IN THE SUPREME COURT OF IOWA

CASE NO. 19-1349

JENNIFER MORRIS, Individually and as the Administrator
for THE ESTATE OF DAULTON HOLLY,
and JASON ALLAN HOLLY,

Plaintiffs-Appellant,

vs.

PRETTY WOMAN, INC. d/b/a THE BEACH GIRLS,
J.P. PARKING, INC. and JAMES E. PETRY,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF POLK COUNTY,
HONORABLE DAVID PORTER, DISTRICT COURT JUDGE

DEFENDANT-APPELLEES' APPLICATION FOR FUTHER REVIEW OF THE IOWA COURT OF APPEALS DECISION FILED AUGUST 5, 2020

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Questions Presented for Review

1. Whether the Court of Appeals erred in reversing a district court's grant of summary judgment to a landowner where the undisputed facts are that no injury was caused by a condition on or an instrumentality from the landowner's premises, and rather the injury occurred approximately 56 minutes after the former patron – declining offers for a cab –walked off the landowner's premises of his own accord and laid down in the middle of the road a ½ mile away from the landowner's premises before being unwittingly run over by an intoxicated third party.

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Statement Supporting Further Review

Pursuant to Iowa Rule of Appellate Procedure 6.1103(1)(b), and specifically subsections (2), (3), and (4) of that section, Defendant-Appellees, Pretty Woman, Inc d/b/a The Beach Girls, J.P. Parking, Inc., and James Petry, requests this Court grant its application for further review of the Iowa Court of Appeals decision entered August 5, 2020 because the Court of Appeals erred by (1) failing to affirm on a proper basis in the record, *see Citizens First Nat'l Bank v. Hoyt*, 297 N.W.2d 329, 332 (Iowa 1980); (2) misapplying the directives of *Thompson v. Kaczinski*, 774 N.W.2d 829, 838–39 (Iowa 2009), thereby greatly expanding potential liability for landowners; and (3) ruled inapposite to prior Supreme Court premises liability cases, creating a question of public importance requiring the Supreme Court to ultimately determine. *See, e.g.*, *id.*; *Hoyt v. Gutterz Bowl & Lounge, LLC*, 829 N.W.2d 772, 775–77 (Iowa 2013); *Koenig v. Koenig*, 766 N.W.2d 635, 643–45 (Iowa 2009).

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Brief

I. Factual Background

The facts before the Court are undisputed. On August 22, 2015 at approximately 11:37pm, decedent Daulton Holly and his friend, Jordan Wills, arrived at the JP Parking, Inc. premises at 6220 Raccoon River Drive, West Des Moines, Iowa 50266. *See* Surveillance Video (App. 1104); Kraemer Depo. At 7:4 – 8:3 (App. 470–71); Petition (App. 7–15); Defendants' Statement of Undisputed Facts ("SUMF") ¶ 5 (App. 1099). JP Parking, Inc. operates an adult entertainment establishes that does not sell or serve alcohol.

At approximately 1:15am on August 23, 2015, Decedent Holly attempted to enter the entertainers' dressing room. *See* Surveillance Video (App. 1104); SUMF ¶ 7 (App. 1109). As such, JP Parking security personnel, Jeremiah Kraemer, advised Holly he was no longer welcome to remain at the establishment. *Id.*

Kraemer offered to call Holly a cab which Holly refused. *See* Kraemer Depo at 19:14–21 (App. 482); SUMF ¶ 10 (App. 1100). Kraemer instructed other security personnel to escort Wills, Holly's friend, to the front door where Kraemer asked if Wills could take Holly home. *See* Kraemer Depo. at

16:10–13 (App. 479); Video Surveillance (App. 1104); SUMF ¶ 11 (App. 1100). Wills and Holly briefly conversed with each other outside the establishment. Holly declined a cab, and Wills declined to drive Holly elsewhere. Ultimately, at 1:22am, Holly voluntarily walks off the premises, displaying his middle finger towards Wills. *See* Video Surveillance (App. 1104); Kraemer Depo. at 9:7–9, 13:9–20, 16:14–22, 17:7–13, 18:4–13 (App. 472, 476, 479, 480, 490); SUMF ¶ 12 (App. 1100).

