

IN THE SUPREME COURT OF IOWA

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No. 23-0866

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**WILLIAM AND MARY GOCHE, LLC, GLOBAL ASSETS, LLC, and  
JOSEPH GOCHE  
Plaintiffs-Appellants**

vs.

**KOSSUTH COUNTY BOARD OF SUPERVISORS in their capacity as  
Trustees of Drainage Districts, 4, 18, and 80, ROGER TJARKS, PAM  
WYMORE, KYLE STECKER, JACK PLATHE, GENE ELSSBECKER,  
GALEN CASEY, DONNIE LOSS, DON MCGREGOR and DON BESCH  
Defendants-Appellees,**

**and  
BOLTON & MENK, INC.,  
Defendant-Appellant.**

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**APPEAL FROM THE KOSSUTH COUNTY DISTRICT COURT CASE NO.  
LACV027745**

**THE HONORABLE JOHN M. SANDY  
PRESIDING JUDGE**

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**PLAINTIFFS-APPELLANTS' FINAL BRIEF**

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**STATEMENT OF ISSUE PRESENTED FOR REVIEW**

- I. Did the District Court erroneously dismiss all Counts of Plaintiffs' Amended Petition based on its conclusion that the Supervisor-Trustee Defendants cannot be personally liable for punitive damages, despite Iowa statute providing that municipal officials and drainage trustees can be held personally liable for punitive damages.

Iowa Code § 468.526

Iowa Code § 468.526A

Iowa Code § 670.12

*Kiesau v. Bantz*, 686 N.W.2d 164 (Iowa 2004)

*Pogge v. Clemons*, 2022 WL 1486854, (Iowa Ct. App. 2022)

## **ROUTING STATEMENT**

This case asks whether individual government officials or employees can be personally liable for punitive damages based on breaches of fiduciary duty which amount to malicious, willful, wanton, or reckless misconduct. This issue is specifically addressed in multiple provisions of Iowa Code. Iowa Code § 468.526A, § 670.12. The Iowa Appellate Courts have not had occasion to apply these statutes to a member of a county board of supervisors or a private drainage district trustee, although the Court of Appeals has noted that a supervisor or trustee is not personally liable *except* for claims of punitive damages. *Pogge v. Clemons*, 2022 WL 1486854, at \* 2 n.4 (Iowa Ct. App. 2022) (citing Iowa Code § 468.526A, § 670.12). As this case presents the first application of these statutes to a member of a county board of supervisors or a private drainage district trustee, it should be retained by the Iowa Supreme Court. *See* Iowa R. Civ. P. 6.1101(2)(c).

## **STATEMENT OF THE CASE**

Plaintiffs, William and Mary Goche LLC, Global Assets, LLC, and Joseph Goche (hereinafter “Goches”), filed suit on October 27, 2022. App. 7. Before any Defendant appeared or answered, Plaintiffs filed an Amended Petition on November 23, 2022. App. 496.

Plaintiffs’ suit makes claims for punitive damages against persons who, at all times material hereto, served on the Kossuth County Board of Supervisors and as

drainage district trustees for Drainage Districts 4, 18, and 80 (hereinafter “Supervisor-Trustee Defendants”). App. 519–523. The Goches further alleged that Defendant, Bolton & Menk, Inc. (hereinafter “B&M”), was liable for compensatory and punitive damages for acting willfully and wantonly, in concert with the Supervisor-Trustee Defendants, with knowledge that the actions were being taken for the purpose of harming the Goches. App. 523–525. The Goches alleged that the conduct of the Supervisor-Trustee Defendants and B&M breached fiduciary duties the Defendants owed Plaintiffs. *See* App. 498, 519–525.

B&M filed a motion to dismiss for failure to state a claim on November 28, 2022. App. 527–528. The Supervisor-Trustee Defendants filed their own motion to dismiss for failure to state a claim on January 20, 2023. App. 608–623. Both parties primarily argued that they did not owe fiduciary duties to Plaintiffs. *See* App. 617–621, 626–628.

