

**IN THE IOWA SUPREME COURT**

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**SUPREME COURT NO. 18-1225**

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**JEREMY HOLLINGSHEAD,**  
Plaintiff-Appellant

v.

**DC MISFITS, LLC,**  
Defendants-Appellees

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**APPELLEE, DC MISFITS, LLC's  
RESISTANCE TO APPLICATION FOR FURTHER REVIEW**

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**QUESTION PRESENTED FOR REVIEW**

**DID THE COURT OF APPEALS PROPERLY AFFIRM THE DISTRICT COURT'S DECISION GRANTING SUMMARY JUDGMENT TO A BAR IN A DRAM SHOP CASE IN WHICH THE BAR WAS NOT SERVED WITH A DRAM SHOP NOTICE OF INTENT AS REQUIRED BY IOWA CODE SECTION 123.93?**

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## **STATEMENT IN RESISTANCE TO APPLICATION FOR FURTHER REVIEW**

There is no basis for further review presented by this Application that meets the grounds required by Rule 6.1103(b) of the Iowa Rules of Appellate Procedure. The Court of Appeals was correct when it affirmed the District Court's summary judgment in a dram shop case in which the bar, DC Misfits, LLC, was never served with a dram shop notice of intent that is required under the specific legislative requirements of Iowa Code Section 123.93. The Plaintiff incorrectly contends that the Iowa Supreme Court's decisions in *Arnold v. Lang*, 259 N.W.2d 749 (Iowa 1977) and *Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200 (Iowa 2002) are not well settled precedents on the notice requirements of Iowa Code Section 123.93, and that the District Court and Court of Appeals decisions are in conflict with a decision of the Iowa Supreme Court.

## **BRIEF**

### **I. THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT GRANTING SUMMARY JUDGMENT PURSUANT TO IOWA'S DRAMSHOP LAW WHERE THERE WAS NO NOTICE OF INTENT TO BRING A DRAMSHOP ACTION AGAINST DC MISFITS THAT MET THE REQUIREMENTS OF IOWA CODE SECTION 123.93.**

#### **1. Standard for Application for Further Review**

Plaintiff seeks further review from a Court of Appeals decision to affirm a District Court's decision to grant summary judgment in a dram shop case in which there was no genuine issues of material fact but that a DC Misfits, LLC (DC Misfits) was never served a dram shop notice of intent required by Iowa Code Section 123.93.

Rule 6.1103 of the Iowa Rules of Civil Procedure provides that further review is not a matter of right, but of judicial discretion. It is also not to be granted in normal circumstances. It should be noted that the Plaintiff does not specify which of the four section of the Rule 6.1103(b) are the basis for this Application. Plaintiff appears to base his Application for Further Review on an allegation that the Iowa Court of Appeals and Iowa District Court entered a decision in conflict with the Iowa Supreme Court's well settled decisions in *Arnold v. Lang*, 259 N.W.2d 749 (Iowa 1977) and *Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200 (Iowa 2002).

Plaintiff also appears to allege that this is a case of broad public importance that the Iowa Supreme Court should ultimately determine, but offer no support for this allegation in their Application for Further Review. Contrary to the Plaintiff's assertion, this is a case in which the District Court and Court of Appeals did a thorough review of the evidence and properly applied Iowa Dramshop Law to a matter where the evidence was uncontroverted.

## **2. Statement of the Case**

This case involves a cause of action for personal injuries allegedly received by Appellant, Jeremy Hollingshead, ("Plaintiff") when the Plaintiff participated in an altercation at DC Misfits on December 11, 2015. (Petition, ¶ 7)(App. 7). The cause of action is based on Iowa's Dramshop Act, defined by Iowa Code Chapter 123. (Id.)

