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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 20-1034

IN THE MATTER OF THE GUARDIANSHIP OF L.M.Y.

G.Y. and K.Y.,

Guardians-Appellants,

And Concerning,

S.W.,

Mother-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR

STORY COUNTY

THE HONORABLE STEPHEN A. OWEN, JUDGE

APPELLEE'S AMENDED BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

STATEMENT OF ISSUES PRESENTED FOR REVIEW

ISSUE I

THE DISTRICT COURT CORRECTLY DETERMINED THAT THE GUARDIANSHIP OF L.M.Y. SHOULD BE TERMINATED.

AUTHORITIES

Doan Thi Hoang Anh v. Nelson, 245 N.W.2d 511 (Iowa 1976)

In re Guardianship of Blair, No. 01-1565, 2003 WL 182981 (Iowa Ct. App. Jan. 29, 2003)

In re Guardianship of Hedin, 528 N.W.2d, 567 (Iowa 1995)

In re Guardianship of Knell, 537 N.W.2d 778 (Iowa 1995)

In re Guardianship of M.E., No. 16-1178, 2017 WL 2465791(Iowa Ct. App. June 7, 2017)

In re Guardianship of M.I.D., No. 17-1481, 2018 WL 5840802 (Iowa Ct. App. November 7, 2018)

Guardianship of Plucar, 72 N.W.2d 455 (Iowa 1955)

In re Guardianship of Roach, 778 N.W.2d 212 (Iowa Ct. App. 2009)

In re Guardianship of Sams, 256 N.W.2d 570 (Iowa 1977)

In re Guardianship of Stewart, 369 N.W.2d 820 (Iowa 1985)

In re Marriage of Vrban, 359 N.W.2d 420 (Iowa 1984)

Northland v. Starr, 581 N.W.2d 210 (Iowa Ct. App. 1998)

Painter v. Bannister, 258 Iowa 1390, 140 N.W.2d 152 (1966)

ISSUE II

S.W. SHOULD BE AWARDED APPELLATE ATTORNEY FEES.

AUTHORITIES

ROUTING STATEMENT

This matter should be transferred to the Court of Appeals because it involves questions that can be resolved by applying existing legal principles. *Iowa R. App. P.* 6.1101(3)(a)(2020).

STATEMENT OF THE CASE

Nature of the Case

This is an appeal by Appellants, G.Y. and K.Y., (hereinafter "G.Y." and/or "K.Y.") from the Order Terminating Guardianship of L.M.Y., entered July 27, 2020

in which the District Court terminated the grandparent's guardianship and placed L.M.Y. in the custody of her mother, S.W., (hereinafter "S.W.").

Course of Proceedings

A Petition for Stand Alone Guardianship was filed by G.Y. and K.Y. on February 19, 2014. (Petition for Appointment of Guardian, App. Pg. 6-7). Both S.W. and M.Y., L.M.Y.'s father, filed affidavits of consent to the guardianship. (Affidavit of S.W. filed 2-19-2014 and Affidavit of M.Y. filed 2-19-2014, App. Pg. 8-10,11-13). An order appointing G.Y. and K.Y. as co-guardians of L.M.Y. was entered by the Story County District Court on March 31, 2014. (Order Appointing Guardians, App. Pg. 14-16). On June 10, 2020, S.W. filed a Motion for Termination of Guardianship. (Motion for Termination of Guardianship, App. Pg. 17-19). Mark Olberding was appointed as the Court Visitor on June 29, 2020. (Order Appointing a Court Visitor, App. Pg. 19-20). Hearing on the motion to terminate guardianship was held on July 23, 2020. Following the hearing, the District Court entered an order terminating the guardianship and placed custody of L.M.Y. with S.W. (Order Terminating Guardianship, App. Pg. 28-42). Notice of Appeal was filed by G.Y. and K.Y. on August 10, 2020. (Notice of Appeal, App. Pg. 43).

STATEMENT OF FACTS

S.W. is the biological mother of L.M.Y. who was born in 2009. At the time

L.M.Y. was born, S.W. was 16 years old and still in high school. She resided with her parents in Webster City, Iowa. After L.M.Y. was born she resided with S.W. in Webster City but also spent time with M.Y. and G.Y. and K.Y. at their home in Story City. The schedule was that L.M.Y. would be with S.W. Monday through Thursday. On Thursday evening, L.M.Y. would go stay with G.Y. and K.Y. until Sunday when S.W. would attend church with them and then return to Webster City with L.M.Y. (Tr. Pg. 7-8, 39, 63, 143-144).

