2013 WL 10342439 (Iowa) (Appellate Brief)
Supreme Court of Iowa.

Maxine Gail VEATCH, Appellant/Plaintiff,

v.

CITY OF WAVERLY and Jason Leonard, Individually and in His Official Capacity, Appellees/Defendants.

No. 13-0417.
July 17, 2013.

Bremer County Case No. CVCV003915
Appeal from the Iowa District Court for Bremer County
The Honorable Dedra Schroeder

Appellant's Final Brief

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***iv** TABLE OF CONTENTS

***vi** TABLE OF AUTHORITIES

*1 STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether The District Court Erred In Finding Ms. Veatch's Claims are Barred by the Doctrine of Issue Preclusion.

Authorities:

Berkovitz v. United States, 486 U.S. 531, 536-37 (1988)

Brinegar v. United States, 338 U.S. 160, 164 (1949)

Children v. Burton, 331 N.W.2d 673, 679 (Iowa 1983)

Cline v. Union County, 182 F.Supp.2d 791, 800-01 (S.D. Iowa 2001)

Craig v. City of Cedar Rapids, No. 12-0318, 2012 WL 6193862 at *1 (Iowa Ct. App. Dec. 12, 2012)

Deuser v. Vecera, 139 F.3d 1190, 1195 (8th Cir. 1998)

George v. D.W. Zinser Co., 762 N.W.2d 865, 868 (Iowa 2009)

Goodman v. City of LaClaire, 587 N.W.2d 232, 238 (Iowa 1988)

Graber v. City of Ankeny, 656 N.W.2d 157, 161 (Iowa 2003)

Kelley v. Story County Sheriff, 611 N.W.2d 475, 484 (Iowa 2000)

Kiesau v. Bantz, 686 N.W.2d 164, 173 (Iowa 2004)

Kraft v. City of Bettendorf, 359 N.W.2d 466,469 (Iowa 1984)

Lewis v. State, 256 N.W.2d 181 (Iowa 1977)

Rojas v. Pine Ridge Farms, L.L.C., 779 N.W.2d 223, 231 (Iowa 2010)

State v. Jacobs, 100 N.W.2d 601, 603 (Iowa 1960)

***2** *Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1255 (8th Cir. 2010)

Virginia v. Moore, 553 U.S. 164, 175 (2008)

Whalan v. Connelly, 621 N.W.2d 681, 687-88 (Iowa 2000)

Iowa Code § 670.4

Iowa Code § 804.7 (2012)

***3 ROUTING STATEMENT**

The Appellant believes this case may be properly retained by the Supreme Court as it involves an issue of first impression. Iowa R. App. P. 6.1101(2).

STATEMENT OF THE CASE

Maxine Veatch appeals the district court's erroneous decision to dismiss the present action. This case stems from events that occurred in September 2006. *See Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1255 (8th Cir. 2010). On June 9, 2008, Ms. Veatch filed a Complaint in the Northern District of Iowa against Appellees, the City of Waverly and Officer Jason Leonard (collectively “the City”). (App. p. 174). On June 4, 2009, the City filed a Motion for Summary Judgment. (App. p. 202). On October 9, 2009, the Honorable Linda Reade ruled in favor of the City of Waverly and Officer Leonard on the federal claims.

(App. p. 220). She declined to exercise supplemental jurisdiction over the state law claims. (Id.) On October 16, 2009, final judgment was entered by the Clerk of the Federal Court. (App. p. 221).

***4** November 13, 2009, Ms. Veatch both appealed Judge Reade's decision in federal court and commenced a new action in the Iowa District Court in and for Bremer County, reasserting all of the same state law claims against the City of Waverly and Jason Leonard. (App. p. 1). On December 18, 2009, the City filed a Motion for Summary Judgment. (App. p. 27). On January 21, 2010, the District Court granted Ms. Veatch, Motion to Stay while the federal issue was on appeal. (App. p. 42). The Eighth Circuit Court of Appeals affirmed Judge Reade's ruling. *Veatch*, 627 F.3d 1254. The stay was lifted on April 26, 2011, and Ms. Veatch resisted the City's Motion for Summary Judgment. (App. p. 43).

On July 20, 2011, the Honorable Bryan McKinley denied the City's Motion for Summary Judgment. (App. p. 44-47). The City filed an Application for Interlocutory Appeal, which was denied on September 15, 2011. (App. pp. 107, 172). Upon Judge McKinley's retirement, the Honorable Dedra Schroeder was appointed as presiding judge. (Order Appointing Presiding Judge, April 26, 2012.) On January 11, 2013, the City filed a Renewed Motion for Summary Judgment. (App. p. 50). February 12, 2013, the Honorable Dedra Schroeder granted the motion and dismissed the case. (App. p. 94-98). Ms. Veatch filed a Motion to Enlarge or Amend on ***5** February 15, which was denied on March 4, 2013. (App. pp. 99-103). Ms. Veatch appeals this erroneous decision.

