ELECTRONICALLY FILED SEP 13, 2021 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 20-1034

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

G.Y. and K.Y.,
Guardians-Appellants

Vs.

S.W., Mother-Appellee

APPEAL FROM THE IOWA DISTRICT COURT FOR STORY COUNTY,
DISTRICT COURT NO. GCPR028779,
THE HONORABLE JUDGE STEVEN A. OWEN

BRIEF OF AMICUS CURIAE B.M.R. (IOWA LEGAL AID)

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TABLE OF CONTENTS

STATEMENT OF INTEREST OF AMICIUS CURIAE 4

STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d) 5

STATEMENT OF FACTS 5

ARGUMENT 8

I. The New Iowa Guardianship Statute Must Be Interpreted In A Way That Requires A Preliminary Finding Of Parental Unfitness. 9

II. In Balancing The Parent And Child's Interest in Continuing a Guardianship, the Fundamental Right Of a Parent To Have Care and Custody Of Their Child Is Important to the Welfare of Both Parents and Children 14

CONCLUSION 16

CERTIFICATE OF SERVICE 18

CERTIFICATE OF COMPLIANCE 18

TABLE OF AUTHORITIES

Cases

In re Guardianship of M.D., 797 N.W.2d 121(Iowa Ct. App. 2011) 13
In re K.M., 653 N.W.2d 602 (Iowa 2002) 10, 13
In re Mann, 293 N.W.2d 185 (Iowa 1980) 16
In re Marriage of Howard, 661 N.W.2d 183 (Iowa 2003) 10, 12
In re N.N.E., 752 N.W.2d 1 (Iowa 2008) 10
Lamberts v. Lillig, 670 N.W.2d 129 (Iowa 2003) 10
Matter of Guardianship of Hedin, 528 N.W.2d 567 (Iowa 1995) 13
Matter of Guardianship of Sams, 256 N.W.2d 570, 573 (Iowa 1977) 14
Reno v. Flores, 507 U.S. 292 (1993) 8
Risting v. Sparboe, 162 N.W. 592 (Iowa 1917). 11, 16
Santi v. Santi, 633 N.W.2d 312 (Iowa 2001) 8, 9, 10, 12, 13, 15
Troxel v. Granville, 530 U.S. 57 (2000) 12

Statutes

14th Amendment 8
Code § 633.559 (2019) 11
Iowa Code § 232D.203 11
Iowa Code § 232D.503 .... 8, 9, 11, 12, 14, 15
Iowa Code § 4.2 14
Iowa Const. Art. I, § 8 8
Iowa Const. Art. I, § 9 8

Other Authorities

Iowa Guardianship and Conservatorship Reform Task Force Final Report (August 2017) available at https://www.iowacourts.gov/static/media/cms/Final_Task_Force_Report_5A992F4D4AF86.pdf [permalink: https://perma.cc/7RKD-TMAF].. 6, 7, 14
Reforming Iowa's Guardianship and Conservatorship system: Minor Guardianships, DRAKE LAW REV. DISCOURSE, June 2018, at 110 .... 6, 8

Rules

Iowa R. App. P. 6.906 5

STATEMENT OF INTEREST OF AMICIUS CURIAE

Iowa Legal Aid submits this brief on behalf of its client, B.M.R. The sister of B.M.R.'s late partner sought a guardianship over B.M.R.'s young child. Shortly after the birth of their child, B.M.R.'s partner was suddenly and unexpectedly deported, and later murdered. B.M.R. sought help from family after this traumatic event left her as the sole provider and caregiver of her young child. As happens too often to low-income parents who seek help during a trying time, B.M.R. was denied access to her child and then served with a petition for guardianship. Though she was more than fit to care for her own child, she was only reunited with him after many months of litigation.

The district court denied the entry of the guardianship in B.M.R.'s case, the putative guardian appealed, and the matter is currently pending decision after assignment to the court of appeals. (*In Re the Guardianship of P.M.*, No. 21-0146). However, after B.M.R.'s appeal was fully briefed, the present case was decided by the court of appeals. That court treated the so-called "parental preference" as wholly statutory in nature, and effectively repealed by the non-inclusion of that phrase in Iowa's new minor guardianship statute. The analysis of the court of appeals in the present case – if affirmed – will upend over a century of Iowa Supreme Court jurisprudence. It will fundamentally

alter the previously established balance of the constitutional interests established by earlier precedent involving minor guardianships, grandparent visitation, termination of parental rights, and other non-parent custodial actions. For B.M.R., and many others like her that Iowa Legal Aid has assisted over the forty-three years of its existence, affirmation of the court of appeals decision will mean diluting the importance of the parent-child bond on the lives of parents and children alike. This will largely reduce the analysis of whether a guardianship is established or continued to a mere question of economic means and material wealth.

STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d)

Neither party nor their counsel participated in the drafting of this brief, in whole or in part. Neither party nor their counsel contributed any money to the undersigned for the preparation or submission of this brief. The drafting of this brief was performed *pro bono publico* by amicus curiae.

STATEMENT OF FACTS

The Iowa Supreme Court established The Guardianship and Conservatorship Reform Task Force ("task force") in January 2015. The mission of the task force was to review Iowa's guardianship laws and procedures to ensure the system is efficient and responsive to the needs Iowans. The task force was to identify the strengths and weaknesses of Iowa

law, examine guardianship law and practices in other jurisdictions, and develop recommendations. The membership of the task force included 72 individuals from disciplines that interact with the court guardship system. The task force issued its final report in August 2017. Iowa Guardianship and Conservatorship Reform Task Force Final Report ("Final Report"), 2-4 (August 2017) available at https://www.iowacourts.gov/static/media/cms/Final_Task_Force_Report_5A992F4D4AF86.pdf [permalink: https://perma.cc/7RKD-TMAF].

Based on the recommendations of the task force, the Iowa legislature adopted the new statute in 2019, which became effective January 2020. When considering recommendations about appointment for guardians with parental consent, one of the tasks force's major concerns was that a parent's consent to a guardianship may often not be knowing and voluntary. *Reforming Iowa's Guardianship and Conservatorship system: Minor Guardianships*, DRAKE LAW REV. DISCOURSE, June 2018, at 110. A second concern was that parents and guardians sometimes have differing expectations about their responsibilities under the guardianship, as well as the anticipated duration of the guardianship, and this lack of common understanding leads to conflict and litigation. *Id.* at 110-11.

The task force then recommended that there be requirements to make

sure that parental consent is truly consensual and that the parents understand the effects of the guardianship. Final Report At 41-42. This includes an agreement that lays out reasonable expectations for all parties involved about the conditions under which the guardianship may be terminated. Parents who truly understand what it will take to end the guardianship are much more likely to give knowing and voluntary consent. Guardians, who exercise a great deal of power over the parent, are less likely to battle to keep the child in their care if expectations have been set in writing and with the court from the very beginning.

The new statute also deals with non-consensual guardianships. The task force was closely divided on whether or not non-consensual guardianships should be eliminated completely, and ultimately provided two alternatives to the legislature. *Id*. at 43-45. The second alternative, which was to allow non-consensual guardianships, but provide more substantive criteria than the former statute, was ultimately passed into law. Iowa Code § 232D.204. *See also* Final Report at 39.

The task force considered constitutional concerns regarding non-consensual guardianships. *Id*. at 44. The thinking was that involuntary guardianships would be constitutional if it was shown by clear and convincing evidence that there was a serious failure by the parent to provide the child with

needed care and protection, and that the guardianship was in the child's best interest. *Id.*; *Reforming Iowa's Guardianship and Conservatorship system: Minor Guardianships* at 112.

ARGUMENT

Iowa Code Chapter 232D, the new Iowa minor guardianship statute, can and must be interpreted in light of the fundamental right to parent one's own child. *See Santi v. Santi*, 633 N.W.2d 312, 321 (Iowa 2001); *Troxel v. Granville,* 530 U.S. 57 (2000); *Reno v. Flores*, 507 U.S. 292 (1993). This right, which is protected under both the 14th Amendment of the U.S. Constitution as well as Article I, Sections 8 and 9 of the Iowa Constitution, requires proof of parental unfitness to justify interfering in the relationship between a natural parent and his child. *Id*.

The court of appeals, analyzing Iowa Code § 232D.503(2), determined that there was no longer a "parental preference" because that term, which appeared in the previous minor guardianship statute, does not appear in the new statute. The court then went on to simply balance the interests of the parent and the child without giving particular weight to the mother's constitutionally protected interests as a parent, and reversed the trial court's decision to terminate the guardianship. This presumes the preference in the prior version of the statute was not derived from superseding constitutional

doctrine. The court of appeals provides almost no analysis in sweeping aside the long-established constitutional rights of parents, long recognized not only in minor guardianship matters, but also in a wide variety of other types of cases that deal with non-parents seeking to assert custodial rights of children.

