Iowa Law Update: New and Notable Legal Developments

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Overview

- **Presentation today**
  - **Employment**
  - **Torts**
  - **Administrative**
  - **Constitutional**
  - **Miscellaneous**
- **Trends**
  - **Power of the Iowa Constitution**
  - **“Conservatives” v. “liberals”**
    - **Narrowed opinions?**

Mormann v. Iowa Workforce Dev., 913 N.W.2d 554 (Iowa 2018)

- **Key question(s):**
  - **Can the 300-day filing requirement of the ICRA be tolled by the discovery rule or equitable estoppel?**
  - **Was it tolled in relation to Mormann?**
- **Facts:**
  - **Mormann was an ALJ and held other positions in IWD**
  - **In January 2014, he applied for an open deputy workers' compensation commissioner position**
  - **Head of hiring committee recommended another candidate to director of IWD, but said Mormann was his second choice**
  - **First choice, who was younger and less experienced, was hired**

Mormann v. Iowa Workforce Dev., 913 N.W.2d 554 (Iowa 2018)

- **More facts:**
  - **Director is later deposed in a different case and observes she didn't agree Mormann was the best runner up because he was apparently considering retirement**
  - **"[P]erhaps more of a conversation needed to be had to be sure that the investment was appropriate for the long-term."**
  - **Deposition was taken in September 2014 but not unsealed until March 2015**
  - **Within 300 days of unsealing, Mormann filed an age discrimination complaint with the ICRC**

Mormann v. Iowa Workforce Dev., 913 N.W.2d 554 (Iowa 2018)

- **Procedural posture:**
  - **Claim was untimely under section 216.15(13) requiring filing "within [300] days after the alleged discriminatory or unfair practice occurred"**
  - **State filed a motion to dismiss**
  - **Mormann argued equitable tolling applied because he had no way to discover the discrimination before deposition unsealed, in part because he received no explanation describing the discriminatory rationale behind the hiring decision**
  - **Court begins its opinion by sorting out the standard of review and encourages district courts in the future "to actively manage the disposition of preliminary questions regarding subject matter jurisdiction and authority in particular cases"**

Mormann v. Iowa Workforce Dev., 913 N.W.2d 554 (Iowa 2018)

- **Analysis:**
  - **Focus is on determining if equitable tolling applies under the ICRA**
  - **Court comes to the "firm conclusion" it does:**
    - **Equitable exceptions to statutes of limitation are common**
    - **Supports the remedial purpose of ICRA**
    - **Some statutes cut against equitable tolling, but not ICRA**
    - **ICRC administrative rules embrace equitable tolling**
  - **Court then discusses the two species of equitable tolling**
    - **Discovery rule – plaintiff focused**
    - **Equitable estoppel – defendant focused**
    - **Both theories require showing reasonable diligence in enforcing a claim**

Mormann v. Iowa Workforce Dev., 913 N.W.2d 554 (Iowa 2018)

- **Further analysis:**
  - **Mormann can't claim protection of the discovery rule**
    - **He knew he wasn't hired in March 2014**
    - **He knew his age and qualifications**
    - **He knew a younger person was hired**
    - **The statute began to run**
  - **Nor does equitable tolling apply**
    - **Only theory was director's reasoning was concealed**
    - **Mere omission of discriminatory basis insufficient in this case**
    - **Needed "affirmative misrepresentation that the employer knew or should have known would delay the filing of a timely claim"**

Ackerman v. State, 913 N.W.2d 619 (Iowa 2018)

- **Key question(s):**
  - **Can an employee covered by a CBA pursue a claim for wrongful termination in violation of public policy?**
- **Facts:**
  - **Ackerman was an ALJ in IWD**
  - **Was covered by CBA between state and AFSCME**
  - **CBA required proper cause for employment action**
  - **Also protected from adverse employment action in retaliation for whistleblowing**
  - **In August 2014, Ackerman was subpoenaed to testify at the legislature about her concerns about IWD administration**
  - **Suspended in Dec. 2014 and terminated in Jan. 2015**

Ackerman v. State, 913 N.W.2d 619 (Iowa 2018)

- **Analysis:**
  - **Case was on appeal from a motion to dismiss focused on 1 of 8 counts**
  - **Majority of opinion focused on discussing the Court's development of the common law retaliatory discharge tort**
  - **Court rejects State's theory that the tort is narrow and therefore can't apply to contract employees**
  - **Court also states the tort is not exclusively an exception to at-will employment**
  - **Instead, tort serves a different function than a breach of contract claim that may be available to the employee**
  - **Retaliatory discharge tort has a broader societal purpose**
  - **Termination in violation of public policy is "a wrong both in contract *and* in tort"**

Ackerman v. State, 913 N.W.2d 619 (Iowa 2018)

