

IN THE SUPREME COURT OF IOWA

No. 19-2121

JULIAN JAY TONEY,

Plaintiff/Counterclaim Defendant-Appellant,

v.

**ARTHUR PARKER, HAZEL PARKER, and the ARTHUR E. PARKER
AND HAZEL FRANCES PARKER TRUST DATED 5/26/1993,**

Defendants/Counterclaimants-Appellees.

APPEAL FROM THE DISTRICT COURT
OF DECATUR COUNTY

NO. EQCV006739

HON. JOHN D. LLOYD, SENIOR JUDGE

FINAL BRIEF OF PLAINTIFF-APPELLANT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. THE DISTRICT COURT ERRED IN DENYING PLAINTIFF'S MOTION TO VACATE THE DISTRICT COURT'S RULINGS ON DEFENDANTS' MOTION TO STRIKE AND THE MOTION FOR SUMMARY JUDGMENT, BASED ON CIRCUMSTANCES THAT REASONABLY AND OBJECTIVELY CALLED INTO QUESTION THE JUDGE'S IMPARTIALITY, SUCH THAT THE JUDGE SHOULD HAVE *SUA SPONTE* DISQUALIFIED HERSELF FROM THE CASE

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In re Howes, 880 N.W.2d 184, 194-195 (Iowa 2016)

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II. THE DISTRICT COURT ERRED IN GRANTING DEFENDANTS' MOTION TO STRIKE AS UNTIMELY AND UNRESPONSIVE PLAINTIFF'S FILINGS IN RESISTANCE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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III. THE DISTRICT COURT, AS A DIRECT CONSEQUENCE OF GRANTING THE MOTION TO STRIKE, ERRED IN PARTIALLY GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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IV. THE DISTRICT COURT ERRED IN AWARDING DAMAGES OF \$62,100.00 IN FAVOR OF DEFENDANTS ON THEIR SLANDER OF TITLE CLAIM, WHERE DEFENDANTS FAILED TO PROVE SLANDER OF TITLE AND SAID DAMAGES

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ROUTING STATEMENT

This case presents a fundamental issue of broad public importance and first impression in the State of Iowa: the circumstances under which a judge is required to disclose relevant facts to the parties with respect to a professional and business relationship between the judge’s spouse and the attorney representing one of the parties, thereby giving the attorney representing the adversary party an opportunity to request that the judge recuse himself or herself. Thus, retention and ultimate determination by the Iowa Supreme Court is appropriate. Iowa R. App. P. 6.1101(2)(d).

STATEMENT OF THE CASE

A. Nature of the Case

This case arises out of a dispute over an approximately 26-acre¹ parcel of land located in Decatur County, Iowa and commonly referred to by the parties

¹ Plaintiff’s Petition states the parcel is approximately 26 acres. [Appendix (“App.”) 0009-0010]. The “Life Time Lease” indicates the parcel is 27 acres. [App. 00827-00829]. An offer to purchase the property in 2016 included the following legal description: “24 acres more or less in S24-T68-R27 (true legal to govern).” [App. 0800]. The district court based its calculation of damages for slander of title on a 24-acre parcel. [App. 0869].

as the “Y Farm.” [App. 0009-0010]. For more than 40 years, Plaintiff Julian Jay Toney (“Mr. Toney”) leased the land from members of the extended Parker family and a trust created by them: first, from Ruth Parker; second, upon her death, from her son Arthur E. Parker²; and third, from a trust established by Arthur E. Parker and his wife, Hazel Parker. [App. 0010-0012]. Mr. Toney maintains that on June 22, 1974, he and Mr. Parker entered into a “Life Time Lease,” the terms of which included:

- a. The lease payment would be \$200.00 per year;
- b. The parcel was comprised of 27 acres;
- c. Seven acres would be devoted to grass and hay;
- d. Mr. Toney would tend to 20 acres of timber on the property;
- e. After 20 years, logs could be cut from the timbered area and the parties would split the proceeds 50/50;
- f. Mr. Toney would have a right to purchase the 27 acres after 20 years, at \$575 per acre—a “lifetime offer.”

[App. 0011-0012, 0828].

Over the years, Mr. Toney expended considerable effort to maintain and improve the Y Farm, including but not limited to: clearing it of debris to make it more useful for grazing; planting and caring for trees; mowing and harvesting

² Arthur Parker, Ted Parker, and Arthur E. Parker, in the context of this litigation, are the same person.

grass and hay; maintaining fences; and protecting Native American gravesites on the property. [App. 0012]. He timely and fully paid rent when due and owing. [App. 0012].

In the years following Ruth Parker's death, Mr. Toney and Mr. Parker had numerous discussions about selling the Y Farm to Mr. Toney. [App. 0012]. The current dispute arose after a series of events. Mr. Toney, on more than one occasion, exercised what he believed to be his right to purchase the Y Farm based on the terms of the Life Time Lease. [App. 0013-0014]. In September 2015, Mr. Toney exercised his right to purchase by presenting Mr. Parker with a Cashier's Check and prepared Trustee Warranty Deed. [App. 0013; 0787-0788, Tr. p. 123 ln. 15 – p. 124 ln. 13; 0830-0831]. Four months later, Mr. Toney's bank notified him that the check had not been negotiated. [App. 0013]. The Parkers refused to accept payment for the purchase of the Y Farm and, in fact, listed the property for sale with a real estate agent. [App. 0013].

In November 2016, after having ostensibly sold the farm to a third party and having promised delivery of the premises to the buyer by early October, 2016, but without having terminated Mr. Toney's leasehold interest in the property, the Parkers filed a Forcible Entry and Detainer action against Mr. Toney, which was dismissed. [App. 0749, Tr. p. 11 ln. 22 – p. 12 ln. 4; 0800-0808; 0809-0810; 0134-0137; 0151; 0155-0179; 0180-0182]. In the fall of 2017, the Parkers served upon Mr. Toney a Notice of Termination of Farm Tenancy,

which purported to terminate the farm tenancy as of March 1, 2018. [App. 0013-0014, 0134-0137, 0198-0200]. Mr. Toney, again, made written offer to purchase the Y Farm in January 2018, in an amount, and under conditions, in compliance with the terms and conditions of the Life Time Lease. [App. 0014; 0789-0790, Tr. p. 125 ln. 18 – p. 126 ln. 15; 0832-0849]. The offer was rejected. [App. 0014; 0790, Tr. p. 126 lns. 14-15].

B. Course of the Proceedings

Plaintiff Julian Toney filed a Petition for Declaratory Judgment, for Temporary and Permanent Injunctive Relief, for Judgment for Specific Performance of Contract Provisions and for Attorney Fees (“Petition”) on February 28, 2018. [App. 0009-0023]. Mr. Toney’s claims focused on a lease and ownership dispute concerning a parcel of real property located in rural Decatur County, Iowa, approximately 26 acres in size, roughly configured in a “Y” shape and, therefore, frequently referred to locally as the “Y Farm.” [App. 0009-0023]. The property is owned by a Trust established in 1993 by Arthur E. and Hazel Parker, collectively named as Defendants in Plaintiff’s Petition. [App. 0009-0017]. Mr. Toney claimed that under the terms of a life-time lease, he had the right to purchase the Y Farm under terms and conditions set forth in that contract. [App. 0009-0017].

