

IN THE SUPREME COURT OF IOWA

Supreme Court Case: 23-1220

Johnson County No. LACV083455

AMIE VILLARINI

Plaintiff-Appellant,

vs.

IOWA CITY COMMUNITY SCHOOL DISTRICT

Defendant-Appellee.

APPLICATION FOR FURTHER REVIEW OF THE
IOWA COURT OF APPEALS DECISION FILED OCTOBER 30, 2024

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

QUESTIONS PRESENTED FOR REVIEW

1. Does the fair-report privilege apply beyond reporting of statements made in open court?
2. Does Iowa adopt Restatement (Second) of Torts §611?
3. If the privilege does apply in this situation, does the school district's republication, knowing the defamatory nature of the statements, constitute presumptive malice?
4. If the privilege does apply in this situation, is it an affirmative defense the school district needed to assert?

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 19th day of November, 2024, I served this document through the Iowa Supreme Court EDMS:

I further certify that on the 19th day of November, 2024, I filed this document with the Iowa Supreme Court EDMS.

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

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW	2
CERTIFICATE OF SERVICE	3
CERTIFICATE OF FILING	3
TABLE OF CONTENTS.....	4
STATEMENT SUPPORTING FURTHER REVIEW	5
TABLE OF AUTHORITIES	6
STATEMENT OF ISSUES PRESENTED FOR REVIEW	7
ARGUMENT	8
I THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT’S GRANTING OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT ..	8
CONCLUSION	12
CERTIFICATE OF COMPLAINT WITH TYPEFACE AND TYPE-VOLUME REQUIREMENTS	13
CERTIFICATE OF COST.....	13

STATEMENT SUPPORTING FURTHER REVIEW

Pursuant to Iowa Rule of Appellate Procedure 6.1103(b), the Iowa Supreme Court should consider this case for further review because the court of appeals has decided an important question of law that has not been, but should be, settled by the supreme court, namely whether the fair-report privilege applies to an Iowa school district publishing video of its board meeting on the internet when defamatory statements were made at the meeting. The case also presents an issue of broad public importance that the supreme court should ultimately decide. The incidence of school boards and other governmental bodies across Iowa publishing video of their meetings on the internet will only increase, and it is important to have guidance from the Iowa Supreme Court on this issue.

TABLE OF AUTHORITIES

Cases:

<i>Bertrand v. Mullin</i> , 846 N.W.2d 884 (Iowa 2014)	10
<i>City of Clinton v. Loeffelholz</i> , 448 N.W.2d 308 (Iowa 1989)	11
<i>Flues v. New Nonpariel Co.</i> , 135 N.W. 1083 (Iowa 1912)	9-10
<i>Nunez v. Lizza</i> , 12 F.4d 890 (8 th Cir. 2021)	10
<i>Peoples Trust Sav. Bank v. Baird</i> , 346 N.W.2d 1 (Iowa 1984)	11

Other Authorities:

Iowa R. App. P. 6.1103(b) (2024)	5
Restatement (Second) of Torts §611 (Am. L. Inst. 1977).....	9, 11

STATEMENT OF ISSUES PRESENTED FOR REVIEW

**I THE COURT OF APPEALS ERRED IN AFFIRMING THE
DISTRICT COURT'S GRANTING OF DEFENDANT/
APPELEE'S MOTION FOR SUMMARY JUDGMENT**

ARGUMENT

I THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT’S GRANT OF DEFENDANT/APPELEE’S MOTION FOR SUMMARY JUDGMENT

This case arises out of defamatory statements made by students against their tennis coach, Plaintiff-Appellant Amie Villarini (“Villarini”) at a school board meeting held by Defendant/Appellee Iowa City Community School District (“ICCSA”). *Ct. App. Opinion* at 4. ICCSD published (and continues to publish) video of the meeting, including the defamatory statements, on its YouTube page, despite Villarini’s numerous requests to remove the defamatory statements. *Id.* at 5.

