IN THE SUPREME COURT OF IOWA

NO. 23-1220

AMIE VILLARINI,
Plaintiff-Appellant/Cross-Appellee,

vs.

IOWA CITY COMMUNITY SCHOOL DISTRICT,
Defendant-Appellee/Cross-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR JOHNSON COUNTY
THE HONORABLE ANDREW CHAPPEL, DISTRICT JUDGE

APPELLEE/CROSS-APPELLANT IOWA CITY COMMUNITY SCHOOL DISTRICT'S FINAL BRIEF

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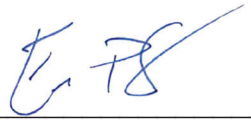
CERTIFICATE OF FILING AND SERVICE

I, Erek P. Sittig, hereby certify that I filed this Final Brief through the 11th day of January, 2024.

I further certify that I served this Final Brief on all parties by filing it through the Iowa Judicial Branch Electronic Document Management System on the 11th day of January, 2024.



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ROUTING STATEMENT

Appellee/Cross-Appellant agrees with Appellant/Cross-Appellee that the case should be transferred to the Court of Appeals pursuant to Iowa R. App. P. 6.1101(3), as it involves the application of existing legal principles.

STATEMENT OF THE CASE

Amie Villarini (hereinafter "Ms. Villarini") filed her amended petition in this matter on June 3, 2022, claiming the Iowa City Community School District (ICCSD) defamed her by posting video of the April 12, 2022, meeting of the ICCSD Board of Directors on YouTube. In addition, Ms. Villarini claimed ICCSD breached its contract with her to coach the West High Girls Varsity Tennis team. ICCSD moved for summary judgment.

After Ms. Villarini filed her resistance and ICCSD filed its reply, the Court held a hearing on the motion on June 9, 2023. On June 16, 2023, ICCSD filed a motion asking for leave to amend its answer to assert an additional affirmative defense.

On July 7, 2023, the District Court granted ICCSD's Motion for Summary Judgment, but denied its Motion to Amend. Ms. Villarini filed her Notice of Appeal on August 2, 2023, and ICCSD filed its Notice of Cross-Appeal on August 9, 2023.

STATEMENT OF FACTS

Amie Villarini coached the West High Girls' Tennis Team from 2013 until she was placed on administrative leave on April 13, 2022.[1] At the end of the 2021 tennis season, certain members of the girls' tennis team complained to administrators about Ms. Villarini's behavior and the culture surrounding the team.[2] ICCSD investigated the matter and determined that Ms. Villarini's actions did not constitute indecent contact or bullying, as those terms are defined in the Iowa Code, but acknowledged a conflict existed between Ms. Villarini and some of her players.[3] The investigation report, issued October 18, 2021, suggested that "Ms. Villarini should refrain from touching players as much as reasonably possible" and offered mediation or a restorative circle to help repair the relationship.[4]

With Ms. Villarini still the head coach, few of the 2021 varsity players returned for the 2022 season.[5] At the beginning of April 2022, West High and

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[1] Petition At Law and Jury Demand (Corrected) (hereinafter "Petition"); and Answer of Defendant Iowa City Community School District (hereinafter "Answer") ¶¶ 3 and 17, Appendix pp. 45, 47, 49, and 51; Affidavit of Chace Ramey ¶ 13, Appendix p. 64.
[2] Petition and Answer ¶ 4, Appendix p. 45; Affidavit of Chace Ramey, ¶ 3, Appendix p. 63.
[3] Affidavit of Chace Ramey, ¶ 3, Appendix p. 63.
[4] *Id.*
[5] Mike Condon, *Iowa City West Girls' tennis regrouping after exodus*, CEDAR RAPIDS GAZETTE, (Mar. 31, 2022 10:08 am, Updated: Mar. 31, 2022 2:32 pm),

District administrators received complaints from certain parents about social media posts Ms. Villarini had made that the parents understood as negative or derogatory toward their children.[6] West High staff addressed the issue with Ms. Villarini, and she removed the post.[7]

On April 12, 2022, a group of former tennis players attended the regular meeting of the Iowa City Community School District Board of Directors.[8] Two students spoke during the public comment period and informed the Board of the complaints, the investigation, and their disappointment with how their complaints were handled and that Ms. Villarini remained in her position.[9] The video of the April 12, 2022, Board meeting was placed on the ICCSD channel on YouTube, as virtually all Board meeting videos are.[10]

On April 13, 2022, District administrators were informed of a new social media post by Ms. Villarini, which again could be understood as aimed at students.[11] ICCSD administrators then placed Ms. Villarini on administrative leave, where she remained for the remainder of the tennis

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https://www.thegazette.com/iowa-prep-sports/iowa-city-west-regrouping-after-exodus/

[6] Affidavit of Chace Ramey, ¶ 4, Appendix p. 63.

