Torts, Malpractice, and Insurance Litigation Update—October 2016 to July 2017

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Iowa Supreme Court

DINSDALE CONSTRUCTION, LLC, v. LUMBER SPECIALTIES, LTD., Supreme Court of Iowa No. 15–0164, Dec. 23, 2016.

Facts: Plaintiff, a construction company, was supplied with building materials to build a structure by the defendant, a lumber supplier. Midway through building the structure, the plaintiff requested that an employee of the lumber supplier, who previously designed roof structures, inspect the progress. The employee, whose current duties were limited to customer service and preparing bids, agreed to do so as a courtesy. The employee indicated that nothing wrong "jumped out" at him when he briefly visited the work site. Nine days later, the structure collapsed. Plaintiff brought suit in negligent misrepresentation and breach of contract. The district court denied the defendants motions for summary judgment, directed verdict, and judgment notwithstanding the verdict that the defendant brought on the grounds that the defendant owed no duty of care to the plaintiff. The jury found for the plaintiff on the count of negligent misrepresentation. The court of appeals affirmed the defendant had a duty of care.

Issue: Whether an employee that sells building materials and services who supplied false information to a builder about the structural integrity of a building under construction had a duty to use reasonable care in supplying information when it was done as a courtesy to the builder and for the general goodwill of the business.

Holding: No. The business owed no duty of care.

Reasoning: The Court explained that, for a conveyer of information, a duty of care arises from the pecuniary interest in providing that information. While there does not need to be a direct relationship between the providing of the information and the pecuniary interest, in the absence of such an interest altogether, there can be no imposition of a duty of care. The Court indicated that there are no facts in this case to demonstrate that he defendant had a pecuniary interest in the courtesy inspection.

State Public Defender v. Iowa District Court, Iowa Supreme Court No. 15–0848, Dec. 30, 2016

Facts: The district court appointed the public defender to represent S.J., a juvenile who had been detained on a burglary charge. S.J.'s interests were directly adverse to the interests of three of the local public defender's other current clients, so the public defender withdrew from representing S.J. The district court issued an order concluding that the local public defender took "absolutely no action to mitigate the consequences to [S.J.] in its effort to withdraw" and ignored her ethical duty to "take all reasonable steps to mitigate the consequences [of withdrawal] to [S.J.]." The court further concluded the local public defender's failure to comply with these ethical and statutory directives wasted the time of those involved and taxed the public defender the court costs related to S.J.'s hearing. The state public defender then filed a petition for writ of certiorari, claiming that

the district court acted illegally when it taxed the court and travel costs against the state public defender.

Issue: Whether the district court exceeded its jurisdiction or otherwise acted illegally in taxing the costs against the state public defender for withdrawing from the representation of a child prior to a detention hearing without taking steps to secure alternative representation for the child.

Holding: The district court made an error of law and exceeded its authority in determining the state public defender or the local public defender violated either statutory or ethical duties.

Reasoning: As a general rule, court costs "are taxable only to the extent provided by statute." Here, the legislature did not authorize courts to tax court costs or travel expenses to attorneys representing parties in juvenile proceedings. The taxation also cannot be sustained as a sanction because it was imposed without prior notice and without giving the state public defender an opportunity to be heard, in violation of due process. Although generally an appointed counsel may not withdraw, the duty of public defenders who are confronted with conflicts of interest is to return the case to the court. Here, the public defender complied with this directive by notifying the court of the concurrent conflicts of interest approximately one hour after the appointment and by appearing at the hearing upon short notice to answer the court's questions. Furthermore, the statute allocated to the court—not the public defender—the responsibility of selecting and appointing a successor counsel for S.J. Lastly, the appointed public defender's obligation to continue representation must be viewed in conjunction with his or her duty to avoid conflicts.

Roth v. The Evangelical Lutheran Good Samaritan Soc., Iowa Supreme Court No. 15–2095, Dec. 30, 2016

Facts: Celtus Roth was admitted to a nursing facility operated by the Evangelical Lutheran Good Samaritan Society (Good Samaritan). Celtus's son, Michael, signed an admission agreement relating to Cletus's stay, as he had general healthcare powers of attorney along with Cletus's daughter Mary. This agreement contained an arbitration clause stating that any legal dispute between the parties and any dispute arising out of or related to the agreement, or the breach thereof, or related to the care of stay at the Facility shall be settled exclusively by binding arbitration. (The agreement to arbitrate was not a condition of admission or of continued stay.) Mary and Michael as coexecutors of his estate, as well as Mary, Michael, and their siblings, Anna and Bradley, individually filed an action against Good Samaritan alleging the defendant had "negligently cared for Cletus . . . and violated numerous regulations, laws, rights and industry standards, causing Cletus . . . personal injury, illness, harm, and eventual death. The five counts set forth in the petition were: "wrongful death, negligence, gross negligence, and/or recklessness," "breach of contract," "dependent adult abuse," "loss of consortium for [Mary, Michael, Anna, and Bradley]," and "punitive damages." Good Samaritan removed the case to federal court and then moved to compel arbitration. The district court directed the claims of Cletus's estate be submitted to arbitration but asked the Iowa Supreme Court to certify questions of Iowa law relating to the adult children's loss-of-consortium claims. Lastly, in a footnote, the Court stated that "in a final rule published October 4, 2016, the Federal Centers for Medicare & Medicaid Services will prohibit nursing homes that receive Medicare or Medicaid funding from entering into this type of arbitration agreement."

Issues: (1) Does Iowa Code § 613.5 require that adult children's loss-of-parental-consortium claims be arbitrated when the deceased parent's estate claims are otherwise subject to

arbitration?; and (2) Does the fact that a deceased parent's estate's claims are subject to arbitration establish that it is impossible, impracticable, or not in the best interest of the decedent's adult children for the decedent's estate to maintain their claims for loss of consortium separately in court?

Holding: (1) No. Adult children's loss-of-consortium claims are not arbitrable just because the wrongful-death action is otherwise arbitrable; and (2) It is not necessary to answer this question as it has become moot in light of our answer to the previous question.

Reasoning: Iowa law authorizes wrongful death action on behalf of the estate. Iowa law also recognized a cause of action for loss of consortium. Iowa Code § 613.15 empowers the administrator of a parent's estate, rather than the children, to bring an action for the children's loss of the parent's services Although the personal representative normally files both claims, in a consortium cause of action, damages "are to be distributed by the trial court [to the children]." The cause of action for parental consortium is "to be commenced by . . . the parent's estate" although "the ownership of the proceeds [is] in the child." However, there is an exception to the rule that either the parent or—in the case of the death—the administrator or executor of the parent's estate must commence an action to recover damages for loss of consortium. While child-parent consortium claims are "subject to the mandates of [Iowa Code § 613.15] concerning who could maintain the action," that "does not completely eliminate" the possibility of separate claims. This exception is recognized when it is "impossible, impracticable or not in the child's best interest for the parent to maintain the action." The court found this exception applied when the parent had commenced an action without including the adult children's consortium claims. In fact, the administrator does not own the cause of action; rather, "a loss-of-parental-consortium claim is independent of the wrongful death claim and belongs to the child." Unlike a wrongful-death claim where the right to recover damages is vested exclusively in the estate representative, and the recovery belongs to the estate. Although other jurisdictions where wrongful-death actions are brought by a personal representative who stands in the shoes of the decedent, the personal representative must abide by any arbitration agreement of the decedent, in jurisdictions where wrongful death is regarded as an independent claim for the direct benefit of the estate's beneficiaries, courts generally do not find the decedent's arbitration agreement to be binding. Although the court is not convinced that the phrase "any action for damages" establishes only a right to proceed in court and not by way of arbitration, and a claim *could* be subject to arbitration, the court finds that the children's consortium claims are not subject to arbitration because these claims belong to the adult children, and they never personally agreed to arbitrate. They support this conclusion with three reasons: (1) the child owns the cause of action and the personal representative is "merely the conduit, the nominal plaintiff," when bringing the child's consortium claim under Iowa law; (2) even if they held that consortium claims brought by a personal representative were subject to the decedent's arbitration agreement, the children would have an easy way to avoid arbitration since under *Nelson*, if "the statutory plaintiff has already commenced an action omitting the claim of a child," the child may bring the consortium claim directly; and (3) in jurisdictions where the wrongful-death claims belongs to the survivors but is brought by the personal representative, courts regularly hold that the decedent's arbitration agreement does not lead to arbitration of the wrongful-death case (which is analogous to the situation at hand since one party owns the claim but a different party gets to file it). The nominal plaintiff status of the administrator or executor is not enough to compel arbitration of claims owned by the adult children and not by the estate.

Iowa Arborteum, Inc. v. Iowa 4-H Foundation, Iowa Supreme Court No. 15-0740, January 9, 2017

Facts: Arbortetum and 4-H Foundation entered into an agreement to develop an arboretum on 300 acres of land owned by the 4-H Foundation. Later they entered into a ninety-nine-year lease for the same tract of land (to supplement their Memorandum of Understanding ("MOU")), some of which was suitable for agriculture. The majority of the land was used by Arboretum as an arboretum open to the public. 4-H Foundation alleged the ninety-nine-year lease is void as it violates the constitutional proscription on agricultural leases exceeding a term of twenty years. The 4-H Foundation served the Arboretum with a notice of termination of tenancy and Arboretum filed a petition for declaratory judgment and injunctive relief to establish the validity of the lease. The 4-H Foundation answered by resisting injunction, requested the declaratory judgment action be dismissed and alleged counterclaims of mediation and breach of contract. The parties also filed competing motions for summary judgment. The district court granted declaratory relief to the Arboretum and determined the subject land was not agricultural (because although the tract of land is suitable for agricultural purposes, it was not being used as such, but was instead being used for its agreed upon purpose of a public arboretum), declared the lease valid, and ordered the 4-H Foundation to comply with the terms of the lease while also barring 4-H Foundation's breach of contract counterclaim under the doctrine of estoppel by acquiescence. The 4-H Foundation appeals.

Issue: Whether incidental agricultural use of land leased for a nonagricultural purpose makes land agricultural for purposes of our constitutional restriction on the length of agricultural leases and therefore whether the district court properly granted summary judgment on the plaintiff's motion for declaratory relief alleging the lease was valid and properly denied the defendant's motion for summary judgment alleging the lease was invalid by violating the constitutional proscription on agricultural leases exceeding a term of twenty years.

Holding: Since the land in question is not agricultural land (and therefore does not fall under the constitutional restriction contained in article I, section 24 of the Iowa Constitution), the lease is valid and enforceable and therefore the district court did not err in concluding the Iowa Constitution was inapplicable to the lease.

Reasoning: The court's review is for correction of errors at law when an equitable proceeding is before them on am motion for summary judgment. The court determined that "[t]he evil aimed at by the constitution is long leases of farming lands for farming purposes" to prevent lengthy leases that led to oppression of tenants and violent unrest as well as stagnation and alienation of those parcels of land. The court has previously held that a limestone and gravel lease was not subject to a 20-year limitation because although the land was suitable for agricultural purposes it was lease purely for nonagricultural purposes. They also cite a Montana Court which rejected the argument that the lease needed to expressly prohibit agricultural purposes in order for it to be valid. While neither the MOU nor the lease expressly prohibits farming activities, the terms of the lease indicate that neither party expected the Arboretum would utilize the land as farmland. Furthermore, The 4-H Foundation's claims the Arboretum breached the lease by not meeting every four years to approve the terms is not supported. The district court raised the doctrine of estoppel by acquiescence sua sponte and rejected the counterclaim on that ground. This court can uphold the district court's ruling on appeal on an alternative ground, so long as that ground was presented to the district court. Since two documents had conflicting terms, the court generally recognizes the modification to a contract as long as there was consideration. The language used by the parties used in the ninety-nine-year lease substituted the consecutive five-year lease period for a new, long-term lease of the property; and adequate

consideration was given for the modification (since prior to the second agreement the parties were under no obligation to continue with a long-term lease past each five-year period).

SEGURA v. STATE OF IOWA, Supreme Court of Iowa No. 15–0203, Jan. 13, 2017.

Facts: Plaintiff alleged negligence on the part of the state led to permanent loss of function in her lower extremities. The state appeals board regulations require that the claimant personally sign the form; however, plaintiff's attorney had signed it for her because she had moved to Texas. The state appeals board never sought to have the signature corrected and dismissed the claim. When the plaintiff filed in district court, the court dismissed the claim, indicating that without the signature as required by the state appeals board, the court had no jurisdiction due to the requirement that a plaintiff exhaust all administrative process before filing in district court. The court of appeals affirmed.

Issues: 1) Whether the issue was preserved for appeal and 2) whether the legislature empowered the appeals board to strip the courts of jurisdiction by regulations.

Holding: 1) The issue was preserved on appeal and 2) the board was not empowered to strip the courts of jurisdiction.

Reasoning: 1) The purpose of the preservation rules was met here as plaintiffs brief had language that suggested what the basis of their argument was and the trial court's ruling necessary considered the issue. 2) The majority expressed that, following precedent in similar cases, they reject a formalistic approach to understanding the legislation in this matter. While the plaintiffs did not adhere to the proper signature rules attached to filing, the State never suggests that the board ever lacked the necessary information to investigate the claim. The Court holds that the plaintiffs filed a valid claim, "the administrative process ran its course, and they may now proceed before the district court."

Special Concurrence: Wiggins, J.
Dissent: Mansfeild and Waterman, J.J.

BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA v. SAC COUNTY BOARD OF SUPERVISORS, AS TRUSTEE OF DRAINAGE DISTRICTS 32, 42, 65, 79, 81, 83, 86, and CALHOUN COUNTY BOARD OF SUPERVISORS and SAC COUNTY BOARD OF SUPERVISORS AS JOINT TRUSTEES OF DRAINAGE DISTRICTS 2 AND 51 and BUENA VISTA COUNTY BOARD OF SUPERVISORS and SAC COUNTY BOARD OF SUPERVISORS AS JOINT TRUSTEES OF DRAINAGE DISTRICTS 19 AND 26 AND DRAINAGE DISTRICTS 64 AND 105, Supreme Court of Iowa No. 16–0076, Jan. 27, 2017.

Facts: Plaintiffs brought suit against upstream drainage districts on the basis that the plaintiffs sustained substantial costs removing nitrates from the water that was allowed to enter the Raccoon River by the defendants. Plaintiffs brought suit on multiple theories seeking money damages and other remedies. All causes of action rest on the central question of sovereign immunity for the drainage districts.

Issues:

Question 1: As a matter of Iowa law, does the doctrine of implied immunity of drainage districts as applied in cases such as Fisher v. Dallas County, 369 N.W.2d 426 (Iowa 1985), grant drainage districts unqualified immunity from all of the damage claims set forth in the complaint (docket no. 2)?

Question 2: As a matter of Iowa law, does the doctrine of implied immunity grant drainage districts unqualified immunity from equitable remedies and claims other than mandamus?

Question 3: As a matter of Iowa law, can the plaintiff assert protections afforded by the Iowa Constitution's inalienable rights, due process, equal protection, and takings clauses against drainage districts as alleged in the complaint?

