IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 23-1794

POLK COUNTY NO. LACL155126

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LINDA BETZ,
Plaintiff-Appellant

v.

REBECCA MATHISEN, ERIC MULLER, KELLY RASMUSSEN, AND MICHAEL WILSON
Defendants-Appellees.

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APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY
THE HONORABLE PATRICK SMITH

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PROOF BRIEF OF APPELLANT

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PROOF OF SERVICE & CERTIFICATE OF FILING

On May 30, 2024, I served this brief on all other parties by EDMS to their respective counsel.

I further certify that I did file this brief with the Clerk of the Iowa Supreme Court by EDMS on May 30, 2024.

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ROUTING STATEMENT

Retention of this case before the Iowa Supreme Court is appropriate under Iowa R. App. P. 6.1101(2)(c) and (f).

STATEMENT OF THE CASE

This appeal follows the district court's entry of an order dismissing Linda Betz's claims of defamation. The district court recognized that the Iowa Supreme Court has not applied the discovery rule to defamation claims and determined that even if the rule applied in this case that Betz was on "inquiry notice" of the defamation and filed her claim outside the two-year statute of limitations under Iowa Code section 614.1(2). This appeal followed.

STATEMENT OF FACTS

Linda Betz was fired from her position as Chief Information Security Officer on January 3, 2020. (App. v. II p. 10, Pet., at ¶¶ 10, 12). At the time she was fired she believed she was fired because of her sex and in retaliation for complaining about sex discrimination. (App. v. II p. 18, Pet., at ¶¶ 57-58). She also believed that an 8k form that the Federal Home Loan Bank of Des Moines ("FHLBDM" or "the Bank") had filed with the SEC was defamatory. (App. v. II p. 24, First. Am. Pet., the federal case, at ¶ 98). Betz learned through discovery in the case against the Bank that an employee she supervised made a confidential internal complaint against her that contained false information. (Ruling, 10).

Linda Betz was hired by the Bank on March 19, 2018 as its Chief Information Security Officer. At the time she joined the Bank, Betz had approximately 20 years of experience working in the area of information security, including, among other high-level positions, her past work as the Chief Information Security Officer for IBM. (App. v. II p. 12, First. Am. Pet., the federal case, ¶ 10-12).

Betz was recruited to FHLB to remediate a struggling information security department. (App. v. I p. 8, Petition, ¶ 3-4). While working for the Bank, Betz had three employees who reported directly to her including Rebecca Mathisen, Manager of Information Security. (App. v. I p. 8, Petition, ¶ 12) .

On July 21, 2019, Mathisen and a Bank contractor informed Betz that certain Sarbanes-Oxley Act ("SOX") controls were not being performed. (App. v. I p. 8, Petition, ¶ 13) . The person responsible for those controls being performed and ultimately also responsible for the failure was Mathisen. (App. v. I p. 8, Petition, ¶ 14).

The fact that the controls were not being performed was a serious issue for Betz and the Bank, and following the disclosure there were internal meetings about how to address the issue. (App. v. I p. 8-9, Petition, ¶ 15-16). Betz followed her direct supervisor's advice regarding internal disclosure

surrounding the controls that were not being performed. (App. v. I p. 9, Petition, ¶ 17).

On August 7, 2019, Mathisen, believing that Betz was about to fire her for failing to perform the required SOX controls, filed an internal complaint against Betz. The complaint stated that Mathisen had certified the relevant SOX controls as "not effective", but that Betz had (improperly) certified the relevant controls as "effective." (App. v. I p. 9, Petition, ¶ 18). Mathisen also stated in her complaint she believed she was being retaliated against and that Plaintiff would terminate her employment two days later, on August 9, 2019. (App. v. I p. 9, Petition, ¶ 19).

Mathisen's complaint was forwarded to Wilson, who was then CEO. (App. v. I p. 9, Petition, ¶ 20). At the time she made her complaint in August 2019, Mathisen had not seen Plaintiff's certifications. (App. v. I p. 9, Petition, ¶ 21). As a result, Mathisen's statements in her complaint regarding Betz's certifications were baseless and false. (App. v. I p. 9, Petition, ¶ 22).

