

IN THE IOWA SUPREME COURT

NO. 23-0300

ASHLEY LYNN KOESTER,

Plaintiff/Appellant,

vs.

EYERLY-BALL COMMUNITY MENTAL HEALTH SERVICES,
REBECCA PARKER, and MONICA VAN HORN,

Defendants/Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
HON. SAMANTHA GRONEWALD, JUDGE

**PLAINTIFF/APPELLANT'S RESISTANCE AND BRIEF AS TO
DEFENDANTS'/APPELLEES' APPLICATION FOR FURTHER
REVIEW**

Bruce H. Stoltze, Jr.
Stoltze Law Group, PLC
300 Walnut, Suite 260
Des Moines, Iowa 50309
Telephone: (515) 989-8529
Facsimile: (515) 989-8530
E-mail: bruce.stoltze.jr@stoltze.law
ATTORNEY FOR PLAINTIFF/
APPELLANT

QUESTION PRESENTED FOR REVIEW

ISSUE I: THE COURT OF APPEALS DID NOT ERR IN WHEN IT FOUND THAT PLAINTIFF HAD A CLAIM FOR A WRONGFUL DISCHARGE PURSUANT TO A PUBLIC POLICY

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW 2

TABLE OF CONTENTS 3

TABLE OF AUTHORITIES..... 4

RESISTANCE TO APPLICATION FOR FURTHER REVIEW 5

**ISSUE I—THE COURT OF APPEALS DID NOT ERR IN WHEN IT
FOUND THAT PLAINTIFF HAD A CLAIM FOR A WRONGFUL
DISCHARGE PURSUANT TO A PUBLIC POLICY**..... 6

**A. The Court of Appeals Did not issue a decision in conflict with
Prior Appellate Precedent.** 6

**B. The Court of Appeals Has not incorrectly expanded the claim of
wrongful discharge in Iowa.** 8

CONCLUSION 11

CERTIFICATE OF COMPLIANCE 12

CERTIFICATE OF SERVICE AND FILING 12

TABLE OF AUTHORITIES

<u>Authority</u>	<u>Page</u>
Cases	
<i>Anthony v. State</i> , 632 N.W.2d 897 (Iowa 2001).....	9
<i>Bjorseth v. Iowa Newspaper Association</i> , 889 N.W.2d 700 (Table), 2016 WL 6902745 (IA Ct App 2016) (unreported).....	7, 10
<i>Bokhoven v. Klinker</i> , 474 N.W.2d 553, 557 (Iowa 1997).	9
<i>Morris v. Conagra Goods, Inc.</i> , 435 F.Supp2d 887 (U.S. Dist. Ct. N.D. Iowa 2005).....	10
<i>Myers v. Iowa Board of Regents</i> , 30 F.4th 705, 708 (8th Cir. 2022)	9
<i>Raper v. State</i> , 688 N.W2d. 29 at 54 (Iowa 2004)	9
<i>Smuck v. National Management Corp.</i> , 530 N.W.2d 669 at 672-673 (Iowa Ct App. 1995).....	9
<i>Springer v. Weeks and Leo Co., Inc.</i> , 429 N.W.2d 558 (Iowa 1988).....	10, 11
<i>Tullis v. Merrill</i> , 584 N.W.2d 236 (Iowa 1998)	7, 10
<i>White v. Harkrider</i> , 990 N.W.2d 647, 650 (Iowa 2023)	8
Rules	
Iowa Rule App. P. 61103(1)(b)	5

RESISTANCE TO APPLICATION FOR FURTHER REVIEW

COMES NOW the Plaintiff/Appellant, Ashley Lynn Koester (“Koester”), and resists the Application for Further Review filed herein by the Defendants/Appellees, Eyerly-Ball Community Mental Health Services, Rebecca Parker, and Monica Van Horn (collectively “Defendants”). In support of this Resistance, Koester states that the Court of Appeals did not commit errors of law in this employment discrimination matter. As shown in its opinion, dated March 27, 2024, the Court of Appeals did properly reverse the District Court’s December 14, 2022, grant of dismissal in favor of Defendants. Defendants’ Application for Further Review does not satisfy any of the grounds for review set forth in the Iowa Rules *See* Iowa Rule App. P. 61103(1)(b). This is because the Court of Appeals is consistent with the decisions of this Court and the Court of Appeals and does not contain any issues that require this Court’s determination. The Application for Further Review filed herein by the Defendants/Appellees should be denied.

