IN THE SUPREME COURT OF IOWA

NO. 22-1026

IOWA DISTRICT COURT
FOR MADISON COUNTY
CASE NO. LACV035142

JAMES R. PENNY,
Plaintiff-Appellant,

v.

CITY OF WINTERSET and
CHRISTIAN DEKKER,
Defendants-Appellees

APPEAL FROM THE IOWA DISTRICT COURT
FOR MADISON COUNTY
HONORABLE JUDGE STACY RITCHIE, PRESIDING

APPELLEES' FINAL BRIEF

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ROUTING STATEMENT

Appellees agree with Appellant's statement that this appeal should be transferred to the Court of Appeals because it presents the application of existing legal principles. Further, the Court may summarily resolve the issues raised in this appeal. *See* Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

This case arises out of an automobile accident on the evening of March 30, 2018, at the intersection of Highway 92 and North 10th Street in Winterset, Iowa. (App. 7-8, Petition, ¶¶ 7-8). Plaintiff is James "Judd" Penny. Defendants are Christian Dekker, a Winterset Police Officer, and the City of Winterset, his employer. (*Id.*, Petition ¶¶ 2 and 8).

Officer Dekker was at home, on his dinner break, when he received a call at approximately 8:20 p.m. regarding an unresponsive female in the parking lot at the Super 8 on Cedar Bridge Road. (App. 43, Dep. Dekker, p 29, line 24 – p. 30, line 16; App. 51). He considered this to be an emergency call because it concerned an unconscious person, and all such calls are deemed to be an emergency. He did not know if the female was breathing or had a pulse. (App. 48, Dep. Dekker p. 50, lines 15-23).

Traffic was very light as he drove toward the Super 8. (*Id.*, Dep. Dekker p. 50, line 24 – p. 51, line 12). He was driving with his overhead lights and

siren on. (*Id.*, Dep. Dekker p. 52, lines 10-12). He had no reason to believe other motorists would not hear his siren, and he had no reason to believe other motorists would not see his overhead lights. (*Id.*, Dep. Dekker p. 52, lines 13-18). Had there been any other traffic, those motorists would have been obligated to yield. Based on his experience in law enforcement, Officer Dekker believed that had there been any drivers in the area, they would yield to him. (App. 48-49, Dep. Dekker p. 52, line 22 – p. 53, line 4).

As Officer Dekker drove north on 10th Street approaching the intersection with Highway 92, Judd Penny was westbound on Highway 92. (App. 74). Mr. Penny saw an emergency vehicle with lights flashing approaching at a high rate of speed from the west. *Id.* He slowed, moved to the right and stopped several hundred yards from the intersection and watched this other vehicle turn left and go north on 10th Street, somewhere near the area on Highway 92 that is marked with a single blue dot on Penny Deposition Exhibit 2. (*Id.*; App. 61, Dep. Penny, p. 26, lines 4-12).

When that happened, he resumed driving west toward 10th Street. (App. 74). He reached a speed of 50-55 mph as he entered the 10th Street intersection. (App. 71, Dep. Penny, p. 66, line 23 – p. 67, line 21). As he entered the intersection, he was looking to his right, at the emergency vehicle that had been approaching him from the west. (App. 62, Dep. Penny, p. 30,

lines 19-24, p. 32, lines 7-9). He did not look to the left. (*Id.*, Dep. Penny p. 32, line 10).

As Officer Dekker approached the intersection, there were no vehicles stopped on the shoulder on either road. (App. 48, Dep. Dekker p. 51, lines 13-19). He believes he had a clear view of the intersection. (*Id.*, Dep. Dekker p. 51, lines 20-22). He could see to his right for 1/4 – 1/2 mile. (App. 51). He did not see any vehicles approaching from the east. (*Id.*). He saw a single light that he believed was part of a farmhouse on the north side of the highway. (*Id.*). He looked to his left and "cleared the intersection," seeing only one vehicle that was far enough away that it was not a factor. (App. 48, Dep. Dekker, p. 51, line 23 – p. 52, line 9; App. 51). Officer Dekker had no reason to think that the way he was driving was likely to result in harm to someone, or cause an accident. He did not know that James Penny was approaching from his right. (App. 49, Dep. Dekker p. 53, lines 5-15).