In fact, Betz's SOX certifications matched Mathisen's certifications. (App. v. I p. 9, Petition, ¶ 23).. Further, Betz had no plans to fire Mathisen and, without any knowledge of Mathisen's complaint, Betz did not fire Mathisen on August 9, 2019 as Mathisen had predicted in her internal complaint. (App. v. I p. 9, Petition, ¶ 24). Instead, Betz offered Mathisen

advice, coaching, and support regarding the failed controls. (App. v. I p. 9, Petition, ¶ 25).

There is no evidence that Betz retaliated against Mathisen either for Mathisen's SOX certification, which matched Plaintiff's certification, or for Mathisen's complaint against Betz. (App. v. I p. 9, Petition, ¶ 26). Betz was not even aware of Mathisen's complaint until long after her employment with the Bank ended and not until after it was disclosed in the first lawsuit. (App. v. I p. 10, Petition, ¶ 27; App v. III p. 121 Betz Decl. 17 ¶).

In addition to filing an internal complaint against Betz, on August 7, 2019, Mathisen also contacted then-CEO of FHLB Wilson to discuss the forgotten controls in-person. (App. v. I p. 10, Petition, ¶ 28). Wilson scheduled to meet with Mathisen on August 9, 2019. (App. v. I p. 10, Petition, ¶ 29).

In the meantime, the Bank's internal audit department was tasked with investigating Mathisen's complaint against Betz. (App. v. I p. 10, Petition, ¶ 30). Kelly Rasmussen led the investigation with Eric Muller reporting to him. (App. v. I p. 10, Petition, ¶ 31).

The investigation was largely a paper review, and while it included interviews of Mathisen and the independent contractor Mathisen supervised, neither Betz nor her direct supervisor, Chief Operating Officer of the Bank, Dusan Stojanovic, nor Mike Masiello, FHLBDM Manager of Financial

Controls, were interviewed. Yet, Betz, Stojanovic, and Masiello each had knowledge relevant to the discussions and disclosures surrounding Mathisen's failed controls which were relevant to Mathisen's complaint. (App. v. I p. 10, Petition, ¶ 32).

The internal audit, including both Rasmussen and Muller, nevertheless reached conclusions as part of their investigation into Mathisen's complaint, creating an interim report on September 4, 2019 and a final report on October 19, 2019. (App. v. I p. 10, Petition, ¶ 33).

The final report noted that Wilson had determined that Betz should be terminated because of actions described in Mathisen's complaint and also because of "the ineffective implementation of SailPoint IIQ" which Wilson attributed to Betz and her alleged "questionable prioritization of information security (IS) projects." (App. v. I p. 10, Petition, ¶ 34).

The internal audit, and auditors Rasmussen and Muller, stated, in the final report, they had "observed a pattern in [Betz's] behavior, that, in [their] view, exhibits a blend of potential retaliation, a lack of listening to others that flag concerns, and a lack of depth with awareness/knowledge of controls." (App. v. I p. 10-11, Petition, ¶ 35).

Rasmussen and Muller's conclusions, based only on their deficient, paper-heavy investigation, were false and lacked support. (App. v. I p. 11,

Petition, ¶ 36). Meanwhile, Wilson suggested to the Bank board or individual board members on various occasions that Betz be terminated. Wilson used the internal audit reports as partial support, and in connection with his suggestions made additional false statements regarding Betz and her work for the bank as Chief Information Security Officer. (App. v. I p. 11, Petition, ¶ 37). Wilson and Mathisen also met with the Bank's federal regulator, the Federal Housing Finance Agency, regarding Betz. (App. v. I p. 11, Petition, ¶ 38). Wilson terminated Betz's employment with FHLB on January 3, 2020. (App. v. I p. 11, Petition, ¶ 39).

Betz did not become aware of the internal complaint filed by Mathisen, nor the ensuing investigation by internal audit, nor any of the related statements made by Mathisen, Muller, Rasmussen, or Wilson until, at the earliest, late March, 2021. (App. v. I p. 11, Petition, ¶ 40; Ruling, 10).

