SUMMARIES OF DECISIONS, IOWA COURT OF APPEALS
June 20, 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Pursuant to Iowa Rule of Appellate Procedure 6.904(2)(6), an unpublished opinion of the Iowa Court of Appeals may be cited in a brief; however, unpublished opinions shall not constitute controlling legal authority.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. 17-0104 **ALGREEN v. GARDNER**

REVERSED AND REMANDED.

Appeal from the Iowa District Court for Monroe County, Randy S. DeGeest and Lucy J. Gamon, Judges. Heard by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. Partial Dissent by Doyle, P.J. (24 pages)

Timothy Gardner and Gardner Crop Insurance (GCI) appeal judgments against them from two consolidated actions filed by former GCI employee, Zane Algreen. First, appellants contest the district court's determination that GCI fraudulently transferred its assets to another company in effort to avoid paying Algreen back wages. Second, Gardner challenges the district court's piercing of the corporate veil to hold him jointly and severally liable for the backed wages. Finally, appellants contest the award for certain attorney fees. **OPINION HOLDS:** After considering the context of GCI's conveyance of it's assets to another business, we conclude the transfer was not fraudulently made in effort to avoid paying Algreen. Similarly, when viewed in proper context, there is insufficient evidence to support piercing the corporate veil. The award for attorney fees must be reconsidered by the district court to only consider the cost expended on the back wages claim and omit expenditures related to the fraudulent-transfer and veil-piercing claims. **PARTIAL DISSENT ASSERTS:** I concur in part and dissent in part. I conclude the sale of GCI to CGB was a fraudulent transfer, as defined under section 684.4, as to Algreen. I would affirm the district court's judgment that Gardner and GCI are jointly and severally liable for the judgment entered in Algreen's favor in the wage-dispute action. Because insufficient evidence supports it, I agree the punitive damages award must be vacated. I conclude the district court did not err in ordering that Gardner and GCI be jointly and severally liable to pay Algreen's supplemental attorney fees and expenses. I concur with the majority's declination to award Algreen appellate attorney fees.

No. 17-0137 **BRONNER v. REICKS FARMS, INC.**

AFFIRMED.

Appeal from the Iowa District Court for Howard County, Margaret L. Lingreen, Judge. Heard by Danilson, C.J., and Mullins and Bower, JJ. Opinion by Danilson, C.J. (20 pages)

Kelsey Bronner appeals from the district court's order granting a new trial on her claims based on injuries sustained during a car accident for which Reicks Farms, Inc. (Reicks Farms) has stipulated liability. Bronner contends the district court improperly found Bronner's counsel engaged in misconduct warranting a new trial under Iowa Rule of Civil Procedure 1.1004(2). Reicks Farms asserts this court does not have jurisdiction to consider the appeal because the notice of appeal was not timely filed. Reicks Farms also maintains the district court did not abuse its discretion in granting a new trial. **OPINION HOLDS:** Finding no abuse of discretion in the district court's order granting a new trial, we affirm.

No. 17-0154 **STATE v. FENTON**

AFFIRMED.

Appeal from the Iowa District Court for Black Hawk County, David P. Odekirk, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (17 pages)

Marsean Fenton appeals from his convictions for third-degree burglary for

a home invasion and a separate conviction for burglary of a motor vehicle. He argues (1) the removal of the only African American juror on his panel, after the jury had been sworn, was improper and prejudiced him as an African American defendant; (2) the district court erred in denying his mistrial motion after the jury viewed a prejudicial portion of a patrol car video; (3) substantial evidence did not support the jury's verdict; (4) trial counsel was ineffective by allowing Fenton to plead guilty to the misdemeanor burglary when the speedy-trial rule would have resulted in dismissal of that charge; and (5) trial counsel was ineffective in not challenging the sentencing court's failure to abide by the plea agreement on the misdemeanor charge. **OPINION HOLDS:** Because Fenton cannot show prejudice from the juror's removal, the court did not abuse its discretion in denying the mistrial motion. Substantial evidence supported the jury's verdict, so we uphold the felony conviction. Because the record is inadequate to assess the merits of the two ineffective-assistance claims, we preserve them for possible postconviction-relief proceedings.

