

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Pursuant to Iowa Rule of Appellate Procedure 6.904(2)(6), an unpublished opinion of the Iowa Court of Appeals may be cited in a brief; however, unpublished opinions shall not constitute controlling legal authority.

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**No. 16-0291**

**SHELTON v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Lucas County, Gary G. Kimes, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, P.J. Special Concurrence by McDonald, J. (11 pages)

Shawn Shelton appeals the district court's dismissal of his contempt action and his underlying motion for injunctive relief. **OPINION HOLDS:** Because we find no abuse of discretion by the district court in dismissing Shelton's contempt action and his underlying motion for injunctive relief, we affirm the court's dismissal of Shelton's motions. **SPECIAL CONCURRENCE ASSERTS:** I would dismiss this appeal for want of jurisdiction. Shelton's filing of a motion wholly unrelated to the underlying case seven years after final judgment was entered does not revive the case or create jurisdiction in the district court or appellate courts where it does not exist.

**No. 16-0875**

**PATE v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, David N. May, Judge. Heard by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Vaitheswaran, J. (12 pages)

Robert Pate Jr. appeals the denial of his postconviction relief application. He argues the district court erred in (1) denying his ineffective-assistance-of-counsel claims, (2) limiting discovery in the postconviction relief proceedings, and (3) concluding he did not establish pre-accusatorial delay. **OPINION HOLDS:** (1) All of Pate's ineffective assistance-of-counsel claims fail. (2) The district court did not abuse its discretion in limiting discovery. (3) Pate did not establish pre-accusatorial delay. We affirm the district court's denial of Pate's postconviction relief application.

**No. 16-0949**

**GALWAY HOMES, INC. v. MANOLIDIS**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, Jeffrey D. Farrell, Judge. Heard by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (12 pages)

Galway Homes, Inc. appeals a district court decision denying its breach-of-contract claim. Antonia and Tom Manolidis cross-appeal the district court's decision denying their counterclaim for earnest money. Both Galway and the Manolidises assert the district court should have awarded attorney's fees. **OPINION HOLDS:** Because Galway did not make an unqualified manifestation of its desire to exercise the option agreement, the agreement automatically terminated and the district court correctly found no breach of the agreement by the Manolidises. Further, because the option agreement did not contain language regarding the earnest money if the property was not rezoned and Galway failed to follow through with the purchase, we affirm the district court's ruling denying the Manolidises' claim. We also affirm the district court's denial of both parties' requests for attorney fees.

**No. 16-1747**

**STATE v. DORMIRE**

**AFFIRMED.**

Appeal from the Iowa District Court for Scott County, Stuart P. Werling, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle,

J. (5 pages)

Caleb Dormire appeals following his conviction of second-degree sexual abuse. **OPINION HOLDS:** Applying our supreme court's holding in *State v. Williams*, 895 N.W.2d 856, 867 (Iowa 2017), to the facts of this case, there was no violation of the speedy-indictment rule, and we therefore affirm the order denying Dormire's motion to dismiss. We preserve Dormire's claims of ineffective assistance of counsel for a possible postconviction proceeding.

**No. 16-2059**

**CORY v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Story County, Michael J. Moon, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (7 pages)

Jeremy Cory appeals from the district court's summary dismissal of his application for postconviction relief (PCR). Here, Cory maintains the district court erred in granting the State's motion for summary dismissal. Alternatively, he maintains PCR counsel provided ineffective assistance by allowing his PCR application to be summarily dismissed. **OPINION HOLDS:** Based on the record that was before the PCR court at the time of the hearing for motion on summary judgment, we cannot say the court erred in granting the State's motion. Additionally, because Cory concedes he cannot establish prejudice due to the inaction of PCR counsel on this record and he has not asked us to find structural error, we preserve Cory's claim that PCR counsel provided ineffective assistance to allow for further development of the record in possible future PCR actions.

**No. 16-2194**

**STATE v. POLTON**

**AFFIRMED.**

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

A defendant appeals his conviction for possession of marijuana. **OPINION HOLDS:** We find error was not preserved for direct appeal. We preserve Polton's claim of ineffective assistance of counsel for possible postconviction proceedings.

**No. 17-0112**

**STATE v. WEST**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, Paul D. Scott, Judge. Considered by Potterfield, P.J., Mullins, J., and Mahan, S.J. Opinion by Mahan, S.J. (5 pages)

Carl West appeals his conviction of murder in the second degree, contending his trial counsel was ineffective in failing to object to the admission of 911 recordings as being more prejudicial than probative. **OPINION HOLDS:** Considering the overwhelming evidence that was properly admitted, the record affirmatively establishes a lack of prejudice in this case. We affirm.

**No. 17-0162**

**HUFFER v. JORDAN AND MAHONEY LAW FIRM**

**AFFIRMED.**

Appeal from the Iowa District Court for Story County, James C. Ellefson and Michael J. Moon, Judges. Considered by Mullins, P.J., McDonald, J., and Scott, S.J. Opinion by McDonald, J. (3 pages)

Duane Huffer appeals from the dismissal of his claims and several collateral rulings. **OPINION HOLDS:** After full consideration of Huffer's claims, we conclude the district court did not err in dismissing the claims. We also cannot conclude the district court abused its discretion or otherwise erred with respect to

the challenged collateral rulings.

**No. 17-0299**

**IN RE MARRIAGE OF MCFADON**

**AFFIRMED.**

Appeal from the Iowa District Court for Muscatine County, Stuart P. Werling, Judge. Heard by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (6 pages)

Timothy McFadon appeals the district court's ruling on postsecondary education expenses. **OPINION HOLDS:** We find the district court properly found Timothy should be required to pay a postsecondary education subsidy for all four years S.M. is attending college. We award appellate attorney fees of \$1000 to Desiree Welsch. We affirm the decision of the district court.

