

SUMMARIES OF DECISIONS, IOWA COURT OF APPEALS
March 7, 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Pursuant to Iowa Rule of Appellate Procedure 6.904(2)(6), an unpublished opinion of the Iowa Court of Appeals may be cited in a brief; however, unpublished opinions shall not constitute controlling legal authority.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. 16-1193

STATE v. STANTON

AFFIRMED.

Appeal from the Iowa District Court for Muscatine County, Mary E. Howes, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (6 pages)

Tywon Stanton appeals the restitution order entered following his guilty pleas to two counts of third-degree burglary. He asserts the court should have granted him the \$1000 exemption under Iowa Code section 627.6(14) (2015) and the court erred in ordering restitution for the dismissed ongoing criminal conduct charge without evidence or finding those damages were related to his criminal conduct. **OPINION HOLDS:** Because we conclude Stanton did not preserve error on his claim that he is entitled to an exemption under section 627.6(14) and the minutes of evidence provide the necessary causal connection relating to the dismissed charge, we affirm the district court's restitution order.

No. 16-1444

BLOOM v. ONIAYEKAN

**AFFIRMED ON BOTH
APPEALS AND
REMANDED.**

Appeal from the Iowa District Court for Scott County, Stuart P. Werling, Judge. Considered by Vaitheswaran, P.J., and Doyle and Bower, JJ. Opinion by Vaitheswaran, P.J. (9 pages)

The buyers in a real estate purchase contract contend (1) a mutual mistake of fact precluded formation of the contract. The sellers cross-appeal for (2) additional damages and (3) attorney fees. **OPINION HOLDS:** (1) The district court did not err in rejecting the buyers' defense of mutual mistake because, at the time of the contract, none of the parties could have made a mistake about the easements because the easements were not in existence. (2) The district court did not err in denying sellers additional damages because their claimed expenses were neither natural consequences of the buyers' breach nor reasonably foreseeable. (3) We discern no abuse of discretion in the reduction of trial attorney fees; we remand to the district court for an evidentiary hearing to fix appellate attorney fees.

No. 16-1672

STATE v. PAYNE

AFFIRMED.

Appeal from the Iowa District Court for Des Moines County, Mark E. Kruse, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, P.J. Dissent by Tabor, J. (30 pages)

Following a two-week jury trial involving a battle of medical experts as to the cause of Randall Payne's infant son's death, Payne was found guilty of manslaughter in the commission of a public offense, child endangerment resulting in serious injury, and child endangerment resulting in death, which Payne now appeals. **OPINION HOLDS:** Having considered the record, we conclude the district court did not err in instructing the jury to consider the out-of-court statements Payne allegedly made, if it first determined Payne made the statements, as if the statements had been made at trial. The instruction was not an incorrect statement of the law, but even if it were, it did not prejudice Payne. Additionally, we conclude the court did not err in denying Payne's motion for a new trial for the State's late disclosure of autopsy photographs. Though Payne did not preserve the alleged error for our review, we find the claim meritless, considering

the totality of the circumstances. For these reasons, we affirm Payne's convictions. **DISSENT ASSERTS:** I respectfully dissent. The instruction permitting the jury to consider Payne's out-of-court statements "just as if they had been made at this trial" misstates the law—substantive evidence and sworn testimony do not carry equal probative value. The incorrect instruction prejudiced Payne. Additionally, permitting the jury to consider the statements "just as if they had been made at this trial" infringes on Payne's constitutionally guaranteed right against self-incrimination because he chose not to testify.

No. 16-1693

**REVERSED AND
REMANDED FOR A
NEW TRIAL.**

STATE v. JOHNSON

Appeal from the Iowa District Court for Clinton County, Stuart P. Werling, Judge. Considered by Danilson, C.J., Vaitheswaran, J., and Mahan, S.J. Opinion by Danilson, C.J. (10 pages)

Michael Johnson appeals from his conviction following a bench trial for sexual abuse in the third degree, in violation of Iowa Code sections 709.1 and .4(4) (2013). Johnson maintains he is entitled to a new trial because the district court erred in granting the State's motion to amend the trial information and abused its discretion in denying Johnson's motion for new trial on the same basis. **OPINION HOLDS:** We conclude the amended trial information presented a wholly new and different offense and Johnson suffered prejudice as a result of the amendment. We therefore find the district court erred in denying the motion for new trial, and we reverse and remand for a new trial.

