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IN THE IOWA SUPREME COURT

S.C. No. 19-0821

MICHAEL MERRILL and KAREN JO FRESCOLN,

Plaintiff/Appellants,

vs.

VALLEY VIEW SWINE, LLC and JBS LIVE PORK, LLC, f/k/a CARGILL PORK, LLC,

Defendants/Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
WAPELLO CO. NO. LALA105144—DIVISION A
HONORABLE JUDGE ANNETTE SCIESZINSKI

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES 4

STATEMENT OF ISSUES PRESENTED FOR REVIEW.................................5

RESPONSE TO DEFENDANTS/APPELLEES' FACT STATEMENTS 6

ARGUMENT 10

ISSUE I: THE DISTRICT COURT ERRED IN FINDING PLAINTIFFS LIABLE FOR COSTS AND EXPENSES UNDER IOWA CODE SECTION 657.11(5) BECAUSE THEY DID NOT BRING CLAIMS AS PART OF A LOSING CAUSE OF ACTION AND THEIR CLAIMS WERE NOT FRIVOLOUS. 11

A. The CAFO Defendants Are Not Entitled to Costs and Expenses Under Iowa Code Section 657.11(5) or Chapter 625 as Two Voluntary Dismissals Constitute a Final Adjudication Only for the Purpose of Res Judicata and Do Not Transform Claims Brought by Merrill and Frescoln Into "a Losing Cause of Action" 11

B. Without an Adjudication on the Merits, the District Court Could Not Determine that Claims Brought by Merrill and Frescoln Constituted a "Losing Cause of Action," nor Enter Into a Subsequent but Irrelevant Inquiry as to Whether the CAFO Defendants are Prevailing Parties....................................12

C. Legislative Intent to Protect the Iowa Pork Industry Is Not Relevant to Whether Two Voluntary Dismissals Constitute a "Losing Cause of Action.".15

D. JFAN's Opinion of the CAFO Industry is Not Relevant to This Appeal 15

E. Merrill and Frescoln's Opinions Regarding CAFOs Are Also Not Relevant to This Appeal......16

F. The Record Reflects Lack of Concern With Merrill and Frescoln on Summary Judgment and Appeal......17

G. Merrill and Frescoln Did Not Bring Frivolous Claims......18

ISSUE II: THE DISTRICT COURT ALSO ERRED IN FINDING THAT A SECOND VOLUNTARY DISMISSAL UNDER IOWA R. CIV. P. 1.943 EXPOSES A PLAINTIFF TO ALL COSTS AVAILABLE UNDER IOWA CODE CHAPTER 625. 21

ISSUE IV: THIS COURT SHOULD AWARD MERILL AND FRESCOLN APPELLATE ATTORNEY FEES...... 22

CONCLUSION......22

CERTIFICATE OF FILING......24

CERTIFICATE OF SERVICE......24

CERTIFICATE OF COMPLIANCE......25

TABLE OF AUTHORITIES

Page

Cases

CRST Van Expedited v. E.E.O.C., 136 S.Ct. 1642 (2016).......................... 13, 14, 15

Darrah v. Des Moines Gen. Hosp., 436 N.W.2d 53, 55 (Iowa 1989). 11, 18

Gardin v. Long Beach Mortg. Co., 661 N.W.2d 193, 197 (Iowa 2003)..................15

Kimble v. Marvel Entertainment, LLC, 135 S.Ct. 2401, 2409 (2015).....................10

Phipps v. Winneshiek County, 593 N.W.2d 143, 147 (Iowa 1999). 10, 12, 21

Schark v. Gorski, 421 N.W.2d 527, 529 (Iowa 1988). 11, 14

Weigel v. Weigel, 467 N.W.2d 277, 282 (Iowa 1991) 16

Williams v. Van Sickel, 659 N.W.2d 572, 579 (Iowa 2003) 22

STATEMENT OF ISSUES PRESENTED FOR REVIEW

ISSUE I: THE DISTRICT COURT ERRED IN FINDING PLAINTIFFS LIABLE FOR COSTS AND EXPENSES UNDER IOWA CODE SECTION 657.11(5) BECAUSE THEY DID NOT BRING CLAIMS AS PART OF A LOSING CAUSE OF ACTION AND THEIR CLAIMS WERE NOT FRIVOLOUS.

