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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 16-1896

KAITLYN JOHNSON,

Plaintiff-Appellant

vs.

HUMBOLDT COUNTY, IOWA,
Defendant—Appellee; and

SANDRA BECKER, Individually and as
Executor of the Estate of
Donald E. Becker,
Defendant.

APPEAL FROM THE DISTRICT COURT
OF HUMBOLDT COUNTY
HONORABLE KURT J. STOEBE, PRESIDING JUDGE

APPELLEE HUMBOLDT COUNTY'S FINAL BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. THE DISTRICT COURT CORRECTLY HELD THAT THE PUBLIC DUTY-DOCTRINE PRECLUDES PLAINTIFF'S CLAIMS AGAINST HUMBOLDT COUNTY.

Authority

Alcala v. Marriott Int'l, Inc., 880 N.W.2d 699 (Iowa 2016)

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II. THE PUBLIC-DUTY DOCTRINE IS CONSISTENT WITH THE IOWA MUNICIPAL TORT CLAIMS ACT.

Authority

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III. THE PUBLIC DUTY DOCTRINE IS APPLICABLE IN THIS CASE.

Authority

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Wicker v. State of Iowa, 2011 WL 8342352 (Polk Co. 2011)

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IV. THE PUBLIC-DUTY DOCTRINE ABOLISHES ALL OF JOHNSON'S CLAIMS AGAINST HUMBOLDT COUNTY.

Authority

Donahue v. Washington County, 641 N.W.2d 848 (Iowa App. 2002)

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ROUTING STATEMENT

Transfer of this case to the Iowa Court of Appeals would be warranted as this case presents issues that require the application of existing legal principles, which have been recently affirmed by this Court in *Estate of McFarlin v. State*, 881 N.W.2d 51 (Iowa 2016). Iowa R. App. P. 6.1101(3) (a).

STATEMENT OF THE CASE

This is an appeal by Kaitlyn Johnson Plaintiff/Appellant (hereinafter "Johnson") from the Ruling on Motions for Summary Judgment (hereinafter the "Ruling") entered on September 23, 2016 in the District Court for Humboldt County, Iowa, the Honorable Judge Kurt A. Stoebe presiding.

The original petition in this matter was filed by Johnson on December 31, 2014, naming the County and landowners—the Beckers—as defendants. (App. p. 001.) The petition was amended twice with the last "amended petition" being filed on or about July 14, 2016. (App. p. 139.) Each petition was answered including the averments of affirmative defenses. (App. p. 155.) Discovery was conducted including depositions. Trial dates were set and deadlines entered—the trial was continued at least once. All of the parties filed motions for summary judgment at one time or another.

Humboldt County's Motion for Summary Judgment was filed on or about June 23, 2016, along with a Memorandum of Authorities and Statement of Undisputed Material Facts—this came shortly after the decision in *Estate of McFarlin v. State*, 881 N.W.2d 51 (Iowa 2016) was published. (App. p. 066.) The District Court after hearing oral argument and considering the parties' written submissions including a plethora of irrelevant information submitted by plaintiff and included in the appendix entered the Ruling on September 23, 2016. (App. p.

326-339.) The Ruling dismissed Johnson's Petition, in its entirety, against Humboldt County because of the public-duty doctrine. (*Id.*) The District Court held that the public-duty doctrine precludes all of Johnson's claims against Humboldt County whether based upon negligence, premises liability, common law public nuisance, public nuisance under Iowa Code 657, and I.C.A. § 318.4. (*Id.*)

On October 7, 2016, Johnson filed a Motion Seeking Clarification. (App. p. 340-341.) In that Motion, Plaintiff sought a clarification from the District Court to determine if it dismissed all counts against Humboldt County. (*Id.*) The District Court entered an Order on October 7, 2016, substantiating that the Ruling granting Humboldt County's Motion for Summary Judgment in its entirety, and that "all counts against Humboldt County, Iowa are dismissed by this Court's ruling on September 23, 2016. (App. p. 342-344.)