From their premise there is no fiduciary duty, the Defendants argued they owed no duty to avoid engaging in malicious, willful, wanton, or reckless misconduct directed towards Plaintiffs. *See* App. 617–621, 626–628. The Supervisor-Trustee Defendants additionally argued that they could not be personally liable for punitive damages pursuant to Iowa law. App. 609–611 (citing Iowa Code § 468.526A). In their resistance, the Goches alleged that Iowa Code does permit



claims for punitive damages against the Supervisor-Trustee Defendants in their individual capacity. App. 642 (quoting Iowa Code § 468.526A).

On February 28, 2023, the district court entered an order partially granting B&M's Motion to Dismiss. App. 667. The district court concluded that B&M owed no duty to Plaintiffs and did not conspire with the Supervisor-Trustee Defendants, dismissing Counts IV and VI of Plaintiffs' Petition. App. 662, 667. The district court denied B&M's Motion to Dismiss Plaintiffs' claim that B&M aided and abetted the wrongful conduct of the Supervisor-Trustee Defendants. App. 665.

On April 18, 2023, the district court entered another order, granting the Supervisor-Trustee Defendants' Motion to Dismiss in full. App. 713. The Court held that the Supervisor-Trustee Defendants and B&M owed no duty to the Goches under Iowa law. App. 712–713. Pursuant to finding there was no duty as to the underlying claim against the Supervisor-Trustee Defendants, the district court concluded that the remaining aiding and abetting claim against B&M must also be dismissed. App. 713.

Plaintiffs filed a timely Motion for Reconsideration. App. 715–739. In support of reconsideration, the Plaintiffs pointed to Iowa statutory provisions which provide that drainage district trustees and municipal officers, such as the Supervisor-Trustee Defendants, may be personally liable for punitive damages if Plaintiffs could prove

they acted with “malice or willful, wanton and reckless misconduct.” App. 771 (citing Iowa Code § 468.526A and § 670.12).

In a combined filing with their Motion for Reconsideration, Plaintiffs requested leave to amend their Petition. Pls.’ Mot. Reconsideration & Leave Amend. App. 715–739. Plaintiffs sought leave to amend specifically in response to the district court’s prior determination that the Supervisor-Trustee Defendants owed no “fiduciary duties” to Plaintiffs. *See* App. 737. Pursuant to the Proposed Amended Petition, Plaintiffs wished to assert that, in addition to breaching any “fiduciary duties,” the Supervisor-Trustee Defendants breached other duties owed pursuant to Iowa Code and caselaw. *See* App. 737.

In denying Plaintiffs’ Motion for Reconsideration and Motion for Leave to Amend Petition, the district court disagreed, reaffirming that none of the Defendants owed Plaintiffs a duty, even taking as true the facts alleged in Plaintiffs’ Petition. *See* App. 751–752. “The Court’s ruling flowed from the precedent (or lack thereof) on fiduciary duties and relationships relative to drainage district trustees.” App. 751.

Plaintiffs filed a timely Notice of Appeal of the May 6 Order on May 26, 2023. Notice of Appeal. The Supervisor-Trustee Defendants filed a Motion to Dismiss Appeal on June 7, 2023. Supervisor-Trustees’ Mot. Dismiss Appeal.

Plaintiffs resisted this Motion on June 14, 2023. Pls.’ Resistance Mot. Dismiss Appeal. The Supervisor-Trustee Defendants filed a Reply in Support of the Motion

to Dismiss Appeal on June 15, 2023. Supervisor-Trustees’ Mot. Dismiss Appeal. On July 6, 2023, this Court entered an Order denying the Supervisor-Trustee Defendants’ Motion to Dismiss Appeal. Order (July, 6 2023) at p. 1.

### **STATEMENT OF THE FACTS**

The Goches own farmland located in Drainage Districts 4 (“DD4”), 18 (“DD18”), and 80 (“DD80”) (collectively “DDs”). App. 497–498. At all times material hereto, the Supervisor-Trustee Defendants served on the Kossuth County Board of Supervisors and were drainage district trustees for the DDs. *See* App. 498.

