

SUMMARIES OF DECISIONS, IOWA COURT OF APPEALS
July 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Pursuant to Iowa Rule of Appellate Procedure 6.904(2)(6), an unpublished opinion of the Iowa Court of Appeals may be cited in a brief; however, unpublished opinions shall not constitute controlling legal authority.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. 16-1945

WYNGARDEN v. STATE OF IOWA JUDICIAL BRANCH

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Wapello County, Sherman W. Phipps, Judge. Heard by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (22 pages)

Don Wyngarden appeals the district court's grant of a directed verdict for defendants in his age discrimination action. **OPINION HOLDS:** We conclude our finding in the previous appeal, *Wyngarden v. Iowa Judicial Branch*, No. 13-0863, 2014 WL 4230192, at *10 (Iowa Ct. App. Aug. 27, 2014), there were genuine fact issues for trial on the question of age discrimination, making summary judgment not appropriate, is not dispositive in this appeal. After considering the evidence presented by Wyngarden, we conclude the district court erred in granting a directed verdict to the State. In making this finding, we note it is generally the best course of action to wait until the completion of all evidence to grant a motion for directed verdict, except in the most obvious cases. We also address several evidentiary issues we believe may arise again on retrial. We reverse the district court's grant of the motion for directed verdict and remand for further proceedings.

No. 16-2195

DIXON v. STATE

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by McDonald, J. (14 pages)

Tramarus Dixon appeals the denial of his application for postconviction relief. Dixon asserts he received constitutionally deficient representation from trial counsel because counsel failed to move to strike a biased juror for cause. **OPINION HOLDS:** Trial counsel cited no legitimate strategic reason for not striking the juror. Trial counsel failed to provide adequate representation by not moving to strike the biased juror for cause. Because the biased juror was seated on the jury, the failure resulted in prejudice by denying Dixon a fair and impartial jury.

No. 17-0053

REED v. STATE

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (28 pages)

Walter Reed appeals a jury verdict in favor of the State and the Iowa Department of Transportation on his claims of race discrimination and retaliatory discharge from employment. He contends the district court (1) erred in granting summary judgment on two grounds for retaliation and (2) abused its discretion in "limiting [his] trial arguments and evidence to only those arguments and evidence [he] asserted in resistance to summary judgment." **OPINION HOLDS:** We reverse the summary judgment rulings on Reed's retaliation claims grounded in the filing of a civil rights complaint and his complaint about Jacqueline Miskimins' hire. We remand for trial on those grounds. We reverse the exclusion of evidence relating to Miskimins and Karen Kienast in connection with the discrimination and retaliation claims that were tried. We remand for a new trial on those claims. The evidence is also admissible in connection with the retaliation claims on which summary judgment was reversed. On trial and retrial, the contextual evidence

admitted at the first trial is admissible, as is evidence relating to the investigation of the workplace environment complaint against Miskimins. The admitted evidence relating to Roger Bierbaum remains admissible. The excluded evidence relating to Bierbaum remains inadmissible.

No. 17-0132

FERNANDEZ v. STATE

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (23 pages)

Mauricio Ramirez Fernandez appeals the denial of his application for postconviction relief from a conviction for fourth-degree fraudulent practice. He contends his attorney was ineffective for failing to advise him of the immigration and criminal consequences of “turning himself in” to the Department of Transportation for past use of a false Social Security number. He also faults his attorney for continuing to represent him while listed as a prosecution witness, failing to move to suppress privileged information, and for advising him to plead guilty to a crime of moral turpitude, rendering him ineligible for cancellation of removal proceedings. **OPINION HOLDS:** When counsel initially advised Ramirez, the right to counsel had not yet attached. But we find counsel was ineffective in continuing to represent the defendant through the criminal case while listed as a witness for the State and not informing the defendant of this fact. The conflict had an adverse effect on counsel’s performance. We further find counsel was ineffective in failing to inform Ramirez of the immigration consequences of his plea; it would have been rational for Ramirez to reject the plea offer because it would have resulted in the same immigration consequence of removal as conviction on the original charge. We reverse the conviction and sentence and remand for further proceedings.

