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IN THE SUPREME COURT OF IOWA

SUPREME COURT No. 19-0221

POLK COUNTY No. LACL142505

LAURA H. FULPS AND CHARLES B. FULPS,

Plaintiffs/Appellants,

vs.

CITY OF URBANDALE
Defendant/Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
THE HONORABLE SARAH CRANE, JUDGE

PLAINTIFFS-APPELLANTS' AMENDED FINAL REPLY BRIEF

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STATEMENT OF THE ISSUES

I. THE COURT ERRED IN DISMISSING AT SUCH AN EARLY STAGE

Cases:

Cutler v. Klass, Whicher & Mishne, 473 N.W.2d 178, 181 (Iowa 1991)
Lakota Consol. Indep. School v. Buffalo Center/Rake Community Schools, 334 N.W.2d 704, 708 (Iowa 1983)
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Berger v. General United Group, 268 N.W.2d 630, 634 (Iowa 1978)
Sarvold v. Dodson, 237 N.W.2d 447, 447–48 (Iowa 1976)

II. THE COURT'S RULING IGNORED LONG PRECEDENCE

Cases:

Adams v. State, 555 P.2d 235, 241 (Alaska 1976)
Beach v. City of Des Moines, 238 Iowa 312, 313, 26 N.W.2d 81, 82 (1947)
Brown v. Inc. Town of Chillicothe, 122 Iowa 640, 98 N.W. 502 (1904)
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Wilson v. Nepstad, 282 N.W.2d 664, 668–69 (Iowa 1979)

Statutes:

Iowa State Torts Claims Act, Iowa Code 669
Iowa Code 364.12(2)(b)

ARGUMENT

I. THE COURT ERRED IN DISMISSING AT SUCH AN EARLY STAGE

It is widely held that a suit will survive a motion to dismiss if a valid recovery exists. *Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 181 (Iowa 1991). If any state of facts can conceivably show a right of recovery, the suit will survive a motion to dismiss. *Lakota Consol. Indep. School v. Buffalo Center/Rake Community Schools,* 334 N.W.2d 704, 708 (Iowa 1983). The Defendant in their brief glosses over the fact that a petition does not need allege ultimate facts to support each and every element of the cause of action. It only needs to contain factual allegations that give fair notice of the claim. *Anderson v. State*, 872 N.W.2d 410 (Iowa Ct. App. 2015). This fair notice requirement is met if a petition informs the defendant of the incident giving rise to the claim and of the claim's general nature. *Id*. (Citing *U.S. Bank v. Barbour,* 770 N.W.2d 350, 353 (Iowa 2009) (citations and internal quotation marks omitted)).

Furthermore, this case should not have been dismissed because well-pled facts are assumed to be true. *Cutler*, 473 N.W.2d at 181; *Berger v. General United Group,* 268 N.W.2d 630, 634 (Iowa 1978); *Sarvold v. Dodson,* 237 N.W.2d 447, 447–48 (Iowa 1976). Iowa is a notice pleading state where a suit will survive a motion to dismiss whenever a valid recovery can be gleaned from the pleadings.

Cutler, 473 N.W.2d at 181; *Lakota Consol. Indep. School v. Buffalo Center/Rake Community Schools,* 334 N.W.2d 704, 708 (Iowa 1983).

Defendant was given notice of the claim's general nature, and because all well pleaded facts are accepted as true, the court erred in dismissing the case at such an early stage, and ignored the Iowa Supreme Court's general warnings about doing so. There is not an Iowa case on point applying the public duty doctrine specifically to sidewalk injury cases, and the public duty doctrine should not have been so widely applied by the court here on a motion to dismiss at such an early stage of proceeding.

II. THE COURT'S RULING IGNORED LONG PRECEDENCE

This type of case is by no means novel, and in fact, has a long history of precedence where Iowa municipalities have been held liable for injuries incurred on defective sidewalks. *Munger v. City of Marshalltown*, 59 Iowa 763, 13 N.W. 642 (1882); *Brown v. Inc. Town of Chillicothe*, 122 Iowa 640, 98 N.W. 502 (1904) *Neeley v. Town of Mapleton*, 139 Iowa 582, 117 N.W. 981 (1908); *Beach v. City of Des Moines*, 238 Iowa 312, 313, 26 N.W.2d 81, 82 (1947); *Spechtenhauser v. City of Dubuque*, 391 N.W.2d 213 (Iowa 1986).

The use of the public duty doctrine in Iowa however is quite new relative to the line of precedence above. The Iowa Supreme Court did not apply the public duty doctrine in *Wilson v. Nepstad* in 1979:

> "An application of the public duty doctrine here would result in finding no duty owed the plaintiffs or their decedents by the state, because, although they were foreseeable victims and a private defendant would have owed such a duty, no "special relationship" between the parties existed. Why should the establishment of duty become more difficult when the state is the defendant? Where there is no immunity, the state is to be treated like a private litigant. To allow the public duty doctrine to disturb this equality would create immunity where the legislature has not."

Wilson v. Nepstad, 282 N.W.2d 664, 668–69 (Iowa 1979)(quoting *Adams v. State*, 555 P.2d 235, 241 (Alaska 1976)).

Although the Court in *Koble v. State* wrote off the language in *Wilson* pertaining to the public duty doctrine merely as dictum, it is important to note that the public duty doctrine is based in recent common law, not legislation. *See Kolbe v. State*, 625 N.W.2d 721, 729 (Iowa 2001). There are already laws limiting public liability such as the Iowa State Torts Claims Act, Iowa Code 669. There are also ways for public entities to shift their liability through laws and ordinances, such as the snow and ice exception to sidewalk abutting landowner liability pursuant to Iowa Code 364.12(2)(b). If the legislature wanted to codify the public duty doctrine to shield state or municipal liability in Iowa, it could have done so in the last 40 years since *Wilson*, but it has not. The Court should not further expand the public duty doctrine and apply it here, and in doing so sever the long line of precedence of public sidewalk liability. It should leave to the legislature the right

to determine when and how the state and municipalities should be shielded from liability.

CONCLUSION

As shown in Appellants' Brief and in this Reply Brief, the use of the public duty doctrine is inapplicable here, and it further should not be expanded where legislature has already set liability standards. As such, Appellants respectfully request that the order to dismiss in this matter be overturned and the case be remanded.

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CERTIFICATE OF FILING

The undersigned hereby certifies that a copy of the final reply brief of Plaintiffs-Appellants was filed via EDMS on the 11th day of October, 2019.

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CERTIFICATE OF SERVICE

It is hereby certified that on the 11th day of October, 2019, the undersigned party, or person acting on his behalf, did file via EDMS the within final reply brief of Plaintiffs-Appellants, which gives notice thereof to counsel for the other party at the following address:

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COST CERTIFICATE

I hereby certify that the true and actual cost of printing the foregoing final reply brief of Plaintiffs-Appellants was N/A.

/s/ David J. Hellstern

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 874 words, excluding the parties of the brief exempted by Iowa R. App. Pr. 6.903(1)(g)(l).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(3) and the type-style requirements of the Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman.

David J. Hellstern	10/11/19
Signature	Date