At 2:18am, 56 minutes after Holly left JP Parking, Holly's body was discovered on Raccoon River Drive, about a half mile away from the JP Parking premises. *See* Hauser Depo. at 125:12–25 (App. 1041); Weatherall Depo. at 16:5–7, 30:2–8 (App. 1108, 1009); SUMF ¶¶ 12, 23 (App. 1100, 1102). The West Des Moines Police's investigation revealed that the vehicle driven by an intoxicated driver, Ronald Hauser, had struck and killed Holly on Raccoon River Drive, a public highway. *See* SUMF ¶¶ 19–20 (App. 1101). Forensics showed no sign of impact to the front bumper of Hauser's vehicle (only under the vehicle), leading investigators to believe Holly had laid down in the travel lane of the highway. *See* SUMF ¶¶ 19–20 (App. 1101) Hauser subsequently pled guilty to OWI and Hit and Run-Serious Injury. *See* SUMF ¶ 21 (App. 1102).

II. Relevant Procedural Background

Defendants filed a motion for summary judgment at the District Court, arguing (1) that no liability attached to JP Parking, Inc. d/b/a The Beach Girls (or the other defendants) on the facts of the case as applied to Iowa law; (2) no personal liability attached to James Petry because Plaintiffs had not made the required showing to pierce the corporate veil; and (3) no liability attached Pretty Woman, Inc. as the corporation was defunct at the time the acts alleged in the Petition occurred. Plaintiffs did not resist liability as to (2) and (3) above. The District Court granted the motion for summary judgment as to claims against all three defendants.

The Iowa Court of Appeals reversed the grant in a four-page opinion, accepting the Plaintiffs' invitation to artificially narrow the District Court's holding; without analyzing its obligation to affirm on any ground; making little mention of the undisputed, dispositive facts; and identifying no condition on the premises or instrumentality from the premises that caused the injury. As such, Defendants seek further review.

III. The District Court did not err in holding "Plaintiff has failed to set forth specific material facts, as supported by competent evidence, sufficient to establish the existence of a genuine issue for trial, as it relates to Defendants Pretty Woman, Inc., J.P. Parking, Inc., d/b/a The Beach Girls, and James E. Petry."

The District Court correctly granted summary judgment in holding that Plaintiffs failed to establish any disputed fact for a factfinder, and that Defendants were entitled to judgment as a matter of law. *See* District Court Opinion, at 7. This Court should affirm the District Court's finding, and reverse the opinion of the Court of Appeals because (A) the Court of Appeals should not have accepted Plaintiffs' invitation to artificially narrow the scope of the District Court's holding, which is clearly set out in the District Court's conclusion; (B) even if the District Court's holding was to be artificially narrowed, the Court of Appeals should have affirmed on other grounds, including that duties of a landowner are not absolute and do not extend in perpetuity; (C) assuming, arguendo, that duties of a landowner are absolute and extend forever, the Court of Appeals should have considered whether Plaintiffs had shown a cognizable dangerous condition on the premises, or dangerous instrumentality from the premises, that caused injury to Holly before reversing the District Court's holding; and (D) the Court of Appeals failed to address claims against Pretty Women, Inc. and James Petry.

A. The Court of Appeals should not have accepted Plaintiffs' invitation to artificially narrow the scope of the District's Court's holding, which is clearly set out in the District Court's Conclusion.

The Court of Appeals should not have accepted the Plaintiffs' invitation to artificially narrow the scope of the District Court's ruling, and erred in reversing the thorough opinion because (1) the District Court analyzed duty and scope of liability and reached the proper conclusion; (2) the District Court thoughtfully analyzed *Thompson* and *Hoyt*, as well as other relevant authority; and (3) Defendants never argued foreseeability was appropriate in the "duty" analysis, though Plaintiffs invited its inclusion.