ARGUMENT

I. IN REFUSING TO APPLY THE DISCOVERY RULE, THE DISTRICT COURT REQUIRED BETZ TO FILE A PETITION ALLEGING DEFAMATION THAT HAD BEEN CONCEALED FROM HER

A. Preservation of Error and Standard of Review

The Court reviews a trial court's ruling on a motion to dismiss for correction of errors at law. *Weizberg v. City of Des Moines,* 92 N.W.2d 200,

211 (Iowa 2018). Error was preserved by Plaintiff's Resistance to the Defendants' Motion to Dismiss. (Resistance to Motion to Dismiss; App.).

B. The Discovery Rule Applies and Betz's Claim is Timely

1. The Iowa Supreme Court Has Never Addressed the Issue of the Application of the Discovery Rule to Defamation Claims

Betz filed her lawsuit in the district court within two years of becoming aware of the libelous statements made by her coworkers. At the motion to dismiss, the district court recognized that this Court has never ruled on the issue whether the discovery rule applies to defamation claims and declined to extend the doctrine in this case. In its ruling, the district court discussed *Linn v. Montgomery,* 903 N.W.2d 337 (Iowa 2017), and *Kiner v. Reliance Ins. Co.,* 463 N.W.2d 9 (Iowa 1990). The court also mentioned two rulings of the Iowa Court of Appeals, *Stites v. Ogden Newspapers, Inc.,* No. 00-1975, 2002 WL 663621, at *2 (Iowa Ct. App. Apr. 24, 2002), and *Davenport v. City of Corning,* 742 N.W.2d 605, 2007 WL 3085797, at *2 (Iowa Ct. App. Oct. 24, 2007). The problem with the cases the district court cited is that *Kiner* is not a discovery rule case at all so to the extent that *Stites* and *Davenport* are authoritative, they rest on the shakiest ground.

The district court seemed to acknowledge this reality holding that this Court acknowledged the fact both that it had never addressed the question of

whether the discovery rule applies in defamation cases and noting that *Kiner* was not a discovery rule case. *Linn v. Montgomery,* 903 N.W.2d at 343.

While the issue of whether the discovery rule applies in defamation cases was raised in *Linn*, the Court recognized that it had not addressed the issue squarely but declined to do so in that case because the result would have been a new trial that would be unnecessary due to issue preclusion. *Id.* at 344.

2. The Iowa Supreme Court Has a Long History of Recognizing and Applying the Discovery Rule

The two-year statute of limitations contained in Iowa Code section 614.1(2) provides,

> Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared: ***Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, . . . within two years.

In *Chrischilles v. Griswold*, 260 Iowa 453, 463, 150 N.W.2d 94, 100-01 (1967) this Court recognized application of the discovery rule in negligence claims governed by section 614.1(2).

In *Mormann v. Iowa Workforce Development*, 913 N.W.2d 554, 566 (Iowa 2018), the Court observed that it had "applied the discovery rule—an equitable tolling doctrine—in a wide variety of settings, including cases involving legal malpractice." The Court recognized the varied settings in which

the doctrine has applied, including legal malpractice (*Trobaugh v. Sondag*, 668 N.W.2d 577, 583 (Iowa 2003)); fraud (*Hallett Construction Co. v. Meister*, 713 N.W.2d 225, 231 (Iowa 2006)); products liability (*Franzen v. Deere & Co*., 334 N.W.2d 730, 732 (Iowa 1983)); express and implied warranties (*Brown v. Ellison,* 304 N.W.2d 197, 201 (Iowa 1981), disapproved of on other grounds by *Franzen*, 334 N.W.2d at 732)), and claims brought under the Iowa Tort Claims Act. (*Vachon v. State*, 514 N.W.2d 442, 445 (Iowa 1994)).

In *Mormann*, the Court discussed the reasons for applying the discovery rule, primarily because it would be unfair to bar an otherwise actionable claim because the plaintiff was unaware of facts critical to the claim. *Mormann*, 913 N.W.2d at 566-67. The Court recognized that "it would be unfair to charge a plaintiff with knowledge of facts which are 'unknown or inherently unknowable.'" *Id.* (internal citations omitted).

