Case Law Update

William (Bill) J. Miller

miller.william@dorsey.com

PCBA Fall Seminar

November 18, 2016

© Dorsey & Whitney LLP

Estate of Gray v. Baldi, 880 N.W.2d 451 (2016)

- **In December 2005, Gray began receiving care from Dr. Baldi, an addiction and pain management specialist**
- **Gray struggled with substance abuse, which Baldi knew about, and his treatment involved examinations, diagnoses, and various prescriptions**
- **Gray's wife, Brenna, often attended appointments with Paul and communicated with Baldi in regards to his treatment**
- **Gray passed away from an overdose or lethal combination of medications**
- **Record did not reveal which medication(s) caused or contributed to the death, nor whether Baldi prescribed them**

DORSEY™
always ahead

Estate of Gray v. Baldi, 880 N.W.2d 451 (2016)

- At time of Gray's death, his wife was pregnant and gave birth to a daughter, O.D.G., several months later
- Brenna sued:
  - (1) for Gray's estate, asserting wrongful death,
  - (2) for herself, asserting a loss of spousal consortium, and
  - (3) for O.D.G., asserting a loss of parental consortium (collectively "Gray")
- Baldi filed a motion for summary judgment contending each of Gray's claims were time-barred
- District court granted the motion for summary judgment in its entirety and Gray appealed

DORSEY™
always ahead

Estate of Gray v. Baldi, 880 N.W.2d 451 (2016)

- **Is a fetus on the date of the accident a child for purposes of asserting a timely parental consortium?**
- **Does the statute of limitations commence when the claimant discovers the possible misconduct or on the date of death?**

Estate of Gray v. Baldi, 880 N.W.2d 451 (2016)

- **Statute of limitations focus is in the present tense and the filing of the action, not on whether the minor child on whose behalf the claim is brought was alive at some prior time**
- **The phrase "brought on behalf of a minor" modifies "an action" and clearly addresses the child's age at the time the case is commenced**
- **Gray filed the petition when O.D.G. was less than four years old and, as such, the action was clearly brought on behalf of a minor**
- **The suit brought on O.D.G.'s behalf arose upon O.D.G's birth, not before**

Estate of Gray v. Baldi, 880 N.W.2d 451 (2016)

- SOL issue pivots to question about application of "contradictory affidavit" rule
- In a prior criminal case against Baldi, Brenna testified that before Gray's death she expressed concern for him to stop taking one medication Baldi had prescribed
- She also stated that in late January 2012 she had a few conversations about Baldi's treatment of Gray with a state investigator

Estate of Gray v. Baldi, 880 N.W.2d 451 (2016)

- **Court concludes an affidavit provided by Brenna in resisting Baldi's motion for summary judgment does not engender a material fact issue because it contradicts her earlier sworn testimony**
- **Court adopts the contradictory affidavit rule that is subject to important exceptions that render the rule inapplicable if the affiant offers a reasonable explanation for any apparent contradiction between their affidavit and other sworn testimony**
- **To invoke the rule, the inconsistency between a party's deposition testimony and subsequent affidavit must be clear and unambiguous**
- **Brenna's subsequent affidavit clearly and unambiguously contradicted her earlier sworn testimony in the criminal case against Baldi and was no impediment to summary judgment**

Winger v. CM Holdings, L.L.C., 881 N.W.2d 433 (2016)

- **Wrongful-death action arising from a child's fatal fall from apartment balcony**
- **32-inch balcony railing on balcony complied with local housing code when apartment complex constructed in 1968, but current code requires a 42-inch railing**
- **Local housing inspector cited landlord for code violation before the accident and the landlord ordered higher railings and asked for an extension of time to install them**
- **City of Des Moines Housing Appeal Board (HAB) found property was in violation but granted three-month extension to install compliant railings and suspended fine**

DORSEY™
always ahead

Winger v. CM Holdings, L.L.C., 881 N.W.2d 433 (2016)

- **Core question presented was whether breach of a local ordinance can give rise to negligence per se or if only a breach of a specific statewide statute or rule suffices**
- **Also whether defendant is bound by HAB's determination that its railing violated code and if HAB's extension of time to install 42-inch railing excused defendant's tort liability in the interim**

Winger v. CM Holdings, L.L.C., 881 N.W.2d 433 (2016)

