

**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.,  
Defendants-Appellees.**

---

**APPEAL FROM THE KOSSUTH COUNTY DISTRICT COURT  
CASE NO. LACV027745  
THE HONORABLE JUDGE JOHN M. SANDY PRESIDING JUDGE**

---

**DEFENDANTS-APPELLEES BOARD OF SUPERVISORS' BRIEF  
AND REQUEST FOR ORAL ARGUMENT**

---

**GOODWIN LAW OFFICE, P.C.  
Robert W. Goodwin, AT0002986  
2211 Philadelphia Street, Suite 101  
Ames, Iowa 50010-8767  
(515) 232-7390  
(515) 232-7396 (Fax)  
E-mail: goodwinlawoffice@fbx.com  
ATTORNEY FOR DEFENDANT-  
APPELLEE BOARD OF SUPERVISORS**

**TABLE OF CONTENTS**

	<u>Pages</u>
TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES .....	3
STATEMENT OF ISSUES AND AUTHORITY PRESENTED FOR REVIEW .....	5
Argument C.....	5
Argument D.....	5
Argument E.....	6
Argument F .....	6
ROUTING STATEMENT.....	7
STATEMENT OF CASE - OVERVIEW.....	7
ARGUMENT	
The District Court Correctly Dismissed Plaintiffs’ Petition Because Members Of A Board of Supervisors Do Not Have A Fiduciary Duty To Individual Landowners.....	9
A. Preservation Of Error.....	9
B. Scope Of Review .....	9
C. Pleading Malicious, Willful, Wanton, Or Reckless Acts Does Not Change That Members Of A Board of Supervisors Do Not Have A Fiduciary Duty To Individual Landowners In A Drainage District.....	9
CONCLUSION.....	11
D. Section 468.526A Is Not Applicable To A Board Of Supervisors.....	11
CONCLUSION.....	16
E. Members Of A Board Of Supervisors Do Not Have A Fiduciary Duty To Individual Landowners In A Drainage District.....	17
CONCLUSION.....	21
F. The District Court Correctly Dismissed Plaintiffs’ Petition Because Members Of A Board Of Supervisors Do Not Have A Fiduciary Duty To Individual Landowners In A Drainage District.....	21
CONCLUSION.....	22
REQUEST FOR ORAL ARGUMENT .....	22
ATTORNEY’S COST CERTIFICATE.....	23
CERTIFICATE OF COMPLIANCE.....	24
CERTIFICATE OF FILING AND SERVICE .....	25

## TABLE OF AUTHORITIES

<b>Cases:</b>	<u>Pages</u>
1. Albaugh v. The Reserve, 930 N.W.2d 676, 685-686 (Iowa 2019)	6,7,8,20, 21
2. Bd. of Water Works Trs. of Des Moines v. Sac Cnty. Bd. of Supervisors, 890 N.W.2d 50, 57 (Iowa 2017)	5,14
3. Board of Supervisors of Worth County v. District Court of Scott County, 229 N.W. 711, 712 (Iowa 1930)	5,15
4. Fisher v. Dallas County, 369 N.W.2d 426, 429-430 (Iowa 1985)	5,13,14
5. Gard v. Little Sioux Intercounty Drainage Dist. Of Monona and Harrison Counties, 521 N.W.2d 696, 698 (Iowa 1994)	5,14
6. Harryman v. Hayles, 257 N.W.2d 631, 637 (Iowa 1977)	5,15
7. Kingsway Cathedral v. Dept. of Transp., 711 N.W.2d 6, 8 (Iowa 2006)	5,10,11
8. Kurth v. Van Horn, 380 N.W.2d 693, 695 (Iowa 1986)	6,20,21
9. Peterson v. Bd. of Trust. Drain. Dist. No. 5, 625 N.W.2d 707 (Iowa 2001)	5,12
10. Pogge WL 1486854	5,14
11. Shumate v. Drake University, 846 N.W.2d 503, 507 (Iowa 2014)	5,9,11

