

App. 1

IN THE SUPREME COURT OF IOWA

No. 19-1674

Lucas County No. LACV033187

PETITION FOR REHEARING DENIED

**CURT N. DANIELS and
INDIAN CREEK CORPORATION,
Plaintiffs-Appellants,**

vs.

**JOHN HOLTZ, personally and
JOHN HOLTZ, d/b/a WSH
PROPERTIES, LLC,
HUNTERS RETREAT, LLC
and NAVAJO ASSOCIATES, LLC.
Defendants-Appellees.**

After consideration by this court, the petition for rehearing in the above-captioned case is hereby overruled and denied.

Copies to:

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1747 East Morten Avenue Suite 105
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Curt Daniels
P.O. Box 701
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John Holtz
1747 East Morten Avenue Suite 105
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[SEAL]

State of Iowa Courts

Case Number **Case Title**
19-1674 Daniels v. Holtz

So Ordered

/s/ Susan Larson Christensen
Susan Larson Christensen
Chief Justice

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IN THE SUPREME COURT OF IOWA

No. 19-1674

Submitted February 17, 2021—Filed March 26, 2021

**CURT N. DANIELS and
INDIAN CREEK CORPORATION,**

Appellants,

vs.

**JOHN HOLTZ, personally and JOHN HOLTZ
d/b/a WSH PROPERTIES, LLC, HUNTERS
RETREAT, LLC, and NAVAJO ASSOCIATES, LLC,**

Appellees.

On review from the Iowa Court of Appeals.

Appeal from the Iowa District Court for Lucas
County, John D. Lloyd, Senior Judge.

The defendant seeks further review of a court of
appeals decision reversing a district court dismissal
of an action based on claim preclusion. **COURT OF
APPEALS DECISION VACATED; DISTRICT COURT
JUDGMENT AFFIRMED.**

Per curiam.

Curtis Daniels, Chariton, for appellants.

John B. Holtz, pro se, Phoenix, Arizona, appellee.

PER CURIAM.

On July 26, 2006, a sheriff’s sale was held in Lucas County for the stock of Curtis Daniels’s farm business Indian Creek Corporation. Indian Creek owned an approximately 1220-acre cattle property in Lucas County. The property was subject to various prior mortgages and liens. John Holtz was the winning bidder at \$110,000.¹ Holtz is the principal of WSH Properties, LLC, which had previously obtained a judgment against Daniels and Indian Creek for approximately \$246,000. *See WSH Properties, L.L.C. v. Daniels*, 761 N.W.2d 45, 47-48 (Iowa 2008).

Daniels filed an action in February 2007 seeking to set aside the sheriff’s sale. We found an issue of fact whether Holtz had improperly discouraged the other bidder at the sale, *see Daniels v. Holtz*, 794 N.W.2d 813, 823-24 (Iowa 2010), and ultimately the sale was invalidated by the district court on remand, *see Daniels v. Holtz*, No. 12-1522, 2013 WL 5743640, at *2 (Iowa Ct. App. Oct. 23, 2013) (affirming the decision to set aside the sale). This necessitated a second sheriff’s sale.

In December 2013, Daniels filed a motion seeking a constructive trust and other remedies for “the monies he would have received had he held and received the benefit of the property at issue . . . between the time of the first sheriff’s sale and the second sheriff’s sale.” In July 2014, the district court concluded that Daniels’s claims were untimely or barred by claim preclusion (or

¹ Prior to the sheriff’s sale, the stock had been appraised at \$29,500.

both). The court of appeals affirmed. *Daniels v. Holtz*, No. 14-1290, 2016 WL 1366760, at *2 (Iowa Ct. App. Apr. 6, 2016). The court of appeals concluded, “[T]he district court did not err in denying [Daniels’s] motion/action on res judicata grounds.” *Id.*

“Daniels was not dissuaded.”² His current petition recites that he filed two subsequent actions in Lucas County in October 2016 and October 2017. Both actions sought constructive trusts, and both were dismissed. Daniels also brought an action in federal district court in May 2018, which was likewise dismissed under the rarely invoked *Rooker-Feldman* doctrine.³

Additionally, in its November 2018 order dismissing the October 2017 Lucas County lawsuit, the district court directed,

Curt N. Daniels is enjoined from filing any new actions or filings, other than a notice of appeal from this ruling, arising out of or related to the facts or subject matter of this case

² This is a quotation from Daniels’s current petition.

