IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 16-0558
WOODBURY COUNTY NO. LACV159726

JOANNE COTE,
Plaintiff-Appellee,

vs.

DERBY INSURANCE AGENCY, INC., an Iowa Corporation,
and KEVIN DORN, Individually,
Defendants-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE JEFFREY L. POULSON, JUDGE

APPELLEE'S RESISTANCE TO APPELLANTS' APPLICATION FOR FURTHER REVIEW

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STATEMENT OF FACTS

Plaintiff-Appellee Joanne Cote (hereinafter "Cote") started working for Derby Insurance Agency, Inc. ("Agency") as a Customer Service Representative on May 6, 1998. (MSJ Resistance Exhibit A - Cote Affidavit ¶3; App. 105.) In addition to working as a Customer Service Representative for Agency, Cote also served them in a variety of roles, including but not limited to, reconciling their bank statements, ordered supplies, and trained new employees. (MSJ Resistance Exhibit A - Cote Affidavit ¶4; App. 105.)

Patricia Georgesen was the individual who hired Cote. She was the owner of Agency when Cote was hired. She was dating Kevin Dorn at the time, and later married him, so her name is now Patty Dorn. (MSJ Resistance Exhibit A - Cote Affidavit ¶5; App. 105.) (See also MSJ Resistance Exhibit C - Anderson Affidavit ¶10; App. 157.)

Kevin Dorn also interviewed Cote for the position. Patricia was the primary owner of Agency, and Kevin helped her run the business as a manager and supervisor. Cote considered both of them to be her bosses. (MSJ Resistance Exhibit A - Cote Affidavit ¶6; App. 106.) (See also MSJ Resistance Exhibit B - Kittler Affidavit ¶3; App. 154.) Cote was made an office manager in approximately 2003. (MSJ Resistance Exhibit A - Cote Affidavit ¶7; App. 106.)

In approximately 2005, while in the office, Kevin exposed his genitals to one of the agents, Sandy Dobson (later Sandy Hospers) in her private office. (MSJ Resistance Exhibit A - Cote Affidavit ¶8; App. 106.) (See also MSJ Resistance Exhibit B - Kittler Affidavit ¶¶4 & 5; App. 154-155; and MSJ Resistance Exhibit C - Anderson Affidavit ¶5; App. 156.) Sandy came right away and reported this incident to Cote when she was sitting out at the front counter. Sandy was quite upset, and Cote was shocked by his behavior. (MSJ Resistance Exhibit A - Cote Affidavit ¶9; App. 106.) (See also MSJ Resistance Exhibit C - Anderson Affidavit ¶¶ 8 & 9; App. 157.)

Shortly after that incident. Kevin again exposed himself to Sandy in her office. Sandy again came to Cote and reported this incident. Both were shocked by his behavior, and Cote suggested that she start documenting his actions. (MSJ Resistance Exhibit A - Cote Affidavit ¶10; App. 106.) (See also MSJ Resistance Exhibit C - Anderson Affidavit ¶12; App. 157.)

Approximately 1-2 years later, Kevin exposed himself to Stephanie Ptak, who was a customer service representative who worked with Cote. This occurred out in the front area while he was standing at the fax machine. (MSJ Resistance Exhibit A - Cote Affidavit ¶11; App. 106.)

Cote was at lunch when this incident happened, and Stephanie reported it to her as soon as she got back to the office. (MSJ Resistance Exhibit A - Cote Affidavit ¶12; App. 106.)

After that, Cote went into Sharon Kittler's office to report to her what was going on (Cote had mentioned the previous incidents involving Sandy to her as well). Sharon was another agent. Both were astounded and disgusted by Kevin's continuing behavior. (MSJ Resistance Exhibit A - Cote Affidavit ¶13; App. 106.) (See also MSJ Resistance Exhibit B - Kittler Affidavit ¶5; App. 154-155.)