**No. 17-0366**

**WINTERS v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Cerro Gordo County, Gregg R. Rosenblatt, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Vaitheswaran, J. (5 pages)

Michael Jon Winters appeals the denial of his third application for postconviction relief, claiming his plea attorney was ineffective (1) in failing to inform him "he did not have an absolute right to withdraw his guilty plea" and (2) in failing to investigate the victim's criminal history. He also claims his prior postconviction attorney was ineffective in failing to raise these claims. **OPINION HOLDS:** (1) Winters' plea attorney did not breach an essential duty in failing to inform him of the inability to withdraw his plea based on buyer's remorse. (2) There is no reasonable probability that, had Winters' plea attorney discovered the criminal history of the victim, Winters would have insisted on going to trial. Postconviction counsel was not ineffective in failing to raise those claims. We affirm.

**No. 17-0372**

**STATE v. MONAHAN**

**REVERSED.**

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge. Heard by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. Special concurrence by Vaitheswaran, J. (18 pages)

Paul Monahan appeals his convictions on five counts of invasion of privacy. **OPINION HOLDS:** We find the State has failed to show the complaining witnesses had a reasonable expectation of privacy. Also, because there is limited evidence to show Monahan knowingly viewed the genitals of the five complaining witnesses and no evidence beyond that to show he was acting for the purpose of arousing or gratifying his sexual desires, we conclude there is not substantial evidence in the record to support Monahan's convictions. Due to our findings on the sufficiency of the evidence, we do not address the other issues Monahan raises on appeal. We reverse the decision of the district court. **SPECIAL CONCURRENCE ASSERTS:** Although the State failed to prove Monahan viewed the teenagers "for the purpose of arousing or gratifying the sexual desire of any person," substantial evidence supports the district court's finding that the boys had "a reasonable expectation of privacy."

**No. 17-0395**

**STATE v. GORDON**

**SENTENCE VACATED  
AND REMANDED FOR  
RESENTENCING.**

Appeal from the Iowa District Court for Floyd County, DeDra L. Schroeder, Judge. Heard En Banc. Opinion by Tabor, J. Dissents by Vogel, Doyle, Mullins, and McDonald, JJ. (42 pages)

Sean Gordon requests resentencing for his conviction of third-degree sexual abuse. Gordon argues the sentencing court impermissibly considered actuarial risk assessment tools contained in the presentencing investigation report. He also argues the court considered an unproven crime and other inappropriate factors. **OPINION HOLDS:** Because the actuarial risk assessment tools assess a defendant's likelihood to reoffend based on group classifications and not based on the defendant individually, the sentencing court improperly considered the risk assessment. We do not reach Gordon's claim the district court considered other unproven or inappropriate factors. Resentencing is necessary. **DISSENT BY MCDONALD ASSERTS:** I disagree with the majority's decision to advance and decide claims not presented, briefed, or argued by the parties. Even if the abuse-of-discretion claim had been presented, I could not conclude the district court abused its substantial discretion on these facts. **DISSENT BY MULLINS ASSERTS:** I join in the dissent by Judge McDonald, and write separately. Failure of the legislature to specifically authorize or require use of risk assessments in sentencing does not necessarily mean a sentencing court abuses its discretion by considering such information. Our supreme court has approved the use of sex-offender assessments in restraining the liberty of sexually violent predators. I cannot reconcile the admissibility of the sex-offender risk assessments for purposes of long-term institutional commitment of an individual with a refusal to allow a district court judge to consider that same or similar information among several factors in determining a tailor-made sentence for an individual criminal defendant. Finally, the trial court record in this case is inadequate to support the result reached by the majority.

**No. 17-0447**

**STATE v. HAGLIN**

**AFFIRMED.**

Appeal from the Iowa District Court for Linn County, Kevin McKeever, Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Danilson, C.J. (6 pages)

Mary Haglin appeals from her conviction for sexual exploitation by a school employee, in violation of Iowa Code section 709.15(2), (3)(a)(2), and (5)(b) (2016). Haglin maintains the district court erred in finding in favor of the State on Haglin's motion to adjudicate law points on the issue of whether Haglin met the definition of a "school employee" under section 709.15. **OPINION HOLDS:** Finding no error, we affirm.

**No. 17-0449**

**IN RE J.R.**

**AFFIRMED.**

Appeal from the Iowa District Court for Marshall County, Timothy J. Finn, Judge. Considered by Tabor, P.J., McDonald, J., and Carr, S.J. Opinion by Carr, S.J. (5 pages)

J.R. appeals the order denying his writ of habeas corpus to vacate and set aside his involuntary commitment. **OPINION HOLDS:** Because substantial evidence supports the court's finding that J.R. is seriously mentally impaired, we affirm the order denying J.R.'s writ of habeas corpus.

**No. 17-0474**

**PENA v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Scott County, Thomas G. Reidel, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (19 pages)

Derrick Pena appeals from the denial of his application for postconviction relief, claiming trial counsel provided ineffective assistance in a number of ways: (1) failing to inform him of his right to testify or to advise him he should do so; (2) failing to properly investigate and prepare the case; (3) failing to object to

testimony regarding statements Pena made about robberies in the area prior to the incident; (4) failing to advise him of his plea options; and (5) failing to make a *Batson* challenge when the prosecution struck one of two minority potential jurors. Pena also claims direct appeal counsel provided ineffective assistance by failing to challenge the district court's denial of his motion for new trial on direct appeal. **OPINION HOLDS:** Because Pena has failed to establish that either his trial counsel or his appellate counsel provided ineffective assistance, we affirm.

**No. 17-0491**

**STATE v. BONILLA**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge. Considered by Vogel, P.J., Bower, J., and Scott, S.J. Opinion by Vogel, P.J. (9 pages)

Ever Bonilla appeals from his convictions for third-degree sexual abuse and false imprisonment, contending his trial counsel was ineffective in failing to specifically assert in his motion for judgment of acquittal the insufficiency of the evidence supporting the false-imprisonment charge, and the district court erred in denying his motion for a new trial and in ordering him to pay restitution. **OPINION HOLDS:** Because we conclude there was sufficient evidence to support the false-imprisonment charge, Bonilla's counsel was not ineffective in failing to make a more specific argument in the motion for judgment of acquittal. Also, we conclude the jury verdict was not against the weight of the evidence and the district court considered Bonilla's ability to pay in ordering restitution.

