IN THE IOWA SUPREME COURT

Supreme Court No. 23-0605
Linn County District Court No. LACV093892

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
ORDER DATED APRIL 3, 2023

THE HONORABLE VALERIE L. CLAY,
DISTRICT COURT JUDGE

DEFENDANT-APPELLANT DOUGLAS SLAGLE'S BRIEF

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ROUTING STATEMENT

The issues presented by Slagle on appeal involve the application of existing legal principles do not fall within the type of cases enumerated in Iowa R. App. P. 6.1101(2) and could, therefore, be transferred to the Court of Appeals. Iowa R. App. P. 6.1101(3). However, Slagle understands that other Defendant-Appellants have raised issues that concern a conflict between published decisions of the Supreme Court and substantial issues of first impression. Because the issues raised by other Defendant-Appellants are appropriately retained by the Supreme Court pursuant to Iowa R. App. P. 6.1101(2), Slagle requests that the Supreme Court retain the entire case, including all issues raised by all Defendant-Appellants.

STATEMENT OF THE CASE

The Appellee-Plaintiff, Valerie Rheeder ("Rheeder"), filed a Petition in Linn County District Court against Appellants-Defendants City of Marion (the "City"), Douglas Slagle, Shellene Gray, and Joseph McHale (collectively, "Defendants"), which she amended on January 21, 2020, and on April 13, 2023 (App. 1023-32). The City employed Rheeder as a part-time custodian at the Marion Police Department beginning in August 2018 and until her resignation in August 2019. (App. 1023-32). Rheeder's Second Amended Petition asserts claims of sexual harassment against Defendant Slagle, retaliation against

Defendants Shellene Gray and Joseph McHale, and vicarious and direct liability against Defendant City of Marion. (App. 1023-32).

Defendants moved for summary judgment on all of Rheeder's claims on September 30, 2022. (App. 65-70). On January 20, 2023, the District Court issued its Ruling denying Slagle's Motion for Summary Judgment (the "Summary Judgment Order"), finding that Rheeder's allegations are "just sufficient to survive summary judgment." (App. 712). The Court likewise denied the other Defendants' Motions for Summary Judgment, other than the motion on constructive discharge, which was granted. (App. 691-723). On February 6, 2023, Slagle filed a Motion to Reconsider or Enlarge the Summary Judgment Order pursuant to Iowa Rule of Civil Procedure 1.9404(2). (App. 760-67). The other Defendants likewise filed Motions to Reconsider or Enlarge. (App. 768-85). On April 3, 2023, the District Court issued its Ruling on all Defendants' Rule 1.9404(2) Motions (the "Reconsideration Order"). (App. 827-40).

The Reconsideration Order clarified portions of the Summary Judgment Order but largely affirmed the District Court's findings in the Summary Judgment Order. (App. 827-40). The Reconsideration Order affirmed the District Court's denial of Slagle's Motion for Summary Judgment and affirmed its findings that Slagle's conduct was objectively severe and pervasive enough

to create a hostile working environment and that Rheeder's history as a domestic violence victim is relevant as to whether Slagle's conduct was objectively hostile or abusive. (App. 836-37). The Reconsideration Order also found that "evidence regarding Slagle's reputation and alleged history of inappropriate sexual behaviors in and around the workplace is admissible (at least in part) with respect to the Defendants *other than* Slagle[,]" and "evidence of prior complaints against Slagle and his reputation at the MPD are admissible against the City." (App. 829, 839 (emphasis in original)). The Court further noted "much of this evidence is likely inadmissible for the purpose of proving Rheeder's claim against *Slagle*." (App. 829) (emphasis in original)). However, the Court did not definitively rule which specific evidence it deemed admissible or inadmissible with respect to Rheeder's claims against Slagle. (App. 827-40).

Defendant Slagle timely filed an Application for Interlocutory Appeal of the District Court's Summary Judgment Order and Reconsideration Order pursuant to Iowa R. App. P. 6.104(1) on April 14, 2023. (Slagle's April 14, 2023, Application for Interlocutory Appeal). Defendants Gray, McHale, and the City also filed Applications for Interlocutory Appeal. (App. 841-925, 929-1020). On September 28, 2023, the Iowa Supreme Court granted Defendants' Applications for Interlocutory Appeal. (App. 1033-35). Slagle seeks interlocutory review of the District Court's findings in its Summary Judgment

Order and Reconsideration Order that evidence of Slagle's reputation, prior complaints against him, and alleged sexual history is admissible; Slagle's conduct was objectively severe and pervasive enough to create a hostile working environment; and Slagle's knowledge of Rheeder's history of domestic violence is relevant as to whether Slagle's conduct was objectively hostile or abusive.

STATEMENT OF THE FACTS

I. THE PARTIES.

Defendant Slagle began working at the Police Department in March 1992 as a police officer. (App. 377). Approximately four years later, he was promoted to a sergeant, and then a lieutenant eight years after that. (App. 377-78). In 2012, he was promoted to captain, which was later changed to the title of deputy chief of police. (App. 378-79).

