IN THE IOWA SUPREME COURT

Supreme Court No. 23-0605

VALERIE RHEEDER,
Plaintiff-Appellee,

vs.

CITY OF MARION, DOUGLAS SLAGLE, SHELLENE GRAY, AND JOSEPH MCHALE,
Defendants-Appellants.

ON APPEAL FROM THE IOWA DISTRICT COURT IN
LINN COUNTY CASE NO. LACV093892
SUMMARY JUDGMENT ORDER DATED JANUARY 20, 2023
AND ORDER DATED APRIL 3, 2023

THE HONORABLE VALERIE L. CLAY,
DISTRICT COURT JUDGE

DEFENDANT-APPELLANT CITY OF MARION'S AND JOSEPH MCHALE'S REPLY BRIEF

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I. THE IOWA DISTRICT COURT ERRED IN DENYING THE CITY DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT.

A. The Iowa District Court Erred By Relying On Inadmissible Evidence To Deny Summary Judgment On Ms. Rheeder's Sexual Harassment Claims.

Ms. Rheeder's arguments on the admissibility of evidence of prior sexual harassment omit one very important point: the majority of this evidence is hearsay. Without rehashing its initial briefing, the evidence the District Court relied on concerning the alleged "notice" the City had is not based on an individual's personal knowledge, it is based on hearsay. (App. 399.) This type of hearsay does not provide a basis for a plaintiff to avoid summary judgment. *Kindig v. Newman*, 966 N.W.2d 310, 322 (Iowa Ct. App. 2021); E*state of Grove v. Clinic Building Co., Inc.*, 992 N.W.2d 234, 2023 WL 2148253, at *4 (Iowa Ct. App. Feb. 22, 2023).

In fact, the only time Ms. Rheeder even addresses hearsay in her briefing is when she alleges that Mr. Slagle's testimony that prior relationships with women were consensual is "hearsay." (Plaintiff-Appellee's Brief at 70-71.) As an initial matter, Ms. Rheeder failed to develop a record that the alleged relationships were not consensual. Rather, the record developed demonstrates that there is no evidence that the alleged relationships were not consensual. (App. 824.)

Further, Ms. Rheeder wants it both ways when it comes to the admission of hearsay evidence. When it aids her case, she argues that hearsay is inadmissible,

characterizing Mr. Slagle's personal belief that the relationships were consensual is inadmissible hearsay. (Plaintiff-Appellee's Brief at 69.) That misstates the record, as the evidence in the record shows that individuals besides Mr. Slagle, including former Captain Robert Huffman and Sergeant Richard Holland, did not have any evidence that the relationships or contacts were not consensual. (App. 824.) However, if Mr. Slagle's personal beliefs about whether his own relationships were consensual are allegedly inadmissible hearsay, Ms. Rheeder surely cannot have it both ways and deny that the rumors recited by witnesses without any personal knowledge are not inadmissible hearsay.

Ms. Rheeder cites to *Herndon v. City of Manchester*, an out of jurisdiction case analyzed under the Missouri Human Rights Act, and presumably the rules of evidence of the state of Missouri, to support her argument that the rumors concerning Mr. Slagle's "reputation" and prior complaints concerning non-City of Marion employees should be admissible. (Plaintiff's Brief at 62.) Ms. Rheeder argues that "In a nearly identical case, evidence of prior sexual misconduct by a police officer directed at civilians, as opposed to employees of the police department, was admitted because officials at the department were aware of the conduct or could have been if they had reviewed the harasser's file." This completely misconstrues the issues in the case. Instead the court recited the alleged past misconduct as facts, without any mention of a dispute of its admissibility, let alone an analysis of such. *See generally*,

Herndon v. City of Manchester, 284 S.W.3d 682 (Mo. Ct. App. 2009). Ms. Rheeder relied on this Missouri state court case because there is no support for her position under Iowa law.

In another case cited by Ms. Rheeder outside of this jurisdiction, *Lopez v. City of Alburquerque,* the Court explicitly noted that evidence of past *complaints could be* relevant "if it [could] be established ***without relying on hearsay or other inadmissible evidence***." No. 08-806 LH/ACT, 2010 WL 11590684, at *7 (D. N.M. Oct. 5, 2010) (emphasis supplied). There is no support in Iowa law or other jurisdictions for the admission of the stale, decades old, hearsay evidence that the District Court in this case deemed admitted.

