

CASE LAW UPDATE: CIVIL PROCEDURE/EMPLOYMENT LAW

Spencer O. Vasey | Elverson Vasey
spencer.vasey@elversonlaw.com | 515-243-1914

CIVIL PROCEDURE DECISIONS – 2019-2020 TERM

Davis v. Iowa District Court for Scott County, No. 19-1008 (Iowa, May 8, 2020)

Facts: The plaintiff sued his employer on various grounds arising from his employment. The district court's trial-setting order set the date for a mandatory pre-trial settlement conference. The trial-setting order stated, with regards to the settlement conference, "[a]ll parties with authority to settle must be present." The settlement conference commenced as scheduled. The defendants each appeared at the conference via counsel and a party representative. The plaintiff did not appear personally, but his attorney informed the court he was in surgery but was available by phone. The district court refused to hold the conference without the plaintiff present and entered an order for sanctions against the plaintiff pursuant to Iowa Rule of Civil Procedure 1.602.

Holding: The district court has authority to require parties to appear before it personally, and did not abuse its discretion in ordering sanctions against a party for his failure to do so.

Why it Matters: The Court reaffirmed a district's authority to manage its docket and proceedings in its courtroom. The Court also states that a district court has inherent authority to require parties to appear personally, even when represented by an attorney with authority to act on the party's behalf. The Davis case emphasizes the importance of carefully reviewing court orders, particularly orders which are generally boilerplate, to ensure compliance.

Whitlow v. McConnaha, No. 18-0566, (Iowa, November 8, 2019)

Facts: The Plaintiff, who was a passenger on her fiancé's motorcycle, was injured when the motorcycle collided with a tractor. The Plaintiff sued the tractor driver for negligence, and the tractor driver in turn filed a third-party contribution claim against the Plaintiff's fiancé. The case proceeded to trial and was submitted to the jury. Unfortunately, there was an error on the verdict form which went unnoticed by the attorneys for all parties. The first question on the verdict form asked whether the tractor driver was at fault - the jury answered "no." The verdict form instructed the jury to stop after the first question if it found the tractor driver was not at fault, without deciding whether the fiancé was at fault. The jury was discharged without deciding whether the Plaintiff's fiancé was at fault. The plaintiff moved for a new trial against both defendants. The district court ordered a new trial against the Plaintiff's fiancé alone, and the Plaintiff appealed, claiming the court should have ordered a new trial against both defendants.

Holding: The district court was correct in ordering a new trial against only the Plaintiff's fiancé, as the tractor driver had been previously exonerated by a unanimous jury.

Why it Matters: The Whitlow decision provides guidance on the standard for granting a new trial on some, but not all, issues. The Court acknowledges that the general rule in Iowa is to retry all issues in a case when a new trial is ordered. However, the Court states that in certain circumstances, this will not be necessary, such as when the issues are severable and the prejudice will only affect one party or issue. The Court cautioned the parties, and their attorneys, to scrutinize a verdict form before allowing it to be submitted to a jury.

Eisenhauer v. The Henry County Health Center, No. 17-1971 (Iowa, October 25, 2019)

Facts: Various complications arose during the birth of the plaintiff at the Henry County Health Center. The plaintiff sued the hospital and the doctor in charge of the delivery, alleging medical malpractice. Early in the case, the defendant doctor gave a deposition in which he was asked about his delivery methods in comparison to the standard methods used in emergency situations. The defendant doctor was thereafter, timely designated by the defendants as an expert who may testify as to "standard of care, causation, and damages." At trial, the defendant doctor was asked whether he believed his actions during the delivery were in conformity with the standard of care. The doctor answered, over the objection of plaintiff's counsel, that in his opinion, they were. The jury entered a verdict for the defense and plaintiff appealed, alleging the doctor's opinion had not been disclosed pursuant to Iowa Rule of Civil Procedure 1.500(2)(c).

Holding: The court held the doctor's opinions on standard of care were properly admitted, despite the fact no report had been served. It reasoned the doctor had been properly designated as an expert witness, and his opinions regarding standard of care had been disclosed during his deposition.

Why it Matters: The court allowed an expert, who had not prepared a written report with a summary of the opinions he would give, to provide expert opinions outside of those contained in his medical records. This is significant because Rule 1.500(2)(c) has traditionally been used as a tool to limit the scope of an expert's opinion to his or her written report or medical records.