On June 8, 2016, the Plaintiff mailed a dramshop notice to Founders Insurance Company (Founders) indicating that the Plaintiff intended to pursue a dramshop action against Leonard LLC. (Defendant's Amended and Substituted Statement of Material Facts, Exhibit 1)(App. 18-19). After being notified by letter by Founders that Leonard LLC was not a policy holder on the incident date referenced in the Plaintiff's Notice of Intent, no further

dramshop notices were served by the Plaintiff. (Defendant's Supplemental Statement of Material Facts, Exhibit 2)(App. 42-43).

DC Misfits filed a Motion for Summary Judgment based on the undisputed material fact that no notice of intent to bring a dramshop action had been served that met the requirements of Iowa's Dramshop Act. (DC Misfits Amended and Substituted Motion for Summary Judgment p. 1)(App. 14).

In resisting the Motion for Summary Judgment, Plaintiff did not offer proof of any notice of intent to pursue a dramshop action that complied with the requirements of Iowa Code Section 123.93 by naming DC Misfits. (Plaintiff's Resistance to Motion for Summary Judgment and Plaintiff's Statement of Disputed Facts and Additional Undisputed Facts)(App. 21-33). Instead, the Plaintiff argued that service of a dramshop notice on Founders of a claim against Leonard LLC d/b/a Misfits was sufficient since Founders insured DC Misfits on the date of the alleged altercation. (Plaintiff's Statement of Disputed Facts)(App. 23-27).

The District Court considered DC Misfit's Motion for Summary Judgment and Plaintiff's Resistance to Motion for Summary Judgment on May 23, 2018. (Ruling)(App. 46-49). On June 29, 2018, Iowa District Court Judge David May granted DC Misfit's Motion for Summary Judgment,

finding there was no genuine issue of material fact but that no dramshop notice of intent had been served that met the requirements of Iowa Code Section 123.93 (2015). (Ruling, pp. 2-3)(App. 47-48).

On May 15, 2019, these same facts and arguments were considered by the Iowa Court of Appeals, and the Iowa District Court Decision was affirmed. (Court of Appeals Decision, May 15, 2019).

### **3. Argument**

#### **a. Summary Judgment Standards**

Review of a summary judgment ruling is limited to determining whether a genuine issue of material fact remains in question or for errors at law. *Sanford v. Fillenwarth*, 863 N.W.2d 286, 289 (Iowa 2015). No fact issue exists if the only dispute concerns the legal consequences flowing from the undisputed facts. *Luttenegger v. Conseco Fin. Servicing Corp.*, 671 N.W.2d 425, 431 (Iowa 2003). This record establishes that Plaintiff never served a dramshop notice of an intent to bring an action against DC Misfits. Based on that fact, review of this case should be limited to whether the District Court and Court of Appeals correctly applied the law. *See id.*

An Iowa appellate court can affirm on any ground even if not relied upon by the District Court below. *Galloway v. Bankers Tr. Co.*, 420 N.W.2d 437, 441 (Iowa 1988).

A district court's determination upon a motion for summary judgment is identical to the determination made by a district court on a motion for directed verdict. *Meyer v. Nottger*, 241 N.W.2d 911, 917 (Iowa 1976). If a directed verdict for the movant would be proper, then it is proper to grant summary judgment. *Id.*

Under Rule 1.981 of the Iowa Rules of Civil Procedure, summary judgment is appropriate where the moving party shows no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981; *Amish Connection Co. v. State Farm Fire & Cas. Co.*, 861 N.W.2d 230, 235 (Iowa 2015) (citing *Boelman v. Grinnell Mut. Reins. Co.*, 826 N.W.2d 494, 500 (Iowa 2013) (citing Iowa R. Civ. P. 1.981(3))). The purpose of this rule "is to avoid useless trials and streamline the litigation process." *Cunningham v. Aviva Life & Annuity Co.*, No. 11-0371, 2011 Iowa App. LEXIS 1428, at \*7 (Iowa Ct. App. Dec. 7, 2011) (citing *Sorensen v. Shaklee Corp.*, 461 N.W.2d 324, 326 (Iowa 1990)).

