IN THE SUPREME COURT OF IOWA

S. Ct. No. 16–1333

Polk County Case No. LACL134859

MARLON MORMANN,
Plaintiff-Appellant,

v.

IOWA WORKFORCE DEVELOPMENT,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT FOR POLK COUNTY
THE HONORABLE DOUGLAS F. STASKAL

APPELLANT'S AMENDED FINAL BRIEF

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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because it contains 4,981 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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STATEMENT OF ISSUES

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Christy v. Miulli, 692 N.W.2d 694 (Iowa 2005).

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because it presents a substantial issue of first impression regarding equitable tolling and equitable tolling of the Iowa Civil Rights Act in discrimination cases. Iowa R. App. P. 6. 1101(2)(c). These legal principals are fundamental issues of public importance because they will impact the rights of employees who have experienced workplace discrimination and prevent employers from avoiding the legal consequences of their discrimination by purposely misleading employees. Iowa R. App. P. 6.1101(2)(d).

STATEMENT OF THE CASE

This case comes before the Court on an interlocutory appeal from Iowa Workforce Development's Pre-Answer Motion to Dismiss. As such, the case has not been developed and the facts asserted in Marlon Mormann's Petition are taken as true. *See King v. State*, 818 N.W.2d 1, 9 (Iowa 2012). Mormann began working at Iowa Workforce Development (IWD) in November 1990. (App. 1). In January 2014, Mormann was working as an Unemployment Administrative Law Judge (ALJ) when he decided to put in an application for an open Deputy Workers' Compensation Commission position. (App. 2). Mormann did not get the position and after he sought out an explanation for why he was not selected, he was told the job went to a more qualified candidate and he was welcome to apply to future openings. (App. 23). It

was therefore reasonable for Mormann to rely upon this representation as the reason he did not get the position and indicated he had little reason to investigate further.

The true reason Mr. Mormann was not selected came out in a deposition for a separate the case. *See Godfrey v. State of Iowa, et al.*, 847 N.W.2d 578, 580–82 (Iowa 2017) (remanding the claims back to district court). (Def. Ex. A, Wahlert Dep. p. 244–45, App. 16). On September 17, 2014, Ms. Teresa Wahlert, Iowa Workforce Development Director, gave testimony in a video deposition and revealed that she had not consider Mormann as a viable candidate for the position because his age was too close to retirement. (App. 16–19). The transcripts of those depositions were not released to the public until March 18, 2015, when the Iowa Attorney General's office released all depositions taken in the *Godfrey* case.[1] (App. 15). After learning the true reason Mormann was denied the position he filed a complaint with the Iowa Civil Rights Commission (ICRC) on May 5, 2015, alleging age discrimination against IWD.[2] (App. 7–14).

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[1] In support of its Motion to Dismiss, IWD filed exhibit A (Mormann's Civil Rights Complaints), which included a portion of a news story about the Attorney General's release of the *Godfrey* depositions and portions of the depositions. (App. 7–15). Mormann has no objection to the Court taking judicial notice of the date of the release and the contents of the relevant portions of the depositions.

[2] Mormann filed an amended civil rights complaint on June 24, 2015, to allege constructive discharge due to discrimination and harassment. (App. 24–33). However, given that the district court permitted Mormann's claim for constructive discharge to proceed this claim will not be discussed in this interlocutory appeal. (App. 68).

After receiving his right to sue letter Mormann filed his claim in Polk County District Court on March 29, 2016. (App. 2). Before filing an Answer, IWD filed a Motion to Dismiss Mormann's claims of age discrimination failure to hire and constructive discharge. (App. 36–43). Mormann argued the 300-day statute of limitation to file a claim pursuant to Iowa Code section 216 was tolled by both the doctrine of equitable tolling—because he was unable to discover the true reason for the decision not to hire him until March 18, 2015—and IWD should be precluded from raising the statute of limitation defense due to equitable estoppel—because Mormann conducted further inquiry as to the reason he was given the job and relied upon the IWD's misrepresentation. (App. 44–52).

