ELECTRONICALLY FILED JUL 23, 2020 CLERK OF SUPREME COURT

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 IOWA DISTRICT COURT
IN AND FOR DECATUR COUNTY

NO. EQCV006739

THE HONORABLE JOHN D. LLOYD, SENIOR JUDGE

APPELLEES' ARTHUR PARKER, HAZEL PARKER, and the ARTHUR E. PARKER AND HAZEL FRANCES PARKER TRUST DATED 5/26/1993 FINAL BRIEF

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I. THE IOWA DISTRICT COURT PROPERLY DENIED TONEY'S MOTION TO VACATE THE RULING PARTIALLY GRANTING PARKERS' MOTION FOR SUMMARY JUDGMENT, AND RULING GRANTING PARKERS' MOTION TO STRIKE.

A. Standard of Review and Preservation of Error

Iowa R. Civ. P. 1.1012

B. Daren Relph is not an Employee of Wayne County Hospital, the Undersigned does not have Hire/Fire Authority Over Daren Relph and is just One of Seven Votes.

In re Marriage of Butterfield, 500 N.W. 2d 97 (Iowa Ct. App. 1993)

In re C.W., 522 N.W.2d 113, 117 (Iowa Ct. App. 1994)

Forsmark v. State, 349 N.W.2d 763 (Iowa 1984)

Iowa Code Chapter 347

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Iowa Code of Judicial Conduct 51:2.11(A)

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In re Krull, 860 N.W.2d 38, 47 (Iowa 2015)

Oxman v. U.S., 148 F.2d 750, 753 (8th Cir. Ct. App. 1945)

Sioux City v. Western Asphalt Paving Corp., 271 N.W. 624, 638, 223 Iowa 279, _____ (1937)

State v. Haskins, 573 N.W.2d 39, 44 (Iowa Ct. App. 1997)

C. Toney's Motion to Vacate Orders was Untimely, and He did not Comply with the Rules to Vacate the Partial Summary Judgment and Order Striking His Partial Resistance.

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II. THE DISTRICT COURT PROPERLY GRANTED PARKERS' MOTION TO STRIKE TONEY'S DOCUMENTS IN SUPPORT OF A RESISTANCE BECAUSE IT WAS UNTIMELY AND FAILED TO COMPLY WITH MULTIPLE RULES OF CIVIL PROCEDURE.

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B. The District Court was Without Discretion to Consider Toney's Late Resistance because He Never Filed A Motion Under Iowa R. Civ. P. 1.443.

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Schroeder v. Fuller, 354 N.W.2d 780, 782 (Iowa 1984).

Theis v. James, 184 N.W.2d 708, 710 (1971)

C. Toney Never Actually Filed His Resistance to Parkers' Motion For Summary Judgment.

Iowa R, Civ. P. 1.443

Iowa R. Civ. P. 1.981(3)

D. The Burden was on Toney to Show Why His Late Resistance and Related Filings Should Be Allowed.

Alexander Technologies Europe, Ltd. v. MacDonald Letter Service, Inc., 2007 WL 1827472, *3 (Iowa Ct. App. 2007)

Iowa R. Civ. P. 1.443

E. Toney's Memorandum of Law Was Not Signed By Incorporation in His Unfiled Resistance.

Iowa R. Civ. P. 1.413

F. Toney Failed to Comply with the Requirements of Iowa R. Civ. P. 1.981(3).

Iowa R. Civ. P. 1.981(3)

III. THE DISTRICT COURT PROPERLY PARTIALLY GRANTED PARKERS' MOTION FOR SUMMARY JUDGMENT AND NO ADDITIONAL FACTS COULD ALTER THE OUTCOME.

A. Standard of Review and Preservation of Error

Amco Insurance Co. v. Stammer, 411 N.W.2d 709, 711 (Iowa Ct. App. 1987)

Carr v. Bankers Trust Co., 546 N.W.2d 901, 903 (Iowa 1996)

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Moser v. Thorp Sales Corp., 312 N.W.2d 881, 886 (Iowa 1981)

B. Toney's Claims are Barred by Iowa Code §614.1(5).

Gibson v. Gibson, 217 N.W. 852, 855 (Iowa 1928)

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Stanley v. Morse, 26 Iowa 454, 458 (1868)

C. Toney's Claims are Barred by Iowa Constitution Article I, Section 24.

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Gansen v. Gansen, 874 N.W.2d 617, 625 (2016)

Iowa Code §562.1A

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Iowa Code §562.6

Iowa Constitution Article I, Section 24

D. The Purported "Life Time Lease" is Unenforceable.

i. There was No Acceptance of Any Offer.

Anderson v. Douglas & Lomason Co., 540 N.W.2d 277, 285 (Iowa 1995)

ii. The Alleged Contract Does Not Contain Essential Terms Necessary for a Contract for the Sale and Purchase of Real Property.

Davis v. Davis, 156 N.W.2d 870, 876 (Iowa 1968)

Down v. Coffie, 15 N.W.2d 216, 219, 235 Iowa 152, 157-158 (Iowa 1944)

Gildea v. Kepenis, 402 N.W. 2d 457, 459 (Iowa Ct. App. 1987)

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TriStates Investment Company v. Henryson, 179 N.W.2d 362, 363 (Iowa 1970)

iii. There was No Meeting of the Minds to Form a Contract.

Iowa Model Civil Jury Instruction 2400.3

iv. Arthur Parker had No Authority to Bind the Owner of the Land at Issue.

Hendricks v. Great Plains Supply Co., 609 N.W.2d 486, 493 (Iowa 2000).

Magnusson Agency v. Public Entity Nat'l Co.-Midwest, 560 N.W.2d 20, 25–26 (Iowa 1997)

Waukon Auto Supply v. Farmers & Merchants Sav. Bank, 440 N.W.2d 844, 847 (Iowa 1989)

v. There was No Consideration for the Purported "Right To Purchase" and "Life Time Offer."

Kristerin Development Co. v. Granson Inv., 394 N.W.2d 325, 331 (Iowa 1986)

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E. Toney Slandered Parkers' Title.

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Witmer v. Valley Nat'l. Bank, 223 Iowa 673, 273 N.W. 370 (1937)

F. Toney Trespassed and was Properly Ejected from the Property.

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G. Conclusion.

Iowa Constitution Article I, Section 24

IV. THE DISTRICT COURT PROPERLY FOUND TONEY WAS LIABLE FOR SLANDER OF TITLE, AND PROPERLY AWARDED DAMAGES TO PARKERS FOR SLANDER OF TITLE.

A. Standard of Review and Preservation of Error.

Brown v. Nevins, 499 N.W.2d 736, 737 (Iowa Ct. App. 1993)

B. The Words in the Purported "Life Time Lease" were Slanderous, False, and Malicious.

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V. THE DISTRICT COURT PROPERLY AWARDED PUNITIVE DAMAGES TO PARKERS.

A. Standard of Review and Preservation of Error.

Wolf v. Wolf, 690 N.W.2d 887, 893 (Iowa 2005).

B. Toney's Actions of Forging Arthur Parker's Signature on the Purported "Life Time Lease," Subsequent Recording, and Trespass, Justified an Award of Punitive Damages.

Amos v. Prom, 115 F. Supp. 127 (N.D. Iowa 1953)

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Suss v. Schammel, 375 N.W.2d 522 (Iowa 1985)

Syester v. Banta, 257 Iowa 613, 133 N.W.2d 666 (1965)

Westway Trading Corp. v. River Terminal Corp., 314 N.W.2d 398 (Iowa 1982)

ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals because it presents issues which require the application of existing legal principles. Iowa R. App. P. 6.1101(3)(b) (2019).

STATEMENT OF THE CASE

This case arises following the Decatur County District Court's Order partially granting Appellees' (hereinafter "Parkers") Motion for Summary Judgment, and a subsequent Judgment following trial in favor of Parkers. The various disputes and claims in this case stem from the validity and authenticity of a purported "Life Time Lease" produced and recorded by Toney. The appeal is from a final order of the district court. Iowa R. App. P. 6.103(1).

On February 28, 2018, Appellant (hereinafter "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. Toney sought injunctive relief to prevent Parkers from seizing ownership and control of the Y farm, sought declaratory judgment that the purported "Life Time Lease" gave Toney a "right to purchase," sought specific performance for Toney's purported exercise of his "right to purchase," and sought attorney fees. (Appendix, pp. 9-20).

Parkers filed an Answer and Counterclaim on May 7, 2018. Their Counterclaims included slander of title, ejectment, trespass, quiet title, and punitive damages. (Appendix, pp. 24-39). Toney filed his Answer to Parkers' Counterclaims on May 29, 2018.

On November 9, 2018, Parkers' timely filed their Motion for Summary Judgment, Statement of Undisputed Facts and Memorandum of Authorities, and Affidavit in support thereof. (Appendix, pp. 96-200). Also, on November, 9, 2018, Toney filed an unresisted Motion to extend the deadline to take Parkers' depositions to December 15, 2018. (Appendix, pp. 201-202). On November 15, 2018, Toney filed a Motion seeking to extend his deadline to file a resistance to Parkers' Motion for Summary Judgment to December 17, 2018. (Appendix, pp. 206-208). Following hearing thereon, the District Court granted Toney's Motion, and extended his deadline to file a resistance to "the close of business" on December 17, 2018. (Appendix, p. 215).

On December 18, 2018, Toney filed "Responses to Statements of Undisputed Facts" and Toney's own "Statement of Fact," an unsigned Memorandum of Law, and Affidavits of Julian and Anita Toney. (Appendix, pp. 218-308).

On December 20, 2018, Parkers filed a Motion to Strike the documents in support of Toney's unfiled resistance, stating that no resistance was actually filed. (Appendix, p. 370). In addition, Parkers alleged that the district court was without discretion to consider Toney's documents in support of his unfiled resistance because Toney had not filed any Motion seeking to enlarge the time for filing his resistance under Iowa R. Civ. P. 1.443(1). (Appendix, p. 372).