Question 4: As a matter of Iowa law, does the plaintiff have a property interest that may be the subject of a claim under the Iowa Constitution's takings clause as alleged in the complaint?

Holding & Reasoning:

Answer 1: Yes. As explained below, drainage districts have a limited, targeted role—to facilitate the drainage of farmland in order to make it more productive. Accordingly, Iowa law has immunized drainage districts from damages claims for over a century. This immunity was reaffirmed unanimously by our court just over four years ago.

Answer 2: Yes. Again, Iowa precedent, reaffirmed unanimously by our court just four years ago, recognizes that drainage districts are immune from injunctive relief claims other than mandamus.

Answer 3: No. Although these constitutional clauses are fundamental to our freedom in Iowa, they exist to protect citizens against overreaching government. Generally, one subdivision of state government cannot sue another subdivision of state government under these clauses. And even if they could, an increased need to treat nitrates drawn from river water to meet standards for kitchen tap water would not amount to a constitutional violation.

Answer 4: No, for the reasons discussed in the answer to Question 3. In the balance of this opinion, we will explain our reasoning behind these answers. We emphasize that our decision does not relate to other matters raised in the federal court litigation, including claims brought under federal law.

Special Concurrence & Dissent: Cady, C.J., concurs in part and dissents in part; Appel, J., concurs in part and dissents in part, joined by Cady, C.J. Wiggins and Hecht, JJ., take no part.

PORTER v. HARDEN, Supreme Court of Iowa No. 15–0683, Mar. 10, 2017.

Facts: The Hardens lived on land owned by the Porters. The Porters, after a court had determined that there was no oral contract entitling the Hardens to the land, served the Hardens with notice to terminate their tenancy to the property. The Hardens answered that the Porters notice was not sufficient because the Hardens had a farm tenancy due to a single horse that grazed on the property. The district court found that no farm tenancy existed. The court of appeals reversed, finding that the statute only required one animal to establish a farm tenancy.

Issues: Whether a tenant's decision to let a single horse graze on the property where the tenant resided establishes a farm tenancy under Iowa Code sections 562.5 and 562.7.

Holding: Farm tenancy must be established through a primary purpose test, and in this case, a single horse grazing on the property where the tenant resided is not sufficient under Iowa Code sections 562.5 and 562.7.

Reasoning: The Court indicates that the court of appeals gave too much wait to one provision of the statute that indicated that 'livestock' should be interpreted as 'an,' a singular term, animal. The Court held that, taking the purpose of this statute into consideration, a farm tenancy is established through a primary purpose test of how the land is being used overall, not the mere presence of one animal. The Court explained that the purpose of this statute is to avoid waste of farmland and that an 'ironclad' rule that one animal can lock up land in a farm tenancy would 'undermine this statutory objective.'

Dissent: Wiggins, J.

BRENDA PAPILLON v. BRYON JONES*,* Supreme Court of Iowa No. 15–1813, Mar. 31, 2017.

Facts: Defendant recorded the plaintiff's conversations when the defendant was not present to use as evidence in a child-custody case against the plaintiff in violation of the Interception of Communications Act. The district court award compensatory damages, attorney's fees, and punitive damages to the plaintiff. The defendant appealed the award of punitive damages because the court made no finding that the defendant knew his actions were in violation of the Act. The court of appeals found for the defendant and reversed the award of punitive damages. Plaintiff sought and was granted further review.

Issues: May punitive damages be awarded for a violation of the Interception of Communications Act absent a finding that the defendant knew his or her actions violated the Act?

Holding: Punitive damages are inappropriate for a violation of the Interception of Communications Act absent a showing that the defendant knew his or her actions violated the Act.

Reasoning: The Court explained that the purpose of punitive damages is to punish those who intentionally violate the rights of another. A showing that the defendant knew their actions violated the law is necessary to satisfy this purpose. In addition, the Court held that finding punitive damages appropriate in response to a lesser mental state than a knowing violation would render language included in the Act superfluous. The Court determined that there was sufficient evidence to support an award of punitive damages and remanded the case to the district court for a determination of whether the defendant knew he was violating the statute.

ESTATE OF MICHAEL G. COX II, ET AL. v. DUNAKEY & KLATT, P.C. *k/n/a* ***KLATT, ODEKIRK, AUGUSTINE, SAYER, TREINEN & RASTEDE, P.C.***, Iowa Supreme Court No. 16-0649, April 7. 2017

Facts: The Defendant law firm performed legal work for the Plaintiff, Cox, in 2010 when it drafted a prenuptial agreement which waived Cox's future wife from having rights to his 401(k) plan. 14 months after the agreement was executed, a petition for the dissolution of marriage was filed. Before the divorce was finalized, Cox died in May 2011, and a dispute arose over the validity of the agreement to waive the spouse's right to the 401(k) account. A federal court held that the waiver was invalid; therefore, Cox's widow received the funds rather than his parents. Cox's parents filed this action for legal malpractice against the law firm that worked on the agreement. The dispute entered mediation; however no agreement was reached during the mediation. The parties continued to work with the mediator in the ensuing days, and the court received an email from the law firm's attorney that the case had settled. The Plaintiff's attorney

disputed that assertion and noted that the parties disagreed on a confidentiality provision being included in the agreement. A series of additional emails were sent, but no final agreement was mutually agreed upon. Several days after the last email was sent, the law firm filed a motion to enforce the agreement but did not identify which version was to be enforced. Several days later, the law firm filed another motion requesting the court seal all documents related to the motion to enforce the settlement. At a hearing, the court granted the motion to enforce a binding settlement agreement and concluded the confidentiality language should be taken from the language of a draft proposed by the plaintiffs and conditionally transmitted by the law firm. The court interpreted the provision as imposing confidentiality on the parties and the attorneys. The Plaintiffs appeal alleging there was no meeting of the minds concerning the confidentiality provision.

Issue: Did the parties enter into a binding settlement agreement and, if so, did the confidentiality provision in the settlement agreement result in a violation of the professional rules of conduct?

Holding: The parties never mutually agreed to the same settlement agreement. The court did not reach the question of the violation of the professional rules of conduct, but held that the district court did not abuse its discretion in sealing the documents related to the mediation and negotiations. The judgment enforcing the settlement is reversed.

PAMELA PLOWMAN *and* ***JEREMY PLOWMAN v. FORT MADISON COMMUNITY HOSPITAL, PIL KANG, JOHN PAIVA, DAVIS RADIOLOGY, P.C., LEAH STEFFENSMEIER, THE WOMEN'S CENTER,*** *and* ***FORT MADISON PHYSICIANS AND SURGEONS***, Iowa Supreme Court No. 15-0974, June 2, 2017

Facts: Plaintiff's claim their son was born with severe birth defects after defendants negligently failed to inform them of prenatal test results. Plaintiffs claim that the negligence of the defendants in performing the prenatal tests deprived them of the right to make an informed decision about continuing the pregnancy to term. Plaintiff, mother, claimed that had she been informed of the test result, she would have terminated the pregnancy, and the plaintiff sought damages for 1) past, present, and future extraordinary care expenses, 2) the ordinary costs of raising the child, 3) the mother's mental anguish, and 4) the mother's loss of income. Plaintiff, father, later filed a claim mirroring the mother's claims. The defendants filed a motion for summary judgment stating that the claim was a wrongful birth claim and should be dismissed because Iowa has not recognized a claim for wrongful birth. The district court granted the motion and declined to recognize a new cause of action for wrongful birth. Plaintiffs appealed.

Issue: Does Iowa law allow parents to sue for wrongful birth?

Holding: Wrongful birth fits within common law medical negligence; therefore, no public policy or statute prevents a cause of action for wrongful birth under Iowa law. The court declined to address which damage claims could be submitted to the jury and instead remanded to the district court to determine which damages may be submitted.

Reasoning: The court declined to complicate medical malpractice jurisprudence by according a particular form of professional negligence when diagnosis procedures are delayed or negligently performed. The parents in this case alleged a well-recognized cause of action without distorting the elements to conform to the facts. Wrongful birth cases focus on the parents' deprivation of material information needed to make an informed decision whether to terminate a pregnancy of

a child with severe disabilities, thereby distinguishing wrongful birth from wrongful life causes of action. The injury at issue is the parents' injury, not the child's injury; therefore, Iowa statutes do not prevent recovery. The court relied on the public policy implications of *not* recognizing this cause of action in its decision because declining to recognize wrongful birth claims would result in one particular area of medical practice being immunized from malpractice claims and liability.

Concurring specially: Cady, C.J.
Dissent: Mansfield, J.

SPENCER JAMES LUDMAN v. DAVENPORT ASSUMPTION HIGH SCHOOL, Iowa Supreme Court No. 15-1191, June 2, 2017

Facts: A foul ball struck a high school baseball player who was standing in an unprotected portion of the visitor dugout at a high school baseball field. The dugout was located along the first-base line, and there was a fence in front of the majority of the dugout; however, at each end of the dugout there was a five-foot-wide opening to allow access in and out of the dugout. The Plaintiff was standing in the opening waiting for the end of the inning when the batter hit the ball. The Plaintiff looked to where the ball went and saw it in his peripheral vision before it struck him in the head. The line drive fractured the Plaintiff's skull, and he received significant injuries. The Plaintiff filed a premises liability action against the high school for negligence. The Defendant school district denied the claims and filed a motion for summary judgment alleging the contact-sports exception applied in this case. The court denied the motion and later denied a second motion for summary judgment arguing under the inherent-risk doctrine. The second motion was denied for being untimely. The jury returned a verdict in favor of the Plaintiff, and the Defendant appeals and argues 1) that it was entitled to a directed verdict on the duty of element in the negligence claim, 2) evidence was insufficient at trial to create a jury question and it was entitle to a directed verdict in its favor, 3) the district court erred in barring evidence on custom and standard practice in the design and construction of dugouts.

Issue: Does a high school, as a premise owner of a baseball field, owe a duty of care to a player when the player is hit with a baseball while standing in a dugout?

Holding: The high school owed a duty of care to the player; however the district court erred in not allowing the high school to present evidence of custom and in failing to instruct the jury on the player's failure to maintain a proper lookout. Reverse and remand for a new trial.

Reasoning: The contact-sports exception only applied to a duty owed by one participant in the sport to another, and because the Plaintiff bases the claim on a premise liability theory, the action is against the premise possessor, not a participant in the sport. The contact-sports exception does not apply. The open and obvious risk inherent in playing baseball applies to contributory fault of the Plaintiff but does not negate the land owner's duty; therefore, the primary assumption of risk or limited-duty rules do not apply. Additionally, evidence about the use of custom should have been presented because it was not conclusive on the high school's lack of negligence; the jury must still weigh evidence on custom against the other evidence. Finally, under the law of proper lookout, a jury could have decided the Plaintiff was not being watchful and failed to follow the ball, constituting negligence. The district court erred in not instructing the jury on proper lookout.

MELISSA STENDER v. ANTHONY ZANE BLESSUM & MINNESOTA LAWYERS MUT. INS. CO., Iowa Supreme Court No. 15-2016, June 16, 2017

Facts: The Plaintiff brought claims for legal malpractice, assault and battery, and punitive damages against her former attorney. The former attorney, Blessum, provided legal assistance to the Plaintiff in a divorce proceeding and two years later in drafting Plaintiff's will. After a meeting between Blessum and the Plaintiff about drafting the will, Blessum called the Plaintiff to meet and catch up. Blessum shared that he was unhappy in his marriage and kissed the Plaintiff at the end of the evening. He later texted her, met with her on a few more occasions, then began a sexual relationship with her within a few weeks. Blessum performed legal services for the Plaintiff during this time; he executed the will and sent a letter to the Plaintiff's former husband demanding three changes to the divorce decree in exchange for the Plaintiff not filing physical and sexual assault claims against her former husband for an incident that took place during the divorce proceedings two years earlier. The Plaintiff and Blessum continued the relationship while he continued to assist the Plaintiff with legal matters until June 2012.

In June, the Plaintiff confronted Blessum about seeing other women. She picked up a pan from the stove, Blessum was standing in front of her, and at some point the pan spilled on the Plaintiff's shoulder and burned her back. Because the grease was soaking through the Plaintiff's clothing, Blessum began taking off her shirt and the Plaintiff become anxious from the events of the evening. The Plaintiff ended the relationship with Blessum after he returned from retrieving her anxiety medication from the car, and he then began hitting her in the arm, forearm, head, and neck. The Plaintiff swallowed many of the anxiety pills and tried to escape the house, but Blessum caught her, dragged her inside, and continued to assault and threaten her with sexual assault. The Plaintiff was able to call 911, hide the phone, and record the remainder of the assault until police arrived. Blessum pinned the plaintiff to the couch and strangled her, poured water down her throat, bound her arms above her head, and began removing her jeans before the police arrived. Blessum was arrested, but began sending the Plaintiff letters in June. The Plaintiff obtained an order of protection and new counsel in October who requested the legal records from Blessum. Records were turned over, but the will documents were missing.

In January 2013, Blessum was sentenced to one year in jail for the assault, and a no contact order was entered. In December 2013, the Plaintiff filed a civil action against Blessum and Blessum's license to practice law was suspended in March for 18 months. In November 2013, a jury found for the Blessum on two legal malpractice claims and for the Plaintiff on the assault and battery claim. The Plaintiff appealed claiming the court erred in granting directed verdicts on the two legal malpractice claims.

Issue: Did the district court err in granting the two legal malpractice claims?

Holding: The district court properly granted directed verdicts on the two legal malpractice claims.

Reasoning: The sexual relationship between Blessum and the Plaintiff does not per se give rise to a legal malpractice claim. The Plaintiff would need to demonstrate a duty was violated and not rely solely on the existence of the sexual relationship. As well, the Plaintiff did not establish a prima facie case of legal malpractice because no evidence was produced to establish the duty or how it was breached in the drafting or execution of the will. The Plaintiff did not produce any evidence that, even if a duty existed and was breached, there was an actual injury, loss or damage.

Dissent: Hecht, Wiggins, Appel, J.J.

Iowa Court of Appeals

No. 15-1501

POLAR INSULATION INC v. GARLING CONSTRUCTION INC

AFFIRMED.

Appeal from the Iowa District Court for Benton County, Patrick R. Grady and Paul D. Miller, Judges. Heard by Vogel, P.J., and Tabor and Mullins, JJ. Opinion by Vogel, P.J. (11 pages)

Polar Insulation, Inc. appeals the district court's grants of Garling Construction, Inc.'s motions for summary judgment, asserting there were material facts in dispute. Additionally, Polar claims the district court abused its discretion in denying its motion for new trial because the jury's verdict was neither supported by sufficient evidence nor did it effectuate substantial justice as between the parties. OPINION HOLDS: Because we agree with the district court there were no material facts in dispute and because we find the jury's verdict was supported by sufficient evidence and effectuated substantial justice between the parties, we affirm.