Following the denial of their Pre-Answer Motion to Dismiss, Defendants filed an Answer and Counterclaim on May 7, 2018. [App. 0024-

0039]. Defendants' Counterclaim raised five counts: slander of title, ejectment, trespass, quiet title, and punitive damages. [App. 0024-0034].

On October 16, 2018, Defendants/Counterclaimants filed a Motion to Continue Trial, Extend Deadlines, Stay Case Proceedings and Release Document. [App. 0040-0045]. In that Motion, Defendants/Counterclaimants requested that the Court extend the deadline to designate an expert witness to testify as to the authenticity of Mr. Parker's signature on the Life Time Lease because they were working with the county attorney to pursue the "alleged forgery of the 'life time lease' under criminal law." [App. 0040-0045; 0211, Tr. p. 6 ln. 18 – p. 7 ln. 5]. The Court denied the Motion. [App. 0215-217; 0213, Tr. p. 9 lns. 5-12]. After both parties had engaged in some discovery, Defendants filed a Motion for Summary Judgment on November 9, 2018, requesting that the district court grant summary judgment in favor of Defendants on all claims raised in Plaintiff's Petition and Defendants' Counterclaim. [App. 0096].

On November 15, 2018, Plaintiff filed a Motion to Continue and Reschedule Hearing on Defendants' Motion for Summary Judgment, due to the rescheduling of depositions of Defendants. [App. 0206-0208]. Following a hearing on the Motion to Continue and Reschedule Hearing, the district court granted Plaintiff's Motion and extended the deadline for Plaintiff to file a resistance to Defendants' Motion for Summary Judgment to December 17,

2018, and scheduled hearing on the Motion for Summary Judgment for January 4, 2019. [App. 0215-0217].

On December 17, 2018, at 4:15 p.m., Plaintiff filed documents in Resistance to the Motion for Summary Judgment (“Resistance Filings”). [App. 0382-0391]. At 8:37 a.m. on December 18, 2018, Plaintiff received notice via email from the Clerk of Court for Decatur County that the Resistance Filings had been rejected due to Plaintiff’s failure to redact his own Social Security Number listed on page 76 of the filed Appendix. [App. 0382-0385; 0386; 0388-0389]. Plaintiff redacted the Social Security Number and immediately refiled with the district court the following: (1) Plaintiff’s Memorandum of Law in Support of Plaintiff’s Resistance to Defendants’ Motion for Summary Judgment, (2) Plaintiff’s Responses to Defendants’ Statement of Undisputed Facts and Plaintiff’s Statements of Fact, and (3) an Appendix in Resistance to the Motion for Summary Judgment. These Filings were file stamped December 18, 2018 at 9:05 a.m. [App. 0218-0367; 0387]. For reasons unknown to Plaintiff, the Resistance to Defendants’ Motion for Summary Judgment was not properly attached to the other Resistance-related documents filed on December 18, 2018, a fact that did not become apparent until Defendants filed a Motion to Strike. [App. 0382-0391].

On December 20, 2018, Defendants filed a Motion to Strike, requesting that the district court strike as untimely and not in compliance with the Iowa

Rules of Civil Procedure Plaintiff's Resistance Filings. [App. 0368-0375].

Plaintiff filed a Resistance to the Motion to Strike the following day. [App. 0382-0385].

The district court, Judge Dustria Relph presiding, held a hearing on Defendants' Motion to Strike and Motion for Summary Judgment on January 4, 2019. On February 9, 2019, the district court filed its Ruling, granting Defendants' Motion to Strike and granting in part the Motion for Summary Judgment. [App. 0445-0454]. The district court granted summary judgment in favor of Defendants and against Plaintiff on each of Plaintiff's claims, denied Plaintiff's requests for temporary and permanent injunctive relief, denied Plaintiff's request for declaratory judgment, dismissed Plaintiff's claim for breach of contract – specific performance, quieted title to the Y Farm for Defendants, ordered that Plaintiff vacate the property within 30 days of entry of the Court's Order, and assessed costs to Plaintiff. [App. 0445-0454].

Following motions by both parties [App. 0455-0542], the district court, on March 6, 2019, filed a Ruling on the parties' separate Motions to Reconsider, Enlarge, and Amend; denying Plaintiff's Motions to Reconsider, Enlarge and Amend, and granting Defendants' Motion to Enlarge and Amend by ordering that Defendants' claims for slander of title, damages for trespass, damages for ejectment, and punitive damages remained for trial. [App. 0543-0545].

On May 15, 2019, Defendants filed an Application for Rule to Show

Cause, alleging that Plaintiff had not vacated the Y Farm within 30 days, as ordered by the Court on February 9, 2019. [App. 0561-0588]. The district court filed an Order for Rule to Show Cause the same day, setting the matter for hearing. [App. 0589-0591].

On May 21, 2019, Plaintiff filed a Motion to Vacate Orders Dated February 9, 2019 and March 6, 2019, arguing that circumstances that had only recently come to Plaintiff's attention reasonably and objectively called into question Judge Relph's impartiality, and that Judge Relph's participation in the hearing and subsequent issuance of Orders violated the appearance of fairness doctrine. [App. 0594-0605]. Specifically, the Motion asserted that Counsel for Defendants' position as a Hospital Trustee for the County Hospital at which Judge Relph's spouse was employed as CEO should have been disclosed to Plaintiff, and that the failure to do so required that the Judge's previous orders be vacated. [App. 0594-0605].

Defendants filed a Resistance to the Plaintiff's Motion to Vacate Orders. [App. 0617]. District Court Judge John Lloyd heard arguments on the Motion to Vacate on July 12, 2019, and filed a Ruling denying the Motion on August 6, 2019. [App. 0738-0744].

Defendants' remaining claims and the Rule to Show Cause went to non-jury trial on October 22, 2019, the Honorable Judge John Lloyd presiding. On November 18, 2019, the Court issued its Findings of Fact, Conclusions of Law

and Judgment Entry (“Ruling”) [App. 0866-0879]. The district court concluded (1) Defendants had proven their claim for slander of title and entered judgment against Plaintiff in the amount of \$62,100.00 for damages; (2) Defendants were entitled to judgment of \$500 for Plaintiff’s trespass; (3) Defendants were not entitled to damages for their ejectment claim; (4) Defendants were entitled to punitive damages of \$15,000.00; and (5) Plaintiff was in contempt for failing to remove cattle and signs from Defendants’ property. [App. 0866-0879]. For the contempt, the Court sentenced Plaintiff to pay fines totaling \$1,000.00 and serve a jail sentence, but suspended mittimus on the condition that Plaintiff, within 30 days, install a fence “or other temporary measures” to prevent cattle from entering Defendants’ property and remove the signs. [App. 0877-0878].

On December 18, 2019, Plaintiff filed a timely Notice of Appeal. [App. 0893-0895]. This appeal follows.