³ The *Rooker-Feldman* doctrine is named for two United States Supreme Court decisions, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303 (1983). It bars “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the [federal] district court proceedings commenced and inviting [federal] district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 1521-22 (2005).

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or previous litigation between the parties to this action.

This brings us to the present action, which Daniels filed on July 15, 2019, in apparent disregard of the foregoing order. The present action again complains about Daniels's dispossession from the cattle farm since 2008 and his associated loss of rents and other income since 2009.⁴ Daniels claims that once the sheriff's sale was set aside, he was legally entitled to restoration of all the property. Accompanying the petition are nine exhibits, including a number of the rulings referenced above. The petition, with some degree of candor, acknowledges that it is trying out new legal theories to obtain relief for the same set of facts, this time under Iowa Code chapters 646 and 649.

Holtz moved to dismiss this action, arguing that it was repetitive of the prior unsuccessful lawsuits. Holtz also raised the November 2018 order precluding Daniels from filing any new actions on the subject matter of the sheriff's sale. The district court agreed and granted dismissal of the entire case. In its dismissal order, the district court not only adopted Holtz's arguments, it added that the petition was barred by the statute of limitations in that "the actions complained of are over 9 years old." The district court cited the statute of limitations for actions on unwritten contracts and for fraud—Iowa Code section 614.1(4)—not the statute of limitations for actions to recover real

⁴ Daniels also claims he was dispossessed of an eleven-acre property in which he resided as a result of the sheriff's sale.

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property—section 614.1(5). Daniels responded with a rule 1.904(a) motion, in which he asserted that his action was timely because less than twenty years had elapsed since the judgment setting aside the sheriff’s sale. *See Iowa Code § 614.1(6).* The district court denied Daniels’s motion.

Daniels appealed, and we transferred the case to the court of appeals. That court reversed and remanded, reasoning that it was not clear from the petition that the present action was barred by claim preclusion, and that the district court committed error in raising the statute of limitations *sua sponte*. The court of appeals did not address the effect of the November 2018 order barring future lawsuits by Daniels.

We granted further review, and we now vacate the decision of the court of appeals and affirm the judgment of the district court.

In ruling on Holtz’s motion to dismiss, the district court was entitled to consider the attachments to Daniels’s petition. These included the July 2014 district court ruling and the April 2016 court of appeals decision. Moreover, the district court was also entitled to consider the dismissal orders specifically referenced by case number and date in Daniels’s petition, even if they had *not* been attached. *See King v. State*, 818 N.W.2d 1, 6 n.1 (Iowa 2012) (holding that in ruling on a motion to dismiss for failure to state a claim, the court may consider documents referenced in the petition regardless of whether they have been attached); *see also Homan v. Branstad*, 864 N.W.2d 321, 323 n.1 (Iowa

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2015). Thus, the dismissal orders for the October 2016 and October 2017 actions, which were provided by Holtz with his motion to dismiss, were likewise fair game.

These documents make clear that this is at least the fourth bite at the same apple by Daniels. The gist of this claim, like the prior claims, is that because the original sheriff's sale was set aside and had to be redone, Daniels should recover the cattle property and income related to that property. This involves the same nucleus of operative fact as the prior litigation, and the district court correctly found that claim preclusion applies. *See Pavone v. Kirke*, 807 N.W.2d 828, 837 (Iowa 2011).⁵

For the foregoing reasons, we affirm in the judgment of the district court and vacate the decision of the court of appeals.

**COURT OF APPEALS DECISION VACATED;
DISTRICT COURT JUDGMENT AFFIRMED.**

This opinion shall not be published.

⁵ We do not find it necessary to address whether dismissal was properly granted on the other grounds noted by the district court.

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[SEAL]

State of Iowa Courts

Case Number	Case Title
19-1674	Daniels v. Holtz

So Ordered

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IN THE COURT OF APPEALS OF IOWA

No. 19-1674
Filed November 4, 2020

**CURT N. DANIELS and
INDIAN CREEK CORPORATION,**
Plaintiffs-Appellants,

vs.

**JOHN HOLTZ, personally and JOHN HOLTZ,
d/b/a WSH PROPERTIES, LLC, HUNTERS
RETREAT, LLC and NAVAJO ASSOCIATES, LLC.**
Defendants-Appellees.

Appeal from the Iowa District Court for Lucas
County, John D. Lloyd, Judge.