The district court granted IWD's motion to dismiss as to Mormann's failure to hire claim, but allowed Mormann's constructive discharge claim to proceed. (App. 59–69). The district court determined that the statute of limitations had run on Mormann's ability to file a civil rights complaint for his failure to hire claim. (App. 62–67). The district court held that neither the doctrine of equitable tolling or equitable estoppel tolled the statute of limitations for Mormann's discriminatory failure to hire claim. (App. 62–68).

Mormann filed an Application for Interlocutory Appeal on August 8, 2016. IWD filed its resistance and the Supreme Court granted the Application for Interlocutory Appeal on September 22, 2016.

STATEMENT OF THE FACTS

Mr. Mormann worked for IWD until January 5, 2015. (App. 2). During his time with the IWD, Mr. Mormann worked as an ALJ both for the Iowa Workers' Compensation Commission and the Unemployment Appeals Bureau. (App. 2). While employed as an Unemployment ALJ, Mr. Mormann applied for an open Deputy Workers' Compensation Commissioner position in January 2014. (App. 2-3). At the time, Christopher Godfrey was the Iowa Workers' Compensation Commissioner and Teresa Wahlert was the Iowa Workforce Development Director. (App. 13–14). IWD did not select Mormann for the position and in a letter dated March 7, 2014, it stated Mormann was qualified but another candidate was chosen for the position and Mormann was *encouraged* to submit future applications. (App. 3, 23) (emphasis added). The position was given to a younger candidate, Erin Pals. (App. 34–35). Mormann tried to find out why he was rejected but Wahlert refused to provide a reason. (App. 29–33). Mormann continued to work as an ALJ until the harassment and discrimination became intolerable and he was forced to resign his employment with Iowa Workforce Development, an agency he had been with for approximately twenty-five years of his legal career. (App. 2, 4). Mormann last day of work was January 5, 2015. (App. 4).

Meanwhile on September 17, 2014, during other litigation Teresa Wahlert provided deposition testimony. (App. 3, 16–19). In relevant part Wahlert testified:

> A. . . . I was saying the first selection that Christopher selected for this particular position and that I didn't necessarily agree with whoever came in second with the scoring process that's used for these positions.
>
> I believe Mr. Godfrey asked me what my issues were. And I said that it really wasn't important unless we got to the point where he wanted to offer the job for Marlon Mormann. So I never stated what my opinions were at the time.
>
> Q. Why did you not agree with it?
>
> A. There were a number of reasons due to the operation of the office.
>
> Q. What office?
>
> A. The statements that Marlon Mormann had made to people and during his interview that he thought he was going to retire. And so I was concerned that training and time would be invested and that perhaps more of a conversation needed to be had to be sure that that investment was appropriate for the long-term.

(App. 18–19).

Unfortunately, there was no way for Mormann to discover the contents of these depositions because they were under district court gag order. (App. 3–4, 13). The Iowa Attorney General's office decided to release the transcripts of the depositions on March 18, 2015. (App. 3, 15). Shortly after learning the true reason he was not selected for the position of deputy commissioner—his age—Mormann filed a complaint with the Iowa Civil Rights Commission on May 5, 2015, alleging age discrimination. (App. 9–14). Further, despite attempting to gather more

information regarding the circumstances surrounding IWD's decision to deny him the deputy position, Mormann was not successful in obtaining any further information because Godfrey and others with knowledge were still involved in ongoing litigation which added obvious delay to their ability to discuss matters related to the litigation while the consulted with attorneys. *See* Iowa Supreme Court Oral Argument Schedule, Sept. 4, 2016 *available at* http://www.iowacourts.gov/wfData/files/Schedule/September%202016%20Schedule.pdf. This regrettably did not occur before the district court ruled on IWD's motion to dismiss. However, given the evidence that was before the district court, a conceivable set of facts could have included the premise that during litigation Mormann would have uncovered the extent to which IWD undertook efforts to cover up its discriminatory acts and Mormann's inability to discover these reasons sooner without asking and expecting other to violate court orders in the ongoing *Godfrey* litigation, thus sufficing the fairly low standard required to survive a motion to dismiss under notice pleading. *See Hawkeye Foodservice Distrib., Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 608–09 (Iowa 2012) ("Nearly every case will survive a motion to dismiss under notice pleading.").