No. 17-0430

IN RE ESTATE OF ERICKSON

AFFIRMED.

Appeal from the Iowa District Court for Boone County, Steven J. Oeth, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (13 pages)

Wayne Erickson appeals a ruling finding his mother’s 2011 will invalid based on undue influence and lack of testamentary capacity and finding him liable for tortious interference with a bequest. He contends the district court erred in (1) finding him liable for intentional tortious interference with a bequest, (2) assessing all the estate’s attorney fees against his share of the estate (3) denying his motion to continue, (4) precluding him from testifying as a discovery sanction, and (5) finding a 2011 will invalid based on lack of testamentary capacity and undue influence. **OPINION HOLDS:** (1) The district court did not err in finding Wayne liable for tortious interference with a bequest because substantial evidence supports its implicit determination that Wayne acted with tortious intent. (2) The district court did not abuse its discretion in assessing the estate’s attorney fees against Wayne’s share of the estate because Wayne acted in bad faith. (3) The denial of Wayne’s continuance motion was proper. (4) The sanction excluding Wayne’s testimony was also proper. (5) The findings and determinations of lack of testamentary capacity and undue influence are supported by substantial evidence. We affirm the court’s conclusion that the 2011 will was invalid.

No. 17-0513

U.S. BANK NATIONAL ASSOCIATION v. PARROTT

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge. Considered by Vogel, P.J., Bower, J., and Mahan, S.J. Opinion by Bower, J. (6 pages)

In an interlocutory appeal, U.S. Bank National Association (U.S. Bank) challenges the district court decision denying its motion for a default judgment in a foreclosure action where the mortgagor is deceased. **OPINION HOLDS:** We find U.S. Bank adequately provided notice to those with an interest in the foreclosure proceedings. We conclude the district court abused its discretion in denying U.S. Bank's motion for a default judgment.

No. 17-0631

EDEN v. VAN BUREN COUNTY SHERIFF'S DEPARTMENT

AFFIRMED.

Appeal from the Iowa District Court for Van Buren County, Mary Ann Brown, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (7 pages)

A former employee of the county sheriff's department appeals from summary judgment on her claim for wrongful discharge. She contends the sheriff provided pretextual reasons for firing her in violation of public policy. **OPINION HOLDS:** Whether pretextual or not, the employee failed to show she participated in protected activity, therefore, the district court was correct in granting the county's motion for summary judgment.

No. 17-0687

HA v. CMP TACTICAL LAZER TAG

AFFIRMED.

Appeal from the Iowa District Court for Polk County, David M. Porter, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (8 pages)

Tu Ha appeals an order prohibiting her from levying assets from a property on Sixth Street in Des Moines, operating as AKA Tactical Laser Tag, L.L.C. (AKA) and Escape Chambers, L.L.C. (Escape Chambers), to satisfy her workers' compensation judgment against CMP Tactical Lazer Tag (CMP). On appeal, Ha argues she should be allowed to levy assets from the property contrary to the normal rules of corporate successor liability because AKA, CMP, and Escape Chambers are all the same business and because the claimed sales transaction between the three businesses was fraudulent. **OPINION HOLDS:** Ha has not presented evidence to prove there is common ownership between CMP and AKA or Escape Chambers, or that a fraudulent transaction took place between AKA, CMP, and Escape Chambers. We affirm the district court's denial of Ha's request to expand the judgment against CMP to include AKA, Escape Chambers, or assets located at the property on Sixth Street.

No. 17-0736

GILSON v. STATE

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (4 pages)

Adam Gilson appeals the district court's dismissal of his postconviction relief action. **OPINION HOLDS:** Gilson claims postconviction counsel was ineffective for failing to amend Gilson's pro se brief to add details, facts, and arguments of law. We reverse the district court's decision and remand for further proceedings.

