

IN THE SUPREME COURT OF IOWA

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NO. 20-1323

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SITE A LANDOWNERS,  
Plaintiff/Appellant

vs.

SOUTH CENTRAL REGIONAL AIRPORT AGENCY, CITY OF PELLA and  
CITY OF OSKALOOSA,  
Defendants/Appellees,

and

MAHASKA COUNTY  
Defendant/Appellant/Cross-Appellee

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CITY OF PELLA and CITY OF OSKALOOSA,  
Plaintiffs/Appellees/Cross-Appellants

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APPEAL FROM THE DISTRICT COURT OF MAHASKA COUNTY  
THE HONORABLE CRYSTAL S. CRONK  
MAHASKA COUNTY DISTRICT COURT CASE NO. EQEQ088856

and

APPEAL FROM THE DISTRICT COURT OF WASHINGTON COUNTY  
THE HONORABLE CRYSTAL S. CRONK  
WASHINGTON COUNTY DISTRICT COURT CASE NO. EQEQ006593

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**CITY OF PELLA'S AND CITY OF OSKALOOSA'S**

## FINAL REPLY BRIEF

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## **ISSUES PRESENTED FOR REVIEW**

1. Whether the District Court erred in denying the Cities' Motion for Summary Judgment relating to the County's counterclaim that the Cities breached the 28E Agreement by allegedly requiring the County to "abandon or close" portions of roads when the 28E Agreement only makes mention of "relocating" roads.

*Ahls v. Sherwood/Div. of Harsco Corp.*, 473 N.W.2d 619 (Iowa 1991)

*Clarke Cty. Reservoir Comm'n v. Robins*, 862 N.W.2d 166 (Iowa 2015)

*Helm Fin. Corp. v. MNVA R.R.*, 212 F.3d 1076 (8th Cir. 2000)

## ARGUMENT

### **II. THE DISTRICT COURT ERRED IN DENYING THE CITIES' MOTION FOR SUMMARY JUDGMENT ON MAHASKA COUNTY'S COUNTERCLAIM.**

#### **A. The District Court's Ruling on the Cities' Second Motion for Summary Judgment is Reviewable on Appeal.**

Contrary to Mahaska County's contention otherwise, the District Court's February 5, 2019 Ruling is reviewable on appeal. The Ruling was an interlocutory order and subsequent final judgment in the case has been entered. It is appealable as a matter of right. Further, the order denying the Cities' Second Motion for Summary Judgment has an adverse legal effect on the Cities. It is accordingly not moot and reviewable on appeal.

The District Court entered a Ruling on the Cities' Second Motion for Summary Judgment on February 5, 2019. (App. p. 225). The District Court ruled against the Cities, finding *inter alia*, a fact question existed as to whether the Cities had breached the 28E Agreement by "requiring road closure based upon the proposed plans". (App. p. 228). The Ruling, while adverse to the Cities, was not dispositive of all issues presented before the District Court. The voluntary dismissal of the breach of contract claim was not filed until October 1, 2020, eighteen months after the ruling was entered. (App. p. 663). The Iowa Supreme Court ruled on November 20, 2020, that final judgment had been entered by the District Court.

The County first contends that there is no final judgment to review because of the voluntary dismissal filed on October 1, 2020. The County's contention is inaccurate. The Cities' are appealing the order denying a motion filed by the Court on February 5, 2019. While the order may not constitute the final order or judgment of the case, it certainly constitutes an interlocutory order substantially affecting the rights of the Cities. A final order has since been entered in this matter and the ruling denying the Cities' second motion for summary judgment is accordingly appealable as a matter of right. Iowa R. App. P. 6.103(3).

The authority cited by the County does not support their contention. However, the cases cited by the County militate in favor of finding that the interlocutory Ruling is reviewable on appeal. *Ahls*, cited by the County, held, "dismissal of all remaining claims by the parties in this case terminated the trial court proceedings and provided the necessary finality to permit an appeal." *Ahls v. Sherwood/Div. of Harsco Corp.*, 473 N.W.2d 619, 623 (Iowa 1991). Under *Ahls*, a party will be permitted to seek review of an interlocutory order *after* a voluntary dismissal had been filed. *Id.* Once finality of the underlying matter was determined, the interlocutory orders were fully reviewable.

The County also cites to *Helm* in support of its contention that the voluntary dismissal prohibits review of the summary judgment order. *Helm* supports an opposite conclusion. *Helm Fin. Corp. v. MNVA R.R.*, 212 F.3d 1076, 1080 (8th Cir.

2000). *Helm* contains similar facts presented in the present matter. In holding that an interlocutory denial of a motion for summary judgment was reviewable on appeal, the Court stated:

The denial of summary judgment in effect terminated any further consideration of [Appellant's] claim . . . . [Appellant]'s voluntary dismissal of its remaining claims, in order to expedite appellate review, in effect made the denial of summary judgment a final judgment for purposes of appeal." *Id.*

In the present case, the Cities are appealing the interlocutory order on their motion for summary judgment. They are *not* appealing the voluntary dismissal of the breach of contract claim. While the County attempts to obfuscate the issue presented on appeal, the distinction between the two is important and clearly presented here. The Cities' are appealing an adverse interlocutory ruling as a matter of right.

The County also contends that the voluntary dismissal renders the appeal of the summary judgment ruling moot. The Ruling denying the Cities' Second Motion for Summary Judgment has an adverse legal effect against the Cities' that survives the voluntary dismissal of the breach of contract claim. The appeal of the Ruling is accordingly not moot and the merits should be addressed.

An appeal is moot if it no longer presents a justiciable controversy because [the contested issue] has become academic or nonexistent. The test is whether the court's opinion would be of force or effect in the underlying controversy. As a general rule, we will dismiss an appeal



when judgment, if rendered, will have no practical legal effect upon the existing controversy. *Clarke Cnty. Reservoir Comm'n v. Robins*, 862 N.W.2d 166, 173 (Iowa 2015) (quoting *In re Guardianship of Kennedy*, 845 N.W.2d 707, 710–11 (Iowa 2014)).

It is important to note that the breach of contract claim was voluntarily dismissed *without* prejudice. Iowa R. Civ. P. 1.943. It is probable the County reasserts its breach of contract claim in the future. The issue presented in the Second Motion for Summary Judgment —whether a fact question exists regarding the claim that the Cities breached the 28E Agreement by “requiring” the County to “close or abandon” roads” — has been litigated and ruled upon by the District Court. The County cannot use the voluntary dismissal as a method to prohibit the Cities’ right to appeal an adverse Ruling.

Finally, the issue is hardly academic or nonexistent. A finding that judgment as a matter of law is appropriate as to the County’s breach of contract claim on appeal would obviously benefit the Cities a great deal. Such a reversal would prohibit future litigation on the matter. Moreover, it would provide conclusive determination that the Cities have not breached their obligations under the 28E agreement. The practical legal effect of a correct determination on the merits of the summary judgment motion is clear.

## **CONCLUSION**

The ruling of the district court in the County case denying summary judgment to the Cities on the County's counterclaim should be reversed, and judgment on that counterclaim should be entered for the Cities as a matter of law. Further, the ruling is appealable as a matter of right. It is accordingly reviewable on appeal.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS  
AND TYPE-VOLUME LIMITATION**

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this Brief contains 1004 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. 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 Microsoft Word 2010 in 14 point, Times New Roman.



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**CERTIFICATE OF FILING AND SERVICE**

The undersigned certifies a copy of Defendants-Appellants' Final Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon the following persons by EDMS on the 1st day of June, 2021.



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