2017 UPDATE

Civil Procedure/Trial Practice

Drake University General Practice Review
December 8, 2017

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

TABLE OF CONTENTS

I. Changes in court rules applicable to civil practice

A. Iowa Rules of Appellate Procedure (all effective March 1, 2017).

1. Special service requirements on appeal.

a. Parties beyond those required to receive filings via EDMS.

i. IowaR.App.P. 6.102(2)(b) (final appeals other than TPR or CINA cases).

a) Notice of appeal must be served on court reporter who reported proceedings in the manner called for in rule 6.702(4), as well as attorney general if the state was a party, pursuant to rule 1.442(4).

b) Informational copy must be filed with clerk of supreme court.

ii. IowaR.App.P. 6.104(1)(c) (interlocutory appeals), IowaR. App.P. 6.106(1)(c) (discretionary review) and IowaR.App.P. 6.107(1)(c) (petition for certiorari).

a) Application or petition must be served on attorney general if the state is a party, pursuant to rule 1.442(4).

2. Citation to legal authority (IowaR.App. 9034(2)(a)).

a. No longer need to cite to L.Ed. citation for United States Supreme Court case citations.

3. Amicus curiae briefs (IowaR.App.P. 6.906(1)).

a. Must be filed within seven days after the brief of the party whose position the brief will support is filed.

i. Had been required to be filed within the time allowed for that party.

4. Applications for further review (IowaR.App.P. 6.1103(3)).

a. Statement supporting further review must not be limited to a recitation of rule 6.1103(1)(b) (grounds for further review.

i. “For example, if the claim is that the court of appeals decision is in conflict with a decision of the supreme court or the court of appeals on an important matter, the party must cite to the case in conflict.”

B. Iowa Rules of Civil Procedure (effective March 1, 2017).

1. Motion to reconsider, amend or enlarge (IowaR.Civ.P. 1.904(2)).

a. Need only be timely to toll time for appeal.

i. Ability to reconsider expressly included in scope of motion (in addition to amendment and enlargement of findings and conclusions).

ii. No longer needs to be "proper" motion to do so.

a) Cf. Hedlund v. State, 875 N.W.2d 720 (Iowa 2016) (1.904(2) motion filed in response to ruling on motion to dismiss improper; interlocutory appeal dismissed as untimely).

b. Successive motions are prohibited, unless court has modified prior ruling and subsequent motion is directed only at modification.

II. Statutory changes applicable to civil practice (all effective July 1, 2017, unless indicated otherwise)

A. Medical malpractice claims.

1. Iowa Code §147.136A.

a. Noneconomic damage claims capped at $250,000 per occurrence, regardless of number of plaintiffs, derivative claims, theories of liability, or defendants in the action.

i. Exception where jury determines 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."

a) "Substantial" not defined in legislation.

i) Presumably would be part of verdict form.

ii. Also not applicable if defendant's actions constituted actual malice.

b. Damages defined to include pain, suffering, inconvenience, physical impairment, mental anguish, emotional pain and suffering, loss of chance, loss of consortium or any other nonpecuniary damages.

c. "Occurrence" defined as the event, incident or happening, and the acts or omissions incident thereto, which proximately caused injuries or

damages for which recovery is claimed by patient or patient's representative.

2. Expert witness testimony.

    a. Expert witness standards (Iowa Code §147.139).

        i. Extended to "health care providers."

            a) Defined to include physicians, osteopathic physicians, physical assistants, podiatrists, chiropractors, licensed practical nurses, registered nurses, advanced registered nurse practitioners, dentists, optometrists, pharmacists, "or any other person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

        ii. Requirements for experts on standard of care,

            a) Same or similar field as defendant, and is in good standing in each state of licensure.

                i) If defendant is licensed physician or osteopathic physician, expert must be licensed in this state or another state.

            b) Not had license in any state revoked or suspended in the five years preceding alleged acts or omissions constituting negligence.

            c) Must be actively practicing in same or substantial field, or a qualified instructor at an accredited university in the same field as the defendant, over same five-year period.

            d) If defendant is board-certified, expert must be certified in same or substantially similar specialty by board recognized by "American board of medical specialties or the American osteopathic association."

    b. Certificate of merit affidavit (Iowa Code §147.140).

        i. Shall be filed prior to commencement of discovery and within 60 days of defendant's answer.

            a) May be extended for good cause shown.

i) Good cause shall include but not be limited to inability to obtain plaintiff's medical records prior to filing petition.

ii. Must be signed by expert.

iii. Certifies familiarity with the applicable standard of care and that standard of care was breached by provider named in petition.

a) Separate certificate required for each defendant.

iv. Does not preclude additional discovery and supplementation as required by Iowa Rules of Civil Procedure.

v. Must still comply with requirements of Iowa Code §668.11 and other laws governing certification and disclosure or expert witnesses.

vi. Pro se litigants held to same responsibilities as represented parties.

vii. Failure to substantially comply shall result in dismissal with prejudice of each cause of action for which expert testimony is required to establish a prima facie case.

c. Applicable to causes of action that accrue on or after effective date.

B. Liability to trespassers (Iowa Code chapter 462).

1. Possessor of any interest in real property, including but not limited to an owner, lessee, or other lawful occupant, owes no duty of care to a trespasser.

a. Must refrain from willfully or wantonly injuring trespasser.

2. Must use reasonable care to avoid injuring trespasser after presence becomes known.

3. Does not create or increase civil liability of possessor.

4. Does not affect any immunities or defenses established by other Code sections or available at common law.

5. Applicable to all causes of action accrued on or after effective date.

C. Statute of repose for improvements to real property (Iowa Code §614.1(11)).

1. Specific repose/limitation periods identified based on nature of improvement to real property.

a. Nuclear power plant—15 years.

b. Residential construction—10 years.

c. Any other kind of improvement—8 years.

2. If unsafe or defective condition is discovered within one year of expiration of applicable period of repose, that period shall be extended one year.