1. The District Court analyzed duty and scope of liability and ultimately arrived at the correct conclusion.

The District Court analyzed the two issues which it had authority to analyze—duty and scope of liability (or legal cause). *See Thompson*, 774 N.W.2d 829, 839 (Iowa 2009) (authorizing district courts to consider foreseeability and decide as a matter of law duty and scope of liability).

Defendants asked the District Court to grant summary judgment on two broad bases. *First*, Defendants argued that the duty had expired and, therefore, did not extend in perpetuity:

> The Court should hold that (1) Plaintiffs' claim of negligence fails because no injury occurred while the relationship existed, namely while Daulton Holly was present on JP Parking premises and (2) no special relationship was created by Daulton Holly's intoxication. Plaintiffs are unable to meet the prima facie

> burden. This Court should dismiss Plaintiffs' negligence claim with prejudice.

See Defendants' Memorandum of Authorities in Support, at 10 (App. 503).

Second, the Defendants presented to the District Court that Plaintiff had failed to demonstrate causation in that the injury suffered was beyond the scope of liability:

> These injuries were not caused by a condition or conditions on the premises. Moreover, there is no allegation that any property item from Defendant's premises caused Daulton Holly's injury.

See id. at 8 (App. 501).

The District Court properly recognized these arguments and considered both duty and scope of liability:

> Finally, the *Thompson* Court advised that when district courts consider the scope-of-liability question on summary judgment, it "must initially consider all of the range of harms risked by the defendant's conduct that the jury *could* find as the basis for determining [the defendant's] conduct tortious. Then, the court can compare the plaintiff's harm with the range of harms risked by the defendant to determine whether a reasonable jury might find the former among the latter."

See District Court's Opinion, at 4–5 (quoting *Thompson v. Kaczinski*, 774 N.W.2d 829, 838 (Iowa 2009)).

After analyzing these two elements, the District Court determined that liability could not attach under these facts. *See* District Court Opinion, at 7.

Here, the District Court never stated that no duty was owed, but rather specifically held "Plaintiff has failed to set forth specific material facts, as supported by competent evidence, sufficient to establish the existence of a genuine issue for trial, as it relates to Defendants Pretty Women, Inc., J.P. Parking, Inc., d/b/a The Beach Girls, and James E. Petry." *Id.* As such, to characterize this as only a "no-duty" ruling for which foreseeability was improperly considered, is not just a misnomer, it is wrong. The District Court's holding speaks for itself.

Even if the Court of Appeals is to be afforded the latitude to rewrite the District Court's order, the Court of Appeals should have expressly considered its obligation to affirm the decision on any proper basis in the record. *Citizens First Nat'l Bank v. Hoyt*, 297 N.W.2d 329, 332 (Iowa 1980) ("We are obliged to affirm an appeal where *any proper basis* appears for a trial court's ruling, even though it is not one upon which the court based its holding." (emphasis added)). Stated differently, the Court of Appeals must still affirm an order if the result the District Court reached was correct, even

if the Court of Appeals found the analysis to be flawed. *See Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W.2d 91, 97 (Iowa 2012); *see also* Defendants' Appellate Brief, at 31 (advising the Court of Appeals of this obligation in the briefing).

2. The District Court thoughtfully analyzed Thompson *and* Hoyt *as well as other relevant authority.*

The District Court spent large portions of its order analyzing and considering the same cases and relevant authority that the Court of Appeals cited. Specifically, the District Court noted that *Thompson* analyzed both the duty and the causation elements of a premises liability claim. *See* District Court Opinion, at 4; *see also Thompson*, 774 N.W.2d at 834–36.