Rheeder began work as a custodian at the Police Department on August 6, 2018. (App. 381). Rheeder and Slagle exchanged cell phone numbers a couple of months later, in October 2018. (App. 370). They had a cordial relationship at work and began to develop a friendship. Rheeder admits she enjoyed talking with Slagle about deep subjects such as their children, family members, and friends. (App. 344, 369-70). Rheeder asked Slagle for advice relating to social media and bullying, and she appreciated

the advice he gave her. (App. 369). The two shared life experiences with each other. Rheeder taught Slagle about a "South African handshake." (App. 370). Rheeder told Slagle that she found him interesting. (App. 344, 369-70). At the Police Department Christmas party in 2018, Slagle gave Rheeder and her daughter a tour of the department. (App. 370). Rheeder did not perceive anything to be inappropriate about their interactions at the party. (App. 370).

II. INTERACTIONS IN JANUARY 2019.

The week following Christmas break—on January 7, 2019, a Monday, or January 8, 2019, a Tuesday—the two had an in-person conversation at the Police Department. (App. 371). Rheeder alleges that this is the first time she perceived that Slagle had a romantic interest in her. (App. 370-71). The two began exchanging text messages a day or two later, on Wednesday, January 9, 2019. (App. 85-91). The text messages were friendly and involved a mutual, back-and-forth banter. (App. 85-91). On occasion, Rheeder initiated the text messages. (App. 374). Rheeder expressed that Slagle's position as deputy chief made her nervous, and he inquired about whether she wanted to be friends or merely coworkers. (App. 85-91). The text messages continued for two more days, until Friday, January 11, 2019. (App. 91-103).

At that point, Rheeder was concerned that Slagle was romantically interested in her. Rheeder met Slagle in his office and informed him that she

was not interested in a romantic relationship. (App. 382). Rheeder admits she never told Slagle that she was not interested in a personal relationship with him before January 11, 2019. (App. 373-74). Rheeder further admits that her communications like "LOL" and smiley faces could give the impression that she wanted to participate in the conversation with Slagle. (App. 374). Slagle apologized repeatedly and informed Rheeder that he did not intend his messages to be sexual in nature, he was happily married, and he wanted to be friends. (App. 171-72, 335, 382). Following the conversation, Slagle sent Rheeder a text message, thanking her for being open and honest. (App. 97). Rheeder told him she was "grateful for [their] conversation" and that they could be friends. (App. 97-100). No further text messages were exchanged between Rheeder and Slagle after January 11, 2019. (App. 85-103).

Sometime the next week, Rheeder and Slagle exchanged a handshake that she perceived to be uncomfortable. (App. 334-35). Rheeder feared that Slagle may not have understood her intent during their conversation the previous Friday, January 11 because the conversation had been interrupted and cut short. (App. 366). To be sure her message was understood, Rheeder confronted Slagle again on Thursday, January 17 and told him his communications made her uncomfortable. (App. 366). Slagle had already ceased all communications with Rheeder following the January 11

conversation but again agreed to end the communications. (App. 334). Rheeder alleges no further interactions between herself and Slagle.

III. RHEEDER'S SEXUAL HARASSMENT COMPLAINT.

While Rheeder admits the communications between her and Slagle had already stopped after their initial conversation on January 11, she reported the interactions with Slagle to Sergeant Jeff Hartwig on Friday, January 18. (App. 174). Rheeder expressed that she was hesitant to make the report because of her friendship with Slagle and because she did not want him to get into trouble. (App. 367). Sergeant Hartwig and Defendant Chief McHale investigated Rheeder's complaint and concluded that no sexual harassment had occurred but rather the two had engaged in a mutual, back and forth innuendo. (App. 247-64, 315-16). Chief McHale and Sergeant Hartwig issued training memos to Slagle and Rheeder, instructing both of them to have no further contact with each other. (App. 247-64). Both Rheeder and Slagle followed the instructions and had no further communication with each other, and Rheeder admits the conduct she perceived to be harassing had stopped. (App. 373). Rheeder made no subsequent complaints about Slagle.

Rheeder continued her custodial work at the Police Department in February and March, seemingly satisfied with the outcome. In early March 2019, she told her therapist that "[w]ork [was] going well." (App. 217).

In April 2019, the City of Marion hired an external investigator, Fran Haas, to reinvestigate Rheeder's complaint, along with other issues at the City, following a complaint by a different City employee. (App. 146-52). At this point, the January interactions between Rheeder and Slagle resurfaced, along with Rheeder's new allegations of retaliation by other Defendants (not Slagle) in this case. Rheeder was anxious about the investigation and told her therapist that "[s]he thought everything was done with the issue. [Slagle] doesn't talk to her and they aren't around each other." (App. 225).

Ultimately, Haas's investigation concluded that Slagle's conduct, which Rheeder told her had stopped on January 11, 2019, violated City policy. (App. 158-93). Slagle submitted his voluntary resignation on May 3, 2019, effective July 5, 2019. (App. 384). Rheeder too eventually resigned from the Police Department in August 2019. (App. 333).

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION IN FINDING THAT EVIDENCE OF SLAGLE'S REPUTATION, PRIOR COMPLAINTS, AND ALLEGED HISTORY OF INAPPROPRIATE SEXUAL BEHAVIOR IS ADMISSIBLE.

A. Preservation of Error.

Slagle raised and preserved this issue through his reply brief in support of his Motion for Summary Judgment. (App. 650-63). The issue was then decided in the District Court's Summary Judgment Order. (App. 692). Based

on the District Court's Summary Judgment Order, Defendant Slagle then raised the issue via his Rule 1.904(2) Motion. (App. 760-67). This issue was decided in the District Court's Reconsideration Order. (App. 1009). Thus, all the issues set forth herein have been preserved for appellate review pursuant to Iowa R. App. P. 6.101, 6.102, and 6.103.

