

IN THE SUPREME COURT OF IOWA

No. 23-0866

**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-Appellee.**

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

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

PLAINTIFFS-APPELLANTS' FINAL REPLY BRIEF

JOEL D. VOS, AT0008263
ZACK A. MARTIN, AT0014476
Heidman Law Firm, P.L.L.C.
1128 Historic Fourth Street
Sioux City, Iowa 51102-3086
Telephone: (712) 255-8838
E-mail: Joel.Vos@heidmanlaw.com
Zack.Martin@heidmanlaw.com
Attorneys for Plaintiffs-Appellants

SAMUEL L. BLATNICK, AT0011632
Lucosky Brookman LLP
111 Broadway, Suite 807
New York, NY 10006
Telephone: (217) 417-8160
sam.blatnick@stinson.com

TABLE OF CONTENTS

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES3

STATEMENT OF ISSUES5

ARGUMENT6

 I. The District Court Erroneously Held That the Supervisor-Trustee Defendants Cannot be Personally Liable for Punitive Damages Based on Breaches of Fiduciary Duty Which Amount to Malicious, Willful, Wanton, or Reckless Misconduct.6

 A. Error Preservation6

 B. Supervisor-Trustee Defendants are subject to punitive damages claims under Iowa Code.7

 C. The immunity of drainage districts is not imputed to the Supervisor-Trustee Defendants.9

 D. A fiduciary duty is not required for Plaintiffs to recover punitive damages from Defendants.14

CONCLUSION.....15

CERTIFICATE OF COMPLIANCE.....17

CERTIFICATE OF FILING.....18

PROOF OF SERVICE19

ATTORNEY’S COST CERTIFICATE.....20

TABLE OF AUTHORITIES

CASES CITED

<i>Bd. of Sup'rs of Worth Cnty. v. Dist. Ct. of Scott Cnty.</i> , 229 N.W. 712 (Iowa 1930)	10, 11
<i>Bd. of Water Works Trustees of City of Des Moines v. Sac Cnty. Bd. of Supervisors</i> , 890 N.W.2d 50, 57 (Iowa 2017)	9
<i>Downing v. Grossman</i> , 2021 WL 4593231 (Iowa Ct. App. 2021), <i>vacated sub nom.</i> <i>Downing v. Grossmann</i> , 973 N.W.2d 512 (Iowa 2022)	7
<i>Driesen v. Iowa Dep't of Hum. Servs.</i> , 2018 WL 1433740 (Iowa Ct. App. 2018) ..	7
<i>Godfrey v. State</i> , 847 N.W.2d 578 (Iowa 2014)	11
<i>Harryman v. Hayles</i> , 257 N.W.2d 631 (Iowa 1977)	10, 11
<i>In re Marriage of Rohde</i> , 2018 WL 4913807 (Iowa Ct. App. 2018)	7
<i>Pogge v. Clemons</i> , 2022 WL 1486854 (Iowa Ct. App. 2022)	13
<i>State ex rel. Iowa Emp. Sec. Comm'n v. Des Moines Cnty.</i> , 149 N.W.2d 288 (Iowa 1967)	11
<i>State v. Deutsch</i> , 2022 WL 10803483 (Iowa Ct. App. 2022)	6
<i>Victoriano v. City of Waterloo</i> , 984 N.W.2d 178 (Iowa 2023)	9

STATUTES CITED

Iowa Code § 468.3	7
Iowa Code § 468.526A	passim
Iowa Code § 668A.1	14, 15
Iowa Code § 670.1	12, 15

Iowa Code § 670.212
Iowa Code § 670.12passim

OTHER AUTHORITIES

Dashboard House Video (2014-02-25), THE IOWA LEGISLATURE 8, 13
IOWA CONST. art. I, § 114
Iowa R. App. P. 6.1017
Iowa R. Civ. P. 1.9047

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 § 468.526A

Iowa Code § 670.12

ARGUMENT

I. The District Court Erroneously Held That the Supervisor-Trustee Defendants Cannot be Personally Liable for Punitive Damages Based on Breaches of Fiduciary Duty Which Amount to Malicious, Willful, Wanton, or Reckless Misconduct.

