearing:

> The father filed a post-trial motion seeking a new trial due to the court's failure to allow him to present evidence that the State failed to make reasonable efforts during the case. Although the State has an obligation to make reasonable efforts toward reunifying the parent and child, the parent has the obligation to demand different or additional services the parent may require *prior* to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). The father does not cite any instance in the record prior to the termination hearing in which he made such a demand; therefore, he failed to preserve the issue for hearing before the juvenile court. *See S.R.*, 600 N.W.2d at 65. The juvenile court did not abuse its discretion in denying the motion for new trial.

B. Placement Issues:

The Parent from Whom the Child Was Removed: *In re: M.P. and C.P. (Iowa Court of Appeals, November 26, 2014)*: In this appeal of a permanency order in a Child-in-Need-of-Assistance (CINA) case placing the child with the mother rather than return to father, the Iowa Court of Appeals reversed the permanency ruling, holding that a parent from whom the child was removed is the proper parent for return/placement:

> Relevant statutory text supports the conclusion the child's "home" is the home from which he was removed. Iowa Code sections 232.95(2) and 232.96(10) provide the "child's home" is the home in which the child resided at the time or removal. Section 232.104(2)(a) provides that the court shall "return" the child to the child's home. From this we can infer that the child had to be removed from the "home" to be "returned" to the "home." Here, the removal order removed B.N. from Shane's home. The fact that B.N. was temporarily residing with Abbey while Shane completed treatment does not change our conclusion. Shane consented to the placement at the request of IDHS. Further, the temporary removal order identified Shane's residence as the child's "home." . . . Based on our conclusion that Iowa Code section 232.104(2)(a) authorizes only the return of the child to the home from which the child was legally removed, the court erred in entering a permanency order pursuant to that particular section "returning" the child to the mother's home, as that was not an option available to the

> court. . . Accordingly, we reverse the permanency order placing the child with the mother pursuant to section 232.104(2)(a).

Return Home of Some But Not All Children: *In re: A.G., O.S., and S.S., (Iowa Court of Appeals, April 22, 2015)*: In this appeal of dispositional and dispositional review orders, the Iowa Court of Appeals reversed the trial court's order leaving one child in out-of-home placement, holding that the out-of-home placement was not supported by the evidence:

> Where, as here, IDHS recommended and the juvenile court found that two other children of similar age could be safely returned to the parents, in the absence of any distinguishing factor regarding the third child, we must conclude that the third child could also be returned to the parents.

C. Abandonment:

Maintaining Meaningful Contact: *In re: S.B., M.N., and S.N., (Iowa Court of Appeals, October 15, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent has an affirmative duty to maintain meaningful contact with the child in order to prevent TPR:

> First, there is clear and convincing evidence the parents have not maintained significant and meaningful contact with the child. Significant and meaningful contact is an affirmative duty that requires "a genuine effort to complete the responsibilities prescribed in the case permanency plan." Iowa Code § 232.116(1)(e)(3). The parents' continued substance abuse and occasional refusal to submit to drug screenings is uncontroverted and belies any genuine effort to adhere to their permanency plans. The parents' efforts to "maintain communication" and "a place of importance in the child's life" have been inconsistent and ineffective. *Id.* There is therefore clear and convincing evidence to satisfy the requirements of section 232.116(1)(e).

Maintaining Significant and Meaningful Contact: *In re: H.C. and K.C. (Iowa Court of Appeals, April 22, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the mother, the Iowa Court of Appeals reversed the TPR,

holding that the parent had not maintained significant and meaningful contact with the child:

> With the mother's inconsistent attendance at visitations, continued drug use, and inability to follow the requirements of the case permanency plan, we find clear and convincing evidence demonstrates the mother has not maintained significant and meaningful contact with her children.

D. Domestic Abuse:

Domestic Abuse Supports a CINA Adjudication: *In re: K.S.-T (Iowa Court of Appeals, November 13, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the presence of domestic violence supports a Child-in-Need-of Assistance (CINA) adjudication:

> Domestic violence also is a harm that would justify adjudication of the child as a child in need of assistance. *Citation Omitted.*

Minimization of Domestic Abuse Supports TPR: *In re: L.A., R.A., and M.A. (Iowa Court of Appeals, November 26, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the mother's minimization of domestic violence demonstrates her inability to make the necessary lifestyle changes to provide a safe environment for her children:

> The biggest problem was Nicole's minimization, if not outright denial, of the domestic violence in the home and its impact on her ability to safely parent her children. . . Nicole's testimony revealed a fundamental misunderstanding of the concept of intimate violence: her definition of domestic abuse was "when a man or a woman beats up on each other to a point where sometimes it ends up in the hospital." Later in her testimony, she acknowledged someone being hit and receiving a bruise could be called domestic abuse but insisted she bruised easily. Nicole has taken no steps to provide the children with a safe home. She has refused to attend domestic violence counseling. Nicole testified she had every intention to continue a romantic relationship with Fernando, giving no thought to its impact on the children. The record shows Nicole is not willing to make the

necessary lifestyle changes to fulfill the case permanency plan and reunite with her children.

E. Incarceration of a Parent:

Participation in Services by an Incarcerated Parent: *In re: K.M. and C.M. (Iowa Court of Appeals, June 25, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that even a parent in prison must request services in order to preserve a claim that the state failed to make reasonable efforts for reunification:

> The father's incarceration "was due to his own actions, and he cannot fault DHS for being unable to provide services while he is in prison." *Citation Omitted.* In fact, the father never requested services while he was in prison. He has not obtained a sex offender evaluation or treatment.

Long-Term Imprisonment Leads to TPR: *In re:* D.D., K.D. and K.M., *(Iowa Court of Appeals, July 16, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a long term period of imprisonment makes TPR likely:

> Here, the children are placed with foster parents in a pre-adoptive home. The father's projected release date is not until January 2025, and it is therefore unlikely he will be released for a period of more than five years. Consequently, the State proved by clear and convincing evidence grounds to terminate pursuant to paragraph (j).
>
> The father also argues termination is not in the children's best interest, given the bond he shares with the children. However, the father is unable to provide for the children or give them a home, and will be unable to do so for approximately the next ten years. The children are placed with a family who intends to adopt them, and by all accounts, they are thriving in that environment. The children are in need of permanency, and it is in their best interest to terminate the father's parental rights so they may be adopted and achieve that necessary stability.

See also *In re:* C.P. and K.P., *(Iowa Court of Appeals, July 16, 2014)*:

> We find termination was appropriate under subsection (f) as to C.P. and subsection (h)4 as to K.P. as the children could not be returned to the father's care at the time of the hearing or in the foreseeable future due to his incarceration. Conviction of a crime and resulting imprisonment do not necessarily result in termination of parental rights. *Citation Omitted.* But by the same token, incarceration cannot justify a parent's lack of relationship with the children. *Citation Omitted.* Here, the father's pursuit of crime rather than stable parenthood contributed to the grounds for termination.

A Parent Cannot Complain when Incarceration Prevents a Relationship: *In re: T.E.*, *(Iowa Court of Appeals, August13, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent cannot complain that the state prevented her from maintaining contact with her child during the parent's incarceration:

> Though she does not contest she has not maintained significant and meaningful contact with the child, she asserts she was unlawfully prevented from doing so. . . The mother's inability to maintain contact with the child is due to her own lifestyle choices that have resulted in her incarceration. This kind of inability to maintain meaningful contact is no legal excuse for failing to do so. The requirements of section 232.116(1)(e) have been satisfied, and the juvenile court's order was proper.

A Parent Cannot Complain of TPR When His Absence was Due to Incarceration: *In re: A.H., (Iowa Court of Appeals, January 28, 2015)*: In this appeal of an order granting a Termination of Parental Rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that a parent cannot complain when his inability to assume his parental duties is due to his incarceration:

> The father's scant contact with the child during most of her life indicates he has little interest in ministering to the physical, mental, and emotional needs of the child. The father suggests his involvement with the child will improve once he is released from incarceration. However, he "cannot use his incarceration as a justification for his lack of relationship with the child. This is especially true when the

> incarceration results from a lifestyle that is chosen in preference to, and at the expense of, a relationship with [the] child."

F. Substance Abuse by Parent:

History of Substance Abuse and Relapse Supports TPR: *In re:* H.L., *(Iowa Court of Appeals, July 16, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a history of substance abuse and relapse supports TPR:

> Alan has a long history of substance use and abuse, and we see no reasonable likelihood of successful treatment and continued sobriety by the end of the six-month period. He first consumed alcohol and marijuana at age eleven. He started using methamphetamine and acid at age twelve. He started using cocaine at age thirteen. He is now forty-four. While it is true that Alan experienced success with services at the beginning of this case, he relapsed shortly after completing outpatient treatment despite all the services afforded him. The story of Alan's life is substance use and abuse punctuated by brief interludes of sobriety. What's past is prologue.