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CRST Van Expedited v. E.E.O.C., 136 S. Ct. 1642 (2016)

Gardin v. Long Beach Mortg. Co., 661 N.W.2d 193 (Iowa 2003)

Weigel v. Weigel, 467 N.W.2d 277, 282 (Iowa 1991)

Honomichl v. Valley View Swine, LLC, 914 N.W.2d 223 (Iowa 2018)

Darrah v. Des Moines General Hosp., 436 N.W.2d 53, 55 (Iowa 1989)

ISSUE II: THE DISTRICT COURT ALSO ERRED IN FINDING THAT A SECOND VOLUNTARY DISMISSAL UNDER IOWA R. CIV. P. 1.943 EXPOSES A PLAINTIFF TO ALL COSTS AVAILABLE UNDER IOWA CODE CHAPTER 625.

Phipps v. Winneshiek County, 593 N.W.2d 143, 147 (Iowa 1999)

ISSUE III: THE DISTRICT COURT ERRED IN THE AMOUNT OF JUDGMENT ENTRY BECAUSE THE COSTS AND EXPENSES AWARDED ARE NOT RECOVERABLE.

ISSUE IV: ISSUE IV: THIS COURT SHOULD AWARD MERRILL AND FRESCOLN APPELLATE ATTORNEY FEES.

Williams v. Van Sickel, 659 N.W.2d 572, 579 (Iowa 2003)

RESPONSE TO DEFENDANTS/APPELLEES' FACT STATEMENTS

The recitation of basic facts by Defendants-Appellees Valley View Swine, LLC ("Valley View") and JBS Live Pork, LLC ("JBS"), successor in interest to Cargill Pork, LLC ("Cargill Pork") (collectively "CAFO Defendants") misconstrues the evidence and the procedural history of this litigation, and the involvement and representation of Plaintiffs-Appellants Michael Merrill and Karen Frescoln in that litigation.[1] Further, the CAFO Defendants' procedural history is largely unrelated to the merits of Merrill and Frescoln's individual claims. The CAFO Defendants' continued mischaracterization of evidence and procedural history is particularly offensive in light of their inferences that the entire body of litigation against animal confinements is wholly unsubstantiated. Below, Plaintiffs address a few factual issues in particular.

Merrill and Frescoln Not Represented by Prior Counsel

On October 22, 2018, current counsel Steven P. Wandro and Jennifer H. De Kock entered their limited appearances on behalf of Merrill for the purpose of resisting Defendants' Motion for Judgement and Costs and Expenses against him. See October 22, 2018 Limited Appearances of Wandro and De Kock. On October

[1] Unless otherwise noted, Plaintiffs-Appellants follow shorthand references designated in their opening brief.

24, 2018, current counsel Benjamin G. Arato entered his limited appearance on behalf of Merrill and Frescoln for the purpose of resisting Defendants' Motion for Judgement and Costs and Expenses against both former plaintiffs. See October 24, 2018 Limited Appearance of Arato. On April 19, 2019 the district court granted attorney David E. Sykes' motion to withdraw as counsel for Merrill and Frescoln. See April 19, 2019 Order Approving Withdrawal of Counsel. Attorneys Wandro, De Kock, and Arato of Wandro & Associates, P.C. (the "Wandro attorneys") are the only counsel of record for Merrill and Frescoln in this litigation.

