

IN THE SUPREME COURT OF IOWA

SUPREME COURT CASE NO. 22-1625
HUMBOLDT COUNTY NO. LACV018792

KRYSTAL WAGNER, INDIVIDUALLY AND AS ADMINISTRATOR
OF THE ESTATE OF SHANE JENSEN,

Plaintiff-Appellant,

vs.

STATE OF IOWA AND WILLIAM (BILL) L. SPECE,

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR HUMBOLDT COUNTY
HONORABLE KURT J. STOEBE

PLAINTIFF-APPELLANT'S SUPPLEMENTAL REPLY BRIEF

DAVE O'BRIEN LAW

/s/ David A. O'Brien

David A. O'Brien AT0005870

1500 Center Street NE

Cedar Rapids, Iowa 52402

Telephone: (319) 861-3001

Fax: (319) 861-3007

E-mail: dave@daveobrienlaw.com

TIMMER & JUDKINS, P.L.L.C.

/s/ Brooke Timmer

Brooke Timmer AT0008821

1415 28th Street, Suite 375

West Des Moines, Iowa 50266

Telephone: (515) 259-7462

Fax: (515) 361-5390

E-mail: brooke@timmerjudkins.com

ATTORNEYS FOR PLAINTIFF-APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
STATEMENT OF ISSUES.....	4
ARGUMENT	6
I. RECENT DECISIONS IN BURNETT, CARTER, WHITE, VENCKUS AND RICHARDSON HOLD THAT INDIVIDUAL LAW ENFORCEMENT OFFICERS MAY BE HELD LIABLE UNDER THE COMMON LAW FOR CONDUCT THAT ALSO VIOLATES ARTICLE I, § 8 OF THE IOWA CONSTITUTION	6
II. ALL OF THE STATE’S ARGUMENTS ARE INVALID FOR FAILING TO ADDRESS ONE CRITICAL FACT – THE FUNDAMENTAL INJUSTICE OF REVERSING CONSTITUTIONAL INTERPRETATION AND NOT ALLOWING PRESENT LITIGANTS THE OPPORTUNITY TO COMPLY WITH NEW INTERPRETATION.....	9
CONCLUSION	12
ATTORNEY’S COST CERTIFICATE	12
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS	12
CERTIFICATE OF SERVICE AND FILING.....	13

TABLE OF AUTHORITIES

CASES

Beeck v. S.R. Smith Co., 359 N.W.2d 482 (Iowa 1984).....11

Burnett v. Smith, 990 N.W.2d 289 (Iowa 2023).....6

Carter v. State, 2023 Iowa Sup. LEXIS 53, at *1-2, 990 N.W.2d 308, 2023
WL 3397451 (Iowa May 12, 2023)8, 9

Godfrey v. State (Godfrey II), 898 N.W.2d 844 (Iowa 2017)6

Haugland v. Schmidt, 349 N.W.2d 121 (Iowa 1984).....7

Hearity v. Iowa Dist. Ct., 440 N.W.2d 860 (Iowa 1989).....10

Lawson v. Kurtzhals, 792 N.W.2d 251 (Iowa 2010).....10

Lennette v. State, 975 N.W.2d 380 (Iowa 2022)6, 7

Northwestern Nat’l Bank v. Metro Ctr., Inc., 303 N.W.2d 395 (Iowa 1981) .7

Richardson v. Johnson, 2023 Iowa Sup. LEXIS 67 (Iowa June 16, 2023).....8

Rieff v. Evans, 630 N.W.2d 278 (Iowa 2001)7

Schwennen v. Abell, 471 N.W.2d 880 (Iowa 1991)10

State v. Iowa Dist. Court, 750 N.W.2d 531 (Iowa 2008).....10

Venckus v. City of Iowa City, 990 N.W.2d 800, 2023 Iowa Sup. LEXIS 56,
2023 WL 3555505 (Iowa May 19, 2023)8