No. 15-1813

PAPILLON v. JONES

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. Considered by Danilson, C.J., and Mullins and Bower, JJ. Opinion by Bower, J. (9 pages)

Bryon Jones appeals the district court's award of actual damages, punitive damages, and attorney fees to Brenda Papillon in her civil action brought pursuant to Iowa Code section 808B.8 (2015) for interception of oral communications. OPINION HOLDS: We affirm the district court on the issues of whether the audio recordings were admissible as evidence and the award of actual damages. We reverse the award of punitive damages. We remand to the district court on the issues of trial and appellate attorney fees.

No. 15-0843

NATIONSTAR MORTGAGE, L.L.C. v. BOWMAN

REVERSED AND REMANDED.

Appeal from the Iowa District Court for Des Moines County, John M. Wright, Judge. Heard by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by Danilson, C.J. (15 pages)

Laverne and Cheryl Bowman appeal from the district court's ruling ordering foreclosure of a mortgage and the sale of property the Bowmans were purchasing on contract. OPINION HOLDS: We reverse because Nationstar Mortgage, L.L.C., doing business as Champion Mortgage Co., is not entitled to subrogation under these facts. Because Champion was not entitled to subrogation it is also not entitled to have the title quieted in its favor. We remand for the purpose of the district court entering an order for judgment of dismissal of the petition for foreclosure and quiet title, and further proceedings relevant to the Bowmans' counterclaim.

BARKER v. UNION PACIFIC RAILROAD

No. 15-0908

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Bower, JJ. Opinion by Vaitheswaran, P.J. (12 pages)

Union Pacific Railroad Company appeals the judgment entered following a jury's award of damages to Franklin Barker on his claim under the Federal Employers' Liability Act, contending (1) Barker failed to "show Union Pacific was negligent" or "present sufficient evidence on causation"; (2) the district court erred "by allowing expert testimony [from a treating physician] on causation"; and (3) the jury instructions were "erroneous and highly prejudicial." OPINION HOLDS: Finding substantial evidence to support the elements of Barker's cause of action, no abuse of discretion in the district court's refusal to disqualify Dr. Thomas, and no error in the challenged jury instructions, we affirm the jury award in favor of Barker.

JONES v. IOWA GREAT LAKES SANITARY DISTRICT

No. 15-1911

AFFIRMED.

Appeal from the Iowa District Court for Dickinson County, Patrick M. Carr, Judge. Considered by Danilson, C.J., and Vaitheswaran and Tabor, JJ. Opinion by Vaitheswaran, J. (4 pages)

Kenneth Jones and Tritium Partners, L.L.C. appeal the district court's order upholding Iowa Great Lakes Sanitary District's denial of Jones' request for encroachment on a sanitary sewer easement across Jones' property, claiming the proposed encroachment would not unreasonably interfere with the district's access to the sewer line. OPINION HOLDS: The record supports the district court's detailed fact findings, and the court appropriately distinguished certain precedent as inapposite in this public/private dispute and thoroughly explained its decision in favor of the district. We affirm.

HINDERKS v. HINDERKS

No. 15-2165

AFFIRMED.

Appeal from the Iowa District Court for Hamilton County, James A. McGlynn, Judge. Considered by Potterfield, P.J., and Mullins and McDonald, JJ. Opinion by Potterfield, P.J. (12 pages)

Luella and Wade Hinderks, defendants in an action for replevin, appeal from the district court's ruling in favor of the plaintiffs. The defendants maintain the district court made several errors in its ruling. They maintain the court wrongly determined Luella's disclaimer was all-encompassing and wrongly included certain items affixed to the property as "trade fixtures" removable by the decedent. Additionally, they maintain the court's determination the estate had the right to hold the February 28 auction on the farmstead and the award of the corresponding damages—for having to move the site of the auction and transport the equipment and tools—was in error. OPINION HOLDS: We find no error in the district court's ruling, and we affirm.

SNYDER v. BAKER

No. 15-0440

AFFIRMED.

Appeal from the Iowa District Court for Jefferson County, John G. Linn, Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Potterfield, P.J. (6 pages)

The plaintiffs, Seth and Meghan Snyder, filed an action for specific performance, asking the district court to order the defendant, Michael Baker, to transfer title to real estate subject to a purchase agreement that had been entered into by the parties on June 23, 2014. The court ordered specific performance of the contract. Baker filed a counterclaim for damages for breach of contract, which the court dismissed in its entirety. Baker appeals from the dismissal of his counterclaim. OPINION HOLDS: Because substantial evidence supports the district court's findings, and we find no error in the district court's dismissal of Baker's counterclaim for damages, we affirm. We award the plaintiffs $2000 in appellate attorney fees.

MCILRATH v. PRESTAGE FARMS OF IOWA, L.L.C.

No. 15-1599

Appeal from the Iowa District Court for Poweshiek County, Annette J. Scieszinski, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Bower, JJ. Opinion by Bower, J. (17 pages)

AFFIRMED.

Prestage Farms of Iowa, L.L.C. appeals the award of damages to Patricia McIlrath in her nuisance action based on odor from an animal confinement operation. OPINION HOLDS: We find Prestage Farms was not entitled to immunity based on Iowa Code section 657.11(2) (2013). We also find the district court properly denied Prestage Farms's motions for judgment notwithstanding the verdict, new trial, or remittitur of damages. We affirm the decision of the district court.

IN RE ESTATE OF WIHLM

No. 15-1888

Appeal from the Iowa District Court for Cerro Gordo County, Gregg R. Rosenbladt, Judge. Considered by Doyle, P.J., McDonald, J., and Mahan, S.J. Opinion by McDonald, J. (2 pages)

REVERSED AND REMANDED.

An attorney appeals from the denial of her request for attorney's fees. OPINION HOLDS: In light of the recent supreme court decision on the same ethical violations that gave rise to the district court's denial of fees, we reverse and remand to give the district court an opportunity to revisit the request. We express no opinion on the merits of the request.

COPYCAT PHOTOCOPY CENTER v. FRISCO-OZARKS PARTNERS

No. 15-2005

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Bower, JJ. Opinion by Potterfield, J. (7 pages)

AFFIRMED.

The plaintiffs initiated this action alleging the defendants made a fraudulent transfer of property and engaged in a civil conspiracy in order to do so. The district court granted summary judgment in favor of the defendants, and the plaintiffs appealed. On appeal, the plaintiffs maintain summary judgment was improper because genuine issues of material fact exist. OPINION HOLDS: The plaintiffs concede the bank was not involved in any alleged conspiracy to fraudulently convey the property in question, and the plaintiffs' lien was

extinguished once the plaintiffs elected not to redeem the property. As such, any actions taken by the defendants afterward could not have been done in an attempt to circumvent the plaintiffs' rights. We affirm the district court's grant of summary judgment in favor of the defendants.

BJORSETH v. IOWA NEWSPAPER ASSOCIATION

No. 15-2121

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Paul D. Scott, Judge. Considered by Danilson, C.J., and Vaitheswaran and Tabor, JJ. Opinion by Vaitheswaran, J. (5 pages)

Karin Bjorseth appeals the district court's order granting summary judgment in favor of Iowa Newspaper Association (INA). OPINION HOLDS: Because the material facts are essentially undisputed and the law supports the district court's conclusion, we affirm the summary judgment ruling in favor of INA.

ABF FREIGHT SYSTEM v. VEENENDAAL

No. 16-0653

AFFIRMED.

Appeal from the Iowa District Court for Polk County, David M. Porter, Judge. Considered by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by Vaitheswaran, J. (6 pages)

ABF Freight System Inc. and its insurer appeal the district court's affirmance of the commissioner's order requiring ABF to authorize surgery for its employee. OPINION HOLDS: Because the commissioner's findings and determination are supported by substantial evidence, we affirm the district court's affirmance of the commissioner's final decision on Veenendaal's request for alternate medical care.

WESTCO AGRONOMY CO. v. WOLLESEN

No. 15-0471

AFFIRMED ON APPEAL; AFFIRMED IN PART, REVERSED IN PART, AND REMANDED ON CROSS-APPEAL.

Appeal from the Iowa District Court for Story County, Michael J. Moon, Judge. Heard by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by Vaitheswaran, J. (21 pages)

In this appeal and cross-appeal, both sides raise a number of challenges to the jury verdict and the court's rulings denying a new trial and granting summary judgment. OPINION HOLDS: We affirm all aspects of the district court proceedings except the summary judgment ruling finding Iowa Code section 706A.2(5)(b)(4) (2011) unconstitutional. We reverse and remand for further proceedings on that count.

HILDRETH v. CITY OF DES MOINES

No. 15-0509

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. Considered by Danilson, C.J., and Doyle and McDonald, JJ. Per Curiam. (3 pages)

Heather Hildreth appeals from the dismissal of an action, which was an "Application for Immediate Return of Seized Property" filed on October 28, 2014.

Hildreth sought the return of her live dog, which was impounded at the Animal Rescue League upon a finding the dog was a "dangerous dog" by the City of Des Moines. OPINION HOLDS: The district court did not err in concluding Hildreth's application for return of property was no longer justiciable because the dog was euthanized.

DIERCKS v. MALIN

No. 15-0609

Appeal from the Iowa District Court for Scott County, Stuart P. Werling, Judge. Heard by Vogel, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (21 pages)

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

The plaintiffs appeal the district court's denial of their claim based on the defendants' alleged failure to provide documents pursuant to Iowa Code chapter 22 (2013) (the Iowa Open Records Act). OPINION HOLDS: We affirm the district court's finding there was no violation of the Iowa Open Records Act with regard to the Deloitte due diligence work product and the Scope of Services document. We reverse the district court's findings there was no violation of the Iowa Open Records Act with regard to the city's failure to produce the invoice the city received from Deloitte in February and the January 9 legal memorandum. We remand to the district court for further proceedings consistent with this opinion.

HALVORSON v. BENTLEY

No. 15-0877

Appeal from the Iowa District Court for Clayton County, Andrea J. Dryer, Judge. Heard by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by Doyle, J. (31 pages)

JUDGMENT VACATED IN PART, AFFIRMED IN PART, AND REMANDED WITH DIRECTIONS.

Seller Kerndt Brothers Savings Bank appeals and land purchasers Allen and Dixie Bentley cross-appeal the order of the district court finding that the Bank breached its warranty under its deed to the Bentleys because it represented the easement on the adjoining land it sold to Roger and Constance Halvorson permitted parking when the language of the easement in the Halvorsons' purchase agreement with the Bank only expressly mentions "access." OPINION HOLDS: Here, the Bentleys' appeal was timely filed. They also proved the easement established by the Bank on the lot it sold to the Halvorsons was not merely for access but also includes parking for the owners of the adjoining lot, which the Bank previously sold to the Bentleys. We deny the claims raised by the Bank on appeal. In light of our conclusion, we vacate the district court's award of damages concerning the cost of the easement, but we affirm its award of trial attorney fees and costs. Additionally, we find the Bentleys are entitled to reasonable appellate attorney fees. Accordingly, we remand to the district court to enter judgment consistent with this opinion and to determine the reasonable amount of appellate attorney fees and costs to be awarded to the Bentleys.

HILDRETH v. CITY OF DES MOINES

No. 15-0961

Appeal from the Iowa District Court for Polk County, Dennis J. Stovall, Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Per Curiam. (6 pages)

AFFIRMED.

This action originated after Heather Hildreth's dog was determined to be a "dangerous dog" by the City of Des Moines and impounded by the Animal Rescue

League. Hildreth filed a writ of certiorari claiming the city had acted illegally and unconstitutionally by declaring the dog dangerous and vicious. On February 20, 2015, the district court rejected Hildreth's claims, annulling the writ and rescinding the previous stay of the order to euthanize. In this appeal, Hildreth challenges the merits of the certiorari proceedings. OPINION HOLDS: A number of Hildreth's claims are not properly before us for review, and we decline to consider those. We understand Hildreth's challenge to the timing of the hearing on the writ of certiorari to be a motion to continue; we find no abuse of discretion in the district court's denial of the motion. We find no error in the interpretation and application of the city's "dangerous dog" ordinance, so we affirm the district court's annulling of the writ.

PRO COMMERCIAL LLC v. MALLORY FIRE PROTECTION SERVICES INC.

No. 15-1420

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge. Heard by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by McDonald, J. (17 pages)

AFFIRMED.

A subcontractor appeals from the district court's award of damages for breach of contract to the general contractor. The subcontractor contends the general contractor failed to prove its damages were reasonable, failed to mitigate its damages, failed to provide pre-termination notice, and that the district court erred in not requiring the replacement contractor to testify as to its hourly rates. OPINION HOLDS: The district court's decision is affirmed. There is substantial evidence to support the district court's findings.

IN RE DETENTION OF ARNZEN

No. 15-1490

Appeal from the Iowa District Court for Dubuque County, Bradley J. Harris, Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Potterfield, P.J. (4 pages)

AFFIRMED.

John Arnzen's hearing to determine if he continued to suffer from a mental abnormality took place outside of the sixty-day window mandated by statute. The district court found there was good cause for the delay, and Arnzen challenges that finding. APPEAL HOLDS: There is nothing in the applicable statute that contemplates the district court may delay the hearing, even for good cause. Although we find the district court erred by allowing the sixty-day window to lapse before holding the final determination hearing, Arnzen has not requested relief that we can provide. We affirm the district court.

KOHL'S DEP'T STORES, INC v. BOARD OF REVIEW OF DALLAS COUNTY

No. 15-1562

Appeal from the Iowa District Court for Dallas County, Richard B. Clogg, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Bower, JJ. Opinion by Vaitheswaran, P.J. (8 pages)

AFFIRMED.

Kohl's Department Stores, Inc. challenged the Dallas County Board of Review's 2013 assessment of its West Des Moines property at $8,357,450, and the district court affirmed the valuation. On appeal, Kohl's contends the court (1) failed "to exercise its own independent judgment" in reviewing the property tax assessment, (2) should not have found its witnesses incompetent, and (3) should not have found the Board's witnesses more credible. OPINION HOLDS: (1) Because our standard of review is de novo, no additional scrutiny of the record is required. (2) Kohl's presented two disinterested valuation experts to challenge the

Dallas County assessor's valuation; accordingly, the burden shifted to the Board to uphold the assessment. (3) The Board's witnesses' valuations support the Dallas County assessment. We affirm the Board's assessment of $8,357,450.

WALMART STORES INC v. IOWA CIVIL RIGHTS COMMISSION

No. 15-1691

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Judge. Heard by Danilson, C.J., and Doyle and McDonald, JJ. Tabor, J., takes no part. Opinion by McDonald, J. (5 pages)

AFFIRMED.

Petitioners appeal from the dismissal of their petition for writ of certiorari, challenging a non-final decision of the Iowa Civil Rights Commission. OPINION HOLDS: The district court did not err in dismissing the petition for writ of certiorari. The Iowa Administrative Procedure Act, Iowa Code Chapter 17A (2015), provides the exclusive remedy for challenging agency action.

