

IN THE SUPREME COURT OF IOWA

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SUPREME COURT NO. 20-1406  
Polk County Juvenile No. JVJV247853

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IN THE INTEREST OF  
A.W.

MINOR CHILD,

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APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY  
THE HONORABLE JUDGE SUSAN COX

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**APPELLANT'S APPLICATION FOR FURTHER REVIEW OF  
THE DECISION OF THE IOWA COURT OF APPEALS  
FILED FEBRUARY 3, 2021**

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**CERTIFICATE OF CONFIDENTIALITY**

**Pursuant to Iowa Rule of Appellate Procedure 6.110(2), counsel  
for the Appellant certifies that the attached Application for Further  
Review contains confidential information as contemplated by Iowa  
Code § 232.147.**

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## **QUESTIONS PRESENTED FOR REVIEW**

1. Whether the Iowa Court of Appeals erred in finding that the State had proven certain grounds for adjudication under Iowa Code Section 232.2(6)(c)(2)?
2. Whether the Iowa Court of Appeals erred in finding that the initial removal and continued removal at Adjudication and Disposition hearing was appropriate pursuant to Iowa Code Section 232.95?

## **CERTIFICATE OF FILING**

I, Nicholas A. Bailey, hereby certify that on the 13th day of February 2021, I did file the attached Appellant's Application for Further Review with the Supreme Court by electronically filing a copy thereof through the electronic document management system (EDMS).



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## CERTIFICATE OF SERVICE

I, Nicholas A. Bailey, hereby certify that on the 13th day of February 2021, the following parties were served with a copy of this Appellant's Application for Further Review through the electronic document management system (EDMS):

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## **STATEMENTS SUPPORTING FURTHER REVIEW**

COMES NOW the Mother-Appellant, pursuant to Iowa R. App. P. 6.1103, and hereby makes application for further review of the February 3, 2021 decision of the Iowa Court of Appeals in In re A.W., Supreme Court No. 20-1406. In support thereof, Appellant states:

1. This Court should grant this application for further review on the ground that the Iowa Court of Appeals erred in finding that the State had proven certain grounds for adjudication under Iowa Code Section 232.2(6)(c)(2).
2. This Court should grant this application for further review on the ground that the Iowa Court of Appeals erred in finding that the initial removal and continued removal at Adjudication and Disposition hearing was appropriate pursuant to Iowa Code Section 232.95.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATIONS, TYPEFACE REQUIREMENTS, AND TYPE-  
STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

☒ this brief contains 3,886 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

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2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. WHETHER THE COURT OF APPEALS ERRED IN ITS FINDING THAT THE STATE HAD PROVEN THAT ADJUDICATION PROVEN BY CLEAR AND CONVINCING EVIDENCE UNDER IOWA CODE SECTION 232.2(6)(c)(2)?

### Authorities

In re H.G., 601 N.W.2d 84, 85 (Iowa 1999).

In re N.C., 551 N.W.2d 872, 872 (Iowa 1996).

In re D.D., 653 N.W.2d 359, 361 (Iowa 2002).

In re J.E., 723 N.W.2d 793, 798 (Iowa 2006).

Iowa Code § 232.2(6)(c)(2) (2019).

Iowa Code § 232.2(6)(n) (2019).

2. WHETHER THE COURT OF APPEALS ERRED IN ITS FINDING THAT THE STATE HAD PROVEN THAT REMOVAL WAS NECESSARY PURSUANT TO IOWA CODE SECTION 232.95 TO PREVENT HARM TO THE CHILD?

### Authorities

In re J.S., 846 N.W.2d 36, 40 (Iowa 2014).

Iowa Code § 232.99(4) (2019).

Iowa Code § 232.95(2)(a) (2019).

In re D.D., 653 N.W.2d 359, 362 (Iowa 2002).

## **STATEMENT OF THE CASE**

**Nature of the Case:** The Mother, Teneisha Doner, and Father, Seandell Wilson, are the parents of a minor daughter, A.W., born in 2020. A.W. was adjudicated a child in need of assistance on June 3, 2020. Disposition was held on July 16, 2020. During both proceedings, the Mother contested adjudication and contested continued removal of A.W. from her care. A Dispositional Order was not entered in this matter until October 20, 2020. The juvenile court issued its ruling confirming adjudication under Iowa Code Sections 232.2(6)(c)(2) and 232.2(6)(n). The Mother filed a timely Notice of Appeal on November 2, 2020. The Court of Appeals affirmed the juvenile court's ruling as to all matters except one. The Court of Appeals overturned the adjudication pursuant to Iowa Code Section 232.2(6)(n). This application for further review is timely filed within ten (10) days of the Iowa Court of Appeals decision.

