

SUMMARIES OF DECISIONS, IOWA COURT OF APPEALS
April 18, 2018

Pursuant to Iowa Rule of Appellate Procedure 6.904(2)(6), an unpublished opinion of the Iowa Court of Appeals may be cited in a brief; however, unpublished opinions shall not constitute controlling legal authority.

No. 16-0999

STATE v. ABANG-NTUEN

AFFIRMED.

Appeal from the Iowa District Court for Dallas County, Randy V. Hefner, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (14 pages)

Danielle Abang-Ntuen appeals her conviction for willful injury following a jury trial of her and her two codefendants. She claims the district court abused its discretion for denying her repeated motions for a mistrial based on the behavior of a codefendant during the trial. **OPINION HOLDS:** Based upon our review of the trial transcript, we conclude the trial court did not abuse its discretion in denying the motions. We affirm Abang-Ntuen's conviction.

No. 16-1117

STATE v. BREWER

**CONVICTION
AFFIRMED, SENTENCE
VACATED, AND
REMANDED.**

Appeal from the Iowa District Court for Polk County, Odell G. McGhee, District Associate Judge. Considered by Danilson, C.J., Bower, J., and Scott, S.J. Opinion by Bower, J. (7 pages)

David Patrick Brewer appeals his conviction for operating while intoxicated, first offense. **OPINION HOLDS:** We find the district court considered an uncharged offense during sentencing. We also find the district court properly denied Brewer's motion to dismiss and there was sufficient evidence to convict Brewer.

No. 16-1534

SEEBERGER v. DAVENPORT CIVIL RIGHTS COMMISSION

**AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED ON
APPEAL; AFFIRMED
ON CROSS-APPEAL.**

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge. Heard by Potterfield, P.J., and Mullins and Bower, JJ. Opinion by Mullins, J. (15 pages)

The Davenport Civil Rights Commission (Commission) and Michelle Schreurs appeal a district court ruling on Theresa Seeberger's petition for judicial review following an agency determination of Schreurs's housing-discrimination complaint. The Commission contends the district court erred in concluding Schreurs's complaint was not filed under the federal Fair Housing Act (FHA) and the Davenport Municipal Code (2014) does not authorize an award of attorney fees in the context of discriminatory housing practices. Schreurs argues the district court erred in concluding the municipal code and FHA do not entitle her to an award of attorney fees incurred during administrative proceedings and abused its discretion in refusing to award her attorney fees in the judicial-review proceeding. Theresa Seeberger cross-appeals the same ruling. She asserts that holding her liable for her discriminatory statements violates the First Amendment to the United States Constitution and article I, section 7 of the Iowa Constitution because the statements she made amount to protected speech. **OPINION HOLDS:** We conclude the challenged ordinance is not an unconstitutional infringement upon Seeberger's freedom-of-speech rights and affirm the agency and district court's findings of liability. We reverse the district court's determination that Schreurs was not entitled to the attorney fees incurred in the administrative proceeding and remand the matter to the district court to consider whether the attorney-fee award was excessive. We affirm the district court's denial of Schreurs's request for attorney fees in the judicial-review proceeding.

No. 16-1828

STATE v. JONES

AFFIRMED.

Appeal from the Iowa District Court for Black Hawk County, David P. Odekirk, Judge. Heard by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (18 pages)

Charles Jones challenges his convictions for robbery in the first degree, going armed with intent, carrying weapons, and making a false report to law enforcement. Jones challenges the sufficiency of the evidence supporting his convictions, alleges trial counsel provided constitutionally deficient representation in several respects, and contends the district court applied the wrong legal standard in denying his motion for new trial. **OPINION HOLDS:** We conclude there is sufficient evidence to support the convictions and find trial counsel did not breach any essential duties, but we preserve one claim for potential postconviction-relief proceedings. We also conclude the district court did not err in ruling on the motion for new trial. We affirm the judgment of the district court in all respects.

No. 16-2023

BUTTS v. STATE

AFFIRMED.

Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, Judge. Heard by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (22 pages)

Robert Butts, convicted of one count each of first-degree burglary, second-degree kidnapping, going armed with intent, assault while participating in a felony, assault with the intent to commit sexual abuse, carrying weapons, and possession of burglar's tools, filed a postconviction-relief action, asserting his trial counsel was ineffective. Additionally, Butts claims his appellate counsel was ineffective in failing to seek further review and failing to challenge trial counsel's disclosure of a letter. Finally, Butts asserts his kidnapping conviction should be reconsidered in light of our supreme court's ruling in *State v. Robinson*, 859 N.W.2d 464 (Iowa 2015). **OPINION HOLDS:** As we conclude the district court properly denied Butts's ineffective-assistance-of-counsel claims against both his trial and appellate counsel and because we do not find any structural error in the trial record, cumulative error, or entitlement to kidnapping reconsideration, we affirm the district court's denial of Butts's application for postconviction relief.

No. 16-2221

STATE v. DOUGLASS

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Paul D. Scott, Judge. Considered by Vogel, P.J., Mullins, J., and Mahan, S.J. Opinion by Mahan, S.J. (8 pages)

David Douglass appeals his conviction for assault with the intent to commit sexual abuse, contending his trial counsel was ineffective in failing to move to suppress the eyewitness identification from the victim's neighbor. **OPINION HOLDS:** Upon consideration of the issue raised on appeal, we affirm.

No. 17-0014

WILSON v. STATE

AFFIRMED.

Appeal from the Iowa District Court for Des Moines County, Mary Ann Brown, Judge. Considered by Tabor, P.J., McDonald, J., and Blane, S.J. Opinion by Blane, S.J. (14 pages)

Applicant Daniel Wilson contends his criminal convictions cannot stand because the State admitted in its answer to the postconviction-relief (PCR) application, despite the evidence at the criminal trial, that the substance Wilson threw at jailers was vomit and not urine, which does not meet the elements of the

crimes of which he was convicted. He also asserts that his trial counsel and potentially PCR counsel were ineffective and that his sentences were unconstitutional as cruel and unusual punishment. **OPINION HOLDS:** Having addressed all of Wilson's contentions and finding that he cannot prevail on any in this appeal, the judgment of the district court is affirmed.

No. 17-0056

CITY OF DUBUQUE v. JADE ENGINEERING LLC

AFFIRMED.

Appeal from the Iowa District Court for Dubuque County, Michael J. Shubatt, Judge. Heard by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (2 pages)

The City of Dubuque appeals from an order denying its petition to obtain title to four pieces of real property claimed to be abandoned within the meaning of Iowa Code section 657A.10A (2016). The city challenges the district court's findings of fact, application of fact to law, and ultimate conclusion the city failed to prove the parcels were abandoned. **OPINION HOLDS:** On de novo review, we conclude the city failed to prove the property was abandoned within the meaning of the Iowa Code.

No. 17-0057

STATE v. BASQUIN

**JUDGMENT AFFIRMED,
SENTENCE AFFIRMED
IN PART AND VACATED
IN PART, AND
REMANDED FOR
ENTRY OF A
CORRECTED
SENTENCE.**

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge. Considered by Vaitheswaran, P.J., Bower, J., and Blane, S.J. Opinion by Vaitheswaran, P.J. (11 pages)

Timothy Basquin appeals his conviction for domestic abuse assault causing bodily injury, (1) challenging the sufficiency of the evidence supporting the jury's finding of guilt, (2) contending his trial attorney was ineffective in failing to object to the district court's inclusion of a jury instruction on general intent, (3) arguing his trial attorney should have objected to what he contends was impermissible testimony vouching for the assaulted woman's credibility, (4) contending the district court erred in admitting hearsay testimony, (5) arguing counsel was ineffective in failing to move for a new trial based on the weight of the evidence, and (6) arguing the district court erred in imposing a domestic abuse assault surcharge. **OPINION HOLDS:** We affirm Basquin's judgment but vacate the portion of his sentence imposing the Iowa Code section 911.2B (2015) surcharge and remand to the district court for entry of a corrected sentence.