After Sandy and Stephanie quit, Kevin started harassing Cote. The first time Kevin sexually harassed Cote was in 2007. Cote was working up front in the customer service area, and no one else was present because it was early in morning, and she was generally the only person who showed up for work on time before 8:30 a.m. Since Cote was the only one there, this would be the time when Kevin would harass her. (MSJ Resistance Exhibit A - Cote Affidavit ¶14; App. 106-107.)

The first time Kevin harassed Cote, he came around her desk with an obvious erection in his pants. Cote was sitting down, and he was standing up only approximately three feet away from her, so his erection was obvious and close to her face. It was obvious he wanted her to see his erection

because of the way he was standing next to her, he had no reason why he had to come into her work area at that specific time (as opposed to later after the erection had gone down). This lasted a few minutes, and he had no reason to stand there that long. Also, it was a part of his pattern of exposing himself to employees. Cote didn't want to believe that he was sexually harassing her at first because she was older than Sandy and Stephanie, but as he kept doing it, it was obvious. (MSJ Resistance Exhibit A - Cote Affidavit ¶14; App. 106-107.)

For the next several years, Kevin did the same thing several times per year. He would always come into Cote's area early in the morning when no one else was present, would have an obvious erection, and would stand within a few feet of her for several minutes. Each time, it was obvious that he wanted her to see him because he had no reason to stand there for that long, and his groin would be in close proximity to her face, and would ask her a question so she would have to stop what she was doing, and have to look in his direction. (MSJ Resistance Exhibit A - Cote Affidavit ¶15; App. 107.)

During one of those incidents, he came right beside her chair less than a foot away from her face, looked at her and asked a question. He was again noticeably erect, so his erection would have been only a few inches from her

face. He stood there for several minutes again. Cote was so nervous that she started fidgeting and reached for papers on the desk, and her hand brushed his erection. He had to have felt it, and still he did not move. (MSJ Resistance Exhibit A - Cote Affidavit ¶16; App. 107.)

On another occasion, Kevin picked Cote up to take her to work because it was a snowy day. On snowy days, Kevin and Patty normally picked her up when she would ask them to, so she did not have to drive on bad roads. However, on this occasion, Kevin was by himself when he picked her up. On the way in to the office, he had his left hand on the steering wheel, and he groped his crotch in front of her the whole time. It was about a ten minute drive from Cote's house to the office. (MSJ Resistance Exhibit A - Cote Affidavit ¶17; App. 107-108.)

In April 2011, again during the early morning when no one else is there, Kevin walked into Cote's working area and was asking her questions. She did not look at him, and he walked away – he went to the fax machine a few feet away, and asked her a question so she had to look in his direction. His pants were unzipped and gaping open and could see skin. (MSJ Resistance Exhibit A - Cote Affidavit ¶18; App. 108.)

On February 9, 2012, again during the early morning when no one else was there, he was standing by the fax machine and his pants were

gaping open. Cote tried to not look at him, but he was asking her questions, so she had to look in his general direction, and as with before, she could see skin. (MSJ Resistance Exhibit A - Cote Affidavit ¶19; App. 108.)

Again on March 12, 2012, he again came within a few feet of Cote in her working area with an obvious erection. Again the erection was within a few feet of her face, and he stood there for several minutes when he did not have to do so. (MSJ Resistance Exhibit A - Cote Affidavit ¶20; App. 108.)

Kevin continued to come into Cote's working area during the summer months, through the beginning of August, 2012, on several occasions during the early morning when no one else was there. He would wander in her work area, sometimes to ask her something, or sometimes not saying anything at all. Because we were alone, and Cote was afraid of him due to his long pattern of sexually offense behavior in front of her, she would immediately tense up and try to not to look at him. She would look away and pretend she was on her phone. (MSJ Resistance Exhibit A - Cote Affidavit ¶21; App. 108-109.)

Cote knew he was trying to get her to look at him and his private parts because of his pattern of behavior and the only times when he would walk into her area during the early morning hour when no one else was there was when he had an erection. It was obvious from his demeanor that he was

there to harass her. Cote knew he would be leaving the Sioux City office soon, so she tried to avoid him as much as possible, but he kept coming in to her area anyway for no apparent reason other than to harass her. (MSJ Resistance Exhibit A - Cote Affidavit ¶21; App. 108-109.)