**No. 17-0514**

**HOBBS v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Lee (South) County, John G. Linn, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (5 pages)

Tyler Hobbs appeals the denial of his application for postconviction relief. He argues his trial counsel was ineffective for failing to inform him of a defense of others. **OPINION HOLDS:** Because Hobbs's trial counsel credibly testified about explaining the defense of others to him prior to trial, we conclude Hobbs has not proven his trial counsel was ineffective. We affirm the district court's decision denying Hobbs's application for postconviction relief.

**No. 17-0519**

**STATE v. MATHEWS**

**AFFIRMED.**

Appeal from the Iowa District Court for Black Hawk County, Andrea J. Dryer, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (5 pages)

Jessie Mathews appeals his conviction for first-degree robbery. **OPINION HOLDS:** We find the district court did not abuse its discretion in sentencing and preserve Mathews's claim of ineffective assistance for postconviction proceedings.

**No. 17-0549**

**STATE v. SINN**

**AFFIRMED.**

Appeal from the Iowa District Court for Henry County, Michael J. Schilling, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (12 pages)

Robert Sinn challenges his conviction and sentence for sexual abuse in the third degree. He contends the district court erred in declining to give his requested spoliation instruction and argues there is insufficient evidence to support his conviction. **OPINION HOLDS:** The district court did not err in declining to give Sinn's proposed spoliation instruction. Sinn failed to establish the State was ever in possession or control of the surveillance footage or that it was

intentionally destroyed. We also find there is substantial evidence to support a reasonable inference Sinn committed a sex act.

**No. 17-0589**

**STATE v. GUISE**

**SENTENCE VACATED  
AND REMANDED FOR  
RESENTENCING.**

Appeal from the Iowa District Court for Cerro Gordo County, Colleen D. Weiland, Judge. Heard En Banc. Opinion by Vaitheswaran, J. Dissents by McDonald, Vogel, Doyle, and Mullins, JJ. (53 pages)

Montez Guise challenges the district court's use of a risk assessment tool in sentencing him. He (1) challenges the district court's reliance on the "Iowa Risk Revised" (IRR) and (2) contends the district court considered an "unproved allegation" of assault. **OPINION HOLDS:** (1) The district court abused its discretion in using the IRR in sentencing without any information about its reliability, and (2) the district court did not consider an unproven offense. Therefore, we vacate Guise' sentence and remand for resentencing without consideration of the IRR on this state of the record. **DISSENT BY MCDONALD ASSERTS:** The sentencing court's consideration of a single, unchallenged sentence regarding a risk assessment in the presentence investigation report is not violation of Guise's due process rights or an abuse of discretion. Guise failed to prove prejudice and thus his ineffective assistance claim also fails. For these reasons, I dissent. **DISSENT BY VOGEL ASSERTS:** The statewide use of risk assessment tools provides uniformity, and the majority's opinion raises serious practical considerations for our sentencing judges. **DISSENT BY DOYLE ASSERTS:** I join in the dissents, but I write separately to address the issue of the use of the term "abuse of discretion." Instances of mistake, human error, or judgment just not to our liking by a district court should not be described as discretion abuse. I call for abandonment of the term "abuse of discretion" in circumstances like those presented here and suggest we replace it with something more fitting. **DISSENT BY MULLINS ASSERTS:** I join in the dissents by Judges Vogel and McDonald and write separately. I acknowledge the concern of the majority opinion that the legislature has not explicitly directed judges to consider the results of risk assessment evaluations in making all sentencing decisions, but disagree that the lack of explicit direction requires exclusion of a sentencing court's consideration of risk assessment evaluations disclosed and intertwined in presentence investigation reports. The information used and considered by the judicial district department of correctional services is important to a sentencing judge in deciding whether probation would likely accomplish the required objectives of sentencing, and thus which of the required sentencing options it should order. I also note Guise did not make an adequate record on the issues upon which the majority relies to reverse the sentence in this case. Unlike the majority, my trouble is with the lack of record that I believe should be necessary to reverse Guise's sentence.

**No. 17-0624**

**STATE v. PLETTENBERG**

**AFFIRMED.**

Appeal from the Iowa District Court for Marshall County, Kim M. Riley, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, P.J. Partial Dissent by Tabor, J. (20 pages)

Marc Plettenberg appeals his convictions, sentences, and the restitution orders entered following his guilty pleas to four offenses, challenging numerous aspects of the case. **OPINION HOLDS:** Upon our review, we find Plettenberg failed to preserve his claim that the district court did not comply with Iowa Rule of Criminal Procedure 2.8(2) such that his guilty pleas were unknowingly and involuntarily made. We find Plettenberg failed to establish that his trial counsel was ineffective or that the district court erred in entering a restitution order requiring Plettenberg to reimburse the county sheriff's office for damages to one of

its vehicles. Finally, we find no abuse of discretion in the district court's decision to impose consecutive sentences. Accordingly, we affirm his convictions, sentences, and the relevant restitution order. **PARTIAL DISSENT ASSERTS:** The Marshall County Sheriff's Department is not eligible for restitution because it does not qualify as a victim under Iowa Code section 910.1(5) (2016). The department suffered damages to its patrol truck as a result of its own sergeant's decision to strike Plettenberg's vehicle in order to stop him. Law enforcement is not generally compensated for losses associated with performing its basic functions like investigating and solving crimes.

**No. 17-0637**

**STATE v. DAVIS**

**AFFIRMED.**

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Mullins, J. (10 pages)

Robert Davis appeals his conviction of operating while intoxicated, second offense, contending the district court erred in partially denying his motion to suppress evidence. He specifically argues his statutory rights under Iowa Code section 804.20 (2015) were violated and such violation requires suppression of the chemical breath test he provided to law enforcement following his arrest. **OPINION HOLDS:** Because Davis's statutory rights under Iowa Code section 804.20 were not violated, he was not entitled to suppression of the chemical breath test. We therefore affirm his conviction.

