IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 23-1794
Polk County No. LACL155126

LINDA BETZ,
Plaintiff-Appellant,
v.
REBECCA MATHISEN, ERIC MULLER, KELLY RASMUSON, and MICHAEL WILSON,
Defendants-Appellees.

APPELLEES' APPLICATION FOR FURTHER REVIEW

FROM THE IOWA COURT OF APPEALS DECISION OF MARCH 5, 2025
ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
THE HONORABLE PATRICK SMITH

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QUESTIONS PRESENTED FOR REVIEW

I. Was Plaintiff Linda Betz on inquiry notice of defamation claims brought in a second lawsuit based upon her allegations about the existence of such claims in her first lawsuit?

II. Does a discovery rule apply to Plaintiff Linda Betz's defamation claims under Iowa Code § 614.1?

III. Are Plaintiff Linda Betz's claims barred by the doctrine of claim preclusion based upon her prior federal lawsuit related to the termination of her employment at Federal Home Loan Bank of Des Moines?

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STATEMENT SUPPORTING FURTHER REVIEW

Plaintiff-Appellee Linda Betz ("Betz") filed her first lawsuit against Federal Home Loan Bank of Des Moines (the "Bank") and several of its employees (including Defendant-Appellee, Michael Wilson) on November 11, 2020, alleging among other things, defamation. Judgment was entered in the Bank's favor on December 7, 2022, and was not appealed. Betz filed the present lawsuit on March 6, 2023 against Wilson, and several Bank employees again alleging defamation. After dismissal of Betz's claims by the district court, an *en banc* panel of the Iowa Court of Appeals split on the issue of whether Betz was on inquiry notice of her current defamation claims when she filed her first lawsuit, and as a result, whether Betz's current claims are time-barred.

Significantly, the six-judge majority "disavow[ed]" two of its prior decisions and held that a discovery rule applies to defamation claims, placing the *en banc* decision in conflict with *Stites v. Ogden Newspapers, Inc.*, No. 00-1975, 2002 WL 663621 (Iowa Ct. App. Apr. 24, 2002), and *Davenport*

v. City of Corning, No. 06-1156, 2007 WL 3085797 (Iowa Ct. App. Oct. 24, 2007). (Opinion, at 5–6). As the Iowa Supreme Court has not decided whether the discovery rule applies to this statute of limitation for defamation claims, *Linn v. Montgomery*, 903 N.W.2d 337, 343 (Iowa 2017), further review should be granted given that the court of appeals' decision is "in conflict with a decision of . . . the court of appeals on an important matter" and that "[t]he court of appeals has decided . . . an important question of law that has not been, but should be, settled by the supreme court." Iowa R. App. P. 6.1103(1)(*b*)(1)–(2).

Further, the majority's finding that "the factual question of what Betz knew and when she knew it" should be remanded contradicts well-established Iowa law holding that "[a] party is placed on inquiry notice when a person gains sufficient knowledge of facts that would put that person on notice of the existence of a problem or potential problem." *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19, 44 (Iowa 2018) (quotation omitted). In the first lawsuit, Betz alleged defamation based on

information contained in a Securities and Exchange Commission Form 8-K, but also alleged:

> Upon information and belief, Defendants have also made additional slanderous and libelous statements regarding Plaintiff's ability to perform her job or surrounding the circumstances of her termination, which include, but are not limited to statements made to the Bank's regulator, the Federal Housing Finance Agency.

(JA.II-25, ¶ 105).

Under the proper standard, Betz was plainly on "notice" that she may have been defamed no later than the date her petition was filed, November 11, 2020. As noted by the three-judge dissent: "The allegations made in her original lawsuit [are] a killer to Betz's current defamation claim". (Opinion, at 14). Left standing, the court of appeals' opinion would require the Bank and its employees to spend significant time and money disputing what Betz herself has already pleaded as true—that she was on notice of the defamatory statements she now attempts to re-litigate.

Finally, both the district court and court of appeals declined to address Appellees' alternative ground for dismissal based on claim

preclusion. The court of appeals stated only that these alternative grounds "can be resolved by the district court in due course," providing no justification why Appellees must expend valuable resources to litigate the same facts previously decided by a final judgment on the merits. (Opinion, at 11).

Factual Backgound

I. The Bank terminates Betz's employment after internal audit report.

Betz was the Bank's Chief Information Security Officer. (JA.I-8 ¶ 9). In that role, she oversaw the Information Security department which protected the Banks's computer systems data and sensitive information against various threats. (JA.II-328). She led a team of several employees responsible for ensuring compliance with certain Sarbanes-Oxley Act ("SOX") access controls. (JA.II-328; JA.III-43-47).

In May 2019, the Bank conducted a risk assessment involving SOX controls. (JA.II-328). During the assessment, one of Betz's direct reports, Defendant Rebecca Mathisen, identified gaps in the controls, specifically, that certain SOX controls were not being performed, other controls were

not effective, and there appeared to be a breakdown in management understanding of the controls. (JA.II-328; JA.II-205-208 [Mathisen 16:13-21, 22:2-25, 30:5-20]; JA.III-25-27, 48-51).

Shortly after the assessment, on August 7, 2019, Betz emailed Mathisen to suggest that the Bank should terminate its contract with the independent contractor who conducted the assessment. (JA.II-329; JA.III-42). Mathisen then submitted whistleblower complaints to the Bank, which Betz now contends contained defamatory statements. (JA.III-29-30; JA.I-9 ¶¶ 18-19)); JA.II-329). Consistent with federal regulations and Bank policy, the Bank's Internal Audit department, Kelly Rasmuson and Eric Muller, investigated Mathisen's complaint. (JA.II-330, 293-295; JA.I-30 ¶ 50); 15 U.S.C. § 78j-1(m)(4). On September 4, 2019, they issued an interim investigation report. (JA.III-61). The auditors noted they had "not seen any evidence where [Betz] filed a certification that conflict[ed] with [Mathisen]'s" but observed that Betz had a "steep learning curve" with internal controls. (JA.II-331; JA.III-61, 64-65). The report further detailed

that the independent contractor who conducted the assessment had provided "good advice on how to improve controls, risk assessments, and the Bank's long-term resolution of [material weaknesses]" and that he had resigned knowing Betz intended to terminate his contract. (JA.II-331; JA.III-61).

The Bank's President and CEO, Michael Wilson, received a copy of the interim report and "interpreted it as raising ethical lapses and serious performance concerns." (JA.II-243 ¶ 5). Based on those concerns, he decided to terminate the employment of three individuals, including Betz. (JA.II-331, 243 ¶ 5; JA.I-32 ¶¶ 63, 66). Shortly after receiving the interim report, Wilson relayed his termination decision to Internal Audit and the Bank's Board of Directors (the "Board"), saying that he'd "come to the conclusion that it is time for the Bank to part ways with Linda Betz." (JA.III-67). The auditors issued a final report on October 19, 2019, which Betz also now contends contained defamatory statements. (JA.III-69-75).

