IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 23-0300
Polk County No. LACL153187

ASHLEY LYNN KOESTER,

Plaintiff-Appellant,

vs.

EYERLY-BALL COMMUNITY MENTAL HEALTH SERVICES, REBECCA PARKER, and MONICA VAN HORN,

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
THE HONORABLE SAMANTHA GROENWALD, JUDGE

APPELLANT'S FINAL REPLY BRIEF AND REQUEST FOR ORAL ARGUMENT

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AND

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ARGUMENT

"Iowa Code chapter 91A plainly articulates a public policy prohibiting the firing of an employee in response to a demand for wages due . . . ." *Tullis v. Merrill*, 584 N.W.2d 236, 239 (Iowa 1998). Despite this plainly articulated prohibition, this is precisely what Defendants did in this case. Plaintiff, Ashley Koester, made demands for overtime wages through her timesheets and in a meeting with her employer. In response, Defendants terminated her employment for making those demands and to avoid complying with any future demands. The District Court's ruling sanctions Defendants' conduct and transforms properly requested overtime payments into little more than a fee for termination. The District Court erred in dismissing Plaintiff's claim on the grounds that she was not "deprived of wages or . . . overpaid." (J.A. 159). First, Defendants did in fact terminate Plaintiff to deprive her of future rightfully earned overtime wages. Second, the District Court's ruling disregards the Supreme Court's mandate in *Tullis*. The Court did *not* say "Iowa Code chapter 91A plainly articulates a public policy prohibiting the firing of an employee who was not *paid* overtime wages." It *said*, "Iowa Code chapter 91A plainly articulates a public policy prohibiting the firing of an employee *in response to a demand for wages due*." *Tullis*, 584 N.W.2d at 239 (emphasis added). Thus, under the plain language of the Supreme Court, the

question is not whether the employee was or was not paid or overpaid. Rather, the question is whether the employee: 1) made a demand for wages due and 2) was fired in response to that demand. Here, Plaintiff made a demand for wages due when she submitted her timesheets for overtime wages. She then made an additional demand when she told her employer that she should continue to receive overtime wages whenever she worked the requisite number of hours. In response, Defendants falsely characterized her demand for wages due as "stealing" and terminated her employment to avoid any future demands for wages. That is the exact type of conduct that chapter 91A prohibits. Therefore, the District Court erred when it granted Defendants' Motion to Dismiss, and Plaintiff respectfully asks this Court to reverse the District Court's ruling and remand for further proceedings.

ISSUE I: The District Court erred in granting the motion to dismiss as Plaintiff satisfied the notice pleading requirement for all of her potential causes of action and this matter was more appropriate for summary judgment.

and

ISSUE II: The District Court erred in as a matter of law in finding Plaintiff could not pursue a claim under Count I – Wrongful Termination in Violation of Public Policy (Public Policy of Iowa Code § 91A and Public Policy) if she received the money she requested.

As Defendants themselves recognize, "[i]n *Tullis*, the Iowa Supreme Court found that Chapter 91A 'articulates a public policy prohibiting the firing

of an employee *in response to a demand for wages due under an agreement with the employer*.'" (Appellee Br. at 12 (quoting *Tullis*, 584 N.W.2d at 239) (emphasis in original)). Thus, under this language, if an employee makes "a demand for wages due" it is illegal for an employer to terminate that employee "in response to" that demand.

Defendants nonetheless argue that Plaintiff's termination was permissible because no overtime wages were withheld from her paychecks. (Appellee Br. at 12–14). First, Defendants in fact terminated Plaintiff with the express intention of withholding future overtime wages. Plaintiff submitted timesheets that included requests for overtime payment for shifts that were approved through Eyerly Ball's software program. (J.A. 40). Plaintiff's supervisor, Defendant Monica Van Horn, then approved these timesheets. (J.A. 35, J.A. 40). When Defendants realized that they had approved Plaintiff's requests for overtime wages, they accused her of stealing from the company. (J.A. 40). At a January 7, 2020 meeting, Plaintiff told Defendants that based on conversations with the Department of Labor, she was entitled to overtime. (J.A. 40). In response, Defendants terminated Plaintiff for requesting overtime payments and for asserting her right to those payments. (J.A. 41). In other words, Plaintiff made a demand for overtime wages through her timesheets (J.A. 40), and made a demand for future overtime wages (J.A.

40). In response, Defendants terminated her employment. (J.A. 41). This termination deprived Plaintiff of any future overtime payments.