B. Standard of Review.

Trial court rulings on admissibility of evidence are reviewed for abuse of discretion. *See Gamerdinger v. Schaefer*, 603 N.W.2d 590, 594 (Iowa 1999).

C. Evidence of Slagle's reputation, prior complaints against him, and alleged history of inappropriate sexual behaviors is inadmissible.

In resisting Slagle's Motion for Summary Judgment, Rheeder attempted to deflect from the lack of facts supporting her own sexual harassment claim by attacking Slagle's character and pointing to inadmissible evidence of Slagle's alleged sexual history from over a decade prior. Rheeder sought to introduce three categories of inadmissible evidence: (1) evidence of a prior consensual sexual relationship from over 20 years ago; (2) evidence of discipline from 2007 relating to Slagle's use of email and consensual extramarital affairs; and (3) evidence of Slagle's reputation generally. Slagle argued that this evidence is inadmissible, and Rheeder cannot rely on inadmissible evidence to defeat summary judgment. The District Court wrote that it "[took] no position" on

admissibility in its Summary Judgment Order, but it seemingly considered at least some of the evidence. (App. 692).

In its Reconsideration Order, the District Court clarified its ruling that "*much* of this evidence is *likely* inadmissible for the purpose of proving Rheeder's claim against Slagle." (App. 829). The District Court did not state definitively *which* evidence is inadmissible. Moreover, the District Court went on to state that "evidence regarding Slagle's reputation and alleged history of inappropriate sexual behaviors in and around the workplace is admissible (at least in part) with respect to the Defendants other than Slagle[,]" and "evidence of prior complaints against Slagle and his reputation at the [Marion Police Department] are admissible against the City." (App. 829, 839).

The District Court's suggestions for reconciling admissibility issues were to (1) issue a curative instruction or (2) bifurcate the issues. (App. 829). Neither of these options are viable. It will be impossible for a jury to ignore evidence presented at trial of Slagle's alleged reputation, prior complaints against him, and prior sexual history when rendering a verdict on Rheeder's claim of sexual harassment against him. A curative instruction would not adequately protect Slagle from unfair prejudice. Additionally, bifurcating Rheeder's claim against Slagle from the other claims in this case would result in doubling Rheeder's chances to obtain a verdict and judgment for the same alleged emotional distress

damages. Rheeder would have an opportunity to try her sexual harassment claim against Slagle, as well as a second opportunity to try her claim for direct and vicarious liability against the City and retaliation against McHale and Gray; yet, she has not asserted separate damages against each Defendant. Rheeder thus could obtain two or more judgments for the same alleged injury, or she may have a second chance at obtaining a judgment if she is unsuccessful in her first attempt. Simply put, there is no fair manner in which this evidence can be admitted without unfairly prejudicing Slagle and the other Defendants.

Further, while the District Court seemingly opines that the "much of" this evidence "is likely" inadmissible against Slagle, it has not issued a ruling as to which portion(s) of the evidence is admissible against Slagle. The District Court abused its discretion in determining that *any* of the evidence at issue is admissible under Iowa law. This Court should determine that the "me too," character, and reputation evidence is inadmissible in its entirety, and it cannot be used to prove Rheeder's claims at trial or to defeat Defendants' motions for summary judgment.

i. Allegations relating to Andrea Wilson.

More specifically, the first category of evidence Rheeder attempted to introduce in her Resistance to Slagle's Motion for Summary Judgment is evidence of a prior consensual sexual relationship with a former police officer,

Andrea Wilson, from over two decades ago. (App. 394-395). Slagle had one sexual encounter with Wilson nearly 25 years ago when Wilson was a civilian not yet working at the Police Department. (App. 436-41, 687). Andrea Wilson is not a party to this lawsuit, and allegations regarding Slagle's interactions with her over 20 years ago have absolutely no bearing on Rheeder's sexual harassment claim in this case. While Slagle disputes many of the allegations Rheeder makes regarding his relationship with Wilson and disputes the characterization of that relationship, the accuracy or inaccuracy of those facts is not relevant. Wilson has not asserted a sexual harassment claim against Slagle. Nor does she claim that the one sexual encounter she had with Slagle was not consensual. To the contrary, during an internal investigation in 2017 regarding an unrelated complaint by Wilson, Wilson clearly told the investigator that "Doug hasn't harassed her" and that Slagle was the only person who had asked if she was "okay." (App. 684).

In its Reconsideration Order, the District Court clarified that it did not rely on evidence relating to Wilson in its Summary Judgment Order. (App. 829). However, it generally held that "evidence regarding Slagle's reputation and alleged history of inappropriate sexual behaviors in and around the workplace is admissible (at least in part) with respect to the Defendants *other than* Slagle." (App. 829). The District Court abused its discretion in finding

that any evidence relating to Wilson is admissible in this case. Evidence of Slagle's consensual relationship with Wilson in the 1990s is inadmissible and irrelevant under Iowa Rule of Evidence 5.401. *See* Iowa R. Evid. 5.402 ("Irrelevant evidence is not admissible.").