STATEMENT OF FACTS

On September 29,2006, Jason Leonard arrested Maxine Veatch without a warrant and charged her with a simple misdemeanor assault. This arrest stemmed from allegations by Bartels Lutheran Home (hereinafter “Bartels”) that a staff member had witnessed Ms. Veatch push her **elderly** mother into a wheelchair on the evening of September 27,2006. Maxine was tried and acquitted of the offense.

As of September 2006, Agnes Bell was a resident at Bartels. (App. 2, ¶8). Maxine Veatch, Agnes's daughter, was very involved in Ms. Bell's care. (See App. p. 2, ¶ 10.) Beginning in June 2006, and continuing up to the September 27 incident, Bartels was looking at ways to restrict visitation by Ms. Veatch and her sister, Chris Price, and/or involuntarily discharge Agnes Bell from the facility due to problems between the family and staff. (App. pp. 240, 256, 260). Following a staff meeting, administration of Bartels directed employees to compile a book detailing various encounters with Ms. Veatch, Ms. Price and their mother. (App. p. 255). Additionally, in ***6** June 2006 Bartels reported the daughters to Department of Inspections and Appeals (“DIA”) on an **abuse** allegation. (App. pp. 238, 257). The DIA refused to investigate the report much to the disappointment of CEO/Bartels President Debra Schroeder (Id)

On September 27, 2006, Ms. Veatch and Ms. Price spent the day with Ms. Bell, taking her shopping and to a doctor's appointment in Cedar Falls. (App. p. 4, ¶¶ 24-25). Upon returning to Bartels, they helped Agnes walk to the dining room for the evening meal. While en route to the dining room, Agnes suddenly collapsed. (*Id.* ¶¶25-26.) Ms. Veatch caught Agnes, and in one motion Ms. Veatch pivoted and swung Agnes into the wheelchair. (*Id.* ¶7.)

Janice Whiteside, a Bartels nurse, observed at least part of the incident when she “glanced down the hall” from the dining room. (*Id.* ¶ 28.) Ms. Whiteside reported the incident to her supervisor and the Department of Inspections and Appeals as a case of dependent adult **abuse**. (*Id.* ¶ 29.) Whiteside also prepared a written report for her supervisor, Brianna Brunner. (App. pp. 232-33,255).

Upon learning about the September 27 incident, Ms. Brunner, reported it to the Waverly Police Department. (App. p. 232). The ***7** investigation was turned over to Officer Leonard. (App. p. 242). Officer Leonard visited Bartels for one to two hours on September 28, where he was provided with documentation by Bartels of problems they had with Ms. Veatch and Ms. Price. These documents and statements did not deal directly with the incident under investigation. Bartels continued to provide statements of other problems with the family even after this initial interview. (App. pp. 235,246, 297).

Upon Bartels's suggestion, Officer Leonard did not meet with Agnes Bell, the alleged victim, while at Bartels. Instead, Jenny Kane, a Bartels employee, taped an interview with Agnes which was later provided to Officer Leonard. (App. pp. 233, 244). While at Bartels Officer Leonard also did not meet with any eyewitnesses to the incident. (App. p. 248).

The next day, Officer Leonard contacted Ms. Veatch for an interview. (App. pp. 225-26) She complied, arriving at the police station around 1:00 p.m. that day. (App. p. 226.) At the time Officer Leonard met with Ms. Veatch, she wanted to talk about problems she was having with the Bartels staff and how they were biased against her. Despite his conversation and documentation from Bartels on such unrelated issues, Officer Leonard stopped Ms. Veatch from sharing this information as it concerned separate ***8** issues and he wanted to speak only about the alleged assault. (App. p. 248). Shortly into the interview, Ms. Veatch requested to have an attorney present. She wanted to continue the interview with Officer Leonard, but wanted to exercise her right to have an attorney present. (App. p. 227). After Ms. Veatch requested an attorney be present, Officer Leonard left the interview room. (App. p. 155). Ms. Veatch assumed he was making arrangements so she could contact her attorney. (Id.) When Leonard returned a short time later he announced Ms. Veatch was going to jail, and he did not want to continue any interviews nor discuss her claims that Bartels was biased and retaliatory. (*Id.*) Officer Leonard informed Ms. Veatch that he had no other recourse but to arrest her when she requested the presence of an attorney before continuing the interview. (App. pp. 267-68). As Leonard was transporting Ms. Veatch to the jail, she kept wanting to talk to Leonard about the things Bartels was doing. Officer Leonard said those issues didn't have merit on what he believed was the case that he was investigating. (App. p. 250).