Indeed, Defendants' subsequent actions underscore this intention. Following Plaintiff's termination, Defendants sent an e-mail to all Eyerly Ball employees informing them that Plaintiff had been terminated and that employees cannot receive overtime payments. (J.A. 41). Thus, because Plaintiff properly alleged that Defendants' actions did, in fact, withhold overtime from Plaintiff, the District Court's ruling should be reversed.

Even if that were not the case, the Supreme Court already has rejected the notion that the public policy prohibiting employee termination for demanding wages due is limited to complaints seeking the recovery of unpaid wages. The Defendants in *Tullis* specifically argued that the prohibition on retaliatory discharge pertained only to complaints filed with the labor commission to recover unpaid wages. *Tullis*, 584 N.W.2d at 239. The Supreme Court held that the public policy articulated in chapter 91A was not so limited. *Id.* Rather, the administrative provisions implementing chapter 91A provide that "[a] complaint to the employer made in good faith would be related to the Act, and an employe would be protected against discharge or discrimination caused by the complaint to the employer." *Id.* at 539–40 (quoting Iowa Admin Code r. 347—36.6(2)).

Defendants contend that subsequent nonbinding holdings support their assertion that a wrongful discharge claim under chapter 91A requires a withholding of wages. (*See* Appellee Br. at 12–14 (citing *Morris v. Conagra Foods, Inc.*, 435 F. Supp. 2d 887 (N.D. Iowa 2005) and *Bjorseth v. Iowa Newspaper Ass'n*, No. 15-2121, 2016 WL 6902745 (Iowa Ct. App. Nov 23, 2016))). However, these cases are inapplicable because neither case concerns "a demand for wages due." In *Bjorseth*, the plaintiff did not make a demand for wages *at all*. Rather, the employee in that case decided that she would not take a day off, so did not make any demand for hours that would have been payable during that day off. *Bjorseth*, 2016 WL 6902745, at *1. In addition, even if she had made such a demand, she was not terminated "in response to" that demand. Rather, she was terminated for poor work performance. *Id.*

Then, in *Morris*, plaintiff was making a demand for wages that were concededly *not* due. *Morris*, 435 F. Supp. 2d at 893. It was undisputed that Morris "had inadvertently been overpaid" due to an "accounting error." *Id.* Morris therefore was demanding that he be allowed to retain wages that he had not earned. Moreover, as in *Bjorseth*, Morris was not terminated in response to any demand. Instead, he voluntarily left his position and informed his employer that he would not be returning to work. *Id.*

In contrast, Plaintiff has made a demand for wages due and was, in fact, terminated in response to that demand. Turning first to whether Plaintiff made a demand for wages due, *Tullis* contemplates that a complaint to one's employer can constitute a demand for wages due. *Tullis*, 584 N.W.2d at 239–40 (holding that Plaintiff's letter to his employer constituted a complaint for wages due). This is because "[t]he statutory principles of the [wage payment act] would be seriously undermined if employees were discouraged from lodging complaints about wages with their employers." *Id.*

Here, Plaintiff submitted timesheets that included requests for overtime payment for shifts that were approved through Eyerly Ball's software program. (J.A. 40). Plaintiff's supervisor, Defendant Monica Van Horn, then approved these timesheets. (J.A. 35, J.A. 40). Iowa has long recognized that a timesheet—or "time check"—constitutes a demand for wages due. *See Kent v. Muscatine, N. & S. Ry. Co.*, 88 N.W. 935, 935 (Iowa 1902) (explaining that time checks represent the amount of wages due to laborers and analyzing whether those demands are transferrable to other individuals). Moreover, in their interpretation of similar wage collection statutes, courts in other jurisdictions consider a submitted timesheet to be a demand for wages. *See, e.g.*, *Gillespie v. Block Maintenance Sols., LLC*, No.-CV-947-W-DGK, 2014 WL 4854647, at *4 (W.D. Mo. Sep. 30, 2014) (holding that Plaintiff "did not

specifically demand payment for work performed" where Plaintiff "never submitted a timesheet for that day").

In addition, when Defendants questioned Plaintiff's timesheets, she asserted that her timesheets were proper demands for overtime based on her conversation with the Department of Labor. (J.A. 40). In other words, she reasserted her demands and made a demand for future overtime wages when earned.

Plaintiff's claims for overtime wages and refusal to disclaim entitlement to such wages is analogous to the plaintiff's conduct in *Springer v. Weeks & Leo, Co.*, 429 N.W.2d 558 (Iowa 1988). In *Springer*, the Iowa Supreme Court held that the defendant illegally terminated an employee after she refused to sign a document stating an injury was not work-related and thus disavowing her previously filed workers' compensation claim. *Id.* at 559. The Court explained that worker protections "would be seriously undermined" if employers could threaten termination and force employees to decide between statutory entitlements and their continued employment. *See id.* at 561 (citing *Kelsay v. Motorola, Inc.*, 384 N.E.2d 353, 357 (Ill. 1978)).