3. 15 year statute of repose for actions arising from or related to intentional misconduct or fraudulent concealment of unsafe or defective condition of an improvement to real property.

a. Runs from act or omission alleged to have been the cause of injury or death.

4. Is not applicable to improvement in existence prior to effective date or to improvement that is the subject of a binding agreement as of effective date (whether construction has begun or not).

D. Forcible entry and detainer actions (Iowa Code §648.5(4A)).

1. Notice requirements deemed to be satisfied if the defendant or defendant's attorney appears at hearing.

2. If hearing held fewer than three days after service, or if notice deemed satisfied as described above, court shall inform defendant that it has a right to a continuance and shall grant a continuance (if requested) to allow defendant to prepare for hearing or to retain counsel.

E. Demand for quitclaim deed (Iowa Code §649.5)

1. Request for deed now only has to be made before quiet title action is filed.

a. Prior language required at least 20 days advance notice.

2. Required content and submissions.

a. Draft quitclaim deed.

b. Street address to property.

c. Brief explanation of how adverse interest or right arose, if known.

d. Why party believes interest or right is not valid.

e. Copy of §649.5.

f. Self-addressed envelope.

g. Fifty dollars to cover expenses of execution, acknowledgement and delivery of deed,

3. Filing of disclaimer after 20 days have passed shall not preclude award of costs associated with quiet title action.

4. Court can impose a reasonable attorney fee in addition to court costs.

    a. Fees had been limited to $25 for a single tract not exceeding 40 acres or a single lot within a city, $40 for a tract between 40 and 80 acres, and a reasonable fee for tracts larger than 80 acres or two or more city lots "not exceeding, proportionately, those provided for…."

F. Nuisance actions involving animal feeding operations (Iowa Code §657.11A).

1. Animal feeding operation found to be a public or private nuisance, or found to interfere with another's use and enjoyment of life or property shall be conclusively presumed to be a permanent nuisance and not a temporary nuisance.

    a. Available compensatory damages.

        i. Person's share of damages due to diminution in fair market value of real property caused by operation.

        ii. Damages due to past, present and future adverse health condition.

            a) Shall be made utilizing only objective and documented medical evidence that nuisance or interference was the proximate cause of adverse health condition.

        iii. Special damages, including but not limited to annoyance and loss of comfortable use and enjoyment of real property.

            a) Cannot exceed 150% of total of damages awarded under (i) and (ii), above.

    b. Limitation on damages not applicable if plaintiff proves under any other cause of action that interference or nuisance caused by failure to comply with federal or state statute, regulation or rule or failure to use existing prudent generally utilized management practices reasonable for the operation.

        i. Also not applicable to person classified as habitual violator pursuant to Iowa Code §459.604.

    c. Applicable to causes of action that accrued prior to effective date.

        i. March 29, 2017.

III. Case law update

A. Attorney and client

1. Stender v. Blessum, 897 N.W.2d 491 (Iowa 2017).

    a. Action by client against attorney; directed verdict on two malpractice claims and verdict for defendant on remaining malpractice claims; verdict for plaintiff on assault claim and for punitive damages; affirmed.

    b. Defendant represented plaintiff in divorce and provided post-dissolution advice regarding need for will.

    c. Intimate relationship ensued during attorney-client relationship.

        i. Violent confrontation in which defendant assaulted plaintiff, which was recorded on 911 call.

    d. Directed verdict properly granted on malpractice claim based on sexual relationship.

        i. Not a per se claim.

            a) Violation of rule of professional conduct cannot be used as a stand-alone basis to establish claim.

        ii. No actionable underlying claim.

            a) No breach of duty.

            b) No proof of any monetary damages.

    e. Directed verdict properly granted on malpractice claim arising from drafting of will.

        i. No expert testimony.

        ii. No proof will was defective.

        iii. No proof of damages arising from drafting.

    f. Directed verdict properly granted on breach of fiduciary duty claim.

        i. Tied to claim regarding sexual relationship.

        ii. No independent basis for fiduciary duty.

    g. Trial court upheld on evidentiary rulings regarding plaintiff's expert.

        i. Had not been allowed to talk about breach of professional rules of conduct arising from sexual relationship, breach of fiduciary duty or ability of client to consent to relationship.

            a) Not relevant on contested claims.

h. Evidence from disciplinary proceedings properly ruled irrelevant.

i. Dealt with other claimed violations of rules of conduct.

a) Delay in filing QDRO in dissolution, sexual relationship, trust account issues and criminal conviction for assault of client.

i. Trial court properly refused to preclude defendant from relitigating issues from disciplinary proceeding.

i. Was precluded on elements of offense to which he pled guilty, existence of sexual relationship and attorney-client relationship.

a) Properly applied issue preclusion analysis.

b) Issues sought to be precluded were secondary to facts in disciplinary proceeding.

j. Dissent (Hecht, joined by Wiggins and Appel) would have submitted claims pertaining to sexual relationship and breach of fiduciary duty.

i. Found sufficient nexus between sexual relationship and claimed legal negligence.

a) Emotional distress would be sufficient to get to jury on issue of damages.

ii. Defendant used confidential information of plaintiff to her disadvantage.

a) Acted dishonestly in reinitiating attorney-client relationship based on inadequate basis (need for will after dissolution).