[7] *Id.*

[8] Petition and Answer ¶ 7, Appendix pp. 46 and 50.

[9] *Id.*, Affidavit of Chace Ramey, ¶ 5, Appendix p. 63A.

[10] Affidavit of Chace Ramey, ¶¶ 6-7, Appendix p. 63A.

[11] Affidavit of Chace Ramey, ¶ 9, Appendix pp. 63A-64.

season.[12] ICCSD decided not to enter into a new contract with Ms. Villarini for the 2023 season and her employment with ICCSD ended June 30, 2022.[13]

Ms. Villarini filed this lawsuit, claiming ICCSD defamed her by posting the April 12, 2022, Board meeting video on YouTube.[14] Ms. Villarini further claims that ICCSD's actions constituted a breach of her employment contract with ICCSD and were a violation of public policy.[15] Ms. Villarini claims unspecified damages caused by ICCSD's actions.[16]

[12] Petition and Answer ¶ 17, Appendix p. 47; Affidavit of Chace Ramey, ¶¶ 9, 14, Appendix pp. 63A-64.
[13] Affidavit of Chace Ramey, ¶ 14, Appendix p. 64.
[14] Petition, Count I, Appendix pp. 46-47.
[15] Petition, Count II, Appendix pp. 47-48.
[16] Petition, Appendix p. 45-48.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR WHEN IT GRANTED DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

A. Scope and Standard of Review and Preservation of Error

ICCSD agrees with the scope and standard of review presented by Ms. Villarini as to the District Court's ruling on ICCSD's motion for summary judgment. ICCSD further agrees that Ms. Villarini preserved error as to this issue.

B. Summary Judgment, Generally

Summary judgment must be rendered when "there is no genuine issue as to any material fact and [where] the moving party is entitled to a judgment as a matter of law."[17] "A fact is material to a case when its determination would affect the outcome" of the suit, and there is an issue of material fact "if reasonable minds can differ on how the issue should be resolved."[18]

The party requesting summary judgment demonstrates there is no question of material fact by marshalling the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits,"[19] and

[17] Iowa R. Civ. P. 1.981(3) (2023).
[18] *DuTrac Cmty. Credit Union v. Radiology Grp. Real Est., L.C.*, 891 N.W.2d 210, 215 (Iowa 2017).
[19] Iowa R. Civ. P. 1.981(3) (2023).

other documents or facts "as would be admissible in evidence."[20] "Summary judgment is properly granted when the moving party shows 'the nonmoving party has no evidence to support a determinative element of that party's claim.'"[21]

"When a motion for summary judgment is made and properly supported, the opposing party may not rest upon the mere allegations or denials in the pleadings," but "[i]nstead . . . must set forth specific material facts, supported by competent evidence, establishing the existence of a genuine issue for trial."[22] Even though "every legitimate inference" is drawn from the record in the nonmovant's favor, "[a]n inference is legitimate if it is rational, reasonable, and otherwise permissible under the governing substantive law."[23]

C. ICCSD Did Not Defame Ms. Villarini

Ms. Villarini claims that ICCSD's posting of the video of the April 12, 2022, school board meeting was slander per se.[24] Slander per se is a form of defamation and a plaintiff must show that a person made a statement that

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[20] Iowa R. Civ. P. 1.981(5) (2023).
[21] *Huck v. Wyeth, Inc.*, 850 N.W.2d 353, 362 (Iowa 2014) (quoting *Parish v. Jumpking, Inc.*, 719 N.W.2d 540, 543 (Iowa 2006)).
[22] *Matter of Est. of Franken*, 944 N.W.2d 853, 858 (Iowa 2020) (citations omitted).
[23] *Morris v. Steffes Group, Inc.*, 924 N.W.2d 491, 496 (Iowa 2019) (citations omitted).
[24] Petition ¶ 10, Appendix p. 46.

