

**SUMMARIES OF DECISIONS, IOWA COURT OF APPEALS**  
**December 20, 2017**

Pursuant to Iowa Rule of Appellate Procedure 6.904(2)(6), an unpublished opinion of the Iowa Court of Appeals may be cited in a brief; however, unpublished opinions shall not constitute controlling legal authority.

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**No. 15-2091**

**REVERSED AND  
REMANDED.**

**STATE v. FRANKLIN**

Appeal from the Iowa District Court for Dubuque County, Mark Hostager, District Associate Judge. Considered by Danilson, C.J., Doyle, J., and Mahan, S.J. Opinion by Mahan, S.J. (9 pages)

Don Franklin appeals following a bench trial after which he was found guilty of one count of interference with official acts and two counts of assault upon a police officer. Franklin asserts he was denied his right to self-representation and there is insufficient evidence to sustain the assault convictions. **OPINION HOLDS:** We find sufficient evidence to support assault the convictions. But because Franklin's right to self-representation was improperly denied after he reasserted his right, we reverse and remand for a new trial.

**No. 16-0709**

**AFFIRMED.**

**STATE v. SHAWHAN**

Appeal from the Iowa District Court for Polk County, Jeanie K. Vaudt, Judge. Considered by Danilson, C.J., and Tabor and McDonald, JJ. Opinion by Danilson, C.J. (19 pages)

Following a jury trial, Richard Gene Shawhan was convicted of second-degree murder for the death of Jeffrey Butts, who suffered brain trauma and eventual death after being hit three times in the head with a blunt instrument. On appeal, Shawhan contends the trial court abused its discretion in not allowing him to impeach a witness with a prior incident of untruthfulness, erred in instructing the jury, and did not apply the correct standard in ruling on his motion for new trial. In a supplemental pro se brief, Shawhan asserts counsel was ineffective in failing to object to additional instructional errors. **OPINION HOLDS:** Finding no reason to overturn the conviction, we affirm.

**No. 16-0744**

**AFFIRMED AS  
MODIFIED.**

**IN RE MARRIAGE OF YEAGER**

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge. Heard by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Bower, J. (8 pages)

A husband appeals the economic provisions of the parties' dissolution decree. **OPINION HOLDS:** We find the district court properly divided the marital property, including the down payment, and properly established child support. However, the spousal support established by the district court was excessive. We also find an award of appellate attorney fees is not appropriate.

**No. 16-0980**

**AFFIRMED.**

**STATE v. HUFFMAN**

Appeal from the Iowa District Court for Grundy County, Joel A. Dalrymple, Judge. Considered by Vaitheswaran, P.J., Potterfield, J., and Mahan, S.J. Opinion by Mahan, S.J. (2 pages)

Blake Huffman was convicted of five counts of second-degree sexual abuse, one count of third-degree sexual abuse, and one count of assault with intent to commit sexual abuse, as a result of events occurring when he was a juvenile and involving two, juvenile complaining witnesses. On appeal, Huffman

contends the court erred in denying his motion for new trial. **OPINION HOLDS:** The asserted recantation of one of the witness's testimony is contradicted by the witness's own later deposition reasserting sexual abuse by Huffman. Finding no abuse of discretion, we affirm.

**No. 16-1134**

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

**B&F JACOBSON LUMBER & HARDWARE v. ACUITY**

Appeal from the Iowa District Court for Monona County, Jeffrey L. Poulson, Judge. Heard by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Danilson, C.J. (26 pages)

B&F Jacobson Lumber & Hardware, L.L.P. (B&F) appeals from a jury verdict in favor of Acuity, A Mutual Insurance Company (Acuity), on B&F's claim for bad faith in the adjustment of a property-damage claim. B&F contends the district court improperly (1) denied B&F's motion to compel evidence of post-filing-of-litigation claim adjustment decisions on the basis it is protected by the attorney-client privilege, (2) determined other evidence of post-filing-of-litigation conduct was inadmissible, and (3) precluded B&F from presenting evidence as to damages for loss of peace of mind. **OPINION HOLDS:** The district court abused its discretion in denying B&F's motion to compel and in determining post-filing-of-litigation conduct was inadmissible without first completing a proper rule 5.403 analysis. The court also erred in denying the admission of the two estimates of damages. Upon our balancing analysis, we conclude B&F is entitled to present post-filing-of-litigation evidence on whether B&F's claim for additional monies was denied or further payment delayed due in whole or part to the language on the check, "settlement in full—ACV." Accordingly, we reverse and remand this matter for further proceedings and a new trial consistent with this opinion. We affirm on the issue of the inadmissibility of evidence on prejudgment interest. We also affirm the district court's determination that evidence of loss of peace of mind is inadmissible.

