IN THE IOWA SUPREME COURT
No. 24-0894

GREGG MANDSAGER,
Plaintiff-Appellee,

vs.

CITY OF MUSCATINE, DIANA BRODERSON, KELCEY BRACKETT, OSMOND MALCOLM, SANTOS SAUCEDO, and NADINE BROCKERT,
Defendants-Appellants.

ON APPEAL FROM THE IOWA DISTRICT COURT IN MUSCATINE COUNTY CASE NO. LACV025982 RULING DATED APRIL 29, 2024

THE HONORABLE TAMRA ROBERTS,
DISTRICT COURT JUDGE

DEFENDANTS-APPELLANTS' BRIEF

(TRIAL DATE – September 22, 2025)

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ROUTING STATEMENT

Pursuant to Iowa R. App. P. 6.903(2)(d) and 6.1101(2)(b) & (c) this matter is appropriately retained by the Iowa Supreme Court as it presents substantial issues in which there appears to be a conflict between published decisions of the supreme court and substantial issues of first impression.

NATURE OF THE CASE

The Appellee-Plaintiff Gregg Mandsager ("Mandsager") filed his Petition containing both tort claims and claims of employment discrimination in Muscatine County District Court on February 17, 2021, against Appellant-Defendants City of Muscatine ("the City"), Diana Broderson ("Broderson") individually and in her Official Capacity as the Mayor of the City, Kelcey Brackett ("Brackett") individually and in his Official Capacity as a Councilmember of the City, Osmund Malcolm ("Malcolm") individually and in his Official Capacity as Councilmember of the City, Santos Saucedo ("Saucedo") individually and in his Official Capacity as Councilmember of the City, and Nadine Brockert ("Brockert") individually and in her Official Capacity as Councilmember (hereinafter collectively the "Defendants"). D0001, Petition (2/17/2021).

The City employed Mandsager as the City Administrator beginning around November 30, 2009, until his termination on December 5, 2019, when a majority of the City Council voted to terminate Mandsager's employment in public, open session. D0048, Defendants' Statement of Undisputed Facts at ("Defs SOUF") ¶¶ 1, 236 (9/14/2022).[1]

[1] As a part of their Renewed Motion for Summary Judgment, the Defendants restated and reincorporated by reference their previously filed Statement of Undisputed Facts ("SOUF") [D0048]; Statement of Additional Undisputed Fact ("SOAF") [D0067]; and the new facts in Defendants' Renewed Statement of Additional Undisputed Facts ("RSOAF") [D0100].

Plaintiff's Petition asserted claims of: Disability Discrimination; Sex Discrimination; Retaliation due to FML; Retaliation due to Accommodations; Retaliation due to Prior Lawsuit and/or Sex; Tortious Discharge based on *Drayfahl v. City of Wapello*, 2014 WL 4937958 (Iowa Ct. App. 2014); Tortious Discharge based on prior lawsuit; Tortious Discharge based on the ICRA (sex or disability); Civil Conspiracy; Interference with Employment Contract; and Interference with Prospective Business Advantage. The only surviving claims after two different summary judgment rulings are: Count I Disability Discrimination (against all Defendants except Broderson); Count II Retaliation due to disability accommodations (against all Defendants except Broderson); Count V Interference with Employment Contract (against Broderson only in her individual capacity); and Count VI Interference with Prospective Business Advantage[2] (against Broderson only in her individual capacity). D0001, Petition (2/17/2021).

On September 14, 2022, Defendants filed their first Motion for Summary Judgment (the "First Motion"). D0046, First Motion (9/14/2022). After briefing and argument by the parties (D0047 and D0066, Defendants' Brief and Reply in Support

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[2] Because claims of Intentional Interference that relate to an at-will employee contract have a higher threshold, like the one in this case, Iowa law requires the tort to be considered as if it were a prospective business interference claim which collapsed Mandsager's Counts V and VI into one analysis – rendering his Count V superfluous. *Compiano v. Hawkeye Bank & Trust of Des Moines*, 588 N.W.2d 462, 464 (Iowa 1999).

of First Motion (9/14/2022) and (10/11/2022) and D0059, Plaintiff's Brief in Resistance (9/30/2022)) on December 8, 2022, the District Court entered its ruling (the "December 2022 Ruling") granting summary judgment in part and denying summary judgment in part. D0080, December 2022 Ruling (12/8/2022). Specifically, the December 2022 Ruling dismissed Defendant Broderson from Plaintiff's discrimination and retaliation claims (Counts I and II), dismissed Plaintiff's wrongful discharge claim (Count III), and dismissed Defendant Broderson in her capacity as Mayor from Plaintiff's intentional interference with contract claim (Count V). D0080 at 25.

After the December 2022 Ruling, and in 2023, the Iowa Supreme Court released several important opinions, which also, coincidentally, bore on Plaintiff's remaining claims: *Feeback v. Swift Pork Co.*, 988 N.W.2d 340 (Iowa 2023); *Carver-Kimm v. Reynolds*, 992 N.W.2d 591 (Iowa 2023); and *McCoy v. Thomas L. Cardella & Assocs.*, 992 N.W.2d 223 (Iowa 2023). New evidence was also available as former City Attorney Matthew Brick ("Brick"), who was previously the City's attorney before the information in this case came to light, was disciplined by the Grievance Commission of the Supreme Court of Iowa for his involvement in Mandsager's scheme, which includes this lawsuit. D0100, Defendants' Renewed Statement of Additional Facts ("RSOAF") (8/3/2023).

Consequently, on August 3, 2023, Defendants renewed their Motion for Summary Judgment (the "Renewed Motion"). D0102, Renewed Motion (8/3/2023). The parties briefed and argued their positions based on this new authority, and on April 29, 2024, the District Court entered its Ruling (the "April 2024 Ruling") granting Defendants' Renewed Motion in part and denying it in part. D0133, April 2024 Ruling at 6 (4/29/2024).

The April 2024 Ruling granted Defendants summary judgment on Plaintiff's civil conspiracy claim (Count IV). D0133 at 5-6. The District Court denied summary judgment on the discrimination and retaliation claims (Counts I and II), rejecting Defendants' argument that the new authority in *Feeback* established that Defendants had a good-faith, honest belief that Mandsager was insubordinate to overcome Plaintiff's pretext arguments at summary judgment. D0133 at 5-6. Even in the face of said new authority and the concessions by Brick in his Affidavit and Consent to Suspension in GC No. 955-d, ADB No. 2022-198, the District Court denied Defendants' Renewed Motion on Mandsager's discrimination and retaliation claims. D0133 at 3-6.

In its April 2024 Ruling, the District Court also denied summary judgment, declining to dismiss Plaintiff's intentional interference tort claims (Counts V and VI) against Defendant Broderson based on preemption even though the facts underlying Plaintiff's tort claims are the same as his ICRA claims. D0133 at 5-6.

Even with the benefit of the Iowa Supreme Court's decision in *McCoy*, the District Court declined to engage in any such preemption analysis. D0133 at 6.

On May 29, 2024, Defendants timely applied for Interlocutory Appeal. Application for Interlocutory Appeal (sans exhibits). Defs. App. for Interlocutory Appeal (5/29/2024) (no docket number). On July 18, 2024, Defendants Application for Interlocutory Appeal and Request for Stay were granted. D0136, Order Granting Application (7/18/2024).

STATEMENT OF THE FACTS

The City employed Mandsager as the City Administrator beginning around November 30, 2009, until his termination on December 5, 2019 where a majority of the City Council voted to end his employment in public, open session. D0048 at ¶¶ 1, 236. The City Code explains that City Administrator "shall hold office during the pleasure of the Council", which supervised Mandsager. D0048 at ¶¶ 6, 9. The City Council has seven elected members; two at-large members and four elected by ward. D0048 at ¶ 10. The Mayor is the "chief executive officer of the City" and is not a voting member of the Council. D0048 at ¶ 11. Broderson was the City's Mayor from January 1, 2016, through December 31, 2021. D0048 at ¶ 12.