A. Error Preservation

The Kossuth County Board of Supervisors (“Board”) and the individual trustees for Drainage Districts 4, 18, and 80 (collectively “Supervisor-Trustee Defendants”) begin their Brief by asserting that error was not preserved for the reasons “stated in Defendants-Appellees’ Motion To Dismiss previously filed with this Court.” Board’s Br. at p. 9. Defendant Bolton & Menk, Inc. (“B&M”) joined the Supervisor-Trustee Defendants’ position. B&M’s Br. at p. 7.

This Court previously entered an Order denying the Supervisor-Trustee Defendants’ Motion to Dismiss. Order (July 6, 2023). Historically, when the Iowa Supreme Court intended to defer ruling on a motion to dismiss, it would reserve ruling and direct the parties to brief the issue of timeliness. *See, e.g., State v. Deutsch*, 2022 WL 10803483, at *1 (Iowa Ct. App. 2022) (noting that the Iowa Supreme Court, on its own motion, directed both parties to address in their appellate briefs whether the court had jurisdiction over this appeal). That did not occur here. Instead, the motion to dismiss was denied in its entirety. *See* Order (July 6, 2023). Thus, Appellees’ contentions regarding error preservation have already been decided adversely to the Appellees and should not have been raised again in their briefing.

To the extent the Court finds it necessary to address error preservation, Plaintiffs request the Court once again reject the Supervisor-Trustee Defendants' argument. For the reasons stated in Appellants' resistance to the Motion to Dismiss, the time for filing the notice of appeal was tolled by the properly filed Rule 1.904 motion. After amendments to the Iowa Rules of Civil and Appellate Procedure in 2017, Supervisor-Trustee Defendants' argument that Plaintiffs' appeal was untimely is without merit. Iowa R. Civ. P. 1.904, CMT.; Iowa R. App. P. 6.101, CMT.; *Downing v. Grossman*, 2021 WL 4593231 (Iowa Ct. App. 2021), *vacated sub nom. Downing v. Grossmann*, 973 N.W.2d 512 (Iowa 2022); *In re Marriage of Rohde*, 2018 WL 4913807 (Iowa Ct. App. 2018); *Driesen v. Iowa Dep't of Hum. Servs.*, 2018 WL 1433740 (Iowa Ct. App. 2018).

B. Supervisor-Trustee Defendants are subject to punitive damages claims under Iowa Code.

The Supervisor-Trustee Defendants argue that Iowa Code section 468.526A—addressing the liability of drainage district trustees for punitive damages—is inapplicable to Plaintiffs' claim because this statute applies to “private trustees” only. *See* Board's Br. at pp. 12–13. This argument appears to hinge on the distinction made in Chapter 468 between drainage districts managed by an elected “board of supervisors” and those managed by a private “board of trustees.” *See* Iowa Code § 468.3(3). The Supervisor-Trustee Defendants claim that the subchapter on management of drainage districts “by trustees,” beginning at Iowa Code section

468.500 and including section 468.526A, applies only to private drainage district trustees and not members of a county board of supervisors such as themselves. *See* Board’s Br. at p. 13.

Even if section 468.526A applies only to private trustees, members of a county board of supervisors would be subject to liability for punitive damages, as would any other municipal officer, pursuant to section 670.12. *See* Iowa Code § 670.12. The purpose of section 468.526A was to clarify that the individual members of boards managing drainage districts, whether they be elected supervisors or private trustees, are subject to liability for punitive damages under the same standard. *Compare id. with* Iowa Code § 468.526A; *see also* *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”). As explained by the bill’s sponsor:

[T]he 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.

Rep. Maxfield Statement (emphasis added).

Plaintiffs’ Petition alleged that the Supervisor-Trustee Defendants conduct was intentional, willful, wanton, or reckless. App. 499. Under a notice pleading

standard, the allegations more than sufficiently apprise the Supervisor-Trustee Defendants of the general nature of the claims against them and Plaintiffs' request for punitive damages. *See* App. 496–526 (setting forth detailed allegations against Supervisor-Trustee Defendants and requesting punitive damages); *Victoriano v. City of Waterloo*, 984 N.W.2d 178, 181 (Iowa 2023) (“[u]nder notice pleading, a petition is sufficient if it informs the defendant of the incident giving rise to the claim and of the claim’s general nature”). The Supervisor-Trustee Defendants do not argue, nor could they, that Plaintiffs failed to adequately plead their punitive damages claims against them, irrespective of which of the mirroring punitive damages statutes applies. *See* Iowa Code § 468.526A, § 670.12.

