BEFORE THE SUPREME COURT OF IOWA

No. 19- 0759

Henry Co. No: CVEQ006115

JOHN C. MAREK JR., JOELLE C. MAREK, JASON D. MOATS, AMBER F. MOATS, LEMAR D. FENTON, KIMBERLY R. FENTON, BEN B. JOHNSON, MARY P. JOHNSON, SCOTT M. PFEIFFER, DONNA J. PRESTON, ANDREW GRIESER, JESSE J. MULLIN, AMANDA M. MULLIN, SCOTT E. CRISTOFFERSON, CANDY S. CRISTOFFERSON, CLIFFORD A. MATHER, WENDY L. MATHER, PHILLIP C. BUFFINGTON, ROBYN B. BUFFINGTON, COREY S. STROTHMAN, AND SAMANTHA STROTHMAN, PRAIRIE AG REAL ESTATE HOLDINGS, LLC,
Plaintiffs-Appellees/ Cross Appellants,

vs.

DAN JOHNSON and LINDA JOHNSON
Defendants-Appellants/ Cross Appellees,
and

THE CITY DEVELOPMENT BOARD OF THE STATE OF IOWA, AND HENRY COUNTY, IOWA
Defendants,

AN APPEAL FROM THE IOWA DISTRICT COURT
FOR HENRY COUNTY
HONORABLE JOHN WRIGHT PRESIDING

FINAL BRIEF OF APPELLEE AND CROSS APPELLANTS MAREK et. al.,

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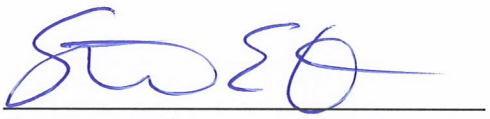
CERTIFICATE OF FILING

I, Steven E. Ort, hereby certify that I conditionally filed the attached Plaintiffs-Appellees/ Cross Appellants' Proof Reply Brief, through the EDMS system on February 14, 2020.



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2-11-2020
Date

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ROUTING STATEMENT

This is a case that is appropriate for retention by the Supreme Court because the issue involved is a fundamental and urgent issue of broad public importance requiring prompt or ultimate determination by the Supreme Court. Pursuant to Iowa R. App. P. 6.1101(2)(d).

STATEMENT OF THE CASE

Nature of the Case

This matter is before the Court on Defendants Dan Johnson and Linda Johnson's appeal from a ruling of the Henry County District Court granting Plaintiff John Marek, et al's motion for summary judgment and on cross–appeal by Plaintiff's John Marek, et al. from a "Ruling on Defendants' Motion to Dismiss Petition For Declaratory Judgment" filed July 10, 2018 granting a "Motion to Dismiss" filed by defendant City Development Board on Plaintiff's "Petition For Declaratory Judgment" filed March 29, 2018. Plaintiffs are referred to hereafter as the Mt. Union Plaintiffs.

Course of Proceedings

On March 26, 2018 a number of citizens of the former city of Mt. Union, Iowa filed a "Petition For Declaratory Judgment" in Henry County District Court

naming as Defendants' Dan Johnson, Linda Johnson, the city Development Board of the State of Iowa and Henry County, Iowa. App.11 The petition sought a declaration of the rights and duties of the City Development Board in resolving a contested tort claim pending against the City of Mt. Union at the time of its dissolution. *Id.*

The Petition also sought a declaration that a certain judgment entered in Henry County Cause No. LALA011869 was void for lack of subject matter and personal jurisdiction. App.19

In response, the City Development Board and Dan and Linda Johnson filed separate motions to dismiss. App.26 & 43 The Mt. Union plaintiffs resisted dismissal. App. 45 Hearing was held before the Court on June 25, 2018. (Docket) Following the hearing the City Development Board requested time to review what it said were "novel precedents unfamiliar to the Board." This request was granted and the City Development Board filed a reply July 2, 2018 declining further comment. (City Development Board Reply)