On January 3, 2020, Wilson informed Betz of the termination decision. (JA.II-306, 332; JA.III-92-98). Pursuant to its reporting obligations under federal law, the Bank filed a Form 8-K with the SEC regarding Betz's termination, which read:

> On January 3, 2020 the Federal Home Loan Bank of Des Moines (the "Bank") provided a notice of termination of employment to Linda N. Betz, the Bank's current Chief Information Security Officer ("CISO"). The effective date of Ms. Betz's separation from the Bank will be January 24, 2020. Ms. Betz served as the Bank's CISO since March 2018.

(JA.II-45).

II. Betz files her first lawsuit in November 2020.

On November 11, 2020 Betz filed her first lawsuit against the Bank, Wilson, and two other individuals she worked with at the Bank, subsequently removed to federal court in a case captioned as *Betz v. Federal Home Loan Bank of Des Moines, et al.*, No. 4:21-cv-00022 (S.D. Iowa 2021-2022) ("*Betz I*"); (JA.II-10-35). She asserted a litany of claims arising from her termination, including, sex discrimination and harassment, retaliation, false light invasion of privacy, employee blacklisting, tortious interference

with employment rights, civil conspiracy, wrongful termination and, relevant here, defamation. (JA.II-10-35).

Betz alleged the form 8-K filed with the SEC was defamatory because the Bank did not specify her termination was "without cause," which she argued implied the termination was "for cause." (JA.II-24-25 ¶¶ 100-103). However, she also expressly alleged in a separate paragraph that "[u]pon information and belief, Defendants have *also* made *additional* slanderous and libelous statements regarding [her] ability to perform her job or surrounding the circumstances of her termination, which include, but are not limited to statements made to the Bank's regulator." (JA.II-25 ¶ 105) (emphasis added).

III. The federal district court dismisses Betz's defamation claim in *Betz I*.

On February 3, 2021, the federal district court dismissed Betz's defamation claim, finding that the statements were not capable of a defamatory meaning and dismissed her defamation claim based on other unidentified statements related to her termination. *Betz I*, 549 F. Supp. 3d at

961, n.6 & 966. Betz received copies of Mathisen's whistleblower complaints and Muller and Rasmuson's interim and final reports early on in discovery, on or around April 23 and 30, 2021, and prior to her deadlines to add parties and amend her pleading, (JA.I-101), set in the scheduling order as May 3, 2021 and July 1, 2021, respectively. (JA.II-46).

Following discovery, the *Betz I* defendants moved for summary judgment on Betz's remaining claims, which was granted. *See Betz I*, 644 F. Supp. 3d 500, 507, 511 (S.D. Iowa 2022). The court found that even if Mathisen's internal complaint factually incorrect, it was a legitimate basis upon which Wilson could make his termination decision and any alleged shortcomings in the investigation did not establish pretext for discrimination. *Id.* Betz never appealed the judgment in *Betz I*.

IV. Betz files this second lawsuit after losing the first.

Shortly after Betz's deadline to appeal her first lawsuit lapsed, she filed the instant lawsuit, again alleging a claim of defamation based upon events leading up to her termination from the Bank. (JA.I-7-13). She again

named Wilson as a defendant, but this time added Mathisen, Muller, and Rasmuson as individual defendants, and alleged each defendant "was, at all times material hereto," acting in their role as a Bank employee. (JA.I-7–8, ¶¶ 3–6). The second lawsuit alleges that she did not become aware of the allegedly defamatory statements "until, at the earliest, late March, 2021," while her first lawsuit was in its early stages and before the deadlines to add parties and amend her pleading. (JA.I-5, ¶ 40).

Proceedings in the District Court and Court of Appeals

I. The district court dismisses Betz's claims as time-barred.

The Appellees moved to dismiss Betz's second lawsuit on the grounds that her claims were: (1) barred by claim preclusion based upon her first lawsuit against the Bank related to claims arising from the termination of her employment; and (2) barred by the two-year statute of limitations running from the dates of publication of the allegedly defamatory statements. (JA.I-14-17). On October 6, 2023, the district court granted Appellees' motion, finding Betz's defamation claims were

untimely under Iowa Code § 614.1(2). (D0043, Motion to Dismiss Ruling (10/06/23)).

The district court noted the Iowa Supreme Court has never applied the discovery rule to defamation and declined to do so in the absence of controlling precedent. (D0043, at 8). Applying existing Iowa law, the court observed the limitations period "commenced on the date the statements were published," and because Betz's second lawsuit "was filed more than two years after the last publication," the court held "her claim is barred by the statute of limitations." (D0043, at 9). Betz's second lawsuit is based upon statements she alleges were published between August 7, 2019 and January 3, 2020, but suit was filed more than two years later on March 6, 2023. (D0043, at 5). The district court declined to apply a discovery rule, relying upon Iowa Court of Appeals precedent of *Stites* and *Davenport*. (D0043, at 8–9).

Alternatively, the district court concluded that even if a discovery rule applied, it would not save Betz's claim. In *Betz I*, she alleged that Bank

employees "made additional slanderous and libelous statements regarding Plaintiff's ability to perform her job or the surrounding circumstances of her termination," which demonstrated she was on inquiry notice. (D0043, at 11) (quoting *Betz*, 549 F.Supp.3d at 966, n.6). As a result, the two-year statute of limitations ran in November 2022, before she filed her second lawsuit in March 2023. (D0043, at 11). The district court did not address Appellees' alternative argument that Betz's claims were barred by the doctrine of claim preclusion. (D0043, at 12).

II. A Split *En Banc* Panel of the Court of Appeals Reverses.

While a three-judge panel of the Iowa Court of Appeals heard oral argument, the case was decided *en banc*. A six-judge majority reversed and remanded, but a three-judge dissent would have affirmed the ruling of the district court.

The majority first overruled two prior unpublished court of appeals decisions that had rejected application of a discovery rule to defamation claims. (Opinion, at 5–6). Instead, it held "the discovery rule applies to a

defamation claim in circumstances such as this, where the allegedly defamatory statements were inherently secretive, inherently undiscoverable, or not a matter of public knowledge." (Opinion, at 9). The majority found that the discovery rule applied to Betz's claims because the allegedly defamatory statements "were inherently secretive in nature." *Id.* Finally, the majority concluded that "[d]etermining what Betz knew and when she knew it . . . is a factual inquiry that cannot be resolved at this motion-to-dismiss stage of the proceedings." (Opinion, at 10).