No. 17-0800

YANCEY v. STATE

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (12 pages)

Nathaniel Yancey Jr. appeals the denial of his postconviction-relief application. On appeal, Yancey argues his trial counsel was ineffective, the

district court should have applied a different standard when determining whether he was prejudiced by his counsel's ineffectiveness, and his total ninety-year sentence violates the cruel and unusual punishment clause of the Iowa Constitution. **OPINION HOLDS:** We find Yancey's trial counsel was not ineffective for failing to demand the order of his trials be switched when evidence from the first trial could have been admitted no matter what the order of the trials were. The district court did not err in applying the current standard for ineffective assistance of counsel and Yancey's sentence does not violate the cruel and unusual punishment clause of the Iowa Constitution.

No. 17-0906

CHRISTIE v. CRAWFORD COUNTY MEMORIAL HOSPITAL

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Crawford County, Edward A. Jacobson, Judge. Heard by Vogel, P.J., and Potterfield and McDonald, JJ. Opinion by Vogel, P.J. (11 pages)

Richard Christie appeals from summary judgment entered in favor of defendants, Crawford County Memorial Hospital (CCMH) and Bill Bruce, dismissing his causes of action for violations of the Iowa Civil Rights Act and wrongful discharge against his employer. **OPINION HOLDS:** Because Christie has generated an issue of material fact on both claims, we reverse the district court's grant of summary judgment and remand for further proceedings.

No. 17-0959

TERRY v. IOWA DISTRICT COURT FOR POLK COUNTY

**AFFIRMED ON APPEAL,
AFFIRMED ON CROSS-
APPEAL, WRIT
SUSTAINED.**

Appeal from the Iowa District Court for Polk County, Jeanie K. Vaudt, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (14 pages)

Michael Terry challenges the district court's dismissal of his applications for rule to show cause requesting the court find his former wife in contempt of court. He also challenges the court's finding of contempt for his failure to pay court-ordered attorney fees associated with a dissolution modification action. Rachael McMann, Terry's former wife, cross appeals, challenging the district court's denial of attorney fees for the present action. **OPINION HOLDS:** Because Terry could not show McMann willfully violated the terms of their dissolution stipulation, the district court properly dismissed the applications for rule to show cause. Though the district court properly found Terry in contempt for failing to pay the court-ordered fees, the court's imposed punishment is not authorized by statute and must be vacated. On cross-appeal, we conclude the district court did not err in denying Rachael attorney fees.

No. 17-0976

EXTREME AUTO PLAZA, INC. v. IOWA DEP'T OF TRANSPORTATION

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

Appeal from the Iowa District Court for Polk County, Paul D. Scott, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (23 pages)

Extreme Auto Plaza, Inc. (Extreme) appeals from the district court ruling affirming the decision of the Iowa Department of Transportation (DOT) revoking its motor vehicle dealership's licenses to sell and recycle automobiles for one year. **OPINION HOLDS:** The agency was in error when it interpreted Iowa Code section 321.52(4)(a) (2014) to require Extreme, as a dealer and a recycler, to title any vehicle obtained from an out-of-state insurance company as salvage. However, because substantial evidence supports the DOT's determination that Extreme improperly titled five vehicles with regular titles, we affirm the finding of violations in respect to those vehicles. We believe the DOT should be given the opportunity to review whether the imposed punishment is appropriate in light of our conclusion that section 321.52(4)(a) does not require recyclers and dealers to title all vehicles

bought from out-of-state insurance companies as salvage, so we remand to the agency for a re-determination of the sanction imposed.

No. 17-0978

STATE v. MURPHY

AFFIRMED.

Appeal from the Iowa District Court for Jefferson County, Annette J. Scieszinski and John M. Wright, Judges. Heard by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (14 pages)

Matthew Murphy appeals the judgment and sentence entered on his conviction following a jury trial for second-degree sexual abuse, in violation of Iowa Code section 709.3(1)(b) (2016). Murphy asserts the court erred in denying his motions to change venue and to strike jurors. He also asserts his trial counsel was ineffective in failing to object to the court's error related to the motion to strike, in failing to move to strike three other jurors for cause, and in failing to object when a witness violated the motion in limine by vouching for the child victim. Finally, Murphy asserts there was insufficient evidence of sexual abuse. **OPINION HOLDS:** Because Murphy failed to show a substantial likelihood a fair and impartial jury could not be found and because Murphy did not prove prejudice resulting from his use of peremptory strikes, the district court did not abuse its discretion. Also, because the record is inadequate to address Murphy's claims of ineffective assistance, we preserve his claims for postconviction relief. Finally, because the jury verdict was supported by substantial evidence and was not against the weight of the evidence, we affirm.