Officer Dekker had slowed to approximately 25 mph as he entered the intersection. (App. 79). Neither party saw the other and their vehicles collided in the middle of the intersection. Had Officer Dekker seen Mr. Penny, he would have stopped. (App. 42, Dep. Dekker p. 25, lines 7-9; App. 62-63, Dep. Penny p. 31, lines 5-7, p. 34, lines 14-18).

Plaintiff initially filed suit on August 22, 2018, in Madison County Case No. LACV034834. Plaintiff dismissed the case without prejudice on January 30, 2019. On March 27, 2020, Plaintiff refiled this current suit. Plaintiff has alleged a claim of recklessness against Christian Dekker and a claim of vicarious liability against the City of Winterset. Defendants filed an answer on May 1, 2020.

On April 5, 2022, Defendants filed for summary judgment. Plaintiff filed a motion to strike Defendants' motion as untimely, and on April 20, 2022, filed their resistance to Defendants' motion. Hearing was held on the motion on May 9, 2022. The district court granted Defendants' motion on June 3, 2022, and Plaintiff filed his notice of appeal on June 14, 2022.

The sole issue on appeal is whether the district court erred in granting Defendant's motion for summary judgment on Plaintiff's claim of recklessness.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY GRANTED DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S CLAIM OF RECKLESSNESS

ERROR PRESERVATION

Defendants/Appellees agree that Plaintiff preserved error on this issue.

STANDARD OF REVIEW

Defendants agree with Plaintiff/Appellant's statement regarding the standard of review, as the Court reviews a summary judgment ruling for errors at law. *See Kragnes v. City of Des Moines*, 714 N.W.2d 632, 637 (Iowa 2006). "Summary judgment is proper when the moving party has shown there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Westco Agronomy Company, LLC v. Wollesen*, 909 N.W.2d 212, 219 (Iowa 2017).

A. Plaintiff Cannot Sustain a Claim of Recklessness against Dekker

"In order to prove recklessness as the basis for a duty under section 321.231(3)(b), we hold that a plaintiff must show that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow." *Morris v. Leaf*, 534 N.W.2d 388, 391 (Iowa 1995); *see also Hoffert v. Luze*, 578 N.W.2d 681, 685 (Iowa 1998) ("We hold that the legal standard of care applicable to the conduct of an ambulance driver as a driver of an authorized emergency vehicle under Iowa Code section 321.231 is to drive with due regard for the safety of all persons, but the threshold for violation of that duty is recklessness, not negligence"). Absent such a showing, Defendants do not owe Plaintiff any

duty and are entitled to the immunities found in Iowa Code § 321.231.[1] *Hoffert*, 578 N.W.2d at 684 (citing *Morris*, 534 N.W.2d at 390).

Based on this standard, in order for Plaintiff to prove recklessness as the basis for a duty, it must be proven that Defendant Dekker "has intentionally done an act of unreasonable character in disregard of a risk known to or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow." *See Morris*, 534 N.W.2d at 391. As the district court found, no reasonable jury could find that Defendant Dekker was reckless on the date of this accident.

In *Bell v. Community Ambulance Service Agency for Northern Des Moines County*, 579 N.W.2d 330 (Iowa 1998) the Iowa Supreme Court was faced with the issue of whether an ambulance driver's conduct in responding in emergency mode could rise to the level of recklessness. In upholding the district court's granting of the ambulance defendants' motion for judgment notwithstanding the verdict, the Iowa Supreme Court stated as follows:

> [T]he ambulance had a clear lane through which it could proceed through the intersection . . . All other witnesses who were also in the vicinity of the intersection clearly saw or heard, or both saw and heard, the ambulance. . . Hinson could not know that Susan Bell would attempt to traverse this

[1] It is undisputed that Dekker was operating his vehicle with emergency overhead lights and the siren of his police cruiser and that § 321.231 is controlling.

> intersection in front of the path of this ambulance. Hinson had no warning or actual knowledge that a dangerous situation was about to be created by Plaintiff's actions. Immediately prior to and at the time of the collision, Hinson was alert, careful, cognizant of his environment and the surrounding traffic . . . Under no stretch of the imagination can it be concluded that the driver of the ambulance was reckless.