B. Bad faith

1. Thornton v. American Interstate Ins. Co., 897 N.W.2d 445 (Iowa 2017).

a. Bad faith action against workers' compensation carrier; plaintiff's motion for summary judgment on bad faith granted; jury verdict in favor of plaintiff for actual and punitive damages; affirmed in part and reversed in part; remanded for new trial.

b. Plaintiff paralyzed from chest down in work-related accident.

i. Contested issues in comp action were existence of permanent total disability and ability to obtain commutation.

a) Carrier paid PTD weekly benefits while settlement was explored.

b) Award of partial commutation referenced "vigorous, albeit weak defense" of carrier.

i) Found to be in best interest of plaintiff, looking at his ability to manage money.

c. Basis for trial court's grant of summary judgment was carrier's refusal to classify plaintiff as permanently and totally disabled, denial of PTD status and failure to agree to commutation.

i. Jury verdict was for $284,000 in compensatory damages and $25 million in punitive damages.

d. Plaintiff not required to offer workers' compensation policy into evidence.

i. Bad faith based on statutory obligations of carrier.

a) Tort of bad faith not tied to breach of contractual terms.

e. Carrier's contesting of plaintiff's permanent total status constituted bad faith as a matter of law.

i. Based on extent of injuries and early assessment by defense counsel.

f. Continuing to negotiate commutation (closed file settlement) was not bad faith.

i. Procedure allowed by workers' compensation statute.

ii. Not bad faith to refuse to stipulate to a commutation.

iii. Petition for commutation was fairly debatable on facts presented.

a) Issue was whether the plaintiff was able to manage a lump-sum settlement, as opposed to weekly benefits.

g. Error in granting summary judgment necessitated new trial on both liability and damages.

i. Compensatory award was tied to commutation claim.

h. District court has subject matter jurisdiction over bad faith claim regarding delay of delivery of new wheelchair.

i. Exclusive jurisdiction of commissioner over alternate medical care does not extend to bad faith claims.

i. Pain and suffering claim associated with wheelchair dispute supported by substantial evidence.

j. Bursitis in arms caused by delay in getting wheelchair.

k. Remaining compensatory damage claims pertaining to loss of use of money and loss of home equity when potential home purchase fell through because of delay for trial court to decide.

l. Plaintiff not entitled to attorney fees in bad faith action.

i. Not covered in either statute or contract.

a) Can recover fees in underlying WC proceeding.

i) Action to establish coverage.

ii. Conduct of carrier insufficient to award common-law attorney fees.

b) Must be more than bad faith.

c) "Oppression or connivance."

C. Class actions

1. Freeman v. Grain Processing Corp. 895 N.W.2d 105 (Iowa 2017).

a. Action for nuisance, trespass and negligence against operator of corn milling facility; class action certified; affirmed.

b. Common issues of law or fact exist and predominate over individual issues.

i. Defendant engaged in common course of conduct regarding all class members, resulting in common injury.

a) Similarity of injury issue addressed by establishing two subclasses based on proximity to facility.

ii. Nuisance requires proof by an objective standard, creating common liability among class members.

a) Determination of existence of nuisance capable on a class-wide basis.

iii. Negligence and trespass claims also involved common evidence.

a) Harm, course of conduct, duty of care, knowledge and interference with possession.

c. Pursuing claims through a class action was the most efficient and appropriate option.

i. Complex facts and legal theories, as well as expenses associated with litigation, rendered individual claims insufficient to afford subclass members relief without certification of class.\

d. Was appropriate to use testimony of class representative to establish harm to class.

i. Consistent with objective standard for theories of liability.

ii. Formula to calculate damages acceptable.

a) If not approved at trial, can always go back to individual trials on damages.

e. Fact that some class members had no injury would not preclude certification.

i. Goes to merits, an issue not addressed at certification stage.

ii. Same logic resolves challenges to plaintiffs' expert modeling.

iii. "Individual issues concerning contamination from other sources or the amount of chemicals present on a particular property may affect damage calculations, but such concerns do not overwhelm common issues of liability."

f. Certification did not violate defendant's due process rights.

i. Can still assert individual defenses.

ii. Can call additional witnesses.

a) Can always bifurcate litigation, create more subclasses or decertify the class altogether, if individual issues become unmanageable.

2. Kline v. Southgate Property Management, LLC, 895 N.W.2d 429 (Iowa 2017).

a. Class action against landlord based on alleged improper lease provisions and fees charged to tenants; motion for partial summary judgment granted; class certified; affirmed in part and reversed in part and remanded on interlocutory appeal.

b. Class certification procedurally flawed.

i. Requires independent analysis and findings of fact on criteria for certification.

a) Not done.

b) Trial court merely relied on Iowa Court of Appeals case.

ii. Remand necessary to undertake proper analysis.

a) Class may still be certified.

D. Contracts

1. Estate of Cox v. Dunakey & Klatt, P.C., 893 N.W.2d 295 (Iowa 2017).

a. Legal malpractice claim arising from drafting of prenuptial agreement; defendant moved to enforce settlement agreement and seal settlement documents consistent with claimed confidentiality clause; motions granted; affirmed in part and reversed in part; remanded.

b. Settlement was never mutually assented to.

i. Parties were never on same page on issue of confidentiality.

ii. Terms in competing offers never matched up to find one party's offer ever accepted by another party's acceptance.

iii. Court's acceptance of claimed settlement was "an elegant finesse," but not consistent with principles of contract law.

c. No need to decide whether requested confidentiality provision violated ethical rules.

d. Trial court did not abuse its discretion in sealing portions of record regarding mediation and settlement negotiation.

i. Exempted from Open Records Act.