The District Court entered its Ruling July 10, 2018 granting the City Development Boards Motion to Dismiss and denying the Johnson Motion To Dismiss. App. 59 The Mt. Union plaintiffs sought review of the order for dismissal which was treated by the Supreme Court as an application for interlocutory review which was denied by Order filed February 6, 2019. App.56

The declaratory judgment action continued in the District Court. Defendant Henry County filed an Answer admitting all allegations in the Petition. (Henry County Answer) Johnson likewise filed an Answer denying all material allegations in the Petition. App.33-35

On August 29, 2018 the Mt. Union Plaintiffs' filed a Motion For Summary Judgment. Johnsons' filed their resistance September 30, 2018. App.47

On April 10, 2019 the District Court entered it's ruling on the Motion For Summary Judgment granting the same on the grounds urged by the Mt. Union plaintiffs'. App. 59-61

Disposition In The Trial Court

On August 29, 2018 the Mt. Union Plaintiffs' filed a Motion For Summary Judgment. App. 36 Following a "Resistance to the Motion For Summary Judgment", by Johnsons, the District Court, (on April 10, 2019) granted summary judgment on that portion of the Petition For Declaratory Judgment seeking to declare null and void the judgment obtained by Dan Johnson and Linda Johnson in Henry County Cause No. LALA011869. App. 59-61

The Johnsons' filed timely appeal from the order granting summary judgment. App.63 The Mt. Union plaintiffs' filed a timely cross-appeal of the order granting the City Development Board's Motion to Dismiss. App. 70

STATEMENT OF FACTS

The Mt. Union Plaintiffs' agree with the Johnsons' that "many of the facts are undisputed." Johnson Brief p. 6. Among the undisputed facts are three material facts upon which the Mt. Union Plaintiffs' sought summary judgment and upon which the District relied to grant their motion for summary judgment, to wit:

1. On March 10, 2017 the city of Mt. Union, Iowa was discontinued pursuant to action of the City Development Board of the State of Iowa. *P. para.19 and Answer.*

2. At the time, the city of Mt. Union was discontinued (March 10, 2017) a civil action was pending against it by Dan and Linda Johnson in Henry County cause no. LALA011869.

3. At the time Dan and Linda Johnson obtained judgment in Henry County cause no. LALA011869 (December 7, 2017) no successor in interest nor the former residents of Mt. Union had been joined or substituted as parties for the former city of Mt. Union. *Record LALA011869.*

As noted in the Mt. Union Plaintiffs' brief in support of the Motion for Summary Judgment, there may be reference to additional facts in their argument to assist in explanation of the legal effect of the March 10, 2017 discontinuance of the City of Mt. Union upon the rights of the parties in this appeal and in Henry County No. LALA011869.

On a motion to dismiss however the Court accepts allegations in the petition as true and construes them in a light most favorable to the non-moving party. D.M.H., ex rel. Hefel v. Thompson 597 NW2d 643, 644 (Iowa 1998). The essential pleadings relative to the issues in this cross- appeal are paragraphs 31, 32 and 33 of the Petition For Declaratory Ruling which state:

> 31. As residents and/or property owners of the former city of Mt. Union whose property is directly assessable to pay claims allowed by the City Development Board. Petitioner's financial interests are directly affected. Each has a direct and substantial interest in the validity of the alleged judgment in Henry County Cause No. LALA011869 because it is the sole basis of adverse agency action taken in matters of substantial taxation and property assessment and other property rights.
>
> 32. As residents and/or property owners of the former city of Mt. Union, Iowa whose property is directly assessable to pay claims allowed by the City Development Board the Petitioners have a direct and substantial interest in the proper administration of the Board's discontinuance of the City of Mt. Union including adjudication of disputed claims in a manner consistent with statutory rights granted pursuant to chapter 362 or elsewhere; compliance with contested case provisions of the Iowa Administrative Code; and, in a manner consistent with constitutional due process rights.
>
> 33. Petitioners are not required to exhaust administrative remedies as to the issues herein (as noted matters which are subject to judicial review are raised by separate petition) for the reason that:
>
> a. the statutory remedy provided by Iowa Code § 362.21 by which disputed claims are to be "adjudicated" does not provide complete relief if the City Development Board does not have

jurisdiction or authority to void a judgment entered by a court lacking personal and subject matter jurisdiction.