Changes for a Prior Substance Abuser: *In re:* J.W., *(Iowa Court of Appeals, July 30, 2014)*: In this appeal reversing the trial court's adjudication order in a Child-In-Need-Of-Assistance (CINA) case, the Court of Appeals found that the mother had complied with treatment and her prior substance abuse problems no longer justified an adjudication of CINA:

> Even under the most liberal interpretation of the phrase "imminently likely" there is not clear and convincing evidence J.W. is imminently likely to suffer the statutorily defined harm. . . The mother's status as a prior substance abuser is insufficient evidence to establish an imminent likelihood of the statutorily prescribed harm. *Citation Omitted.* The inference of statutory harm is particularly weak here where the evidence points to the mother's remarkable progress since April 2013. . . These same considerations also lead us to conclude there is insufficient evidence supporting the adjudication under section 232.2(6)(c)(2). . . But the record in this case does not support

> adjudication under this provision. The mother no longer has an "active addiction" to methamphetamine. Further, this is not a case where the parent waited until the eve of an important hearing to address her behaviors and express an interest in parenting. *Citation Omitted.* Here, the mother responded to the State's intervention. She accepted services, changed her associations, successfully completed substance abuse treatment, maintained sobriety, and reunited with her three older children. The service providers involved with this family conclude she is learning to become a good parent and providing a safe and stable home for her children. She had progressed so far from the time of removal of her three older children that J.W. was never removed from the mother's custody and care. Unlike his older siblings, J.W. has never known or been exposed to the drugs, violence, or chaos associated with the mother's prior life. The only life J.W. knows is a relatively calm and peaceful life in the care of his mother.

New Standard for TPR Based on Substance Abuse: *In re: L.S., H.S., and E.H., (Iowa Court of Appeals, October 15, 2014)*: In this appeal reversing an order terminating parental rights (TPR), the Iowa Court of Appeals held that statutory change requires that a substance abuse disorder must be diagnosable in order to serve as grounds for a TPR:

> We need only address the second element because it is dispositive of the outcome. The State alleged and the juvenile court found the mother had a "severe chronic substance abuse problem." That language was from the pre-2012 version of section 232.116(1)(*l*)(2). In 2011, the legislature amended this provision, replacing the phrase "severe, chronic substance abuse problem" with "severe substance-related disorder." *Citation Omitted.* In the same enactment, the legislature defined "substance-related disorder" as "a diagnosable substance abuse disorder of sufficient duration to meet diagnostic criteria specified within the most current diagnostic and statistical manual [DSM] of mental disorders published by the American psychiatric association [APA] that results in a functional impairment." *Citation Omitted.*. It is no longer sufficient for the court to assess in lay terms whether the parent suffers from "a severe, chronic substance problem." The definition of substance-related disorder requires consideration of diagnostic criteria from the DSM-5 . . . In fact, in response to cross examination from the mother's attorney, the DHS case worker testified she did not know if the mother's condition had ever been diagnosed or

> described as a "severe substance related disorder" and as far as she knew it had not been. Given this concession by the DHS worker, it would be difficult to conclude the State offered clear and convincing evidence the mother had a severe substance-related disorder.

Sobriety Required Before Return Home to Prevent TPR: *In re: B.G., B.G. and B.G. (Iowa Court of Appeals, November 26, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that a parent's inability to maintain sobriety without the children in the home demonstrates that the children would not be safe if placed back in the home:

> "Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting." *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

DHS Does Not Have to File Involuntary Commitment Proceedings: *In re: L.P. (Iowa Court of Appeals, November 26, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the state is not required to file involuntary commitment proceedings against a drug-addicted parent to meet the reasonable efforts requirement:

> Even if the mother is gaining skills in child care, she has not demonstrated those with her own son because she has not taken the initiative to undergo drug testing since April. The mother's argument does not address the fundamental impediments to reunification, which are the unresolved drug addictions and mental health challenges faced by both her and L.P.'s father. A child cannot be safely placed in the home of a methamphetamine addict who is actively using. . . We decline to hold the DHS had an obligation to commence proceedings for involuntary commitment or treatment under Iowa Code section 125.75 for the parent of a child adjudicated CINA as part of its reasonable-efforts requirement. . . His appellate argument that the DHS should have pursued *involuntary* commitment does not square with the settled principle that parents must *demand* the services they believe will help eliminate the need for removal of their child.

TPR Based on Substance Abuse Disorder Requires a Diagnosable Condition: *In re: G.B. (Iowa Court of Appeals, November 26, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals reversed the TPR, holding that the code section relied upon by the state required that the substance abuse condition must be a diagnosable condition:

> The State alleged and the juvenile court found that both of the parents have a "severe, chronic substance abuse problem." That language was from the pre-2012 version of section 232.116(1)(*l*)(2). In 2011, the legislature amended this provision, replacing the phrase "severe, chronic substance abuse problem" with "severe substance-related disorder." *See* 2011 Iowa Acts ch. 121 § 58 (effective July 1, 2012). In the same enactment, the legislature defined "substance-related disorder" as "a diagnosable substance abuse disorder of sufficient duration to meet diagnostic criteria specified within the most current diagnostic and statistical manual [DSM] of mental disorders published by the American psychiatric association [APA] that results in a functional impairment." *Id.* § 26 (codified at Iowa Code § 125.2(14)). It is no longer sufficient for the court to assess in lay terms whether the parent suffers from "a severe, chronic substance problem." The definition of substance-related disorder requires consideration of diagnostic criteria from the DSM–5.

Court Cannot Use a Parent's Refusal to Submit to Pre-Adjudication Drug Testing: *In re: D.S. (Iowa Court of Appeals, February 25, 2015)*: In this appeal of an order adjudicating the child to be a child in need of assistance (CINA), the Iowa Court of Appeals affirmed the lower court, but also held that the court could not base its opinion on a parent's refusal to submit to drug testing that was requested by DHS prior to adjudication:

> We recognize the district court and the department additionally relied on the mother's refusal to undergo drug testing at the time of the child abuse investigation—testing we have held a district court and, by extension, the department, lacks authority to require at the pre-adjudication stage. *See In re A.C.*, 852 N.W.2d 515, 518 (Iowa Ct. App. 2014) ("[W]e find no statutory authority to support the district court's ex parte pre-adjudication parental drug testing-order. . .").

Recent Substance Abuse May Constitute Imminent Danger: *In re: A.H., (Iowa Court of Appeals, March 25, 2015)*: In this appeal of an order adjudicating the child to be a Child in Need of Assistance (CINA) of the father, the Iowa Court of Appeals reversed the CINA on one ground but affirmed on another, holding that the recent history of substance abuse by the parents constitutes "imminent harm" to support the adjudication:

> Iowa Code section 232.2(6)(c)(2) provides a child in need of assistance is one whose parent "has physically abused or neglected the child, or is imminently likely to abuse or neglect the child." Preliminarily, there is no evidence the parents have physically abused or neglected the child. We assess only whether the evidence supports a conclusion that the parents are *imminently likely* to abuse or neglect the child . . . We agree with the juvenile court that the father's sobriety in particular is of such recent vintage as to still pose a risk of imminent harm to A.H. without court and DHS supervision. Clear and convincing evidence supports this conclusion. A.H. is very young, barely three months old at the time of adjudication, and she is unable to self-protect if either one or both her parents relapse into drug use. Therefore, we affirm adjudication under Iowa Code section 232.2(6)(c)(2).

G. Poverty Issues:

The Impact of Poverty on Placement Decisions: *In re: M.P. and C.P. (Iowa Court of Appeals, November 26, 2014)*: In this appeal of a permanency order in a Child-in-Need-of-Assistance (CINA) case with the goal of placement with mother rather than return to father, the Iowa Court of Appeals affirmed the permanency ruling, holding that a parent's inability to provide for the needs of the children does reflect on the placement decision:

> Kenneth has no long-term plan to provide for the children. He is unemployed and not searching for work. He depends entirely on others for transportation for himself and the children. He is dependent upon FIP payments, food assistance, and donations to provide for the children. He is also dependent upon his paramour for housing and support. While poverty, alone, is not grounds for determining permanency, the best interests of the children require a

> determination of whether the parent can meet the children's basic needs. *See In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (noting the court looks at placement that best meets the physical, mental, and emotional needs of the child).

H. Elements of Proof:

Proof Required for Modification of a Dispositional Order: *In re:* V.B. *(Iowa Court of Appeals, June 11, 2014)*: In this appeal affirming an order modifying a dispositional order by removing the child from the parent in a Child in Need of Assistance (CINA) case, the Iowa Court of Appeals recited the pre-requisites for the modification of a dispositional order:

> A transfer of custody shall not be ordered 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." Iowa Code § 232.102(5)(a). Further, 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 identify the reasonable efforts that have been made." Iowa Code § 232.102(5)(b). Finally, in order to modify custody or placement, there must also be a material and substantial change of circumstances.