No. 17-0324 **VAN HORN v. R.H. VAN HORN FARMS, INC.**

AFFIRMED.

Appeal from the Iowa District Court for Carroll County, Michael D. Huppert, Judge. Heard by Vogel, P.J., Tabor, J., and Carr, S.J. Opinion by Tabor, J. (18 pages)

Siblings William Van Horn and June Linder appeal the district court's ruling in their legal actions against their father, brother, and R.H. Van Horn Farms, Inc., a closely held corporation. They challenge the district court's conclusion the corporation shares were not all voting shares; its application of the five-year statute of limitations; and its conclusion they did not suffer minority-shareholder oppression. **OPINION HOLDS:** Corporate formalities dictated maintaining the distinction between voting and non-voting stock, therefore, we agree with the denial of relief on that claim. The district court correctly rejected the continuing-wrong exception to extend the statute of limitations. And, on the issue of minority-shareholder oppression, the siblings'' reasonable expectations have not been frustrated by the actions of the controlling shareholders. We affirm the district court.

No. 17-0349 **CONNELL v. STATE**

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve, Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Danilson, C.J. (6 pages)

Zachary Connell appeals from the denial of his application for postconviction relief (PCR), asserting trial counsel was ineffective in (1) failing to make offers of proof regarding excluded evidence and (2) failing to investigate potential juror misconduct. He also asserts postconviction counsel was ineffective in failing to investigate potential juror misconduct. **OPINION HOLDS: I.** Trial counsel's decision not to make an offer of proof was a reasonable strategic decision. **II.** Trial counsel had no ability to investigate where he had no specific facts or knowledge of any alleged juror misconduct. **III.** Without a specific juror's name or a concrete statement of what happened, Connell can show nothing for PCR counsel to investigate even if he remained under a duty to investigate.

No. 17-0391 **BECKER v. STATE**

AFFIRMED.

Appeal from the Iowa District Court for Butler County, Gregg R. Rosenbladt, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (5 pages)

Mark Becker appeals the district court's denial of his application for

postconviction relief. **OPINION HOLDS:** We find trial counsel was effective but preserve Becker's claim postconviction counsel was ineffective for further hearing. We also find Becker's claim regarding restitution cannot be raised in the current action.

No. 17-0592 **STATE v. YENGER**

AFFIRMED.

Appeal from the Iowa District Court for Wapello County, Joel D. Yates, Judge. Heard by Vaitheswaran, P.J., and Doyle and Tabor, JJ. Opinion by Vaitheswaran, P.J. Dissent by Tabor, J. (16 pages)

Christopher Yenger appeals his convictions for two counts of first-degree murder following a jury trial. He contends (1) the State presented insufficient evidence to corroborate accomplice testimony, (2) his trial attorney was ineffective in failing to challenge certain jury instructions, and (3) the district court provided inadequate reasons for denying his post-trial motions. **OPINION HOLDS:** (1) The State presented sufficient independent evidence to corroborate the accomplice testimony. (2) Yenger's attorney breached no essential duty in failing to object to the challenged instructions. (3) The district court did not abuse its discretion in denying the new trial motion. We affirm Yenger's convictions for two counts of first-degree murder. **DISSENT ASSERTS:** The instruction permitting the jury to consider Yenger's out-of-court statements to accomplices, acquaintances, and jailmates "just as if they had been made at [his] trial" misstated the law and prejudiced Yenger. Additionally, the faulty instruction infringed on Yenger's constitutionally guaranteed right against self-incrimination because he chose not to testify.

No. 17-0611 **LUCHTENBURG v. STATE**

AFFIRMED.