The Majority of Dismissals by Current Counsel Occurred After Voluntary Settlement

The CAFO Defendants offer a selective and misleading recitation of the procedural history of similar nuisance cases. Prior to entering any appearance of record, in summer and fall of 2016 the Wandro attorneys reviewed every active CAFO case brought by prior counsel in Iowa and evaluated it for likelihood of success via settlement or at trial. The Wandro attorneys agreed to represent certain plaintiffs in nuisance actions against confinement owners, operators, and integrators only after conducting this review. On their recommendation certain plaintiffs agreed to dismiss cases that fell outside that criteria.

The Wandro attorneys worked through this process with attorney Sykes to focus energy and resources on plaintiffs whose properties were burdened by hog confinement stench that created a nuisance so proximate and significant that they

had a reasonable chance of success before a jury and on appeal. As part of their analysis, the Wandro attorneys also considered the award of costs and expenses pursuant to 657.11(5) awarded by the district court, the Honorable Judge Annette Scieszinski presiding, to defendants in Division C of this litigation in Wapello County. App. 260.

Under this agreed-upon evaluation protocol, attorney Sykes and former plaintiffs' counsel dismissed the following cases before the Wandro attorneys entered any appearances:

- *Davis, et al. v. Maschhoff Pork, LLC, et al.* (LACV084348 Linn)
- *Bolin, et al. v. Parks Finishing C10, LLC, et al.* (LALA012580 Davis); *Arbogast, et al. v. Parks Finishing C10, LLC, et al.* (LALA012581 Davis); and *Basinger, et al. v. Parks Finishing C10, LLC, et al.* (LALA012582 Davis); consolidated into *Hopkins et al. v. Parks Finishing C10, LLC et al.* (LALA012580 Davis)
- *Wilkerson et al. v. Pro Ag Investors, LLC et al.* (LALA018795 Louisa)
- *Wilson et al. v. Pro Ag Investors, LLC et al.* (LALA018795 Louisa)
- *Merritt, et al. v. JBS Live Pork, LLC et al.* (LACV005896 Adair)

-Following their appearance as counsel of record with attorney Sykes, the Wandro attorneys refiled the Davis and Linn County cases[2]. The Wandro attorneys then negotiated settlements in the following cases and consequently dismissed them with prejudice:

[2] *Hopkins et al. v. Parks Finishing C10, LLC, Parks Finishing C11, LLC, and JBS Live Pork, LLC* (LALA012637 Davis) and *Gibson, et al. v. CP3 Farms, LLC, Matthew J. Ditch, and The Maschhoffs, LLC* (LACV092269 Linn)

- *Ahrens, et al. v. Prestage Farms of Iowa, LLC* (CVEQ027257 Poweshiek)
- *Bergthold, et al. v. Pro Ag Investors, LLC et al.* (LALA018794 Louisa)
- *Honomichl, et al. v. JBS, et al.* (LALA105144 Wapello County)
- *Hopkins et al. v. Parks Finishing C10, LLC et al.* (No. LALA012637 Davis); removed to federal court (4:18-cv-00123 S.D. Iowa)

The law firm of Faegre Baker Daniels, LLP, counsel of record for JBS on this appeal, was also counsel of record for JBS for the *Honomichl* and *Hopkins* cases, and has personal knowledge that plaintiffs dismissed these cases only **after voluntary settlement was reached**. The firm of Elderkin & Pirnie, PLC, counsel of record for defendant Valley View at trial and on this appeal, was also counsel of record for Valley View for the *Honomichl* Wapello County case, and must similarly be charged with knowledge that the remaining plaintiffs dismissed after negotiating voluntary settlements.

Of the seven cases where the Wandro attorneys entered their appearance with Sykes, only one[3] was dismissed without negotiated settlement. Current counsel obtained plaintiffs' consent to dismiss that lawsuit following the defense verdict in its neighboring county companion case[4] and their reasoned opinion as to the likelihood of success. Following withdrawal of prior counsel for plaintiffs, current counsel has consistently shared their forthright assessments with both plaintiffs and

[3] *Lappe et al. v. AWP Pork, LLC et al.*(Des Moines County Case No. LALA004642)

[4] *City of Mount Union, et al. v. AWP Pork, LLC et al.* (Henry County Case No. LALA011873)

the courts in an attempt to maximize both effective representation and judicial efficiency in resolving these nuisance claims.[5]

Gibson, et al. v. Maschhoff, et al. is still pending in Linn County.