b. to the extent Petitioners contend the ruling of the City Development Board renders Iowa Code § 362.21 unconstitutional pursuant to the provisions of the due process clause the City Development Board cannot resolve such issues and therefore exhaustion of administrative rules is not required. Matters v. City of Ames, 219 N.W.2d 718 (1974).

PRESERVATION OF ERROR

Defendant Dan Johnson and Linda Johnson have preserved error by timely appeal of the District Court ruling granting summary judgment.

Plaintiffs timely cross-appealed the District Court ruling on the City Development Board's Motion to Dismiss.

STANDARD OF REVIEW

Review of a district courts' ruling on a motion for summary judgment is for correction of errors of law. Kunde v. Estate of Bowman, 920 N.W. 2d 803, 806 (Iowa 2018)" In determining whether a grant of summary judgment was appropriate we examine the record in the light most favorable to the non moving party, drawing all legitimate inferences that may be drawn from the evidence in his or her favor." Harmon v. Brandstad, 887 NW 2d 153, 163-64 (Iowa 2016)

An order granting a motion to dismiss is reviewed for errors at law. Helund v. State, 875 N.W.2d 720,722 (2016)

ARGUMENT

I. WHETHER THE TRIAL COURT PROPERLY DETERMINED THAT THERE WAS NO GENUINE ISSUE OF MATERIAL FACT THAT THE JUDGMENT IN HENRY COUNTY CAUSE NO. LALA011869 WAS VOID FOR LACK OF SUBJECT MATTER AND / OR PERSONAL JURISDICTION OF THE CITIZENS OF THE FORMER CITY OF MT. UNION.

The Mt. Union Plaintiffs' first note that the Johnsons' cite no legal authority to support a claim or assertion that the district court erred as a matter of law in the following aspects of its ruling:

1. Though Defendants believe the City dissolved for the purpose of avoiding a money judgment, they also did not move to substitute those Plaintiffs. Plaintiffs herein did not receive an Original Notice that they were named Defendants in the civil action. App. 60

2. The Court did not have jurisdiction of the City on December 7, 2017, when judgment was entered. There was no City and no successor in interest against which a judgment could be entered.

Johnsons' argument that the district court abused its discretion by concluding, in essence, that the intent of the voters of Mt. Union were not material is equally without merit. First, the Mt. Union Plaintiffs' are unaware of any case, statute, rule or regulation that would allow any government agency, including the Courts, to question a voter, about, how or why they voted as they did. Second, any objection to the dissolution of Mt. Union would properly lie within the jurisdiction of the City Development Board per Iowa Code §368.3. Third, the dissolution procedures provide a mechanism for claims to be adjudicated and paid. See §368.21. Consequently, if Johnsons' had a claim for a fraudulent transfer against the city that claim should have been presented as provided in Chapter 368.

In addition to the above, §368.21 provides a taxing mechanism to assure valid claims are paid eliminating any benefit from a fraudulent transfer.

Johnsons had from March 10, 2017 to December 5, 2017 to seek substitution of an actual party to the litigation. They could have petitioned to substitute Henry County or the individual citizens who had previously been residents of the city. Instead, they chose to proceed to court with no party defendant and no personal jurisdiction of any legal entity.