The Goches allege that in or around 2015, the Supervisor-Trustee Defendants changed the classification schedule of 80 acres of farmland located in DD4 and owned by the Goches. App. 500. The Goches further allege that this reclassification was done without their notice, and the first the Goches were made aware of this reclassification was in 2022. App. 500–501. The Goches suffered damages upon being forced to remove tiling as a result of the reclassification. App. 501.

The Goches further allege that the Supervisor-Trustee Defendants billed the Goches twice for the same drainage assessments conducted in 2016 and 2017. App. 506–507. Thereafter, in late 2017, the Supervisor-Trustee Defendants undertook an improvement project in DD80. App. 501 The Goches allege that in connection with the improvement project, the Supervisor-Trustee Defendants improperly forgave

money owed by another individual because forgiving the amount would result in the Goches having to pay more in assessments. *See App. 501–502.*

In 2018, B&M performed extensive work on private land for the benefit of a private landowner. App. 505. Nevertheless, the costs for the work were shared between members of DD18, with the Goches paying approximately 25% of the costs, despite the work having nothing to do with DD18. App. 505. The Goches additionally allege that in April 2019, the Supervisor-Trustee Defendants intentionally and improperly assessed over \$35,000.00 in fees related to DD4. App. 508.

In August 2019, the Supervisor-Trustee Defendants gave approval to the Goches to install drainage tile on land located in DD80. App. 502. Upon the Goches completing the approved tiling, the Supervisor-Trustee Defendants employed B&M to prepare a report related to the Goches tiling. App. 503. The Goches allege that the Supervisor-Trustee Defendants employed B&M for the purposes of preparing a false report claiming that the Goches had tiled illegally. App. 503.

The Goches allege that the Supervisor-Trustee Defendants then threatened to initiate legal action on the basis of the false report prepared by B&M. App. 503–504. Ultimately, after statutorily mandated pre-suit mediation occurred in October 2021, the Supervisor-Trustee Defendants indicated that they would not pursue legal action against the Goches. *See App. 504.* In the Fall of 2021, the Supervisor-Trustee

Defendants once again double billed the Goches for amounts previously assessed. App. 506–507.

On or around March 9, 2022, the Goches received a Notice of Annexation and Reclassification from the Supervisor-Trustee Defendants regarding DD80. App. 510. At a hearing on June 28, 2022, the Supervisor-Trustee Defendants voted to annex and reclassify land in DD80. App. 510–511. The Goches allege that the annexation/reclassification by the Supervisor-Trustee Defendants was deficient under Iowa law and undertaken for the specific purpose of harming the Goches. App. 511, 514.

After years of alleged malicious misconduct on the part of the Defendants, the Goches filed suit on October 27, 2022. *See generally* App. 7–495. In their Amended Petition, the Goches allege that the conduct of all Defendants was intentional, willful, wanton, or reckless. App. 499 (citing Iowa Code § 468.526A); *see also* Iowa Code § 670.12 (standard for recoverable punitive damages the same for drainage district trustees and municipal employees). Pursuant to the immunities afforded by Chapter 468 and the Iowa Municipal Tort Claims Act (“IMTCA”) the Goches allege only claims for punitive damages against the Supervisor-Trustee Defendants. App. 519–523.

The Goches seek both compensatory and punitive damages against B&M. *See* App. 523–525. In addition to asserting that both B&M and the Supervisor-Trustee

Defendants are directly liable for their own intentional, willful, wanton, or reckless conduct, the Goches further allege that Defendants are liable for aiding and abetting the intentional, willful, wanton, or reckless conduct of other Defendants and for conspiring with other Defendants to engage in intentional, willful, wanton, or reckless conduct. App. 520–525. The Goches argued that the conduct of all Defendants amounted to a breach of fiduciary duty. *See* App. 498, 519–525.

### **ARGUMENT**

#### **I. The District Court Erroneously Held That the Supervisor-Trustee Defendants Cannot be Personally Liable for Punitive Damages for Malicious, Willful, Wanton, or Reckless Misconduct.**

##### **A. Preservation of error.**

Error was preserved here by Plaintiffs filing a notice of appeal from the district court’s ruling on Plaintiffs’ Motion for Reconsideration.