Broderson and Mandsager had a contentious relationship from the time Broderson took office in 2016. D0048 at ¶¶ 13-15. Relevant to the context of the relationship, on January 12, 2017, Mandsager led the charge for the City Council to

vote to file charges of removal against Broderson, and on May 11, 2017, Broderson was removed. D0048 at ¶¶ 17-19. On October 24, 2017, Broderson was reinstated as Mayor of Muscatine by a Court Order. D0048, at ¶ 20. On November 10, 2017, Mandsager sued Broderson and the City alleging Broderson was liable for defamation, reckless or negligent infliction of emotional distress, intentional interference with prospective business advantage, and intentional interference with contract. D0048 at ¶ 26.

On February 9, 2018, Broderson counterclaimed against Mandsager (and others including then-City Attorney Matt Brick ("Brick")) in the Defamation Lawsuit claiming abuse of process, defamation, intentional infliction of emotional distress, malicious prosecution. D0048 at ¶ 27. The parties ultimately resolved the Defamation Lawsuit via Global Release and Settlement Agreement on April 25, 2019. D0048 at ¶ 29. During the pendency of the Defamation Lawsuit, three new City Council members were seated in January 2018. D0048 at ¶ 30. The three council members were Brockert, Malcolm, and Brackett. D0048 at ¶ 31.

With regard to his health, Mandsager has had neuropathy since 1994. D0048 at ¶ 132. However, around August 2018, Mandsager decided to seek treatment again. D0048 at ¶ 134. Mandsager provided email updates to the Council and would occasionally reference his health. D0048 at ¶¶ 136-140. Mandsager testified that, during his employment, Councilmembers Tom Spread, Phil Fitzgerald, Allen

Harvey, Brackett, Brockert, and Malcolm would check on him and ask him how things were generally going. D0048 at ¶ 135. Mandsager agrees that the Mayor and Council were not involved in his accommodations requests and were not involved in his medical leave as he went through Human Resources. D0048 at ¶¶ 147, 165.

From 2016 to 2019, there was tension between councilmembers, Broderson, and Mandsager. D0048 at ¶¶ 17, 35, 54, 110. Ultimately, the tide changed against Mandsager when he mounted resistance to the City Council's feedback and committee creation and became hostile to the City Council's code changes. D0048 at ¶¶ 17, 35, 54, 110; D0100 at ¶ 2. While not an exhaustive list of the problems with Mandsager, the key issues of contention between councilmembers and Mandsager are outlined herein.

On February 26, 2018, the Muscatine County Board of Supervisors wrote to the City Council terminating a memorandum of understanding wherein the City provided services to Muscatine County. D0048 at ¶ 32. The reasons the Muscatine County Board of Supervisors provided were that the process with the City was "onerous, overly time consuming and causes delays in construction projects" and "that there has been very poor communication from City staff on occasions where conflicts have arisen between City staff and businesses located in the County." D0048 at ¶ 33. At the next regular City Council meeting, Brackett proposed an ad

hoc committee to evaluate the issues between the City and the County to which Brackett believed Mandsager was resistant. D0048 at ¶¶ 34-35.

Also in 2018, the City Council had concerns with the language of the City Code (the "Code Change" issue). D0048 at ¶¶ 39-40. Specifically, the City Council took issue with the process for communication with City Staff. D0048 at ¶ 41. The City Administrator (Mandsager) was acting as a gatekeeper, and the Council could only go through him to speak with staff. D0048 at ¶ 41. While Mandsager asserts otherwise, his rule was not applied consistently, as it depended on whether Mandsager had a good relationship with the councilmember. D0048 at ¶¶ 42-45. Saucedo testified that when he was first elected to the Council, he was allowed to talk to everybody, and then he realized, when Mandsager got crosswise with the City Council, Mandsager only allowed certain individuals access to staff. D0048 at ¶ 46.

The Code Change battle continued into January 2019 where a minority of councilmembers wanted the Code Change. D0048 at ¶ 55. Throughout 2019, the sentiment changed from a minority of councilmembers in favor of the Code Change to a majority around July 2019 when Saucedo joined and requested a discussion regarding the Code Change. D0048 at ¶ 59. The Council requested the Code Change for two reasons: (1) so that the Council could communicate directly with staff, which Mandsager had prevented them from doing and (2) the belief communicated by some

staff that "[Mandsager] tries to limit [what] Council is told. Like during budget meetings he tells you basically what you can bring up." D0048 at ¶¶ 57, 59.

At the July 18, 2019, City Council meeting, the minutes reflect that Saucedo requested discussion regarding the Code Change and Brackett agreed, clarifying that he supported the Code Change with one caveat—it was not for the Council to give orders to the staff, but both to communicate and receive feedback. D0048 at ¶ 59. Broderson read a letter by Malcolm in support of the Code Change. D0048 at ¶ 59. Brockert stated that she also supported the Code Change. D0048 at ¶ 59. Mandsager resisted, asserting that the Code Change would create issues requiring involvement of the then-City Attorney (Brick), and the Code Change discussion should be tabled until Brick could attend. D0048 at ¶ 59.

On July 19, 2019, Broderson messaged Brackett, "Looks like [G]regg took another day off. Wouldn't it be nice to earn a quarter of a million dollars a year in salary and benefits to work part time?" D0048 at ¶ 60. Around the same time on July 19, 2019, Broderson also sent a text to Saucedo where Broderson said "Looks like Gregg took another day off" and Saucedo responded: "Wow imagine that." D0048 at ¶ 61. Later that same day in discussing a closed session, Saucedo texted Broderson, "…well this may be good time to discuss his combative behavior, un-cooperative actions, and desire to just contact [the] City Attorney every chance he gets." D0048 at ¶ 61.

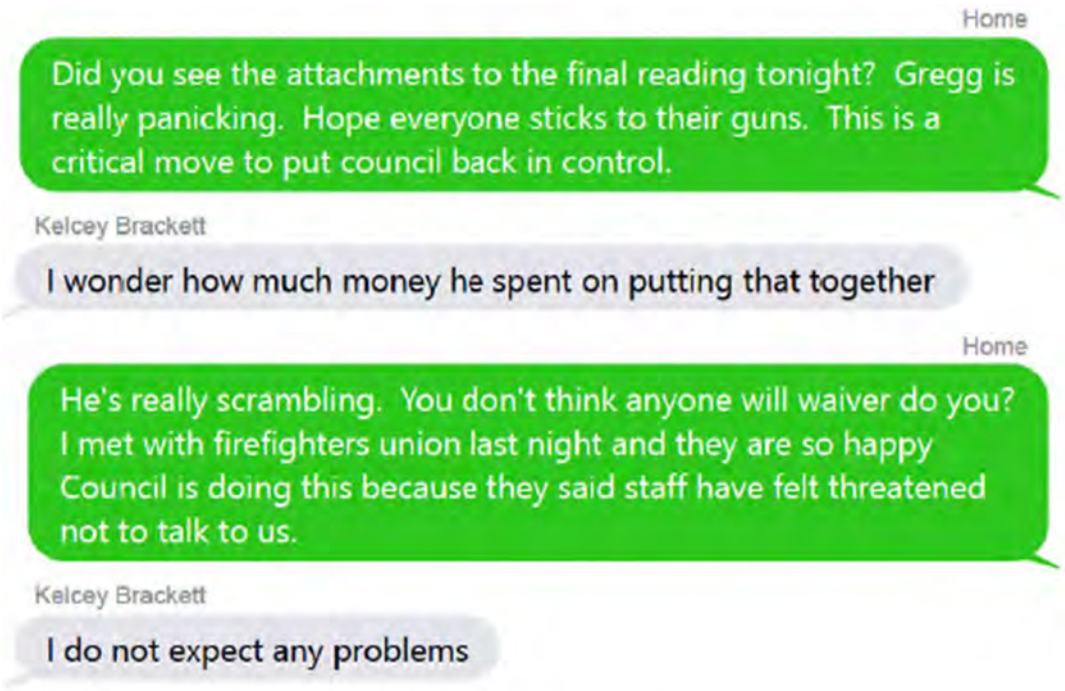
On August 15, 2019, the City Council discussed the Code Change, and "City Attorney Matt Brick presented a change to the code that would allow communication without having any action on the ethics code." D0048 at ¶ 62. There was a consensus to bring the Code Change to the September 5, 2019 Council Meeting for the first reading. D0048 at ¶ 62.