Yet, Defendants here placed Ms. Koester in that exact position. At her January 7, 2020 meeting with Defendants, Plaintiff could either disavow her entitlement to overtime and concede overpayment or she could suffer

termination. When Plaintiff asserted her entitlement to overtime, Defendants told Plaintiff that they considered her proper request for overtime to be stealing and told her she lacked integrity. (J.A. 41). Then, as alleged in Plaintiff's Petition—and thus assumed true for purposes of a Motion to Dismiss—"Defendant Parker . . . terminated Plaintiff for receiving overtime payments." (J.A. 41). In so doing, Defendants violated the public policy protections contained in Iowa's wage protections laws. Thus, the District Court's dismissal should be reversed.

Not only is Plaintiff's conduct protected under express Supreme Court holdings for the reasons explained above and in Plaintiff's opening brief, but Defendants' interpretation of Iowa's wrongful discharge tort also would seriously undermine worker protections enshrined in Iowa statutes.

As the Supreme Court reiterated just over one month ago:

> [t]he very point of the wrongful-discharge-in-violation-of-public-policy tort is to protect employees from being fired when that protection is necessary to vindicate *some other* legal mandate, whether it be the statutory duty to testify truthfully, the statutory duty to keep honest records, or the statutory duty to pay employees benefits when due.

Carver-Kimm v. Reynolds, --- N.W.2d ----, 2023 WL 4140067, at *8 (Iowa June 23, 2023) (citing *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 287–88 (Iowa 2000) (en banc); *Dorshkind v. Oak Park Place of Dubuque II,*

LLC, 835 N.W.2d 293, 301 (Iowa 2013); *Tullis*, 584 N.W.2d at 239–40). Thus, "[i]t would dramatically narrow that tort to say that the other legal mandate is *itself* a sufficient remedy that eliminates the need for the tort. We crossed that bridge long ago." *Id.* Accordingly, Iowa's wrongful discharge tort draws a distinction between claims based on public policy and claims based on private disputes between an employer and employee. *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 761 (Iowa 2009). Defendants and the District Court seem to believe that only the latter class of disputes matter. However, when an employer action violates public policy, "the entire community is damaged." *Id.* at 762.

Thus, "[t]he question isn't simply whether *some* remedy exists for *someone* that advances the public policy at issue." *Carver-Kimm*, --- N.W.2d ----, 2023 WL 4140067, at *7. For example, whether 91A allows an employee to recover unpaid wages. Rather, the question is "whether a remedy exists to address the wrong associated with firing of an employee against a clearly defined public policy." *Id.* In other words, whether the wrongful discharge action addresses the social harm the comes from terminating employees who make demands for wages due. "Stated another way, the sources from which an employee seeks to derive a public policy 'must affect the public interest so what the tort advances general social policies, not . . . individual interests.'"

Berry v. Liberty Holdings, Inc., 803 N.W.2d 106, 110 (Iowa 2011) (citing *Jasper*, 764 N.W.2d at 766).

In this case, the purpose of wage collection statutes like Iowa Code chapter 91A—and its federal counterpart, the Fair Labor Standards Act—is not simply to resolve wage disputes but to achieve minimum labor standards for the general social welfare. *See, e.g.*, *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981) ("The principal congressional purpose in enacting the Fair Labor Standards Act of 1938 was to protect all covered workers from substandard wages and oppressive working hours, 'labor conditions [that are] detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers.' (citing 29 U.S.C. § 202(a))).

To achieve this purpose, freedom from retaliation is essential, "[f]or it needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions." *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 293 (1960) (citing *Holden v. Hardy*, 169 U.S. 366, 397 (1898)). The purpose of the wrongful termination tort is meant to protect employees from facing this Hobson's choice.

Therefore, Defendants are incorrect in saying that "[t]here is no public policy that would be undermined by Plaintiff's discharge from employment." (Appellee Br. at 20). Rather, Defendants' interpretation would eviscerate the purpose of chapter 91A and the wrongful termination tort because it would force employees to choose between their legal rights and their continued employment, just as Defendants forced Plaintiff to do here. The District Court was in error to parse the rights protected through the wrongful discharge tort so narrowly. Employee protections such as overtime wages and workers' compensation benefits "would be largely illusory and do little for the workman's 'well-being' if the price were loss of his immediate livelihood." *Springer*, 429 N.W.2d at 561 (citing *Krein v. Marian Manor Nursing Home*, 415 N.W.2d 793, 794 (N.D. 1987)). Terminating an employee under such circumstances "profanes public policy." *Id.* Plaintiff, thus, respectfully asks the Court to reverse the District Court's ruling.