In May, 2010, S.W. graduated from high school. After her graduation, she moved into the home of G.Y. and K.Y., along with her daughter, L.M.Y. S.W. and M.Y. married in February, 2011. S.W. and M.Y., along with L.M.Y., continued to reside with G.Y. and K.Y. (Tr. Pg. 8-9, 40, 63). While the parties were all residing in G.Y. and K.Y.'s home, S.W. was the primary caretaker of L.M.Y. during the day as she was not working. In October, 2010 when S.W. took a job at Pizza Ranch, L.M.Y. attended daycare. (Tr. Pg. 10-11, 145. S.W. and L.M.Y. resided with G.Y. and K.Y. from May, 2010 until July, 2013 when she and M.Y., along with L.M.Y. moved into their own home in Story City. This living arrangement lasted until September, 2013 when S.W. and M.Y.'s relationship ended and they separated. S.W. moved back to Webster City to live with her parents and L.M.Y. stayed with G.Y. and K.Y.. This arrangement was done for L.M.Y.'s stability and for S.W. and

M.Y. become stable in their own homes. L.M.Y. was enrolled in school and dance at the time. (Tr. Pg. 12, 63).

After September, 2013, S.W. continued to see L.M.Y. on weekends and at the daycare where she worked and L.M.Y. attended (Tr. Pg. 13). In February, 2014, S.W. was asked to go to G.Y.'s office in Randall, Iowa to sign paperwork. She was presented with an affidavit and asked to sign it. S.W. repeatedly made inquiry if the paperwork was temporary in nature. She was assured by G.Y. that it was. G.Y. had a co-worker present to notarize S.W.'s signature. S.W. did not carefully review the affidavit but wanted to be sure it was temporary or she would not agree to sign it. (Tr. Pg. 14-15). S.W. believed the guardianship was being put in place temporarily because G.Y. and K.Y. were going to take L.M.Y. on vacation and wanted authority to take medical action on behalf of L.M.Y. (Tr. Pg. 13, 16). If the guardianship was not to be temporary, S.W. would not have agreed to sign the affidavit. (Tr. Pg. 15).

S.W. has maintained regular visits and contact with L.M.Y. since February, 2014. She has requested additional visits but has regularly been denied those requests. (Tr. Pg. 16-17, 49-50, 85, 94-96) (Exhibit 3, App. Pg. 51-62). S.W. has consistently been employed since 2014. She currently works for Wright County Communications Center as a 9-1-1 dispatcher earning $17.50 per hour. S.W.'s employer testified that she is a good employee and will continue to be employed so

long as S.W. desires. (Tr. Pg. 109-110) (Exhibit 2, App. Pg. 50). S.W. has provided financial support by purchasing clothes, shoes and craft supplies for L.M.Y. S.W. is in a good position to financially provide for L.M.Y.'s needs. (Tr. Pg. 18-19, 32-33, 60) (Exhibit 2, App. Pg. 50).

S.W. has made several attempts to have the guardianship terminated. In 2015, she contacted Zach Chizek, an attorney in Webster City, Iowa. S.W. learned from Mr. Chizek that the guardianship was not temporary as she had thought it was, and he further advised her she would need to go to Story County to terminate the guardianship. (Tr. Pg. 20-21, 64).

In 2017, S.W. consulted with another attorney in Fort Dodge about terminating the guardianship. She was advised that she would need to get an attorney out of Story County and that L.M.Y. would also need an attorney. (Tr. Pg. 21).

In 2018, S.W. sent a letter to G.Y. and K.Y. requesting that L.M.Y. come and live with her. (Tr. Pg. 65) (Exhibit B, App. Pg. 44). Prior to this, S.W. and M.Y. had discussed with L.M.Y. the idea of her living with one of them. L.M.Y. would then report they could not talk about her living with her parents or she would not be allowed to see them. (Tr. Pg. 16, 138, 65). In 2019, S.W. sent a text message to K.Y., that included M.Y., requesting L.M.Y. be returned to the custody of her parents. (Tr. Pg. 71). The requests concerning termination of the guardianship went

unanswered by G.Y. and K.Y.. (Tr. Pg. 214).