##### **B. Scope of review.**

On review of a motion to dismiss, the appellate court reviews for corrections of errors at law. *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 211 (Iowa 2018). An appellate court “will affirm a dismissal only if the petition shows *no right of recovery under any state of facts.*” *Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 298 (Iowa 2020) (emphasis added) (quoting *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001)). A reviewing court is under a duty to “accept as true the petition’s well-pleaded factual allegations” and must “construe the petition in its most favorable

light, resolving all doubts and ambiguities in the plaintiff's favor." *Id.* (internal quotations and alterations omitted).

The question of whether a defendant's conduct is sufficiently willful or wanton to allow for recovery of punitive damages is almost always a fact question for the jury. *See, e.g., McClure v. Walgreen Co.*, 613 N.W.2d 225, 231 (Iowa 2000) (citing *Lovick v. Wil-Rich*, 588 N.W.2d 688, 699 (Iowa 1999)). A district court commits reversible error when dismissing a punitive damages claim as a matter of law if a reasonable jury could find in favor of the plaintiff. *Kiesau v. Bantz*, 686 N.W.2d 164, 173–74 (Iowa 2004), *overruled on other grounds by Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699 (Iowa 2016).

"Historically, Iowa is a notice pleading state." *Nahas v. Polk Cnty.*, 991 N.W.2d 770, 776 (Iowa 2023). "Under our notice pleading approach, a pleading is sufficient if it informs the defendant of the incident giving rise to the claim and of the claim's general nature. There is no requirement that the plaintiff allege theories of recovery." *Putman v. Walther*, 973 N.W.2d 857, 863 n.2 (Iowa 2022) (internal citations omitted).

**C. The well-pled facts of Plaintiffs' Amended Petition allege that the Supervisor-Trustee Defendants acted maliciously, willfully, wantonly, or recklessly.**

The willful/wanton standard for personal liability for punitive damages applies to all private individuals and government officers, including drainage

trustees. *Compare* Iowa Code § 468.526A and § 668A.1 with § 670.12. “The willful, wanton, and reckless misconduct standard under section 670.12 is the same as the willful and wanton disregard for the rights of another standard found in section 668A.1(1)(a).” *Kiesau*, 686 N.W.2d at 173.

A plaintiff may recover punitive damages upon showing that the defendant acted with malice, which “may be shown by such things as personal spite, hatred, or ill-will.” *Cawthorn v. Cath. Health Initiatives Iowa Corp.*, 743 N.W.2d 525, 529 (Iowa 2007) (quoting *Wolf v. Wolf*, 690 N.W.2d 887, 893 (Iowa 2005)). When the evidence, viewed in the most favorable light of the plaintiff, raises a genuine issue that the defendant either acted maliciously, willfully, wantonly, or recklessly, a district court errs in dismissing a punitive damages claim as a matter of law. *Kiesau*, 686 N.W.2d at 173–74.

*Kiesau* and more recent federal court decisions illustrate the type of allegations required to defeat dismissal of a punitive damages claim as a matter of law. *See id.*; *Dunn v. Doe 1 - 22*, --- F.Supp.3d ----, 2023 WL 3081611 (S.D. Iowa 2023) (pending appeal); *Ohlson-Townsend v. Wolf*, 2019 WL 6609695, at \*11–12 (N.D. Iowa 2019); *Cerny-Deahl v. Launderville*, 2015 WL 4458878, at \*11–12 (N.D. Iowa 2015). In *Dunn*, the plaintiffs made various allegations against individual police officers of the Des Moines, West Des Moines, and Altoona Police Departments, arising from police response to the protests in late May 2020 following



the murder of George Floyd. *See Dunn*, --- F.Supp.3d ----, 2023 WL 3081611 at \*5, \*11, \*13. Among the allegations supporting the punitive damages claims against the individual officers were improper targeting of protestors for arrest, arresting protestors who were dispersing, consistent with officer commands, and use of excessive force. *See id.* at \*39, \*44, \*48, \*54, \*75.