In resisting a motion for summary judgment, the nonmoving party must set forth material facts that are in dispute. *See Int'l Milling Co. v. Gisch*, 129 N.W.2d 646, 651 (Iowa 1964). As such, "the nonmoving party must come forward with specific facts constituting competent evidence supporting the claim advanced." *Smith v. First Nat'l Bank Iowa*, No. 00-0534, 2001 WL

726079, at \*2 (Iowa Ct. App. June 29, 2001) (citing *Winkel v. Erpelding*, 526 N.W.2d 316, 318 (Iowa 1995)). “An inference based upon speculation or conjecture does not generate a material factual dispute sufficient to preclude summary judgment.” *Id.* at \*6-7 (citing *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994)).

Further, on direct attack, doubtful pleading must be resolved against the pleader. *See Eaton v. Downey*, 118 N.W.2d 583, 586 (Iowa 1962). Accordingly, inferences may be drawn in favor of the party opposing summary judgment only if those inferences are rational, reasonable, and otherwise permissible under the governing substantive law. *See Butler*, 530 N.W.2d at 88.

Taking “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits,” no issue of fact must remain. Iowa Rule Civ. P. 1.981(3).

The Plaintiff has not disputed DC Misfit’s Statement of Undisputed Material Facts by providing proof of service of a notice of intent to pursue a dramshop action with regard to DC Misfits. The Plaintiff only offered a notice of intent to pursue a dramshop notice on the previous bar owner. *See generally* Plaintiff’s Statement of Disputed Facts and Additional Undisputed Facts. (App. 23-33).

An attempt to simply offer facts to claim that issues of fact remain is insufficient and summary judgment is appropriate when there is no *genuine* issue of *material* fact. *Parish v. ICON Health & Fitness, Inc.*, 719 N.W.2d 540, 542 (Iowa 2006). “A fact is *material* if it will affect the outcome of the suit, given the applicable law. An issue of fact is ‘genuine’ if the evidence is such that a reasonable finder of fact could return a verdict or decision for the nonmoving party.” *Id.* (emphasis added).

Here, the District Court was faced with a motion for summary judgment in which the resisting party admitted that it had no dramshop notice that was given with regard to a claim against DC Misfits. Instead, the Plaintiff stated that a notice of claim was made against the previous owner, and that was sufficient. This attempt did not create a genuine issue of material fact.

**b. Iowa’s Dramshop Statute**

Before DC Misfits may be exposed to liability under Iowa Code Section 123.93, it is essential that the Plaintiff has served a proper notice of intent under Iowa Code Section 123.93. Despite the Plaintiff’s contention that the dramshop notice should not be required to specify the name of the licensee or permittee, a review of Iowa Code Section 123.93 demonstrates that including the name of the licensee is absolutely required, stating:

Within six months of the occurrence of an injury, the injured person shall give written notice to the licensee or permittee or

such licensee's or permittee's insurance carrier of the person's intention to bring an action under this section, indicating the time, place and circumstances causing the injury. Such six months' period shall be extended if the injured party is incapacitated at the expiration thereof or unable, through reasonable diligence, to discover the name of the licensee, permittee, or person causing the injury or until such time as such incapacity is removed or such person has had a reasonable time to discover the name of the licensee, permittee or person causing the injury.

Iowa Code § 123.93 (2015) (emphasis added).

If the name of the licensee or permittee is not known, the Iowa Legislature acknowledged that it is impossible to give notice in strict compliance with the statute, and extended the time period until the name of the licensee or permittee known so notice could be given which met with the requirements of the statute.

In this case, there was never any written dramshop notice of intent that was given that named DC Misfits as the licensee or permittee as required by Iowa Code Section 123.93.

**c. There is no genuine issue of material fact but that Plaintiff failed to comply with the notice requirements of Iowa Code Section 123.93 by not naming and serving the actual licensee.**

**1. The Iowa Supreme Court has consistently required strict compliance with the notice provisions of Iowa Code Section 123.93.**

The Plaintiff's argument on appeal is that he is not required to strictly comply with Iowa Code Section 123.93 by naming the licensee in the dramshop notice of intent. (Application for Further Review, pp. 10-11). In particular, the Plaintiff contends that a notice of intent that allegedly includes the other requirements of the dramshop notice is good enough. (Appellant's Brief, pp. 7-9).

