

IN THE IOWA SUPREME COURT

SUPREME COURT NO. 18-1225

JEREMY HOLLINGSHEAD,
Plaintiff-Appellant

v.

DC MISFITS, LLC,
Defendants-Appellees

**APPEAL FROM THE DISTRICT COURT FOR POLK COUNTY
HONORABLE DISTRICT COURT JUDGE DAVID MAY**

APPELLEE, DC MISFITS, LLC's, FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 4

STATEMENT OF ISSUE PRESENTED FOR REVIEW 6

ROUTING STATEMENT..... 8

STATEMENT OF THE CASE 8

 a. Nature of the Case 8

 b. Course of Proceedings..... 8

STATEMENT OF FACTS 8

ARGUMENT 11

 I. THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT PURSUANT TO IOWA’S DRAMSHOP LAW WHERE THERE WAS NO NOTICE OF INTENT TO BRING A DRAMSHOP ACTION AGAINST DC MISFITS THAT MET THE REQUIREMENTS OF IOWA CODE SECTION 123.93..... 11

 a. Preservation of Error..... 11

 b. Standard of Review..... 11

 c. Standard for Summary Judgment 12

 d. Iowa’s Dramshop Statute..... 14

 e. Issue Presented By Plaintiffs on Appeal..... 16

 The Plaintiffs failed to comply with the notice requirements of Iowa Code Section 123.93 by not naming the actual licensee. 16

 1. The Iowa Supreme Court has consistently required strict compliance with the notice provisions of Iowa Code Section 123.93..... 16

2. The additional cases cited by the Plaintiff do not support the Plaintiff’s position that the specific licensee does not have to be included in a dramshop notice.....	20
3. In granting summary judgment, the district court correctly ruled that the Plaintiff had not met the dramshop notice requirements of Iowa Code Section 123.92.....	23
CONCLUSION.....	25
REQUEST FOR ORAL ARGUMENT.....	26
CERTIFICATE OF COST.....	27
CERTIFICATE OF SERVICE.....	27
CERTIFICATE OF FILING.....	27
CERTIFICATE OF COMPLIANCE.....	28

TABLE OF AUTHORITIES

Cases

<i>Amish Connection Co. v. State Farm Fire & Cas. Co.</i> , 861 N.W.2d 230 (Iowa 2015).....	12
<i>Arnold v. Lang</i> , 259 N.W.2d 749 (Iowa 1977).....	16, 17, 18, 24
<i>Boelman v. Grinnell Mut. Reins. Co.</i> , 826 N.W.2d 494 (Iowa 2013)	12
<i>Butler v. Hoover Nature Trail, Inc.</i> , 530 N.W.2d 85 (Iowa Ct. App. 1994).....	13
<i>Cunningham v. Aviva Life & Annuity Co.</i> , No. 11-0371, 2011 Iowa App. LEXIS 1428 (Iowa Ct. App. Dec. 7, 2011).....	12
<i>Eaton v. Downey</i> , 118 N.W.2d 583 (Iowa 1962)	13
<i>Evjen v. Brooks</i> , 372 N.W.2d 494 (Iowa 1985).....	22, 23
<i>Galloway v. Bankers Trust Co.</i> , 420 N.W.2d 437 (Iowa 1988)	11
<i>Grovijohn v. Virjon, Inc.</i> , 643 N.W.2d 200 (Iowa 2002)	18, 19, 20, 25
<i>Harrop v. Keller</i> , 253 N.W.2d 588 (Iowa 1977)	20, 21, 22
<i>In re Estate of Smith</i> , No. 00-0534, 2001 Iowa App. LEXIS 410 (Iowa Ct. App. June 29, 2001)	13
<i>International Milling Co. v. Gisch</i> , 129 N.W.2d 646 (Iowa 1964).....	12
<i>Luttenegger v. Conseco Fin. Servicing Corp.</i> , 671 N.W.2d 425 (Iowa 2003).....	11
<i>Meyer v. Nottger</i> , 241 N.W.2d 911 (Iowa 1976).....	12
<i>Parish v. ICON Health & Fitness, Inc.</i> , 719 N.W.2d 540 (Iowa 2006).....	14
<i>Sanford v. Fillenwarth</i> , 863 N.W.2d 286 (Iowa 2015).....	11
<i>Sorensen v. Shaklee Corp.</i> , 461 N.W.2d 324 (Iowa 1990).....	12
<i>Winkel v. Erpelding</i> , 526 N.W.2d 316 (Iowa 1995)	13