Johnson filed her Notice of Appeal on November 4, 2016. (App. p. 345-347.) Johnson appealed to the Supreme Court of Iowa from the "final order entered in this case on the 23rd day of September, 2016, dismissing all claims against Humboldt County, Iowa, as clarified by the court's order entered pursuant to Iowa R. Civ. P. 1.904 on the 7th day of October, 2016, and from all adverse rulings and orders inhering therein." (*Id.*) The case is currently stayed between the plaintiff and remaining defendants on the parties' joint motion and Court Order.

STATEMENT OF THE FACTS

In approximately **1972**, a concrete embankment was constructed on the Donald and Sandra Becker ("Becker") property in the non-traveled right-of-way abutting their property – the ditch. (App. p. 141, ¶ 15.) The Beckers either caused or paid someone to construct the embankment, which was apparently used for a cattle crossing on their property. (App. p. 141, ¶ 17.) Humboldt County never authorized the Beckers to construct this concrete embankment. (App. p. 032-034.) The Beckers never contacted Humboldt County prior to their construction of the concrete embankment nor did they obtain any permits to build it. (*Id.* at Response to Request for Admission No. 1 and 2.). Of note, the Humboldt County Ordinance requiring a permit was not enacted until 2006 and did not apply retroactively, therefore no permit was required. The Beckers admit and agree that they are responsible for maintaining the concrete embankment. (*Id.* at Response to Request for Admission No. 3.). The subject concrete embankment had been present from 1972 until March 3, 2013, a period of over 40 years. During this time, there is no record of any complaints, concerns, or requests for action that were made to Humboldt County.

The Beckers claim that the concrete embankment was actually a cattle grid to prevent cattle or other livestock from crossing roads and can serve as an

alternative to fencing. (App. p. 047, 011 at ¶ 10.) At all times material to this matter, the Beckers maintained the cattle grid. (App. p. 033 at No. 3.)

The subject motor vehicle accident occurred around 2:30 a.m. on March 3, 2013. (App. p. 021-022.) The location of the accident was on C49, which is a secondary road with one lane of travel in each direction located in Humboldt County, Iowa. (App. p. 302:5-21.) Helmers was driving and Johnson was a passenger. (App. p. 010, #2 and App. p. 021-022.) Helmers *believes* that he "must have fallen asleep at the wheel while driving." (App. p. 010, # 3 and App. p. 021-022.) Helmers vehicle crossed the oncoming lane of traffic and continued into the ditch on the other side of the road. (Amended Petition, ¶ 19). According to the Accident Report, Helmers vehicle continued in the ditch for another 224 feet before striking the subject concrete embankment. (App. p. 021-022.) Helmer's did not apply his brakes at any point prior to impact with the concrete embankment. (App. p. 101, ¶ 4 & 5 and App. p. 024-031.) The data from the vehicle establishes that Helmers continued to travel through the ditch at 60 mph until 1 second before impact, when his speed decreased to 58 mph. (App. p. 024-031.) Helmers is a released party under Iowa Code § 668.7. Despite the clear fault of Helmers, Johnson now seeks to hold the landowner and Humboldt County liable.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY HELD THAT THE PUBLIC DUTY DOCTRINE PRECLUDES PLAINTIFF'S CLAIMS AGAINST HUMBOLDT COUNTY.

ERROR PRESERVATION

Johnson did not address whether error had been preserved on this issue pursuant to Iowa R. App. P. 6.903(2)(g)(1). Nevertheless, Johnson timely appealed the Order granting summary judgment in favor of Humboldt County and Humboldt County does not dispute that error has been preserved on this issue.

STANDARD OF REVIEW

The Court reviews a District Court's entry of summary judgment for correction of errors at law. An entry of summary judgment will be affirmed when the entire record establishes that there is no genuine issue of material fact. *Hlubek v. Pelecky*, 701 N.W.2d 93, 96 (Iowa 2005).

A. This Court Considered Whether the Public Duty Doctrine Should Be Abandoned.

In her brief, Johnson argues that the Iowa Supreme Court did not consider whether the public-duty doctrine should be abandoned in its recent case, *Estate of McFarlin*, 881 N.W.2d 51 (Iowa 2016). Johnson cites to the Supreme Court's opinion in *Estate of McFarlin* as follows,

> The plaintiffs, relying on *Summy,* argue that the public-duty doctrine is inapplicable to the facts of this case *but do not ask us to overrule*

> Raas *and* Kolbe and *abandon the public-duty doctrine.* We do not ordinarily overrule our precedent sua sponte.