After arresting Ms. Veatch, Officer Leonard called Bartels to advise them that he had made the arrest. (App. p. 244). Officer Leonard had previously informed Bartels that if charges were filed against either of ***9** Agnes Bell's daughters, a temporary Protective Order could be obtained to prohibit the daughters from having contact with Bell. (App. p. 267-68) Officer Leonard also testified that he had a conversation with Magistrate Steven Egli, who is on the Bartels Board of Directors, but he could not remember the details of the conversation. (App. p. 244). Brianna Brunner also remembers a conversation with Magistrate Egli. (App. p. 260).

When making his decision to arrest Ms. Veatch and charge her with assault, Officer Leonard admittedly relied on the information he received from Bartels. (App. p. 249). This is despite the fact that he was aware of Bartels's plan to restrict Ms. Veatch's visitation with her **elderly** mother, he had not talked to the victim, nor had he received any eyewitness statements or interviewed anyone who had personal knowledge of what had occurred during this alleged assault. (App. pp. 248, 260). Regardless, Officer Leonard arrested Ms. Veatch, charged her with simple misdemeanor assault, and took her to the Bremer County Jail where she waited until the next day to be seen by a magistrate. (App. pp. 229, 267).

After arresting Ms. Veatch, Officer Leonard continued to receive information from Bartels. On October 2, Bartels sent Officer Leonard a copy of the report from Dr. Fagre, the medical director who had checked ***10** Ms. Bell for bruises. (App. p. 245). On October 16, Bartels sent Officer Leonard the statement from Ms. Whiteside, the staff person who witnessed the incident. (Id.)

Officer Leonard also received a tape of Bartels employee Jenny Kane's interview with Agnes Bell. (App. p. 244). Ms. Bell reported during this interview that she was glad when Maxine and Chris took her out every Thursday. (App. p. 288). Agnes stated that her daughters don't make her walk too much and that they help her and she knows she needs to walk. (App. p. 289). Agnes reported that when she tried to walk with her walker and wants to stop her daughters don't get frustrated, but tell her to stop and breathe deep. She reported that her daughters will also let her sit down. (App. p. 6). Ms. Bell reported that her body just went out when walking in the hallway. (Id.) Ms. Bell reported that she didn't know where her bruises came from and that she bruises easy. (App. p. 295). She denied that anyone grabbed her to cause the bruises. (Id.) Officer Leonard arrested Ms. Veatch without taking into consideration any of these statements by the victim, the examining doctor or the eyewitness who reported the incident.

Ultimately Ms. Veatch was arrested without a warrant for a simple misdemeanor not committed in the officer's presence and prosecuted for ***11** assault pursuant to Iowa Code § 708.1. The case was tried before a jury on August 2 and 3, 2007. (App. p. 278). On August 3, 2007, the jury returned a verdict of Not Guilty after only one hour of deliberating. (*Id.*) In October, 2007, Judge Lambert reversed the finding of dependent adult **abuse**. (*See* Defs. Statement of Material Facts and Mem. of Authorities in Supp. of Mot. for Summ. J. at 11, ¶ 57 (stating an Administrative Law Judge held allegations of dependent adult **abuse** are incorrect)).

In June 2008, Ms. Veatch filed a civil action in the Northern District of Iowa against the City of Waverly and Officer Leonard. (App. p. 174). This Complaint involved multiple claims, including a federal claim. (*Id.*) In 2009, the City of Waverly and Officer Leonard filed a Motion for Summary Judgment. On October 9, 2009, the Honorable Linda Reade ruled in favor of the City of Waverly and Officer Leonard on the federal claims. (App. p. 206). She declined to exercise supplemental jurisdiction over the state law claims. (App. p. 220). Ms. Veatch appealed this decision to the Eighth Circuit Court of Appeals, which affirmed Judge Reade. *Veatch*, 627 F.3d 1254.

In November 2009, Ms. Veatch filed a Petition in Bremer County that reasserted the state law claims. (App. p. 1). The City almost immediately ***12** filed a Motion for Summary Judgment asserting that Ms. Veatch's claims are barred by the doctrine of issue preclusion. (App. p. 27). After hearing oral argument on the issue, the Honorable Judge McKinley denied the motion in its entirety. (App. p. 44). The City of Waverly and Officer Leonard filed an Application for Interlocutory Appeal, which was denied. (App. p. 172).