Requirements for a Six-Month Extension: *In re: K.M. and C.M. (Iowa Court of Appeals, June 25, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the parents were not entitled to a six-month extension:

> In order to be granted an additional six months to work toward reunification, Iowa Code section 232.104(2)(b) requires the court to make a finding that the need for the removal of the child will no longer exist at the end of the additional six-month period. As the district court found, there is no evidence the parents' circumstances will change in six months, and the children are entitled to permanency in their lives. The children should not be forced to endlessly wait for their parents to provide responsible parenting.

See also: *In re: K.B., (Iowa Court of Appeals, August13, 2014)*:

> The juvenile court may grant more time only if the judge specifically finds whatever prompted removal of the child will be resolved at the end of the six months.

Defining "Imminently Likely": *In re:* J.W., *(Iowa Court of Appeals, July 30, 2014)*: In this appeal reversing the trial court's adjudication order in a Child-In-Need-Of-Assistance (CINA) case, the Court of Appeals helped define the terms "imminently likely":

> The State may also seek to adjudicate a child in need of assistance pursuant to section 232.2(6)(b) if the child is "imminently likely" to suffer "physical abuse or neglect," as defined above. "Imminently likely" is not defined by the code. *Citation Omitted.* Our supreme court has considered several definitions: "Relying on a dictionary definition, we have defined 'imminent' for purposes of our self-defense statute to mean 'ready to take place,' 'near at hand,' 'hanging threateningly over one's head,' and 'menacingly near.' *Citation Omitted.* Relying on this same definition, we explained in another case that 'imminent' means a threatened act 'is impending or about to occur.' *Citation Omitted.* 'Imminent' has also been defined to mean 'on the point of happening.'" *Citation Omitted.* Our court defined the term as "an immediate risk of the statutorily proscribed harm; and a real, as opposed to speculative or conjectural, risk of statutorily proscribed harm." *Citation Omitted.* Regardless of the exact denotation, our "[c]ase law supports a liberal interpretation of the phrase "imminently likely" in the CINA context."

Defining "Harmful Effects": *In re:* J.W., *(Iowa Court of Appeals, July 30, 2014)*: In this appeal reversing the trial court's adjudication order in a Child-In-Need-Of-Assistance (CINA) case, the Court of Appeals helped define the terms "harmful effects":

> Chapter 232 does not define "harmful effects." Our supreme court has provided the following guidance: "[I]t 'pertains to the physical, mental or social welfare of a child.' *Citation Omitted.* Because of this broad definition, we have found such effects established when there was

> harm to a child's physical, mental, or social well-being or such harm was imminently likely to occur. *Citations Omitted.* Hence, a juvenile court could reasonably determine that a parent's active addiction to methamphetamine is 'imminently likely' to result in harmful effects to the physical, mental, or social wellbeing of the children in the parent's care. *Citation Omitted."*

Modification of a Permanency Order: *In re: M.F. and A.A., (Iowa Court of Appeals, October 1, 2014)*: In this appeal affirming an order modifying a permanency order by moving the child from a relative placement to foster care and changing the permanency goal from reunification to placement with a suitable person, the Iowa Court of Appeals set for the standard for modifying a permanency order:

> Following a permanency determination continuing out-of-home placement of a child for an additional six months, the juvenile court may modify the permanency order by transferring guardianship and custody of the child to a suitable person. *See* Iowa Code § 232.104(2)(d)(1). Prior to entering a permanency modification order, the State must show by clear and convincing evidence that (a) termination of the parent-child relationship would not be in the child's best interest; (b) services were offered to correct the situation which led to the child's removal; and (c) the child cannot be returned to the child's home. *See* Iowa Code § 232.104(3).

Failure to Properly Supervise as a Ground for CINA Adjudication: *In re: E.R. and E.R., (Iowa Court of Appeals, October 1, 2014)*: In this appeal reversing an order adjudicating a child to be a child in need of assistance (CINA), the Iowa Court of Appeals held that the trial court had adjudicated the child on an improper ground and explained what is required to support an adjudication on the grounds of a failure to properly supervise:

> We have no doubt these children are in need of assistance. However, our supreme court has recently noted, "The grounds for a CINA adjudication do matter." *J.S.*, 846 N.W.2d at 41. Iowa Code section 232.2(6)(c)(2) defines a child in need of assistance as one "[w]ho has suffered or is imminently likely[3] to suffer harmful effects[4] as a result of . . . the failure of the child's parent . . . to exercise a reasonable degree of care in supervising the child." We interpret the provision liberally and broadly to protect children, *see J.S.*, 846 N.W.2d

at 43, but we cannot read it so broadly as to include the parents' conduct here, particularly where the code clearly addresses the conduct in another provision. See Iowa Code § 232.2(6)(c)(1) (defining a child in need of assistance as one who "has suffered or is imminently likely to suffer harmful effects as a result of . . . [m]ental injury caused by the acts of the child's parent."). . . There may be a question about whether the mother's judgment is faulty, but we do not agree the issue here falls under the rubric of a failure to exercise a reasonable degree of care in supervising the child.

Typically, an adjudication as a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) involves a parent who inadequately or insufficiently supervises a child due to inability or lack of concern, placing the child at risk of harm. . . Here, adequate protection for these children can be found in a plain reading of section 232.2(6)(c)(1) because both children have sustained mental injury at the hands of both parents. . . However, to adjudicate these children as CINA for failure to exercise a reasonable degree of care in supervising the children is to read section 232.2(6)(c)(2) so broadly as to render its terms meaningless.

We therefore reverse and remand the adjudication pursuant to Iowa Code section 232.2(6)(c)(2).

I. Procedural Issues:

Requirements for Notice of a Parent: *In re:* A.L., *(Iowa Court of Appeals, May 29, 2014)*: In this appeal reversing an order terminating parental rights (TPR), the Iowa Court of Appeals held that the father was not given notice for the underlying Child-in-Need-of-Assistance (CINA) hearing:

> The child-in-need-of-assistance statute provides that the State shall serve the child-in-need-of-assistance petition "in the same manner as for adjudicatory hearings in cases of juvenile delinquency as provided in section 232.37." Iowa Code § 232.88 (2013). Section 232.37, in turn, requires service "upon the known parents . . . of a child" and specifies that the service shall be "made personally by the sheriff" or, if the court determines personal service is impracticable, by certified mail. *Id.* § 232.37(1), (4). Hearings may not take place without a parent

> except if the parent "fails to appear after reasonable notification" or "if the court finds that a reasonably diligent effort has been made to notify the child's parent." *Citations Omitted.* A diligent search "is measured not by the quantity of the search but the quality of the search." *Citation Omitted.* "While a reasonable search does not require the use of all possible or conceivable means of discovery, it is an inquiry that a reasonable person would make, and it must extend to places where information is likely to be obtained and to persons who, in the ordinary course of events, would be likely to have information of the person or entity sought." The department conducted no search for James, diligent or otherwise, during the child-in-need-of-assistance proceeding. . . Even if James had actual notice of the child-in-need-of-assistance proceeding, that fact did not obviate the need to provide formal notice, absent some participation by James in the proceeding. *Citation Omitted.* It is conceded that James did not participate in the child-in-need-of-assistance proceeding.

The Court of Appeals went on to explain the effect of the lack of notice in the underlying CINA case on the TPR case:

> This brings us to *In re M.L.M.*, 464 N.W.2d 688, 690–91 (Iowa Ct. App. 1990), in which this court held that a father was entitled to notice of a child-in- need-of-assistance action, but failure to provide notice did not mandate reversal where the father knew the whereabouts of the children, had abandoned or deserted them, and could not assume care of them in the reasonable future. If *M.L.M.* is read to require a parental showing that the termination petition likely would have been denied on the merits, we believe such a showing is inconsistent with due process precedent. In particular, the United States Supreme Court has rejected the notion that a person deprived of notice has to establish the existence of a meritorious defense. *Citation Omitted.* Such a showing is also inconsistent with the allocation to the State of the burden of proving the grounds for termination. Because James did not receive notice of the child-in-need-of-assistance proceeding, that proceeding was void as to him irrespective of whether he knew he had a child and had contact with the child. This is as true under the statutory notice test as it is under the constitutional notice test.
>
> For the same reason, James's failure to file a paternity action and seek custody of the child has no bearing on the notice issue. The State filed

> the child-in-need-of-assistance petition, and the State had the obligation to formally notify James of that filing once it received the affidavit of paternity, even if James expressed no interest in the child and took no action to establish a relationship with the child. Absent such notice, the proceeding was void as to him. *Citation Omitted.*
>
> While we are not convinced the merits should have been reached in *M.L.M.,* we recognize that they were. Accordingly, we will briefly address the merits in this case.