**No. 16-1134**

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REVERSED IN PART,  
AND REMANDED.**

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Appeal from the Iowa District Court for Monona County, Jeffrey L. Poulson, Judge. Heard by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Danilson, C.J. (26 pages)

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**No. 16-1183**

**STATE v. WILLIAMS**

**AFFIRMED.**

Appeal from the Iowa District Court for Story County, Paul G. Crawford, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Potterfield, Judge. (8 pages)

Lamont Montee Williams appeals from his convictions for possession of marijuana, failure to affix a drug tax stamp, possession of cocaine, third or subsequent offense, and possession of hydrocodone, third or subsequent offense. Williams claims the district court should have granted his motion to suppress because the warrant lacked probable cause and lacked the required nexus between items sought under warrant and the people or places searched. **OPINION HOLDS:** Because the arresting officer was qualified to detect the odor of marijuana, and a requisite nexus or other means of validity exists for all fruits of the search, the district court properly denied Williams's motion to suppress, and we affirm.

**No. 16-1185**

**STATE v. QUIJAS**

**AFFIRMED.**

Appeal from the Iowa District Court for Fayette County, Richard D. Stochl, Judge. Considered by Vaitheswaran, P.J., and Doyle and Bower, JJ. Opinion by Vaitheswaran, P.J. (6 pages)

Abel Quijas, Jr. appeals his judgment for attempted murder. He contends the district court abused its discretion in overruling an objection to what he characterizes as "other bad acts" evidence. He also raises several ineffective assistance claims. **OPINION HOLDS:** The evidence Quijas objected to was cumulative, not prejudicial, and does not require reversal. We preserve all of Quijas' ineffective assistance claims for postconviction relief. We affirm Quijas' conviction for attempted murder.

**No. 16-1208**

**KERBY v. KERBY REVOCABLE TRUST**

**APPEAL DISMISSED.**

Appeal from the Iowa District Court for Appanoose County, Randy S. DeGeest, Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (6 pages)

The Jerry Kerby Revocable Trust appeals the district court's denial of its motion for a protective order to prevent the settlor's son from obtaining discovery regarding the trust and the competence of the settlor. **OPINION HOLDS:** While this appeal was pending, the settlor of the trust died and the documents in question were provided to the settlor's son. We therefore dismiss this appeal as moot. The case is remanded to the district court for further proceedings.

**No. 16-1283**

**STATE v. KEASLING**

**AFFIRMED.**

Appeal from the Iowa District Court for Wapello County, Myron L. Gookin, Judge. Heard by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (16 pages)

Ricky Keasling, convicted of murder in the first degree and burglary in the first degree, asserts his trial counsel was ineffective for failing to object to the felony-murder instruction, failing to seek an eyewitness-identification instruction, and failing to obtain an eyewitness expert. Further, Keasling asserts the district court erred in excluding a witness from testifying at trial, or in the alternative, trial counsel was ineffective for failing to timely disclose the witness. **OPINION HOLDS:** Because Keasling's trial counsel was not ineffective for failing to object to the felony-murder instruction and no prejudice resulted from counsel's failure to request an eyewitness-identification instruction or obtain an eyewitness expert, we affirm. Also, the district court did not abuse its discretion in excluding witness testimony presented after the State rested and no prejudice resulted from

counsel's untimely disclosure of the witness because the testimony was impeachment testimony.

**No. 16-1367**

**STATE v. FORD**

**AFFIRMED.**

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. Heard by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (6 pages)

Henry Ford appeals his convictions for possession with intent to deliver (marijuana), second offense, and child endangerment. He contends a search of his vehicle exceeded the scope of a warrant. His argument implicates the constitutional particularity requirement. **OPINION HOLDS:** The specificity of the vehicle description, the reference to seizure of drug proceeds, and the attestations of a nexus between the vehicle and drug proceeds lead us to conclude the constitutional particularity requirement was satisfied. We affirm the district court's denial of Ford's suppression motion.

**No. 16-1686**

**SEWARD v. HANE**

**AFFIRMED AS  
MODIFIED.**

Appeal from the Iowa District Court for Monona County, Jeffrey A. Neary, Judge. Heard by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (13 pages)

In this second appeal from a paternity decree, the Child Support Recovery Unit (CSRU) weighs in on our decision to afford the unit formal notice of the paternity proceeding, and a father challenges the child support and medical support provisions of the decree. **OPINION HOLDS:** We affirm all aspects of the district court's remand order except the order for retroactive child support and cash medical support. We modify the remand decree to order Hane's support obligation to begin on January 1, 2015, and to eliminate the order of \$125 in cash medical support.