tended to injure the plaintiff, expose the plaintiff to public hatred, contempt or ridicule, or injure the plaintiff in the maintenance of their business or occupation; and the person communicated the statement to someone other than the plaintiff.[25] Republication of defamatory statements occurs and can give rise to a cause of action separate from that created by the initial statement. Special rules apply to the news media, who have immunity from republishing defamatory statements if they do not breach the professional standard of care.

1. ICCSD did not make a statement related to Ms. Villarini

Ms. Villarini argues that ICCSD failed to claim in the District Court that it did not make the statements shown in the video at the center of this action.[26] However, the portion of ICCSD's Brief in support of its motion for summary judgment labeled III.F[27] is, in fact, the argument in question.[28] ICCSD also mentioned this argument as one of its main points during the hearing on its motion.[29]

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[25] *Vinson v. Linn-Mar Community School Dist.*, 360 N.W.2d 108, 115-116 (Iowa 1984).
[26] *Id.*
[27] ICCSD acknowledges the label "F" for this section is out of order and erroneous.
[28] "ICCSD did not make any statement related to Ms. Villarini at the April 12, 2022, meeting . . . ." ICCSD Brief in Support of Motion for Summary Judgment, III.F, Appendix p. 75.
[29] Transcript p. 3, lines 3-8, Appendix p. 16.

Ms. Villarini's defamation claim must fail because she cannot prove the first prong of the defamation test, namely that ICCSD made a statement that tended to injure her. The statements of which Ms. Villarini complains were made by former West High tennis players who had played under Ms. Villarini and others speaking during the public comment period at the April 12, 2022, ICCSD Board of Directors meeting. ICCSD simply followed its normal policy and placed the unredacted video of the meeting on YouTube. When Ms. Villarini demanded that ICCSD edit the video or remove it entirely from YouTube, ICCSD refused.

Ms. Villarini does not claim that an ICCSD employee told a third party what the former players and others said during the public comment portion of the meeting. Or that the ICCSD Board of Directors passed a resolution endorsing the statements on behalf of the District. Rather, if a person goes to YouTube and chooses to watch the public comment portion of the meeting video, they will see the same thing as those who attended the meeting in-person: former players and others making statements about Ms. Villarini.

ICCSD hasn't publicly endorsed the statements and has not advertised the statements in the video.[30] ICCSD has not tagged the video with Ms. Villarini's

[30] Affidavit of Chace Ramey, ¶ 11, Appendix p. 64.

name so it appears when people search the internet to find more about her.[31] ICCSD has done nothing to bring attention to the video. It merely posted the video on YouTube as it has with video of nearly every other school board meeting for many years.

In addition, ICCSD is a governmental entity required to keep and publish minutes of the meetings of its Board of Directors. If the statements made at the meeting were recounted accurately in the official meeting minutes, surely that would not cause ICCSD to be liable for defamation damages. Ms. Villarini has failed to explain why there is a difference between the two methods of making a record.

This is somewhat analogous to the situation where a news outlet reports on a public meeting. In that case, assuming the publisher uses due care in making the report and does so without malice, the publisher is immune from liability for defamation, even if the statements recounted are untrue.[32] But this situation is even more simple, as we are not concerned here with a third party's report on what happened at the meeting, but the meeting itself.

ICCSD has acknowledged that republication of defamatory statements can lead to a separate cause of action against the person repeating the

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[31] *Id.*

[32] *Johnson v. Nickerson*, 542 N.W.2d 506, 511 (Iowa 1996).

information.[33] That doesn't change the fact that those seen in the video of the meeting making statements about Ms. Villarini are not representatives of ICCSD. Rather they are members of the public, and it's hard to imagine a reasonable person watching the video and attributing their statements to ICCSD.

The District Court clearly accepted this argument, and found it bolstered by the privilege points it included in its order.

ICCSD did not make a statement regarding Ms. Villarini and her defamation claim must fail.