Wagner v. State, 952 N.W.2d 843 (Iowa 2020).....9

White v. Harkrider, 900 N.W.2d 647 (Iowa 2023)8

RULES

Iowa R. Civ. P. 1.403(1)7

STATEMENT OF ISSUES

- I. DID THE STATE FAIL TO ADDRESS WAGNER’S MAIN ARGUMENT – *BURNETT, CARTER, WHITE, VENCKUS* AND *RICHARDSON* HOLD THAT INDIVIDUAL LAW ENFORCEMENT OFFICERS MAY BE HELD LIABLE UNDER THE COMMON LAW FOR CONDUCT THAT ALSO VIOLATES ARTICLE I, SECTION 8 OF THE IOWA CONSTITUTION?**

Cases

Burnett v. Smith, 990 N.W.2d 289 (Iowa 2023)
Carter v. State, 2023 Iowa Sup. LEXIS 53, *1-2, 990 N.W.2d 308, 2023 WL 3397451 (Iowa May 12, 2023)
Godfrey v. State (Godfrey II), 898 N.W.2d 844 (Iowa 2017)
Haugland v. Schmidt, 349 N.W.2d 121, 123 (Iowa 1984)
Lennette v. State, 975 N.W.2d 380, 405 (Iowa 2022)
Northwestern Nat’l Bank v. Metro Ctr., Inc., 303 N.W.2d 395, 401 (Iowa 1981)
Richardson v. Johnson, 2023 Iowa Sup. LEXIS 67, at *3 (Iowa June 16, 2023)
Rieff v. Evans, 630 N.W.2d 278, 292 (Iowa 2001)
Venckus v. City of Iowa City, 2023 Iowa Sup. LEXIS 56, at *3, 2023 WL 3555505 (Iowa May 19, 2023)
White v. Harkrider, 990 N.W.2d 647 (Iowa 2023)

Rules

Iowa R. Civ. P. 1.403(1)

- II. ARE ALL OF THE STATE’S ARGUMENTS INVALID FOR FAILING TO ADDRESS ONE CRITICAL FACT – THE FUNDAMENTAL INJUSTICE OF REVERSING CONSTITUTIONAL INTERPRETATION AND NOT ALLOWING PRESENT LITIGANTS THE OPPORTUNITY TO COMPLY WITH THE NEW INTERPRETATION?**

Cases

Beeck v. S.R. Smith Co., 359 N.W.2d 482, 484, (Iowa 1984)
Hearity v. Iowa Dist. Ct., 440 N.W.2d 860, 863 (Iowa 1989)
Lawson v. Kurtzhals, 792 N.W.2d 251, 258 (Iowa 2010)
Schwennen v. Abell, 471 N.W.2d 880, 884 (Iowa 1991)
State v. Iowa Dist. Court, 750 N.W.2d 531, 534 (Iowa 2008)
Wagner v. State, 952 N.W.2d 843 (Iowa 2020)

ARGUMENT

This Supplemental Reply Brief is submitted pursuant to court order dated July 6, 2023, in the aftermath of the reversal of *Godfrey v. State* (*Godfrey II*), 898 N.W.2d 844 (Iowa 2017), by *Burnett v. Smith*, 990 N.W.2d 289, 306 (Iowa 2023).

I. RECENT DECISIONS IN *BURNETT*, *CARTER*, *WHITE*, *VENCKUS* AND *RICHARDSON* HOLD THAT INDIVIDUAL LAW ENFORCEMENT OFFICERS MAY BE HELD LIABLE UNDER THE COMMON LAW FOR CONDUCT THAT ALSO VIOLATES ARTICLE I, § 8 OF THE IOWA CONSTITUTION

The State’s entire argument is premised on a claim that *Burnett v. Smith* holds that constitutional torts are no longer recognized in Iowa, regardless of how the claims are pled. As noted in Wagner’s initial supplemental brief, that is simply not the case. *Burnett* held, “We no longer recognize a standalone cause of action for money damages under the Iowa Constitution unless authorized by the common law, an Iowa statute, or the express terms of a provision of the Iowa Constitution.” 990 N.W.2d 289, 307 (Iowa 2023) (emphasis added). Justice McDonald’s *Lennette* concurrence is now the law: “I would recognize that the Iowa Constitution secures a right to assert nonconstitutional causes of action for money damages against government officials under certain circumstances.” *Lennette v. State*, 975 N.W.2d 380, 402-403 (Iowa 2022) (McDonald, J. concurring). Justice McDonald goes on

to confirm the availability of such causes of action for the violation of the right that is at issue in this case, an unreasonable seizure. *Id.*