Statutes

IOWA CODE § 123.92 (2015).....	9, 14, 21, 22
IOWA CODE § 123.93 (1981).....	22
IOWA CODE § 123.93 (2015).....	10, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25
IOWA CODE § 633.410 (1981).....	23
IOWA CODE Ch. 123 (2015).....	8, 17
Iowa R. App. P. 6.1101(3)(a) (2017).....	8
Iowa R. App. P. 6.1101(3)(b) (2017).....	8
Iowa R. Civ. P. 1.981 (2017).....	12
Iowa R. Civ. P. 1.981(3) (2017).....	12, 13

STATEMENT OF ISSUE PRESENTED FOR REVIEW

I. THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT PURSUANT TO IOWA'S DRAMSHOP LAW WHERE THERE WAS NO NOTICE OF INTENT TO BRING A DRAMSHOP ACTION AGAINST DC MISFITS THAT MET THE REQUIREMENTS OF IOWA CODE SECTION 123.93.

Sanford v. Fillenwarth, 863 N.W.2d 286 (Iowa 2015)

Luttenegger v. Conseco Fin. Servicing Corp., 671 N.W.2d 425 (Iowa 2003)

Galloway v. Bankers Trust Co., 420 N.W.2d 437 (Iowa 1988)

Meyer v. Nottger, 241 N.W.2d 911 (Iowa 1976)

Iowa R. Civ. P. 1.981 (2017)

Amish Connection Co. v. State Farm Fire & Cas. Co.,
861 N.W.2d 230 (Iowa 2015)

Boelman v. Grinnell Mut. Reins. Co., 826 N.W.2d 494 (Iowa 2013)

Iowa R. Civ. P. 1.981(3) (2017)

Cunningham v. Aviva Life & Annuity Co., No. 11-0371, 2011 Iowa App.
LEXIS 1428 (Iowa Ct. App. Dec. 7, 2011)

Sorensen v. Shaklee Corp., 461 N.W.2d 324 (Iowa 1990)

International Milling Co. v. Gisch, 129 N.W.2d 646 (Iowa 1964)

In re Estate of Smith, No. 00-0534, 2001 Iowa App. LEXIS 410
(Iowa Ct. App. June 29, 2001)

Winkel v. Erpelding, 526 N.W.2d 316 (Iowa 1995)

Butler v. Hoover Nature Trail, Inc., 530 N.W.2d 85 (Iowa Ct. App. 1994)

Eaton v. Downey, 118 N.W.2d 583 (Iowa 1962)

Parish v. ICON Health & Fitness, Inc., 719 N.W.2d 540 (Iowa 2006)

IOWA CODE § 123.92 (2015)

IOWA CODE § 123.93 (2015)

Arnold v. Lang, 259 N.W.2d 749 (Iowa 1977)

Grovijohn v. Virjon, Inc., 643 N.W.2d 200 (Iowa 2002)

Harrop v. Keller, 253 N.W.2d 588 (Iowa 1977)

Evjen v. Brooks, 372 N.W.2d 494 (Iowa 1985)

IOWA CODE § 633.410 (1981)

ROUTING STATEMENT

Appellee, DC Misfits, LLC (“DC Misfits”) agrees with the Appellants that this case would be appropriately assigned to the Iowa Court of Appeals because it involves the application of settled legal principles, pursuant to Iowa R. App. P. 6.1101(3)(a), and warrants summary disposition pursuant to Iowa R. App. P. 6.1101(3)(b).