E. Employment discrimination

1. Godfrey v. State, 898 N.W.2d 844 (Iowa 2017).

a. Action by workers' compensation carrier against state officials for retaliation, as well as due process and equal protection violations; defendants' motion for summary judgment granted; affirmed in part and reversed in part on interlocutory appeal.

b. Motion for summary judgment only dealt with direct claims for due process and equal protection violations arising from Iowa constitution.

i. Summary judgment reversed on due process claim.

c. Can assert direct claims asserting violation of Iowa constitution.

i. Due process and equal protection provisions are self-executing.

a) Not necessary for legislature to enact enabling legislation, as otherwise required by Art. XII, §1.

ii. Not preempted by passage of Iowa Civil Rights Act.

a) Involve different sources and different remedies.

b) While ICRA can preempt common-law claims, legislation cannot trump the constitution.

d. Remedy under ICRA not sufficient to allow court to decline action under constitution for due process violation.\

i. Claims are outside scope of ICRA.

a) Involve alleged partisan motivation to deprive the plaintiff of property and liberty interests without due process.

e. Action for equal protection violation adequately covered by ICRA.

i. Opinion of Mansfield (captioned as dissent), joined in by Cady by special concurrence.

ii. Did not conclude inability of plaintiff to seek punitive damages in ICRA claim to allow direct equal protection claim.

a) Might be different in analyzing other claims in future attempts to assert direct equal protection claim.

f. Dissent would find no basis for direct claim and would conclude that ICRA was an adequate remedy as to both due process and equal protection claims.

i. Would allow award of punitive damages despite sovereign immunity and language of Iowa Tort Claims Act.

ii. Would hold the ICRA allows for the exclusive remedy for employee discrimination.

2. Haskenhoff v. Homeland Energy Solutions, LLC, 897 N.W.2d 553 (Iowa 2017).

a. Employment discrimination claim base on sexual harassment, retaliation and constructive discharge; jury verdict for plaintiff; reversed and remanded.

b. Employee can pursue a direct negligence claim against supervisor arising out of co-worker harassment.

    i. Must prove the employer failed to take prompt and appropriate remedial action to end harassment.

        a) Can either sue employer under vicarious liability theory or direct theory.

        b) Vicarious liability theory supplements direct negligence theory rather than replaces it.

    ii. Plaintiff has burden of proof in a direct claim regarding failure of employer to take prompt and appropriate remedial action.

        a) Affirmative defense of exercise of reasonable care to prevent and correct sexual harassment and plaintiff's failure to take advantage of preventive or corrective opportunities remains applicable to vicarious liability claims.

            i) Defendant has burden of proving defense.

    iii. Not enough to show that the employer allowed sexual harassment to occur or continue.

        a) Failure to include element regarding failure to take prompt and appropriate remedial action necessitated new trial.

            i) Not cured by other instructions or closing arguments.

c. "Motivating factor" standard for causation established for both discrimination and retaliation claims.

    i. Typically defined as requiring that protected status or opposition "played a part" in decision or adverse action.

        a) Three votes for continuing this definition (Appel, joined by Wiggins and Hecht).

            i) Cady specially concurred in allowing "motivating factor" standard, but would require it to mean more than "played a part."

A) "A motivating factor is a factor that weighs in the defendant's decision to take the action complained of—in other words, it is a consideration present to his mind that favors, that pushes him toward, the action. It is a, not necessarily the, reason that he takes the action. Its precise weight in his decision is not important."

d. "Adverse employment action" required in retaliation claim can include actions that would have dissuaded a reasonable worker from making or supporting a charge of discrimination.

    i. Instruction should not include examples of actions that constitute adverse action as a matter of law.

        a) Depends on particular circumstances of case.

        b) Instructional error was not harmless, based on jury's verdict in favor of constructive discharge claim, despite fact that constructive discharge would constitute adverse employment action.

            i) Verdict form is unclear whether jury found a causal connection between retaliation claim and constructive discharge claim.

                A) May have concluded sexual harassment claim was grounds for constructive discharge.

    ii. Error necessitated new trial.

e. Constructive discharge instruction correctly stated that an employer need not want the employee to quit.

    i. Standard is whether the employee's resignation was a reasonably foreseeable consequence of the insufferable working conditions created by the employer.

f. Constructive discharge incorrectly applied a subjective standard (i.e., whether the plaintiff believed there was no chance of fair treatment).

    i. Correct standard is objective (whether a reasonable person in the plaintiff's position would have been compelled to resign and whether an employee reasonably believed there was no possibility that the employer would respond fairly.

ii. Error was harmless based on repeated references in other instructions regarding definition of "intolerable working conditions" and "repeated references to reasonability."

a) "On retrial, however, the district court might want to eliminate any confusion by consistently referencing the objective nature of the inquiry."

g. Trial court acted correctly in refusing to instruct jury that an employee must give the employer a reasonable chance to resolve the problem before it may find the working conditions were so intolerable a reasonable employee would have been forced into resignation.

i. Appel's dissent (joined by Wiggins and Hecht), in which Cady concurred.

ii. "If the unreported discrimination then turns the workplace intolerable, no employee should reasonably be expected to remain on the job merely to give the employer a chance to fix it." Id. at 604 (Cady, C.J., concurring).

a) "That said, the failure of an employee to pursue available remedies with the employer may be evidence for the fact finder to consider in determining whether a work environment was truly so intolerable as to satisfy the requirements of a constructive discharge." Id. at 652 (Appel, dissenting).

h. Trial court acted correctly in allowing plaintiff's expert to testify regarding requirements of a proper sexual harassment program and whether the defendant's program was consistent with those standards.

i. Did not constitute a legal opinion.

a) Was appropriate as evidence of the standard of care or standard of practice.

3. Simon Seeding v. Dubuque Human Rights Comm'n, 895 N.W.2d 446 (Iowa 2017).

a. Judicial review of city human rights commission award of damages for racial discrimination; affirmed.

b. Ordinance exempted employers with less than four "regularly employed employees."

i. Interpretation of "regularly employed" not clearly vested in commission.

a) No deference given to interpretation.

c. Numerosity requirement not jurisdictional.

    i. Constituted merits-based element of proof, to be determined by trier of fact.

d. 20-week threshold urged by employer not part of ICRA and not supported by other jurisdictions.

e. Number of employees best determined by looking at payroll.

    i. Looks at how many employees are being paid.

        a) Language looks at employer's acts (payment), not employees'.

f. "Regularly" defined as part of the established mode or place of business.

    i. In seasonal work, look to the appropriate season.

        a) Payroll records showed more than four employees during landscape season.

            i) Supported by substantial evidence.

                A) Four employees actually on payroll, with additional employees (including owner) not paid, even though employed.