- **Iowa Supreme Court "has long recognized the violation of a municipal safety ordinance can be negligence per se" and *Griglione v. Martin*, 525 N.W.2d 810 (Iowa 1994), which indicated otherwise, is overruled**
- **Defendant is not bound by HAB determination: it had pursued an extension and suspension of the fine but otherwise did not have a chance to vigorously defend itself as required to apply issue preclusion**
- **HAB's extension of time does not provide the property owner a legal excuse in a third party's tort action arising from the violation because no relevant statute specifically excuses the violation**

Alcala v. Marriott Int'l, Inc., 880 N.W.2d 669 (2016)

- **Alcala is a software consultant who makes in-person visits to clients who were implementing new software so she could assist with any issues**
- **While visiting one of her clients in January 2012, Alcala stayed at the Marriott, where she fell and broke her ankle while exiting the hotel**
- **Alcala filed suit against the hotel alleging that it was negligent in allowing ice to accumulate on its outdoor walkways, failed to maintain safe premises, failed to properly train their employees who were responsible for clearing icy sidewalks, and failed to warn guests of the danger**

Alcala v. Marriott Int'l, Inc., 880 N.W.2d 669 (2016)

- Focus was on whether the district court erred by submitting the negligent training theory without any testimony on the standard of care for training or its breach
- There must be some evidence or expert testimony to support giving an instruction on negligent training of employees on ice removal
- Reference to existing ASTM standards that do not mention ice or snow was inadequate basis to instruct the jury that an icy sidewalk is substandard

Sanon v. City of Pella, 865 N.W.2d 506 (2015)

- **In the several years after construction of a new aquatic center, the city aquatics manager decided to cease using the underwater lighting because it had started to rust (she did so without consulting with other city officials)**
- **Without the additional lights, the pool did not meet requirements in the administrative code that required the main drain to be visible from the swimming deck**
- **Despite the lack of lighting, the pool was still open in the evenings and two boys drowned in the pool at an evening pool party**

Sanon v. City of Pella, 865 N.W.2d 506 (2015)

- **Parents sued the city under theories of negligence and due process (under the state-created danger doctrine)**
- **After summary judgment motions, only one of the parents' negligence claims remained—that city employee's acts constituted involuntary manslaughter**
- **Both parties filed for interlocutory appeal**

Sanon v. City of Pella, 865 N.W.2d 506 (2015)

- **Whether violation of an administrative rule from the Iowa Department of Public Health constitutes criminal activity for purposes of removing immunity as defined in Iowa Code § 670.4(12)?**
- **Whether manslaughter is a criminal offense that would remove immunity under the same code provision when there has been no conviction?**
- **What burden of proof must plaintiffs meet to establish those criminal offenses?**

Sanon v. City of Pella, 865 N.W.2d 506 (2015)

- **A violation of a Dep't of Public Health rule relating to swimming pools can constitute a criminal offense as it relates to § 670.4(12)**
  - **The rules relied upon by the parents in their claim were promulgated under statutory authority that allowed the Department to enact rules to protect the health and well-being of the public, as defined in the act that created the department**
- **A conviction is not necessary for manslaughter to remove immunity under § 670.4(12)**
  - **The criminal conduct provision in 670.4(12) requires merely "conduct which is prohibited by statute and is *punishable* by fine and imprisonment;" this does not require previous punishment for the behavior to qualify.**
- **Plaintiffs only need establish either violation of rules or criminal action by the preponderance of the evidence**

DORSEY™
always ahead

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

- **The Sanfords were husband and wife guests at Fillenwarth, a resort on Lake Okoboji**
- **While staying at the resort, plaintiffs took an adults-only lake cruise on which alcohol was provided**
- **Another guest, who was not personally paying for his room but was nevertheless a legal guest at the resort, was also on the cruise, imbibed alcohol and became intoxicated, and ultimately got into a dispute with plaintiffs in which he assaulted one of the plaintiffs and caused physical injury**

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

- **Plaintiffs sued defendant under dram shop liability for payment of medical bills and damages relating to the assault**
- **District court granted summary judgment in favor of defendant reasoning dram shop liability applied only in cases of sale of alcohol, not in cases such as the cruise in which alcohol is provided gratuitously**
- **Did district court err in finding the alcohol provided on the adults-only cruise was not a sale incurring liability under Iowa's dram shop statutes?**