On September 3, 2019, Mandsager wrote in an email to Brick: "Santos is working to have me fired in November, but after the election." D0048 at ¶ 141. In the September 3, 2019 email, Mandsager listed the following reasons that Mandsager thought Saucedo wanted him fired:

> Matt:
>
> I was told today that Santos is working to have me fired in November, but after the election. Apparently he is embolden as of late. Obviously, just needs the 4 votes.
>
> I personally believe this is related to the following:
> 1. Things did not go his way on hard surfacing,
> 2. Things did not go his way wit Curry's,
> 3. He gave me an order in violation of City code,
> 4. Some of this must be related to Community Development, access to staff, and review and inspections, and
> 5. My legal case against the City, Mayor & City Council.

D0048 at ¶ 142 (citing D0045 at App. 146-48, Depo. Ex. 10 (9/14/2022)). While none of the reasons Mandsager cited involved his health, Mandsager sought Brick's help for "protections" to avoid termination "under ADA, FMLA, or other rules, codes or statutes." D0048 at ¶ 143. Mandsager correctly noted in the September 3, 2019 email that Saucedo was mad about a number of things Mandsager had done including "access to staff" a/k/a the Code Change issue. D0045 at App. 146-48.

On October 2, 2019, Broderson and Brackett text messaged regarding the vote on the Code Change:



D0048, Defs' SOUF at ¶ 63 (citing D0045 at App. 260, Depo. Ex. 31 (9/14/2022)). On October 3, 2019, there were four "ayes" and three "nays"—the "nays" being Councilmembers Spread, Harvey, and Fitzgerald. D0048 at ¶¶ 64-65. The Code Change passed despite Mandsager's hostility to it. D0048 at ¶¶ 64-65.

On October 9, 2019, Human Resources ("HR") Director Stephanie Romagnoli ("Romagnoli") emailed "guidance" to employees on the Code Change via the employee handbook (the "Handbook Change") for City staff to sign. D0048, Defs' SOUF at ¶¶ 69-70 (9/14/2022). This "guidance" included a requirement under subsection #6 to report any work-related conversations, meetings, or issues with

councilmembers to the Department Head (who would report to Mandsager) and/or to Mandsager immediately. D0048 at ¶ 69.

One Department Head, Jon Koch, messaged Romagnoli on October 10, 2019, and asked for clarification on when to report per the Handbook Change. D0048 at ¶ 72. Romagnoli's response was, "Anything that is work related – if it's just operational type questions about what they're doing, it's probably fine to let you know and you can determine if it needs to go beyond that. The intent is to keep [Mandsager] in the loop so if there are issues/concerns we can get them addressed quickly. If the Council members is [sic] just making small talk – how are you today kind of stuff that's not a concern." D0048 at ¶ 73.

Later that same day, on October 10, 2019, Mandsager sent an email to all City department heads regarding the Handbook Change with the reminder that employees who meet with the Mayor or a City Councilmember "are required to report **any work-related conversations (this includes the content of the conversation), meetings or issues to the Department Head/City Administrator immediately."** D0048 at ¶ 74 (emphasis in original).

Before the October 17, 2019 City Council meeting, a City employee emailed the Handbook Change to the City Council. D0048 at ¶ 152. Broderson learned that the City employee was shortly thereafter put on indefinite probation; so, Broderson sent a text to Saucedo stating, "We've got to do something." D0048 at ¶ 153. On

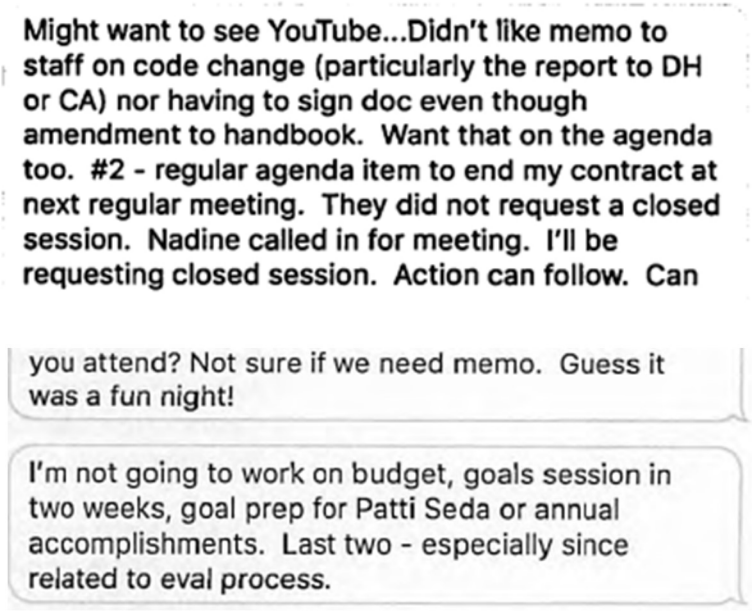
October 17, 2019, Broderson and Brackett and Saucedo met at Brackett's home and discussed their concerns about Mandsager. D0048 at ¶ 156. Following the lunch meeting, Broderson messaged Brackett, "I would like to request that we have an agenda item for the 11/7/19 meeting, discussion and possible action to end the City Administrator's Contract." D0048 at ¶ 157.

At the October 17, 2019, Council meeting the Handbook Change that directly went against Council's previous Code Change was discussed. D0048 at ¶ 75. Saucedo saw the Handbook Change as a threat to the employees that did not sign it. D0048 at ¶ 75. At the October 17, 2019, Council Meeting, Saucedo requested that the Handbook Change "bullet 6" that required employees to immediately report any conversations with the Mayor or the City Councilmembers to the City Administrator be removed. D0048 at ¶ 75. Shortly after discussion about the Handbook Change that circumvented the Code Change, Brackett requested to add a discussion and possible action to end the City Administrator's contract to the next meeting agenda. D0048 at ¶ 159.

Notably, discovery in this case revealed Brick's duplicitous actions in working "behind the scenes" with Mandsager to aid in Mandsager's insubordination. D0048 at ¶ 235. On or around June 29, 2023, the former City Attorney (Brick) provided an affidavit to the Grievance Commission of the Supreme Court of Iowa in the matter GC No. 955-d, ABA No. 2022-198, *Iowa Supreme Court Disciplinary*

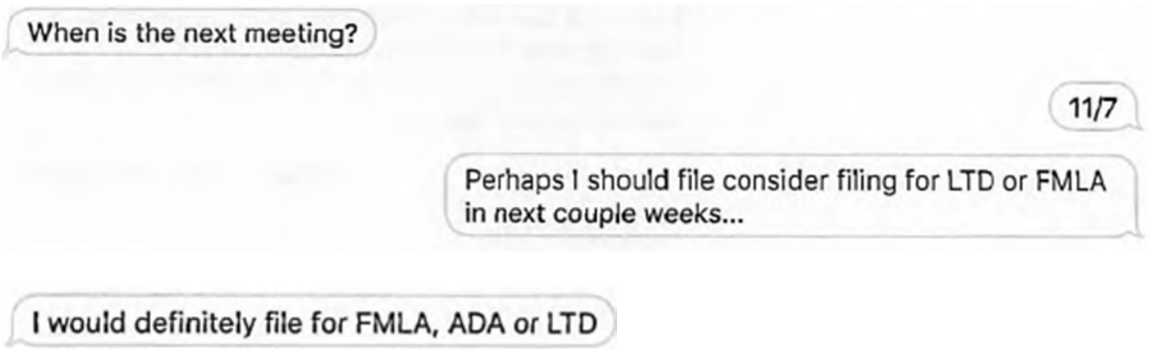
Board v. Matthew Brick regarding Brick's service to the City, his work with Mandsager "trying to save [Mandsager's] job" against the wishes of his client (the City), and manipulating the facts of this case. D0100 at ¶¶ 1-18.