**No. 17-0648**

**STATE v. TENNANT**

**AFFIRMED.**

Appeal from the Iowa District Court for Scott County, Mark R. Lawson, Judge, and Mark R. Fowler, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by McDonald, J. (8 pages)

Gregory Tennant appeals his convictions for possession of a controlled substance, marijuana, and operating without registration. He contends the district court violated his right to speedy trial and erred in denying his motion to suppress evidence. Tennant raises several additional claims in a pro per brief. **OPINION HOLDS:** The district court did not err in denying Tennant's motion to dismiss based on a finding of good cause or in denying the motion to suppress evidence. None of the other claims raised by Tennant have merit.

**No. 17-0661**

**STATE v. VENTURA**

**AFFIRMED.**

Appeal from the Iowa District Court for Dallas County, Paul R. Huscher, Judge. Considered by Vaitheswaran, P.J., Potterfield, J., and Blane, S.J. Opinion by Potterfield, J. (6 pages)

Carlos Hernandez Ventura appeals from his three convictions for first-degree murder. On appeal, Hernandez Ventura maintains the district court abused its discretion in denying his motion to strike a juror for cause. He also maintains the district court erred in refusing to instruct the jury on the defense of necessity and that the instruction informing the jury the defense of compulsion was not available to him should have included language that evidence relevant to that defense may still be relevant to other issues in the case. **OPINION HOLDS:** Hernandez Ventura concedes he cannot establish that the jury that served in his case was not impartial; thus he is not entitled to relief for the district court's denial of his motion to strike a juror for cause. Because Hernandez Ventura did not create a fact question sufficient to submit the necessity defense to the jury, the district court did not err in refusing to instruct the jury on it. Finally, we cannot say the district court erred in refusing to include the additional language Hernandez Ventura requested. We affirm.

**No. 17-0705**

**STATE v. STEWART**

**AFFIRMED.**

Appeal from the Iowa District Court for Black Hawk County, Nathan A. Callahan, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (4 pages)

Lydell Stewart appeals his conviction asserting the district court erred in denying his motion to suppress evidence. **OPINION HOLDS:** Because we agree with the district court that the automobile exception applies to this set of facts, we affirm the district court's denial of Stewart's motion to suppress.

**No. 17-0723**

**STONE v. FORD**

**AFFIRMED.**

Appeal from the Iowa District Court for Johnson County, Lars G. Anderson, Judge. Heard by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by McDonald, J. (10 pages)

Jade and Darcie Stone appeal from the district court's ruling finding Charles and Joyce Ford did not breach their duty to disclose under Iowa Code chapter 558A (2016) and did not commit fraudulent misrepresentation. **OPINION HOLDS:** Under our deferential standard of review, when the evidence is viewed in the light most favorable to the district court's judgment, substantial evidence supports the findings of the district court. We affirm the judgment of the district court in all respects.

**No. 17-0769**

**IN RE MARRIAGE OF MERTZ**

**AFFIRMED.**

Appeal from the Iowa District Court for Kossuth County, Don E. Courtney, Judge. Heard by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Vaitheswaran, J. Dissent by Danilson, C.J. (6 pages)

A mother appeals the provision of a dissolution of marriage decree granting the father physical care of their child. **OPINION HOLDS:** On our de novo review, we conclude the district court acted equitably in granting the father physical care of the child. We decline the mother's request for appellate attorney fees. **DISSENT ASSERTS:** Physical care and appellate attorney fees should be awarded to the mother.

**No. 17-0776**

**STATE v. TROMBONE**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, Glen E. Pille, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (3 pages)

DeShaun Trombone appeals the district court's sentencing order on remand, contending his prior appellate attorney was ineffective in "fail[ing] to request an appropriate remedy thereby prejudicing him when he was resentenced." **OPINION HOLDS:** In the first appeal, this court ordered a remedy authorized by the Iowa Supreme Court. Accordingly, Trombone cannot establish his appellate attorney was ineffective in failing to argue for a different remedy. We affirm the district court's judgment and sentence on remand.

**No. 17-0778**

**STATE v. LEE**

**CONVICTIONS  
AFFIRMED;  
SENTENCES AFFIRMED  
IN PART, VACATED IN  
PART, AND**

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (11 pages)

Shawn Lee appeals his convictions and sentences for sexual abuse in the second degree and two counts of lascivious acts with a child. On appeal, Lee



**REMANDED.**

maintains there was insufficient evidence to support one of his convictions for lascivious acts with a child and the district court abused its discretion when it declined to permit him to question the complaining witness about her prior use of drugs and alcohol. He also maintains the district court abused its discretion when it imposed consecutive sentences and argues the imposition of the section 911.2B surcharge constituted a violation of the Ex Post Facto Clause. **OPINION HOLDS:** Because substantial evidence supports Lee's conviction for lascivious acts with a child for making the child touch or fondle his pubes or genitals, Lee's trial attorney did not provide ineffective assistance by failing to raise that claim of error with the district court. Additionally, the district court did not abuse its discretion in excluding testimony regarding the complaining witness's prior illegal use of drugs and alcohol nor in imposing consecutive sentences. However, the imposition of the section 911.2B surcharge violated the Ex Post Facto Clause, so we remand to the district court only for the entry of a corrected sentence.

**No. 17-0782**

**STATE v. GOODEN**

**AFFIRMED.**

Appeal from the Iowa District Court for Scott County, Mark R. Lawson, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (3 pages)

Clifford Gooden appeals following a jury trial finding him guilty of operating a vehicle without the owner's consent, asserting his constitutional rights were violated as a result of juror bias. **OPINION HOLDS:** Gooden concedes his trial counsel did not challenge the juror for cause, which waived any objection he may have had concerning the alleged bias. He alternatively presents the claim as one of ineffective assistance, but because we find his challenge requires a more fully developed record, we preserve his claim for possible postconviction-relief proceedings.