No. 17-1000

IN RE GUARDIANSHIP OF A.S. AND G.S.

WRIT ANNULLED.

Certiorari to the Iowa District Court for Scott County, Henry W. Latham II, Judge. Considered by Danilson, C.J., McDonald, J., and Blane, S.J. Opinion by Blane, S.J. (11 pages)

Guardians petition for writ of certiorari from an order of sanctions against them for misleading the court regarding a guardianship over two children. They contend the district court erred in hearing an untimely motion for sanctions, acted beyond its authority and abused its discretion in granting sanctions, and exhibited unlawful bias against them. **OPINION HOLDS:** We find the district court acted within its authority and without any abuse of discretion or evidence of bias, and we affirm the district court order in every respect. We grant no appellate attorney fees.

No. 17-1002

SIBLEY STATE BANK v. BRAAKSMA

AFFIRMED.

Appeal from the Iowa District Court for Osceola County, Patrick M. Carr, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Carr, S.J., takes no part. Opinion by Tabor, J. (4 pages)

Farm debtors appeal the district court's grant of summary judgment to the bank in a replevin action. **OPINION HOLDS:** Having rejected the debtors' argument on the foreclosure appeal in a companion case, we affirm here by memorandum opinion pursuant to Iowa Court Rule 21.26(1)(b) and (e) (2017).

No. 17-1021

SIBLEY STATE BANK v. BRAAKSMA

AFFIRMED.

Appeal from the Iowa District Court for Osceola County, Patrick M. Carr, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Carr, S.J., takes no part. Opinion by Tabor, J. (12 pages)

Debtors appeal district court rulings stemming from a bank's foreclosure action. The debtors challenge: (1) appointment of the bank as a receiver under Iowa Code section 680.1 (2017); (2) denial of their motion to continue under Iowa

Code section 645.15; and (3) grant of the bank's motion for summary judgment on the foreclosure. **OPINION HOLDS:** (1) The appointment of the bank as receiver did not unduly infringe on the debtors' rights; (2) the court did not abuse its discretion in declining to continue proceedings; and (3) there was no legal error in the district court's grant of the bank's motion for summary judgment.

No. 17-1195

WILLIAMS v. STATE

AFFIRMED.

Appeal from the Iowa District Court for Lee (North) County, John M. Wright, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (3 pages)

Jerry Williams Sr. appeals the denial of his application for postconviction relief (PCR) following his conviction for murder in the first degree. He argues his PCR counsel was ineffective for failing to raise an actual innocence claim and create a record to evaluate his innocence. **OPINION HOLDS:** The record before us is inadequate to evaluate whether his counsel was ineffective for failing to raise actual innocence. Therefore, we affirm the district court, and we preserve his claim for an additional PCR proceeding.

No. 17-1199

GALEY v. EMPLOYMENT APPEAL BOARD

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson and Eliza J. Ovrom, Judges. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (12 pages)

Rob Galey appeals from the district court's ruling on judicial review upholding his denial of unemployment benefits. On appeal, Galey argues the district court abused its discretion in remanding for additional evidence to be submitted to the agency. Galey also argues the record does not support the determination he was fired for job-related misconduct, and the Employment Appeal Board decision is irrational, illogical, or wholly unjustifiable. **OPINION HOLDS:** The district court did not abuse its discretion in remanding. There was substantial evidence in the record to support the EAB's finding Galey was discharged for misconduct. Under the circumstances of this case, it was not irrational, illogical, or wholly unjustifiable to decide Galey's loss of his driving privileges due to an OWI charge was employment-connected misconduct. We affirm the district court.