ICCSA moved for summary judgment, and the district court granted the motion over Villarini’s resistance. *Id.* at 5-6. The district court based its ruling granting summary judgment for ICCSD on a number of different bases. *Id.* at 6. On appeal, the Court of Appeals limited its basis for affirming the district court’s decision to one argument: that the fair-report privilege requires judgment as a matter of law in favor of ICCSD. *Id.* at 14.

The Court of Appeals cited three Iowa cases, all decided before 1930, and all dealing with privilege in the context of republication of an event “that occurs

publicly in open court.” *Ct. App. Opinion* at 11. The Court of Appeals further relied on Restatement (Second) of Torts §611 for the principle that the fair-report privilege applies beyond newspapers and other media entities and reporting of events from open court, but acknowledges it has not been addressed or adopted by the Iowa Supreme Court. *Ct. App. Opinion* at 13. The only Iowa cases relied on by the Court of Appeals all involve statements made in open court, so the fair-report privilege in Iowa does not extend to public meetings as in this case.

The Iowa Supreme Court should decide the scope and extent of application of the fair-reporting privilege in Iowa, and that it does not extend to matters such as are involved here. When deciding whether the scope of the fair-reporting privilege in Iowa should be extended beyond the reporting of statements made in open court, the Court should also consider that traditional methods of republication in defamation cases (e.g., orally or by print edition of a newspaper) differ significantly in scope from the method in this case (publication on the internet accessible to anyone world-wide who has an internet connection, available indefinitely), which will only become more common.

The Court of Appeals notes in its discussion that the privilege only applies if it was republished “in good faith . . . and without actual malice.” *Ct. App. Opinion at 11* (quoting *Flues v. New Nonpariel Co.*, 135 N.W. 1083, 1085 (Iowa

1912)). The Court of Appeals goes on to find that “Villarini does not seek to defeat the fair-report privilege by a showing actual malice or bad faith.” (sic) *Ct. App. Opinion* at 13 fn. 5. However, Villarini did make that argument. Villarini argued in her Reply Brief:

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)).

Villarini Reply Brief at 10.

In the event this Court decides the fair-report privilege can apply in the context of this case, it should find the privilege defeated by ICCSD’s actual malice, and should remand for trial, or at least find that whether ICCSD had actual malice is a question for the jury.

Furthermore, in the event this Court decides the fair-report privilege can apply in the context of this case, it should find the privilege defeated by virtue of

the fact that the statements at issue are not matters of public concern. The section of the Restatement addressing the privilege in the context of public meetings notes that “the privilege does not extend . . . to a report of a meeting that does not deal with matters of public concern, even though it is open to the public.” Restatement (Second) of Torts §611, comment i (Am. L. Inst. 1977). The statements in question were the repeating in public of prior complaints that had been investigated and determined to be unfounded by ICCSD—the students were using the open comment segment of the ICCSD board meeting to air their private grievances and defame their tennis coach. *Ct. App. Opinion* at 4.

Finally, in the event this Court decides the fair-report privilege can apply in the context of this case, it should determine that the privilege is an affirmative defense. “In determining what matters must be pleaded as affirmative defenses, we have previously defined an affirmative defense as ‘one resting on facts not necessary to support plaintiffs' case.’” *Peoples Trust Sav. Bank v. Baird*, 346 N.W.2d 1, 4 (Iowa 1984) (citations omitted). None of the elements of the fair-report privilege are elements necessary to support Villarini’s defamation claims. Affirmative defenses must be pleaded. *City of Clinton v. Loeffelholz*, 448 N.W.2d 308, 310 (Iowa 1989) (citations omitted). ICCSD did not raise fair-report

privilege as an affirmative defense in any pleadings, and therefore is not able to rely on it as a basis for summary judgment.

CONCLUSION

ICCSD was not entitled to judgment as a matter of law under the fair-report privilege. Therefore, Court of Appeals erred in affirming the district court's granting of ICCSD's motion for summary judgment. As a result the case should be remanded to the district court and reset for trial.

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 TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.6.1103(4) because this application has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman, and contains 1580 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.1103(4)(a).

 /s/James Weston
James K. Weston II

November 19, 2024
Date

CERTIFICATE OF COST

The undersigned hereby certifies that the foregoing Brief was printed at a cost of \$ n/a .