Toney filed a Resistance to the Motion to Strike on December 21, 2018, arguing he timely filed the documents in support of the resistance to Motion for Summary Judgment at 4:14 P.M. on December 17, 2018, but that they were rejected due to failure to redact a social security number. (Appendix, pp. 383-384). A declaration in support of the Resistance to Motion to Strike, signed by Andrew Kramer, a paralegal for Toney's attorney, was attached as an exhibit. (Appendix, pp. 388-389). A copy of Toney's Resistance to Motion for Summary Judgment was then attached as an exhibit to Andrew Kramer's declaration.

Not knowing what the outcome of the Motion to Strike would be, Parkers' filed a Reply to Toney's documents in support of his unfiled Resistance to Motion for Summary Judgment, on December 22, 2018. (Appendix, pp. 392-438).

On January 4, 2019, hearing was held on Parkers' Motion to Strike and their Motion for Summary Judgment. On February 9, 2019, the Honorable Dustria A. Relph entered the court's granting Parkers' Motion to Strike, and partially granting Parkers' Motion for Summary Judgment. The district court found that Toney only filed his resistance as an exhibit to an exhibit, four days late. (Appendix, p. 446). The district court further found that Toney requested an extension and was granted the extension he specifically requested but failed to file his resistance timely. (Appendix, pp. 445-446). The district court further found that Toney did not file a Statement of Disputed Facts, as required by Iowa R. Civ. P. 1.981(3), but only filed "responses" and his own "statement of facts." (Appendix, p. 446). Finally, the district court noted the Memorandum of Law was unsigned. (Appendix, p. 446). Taking these deficiencies as a whole, the District Court found no reasonable excuse for the "multiple failures to abide by the Iowa Rules of Civil Procedure, and therefore granted Parkers' Motion to Strike the documents in support of Toney's unfiled resistance to Motion for Summary Judgment. (Appendix, p. 446).

In partially granting Parkers' Motion for Summary Judgment, the district court granted summary judgment in favor of Parkers, and against Toney on all of Toney's claims. (Appendix, p. 452). The district court

further granted summary judgment in favor of Parkers' on some of their claims. Specifically, the district court found Toney was liable for trespass and ejectment, and quieted title in the "Y farm" in Parkers' Trust. (Appendix, p. 452). Trial on the remaining issues was then continued to May 22, 2019. (Appendix, p. 546).

On February 24, 2019, Toney filed a Motion to Reconsider, Enlarge and Amend the court's ruling on Parkers' Motion to Strike, as well as a Motion to Reconsider, Enlarge and Amend the court's ruling partially granting Parkers' Motion for Summary Judgment. (Appendix, pp. 455-492). Parkers filed a resistance to each Motion to Reconsider on March 3, 2019. The district court denied each of Toney's Motions to Reconsider, Enlarge and Amend by Order dated March 6, 2019. (Appendix, p. 543).

On February 25, 2019, Parkers filed a Motion to Enlarge and Amend the district court's ruling on their Motion for Summary Judgment, seeking clarification of what facts were established for trial, and what evidence would be deemed relevant at trial, pursuant to Iowa R. Civ. P. 1.981(4). (Appendix, pp. 494-496). On March 6, 2019, the district court granted Parkers' Motion to Enlarge and Amend. (Appendix, p. 543).

On May 21, 2019, at 4:39 P.M., the 'eve' of trial, Toney filed a "Motion to Vacate Orders." The orders he sought to vacate were the district

court's orders granting Parkers' Motion to Strike, partially granting Parkers' Motion for Summary Judgment, and the Order denying Toney's Motions to Reconsider, Enlarge and Amend. (Appendix, p. 600). Toney argued that the undersigned had broad hire/fire, compensation, and 'work conditions' authority over the Honorable Dustria A. Relph's husband, who was and remains the CEO of Wayne County Hospital. (Appendix, pp. 596, 653).

The Honorable Dustria A. Relph, in her ruling on the Motion to Vacate, denied that any bias or basis for disqualification exists, and then voluntarily recused herself from further hearings in the case. (Appendix pp. 609-610, Recusal Tr. Pg. 4, Ln. 15 – Pg. 5, Ln. 19; 614).

Parkers filed their Resistance to Toney's Motion to Vacate Orders on May 31, 2019. (Appendix, pp. 617-629). Hearing was held on the Motion to Vacate Orders on July 12, 2019. On August 6, 2019, the Honorable John D. Lloyd entered the court's ruling, denying Toney's Motion to Vacate. In so ruling, the district court found Daren Relph is not an employee of Wayne County Hospital but is instead an employee of Mercy. (Appendix, pp. 739-742). The court further found that all votes regarding Daren Relph's compensation were unanimous, and that the undersigned was just one of those seven votes. (Appendix, p. 743).

On October 22, 2019, trial was held before the Honorable John D. Lloyd on the remaining issues following the ruling partially granting Parkers' Motion for Summary Judgment. On November 18, 2019, the district court entered its Findings of Fact, Conclusions of Law and Judgment Entry. The court found in favor of Parkers on their Slander of Title claim and entered judgment in the amount of $62,100.00 thereon. (Appendix, p. 877). The district court further awarded judgment in the amount of $500.00 on Parkers' trespass claim. (Appendix, p. 877). Finally, the district court awarded $15,000.00 to Parkers' for punitive damages. (Appendix, p. 877).

On December 18, 2019, Toney timely filed his Notice of Appeal with the Iowa District Court in and for Decatur County.

STATEMENT OF FACTS

The Arthur E. Parker and Hazel Frances Parker Trust Dated 5/26/93 (hereinafter "Parkers' Trust") is the record title holder of real estate legally described as:

> All of the West One-half of the Northwest Quarter (W1/2 NW1/4) lying East of the 150th Avenue and North of 250th Street in Section Twenty-four (24), Township Sixty-eight (68) North, Range Twenty-seven (27) West of the 5th P.M., Decatur County, Iowa.

(Appendix, pp. 134-135, 138-139). This property is commonly referred to as the "Y" property. (Appendix, p. 447). Ruth Parker, Arthur Parker's

mother, owned the land described above until her death in 1990. (Appendix, pp. 12, 135). After Mrs. Parker's death, the land was conveyed to Arthur E. Parker and Hazel Frances Parker, who then transferred it into their trust as noted above. (Appendix, p. 135).

Toney rented farm ground from Parkers for a period of time. (Appendix, p. 180). Over the years, Toney sent several letters offering to purchase the property, and requesting that Parkers sell the property. (Appendix, p. 135). One letter is undated, one is dated March 25, 2003, one is dated October 15, 2015, one is dated October 28, 2015, and one is dated November 2, 2015. (Appendix, pp. 146-150). There is absolutely no mention of an option to purchase in any of these letters. (Appendix, pp. 146-150). In the letter dated November 2, 2015, Toney, and his spouse Anita, state "What do you want me to say about buying the farm? I have already said everything on the business end." (Appendix, p. 150). And yet, despite having "said everything," there is no mention of a "life time offer."

Subsequently thereafter, Parkers sought to evict Toney from the property at issue by filing a Forcible Entry and Detainer action in Decatur County Case No. SCSC007487. Toney was served with notice in that case on Friday, November 25, 2016. (Appendix, p. 151). On the next business

day, being Monday, November 28, 2016, Toney recorded the purported "Life Time Lease." (Appendix, pp. 152-154). The alleged lease provides:

> Life time Lease
> Rental Agreement – between Parker family and Toney family. for the Y land 27 acres ¾ mile north of Ruth Parker's house, on east side of road. 4 acre and 3 acres of grass and hay field. $200.00 year.
> Also a 50/50 timber agreement after 20 year log cut 50/50 share. 50% Parker 50% Toney – toney brush cut & trim – 20 acres of timber.
>
> Also a right to purchase the 27 – Y – [illegible] after 20 year [sic] form [sic] the Date
> June 22, 1974. at $575 acre. – life time offer.

(Appendix, p. 153). The document purports to be signed by Julian Toney as "Renters 50/50 partners" and Arthur E. Parker as "Son and Overseer of Ruth Parker." (Appendix, p. 153). Arthur E. Parker denied that he signed the document. (Appendix, pp. 35-36, 136-137).

The hearing on Parker's Petition for Forcible Entry and Detainer was held on December 9, 2016. (Appendix, p. 173). Parker's Petition for Forcible Entry and Detainer was dismissed on January 4, 2017, because the magistrate found the real estate was subject to a farm tenancy and the notice requirements of Iowa Code section 562.7 had not been met. (Appendix, p. 173).

Following the Order in that case, Parkers had Toney personally served with a notice of termination of farm tenancy on July 6, 2017. (Appendix,

pp. 198-199). More than six (6) months later, Toney attempted to exercise his alleged option to purchase under the purported "Life Time Lease." (Appendix, pp. 14, 415-416). He then filed the petition herein on February 28, 2018, which was the *last* day that his oral farm tenancy existed. (Appendix, pp. 9, 199).

Arthur Parker's signature in the present day, including in 2015, is far more "shakey" than it was in 1974, when the purported "Life Time Lease" was allegedly signed. (Appendix, pp. 136; 163, FED Tr. Pg. 30, Ln. 21; 183-197).

Ruth Parker was the owner of the land at issue on June 22, 1974, the date of the purported "Life Time Lease." (Appendix, p. 135). Arthur Parker had no authority, either actual or apparent, to bind Ruth Parker to any lease, purchase, or sale, of real property, on June 22, 1974. (Appendix, p. 135). Ruth Parker was competent to handle her own legal affairs, including the sale of land. (Appendix, pp. 135, 140-145).

Julian Toney knew, or through the exercise of reasonable diligence should have known, that Parkers did not intend to abide by the terms of the purported "Life Time Lease," including those terms related to a "life time offer" and "right to purchase." In his deposition on November 7, 2018, Julian Toney stated that shortly after Ruth Parker's death in 1990, he and

Arthur Parker were in the same room or vicinity, and Arthur Parker found Arthur's copy of the purported "Life Time Lease," and told Toney that he intended to burn his (Arthur's) copy of the purported "Life Time Lease." (Appendix, pp. 886-887, J. Toney Depo Tr., Pg. 48, Ln. 22 – Pg. 49, Ln. 9).

ARGUMENT

I. THE IOWA DISTRICT COURT PROPERLY DENIED TONEY'S MOTION TO VACATE THE RULING PARTIALLY GRANTING PARKERS' MOTION FOR SUMMARY JUDGMENT, AND RULING GRANTING PARKERS' MOTION TO STRIKE.