C. The immunity of drainage districts is not imputed to members of a Board of Supervisors or private trustees.

In addition to arguing that section 468.526A is inapplicable, the Supervisor-Trustee Defendants also claim that they are not liable for punitive damages under Chapter 670. *See* Board’s Br. at pp. 13–15. In support of their position, the Supervisor-Trustee Defendants point to drainage districts not being subject to suits for money damages. *See, e.g., Bd. of Water Works Trustees of City of Des Moines v. Sac Cnty. Bd. of Supervisors*, 890 N.W.2d 50, 57 (Iowa 2017). Plaintiffs recognized that proposition of law, and for that reason did not assert claims directly against Drainage Districts 4, 18, and 80. *See* Am. Pet.

However, the Supervisor-Trustee Defendants are incorrect in insisting that “[t]he immunity of the drainage districts is imputed to the Members of the Board of Supervisors managing the affairs of the drainage district.” Board’s Br. at p. 15. The Supervisor-Trustee Defendants cite two cases in support of this proposition. *Id.* (citing *Harryman v. Hayles*, 257 N.W.2d 631, 637 (Iowa 1977), *overruled by Miller v. Boone Cnty. Hosp.*, 394 N.W.2d 776 (Iowa 1986); *Bd. of Sup’rs of Worth Cnty. v. Dist. Ct. of Scott Cnty.*, 229 N.W. 711, 712 (Iowa 1930)). Neither case stands for the broad proposition asserted by the Supervisor-Trustee Defendants. Both cases are readily distinguishable from the facts at issue here.

Harryman did not affirm the doctrine of governmental immunity—it recognized the abrogation of the doctrine of governmental immunity. *See Harryman*, 257 N.W.2d at 638 (“We hold the abrogation of governmental immunity means the same principles of liability apply to officers and employees of municipalities as to any other tort defendants, except as expressly modified or limited by the provisions of Chapter 613A.”). The portion cited by the Supervisor-Trustee Defendants referencing the bar on liability for governmental officers and employees was a discussion of cases which the Court went on to note were “no longer persuasive” based on the abolition of sovereign immunity in discharging governmental functions. *See id.* at 637. Consistent with this finding and inconsistent with the position asserted by the Supervisor-Trustee Defendants, *Harryman* reversed the

district court and found the plaintiffs stated a cause of action against the individual members of the county board of supervisors. *Id.* at 638.

The plaintiff in *Worth County* asserted a breach of contract claim against a county board of supervisors. *Worth Cnty.*, 229 N.W. at 711. *Worth County* did not address the potential tort liability of individual members of a county board of supervisors. *See id.*

Worth County is also yet another case, like those referenced in and expressly rejected by *Harryman*, which was decided before 1968 when “the general assembly enacted the Municipal Tort Claims Act and [] waived a political subdivision’s immunity for certain tort claims against a political subdivision.” *See Godfrey v. State*, 847 N.W.2d 578, 582–83 (Iowa 2014) (citing Iowa Code Chapter 670). It was also decided before the 1982 amendments to the Iowa Municipal Tort Claims Act (“IMTCA”) that provide for liability of officers and employees for punitive damages. *See* Iowa Code § 670.12. Since *Worth County* is a breach of contract case which predates the IMTCA, it has no bearing on whether the Supervisor-Trustee Defendants in this case are liable for punitive damages.

Iowa precedent has noted that “an organized drainage district is a political subdivision of the county in which it is located, its purpose being to aid in the governmental functions of the county.” *State ex rel. Iowa Emp. Sec. Comm’n v. Des Moines Cnty.*, 149 N.W.2d 288, 291 (Iowa 1967). As such, it is managed by the

board of supervisors of the county. If the board members, in their management, actively seek to harm particular persons within the district, they cannot do so with impunity. Their intentional actions subject themselves to liability for punitive damages under Iowa Code section 670.12.