D. ICCSD is Immune Under Section 670.4(1)(c) of the Code of Iowa

ICCSD's situation in this case is the same as that described in Section 670.4(1)(c) of the Code of Iowa.[34] The school board some time ago chose to allow public comment during its regular meetings.[35] This is not required but is allowed at the discretion of the governmental body.

School board meetings must be open to the public but, outside certain statutorily required public hearings, there is no requirement that the public be

[33] ICCSD's Brief in Support of Motion for Summary Judgment p. 5, III.A.3, Appendix p. 73; *Bond v. Lotz*, 243 N.W. 586, 587 (Iowa 1932).
[34] Iowa Code § 670.4(1)(c) (2021).
[35] Affidavit of Chace Ramey, ¶ 8, Appendix p. 63A.

allowed to speak at a meeting.[36] If a school board allows public comment, it has opened a public forum, subject to the First Amendment to the United States Constitution.[37] A public comment period might be a designated public forum or a limited public forum.[38] A limited public forum might be a subset of designated public forum.[39]

The hallmark of public forum jurisprudence, though, is that when a public forum exists, if a governmental entity can place any restrictions on expression within the forum, those restrictions must be viewpoint neutral.[40] In other words, when the school district creates a public comment period during its meetings, it may require the public to limit their comments to topics that are

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[36] Any mention of public participation in public meetings is noticeably absent from the Iowa Open Meetings law. Iowa Code § 22.1-22.11 (2023). U.S. District Court Judge Rebecca Goodgame Ebinger provides a summary of the law as it relates to Iowa school board meetings in her Order Re: Defendants' Motion to Dismiss Amended Complaint for Failure to State a Claim in *Cawiezell-Sojka v. Highland Community School District, et al.*, 3:17-cv-00020, Feb. 21, 2018, pp. 13-17 (S. D. Iowa), a copy of which is attached hereto as Attachment A. Further citation to this order will omit the name of the order.

[37] *Cawiezell-Sojka v. Highland Community School District, et al.*, 3:17-cv-00020, Feb. 21, 2018, pp. 13-17 (S. D. Iowa). S*ee also Bowman v. White*, 444 F.3d 967, 974-976 (8th Cir. 2006).

[38] *Bowman v. White*, 444 F.3d at 975-976.

[39] *Id.*

[40] *Cawiezell-Sojka v. Highland Community School District, et al.*, 3:17-cv-00020, Feb. 21, 2018, p. 15 (S. D. Iowa).

under the school board's jurisdiction but may not prohibit comments that are critical of the board or school employees.[41]

In the face of Ms. Villarini's demands, employees and agents of the school district were faced with the choice of altering or removing the video or refraining from altering or removing the video. They consulted with the District's general counsel and were told the U.S. Constitution does not allow them to discriminate based on point of view, and editing or removing the video would be just that sort of discrimination.[42]

Exercising due care, the District's employees and agents executed the law and chose to not edit or remove the video. Under the terms of Section 670.4 of the Code of Iowa, ICCSD is immune from liability for any damage related to Ms. Villarini's claim.

E. <u>No Employee of ICCSD Defamed Ms. Villarini</u>

Ms. Villarini alleged in her petition that "[e]mpoyees and agents of ICCSD have made further improper and defamatory statements about Plaintiff

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[41] *Cawiezell-Sojka v. Highland Community School District, et al.*, 3:17-cv-00020, Feb. 21, 2018, pp. 13-17 (S. D. Iowa). S*ee also Bowman v. White*, 444 F.3d 967, 974-976 (8th Cir. 2006); *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F.Supp. 719, 727-728 (C.D. Cal. 1996) (holding both the California and U.S. Constitutions forbid a school district from limiting negative speech regarding employees).

[42] Affidavit of Chace Ramey, ¶ 10, Appendix p. 64.

regarding her work as a tennis coach."[43] Ms. Villarini specified she was referring to a statement by West High Principal Mitch Gross to the athletics director at another school that Gross might be required to coach the girls team going forward. The District Court found that this statement was not defamatory as a matter of law.

Ms. Villarini also claims ICCSD placing her on leave meant it was adopting the statements made at the meeting and defaming her.[44] ICCSD did not disseminate any information to the public about Ms. Villarini's absence, and therefore did not publish that she was on leave.[45] Ms. Villarini therefore had the ability to control any public information regarding her absence from the team.