The three-judge dissent would have affirmed the district court's ruling that Betz was on "inquiry notice of her potential defamation claim when she filed a November 11, 2020 lawsuit that was dismissed in federal court." (Opinion, at 12) (Greer, J. dissenting). Under Iowa law, inquiry notice does not require that Betz knew of the specific statements published, but that "it is sufficient to prove that the person had notice that such evidence *might* exist" and "[h]ere, Betz made allegations in her November 2020 petition that described slanderous, false, or defamatory statements

made at work that might cast her in a false light." (Opinion, at 14). Based on her own pleadings in *Betz I*, the dissent would have affirmed the dismissal of Betz's second lawsuit. (Opinion, at 15).

Like the district court, the court of appeals declined to address the alternative basis for dismissal raised by Betz on the grounds of claim preclusion, stating only that "[t]hose alternative grounds . . . can be resolved by the district court in due course." (Opinion at 11).

Argument

I. The district court and Court of Appeals' dissent correctly found Betz was on inquiry notice of the defamation claims asserted in her second lawsuit no later than November 11, 2020.

The *en banc* panel split on whether, based on her allegations in *Betz I*, Betz was on inquiry notice of the defamation claims plead in the present case. While Betz attempts to recast her first lawsuit as relating only to the Form 8-K filed with the SEC, her November 11, 2020 lawsuit alleges the opposite:

> Upon information and belief, Defendants have also made additional slanderous and libelous statements regarding

> Plaintiff's ability to perform her job or surrounding the circumstances of her termination, which include, but are not limited to statements made to the Bank's regulator, the Federal Housing Finance Agency.

(JA.II-25, ¶ 105). Further, Betz's has conceded that her *Betz I* pleading was not limited to the Form 8-K, stating at oral argument: "what happened as we were pleading the lawsuit *we suspected there may have been other statements made*."[1] (Emphasis added.) Despite this admission, and the express allegation in *Betz I* that Betz believed there were additional defamatory statements made by Bank employees, a majority the Iowa Court of Appeals held that "[r]esolving the factual question of what Betz knew and when she knew it will need to be resolved on remand by motion

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[1] The December 10, 2024 oral argument before the Court of Appeals is not publicly available, but the archival YouTube link containing the recording was provided to counsel for both parties on March 6, 2025 by the Iowa Court of Appeals clerk. The supreme court routinely considers concessions of counsel at oral argument when deciding cases on appeal. *See, e.g.*, *In re Det. of Schuman*, 2 N.W.3d 33, 44 (Iowa 2024); *MIMG CLXXII Retreat on 6th, LLC v. Miller*, 16 N.W.3d 489, 495–96 (Iowa 2025).

practice—other than a motion to dismiss—or trial." (Opinion, at 10). Respectfully, this was error.

"A party is placed on inquiry notice when a person gains sufficient knowledge of facts that would put that person on notice of the existence of a problem or potential problem." *Bandstra*, 913 N.W.2d at 44 (quoting *Vossoughi v. Polaschek*, 859 N.W.2d 643, 652 n.4 (Iowa 2015)). As noted by the three-judge dissent: "Once a person is aware that a problem exists, the person has a duty to investigate 'even though the person may not have knowledge of the nature of the problem that caused the injury.'" (Opinion, at 13–14 (quoting *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 736 (Iowa 2008))). It is "[o]n that date, [a person] is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation." (Opinion, at 13 (quoting *Sparks v. Metalcraft, Inc.*, 408 N.W.2d 347, 351 (Iowa 1987))). And, "[a] claimant can be on inquiry notice without knowing 'the details of the evidence by which to prove the cause

of action.'" *Hallett Const. Co. v. Meister*, 713 N.W.2d 225, 231 (Iowa 2006) (*quoting Vachon v. State*, 514 N.W.2d 442, 446 (Iowa 1994)).

Under this standard, Betz was plainly on "notice" that she may have been defamed by the date her petition was filed, November 11, 2020. To quote the dissent: "The allegations made in her original lawsuit [are] a killer to Betz's current defamation claim". (Opinion, at 14). *See also Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 302 (Iowa 2020) (affirming dismissal where plaintiff's "own allegations, as a matter of law, defeat application of the discovery rule").

That Betz's pleading was made "[u]pon information and belief" does not change the analysis. "To swear that one *believes* a thing to be true is equivalent to swearing that it *is* true." *Koch v. Dist. Ct. of Des Moines Cnty.*, 129 N.W. 740, 742 (Iowa 1911) (emphasis added); *accord Fox Prairie Invs., LLC v. Walters Companies, Inc.*, 8 N.W.3d 197, 2024 WL 2045626, at *1 n.1 (Iowa Ct. App. 2024) (noting that "'[u]pon information and belief' is a lawyerly way of saying that the [affiant] does not know that something is a

fact but just suspects it or has heard it." (quotation omitted)). Her own allegations demonstrate notice "of the existence of a problem or potential problem" no later than November 11, 2020. *Bandstra*, 913 N.W.2d at 44 (quotation omitted).

The majority's holding that whether Betz was on inquiry notice presented a fact question that could not be decided at the motion to dismiss stage was erroneous, and inconsistent with other precedent of this Court. For example, in *Benskin, Inc. v. W. Bank*, the Court found that inquiry notice may be decided at the motion to dismiss stage based upon the allegations in a party's pleading. 952 N.W.2d at 303–04. There, the Court considered the district court's dismissal of the plaintiff's fraud claim, finding the plaintiff was on inquiry notice against the defendant bank based upon the allegations in his petition. *Id.* The Court affirmed, finding the statute of limitations had run notwithstanding the discovery rule. *Id.* The only difference here is that Betz's express admission that she was on notice of additional defamatory statements was made in her first lawsuit rather than

in this one—a distinction without difference. The district court properly took judicial notice of the facts plead by Betz in her prior lawsuit. Iowa R. Evid. 5.201; *Johnson v. Ward*, 265 N.W.2d 746, 749 (Iowa 1978).

Simply put: Betz was on inquiry notice because *she told the court* she was aware of the facts to support the claims she brings in this lawsuit. She does not get a do-over in a second lawsuit simply because she has learned additional facts through discovery that could have supported additional claims in her first lawsuit. The Court should affirm the district court's ruling that Betz was on inquiry notice of her defamation claims against Appellees no later than November 11, 2020, and therefore her claims are barred regardless of whether a discovery rule applies.