STATEMENT OF FACTS

Plaintiff Julian Toney filed a Petition on February 28, 2018, seeking declaratory judgment, injunctive relief, and specific performance for breach of contract, and naming as Defendants Arthur Parker, Hazel Parker, and the Arthur E. Parker and Hazel Frances Parker Trust Dated 5/26/1993. [App. 0009-0023]. Plaintiff’s claims related to a lease and ownership dispute concerning an approximate 26-acre parcel of property located in Decatur

County, Iowa, and commonly referred to by the parties as the “Y-Farm,” due to its roughly Y-shaped configuration. [App. 0009]. Mr. Toney owns and resides at property immediately adjacent to the Y-Farm and, for more than 40 years, rented and maintained the Y-Farm from Defendants and their predecessor in title, Arthur Parker’s mother Ruth Parker. [App. 0010-0012]. By the terms of a written “Life Time Lease” that Mr. Toney maintains he and Arthur Parker (on behalf of his mother Ruth, who then owned the land) signed on June 22, 1974, Mr. Toney paid \$200.00 per year to lease the property and had a right to purchase the property at \$575.00 per acre after twenty years from the date of signatures. [App. 0010-0012; 0747, Tr. p. 8 lns. 12-24; 0748, Tr. p. 9 lns. 13-15; 0763-0765, p. 63 ln. 18 – p. 65 ln. 22; 0827-0829].

In the fall of 2016, the Parkers ostensibly sold the property to a third party and, as part of the sale, promised the purchasers delivery of physical possession of the property in early October 2016. [App. 0800-0808]. In order to fulfill that promise, however, the Parkers first needed to evict Mr. Toney, who had maintained physical possession of the property for more than 40 years. [App. 0778, Tr. p. 102 lns. 13-18]. The Parkers filed a Forcible Entry and Detainer (“F.E.D.”) action against Mr. Toney in November 2016, Decatur County, Case No. SCSC007487. [App. 0134-0137; 0151; 0155-0179; 0180-0182].

On the advice of an attorney, and in conjunction with Mr. Toney's defense against the F.E.D. action, Julian Toney's wife, Anita Toney, recorded the "Life Time Lease" in the Office of the Decatur County Recorder on November 28, 2016. [App. 0765-0766, Tr. p. 65 ln. 23 – p. 66 ln. 20; 0781-0782, Tr. p. 117 ln. 24 – 118 ln. 15; 0827-0829]. Upon the conclusion of an evidentiary trial, the F.E.D. lawsuit was dismissed on January 4, 2017 due to the Parkers' failure to meet the notice requirements of Iowa Code section 562.7. [App. 0134-0137; 0180].

On July 6, 2017, the Parkers served Mr. Toney a notice of termination of farm tenancy in accordance with Iowa Code chapter 562, notifying him that the farm tenancy of the Y Farm would terminate on March 1, 2018. [App. 0134-0137; 0198-0200]. Mr. Toney filed his Petition in this case on February 28, 2018. [App. 0009-0023].

Defendants Arthur Parker and Hazel Parker, husband and wife, and the Arthur E. Parker and Hazel Frances Parker Trust dated 5/26/93 (hereinafter referred to collectively as "Parkers") filed counterclaims for slander of title, ejectment, trespass, quiet title, and punitive damages. [App. 0024-0039].

Motion for Summary Judgment and Motion to Strike. After Defendants filed a Motion for Summary Judgment, Plaintiff requested and was granted by the Court an extension of time to file his resistance. [App. 0206-0208; 0215-0217]. The extension was due to an unforeseen delay in the completion of the

depositions of the Parkers resulting from an injury suffered by Mr. Parker. [App. 0206-0208]. The Court extended the deadline to December 17, 2018. [App. 0210, Tr. p. 5 lns. 11-14; 0215-0217].

On December 17, 2018 at 4:15 p.m., Mr. Toney filed the following:

- (1) Resistance to Defendants' Motion for Summary Judgment;
- (2) Memorandum of Law in Support of Plaintiff's Resistance to Defendant's Motion for Summary Judgment;
- (3) Plaintiff's Responses to Statements of Undisputed Facts Submitted by Defendants and Plaintiff's Statements of Fact; and
- (4) Plaintiff's Appendix in Resistance to Motion for Summary Judgment.

[App. 0382-0391].

The following morning, at 8:37 a.m., Mr. Toney, through his attorney, received an email notice from the Clerk of Court for Decatur County, notifying Mr. Toney that the Resistance Filings had been rejected, due to the presence of Mr. Toney's own Social Security Number on page 76 of the Appendix. [App. 0382-0385; 0386].

Upon receipt of the notice of rejection by the Clerk of Court, Plaintiff redacted the Social Security Number and immediately re-filed the documents electronically, which were file-stamped by the Clerk of Court at 9:05 a.m. on December 18, 2018. [App. 0218-0367; 0382-0391]. This time, however, one two-page document was inadvertently not included with the Resistance Filings

that were received by the Clerk of Court: Plaintiff's Resistance to the Motion for Summary Judgment. [App. 0382-0391]. Plaintiff did not realize the Resistance to the Motion for Summary Judgment had not been properly included and filed with the remaining Resistance Filings until receipt of Defendants' Motion to Strike, filed on December 20, 2018. [App. 0382-0391]. It remains unclear whether the filing error was that of Plaintiff or the eFlex system. [App. 0382-0391]. Among the resistance documents filed on December 17 and re-filed on December 18 were affidavits executed by both Julian and Anita Toney in which the two of them, under oath, had attested to material facts supporting both Mr. Toney's claims against the Parkers, but also his defenses against the counterclaims made by the Parkers against him. [App. 0289-0308].

On December 20, 2018, Defendants' filed a Motion to Strike, asking the Court to strike Plaintiff's Resistance Filings due to Plaintiff's failure to timely file said documents, failure to sign the Memorandum of Law in Support of Plaintiff's Resistance, failure to file a resistance, and failure to file a disputed statement of facts. [App. 0368-0381]. Plaintiff resisted the motion. [App. 0382-0391].

On December 22, 2018, Defendants filed a Reply to Plaintiff's Resistance Filings, attached to which was approximately 33 pages of exhibits. [App. 0392-0438].

Hearing on Defendants' Motion to Strike and Motion for Summary Judgment occurred on January 4, 2019. [App. 0439-0444; 0445-0454]. Neither before or in the course of the hearing did either Judge Relph or Defendants' attorney, Mr. Rockhold, disclose the ongoing professional relationship between Mr. Rockhold and Judge Relph's spouse. At the hearing, Judge Relph did not speak to the issue of Plaintiff's disputed filings nor suggest a way that such a deficiency, if any, might be cured. [App. 0443-0444, Tr. pp. 10, 37]. On February 9, 2019, the Court filed an Order, granting the Motion to Strike Plaintiff's Resistance Filings due to Plaintiff's failure to abide by the Iowa Rules of Civil Procedure by failing to timely file an actual resistance, for failing to sign his memorandum of authorities, and for failing to file a clear statement of disputed facts. [App. 0445-0446]. Although initially timely filed, Judge Relph characterized Mr. Toney's counsel as having waited until "the last possible day" to file the resistance to the Parkers' motion. [App. 0445]. The judge also ruled that because Mr. Toney's Petition was not supported by an affidavit signed by the petitioner, the allegations contained therein "cannot be considered as facts asserted by the Plaintiff, but only as conclusory statements of counsel." [App. 0449]. Based on the record, the scope of which the Court had radically reduced, the Court granted summary judgment in favor of Defendants and against Plaintiff on each of Plaintiff's claims, denied Plaintiff's requests for temporary and permanent injunctive orders and for declaratory judgment,

dismissed Plaintiff's claim for breach of contract: specific performance, quieted title to the Y Farm in the Arthur E. Parker and Hazel Frances Parker Trust dated 5/26/93, and ordered Toney to vacate the property within 30 days. [App. 0445-0454].

