

# Des Moines Register

## NEWS

# Iowa man who lost daughter while battling drug addiction makes long-shot bid to U.S. Supreme Court



**Lee Rood**

Des Moines Register

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The prosecutor who faced Kirk Simmons in the court video hearing pulled no punches: The likelihood of the first-time father being able to safely parent his baby girl was a long shot.

Assistant Madison County Attorney Andrea Lovig told a judge that Simmons had a severe, decades-long drug problem. He faced jail time for recent arrests. Unlike the baby's mother, Simmons had checked himself into inpatient drug treatment. But he'd been off methamphetamine for only four months.

"I would argue that it's just not long enough, given his track record, to prove that he is ready and able to maintain that sobriety," Lovig said.

The story of Simmons' long struggle with addiction progressed from drinking Bud tallboys and smoking pot in his youth to popping speed and shooting cocaine in his teens to opioid and meth abuse in adulthood. It's a familiar one in Iowa, where meth and opioid abuse has been on the rise for years.

And what happened to Simmons, a first-time father, in that December 2020 court hearing has been an increasingly common outcome.

District Associate Court Judge Kevin Parker went along with the recommendations of Lovig, who was representing the child and Iowa's then-Department of Human Services, now the Department of Health and Human Services. His ruling severed Simmons' parental rights, as well as those of the mother, who brought the baby girl into the world with meth in her system.

But in a state where such decisions generally go unchallenged, Simmons, a 50-year-old Indianola construction worker who formerly lived in Madison County, has taken his fight to father his now 2-year-old daughter a big step further.

In a last-ditch petition to the U.S. Supreme Court, he and his Des Moines attorney have argued the state's actions violated the U.S. Constitution in ways that could have implications for thousands of other parents in Iowa and other states.

"In this case, the petitioner... took every step instructed by the state's Department of Human Services to reunify with this child," Des Moines attorney Christine Branstad wrote in the petition to the high court. "But he was cut off at each pass by the very state agency which was statutorily charged to assist him in regaining custody."

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## **Attorney: Iowa's process violated Simmons' constitutional rights**

When the Iowa Court of Appeals reviewed Simmons' case earlier this year, it upheld Parker's 2020 decision, saying Simmons was unlikely to have won back his daughter from foster care even if he'd gotten more time to show progress toward being a fit father, as he requested.

At first blush, Simmons did make a better case for an extension than did the mother, whose parental rights had been terminated for two prior children, the court said. Ultimately, however, he failed to fully engage early enough in the services offered him in the first months of his daughter's life, which could have helped his case, it said.

"Considering the child's need for permanency and the father's delay in seeking treatment for his long-standing substance-abuse issues, we are not confident the need for removal will no longer exist after an additional six months," it said.

Branstad countered that Simmons' paternity, in question at the beginning in the case, wasn't even established until a month before the state sought termination. Afterward, she argued, DHS took shortcuts that made termination of his parental rights "a primary, foregone conclusion."

She said DHS hamstrung Simmons' effort by providing minimal services, cancelled or shorten his visits with the baby during the pandemic, and ignoring his requests, including

that the child be placed with his mother and father, who were registered foster parents.

She also argued that by combining hearings legally essential to the child welfare case, the state violated Simmons' constitutional rights to due process and equal protection.

The U.S. Supreme Court has weighed in on the constitutional rights of parents, deciding they must be protected even after a parent is declared unfit. But the justices have said little about how constitutional protections should be applied in termination of parental rights cases, according to the American Bar Association.

Simmons says he and his parents have spent nearly \$30,000 in legal fees to fight the termination of his parental rights and hire Branstad to prepare the petition for the Supreme Court.

Branstad contends Simmons' case is of national significance because many states currently combine into a single hearing two different legal matters. Under Iowa code, in a permanency hearing, which governs the termination of parental rights, the court must assess the current situation of a child welfare case, weigh evidence and determine what will bring a parent closer to reunifying with the child. But when that is combined with a parent's termination hearing, Branstad argues, the state's interest in ending that legal relationship becomes paramount.

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Combining the two matters is a practice for the state's convenience, she argues, that should be ruled illegal given the wording in Iowa's permanency code. Combining them also is at odds with procedures in other state courts and against the guidance of the National Council of Juvenile and Family Court Judges, she says.

Iowa's Department of Health and Human Services did not respond to a request for comment. It has historically not commented on specific child abuse cases, details of which are kept confidential under state law.

Lynn Hicks, a spokesman for the Iowa Attorney General's Office, which represents the agency in legal appeals, said that office has signed a waiver to the Supreme Court saying it doesn't intend to respond to Branstad's petition unless the Supreme Court requests it to do so.

But he said the state continues to hold permanency and termination hearings concurrently. He said the Iowa Court of Appeals has weighed in on the practice in previous cases, saying

the court has no obligation to hold separate hearings.

## **A love affair with meth**

In an interview with Watchdog, Simmons talked freely about his decades as an addict, his many arrests, seven stints in prison and all it cost him.

He said he started drinking and chewing tobacco when he was barely 12, a difficult time when his parents divorced. Growing up in Pella, he said, he didn't feel like he fit in.

"I wasn't rich and I wasn't Dutch, and back then that really mattered," he said of the community that celebrates its heritage with its annual Tulip Time festival.

In his teens, he said, he found friendship with other "misfits" who used a mix of drugs, and he wasn't afraid of experimenting because it masked his pain and left him feeling numb.

He graduated to meth in the early 1990s, before abuse of the highly addictive drug had become an epidemic in Iowa.

"When I got ahold of meth, man, I knew it was love," he said. "It's what did it for me the most."