*Dunn* held that, when viewed in the light most favorable to the plaintiffs, these allegations survived the summary judgment motions brought by the individual police officers. *See id.* A fact question is raised on actual malice where the defendant “targeted [the plaintiff] . . . despite having no basis for doing so.” *Id.* at \*39. If a reasonable juror could conclude that a defendant made a “decision to participate” in acts amounting to “willful, wanton, and reckless misconduct,” judgment as a matter of law in favor of that defendant is improper. *See id.* at \*44.

The plaintiff in *Ohlson-Townsend* sought punitive damages against a sheriff’s deputy, alleging that he willfully and wantonly made false allegations against her in an affidavit. *Ohlson-Townsend*, 2019 WL 6609695, at \*1. The court held that the plaintiff raised sufficient questions of material fact regarding whether the deputy acted with reckless disregard or conscious indifference in making the statements in the affidavit or by not verifying the information contained in the affidavit. *Id.* at \*12.

In *Cerny-Deahl*, a city clerk made a claim for punitive damages alleging that the town’s mayor acted with reckless disregard for the truth when stating that the

clerk would receive a salary increase beginning a certain date. *See Cerny-Deahl*, 2015 WL 4458878, at \*11–12. The court held that an email from the mayor stating that the salary change would begin on the date the clerk alleged and a signed statement from the deputy clerk, regarding her recollection of the mayor telling her and the clerk of the increase and effective date thereof, was sufficient evidence to preclude summary judgment. *Id.* at \*12. “Although a close call, the court finds that ‘a reasonable fact finder could find by a preponderance of clear, convincing, and satisfactory evidence that the conduct of [defendant] from which the claim arose constituted willful and wanton disregard for the rights of another.’” *Id.* at \*12 (internal alterations omitted) (quoting *Cawthorn v. Cath. Health Initiatives Iowa Corp.*, 743 N.W.2d 525, 529 (Iowa 2007)).

*Kiesau* involved a deputy sheriff’s allegations of defamation and invasion of privacy against a fellow deputy sheriff, in which she named the fellow deputy sheriff, the County, and the County Sheriff as defendants. *Kiesau*, 686 N.W.2d at 169–70. One of the issues on appeal was whether the district court erroneously granted summary judgment in favor of the County Sheriff on *Kiesau*’s punitive damages claim. *See id.* at 173–74. Based on the County Sheriff receiving numerous complaints over the years and having more than once been advised to terminate the defendant deputy sheriff, the Court held that the district court improperly granted summary judgment and a reasonable fact finder could conclude the County Sheriff’s

conduct was willful, wanton, or reckless. *See id.*

Just as in the cases outlined, the Goches' allegations—taken as true, as they must be—raise a legally sufficient claim for punitive damages. The Goches allege that all Defendants have engaged in malicious, willful, wanton, or reckless misconduct with the intent of harming them. App. 499–500. With the record at this stage in the proceedings being limited to the allegations contained in and documents attached to Plaintiffs' Petition, Plaintiffs' well-pled facts support a punitive damages claim.

**D. Under Iowa Code § 468.526A and § 670.12, the Supervisor-Trustee Defendants are personally liable for punitive damages if Plaintiffs prove they acted maliciously, willfully, wantonly, or recklessly.**

The district court ultimately never addressed whether the allegations, when taken as true, meet the prima facie elements for punitive damages. *See* App. 656–668, 704–714, 744–753. This is the result of the district court concluding that the Defendants owed no duty to avoid engaging in malicious, willful, wanton, or reckless misconduct directed towards the Goches. App. 662, 712–713. The district court, sidetracked by the fiduciary role of the Supervisor-Trustee Defendants, misstates the standard for when drainage district trustees and municipal officials, such as Supervisor-Trustee Defendants, are liable for punitive damages. Iowa Code § 468.526A, § 670.12; *Pogge*, 2022 WL 1486854, at \* 2 n.4.

“On January 1, 1968, the legislature abolished sovereign immunity for

governmental subdivisions and established a procedure for bringing actions against such subdivisions.” 3 Ia. Prac., Methods of Practice § 45:1 *Introduction (Suits Against Municipalities)*. The IMTCA provides that a “governing body”—which includes a county board of supervisors—may be liable for certain torts committed by “its officers and employees.” *See* Iowa Code § 670.1, § 670.2(1).