STATEMENT OF THE CASE

a. Nature of the Case

Appellant, Jeremy Hollingshead (“Plaintiff”), filed an action for personal injuries allegedly received in an altercation at DC Misfits based on the provisions of Iowa’s Dramshop Law which is defined by Iowa Code Chapter 123.

b. Course of Proceedings

DC Misfits agrees with the Course of Proceedings summarized by the Plaintiff in his brief, which specifies the important filings and dates in the proceedings in the Iowa District Court for Polk County.

STATEMENT OF FACTS

The Plaintiff offers many facts that have no direct application to the issue on appeal. The issue on appeal is the whether the Iowa District Court was correct in granting summary judgment when there was no genuine

material fact but that the Plaintiff did not give a dramshop notice that met the requirements of Iowa Code Section 123.92 by including the dramshop licensee.

This case involves a cause of action arising out of personal injuries allegedly received by the Plaintiff as the result of participation in an altercation at DC Misfits on December 11, 2015. (Petition, ¶ 7) (App. 7).

On June 8, 2016, the Plaintiff mailed a dramshop notice to Founders Insurance Company (Founders) indicating that the Plaintiff intended to pursue a dramshop action against Leonard LLC. (Defendant's Amended and Substituted Statement of Material Facts, Exhibit 1) (App. 18-19). After being notified by letter by Founders that Leonard LLC was not a policy holder on the incident date referenced in the Plaintiff's Notice of Intent, no further dramshop notices were served by the Plaintiff. (Defendant's Supplemental Statement of Material Facts, Exhibit 2) (App. 42-43).

DC Misfits filed a Motion for Summary Judgment based on the undisputed material fact that no notice of intent to bring a dramshop action had been served that met the requirements of Iowa's Dramshop Act. (DC Misfits Amended and Substituted Motion for Summary Judgment p. 1) (App. 14).

In resisting the Motion for Summary Judgment, Plaintiff did not offer proof of any notice of intent to pursue a dramshop action that complied with the requirements of Iowa Code Section 123.93 by naming DC Misfits. (Plaintiff's Resistance to Motion for Summary Judgment and Plaintiff's Statement of Disputed Facts and Additional Undisputed Facts) (App. 21-33). Instead, the Plaintiff argued that service of a dramshop notice on Founders of a claim against Leonard LLC d/b/a Misfits was sufficient since Founders insured DC Misfits on the date of the alleged altercation. (Plaintiff's Statement of Disputed Facts) (App. 23-27).

The District Court considered DC Misfit's Motion for Summary Judgment and Plaintiff's Resistance to Motion for Summary Judgment on May 23, 2018. (Ruling) (App. 46-49). On June 29, 2018, Iowa District Court Judge David May granted DC Misfit's Motion for Summary Judgment, finding there was no genuine issue of material fact but that no dramshop notice of intent had been served that met the requirements of Iowa Code Section 123.93 (2015). (Ruling, pp. 2-3) (App. 47-48).

ARGUMENT

I. THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT PURSUANT TO IOWA'S DRAMSHOP LAW WHERE THERE WAS NO NOTICE OF INTENT TO BRING A DRAMSHOP ACTION AGAINST DC MISFITS THAT MET THE REQUIREMENTS OF IOWA CODE SECTION 123.93.

a. Preservation of Error

DC Misfits does not raise issues relating to Preservation of Error on this appeal.

b. Standard of Review

Review of a summary judgment ruling is limited to determining whether a genuine issue of material fact remains in question or for errors at law. *Sanford v. Fillenwarth*, 863 N.W.2d 286, 289 (Iowa 2015). No fact issue exists if the only dispute concerns the legal consequences flowing from the undisputed facts. *Luttenegger v. Conseco Fin. Servicing Corp.*, 671 N.W.2d 425, 431 (Iowa 2003). This record establishes that Plaintiff never served a dramshop notice of an intent to bring an action against DC Misfits. Based on that fact, review of this case should be limited to whether the District Court correctly applied the law. *See id.*

