IN THE SUPREME COURT OF IOWA
Supreme Court No. 23–1766
Polk County No. CVCV063762

EUGENE SIKORA,

Plaintiff–Appellant,

vs.

STATE OF IOWA and DR. BETH SKINNER, in her official capacity as Director of the Iowa Department of Corrections,

Defendants–Appellees.

Appeal from the Iowa District Court
For Polk County
The Honorable Joseph Seidlin, District Judge

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STATEMENT OF THE ISSUES

1. Whether the district court correctly dismissed Sikora's negligence claims and denied him leave to add a false-imprisonment claim.

2. Whether the district court correctly denied Sikora leave to add a trespass-on-the-case claim.

3. Whether the district court correctly denied Sikora leave to bring an action on the State's blanket bond.

4. Whether the district court correctly held that *Burnett* bars Sikora's *Godfrey* claims.

ROUTING STATEMENT

This Court should retain this case—not because it is difficult, but because Plaintiff Eugene Sikora raises claims of first impression. *See* Iowa R. App. P. 6.1101(2)(*c*).

Sikora brings constitutional and common-law claims based on an allegation that he was unlawfully imprisoned due to a miscalculation of his earned-time credit. D0061, Subst. Proposed 2d Am. Pet. at ¶¶ 39–53 (08/18/2023). Some of his claims rely on archaic common law antecedents to current precedent. For example, he brings an action for trespass on the case, a precursor to what we now call negligence, D0061 at ¶¶ 125–31, and an action on the State's blanket bond that insures the State against losses from employee misconduct, D0061 at ¶¶ 114–24. To the State's knowledge, this Court has not addressed either claim since the Legislature enacted the Iowa Tort Claims Act in 1965. Nor has there ever been an action on the State's blanket bond in any Iowa court.

Though a straightforward application of the Iowa Tort Claims Act's provision maintaining sovereign immunity for "[a]ny claim arising out of . . . false imprisonment" bars Sikora's claims, Iowa Code § 669.14(4), retention of this case is appropriate given the lack of precedent in this area.

NATURE OF THE CASE

This is a case about the Iowa Tort Claims Act's retention of sovereign immunity for claims arising out of false imprisonment. *See* Iowa Code § 669.14(4). Sikora brought several common-law and constitutional claims against the State of Iowa and the Director of the Iowa Department of Corrections. Each arose out of his allegation that he was unlawfully imprisoned because the State miscalculated his earned-time credit. D0004, Am. Pet. at ¶¶ 37–43 (06/08/2022).

Sikora initially brought negligence and negligence per se claims. D0004 at ¶¶ 60–64, 65–69. Recognizing that the gravamen of these claims was an alleged false imprisonment, the district court dismissed them based on the ITCA's retention of sovereign immunity for claims arising out of false imprisonment. D0034, Order on MTD at 9–12 (01/26/2023) (citing Iowa Code § 669.14(4)).

Sikora also initially brought constitutional claims relying on *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017). D0004 at ¶¶ 44–59. When this Court overruled *Godfrey* in *Burnett v. Smith*, 990 N.W.2d 289, 290 (Iowa 2023), the district court dismissed those claims. D0050, Order on MJP (06/30/2023).

After the district court dismissed Sikora's initial claims, Sikora sought leave to amend his petition and add three new claims and one new defendant. D0061.

First, Sikora sought to add a common-law claim for false imprisonment. D0061 at ¶¶ 91–101. The district court rejected his request as futile because the ITCA expressly retains sovereign immunity for false-imprisonment claims. D0063, Order on MTA at 5 (10/02/2023).

Second, Sikora asked to add a claim for trespass on the case. D0061 at ¶¶ 125–31. The district court denied this request, too. It recognized that trespass on the case has been absorbed by negligence and held that this claim was therefore not a viable cause of action. D0063 at 10–12.

Third, Sikora wanted to bring an action on the State's blanket bond that insures State against losses from employee misconduct. D0061 at ¶¶ 114–124. He sought to add Travelers Insurance, the surety on the State's blanket bond, as a defendant. D0061 at ¶ 9. Seeing through Sikora's artful pleading, the district court concluded that this claim was, in substance, a claim arising out of false imprisonment, and was thus barred by sovereign immunity. D0063 at 8–10. The district court also held that Sikora did not have a right to sue on the State's blanket bond because State officials are not required to obtain bonds. D0063 at 5–8.

Sikora now appeals the district court's dismissal of his constitutional and common-law claims, as well as its denial of his motion to amend. D0065, Notice of Appeal (10/27/2023).