**No. 17-0795**

**PEGRAM v. STATE**

**AFFIRMED.**

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

Roger Pegram appeals from the dismissal of his second application for postconviction relief (PCR) after the district court granted the State's motion for summary disposition. **OPINION HOLDS:** Because Pegram's second PCR application was time barred by the statute of limitations, the court did not err in granting the State's motion for summary disposition and dismissing the PCR application. Accordingly, we affirm the ruling of the district court.

**No. 17-0830**

**IN RE MARRIAGE OF KOELLNER**

**AFFIRMED.**

Appeal from the Iowa District Court for Van Buren County, John G. Linn, Judge. Considered by Danilson, C.J., Bower, J., and Scott, S.J. Opinion by Scott, S.J. (6 pages)

Timothy Koellner appeals the child-support provision of the decree dissolving his marriage to Lesa Koellner. Timothy generally argues the district court erred in calculating his income and, therefore, his child-support obligation. Lesa requests an award of appellate attorney fees. **OPINION HOLDS:** Upon our de novo review of the sole issue presented, we are unable to conclude the district court's ruling failed to do equity for Timothy. We therefore affirm the child-support provision of the decree. We order Timothy to pay Lesa appellate attorney fees in the amount of \$1000.00. Costs on appeal are assessed to Timothy.

**No. 17-0852**

**STATE v. KLINKKAMMER**

**AFFIRMED.**

Appeal from the Iowa District Court for Johnson County, Jason A. Burns, District Associate Judge. Heard by Potterfield, P.J., and Mullins and Bower, JJ. Opinion by Bower, J. Special Concurrence by Potterfield, P.J. (5 pages)

Tracy Klinkkammer appeals his conviction for operating while intoxicated, in violation of Iowa Code section 321J.2 (2015). **OPINION HOLDS:** We find Klinkkammer's right to communicate with family or an attorney was not violated. **SPECIAL CONCURRENCE ASSERTS:** While I believe Klinkkammer's statement was an adequate request to make a phone call under the statute, because the record before us establishes that the officer did not hear Klinkkammer, I would affirm the district court's denial of Klinkkammer's motion to suppress.

**No. 17-0865**

**BURNETT v. STATE**

**AFFIRMED.**

Appeal from the Iowa District Court for Pottawattamie County, Richard H. Davidson, Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by McDonald, J. (3 pages)

Terrance Burnett appeals from the dismissal of his second application for postconviction relief. He contends the district court erred in dismissing his application as time barred. **OPINION HOLDS:** On review for the correction of legal error, we conclude the district court did not err in dismissing Burnett's untimely second application for postconviction relief.

**No. 17-0871**

**STATE v. MCFARLAND**

**AFFIRMED.**

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. Considered by Danilson, C.J., Mullins, J., and Mahan, S.J. Opinion by Mullins, J. (6 pages)

Norris McFarland appeals his convictions, following guilty pleas, to two drug charges. He challenges his guilty pleas through two claims of ineffective assistance of counsel. **OPINION HOLDS:** We find the record inadequate to resolve either of McFarland's ineffective-assistance claims. We therefore affirm his convictions but preserve his claims for possible postconviction-relief proceedings.

**No. 17-0884**

**IN RE C.C.**

**AFFIRMED.**

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge. Heard by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (11 pages)

C.C. 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:** Iowa Code section 125.81(1) imposes on the court a duty to hold the commitment hearing within five days if the court exercises its power to order the respondent be taken into immediate custody and detained until the time of the commitment hearing. Because C.C. was not detained after the physician's examination, the duty was not triggered. C.C.'s ineffective-assistance claim fails because C.C. cannot show he was prejudiced by any breach of counsel's duty in stipulating that C.C. meets the criteria for treatment under chapter 125.

**No. 17-0901**

**STATE v. SMANIOTTO**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, David N. May, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Vaitheswaran, P.J. (3 pages)

Gary Smaniotto appeals his sentence for possession of a controlled substance (methamphetamine), second offense. He contends the district court “abused its discretion by failing to consider factors in sentencing, by failing to provide reasons for rejecting the plea agreement . . . and by sentencing [him] to a period of incarceration greater than the joint recommendation of the parties.” **OPINION HOLDS:** The district court did not abuse its discretion in enumerating its reasons for imposition of the 120-day jail term. We affirm the sentence imposed.

**No. 17-0931**

**STATE v. ROACHE**

**AFFIRMED.**

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

Terran Roache appeals from the district court order requiring him to pay \$3557.08 in restitution. Roache claims part of the obligation was unreasonable and the State has not established a causal connection between his offense and the amount owed. **OPINION HOLDS:** Because the victim’s \$1900 outstanding balance is a damage that is causally related to Roache’s criminal activities and was properly included in the restitution order, we affirm.

**No. 17-0964**

**STATE v. BUSH**

**AFFIRMED.**

Appeal from the Iowa District Court for Johnson County, Jason A. Burns, District Associate Judge. Considered by Doyle, P.J., Bower, J., and Blane, S.J. Opinion by Bower, J. (4 pages)

Adam Bush appeals his conviction for indecent exposure. **OPINION HOLDS:** We conclude there is sufficient evidence in the record to support a finding Bush had a sexual motivation when he exposed his genitals. We affirm Bush’s conviction for indecent exposure.

**No. 17-1027**

**IN RE I.M.**

**AFFIRMED.**

Appeal from the Iowa District Court for Webster County, Angela L. Doyle, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (6 pages)

I.M. appeals the juvenile court’s finding he committed the delinquent acts of attempted murder and going armed with intent. **OPINION HOLDS:** Upon our de novo review, we find the State has shown beyond a reasonable doubt I.M. committed the delinquent acts of attempted murder and going armed with intent. We affirm the juvenile court’s decision.