An Iowa appellate court can affirm on any ground even if not relied upon by the District Court below. *Galloway v. Bankers Tr. Co.*, 420 N.W.2d 437, 441 (Iowa 1988).

c. Standard for Summary Judgment

A district court's determination upon a motion for summary judgment is identical to the determination made by a district court on a motion for directed verdict. *Meyer v. Nottger*, 241 N.W.2d 911, 917 (Iowa 1976). If a directed verdict for the movant would be proper, then it is proper to grant summary judgment. *Id.*

Under Rule 1.981 of the Iowa Rules of Civil Procedure, summary judgment is appropriate where the moving party shows no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981; *Amish Connection Co. v. State Farm Fire & Cas. Co.*, 861 N.W.2d 230, 235 (Iowa 2015) (citing *Boelman v. Grinnell Mut. Reins. Co.*, 826 N.W.2d 494, 500 (Iowa 2013) (citing Iowa R. Civ. P. 1.981(3))). The purpose of this rule "is to avoid useless trials and streamline the litigation process." *Cunningham v. Aviva Life & Annuity Co.*, No. 11-0371, 2011 Iowa App. LEXIS 1428, at *7 (Iowa Ct. App. Dec. 7, 2011) (citing *Sorensen v. Shaklee Corp.*, 461 N.W.2d 324, 326 (Iowa 1990)).

In resisting a motion for summary judgment, the nonmoving party must set forth material facts that are in dispute. *See Int'l Milling Co. v. Gisch*, 129 N.W.2d 646, 651 (Iowa 1964). As such, "the nonmoving party must come forward with specific facts constituting competent evidence supporting the

claim advanced.” *Smith v. First Nat’l Bank Iowa*, No. 00-0534, 2001 WL 726079, at *2 (Iowa Ct. App. June 29, 2001) (citing *Winkel v. Erpelding*, 526 N.W.2d 316, 318 (Iowa 1995)). “An inference based upon speculation or conjecture does not generate a material factual dispute sufficient to preclude summary judgment.” *Id.* at *6-7 (citing *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994)).

Further, on direct attack, doubtful pleading must be resolved against the pleader. *See Eaton v. Downey*, 118 N.W.2d 583, 586 (Iowa 1962). Accordingly, inferences may be drawn in favor of the party opposing summary judgment only if those inferences are rational, reasonable, and otherwise permissible under the governing substantive law. *See Butler*, 530 N.W.2d at 88.

Taking “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits,” no issue of fact must remain. Iowa Rule Civ. P. 1.981(3). The Plaintiff has not disputed DC Misfit’s Statement of Undisputed Material Facts by providing proof of service of a notice of intent to pursue a dramshop action with regard to DC Misfits. The Plaintiffs only offered a notice of intent to pursue a dramshop notice on the previous bar owner. *See generally* Plaintiffs’ Statement of Disputed Facts and Additional Undisputed Facts. (App. 23-33).

An attempt to simply offer facts to claim that issues of fact remain is insufficient and summary judgment is appropriate when there is no *genuine* issue of *material* fact. *Parish v. ICON Health & Fitness, Inc.*, 719 N.W.2d 540, 542 (Iowa 2006). “A fact is *material* if it will affect the outcome of the suit, given the applicable law. An issue of fact is ‘genuine’ if the evidence is such that a reasonable finder of fact could return a verdict or decision for the nonmoving party.” *Id.* (emphasis added)

Here, the District Court was faced with a motion for summary judgment in which the resisting party admitted that it had no dramshop notice that was given with regard to a claim against DC Misfits. Instead, the Plaintiff stated that a notice of claim was made against the previous owner, and that was sufficient. This attempt did not create a genuine issue of material fact.

d. Iowa’s Dramshop Statute

Before DC Misfits may be exposed to liability under Iowa Code Section 123.92, it is essential that the Plaintiff has served a proper notice of intent under Iowa Code Section 123.93. Despite the Plaintiff’s contention that the dramshop notice should not be required to specify the name of the licensee or permittee, a review of Iowa Code Section 123.93 demonstrates that including the name of the licensee is absolutely required, stating:

Within six months of the occurrence of an injury, the injured person shall give written notice to the licensee or permittee or

such licensee's or permittee's insurance carrier of the person's intention to bring an action under this section, indicating the time, place and circumstances causing the injury. Such six months' period shall be extended if the injured party is incapacitated at the expiration thereof or unable, through reasonable diligence, to discover the name of the licensee, permittee, or person causing the injury or until such time as such incapacity is removed or such person has had a reasonable time to discover the name of the licensee, permittee or person causing the injury.

