2018 UPDATE

Civil Procedure/Trial Practice

Drake University General Practice Review
December 7, 2018

Hon. Michael D. Huppert
Polk County District Court
500 Mulberry Street
Des Moines, IA 50309

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I. Changes in court rules applicable to civil practice

A. Expedited civil actions (effective January 1, 2019).

1. Rule 1.281(1)(c).

a. Amended to add provision that the ECA certification must be filed before the discovery conference deadline under rule 1.507(1).

i. Not later than 21 days after any defendant has answered or appeared.

2. Rule 1.281(4)(b).

a. Amended to clarify that trial date must be set within one year of filing of petition.

B. Discovery rules (all effective January 1, 2019).

1. Domestic relation proceedings (rule 1.505(1)).

a. Parties may not seek discovery before initial disclosures have occurred.

i. Except where parties have stipulated or court has ordered that disclosures need not be made.

2. Cases transferred to district court from small claims court (rule 1.507(1)).

a. Discovery conference must take place no later than 21 days after case is docketed in district court.

3. Requests for admission (rule 1.510).

a. No longer may be served on plaintiff after petition is filed or on defendant after service.

i. Extends discovery moratorium in rule 1.505(1) to requests for admission.

4. Pretrial objections to exhibits (Rule 23.5—Form 2 and Form 3).

a. All objections, except as to relevancy pursuant to Iowa Rule of Evidence 5.402 and 5.403, must be made within time limits for pretrial submissions in scheduling order.

i. Within 7 days of filing exhibit list, or within 4 days if the deadline for filing the list is less than 10 days before trial.

ii. Objections are waived if not timely filed.

iii. Adds hearsay objections to those that which be reserved prior to trial or waived.

b. Effective January 1, 2019.

C. Rules applicable to partition proceedings (Chapter XII).

1. Rescinded effective July 1, 2018.

2. Consequence of adoption of new code chapter governing such proceedings.

a. Chapter 651.

i. Provides for all substantive and procedural provisions previously contained in Chapter XII (rules 1.1201-1.1228).

D. Small claims forms.

1. Modified to reflect higher jurisdictional amount in controversy (see below).

2. New forms to be used effective July 1, 2018.

3. Some format changes.

a. Updated ADA notice on some forms.

II. Statutory changes applicable to civil practice (all effective July 1, 2018, unless indicated otherwise)

A. Dramshop actions.

1. Iowa Code §123.92(1).

a. Clarifies the class of plaintiffs from "any person" to "any third party who is not the intoxicated person who caused the injury at issue."

b. Changes standard of liability from "knew or should have known the person was intoxicated" or "knew or should have known the person would become intoxicated" to "provided the person was visibly intoxicated at the time of the sale or service."

i. Probably a reaction to Iowa Supreme Court decision in Banwart case (see below).

c. Clarifies causation standard to require that injury was proximately caused by the intoxicated person.

d. Noneconomic damages limited to $250,000 for any injury or death of a person, unless the jury determines that there is a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained.

i. No guidance on how to submit these provisions to jury.

ii. May have jury find "full compensation" and then require finding on statutory exceptions to limit.

a) If not found, court could impose statutory limit of $250,000.

iii. Limitation is applicable to "any civil action…whether in tort, contract, or otherwise, against a licensee or permittee."

a) Actions arising from underage sales to minors.

b) Negligent supervision claims.

c) Etc.

B. Reduction of recovery for failure to use seat belt.

1. Iowa Code §321.445.

2. Potential percentage of reduction increased from five percent to twenty-five percent.

a. Still imposed after any reductions for comparative fault.

C. Small claims jurisdiction.

1. Iowa Code §631.1.

a. Increased from $5,000 to $6,500 for actions commenced after July 1, 2018.

b. Extended to cases involving both exclusive jurisdiction in small claims court and those with concurrent jurisdiction with district court.

c. Reverts to $5,000 if new jurisdictional amount is found unconstitutional by a court of competent jurisdiction.

III. Case law update

A. Attorney and client

1. Kraklio v. Simmons, 909 N.W.2d 427 (Iowa 2018).

a. Legal malpractice action against former criminal defense lawyer; trial court granted motion for summary judgment for defendant; Ct.App. reversed; S.Ct. affirmed Ct.App. on further review; remanded.

b. Attorney alleged to have negligently failed to have client discharged from probation sooner.

i. Was revoked and sent to prison after effective discharge date.

ii. Client came within window to have Anderson credit applied against sentence.

c. Basis for summary judgment was that client never had his probation set aside ("relief requested rule").

i. Never achieved relief from the underlying conviction.

ii. Court of Appeals found that the relief existed as a result of the expiration of client's probation prior to the initiation of the report of violations.

d. Actual innocence not required to trigger relief requested rule.

i. Only need to show relief from avoidable conviction.

ii. Analysis to sentencing error is an issue of first impression.

e. Missed opportunity to end probation sufficient to show relief.

i. Relief in question was from the duration of supervised probation, not the underlying conviction.

ii. Must obtain post-judgment relief on sentencing issue, not necessarily on the conviction.

f. Summary judgment reversed and case remanded for further proceedings.