No. 17-0063

STATE v. KING

**SEXUAL ABUSE
CONVICTION
AFFIRMED, BURGLARY
CONVICTIONS
VACATED, AND
REMANDED FOR
RESENTENCING.**

Appeal from the Iowa District Court for Bremer County, Christopher C. Foy, Judge. Heard by Danilson, C.J., and Vaitheswaran, Doyle, Tabor and McDonald, JJ. Opinion by McDonald, J. (23 pages)

Blake King challenges his convictions for two counts of burglary in the first degree and one count of sexual abuse in the third degree. King argues he was denied a fair trial when the district court denied his motions to strike certain jurors, challenges the sufficiency of the evidence supporting the convictions, and contends his counsel provided constitutionally deficient representation in failing to raise an intoxication defense and request an intoxication instruction. **OPINION HOLDS:** We conclude the district court did not err in denying the motion to strike certain jurors and preserve King's ineffective assistance claims based on intoxication. Because we find the evidence is insufficient to support either count of burglary, we vacate those convictions. We affirm King's conviction for sex abuse in the third degree.

No. 17-0082

INTERCHANGE PARTNERS v. CITY OF WEST DES MOINES

Appeal from the Iowa District Court for Dallas County, Paul R. Huscher,

AFFIRMED.

Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (13 pages)

The City of West Des Moines appeals the district court's ruling invalidating the ordinances imposing a connection fee levied by the City. The City claims the district court and this court lack subject matter jurisdiction over the case. The City also claims the district court erred in invalidating the ordinances because it has validly created a city sewer utility, it has provided the required connection, and the calculation and apportionment of the connection fee is equitable. **OPINION HOLDS:** Because Iowa Code section 384.66 (2015) provides a procedure to review ordinances under section 384.38(3), the district court and this court have subject matter jurisdiction. We also agree with the district court that the planned improvements do not create a city sewer utility under chapter 384, property is not connected to a city sewer utility merely because water from the property eventually passes through a city culvert, and the City's calculation and apportionment of the connection fee is not equitable because the City improperly reduced the amount of the area subject to the assessment.

No. 17-0085

STATE v. CHRISTENSEN

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Emmet County, David A. Lester, Judge. Heard by Danilson, C.J., and Vaitheswaran, Doyle, Tabor, and McDonald, JJ. Vogel, J., takes no part. Per Curiam. Dissent by McDonald, J. (34 pages)

Lee Samuel Christensen appeals his conviction for second-degree murder following a jury trial. He contends there was juror misconduct requiring a new trial. Specifically, he contends, "the exposure of one or more jurors to Facebook postings or conversations with family members about the possibility of a riot or danger to the jurors in the event Christensen was not found guilty of murder constitutes misconduct" that "was calculated to, and with reasonable probability did, influence the verdict." **OPINION HOLDS:** The extraneous information introduced into the jury room was calculated to and with a reasonable probability did influence the jury verdict. The denial of Christensen's new trial motion amounted to an abuse of discretion. We reverse and remand for a new trial. **DISSENT ASSERTS:** Christensen failed to prove the alleged jury intrusions were calculated to influence the jury's verdict. Christensen also failed to establish a reasonable probability the alleged intrusions influenced the jury's verdict. For these reasons, I dissent.

No. 17-0160

IN RE MARRIAGE OF STRONG

AFFIRMED.

Appeal from the Iowa District Court for Calhoun County, William C. Ostlund, Judge. Heard by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (21 pages)

Justin Strong appeals from the district court's modification of his and Rose Strong's dissolution decree, changing physical care of the parties' two minor children from Justin to Rose. On appeal, Justin argues the district court considered improper evidence in reaching its determination. He also maintains there was not a material and substantial change warranting modification and that Rose did not establish she could provide the children superior care. Rose asks that we affirm the district court's modification and award her \$5000 in appellate attorney fees. **OPINION HOLDS:** Considering only the evidence properly before the district court, we find that a substantial change in circumstances warranting modification has occurred and Rose established that she can provide the children with superior care. Additionally, we award Rose \$5000 in appellate attorney fees. We affirm.

