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IN THE SUPREME COURT OF IOWA

Supreme Court No. Supreme Court Case: 23-1220

Johnson County No. LACV083455

AMIE VILLARINI

Plaintiff-Appellant,

vs.

IOWA CITY COMMUNITY SCHOOL DISTRICT

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF JOHNSON COUNTY
THE HONORABLE ANDREW CHAPPELL, PRESIDING

PLAINTIFF-APPELLANT'S
FINAL REPLY BRIEF

James K. Weston II AT0008404
TOM RILEY LAW FIRM
1210 Hwy. 6 West
Iowa City, IA 52246
Telephone: (319) 351-4996
Facsimile: (319) 351-7063
Email: jimw@trlf.com
ATTORNEYS FOR
PLAINTIFF-APPELLANT

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 10th day of January, 2024, I served this document through the Iowa Supreme Court EDMS:

I further certify that on the 10th day of January, 2024, I filed this document with the Iowa Supreme Court EDMS.

_/s/James Weston______________
James K. Weston II
Attorney for Appellants

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ARGUMENT

II THE DISTRICT COURT ERRED IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

A. SLANDER

Iowa law is clear that an attack on the integrity and moral character of a party is slanderous per se. *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 139 (Iowa 1996). There does not seem to be any dispute that the comments made at the ICCSD board meeting constituted slander per se. The district court agreed the statements were defamatory per se. (App. 166). ICCSD relies primarily on its claim that because the speakers were not employees of ICCSD, they are not responsible for the slander. However, in both its brief in support of its motion and in its appellee's brief, ICCSD agreed with Villarini that "Republication of defamatory statements occurs and can give rise to a cause of action separate from that created by the initial statement." (App. 73; Appellee's Brief at 18-19). This is precisely what ICCSD did—its employees recorded video of the board meeting and uploaded it to the ICCSD You Tube page, where is remains available to anyone with an internet connection. Had ICCSD not published (or left up) the defamatory

material, no one except those in attendance at the meeting would have heard it. Yet ICCSD never explains why it should not be held responsible despite its republication of the slanderous statements. ICCSD repeatedly notes that it was not its employees who made the statements, but does not address the fact that it published the statements. ICCSD was informed of the defamatory nature of the comments that ICCSD had itself published on the internet, and despite that notice, failed to act in any way.

Like the district court, ICCSD argues that its duty to keep minutes of its school board meetings somehow allows it free rein to publish anything on the internet without any responsibility. Again, the meeting minutes argument is a straw man. Keeping "a record of the proceedings" is not the same as a transcript. Had ICCSD simply summarized the proceedings in its minutes, we would not be here. The issue is that video of the actual allegations against Villarini were published on the internet for all the world to see despite being alerted to their slanderous nature.

The district court and ICCSD seem to take the position that ICCSD is barred from removing or editing video of its meetings in any way. Clearly that is not the case. If, for example, someone exposed themselves at a meeting, or made threats, or stated confidential student information, social security numbers, home

addresses, etc., ICCSD would certainly be able to edit the video to remove that portion.

ICCSD further argues that it does not adopt the statements. In fact it did, both in a legal sense in its discovery responses, as well as in a public sense by leaving the video up on its official You Tube channel. ICCSD responds to that concept by arguing it did not state approval of the comments on the site. However, it is the fact that it is on the official ICCSD site that gives the impression it adopts or endorses the statements. Again, one alternative requested by Villarini long ago was for ICCSD to put a disclaimer of some sort on the video, since it refused to edit the video, but it refused even that step, though it has never provided a reason why it thinks it could not do that.

ICCSD argues that it should not be responsible because it was acting on the advice of counsel. First, that is a circular argument: counsel for ICCSD are citing themselves as authority—they are the ones who purportedly gave the advice that ICCSD could not remove the slanderous language from the ICCSD You Tube page. Second, reliance on inaccurate legal advice is not a bar to liability for wrongful conduct. *In the Matter of Inspection of Titan Tire,* 637 N.W.2d 115, 132 (Iowa 2001).

ICCSD goes on to argue this case is "somewhat analogous . . . to a news outlet reporting on a public meeting." Perhaps there is some similarity, but a better analogy would be to a news outlet who repeatedly aired claims by a third party that it knew were slanderous. That would result in liability. "A speaker who repeats a defamatory statement or implication after being informed of its falsity 'does so at the peril of generating an inference of actual malice.'" *Nunes v. Lizza*, 12 F. 4th 890, 900 (8th Cir. 2021) (quoting *Bertrand v. Mullin*, 846 N.W.2d 884, 901 (Iowa 2014)).