B. The Iowa District Court Erred In Finding Ms. Rheeder Generated A Fact Question On The First Element Of The *Faragher-Ellerth* Defense.

Ms. Rheeder's briefing contains several allegations with no citation to the record supporting her position that the City has not proved the elements of the *Faragher-Ellerth* affirmative defense. An "employer defending a vicarious liability claim may assert the *Faragher-Ellerth* affirmative defense by showing it: (1) exercised reasonable care to prevent and correct any harassing behavior; and (2) that the plaintiff employee unreasonably failed to take advantage of preventative or corrective opportunities provided by the employer to avoid harm otherwise." *Haskenhoff v. Homeland Energy Solutions, LLC*, 897 N.W.2d 553, 571 (Iowa 2017)

(quoting *Farmland Foods, Inc. v. Dubuque Human Rights Comm'n*, 672 N.W.2d 733, 744 (Iowa 2003) (internal quotation marks omitted)); *see also Valdez v. W. Des Moines Comm. Schs.*, 992 N.W.2d 613, 632 (Iowa 2023).

The summary judgment record developed by the parties reflects that the City exercised reasonable care to prevent and correct any sexual harassment, satisfying the first element of the *Faragher-Ellerth* affirmative defense. Where an employer has an anti-harassment policy that includes instructions and multiple avenues for filing complaints, the policy is sufficient to satisfy the first element of the *Faragher-Ellerth* affirmative defense. *Trahanas v. Northwestern Univ.*, 64 F.4th 842, 854 (7th Cir. 2023). The City had a harassment policy in place during Ms. Rheeder's employment had a sexual harassment policy forbidding harassment and retaliation that Ms. Rheeder acknowledged receiving. (App. 757.) The Marion Police Department also had a harassment policy during Ms. Rheeder's employment. (App. 730.)

Ms. Rheeder admits the Marion Police Department had a harassment policy. (Appellee's Brief at p. 48.) The Marion Police Department's policy made it clear that sexual harassment was prohibited. (App. 82-84.) The policy defined sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (a) [s]ubmission to such conduct is made either explicitly or implicitly a term or condition of employment; or (2)

[s]ubmission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or (c) [s]uch conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment." (App. 82.)

After acknowledging that the Department had a sexual harassment policy, Ms. Rheeder then claims that it is "inadequate" by misstating the record and alleging that Joseph McHale "determined that the policy only applied to quid pro quo harassment." (Plaintiff-Appellee's Brief at 48.) This is argued without citation to the record. The allegation is not accurate—Mr. McHale acknowledged that there are three to four bullet points in the policy that would have caused a violation of the policy. ("I think that you could read the three or four little bullets in the policy, and those would be the only things that would have risen to find a violation of policy.") (App. 507.)

Ms. Rheeder then argues that the Department's policy was "not disseminated." (Plaintiff-Appellee's Brief at 48.) Again, the allegation has no citation to the record. In *Faragher*, the Court found the city "entirely failed" to disseminate the policy to the plaintiff's Department. *Faragher v. City of Boca Raton*, 524 U.S. 775, 808 (1998). Likewise, in *Dinkins* as cited by Ms. Rheeder, "the policy went undistributed for months at a time." *Dinkins v. Charoen Pokphand USA, Inc.*, 133 F.Supp.2d 1254, 1268 (M.D. Alabama 2001). That is not the case

here. (Plaintiff's Brief at 47; App. 730.) Additionally, after Ms. Rheeder asked Mr. Slagle to stop the text messages she found unwelcome on January 11, 2019, and he complied, Ms. Rheeder lodged an internal sexual harassment complaint on January 18, 2019 by reporting the allegation to Jeff Hartwig, the Department's Office of Professional Standards sergeant. (App. 736, 739, 740.) Once Ms. Rheeder found Mr. Slagle's conduct to be unwelcome, her conduct followed what the Department's policy directed her to do: she told Mr. Slagle to stop texting her and she reported the unwelcome conduct to Sergeant Hartwig. (App. 736, 739, 740, 82-84.) Ms. Rheeder's actions following Mr. Slagle's alleged unwelcome conduct bolsters the argument that not only was the policy disseminated, it was effective.