OLINGER v. SMITH

No. 15-1837

Appeal from the Iowa District Court for Harrison County, James M. Richardson, Judge. Heard by Vogel, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (22 pages)

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Olinger and Meyer appeal various aspects of the district court's order and judgment on their claim the trustees of the Utman Drainage District violated the Iowa Open Meetings Act (IOMA). The drainage district and its trustees crossappeal. OPINION HOLDS: We affirm the district court's finding that defendants violated IOMA. We reverse the district court's finding the trustees met their burden to prove a good faith defense. We, therefore, assess a $200 total fine against each trustee for the two violations. We further reverse the district court's downward adjustment of the attorney fees requested at trial and award the full amount sought by plaintiffs. We further award plaintiffs appellate attorney fees to be jointly and severally paid by the trustees. We remand for an entry of judgment by the district court consistent with this opinion.

MACHAMER v. IOWA DEPARTMENT OF ADMINISTRATIVE SERVICES

No. 15-1861

Appeal from the Iowa District Court for Polk County, Rebecca Goodgame Ebinger, Judge. Heard by Mullins, P.J., Bower, J., and Scott, S.J. Opinion by Scott, S.J. (9 pages)

AFFIRMED.

James Machamer appeals the district court's denial of his petition for writ of certiorari. Machamer claims the Iowa Department of Administrative Services (DAS) violated the Iowa Veterans Preference Act (the Act) by denying him a hearing before he was terminated from his position. In this appeal, he asserts the district court wrongly concluded he was exempt from the protections of the Act as a person holding a strictly confidential relation to the appointing officer. OPINION HOLDS: Upon our review of the undisputed facts in the record, we conclude the district court did not commit an error at law in determining Machamer was in a strictly confidential relationship with Director Phipps under section 35C.8. Machamer was given authority and latitude, and required to exercise his discretion and good judgment in dealing with many of the duties delegated to him. His duties were not merely clerical but required skill, judgment, trust, and confidence. We affirm the district court's denial of Machamer's petition for writ of certiorari.

RUMSEY v. CITY OF DES MOINES

No. 15-1948

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom, Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Per Curiam. (5 pages)

AFFIRMED.

The City of Des Moines impounded a dog, declared the dog to be a "dangerous animal" under the city code, and ordered the dog euthanized. The dog owner sought the return of her dog by filing an application for return of seized property under Iowa Code chapters 809 and 809A (2015). The district court decided those chapters did not provide a basis for returning the dog to its owner. OPINION HOLDS: Finding the district court's statutory analysis correct, we affirm.

GRAHAM v. MYERS

No. 15-1963

Appeal from the Iowa District Court for Mahaska County, Daniel P. Wilson, Judge. Considered by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by Vaitheswaran, J. (7 pages)

REVERSED AND REMANDED.

John and Nancy Graham appeal the district court's order quieting title in Jerry and Kim Myers to a grassy strip of land between the parties' properties and concluding the Myers (1) acquired the disputed property by adverse possession and (2) established a boundary by acquiescence. OPINION HOLDS: On our de novo review, we conclude the Myers failed to establish a right to the grassy strip by adverse possession or that the Grahams acquiesced in a boundary other than the legal boundary. We therefore reverse the district court's decision and remand for entry of an order quieting title to the grassy strip in the Grahams.

PIEPER, INC. v. GREEN BAY LEVEE AND DRAINAGE DISTRICT NO. 2

No. 15-2032

Appeal from the Iowa District Court for Lee (North) County, John M. Wright, Judge. Heard by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by Danilson, C.J. Dissent by McDonald, J. (22 pages)

AFFIRMED.

Pieper Inc. and MEP Co. appeal from the district court's rulings rejecting claims the drainage district improperly classified and assessed district landowners. OPINION HOLDS: Our review is limited to whether the Green Bay Levee and Drainage District No. 2 Board of Trustees acted illegally or in excess of its jurisdiction. Because Pieper has not established that the board acted illegally or in excess of its jurisdiction, we affirm. DISSENT ASSERTS: I would dismiss this appeal for lack of subject matter jurisdiction. The exclusive appeal remedy is provided by statute. Plaintiffs failed to comply with that procedure.

IN RE MACMASTERS TRUST

No. 15-2142

Appeal from the Iowa District Court for Winneshiek County, John J. Bauercamper, Judge. Heard by Mullins, P.J., Bower, J., and Scott, S.J. Opinion by Scott, S.J. (7 pages)

REVERSED AND REMANDED.

Residual beneficiaries appeal from a district court order concluding trustee had abused its discretion in denying income beneficiary's requests for funds. OPINION HOLDS: Upon consideration of relevant factors, we conclude the trustee did not abuse its discretion. We therefore reverse the judgment of the

district court and remand for proceedings consistent with this opinion.

DRIESEN v. SMITH

No. 15-2144

Appeal from the Iowa District Court for Lyon County, David A. Lester, Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Potterfield, P.J. (5 pages)

AFFIRMED ON BOTH APPEALS.

Jay Driesen filed a petition alleging the defendants had engaged in a number of fraudulent misrepresentations resulting in their unjust enrichment. The district court granted summary judgment in favor of the defendants, and Driesen appealed. Three of the defendants—Margaret Smith, Ruth Kooima, and Michael Jacobsman—cross-appeal, claiming the district court should have imposed sanctions against Driesen. OPINION HOLDS: Driesen's claims fail for a number of reasons, already clearly laid out by the district court. Due to lack of standing, issues involving the statute of limitations, and res judicata, we do not consider the merits of Driesen's claims. Regarding the defendants' cross-appeal, we cannot say the district court erred or abused its discretion by not imposing sanctions against Driesen or a bonding condition on Driesen's possible future litigation. We affirm on both appeals.

IN RE ESTATE OF BEDFORD

No. 15-2206

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

APPEAL DISMISSED.

George Clayton appeals from the district court's dismissal of his petition to remove the administrator from an intestate estate. The court determined that Clayton had failed to establish he was the common-law spouse of the decedent and thus lacked standing to challenge the administrator. OPINION HOLDS: Since filing his notice of appeal, Clayton has since dismissed his spousal claim. His appeal is now moot, and we dismiss it.

IN RE L.H.

No. 16-0185

Appeal from the Iowa District Court for Delaware County, Stephanie C. Rattenborg, District Associate Judge. Considered by Danilson, C.J., and Vaitheswaran and Tabor, JJ. Opinion by Tabor, J. (14 pages)

REVERSED AND REMANDED.

L.H. appeals the district associate judge's (DAJ) order of continued commitment under Iowa Code chapter 229 (2015). L.H. argues the DAJ's findings concerning lack of judgment and dangerousness are not supported by substantial evidence in the record. OPINION HOLDS: Because we agree the sparse record in this matter does not support the DAJ's findings of lack of judgment and dangerousness, we reverse and remand for termination of L.H.'s outpatient commitment.

GORDEN v. MITCHELL ENTERPRISES

No. 16-0316

Appeal from the Iowa District Court for Crawford County, John D. Ackerman, Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ.

Opinion by Potterfield, P.J. (13 pages)

AFFIRMED.

Michelle Gorden appeals from the district court's grant of summary judgment in favor of the defendants, dismissing her petition alleging dramshop liability. Gorden maintained that she was injured by Timothy Mitchell in an altercation after he was "sold and served" alcohol at the bar he owns, the appellee in this action, Mitchell Enterprises, L.L.C. ("Cheers"). The district court ruled Mitchell was not "sold" alcohol by Cheers, as contemplated by Iowa Code section 123.92 (2013), and dismissed Gorden's claim. On appeal, Gorden maintains the district court erred in interpreting the meaning of "sold" and the proper interpretation shows there is at least a genuine issue of material fact whether Cheers sold Mitchell alcohol on the night in question. Specifically, Gorden raises interpretations involving: (A) sale as defined by section 123.3(41), (B) sale by inference, (C) sale by pre-payment, (D) sale by barter, (E) sale by indirect payment, and (F) sales for tax purposes. OPINION HOLDS: Having considered each of the plaintiff's arguments regarding the interpretation of "sold" within the Dramshop Act, we find no error in the district court's interpretation. We affirm the summary dismissal of the plaintiff's petition alleging dramshop liability because the undisputed facts establish Mitchell was not "sold and served" alcohol by the appellee bar.

RENANDER v. HIGH COUNTRY DEVELOPMENT

No. 16-0424

Appeal from the Iowa District Court for Johnson County, Sean W. McPartland, Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Potterfield, P.J. (4 pages)

APPEAL DISMISSED.

In the instant case, the plaintiff, Arthur Renander, filed a petition for declaratory judgment asking the district court to determine whether the defendants' inaction in closing on the property in question had waived the rights given to them by an earlier settlement agreement between the two parties. The defendants filed a motion to dismiss Renander's petition for declaratory judgment, and the district court granted it. Renander appeals. OPINION HOLDS: Because Renander's requested relief is a declaration involving his right to purchase the land in question, and Renander has filed a quitclaim deed giving up any such rights since filing his appeal, the appeal is now moot. We dismiss it.

MALEK v. STATE

No. 16-0748

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. Considered by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by Danilson, C.J. (5 pages)

AFFIRMED.

Amanda Malek appeals from the district court's summary judgment ruling in favor of the State on her tort claim for monetary damages based on the prison authorities' alleged negligent failure to include probation credit in the calculation of her minimum parole date. OPINION HOLDS: We agree with the district court that Iowa Code section 903A.5 (2011) does not explicitly or implicitly provide for a private cause of action. We therefore affirm the entry of summary judgment in favor of the State.

IN RE DETENTION OF HUTCHCROFT

No. 15-1489

Appeal from the Iowa District Court for Dubuque County, Andrea J. Dryer, Judge. Considered by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by Vaitheswaran, J. (4 pages)

AFFIRMED.

Bradley Hutchcroft appeals the district court order placing him in transitional release. He claims the court's verdict finding him eligible for transitional release but ineligible for discharge is inconsistent and in violation of the United States and Iowa Constitutions. OPINION HOLDS: Because there is no inconsistency in the district court's verdict, we affirm.

SCHULZ FARM ENTERPRISES, INC. v. IMT INSURANCE

No. 15-1960

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

AFFIRMED.

Schulz Farm Enterprises, Inc. appeals a grant of summary judgment to IMT Insurance. OPINION HOLDS: We hold the district court properly found there were no genuine issues of material fact and IMT was entitled to judgment as a matter of law. We affirm the district court's grant of summary judgment in favor of IMT.

FIRST AMERICAN BANK v. URBANDALE LASER WASH

No. 16-0081

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. Heard by Vogel, P.J., and Tabor and Mullins, JJ. Opinion by Vogel, P.J.
(10 pages)

AFFIRMED.

First American Bank appeals the district court's decision allowing Steven Golden to carve out approximately a one-half-acre piece of land from the property he owns to designate as his homestead. The bank asserts the ability of a homeowner to select and plat a homestead under Iowa Code chapter 561 (2015) should be subject to the local zoning ordinances and rules regarding the division of property. Because Golden's property cannot be subdivided in compliance with the controlling city ordinances, the bank claims Golden should not be entitled to claim a homestead exemption. OPINION HOLDS: Considering the controlling language in Berner v. Dellinger, 222 N.W. 370, 371 (Iowa 1928), that the right to the homestead "is absolute and subject to but one limitation; that is, it must be set off so as to include the dwelling house or home of such debtor," and that homestead may be "platted in any shape or form and from any part of the whole tract," we conclude the district court correctly concluded Golden had the right to assert a homestead exemption in this case. Because there was an absence of an alternative homestead plat, it was appropriate for the court to adopt Golden's designation.

IN RE T.J.

No. 16-0086

Appeal from the Iowa District Court for Lucas County, Martha L. Mertz, Judge. Considered by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by Vaitheswaran, J. (5 pages)

REVERSED.

T.J. appeals the district court's order finding him to be seriously mentally impaired and requiring outpatient treatment. OPINION HOLDS: Because we conclude the evidence is insufficient to establish T.J. is a danger to himself or others, we reverse the district court's order and remand for dismissal of the application.

STATE v. HOYMAN

No. 16-0225

Appeal from the Iowa District Court for Warren County, Jeffrey D. Farrell, Judge. Considered by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by Vaitheswaran, J. (4 pages)

AFFIRMED.

John Hoyman appeals the district court's restitution order. Hoyman contends the State failed to prove (1) an actual loss by the City or (2) the elements of a civil cause of action. OPINION HOLDS: Because substantial evidence supports the restitution findings and determinations, we affirm.

BORN FREE USA v. IOWA DEPARTMENT OF AGRICULTURE

No. 16-0367

Appeal from the Iowa District Court for Polk County, Jeanie K. Vaudt, Judge. Considered by Doyle, P.J., McDonald, J., and Mahan, S.J. Opinion by Doyle, P.J. (3 pages)

AFFIRMED.

Born Free USA and the Animal Rescue League of Iowa, Inc. appeal the district court ruling affirming the Iowa Department of Agriculture and Land Stewardship's denial of their petition for rulemaking. OPINION HOLDS: We affirm by memorandum opinion pursuant to Iowa Rule of Court 21.26(b), (d), and (e).

AYALA v. TYSON FOODS INC.

No. 16-0505

Appeal from the Iowa District Court for Polk County, Paul D. Scott, Judge. Considered by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by McDonald, J. (7 pages)

AFFIRMED.

Claimant appeals the denial of his petition for review-reopening. OPINION HOLDS: The commissioner's decision was not irrational, illogical, or wholly unjustifiable and was supported by substantial evidence.

AYALA v. TYSON FOODS INC.

No. 16-0505

Appeal from the Iowa District Court for Polk County, Paul D. Scott, Judge. Considered by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by McDonald, J. (7 pages)

AFFIRMED.

Claimant appeals the denial of his petition for review-reopening. OPINION HOLDS: The commissioner's decision was not irrational, illogical, or wholly unjustifiable and was supported by substantial evidence.

FIRST AMERICAN BANK v. FOBIAN FARMS, INC.

No. 16-0624

Appeal from the Iowa District Court for Johnson County, Ian K. Thornhill, Judge. Considered by Vogel, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (3 pages)

WRIT ANNULLED.

Fobian Farms, Inc. challenges the district court's ruling on remand arguing it abused its discretion in imposing sanctions. OPINION HOLDS: On remand, the district court wrote a thorough opinion identifying and addressing the issues. On our review, we find the district court did not abuse its discretion. We annul the writ without further opinion. See Iowa Ct. R. 21.26(1)(d), (e).

IN RE G.G.

No. 16-0932

Appeal from the Iowa District Court for Johnson County, Magistrate Edward J. Leff. Considered by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by Vogel, P.J. Dissent by Vaitheswaran, J. (5 pages)

AFFIRMED.

A respondent appeals his civil commitment. OPINION HOLDS: After finding substantial evidence to support the commitment, we affirm. DISSENT ASSERTS: I respectfully dissent. Because I do not believe the State presented substantial evidence to support a finding of dangerousness, I would reverse.

BUDNY v. MEMBERSELECT INSURANCE COMPANY

No. 16-1189

Appeal from the Iowa District Court for Johnson County, Christopher L. Bruns, Judge. Considered by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by McDonald, J. (10 pages)

AFFIRMED.