The relevant inquiry for the claims against the individual Supervisor-Trustee Defendants is not whether the Drainage Districts are “municipalities” but instead whether the individual board members are “officers [or] employees” of Kossuth County. *See* Iowa Code § 670.2(1)–(3). The Supervisor-Trustee Defendants never denied Plaintiffs’ allegation that the individually named members were or are members of the Kossuth County Board of Supervisors. *See* App. 498. A “governing body” for purposes of the Iowa Municipal Tort Claims Act (“IMTCA”) includes a “county board of supervisors,” and “officers” of a governing body include but are not limited to its “members.” Iowa Code § 670.1(1), (3). The plain language of the definitions contained within the IMTCA preclude the Supervisor-Trustee Defendants’ argument that the non-susceptibility to suit enjoyed by drainage districts is imputed to members of a county boards of supervisors or other persons managing drainage districts. *See id.*

The enactment of section 468.526A in 2014 further contraindicates the Supervisor-Trustee Defendants’ position. *See* Iowa Code § 468.526A. If the immunity of drainage districts was imputed to the individuals managing them—

whether they be county supervisors or private trustees—it would be quite unnecessary for the legislature to enact a statute providing that drainage district trustees are “not personally liable for a claim which is exempted under section 670.4, except a claim for punitive damages.” *Id.* The intent of section 468.526A was to immunize private trustees from the claims exempted by section 670.4 but provide that they may still be personally liable for punitive damages, just as members of a county board of supervisors are under section 670.12. *Id.*; *see also* Rep. Maxfield Statement.

When enacting section 468.526A, the legislature recognized that liability for punitive damages already existed for individuals serving on county boards of supervisors and managing drainage districts, pursuant to Chapter 670. *See* Rep. Maxfield Statement. By immunizing private trustees from claims included in section 670.4 and inserting the precise punitive damages language used for government officers and employees at section 670.12, section 468.526A “addresses the liability [for persons acting as drainage trustees] as though they were county supervisors even though they are not county supervisors.” *Id.* Consistent with the bill’s aim, Iowa courts have since noted that persons acting as drainage trustees are personally liable for punitive damages, whether under section 468.526A or 670.12. *See Pogge v. Clemons*, 2022 WL 1486854, at * 2 n.4 (Iowa Ct. App. 2022) (citing Iowa Code §

468.526A, § 670.12). The Supervisor-Trustee Defendants' contrary arguments should be rejected.

D. A fiduciary duty is not required for Plaintiffs to recover punitive damages from Defendants.

The Supervisor-Trustee Defendants ultimately claim that the issue of which if either of the punitive damages statutes applies is “moot” or otherwise “superseded and preempted” by the district court dismissing Plaintiffs' claims after finding a lack of fiduciary duty. *See* Board's Br. at pp. 11, 16. 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 of Plaintiffs' claims. *See* App. 712–713.

However, even if the persons managing drainage districts or those employed on their behalf owe no fiduciary duty to individual landowners, the existence of a confidential relationship is not required to recover punitive damages against persons who willfully and wantonly disregard the rights of another. *See* Iowa Code § 468.526A, § 668A.1, § 670.12. As landowners, Plaintiffs had the inalienable right to possess and protect their property. IOWA CONST. art. I, § 1. The Supervisor-Trustee Defendants get sidetracked, as the district court did, by the question of the existence of a confidential relationship, when no such relationship is required.

Plaintiffs' Petition makes sufficient allegations of malice or willful, wanton, and reckless misconduct such that a reasonable jury could find that both the

Supervisor-Trustee Defendants and B&M disregarded Plaintiffs' rights and therefore may be liable for punitive damages. *See* Iowa Code § 468.526A, § 668A.1, § 670.12. Plaintiffs asserted a punitive damages claim against B&M and requested that this claim proceed under the governing statute. *Compare* App. 523–524 and Pls.' Br. at p. 26 n.1 *with* B&M's Br. at p. 7. The viability of Plaintiffs direct claims against all Defendants should result in Plaintiffs' conspiracy and aiding and abetting claims also be revived on remand, as dismissal of these claims was premised on the lack of an underlying wrong or the requisite co-conspirator. *See* Order (Apr. 18, 2023) at p. 6.

CONCLUSION

The Defendants are liable for punitive damages, whether that be the Supervisor-Trustee Defendants' liability under either section 468.526A or 670.12 or B&M's liability under section 668A.1. The Supervisor-Trustee Defendants are officers of the Kossuth County Board of Supervisors and therefore may be liable under the IMTCA. That officers of a county board of supervisors are not afforded the immunity of drainage districts flows directly from the definitions contained within the IMTCA. *See* Iowa Code § 670.1. Proof of the existence of a fiduciary relationship is not required for Plaintiffs to recover punitive damages from any Defendant.

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.

DATED this 30th day of October, 2023.