2. Skadburg v. Gately, 911 N.W.2d 786 (Iowa 2018).

    a. Legal malpractice action; trial court granted motion for summary judgment; Ct.App. reversed and remanded; trial court affirmed by S.Ct. on further review.

    b. Issue is accrual of cause of action for purposes of five-year statute of limitations (case filed in 2015).

        i. No accrual until 2008.

            a) Payment of estate debt from exempt assets.

        ii. Would be time-barred, unless some other doctrine bars application of statute of limitations.

    c. Discovery rule not applicable to toll statute.

        i. Client was on inquiry notice by January of 2009 and no later than March of 2010.

            a) Consequence of communication regarding use of exempt funds to pay estate debts.

                i) "Paying off mom's debt with money that should not have been part of the estate was one of the issues that has arisen."

                ii) Client under duty to engage in reasonable investigation.

    d. Continuous representation rule not applicable to extend statute of limitations to date of last representation.

        i. Analogous to continuous treatment rule in medical malpractice actions.

        ii. Not applicable when the patient on notice of negligence prior to end of treatment.

        iii. "Particularized application of discovery rule."

    e. Fraudulent concealment doctrine.

        i. Viewed as a form of equitable estoppel rather than as a means to toll statute of limitations.

ii. Record generated fact issue on existence of false or concealed facts and attorney's intent to deceive.

a) Attorney was silent after he was told by client that bills had been paid.

b) Knew or should have known that payments were improper and the existence of a potential negligence action.

iii. No fact issue on element of lack of knowledge and reliance on part of client.

a) Client was already on inquiry notice, which establishes constructive knowledge.

i) Cannot claim concealment when you already are on such notice.

ii) Cannot justifiably rely on concealed facts when placed on inquiry notice.

B. Attorney fees

1. Lee v. State, 906 N.W.2d 186 (Iowa 2018).

a. Award of attorney fees following award under FMLA; trial court reduced requested fee amount by 40%; reversed and remanded.

b. Proper to seek award of expenses associated with computer-assisted legal research.

i. Must relate to issues at hand.

ii. Must be type of costs normally billed to paying clients in relevant market.

a) Documentation was insufficient to connect time spent on issues raised on appeal.

b) Research-related expenses taken out.

c. Proper to use current hourly rates rather than rates in effect at time services were rendered.

i. Offsets impact of delay in payment.

d. Proper generally to use percentage reduction method in looking at overall fee award.

i. Trial court abused its discretion by reducing award by 40%, based on two of five claims being unsuccessful.

ii. Trial court also improperly included work for previously disallowed work related to retroactive relief under FMLA.

iii. Approach was "too mathematical" and did not take into account relation between successful and unsuccessful claims.

e. Supreme Court calculated proper amount of award rather than remanding for recalculation.

i. Fourth appeal of dispute.

ii. Focus was on advancement of public policy and overall success in obtaining remedies.

a) Felt a 35% reduction in requested fee award was proper.

i) Remanded for entry of judgment.

C. Constitutional law

1. Bandstra v. Covenant Reformed Church, 913 N.W.2d 19 (Iowa 2018).

a. Action by female parishioners and spouses for negligence and defamation; trial court granted motion for summary judgment; affirmed in part and reversed in part.

b. Dispute arose following sexual exploitation of parishioners by pastor under guise of pastoral counseling.

i. Response of church elders.

a) Letter to congregation after resignation of pastor.

i) Reference to "sexual immorality between pastor and female members."

A) Congregation had already learned identity of women who had made allegations against pastor.

b) Disagreement within church leadership regarding impropriety.

i) Some felt that women had sinned also.

ii. Pastor convicted of five counts of sexual exploitation.

a) Acquitted of sexual abuse counts.

c. Religion clauses in state and federal constitutions precludes judicial involvement in internal church disputes on doctrinal issues.

i. Delving into duty of elders to respond to allegations runs afoul of religion clauses.

a) "A court cannot dictate what teachings and services a church offers its parishioners. Nor can we disapprove of the elders deciding, pursuant to their duty as religious authorities, that the women would be best healed by simply confessing their 'sins.' Because plaintiffs' first two negligence claims go to the very heart of religious decision-making, they are barred by the First Amendment."

ii. Negligent investigation claims also properly disposed of by way of summary judgment on factual record, notwithstanding First Amendment.

a) Undisputed that investigation was done quickly and decisively.

iii. Negligent supervision claims arise from neutral activity not tied to religious doctrine.

a) Deal with considerations of reasonableness and foreseeability found in any employment setting.

i) Not barred by First Amendment.

2. Planned Parenthood v. Reynolds, ex rel. State, 915 N.W.2d 206 (Iowa 2018).

a. Action to challenge constitutionality of 72-hour waiting period prior to obtaining abortion; trial court found statute constitutional; reversed and remanded.

b. Dealt with issue under Iowa Constitution.

c. Extensive discussion of procedures and data addressed at trial regarding access to abortions in Iowa.

    i. Impact of poverty and domestic abuse.

    ii. Scarcity of access as result of shrinking population of OB/GYN practitioners.

    iii. No evidence that PP used pressure on patients to undergo abortions or to collect fees.

    iv. Numerous studies summarized.

d. Process required under statute required patients to incur potentially prohibitive costs and delays in access.

    i. Looked at hypothetical patients in Ottumwa and Sioux City.

    ii. Disproportionately impacts poor women and those with low-income jobs.

    iii. Lack of reliable transportation also a factor.

e. Statute has effect of preventing abortions and delaying medical abortions (those performed with medication).

    i. Increases risk of complications.

        a) Risk increases as gestational age increases.

        b) Increased risk associated with self-inducing abortions after time limit reached.

    ii. Increases harm to domestic abuse victims.

f. Facial challenge to statute measured by Casey standard.

    i. Look to impact on those whose conduct it impacts.

g. Substantive due process analysis.

    i. The decision to terminate a pregnancy is a fundamental right under the due process clause of the Iowa Constitution.

        a) Article I, §9.

b) "Autonomy and dominion over one's body go to the very heart of what it means to be free."

ii. Impact of restrictions found in statute to be viewed under a strict scrutiny analysis.

a) Not an unlimited right.

i) Affects two competing state interests.

A) Protecting women's health and safety and ensuring that abortions are safe.