An insured appeals from the district court's order granting summary judgment to insurer in policy dispute. OPINION HOLDS: The district court did not err in granting summary judgment. There is no disputed issue of material fact, and the insurer is entitled to judgment as a matter of law with respect to the insured's claims of waiver, promissory estoppel, implied warranty, and bad faith.

ANDERSEN v. KHANNA

No. 14-1682

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg (partial summary judgment), Dennis J. Stovall (motion to reconsider), and Michael D. Huppert (pretrial motions and trial), Judges. Heard by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Potterfield, P.J. (25 pages)

AFFIRMED.

On appeal, the plaintiffs maintain they should have been allowed to present two claims of inadequate informed consent alleging (1) Dr. Khanna failed to advise Andersen that he had a "super bad heart" pre-surgery with an increased risk of mortality and (2) Dr. Khanna was required to inform Andersen he had never performed the procedure before. Additionally, the plaintiffs argue the court abused its discretion when it refused to allow them to present a rebuttal witness, and they urge us to find the court erred when it refused to provide their proposed marshalling instruction to the jury. OPINION HOLDS: Because we find no error on the district court's part that prevented the jury from hearing that Andersen was never told about his "super bad heart," there is no relief that we can

grant. Because Dr. Khanna had no duty to inform Andersen of his inexperience in performing the procedure, summary judgment of that informed consent claim was proper. Additionally, the court did not abuse its discretion in refusing to allow the plaintiffs to call a rebuttal witness, and the court did not err in refusing to provide the plaintiffs' proposed marshalling instruction to the jury. We affirm.

SHAMS v. HASSAN

No. 15-1344

Appeal from the Iowa District Court for Polk County, Jeanie Kunkle Vaudt, Judge. Considered by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by Danilson, C.J. (11 pages)

REVERSED AND REMANDED FOR NEW TRIAL.

Sona Hassan appeals from judgment entered against her on claims by her brother, Samir Shams, for conversion, breach of fiduciary duty, and breach of oral contract. Hassan contends the trial court erred in refusing to submit a proposed jury instruction on the statute-of-limitations affirmative defense. OPINION HOLDS: Because we conclude Hassan was entitled to submission of the jury instruction on the statute-of-limitations theory, we reverse.

IN RE ESTATE OF HOUSER

No. 15-1993

Appeal from the Iowa District Court for Johnson County, Marsha A. Bergan, Judge. Considered by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by Vaitheswaran, J. (4 pages)

AFFIRMED.

Bonnie Forbes appeals the district court's order removing her as co-executor of her mother's estate. OPINION HOLDS: Because we conclude the district court did not abuse its discretion in removing Forbes as co-executor, we affirm.

URBANDALE BEST v. R&R REALTY GROUP

No. 15-2015

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge. Heard by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J. Opinion by Vogel, P.J. (17 pages)

AFFIRMED IN PART, REVERSED IN PART ON APPEAL; AFFIRMED ON CROSS-APPEAL.

Urbandale Best, LLC and Urbandale West, LLC (collectively the Urbandale entities) appeal the district court's verdicts in a bench trial involving R&R Realty Group, LLC (R&R), R&R Real Estate Investors, LLC (REI), and PMR Realty Group, LLC (PMR) (collectively the R&R entities). The R&R entities crossappeal. OPINION HOLDS: Because we conclude REI breached a fiduciary duty involving a personal profit, we reverse the district court's decision refusing to remove it as a managing member of Paragon West. Because we conclude the apartment proposal was part of the ordinary course of business of Paragon Best, Urbandale West's rejection of the financing proposal was not in violation of its fiduciary duties, and Urbandale West was not entitled to attorney fees, we affirm the district court on all other counts.

IN RE ESTATE OF WORKMAN

No. 15-2126

Appeal from the Iowa District Court for Scott County, John D. Telleen, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Bower, JJ. Opinion by Vaitheswaran, P.J. (4 pages)

AFFIRMED.

Dennis Workman appeals claiming (1) the law on confidential relationships should be changed and (2) the district court abused its discretion in denying his motion to amend his petition to conform to the proof. OPINION HOLDS: Because the district court cited appropriate precedent on confidential relationships, we affirm the summary judgment ruling. We also conclude the district court did not abuse its discretion in denying the motion to amend. We affirm.

NATH v. PAMIDA STORES OPERATING CO.

No. 16-0001

Appeal from the Iowa District Court for Winnebago County, Gregg R. Rosenbladt, Judge. Considered by Doyle, P.J., Tabor, J., and Goodhue, S.J. Opinion by Goodhue, S.J. (13 pages)

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Louise A. Nath appeals from the order granting summary judgment on her extortion claim against her former employer. OPINION HOLDS: A. The transcript of Nath's testimony at the unemployment hearing should have been considered in ruling on the employer's motion for summary judgment. Because both the transcript and Nath's interrogatory answer create a material dispute of fact as to the existence of a threat adequate to support a claim of extortion, the dispositive motion for summary judgment is overruled. B. Nath is not entitled to recover lost wages, but pain and suffering damages are available to her. C. The motion to strike Nath's expert witness was prematurely granted and may be reconsidered after the content and reliability of the expert's testimony can more accurately be determined.

STOWE v. SECOND INJURY FUND

No. 16-0599

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. Heard by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Doyle, J. (9 pages)

AFFIRMED.

The Second Injury Fund (Fund) appeals the district court's ruling that reversed the agency's grant of summary judgment in favor of the Fund. The district court determined the agency erred in its conclusion that Stowe was precluded from claiming a hand injury based upon a settlement agreement in another case. OPINION HOLDS: Viewing the evidence in the light most favorable to Stowe, we agree with the district court that the agency erred in finding there was no genuine issue of material fact such that the Fund was entitled to summary judgment as a matter of law based upon Stowe's settlement agreement. While the agency may ultimately determine Stowe did not prove she was entitled to Fund benefits, the evidence presented was sufficient to establish a factual issue concerning her claim, and Stowe is entitled to present her evidence and have the agency make a determination based upon that evidence. For these reasons, we affirm the ruling of the district court finding the agency erred in granting the Fund's motion for summary judgment and dismissing Stowe's petition, and we remand the matter back to the agency for further proceedings.

IN RE G.G.

No. 16-0678

Appeal from the Iowa District Court for Polk County, Heather L. Lauber, District Associate Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Tabor, J. (6 pages)

AFFIRMED.

G.G. appeals the district court's order of involuntary commitment under Iowa Code chapter 229 (2016). G.G. challenges the sufficiency of the State's evidence that he lacked sufficient judgment to make responsible decisions with respect to his hospitalization and treatment. OPINION HOLDS: Because we find ample evidence in the record establishing G.G.'s lack of judgmental capacity, we affirm.

RILEY v. RILEY

No. 15-1250

Appeal from the Iowa District Court for Adams County, John D. Lloyd, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Mullins, P.J. (25 pages)

APPEAL AFFIRMED; CROSS-APPEAL DISMISSED; AND REMANDED.

Matt and Denise Riley appeal the judgment of the district court finding they engaged in elder abuse by financially exploiting Arlin Riley. They argue Arlin was not a vulnerable elder within the meaning of Iowa Code chapter 235F (2015), the district court improperly shifted the burden of proof to Matt and Denise to affirmatively establish they did not unduly influence Arlin, and the district court erred in finding Matt and Denise financially exploited Arlin. Arlin cross-appeals a portion of the court's ruling denying his request for the return of property. Arlin requests appellate attorney fees. OPINION HOLDS: We determine this is the exceptional case in which there has been a final appealable order as to some issues, while the court retained jurisdiction to rule on remaining issues. We find the court did not enter a final order on the issues raised by Arlin in his crossappeal; we consider the cross-appeal as an application for interlocutory appeal, deny the application, and dismiss the cross-appeal. However, the court entered a final ruling as to the issues raised by Matt and Denise on appeal; thus, we consider those issues. Upon our de novo review, we find Arlin proved by a preponderance of the evidence he was a vulnerable elder under chapter 235F and unable to protect himself from financial exploitation by Matt and Denise. Accordingly, we affirm the district court's ruling as to the issues raised by Matt and Denise. We remand to the district court for resolution of unresolved issues and consideration of appellate attorney fees.

PETRO v. STATE

No. 15-2079

Appeal from the Iowa District Court for Warren County, Bradley McCall, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ. Per Curiam. (13 pages)

AFFIRMED.

Rick Petro appeals from the district court's summary dismissal of his lawsuit against the State of Iowa for intentional infliction of emotional distress (IIED) and negligent hiring and supervising. Petro sued the State for civil tort damages claiming the Iowa Department of Human Services acted improperly, by and through its employee, in the employee's acts and omissions during the course of juvenile court proceedings, which ultimately concluded with the termination of Petro's parental rights to his two children. The State filed for summary judgment, asserting Petro's suit failed to state a recoverable claim for a number of reasons. The district court found that Petro's suit was barred by res judicata, granted the State's motion for summary judgment, and dismissed Petro's claims. Petro appeals. OPINION HOLDS: Because we agree with the district court that the doctrine of

res judicata bars Petro's claims for IIED and negligent hiring and supervising, we affirm the district court's grant of summary judgment and dismissal of the claims. We affirm.

WEDDLE v. MADSEN

Appeal from the Iowa District Court for Carroll County, Gary L. McMinimee, Judge. Considered by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by Vogel, P.J. (8 pages)

No. 15-2112

AFFIRMED.

Mark Madsen and Farner Bocken Company (Madsen) appeal the district court's rulings that admitted medical evidence relating to Carolyn Weddle's future pain and suffering and past medical expenses. Madsen claims the district court erred in overruling his objections to the evidence because Weddle failed to timely disclose the evidence related to future pain and suffering and failed to provide expert testimony on causation regarding her past medical expenses. OPINION HOLDS: Because we find the evidence admitted was not prejudicial and there was a nexus between the injuries suffered and the medical bills, we affirm the district court.

KELLOGG v. CITY OF ALBIA

Appeal from the Iowa District Court for Monroe County, Randy S. DeGeest, Judge. Heard by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Danilson, C.J. (15 pages)

No. 15-2143

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Wilma Kellogg appeals from the district court's adverse summary judgment ruling on her claim for nuisance as a result of damages to her home caused by the flooding of a storm sewer system constructed by the City of Albia. Kellogg contends the district court erred in granting summary judgment on these two grounds: (1) the action is barred by the statute of limitations; and (2) Iowa Code section 670.4(1)(h) (2015) municipal immunity applies. OPINION HOLDS: We find a genuine issue of material fact exists, and the district court erred in granting summary judgment on the basis of municipal liability provided in section 670.4(1)(h). We conclude the district court did not err in granting summary judgment with respect to claims and damages for flooding occurring prior to the two-year period preceding the filing of the lawsuit as they were barred by the statute of limitations, and we affirm the entry of summary judgment as to such claims. We remand for further proceedings on the nuisance claim for damages arising within two years of the filing of the lawsuit as well as the abatement cause of action.

BUSZKA v. IOWA CITY COMMUNITY SCHOOL DISTRICT

Appeal from the Iowa District Court for Johnson County, Carl D. Baker, Judge. Considered by Danilson, C.J., and Mullins and Bower, JJ. Opinion by Mullins, J. (15 pages)

No. 16-0011

AFFIRMED.

Plaintiffs appeal an adverse summary judgment ruling and dismissal of their claims against a school district for alleged sexual abuse by an employee. They argue the district court applied the improper statute of limitations and that such an application is unconstitutional. OPINION HOLDS: We agree with the district court's analysis and hold it applied the correct statute. The statute is not unconstitutional.

BESLER v. DUBUQUE COMMUNITY SCHOOL DISTRICT

No. 16-0070

Appeal from the Iowa District Court for Dubuque County, Bradley J. Harris, Judge. Considered by Danilson, C.J., and Mullins and Bower, JJ. Opinion by Mullins, J. (10 pages)

AFFIRMED.

Plaintiffs appeal the dismissal of their claims against a school district and its administrators for alleged sexual abuse by an employee. They allege a five-year statute of limitations under Iowa Code chapter 614 (2009) applies, not the two-year statute pursuant to the Iowa Municipal Tort Claims Act. They also challenge the constitutionality of the statutory scheme as applied by the district court. OPINION HOLDS: We find the two-year statute is the applicable one. It is not unconstitutional.

IN RE ESTATE OF BOMAN

No. 16-0110

Appeal from the Iowa District Court for Hancock County, Gregg R. Rosenbladt, Judge. Heard by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Tabor, J. (38 pages)

AFFIRMED.

Cynthia Cramer and Trudy Burford, daughters of Milton and Helen Boman, appeal jury verdicts in favor of their brother, Wesley Boman, in his lawsuit contesting their father's will and alleging tortious interference with inheritance. On appeal, Cynthia and Trudy argue the district court should have granted their motion for judgment notwithstanding the verdict or a new trial because Wesley did not offer sufficient evidence to support the verdicts. OPINION HOLDS: We find no error in the court's refusal to disturb the verdicts or the jury's award of punitive damages. Because the admission of improper opinion testimony from Wesley's expert constituted harmless error, we affirm.

DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT v. BABE

No. 16-0258

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge. Considered by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Danilson, C.J. (9 pages)

AFFIRMED.

The Des Moines Independent Community School District (District) challenges the district court's dismissal of its appeal of an adjudicator's decision. OPINION HOLDS: Because the District did not reject the arbitrator's decision within the time provided by Iowa Code section 279.17(7) (2014), the adjudicator's decision was final and binding, and the district court was without jurisdiction to hear the appeal. Summary judgment was properly granted.

DARABA v. STURDIVANT

No. 16-0343

Appeal from the Iowa District Court for Polk County, Mary Pat Gunderson, Judge. Considered by Vogel, P.J., and Tabor and Mullins, JJ. Opinion by Vogel, P.J. (4 pages)

AFFIRMED.

Aura Daraba appeals the district court's order that granted the motion for summary judgment filed by Jeffrey J. Sturdivant, D.D.S., and Drs. Sturdivant and Mann, P.C., d/b/a Smile Orthodontics (Dr. Sturdivant). Daraba asserts various reasons why summary judgment was not proper in this case, and she asks that we reverse and remand the matter for trial. OPINION HOLDS: Summary judgment was proper in this case in light of

Daraba's failure to designate an expert witness who supported her claims against Dr. Sturdivant. We affirm the district court's decision.

MONSANTO v. DELGADO

No. 16-0660

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge. Considered by Danilson, C.J., and Mullins and Bower, JJ. Opinion by Mullins, J. (4 pages)

AFFIRMED.

An employer appeals from the ruling on petition for judicial review of agency action. OPINION HOLDS: We conclude the agency's decision is supported by substantial evidence and is not irrational, illogical, or wholly unjustifiable. Accordingly, we affirm the district court's decision on judicial review.

SCHNEIDER v. KEOKUK COMMUNITY SCHOOL DISTRICT

No. 16-0675

Appeal from the Iowa District Court for Lee County, John M. Wright, Judge. Considered by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Vaitheswaran, J. (5 pages)

AFFIRMED.

Scott Schneider appeals the district court's dismissal of his petition. OPINION HOLDS: Because Schneider failed to exhaust the required administrative remedies, we affirm.