3. The Discovery Rule is Accepted and Applied in a Wide Variety and Most Jurisdictions that Have Addressed the Question

Jurisdictions across the country that have addressed the question of whether the discovery rule applies in defamation cases have answered the question in the affirmative. Without exception, where a plaintiff is operating in

the dark about the fact of the alleged defamation, courts hold that the plaintiff's cause of action does not accrue until she discovers it.

The Oklahoma Supreme Court has held that when the publication of the alleged defamation is likely to be concealed or published essentially in secret making it unlikely the plaintiff would learn of the statement, the discovery rule should apply. *Digital Design Group v. Information Builders, Inc.,* 24 P.3d 834, 839 (Oklahoma 2001). In *Digital Design Group,* the alleged defamatory statement were letters written by the defendant that ultimately cost the plaintiff a government contract. Plaintiff was unaware of the letters or what was stated in them until an open records request ultimately caused the allegedly defamatory content to come to plaintiff's attention. *Digital Design Group,* 24 P.3d at 839.

The Texas Supreme Court applied the discovery rule where the plaintiff alleged damages resulting from the defendant filing a false credit report. *Kelly v. Rinkle*, 532 S.W.2d 947 (Texas 1976). The court applied the discovery rule because: "A person will not ordinarily have any reason to suspect that he has been defamed by the publication of a false credit report to a credit agency until he makes application for credit to a concern which avails itself of the information furnished by the credit agency. Thus, in many cases the injured party may not learn of the existence of the libelous report until several months after its publication to the credit agency." *Kelly,* 532 S.W.2d at 949.

In Massachusetts, the court recognized that for accrual under the discovery rule, a plaintiff must know first that she was harmed, and second that the defendant's conduct caused the harm. *Harrington v. Costello*, 7 N.E.3d 449, 454 (Mass. 2014). The court summarized the application of the discovery rule as:

> Accordingly, a more precise way to state the discovery rule is the following: a cause of action accrues when the plaintiff discovers or with reasonable diligence should have discovered that (1) he has suffered harm; (2) his harm was caused by the conduct of another; and (3) the defendant is the person who caused that harm.

Harrington, 7 N.E.3d at 455. In *Harrington*, unlike Betz, the plaintiff had knowledge before the statute of limitations (without considering the discovery rule) ran of the fact that the defendant had shared false information with another person and that he had been harmed. *Id*. at 456. What Harrington lacked was knowledge of the identity specifically of the fact that he was legally harmed, (i.e. that he could sue his colleagues for the wrong despite privilege issues). *Id*.

In California the discovery rule applies in defamation cases but unless publication was inherently secretive, even if not in wide circulation, as long as the plaintiff had access to the publication, the discovery rule will not save the claim. *Hebrew Academy of San Francisco v. Goldman*, 173 P.3d 1004 (Cal. App. 2005). Because the transcript of an oral history allegedly defaming the

dean of an academy was not published in a secretive way, and was available to the plaintiff, he could not avail himself of the rule. *Hebrew Academy of San Francisco,* 173 P.3d at 1009-10.

The Illinois Supreme Court recognized the problem as one of a balancing the challenge related to proof evaporating with the passage of time against the challenge to the injured person either not knowing or having even reason to know of the fact of the potential claim. *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 334 N.E.2d 160, 162 (Ill. 1975). The court noted that the purpose of the statute of limitations is not to protect wrongdoers, but to discourage the filing of stale claims. *Id*. at 163. The court distinguished the alleged wrong, in part, by recognizing that a false credit report was different than libel resulting from publications intended for more public attention. *Id*.

The Indiana Supreme Court has held that the statute of limitations does not begin to run on a defamatory statement until the point at which the damage resulting from the contents of statement was reasonably ascertainable with due diligence. *Burks v. Rushmore*, 534 N.E.2d 1101, 1104 (Ind. 1989).

In another intra-employer case, a candidate for tenure sued his college Dean for his allegedly defamatory comments in recommendations against plaintiff's tenure application. *Staheli v. Smith,* 548 So. 2d 1299 (Miss. 1989).