B) Protecting potential life.

b) There must be a connection between the claimed interest and the statutory regulation.

i) Otherwise, the state becomes unrestrained.

c) The undue burden standard under Casey only looks to a woman's ability to receive the procedure.

i) No objective standard.

d) Better approach is to require that the statute be narrowly tailored to serve a compelling state interest.

i) Standard under strict scrutiny.

iii. Mandatory delay of 72 hours does not advance the purpose sought under the statute (reflection and informed decision).

a) Evidence suggests that delay results in no changes in decision to have abortion.

b) Trial court's finding that 8% of women change their mind not supported by record.

i) "In truth, the evidence conclusively demonstrates that the Act will not result in a measurable number of women choosing to continue a pregnancy they would have terminated without a mandatory 72-hour waiting period."

iv. Legislation does not further the compelling state interest of promoting potential life.

a) "Even if the Act did confer some benefit to the State's identified interest, it sweeps with an impermissibly broad brush."

i) Imposes blanket hardship on all women.

ii) No exceptions for rural areas, those with financial constraints, etc.

h. Equal protection analysis.

i. "Autonomy is the great equalizer."

ii. Same analysis as substantive due process.

a) Does not survive strict scrutiny.

i. Dissent from Mansfield (joined by Waterman).

i. Majority did not acknowledge prior illegality of abortion and attitudes of pro-life segments of society.

ii. Doubts validity of substantive due process under historical analysis of constitution.

a) Acknowledges the analysis, however.

iii. Many in society view abortion as ending a life, not merely a potential life.

a) Justification for undue burden.

b) Other jurisdictions have upheld similar waiting periods under this standard.

iv. No proof PP forced to close clinics due to financial constraints imposed by ending of public funding by legislature.

v. Equal protection assumes similarly situated persons.

a) Majority assumes women are situated differently from men and can only achieve equality with men with assistance from decision invalidating statute.

b) No supporting caselaw.

D. Contribution

1. Shcharansky v. Shapiro, 905 N.W.2d 579 (Iowa 2017).

a. Action for equitable contribution by purchasing shareholders against selling shareholders; claims dismissed and counterclaims dismissed as moot; Ct.App. affirmed; reversed and remanded on further review.

b. Plaintiff seeking contribution from other co-guarantors on monies paid to retire debt of company owed to Wells Fargo.

i. Underlying indebtedness reduced to judgment.

c. Counterclaim was for alleged breach of stock purchase agreement.

d. Trial court concluded that contribution was unwarranted since source of funds used to retire debt by plaintiffs was their parents, who were under no obligation to pay debt.

i. No evidence that funds were loaned by parents.

e. Authority relied upon by trial court not persuasive.

f. Contribution allowed when there is a disproportionate payment on a jointly held obligation.

i. Source of funds used to make payment not determinative.

a) No evidence payment from parents was "artificial" or part of scheme to defraud creditors.

ii. Plaintiffs entitled to contribution on undisputed facts.

iii. Remanded for proceedings on counterclaims.

E. Defamation

1. Bandstra v. Covenant Reformed Church, 913 N.W.2d 19 (Iowa 2018).

a. Action by female parishioners and spouses for negligence and defamation; trial court granted motion for summary judgment; affirmed in part and reversed in part.

b. Statements in communications to parishioners that "you are not victims" not actionable.

i. Not subject to qualified privilege, as arising from church-related activities.

ii. Protected opinion.

a) Not objectively capable of proof or disproof.

i) No criminal proceedings at time statement was made.

b) Same conclusion as to statements that rape requires a "knife to the throat" and that the parishioners "should go to jail."

c. Statements that women "admit what they did was wrong" subject to qualified privilege.

i. Communication within church related to church members.

a) Same conclusion for statements that the pastor's acts were "not clergy sexual abuse," statements questioning parishioner's level of repentance, and statements questioning use of term "grooming" rather than "temptation" and "sin."

b) Statements regarding "sexual immorality" and "inappropriate contact" subject to qualified privilege.

i) Made in context of request that other members of congregation demonstrate "forgiving love" to parishioners.

d. No publication of statements accusing parishioners of adultery.

i. Contained in letter sent only to parishioners.

e. Statements to congregation describing parishioners as "willing" not malicious.

i. Pastor had already been acquitted of sexual abuse charges.

a) Eliminated issue of nonconsensual nature of sexual relations.

f. All defamation claims properly dismissed on summary judgment.

F. Discovery

1. Bandstra v. Covenant Reformed Church, 913 N.W.2d 19 (Iowa 2018).

    a. Action by female parishioners and spouses for negligence and defamation; trial court granted motion for summary judgment; affirmed in part and reversed in part.

    b. Court dealt with privilege issues that would more than likely be addressed following remand.

    c. Clergy privilege properly extended to church elders.

        i. Communication that otherwise qualified as pertaining to pastoral counseling duties.

        ii. Would not extend to issues regarding supervision of pastor.

            a) Is a secular task similar to any workplace.

        iii. Trial court will need to analyze privilege on remand to determine whether source of communication is religious or secular.

            a) Supreme Court did not have documents available to analyze on their own.

            b) "With respect to the Board of Elders meeting minutes, any discussion of confidential communications made pursuant to the elders' duties as religious counselors are privileged. Communications relating to the elders' secular duties, such as supervision, governance, and administration, are beyond the scope of the privilege and may not be withheld."

    d. Issue of disputed documents that had been part of prior discovery efforts.

        i. Were either not provided to the court for review or identified as non-privileged and not produced.

            a) Former category ordered to be produced; latter category to be reviewed by trial court in camera on remand.

        ii. Counsel reminded of obligation to work collaboratively and in good faith to avoid court intervention.