The parties each filed Motions to Reconsider, Enlarge and Amend the Court's ruling on the Motion to Strike and the Motion for Summary Judgment. [App. 0455-0467; 0468-0492; 0493-0497]. The Court denied Plaintiff's Motions, and granted Defendants' Motion in part, ordering that trial be scheduled on Defendants' claims related to slander of title, damages for trespass, damages for ejectment, and punitive damages. [App. 0543-0545]. The Court further ordered that the findings of fact set forth in its February 9, 2019 Summary Judgment Ruling were "deemed established." [App. 0543-0545].

Motion to Vacate. Subsequent to Judge Relph's February 9, 2019 and March 6, 2019 Orders, which, in effect, denied the totality of Plaintiff's claims and denied Plaintiff the opportunity to present a resistance to Defendants' Motion for Summary Judgment, Plaintiff learned that Mr. Rockhold, counsel for Defendants, had been, first, appointed in January 2018 to serve the remaining years of a term of office, then, in November 2018, elected to serve, on the Wayne County Hospital Board of Trustees. [App. 0594-0605]. Judge Relph's spouse, Daren Relph, is employed by the Wayne County Hospital as its CEO, a position he has held since 2010. [App. 0594-0605]. Under the Iowa

Code, the Board of Trustees is invested with all the powers and duties necessary to manage, control, and govern the County Hospital, including employing or contracting for an administrator and fixing the administrator's compensation. Iowa Code §§ 347A.1(4)(b); 347.13(5).

Upon learning this information, Plaintiff filed a Motion to Vacate Judge Relph's Orders of February 9 and March 6, 2019, citing the potential conflict of interest that had not been disclosed by Judge Relph. [App. 0594-0605]. The failure to disclose that, as Hospital Trustee, Attorney Rockhold held hire / fire and other broad executive authority over Judge Relph's husband, Hospital CEO Daren L. Relph, deprived Mr. Toney the opportunity to object to what he believed was a disqualifying conflict of interest. [App. 0594-0605].

District Court Judge John D. Lloyd considered the motion, hearing arguments by the parties on July 12, 2019. In a Ruling filed on August 6, 2019, Judge Lloyd denied the Motion to Vacate, concluding there was no basis for disqualification of Judge Relph. [App. 0738-0744]. The district court based its decision on the following facts: (1) Mr. Relph is employed by Mercy Health Network, Inc. ("Mercy"), not by the hospital; and (2) a majority of the seven trustees make decisions about Mr. Relph's compensation, therefore Mr. Rockhold is only one vote out of seven, and recent votes setting compensation by the Board were unanimous. [App. 0738-0744].

The district court concluded that it could “conceive of facts that might require a different result, for example, if the Board of Trustees were divided on the retention or compensation of Mr. Relph. That is not the case here and the court can see nothing on this record that would allow a reasonable person to question the impartiality of Judge Relph.” [App. 0743].

Trial on Remaining Issues. A trial on the remaining issues was held on October 22, 2019.³ The court received evidence and heard testimony from Julian Toney, Anita Toney, and Hazel Parker. Mr. Toney testified that the “Life Time Lease” had been signed by himself and by Mr. Parker, in each other’s presence, on June 22, 1974. [App. 0779, Tr. p. 111 lns. 17-22; 0780, Tr. p. 112 lns. 13-20]. Mr. Parker, although present at counsel table in the court room, chose not to testify about the authenticity of his signature—or about any other matter. [App. 0745-0790]. Consistent with the Court’s earlier ruling that the Parkers had inexcusably failed to honor the Court’s deadline to name expert witnesses, no expert witness testified as to the authenticity of any of the signatures on the lease document. [App.0745-0790].

³ At the October 22, 2019 trial, the court also heard testimony and evidence related to Defendants’ Application for Rule to Show Cause, which alleged that Mr. Toney had failed to abide by the court’s February 9, 2019 Order to vacate the property within 30 days. Mr. Toney challenged the district court’s contempt ruling through a petition for writ of certiorari before the Iowa Supreme Court, which was denied. Order, Iowa Supreme Court No. 19-2102 (February 28, 2020).

In a Ruling filed on November 18, 2019, the court found in favor of the Parkers on their claims for (1) slander of title, (2) damages for trespass, and (3) punitive damages.⁴ It awarded damages of \$62,100.00 on the slander of title claim, \$500 on the trespass claim, and punitive damages in the amount of \$15,000. [App. 0866-0879].

Slander of title. The district court concluded that not only was the purported lease and option not executed by Arthur Parker, but that the lease and option “is a forgery created by the plaintiff for the sole purpose of rendering title to the Y farm unmarketable and thus securing to the plaintiff an advantage in acquiring the property from the Parkers. This constitutes malice.” [App. 0869]. The court awarded damages due to Mr. Toney’s slander of title in the amount of \$62,100.00, which it calculated was the difference between the contract sale price of \$86,100.00 and Mr. Toney’s offer of \$1000 per acre (for 24 acres) for the property. [App. 0869].

Damages for trespass. The trial court concluded the Parkers were “damaged to the extent that, after the trespass, they were denied the fair rental value of the land during the crop year 2018.” [App. 0867]. After considering the

⁴ The trial court denied the Parkers’ claim for damages for ejectment because, in the court’s view, it duplicated the measure of damages for trespass. [App. 0870-0871].

testimony from both parties, the trial court concluded the fair rental value was \$500 and awarded damages of that amount. [App. 0870].

Punitive damages. The trial court concluded that Mr. Toney's action rose to the level of legal malice, finding by a preponderance of the clear, satisfactory and convincing evidence that Mr. Toney's conduct constituted willful and wanton disregard for the rights of the Parkers and was specifically directed at the Parkers. [App. 0872]. The court awarded the Parkers punitive damages in the amount of \$15,000.00. [App. 0873].

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING PLAINTIFF'S MOTION TO VACATE THE DISTRICT COURT'S RULINGS ON DEFENDANTS' MOTION TO STRIKE AND MOTION FOR SUMMARY JUDGMENT, BASED ON CIRCUMSTANCES THAT REASONABLY AND OBJECTIVELY CALLED INTO QUESTION THE JUDGE'S IMPARTIALITY, SUCH THAT THE JUDGE SHOULD HAVE *SUA SPONTE* DISQUALIFIED HERSELF FROM THE CASE

A. Standard of Review and Preservation of Error

This Court reviews the district court's ruling on a motion to vacate for correction of errors at law. *State ex rel. Goettsch v. Diacide Distribs., Inc.*, 596 N.W.2d 532, 537 (Iowa 1999).

