

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>KATHERINE VARNUM, et al.,</p> <p>Plaintiffs,</p> <p>vs</p> <p>TIMOTHY J. BRIEN,</p> <p>Defendant.</p>	<p>Case No. CV5965</p> <p>RULING ON PLAINTIFFS' AND DEFENDANT'S MOTIONS FOR - SUMMARY JUDGMENT</p>
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This matter came before the Court for hearing on the parties' competing motions for summary judgment on May 4, 2007. Representing Plaintiffs were attorneys Dennis Johnson, Camilla Taylor, and Kenneth Upton, Jr. Representing Defendant was Assistant Polk County Attorney Roger Kuhle. Having entertained the arguments of counsel, having reviewed the parties' motions, resistances, and all supporting submissions, and being otherwise fully advised in the premises, the Court now makes its ruling on said motions.

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CLERK DISTRICT COURT

I. STANDARD OF REVIEW

Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Robinson v. Poured Walls of Iowa, Inc., 553 N.W.2d 873, 875 (Iowa 1996); IOWA R. CIV. P. 1.981(3). The Court shall determine whether summary judgment is appropriate by first examining the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, to determine whether there is any genuine issue of material fact. IOWA R. CIV. P. 1.981(3); Wilson v. Darr, 553 N.W.2d 579, 582 (Iowa 1996). When the facts are undisputed and the only issue is what consequences flow from the facts,

summary judgment is appropriate. Smith v. CRST Int'l, Inc., 553 N.W.2d 890, 893 (Iowa 1996).

“A fact issue is generated if reasonable minds can differ on how the issue should be resolved.” Schlueter v. Grinnell Mut. Reins. Co., 553 N.W.2d 614, 616 (Iowa Ct. App. 1996). “An issue of fact is ‘material’ only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law.” Junkins v. Branstad, 421 N.W.2d 130, 132 (Iowa 1988) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). “The requirement of a ‘genuine’ issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson, 477 U.S. at 248.

The moving party has the burden to show the nonexistence of any genuine issue of material fact and the record must be viewed in the light most favorable to the nonmoving party. Schlueter, 553 N.W.2d at 615; Thorp Credit, Inc., v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). The statement of undisputed facts submitted by the moving party does not “constitute a part of the record from which genuine issues of material fact may be determined” except insofar as the statement of undisputed facts may contain “express stipulations concerning the anticipated summary judgment ruling.” Griglione v. Martin, 525 N.W.2d 810, 813 (Iowa 1994) (citing Glen Haven Homes, Inc. v. Mills County Bd. Of Review, 507 N.W.2d 179, 182 (Iowa 1993)). The statement of undisputed facts “is intended to be a mere summary of claims that must rise or fall on the actual contents of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any.’” Id.

To resist the motion, the nonmoving party must set forth specific facts

constituting competent evidence to support a prima facie claim. Hoefer v. Wisconsin Educ. Ass'n Ins. Trust, 470 N.W.2d 336, 339 (Iowa 1991). If the moving party has supported its motion for summary judgment, the nonmoving party “may not rest upon the allegations or denials in his pleadings, but must show there is a genuine issue of fact.” Colonial Baking Co. of Des Moines v. Dowie, 330 N.W.2d 279, 282 (Iowa 1983) (citing IOWA RULE CIV. PRO. 1.981(5)). The nonmoving party must plead “ultimate facts and cannot rely upon conclusions by themselves.” Schulte v. Mauer, 219 N.W.2d 496, 500 (Iowa 1974). An expert’s affidavit submitted in resistance to a motion for summary judgment must “set forth specific facts in order to create an issue of fact for trial.” Bell v. Swift Adhesives, Inc., 804 F.Supp. 1577 (S.D. Ga. 1992) (citations omitted); *See* Brody v. Ruby, 267 N.W.2d 902, 904 (federal interpretations of Federal Rule of Civil Procedure 56 are persuasive in considering Iowa Rule of Civil Procedure 1.981). When the expert’s opinion is based on speculation, hypothesis and is otherwise unsubstantiated by evidence in the record, it is inadequate to prevent the entry of summary judgment. Merit Motors, Inc. v. Chrysler Corp., 569 F.2d 666 (D.C. App. 1977).

II. UNDISPUTED FACTS

A. Preface to Statement of Undisputed Facts

Both the Defendant and the Plaintiffs have submitted, by affidavit, the statements of several purported expert witnesses in support of and in resistance to the opposing motions for summary judgment. In ruling on a motion for summary judgment, the Court should only consider evidence which would be admissible at trial. Pink Supply Corp. v. Hiebert, Inc., 612 F. Supp. 1334, 1338 (D.C. Minn. 1985) (citing FED.R.CIV.P. 56(e)); *See* McSpadden v. Mullins, 456 F.2d 428 (8th Cir. 1972); Chambers v. United States, 357