Appeal from the Iowa District Court for Black Hawk County, David F. Staudt, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (7 pages)

Brian Luchtenburg appeals the denial of his postconviction relief application. He argues his trial attorneys were ineffective in (1) "failing to call [a witness] at the suppression hearing" and "failing to effectively cross-examine [the same witness] at trial," (2) "failing to obtain a video from [a] police car," and (3) failing to raise claimed conflicts of interest of the attorney and judge. **OPINION HOLDS:** All of Luchtenburg's ineffective-assistance claims fail. We affirm the denial of Luchtenburg's postconviction-relief application.

No. 17-0793 **LOWERY v. AMERICAN FAMILY MUTUAL INSURANCE COMPANY**

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (4 pages)

Richard Lowery appeals the denial of his motion for additur. He contends the damage award was inadequate. **OPINION HOLDS:** Although the jury could have awarded more, the damage award was not flagrantly inadequate. We affirm the district court's denial of Lowery's additur motion.

No. 17-0807 **SAUSER v. STATE**

AFFIRMED.

Appeal from the Iowa District Court for Delaware County, Thomas A. Bitter, Judge. Considered by Doyle, P.J., Bower, J., and Mahan, S.J. Opinion by Mahan, S.J. Dissent by Doyle, P.J. (7 pages)

Revette Sauser appeals the district court's denial of her application for postconviction relief following her 2012 guilty plea to kidnapping in the second

degree, voluntary manslaughter, and going armed with intent. **OPINION HOLDS:** Upon our review, we determine Sauser has not shown she received ineffective assistance; there is a factual basis for her plea of guilty to kidnapping in the second degree. We affirm the denial of Sauser's postconviction-relief application. **DISSENT ASSERTS:** I respectfully dissent. I would reverse the judgment of the district court, set aside Sauser's sentence, and remand to give the State the opportunity to establish a factual basis for the kidnapping charge.

No. 17-0817 **STATE v. KILPATRICK**

Appeal from the Iowa District Court for Polk County, David N. May, Judge.

AFFIRMED. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (10 pages)

Michael Kilpatrick appeals the district court's denial of his motion to suppress evidence arising from a traffic stop. On appeal, citing both state and federal constitutions, Kilpatrick argues officers improperly extended the traffic stop after resolving its initial purpose, the search of his cargo-pants pocket exceeded the plain-feel doctrine, and the search of the automobile was not authorized under the search-incident-to-arrest or the automobile exceptions. **OPINION HOLDS:** The stop was not extended because officers required time to confirm the identities of the vehicle's occupants. The investigating officer did not exceed the plain-feel exception. And the discovery of drugs in Kilpatrick's pocket and drug paraphernalia in the backseat permitted the vehicle's search under the automobile exception.

No. 17-0836 **STATE v. ENGLISH**

Appeal from the Iowa District Court for Polk County, Odell G. McGhee II,

AFFIRMED. District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (10 pages)

Warren English appeals from the district court's denial of his motion to suppress. English maintains the evidence obtained during the search of his vehicle should have been suppressed because his consent to the search was not voluntary pursuant to the Iowa Constitution. Additionally, he claims trial counsel was ineffective for failing (1) to challenge the duration of the stop as unconstitutional and (2) to advocate for a change under the Iowa Constitution requiring consent to be knowing in order for it to constitute a valid waiver. **OPINION HOLDS:** Because we find English's consent to the search of his vehicle was voluntarily given and he has not proven either of his claims of ineffective assistance, we affirm.

No. 17-0869 **HARDIN v. STATE**

Appeal from the Iowa District Court for Warren County, Richard B. Clogg,

AFFIRMED. Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Danilson, C.J. (5 pages)

Tracy Hardin appeals the dismissal of her second application for postconviction relief, contending the district court erred in finding her claims time-barred. Hardin contends the concept of equitable tolling should save her petition. **OPINION HOLDS:** Our court has repeatedly noted the doctrine of equitable tolling does not apply to Iowa Code section 822.3 (2014). Although Hardin's arguments for adopting the doctrine have some appeal, because the supreme court has not adopted the doctrine, we do not apply it now.