<b>Statutes:</b>	<u>Pages</u>
Chapter 468	6,20
Chapter 670	5,15
Iowa Code § 306.4(2)	5,14
Iowa Code § 468.6 through 468.27, Code of Iowa	5,6,12,17
Iowa Code § 468.24 through 468.26, Code of Iowa	6,17
Iowa Code § 468.38 through 468.49, Code of Iowa	6,18
Iowa Code § 468.65 through 468.67, Code of Iowa	6,18
Iowa Code § 468.83 through 468.96, Code of Iowa	6,19
Iowa Code § 468.119 through 468.121, Code of Iowa	6,18
Iowa Code § 468.126, Code of Iowa	6,19
Iowa Code § 468.500, Code of Iowa	5,12

Iowa Code § 468.500 through 468.518, Code of Iowa	5,12
Iowa Code § 468.502, Code of Iowa	5,12
Iowa Code § 468.506(1), Code of Iowa	5,13
Iowa Code § 468.526, Code of Iowa	8
Iowa Code § 468.526A, Code of Iowa	5,6,11,12,13,15,16, 21
Iowa Code § 468.532 through 468.537, Code of Iowa	6,12
Iowa Code § 613A.1(1), 1981 Code of Iowa	6,13
Iowa Code § 633A.4202	8
Iowa Code § 670.1(2) , Code of Iowa	6,13
Iowa Code § 670.4, Code of Iowa	6,13

**STATEMENT OF ISSUES AND AUTHORITIES  
PRESENTED FOR REVIEW**

**ARGUMENT C**

**PLEADING MALICIOUS, WILLFUL, WANTON, OR RECKLESS ACTS  
DOES NOT CHANGE THAT MEMBERS OF A BOARD OF  
SUPERVISORS DO NOT HAVE A FIDUCIARY DUTY TO INDIVIDUAL  
LANDOWNERS IN A DRAINAGE DISTRICT.**

Kingsway Cathedral v. Iowa Dept. of Transp., 711 N.W.2d 6 (Iowa 2006)  
Shumate v. Drake Univ., 846 N.W.2d 503 (Iowa 2014)

**ARGUMENT D**

**SECTION 468.526A, CODE OF IOWA IS NOT APPLICABLE TO  
MEMBERS OF A BOARD OF SUPERVISORS.**

Bd. of Water Works Trs. of Des Moines v. Sac Cnty. Bd. of Supervisors, 890  
N.W.2d 50 (Iowa 2017)  
Board of Supervisors of Worth County v. District Court of Scott County, 229 N.W.  
711, 712 (Iowa 1930)  
Fisher v. Dallas County, 369 N.W.2d 426 (Iowa 1985)  
Gard v. Little Sioux Intercounty Drainage Dist. Of Monona and Harrison Counties,  
521 N.W.2d 696, 698 (Iowa 1994)  
Harryman v. Hayles, 257 N.W.2d 631, 637 (Iowa 1977)  
Peterson v. Bd. of Trust. Drain. Dist. No. 5, 625 N.W.2d 707 (Iowa 2001)  
Pogge WL 1486854  
Chapter 670  
Iowa Code § 306.4(2)  
Iowa Code §§ 468.6 through 468.27, Code of Iowa  
Iowa Code § 468.256A, Code of Iowa  
Iowa Code § 468.500, Code of Iowa  
Iowa Code §§ 468.500 through 468.518, Code of Iowa  
Iowa Code §§ 468.502, Code of Iowa  
Iowa Code §§ 468.506(1), Code of Iowa

Iowa Code §§ 468.526A, Code of Iowa  
Iowa Code § 468.532 through 468.537, Code of Iowa  
Iowa Code §§ 613A.1(1), 1981 Code of Iowa  
Iowa Code §§ 670.1(2), Code of Iowa  
Iowa Code §§ 670.4, Code of Iowa