**No. 16-1710**

**STATE v. RETTERATH**

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

Appeal from the Iowa District Court for Mitchell County, James M. Drew and Gregg R. Rosenblatt, Judges. Heard by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Tabor, J. (36 pages)

Sex acts, vengeance, and castor beans. After digesting salacious testimony offered by prosecution witnesses on these subjects, a jury convicted Mark Retterath of sexual abuse in the third degree, solicitation to commit murder, and attempted murder. Retterath appeals the three guilty verdicts, challenging the sufficiency of the evidence and alleging a number of errors by the trial court. **OPINION HOLDS:** When viewing the proof in the light most favorable to the State, we find substantial evidence to support the convictions for sexual abuse and solicitation to commit murder. But because the State did not prove Retterath performed an act that met the statutory definition of "assault," we reverse and remand for dismissal of the attempted-murder count. We find no grounds for reversal in Retterath's remaining issues, although we do remand for an in camera review of the counseling records of two witnesses whose credibility was critical to the State's case on solicitation to commit murder.

**No. 16-2032**

**GIAMBO v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, Judge. Considered by Danilson, C.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. Partial Dissent by McDonald, J. (11 pages)

Antonio Giambo II appeals the dismissal of his application for

postconviction relief (PCR). Giambo claims trial counsel had a conflict of interest and coerced his plea. He claims PCR counsel was ineffective for failing to amend his self-represented application to include a prayer for relief, failing to investigate plea counsel's possible conflict of interest, failing to present evidence about Giambo's ability to reimburse attorney fees, failing to challenge trial counsel's ineffectiveness for allowing Giambo to enter a guilty plea, and failing to challenge plea court's failure to advise Giambo of certain surcharges. **OPINION HOLDS:** Trial counsel did not have a conflict of interest or coerce Giambo's guilty plea. Giambo was not prejudiced by PCR counsel's failure to amend Giambo's application because counsel filed another application with a prayer for relief. PCR counsel adequately investigated plea counsel for possible conflicts of interest. Attorney fee issues do not provide grounds for relief. The minutes of evidence provide a factual basis for Giambo's plea. The record is not adequately developed to determine if Giambo would have refused the plea deal and proceeded to trial if he knew of the imposed surcharges. Because the record is not adequately developed, Giambo's claim PCR counsel was ineffective for not challenging the plea court's failure to advise Giambo of certain surcharges is preserved for potential PCR proceedings. **PARTIAL DISSENT ASSERTS:** I concur in part and dissent in part. I respectfully dissent from the majority's preservation of Giambo's ineffective assistance of postconviction counsel claim. Ineffective assistance of postconviction counsel claims are subject to a heightened standard for preservation in the interest of finality. Giambo failed to establish a viable ineffective assistance claim by making a showing of prejudice. I would deny the claim on the merits and affirm the judgment of the postconviction court in its entirety.

**No. 16-2039**

**JASPER v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Crawford County, Duane E. Hoffmeyer, Judge. Considered by Danilson, C.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (9 pages)

Clint Jasper appeals the dismissal of his postconviction-relief application. Jasper claims he received ineffective counsel when his trial counsel allowed him to plead guilty without informing him of the plea's details and what rights he would forfeit when agreeing to the plea agreement. He also argues he received ineffective counsel because trial counsel did not arrange testing to determine his mental and cognitive abilities. Finally, he claims his plea was not knowingly, intelligently, or voluntarily made. **OPINION HOLDS:** A review of trial counsel's notes and the plea hearing indicate Jasper knew the details of the plea and what rights he forfeited. Trial counsel also testified that he suggested Jasper complete competency testing but Jasper opposed it and ultimately appeared competent. Jasper's claim his plea was not knowing, intelligent, or voluntary was not preserved but would fail if it had been preserved. The postconviction-relief court properly dismissed Jasper's application.

**No. 16-2082**

**HARKLESS v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Muscatine County, Nancy S. Tabor, Judge. Considered by Danilson, C.J., Doyle, J., and Carr, S.J. Tabor, J., takes no part. Opinion by Carr, S.J. (5 pages)

Jay Harkless appeals the district court's dismissal of his application for postconviction relief, claiming his postconviction counsel committed structural error and thus rendered ineffective assistance. **OPINION HOLDS:** Because Harkless failed to establish structural error, we affirm.

**No. 16-2100**

**STATE v. WILKINS**

**AFFIRMED.**

Appeal from the Iowa District Court for Scott County, John D. Telleen, Judge. Considered by Vogel, P.J., Tabor, J., and Carr, S.J. Opinion by Carr, S.J. (7 pages)

A defendant appeals from his convictions and sentences. He challenges the timeliness of his indictment and contends the trial court erred in failing to merge his convictions and sentences. **OPINION HOLDS:** The indictment was timely because the defendant was not arrested until an arrest warrant was executed on him in Iowa. The trial court did not err in failing to merge his convictions and sentences; there was evidence to support three independent charges, convictions, and sentences.