No. 17-1231

STATE v. FULLER

**VACATED AND
REMANDED FOR
FURTHER
PROCEEDINGS.**

Appeal from the Iowa District Court for Black Hawk County, Linda M. Fangman, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (10 pages)

James Fuller appeals his conviction for possession with intent to deliver a controlled substance and carrying a weapon. Fuller contends his trial counsel was constitutionally ineffective for permitting him to enter *Alford* pleas without a sufficient factual basis for the pleas and in failing to file a motion in arrest of judgment. **OPINION HOLDS:** The record did not include sufficient factual basis for either of Fuller's pleas. We vacate the sentence and remand for the State to supplement the record to establish a factual basis to support the pleas.

No. 17-1268

STATE v. ROSS

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

Appeal from the Iowa District Court for Scott County, Mark R. Lawson and Nancy S. Tabor, Judges. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Danilson, P.J. Concurrence in part and dissent in part by Mullins, J. Tabor, J., takes no part. (14 pages)

RESENTENCING.

Quincy Ross appeals the convictions entered following his guilty pleas to one count of possession with intent to deliver and one count of child endangerment. He claims counsel was ineffective for failing to challenge his guilty plea to the child-endangerment charge on factual-basis grounds. He also appeals his sentences, contending the district court failed to consider additional evidence in support of mitigation. **OPINION HOLDS:** We find Ross's counsel was not ineffective as alleged and affirm his convictions. However, we find the district court failed to consider information offered by the defendant at his sentencing hearing it was obligated to consider, and, therefore, we vacate his sentences and remand for resentencing. **PARTIAL DISSENT ASSERTS:** I dissent from the majority decision to vacate the sentence and remand. Considering the record as a whole, I would find the court did not abuse its discretion notwithstanding its mistaken statement it could not consider certain exhibits. I would affirm.

No. 17-1324

EAST IOWA PLASTICS, INC. V HARTFORD CASUALTY INSURANCE COMPANY

AFFIRMED.

Appeal from the Iowa District Court for Buchanan County, Joel A. Dalrymple, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (8 pages)

East Iowa Plastics, Inc. (EIP) appeals the district court ruling granting summary judgment to Hartford Casualty Insurance Company (Hartford). On appeal, EIP argues the district court improperly relied on Hartford's statement of undisputed facts. **OPINION HOLDS:** Because EIP's statement of disputed facts filed in response to Hartford's statement of disputed facts does not cite to any record or authority, we find the district court did not err in applying the policy to the facts Hartford provided and concluding Hartford was entitled to judgment as a matter of law. We affirm.

No. 17-1332

STATE v. BALL

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

Appeal from the Iowa District Court for Dubuque County, Michael J. Shubatt, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (16 pages)

Michael "Wally" Ball appeals his convictions for enticing a minor, supplying alcohol to a minor, indecent exposure, and invasion of privacy. He argues the evidence is insufficient to prove he committed enticement. He also argues the district court abused its discretion in refusing to exclude the testimony of his former wife, Beth Ball, and it erred in imposing sexual abuse victim surcharges and special conditions of probation and in ordering appellate attorney fees unless he filed a request for a hearing on his ability to pay. **OPINION HOLDS:** We find sufficient evidence supports Ball's conviction for enticement. We also find the district court did not abuse its discretion in permitting Beth to testify, and the court did not err in imposing special conditions or in stating Ball may be assessed appellate attorney fees at a later date subject to his reasonable ability to pay. However, the district court erred in imposing sexual-abuse-victim surcharges under Iowa Code section 911.2B (2014), and we remand for the limited purpose of entering a corrected sentence without the surcharges.

No. 17-1344

STATE v. VINSICK

**CONVICTION,
SENTENCE, AND
JUDGMENT VACATED
AND CASE REMANDED
FOR A NEW TRIAL.**

Appeal from the Iowa District Court for Warren County, Kevin A. Parker, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (15 pages)

Carlton Vinsick Jr. appeals his conviction, sentence, and judgment of forgery following a jury trial. **OPINION HOLDS:** Considering the evidence in the

light most favorable to the State, particularly all of the reasonable inferences that may be fairly drawn from the evidence, substantial evidence supports Vinsick's conviction of forgery by way of aiding and abetting another. However, we conclude Vinsick established his trial counsel rendered ineffective assistance in failing to object to the lack of inclusion of a necessary paragraph from the uniform instructions in the jury instructions. We vacate Vinsick's conviction, judgment, and sentence, and we remand the case to the district court for a new trial.