No. 17-0981 **KENT v. STATE**

Appeal from the Iowa District Court for Polk County, David M. Porter,

AFFIRMED.

Judge. Considered by Vaitheswaran, P.J., Tabor, J., and Scott, S.J. Opinion by Scott, S.J. (2 pages)

Daron Kent appeals the summary dismissal of his postconviction-relief application, contending equal protection requires his sentence for second-degree robbery to be reconsidered in light of the legislature's recent amendment to Iowa Code section 902.12. **OPINION HOLDS:** We repeat our position that the legislative amendment at issue here does not give rise to equal-protection infirmities, and we affirm the summary dismissal of Kent's application without further opinion pursuant to Iowa Court Rule 21.26(1)(a), (c), and (e).

No. 17-1029

IN RE MARRIAGE OF MRLA

AFFIRMED AND REMANDED.

Appeal from the Iowa District Court for Woodbury County, Edward A. Jacobson, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (5 pages)

Angela Mrla appeals from the property division provisions of a decree of dissolution. She contends district court failed to equitably divide the parties' property. **OPINION HOLDS:** Because the district court did not make a determination regarding numerous disputed factual issues we vacate the property division in the decree and remand this matter to the district court to identify and equitably divide the property.

No. 17-1122

DUNCAN v. FORD MOTOR CREDIT

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Appeal from the Iowa District Court for Winneshiek County, Margaret L. Lingreen, Judge. Considered by Vogel, P.J., Doyle, J., and Scott, S.J. Opinion by Scott, S.J. (8 pages)

Shannon Duncan appeals the district court's grant of summary judgment to the defendants based on the statute of limitations. **OPINION HOLDS:** We affirm the district court's decision finding Duncan's claim of conversion is barred by the five-year statute of limitations in Iowa Code section 614.1(4) (2015). On Duncan's claim of civil extortion, the court erred by applying the two-year statute of limitations in section 614.1(2). Duncan's claim of civil extortion is timely under the five-year statute of limitations in section 614.1(4), and the district court improperly granted summary judgment on this issue. We remand to the district court for further proceedings on the issue of civil extortion.

No. 17-1162

STATE v. GUERRERO-ADAME

AFFIRMED.

Appeal from the Iowa District Court for Muscatine County, Mary E. Howes, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (4 pages)

Martin Guerrero-Adame appeals his conviction for third-degree sexual abuse. He contends his trial attorney was ineffective "in presenting" an expert who, in the eyes of the district court, did nothing to advance his cause. **OPINION HOLDS:** There is no reasonable probability of a different result had defense counsel kept the expert off the stand. We affirm Guerrero-Adame's conviction for third-degree sexual abuse.

No. 17-1165

STATE v. GARDUNO-RODRIGUEZ

AFFIRMED.

Appeal from the Iowa District Court for Crawford County, Jeffrey L. Poulson, Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Danilson, C.J. (6 pages)

Erwin Garduno-Rodriguez appeals from his conviction for second-degree

sexual abuse following a bench trial. He challenges the sufficiency of the evidence and asserts the verdict is against the weight of the evidence. **OPINION HOLDS:** We conclude there is substantial evidence supporting the trial court's findings and conclusions. We find no clear and manifest abuse of discretion in the court's denial of the motion for new trial.

No. 17-1209 **STATE v. CORDERO**

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble and Robert J. Blink, Judges. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (8 pages)

Yosley Cordero appeals from his conviction on one count of conspiracy to commit forgery. **OPINION HOLDS:** Because the record establishes a factual basis for Cordero's guilty plea to the charge of conspiracy to commit forgery, Cordero's attorney was not ineffective in allowing him to enter the plea. We therefore affirm Cordero's conviction.

No. 17-1281 **RYAN v. SIMMONS PERRINE MOYER BERGMAN, PLC**

AFFIRMED.