Finally, and again without record to the citation, Ms. Rheeder argues that the City's harassment policy was ineffective. (Plaintiff-Appellee's Brief at 49-50.) Ms. Rheeder's own actions under cut this claim. The effectiveness of the City's policies is further substantiated by the fact that Officer Andrea Wilson made a complaint in 2017 and the City investigated it. (App. 758-759.) In that investigation, Ms. Wilson complained freely, but stated very clearly that Mr. Slagle had never harassed her. (App. 758-759.) Like Ms. Rheeder, Ms. Wilson, another Marion Police Department employee, knew how to make a complaint pursuant to the City's (and the department's) policies demonstrating their effectiveness.

The plaintiffs in *Weger v. City of Ladue*, as cited by Ms. Rheeder, attempted a similar strategy, arguing that while the City had an antiharassment policy, it was "ineffective." There, the Eighth Circuit Court of Appeals held that where the Department "had a facially valid antiharassment policy that, when invoked by Plaintiffs, brought an immediate end to [the alleged harasser's] harassment" the City satisfied the "prevention" prong of the *Ellerth-Faragher* affirmative defense as a matter of law. 500 F.3d 710, 720 (8th Cir. 2007).

Further, as stated in the *Dinkins* case cited by the Ms. Rheeder, "[P]laintiffs cannot avoid summary judgment by grumbling that they did not personally comprehend the policy; rather, they must show that the policy was administered 'in bad faith' or was 'otherwise defective or dysfunctional.'" *Dinkins v. Charoen Pokphand USA, Inc.*, 133 F.Supp.2d 1254, 1268 (M.D. Alabama 2001).

Finally, Ms. Rheeder's arguments on this topic are analogous to those made by the plaintiff in *Neel*. In that case, the plaintiff argued that while the employer had a policy, the policy failed to prevent or effectively prohibit sexual harassment. *Neel v. CRST Expedited, Inc.*, 2020 WL 1052520, at *3 (N.D. Iowa Mar. 4, 2020). In *Neel*, the employer had a policy distributed to employees that prohibited sexual harassment, prohibited retaliation, and provided an avenue for employees to report complaints. *Id.* The Court in *Neel* held that this policy met the standard of care as

a matter of law. *Id.* at *10. According to this standard, both of the City of Marion's policies met the standard of care as a matter of law.

Under the prevention standards for employers requested by the plaintiff in *Neel* and Ms. Rheeder, employers would essentially be required to read their employee's minds employees to determine if they planned to sexually harass a co-worker and then to fire the employee before the harassment occurred. This is an unreasonable and impossible standard for prevention, and like the Court in *Neel*, this Court should reject it and find that the City did, in fact, exercise reasonable care to prevent the harassment Ms. Rheeder alleges.

C. The Iowa District Court Erred In Finding That The City Failed To Take Remedial Measures That Ended The Alleged Harassment Within A Reasonable Time.

Likewise, the District Court erred in finding that the City failed to meet the correction prong of the *Faragher-Ellerth* Affirmative Defense. Ms. Rheeder argues that even if the City had an effective and well-disseminated policy, there was "widespread or unchecked harassment." (Plaintiff-Appellee's Brief at 49.) Ms. Rheeder argues that the City discouraged complaints by retaliating against officers who made complaints, without any citation to the record. Ms. Rheeder claims that Officers Hotz, Cirkl, Martens, and Wilson all offered testimony that they did not

make complaints because they *feared* retaliation. (Plaintiff-Appellee's Brief at 51.)[1] Yet in the same brief, Ms. Rheeder acknowledges that former Officer Wilson actually made a complaint that was investigated by the City (Plaintiff-Appellee's Brief at p. 20) and Officer Cirkl wrote a letter discouraging the City from hiring Doug Slagle as police chief in 2016 (Plaintiff-Appellee's Brief at 18; App. 451.) Yet, there is no evidence offered that either of these officers suffered from retaliation.