Limits of Questioning Witnesses by the Court: *In re:* A.C.. and A.J., *(Iowa Court of Appeals, July 16, 2014)*: In this appeal affirming the trial court's adjudicatory and dispositional orders in a Child-In-Need-Of-Assistance (CINA) case, the Court of Appeals explained the limits of the role of the Court in questioning a witness:

> A court may interrogate witnesses "[w]hen necessary in the interest of justice." Iowa R. Evid. 5.614(b). However, "we have cautioned against assuming the role of an advocate." *See State v. Cuevas*, 288 N.W.2d 525, 533 (Iowa 1980)
>
> Here, the district court judge came close to the line of impermissible advocacy by raising a foundational issue that aided the State. However, the court did not attempt to undermine the father's position that the document flowed from the statutorily unauthorized ex parte drug testing order and, as "fruit of the poisonous tree," was inadmissible.

Appearing at a Hearing May Waive Lack of Service: *In re: K.S.-T (Iowa Court of Appeals, November 13, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the fact that the father had appeared at the adjudicatory hearing waived any jurisdictional complaint about a lack of service (or a reasonably diligent search):

> Notice is jurisdictional and a judgment entered without notice is void. *Citation Omitted.* "The issue boils down to whether [the father's] whereabouts were unknown and whether a 'reasonably diligent search' was made to determine his whereabouts." . . . There is no question the investigator made "numerous inquiries." *Citation Omitted.* But he did not make "the obvious inquiries a reasonable person would make under the circumstances," such as a request for information from the child's mother. . . In light of the father's appearance at the

> adjudicatory hearing, we conclude the State's failure to notify him formally does not require us to vacate the district court judgment against him.

Amending a TPR Petition to Conform to the Proof: *In re: H.E., (Iowa Court of Appeals, March 11, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the mother and father, the Iowa Court of Appeals affirmed the TPR holding that it was permissible for the Court to allow the petition to be amended "to conform to the proof" (especially where none of the parties objected):

> Though the child was four years of age on the last day of the termination proceeding, the original petition to terminate rights alleged the child was three years of age, and sought termination pursuant to Iowa Code section 232.116(1)(h) (2013) . . On limited remand from the supreme court, and without objection by either parent, the petition was amended to "conform to the proof" and assert termination was proper under Iowa Code section 232.116(1)(f). . . Upon our de novo review, it is clear that the child who had been adjudicated CINA was four years of age, had been out of the parents' custody for more than the last twelve consecutive months, and could not be returned to their custody at the present time. Finding no resistance to the juvenile court's order on remand conforming the amended petition to the proof, we affirm the termination of each parent's parental rights under Iowa Code section 232.116(1)(f).

Amending a TPR Petition at Trial May Violate Due Process: *In re: B.B., (Iowa Court of Appeals, March 25, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the father, the Iowa Court of Appeals reversed the TPR, holding that the amendment of the TPR petition at trial violated the Due Process rights of the parent:

> We conclude the State's amendment of its petition to substitute a new ground for termination during the hearing, over the mother's objection, violated the mother's due process rights. Accordingly, we reverse the order terminating her parental rights. . . Termination of parental rights should not be a bait-and-switch proposition, where a parent prepares a defense against one set of allegations and at the hearing, over her objection, the State moves forward with a different

ground for termination. Due process requires Joleen to have notice of the grounds under which termination was eventually decreed. . .

J. Evidentiary Issues:

The Ordering of a Psychosexual Evaluation is Authorized: *In re: J.F., (Iowa Court of Appeals, October 15, 2014)*: In this appeal affirming an order adjudicating the child to be a child in need of assistance (CINA) the Iowa Court of Appeals held that a court may order a psychosexual evaluation and that such order does not improperly shift the burden of proof:

> The father appeals the juvenile court's order requiring him to complete a psychosexual evaluation. He contends the requirement improperly shifts the burden to him to prove he is a fit parent. . . The court did not order the father to undergo a psychosexual evaluation until finding the State had met its burden in proving by clear and convincing evidence J.F. is a CINA. Rather than shifting the burden to the father to prove his fitness as a parent, the court has ordered the evaluation to determine what services need to be offered to facilitate the possible reunification of J.F. with her father. It is within the discretion of the court to determine what services are to be provided "to the child's parent, guardian, or custodian in order to enable them to resume custody of the child."

A Therapist's Testimony can be Compelled in a CINA Case: In Interest of A.M., ____ N.W.2d ____ (Iowa 2014) [November 21, 2014]: In this Child-in-Need-of-Assistance (CINA) Case, the Iowa Supreme Court held that the psychotherapist privilege and HIPPA do not prevent the Court from ordering a psychotherapist to testify in a CINA case:

> We must decide whether section 232.96(5)'s limited statutory exception to the psychotherapist privilege in CINA adjudicatory hearings trumps the confidentiality afforded mental health treatment under Iowa Code chapter 228, Iowa Code section 622.10, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) *[citation omitted].* This is a question of first impression. . . We conclude the legislature has made the policy choice to balance these competing interests by allowing the court to compel the therapist's

> testimony in CINA adjudicatory proceedings, and no contrary result is required under HIPAA. For the reasons explained below, we hold the juvenile court properly ordered the therapist to testify.

Opinion of the FSRP Worker as to the Bond Between the Parent and Child is Admissible: *In re: L.C., (Iowa Court of Appeals, February 11, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the father, the Iowa Court of Appeals reversed the TPR, holding that the opinion of the FSRP worker concerning the exception to FPR of the close bond between the child and parent was improperly excluded:

> The record might have been even stronger, but as Clifford's attorney was asking the FSRP worker to discuss how L.C. would react to being separated from her father, the county attorney objected to the question as calling for "speculation and beyond the scope of the witness's expertise." The county attorney voir dired the witness about her credentials, pointing out she did not have a postgraduate degree as a therapist nor had any interaction with the L.C. outside the visitation.
> The juvenile court ultimately sustained the objection. While the evidentiary question is not raised in this appeal, we nevertheless are troubled by the State's adversarial treatment of the FSRP worker and the juvenile court's unwarranted limitation on the father's ability to prove the detrimental impact of termination under section 232.116(3)(c). The FSRP worker consistently supervised the interaction between the father and L.C. during visits and, accordingly, had one of the best vantage points to form an opinion on how separation would impact L.C. In numerous cases, the State relies on FSRP workers to give their opinions on the propriety of terminating parental rights. And our supreme court has found it "significant" when "the third-party service providers" have expressed their belief that a child could not be safely returned to her parents at the time of trial. *See A.M.*, 843 N.W.2d at 112. In this case, we are persuaded by the FSRP worker's opinion concerning the significant bond between the child and her father.

The Effect of Failure to Acknowledge Abuse: *In re: R.M. (Iowa Court of Appeals, February 25, 2015)*: In this appeal of a permanency order granting the father an additional six months of services and visitation, the Iowa Court of

Appeals, in affirming the order, held that a failure to acknowledge any wrongdoing may diminish the chance of regaining custody but cannot automatically disqualify a parent from regaining custody:

> The State is rightly concerned with Adam's failure to acknowledge any wrongdoing. Parents' refusal to address their role in a child's abuse may hurt their chances of regaining custody. *Citation Omitted.* But a parent's insistence he is innocent cannot automatically disqualify him from resuming custody. Our supreme court has said: "The State may require parents to otherwise undergo treatment, but it may not specifically require an admission of guilt as part of the treatment."

The Use of Professional Statements by an Attorney: *In re: M.B., (Iowa Court of Appeals, February 25, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the mother, the Iowa Court of Appeals explained that an attorney making a professional statement may be cross-examined:

> *See Frunzar v. Allied Prop. and Cas. Ins. Co.*, 548 N.W.2d 880, 888 (Iowa 1998) ("Under Iowa law, professional statements are treated as affidavits and the attorney making the statement may be cross-examined regarding the substance of the statement.").

K. Jurisdictional Issues:

A Legal Father who is Not the Biological Father is NOT a necessary party in a CINA or TPR Proceeding: *In re: J.C., ____ N.W.2d ____ (Iowa Supreme Court, December 26, 2014)*: In this appeal of a child in need of assistance (CINA), case, the Iowa Court of Appeals reversed the lower court's dismissal of the legal father from the proceedings when a paternity test showed him not to be the biological father. The Iowa Supreme Court reversed the Court of Appeals (affirming the trial court) holding that a legal father who is not the biological or adoptive father is not a necessary party in child in need of assistance (CINA) proceedings and termination of parental rights (TPR) proceedings:

> Under Iowa Code chapter 232, which governs CINA proceedings, " '*Parent*' means a biological or adoptive mother or father of a child . . . ." Iowa Code § 232.2(39). . . The legislature, through clear language,

> specified necessary parties to CINA proceedings. *See id.* § 232.91(1). The child's parent is one necessary party. *See id.* The legislature, again through clear language, defined a "parent" as a "biological or adoptive mother or father." *Id.* § 232.2(39). Daniel is undisputedly not J.C.'s biological or adoptive parent. Therefore, he is not a necessary party to the CINA proceedings involving J.C.