Bell, 579 N.W.2d at 337. As noted by the district court, other than the factual difference regarding the presence of a traffic control signal, "The undisputed evidence is very similar in this case to the facts of the *Bell* case above." (App. 103).

More to the point, in *Estate of Fritz v. Hennigar*, 2020 WL 6845944 (N.D. Iowa 2020) (affirmed, *Fritz v. Henningar*, 19 F.4th 1067 (8th Cir. 2021)), a West Union police officer was responding to a call requesting assistance at an apartment complex known to be a problem area, where tenants were arguing. The officer approached the busy intersection of two highways at which there was a four-way stop, at speeds of 44-51 mph. He cleared the intersection and proceeded through without stopping. Thereafter, he accelerated, reaching speeds as high as 60 mph, before colliding with a motorist seeking to cross the road from left to right to enter a gas station on the opposite side of the road. The ensuing collision proved fatal to the crossing motorist. 2020 WL 6845944 at * 2-3.

The Estate filed suit, alleging that the officer was reckless under Iowa Code § 321.231. Defendants moved for summary judgment. The District Court, in granting the motion, found that "no reasonable jury could find Hennigar knew, or should have known, that his driving was so obviously dangerous that it was likely to cause an accident." 2020 WL 6845944 at * 6. The officer's lane was clear. "He did not know, nor was it reasonably foreseeable, that a vehicle was likely to pull into his path." *Id*. He was driving in emergency mode (lights and siren), so others were obligated to yield. It was reasonable for the officer to believe that they would do so. *Id*. "The material issue is whether Hennigar knew, or had reason to know, that a nearby driver, such as Willys, was likely to be unaware that he was approaching. While a momentary obstruction to Hennigar's vision should have alerted him of the need to proceed with more caution, there is insufficient evidence to find that proceeding as Hennigar did constituted recklessness." *Id*.

In summary, the Court found that the officer had no reason to believe nearby motorists would fail to hear or see him. He had no reason to believe they were unlikely to yield. He had no reason to believe his driving was "likely to result in harm to another." *Id*. at * 7. Thus, even if he was negligent, no reasonable jury could find that he was reckless. *Id*.

In this case, Officer Dekker had a reasonable basis for believing he was responding to an emergency. The subject was unconscious, and he did not know if she was breathing or had a pulse. Traffic was light and Officer Dekker cleared the intersection as he approached. He did not know, nor was it reasonably foreseeable, that a vehicle was likely to pull into his path. He was driving in emergency mode (lights and siren), so others were obligated to yield. It was reasonable for Officer Dekker to believe that they would do so. He had no reason to believe his driving was likely to result in harm to another.

In analyzing these facts, the District Court correctly found as follows:

> [T]he Court finds that Officer Dekker's driving was more reasonable than that of Officer Hennigar above. Officer Dekker slowed considerably as he approached the intersection, the traffic on the roadway was much lighter, Officer Dekker did not navigate his way through traffic, and he did not accelerate as he went through the intersection. Similar to *Fritz*, while the officer's failure to see Mr. Penny's approach into the intersection may constitute negligence, he did not have reason to believe that any vehicle nearby was unlikely to yield to his emergency lights and siren, thus resulting in harm to another. Because Officer Dekker had no reason to believe that any traffic present did not hear or see his approach, his assumption that the path in front of him would remain clear was reasonable. Further, no reasonable jury could find that his driving was reckless under Iowa Code section 321.231.

(App. 104).

Plaintiff has focused on the fact that Dekker was speeding leading up to the intersection as "competent and compelling evidence" that supports a finding that Dekker was reckless on the date of this incident. In doing so, Plaintiff seems to disregard the exact language of Iowa Code § 321.231 which allows emergency responders to exceed the speed limit when operating in emergency response mode and in responding to emergency calls. Further, Plaintiff focuses on the speed of Dekker before the intersection, as opposed to his speed through the intersection and at the time of the impact, which Plaintiff's own expert concedes was reduced to "approximately 30-31 mph for several seconds before impact." At the time of the impact, the uncontradicted evidence is that the Dekker's speed was 25 MPH. (App. 79). Dekker's speed in traveling 5-6 MPH above the speed limit for several seconds before the impact and traveling the speed limit at the time of impact is not enough to sustain a claim of recklessness against Dekker. *See Estate of Fritz*, 2020 WL 6845944 at *6 (quoting *Whiting v. Stephas*, 74 N.W.2d 228, 231 (1956) for the proposition that "the speed of a vehicle, on its own, 'is seldom of controlling significance' on the issue of recklessness.").