                B) Employer did not produce full payroll records.

                    I) Allowing adverse inference from limited production appropriate.

g. Award supported by substantial evidence.

    i. Employee subjected to hostile work environment as result of regular use of racial epithets.

    ii. Lost wages properly calculate based on termination during landscape season.

    iii. Emotional distress damages established by lay witnesses supporting adverse impact on employee from environment.

        a) No need for expert testimony.

h. Attorney fees allowed under ordinance.

    i. Including appellate fees.

F. Governmental liability

1. Bd. of Water Works Trustees of City of Des Moines v. Sac County Bd. of Supervisors, 890 N.W.2d 50 (Iowa 2017).

    a. Action by water works board against drainage districts; certified questions answered.

    b. Ten-count complaint in federal court.

        i. Certified questions dealt with state-law claims and immunity of drainage districts.

            a) Despite long-standing precedent in area, court elected to answer questions.

    c. Only remedy against a drainage district under Iowa law is mandamus.

        i. No ability to recover monetary damages.

            a) Drainage district is not a municipality.

                i) Previously upheld on equal protection grounds.

                    A) Bound by stare decisis.

            b) Environmental considerations insufficient to revisit issue.

        ii. Legislature had done nothing in the interim to alter the statutory scheme for drainage districts.

        iii. Home rule amendment not a factor.

    d. No taking of private property.

        i. Dispute was between two public entities.

            a) Water constitutes a public resource.

    e. Drainage districts serve a legitimate state interest of facilitating the drainage of surface water off farmland and enhancing the productivity of that land.

    f. No claim under the inalienable rights clause of the Iowa constitution.

        i. Only applicable to interference with private property rights.

2. Gottschalk v. Pomeroy Dev., Inc., 893 N.W.2d 579 (Iowa 2017).

    a. Negligence claim against care center and state arising from sexual assault of resident by convicted sex offender place at center; claim for

indemnity by care center against state; motion for summary judgment of state granted on all claims; court of appeals affirmed; affirmed on further review.

b. No duty of care owed by state to either plaintiff or care center.

    i. Offender had been discharged from CCUSO (Civil Commitment Unit for Sex Offenders) prior to placement at facility.

        a) Was no longer a viable candidate for sex offender treatment due to declining mental health.

            i) Was a danger to self and others.

                A) Placement was pursuant to Iowa Code chapter 229 commitment.

                    I) Advised the care facility that offender was not a risk to others at facility, based on his history as a pedophile.

c. Issue of duty to not release offender from CCUSO not preserved.

    i. First appeared in appellate brief.

d. Issue preserved on duty to warn residents at care facility.

    i. No duty after release from CCUSO.

        a) Decision to place not made by CCUSO.

    ii. No special relationship between state and other parties.

    iii. Likewise, no duty to assure care facility used proper safety protocols

        a) No need to address immunity for misrepresentation under Iowa Code §669.14(4).

e. Claim of indemnity made by care facility properly dismissed.

    i. No special relationship.

    ii. No duty to discharge from CCUSO.

        a) Was court-ordered.

        b) Likewise, no duty regarding chapter 229 commitment.

    iii. No continuing duty to supervise or monitor sex offender.

iv. Issue of granting summary judgment when motion to compel pending not reached.

a) No duty regardless of discovery dispute.

f. Dissent by Hecht.

i. Critical of "orchestrated" transfer via stipulated order.

ii. Would find existence of duty owed by state as result of special relationship and likelihood of offender reoffending.

g. Dissent by Zager.

i. Focused on "abysmal" progress by offender while held at CCUSO.

ii. Decision to discharge was "summary and perfunctory" with no conditions.

3. Segura v. State, 889 N.W.2d 215 (Iowa 2017).

a. Medical malpractice claim against state; action dismissed for failure to exhaust administrative remedies; Court of Appeals affirmed; reversed and remanded on further review.

b. Plaintiffs did not personally sign claim forms with State Appeal Board.

i. No evidence that power of attorney had been executed, as indicated by attorney.

c. Error preserved on issue of whether plaintiffs substantially complied with rules for completing forms.\

i. Enough information in claims to trigger investigation by board.

ii. Failure to sign not an obstacle to investigation.

d. Presentment requirement for claim not delegated to administrative rules regarding form.

i. Signature did not constitute key information in completing form.

ii. Failure to sign did not deprive court of jurisdiction over claim.

e. Attorney had authority to present claim on behalf of plaintiffs.

f. Claim is properly presented when in writing and identifies sufficient information to investigate, and discloses amount of damages claimed.

i. Similar approach to that of Federal Tort Claims Act.

g. Special concurrence by Wiggins would find attorney's signature sufficient to comply with Code and administrative rules.

h. Dissent by Mansfield (joined by Waterman).

i. Board correctly required signatures as part of claim.

a) Part of processing and handling of claim.

G. Injunctive relief

1. Ney v. Ney, 891 N.W.2d 446 (Iowa 2017).

a. Contempt proceeding alleging violation of stipulated no-contact order; trial court dismissed action for lack of jurisdiction; reversed and remanded.

b. Court has equitable jurisdiction to grant injunctive relief.

i. Not limited by provisions of Iowa Code chapter 664A.

a) Merely addresses conditions laid out in statute.

i) Orders entered pursuant to Iowa Code chapters 232, 236, 598, 708.2A and 915.22.

H. Invasion of privacy

1. Papillon v. Jones, 892 N.W.2d 763 (Iowa 2017).

a. Action for violation of Iowa Code chapter 808B (Interception of Communications Act); actual and punitive damages awarded after bench trial; Court of Appeals affirmed in part, reversed in part and remanded; affirmed in part, reversed in part and remanded on further review.

b. Chapter 808B requires knowing violation of statute to award punitive damages.

c. Trial court did not make a finding on defendant's knowing violation.

i. Based award on other findings, regardless of whether defendant knew conduct was in violation of statute.

ii. Evidence supported such a finding.

a) Defendant continued to record messages even after served with lawsuit alleging violation.

b) Asserted 5th Amendment rights during trial.

d. Remanded for further proceedings to allow trial court to apply proper standard on present record, and to recalculate attorney fees as directed by court of appeals.