Appeal from the Iowa District Court for Polk County, David N. May, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (8 pages)

Michael C. Ryan and his business Ryan Data Exchange, Ltd. (collectively, "Ryan") appeal the district court's grant of partial summary judgment, which entered judgment on two paragraphs of their petition alleging negligence against Simmons Perrine Moyer Bergman, PLC (Simmons). Ryan argues the district court erred in finding Simmons cannot be a proximate cause of Ryan's loss. **OPINION HOLDS:** We agree with the district court that Simmons's withdrawal as counsel left sufficient time for successor counsel to file a breach-of-contract claim and affirmative defenses, had such been deemed warranted by successor counsel.

No. 17-1373 **STATE v. MARTINEZ**

REVERSED AND REMANDED.

Appeal from the Iowa District Court for Muscatine County, Thomas G. Reidel, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (9 pages)

Marco Martinez appeals from his convictions for third-degree burglary and fourth-degree theft. He claims the State did not prove beyond a reasonable doubt that he broke into a liquor store after hours. **OPINION HOLDS:** Because the only evidence placing Martinez at the scene was an identification by police officers from a surveillance video that did not show the burglars' faces or any other distinctive features, we find insufficient evidence to sustain his convictions. We reverse and remand for entry of a judgment of acquittal.

No. 17-1374 **BAHIC v. MERCY MEDICAL CENTER**

AFFIRMED.

Appeal from the Iowa District Court for Polk County, William P. Kelly, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (13 pages)

Munira Bahic appeals from the district court's judgment affirming the commissioner's determination that Bahic's stipulated work injury did not cause her ongoing disability and symptoms after the date of February 27, 2014. On appeal, Bahic claims the district court erred in its determination that substantial evidence supports the commissioner's ruling. Additionally, she claims the court was wrong to conclude the commissioner's reversal of the deputy's causation ruling was not irrational, illogical, or wholly unjustifiable. **OPINION HOLDS:** The commissioner's

determination that Bahic's stipulated work injury was not the cause of a permanent disability and that any symptoms after the date of maximum medical improvement—February 27, 2014—were not causally related to the stipulated work injury are supported by substantial evidence in the record. Additionally, because this is not a case where the ruling establishes the commissioner failed to review and evaluate the evidence in the record, we affirm.

No. 17-1465 **DES MOINES RHF HOUSING, INC. v. SPENCER**

JUDGMENT VACATED AND REMANDED.

Appeal from the Iowa District Court for Polk County, Odell G. McGhee, II, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by McDonald, J. (6 pages)

Des Moines RHF Housing, Inc. appeals the dismissal of its petition for forcible entry and detainer filed against a housing tenant. RHF Housing challenges the tenant's use of the peaceable possession defense. **OPINION HOLDS:** The district court erred in treating RHF Housing's petition as a claim under Iowa Code section 648.1(5) (2017) even though the petition asserted its claim under Iowa Code section 648.1(2). And because RHF Housing initiated its action the day after the lease was terminated, the tenant did not have peaceable possession of the property for thirty days after the accrual of the cause of action, making the peaceable possession defense inapplicable.

No. 17-1466 **MORRIS v. STEFFES GROUP, INC.**

AFFIRMED.

Appeal from the Iowa District Court for Marion County, Martha L. Mertz, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (4 pages)

Todd Morris appeals the district court's granting of summary judgment in favor of Steffes Group, Inc. (Steffes). Morris argues the district court erred in finding Iowa Code chapter 555A (2016) did not apply to his purchase of auction services from Steffes. Morris also argues the district court erred in dismissing his petition as to all other theories. **OPINION HOLDS:** We agree with the district court that Iowa Code chapter 555A does not apply to these facts and conclude the district court did not err in dismissing Morris's petition in its entirety, without prejudice.