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

- The Court began by examining the statutory language and legislative history, noting that the statute only applied to sales rather than gifts of alcohol and that sale was not readily defined within the statute.
- The dram shop statute was intended to impose liability only when the establishment is in the regular business of serving alcohol, not in cases in which a business might occasionally serve such beverages
  - For instance, the Court has previously noted that it does not apply to a company's annual Christmas party when the company does not otherwise typically serve alcohol
- In the case of Fillenwarth, however, the fact that there was no money exchanged on the boat does not preclude the finding of a sale of alcohol

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

- **Because the provision of alcoholic beverages on such cruises is advertised to paying guests as a selling point of the resort accommodations, the provision of such beverages is incident to the sale of the accommodations and thus subjects the resort to dram shop liability**
- **Additionally, the fact that the particular guest did not personally pay for his accommodation (rather, someone else had paid for him) did not nullify the sale**

Smith v. ISU, ___ N.W.2d ___ (2016)

- **Former employee of Iowa State University brought action for intentional infliction of emotional distress and for violations of state whistleblower statute following a prolonged series of altercations with his supervisor**
- **Smith was improperly denied a promotion promised and was made the subject of investigations following his supervisor's unwarranted allegations Smith posed a physical threat to fellow coworkers**
- **The appeal largely concerned the allocation of attorney fees**

Smith v. ISU, ___ N.W.2d ___ (2016)

- Court affirms court of appeals conclusion that recoverable fees must be apportioned to the theory under which fees may be awarded and not broadly awarded based on core common facts
- Court further affirms that the fees can be reduced in connection with Plaintiff's level of success on the fees-permitting claim
- Court holds the employee was not required to submit more detailed time records to support award of attorney fees but was not entitled to all of his requested fees

Johnson v. Associated Milk Producers, Inc., ___ N.W.2d ___ (2016)

- **Johnson sued alleging that AMP breached an at-will oral contract between the two parties when it failed to pay Johnson a $100 trip fee, in addition to the agreed hauling rate, for hauling milk from farms to the co-op's facilities**
- **Question presented was whether an at-will contract exists, and is thereby terminable or modifiable by either party upon reasonable notice, when one party changes the "terms of an ongoing commercial relationship and the other" party continues performance**
- **Also, did AMP's notification to Johnson of its intention to discontinue the $100 trip fee constitute a new offer that could be accepted by performance because Johnson was an independent contractor rather than an employee?**

DORSEY™
always ahead

Johnson v. Associated Milk Producers, Inc., ___ N.W.2d ___ (2016)

- **“When one party modifies an at-will contract, the other party may choose to accept the new terms or discontinue the relationship.”**
- **Formal language terminating the contract is not required in order for new terms to be effective going forward**
- **Contracts with independent contractors—of which Johnson was one—are at-will and can be modified unilaterally**

Irving v. Employment Appeal Board, 883 N.W.2d 179 (2016)

- **Appeal from a decision made by the Iowa Employment Appeal Board (EAB) denying the petitioner's request for unemployment benefits**
- **Petitioner was formerly employed at the University of Iowa Hospitals and Clinics (UIHC) as a medical assistant**
- **She was incarcerated for a period of close to a month, during which time her supervisor placed her on a leave of absence**
- **After she was released and attempted to return to work, petitioner was told she was no longer employed and was rejected when she tried to reapply for her position**

Irving v. Employment Appeal Board, 883 N.W.2d 179 (2016)

- **Employee applied for unemployment insurance benefits and this request was denied based on records showing she voluntarily quit her job**
- **She appealed the decision to the EAB and she was again denied benefits in an administrative hearing on the grounds that her absence from the workforce was misconduct and should be regarded as a "voluntary quit" without good cause**
- **On appeal, she argues that involuntary incarceration cannot be considered misconduct or a voluntary quit under the Iowa unemployment insurance law**

Irving v. Employment Appeal Board, 883 N.W.2d 179 (2016)

- **Court finds that excessive absences as a result of incarceration do not alone qualify as misconduct**
- **Further, incarceration, in an of itself, does not establish a voluntary quit because there is a requirement of a volitional act on the part of the employee**
- **Burden is on the employer to show that the circumstances that led to the incarceration establish volitional acts sufficient to show the employee intentionally set into motion the chain of events that led to the termination from employment**