Curtis Daniels appeals the district court's grant of
the defendants' motion to dismiss. **REVERSED AND
REMANDED.**

Curtis Daniels, Chariton, self-represented appellant.

John B. Holtz, Phoenix, Arizona, self-represented
appellee.

Considered by Doyle, P.J., and Mullins and Greer,
JJ.

MULLINS, Judge.

In 2007, Curtis Daniels filed suit against John
Holtz and others seeking to set aside a sheriff's sale

of real property, “alleging a variety of claims including conspiracy, fraud, denial of equal treatment, unjust enrichment, intimidation, slander, and abuse of process.” *Daniels v. Holtz*, 794 N.W.2d 813, 817 (Iowa 2010). The defendants moved for summary judgment, and “Daniels moved to amend his petition to add nine causes of action, including deceit and collusion by the parties and their attorneys.” *Id.* The motion to amend was denied, and summary judgment was granted in favor of defendants. *Id.* The supreme court remanded for a new trial on the sole issue of “whether Holtz’s actions at the sale chilled the bidding and unfairly or fraudulently caused another bidder to cease bidding” and whether the sale should be set aside on that basis. *Id.* at 825.

On remand, “[t]he court concluded Holtz’s actions rose ‘to the level of the irregularity, unfairness, and fraud described in case law’ and were ‘sufficient reason to conclude the sale must be set aside.’” *Daniels v. Holtz*, No. 12-1522, 2013 WL 5743640, at *1 (Iowa Ct. App. Oct. 23, 2013). Holtz appealed, and we affirmed. *Id.* at *2.

“After the second appeal became final, Daniels filed a ‘motion for court imposition of a constructive trust, order for restitution and request for punitive damages,’ alleging:

This instant action is brought to restore to [him] the [corporation] property and property that was owned by [him] personally prior to the . . . sheriff’s sale along with all proceeds Holtz deprived [the corporation and him] of

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receiving post the sheriff’s sale and the costs incurred by [him] to recover his property.

Daniels v. Holtz, No. 14-1290, 2016 WL 1366760, at *1 (Iowa Ct. App. Apr. 6, 2016) (alterations in original), *cert. denied* 137 S. Ct. 377 (2016). Holtz resisted, asserting the motion requested the same relief as the 2007 petition, which was already disposed of. *Id.* The district court denied Daniels’s motion on res judicata grounds, reasoning, “The remedies of constructive trust, unjust enrichment, and restitution now sought by the plaintiff in his present filings either were brought before the Court and rejected, or were not brought before the Court in a timely manner and thus must be rejected.” *Id.* We affirmed on appeal. *Id.* at *2. We reasoned the issues raised in the motion “were raised before” in the first lawsuit and, although not addressed, “could have been determined.” *Id.* Specifically, Daniels had

urged the district court to amend the [remand] ruling to impose “a constructive trust upon Holtz in his post sheriff sale dealings with [Indian Creek Corporation (ICC)], to assure that Holtz is not able to benefit from his fraud.” Daniels also asserted, “All of Holtz’s activities concerning ICC/Daniels following the sheriff’s sale, the ownership transfer(s) of ICC, sale of ICC’s personal property, interference with Daniels operation of ICC, extending the sheriff’s sale reach to Daniels’s residence/homestead, and other activities by Holtz should all be assessed for fairness by the court.

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Daniels filed the lawsuit precipitating this appeal in 2019. In his petition, he again seeks the return of property allegedly in the wrongful possession of Holtz as a result of the sheriff's sale being set aside, this time pursuant to Iowa Code chapter 646 (recovery of real property) and 649 (quieting title). He also seeks reimbursement for rent of and damages to the real property occurring during the alleged wrongful possession, as well as damages for conversion of personal property.

The defendants filed a pre-answer motion to dismiss, forwarding allegations concerning Daniels's onslaught of senseless litigation against Holtz, frequent judicial admonishment against the same, and Daniels's failure to heed to said admonishments. The following day, the court entered an order granting the motion to dismiss "for all the reasons set out in it" and on statute-of-limitations grounds, which was not raised in the motion to dismiss. Daniels unsuccessfully moved for reconsideration, and this appeal followed.