A party seeking recusal has the burden of establishing the basis for it, and "the determination is committed to the judge's discretion." *Forsmark v. State of Iowa*, 349 N.W.2d 763, 767 (Iowa 1984). This Court reviews for an abuse of discretion. *Id.*

Plaintiff raised this claim and argued it in his Motion to Vacate. [App. 0594-0605]. Plaintiff filed a timely Notice of Appeal. [App. 0893].

B. Argument

“A judge’s impartiality is basic to the due and orderly conducting of litigation.” *Forsmark*, 349 N.W.2d at 767. Iowa Code of Judicial Conduct rule 51:2.11(A) requires a judge to disqualify himself or herself “in any proceeding in which the judge’s impartiality might reasonably be questioned,” and includes a non-exclusive list of circumstances in which a judge’s impartiality might reasonably be questioned. “Impartiality” is defined as the “absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.” Iowa Code of Judicial Conduct, Terminology.

Under rule 51:2.11(A), “judicial disqualification is ordinarily mandatory, rather than discretionary, when the impartiality of a judge might reasonably be questioned if he or she were to decide a particular matter.” *In re Howes*, 880 N.W.2d 184, 194 (Iowa 2016). The rule operates “to promote public confidence in the integrity of the judicial process.” *Id.* at 195 (citation omitted).

The standard for determining whether judicial recusal is required under the rule is objective, not subjective. *Id.* The appropriate inquiry is “whether a reasonable person with knowledge of all the facts might have a reasonable basis

for questioning the judge's impartiality such that the judge deciding a matter would create an appearance of impropriety.” *Id.*

The district court denied Plaintiff’s Motion to Vacate, concluding, “the court can see nothing on this record that would allow a reasonable person to question the impartiality of Judge Relph.” [App. 0743]. The court concluded there was no basis for disqualification of the judge because (1) Mr. Relph is not an employee of the Hospital, but of Mercy, and his lease to the Hospital is not terminable at will by the Hospital; and (2) in order to affect Mr. Relph’s compensation, a majority of the Board would have to take action; both actions to set compensation that were disclosed on the record were unanimous, therefore “it appears unlikely that any action by Mr. Rockhold in this arena would have any likelihood of success. He is only one vote out of seven.” [App. 0742-0743].

The district court erred by treating the issue as whether Judge Relph was obliged to disqualify herself. *See Fosmark*, 349 N.W.2d at 767. This would have been the issue if Judge Relph had been asked to recuse herself and refused to do so. *Id.* Instead, the issue before the court on the Motion to Vacate was whether Judge Relph, prior to convening a hearing and ruling on the merits of motions and resistances filed by both parties, should have disclosed the relevant facts to the parties to give them an opportunity to request that she step aside. *Id.* (holding that trial judge’s failure to disclose before trial that a

wrongful death malpractice action by the estate of the trial judge's brother was pending against plaintiff's chief medical witness at the time of the trial was an irregularity within the meaning of Iowa Rule of Civil Procedure 1.1004(1) [formerly rule 252(b)], and thus required the judgment to be vacated).

A hearing was convened by Judge Relph on January 4, 2019 to address the following pending motions: Defendants' Motion for Summary Judgment, Plaintiff's Resistance to the Motion for Summary Judgment, Defendants' Motion to Strike, and Plaintiff's Resistance to the Motion to Strike. [App. 0440, Tr. p. 3 lns. 16-20]. At the hearing, both Attorney Daniel Rockhold (representing the Parkers) and Judge Relph failed to disclose to Plaintiff that the judge's spouse, Wayne County Hospital Chief Executive Officer Daren Relph, is employed by a corporate entity concerning which Mr. Rockhold serves on the Board of Trustees and, in that capacity, has direct legal authority over Judge Relph's spouse, ranging from salary amounts paid to work-related conditions. [App. 0594-0605]. *See* Iowa Code §§ 347A.1(2), (4); 347.13.

Daren Relph, employed since June 2010 by the Wayne County Board of Trustees ("Board") as CEO/Administrator for the Wayne County Hospital, is the spouse of Judge Relph. [App. 0594-0605]. Pursuant to a Management Services Agreement ("Agreement") between Wayne County Hospital and Mercy Health Network, Inc. ("MHN"), the hospital pays a fee to MHN for the provision of certain management services, including hiring Mr. Relph and then

leasing him back to the hospital to perform his management duties. [App. 0634-0651].

Under the terms of the Agreement, nothing related to the Board's power or authority over the hospital's operation and administration was altered, weakened, displaced or modified. [App. 0641]. The Agreement further provided that: the hospital's CEO/Administrator would be selected by the Board from among individuals presented by MHN; performance reviews of the CEO would be conducted jointly by MHN and the Board; the Board would report in writing to MHN deficiencies in the CEO's performance, which would trigger a 60-day period within which to cure the deficiencies; and the Board, upon consultation with MHN, could request reassignment of the CEO for cause or without cause, subject only to the condition that the Board may be required to pay the costs of a severance payment for a terminated CEO under certain conditions. [App. 0645-0647].

Upon learning of the arrangement, Plaintiff issued a subpoena to the Wayne County Hospital, requesting copies of relevant documents, including Board minutes for those meetings during which the terms and conditions of Mr. Relph's employment was discussed or subject to any Board action. [App. 0670-0728]. Attorneys for the Hospital refused to disclose the minutes of the meetings, citing Iowa's open meeting statute. [App. 0729-0735].

Attorney Rockhold, counsel for the Parkers, began his service on the Board of the Wayne County Hospital in January 2018, filling out an uncompleted term for a prior Board member. [App. 0619]. He was elected to continue his service on the Board in November 2018. [App. 0660]. During his service on the Board, Mr. Rockhold has participated in votes related to Mr. Relph's compensation and work duties. [App. 0692; 0707; 0736-0737]. At no time in the proceedings did Mr. Rockhold describe to the Court, or disclose to Plaintiff, what role he played in confidential Board proceedings at which time Mr. Relph's performance and / or compensation issues were evaluated or addressed.

An objective inquiry leads to the conclusion that had the foregoing facts been disclosed, Mr. Toney would have had a reasonable basis for questioning Judge Relph's impartiality. Judge Relph's failure to disclose facts that created a substantial and serious issue concerning her duty to disqualify herself denied Mr. Toney an opportunity to be heard on the issue prior to the district court's ruling on the Parkers' Motion to Strike. That ruling eliminated the entirety of Mr. Toney's resistance to the Parkers' motion for summary judgment and in turn led to an errant ruling on many of the Parkers' summary judgment positions.

The judge's omission constitutes an irregularity in the obtaining of the judgment within the meaning of Iowa Rule of Civil Procedure 1.1004(1).

Forsmark, 349 N.W.2d at 767. The district court's ruling on the Parkers' motion for summary judgment subsequently led to the Parkers' filing an Application for Rule to Show Cause, alleging that Mr. Toney had violated certain terms of the summary judgment ruling. This eventually resulted in the district court finding Mr. Toney in contempt and imposing fines and potential jail sentences on Mr. Toney.⁵

The cascading series of events in this case began with a judge whose failure to disclose information related to the judge's potential impartiality deprived Mr. Toney the opportunity to make a timely request that the judge disqualify herself on the ground that the judge's impartiality might reasonably be questioned. It leaves a plaintiff such as Mr. Toney with the impression that the deck was stacked against him from the start.