Finally, Defendants' argument that these issues are "more appropriately directed to the legislature" (Appellee Br. at 18–19) demonstrates a fundamental misunderstanding of how Iowa's wrongful discharge tort operates. Indeed, the Supreme Court has rejected their exact argument. *See Springer*, 429 N.W.2d at 561. In *Springer*, Court held that discharging an employee for seeking workers' compensation would "frustrate a well-

recognized and defined public policy of the state" as set forth in state statute. *Id.* at 560–61. Thus, "by sanctioning wrongful discharge actions for contravention of a public policy which has been articulated in a statutory scheme, *we are acting to advance a legislatively declared goal*." *Id.* at 561 (citing *Brockmeyer v. Dun & Bradstreet*, 335 N.W.2d 834, 842 (Wis. 1983)) (emphasis added); *see also Tullis*, 584 N.W.2d at 240. The District Court's ruling, however, directly undermines this legislative directive and guarantees that an employer never has to pay an employee for overtime more than once.

At minimum, the District Court erred in applying Iowa's liberal pleading standard for a Motion to Dismiss. *See Carver-Kimm*, --- N.W.2d ---, 2023 WL 4140067, at *9 (citing *Benskin, Inc. v. West Bank*, 952 N.W.2d 292, 307 (Iowa 2020)). Reading all allegations as a whole, it is possible that Ms. Koester will be able to prove that she was terminated in response to a demand for overtime wages. If Defendants discharged her for that reason, "her discharge 'would have a chilling effect on other employees by discouraging them from engaging in similar conduct.'" *See Carver-Kimm*, --- N.W.2d ----, 2023 WL 4140067, at *9 (quoting *Fitzgerald*, 613 N.W.2d at 288). Therefore, the District Court's dismissal was improper and should be reversed.

ISSUE III. The District Court erred as a matter of law in finding Count II – Wrongful Termination and Retaliation under Iowa Code § 91A, et seq., was not within the applicable statute of limitations.

Defendants assert that the statute of limitations bars Plaintiff claim for wrongful termination and retaliation under Iowa Code § 91A because "[t]he statute of limitations on a claim under Chapter 91A is two years." (Appellee Br. at 21 (citing Iowa Code § 614.1(8)). Defendants overstate the applicability of Iowa Code § 614.1(8). That provision provides that the limitations period on "[t]hose claims founded on claims for wages or for a liability or penalty for failure to pay wages" is two years. Iowa Code § 614.1(8). However, as evident from the text of the statute, this provision addresses claims for lost wages. It does *not* address claims for wrongful termination or retaliatory discharge. In other words, it does not address the claim that Plaintiff is making in this case.

In fact, Defendants' argument ignores clear instruction from the Iowa Supreme Court. As explained in Plaintiff's opening brief, the Iowa Supreme Court "ha[s] said that in choosing the proper statute of limitations, the court's focus must be on the '*actual nature of the action*.'" *Brown v. Liberty Mut. Ins. Co.*, 513 N.W.2d 762, 764 (Iowa 1994) (quoting *Clark v. Figge*, 181 N.W.2d 211, 213 (Iowa 1970)) (emphasis added). "The choice turns, not on the relief requested, but on 'the *nature of the right sued upon*.'" *Id.* (quoting *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457, 462 (Iowa 1984), *overruled on other grounds by Langwith v. Am. Nat'l Gen. Ins. Co.*, 793 N.W.2d 215

(Iowa 2010)) (emphasis added).

Here, the nature of Plaintiff's cause of action is Defendants' interference with her property right to work and make money. Under Iowa law, Plaintiff had a right to protection against "a clearly improper interference" with a business relationship. *See Springer*, 419 N.W.2d at 561. Defendants interfered with that right when they retaliated against Plaintiff for making a demand for overtime. Defendants did not have the right to do so. *See* Iowa Code § 91A.10. But they did so anyway. Accordingly, Plaintiff seeks relief under Iowa Code chapter 91A for Defendants' retaliatory interference with her business relationship. The Iowa Supreme Court has "determined that the five-year statute of limitations was appropriate" for an action for intentional interference with a business relationship. *Vrban v. Deere & Co.*, 129 F.3d 1008, 1010 (8th Cir. 1997) (citing *Clark*, 181 N.W.2d at 214–16). Thus, a five-year statute of limitations applies to Plaintiff's retaliatory discharge claim.