The District Court also considered *Hoyt v. Gutterz*, a 2013 Iowa Supreme Court case in which a bar fight spilling into the parking lot subjected the bar to a premises liability claim. *Hoyt v. Gutterz Bowl & Lounge, LLC*, 829 N.W.2d 772, 780–81 (Iowa 2013). The District Court stated "[t]he facts in *Hoyt*, however, are not analogous to the facts of this case in a number of critical ways." District Court Opinion, at 6.

3. Defendants never argued foreseeability was appropriate in the "duty" analysis, though Plaintiff invited its inclusion.

Defendants never argued that the District Court should have analyzed "foreseeability" in the "duty" analysis. To the extent the District Court did

note "foreseeability," that would certainly have been applicable to the scope-of-liability analysis.

Defendants only argued that no liability could attach under the duty and causation elements based on the facts, and submitted a Statement of Undisputed Facts. *See* SUMF (App. 1098–1103). Plaintiff did not dispute any of the facts contained therein. Plaintiff did not advance additional facts in dispute. Instead, Plaintiff merely made a legal response, arguing Defendants continued to owe a duty to Holly until he reached a location where he was safe. *See* Plaintiff's Appellate Brief, at 35, 38. In short, this was a routine summary judgment case where Plaintiff did not meet its burden to forestall summary judgment. *See* Iowa R. Civ. P. 1.981(5).

Nevertheless, Plaintiffs' legal argument specifically asked the District Court to consider foreseeability: "Beach Girls did not act with reasonable care when it took Daulton Holly from the comparative safety inside the strip club to exposing him to the foreseeable dangers outside the premises without any means of making it to safety." *See* Plaintiffs' Resistance to Motion for Summary Judgment, at 16; *see also* Plaintiff's Final Appellate Brief, at 37 ("The foreseeability of the misconduct *raises the issue of the appropriate level of care* and the issue of whether the harm suffered by plaintiff is within the

range of risks." (emphasis added)). Plaintiff argues that injury to Holly was foreseeable because of the threat of drunk drivers at a strip club late at night. *See* Plaintiff's Appellate Brief, at 44–45. But there was exactly *zero* admissible evidence on this point. *See Herold v. Shagnasty's, Inc.*, No. 03-0894, 2004 WL 2002433, at *5 (Iowa Ct. App. Sept. 9, 2004) (holding police reports inadmissible). *See generally* SUMF (App. 1098–1103).

In the end, the Court of Appeals took issue with an analytical nuance as to whether or not the district court considered foreseeability in the duty analysis, and whether that was improper in the case at hand. The District Court, however, reached the proper conclusion, and the Court of Appeals erred by reversing—in full—the thoughtful, and proper grant of summary judgment, especially in light of the multiple grounds considered by the District Court—duty and scope of liability. *Cf. Van Fossen v. MidAmerican Energy Co.*, 777 N.W.2d 689, 696 (Iowa 2009) ("Although the district court considered the foreseeability of a risk of physical injury to Ann in its analysis of the duty issue because it did not have the benefit of our decision in *Thompson*, summary judgment was nonetheless proper under our newly adopted analytical principles.").

B. Even if the District Court's holding was to be artificially narrowed, the Court of Appeals should have affirmed on other

grounds, including that duties of a landowner are not absolute and do not extend in perpetuity.

The Court of Appeals is required to affirm on any proper basis in the record. *See Citizens First Nat'l Bank*, 297 N.W.2d at 332. Such a proper basis is that the duty had expired because (1) any duty owed to Daulton Holly has its limits; and (2) the Court of Appeals did not discredit any of the District Court's policy considerations limiting liability.

1. Any duty owed to Daulton Holly has its limits.

In this case, Defendants do not allege that no duty was ever owed Daulton Holly. *See* Defendants' Appellate Brief, at 21 ("Defendant-Appellees have never argued that no duty was owed to D. Holly while D. Holly was a patron of the premises."). To suggest otherwise is a red-herring. Instead, it is undisputed that Holly entered the entertainers' dressing room, was asked to leave, declined a cab in the parking lot, gave his friend the middle finger, and walked off the premises. *See* SUMF ¶ 12 (App. 1100); Weatherall Depo., at 11:11 – 12:16 (App. 1107); Kraemer Depo., at 16:14–22 (App. 479).