STATEMENT OF THE FACTS[1]

Sikora has a long criminal history. Relevant here, Sikora committed forgery in November 2015—twice. *State v. Sikora*, FECR024737 (Cerro Gordo); *State v. Sikora*, FECR016434 (Winnebago). In December 2015, he committed burglary. *State v. Sikora*, FECR011058 (Hancock). Sikora pleaded guilty to all three offenses and was sentenced to incarceration not to exceed five years. D0004 at ¶¶ 9, 15, 21. All three prison sentences were to run concurrently. D0004 at ¶¶ 11, 17, 23. The sentences were suspended, and Sikora was released on probation. D0004 at ¶¶ 12, 18, 24.

Less than a year later, Sikora violated his probation and was ordered to serve his original prison sentence. D0004 at ¶¶ 13, 19, 25. After serving about a year of his prison sentence, Sikora was released on probation in April 2018. D0004 at ¶¶ 25, 32. Eight months later, Sikora's parole was revoked and he was returned to prison. D0004 at ¶ 33. In connection with his initial and subsequent arrests, Sikora served time in various county jails. D0004 at ¶¶ 26–28.

Sikora received notice that he was discharged from his Cerro Gordo County sentence on February 25, 2019, and was released from his Hancock and Winnebago County sentences on March 19, 2019. D0004 at ¶¶ 34, 40–42; D0061 at ¶ 61. Sikora alleges that his earned-time credit

[1] The States accepts the well-pleaded factual allegations as true only for purposes of this appeal but it does not accept Sikora's legal conclusions. *See, e.g.*, *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016).

was improperly calculated, and that he should have been released about a month earlier, on February 19, 2019. D0004 at ¶ 41. To be sure, Sikora has also alleged that he "should have been released from prison on October 24, 2018." D0061 at ¶ 60. Sikora does not contend that he was held beyond the five-year statutory maximum that the courts imposed.

More than three years after his release, Sikora sued. D0001, Petition (05/26/2022). He initially alleged five tort claims against the State of Iowa and the Director of the Department of Corrections. Those claims alleged Defendants: (1) violated his due-process rights under article I, § 9 of the Iowa Constitution; (2) violated his right to freedom, liberty, and happiness under article I, § 1 of the Iowa Constitution; and (3) violated his right to be free from unreasonable seizure under article I, § 8 of the Iowa Constitution; as well as committed (4) negligence, and (5) negligence per se. D0004 at ¶¶ 44–69.

The district court dismissed Sikora's negligence and negligence per se claims. D0034. The Iowa Tort Claims Act retains sovereign immunity for claims "arising out of . . . false imprisonment," the court explained, and Sikora's negligence claims were the "functional equivalent" of a false imprisonment claim. D0034 at 9–12 (quoting Iowa Code § 669.14(4)).

The district court initially allowed Sikora's constitutional tort claims to go forward based on *Godfrey v. State*, which held that there is a direct cause of action for certain constitutional torts under the Iowa Constitution. 898 N.W.2d at 870–72; D0034 at 6–9. Then this Court

decided *Burnett v. Smith*, which overruled *Godfrey*. 990 N.W.2d at 290. In response, the State filed a motion for judgment on the pleadings seeking dismissal of Sikora's remaining constitutional claims. D0041, State's MJP (05/05/2023). The district court granted the State's motion. D0050.

Undeterred, Sikora filed a motion for leave to file a Second Amended Petition. D0046, Plf.'s MTA (06/19/2023). He sought to add claims for false imprisonment and trespass on the case. D0061 at ¶¶ 91–101, 125–131. He also wanted to bring an action on the State's blanket bond against the State, the Director of the Department of Corrections, and a new defendant, Travelers Insurance, who holds the State's blanket bond. D0061 at ¶¶ 114–24. Sikora alleged that the bond covers State employees like the Director of the Department of Corrections. D0061 at ¶¶ 123–24.

The district court denied Sikora's motion for leave to amend. D0063. It held that Sikora's false imprisonment and action-on-the-blanket-bond claims would be futile because, in substance, they arose out of a claim of "false imprisonment." D0063 at 5, 8–10 (quoting Iowa Code § 669.14(4)). Thus, they were barred by sovereign immunity under the ITCA. The court also held that trespass on the case is not a viable standalone claim because it has been absorbed by negligence. D0063 at 10–12. Finally, it held that Sikora did not have a right of action to sue on the State's

blanket bond because State officials are not required to obtain bonds. D0063 at 7–8. This appeal followed. D0065.