## **ARGUMENT E**

### **MEMBERS OF A BOARD OF SUPERVISORS DO NOT HAVE A FIDUCIARY DUTY TO INDIVIDUAL LANDOWNERS IN A DRAINAGE DISTRICT.**

Albaugh v. The Reserve, 930 N.W.2d 676 (Iowa 2019)  
Kurth v. Van Horn, 380 N.W.2d 693 (Iowa 1986)  
Chapter 468  
Iowa Code §§ 468.6 through 468.27, Code of Iowa  
Iowa Code §§ 468.24 through 468.26, Code of Iowa  
Iowa Code §§ 468.38 through 468.49, Code of Iowa  
Iowa Code §§ 468.65 through 468.67, Code of Iowa  
Iowa Code §§ 468.83 through 468.96, Code of Iowa  
Iowa Code §§ 468.119 through 468.121, Code of Iowa  
Iowa Code §§ 468.126, Code of Iowa

## **ARGUMENT F**

### **THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' PETITION BECAUSE MEMBERS OF A BOARD OF SUPERVISORS DO NOT HAVE A FIDUCIARY DUTY TO INDIVIDUAL LANDOWNERS IN A DRAINAGE DISTRICT.**

Albaugh v. The Reserve, 930 N.W.2d 676 (Iowa 2019)  
Kurth v. Van Horn, 380 N.W.2d 693 (Iowa 1986)  
Iowa Code §§ 468.526A, Code of Iowa

## **ROUTING STATEMENT**

This case should be retained by the Supreme Court to clearly establish that Members of a Board of Supervisors do not have a fiduciary duty to individual landowners in a drainage district, which is an issue of first impression.

## **STATEMENT OF CASE**

### **OVERVIEW**

The Plaintiffs' claim is that Members of the Kossuth County Board of Supervisors in their capacity of managing drainage districts breached fiduciary duties to the Plaintiffs who are individual landowners in the drainage districts. The District Court found there is no confidential relationship that requires Members of a Board of Supervisors to have a fiduciary duty to individual landowners, and the lack of a fiduciary duty is dispositive of Plaintiffs' action.

The District Court, on page 8 of its Ruling On Motion To Dismiss, states:

“However no case law the Court could find has stated that drainage district trustees have such fiduciary duties.” App. P. 711.

The Plaintiffs, on page 24 of their Brief, assert the following:

“While fiduciary duties can arise from a confidential relationship between the parties, such duties can also be created by statute.”

The Plaintiffs' Brief, on page 24, in support of the above assertion cites Albaugh v. The Reserve, 930 N.W.2d 676, 685-686 (Iowa 2019). However, the

Albaugh case does not involve a drainage district and does not cite a statute that creates a fiduciary duty.

The District Court, on page 8 of its Ruling On Motion To Dismiss, holds:

“Similarly, no code section lists any duty for Trustees to act in the best interest of specific landowners, or even the district as a whole.<sup>3</sup>

<sup>3</sup> Even the statutory section entitled “Powers and duties of trustees,” Iowa Code § 468.526, does not list a single explicit duty for trustees.” App. P. 711.

The District Court, on page 8 of its Ruling On Motion To Dismiss, holds as follows:

“Plaintiff doesn’t seem to see any such reposing of trust either, as Plaintiffs’ only two arguments in favor of the existence of fiduciary duties are: (1) that the Trustees are trustees and trustees have fiduciary duties in other areas of the law, citing *Eblen v. Harkin*, 912 N.W.2d at 14 (Ia. Ct. App. 2017); and (2) acknowledgment of such duties in *Cook v. McNeal*, 602 N.W.2d 353 (Iowa 1999).” (Emphasis added.) App. P. 711.

The Plaintiffs’ Brief, on page 25, cites Section 633A.4202. However, that section applies to beneficiaries of a trust. It does not apply to drainage districts.

The District Court, on page 10 of its Ruling On Motion To Dismiss, correctly rules as follows:

“There is no precedent the Court can find establishing any duty the Trustees may or may not have would be directed *towards the individual landowners*.” App. P. 713.

The District Court correctly sustained Defendants’ Motion To Dismiss.



There is no case law nor statute that places a fiduciary duty on the Members of the Board of Supervisors to individual landowners.