No. 17-1376

STATE v. SLINKER

SENTENCE AFFIRMED Appeal from the Iowa District Court for Marshall County, Kim M. Riley, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (6 pages)
IN PART AND VACATED
IN PART AND
REMANDED.

Wyatt Slinker appeals his sentence following his guilty plea to involuntary manslaughter. He contends (1) the district court considered improper sentencing factors, (2) his attorney was ineffective in failing to object to victim impact statements from the victim's uncles, and (3) the district court improperly assessed costs against him on a dismissed charge. **OPINION HOLDS:** (1) The district court did not consider improper sentencing factors. (2) Slinker's attorney was not ineffective. (3) The district court improperly assessed costs against Slinker on a dismissed charge. We affirm the sentence in part and vacate the sentence in part and remand for a corrected sentencing order assessing Slinker with the appropriate court costs.

No. 17-1435

STATE v. NYOMAH

AFFIRMED. Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (4 pages)

Prince Nyomah appeals his convictions of second-degree robbery and assault while participating in a felony, arguing the convictions should have merged. **OPINION HOLDS:** Because the minutes of testimony set forth numerous actions by Nyomah which constitute separate and distinct assaults, each conviction can be supported by a separate and distinct assault. Thus, the crimes of assault while participating in a felony and second-degree robbery do not merge, and Nyomah's claim must fail. Accordingly, we affirm his convictions, judgment, and sentences.

No. 17-1498

BUSSANMAS v. CITY COUNCIL OF THE CITY OF DES MOINES

AFFIRMED. Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (8 pages)

Nicholas S. Bussanmas, L.L.C. appeals from the denial of its petition for writ of certiorari challenging the Des Moines City Council's denial of its preliminary subdivision plat "Winterfell." **OPINION HOLDS:** Because we agree with the district court that there is sufficient evidence to support the Council's decision to reject Bussanmas's preliminary plat, we affirm the district court's order.

No. 17-1501

STATE v. DELACY

AFFIRMED. Appeal from the Iowa District Court for Henry County, Mark E. Kruse and John G. Linn, Judges. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (5 pages)

Sean Delacy appeals the district court's order requiring him to pay restitution following his convictions for sexual exploitation of a minor and lascivious

acts with a child. **OPINION HOLDS:** We deny Delacy's claim the restitution order and plan is improper. We affirm the restitution order and restitution plan.

No. 17-1601

REHM v. ARCTIC GLACIER WEST POINT, INC.

AFFIRMED.

Appeal from the Iowa District Court for Lee (North) County, Michael J. Schilling, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (5 pages)

James Rehm appeals the district court's grant of summary judgment to Arctic Glacier West Point, Inc. on his disability discrimination claims under the Iowa Civil Rights Act (ICRA). **OPINION HOLDS:** We find the district court did not err in finding Rehm did not present a genuine issue of material fact on the question of whether he was disabled within the meaning of the ICRA. We affirm the district court's decision granting the employer's motion for summary judgment.

No. 17-1608

STATE v. DETTMER

AFFIRMED.

Appeal from the Iowa District Court for Polk County, William A. Price, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (3 pages)

Courtney Dettmer appeals her conviction and sentence for operating while intoxicated, second offense. She argues the officer lacked reasonable suspicion to stop her vehicle. **OPINION HOLDS:** The officer had reasonable suspicion to stop Dettmer's vehicle. We affirm the denial of Dettmer's motion to suppress as well as her conviction and sentence for operating a motor vehicle while intoxicated, second offense.