### **Course of Proceedings and Disposition in the Juvenile Court and**

#### **Statement of the Facts:**

Teneisha Doner (hereinafter "Teneisha") is the biological mother of A.W. Seandell Wilson (hereinafter "Seandell") is the biological father of A.W. A.W. was born on April 7, 2020.

This family is also involved in other juvenile proceedings which are

currently on appeal in Iowa Supreme Court no. 20-1266. That appeal involves three half-siblings of A.W., whom are A.B., A.C. and A.C. Like those cases, A.W.'s case has a complicated procedural history. For instance, although a contested dispositional hearing was held on July 16, 2020, along with a request for return of A.W. at that time, the parties did not receive a written ruling until October 20, 2020 – over three months later. For a history of this family, the Mother invites the court to cross reference and take notice of the brief filed in Case no. 20-1266. Like that case, this case was punctuated by problems with the lack of provision of reasonable efforts toward reunification with A.W. and intentional thwarting by the Department of Human Services of the Mother's efforts to regain care of her child.

On April 7, 2020, A.W. was born to the Mother by caesarean section in a planned birth. Following A.W.'s birth, the Mother made plans for A.W. to live with her paternal grandmother, Tamika Terrell, in the State of Michigan. The plan was for Tamika to obtain guardianship of the child in the State of Michigan. The Mother included the Department of Human Services in this planning by engaging in an email exchange with assigned DHS worker Lisa Cunningham. (See Mother's Exhibit A). The DHS worker gave permission for the paternal grandmother to take the child with her to Michigan. The last communication was a question from the DHS

worker asking, “Can you have the baby go back with Seandell’s mom today?.” *Id.* The Mother responded, “Yes, I can.” *Id.* This was the final communication between DHS and the Mother on the subject, and the child was sent back to Michigan with the paternal grandmother.

Unbeknownst to other parties – save the county attorney—at the same time DHS was emailing the Mother giving her permission to send the child with its paternal grandmother, an appropriate person, the Department was also requesting ex-parte removal. On April 9, 2020, the State filed a CINA Petition, along with an Application for an Ex-Parte Removal Order, making no mention of the conversation between DHS and the Mother allowing her to send A.W. with the paternal grandmother. (CINA Petition, 4/9/20; Application for Removal, 4/9/20). The Juvenile Court issued an ex parte removal order on that same date, citing the parents’ unresolved domestic violence and substance abuse issues, and the parents’ inability to provide a safe home free of violence, tumult, chaos, and substance abuse. (Ex-Parte Removal Order, 4/9/20). On April 14, 2020, the Juvenile Court issued an Order for completion of an expedited ICPC pursuant to the State’s request. (Order for Expedited ICPC, 4/14/20).

On April 16, 2020, the Mother filed a Motion to Stay Removal. Mother cited the circumstances detailed above and that the Department

appeared to essentially be telling the Mother one thing and then covertly approaching the Court about an ex-parte removal order concurrently. (Motion to Stay Removal Order, 4/16/20). A contested removal hearing commenced on April 17, 2020. At that same time Mother's Motion to Stay Removal was heard. The parties presented evidence and the court took the matter under advisement and set a continuation of the Removal Hearing on April 27, 2020.

On April 19, 2020, the Juvenile Court denied the Mother's Motion to Stay Removal, finding that the directive of the Department was not "clear" and that even if it had been the Court found that necessary grounds for removal were met. (Order Denying Stay, 4/19/20). The Court identified no safety concerns with the paternal grandmother or her care for the child. *Id.* Following denial of that Motion, the paternal grandmother returned the child to Iowa, and the child was placed in foster care.

On April 27, 2020, the Court continued the Removal Hearing previously held with additional evidence and testimony. On May 4, 2020, the Court ordered continued removal from both parents' care. (Removal Order, 5/4/20). Notably, the Court made no specific findings of concerns or imminent risk to the child had she remained in the parental grandmother's care, only a generally finding that it was needed because of unspecified

“imminent risk to the child’s life or health.” *Id.* The Court further found, “The Court believes the parents’ abrupt decision to have the paternal grandmother take Amiah to Michigan was to try and thwart DHS’s decision to request the Court remove Amiah. If the Court and/or DHS was not involved, Amiah would be back with the mother who repeatedly tested positive for drugs yet denies responsibility- continues to violate a Criminal No Contact Order and continues to engage in an unhealthy, domestic violence relationship with Seandell.” *Id.* at 7. The Court’s ruling is belied by the evidence in Mother’s Exhibit A and testimony at the Removal Hearing. The Department clearly felt this plan was enough to safeguard the health and safety of A.W., or at least outwardly that is what they portrayed to the mother, paternal grandmother, father, and every other party while covertly approaching the Juvenile Court for an ex-parte removal order. *Id.* The Department’s approach to this case appeared to be to play a game of chess with the Mother, rather than fulfill its statutory duty to reunify this family.