II. The court should not apply a discovery rule to Betz's defamation claims in this second lawsuit.

The Iowa Supreme Court has "not decided whether the discovery rule applies to this statute for nonnegligence claims such as defamation." *Linn*, 903 N.W.2d at 343. When the discovery rule was adopted by this Court, it reasoned that "[i]f an injured party is wholly unaware of the

nature of his injury and the cause of it, it is difficult to see how he may be charged with a lack of diligence or sleeping on his rights." *Chrischilles v. Griswold*, 150 N.W.2d 94, 100 (Iowa 1967), *superseded on other grounds recognized in Langner v. Simpson*, 533 N.W.2d 511, 516–17 (Iowa 1995). By contrast, the facts of this case show Betz lacked diligence and slept on her rights—she never amended her federal court action and delayed until after her first lawsuit was dismissed to bring these claims.

There is also sound reason not to apply a discovery rule to defamation claims generally based upon the difference between injuries to reputation and physical injuries. As one court put it:

> We conclude that the rationale for declining to apply the discovery rule to defamation statutes of limitations is persuasive. Typical situations in which the discovery rule has been applied involved distinct and usually physical injuries developing long after the defendant's negligent conduct occurred, and after the statute of limitations expired. In contrast, the injury to character and reputation upon which a slander action is based develops and is complete at the moment the slanderous words are uttered. Moreover, the policies upon which statutes of limitations are based, i.e., preventing stale claims and preserving evidence, are especially applicable to slander actions because of the intangible nature of the evidence,

> spoken words, and of the injury itself, damage to character and reputation.

Quality Auto Parts Co. v. Bluff City Buick Co., 876 S.W.2d 818, 821–22 (Tenn. 1994).

Further, the legislature has not adopted a discovery rule for defamation claims, and this Court should not impose one where the legislature is silent. *U.S. Jaycees v. Iowa C.R. Comm'n*, 427 N.W.2d 450, 455 (Iowa 1988) ("If changes in a law are desirable from a standpoint of policy or mere practicality, it is for the legislature to enact them, not for the court to incorporate them by interpretation."). The Court should find no discovery rule applies to defamation and the statute of limitations ran on Betz's claims two years from the dates of publication of the allegedly defamatory statements.

III. If the Court finds Betz's claims are not time-barred, her second lawsuit is barred by the doctrine of claim preclusion.

An alternatively compelling reason to affirm the district court's dismissal of Betz's claims is the doctrine of claim preclusion. Claim preclusion prevents parties from doing exactly what Betz tries here—

bringing a second action on the same claim. *See, e.g., Elbert v. Carter*, 903 F.3d 779, 782 (8th Cir. 2018). Although the district court and court of appeal declined to consider this alternative ground, this Court may "affirm a trial court on any basis appearing in the record and urged by the prevailing party," and should do so here. *Chicago Cent. & Pac. R. Co. v. Calhoun Cnty. Bd. of Sup'rs*, 816 N.W.2d 367, 373 (Iowa 2012).

A. Elements of claim preclusion.

To establish claim preclusion, a party must show "(1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involve the same parties (or those in privity with them); and (4) both suits are based upon the same claims or causes of action."[2] *Elbert*, 903 F.3d at 782 (quotation omitted). Here, the only issues in dispute are (a) whether Mathisen, Muller, and Rasmuson are in

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[2] As a federal court rendered judgment in *Betz I*, federal law controls in determining preclusive effect. *See, e.g., Poe v. John Deere Co.*, 695 F.2d 1103, 1105 (8th Cir. 1982).

privity with the Bank, and thus the "same parties"; and (b) whether both suits are based on the same claims.[3] As Appellees argued before each court, these elements are easily met here.

B. Mathisen, Muller, and Rasmuson are in privity with the Bank.

Claim preclusion has "special applicability in suits against a principal or agent." *Peppmeier v. Murphy*, 708 N.W.2d 57, 63 (Iowa 2005). The doctrine extends to parties who should have been joined in the original action, as well as to those whose relationship is so close that their addition cannot avoid the reach of res judicata. *See, e.g., Elbert*, 903 F.3d at 783; *Shivvers v. Hertz Farm Mgmt., Inc.*, 595 N.W.2d 476, 481 (Iowa 1999). A judgment in favor of either the principal or agent is "accepted as conclusive against the plaintiff's right of action against the other, or as to any issues decided in the prior action." *Peppmeier*, 708 N.W.2d at 63 (quotation omitted). This rule

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[3] Betz does not dispute that *Betz I* resulted in a final judgment on the merits and was based on proper jurisdiction, or that Wilson was named as a defendant in both suits.

applies regardless of "whether the actions are separate or the principal and agent are joined in the same action." *Id.*

Before the district court, Betz acknowledged that parties to a vicarious-liability relationship are "parties in privity" for purposes of claim preclusion. (JA.II-136-37). Further, her own petition expressly alleges that Mathisen, Muller, and Rasmuson were "at *all* times material" acting as employees of the Bank. (JA.I-7-8, ¶¶ 4-6 (emphasis added)). While she now argues that they were acting outside the scope of their employment with the Bank, she never once alleged so in her petition. (JA.II-10-35).

Further, under federal law, whether parties are in "'privity' is 'merely a word used to say that the relationship between the one who is a party on the record and another is close enough to include that other within the res judicata'" and is not limited to the "traditional 'privity'" analysis. *Elbert*, 903 F.3d at 782–83 (quotation omitted). As such, individuals who were not parties in the first action can invoke nonmutual claim preclusion if they "can show good reasons why [they] should have been joined in the first

action and the old party cannot show any good reasons to justify a second chance." *Id.* (quotation omitted); *accord Cho v. Blackberry Ltd.*, 991 F.3d 155, 170 (2d Cir. 2021) ("[T]he privity inquiry is a 'functional' one, and '[r]es judicata may bar non-parties to earlier litigation ... when the interests involved in the prior litigation are virtually identical to those in later litigation.' " and " claims based upon different legal theories are barred provided they arise from the same transaction or occurrence." (quotations omitted).

In *Elbert*, the plaintiff first sued the City of Kansas, the board of police commissioners, and various city employees and police officers alleging claims under section 1983 and other constitutional and state law claims related to a police raid at a country club the plaintiff managed. *Elbert*, 903 F.3d at 780. The plaintiff moved to amend his pleadings two months after the pleading deadline, seeking to substitute additional defendants, mostly police officers for previously-listed John Does defendants. *Id.* at 781. The federal district court denied Elbert's motion to amend and plaintiff filed a

second lawsuit against some defendants he had previously sued and the defendants he unsuccessfully sought to add in his first lawsuit. *Id.* Applying the privity analysis set forth above, the Eighth Circuit found there was "no good reason why" the plaintiff should be given a second chance given that he "could have brought the new claims . . . in the first action and failed to do so" and he "could have joined the other[, new defendants] in the first action but failed to do so in a timely manner." *Id.*

Here, Appellees have presented good reasons why they should have been joined in the first lawsuit, namely that the facts at issue and claims in the second lawsuit significantly (if not identically) overlap with the first lawsuit related to the events leading up to Betz's termination from the Bank. More importantly, Betz can show no good reason to justify a second chance in this lawsuit. She received copies of Mathisen's whistleblower complaint and the Internal Audit reports and deposed each of the Appellees in the first lawsuit. Just as in *Elbert*, Betz cannot escape the fact that she could have joined Mathisen, Muller, and Rasmuson in her first

lawsuit, but failed to do so. Mathisen, Rasmuson, and Muller are therefore in privity with the Bank.