No. 16-1972

AFFIRMED.

CITY OF WEST LIBERTY v. EMPLOYERS MUTUAL CASUALTY COMPANY

Appeal from the Iowa District Court for Muscatine County, Paul L. Macek, Judge. Heard by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. Dissent by Doyle, J. (33 pages)

A city appeals a summary judgment ruling in favor of the city's insurer pursuant to an exclusion in an all-risks insurance policy. **OPINION HOLDS:** Because the damages claimed by the city were excluded under the insurance policy, the insurer was entitled to summary judgment as a matter of law. We therefore affirm. **DISSENT ASSERTS:** I dissent. I conclude the court-made efficient proximate cause rule applies here. The efficient proximate cause rule states that where a peril insured against sets other causes into motion which, in an unbroken sequence, produce the result for which recovery is sought, the loss is covered, even though other events within the chain of causation are excluded from coverage. Here, the insured risk—the squirrel's action—itself set into operation a chain of causation in which the last step—the arcing—may have been an excepted risk, but under the efficient proximate cause rule, the excepted risk does not defeat recovery and the loss is covered under the policy. EMC was not entitled to summary judgment, and I would reverse and remand for further proceedings.

No. 16-2169

AFFIRMED.

STATE v. CALAWAY

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

Damon Calaway appeals following his second resentencing hearing. He asserts the court abused its discretion in imposing consecutive sentences and in denying his request for the appointment of an expert at state expense to testify in mitigation of punishment. **OPINION HOLDS:** We find no abuse of discretion in the district court's imposition of consecutive sentences in this case. In addition, we conclude the district court did not abuse its discretion in determining Calaway

failed establish the necessity of his expert witness. We affirm the district court's resentencing order.

No. 17-0170

TAFT v. IOWA DISTRICT COURT

WRIT ANNULLED.

Appeal from the Iowa District Court for Monroe County, Annette J. Scieszinski, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. (4 pages)

Joshua Taft filed a petition for writ of certiorari, challenging his special sentence under Iowa Code section 903B.1 (2007). **OPINION HOLDS:** Taft has not shown (1) the special sentence of lifetime parole is facially cruel and unusual, (2) the sentence is grossly disproportionate to the offense, or (3) the sentence violates double jeopardy. We find the district court did not act illegally and annul the writ of certiorari.

No. 17-0175

STATE v. MCCANN

AFFIRMED.

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge. Considered by Doyle, P.J., McDonald, J., and Scott, S.J. Opinion by Scott, S.J. (12 pages)

Marc McCann appeals his conviction for possession of a controlled substance—methamphetamine—with intent to deliver, as a second or subsequent offender. He raises a number of claims on appeal including: (1) the court erred in overruling his objection to testimony he believed constituted speculation; (2) the court erred in permitting an officer to comment on his refusal to answer questions during his interrogation; (3) the court erred in permitting the trial to go forward in his absence; and (4) the evidence was insufficient to support his conviction. **OPINION HOLDS:** We conclude the court did not abuse its discretion in admitting layperson opinion testimony, and McCann cannot prove he suffered prejudiced due to his counsel's failure to object to testimony McCann claims commented on his right to remain silent. In addition, the facts established McCann voluntarily absented himself from trial, and the court did not abuse its discretion in proceeding with the trial in his absence. Finally, substantial evidence supports the jury's guilty verdict. We therefore affirm McCann's conviction.

No. 17-0232

STATE v. WINDER

AFFIRMED.

Appeal from the Iowa District Court for Sioux County, Patrick H. Tott, Judge. Considered by Danilson, C.J., Vaitheswaran, J., and Mahan, S.J. Opinion by Mahan, S.J. (9 pages)

Dianna Winder appeals her convictions of child endangerment causing bodily injury and assault causing bodily injury. She contends her attorney was ineffective in failing to properly challenge the sufficiency of the evidence supporting the jury's findings of guilt and claims the district court erred in ordering restitution for the costs of prosecution. **OPINION HOLDS:** As the record reveals substantial evidence to support the jury's findings of guilt, trial counsel was not ineffective in failing to make a more detailed challenge to the sufficiency of the evidence. The court's restitution order was statutorily authorized. We affirm Winder's convictions.

No. 17-0263

WHITE v. STATE

AFFIRMED.