The court of appeals decision is fundamentally flawed. The language of Iowa Code §§ 232D.503(2) and 203 can and must be interpreted in a way that protects a parent's fundamental right to parent their child in the following ways: (1) a threshold finding of unfitness is necessary to intrude into the relationship of a natural parent and their child before engaging in a best interest analysis; and (2) in balancing the parent and child's interest, proper weight must be given to the parent's fundamental right and child's interest to be with their natural parent.

I. The New Iowa Guardianship Statute Must Be Interpreted In A Way That Requires A Preliminary Finding Of Parental Unfitness.

"If a statute is susceptible to more than one construction, one of which is constitutional and the other not, [the Court is] obliged to adopt the construction which will uphold it." *Santi* at 316. Only by adopting a construction that recognizes the fundamental right of parents to custody of their children can Iowa Code Chapter 232D be considered constitutional.

Derived from United States Supreme Court precedent in *Troxel v. Granville* and *Reno v. Flores*, Iowa Courts have consistently held that a

threshhold finding of parental unfitness is constitutionally required before interfering with the fundamental right of a parent to have care and custody of their own child. *See Santi*, at 321 (striking down a grandparent visitation statute that did not first require a finding that a parent was unfit to make visitation decisions); *In re Marriage of Howard*, 661 N.W.2d 183, 188 (Iowa 2003) (threshold issue of unfitness still a required showing even if parents are divorcing and cannot agree on appropriate grandparent visitation between themselves); *Lamberts v. Lillig*, 670 N.W.2d 129, 133 (Iowa 2003) (unfitness finding still required if one of the parents has died); *see also In re N.N.E.*, 752 N.W.2d 1 (Iowa 2008) (preference priorities under the Iowa Indian Child Welfare Act unconstitutional to the extent that they voided parental preference in guardian in voluntary termination of parental rights case); *In re K.M.*, 653 N.W.2d 602, 608 (Iowa 2002) (there must be clear and convincing evidence of unfitness under one of the enumerated statutory provisions before parental rights can be terminated), *holding modified by In re P.L.*, 778 N.W.2d 33 (Iowa 2010). The court of appeals considered none of these cases in its analysis and did not advance any rationale as to why this fundamental right which applies in all of these instances would not apply to a minor guardianship.

It is also worth noting that the court of appeals applied Iowa Code §

232D.503(2) which describes how to terminate a guardianship that was established pursuant to another part of the new Iowa minor guardianship law, Iowa Code § 232D.203. However, the guardianship at issue was not established pursuant to an agreement that meets the enhanced protections of Iowa Code § 232D.203. Though the parents consented to the guardianship, the consent and the guardianship predated the new statutory scheme. Thus, the current guardianship lacked all the protections envisioned under the new statutory scheme, including an agreement between the parties, filed with the court, that lays out the scope and expected duration of the guardianship. Iowa Code § 232D.203(3).

Since the guardianship here was not established by a consent agreement that comports with the protections put in place by Iowa Code § 232D.203, it is not clear that § 232D.503(2) applies in this case. However, even without the 232D.203 protections, the language of both the old and new statutory scheme protect the fundamental interest of parents.

The statute in force prior to January 1, 2020 provided that qualified and suitable parents are afforded preference as guardians of their children. Iowa Code § 633.559 (2019). However, this preference was simply a codification of the preexisting case law. *See, e.g., Risting v. Sparboe*, 162 N.W. 592 (Iowa 1917). These foundational cases described this fundamental right long before

later cases like *Troxel* framed parental rights as constitutional in nature, but nevertheless established what is "perhaps the oldest of the fundamental liberty interests recognized by [the] Court." *Santi at* 317, *quoting Troxel* at 65-66.

Though its language is different, 232D.503 must be interpreted to require an analysis that adequately protects parents' fundamental liberty interest to raise their own children. Iowa Code § 232.503 states:

> The court shall terminate a guardianship established pursuant to section 232D.203 if the court finds the basis for the guardianship set forth in section 232D.203 is not currently satisfied *unless the court finds 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 the parent of the minor in termination of the guardianship*.
>
> (emphasis added).

This language must be interpreted to fit the constitutional construction that has been developed for over a century. In order to intervene with the fundamental right of a parent to custody of their child, by denying the termination of a guardianship, Iowa Code § 232.503 first requires a finding of harm to the child. So long as this harm is interpreted as substantial harm, this tracks U.S. and Iowa Supreme Court precedent. *See In re Marriage of Howard* at 190.

Fit parents are presumed to act in their child's best interest. It is presumed that fit parents' decisions will benefit their children, not harm them.

Santi at 319, 321. Thus, a threshold determination of whether a parent is fit, is a necessary component of analyzing the first prong of the statute. If a parent is determined to be fit, then normally the analysis will end there. *E.g.*, *Santi at* 321.