Sherburne v. Ashton State Bank, No. 19-0830 (Iowa App., December 18, 2019)

Facts: An Iowa resident bought approximately \$33,000.00 worth of lambs from a Nebraska resident and subsequently brought the lambs to Iowa. Ashton State Bank, a Nebraska company, had a security interest in the lambs. The plaintiff filed a declaratory action against the bank in an Iowa court to establish the bank's security interest was not valid. The bank sought dismissal for lack of personal jurisdiction.

Holding: Ashford State Bank did not have sufficient minimum contacts with Iowa to establish personal jurisdiction. “The bank did nothing to purposely direct its activities to residents of the state of Iowa.”

Why it Matters: Sherburne appears to be a simple application of the traditional minimum contacts analysis utilized by courts in determining personal jurisdiction. However, the Court of Appeals also discusses in rem jurisdiction, stating in rem jurisdiction has essentially been done away with in Iowa, “meaning a plaintiff [in Iowa] who is unable to obtain personal jurisdiction over a defendant will be unable to obtain quasi in rem jurisdiction by virtue of the presence of defendant’s property in the state.”

Mitchell v. Christensen, No. 19-0589 (Iowa App., November 27, 2019)

Facts: The plaintiff sued three defendants for, among other things, conversion, theft, and defamation. One of the three defendants, Christensen, sought and was granted summary judgment. The plaintiff settled with the second defendant shortly thereafter. After the settlement, the second defendant gave a deposition in which he testified Christensen had provided false documents during discovery and had also refused to provide certain documents to her counsel. The plaintiff also obtained 22 pages of Christensen’s text messages for a period of time after she had been granted summary judgment. The plaintiff moved to vacate the summary judgment on the grounds of fraud and newly discovered evidence, pursuant to Iowa Rule of Civil Procedure 1.1012. The district court denied the plaintiff’s motion.

Holding: The Iowa Court of Appeals affirmed. First, it explained that only extrinsic fraud, rather than intrinsic fraud, can serve as a grounds for vacating a judgment under Rule 1.1012. Christiansen’s conduct constituted intrinsic fraud and was therefore, not a basis for vacating the judgment. Second, it held that there was no newly discovered evidence, as Christiansen’s text messages, sent in the weeks after summary judgment had been granted, had not yet existed at the time of the summary judgment.

Why it Matters: The Mitchell Court explains and clarifies two of the grounds for seeking to vacate a judgment – fraud and newly discovered evidence. The ruling is also helpful in discerning the difference between extrinsic and intrinsic fraud, which is oftentimes a tricky distinction.

EMPLOYMENT LAW DECISIONS – 2019-2020 TERM

Ferguson v. Exide Technologies, No. 18-1600 (Iowa, December 13, 2019)

Facts: The plaintiff was fired when she refused to take a drug test at work. She filed an action against her employer alleging wrongful termination under two theories. First, she claimed the employer had violated Iowa’s employer drug and alcohol testing statute. She also asserted a claim for common law wrongful discharge in violation of public policy. The case proceeded to a jury trial - which is available for common law wrongful termination but which was not available for the plaintiff’s statutory

claim. Judgment was entered for the Plaintiff and Exide moved for judgment notwithstanding the verdict, arguing that while it admittedly violated the drug testing statute, it could not be held liable on the Plaintiff's common law claim, as this claim was preempted by the Iowa drug testing statute. The district court denied Exide's motion and the employer appealed.

Holding: The Court held the district court should have entered judgment for the employer on the Plaintiff's common law wrongful discharge claim, as Iowa Code 730.5 provides the exclusive remedy for a violation of Iowa's employer drug testing statute.

Why it Matters: The Court limited the remedies available to a plaintiff alleging wrongful termination by holding that the civil action provided for in Iowa Code 730.5 is the exclusive remedy for conduct governed by that chapter. Thus, plaintiffs may only recover the damages available under the statutory cause of action and will not be entitled to additional, common law damages for a violation of the drug-testing statute.