I. Landlord and tenant

1. Iowa Arboretum, Inc. v. Iowa 4-H Foundation, 886 N.W.2d 695 (Iowa 2016).

a. Declaratory judgment action by tenant regarding construction of 99-year lease; tenant's motion for summary judgment granted; affirmed.

b. Issue was whether lease violated provision in Iowa constitution prohibiting agricultural leases greater than 20 years.

i. Provision does not apply to land suitable for agriculture but leased for purely non-agricultural purposes.

a) Land involved in dispute was leased for incidental agricultural use.

i) 7.1 acres out of 300 acres (parking lot, etc.)

ii) Only 3.0 acres actually used as farmland.

ii. Provision enacted to prevent lengthy leases that led to oppression of tenants and violent unrest.

iii. Lease was valid.

c. Plaintiff not in breach of lease, as alleged in counterclaim.

i. 99-year lease substituted for prior language calling for consecutive five-year lease periods.

2. Kline v. Southgate Property Management, LLC, 895 N.W.2d 429 (Iowa 2017).

a. Class action against landlord based on alleged improper lease provisions and fees charged to tenants; motion for partial summary judgment granted; class certified; affirmed in part and reversed in part and remanded on interlocutory appeal.

b. Motion sought partial summary judgment for declaratory judgment on prohibited nature of fees in lease.

i. Some were properly found to be improper, others not.

a) Remand required.

c. "Uses" in Iowa Code §562A.11(2), which prohibits waiver of rights or remedies under URLTA, authorizes a person to confess judgment on a

claim under rental agreement, agrees to pay other party's attorney fees or agrees to exculpation or limitation of any liability, is ambiguous.

i. Means more than "included," based on legislative intent.

ii. Proper to make claim for damages and other remedies, even in absence of attempt by landlord to enforce lease provisions.

a) Plaintiffs had standing to bring action.

b) No need to show actual damage.

i) Can recover up to three months' rent even in the absence of any damage.

b. Fees are not categorically prohibited under URLTA.

i. Recognizes freedom of contract between parties.

ii. Fee found to be not prohibited under URLTA may still be found to be unconscionable or otherwise unenforceable.

a) Would be determined on remand.

e. Delayed possession provision is unenforceable.

i. Operated as exculpation or limitation of liability for landlord for failing to give possession at start of lease.

a) Provided for prorated credit on rent for days not in possession.

f. Carpet cleaning fee not categorically prohibited.

i. Not automatic.

ii. Establishes benchmark for clean carpet.

g. Not withheld from plaintiffs.

h. Inspection checklist provision not prohibited.

i. Established presumption that space had no pre-existing defects if tenant did not return checklist within prescribed period.

ii. Not a limitation of landlord's liability.

a) Protects tenants as well, if completed and returned.

3. Walton v. Gaffey, 895 N.W.2d 422 (Iowa 2017).

a. Class action against landlord; motion for partial summary judgment granted; class certified; affirmed in part and reversed in part and remanded on interlocutory appeal.

b. Companion case to Kline, above.

i. Same conclusion as in that case regarding standing and blanket prohibition of fees.

c. Carpet-cleaning fee charged in lease was prohibited.

i. Was automatically charged, even if not necessary to restore carpet to pre-lease condition.

a) Relying on DeStefano decision from last year.

d. Class certification reversed, for same reasons as in Kline.

J. Malicious prosecution

1. Linn v. Montgomery, ____ N.W.2d ____, 2017 WL 4847687 (Iowa S.Ct., Case No. 16-1136, filed October 27, 2017).

a. President of homeowners association and spouse filed action against residents for defamation, malicious prosecution and loss of consortium; motion for summary judgment granted as to one resident and motion for partial summary judgment granted as to another; jury verdict for defendants as to remaining parties; affirmed.

b. Residents had furnished information to law enforcement regarding alleged misappropriation of association funds to pay plaintiff's water bills.

c. Proper to grant summary judgment on malicious prosecution claim.

i. No issue of material fact regarding instigation of prosecution.

a) Merely furnished information to law enforcement.

b) Even assuming information was false, no proof of reliance by law enforcement.

i) Plaintiff must prove law enforcement official would not have brought charges in absence of false information.

ii) Charging decision was made after independent investigation and "hard evidence" (water bills).

A) False information was not material to decision to file criminal charges.

K. Medical malpractice

1. Plowman v. Ft. Madison Community Hosp., 896 N.W.2d 393 (Iowa 2017).

    a. Wrongful birth lawsuit based on failure to detect fetal abnormalities; defendant's motion for summary judgment granted; reversed and remanded.

    b. Court adopted tort of wrongful birth consistent with fact presented.

        i. Child was born with severe disabilities.

            a) Prior case rejecting wrongful birth tort involved healthy baby born after failed vasectomy.

        ii. Parents were seeking damages consistent with increased costs of raising child, as well as loss of income and emotional distress, unlike prior case which sought only traditional costs of raising healthy child.

            a) Would have terminated pregnancy if abnormalities had been properly disclosed.

                i) Injury arose from loss of opportunity to make informed decision regarding pregnancy.

        iii. Consistent with majority rule from other jurisdictions.

            a) Development of majority rule tracked with increased reliability of medical prenatal testing and right to exercise control over pregnancy resulting from Roe v. Wade and its progeny.

    c. Adoption of tort consistent with concepts of common law associated with medical negligence.

        i. Failure to diagnose.

        ii. Resulting injury is not the life of the child wrongfully born, but rather the deprivation of information necessary to make the decision to terminate pregnancy.

            a) Similar to concept of informed consent.

    d. No prevailing public policy considerations against recognition of tort.

