IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 20-0710

RICKIE RILEA, individually and on behalf of all those similarly situated,
Plaintiff-Appellant

vs.

STATE OF IOWA; IOWA DEPARTMENT OF TRANSPORTATION; DAVID LORENZEN, in his Official Capacity as Director of the IDOT Motor Vehicle Enforcement Division; MARK LOWE, in his Official Capacity as Director of the IDOT Motor Vehicle Division; and PAUL TROMBINO III, in his Official Capacity as Director of the IDOT
Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY, JUDGE DAVID NELMARK

APPELLANT'S FINAL REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES

I. The judgment against Rilea does not prevent restitution for defendant's illegal actions.

Heck v. Humphrey, 512 U.S. 477 (1994)

Kragnes v. City of Des Moines, 810 N.W.2d 492 (Iowa 2012)

Rilea v. Iowa Dept. of Trans., 919 N.W.2d 380 (2018)

Slade v. M.L.E. Invest. Co., 566 N.W.2d 503 (Iowa 1997)

Iowa Code § 321.477

II. It is an open question whether Iowa's receipt of funds pursuant to an illegally issued traffic citation is "unjust."

Behm v. City of Cedar Rapids, 922 N.W.2d 524 (Iowa 2019)

Rilea v. Iowa Dept. of Trans., 919 N.W.2d 380 (2018)

Weizberg v. City of Des Moines, 923 N.W.2d 200 (Iowa 2018)

Weizberg v. City of Des Moines, Polk County No. CVCV050995 (2/13/2020 Ord. Re: MSJ)

III. Iowa does not have sovereign immunity for implied contract claims.

Ahrendsen ex rel. Ahrendsen v. Iowa Dep't of Human Srvs., 613 N.W.2d 674 (Iowa 2000)

Dolezal v. City of Cedar Rapids, 326 N.W.2d 355 (Iowa 1982)

Hawkeye By-Prod., Inc. v. State, 419 N.W.2d 410 (Iowa 1988)

Kersten Co. v. Dept. of Social Srvs., 207 N.W.2d 117 (Iowa 1973)

Krieger v. Iowa Dep't of Human Srvs., 439 N.W.2d 200 (Iowa 1989)

IV. The Iowa Tort Claims Act doesn't apply.

Dolezal v. City of Cedar Rapids, 326 N.W.2d 355 (Iowa 1982)

Kersten Co. v. Dept. of Social Srvs., 207 N.W.2d 117 (Iowa 1973)

Minor v. State, 819 N.W.2d 383 (Iowa 2012)

Snider v. United States, 468 F.3d 500 (8th Cir. 2006)

Iowa Code § 669.2

41 U.S.C. § 7101 et seq.

41 U.S.C. § 7103

ARGUMENT

The defendants' repeated arguments about collateral attacks, sovereign immunity, and the Iowa Tort Claims Act should be ignored. This case is about whether the State should face consequences for the IDOT implementing an illegal policy to issue millions of dollars' worth of traffic tickets without lawful authority, at the expense of persons like Rilea. If there is no claim for unjust enrichment, and no penalty to the State, there is nothing to deter the State and its agencies from similar actions in the future. The Court should reverse the grant of summary judgment to defendant State of Iowa,[1] and remand this case for further proceedings.

I. THE JUDGMENT AGAINST RILEA DOES NOT PREVENT RESTITUTION FOR DEFENDANT'S ILLEGAL ACTIONS.

Defendants rely on *Slade v. M.L.E. Invest. Co.*, 566 N.W.2d 503, 506 (Iowa 1997) for the general proposition that a defendant who is "doing what it was entitled to do based on a final and firm judgment" cannot be liable for unjust enrichment. (Appellee's Proof Brief. 20). The defendant contends, because speeding is illegal, and Rilea is an admitted speeder, the State has done nothing wrong.

[1] Rilea has not contended on appeal that the individual defendants or IDOT were unjustly enriched, and therefore does not respond to defendants' arguments regarding those persons/entities.

First, *Slade* is distinguishable. In *Slade*, the plaintiffs challenged a foreclosure action claiming unjust enrichment. But the defendants in *Slade* did nothing wrong. They did not cheat in obtaining the foreclosure judgment against plaintiffs, each of their actions in each step of the case were in accord with the law. *Slade*, 566 N.W.2d at 506 ("Plaintiff Slade contends M.L.E. was unjustly enriched by obtaining title to the Clark Street property. However, that argument ignores the fact that when M.L.E. was unjustly enriched by obtaining title to the Clark Street property. However, that argument ignores the fact that when M.L.E. executed on the foreclosure judgment, purchased the property at the sheriff's sale, obtained a sheriff's deed, and later sold the property to a third party, it was only doing what it was entitled to do based on a final and firm judgment."). Not so with the IDOT, who pulled Rilea over in accordance with an illegal policy and despite a clear lack of statutory authority to do so. *Rilea v. Iowa Dept. of Trans.*, 919 N.W.2d 380 (2018) ("*Rilea I*"). M.L.E. was authorized to take action to Slade's detriment. IDOT started the process against Rilea despite the lack of authorization.