(Appellant's Brief, pg. 24.)

The Supreme Court, however, made it explicitly clear that the public-duty doctrine was still viable, alive, and well in *McFarlin.* Furthermore, the Iowa Supreme Court, in the very next paragraph following the paragraph cited by Johnson above, stated that,

> We conclude the public-duty doctrine remains good law after our adoption of sections of the Restatement (Third) of Torts.

McFarlin at 59. It is apparent to Appellee, and this Court, that the Supreme Court did indeed consider whether the public-duty doctrine should be abandoned, and rejected that consideration, because the Supreme Court explicitly stated it "remains good law after our adoption of sections of the Restatement (Third) of Torts" just a mere 7 months ago.

B. The Public Duty Doctrine Is Consistent With the Restatement (Third) of Torts: Liability for Physical and Emotional Harm.

Although the Supreme Court, as mentioned above, explicitly stated that "the public-duty doctrine remains good law after our adoption of sections of the Restatement (Third) of Torts," Johnson argues in her appeal that the public duty doctrine is inconsistent with the Restatement (Third) of Torts: Liability & Emotional Harm. (Appellant Brief, pg. 25.) In making her argument, Johnson appears to chastise the Supreme Court and how it handled its decisions in *Estate of*

McFarlin and *Alcala v. Marriott Int'l, Inc.,* 880 N.W.2d 699, 712 (Iowa 2016). Nevertheless, the Supreme Court was correct in its holding in *Estate of McFarlin,* and it should continue to uphold and enforce the public-duty doctrine in this case.

Johnson argues that the public-duty doctrine is a vestige of outdated common law that that has no continuing utility under the Third Restatement. (Appellant's Brief, pg. 28.) Johnson, in making her unsupported statement, fails to consider the fact that if there was no continuing utility for the public-duty doctrine than the Restatement (Third) of Torts should have either abolished it or not even mentioned it at all. The Restatement (Third) of Torts, however, mentions the public-duty doctrine and acknowledges that the doctrine is alive and well just as the Supreme Court has done. For example, Section 7 of the Restatement (Third), provides as follows,

> *Deference to discretionary decisions of another branch of government.* The "public-duty" doctrine is often explained as preventing government tort liability for obligations owed generally to the public, such as providing fire or police protection. Only when the duty is narrowed to the injured victim or prescribed class of persons does a tort duty exists.

Johnson's statement that there is no continuing utility for the public-duty doctrine after the Restatement (Third) of Torts is not supported by the Restatement itself.

Furthermore, courts throughout Iowa have considered the issue of the Supreme Court's adoption of sections of the Restatement (Third) of Torts and addressed whether there was any conflict with the continued viability of the public-

duty doctrine. As recently as June of 2016, each of those courts, including the Supreme Court, have found that the public-duty doctrine remains "alive and well in Iowa." *See Estate of McFarlin*, 881 N.W.2d at 59 (quoting *Raas v. State*, 729 N.W.2d 444, 449 (Iowa 2007)). The District Court for Polk County considered the Supreme Court's adoption of the Restatement (Third) of Torts for cases involving the general duty of care.[1] The District Court in *Wicker v. State of Iowa,* 2011 WL 8342352 (Polk Co. 2011), considered two years after *Thompson v. Kaczinksi,* 774 N.W.2d 829 (Iowa 2009), looked at the idea, just as the Supreme Court did in *McFarlin,* regarding whether the Restatement (Third) of Torts and the public-duty doctrine are mutually exclusive. The District Court, in this regard, stated that,

> The Iowa Supreme Court has adopted the Restatement (Third) of Torts for cases involving the general duty of care. *Thompson v. Kaczinski,* 744 N.W.2d 829, 834-35 (Iowa 2009). "An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm." *Id.* (quoting Restatement (Third) of Tort's Liability for Physical Emotional Harm § 7(a) at 90). This normally removes the duty question and allows the Court to proceed to the elements of liability. *Id.* It is an exception which the State points to in this case, however. Under this exception, the general duty can be modified or completely displaced where "an articulated countervailing principle or policy warrants denying or limiting liability in particular class of cases." *Id*. "In such an exceptional case, when the court rules as a matter of law that no duty is owed by actors in a category of cases, the ruling should be explained and justified based on articulated policies or principles that justify exempting [such] actors from liability or modifying the ordinary duty of reasonable care." *Id.* (internal citations omitted). The

[1] Any representation by Johnson that this Court has adopted the entire Restatement (Third) of Torts is inaccurate. (Appellant's Brief, pg. 28 and 36.)