Kevin and Patty were looking to sell the business at that time, and they moved to Omaha in August. The business was sold in October, 2012, and the business was renamed Derby Insurance ("Services"), but Kevin and Patty still worked for the agency, and worked at an office in Omaha for Services. (MSJ Resistance Exhibit A - Cote Affidavit ¶22; App. 109.)

While at Derby Insurance Agency, Kevin Dorn had the right to fire employees. For example, he fired Karen Worrell, who was an agent. Patty was not even in the office that day – he brought Karen in to his office and fired her. (MSJ Resistance Exhibit A - Cote Affidavit ¶24; App. 109.) (See also MSJ Resistance Exhibit B - Kittler Affidavit ¶3; App. 154.) Moreover, during the periods of time when Patty was not in the office, Kevin was the leader of office. When Patty's mother was ill, Patty would be out of the office for months, and Kevin ran the office by himself during that time. (MSJ Resistance Exhibit A - Cote Affidavit ¶25; App. 109.)

Even when Patty was in the office, he was still the boss. He led all of their meetings. Cote was not aware of any decisions that Patty made where

Kevin was not a part of it. (MSJ Resistance Exhibit A - Cote Affidavit ¶26; App. 109.) (See also MSJ Resistance Exhibit C - Anderson Affidavit ¶10; App. 157.)

Other evidence established Kevin's status as an owner/manager of Agency. The sign in front of Derby Insurance Agency said: "Kevin & Patty Dorn". (MSJ Resistance Exhibit A - Cote Affidavit ¶27; App. 109.) Furthermore, a Derby Insurance Services, Inc. Facebook post on March 27, 2013 which states in part: "Patty Dorn (sister to Jeanne Derby) and her husband Kevin Dorn are the current owners of Derby Insurance Agency." (MSJ Resistance Exhibit A - Cote Affidavit ¶28; App. 110.)

Cote was afraid to complain to Patty because she was afraid she would retaliate against her and she would lose her job. Patty has sent Cote threatening text messages in August, 2015. Also, Defendants did not have a sexual harassment policy in place, so Cote had no one to complain to, and there was no policy to protect her from retaliation. (MSJ Resistance Exhibit A - Cote Affidavit ¶29; App. 110.) (See also MSJ Resistance Exhibit B - Kittler Affidavit ¶6; App. 155.)

Due to Kevin's actions, Cote has suffered both physically and mentally since it occurred. She frequently feels stressed out, has tension and worries about whether she could be subjected to harassment from other employers.

During the several years of harassment, she frequently had tension headaches, sick feelings in her stomach, and she almost fainted due to feeling queasy. (MSJ Resistance Exhibit A - Cote Affidavit ¶30; App. 110.)

Cote could not sleep through the night on several occasions while the harassment was going on when she knew Patty was not going to be in the office the next day, because she was afraid that Kevin would do it again. Cote felt degraded, humiliated, ashamed, depressed, and angry during the several years that he did those things to her, and she still feel that way at times when she is reminded of what happened. (MSJ Resistance Exhibit A - Cote Affidavit ¶30; App. 110.)

The Iowa Civil Rights Commission found that there was probable cause to pursue Cote's complaints against Defendants. Said findings included the finding that the ICRC had jurisdiction over the case because Agency had a sufficient number of employees to be covered by Iowa Code Chapter 216, and that there was probable cause to believe that actionable discrimination had occurred. (MSJ Resistance Exhibit D; App. 159-167.)

ARGUMENT

I. THE IOWA COURT OF APPEALS PROPERLY DECIDED THE ISSUE PERTAINING TO INTERPRETATION OF IOWA CODE §216.6(6), AND PROPERLY DETERMINED THAT DEFENDANTS HAD A SUFFICIENT NUMBER OF EMPLOYEES TO BE COVERED BY THE IOWA CIVIL RIGHTS ACT.