Appeal from the Iowa District Court for Des Moines County, John G. Linn, Judge. Considered by Vogel, P.J., Potterfield, J., and Goodhue, S.J. Opinion by Goodhue, S.J. (8 pages)

Tyler White appeals the district court decision denying his request for

postconviction relief (PCR) on his convictions for escape and lascivious acts with a child. **OPINION HOLDS:** White's PCR action on his conviction for lascivious acts with a child is untimely, and we do not consider it. As to his PCR action on his conviction for escape, White claimed he received ineffective assistance because defense counsel: (1) failed to advise him of or raise the possibility of the defense of necessity; (2) failed to raise a claim of diminished capacity; and (3) failed to argue and convince the prosecutor that the lesser-included charge of absence from custody was the appropriate charge. We affirm the district court's decision denying White's PCR action.

No. 17-0277

STATE v. TROUTMAN

AFFIRMED.

Appeal from the Iowa District Court for Mills County, James S. Heckerman, Judge. Considered by Vogel, P.J., Potterfield, J., and Mahan, S.J. Opinion by Mahan, S.J. (7 pages)

Mark Troutman appeals from his conviction for murder in the first degree, contending the district court erred in overruling his motion to strike a potential juror for cause, his counsel was ineffective, and his conviction was against the weight of the evidence. **OPINION HOLDS:** We affirm Troutman's conviction for murder in the first degree.

No. 17-0296

STATE v. PFEIFERLING

AFFIRMED.

Appeal from the Iowa District Court for Lee (South) County, John G. Linn and Mary Ann Brown, Judges. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, J. (3 pages)

Craig Pfeiferling appeals following his guilty plea to possession of marijuana, second offense. **OPINION HOLDS:** Because nothing in Iowa Rule of Criminal Procedure 2.8 requires apprising a defendant that a guilty plea waives the right to attack an adverse suppression ruling, Pfeiferling's counsel did not breach an essential duty in allowing the plea to proceed without informing Pfeiferling that by pleading guilty, he was waiving his right to appeal the court's adverse ruling on his motion to suppress. Pfeiferling has waived his claim that our rule prohibiting conditional plea agreements violates his due process rights. Regardless, we are not at liberty to overrule the controlling supreme court precedent that unequivocally rejects conditional plea agreements.

No. 17-0308

STATE v. CASON

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (7 pages)

Michael Cason Jr. appeals from his conviction for first-degree murder, claiming (1) his motion for new trial should have been granted because the weight of the evidence does not support his conviction and (2) trial counsel provided ineffective assistance. **OPINION HOLDS:** Because we cannot say the district court abused its discretion in determining the weight of the evidence supports Cason's conviction for first-degree murder, we affirm. We preserve Cason's claims of ineffective assistance for possible postconviction-relief proceedings.

No. 17-0365

WELLS FARGO BANK v. ESTATE OF MORRISON

**AFFIRMED AND
REMANDED.**

Appeal from the Iowa District Court for Linn County, Chad A. Kepros, Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (3 pages)

The Estate of Donald Morrison appeals the district court's ruling granting

summary judgment in favor of Wells Fargo Bank on Wells Fargo's foreclosure action, claiming (1) Wells Fargo "had unclean hands in its treatment of the Estate of Donald [sic] Leonard Morrison and was not entitled to summary judgment"; (2) "the foreclosure petition and the evidence before the court was insufficient to award summary judgment"; (3) "the trial court erred by failing to grant the Estate a hearing on these matters"; (4) "the granting of summary judgment under the circumstances of this case would create a flawed public policy precedent"; and (5) "a corporation doing business in Iowa may not refuse to follow lawful orders of the district court." **OPINION HOLDS:** We discern no error in the district court's grant of summary judgment in favor of Wells Fargo. We remand to the district court for an evidentiary hearing to fix appellate attorney fees.

No. 17-0369

DIXON v. DISTRICT COURT

WRIT ANNULLED.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (7 pages)

Casey Dixon challenges his sentence for two counts of robbery in the second degree. He argues failure to apply an ameliorative sentencing statute retroactively violates the constitutional prohibition against cruel and unusual punishment. **OPINION HOLDS:** We hold the prohibition against cruel and unusual punishments set forth in the federal and state constitutions does not require retrospective application of the ameliorative sentencing provision set forth in Code section 902.12(3) to robbery convictions occurring before July 1, 2016. The district court did not err in denying the defendant's motion to correct illegal sentence.