ARGUMENT

Plaintiffs are entitled to a reversal of the judgment entered against them pursuant to the doctrine of *stare decisis* for three major reasons. [6] First, prior caselaw is clear that a voluntary dismissal under Rule 1.943 does not constitute an adjudication on the merits but is only "final" for *res judicata* purposes. *Phipps v. Winneshiek County*, 593 N.W.2d 143, 147 (Iowa 1999). Second and similarly, a determination that a voluntary dismissal constitutes a "losing cause of action" under 657.11(5) would require a radical break with *stare decisis* that no plaintiff should

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[5] As counsel for the CAFO Defendants has highlighted, current counsel has been as candid as possible within the bounds of ethics, on and off the record, in assessing the strength of all plaintiffs' claims in light of historic and evolving precedent. (*See* Defendants-Appellees' Br. at 27, fn. 4.)

[6] *Kimble v. Marvel Entertainment, LLC*, 135 S.Ct. 2401, 2409 (2015) (internal citations omitted).

> "Overruling precedent is never a small matter. *Stare decisis* – in English, the idea that today's Court should stand by yesterday's decisions – is 'a foundation stone of the rule of law.' Application of that doctrine, although 'not an inexorable command,' is the 'preferred course because it promotes the evenhanded, predictable, consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.' It also reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation."

ever be discouraged from voluntarily dismissing a claim. *Schark v. Gorski*, 421 N.W.2d 527, 529 (Iowa 1988). Third, upholding the district court's ruling would require a new "carveout" exception to the general rule that a voluntary dismissal divests the district court of jurisdiction over the controversy. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d 53, 55 (Iowa 1989).

ISSUE I: THE DISTRICT COURT ERRED IN FINDING PLAINTIFFS LIABLE FOR COSTS AND EXPENSES UNDER IOWA CODE SECTION 657.11(5) BECAUSE THEY DID NOT BRING CLAIMS AS PART OF A LOSING CAUSE OF ACTION AND THEIR CLAIMS WERE NOT FRIVOLOUS.

A. The CAFO Defendants Are Not Entitled to Costs and Expenses Under Iowa Code Section 657.11(5) or Chapter 625 as Two Voluntary Dismissals Constitute a Final Adjudication Only for the Purpose of Res Judicata and Do Not Transform Claims Brought by Merrill and Frescoln Into "a Losing Cause of Action"

Following their second dismissals under Iowa Rule of Civil Procedure 1.943, the doctrine of *res judicata* bars Merrill and Frescoln from refiling their claims against the CAFO Defendants, but those dismissals do not transform their claims into a "losing cause of action" as required for a costs award under Iowa Code section 657.11(5) or Chapter 625. "For the purpose of applying the principles of res judicata, a voluntary dismissal can constitute a final adjudication of the claims and issues of a dismissed lawsuit. On the other hand, voluntary dismissals are otherwise not considered to be an adjudication on the merits." *Phipps,* 593 N.W.2d at 147 (internal citations omitted).

In *Phipps*, the plaintiffs dismissed their claims with prejudice after entering into a voluntary settlement, but following discovery of false deposition statements by a defendant county employee, sought to pursue an independent claim for damages based upon the intrinsic fraud. *Id.* at 145. In allowing the plaintiffs to pursue their independent claims under the election of remedies doctrine despite the dismissal with prejudice, the *Phipps* court also addressed the conundrum of whether a voluntary dismissal is a judgment when "under our rules of procedure 'every final adjudication of any of the rights of the parties in an action is a judgment.'" *Id.* at 146-147 (citing Iowa R. Civ. P. 219, now Iowa R. Civ. P. 1.951(2019)). Twenty years of subsequent case law has not altered the Iowa Supreme Court's conclusion that a voluntary dismissal is not an adjudication on the merits. *Id.* at 147. Therefore, two voluntary dismissals by Merrill and Frescoln, while precluding them from relitigating their claims under *res judicata*, are not adjudications on the merits that allow awards of costs and fees under either Iowa Code Section 657.11(5) or Chapter 625.

