

**IN THE COURT OF APPEALS OF IOWA**

No. 7-801 / 07-1532  
Filed November 15, 2007

**IN THE INTEREST OF N.B.,  
Minor Child,**

**N.B., Minor Child,**  
Appellant.

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Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,  
District Associate Judge.

A child's guardian ad litem appeals the juvenile court's order allowing  
visitation between the child and mother. **AFFIRMED.**

Melody Butz of Butz Law Offices, P.L.C., Cedar Rapids, for appellant  
minor child.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Harold Denton, County Attorney, and Rebecca Belcher, Assistant  
County Attorney, for appellee State.

Mona Knoll of Nazette, Marner, Wendt, Knoll & Usher, L.L.P., Cedar  
Rapids, for appellee mother.

Judith Hoover of Hoover Law Office, Cedar Rapids, for appellee father.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

**BAKER, J.**

A child's guardian ad litem appeals the juvenile court's order allowing supervised visitation between the child and mother. We affirm.

**I. Background and Facts**

Amanda and Jeremy are the parents of N.B., who was born in June 2003. In August 2004, N.B. and her older sister, who was age eight at the time, came to the attention of the Iowa Department of Human Services (DHS) because Amanda left the girls home alone. In September 2004, it was stipulated that the children were in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(n) (2003). The girls were removed from Amanda's home in November 2004 due to the presence of cocaine in N.B.'s body and Amanda's positive test for cocaine. They were returned to Amanda's care in March 2005, but removed again in June 2005 after N.B. again tested positive for cocaine.

Amanda was provided supervised visitation, at State expense through DHS, from November 2004 through October 2006. Amanda's visits with N.B. progressed to semi-supervised for a brief period. Their visits became fully supervised again in January 2006, due to Amanda's arrest for public intoxication and her subsequent attempts to conceal the incident from DHS, and due to Amanda's failure to meet the expectations of her DHS case plan.

A permanency hearing was held on March 9, 2006. The permanency goal was changed from N.B.'s reunification with Amanda to N.B. remaining permanently with Jeremy. Concurrent jurisdiction was granted to Jeremy to seek a district court order to close N.B.'s case. On September 6, 2006, Jeremy was

granted sole custody, and Amanda was allowed fully-supervised visitation, at her expense.

After DHS-provided services expired on October 10, 2006, Amanda failed to make arrangements for visits. From October 2006 to August 2007, Amanda had supervised visitation with N.B. on three occasions. She claims her failure to exercise her visitation is due to her inability to pay for the supervised visits. Amanda testified that the one-hour visits cost \$105. She also testified that she is currently employed as a realtor, and made approximately \$10,000 in salary and \$4800 in rental income last year. Amanda has semi-supervised visits with her older daughter, and custody of a third daughter, seven months old at the time of trial, for whom CINA proceedings were dismissed in August 2007.

On August 17, 2007, a contested hearing on Amanda's request for DHS-provided visitation was held. The juvenile court ordered weekly fully-supervised visitation between N.B. and Amanda begin as soon as possible and granted DHS the discretion to increase the frequency and duration and to decrease the level of supervision. The court authorized DHS to utilize appropriate relative or suitable other adult persons to supervise, and ordered Amanda to provide a list of names of potential supervisors for DHS's approval. N.B.'s guardian ad litem appeals. The State takes no position in the appeal and has filed no response.

## **II. Merits**

Our scope of review in juvenile proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We give weight to the court's findings of fact, but are not bound by them. *Id.* "As in all juvenile proceedings, our fundamental concern is the best interests of the child." *Id.*

The guardian ad litem contends the juvenile court erred in ordering DHS to provide visits to the mother without making a finding that it is in the child's best interests. "[T]he nature and extent of visitation is always controlled by the best interests of the child. This standard may warrant limited parental visitation." *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996) (holding the continued existence of the reasons for implementing limited visitation, and the mother's poor overall progress in resuming custody, justified continued limited visitation).

The juvenile court found that a stalemate exists. On the one hand, the mother has claimed an inability to pay for supervised visits. On the other hand, DHS is unwilling to proceed to unsupervised visits because of the child's young age and the decreased bond between the mother and child due to irregular visitation, without first having additional supervised visits. The court concluded that, in order to break the stalemate and for the case to close, "substantial and reasonable efforts must be made to determine whether the child can safely have unsupervised contact with her mother."

There is little doubt the child's best interests will be promoted by the stability that will result from closing this case. To accomplish that end, the court ordered the steps required to finally determine whether unsupervised contact should be allowed. While the juvenile court did not make a specific finding that visitation with the mother was in the child's best interests, we find the juvenile court did consider and make a best-interests determination in ordering visitation.