Even if Slagle's relationship with Wilson were arguably relevant, its probative value is substantially outweighed by a danger of unfair prejudice. *See* Iowa R. Evid. 5.403; *see also Stephens v. Rheem Mfg. Co.*, 220 F.3d 882, 885 (8th Cir. 2000) (excluding evidence of rumors of sexual affairs because "probative value was substantially outweighed by the danger of unfair prejudice"); *Scott v. City of Sioux City, Iowa*, 96 F. Supp. 3d 876, 885 (N.D. Iowa 2015) (excluding evidence or prior consensual sexual relationship with coworker as such evidence was likely to "misdirect the jurors, enflame their passions in response to behavior . . . that has little relevance to [plaintiff's] claims, and cause jurors to decide the case on the basis of their emotional response . . . , rather than on the basis of the evidence concerning the alleged misconduct"); *Hughes v. Goodrich Corp.*, No. 3:08CV263, 2010 WL 3746598, at *13 (S.D. Ohio Sept. 21, 2010) (excluding evidence of prior consensual sexual relationships with coworkers as not relevant).

Similarly, Rheeder's allegation that Slagle "sexually harassed Andrea during her entire career"—an allegation that Slagle categorically denies, and

which Wilson admittedly never reported, even during the 2017 investigation—is likewise inadmissible as irrelevant, unfairly prejudicial, and improper character evidence. *See* Iowa R. Evid. 5.402, 5.403, and 5.404. Iowa Courts have found such evidence to be improper and untimely "me too" evidence. *See Salami v. Von Maur, Inc.*, No. 12–0639, 2013 WL 3864537, at *9 (Iowa Ct. App. 2013) (affirming district court's exclusion of "me too" evidence). "[T]rial courts regularly prohibit 'me too' evidence from or about other employees who claim discriminatory treatment because it is highly prejudicial and only slightly relevant." *Johnson v. Interstate Brands Corp*., 351 F. App'x 36, 41 (6th Cir. 2009); *see also Jones v. St. Jude Med. S.C., Inc.*, 823 F. Supp. 2d 699, 734 (S.D. Ohio 2011) ("'Me too' evidence is typically inadmissible under Rule 403 of the Federal Rules of Evidence because it prejudices the defendant by embellishing plaintiff's own evidence of alleged discrimination and typically confusing the issue of whether the plaintiff, and not others, was discriminated against.").

Wilson's generalized allegations regarding her interactions with Slagle are not at all similar to Rheeder's "circumstances and theory of the case." *See Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379 (2008). Wilson had a prior consensual relationship with Slagle, knew him for years prior to her joining the Police Department, never complained about him during her 15-

year career with the City, and only now alleges unwanted touching and conduct had occurred during their relationship. (App. 395). None of these circumstances are similar at all to Rheeder's claim, which occurred years later, involved no prior relationship, had no direct reporting structure, and includes no allegations of unwanted touching.

Further, Wilson and Rheeder were never employed by the City of Marion at the same time, and they were not similarly situated in essential job functions, role, or chain of command. *See, e.g.*, *Burleson v. Sprint PCS Group*, 123 Fed. Appx. 957, 960 (10th Cir. 2005) (affirming exclusion of "me too" evidence where the other employees' complaints were dissimilar and unrelated to plaintiff's claims); *Thomas v. Performance Contractors, Inc.*, 2018 WL 10561988 (N.D. Iowa 2018) (excluding "me too" evidence in granting employer's motion for summary judgment, in part because the coworkers identified did not appear to hold the same or similar job positions as the plaintiff). The Eighth Circuit has held that employees must be "similarly situated in all material respects." *Smith v. URS Corp.*, 803 F.3d 964, 970 (8th Cir. 2015). This test "is rigorous and requires that the other employees be similarly situated in all relevant aspects before the plaintiff can introduce evidence comparing [herself] to the other employees." *Davis v. Jefferson*

Hosp. Ass'n, 685 F.3d 675, 681-82 (8th Cir. 2012). Rheeder has pointed to no facts indicating that she is similarly situated to Wilson in *any* aspect.

The District Court abused its discretion in grouping all evidence into one category of "evidence regarding Slagle's reputation and alleged history of inappropriate sexual behaviors in and around the workplace" and finding it to be admissible without individually considering the specific evidence at issue. (App. 829). This Court should reverse the District Court's ruling that such evidence is admissible and find that any allegations relating to Wilson are inadmissible and cannot be used to defeat Slagle's summary judgment motion or to support Rheeder's claims at trial.

ii. Slagle's use of email in 2007.

The second category of information Rheeder sought to introduce in her Resistance to Slagle's summary judgment motion is character evidence of discipline from 2007 relating to Slagle's use of email and consensual extramarital affairs. (App. 397). Again, the District Court abused its discretion in not individually considering this specific evidence and holding that *all* evidence of "Slagle's reputation and alleged history of inappropriate sexual behaviors in and around the workplace" is admissible as a whole. (App. 829).

This 2007 incident involving Slagle's use of email has absolutely no relevance to Rheeder's claim of sexual harassment over a decade later. The

individuals who Slagle was disciplined for emailing were not employees of the Police Department or the City of Marion. (App. 462-64). Nor has Rheeder presented any evidence that any relationship that Slagle may have had with any of these women was not consensual. The fact that Slagle may have exchanged consensual sexually explicit emails with women in 2007 is of no consequence to determining Rheeder's sexual harassment claim. *See* Iowa R. Evid. 5.401, 5.402. Moreover, it is improper character evidence that is explicitly inadmissible under Iowa Rule of Evidence 5.404.