B. Without an Adjudication on the Merits, the District Court Could Not Determine that Claims Brought by Merrill and Frescoln Constituted a "Losing Cause of Action," nor Enter Into a Subsequent but Irrelevant Inquiry as to Whether the CAFO Defendants are Prevailing Parties.

The Court must consider whether claims brought by Merrill and Frescoln constituted a losing cause of action under Iowa Code section 657.11(5), not whether

the CAFO Defendants are the prevailing party on a civil rights claim.[7] Consequently, the CAFO Defendants' reliance on *CRST Van Expedited v. E.E.O.C.,* 136 S. Ct. 1642 (2016) is misplaced. A "prevailing party" analysis is irrelevant here given that the statutory language demands an inquiry as to whether the claims constituted a "losing cause of action," and because the district court had no opportunity to issue a ruling affecting the relative rights of the parties prior to the second dismissals filed by Merrill and Frescoln pursuant to Iowa Rule of Civil Procedure 1.943.

First, the *CRST* analysis interprets the statutory language of "prevailing party," not "losing cause of action," and is therefore of little assistance to any analysis of Iowa Code section 657.11(5) here.

Second, the plain language of the *CRST* decision emphasizes that a "prevailing party" analysis is undertaken only after a court issues a ruling affecting the relative rights of the parties. "The Court has said that the 'touchstone of the prevailing party inquire must be the material alteration of the legal relationship of the parties.' This change must be marked by 'judicial imprimatur.'" *CRST,* 136 S.

[7] In claims filed under Title VII of the Civil Rights Act of 1964 (*see* 42 U.S.C. § 2000e–5(b)), "district courts may award attorney's fees if the plaintiff's 'claim was frivolous, unreasonable, or groundless,' or if 'the plaintiff continued to litigate after it clearly became so.'" *CRST Van Expedited, Inc. v. E.E.O.C.*, 136 S. Ct. 1642, 1646 (2016) (citing *Christiansburg Garment Co. v. EEOC,* 434 U.S. 412, 422 (1978)).

Ct. at 1646 (internal citations omitted). The CAFO Defendants incorrectly argue that *CRST* is controlling here, despite its holding that a court must issue a final order that involuntarily changes the legal standings of the parties, including dismissal of a plaintiff's claim for reasons not on-the-merits, before a defendant can be entitled to costs and fees as the "prevailing party". *Id.* at 1651 ("The defendant has…fulfilled its primary objective whenever the plaintiff's challenge is **rebuffed**, irrespective of the precise reason for **the court's decision**.") (emphasis added). In this matter, the district court did not change the legal relationship of the parties.[8] Through their dismissals, Merrill and Frescoln voluntarily changed that relationship on their own, which they are entitled to do and should never be discouraged from doing. *See Schark v. Gorski*, 421 N.W.2d 527, 529 (Iowa 1988). The Court can and should use the *CRST* decision only as guidance for the proposition that a judicial determination of the legal rights of the parties is necessary before any party becomes entitled to costs and fees. *CRST,* 136 S.Ct. at 1646.

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[8] The Court had the opportunity to change the parties' legal relationship when the CAFO Defendants filed their motions for summary judgment, but it denied those motions based on the facts asserted by Plaintiffs. Plaintiffs concede that had the CAFO Defendants been successful in obtaining summary judgment then their claims would constitute a "losing cause of action." Moreover, the CAFO Defendants' argument is clearly erroneous that "only when a plaintiff maintains their frivolous suit through trial" will s/he held responsible. A plaintiff who pursues a frivolous claim through a motion to dismiss or motion for summary judgment is also exposed to all costs under 657.11(5).