The Iowa Supreme Court has addressed the absolute necessity of having a representative party defendant to obtain a valid judgment. In a case styled

Bingaman v. Rosenbahm, 227 Iowa 655 (1939) the Court discussed the legal consequence of the death of a party in a pending action and failure to substitute a personal representative. *Bingaman* was a partition action commenced by one Laura Bingaman. During pendency of the action, Laura Bingaman died, this event occurring a year prior to the judgment being entered against her. Judgment was entered against Bingaman on or about October 1938. The Court noted:

> No administrator or executor had up to that time been appointed – at least, the record does not so indicate. This fact seems to have been overlooked by the court and counsel. When the case was reached, intervener's counsel declined to grant further time, and plaintiff's attorney assumed to dismiss the petition. It is apparent that at this time the attorney had no authority or power to enter such dismissal or to do anything else in the case except to advise the court of the death of his client. He was not then acting for a personal representative of the estate, and the heirs were not in court. The trial court, apparently taking the view that the dismissal was authorized and that the intervener had the right to proceed, entered its decree not only quieting title against the decease plaintiff but rendering judgment against her for costs.

Further,

> The attorney who had, up to the time of Laura Bingaman's death, represented her, lost, as we have said, all authority to proceed after his client died; and the court was without jurisdiction to enter a judgment against the interests (or what had been the interests) of plaintiff after her death. As to obligation to procure a substitution of parties-plaintiff, it would seem to require no argument to show that if intervener was to take a valid decree against anyone, such person must be brought into court. But nothing was done in that direction and thus there was no party in the case against whom a decree could be entered.

Most interestingly the Court in Bingaman found case citation lacking regarding its ability to even hear the appeal, and relied upon its powers under Article V, section 4 of the Iowa Constitution.

> As we have said, the record shows that "plaintiff", who had been dead for 17 months, appealed to this court. It might well be suggested that this leaves us without jurisdiction, but we do not take that view for two reasons: First, because the parties treat the cause as properly before us; and the other, that it seems to be a case which invokes the powers granted this court under Article V, section 4, of the Constitution. No citations are made in the briefs of either party except certain statutes. None are necessary. It should seem to require no argument to demonstrate that rights should not be wiped out or otherwise disposed of without a day in court for those in interest. It follows that the attempted dismissal by plaintiff's attorney was without authority; that the decree in intervener's favor was not warranted under this record and should be set aside; that the petition should be reinstated; and that all proper parties be given reasonable notice and opportunity to be heard on the merits.[1]

The former citizens of Mt. Union were alleged to be liable for over $100,000 to Johnsons over a disputed claim of liable or slander by its mayor which the mayor denied. The Supreme Court's declaration that "rights should not be wiped out or otherwise disposed of without a day in court for those in interest" is

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[1] **Article V, Judicial Department, Sec. 4. Jurisdiction of Supreme Court.** The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.

applicable here and reflects recognition of the denial of Due Process to plaintiffs in this case.

Although the language of rules 1.222 and 1.226 use the word "may" suggesting discretion, rule 1.234(3) is mandatory: "If an indispensable party is not before the court, it shall order the party brought in." Implicit in this rule is the concept that there must be a party before the Court. That did not happen here and no valid judgment could have been entered.

> For some reason, the plaintiff brought an action in which the district township of Sumner was named as the sole defendant. But the district township of Sumner, having previously gone out of existence, could not be made defendant. In the very nature of things, the Court could not have jurisdiction either of the subject-matter or person, in an action in which the party named as defendant had no existence. The Dist. Twp. Of Clay v. The Ind. Dist. Of Buchanan 63 Iowa 188, 191 (1884)

This same case was cited in 1901 by the federal circuit court for the Northern District of Iowa in Fairfield v. Rural Independent School District of Allison and Jackson, 111 F. 198, 199 (Cir. Ct. N.D. IA.1901), to wit: "as the original district ceased to exist an action cannot be maintained against the same…". And, "a creditor of the district township should not be allowed to maintain an action against one of the independent districts, no one representing in any proper sense the original debtor…".