G. Dram shop liability

1. Banwart v. 50th St. Sports, L.L.C., 910 N.W.2d 540 (Iowa 2018).

    a. Dram shop action; motion for summary judgment for bar granted; Ct.App. affirmed; reversed and remanded on further review.

    b. Discussion of scienter element (licensee knew or should have known of intoxication).

        i. Degree of intoxication not specified in statute.

    c. Subsequent finding of intoxication creates inference that the sale or service was undertaken with the required knowledge.

        i. Only when there is no evidence of subsequent drinking or where time frame is accounted for between sale or service and intoxication.

            a) No "magic number" in terms of intervening time.

        i. Accident happened a few minutes after patron left bar.

            a) Clear timeline between drinking and intoxication.

    d. Absence of evidence of signs of intoxication at bar does not guarantee summary judgment.

        i. Jury could disbelieve testimony of patron or supporting witnesses regarding actions and number of drinks consumed (three beers).

    e. Dissent by Mansfield (joined by Waterman and Zager).

        i. Disputed the analysis by the majority of the dram shop statute and prior precedent.

        ii. Focused on absence of evidence of any intoxication at bar.

        iii. Issues relied upon by majority should have been the subject of discovery (in order to clarify number of drinks consumed by patron) rather than application of a blanket inference.

H. Employment discrimination

1. Cote v. Derby Ins. Agency, 908 N.W.2d 861 (Iowa 2018).

    a. Action under Iowa Civil Rights Act; motion for summary judgment denied; Ct.App. affirmed in part and reversed in part on interlocutory appeal; Ct.App. affirmed on further review.

        i. Corporation cannot qualify for family-member exception in Iowa Code §216.6(6)(a).

            a) Exception allows members of an employer's family to not be counted toward as employees for purposes of the four-employee rule triggering application of ICRA.

        ii. While legislature may have intended to apply the rule to family-owned corporations, the court is constrained by the statutory text.

            a) "We have never held that a corporation has family members."

            b) Denial of summary judgment on ICRA claims affirmed.

                i) Remanded for further proceedings.

2. Deeds v. City of Marion, 914 N.W.2d 330 (Iowa 2018).

    a. Action under ICRA by prospective employee for disability discrimination after not being hired for medical reasons; motion for summary judgment granted; Ct.App. affirmed; affirmed on further review.

    b. Plaintiff had previously been diagnosed with multiple sclerosis.

        i. Did not tell city he had MS.

        ii. Doctor retained by city to perform pre-employment physical examination did not disclose diagnosis to city.

            a) Only said applicant was "medically unqualified" for job as firefighter.

    c. City not liable for discrimination because of disability (MS) if it did not know about existence of disease.

i. Was under no duty to second-guess medical opinion.

d. Doctor not liable for aiding and abetting discrimination in absence of proof of underlying discrimination.

e. Plaintiff never requested accommodation in light of MS diagnosis.

i. City under no obligation to inquire further.

a) Can rely on medical opinions.

b) Only have to accommodate known medical conditions.

ii. Applicant cannot keep disability secret and then sue for discrimination for failure to accommodate.

a) City is not required to read applicant's mind.

f. City could face liability if it hires an otherwise medically unqualified applicant.

g. Summary judgment also proper because the plaintiff caused a breakdown in the post-lawsuit interactive process to explore possible options for accommodation.

i. Refused to provide information or participate in re-testing.

h. Label of being "medically unqualified" does not generate a fact issue on element of disability.

i. Does not create constructive knowledge of disability.

a) Not the only reasonable interpretation of label.

b) Can be medically unqualified in absence of disability.

i. Examining physician not an agent of the city.

i. No imputation of knowledge of MS.

j. City did not "bury its head in the sand" in effort to avoid liability.

k. Dissent by Appel (joined by Wiggins).

i. Doctor relied on stereotypical ban created by standard associated with presence of MS symptoms within prior three years.

a) Constituted a "flat out ban."

ii. Would find doctor was an agent of the city.

a) Based on factors of control.

iii. No need for plaintiff to engage in interactive process after denial of employment.

iv. Would reverse aiding and abetting claim.

a) Doctor did not provide an independent medical opinion.

b) Relied on "stereotypical thinking" contained within NFPA standard.

3. Fenceroy v. Gelita USA, Inc., 908 N.W.2d 235 (Iowa 2018).

a. Claim for racial harassment under ICRA, constructive discharge and tortious infliction of emotional distress; denial of motion for protective order and motion for summary judgment affirmed on interlocutory appeal.

b. Employer cannot assert attorney-client privilege and work product privilege prior relative to investigation that forms the basis for a Farragher-Ellerth affirmative defense.

c. Plaintiff wanted to depose attorney used in administrative investigation and obtain her notes.

i. Investigation formed basis for affirmative defense urged within motion for summary judgment.

a) Defense based on defendant's reasonable care in preventing and correcting harassing behavior and plaintiff's failure to pursue previous corrective opportunities provided by the defendant.

i) Would be a defense to employer's vicarious liability for supervisor harassment.

d. Investigation constituted an implied waiver of attorney-client privilege otherwise contained in report, notes, etc.

i. Plaintiff must be able to pursue nature and scope of investigation.

ii. Employer must rely on investigation in pursuit of a Farragher-Ellerth defense in order for waiver to occur.

iii. "If defendants wish to use [the attorney's] investigation as evidence of their commitment to abiding by antidiscrimination statutes, plaintiff may not be kept from disputing that evidence, especially at the summary judgment stage."

iv. Options for defendant.

a) Not make reference to investigation in pursuit of defense.

i) Confidentiality is maintained.

b) Limit defense to period of employment.

i) Post-employment investigation becomes irrelevant.

b) Offer investigation as evidence in favor of defense.

i) Privilege is waived.

iv. Defendant can retract waiver and make new record clearly establishing investigation was not involved in formulation of defense.

e. Same analysis for work-product doctrine.

i. Issue is extent of reliance on investigation.

a) If relied upon, non-opinion work product protection waived.

b) Still cannot get access to attorney's thought process.

f. No issue of waiver as result of having third party (union representative) present for interviews.

i. No privilege urged about things done in representative's presence.

ii. Third party not involved in internal discussions.

iii. Statements made were previously produced.

g. Dissent by Waterman (joined by Mansfield and Zager).

i. Would find abuse of discretion.

ii. Defense based only on opportunity for plaintiff to use reporting procedures during employment.

a) Defendant has already retracted reliance upon investigation, based on position taken in briefs.

i) No need for opportunity to do so on remand.

iii. Majority view could result in flurry of depositions of counsel and decrease in civility.

iv. Mere reference to investigation not enough to tie into defense.

v. Plaintiff has not met high burden necessary in order to justify deposition of defense counsel.

a) No other means to obtain information.

b) Information sought is relevant and non-privileged.

c) Information sought is central to preparation of case.