On October 17, 2019, just after the City Council meeting, Mandsager text messaged Brick at 8:35 PM,



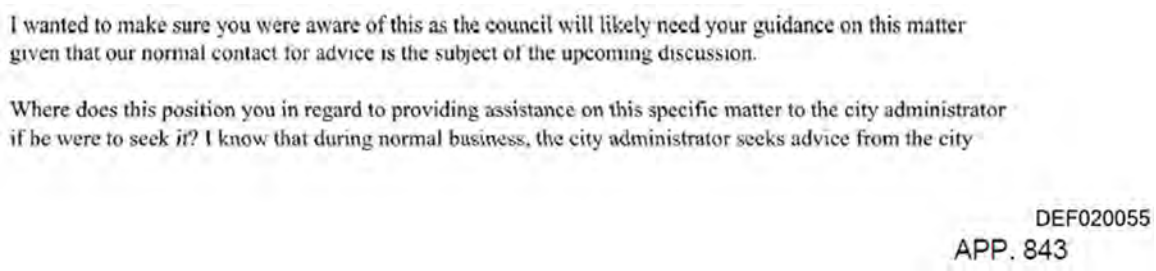
D0048 at ¶ 161(citing D0045, Depo. Ex. 84 at App. 641-42 (9/14/2022); D0100 at ¶¶ 6-7.

Brick replied, "When is the next meeting?" D0048 at ¶ 161. Mandsager responded, "11/7. Perhaps I should file [sic] consider filing for LTD or FMLA in next couple of weeks…" D0048 at ¶ 163. The City Attorney responded to Mandsager on October 17, 2019 stating, "I would definitely file for FMLA, ADA or LTD." D0100 at ¶ 7.



D0048 at ¶ 163 (citing D0045, Depo. Ex. 84 at App. 641-42 (9/14/2022)). Less than twenty minutes later, on October 17, 2019 at 8:54 PM, Mandsager emailed HR Director Stephanie Romagnoli stating, "I would like to begin the process to file for FMLA, ADA, or LTD (which is most appropriate or both?). Can you please assist me with the application process." D0048 at ¶ 165.

On October 18, 2019 (the next day), Mandsager messaged Brick that he was going to email the councilmembers to inform them of his sudden request for FMLA. D0048 at ¶ 166. Brick responded: "I'd hold off on all emails until we meet on Tuesday." D0100 at ¶ 9. The same day (October 18, 2019), Brackett emailed Brick regarding the October 17 motion and stated in part:


I wanted to make sure you were aware of this as the council will likely need your guidance on this matter given that our normal contact for advice is the subject of the upcoming discussion.

Where does this position you in regard to providing assistance on this specific matter to the city administrator if he were to seek *it*? I know that during normal business, the city administrator seeks advice from the city

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D0048 at ¶ 170 (citing D0045, Brackett Emails at App. 843-44 (9/14/2022)). Shortly after Brackett's email, Brick responded in part: "As for the City Administrator, if he

asks for any assistance on this matter, I will say that I work for the Council so, if he needs any assistance he will need to obtain outside counsel." D0048 at ¶ 171.

On October 21, Broderson sent a text to Brackett: "Inside word is that Gregg is going to quickly file for FMLA so he can't be let go. …" D0048 at ¶ 172. Brackett responded: "Not surprised, I will talk to [the City Attorney] about it tomorrow." D0048 at ¶ 173. The same day (October 21, 2019) Broderson text messaged Brackett with an internet search from "HR Daily Advisor" that said:

D0048 at ¶ 174 (citing D045, Depo. Ex. 31 at App. 267 (9/14/2022)). To which Bracket responded: "Yeah, that is why I am not worried about that part" and, "My motivation has nothing to do with that. So it isn't relevant." D0048 at ¶ 175.

On October 22, 2019, Brackett messaged Brick stating in part:

> Also, I have been told he is now trying to rush FMLA. How does that impact our next meeting if a motion is made to cancel his contract? My issues with his performance have nothing to do with whatever he is doing with FMLA.

D0048 at ¶ 178 (citing D045, at App. 845 (9/14/2022)). Brick responded that day stating, in part, that an employer could terminate someone on FMLA and that the employer "would just need to provide evidence of the legitimate reason(s) for the termination. D0048 at ¶ 179. Also on October 22, 2019, Brick and Mandsager had a meeting where Brick took notes of the meeting appropriately titled "10/22/19 – Meeting with Gregg." D0067 at ¶ 1. This meeting between Mandsager and Brick included the following discussion points:

Muscat: Labor Issues

10/22/19 - Meeting with Gregg
1. Donations
    1. $60 for Steph.
2. Press Coverage
    1. Know anyone with the DSM Register?
    2. Know any press other than Journal?
3. Leave from work
    1. LTD - will do
    2. FMLA - done Monday
    3. ADA - nothing to do now
4. 11/7 Meeting
    1. Closed or open session?
    2. Bring witnesses
        1. Can I request that other staff be in attendance at the closed session if I believe that they have relevant information - HR, Finance, other or all Department Heads? Perhaps Patti Seda? Does that negate the Closed session?
    3. Pack chamber
    4. Ask candidates to come
    5. Bring legal counsel (send letter ahead of time)
        1. Have Steph. report to ICAP and have ICAP counsel there
    6. Open Meetings
    7. FMLA retaliation
    8. ADA discrimination
    9. Retaliation claim
        1. When was settlement?
    10. Wrongful termination
    11. Breach of contract
    12. Defamation
    13. Self-compelled defamation
    14. Fraud/Estoppel (evaluation)
5. Outstanding Issues—purpose of today's meeting
    1. Haggerty lawsuit - May 2020

EXHIBIT 121 11-22 SCI Brick

BRICK000493

SUPP. APP. 001

2. PERB claim
3. FD Negotiations
4. Larew ATE claim
5. FD PPC
6. Varela Writ of Cert
7. Gobin Termination
8. Cooks ICRC complaint
9. Dick Doyle Contract
    1. Deadline for meeting or self-help
10. Call Patti Seda regarding evaluation
    1. Have Gregg finish up his information so she can send information to Council
        1. There was nothing negative in the 360 evaluation—all helpful.
        2. Patti is willing to send an email to Council shaming them.

D0067, Defs' SOAF at ¶ 1 (10/11/2022) (citing D0068, Depo. Ex. 121 at Supp. App.001, Brick Meeting Notes, (10/11/2022)).

On October 24, 2019, Mandsager drafted an email for the councilmembers that he shared with Brick via text message. Brick recommend edits to the email including that Mandsager remove the word "stress"; so, Mandsager applied the changes. D0048 at ¶¶ 189-90. On October 25, 2019, at 9:01am, Mandsager sent the email that he workshopped with Brick. D0048 at ¶¶ 189-90.

On October 25, 2019, Brackett and Saucedo called Brick for advice regarding the impact of medical leave on the pending motion to terminate. D0100 at ¶ 12. Brick audio recorded the conversation Brackett and Saucedo without their knowledge. D0048 at ¶ 196. During that recorded call, Brackett articulated to Brick (who was "working behind the scenes" for Mandsager) his justification for wanting to terminate Mandsager, stating the reason for termination was plainly insubordination and that it "all goes back to" the ad hoc committee and Mandsager's fight against

the Council, followed by the resistance to the Code Change. D0048 at ¶¶ 195-197, 208-209. Brackett also stated that Mandsager's decision to go on FMLA did not change anything because Brackett made the motion before he knew of Mandsager's FMLA. D0048 at ¶ 197.

Brick responded in the recorded phone call that Mandsager's impending FMLA meant that Mandsager would get a bigger check from the City's insurance company if Mandsager sued the City. D0048 at ¶ 198. Brick went on to advise that Mandsager could be terminated if they were not considering his FMLA or sickness. D0048 at ¶ 199. Brackett and Saucedo reiterated that they had known of Mandsager's health issues for years and it was not an issue—his insubordination was the issue. D0100 at ¶ 13; D0048 at ¶¶ 201, 206.

Brackett also expressed during the call that he wanted Brick to know that Mandsager was telling people Mandsager had Brick's support to "help fight the Council." D0048 at ¶ 203. Brick feigned surprise on the call and reiterated that he told Mandsager forcefully that he represented the City. D0048 at ¶¶ 204-05. Brick then advised Brackett and Saucedo that they could not have someone in the job as City Administrator who is openly insubordinate to the Council. D0048 at ¶ 208.