No. 17-1742 **STATE v. ALEXANDER**

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Gregory D. Brandt, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Danilson, C.J. (5 pages)

Antonio Luis Alexander appeals from the sentence imposed following his guilty plea, asserting the court considered improper factors and gave insufficient reasons for the sentence imposed. **OPINION HOLDS:** The record fails to reflect that the court relied upon an erroneous criminal history or relied upon any unproven criminal charge. The sentence imposed was within the statutory limits and based on valid reasons. We find no abuse of discretion.

No. 17-1763 **STATE v. BROWN**

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Cynthia M. Moisan, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Mullins, J. (6 pages)

Michael Brown appeals the sentences imposed following his guilty pleas to two counts of driving while barred, contending the district court unconstitutionally considered his delinquent financial obligations in sentencing and

abused its discretion in refusing to consider all potential sentencing options. **OPINION HOLDS:** Finding no constitutional infirmity or abuse of discretion in relation to Brown's sentence, we affirm.

No. 17-2030 **STATE v. PION**

AFFIRMED.

Appeal from the Iowa District Court for Marion County, Dustria A. Relph, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (7 pages)

Crystal Pion appeals her conviction for violation of a custodial order, a class "D" felony in violation of Iowa Code section 710.6 (2015). On appeal, Pion maintains the district court abused its discretion when it denied her pro se motion for substitute counsel, which she filed several months after pleading guilty. **OPINION HOLDS:** Based on this record of the court's considerations and the late nature of Pion's request, we cannot say the district court abused its discretion in denying Pion's motion. Moreover, Pion has neither established that she was prejudiced by the court's denial of her request nor claimed to fall within one of the three recognized exceptions to the requirement to prove prejudice**.** We affirm.

No. 18-0095 **IN RE L.R.-N.**

AFFIRMED.

Appeal from the Iowa District Court for Woodbury County, Jeffrey L. Poulson, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (5 pages)

L.R.-N. appeals from the district court order finding he is a person with a substance-related disorder and placing him in outpatient treatment pursuant to Iowa Code chapter 125 (2017). **OPINION HOLDS:** L.R.-N. failed to preserve error on his claim that the district court's order lacked substantial evidence to support its finding he was a person with a substance-related disorder. Accordingly, we affirm the order of the district court.

No. 18-0136 **IN RE O.H.**

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Susan C. Cox, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (7 pages)

A father appeals the termination of his parental rights. **OPINION HOLDS:** We find the juvenile court's termination of the father's rights under Iowa Code section 232.116(1)(j) (2017) is supported by clear and convincing evidence, termination is in the best interests of the children, and neither a six-month extension nor a guardianship are appropriate.

No. 18-0239 **IN RE I.C.**

AFFIRMED.

Appeal from the Iowa District Court for Linn County, Susan F. Flaherty, Associate Juvenile Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (4 pages)

A father with a history of cocaine use appeals the termination of his parental rights to a child, born in 2016. He contends (1) the State failed to prove the ground for termination cited by the juvenile court and (2) termination was not in the child's best interests. **OPINION HOLDS:** (1) The State proved termination was warranted under section 232.116(1)(h) (2017). (2) Termination was in the child's best interests because the infant's safety would have been compromised by a return of the child to the father. We affirm the juvenile court's termination of the father's parental rights to the child.

No. 18-0281 **IN RE X.W.**

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Cheryl E. Traum, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (4 pages)

A mother appeals a permanency order in child-in-need-of-assistance proceedings placing both children in the care of the father of one of the children. **OPINION HOLDS:** We conclude it is in the best interests of both children to be placed with the father of the younger child. We affirm the decision of the juvenile court.

No. 18-0289 **IN RE M.F.**

AFFIRMED.

Appeal from the Iowa District Court for Decatur County, Monty W. Franklin, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (5 pages)

The mother appeals from an order terminating her parental rights to her daughter, M.F. **OPINION HOLDS:** We conclude the mother has waived the issues she now raises on appeal, and even if error had been preserved or waiver had not occurred, the state proved the grounds for termination by clear and convincing evidence, termination was in the child's best interests, and no factors preclude termination.