Ms. Villarini appears to have abandoned this argument on appeal, and ICCSD was entitled to judgment as a matter of law.

F. ICCSD Did Not Breach Ms. Villarini's Contract in Violation of Public Policy

Ms. Villarini cited *Ferguson v. Exide Techs., Inc.* in stating "the elements of a claim for wrongful termination in violation of public policy are '(1) the existence of a clearly defined and well-recognized public policy that protects

[43] Petition ¶ 14, Appendix p. 47.
[44] Villarini Answer to Interrogatory No. 8, Attachment D to Defendant's Brief in Reply to Resistance to Motion for Summary Judgment, Appendix p. 150.
[45] Deposition of Chace Ramey, p. 45, lines 4-8, Appendix p. 379.

the employee's activity; . . . the employee engaged in the protected activity, and the conduct was the reason the employer discharged the employee . . . .'"[46] The Iowa Supreme Court, in *Ferguson*, noted "three primary situations" that would give rise to an action for wrongful in violation of public policy: "retaliation for performing an important and socially desirable act, exercising a statutory right, or refusing to commit an unlawful act."[47] "[S]uch policies may be expressed in the constitution and the statutes of the state."[48]

The Supreme Court discussed a similar claim in *Nahas v. Polk County*, where the plaintiff's petition "refer[red] broadly to the public policy of the State of Iowa and relie[d] on Polk County policies as sources of public policy."[49] The Court reinforced that it has consistently refused to recognize the existence of alleged public policies based in general and vague concepts of socially desirable conduct, internal employment policies, or private interests."[50]

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[46] Villarini Brief at pp. 6-7 (citing *Ferguson v. Exide Techs., Inc.*, 936 N.W.2d 429, 432 (Iowa 2019)).
[47] *Ferguson v. Exide Techs., Inc.*, 936 N.W.2d 429, 432 (Iowa 2019) (citation omitted).
[48] *Id.* (citation omitted).
[49] *Nahas v. Polk County*, 991 N.W.2d 770, 782 (Iowa 2023).
[50] *Id.* (citation omitted).

In her brief, Ms. Villarini states "[t]here is a clear public policy against" her being placed on leave in this situation.[51] Similar to *Nahas*, Ms. Villarini has cited "no caselaw, statute, administrative regulation, or constitutional provision as a source of public policy that [ICCSD] has violated."[52]

Ms. Villarini's Breach of Contract/Public Policy claim must fail as a matter of law.

II. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED DEFENDANT'S MOTION TO AMEND

At the hearing on ICCSD's Motion for Summary Judgment, ICCSD argued that immunity under Section 670.4A of the Code of Iowa applied to this case. Before the Court ruled on ICCSD's Motion for Summary Judgment, Defendant filed a Motion for Leave to Amend Answer, along with an Amended Answer, on June 16, 2023. Ms. Villarini filed her Resistance to Defendant's Motion for Leave to Amend Answer on June 21, 2023. Ultimately, the Court ruled on these issues in its July 7, 2023, Ruling, granting ICCSD's Motion for Summary Judgment, and denying ICCSD's Motion for Leave to Amend Answer as moot. ICCSD Cross-Appeals from the Court's denial of its Motion for Leave to Amend Answer.

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[51] Villarini Brief, p. 27.
[52] *Id.*

A. Standard and Scope of Review

The denial of a motion to amend a pleading is reviewed for abuse of discretion.[53] "Abuse of discretion does not entail ill will, improper motive, or intentional wrong."[54] Rather, courts have held that "discretion is abused when it is exercised on clearly untenable grounds or to a clearly unreasonable extent."[55] Put another way, abuse of discretion exists when "discretion is exercised on grounds or for reasons clearly unreasonable."[56]

B. Preservation of Error

ICCSD filed its motion and the District Court ruled on the motion as part of its Order granting ICCSD's Motion for Summary Judgment. Because the District Court ruled on the motion, error is preserved.[57]

C. Leave to Amend, Generally

According to Iowa Rule of Civil Procedure 1.402(4), leave to amend a pleading "shall be freely given when justice so requires."[58] In interpreting this Rule, Iowa courts have a long history of liberally granting motions to amend.[59]