**No. 16-2148**

**MILAS v. SOCIETY INS.**

**AFFIRMED.**

Appeal from the Iowa District Court for Scott County, Henry W. Latham II and Nancy S. Tabor, Judges. Considered by Danilson, C.J., McDonald, J., and Blane, S.J. Tabor, J., takes no part. Opinion by McDonald, J. (12 pages)

A plaintiff appeals following judgment entry on his claims for fraudulent misrepresentation and breach of contract. He contends the district court erred in dismissing his fraudulent misrepresentation claim and erred in declining to submit the issue of punitive damages to the jury. He also contends the district court should have granted his motion for recusal. **OPINION HOLDS:** The district court did not error. The plaintiff failed to create a triable issue on his fraudulent misrepresentation claim and did not present substantial evidence supporting the submission of an instruction on the claim or on the claim for punitive damages. There is also no merit to the recusal claim.

**No. 16-2172**

**STATE v. LENZ**

**AFFIRMED.**

Appeal from the Iowa District Court for Mitchell County, Christopher C. Foy, Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (19 pages)

Nicholas Lenz appeals his conviction of first-degree kidnapping. He challenges the district court's evidentiary rulings, the court's instruction to the jury on the definition of serious injury, the constitutionality of Iowa Code section 702.18, the sufficiency of evidence to support his conviction, the court's refusal to give certain jury instructions, and the validity of the jury's verdict. He also claims his trial counsel was ineffective in several respects. **OPINION HOLDS:** We affirm Lenz's conviction of first-degree kidnapping in its entirety. We preserve for postconviction-relief proceedings Lenz's claim that his trial counsel was ineffective in failing to ensure the inclusion of the jury instructions concerning intoxication and diminished capacity or responsibility.

**No. 17-0016**

**STATE v. BROUGHTON**

**SENTENCES VACATED  
AND REMANDED FOR  
RESENTENCING.**

Appeal from the Iowa District Court for Polk County, Carol L. Coppola, District Associate Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (4 pages)

Monesha Broughton appeals the sentences imposed following her conviction for operating while intoxicated and child endangerment. She asserts the district court abused its discretion in sentencing her by failing to place on the record sufficient reasons for selecting the sentences imposed. **OPINION HOLDS:** We note the court indicated at the sentencing hearing and in the sentencing order that it was imposing the sentences in accordance with the "plea agreement," but there had been no guilty plea. The adjudication of guilt followed a trial on the minutes. Because of the reference to a "plea agreement," this court is

unable to determine whether the district court properly exercised its discretion in sentencing Broughton. Therefore, her sentences must be vacated, and the case is remanded for resentencing.

**No. 17-0045**

**CARTER v. GENESIS HEALTH SYSTEM**

**AFFIRMED.**

Appeal from the Iowa District Court for Scott County, Paul L. Macek, Judge. Considered by Vaitheswaran, P.J., and Doyle and Bower, JJ. Opinion by Vaitheswaran, P.J. (4 pages)

Albert Carter appeals the district court's ruling granting summary judgment in favor of Genesis Health System d/b/a Genesis Medical Center on his medical malpractice action. **OPINION HOLDS:** Without expert testimony that the claimed breach of the standard of care was the cause of his harm, Carter could not establish a prima facie case of medical negligence. We affirm the district court's summary judgment ruling in favor of Genesis.

**No. 17-0115**

**GREEN v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge. Considered by Doyle, P.J., Bower, J., and Carr, S.J. Opinion by Carr, S.J. (3 pages)

An applicant appeals the district court's order granting summary judgment on his application for postconviction relief. **OPINION HOLDS:** The application was filed untimely and no new ground of fact or law exists to render it timely. We therefore affirm.

**No. 17-0128**

**BRANDES v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Chickasaw County, Margaret L. Lingreen, Judge. Considered by Danilson, C.J., Doyle, J., and Blane, S.J. Opinion by Blane, S.J. (3 pages)

An applicant appeals from the dismissal of his application for postconviction relief. **OPINION HOLDS:** The application is untimely, and the applicant has shown no new ground of fact or law to avoid dismissal. We therefore affirm.

**No. 17-0224**

**ARMSTRONG v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Pottawattamie County, Susan K. Christensen, Judge. Considered by Vaitheswaran, P.J., and Doyle and Bower, JJ. Opinion by Vaitheswaran, P.J. (3 pages)

Charles Armstrong appeals the summary dismissal of his second postconviction relief application, claiming newly-discovered evidence. **OPINION HOLDS:** The district court did not err in finding there was no newly discovered evidence and in concluding the ground-of-fact exception to the three-year time bar was inapplicable. We affirm the court's summary dismissal of Armstrong's second postconviction relief application.