A. Standard of Review and Preservation of Error.

Parkers agree with Toney's statements on error preservation and standard of review.

"In reviewing a proceeding to vacate a judgment [under Iowa R. Civ. P. 1.1012], we recognize the proceeding is an action at law." *In re Marriage of Butterfield*, 500 N.W. 2d 97 (Iowa Ct. App. 1993). "The appropriate standard is that the district court's findings of fact have the effect of a jury verdict, and those findings are binding upon us if there is substantial evidence to support them." *In re Butterfield* at 97.

B. Daren Relph is not an Employee of Wayne County Hospital, the Undersigned does not have Hire/Fire Authority Over Daren Relph and is just One of Seven Votes.

The day before trial was set to commence, on May 21, 2019, at 4:39 P.M., Toney filed his Motion to Vacate Orders dated February 9, 2019, and March 6, 2019. Toney's Motion to Vacate argued that the Honorable Dustria A. Relph was biased, or reasonably could have been viewed as biased. (Appendix, p. 598). For the reasons set forth herein, Toney's Motion to Vacate Orders was properly denied.

The undersigned is one of seven members of the Wayne County Hospital Board of Trustees. (Appendix, p. 604); Iowa Code §347.9 (2019). The Board is charged with employing or contracting for a hospital administrator, and fixing the compensation of said administrator. Iowa Code §347.9(5). "The administrator shall have authority to oversee the day-to-day operations of the hospital and its employees." *Id*.

The Honorable Dustria A. Relph is married to Daren Relph. (Appendix, p. 601). Daren Relph is the CEO of Wayne County Hospital in Corydon, Iowa. (Appendix, pp. 601-602). The undersigned attorney has served on the Wayne County Hospital Board of Trustees since January, 2018. (Appendix, p. 619). Daren Relph's status as CEO of Wayne County Hospital, and the undersigned's status as a Board Trustee, has always been

public information. Wayne County Hospital is subject to open meeting and open record laws. *See generally* Iowa Code Chapter 347. The 2018 Board of Trustee election results were posted to the Iowa Secretary of State's website. (Appendix, p. 619).

Daren Relph is not an employee of Wayne County Hospital. (Appendix, p. 632). Daren Relph is an employee of MercyOne Des Moines Medical Center, a subsidiary of CommonSpirit Health (formerly Catholic Health Initiatives). (Appendix, p. 632). Mercy Health Network has a Master Services Agreement with Wayne County Hospital to provide management services to Wayne County Hospital. (Appendix, pp. 632, 634-651). Daren Relph's position as CEO of Wayne County Hospital is the result of that Master Services Agreement for management. (Appendix, pp. 632, 634-651)

Under the Master Services Agreement, Mercy Health Network makes recommendations to the Board of Trustees for CEO compensation. (Appendix, pp. 619, 636). The Board of Trustees then either accepts, or rejects, that recommendation. (Appendix, pp. 619, 636). If Wayne County Hospital were to discontinue services with Daren Relph as CEO, Daren Relph would still be employed by MercyOne Des Moines Medical Center. (Appendix, p. 632). Furthermore, Daren Relph's lease to Wayne County

Hospital is not terminable at will. (Appendix, p. 645). Deficiencies in Daren Relph's performance must be raised within 60 days by written notice to Mercy. (Appendix, p. 645). Deficiencies are to be resolved by mutual agreement. (Appendix, p. 645). Wayne County Hospital can only ask that Daren Relph be reassigned, because he is employed by Mercy. (Appendix, pp. 632, 645-646). Wayne County Hospital is responsible for the costs of any severance owed to Daren Relph. (Appendix, pp. 645-646).

Iowa Code §602.1606(1)(c) states

> 1. A judicial officer is disqualified from acting in a proceeding, except upon the consent of all of the parties, if any of the following circumstances exists:
> c. The judicial officer knows that the officer, individually or as a fiduciary, or the officer's spouse or a person related to either of them by consanguinity or affinity within the third degree or the spouse of such a person has a financial interest in the subject matter in controversy or in a party to the proceeding, or has any other interest that could be substantially affected by the outcome of the proceeding.

Toney alleged the outcome of this case could substantially affect Mr. Relph's interest as CEO for Wayne County Hospital. In short, if Parkers were to lose the case, then Daren Relph's compensation or employment would be substantially affected.

Interest, as used in Iowa Code §602.1606(1)(c) is defined as "some direct, pecuniary gain or property interest, and has no reference to" remote

interests. *Sioux City v. Western Asphalt Paving Corp.*, 271 N.W. 624, 638, 223 Iowa 279, _____ (1937). In *Western Asphalt*, the Iowa Supreme Court held that a judge was not disqualified in an action by a city against a paving contractor simply because the judge was a property owner and taxpayer of the suing city. *Id*.

Just like the *Western Asphalt* case, Daren Relph does not have any *direct* pecuniary gain or property interest that would be affected by the outcome of this proceeding. By Toney's logic, no citizen of Wayne County, Iowa, could appear, prosecute, or defend a case before the Honorable Dustria A. Relph, because that citizen could run for a position on the Hospital Board of Trustees. Therefore, neither the Honorable Dustria A. Relph, nor Daren Relph, have any interest in the outcome of this proceeding, within the meaning of Iowa Code §602.1606(1)(c).

Toney specifically addressed two instances where an increase in Daren Relph's compensation was voted on. (Appendix, pp. 660-661). In both cases, the increase was passed unanimously. (Appendix, pp. 660-661). The undersigned attorney was just one of the seven votes to increase Daren Relph's compensation. (Appendix, pp. 632-633). To that end, Daren Relph's "interest" as CEO could not be substantially affected by the outcome of this case.

Furthermore, the burden for showing grounds for recusal under Iowa Code §602.1606(1)(c) is substantial. *State v. Haskins*, 573 N.W.2d 39, 44 (Iowa Ct. App. 1997). "Actual prejudice must be shown before recusal is necessary." *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994) (*see also Oxman v. U.S.*, 148 F.2d 750, 753 (8th Cir. Ct. App. 1945) holding that a motion to vacate and correct sentence was properly denied because there was no charge of prejudice by the judge, and no dispute regarding any material fact). "The appearance of impropriety is not sufficient to merit recusal." *In re C.W.* at 117. "There is as much obligation for a judge not to recuse when there is no occasion for him to do so as there is for him to do so when there is." *In re Krull*, 860 N.W.2d 38, 47 (Iowa 2015).

Toney has not cited any actual prejudice, but instead hides behind vague clouds of conspiracy that he created. In fact, he only takes issue with not being the given the opportunity to ask Judge Relph to recuse herself prior to the hearing on Motion for Summary Judgment. Toney uses this to claim an irregularity. To that end, because recusal was not necessary, there was no irregularity in obtaining the Ruling partially granting Parkers' Motion for Summary Judgment. As a matter of law, the district court was correct when it denied Toney's Motion to Vacate the court's rulings on Parkers' Motion to Strike and Motion for Summary Judgment.

Toney relies on Iowa Code of Judicial Conduct 51:2.11(A) for his argument that because no disclosure was made, there was an irregularity in obtaining partial summary judgment. Iowa Code of Judicial Conduct 51:2.11 states in relevant part

> (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:
> (2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:
> (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding;

"De minimis" is defined under terminology of Chapter 51 of the Iowa Code of Judicial Conduct as, "in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality." One of seven votes is insignificant, particularly when the votes are unanimous. (Appendix, pp. 632-633, 660-661).

Toney also relies heavily on *Forsmark v. State*, 349 N.W.2d 763 (Iowa 1984). In that case, Forsmarks sued the University of Iowa Hospital for medical malpractice by the operating surgeons. *Forsmark* at 765. The trial resulted in a judgment for the State. *Id*. Forsmarks appealed that judgment. *Id*. Six weeks after the judgment, and nearly a month after their

appeal, Formarks filed a petition to vacate the judgment under Iowa R. Civ. P. 1.1012, alleging that at the time of trial, "a wrongful death malpractice action was pending against their chief medical witness in behalf of Judge Richardson's deceased brother Gail." *Id*. Forsmarks alleged that Judge Richardson's "failure to disqualify himself from presiding in their trial constituted an 'irregularity' under rule [1.1012(2)]." *Forsmark* at 765.

Thereafter, Judge Richardson recused himself, noting that it did not occur to him that Forsmarks would "believe that this Court had an interest in that litigation such as would disqualify this Court from hearing the subject matter." *Forsmark* at 766. Judge Richardson further stated "[t]he Court again reiterates that it was not the intention of this Court to proceed with the trial of a matter which this Court should have been disqualified to hear." *Id*. Judge Richardson then recused himself to allow a different judge to decide the Petition to Vacate. *Id*. Judge Hill then denied the Motion to Vacate, finding Forsmarks "failed to show they could not have discovered the basis for their petition in time to proceed under rule [1.1004]," and further found Forsmarks "did not prove Judge Richardson should have disqualified himself." *Id*. Forsmarks appealed. *Forsmark* at 766.

On appeal, the Iowa Supreme Court noted that Forsmarks "testified they did not learn of the Richardson malpractice case until after taking the appeal in their own case." *Id*. The Court further stated

> Judge Hill did not suggest any basis for charging them with a duty to discover the facts earlier. Nothing in the record indicates plaintiffs should have been alerted to the issue sooner, and they cannot be charged under this record with an affirmative duty to investigate to ascertain the facts. We believe plaintiffs showed, as a matter of law, that the facts were not discovered and could not with reasonable diligence have been discovered by them in time to move for new trial under rule [1.1004]."

Id.

The Court then addressed the second ground raised for vacating the judgment, noting an irregularity in obtaining a judgment constitutes grounds for vacating it. *Id*. "Failing to follow required procedures to determine a disqualification issue is thus an irregularity within the meaning of rule [1.1012(2)]." *Forsmark* at 767. Forsmarks argued "that a person in their position could reasonably believe Judge Richardson had a hostile attitude toward [their expert witness] which might affect his impartiality." *Id*. "The burden is on a party seeking recusal to establish the basis for it, and the determination is committed to the judge's discretion." *Id*. "Abuse of discretion must appear before this court will interfere." *Id*.