No. 17-0332

STATE v. DRAINE

**CONVICTIONS
AFFIRMED,
SENTENCES VACATED,
AND REMANDED.**

Appeal from the Iowa District Court for Black Hawk County, Linda M. Fangman, Judge. Considered by Vaitheswaran, P.J., Bower, J., and Blane, S.J. Opinion by Blane, S.J. (5 pages)

Yolanda Draine appeals from her convictions and sentences for willful injury causing serious injury, domestic abuse assault with intent to cause serious injury while using a dangerous weapon, and leaving the scene of a personal injury accident. Draine maintains there was insufficient evidence to support her conviction of the three crimes because there was not evidence that she was driving the car that hit her husband. She also challenges the district court's imposition of sentences, claiming the court failed to provide reasons on the record for imposing consecutive sentences. **OPINION HOLDS:** Viewing the evidence in the light most favorable to the State, substantial evidence supports the jury's conclusion that Draine was driving the vehicle; we affirm Draine's convictions. However, as the State concedes, while the court gave a detailed explanation for the sentences it imposed, it failed to tie those reasons to its decision to impose consecutive sentences. Thus, we vacate Draine's sentences and remand for resentencing.

No. 17-0350

GRAVES v. STATE

AFFIRMED.

Appeal from the Iowa District Court for Polk County, William P. Kelly, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Danilson, C.J. (4 pages)

John Graves appeals from the dismissal of his third application for postconviction relief, arguing the district court improperly granted summary judgment to the State. **OPINION HOLDS:** Finding no error in the dismissal of the application, we affirm.

No. 17-0408

STATE v. BROWN

AFFIRMED.

Appeal from the Iowa District Court for Webster County, Angela L. Doyle, District Associate Judge. Considered by Danilson, C.J., Vaitheswaran, J., and Carr, S.J. Opinion by Carr, S.J. (3 pages)

Shane Karl Brown appeals the judgment and sentence entered following his guilty plea to one charge of assault while displaying a weapon. **OPINION HOLDS:** Brown was adequately apprised of the need to file a motion in arrest of judgment to challenge the adequacy of his guilty plea. His failure to do so precludes his challenge.

No. 17-0482

JM 48, LLC v. HEARTLAND CO-OP

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Jeffrey D. Farrell, Judge. Heard by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (10 pages)

Heartland Co-op appeals a district court ruling denying its motion to compel arbitration. Heartland contends the parties entered into an arbitration agreement that is enforceable under the Federal Arbitration Act as well as the Iowa Arbitration Act and, therefore, the district court erred in denying its motion to compel arbitration. Heartland alternatively argues an arbitration agreement should be enforced through the doctrine of promissory estoppel. Finally, Heartland requests that *Des Moines Asphalt & Paving Co. v. Colcon Industries, Corp.*, 500 N.W.2d 70 (Iowa 1993) be overruled. **OPINION HOLDS:** Based upon our review of the record, we find no enforceable arbitration agreement. In addition, because the essential elements of promissory estoppel are not present in this case,

Heartland is not entitled to its application. Finally, we are not at liberty to overrule controlling supreme court precedent. We affirm the district court's denial of Heartland's motion to compel arbitration in its entirety.

No. 17-0493

HAWKEYE LAND CO. v. CITY OF IOWA CITY

AFFIRMED.

Appeal from the Iowa District Court for Johnson County, Sean W. McPartland, Judge. Heard by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Danilson, C.J. (17 pages)

Hawkeye Land Company appeals from an adverse judgment in its claims against the City of Iowa City and an intervening party, Iowa Interstate Railroad, Ltd. The central issue is which entity—Hawkeye Land Company or Iowa Interstate Railroad, Ltd.—has the right to grant at-grade crossings in Iowa City. **OPINION HOLDS:** The district court concluded Iowa Interstate Railroad, Ltd. has the exclusive right to control at-grade crossings. We find no errors of law, and the findings of the trial court are supported by substantial evidence. We therefore affirm.

