

IN THE SUPREME COURT OF IOWA  
No. 22-0259

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BRIAN HORA AND GREGG HORA, AS SHAREHOLDERS OF HORA FARMS,  
INC. AND AS BENEFICIARIES OF THE CELESTE N. HORA TRUST,

*Plaintiffs-Appellants/ Cross-Appellees*

v.

KEITH HORA, INDIVIDUALLY, AS DIRECTOR AND OFFICER OF HORA  
FARMS, INC., AS A SHAREHOLDER OF HORA FARMS, INC., AND AS  
TRUSTEE OF THE CELESTE N. HORA TRUST; KURT HORA, HEATHER  
HORA; HK FARMS, INC., AND HORA FARMS, INC.,

*Defendants-Appellees/ Cross-Appellants.*

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Appeal from the District Court for Washington County  
The Honorable Sean McPartland

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Resistance of Plaintiffs-Appellants Brian Hora and Gregg Hora to Kurt Hora,  
Heather Hora and HK Farms, Inc.'s Application for Further Review

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**I. The contours of de novo review are not unclear; the district court simply did not make any findings as to Kurt's breaches of fiduciaries duties.**

Kurt's contention that the court of appeals failed to give the appropriate weight to the district court's findings about his breaches of fiduciary duties suffers a fatal flaw: the district court actually failed to make findings and conclusions on the claims against Kurt for breach of fiduciary duty (although the district court did note repeatedly that his failure to keep proper records was at the heart of the dispute). There is nothing for an appellate court to "defer" to when the district court makes no findings or conclusions on a claim. Kurt recognizes this failure, noting that "while the District Court was critical of Kurt's record keeping (see App. 558, Ruling 20), *it made no determination that Kurt "misappropriated" any corn.*" Kurt Hora's Application for Further Review, p. 12 (emphasis in original). The Court of Appeals also recognized this failure, giving it no reason to defer to the district court. *Amended Opinion*, p. 21 ("The district court did not address any alleged breaches of duty by Kurt."). The Court of Appeals could simply, and did, try the claims against Kurt de novo. Nothing in the Court of Appeals'

findings and conclusions on the breach of fiduciary duty claims against Kurt conflicted with the district court's findings (or lack thereof).

The district court made some findings on the credibility of experts. Kurt's experts testified in support of Kurt's claim that he misappropriated no corn; but the Court of Appeals properly rejected this position, finding it had been thoroughly discredited. None of Kurt's experts, and none of the witnesses who were involved in financing Hora Farms, had all of the information that came in through the evidence at trial. They might have believed Kurt and Keith, but they did not know the whole story. The Court of Appeals had the whole story and properly found against Kurt on the misappropriation claims. This was entirely within the prerogative of the Court of Appeals.

Regarding expert testimony offered by Brian and Gregg, the district court noted: "Although the Court did not disagree with all of their opinions, the Court found their testimony to be less credible than other expert testimony in the case." App. 555, Ruling p. 18. It was not clear from the ruling which opinions the district court agreed with and which opinions it disagreed with.

Finally, contrary to Kurt's suggestion, the contours of de novo review are not "unclear"; they are as old as the Iowa Constitution. Iowa Const. Art. 5, § 4; *see also* Iowa R. App. P. 6.907. There is no legal issue requiring guidance from the Supreme Court on further review.

**II. As the operations manager for Hora Farms, Kurt was a fiduciary, not a "mere employee," and he is responsible for the damages his breaches of those duties caused.**

This Court has recognized the distinction between the breach of fiduciary duties owed by an agent and the breach of the duty of loyalty owed by a mere employee. *Condon Auto Sales & Service, Inc. v. Crick*, 604 N.W.2d 587, 599-600 (Iowa 1999). The Court of Appeals also recognized the distinction. *Amended Opinion* . p. 22 ("his [Kurt's] trusted position as operations manager of HFI justifies the imposition of fiduciary duties") (citing *Condon*, 604 N.W.2d at 599 (recognizing fiduciary duties arise when an employee or agent has "greater authority to act for the principal"). Hora Farms' claims against Kurt were ones for breach of fiduciary duties, not simply for breach of a common-law duty of loyalty owed by a "mere employee." As the Court of Appeals correctly concluded, Kurt breached the fiduciary duties he owed to Hora Farms by misappropriating corn:

This misappropriation was not a mere accounting error but a deliberate and repeat series of choices that involved taking the corn, making false estimates of the amount taken, and inaccurately recording the taking to such a degree that precise accounting was made difficult or nearly impossible. We also reject Kurt's claim that the corn was permissible compensation, as Kurt never claimed it as income on his tax filings and HFI never reported the transactions in its filings. Last, we observe that Kurt's shifting stories (all of which conflict, to varying degrees, with more credible evidence) provide substantive proof of his culpability.

*Amended Opinion*, p. 22. The Court of Appeals did not "expand" on a duty of loyalty owed by an employee; it applied well-established rules governing breaches of fiduciary duties by Kurt, as an agent entrusted with responsibilities over management operations. There is no issue here for further review.

Kurt's compensation was supposed to be \$34,000 a year, less certain deductions. *See Kurt's Application for Further Review*, p. 23. The Court of Appeals correctly concluded that Kurt should repay Hora Farms for all of the missing corn in excess of that net amount. On remand, the district court can calculate the damages, as the Court of Appeals directed. Kurt's disagreement with that conclusion presents no question of legal importance requiring this Court's attention.

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## Certificate of compliance

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because the application has been prepared in a proportionally-spaced typeface using Century Schoolbook font in size 14 and contains 852 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

*/s/ Amanda Mason* \_\_\_\_\_

## Certificate of service

I hereby certify that on March 10, 2023, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel below:

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The undersigned further certifies that the foregoing document was served on Hora Farms, Inc., in an envelope with postage fully paid and deposited in a U.S. Post Office depository as follows:

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