INTRILIGATOR v. RAFOTH

No. 16-0743

Appeal from the Iowa District Court for Dubuque County, Michael J. Shubatt, Judge. Considered by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by Doyle, J. (7 pages)

AFFIRMED.

William and Lisa Intriligator appeal after the district court entered judgment in favor of David and Janie Rafoth on claims the Rafoths made material misrepresentations regarding the roof of a home they sold to the Intriligators. OPINION HOLDS: I. The district court properly exercised its discretion in excluding the Intriligators' expert witnesses due to concerns about the untimely designation causing additional delays. II. The trial court acted within its discretion in denying evidence offered without a foundation. III. Substantial evidence supports the court's finding the Intriligators failed to prove the Rafoths violated chapter 558A (2015). Because the Intriligators' breach-of-contract claim depends on the success of their chapter 558A claim, we affirm the judgment entered in favor of the Rafoths on both claims.

WENDT v. MEAD

No. 16-0928

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Opinion by McDonald, J. (6 pages)

AFFIRMED.

A respondent appeals from an order extending an order of protection entered pursuant to Iowa Code chapter 236 (2016). OPINION HOLDS: There was sufficient evidence to establish the respondent posed a continuing threat to the safety of the petitioner.

FIRST AMERICAN BANK GROUP v. IOWA DOT

No. 15-1212

Appeal from the Iowa District Court for Woodbury County, Jeffrey L. Poulson, Judge. Heard by Vogel, P.J., and Vaitheswaran and McDonald, JJ. Opinion by McDonald, J. (16 pages)

AFFIRMED.

The Iowa Department of Transportation appeals a condemnation award. It contends the jury overvalued the leasehold interest at issue because of one expert's irrelevant testimony, the verdict did not conform to the evidence, a second expert should have been allowed to testify, it should have been allowed to crossexamine a third expert on an ethical infraction, and that remittitur is proper. OPINION HOLDS: The first expert's testimony was relevant to bear on the contested issue of discount rates. The verdict conformed to the jury instruction the parties agreed to and was within the range of evidence, which is a strong indicator of its propriety; we cannot say the court abused its discretion in allowing the verdict to stand. The second expert's proposed testimony was speculative and relied on another expert's analysis, so it was not an abuse of discretion to disallow his testimony. The third expert's ethical infraction was irrelevant. Remittitur is not authorized in a case such as this. Accordingly, we affirm.

BURKE v. CITY OF LANSING

No. 15-1797

Appeal from the Iowa District Court for Allamakee County, Richard D. Stochl, Judge. Heard by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Vaitheswaran, J. (11 pages)

REVERSED AND REMANDED.

William Burke appeals the district court's decision denying his petition for writ of certiorari in which he challenged the City of Lansing's city council's action in removing him from the city council. Burke raises several issues, one of which we find dispositive: whether the removal proceeding violated the United States and Iowa Constitutions' guarantees of procedural due process. OPINION HOLDS: Because the removal proceeding violated Burke's right to procedural due process, we reverse and remand for entry of an order sustaining the writ of certiorari. We remand for a determination of the expenses and fees payable to Burke's attorney.

CITY OF CEDAR RAPIDS v. LEAF

No. 16-0435

Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Judge. Considered by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by Doyle, J. (20 pages)

AFFIRMED

Marla Leaf appeals from the assessment of a civil fine imposed under Cedar Rapids' automated traffic enforcement (ATE) ordinance. She asserts the City failed to prove by clear, satisfactory, and convincing evidence that her car exceeded the speed limit, and she argues the ATE ordinance and its implementation by the City violates her constitutional rights and violates state law. OPINION HOLDS: The district court did not error in concluding the City proved by clear, satisfactory, and convincing evidence that Leaf was speeding. We reject Leaf's procedural due process, substantive due process, equal protection, and privileges and immunities arguments. We also reject Leaf's unlawful-grantof- jurisdiction, preemption, and unlawful-delegation-of-police-powers arguments. Accordingly, we affirm the judgment of the district court.

CINCINNATI INSURANCE CO. v. BLUESCOPE BUILDINGS

No. 16-0503

Appeal from the Iowa District Court for Cass County, Timothy O'Grady, Judge. Considered by Vogel, P.J., and Tabor and Mullins, JJ. Opinion by Tabor, J. (4 pages)

AFFIRMED.

BlueScope challenges the court's application of Iowa's rate of statutory interest, asserting the court should have instead applied Minnesota's higher rate of statutory interest to the Iowa judgment. OPINION HOLDS: The parties agreed Iowa law governed the court's interpretation of the insurance policy, and Iowa law also governs the interest rate on the Iowa judgment.

FISHER v. DOLAN

No. 16-0874

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ. Opinion by Bower, J. Dissent by Vaitheswaran, P.J. (5 pages)

REVERSED.

James Dolan appeals the district court's decision denying his motion to dismiss and granting a domestic abuse protective order to Jessica Fisher. OPINION HOLDS: We find the district court improperly denied James's motion to dismiss as there was insufficient evidence to establish a domestic or intimate relationship. DISSENT ASSERTS: I respectfully dissent. I would find sufficient evidence to support a finding of domestic abuse assault.

IN RE ESTATE OF WORKMAN

No. 16-0908

Appeal from the Iowa District Court for Scott County, John D. Telleen, Judge. Heard by Vaitheswaran, P.J., and Potterfield and Bower, JJ. Opinion by Vaitheswaran, P.J. Dissent by Potterfield, J. (19 pages)

AFFIRMED.

Dennis Workman appeals the district court's grant of several posttrial motions. Dennis claims (1) he satisfied common law factors for deeming the will contest provision unenforceable; (2) the attorney fee awarded to the executor was unwarranted; and (3) accounting, disbursements, and farm leases should not have been approved. OPINION HOLDS: Because the no contest provision was enforceable and the district court appropriately granted Gary's motion to revoke Dennis' interest or shares, the district court did not abuse its discretion in granting Gary's request for attorney fees, and Gary discharged his fiduciary duty, we affirm. DISSENT ASSERTS: I respectfully dissent; I would find the district court's rulings in Dennis's favor on the motions for summary judgment and directed verdict sufficient to establish probable cause for Dennis's claim. I would reverse the revocation of Dennis's interest and also the derivative revocation of his son's interest under the forfeiture clause herein.

DOSS v. ZONING BOARD OF ADJUSTMENT

No. 16-0916

Appeal from the Iowa District Court for Story County, Gary L. McMinimee, Judge. Considered by Vogel, P.J., and Tabor and Mullins, JJ. Opinion by Tabor, J. (4 pages)

AFFIRMED.

Ames homeowners filed a petition for writ of certiorari challenging the decision about their backyard fence reached by the city's Zoning Board of Adjustment; the district court annulled the writ. OPINION HOLDS: Assuming error is preserved, we find no merit to the homeowners' accusation the district court was biased in favor of the city. As to the homeowners' other claims, we agree with the district court's well-reasoned decision to annul the writ.

BEHM v. CITY OF CEDAR RAPIDS

No. 16-1031

Appeal from the Iowa District Court for Linn County, Christopher L. Bruns, Judge. Considered by Danilson, C.J., and Doyle and McDonald, JJ. Opinion by Doyle, J. (18 pages)

AFFIRMED.

After unsuccessfully challenging the Cedar Rapids Automatic Traffic Enforcement (ATE) system on numerous fronts, six motor vehicle owners appeal from summary judgment granted in favor of the defendants. OPINION HOLDS: We have carefully considered all of the plaintiffs' arguments properly preserved for review, and we find no error in the district court's grant of summary judgment in favor of the defendants. The plaintiffs' procedural due process rights were not violated under the procedures set forth in the ATE ordinance, nor did the ATE system or ordinance violate the plaintiffs' rights relating to substantive due process, travel, equal protection, or privileges and immunities. The ATE ordinance does not unconstitutionally delegate police power, and the plaintiffs did not establish their claim of unjust enrichment. Finally, we reject the plaintiffs' arguments concerning their claim for a private cause of action. Accordingly, we affirm the judgment of the district court.

IN RE C.D.

No. 16-1491

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Bower, J. (8 pages)

AFFIRMED.

Respondent C.D. appeals the district court order finding she was seriously mentally impaired. OPINION HOLDS: We find there is clear and convincing evidence in the record to show C.D. had a mental illness, lacked sufficient judgment to make responsible decisions about her treatment, and was likely to inflict serious emotional injury on those close to her if she was allowed to remain at liberty. We affirm the decision of the district court.

IN RE DETENTION OF ADAMS

No. 15-1539

Appeal from the Iowa District Court for Scott County, Thomas G. Reidel, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by McDonald, J. (11 pages)

AFFIRMED.

A respondent appeals the jury's finding that he is a sexually violent predator in a civil commitment proceeding. The respondent contends the district court erred in not granting his motions for mistrial based on the State's expert's testimony. Additionally, the respondent argues there is not sufficient evidence to support the jury's finding. OPINION HOLDS: The district court did not err when it denied the respondent's motions for mistrial. Additionally, there was sufficient

evidence to support the jury's verdict.

HJELMELAND v. COLLINS

No. 15-1901

AFFIRMED.

Appeal from the Iowa District Court for Kossuth County, Don E. Courtney, Judge. Considered by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Danilson, C.J. (7 pages)

Property owners appeal from an adverse decision entered in this action for foreclosure of a mechanic's lien, claiming the district court erred in the calculation of the amount due on a pattern-tiling project and in its award of attorney fees to the claimant. The owners also challenge the court's dismissal of their counterclaim for failure to timely complete the tiling project. OPINION HOLDS: Finding no reason to disturb the court's findings, we affirm.

NEBEL v. LOTT

No. 15-2035

AFFIRMED IN PART AND REVERSED IN PART.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge. Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ. Opinion by Potterfield, J. (7 pages)

David Nebel filed a petition to foreclose his mechanic's lien on property owned by the Lotts, maintaining the Lotts owed him $9283.69 for materials and labor he provided doing electrical work on one of their rental properties. Following a hearing on the petition, the district court granted the defendants' motion for a directed verdict. On appeal, Nebel maintains the district court applied the wrong statute and, as a result, the defendants' motion for directed verdict was improperly granted. Nebel also challenges the district court's award of attorney fees to the defendants. OPINION HOLDS: Considering the 2011 statute, we do not believe the district court's grant of a directed verdict for failure to comply with the statute was appropriate. However, because Nebel has failed to satisfy his burden, we decline to foreclose the mechanic's lien. We reverse the district court's award of attorney fees to the defendants. Additionally, we deny the defendants' request for appellate attorney fees.

NDA FARMS LLC v. CITY OF AMES

No. 16-0028

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Paul D. Scott, Judge. Heard by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Doyle, J. (15 pages)

The City of Ames appeals a partial condemnation award compensating property owners for a thirty-three-foot-wide easement it obtained for the purpose of installing electric transmission lines. OPINION HOLDS: I. The trial court was within its discretion in allowing limited cross-examination of the City's expert for the limited purpose of determining whether the expert was biased. II. The trial court was within its discretion to exclude evidence that lacked probative value. III. The trial court was within its discretion to exclude from evidence the property's tax assessment because the property's tax-assessed value, determined by the special statutory formula applicable to agricultural land, is not relevant to the determination of the property's fair market value as a residential development land. IV. A requested instruction on speculative evidence was implicit in the jury instructions when read in conjunction. V. The jury's damage award is not wholly unfair and unreasonable.

No. 16-0163

FOUR OAKS FAMILY AND CHILDRENS SERVICES v. IOWA DEPT OF EDUCATION

REVERSED.

Appeal from the Iowa District Court for Linn County, Christopher L. Bruns, Judge. Heard by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Vogel, J. (10 pages)

The Iowa Department of Education and its Bureau of Nutrition and Health Services (the Department) claim the district court erred in its judicial review decision reversing the Department's decision to pursue termination of Four Oaks Family and Children Services' (Four Oaks) participation in the Child and Adult Care Food Program (the CACFP) and to place Four Oaks on the national disqualified list. OPINION HOLDS: Because we agree that federal law allowed the Department to terminate Four Oaks's participation in the CACFP and place it on the national disqualified list, we reverse the district court's judicial-review decision.

No. 16-0408

ESTATE OF HARRIS v. HARRIS

AFFIRMED.

Appeal from the Iowa District Court for Floyd County, Christopher C. Foy, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Mullins, P.J. (13 pages)

Randall Harris appeals from the district court's order setting aside a quit claim deed executed by his mother, Dorothy Harris, which conveyed real estate to him. He asserts the district court erred in finding the Estate proved Dorothy lacked sufficient mental capacity to execute the quit claim deed by clear, convincing, and satisfactory evidence. OPINION HOLDS: Based upon our de novo review of the record, we find the Estate presented clear, convincing, and satisfactory evidence that Dorothy lacked the requisite mental capacity to execute the deed conveying real estate to Randall. We affirm the district court's order setting aside the deed and declaring it void. Additionally, because neither party cited any authority in support of its claim for appellate attorney fees, we decline to award them.

No. 16-0822

METAL DESIGN SYSTEMS, INC. v. D&G METAL WORKS, INC.

AFFIRMED.

Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Bower, J. (3 pages)

D&G Metal Works, Inc., appeals the district court award of interest to Metal Design Systems, Inc. OPINION HOLDS: D&G has not preserved error or the issues presented.

No. 16-1069

SARVESTANEY v. TALLMAN

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Thomas G. Reidel, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Per Curiam. (5 pages)

Cyrus Sarvestaney appeals the district court decision denying his request to set aside a settlement agreement in his tort action against defendants. OPINION HOLDS: We find Sarvestaney has not raised adequate grounds to support his position, and we note he agreed, on the record, to the terms of the settlement. We affirm the decision of the district court denying Sarvestaney's motion to set aside the settlement agreement.

No. 15-0741

CANNON v. BODENSTEINER IMPLEMENT CO.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Appeal from the Iowa District Court for Clayton County, John J. Bauercamper, Judge. Considered by Vaitheswaran, P.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (30 pages)

Jason Cannon appeals the district court's grant of summary judgment to defendants on numerous causes of action he brought arising from his purchase of a defective tractor. OPINION HOLDS: We affirm the district court's grant of summary judgment on Cannon's claims raised against EPG and CNH. We reverse the district court's grant of summary judgment on Cannon's expresswarranties claim against Bodensteiner and affirm the remainder of the district court's ruling.

FRANKLIN v. JOHNSTON

No. 15-2047

AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED.