        i. Policy favors informed consent.

        ii. No stigma to disabled community.

        iii. Would not needlessly increase cost of medical care.

iv. Concerns regarding possibility of fraudulent claims better left to jury.

v. Policy is not in favor of immunizing physicians from negligence.

e. No statutes to the contrary.

i. Statutes and rules limiting recovery arising from injury or death to child not analogous.

a) Injury is to parents, not to child.

f. Negligence must be cause of failure to lawfully terminate pregnancy.

i. See Iowa Code §707.7 (abortions past second trimester constitutes a felony, absent proof that was necessary to preserve life or health of mother or fetus and every reasonable effort not inconsistent with preserving life of mother is made to preserve life of viable fetus).

g. Father's claim survives despite lack of physician-patient relationship.

i. Father is jointly responsible for legal obligation to raise child.

a) Has interest in decision to terminate pregnancy, even though mother is ultimate decider.

h. No decision on scope of allowable damages.

i. Left to trial court on remand based on record.

i. Special concurrence by Cady.

i. Would overrule prior decision rejecting wrongful birth and eliminate distinction between normal, healthy child and one born with severe disabilities.

j. Dissent by Mansfield.

i. Adoption of tort was inconsistent with common law.

a) No physical harm to parents resulting from actions of physician.

ii. Iowa Rule of Civil Procedure 1.206 (former rule 8) precludes recovery.

a) Does not provide for recovery of emotional distress damages.

b) Does not extend any recovery for birth of child, only injury or death.

iii. Public policy is consistent with discouraging abortions.

iv. Creates slippery slope on severity of injury to qualify for recovery.

2. Willard v. State, 893 N.W.2d 52 (Iowa 2017).

a. Medical negligence claim against hospital for increased injuries following automobile accident; motion to compel disclosure of patient safety net (PSN) materials granted; reversed and remanded on interlocutory appeal.

b. PSN materials privileged under morbidity and mortality statutes (Iowa Code §§135.40-135.42).

i. Internal form used to document events that raise safety concerns for patients.

a) Reviewed by university hospital personnel and routed accordingly.

i) May result in recommendations and implementation of action plan.

b) Not individually tracked.

i) No way to know what happened to PSN generated by plaintiff's incident.

ii. Statutes enacted as part of national effort to identify and protect against medical errors.

b) Legislative intent was to encourage number of individuals and organizations to report incidents and concerns, utilizing a wide variety of formats.

iii. PSN information clearly comes within scope of statutory language ("any study for purpose of reducing morbidity or mortality") found at §135.40.

a) Privilege not limited to requests made by third parties.

i) Exception for production of summary (§135.41) not applicable.

c. PSN materials not available in discovery pursuant to §135.42.

i. Scope of statutory prohibition extends beyond use at trial.

ii. Is linked to privilege in §135.40.

a) May not be used for any litigation-related purpose.

d. Public policy favors non-disclosure.

i. Tied to goal of effective review of medical care.

L. Negligent misrepresentation

1. Dinsdale Constr. v. Lumber Specialties, Ltd., 888 N.W.2d 644 (Iowa 2016).

a. Negligent misrepresentation action against lumber company following collapse of building; jury verdict for plaintiff builder; affirmed by Court of Appeals; reversed and remanded on further review.

b. Defendant owed no duty of information to plaintiff.

i. Defendant offered engineering services, but not related to bracing of trusses.

a) Structure collapsed due to inadequate temporary bracing of trusses.

i) Defendant had advised structure "looks great" during inspection.

ii) Plaintiff had not followed plan supplied by defendant.

c. Duty to provide information must be tied to pecuniary interest of defendant in supplying that information.

i. Defendant provided mixed business of goods and services and had no pecuniary interest in supplying information regarding bracing of trusses.

a) Information supplied only as courtesy to customer.

b) Inspection of structure not done to create further business.

d. "The tort of negligent misrepresentation is not broad enough for the pecuniary interest in a transaction to come from general goodwill potentially derived by a business in supplying requested advice or information to a customer as a courtesy following the sale of a product."

i. Casual observations made during inspection expressed nothing more than a "curbstone opinion" excluded from imposition of duty under tort of negligent misrepresentation.

M. Open Records Act

1. In re Langholz, 887 N.W.2d 770 (Iowa 2016).

    a. Action for injunction against former coach of child; petition granted and injunction sealed; father's request to redisseminate injunction and expand its scope denied; affirmed in part and reversed in part; remanded.

    b. Procedures under Open Records Act (Iowa Code chapter 22) not followed.

        i. If no exclusion under §22.7 applicable, injunctive relief under §22.8 to seal record must be preceded by hearing and factual findings by court.

            a) No exception present under circumstances of case.

    c. Court will have to determine on remand whether provisions of Iowa Code chapter 235A pertaining to dissemination of dispositional data in child abuse investigations apply to justify auxiliary remedy of injunctive relief sealing record pursuant to Iowa Code §22.8 or similar procedure.

    d. No need to expand scope of injunction as requested by father.

        i. Harm sought to be avoided already covered in injunction.

            a) Proper remedy would be to enforce existing injunction, not expand its scope.

N. Premises liability

1. Ludman v. Davenport Assumption High School, 895 N.W.2d 902 (Iowa 2017).

    a. Premises claim against school arising from baseball player being struck by foul ball; jury verdict in favor of plaintiff; reversed and remanded.

    b. School owed duty of care to player.

        i. Principles of Restatement (Third) of Torts adopted for premises liability cases.

            a) Contact-sport exception to duty not applicable.

                i) Only applicable between participants in sporting activity and not to premises liability case.

b) Open and obvious nature of danger not conclusive on issue of duty.

i) Applicable to imposition of comparative fault of plaintiff.

c. Jury instruction on negligence supported by sufficient evidence.

i. ASTM standards.

ii. NFHS recommendations.

iii. Plaintiff was unaware of defendant's non-compliance with standards.

iv. Prior instances of a similar nature.

v. Safer available alternative designs of dugout.

d. Defendant should have been allowed to introduce evidence of custom through high school athletic conference.

i. Testimony of architect made through offer of proof was sufficient to go to jury.

a) Witness testified regarding placement of dugout openings in other fields in conference.

e. Jury should have been instructed on plaintiff's duty to maintain proper lookout.

i. Evidence suggested he was not looking when ball was hit and only heard ball being hit.

f. Remanded for new trial.