Upon Judge McKinley's retirement, this case was continued by the court due to the unavailability of a trial judge. Ultimately a new judge - the Honorable Dedra Schroeder-was assigned to the case. (Order Appointing Presiding Judge, April 26, 2012.) The City then filed a Renewed Motion for Summary Judgment on the same grounds that it had previously asserted. The Renewed Motion for Summary Judgment is nearly verbatim the Application for Interlocutory Appeal. (*Compare* App. p. 50 *with* App. p. 107). The District Court granted the motion and dismissed the case in its entirety. (App. p. 94).

*13 ARGUMENT

I. The District Court Erred In Finding This Action Is Barred By The Doctrine of Issue Preclusion.

A. Preservation Of Error.

This issue has been preserved for appellate review pursuant to Iowa R. App. P. 6.103. The issue was raised, submitted, and decided by the district court, it materially affected the final decision, and Appellant filed a timely Notice of Appeal.

B. Scope Of Review.

This appeal stems from the district court's ruling on a motion for summary judgment. Therefore, the scope of review is "for the corrections of errors at law." *Alliant Energy-Interstate Power v. Duckett*, 732 N.W.2d 869, 873 (Iowa 2007); *accord George v. D.W. Zinser Co.*, 762 N.W.2d 865, 868 (Iowa 2009). To the extent that this review involves issues of statutory interpretation, corrections of errors at law is also the appropriate standard. *Jones v. State Farm Mut. Auto. Ins. Co.*, 760 N.W.2d 186, 188 (Iowa 2008); *Bankers Standard Ins. Co. v. Stanley*, 661 N.W.2d 178, 180 (Iowa 2003). During its review, the court "view[s] the entire record in a light most ***14** favorable to the nonmoving party." *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000).

C. This Action is Not Barred by the Doctrine of Issue Preclusion Because the Issue Concluded is Not Identical, Nor was it Material and Relevant to the Disposition of the Prior Action.

The Eighth Circuit Court of Appeals held that Officer Leonard had probable cause to arrest Ms. Veatch without a warrant under the Fourth Amendment of the United States Constitution. *Veatch*, 627 F.3d at 1257. The City has asserted that this probable cause decision has preclusive effect on Ms. Veatch's state law claims, including false imprisonment, malicious prosecution, and negligence. The City has the burden to establish the following elements of issue preclusion:

> (1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

George, 762 N.W.2d at 868 (citation omitted). The City cannot prove the first or third elements of this claim. Therefore, the District Court erred in granting summary judgment.

***15** Judge Schroeder found that the Eighth Circuit probable cause decision has preclusive effect on Ms. Veatch's state law claims. The issue raised and litigated in the prior federal action was "whether Leonard's warrantless arrest of Veatch constituted a violation of federal law, namely, the Fourth Amendment's prohibition of unreasonable seizures." *Veatch*, 627 F.3d at 1257. Probable cause is the standard for Fourth Amendment warrantless arrests. *Brinegar v. United States*, 338 U.S. 160, 164 (1949); *Veatch*, 627 F.3d at 1257. Iowa law, however, is more restrictive than the federal law for warrantless arrests. Therefore, a federal probable cause determination does not preclude related state law claims.

Per Iowa Code § 804.7,
A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant:

1. For a public offense committed or attempted in the peace officer's presence.

2. Where a public offense has in fact been committed, and the peace officer has reasonable ground for believing that the person to be arrested has committed it.

3. Where the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.

***16** 4. Where the peace officer has received from the department of public safety, or from any other peace officer of this state or any other state or the United States an official communication... informing the peace officer that a warrant has been issued and is being held for the arrest of the person to be arrested on a designated charge.

5. If the peace officer has reasonable grounds for believing that domestic **abuse**, as defined in section 236.2, has occurred and has reasonable grounds for believing that the person to be arrested has committed it.

6. As required by section 236.12, subsection 2.

Iowa Code § 804.7 (2012). The analysis is not a simple "did the officer have reasonable grounds?"; one of the circumstances delineated in Iowa Code § 804.7 must also be present for a legal warrantless arrest under Iowa law. Therefore, whether Officer Leonard's warrantless arrest violated Ms. Veatch's Fourth Amendment protections and whether Officer Leonard's warrantless arrest violated Iowa Code § 804.7 are not identical issues. Since the issues are not identical, the District Court erred in dismissing Ms. Veatch's claims on the basis of issue preclusion.

The City has also failed to prove the third element of issue preclusion. Whether Officer Leonard violated Iowa law was not material and relevant to the disposition of the federal case or the determination of probable cause under the Fourth Amendment.