Holly's estate argues that any duty owed must extend in perpetuity. But, that has never been Iowa law. *See, e.g.*, *Brenneman v. Stuelke*, 654 N.W.2d 507, 510 (Iowa 2002) ("Once a person leaves the land or remains

without consent, the individual loses the status of [lawful visitor]."); *Davis v. Kwik-Shop, Inc.*, 504 N.W.2d 877, 879 (Iowa 1993). Moreover, the Restatement (Third) reinforces this fundamental proposition. *See* Restatement (Third) of Torts: Phys. & Emot. Liab. §§ 7, 40(a), 40 cmt. f.

Instead, Iowa law "imposes no affirmative duty on a common carrier to a person who left the vehicle and is no longer a passenger. Similarly, an innkeeper is ordinarily under no duty to a guest who is injured or endangered while off the premises." *See* Restatement (Third) of Torts: Phys. & Emot. Harm § 40 cmt. f (2012). The Restatement also limits the duty owed to "risks that arise within the scope of the relationship." *See id.* § 40(a). Put simply, the special relationship flows from the land itself in a premises liability claim.

When Holly first arrived at JP Parking's premises, he was a lawful visitor. *See Koenig v. Koenig*, 766 N.W.2d 635, 645–46 (Iowa 2009) (eliminating the distinction between invitees and licensees). Landowners owe "only the duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors." *Id.* (quoting *Sheets v. Ritt, Ritt & Ritt, Inc.*, 581 N.W.2d 602, 606 (Iowa 1998)). This duty is owed by a "land possessor…to entrants *on the land* with regard to…conditions *on the land* that

pose risks to entrants *on the land*." *Gries v. Ames Ecumenical Housing, Inc.*, 944 N.W.2d 626, 629 (Iowa 2020) (quoting Restatement (Third) § 51(c), at 242) (emphases added). If Holly maintained his status as a lawful visitor after he was asked to leave, he nevertheless walked off the premises.[1]

In short, Iowa law is clear that duties owed to a former entrant on the land do not exist in perpetuity, so when Holly walked off the premises uninjured, and was not injured by an instrumentality from the premises, Iowa law does not expose the landowner, here JP Parking, to liability forever. *See, e.g.*, Restatement (Third) of Torts: Phys. & Emot. Liab. § 40(a).

2. The Court of Appeals did not discredit any of the District Court's policy considerations.

The Court of Appeals said, with regard to the District Court's opinion, "[a]lthough the district court also cited policies favoring a finding of no duty, *Thompson* authorizes the incorporation of policy considerations in the duty analysis only after foreseeability is removed from the equation." Ct. App. Opinion, at 5. Specifically, the District Court considered the following policies supporting a finding that duty does not extend in perpetuity: (1) other businesses would be put:

[1] Of course, duties owed to trespassers are different and significantly less.

> in the untenable position of making judgment calls on each individual patron and deciding whether, in any given situation, they could lawfully restrain a customer from leaving, force them into a cab, or otherwise provide them with transportation to their next destination.

District Court Opinion, at 5; (2) Iowa law does not support compelling a business owner to usurp a patron's judgment as to whether they can or should leave the premises; (3) the Court of Appeals implicitly sets a duty for JP Parking, or any business owner, to protect another at the expense of civil and criminal liability to JP Parking or the business owner; (4) JP Parking "could have had no conceivable notice of the dangers Hauser posed to Holly." *See* District Court Opinion, at 6.

The Court of Appeals did not discredit any of these policy considerations. Instead, the Court of Appeals attributed the District Court's notes on foreseeability to duty as opposed to scope of liability.

First, under Iowa law, a person's intoxication is not reason to change the duty owed. *See Rippel v. J.H.M. of Waterloo, Inc.*, 328 N.W.2d 499, 501 (Iowa 1983).

