

NEGLIGENT HIRING, RETENTION, AND SUPERVISION

BY: Patrick J. McNulty

I. ELEMENTS.

A. In Godar v. Edwards, 588 N.W.2d 701, 708-09 (Iowa 1999) the Iowa Supreme Court set forth the elements of this tort action. They are:

- (1) The employer knew or should have known of its employee's unfitness at the time of hiring;
- (2) Through the negligent hiring [retention, or supervision] of the employee, the employee's incompetence, unfitness, or dangerous characteristics proximately caused the resulting injuries;
- (3) There is some employment or agency relationship between the tortfeasor and the defendant employer; and
- (4) An underlying tort committed by an agent or employee of the defendant.

B. With regard to the third element, several factors are used to determine whether an employer-employee relationship exists. These factors include "the right of selection or employment at will, the responsibility to pay wages, the right to terminate the relationship, the right to control the work, the benefit received by the alleged employer, and the intent of the parties." *Id.* When determining whether an individual is an employee or independent contractor, "the primary focus is on the extent of control by the employer over the details of the alleged employee's work.'" *Id.* (quoting *Iowa Mut. Ins. Co. v. McCarthy*, 572 N.W.2d 537, 541-42 (Iowa 1997)).

C. A previously noted, one element of negligent hiring, retention and supervision is that the employer knew or should have known of an employee's unfitness at the time of hiring. It is this actual or constructive knowledge

of unfitness that creates a duty of care toward the Plaintiff. One way of showing an employer should have known of unfitness of an employee is through demonstrating failure to follow hiring policies or procedures. *Id.* at 709.

II. CASES SINCE GODAR

A. The Iowa Supreme Court has decided several cases addressing this tort action. *Walderbach v. Archdiocese of Dubuque*, 730 N.W.2d 198 (Iowa 2007); *Kiesau v. Bantz*, 686 N.W.2d 164 (Iowa 2004) (holding physical injury is not required for successful negligent hiring, retention or supervision claim, and thus reversing district court's order granting summary judgment to employer of police officer who doctored photograph of colleague so that it appeared her breasts were showing); *Harris v. Papa John's*, 679 N.W.2d 673, (Iowa 2004) (holding decedent's injuries resulting from attack of supervisor arose within the scope of employment and, thus, workers' compensation laws barred negligent supervision claim); *A. Doe v. Cedar Rapids Cmty. Sch. Dist.*, 652 N.W.2d 439, 447 (Iowa 2002) (holding school district was not immune from claims of negligent hiring, supervision and retention); *United Fire & Cas. Co. v. Shelly Funeral Home, Inc.*, 642 N.W.2d 648, 653-54 (Iowa 2002) (holding insurance policy covered damages verdict arising from negligent supervision claim against funeral home); *Schoff v. Combined Ins. Co. of America*, 604 N.W.2d at 43 (Iowa 1999) (holding a negligent supervision claim was barred given the lack of tortious conduct on the part of an employee or agent of the defendant).

B. Failure to Supervise in the Context of Sexual Abuse.

1. Smith v. Howard Center;
2. Godar v. Edwards;
3. Angen v. Padilla, et al.