The guardian ad litem cites Iowa Code section 232.104(6) (2007) to support its contention that the juvenile court erred because it failed to make a finding that visitation is in the child's best interests. The court's order was in

regard to the mother's request for DHS-provided visitation. Therefore, the requirement of section 232.104(6) of an annual review of permanency orders "to ascertain whether the best interest of the child is being served" is inapplicable.

The guardian ad litem contends the juvenile court abused its discretion by ordering DHS to provide visitation with the mother "over a year after permanency was established when reasonable efforts at reunification with the mother were no longer necessary, visits were available to the mother, and the mother had refused to pay for visits despite her ability" to pay for supervised visits. The guardian ad litem also contends the juvenile court abused its discretion by refusing to order DHS to provide the child with therapy and require the mother to participate in therapy prior to resuming visits.

The guardian ad litem cites cases to support these arguments, yet fails to provide any explanation, or even pinpoint citations, to guide our understanding of how she believes the cases support the argument. Equally troubling is the mother's response, which presents no legal authority to support her reply to these arguments. See Iowa R. App. P. 6.14(1)(c) ("Failure in the brief to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue."); Iowa R. App. P. 6.14(2) ("The brief of appellee shall conform to the requirements of rule 6.14(1)."); *Lausen v. Bd. of Supervisors*, 204 Iowa 30, 32, 214 N.W. 682, 684 (1927) (describing failure to cite authorities to support contentions as "wholly inexcusable"). More importantly, this is a juvenile case. The parties' lack of clarity and appropriate citation to legal authority in their arguments leaves us to speculate on the points they are attempting to make in regard to the well-being of a four-year-old child.

Left to speculate on what legal authority the parties believe supports their arguments, we agree with the court's finding that "Amanda has made progress." The record is unclear as to whether or not Amanda could have paid for more visits. Our de novo review does not convince us that therapy for the child or mother should be required prior to resuming visits. We affirm the juvenile court on this issue.

The guardian ad litem also contends the juvenile court erred in excluding relevant and material evidence regarding the mother's ability to pay for supervised visits. She argues the court erred when it sustained an objection to questions about the mother's financial situation, yet overruled her objection to questions by the mother's attorney of another witness on the same subject.

Because this is an equitable claim, the district court need not rule on objections, but should hear all evidence subject to objections. *Wilker v. Wilker*, 630 N.W.2d 590, 597 (Iowa 2001); *In re Estate of Evjen*, 448 N.W.2d 23, 24 (Iowa 1989). Thus, evidence which under ordinary rules of evidence applicable to a civil trial would be excluded, is admissible in a juvenile proceeding, and the nature of the evidence is considered for its probative value rather than its admissibility. *In re H.R.K.*, 433 N.W.2d 46, 48 (Iowa Ct. App. 1988) (citing *Harter v. State*, 260 Iowa 605, 608, 149 N.W.2d 827, 829 (1967)).

The purpose is to preserve a complete record of the evidence for the trial and the appellate courts, leaving to them the rejection of inadmissible testimony in deciding the issues. In the review de novo the appellate court, if it finds the trial court has erred, may then decide the case on the record made without a remand.

*O'Dell v. O'Dell*, 238 Iowa 434, 465-66, 26 N.W.2d 401, 417 (1947).

In equity, to the extent the parties challenge the court's rulings on the admissibility of evidence, we review for the correction of errors at law. *Garland v. Branstad*, 648 N.W.2d 65, 69 (Iowa 2002). On our de novo review, we may decline to address the issue of admissibility when we can arrive at the same result with or without the evidence. See *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005) (citing *Wilker*, 630 N.W.2d at 598).

Upon our review, we decline to address the issue of admissibility because neither the exclusion of evidence regarding the mother's child support obligation, nor the inclusion of additional evidence regarding the mother's ability to pay for supervised visits, would influence our decision to affirm. We therefore refuse to reverse the juvenile court order based on the exclusion of alleged relevant and material evidence. We further note that there was no offer of proof and, therefore, error was not preserved.

### **III. Conclusion**

Although we find the juvenile court did consider and make a best-interests determination in ordering visitation, the requirement of an annual review of permanency orders is inapplicable to this case. We will not reverse the juvenile court's order based upon the mother's failure to pay for supervised visitation or the court's failure to require therapy for the child or mother prior to resuming visits. Finally, we decline to address the issue of admissibility.

**AFFIRMED.**