Likewise, the complaint made by one of these women, Tina Alpers, to her supervisor is similarly improper character evidence as well as inadmissible "me too" evidence. *See* Iowa R. Evid. 5.404(b); *Salami*, 2013 WL 3864537, at *9. Alpers was not an employee of the City of Marion; her complaint about Slagle's conduct was made 12 years before Rheeder's; and there are no similarities between Rheeder's "circumstances and theory of the case." *See* (App. 462-63); *Sprint/United Mgmt. Co.*, 552 U.S. at 388. Accordingly, any evidence relating to Alpers is inadmissible, and the District Court abused its discretion in finding it to be admissible.

iii. Slagle's reputation generally.

Finally, Rheeder sought to introduce evidence of Slagle's reputation generally by attempting to establish his character as "a predator empowered

by his position in the police department to prey on women." (App. 829). In her Resistance to Slagle's Motion for Summary Judgment, Rheeder dramatizes his alleged "well-known mantra" and "countless victims" with unsubstantiated rumors. (App. 655). Such a character attack is squarely within the confines of Iowa Rule of Evidence 5.404 and is inadmissible. Case law is clear that "the admittance of such salacious rumor-based evidence could . . . unduly prejudice[] the jury against [Slagle], and . . . this danger of prejudice greatly outweigh[s] the limited probative value of the evidence." *Stephens*, 220 F.3d at 885. Further yet, Rheeder made references to third parties who "heard that Doug Slagle had made other advances toward women that were inappropriate" and other rumor-based evidence. (App. 655). Such evidence constitutes inadmissible hearsay under Iowa Rule of Evidence 5.801 and 5.802. To the extent Rheeder references rumors of Slagle's affairs or his reputation with women generally, such references should have been disregarded by the District Court as inadmissible evidence. However, the District Court abused its discretion in concluding "the Court is not willing to impose a blanket prohibition on the introduction of evidence concerning Slagle's reputation and past conduct." (App. 829).

This "me too," character, and reputation evidence has a direct and material impact on the claim against Slagle and the other Defendants in this

case. None of it is admissible to establish that Slagle sexually harassed Rheeder or to establish any of Rheeder's other claims against other Defendants. The District Court's conclusion that such evidence is admissible in support of Rheeder's claims against the City was an abuse of discretion, as any potential relevance is substantially outweighed by the danger of unfair prejudice against Slagle. There is no manner in which Rheeder can introduce any of the evidence at issue without unfairly prejudicing Slagle.

Accordingly, this Court should reverse the District Court's Reconsideration Order on the admissibility of this evidence and find that it is inadmissible in its entirety.

II. THE DISTRICT COURT ERRED IN DENYING SLAGLE'S MOTION FOR SUMMARY JUDGMENT.

A. Preservation of Error.

Slagle raised and preserved this issue through his Rule 1.904(2) Motion addressing the District Court's denial of his Motion for Summary Judgment. (App. 760-67). The issue was decided in the District Court's Reconsideration Order wherein the District Court affirmed its denial of Slagle's Motion for Summary Judgment. (App. 836-837).

B. Standard of Review.

District court rulings denying motions for summary judgment are reviewed for correction of legal error. *Cote v. Derby Ins. Agency, Inc.*, 908

N.W.2d 539 (Iowa Ct. App. 2017). Under Iowa Rule of Civil Procedure 1.981(3), a court "shall" grant summary judgment if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." The opposing party "may not rest upon the mere allegations of his pleading but must set forth specific facts showing the existence of a genuine issue for trial." *Hlubek v. Pelecky*, 701 N.W.2d 93, 95 (Iowa 2005) (citing Iowa R. Civ. P. 1.981(5)).

C. The District Court erred by concluding that Slagle's conduct was objectively severe and pervasive enough to create a hostile working environment.

i. Iowa courts require a high threshold to establish actionable harassment.

To show actionable harassment, a plaintiff must "not only show he or she subjectively perceived the conduct as abusive, but that a reasonable person would also find the conduct to be abusive or hostile." *Farmland Foods*, 672 N.W.2d at 744. To determine whether a reasonable person would find the conduct to be abusive or hostile, the factfinder must examine all of the circumstances, including "(1) the frequency of the conduct, (2) the severity of the conduct, (3) whether the conduct was physically threatening or humiliating or whether it was merely offensive, and (4) whether the conduct unreasonably interfered with the employee's job performance." *Id*. at 744–45.

Under these factors, Rheeder falls far short of the "high threshold to demonstrate actionable harm." *Nitsche v. CEO of Osage Valley Elec. Co-op.*, 446 F.3d 841, 846 (8th Cir. 2006).[1]

Iowa courts have "'repeatedly emphasized that anti-discrimination laws do not create a general civility code.'" *Sellers v. Deere & Co.*, 23 F. Supp. 3d 968, 988 (N.D. Iowa 2014) (quoting *Ryan v. Capital Contractors, Inc.*, 679 F.3d 772, 779 (8th Cir. 2012)). They also are "'not designed to purge the