ISSUE I—THE COURT OF APPEALS DID NOT ERR IN WHEN IT FOUND THAT PLAINTIFF HAD A CLAIM FOR A WRONGFUL DISCHARGE PURSUANT TO A PUBLIC POLICY.

Defendants in this case have asked for further review stating that the Court of appeals erred. However, Koester properly brought a claim for wrongful discharge pursuant to a public policy as she was terminated for making a demand for wages due for her overtime and was terminated for having done so.

While the Defendants argue that this is a matter of first impression and the Iowa Supreme Court should have handled this matter, that is not what Defendants stated in their routing statement where they asked this matter to be routed to the Iowa Court of Appeals (Appellee’s Brief p. 7). Further, none of Defendants’ arguments establish proper grounds for further review. As such, Defendants’ Application for Further Review should be denied.

A. The Court of Appeals did not issue a decision in conflict with Prior Appellate Precedent.

One of Defendants main arguments in this matter is that the Court of Appeals erred in the alleged expanding of the public policy wrongful termination tort when an employee is terminated for making a demand for

wages due. The Defendants incorrectly claim this is contradiction to a previous unreported decision by the Iowa Court of Appeals.

Unfortunately, the reliance on *Bjorseth v. Iowa Newspaper Association*, 889 N.W.2d 700 (Table), 2016 WL 6902745 (IA Ct App 2016) (unreported) is not helpful. In *Bjorseth*, there was a wage dispute, yes, but the details into that wage dispute shows the difference. Bjorseth requested time off, something that she was not entitled to. The employer then responded with a threat to deduct employee wages, something the employer never actually did. The Court of Appeals found that the request for the time off and the threat to deduct wages was not a wage dispute for wages due.

However, as the Court Appeals found in its decision, Koester sits closer to *Tullis v. Merrill*, 584 N.W.2d 236 (Iowa 1998) than to *Bjorseth*. (Ruling p. 11). The Court of Appeals correctly stated:

“When their claims are stripped down, Koester is in the same boat as Tullis.... Accepting her alleged facts as true, Koester was fired for the wage related actions she took – investigating her eligibility for overtime and demanding the wages due on her time sheets.”

(Court of Appeals Decision p.11) (citations omitted)

The Defendants want to hold onto the argument that as she was

ultimately given the wages, they were never “withheld”, but that is because the Defendants wish to shift the timeline and nexus. As the Court of Appeals further noted correctly “Unlike *Bjorseth* and *Morris*, she draws a nexus between her demand for overtime wages and her discharge”. (Court of Appeals Decision p. 11).

At the end of the day, as Koester pointed out, she was fired as she made a demand for overtime wages on her timesheets (wages due) and that was the reason for her termination. The Court of Appeals correctly also pointed out that this is a Motion to Dismiss. (Court of Appeals Decision p. 11). Plaintiff’s allegations at this point are to be accepted as true. *White v. Harkrider*, 990 N.W.2d 647, 650 (Iowa 2023). As the Iowa Court of Appeals noted “Taking her allegations as true, her supervisors accused her of ‘stealing from the company’ and ‘lacking integrity’ for receiving overtime pay due. And then she was fired.” (Court of Appeals Decision p. 10).

The Court of Appeals properly reversed the District Court’s order on the Motion to Dismiss and remanded for further proceedings.