**No. 17-0251**

**IN RE MARRIAGE OF SLIFE**

**AFFIRMED.**

Appeal from the Iowa District Court for Buchanan County, John J. Bauercamper, Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Doyle, J. (15 pages)

Megan Slife appeals the district court's order modifying the visitation provisions of the decree entered dissolving her marriage to Brian Slife. **OPINION HOLDS:** We believe it is evident from the district court's judgment and decree that

the court interpreted the language of the original decree to mean Brian was not required to establish a change in circumstances concerning visitation. In any event, upon our de novo review of the record, we find that even if Brian was required to make such a showing, he met that burden under the unique facts of the case. Additionally, we believe modifying the visitation schedule to reunite the child and the father slowly to be in the child's best interests. Finally, we find no merit in Megan's claims concerning her asserted affirmative defenses. Accordingly, we affirm the district court's order modifying the visitation provisions of the parties' dissolution decree.

**No. 17-0268**

**STATE v. LADEAUX**

**APPEAL DISMISSED.**

Appeal from the Iowa District Court for Woodbury County, John C. Nelson, District Associate Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (3 pages)

Larissa LaDeaux appeals following her conviction for domestic abuse assault, a simple misdemeanor, asserting this case must be remanded because the district court applied the wrong standard to her motion for judgment of acquittal. **OPINION HOLDS:** LaDeaux does not have the right to appeal from her simple misdemeanor conviction. We consider her notice of appeal and appellate brief as an application for discretionary review. Having considered the issue raised by LaDeaux and the grounds for granting discretionary review, we determine the application should be denied, and we dismiss the appeal.

**No. 17-0284**

**THOMPSON v. FOWLER**

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

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (9 pages)

Justin Thompson appeals a district court order determining visitation and the surname of his minor child in favor of the child's mother, Allyson Fowler. Justin argues (1) the district court's ruling placing visitation in Allyson's discretion is an impermissible delegation of judicial authority and (2) the district court had no authority to rule on the child's surname. Both parties request an award of appellate attorney fees. **OPINION HOLDS:** We reverse the portion of the district court's order delegating discretion over visitation to Allyson and remand for the entry of an order defining the parameters of visitation consistent with Iowa Code sections 598.41 and 598.41A (2015). Finding the district court had authority to rule on the child's surname, we affirm that portion of its order. We decline to award appellate attorney fees to either party.

**No. 17-0298**

**IN RE J.S.**

**AFFIRMED.**

Appeal from the Iowa District Court for Scott County, Christine Dalton Ploof, District Associate Judge. Considered by Doyle, P.J., Mullins, J., and Mahan, S.J. Opinion by Doyle, P.J. (5 pages)

J.S. appeals from the order adjudicating him a delinquent child after the juvenile court determined the evidence showed he committed an act that would have constituted sexual abuse in the second degree if he were an adult. He alleges there is insufficient evidence showing he committed a "sex act." **OPINION HOLDS:** Although the evidence is unclear as to whether any skin-to-skin contact occurred, the evidence beyond a reasonable doubt shows J.S. committed a sex act. Taking into account the circumstances surrounding it, there is no doubt that the conduct the child consistently described was sexual in nature. Therefore, we affirm the order adjudicating J.S. a delinquent child.



**No. 17-0317**

**STATE v. SMITH**

**AFFIRMED.**

Appeal from the Iowa District Court for Clarke County, Monty W. Franklin, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by McDonald, J. (10 pages)

A defendant challenges an order denying his motion to suppress evidence. He contends the traffic stop resulting in his arrest was unlawful. **OPINION HOLDS:** The traffic stop was permissible under the community caretaker doctrine. The responding officer was attempting to check on the welfare of an individual involved in a traffic accident. Because the stop was permissible, the motion to suppress was properly denied.

**No. 17-0339**

**IN RE ESTATE OF BREHM**

**APPEAL DISMISSED.**

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (5 pages)

Douglas Brehm appeals contending the district court erred in permitting the decedent's real estate to be sold and interpreting the residuary clauses of the decedent's will in light of the decedent's spouse's election to take against the will. **OPINION HOLDS:** Both issues raised by Douglas arise from the district court's July 14, 2016 order, but Douglas did not file his notice of appeal until March 2017. We therefore do not have jurisdiction to consider the claims made and dismiss the appeal as untimely.