Iowa Rule of Civil Procedure 1.421(1) provides the bases for granting a motion to dismiss. We interpret the defendants' motion to request dismissal for "[f]ailure to state a claim upon which any relief may be granted." *See Iowa R. Civ. P. 1.421(1)(f).* The motion alleged that, in 2018 the district court granted a motion to dismiss in yet another lawsuit by Daniels against Holtz and others and enjoined Daniels "from filing any new actions or filings other than a notice of appeal from this ruling, arising out of or related to the facts or subject matter of this case or previous litigation between the parties to this action." According to the

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motion, the supreme court dismissed Daniels's ensuing appeal.¹ The implication seems to be that the injunction thus serves as the law of the case for further litigation between the parties.

But the problem with granting a motion to dismiss for failure to state a claim upon which any relief may be granted on that basis is that, in ruling on a motion to dismiss, courts do not consider factual allegations contained in the motion, *McGill v. Fish*, 790 N.W.2d 113, 116 (Iowa 2010), and "facts not alleged cannot be relied on to aid a motion to dismiss nor may evidence be taken to support it." *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001) (quoting *Ritz v. Wapello Cnty. Bd. of Supervisors*, 595 N.W.2d 786, 789 (Iowa 1999)). To the extent the district court may have taken judicial notice—without expressly saying so—of prior different proceedings as alleged in the motion to dismiss, that was improper without an agreement of the parties. *Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 308, 311 (Iowa 1982).²

¹ The motion also claims a similar admonishment and an attorney disciplinary board proceeding resulting in a public reprimand of Daniels for asserting a frivolous claim against Holtz in the last several years, as well as a supreme court order directing Daniels to submit no additional filings in an appellate case following his petition for rehearing following the issuance of procedendo.

² We recognize the allegations in the petition involve the same parties in prior proceedings concerning many of the same allegations, but the petition was filed in a new legal action, not in any of the prior cases.

The defendants also argued Daniels's petition should be dismissed because various courts "have repeatedly denied [him] the relief requested in his" petition. To the extent the defendants are again arguing for application of res-judicata principles, we are not persuaded dismissal would be appropriate on that basis either. A large part of the underlying support for that argument is also gleaned from factual allegations outside the petition. While Daniels's petition details the history of the litigation, all we know is that, following the setting aside of the sheriff's sale, Daniels sought a constructive trust, damages, and enjoining Holtz from engaging in certain activities, apparently in relation to Holtz's fraud in prevailing at the sheriff's sale. Here, Daniels appears to be seeking return of real property and quieting of title following Holtz's alleged failure to turn over the property following the setting aside of the sheriff's sale, which, for all we know could have occurred after the litigation involving the first two appeals.

Lastly, the court alternatively granted dismissal on statute-of-limitations-grounds. But the statute or statutes of limitations were not specifically asserted in the motion to dismiss. Raising it *sua sponte* was error. *See, e.g., In re Estate of Terpstra*, No. 17-0893, 2018 WL 2246838, at *2 (Iowa Ct. App. May 16, 2018); *Page v. State*, No. 14-1842, 2016 WL 719243, at *2 (Iowa Ct. App. Feb. 24, 2016); *Reyna v. State*, No. 13-0126, 2014 WL 1234142, at *2 (Iowa Ct. App. Mar. 26, 2014).

On the record before us, properly limited to the allegations contained in the petition, we find no valid

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basis for dismissing the case at this earliest stage of the proceedings.³ We reverse and remand for further proceedings.

REVERSED AND REMANDED.

[SEAL]

State of Iowa Courts

Case Number	Case Title
19-1674	Daniels v. Holtz

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³ For the same reasons set forth above, we deny the appellants' motion to dismiss filed in response to the appeal in this case.

IN THE COURT OF APPEALS OF IOWA

No. 14-1290
Filed April 6, 2016

CURT N. DANIELS,
Plaintiff-Appellant,

vs.

**JOHN HOLTZ; WSH PROPERTIES,
LLC; HUNTERS RETREAT, LLC; and
NAVAJO ASSOCIATES, LLC.**
Defendants-Appellees.

Appeal from the Iowa District Court for Lucas
County, Carla T. Schemmel, Judge.

Curt Daniels appeals the district court's denial of
a motion on res judicata grounds. **AFFIRMED.**

Curt N. Daniels, Chariton, appellant pro se,

Robert L. Stewart Jr. of Robed Stewart & Associates, Phoenix, and Kermit B. Anderson of Finley, Alt, Smith, Schamberg, Craig, Hilmes, & Gaffney, P.C., Des Moines, for appellees.