PROCEDURAL HISTORY

On May 5, 2015, Mormann filed a complaint with the ICRC for discrimination based on age and amended his complaint on June 24, 2015, to include a claim for

constructive discharge. On March 29, 2016, Mormann filed a petition in Polk County alleging age discrimination, harassment, and constructive discharge in violation of the ICRA.

On May 2, 2016, IWD filed a pre-answer Motion to Dismiss on all issues. Mormann filed his resistance to the Motion to Dismiss on May 11, 2016. The district court held arguments on the motion to dismiss on June 8, 2016. On July 7, 2016, the district court granted IWD's motion to dismiss on Mormann's age discrimination claim and denied the motion on Mormann's harassment and constructive discharge claims.

On August 8, 2016, Mormann filed an application for interlocutory appeal with the Iowa Supreme Court. On August 11, 2016, Mormann filed a Motion to Reconsider and Enlarge Findings on the district court's motion to dismiss ruling. IWD filed its resistance to Mormann's motion to reconsider on August 18, 2016. On August 22, 2016, IWD filed its resistance to Mormann's application for interlocutory appeal. The district court filed its Order denying Mormann's motion to reconsider on September 8, 2016. The Supreme Court granted Mormann's application for interlocutory appeal on September 22, 2016.

I. THE DISTRICT COURT INCORRECTLY DETERMINED THAT MORMANN'S TIME FOR FILING AN IOWA CIVIL RIGHTS COMPLAINT WAS NOT TOLLED BY THE INABILITY TO OBTAIN VITAL INFORMATION REGARDING IOWA WORKFORCE DEVELOPMENT'S ADMISSIONS OF AGE

DISCRIMINATION UNTIL TRANSCRIPTS CONTAINING THIS INFORMATION WERE DISCLOSED TO THE PUBLIC.

A. Preservation of Error.

Mr. Mormann preserved error on all issues raised in this appeal by filing a written resistance to IWD's pre-answer motion to dismiss. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Error was also preserved by Mr. Mormann's motion to reconsider and enlarge the district court's findings. Mr. Mormann's resistance, motion to reconsider and IWD's motion to dismiss and resistances to Mr. Mormann's motion to reconsider gave the district court the opportunity to consider the issues raised on appeal. *Id.*

B. Standard of Review.

The standard of review for appellate review of a district court's grant of a motion to dismiss applies to all issues herein. The Iowa Supreme Court reviews "the district court's grant of a motion to dismiss a petition for correction of errors at law." *Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 640 (Iowa 2013), (as revised on denial of reh'g July 15, 2013). "A motion to dismiss should *only* be granted if the allegations in the petition, taken as true, could not entitle the plaintiff to any relief." *Sanchez v. State*, 692 N.W.2d 812, 816 (Iowa

2005) (emphasis added). When reviewing a district court's ruling on a motion to dismiss, the Iowa Supreme Court "accepts as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014).

C. The Iowa Civil Rights Act Permits Tolling of the Administrative Deadline for Filing a Complaint.

The Iowa Civil Rights Act states that to pursue a claim under chapter 216, the complaint is to be filed within three hundred days after the alleged discrimination occurred. Iowa Code § 216.15(13). However, this requirement, like other filing period deadlines, is subject to "waiver, estoppel and equitable tolling." Iowa Admin. Code r. 161–3.3(3) (2016). The determination of whether the "filing period shall be equitably tolled in favor of a complainant depends upon the facts and circumstances of the particular case." *Id.* A determination of whether a civil rights compliant was timely filed can be made by either the Civil Rights Commission or the district court. *See Ritz v. Wapello Cnty Bd. Of Supervisors*, 595 N.W.2d 786, 792 (Iowa 1999) ("[T]he district court is nevertheless permitted to consider whether the complaint was timely filed.").