Appeal from the Iowa District Court for Van Buren County, Lucy J. Gamon and Randy S. DeGeest, Judges. Heard by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Vogel, J. Special Concurrence by Danilson, C.J. (31 pages)

Adjoining landowners in rural Van Buren County, the Johnstons and the Franklins, appeal and cross-appeal the district court's decisions regarding the interpretation of a 1962 easement and agreement that impacts the extent of each other's rights to access and use a lake covering portions of both properties. The parties also dispute the boundary line between the properties. OPINION HOLDS: With respect to the Johnstons' appeal, we conclude the use restrictions in the 1962 easement and agreement have expired and are no longer enforceable pursuant to Iowa Code section 614.24 (2013). We agree with the district court's determination that the right of first refusal violates the rule against restraints on the alienation of land and is therefore unenforceable. We also agree with the district court's conclusion that the Franklins have proven a prescriptive easement to use the entire lake. We affirm the district court's rejection of the Johnstons' claim of a boundary by acquiescence through and on the south side of the lake due to the lack of clear evidence to support the claim, and we also conclude the district court did not abuse its discretion in declining to award attorney fees under rule 1.413. With respect to the Franklins' cross-appeal, we agree with the district court there is no requirement the Johnstons must maintain the dam in perpetuity. However, we remand this matter to the district court so that it may expand its decision with respect to the shoreline and dock near Mike Johnston's property. SPECIAL CONCURRENCE ASSERTS: Special concurrence agrees in all respects and with the result but asserts the 2014 amendment to Iowa Code section 614.24 should not be interpreted so as to resurrect a use restriction that was otherwise stale and had long ago expired.

BATINICH v. RENANDER

No. 15-2053

Appeal from the Iowa District Court for Johnson County, Mary E.

Chicchelly, Judge. Heard by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Doyle, J. (24 pages)

AFFIRMED-IN-PART, VACATED-IN-PART, AND REMANDED WITH DIRECTIONS.

Arthur Renander appeals the remedies and damages awarded to Alex Batinich by the district court, including trial attorney fees, punitive damages, and dissociation from the parties' limited liability company RAI, LLC (RAI), following the court's entry of a default judgment. OPINION HOLDS: Upon our review of the record, we affirm the district court's dissociation of the Renanders from RAI and its monetary judgment in favor of Batinich individually against the Renanders of $373,880. We vacate the portion of the judgment awarding attorney fees in favor of Batinich and against the Renanders but find the award of attorney fees should be instead against RAI. Finally, we vacate the portion of the judgment awarding Batinich punitive damages. We remand the case to the district court to enter judgment consistent with our decision.

TORSTENSON v. BIRCHWOOD ESTATE, L.L.C.

No. 16-0118

Appeal from the Iowa District Court for Polk County, David M. Porter, Judge. Heard by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Danilson, C.J. (21 pages)

REVERSED AND REMANDED WITH INSTRUCTIONS.

Ted and Toby Torstenson appeal from the district court's ruling on their claim for reimbursement against Birchwood Estate, L.L.C. (Birchwood) for payments made by the Torstensons on behalf of Birchwood under personal guarantees. OPINION HOLDS: We conclude the Torstensons were entitled to reimbursement from Birchwood for the amounts paid under the Torstensons' personal guarantees. We further conclude the district court erred in considering the law of contribution among co-guarantors, finding Tierra Linda, L.L.C. (TL) breached a fiduciary duty to Birchwood, piercing the corporate veil of TL and holding the Torstensons personally liable, and awarding the money in dispute to the members of Central Iowa Developers, L.L.C., who were not parties to the suit. We therefore reverse the ruling of the district court and remand for entry of judgment in favor of the Torstensons.

FILIPELLI v. IOWA RACING & GAMING COMMISSION

No. 16-0301

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, Judge. Considered by Vogel, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (8 pages)

AFFIRMED.

John Filipelli appeals the district court's grant of the Iowa Racing and Gaming Commission (IRGC) and Intervenor Iowa Greyhound Association's joint motion to dismiss. Filipelli argues the court erred in determining he lacked standing to challenge the IRGC's action concerning the distribution of an escrow fund created by an arbitration agreement. OPINION HOLDS: Filipelli was never a party in the underlying proceedings and thus clearly did not "exhaust[] all adequate administrative remedies." Iowa Code § 17A.19(1). He, therefore, does not have standing to seek judicial review of the IRGC's decision disposing of the escrow account. Furthermore, Filipelli's claim that he has proper standing because he is a third-party beneficiary of the arbitration award is not preserved for our review. Accordingly, we conclude the district court correctly determined Filipelli lacks standing to challenge the IRGC's March 5, 2015 action.

PAINE v. AMERICAN FAMILY MUTUAL INSURANCE COMPANY

No. 16-0429

Appeal from the Iowa District Court for Cerro Gordo County, Christopher C. Foy, Judge. Heard by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Vaitheswaran, J. (13 pages)

AFFIRMED.

An injured motorcyclist, Mark Paine, and his wife, Denise Paine, appeal adverse summary judgment rulings on their claims for early underinsured motorist (UIM) payments, bad faith, and punitive damages against American Family Mutual Insurance Company and the denial of their post-trial motion for additur. OPINION HOLDS: (A) Because the total damages had yet to be determined, the district court did not err in denying the Paines' summary judgment motion on the UIM claim and setting the matter for trial to determine precisely what the Paines were "entitled to recover." (B) Given the uncertainty of the Paines' damages, we discern no error in the district court's rejection of the Paines' bad faith and punitive damages claims as a matter of law. (C) The evidence on all the categories of damages except past medical expenses was disputed, and the jury reasonably could have credited American Family's evidence in reducing those damages. We affirm the rulings on the district court.

HARTSON v. ESTATE OF IVERSON

No. 16-0475

Appeal from the Iowa District Court for Clayton County, John J. Bauercamper, Judge. Considered by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Vaitheswaran, J. (4 pages)

AFFIRMED.

Elizabeth Hartson appeals the district court's dismissal order. OPINION HOLDS: Because Hartson's original notice apprised the defendant to file a motion or answer in the wrong county, it was fatally defective. We affirm.

RODAMAKER v. BIERMANN

No. 16-1102

Appeal from the Iowa District Court for Clayton County, David P. Odekirk, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Bower, J. (5 pages)

AFFIRMED.

Elaine and Kurt Biermann appeal the district court decision finding Stanley Rodamaker had established title to certain property through adverse possession and boundary by acquiescence. OPINION HOLDS: We find the district court properly determined Rodamaker had established a right to the property in question under a theory of adverse possession. We affirm the decision of the district court.

PETERS v. O'DONNELL

No. 16-1284

Appeal from the Iowa District Court for Jackson County, Nancy S. Tabor, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Mullins, P.J. Tabor, J., takes no part. (4 pages)

AFFIRMED.

Patricia Peters and Jacob Brewster appeal the district court's grant of summary judgment on their claims brought against Patricia O'Donnell. OPINION HOLDS: As there is no genuine issue of material fact, we affirm the ruling of the district court.

PULLIAM v. MAC

No. 15-2115

Appeal from the Iowa District Court for Allamakee County, Barry S. Mueller, Magistrate and Stephanie C. Rattenborg, District Associate Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Doyle, J. (14 pages)

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.

A towing company appeals from a judgment entered against it in a replevin action in favor of the vehicle's owner. OPINION HOLDS: Because the magistrate erred in entering judgment in favor of the vehicle's owner for $3000, we vacate that portion of the district associate judge's order on appeal affirming the $3000 judgment in favor of the vehicle's owner and against the towing company. We remand for entry of an amended judgment in the amount of $1500, the value of the vehicle at the time it was wrongfully possessed. We affirm in all other respects.

ESTATE OF SCHNEIDER v. LENTH

No. 16-1413

Appeal from the Iowa District Court for Fayette County, Joel A. Dalrymple, Judge. Considered by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Vogel, J. (5 pages)

AFFIRMED.

The administrators of the estate of Layne Schneider appeal the district court's grant of Wade Lenth's motion for summary judgment. The administrators assert summary judgment was not proper because there were material facts in dispute. In addition, the administrators claim summary judgment was not appropriate when there was a pending discovery dispute. OPINION HOLDS: Because we conclude the administrators did not preserve error on the claims they made on appeal and, even if error was preserved, summary judgment was properly entered in favor of Lenth, we affirm the district court's decision.

IN RE M.E.

No. 16-1479

Appeal from the Iowa District Court for Cherokee County, Charles K. Borth, District Associate Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Tabor, J. (9 pages)

AFFIRMED.

M.E. appeals the district associate judge's order of continued outpatient commitment under Iowa Code section 229.14A (2016). M.E. argues the State failed to prove she lacked sufficient judgment to make responsible decisions about her treatment. The State raises a jurisdictional issue. OPINION HOLDS: We find we have jurisdiction to consider M.E.'s appeal, and because there is clear and convincing evidence in the record demonstrating M.E.'s lack of judgmental capacity, we affirm.

CITY OF NORTH LIBERTY v. WEINMAN

No. 16-1576

Appeal from the Iowa District Court for Johnson County, Lars G. Anderson, Judge. Considered by Doyle, P.J., Tabor, J., and Mahan, S.J. Opinion by Tabor, J. (5 pages)

AFFIRMED.

Johnson County landowner Gary Weinman appeals a jury's verdict requiring the City of North Liberty to pay him $25,000 as compensation for easements across his 70-acre property to supply sanitary sewer lines to a new high school. OPINION HOLDS: Because the city's expert witness, an experienced appraiser, presented substantial evidence to support the verdict, we affirm.

KINSETH v. WEIL-MCLAIN COMPANY

No. 15-0943

Appeal from the Iowa District Court for Wright County, Stephen P. Carroll, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Bower, J. (27 pages)

REVERSED AND REMANDED FOR NEW TRIAL ON THE APPEAL, AFFIRMED ON THE CROSS-APPEAL.

Weil-McLain Company appeals the jury's award of damages and punitive damages to plaintiffs on theories of negligence, product liability, and breach of implied warranty of merchantability arising from the death of Larry Kinseth as a result of exposure to asbestos, and plaintiffs cross-appeal. OPINION HOLDS: We find the district court abused its discretion in denying Weil-McLain's motions for mistrial due to statements of plaintiffs' counsel during closing arguments, in violation of the court's motion in limine order. We affirm the district court's rulings on the admissibility of evidence. We conclude the district court erred by not including McDonnell & Miller valves on the special verdict form, but otherwise affirm the court's determination of which entities should be included in the special verdict form for the allocation of fault. Due to our decision reversing and remanding for a new trial, we make no ruling on the award of punitive damages. We reverse and remand for new trial on the appeal and affirm on the crossappeal.

MCCLEARY v. CITY OF DES MOINES ZONING BOARD OF ADJUSTMENT

No. 16-0620

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge. Considered by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Per Curiam. (8 pages)

AFFIRMED.

Jaysen McCleary appeals the district court's dismissal of his writ of certiorari claiming the writ was timely filed, some of his claims survived dismissal, and the attorney for the City of Des Moines Zoning Board of Adjustment (the Board) should have been disqualified. OPINION HOLDS: Because we conclude McCleary's appeal from the decision of the Board was untimely, we affirm the district court's grant of the motion to dismiss. We also conclude the court did not abuse its discretion in refusing to disqualify the Board's attorney and affirm on that claim.

HEAL v. ANDERSON

No. 16-0621

Appeal from the Iowa District Court for Iowa County, Ian K. Thornhill, Judge. Considered by Doyle, P.J., Tabor, J., and Blane, S.J. Opinion by Blane, S.J. (11 pages)

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

James Heal appeals from the district court's ruling, following a bench trial, in favor of the defendant, Brian Anderson. Heal maintains the district court erred by finding he had wrongfully converted Anderson's personal property while Heal had a temporary injunction against Anderson. Additionally, he maintains the district court abused its discretion in permitting a lay witness to testify to the value of salvage vehicles on the business premises. OPINION HOLDS: When Heal obtained an injunction, the parties entered into a gratuitous bailment. Thus, Heal had some duty to protect and preserve

Anderson's property. Because there was no record made by the parties or the court as to which items may have been returned, we remand to the district court for further proceedings. On remand, the district court should determine which items were disposed of by Heal after he obtained the injunction. Any such items have been converted—along with the $7280 in cash taken by Heal—and Heal is to pay damages for those items. Additionally, if there are items that are returned to Anderson that were damaged while in Heal's care as a result of Heal's bad faith or grossly negligent actions, Heal is responsible for the reduced value.

WINTERS v. TANK

No. 16-0970

Appeal from the Iowa District Court for Allamakee County, John J. Bauercamper, Judge. Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (13 pages)

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Duane Tank and Sheila Tank appeal the district court's grant of summary judgment to James Winters, Carol Winters, Ted Waitman, and Deborah Waitman in this quiet title action. OPINION HOLDS: We affirm the district court's finding the Tanks have no legal interest in the land and grant of summary judgment to the Winterses. Because the Waitmans did not move for summary judgment, we reverse the district court's order with regard to them.

SUNGREEN LAWNCARE, L.L.C. v. BEAUTIFUL LAWNS BY LONG, L.L.C.

No. 16-1271

Appeal from the Iowa District Court for Polk County, Brad McCall, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Mullins, P.J. (6 pages)

REVERSED AND REMANDED.

Beautiful Lawns by Longs, L.L.C. (Beautiful Lawns) and Brandan Long appeal the district court's dismissal of their petition to modify default judgment. OPINION HOLDS: Without reaching the question of whether Beautiful Lawns and Long have valid grounds to vacate or modify the prior default judgment, we reverse the denial of the petition and remand this matter to the district court to allow Beautiful Lawns and Long an opportunity to be heard on their petition, in compliance with Iowa Rule of Civil Procedure 1.1013.

IOWA DEPARTMENT OF REVENUE v. WALBAUM

No. 16-1322

Appeal from the Iowa District Court for Jefferson County, Randy S. DeGeest, Judge. Considered by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Per Curiam. (5 pages)

AFFIRMED.

Richard Walbaum appeals from the dismissal of his motion to reinstate a declaratory judgment action. OPINION HOLDS: Walbaum's complaint that the available administrative remedy is not personally acceptable to him is not the equivalent of saying the remedy is inadequate. We find no error in the district court's denial of his motion to reinstate the declaratory judgment action.

REHR v. GUARDIAN TAX PARTNERS INC

No. 16-1962

Appeal from the Iowa District Court for Clinton County, Mark R. Lawson, Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Tabor, J. (13 pages)

AFFIRMED.

The holder of a tax sale certificate, Guardian Tax Partners, Inc., appeals the district court's order setting aside its deed as void due to the insufficiency of its proof-of-service affidavit. Guardian argues the district court wrongly found its affidavit of service was insufficient and asks us to take a more "common sense" approach to the statutory requirements for such an affidavit. OPINION HOLDS: Because more than a century of case law instructs courts to strictly construe the statutory requirements for an affidavit of service, we find no error and affirm the district court's grant of summary judgment to the plaintiffs.

MIXDORF v. MIXDORF

No. 16-0596

Appeal from the Iowa District Court for Bremer County, James M. Drew, Judge. Heard by Vogel, P.J., and Doyle and McDonald, JJ. Opinion by Doyle, J. (8 pages)

AFFIRMED.