C. Betz's Claims in Her Second Lawsuit Could Have Been Fully and Fairly Adjudicated in Her First Lawsuit.

"[W]hether two claims are the same for res judicata purposes depends on whether the claims arise out of the same nucleus of operative fact or are based upon the same factual predicate." *Elbert*, 903 F.3d at 782 (quoting *Murphy v. Jones*, 877 F.2d 682, 684-85 (8th Cir. 1989)). The analysis, therefore, is focused on the *facts* at issue in each suit, not the legal theories of relief.

Betz argues that the defamation claims in this lawsuit, although "related" to her prior lawsuit, are "separate" causes of action. (Appellant's Reply Br. 19). But the facts before the federal district court in her first lawsuit involved the contents of Mathisen's internal whistleblower complaints against Betz, the Internal Audit Department's investigation of the complaints, Wilson's decision to terminate Betz following the investigation, and Wilson's communication to the Board about the

decision. *Betz I*, 644 F. Supp. 3d at 505–06. The facts alleged by Betz in this second lawsuit clearly arise out of a common nucleus of operative facts as those at issue in her first lawsuit, even if the court's analysis was focused on whether the facts supported a Title VII claim rather than defamation.

Notably, Betz never amended or attempted to amend her federal court pleading to include these claims. *See RSM Prod. Corp. v. Freshfields Bruckhaus Deringer U.S. LLP*, 800 F. Supp. 2d 182, 193 (D.D.C. 2011) (finding where the record "demonstrates that the plaintiff knew of the relevant, operative facts that it asserts in this case at the time it filed its Third Amended Complaint in" the first action," it could have been raised in prior action on same claim and therefore the second action "arises out of the same nucleus of facts as presented" in the first action), *aff'd*, 682 F.3d 1043 (D.C. Cir. 2012). Betz conceded at oral argument before the Iowa Court of Appeals that when she learned of the defamation, "candidly, [she] could have asked the federal court to allow [her] to amend" and that if the federal

court denied that request it would have been "dispositive" of her claims.[4] Her claims clearly could have been adjudicated in her first lawsuit as claims arising out of a common nucleus of operative facts, but Betz decided not to pursue those claims. Claim preclusion bars parties from doing what Betz attempts here—deliberately holding back some claims in one lawsuit in order to reserve the right to a do-over in a later lawsuit. Because the claims brought by Betz could have been fully and fairly adjudicated in the first lawsuit, claim preclusion bars her from bringing them in this lawsuit.

CONCLUSION

Appellees request that the Court grant this application for further review, vacate the Iowa Court of Appeals' decision, and affirm the district court judgment.

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[4] *See* footnote 3, *supra*.

Dated: March 25, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This application complies with the typeface and type-volume limitation of Iowa R. App. P. 6.1103(5) because*:*

[X] this application has been prepared in a proportionally spaced typeface using Palatino Linotype typeface in font size 14 and contains 5,188 words, excluding parts of the application exempted by Iowa R. App. P. 6.1103(5)(*a*), or

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/s/ David T. Bower

PROOF OF SERVICE AND CERTIFICATE OF FILING

I hereby certify that on March 25, 2025, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel of record.

/s/ David T. Bower

IN THE COURT OF APPEALS OF IOWA

No. 23-1794
Filed March 5, 2025

LINDA BETZ,
Plaintiff-Appellant,

vs.

REBECCA MATHISEN, ERIC MULLER, KELLY RASMUSON and MICHAEL WILSON,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Patrick D. Smith, Judge.

A plaintiff in a defamation suit appeals the district court order dismissing her claim. **REVERSED AND REMANDED.**

Michael J. Carroll of Carney & Appleby Law Firm, Des Moines, for appellant.

David Bower, Katie Graham, Haley Hermanson (until withdrawal), and Dana W. Hempy of Nyemaster Goode, P.C., Des Moines, for appellee.

Heard by Tabor, C.J., and Ahlers and Sandy, JJ, but decided en banc.

AHLERS, Judge.

Linda Betz was hired by a bank to be its chief information security officer. At least three employees reported directly to her, including the manager of information security—defendant Rebecca Mathisen. Over a year into Betz's tenure, the manager informed Betz that certain Sarbanes-Oxley Act (SOX) controls were not being performed. The manager filed an internal complaint against Betz. The complaint included statements that Betz had improperly certified the relevant controls and was planning to retaliate by firing the manager. The complaint was forwarded to the bank's president and chief executive officer (CEO)—defendant Michael Wilson—who then initiated an investigation.

The investigation was conducted by two members of the bank's internal audit department—defendants Eric Muller and Kelly Rasmuson. The auditors completed multiple reports, with their final report submitted on October 19, 2019. The final report included an action plan as to personnel changes and noted that the CEO had determined Betz should be terminated. As part of the description of the action plan, the final report stated the reasons for the CEO's determination as to Betz's termination included Betz's action described in the manager's complaint and her "questionable prioritization of information security (IS) projects."

The CEO reviewed the auditors' final report and ultimately concluded there was a pattern to Betz's behavior of potential retaliation, her lack of listening to others, and a growing list of issues surrounding IS projects. On January 3, 2020, the CEO terminated Betz's employment with the bank. Following protocol, the bank reported her termination to the Securities Exchange Commission (SEC) through Form 8-K.

On November 11, 2020, Betz filed a lawsuit against the bank, the CEO, and two individuals with whom she worked (two individuals who are not parties to this suit).[1] Her claims primarily centered on sex discrimination and wrongful termination, but she included a claim for defamation. She asserted the Form 8-K filed with the SEC was defamatory by failing to specify that she was terminated "without cause." Betz further alleged the bank and its employees made slanderous and libelous statements regarding her job performance and the reasoning behind her termination. The federal court ultimately dismissed Betz's state common law claims, including the defamation claim, for failure to state a claim for which relief could be granted. *See Betz v. Fed. Home Loan Bank of Des Moines*, 549 F. Supp. 3d 951, 969 (S.D. Iowa 2021).

Betz filed the present lawsuit on March 6, 2023—about two months after dismissal of her federal suit. She alleges a single count of defamation against the manager, the two auditors, and the CEO. Betz contends the statements made in the manager's complaint, the statements made in the interim and final audit reports, and comments made by the CEO damaged her reputation and ultimately led to the termination of her employment. The district court granted the defendant's motion to dismiss Betz's suit because it was filed outside the two-year statute of limitations under Iowa Code section 614.1(2) (2023).