B. The Court of Appeals has not incorrectly expanded the claim of wrongful discharge in Iowa.

Defendants continue their argument that was argued for the first time

to the Court of Appeals that Iowa Code §91A does not cover Koester’s claim, but rather the Fair Labor Standards Act. It should be noted that this was not properly preserved. *Bokhoven v. Klinker*, 474 N.W.2d 553, 557 (Iowa 1997). However, the Defendants argument is without merit. In longstanding Iowa law, overtime wages are properly incorporated in Iowa Code §91A. In *Anthony v. State*, 632 N.W.2d 897 (Iowa 2001) it was held:

“We are convinced that the statutory scheme for deriving pay plans has been implemented in a manner that includes FLSA overtime remuneration as compensation owed by an employer. Sections 91A.8 and 91A.10(3) provide an express consent to sue in the Iowa courts for purposes of recovering any compensation thus owed.”

Anthony v. State, 632 N.W.2d 897 at 902 (Iowa 2001). See also *Raper v. State*, 688 N.W.2d. 29 at 54 (Iowa 2004) and *Myers v. Iowa Board of Regents*, 30 F.4th 705, 708 (8th Cir. 2022). Regardless, the current binding authority on whether or not a federal statute can be the basis of the wrongful termination tort is the published Court of Appeals decision in *Smuck v. National Management Corp*, 530 N.W.2d 669 at 672-673 (Iowa Ct App. 1995) finding that a federal law can be the basis for the tort.

The Court of Appeals in this case did not expand the Iowa Public Policy

Wrongful Termination Tort as *Tullis* clearly announced the recognition that termination due to an employee's demand for wages due under Iowa Code §91A is violative of wrongful discharge tort.

It is not the Court of Appeals in this decision, but rather the Defendants that wish to expand on Iowa law and make restrictions to the wrongful discharge tort that currently do not exist. Defendants wish to hang on *Morris v. Conagra Goods, Inc.*, 435 F.Supp2d 887 (U.S. Dist. Ct. N.D. Iowa 2005) or *Bjorseth*, but in truth *Tullis* laid out the policy:

“We now hold that Iowa Code chapter 91A plainly articulates a public policy prohibiting the firing of an employee in response to a demand for wages due under an agreement with the employer.”

Tullis at 239. There was no restriction placed that the Plaintiff must first be unsuccessful at obtaining the benefit demanded, in this case under Iowa Code §91A, demanding wages due. The Iowa Court of Appeals correctly ruled that reading the *Tullis* too narrow may be tempting but it would be error. Ruling p. 8). Indeed, *Springer v. Weeks and Leo Co., Inc.*, 429 N.W.2d 558 (Iowa 1988), the very case where the tort was recognized in Iowa, stands for the proposition that an employee will not be terminated for pursuing worker compensation rights, and that allowing a termination “would fly in the face of

this policy”. *Springer* at 561-562.

The Iowa Court of Appeals properly found that, within the precedents in Iowa law, Koester was protected under a public policy under Iowa Code §91A as recognized in *Tullis* and *Springer* and its progeny.

CONCLUSION

Koester contends that the Court of Appeals is correct, and this Application for Further Review should be denied.

Respectfully submitted,

By: /s/Bruce H. Stoltze, Jr.

Bruce H. Stoltze, Jr. (AT0010694)
Stoltze Law Group PLC
300 Walnut Street, Suite 260
Des Moines, Iowa 50309
Telephone: (515) 989-8529
Facsimile: (515) 989-8530
E-mail: bruce.stoltze.jr@stoltze.law
ATTORNEY FOR
PLAINTIFF/APPELLANT

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. 6.903(1)(g)(1) and 6.1103(4) because this brief contains 1,302 words, excluding the parts of the Resistance and Brief exempted by Iowa R. App. P. 6.1103(4).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and they type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Times New Roman 14.

/s/Bruce H. Stoltze, Jr.
Bruce H. Stoltze, Jr.

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on the 26th day of April 2024, the foregoing was filed electronically via Iowa Judicial Branch Electronic Document Management System, which sent notification of such filing to all parties of record.

/s/Bruce H. Stoltze, Jr.
Bruce H. Stoltze, Jr.