The Court further noted that the issue was not whether or not Judge Richardson was obliged to recuse himself, but was rather whether or not he "should have disclosed the facts to the parties to give them an opportunity to request that he step aside." *Forsmark* at 767. Judge Richardson knew at the commencement of trial that Forsmarks' expert witness would be called to testify. *Id*. "This knowledge was sufficient to charge the judge with a duty to disclose his relationship with the Richardson estate case." *Forsmark* at 768. "The judge's failure to disclose the information deprived plaintiffs of the opportunity to make a timely request that he disqualify himself on the ground . . . that 'impartiality might reasonably be questioned.'" *Id*.

The Court further noted "[n]o meaningful way existed after trial to reconstruct how the issue would have been resolved before trial." *Id*. "As a result plaintiffs were denied an opportunity to raise the issue or be heard on it." *Id*. The Iowa Supreme Court concluded "that this omission constituted an irregularity in the obtaining of the judgment within the meaning of rule [1.1012(b)]." *Id*.

The case at hand is easily distinguished from the *Forsmark* case. In this case, the undersigned attorney is one of seven votes on issues such as Daren Relph's compensation and his assignment under the Master Services Agreement with Mercy. Toney had a meaningful way to "reconstruct how

the issue would have been resolved" before the hearing on Parkers' Motion for Summary Judgment and Motion to Strike. Toney filed his Motion to Vacate, Judge Relph denied any basis for disqualification, and then voluntarily recused herself from the case so that another judge could decide the Motion to Vacate. Judge Lloyd then found there was no basis for disqualification before trial. (Appendix, p. 742).

Toney takes exception to the ruling denying his Motion to Vacate in that it determined there was no basis for disqualification. Toney argues that Judge Relph's failure to disclose relevant facts constitutes an irregularity because it denied him an opportunity to ask her to recuse herself. This argument defies common sense. Toney filed two Motions to Reconsider, Enlarge, and Amend, as well as his Motion to Vacate. He was granted an opportunity, before trial on the remaining issues, to show Judge Relph should have recused herself. Judge Lloyd found there was no basis for disqualification. If there was no basis for disqualification, then Judge Relph had no duty to disclose her husband's indirect and inconsequential relationship with the undersigned.

By Toney's logic, anytime there is even a remote basis upon which a Judge's impartiality might be questioned, failure to disclose facts relevant to disqualification automatically means that every order and ruling entered by

that Judge must be vacated under Iowa R. Civ. P. 1.1012(2). That should not be the case here. The orders Toney sought to vacate granted Parkers' Motion to Strike and granted partial summary judgment in favor of Parkers. *Forsmark* involved a trial where credibility of an expert witness was at issue. The relevant orders in this case dealt with the application of law to undisputed facts. Toney exercised a meaningful way to raise the issue, before trial, when he filed his Motion to Vacate.

Daren Relph does not even have a "de minimis" interest that could be substantially affected by this case. The undersigned does not have hire/fire and other broad executive authority over Daren Relph. Based upon the above, there was no irregularity in obtaining the partial summary judgment, and order granting Parkers' Motion to Strike.

C. Toney's Motion to Vacate Orders was Untimely, and He did not Comply with the Rules to Vacate the Partial Summary Judgment and Order Striking His Partial Resistance.

Toney stated his Motion to Vacate Orders is filed under Iowa R. Civ. P. 1.1004, which deals with Motions for New Trial. (Appendix, p. 594). Iowa R. Civ. P. 1.1007 (2019) states "[m]otions under rules . . . 1.1004 . . . must be filed within fifteen days after filing of the verdict, report or decision with the clerk . . . unless the court, for good cause shown and not ex parte, grants an additional time not to exceed 30 days." Toney's motion could not

be considered under Iowa R. Civ. P. 1.1004, as it was filed well past the deadline.

This Court could consider the Motion to Vacate Judgment to be filed under Iowa R. Civ. P. 1.1012 and Iowa R. Civ. P. 1.1013, which deal with the procedure and grounds for vacating judgments. Iowa R. Civ. P. 1.1012 states in relevant part

> Upon timely petition and notice under rule 1.1013 the court may correct, vacate or modify a final judgment or order, or grant a new trial on any of the following grounds:
> (2) Irregularity or fraud practiced in obtaining it.
> (3) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not discovered within the time for moving for new trial under rule 1.1004.

There was no irregularity practiced in obtaining the partial summary judgment.

Furthermore, to the extent the "relationship," if any, among the Honorable Dustria A. Relph, her husband Daren Relph, and the undersigned attorney, is considered "newly discovered material evidence," it was all public record since long before Parkers' even filed their Motion for Summary Judgment. If Toney is arguing that the partial summary judgment should be vacated because of newly discovered evidence, then he failed to support that claim by affidavit as required by Iowa R. Civ. P. 1.1005 and 1.1013(1). To that end, Toney failed to carry his burden to prove grounds

for vacating the Ruling partially granting Parkers' Motion for Summary Judgment and granting Parkers' Motion to Strike, whether under Iowa R. Civ. P. 1.1004 or 1.1012.

Iowa R. Civ. P. 1.1013 states, in relevant part

> (1) *Petition.* A petition for relief under rule 1.1012 requires payment of the filing fee set forth in Iowa Code section 602.8105(1)(a), or if made in small claims, the filing fee set forth in section 631.6(1)(a), and must be filed and served in the original action within one year after the entry of the judgment or order involved. It shall state the grounds for relief, and, if it seeks a new trial, show that they were not and could not have been discovered in time to proceed under rule 1.977 or 1.1004. If the pleadings in the original action did not allege a meritorious action or defense the petition shall do so. It shall be supported by affidavit as provided in rule 1.413(3).
> (2) *Notice.* The petitioner must serve the adverse party with an original notice and petition in the manner provided in rules 1.301 through 1.315, located in division III of the rules in this chapter.

Toney did not file his "Motion" as a "Petition," did not pay any filing fee, did not support his "Motion" to Vacate Orders by affidavit, and did not serve Parkers in the manner provided in Iowa R. Civ. P. 1.301 through 1.315. (Appendix, pp. 594-605).

Furthermore, Toney made no allegation that his recently discovered information could not have been discovered before the time for a Motion under Iowa R. Civ. P. 1.1004. Toney failed to comply with Iowa R. Civ. P. 1.1013, and his Motion to Vacate Orders was properly denied.

D. Conclusion.

Toney did not prove that the Honorable Dustria A. Relph should have recused herself from these proceedings. Toney did not show *any* duty to disclose facts related to the indirect and tangential relationship the undersigned attorney has with Daren Relph. Toney's Motion to Vacate Orders was not filed timely under Iowa R. Civ. P. 1.1004 and 1.1007. Toney failed to follow the procedure under Iowa R. Civ. P. 1.1013 for petitioning the district court to vacate its Orders dated February 9, 2019, and March 6, 2019. Toney failed to show any irregularity in obtaining the above Rulings and Orders. Therefore, this Court should affirm the district court's Order denying Toney's Motion to Vacate Orders.

II. THE DISTRICT COURT PROPERLY GRANTED PARKERS' MOTION TO STRIKE TONEY'S DOCUMENTS IN SUPPORT OF A RESISTANCE BECAUSE IT WAS UNTIMELY AND FAILED TO COMPLY WITH MULTIPLE RULES OF CIVIL PROCEDURE.

A. Standard of Review and Preservation of Error.

Parkers agree with Toney's statements on error preservation and standard of review.

This Court reviews a "district court's grant of a motion to strike . . . for abuse of discretion." *Thies v. James*, 184 N.W.2d 708, 710 (Iowa 1971);

see also AAA Elec., L.C. v. Agri Processors, Inc., 2003 WL 22900225, *1 (Iowa Ct. App. 2003).

Parkers timely filed their Motion for Summary Judgment on November 9, 2018. On November 15, 2018, Toney, filed a Motion to Continue and Reschedule Hearing on Defendants' Motion for Summary Judgment. Toney's Motion also requested that the deadline to file a resistance to Parkers' Motion for Summary Judgment be extended to December 17, 2018. (Appendix, p. 208). Parkers' filed a Resistance to Toney's Motion on November 16, 2018. The hearing was held on Toney's Motion to Continue on November 21, 2018, and the Court entered an Order thereafter, which stated in relevant part "Plaintiff's deadline to file a resistance to Defendants' Motion for Summary Judgment is extended to the close of business on December 17, 2018." (Appendix, p. 215).

Instead of adhering to the deadline for filing a resistance *that Toney requested and that the District Court granted*, Toney filed an unsigned "Memorandum of Law in Support of Plaintiff's Resistance to Defendants' Motion for Summary Judgment," a Response to "Statement of Undisputed Facts Submitted by Defendants-Counterclaimants and Plaintiff's Statement of Fact," and Affidavits of Julian Toney and Anita Toney, *on December 18, 2018, at 9:05 A.M.* No motion or request was made by Toney to file his

documents in support of resistance late. To date, no "Resistance" has been filed by Toney, only documents supporting an unfiled resistance. On February 9, 2019, the district court properly entered an order sustaining Parkers' Motion to Strike Toney's Resistance to Parkers' Motion for Summary Judgment, and sustaining Parkers' Motion for Summary Judgment. (Appendix, pp. 446, 452-453).

B. The District Court was Without Discretion to Consider Toney's Late Resistance because He Never Filed A Motion Under Iowa R. Civ. P. 1.443.

The Iowa Supreme Court has stated "[w]e have recognized the trial court's discretion to *strike a motion or pleading* because *it was filed too late*." *Theis v. James*, 184 N.W.2d 708, 710 (1971) (emphasis added). Iowa R. Civ. P. 1.981(3), which governs motions for summary judgment, states "[a]ny party resisting the motion shall file a resistance within 15 days, unless otherwise ordered by the court, from the time when a copy of the motion has been served." Iowa R. Civ. P. 1.443(1)(b) states

> (1)When by . . . order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion do the following:
> (2) Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect;

"The time constraint in rule [1.981(3)] must be read with rule [1.443(1)]." *Schroeder v. Fuller*, 354 N.W.2d 780, 782 (Iowa 1984).