The IMTCA exempts from liability a host of governmental actions. *See* Iowa Code § 670.4. Government officers and employees are not personally liable for claims exempted under section 670.4. Iowa Code § 670.12.

However, officers and employees may be personally liable for punitive damages. *Id.* Punitive damages may be awarded if the plaintiff proves “actual malice or willful, wanton and reckless misconduct.” *Id.* Where a reasonable jury could find that an officer or employee “targeted [the plaintiff] . . . despite having no basis for doing so” or acted or failed to act with “a conscious indifference to the consequences,” that officer or employee may be personally liable for punitive damages. *See Kiesau*, 686 N.W.2d at 174; *Dunn*, --- F.Supp.3d ----, 2023 WL 3081611 at \*39.

Iowa Code Chapter 468 governs levee and drainage districts. Iowa Code § 468.1 et seq. Chapter 468 contemplates drainage districts managed by either a board of supervisors or a board of trustees. *See* Iowa Code § 468.3(3) (“‘board’ shall embrace the board of supervisors, the joint boards of supervisors in case of

intercounty levee or drainage districts, and the board of trustees in case of a district under trustee management”).

“The powers *and duties* of the trustees are defined under Iowa Code section 468.526.” *Sedore v. Bd. of Trustees of Streeby Drainage Dist. No. 1 of Wapello & Davis Ctys.*, 525 N.W.2d 432, 433 (Iowa Ct. App. 1994) (emphasis added). Those powers include acquiring land for drainage by way of conveyance, lease, or eminent domain, and annexation of land to the drainage district. Iowa Code § 468.526.

Drainage district trustees, like other government officials and employees, cannot be personally liable for exempted claims. Iowa Code § 468.526A (cross-referencing Iowa Code § 670.4). However, a trustee may be liable for punitive damages under the same standard applicable to all individuals performing municipal duties, upon plaintiff showing “actual malice or willful, wanton, and reckless misconduct.” *Id.*; *see also* Iowa Code § 670.12 (same).

Section 468.526A was enacted as part of a 2014 bill which addressed issues related to drainage districts, including the liability of trustees. H.F. 2344, 85th G.A. (Apr. 3, 2014). H.F. 2344 was sponsored by Representative Dave Maxwell. *Legislation BillBook* (2344), THE IOWA LEGISLATURE, <https://www.legis.iowa.gov/legislation/BillBook?ga=85&ba=HF%202344> (last accessed July 19, 2023). When introducing the bill, Representative Maxwell explained:

Lastly, the bill clarifies the liability for persons acting as drainage trustees, whether they be county supervisors or private trustees. It addresses the *liability as though they were county supervisors* even though they are not county supervisors.

*Dashboard House Video (2014-02-25)* at 4:53:33–4:53:54, THE IOWA LEGISLATURE, <https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=916&dt=2014-02-25&offset=4671&bill=HF%202344&status=i> (last accessed July 19, 2023) (hereinafter “Rep. Maxfield Statement”) (emphasis added).

Consistent with the stated purpose of its authoring sponsor, section 468.526A makes private trustees liable “as though they were county supervisors.” *See id.* This intent is evident from section 468.526A incorporating the precise language used in the IMTCA. *Compare* Iowa Code § 468.526A *with* § 670.12.

A recent Court of Appeals decision addressing claims against individuals on a county board of supervisors acting as drainage district trustees is instructive. *See Pogge*, 2022 WL 1486854, at \*1–2. When addressing the immunity enjoyed by these “individually-named county employees” under section 670.4, the court noted:

“All officers and employees of municipalities are not personally liable for claims which are exempted under section 670.4, except claims of punitive damages.” Iowa Code § 670.12. “A drainage district trustee is not personally liable for a claim which is exempted under section 670.4, except a claim of punitive damages.” *Id.* § 468.526A.

*Id.* at \*2 n.4 (internal alterations omitted).