No. 17-0440

STATE v. HILL

AFFIRMED.

Appeal from the Iowa District Court for Wright County, Paul B. Ahlers, District Associate Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (11 pages)

Amber Hill appeals the sentence imposed following her guilty plea for theft in the second degree. She contends the sentencing court abused its discretion by relying on impermissible sentencing factors and her counsel was ineffective in a number of respects. **OPINION HOLDS:** The district court did not abuse its discretion, and we affirm Hill's sentence. We preserve two claims of ineffective assistance of counsel for possible postconviction-relief proceedings.

No. 17-0461

STATE v. MCELROY

AFFIRMED.

Appeal from the Iowa District Court for Bremer County, Peter B. Newell, District Associate Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. (6 pages)

Felix Cecil McElroy appeals his conviction for failure to comply with sex offender registry requirements, second offense. **OPINION HOLDS:** We find the evidence is sufficient to support a conviction. We also find McElroy's trial counsel was effective.

No. 17-0577

STATE v. AKERS

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Linn County, Nicholas Scott, District Associate Judge. Considered by Tabor, P.J., McDonald, J., and Carr, S.J. Opinion by Tabor, P.J. (9 pages)

Nathaniel Akers appeals his conviction for possession of marijuana, second offense. On appeal, Akers argues the marijuana found on his person

following a traffic stop should be suppressed because no probable cause to stop him existed at the time of the stop. He contends the stop amounted to an unreasonable seizure, violating his Fourth Amendment rights. **OPINION HOLDS:** The asserted probable cause, a rear-lighting violation, only became apparent after the officer initiated the stop, seizing Akers. Because the lighting violation was not apparent when the officer initiated the stop, no probable cause existed and the stop amounted to an unreasonable seizure. All resulting evidence must be suppressed.

No. 17-0647

IN RE GUARDIANSHIP AND CONSERVATORSHIP OF R.K.

AFFIRMED.

Appeal from the Iowa District Court for Lyon County, Carl J. Petersen, Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (4 pages)

A man appeals the order establishing his involuntary guardianship and conservatorship. He contends (1) the evidence was insufficient to support the need for a guardianship and conservatorship; (2) the district court failed to consider the availability of third-party assistance; and (3) the district court failed to consider the creation of a limited guardianship. **OPINION HOLDS:** The district court did not err in concluding the legal standards for appointment of a guardian and conservator were satisfied. The court also did not err in denying the request for a limited guardianship and in appointing the office of substitute decision maker as the guardian and conservator. We affirm the district court's ruling in its entirety.

No. 17-0717

STATE v. SHANNON

AFFIRMED.

Appeal from the Iowa District Court for Buchanan County, Monica L. Wittig, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (5 pages)

Larry Shannon appeals his conviction for operating while intoxicated, claiming the State presented insufficient evidence he drove under the influence of a drug. **OPINION HOLDS:** The State presented sufficient evidence to prove Shannon drove under the influence of a drug.

No. 17-0749

STATE v. YOUNG

JUDGMENT AND SENTENCE VACATED AND REMANDED FOR FURTHER PROCEEDINGS.

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. (7 pages)

Wendy Young appeals from her conviction after entering a guilty plea for arson in the second degree, a class "C" felony, in violation of Iowa Code sections 712.1 and .3 (2016). Young contends her defense counsel rendered ineffective assistance in failing to challenge the factual basis and the voluntary and intelligent nature of the guilty plea. Young also asserts the district court abused its discretion in considering improper factors and in failing to exercise its discretion when reaching its sentencing determination. **OPINION HOLDS:** We find the record lacks a factual basis for the plea, and we conclude defense counsel was ineffective in failing to challenge that deficiency. We therefore vacate the judgment and sentence and remand the case to the district court for further proceedings consistent with this opinion.