No. 17-0518

STATE v. SCHROCK

AFFIRMED.

Appeal from the Iowa District Court for Davis County, Lucy J. Gamon, Judge. Considered by Vaitheswaran, P.J., Tabor, J., and Blane, S.J. Opinion by Vaitheswaran, P.J. (4 pages)

John A. Schrock appeals his conviction for third-degree sexual abuse, contending his attorney was ineffective in (1) "fail[ing] to give notice of the witnesses he intended to call at the trial, effectively preclud[ing] presentation [of] most evidence of the consensual nature of the relationship" and (2) "unconditionally stipulat[ing] that the trial court could consider only the various minutes of testimony in rendering a verdict in this case." **OPINION HOLDS:** Because this record is inadequate to decide the ineffective-assistance-of-counsel claims, we preserve the claims for postconviction relief.

No. 17-0534

IN RE MARRIAGE OF DOW

**AFFIRMED AS
MODIFIED.**

Appeal from the Iowa District Court for Lucas County, David L. Christensen, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Danilson, C.J. (15 pages)

Daniel Dow appeals from the support and economic provisions of the decree dissolving his twenty-eight-year marriage to Shantel Dow. He objects to the court ordering him to pay six months of child support for the couple's fourth child. Daniel contends he is unemployed and cannot afford to pay spousal support. He also objects to the terms of the court's qualified domestic relations order (QDRO). **OPINION HOLDS:** Upon our de novo review, we find no reason to disturb the court's rulings as to spousal support, child support, and the distribution of debts. We modify the order as to the terms of the QDRO, eliminating any requirement that Shantel be identified as a contingent annuitant and the parties' children as contingent alternate payees. We award no appellate attorney fees.

No. 17-0543
AFFIRMED.

STATE v. HANSON

Appeal from the Iowa District Court for Polk County, Karen A. Romano and Paul D. Scott, Judges. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (9 pages)

Christopher Hanson appeals the consecutive sentences imposed after his probation was revoked on a suspended sentence and after he entered *Alford* pleas for unrelated offenses. He claims his counsel was ineffective for failing to

continue the sentencing hearing after the State revealed Hanson violated a no-contact order nearly 300 times and, as a result, it would not recommend a suspended sentence. Hanson also claims the district court abused its discretion by not considering concurrent sentences for his probation violations. **OPINION HOLDS:** Hanson's counsel was not deficient; the State revoked its recommendation as a result of Hanson's subsequent conduct and it is unlikely counsel could have persuaded the State to agree to its original terms had the hearing been continued. We lack jurisdiction to consider Hanson's second claim.

No. 17-0564

ESCOBEDO v. STATE

AFFIRMED.

Appeal from the Iowa District Court for Plymouth County, Edward A. Jacobson, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. (5 pages)

Guillermo Gutierrez Escobedo appeals the district court decision denying his request for postconviction relief. **OPINION HOLDS:** We find Escobedo is barred from relitigating the issue of juror substitution and Escobedo did not preserve error regarding the new case law.

No. 17-0584

STATE v. INGRAM

AFFIRMED.

Appeal from the Iowa District Court for Boone County, Paul G. Crawford, District Associate Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (14 pages)

Brian Ingram appeals his convictions for domestic abuse assault with a dangerous weapon and child endangerment. He claims his trial counsel was ineffective for failing to object to the introduction of text messages and for failing to strike a juror. He also claims the district court erred in allowing the State to impeach his witness with prior convictions and in failing to grant a new trial based on the weight of the evidence and a biased juror. **OPINION HOLDS:** Because the text messages were sufficiently relevant and not unfairly prejudicial, we find his counsel was not ineffective for not objecting to their introduction. We also agree with the district court that the probative value of the witness's prior convictions outweighs their prejudicial effect, the weight of the evidence does not require a new trial, and that the juror was not impermissibly biased. We preserve the ineffective-assistance claim relating to the use of peremptory strikes.