**No. 17-1037**

**STATE v. PHIPPS**

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

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (7 pages)

Joshua Phipps appeals the judgment and sentence entered after a jury found him guilty of aggravated theft. **OPINION HOLDS:** Counsel was not ineffective by failing to object to jury instructions that specified a general intent rather than a specific intent because aggravated theft statute does not require specific intent. Because the court improperly considered the termination of Phipps’s parental rights to three children in imposing his sentence, we vacate his sentence and remand the case for resentencing.

**No. 17-1039**

**STATE v. COOK**

Appeal from the Iowa District Court for Scott County, Stuart P. Werling,

**AFFIRMED.**

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

Joshua Cook appeals from his conviction following a bench trial for escape from custody, a class “D” felony, in violation of Iowa Code section 719.4(1) (2016). Cook contends there is insufficient evidence to show he “intentionally escape[d], . . . from a . . . community-based correctional facility.” Iowa Code § 719.4(1). Cook argues instead he should have been prosecuted for absence from custody under section 719.4(3). **OPINION HOLDS:** Because we conclude substantial evidence supports Cook’s conviction, we affirm.

**No. 17-1057**

**STATE v. GOAD**

**AFFIRMED.**

Appeal from the Iowa District Court for Linn County, Ian K. Thornhill, Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by McDonald, J. (3 pages)

Nathan Goad challenges his sentence for burglary in the third degree. He argues the district court erred by considering unproved criminal conduct in imposing sentence. **OPINION HOLDS:** Goad’s contention the district court relied on unproved criminal conduct is without merit. We affirm Goad’s sentence.

**No. 17-1099**

**IN RE GUARDIANSHIP OF MONKHOUSE**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, Craig E. Block, Associate Probate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (3 pages)

Timothy Monkhouse appeals the probate court order establishing a limited guardianship. **OPINION HOLDS:** We find substantial evidence supports the establishment of a guardianship limited to medical decisions, access to medical information, and determining living arrangements.

**No. 17-1125**

**STATE v. BREHME**

**REVERSED AND  
REMANDED.**

Appeal from the Iowa District Court for Calhoun County, Thomas J. Bice and Kurt J. Stoebe, Judges. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (8 pages)

Nathan Brehme appeals the judgment and sentence entered after a jury found him guilty of possession of a firearm by a felon. **OPINION HOLDS:** Viewing the record in the light most favorable to the State, there is insufficient evidence to show Brehme constructively possessed firearms given the joint possession of the premises. Accordingly, we reverse the judgment and sentence for possession of a firearm by a felon and remand for dismissal of the charge.

**No. 17-1161**

**IN RE MARRIAGE OF HERUM**

**AFFIRMED.**

Appeal from the Iowa District Court for Emmet County, Nancy L. Whittenburg, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (21 pages)

Scott Herum appeals the district court’s partial denial of his petition to modify the decree dissolving his marriage to Stacy Zumbach. Scott asks the court to terminate his alimony payment, give him more physical care of the parties’ children, reduce his child support obligation, award him a retroactive reduction in child support, and find the court’s delay was an abuse of discretion and violated court rules. **OPINION HOLDS:** Although we disagree with the reasoning of the district court, we reach the same conclusion: the parties contracted to make the alimony payments non-modifiable. Scott has not met the burden to justify a

change in the custodial provisions of the decree or in the amount of child support. Iowa law does not permit courts to award a retroactive reduction in child support before modification is ordered. Finally, there is no evidence the court violated court rules, and the delay in issuing the modification decision does not constitute an abuse of discretion. Scott will pay \$4000 toward Stacy's appellate attorney fees and the costs of this appeal.

**No. 17-1181**

**STATE v. GARCIA**

**AFFIRMED.**

Appeal from the Iowa District Court for Boone County, Paul G. Crawford, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (3 pages)

Gabriel Garcia pled guilty to eluding, in violation of Iowa Code section 321.279(3) (2017) and operating while intoxicated, second offense, in violation of Iowa Code section 321J.2. On appeal, he contends the district court failed to advise him of his right against self-incrimination. **OPINION HOLDS:** Because Garcia did not file a motion in arrest of judgment though he was informed of the requirement to do so, he has failed to preserve error. Also, Garcia does not assert his trial counsel was ineffective in failing to file the motion in arrest of judgment. We affirm Garcia's guilty pleas.

**No. 17-1228**

**STATE v. SMITH**

**AFFIRMED.**

Appeal from the Iowa District Court for Webster County, Angela L. Doyle, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Mullins, J. (9 pages)

Dajour Smith appeals his convictions following guilty pleas to the charges of indecent contact with a child and failure to comply with the sex offender registry. He claims he did not voluntarily or knowingly waive his right of allocution and the district court failed to advise him that his right must be exercised upon inquiry or it would otherwise be waived. He also contends the district court abused its discretion by imposing an excessive sentence by ordering consecutive prison sentences. **OPINION HOLDS:** Based on our review of the plea and sentencing transcript, we conclude there was no error or abuse of discretion by the district court. We affirm Smith's sentences.

**No. 17-1238**

**HEIMS v. HEIMS**

**AFFIRMED.**

Appeal from the Iowa District Court for Dubuque County, Thomas A. Bitter, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Vogel, P.J. (7 pages)

Lynette Heims appeals from the district court's denial of her application for rule to show cause. She argues Brad Heims should be held in contempt for failing to pay spousal support, in violation of their marital settlement agreement, which was incorporated into their Illinois "Judgment for Dissolution of Marriage." She also argues Brad should be required to pay her attorney fees and appellate attorney fees. **OPINION HOLDS:** We conclude the district court did not abuse its discretion in finding Lynette did not prove Brad engaged in willful disobedience of his obligation to pay spousal support, nor did it abuse its discretion in declining to order Brad to pay Lynette's attorney fees. Therefore, we affirm. We also decline to order Brad to pay Lynette's appellate attorney fees.