No. 17-0809

STATE v. PURSLEY

AFFIRMED.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Vaitheswaran, J. (4 pages)

Corion Pursley appeals following his guilty pleas to possession of marijuana and carrying a concealed weapon, arguing: (I) the district court “erred in accepting [his] guilty plea [to the concealed weapon charge] and trial counsel was ineffective for failing to challenge the plea where no factual basis existed in the record on the carrying weapons charge”; (II) the court “erred in accepting a plea that was not knowing and voluntary”; and (III) his trial counsel “was ineffective for failing to fully apprise [him] of the consequences of a conviction prior to [his] plea of guilty.” **OPINION HOLDS:** (I) The minutes of evidence established a factual basis for the *Alford* plea, and counsel did not breach an essential duty in failing to challenge the factual basis via a motion in arrest of judgment. (II) Error was not preserved on Pursley’s claim his plea was not knowing and voluntary. (III) We preserve Pursley’s challenge to the consequences of his plea for postconviction relief to permit his counsel to weigh in on the issue.

No. 17-0820

STATE v. BROWN

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

Appeal from the Iowa District Court for Cerro Gordo County, Karen Kaufman Salic, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (10 pages)

Eric Brown challenges his conviction and sentence for burglary in the third degree. He argues his guilty plea lacked a factual basis, the prosecutor breached the plea agreement, and the prosecutor had a disqualifying conflict of interest. **OPINION HOLDS:** We find that the prosecutor breached the plea agreement by reciting Brown’s criminal history immediately after the recommendation while never commending the sentence as worthy of the court’s acceptance despite the criminal history. Brown is entitled to resentencing before a different judge. We find no merit in Brown’s other claims.

No. 17-0859

IN RE S.A.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Jeanie K. Vaudt, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (7 pages)

A mother appeals the district court’s denial of her petition to terminate the parental rights of the father. **OPINION HOLDS:** The mother has not met her burden of proof to show the father has abandoned the child, and we affirm.

No. 17-0969

STATE v. VANDERMARK

AFFIRMED.

Appeal from the Iowa District Court for Polk County, David N. May and Jeanie K. Vaudt, Judges. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, P.J. (7 pages)

Sharon Vandermark appeals after pleading guilty to possession of a controlled substance as a habitual offender. **OPINION HOLDS: I.** We preserve for possible postconviction-relief proceedings Vandermark’s claim that her counsel was ineffective in failing to move for recusal of the judge who accepted her guilty plea. **II.** Vandermark’s sentence for a term of incarceration not to exceed fifteen years with a mandatory minimum sentence of three years is not grossly disproportionate.

No. 17-1020

STATE v. CHRISTIAN

AFFIRMED.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (4 pages)

Korey Christian appeals his guilty plea to possession of methamphetamine with intent to deliver, second offense, and the sentence imposed thereon, contending his counsel was ineffective in relation to his guilty plea. **OPINION HOLDS:** Absent a record to support Christian's version of the facts underlying his ineffective-assistance-of-counsel claim, we affirm his conviction and sentence but preserve his claim for postconviction-relief proceedings.

No. 17-1041

IN RE M.E.

AFFIRMED.

Appeal from the Iowa District Court for Marshall County, Paul G. Crawford, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (6 pages)

Upon application by the father, the juvenile court terminated a mother's parental rights to their child under Iowa Code section 600A.8(3)(2015). The juvenile court found the mother failed to maintain substantial and continuous or repeated contact with the child. The mother has a long criminal history and unaddressed substance abuse issues. On appeal, the mother contends she made attempts to contact the child but was prevented from doing so by the father. She further contends incarceration does not necessarily constitute abandonment. **OPINION HOLDS:** The mother cannot use the animosity between herself and the father or her history of incarceration as justification for her lack of relationship with the child. The record shows she has failed to offer financial support for the child and has fallen short in maintaining steady or meaningful communication. The father established the mother abandoned the child. We affirm termination of her parental rights.

No. 17-1058

IN RE E.T.

AFFIRMED.

Appeal from the Iowa District Court for Clay County, Charles K. Borth, District Associate Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. (6 pages)

A father appeals the juvenile court's termination of his parental rights in a private termination action. **OPINION HOLDS:** We find there is sufficient evidence in the record to show the father abandoned the child. Also, termination is in the child's best interests.

No. 17-1073

STATE v. SIFUENTES

AFFIRMED.

Appeal from the Iowa District Court for Dubuque County, Monica Wittig, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. (5 pages)

A defendant appeals his sentence for stalking, extortion, and three counts of interference with official acts causing bodily harm. **OPINION HOLDS:** We find a presentence investigation was properly ordered and considered by the district court. We also find the district court did not abuse its discretion by sentencing Sifuentes to consecutive sentences.