The Iowa Supreme Court also made it clear that the trial court in a juvenile case has the power/jurisdiction to determine paternity in the cases of children in its jurisdiction:

> Consequently, when it becomes apparent to the juvenile court that a child's established father is not the child's biological father, determining the child's biological father both honors the biological father's due process rights and also serves to make subsequent placement decisions sounder, thereby providing stability for the child. The juvenile court did not exceed its authority in determining Daniel is not J.C.'s biological father as part of the termination of parental rights proceedings.

Finally, the Supreme Court made it clear that there are some instances where legal fathers may still participate in CINA and TPR proceedings even when they are not the adoptive or biological parent:

> Nothing in the juvenile code warrants a blanket extension of rights to all established fathers to participate in CINA or termination cases. But our holding here does not exclude *all* nonbiological established fathers from participating in CINA proceedings or termination of parental rights proceedings. As noted above, there may be circumstances where a juvenile court would allow a nonbiological established father to remain a part of the juvenile proceedings. For example, in the CINA context, Iowa Code section 232.91(2), provides a "person . . . may petition the court to be made a party to [CINA] proceedings . . . ." Further, in some termination of parental rights cases, an established father may be a necessary party where the court makes the factual determination that he "stand[s] in the place of the parents of the child." *See* Iowa Code §§ 232.111(4)(*b*)(6), .112(1).

Follow up:

The Court Cannot Order a TPR on a Legal Father who is Not the Biological Father: *In re: J.C., (Iowa Court of Appeals, January 28, 2015)*: In this follow-up to the Supreme Court's prior ruling, the Iowa Court of Appeals held that, since the "established father" was not the parent, he could not have his parental right terminated:

> An established father appeals the juvenile court order terminating his parental rights. The established or legal father is not a parent under Iowa Code chapter 232 (2013), and we conclude the juvenile court did not have the authority in this termination proceeding to enter an order terminating his parental rights. We therefore conclude the order terminating his parental rights should be vacated. . . The Iowa Supreme Court has determined Daniel is not the child's parent under chapter 232. *Id.* at ___, 2014 WL 7338505, at *11 ("Although Daniel is J.C.'s established father, he is not her parent under chapter 232."). Because Daniel was not a parent for purposes of chapter 232, he did not have parental rights that could be terminated.

The Court has No Authority to Enter an Ex Parte Pre-Adjudication Parental Drug-Testing Order: *In re:* A.C. and A.J., *(Iowa Court of Appeals, July 16, 2014)*: In this appeal affirming the trial court's adjudicatory and dispositional orders in a Child-In-Need-Of-Assistance (CINA) case, the Court of Appeals held that the court does not have authority to order an ex parte pre-adjudication parental drug-testing order:

> The legislature has specified precisely what the department can do on receipt of a child abuse complaint. *See* Iowa Code § 232.71B. Nothing in that provision authorizes a department employee to obtain an ex parte court order mandating parental drug testing for the purpose of confirming child abuse allegations. To the contrary, the provision only authorizes the department to furnish voluntary services to families and then only to families of "abused children," not families being investigated for abuse. *See id.* § 232.71B(13).
>
> We recognize that a separate code provision, section 232.71C, allows the department to seek juvenile court action at any time during the assessment process if the department believes such action is necessary "to safeguard a child." *See id.* § 232.71C(1). This provision cannot be

> read as authorizing the department to seek a pre-adjudication, ex parte order for mandatory parental drug testing because another provision permits such testing only "[f]ollowing an adjudication that a child is a child in need of assistance" and only "after a hearing." *See id.* § 232.98(2).
>
> In sum, we find no statutory authority to support the district court's ex parte pre-adjudication parental drug-testing order, nor do we find that the court had inherent authority to enter such an order.

L. Termination of Parental Rights (TPR):

Statutory Time Periods for TPR Still Apply to Parents in Close Proximity to Children: *In re:* K.R., K.R., K.R., K.R., K.R. and K.R. *(Iowa Court of Appeals, June 11, 2014)*: In this appeal affirming an order terminating parental rights (TPR) as to six children, the Iowa Court of Appeals held that living next to the home of the children does not toll the statutory time periods:

> On appeal, the father contends the children have not been out of his custody for the requisite time to support termination under either statutory provision. But the record is clear that the children have been in the custody of the department and placed with their grandparents for more than the statutory time period. The father's apparent argument is that his presence in the house next door to the grandparents' residence and his having spent time with the children is sufficient to disrupt the statutory clock. It is not.

Failure to Appear at TPR Hearing Supports Termination: *In re:* J.L.-S. and C.L.-S., *(Iowa Court of Appeals, July 16, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that living the mother's failure to appear at the TPR hearing supports a finding of instability and lack of commitment to her children:

> In this case, Anna received notice of the termination hearing yet failed to appear. At the termination hearing, Anna was represented by counsel, who had not heard from her client that day. Counsel moved to continue, but the court denied the motion. Anna does not challenge the

> denial of a continuance on appeal. At the termination hearing, Anna's attorney did not object to any evidence presented by the State, offer any evidence on Anna's behalf, or raise any specific issues. . . By not showing up at the termination hearing and not informing counsel of her whereabouts, Anna displayed her instability and lack of commitment to the welfare of her children. Anna's counsel failed to explain or counterbalance any of the State's evidence at the hearing. The State's uncontested exhibits were sufficient to show, by clear and convincing evidence, the children could not be returned to Anna's care at the present time. We affirm the termination based on section 232.116(1)(h).

Relative Custody Exception to TPR Does Not Apply When DHS Has Custody: *In re:* R.L.P., *(Iowa Court of Appeals, July 16, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that the provision allowing an exception to TPR when placement is with a relative does not apply when the legal custody is still in DHS:

> Citing Iowa Code section 232.116(3), the mother argues that because the children are placed with their maternal grandmother, termination need not occur. However, Iowa Code section 232.116(3) is not applicable because the children are not in the legal custody of a relative—they are in the legal custody of the department of human services.

Termination of One Parent's Rights When Placing with the Other Parent: *In re*: *C.C.*, *(Iowa Court of Appeals, August13, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a court can terminate the rights of one parent while placing the child in the other parent's care:

> He does not argue the child could be returned to his care. Instead, he claims the last element was not proved "because the child has been returned to [the custody of] one of the parents, the mother." His claim implies the provisions of subsection (h) do not apply unless the rights of both parents are being terminated. . . Applying section 4.1(17) to section 232.116(1), both the Iowa Supreme Court and our court have allowed termination of the rights of a noncustodial parent when the children are placed with the other parent. *Citations Omitted.* The

> statutes permit the termination of one parent's rights. . . Under the facts of this case, termination of the father's parental rights was proper despite the child being in the care of his mother. We cannot maintain the parent-child relationship where there exists only a remote possibility the father will become a responsible and consistent parent sometime in the unknown future.

Keeping Siblings Together does not Trump Best Interests in TPR: *In re: Q.E., C.E. and* K.E., *(Iowa Court of Appeals, August13, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that the best interests of the child standard controls even when TPR results in separating siblings:

> The mother contends termination of her parental rights is not in the best interests of the children because it would sever "the sibling group [and] the sibling relationship between these children and their half sibling group [of which] the mother retains parental rights." Indeed, we prefer to keep siblings together when possible. *Citation Omitted.* But the paramount concern is the children's best interests.

Failure to Acknowledge Abuse Supports TPR: *In re: J.D. and E.D.*, *(Iowa Court of Appeals, August13, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent's refusal to acknowledge abuse can prevent the change necessary to prevent TPR:

> The father has shown no progress or willingness to engage in services throughout the pendency of this proceeding. He consistently denies any abuse ever occurred, which evidences an unwillingness to modify his violent behavior. . . He adamantly contends there was no abuse. However, it is vital the parent acknowledge and recognize abuse occurred before any meaningful change can take place.

See also: *In re: J.L.M.*, *(Iowa Court of Appeals, August 27, 2014)*:

> Most importantly, she does not acknowledge the abuse J.L.M. has suffered. She demonstrates no protective capacity in that regard. . . Given her unwillingness to believe her boyfriend sexually abused

> J.L.M., the trauma this has caused to J.L.M., and the extent to which J.L.M. has become integrated into her safe and loving foster family, it is clear her safety; her long-term nurturing and growth; her physical, mental and emotional needs; and her own wishes are best secured by termination of the mother's parental rights.