4. Jahnke v. Deere & Co., 912 N.W.2d 136 (Iowa 2018).

a. Action under ICRA arising from repatriation following violation of company code of conduct; motion for summary judgment denied; reversed and remanded on interlocutory appeal.

b. Plaintiff worked in China at time of conduct at issue.

i. Repatriated to United States with reduced authority and compensation as consequence of having unreported sexual relationships with subordinates.

c. Allegations of discrimination based on age, gender and national origin.

i. Motion for summary judgment based on argument that ICRA cannot be applied extraterritorially and no acts occurred within state of Iowa.

d. State statutes are presumed to lack extraterritorial reach absent a clear expression to the contrary.

i. Nothing contained within ICRA to express extraterritorial application.

ii. No legislative intent that ICRA was to be so applied.

a) Nothing in purpose, subject matter or history.

e. Policy considerations against extraterritorial application.

i. Creates potential for conflict with other jurisdictions or countries.

f. Absence of contacts within Iowa.

i. Crux of employment relationship was in China, or perhaps Illinois.

a) Plaintiff lived in China and subjected himself to Chinese laws.

b) Defendant's headquarters are located in Illinois.

i) Fact that individual defendants reside in Iowa or that company has operations in Iowa not enough under circumstances.

A) "Tangential relations."

ii. ICRA does not apply when operative actions occurred outside of the state of Iowa, even if some people involved in case have some contacts with Iowa.

iii. No actions in Polk County (chosen venue).

a) Everything of consequence took place in either China or Illinois.

i) No focus in Iowa.

g. State has no interest in protecting nonresidents who perform work outside of Iowa.

i. Would create conflicts.

ii. Plaintiff could have brought a claim in federal court or in either Illinois state court or in China.

I. Governmental liability

1. Baldwin v. City of Estherville, 915 N.W.2d 259 (Iowa 2018).

    a. Action in federal court arising from alleged wrongful arrest; certified question presented regarding claim under Iowa Constitution; question answered.

    b. All other claims disposed of by way of summary judgment.

    c. Question: "Can a defendant raise a defense of qualified immunity to a claim for damages for violation of Art. I, §1 and §8 of the Iowa Constitution?"

    d. Answer: If the defendant pleads and proves as an affirmative defense that he or she exercised due care to conform with requirements of the law, qualified immunity exists.

    e. Question is a consequence of claim under Iowa Constitution created in Godfrey, but expressly reserved therein.

    f. Most jurisdictions that have adopted a similar cause of action provide for some sort of immunity to be asserted as a defense.

        i. Extensive discussion of development of defense by those jurisdictions.

    g. Would not impose strict liability for a violation of the Iowa Constitution.

        i. Would go too far.

        ii. Would create the "danger of overdeterrence," especially in areas of search and seizure.

        iii. Creation of a qualified immunity based on due care is appropriate.

    h. Dissent by Appel (joined by Hecht) would find no immunity.

        i. Extensive discussion in support of position.

2. Johnson v. Humboldt County, 913 N.W.2d 256 (Iowa 2018).

a. Action against county and landowner arising from collision with concrete embankment in ditch; motion for summary judgment in favor of county granted; affirmed.

b. Application of public duty doctrine.

    i. No liability for breach of duty owed to public at large, absent a special relationship with injured party.

c. Liability sought based on violation of Iowa Code §318.4, which pertains to county's obligation to remove obstructions.

    i. Any duty created by statute is owed to all members of the public.

        a) Not affected by adoption of Restatement (Third) of Torts.

d. The public duty doctrine is applicable to municipal tasks and not an immunity waived by the adoption of chapter 670 (Iowa Municipal Tort Claims Act).

    i. Establishes whether a duty exists in the first place.

        a) Same analysis as previously undertaken under chapter 669 (Iowa Tort Claims Act) in addressing duty of state.

e. Not overruled by Wilson v. Nepstad, which had suggested a shift away from the public duty doctrine.

    i. Subsequent cases have reaffirmed doctrine.

f. Facts of case do not dictate application of exception to doctrine.

    i. Plaintiff focused on "grave danger" of highway safety posed by failure to remove embankment.

g. Public duty doctrine equally applicable to parallel nuisance claim.

h. Doctrine may not be applicable when the governmental entity acts affirmatively in a negligent manner, as compared to a mere failure to act.

i. Dissent by Wiggins (joined by Appel and Hecht).

i. Would find an affirmative duty on the part of the county, based on the special relationship between it and the injured passenger.

ii. Application of public duty doctrine is inconsistent with waiver of immunity of in IMTCA and ITCA.

a) Doctrine is essentially a form of immunity.

iii. Issue of doctrine should go to the jury, if not rejected altogether.

3. Kellogg v. City of Albia, 908 N.W.2d 822 (Iowa 2018).

a. Action against city for recurring flooding based on nuisance; motion for summary judgment granted; Ct.App. reversed; trial court affirmed on further review.

b. State of the art immunity is applicable to nuisance claims.

i. No dispute regarding fact that storm sewer system in question was built (in 1972) to applicable state of art.

ii. Immunity applies only to failure to update system, not failure to properly maintain it.

iii. Nuisance caused by immunized conduct (failure to update).

a) Undisputed on MSJ record.

c. Nuisance claim based on harm which is inherent in an activity ("pure nuisance") falls outside of the immunity statute.

i. Inherent danger comes from the activity of the defendant, not the harm sustained by the plaintiff.

d. Special concurrence by Wiggins (joined by Hecht).

i. Noted that a city could be liable for overloading a system constructed to the state of the art.

a) Would be akin to failure to maintain.

ii. Concurred in result.