Jon Mixdorf appeals from the district court order resolving a boundary dispute with his neighbors. He contends the district court erred in sustaining the actions to quiet title to two owners of western neighboring property and in determining the location of the northern boundary of his property. OPINION HOLDS: A. Jon has failed to show he adversely possessed the land to the west of the location of the western boundary on the legal description before 2013 or that Jack or Jeri had knowledge of or consented to the boundary for ten years. Therefore, Jon's claims of adverse possession and boundary by estoppel fail, and we affirm the portion of the district court order quieting title to Jack and Jeri. B. With regard to the northern boundary, there lacks clear and convincing evidence that the parties agreed to the boundary line's location. Because Jon moved his farm lane and installed the deer fence without first obtaining a survey, it was equitable to require Jon to pay the expense of moving both.

BROOKS v. STATE

No. 16-0710

Appeal from the Iowa District Court for Bremer County, Christopher C. Foy, Judge. Heard by Vogel, P.J., and Doyle and McDonald, JJ. Opinion by Vogel, P.J. (14 pages)

AFFIRMED.

After suffering a heart attack and being treated by the University of Iowa Hospitals and Clinics (UIHC), Nicole Brooks sued the State of Iowa for negligence. Although a jury found the State negligent, it awarded no damages. Brooks appeals the district court's denial of her motion for a new trial. Specifically, she claims: (1) the district court erred in failing to admit a letter written by UIHC's Chief Quality Officer; (2) the district court erred in giving a jury instruction regarding alternate methods of treatment; (3) juror misconduct occurred; and (4) the verdict was legally inconsistent. OPINION HOLDS: Because we find the district court properly excluded the letter, the district court properly gave the challenged instruction, there was no juror misconduct, and the verdict was not inconsistent, we affirm.

CITY OF DES MOINES v. OGDEN

No. 16-1080

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge. Heard by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Potterfield, J. Partial Dissent by Danilson, C.J. (20 pages)

AFFIRMED.

A property owner appeals from the district court's injunction and order to cease use of the property as a mobile home park because discontinuance is necessary for the safety of life or property and the mobile home park exceeded the boundaries of the legal nonconforming use as it originally existed. OPINION HOLDS: The district court properly granted the city's request for an injunction against Ogden's use of the property as a mobile home park. The city may revoke nonconforming use status for the "safety of life or property." Ogden also exceeded the valid nonconforming use by expanding the structures and reducing the open space of the mobile home park in a manner that violated multiple city ordinances. Furthermore, the district court properly excluded Lang's testimony because Ogden failed to disclose the witness to the city until the morning of trial. Ogden also failed to prove misconduct by the city in order to succeed on his equitable estoppel claim. DISSENT ASSERTS: I disagree with the majority affirmation of the district court conclusions that the mobile home park's current state exceeds the legal nonconforming use as it existed in 1955 and poses a threat to the safety of people or property at the mobile home park. I conclude the City has failed to prove both grounds.

BRUEGGEMAN v. OSCEOLA COUNTY

No. 16-1552

Appeal from the Iowa District Court for Osceola County, David A. Lester, Judge. Heard by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Potterfield, J. (15 pages)

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

The plaintiffs filed a petition for writ of certiorari and declaratory judgment challenging a resolution and an effectuating ordinance passed by or involving the defendants, Osceola County and the City of Harris. The defendants filed a motion for summary judgment, and the district court granted it, finding the plaintiff's lacked standing to challenge the resolution and their claims involving the ordinance were untimely. The plaintiffs' petition was dismissed. On appeal, the plaintiffs challenge the district court's ruling and maintain the merits of their motion for summary judgment should have been granted instead. OPINION HOLDS: We agree with the district court that the plaintiffs' petition for writ of certiorari and declaratory judgment was untimely to challenge Ordinance No. 47, and we affirm the district court's grant of defendants' motion for summary judgment on that ground and dismissal of the corresponding claim. However, because we find the plaintiffs have standing to bring their challenge to Resolution 10-15/16, we reverse and remand for further proceedings. On remand, the plaintiffs may refile their motion for summary judgment or the claims regarding Resolution 10-15/16 may be set for trial.

DUBUQUE INJECTION SERV. CO. v. KRESS

No. 16-0399

Appeal from the Iowa District Court for Dubuque County, Monica Ackley, Judge. Heard by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Danilson, C.J. (26 pages)

AFFIRMED ON APPEAL AND ON CROSS-APPEAL.

Dubuque Injection Service Company (DIS) appeals the district court's denial of its motion for new trial following a jury verdict finding Steven Kress—a shareholder of DIS—not liable for breach of fiduciary duty, and finding Steven and BK Diesel Service, Inc. (BK) not liable for misappropriation of trade secrets and interference with business relationships. DIS asserts a new trial should be granted because the district court erred in (1) allowing admission of evidence regarding two non-parties' personal bankruptcy, (2) instructing the jury on the ratification defense, and (3) refusing to allow the admission of protective orders regarding trade secrets into evidence. Steven cross-appeals on the basis of an evidentiary ruling affecting Steven's counterclaim against DIS for unpaid wages. OPINION HOLDS: We conclude none of the claims raised by the parties on appeal and cross-appeal warrant reversal or a new trial and therefore affirm.

HUNTING SOLUTIONS v. KNIGHT

No. 16-0733

Appeal from the Iowa District Court for Appanoose County, Daniel P. Wilson, Judge. Considered by Danilson, C.J., and Vogel and Vaitheswaran, JJ. Opinion by Vogel, J. (7 pages)

AFFIRMED.

Hunting Solutions, L.L.C., d/b/a Extreme Hunting Solutions (EHS), filed suit against William Knight, asserting various causes of action arising from an unsuccessful business relationship. EHS asserts on appeal the district court was wrong to deny its unjust enrichment cause of action because it bestowed a benefit onto Knight by developing the prototype of his product and it should be compensated for that benefit. OPINION HOLDS: Upon our review of the record, we agree with the district court that EHS has not conferred a benefit upon Knight such that it would be unjust for Knight to retain that benefit without compensating EHS. Because EHS is unable to prove such benefit has been conferred, we affirm the decision of the district court.

BENNINGHOVEN v. HAWKEYE HOTELS, INC.

No. 16-1374

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge. Considered by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Danilson, C.J. (14 pages)

AFFIRMED.

The plaintiffs, Alex Benninghoven and Bryan Sloan, appeal the district court's grant of summary judgment in favor of the defendants, Hawkeye Hotels, Inc., DM River Lodging, Inc., and Hawkeye Hotels Hospitality Management, Inc. The plaintiffs argue the defendants breached their duty of reasonable care owed to hotel guests in hiring Michael Morrow without discovering Morrow's criminal history. OPINION HOLDS: The plaintiffs were hotel guests and were assaulted by Morrow after Morrow's shift was over and they were all off premises. Because we agree the hotel's liability does not extend to criminal conduct of an employee who was off duty and off premises under these facts, we affirm.

DEPPE v. DEPPE

No. 16-0310

Appeal from the Iowa District Court for Clinton County, Mark D. Cleve, Judge. Considered by Potterfield, P.J., and Doyle and Tabor, JJ. Opinion by Doyle, J. (16 pages)

AFFIRMED.

Plaintiffs John Deppe and his business, Deppe JJ, LLC, formerly known as Doerscher-Deppe, LLC, appeal following jury verdicts in favor of defendants Doug Deppe and Kim Doerscher-Deppe finding, among other things, that there was no breach of the parties' settlement agreement by the defendants. Plaintiffs assert the district court erred in not giving their proposed jury instruction defining the term "crop year" as used in the settlement agreement, arguing the term is defined by statute, regulation, by the court, by industry usage, and by the parties. Plaintiffs argue the district court compounded the error by instructing the jury that "There is no established legal definition of 'crop year' in this case." OPINION HOLDS: Upon our review, we conclude, based upon the language of the parties' settlement agreement along with the extrinsic evidence presented, there was no reversible instructional error. Further, we conclude that, even if there was instructional error, it did not result in prejudice because of Plaintiffs' failure to materially comply with the terms of the settlement agreement. Accordingly, we affirm the jury's verdicts.

RESIDENTS OF ROYAL VIEW MANOR v. THE DES MOINES HOUSING AGENCY

No. 16-1230

Appeal from the Iowa District Court for Polk County, Jeffrey D. Farrell, Judge. Heard by Vogel, P.J., and Doyle and McDonald, JJ. Opinion by Doyle, J. (10 pages)

AFFIRMED.

The Des Moines Municipal Housing Agency (DMMHA) appeals the district court order certifying a class action of apartment building tenants who were subject to infestation of bed bugs. OPINION HOLDS: The district court did not abuse its discretion in certifying the class action. A. The plaintiffs have shown the class is so numerous that joinder of all members is impractical because the number of plaintiffs already named exceeds the threshold at which we presume impracticability and the estimated size of the class is five to ten times larger. B. The plaintiffs have also shown common questions of law or fact predominate over questions affecting individual members because their theory of liability stems from a common nucleus of operative fact regarding the DMMHA's conduct. Although the DMMHA argues there are questions concerning whether the bed bug infestation affected each class member's individual apartment unit, the underlying basis for the plaintiffs' claim is that the bed bug infestation rendered Royal View Manor uninhabitable as a whole—regardless of whether the infestation was present in an individual's apartment unit.

SHCHARANSKY v. SHAPIRO

No. 16-1265

Appeal from the Iowa District Court for Polk County, David M. Porter, Judge. Considered by Danilson, C.J., and Potterfield and Bower, JJ. Blane, S.J., takes no part. Opinion by Potterfield, J. (10 pages)

AFFIRMED.

Alexander and Tatiana Shcharansky initiated an action against the five

named defendants for equitable contribution, claiming they had paid more than their share of a joint debt to Wells Fargo and the defendants had been unjustly enriched as a result. The district court concluded the Shcharanskys were not entitled to contribution because the source of the funds used to pay the debt was not the Shcharanskys'. The Shcharanskys filed an Iowa Rule of Civil Procedure 1.904(2) motion to enlarge or amend, and the district court denied their motion. On appeal, the Shcharanskys contend the source of the funds used to pay the joint debt is immaterial; they urge us to reverse the ruling of the district court. In response, the defendants contend the Shcharanskys' 1.904(2) motion was not "proper," so it did not toll the time for filing a timely appeal. They maintain we should find the Shcharanskys' appeal was untimely and dismiss it. OPINION HOLDS: The Shcharanskys' appeal was timely. However, although the money used to discharge the joint debt came from the Shcharanskys' accounts, they have been unable to establish that they personally were forced to bear more than their just share of the debt. We affirm the district court's dismissal of their action for contribution.

THE GRAND LODGE v. STAR OF THE WEST LODGE NO. 1

No. 16-1476

Appeal from the Iowa District Court for Linn County, Kevin McKeever, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Bower, J. (7 pages)

AFFIRMED.

Defendants appeal the district court decision finding The Grand Lodge, Knights of Pythias of Iowa (Grand Lodge) was entitled to the proceeds from the sale of property by Star of the West Company (Star of the West). OPINION HOLDS: We find a decision of the Grand Tribunal, which is part of the Grand Lodge, is binding on Star of the West only if Star of the West is an ancillary entity of Star of the West Lodge No. 1 (Lodge No. 1). Under the rules of the organizations, the property of an ancillary entity, such as Star of the West, reverts to the Grand Lodge if a subordinate lodge, such as Lodge No. 1, ceases to exist. We conclude the district court properly determined the property of Lodge No. 1 and Star of the West should be turned over to the Grand Lodge.

GRIMM v. CHILCOTE

No. 16-1079

Appeal from the Iowa District Court for Black Hawk County, David P. Odekirk, Judge. Heard by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Danilson, C.J. (22 pages)

REVERSED AND REMANDED FOR NEW TRIAL.

Jeanne Grimm appeals the jury's verdict in this vehicle-collision suit against driver Carli Chilcote and the owner of the vehicle, Timothy Chilcote. Jeanne contends the $7027 verdict is inadequate, fails to do substantial justice between the parties, and asserts an error in giving a jury instruction not supported substantial evidence resulted in prejudice. OPINION HOLDS: Jury instruction 18 was not supported by the evidence and prejudicially introduced an improper legal theory to the jury. A new trial on the scope and amount of damage caused by the admittedly negligent conduct is required.

THOMPSON v. JTTR ENVIRO, L.L.C.

No. 16-1610

Appeal from the Iowa District Court for Plymouth County, Jeffrey L. Poulson, Judge. Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (15 pages)

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

JTTR Enviro, L.L.C. appeals from a bench trial verdict in favor of Tommy Thompson arising from a manure easement agreement (MEA), claiming the district court (1) improperly imposed a burden upon it, as the grantee of the MEA; (2) improperly increased the burden placed on JTTR under the MEA; (3) improperly interpreted the MEA to contemplate a corn-on-corn rotation; and (4) awarded excessive damages. OPINION HOLDS: We affirm the district court's ruling except for its award of damages for the 2015 to 2016 crop year. We grant a portion of Thompson's request for appellate attorney fees. We remand for entry of judgment consistent with this opinion. Costs are assessed to JTTR.

COTE v. DERBY INSURANCE AGENCY, INC.

No. 16-0558

Appeal from the Iowa District Court for Woodbury County, Jeffrey L. Poulson, Judge. Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Per Curiam. Partial Dissent by Mullins, J. (24 pages)

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

In 2014, Joanne Cote sued Derby Insurance Agency and Kevin Dorn (collectively, Derby), alleging sexual discrimination based on a hostile work environment, as well as the torts of intentional infliction of emotional distress and assault. On interlocutory appeal, Derby challenges the district court's denial of its motion for summary judgment, first arguing it is exempt from the provisions of the Iowa Civil Rights Act (ICRA) because it had less than four employees, and second, contending all of Cote's claims are either time barred, preempted, or fail to raise a question of material fact. **OPINION HOLDS:** We agree with the district court's rejection of Dorn's claims regarding the family-member exception and statute of limitations. We decline to address the preemption issue. We affirm the court's conclusion Cote alleged sufficient undisputed material facts to support the elements of her claims for a hostile work environment and the intentional infliction of emotional distress. We reverse as to Cote's assault claim, finding Derby is entitled to summary judgment because Cote has not alleged sufficient undisputed material facts to support the elements of assault. **PARTIAL DISSENT ASSERTS:** In order for Cote to rely on the pre-statute of limitations conduct to support a claim of continuing harassment, she needed to have at least one instance of conduct within that limitations period that could satisfy her claims. I respectfully dissent to the affirmance of the district court on its denial of Derby's motion for summary judgment seeking dismissal of the ICRA claim and the claim of intentional infliction of emotional distress. I concur in all other parts of the majority's opinion.

PREFERRED MARKETING, INC. v. LE MARS INSURANCE CO.

No. 16-1733

Appeal from the Iowa District Court for Polk County, David Porter, Judge. Considered by Vogel, P.J., and Doyle and McDonald, JJ. Opinion by Doyle, J. (11 pages)

AFFIRMED.

An insured appeals the district court's grant of summary judgment in favor of the insurer, finding the insurance policy's two-year limitations period for bringing a suit against the insurer applied to bar the insured's suit. **opinion holds:** Here, the policy's limitations period is valid and enforceable. Preferred has not established evidence of conduct amounting to estoppel. Because the district court did not err in determining the insurer was entitled to summary judgment as a matter of law, we affirm its judgment.