On November 6, 2019, in text messages about the next day's Council Meeting, Broderson messaged, "OK then [w]hoever makes the motion can just say 'Move to end City Administrator contract because of no confidence in his leadership anymore

and keeping him on would not be in the best interest of the city and this has nothing to do with FMLA." D0048 at ¶ 209. On November 6, 2019, Brick messaged Mandsager and said, "I'd push Tom [Spread] and Phil [Fitzgerald][3] (two other City councilmembers) to berate the rest for refusing to wait until you're off leave and the evaluation is done." D0048 at ¶ 219.

At the November 7, 2019, Council Meeting, the Council tabled discussion on ending Mandsager's employment. D0048 at ¶ 220. During the meeting, Mandsager messaged Brick, who was in attendance at the meeting, stating, "Legal opinion that it is not inconsistent. Can't do that…admin function unless terminated as discussed. Can you address?" D0048 at ¶ 221. And, Brick responded, "Hold on, I'm busy trying to save your job." D0100 at ¶ 17.

Brick and Mandsager's plot to save Mandsager's job was in full swing the day of the council vote. On December 5, 2019, Patti Seda (an individual who had been hired to "provide unbiased and objective third-party facilitation of the City Administrator performance evaluation process") sent an email with the intention of "shaming" the Council ahead of the vote to terminate. D0067 at ¶ 1; D0048 at ¶¶

[3] While Councilmember Fitzgerald testified in this case that he generically felt Mandsager had been retaliated against, Fitzgerald also testified that he could not think of any examples where Mandsager was discriminated against on the basis of his disability and Fitzgerald confirmed that he never saw or heard anyone hold Mandsager's health condition against him. D0060, Plf. Ex. 128 at 42:14-44:16 (9/30/2022).

223-26. Although Seda was just hired to create an assessment tool, as seen in the meeting notes for Brick and Mandsager on October 22, 2019, it was part of their plan to direct Seda to send an email "shaming" the council from terminating Mandsager. D0067 at ¶ 1.

Also on December 5, 2019, Brick messaged Mandsager that Councilmember Allen Harvey ("Harvey") forwarded a private email between Brick and Harvey to the entire Council. D0048 at ¶ 234. In reference to Harvey's forward to the Council, Brick stated "I think Allen just outed me as someone working behind the scenes on you [sic] behalf. I'm not sure any of them would be surprised by that but it certainly makes it even less likely that they take my advice." D0048 at ¶ 235.

At the December 5, 2019, Council meeting, the majority of the City Council voted to end Mandsager's employment in public, open session. D0048 at ¶ 236. Broderson, as a non-voting member, did not have a vote regarding Mandsager's termination. D0048 at ¶ 250. Brick messaged Mandsager from the Council meeting, "These fuckers just made you a lot of money." D0048 at ¶ 237. Mandsager understood that the message from Brick about "these fuckers" was a reference to those councilmembers who voted in the majority to terminate, as well as Broderson. D0048 at ¶ 238.

Brackett testified he voted to terminate Mandsager's employment after Brackett felt it was "blatantly obvious" that Mandsager was seeking to circumvent

the City Code change regarding staff communication through manipulation of the employee handbook. D0048 at ¶ 243. Saucedo testified that he voted to terminate Mandsager's employment because the last straw was the deviation from the Code Change via the Handbook Change. D0048 at ¶ 244.

Saucedo described the Handbook Change as a willful, failure to implement Council policy. D0048 at ¶ 77. A majority of the councilmembers honestly believed that Mandsager was insubordinate and worked against them, not with them. D0048 at ¶¶ 54, 110. Mandsager was fully apprised of the Council's concerns with his demeanor with certain elected officials the building and permitting department/ad hoc committee, the staff communication Code Change and handbook response. D0048 at ¶¶ 92, 99, 94, 161.

Brockert testified her primary concern the evening of the vote to terminate Mandsager's employment was "the change in the employee handbook regarding contacting the City Administrator if you spoke to a [council] person." D0048 at ¶ 247. Brockert further testified the Council was frustrated with Mandsager's failure to follow Council direction. D0048 at ¶ 248. Malcolm testified he voted to terminate because he felt Mandsager gave less than honorable answers to requests for information. D0048 at ¶ 249. Broderson did not have a vote per City Code. D0048 at ¶ 11.

On December 23, 2019, Mandsager received the following notice from the City Attorney, "As stated as part of the Motion to Remove passed during the December 5, 2019, Council meeting, you are being removed from office because a majority of the Council has lost confidence in your willingness to perform your duties. As an example, there have been multiple issues during public meetings where a majority of council rule in one direction and you pushed repeatedly in an opposite direction." D0048 at ¶ 261.

Brackett requested that the change in language from "ability" to "willingness" because he was "sure that [Mandsager] [was] able to do the work assigned" and that the "lack of confidence comes from his seeming lack of willingness to do what the council directs." D0048 at ¶ 264. On December 24, 2019, Brick messaged Mandsager, "FYI: the removal letter is on its way to you. Out of the blue [Brackett] [] sent me his changes." D0048 at ¶ 267. Mandsager responded, "Thanks. Did he word it correctly?" D0048 at ¶ 268. Brick responded: "Of course he didn't." D0048 at ¶ 269.

On January 2, 2020, with a new Council, Councilmember Dwayne Hopkins moved to reinstate Mandsager; the motion failed for a lack of second. D0048 at ¶ 270. Accordingly, the Council seated after Mandsager's termination could have voted to reinstate him, but the motion did not even garner a second. D0048 at ¶ 271.

On or about June 29, 2023, Brick testified by affidavit before the Grievance Commission of the Supreme Court of Iowa in the matter GC No. 955-d, ABA No. 2022-198, *Iowa Supreme Court Attorney Disciplinary Board v. Matthew Brick* (6/30/2023). D0100 at ¶ 1. Brick admits there was a faction of elected officials who strongly disliked Mandsager and were vocal in this dislike in the approximately four years leading up to his termination. D0100 at ¶¶ 2-3. This minority became a majority after repeated concerns of Mandsager's insubordination. D0100 at ¶¶ 2-3, 13.

ARGUMENT

I. THE DISTRICT COURT'S RULING MISUNDERSTANDS *FEEBACK* AND THE "HONEST BELIEF RULE"

A. Issue Preserved for Appellate Review

Through their August 3, 2023, Renewed Motion for Summary Judgment, Defendants raised and preserved for appeal that Mandsager failed to prove pretext under *Feeback* given the overwhelming evidence and exposed scheme between Mandsager and Brick. D0101, Renewed Brief at 5-8 (8/3/2023). Defendants also raised and preserved for appeal that Mandsager could not survive summary judgment under the "honest belief rule" set forth in *Feeback*. D0101 at 5-8. In response to Plaintiff's Resistance, Defendants then raised that neither Plaintiff nor the District Court could have predicted or applied *Feeback* before it existed, and, as a result, Mandsager merely copying and pasting the December 2022 Ruling to resist

the Renewed Motion was not sufficient. D0114, Renewed Brief at 1-2 (10/4/2023). The issues were then decided in the District Court's April 2024 Ruling. D0133 at 3-4.

B. Standard of Review

Summary judgment is reviewed for correction of errors at law. *Pitts v. Farm Bureau Life Ins. Co*., 818 N.W.2d 91, 96 (Iowa 2012); *Iowa Individual Health Ben. Reins. Ass'n v. State U. of Iowa*, 876 N.W.2d 800, 804 (Iowa 2016).

C. Argument: *Feeback* Demonstrates Mandsager's Pretext Argument Fails

Mandsager's remaining claims before this Court available for analysis under *Feeback* include Count I Disability Discrimination (excluding Defendant Broderson) and Count II: Retaliation based on Disability (excluding Defendant Broderson). As an initial matter, Defendants anticipate that Mandsager will continue to assert, without support, that he has direct evidence of discrimination and, thus, that *Feeback* does not apply. D0112, Plf's Resistance to Renewed Motion at 3 (9/25/2023). However, Mandsager has no direct evidence, and he plainly relies on pretext (circumstantial evidence). D0114 at 3.