Plaintiff also focuses on a statement from his expert who suggests that Dekker's years of driving would have exposed him to the knowledge of the danger of failing to stop at a stop sign. This suggestion, along with the

complaint that Dekker did not observe Plaintiff's vehicle, are mere complaints of negligence, which is not the standard for recovery in this case. As noted by the district court,

> Recklessness is more than "the mere unreasonable risk of harm in ordinary negligence." *Bell v. Community Ambulance Service Agency for Northern Des Moines County*, 579 N.W.2d 330, 335 (Iowa 1998) (citations omitted). "It is proceeding to act in a negligent manner despite knowing, or reasonably foreseeing, that harm is highly likely to occur. It is this conscious disregard for, or indifference to, the rights and safety of others that elevates conduct from negligence to recklessness." *Id.* at 336. (citations omitted).

(App. 101).

Plaintiff's inability to satisfy this high burden is further exemplified by the expert's suggestion that police policy in the City of Winterset was violated seemingly because the accident occurred and because the violation of traffic laws was not done "safely." (App. 112). While Plaintiff has cited a handful of out-of-state cases in alleging that violation of departmental policy can support a finding of recklessness, even in those jurisdictions, the Courts hold that the policies are not dispositive on the issue of recklessness. In fact, the cases hold that "Without evidence of an accompanying knowledge that the violations [of department policies] will in all probability result in injury . . . evidence that policies have been violated demonstrates negligence at best." *Anderson v. Massillon*, 983 N.E.2d 266, 274 (Ohio 2012) (quotations and citations

omitted); *Delgado v. Pawtucket Police Department*, 668 F.3d 42 (1st Cir. 2012) (noting that the Court in *Seide v. State*, 875 A.2d 1259 (R.I. 2005) did not hold that "any" violation of a pursuit policy necessarily constitutes evidence of recklessness" and that "The ultimate issue . . . is not lack of compliance with pursuit policies, but recklessness.").[2] Thus, even assuming *arguendo* that Dekker did violate a departmental policy, there is no evidence that Dekker possessed any knowledge that the violation would in all probability result in injury.

Further, while Plaintiff's expert is admittedly not mentioned by name in the order, Plaintiff erroneously claims that the district court failed to consider the expert's report in ruling on the motion. (App. 99) ("The parties provided affidavits, deposition transcripts, and reports for the Court's consideration of the motion for summary judgment."). Additionally, Plaintiff's claim that the district court's opinion is squarely contradicted by the report is without merit, as evidenced by the plain language of these cited excerpts. (Pl. Br. at 19). The district court correctly focused on whether

[2] The case of *Seide v. State*, 875 A.2d at 1269 is also factually distinguishable from the current case as it involved an actual police chase and police pursuit policy, where the officers did not terminate the chase of a "fleeing car thief, who disregarded traffic signals, drove through downtown Providence erratically, swerved at police cruisers, struck objects, repeatedly exited and reentered major highways, reached speeds of approximately ninety miles per hour, and endangered the safety of police officers and the driving public."

Dekker had had any reason to believe that traffic did not see or hear his approach with his lights and siren, which is the proper inquiry under Iowa law. *See Estate of Fritz*, 2020 WL 6845944 at *6 ("The material issue is whether [the officer] knew, or had reason to know, that a nearby driver . . . was likely to be unaware that he was approaching.").