**No. 17-0428**

**STATE v. ZEIEN COX**

**SENTENCE VACATED  
AND REMANDED.**

Appeal from the Iowa District Court for Chickasaw County, Richard D. Stochl, Judge. Considered by Vaitheswaran, P.J., McDonald, J., and Carr, S.J. Opinion by McDonald, J. (6 pages)

A defendant challenges her sentence for serious injury by vehicle. **OPINION HOLDS:** The district court abused its discretion in considering facts not supported by the record when making its sentencing decision.

**No. 17-0489**

**CROSS v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, Jeanie K. Vaudt, Judge. Considered by Vogel, P.J., Bower, J., and Scott, S.J. Opinion by Scott, S.J. (5 pages)

Floyd Cross appeals the district court's summary dismissal of his second application for postconviction relief (PCR), asserting the ground-of-law exception to the three-year statute of limitations applies to his case. **OPINION HOLDS:** None of the cases cited by Cross satisfy the ground-of-law exception to the statute of limitations. Therefore, we agree with the district court's conclusion that Cross's second PCR application is time-barred, and we affirm the dismissal.

**No. 17-0494**

**BRUSKE v. BRUSKE**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (8 pages)

Randycurtis (Randy) Bruske appeals the entry of a domestic abuse protective order pursuant to Iowa Code section 236.5(1)(b) (2017). He contends the district court's conclusion that he committed domestic abuse assault against his wife, Theresa Bruske, is not supported by substantial evidence. Theresa requests an award of appellate attorney fees. **OPINION HOLDS:** We affirm the

district court's entry of the protective order. We award appellate attorney fees to Theresa in the amount of \$1000. Costs on appeal are assessed to Randy.

**No. 17-0604**

**IN RE T.M.**

**REVERSED.**

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

T.M. appeals from the order finding that he is seriously mentally impaired and ordering him to undergo involuntary hospitalization. **OPINION HOLDS:** The record evidence concerning the emotional effect that T.M.'s illness has had on family members is insufficient to base a finding that T.M. is likely to inflict serious emotional injury on others if left untreated. Because there is insufficient evidence showing T.M. is seriously mentally impaired as set forth in Iowa Code section 229.1(20)(b) (2017), we reverse.

**No. 17-0626**

**STATE v. HARRIS**

**AFFIRMED.**

Appeal from the Iowa District Court for Scott County, Thomas G. Reidel, Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (6 pages)

Stephanie Harris appeals the sentence imposed following a guilty plea to two charges. She contends the district court (1) abused its discretion in ordering her sentences to run consecutively because it failed to consider certain mitigating circumstances and (2) considered an improper sentencing factor in imposing sentence. **OPINION HOLDS:** We conclude (1) the district court did not abuse its discretion in deciding to impose consecutive sentences and (2) the sentencing consideration Harris complains of was proper. We therefore affirm Harris's sentence.

**No. 17-0640**

**FARMERS MUTUAL v. HUFFER**

**AFFIRMED.**

Appeal from the Iowa District Court for Story County, Michael J. Moon and James C. Ellefson, Judges. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by McDonald, J. (2 pages)

Duane Huffer appeals the district court's grant of summary judgment motions dismissing his abuse of process claims and finding Farmers Mutual Insurance is not required to indemnify Robert and Thelma Huffer against the majority of Duane's claims. Duane contends the district court erred in granting the motions because (1) James Huffer was a necessary party who was not included in the action, (2) Farmers Mutual committed an abuse of process, and (3) the district court was biased against Duane. **OPINION HOLDS:** We find that Huffer's claims have no merit.

**No. 17-0685**

**VAN WALL EQUIPMENT, INC. v. BC STEEL BUILDINGS, INC.**

**AFFIRMED.**

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

Van Wall Equipment, Inc. appeals the district court's ruling granting BC Steel Buildings, Inc.'s motion for summary judgment on the ground that Van Wall's action was barred by the fifteen-year statute of repose set forth in Iowa Code section 614.1(11) (2016). **OPINION HOLDS:** The lawsuit against BC was barred by the fifteen-year statute of repose set forth in section 614.1(11); we affirm the district court's summary judgment ruling.

**No. 17-0759**

**STATE v. WILKINSON**

**AFFIRMED.**

Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (4 pages)

Robert Wilkinson appeals the revocation of his deferred judgment and the sentence imposed. He contends the district court (1) improperly considered unproven conduct in deciding to revoke his deferred judgment and impose sentence and (2) abused its discretion by imposing an excessive sentence. **OPINION HOLDS:** We affirm the district court's revocation of Wilkinson's deferred judgment and its sentencing decision in its entirety.

**No. 17-1273**

**IN RE E.G.**

**AFFIRMED ON BOTH APPEALS.**

Appeal from the Iowa District Court for Floyd County, Karen K. Salic, District Associate Judge. Considered by Vaitheswaran, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (3 pages)

A father and mother appeal separately from the order adjudicating their child as a child in need of assistance. **OPINION HOLDS:** The parents' instances of improper care combined with their history of instability and failure to properly supervise other children indicate the child was properly found to be in need of assistance.

