IN THE SUPREME COURT OF IOWA

CASE NO. 24-1133

VICTORIA ABRAHAMSON, HANA SCHROEDER, JODY SCHROEDER, TERRY SCHROEDER, SAMANTHA JOHNSON, BRE AHNA BOGGESS (f/k/a Bre Ahna Payne), REBECCA BATES, TAWNI HANSON, DARBY JONES, HUNTER MINER, and the STATE OF IOWA Ex rel. VICTORIA ABRAHAMSON, HANA SCHROEDER, JODY SCHROEDER, TERRY SCHROEDER, SAMANTHA JOHNSON, BRE AHNA BOGGESS, REBECCA BATES, TAWNI HANSON, DARBY JONES, HUNTER MINER,

Plaintiffs/Appellees,
v.

BENJAMIN SCHEEVEL, Individually and in his Official Capacity as Officer for the Estherville Police Department, BRENT SHATTO, Individually and in his Official Capacity as Chief of the Estherville Police Department, CITY OF ESTHERVILLE, IOWA, ACADIA INSURANCE COMPANY, and JOHN DOE

Defendants/Appellants.

RELATING TO THE IOWA DISTRICT COURT IN AND FOR EMMET COUNTY (CASE NO. CVCV022475)
HON. SHANE MAYER, DISTRICT COURT JUDGE

APPELLANTS' JOINT REPLY BRIEF

(TRIAL HAS NOT BEEN SET)

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Plaintiffs' late-acquired arguments are without legal basis and their new concession that they seek application of Iowa's discovery rule proves too much. Iowa law is clear—Plaintiffs' Iowa Municipal Tort Claims Act claims are subject to a two-year limitation period. Plaintiffs failed to assert their claims in that time. As set forth below, Plaintiffs' claims fail as a matter of law and this Court should reverse the District Court's Order.

I. The two-year limitation period under Iowa Code section 670.5 applies to Plaintiffs' claims.

Despite not raising this argument in the District Court, Plaintiffs now urge that "the plain text of § 692.6 controls, and works to defeat any contrary provision of Chapter 670." Appellee Br. At 31. Specifically, Plaintiffs latch onto the District Court's erroneous reading of Iowa Code section 692.6 by stating, "[s]o long as the elements of a § 692.6 claim are proven no provision of Iowa Code Chapter 670 can operate to defeat the claim." (Br. at 27). Contrary to Plaintiffs' contention, the plain language of Iowa Code section 692.6 states that "[a]ny person may institute a civil action for damages *under chapter 669 or 670* or to restrain the dissemination of the person's criminal history data or intelligence data in violation of this chapter." Iowa Code § 692.6 (emphasis supplied). In other words, Chapter 670 governs claims under Iowa Code section 692.6 brought against municipalities and their employees.

Though Plaintiffs purport to bring three (3) distinct claims, each seeks

recovery for the same alleged conduct – "violation of Chapter 692." D0013, Am. Pet. at ¶¶ 184-89 (as to Count I); ¶¶ 196-205 (as to Count II); ¶ 213 (as to Count III). Each is governed by Chapter 670 and is time barred pursuant to section 670.5.

Even absent the first sentence of section 692.6, each of Plaintiffs' claims allege a statutory violation against a municipal entity and its agents, which is covered by the definition of "tort" under the IMTCA. *See* Iowa Code § 670.1(4) (defining "tort" as "every civil wrong which results in wrongful death or injury to person . . . and includes but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether *statutory* or other duty or denial or impairment of any right under any constitutional provision, *statute* or rule of law" (emphasis supplied)).

The two-year limitation period under Iowa Code section 670.5 applies to Plaintiffs' IMTCA claims. *See Venckus v. City of Iowa City*, 930 N.W.2d 792, 808 (Iowa 2019) (holding that Iowa Code § 670.5 governed Plaintiff's claims under the state constitution by virtue of the definition of tort in Iowa Code § 670.1(4), in turn rejecting Plaintiff's argument that § 614.1 and the discovery rule applied, noting that "[s]ection 670.4(2) provides that the statutory remedies shall be exclusive" and that "[o]ur cases recognize the exclusivity of the IMTCA.").

Iowa's statutory and case law is clear. Iowa Code section 670.5 and its two-year limitation period governs Plaintiffs' claims.

II. Plaintiffs' argument that that Iowa Code section 614.1(5) might apply—raised for the first time in their appellate brief—fails substantively and procedurally.

As a fallback, Plaintiffs now claim that "[a]nother possibility in this case is that, because the Plaintiffs' action is, in part, brought in the name of the State for the benefit of the Plaintiffs, upon the bond of the Defendants pursuant to Iowa Code § 64.18, that Iowa Code 614.1(5), concerning written contracts, is the appropriate statute of limitations." Appellee Br. at 32. Plaintiffs fail to identify any legal support for this assertion—nor are the undersigned aware of any. Plaintiffs' "Action on the Bond" claim is not a separate cause of action, let alone a viable cause of action under Iowa law.