Further, in the cases cited by Ms. Rheeder to support this claim of "widespread or unchecked harassment," the employers took no action once a complaint was made. In *E.E.O.C. v. Management Hospitality of Racine, Inc.*, after an employee complained of sexual harassment that included ongoing and explicit sexual comments and groping and touching of the employee's buttocks and breast, the employer told the employee that they "didn't need to hear it." 666 F.3d 422, 429-30 (7th Cir. 2012). The record reflects the City took the opposite action here: Once Ms. Rheeder complained, Chief McHale investigated and the complained of conduct stopped. (App. 740-743.) Months later, when the City received information indicating that the complained of conduct may still be ongoing, the City doubled down and hired an independent investigator to perform an independent, external

[1] Notably, the Plaintiff's Statement of Additional Facts cited for this proposition are replete with hearsay.

investigation and took action after receiving the findings of that investigation. (App. 747-751.) Very clearly, no one at the City or within the Department told Ms. Rheeder they "didn't need to hear it" during either the January or the April 2019 investigations.

Ms. Rheeder's briefing blends together the arguments against allowing the City's *Faragher-Ellerth* affirmative defense and her allegation that the City was negligent in the handling of Ms. Rheeder's complaint. To prove a negligence claim, the employee must establish that a reasonable employer knew or should have known of the harassment and failed to take reasonable action to stop it within a reasonable period of time. *Haskenhoff v. Homeland Energy Solutions, LLC*, 897 N.W.2d 553, 601-02 (Iowa 2017).

Again, Ms. Rheeder makes arguments without any citation to the summary judgment record developed by the parties. (Plaintiff-Appellee's Brief at 51-56.) Ms. Rheeder makes allegations like "there was no investigation into [Ms. Rheeder's] complaint," without any support in the record for these statements. (Plaintiff-Appellee's Brief at 52.)

The actual record developed in this matter demonstrates that once Ms. Rheeder complained, Chief McHale investigated, issued a memo about his findings, and the complained of conduct stopped. (App. 740-743.) As described above, months later, when the City received information indicating that the complained of

conduct may still be ongoing, the City doubled down and hired an independent investigator to perform an independent, external investigation and took action after receiving the findings of that investigation. (App. 747-751.)

While Ms. Rheeder disagrees with how the January 2019 investigation was managed, she cannot deny and does not deny, that the alleged harassment stopped. Further, she cannot deny, and does not deny, that the City took prompt remedial action through the utilization of training memos and ordering Mr. Slagle to cease conduct with Ms. Rheeder outside the performance of her duties in a situation that was not being managed by her direct supervisor. (App. 742-743.)

In the cases cited by Ms. Rheeder on this issue, the employer took no action. *See Perez v. Superior Court of Guam*, 2009 WL 4823856, at *2 (D. Guam Dec. 7, 2009); *see also Fuller v. City of Oakland Cal.*, 47 F.3d 1522, 1529 (9th Cir. 1995) (finding that where the employer investigated only, but failed to take *any* remedial steps once it learned of the harassment, the employer could be liable).

This brings us to *Feeback*. Ms. Rheeder argues that the principles illustrated by the *Feeback* case are not applicable to this case because it is an age discrimination case dealing with causation. (Plaintiff-Appellee's Brief at 55-56.) Ms. Rheeder's briefing ignores the holdings the Court made regarding allegations of shortcoming in an employer's investigation creating fact questions on summary judgment. *Feeback v. Swift Pork Co.*, 988 N.W.2d 340, 350 (Iowa 2023). The City's

investigations support that it was not negligent in responding to Ms. Rheeder's complaint. While Ms. Rheeder complains that the January 2019 investigation was too short and its evidentiary scope was too small, *Feeback* holds that the scope of an internal investigation is a business judgment, and the Court does not review the rationale behind such a decision. *Id.* Like in *Feeback*, both in January and April 2019, the investigators interviewed witnesses they deemed relevant, here the parties, reviewed the text messages they thought relevant, and reviewed the policy at issue. (App. 741; 825.) The principles regarding employment investigations as held by the Court in *Feeback* should be applied in this case as well.

For the reasons cited above and in its initial briefing, this Court should find that the District Court erred in failing to grant the City Defendants summary judgment with respect to its *Faragher-Ellerth* affirmative defense and Ms. Rheeder's negligence claims.

D. The Iowa District Court Erred In Finding Mr. McHale Could Be Individually Liable For Retaliation For Issuing A Training Memo To Ms. Rheeder.