No. 17-1611

STATE v. WILLIAMS

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge. Considered by Potterfield, P.J., and Bower and McDonald, JJ. Opinion by McDonald, J. (3 pages)

Gerald Williams appeals his sentence for four counts of third-degree burglary and one count of second-degree theft. Williams contends the district court abused its discretion when sentencing him. **OPINION HOLDS:** The district court considered permissible factors when determining Williams's sentence and did not abuse its discretion.

No. 17-1615

HARPER v. UNITED FIRE

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom, Judge. Considered by Vaitheswaran, P.J., Tabor, J., and Scott, S.J. Opinion by Scott, S.J. (9 pages)

Angela Harper appeals a district court ruling on her petition for judicial review of a determination of the workers' compensation commissioner. **OPINION HOLDS:** We affirm the district court's denial of Harper's judicial-review petition.

No. 17-1765

STATE v. EDWARDS

AFFIRMED.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (4 pages)

Teriona Edwards appeals her sentence for driving while barred. She asserts the court abused its discretion in sentencing by not considering all required and relevant factors. **OPINION HOLDS:** Upon our review for abuse of discretion, we hold that there was no abuse. The trial court sufficiently explained

the reasoning of the sentence imposed, even while utilizing a standardized form. The form shows the court considered all required and relevant factors and provides an adequate explanation for the sentence based upon the evidence.

No. 17-1788

STATE v. LAWSON

AFFIRMED.

Appeal from the Iowa District Court for Lee (South) County, Michael J. Schilling and John M. Wright, Judges. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (6 pages)

Ronald Lawson appeals his conviction following his guilty plea for possession of a controlled substance, methamphetamine, third or subsequent offense, in violation of Iowa Code section 124.401(5) (2017). **OPINION HOLDS:** Because the district court did not rely on risk-assessment tools during sentencing and because the prosecutor did not breach the plea agreement, these ineffective-assistance claims fail, and we affirm. Also, because the record pertaining to the plea negotiations is insufficient, we preserve Lawson's claim regarding Iowa Rule of Criminal Procedure 2.10(3) for postconviction relief.

No. 17-1866

IN RE MARRIAGE OF JUDD

APPEAL DISMISSED.

Appeal from the Iowa District Court for Clinton County, John D. Telleen, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (7 pages)

Scott Judd appeals the district court's denial of his application to modify the parties' dissolution decree. **OPINION HOLDS:** Scott's application to modify was instead an untimely motion pursuant to Iowa Rule of Civil Procedure 1.904(2) and did not extend the time for filing an appeal. Because the appeal is untimely, we do not have jurisdiction to consider it. We therefore dismiss the appeal.

No. 17-1913

TRANA v. SMITH

AFFIRMED.

Appeal from the Iowa District Court for Johnson County, Douglas S. Russell, Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by McDonald, J. (3 pages)

Donovan Trana appeals the dismissal of his personal injury action. **OPINION HOLDS:** Because Trana filed his action nearly two years beyond the statute of limitations, the district court properly dismissed the action.

No. 17-1974

IN RE MARRIAGE OF INGERSOLL

AFFIRMED.

Appeal from the Iowa District Court for Montgomery County, Richard H. Davidson, Judge. Heard by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (13 pages)

A father appeals the custody, child-support, and division-of-assets determinations of a decree of dissolution. **OPINION HOLDS:** We affirm the joint-physical-care, child-support, and economic provisions of the dissolution decree. We affirm the award of trial attorney fees. We deny the request for appellate attorney fees.

No. 17-2012

IN RE MARRIAGE OF FRAKER

AFFIRMED.

Appeal from the Iowa District Court for Poweshiek County, Joel D. Yates, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (5 pages)

A father appeals the physical care provision of his dissolution decree. He

contends the district court should have continued a joint physical care arrangement mandated by a temporary custody order or, alternatively, granted him physical care of the children. **OPINION HOLDS:** The district court appropriately denied the father's request for joint physical care and acted equitably in granting the mother physical care. We affirm the district court's physical care decision. We also order the father to pay \$2000 toward the mother's appellate attorney fee obligation.

No. 17-2052

IN RE MARRIAGE OF KRAABEL

AFFIRMED.