Iowa Code § 123.93 (2015) (emphasis added).

If the name of the licensee or permittee is not known, the Iowa Legislature acknowledged that it is impossible to give notice in strict compliance with the statute, and extended the time period until the name of the licensee or permittee known so notice could be given which met with the requirements of the statute.

In this case, there was never any written dramshop notice of intent that was given that named DC Misfits as the licensee or permittee as required by Iowa Code Section 123.93.

e. **Issue Presented By Plaintiffs on Appeal**

The Plaintiffs failed to comply with the notice requirements of Iowa Code Section 123.93 by not naming the actual licensee.

- 1. The Iowa Supreme Court has consistently required strict compliance with the notice provisions of Iowa Code Section 123.93.**

The Plaintiff's argument on appeal is that he is not required to strictly comply with Iowa Code Section 123.93 by naming the licensee in the dramshop notice of intent. (Appellants' Brief, pp. 6-9). In particular, the Plaintiff contends that a notice of intent that allegedly includes the other requirements of the dramshop notice is good enough. (Appellant's Brief, pp. 7-9).

The Iowa Supreme Court has consistently insisted on strict compliance with the basic requirements of Iowa Code Section 123.93.

In *Arnold v. Lang*, 259 N.W.2d 749 (Iowa 1977), a patron brought a cause of action against a dramshop based on injuries received from an altercation with two other patrons. In that case, counsel for the Plaintiff sent a "formal writing" of an intent to represent a client with regard to the altercation over ten months after the original altercation. *Id.* at 750. The notice, however, was sent to the liability insurance carrier. Almost eleven

months after the initial injury, a written notification was sent to the dramshop insurance carrier.

The district court granted the dramshop's motion for summary judgment, and the Plaintiff appealed. *Id.* In considering the appeal, the Iowa Supreme Court first explained that Iowa Code Section 123.93 defines a special statutory limitation qualifying a given right, stating:

Pursuing the subject further, our Dramshop Act (Code ch. 123) created a cause of action unknown to common law. (Citation omitted). That means § 123.93 must be accepted as a special statutory limitation qualifying a given right, not as a pure statute of limitations.

Arnold at 752.

In affirming the district court's granting of the dramshop's motion for summary judgment, the Iowa Supreme Court stated that the dramshop notice was deficient as to the requirements of Iowa Code Section 123.93, as it was missing a number of items, including the dramshop licensee's name:

But [plaintiff] did not substantially comply with pertinent statutory requirements. Only one writing was transmitted from [plaintiff] to a representative of Iowa Mutual within the statutory six month period and it merely advised that substitute counsel "represent [plaintiff] with regard to an accident which occurred on September 14, 1974." Noticeably, this communication makes no reference to the place or circumstances under which plaintiff suffered his alleged injuries. Neither does it mention [dramshop licensee's] name nor express any intention by [plaintiff] to bring a dramshop action against [dramshop licensee]. All such information is essential in order to qualify as a § 123.93 notice. [Citation omitted]. In the fact that these elements were contained

in a letter sent to Iowa Mutual some four months *after* expiration of the statutory six month period could not serve as an escape hatch for [plaintiff].

In summary, any purported § 123.93 notices by plaintiff were either (1) sent to the wrong party, (2) fatally deficient as to content, or (3) not timely given.

Arnold at 751-52 (emphasis added).

Despite the fact that the Plaintiff cites *Arnold* in his brief, it is not supportive of his position.