- **Further analysis:**
  - **Court approves extension of retaliatory discharge claim to contract employees**
  - **But maybe not Ackerman: she's not a private employee, but a public employee provided a direct statutory remedy for retaliation based on whistleblowing**
  - **Case is remanded to litigate this and other issues**
  - **Dissent points out that the majority's conclusion about Ackerman's specific circumstances means this was the "wrong case to decide whether contract employees can bring a common law claim for wrongful termination in violation of public policy"**

Deeds v. City of Marion, 914 N.W.2d 330 (Iowa 2018)

- **Key question(s):**
  - **Does liability for disability discrimination arise when the alleged discriminating party did not know about the underlying disability?**
  - **Can a diagnosing physician be liable for aiding and abetting the alleged discrimination?**
- **Facts:**
  - **Deeds was a volunteer firefighter for Coralville who was diagnosed with MS and prevented from volunteering**
  - **Applied and interviewed favorably for positions in Cedar Rapids and Marion**
  - **Was offered position in CR, which was withdrawn after not receiving medical clearance**
  - **No request for second opinion or accommodation in CR**

Deeds v. City of Marion, 914 N.W.2d 330 (Iowa 2018)

- **More facts:**
  - **Later received conditional offer from Marion**
  - **Underwent exam with medical defendants**
  - **After assessment that included review of past assessments, the physician concluded he was not qualified**
  - **Marion withdrew its offer**
  - **No request for second opinion or accommodation**
  - **Undisputed Marion did not know about MS or basis for physician decision**
  - **Deeds files ICRC complaint and Marion offers interactive process**
  - **Deeds does not follow through but sues instead**

Deeds v. City of Marion, 914 N.W.2d 330 (Iowa 2018)

- **Analysis:**
  - **Court frames issue as whether Deeds could show Marion "declined to hire him *because of* his MS"**
  - **First issue is if the City had an obligation to inquire further in absence of request to accommodate**
  - **Court notes employers are entitled to rely on physician's opinion on qualification**
  - **City does not need to probe basis for independent appraisal**
  - **Onus is on employee to request accommodation or inform the employer of the disability**
  - **"The City was not required to read Deeds's mind. . ."**

Deeds v. City of Marion, 914 N.W.2d 330 (Iowa 2018)

- **Further analysis:**
  - **Court also concludes Deeds caused a breakdown in interactive process giving another basis for MSJ**
    - **City had asked for medical records and to arrange an individualized assessment and Deeds ignored request**
  - **Court also addresses if knowledge Deeds was "not medically qualified" created jury question**
    - **Court says no—there could be many reasons he was not qualified and disability should not be assumed**
  - **Court also concludes there is insufficient evidence of agency relationship between physician and City**
  - **Finally, Court acknowledges possibility of claim against medical providers for aiding and abetting discrimination**
    - **However, this assumes underlying discrimination by the City, and none existed here**

Kunde v. Estate of Bowman, 920 N.W.2d 803 (Iowa 2018)

- **Key question(s):**
  - **Do equitable doctrines of unjust enrichment, quantum meruit, and promissory estoppel apply when there is a contract governing the same subject matter?**
- **Facts:**
  - **Kunde and Bowman were neighbors**
  - **Kunde rented Bowman farm property pending option to later purchase the land**
  - **Entered into leases stating Kunde would make improvements that would be deemed additional rent**
  - **Kunde said he made the improvements based on promise that he could buy the farm**
  - **Kunde tries to exercise option and Bowman family prevents**

Kunde v. Estate of Bowman, 920 N.W.2d 803 (Iowa 2018)

- **Analysis:**
  - **Kunde seeks to recover for the improvements based on quantum meruit and unjust enrichment**
  - **Bowman argues leases subsumed the equitable claims**
  - **Court agrees because the equitable theories and lease both relate to "a right *to recover the cost of improvements*"**
    - **Kunde's sole remedy, if any, would be under the leases**
  - **However, promissory estoppel is different because it involved a separate issue: the promise Kunde could purchase**
    - **To reach this conclusion, Court addresses question of whether mere promise can serve as basis for estoppel or if a "clear and definite agreement" is required**
    - **A "clear and definite *promise*" is consistent with the case law and that is needed**

Kinseth v. Weil-McLain, 913 N.W.2d 55 (Iowa 2018)

- **Key question(s):**
  - **Did trial counsel act so inappropriately in closing argument to warrant a new trial?**
- **Facts:**
  - **Family members bring multiple claims on behalf of decedent who died due to mesothelioma**
  - **Lengthy factual record about Kinseth's exposure to asbestos in multiple forms and capacities**
  - **Motion in limine is filed resulting in order directing no evidence or mention of:**
    - **Prior verdicts or suits involving asbestos**
    - **Amount of money spent on defense**
    - **Other suits against defendant**
    - **Sending defendant "a message"**
    - **Defendant's "wealth, power, corporate size or assets"**