The Supervisor-Trustee Defendants must fall under either or both the categories of “trustee” in Chapter 468 or “officer or employee” under Chapter 670. Iowa Code § 468.526A, § 670.12. *Pogge* recognizes that under the Iowa Code, members of a board of supervisors acting as drainage district trustees are personally liable for punitive damages under either or both of these statutes. *Pogge*, 2022 WL 1486854, at \*2 n.4.

While Supervisor-Trustee Defendants argue that section 468.526A is inapplicable because it governs private trustees and not drainage districts managed by a board of supervisors, the intent of section 468.526A was to create uniform liability for punitive damages for management of drainage districts by any private trustee or public board member. *See* Iowa Code § 468.526A, § 670.12; Rep. Maxfield Statement. Supervisor-Trustee Defendants’ interpretation would result in a ‘no-man’s land’ where individuals on county boards of supervisors could avoid personal liability for punitive damages under both the drainage district Code Chapter and the IMTCA. This result is incongruent with Iowa law. *See id.*; *Pogge*, 2022 WL 1486854, at \*2 n.4.

Members of a county board of supervisors, like all other municipal officers or employees, are liable for punitive damages for malicious, willful, wanton, or reckless misconduct. Iowa Code § 670.12. The 2014 legislation clarified that this same standard for liability applies to any person managing a drainage district. *See*

Iowa Code § 468.526A. The Supervisor-Trustee Defendants, no matter their classification, must be liable for punitive damages under one of if not both of these statutes. *See* Iowa Code § 468.526A, § 670.12; *Pogge*, 2022 WL 1486854, at \*2 n.4.

**E. The Supervisor-Trustee Defendants owed fiduciary duties to Plaintiffs under Iowa Code Chapter 468.**

Plaintiffs further alleged that the Supervisor-Trustee Defendants' misconduct amounted to a breach of fiduciary duty. App. 498, 519–525. The district court found: (1) a confidential relationship was required for Defendants to owe Plaintiffs a fiduciary duty; and (2) the lack of a confidential relationship and resulting lack of fiduciary duty is dispositive here. *See* App. 712–713. The district court erred in reaching each conclusion and should be reversed.

While fiduciary duties can arise from a confidential relationship between the parties, such duties can also be created by statute. *Compare Albaugh v. The Rsrv.*, 930 N.W.2d 676, 685–86 (Iowa 2019) *with* Iowa Code § 468.526. Pursuant to statute, the Supervisor-Trustee Defendants had the duty to control, supervise, and manage the DDs. *Id.* These statutory duties are analogous to duties imposed on trustees by Iowa Code, which includes a duty of impartiality between beneficiaries. *See* Iowa Code § 633A.4202.

The Plaintiffs did not need to show a confidential relationship to impose a fiduciary duty here because the powers and resulting duties created by statute inhered to the roles of the Supervisor-Trustee Defendants. *See* Iowa Code § 468.526.



Plaintiffs allege that the Supervisor-Trustee Defendants breached these duties through various actions not undertaken with impartiality towards all landowners in the DDs. *See, e.g.*, App. 501–502, 505. Treating these allegations as true, the district court should have denied the Supervisor-Trustee Defendants’ Motion to Dismiss.

Even if Chapter 468 creates no fiduciary duties, a fiduciary relationship is not required for a plaintiff to recover punitive damages from a drainage district trustee, any other private individual, or any government employee or officer. Iowa Code § 468.526A, § 668A.1, § 670.12. Plaintiffs’ Petition makes sufficient allegations of malice or willful, wanton, and reckless misconduct that a reasonable jury could find the Supervisor-Trustee Defendants liable for punitive damages. *Supra* at § I.C.

Though couched under a fiduciary duty theory, Plaintiffs’ Petition alleges a statutory entitlement to punitive damages for intentional, willful, wanton, or reckless misconduct. *See* App. 499. Plaintiffs requested leave to amend after the district court’s April 18, 2023 Order, clarifying that the Defendants may be liable for breach of fiduciary or “other” duties. App. 737. The allegations in the Petition apprised Defendants of the general nature of Plaintiffs’ claims against them and easily satisfy Iowa’s notice pleading standards. *See Putman*, 973 N.W.2d at 863 n.2.