ARGUMENT

This Court should affirm the district court's judgment. The Iowa Tort Claims Act expressly retains the State's sovereign immunity for any claim that arises out of an allegation of false imprisonment. Iowa Code § 669.14(4). Though Sikora brings a variety of common-law claims against the State, each claim arises out of an alleged false imprisonment. Thus, Sikora's negligence, negligence per se, false imprisonment, trespass-on-the-case, and action-on-the-blanket-bond claims are barred by sovereign immunity.

Moreover, the district court correctly concluded that neither trespass-on-the-case nor an action on the State's blanket bond are viable causes of action. An action for trespass on the case is not a viable standalone claim because it is just an antiquated way of describing a negligence action. And because State officials are not required to obtain bonds securing their oath to uphold the constitution, Sikora cannot sue on the State's blanket bond.

Finally, the district court correctly dismissed Sikora's *Godfrey* claims under *Burnett*.

I. The district court correctly dismissed Sikora's negligence claims and rejected his request to add a false imprisonment claim.

A. Preservation and Standard of Review.

The parties agree that Sikora preserved his negligence, negligence per se, and false imprisonment claims. Sikora brought both negligence

claims in his petition, D0004 at ¶¶ 60–69, and the district court granted the State's motion to dismiss them based on sovereign immunity, D0034 at 9–12. Sikora also sought leave to add a false imprisonment claim, D0061 at ¶¶ 91–101, which the district court denied on the same grounds, D0063 at 5–12.

This Court reviews a district court's grant of a motion to dismiss for correction of errors at law. *See Karon v. Elliott Aviation*, 937 N.W.2d 334, 339 (Iowa 2020).

The district court "has considerable discretion in granting or denying a motion for leave to amend," and this Court "will reverse only when a clear abuse of discretion is shown." *Porter v. Good Eavespouting*, 505 N.W.2d 178, 180 (Iowa 1993). This Court's "real inquiry in reviewing a trial court's ruling on a motion to amend is whether the ruling lacks a solid legal basis." *Neylan v. Moser*, 400 N.W.2d 538, 543 (Iowa 1987). "[W]here a proposed amendment to a petition appears on its face to be legally ineffectual, it is properly denied." *Midthun v. Pasternak*, 420 N.W.2d 465, 468 (Iowa 1988).

B. The Iowa Tort Claims Act retains sovereign immunity for any claim arising out of false imprisonment.

"Historically, in Iowa, the State could not be sued for damages without its consent." *Burnett*, 990 N.W.2d at 300 (tracing this "well settled principle" (citation omitted)). Today, that principle "remains the

rule rather than the exception." *Wagner v. State*, 952 N.W.2d 843, 856 (Iowa 2020) (citation omitted).

In 1965, the Legislature passed the Iowa Tort Claims Act, which waives the State's sovereign immunity on a "limited basis" for damages caused by the negligent or wrongful acts of state employees acting within the scope of employment. *Id.* (citation omitted). The ITCA thus allows the State to be sued, but "only in the manner and to the extent to which consent has been given by the legislature." *Hansen v. State*, 298 N.W.2d 263, 265 (Iowa 1980).

The contours of this consent are "are most clearly manifested in the specific exceptions to the [ITCA], which describe the categories of claims for which the State has not waived its sovereign immunity." *Trobaugh v. Sondag*, 668 N.W.2d 577, 584 (Iowa 2003) (citing Iowa Code § 669.14). Section 669.14(4) of the ITCA states that sovereign immunity is not waived for "*[a]ny claims arising out of* assault, battery, *false imprisonment*, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." Iowa Code § 669.14(4) (emphases added).

The "arising out of" language matters because it broadens the scope of the claims for which the ITCA retains sovereign immunity. *See Cubit v. Mahaska Cnty.*, 677 N.W.2d 777, 784 (Iowa 2004) (collecting cases explaining why a "broad" interpretation of the phrase "arising out of" is appropriate in the sovereign immunity context).

To determine whether a plaintiff's claim falls within section 669.14(4)'s exception, courts "identif[y] excluded claims in terms of the type of wrong inflicted," rather than by the plaintiff's cause of action. *Greene v. Friend of Ct., Polk Cnty.*, 406 N.W.2d 433, 436 (Iowa 1987). In other words, "[i]t is the substance of the claim and not the language used in stating it which controls whether the claim is barred by" the ITCA. *Minor v. State*, 819 N.W.2d 383, 406 (Iowa 2012) (quoting *JBP Acquisitions, LP v. U.S. ex rel. F.D.I.C.*, 224 F.3d 1260, 1264 (11th Cir. 2000)); *see also Hawkeye By-Prod., Inc. v. State*, 419 N.W.2d 410, 411 (Iowa 1988) (looking to the "gravamen of plaintiffs' claim").

