

SUPREME COURT No. 22-1337  
CASS COUNTY CASE No. LACV025752

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IN THE  
SUPREME COURT OF IOWA

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**SIMRANJIT SINGH,**

Plaintiff/Appellant

v.

**MIKE MCDERMOTT,**

Defendant-Appellee.

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*ON APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR CASS COUNTY  
HONORABLE CRAIG M. DREISMEIER,  
DISTRICT COURT JUDGE*

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**FINAL BRIEF FOR APPELLANT**

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## PROOF OF SERVICE

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## CERTIFICATE OF FILING

I, Matthew M Sahag, certify that I did file the attached brief with the Clerk of the Iowa Supreme Court by electronically filing the brief through the EDMS system on January 20, 2023.

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## STATEMENT OF ISSUES PRESENTED FOR REVIEW

### I. DEFENDANT FAILED TO MEET HIS BURDEN TO SHOW THE ABSENSE OF DISPUTED FACTS IN THE SUPPORTING SUMMARY JUDGMENT

*Bagelmann v. First Nat'l Bank*, 823 N.W.2d 18 (Iowa 2012)  
*Banwart v. 50th Street Sports, L.L.C.*, 910 N.W.2d 540 (Iowa 2018)  
*Bass v. J.C. Penney Co.*, 880 N.W.2d 751 (Iowa 2016)  
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*Klobnak v. Wildwood Hills, Inc.*, 668 N.W.2d 799 (Iowa 2004).  
*Knapp v. Simmons*, 345 N.W.2d 118 (1984).  
*Leaders v. Dreher*, 169 N.W.2d 570 (Iowa 1969).  
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61A C.J.S. *Motor Vehicles* §1926 (2002)  
Iowa R. Civ. P. 1.981(3)  
IOWA R. APP. P. 6.903  
IOWA R. APP. P. 6.1101

## ROUTING STATEMENT

Because this case involves the application of facts to existing precedent, transfer to the Court of Appeals would be appropriate. IOWA R. APP. P. 6.1101.

## STATEMENT OF THE CASE

Simranjit Singh's filed a claim for negligence against Mike McDermott after Singh's semi-truck collided with McDermott's cow that McDermott left unattended on Interstate 80. McDermott filed a motion for summary judgment arguing there was an absence of genuine issues of material fact surrounding McDermott's alleged negligence. Singh resisted asserting that genuine issues of material fact are present in the record surrounding whether the cow's unattended presence on Interstate 80 constitutes negligence. In granting summary judgment, the court below agreed with McDermott for two reasons. First, the court held that a cow's unattended presence on Interstate 80 alone is not sufficient to establish a genuine issues of material fact as to whether the McDermott was negligent. Second, on Singh's *res ipsa loquitor* theory the court concluded that there is no evidence in the record that the cow was under the exclusive control and management of McDermott who was the undisputed owner of the cow. This appeal ensued.

## STATEMENT OF FACTS



On January 26, 2019, Plaintiff Simranjit Singh (“Singh”) was driving his semi-truck east on Interstate 80. App. 234. Around 2am, Singh’s semi-truck struck a black cow that was standing in the right lane of the interstate. App. 234. Defendant Mike McDermott (“McDermott”) owned the cow. McDermott also owned the land adjacent to the interstate where Singh’s semi-truck collided with McDermott’s cow. App. 234. The land was fenced and had gates for the purpose of confining McDermott’s cow. App. 234. As a result of the collision, Singh suffered personal injuries and property damage to his semi-truck in the amount of \$44,094.94. App. 235.

## ARGUMENT

### **I. DEFENDANT FAILED TO MEET HIS BURDEN TO SHOW THE ABSENCE OF DISPUTED FACTS IN THE SUPPORTING SUMMARY JUDGMENT**

#### Preservation of Error:

Singh preserved error by resisting McDermott’s summary judgment motion and obtaining a ruling in which the court necessarily decided the issues. App. 236.

#### Standard of Review:

The Court reviews rulings on motions for summary judgment for corrections of errors of law. *Winger Contracting Co. v. Cargill, Inc.*, 926 N.W.2d 526, 535 (Iowa 2019).

Summary judgment is appropriate only if the record “show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Iowa R. Civ. P. 1.981(3); *Banwart v. 50th Street Sports, L.L.C.*, 910 N.W.2d 540, 544 (Iowa 2018). “Even if the facts are undisputed, summary judgment is not proper if reasonable minds could draw different inferences from them and thereby reach different conclusions.” *Id.* at 544-45. In ruling on a motion for summary judgment, the Court does not weigh the evidence. *Bitner v. Ottumwa Cmty. Sch. Dist.*, 549 N.W.2d 295, 300 (Iowa 1996). Instead, the Court inquires whether a reasonable jury, faced with the evidence presented, could return a verdict for the nonmoving party. *Id.* When the record, taken as a whole, could lead a rational trier of fact to find for the nonmoving party, there is a genuine issue for trial. *Id.* The Court must also indulge on behalf of the nonmoving party every legitimate inference reasonably deduced from

the record in an effort to ascertain the existence of a fact question.

*Bagelmann v. First Nat'l Bank*, 823 N.W.2d 18, 20 (Iowa 2012).