The plaintiff invoked the discovery rule because he was unaware of the allegedly defamatory comments until he was told by colleagues that his file contained such information. *Staheli,* 548 So. 2d at 1301. Recognizing the reality of the burden that placed on the plaintiff the court held: "[w]e are convinced that the general policies underlying this statute of limitations will not be thwarted by adoption of the discovery rule in that limited class of libel cases in which, because of the secretive or inherently undiscoverable nature of the publication the plaintiff did not know, or with reasonable diligence could not have discovered, that he had been defamed." *Id*. at 1303.

Where no notice is given to the plaintiff of a false criminal complaint, and she does not discover the false complaint until she is arrested beyond the statute of limitations for the original publication, the West Virginia Supreme Court applied the discovery rule. *Padon v. Sears*, 411 S.E.2d 245 (W. Va. 1991). "Accordingly, the Court holds that, in defamation actions the period of the statute of limitations begins to run when the fact of the defamation becomes known, or reasonably should have become known, to the plaintiff." *Padon,* 411 S.E. 2d at 248.

The Utah Supreme Court has recognized the discovery rule in defamation cases: "[w]e think that the policy behind the discovery rule, that potential plaintiffs should not be barred from suit if they did not know and could not

reasonably have known of the underlying facts giving rise to a cause of action, appropriately applies to libel actions. Unlike cases involving direct injury to the person, a libel may remain unknown for years, all the while having its effect on one's reputation." *Allen v. Ortez*, 802 P.2d 1307, 1313-14 (Utah 1990)

Vermont also applies the discovery rule to defamation claims, holding the action accrues on discovery of facts or the existence of facts to put a plaintiff on inquiry notice. *Dulude v. Fletcher Allen Health Care*, 807 A.2d 390, 399 (Vt. 2002).

4. Conclusion: This Court Should Adopt the Discovery Rule for Defamation Claims

Had Linda Betz never suffered a job termination, this claim likely never would have been brought as nothing would have happened to trigger the events that disclosed to her the alleged defamation. What makes Betz's claim so compelling is the fact that the defamatory comments alleged in her lawsuit were so intertwined with and the cause of her discharge. In this case, the facts make it impossible not to see the unfair outcome that attaches if the discovery rule is not applied when confidential, even secretly published defamation, is discovered long after the defamation occurs. There is now a long history of courts that have looked at the same issue and almost all of them have found that where, as here, an injured person did not know, and could not have otherwise known, of the defamation, the discovery rule has been applied. The Iowa

Supreme Court should apply the rule in the same manner as so many other jurisdictions that have had the opportunity to look at the issue.

II. THE DISTRICT COURT INCORRECTLY FOUND THAT BETZ WAS ON INQUIRY NOTICE OF THE FALSE CONFIDENTIAL INTERNAL COMPLAINT

A. Preservation or Error and Standard of Review

The Court reviews a trial court's ruling on a motion to dismiss for correction of errors at law. *Weizberg v. City of Des Moines,* 92 N.W.2d 200, 211 (Iowa 2018). Error was preserved by Plaintiff's Resistance to the Defendants' Motion to Dismiss. (Resistance to Motion to Dismiss; App. v. I p. 121).

B. Applicable Legal Principles re: Rule 1.421 Motions to Dismiss

In Iowa, motions to dismiss are highly disfavored. *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 608 (Iowa 2012). Nearly every case will survive a motion to dismiss under notice pleading. *Id.* The petition need not allege ultimate facts that support each element of the cause of action. *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994). The petition, however, must contain factual allegations that give the defendant "fair notice" of the claim asserted so the defendant can adequately respond to the petition.

Schmidt v. Wilkinson, 340 N.W.2d 282, 283 (Iowa 1983). The fair-notice requirement is satisfied if the petition informs the defendant of the general nature of the claim and the incident giving rise to it. *Young v. HealthPort Tech., Inc.*, 877 N.W.2d 124, 128 (Iowa 2016).