In the case at hand, Toney never filed any motion asking the district court to accept his unfiled resistance and related submissions. Therefore, the district court was without discretion to accept or consider Toney's late resistance to Parkers' Motion for Summary Judgment.

C. Toney Never Actually Filed His Resistance to Parkers' Motion For Summary Judgment.

Iowa R. Civ. P. 1.981(3) states that after a motion for summary judgment is filed, any party resisting must file a resistance within 15 days unless otherwise ordered by the court, and that the resistance "shall include a statement of disputed facts, if any, and a memorandum of authorities supporting the resistance." Toney argues that his resistance was filed on December 17, then rejected by the clerk on December 18, possibly refiled on December 18, 2018, and filed again on December 21, 2018. (Appendix, pp. 383-384). Toney specifically relies on the "declaration" of Andrew Kramer for his argument that his resistance was in fact filed on each of those dates. (Appendix, pp. 388-391). However, Andrew Kramer's "declaration" only states that he believes that he filed 1) a resistance; 2) a memorandum of law in support of resistance; 3) a response to Parkers' Statement of Facts and Toney's Statement of Facts; and 4) an appendix in support of Toney's

resistance. (Appendix, p. 388). Andrew Kramer's "declaration" goes on to state that he believes he filed the resistance again on December 18, 2019, but that either he did not actually file it on that date, or there was a problem with Iowa EDMS. (Appendix, p. 389). Andrew Kramer does not assert, as a matter of fact, that he filed Toney's Resistance.

Furthermore, the rejection and acceptance notices only indicate that document types of 1) resistance; 2) other event; and 3) other event, were submitted on December 17, 2018, and December 18, 2018. (Appendix, pp. 386-387). This appears contrary Andrew Kramer's assertion that he filed four documents. Toney further argues that his resistance was filed when he attached it to Andrew Kramer's "declaration," which was itself an exhibit to Toney's Resistance to Parkers' Motion to Strike. Toney argues that by filing his Resistance as an exhibit to an exhibit, it should be deemed filed.

Toney's argument in this regard is inconsistent with Iowa R, Civ. P. 1.443(1). If a resistance is going to be filed late, the late filer must first make a motion with the court, and the court must approve the late resistance or other late filings. Iowa R. Civ. P. 1.443(1). Toney never made any motion under Iowa R. Civ. P. 1.443(1).

D. The Burden was on Toney to Show Why His Late Resistance and Related Filings Should Be Allowed.

Toney argues that Parkers' were not prejudiced by his late filings. However, Toney's argument improperly attempts to place the burden on Parkers. The burden was on Toney to show cause why his untimely submission of documents in support of his unfiled resistance should be considered. Iowa R. Civ. P. 1.443(1).

The Iowa Court of Appeals in *Alexander Technologies Europe, Ltd. v. MacDonald Letter Service, Inc*., 2007 WL 1827472, *3 (Iowa Ct. App. 2007), noted that the district court had concluded that a resistance should be disregarded because MacDonald "did not offer a compelling reason for being unable to file a timely resistance. More importantly, no request for an extension was made until after the deadline expired." *Id*. The court further stated "Iowa Rule of Civil Procedure 1.443(1)(a) allows the court 'in its discretion' and for 'good cause shown' to order the period enlarged if request therefor is made before the expiration of the period originally prescribed…" *Id*. The court noted that no good cause was shown. *Id* (internal quotes omitted). The Iowa Court of Appeals found "MacDonald did not establish that the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable" and therefore,

did not abuse its discretion in refusing to consider the untimely resistance. *Alexander Technologies* at *3 (internal quotes omitted, cite omitted).

Toney had thirty-eight (38) days to file a resistance to Parkers' Motion for Summary Judgment, but still did not do so timely. *Compare* (Appendix, p. 96) and (Appendix, p. 215). When Toney requested the extension to file his resistance to Parkers' Motion for Summary Judgment, he knew when Parkers' depositions were scheduled. (Appendix, p. 204). The documents Toney untimely filed in support of his unfiled resistance are largely based upon the factual allegations of Toney and his spouse, Anita Toney. (Appendix, pp. 289-308). There simply is no excusable neglect for Toney's failure to timely file a resistance *by the deadline Toney requested*.

E. Toney's Memorandum of Law Was Not Signed By Incorporation in His Unfiled Resistance.

The Memorandum of Law filed by Toney was not signed. (Appendix, p. 263). Toney argued his unsigned Memorandum of Law in support of his resistance was signed, because his resistance was signed and because his resistance incorporated the Memorandum of Law. (Appendix, pp. 464-465). Toney's argument in this regard defies logic.

Toney's unsigned Memorandum of Law was not filed until December 18, 2018. Toney's unfiled Resistance to Parkers' Motion for Summary Judgment was not seen by Parkers or the district court until it was attached

as an exhibit to an exhibit to Toney's Resistance to Parkers' Motion to Strike, filed on December 21, 2018. (Appendix, p. 388, 390-391). It defies logic to state that an unsigned Memorandum of Law was signed by incorporation to a resistance that has never been filed, and which was only attached as an exhibit to an exhibit to a resistance *after the Memorandum of Law was filed*.

Furthermore, Iowa R. Civ. P. 1.413 states "[i]f a motion, pleading, *or other paper* is not signed, *it shall be stricken* unless it is signed promptly after the omission is called to the attention of the pleader or movant." (emphasis added). Parkers' addressed the unsigned Memorandum of Law in their Motion to Strike, which was filed on December 20, 2018. (Appendix, p. 374). To date, Toney has not signed the Memorandum of Law.

F. Toney Failed to Comply with the Requirements of Iowa R. Civ. P. 1.981(3).

Iowa R. Civ. P. 1.981(3) states that "[i]f affidavits supporting the resistance [to Motion for Summary Judgment] are filed, they must be filed with the resistance." Toney never filed a resistance to Parkers' Motion for Summary Judgment. That fact alone justifies the District Court's ruling to disregard and strike the untimely documents submitted by Toney. Furthermore, Toney's Memorandum of Law was not signed, and his affidavits in support of his unfiled resistance were untimely.

No statement of disputed facts was ever filed by Toney, as required by Iowa R. Civ. P. 1.981(3). Instead, Toney untimely filed a Response to "Statement of Undisputed Facts Submitted by Defendants-Counterclaimants and Plaintiff's Statement of Fact." Said response offered admissions to statements of fact that were not made by Parkers, and objected to other statements of fact. (Appendix, p. 446). There is no statement of disputed material facts.

The district court was without discretion to consider Toney's pieces of a resistance to Parkers' Motion for Summary Judgment. Toney either failed to comply with the requirements under Iowa R. Civ. P. 1.981(3), or he complied with those requirements. In this case, Toney did not comply with the requirements to resist Parkers' Motion for Summary Judgment.

III. THE DISTRICT COURT PROPERLY PARTIALLY GRANTED PARKERS' MOTION FOR SUMMARY JUDGMENT AND NO ADDITIONAL FACTS COULD ALTER THE OUTCOME.

A. Standard of Review and Preservation of Error.

Parkers agree with Toney's statements on error preservation and standard of review.

This Court reviews orders granting summary judgment for corrections of errors at law. *Moser v. Thorp Sales Corp.*, 312 N.W.2d 881, 886 (Iowa 1981). "Summary judgment is appropriate only when the entire record

before the court shows that there are no genuine issues of material fact and that the district court correctly applied the law." *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 903 (Iowa 1996). "Under this standard of review, the trial court's findings carry the force of a special verdict and are binding upon us if supported by substantial evidence." *Hardin County Drainage Dist. 55, Div. 3, Lateral 10 v. Union Pacific R. Co.*, 826 N.W.2d 507, 510 (Iowa 2013). "It is established that a successful party in the district court may, without appealing, save the judgment . . . based on grounds urged in the district court but not included in that court's ruling." *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 609 (Iowa 2012).

The purpose of summary judgment is to avoid a trial where no genuine issue of material fact exists. *See Amco Insurance Co. v. Stammer,* 411 N.W.2d 709, 711 (Iowa Ct. App. 1987) and *Diamond Products Co. v. Skipton Painting and Insulation, Inc.,* 392 N.W.2d 137, 138 (Iowa 1986).

Once the defendant has properly pled and supported its motion for summary judgment with a statement of undisputed facts the burden shifts. "Under rule 237, the burden then shift(s) to plaintiff to produce or present specific, material facts to show that there is a genuine issue of material fact.

James v. Swiss Valley Ag Services, 449 N.W.2d 886, 888 (Iowa Ct. App. 1989).

Toney argues that his Petition should have been considered for the purposes of generating an issue of material fact. Iowa R. Civ. P. 1.981(8) allows a party moving for summary judgment to specifically reference "pleadings." Iowa R. Civ. P. 1.981(5) prohibits a party resisting a motion for summary judgment from relying on his pleadings. "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." *Id*.

Toney makes no argument that the District Court's legal analysis in its Ruling partially granting Parkers' Motion for Summary Judgment was erroneous. Instead, Toney simply continues his argument that had his documents in support of his unfiled resistance not been stricken, the district court would have found genuine issues of material fact existed. Parkers submit that no material facts, including the few facts raised in Toney's brief on appeal, would alter the outcome on Parkers' Motion for Summary Judgment.

B. Toney's Claims are Barred by Iowa Code §614.1(5).

Toney asserted two relevant claims. First, he requested a declaratory judgment on the validity of the purported "Life Time Lease." (Appendix, p. 15). Second, he claimed breach of contract, and requested specific performance of the "life time offer" and "right to purchase" within the purported "Life Time Lease." (Appendix, p. 16). Both of these claims are barred by Iowa Code §614.1(5).

Claims "founded on written contracts . . . and those brought for the recovery of real property" must be brought within ten (10) years after the cause of action accrues. *Id*. An action to compel conveyance of land purchased is an action for the recovery of real property. *See generally Stanley v. Morse*, 26 Iowa 454, 458 (1868). The test for whether a proceeding is an 'action to recover real property' within the statute of limitation is whether the petition seeks right to, title in, or possession of realty. *Gibson v. Gibson*, 217 N.W. 852, 855 (Iowa 1928). There is no dispute that Toney's claims are based upon a purported written contract, and is seeking the recovery of real property.