The first argument made by Defendants is that the Iowa Supreme Court should have retained this case instead of transferring it to the Court of Appeals. Although this exact question has not arisen before the Iowa appellate courts before, the issue raised involves straight-forward issues of statutory interpretation, and because the Court of Appeals properly resolved the issue, this Court should decline further review.

Section 216.6(6)(a) of the Iowa Code indicates that the Iowa Civil Rights Act does not apply to employers who regularly employ less than four individuals, and "individuals who are members of the employer's family shall not be counted as employees". Defendants admitted that they regularly employed five individuals at any given time. (Defendants' MSJ Brief p. 7; App. 45). Therefore, they attempt to avoid liability by claiming that the exception for family members applies, reducing the number of regularly employed individuals down to less than four.

Defendants admit that the employer in question, Agency, is a S Corporation. Therefore, the question before the trial court and Court of Appeals is whether Agency can have family members. At the trial court level, Cote submitted that the answer to that question is "no" – corporations do not have family members, and so the exception does not apply. The trial

court found in Cote's favor on this issue, and the Court of Appeals affirmed this decision.

The trial court properly began by applying the pertinent principles of statutory construction. The trial court found that the statute was ambiguous, citing *Iowa Inst. v. Core Grp. Of Iowa Ass'n for Justice*, 867 N.W.2d 58, 72 (Iowa 2015)("A statute is ambiguous if reasonable minds could differ or be uncertain as the meaning of the statute")(MSJ Ruling pp. 7-8). When interpreting such a statute, "the court will read the statute as a whole and give it its plain and obvious meaning a sensible and logical construction, which does not create an impractical or absurd result." *In re Det. of Geltz*, 840 N.W.2d 273, 275 (Iowa 2013). The Court of Appeals affirmed the trial court's analysis as to statutory interpretation.

The trial court began by looking at the language of Iowa Code Chapter 216:

> First, this construction is consistent with the definitions of "employer" and "person" in section 216.2 (which) defines "employer" as including "persons," Iowa Code § 216.2(7), and defines "person" in part as including "one or more…. Corporations," *id.*§ 216.2(12). Thus, it is the corporations, themselves – and not their board or shareholders – that are considered to be the "employers" under chapter 216. Although section 216.2(12) does also state that "individuals" may be considered "persons" (and thus "employers"), *id,.* this subsection nowhere states that a corporation's board or shareholders are to be considered the true employer of an employee.

(MSJ Ruling p. 9). The Court of Appeals also noted:

> As we strive to interpret the terms in section 216.6(6)(a), we note the legislature opened the ICRA's definitional section by warning that the listed words would have the following meanings "unless the context otherwise requires." *See* Iowa Code § 216.2. This warning about context is relevant when deciding which of the assorted definitions of "person" from section 216.2(12) is practical to apply when we construe other statutory provisions. Not all the definitions of "person" fit with the varied uses of the word in chapter 216. For example, a "person" may sometimes mean one or more "partnerships, associations, or corporations" but not as "person" is used in the "familial status" or "gender identity" definitions in section 216.2(9) and (10). Obviously, a corporation cannot be pregnant or have an assigned sex at birth. *See id*. § 216.2(9), (10). Similarly, as the district court decided, a corporation cannot have family members. *See Sears*, 704 P.2d at 392 (recognizing a corporation does not have family members related to it by blood, marriage, or adoption).

Cote v. Derby Ins. Agency, Inc., No. 16-0558, 2017 WL 3283862, at *5 (Iowa Ct. App. Aug. 2, 2017).

