

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 REPLY 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 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

Iowa Code § 347.13(5)

Forsmark v. State of Iowa, 349 N.W.2d 763, 767 (Iowa 1984)

Iowa Code of Judicial Conduct rule 51:2.11(A)

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 AND BY DECLINING TO CONSIDER FACTUAL ALLEGATIONS CONTAINED IN PLAINTIFF'S PETITION WHEN RULING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Iowa Rule of Civil Procedure 1.981(3)

Iowa Rule of Civil Procedure 1.443

Iowa Rule of Electronic Procedure 16.308(2)(d)(2)

Jacobs v. Iowa DOT, Motor Vehicle Div., 887 N.W.2d 590, 598 (Iowa 2016)

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Alexander Techs. Eur., Ltd. v. Macdonald Letter Serv., No. 05-2023, 2007 Iowa App. LEXIS 758 (Ct. App. June 27, 2007)

INTRODUCTION

Plaintiff / Counter-Claim Defendant-Appellant Julian Jay Toney's ("Plaintiff" or "Mr. Toney") Reply Brief will address the two fundamental issues raised in this appeal. First, Iowa District Court Judge Dustria Relph erred as a matter of law when she failed to disclose the relationship between her husband, Daren Relph, the CEO of Wayne County Hospital, and Attorney Daniel R. Rockhold, Counsel for Defendants, who, as a member of the Hospital Board of Trustees, was Mr. Relph's employer. Judge Relph proceeded to make a series of adverse rulings against Plaintiff. The facts, amounting to, at the very least, the undisclosed appearance of a conflict of interest that raised a reasonable and objective basis for questioning the Judge's impartiality, were discovered by Plaintiff only after Judge Relph had issued adverse rulings that, in effect, denied Plaintiff the opportunity to present his case. When this issue was presented to the District Court, in the form of a Motion to Vacate Judge Relph's adverse rulings, the District Court erred, as a matter of law, in denying it. Defendants' arguments fail to remove the taint of these facts over the decisions that Plaintiff appeals to this Court as a matter of first impression.

Second, the Clerk of Court's rejection of the totality of Plaintiff's Resistance Filings¹ based on a ministerial error found by the Clerk on one page

¹ "Plaintiff's Resistance Filings" refers to the following: (1) Plaintiff's Resistance to Defendants' Motion for Summary Judgment, (2) Memorandum in Support

of one of the documents filed in support of that Resistance (the inadvertent failure to redact Plaintiff's Social Security number). When notified of the error the next day by the Clerk of Court, Mr. Toney's counsel corrected it immediately and re-filed within minutes of the notification. The District Court refused to consider Plaintiff's re-filed Resistance Filings in their totality; in so doing, it also refused to consider the facts as alleged in Plaintiff's Petition, based on a novel and incorrect reading of the Iowa Rules of Civil Procedure. These compounded acts constituted error at law, and resulted in the District Court wrongfully granting Defendants' Motion to Strike and Motion for Summary Judgement and, thereby, denying Plaintiff his right to a trial.

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

The operating Agreement between Mercy Health Network, Inc. (MHN) and the Hospital is clear that nothing in the contract "alters, weakens, displaces,

of Plaintiff's Resistance to Defendants' Motion for Summary Judgment, (3) Plaintiff's Response to Defendants' Statement of Facts and Plaintiff's Statement of Facts, and (4) Plaintiff's Appendix in Support of Plaintiff's Resistance to Defendants' Motion for Summary Judgment.

or modifies its authority or responsibility for operation and administration of Hospital.” [Appendix (“App.”) 0680]. Thus, the Board remains accountable and responsible for its statutory duties, including employing or contracting for an administrator and fixing the administrator’s compensation. Iowa Code § 347.13(5).

Even though Mr. Relph’s position as CEO is not terminable at will by the Hospital Board, the Board retains the authority to select from among the candidates presented by MHN, to conduct performance reviews jointly with MHN, and to request that deficiencies in the CEO’s performance be corrected or the CEO be replaced. [App. 0681]. Mr. Rockhold, in his position as Trustee, has participated in votes related to Mr. Relph’s compensation and work duties. [App. 0692; 0707].