G.Y. and K.Y. are intimidating people who S.W. was scared to confront with her requests concerning the guardianship. (Tr. Pg. 35-36). S.W.'s communication with G.Y. and K.Y. was done mostly through text messaging. (Tr. Pg. 70). The fear and intimidation come from S.W. constantly being judged and controlled by G.Y. and K.Y. and their belief that S.W.'s way of parenting is not the correct way of doing things. G.Y. and K.Y. were very controlling of L.M.Y.'s schedule and when they would allow L.M.Y. to visit S.W. This fear, control and lack of response to her written requests to terminate the guardianship left S.W. unsure of how to go about terminating the guardianship so she could resume custody of L.M.Y. (Tr. Pg. 71-74, 93-96).

S.W. and M.Y.'s marriage was dissolved on January 28, 2016. No custody arrangements were made in the parties Decree since the guardianship was in place. A modification of the parent's decree will be necessary upon termination of the guardianship. (Tr. Pg. 32, 55, 148) (Exhibit 1, App. Pg. 47-49). S.W. has regularly discussed termination of the guardianship with M.Y. S.W. believed that M.Y. was also agreeable to terminating the guardianship proceedings. (Tr. Pg. 21-22, 138, 147). S.W. and M.Y. have a cordial relationship and are able to communicate regarding L.M.Y. (Tr. Pg. 22).

S.W. lives in Woolstock, Iowa with her boyfriend, Devon Anderson. They live in a single-family home on the edge of town and L.M.Y. has her own bedroom at the home. L.M.Y. knows Devon and gets along with him. (Tr. Pg. 23-24) (Exhibit 4, App. Pg. 63-66).

S.W. participates in counseling for depression and anxiety issues with one of the contributing factors being that she does not have custody of L.M.Y. S.W. is also aware that L.M.Y. participates in counseling and recognizes that would need to continue. S.W. has not been kept informed of appointments for L.M.Y. by G.Y. and K.Y. and therefore has not been able to regularly attend those appointments. (Tr. Pg. 25-26).

S.W. has never used illegal substances, she does not have a substance abuse problem, she does not have any criminal history or any child abuse allegations. She is a good mother and has a good relationship with L.M.Y. (Tr. Pg. 28-29, 79, 84, 96, 105, 142, 145-146, 153) (Exhibit 3, App. Pg. 51-62).

S.W. no longer consents to the guardianship for L.M.Y. There is no reason for the guardianship to remain in place. S.W. has no physical or mental illnesses that prevent her from caring for L.M.Y. She is not incarcerated or imprisoned. She is not on active military duty. There is no other reason for a guardianship. (Tr. Pg. 34, 142, 145-146, 153).

ARGUMENT

Error Preservation: Error was preserved on this issue as it was raised with the district court and ruled upon in the Order Terminating Guardianship.

Standard of Review: An action for termination of guardianship is a proceeding in equity. *In re Guardianship of Stewart*, 369 N.W.2d 820, 822 (Iowa 1985). Accordingly, review of an action to terminate a guardianship is de novo. *In re Guardianship of Sams*, 256 N.W.2d 570, 572 (Iowa 1977); see also *Guardianship of Plucar*, 72 N.W.2d 455, 457 (Iowa 1955). In equity cases, deference is given to the district court's factual findings, especially in determining the credibility of witnesses. *Iowa R. App. P*. 6.904(3)(g); *In re Guardianship of Knell*, 537 N.W.2d 778, 781 (Iowa 1995). However, the appellate court is not bound by those determinations. *Id.*

ISSUE I

THE DISTRICT COURT CORRECTLY DETERMINED THAT THE GUARDIANSHIP OF L.M.Y. SHOULD BE TERMINATED.

A. Legal Standards Regarding Termination of Guardianship.

The Supreme Court of the United States has long held that parenting is a fundamental right, and among "the basic civil rights of man." *See Santosky v. Kramer*, 455 U.S. 745 (1983).