Second, as property owners, JP Parking had a right to exclude individuals from its land. *See Kaiser Aetna v. United States*, 444 U.S. 164, 176

(1979) (noting the right to exclude is "one of the most essential sticks in the bundle of rights that are commonly characterized as property").

Third, by forcing Holly to remain on JP Parking's premises, JP Parking is subjecting itself to liability from other patrons based on the potential conduct of the trespasser. *See Hoyt*, 829 N.W.2d at 777–78.

Fourth, JP Parking could become subject to civil and criminal liability as to Holly himself. The estate asks JP Parking to hold Holly until he can leave the premises in another manner. This could constitute false imprisonment. *See Ette ex rel. Ette v. Linn-Mar Cmty. Sch. Dist.*, 656 N.W.2d 62, 70 (Iowa 2002) ("The tort of false imprisonment involves 'an unlawful restraint on freedom of movement or personal liberty'" (quoting *Nelson v. Winnebago Indus., Inc.*, 619 N.W.2d 385, 388 (Iowa 2000))). JP Parking employees could be subject to criminal charges as well. *Cf. State v. Lawler*, 571 N.W.2d 486, 489 (Iowa 1997) (noting that a citizen's arrest could be defenses to assault, kidnapping, and false imprisonment charges; though citizen's arrest defenses are codified); Iowa Code § 806.9 (limiting the circumstances when one can make a citizen's arrest to a public offense committed or attempted in the arrestor's presence or a felony with reasonable ground for believing the arrested party committed the felony). No

such offense exists here. As such, if JP Parking were to abide by the rule set forth by the Iowa Court of Appeals, and the requests of the estate, the employees must subject themselves to such criminal and civil liability in order to meet the duty of care in a premises liability case. This rule cannot stand.

C. Assuming, arguendo, that duties of a landowner are absolute and extend forever, the Court of Appeals should have considered whether Plaintiffs had shown a cognizable dangerous condition on the premises, or dangerous instrumentality from the premises, that caused injury to Holly before reversing the District Court's holding.

The Court of Appeals should have considered whether Plaintiffs had shown a dangerous condition or dangerous instrumentality that injured Holly. *Thompson* directs district courts to consider foreseeability when adjudging the scope of liability for a given incident. *Thompson*, 774 N.W.2d at 839 ("The drafters of the Restatement (Third) explain that foreseeability is still relevant in scope-of-liability determinations."). Essentially, a court can consider the range of harms a jury may find risked by the defendant's conduct and compare these potential harms to the harm actually suffered by the plaintiff. *See Thompson*, 774 N.W.2d at 838 (quoting Restatement (Third) § 29 cmt. d, at 496).

To the extent the District Court did consider foreseeability, the District Court properly analyzed the scope-of-liability question, an issue of causation. *See* District Court Opinion, at 4–5. This was not in error. The Court of Appeals erred by not affirming on this independent ground, that is, the harms suffered by Holly were not within the scope of Defendants' liability because (1) a premises liability claim requires a dangerous condition on the premises or dangerous instrumentality from the premises; (2) Holly was not on the premises when the injury occurred; and (3) Holly was not injured by a dangerous instrumentality from the premises.

1. Iowa cases have required a dangerous condition on the premises or dangerous instrumentality from the premises for a cognizable claim.

A plaintiff can successfully bring a claim for premises liability where an injury occurs due to a dangerous condition on the defendant's premises. *Hoyt*, 829 N.W.2d at 781–82 (in the parking lot, which was on premises); s*ee also Koenig*, 766 N.W.2d at 637. Alternatively, a premises liability action can be maintained for injuries off the premises when negligence allows a dangerous instrumentality from the premises to injure the plaintiff off the premises. *Thompson*, 774 N.W.2d at 839. This case is neither, as the District Court properly concluded.