**No. 17-1312**

**STATE v. PLETTENBERG**

**AFFIRMED.**

Appeal from the Iowa District Court for Marshall County, Kim M. Riley, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, P.J. (7 pages)

Marc Plettenberg appeals the restitution order entered following his guilty pleas to four offenses. **OPINION HOLDS:** Upon our review, we find the matter of whether Plettenberg had the ability to pay the ordered restitution is not ripe for appeal. We reject Plettenberg's other arguments. Accordingly, we affirm the district court's restitution order.

**No. 17-1320**

**STATE v. BAXTER**

**AFFIRMED.**

Appeal from the Iowa District Court for Des Moines County, Jennifer Slocum Bailey, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (5 pages)

Max Baxter appeals his conviction for eluding a peace officer. **OPINION HOLDS:** We find Baxter was informed of the elements of eluding a peace officer and the burden to prove those elements beyond a reasonable doubt. Baxter has not shown he received ineffective assistance because defense counsel did not file a motion in arrest of judgment, as such a motion, if filed, would have been unsuccessful. We affirm Baxter's conviction.

**No. 17-1436**

**STATE v. HANKINS**

**AFFIRMED IN PART,  
SENTENCE FOR  
ELUDING VACATED,  
AND REMANDED WITH  
DIRECTIONS.**

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 Potterfield, J. (6 pages)

Seth Hankins appeals from his convictions and sentences for eluding, leaving the scene of an accident where a serious injury occurred, and third-degree fraudulent practice. Hankins maintains trial counsel provided ineffective assistance when he allowed Hankins to plead guilty to the crime of eluding without a factual basis to support the plea. He also maintains trial counsel acted ineffectively at sentencing by failing to competently advocate for him "after highly emotional victim impact statements." **OPINION HOLDS:** Because the record is silent regarding whether the officer in the marked police car was wearing a uniform—as is required for the crime of eluding—we vacate Hankins's sentence and remand to give the State the opportunity to establish a factual basis. As Hankins requests, we preserve his claim of ineffective assistance.

**No. 17-1456**

**STATE v. BLANCHARD**

**AFFIRMED.**

Appeal from the Iowa District Court for Taylor County, Dustria A. Relph, Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by McDonald, J. (4 pages)

William Blanchard challenges his conviction for possession of more than five grams of methamphetamine with intent to deliver. He contends his plea was not knowingly and voluntarily made due to the ineffective assistance of plea counsel. **OPINION HOLDS:** We find Blanchard's claim entirely inconsistent with the record in this case. We also find Blanchard has not established constitutional prejudice. For these reasons, we affirm Blanchard's conviction.

**No. 17-1476**

**STATE v. HAYNES**

**CONVICTION AND  
SENTENCE VACATED  
AND REMANDED.**

Appeal from the Iowa District Court for Jefferson County, Mary Ann Brown, Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (5 pages)

Bryce Haynes appeals his conviction after pleading guilty to one count of sexual exploitation of a minor. **OPINION HOLDS:** Because the record provides no detail as to what act Haynes solicited from a minor, there is an insufficient factual

basis for Haynes's guilty plea and trial counsel was ineffective in allowing Haynes to plead guilty. We vacate Haynes's conviction and remand the case to the district court to allow the State the opportunity to establish a factual basis.

**No. 17-1479**

**STATE v. HARRIS**

**AFFIRMED.**

Appeal from the Iowa District Court for Scott County, Mark R. Lawson and John D. Telleen, Judges. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (3 pages)

Cortez Harris appeals following his guilty plea to possession of marijuana with intent to deliver in violation of Iowa code section 124.401(1)(d) (2017). On appeal, Harris argues his plea counsel was ineffective and the sentencing court abused its discretion. **OPINION HOLDS:** Harris's ineffective-assistance-of-counsel claims are preserved for possible postconviction proceedings. We find the sentencing court did not abuse its discretion by considering Harris's lack of participation in in-jail programming and affirm Harris's sentence.

**No. 17-1549**

**IN RE MARRIAGE OF VICKERS**

**AFFIRMED.**

Appeal from the Iowa District Court for Jefferson County, Mary Ann Brown, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Vaitheswaran, J. (4 pages)

A father appeals the physical care provision of his dissolution decree. The mother requests appellate attorney fees of \$7500. **OPINION HOLDS:** On our de novo review, we find extensive support for the court's detailed fact findings. We affirm the court's physical care decision. We also order the father to pay \$2000 towards the mother's attorney fee obligation.

**No. 17-1600**

**STATE v. WILLIAMS**

**AFFIRMED.**

Appeal from the Iowa District Court for Mahaska County, Joel D. Yates, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Potterfield, J. (4 pages)

Jeremy Williams appeals the restitution order entered following his guilty plea to second-degree theft by possession of stolen property in violation of Iowa Code sections 714.1(4) and 714.2(2) (2017). **OPINION HOLDS:** Because the restitution order is within a reasonable range of the evidence, we affirm the district court's restitution order.

**No. 17-1683**

**TEEBO v. JOHNSON**

**REVERSED AND  
REMANDED WITH  
INSTRUCTIONS.**

Appeal from the Iowa District Court for Page County, James M. Richardson, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (10 pages)

The city of Shenandoah seeks interlocutory review of the district court's refusal to grant summary judgment and dismiss it as a party to a civil suit stemming from a police officer's off-duty conduct. **OPINION HOLDS:** Because the police officer was driving to work and not yet on duty when the accident occurred, the doctrine of respondeat superior does not apply and the city cannot be held liable for the officer's actions. The city should be dismissed from the civil suit.

**No. 17-1691**

**IN RE MARRIAGE OF LANG**

**AFFIRMED.**

Appeal from the Iowa District Court for Dubuque County, Thomas A. Bitter, Judge. Heard by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Mullins, J. (11 pages)

Katie Lang appeals a district court order modifying the physical-care provision of the decree dissolving her marriage to Jeffrey (Jeff) Lang, arguing the court should have modified the decree to place the child in her, rather than Jeff's, physical care. Katie also challenges the corresponding modification of her child-support obligation and the visitation schedule imposed. Jeff requests an award of appellate attorney fees. **OPINION HOLDS:** We affirm the district court's modification ruling in its entirety. We decline to award appellate attorney fees to Jeff. Costs on appeal are assessed to Katie.