Guardianship proceedings concerning conflicting custodial claims of parents and nonparents implicate a parent's fundamental liberty interest in parental autonomy. *Reno v. Flores*, 507 U.S. 292, 301-02 (1993). In any action concerning custody of a child, the determining factor is the best interest of the child. *In re Sams*, 256 N.W.2d 570, 572 (Iowa 1977); *In re Guardianship of Roach*, 778 N.W.2d 212, 214 (Iowa Ct. App. 2009). In determining the child's best interest, the court must take into account the strong societal interest in preserving the natural parent-child relationship. Also, the court must consider the long-range interests as well as the immediate interest of the child. *In re Guardianship of Knell*, 537 N.W.2d 781 (Iowa 1995). In considering the best interest of the children, the law raises a strong presumption that the children's welfare will be best served in the care and control of the natural parents. *Stanley v. Aiken*, No. 09-0723, 2010 WL 2602172, at *4 (Iowa Ct. App. June 30, 2010); *Zvorak v. Beireis*, 519 N.W.2d 87, 89 (Iowa 1994); *In re Guardianship of M.I.D.*, No. 17-1481, 2018 WL 5840802, at *3 (Iowa Ct. App. November 7, 2018).

Recognizing that the non-parental party is an excellent caretaker for the child is rarely strong enough to interfere with the presumption in favor of a parent. *Northland v. Starr*, 581 N.W.2d 210, 212 (Iowa Ct. App. 1998). The court has acted in some cases to remove a child from a conscientious, well-intentioned custodian

with a history of providing good care to the child and placed the child with a natural parent. *Zvorak*, 519 N.W.2d at 89. The guardians have the burden to overcome a parental preference and show that the child's best interests require a continuation of the guardianship. *Stewart*, 369 N.W.2d at 824. If returning a child to the custody of the parent is "likely to have a seriously disrupting and disturbing effect upon the child's development, this fact must prevail." *Painter v. Bannister*, 258 Iowa 1390, 1396, 140 N.W.2d 152, 156 (1966). Absent any concrete evidence of a disruptive effect on the child, however, the continuity and stability of remaining in a familiar setting is insufficient to overcome the presumption favoring a parent. *Stewart*, 369 N.W. 2d at 825.

Because of the fundamental constitutional rights implicated, a nonparent bears the burden of persuasion throughout guardianship proceedings, including initial appointment, modification, or termination to rebut the presumption favoring parental custody by providing clear and convincing evidence of parental unsuitability. *In re Guardianship of M.E.*, No. 16-1178, 2017 WL 2465791, at *6 (Iowa Ct. App. June 7, 2017) (citing *In re Guardianship of Blair*, No. 01-1565, 2003 WL 182981, at *5 (Iowa Ct. App. Jan. 29, 2003) (citing *In re Guardianship of Hedin*, 528 N.W.2d, 567, 581 (Iowa 1995)).

Iowa cases have emphasized that parents should be encouraged in time of need to look for help in caring for their children without the risk of losing custody. The presumption preferring parental custody is not overcome by a mere showing that such assistance was obtained. Nor is it overcome by showing that those who provided the assistance love the child and would provide a good home. These circumstances are not alone sufficient to overcome the preference for parental custody. *Sams* at 573. See also *Stewart* at 823.

Beginning January 1, 2020, all facets of a minor guardianship are now governed by *Iowa Code* 232D. The former provisions concerning guardianships under *Iowa Code* 633.552 through 633.562 were repealed. Under the prior statue, the legislature had provided for a statutory preference favoring custody with a natural parent. While this specific statutory preference has been repealed, the preference in a natural parent was established by the Court and therefore remains a valid preference. Specifically, the Court has found:

> "Something more than the material things of life is essential to the nurture of a child, and that something is the father's and the mother's love, or as near its equivalent as may be. Recognizing this, the law raises a strong presumption that the child's welfare will be best subserved in the care and control of parents, and in every case a showing of such relationship, in the absences of anything more, makes out a prima facie case for parents claiming the custody of their children. "Indeed," as said in one case, "this presumption is essential to the maintenance of

> society, for without it man would be denaturalized, the ties of family broken, the instincts of humanity stifled, and one of the strongest incentives to the propagation and continuance of the human race destroyed."
>
> "Recognition of what is for the best interest of the child will seldom interfere with the natural rights of the parent to the custody thereof, and never unless essential to its welfare or for the good of society."

Risting v. Sparboe, 179 Iowa 1133, 1136-1139, 162 N.W. 592, 594 (Iowa 1917).

The new statutory provisions governing minor guardianships are now set forth in *Iowa Code* 232D. Specific to this action is 232D.503(2) which provides:

> The court shall terminate a guardianship established pursuant to section 232D.203 if the court finds that the basis for the guardianship set forth in section 232D.203 is not currently satisfied unless the court finds that the termination of the guardianship would be harmful to the minor and the minor's interest in continuation of the guardianship outweighs the interest of a parent of the minor in the termination of the guardianship.
>
> *Iowa Code* 232D.203(2) (Iowa Supp. 2020).