If the substance of a plaintiff's complaint "is the functional equivalent of a cause of action listed in [the ITCA's exclusion]," then the State retains sovereign immunity. *Minor*, 819 N.W.2d at 406. Plaintiffs' claims need not be identical to a cause of action enumerated in section 669.14(4). *See id.* ("[A] defendant may successfully assert section 669.14(4) as a defense even though the tort complained of is not itself listed in section 669.14(4)."). Instead, a State defendant must show "more than '[a] mere conceivable similarity' in order to establish 'the nexus of functional equivalency' between the claimed tort and the type of wrong listed under section 669.14(4)." *Id.* (quoting *Trobaugh,* 668 N.W.2d at 584).

If the plaintiff's claim cannot "be proved without reference to or reliance upon" conduct involved in the type of claim exempted by the

ITCA, then the State retains sovereign immunity. *Cubit*, 677 N.W.2d at 784. In *Minor*, for example, the plaintiff brought an intentional-infliction-of-emotional-distress claim based on a social worker's alleged misrepresentations to a court. 918 N.W.2d at 406–08. Because the plaintiff's IIED claim "would not exist but for [the social worker's] alleged misrepresentation to the juvenile court," this Court held that the IIED claim arose out of "misrepresentation" or "deceit," which are enumerated claims in the ITCA's sovereign-immunity exception. *Id.* at 407–08.

C. Sikora's false imprisonment and negligence claims arise out of his alleged false imprisonment.

Sikora's false imprisonment, negligence, and negligence per se claims are barred by sovereign immunity because they "aris[e] out of . . . false imprisonment." Iowa Code § 669.14(4).

First, Sikora's false imprisonment claim falls within section 669.14(4)'s retention of sovereign immunity for claims of false imprisonment. Even Sikora admits that the ITCA "specifically excepts false imprisonment suits from the State's waiver of sovereign immunity." Appellant's Br. 22. The district court correctly explained that "[t]he ITCA expressly forecloses such a claim." D0063 at 5.

Second, Sikora's negligence claims arise out of a claim for "false imprisonment." Iowa Code § 669.14(4). The elements of a false imprisonment are: (1) a detention against a person's will, and (2)

unlawfulness of the detention. *Nelson v. Winnebago Indus., Inc.*, 619 N.W.2d 385, 388 (Iowa 2000).

That is exactly "the type of wrong" that Sikora's negligence claims allege was "inflicted." *See Greene*, 406 N.W.2d at 436 (analyzing these aspects of the plaintiff's claim). Referring to his negligence claims, Sikora explained that "[e]ach [claim] alleged the State wrongfully held [him] in prison for nearly five months longer than authorized by the sentencing District Courts." Appellant's Br. 17. "[B]ut for" an alleged unlawful detention or restraint against Sikora's will, *see Minor*, 918 N.W.2d at 408, Sikora would not have a claim for negligence or negligence per se. Nor can Sikora prove his negligence claims "without reference to or reliance upon" an alleged false imprisonment. *See Cubit*, 677 N.W.2d at 784. So his claims are barred by sovereign immunity.

The Court of Appeals reached the same conclusion in *James v. State*, where the plaintiff alleged that State officials "negligently failed to calculate his earned-time credit," and that he was over-detained as a result. No. 19-1720, 2020 WL 4814140, at *2 (Iowa Ct. App. Aug. 19, 2020). The court held that "[t]he fact [the plaintiff] asserts his claim as one of negligence by the State's agents does not change the fact the claim is still the functional equivalent of false imprisonment." *Id.* at *3. "The entire basis for his claim is that he was wrongfully imprisoned longer than he should have been by agents of the State," the court reasoned, and so "[n]o matter how [the plaintiff] may try to spin it, his claim is one of

false imprisonment, or, at the very least, 'aris[es] out of false imprisonment.'" *Id.* (quoting Iowa Code § 669.14(4)). Sikora's claims are identical to those in *James*, and this Court should reach the same result.