By 2003, he said, he faced a list of felony drug charges that could have sent him to prison for more than 130 years. But a prosecutor took pity and offered him a plea deal that included a much more lenient sentence if he completed inpatient drug treatment.

He said he enjoyed five years of being "cleanish" after graduating from Bridges of Iowa's inpatient drug treatment program in 2004. But his continued drinking, he said, always led him back to hard drug use. At one point, he said, he used meth to stop using opiates.

"I kind of gave up on quitting altogether," he said. "I made peace with my demons."

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In 2018, the twice-divorced Simmons was in a relationship with a girlfriend, another meth user 20 years his junior, who became pregnant with her second child, a son.

Because her parental rights had been terminated after the birth of her first child, the new baby boy — born with meth in his system — came to the attention of DHS right away.

At the time, Simmons said, his girlfriend didn't know who the father was because she "was bouncing back and forth between me and another guy, who was a heroin addict. I was crazy about her, and I told her it didn't really matter. I was going to be the dad."

But DHS required a paternity test, and Simmons learned he wasn't the father of the boy. "I kind of train-wrecked again after that," he said.

## **His daughter is born, and he gets treatment**

Simmons recalled in court last year that he was arrested seven more times in the two years before the same girlfriend, then 28, gave birth to her third child, a girl, in February 2020.

He knew child protective workers would become involved, and he said he quit using meth during that pregnancy and tested negative for the drug the day the girl was born.

A drug test at the hospital revealed the baby had meth in her system, and the parents were asked to voluntarily give the state custody. Both did, fearing they wouldn't be able to see the baby as soon if they didn't.

The infant was placed in the same foster home as her older brother, Simmons said.

Simmons relapsed again after that, even after a paternity test in July 2020 showed the baby girl was his. The following month, he voluntarily checked into Bridges of Iowa, realizing his girlfriend was unlikely to get the baby back.

Over the next four months, he said, he did everything he could think of to prove to DHS and the court he could be a good father, maintaining his sobriety, taking parenting classes, attending visitations with his child, showing he was doing well at his job, and making improvements to a run-down house in Indianola that a friend let him live in for free.

He completed inpatient and outpatient treatment; ended the relationship with the girlfriend; took part in a special court program for family members with drug problems; became active in Bible study; and started a recovery meeting in Indianola with a friend.

That friend, Tawny Cochrane, 47, said the difference between the burly, jobless biker and the new Simmons, who has been a constant inspiration to her and others, was night and day.

"He had no motivation for anything until (his daughter) was born. I think people actually had bets, thinking he ain't gonna (stay sober,)" said Cochrane, also in recovery from meth addiction. "I get goosebumps thinking about it... because this was a guy who was as low as

you get. To see someone go from being a menace to being somebody that many people respect and look up to is a hell of a thing."

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Simmons said that when he failed to get his daughter and her half-brother back, he was devastated.

"I went above and beyond. I changed everything. It doesn't make sense to me," he said.

Still, he said, he hasn't relapsed in two years since treatment and he doesn't intend to.

Somewhere between the time when he broke down crying at his early recovery meetings, overcome with emotion, and when he realized he was making real progress, he began to look at sobriety another way, he said.

"At first, I saw Bridges of Iowa as a means to an end. I wanted a piece of paper to make the court happy," he said. "But I wound up finding a better life."

## **Did state do enough to ensure parental rights?**

Every state requires human services agencies to make reasonable efforts, in the form of assistance and services, to avoid removing children from their homes or, if they must go to foster care, to reunite them quickly with their parents.

Yet in a pandemic year when hundreds of court hearings and meetings were delayed or canceled, DHS called off nearly half of Simmons' scheduled visits with the baby, Branstad said.

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Simmons said after Covid hit, he had to switch to Zoom visits with the infant, which were awkward and sometimes agitated his daughter.

He and Branstad said he never failed a drug test after he began treatment. He also said he signed a release allowing his caseworker to access information about his progress with Bridges of Iowa, but that she barely made an effort to obtain the information before his termination case was decided.

Branstad said that during the process leading up to termination, DHS did little to help Simmons successfully reunite with his child.

“Instead of recognizing the father’s hard work and dedication to his child, DHS stalled action and allowed the case to stagnate. Stagnation, during the lockdown year of COVID, resulted in termination of parental rights,” she wrote in her petition to the Supreme Court.

## **What's next in Simmons' quest?**

In Iowa, a termination of parental rights petition can be filed for a child under 3 after as little as six months in foster care if there is clear and convincing evidence the child cannot be safely returned to the parents.

After the onset of the pandemic, however, groups like the federal Children’s Bureau issued guidance saying state agencies should work to ensure hearings and services continued and exercise flexibility in filing termination petitions in cases where necessary services had not been provided.

Iowa’s Supreme Court, which declined to review Simmons' case, has ruled in the past that "the state’s interest in obtaining a permanent home for a child as soon as possible is a compelling governmental interest."

Lawyers across the country file thousands of petitions like Branstad's, called writs of certioraris, each year, asking the U.S. Supreme Court to review important questions of federal law.

Four of nine justices must agree to hear a case for that to happen. The court issues fewer than 75 decisions each year.

It is expected to decide whether to take Simmons' case as soon as next month.

*Lee Rood's Reader's Watchdog column helps Iowans get answers and accountability from public officials, the justice system, businesses and nonprofits. Reach her at [lrood@registermedia.com](mailto:lrood@registermedia.com), at 515-284-8549, on Twitter at [@leerood](https://twitter.com/leerood) or on Facebook at [Facebook.com/readerswatchdog](https://www.facebook.com/readerswatchdog).*