Ms. Rheeder's arguments fail to address the issue relevant to Mr. McHale: that a single training memo could not rise to the level of an adverse employment action under Iowa law. (App. 194.) *See generally*, *Weger v. City of Ladue*, 500 F.3d 710 (8th Cir. 2007) (holding that following a sexual harassment complaint from communications operators against a supervising police officer, a Department

directive from the Chief of Police instructing officers not to enter the communications operators' work areas except for a business purpose was not retaliatory). Throughout her briefing, and often without citation to the record, Ms. Rheeder refers to the training memo as a written warning, but she never addresses the objective reality of the document. The words "written warning" appear nowhere on the training memo. (App. 194.) Objectively, throughout the Department, training memos are not viewed as disciplinary. (App. 743.) Furthermore, subjectively, the training memo did not dissuade Ms. Rheeder from raising further complaints. Without rehashing the arguments in its Interlocutory Appeal Brief, the City Defendants continue to request this Court to correct the District Court's error in finding that there is a genuine issue of material fact on whether the training memo qualifies as an adverse employment action, and should therefore reverse the District Court's denial of summary judgment of Ms. Rheeder's retaliation claims against the City Defendants.

E. The Iowa District Court Erred In Finding The City Could Be Vicariously Liable For Discrete Acts Of Alleged Retaliatory Conduct By Mr. McHale And Ms. Gray.

The City joins Ms. Gray's claims on this issue and contends that if the Court reverses summary judgment on the individual retaliation claims, the City of Marion cannot be held vicariously liable for Mr. McHale and Ms. Gray's conduct. Accordingly, this Court should correct these errors with respect to the application of

established case law on the sufficiency of evidence for materially adverse employment actions.

II. THE IOWA DISTRICT COURT ABUSED ITS DISCRETION BY RULING THAT EVIDENCE OF PRIOR COMPLAINTS AGAINST MR. SLAGLE AND EVIDENCE OF MR. SLAGLE'S "REPUTATION" ARE ADMISSIBLE AGAINST THE CITY AT TRIAL.

The City incorporates its arguments in Section I. (B-E) *supra*, by reference. In addition to those arguments, the City addresses Ms. Rheeder's argument that it is requesting an advisory opinion from this Court. Ms. Rheeder titles this portion of her briefing with an argument that "the District Court did not abuse its discretion in concluding that some evidence of prior sexual harassment ***will be*** admitted at trial to disprove the City's affirmative defense." (Plaintiff-Appellee's Brief at 57 (emphasis supplied)). Despite acknowledging the District Court's ruling that the evidence "is admissible (at least in part) with respect to Defendants other than Slagle", Ms. Rheeder contradicts herself and claims that the City is inappropriately seeking an advisory opinion when there has been no "final evidentiary rulings" on the issue. (Plaintiff-Appellee's Brief at 58.) The District Court's ruling plainly stated that evidence that had not been analyzed by the Court for undue prejudice under Iowa Rule of Evidence 5.403, that is not based on personal knowledge, and that is related to consensual relationships which is not relevant to the "distinct motivations and underlying conduct" of "unwelcome sexual harassment" will be admitted, at least in part. (App. 829.)

Ms. Rheeder cites *Lopez v. City of Alburquerque*, an unreported federal district court ruling on a motion in limine, to support her position that the evidence of prior complaints against Mr. Slagle and of his "reputation" will be admissible. (Plaintiff's Brief at 64.) Again, Ms. Rheeder's brief does not provide a complete analysis of the case. In *Lopez*, the Court excluded evidence of the Defendant's alleged harassment outside of the workplace, holding that it was "not relevant to establish the environment in which [the plaintiff] and other women worked with [the defendant] at the City," noting that in addition the complaints were "unsubstantiated." *Lopez*, 2010 WL 11590684 at *2-*3 (D.N.M. Oct. 5, 2010) (citing *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1415 (10th Cir. 1987) and noting in *Hicks* the Court concluded "that incidents of sexual harassment involving employees other than the plaintiff are relevant in establishing the general work atmosphere, ***but apparently limiting the inquiry to harassment of those 'working alongside' the plaintiff***." (emphasis supplied)). Clearly *Lopez* does not support admitting decades' old complaints of non-employees, Ms. Wilson (a police officer) and others who did not work "alongside" of Ms. Rheeder,. In fact, the only evidence that the *Lopez* court found admissible was evidence that other similarly situated employees had been sexually harassed by the defendant. *Id.* at *5. And, that the court would consider whether Lopez knew about the alleged harassment of her co-workers, because "harassment of which the plaintiff is not aware cannot make out a

[subjectively] hostile work environment claim." *Id* at *6 (internal citation omitted). Finally, in a very limited and specific instances where the disputed evidence was not based on similarly situated employees, the Court noted that it could be relevant "if it [could] be established without relying on hearsay or other inadmissible evidence..." *Id.* at *7.