The district court relied on the concept of qualified privilege, citing an unpublished Iowa Court of Appeals opinion, *Murken v. Sibbel*, No. 00-1239, 2001 WL 1451051 (Iowa Ct. App. Nov. 16, 2001). In that very opinion, the court states, "Qualified privilege is an affirmative defense which must be pled and proven." (*Id.* (citing *Vinson v. Linn-Mar Cmty. Sch. Dist.*, 360 N.W.2d 108, 116 (Iowa 1984)). In this case, ICCSD never pled qualified privilege as an affirmative defense, much less proved it. (App. 49). ICCSD fails to respond to Villarini's argument on this point in its brief.

ICCSD continues to argue that an easily distinguishable federal district court ruling somehow controls in this case. In *Cawiezell-Sojka v. Highland*

Comm. Sch. Dist., the court was faced with a situation much different than this case. Order Re: Defendants' Motion to Dismiss Amended Complaint for Failure to State a Claim, *Cawiezell-Sojka v. Highland Comm. Sch. Dist.*, No. 3:17-cv-00020-RGE-SBJ (Feb. 21, 2018, U.S. Dist. Court, S.D. Iowa). The Highland school district had a formal policy that allowed positive comments about district employees, but prohibited negative comments. (*Id.* at 21). Further, the court did not decide the merits of the claim, but merely whether there were allegations sufficient to survive a motion to dismiss. *Id.* at 22-24. The ICCSD chose to interpret this decision as one that would bar it from deleting or modifying any comments ever made at any of its board meetings. *Cawiezell-Sojka* did not involve defamatory speech or the broadcast/republishing of same. Here there is no issue of prior restraint on free speech, or even any issue of speech allowed at a board meeting, but merely the publication or modification of certain defamatory speech after it has been spoken.

Genuine issues of material fact prevented the entry of summary judgment on Villarini's defamation claims, and ICCSD was not entitled to judgment as a matter of law.

B. BREACH OF CONTRACT/VIOLATION OF PUBLIC POLICY

Villarini's Petition contained a claim for breach of contract. (App. 45). The existence and terms of a contract and whether the contract was breached are ordinarily questions for the jury. *Dallenbach v. Mapco Gas Products, Inc.*, 459 N.W.2d 483, 486 (Iowa 1990). However, the interpretation of contractual terms is a legal issue for the court. *Chariton Feed Grain v. Harder*, 369 N.W.2d 777, 785 (Iowa 1985). The district court noted that ICCSD did not make its employment contract with Villarini part of its summary judgment record. (App. 170). ICCSD fails to address in any way Villarini's question about how the district court could have granted summary judgment on her breach of contract claim when the contract was not a part any of ICCSD's summary judgment filings or the court file at all. In other words, the court cannot rule based on its interpretation of contractual terms if it does not have the contract in front of it.

In addition, there are genuine issues of material fact as to why Villarini was placed on leave. Her immediate supervisor, Craig Huegel, the West High AD, says it was because of the allegations made at the meeting. (App. 310). Villarini agrees. Chace Ramey claims it was because of social media posts, but his own emails to Huegel the night of the school board meeting and the following afternoon belie that claim. (App. 329-330). The ICCSD admits it would have

been improper to place Villarini on leave due to the allegations made at the board meeting, because those allegations had already been investigated and dismissed by the ICCSD itself. (App. 378).

Villarini was placed on leave due to the public statements and accusations at the board meeting, which had already been investigated by ICCSD and determined to be without merit. (App. 137). As a result of being placed on leave the day after the public accusations Villarini sustained damages to her career and her reputation. The district court erred in granting summary judgment on Villarini's breach of contract claim.