On appeal, Betz argues the district court erred in dismissing her suit. She contends the discovery rule should be applied to her claim. Betz also asserts the district court incorrectly found she was on inquiry notice of the alleged defamation.

[1] The suit was originally filed in an Iowa state court, but the defendants removed the case to federal court.

A ruling on a motion to dismiss is reviewed for correction of legal error. *White v. Harkrider*, 990 N.W.2d 647, 650 (Iowa 2023). A party is entitled to dismissal only if the petition demonstrates the claims are legally insufficient and "the plaintiff has no right of recovery as a matter of law." *Id*.

Under Iowa law, a claim for defamation must be brought within two years. *See* Iowa Code § 614.1(2). Betz concedes that the two-year-limitation period begins to run on the date of publication. *See Kiner v. Reliance Ins.*, 463 N.W.2d 9, 13 (Iowa 1990). However, she contends the discovery rule should apply to save her claim. Under the discovery rule, "a claim does not accrue until the plaintiff knows or in the exercise of reasonable care should have known both the fact of the injury and its cause." *Rieff v. Evans*, 630 N.W.2d 278, 291 (Iowa 2001) (quoting *Woodroffe v. Hasenclever*, 540 N.W.2d 45, 47 (Iowa 1995)). Betz argues the discovery rule should apply to her defamation claim, as she was unaware of the alleged defamatory statements at the time they were published. She maintains that it was not until late March 2021 at the earliest—through discovery in her federal suit—that she became aware of specific statements made by the defendants in this suit. She contends the discovery rule should apply to toll the start of the limitation period to at least late March 2021, which would make the filing of this lawsuit on March 6, 2023, timely.

The district court declined to apply the discovery rule to Betz's claim. The court also concluded that, even if the rule did apply, her claim was still untimely because Betz knew of the claims at least by November 2020, when she filed her first suit.

Both parties acknowledge the Iowa Supreme Court has not directly addressed whether the discovery rule applies to defamation claims. *See Linn v. Montgomery*, 903 N.W.2d 337, 343 (Iowa 2017) ("We have not decided whether the discovery rule applies to [Iowa Code section 614.1(2) (2015)] for nonnegligence claims such as defamation."). But our court has held that the discovery rule does not apply to defamation claims. *See Stites v. Ogden Newspapers, Inc.*, No. 00-1975, 2002 WL 663621, at *2 (Iowa Ct. App. Apr. 24, 2002) (refusing to apply the discovery rule to a defamation claim); *see also Davenport v. City of Corning*, No. 06-1156, 2007 WL 3085797, at *6 (Iowa Ct. App. Oct. 24, 2007) ("We accordingly conclude the district court was correct in finding the statute of limitations begins to run on the date of publication, not on the date the plaintiff discovers or reasonably should have discovered the slanderous statement.").

Betz asks us to disavow *Stites* and *Davenport*, arguing the foundation upon which they are built is faulty and there is no persuasive reason why defamation claims should not be subject to application of the discovery rule. After reviewing *Stites* and *Davenport* as well as other relevant case law, we agree with Betz.

Stites and *Davenport* are unpublished opinions. As such, they are not binding precedent on appeal. Iowa R. App. P. 6.904(2)(a)(2); *accord State v. Lindsey*, 881 N.W.2d 411, 414 n.1 (Iowa 2016) (noting "unpublished decisions of the court of appeals do not constitute binding authority on appeal" but may help "define the issues" before the district court). But even though the cases are not binding on appeal, they serve as guidance for the district court and bar, and we strive for consistency in our opinions, so we do not disavow unpublished opinions

lightly. *See State v. Kraai*, No. 19-1878, 2021 WL 1400366, at *6 (Iowa Ct. App. Apr. 14, 2021) (en banc), *aff'd*, 969 N.W.2d 487 (Iowa 2022). That said, we disavow unpublished opinions when convinced they were wrongly decided. *Id.* We take that course here.

Both *Stites* and *Davenport* rely on *Kiner* to reach the conclusion that the discovery rule does not apply to defamation claims. *See Stites*, 2002 WL 663621, at *2; *Davenport*, 2007 WL 3085797, at *6. But *Kiner* merely holds that the statute of limitations on a defamation claim begins to run on the date of publication; it says nothing about the discovery rule. *See* 463 N.W.2d at 13–14. And since *Stites* and *Davenport* were decided, our supreme court has expressly noted that whether the discovery rule applies to nonnegligence claims such as defamation has not been decided. *See Linn*, 903 N.W.2d at 343. In reaching such conclusion, the supreme court acknowledged *Kiner*, but dismissed any suggestion that it was controlling on the question by noting that the discovery rule was not argued in *Kiner*. *Id.* n.3.

Because *Stites* and *Davenport* rely on *Kiner* as the basis for not applying the discovery rule to a defamation claim, and the supreme court has expressly held that *Kiner* is not a discovery-rule case and thus does not answer the question of whether the discovery rule applies to a defamation claim, the foundation upon which *Stites* and *Davenport* is built is imaginary. Further, *Linn* confirms that whether the discovery rule applies to defamation claims remains an open question, further undercutting any suggestion that *Stites* and *Davenport* are controlling. *See id.* at 343. The lack of foundation for the conclusion reached in *Stites* and *Davenport* causes us to conclude they do not express a correct statement of the law on this issue. As a result, we disavow them.

Having concluded that *Stites* and *Davenport* do not control, we must still decide whether to apply the discovery rule to a defamation claim, as *Linn* has acknowledged this as an open question. We begin by looking at how other states have answered this question. Other states appear to fall into one of three camps: (1) unqualified acceptance of the discovery rule in defamation cases; (2) qualified acceptance of the discovery rule—only permitting application of the rule when publication is inherently undiscoverable or not a matter of public knowledge; and (3) unqualified rejection of the discovery rule. *See generally* Francis M. Dougherty, Annotation, *Limitation of Actions: Time of Discovery of Defamation as Determining Accrual of Action*, 35 A.L.R.4th 1002 (1985). Although determining into which of these camps a particular state falls can sometimes be more art than science, our research suggests that five states have unqualifiedly adopted the discovery rule in defamation cases,[2] ten have adopted the discovery rule only in cases when the publication is inherently undiscoverable or not a matter of public knowledge,[3]

[2] *See Puana v. Kealoha*, 587 F. Supp. 3d 1035, 1048 (D. Haw. 2022) (applying Hawaii law); *Smith v. IMG Worldwide, Inc.*, 437 F. Supp. 2d 297, 306 (E.D. Pa. 2006) (applying Pennsylvania law); *Padon v. Sears, Roebuck & Co.*, 411 S.E.2d 245, 248 (W. Va. 1991); *Allen v. Ortez*, 802 P.2d 1307, 1313–14 (Utah 1990); *Burks v. Rushmore*, 534 N.E.2d 1101, 1104 (Ind. 1989).