2. Holly was not injured on the premises.

Holly declined the reasonable alternatives offered by Defendants to take a taxi or to receive a ride from his friend Wills. *See* SUMF ¶ 12 (App. 1100); Weatherall Depo., at 11:11 – 12:16 (App. 1107).

Holly was not told he had to walk off the premises. *See* Ct. App. Op., at 4 n.1. In fact, it is undisputed that JP Parking employees attempted to secure alternative means of departure. *See* Weatherall Depo., at 11:11 – 12:16 (App. 1107). Instead, Holly made the choice to walk off the premises. It is a choice the law entitles him to make. *See Rippel*, 328 N.W.2d at 501; *see also Garofalo v. Lambda Chi Alpha Fraternity*, 616 N.W.2d 647, 654 (2000).

Holly was then struck approximately 56 minutes after leaving the premises, a half mile away. In other words, he was injured off the premises.

3. Holly was not injured by a dangerous instrumentality from the premises.

Both Plaintiff and the Court of Appeals have ignored the instrumentality that caused Holly's injury was the vehicle driven by Hauser. It did not originate at JP Parking's premises.

Hauser, the drunk driver, did not originate from JP Parking's premises. *See* SUMF ¶¶ 16–17 (App. 1101). Hauser's vehicle did not strike Holly on JP Parking's premises. *See id.* JP Parking was not on notice of

Hauser's driving or intoxication. *See id.*; *see also* District Court Opinion, at 6 ("Movants could have had no conceivable notice of the dangers that Hauser posed to Holly. Here, the only nexus between Hauser and the movants was that Hauser traversed a road near their establishment."). Hauser, therefore, did not have the requisite contacts under *Thompson*, *Hoyt*, or *Koenig*.

D. The Court of Appeals also failed to address the claims against James Petry individually and Pretty Woman, Inc.

The District Court properly dismissed the claims against James Petry individually and Pretty Woman, Inc. These claims and arguments are wholly absent from the Court of Appeals's opinion wholesale reversing the District Court's order.

First, James Petry cannot be individually liable unless the corporation is a mere shell without a legitimate business purpose, and instead used to promote fraud or injustice. *See In re Marriage of Ballstaedt*, 606 N.W.2d 345, 349 (Iowa 2000). Regardless, the party seeking to pierce the veil bears the burden of so demonstrating. *Briggs Transp. Co. v. Starr Sales Co.*, 262 N.W.2d 805, 810 (Iowa 1978). Plaintiffs failed to argue any of these points, let alone adduce evidence sufficient to support such a finding. As such, the Court of Appeals erred in reversing the summary judgment grant as to James Petry individually.

Second, Pretty Woman, Inc. was a defunct corporation at the time of the acts and omissions alleged in the Petition. This is undisputed. The Court of Appeals did not have authority to reverse the summary judgment as to this claim when it (1) was properly decided at the District Court; (2) it was waived at the Court of Appeals, see *State v. Adney*, 639 N.W.2d 246, 250 (Iowa Ct. App. 2001); and (3) the Court of Appeals failed to consider this claim at all in its opinion.

The Court of Appeals erred by not affirming summary judgment as to these two defendants. It again erred by not treating *any* discussion relative to these two defendants in any way.

IV. Conclusion

For the above stated reasons, this Court should grant further review and reverse the decision of the Iowa Court of Appeals to reinstate the proper ruling by the District Court.

Certificate of Compliance with Typeface Requirements and Type-Volume Limitation

This **Application for Further Review** complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

This **Application for Further Review** has been prepared in a proportionally spaced typeface using **Equity Text A** in **size 14 font**, and contains 4,269 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

August 25, 2020
Date

/s/ Adam Zenor
Adam D. Zenor

Certificate of Service

The undersigned hereby certifies that the foregoing Application for Further Review was filed electronically with the Clerk of the Supreme Court of Iowa to be served via EDMS and/or e-mail on this 25th day of August, 2020, upon the parties listed below:

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