In fact, Judge Reade made this very clear ***17** when she stated, "Veatch's argument that a warrantless arrest for a simple misdemeanor violates Iowa law is irrelevant to her § 1983 claim." (App. p. 206). Additionally, when deciding the Fourth Amendment claim, the Eighth Circuit gave no consideration to warrantless arrests under Iowa Code § 804.7, the basis of Ms. Veatch's state law claims. *C.f. Veatch*, 627 F.3d 1254.

Judge Reade was correct to distinguish the federal claim from the state law claims. Even the United States Supreme Court has recognized a distinction between Fourth Amendment warrantless arrests and state law requirements for warrantless arrests. That Court declined to consider state laws under a Fourth Amendment analysis, stating that "linking Fourth Amendment protections to state law would cause them to vary from place to place and time to time." *Virginia v. Moore*, 553 U.S. 164, 175 (2008) (citations omitted). Thus, even the application of the laws by our nation's highest court suggests that a ruling on probable cause under the Fourth Amendment does not have a preclusive effect on similar state law claims.

The issue of warrantless arrest under Iowa Code § 804.7 versus a Fourth Amendment warrantless arrest is not identical. Requirements under Iowa law were expressly deemed irrelevant to the federal law analysis. ***18** Therefore, the District Court erred in holding Ms. Veatch's state law claims are barred by the doctrine of issue preclusion.

1. Summary Judgment was Further Inappropriate on Ms. Veatch's False Imprisonment Claim Because Officer Leonard Violated Iowa Code §804.7 Despite the Eighth Circuit's Probable Cause Determination.

Two elements are necessary to sustain a claim of false imprisonment: (1) detention against Ms. Veatch's will; and (2) unlawfulness of the detention. *Kraft v. City of Bettendorf*, 359 N.W.2d 466,469 (Iowa 1984). Officer Leonard has the burden of proving that the arrest was lawful. *Children v. Burton*, 331 N.W.2d 673, 679 (Iowa 1983). It is undisputed that the arrest was against Ms. Veatch, will. The arrest was unlawful because it was a warrantless arrest in violation of Iowa Code § 804.7.

Iowa has adopted a statute specifying the circumstances under which a peace officer may arrest an individual without a warrant. Iowa Code § 804.7 authorizes an arrest without a warrant in very specific circumstances, including:
(1) For a public offense ***committed*** or attempted ***in the officer's presence;***

(2) Where a public ***offense has in fact been committed*** and the officer has reasonable ***19** grounds for believing the person to be arrested committed it; and

(3) Where the peace officer has reasonable grounds for believing that ***an indictable public offense*** has been committed and has reasonable grounds for believing that the person to be arrested committed the offense.

Iowa Code § 804.7(1)-(3). In the present case, it is undisputed that subsection (1) does not apply since the assault did not occur in Officer Leonard's presence. The City has asserted that Officer Leonard's arrest "might be justified" under subsections (2) or (3). Subsections (2) and (3) reference "reasonable grounds", which has been interpreted to mean "probable cause". *Children*, 331 N.W.2d at 679. However, principles of statutory interpretation show that this Court need not even consider whether there were reasonable grounds for believing Ms. Veatch committed the offense to determine that Officer Leonard's warrantless arrest is a violation of Iowa law.

When interpreting a statute, the court "assess[es] the entire statute, not just isolated words or phrases." *Rojas v. Pine Ridge Farms. L.L.C.*, 779 N.W.2d 223, 231 (Iowa 2010). Additionally, "[t]here is a presumption that every word, sentence or provision of a statute was intended for some useful ***20** purpose, has some force and effect, and that some effect is to be given to each, and also that no superfluous words or provisions were used." *State v. Jacobs*, 100 N.W.2d 601, 603 (Iowa 1960). It is not "presumed that the legislature inserted idle or meaningless verbiage or superflouous language, or intended any part or provision to be meaningless, redundant or useless." *1d.; accord Rojas*, 779 N.W.2d at 231.

Finding the Eighth Circuit's Fourth Amendment probable cause decision has preclusive effect on Ms. Veatch's state law claims renders portions of § 804.7 meaningless. The plain meaning of § 804.7(2) shows that two things must be present for a warrantless arrest under that provision: (1) a public offense had in fact been committed, *and* (2) the peace officer had reasonable ground for believing that the person to be arrested had committed it. *See* Iowa Code § 804.7(2). These phrases are connected by an "and". Therefore, applying the principles of statutory interpretation, both phrases--a public offense has in fact been committed, and reasonable ground for believing that the person to be arrested has committed it--must be present; simply having reasonable grounds is not enough. Holding otherwise would render both the first phrase of § 804.7(2) as well as the word "and" meaningless. These terms would have no force and effect; they ***21** would be meaningless verbiage and superfluous language. Such a decision is contrary to the most basic principles of statutory interpretation.