Plaintiff also faults the district court for ruling on the issue of recklessness at the summary judgment stage, again citing out-of-state cases for this proposition. Not only are there no Iowa cases holding that recklessness cases cannot be decided at the summary judgment stage, as mentioned previously, the issue is whether a reasonable jury could find recklessness as the basis to impose a duty. *Morris v. Leaf*, 534 N.W.2d 388, 391 (Iowa 1995) ("In order to prove recklessness as the basis for a duty under section 321.231(3)(b), we hold that a plaintiff must show that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow." (emphasis added)). Issues of duty are commonly decided by courts at the summary judgment stage in the State of Iowa. *Thompson v. Kaczinski*, 774 N.W.2d 829, 834 (Iowa 2009) ("Whether a duty arises out of a given relationship is a matter of law for the court's determination." (citing *Shaw v. Soo Line R.R.*, 463

N.W.2d 51, 53 (Iowa 1990)); *Stotts v. Eveleth*, 688 N.W.2d 803, 807 (Iowa 2004) ("Because the existence of a duty is a legal issue for the court, summary judgment is a proper vehicle to resolve the issue." (citing *Kolbe v. State*,625 N.W.2d 721, 725 (Iowa 2001).

While there are not a plethora of published cases dealing with recklessness and accidents involving emergency vehicles under Iowa Code § 321.231 other than the cases of *Bell, Estate of Fritz*, and *Hoffert*, there are various cases under the now-defunct guest statute in Iowa discussing the standard of recklessness and the type of conduct that could lead to a finding of recklessness under Iowa law.

In *Krell v. May*, 149 N.W.2d 834 (Iowa 1967), the Iowa Supreme Court was faced with the question of "whether evidence of [the Defendant driver's] actions regarding speed and control, his awareness of the situation, and the circumstances then and there existing, was sufficient to sustain a finding of recklessness. . . ." *Id.* at 839. The driver in *Krell* was on a "joyride" after work. *Id*. He drove so fast on a winding road that the passenger thought he was not going to make the bridge but rather drive into the trees. *Id.* He blew through stop signs leading up to the crash, and it was determined that the driver was a "mind apparently bent on showing off to thrill or frighten the girls in the car." *Id.* at 840.

The court described the moments prior to the accident as follows:

> Back from the upset, he turns the car from one side of the road to the other at high speed, and there is no direct evidence whatsoever that this was merely due to negligent lack of control. He was seen by Miss Schumacher to turn the wheel to one side and then the other, and she was very frightened and exclaimed aloud to him. The jury could well infer that Stephen intended to do this thing that he in fact did, especially in view of his previous conduct in showing off and causing fright. If he was deliberately swaying the car at a high speed, and the jury could reasonably so find, the jury could also find that he had heedless disregard for consequences which constitute recklessness.

Id.

In *Lewis v. Baker*, the Iowa Supreme Court found that there was a jury question on the issue of recklessness where the Defendant was operating at 110 to 115 miles per hour leading up to the scene of the accident. *Lewis*, 104 N.W.2d 575, 577 (Iowa 1960). The Plaintiff advised the Defendant that he was operating at these speeds and informed him to slow down. *Id.* In response, Plaintiff laughed at Defendant's suggestion and there was not any change in speed following this conversation. *Id.* There was traffic, the weather was dark, and there were curves in the roadway, including a roadway with a 45-mph permissible speed sign leading up to the curve. *Id.* at 578. The Iowa Supreme Court ultimately concluded that "[t]here was a probability rather than a mere possibility of danger." *Id.* (citations omitted).

In *Winkler v. Patten*, 175 N.W.2d 126 (Iowa 1970), which is cited by Plaintiff for the proposition that the goal in a recklessness case is to determine "the driver's mental attitude as disclosed by his acts and conduct immediately prior to and at the time of the accident" (Pl. Br. At 15-16), the Iowa Supreme Court discussed the driver's conduct as follows in deciding whether the driver was reckless:

> The evidence discloses facts from which the jury could reasonably find that defendant had been travelling at a high and excessive rate of speed for several miles, the last part of which was in excess of 85 miles per hour in a 35-mile zone, and was travelling at such speed when he entered the curve which he failed to negotiate, that he was familiar with the road or street in this area and made no effort to reduce his speed until he had entered the curve. While his turning his head to look into the rear of the car might of itself have been nothing more than a case of momentary thoughtlessness, his action in doing so while travelling at a high rate of speed and approaching a curve which he knew was there and which could not safely be negotiated at such speed is evidence of proceeding without heed of or concern for consequences and with a heedless disregard for and indifference to the rights of others. From all of the above the jury could reasonably find recklessness on the part of defendant.