More to the point, the defendants' attempt to reframe Rilea's claim should be ignored. The unlawful action at issue in this case did not arise from an invalid statute (i.e., the defendant's imagined claim that Rilea is challenging the State's authority to prohibit speeding), but rather the IDOT's

patently invalid interpretation of its authority under Iowa Code § 321.477. *Rilea I*, 919 N.W.2d 380. A governmental entity that does not have the authority to take an action should not take that action. When that action results in fines being assessed to a person, those fines are an illegal exaction and should be returned. *Kragnes v. City of Des Moines*, 810 N.W.2d 492 (Iowa 2012).

Regardless of whether the judgment against Rilea stands, return of the fine should occur in a manner similar to *Heck v. Humphrey*, 512 U.S. 477 (1994). The fact that Rilea was speeding does not wipe out defendant's wrongdoing: two wrongs do not make a right. *Heck* held that claims for money damages that would "necessarily imply the invalidity of" a plaintiff's conviction or sentence must be dismissed as a prohibited collateral attack on the underlying conviction. *Id.* at 487. However, "if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed." *Id.*

Rilea asked for two forms of relief: invalidating his conviction, and return of the fine paid. If, under *Heck*, his conviction cannot be invalidated, the return of the fine does not necessarily imply that the conviction is invalid. The "return of the fine" is a measure of damages and a proper one at that.

Requiring the State to repay the monies it received demonstrates the extent to which the State was unjustly enriched by its unlawful actions, through the IDOT issuing a traffic citation/summons that it had no authority to issue. This case does not depend on whether or not Rilea was speeding – it depends on whether IDOT acted unlawfully in pulling him over and issuing him a citation. It did so, and as a result the State was unjustly enriched.

II. IT IS AN OPEN QUESTION WHETHER IOWA'S RECEIPT OF FUNDS PURSUANT TO AN ILLEGALLY ISSUED TRAFFIC CITATION IS "UNJUST."

Defendants rely on the concurring opinion by Justice Mansfield in *Weizberg v. City of Des Moines* to suggest that a person who is guilty of a traffic offense suffered no damages despite an agency's violation of the law. 923 N.W.2d 200, 225 (Iowa 2018). Concurring opinions are not controlling law. Majority opinions are controlling law. The majority in *Weizberg* expressly allowed an unjust enrichment claim to go forward against the City of Des Moines; and dismissed a claim on the merits for unjust enrichment against the administrative agency because none of the plaintiffs actually paid the fines that were allegedly owed. *Id.* at 221. On remand, the unjust enrichment claim against the city ultimately failed in light of the finding that the traffic camera enforcement system was not unlawful. *See Behm v. City of Cedar Rapids*, 922 N.W.2d 524 (Iowa 2019) (considering a similar challenge

to the traffic camera enforcement system as *Weizberg*); *Weizberg v. City of Des Moines*, Polk County No. CVCV050995 (2/13/2020 Ord. Re: MSJ). However, Rilea's case is distinguishable from the traffic camera enforcement cases because here, the court has conclusively determined that the IDOT's actions were unlawful. *Rilea I*, 919 N.W.2d 380

III. IOWA DOES NOT HAVE SOVEREIGN IMMUNITY FOR IMPLIED CONTRACT CLAIMS. THE IOWA TORT CLAIMS ACT DOESN'T APPLY.

With their brief on appeal, Iowa urges for the fourth time that sovereign immunity excuses its unlawful actions in this case. Three district court judges have already found that Iowa is not entitled to sovereign immunity for implied contracts such as unjust enrichment. Those judges' analyses remain correct.

For obvious policy reasons, state sovereign immunity is abrogated by express contracts created by the State's voluntary relationship with the contracting party:

> Any other conclusion would ascribe to the General Assembly an intent to profit the State at the expense of its citizens. We are unwilling to assume that the General Assembly intended the State to mislead its citizens into expending large sums to carry out their obligations to the State and, at the same time, deny to them the right to hold the State accountable for its breach of obligations.

Kersten Co. v. Dept. of Social Srvs., 207 N.W.2d 117, 120 (Iowa 1973) (cleaned up). The Iowa supreme Court has never expressly answered the question of whether state sovereign immunity is abrogated by implied

contract, *see Hawkeye By-Prod., Inc. v. State*, 419 N.W.2d 410, 412 (Iowa 1988) (avoiding question), the Iowa Supreme Court *has* allowed unjust enrichment claims to proceed against government entities before.

A claim for unjust enrichment is similar to a contract claim because, as in *Kersten Co.*, the defendants voluntarily entered into the relationship which gave rise to their liability in this case, thereby waiving sovereign immunity. Defendants have claimed that their actions were involuntary, because they had to enforce the law against Rilea and those similarly situated. Given that the IDOT did not have the authority to issue summonses/traffic citations under the circumstances of this case, and IDOT was put on notice that it did not have the authority to conduct these traffic citations, this argument falls flat.