[3] *See Davalos v. Bay Watch, Inc.*, 240 N.E.3d 753, 764 (Mass. 2024); *Shively v. Bozanich*, 80 P.3d 676, 687–88 (Cal. 2003); *Dulude v. Fletcher Allen Health Care, Inc.*, 807 A.2d 390, 399 (Vt. 2002); *Digit. Design Grp., Inc. v. Info. Builders, Inc.*, 24 P.3d 834, 839–41 (Okla. 2001); *Staheli v. Smith*, 548 So. 2d 1299, 1303 (Miss. 1989); *Clark v. Airesearch Mfg. Co. of Ariz., Inc.*, 673 P.2d 984, 986 (Ariz. Ct. App. 1983); *Sears, Roebuck & Co. v. Ulman*, 412 A.2d 1240, 1242–44 (Md. 1980); *White v. Gurnsey*, 618 P.2d 975, 976–78 (Or. Ct. App. 1980); *Kelley v. Rinkle*, 532 S.W.2d 947, 949 (Tex. 1976); *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 334 N.E.2d 160, 164 (Ill. 1975).

fourteen have rejected the discovery rule,[4] and three (including Iowa) are undecided on the issue.[5]

Having considered the competing case law and the parties' arguments, we find the cases applying the discovery rule in defamation cases in limited circumstances more persuasive than those that decline to do so, and we see no convincing reason not to apply it here. The policy behind the discovery rule is that it is "unfair to charge a plaintiff with knowledge of facts which are unknown and inherently unknowable." *Mormann v. Iowa Workforce Dev.*, 913 N.W.2d 554, 567 (Iowa 2018) (cleaned up). This policy consideration warrants application of the

[4] *See Harris v. Tietex Int'l Ltd.*, 790 S.E.2d 411, 416 (S.C. Ct. App. 2016); *Horne v. Cumberland Cnty. Hosp. Sys., Inc.*, 746 S.E.2d 13, 20 (N.C. Ct. App. 2013); *Casa de Meadows Inc. (Cayman Is.) v. Zaman*, 908 N.Y.S.2d 628, 631–32 (N.Y. App. Div. 2010); *Lewis v. Del. Cnty. Joint Vocational Sch. Dist.*, 829 N.E.2d 697, 700 (Ohio Ct. App. 2005); *Quality Auto Parts Co. v. Bluff City Buick Co.*, 876 S.W.2d 818, 821–22 (Tenn. 1994); *Wagner, Nugent, Johnson, Roth, Romano, Erikson & Kupfer, P.A. v. Flanagan*, 629 So. 2d 113, 115 (Fla. 1993); *LaPan v. Myers*, 491 N.W.2d 46, 49 (Neb. 1992); *McGaa v. Glumack*, 441 N.W.2d 823, 825 (Minn. Ct. App. 1989); *L. Cohen & Co. v. Dun & Bradstreet, Inc.*, 629 F. Supp. 1425, 1429 (D. Conn. 1986) (applying Connecticut law); *Mikaelian v. Drug Abuse Unit*, 501 A.2d 721, 725 (R.I. 1985); *Lawrence v. Bauer Publ'g & Printing Ltd.*, 396 A.2d 569, 571 (N.J. 1979) (Pashman, J., concurring); *Lashlee v. Sumner*, 570 F.2d 107, 109–10 (6th Cir. 1978) (applying Kentucky law); *Rinsley v. Brandt*, 446 F. Supp. 850, 852–53 (D. Kan. 1977) (applying Kansas law); *Brown v. Chi., Rock Island & Pac. R.R.*, 212 F. Supp. 832, 835 (W.D. Mo. 1963) (applying Missouri law).

[5] *See Arthaud v. Fuglie*, 987 N.W.2d 379, 381 (N.D. 2023) ("We find it unnecessary to determine whether the discovery rule should apply to defamation claims because the Uniform Single Publication Act, as adopted by the North Dakota legislature, precludes application of the discovery rule when the alleged defamatory statement was made to the public."); *Linn*, 903 N.W.2d at 343 (stating that Iowa has "not decided whether the discovery rule applies to [the limitations statute] for nonnegligence claims such as defamation"); *Jacobson v. Leisinger*, 746 N.W.2d 739, 746 (S.D. 2008) ("Although [an argument for application of a discovery rule when the allegedly defamatory statement is inherently undiscoverable] is persuasive, we need not reach this limited application of the so-called 'discovery rule.'").

rule to defamation claims just as much as it warrants application of the rule to negligence actions, where such application is generally permitted.

For these reasons, we hold that the discovery rule applies to a defamation claim in circumstances such as this, where the allegedly defamatory statements were inherently secretive, inherently undiscoverable, or not a matter of public knowledge. We need not and do not decide whether to apply the rule to defamation claims in general. Here, the alleged defamatory statements were inherently secretive in nature, as they were made in an internal complaint, in internal audit reports, and by in-house comments made by the CEO while terminating Betz's employment—all statements to which Betz would have had restricted or nonexistent access. We conclude the discovery rule applies in this situation.[6] We leave for another day the question whether the discovery rule should apply with a more publicly distributed statement.

Because of our decision to disavow *Stites* and *Davenport* and apply the discovery rule under these limited circumstances, we disagree with the district court's decision not to apply it. Of course, by disagreeing with the district court, we mean no criticism of it, as it had no reason to know we would disavow *Stites* and *Davenport*, and it therefore understandably relied on those cases.

Though we have determined that the discovery rule applies to a defamation claim in circumstances such as this, a determination still needs to be made

[6] Betz's claim is similar to the one addressed in *Kelley v. Rinkle*, where the plaintiff was falsely reported to a credit agency for owing money past due but did not learn of the defamatory statement until he was later denied credit services. 532 S.W.2d at 947–48. There, the court held that the statute of limitations on a defamatory report does not begin until the person defamed learns of, or should by reasonable diligence have learned of, the existence of the report. *Id.* at 949.

whether it applies to Betz's particular claim. The discovery rule tolls the statute of limitations "until the plaintiff knows or in the exercise of reasonable care should have known both the fact of the injury and its cause." *MidWestOne Bank v. Heartland Co-op*, 941 N.W.2d 876, 884 (Iowa 2020) (quoting *K&W Elec., Inc. v. State*, 712 N.W.2d 107, 116 (Iowa 2006)). Determining what Betz knew and when she knew it such that a decision can be made whether and to what extent the statute of limitations should be tolled by application of the discovery rule is a factual inquiry that cannot be resolved at this motion-to-dismiss stage of the proceedings. *See Nahas v. Polk Cnty.*, 991 N.W.2d 770, 776 (Iowa 2023) (noting that a motion to dismiss may only be granted if the petition "shows no right of recovery under any state of facts" (citation omitted)). We respectfully disagree with the district court's conclusion that this factual determination can be made at the motion-to-dismiss stage in this case. Resolving the factual question of what Betz knew and when she knew it will need to be resolved on remand by motion practice—other than a motion to dismiss—or trial.