The issue before the District Court on the Motion to Vacate was whether Judge Relph,² prior to convening a hearing and ruling on the merits of motions and resistances filed by both parties, should have, *sua sponte*, disclosed to the parties the relevant facts of her husband’s employment in relation to Mr. Rockhold’s role on the Hospital Board, to give either party an opportunity to

² Whether Mr. Rockhold, with full knowledge of the facts and circumstances giving rise to Judge Relph’s conflicted position, had a separate and independent professional, ethical or legal duty to apprise the Court and adverse counsel of his employment relationship with Judge Relph’s husband, were not issues litigated before the District Court, nor ruled upon. Those issues, therefore, are not subject to this appeal.

request that she step aside. *Forsmark v. State of Iowa*, 349 N.W.2d 763, 767 (Iowa 1984). As outlined in Appellant’s Brief (Section I.B.), the District Court erred by treating the issue as whether Judge Relph was obliged to disqualify herself, rather than whether the judge should have disclosed the relevant facts to the parties to give them an opportunity to request that she step aside. *See Forsmark*, 349 N.W.2d at 767.

In addressing the Parkers’ argument that the Motion to Vacate was untimely, the District Court concluded that “defendants fail to point to any facts that would have charged the plaintiff with notice of the possible grounds for recusal,” therefore Plaintiff was “excused from filing within the time for filing a motion for new trial.” [App. 0742]. The District Court’s conclusion is consistent with *Forsmark v. State*, 349 N.W.2d 763, 766 (Iowa 1984) (“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 ascertain the facts.”).

Plaintiff was not under an affirmative duty to investigate any potential conflict of interest; rather, the judge’s knowledge of the relationship between her spouse, as CEO of the Hospital, and Mr. Rockhold, as Trustee on the Hospital Board and as attorney of record for the Parkers, was sufficient to charge the judge with a duty to disclose that relationship. *Forsmark*, 349 N.W.2d at 767-768. As in *Forsmark*, Judge Relph’s failure to disclose the information

deprived Plaintiff of the opportunity to make a timely request that the judge disqualify herself on the ground that, under Iowa Code of Judicial Conduct rule 51:2.11(A), her impartiality “might reasonably be questioned.” *See id.*

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 AND BY DECLINING TO CONSIDER FACTUAL ALLEGATIONS CONTAINED IN PLAINTIFF’S PETITION WHEN RULING ON DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

The District Court abused its discretion when it granted Defendants’ Motion to Strike, thereby eliminating from consideration the totality of Plaintiff’s filings in resistance to Defendants’ Motion for Summary Judgment—including, for example, sworn affidavits submitted by Plaintiff and his spouse, Anita Toney, that supported Mr. Toney’s initial Petition and also his defenses against Defendants’ pending Motion. Not only did the District Court fail to consider Plaintiff’s Resistance Filings, it also erred as a matter of law by failing to consider the allegations contained in Plaintiff’s Petition, as required by Iowa Rule of Civil Procedure 1.981(3)(requiring the court to consider the pleadings in its determination as to whether there is any genuine issue as to any material fact).

The Parkers argue the District Court was without discretion to consider the “late” filings because Plaintiff did not file a motion under Iowa Rule of Civil Procedure 1.443. The facts and the law, however, suggest otherwise.

Plaintiff's Resistance Filings *were* timely filed on December 17, 2018. [App. 0386]. When the Clerk of Court's office returned the *entire* filing electronically the next morning un-filed, because one page of one supporting document in the appendix (out of approximately 150 pages filed) contained Plaintiff's own un-redacted Social Security number, the error was immediately corrected by redaction, and the same series of documents were resubmitted within 40 minutes of being notified by the clerk's office. [App. 0386-0387].

The Iowa Rules of Electronic Procedure make it "the responsibility of the filer to keep a record of the notice EDMS generated to verify the date and time of the original submission." Iowa R. Elec. P. 16.308(2)(d)(2). The Iowa Supreme Court has interpreted this rule to allow "a corrected filing to relate back to the date of the original submission in some situations." *Jacobs v. Iowa DOT, Motor Vehicle Div.*, 887 N.W.2d 590, 598 (Iowa 2016). The court in *Jacobs* held that a resubmitted filing could relate back to the original submission date for purposes of meeting an appeal deadline when (1) the party submitted an electronic document that was received by EDMS prior to the deadline and was otherwise proper except for minor errors in the electronic cover sheet, (2) the proposed filing was returned by the clerk's office after the deadline because of the minor errors, and (3) the party promptly resubmitted the filing after correcting the errors. *Id.*

The error in the proposed filing in this case, similar to that in *Jacobs*, was minor: the failure to redact Plaintiff's own Social Security Number on one page of one document. The *entire* proposed filing was returned by the Clerk of Court the next day, after the filing deadline. Upon learning of the error and the Clerk's return of the entire multi-document filing, Plaintiff's counsel promptly redacted the Social Security number and resubmitted the *entire* filing. Thus, applying rule 16.308(2)(d)(2) and the impetus of the *Jacobs* decision, there was no need for Plaintiff to file a motion pursuant to rule 1.443, and Plaintiff was not required to show "good cause" for failing to file a timely Resistance.³ The judge's failure to apply rule 16.308 and the *Jacobs* decision properly and, in turn, its determination to reject Plaintiff's entire resistance, was an abuse of discretion.