In this case, Ms. Veatch was acquitted by a jury of simple misdemeanor assault. (App. p. 278). Since no public offense was committed, this Court need not even consider "reasonable grounds" or the Eighth Circuit's findings to determine that the District Court granted summary judgment in error. Therefore, this Court should give meaning to the entire statute and reverse the District Court's ruling.

Applying the principles of statutory interpretation to subsection (3)- the other section the City has relied on-necessitates the same result. In that instance, the two prongs that have to be proven are (1) Officer Leonard had reasonable ground for believing that an indictable public offense had been committed, *and* (2) Officer Leonard had reasonable ground for believing that Ms. Veatch had committed it. *See* Iowa Code § 804.7(3). Again the phrases are connected by an "and", so both parts of the subsection must be met. Therefore, if there was not reasonable grounds for believing that an indictable public offense had been committed, Officer Leonard's warrantless arrest was illegal. While the Eighth Circuit found that "[t]he information gathered by Leonard was sufficiently reliable to establish a ***22** reasonable ground for belief that Veatch had committed a misdemeanor assault," such a simple misdemeanor is not an indictable public offense. Thus, that finding does not apply to the false imprisonment claim. Once again, this Court need not even consider the Eighth Circuit decision to determine that the District Court granted summary judgment in error.

Ms. Veatch believes that the fact that no public offense was committed and that there were not reasonable grounds to believe that an indictable public offense was committed have been conclusively and undisputedly established. For example, Officer Leonard only charged Ms. Veatch with a simple misdemeanor, which is not an indictable public offense. (App. p. 269). Additionally, she was acquitted of this offense after one hour of deliberation. (App. p. 278). Alternatively, and at the very least, there is a genuine issue of material fact that renders summary judgment inappropriate.

For the above reasons, the District Court's decision violates the most basic principles of statutory interpretation. A jury need not even consider the Eighth Circuit decision to find that Officer Leonard violated Iowa Code § 804.7. Therefore, the District Court erred in dismissing the false ***23** imprisonment claim. This Court should correct this error by reversing the District Court's ruling.

As explained in the Statement of the Case, the Court denied the City's initial Motion for Summary Judgment, and upon receiving a new presiding judge, the City filed a Renewed Motion for Summary Judgment. The City used a recent Iowa Court of Appeals case, *Craig v. City of Cedar Rapids*, as the basis for its Renewed Motion for Summary Judgment. Nothing about that case changed the law upon which Judge McKinley relied when denying the City's December 2010 Motion for Summary Judgment. Rather, *Craig* is the court's application of the law to a different set of facts. The District Court erred in its application of *Craig* to the facts of this case.

There are key factual differences that distinguish Craig from the present case. The plaintiff in *Craig v. City of Cedar Rapids* was a Memorial Director for the Cedar Rapids Veterans Memorial Commission. *Craig v. City of Cedar Rapids*, No. 12-0318,2012 WL 6193862 at *1 (Iowa Ct. App. Dec. 12, 2012). An audit performed by the Iowa State Auditor's Office suggested that Mr. Craig was responsible for improper disbursements. *Id.* at *1-2. As a result, Mr. Craig was arrested pursuant to a warrant and charged with Felonious Misconduct in Office. *Id.* at *2. The case was dismissed a ***24** few months later because the State

determined it could not prove beyond a reasonable doubt the elements of the crime charged. Id. Mr. Craig sued the City of Cedar Rapids for malicious prosecution and false arrest. *Id.* at *3.

In *Craig*, "Assistant Attorney General Kivi had independently reviewed the auditor's special investigation report and the Linn County Sheriff's investigations. Thereafter, a district court judge approved the trial information. An arrest warrant was issued, denoting that not only did the prosecutor believe probable cause existed but a district court judge also approved the warrant application." *Id.* at *7.

In this case, there was *no warrant.* There was no district court or prosecutorial oversight prior to the arrest. There was no conclusive investigation. Additionally, the City of Cedar Rapids was not involved in investigating and arresting Mr. Craig. Conversely, Officer Leonard was the one who investigated and arrested Ms. Veatch. Moreover, Mr. Craig was arrested *with* a warrant and for a felony. Office Leonard, however, arrested Ms. Veatch *without* a warrant and for a *simple misdemeanor*. Iowa Code § 804.7 distinguishes between the level of crime, and such a warrantless arrest for a simple misdemeanor offense is not allowed. Therefore, key factual ***25** differences necessitate a different outcome in the present case. For all of the above reasons, this Court should reverse the District Court's ruling.

2. Summary Judgment was Inappropriate on Ms. Veatch's Malicious Prosecution Claim Because Issue Preclusion Does Not Apply.