Winkler, 175 N.W.2d at 128 (internal quotations omitted);[3] *see also Bell*, 579 N.W.2d at 336 (noting that in *Winkler* the "[e]vidence supporting recklessness

[3] The cited facts are from the district court's ruling on the defendant's motion for judgment notwithstanding the verdict, with the Iowa Supreme Court

included the vehicle's speed of more than twice the speed limit coupled with the driver looking away from the road while entering a curve the driver knew was there.").

Unlike the Defendant drivers in *Krell*, *Winkler*, and *Lewis*, Defendant Dekker was a police officer operating his cruiser in emergency response mode in accordance with the laws in the State of Iowa.

Further, based on the record evidence, the current facts are not even remotely similar to those in *Krell, Winkler,* and *Lewis*. Nor do the facts parallel the cases of *Tuttle v. Longnecker* and *Oehlert v. Kramer*. *See Tuttle v. Longnecker*, 138 N.W.2d 851, 853-55 (Iowa 1965) (where the Court found that testimony about the driver swerving the vehicle back and forth across the gravel roadway with a smile on his face led to the conclusion that "[t]he jury could further find, what experience teaches, that injury from driving in this manner was probable, not merely possible."); *Oehlert v. Kramer*, 205 N.W.2d 723, 724-25 (Iowa 1973) (where the court found sufficient evidence to make a case of recklessness where the vehicle was traveling 90 miles per hour in a 50 mile per hour zone and proceeded through four curves, crashing into the fourth).

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mentioning that there was no evidence in the record on appeal where the Defendant's speed was in excess of 85 miles per hour. *Winkler*, 175 N.W.2d at 128.

Here, Dekker had no knowledge that any driver was unable to see or hear his approach or that any driver was going to fail to yield to his emergency vehicle. There are no aggravating circumstances such as intoxication or cell phone use. There is absolutely no evidence that he was swerving, joy riding, thrill seeking, or a "mind apparently bent on showing off to thrill or frighten." In fact, there is not even evidence that he was distracted as he approached the intersection.

The simple fact remains that Plaintiff has cited no case in Iowa, including and especially any case law under Iowa Code § 321.231, tending to indicate that a jury could find Defendant Dekker's conduct reckless.

Under Iowa law, "[A]ssuring police protection free from the chilling effect of liability for split-second decisions is an important policy justification for curtailing liability." *Morris v. Leaf*, 534 N.W.2d 388, 391 (Iowa 1995) (internal quotations and citations omitted). Based on the record evidence, Plaintiffs cannot prove that a reasonable jury could find that Defendant Dekker was reckless on the date of this incident, and the district court correctly granted Defendants' motion for summary judgment.

CONCLUSION

"Summary judgment is not a dress rehearsal or a practice run; it is the put up or shut up moment in a lawsuit when a [nonmoving] party must show

what evidence it has that would convince a trier of fact to accept its version of the events." *Slaughter v. Des Moines University College of Osteopathic Medicine*, 925 N.W.2d 793, 809 (Iowa 2019) (alterations original quotations and citations omitted).

For the reasons expressed herein, Plaintiff has failed to demonstrate how the district court erred, and Defendants/Appellees Christian Dekker and the City of Winterset respectfully request that the Court affirm the district court's order granting summary judgment in favor of the Defendants.

REQUEST FOR ORAL SUBMISSION

Appellees only ask to be heard on oral argument if argument is granted to the Appellant.

CERTIFICATE OF COMPLIANCE

This brief 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:

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[ ] this brief has been prepared in a monospaced typeface using [state name of typeface] in [state font size] and contains [state the number of] lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1) (g) (2).

/s/ Zachary D. Clausen January 9, 2023

CERTIFICATE OF SERVICE

I, Zachary D. Clausen, hereby certify that on the 9th day of January, 2023, I served Appellees' Final Brief on all other parties to this appeal by emailing one copy thereof to the following counsel for the parties at the following addresses:

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/s/ Zachary D. Clausen

CERTIFICATE OF FILING

I, Zachary D. Clausen, further certify that I filed the Appellees' Final Brief via EDMS on the 9th day of January, 2023.

/s/ Zachary D. Clausen

CERTIFICATE OF COST

It is certified that the actual cost paid by Appellees for submitting this brief was $0.00 as it was filed electronically by EDMS.