Sladek v. Employment Appeal Board, No. 18-0981 (Iowa, February 21, 2020)

Facts: The plaintiff, a temporary employee at an employment agency, was placed at ACT for a job assignment. The plaintiff struggled throughout the duration of her assignment, despite the best efforts of her employer to assist her. Several weeks into her job assignment, the plaintiff was informed via telephone that she was being released from the ACT assignment. The plaintiff did not ask for another assignment and no further assignment was offered. Five weeks later, the employee sought reassignment, which was denied. When the employee filed for unemployment benefits, her request was denied due to a finding that she had voluntarily quit her position with the employment agency.

Holding: The denial of unemployment benefits was affirmed. The court held that the employee's failure to promptly contact the agency seeking reassignment constituted a voluntary termination within the meaning of Iowa Code 96.5, governing temporary employees.

Why it Matters: The Court reaffirmed the validity Iowa Code 96.5 and its requirement that a temporary employee at an employment agency must seek, and be denied, reassignment prior to obtaining unemployment benefits.

Little Hands Childcare & Preschool v Employment Appeal Board, No. 19-1072 (Iowa App., November 6, 2019)

Facts: An employee at a childcare center was terminated after she told a parent the childcare center had black mold. When she sought unemployment benefits, the childcare center resisted, arguing the employee had been fired for misconduct. The childcare center alleged the employee had violated its policies making false statements to a child's parent. The employment appeal board held a hearing in which it determined the employee had sincerely believed there was black mold in the center and thus, the employee had not engaged in misconduct.

Holding: The appellate court affirmed the decision of the EAB. It stated that misconduct is a deliberate act, and the employee did not deliberately make a false statement, as she sincerely believed the childcare center contained mold.

Why it Matters: The Court emphasized its deference to the EAB on decisions relating to credibility. The EAB believed the employee sincerely believed the center contained black mold, and therefore, the Court of Appeals would not disturb this finding. Absent a finding the employee knowingly made the false statement about mold, the court declined to find she had engaged in misconduct.

Woods v. Charles Gabus Ford, No. 19-0002 (Iowa App. January 9, 2020)

Facts: The plaintiff, who was fired following a positive drug test at work, sued his former employer alleging the employer had failed to comply with Iowa's drug-testing statute. The employer had sent the plaintiff notice of his positive drug test via certified mail but did not request a return receipt, as is required by Iowa Code 730.5. In addition, while the notice informed the plaintiff of his right to obtain a confirmatory test, it omitted the cost of the confirmatory test. The district court held that, despite these nonconformities, the employer had substantially complied with the statute and therefore, had not improperly discharged the plaintiff.

Holding: The Iowa Court of Appeals held that the employer's failure to notify the plaintiff of the cost of a confirmatory test rendered the employer's notice inadequate. The employer was, therefore, liable for violation of Iowa Code 730.5.

Why it Matters: The Court has consistently held that strict compliance with Iowa Code 730.5 is not necessary so long as the employer has given the employee notice of the positive test and provides the employee a "meaningful opportunity to consider whether to undertake a confirmatory test." Despite the "substantial compliance" standard, the Woods Court determined strict compliance with the requirement of providing the retesting cost was necessary to ensure the objective of the statute was satisfied. Thus, the Woods case emphasizes that strict compliance with the statute is the best, and only way, to ensure a drug-testing termination will be deemed valid.

Dix v. Casey's General Stores, No. 18-1464 (Iowa App. January 9, 2020)

Facts: The plaintiffs were fired after submitting positive drug tests. The tests were administered without notice to all warehouse employees. The plaintiffs worked in the warehouse, but were not involved in heavy-duty work and spent their days in a protected area separate from the forklifts and heavy-duty warehouse equipment. The plaintiffs alleged their termination was wrongful and in violation of Iowa Code 730.5. The employer argued the tests were proper because Iowa Code 730.5(8)(a) allows for testing without notice of persons working in a safety-sensitive position. The district court held the "light-duty" employees were not in a safety-sensitive position within the meaning of the statute, even though they worked in a warehouse where serious accidents could occur.

Holding: The Court of Appeals held the plaintiffs were not in a safety-sensitive position within the meaning of the statute. It emphasized that an employer cannot determine

which employees work in a safety-sensitive position. The employee's job duties control the analysis and the court need not give deference to the employer's determination.

Why it Matters: In addition to discussing the safety-sensitive requirement, the Court of Appeals touches on several other portions of the drug testing statute, including the testing procedure, selection process, and potential damages. The Dix decision is a helpful guide to compliance with Iowa Code 730.5.