On June 3, 2020, a contested adjudication hearing was held in this matter. The parties relied on the evidence previously submitted at the Removal Hearing held on April 17, 2020 and April 27, 2020, and the court took judicial notice of those findings and the exhibits submitted therein.



(CINA Adjudication Order, 6/8/20). The Mother specifically contested adjudication as well as continued removal of A.W. from her home. The Juvenile Court found clear and convincing evidence to adjudicate A.W. pursuant to Iowa Code Sections 232.2(6)(c)(2) and 232.2(6)(n). *Id.* at 1. The Court found that continued removal was necessary due to “unresolved issues.” The Court made many findings regarding the parents’ past performance in the half-sibling’s cases but did not specify which “unresolved issues” necessitated continued removal from the Mother’s care. *Id.* at 9. Further, the Court did not specifically find what imminent risk to the child existed if she were placed in the care of the mother. *Id.* Further, the Court denied the Mother’s claim that a CINA was unnecessary as the paternal grandmother was seeking guardianship of A.W. in Michigan. *Id.*

On July 16, 2020, a Disposition Hearing was held in this matter. (CINA Disposition Order, 10/20/20). The Court took judicial notice of the trial testimony of the mother, father, DHS worker, FSRP worker, and paternal grandmother in the half-siblings’ termination trial (See *In re A.B, A.C. and A.C.*, Iowa Supreme Court Case no. 20-1266). No new evidence was submitted by any party. Those cases had come on for hearing on June 26 and 29, 2020. The Court took notice of findings from those cases that predated A.W.’s birth by over two years and did not reflect the present state

of the parents' ability to care for A.W. The Mother maintained at the July 16, 2020 hearing that neither removal nor adjudication were necessary for A.W. at any stage of these proceedings. A.W. would have been safe in the Mother's care at the time of the disposition hearing. Further, A.W. would have been safe in the care of Tamika Terrell, the paternal grandmother, on April 9, 2020 (the child was already with her out of state) and had the Department followed through with its own plans the aid of the Court would not have been necessary. The Court confirmed removal of A.W. and her continued adjudication under the two grounds previously found. (CINA Disposition Order, 10/20/20).

Teneisha timely filed a Notice of Appeal on November 2, 2020. (Notice of Appeal, 11/2/20).

## **ARGUMENT**

### **I. THE COURT OF APPEALS ERRED IN ITS FINDING THAT THE STATE PROVED GROUNDS FOR ADJUDICATION UNDER IOWA CODE SECTION 232.2(6)(c)(2).**

#### **A. Standard of Review.**

This Court reviews claims that children were improperly adjudicated as children-in-need-of-assistance *de novo*. In re H.G., 601 N.W.2d 84, 85 (Iowa 1999). The State has the burden to prove the grounds supporting the children's adjudication by clear and convincing evidence. In re N.C., 551

N.W.2d 872, 872 (Iowa 1996). "Clear and convincing evidence" must leave "no serious or substantial doubt about the correctness of the conclusion drawn from it." In re D.D., 653 N.W.2d 359, 361 (Iowa 2002). The Court reviews both the facts and law and adjudicates rights anew. In re H.G., 601 N.W.2d at 85.

**B. Discussion.**

At the time of the adjudication hearing and again at the disposition hearing, Teneisha was engaged in individual therapy with Ellie from CFI. She was attending substance abuse treatment with Cabrie at CFI. She had stable housing and an apartment that was adequate to house both her and the children. She was actively engaged in looking for employment. She had re-engaged in domestic violence services through her work in individual therapy. She was in good standing with her criminal probation officer and slated to discharge successfully in November 2020. She had completed SafeCare programming and had no issues noted with her parenting. Her last positive UA for illegal substances was a positive screen for cocaine in February 2020, and before that a positive test for marijuana in November 2019. She had a single positive screen for alcohol in May 2020, and she admitted to usage of alcohol during a birthday celebration. Teneisha was attending visits with her children on a regular basis. There was testimony at

the termination hearing of the half-siblings that Teneisha was bonded to the children. During the visitations that occurred close in time to the TPR trial in the half-siblings' cases, Teneisha was appropriate and showed adequate parenting skills. Her performance was not perfect to be sure but was adequate to assure the safety of the children. Adjudication of A.W. was simply not necessary, and her continued removal from the Mother's care was not necessary as there was no imminent risk to the child.

An adjudication under Iowa Code Section 232.2(6)(c)(2) requires proof by clear and convincing evidence that the child "has suffered or is imminently likely to suffer harmful effects as a result of...[t]he failure of the child's parent...to exercise a reasonable degree of care in supervising the child." Iowa Code § 232.2(6)(c)(2) (2019).