In *Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200 (Iowa 2002), a passenger injured in an automobile accident brought a dramshop action against a bar. In that case, the plaintiff alleged that the driver of his car became intoxicated at the bar and later drove the plaintiff's automobile into another car, causing the plaintiff's injuries. *Id.* at 201. Thirteen months after his injuries, the plaintiff notified the bar of his intent to file a suit under Iowa's Dramshop Act. *Id.* The district court granted the dramshop's motion for summary judgment, and the plaintiff appealed. *Id.*

On appeal, the plaintiff claimed that the dramshop notice requirements violated his constitutional rights, and generally alleged that he fit some exception to the notice provision. *Id.* at 202. In considering his appeal, the Iowa Supreme Court rejected the plaintiff's constitutional argument, stating:

A distinguishing feature of the Iowa dramshop act is that it created liability where none existed at common law. It provides

the exclusive remedy against a liquor licensee or permittee for violation of the statute. Since the legislature created this cause of action, it follows the legislature may affix the conditions under which it is to be enforced. We will not question the legislature's policy determinations made in an area involving neither a suspect class nor a fundamental right.

Id. at 203 (citations omitted).

After rejecting the plaintiff's claims of constitutional violations, the Court considered the Plaintiff's argument that he met one of the three exceptions to the six month notice requirement, writing:

Iowa Code section 123.93 contains three exceptions to the six-month notice requirement. The notice period shall be extended if: (1) the injured party is incapacitated at the end of the six-month period; (2) the injured party is unable through reasonable diligence to discover the name of the potential dramshop defendant; or (3) the injured party, through reasonable diligence, is unable to discover the identity of the person causing the injury. Iowa Code § 123.93.

Grovijohn at 204.

In rejecting the notice exception argument and affirming the decision of the district court, the Iowa Supreme Court held:

[Plaintiff] did not present any evidence to the court in its resistance to [dramshop's] motion for summary judgment relevant to any of the exceptions. [Plaintiff] merely asserted he was incapacitated after the accident. He did not articulate the nature or scope of his incapacity, nor did he claim he was incapacitated at the end of the six month period. [Plaintiff] did not argue that he was unable, through reasonable diligence, to discover the name of the potential dramshop defendant. Finally, he does not present any evidence that supports the third exception that he, through reasonable diligence, was unable to discovery

the identity of the person causing the injury. We disagree with [plaintiff's] suggestion the terms reasonable diligence and incapacity are ambiguous. However, even if we were to accept his argument, this does not change [plaintiff's] presenting no evidence to the court to support the existence of a material issue regarding any of the three exceptions to the notice requirement. We conclude the district court properly granted [dramshop owner's] motion for summary judgment as there were no genuine issues of material fact. We affirm.

Grovijohn at 204-05.

In the case at bar, the Plaintiff has not claimed that he fits under one of the statutory exceptions as to the six month time limit for giving the notice, nor does he claim that he was in anyway unable, through reasonable diligence, to discover the name of the dramshop defendant.

2. The additional cases cited by the Plaintiff do not support the Plaintiff's position that the specific licensee does not have to be included in a dramshop notice.

In addition, the Plaintiff cites to two additional Iowa Supreme Court cases as authority in his brief for his position that the actual licensee does not have to be named in the notice. An actual reading of these cases, however, does not support the Plaintiff's position.

The first case referenced by the Plaintiff was *Harrop v. Keller*, 253 N.W.2d 588 (Iowa 1977). In *Harrop*, the plaintiff was injured as the result of a stabbing that occurred at the defendant's bar by an intoxicated patron. *Id.* at 590. The plaintiff filed a petition in district court against the dramshop almost

seven months after his injury. *Id.* The bar filed a motion to dismiss alleging that a dramshop notice had not been given within six months of the injury pursuant to Iowa Code Section 123.93. *Id.* After the motion to dismiss was granted, the plaintiff appealed. *Id.* at 591.