Economic Factors can be Relevant to TPR: *In re: N.S., (Iowa Court of Appeals, August 27, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held economic factors are relevant to the issue of whether a child can be returned to the parent:

> Lisa is also unable to manage her financial affairs or control her impulses with respect to spending money. Lisa's Social Security Disability Insurance benefits are managed by a designated payee. The money Lisa earns from employment is compulsively spent or gambled away. IDHS provided services to Lisa to assist her in managing her money, but those services were not successful. The social worker assigned to the case testified Lisa is barely able to provide for herself let alone N.S. While termination cannot be based on economic factors alone, we find those factors are relevant to the extent they reflect on Lisa's decision making process, or lack thereof.

Lack of a Relationship due to Incarceration can Support TPR: *In re: T.J., (Iowa Court of Appeals, September 17, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent's incarceration can prevent the formation of a parent/child bond, leading to TPR:

> Following her incarceration, the mother had no contact with her child because the prison did not allow inmate visits with victims of their crimes. On her release, she would require time to reacquaint herself with the child and address the issues that compromised the child's safety two years earlier. Under these circumstances, we conclude termination was in the child's best interests.

A Father Has an Obligation Even Before Paternity is Established: *In re: J.S., (Iowa Court of Appeals, September 17, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a father who has had a relationship with the mother and is aware that the mother is

pregnant, cannot wait until paternity is established to become involved with the child and the juvenile case:

> We are cognizant that the father did not know of his paternity until July 2013. But for two years he chose to ignore the possibility of his fatherhood as he knew of the mother's pregnancy and the child's birth. *See In re M.M.S.*, 502 N.W.2d 4, 7 (Iowa 1993) (stating the father "must be charged with some sense of involvement on the basis of his encounter with [the mother] and his knowledge of her pregnancy that followed, even notwithstanding rumors of another father"). Although J.G. chose to believe that J.S. was not his child, he was then afforded more than eight months to work toward reunification. He was less than cooperative with the case plan until just before termination was scheduled. Such eleventh-hour efforts do not bode well for the possibility of reunification in a reasonable amount of time.

Failure to Maintain Contact with the Child Supports TPR: *In re: K.W., (Iowa Court of Appeals, October 1, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a father's failure to maintain regular contact with his child supports TPR:

> Even if we ignore the father's issues with honesty and blame shifting—although we note these issues could also support termination—the record shows he does not prioritize his child. Since April 2014 he has missed eight scheduled visitations with his child. Since that same time he has missed multiple scheduled phone calls with his child. These missed appointments were purely a result of the father's indifference or inability to place the child first in his life. For these reasons, we find the father has failed to exhibit "a genuine effort to maintain communication with the child," and thus satisfying the third factor of 232.116(1)(e)(3). We find clear and convincing evidence the father has not Maintained significant and meaningful contact with his child during the previous six months, pursuant to section 232.116(1)(e)(3); termination is appropriate.

Parent Can Improve to the Point Where the Child Can Be Returned: *In re: A.S.* and E.S., *(Iowa Court of Appeals, October 1, 2014)*: In this appeal reversing an order terminating parental rights (TPR), the Iowa Court of Appeals held that a

mother who has demonstrated an ability to safely parent a child in spite of a previous history of drug addiction can avoid TPR:

> When we view the evidence presented at the termination hearing in its entirety, we do not find clear and convincing proof that A.S. and E.S. would be exposed to harm of the kind that would merit a new CINA adjudication if returned to the mother's care. The mother has not used synthetic marijuana, or other illicit drugs, since June 2013. The mother gave up stable employment to comply with the directives of the DHS to achieve reunification with her children. Her visits with the children are consistent and go very well. By all accounts, she is progressing in her substance abuse treatment. The State's suggestion of possible harm is too elusive to qualify as clear and convincing evidence. . . Nowhere in the record is the mother's substance-related disorder described as "severe" and the State did not offer evidence that her drug addiction continued to present a danger to herself or others. The mother has been able to successfully maintain employment throughout the case and is now in drug treatment and undergoes regular drug testing. The record does not reveal a prognosis for the mother that would prevent returning the children to her custody within a reasonable period of time considering their age and need for a permanent home.
>
> Our supreme court has said "a parent who was once unfit may not automatically be deemed forever unfit." *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). That is not to say that parents can take their time in addressing their problems. We adhere to "the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up." *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). In this case, we recognize the mother realized late in the game that she needed to comply with the DHS expectations or face termination of her parental rights. But she did arrive at that realization approximately three months before the termination hearing. We do not believe it was proper to discount her improvement from December 2013 through March 2014 simply because the CINA case was on a trajectory toward termination. The State bears the burden to satisfy the statutory elements under section 232.116(1) by clear and convincing proof. The State did not carry its burden in this case.

Drug Use Does Not Equate to Abuse and Neglect to Support a TPR: *In re: G.B. (Iowa Court of Appeals, November 26, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals reversed the TPR, holding that the code section relied upon by the state required abuse and neglect which was not satisfied by only showing drug abuse by the parents:

> Under Iowa Code section 232.116(1)(d), the juvenile court may terminate parental rights to a child only when "[t]he court has previously adjudicated the child to be a child in need of assistance *after finding the child to have been physically or sexually abused or neglected*" or another child in the family has been adjudicated "after such a finding." *Citation Omitted.* "Physical abuse or neglect" and "abuse or neglect" are terms of art in this context. *Citation Omitted.* "Within chapter 232, 'physical abuse or neglect' and 'abuse or neglect' means 'any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian, or custodial or other person legally responsible for the child.'" *Citation Omitted.*
>
> In the CINA adjudication order, the juvenile court recited issues with the parents' history of drug use, the fact that a registered sex offender was allowed in the home, and the father's incarceration. The court did not make any findings regarding nonaccidental physical injury suffered by G.B. Our supreme court has concluded it is not sufficient to cite the parents' history of drug use for the proposition that the child has suffered physical injury or is imminently likely to do so to terminate under section 232.116(1)(d). *Citation Omitted.* ("[W]e do not believe general statements about methamphetamine addiction are enough by themselves to prove that a child is imminently likely to suffer physical harm . . . .") *Citation Omitted.* Although addiction to methamphetamine may be sufficient to establish that a child has suffered or is imminently like to suffer "harmful effects" as a result of the parents' failure to exercise reasonable care in supervising the child, that only allows the court to adjudicate the child a CINA under 232.2(6)(c). A CINA determination under 232.2(6)(c) may not lead to termination of parental rights under section 232.116(1)(d) because section 232.116(1(d) requires a nonaccidental physical injury. *Citation Omitted.*
>
> Because the juvenile court did not adjudicate G.B. a CINA pursuant to Iowa Code section 232.2(6)(b) after finding him to be physically or

> sexually abused or neglected or another child in the family to be physically or sexually abused, the termination of the mother's and father's parental rights may not be premised upon section 232.116(d).

Parents Can Change Sufficient to Justify Denial of a TPR: *In re: A.H. (Iowa Court of Appeals, December 24, 2014)*: In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals reversed the termination order, saying that the parent had demonstrated that she could change sufficiently to provide a safe home for her child:

> This court reviews limitless appeals from parents challenging the termination of their parental rights. It is very easy to read the opening line in this case, stating this case concerns a parent's appeal "from the termination of her parental rights to her seventh biological child" and have little faith that this case is any different from those that have come before. Nevertheless, *this* case shows a mother who has taken the all of the necessary steps to change her life for the better, for both herself and A.H. Given all that she has accomplished, it is patently unfair to ignore her progress because of her unfortunate history, particularly in light of the fact that there was no evidence that this child was in any imminent danger from the mother. Past performance is of course indicative of potential future behavior, but it is not all that courts must consider, especially considering the constitutionally protected parent-child relationship. Children simply are not entitled to perfect parents because there is no such thing.

Computing the Time Period of Removal of a Child from the Parent in a TPR Proceeding: *In re: J.J., J.J., and A.J. (Iowa Court of Appeals, January 14, 2015)*: In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals affirmed the TPR on the father, finding that placement with the father contrary to a court order did not extend the one-year time period necessary to support TPR:

> We reject the father's suggestion that the grandfather's leaving the children with the mother for five days, contrary to court order and against DHS direction, constituted any kind of "trial period" or in any way tolls the period of time the children were removed from the parents' custody.

Participation in Services Shortly Before Termination Does Not Support an Extension of Time in a TPR Case: *In re: A.K. and A.W. (Iowa Court of Appeals, January 14, 2015)*: In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals affirmed the TPR, finding that the mother's recent participation in services shortly before the TPR hearing did not support the granting of a six-month extension:

> Because the mother only became more involved with the offered services in the few weeks leading up to the termination hearing, we cannot say the issues that led to removal will no longer exist in six months. Children should not be forced to wait for their parent to be able to care for them, particularly when we have so little evidence to rely upon to believe the circumstances will be different in six months. *Citation Omitted.* We agree with the district court that the extension is not warranted, and we consider whether the grounds for termination have been met.