**No. 17-2082**

**IN RE D.S.**

**AFFIRMED.**

Appeal from the Iowa District Court for Johnson County, Jason A. Burns, District Associate Judge. Considered by Danilson, C.J., Bower, J., and Mahan, S.J. Opinion by Mahan, S.J. (14 pages)

A child, through his attorney, appeals the permanency order entered by the juvenile court placing him with his father. **OPINION HOLDS:** Upon our review, we affirm the court's order.

**No. 18-0141**

**IN RE A.M.**

**AFFIRMED.**

Appeal from the Iowa District Court for Dallas County, Virginia Cobb, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Danilson, C.J. (11 pages)

A father appeals from the dispositional order confirming the removal of his children from his care. He does not contest the adjudication of his children as being children in need of assistance. However, he contends he has complied with all of the juvenile court's requirements and objects to the court's order that he obtain a hair-stat test. **OPINION HOLDS:** The father's continued demonstration of an inability to protect the children and allowing them to have unsupervised contact with their mother establishes a risk of inadequate supervision. In addition, in light of the father's admitted past use of methamphetamine, his continued refusal to provide a hair-stat drug test despite court orders, the testimony of the service provider about the father's behavioral indicators of drug use, and the court's observations of the father's behavioral characteristics at the dispositional hearing, we conclude the juvenile court had ample reasons to continue the children's removal and order the father to obtain a hair-stat drug test.

**No. 18-0202**

**IN RE T.K.**

**AFFIRMED ON BOTH APPEALS.**

Appeal from the Iowa District Court for Polk County, Joseph W. Seidlin, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Danilson, C.J. (9 pages)

A mother and father separately appeal from the termination of their parental rights to their children pursuant to Iowa Code section 232.116(1)(f) and (l) (2017). Both parents challenge the grounds for termination, contend termination is not in the children's best interests, and assert exceptions apply to preclude the need for termination. **OPINION HOLDS:** Because the parents have not taken significant steps to reengage in substance-abuse treatment or to address the domestic-violence concerns in their relationship, we affirm the termination of their parental rights to their children.

**No. 18-0226**

**IN RE C.L.**

**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 Vogel, P.J. (7 pages)



A mother appeals the termination of her parental rights to her daughter, asserting the State failed to prove the grounds for termination and the court should not have found termination was in the best interests of the child. The mother also asserts she should have been given additional time to work toward reunification. **OPINION HOLDS:** Because we agree with the district court that the child could not be returned to the mother at the time of the termination hearing, that termination was in the best interests of the child, and there are no impediments to termination, we affirm.

**No. 18-0283**

**IN RE A.B.**

**AFFIRMED.**

Appeal from the Iowa District Court for Dallas County, Virginia Cobb, District Associate Judge. Considered by Danilson, C.J., and Mullins and McDonald, JJ. Opinion by Mullins, J. (10 pages)

A father appeals a juvenile court order terminating his parental rights to his minor child contending the juvenile court erred in (1) finding clear and convincing evidence supported the statutory grounds for termination, (2) concluding termination is in the child's best interests, and (3) declining to apply a statutory exception to termination. **OPINION HOLDS:** We find the evidence sufficient to support termination under Iowa Code section 232.116(1)(f) (2017), termination is in the best interests of the child, and no exceptions apply to preclude termination. We therefore affirm.

**No. 18-0290**

**IN RE E.N.**

**AFFIRMED.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Bower, J. (5 pages)

A mother and father separately appeal the juvenile court order terminating their parental rights. **OPINION HOLDS:** We find the evidence was sufficient and termination is in the children's best interests.

**No. 18-0382**

**IN RE A.W.**

**AFFIRMED.**

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 Potterfield, J. (6 pages)

A mother appeals the juvenile court order removing her two children from her custody. On appeal, she argues the court should not have relied on sweat-patch testing as proof of her continuing drug use. **OPINION HOLDS:** We find sweat-patch testing a reliable method of detecting drug use and affirm the children's temporary removal.

**No. 18-0383**

**IN RE C.T.**

**AFFIRMED ON BOTH APPEALS.**

Appeal from the Iowa District Court for Fremont County, Craig M. Dreismeier, District Associate Judge. Considered by Vogel, P.J., and Doyle and Bower, JJ. Opinion by Doyle, J. (7 pages)

A mother appeals the termination of her parental rights to her child, C.T., and the State of Iowa and C.T.'s guardian ad litem appeal the juvenile court's order dismissing the petition to terminate C.T.'s father's parental rights. **OPINION HOLDS:** Upon our de novo review, we agree with the juvenile court that the State established the child could not be returned to the mother's care at the time of the termination-of-parental-rights hearing, given her lack of participation in the case, among other things. Additionally, we also agree that termination of the father's parental rights was not in the child's best interests under the unique facts of the

case. Accordingly, we affirm the juvenile court's order terminating the mother's parental rights and dismissing the petition to terminate the father's parental rights.

**No. 18-0386**

**IN RE X.L.**

**AFFIRMED.**

Appeal from the Iowa District Court for Cerro Gordo County, Gregg R. Rosenblatt, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ. Opinion by Tabor, J. (8 pages)

A father appeals the termination of his parental rights. In addition to challenging the statutory grounds, he claims termination is not in his son's best interests and would be detrimental due to their close relationship. He further asserts a lack of reasonable efforts and asks for an additional six months to work toward reunification. **OPINION HOLDS:** The circumstances meet the statutory basis for termination under section 232.116(1)(h) (2017), and termination was proper under sections 232.116(2) and (3). The father is not prepared, due to his unresolved substance-abuse issues, to assume custody despite reasonable efforts made on his behalf. An additional six months would not have remedied the situation.