A motion to dismiss is proper "only if the petition shows no right to recovery *under any state of facts*." *Southard v. Visa U.S.A., Inc.*, 734 N.W.2d 192, 194 (Iowa 2007) (emphasis added). In considering such motion, the Court must accept the facts alleged in the petition as true. *McGill v. Fish*, 790 N.W.2d 113, 115 (Iowa 2010). If the viability of a claim is at all debatable, the Court should not sustain a motion to dismiss. *Southard*, 734 N.W.2d at 194. Even in the rare instance in which the Iowa Supreme Court has affirmed a motion to dismiss it cautioned against their use:

> We recognize the temptation is strong for a defendant to strike a vulnerable petition at the earliest opportunity. Experience has however taught us that vast judicial resources could be saved with the exercise of more professional patience. Under the foregoing rules dismissals of many of the weakest cases must be reversed on appeal. Two appeals often result where one would have sufficed had the defense moved by way of summary judgment, or even by way of defense at trial. From a defendant's standpoint, moreover, it is far from unknown for the flimsiest of cases to gain strength when its dismissal is reversed on appeal.

Cutler v. Klass, Whicher & Mishne, 473 N.W.2d 178, 181 (Iowa 1991).

C. The Court Misapplied the Facts Proving Plaintiff Was Unaware of the Internal Complaint and the Investigation that Followed

In its ruling, the district court held that though it declined to apply the discovery rule, even if it did apply the rule, Betz's claim would be untimely. The district court is wrong. The district court relied on two cases that are not in any way analogous to this case. First, the court relied on *Hallett Constr. Co. v. Meister*, 713 N.W.2d 225, 231 (Iowa 2006) for the proposition that once Betz learned information sufficient to put her on notice of the need to investigate, she would be "on inquiry notice of all facts that would have been disclosed by a reasonably diligent investigation." *Hallett Constr. Co.*, 713 N.W.2d at 231 (citing *K&W Electric, Inc. v. State,* 712 N.W.2d 107, 116 (Iowa 2006). The facts in *Hallett* are different than the facts in this case. This Court found in *Hallett* that:

> It is undisputed the Meisters knew in 1987 they had signed a lease without the option to renew. In 1996, they learned the lease signed by all the parties contained the renewal provision to which they had objected. At that point, they had actual knowledge of their injury--their property was arguably burdened by a lease that could be renewed for ten years-and they were clearly on inquiry notice of the cause of that injury-Hallett's alteration of the original lease. Though the Meisters may have questioned their collective memory and not realized they possessed evidence to establish Hallett's alleged fraud, they certainly had enough information in 1996 to alert them of the need to investigate. Had the Meisters exercised reasonable diligence to investigate the facts at that time, they would have discovered the original lease in their own files.

Hallett Constr. Co., 713 N.W.2d at 231. The court does not say what Betz could have done to find out about the defamatory complaint or its aftermath.

Indeed, it could not point to any fact that would have tipped Betz off to the fact of the complaint because it was confidential and not disclosed to Betz. (App. v. I p. 10, Petition, ¶ 27; App v. III p. 121 Betz Decl. 17 ¶).. The investigation did not include an interview of Betz, nor did anything happen that could have alerted her to the fact of the complaint. She knew nothing of the contents of the investigation until after the discovery process had begun. (App. v. I p. 10, Petition, ¶ 27; App v. III p. 121 Betz Decl. 17 ¶).

The court also cites *Mormann,* holding that the plaintiff's knowledge of certain facts disallowed him the benefit of the discovery rule. (Ruling, 10). The facts that this Court determined were dispositive in that case were that: (1) the plaintiff was aware he was not hired for a position, (2) he was aware of his own age and qualifications; (3) plaintiff was aware that the person hired was younger; and (4) he never raised the person's lack of qualifications in the district court. *Mormann*, 913 N.W.2d at 576-77. The district court also highlighted language from the *Mormann* decision that indicated once a plaintiff is on notice of a *prima facie* case of discrimination, the plaintiff cannot rely on the discovery rule to save a statute of limitations problem. (Ruling, 10). Mormann was aware of facts sufficient to alert him to a potential violation of Iowa code chapter 216 whereas Betz had no such knowledge.

Despite these differences between the cases cited and the facts Betz presented, the district court held, "[i]n this case, Plaintiff alleges she was not aware of the specific defamatory statements Defendants published until, at the earliest, late March 2021. In their brief, Defendants represent they disclosed the documents in which the alleged defamatory statements were contained on April 23, 2021 and April 30, 2021 as part of Plaintiff's first lawsuit." (Ruling, 10).