## **ARGUMENT**

### **THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' PETITION BECAUSE MEMBERS OF A BOARD OF SUPERVISORS DO NOT HAVE A FIDUCIARY DUTY TO INDIVIDUAL LANDOWNERS IN A DRAINAGE DISTRICT.**

- A. Preservation of Error. The Defendants-Appellees Supervisors do not agree that error was preserved by Plaintiffs filing a notice of appeal as stated in Defendants-Appellees' Motion To Dismiss previously filed with this Court.
- B. On review of a motion to dismiss, the appellate court reviews for correction of errors at law. Shumate v. Drake University, 846 N.W.2d 503, 507 (Iowa 2014).

### **C. PLEADING MALICIOUS, WILLFUL, WANTON, OR RECKLESS ACTS DOES NOT CHANGE THAT MEMBERS OF A BOARD OF SUPERVISORS DO NOT HAVE A FIDUCIARY DUTY TO INDIVIDUAL LANDOWNERS IN A DRAINAGE DISTRICT.**

The Plaintiffs brought their action seeking punitive damages against the former and present Members of the Kossuth County Board of Supervisors based on there being a fiduciary duty by the Members of the Board of Supervisors to individual landowners in a drainage district.

However, their claim is nullified and defeated because Members of a Board of Supervisors do not have a fiduciary duty to individual landowners in a drainage district.

The Plaintiffs argue on pages 16 to 19 of their Brief that they have well plead willful, wanton, and reckless conduct. However, the Plaintiffs ignore that Members of a Board of Supervisors do not have a fiduciary duty to individual landowners in a drainage district.

The District Court in our present case dismissed the Plaintiffs' Petition because Members of a Board of Supervisors do not have a fiduciary duty to individual landowners in a drainage district. App. PP. 712-713.

On page 10 of the Ruling on Motion To Dismiss, the District Court ruled as follows:

“There is no precedent the court can find establishing any duty the trustees may or may not have would be directed *towards the individual landowners.*” App. P. 713.

Conclusions in a Petition are not accepted by the Court in considering a Motion To Dismiss.

“For purposes of reviewing a ruling on a motion to dismiss, we accept as true the petition's well-pleaded factual allegations, but not its legal conclusions. See *Kingsway Cathedral v. Iowa Dep't of Transp.*, 711 N.W.2d 6, 8 (Iowa 2006). We will affirm a district court ruling that granted a motion to dismiss when the petition's allegations, taken as true, fail to state a claim upon which

relief may be granted. Mueller, 818 N.W.2d at 253.” (Emphasis added.) Shumate v. Drake Univ., 846 N.W.2d 503, 507 (Iowa 2014).

“A motion to dismiss admits the well-pled facts in the petition, but not the conclusions. Berend v. Iowa State Tax Comm’n, 247 Iowa 1333, 1339, 78 N.W.2d 812, 816 (1956).” Kingsway Cathedral v. Dept. of Transp., 711 N.W.2d 6, 8 (Iowa 2006).

The Plaintiffs’ Petition contains the incorrect conclusion that Members of a Board of Supervisors have a fiduciary duty to individual landowners in a drainage district. The District Court, noting that incorrect conclusion, properly dismissed the Plaintiffs’ Petition.

The District Court correctly dismissed the Plaintiffs’ Petition because Members of a Board of Supervisors do not have a fiduciary duty to individual landowners in a drainage district. This is discussed further in Argument E.

## CONCLUSION

The District Court’s dismissal of the Plaintiffs’ Petition should be affirmed.

### **D. SECTION 468.526A IS NOT APPLICABLE TO A BOARD OF SUPERVISORS.**

The lack of any fiduciary duty of the Members of a Board of Supervisors to individual landowners in a drainage district makes moot whether Section 468.526A, Code of Iowa, applies to the Defendant Members of the Kossuth County Board of

Supervisors. However, to not be remiss in regard to that issue, the Defendant Members of the Kossuth County Board of Supervisors state as follows.