The Iowa Supreme Court has consistently insisted on strict compliance with the basic requirements of Iowa Code Section 123.93.

In *Arnold v. Lang*, 259 N.W.2d 749 (Iowa 1977), a patron brought a cause of action against a dramshop based on injuries received from an altercation with two other patrons. In that case, counsel for the Plaintiff sent a "formal writing" of an intent to represent a client with regard to the altercation over ten months after the original altercation. *Id.* at 750. The notice, however, was sent to the liability insurance carrier. Almost eleven months after the initial injury, a written notification was sent to the dramshop insurance carrier.

The district court granted the dramshop's motion for summary judgment, and the Plaintiff appealed. *Id.* In considering the appeal, the Iowa Supreme Court first explained that Iowa Code Section 123.93 defines a special statutory limitation qualifying a given right, stating:

Pursuing the subject further, our Dramshop Act (Code ch. 123) created a cause of action unknown to common law. (Citation omitted). That means § 123.93 must be accepted as a special statutory limitation qualifying a given right, not as a pure statute of limitations.

*Arnold* at 752.

In affirming the district court's granting of the dramshop's motion for summary judgment, the Iowa Supreme Court stated that the dramshop notice was deficient as to the requirements of Iowa Code Section 123.93, as it was missing a number of items, including the dramshop licensee's name:

But [plaintiff] did not substantially comply with pertinent statutory requirements. Only one writing was transmitted from [plaintiff] to a representative of Iowa Mutual within the statutory six month period and it merely advised that substitute counsel "represent [plaintiff] with regard to an accident which occurred on September 14, 1974." Noticeably, this communication makes no reference to the place or circumstances under which plaintiff suffered his alleged injuries. Neither does it mention [dramshop licensee's] name nor express any intention by [plaintiff] to bring a dramshop action against [dramshop licensee]. All such information is essential in order to qualify as a § 123.93 notice. [Citation omitted]. In the fact that these elements were contained in a letter sent to Iowa Mutual some four months *after* expiration of the statutory six month period could not serve as an escape hatch for [plaintiff].

In summary, any purported § 123.93 notices by plaintiff were either (1) sent to the wrong party, (2) fatally deficient as to content, or (3) not timely given.

*Arnold* at 751-52 (emphasis added).

Despite the fact that the Plaintiff cites *Arnold* in his Application for Further Review, it is not supportive of his position.

In *Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200 (Iowa 2002), a passenger injured in an automobile accident brought a dramshop action against a bar. In that case, the plaintiff alleged that the driver of his car became intoxicated at the bar and later drove the plaintiff's automobile into another car, causing the plaintiff's injuries. *Id.* at 201. Thirteen months after his injuries, the plaintiff notified the bar of his intent to file a suit under Iowa's Dramshop Act. *Id.* The district court granted the dramshop's motion for summary judgment, and the plaintiff appealed. *Id.*

On appeal, the plaintiff claimed that the dramshop notice requirements violated his constitutional rights, and generally alleged that he fit some exception to the notice provision. *Id.* at 202. In considering his appeal, the Iowa Supreme Court rejected the plaintiff's constitutional argument, stating:

A distinguishing feature of the Iowa dramshop act is that it created liability where none existed at common law. It provides the exclusive remedy against a liquor licensee or permittee for violation of the statute. Since the legislature created this cause of action, it follows the legislature may affix the conditions under which it is to be enforced. We will not question the legislature's

policy determinations made in an area involving neither a suspect class nor a fundamental right.

*Id.* at 203 (citations omitted).