The District Court ruling on summary judgment was entirely correct, appropriate and without legal error. It should be affirmed.

In addition, it is now a "fact[2], based on the District Court Ruling on Plaintiff's Motion For Summary Judgment in this case, that the Johnson judgment in LALA011869 is VOID, which is relevant to Argument II.

II. WHETHER PLAINTIFF'S PETITION FOR DECLARATORY RULING IS BARRED BY THE EXCLUSIVE REMEDY PROVISIONS OF IOWA CODE §368.22

The District Court recognized the issues presented here are "unique and not easily relatable to other appellate cases." (Ruling, p.5) Having taken judicial notice of both the civil action wherein the Johnson judgment had been obtained Johnson v. City of Mt. Union (LALA011869) and a Petition For Judicial Review of the City Development Boards determination that the Mt. Union plaintiffs would have to pay that judgment; John Marek, et.al v City Development Board, CVEQ006111,[3] the District Court observed:

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[2] It is a fact unless this Court reverses the summary judgment order now on appeal.

[3] This case has been submitted to the District Court and is under consideration pending this appeal

> The issues presented in this motion are intertwined with the judicial review case. That does not mean that all the issues presented in this case will be determined in the judicial review case or should be determined by the same standards. Whether the judicial review will cover part or all of the allegations of the Petitions is in question. This includes jurisdictional issues and the effect or value of the judgment at issue.

The Court went on to overrule the motion as to the Johnsons' based on the following reasoning:

> The question is whether all the issue presented in the Petition will "necessarily be determined" in the judicial review case. The court cannot find that to be the case. For that reason, the Motion to Dismiss filed by Dan and Linda Johnson will be overruled.

The Court however accepted the City Development Board argument that Plaintiff's had failed to state a claim upon which relief could be granted. (I.R.C.P. 1.421(1)) because Iowa Code §368.22(2) purports to provide that the exclusive remedy for persons aggrieved by its actions are contained within that provision (368.22) and Chapter 17A. (See I.C. § 368.22, Chapter 17A generally)

It must be noted however that under I.C. §368.22 judicial review is limited to the following:

a. jurisdiction

b. regularity of proceedings

c. whether the decision appealed from is arbitrary unreasonable, or without substantial evidence

In addition to those limitations, §368.22(3) further narrows the scope of judicial review by specifically excluding the court's ability to rule on certain issues, including section 17A.19(10). That section could, otherwise, and concerning any other agency, address the issues raised by Plaintiffs in paragraph 33 of their Petition. That sections states in part:

> 1. The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency is any of the following:
>
> a. Unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.

As a consequence, judicial review under section 368.22 and/or Chapter 17A cannot address the issues raised by these Plaintiffs. This is not an issue of an "exclusive remedy" it is a question of the absence of any remedy whatsoever to prevent a gross miscarriage of justice as a result of denial of basic due process rights.

One would hope that if this Court affirms the Summary Judgment ruling declaring the Johnson judgment in LALAL011869 is void that the City Development Board will not continue to insist they have the authority to require Plaintiffs to pay it anyway without any evidentiary hearing of any nature. As long as it remains possible that the decision of the City Development Board could require Plaintiffs to pay a judgment that is void, a constitutional issue of

construction and/or application requires a judicial remedy. A declaratory action to obtain that remedy, under the specific facts and statutory limitations present in this matter, is appropriate.

CONCLUSION

The Mt. Union plaintiffs stated a cause of action in their Petition For Declaratory Judgment because the statute authorizing judicial review does not allow a remedy for constitutional deprivation of substantial due process rights.

The City Development Board should have remained a part to these proceedings. The ruling should be reversed and remanded with instructions to request the City Development Board to answer.

The District Court properly granted summary judgment and should be affirmed.

REQUEST FOR ORAL

The Mt. Union Plaintiffs requests to be heard at oral argument.

Respectfully submitted,

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