The basis for termination of a guardianship by consent under the new statute is provided for in *Iowa Code* 232D.203. This provides:

1. The Court may appoint a guardian for a minor if the court finds all of the following:

a. The parent or parents having legal custody of the minor understand the nature of the guardianship and knowingly and voluntarily consent to the guardianship.

b. The minor is in need of a guardianship because of one of the following:

(1) The parent having legal custody of the minor has a physical or mental illness that prevents the parent from providing care and supervision of the child.

(2) The parent having legal custody of the minor is incarcerated or imprisoned.

(3) The parent having legal custody of the minor is on active military duty.

(4) The minor is in need of a guardianship for some other reason constituting good cause shown.

c. Appointment of a guardian for the minor is in the best interest of the minor.

Iowa Code 232D.203(1) (Iowa Supp. 2020).

B. Application of the Legal Standards to the Facts of this Case.

The district court correctly determined that S.W. had consented to the guardianship while she worked independently to achieve security and stability in her life. The district court further determined that S.W. had reached that security and stability and that the basis for the guardianship of L.M.Y. is not currently satisfied. (Order Terminating Guardianship, App. Pg. 28-42).

After S.W. and M.Y. had separated, they placed L.M.Y. in the home of G.Y. and K.Y. because she was attending school and dance. S.W. wanted L.M.Y. to have stability while she moved back in with her parents in Webster City. (Tr. Pg. 12). On February 3, 2014, S.W. was asked to sign an affidavit regarding the guardianship proceedings. She questioned whether the guardianship was temporary before signing the affidavit because she knew she would not sign or agree to the guardianship if it were not temporary. (Tr. Pg. 13, 15).

From February, 2014 until the time of trial on termination of the guardianship, S.W. had taken various steps to try to terminate the guardianship. This has included consulting with two different attorneys prior to consulting and hiring a third attorney to file her request to terminate the guardianship. (Tr. Pg. 20, 21, 83, 86, 100). This also included talking with M.Y., L.M.Y.'s father, about terminating the guardianship proceedings. (Tr. Pg. 22, 138). S.W. also asked G.Y. and K.Y. to terminate the

guardianship through a letter and in text messages. None of which were responded to. S.W.'s lack of personal and direct requests to the guardians were based on the intimidation she felt from G.Y. and K.Y. and fear the requests would have a direct effect on her ability to see and spend time with L.M.Y. (Tr. Pg. 51, 65, 69-73) (Exhibit B, App. Pg. 44).

Because the initial guardianship was put in place by consent of the parents, an examination of *Iowa Code* 232D.203 is necessary to see if a guardianship is still necessary.

1. The Court may appoint a guardian for a minor if the court finds all of the following:

    a. The parent or parents having legal custody of the minor understand the nature of the guardianship and knowingly and voluntarily consent to the guardianship.

S.W. revoked her consent to the guardianship. She filed a motion with the court asking for it to terminate. It has been clearly established that S.W. no longer consents to the guardianship. (Motion to Terminate Guardianship, App. Pg. 17-18).

    b. The minor is in need of a guardianship because of one of the following:

(1) The parent having legal custody of the minor has a physical or mental illness that prevents the parent from providing care and supervision of the child.

(2) The parent having legal custody of the minor is incarcerated or imprisoned.

(3) The parent having legal custody of the minor is on active military duty.

(4) The minor is in need of a guardianship for some other reason constituting good cause shown.

S.W. does not have any physical or mental illness that prevents her from providing care or supervision to L.M.Y. S.W. herself disclosed that she suffers from depression and anxiety as a result of not having her daughter in her custody. She recognizes this and sees a counselor to help her deal with it. There is no evidence that it has any negative affect on her day to day activities or ability to care for L.M.Y. She does not do drugs or have any substance abuse issues. S.W. has no criminal history and is not incarcerated or imprisoned. She is not in the military. S.W.

testified there is no reason that would constitute good cause for the guardianship. (Tr. Pg. 34).

c. Appointment of a guardian for the minor is in the best interest of the minor.

The Court found that terminating the guardianship was in L.M.Y.'s best interest. There was no shortage of findings to support that the guardianship was no longer in L.M.Y.'s best interest.

S.W. and L.M.Y. have a strong parent-child bond. Since the guardianship was put in place, S.W. has had regular visitation and contact with L.M.Y. that includes seeing her two to three weekends per month and maintaining regular phone contact with her.