Considered by Vogel, P.J., and Vaitheswaran and
Bower, JJ.

VAITHESWARAN, Judge.

This third appeal involving the same parties
raises the issue of whether the underlying action is
barred by the doctrine of claim preclusion.

I. Background Proceedings

Curt Daniels sued John Holtz and others in connection with a sheriff's sale of certain stock in a company known as Indian Creek Corporation (ICC). The litigation spawned two appeals. *See Daniels v. Holtz*, 794 N.W.2d 813, 815 (Iowa 2010); *Daniels v. Holtz*, No. 12-1522, 2013 WL 5743640, at *1 (Iowa Ct. App. Oct. 23, 2013).

The opinion in the first appeal provides a detailed rendition of the facts and issues. *See Holtz*, 794 N.W.2d at 815-17. Daniels challenged two aspects of a summary judgment ruling disposing of a multitude of claims. *Id.* at 817. The court found a genuine issue of material fact precluding summary judgment in favor of Holtz and remanded the case for a determination of whether the fact issue would require the sheriff's sale to be set aside. *Id.* at 825.

On remand, the district court set aside the sheriff's sale. Holtz appealed the remand decision, and this court affirmed. *Holtz*, 2013 WL 5743640, at *2.

After the second appeal became final, Daniels filed a "motion for court imposition of constructive trust, order for restitution and request for punitive damages." He alleged:

This instant action is brought to restore to [him] the [corporation] property and property that was owned by [him] personally prior to the . . . sheriff's sale along with all proceeds Holtz deprived [the corporation and him] of

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receiving post the sheriff's sale and the costs incurred by [him] to recover his property.

In addition to seeking a constructive trust on certain property, Daniels requested actual and punitive damages.

Holtz filed a resistance to the motion. He asserted "Daniel's Motion requests the same relief that was requested in his initial Petition for Relief filed February 26, 2007," which was "conclusively disposed of by" the district court and supreme court.

The district court denied the motion. The court reasoned in part as follows:

Under Iowa law, "a party must litigate all matters growing out of the claim" or they may be precluded from bringing a second action seeking relief which could and should have been brought in the first action. *Pavone v. Kirke*, 807 N.W.2d 828, 83536 (Iowa 2011). The reason for this rule is to prevent a party from getting "a second bite" simply by alleging a new theory of recovery for the same wrong. *Id.*

...

The remedies of constructive trust, unjust enrichment, and restitution now sought by the plaintiff in his present filings either were brought before the Court and rejected, or were not brought before the Court in a timely manner and thus must be rejected.

A third appeal followed.

On appeal, Daniel styles his trial court “motion” as an action to implement or enforce the final judgment setting aside the sheriff’s sale. He contends the district court erred in denying the motion/action. Holtz responds with a number of arguments, including an argument premised on “res judicata.”

II. Res Judicata Claim Preclusion

The doctrine of res judicata includes both claim preclusion and issue preclusion.” *Pavone*, 807 N.W.2d at 835. This appeal involves claim preclusion, which “holds that a valid and final judgment on a claim bars a second action on the adjudicated claim or any part thereof.” *Id.* In other words, “[a]n adjudication in a prior action between the same parties on the same claim is final as to all issues that could have been presented to the court for determination.” *Id.* at 836 (citation omitted).

To establish claim preclusion a party must show: (1) the parties in the first and second action are the same parties or parties in privity, (2) there was a final judgment on the merits in the first action, and (3) the claim in the second suit could have been fully and fairly adjudicated in the prior case (i.e., both suits involve the same cause of action).

Id.

There is no dispute as to the first and second elements. Daniels and Holtz were both parties to the original action, and the original action culminated in a

final judgment setting aside the sheriff’s sale of ICC stock.

We turn to the third element—whether the claim in the second suit could have been fully and fairly adjudicated in the prior case. “[A] party must litigate all matters growing out of the claim, and claim preclusion will apply not only to matters actually determined in an earlier action but to all relevant matters that could have been determined.” *Id.* at 835 (citation omitted).