C. Legislative Intent to Protect the Iowa Pork Industry Is Not Relevant to Whether Two Voluntary Dismissals Constitute a "Losing Cause of Action."

The CAFO Defendants again seek to muddy the waters regarding whether Merrill and Frescoln were part of a losing cause of action by quoting the testimony of Dr. Dermot Hayes to support their argument that they are entitled to all costs of and expenses incurred in defending the action. (Defs. Brief at 24). Dr. Hayes' opinion regarding the import of the Iowa pork industry is even less germane to this appeal that it was to proceedings below, when the district court granted Plaintiffs' motion to exclude his testimony. See January 9, 2016 Ruling on Pretrial Motions, at page 4. In their brief, the CAFO Defendants duplicate their arguments from *Honomichl* and argue that Dr. Hayes' opinion that the "more than $1.1 billion in value added to the state's economy in 2015" by the pork industry supports an award of costs to the CAFO Defendants against Merrill and Frescoln of $9,317.27 and $9,184.25, respectively, in order to uphold the valid legislative interest in protecting Iowa agricultural producers. (Defs. Brief at 24). This argument is not only irrelevant, but such interpretation may plainly be construed as absurd and impractical. *See Gardin v. Long Beach Mortg. Co*., 661 N.W.2d 193, 197 (Iowa 2003).

D. JFAN's Opinion of the CAFO Industry is Not Relevant to This Appeal

The CAFO Defendants cite to an "op/ed piece" published years ago by an organization known as JFAN. App. 268. "Op/ed" is shorthand for that page of a

newspaper where “opinions” of citizens are printed on one side, and “editorials” (which are opinions of the newspaper) are on the other. Neither Merrill nor Frescoln were members of JFAN. App. 1154 (Merrill Dep. Tr., 21:23-25); App. 1180 (Frescoln Dep. Tr., 47:20-25 The opinions of a “local activist organization” are in no way relevant to the issues in this appeal, say nothing about the merits of Merrill and Frescoln’s claims, and the Court should afford them no weight.

E. Merrill and Frescoln’s Opinions Regarding CAFOs Are Also Not Relevant to This Appeal

The CAFO Defendants claim that Frescoln brought suit for religious reasons because she testified animal confinements are “sinful.” (Defs. Brief at 35). With no support from deposition testimony, the CAFO Defendants claim that Merrill had a “vendetta” against them. (Defs. Brief at 36). Merrill and Frescoln’s personal opinions regarding the CAFO industry are not properly part of any legal analysis in this appeal. A party’s subjective hatred of his or her opponent does not render an otherwise colorable claim invalid. *Weigel v. Weigel*, 467 N.W.2d 277, 282 (Iowa 1991) (“the subjective intent of the pleader or movant to file a meritorious document is of no moment. The standard is reasonableness.”). Whether a claim is a colorable one or not does not depend on the motives of the filer but rather the evidence to support it. As set forth in their initial brief, both Merrill and Frescoln testified to the smells they experienced after the CAFO Defendants erected and populated the confinements at issue. (Plfs. Brief at 21-23). The district court found that evidence

sufficient for both former plaintiffs to survive a summary judgment challenge by the CAFO Defendants. See June 8, 2016 Ruling on Summary Judgment at 2. By permitting Merrill and Frescoln to survive Summary Judgment, the district court explicitly found neither of their claims were a losing cause of action under Iowa Code section 657.11(5).