**No. 17-1283**

**IN RE J.C.**

**REVERSED AND REMANDED.**

Appeal from the Iowa District Court for Mahaska County, Rose Anne Mefford, District Associate Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Bower, J. (6 pages)

J.C. appeals the district court order finding her to be seriously mentally impaired. **OPINION HOLDS:** We conclude there is not clear and convincing evidence in the record to show J.C. was likely to injure herself or others if allowed to remain at liberty without treatment. We reverse the district court's ruling finding J.C. was seriously mentally impaired and remand for dismissal of the application.

**No. 17-1408**

**IN RE R.O.**

**AFFIRMED ON BOTH APPEALS.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Potterfield, J. (9 pages)

The mother and biological father of R.O. appeal the termination of their parental rights to the child. The mother maintains she should have been given additional time to work toward reunification. The father maintains the State failed to make reasonable efforts to reunify R.O. and claims this failure precludes the termination of his parental rights. **OPINION HOLDS:** Because there is clear and convincing evidence the statutory grounds for termination have been met and termination is in R.O.'s best interests, we affirm the termination of the mother's and the biological father's parental rights.

**No. 17-1455**

**IN RE B.A.**

**AFFIRMED.**

Appeal from the Iowa District Court for Butler County, Peter B. Newell, District Associate Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Doyle, J. (7 pages)

A mother appeals the termination of her parental rights to her child. **OPINION HOLDS:** Because the mother was not denied due process in not being

allowed to be transported from prison to the termination-of-parental-rights hearing, and because neither additional time nor establishment of a guardianship was warranted under the facts of the case, we affirm the juvenile court's order terminating the mother's parental rights.

**No. 17-1459**

**IN RE A.R.**

**AFFIRMED ON BOTH  
APPEALS.**

Appeal from the Iowa District Court for Crawford County, Mary L. Timko, Associate Juvenile Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Tabor, J. (10 pages)

A mother, Jessica, appeals the termination of her rights to her three children. Edward, father to one child, also appeals the termination of his rights to his child. Jessica argues the State failed to prove statutory grounds authorizing termination, a guardianship should have been established, and she should be given an additional six months to work toward reunification. Edward argues the State failed to provide reasonable efforts supporting reunification and requests an additional six months. **OPINION HOLDS:** The State proved statutory grounds for termination by showing the children could not be returned to Jessica's care. A guardianship would not be preferable to termination. The State provided reasonable efforts to Edward. Neither parent is likely to resolve issues supporting termination within six months.

**No. 17-1471**

**IN RE J.H.**

**AFFIRMED.**

Appeal from the Iowa District Court for Pottawattamie County, Craig M. Dreismeier, District Associate Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (5 pages)

A mother appeals a juvenile court order terminating her parental rights to her three children, born in 2010, 2013, and 2016, respectively. She contends the State failed to prove by clear and convincing evidence the statutory grounds for termination. **OPINION HOLDS:** We affirm the termination of the mother's parental rights as to N.H. and A.H. under Iowa Code section 232.116(1)(f) (2017) and as to J.H. under section 232.116(1)(h).

**No. 17-1485**

**IN RE A.K.**

**AFFIRMED ON BOTH  
APPEALS.**

Appeal from the Iowa District Court for Calhoun County, Adria Kester, District Associate Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Bower, J. (6 pages)

A mother and father separately appeal a juvenile court decision terminating their parental rights. **OPINION HOLDS:** We find there is sufficient evidence in the record to support the termination of the parents' rights and we cannot say the State did not engage in reasonable efforts to reunite the parents with the children. We affirm the decision of the juvenile court.

**No. 17-1521**

**IN RE A.N.**

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

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (8 pages)

A father of a child appeals adjudicatory and dispositional orders declining to place the child with him. He challenges the absence of a formal removal of the child from him. He also contends the court impermissibly shifted the burden to him to prove the child could be safely placed in his care and failed to make findings of fact establishing his failure to supervise the child. **OPINION HOLDS:** The father's challenge is not moot. Removal was proper under Iowa Code section

232.78(1)(a) (2017) because the mother, who was responsible for the care of the child, was absent by virtue of her incarceration. We affirm the adjudicatory order to the extent the adjudication was based on Iowa Code section 232.2(6)(c)2) and the evidence indicating the mother endangered the life of another child. We reverse that portion of the adjudicatory order premised on Iowa Code section 232.2(6)(j) because the father was available. We affirm the dispositional order because the father twice tested positive for methamphetamine.