Finally, federal courts applying an identical section of the Federal Tort Claims Act—which the ITCA is based on—have similarly held that over-detention claims like Sikora's are barred by sovereign immunity. *See* 28 U.S.C. § 2680(h) (excepting "[a]ny claim arising out of . . . false imprisonment" from the sovereign-immunity waiver); *Minor*, 819 N.W.2d at 406 ("[B]ecause the legislature intended the ITCA to have the same effect as the Federal Tort Claims Act (FTCA), we give great weight to relevant federal decisions interpreting the FTCA."); *see also, e.g.*, *Snow–Erlin v. United States*, 470 F.3d 804, 809 (9th Cir. 2006) ("Plaintiff cannot sidestep the FTCA's exclusion of false imprisonment claims by suing for the damage of false imprisonment under the label of negligence."); *Adeboye v. United States*, No. 1:19-CV-03089, 2020 WL 5231323, at *3 (D.D.C. Sept. 1, 2020) (explaining that "courts have consistently held that the FTCA does not waive sovereign immunity for over-detention claims," and collecting cases); *Edwards v. United States*, 211 F. Supp. 3d 234, 237–38 (D.D.C. 2016) (dismissing a negligence claim arising out of an alleged thirty-day over-detention on similar grounds).

D. Sikora's other arguments are unconvincing.

Sikora addresses none of the above authority in his brief. Instead, he raises two tangential arguments. Neither is convincing.

First, Sikora argues that "the State should never be allowed to immunize its officers from suit for violations of constitutional rights." Appellant's Br. 23. But "[t]hat is simply not the law in Iowa," as the district court observed. D0063 at 5. In *Greene v. Friend of Court, Polk County*, the plaintiff brought due process claims based on allegations that he was imprisoned for failing to pay child support without the opportunity for a hearing. 406 N.W.2d at 434. Applying the ITCA, this Court held that the State was immune from the constitutional claims because "[t]he gravamen of plaintiff's claim . . . is the functional equivalent of false arrest or false imprisonment." *Id.* at 436. *Greene* thus held that "section [669.14(4)] immunize[s] the State from suit on a federal constitutional claim that [is] 'the functional equivalent' of an explicit section 669.14(4) exception." *Wagner*, 952 N.W.2d at 855 (quoting *Greene*, 406 N.W.2d at 436).

Second, Sikora cites a concurring opinion to argue that "[w]hen a plaintiff alleges wrongful conduct in violation of the constitution, sovereign immunity, and statutory immunity, must fall by the wayside." Appellant's Br. 29 (citing *Lennette v. State*, 975 N.W.2d 380, 402–03 (Iowa 2022) (McDonald, J., concurring)). But that concurring opinion does not apply here, because that opinion discussed an unlawful-search-and-seizure claim.

Lennette involved an unlawful-search-and-seizure claim. 975 N.W.2d at 393. After calling for the Court to overrule *Godfrey*, Justice

McDonald opined that "it appears that '[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches' is a guarantee of the right to assert nonconstitutional causes of action for money damages against government officials for unlawful seizures and searches." *Id.* at 402–03 (McDonald, J., concurring) (quoting Iowa Const. art. I, § 8). This suggestion was based on scholarship and several opinions suggesting that the word "unreasonable" guaranteed common-law remedies for violations of the search-and-seizure right. *See id.* at 408–09 (citing, *e.g.*, *Carpenter v. United States*, 585 U.S. 296, 356 (2018) (Thomas, J., dissenting)).

But Sikora does not have an unlawful-search-or-seizure claim. He "asserts injuries arising from his [allegedly] unlawfully prolonged detention following his lawful convictions." *Francis v. Fiacco*, No. 9:15-CV-901, 2018 WL 1384499, at *6 (N.D.N.Y. Mar. 16, 2018), *rev'd on other grounds*, 942 F.3d 126 (2d Cir. 2019). Because he was validly seized after his conviction, Sikora's "claims regarding unlawfully extending the term of his incarceration must necessarily arise from either the Eighth Amendment's prohibition of cruel and unusual punishment or the Fourteenth Amendment Due Process Clause"—not the Fourth Amendment. *Id.* ("The Court is unaware of any decisional law applying the Fourth Amendment in any context similar to the present matter.").