On appeal, the plaintiff argued that the stabbing had left him physically incapacitated and that permitted him to give the notice after the six months. *Id.* at 592. In addition, he alleged that the petition itself was the notice. *Id.*

Obviously, the petition itself contained the name of the liquor licensee, and was properly served on the liquor licensee, as that was not an issue on appeal. In reversing the decision of the district court, the Iowa Supreme Court held that the information contained in the lawsuit was sufficient notice to comply with Iowa Code Section 123.92, and there was an issue as to whether the plaintiff was entitled to additional time due to incapacity, stating:

The bringing of the suit itself accords a dram shop operator every advantage any other notice would. There are only three matters required for inclusion in the notice by § 123.93. The notice must indicate the time, place, and circumstances causing the injury. Plaintiff's petition notified defendants of all these matters. To require some type of notice to precede the bringing of suit under these circumstances would be a meaningless formality. We hold bringing the suit was itself sufficient notice under § 123.93.

Harrop at 593.

As a result, the issues faced by the Iowa Supreme Court in *Harrop* did not relate to the giving of a notice that failed to include the licensee's name. *See Id.*

The other case cited by the Plaintiff was the Iowa Supreme Court case of *Evjen v. Brooks*, 372 N.W.2d 494 (Iowa 1985). In *Evjen*, the plaintiff was killed in an automobile accident when he was riding as a passenger in a vehicle operated by a drunk driver. *Id.* at 495. Within six months of the date of publication of the second notice to creditors, the plaintiff's estate sent a detailed dramshop notice to the liquor licensee. *Id.* Contrary to the Plaintiff's brief, the Iowa Supreme Court noted that the dramshop notice contained the name of the dramshop's owner-operator, stating:

In August, 1982, an attorney for the Evjen estate (hereinafter Evjen) sent a letter to the local 7-Eleven store and its owner-operator, The Southland Corporation, informing them of his intention to bring an action for damages under Iowa Code section 123.93 (actually section 123.92, the dram-shop statute). Such a notice to the liquor licensee or permittee or their insurance carrier is required to notify them of the intention to bring a dram-shop action and "indicating the time, place and circumstances causing the injury." This notice must be given in writing and within six months of the occurrence. Iowa Code § 123.93 (1981). The notice to Southland and the 7-Eleven store complied with these requirements. It notified them of the accident and the resulting deaths. It also stated that at the time and place of said fatal accident the automobile, operated by Mark James Pauly, was traveling at a high rate of speed and failed to negotiate a curve in the road on Indian Hill Rd. S.E. Cedar Rapids, Linn County, Iowa and did strike a tree killing both Mark Allen Evgen [sic] and Mark James Pauly. That at the time and place of said fatal

accident the operator of the automobile, Mark James Pauly, was in an intoxicated condition as a result of the consumption of alcoholic beverages obtained on or about the 14th day of March, 1982 from the 7-Eleven Store located at 3342 Mt. Vernon Rd. S.E. Cedar Rapids, Linn County, State of Iowa.

This notice was dated August 11, 1982, and receipt of it was acknowledged by Southland's legal department on August 30, 1982.

Evjen at 495.

In *Evjen*, the appeal considered by the Iowa Supreme Court did not relate to whether the plaintiff estate had properly or timely given notice under Iowa Code Section 123.93. The issue considered by the Iowa Supreme Court related to whether the defendants had timely cross-claimed against the plaintiff estate pursuant to probate provision Iowa Code Section 633.410. *Evjen* at 496. Contrary to the Plaintiff's assertion in his brief, Southland Corporation was named in the dramshop notice, and the detailed dramshop notice was not an issue in the appeal. *Id.* at 495. (Appellant Brief, pp. 8-9).

3. In granting summary judgment, the district court correctly ruled that the Plaintiff had not met the dramshop notice requirements of Iowa Code Section 123.92.