Merits:

A. The cow's unattended presence on Interstate 80 constitutes prima facie evidence that McDermott breached his duty of care

Proper motion for summary judgment analysis is an exercise of burden shifting. Under the rule, “[t]he burden is on the moving party to show the nonexistence of material facts and to prove the party is entitled to judgment as a matter of law.” *Mohr v. Langerman*, 858 N.W.2d 36, 2014 Iowa App. LEXIS 1038, \*5 (Iowa Ct. App. 2014) (citing *Knapp v. Simmons*, 345 N.W.2d 118, 121 (1984). “To obtain a grant of summary judgment on some issue in an action, the moving party must affirmatively establish the existence of undisputed facts entitling that party to a particular result under controlling law.” *Interstate Power Co. v. Insurance Co. of N. Am.*, 603 N.W.2d 751, 756 (Iowa 1999). According to the plain text of the rule, a moving party is required to demonstrate the absence of a genuine issue of material fact “from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted.” Iowa R. Civ. P. 1.981(3).

The central flaw of the district court's analysis is that it lost sight of the core burden-shifting principles of Iowa R. Civ. P. 1.981, which place the burden on McDermott to show an absence of disputed facts in the summary judgment record, not Singh. It cannot be disputed that McDermott had a duty of care to keep his cow off the highway because it was a dangerous obstruction to highway traffic. *Klobnak v. Wildwood Hills, Inc.*, 668 N.W.2d 799, 801-03 (Iowa 2004) (holding that the owner of an animal may be liable for injuries resulting from collisions due to negligence in permitting an animal to be left unattended on the highway) (citing *see e.g.* 61A C.J.S. *Motor Vehicles* §1926, at 192 (2002) (The ordinarily careful and prudent farmer puts his animal in a barn, and shuts and latches the doors or confines it in the yard with proper fencing and secured gates); *Thompson v. Kaczinski*, 774 N.W.2d 829, 835-36 (Iowa 2009) (citing *Weber v. Madison*, 251 N.W.2d 523, 527 (Iowa 1977) (A landowner abutting a highway is under an obligation to use reasonable care to not to create hazards in the adjoining highway or injury the highway traveler); *Fritz v. Parkison*, 397 N.W.2d 714, 715 (Iowa 1986) (noting public policy to keep highways free from obstructions and hazards is well-developed and clearly recognized);

*Steward v. Wild*, 196 Iowa 678, 683, 195 N.W. 266, 269 (1923) (“It is the fundamental law of the highway that it is subject to the use of the traveling public, and that it must be kept free from such obstructions as are not incident to its use for travel.”).

Also, it is undisputed that at the time of the collision McDermott’s cow was unattended on Interstate 80. App. 22, 161. Accordingly, prima facie evidence of negligence exists in the summary judgment record that McDermott breached his duty of care by permitting his cow to be left unattended on Interstate 80. *See Klobnak v. Wildwood Hills, Inc.*, 668 N.W.2d at 802-03 (Iowa 2004); *see also Leaders v. Dreher*, 169 N.W.2d 570, 573 (Iowa 1969) (holding that proof that animals are running at large is prima facie evidence of negligence). For reasons that are as unexplained as they are inexplicable, the district court went outside of the record to imagine a number of plausible factual scenarios including that 1) the cow may have leapt over the fence, 2) that the fence may have been inadequate or 3) that the gate may have been unlatched. App. 236. In doing so, the court essentially blamed Singh for failing to prove a negative when he had proved a positive – that McDermott’s cow was unattended on Interstate 80. There is no record evidence that would

support a reasonable inference for any of the above scenarios. These unexplained circumstances posited by the court demonstrate exactly why McDermott's motion should have been denied. Disputed facts exist in the record as to whether McDermott was negligent in allowing his cow to be on Interstate 80, unattended.

C. McDermott exercised exclusive control over the cow because he was its owner

Second, the court failed to acknowledge that a genuine issue of material fact was created by Singh's assertion about control of the cow. Here again McDermott erroneously argued that to survive summary judgment, Singh was required to prove a negative - that the cow was not stolen, that the fences were not vandalized or that a tornado hadn't dropped the cow on the roadway. App. 222. However, again all of these factual scenarios are outside the summary judgment record, which is precisely why the district court's ruling must be reversed. Indeed, the suggestion that McDermott didn't have control of the cow is internally inconsistent with the district court's findings on page 2 of the ruling that "McDermott owned the cow." App. 234.

Viewed in the light most favorable to Singh, the evidence is as follows: 1) McDermott had control of the cow because he was its owner

and 2) that the cow's unattended presence on Interstate 80 constitutes negligence. *See Bass v. J.C. Penney Co.*, 880 N.W.2d 751, 755 (Iowa 2016) (holding that on summary judgment, the Court must view the whole record in the light most favorable to the nonmoving party). From these facts, the jury could reasonably conclude that McDermott was negligent either directly or under the res ipsa doctrine. If this summary judgment record is not sufficient to create a genuine issue of material fact as to control, then no case ever will.

### **CONCLUSION**

For the reasons articulated herein, the district courts order on July 28, 2022, should be reversed and the matter should be remanded back to district court for trial.

### **REQUEST FOR ORAL ARGUMENT**

Counsel for Appellant requests to be heard in oral argument.

## COST CERTIFICATE

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