The trial court proceeded to find that applying the family member exception to corporations would create further ambiguities which would require the courts to substitute their judgment for that of the legislature. (MSJ Ruling p. 9). Corporations are fictitious entities. *Kerrigan v. Errett*, 256 N.W.2d 394, 396 (Iowa 1977). Fictitious entities obviously cannot have family members. The Fourth Circuit Court of Appeals has noted how corporations are distinct entities, set apart legally from their shareholders:

> "A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities." *Dole Food Co. v. Patrickson,* 538 U.S. 468, 474, 123 S.Ct. 1655, 155 L.Ed.2d 643 (2003). The idea of a "[s]eparate legal personality has been described as an almost

> indispensible aspect of the public corporation." *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba,* 462 U.S. 611, 625, 103 S.Ct. 2591, 77 L.Ed.2d 46 (1983) (internal quotation marks omitted).

Yousuf v. Samantar, 552 F.3d 371, 380 (4th Cir. 2009) *aff'd and remanded*, 560 U.S. 305, 130 S. Ct. 2278, 176 L. Ed. 2d 1047 (2010). As the trial court noted, neither Iowa Code 216.2 or 216.6 indicates that family members of shareholders or corporate directors may be counted when determining whether the family exception applies. (Ruling p. 9). It is not the role of the courts to add that language in order for the statute to make sense.

Defendants are essentially trying to get the best of both worlds. As a corporation, the individuals involved are insulated from liability for corporate acts as well as liability based on contracts. *Haupt v. Miller*, 514 N.W.2d 905, 909 (Iowa 1994). At the same time, however, they are now also claiming that they are exempt from liability based on Chapter 216 because of alleged familial relations. Defendants cannot have it both ways. In deciding to receive the benefits of incorporating, Defendants should not also be able to claim the benefit of being a business with alleged family members as employees.

Agency argues that the *Hobby Lobby* decision from the Supreme Court is persuasive, but the Court of Appeals succinctly articulated why the holding of that case does not apply:

> We do not find *Hobby Lobby* persuasive authority for a conclusion a corporation can have family members. In interpreting the RFRA definition, the Supreme Court recognized the word " 'person' sometimes encompasses artificial persons ..., and it sometimes is limited to natural persons." *Hobby Lobby*, 134 S. Ct. at 2769. What was most concerning to the *Hobby Lobby* majority was the government's position that the definition of "persons" could include "natural persons *and nonprofit corporations*, but not for-profit corporations." *Id*. (emphasis added). In the context of the ICRA's specific reference to *family members* of an employer, we believe "employer" means a natural person. *See id.* (stating term "person" can be "limited to natural persons")

Cote v. Derby Ins. Agency, Inc., No. 16-0558, 2017 WL 3283862, at *5 (Iowa Ct. App. Aug. 2, 2017). Therefore, the statutory interpretation of the trial court and Court of Appeals should be sustained.

Plaintiff Cote will also briefly address Defendants' argument on page 15 regarding who the family members are in this case, even though the trial court and Court of Appeals did not address this issue (the conclusion regarding statutory construction obviated the need to address this issue), raising preservation of error problems for the Defendants. To get below four employees, the Defendants attempt to define certain employees, who were a part of the extended family, and who did not live with Kevin and Patty, as family members under this section. Defendants raised this same argument before the Iowa Civil Rights Commission. In thorough fashion, the ICRC rejected the Defendants' position in their Screening Analysis, at pages 3-6 (Exhibit D to Plaintiff's Statement of Facts; App. 161-164). Specifically, the

ICRC found that Patricia Strawn and Jasmine Derby were regularly employed, and were not to be considered "family members". The ICRC's analysis was correct.

II. THE COURT OF APPEALS WAS CORRECT IN DENYING THE DEFENDANTS' ARGUMENTS REGARDING THE STATUTE OF LIMITATIONS AS TO PLAINTIFF'S ICRA COMPLAINT.

The gist of the Defendants' claim is that they argue that Cote's ICRC complaint, submitted on April 10, 2013, was untimely, as they allege that no acts of sexual harassment took place within the previous 300 days. The trial court properly denied this argument, viewing the facts in the light most favorable to Cote. The Court of Appeals properly affirmed the decision of the district court.