The Iowa Supreme Court has also recognized that the Iowa Civil Rights Act is similar to federal discrimination laws and with the exception of those federal interpretations which adopt a narrow construction of the anti-discrimination

statutes, can be instructive for Iowa Courts. *See Goodpaster v. Schwan's Home Serv. Inc.*, 849 N.W.2d 1, 11 (Iowa 2014); *Pippen v. State*, 854 N.W.2d 1, 28 (Iowa 2014). The seminole case regarding federal court's recognition of equitable tolling for Title VII actions is *Reeb v. Economic Opportunity Atlanta, Inc.*, 516 F.2d 924 (5th Cir. 1975). The court in *Reeb* was faced with the tasks of determining whether Title VII's filing time limitation was subject to equitable tolling. *Id.* at 926. The court held that the "period did not begin to run in the [] case until the facts that would support a charge of discrimination under Title VII were apparent or should have been apparent to a person with a reasonably prudent regard for his rights similarly situated to the plaintiff." *Id.* at 931. The court based this holding on the fact that

> Secret preferences in hiring and even more subtle means of illegal discrimination, because of their very nature, are unlikely to be readily apparent to the individual discriminated against. Indeed, employers that discriminate undoubtedly often attempt to cloak their policies with a semblance of rationality, and may seek to convey to the victim of their policies an air of neutrality or even sympathy. These tendencies may even extend to the giving of misleading or false information to the victim, as is alleged in the present case.

Id.

The court ultimately determined the district court had erred and remanded the case to allow the parties to develop the factual record for the issue. *Id.*; *see also Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1389 (3rd Cir. 1994)

("[W]here a defendant actively misleads the plaintiff regarding the reason for the plaintiff's dismissal, the statute of limitations will not begin to run, that is, will be tolled, until the facts which would support the plaintiff's cause of action are apparent, or should be apparent to a person with a reasonably prudent regard for his or her rights."); *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1531–32 (11th Cir. 1992) (applying *Reeb* and referring to it the "seminal case" in the area of equitable tolling); *Vaught v. R.R. Donnelley & Sons Co.*, 745 F.2d 407, 410–12 (7th Cir. 1984) (same). The Eighth Circuit has also held that "equitable tolling is appropriate when the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his claim." *Dring v. McDonnell Douglas Corp.*, 58 F.3d 1323, 1328 (8th Cir. 1995).

Although the administrative rules do not specify which equitable exceptions apply to the three hundred period, Iowa law recognizes the discovery rule as one means of tolling. *See generally Callahan v. State*, 464 N.W.2d 268, 273 (Iowa 1990). The discovery rule tolls the statute of limitations, stopping it from running, "until the plaintiff has in fact discovered that he has suffered injury or by the exercise of reasonable diligence should have discovered it." *Steinke v. Kurzak*, 803 N.W.2d 662, 667 (Iowa App. Ct. 2011) (quoting *Chrischilles v. Griswold*, 206 Iowa 453, 463, 150 N.W.2d 94, 100 (1967) (superseded by statute)).

The Court has articulated the reasons for having statute of limitations to include "preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Harrington v. Toshiba Mach. Co.*, 562 N.W.2d 190, 192 (Iowa 1997) (quoting *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 554 (1974)). However, in this case, none of these purposes are advanced by the district court's strict adherence to the statute of limitations. As previously mentioned, the disclosure of IWD's age discrimination came out in a deposition for the *Godfrey* case and it is unlikely the memories, evidence, and witnesses to the events giving rise to Mormann's case are going anywhere as the *Godfrey* case is still going strong. *See* Oral Arguments, Iowa Supreme Court, Sept.14, 2016 *available at* http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Oral_Argument_Videos/2016_Videos/September_2016_Videos/.

This case is more analogous to the Iowa Court of Appeals' decision in *Wetter v. Dubuque Aerie No. 568 of the Fraternal Order of Eagles*, 588 N.W.2d 130 (Iowa Ct. App. 1998). The plaintiff in *Wetter* filed a complaint with the ICRC and EEOC alleging sex discrimination. *Id.* at 131. After receiving her right to sue letters, the plaintiff initially brought her action in federal court mistakenly believing the defendant employer had more than eight employees. *Id.* at 132. The federal district court dismissed her claim for lack of subject matter jurisdiction. *Id.* at 131. The

plaintiff then tried to refile her claim in state court, however, at that point the window she had to file her claim had passed. *Id.* The district court dismissed the claim as untimely and determined the claim was not saved by any equitable tolling, in this case the tolling argument was premised on the filing of the federal claim. The Court of Appeals discussed that the plaintiff had conducted as diligent an investigation in the federal claim as was possible given that the court's ruling was filed before she could conduct discovery to determine a jurisdictional fact that was "implicitly and peculiarly known only to" the defendant. *Id.* at 132. The court went on to find that none of the purposes of the statute of limitation in chapter 216 were served by the district court's harsh ruling. *Id.*