Lucosky Brookman LLP

By: /s/ Samuel L. Blatnick

Samuel L. Blatnick IA# AT0011632

Lucosky Brookman LLP

111 Broadway, Suite 807

New York, NY 10006

Telephone: (212) 417-8160

Facsimile: (212) 417-8161

sblatnick@lucbro.com

HEIDMAN LAW FIRM, P.L.L.C.

/s/ Joel D. Vos

JOEL D. VOS, AT0008263

ZACK A. MARTIN, AT0014476

1128 Historic 4th Street

P.O. Box 3086

Sioux City, IA 51102

Phone: (712) 255-8838

Fax: (712) 258-6714

E-Mail: Joel.Vos@heidmanlaw.com

Zack.Martin@heidmanlaw.com

ATTORNEY FOR PLAINTIFFS

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 certify that this final reply brief contains 2,325 words of a 14-point proportionally spaced Times New Roman font and it complies with the 7,000-word maximum permitted length of the brief.

Lucosky Brookman LLP

By: /s/ Samuel L. Blatnick

Samuel L. Blatnick IA# AT0011632

Lucosky Brookman LLP

111 Broadway, Suite 807

New York, NY 10006

Telephone: (212) 417-8160

Facsimile: (212) 417-8161

sblatnick@lucbro.com

HEIDMAN LAW FIRM, P.L.L.C.

/s/ Joel D. Vos

JOEL D. VOS, AT0008263

ZACK A. MARTIN, AT0014476

1128 Historic 4th Street

P.O. Box 3086

Sioux City, IA 51102

Phone: (712) 255-8838

Fax: (712) 258-6714

E-Mail: Joel.Vos@heidmanlaw.com

Zack.Martin@heidmanlaw.com

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF FILING

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

Lucosky Brookman LLP

By: /s/ Samuel L. Blatnick

Samuel L. Blatnick IA# AT0011632

Lucosky Brookman LLP

111 Broadway, Suite 807

New York, NY 10006

Telephone: (212) 417-8160

Facsimile: (212) 417-8161

sblatnick@lucbro.com

HEIDMAN LAW FIRM, P.L.L.C.

/s/ Joel D. Vos

JOEL D. VOS, AT0008263

ZACK A. MARTIN, AT0014476

1128 Historic 4th Street

P.O. Box 3086

Sioux City, IA 51102

Phone: (712) 255-8838

Fax: (712) 258-6714

E-Mail: Joel.Vos@heidmanlaw.com

Zack.Martin@heidmanlaw.com

ATTORNEY FOR PLAINTIFFS

PROOF OF SERVICE

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

Robert Goodwin
ATTORNEY FOR KOSSUTH COUNTY BOARD OF SUPERVISORS

Jeffrey Coleman
ATTORNEY FOR BOLTON & MENK INC.

Lucosky Brookman LLP

By: /s/ Samuel L. Blatnick
Samuel L. Blatnick IA# AT0011632
Lucosky Brookman LLP
111 Broadway, Suite 807
New York, NY 10006
Telephone: (212) 417-8160
Facsimile: (212) 417-8161
sblatnick@lucbro.com

HEIDMAN LAW FIRM, P.L.L.C.

/s/ Joel D. Vos
JOEL D. VOS, AT0008263
ZACK A. MARTIN, AT0014476
1128 Historic 4th Street
P.O. Box 3086
Sioux City, IA 51102
Phone: (712) 255-8838
Fax: (712) 258-6714
E-Mail: Joel.Vos@heidmanlaw.com
Zack.Martin@heidmanlaw.com
ATTORNEY FOR PLAINTIFFS

ATTORNEY'S COST CERTIFICATE

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

Lucosky Brookman LLP

By: /s/ Samuel L. Blatnick

Samuel L. Blatnick IA# AT0011632

Lucosky Brookman LLP

111 Broadway, Suite 807

New York, NY 10006

Telephone: (212) 417-8160

Facsimile: (212) 417-8161

sblatnick@lucbro.com

HEIDMAN LAW FIRM, P.L.L.C.

/s/ Joel D. Vos

JOEL D. VOS, AT0008263

ZACK A. MARTIN, AT0014476

1128 Historic 4th Street

P.O. Box 3086

Sioux City, IA 51102

Phone: (712) 255-8838

Fax: (712) 258-6714

E-Mail: Joel.Vos@heidmanlaw.com

Zack.Martin@heidmanlaw.com

ATTORNEY FOR PLAINTIFFS