The district court's decision denying Plaintiff's Motion to Vacate should be reversed.

⁵ The contempt finding and judgment was entered by another district court judge, following Judge Relph's voluntary recusal from consideration of the Motion to Vacate and subsequent proceedings in this case. [App. 0610, Tr. p. 5 lns. 13-18].

II. THE DISTRICT COURT ERRED IN GRANTING DEFENDANTS' MOTION TO STRIKE AS UNTIMELY AND UNRESPONSIVE PLAINTIFF'S FILINGS IN RESISTANCE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

A. Standard of Review and Preservation of Error

This Court reviews the district court's granting of a motion to strike for abuse of discretion. *Theis v. James*, 184 N.W.2d 708, 710 (Iowa 1971). "The district court abuses its discretion when it exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Brown*, 856 N.W.2d 685, 688 (Iowa 2014). "A ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law." *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000).

Error was preserved by filing in the district court a resistance to Defendants-Appellees' Motion to Strike; a Motion to Reconsider, Enlarge and Amend the Court's Order on Defendants' Motion to Strike; and by filing a timely Notice of Appeal. [App. 0382-0391; 0455-0467; 0893-0895].

B. Argument

"Our legal processes normally strive to resolve disputes on their merits." *MC Holdings, L.L.C. v. Davis County Bd. of Review*, 830 N.W.2d 325, 328 (Iowa 2013). For this reason, "mistakes and inadvertence ordinarily do not become roadblocks to this goal. A party is usually permitted to correct mistakes when

prejudice does not result.” *Id.* at 329.

Trial courts often grant parties a modicum of leeway and will not grant a motion to strike unless prejudice is demonstrated; desiring instead that each party be permitted its day in court. *See, e.g., Fransene v. State*, No. 0-888/10-0733, 2011 Iowa App. LEXIS 2, at *3 (Iowa Ct. App. 2011)(district court did not abuse its discretion in denying motion to strike State’s untimely resistance to partial motion for summary judgment where Fransene suffered no prejudice; he was allowed to reply to the State’s resistance and participate in a hearing that did not take place until after filing of the State’s documents); *Adams v. Frieden, Inc.*, No. 2-163/01-1593, 2002 Iowa App. LEXIS 861, at *2-*3 (Iowa Ct. App. 2002)(district court did not abuse its discretion in overruling timeliness objection when resistance to motion for summary judgment was filed 22 days after summary judgment motion was served, but “well in advance of the scheduled hearing on the motion”); *cf. AAA Elec., L.C. v. Agri Processors, Inc.*, No. 3-726/02-1623, 2003 Iowa App. LEXIS 1062, at *4 (Iowa Ct. App. 2003)(district court did not abuse its discretion by striking defendant’s resistance, brief, and supporting affidavits; the documents were filed 49 days after plaintiff filed its motion for summary judgment, and plaintiff did not receive a copy of the resistance by mail until the morning of the hearing).

The problems with Plaintiff’s Resistance Filings, noted by the district court, amount to mistakes and inadvertence that should not have become a

roadblock to permitting the district court's consideration of the filings in their entirety in conjunction with Defendants' Motion for Summary Judgment. In granting the Motion to Strike, the district court placed form over substance and denied Plaintiff the opportunity to present his case.

Moreover, there is no evidence that Defendants were prejudiced by Plaintiff's errors. Plaintiff quickly corrected the redaction oversight that led to the clerk's initial rejection of the Resistance Filings, resubmitting the documents within less than an hour after receiving the Notice of Rejection from the Clerk of Court. Similarly, Plaintiff filed its Resistance upon being made aware that the document, for reasons unknown, had not been included with the other re-filed Resistance Filings. Plaintiff's "Responses to Statements of Undisputed Facts Submitted by Defendants and Plaintiff's Statements of Fact," while perhaps not artfully captioned, in substance served as Plaintiff's statement of disputed facts, and should have been treated as such by the district court. *See, e.g., Meier v. Senecant*, 641 N.W.2d 532, 539 (Iowa 2002)("[W]e treat a motion by its contents, not its caption.").

In short, Plaintiff's Resistance Filings were submitted in their totality by December 21, 2018, a full two weeks prior to the hearing on the Motion for Summary Judgment. In fact, Defendants filed a Reply to Plaintiff's Resistance Filings on December 22, 2019, which included an additional 33 pages of exhibits for the Court to consider. [App. 0392-0438]. Defendants were able to

fully respond to Plaintiff's Resistance Filings and suffered no prejudice.

The district court abused its discretion by granting the Motion to Strike, thereby eliminating from consideration Plaintiff's arguments against Summary Judgment, which resulted in a favorable ruling for the Defendants. The district court's decision should be reversed.

III. THE DISTRICT COURT, AS A DIRECT CONSEQUENCE OF GRANTING THE MOTION TO STRIKE, ERRED IN PARTIALLY GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

A. Standard of Review and Preservation of Error

This Court reviews the district court's granting of summary judgment "for correction of errors at law." *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007) (citation omitted). Summary judgment is proper when the movant establishes there is no genuine issue of material fact and it is entitled to judgment as a matter of law. *Slaughter v. Des Moines Univ. Coll. of Osteopathic Med.*, 925 N.W.2d 793, 800 (Iowa 2019). In determining whether summary judgment was appropriate, the court views the record in the light most favorable to the nonmoving party. *Id.*

Plaintiff raised this argument in his Resistance to Defendants' Motion for Summary Judgment, and in his Motion to Reconsider, Enlarge and Amend the Court's Order on Defendants' Motion for Summary Judgment. [App. 0218-0367; 0468-0492]. Plaintiff filed a timely Notice of Appeal. [App. 0893-0895].

B. Argument

The district court erred as a matter of law by (1) concluding, in contradiction to Iowa Rule of Civil Procedure 1.413, that Plaintiff's Petition required verification; and (2) concluding that no material facts existed to preclude summary judgment as a matter of law.

In addition to abusing its discretion by granting the Parkers' Motion to Strike Toney's Resistance Filings, the district court erred as a matter of law by considering the allegations contained in Plaintiff's Petition "only as conclusory statements of counsel," rather than "as facts asserted by the Plaintiff." [App. 0449]. The court explained it was doing so because the Petition "is not supported by an affidavit signed by the Petitioner." [App. 0449].

In refusing to consider the facts set forth in the Petition as nothing more than "conclusory statements of counsel," the district court ignored the plain language of the Iowa Rules of Civil Procedure: "Pleadings need not be verified unless special statutes so require...." Iowa R. Civ. P. 1.413(1). No "special statute" required that Toney's Petition be verified. Counsel's signature to the pleading is deemed a certificate that the pleading "is well grounded in fact." *Id.*⁶

⁶ In a footnote, the district court cited official comments to Iowa Rule of Civil Procedure 1.413. [App. 0449]. The portion of the Official Comments quoted by the court specifies that an affidavit is needed for *motions* or other applications (injunction, discovery, etc.), as referenced in 1.413(3). Plaintiff did, in fact, include an affidavit with his Resistance Filings, as required by the rule.