Hutchison v. Shull, 878 N.W.2d 221 (2016)

- **Iowa Code section 21.2(2) requires notice and a public hearing whenever a majority of a governmental body gathers to deliberate on matters within the scope of their policy-making authority**
- **Members of the three-member Warren County Board of Supervisors and the non-elected Administrator met and deliberated the reorganization of county government**
- **By meeting individually with the Administrator, the Board was able to reach compromises about which positions to eliminate as part of the reorganization process ahead of an open meeting in which the recommendations passed without discussion**

Hutchison v. Shull, 878 N.W.2d 221 (2016)

- **“Meeting” in Iowa Code section 21.2(2) requiring notice and a public hearing extends to all in-person gatherings at which there is deliberation upon any matter within the scope of the policy-making duties of a governmental body by a majority of its members, as well as in-person gatherings attended by a majority of the members by virtue of an agent or proxy.**
- **There was no dispute that this type of deliberation had occurred in this case**
  - **In 2008, the court of appeals stated that “[t]he difference between a ministerial gathering and one that involves deliberation appears to be whether members are gathering information or are discussing opinions.” *See Dooley*, 760 N.W.2d 210, at *4 (Iowa Ct. App. 2008).**
- **The real question was whether the Administrator was acting as an agent of another board member thereby resulting in a gathering of a majority of the board when the Administrator met with one board member**

Hutchison v. Shull, 878 N.W.2d 221 (2016)

- **However, the Court was unable to reach a definitive conclusion about whether Warren County violated the open meetings law through the use of the Administrator as an agent**
- **Instead, the Iowa Supreme Court sent the case back to the district court to determine whether the Administrator acted within the scope of her agency when she deliberated with the supervisors about the reorganization**
- **If the district court finds that an agency relationship existed, and that the Administrator acted within the scope of her agency authority, the district court must also consider whether this violation was alleviated by the Board's subsequent ratification of the reorganization plan in an open meeting**

Rivera v. Woodward Resource Center, 865 N.W.2d 887 (2015)

- Plaintiff was hired on a probationary status at Woodward Resource Center (WRC) in April 2006 and was terminated during her 6-month probationary period in early October 2006
- WRC is a state-run institution which cares for individuals with mental and physical disabilities
- Plaintiff sued WRC for wrongful discharge for reasons contrary public policy, alleging she was terminated because she had complained about patient abuse at WRC
- Defendant countered that Plaintiff had been terminated due to 3 unscheduled absences

Rivera v. Woodward Resource Center, 865 N.W.2d 887 (2015)

- **At trial, the jury instructions provided explanation of the “determining factor” test that applies in wrongful discharge for reasons contrary to public policy cases, including:**
  - **Applying the previously articulated test that the alleged cause for wrongful discharge (in this case, Plaintiff’s complaints of abuse) need not be the “main” reason for discharge, but merely “the reason which tips the scales decisively”**
  - **Instructing that these complaints were not the determining factor if WRC “had an overriding business reason for terminating [plaintiff’s] employment”**

Rivera v. Woodward Resource Center, 865 N.W.2d 887 (2015)

- **In arguing about the instructions, Plaintiff objected to the overriding business reason sentence, claiming it was essentially a “same decision” theory which was not appropriate in this case**
- **Question presented was whether wrongful discharge for reasons contrary to public policy claims include a separate fourth element that requires the plaintiff to prove there was not an overriding business reason for the dismissal**

Rivera v. Woodward Resource Center, 865 N.W.2d 887 (2015)

- **The lack of an overriding business reason is not a separate element that must be proven by the plaintiff in a wrongful discharge for reasons contrary to public policy claim, though evidence of an overriding business justification may be introduced to help defeat the determining factor element**
- **In this case, the overriding business factor instruction could be read in harmony with the determining factor question, and thus no prejudice existed warranting a new trial**

Case Law Update

Special thanks to:

Jim Hansen, Em Papp, Megan La Suer, George Tzanetakos, Matt Bergs, and Alle McNorton

THANK YOU FOR YOUR ATTENTION!

PCBA Fall Conference

November 18, 2016

© Dorsey & Whitney LLP

Case Law Update

William (Bill) J. Miller

miller.william@dorsey.com

PCBA Fall Seminar

November 18, 2016