

IN THE SUPREME COURT OF IOWA

K.C., Minor Child,
Plaintiff-Appellant,

v.

IOWA DISTRICT COURT FOR POLK COUNTY,
Defendant-Appellee.

*APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
HONORABLE RACHAEL SEYMOUR, JUVENILE COURT JUDGE*

FINAL BRIEF OF *AMICUS CURIAE*
THE AMERICAN CIVIL LIBERTIES UNION OF IOWA FOUNDATION,
INC.

IN SUPPORT OF PLAINTIFF-APPELLANT

Sharon Wegner
Rita Bettis Austen
ACLU of Iowa
505 Fifth Ave., Ste. 808
Des Moines, Iowa 50309
PHONE: (515) 243-3988
FAX: (515) 243-8506
EMAIL: sharon.wegner@aclu-ia.org
EMAIL: rita.bettis@aclu-ia.org

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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. Consent to file on behalf of all parties is attached to this brief.

**STATEMENT OF IDENTITY AND INTEREST
OF AMICUS CURIAE**

The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan organization made up of more than 500,000 members dedicated to the principles of liberty and equality embodied in state and federal law. The ACLU of Iowa (together, “ACLU”), founded in 1935, is its statewide affiliate. This case presents important questions of first impression: (1) Did the district court abuse its discretion in requiring that only roughly half of the expert fees incurred in support of a juvenile’s presentation of evidence opposing waiver to adult criminal court be paid at state expense? (2) How deferential should the standard of review be in appeals of such decisions in light of the constitutional differences between adults and children in delinquency and criminal proceedings?

The ACLU has a longstanding interest in defending the rights of the accused and convicted. With respect to the developing case law in both state and federal courts concerning the rights of those who were children at the time

of their offense, the ACLU has actively pursued cases nationwide affirming the right of juveniles to be free from sentences amounting to cruel and unusual punishment and to be provided with additional procedural safeguards that are necessary to protect children within the delinquency and criminal systems. In addition to direct representation of juvenile offenders in state and federal court, as well as providing research support to juvenile defenders in the state to advance this mission and through the filing of amicus briefs, the ACLU actively worked for years toward legislative reforms by the Iowa General Assembly to adopt constitutional and comprehensive juvenile sentencing and parole procedures.

Because of its experience, record of dedication, and accumulated expertise in the preservation of constitutional rights, including the rights of juveniles, the ACLU can materially contribute to the legal dialogue in this case, and ultimately assist the Court in rendering the best possible opinion.

ARGUMENT

I. COURTS SHOULD BE LESS DEFERENTIAL WHEN REVIEWING REASONABLE AND NECESSARY LITIGATION COSTS FOR JUVENILES IN DELINQUENCY PROCEEDINGS THAN ADULT CRIMINAL PROCEEDINGS.

Because juveniles are constitutionally and statutorily entitled to extra protections under the law, juvenile court decisions regarding the application

for reasonable litigation costs to be covered at state expense in delinquency proceedings should be reviewed de novo. Indeed, in the case below the juvenile court recognized that the child in interest had a constitutional right to an expert at state expense. (11.07.2022 Order at *2). However, in that same Order, the Court nevertheless declined to reimburse the child for the entirety of the necessary expert fees to cover the entirety of their fees. *Id.* at *3. Such inconsistency undermines the entitlement to an expert witness and subverts the purpose of the extra protections inherent to juvenile courts. In this infrequently litigated issue, we ask the Court to assess the standard of review so that it better serves the interests of both juvenile delinquents and juvenile courts in the state of Iowa.

A. Juveniles are entitled to more protections than adult defendants.

“Children are constitutionally different.” *State v. Null*, 836 N.W.2d 41, 65 (Iowa 2013) (quoting *Miller v. Alabama*, 567 U.S. 460, 470-472 (2012); accord *State v. Lyle*, 854 N.W.2d 378, 395 (Iowa 2014), *as amended* (Sept. 30, 2014); *State v. Seats*, 865 N.W.2d 545, 556 (Iowa 2015) *see also Bonilla v. Bd. of Parole*, 930 N.W.2d 751, 776, 786 (Iowa 2019) (holding that juvenile offenders, unlike adults, have a due process liberty interest in an opportunity to gain release on parole by demonstrating maturity and rehabilitation, which requires additional procedural protections that the juvenile offender be able to

access the parole file and provide additional information to the Board, and that the state Department of Corrections may not unreasonably withhold rehabilitative programming required for release). For the past decade this well-reasoned maxim has been the governing rule in state and federal courts. Yet, juvenile courts in Iowa utilize the same test as adult criminal courts to assess whether expert witness fees should be paid by the state in juvenile delinquency waiver proceedings.