The entirety of the record, including Mr. Toney's Petition and Resistance Filings, when viewed in the light most favorable to Mr. Toney, raises issues of material fact that preclude summary judgment, particularly concerning the execution, terms, and enforcement of the "Life Time Lease." [App. 0218-0367].

For example, Mr. Parker claimed to have lacked the authority to have acted on behalf of his mother, Ruth Parker, in matters related to the Y Farm. The trial court, in its summary judgment ruling, found Mr. Parker had had no authority, either actual, apparent, or implied, to have acted as an agent for and to have bound Ruth Parker in 1974. [App. 0445-0454]. Mr. Toney, however, in his submitted, but stricken, summary judgment papers, had provided evidence that Mr. Parker, in fact, had written and had signed receipts for Y-Farm rental payments made by Mr. Toney on behalf of Ruth Parker and continued to do so upon Ruth Parker's death. [App. 0312; 0313; 0316]. In addition, Mr. Parker, in his deposition testimony, admitted that his mother, Ruth Parker, had "left that [the issue of allowing the Toney's to use the land] up to me," and would not have given Mr. Parker instruction as to leasing the land to the Toney's. [App. 0324, Tr. p. 30 lns. 8-14].

Mr. Toney, in his affidavit, offered facts to dispute Arthur Parker's denials related to signing the "Life Time Lease." [App. 0291-0294]. Mr. Toney also averred to his full performance under the terms of the lease for more than 40 years, which continued after Ruth Parker's death in 1990. [App. 0294-0295].

Similar disputed facts related to the Parkers' claims are found throughout Mr. Toney's Resistance Filings.

The disputed material facts presented by Mr. Toney in his Resistance Filings emphasize that the testimony and demeanor of *both* Mr. Toney *and* Mr. Parker as it related to the "Life Time Lease" would have been paramount to the trial court in its consideration of both parties' claims. These disputed facts, precluded from consideration due to the court's ruling on Defendants' Motion to Strike, raised issues of disputed material fact that precluded summary judgment.

The entire summary judgment record, including Mr. Toney's Resistance Filings, when considered in the light most favorable to Mr. Toney, leads to the conclusion that genuine issues of material fact remained and that summary judgment was not appropriate as a matter of law.

The district court's decision should be reversed.

IV. THE DISTRICT COURT ERRED IN AWARDING DAMAGES OF \$62,100.00 IN FAVOR OF DEFENDANTS ON THEIR SLANDER OF TITLE CLAIM, WHERE DEFENDANTS FAILED TO PROVE SLANDER OF TITLE AND SAID DAMAGES

A. Standard of Review and Preservation of Error

Review of equity actions is de novo. *Brown v. Nevins*, 499 N.W. 736, 737 (Iowa Ct. App. 1993). Plaintiff appealed from the Court's order, below. [App. 0893-0895].

B. Argument

There are five elements to a slander-of-title action: (1) an uttering and publication of slanderous words; (2) falsity of those words; (3) malice; (4) special damages to the plaintiffs; and (5) an estate or interest of the plaintiff in the property slandered. *Davitt v. Smart*, 449 N.W.2d 378, 379 (Iowa 1989). The issues at trial as respects the Parkers' slander of title claim were malice and damages. [App. 0451; 0867-0869].

Malice "is a necessary ingredient to entitle plaintiff to recover" in a slander of title action. *Miller v. First Nat'l Bank*, 264 N.W. 272, 274 (Iowa 1935). A malicious act is deliberate conduct without probable cause. *Davitt*, 449 N.W.2d at 380. "Malice suggests an intention to vex, injure, or annoy." *Id.* A slander of title action "cannot be maintained if the claim was asserted by defendant in good faith, and if the act complained of was founded upon probable cause or prompted by a reasonable belief, although the statement may have been false." *Id.* (citation omitted).

The Parkers' slander of title claim was based on Mr. Toney's recording of the "Life Time Lease." [App. 0024-0039]. At trial, Mr. Toney testified that, when sued for eviction by the Parkers in late 2016, his then-attorney advised him to record the lease document. [App. 0765-0766, Tr. p 65 ln. 23 – p. 66 ln. 20; 0767, Tr. p. 67 lns. 15-17]. Immediately thereafter, Mr. Toney's wife, Anita Toney, searched boxes of old records in the couple's attic and found the

document. [App. 0781-0784, Tr. p 117 ln. 24 – p. 120 ln. 25]. Anita Toney testified that she immediately recorded the lease on November 28, 2016, in order to preserve what Mr. Toney, in good faith, believed was his right to occupy the land. [App. 0781-0782, Tr. p. 117 ln. 24 – p. 118 ln. 10; 0783-0784, Tr. p. 119 ln. 18 – p. 120 ln. 2]. Anita Toney testified that the first and third pages of the recorded document [App. 0827-0829] were included with the lease at the direction of the county recorder. [App. 0782, Tr. p. 118 lns. 8-15; 0785-0786, Tr. p. 121 ln. 5 – p. 122 ln. 11].

The district court concluded “the purported lease and option is a forgery created by the plaintiff for the sole purpose of rendering the title to the Y farm unmarketable and thus securing to the plaintiff an advantage in acquiring the property from the Parkers. This constitutes malice.”[App. 0869]. The court awarded damages of \$62,100, based on the difference between a contract for sale of the property that “fell through,” and an offer from Mr. Toney in 2015 to purchase the property for \$1,000 per acre. [App. 0869].

The testimony presented at trial supports a finding that the claim of rights under the recorded Life Time Lease were asserted by Mr. Toney in good faith, prompted by his contemporaneous and reasonable belief that his legal rights had been defined by that instrument. Thus, there was no malice proven.

Even if this court agrees with the district court’s findings related to malice, its award of \$62,100.00 in damages should be reversed.

While not pled in its Answer and Counterclaims,⁷ and not raised in its Motion for Summary Judgment,⁸ at trial the Parkers claimed that Toney's recording of the "Life Time Lease" led to an offer for sale of the Y Farm property falling through. [App. 0555-0556; 0775-0776, Tr. p. 89 ln. 7 – p. 90 ln. 9; 0858-0859]. The offer, dated October 3, 2016, initially provided that closing and possession of the property would occur on October 31, 2016. [App. 0800-0808]. An addendum to the contract, signed and dated by both parties two days later, on October 5, 2016, moved the date of possession to October 8, 2016. [App. 0800-0808].

It is clear that the Parkers had promised to prospective buyers *immediate* possession of real estate over which the Parkers had had no immediate possessory interest. In fact, their effort to seize the property from Mr. Toney, through a F.E.D. action, later failed. Thus, a critical impediment to the purchase was that the Parkers could not deliver immediate possession to buyers who had made such possession a condition of the purchase agreement. [App.

⁷ In their Counterclaim for slander of title, Defendants alleged they had sustained special damages, including but not limited to loss of rent in the amount of at least \$625 per year, the loss of value in the farm by virtue of the cloud on title from the recorded Life Time Lease, and loss of rental value. [App. 0029].