Kinseth v. Weil-McLain, 913 N.W.2d 55 (Iowa 2018)

- **Analysis:**
  - **Court first had to determine if objections to closing were timely because some not raised during the closing**
    - **Court finds that cumulative effect excused objection delay, which was relatively minor regardless**
  - **Court then reviews each incident of alleged misconduct**
  - **Included comments like:**
    - **"if you buy their bought-for studies" and "[y]ou don't have to believe their experts that are paid a lot of money"**
  - **Some of these were appropriate because case was a battle of experts and it is generally acceptable to remind a jury of expert's pecuniary interest**
  - **Others crossed "the admittedly hazy line between zealous advocacy and misconduct:"**
    - **Comparisons between expert's earnings and Plaintiff's earnings;**
    - **Reference to "expensive graphics" and the like, which alerted jury to Defendant's deep pockets;**
    - **Comments about the wealth of Defendant versus Plaintiff's relative wealth as "ordinary people";**
    - **Reminding the jury that one of Defendant's witnesses had testified that he had been involved in asbestos litigation since the 1980s**
    - **Attacking the statute of repose and asking the jury to nullify**

Kinseth v. Weil-McLain, 913 N.W.2d 55 (Iowa 2018)

- **Further analysis:**
  - **Others crossed "the admittedly hazy line between zealous advocacy and misconduct:"**
    - **Comparisons between expert's earnings and Plaintiff's earnings;**
    - **Reference to "expensive graphics" and the like, which alerted jury to Defendant's deep pockets;**
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Kinseth v. Weil-McLain, 913 N.W.2d 55 (Iowa 2018)

- **Further analysis:**
  - **Court concludes counsel's misconduct was sufficiently prejudicial to warrant a new trial**
  - **Accordingly, also addresses theories at issue on remand:**
    - **Comment by defense counsel in closing that defendant would "compensate" plaintiffs based on verdict was not a matter of judicial estoppel on recovery of damages**
    - **A couple verdict form issues regarding apportioning fault to third parties, including bankrupt entities**
    - **Admissibility of OSHA-related evidence**
    - **Whether punitive damages could be submitted to the jury on remand**

Bandstra v. Covenant Reformed Church, 913 N.W.2d 19 (Iowa 2018)

- **Key question(s):**
  - **What is the interplay between tort claims and constitutional provisions relating to freedom of religion?**
- **Facts:**
  - **Covenant is governed by a Consistory with a Board of Elders and minister of the Word**
  - **Members of church "expected to submit to the elders with respect to matters of doctrine and spirituality" and also submit to God and government of the church**
  - **Covenant employed Pastor Edouard**
  - **Eduoard took advantage of his position, sexually exploited church members, and was convicted**
  - **Covenant/elders responded in church-oriented fashion**
  - **Plaintiffs sued under multiple negligence theories**

Bandstra v. Covenant Reformed Church, 913 N.W.2d 19 (Iowa 2018)

- **Analysis:**
  - **Long opinion addressing multiple issues**
  - **Key discussion focuses on balancing civil v. church law**
    - **Court will not resolve "internal church disputes that would require interpreting or deciding questions of [church] doctrine"**
    - **But, issues involving church and third parties (such as negligent supervision) are different and not barred**
  - **Also addresses issues regarding statute of limitations and discovery rule and/or continuing-violations doctrine**
  - **Lengthy discussion about defamation claims**
  - **Brief discussions about offensive claim preclusion based on criminal conviction and application of the clergy privilege to the elders**

Metro. Prop. & Cas. Ins. Co. v. Auto-Owners Mut. Ins. Co., ____ N.W.2d ___ (Iowa 2019)

- **Key question(s):**
  - **Was CGL policy implicated under the circumstances?**
- **Facts:**
  - **Couple created an LLC to hold property including farm used for recreation**
  - **Husband left property one day and asked son to lock up the house before he and friends left**
  - **While son was straightening up, he accidentally discharged a rifle, hitting and killing a friend**
  - **Couple had personal policy with Metropolitan covering family members**
  - **Metropolitan settled with family of friend and sought subrogation from Auto-Owners under CGL policy**

Metro. Prop. & Cas. Ins. Co. v. Auto-Owners Mut. Ins. Co., ____ N.W.2d ___ (Iowa 2019)

- **Analysis:**
  - **Auto-Owners argued no coverage because it applied to LLC, not individual family members, and shooting was unrelated to LLC's business**
    - **Court generally agrees, stating coverage arises if son was engaged in the LLC's business**
    - **Court concludes he was because LLC held the property and securing the house was part of its business**
  - **Became a battle of experts about reasonableness of underlying settlement based on argument that claim was defensible**
    - **Court affirms district determination that there was exposure for underlying claim and settlement was reasonable**

Andersen v. Khanna, 913 N.W.2d 526 (Iowa 2018)