Instead of addressing whether Plaintiffs’ allegations are legally sufficient to support a punitive damages claim, the district court improperly disposed of the case on lack of confidential relationship grounds. *See* App. 712–713. On remand,

Plaintiffs should be allowed to pursue their punitive damages claim against the Supervisor-Trustee Defendants pursuant to the standard required to recover punitive damages under Iowa law. *See* Iowa Code § 468.526A, § 670.12.<sup>1</sup>

**F. The District Court erred in dismissing all Counts of Plaintiffs' Amended Petition pursuant to its incorrect conclusion that the Supervisor-Trustee Defendants cannot be held personally liable for punitive damages.**

Consistent with its finding that the Goches' underlying claims against the Supervisor-Trustee Defendants and B&M failed, the district court dismissed the conspiracy and aiding and abetting claims against all Defendants. *See* Order (Feb. 28, 2023) at p. 12; Order (Apr. 18, 2023) at p. 6. For the reasons stated above, all Defendants had a duty to avoid engaging in breaches of fiduciary duty directed towards Plaintiffs which amount to malicious, willful, wanton, or reckless misconduct. *See* Iowa Code § 468.526, § 468.526A, § 668A.1, § 670.12. Because the district court's dismissal of all claims was based on the erroneous conclusion that there is no liability for the underlying wrong, Plaintiffs should be permitted to pursue these claims on remand.

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<sup>1</sup> As previously stated, the punitive damages standard for drainage district trustees and municipal officials is the same as that for private individuals. *Kiesau*, 686 N.W.2d at 173 (citing Iowa Code § 668A.1, § 670.12). Plaintiffs' punitive damages claim against B&M should also proceed under the appropriate and governing statutory standard. *See* Iowa Code § 668A.1.

## **CONCLUSION**

Pursuant to Iowa law, trustees or supervisors who manage drainage districts may be personally liable for punitive damages. Iowa Code § 468.526A, § 670.12. Plaintiffs' Petition alleges that the Supervisor-Trustee Defendants breached their fiduciary duties and acted maliciously, willfully, wantonly, or recklessly, such that Plaintiffs are entitled to punitive damages under Iowa statute. Despite the well-pled facts of Plaintiffs' Petition, the district court granted the Supervisor-Trustee Defendants' Motion to Dismiss on the basis that whatever fiduciary duty the Supervisor-Trustee Defendants owed was not to the Plaintiffs individually. *See* Order (Apr. 18, 2023) at pp. 9–10. This ruling was inconsistent with Iowa law and warrants reversal.

WHEREFORE Plaintiffs, William and Mary Goche LLC, Global Assets, LLC, and Joseph Goche respectfully request that this Court reverse and remand the decision of the district court and provide any and all further relief which is just and equitable under the circumstances.

## **REQUEST FOR ORAL ARGUMENT**

The Petitioner-Appellant requests that this case be submitted with oral argument.

DATED this 30<sup>th</sup> day of October, 2023.

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**CERTIFICATE OF COMPLIANCE**

Plaintiffs-Appellants, William and Mary Goche LLC, Global Assets, LLC, and Joseph Goche, pursuant to Iowa Rules of Appellant Procedure 6.903(1)(g)(1), hereby certifies that this final brief contains 4,750 words of a 14-point proportionally spaced Times New Roman font and it complies with the 14,000-word maximum permitted length of the brief.

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## **CERTIFICATE OF FILING**

I, the undersigned, hereby certify that I will electronically file the attached Plaintiffs-Appellants' Final Brief with the Clerk of the Supreme Court by using the EDMS filing system.

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**PROOF OF SERVICE**

I, the undersigned, hereby certify that I did serve the attached Plaintiffs-Appellants' Final Brief on all other parties electronically utilizing the EDMS filing system, which will provide notice to:

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**ATTORNEY'S COST CERTIFICATE**

The undersigned attorney does hereby certify that the actual cost of preparing the foregoing Plaintiffs-Appellants' Final Brief was the sum of \$0.00 exclusive of service tax, postage, and delivery charges.

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