After rejecting the plaintiff's claims of constitutional violations, the Court considered the Plaintiff's argument that he met one of the three exceptions to the six month notice requirement, writing:

Iowa Code section 123.93 contains three exceptions to the six-month notice requirement. The notice period shall be extended if: (1) the injured party is incapacitated at the end of the six-month period; (2) the injured party is unable through reasonable diligence to discover the name of the potential dramshop defendant; or (3) the injured party, through reasonable diligence, is unable to discover the identity of the person causing the injury. Iowa Code § 123.93.

*Grovijohn* at 204.

In rejecting the notice exception argument and affirming the decision of the district court, the Iowa Supreme Court held:

[Plaintiff] did not present any evidence to the court in its resistance to [dramshop's] motion for summary judgment relevant to any of the exceptions. [Plaintiff] merely asserted he was incapacitated after the accident. He did not articulate the nature or scope of his incapacity, nor did he claim he was incapacitated at the end of the six month period. [Plaintiff] did not argue that he was unable, through reasonable diligence, to discover the name of the potential dramshop defendant. Finally, he does not present any evidence that supports the third exception that he, through reasonable diligence, was unable to discover the identity of the person causing the injury. We disagree with [plaintiff's] suggestion the terms reasonable diligence and incapacity are ambiguous. However, even if we were to accept his argument, this does not change [plaintiff's] presenting no

evidence to the court to support the existence of a material issue regarding any of the three exceptions to the notice requirement. We conclude the district court properly granted [dramshop owner's] motion for summary judgment as there were no genuine issues of material fact. We affirm.

*Grovijohn* at 204-05.

In the case at bar, the Plaintiff has not claimed that he fits under one of the statutory exceptions as to the six month time limit for giving the notice, nor does he claim that he was in anyway unable, through reasonable diligence, to discover the name of the dramshop defendant. Plaintiff admits that he sent a dramshop notice with the wrong dramshop licensee's name to the insurance carrier just four days prior to the expiration of the six month time limit, was notified that a short time later by the insurance carrier he had given the wrong dramshop licensee in the notice, and did nothing further to provide a notice that complied with the strict requirements of Iowa Code Section 123.93. (Application for Further Review, p.7-8).

**2. The additional cases cited by the Plaintiff does not support the Plaintiff's position that the specific licensee does not have to be included in a dramshop notice.**

In addition, the Plaintiff cited to two additional Iowa Supreme Court cases as authority in his brief for his position that the actual licensee does not have to be named in the notice. In his Application for Further Review, he now

only relies on one of them. (Application for Further Review, pp. 10-12). An actual reading of this case, however, does not support the Plaintiff's position.

The case referenced by the Plaintiff was *Harrop v. Keller*, 253 N.W.2d 588 (Iowa 1977). In *Harrop*, the plaintiff was injured as the result of a stabbing that occurred at the defendant's bar by an intoxicated patron. *Id.* at 590. The plaintiff filed a petition in district court against the dramshop almost seven months after his injury. *Id.* The bar filed a motion to dismiss alleging that a dramshop notice had not been given within six months of the injury pursuant to Iowa Code Section 123.93. *Id.* After the motion to dismiss was granted, the plaintiff appealed. *Id.* at 591.

On appeal, the plaintiff argued that the stabbing had left him physically incapacitated and that permitted him to give the notice after the six months. *Id.* at 592. In addition, he alleged that the petition itself was the notice. *Id.*

Obviously, the petition itself contained the name of the liquor licensee, and was properly served on the liquor licensee, as that was not an issue on appeal. In reversing the decision of the district court, the Iowa Supreme Court held that the information contained in the lawsuit was sufficient notice to comply with Iowa Code Section 123.93, and there was an issue as to whether the plaintiff was entitled to additional time due to incapacity, stating:

The bringing of the suit itself accords a dram shop operator every advantage any other notice would. There are only three matters

required for inclusion in the notice by § 123.93. The notice must indicate the time, place, and circumstances causing the injury. Plaintiff's petition notified defendants of all these matters. To require some type of notice to precede the bringing of suit under these circumstances would be a meaningless formality. We hold bringing the suit was itself sufficient notice under § 123.93.

*Harrop* at 593.