There are no facts in the Record demonstrating direct evidence. Direct evidence of a discriminatory motive "is rarely trumpeted by the employer and is almost never available". *See Stansbury v. Sioux City Cmty. Sch. Dist., No. 21-0864*, 2022 WL 2824284, at *4 (Iowa Ct. App. July 20, 2022). For his purported "direct

evidence", Mandsager alleges that the District Court "already held that there is direct evidence that Defendants **knew of Plaintiff's disability and his accommodations**." D0112 at 3 (emphasis added). This is not true. The mere fact that Defendants "knew of Plaintiff's disability and his accommodations" is not direct evidence—it is a fact that can be used to support circumstantial evidence. Direct evidence "is not the converse of circumstantial evidence" and, instead, is "showing a specific link between the alleged discriminatory animus and the challenged decision." *Griffith v. City of Des Moines*, 387 F.3d 733, 736 (8th Cir. 2004).

Mandsager did not offer anything for the District Court to analyze, nor are there any facts in the record that support an announced discriminatory motive at the City Council meetings where Mandsager's termination was discussed or in the termination letter. *See Griffith*, 387 F.3d at 736. Mandsager's warped reading of the December 2022 Ruling attempts to alter the ruling and its clear language. There is no direct evidence in the record and the District Court certainly did not declare it so. *See King v. United States*, 553 F.3d 1156, 1160 (8th Cir. 2009).

Because Mandsager only has an indirect evidence case, the modified *McDonnell Douglas* standard adopted in *Feeback* applies: (1) Mandsager must establish a prima facie case; (2) Defendants can rebut that case; and then (3) Mandsager must overcome the employer's rebuttal by demonstrating pretext. *See Feeback*, 988 N.W.2d at 347.

To resist the Renewed Motion, Mandsager did nothing more than refer back to the December 2022 Ruling. D0112 at 3. As a result, Mandsager failed to present evidence in his Resistance to meet his burden to establish pretext. D0112 at 3. However, the District Court concluded that Mandsager's reference back to the December 2022 Ruling was sufficient to establish pretext. D0133 at 4. In coming to this conclusion, the District Court erred by declining to engage in any analysis of *Feeback* because "[t]he Court already found that the plaintiff provided a sufficient basis for his argument about pretext to survive summary judgment." D0133 at 4.

The District Court erred when it adopted Mandsager's argument that the District Court could and should conduct no analysis under the new case law and rely solely on the December 2022 Ruling that pre-dated *Feeback*. D0133 at 4. *Feeback* was not the law of the land at the time of the December 2022 Ruling. Even if no new factual developments had occurred in the case—and here they certainly did—Defendants renewed their motion for summary judgment under the new case law, incorporating the facts from the SOUF, SOAF, and the RSOAF. Mandsager then had the burden to prove pretext to defeat Defendants' Renewed Motion. The District Court then needed to conduct its analysis based on the *Feeback* framework. Instead, the District Court simply adopted Mandsager's argument outright, without conducting any new analysis. Consequently, the District Court's reliance on the pre-*Feeback* December 2022 Ruling, without more, was misplaced.

Since *Feeback*, the issue of pretext has been further analyzed. *See Avery v. Iowa Dept. of Human Services*, 995 N.W.2d 308, 314 (Iowa Ct. App., July 13, 2023). In affirming the District Court's grant of summary judgment in *Avery v. Iowa Department of Human Services*, the Iowa Court of Appeals reiterated that the "showing of pretext necessary to survive summary judgment requires more than merely discrediting the employer's proffered reason for the adverse employment decision." *Id.* at 312, 314 (citing *Feeback*, 988 N.W.2d at 348). A "protected class must have **actually** played a role in the employer's decision-making process and had a determinative influence on the outcome." *Id.* at 314 (emphasis added). Here, that burden is on Mandsager.

In its analysis of *Feeback*, the *Avery* Court affirmed the District Court's grant of summary judgment and stated a "material question of fact regarding pretext can be demonstrated in at least two ways: (1) by showing that the employer's explanation is unworthy of credence because it has no basis in fact; or (2) by persuading the court that a prohibited reason more likely motivated the employer. The court's inquiry is limited to whether the employer gave an honest explanation of its behavior." *Id.*

Under the instruction provided in *Feeback* and *Avery*, it was Mandsager's burden on Counts I and II for Disability Discrimination and Retaliation to show that either: (1) the Defendants' explanation of Mandsager's insubordination had no basis in fact; or (2) that a prohibited reason (his health and requested medical leave) was

more likely what motivated the Defendants rather than his insubordination. Mandsager offered nothing to meet this burden in his Resistance to the Renewed Motion.

Even if Mandsager had offered an argument related to pretext, he would have failed to put up submissible evidence to survive summary judgment. First, Defendants' explanation of insubordination is demonstrated throughout the record. Defendants raised the alarm repeatedly that Mandsager was insubordinate. As Defendant Brackett told the duplicitous former-City Attorney in a surreptitiously recorded phone call, the concerns of Mandsager's insubordination "go[] back to" the ad hoc committee issue of 2018 and Mandsager's continued fights against the Council's initiatives including pushback to the Code Change from October 2019.

Second, Mandsager had the burden to persuade the District Court that his health or medical leave was what more likely motived Defendants rather than Mandsager's insubordination with the Code Change. It is unclear what Mandsager could use to persuade the District Court that the final straw was not the Code Change. The timeline is damning. Defendants had vague knowledge of Mandsager's health from his email updates, but those email updates predated his termination by over a year. Defendants had no knowledge of Mandsager's medical leave until after the motion to terminate—the motion to terminate Mandsager's employment preceded his request for leave.

The City Council was aware of Mandsager's ongoing health issues since at least August 2018, and no one took any adverse action against him during that time. Instead, Mandsager exposed his insubordination when the Council voted for the October 3, 2019 Code Change to "foster more communication directly between Council and employees." Given his disdain for the Code Change, Mandsager immediately took matters into his own hands to circumvent the Council's access to City employees and, on October 9, 2019, implemented the Handbook Change.

Mandsager personally confirmed that the Handbook Change meant that any conversations with the Mayor or City Council should be **immediately** reported to him—a request that directly contradicted the Code Change. Shortly after the Councilmembers learned of the Handbook Change—a further act of insubordination by Mandsager—Brackett made a motion to terminate Mandsager's employment on October 17, 2019. Mandsager, who Defendants also understand to be a licensed attorney in the State of Iowa, then cooked up a fake timing issue with Brick to make it seem like any termination was a result of Mandsager's medical leave. It plainly was not. Mandsager and Brick then plotted and schemed to manufacture the lawsuit before this Court now.

Sequence matters, and the sequence of events here supports dismissal of Mandsager's claims in their entirety. The record before this Court is a death knell to Mandsager's pretext arguments. The text messages between Mandsager and Brick

demonstrate clearly that Mandsager planned to file for FML immediately following the City's motion to terminate him to shield himself from termination—not for any legitimate reason. Brick fully encouraged and promoted this farce. Notwithstanding, Iowa law is clear that Mandsager cannot engage in terminable conduct and then use his purported disability and suspiciously timed request for leave as a shield and a sword. *See, e.g., Rumsey v. Woodgrain Millwork, Inc.*, 962 N.W.2d 9, 31 (Iowa 2021) ("An employee who engages in terminable conduct cannot avoid the consequences of his actions by then requesting an accommodation for those actions") (citing *Schaffhauser v. UPS, Inc*., 794 F.3d 899, 906 (8th Cir. 2015) ("[L]iability is not established where 'an employee engages in misconduct, learns of an impending adverse employment action, and then informs his employer of a disability that is the supposed cause of the prior misconduct and requests an accommodation.'"). Mandsager "cannot dress up insubordination as protected conduct to immunize himself from negative repercussions for his actions." *Kuehl v. Tegra Corp*., 986 N.W.2d 130 (Table) 2022 WL 2155269, *6 (Iowa Ct. App. June 15, 2022).

Mandsager cannot establish pretext under *Feeback* and its progeny and, thus, should not have survived summary judgment on this basis. The basic purpose of summary judgment is to weed out "[p]aper cases" in order "to make way for litigation which does have something to it." *Feeback*, 988 N.W.2d at 348 (citing

Slaughter v. Des Moines University, 925 N.W.2d 793, 808 (Iowa 2019)). No reasonable jury could find Mandsager's purported pretext evidence sufficient. There is no case more appropriate for summary judgment than this—where evidence of pretext is completely lacking and the record demonstrates manufactured claims by two attorneys, the former employee and the former City Attorney.