Section 468.526A, Code of Iowa, is not applicable to Members of a Board of Supervisors. The ‘trustee’ in Section 468.526A is one of the three individuals who take over the management of a drainage district from the Members of a Board of Supervisors pursuant to Sections 468.500 through 468.518, Code of Iowa.

“[T]he administration of the drainage district was taken over by a board of trustees as authorized in Iowa Code Section 468.500.” Peterson v. Bd. of Trust. Drain. Dist. No. 5, 625 N.W.2d 707, 708 (Iowa 2001).

Section 468.502 provides for the election of three “trustees”.

A Board of Supervisors pursuant to Sections 468.6 through 468.27 is the entity that established a drainage district. After a drainage district is established, the management of the drainage district can be transferred from the Members of a Board of Supervisors to a “board of trustees” who are “private trustees” pursuant to Sections 468.500 through 468.518.

It is noted that the management of a drainage district pursuant to Sections 468.532 through 468.537 can be returned from the “private trustees” back to the Board of Supervisors.

The term “board of trustees” is defined in Section 468.500, Code of Iowa, as “a board of trustees to be elected by the persons owning land in the district”. That

distinguishes “a board of trustees” from a “Board of Supervisors” who are elected by citizens in the county.

Section 468.506(1) provides among other requirements that each “trustee” shall be a “bona fide owner of agricultural land in the election district for which the trustee is elected”, which excludes the Defendant Members of the Kossuth County Board of Supervisors who Plaintiffs do not allege are landowners in the drainage districts in issue.

Section 468.526A, Code of Iowa, provides as follows:

“A trustee is not personally liable for a claim which is exempted under Section 670.4, except a claim for punitive damages. A trustee is not liable for punitive damages as a result of acts in the performance of a duty under this chapter, unless the actual malice or willful, wanton, and reckless misconduct is proven.”

However, a drainage district is not a municipality. Therefore, Section 670.4, Code of Iowa, does not apply to a drainage district nor to the Members of a Board of Supervisor managing the drainage district.

“We, therefore, hold that a drainage district is not a ‘municipality’ within the meaning of Iowa Code section 613A.1(1) (now 670.1(2)).” Fisher v. Dallas County, 369 N.W.2d 426, 430 (Iowa 1985).

“[I]n Fisher we rejected the argument that a drainage district is a municipality as defined in Section 613A.1(1) ...

The drainage district’s immunity from suit does not stand or fall with the doctrine of sovereign immunity, but is based upon the special and limited power and duties conferred by the Iowa Constitution and statutes ... A

drainage district is not subject to suit in tort for money damages.” Gard v. Little Sioux Intercounty Drainage Dist. Of Monona and Harrison Counties, 521 N.W.2d 696, 698 (Iowa 1994).

“[A] drainage district is not susceptible to suit for money damages. Bd. of Water Works Trs. of Des Moines v. Sac Cnty. Bd. of Supervisors, 890 N.W.2d 50, 57 (Iowa 2017).

“Our cases have consistently held that a drainage district is not susceptible to suit for money damages.” Fisher v. Dallas County, 369 N.W.2d 426, 429 (Iowa 1985).

The Plaintiffs’ Brief, on page 23, cites the unreported case of Pogge WL 1486854 which is distinguishable from our present case. The Pogges brought suit against the Wright County Engineers and the Supervisors in their capacity under Section 306.4(2), Code of Iowa, having jurisdiction and control over secondary roads, i.e., county roads, for putting in a large culvert in a county road upstream from their land bridge that spans a drainage district’s open ditch. The large culvert released a large amount of water which damaged the Pogge’s land bridge rendering it unusable for farm equipment. The Court of Appeals ruled that the installation of a large culvert in the county road which damaged the Pogges’ land bridge was a discretionary function. The Pogge case does not involve an issue of whether the Members of the Board of Supervisors had a fiduciary duty to individual landowners in a drainage district.

A drainage district is not susceptible to suit for money damages, and is not susceptible to a claim under Tort Liability of Governmental Subdivisions, Chapter 670 Code of Iowa.