[1] In the Summary Judgment Order, the District Court asserted that "Iowa courts seem to have set a lower standard for the fourth element than the Eighth Circuit." (App. 994) (referencing *McElroy v. State of Iowa*, 637 N.W.2d 488, 499 Iowa 2001)). In Slagle's Motion to Reconsider, Slagle asked the District Court to reconsider its finding that Iowa courts have set a lower standard for severe and pervasive conduct than the Eighth Circuit, and, to the extent the District Court mistakenly assessed Rheeder's sexual harassment claim against Slagle under a lower standard than that set by Iowa and Eighth Circuit precedent, to reconsider its analysis of whether Slagle's alleged conduct was objectively sufficiently severe and pervasive to survive summary judgment. In addressing this issue in its Reconsideration Order, the District Court simply struck that language from the Summary Judgment Order, noting "any difference between the two in the requisite prima facie showing of sexual harassment does not appreciably impact the outcome." (App. 1017). Thus, the District Court affirmed its ruling against Slagle while still maintaining that Iowa and the Eighth Circuit precedent set forth different standards, which is an error at law. Iowa courts have repeatedly confirmed that "both Iowa Civil Rights Act (ICRA) and Title VII sexual harassment claims are analyzed under the same legal framework[.]" *Wright v. Ross Holdings, LLC*, No. 14-1106, 2015 WL 1848534, at *3 (Iowa Ct. App. Apr. 22, 2015); *see also Paskert*, 2018 WL 5839092, at *9 ("The Iowa Supreme Court has generally turned to federal law, including decisions of the Eighth Circuit Court of Appeals, when considering hostile work environment claims under the ICRA.").

workplace of vulgarity.'" *Duncan v. Gen. Motors Corp.*, 300 F.3d 928, 934 (8th Cir. 2002) (quoting *Baskerville v. Culligan Int'l Co.*, 50 F.3d 428, 430 (7th Cir. 1995)); *see also Hall v. Gus Constr. Co.*, 842 F.2d 1010, 1017 (8th Cir. 1988) ("Title VII does not mandate an employment environment worthy of a Victorian salon."). "[S]ome conduct well beyond the bounds of respectful and appropriate behavior is nonetheless insufficient to violate Title VII [or the ICRA]." *Paskert v. Kemna-ASA Auto Plaza, Inc.*, 950 F.3d 535, 538 (8th Cir. 2020). "The Supreme Court has cautioned courts to be alert for workplace behavior that does not rise to the level of actionable harassment." *Al-Zubaidy v. TEK Indus., Inc.*, 406 F.3d 1030, 1038 (8th Cir. 2005). For that reason, the standards for a hostile environment are "demanding," and "conduct must be extreme and not merely rude or unpleasant to affect the terms and conditions of employment." *Alagna v. Smithville R-II Sch. Dist.*, 324 F.3d 975, 980 (8th Cir. 2003).

ii. The alleged sexual harassment was not severe or pervasive enough to create a hostile working environment.

The District Court erred in finding that a reasonable person would find Slagle's conduct to be abusive or hostile. Slagle's conduct was not frequent, severe, or physically threatening or humiliating, and it did not unreasonably interfere with Rheeder's job performance. *See Farmland Foods*, 672 N.W.2d at 744–45. The undisputed facts in case show that: (1) Rheeder and Slagle

exchanged text messages over a three-day period in January 2019; (2) Slagle did not directly proposition Rheeder for sex or explicitly tell her he wanted to have a sexual relationship with her; (3) after a few days, Rheeder told Slagle he was making her uncomfortable and asked him to stop; and (4) Slagle immediately apologized and ceased all communications with Rheeder. (App. 976-82).

In its erroneous finding that Rheeder's allegations were "just sufficient to survive summary judgment," the District Court conceded that the conduct occurred "over a very short period of time[.]" (App. 712). The District Court cited only the following facts supporting its finding that a reasonable factfinder could find Slagle's conduct to be objectively hostile or abusive:

> Slagle's inappropriate conduct occurred frequently, albeit over a very short period of time in January 2019. Arguably, Slagle's behavior after he and Rheeder agreed to be friends—leaning in to place his cheek against hers while shaking her hand—could reasonably be perceived as physically intimidating, if not outright threatening, particularly given Slagle's knowledge about Rheeder's history as a domestic violence victim. The severity of his conduct was amplified by the power disparity between Rheeder and Slagle, which is the key factor in the Court's holding. Had Slagle been a coworker or a low-ranking officer, his behavior would have been less impactful.

(App. 995). The District Court did not cite any case law in support of its finding that a reasonable factfinder could find this conduct to be objectively hostile or abusive. (*See id.*). Nor did it reconcile the fact that this conduct

plainly is not severe or pervasive enough to constitute actionable harassment under decades of Iowa and Eighth Circuit precedent. (App. 837). Even taking every single action that Rheeder found to be "inappropriate" in sum, Slagle's conduct cannot be characterized as severe, pervasive, physically threatening or humiliating, or unreasonably interfering with Rheeder's job performance. *See Easterday v. Whirlpool Corp.*, No. 19-CV-20-LRR, 2020 WL 1536698, at *8 (N.D. Iowa Mar. 31, 2020) (rejecting hostile work environment claim where comments, "while offensive, were not threatening or humiliating"); *Remmick v. Magellan Health, Inc.*, 908 N.W.2d 882 (Iowa Ct. App. 2017) (finding harasser's actions were "rude, unprofessional, and offensive, but even in the aggregate, the actions are not so severe or pervasive as is necessary to meet the demanding standard of 'extreme conduct.'"); *Van Horn v. Specialized Support Servs., Inc.*, 241 F. Supp. 2d 994, 1009 (S.D. Iowa 2003) (finding that harassment that occurred over a period of less than one month was not sufficiently pervasive to support a hostile work environment claim). Thus, the District Court's ruling to the contrary was an error at law.

iii. Courts have repeatedly rejected sexual harassment claims involving conduct far more egregious than Slagle's conduct.