> question today, therefore is whether this is in a category of cases where the general duty is displaced.

Wicker v. State of Iowa, 2011 WL 8342352 (Polk County 2011). In *Wicker,* the District Court, citing the Supreme Court and the Court of Appeals, went on to state that,

> Iowa Courts have long applied the "public duty doctrine" and continue to do so today. *See Dooley v. City of Cedar Rapids,* 2011 WL 1135794, 3 (Iowa App. 2011). Under this doctrine, a governmental body owes no duty of care to an individual when the duty of care is owed to the public generally. *Id.* To recover in such a circumstance, the individual plaintiff must show some kind of special relationship between the government body and the individual plaintiff. *Kolbe v. State,* 625 N.W.2d 721, 729-30 (Iowa 2011)(applying public duty exception suit against State by users of a highway). While the on-going vitality of this doctrine could be questioned in light of the Court's adoption of the Restatement (Third) of Torts, thereby shifting the foreseeability analysis from the arena of duty to the area of causation, the doctrine appears to this Court to be of the type where an "articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases." *Van Fossen v. MidAmerican Energy Co.,* 777 N.W.2d 689, 696-97 (Iowa)(examining Restatement (Third) of Torts § 7). In fact the comments to the Restatement (Third) § 7 discuss the on-going application of the doctrine. Restatement (Third) § 7 cmt. g.

Wicker at 2011 WL 8342352.

In this case, there is no dispute that Johnson was a general user of the road. (Amended Petition, ¶ 35) Specifically, Johnson alleges that Humboldt County failed "to exercise reasonable care due travelers on the public highway." (*Id.*) *Kolbe v. State,* 625 N.W.2d 721, 729 (Iowa 2001) (travelers on the road are not a specific group or specialized class.) and *Wicker v. State,* 2011 WL 8342352

(travelers are "general users of the road.) Johnson was not an invitee and Humboldt County had no special relationship with her. As the Supreme Court noted in *Estate of McFarlin*, "Boaters at Storm Lake, like motorists driving on Iowa roadways, are members of the general public, not a special class…for purposes of the public-duty doctrine." *See,* 881 N.W.2d at 61.

The public-duty doctrine is alive and well. It should be upheld once again.

II. THE PUBLIC-DUTY DOCTRINE IS CONSISTENT WITH THE IOWA MUNICIPAL TORT CLAIMS ACT

ERROR PRESERVATION

Johnson did not address whether error had been preserved on this issue pursuant to Iowa R. App. P. 6.903(2)(g)(1). Nevertheless, Johnson timely appealed the Order granting summary judgment in favor of Humboldt County and Humboldt County does not dispute that error has been preserved on this issue.

STANDARD OF REVIEW

The Court reviews a District Court's entry of summary judgment for correction of errors at law. An entry of summary judgment will be affirmed when the entire record establishes that there is no genuine issue of material fact. *Hlubek v. Pelecky*, 701 N.W.2d 93, 96 (Iowa 2005).