D. Argument: *Feeback* Does Not Require that the Employer is Mistaken in its Honest Belief—Just that the Employer Honestly Believed the Conduct Occurred

The District Court's April 2024 Ruling relies on an incorrect reading of *Feeback* and an incorrect application of the December 2022 Ruling that predated *Feeback*. D0133 at 3-4. Specifically, the District Court's Ruling embraces and parrots Mandsager's arguments that "this is not an 'honest belief rule' case" because: (1) the honest belief rule only applies to cases when the Defendants' proffered reason for termination is false and (2) the "honest rule" [sic] defense does not apply because of the December 2022 Ruling. D0133 at 4 (citing D0112 at 3). To embrace these arguments is to misinterpret and distort *Feeback*'s adoption of the "honest belief rule" and its other dictates.

1. <u>Iowa Courts Do Not Need to Make a Factual Determination as to Whether Employer's Reason was False</u>

Mandsager's first theory that the proffered reason for termination must be false as a prerequisite to use the honest belief rule misunderstands *Feeback* entirely. Contrary to the District Court's Ruling, nowhere in *Feeback* does the Iowa Supreme

Court describe or assign a requirement that employers must be proven mistaken[4] in their honest belief in order to utilize the "honest belief rule". *See generally Feeback*, 988 N.W.2d 340. The facts underlying *Feeback* demonstrate the absurdity of this argument and this interpretation of the rule.

In *Feeback*, the Plaintiff argued under his "mistake theory" that the offending text messages were sent to the wrong person. *Id.* at 349. The employer then argued that its investigation determined that plaintiff was terminated for the offensive text messages because the employer did not believe plaintiff's explanation of events. *See id.* at 345, 350. As the Iowa Supreme Court determined, it did not matter whether *Feeback* actually intended the text messages for the ultimate recipient. *See id.* at 350. The focus was the honest belief of the employer in coming to the conclusion to terminate. *See id.*

To put it simply, the "honest belief rule" is about the employer's beliefs—not whether the employer's detective work uncovered the correct answer. *Feeback*, 988 N.W.2d at 347. In fact, the *Feeback* Court ignored entirely the question of whether the employer was ultimately mistaken. *Id.* at 349–50. *Feeback* allows employers to "make even hasty business decisions,

[4] Further highlighting the mental gymnastics required under Mandsager's theory, Defendants note Mandsager's argument that this is not an "honest belief rule" case because the employer must be mistaken implies that Mandsager actually agrees that Defendants' fears and concerns about Mandsager and his insubordination were founded.

so long as they do not discriminate unlawfully." *Id.* at 350. What matters for summary judgment is whether or not the employer in good faith believed that the employee was guilty of the conduct justifying the discharge and that the defendant employer had evidence to support this honest belief. *Id.* at 349. This merely means that an allegation by a plaintiff that defendant employer was mistaken in its belief cannot disrupt summary judgment—not that there must be a determination regarding the accuracy of the employer's belief. *See id.* Whether the employer was ultimately mistaken in its "honest belief" is entirely irrelevant to the analysis.

To survive summary judgment in a discrimination case under *Feeback*'s honest belief rule, Mandsager would need to show that the Defendants did not honestly believe the legitimate reason provided in terminating his employment. *Id.* at 349. "[T]he question is whether [Defendants] had a good-faith honest belief that [Mandsager] was insubordinate." *Id.* at 349. They did, and they had voiced their concerns with Mandsager's insubordination for years. These concerns predated Mandsager's "health updates" in his emails, predated his requested accommodations, and predated Mandsager's leave. D0048 at ¶¶ 84-99, 152-153, 161. Accordingly, Mandsager's argument that the "proffered reason for termination" must be factually false is an attempt only to cling to the wreckage of a case that should have been dismissed at summary judgment long ago.

It seems that Mandsager's argument is based on a misinterpretation of *Pulczinski v. Trinity Structural Towers, Inc*., 691 F.3d 996, 1003 (8th Cir. 2012). First and foremost, *Pulczinski* is not an Iowa Supreme Court case. It is from the Eighth Circuit where *McDonnell Douglas* is the framework used at summary judgment–not Iowa's modified *McDonnell Douglas* framework under *Feeback*. *Compare McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973) *with Feeback*, 988 N.W.2d at 347.

Second, in *Pulczinski*, the plaintiff argued that the "honest belief rule" should be abandoned and "that summary judgment is per se inappropriate when an employee presents evidence that an employer's proffered reason for termination is false." *Id.* at 1002. In *Pulczinski*, the plaintiff argued summary judgment should be denied solely on the basis that the plaintiff alleged the defendant employer's offered basis was false. *Pulczinksi*, 691 F.3d at 1002. However, the *Pulczinski* Court firmly held that to show pretext, a plaintiff "must present sufficient evidence that the employer acted with an intent to discriminate." *Id.* at 1003. The *Pulczinski* Court clarified that merely because an "employer's belief turns out to be wrong [, it] is not enough to prove discrimination." *See id.* at 1003. Such clarification acts are contrary to Mandsager's position. Accordingly, Mandsager's—and in turn the District Court's—reliance on *Pulczinski* is misplaced.

Here, the Defendants honestly and strongly believed that Mandsager acted in direct contravention of his employer, and he conspired with Brick to do so. The point of the honest belief rule is not that Defendants' reason must ultimately have been mistaken. Rather, *Feeback* commands that Mandsager cannot disrupt this summary judgment by arguing his insubordination is a fact issue when Defendants have undisputed evidence they honestly believed his insubordination justified termination. Despite the clear instruction from *Feeback*, Plaintiff's blatant distortion tainted the District Court's April 2024 Ruling.

2. Nothing in Iowa Law Supports Mandsager's Argument that the District Court Could Ignore *Feeback* as "already decided" When the Previous Ruling Pre-Dates *Feeback*.

To support his theory that *Feeback* is not applicable because it was "already decided", Mandsager cites to the December 2022 Ruling as if the ruling that **predated** *Feeback* somehow anticipated the new standard. D0112 at 5. Neither Mandsager nor the District Court could have predicted the *Feeback* analysis back in December 2022. The Iowa Supreme Court did not decide *Feeback* until March 2023. The December 2022 Ruling applied the law as to summary judgment that it had available to it at the time, and the law has since changed. Consequently, the District Court should have performed its analysis under the current state of the law—not outdated case law recycled from its December 2022 Ruling to support its April 2024

Ruling. Therefore, the District Court erred in adopting Mandsager's argument that *Feeback* need not be applied. D0133 at 3.

The argument that *Feeback* does not apply because pretext "has already been decided" boils down to Mandsager's personal belief, which is unsupported by Iowa law, that even with new law or new evidence, renewed summary judgment motions should never be allowed. D0112 at 8. While Mandsager's Resistance Brief alleges without support that "[t]here are no two bites at the apples, let alone, a third bite considering the Interlocutory Appeal denied as Defendant's [sic] second bite," there is nothing under Iowa law that precludes parties from filing multiple summary judgments or from filing multiple Interlocutory Appeals in the context of regular litigation. D0112 at 8.

Of note, the only limitation in the rules for summary judgment is in the context of an expedited civil matter where the rules explicitly spell out that there is a "[l]imited number" of summary judgment motions—one. *Compare* Iowa R. Civ. P. 1.281(3) *with* Iowa R. Civ. P. 1.981. Other than that, there is nothing in the Iowa Rules of Civil Procedure that permits District Courts to summarily disregard further or renewed dispositive motions. Although Mandsager likely views these proceedings as the fourth and fifth "bite at the apple," Mandsager's argument that this was "already decided" is entirely without merit and the District Court's reliance on the previous ruling was misplaced.

II. THE DISTRICT COURT ERRED WHEN IT IGNORED THE ANALYSIS IN *MCCOY V. THOMAS L. CARDELLA & ASSOCIATES* AS TO THE PREEMPTION OF TORT CLAIMS

A. Issue Preserved for Appellate Review

Defendants raised and preserved for appeal that Mandsager's tort claims were preempted through the exclusive remedies of the Iowa Civil Rights Act ("ICRA") through their August 3, 2023, Renewed Motion for Summary Judgment. D0101 at 12-14. The issue was then decided in the District Court's April 2024 Ruling. D0133 at 5-6.