In *Dolezal v. City of Cedar Rapids*, the Iowa Supreme Court held that municipal immunity is abrogated by implied contract. 326 N.W.2d 355, 357 (Iowa 1982). This Court explained, in contrast to a "tort," "'restitution' and 'unjust enrichment' are modern designations for the older doctrine of quasi-contract or contracts implied in law, sometimes called constructive contracts." *Id.* at 359. The *Dolezal* Court recognized that the decision to allow unjust enrichment claims against municipalities was supported by decisions preceding the adoption of the Iowa Municipal Tort Claims Act (MTCA), in which the Court "routinely allowed actions in unjust enrichment, then

characterized as implied contract, to proceed against municipalities." *Id.* at 358.

Subsequent cases have implied state sovereign immunity is also abrogated by implied contract. In *Krieger v. Iowa Dep't of Human Srvs.*, this Court reached the merits of an unjust enrichment claim against the state. 439 N.W.2d 200, 203 (Iowa 1989). In *Ahrendsen ex rel. Ahrendsen v. Iowa Dep't of Human Srvs.*, this Court cited *Dolezal* in considering a potential unjust enrichment claim against Iowa DHS. 613 N.W.2d 674, 679 (Iowa 2000). In *Ahrendesen*, this Court discussed the unjust enrichment claim without ever suggesting that such a claim cannot lie against the state, even though the issue of sovereign immunity had been briefed in that case. *Id.*, at 679.[2]

The injustice identified in *Kersten Co.* is evident here: the State has voluntarily engaged its citizens in violation of the law. It is manifestly unfair for Iowa to violate the law in order to collect fines from its citizens, and then hide behind the cloak of immunity to avoid responsibility. Defendants have taken *millions* of dollars out of the pockets of Iowans by pursuing an obviously illegal policy. There must be a remedy for such blatant misconduct

[2] The briefing in *Ahrendsen* is available at 1999 WL 34685661 (appellants' brief); 1999 WL 34685662 (appellee's brief) and 1999 WL 3465663 (appellants' reply brief).

when the State is enriched by it, otherwise there is no deterrent for such misconduct.

IV. THE IOWA TORT CLAIMS ACT DOES NOT APPLY.

Again, for the fourth time, defendants complain that Rilea's claim is barred by the Iowa Tort Claims Act (ITCA). Three Iowa District Court judges have already correctly determined that the ITCA does not apply to claims for unjust enrichment. For purposes of the ITCA, a "claim" is "[a]ny claim . . . for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission, of any employee of the state." Iowa Code § 669.2(3)(a), (b). Count III of plaintiff's petition – the claim for illegal exaction/unjust enrichment/restitution – does not fall within that definition because it is a quasi-contract claim. *Dolezal,* 326 N.W.2d at 357 (holding unjust enrichment claim does not fall within definition of claim in the MTCA). There is no reason to interpret the MTCA differently from the ITCA.

In order to get around the authoritative interpretations of this Court, defendants resort to cases interpreting the Federal Tort Claims Act (FTCA). However, the cases relied upon by defendants are not persuasive. Although the legislature may have intended for the ITCA to have the same effect as the FTCA, *see Minor v. State*, 819 N.W.2d 383, 406 (Iowa 2012), it did not adopt

a statute identical to the FTCA. Where the statutes and case law surrounding the two acts are distinguishable, the two acts must be interpreted differently.

Both the FTCA and the ITCA are meant to waive the sovereign immunity of the federal or state governments from suits for torts. Both statutes are silent are silent as to the immunity of the respective governments from suit for violations of contracts. In both fields, additional law must come in to fill the gap. For the federal government, its liability for contracts is governed by a separate set of statutory provisions, including, among others, 41 U.S.C. § 7101 *et seq*. This chapter of the U.S. Code requires administrative exhaustion of contract disputes – filling in the gap left by the FTCA. *See, e.g.* 41 U.S.C. 7103 (describing process for submission of contractor's claims against the federal government). For the state of Iowa, the waiver of immunity for suit arising from contract disputes is instead a creation of case law, as described in *Kersten Co.*, 207 N.W.2d at 117, because Iowa contract claims are generally governed by case law and not by statute. Because state and federal law are distinguishable in how they treat contracts made by the respective governments, it stands to reason that the interpretation of the respective tort claims acts must also be distinguishable.

Further, Iowa courts have been willing to find a waiver of sovereign immunity in the interests of justice, *id.* at 120, while it is well established in

federal courts that a waiver of sovereign immunity is strictly and narrowly construed in favor of the United States. *Snider v. United States*, 468 F.3d 500, 509 (8th Cir. 2006) (citation omitted). Here, justice supports a waiver of sovereign immunity based on Iowa's voluntary law-breaking. The ITCA does not apply.

CONCLUSION

WHEREFORE, the Plaintiff, Mr. Rilea, respectfully requests the Court reverse the order granting defendants' summary judgment and remand the case for trial.

CERTIFICATES

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 7,000 words); excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates. This brief contains 2,176 words.

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 Office Word 2010 in font size 14, Times New Roman.

I hereby certify that on September 30, 2020, I did serve Plaintiff-Appellant's Final Reply Brief on Appellant by e-mailing one copy to:

Rickie Rilea
Plaintiff-Appellant

/s/ Brandon Brown
Dated: September 30, 2020
Brandon Brown