Iowa juvenile delinquency proceedings are not criminal prosecutions, “but are special proceedings that provide an ameliorative alternative to the criminal prosecution of children.” *In re J.A.L.*, 694 N.W.2d 748, 751 (Iowa 2005). The United States Supreme Court has recognized differences of constitutional magnitude between adults and children in an array of non-punishment contexts. *See generally* Martin Guggenheim, *Graham v. Florida and a Juvenile's Right to Age-Appropriate Sentencing*, 47 Harv. C.R.-C.L. L. Rev. 457, 487 (2012). Indeed, “juvenile courts still process juvenile delinquents in a manner more paternal and diagnostic than that afforded their adult criminal counterparts.” *Alexander S. by and through Bowers v. Boyd*, 876 F. Supp. 773, 781 (D.S.C. 1995).

Because the courts have recognized that juveniles are worthy of a higher level of protection than adult defendants, the Iowa Supreme Court

should apply a de novo—or, as in *State v. Roby*, at least a practically more exacting and less deferential—standard of review to juvenile court decisions when it comes to the payment of expert witness fees necessary to juvenile waiver proceedings. 897 N.W.2d 127 (Iowa 2017)

B. Courts should apply a de novo standard of review when reviewing reasonable and necessary litigation costs for juveniles in delinquency proceedings.

Typically, appellate review of juvenile delinquency cases is de novo. *In re J.A.L.*, 694 N.W.2d 748, 751 (Iowa 2005); *see also In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996); *In re D.L.C.*, 464 N.W.2d 881, 883 (Iowa 1991). The review of issues implicating constitutional rights is also de novo. *State v. Harrison*, 914 N.W.2d 178, 187 (Iowa 2018). However, “appellate review of a juvenile court’s discovery rulings and decisions whether to grant applications for state-funded investigators is for abuse of discretion.” *In re A.K.*, 825 N.W.2d 46, 51 (Iowa 2013). A court abuses its discretion when it makes a ruling on “grounds or for reasons clearly untenable or to an extent clearly unreasonable.” *In re J.A.L.*, 694 N.W.2d at 751 (*citing State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997)).

In *In re A.K.*, the Iowa Supreme Court recognized that the differences between juvenile and adult criminal proceedings, including the lack of a constitutional guarantee of a jury trial, meant that “juvenile proceedings favor

a more in-depth appellate review of the facts supporting and opposing an adjudication.” *Id.* (citing Iowa Code § 232.47(2)); *McKeiver v. Pennsylvania*, 403 U.S. 528, 533, 545–47 (1971)(declining to adopt the “formalities” of criminal court in adjudicative proceedings); *In re Johnson*, 257 N.W.2d 47, 50–51 (Iowa 1977). Furthermore, even once waived to adult criminal court, and in light of the entitlement to additional constitutional protections afforded to juveniles, the court does not apply the same level of deference, practically speaking, to the district court’s exercise of discretion regarding a juvenile offender as to an adult. *See State v. Roby*, 897 N.W.2d 127 (Iowa 2017) (reversing a sentencing decision on an abuse of discretion standard of review, while holding, inter alia, that sentencing courts must consider five mitigating factors particular to youth in an individualized hearing, relying on expert evidence, and not based on the particular culture or background of the sentencing judge applying them or perceptions applicable to adult behavior).

Juvenile courts across this state have been given no direction on how to assess fees other than the rules found in Iowa R. Crim. P. 2.20(4) and Iowa Code § 815.7(5). Rule 2.20(4) states:

An attorney for a defendant who because of indigency is financially unable to obtain expert or other witnesses necessary to an adequate defense of the case may request in a written application that the necessary witnesses be secured at state

expense. Upon finding that the services are necessary and that the defendant is financially unable to provide compensation, the court shall authorize the defendant's attorney to obtain the witnesses on behalf of the defendant. The court shall determine reasonable compensation and direct payment pursuant to Iowa Code chapter 815.

Chapter 815, which regulates compensation and fees in indigent defense, goes on to state that attorneys should be reimbursed for expenses “as are necessary for investigations in the interest of justice.” Iowa Code § 815.7(5) (2023). Iowa Code 232, which regulates juvenile cases, is silent on the issue of expert fees or attorney remuneration. Thus, juvenile courts are applying adult criminal standards in delinquency proceedings, which contravenes precedent by this Court holding that delinquency proceedings are not criminal in nature.