ARGUMENT

Johnson argues in her brief that the public-duty doctrine is inconsistent with the Iowa Municipal Tort Claims Act ("IMTCA"). *See* Iowa Code Chapter 670. As

Johnson acknowledges, the IMTCA was enacted in 1967. Since that time, the Iowa Supreme Court has addressed the validity of the public-duty doctrine on numerous occasions, always upholding its validity. The Supreme Court already directly addressed this exact argument in *Raas v. State,* 729 N.W.2d 444 (Iowa 2007). This Court, in *Raas,* stated that,

> Our cases decided after the adoption of the State Tort Claims Act continue to recognize the public-duty doctrine, and with the exception of the *Wilson* and *Adam* cases discussed below, they have clearly upheld the continued validity of the doctrine.
>
> The plaintiffs contend that our prior cases of *Wilson,* 282 N.W.2d 664, and *Adam v. State,* 380 N.W.2d 716 (Iowa 1986), cast doubt on the continued validity of the public-duty doctrine. However, in *Kolbe* we distinguished *Wilson* and *Adam* on the basis that the statutes involved in those cases were not aimed at the protection of the public in general (as required by the public-duty doctrine), but to narrow groups of persons, thereby establishing special relationships and making the public-duty doctrine inapplicable. *Kolbe,* 625 N.W.2d at 729. Contrary to the plaintiffs' argument [including in this case], *Wilson* and *Adam* did not eliminate the public-duty doctrine.
>
> In *Kolbe,* we recognized that the public-duty doctrine is still viable despite enactment of the State Tort Claims Act: "Because we conclude where was no … duty [under the public-duty doctrine], we need not address the immunity issue." *Kolbe,* 625 N.W.2d at 725. Although, as the plaintiffs [including in this case] point out, other jurisdictions have held their tort claims statutes to have abrogated the public-duty doctrine in those jurisdictions, we conclude that both doctrines are alive and well in Iowa.

Raas at 448-449.

Nothing has changed since this Court's holding in *Raas* or *Kolbe* that would warrant this Court to overrule *Raas* and *Kolbe.* The Iowa Supreme Court has made

it clear that the public-duty doctrine survived the implementation of the Municipal Tort Claims Act.

III. THE PUBLIC DUTY DOCTRINE IS APPLICABLE IN THIS CASE.

ERROR PRESERVATION

Johnson did not address whether error had been preserved on this issue pursuant to Iowa R. App. P. 6.903(2)(g)(1). Nevertheless, Johnson timely appealed the Order granting summary judgment in favor of Humboldt County and Humboldt County does not dispute that error has been preserved on this issue.

STANDARD OF REVIEW

The Court reviews a District Court's entry of summary judgment for correction of errors at law. An entry of summary judgment will be affirmed when the entire record establishes that there is no genuine issue of material fact. *Hlubek v. Pelecky*, 701 N.W.2d 93, 96 (Iowa 2005).

ARGUMENT

Johnson's argument that the public-duty doctrine is inapplicable to this case ignores that the Supreme Court has stated that the general duty can be modified or completely displaced where, "an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases." *Thompson v.*

Kaczinski, 774 N.W.2d 829, 834-35 (Iowa 2009).[2] And, when the Court rules as a "matter of law that no duty is owed by actors in a category of cases, the ruling should be explained and justified based on articulated policies or principles that justify exempting [such] actors from liability or modifying the ordinary duty of reasonable care." *Id.* Johnson also ignores the *Thompson* ruling in this regard, which shows that the public-duty doctrine is still alive even after *Thompson.*

Although not directly addressed by Johnson, the issue has been raised that precedent in Iowa establishes that the government has a duty to ensure that roads are made safe. However, what that argument fails to address is that Iowa precedent is also clear that "rightful users of the roads" are not a specific class and do not share a special relationship for the purposes of the public-duty doctrine. *See Estate of McFarlin*, 881 N.W.2d at 61; *see also Kolbe*, 625 N.W.2d at 728-30. Despite counsel for Johnson's description of *Estate of McFarlin* as a "paper tiger" with little applicability to the present case, the reality is that this Court's ruling in *McFarlin* is directly applicable to this case. (App. p. 302:3-6.) Similar to the Plaintiffs in *Estate of McFarlin*, public roads are open to the general public to "traverse…freely and come and go as they please." *Estate of McFarlin*, 881

[2] It is being argued by Appellant and the Iowa Association of Justice that the public-duty doctrine is inconsistent with the Supreme Court's ruling in *Thompson v. Kaczinski,* 774 N.W.2d 829 (Iowa 2009). The Supreme Court in *Estate of McFarlin v. State,* 881 N.W.2d 51 (Iowa 2016) considered the *Thompson* ruling and still held that the public-duty doctrine is alive in Iowa.