There only needs to be one incident in furtherance of the hostile environment that occurred within the 300 day time frame – as long as that one incident exists, the fact finder can consider all incidents, whether within or outside of the 300 day claim, when evaluating a hostile environment claim. This has been the law of the State of Iowa for some time. *Lynch v. City of Des Moines,* 454 N.W.2d 827, 832 (Iowa 1990). *See also Jenkins v. Wal-Mart Stores, Inc.,* 910 F.Supp. 1399, 1413-14 (N.D. Iowa 1995) (a plaintiff making a Title VII claim of discrimination may challenge incidents which happened outside the statutory time limitation if there is a continuing

pattern of discrimination, and at least one instance of discrimination occurred within the filing period). As Judge Bennett noted in *Inglis v. Buena Vista University*, 235 F.Supp.2d 1009 (N.D. Iowa 2002), sexually hostile work environments do not occur in a single day:

> Specifically, hostile environment claims do not take place in a single day; rather they unfold over a period of time because "[s]uch claims are based on the cumulative affect [sic] of individual acts." *See id.* Therefore, "'[t]he unlawful employment practice'. . . . cannot be said to occur on any particular day. It occurs over a series of days and perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own." *Id.*

Id. Therefore, as long as one instance occurred after June 14, 2012, Cote's claims were timely.

Defendants' argument is that the events alleged by Cote that occurred within the 300 day time frame (after June 14, 2012) are not a part of the pattern of sexual harassment. Cote's version of the events (which must be accepted given the summary judgment standard of viewing the facts in the light most favorable to her) establishes several things which preclude summary judgment, however.

First, Dorn had a history of exposing himself to other women in the office. Since Cote knew of these occurrences, it is admissible to prove Dorn's pattern and practice, and that a hostile work environment existed. It is not hearsay:

> To determine whether a hostile work environment existed, evidence concerning "all circumstances" of the complainant's employment must be considered. *Harris v. Forklift Sys., Inc.,* 510 U.S. 17, 22–24, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993). "[E]vidence of a hostile environment must not be compartmentalized, but must instead be based on the totality of the circumstances of the entire hostile work environment." *Delph v. Dr. Pepper Bottling Co. of Paragould, Inc.,* 130 F.3d 349, 355 (8th Cir.1997) (citations omitted). Here, Madison introduced evidence that other women and African American employees were also discriminated against and harassed. This evidence was relevant as to whether IBP maintained a hostile work environment, whether it intended to harass and discriminate against women and African Americans, and whether IBP's justifications for its refusal to discipline Madison's harassers or to promote her were pretextual. *See Jackson v. Quanex Corp.,* 191 F.3d 647, 661 (6th Cir.1999) (racist conduct directed at other employees probative since "[w]hat may appear to be a legitimate justification for a single incident of alleged harassment may look pretextual when viewed in the context of several other related incidents") (citations omitted). Moreover, IBP made such evidence relevant by claiming that it maintained effective corporate policies prohibiting racial and sexual harassment. Madison was entitled to present evidence showing that IBP had consistently failed to prevent illegal conduct and to correct it promptly. *See Burlington Indus., Inc. v. Ellerth,* 524 U.S. 742, 765, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998). This evidence supported Madison's contention that IBP failed to discipline harassers and to ensure that the civil rights of its employees were not violated.

Madison v. IBP, Inc., 257 F.3d 780, 793-94 (8th Cir. 2001) *cert. granted, judgment vacated*, 536 U.S. 919, 122 S. Ct. 2583, 153 L. Ed. 2d 773 (2002) *abrogated by Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 124 S. Ct. 1836, 158 L. Ed. 2d 645 (2004)(on other grounds).

Second, Cote's evidence shows that she was personally a victim of Dorn's harassment over a lengthy period of time. Numerous times over the

course of several years, Dorn came into her work area, when there was no one else in the office, to stand right next to her with an obvious erection in his pants. As with the other women, there was also an occasion where he had his pants unzipped to expose himself in front of her, and he also groped himself in front of her on one occasion. This is not a case of mere occasional jokes or comments, but a longstanding practice of extremely offensive behavior.