The State wants to pretend that pleaded causes of action are determined by their heading, not by the substance of the allegations presented. That is not the law in Iowa. In *Rieff v. Evans*, the Iowa Supreme Court held, “we do not require a petition to allege a specific legal theory. Iowa R. Civ. P. [1.403(1)].” 630 N.W.2d 278, 292 (Iowa 2001), as amended on denial of reh’g (July 3, 2001). A “pleading ‘is sufficient if it apprises of the incident out of which the claim arose and the mere general nature of action.’” *Haugland v. Schmidt*, 349 N.W.2d 121, 123 (Iowa 1984) (quoting *Northwestern Nat’l Bank v. Metro Ctr., Inc.*, 303 N.W.2d 395, 401 (Iowa 1981)). “Under Rule [1.403(1)]’s requirement that the petition set forth a claim for relief, the claim is not the equivalent of a cause of action. Obviously, the claims asserted must be capable of recovery.” *Rieff*, 630 N.W.2d at 292.

Count I of Wagner’s petition sets out a viable claim for a “nonconstitutional causes of action for money damages against government officials” for an unreasonable seizure. *See Lennette*, 975 N.W.2d at 402-403. Wagner’s son was shot and killed by Defendant Spece without justification. Her wrongful death cause of action remains viable post-*Burnett* regardless of the heading used to set the claim or the specific language use to give the State

notice of the claim.

In each of the post-*Burnett* decisions by the Iowa Supreme Court, the underlying cause of action asserted and the factual basis for the claim were critical components of the analysis of the continued viability of the claim. *See Venckus v. City of Iowa City*, 990 N.W.2d 800, 2023 Iowa Sup. LEXIS 56, 2023 WL 3555505 (Iowa May 19, 2023); *White v. Harkrider*, 900 N.W.2d 647 (Iowa 2023); *Richardson v. Johnson*, 2023 Iowa Sup. LEXIS 67 (Iowa June 16, 2023). The State fails to address any of the facts of *Venckus*, *White*, or *Richardson*. *See* Def. Suppl. Br. p. 14. *White*'s assault claim, the same theory of recovery that forms the basis of Wagner's claim in this case, was not dismissed. *White*, 990 N.W.2d at 657.

The State incorrectly claims that *Carter* turned on a common law tort recognized at the time of the Iowa Constitution, arguing "*Carter* brought an unreasonable seizure claim against law enforcement, alleging he was arrested without probable cause." Def. Suppl. Br. p. 11. That claim is patently false. The Iowa Supreme Court described the underlying tort in *Carter* – a law enforcement officer "wrongly inserted himself into the civil case and intentionally, but wrongly, targeted *Carter* as his mother's killer." *Carter v. State*, 2023 Iowa Sup. LEXIS 53, at *1-2, 990 N.W.2d 308, 2023 WL 3397451 (Iowa May 12, 2023). That is not a claim recognized at common law. The

Carter case has absolutely nothing to do with a claim that a law enforcement officer effectuated a wrongful seizure. *Carter* involves a DCI agent who set out to influence a civil wrongful death case. 2023 Iowa Sup. LEXIS 53, at *1-2. That is not a claim recognized at common law at the time of the ratification of the Iowa Constitution.

II. ALL OF THE STATE’S ARGUMENTS ARE INVALID FOR FAILING TO ADDRESS ONE CRITICAL FACT – THE FUNDAMENTAL INJUSTICE OF REVERSING CONSTITUTIONAL INTERPRETATION AND NOT ALLOWING PRESENT LITIGANTS THE OPPORTUNITY TO COMPLY WITH NEW INTERPRETATION

This case was pending in state court before the Iowa Supreme Court issued its decision in *Wagner v. State*. 952 N.W.2d 843 (Iowa 2020). The State certainly treated the Iowa Supreme Court’s *Wagner* decision as the law of this case. The Joint Motion for Stay filed by the parties in this case on October 28, 2019, stated as follows:

Given the issues to be decided by the Iowa Supreme Court in this dispute, it is possible that Plaintiff would be required to bring her Godfrey Iowa constitutional claims in state court and not be subject to the procedural requirements and tolling provision of the ITCA. By the time that scenario could come into fruition, the two-year statute of limitations will have run and Plaintiff would not be able to pursue the Iowa constitutional claims.