No. 17-0634

STATE v. SHACKFORD

**AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.**

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Danilson, C.J. (14 pages)

Tavish Shackford appeals from his convictions for willful injury causing bodily injury, a class "D" felony, in violation of Iowa Code section 708.4(2) (2016), and intimidation with a dangerous weapon with intent, a class "C" felony, in violation of section 708.6. Shackford contends defense counsel rendered ineffective assistance by failing to challenge the sufficiency of the evidence to support the intimidation-with-a-dangerous-weapon conviction and failing to object to testimony reiterating out-of-court statements on hearsay and confrontation clause grounds. Shackford also asserts the district court applied an incorrect standard in ruling on Shackford's motion for new trial. **OPINION HOLDS:** Because prejudice has not been shown, we find no ineffective assistance of counsel with respect to the failure to object to testimony regarding out-of-court-statements. We also find no error in the standard applied in ruling on the motion for new trial or the court's denial of the motion as it related to the willful-injury-causing-bodily-injury count. However, we conclude trial counsel did render

ineffective assistance in failing to object to the sufficiency of the evidence supporting the charge of intimidation with a dangerous weapon with intent, and we reverse and remand for dismissal of that charge and entry of a corrected judgment.

No. 17-0654

G-FORCE HAULING, L.L.C. v. ERICKSON

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Pottawattamie County, Susan K. Christensen, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (9 pages)

David Erickson appeals from the judgment entered against him for tortious interference with a contract after a trial to the court. Erickson challenges some of the district court's evidentiary rulings and the court's determination that he intentionally interfered with the contract between plaintiff G-Force Hauling, L.L.C. (G-Force) and Menards. Erickson also argues G-Force failed to mitigate its damages and asks for an award of appellate attorney fees. **OPINION HOLDS:** Because hearsay evidence was improperly admitted at trial and the absence of prejudice cannot be affirmatively shown, we reverse the district court's ruling and remand for new trial. We do not award Erickson appellate attorney fees.

No. 17-0724

STATE v. HERING

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Muscatine County, Mary E. Howes, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Danilson, C.J. (6 pages)

David Hering appeals from the denial of his April 4, 2017 motion for a restitution hearing. The district court denied the motion on grounds it was untimely. **OPINION HOLDS:** The questions Hering has about his account—as the district court found and we observed in our previous opinion—may be administrative matters beyond the scope of the actual restitution order. However, the motion is timely. Without a hearing and the opportunity to present evidence, we are unable to conclude if his claims have any merits. A hearing is not always necessary; but here, looking at the face of the petition, we cannot conclude a hearing was not warranted. We reverse and remand for further proceedings.

No. 17-0796

MOSER v. BIEHN

**AFFIRMED IN PART
AND REVERSED IN
PART.**

Appeal from the Iowa District Court for Warren County, Sherman W. Phipps, Judge. Considered by Doyle, P.J., Tabor, J., and Scott, S.J. Opinion by Scott, S.J. (13 pages)

Dwight Moser appeals a district court ruling on his petitions to modify a custody decree and his application for contempt. He argues the district court (1) erred in declining to modify the visitation and income-tax-deduction provisions of the decree, (2) abused its discretion in declining to hold the opposing party, Angela Biehn, in contempt for violating the visitation provisions of the decree and the right-of-first-refusal provision of a mediation agreement, and (3) abused its discretion in granting Angela an award of attorney fees. Angela requests an award of appellate attorney fees. **OPINION HOLDS:** We affirm the district court's denial of Dwight's modification petitions and contempt application. We reverse the district court's attorney-fee award and order Dwight to pay Angela \$9000.00 in trial attorney fees relating to the modification portions of the proceeding. We order Dwight to pay Angela appellate attorney fees in the amount of \$3000.00. Costs on appeal are assessed to Dwight.