**No. 17-1527**

**IN RE K.P.**

**AFFIRMED ON BOTH APPEALS.**

Appeal from the Iowa District Court for Johnson County, Deborah F. Minot, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by McDonald, J. (16 pages)

A mother and father separately appeal from the termination of their parental rights in their child. The mother argues the strength of the parent-child bond precludes termination. The father challenges the sufficiency of the evidence supporting the statutory ground for termination, requests an additional six months to work toward reunification, and argues termination is not in the child's best interest. **OPINION HOLDS:** The parent-child bond between mother and child does not preclude termination here. As to the father, the statutory ground has been proved, there has been no showing the need for removal would no longer exist following an additional six months, and termination is in the child's best interest. We affirm.

**No. 17-1558**

**IN RE T.H.**

**AFFIRMED.**

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by McDonald, J. (6 pages)

A mother appeals the termination of her parental rights arguing termination was not in the best interest of her two children. As part of this argument, she contends the State did not make reasonable efforts towards reunification, termination is inappropriate because the children are in the care of relatives, and the prospect of a guardianship makes termination unnecessary. **OPINION HOLDS:** Termination is in the best interest of the children because the mother lacks stable housing and employment, has issues with substance abuse, and failed to exercise consistent visitation. We also find reasonable efforts were made, there is no basis to exercise permissive authority to preserve the parent-child relationship, and a potential guardianship does not make termination inappropriate or unnecessary.

**No. 17-1612**

**IN RE B.C.-W.**

**AFFIRMED ON BOTH APPEALS.**

Appeal from the Iowa District Court for Mahaska County, Rose Anne Mefford, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Potterfield, J. (8 pages)

A mother and father appeal separately the termination of their parental rights to B.C.-W., born in 2013. The mother argues there is not clear and convincing evidence to support the statutory grounds for termination and termination is not in B.C.-W.'s best interests. The father argues service of process for the termination petition with notice of hearing date was improper, there is not clear and convincing evidence to support the statutory grounds for termination, reasonable efforts towards reunification were not made, and the court erred in denying the father's requested continuance for the hearing on permanency and termination. **OPINION HOLDS:** Having carefully considered the record and each party's position, we reach the same conclusion as the juvenile court—termination

of the mother's and the father's parental rights is in the best interests of the child. We affirm.

**No. 17-1628**

**IN RE K.T.-L.**

**AFFIRMED ON BOTH  
APPEALS.**

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Doyle, J. (7 pages)

A mother and a father separately appeal the termination of their parental rights to their children pursuant to Iowa Code chapter 236 (2017) and the provisions of the Indian Child Welfare Act. **OPINION HOLDS:** Clear and convincing evidence establishes the statutory grounds for terminating the mother's parental rights to her children. Because terminating the mother's parental rights is in the children's best interests, we decline to apply a statutory exception to avoid terminating the mother's parental rights. There is proof beyond a reasonable doubt that the children would be at risk of emotional or physical harm if returned to the mother's or the father's care.

**No. 17-1631**

**IN RE A.R.**

**AFFIRMED.**

Appeal from the Iowa District Court for Pottawattamie County, Charles D. Fagan, District Associate Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (9 pages)

The mother appeals the termination of her parental rights to her daughter, A.R. She asserts the State did not establish the statutory elements by clear and convincing evidence, termination was not in the best interest of the child, and the court abused its discretion in not granting a continuance. **OPINION HOLDS:** We conclude the State proved the elements for termination, including that A.R. had been out of the mother's care for more than six months and could not be returned to the mother's care at the time of the termination hearing. The mother has been unable to put A.R.'s needs before her own, and any bond she has with the child does not override the need for termination. Additionally, the court did not abuse its discretion in denying the motion to continue because A.R. needs permanency and stability in her life without further delay. Consequently, we affirm the order of the district court.

**No. 17-1684**

**IN RE H.B.**

**REVERSED.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (6 pages)

A mother appeals the termination of her parental rights to two children. She challenges the ground for termination cited by the juvenile court. **OPINION HOLDS:** In the absence of an adjudication based on physical abuse or neglect, the State failed to prove termination under section 232.116(1)(d).

**No. 17-1717**

**IN RE A.H.**

**AFFIRMED ON BOTH  
APPEALS.**

Appeal from the Iowa District Court for Warren County, Mark F. Schlenker, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by McDonald, J. (6 pages)

A mother and father appeal the termination of their parental rights in their two children. They both challenge the sufficiency of the evidence supporting the grounds for termination and allege termination was not in the best interest of their children, the court should defer permanency for six months, and that their close bonds with the children should lead the court to preserve the parent-child

relationship. The mother also challenges whether reasonable efforts were made by the State. **OPINION HOLDS:** Upon our de novo review, we conclude termination was appropriate and affirm the juvenile court in all respects.