Ms. Rheeder's briefing also relies on another out-of-jurisdiction authority that does not analyze the admissibility of the alleged harasser's prior complaints or alleged "reputation" to support her arguments. *See*, *supra*, Section I. A. discussing *Herndon*.

Because Ms. Rheeder's briefing does not provide any Iowa authority as support for the District Court's decision to admit this evidence without analyzing it under the Iowa Rules of Evidence, for the reasons previously stated, and for those reasons set forth in this Section, this Court should reverse the District Court's order permitting inadmissible evidence at trial against the City of Marion.

III. THE IOWA DISTRICT COURT ABUSED ITS DISCRETION BY SUA SPONTE GRANTING THE PLAINTIFF THE RIGHT TO AMEND HER PETITION TO STATE A RETALIATORY HOSTILE WORK ENVIRONMENT CLAIM.

Ms. Rheeder's briefing on this issue omits any arguments with respect to the City or Mr. McHale. The City and McHale will respond to her arguments out of an abundance of caution. Other than in her routing statement, Ms. Rheeder ignores that the District Court's sua sponte order allowing her to amend her petition resulted in

her making a claim not recognized to date under Iowa law. Again, without citation to the record, Ms. Rheeder argues that the District Court concluded that a retaliation claim based on a hostile work environment *may* exist but fails to mention that Iowa law has not actually recognized the claim or established its elements. (Plaintiff-Appellee's Brief at 71.) In fact, the District Court made very clear there was ambiguity on what the elements of a retaliation claim based on a hostile work environment were. (App. 836.)

Ms. Rheeder also argues that the Defendants should not have been surprised by the amendment to her petition because the claim was recognized by federal courts, citing *Stewart v. Indep. Sch. Dist. No. 196*, 481 F.3d 1034, 1042 (8th Cir. 2007). The most obvious problem with this argument is the fact that the City Defendants were in fact surprised by this claim. Ms. Rheeder did not bring this lawsuit under federal law. She brought it under the laws of the state of Iowa, where the Court has yet to determine if this type of claim exists. *Godfrey v. State*, 962 N.W.2d 84, 110 (acknowledging that the Court does not have to reach the issue of defining a retaliation claim based on a hostile work environment because that was not at issue in the case). Even if the claim clearly existed in Iowa law, Ms. Rheeder's petitions did not say the words " retaliatory hostile work environment." Similarly, Ms. Rheeder's briefing fails to clarify how her First Amended Petition, which only pled a single, discrete claim of retaliation against Mr. McHale, put either the City or

Mr. McHale on notice of and allowed them to defend against this new, unknown, and undefined state claim.

Finally, Ms. Rheeder's arguments completely ignore that the Defendants were unable to conduct discovery or move for summary judgment on this claim because it was not pled until eight weeks before trial. For these reasons and those reasons set forth in all of the Defendants' appeal and reply briefs, this Court should reverse the District Court's order permitting Ms. Rheeder to amend her petition to include an additional claim eight weeks before trial after discovery and pleadings deadlines had closed.

JOINDER

In addition to the arguments in this brief and their interlocutory appeal brief, the City Defendants expressly join in and agree with the arguments in the briefing filed by Ms. Gray and Mr. Slagle for the reasons set forth their applications.

CONCLUSION

For the reasons stated above and those stated in the City's interlocutory appeal brief, the City respectfully requests this Court reverse the District Court's January 20, 2023 and April 18, 2023 Orders and find the District Court erred as a matter of law when it denied the City of Marion and Joseph McHale's summary judgment and abused its discretion when it determined that inadmissible evidence could be used to deny the City Defendants motions for summary judgment and in sua sponte allowing

the Ms. Rheeder to amend her petition eight weeks prior to trial. Accordingly, the District Court's Orders should be reversed, and summary judgment should be entered in favor of the City Defendants.

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

1. This reply brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or 2 because this brief contains **4,324 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 14-point Times New Roman typeface.

Dated this 30th day of January, 2024.

/s/ Amy L. Reasner