It is also entirely possible that the Iowa Supreme Court will rule in a manner that makes this state case duplicative and subject to dismissal.

Therefore, the Parties agree that this case should be stayed until thirty days after the Iowa Supreme Court issues a final ruling in the pending certified-question action.

See also Order Granting Joint Motion for Stay on October 29, 2019.

“The district court has inherent power . . . to maintain and regulate cases proceeding to final disposition within its jurisdiction” *Hearity v. Iowa Dist. Ct.*, 440 N.W.2d 860, 863 (Iowa 1989). *See also* *Lawson v. Kurtzhals*, 792 N.W.2d 251, 258 (Iowa 2010); *Schwennen v. Abell*, 471 N.W.2d 880, 884 (Iowa 1991); *State v. Iowa Dist. Court*, 750 N.W.2d 531, 534 (Iowa 2008) (“Of course, when a court is acting within its jurisdiction it always has the inherent authority to do what is reasonably necessary for the administration of justice in a case before the court.”). In this case, the “inherent authority to do justice” mandates that Wagner be given the opportunity to comply with *Burnett* and its progeny.

The State claims “Wagner rolled the dice, strategically choosing to waive her federal forum rather than risk the ramifications of a negative result. But that choice had consequences—Wagner was left only with her state claims and the knowledge that if those claims failed, she would be without redress.” Def. Suppl. Br. p. 6-7. Yes, Wagner “rolled the dice” and chose to go with her state court claim. But, after Wagner rolled the dice, the rules changed. Fairness dictates that Wagner get the opportunity to respond to the change in

the rules.

The State argues, “Wagner ‘concede[d] that . . . Count IV for Common Law Wrongful Death should be dismissed’ and offered nothing to the district court in support of the claim.” Def. Suppl. Br. p.7. Wagner’s decision was based upon the law, as set out by the Iowa Supreme Court at the time—private rights of action under the Iowa Constitution were allowed, but common law tort claims were not allowed pursuant to immunity granted by the Iowa Tort Claims Act. Again, fairness dictates that once the Iowa Supreme Court changed the applicable law, essentially reversing the validity of constitutional claims (now no longer allowed) with tort claims (now allowed if recognized at common law in 1857), Wagner should have the opportunity to plead her case under the new rules.

The State further argues, “judicial decisions have always stood apart from statutes, and their retroactive effect does not turn on a substantive—procedural distinction. Instead, ‘[a] holding relative to retroactiveness or prospectiveness of a judicial decision on a point of civil law does not implicate the United States Constitution.’” Def. Suppl. Br. p. 10 (quoting *Beeck v. S.R. Smith Co.*, 359 N.W.2d 482, 484 (Iowa 1984)). However, this argument misses the whole point. The judicial decisions at issue here interpret the Iowa Constitution and are not just regarding “a point of civil law.” *Id.* To argue that

Godfrey or Burnett do not “implicate the Iowa Constitution” is ridiculous.

CONCLUSION

For all the reasons stated above, the District Court’s summary judgment order must be reviewed on the merits and reversed.

ATTORNEY’S COST CERTIFICATE

I, Brooke Timmer, certify that there was no cost to reproduce copies of the preceding Plaintiff-Appellant’s Supplemental Reply Brief because the appeal is being filed exclusively in the Appellate Courts’ EDMS system.

Certified by: /s/ Brooke Timmer

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 1471 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 16.67 in 14-point font size in Times New Roman type style.

/s/ Brooke Timmer
Signature

August 22, 2023
Date

CERTIFICATE OF SERVICE AND FILING

I, Summer Heeren, certify that on the 22nd day of August, 2023, I electronically filed the foregoing Supplemental Reply Brief with the Clerk of the Iowa Supreme Court by using the EDMS system. Service on all parties will be accomplished through EDMS.

Certified by: /s/ Summer Heeren