In June, 2018, L.M.Y. started to see a clinical psychologist, Dr. Judy Rudman. L.M.Y was wanting to spend more time with her parents. (Tr. Pg. 115-116). The district court found that "therapeutic intervention was required in order to restore L.M.Y's sense of security and her relationship to her parents and a sense that she is valued by them." The district court very boldly and correctly concluded: "that had the guardianship been terminated years earlier as requested by S.W., L.M.Y. would not have developed the psychological turmoil requiring the therapeutic intervention described here." (Order terminating Guardianship, App. Pg. 28-42).

Dr. Rudman provided testimony that children do best in their core families. This is because kids want to be connected to their mom and their dad. That is what society values and what kids know. The situation where L.M.Y. was struggling because she wanted more time with her mom is clear evidence of this and could have been avoided if G.Y. and K.Y. had terminated the guardianship when first requested by S.W. (Tr. Pg. 122).

L.M.Y. is described has having a significant bond with her mother. In fact, it was difficult for L.M.Y. when her weekend visits would end and she struggled with not wanting to leave her mother. On one occasion, she hid in an upstairs bedroom at her grandma Anita's house so she would not have to return to G.Y. and K.Y.. (Tr. Pg. 79, 89, 98-99, 177-179).

Just because guardians are able and fit to continue having custody over a minor does not overcome a parent's fundamental right to parent or the parental presumption. *Doan Thi Hoang Anh v. Nelson*, 245 N.W.2d 511, 518 (Iowa 1976). This is because the law recognizes that returning the minor child to a parent's custody is in the best interest of the child. *See id*; *see also Sams*, 256 N.W.2d at 573. The Court has repeatedly held that, "Absent concrete evidence of a disruptive effect on the child, the continuity and stability of remaining in a familiar setting is

insufficient to overcome the presumption favoring the parent." *Stewart*, 369 N.W.2d at 825 (emphasis added).

S.W. acknowledged that G.Y. and K.Y. had provided a good home for L.M.Y. and taken good care of her. At the same time, the district court believed that S.W.'s actions in not allowing her own family to advocate on her behalf with G.Y. and K.Y. supported her testimony that she was intimidated by G.Y. and K.Y. and believed that jeopardizing the relationship also risked losing her parenting time with L.M.Y., which she was not willing to do. (Order Terminating, App. Pg. 28-42). One thing that is important to take note of is the credibility findings of the district court concerning G.Y. and K.Y. testimony:

> "The court appreciates the degree to which the paternal relatives love L.M.Y. and focus on her immediate and future needs and desires. Their testimony however was rather self-congratulatory. Overall, their demeanor was subtly infused with a degree of elitism that supported the mother's testimony that she is intimidated by the paternal side of L.M.Y.'s extended family. The court concludes that G.Y. and K.Y. intend no such intimidation. They are an accomplished, loving and close-knit family. Nevertheless, their particular status in the community, accomplishments and lack of communication with the mother support a worldview in which their preferences and values predominate. This can be intimidating to those who have experienced the world from a less privileged vantage point." (Order Terminating Guardianship, p3, App. Pg. 30).

While there will certainly be some level of disruption for L.M.Y. upon return to S.W.'s home, it will not be harmful. L.M.Y. has a close bond with S.W. and her

extended family. She visits regularly. She has been to S.W.'s home where she has lived for three years. L.M.Y. has her own room there and there are no other children in the home. S.W. has a good job and is able to provide support for L.M.Y. S.W. was clear that she understood L.M.Y. would need to continue to see Dr. Rudman to help with the transitions and was committed to making that happen. S.W. was also very aware of the need for L.M.Y. to have a continued relationship and contact with her grandparents and her father. The district court appropriately found that S.W. would ensure that all of these things happened.

While there is established statutory and case law concerning a child's preference, there is no statute or caselaw concerning the minor's preference as it relates to a guardianship action. L.M.Y. has told each of the parties involved what they want to hear. She has been described as a child who wants to please everyone and avoid conflict. G.Y. and K.Y. argue that her preference outweighs S.W.'s fundamental right to parent L.M.Y.

The district court considered L.M.Y.'s preference in the overall best interest determination and found that it did not outweigh S.W.'s fundamental right to parent.