TPR is Preferred Over Guardianship: *In re: E.D. and A.G. (Iowa Court of Appeals, January 14, 2015)*: In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals affirmed the TPR, finding that TPR is preferred over establishing a guardianship, as TPR provides more permanency for the child:

> We note that a guardianship is not a legally preferable alternative to termination of parental rights and adoption, *Citation Omitted,* and termination is the appropriate solution when a parent is unable to regain custody within the time frames of chapter 232.

Termination on the Non-Custodial Parent even When the Child is Placed with the Other Parent: *In re: G.W., (Iowa Court of Appeals, February 11, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the father, the Iowa Court of Appeals affirmed the TPR, holding that the timeframe for TPR is not excused for a noncustodial parent even when the child is placed with the other parent:

> To terminate parental rights under Iowa Code section 232.116(1)(f), the State must prove by clear and convincing evidence the child is four years of age or older, has been adjudicated in need of assistance, has been removed from the physical custody of the parent for twelve of the last eighteen months, and cannot be returned to the parent's care. We

> further note that termination is appropriate for the noncustodial parent, even when the child is placed with the other parent.

The Obligation of an Out-of-State Noncustodial Parent in a TPR Case: *In re: T.S. and K.G., (Iowa Court of Appeals, February 25, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the mother, the Iowa Court of Appeals affirmed the TPR holding that a noncustodial parent whose conduct was not responsible for the removal must "step up" his involvement with the child in order to avoid TPR:

> The question might be reframed: What did the legislature intend that a noncustodial out-of-state parent must do in order to satisfy the requirement of an "affirmative assumption of the duties encompassed by the role of being a parent" when faced with a CINA adjudication and possible termination of parental rights? In the context of a CINA proceeding and impending termination proceeding, was Kirk required to do more than maintain his status quo as a noncustodial dad? . . .
> The legislative scheme is designed to require that parents whose children are subjects of a CINA case "step up their game" in order to avoid termination. Parents are given timely warnings—as was Kirk in this case—that failure to take such steps may result in termination and they are given opportunities to request additional services or assistance. Simply put, a parent must *do* something, must make some effort to move; neither standing still nor cruise control on a status-quo path will defeat an impending termination.
> Inherent in CINA proceedings is a requirement that parents who were the cause of the CINA determination are required to take certain affirmative steps to remedy the circumstances which gave rise to the adjudication. In other words, maintaining the status quo is not sufficient for such a parent. In the event only one of the parents was responsible for causing the CINA adjudication, the other parent cannot refuse to assist in the remediation and just stand on the sideline and observe.

Defining "Previously Adjudicated" Under the TPR Statute: *In re:* A.R., D.R., *J.C. and J.C., (Iowa Court of Appeals, February 25, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the mother, the Iowa Court of Appeals reversed the TPR, and in doing so interpreted the terms "previously adjudicated" to include an adjudication in a concurrent proceeding:

> Section 232.116(1)(d) requires that "[t]he court *has previously adjudicated* the child to be in need of assistance." Iowa Code § 232.116(1)(d)(1) (emphasis added). Nine subsequent subparagraphs require that the child "*has been adjudicated*" a child in need of assistance. *See id.* § 232.116(1)(e), (f), (g), (h), (j), (k), (*l*), (m), and (n) (emphasis added). One subparagraph requires that the child "meets the definition of child in need of assistance." *See id.* § 232.116(1)(d)(i). The remaining subparagraphs do not require any CINA determination. *See id.* § 232.116(1)(a), (b), (c), and (o) . . . We reconcile *N.H.* and *A.B.* by concluding that our supreme court has determined a "previous adjudication" should be interpreted to mean an adjudication in *either* a prior or the current proceeding so long as the adjudication is previous to the filing of the termination petition.

M. Constitutional Issues:

Combining Dispositional and Termination Hearings Does Not Violate Due Process: *In re: K.P. (Iowa Court of Appeals, June 25, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that combining two hearings (TPR and Disposition) does not violate the parent's constitutional Due Process rights:

> K.S. claims her procedural due process rights were violated by the combined disposition and termination hearing. . . K.S. was given sufficient notice of both the nature and scope of the combined hearing. She was also given ample opportunity to be heard on both the aggravated circumstances and termination issues, and declined to present a meaningful defense to the State's allegations. In no way did the combined hearing deprive her of a meaningful right.

Accepting Evidence After the Case is Submitted Without a Chance for Response Violates Parents' Due Process Rights: *In re: A.B. and A.B. (Iowa Court of Appeals, December 24, 2014)*: In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals reversed the termination order finding that the reliance of the trial court on a report of the G.A.L. submitted after the case was "submitted", violated the parents' due process rights:

> The mother now appeals. She contends the juvenile court violated her right to procedural due process by considering the new information contained in the GAL's filings after the termination hearing closed without providing her an opportunity to respond. . . But in this case, the mother did not have notice the juvenile court would consider evidence submitted after the termination hearing. At the close of the hearing, the court deemed the matter "submitted." . . . In the termination ruling, the court relied heavily on the new, untested information. . . The mother argues the court's use of this information violated her due process rights as the court held no hearing where she could object to the new evidence or present new evidence of her own. We agree. . . It is true juvenile courts have broad discretion to reopen the evidence. *In re J.R.H.*, 358 N.W.2d 311, 318 (Iowa 1984) (explaining "[t]his is a juvenile case in which the best interests of the children dictate that the rules of procedure be liberally applied in order that all probative evidence might be admitted"). But the court here did not reopen the record to take the GAL's new evidence. In fact, the evidence was not admitted into the record. The court did not hold a hearing on the GAL's filings. The mother did not have an opportunity to object to or explain the evidence attached to the GAL's filing nor to present her own contrary evidence. Because due process requires the mother be afforded a meaningful opportunity to respond, we reverse the termination order and remand the case to the juvenile court for a supplemental hearing where the State, the GAL, and the mother may present any additional evidence relevant to the court's decision whether to terminate parental rights.

N. Appeals:

Failure to Order Transcript on Appeal Waives Error: *In re: I.M.*, *(Iowa Court of Appeals, August 27, 2014)*: In this appeal affirming a dispositional order and an order terminating parental rights (TPR), the Iowa Court of Appeals held that an intervenor-grandparent's failure to provide a transcript of the dispositional hearing proceedings waives any claims:

> Insofar as the grandmother's appeal involves the district court's disposition order finding placement of I.M. in her care was not in the child's best interests, the grandmother's failure to provide us with a transcript of the entire disposition proceedings constitutes waiver of the issue.

Preservation of Issues on Appeal: *In re: I.L., (Iowa Court of Appeals, October 1, 2014)*: In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a mother's failure to as the trial court to enlarge or modify its order resulted in a waiver of any issues not included in the trial court's order:

> Where, as here, the juvenile court failed to make a written finding of fact or conclusion of law, "[t]he findings and conclusions may be enlarged or amended and the judgment or decree may be modified upon timely posttrial motion [pursuant to Iowa R. Civ. P. 1.904(2)]." *Citation Omitted.* The party must bring the issue to the attention of the lower court, and it must be evident the court considered the party's claim. *Citation Omitted.* Failure to file such a motion waives any challenges to the deficiency in the court's termination order. *Citation Omitted.*
>
> Here, we agree with the mother that the juvenile court did not make an express determination addressing whether any statutory exception applied. Nevertheless, the mother did not make any further motion to amend and enlarge the court's findings. Therefore, the issue was not preserved for appeal.

Review Orders and Orders Setting Permanency Hearings are Not Final Orders for the Purposes of Appeal Rights: *In re: Z.F., C.F., R.F., and T.F. (Iowa Court of Appeals, December 24, 2014)*: In this appeal of a child in need of assistance (CINA), case, the Iowa Court of Appeals held that review orders and orders setting permanency hearings are not final orders allowing a right to appellate review:

> Final orders or judgments are appealable. Iowa R. App. P. 6.101(1). The mandatory review order and order setting permanency hearing is not a final order. *See In re T.R.*, 705 N.W.2d 6, 10 (Iowa 2005) (stating a final order is "one that finally adjudicates the rights of the parties" and stating an order "is not final when the trial court intends to do

> something further to signify its final adjudication of the case" and "unless it disposes of all the issues."). By its terms, the order leaves open the possibility of revision, on receipt of additional information. While the parents point out that certain information cited by the juvenile court as unavailable was actually in the court file at the time of the order, other information such as evidence from the parents' individual therapist, had yet to be presented. We conclude the order, like a permanency review order this court considered in *In re S.K.*, No. 10-1628, 2011 WL 662837, at *2 (Iowa Ct. App. Feb. 23, 2011), "essentially maintains the status quo and sets the matter for further review at a later date." The order is not appealable as a matter of right. It is interlocutory. *See* Iowa R. App. P. 6.104(1).