Only clear and convincing evidence to the contrary can overcome the presumption that a fit parent's decisions will benefit their child. *See Matter of Guardianship of Hedin*, 528 N.W.2d 567, 581 (Iowa 1995) ("Because the liberty interest of the individual is at stake in civil commitment and guardianship proceedings, we think the clear and convincing evidence standard is the appropriate one to apply in guardianship proceedings, whether those proceedings involve appointment, applications to modify, or applications to terminate"). *See also In re K.M.*, 653 N.W.2d 602, 608 (Iowa 2002) (clear and convincing evidence of unfitness is necessary for parental rights termination), *holding modified by In re P.L.*, 778 N.W.2d 33 (Iowa 2010). The court may not substitute its judgement for that of a fit parent. *Santi* at 320. In analyzing the appropriateness of a guardianship, a parent's current fitness is not measured by their past indiscretions as long as they do not pose a current risk. *In re Guardianship of M.D.*, 797 N.W.2d 121, 128 (Iowa Ct. App. 2011). Indeed, to do so would discourage parents to seek help when they need it for fear of losing custody of their children indefinitely. *See Matter of*

Guardianship of Sams, 256 N.W.2d 570, 573 (Iowa 1977) ("Our cases have emphasized that parents should be encouraged in time of need to look for help in caring for their children without risking loss of custody").

It is also important that Iowa Code § 232.503 be interpreted in light of the purpose of the statute. Iowa Code § 4.2. In this case the guardianship statute was amended in order to provide clearer guidance to the courts, to make sure that the parties understood the proceedings, and still protect the constitutional interest of parents in raising their minor children, as well as protecting the best interest of children, which is presumed to be with their parents. Final Report, 39, 42-44. In particular, the task force repeatedly discusses the threshold requirement of parental unfitness as a necessary component to guardianships where the parent does not consent. *See e.g. id*. 44-45.

In light of the constitutional requirements and the statutory purpose, it is both reasonable and necessary to interpret Iowa Code § 232D.503(2) to include a threshold requirement of parental unfitness.

II. In Balancing The Parent And Child's Interest in Continuing a Guardianship, the Fundamental Right Of a Parent To Have Care and Custody Of Their Child Is Important to the Welfare of Both Parents and Children

The Iowa Supreme Court has made clear that the court should proceed

to the best interest analysis only if parental unfitness is found. *Santi* at 321. Iowa Code § 232D.503 sets up a balancing test in considering whether the termination of a guardianship is appropriate: "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 the parent of the minor in the termination of the guardianship." As provided in Section I of this argument, this section must be interpreted in light of the constitutional rights of the parents. However, it also must take into account that preserving the parent-child relationship is itself a special factor that should be presumed to be in the best interests of both parents and their children.

The statute in question provides that the guardianship be terminated unless there is harm to the minor and that harm outweighs the interests of the parent. To interpret this in a way that does not violate the parent's constitutional rights, the interest of the parent must be considered compelling unless there is a showing of unfitness. The statute should be read to include a finding of parental unfitness as a requisite to balancing the possible harm to the child. In a sense, the harm to the child is always minimal unless the parent is unfit.

More to the heart of this case, and many others like it that Iowa Legal

Aid has seen over the decades, when considering a best interest analysis, "[c]ourts are not free to take children from parents simply by deciding another home offers more advantages." *In re Mann*, 293 N.W.2d 185, 190 (Iowa 1980). When considering the importance of the parent-child bond to both parents *and children*, Iowa courts have recognized for over a century that:

> 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 served in the care and control of parents, and in every case a showing of such relationship, in the absence of anything more, makes out a prima facie case for parents claiming 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.

Risting at 594. In other words, the parental preference is not simply a constitutional protection of the rights of parents at the *expense* of their children, but rather a critical protection of the rights of the family to remain intact which serves the interests of the family as a whole and on an individual basis.

CONCLUSION

The disappearance of the words "parental preference" from the new guardianship statute does not mean that the fundamental rights of parents to

care for their children, which has been recognized and protected for over a century, no longer exists. The changes made to the statute were intended to provide more guidance to the courts and to better protect the rights of parents and their children. Iowa Code Chapter 232D can be interpreted to continue to protect those rights, and it is constitutionally necessary to do so.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Ericka Petersen, hereby certify that the Amicus Brief was electronically filed on the 13th day of September, 2021, and was electronically served upon the Appellee's counsel via electronic mail / EDMS.

/s/ Ericka Petersen

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