The immunity of the drainage districts is imputed to the Members of the Board of Supervisors managing the affairs of the drainage district.

“A drainage district is *sui generis*. It is not a corporation. It cannot sue or be sued. It is merely a segregated area of land, which has been set out by legal proceedings, and is subject to assessment for the construction of certain drainage improvements within said territory. It can incur no corporate liability. Under the statute, its affairs are managed by the board of supervisors of the county in a representative capacity. The powers of such board, however, are limited and defined by statute.

...

Nor is the Plaintiff entitled to any judgment at law against the board of supervisors. They act wholly in an official or representative capacity, under the express provisions of the drainage statutes.” Board of Supervisors of Worth County v. District Court of Scott County, 229 N.W. 711, 712 (Iowa 1930).

“That rationale for the rule barring liability of officers and employees was dependent upon the doctrine of governmental immunity is well illustrated in Wittmer v. Letts, supra.” Harryman v. Hayles, 257 N.W.2d 631, 637 (Iowa 1977).

Section 468.526A is applicable to “a board of trustees”, who are “private trustees”, but it is not applicable to Members of the Board of Supervisors. The Appellants’ Brief, on page 22, contains a purported 2014 quote from Representative Dave Maxwell in regard to what is now Section 468.526A. It is important to note

that the quote recognizes that there is a difference and a distinction between “county supervisors” (Members of the Board of Supervisor) and “private trustees” (a board of trustees to be elected by the persons owning land in the district). (Emphasis added.)

The quote in pertinent part states as follows:

“whether they be county supervisors or private trustees.” (Emphasis added.)

The quote asserts that the “private trustees” should have “*liability as though they were county supervisors even though they are not county supervisors.*” (Emphasis added.)

Appellees’ Brief, on pages 12 and 15, uses the term “private trustees” which is the term used by Mr. Maxwell, and is often times used to differentiate the “private trustees” from Members of a Board of Supervisors.

Again, the issue of Section 468.526A not being applicable to Members of a Board of Supervisors is superseded and preempted by the Defendant Members of the Board of Supervisors not having a fiduciary duty to the Plaintiffs who are individual landowners in the drainage districts.

## **CONCLUSION**

The District Court’s Dismissal of the Plaintiffs’ Petition should be affirmed.



**E. MEMBERS OF A BOARD OF SUPERVISORS DO NOT HAVE A FIDUCIARY DUTY TO INDIVIDUAL LANDOWNERS IN A DRAINAGE DISTRICT.**

There is no case law that Members of a Board of Supervisors, in their position as managers of a drainage district, have a fiduciary duty to an individual landowner in the drainage district.

There is no statute that provides that Members of a Board of Supervisors, in their role as managers of a drainage district, have a fiduciary duty to an individual landowner in the drainage district.

The Code of Iowa provides that Members of a Board of Supervisors (Board), in their position as managers of a drainage district, have the following powers:

- In establishing a drainage district, the Board, pursuant to Sections 468.6 through 468.27, shall appoint an engineer to make a survey, plat, profile, and report concerning its establishment. There will be a public hearing and the Board will decide whether or not the drainage district is to be established.
- When a drainage district is being established, the Board, pursuant to Sections 468.24 through 468.26, shall appoint three appraisers to assess damages of the landowners in the drainage district resulting from the

drainage district. There will be a public hearing on the appraisal report, and the Board will determine the amount of damages to be awarded.

- Once the drainage district is established, the Board, pursuant to Sections 468.38 through 468.49, shall appoint three commissioners to classify the lands within the drainage district and fix the assessments against the lands. There will be a public hearing on the report of the commissioners, and the Board will determine the classifications and assessments.
- If there is to be a reclassification, the Board, pursuant to Sections 468.65 through 468.67, shall appoint three commissioners who will prepare a report. There will be a public hearing on the report, and the Board will determine the reclassifications and assessments.
- If there is to be an annexation of lands into the drainage district, the Board, pursuant to Sections 468.119 through 468.121, will appoint an engineer to make a report on the proposed annexation. There will be a public hearing on the annexation reports, and the Board will determine whether the lands will be annexed.