N.W.2d at 61. As discussed in *Estate of McFarlin*, a key factor in rejecting the applicability of the public-duty doctrine in *Summy* was that the City was operating the golf course as a business and invitees paid for the use of the course. *Id.* at 60. In the present case, Johnson was specifically pay for the use of the public road and therefore did have a special relationship with Humboldt County.

In this case, Johnson, in trying to assert or impute liability to Humboldt, based on the premise "all persons on roadways are foreseeable victims of a driver falling asleep and driving across the on-coming lane of traffic and crashing into the ditch on the opposite side of the road. *See, Wicker* at 2011 WL 8342352. Additionally, under Johnson's theory, the County (or State or any other governmental entity) would have unlimited potential liability if a finding of a duty is owed to Johnson.

Johnson, or her ex-husband, should not have even been driving in the ditch on the opposite side of the highway. Johnson, or her ex-husband, should not have been in the vehicle if her ex-husband was too tired to drive. While Humboldt County certainly has sympathy for Johnson, the law in Iowa is clear that Johnson does not share a special relationship with Humboldt County, therefore no duty attaches. *See Estate of McFarlin*, 881 N.W.2d at 61; *see also Kolbe*, 625 N.W.2d at 728-30.

Public policy also supports the application of the public-duty doctrine in this case. Johnson still has avenue for recovery against the Beckers and her ex-husband. However, the rejection of the public-duty doctrine in this case would burden Iowa counties with a duty to protect all general users of public roads against the potential negligence of third parties. The potential burden of this duty is substantial and unlimited.

IV. THE PUBLIC-DUTY DOCTRINE ABOLISHES ALL OF JOHNSON'S CLAIMS.

ERROR PRESERVATION

Johnson did not address whether error had been preserved on this issue pursuant to Iowa R. App. P. 6.903(2)(g)(1). Nevertheless, Johnson timely appealed the Order granting summary judgment in favor of Humboldt County and Humboldt County does not dispute that error has been preserved on this issue.

STANDARD OF REVIEW

The Court reviews a District Court's entry of summary judgment for correction of errors at law. An entry of summary judgment will be affirmed when the entire record establishes that there is no genuine issue of material fact. *Hlubek v. Pelecky*, 701 N.W.2d 93, 96 (Iowa 2005).

ARGUMENT

The District Court, rightfully so, dismissed Counts II, III, IV, V, and VI against Humboldt County – all of Johnson's counts against Humboldt County. Johnson now argues that the District Court erred in dismissing all of Johnson's claims "because the doctrine has limited application and can only prevent the recognition of a common law duty of reasonable care." (Appellee's Brief, pg. 68.) Johnson goes on to argue, without Iowa based legal authority, that the public-duty doctrine "does not protect the government from premises liability claims" and that "there is no authority the doctrine protects the government from liability for public nuisance." (Appellee's Brief, pg. 68.) Johnson continues and argues that the public-duty "doctrine would not preclude implied causes of action arising out of a statute." (Appellee's Brief, pg. 68.)

These arguments are without merit, which is why Johnson relied upon Montana law to support her contention. First, the Iowa Supreme Court has stated in regard to the public-duty doctrine,

> If a duty is owed to the public generally, there is no liability to an individual member of that group.

Kolbe v. State, 625 N.W.2d 721, 728 (Iowa 2001). There is no limitation by this Court that the public-duty doctrine only applies to common law claims as Johnson contends. Further, the Supreme Court in *Wilson v. Nepstad,* 282 N.W.2d 664, 672 (Iowa 1979), provided that "the doctrine did not bar the plaintiff's suit because the

statutes and ordinances in question *were not designed to protect the general public,* but rather were designed to protect a 'special, identifiable group of persons." *Kolbe* at 729 citing *Wilson* at 672. The Supreme Court "confirmed this reading of *Wilson* in *Sankey,* 456 N.W.2d at 209." *Kolbe* at 827. Any argument by Johnson that the public-duty doctrine does not apply to any duty that is created by statute or an ordinance is wholly without merit.