N. Trial

1. Chicoine v. Wellmark, Inc., 894 N.W.2d 454 (Iowa 2017).

a. Putative class action against health insurer based on alleged violations of Iowa Competition Act; trial court stayed action in favor of pending federal MDL litigation; reversed on interlocutory appeal.

b. Stay constituted abuse of discretion.

i. Stay was indefinite.

a) MDL litigation could last years or decades.

c. Issues and parties were not the same.

i. MDL litigation would not resolve all issues.

a) Iowa state courts "capable of applying antitrust precedent."

d. Stay was "patently immoderate."

2. Estate of Cox v. Dunakey & Klatt, P.C., 893 N.W.2d 295 (Iowa 2017).

a. Legal malpractice claim arising from drafting of prenuptial agreement; defendant moved to enforce settlement agreement and seal settlement documents consistent with claimed confidentiality clause; motions granted; affirmed in part and reversed in part; remanded.

b. No abuse of discretion in refusing to appoint judge from outside judicial district.

i. Basis for motion for recusal was that plaintiff law firm regularly practiced and was located in 1st District (Black Hawk County).

a) Judge who was appointed to preside over case resided in Chickasaw County in northeast corner of district.

b) No per se rule requiring recusal.

3. Linn v. Montgomery, ____ N.W.2d ____, 2017 WL 4847687 (Iowa S.Ct., Case No. 16-1136, filed October 27, 2017).

a. President of homeowners association and spouse filed action against residents for defamation, malicious prosecution and loss of consortium; motion for summary judgment granted as to one resident and motion for partial summary judgment granted as to another; jury verdict for defendants as to remaining parties; affirmed.

b. Summary judgment rulings on defamation claims based on bar of statute of limitations.

i. Statute of limitations issue not reached on appeal.

ii. Answer to special interrogatory on loss of consortium claim indicated that no defendant had made any defamatory statement prior to March 10, 2013 (effective date for statute of limitations).

a) Answer to special interrogatory met all elements of issue preclusion.

i) "Prior claim" element met by answer.

iii. Ruling on limitations issue would only constitute an advisory opinion and was unnecessary.

4. Stender v. Blessum, 897 N.W.2d 491 (Iowa 2017).

    a. Action by client against attorney; directed verdict on two malpractice claims and verdict for defendant on remaining malpractice claims; verdict for plaintiff on assault claim and for punitive damages; affirmed.

    b. Plaintiff's medical records properly submitted to jury.

        i. Medical condition was at issue.

        ii. Portions of records were redacted.

            a) Considerations of plaintiff's privacy properly weighed.

    c. No error in allowing defendant's ex-wife to testify.

        i. Was responsive to plaintiff's testimony and relevant on claimed damages.

        ii. While unfavorable to plaintiff, was not so unfairly prejudicial as to warrant exclusion under Iowa Rule of Evidence 5.403.

    d. Defendant's cross-appeal on damages dismissed as untimely.

        i. Should have filed motion for remand to allow for filing of JNOV motion or motion for new trial after plaintiff filed notice of appeal.

            a) Motion is required to be filed as soon as possible.

                i) Defendant waited 7 months to file.

        ii. Cross-appeal rejected on merits.

            a) Damages awarded were within permissible range for jury to consider.

            b) Properly left to jury's consideration.

5. Wellmark, Inc. v. Iowa Dist. Court for Polk County, 890 N.W.2d 636 (Iowa 2017).

    a. Putative class action against insurer; motion for summary judgment for defendant granted twice (second time on remand following first appeal); trial court allowed antitrust claim to proceed despite MSJ ruling #2; writ of certiorari sustained.

b. Petition limited by stipulation to per se violations of Iowa Competition Act.

i. Trial court allowed petition to be amended after second summary judgment ruling to assert a rule of reason claim.

a) Could only be pursued in a new lawsuit.

b) Affirming summary judgment ruling in second appeal deprived district court of any power to act further on matter.

i) Prior appeal ended lawsuit for all intents and purposes.

O. Warranty

1. Cannon v. Bodensteiner Implement Co., ____ N.W.2d ____, 2017 WL 4847680 (Iowa S.Ct., Case No. 15-0741, filed October 27, 2017).

a. Action by buyer of used tractor against seller; summary judgment entered in favor of defendant; Court of Appeals affirmed in part and reversed in part; affirmed in part and vacated on further review.

b. Only reviewed claim for breach of express warranty.

i. Summary judgment on claim had been reversed by court of appeals.

a) Affirmance of summary judgment on other claims affirmed.

c. Tractor was a "lemon" and "unfixable."

i. Issue is whether statements of defendant that tractor "is fit, is ready, it is field ready" constituted an express warranty.

a) Decision of court of appeals that concluded that warranty existed was vacated.

i) Even assuming statements constituted a warranty, the written contract between the parties adequately disclaimed warranty.

A) Written contract of sale disclaimed any express warranties regarding used products or from dealer.

d. Disclaimer governed by Iowa Code §554.2316.

i. Subject to parol evidence rule contained in §554.2202.

ii. Since the contract of sale was a fully integrated document, plaintiff could not use extrinsic evidence (oral statements) to vary, add to or subtract from contract.

    a) To allow oral warranty to be effective would replace disclaimer language in contract and render that part of contract ineffective.

iii. Purchase agreement disclaimed alleged oral warranty.

    a) District court grant of summary judgment affirmed.