No. 17-1079

BENAVIDEZ v. STATE

**REVERSED AND
REMANDED WITH
DIRECTIONS.**

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

Pablo Benavidez appeals the sanction imposed by the district court for the summary dismissal of his third application for postconviction relief (PCR), asserting the district court misinterpreted the available statutory sanctions.

OPINION HOLDS: When a district court dismisses a PCR action as frivolous, Iowa Code section 610A.3 (2016) requires the court to impose a sanction of the loss of some or all of the inmate's earned time credits. Only if the inmate has no earned time credits to deduct is the district court allowed to order a deduction from the inmate's account. Here, the district court erred when it ignored the inmate's earned time credits and ordered a deduction from his account.

No. 17-1183

STATE v. SCHMITZ

AFFIRMED.

Appeal from the Iowa District Court for Floyd County, James M. Drew, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (7 pages)

Anthony Schmitz appeals the sentences imposed upon his convictions of child endangerment resulting in serious injury and serious injury by vehicle. He contends his attorney rendered ineffective assistance at his sentencing hearing by failing to object to the presentation of victim impact statements of two non-victims. **OPINION HOLDS:** We conclude Schmitz has failed to demonstrate he was prejudiced by his counsel's failure to perform an essential duty and therefore affirm his sentences in their entirety.

No. 17-1234

STATE v. BROOKS

AFFIRMED.

Appeal from the Iowa District Court for Cass County. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (5 pages)

On discretionary review, Joseph Brooks challenges his conviction of a simple misdemeanor traffic violation. He contends (1) the citing officer conducted an unlawful search of his motor vehicle, which resulted in the citation that was issued, and (2) he was denied due process when he was convicted without a hearing. **OPINION HOLDS:** We find the record in this case insufficient to provide us with the ability to rule on Brooks's unlawful-search argument. As to the due process claim, we conclude Brooks was provided with sufficient notice and an opportunity to defend. We therefore affirm.

No. 17-1246

STATE v. TENSLEY

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Stuart P. Werling (guilty plea), and Nancy S. Tabor (sentencing), Judges. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. Tabor, J., takes no part. (4 pages)

David Tensley appeals his conviction and sentence for forgery. **OPINION HOLDS:** We find the district court did not abuse its discretion in sentencing Tensley to a term of imprisonment not to exceed five years, rather than placing him on probation. We affirm the decision of the district court.

No. 17-1591

IN RE S.M.

AFFIRMED.

Appeal from the Iowa District Court for Johnson County, Chad A. Kepros, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (8 pages)

S.M., a state prisoner, appeals his psychiatric commitment. S.M. argues the State failed to show by clear and convincing evidence that he is likely to physically injure himself or others if not committed. **OPINION HOLDS:** Given S.M.'s history of violent acts towards himself and others, his recent threats of retaliation and physical posturing provide sufficient evidence to show S.M. is likely to physically injure himself or others.

No. 17-1688

IN RE R.W.

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Cheryl E. Traum, District Associate Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Bower, J. (6 pages)

A mother appeals the juvenile court order terminating her parental rights pursuant to Iowa Code section 232.116(1)(e), (f), (g), and (i) (2017). **OPINION HOLDS:** We find reasonable efforts were provided, the evidence was sufficient to terminate her parental rights, no exceptions should be applied, and termination is in the best interests of the child.

No. 17-1943

IN RE L.S.

AFFIRMED.

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

A mother appeals from the termination of her parental rights to her child, L.S., pursuant to Iowa Code section 232.116(1)(h) (2017). The mother asserts the State failed to prove the child could not be returned to her care at the time of the termination trial, failed to make reasonable efforts to reunify mother and child, should have allowed her additional time to achieve reunification, and the close bond between mother and child should weigh against termination. **OPINION HOLDS:** We find no merit in any of the mother's claims, and we therefore affirm.

No. 17-2011

IN RE C.C.

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Christine Dalton Ploof, District Associate Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (2 pages)

The father appeals the termination of his parental rights to his children. He maintains termination is not in the children's best interests because of the bond they share with him, and he asks for additional time to reunify with them. **OPINION HOLDS:** Based on this record, we can neither say the children are so bonded to the father that termination is at odds with their best interests nor that an additional six months would alleviate the need for the children's removal from the father's care. We affirm.

No. 17-2032

IN RE R.J.