- If there are to be repairs or improvements made to the drainage district's facilities, the Board, pursuant to Section 468.126, will appoint an engineer to make a report. There will be a public hearing on the report, and the Board will determine what repairs or improvements will be made.
- Any person aggrieved from any final action of the Board may, pursuant to Sections 468.83 through 468.96, appeal from any final action of the Board in relation to any matter involving the person's rights.

The Members of a Board of Supervisors have no duty to act for or give advice to any one landowner in a drainage district. The Members of a Board of Supervisors, in administering a drainage district, do not have a fiduciary relationship with any individual landowner in the drainage district.

The Members of a Board of Supervisors managing/administering a drainage district have an adjudicatory and not a fiduciary role. The Members of a Board of Supervisors appoint engineers, appraisers, and commissioners who provide reports on which public meetings are held. The Members of a Board of Supervisors then determine/adjudicate how the drainage district is to proceed.

As the District held, “similarly, no code sections lists any duty for Trustees to act in the best interest of specific landowners or even the district as a whole.” Ruling on Motion To Dismiss, page 8. App. P. 711.

The Appellant cites the case of Albaugh v. The Reserve, 930 N.W.2d 676 (Iowa 2019) which states as follows:

“In contrast, a fiduciary relationship does not exist when the relationship exists through an ‘arms-length transaction’, which a ‘[a] transaction between two unrelated and unaffiliated parties’...” Id., 930 N.W.2d 686.

The actions of the Board of Supervisors, under Chapter 468 with individual landowners in the drainage district, are arm-length transactions between two unrelated and unaffiliated parties.

A fiduciary relationship has been defined in Kurth v. Van Horn, 380 N.W.2d 693, 695 (Iowa 1986) as follows:

“A fiduciary relationship has been generally defined in this way: A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation. Restatement (Second) of Torts § 874 comment a, at 300 (1979). A fiduciary relationship has also been defined as [a] very broad term embracing both technical fiduciary relations and those informal relations which exist wherever one man trust in or relies upon another. One founded on trust or confidence reposed by one person in the integrity and fidelity of another.” (Emphasis added.)

The Kurth case requires a confidential relationship between two parties. The Plaintiffs, on page 24 of their Brief, incorrectly assert that the District Court should not have dismissed Plaintiffs' Petition on the basis that the Defendant Members of the Board of Supervisors do not have a confidential relationship with the Plaintiffs who are individual landowners in the drainage districts.

Again, the Kurth case requires a confidential relationship to exist for there to be a fiduciary duty. The Albaugh case holds that there is not a fiduciary relationship when there is an arms-length situation – which is the situation with the Members of the Board of Supervisors in their position of managing a drainage district in an adjudicatory position, and not in a fiduciary relationship.

## CONCLUSION

The District Court's dismissal of the Plaintiffs' Petition should be affirmed.

### **F. THE DISTRICT COURT CORRECTLY DISMISSED THE PLAINTIFFS' PETITION BECAUSE MEMBERS OF A DRAINAGE DISTRICT DO NOT HAVE A FIDUCIARY DUTY TO INDIVIDUAL LANDOWNERS.**

The Plaintiffs ignore that Members of a Board of Supervisors do not have a fiduciary duty to individual landowners in a drainage district, which is in accord with the cases of Kurth v. Van Horn, 380 N.W.2d 693, 695 (Iowa 1986) and Albaugh v. The Reserve, 930 N.W.2d 676, 686 (Iowa 2019). Furthermore, Section 468.526A,

Code of Iowa, is not applicable to Members of a Board of Supervisors, and again, more significantly, it is controlling in this case that Members of a Board of Supervisors in their position of managing a drainage district do not have a fiduciary duty to individual landowners in a drainage district, as discussed in Argument D.

### **CONCLUSION**

The District Court's dismissal of Plaintiffs' Petition should be affirmed.

### **REQUEST FOR ORAL ARGUMENT**

The Defendant-Appellee Supervisors request oral arguments in this matter.