The District Court erred in holding that "probable cause has been determined by the federal court and the cause of malicious prosecution cannot survive without this necessary element." (App. p. 97). To prevail on a claim for malicious prosecution, Ms. Veatch must prove "(1) a previous prosecution; (2) [instigation] of that prosecution by the defendant; (3) termination of that prosecution by acquittal or discharge of the plaintiff; (4) want of probable cause; (5) malice on the part of the defendant for bringing the prosecution; and (6) damage to the plaintiff. *Whalan v. Connelly*, 621 N.W.2d 681, 687-88 (Iowa 2000). It is undisputed that there was a previous protection that resulted in a jury acquitting Ms. Veatch of simple misdemeanor assault. (App. p. 278). Officer Leonard instigated the prosecution by preparing and filing the criminal Complaint on which Ms. Veatch was arrested and held overnight in jail. (App. p. 269). The dispute on this claim lies in the applicability of the federal court's probable cause determination.

***26** The issue before the federal court was whether Officer Leonard violated Ms. Veatch's Fourth Amendment rights by arresting her without a warrant for an alleged assault. This led to the issue of whether Officer Leonard had probable cause under the Fourth Amendment to arrest Ms. Veatch. The want of probable cause for malicious prosecution, however, is different than that of the Fourth Amendment. Probable cause under Iowa law as it relates to a malicious prosecution claim was not a part of the federal court's decision.

A showing of actual malice is required when considering the conduct of a public official such as Officer Leonard. This can be shown by evidence that the Officer Leonard instigated the criminal proceedings against Ms. Veatch primarily for a wrongful purpose. The facts in the present case demonstrate malice by Officer Leonard. As shown by the record, Ms. Veatch was charged and arrested simply as a quick and easy method of obtaining a No Contact Order as requested by Bartels. This was done without any sort of due diligence or independent investigation by Officer Leonard; It was done simply to accommodate the personal interests of Bartels.

***27** Officer Leonard was very biased in his investigation, relying heavily on information from Bartels and not allowing Ms. Vetach to talk about Bartels's bias against her. Officer Leonard should have been aware of this bias based upon Bartels's actions and eagerness to finally find a way to restrict Plaintiffs' visitation with their mother. Officer Leonard called Bartels and advised them that he had made the arrest. (App. p. 244). Officer Leonard arrested Ms. Veatch for the purpose of getting a no contact order, not because she had assaulted her mother. This is a wrongful purpose for the warrantless arrest and instigation of criminal proceedings. For the above reasons, the District Court erred in dismissing Ms. Veatch's malicious prosecution claim on the

basis of issue preclusion, and genuine issues of material fact further render summary judgment inappropriate. Therefore, this Court should reverse the District Court's ruling.

3. Summary Judgment was Further Inappropriate on Ms. Veatch's Negligence Claim Because Officer Leonard Failed to Exercise Due Care in Exercising his Statutory Authority for Warrantless Arrests.

Ms. Veatch alleges that, among other actions, Officer Leonard arrested her without compliance with the statutory protections of Iowa Code § 804.7. The District Court erred in dismissing this claim on its erroneous ***28** finding that "There are no genuine issues of material fact as to whether the defendants violated Iowa Code § 804.7 regarding arrest." (App. p. 97). Therefore, this Court should reverse the District Court's ruling.

Officer Leonard is required to use due care in exercising his statutory authority to arrest without a warrant. Failure to exercise due care in the discharge of a statutory duty will subject a municipal tortfeasor to liability. *Kelley v. Story County Sheriff*, 611 N.W.2d 475,484 (Iowa 2000). As shown by the evidence in this case, Officer Leonard arrested Ms. Veatch without complying with Iowa Code § 804.7. Therefore, Ms. Veatch's negligence claim against Officer Leonard is appropriate under the circumstances and a genuine issue of material fact remains regarding whether Officer Leonard exercised such due care in the discharge of his statutory duty. For these reasons, this Court should reverse the District Court's ruling.

4. Summary Judgment was Further Inappropriate on Ms. Veatch's Claim for Punitive Damages Because Officer Leonard Acted With Reckless Disregard for Ms. Veatch's Rights.

The District Court dismissed Ms. Veatch's claim for punitive damages based upon its incorrect conclusion that issue preclusion applies to ***29** this case. For the reasons stated in Section II.C above, the doctrine of issue preclusion does not apply. In light of that fact, and for the reasons stated below, summary judgment is inappropriate on Ms. Veatch's claims for punitive damages.