As a result, the issues faced by the Iowa Supreme Court in *Harrop* did not relate to the giving of a notice that failed to include the licensee's name.

*See Id.*

**3. In granting summary judgment, the District Court and Court of Appeals correctly ruled that the Plaintiff had not met the dramshop notice requirements of Iowa Code Section 123.93.**

In his ruling in the case at bar, Polk County District Court Judge David May noted that the Plaintiff argued substantial compliance with regard to the notice requirement, and that the Plaintiff claimed that it was not actually necessary to include the correct dramshop owner's name, DC Misfits, in the dramshop notice. (Ruling, pp. 1-2)(App. 46-47). In rejecting this argument, Judge May relied on a proper reading of the statutory requirements of Iowa Code Section 123.93 and the Iowa Supreme Court cases interpreting this statutory section, and granted the motion for summary judgment, writing:

DC Misfits, LLC has filed a motion for summary judgment. It contends Plaintiff did not provide the written notice required by section 123.93. Specifically, DC Misfits, LLC argues Plaintiff's notice was deficient

because it did not name DC Misfits, LLC. Instead, it named a different entity called “Leonard LLC d/b/a Misfits.” (Defendant’s Exhibit A).

Plaintiff concedes that his notice did not name DC Misfits, LLC. But Plaintiff argues, *inter alia*, that his notice:

- (1.) identified the bar (“Misfits”) where he was injured;
- (2.) stated the date of his injury;
- (3.) described the cause of his injury, namely, an assault by drunken patrons;
- (4.) stated Plaintiff’s intention to bring a dramshop action; and
- (5.) was sent to Founders Insurance Company, who was the dramshop carrier for DC Misfits, LLC.

Therefore, Plaintiff argues, his notice substantially complied with section 123.93.

The Court disagrees. In *Lang*, the Iowa Supreme Court said That the “name” of the defendant licensee (in that case, Lang) is among the “information” that must be provided—the “*essential*” information—“in order” for a written communication to “qualify as a [section] 123.93 notice.” *Arnold v. Lang*, 259 N.W.2d 749, 752 (Iowa 1977) (italics added).

Here, it is undisputed that Plaintiff’s notice did not mention DC Misfits, LLC. Therefore, under *Lang*, Plaintiff’s notice did not satisfy the requirements of section 123.93. As a result, Plaintiff’s dramshop claim fails as a matter of law. *See, e.g., Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200, 204 (Iowa 2002) (affirming grant of summary judgment where plaintiff failed to provide notice as required by section 123.93).

Defendant DC Misfits, LLC’s motion for summary judgment is GRANTED. Plaintiff’s claims against DC Misfits, LLC are DISMISSED.

(Ruling pp. 1-3)(App. 46-48).

After reviewing the record and legal arguments in this case, the Iowa Court of Appeals noted that the dramshop law was created by the Iowa Legislature, and was governed by statute, stating:

Iowa's Dramshop Act, Iowa Code chapter 123 (2015), creates a cause of action previously unknown in common law, establishing civil liability for persons injured in person or property by an intoxicated person against the entity selling and serving alcohol to the intoxicated person. Our legislature may require compliance with certain conditions before a plaintiff may assert a dramshop claim. *See Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200, 203 (Iowa 2002); *Arnold v. Lang*, 259 N.W.2d 749, 751–52 (Iowa 1977). Iowa Code section 123.93 creates a jurisdictional prerequisite to a plaintiff's dramshop claim requiring proper notice of the intent to bring a dramshop claim. Section 123.93 provides requirements for such notice:

Within six months of the occurrence of an injury, the injured person shall give written notice to the licensee or permittee or such licensee's or permittee's insurance carrier of the person's intention to bring an action under this section, indicating the time, place and circumstances causing the injury.

Substantial compliance with section 123.93's notice requirements will suffice. *See Arnold*, 259 N.W.2d at 752.

(Appeal Decision, pp. 2-3).