Daniels’ motion/action underlying this appeal is the “second suit” for purposes of a claim preclusion analysis. The issues raised in this suit were raised before. Specifically, after the district court issued its remand decision setting aside the sheriff’s sale, Holtz moved for a new trial, which Daniels resisted. In his resistance, he urged the district court to amend the ruling to impose “a constructive trust upon Holtz in his post sheriff sale dealings with ICC, to assure that Holtz is not able to benefit from his fraud.” Daniels also asserted, “All of Holtz’s activities concerning ICC/ Daniels following the sheriff’s sale, the ownership transfer(s) of ICC, sale of ICC’s personal property, interference with Daniels operation of ICC, extending the sheriff’s sale reach to Daniels’s residence/homestead, and other activities by Holtz should all be assessed for fairness by the court.” Although the district court’s ruling on Holtz’s new trial motion did not address the issues raised in Daniel’s resistance, they were clearly issues that “could have been determined.” *Id.*

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Because the relief Daniels sought in the second suit is the same relief Daniels sought in the original action, we conclude claim preclusion barred the second suit. Accordingly, the district court did not err in denying the motion/action on res judicata grounds.

AFFIRMED.

[SEAL]

State of Iowa Courts

Case Number **Case Title**
14-1290 Daniels v. Holtz

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IOWA SUPREME COURT

CURT N. DANIELS and)	SUPREME COURT
INDIAN CREEK)	CASE. 19-1674
CORPORATION,	)	CASE NO: CVCV033187
Plaintiffs-Appellants	)	DEFENDANTS'
vs.	)	APPELLEES'
JOHN HOLTZ PERSONALLY	)	WAIVER OF BRIEF
AND JOHN HOLTZ, d/b/a	)	(Filed Nov. 26, 2019)
WSH PROPERTIES, LLC,)	
HUNTERS RETREAT,)	
LLC, and NAVAJO)	
ASSOCIATES, LLC)	
Defendants-Appellees)	

COMES NOW defendants-appellees John Holtz, both personally and purportedly doing business as WSH Properties, LLC, Hunters Retreat, LLC, and Navajo Associates, LLC (collectively, "Holtz"), pursuant to Rule 6.903(4), *Iowa Rules of Civil Appellate Procedure*, and hereby waives the appellee's brief.

Holtz incorporates the Motion to Dismiss filed in this appeal on October 11, 2019 which cites the following Order affirmed by the Iowa Supreme Court on March 18, 2019 in Case No. 19-0078:

In order to fully understand and appreciate Defendants' Motion to Dismiss and Plaintiffs' Resistance thereto, the court has reviewed each of the rulings and documents addressed herein. Based upon that review, the court finds

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Daniels, who is an attorney, has continued to file motions and complaints against Defendants based upon rejected legal propositions. He has continued to advocate positions against Holtz that have been found unsound. As noted above, both the District Court and the Supreme Court ordered Daniels to cease filing documents in two previous related cases between the parties, and the Supreme Court publicly reprimanded him for frivolous filings in a third. Yet Daniels continues.

Daniels' failure to make proper inquiry into the law regarding the present case has caused needless litigation costs for the Defendants and has been wasteful of judicial resources. The court finds Defendants' request for sanctions is appropriate to prevent further misuse of the judicial system.

ORDERS:

Based upon the foregoing, Defendants' Motion to Dismiss is GRANTED for failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED as and for sanctions, that Curt N. Daniels is enjoined from filing any new actions or filings, other than a notice of appeal from this ruling, arising out of or related to the facts or subject

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matter of this case or previous litigation between the parties to this action.

Respectfully submitted,
/s/ John Holtz John B Holtz
John B. Holtz
1747 East Morten Avenue,
Suite 105
Phoenix, Arizona 85020
Telephone: 602-266-7766

Copy to:

Curt Daniels
P.O. Box 701
Chariton, IA 50049

[Certificate Of Service Omitted]

IN THE SUPREME COURT OF IOWA

CURT N. DANIELS	)	SUPREME COURT
and INDIAN CREEK	)	NO. 19-1674
CORPORATION	)	LUCAS COUNTY
PLAINTIFFS,	)	CASE NO:
APPELLANTS.	)	LACV033187
vs.	)	APPELLANTS'
JOHN HOLTZ personally,	)	RESPONSE TO
and, JOHN HOLTZ, dba	)	APPELLEES'
WSH PROPERTIES, LLC;	)	WAIVER
HUNTERS RETREAT,	)	TO
LLC; and NAVAJO	)	SUBMIT BRIEF
ASSOCIATES, LLC.	)	Iowa R. App. P.
DEFENDANTS,	)	6.501 and 6.1002
APPELLEES	)	(Filed Dec. 3, 2019)