As noted, ICCSD admits that it would have been improper to put Villarini on leave due to allegations it had already investigated and determined were without merit. Yet that is what the evidence shows is exactly what ICCSD did. As a result of the public pressure related to the complaints at the board meeting, the ICCSD put Villarini on leave for allegations it knew were unfounded and baseless. Parents and students made baseless complaints against the coach; those complaints were investigated and dismissed by the school district itself; unhappy with that outcome, the students make a scene at a school board meeting with wild accusations, and as a result of that pressure, the ICCSD caves and places the coach on leave, which its employees admit was the likely motive behind the complaints

in the first place. There is a clear public interest against school employees being forced out of their jobs by angry parents and students making wild, unfounded allegations for the purpose of ousting that employee. The fact that Villarini was placed on leave due to improper reasons is buttressed by a number of facts—there was nothing in Villarini's personnel file regarding the pretextual reason for her being placed on leave (social media posts), and in fact Deputy Superintendent Ramey ordered her placed on leave before he had even seen the alleged post that purportedly caused it. ICCSD and its representatives admit that the norm was for a coaching contract to be renewed, and Villarini wanted to return as coach both during the season when she was placed on leave and the following season. At a minimum there were genuine issues of material fact on the basis for the ICCSD placing Villarini on leave that should have precluded summary judgment on this issue.

The district court inappropriately disregarded the admission made by Chase Ramey, the district's Deputy Superintendent, that it would have been improper for ICCSD to place Villarini on leave on the basis of the board meeting allegations because those allegations had been investigated by ICCSD and were determined to be unfounded. (App. 378). This admission, made by ICCSD management, should satisfy the elements of wrongful discharge in violation of public policy. Yet the

district court chose to disregard the admission, again misapplying summary judgment standards.

The district court should have denied ICCSD's motion for summary judgment on the breach of contract/wrongful discharge count.

III. THE DISTRICT COURT DID NOT ERR IN DENYING DEFENDANT'S MOTION FOR LEAVE TO AMEND ANSWER

A. STANDARD AND SCOPE OF REVIEW AND PRESERVATION OF ERROR

Villarini agrees that abuse of discretion is the proper standard of review and that ICCSD preserved error on its cross-appeal.

B. ARGUMENT

The district court was well within its discretion to deny ICCSD's motion for leave to amend. The motion was untimely and as it was filed about one month prior to trial, would have prejudiced Villarini. The trial scheduling and discovery plan in this case, filed July 25, 2022, stated that pleadings closed May 25, 2023. ICCSD did not request to amend its answer until June 16, 2023. (App. 53; App. 154). Nowhere in its motion for leave to amend or in its brief does ICCSD even attempt to explain why it waited a year after it filed its answer to seek to add the

affirmative defense. There was no change in the relevant facts or law during that time. Based on the untimely nature of the motion, and its proximity to trial, the district court's decision to deny the motion certainly did not rise to the level of an abuse of discretion.

Even if ICCSD had timely filed its motion for leave to amend, the defense would have failed as a matter of law. ICCSD's claim of immunity under Iowa Code §670.4A is misplaced. As ICCSD admits in its Brief, the plain language of Section 670.4A does not apply to this case as the sole defendant was ICCSD. Brief at 29-30. ICCSD cites no authority for its interpretation of that section, and indeed in that section cites no authority beyond Section 670.4A. When ICCSD first brought up the idea it may have immunity during the hearing on its motion for summary judgment, it discussed a case the Iowa Supreme Court had issued earlier that same day, *Nahas v. Polk County*. (Trans. 3-4). However, ICCSD does not even cite *Nahas* in its brief. In that case the court had to determine section 670.4A's application to allegations of defamation per se. *Nahas v. Polk County*, 991 N.W.2d 770, 782 (Iowa 2023). The court held that because, as in this case, the plaintiff's petition had alleged defamation per se and explained the acts that were the basis for it, 670.4A did not provide immunity. *Id.* The *Nahas* decision did say in that case that 670.4A could apply to termination in violation of public

policy, but there is no question that the law regarding employment contracts is settled law.

The district court did not abuse its discretion by denying ICCSD's motion to amend. ICCSD's cross-appeal should be denied.

CONCLUSION

Villarini presented genuine issues of material fact, and ICCSD was not entitled to judgment as a matter of law. Therefore, the district court erred in granting the ICCSD's motion for summary judgment. As a result the case should be remanded to the district court and reset for trial. The district court's denial of ICCSD's motion for leave to amend was correctly denied and should be affirmed.

TOM RILEY LAW FIRM, P.L.C.

By: _/s/James Weston____________________

JAMES K. WESTON II AT0008404
1210 Hwy. 6 West
P. O. Box 3088
Iowa City, IA 52244-3088
Ph. (319) 351-4996
Fax (319) 351-7063
Email: jimw@trlf.com
ATTORNEYS FOR APPELLANT

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) because this brief contains 2961 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 2010 in 14 point Times New Roman.

_/s/James Weston________________ January 10, 2024
James K. Weston II Date

CERTIFICATE OF COST

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