*/s/ Robert W. Goodwin*

GOODWIN LAW OFFICE, P.C.

Robert W. Goodwin, AT0002986

2211 Philadelphia Street, Suite 101

Ames, Iowa 50010-8767

(515) 232-7390

(515) 232-7396 (Fax)

E-mail: goodwinlawoffice@fbx.com

**ATTORNEY FOR DEFENDANT-  
APPELLEE BOARD OF SUPERVISORS**

**ATTORNEY'S COST CERTIFICATE**

I certify that the actual cost of reproducing the necessary copies of Defendant-Appellee Supervisors' Brief And Request For Oral Argument consisting of 26 pages was in the sum of \$2.60.

GOODWIN LAW OFFICE, P.C.

*/s/ Robert W. Goodwin*

---

Robert W. Goodwin, AT0002986

2211 Philadelphia Street, Suite 101

Ames, Iowa 50010-8767

(515) 232-7390

(515) 232-7396 (Fax)

E-mail: goodwinlawoffice@fbx.com

**ATTORNEY FOR DEFENDANT-  
APPELLEE BOARD OF SUPERVISORS**

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

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this Brief contains 4,833 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word in Size 14 font.

Dated this 20<sup>th</sup> Day of October, 2023.

GOODWIN LAW OFFICE, P.C.

*/s/ Robert W. Goodwin*

---

Robert W. Goodwin, AT0002986

2211 Philadelphia Street, Suite 101

Ames, Iowa 50010-8767

(515) 232-7390

(515) 232-7396 (Fax)

E-mail: goodwinlawoffice@fbx.com

**ATTORNEY FOR DEFENDANT-  
APPELLEE BOARD OF  
SUPERVISORS**



## CERTIFICATE OF FILING AND SERVICE

I, Robert W. Goodwin, hereby certify that I electronically filed the foregoing Defendant-Appellee Supervisors' Brief And Request For Oral Argument with the Clerk of the Iowa Supreme Court on October 20, 2023.

I, Robert W. Goodwin, hereby further certify that on October 20, 2023, I served the foregoing Defendant-Appellee Supervisors' Brief And Request For Oral Argument by the electronic filing system, to the following attorneys of record:

Samuel Louis Blatnick IA# AT0011632  
Lucosky Brookman LLP  
111 Broadway, Suite 807  
New York, NY 10006  
Phone: 732-712-2708  
Email: [Sblatnick@lucbro.com](mailto:Sblatnick@lucbro.com)  
ATTORNEY FOR PLAINTIFFS-APPELLANTS

Joel D. Vos AT0008263  
Zack A. Martin AT0014476  
1128 Historic 4<sup>th</sup> Street  
PO Box 3086  
Sioux City, IA 51102  
Phone: 712-255-8838  
Fax: 712-258-6714  
Email: [Joel.Vox@heidmanlaw.com](mailto:Joel.Vox@heidmanlaw.com)  
[Zack.Martin@heidmanlaw.com](mailto:Zack.Martin@heidmanlaw.com)  
ATTORNEYS FOR PLAINTIFFS-APPELLANTS

Jeffrey William Coleman  
Coleman & Erickson, LLC  
10400 Viking Drive, Suite 110  
Eden Prairie, MN 55344  
Phone: 612-877-8200  
Fax: 612-877-8201  
Email: [jwc@jwcolaw.com](mailto:jwc@jwcolaw.com)  
ATTORNEY FOR BOLTON & MENK INC.

GOODWIN LAW OFFICE, P.C.  
*/s/ Robert W. Goodwin*  
\_\_\_\_\_  
Robert W. Goodwin, AT0002986  
2211 Philadelphia Street, Suite 101  
Ames, Iowa 50010-8767  
(515) 232-7390  
(515) 232-7396 (Fax)  
E-mail: [goodwinlawoffice@fbx.com](mailto:goodwinlawoffice@fbx.com)  
**ATTORNEY FOR DEFENDANT-  
APPELLEE BOARD OF  
SUPERVISORS**