J. Medical malpractice

1. Andersen v. Khanna, 913 N.W.2d 526 (Iowa 2018).

a. Medical malpractice action; judgment for defendant following jury trial; Ct.App. affirmed; affirmed in part and reversed in part on further review; remanded for new trial.

b. Earlier motion for partial summary judgment on informed consent claim granted.

i. Went to claim that physician had an obligation to inform patient of his experience (or lack thereof) with procedure.

ii. Did not have any effect on informed consent claim regarding information on risks and potential harm from procedure.

a) Informed consent claim not submitted to jury at all.

b) Jury verdict found no negligence on part of physician in performing procedure.

c. MPSJ incorrectly granted.

i. Informed consent extends to experience of physician, as a "personal characteristic," if material to the decision to undergo the procedure.

ii. Not limited by Iowa Code §147.137, which does not list experience of physician as a topic of disclosure.

a) Only creates a rebuttable presumption involving listed topics.

iii. A reasonable patient could find information on experience material in coming to decision.

d. Trial court erred by not submitting informed consent claim.

i. Was error to conclude that issue of risk posed by surgery was no longer in case based on prior rulings.

ii. Should have allowed plaintiff's expert to testify on that issue.

e. Jury verdict on negligence claims would not preclude new trial on informed consent claims.

i. Not dependent on procedure being performed in a negligent manner.

ii. Injury resulted from surgery being performed at all, if decision to do so would have been otherwise upon full disclosure.

f. Trial court correctly refused to add lack of experience as separate specification of negligence in marshalling instruction.

i. Was part of other specifications.

ii. Tied into standard of care.

g. Waterman (joined by Cady and Mansfield) concurred in part and dissented in part.

i. Would have affirmed MPSJ on informed consent claim premised on failure to disclose lack of experience.

a) Any risk from failure to disclose never materialized.

i) Risk was failure to conform to the standard of care.

ii) Jury verdict on negligence precludes claim.

ii. No duty to disclose.

a) Noted potential difficulties in conforming to standard created by majority.

i) How much experience is enough?

iii. Decision should be limited to its facts.

a) "Extremely complicated" procedure and a physician with no prior experience performing it.

K. Preemption

1. Griffioen v. Cedar Rapids and Iowa City Ry. Co., 914 N.W.2d 273 (Iowa 2018).

a. Class action against railroads for flooding; removed to federal court; remanded to state court; motion for judgment on the pleadings granted; affirmed.

b. Action preempted by federal law.

    i. Interstate Commerce Commission Termination Act (ICCTA).

    ii. Related to decision to keep rail lines open.

c. Recognized exceptions to preemption.

    i. Maintenance and operation of lines.

    ii. Decision not related to rail safety.

d. Decision in question was to place railcars (each loaded with rocks) on bridges over Cedar River in order to keep bridges from being washed away during floods of 2008.

    i. Bridges collapsed anyway.

    ii. Railcars fell into river and impeded flow of water.

        i) Increased harm created by natural river flooding.

e. ICCTA preempts common-law causes of action and state statutes that regulate railroad transportation.

    i. Protects actions of railroads designed to protect rail tracks and bridges.

    ii. Not allowed for acts taken in general management or governing rail transportation.

        a) Has an "incidental effect" which does not justify preemption.

    iii. Pertains to decisions regarding placement of railcars on lines and construction of lines.

f. Rejected effort to establish "one-time event" exception to preemption based on exceptional circumstances created by flooding.

    i. Cases which have recognized this exception have all involved claims for personal injuries.

        a) "Rather than a personal injury claim based on a limited, discrete aspect of a railroad's operations, this is a tug-

of-war over responsibility for catastrophic economic damages."

g. Federal Railroad Safety Act was not applicable to preserve claims of property damage.

h. Dissent by Appel (joined by Wiggins and Hecht).

i. Would extend preemption to only issues of government economic regulation, not state tort law claims.

L. Promissory estoppel

1. Kunde v. Estate of Bowman, ____ N.W.2d ____, 2018 WL 5730146 (Iowa S.Ct., Case No. 17-0791, filed November 2, 2018).

a. Claim for breach of option contract, promissory estoppel, quantum meruit and unjust enrichment; jury verdict for plaintiff; trial court granted motion for JNOV; Ct.App. affirmed in part, reversed in part and remanded; motion for summary judgment for defendant granted on remand; Ct.App. reversed and remanded; trial court affirmed in part and reversed in part on further review; remanded.

b. Remand was only on equitable claims.

i. Focus of motion for summary judgment.

a) Court of Appeals reversed summary judgment on promissory estoppel claim.

c. Summary judgment properly granted as to unjust enrichment and quantum meruit claims.

i. Cannot have an implied contract and an express contract on the same subject matter.

a) The express contract in question (farm lease) allocated the costs of improvement to the tenant.

d. Promissory estoppel claim was tied to the owner's promise to allow the tenant to purchase the land at his option.

i. The farm lease (which had allocated the cost of improvements) was separate and apart from the option contract.

ii. Improvements were made in reliance on the promise of option to purchase.

a) Not inconsistent with lease.

b) Presented a triable issue of fact.

e. Promissory estoppel requires a clear and definite promise, as compared to a clear and definite agreement.

i. Development of doctrine analyzed.

a) Focus changed from agreement and consideration to promise and reliance.

f. Promissory estoppel claim survives summary judgment.

i. Remanded for trial.