In his ruling in the case at bar, Polk County District Court Judge David May noted that the Plaintiff argued substantial compliance with regard to the notice requirement, and that the Plaintiff claimed that it was not actually necessary to include the correct dramshop owner's name, DC Misfits, in the

dramshop notice. (Ruling, pp. 1-2) (App. 46-47). In rejecting this argument, the district court relied on a proper reading of the statutory requirements of Iowa Code Section 123.93 and the Iowa Supreme Court cases interrupting this statutory section, and granted the motion for summary judgment, writing:

DC Misfits, LLC has filed a motion for summary judgment. It contends Plaintiff did not provide the written notice required by section 123.93. Specifically, DC Misfits, LLC argues Plaintiff's notice was deficient because it did not name DC Misfits, LLC. Instead, it named a different entity called "Leonard LLC d/b/a Misfits." (Defendant's Exhibit A).

Plaintiff concedes that his notice did not name DC Misfits, LLC. But Plaintiff argues, *inter alia*, that his notice:

- (1.) identified the bar ("Misfits") where he was injured;
- (2.) stated the date of his injury;
- (3.) described the cause of his injury, namely, an assault by drunken patrons;
- (4.) stated Plaintiff's intention to bring a dramshop action; and
- (5.) was sent to Founders Insurance Company, who was the dramshop carrier for DC Misfits, LLC.

Therefore, Plaintiff argues, his notice substantially complied with section 123.93.

The Court disagrees. In *Lang*, the Iowa Supreme Court said That the "name" of the defendant licensee (in that case, Lang) is among the "information" that must be provided—the "*essential*" information—"in order" for a written communication to "qualify as a [section] 123.93 notice." *Arnold v. Lang*, 259 N.W.2d 749, 752 (Iowa 1977) (italics added).

Here, it is undisputed that Plaintiff's notice did not mention DC Misfits, LLC. Therefore, under *Lang*, Plaintiff's notice did not satisfy the requirements of section 123.93. As a result, Plaintiff's dramshop claim fails as a matter of law. *See, e.g., Grovijohn v. Virjon, Inc.*, 643 N.W.2d

200, 204 (Iowa 2002) (affirming grant of summary judgment where plaintiff failed to provide notice as required by section 123.93).

Defendant DC Misfits, LLC's motion for summary judgment is GRANTED. Plaintiff's claims against DC Misfits, LLC are DISMISSED.

(Ruling pp. 1-3) (App. 46-48).

Based on the record presented to the Iowa District Court at the time the Motion for Summary Judgment was considered, the Iowa District Court was correct in determining that there was no genuine issue of material fact but that a notice of intent to pursue a dramshop notice was not served with regard to DC Misfits, in strict compliance with Iowa Code Section 123.93.

CONCLUSION

No genuine issue of material fact exists that would preclude summary judgment in this case. The Plaintiffs cannot prove that a notice of intent to pursue a dramshop action against DC Misfits was ever made that complies with the strict requirements of Iowa Code Section 123.93. DC Misfits would, therefore, respectfully request that the decision of the Iowa District Court be affirmed, and the Plaintiff's Appeal be dismissed with costs assessed to the Plaintiffs.

REQUEST FOR ORAL ARGUMENT

DC Misfits respectfully requests to be heard at oral argument should oral argument be granted.

Respectfully submitted,

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CERTIFICATE OF COST

The undersigned hereby certifies that the cost of printing the foregoing Appellee DC Misfits' Final Brief is \$ 0.00

/s/ Thomas Henderson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Final Brief of Appellee, DC Misfits, was served upon the attorneys of record listed below by electronic filing and electronic delivery to the parties via the EDMS system on November 12, 2018, pursuant to Iowa R. App. P. 6.901(3) and Iowa R. Elec. P. 16.315(1)(b).

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CERTIFICATE OF FILING

The undersigned hereby certifies that the foregoing Final Brief of Appellee, DC Misfits, was filed with the Iowa Supreme Court by electronically filing the same on November 12, 2018, pursuant to Iowa R. App. P. 6.901(3) and Iowa R. Elec. P. 16.302(1).

/s/ Thomas Henderson

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

This forgoing Appellee Final Brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 pt. and contains 4,170 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Tara Johnson

Signature

November 12, 2018

Date