Finally, in the summer of 2012, within the 300 day period, Dorn came into Cote's work area several times when they were alone in the office, consistent with the other times that Dorn sexually harassed her by standing immediately next to her with a visible erection. Cote's ICRC complaint (App. 6-12) and her Affidavit submitted in response to the summary judgment motion (App. 105-110) note that it was obvious from the context of his coming into her work area alone, for no apparent reason, with the same demeanor as to the times when he would harass her, that these acts were in continuance of the hostile work environment. Considering his history with other women as well as Cote, it was obvious that he went to her work area, stood next to her, trying to harass her again.

Even if the Court concludes that these were not overtly sexual actions in the summer of 2012, in *Carter v. Chrysler Corp.*, 173 F.3d 693 (8th Cir.

1999), the Eighth Circuit held that not all acts in support of a hostile environment claim need to be stamped with an overtly discriminatory character, as long as they are part of a course of conduct which is tied to a discriminatory animus. Cote's affidavit and version of events establishes that the events of the summer of 2012 were a part of the overall hostile environment.

The trial court and the Court of Appeals properly concluded that summary judgment was not appropriate, so further review is not warranted.

III. DEFENDANTS' STATUTE OF LIMITATIONS ARGUMENT REGARDING PLAINTIFF'S TORT CLAIM WAS PROPERLY REJECTED BY THE TRIAL COURT AND COURT OF APPEALS.

Next, Defendants argue that the statute of limitations bars her tort claims. Defendants' arguments should be rejected.

Defendants argue that there is insufficient evidence as a matter of law that conduct giving rise to the intentional infliction of emotional distress claim occurred within the statute of limitations period. The elements of a claim for intentional infliction of emotional distress are: (1) outrageous conduct by the defendant; (2) the defendant's intentional causing, or reckless disregard of the probability of causing emotional distress; (3) the plaintiff has suffered severe or extreme emotional distress; and (4) actual proximate causation by the defendant's outrageous conduct. *Taggart v. Drake*

University, 549 N.W.2d 796, 802 (Iowa 1996). *Vinson v. Linn Mar Comm. School District*, 316 N.W.2d 108 (1984) stated that for conduct to be outrageous, it must be "so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." *Id.* at 118. It has been noted that unwelcome sexual conduct may reasonably be regarded as extreme and outrageous conduct for the purposes of an intentional infliction of emotional distress claim. *Watson v. Las Vegas Valley Water Dist.*, 378 F.Supp.2d 1269, 1278-79 (D. Nev. 2005).

Given his longstanding pattern of exposing himself and standing next to her with an erection, a jury could conclude that those actions continued to occur in the summer of 2012, and that those actions were outrageous. Contrary to Defendants' argument, the decision of the trial court and Court of Appeals does not impermissibly expand *Hegg v. Hawkeye Tri-Cty REC*, 512 N.W.2d 558 (Iowa 1994). Prior events shed light on the outrageous nature of Defendants' actions, but the events in the summer of 2012 stand on their own and give rise to a legally cognizable claim.

The trial court's ruling correctly interpreted the evidence in the light most favorable to Cote, and found that the claims should be submitted to the jury notwithstanding the Defendants' statute of limitations arguments. (MSJ

Ruling pp. 15-18, App. 190-193). The Court of Appeals properly sustained the trial court's ruling. Therefore, further review as to this issue is not warranted.

IV. CONCLUSION.

For all the foregoing reasons, Cote requests that the Court deny the Application for Further Review.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND CERTIFICATE OF FILING

On the 30th day of August, 2017, the undersigned hereby certifies that Appellee's Resistance to Appellants' Application for Further Review of the Iowa Court of Appeals Ruling Filed August 2, 2017 filed with the Supreme Court of Iowa by electronic filing via EDMS. Additionally, the undersigned certifies that on the 30th day of August, 2017, this document was served upon all parties to this appeal by electronic filing via EDMS:

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