⁸ In their Motion for Summary Judgment, Defendants asserted only that Toney remained on the land without paying rent following the termination of his farm tenancy on March 1, 2018, thus damaging Defendants in the amount of unpaid rent. [App. 0128].

0800-0808]. The Parkers did not call as witnesses the ostensible purchasers of the property to verify as to their own bases for not moving forward with the purchase. Instead, at trial, Mrs. Parker speculated that Mr. Toney had been culpable for the Parkers' legal problem with the buyers. She testified, for example, that the sale "fell through," although the buyers never revoked their offer in writing. [App. 0775-0776, Tr. p. 89 ln. 10 – p. 90 ln. 9; 0777, Tr. p. 93 lns. 1-11]. She further speculated that the purchasers-offerors did not go through with the deal because of the Life Time Lease. [App. 0776, Tr. p. 90 lns. 3-6]. She admitted, under cross examination, that the Parkers had not held the buyers to the terms of the contract. [App. 0777, Tr. p. 93 lns. 1-11].

The Parkers, in fact, had offered something for sale that they could not deliver: possession of the property in October 2016. Mr. Toney had lawful possession of the property at that time, because the Parkers had not properly terminated Mr. Toney's farm lease, as confirmed by the Iowa District Court's dismissal of the Parkers' Petition for Forcible Entry and Detainer on January 4, 2017 in Decatur County Case No. SCSC007487.

Further, the date of the purchase agreement and the addendum thereto, and the respective possession/closing dates well preceded Mr. Toney's recording of the Life Time Lease. The Parkers failed to prove, beyond mere speculation, that their failure to close on the sale of the property had any

relation to Mr. Toney's recording of the Life Time Lease.⁹

For these reasons, the trial court erred in calculating damages based on the contract price of the sale that "fell through."

The district court's decision on slander of title and damages for said claim should be reversed.

V. THE DISTRICT COURT ERRED IN AWARDING PUNITIVE DAMAGES OF \$15,000 IN FAVOR OF DEFENDANTS

A. Standard of Review and Preservation of Error

This court reviews an award of punitive damages for correction of errors at law. *Wolf v. Wolf*, 690 N.W.2d 887, 893 (Iowa 2005). Plaintiff appealed from the Court's order, below. [App. 0893-0895].

B. Argument

In considering an award for punitive damages, the fact finder must determine (1) whether, by a preponderance of clear, convincing, and satisfactory evidence, the conduct from which the claim arose constituted willful and wanton disregard for the rights or safety of another; and (2) whether

⁹ At trial, the Parkers' attorney elicited testimony from Mr. Toney as to why Mr. Toney thought the sale of the property had "fallen through." [App. 0752-0755, Tr. p. 14 ln. 6 – p. 17 ln. 24]. This testimony, however, amounts to nothing more than mere speculation and/or hearsay, particularly given the fact that Mr. Toney had not been privy to conversations between the Parkers, their realtor, and the ostensible buyers.

the conduct was directed specifically at the claimant, or at the person from which the claimant's claim is derived. Iowa Code § 668A.1(1).

Punitive damages are only appropriate when a tort is committed with "either actual or legal malice." *Wolf v. Wolf*, 690 N.W.2d 887, 893 (Iowa 2005). "Actual malice may be shown by such things as personal spite, hatred, or ill-will and legal malice may be shown by wrongful conduct committed with a willful or reckless disregard for the rights of another." *Id.* The party requesting punitive damages must offer evidence of a persistent course of conduct to show that the party from whom such damages are sought "acted with no care and with disregard to the consequences of those acts." *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co.*, 510 N.W.2d 153, 156 (Iowa 1993).

The district court concluded Mr. Toney's actions rose to the level of legal malice:

While the plaintiff may have honestly believed he had some sort of agreement to purchase the land, he created a written document and proceeded to have it recorded. He has continued to occupy the real estate, despite court rulings against him. He posted signs intended to discourage possible purchasers of the land. In the court's view, these actions constitute willful and reckless disregard of the Parkers' rights and entitle them to punitive damages.

[App. 0872].

The facts upon which the district court relied in its conclusion that Mr. Toney's conduct constituted willful and wanton disregard for the Parkers are not supported by the evidence presented at trial in at least two ways. First, Mr.

Toney testified that he had placed 50 to 100 signs about five years ago in order to discourage hunting from the roadside, and that it was not his intent to discourage the Parkers from selling the land to other people. [App. 0760-0762, Tr. p. 47 ln. 5 – p. 49 ln. 2]. No evidence to the contrary was provided to the Court by the Parkers—or by any other witness.

Moreover, second, Mr. Toney testified that both he and Mr. Parker were present when the Life Time Lease was drawn up. [App. 0779, Tr. p. 111 lns. 17-22; 0780, Tr. p. 112 lns. 13-20]. Mr. Parker, who was present in the courtroom during trial, did not testify. His failure to testify gives rise to an inference that his testimony would not have supported the Parkers' position, adopted by the district court: that Mr. Toney "created" the document years later.¹⁰ *Quint-Cities Petroleum Co. v. Maas*, 259 Iowa 122, 127-28, 143 N.W.2d 345, 348 (1966)("[T]he unexplained failure of defendant husband to testify certainly created an inference that his testimony would neither aid nor support the defense"); *Grimes Sav. Bank v. McHarg*, 224 Iowa 644, 648, 276 N.W. 781, 784

¹⁰ As asserted in Sections II and III, *supra*, the district court erred in granting Defendants' Motion to Strike and Motion for Summary Judgment. Mr. Toney contends the district court's error includes its finding on summary judgment that Arthur E. Parker "did not execute" the Life Time Lease. [App. 0450]. Mr. Toney, in his Resistance documents that were improperly stricken from the summary judgment record, testified that both he and Mr. Parker had signed the Life Time Lease in Mr. Toney's presence [App. 0292-0294], thus raising an issue of disputed material fact regarding the execution of the Life Time Lease, which should have precluded summary judgment.

(1938)(the failure of mother and daughter to testify about an alleged agreement between them related to the transfer of certain property “is an unfavorable circumstance and gives rise to an inference that if they had been called on and testified as witnesses in the case, their contention would not have been aided by their testimony”).

Defendants failed to prove Mr. Toney’s conduct constituted actual or legal malice. The district court erred by awarding punitive damages.

CONCLUSION

For one or more of the foregoing reasons, Plaintiff respectfully requests that the district court’s decision be reversed as to all issues decided adversely to Plaintiff and the case be remanded for further proceedings before the district court.

Dated this 16th day of July, 2020.

REQUEST FOR ORAL ARGUMENT

Plaintiff respectfully requests oral argument.

CERTIFICATE OF COST

Plaintiff will not submit a Certificate of Cost given the electronic filing of the Final Brief, Final Reply Brief, and Appendix.

Respectfully submitted,

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on July 16, 2020, I electronically filed the foregoing Final Brief of Appellant with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Pursuant to Rule 16.317(1)(a), this constitutes service of the document on the following for purposes of the Iowa Court Rules.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS,
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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because: this brief contains 9,933 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because: this brief has been prepared in a proportionally spaced typeface using Microsoft Word 1997-2004 in size 14 Garamond.

Dated this 16th day of July, 2020

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