Having determined that the discovery rule applies to a defamation claim in limited situations and that factual disputes need to be resolved to determine to what extent the discovery rule tolled the statute of limitations on Betz's claim, we hereby reverse the district court's grant of the defendants' motion to dismiss. We remand for further proceedings as if such motion had been denied. And, because the district court declined to consider alternative grounds for dismissal (e.g., issue preclusion), we decline to address those alternative grounds and express no

opinion on them. Those alternative grounds, and any other grounds properly raised on remand, can be resolved by the district court in due course.

REVERSED AND REMANDED.

Tabor, C.J., and Badding, Chicchelly, Langholz, and Sandy, JJ., concur; Greer, Schumacher and Buller, JJ., dissent.

GREER, Judge (dissenting).

I respectfully dissent from the majority's decision to reverse the district court's dismissal of Linda Betz's defamation claim on statute-of-limitation grounds. I would affirm the district court's decision as it is well-written and sound. The district court found that Betz had inquiry notice of her potential defamation claim when she filed a November 11, 2020 lawsuit that was dismissed in federal court. *See Betz v. Fed. Home Loan Bank of Des Moines*, 549 F. Supp. 3d 951, 966 (S.D. Iowa 2021). Thus, her claim for defamation filed in March 2023 is barred by the applicable two-year statute of limitations because she had until only November 2022 to file her action.

At this point in the proceedings, whether the discovery rule applies to a defamation action does not matter, as Betz was on inquiry notice based upon her earlier allegations in the first suit involving her employment at the bank. In November 2020, Betz filed her first lawsuit involving her employment against the bank and three employees, including the CEO Michael Wilson, who is also a defendant in this current case. In the first lawsuit, under her claim for "defamation by implication, defamation per se" (count V), she asserted among other allegations that, "[u]pon information and belief, Defendants have *also made additional slanderous and libelous statements* regarding Plaintiff's ability to perform her job or surrounding the circumstances of her termination, which include, but are *not limited to statements made to the Bank's regulator*, the Federal Housing Finance Agency." (Emphasis added.) Then, in the same filing, she claimed civil conspiracy (count IX), alleging: "Defendants formed an agreement to intentionally and improperly interfere in the employment relationship existing between Plaintiff and

[Federal Home Loan Bank]-Des Moines and to make *false and/or defamatory statements* regarding Plaintiff and/or to cast Plaintiff in a false light." (Emphasis added.)

As already stated, the federal court dismissed her first suit. Then in March 2023, Betz followed that dismissal by again bringing claims related to her employment against Wilson, but also against three other employees—a manager and two auditors: Rebecca Mathisen, Eric Muller, and Kelly Rasmuson. To support her argument related to the discovery rule, Betz argues that it was not until March 2021, during discovery in the first lawsuit, that she learned of the specific statements made. She contends that would have extended the statute of limitations and her second lawsuit was timely.

As the majority sees it, because the discovery rule applies to defamation cases like Betz's, there must be a factual determination of "what Betz knew and when she knew it" before this case can be dismissed. In essence, the majority found the case was dismissed prematurely. I disagree. "A party is placed on inquiry notice when a person gains sufficient knowledge of facts that would put that person on notice of the existence of a problem or potential problem." *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 736–37 (Iowa 2008) (rejecting the contention that there was a genuine question of material fact that prohibited dismissal when there were sufficient facts to notify the plaintiffs of a "potential problem, requiring further investigation"). "On that date, [a person] is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation." *Sparks v. Metalcraft, Inc.,* 408 N.W.2d 347, 351 (Iowa 1987). "Once a person is aware that a problem exists, the person has a duty to investigate 'even

though the person may not have knowledge of the nature of the problem that caused the injury.'" *Buechel*, 745 N.W.2d at 736 (citation omitted). "[T]he limitations period begins not with actual knowledge, but rather once the plaintiff is placed on inquiry notice." *Bandstra v. Covenant Reformed Church,* 913 N.W.2d 19, 44 (Iowa 2018).

To meet the test over inquiry notice, a party does not have to show that you knew of the specific statements made or published, instead, it is sufficient to prove that the person had notice that such evidence *might* exist. Here, Betz made allegations in her November 2020 petition that described slanderous, false, or defamatory statements made at work that might cast her in a false light. Once those allegations were made, she had an obligation to investigate. Her allegations go directly to her notice that bank employees likely made slanderous or libelous statements against her. To that point, Betz did not have to know about the specific documents or comments that were involved, such as those received in discovery in late March 2021 in the present suit. Instead, inquiry notice comes into play when she was aware that she had a prima facie case of defamation. Certainly, filing a lawsuit and making those allegations related to defamation at the workplace would qualify. *See Mormann v. Iowa Workforce Dev.*, 913 N.W.2d 554, 576-77 (Iowa 2018). The allegations made in her original lawsuit is a killer to Betz's current defamation claim. The supreme court has said:

> "A defendant may raise the statute of limitations by a motion to dismiss if it is obvious from the uncontroverted facts contained in the petition that the applicable statute of limitations bars the plaintiff's claim for relief." *Venckus v. City of Iowa City*, 930 N.W.2d 792, 809 (Iowa 2019) (quoting *Turner v. Iowa State Bank & Tr. Co. of Fairfield*, 743 N.W.2d 1, 5 (Iowa 2007)); *see also Mormann*[,913 N.W.2d at 557] (affirming order granting motion to dismiss and noting that

> whether discovery rule and equitable estoppel apply "is often a fact-intensive inquiry for which a ruling on a motion to dismiss or at the summary judgment stage is often inappropriate. Yet, it is also true that a plaintiff may plead himself out of court by alleging facts that provide the [defendant] with a bulletproof defense and foreclose application of equitable tolling." (citation omitted)).

Benskin, Inc. v. W. Bank, 952 N.W.2d 292, 299 (Iowa 2020) (second alteration in original). I think this reasoning applies here—where there is a petition with defamation claims against one common bank employee in both filings and the allegations involve the same workplace. Thus, I would conclude the district court properly dismissed the defamation claims and affirm.

Schumacher and Buller, JJ., join this dissent.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
23-1794	Betz v. Mathisen

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