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Christine Dalton Ploof, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, P.J. (4 pages)

A father appeals the termination of his parental rights to his child. **OPINION HOLDS:** Even assuming the father did not waive his challenge to the termination of his parental rights under Iowa Code section 232.116(1)(h) (2017), ample evidence in the record supports terminating his parental rights on that ground, and we affirm the termination of his parental rights on this basis. Because terminating the father's parental rights will afford the child the permanency and safety the child needs, we decline to apply the statutory exception to termination.

No. 17-2038

IN RE J.B.

AFFIRMED.

Appeal from the Iowa District Court for Benton County, Barbara H. Liesveld, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (4 pages)

A mother appeals the termination of her parental rights to her child. On appeal, she argues her child could have been returned to her care at the time of the termination hearing or the court should have given her more time to work toward reunification. **OPINION HOLDS:** Because the mother made limited progress toward sobriety, she could not care for the child at the time of termination. Given her history of drug abuse and limited progress, it is unlikely she would be able to care for the child in six months. Termination is in the child's best interests.

No. 17-2073

IN RE J.M.

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

Appeal from the Iowa District Court for Story County, Stephen A. Owen, District Associate Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (13 pages)

A guardian ad litem appeals the denial of termination-of-parental-rights petitions concerning three children, L.M., B.M., and J.M., born in 2013, 2014, and 2017, respectively. She contends the juvenile court erred in not terminating the parents' parental rights as to all three children pursuant to Iowa Code section 232.116(1)(b), (e), and (h) (2017). She additionally argues the court erred in concluding termination of the parents' parental rights as to the youngest child, J.M., under section 232.116(1)(h) was not in the child's best interests. **OPINION HOLDS:** We reverse the juvenile court's determination that the State failed to satisfy the statutory grounds for termination under section 232.116(1)(e), but we affirm in all other respects. We reverse in part and remand the case to the juvenile court for further proceedings in accordance with this opinion.

No. 18-0017

IN RE R.S.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Joseph W. Seidlin, District Associate Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (8 pages)

A mother appeals the district court's termination of her parental rights to three of her children. She contends the State failed to make reasonable efforts for reunification and thereby failed to prove by clear and convincing evidence her rights should be terminated pursuant to Iowa Code section 232.116(1)(f) (2017). Additionally, the mother asserts termination is not in the children's best interests and the bond she has with the children should preclude termination. **OPINION HOLDS:** We agree with the district court that reasonable efforts were made to reunite the children and the mother. Because of the mother's inability to safely care for the children, in large part because of her use of illegal substances, termination is appropriate under paragraph (f) and is in the children's best interests. Therefore, we affirm the order of the district court.

No. 18-0053

IN RE C.B.

**AFFIRMED ON BOTH
APPEALS.**

Appeal from the Iowa District Court for Pottawattamie County, Charles D. Fagan, District Associate Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (10 pages)

A mother and father separately appeal a juvenile court order terminating their parental rights to their minor child, born in 2013. Both parents challenge the juvenile court's termination decision. The father additionally argues the juvenile court abused its discretion in declining to reopen the record in the termination proceeding and the department of human services failed to make reasonable efforts to facilitate reunification. **OPINION HOLDS:** We affirm the termination of both parents' parental rights.

No. 18-0093

AFFIRMED.

IN RE M.F.

Appeal from the Iowa District Court for Polk County, Rachael E. Seymour, District Associate Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (6 pages)

The mother appeals the district court's termination of her parental rights to her child, M.F. She asserts the State failed to prove by clear and convincing evidence her rights should be terminated pursuant to Iowa Code section 232.116(1)(e) and (h) (2017), termination is not in the child's best interest, and her bond with the child should preclude termination. **OPINION HOLDS:** Because the mother failed to correct the many circumstances in her life that put the child at risk, we affirm the order of the district court.

No. 18-0094

AFFIRMED.

IN RE A.W.

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

A mother appeals from an order terminating her parental rights pursuant to Iowa Code chapter 232 (2017). She contends there is insufficient evidence supporting the statutory ground authorizing termination and argues termination is not in the best interest of her child. **OPINION HOLDS:** We first note that the mother failed to preserve error on her claims. Even if she had, we find there is sufficient evidence to support termination of her parental rights and that termination is in the best interest of the child. We affirm the juvenile court order terminating the mother's parental rights.