A punitive damage award is allowed upon showing Officer Leonard acted in disregard of a known or obvious risk so as to be considered in reckless disregard for the rights of another. *Kiesau v. Bantz*, 686 N.W.2d 164, 173 (Iowa 2004). The facts show that Officer Leonard did act with such reckless disregard. For example, he testified as to the need to establish probable cause prior to placing an individual under arrest; he explained his standard operating procedure for making such a determination involved reviewing witness statements, interviewing any victims and having all reports available before making an arrest decision; he candidly acknowledged making the arrest decision in this case without talking to any of the individuals with firsthand knowledge of the alleged criminal act; he acknowledged that this is the first time in his many years in law enforcement that he arrested someone for assault without having interviewed the alleged victim. When making his decision to arrest Ms. Veatch and charge her with assault, Officer Leonard relied on the ***30** information he received from Bartels, and he admittedly refused to let Ms. Veatch share any information about her relationship with Bartels. The record shows that Bartels had a poor relationship with the Plaintiffs and had actually looked for ways to restrict her visitation. Officer Leonard's actions, particularly in light of these facts, show disregard of obvious risks. Therefore, this Court should find that summary judgment was improper.

5. Summary Judgment was Further Inappropriate on the Issue of Statutory Immunity Because Officer Leonard Failed to Exercise Due Care in the Execution of Iowa Code § 804.7.

The District Court erred in finding that the federal court ruling "entitles defendants to statutory immunity under Iowa Code § 670.4 for exercising due care." (App. p. 97). The City of Waverly is not immune from liability. Under Iowa Code § 670.4(3), the City is immune from "Any claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, or regulation whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is **abused**." Typically arrests ***31** are within an officer's discretionary function. *Deuser v. Vecera*, 139 F.3d 1190, 1195 (8th Cir. 1998) (stating "Law enforcement decisions

of the kind involved in making or terminating an arrest must be within the discretion and judgment of enforcing officers."). However, officers and municipalities are not shielded from liability for an illegal arrest; "[A] municipality cannot avail itself of the immunity provisions... if the government employees do not exercise due care in executing a statute in the first instance." *Kelley*, 611 N.W.2D at 484; *Cline v. Union County*, 182 F.Supp.2d 791, 800-01 (S.D. Iowa 2001). As discussed above, Officer Leonard failed to exercise due care in executing Iowa Code § 804.7. Therefore, the City of Waverly is not protected by statutory immunity.

Even if a fact finder found that Officer Leonard did exercise due care, immunity is improper. In Iowa, liability is the rule and immunity remains the exception; the discretionary immunity defense has traditionally been interpreted narrowly. *Graber v. City of Ankeny*, 656 N.W.2d 157, 161 (Iowa 2003); *Lewis v. State*, 256 N.W.2d 181 (Iowa 1977).

Discretionary immunity requires a two step analysis: (1) Does the challenged act involve an element of choice or judgment?; and (2) Is the challenged act of the type rooted in public policy considerations and ***32** therefore of the type for which immunity was intended? *Graber*, 656 N.W.2d at 161. Immunity is available only if both elements are established. *Goodman v. City of LaClaire*, 587 N.W.2d 232, 238 (Iowa 1988), adopting *Berkovitz v. United States*, 486 U.S. 531, 536-37 (1988). The first prong of the immunity test is not met when a statute, regulation or policy specifically prescribes a course of action. In such a setting, the government has no rightful option but to follow the directive. *Berkovitz*, 486 U.S. at 536. In this case, Officer Leonard did not comply with the statute. The second element of discretionary immunity is also not met by the facts of this case since the challenged act would be in violation of well established public policy considerations. Therefore, Defendants are not protected by statutory immunity.

Defendants also claim immunity, based on Iowa Code §. 670.4(10), for all damages caused subsequent to the time Officer Leonard transferred Ms. Veatch to the Bremer County Jail. This provision provides immunity where the damage is caused by a third party not under the supervision or control of the municipality. Iowa Code § 670.4(10). Reliance on this provision is misplaced as it is the initial wrong of Officer Leonard's false arrest and imprisonment that caused the subsequent damage. It is only when ***33** the third party's intervening conduct is unforeseeable and of such degree to break the causal chain that liability is relieved for the original tortfeasor. Those facts are not present in this case. Therefore, this Court should reverse the District Court's Ruling on Defendant's Renewed Motion for Summary Judgment.

CONCLUSION

The district court erred in finding this action is barred by the doctrine of issue preclusion. For all of the reasons set forth in this brief, Ms. Veatch respectfully requests that this Court reverse the district court's ruling in its entirety.

*34 REQUEST FOR ORAL ARGUMENT

Appellant requests oral argument on the issues appealed in this case. Notice of this request is hereby given to Beth Hansen.

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