Even if Rheeder subjectively found Slagle's conduct to be uncomfortable or unpleasant, it was not severe enough to affect the terms,

conditions, or privileges of her employment as a matter of law. The Eighth Circuit has consistently rejected sexual harassment claims involving conduct far more egregious than Slagle's conduct here. *See, e.g.*, *Anderson v. Family Dollar Stores of Ark., Inc.*, 579 F.3d 858, 861–62 (8th Cir. 2009) (finding conduct insufficiently severe or pervasive where alleged harasser rubbed the plaintiff's shoulders or back, called her "'baby doll'" on the phone, accused her of not wanting to be "'one of my girls,'" suggested that "she should be in bed with him and a Mai Tai," and insinuated she could advance professionally if she got along with him); *Vajdl v. Mesabi Acad. of KidsPeace, Inc.*, 484 F.3d 546, 551 (8th Cir. 2007) (rejecting hostile work environment claim where, among other things, one co-worker over three months commented about the plaintiff's body, touched her bangs, wiped water off her pant leg, repeatedly suggested she leave her boyfriend and date him, phoned her at home, and offered to buy her a drink and give her a ride home); *LeGrand v. Area Res. for Cmty. & Human Servs.*, 394 F.3d 1098, 1100, 1102 (8th Cir. 2005) (rejecting hostile work environment where the alleged harasser asked the plaintiff to watch pornography and "'jerk off with him,'" suggested the plaintiff would advance professionally if he watched "'these flicks' and 'jerk[ed the alleged harasser's] dick off,'" kissed the plaintiff's mouth,

grabbed the plaintiff's buttocks, and reached for and brushed the plaintiff's genitals).

In *Duncan v. General Motors Corp.*, the Eighth Circuit did not find repeated hand touching, a request for a sexual relationship, a request that the employee make a sketch with sexual implications, putting up a poster identifying the employee as president of a fictional "Man Hater's of America" club, asking the employee to draft a document outlining the beliefs of the "He–Men Women Hater's Club," and being required to use a computer with a screen saver displaying a picture of a naked woman to be severe or pervasive enough to establish a hostile work environment. *See* 300 F.3d 928, 935 (8th Cir. 2002). Even though the teasing had "upset and embarrassed" the plaintiff and the harasser's advance had "disturbed" her, the court held she "failed to show that these occurrences in the aggregate were so severe and extreme" that a reasonable person would find her employment terms or conditions had been altered. *Id*. at 934. The Eighth Circuit and Iowa courts repeatedly and consistently apply "the *Duncan* threshold" in analyzing hostile work environment claims. *See, e.g.*, *Vajdl*, 484 F.3d at 551.

Relying on *Duncan* and its progeny, the Iowa Court of Appeals in *Wright* found unanimously that two requests for a relationship, on top of "sexually-fueled conversations, minor touching," calling the plaintiff "'blue

eyes,'" and making "body and breast comments" were not severe or pervasive enough to show actionable harassment. 2015 WL 1848534, at *5. The court observed that plaintiff "undoubtedly endured unprofessional and offensive comments and interactions." *Id*. at *6. However, echoing the district court, the court of appeals found that "'[w]hile . . . plaintiff was at times subjected to an unwelcome and offensive nickname, and on two occasions was subjected to objectionable advances, Iowa law requires more.'" *Id*. (holding that alleged harasser's "conduct did not affect the terms or conditions of her employment as required to establish a hostile work environment claim"); *see also Remmick*, 908 N.W.2d 882 (finding conduct "rude, unprofessional, and offensive, but even in the aggregate, the actions [were] not so severe or pervasive as is necessary to meet the demanding standard of 'extreme conduct'").

Duncan and *Wright* apply with even greater force here. Indeed, the entire record of alleged sexual harassment is a series of interactions and text messages over a mere four- or five-day period, and they are far from actionably "extreme." *See Wright*, 2015 WL 1848534, at *5. Rheeder cannot show any conduct as egregious as the conduct that was held to be not actionable in *Duncan* and *Wright*. Rheeder does not allege that Slagle ever expressly asked her to have sex or to have a romantic relationship. *Cf.*

Anderson, 579 F.3d at 862 (finding no actionable harassment even though alleged harasser said the plaintiff "should be in bed with him"). The text messages the two exchanged are not explicitly sexual and, at most, reflect that Slagle was inquiring about the type of relationship that Rheeder desired to have. (App. 693-98). Rheeder does not allege any sexual touching. *Cf. Lopez v. Whirlpool Corp.*, 989 F.3d 656, 663 (8th Cir. 2021) (rejecting sexual harassment claim even where harasser "touched [plaintiff] almost every time he saw her in the months following [her asking him to stop, including] . . . touch[ing] her back, invad[ing] her personal space, and [blowing] on her finger while calling her 'baby.' . . . [T]he evidence in this case fails is not as strong as evidence in our hostile-work-environment precedent involving frequent, unwelcome touching"). Rheeder does not allege that Slagle ever commented on her appearance or used any nicknames. She does not allege that Slagle ever threatened or physically intimated her. *See Farmland Foods*, 672 N.W.2d at 745 (rejecting hostile work environment claim in part because "there was no evidence of physical intimidation"); *Remmick*, 2017 WL 4317291, at *10 (affirming summary judgment for defendant where the plaintiff was not subject to unwelcome physical touching, threats, or name-calling). Even if a factfinder finds that Slagle's behavior "is inappropriate and should never be tolerated in the workplace, . . . it is not nearly as severe or