Other courts have uniformly held that there is no Fourth Amendment claim in circumstances like Sikora's. *See Beckstrand v. Read*, 563 F. App'x 533, 534 (9th Cir. 2014) (noting that "[w]hile our cases provide some support for a due process or Eighth Amendment right against over-detention, they do not speak to any analogous Fourth Amendment right" (internal citation omitted)); *Rhoades v. Tilley*, No. 21-5899, 2022 WL 684576, at *2 (6th Cir. Mar. 8, 2022) ("The right not to be detained past the expiration of a term of incarceration can be analyzed under the Eighth Amendment, Fourteenth Amendment, or both." (quotation marks omitted)); *Kohr v. Doe*, No. 4:14-CV-228, 2015 WL 4715345, at *1 (N.D. Fla. Aug. 7, 2015) (explaining that an over-detention claim "is premised on the protections of the Eighth Amendment of the United States Constitution"); *Barnes v. D.C.*, 793 F. Supp. 2d 260, 273–74 (D.D.C. 2011) (explaining that because "plaintiffs were already in custody at the time they were ordered released or their sentences expired," the Fourth Amendment did not apply because there was no additional "seizure"). Thus, a concurring opinion about the Fourth Amendment has no relevance here.

In all events, Justice McDonald's concurrence is foreclosed by *Burnett*, which involved an unlawful seizure claim under the Iowa Constitution. 990 N.W.2d at 292. *Burnett* held that there is no direct cause of action for money damages for such a claim. *Id.* at 307.

This Court should affirm the district court's dismissal of Sikora's negligence and negligence per se claims and its denial of Sikora's motion to add a false imprisonment claim because each claim is barred by sovereign immunity.

II. The district court correctly denied Sikora's motion to add a trespass-on-the-case claim.

A. Preservation and Standard of Review.

Sikora preserved his trespass-on-the-case claim by seeking leave to amend his petition and add the claim in the district court. D0046 at 5. The district court denied Sikora's motion because actions for trespass on the case have been subsumed by negligence and are thus no longer viable. D0063 at 10–12.

This Court reviews a district court's denial of a motion to amend for a "clear abuse of discretion." *Porter*, 505 N.W.2d at 180. When a proposed amendment is "legally ineffectual," leave to amend "is properly denied." *Midthun*, 420 N.W.2d at 468.

B. Trespass on the case is not a viable cause of action.

"'Trespass on the case' is an archaic reference to legal history no longer used to address a cognizable wrong." *Bochenski v. Hollander*, No. 1:16-CV-00007, 2016 WL 241423, at *2 (D. Md. Jan. 20, 2016). Before the negligence action developed, claims for injuries were divided into actions of "trespass *vi et armis*" (or simply "trespass") and actions for "trespass on the case." *See Taylor v. Devereux Found., Inc.*, 885 S.E.2d 671, 694

n.35 (Ga. 2023). "[W]henever the act itself is directly and immediately injurious to the person or property of another, . . . action of trespass *vi et armis* will lie; but, if the injury is only consequential, a special action of trespass on the case may be brought." 3 William Blackstone, Commentaries on the Laws of England 208 (1772). In other words, a "'[t]respass to property' was distinguished from 'trespass on the case' by the fact that trespass lay for a direct injury, 'trespass on the case' for an indirect." *New York Life Ins. Co. v. Clay Cnty.*, 267 N.W. 79, 80 (Iowa 1936).

So, for example, an action for damages resulting from false imprisonment would be brought as a trespass *vi et armis*. *See* Blackstone, Commentaries, at 138 ("THE satisfactory remedy for this injury of false imprisonment, is by an action of trespass, *vi et armis*, usually called an action of false imprisonment."). But an action for consequential damages to cattle stemming from a broken fence would be brought as trespass on the case. *See Osgood v. Names*, 184 N.W. 331, 332–33 (Iowa 1921) (giving this example).

Over time, the distinction between trespass *vi et armis* and trespass on the case fell away. As early as 1886, courts recognized that there was no material difference between the two actions: "One hundred years ago, or thereabouts, courts and lawyers seem to have had a vague impression that there did exist a practical difference between the two actions; but

the line of demarkation never has been satisfactorily established." *Brown v. Hendrickson*, 27 N.W. 914, 916 (Iowa 1886).

Eventually, both trespass *vi et armis* and trespass on the case were absorbed into "what we now speak of as negligence." *Miranda v. Said*, 836 N.W.2d 8, 18 n.7 (Iowa 2013) (quoting Charles O. Gregory, *Trespass to Negligence to Absolute Liability*, 37 Va. L. Rev. 359, 363 (1951)); *see also New York Life Ins.*, 267 N.W. at 81 (explaining that "[t]respass on the case, or Case, was a form of action which included a large variety of torts" such as "negligence"); *Whitham v. Creamer*, 525 P.3d 746, 757 (Idaho 2023) ("Trespass on the case preceded the legal theory of negligence"); *Kennedy v. Dutcavage*, No. 3:18-CV-00767, 2019 WL 2502569, at *6 (M.D. Pa. Mar. 19, 2019) ("'[T]respass on the case' at common law has transformed into what is considered today as negligence."); *Mueller v. Brunn*, 313 N.W.2d 790, 794 (Wis. 1982), *abrogated on other grounds by Vill. of Trempealeau v. Mikrut*, 681 N.W.2d 190 (Wis. 2004) ("Trespass on the case is the ancestor of the present day action for negligence.").