In this case, the district court correctly articulates the Supreme Court's finding that a "party is placed on inquiry notice when a person gains sufficient knowledge of facts that would put that person on notice of the existence of a problem or potential problem." *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 736 (Iowa 2008). However, the district court then failed to apply the motion to dismiss standard to determine if Mormann had pled sufficient facts, that when taken as true, demonstrated that Mormann not only took steps to try and determine why he had not been selected for the position, but that he did not in fact discover that he had been the victim of age discrimination until the Attorney General's office released the

transcripts. *See Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1389 (3d Cir. 1994).

When he learned that he was not selected for the deputy position, Mormann received a letter telling him that while he was qualified, another candidate was selected for the position. (App. 23). The letter went on to state that Mormann was *encouraged* to apply for future openings and that he was one of the finalists for the position. (App. 23) (emphasis added). These statements would give most individuals the impression that they had been given full and fair consideration for the position in question and may even give a reasonable person the belief that if a similar position opened they would be strongly considered for the job again. Ms. Wahlert also prohibited participants in the hiring process from disclosing the process for selecting the deputy, which made it impossible for Mormann to question anyone involved in the hiring process. (App. 4). It was not, as the district court suggested, possible for him to interview Godfrey to obtain the information that ultimately came out in Wahlert's deposition. (App. 65). Mormann questioned the underlying reasons he was not given the position and received an answer that he was not as qualified. The district court erred in finding that these reasonable steps Mormann took to understand why he was not given the job were not sufficient.

The district court also states without any factual support or consideration of the circumstances of this case that Mormann could have 1) discovered Wahlert's

deposition or 2) interviewed Godfrey to discover that "Wahlert had reservations about Mormann getting the position." (App. 65). Nothing in the record supports the district court's speculation or assumption that Mormann could have asked Godfrey or Walhert about the incident, nor do the party's pleadings contend Mormann could have talked to Godfrey. This is a factual finding the district court came to on its own and as such the district court erred by relying on this assumption. As the petition and IWD exhibit A states, Wahlert's deposition was not a matter of public record until the Iowa Attorney General released it on March 18, 2015. (App. 3, 15). It was not reasonable or practical for Mormann to obtain the information sooner as he had a right to rely upon the information provided to him for the reasons he was not selected for the position. Secondly, if the contents of the transcripts were not public record before March 2015, it stands to reason that Godfrey would not have been able to provide details surrounding the hiring process, a direct topic in the depositions. Further, until Godfrey left his position with IWD, he was still required to follow the rules of his supervisors, which included Wahlert's prohibition on disclosing the discussions in the hiring process.

Mormann discovered the underlying age discrimination giving rise to this claim as soon as it was reasonably possible. When taken as true Mormann pled sufficient facts to generate a claim that due to Ms. Wahlert's policy to prohibit

disclosure of discussions during the hiring process, the steps Mormann took to inquire as to the reasons for his termination were reasonable.

II. IOWA WORKFORCE DEVELOPMENT IS BARRED FROM RAISING A STATUTE OF LIMITATIONS DEFENSE BECAUSE IT DELIBERATELY MISLEAD MORMANN AS TO THE TRUE REASON FOR ITS DECISION NOT TO HIRE.

A. The Doctrine of Equitable Estoppel Precludes Iowa Workforce Development from Arguing Mormann's Claim is Barred by the Statute of Limitations for Discrimination Claims.

The district court also wrongly found that equitable estoppel did not apply to Mormann's claims. (App. 66). In coming to that decision, the district court ultimately found that if it permitted the claim to go forward, the three hundred-day limit would be meaningless and that

> the premise of the argument—that Wahlert admitted that Mormann wasn't hired because of his age—is unsupported by the *evidence*. Wahlert's deposition testimony cannot be characterized as anything more than some evidence, albeit weak evidence, of age discrimination. The evidence is *weak* when considered in its own context and in the context of the other evidence.