No. 17-0799

STATE v. CHAVEZ

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Danilson, C.J. (4 pages)

Gilberto Morales Chavez appeals from his conviction for operating while intoxicated (OWI), third offense, a class “D” felony, in violation of Iowa Code section 321J.2(2)(c) (2017). Chavez contends there is not substantial evidence to establish his prior OWI convictions. **OPINION HOLDS:** We conclude there is substantial evidence of Chavez’s prior convictions and the trial court properly followed the procedure for a bench trial on the minutes of evidence. We affirm.

No. 17-0802

STATE v. SILVA

AFFIRMED.

Appeal from the Iowa District Court for Union County, Dustria A. Relph, Judge. Considered by Tabor, P.J., McDonald, J., and Blane, S.J. Opinion by Blane, S.J. (13 pages)

Manuel Silva Jr. appeals both of his convictions of sexual abuse in the third degree. On appeal, Silva raises a number of claims, including that he should be granted a new trial because of juror bias, juror misconduct, and the jury being improperly instructed that it could convict him without reaching a consensus as to the means of the crime. Finally, Silva maintains trial counsel provided ineffective assistance because they failed to object to voir dire questions by the prosecutor that tainted the jury pool and to vouching statements by medical personnel during trial. **OPINION HOLDS:** Because the district court did not abuse its discretion in denying Silva’s motion for new trial based on juror bias and juror misconduct and the court did not err in instructing the jury that it could convict Silva of sexual abuse in the third degree without unanimously agreeing as to the means of the crime, we affirm. We preserve Silva’s claims of ineffective assistance for possible postconviction relief.

No. 17-0932

STATE v. EADY

AFFIRMED.

Appeal from the Iowa District Court for Henry County, John M. Wright, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (3 pages)

Dominic Eady appeals his convictions for second-degree burglary and first-degree theft. Eady alleges he received constitutionally deficient representation because his trial counsel failed to depose State witnesses and did not have voir dire reported. **OPINION HOLDS:** Because Eady’s challenges his counsel’s trial tactics, his claims may best be addressed through a postconviction-relief action and are preserved.

No. 17-1005

WASHINGTON v. COLLINS

**AFFIRMED AS
MODIFIED; WRIT
ANNULLED.**

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Judge. Heard by Danilson, C.J., and Vaitheswaran and Bower, JJ. Tabor, J., takes no part. Opinion by Danilson, C.J. (19 pages)

Damarius Washington appeals from the district court’s order denying his application for modification of the order establishing paternity, custody, visitation, and child support of the parties’ child, and ruling on Porsha Collins’ contempt allegations. Washington asserts the court erred in determining there was not a substantial change in circumstances warranting modification of custody, finding Washington in contempt, ordering Washington to pay forty percent of his bonus to Collins for child support, and ordering Washington to pay Collins’ trial attorney fees. Washington also contends the court engaged in “impermissible and unconstitutional racial stereotyping of an educated black male” throughout the

proceedings. Both parties request appellate attorney fees. **OPINION HOLDS:** We conclude the court properly reached its determination regarding the modification of physical care. We find the court's order respecting the portion of Washington's bonus to be paid for child support was not equitable and modify the provision accordingly. As to Washington's writ of certiorari, we find the court properly found Washington in contempt for failure to maintain Z.'s health insurance but erred in finding contempt based on Washington's failure to provide notice for summer visitation.

No. 17-1348

STATE v. DANN

AFFIRMED.

Appeal from the Iowa District Court for Des Moines County, Mark E. Kruse, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (3 pages)

Gabriel Dann appeals his conviction asserting his trial counsel provided ineffective assistance. **OPINION HOLDS:** Because we conclude the record on appeal is not adequate to address Dann's claims that his trial counsel was ineffective with respect to the guilty plea, we preserve Dann's ineffective-assistance claims for a postconviction proceeding.

No. 17-1645

ROBINSON v. GROSS

AFFIRMED.