F. The Record Reflects Lack of Concern With Merrill and Frescoln on Summary Judgment and Appeal

Defendants assert that they were "forced" to "address plaintiff [Merrill & Frescoln's] claims in lengthy summary judgment filings and on appeal." (Defs. Brief at 27). The record reflects that neither Merrill nor Frescoln's names appear in JBS's brief filed in support of its motion for summary judgment.[9] In fact, a review of the legal arguments made demonstrate that JBS was not at all focused on the claims of any particular plaintiff, but rather on what it believed to be its statutory defenses under 657.11. It is reasonable to infer that these arguments would have been the same regardless of whether Merrill and Frescoln were plaintiffs. As for the appeal, JBS initiated the appellate action for which it now blames Merrill and Frescoln. See June 10, 2016 Notice of Appeal. In the ensuing appeal, ultimately captioned as *Honomichl v. Valley View Swine, LLC*, 914 N.W.2d 223, the CAFO Defendants were only partially successful and succeeded only in overturning the

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[9] When JBS originally filed its motion for summary judgment it was known as Cargill Pork, LLC.

denial of their summary judgment on the basis that the law required a full evidentiary hearing. None of the appellate proceedings had anything to do with the merits of the Merrill or Frescoln claims.

G. Merrill and Frescoln Did Not Bring Frivolous Claims

As argued above, longstanding Iowa precedent demands reversal of the district court award of costs and fees to the CAFO Defendants. Merrill and Frescoln also are entitled to reversal on the grounds that the evidence before the district court demonstrates that their claims were not frivolous. Merrill and Frescoln set forth facts establishing a colorable claim for nuisance. Whether or not they would have prevailed on those claims is not at issue in this appeal, as they chose to forego ever finding out what a jury may have thought about their claims.

This Court need not reach a decision as to the merits of their claims because Merrill's and Frescoln's voluntarily dismissal with prejudice, well before trial, divested the trial court of jurisdiction to make any further determinations as to their claims. *See Darrah v. Des Moines General Hosp*., 436 N.W.2d 53, 55 (Iowa 1989). For this reason, Merrill and Frescoln set forth the facts supporting their claims in their initial brief and did not undertake a lengthy analysis of the district court's abuse of discretion as to factual conclusions regarding those claims. However, given the CAFO Defendants' reliance on those conclusions, and in the event that this Court reaches the question, Merrill and Frescoln are compelled to assert that the district

court made numerous conclusions that are highly troubling, not supported by substantial evidence, and that constitute an abuse of discretion.

The district court made numerous findings of fact based on supporting documents filed with dispositive motions from which it drew its own subjective conjecture without benefit of testimony or an evidentiary hearing. As an example, the district court faulted both Merrill and Frescoln for the amount they identified in damages, which the district court described as a "demand." App. 1639, 1640. There was no finder of fact in this case – the damages identified were discovery numbers properly disclosed in the normal course of discovery and do not constitute a "demand."

Most troubling by far is this passage from the district court's ruling:

> "[Frescoln] routinely conflates complaints made on behalf of her grandchildren and her husband, with her own experience and claims…[Frescoln's husband, Robert] was also at some point diagnosed with early-onset Alzheimer's Disease. Robert did not join his wife in this suit, nor did he offer testimony in support of any of her claims. Frescoln's daughter and son-in-law who have resided since 2013 in the Ash Avenue farmhouse with their children, have not been shown to have complained of odor, alleged it to be a nuisance, or offered testimony in support of any of Frescoln's claims. It cannot go unnoticed that Frescoln's predilection is different from her family's frame of mind."

App. 1641.

The district court first faults Frescoln for testifying as to the complaints of her family during her deposition. Then Frescoln is faulted again, apparently for not

compelling her family to join a voluntary lawsuit. Despite her decision to forego a trial, she is faulted for not ordering her lawyers to obtain testimony from her family – including her husband suffering from dementia – prior to trial. The district court then arrays the lack of sworn testimony from the remainder of the Frescoln family against her as evidence that their "frame of mind" is contrary to Frescoln's, without hearing a word from the individuals referenced. When the court reached its conclusions, Frescoln had long since dismissed herself from the case and was not present to defend herself from the court's unfounded and jurisdictionless attack.