M. Sanctions

1. First Am. Bank v, Fobian Farms, Inc., 906 N.W.2d 736 (Iowa 2018).

a. Review of sanctions award under Iowa Rule of Civil Procedure 1.413(1); award modified; remanded.

b. Issue is whether award of $145,000 was excessive.

i. No dispute that some sanction was warranted.

a) Law of the case from prior appeal.

c. Trial court abused its discretion in awarding all fees associated with litigation as a sanction.

i. Purpose of sanction is deterrence, not compensation.

ii. Award was excessive in light of purpose.

a) More than what was required for deterrence.

b) Included pre-violation fees.

c) Improperly based in part on letter from defendant during first appeal.

d. Hourly rates were reasonable.

e. No effort to determine what fees were caused by sanctioned filing.

    i. Wrongful nature of filing determined in first appeal.

f. Defendant had ability to pay fee award.

g. Awarding all fees greatly exceeds the minimum amount necessary to deter similar misconduct.

    i. No mathematical formula.

    ii. Factors to consider in fashioning appropriate award.

        a) Whether conduct was willful or negligent.

        b) Whether the actions were part of a pattern or isolated.

        c) Whether party had engaged in similar conduct.

        d) Party's intent to injure.

        e) The effect on the litigation process.

        f) Whether the person was trained in the law.

        g) The amount necessary to deter the party.

        h) The amount necessary to deter others.

h. Application of factors.

    i. Conduct was willful.

    ii. Conduct was not isolated.

    iii. No similar conduct.

    iv. Was intended to injure other party.

    v. Delayed the litigation process.

    vi. Appropriate to sanction represented party, as opposed to counsel.

        a) Had knowledge of impropriety.

    vii. $30,000 determined to be the minimum amount necessary to deter conduct.

i. No causal connection between fee award and improprieties.

i. Defendant prevailed on some claims.

ii. Some fees incurred prior to offending filings.

j. Trial court should not have considered letter submitted after first appeal.

i. Party has a First Amendment right to criticize the court.

k. Dissent by Wiggins (joined by Appel).

i. Would have awarded no sanction.

ii. Focus should have been on the deterrence of a represented party.

a) Nothing to deter.

b) Sanctions should never be imposed against a party when his lawyer is not being sanctioned.

iii. No evidence lawyer advised the client pursue claims that were the source of the sanction.

a) Party had no actual knowledge of impropriety.

N. Statute of limitations

1. Bandstra v. Covenant Reformed Church, 913 N.W.2d 19 (Iowa 2018).

a. Action by female parishioners and spouses for negligence and defamation; trial court granted motion for summary judgment; affirmed in part and reversed in part.

b. Analysis of application of statute of limitations focused on extent to which nature of exploitation prevented parishioners from understanding pastor's conduct was illegal.

c. Action by earlier of two victims was time-barred.

i. Knew pastor's conduct was wrong in 2009.

a) No subsequent exploitation by pastor.

ii. On inquiry notice regarding church's duty to supervise.

d. Second victim did not understand pastor's actions were wrong until sometime in 2010.

i. Continued to be exploited after discovery.

ii. Claim is viable for wrongful acts undertaken within limitations period.

a) Continuing violation doctrine not applicable to toll statute of limitations altogether.

i) Each act of misconduct was a discrete act, not a part of a continuing violation.

ii) "Each sexual encounter was an act of sexual exploitation, which was potentially facilitated by the elders' negligent supervision. Plaintiffs' claims are not derived from a cumulative wrong, but from reoccurring wrongs."

O. Trial

1. Kinseth v. Weil-McLain, 913 N.W.2d 55 (Iowa 2018).

a. Wrongful death action arising from asbestos exposure; jury verdict for plaintiff; Ct.App. reversed and remanded; affirmed in part and reversed in part on further review; remanded.

b. Decedent diagnosed with mesothelioma associated with his work-related exposure to asbestos in installation of new boilers and removal of old boilers.

i. Removal work associated with other companies' products.

c. Trial court erred in not considering mistrial motion made before submission of case to jury and after closing arguments.

i. Was timely.

d. Analysis of statements made during plaintiff's closing.

i. Proper to question self-funded studies of the defendant.

a) Not a violation of ruling on motion in limine regarding amount of costs incurred in defense of litigation.

i) Not a violation to refer to studies as "bought and paid for."

A) Proper statement on credibility of expert.

B) Equally proper to call experts "paid experts."

ii. Improper to tie compensation award to amount of fees generated by defense experts.

a) Focused on large amount spent by defense in engaging in litigation.

i) Violation of MIL ruling.

iii. Plaintiff's counsel violated ruling on motion in limine by tying amounts spent in litigation to requested punitive damage award.

a) "Deep pockets."

b) Improper comment on relative wealth of parties.

iv. Telling the jury to "send a message" was improper and violation of MIL ruling.

v. Improperly referenced past lawsuits in violation of ruling on motion in limine.

a) Came up in discussion of punitive award.

vi. Did not improperly argue nullification of statute of repose in assessing allocation of fault of other parties.

a) Was improper to cast doubt on policy behind statute.

e. Defendant was prejudiced by improper comments during closing.

i. Repeated, deliberate references in violation of ruling on motion in limine.

a) Recognition that "one or more isolated missteps" may not be prejudicial, even though a violation of a pretrial order.

f. Defendant not judicially estopped from challenging compensation award as result of comments made during closing that it "is going to compensate these folks" based on what jury would award.

    i. No judicial acceptance of statement.

g. Proper to exclude other defendants' valves from consideration in allocating fault.

    i. No proof of exposure of products during installation.

h. Proper to include bankrupt parties in allocation of fault.

    i. Plaintiff had received monies in settlement from these parties and obtained releases.

    ii. Different than in Spaur case.

i. Trial court improperly excluded OSHA evidence regarding placement of warnings on products.

    i. Relevant to punitive damages claim.

j. Proper to admit evidence regarding exposure during removal process, despite application of statute of repose.

    i. Relevant on total exposure and causation.

k. Proper to submit punitive damages to the jury.

    i. Evidence sufficient to show defendant had specific knowledge of risks.

        a) Same as other defendants.