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[53] *See e.g. Davis v. Ottumwa Young Men's Christian Assn.*, 438 N.W.2d 10, 14 (Iowa 1989).
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Otterberg v. Farm Bureau Mut. Ins. Co.*, 696 N.W.2d 24, 28 (Iowa 2005).
[58] Iowa R. Civ. P. 1.402(4) (2023).
[59] See e.*g., Hariri v. Morse Rubber Products Co*., 465 N.W.2d 546, 551 (Iowa Ct. App. 1990) (finding that Iowa's Rule of Civil Procedure relating to

The Court's primary rule states that "leave to amend is generally given when there is no substantial change in the defense or issues of the case."[60] In *Ellwood*, Defendant-Appellee filed a second amendment to its answer, pleading an additional affirmative defense, two weeks prior to trial.[61] The trial court allowed the amendment over objection of the Plaintiff-Appellant.[62] The Supreme Court of Iowa held that the trial court did not abuse its discretion because, despite the fact that the amendment could have been filed earlier, the additional affirmative defense did not require any additional depositions or burden the Plaintiff-Appellant.[63]

Similarly, the Court in *Glenn v. Carlstrom* held that "a motion to amend pleadings should not be granted in close proximity to trial if it will substantially alter the issues."[64] The Supreme Court of Iowa upheld this

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amendments of pleadings "has always received liberal interpretation"); *Ackerman v. Lauver*, 242 N.W.2d 342, 345 (Iowa 1976) ("amendments are the rule and denials the exception"); *Chao v. City of Waterloo*, 346 N.W.2d 822, 825 (Iowa 1984) ("we have also frequently held that allowance of amendments should be the rule and denial the exception"); *Dailey v. Holiday Distributing Corp*., 151 N.W.3d 477, 482 (Iowa 1967) ("to allow is the rule, not the exception"); *Davis v. Ottumwa Young Men's Christian Assn*., 438 N.W.2d 10, 14 (Iowa 1989) ("we have found that amendments are the rule and denials the exception").

[60] *Ellwood v. Mid State Commodities, Inc*., 404 N.W.2d 174, 179 (Iowa 1987).

[61] *Id.*

[62] *Id.*

[63] *Id*.

[64] *Glenn v. Carlstrom*, 556 N.W.2d 800, 804 (Iowa 1996).

decision, reasoning that the proposed amendment would have substantially changed the issues to be tried, potentially deprived Defendants of adequate representation, and would have completely altered the course of trial preparation.[65]

The Court is particularly willing to allow amendments to defendants' answers because the Iowa Rules of Civil Procedure require defenses to be raised in pleadings.[66] In *Rife v. D.T. Corner, Inc*., the Court held that allowing Defendants to amend their answer one week prior to trial and add two affirmative defenses was not an abuse of discretion by the trial court.[67] The Supreme Court of Iowa reasoned that "a party may amend a pleading at any time before a decision is rendered."[68] Additionally, the Court noted that courts should permit amendments as long as the amendment does not substantially change the issues of defense of the case.[69] Finally, "even an amendment that substantially changes the issues may still be allowed if the opposing party is not prejudiced or unfairly surprised.[70] In light of these principles, the *Rife*

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[65] *Id*.
[66] *See* Iowa R. Civ. P. 1.419 (2023) (any defense alleging justification or excuse must be specifically plead); Iowa R. Civ. P. 1.412(1) (2023) (must raise defenses in pleadings).
[67] *Rife v. D.T. Corner, Inc*., 641 N.W. 2d 761, 768 (Iowa 2002).
[68] *Id*. at 767.
[69] *Id*.
[70] *Id*.