The crux of the State's argument at adjudicatory hearing appeared to center around Teneisha's past behaviors, her past criminal behavior and current probation status, and most importantly her prior juvenile court involvement and termination of parental rights of other children. There is no question that Teneisha has had a lackluster performance with juvenile court (in the past), but that history alone cannot suffice as grounds for adjudication in this case. The State must present specific evidence that A.W. is *imminently likely* to suffer harmful effects because of a failure of Teneisha to

supervise her. *See id.* Here, Teneisha made plans with DHS' blessing to place her child in a guardianship with her paternal grandmother, Tamika Terrell. She had the written sign-off of the Department worker to send the child home with Tamika to Michigan. The Department knew Tamika lived out of state in Michigan and that is where A.W. would be relocating. There is simply insufficient evidence for the State to meet its considerable burden of clear and convincing evidence for adjudication under Iowa Code Section 232.2(6)(c)(2). Nothing Teneisha did or failed to do put this child at risk of harm.

The Court also adjudicated A.W. as a Child in Need of Assistance pursuant to Iowa Code Section 232.2(6)(n). Under Subsection 232.2(6)(n), the State must prove that a parent's "mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care." Iowa Code § 232.2(6)(n) (2019). Again, the State and the Juvenile Court rely heavily on Teneisha's past performance, her criminal history, her probation status; however, they do not rely upon facts grounded in current reality as to any current mental capacity or condition, or drug and alcohol usage. Teneisha had been clean from illicit drugs for some months at the time of the adjudication in June 2020. She was engaged in treatment. She was engaged in therapy. Her performance and attendance had not been

perfect, but there was not sufficient evidence that any condition from which she suffered would have affected her ability to parent A.W. to the extent that he would not have received adequate care. The State did not meet its burden for adjudication under Iowa Code Section 232.2(6)(n).

**II. THE COURT OF APPEALS ERRED IN ITS FINDING THAT REMOVAL WAS NECESSARY TO AVOID HARM TO THE CHILD PURSUANT TO IOWA CODE SECTION 232.95.**

**A. Standard of Review.**

This Court reviews claims that children were improperly removed *de novo*. In re J.S., 846 N.W.2d 36, 40 (Iowa 2014). In doing so, the Court gives weight to the juvenile court’s findings, but is not bound by them. *See id.*

**B. Discussion.**

Mother argued at all stages of this case – removal, adjudication, and disposition hearings—that the removal of A.W. from her care was inappropriate. Specifically, the Mother argued that there was no imminent risk of harm to A.W. to remain in her care. Also, at the disposition hearing, she argued that it was not the least restrictive placement appropriate considering the facts of this case.

At the time of disposition hearing, the court shall make “the least restrictive disposition appropriate considering all the circumstances of the

case.” Iowa Code § 232.99(4) (2019). Removal is appropriate “if the court finds that substantial evidence exists to believe that removal is necessary to avoid imminent risk to the child’s life or health.” Iowa Code § 232.95(2)(a) (2019). A removal order must “make a determination that continuation of the child in the child’s home would be contrary to the welfare of the child, and that reasonable efforts ... have been made to prevent or eliminate the need for removal of the child from the child’s home.” Iowa Code §232.95(2)(a)(1) (2019). “The most important consideration in any CINA case is the best interests of the child.” *In re D.D.*, 653 N.W.2d 359, 362 (Iowa 2002).

In this case, Teneisha, with the blessing of the Department of Human Services, planned to place her child in a guardianship with her paternal grandmother, Tamika Terrell. She had the written sign-off of the Department worker to send the child home with Tamika to Michigan. The Department knew Tamika lived out of state in Michigan and that is where A.W. would be relocating. Nothing Teneisha did or failed to do put this child at risk of harm. There was not substantial evidence of serious risk to the health or safety of A.W. In fact, by all accounts the home of Tamika was appropriate and she was an appropriate person.

Further, even if the Department could not allow the child to travel out

of state without an ICPC, the State did not prove at disposition that the child needed to remain out of Teneisha's care. Teneisha was engaged in therapy. She was engaged in substance abuse treatment. Her last positive drug screen for illicit drugs was 5 months prior to disposition, and the last positive drug screen before that was in November 2019. The child should have been returned to Teneisha's care at the time of the disposition hearing as there was no longer a risk to the health and safety of A.W. in returning the child to her care.

### **CONCLUSION**

For the reasons stated above, Mother respectfully requests this Court overturn the decision of the Iowa Court of Appeals as to the adjudication of A.W. as a child in need of assistance pursuant to Iowa Code Section 232.2(6)(c)(2) and dismiss the Petition. In the alternative, the Mother requests that the Court overturn the decision on continued removal of A.W. from the Mother's care even if the decision on adjudication is upheld.



## REQUEST FOR ORAL SUBMISSION AND FULL BRIEFING

Mother respectfully submits this case with a request for oral argument and full briefing.



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