³ In *Alexander Techs. Eur., Ltd. v. Macdonald Letter Serv., No. 05-2023*, 2007 Iowa App. LEXIS 758 (Ct. App. June 27, 2007), cited by Defendants, plaintiff filed a motion for summary judgment on November 8, 2005 and defendant filed a request for additional time to respond to the motion on November 28, 2005. *Id.* at *4. Defendant filed a resistance to the summary judgment motion on the day of the hearing on the motion, but the district court declined to consider the resistance except to the extent it constituted legal argument. *Id.* at *4-*5. The court of appeals concluded the district court did not abuse its discretion in refusing to consider the untimely resistance, in part because defendant admitted he had been out of town visiting his son for a week when he should have been working on the resistance. *Id.* at *8-*9. In contrast to *Alexander*, the facts in the case now before the court present a different scenario altogether—one that supports a finding of an abuse of discretion.

As to the Parkers' arguments related to the balance of Plaintiff's Resistance Filings, Mr. Toney contends the District Court placed form over substance in granting the Parkers' Motion to Strike. *See, e.g., Meier v. Senecaut*, 641 N.W.2d 532, 539 (Iowa 2002)("[W]e treat a motion by its contents, not its caption."); *see also Cooksey v. Cargill Meat Sols. Corp.*, 831 N.W.2d 96, 104 (Iowa 2013)(party substantially complied with statutory requirement to name agency as respondent where, although the caption of the petition for judicial review of agency action failed to specifically name the agency as respondent, the agency was named in the body of the petition).

For example, at the hearing on Defendants' Motion to Strike, counsel for Mr. Toney explained the document styled "Plaintiff-Counterclaim Defendant Julian Toney's Responses to Statements of Undisputed Facts Submitted by Defendants-Counterclaimants and Plaintiff's Statements of Fact": some of Defendants' statements of undisputed facts were compound sentences, or didn't make reference to the record, and Plaintiff wanted to "make sure where we disagreed," and then included a statement of facts, with references to the record (by way of an appendix) that supported those statements. [App. 0441-0442, Tr. p. 6 ln. 15 – p. 7 ln. 17]. Considered in its

entirety, the document and accompanying appendix set forth what Plaintiff considered to be disputed material facts.⁴

Not only did the District Court decline to consider Plaintiff's Resistance Filings, it erred as a matter of law when it declined, based on an erroneous reading of Iowa Rule of Civil Procedure 1.413, to consider *any* of the factual allegations contained in Plaintiff's Petition.⁵

The District Court, ignoring the plain language of Iowa Rule of Civil Procedure 1.413(1) that pleadings "need not be verified," concluded the allegations contained in Plaintiff's Petition could only be considered "as conclusory statements of counsel," rather than "facts asserted by Plaintiff" because it was not supported by an affidavit signed by Mr. Toney. [App. 0449]. In doing so, the District Court failed to comply with Iowa Rule of Civil

⁴ The District Court concluded the Plaintiff's Resistance to Defendants' Motion for Summary Judgment was never filed. [App. 0446]. The declaration of legal assistant Andrew Kramer describes the series of events surrounding the filing, and Mr. Kramer's belief that he did, in fact, file the Resistance on December 17, and again on December 18, 2018. [App. 0388-0389]. It is unknown whether the fact that the Resistance was not actually filed on December 18, 2018 was due to human error, or an error of the EDMS system. [App. 0389]. Regardless, and as argued in Appellant's Final Brief, the Parkers were not prejudiced, as evidenced by Defendants' Reply to Plaintiff's Resistance Filings, filed on December 22, 2019, which included an additional 33 pages of exhibits for the court to consider. (Plaintiff/Appellant's Final Brief, pp. 34-36).

⁵ This argument is included in Section III.B. of Appellant's Brief.

Procedure 1.981(3), which requires the court to consider the pleadings in its determination as to whether there is any genuine issue as to any material fact.

The District Court's failure to consider Plaintiff's Resistance Filings or Plaintiff's Petition when ruling on Defendants' Motion for Summary Judgment resulted in a one-sided and incomplete record on which the court based its Ruling on Summary Judgment. The court's erroneous application of the law amounts to an abuse of discretion, requiring reversal. *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000).

CONCLUSION

For the reasons set forth herein and in Plaintiff's opening brief, 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.

CERTIFICATE OF COST

Plaintiff will not submit a Certificate of Cost given the electronic filing of the final Briefs 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 Reply 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,
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 2,418 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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