2. Shams v. Hassan, 905 N.W.2d 158 (Iowa 2017).

    a. Claim by brother against sister for breach of contract, conversion and breach of fiduciary duty; verdict for brother after jury trial; Ct.App. reversed and remanded; trial court reversed on further review.

    b. Issue focused on application of statute of limitations.

        i. Specifically, date of accrual of cause of action.

        ii. Dispute on operative dates.

a) Date brother learned sister had written checks to herself vs. date he learned all the money he had entrusted to her for specified expenses was gone.

c. Jury should have been instructed on statute of limitations.

i. Had to be resolved by jury as a matter of fact.

d. No instruction given by trial court.

i. Denied defendant's requested instruction.

ii. Incorrectly stated the applicable law.

iii. Court should have submitted separate instructions on statute of limitations for each claim.

e. Court was alerted by issue of statute of limitations through erroneous requested instruction.

i. Once alerted, was under obligation to fashion correct instruction.

e. Remanded for new trial.

3. Westco Agronomy Co., LLC v. Wollesen, 909 N.W.2d 212 (Iowa 2017).

a. Action by seller of products against customer and former salesman customer counterclaimed; motion for summary judgment granted on some claims; jury verdict in favor of customer and against seller; Ct.App. affirmed in part and reversed in part and remanded; affirmed in part and reversed in part on further review; remanded.

b. Alleged bribery scheme between customer and salesman that resulted in losses to seller (co-op).

i. Seller and customer each blamed the other.

a) Salesman engaged in bribery scheme with customer.

b) Seller was aware of situation.

c. Jury verdict

i. No damage to seller from customer.

ii. Customer awarded damages from seller on counterclaim for breach of contract and fraud related to failure of seller to deliver product after seller had made prepayment.

a) Seller had used prepayment to correct deficiency in account resulting from salesman's entries in books to hide reduced prices on actual transactions.

d. Trial court correctly ruled statutory basis for counterclaim was unconstitutional.

i. Iowa Code §706A.2(5) (part of ongoing criminal conduct statute).

a) Imposes civil liability for "negligent empowerment of specified unlawful activity."

b) Provides for treble damages and attorney fees.

ii. Statutory presumption of negligence which shifted burden onto defendant to establish due care once facilitation of unlawful activity has been established unconstitutional.

a) Arbitrary and irrational.

i) Renders a party liable for another's illegal activity unless they can prove due care.

ii) Provides for severe consequences.

e. Trial court should have severed unconstitutional portion of statute from remainder.

i. Still allows for recovery of damages based on actual negligence.

a) Plaintiff retains burden of proof.

f. Remand necessary to establish counterclaim based on constitutional part of statute.

g. Verdicts were not inconsistent.

i. Instructions allowed for harmonization between verdicts.

a) Plaintiff was allowed to be found "more culpable" than defendant.

ii. Wording of instruction not part of appeal.

a) New trial not warranted.

h. Not reversible error to deny motion to try equitable issues first.

i. Could deal with equitable issues after verdict.

P. Wrongful discharge

1. Ackerman v. State, 913 N.W.2d 610 (Iowa 2018).

a. Action by former administrative law judge for wrongful termination against public policy; motion to dismiss granted; Ct.App. reversed and remanded; Ct.App. affirmed on further review; remanded.

b. Plaintiff initially suspended and eventually terminated allegedly for providing unfavorable testimony regarding alleged hostile work environment and pressure to rule in favor of employers.

i. Motion to dismiss granted because plaintiff was not an at-will employee.

c. Claim of wrongful discharge not exclusively reserved for at-will employees.

i. Cases since adoption of tort have addressed source of required public policy, not the appropriate class of plaintiffs.

ii. Class should be expanded to other segments of society.

a) The right to pursue such a claim is separate from the right to sue for breach of contract.

i) Vindicates the greater harm to society for the violation of public policy.

b) Is a separate wrong sounding in tort.

i) Requires proof of an intentional tort.

ii) Provides potential for punitive damages.

A) Results in greater protection to public interests and deterrence.

d. Court did not address whether availability of whistleblower claim pursuant to Iowa Code §70A.28 would preclude a tort claim for wrongful discharge in violation of public policy.

i. Issue raised for first time on appeal.

e. Dissent by Waterman (joined by Mansfield).

i. Plaintiff already has remedies.

a) Breach of employment contract.

b) Iowa Code §70A.28.

ii. Common-law claim is at odds with whistleblower statute.

a) Statute does not allow for recovery of punitive damages or emotional distress damages.

iii. Feels majority result is inconsistent with Walsh case handed down on the same day (see below).

2. Walsh v. Wahlert, 913 N.W.2d 517 (Iowa 2018).

a. Action by former administrative law judge for wrongful discharge and failure to hire; motion for summary judgment granted; affirmed in part and reversed in part; remanded.

b. Claims were pursuant to whistleblower statute (Iowa Code §70A.28) and common-law claim for wrongful discharge in violation of public policy.

i. Summary judgment granted based on plaintiff's failure to exhaust administrative remedies pursuant to Iowa Code §8A.415 prior to pursuing statutory whistleblower claim and common-law claim only available to at-will employees.

c. Discussion of overlap between whistleblower statute and statute applicable to merit employees (Iowa Code §8A.417).

i. Substantially identical language.

ii. Existence of remedy under §8A.417 does not preempt availability of remedy under §70A.28.

iii. No administrative prerequisite in whistleblower statute.

d. Prior precedent allowed for pursuit of injunctive relief under whistleblower in absence of exhaustion of administrative remedies under §8A.417.

i. Would be an "odd result" to not allow other claims under whistleblower statute for this reason.

e. Affirmed dismissal of public policy wrongful discharge claim.

i. Not for reasons relied upon by trial court.

ii. Plaintiff precluded from being common-law claim by virtue of exclusivity of remedy under civil service statute (Van Baale).