So today, "[t]respass on the case is simply a label for a negligence claim." *Tabb v. One W. Bank (Indymac)*, No. 3:10-CV-00855, 2010 WL 5684402, at *3 (D. Or. Nov. 1, 2010). As a result, courts routinely reject trespass-on-the-case claims because they "do[] not stand as an independent cause of action." *Martin-McFarlane v. City of Philadelphia*, 299 F. Supp. 3d 658, 672 (E.D. Pa. 2017); *see Takhvar v. Warner Bros.*

Discovery Inc., No. 5:22-CV-576, 2023 WL 5922469, at *4 (M.D. Fla. Aug. 17, 2023) (holding that "'trespass on the case' is not the appropriate cause of action"); *In re Ward*, 583 B.R. 558, 566 (Bankr. S.D. Ga. 2018) (same); *Kennedy v. Petrus*, No. 3:18-CV-00697, 2019 WL 1871017, at *6 (M.D. Pa. Apr. 4, 2019) (denying a trespass-on-the-case claim because plaintiff failed to establish negligence).

The district court correctly denied Sikora's motion to add a trespass-on-the-case claim because "an action for trespass on the case is no longer viable in Iowa." D0063 at 12. As courts have recognized, trespass on the case is not a valid standalone cause of action. *See, e.g.*, *Martin-McFarlane*, 299 F. Supp. 3d at 672. And even if it were, because trespass on the case has been subsumed by negligence, Sikora's claim is "duplicative of and subsumed by his negligence claim." *Whitham*, 719, 525 P.3d at 757.

In his brief, Sikora ignores the fact that trespass on the case has been subsumed by negligence. As a result, while some cases he relies on show that those plaintiffs brought trespass-on-the-case actions before modern negligence actions existed, that type of claim is no longer available.

And Sikora's primary reference in support of trespass-on-the-case as a valid cause of action for constitutional violations, *Lane v. Mitchell*, 133 N.W. 381 (Iowa 1911), does not support his theory. *Lane* does not

even use the word "trespass." *See* D0063 at 12 (district court pointing this out).

In *Lane*, the court found that an election judge's duties to administer an oath to a voter and receive the voter's ballot were "ministerial, and not judicial." 133 N.W. at 382. If the plaintiff could prove that the judge's failure to perform these duties was willful and malicious, the court held, then recovery would not be necessarily limited to nominal damages. *Id.* at 383.

Though *Lane* never characterized that plaintiff's cause of action, Sikora attempts to cast it as a trespass-on-the-case action because it cited *Ashby v. White*, 92 Eng. Rep. 126 (K.B. 1703), an old English case that involved a trespass-on-the-case action seeking to vindicate the denial of the right to vote. *Id.* at 129, 130, 133; *see also* Appellant's Br. 35. In *Ashby*, the English court initially ruled against the plaintiff, and Lord Holt wrote a dissenting opinion arguing that the plaintiff had a cause of action for trespass on the case. 92 Eng. Rep. at 137; *see Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 799 (2021) (explaining *Ashby*'s procedural history). The House of Lords then overturned the court's decision, agreeing with Lord Holt's outcome—though it is far from clear what portions of Lord Holt's opinion the House of Lords found persuasive. *See Uzuegbunam*, 141 S. Ct. at 806 (Roberts, C.J., dissenting) (explaining that "the House of Lords likely paid scant attention to Lord Holt's

analysis" due to political reasons (quoting 2 J. Campbell, Lives of the Chief Justices of England 160 (1849)).

Sikora's attempt to paint *Lane* as a trespass-on-the-case action based on its citation to *Ashby* is wrong for three reasons.

First, *Lane* cited *Ashby* solely for the proposition that a judge's duty to receive a vote is ministerial. *See Lane*, 133 N.W. at 383 (explaining that judges "have no discretion but to obey the law and receive the vote" and that "such was also the holding in *Ashby v. White*"). *Lane* did not cite to or discuss the portion of Lord Holt's opinion in *Ashby* discussing trespass on the case.