Appeal from the Iowa District Court for Harrison County, James S. Heckerman, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, P.J. (6 pages)

Michael Gross appeals the district court's order declining to exercise jurisdiction in the ongoing custodial dispute concerning his and Bailey Goodell's (formerly Robinson) minor child. **OPINION HOLDS:** Upon our de novo review, we find the district court considered the relevant factors in declining to exercise jurisdiction in determining Iowa was an inconvenient forum under the circumstances and Utah was a more appropriate forum. We find no reason to disturb the district court's determination. Accordingly, we affirm the district court's order declining to exercise jurisdiction in the parties' ongoing custodial dispute. We award Bailey appellate attorney fees.

No. 18-0044

IN RE C.D.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (15 pages)

A mother appeals the termination of her parental rights in her three children. She challenges the statutory grounds supporting termination, requests additional time to work toward reunification, claims termination is not in the children's best interests, and maintains the State failed to provide reasonable efforts supporting reunification. **OPINION HOLDS:** The statutory grounds for termination were satisfied and a six-month extension was not warranted. Termination is in the children's best interests. And the State made reasonable efforts toward reunification by providing appropriate services when available.

No. 18-0101

IN RE N.J.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Susan C. Cox, District Associate Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (5 pages)

The father appeals the termination of his parental rights to his three children. The father contends termination is not in the best interests of the

children and placement with paternal family members was not properly considered. **OPINION HOLDS:** Termination is in the best interests of the children, and the district court did consider placement with the father's family. We affirm the district court.

No. 18-0192

IN RE C.M.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, P.J. (9 pages)

A father appeals the termination of his parental rights to his child. **OPINION HOLDS:** Because we agree with the juvenile court that grounds for termination exist under Iowa Code section 232.116(1)(f) (2017) and termination of the father's parental rights is in the child's best interests, we affirm the order terminating the father's parental rights to the child.

No. 18-0197

IN RE A.S.

AFFIRMED ON BOTH APPEALS.

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (10 pages)

The mother and father separately appeal from the district court's order terminating their parental rights to their child A.S. The mother also appeals from the district court's order terminating her parental rights to her children G.S. and T.R. **OPINION HOLDS:** Because A.S.'s father's failed to address his substance-abuse issues and because the mother did not address her substance-abuse issues, the children's safety and development is served by terminating the parental rights of both the mother and father, and there are no exceptions to preclude termination, we affirm the district court's termination of the parental rights of the mother and father.

No. 18-0262

IN RE L.B.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Rachael E. Frideres-Seymour, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (5 pages)

The father appeals the termination of his parental rights to his child, born in April 2016. On appeal, the father challenges the statutory grounds for termination and claims termination of his parental rights is not in the child's best interests. **OPINION HOLDS:** Because the statutory grounds for termination have been met and terminating the father's parental rights is in L.B.'s best interests, we affirm.

No. 18-0271

IN RE B.C.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Rachael E. Frideres-Seymour, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (4 pages)

A mother appeals from the order terminating her parental rights to her child. **OPINION HOLDS:** Clear and convincing evidence supports termination of the mother's parental rights pursuant to Iowa Code section 232.116(1)(h) (2017) and establishes that termination is in the child's best interests.

No. 18-0272

IN RE A.L.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Romonda D. Belcher, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and

Tabor, JJ. Opinion by Tabor, J. (8 pages)

The father appeals from termination of his parental rights to two children. **OPINION HOLDS:** Because the father did not comply with court orders to address sexual-abuse allegations with a qualified therapist and pleaded guilty to a new charge of child endangerment, there was clear and convincing evidence the children could not be returned to him. Termination was in the children's best interests. And although the children were placed with relatives, we do not find cause for preserving the father's parental rights.

No. 18-0324

IN RE J.L.

AFFIRMED.

Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Tabor, J., takes no part. Opinion by McDonald, J. (5 pages)

A mother appeals from an order terminating her parental rights pursuant to Iowa Code chapter 232 (2017). She challenges the sufficiency of the evidence supporting the statutory grounds authorizing the termination of her parental rights and contends the juvenile court should have granted her an additional three months' time to have the children returned to her care. **OPINION HOLDS:** We find there is clear and convincing evidence to support termination pursuant to Iowa Code section 232.116(1)(g) and conclude there is no basis for deferring permanency. We affirm the termination order of the juvenile court.