The purported "Life Time Lease" stated Toney had a life time offer and right to purchase 20 years after it was allegedly signed. (Appendix, p. 153). The "Life Time Lease" was allegedly signed June 22, 1974.

(Appendix, p. 153). Even if one assumes the purported "Life Time Lease" is valid, then under its terms, Toney could exercise his "life time offer" and "right to purchase" in 1994, twenty years after it was purportedly signed.

The district court denied summary judgment on Parkers argument that Toney's claims were barred by Iowa Code §614.1(5). (Appendix, p. 449). The district court was unable to determine the intent of the phrase "life time offer." (Appendix, p. 449). The district court stated "[i]s it a right to purchase until 1994, or did the right to purchase not accrue until 1994 and last a life time thereafter? If it was the second, whose lifetime is the offer measured by?" (Appendix, p. 449). Parkers submit that the term "life time offer" is meaningless in this context. The "right to purchase" accrued in either 1974, or 1994, and either way, the 10-year statute of limitation expired before Toney filed his Petition herein.

Toney's claims for declaratory judgment and breach of contract-specific performance, are barred by Iowa Code §614.1(5). Toney's claim for a temporary and permanent injunction must necessarily fail because it is based upon his claims for declaratory judgment and specific performance.

C. Toney's Claims are Barred by Iowa Constitution Article I, Section 24.

Iowa Constitution Article I, Section 24 states "[n]o lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid

for a longer period than twenty years." A "life time" farm lease is invalid after 20 years under Article I, Section 24 of the Constitution of the State of Iowa. *See Casey v. Lupkes*, 286 N.W.2d 204, 207 (Iowa 1979)(holding a forty-five year farm lease was valid for twenty years after its effective date, and invalid as to the excess).

It is undisputed that Toney once held a farm tenancy. (Appendix, p. 180). A farm tenancy is defined as "a leasehold interest in land held by a person who produces crops or provides for the care and feeding of livestock on the land, including by grazing or supplying feed to the livestock." Iowa Code §562.1A(2). To that end, it is undisputed that the land in question is agricultural land. Even if one assumes that the purported "Life Time Lease" is valid, the "life time offer" and "right to purchase" the agricultural land at issue was granted to Toney in 1974. (Appendix, p. 153). It has been more than twenty (20) years since the alleged 'option to purchase' was granted, and more than 20 years since the alleged 'option to purchase' could be exercised. Toney's claims are therefore barred by Iowa Constitution Article I, Section 24.

Toney argued that because the purported lease automatically renewed year to year pursuant to Iowa Code §562.6, that his "life time offer" and "right to purchase" also renewed every year, and is therefore not subject to

the bar of Iowa Constitution Article I, Section 24. (Appendix, p. 15). This argument is without any legal authority or merit. Iowa Code §562.6 states, in relevant part

> a farm tenancy shall continue beyond the agreed term for the following crop year and otherwise upon the same terms and conditions as the original lease unless written notice for termination is served upon either party or a successor of the party in the manner provided in section 562.7, whereupon the farm tenancy shall terminate March 1 following.

A farm tenancy is defined to only include a "leasehold interest." *See* Iowa Code §562.1A. Nowhere does it say that a "life time offer," "right to purchase," or 'option to purchase,' is automatically renewed. Instead, only the farm leasehold interest automatically renews.

In *Gansen v. Gansen*, 874 N.W.2d 617, 625 (2016), the Iowa Supreme Court stated "*[w]e noted that the [automatic renewal] law cannot operate to extend the lease beyond a term of twenty years within the prohibition of article I, section 24.*" (emphasis added). *Gansen* goes expressly against Toney's argument. Iowa Code §562.6 cannot operate to extend the provisions of the purported "Life Time Lease" beyond a term of twenty years within the prohibition of Article I, Section 24 of the Iowa Constitution. The "life time offer" and "right to purchase" did not automatically renew, just as the "Life Time Lease" did not automatically renew.

The purported "Life Time Lease" and *all* of its terms are barred by Article I, Section 24 of the Iowa Constitution.

D. The Purported "Life Time Lease" is Unenforceable.

i. There was No Acceptance of Any Offer.

"All contracts must contain mutual assent; mode of assent is termed offer and acceptance." *Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 285 (Iowa 1995). An offer is a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Id*. "The test for an offer is whether it induces a reasonable belief in the recipient that he can, by accepting, bind the sender." *Anderson* at 286.

In the case at hand, the purported "Life Time Lease" states, in relevant part, "Also a right to purchase the 27-Y-[illegible] after 20 year [sic] form [sic] the date June 22, 1974. at $575 acre.-life time offer." (Appendix, p. 153). From the terms of the purported "Life Time Lease" itself, there is no "option to purchase," as Toney argues. Instead, there is just an offer, presumably capable of being accepted twenty years from June 22, 1974. Parkers never accepted any offer from Toney regarding the sale of the real property at issue. (Appendix, p. 135).

ii. The Alleged Contract Does Not Contain Essential Terms Necessary for a Contract for the Sale and Purchase of Real Property.

In the case at hand, Toney seeks specific performance for the purchase of the subject real property owned by Parkers. (Appendix, pp. 16-17). In order to be binding, an agreement must be definite and certain as to its terms to enable the court to give it an exact meaning. *TriStates Investment Company v. Henryson*, 179 N.W.2d 362, 363 (Iowa 1970).

Although vagueness, indefiniteness and uncertainty are matters of degree, their existence as to any of the essential terms of an agreement is adequate reason for refusal to direct specific performance. *Davis v. Davis*, 156 N.W.2d 870, 876 (Iowa 1968). "Vagueness of expression, indefiniteness, or uncertainty as to any of the essential terms of the agreement may prevent the creation of an enforceable contract." *Gildea v. Kepenis*, 402 N.W. 2d 457, 459 (Iowa Ct. App. 1987). "It is a familiar rule that contracts to be specifically enforced must be so certain and definite in their terms as to leave nothing to conjecture or to be supplied by the court." *Down v. Coffie*, 15 N.W.2d 216, 219, 235 Iowa 152, 157-158 (Iowa 1944).

Toney alleges there was an oral agreement reached that was subsequently reduced to writing. (Appendix, pp. 11; 882-883, J. Toney Depo. Tr. Pg. 36, Ln. 12 – Pg. 37, Ln. 18). The terms of the agreement

between Toney and Parkers were not "so certain and definite...as to leave nothing to conjecture or to be supplied by the court." Terms that were never discussed or agreed to between Parkers and Toney include: 1) whether an abstract would be furnished for Toney; 2) what kind of deed Toney would receive if he decided to buy part of the farm; 3) whether the taxes on the subject property would be prorated; 4) who would pay the closing costs if Toney decided to buy the subject real property; 5) when the purchase price would be paid; 6) whether the deed would recite all improvements to the property as being "as is;" 7) whether there would be easements on the part of the subject real property Toney wanted to purchase; and 8) the exact amount of land to be bought. (Appendix, p. 153). In his deposition on November 7, 2018, Julian Toney stated that there is a discrepancy between he and Arthur Parker as to how many acres constitutes the real property that is the subject of this case. (Appendix, pp. 886-887, J. Toney Depo. Tr., Pg. 48, Ln. 22 – Pg. 49, Ln. 9). The terms above were present in agreements the Iowa Supreme Court upheld in specific performance actions. *See Recker v. Gustafson*, 279 N.W.2d 744, 746 (Iowa 1979); *see also Severson v. Elberon Elevator, Inc.*, 250 N.W.2d 417, 420 (Iowa 1977).

Additionally, there was no agreement concerning the terms governing the manner and time of payment of the price agreed upon. (Appendix, p.

153). These terms have ordinarily been regarded as such an important part of an agreement that where they were not included, "courts have usually held that the minds of the parties had never in fact met upon the essentials and [that] a conveyance of the property would not be specifically enforced." *TriStates* at 364.

The Iowa Court of Appeals in *Kunde v. Bowman*, 2016 WL5408356, *2 (2016) declined to grant specific performance when a contract did not contain the deadline for exercising an option to purchase. The Iowa Court of Appeals opined "[w]hile the jury reasonably could have credited Kunde's testimony that he would not have made improvements to the Bowman farm but for an agreement to purchase the farm, the terms of the agreement were far *too speculative to be enforceable*." *Id* (citing *Tri-States*, 179 N.W.2d at 363 "In our view, the terms of the option are so indefinite and uncertain that plaintiff is not entitled to specific performance.") (emphasis added). In this case, the district court noted in its ruling, the purported "Life Time Lease" was indefinite as to when the alleged 'right to purchase' accrued. (Appendix, p. 450).

Toney argues, without any citation to the record, that the 'intent' of the parties can supply the missing essential terms. However, Toney stated in his deposition that all terms that were discussed were reduced to the writing

known as the "Life Time Lease." (Appendix, pp. 882-883, J. Toney Depo. Tr. Pg. 36, Ln. 12 – Pg. 37, Ln. 18). It is undisputed that no other terms were discussed.

Parkers submit that it was impossible for the district court to ascertain the terms of an alleged agreement between Toney and Arthur Parker without conjecture as to these essential terms.

iii. There was No Meeting of the Minds to Form a Contract.

One of the most basic principles in contract law is that there must be a meeting of the minds as to the material terms of an agreement before an enforceable contract exists. Iowa Model Civil Jury Instruction 2400.3 states "The existence of a contract requires a meeting of the minds on the material terms. This means the parties must agree upon the same things in the same sense. You are to determine if a contract existed from the words and acts of the parties, together with all reasonable inferences you may draw from the surrounding circumstances." There can be no meeting of the minds on material terms when material terms were never discussed.

iv. Arthur Parker had No Authority to Bind the Owner of the Land at Issue.

Toney argues that the contract is binding because Arthur Parker held himself out as overseer of Ruth Parker, and could therefore bind Ruth Parker to the terms of the purported "Life Time Lease." (Appendix, p. 11). Not

only does the term “overseer” have no legal definition or effect, but the argument is completely without merit.