In significantly reducing the child's application for expert fees, the Court below relied heavily on *In re C.L.C. Jr.* for the proposition that not “every similarly situated defendant is entitled to appointment of an investigator or to other expert services; before authorizing such services to be furnished at state expense there must be a finding that they are necessary in the interest of justice.” 798 N.W.2d 329, 338 (Iowa App. 2011) (citing *State v. Williams*, 207 N.W.2d 98, 105 (Iowa 1973)); *see also* Iowa Code § 815.7(1), (5) (stating the expenses due to an attorney “appointed by the court to represent any person pursuant to section 814.11 or 815.10 . . . shall include any sums as are necessary for investigations in the interest of justice”). Below,

when confronted with an unresisted application for expert fees, the court recognized that the child had a constitutional right to an appointed expert. (11.07.2022 Order at *2). While *In re CLC* is a juvenile case, its logical underpinnings all stem from the criminal context. This Court has routinely recognized that juveniles are in need of greater protections than criminal defendants—as a matter of constitutional law. Thus, it should review rulings seeking reasonable and necessary litigation costs for juveniles de novo, consistent with how it otherwise reviews juvenile delinquency proceedings and rulings implicating constitutional rights. In the alternative, as in *Roby*, in light of juveniles’ increased constitutional rights and diminished standard of culpability, the abuse of discretion standard should, as a practical matter, be less deferential to district courts than in the adult criminal context.

II. EVEN IF THE COURT CHOOSES NOT TO IMPLEMENT A DE NOVO—OR A PRACTICALLY LESS DEFERENTIAL—STANDARD OF REVIEW, THE JUVENILE COURT ABUSED ITS DISCRETION.

This Court should implement a de novo standard of review for all rulings seeking reasonable and necessary litigation costs for juveniles. However, even if this Court declines to do so it should still find that the juvenile court abused its discretion and reverse.

Because the juvenile code is silent on reimbursement of fees, juvenile courts are applying criminal case law in delinquency proceedings despite

these proceedings’ fundamental differences from the prosecution of an adult. And in some instances, as here, they may do so in a haphazard fashion without necessarily applying the most recent case law. Specifically, when assessing the child’s fee application, the juvenile court below did not follow 2016 case on indigent defendant applications for fees, which provides:

When an indigent defendant applies for appointment of a private investigator at state expense, the trial court should give the State an opportunity to resist the application; if the State resists the application, the prosecutor should have the right to appear and participate in a hearing regarding the application and the State’s resistance.

State v. Dahl, 874 N.W.2d 348 (Iowa 2016). Under *Dahl*, the Iowa Supreme Court outlined a procedure for maintaining the zealous representation of indigent clients while balancing the government’s interest to protect its purse strings: it must conduct a thorough review of a defendant’s application for costs at state expense. *Id.* at 353. If the court can glean that there is some likelihood that the expert is necessary but the application lacks particularity, the State must be given an opportunity to object. *Id.* But if there is no objection, the court can proceed to an ex parte hearing¹ before ruling on the merits of the application. *Id.*

¹ If ex parte, the court must report hearing, seal any transcript or order that would disclose defense strategy or work product, and file a separate unsealed order announcing its decision to grant or deny the application. *Dahl*, 874 N.W.2d at 348.

Similar to the case at hand, in *State v. Tate*, the Iowa Court of Appeals reversed and remanded an adult criminal case in which the attorney for an indigent defendant sought funds for an investigator, was denied, and thereafter applied for funds under *Dahl*. 908 N.W.2d 881 (Iowa 2017). The trial court had summarily denied the attorney's second application within an hour of the filing, without seeking any further information or particularities, or holding a hearing. *Id.* Important to the appellate court was the fact that the State did not file a resistance to any of the proposed fees. *Id.*

In addition to the procedure outlined in *Dahl*, the Model Juvenile Court Act provides further guidance in reviewing whether a district court abused its discretion in weighing the reasonableness of a child's request for necessary defense costs at state expense. Under the Model Rule, unless the court finds that a parent or other legal guardian is able to pay all or part of the costs, the [State] shall pay for the cost of court-ordered examinations and treatment of a child, the cost of care of a child committed to a public agency other than an institution for delinquent children, or to a private agency or individual other than a parent; and reasonable compensation for court-appointed counsel for a party and for a guardian ad litem. 47 Am. Jur. 2d Juvenile Courts, Etc. § 115 (*citing* Model Juvenile Court Act § 52). The act goes on to state that [t]he [State] shall also pay for service expenses, travel expenses of witnesses,

transportation of the child, and other like expenses incurred in the proceedings. *Id.*

Under this model, and consistent with Iowa appellate decisions, the juvenile court retains its jurisdiction to determine the reasonableness of attorney's fees, but the State is directed to pay for other services such as expert witness fees. It is axiomatic "an indigent's 'right to effective counsel includes the right to public payment for reasonably necessary investigative services.'" *In re C.L.C. Jr.*, 798 N.W.2d at 338 (citing *English v. Missildine*, 311 N.W.2d 292, 293–94 (Iowa 1981)).

Similarly, the Iowa Supreme Court has held that, while a defendant is not allowed to go on a "fishing expedition," a "court should not withhold appointment of an expert when the facts asserted by counsel reasonably suggest further exploration *may* prove beneficial to defendant in the development of his or her defense." *State v. Coker*, 412 N.W.2d 589, 592 (Iowa 1987) (citing *United States v. Schultz*, 431 F.2d 907, 911 (8th Cir. 1970)).