Indeed, as noted in Plaintiff's opening brief, the Eighth Circuit already has applied the Supreme Court's guidance to wrongful discharge actions and arrived at the same conclusion. *See Vrban v. Deere & Co.*, 129 F.3d 1008 (8th Cir. 1997). In *Vrban*, the Eighth Circuit was unequivocal: "The sole issue . . . is whether, under Iowa law, a two-year or five-year statute of

limitations applies to a wrongful discharge action. *We hold that a five-year statute applies*." *Id.* at 1009. In fact, the Court specifically rejected defendants' effort to apply the two-year statute of limitations contained in Iowa Code § 614.1(8). *Id.* at 1011. Rather, "the five-year limitation period contained in section 614.1(4) applies to [Plaintiff's] action. *Id.* This is because the nature of plaintiff's cause of action was one for wrongful discharge not for wages for services rendered. *Id.* at 1010–11.

Defendants attempt to argue *Vrban* is inapplicable because it addressed a common law discharge claim rather than a statutory retaliatory discharge claim. This distinction is irrelevant to the inquiry. The relevant question is: What is the "actual nature of the action"? Plaintiff does not claim that Defendants failed to pay her wages for services rendered. Rather, she requests compensatory damages arising from her wrongful termination. In other words, the "actual nature of the action" is Defendants' interference with Plaintiff's right to continued employment. Based on the actual nature of the action, Iowa Code § 614.1(4) provides the relevant statute of limitations, and that statute of limitations is five years. This answer is the same whether the claim arises under common law or by statute.

Like the Defendants *Vrban*, "Defendants do not cite any and we have not found any Iowa case law that supports [their] contention that the Iowa

Supreme Court would characterize a wrongful discharge action as one founded on a claim for wages." *Vrban*, 129 F.3d at 1011. Defendants do reference one federal decision from the Northern District of Iowa. (*See* Appellee Br. at 21–22 (citing *Waterman v. Nashua-Plainfield Cmty. Sch. Dist.*, 446 F. Supp. 2d 1018 (N.D. Iowa 2006))). However, *Waterman* is flatly inapplicable. As explained in Plaintiff's opening brief, *Waterman*—upon which the District Court also relied—did not address "the issue as to whether a retaliation claim falls under 614.1(8)." (Appellant Br. at 47–48). Indeed, the Court in *Waterman* could not have addressed the statute of limitations for retaliatory discharge because the case did not involve a discharge *at all*. Rather, the plaintiff in that case "submitted a letter of retirement and resignation," voluntarily ending her employment with the Defendant. *Waterman*, 446 F. Supp. 2d at 1022.

At bottom, Defendants did not have a right to fire Plaintiff for demanding overtime wages. Defendants did so anyway, giving rise to a cause of action for retaliatory discharge. Based on Iowa Supreme Court and Eighth Circuit case law, the statute of limitations for such an action is five years. Therefore, the District Court's dismissal should be reversed.[1]

[1] Defendants also argue that "[e]ven if Count II were not time-barred, it would still fail for all the reasons that Count I fails." (Appellee Br. at 22–23). This

CONCLUSION

The District Court Erred when it granted Defendants' Motion to Dismiss Plaintiff's Amended Petition. Plaintiff respectfully asks this Court to reverse the District Court's ruling and remand for further proceedings.

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argument is flawed for the same reasons discussed above. (*See* Issues I and II).

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 3,700 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(9).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Times New Roman 14 point font.

/s/ Bruce H. Stoltze, Jr.

CERTIFICATE OF SERVICE

I, Bruce H. Stoltze, Jr., member of the Bar of Iowa, hereby certify that on the 25th day of August, 2023, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following Counsel of Record. Per Rule 16.317(1)(a), this constitutes service of the document(s) for purposes of the Iowa Court Rules.

/s/ Bruce H. Stoltze, Jr.

CERTIFICATE OF FILING

I hereby certify that on the 25th day of August, 2023, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following Counsel of Record. Per Rule 16.317(1)(a) this constitutes service of the document(s) for purposes of the Iowa Court Rules.

/s/ Bruce H. Stoltze, Jr.

ATTORNEY'S COST CERTIFICATE

The undersigned attorney does hereby certify that the actual cost of producing the foregoing Appellant's Final Reply Brief and Request for Oral Argument was $0.00.

/s/ Bruce H. Stoltze, Jr.