(App. 66) (emphasis added).

The elements of equitable estoppel are well established: "(1) The defendant has made a false representation or has concealed material facts; (2) the plaintiff lacks knowledge of the true facts; (3) the defendant intended the plaintiff to act upon such representations; and (4) the plaintiff did in fact rely upon such representations to his

prejudice." *Christy v. Miulli*, 692 N.W.2d 694, 702 (Iowa 2005). The doctrine of equitable estoppel does not give a free pass to plaintiffs who missed a statute of limitations as the district court feared. "[E]quitable estoppel has nothing to do with the running of the limitations period or the discovery rule; it simply precludes a defendant from asserting the statute as a defense when it would be inequitable to permit the defendant to do so." *Id*. (citing 51 Am. Jur. 2d *Limitation of Actions* § 399, at 705 ("Equitable estoppel bars a defendant from pleading the running of statute of limitations if the plaintiff is induced to refrain from bringing a timely action by the defendant's fraud, misrepresentation, or deception.")). The Iowa Supreme Court has held that a district court was correct in denying a motion to dismiss in a case when "the evidence is not substantial at this point to support a finding . . .." *Tigges v. City of Ames*, 356 N.W.2d 503, 510 (Iowa 1984). The Court continued to say that the district court was "correct that the matter could not be determined from the affidavits of the parties," and "that the matter might be addressed further after the parties had concluded discovery." *Id.*

Here, IWD did more than just not tell Mormann the true reason for the decision to deny him the position. It affirmatively stated other reasons, misleading Mormann. In this case, IWD concealed the true reason they did not hire Mormann. Setting aside for the moment the district court's assertion that discovery of Wahlert's testimony constitutes only weak evidence of age discrimination. While it was under

no obligation to do so, IWD provided Mormann with a written statement that he was a finalist for the position and that he should apply again, and Mormann was told the job was given to a more qualified candidate. (App. 23). These statements not only concealed the true reason that Mormann was not offered the position, but also likely masked the extent to which Wahlert was operating behind the scene to ensure Mormann was not selected for that position or any future position. (App 7–14, 24–33). As discussed earlier given the context of the case and Wahlert's prohibition on disclosing discussions regarding hiring decision, it was not possible for Mormann to know the true facts, that Wahlert did not allow Godfrey to hire him because of his age and the fact that he might retire someday. (App. 8–14). At this stage in litigation it is only possible to conceive that IWD intended for Mormann to rely on the statements in his letter and what he was told as the reason for the decision. (App. 4).

The last element of estoppel that Mormann relied on this information is evident by the fact that Mormann continue working as an ALJ for eight more months before he had no choice but to leave. (App. 4). He also filed his complaint shortly after learning of the true reason he was fired. He did not delay in filing after he learned Wahlert had discriminated against him due to his age and because she did not want to give him the position when he may retire. (App. 7–14, 24–33).

The district court also found that Wahlert's testimony was at best weak evidence of age discrimination and therefore, could not support a claim for estoppel.

The finding that Wahlert's testimony is only "some evidence" of age discrimination is exactly the reason the district courted erred in granting the Defendant's Motion to Dismiss. The district court's findings acknowledge that the evidence is incomplete, yet it still decided to dismiss Mormann's claim for failure to hire due to age discrimination. This premature dismissal violates the Plaintiff's right to a trial on the merits and at the very least the right to develop the factual record in order for the district court to make an informed decision on this issue. The Eighth Circuit described the doctrine of equitable estoppel as applicable when "the employee's failure to file in timely fashion is the consequence of either a deliberate design by the employer or of actions that the employer should unmistakably have understood would cause the employee to delay filling his charge." *Dring*, 58 F.3d at 1329 (internal citations omitted). The district court's decision allows IWD to violate Mormann's substantial right to a lawful hiring process and his ability to seek a remedy for this violation.

CONCLUSION

Wherefore, Marlon Mormann respectfully requests this Court reverse the District Court's ruling granting the motion to dismiss in part and remand this case back to district court for further proceedings.

REQUEST FOR ORAL ARGUMENT

Marlon Mormann requests to be heard orally in this matter.