No. 18-0358 **IN RE A.B.**

AFFIRMED ON BOTH APPEALS.

Appeal from the Iowa District Court for Appanoose County, William S. Owens, Associate Juvenile Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (9 pages)

The mother and the father of A.B., born in 2011, and J.B., born in 2016, separately appeal the termination of their parental rights. On appeal, the mother maintains there is not clear and convincing evidence to support termination as the children could have been returned to her care at the time of the termination hearing "or a reasonable period thereafter" and termination is not in the children's best interests. The father also claims termination is not in the children's best interests and asserts the juvenile court should have entered a permanency order placing the children in a guardianship with a relative rather than terminating the father's parental rights. **OPINION HOLDS:** Because the statutory grounds for termination have been met and it is in the best interests of the children, we affirm the termination of the mother's parental rights. Additionally, because the father does not contest the statutory grounds for termination have been met and the children's best interests are served by termination, we affirm the juvenile court's termination of the father's parental rights.

No. 18-0416 **IN RE R.B.**

AFFIRMED.

Appeal from the Iowa District Court for Webster County, Angela L. Doyle, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. Special concurrence by Tabor, J. (6 pages)

A mother appeals the termination of her parental rights to a child, born in 2010. She contends (1) the record lacks clear and convincing evidence to support the grounds for termination cited by the district court, (2) the department of human services failed to make reasonable efforts toward reunification with the child, and (3) she should have been afforded additional time to reunify or the court should have placed the child in a guardianship in lieu of terminating her parental rights. **OPINION HOLDS:** We affirm the termination of the mother's parental rights to the

child. **SPECIAL CONCURRENCE ASSERTS:** I agree with the outcome reached by the majority, but write separately to raise a concern about the Department of Human Services (DHS) case worker's failure to contact the mother while she was incarcerated. For three months, DHS made no effort to contact the mother or her counselor or to evaluate the possibility of visitation in prison. A parent's imprisonment does not in all circumstances absolve the DHS of its duty to provide reunification services. Whether visitation should be ordered as a reasonable service will depend on the circumstances, but it is difficult to see how DHS could make a recommendation to the juvenile court when the DHS worker ceased all outreach to the mother. Given the devastating impact of parental incarceration on children, Iowa attorneys and the DHS must not operate on the assumption that an incarcerated parent is not worthy of continued reasonable efforts.

No. 18-0576 **IN RE L.K.**

AFFIRMED.

Appeal from the Iowa District Court for Pottawattamie County, Craig M. Dreismeier, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (6 pages)

A mother appeals the termination of her parental rights to her children. **OPINION HOLDS:** The grounds for terminating the mother's parental rights pursuant to Iowa Code section 232.116(1)(f) (2017) have been proved because clear and convincing evidence shows the children could not be returned to the mother's care at the time of the termination hearing. Because the issue was not raised at the time the services were provided, the mother has failed to preserve her challenge to the reasonable-efforts requirement. Termination is in the children's best interests. Accordingly, we affirm.

No. 18-0581 **IN RE K.C.**

AFFIRMED.

Appeal from the Iowa District Court for Linn County, Susan F. Flaherty, Associate Juvenile Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by McDonald, J. (7 pages)

A mother appeals from an order terminating her parental rights pursuant to Iowa Code chapter 232 (2017). She challenges the sufficiency of the evidence supporting the statutory grounds authorizing the termination of her parental rights, contends the Iowa Department of Human Services failed to make reasonable efforts towards reunification, and argues termination is not in the best interest of her children. **OPINION HOLDS:** Upon our de novo review we find the mother's claims to be without merit. We affirm the order of the juvenile court.

No. 18-0598 **IN RE A.W.**

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 Tabor, JJ. Opinion by Tabor, J. (6 pages)

Two parents appeal the order terminating their parental rights to two children. Both parents argue the children could be returned home. The father also contends termination of his parental rights was not in the children's best interests. **OPINION HOLDS:** Given the parents' histories of unabated drug use, mental-health challenges, and incidents of domestic violence, we agree with the conclusions of the juvenile court and affirm the termination order.