> Actual authority to act is created when a principal intentionally confers authority on the agent either by writing or through other conduct which, reasonably interpreted, allows the agent to believe that he has the power to act. Actual authority includes both express and implied authority. Express authority is derived from specific instructions by the principal in setting out duties, while implied authority is actual authority circumstantially proved.

Hendricks v. Great Plains Supply Co., 609 N.W.2d 486, 493 (Iowa 2000).

> Apparent authority is authority which, although not actually granted, has been knowingly permitted by the principal or which the principal holds the agent out as possessing. *Magnusson Agency v. Public Entity Nat'l Co.-Midwest,* 560 N.W.2d 20, 25–26 (Iowa 1997). Apparent authority must be determined by what the principal does, rather than by any acts of the agent. *Id.* The burden of showing that an agent acted within the scope of the agency's actual or apparent authority is on the party claiming that such authority existed. *Waukon Auto Supply v. Farmers & Merchants Sav. Bank,* 440 N.W.2d 844, 847 (Iowa 1989).

Id. In the case at hand, Ruth Parker did not grant “actual” authority to Arthur Parker to bind her to contracts. (Appendix, p. 135). Furthermore, Toney has only alleged the conduct of Arthur Parker, and nothing by Ruth Parker (the owner of the land at issue in 1974) to be able to circumstantially prove “implied” authority.

In addition, since Toney only focuses on what Arthur Parker held himself out to be, he cannot prove Arthur Parker had “apparent” authority to

bind his mother, Ruth Parker, to any agreement for the sale or purchase of real estate. "Apparent authority must be determined by what the principal does, *rather than by any acts of the agent*." *Hendricks* at 493 (emphasis added).

Toney argues that because Arthur Parker allegedly signed some rent receipts in the 1980s, and later as a beneficiary of Ruth Parker's Estate, that Arthur Parker had apparent authority to sign on behalf of Ruth Parker in 1974. (Appendix, pp. 291, 294, 300). Toney also relies on his own self-serving legal conclusion wherein he states "I knew from my own prior communications with both Ruth Parker and Ted Parker that he shared authority with her concerning the management of her affairs." (Appendix, p. 291). Toney provides a single alleged fact to support this conclusion, stating Arthur Parker, in his deposition, stated that when it came to leasing the land, Ruth left that up to Arthur. A lease is not a land sale, "life time offer," or "right to purchase." Furthermore, there was no timeframe associated with the question or response. No one could possibly conclude Arthur made leasing decisions for his mother in 1974.

Julian Toney, when asked what made Toney think Arthur could sign an agreement on behalf of Ruth Parker, responded that Ruth said "you have to talk to Ted about all the decisions." (Appendix, p. 884, J. Toney Depo.

Tr. Pg. 43, Lns. 2-3). The decisions that Toney was directed to talk to Ted (a/k/a Arthur) about related to when to mow the roadside, when to fix the fence, and how many cattle to put on. (Appendix, p. 884, J. Toney Depo. Tr. Pg. 43, Lns. 11-19). When asked if there was anything else that lead Toney to believe that Arthur Parker could sign the purported "Life Time Lease" for his mother, Ruth Parker, Toney responded "Yea, he was her son. That was it." (Appendix, p. 885, J. Toney Depo. Tr. Pg. 44, Lns. 8-14).

Toney has not produced a single fact that could possibly lead a reasonable person to conclude that Ruth Parker held out Arthur Parker as having authority to bind her to any agreement, let alone an agreement to sell land.

v. There was No Consideration for the Purported "Right To Purchase" and "Life Time Offer."

Toney alleged consideration for entering into the purported "Life Time Lease," and the "life time offer" and "right to purchase" terms contained therein. (Appendix, p. 11). Some of the consideration occurred prior to June 22, 1974, when the purported "Life Time Lease" was allegedly signed. (Appendix, p. 11). Toney argues some consideration was given after the purported "Life Time Lease" was allegedly signed. (Appendix, p. 11). What matters, is that consideration was given at the time the purported "Life Time Lease" was allegedly signed.

"A failure of consideration may sometimes serve as a defense to enforcement of an existing contract." *Kristerin Development Co. v. Granson Inv.*, 394 N.W.2d 325, 331 (Iowa 1986). "The alleged failure of consideration ordinarily must be total to serve as a complete defense of contract claim." *Id*. Lack of consideration may prevent the formation of a contract. *Id*. The burden is on the person alleging lack of consideration. *Id*.

Although not specifically addressed on appeal in *Kunde*, the Iowa Court of Appeals did note the district court's ruling in that case. The district court in that case stated

> [T]here was no consideration for the alleged contract. All of the consideration that the plaintiff relied upon was contained within the leases. There was no evidence that any portion of the work and improvements that the plaintiff did and made was in respect to the option, the alleged option. All of the consideration for the leases was contained within the four corners of the lease. The consideration addressed in the leases, again, was for the leases, it was not identified as anything other than that.

Kunde at *2. In the case at hand, as it relates to the "life time offer" and "right to purchase," to the extent it could possibly be construed as an option to purchase, there is no stated consideration. (Appendix, p. 153). All of the stated consideration is for the purported lease. In fact, this shows that the "right to purchase" and "life time offer" is in fact nothing more than an offer.

E. Toney Slandered Parkers' Title.

Slander of title may be predicated on real property. *See generally Miller v. First Nat'l. Bank*, 220 Iowa 1266, 264 N.W. 272 (1935). The burden is on the person claiming their title was slandered to prove that slanderous words were uttered and published, that the words were false and malicious, that special damages were sustained as a result, and that the person had an interest in the property. *See generally Witmer v. Valley Nat'l. Bank*, 223 Iowa 673, 273 N.W. 370 (1937).

In the case at hand, Parkers' Trust is the owner of the land at issue. (Appendix, pp. 138-139). It is undisputed that Julian Toney had his wife, Anita Toney, record the "Life Time Lease" with the Decatur County, Iowa, Recorder. (Appendix, p. 892, A. Toney Depo. Tr. Pg. 7, Lns. 2-5). It is also undisputed that Parkers did not draft the first and third page of the recorded, purported "Life Time Lease." (Appendix, p. 891, A. Toney Depo. Tr. Pg. 6, Lns. 2-24). It is also undisputed that Toney's farm tenancy was terminated effective March 1, 2018. (Appendix, pp. 198-199). Toney remained on the land until sometime after being ordered to vacate by the district court. (Appendix, p. 452). To that end, Parkers have been damaged.

The district court further found Arthur E. Parker did not execute the document. (Appendix, p. 451). As it relates to Parkers' slander of title

claim, there is no dispute that the lease was uttered and published, that damages have been sustained, and that Parkers had an interest in the property at issue. (Appendix, p. 451). Following the Ruling partially granting summary judgment, the only issue remaining for trial was if the document was slanderous, false, and malicious.

F. Toney Trespassed and was Properly Ejected from the Property.

Parkers served Toney with a Notice of Termination of Farm Tenancy on July 6, 2017 as required by Iowa Code Chapter 562. (Appendix, pp. 198-199). Pursuant to Iowa Code §562.5, Toney's farm tenancy was terminated on March 1, 2018. Following termination, his continued occupation constituted trespass, as he was entering upon land he had no right to enter upon. Iowa Code §716.7(2)(a). Even if Toney's offer had been accepted by Parkers, he had no right to continue occupying the land past the termination of his oral farm lease.

G. Conclusion.

The district court, in its Ruling on Parkers' Motion for Summary Judgment, and subsequent Order denying Toney's Motion to Reconsider, Enlarge, and Amend, properly found that even assuming the "Life Time Lease" was valid at the time it was executed, Toney's right to purchase the

land expired on June 22, 2014, due to the bar of Article I, Section 24 of the Iowa Constitution.

The district court also properly found the written terms of the "Life Time Lease" related to the sale or purchase of the Y property are ambiguous at best, and were indefinite as to when the claimed right to purchase accrued. (Appendix, p. 450). The district court also properly found the alleged contract is void of *any* term except the barest possible description of the property to be conveyed and the price at which it would be purchased on some unknown date. (Appendix, p. 450). The district court properly found there was no meeting of the minds to form a contract between Toney and Parker. (Appendix, p. 450). Further, the district court properly found Arthur Parker did not accept any offer from Toney on behalf of his mother. (Appendix, p. 450). The district court properly found there was no consideration paid to Parkers in exchange for the alleged "right to purchase" the Y property at the time the contract was allegedly executed. (Appendix, p. 451).

Therefore, based upon the several theories rendering the purported "Life Time Lease" unenforceable, Parkers were entitled to summary judgment against Toney on all claims asserted in Toney's Petition, as well as summary judgment on their counterclaim to quiet title.

Further, based upon the undisputed facts, and as a matter of law, the district court properly granted summary judgment in favor of Parkers on their claim for ejectment, and properly found Toney was liable for trespass. Damages were later assessed following trial.

IV. THE DISTRICT COURT PROPERLY FOUND TONEY WAS LIABLE FOR SLANDER OF TITLE, AND PROPERLY AWARDED DAMAGES TO PARKERS FOR SLANDER OF TITLE.

A. Standard of Review and Preservation of Error.

Parkers agree with Toney's statements on error preservation and standard of review. As it relates to the trial on Parkers' slander of title claim, review is de novo. *Brown v. Nevins*, 499 N.W.2d 736, 737 (Iowa Ct. App. 1993).

B. The Words in the Purported "Life Time Lease" were Slanderous, False, and Malicious.

Following the Ruling partially granting summary judgment, the only remaining issue was whether the words in the purported "Life Time Lease" were slanderous, false, and malicious. Parkers had nothing to do with writing the legal description that is page 3 of the recorded, purported "Life Time Lease." (Appendix, p. 891, A. Toney Depo. Tr. Pg. 6, Lns. 2-24). However, Toney argues it was part of the purported agreement between Toney and Arthur Parker. (Appendix, p. 12). That is false. It is particularly

false given the discrepancy between Toney and Arthur Parker as to the number of acres of the property. (Appendix, pp. 888-889, J. Toney Depo Tr., Pg. 86, Ln. 25 – Pg. 87, Ln. 3).