COMES NOW Plaintiffs/Appellants, Curt N. Daniels and Indian Creek Corporation, (hereinafter collectively Daniels), and in support of this Response, submitted under Iowa R. App. P. 6.1002, the following is set forth:

INTRODUCTION

Appellees' Holtz et al. cites *Iowa Rule of Appellate Procedure 6.903(4)* as authority for Defendants'-Appellees Waiver of Brief. Daniels, does not resist Holtz's request to be relieved from filing a brief. However, Rule 6.903(4) addresses only whether or not an appellant wishes to file a reply brief – not whether an appellee wishes to be relieved from filing Appellee's

Brief. Possibly the correct Iowa. R. App. P. is 6.501, which provides procedural rule for “other proceedings.”

Daniels submits that Holtz’s desire to be relieved from filing an Appellees’ Brief is not prejudicial, is in the interest of judicial economy, and may promote justice. Daniels does not resist Holtz’s request for waiver from submitting brief.

DISCUSSION

A. HOLTZ’S RELIANCE ON S.C. NO. 19-0078 ORDER IS ERRED

Holtz’s Waiver of Brief on pgs. 1-2 recites the Ruling in Lucas County Case No. CVCV033079. The Ruling in CVCV033079 is not controlling of the instant appeal for the following reasons:

1. Holtz’s recitation of sanctions ordered by the district court, *italicized* by Holtz on page 2 of his Waiver of Brief, was denied by this Court. A copy of the Order is attached hereto as Exhibit 1 for the Court’s convenience.
2. Regardless of how the 19-0078 Order is interpreted by Holtz, such interpretation is irrelevant in the instant appeal. S.C. No. 19-1674 is not a “new action.” This appeal devolves from the Judgment awarded to Daniels and was sustained by the Appellate Court, *Daniels v. Holtz*, 840 N.W.2d 727 (Iowa Ct. App. 2013, LEXIS 1081). This appeal concerns only Daniels’ efforts in LACV033187 to execute on the Judgment.

3. The Judgment, the subject of LACV033187, from which the instant appeal devolves, is a species of property protected by the Due Process Clause of U.S. Const. Amendment XIV, *Logan v. Zimmerman*, 455 U.S. 422, 429 (1982). The Court's refusal to allow Daniels to execute on the Judgment is a continuing U.S. Const. violation and not subject to Statute of Limitations or other constrictions, *see* Appellants' Proof Brief 19-1674, Issue II, pgs. 31-38, filed Oct. 30, 2019, EDMS.

B. THE ORDER UPON WHICH HOLTZ RELIES WAS DEFECTIVE IN ITS INCEPTION. FURTHER RELIANCE BY THIS COURT ON SUCH ORDER IS UNACCEPTABLE.

1. The Order Holtz recites in Waiver of Brief devolved from prior cases, CVCV033881 and LACV031411. These two actions were brought to have certain judgments Holtz was granted against Daniels in or about 2003 to be vacated. The judgments were satisfied in or prior to 2008 and, by law, were required to be vacated as provided by Iowa R. Civ. P. 1.1016. Daniels actions for vacation of the satisfied judgments was supported with exhibits evidencing satisfaction of the judgments and controlling case law. Daniels' reasonable expectation was that Holtz would allow the court to Order the satisfied judgments vacated – that was not the case. The district court failed to understand, consider, or address, that Rule 1.1016 authorized Daniels'

actions. The court in error ruled that Daniels' actions were barred by the Statute of Limitations and relied on Holtz pleadings that the judgments were not paid. Holtz's pleadings were without supporting evidence and did not address Daniels' evidence that Holtz's judgments were satisfied.

2. Failing to have the satisfied judgments vacated, as a result of Holtz and his attorney team deceiving the court, Daniels filed Complaint CVCV033079 with jury demand in Lucas County District Court. In CVCV033079 Daniels sought remedy(s) for defendants illegal and unanticipated actions in the prior action to block the vacation Holtz's satisfied judgments.
3. Daniels supported CVCV033079 with a body of Iowa citations that provide that claims "based on events subsequent to the filing of the [prior], suits . . . and therefore could be based on the 'same facts'" are not subject to issue or claim preclusion, *Leichtennacher v. Farm Bureau Mutual Ins. Co.*, 460 N.W.2d 858, 861 (Iowa 1990). Daniels' Plaintiffs' Motion for Reconsideration of Ruling Issued 11/25/2018 Dismissing Complaint, filed Dec. 07, 2018, on pgs. 6-8, distinguishes that CVCV033079 is not controlled by *Pavone v. Kirke*, 807 N.W.2d 828, 836 (Iowa 2011) as held by the court; and instead is controlled body of Iowa precedent holding otherwise., *see* Plaintiffs' Motion for Reconsideration, EDMS.