No. 18-0618 **IN RE T.B.**

AFFIRMED ON BOTH APPEALS.

Appeal from the Iowa District Court for O'Brien County, David C. Larson, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (11 pages)

Two parents appeal from an order terminating their parental rights to two children. They contend the State offered insufficient proof the children could not be returned to their care; termination will be detrimental to the children due to the closeness of their relationship; and they should have been given an additional six months to work towards reunification. **OPINION HOLDS:** Although the parents addressed the initial concerns of homelessness and instability, continued removal of the children is necessary because of shortcomings in their parenting skills and judgment. After two years out of their parents' care, including an extension of six months, the best interests of these young children is served by termination of parental rights. We affirm the juvenile court order.

No. 18-0623 **IN RE S.C.**

AFFIRMED.

Appeal from the Iowa District Court for Warren County, Mark F. Schlenker, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (8 pages)

A mother appeals the juvenile court decision terminating her parental rights. **OPINION HOLDS:** We find the statutory grounds for termination under section 232.116(1)(*l*) (2017) of the mother's parental rights were established by clear and convincing evidence, an extension of time is unwarranted, termination is in the child's best interests, and no section 232.116(3) exception precludes the need for termination. We affirm the decision of the juvenile court.

No. 18-0641 **IN RE J.D.**

REVERSED AND REMANDED.

Appeal from the Iowa District Court for Monona County, Timothy T. Jarman and Mark C. Cord, District Associate Judges. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Mullins, J. (7 pages)

A mother appeals a juvenile court order adjudicating her children to be children in need of assistance (CINA) and the subsequent dispositional order. She contends the CINA adjudication is unsupported by clear and convincing evidence or, alternatively, the juvenile court erred in declining to return the children to the parents' care at the time of disposition. **OPINION HOLDS:** Upon our de novo review, we conclude adjudication pursuant to section 232.2(6)(c)(2) (2017) was not supported by clear and convincing evidence. As such, we reverse the adjudication and remand for dismissal of the State's petition. Our disposition renders our consideration of the mother's alternative challenge to the juvenile court's dispositional order unnecessary.

No. 18-0698 **IN RE Z.C.**

AFFIRMED ON BOTH APPEALS.

Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Tabor, J., takes no part. Opinion by Vogel, P.J. (7 pages)

The mother and father separately appeal the district court's termination of their parental rights to their child, Z.C. **OPINION HOLDS:** Because the district court properly terminated both parents' rights under paragraph (h), their unresolved substance-abuse and mental-health issues result in Z.C. being unable to be placed in their care, termination is in Z.C.'s best interests, and no factors preclude termination, we affirm.

No. 18-0735 **IN RE S.P.**

AFFIRMED.

Appeal from the Iowa District Court for Butler County, Peter B. Newell, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (6 pages)

A mother appeals a child-in-need-of-assistance permanency review order transferring guardianship and custody of her younger child to the relatives with whom he had been living for two years. She contends the department of human services failed to make reasonable efforts toward reunification and the district court should have returned the child to her care. **OPINION HOLDS:** We conclude the department satisfied its obligation to provide reasonable reunification efforts; reunification was simply not a viable option under these circumstances, and a guardianship with the mother's relatives was in the child's best interests.

No. 18-0790 **IN RE K.H.-K.**

AFFIRMED.

Appeal from the Iowa District Court for Buchanan County, Stephanie C. Rattenborg, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by McDonald, J. (6 pages)

A father appeals from an order terminating his parental rights. He challenges the sufficiency of the evidence supporting the statutory grounds authorizing the termination of his parental rights and argues termination of the parent-child relationship is not in the best interest of his child. **OPINION HOLDS:** There is clear and convincing evidence supporting termination of the father's parental rights pursuant to Iowa Code section 232.116(1)(e) (2017). We also find termination to be in the best interest of the child.