Appeal from the Iowa District Court for Winneshiek County, Margaret L. Lingreen, Judge. Heard by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (12 pages)

Kristine Kraabel appeals the dismissal of her petition for dissolution of her marriage to Thomas Kraabel. Kristine argues the district court erred in determining Thomas was not an Iowa resident and therefore the court did not have subject matter jurisdiction over the matter. Thomas cross-appeals, arguing the district court abused its discretion in granting Kristine's motion to strike an affidavit and exhibits from his foreign counsel. **OPINION HOLDS:** We agree with the district court that Thomas is not a resident of Iowa and therefore subject matter jurisdiction is negated. Therefore, we affirm the dismissal of the petition and deny Kristine's request for appellate attorney fees. Because we affirm the district court, we do not reach Thomas's cross-appeal.

No. 18-0568

IN RE P.J.

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Cheryl E. Traum, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Danilson, C.J. (7 pages)

A mother appeals the termination of her parental rights to four children. **OPINION HOLDS:** Even after receipt of services specific to the mother's intellectual deficits, the mother remains unable to provide for the physical, mental, and emotional needs of the children. On our de novo review, we agree that termination of the mother's parental rights is in the best interests of the children.

No. 18-0804

IN RE S.H.

AFFIRMED.

Appeal from the Iowa District Court for Franklin County, Peter B. Newell, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (10 pages)

A mother appeals the juvenile court's termination of her parental rights. She contends the State failed to provide reasonable efforts at reunification, mental illness made her unable to competently assist counsel, and termination of parental rights should have been stayed to allow for possible improvement in her mental health. **OPINION HOLDS:** The mother waived her reasonable-efforts claim by not raising it prior to the termination hearing and termination of parental rights was in the child's best interest.

No. 18-0863

IN RE L.P.

AFFIRMED ON BOTH APPEALS.

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (6 pages)

The mother and father of twins separately appeal the termination of their parental rights. **OPINION HOLDS:** Because the State proved by clear and convincing evidence that the children could not be returned to the mother, the

father did not contest the statutory grounds for termination, termination is in the best interest of the children, and no factors preclude termination, we affirm.

No. 18-0891

IN RE S.B.

AFFIRMED.

Appeal from the Iowa District Court for Linn County, Susan F. Flaherty, Associate Juvenile Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (9 pages)

A mother appeals the termination of her parental rights. **OPINION HOLDS:** Because we find clear and convincing evidence that grounds for termination of the mother's parental rights were established under Iowa Code section 232.116(1)(h) (2017), termination of the mother's parental rights is in the child's best interests, and an extension of time for reunification is not supported under the facts of the case, we affirm the juvenile court's order terminating the mother's parental rights.

No. 18-0909

IN RE E.B.

AFFIRMED.

Appeal from the Iowa District Court for Cerro Gordo County, Adam D. Sauer, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (6 pages)

A father appeals from an order terminating his parental rights. He contends he should be given an additional six months to work toward reunification, termination was not in the child's best interests, and the relative-custody exception should prevent termination. **OPINION HOLDS:** Additional time would not result in a significant change in circumstances. Termination was in the best interest of the child, and there is not clear and convincing evidence termination will be detrimental to the child due to the parent-child bond. Under the circumstances of this case, including a history of domestic violence, the relative-custody exception does not preclude termination. We affirm termination on all grounds.

No. 18-0910

IN RE L.J.

AFFIRMED.

Appeal from the Iowa District Court for Jasper County, Steven J. Holwerda, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Mullins, J. (5 pages)

A mother appeals the termination of her parental rights to her two children. She contends her constitutional right to due process of law was violated when the juvenile court denied her motion to continue the termination hearing and conducted the hearing without her presence. The mother alternatively argues the statutory exception to termination contained in Iowa Code section 232.116(3)(c) (2018) should be applied to preclude termination. **OPINION HOLDS:** We conclude (1) the mother has failed to preserve error on her due process claim and (2) the mother failed to meet her burden to establish the statutory exception to termination. We affirm the juvenile court order terminating the mother's parental rights.