B. Standard of Review

Summary judgment is reviewed for correction of errors at law. *Pitts*, 818 N.W.2d at 96.

C. Argument: The Venn Diagram of Facts for Mandsager's ICRA Claims against Councilmembers and the Tort Claims against Former Mayor Broderson are a Circle

The District Court erred in denying summary judgment on Mandsager's remaining tort claims against Defendant Broderson. As detailed in Defendants' Renewed Motion, Mandsager's tort claims are expressly preempted by the ICRA[5]; yet, in its Ruling, the District Court ignored the Iowa Supreme Court's discussion of

[5] Defendants acknowledge that the Iowa Supreme Court's opinions have used the term "preemption" synonymously with the exclusivity principle in the ICRA, but that the Court has noted "preemption" has independent legal significance. *McCoy*, 992 N.W.2d at 225 n.1. With that in mind, Defendants similarly utilize "preemption" as shorthand for the description of the exclusive nature of the ICRA remedy. *See id.*

the ICRA in *McCoy*. D0133 at 5-6. The District Court held in the April 2024 Ruling that *McCoy* does not represent new authority on the issue of ICRA preemption and therefore disregarded *McCoy*. Nevertheless, the guidance *McCoy* provides as to ICRA preemption is instructive, and, as such, Defendants request appellate intervention. *See McCoy*, 992 N.W.2d at 229.

In *McCoy*, the defendant appealed a jury verdict on the plaintiff's common law tort action as preempted by the ICRA and the Iowa Workers' Compensation Act ("IWCA"). *McCoy*, 992 N.W.2d at 227. While the *McCoy* Court determined that it did not need to reach the issue of ICRA preemption directly given IWCA exclusivity, the *McCoy* Court thereafter repeatedly discussed and analyzed the ICRA. *See id.* at 225 n.1, 229, 232 n.4. Most notably, the *McCoy* Court frequently references the "the exclusive nature of the ICRA and IWCA remedy provisions" which the Court refers to in shorthand as preemption. *See id.* at 229 (citing *Graham v. Drake Univ., No. 4:16-cv-00648*, 2018 WL 11417566, at *5 (S.D. Iowa Feb. 21, 2018) ((dismissing negligent supervision or retention claim as precluded by the ICRA).

Central to *McCoy* is the principle that a plaintiff "cannot avoid the statutory processes for seeking redress against [their] employer by manipulating common law theories to reach the jury." *See id.* at 225. Because the plaintiff's Venn diagram of claims was truly one circle, the *McCoy* Court even stated that the plaintiff's tort "claim, as pleaded, was likely barred by the ICRA." *See id.* at 232 n.4.

Here, Mandsager's lawsuit does just that—the facts he uses to support his tort claims against Broderson are the exact same facts he has alleged support his ICRA claims from which Broderson has already been dismissed by the District Court. There are no differences between the facts underlying the ICRA claims and the tort claims, "to the point that there is only one circle in the Venn diagram of the [] claims". *See McCoy*, 992 N.W.2d at 227.

To resist the renewed summary judgment motion, Mandsager offered that the District Court previously determined that the evidence underlying his tort claims was similar to that in *Iowa Coal Min. Co., Inc. v. Monroe County*. *See* 555 N.W.2d 418 (Iowa 1996); *see also* D0112 at 6. Specifically, because the District Court stated that Mandsager has "evidence that Broderson was hostile towards Plaintiff based on his absences from work" and that she was "significantly involved in plans to have Plaintiff terminated from his position" Mandsager believes he should be able to bring both tort claims and ICRA claims under the same set of facts. *See* 555 N.W.2d 418 (Iowa 1996); *see also* D0112, Plf's Resistance to Renewed Motion at 6 (9/25/2023). These are the same theories Mandsager proffers for his ICRA claims, from which the District Court dismissed Broderson.

Notwithstanding the holding in *McCoy*, Mandsager's tort claims are plainly preempted. The test for ICRA preemption is "whether, in light of the pleadings, discrimination [or retaliation] is made an element of the non-ICRA claims." *See*

Channon v. UPS, Inc., 629 N.W.2d 835, 858 (Iowa 2001); (*Graves v. City of Durant*, 2010 WL 785850, at *15 (N.D. Iowa Mar. 5, 2010)). "Preemption most obviously occurs if a plaintiff brings a tort claim supported by conduct also prohibited by the ICRA." *Cole v. Wells Fargo Bank, N.A*., 437 F.Supp.2d 974, 980 (S.D. Iowa 2006); *see also, Graham v. Drake Univ.*, 2018 WL 11417566, at *5 (S.D. Iowa Feb. 21, 2018). The standard and recent authority demonstrates that Mandsager's continued reliance on the December 2022 Ruling, which includes his reliance on *Iowa Coal*, is misguided especially where *Iowa Coal* does not even contemplate Iowa Code chapter 216 or preemption thereunder. *See generally, Iowa Coal*, 555 N.W.2d 418.

Defendants expect Mandsager to argue that *McCoy* has no impact because it "was not addressing ICRA preemption." D0112 at 7. In *McCoy*, the plaintiff had missed the 300-day window for filing an ICRA charge with the ICRC and the *McCoy* court did not address ICRA preemption as the motion for judgment notwithstanding the verdict on the issue of IWCA was reversed—rendering the ICRA analysis unnecessary. *See McCoy*, 992 N.W.2d at 228. Mandsager's case does not have the same procedural background that precluded analysis of the ICRA.

Authority from the recent term of the Iowa Supreme Court demonstrates that same premise, Mandsager's remedy is under the ICRA or he has no remedy at all. *See McCoy*, 992 N.W.2d at 232; *see also Smidt v. Porter*, 695 N.W.2d 9, 17 (Iowa 2005) ("To the extent the ICRA provides a remedy for a particular discriminatory

practice, its procedure is exclusive and the claimant asserting that practice must pursue the remedy it affords."). To the extent this Court feels *McCoy* is unclear on ICRA preemption, then Defendants also request that the Iowa Supreme Court clarify that plaintiffs like Mandsager cannot bring claims that belong under chapter 216 and disguise them as tort claims.

If permitted to continue with his tort claims with facts that belong under chapter 216, then Mandsager has found a loophole that *McCoy* and the ICRA's exclusivity provisions did not contemplate and, frankly, does not exist under Iowa case law. The facts of his ICRA claims are the same facts that support his tort claims. Plaintiffs like Mandsager "cannot avoid the statutory processes for seeking redress against [their] employer by manipulating common law theories to reach the jury." *See McCoy*, 992 N.W.2d at 225.

All roads lead back to the ICRA. The Iowa Supreme Court has now made plain that this type of tort action, wherein the Venn diagram of the underlying facts for the ICRA and the tort claims is just a circle, is barred pursuant to the ICRA's exclusivity provision. *Id.* Mandsager cannot sidestep the ICRA—his theory that he lost his job due to Broderson necessarily hinges on the idea that he was the subject of discrimination and/or retaliation. Accordingly, there is not a submissible tort claim for Mandsager due to the ICRA exclusivity provisions as explained by the

McCoy Court. Judgment should be entered in favor of Defendant Broderson on the remaining tort claims, dismissing her entirely from this case.

CONCLUSION

For the reasons stated above, the District Court erred when it failed to conduct analysis of the new case law and erred when it denied Defendants' Renewed Motion for Summary Judgment. Accordingly, the District Court's April 2024 Ruling should be reversed and summary judgment should be entered in favor of the Defendants.

REQUEST FOR ORAL ARGUMENT

Defendants-Appellants respectfully requests that this matter be heard orally upon submission of this case.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i)(1) because this brief contains 10,258 words (including images), excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) and the type-style requirements of Iowa R. App. P. 6.903(1)(h) because This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, size 14.

Dated: September 11, 2024

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CERTIFICATE OF FILING AND SERVICE

I certify that I filed this Brief with the Clerk of the Supreme Court using the Iowa Electronic Document Management System ("EDMS") on September 11, 2024.

I further certify that on September 11, 2024, a copy of this Brief was served using the EDMS system, upon the following persons:

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