Dispositional Orders are Final Orders for the Purposes of Appeal Rights: *In re: A.H. (Iowa Court of Appeals, December 24, 2014)*: In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals held that dispositional orders are final orders and, if not appealed, may fail to preserve error on deficiencies in the CINA proceedings:

> Nevertheless, there is a serious error preservation concern here. The aggravating circumstances finding was in the dispositional order, which is a "'final,' appealable order." *In re Long*, 313 N.W.2d 473, 476 (Iowa 1981). We have held that a parent must appeal the dispositional order to challenge deficiencies from any of the CINA proceedings to preserve the alleged errors for our review.

Preserving Appeal Issues by Appealing the CINA Adjudication: *In re: J.B. (Iowa Court of Appeals, January 14, 2015)*: In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals affirmed the TPR, finding that the mother had waived the claim that abandonment had not been established when she failed to appeal the Child-in-Need of Assistance finding:

> The mother challenges the juvenile court's finding that she abandoned the child, which was made during the CINA proceedings. The challenge to the finding of abandonment could have and should have been made by appeal from the dispositional order entered after the CINA adjudication and it cannot be raised here.

A Permanency Order May Not Be a Final Order for Appeal: *In re: R.W. and C.W., (Iowa Court of Appeals, February 11, 2015)*: In this appeal of an permanency order in a Child in Need of Assistance (CINA) case, the Iowa Court of Appeals dismissed the appeal, holding that the permanency order that did not include the mandatory options, was not a final order allowing an appeal:

> In its permanency order, the juvenile court cited Iowa Code section 232.104, which governs permanency proceedings, but failed to rule pursuant to one of the four mandatory options in 232.104 (2)(a)–(d). Instead, the juvenile court ruled on some items, (discontinuation of services) and left other items unresolved (the guardianship). We find the juvenile court's ruling fits the definition of an interlocutory order and therefore cannot be heard on appeal. We dismiss the mother's appeal due to the lack of a "final order or judgment" in this case.

Post-Trial Motions Alone do not Preserve Error: *In re: T.C. and J.C., (Iowa Court of Appeals, February 11, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the father, the Iowa Court of Appeals affirmed the TPR, holding that post-trial motions and a notice of appeal alone do not preserve error on appeal:

> The father asserts he preserved error through testimony, the motion pursuant to Iowa Rule of Civil Procedure 1.904, and the notice of appeal. Our examination of the record discloses the father did not assert the applicability of the exception during the termination hearing. Thus, although he requested a post-trial ruling, the father had not raised the issue prior to the rule 1.904 motion. Thus it was not properly raised. Accordingly, the 1.904 motion did not preserve the issue for hearing on appeal.

Preservation of Error on Constitutional Issues: *In re: J.F. (Iowa Court of Appeals, February 25, 2015)*: In this appeal of an order removing a child and adjudicating the child to be a child in need of assistance (CINA), the Iowa Court of Appeals affirmed the lower court, holding that the parent failure to preserve error on the constitutional issues:

> Parents are entitled to due process in a CINA proceeding. *Citation Omitted.* Nevertheless, parties to a child welfare hearing have an obligation to preserve error for appeal, even when the alleged error impacts their constitutional rights. *Citation Omitted.* This requires

> that parties present their constitutional questions to the district court when the grounds for objection become apparent at the earliest opportunity. *Citation Omitted.* "A party cannot preserve error for appeal by making only general reference to a constitutional provision in the district court and then seeking to develop the argument on appeal." *Citation Omitted.* Additionally, the court must rule upon the constitutional issue to preserve error, in either its initial ruling or after the parties file a motion to enlarge or amend, requesting the court to rule on the issue. *See State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008) (noting that when the district court fails to address a constitutional argument raised by the defendant, the defendant must "file a motion to enlarge the trial court's findings or in any other manner have the district court address th[e] issue").
>
> Here, even assuming without deciding the father presented his constitutional claims to the juvenile court, the court did not rule on his constitutional challenges, nor did the father file a motion to enlarge or amend the court's rulings, even after he was represented by counsel. The father did not preserve error on his due process claims, and consequently, we do not consider them on appeal.

Preserving Error on a Request for Additional Time: *In re: A.L., L.R., and E.R., (Iowa Court of Appeals, March 25, 2015)*: In this appeal of an order terminating the parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the mother failed to preserve error for appeal on the issue of her request for an additional six months when the court failed to specifically rule on the request and she failed to file a post-trial motion requesting a specific ruling:

> Finally, the record shows the mother asked for an additional six months to work toward reunification at the termination hearing. The court noted this issue in its opinion, but it did not provide a ruling on the issue. Since the mother did not file a motion to preserve error on this issue, this issue has not been preserved on appeal.

Preserving Error on Constitutional Issues: *In re: C.H., (Iowa Court of Appeals, March 25, 2015)*: In this appeal of an order terminating the parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the mother failed to preserve error for appeal on the issue of the constitutionality of the statute when the court failed to specifically rule on the issue and she failed to file a post-trial motion requesting a specific ruling:

> On appeal, the mother claims the permanency deadlines in section 232.116(1)(h) are unconstitutional because the time is unreasonably short to regain custody of a child under the age of four. The mother argued this position at the hearing, but the juvenile court did not discuss the constitutionality of the statute in its decision. The mother did not file a motion under Iowa Rule of Civil Procedure 1.904(2) asking for the court to address this argument. Because the juvenile court did not rule on the constitutional claim, it was not preserved for appellate review.

O. Delinquency Cases:

Placing Juveniles on the Sex Offender Registry: *In re: A.J.M.*, ____ N.W.2d ____ *(Iowa, June 6, 2014)*: In this appeal of a ruling declining to place a juvenile offender on Iowa's Sex Abuse Registry, the Iowa Supreme Court reversed, holding that there is a presumption of placement on the registry and that the sole issue before the court is protection of the public:

> A juvenile court is authorized to waive the registration requirements for eligible juveniles when it "finds that the person should not be required to register." *Citation Omitted.* This waiver provision gives the juvenile court discretion to excuse an eligible juvenile from the registration requirement. *Citation Omitted.* The discretion, however, "is not unbridled." *Citation Omitted.* Not only is the waiver limited to eligible juveniles, but the juvenile court must *find* registration should be excused. The waiver provision does not identify any specific guidelines for juvenile courts to apply in exercising discretion to waive sex offender registration. . . Accordingly, the legal standard for waiver under the statute is guided by public protection. Waiver is available when the juvenile court "finds" in its discretion that the eligible juvenile is not likely to reoffend. . . In applying these standards, it is important to recognize it is possible for any juvenile sex offender to reoffend. Yet, the mere possibility of reoffending does not preclude waiver or subsequent modification. The standard intended by our legislature is built on a likelihood of reoffending. This means the risk of reoffending would be "probable or reasonably to be expected."

Evidence Required for Delinquency Adjudication: *In re: S.P. (Iowa Court of Appeals, June 25, 2014)*: In this appeal of a delinquency adjudication, the Iowa Court of Appeals reversed, holding that the State's case against S.P. rested on too many inferences to satisfy the burden of proof,:

> Because juvenile proceedings do not offer the right to a jury trial, a more in-depth appellate review of the facts supporting and opposing adjudication is appropriate. *Citation Omitted.* Delinquency adjudications are special proceedings that serve as an alternative to a criminal prosecution—keeping the best interest of the child as the objective. *Citation Omitted.* . . Our law has no bias against circumstantial evidence. *Citation Omitted.* But like direct evidence, it must raise a fair inference of culpability; if circumstantial evidence does no more than create speculation, suspicion, or conjecture, it is insufficient. . . "An inference must do more than 'create speculation, suspicion, or conjecture.' Evidence that allows two or more inferences to be drawn, without more, is insufficient to support guilt."

Standard for Waiving Placement of a Juvenile on the Sex Offense Registry: *In re: D.H., (Iowa Court of Appeals, February 11, 2015)*: In this appeal of an order denying a juvenile's request for waiver from placement on the Iowa Sex Offender Registry, the Iowa Court of Appeals affirmed the decision to deny waiver, setting for the requirements for granting a waiver:

> In Iowa, a person who is convicted of or adjudicated delinquent for committing certain sexual offenses is required to register as a sex offender. . . The code allows a juvenile court to waive the registration requirements for an eligible juvenile when it "finds that the person should not be required to register." Iowa Code § 692A.103(3). But the code does not provide any specific guidelines or factors for the court to consider. . . Waiver from the registry requirement is only available when the juvenile court "finds" in its discretion that the eligible juvenile is not likely to reoffend. . . The nature of the offender's acts, the offender's status, his attitude toward his victims, as well as clinical judgment and assessment tools, are all factors which courts may consider in deciding if a juvenile is appropriately listed on the sex offender registry.