The Iowa Court of Appeals found that the Plaintiff had failed to properly include DC Misfits as the licensee or permittee in the Plaintiff dramshop notice of intent, as required by Iowa law, writing:

Hollingshead's notice of his intent to bring a dramshop claim failed to substantially comply with section 123.93. Among other things, section 123.93 specifically requires notice be provided by "the

injured person” to the “licensee or permittee or such licensee’s or permittee’s insurance carrier.” In *Arnold*, our supreme court held it was “essential” for the notice to contain the licensee or permittee’s name. *See Arnold*, 259 N.W.2d at 752. In *Berte v. Bode*, 692 N.W.2d 368, 370–71 (Iowa 2005), the court held a notice listing Berte as “guardian and conservator” of a minor child was insufficient to serve as notice of claim for Berte individually to sustain a dramshop claim—indicating proper identification of the parties to the suit is a requirement of the notice. As we have previously noted, “notice on behalf of one party cannot constitute notice on behalf of another party.” *Veach v. Prairie Meadows Racetrack & Casino, Inc.*, No. 06-0366, 2006 WL 3801735, at \*4 (Iowa Ct. App. Dec. 28, 2006). Thus, the notice must specify the plaintiff in the potential suit and properly identify the “licensee or permittee” subject to the suit.

(Appeal Decision, pp. 3-4).

In affirming the Iowa District Court’s granting of summary judgment, the Iowa Court of Appeals stated:

Here, Hollingshead’s notice made no mention of DC Misfits, the licensee at issue. Instead it referred to “Leonard LLC dba Misfits.” The two are distinct entities with separate insurance policies which just happened to be with the same carrier. Leonard LLC was dissolved August 10, 2015, several months before the date of the alleged injury. Without reference to the intended defendant, DC Misfits, Hollingshead’s notice was “fatally deficient as to content,” and he did not satisfy a condition precedent to a dramshop action.<sup>2</sup> *See Arnold*, 259 N.W.2d at 752.

As a result, we conclude the district court properly granted summary judgment dismissing Hollingshead’s dramshop claim against DC Misfits LLC.

(Appeal Decision, p. 4).

Based on the record presented to the Iowa District Court at the time the Motion for Summary Judgment was considered, the Iowa District Court and

Iowa Court of Appeals were correct in determining that there was no genuine issue of material fact but that a notice of intent to pursue a dramshop notice was not served naming DC Misfits as licensee, in strict compliance with Iowa Code Section 123.93.

### CONCLUSION

No genuine issue of material fact exists that would preclude summary judgment in this case. The Plaintiff cannot prove that a notice of intent to pursue a dramshop action against DC Misfits was ever made that complies with the strict requirements of Iowa Code Section 123.93. DC Misfits would, therefore, respectfully request that the decisions of the Iowa District Court and Court of Appeals be upheld, and the Plaintiff's Application for Further Review be denied with costs assessed to the Plaintiff.

Respectfully submitted,

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## **CERTIFICATE OF COST**

The undersigned hereby certifies that the cost of printing the foregoing Appellee DC Misfits' Resistance to Application for Further Review is \$0.00.

/s/ Thomas Henderson

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Resistance to Application for Further Review, DC Misfits, was served upon the attorneys of record listed below by electronic filing and electronic delivery to the parties via the EDMS system on June 11, 2019, pursuant to Iowa R. App. P. 6.901(3) and Iowa R. Elec. P. 16.315(1)(b).

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ATTORNEY FOR PLAINTIFF/APPELLANT

/s/Thomas Henderson

## **CERTIFICATE OF FILING**

The undersigned hereby certifies that the foregoing Final Application for Further Review, DC Misfits, was filed with the Iowa Supreme Court by electronically filing the same on June 11, 2019, pursuant to Iowa R. App. P. 6.901(3) and Iowa R. Elec. P. 16.302(1).

/s/ Thomas Henderson

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

This forgoing Resistance to Application for Further Review complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 pt. and contains 4,602 words, excluding the parts of the Resistance exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Tara Johnson

Signature

June 11, 2019

Date