When applying *Coker*, the Iowa Court of Appeals held, "When [the] trial court, upon its independent review of the record made when the motion is submitted, concludes counsel's request is reasonable under the circumstances and may lead to development of a plausible defense, counsel's

request should be granted.” *State v. Mason*, 778 N.W.2d 219 (Iowa App. 2009). “The underlying question is whether the application is reasonable. If it is reasonable it should be granted.” *Id.* (citing *State v. Stewart*, 445 N.W.2d 418, 420 (Iowa 1989)). Finally, the Iowa Supreme Court has held that Iowa courts remain “committed to the liberal view on the admission of psychological evidence.” *State v. Dudley*, 856 N.W.2d 668, 676 (Iowa 2014).

Here, counsel for the child requested \$7,900 in fees for the expert, with an attestation both by the attorney as to the fees charged by other experts that were contacted, as well as by the expert themselves as to their fees. (09.11.2022 Professional Statement *1-2; 09.18.2022 Supplemental Professional Statement *1) (09.18.2022 Affidavit of Dr. Thomas *1). The juvenile court deemed K.C. to be indigent. (08.15.2022 Order *1). It agreed with defense counsel that the expert was necessary in the interests of justice. As in *Tate*, the State did not resist the fee amount or application. Yet, the district court sought no further information from the child and scheduled no hearing per *Dahl* before it docked the bill nearly in half (down to \$4,590). *See* 12.09.2022 Order Denying Fees at *1; 11.07.2022 Order at *2.

In its November order, the District Court was silent as to why it had docked the fees to the extent that it did, or how it subtracted funds from the child’s updated application for fees. (12.09.2022 Order Denying Fees at *1).

While counsel did not initially state with specificity which tests the expert planned to administer, this was cured with a further filing. (11.20.2022 Application for Additional Fees *2). Likewise, while the juvenile court initially reduced fees because it found that the expert could testify remotely, it provided no adjustment or change to its partial denial after the hearing, at which, per the court's initial determination of unreasonableness, the expert actually testified remotely. (12.22.2022 Motion to Reconsider *3).

Because (a) the motions for fees were unresisted by the state, (b) the juvenile court did not seek further information from the child, and (c) upon receiving more information curing the reasons previously cited by the court for docking fees, the juvenile court refused to change the fee allocation, the juvenile court's ruling should be reversed as an abuse of discretion.

CONCLUSION

For these reasons, *amicus curiae* respectfully requests that this Court review the reasonable and necessary litigation costs for juveniles and adopt a *de novo*—or at least practically less deferential—standard of review, reverse the decision below and remand to the juvenile court with instructions for payment of the fees in their entirety.

Respectfully submitted,

/s/ Sharon Wegner

Sharon Wegner, AT0012415
ACLU of Iowa Foundation Inc.
505 Fifth Avenue, Ste. 808
Des Moines, IA 50309-2317
Telephone: 515-243-3988
Facsimile: 515-243-8506
sharon.wegner@aclu-ia.org

/s/ Rita Bettis Austen

Rita Bettis Austen, AT0011558
ACLU of Iowa Foundation Inc.
505 Fifth Avenue, Ste. 808
Des Moines, IA 50309-2317
Telephone: 515-243-3988
Facsimile: 515-243-8506
rita.bettis@aclu-ia.org

COST CERTIFICATE

I hereby certify that the cost of printing this application was \$0.00 and that that amount has been paid in full by the ACLU of Iowa.

/s/ Sharon Wegner

Sharon Wegner, AT0012415
ACLU of Iowa Foundation Inc.
505 Fifth Avenue, Ste. 808
Des Moines, IA 50309-2317
Telephone: 515-243-3988
Facsimile: 515-243-8506
sharon.wegner@aclu-ia.org

CERTIFICATE OF COMPLIANCE

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

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/s/ Sharon Wegner

Sharon Wegner, AT0012415
ACLU of Iowa Foundation Inc.
505 Fifth Avenue, Ste. 808
Des Moines, IA 50309-2317
Telephone: 515-243-3988
Facsimile: 515-243-8506
sharon.wegner@aclu-ia.org

CERTIFICATE OF SERVICE

The undersigned certifies that on the date signed electronically below, all parties were served electronically via EDMS. Parents of the Appellant were served via U.S. Mail, through counsel for the Appellant.

/s/ Sharon Wegner

Sharon Wegner, AT0012415

ACLU of Iowa Foundation Inc.

505 Fifth Avenue, Ste. 808

Des Moines, IA 50309-2317

Telephone: 515-243-3988

Facsimile: 515-243-8506

sharon.wegner@aclu-ia.org