> "Termination of the guardianship will not deprive L.M.Y. of the benefits of a deep and healthy relationship with her extended family. Placement of L.M.Y. with her mother will in fact continue to foster those important extended familial relationships. S.W. has internalized the pain and empathizes deeply with those who have lost relationships with children. She has experienced it herself.

> Surviving this experience imbues in her a deep understanding of the importance of fostering and maintaining those relationships. She has approached her relationship with the G.Y. and K.Y. first with gratitude. Although hard feelings have developed, she continues to speak highly of the important role they play in L.M.Y.'s life. The court has no doubt that the G.Y. and K.Y. may not have the daily experience with L.M.Y., they will not be deprived of a healthy, appropriate and ongoing relationship with her as paternal grandparents."
>
> "The foregoing leads the court to conclude that termination of the guardianship would not be harmful to L.M.Y. What is harmful is the continued trauma she experiences by being caught in the middle of three homes. She deserves a single home with a stable parent in which her needs are met. It would be a home base for her physically and emotionally. That home is with her mother." (Order Terminating Guardianship p.13, App. Pg. 28-42).

The court pays close attention to the credibility findings of the trial court because it had the opportunity to observe and listen to the parties and other witnesses, including the minor child. *Stewart* at 824 (citing *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984)). The district court did an excellent job of detailing in its written order the credibility findings of the parties and their witnesses. This court does not have to question how or why the district court determined credibility because the court very clearly explained it for each witness in its order. The district court made a determination that the most weight was to be given to the testimony offered by S.W. The conclusion was based on her demeanor and composure throughout the proceedings and that it was devoid of "any exaggeration or

minimization." (Order Terminating Guardianship, App. Pg. 28-42). The district court's credibility determinations are solid and should not be disturbed on appeal.

The district court correctly determined that there was no basis for the guardianship and that the best interest of L.M.Y. would be served by placing her in the custody of her natural mother, S.W.

ISSUE II

S.W. SHOULD BE AWARDED APPELLATE ATTORNEY FEES.

S.W. should be awarded attorney fees and costs on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). This court is to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981). An award of appellate attorney fees was appropriate in a guardianship where the district court's finding of "overwhelming evidence" that the father was a capable father. *In re Guardianship of C.G.*, 799 N.W.2d 549, 554 (Iowa Ct. App. 2011). The district court order in this case also found what can be described as "overwhelming evidence" that S.W. is a good mother and capable of parenting L.M.Y. and that the guardianship should be terminated.

S.W.'s financial position was such that she was earning $17.50 per hour working full-time as a 9-1-1 dispatcher. G.Y. and K.Y. are both employed; K.Y. as a registered nurse and G.Y. as co-owner of a construction business and sole owner in advanced waterproofing business. Part of G.Y. and K.Y.'s testimony was their boastful statements that they own a 4,000 square foot finished house with multiple bedrooms, bathrooms and a big yard. (Tr. Pg. 196, 227-228). S.W. testified that her lack of financial resources had been a barrier to terminating the guardianship proceedings sooner. (Tr. Pg. 86). It appears from the record that G.Y. and K.Y. are in a better financial position to pay attorney fees than S.W. S.W. was forced to seek out an attorney to file an action to terminate the guardianship. When she was successful in doing so, G.Y. and K.Y. did not like the result, thereby asking for review from the Court of Appeals. When the district court order is affirmed, S.W. should be awarded reasonable attorney fees for having to defend this appeal. Under the circumstances of this case, award of appellate attorney fees is appropriate.

CONCLUSION

For all of the reasons stated above, the district court's order should be affirmed and appellate attorney fees should be awarded to S.W.

REQUEST FOR ORAL ARGUMENT

Counsel for Appellee requests to be heard in oral argument upon submission of this case.

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

This amended brief complies with the typeface requirements and type-volume limitation of *Iowa R. App. P.* 6.903(1)(d) and 6.903(1)(g)(1) because:

This brief has been prepared in a proportionally spaced typeface using Times New Roman in point 14 font size and contains 5343 words, excluding the parts of the amended brief exempted by *Iowa R. App. P.* 6.903.(1)(g)(1).

/s/ *Dani L. Eisentrager* September 10, 2021

CERTIFICATE OF SERVICE

I certify that on the 10th day of September, 2021, pursuant to *Iowa R. App. P.* 6.701 and 6.901, I served the attached Amended Brief by electronically filing a copy of the amended brief with the Supreme Court on EDMS and electronically served all parties of record.

/s/ *Dani L. Eisentrager*
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