Court held that Defendants' amendment to their answer was necessary for Defendants to properly raise and preserve the issue, the amendment did not create surprise or inject new issues into the case, and Defendants were simply clarifying their theory of defense.[71] Furthermore, the *Rife* Court highlighted the fact that Plaintiff did not request a continuance.[72] The Court opined that failure to request a continuance mitigates a party's claim that an amendment deprives the party of the ability to adequately prepare for trial.[73]

D. The District Court Should Have Granted ICCSD's Motion to Amend and Addressed the New Defense in the Order Granting ICCSD's Motion for Summary Judgment

Here, ICCSD raised the defense of immunity under Section 670.4A at the hearing on ICCSD's Motion for Summary Judgment and asked the Court to consider it as part of the Motion for Summary Judgment.[74] ICCSD filed its Motion to Amend shortly afterward.[75] Rather than denying the Motion to Amend as moot, the District Court should have granted the Motion to Amend, allowed Ms. Villarini a short time to respond to the claim of immunity, and addressed the new defense in its Order granting ICCSD's Motion for Summary Judgment.

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[71] *Id*. at 768.
[72] *Rife v. D.T. Corner, Inc*., 641 N.W. 2d 761, 768 (Iowa 2002).
[73] *Id*.
[74] Transcript, p. 4, Line 18-p. 5, Line 12, Appendix pp. 17-18.
[75] Motion for Leave to Amend Answer, Appendix p. 154.

The new defense ICCSD offered did not require the development of any additional facts and was solely a matter of law. It did not substantially change the nature of the proceedings.

E. ICCSD is Entitled to Immunity Under Section 670.4A(2) of the Iowa Code

Section 670.4A was enacted in 2021 and took effect in 2021, well before Ms. Villarini filed her petition in 2022.

> 1. Notwithstanding any other provision of law, an employee or officer subject to a claim brought under this chapter shall not be liable for monetary damages if any of the following apply:
> a. The right, privilege, or immunity secured by law was not clearly established at the time of the alleged deprivation, or at the time of the alleged deprivation the state of the law was not sufficiently clear that every reasonable employee would have understood that the conduct alleged constituted a violation of law. . . .
> 2. A municipality shall not be liable for any claim brought under this chapter where the employee or officer was determined to be protected by qualified immunity under subsection 1.[76]

Ms. Villarini did not name any individual employee as a defendant, so the first portion of Section 670.4A does not seem to apply. But it also seems necessary to the municipality being eligible for the protections of the second portion of the statute. Denying a municipality those protections when no individual is named would make life simple for plaintiff's attorneys to avoid

[76] Iowa Code § 670.4A (2021).

the provisions of this law. They would merely stop naming individuals as plaintiffs in tort claims against municipalities.

But, all functions of government entities are carried out, ultimately, by individuals. In this case, individuals chose to leave the YouTube video unredacted. The immunity for municipalities should apply regardless of whether an individual is named if the individual taking an action would have been immune if they were named as a defendant.

As shown in Division I of this Brief, there is substantial uncertainty about what was appropriate in this case. In the event the Court finds Ms. Villarini had a valid claim for defamation, the state of the law was not sufficiently clear at the time of ICCSD's actions for every reasonable employee to have understood that the conduct constituted a violation of law.

The District Court abused its direction by denying Defendant's Motion to Amend Answer as moot. The grounds on which the District Court denied this motion were untenable, unreasonable, and violate Iowa Courts' longstanding tradition of freely granting motions to amend pleadings. The Court should reverse the District Court's denial of ICCSD's Motion to Amend and reach the issue of ICCSD's immunity under Section 670.4A.

CONCLUSION

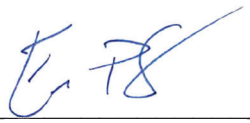
ICCSD did not defame Amie Villarini. ICCSD's posting on YouTube of an unedited Board of Directors video was not a statement regarding Ms. Villarini and she has not identified any statement by an individual employee that was defamatory. ICCSD is immune from liability in this matter under Section 670.4 of the Code of Iowa.

In addition, ICCSD did not breach Ms. Villarini's contract or put her on leave in violation of public policy. Ms. Villarini has not identified any well-established public policy set out in constitution or statute that protected her from being put on leave.

Finally, the District Court abused its discretion in denying ICCSD's Motion to Amend. The Court should reverse that decision and reach the question of ICCSD's immunity under Section 670.4A of the Code of Iowa.

REQUEST FOR ORAL ARGUMENT

Appellee requests that, upon submission of this matter, it be granted oral argument.



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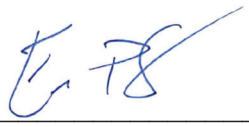

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Date