- **Key question(s):**
  - **Can a medical malpractice claim based on lack of informed consent be premised on the failure to describe the physician's experience?**
- **Facts:**
  - **Plaintiff had a heart procedure performed by defendant**
  - **Defendant had never done the procedure before**
  - **Plaintiff had severe complications**
  - **Filed a medical negligence claim that included an aspect of failure of inform based on failure to advise about defendant's lack of experience**

Andersen v. Khanna, 913 N.W.2d 526 (Iowa 2018)

- **Analysis:**
  - **District court granted partial summary judgment on conclusion that physician did not "have a duty to disclose physician-specific characteristics or experience in obtaining informed consent"**
  - **On appeal, court concludes there is not a bright-line rule**
  - **Instead, specific characteristics can be relevant: this is determined by a "reasonable person" test**
  - **Court rejects physician concerns that this creates a new duty that is contrary to statute and unworkable in practice**

Andersen v. Khanna, 913 N.W.2d 526 (Iowa 2018)

- **Further analysis:**
  - **Focus of opinion then shifts to timing of presentation of negligence claims, as well as their scope**
    - **Plaintiff chose to present an aspect of informed consent theory through cross of one of defendant's experts**
    - **District court cut off this opportunity in a ruling during the course of trial, effectively making final pretrial rulings about the theory**
    - **This was prejudicial to Plaintiff and warranted a new trial**
  - **Court also rejects defendant's theory that a finding of no negligence defeats the informed consent claim as well**
    - **In fact, informed consent is an independent theory**
    - **Dissent attacks this theory in particular**

Good v. Iowa Dept. of Human Servs., ___ N.W.2d ___ (Iowa 2019)

- **Key question(s):**
  - **Does the rule prohibiting Iowa Medicaid coverage for surgical procedures related to "gender identity disorders" violate the ICRA and Iowa Constitution?**
- **Facts:**
  - **Consolidated cases brought by two transgender women with gender dysphoria**
  - **Court notes DSM-V, which "refers to the distress that may accompany the incongruence between one's experienced or expressed gender and one's assigned gender"**
  - **Both Plaintiffs offered an expert affidavit explaining the rule was not based on evidence and ignored research on the benefits of surgery**
  - **Both Plaintiffs' physicians concluded gender-affirming surgery was a necessary treatment**
  - **Both sought coverage for surgery, were denied, and appealed**
  - **District court reversed, in part on the conclusion DHS is a "public accommodation" and the rule violates the equal protection clause of the Iowa Constitution**

Good v. Iowa Dept. of Human Servs., ___ N.W.2d ___ (Iowa 2019)

- **Analysis:**
  - **DHS raises multiple challenges**
  - **Court concludes DHS is a "public accommodation" because that term is not "limited to physical places, establishments, or facilities"**
  - **DHS also argued rule was not discriminatory, in part because it encompassed a broader category of "'cosmetic, reconstructive, or plastic surgery' that is 'performed primarily for psychological purposes'"**
    - **Court points out "gender identity" was added as a protected group in 2007**
    - **Court also points out Plaintiffs were denied coverage specifically "because they were 'related to transsexualism . . . [or] gender disorders' and 'for the purpose of sex reassignment'"**

Good v. Iowa Dept. of Human Servs., ___ N.W.2d ___ (Iowa 2019)

- **Further analysis:**
  - **Further, some surgeries are permitted for others but specifically denied to transgender individuals**
  - **Finally, history of the rule shows a discriminatory purpose, which was later followed by 2007 legislative change**
  - **Accordingly, rule violates the ICRA**
  - **Court dodges other constitutional issues based on "the time-honored doctrine of constitutional avoidance"**

Miscellaneous

- ***Johnson v. Humboldt County*, 913 N.W.2d 256 (Iowa 2018)**
  - **Affirming application of the "public-duty doctrine" by which a duty owed to the public is not actionable unless there is a special duty to the plaintiff**
  - **No duty to plaintiff traveling on a county road**

- ***Mumm v. Jennie Edmundson Mem'l Hosp.*, _____ N.W.2d ___ (Iowa 2019)**
  - **Court's failure to respond to a question from the jury resulted in instructional error that should have been avoided because the jury's question was logical**
  - **Notwithstanding, the failure was not prejudicial**

Miscellaneous

- ***Lowe's Home Centers, LLC v. Iowa Dep't of Rev.*, 921 N.W.2d 38 (Iowa 2018)**
  - **Determining Lowe's was required to collect taxes on installation labor**

- ***Lucy v. Platinum Servs., Inc.*, No. 17-1118 (Iowa Ct. App. Nov. 7, 2018)**
  - **Considering but not reaching question of whether seven-year non-compete was enforceable (district court had concluded it was unreasonable and too restrictive)**

DORSEY
always ahead

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