Merrill and Frescoln therefore urge this Court to overturn the district court ruling based on the legal grounds set forth herein and in their prior brief. This Court does not need to reach the question of whether the district court abused its discretion in finding that claims brought by Merrill and Frescoln were frivolous, despite surviving the challenge of summary judgment on the identical evidence arrayed against them in the district court ruling, but this question should be decided in Plaintiffs' favor in that event.

ISSUE II: THE DISTRICT COURT ALSO ERRED IN FINDING THAT A SECOND VOLUNTARY DISMISSAL UNDER IOWA R. CIV. P. 1.943 EXPOSES A PLAINTIFF TO ALL COSTS AVAILABLE UNDER IOWA CODE CHAPTER 625.

Established precedent clearly holds that a voluntary dismissal under Rule 1.943 does not constitute an adjudication on the merits but is only "final" for *res judicata* purposes, as argued above. *Phipps v. Winneshiek County*, 593 N.W.2d 143, 147 (Iowa 1999). The district court clearly erred in holding that "a second dismissal, for any reason, under Iowa Rule of Civil Procedure 1.943…trigger[s] the application of Iowa Code Chapter 625 on assessment of court costs and related expenses." Denying Plaintiffs' appeal on this point would require the Court to destroy two decades of *stare decisis*.

Merrill and Frescoln additionally refer the court to their arguments on this issue in Plaintiffs-Appellants' brief.

ISSUE III: THE DISTRICT COURT ERRED IN THE AMOUNT OF JUDGMENT ENTRY BECAUSE THE COSTS AND EXPENSES AWARDED ARE NOT RECOVERABLE.

Merrill and Frescoln refer the court to their arguments on this issue contained in Plaintiffs-Appellants' brief.

ISSUE IV: THIS COURT SHOULD AWARD MERILL AND FRESCOLN APPELLATE ATTORNEY FEES

The CAFO Defendants compound the bad faith, vexatious, and oppressive assertions of their trial motions in their appellate brief. This “willful and wanton disregard” for the facts of this litigation and the procedural history of voluntary settlements negotiated by the selfsame counsel is “connivance” tantamount to “voluntary blindness” by JBS and Valley View and further supports the award of appellate attorney fees Plaintiffs initially requested. *See Williams v. Van Sickel*, 659 N.W.2d 572, 579 (Iowa 2003) (internal citations omitted). As pled in their initial brief, and again, inapposite to the CAFO Defendants’ claims, Merrill and Frescoln are requesting attorney fees on appeal, not at trial. They will submit attorney affidavits in support of the same at the close of final briefing.

CONCLUSION

For all the foregoing reasons, this Court should reverse the district court’s April 19, 2019 Ruling and Judgment on Costs because Merrill and Frescoln are not liable in the first instance for costs and expenses under either Iowa Code 657.11(5) or Chapter 625 and/or because the costs and expenses awarded against them were not recoverable under Iowa law. The doctrine of *stare decisis* additionally demands reversal of the Ruling and Judgment. Costs of appeal should be taxed to the CAFO Defendants Valley View and JBS.

Respectfully submitted,

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CERTIFICATE OF FILING

The undersigned hereby certifies that I, or someone acting on my behalf, filed the foregoing Appellants' Reply Brief via the Iowa Judicial Branch EDMS system on November 1, 2019.

/s/ Ben Arato
Benjamin G. Arato

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 1, 2019, a copy of the foregoing Appellants' Reply Brief was served via the Iowa Judicial Branch EDMS system to the attorneys listed below:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This proof reply brief complies with the type-volume limitation of Iowa R. App. 6.903(1)(g)(1) because this proof reply brief contains 4,108 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.9903(1)(g)(1).

2. This proof 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 space typeface using Times New Roman 14.

Dated: November 1, 2019

/s/ Ben Arato
Benjamin G. Arato