In considering the motion to dismiss, the district court must accept the facts alleged in the petition as true. *McGill v. Fish*, 790 N.W.2d 113, 115 (Iowa 2010). Despite this requirement, the district court held that "[e]ven without access to the specific statements Defendants uttered or wrote, Plaintiff was aware no later than November 11, 2020, that FHLB employees 'made additional slanderous and libelous statements regarding Plaintiff's ability to perform her job or circumstances surrounding her termination.'" (Ruling, 11).

There are several facts important to this incorrect conclusion. First, this defamation claim is not a claim about Betz's discharge. To be sure, the first lawsuit was a suit about her discharge. And while her discharge was an outcome of the alleged wrong, it was an effect, not a cause. Second, the fact that Betz alleged in her first lawsuit that employees made other defamatory statements was an allegation related then specifically to the only defamation she could then allege or identify: the SEC form 8k. (App. v. II p. 24-25, Petition, ¶ 98-103).

Third, the district court never states how it is that Betz can be charged with "inquiry notice" about a complaint she was not aware of, an investigation never disclosed to her, or comments and other conclusions part and parcel to the same investigation she was not told about, or statements by the CEO to board members never mentioned to her. Fourth, and finally, given how the Bank handled the confidential complaint and investigation and its aftermath, even if Betz had a reason to guess that someone had made a complaint about her, there is no reason to believe the Bank or its representatives would have confirmed as much or given her any information sufficient to do her own investigation.

The district court must take the facts Betz alleged as true (and even the Bank does not disagree with the fact the disclosures of the investigation were made April 23 and 30, 2021) that she was not aware of the defamatory statements until those disclosures were made after the filing of the first lawsuit.

The reasonable conclusion regarding the facts as pled are:

- Mathisen failed in the performance of her job; (App. v. I p. 8, Petition, ¶ 14).
- Mathisen became worried for her own job thinking Betz was going to fire her and decided to try to deflect attention away from her own failing by tossing Betz under the proverbial bus; (App.

v. I p. 9, Petition, ¶ 18).

- Betz did not even discipline Mathisen, let alone fire her, deciding to coach her instead; (App. v. I p. 9, Petition, ¶ 24).
- The Bank initiated an investigation; (App. v. I p. 10, Petition, ¶ 30).
- Betz was not told of the investigation; (App. v. I p. 11, Petition, ¶ 40; Ruling, 10).
- Though she was the subject of an investigation Betz was not interviewed as part of the investigation; (App. v. I p. 10, Petition, ¶ 32).
- The investigation concluded without important people with knowledge being interviewed; (App. v. I p. 10, Petition, ¶ 32).
- The investigation and some of its findings were used by the CEO as a basis to advocate for Betz's discharge in discussions with board members. (App. v. I p. 11, Petition, ¶ 37). .
- Not knowing of the complaint, the investigation, or the real reason for her discharge, Betz filed a lawsuit alleging, among other things, discrimination, retaliation, and defamation for how the public SEC filings were handled; (App. v. II p. 10-26, Petition, the federal case).

- Sometime after the lawsuit was filed and disclosures of relevant documents were being made, Betz learned for the first time that Mathisen and the other named parties defamed her and used her as a scapegoat. (App. v. I p. 10, Petition, ¶ 27; App v. III p. 121 Betz Decl. 17 ¶).

There was no basis for the district court to conclude that though Betz had a claim for defamation regarding the filing of the 8k in her initial lawsuit that she was on some sort of notice, constructive or otherwise, regarding the defamation she later discovered. The discovery rule should be applied, the district court order dismissing Betz's case should be reversed, and the case should be remanded for further proceedings.

CONCLUSION

For all the reasons stated above, Linda Betz respectfully urges the Court to overrule the district court and remand the case for further proceedings.

REQUEST FOR ORAL ARGUMENT

The Appellant hereby requests to be heard in oral argument in connection with this appeal.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

[X] This brief contains 5098 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1)

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Dated: May 30, 2024

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CERTIFICATE OF SERVICE AND FILING

I hereby certify that on May 30, 2024, I electronically filed the foregoing with the Clerk of the Court for the Iowa Supreme Court by using the EDMS system. I certify that all participants in the case are registered EDMS users and that service will be accomplished by the EDMS system.

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