pervasive as the behavior found insufficient in *Duncan* and *LeGrand*." *Paskert v. Kemna-ASA Auto Plaza, Inc.*, 950 F.3d 535, 538-39 (8th Cir. 2020)) ("[W]e may only ask whether their behavior meets the severe or pervasive standard applied by this circuit, and it does not.").

In ruling that a reasonable factfinder could find Slagle's conduct to constitute actionable harassment, the District Court has essentially created an erroneous strict liability standard. In this case, it is undisputed that Slagle made what Rheeder subjectively perceived to be sexual advances; she asked him to stop; and he stopped. (App. 693-99). If this conduct is sufficient to constitute sexual harassment under the Iowa Civil Rights Act, Iowa courts will create a slippery slope in which *any* inquiry regarding a workplace relationship could create a claim for hostile working environment.

The standard for hostile working environment claims has been well-established by Iowa and Eighth Circuit case law. The Eighth Circuit has "often noted that [its] precedent 'sets a high bar' for 'sufficiently severe or pervasive' conduct." *Lopez*, 989 F.3d at 663 (quoting *Paskert*, 950 F.3d at 538). Relying on this precedent, this Court should reverse the District Court's erroneous ruling that Slagle's conduct was severe or pervasive enough to constitute actionable sexual harassment.

D. The Iowa District Court erred by concluding that Slagle's knowledge of Plaintiff's history of domestic violence is relevant as to whether Slagle's conduct was objectively hostile or abusive.

In its Reconsideration Order, the District Court affirmed its earlier ruling that Slagle's knowledge of Rheeder's history as a domestic violence victim is relevant as to whether his alleged conduct towards her was *objectively* hostile or abusive. (App. 837). Relying on this factor, the District Court affirmed its finding in the Summary Judgment Order that Rheeder's allegations are "just sufficient to survive summary judgment." (App. 995).

While Slagle sympathizes with Rheeder's history of domestic violence, her prior experiences are not relevant to the Court's inquiry as a matter of law. The District Court cited no authority in support of its erroneous finding that Rheeder's history of domestic violence is relevant. (App. 837). Sexual harassment claims involve both a subjective and objective element. *Farmland Foods, Inc. v. Dubuque Human Rights Comm'n*, 672 N.W.2d 733, 744 (Iowa 2003). To prove sexual harassment, Rheeder must establish that a reasonable person would find the conduct to be abusive or hostile. *Id.* No applicable case law mandates that the *objective* component must take into consideration personal experiences of a plaintiff.

Defendants in sexual harassment cases are not held to a different standard based on the history of the plaintiff. While Rheeder's history may have

impacted whether she *subjectively* perceived Slagle's conduct as abusive, it has no impact on whether a *reasonable person* would find Slagle's conduct abusive or hostile. *See Rickard v. Swedish Match N. Am., Inc.*, 773 F.3d 181, 185 (8th Cir. 2014). Regardless of whether Rheeder subjectively perceived Slagle's conduct as harassing, she cannot, as a matter of law, establish that a reasonable person would too. *See Rickard v. Swedish Match N. Am., Inc.*, 773 F.3d 181, 185 (8th Cir. 2014) ("Although it appears [plaintiff] suffered because of his interactions with [defendant], a reasonable person would not have found any comments or incidents created a hostile environment under the law."); *Peda v. Am. Home Prod. Corp.*, 214 F. Supp. 2d 1007, 1018 (N.D. Iowa 2002) (rejecting sexual harassment claim where "a reasonable person would not perceive the complained of conduct to be hostile or abusive").

This Court should reverse the District Court's erroneous finding that Slagle's knowledge of Rheeder's history of domestic violence is relevant as to whether a reasonable person would find Slagle's conduct abusive or hostile.

CONCLUSION

For the reasons stated above, the District Court erred when it denied Slagle's Motion for Summary Judgment and abused its discretion in finding that some of Slagle's previous character evidence is admissible in this case.

Accordingly, the District Court's Summary Judgment Order and Reconsideration Order should be reversed.

REQUEST FOR ORAL ARGUMENT

Slagle respectfully requests oral argument in the maximum amount of time allowed.

JOINDER

Slagle respectfully joins in the Briefs filed contemporaneously herewith by Defendants City of Marion, Shellene Gray, and Joseph McHale.

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CERTIFICATE OF COST

The undersigned certifies that the cost for printing and duplicating paper copies of this brief was $0.00.

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This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) because it has been prepared in a proportionally spaced typeface using 14-point Times New Roman font and contains 7,175 words, excluding the parts of the brief exempted from the type-volume requirements by Iowa R. App. P. 6.903(1)(*g*)(1).

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CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was electronically served on the Clerk of the Supreme Court using the Electronic Document Management System on February 12, 2024, which will serve a notice of electronic filing to all registered counsel of record.

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