At trial, it was already established as fact that Arthur Parker did not sign the purported “Life Time Lease.” (Appendix, p. 451). Mrs. Parker testified that she was familiar with Arthur Parker’s signature based upon more than 70 years of marriage with him. (Appendix, p. 768, Trial Tr. Pg. 81, Lns. 11-18). She testified that she recognized Arthur Parker’s various signature samples, from the 1970s and 80s, as his. (Appendix, pp. 769-772, Trial Tr. Pg. 82, Ln. 10 – Pg. 85, Ln. 22; 791-799). She further testified that a 2015 check had Arthur Parker’s signature. (Appendix, pp. 773, Trial Tr. Pg. 86, Lns. 1-20; 811). As Mrs. Parker testified, Arthur Parker’s signature has become more shaky over the years as he has become older. (Appendix, pp. 773-774, Trial Tr. Pg. 86, Ln. 25, Pg. 87, Lns. 1-3).

As referenced during trial, Toney and Parkers had a prior court case which was an unsuccessful forcible entry and detainer action in Decatur County Case No. SCSC007487. During the trial in this case, Toney confirmed during his testimony that, during the Forcible Entry and Detainer trial, he asked Arthur Parker to compare Exhibit J, which is a 2015 check indorsed by Arthur Parker, to his signature on the purported “Life Time

Lease." (Appendix, pp. 750-751, Trial Tr. Pg. 12, Ln. 5 – Pg. 13, Ln. 23; 811, 828). Looking at the top and bottom of Exhibit J, the image was clearly printed off on November 7, 2016, and subsequently faxed. Again, given the allegation of forgery, and given Toney's use of the 2015 check in the prior Forcible Entry and Detainer action to compare that signature to the signature on the purported "Life Time Lease," it is reasonable to conclude that Toney used the 2015 check to forge Arthur Parker's signature to the purported "Life Time Lease."

Toney argues that he testified how the purported "Life Time Lease" was created and signed by he and Arthur Parker, and that Arthur Parker did not testify to controvert that testimony. Arthur Parker did not need to testify on this issue. Based upon the district court's Ruling on Parkers' Motion for Summary Judgment, and its subsequent order enlarging and amending said Ruling, it was already established as a fact for trial that Arthur Parker did not sign the purported "Life Time Lease." *See* Iowa R. Civ. P. 1.981(4); (Appendix, pp. 451, 543). Furthermore, Arthur Parker filed with his Answer and Counterclaim an affidavit, pursuant to Iowa R. Civ. P. 1.405(4), denying that his alleged signature on the purported "Life Time Lease" was genuine or authorized. (Appendix, pp. 35-36). Mrs. Parker testified that she did not recognize the alleged signature of Arthur Parker, on the purported "Life

Time Lease" as what his signature looked like in 1974. (Appendix, pp. 768-769, Trial Tr. Pg. 81, Lns. 19-25, Pg. 82, Lns. 1-9).

Finally, Toney's description of how the purported "Life Time Lease" was created defies common sense. Toney alleged the purported "Life Time Lease" was written on the hood of a running pickup in 1974. Review of the second page of the purported "Life Time Lease", which Toney alleges was written in 1974, shows remarkably smooth handwriting for being written on the hood of a running pickup in 1974. (Appendix, pp. 828; 881, J. Toney Depo. Tr. Pg, 35, Lns. 24-25). Indeed, everything is smooth handwriting, except of course for Arthur Parker's alleged signature thereon.

Finally, the words must be malicious. Toney was served with notice of the Petition for Forcible Entry and Detainer in Decatur County Case No. SCSC007487 on Friday, November 25, 2016, at 1:30 P.M. (Appendix, pp. 136, 146). On the very next business day, being November 28, 2016, Julian Toney had his spouse record the purported "Life Time Lease." (Appendix, pp. 827-829). There is no dispute that the words contained in the purported "Life Time Lease" are malicious. The document was recorded in response to being served with notice of the Forcible Entry and Detainer action. The document was also recorded to render the title unmarketable, giving Toney an advantage in purchasing the property. (Appendix, p. 869).

Parkers have also been directly damaged by Toney's slander of their title to the property. An agreement for the sale and purchase of the subject real property was made on October 3, 2016, for the sum of $86,100.00. (Appendix, pp. 800-808). The purported "Life Time Lease" was recorded on November 28, 2016. (Appendix, p. 827). Toney testified he spoke with Parkers' realtor and informed him of his "life time lease" and "life time offer to purchase." (Appendix, p. 752, Trial Tr., Pg. 14, Lns. 6-12). During his testimony, Toney noted he recently purchased property at $1,000.00 per acre from Parkers. (Appendix, pp. 816, 869; Trial Tr. Pg. 110, Lns. 20-22). To that end, the district court properly found Parkers had been damaged in the amount of $62,100.00. (Appendix, p. 869).

V. THE DISTRICT COURT PROPERLY AWARDED PUNITIVE DAMAGES TO PARKERS.

A. Standard of Review and Preservation of Error.

Parkers agree with Toney's statements on error preservation and standard of review. An award of punitive damages is reviewed for corrections of errors at law. *Wolf v. Wolf*, 690 N.W.2d 887, 893 (Iowa 2005).

B. Toney's Actions of Forging Arthur Parker's Signature on the Purported "Life Time Lease," Subsequent Recording, and Trespass, Justified an Award of Punitive Damages.

For an award of punitive damages, Parkers must prove gross negligence, recklessness, malice, or willful and wanton disregard for the rights of others. *See Amos v. Prom*, 115 F. Supp. 127 (N.D. Iowa 1953); *Meyer v. Nottger*, 241 N.W.2d 911 (Iowa 1976); *Syester v. Banta*, 257 Iowa 613, 133 N.W.2d 666 (1965); *Sebastian v. Wood*, 246 Iowa 94, 66 N.W.2d 841 (1954). Actual damages are generally required before there can be an award of punitive damages. *Speed v. Beurle*, 251 N.W.2d 217 (Iowa 1977). An award of actual damages is not required, only a *showing* of actual damages. *Suss v. Schammel*, 375 N.W.2d 522 (Iowa 1985). Punitive damages may be awarded even if actual damages, though shown, are not awarded because the amount cannot be determined, or for other reasons. *Westway Trading Corp. v. River Terminal Corp.*, 314 N.W.2d 398 (Iowa 1982). Although malice is often an element in a punitive damages award, it is not a requirement to be awarded punitive damages. *Sebastian v. Wood*, 66 N.W.2d 841, 848 (Iowa 1954). Wantonness or the willful disregard of the rights of others may constitute legal malice. *Id*. Punitive damages may also be awarded where a defendant acts illegally or improperly with willful or

reckless disregard for another's rights. *Klooster v. North Iowa State Bank*, 404 N.W.2d 564 (Iowa 1987).

Based upon Parkers' Slander of Title Claim, Toney must pay punitive damages to Parkers. The district court correctly concluded that Julian Toney forged Arthur Parker's signature on the purported "Life Time Lease." (Appendix, p. 869). Julian Toney caused the purported "Life Time Lease" to be recorded. The document was created to render title unmarketable, and to give Toney an advantage in acquiring the property. (Appendix, p. 869). As part of their Slander of Title Claim, Parkers' proved that the published words were "malicious."

Parkers were also awarded punitive damages for Toney's trespassing. Toney's farm tenancy was terminated on March 1, 2018. (Appendix, pp. 198-199). Toney testified that he removed his feed bunks only upon the district court's order to vacate the property. (Appendix, pp. 757, 759, Trial Tr. Pg. 44, Lns. 7-17, Pg. 46, Lns. 21-24). Furthermore, Toney testified that he left his signs on the property. (Appendix, p. 761, Trial Tr. Pg. 48, Lns. 6-7). Trespass includes the placing of inanimate objects on the property of another without permission. *See generally* Iowa Code §716.7(2)(a). His actions, or failure to act, still constitute trespass, as he left an inanimate object on land that he had no right to enter upon. Damages were assessed

against Toney for his trespass on the property, based upon the fair rental value.

The District Court entered its Ruling partially granting Parkers' Motion for Summary Judgment on February 9, 2019. As part of its ruling, it ordered Toney to vacate the property within thirty (30) days. (Appendix, p. 453). Sometime during his occupation of the land, Toney added a sign to the gate of the subject real property that reads, "Iowa feedlot rules, No spotlighting, No hunting, No building." (Appendix, pp. 817-826). Toney testified this sign had been there for 4 years. (Appendix, p. 756, Trial Tr. Pg. 29, Lns. 2-9). It is not clear why the sign was necessary if Toney occupied the property and seemingly visited it regularly. However, it is reasonable to conclude that it was meant to discourage potential buyers of the property.

Finally, Toney wrote two letters following the district court's Ruling to vacate the property, both of which allege certain protection under 'feedlot rules.' (Appendix, pp. 812-816). These letters mirror the sign placed by Toney on the property.

Toney willfully failed to remove the sign after his tenancy terminated, and after being ordered to vacate the property. Toney willfully failed to remove his feed bunks until the district court ordered him to vacate the

property. The purpose of the sign is to interfere with Parkers' lawful use of the property, including, but not limited to, discouraging potential buyers of the property. Toney's actions are illegal and a willful disregard for Parkers' rights in the property.

The district court properly punished Toney, both for his slander of Parkers' title, and for trespass. It is clear that Toney willfully violated Parkers' rights in their property. Toney did not respect the district court's authority. Toney was properly punished by awarding punitive damages to Parkers.

CONCLUSION

The purported "Life Time Lease" was not enforceable. Toney trespassed and slandered Parkers title in the subject property. Parkers respectfully request that the district court's decision be affirmed in all respects.

Dated this 23rd day of July, 2020.

REQUEST FOR ORAL ARGUMENT

Appellees respectfully request oral argument.

CERTIFICATE OF COST

Appellees will not submit a Certificate of Cost given the electronic filing of the final briefs.

Respectfully submitted,

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on July 23, 2020, I electronically filed the foregoing Final Brief of Appellees with the Clerk of the Supreme Court by using Iowa Electronic Document Management System which will send notice of the electronic filing to the following. Pursuant to Iowa R. Elec. P. 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, AND TYPE-STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 13,511 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 proportionally spaced typeface using Microsoft Word 2019 in size 14 Times New Roman.

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