The Iowa Court of Appeals has stated, in this regard that, "[t]his duty to the public can arise from a statute or from the [governmental entity's] obligation to protect the public at large" in regard to the public-duty doctrine. *Donahue v. Washington County,* 641 N.W.2d 848, 851 (Iowa App. 2002) citing *Kolbe,* 625 N.W.2d at 729 and *Fitzpatrick v. State,* 439 N.W.2d 663, 667 (Iowa 1989). As established by the above-referenced authority, there is no distinction between whether a claim is being brought against a county under statutory or common law in regards to the public-duty doctrine. As long as the duty is owed to the general public as opposed to a special class, the public-duty doctrine applies and precludes the claim.

The public-duty doctrine is applicable in any claim brought against Humboldt County where the,

> municipality has a duty to the general public, as opposed to a particular individual, breach of that duty does not result in tort liability. The rule protects municipalities from liability for failure to adequately enforce general laws and regulations, which were intended

> to benefit the community as a whole. The public duty rule is not technically grounded in government immunity, through it achieves the same results. Unlike immunity, which protects a municipality from liability for breach of an otherwise enforceable duty to the plaintiff, the public duty rule asks whether there was any enforceable duty to the plaintiff in the first place.

Raas at 448. The *Kolbe* Court also rejected claims based on statute under the public-duty doctrine. *Kolbe* at 729-730.

Johnson's argument against the application of the public-duty doctrine in this case for her claims for liability under Chapters 318 and 319 is also not the law of Iowa. This Court in *Waters v. State,* 784 N.W.2d 24 (Iowa 2010), specifically looked at Chapter 319 (of which 318 is the predecessor) in regard to an obstruction of an abandoned vehicle sitting in the central traveled portion of the highway right-of-way. The Iowa Supreme Court looked at and approvingly cited the case of *Kolbe v. State,* 624 N.W.2d 721, 729 (Iowa 2001)("We have routinely held that a breach of a duty owed to the public at large is not actionable unless the plaintiff can establish, based on the unique or particular facts of the case, a special relationship between the [government] and the injured plaintiff ….") in determining that immunity is applicable in a case where the trial court had dismissed some, but not all of the claims against several governmental entities/units.

The public-duty doctrine applies to Iowa's common law claims against counties as well as causes of action based on alleged violations of Iowa law or

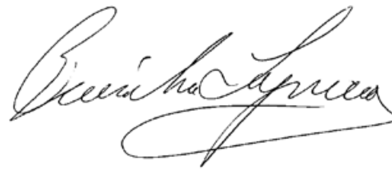
administrative regulation. All of Johnson's counts against Humboldt County are either based upon the common law or Iowa Code. As such, the public-duty doctrine is applicable to all of these counts, and they were rightfully dismissed by the District Court.

CONCLUSION

Defendant/Appellee Humboldt County respectfully requests this Court to uphold the District Court Ruling.

REQUEST FOR ORAL ARGUMENT

In light of this Court's very recent decision in *Estate of McFarlin v. State*, Appellee believes oral argument is unnecessary.



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CERTIFICATE OF SERVICE AND FILING

The undersigned certifies this Final Brief was filed with the Iowa Supreme Court via EDMS, pursuant to the Court Order and a copy of this second amended proof brief was served on the 4th day of May, 2017, upon all parties to the appeal via EDMS: Conrad Meis, 111 North Dodge Street, PO Box 617, Algona, IA 50511; Michael Bush and John Bush, 5505 Victoria Ave, Suite 100, Davenport, IA 52807; Joel J. Yunek, 10 North Washington, Suite 204, PO Box 270, Mason City, Iowa, 50402; Jessica A. Zupp 1919 4th Avenue S., Ste. 2, Denison IA and Joel E. Fenton, 541 31st Street, Suite C, Des Moines, Iowa.

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CERTIFICATE OF COST

It is certified that the actual cost paid by Appellee for submitting this brief was $0.00 as it was filed electronically by EDMS pursuant to Court Order.

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1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1) (g) (1) because this brief contains 4,817 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1) (g) (1).

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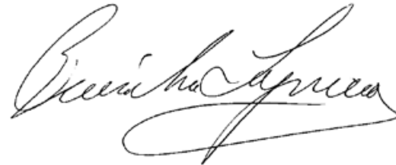

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