Iowa Code section 64.18 provides, "[a]ll bonds of public officers shall run to the state, and be for the use and benefit of any corporation, public or private, or person injured or sustaining loss, *with a right of action* in the name of the state for its or the corporation's or person's use." Iowa Code § 64.18 (emphasis supplied). Pursuant to the provision, whether a "person injured or sustaining loss" may be the beneficiary of a bond depends on the viability of an underlying right of action. *See id.* As such, an action on the bond cannot survive as a stand-alone cause of action. *See* D0031, Ruling, at 15 (June 13, 2024) ("Count IV, pled originally as an action on the bond, is not a separate cause of action unto itself."); *Close v. City of Bellevue, Iowa*, ___ F. Supp.3d___, 2024 WL 4535621 at *15-16 (N.D. Iowa 2024) (granting

summary judgment on "action on the bond claim" finding that the bonds are not subject to forfeiture, also agreeing with Defendants that "Iowa Code chapter 64 is focused on record-keeping and preventing misappropriation of government funds, and not a workaround to recover for alleged tortious conduct or constitutional violations.").

Even if the argument were based in law (it is not), Plaintiffs did not argue that Iowa Code § 614.1(5) relating to written contracts applied in the District Court and, as such, the argument is waived.[1] *See State ex rel. Miller v. Vertue, Inc.*, 834 N.W.2d 12, 21 (Iowa 2013) (citations omitted) ("Our error preservation rules provide that error is preserved for appellate review when a party raises an issue and the district court rules on it."); *see also State v. Childs*, 898 N.W.2d 177, 190 n.8 (Iowa 2017) (discussing the difference between error preservation and waiver, noting that "A party does not preserve error on issues not asserted or decided in the district court . . ."). Indeed, Plaintiffs do not challenge the District Court's finding that their action on the bond claim is not a separate and distinct cause of action in their brief. *See* D0031 at 15.

Plaintiffs' new contention fails legally and because it was not preserved.

[1] Plaintiffs did not mention Chapter 614 in any pleading or during oral argument.

III. The discovery rule is not applicable, and Plaintiffs' claims are time-barred for tailing to file within the two-year limitation period.

Plaintiffs now concede what they have denied throughout this case—that their argument is predicated on the invocation of the discovery rule. *See* Appellee Br. at 26 (urging that the action was timely filed "because they filed within five years of discovery of their injuries."); Appellee Br. at 31 (arguing that "Iowa's discovery rule does apply to Count I[,]" and detailing the date on which Plaintiffs "became aware of Officer Scheevel's wrongful acts"); *compare* D0036, Tr. Mt. to Dismiss Hrg. at 12:22-23 (10/16/2024) ("We are not making a tolling argument or discovery rule argument."). Iowa law unambiguously provides that the discovery rule does not apply to claims against municipalities and their employees. *See Venckus v. City of Iowa City*, 930 N.W.2d at 808 (affirming a trial court's grant of a motion for summary judgment for a plaintiff's failure to file within the requisite two (2) year period and rejecting plaintiff's argument that Iowa law should recognize the discovery rule in under the Municipal Tort Claims Act, based on long-standing case law) (citing *Farnum ex rel. Farnum v. G.D. Searle & Co.*, 339 N.W.2d 392, 396 (Iowa 1983) and *Montgomery v. Polk Cnty.*, 278 N.W.2d 911, 912 (Iowa, 1979)).

Plaintiffs frame the inquiry as hinging on "the date of injury[,]" focusing on the date that Plaintiffs "because aware of Officer Scheevel's [alleged] wrongful acts." Appellee Br. at 37, 41. The "date of injury" is not the date on which the Plaintiffs became aware of or discovered their injury, but on the date that the alleged

wrongful conduct occurred. *Klein v. Steinkamp*, 44 F.4th 1111, 1114 (8th Cir. 2022) (finding that the two-year time period ran on the date of the alleged false arrest under § 670.5 because "[u]nder Iowa law, an injury occurs at the time of the unlawful act that gives rise to the claim").

Plaintiffs misread *Venckus* to hold that that the date of the alleged emotional distress—in other words the date of discovery/accrual—controls. In doing so, they claim that *Venckus* reaffirmed the holding of *Montgomery v. Polk County*, 278 N.W.2d 911 (Iowa 1979), and that somehow these cases save their claims. This reading either disregards, or completely ignores, the holding in *Venckus*: "[s]ince *Montgomery* was decided in 1979, we have repeatedly held that the IMTCA bars any claim not filed within the requisite time period as measured from the date of injury rather than the date of accrual." *See Venckus v. City of Iowa City*, 930 N.W.2d 792, 807 (Iowa 2019). The Iowa Supreme Court elaborated in *Venckus* as follows:

> Most recently, in *Doe v. New London Community School District*, we again held the limitations period in section 670.5 commences on the date of injury. 848 N.W.2d 347, 353–54 (Iowa 2014). We explained, "[T]he IMTCA contains no term like 'accrues' to give the statute 'elasticity' for the court to consider 'when a cause of action "accrues." ' " *Id.* at 352 (quoting *Montgomery*, 278 N.W.2d at 914). We further noted the legislature amended the statute post-*Montgomery* and retained the date of injury as the relevant date and there was thus no reason to reconsider *Montgomery*:
>
> > In sum, on several occasions, we have discussed the pre–2007 version of section 670.5 and said it

> did not incorporate a common law discovery rule. We reached this conclusion based upon the absence of language like "accrue" or "accrual" in the IMTCA to suggest that something other than the date of injury might be the starting point for the statute of limitations. Especially given the further fact that section 670.5 has now been legislatively rewritten, we see no reason to disturb our longstanding precedent in this area.
>
> *Id*. at 353–54 (citations omitted). One of the practical consequences of *Montgomery*, as reaffirmed in *Doe*, is that an action can be barred before the accrual date if the action was not filed within two years of the date of injury. *See Farnum*, 339 N.W.2d at 394, 396 (holding an action was barred by the limitations period where the time period to commence the action had passed prior to the accrual date).

Venckus, 930 N.W.2d at 808.

Plaintiffs attempt to do exactly what the Plaintiff did in *Montgomery*—urging that their cause of action did not accrue until the discovery of the injury:

> (1) [T]he county was negligent in paying the money to the wrong person, (2) this breach of the duty of care occurred on January 18, 1977, when the county paid Mr. Wright, (3) Montgomery did not Discover the breach until May 1977, and (4) her cause of action against the county did not Accrue until the discovery[.]

Montgomery, 278 N.W.2d at 913.

Ultimately, the Court in *Montgomery* held the plaintiff's claim failed as a matter of law: "[I]n this case involving a tort claim for negligently paying money to the wrong person, the 'injury' occurred when the payment is made." *Id.* at 916. In

other words, the "injury" occurred on the date of the wrongful conduct occurred, *not* the date the plaintiff became aware of the same. *Id.*

Plaintiffs attempt to latch on to language in *Montgomery* that discussed inapposite, out-of-state cases where negligence occurs at one time and the breach occurs later. The *Montgomery* court expressly distinguished IMTCA claims from these. *Montgomery*, 278 N.W.2d at 916, 918 ("The present case is to be distinguished." "The legislature . . . did not see fit to insert other ameliorative language found in some other jurisdictions.")

In this IMTCA case, like in *Montgomery* and *Venckus*, the alleged statutory breach occurred on the dates that the alleged database searches were conducted. *See Venckus*, 930 N.W.2d at 809 ("The date of injury for a defamation claim is the date on which 'the defendants performed their last allegedly defamatory act.'"); *Montgomery*, 278 N.W.2d at 916; *see also Rucker v. Humboldt Comm. School Dist.*, 737 N.W.2d 292, 293 (Iowa 2007) (finding claim of negligence against District and employees was time barred under prior version of section 670.5 because it was not filed within two years).

Specifically, the date of injury for Plaintiffs' claims under Iowa Code § 692.6 is the date on which the Defendants last allegedly "disseminated or . . . requested and received criminal history data or intelligence data." Iowa Code § 692.6. The same is true for the claims for civil conspiracy and invasion of privacy, as both are

predicated on the alleged violation of Chapter 692. *See* D0013 at ¶ 197-99 (noting that the claim for invasion of privacy arises out of Defendants alleged search and dissemination of Plaintiff's criminal history and intelligence data in violation of Chapter 692); *Wright v. Brooke Group, Ltd.*, 652 N.W.2d 159, 172 (Iowa 2002) ("Civil conspiracy is not in itself actionable; rather it is the acts causing injury undertaken in furtherance of the conspiracy that give rise to the action." (cleaned up)); *Bendzak v. Midland Nat. Life Ins. Co.*, 440 F. Supp.2d 970, 984 (S.D. Iowa 2006) ("Under Iowa law, the statute of limitations for conspiracy to commit a tort is the same as the statute of limitations for the underlying tort that furthered the conspiracy.").

Because the conduct giving rise to these actions all occurred between August of 2016 and May of 2019, and suit was not filed until July 7, 2023—facts which are not challenged by Plaintiffs on appeal, and are expressly alleged in Plaintiffs' Amended Petition—the claims are untimely as a matter of law, and the District Court's denial of the motions to dismiss should be reversed.

CONCLUSION

For the reasons stated herein and those previously articulated, the Court should reverse the District Court's Order.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on February 12, 2025, I electronically filed the foregoing Reply Brief of Appellants with the Clerk of the Supreme Court of Iowa by using the Iowa Electronic Document Management System (EDMS), which will send notice of electronic filing to the following:

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) and 6.903(1)(i)(1) or (2) because:

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