4. Appellants' Resistance to Dismissal of 19-1674, filed on October 21, 2019, made the following request; repeated here:

"I respectfully submit that if this Court reviews my Appellants' Resistance, in CVCV033079, with the attached Affidavit and Exhibits, citations to case precedent and otherwise, that the Court will understand that the sustaining of Defendants' Motion to Dismiss Appeal, S.C. No. 19-0078, was contrary to the law and was error." Bold in the original, p. 4, Plaintiffs' Resistance to Dismissal, filed Oct. 21, 2019.

CONCLUSION

Holtz's recitation of the district court's Order in CVCV033079 is erred and as such attempts to deceive the Court and frustrates the cause of justice. Holtz's Motion to Dismiss Appeal should be denied. Daniels does not resist Holtz's request for Waiver of Brief.

Respectfully submitted,

December 03, 2019 /s/ Curt N. Daniels

Date Curt N. Daniels, At 0001959

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Original filed,
Clerk of the Iowa Supreme Court

Copies to:

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[Certificate Of Service Omitted]

EXHIBIT 1
IOWA SUPREME COURT
ORDER IN 19-0078
IN THE SUPREME COURT OF IOWA
No. 19-0078
Lucas County No. CVCV033079
ORDER
(Filed Mar. 18, 2019)
CURT N. DANIELS and
INDIAN CREEK CORPORATION,
Plaintiffs-Appellant,

vs.

**JOHN HOLTZ, personally and
JOHN HOLTZ, d/b/a WSH
PROPERTIES, LLC; HUNTERS
RETREAT, LLC and NAVAJO
ASSOCIATES, LLC, FINLEY LAW
FIRM, KERMIT B. ANDERSON,
STEWART AND ASSOCIATES, P.C.,
ROBERT L. STEWART, BRICK GENTRY, P.C.,
JAMES NERVIG, BILLY MALLORY and
MATTHEW CRONIN,
Defendants-Appellees.**

This matter comes before the court, Waterman, Christensen, and McDonald, B., upon the appellees' motions to dismiss the appellant's appeal. Iowa R. App. P. 6.1006(1). Appellant has filed resistances, and the appellees have replied.

Upon consideration, the motion to dismiss is granted. The requests for sanctions are denied.

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Clerk of District Court, Lucas County

[SEAL]

State of Iowa Courts

Case Number **Case Title**
19-0078 Daniels v. Holtz

So Ordered

/s/ Susan Christensen

Susan Christensen, Justice

Electronically signed on 2019-03-18 08:54:07

**IN THE IOWA DISTRICT COURT
FOR LUCAS COUNTY**

CURT N. DANIELS) LUCAS COUNTY
and INDIAN CREEK) CASE NO. LACV033187
CORPORATION,)
PLAINTIFFS,) PETITION AT LAW
vs.) FOR POSSESSION
JOHN HOLTZ personally,) OF REAL PROPERTY
and, JOHN HOLTZ, dba) AND DAMAGES FOR
WSH PROPERTIES, LLC;) WRONGFUL
dba HUNTERS RE-) POSSESSION AND
TREAT, LLC; dba NAV-) CONVERSION I.C.
AJO ASSOCIATES, LLC;) CHAPTER 646 et seq.
DEFENDANTS) AND PETITION IN
) EQUITY TO QUIET
) TITLE I.C. CHAPTER
) 649 et seq.

(Filed Jul. 15, 2019)

COMES NOW the Plaintiffs, Curt N. Daniels, (Daniels), and Indian Creek Corporation, (ICC), (collectively hereinafter Daniels), and in support of this Petition the following is set forth:

SUMMARY OF THIS ACTION

Defendants, (hereinafter collectively Holtz), acquired sheriff's deeds to real property owned by Daniels and took possession of Daniels' personal property following a sheriff's sale of ICC on July 26, 2006. Daniels brought action to have the sheriff's sale set aside. The court in Judgment & Ruling After Trial to the

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Court, (hereinafter Judgment), set aside the sale based
on finding that the sale was

* * *