Second, even if *Lane* silently adopted from *Ashby* the idea that a voter can bring a trespass-on-the-case action based on an "invasion of another's franchise," 92 Eng. Rep. at 137, that principle would not be relevant here. Lord Holt reasoned that trespass on the case was appropriate because a traditional trespass *vi et armis* "d[id] not lie" for "invasion of another's franchise"—that is, the right to vote. *Id.* at 137. But here, Sikora would have had an action for trespass *vi et armis* at common law before negligence developed. *See* Blackstone, Commentaries, at 138 ("THE satisfactory remedy for this injury of false imprisonment, is by an action of trespass, *vi et armis*, usually called an action of false imprisonment.").

Third, and more to the point, Lord Holt reasoned that trespass on the case must be an appropriate action for denial of a right to vote

because "every man that is injured ought to have his recompense." *Ashby*, 92 Eng. Rep. at 137. But this Court has rejected the principle that "every wrong should have a potential money damages remedy." *Burnett*, 990 N.W.2d at 306 ("[P]ersons who are harmed by illegal conduct often do not receive a remedy for any number of different reasons.").

In sum, Sikora's trespass-on-the case claim is not a viable cause of action because it is really just another attempt at a sovereign-immunity-barred negligence claim.

C. Even if it were viable, Sikora's trespass-on-the-case claim would be barred by sovereign immunity because it arises out of his alleged false imprisonment.

Even if trespass-on-the-case were a viable claim, it would be barred by sovereign immunity because it arises out of an alleged false imprisonment. *See* Iowa Code § 669.14(4). The substance of Sikora's claim—not the language he uses to state it—is what controls. *See Minor*, 819 N.W.2d at 406; *Greene*, 406 N.W.2d at 436. As with his negligence and false imprisonment claims, the substance of Sikora's trespass-on-the-case claim is functionally equivalent to a false imprisonment claim. Recall that a false imprisonment claim has two elements: "(1) detention or restraint against a person's will, and (2) unlawfulness of the detention or restraint." *Nelson*, 619 N.W.2d at 388. Referring to his trespass-on-the-case claim, Sikora explained that "[his] cause of action is the fact that the State and its employees kept him locked in prison for nearly five

months past the date authorized by the sentences issued by the District Courts." Appellant's Br. 41. That is a textbook allegation of a false imprisonment claim.

But Sikora argues that his trespass-on-the-case claim "is concerned with the invasion of the constitutional right," while false imprisonment relates to "the State's physical restriction of his body and movements." Appellant's Br. 38–39. As a result, he says that his trespass-on-the-case claim is "not the functional equivalent of false imprisonment." Appellant's Br. 39.

Sikora's artful description of his trespass-on-the-case claim as only seeking to remedy a constitutional violation is at odds with this Court's approach of looking at the "substance of the claim." *See Minor*, 819 N.W.2d at 406 (citation omitted). For example, the plaintiff in *Greene* alleged a violation of his due process rights. 406 N.W.2d at 434–36. But in analyzing whether the substance of the plaintiff's claims arose out of false imprisonment, this Court did not look solely to the alleged invasion of a constitutional right, nor did it take the plaintiff at his word. *Id.* at 436. Rather, this Court looked to the underlying conduct—"the type of wrong inflicted." *Id.* If Sikora's approach was right, "[t]here would be little purpose in such a statutory scheme [like the ITCA] if it could be circumvented merely by a shift of legal theory." *Hawkeye By-Prod.*, 419 N.W.2d at 412.

The gravamen of the claim, and not a plaintiff's characterization of it, carries the day. And the "invasion of the constitutional right" that Sikora says his trespass-on-the-case claim is based on depends on him proving false imprisonment. Sikora cannot prove a constitutional violation "without reference to or reliance upon" conduct that constitutes false imprisonment. *Cubit*, 677 N.W.2d at 784 (applying this standard and holding that a claim arose out of an enumerated claim). "No matter how [Sikora] may try to spin it, his claim is one of false imprisonment, or, at the very least, 'aris[es] out of false imprisonment.'" *James*, 2020 WL 4814140, at *3 (quoting Iowa Code § 669.14(4)).

Sikora's trespass-on-the-case claim, like his negligence and false-imprisonment claims, is barred by sovereign immunity because it arises out of an alleged false imprisonment.

III. The district court correctly denied Sikora leave to add an action-on-the-blanket-bond claim.

A. Preservation and Standard of Review.

The State agrees that Sikora preserved his attempt to make a claim on the State's blanket bond by seeking leave to add the claim to his petition, D0046 at 4, which the district court denied, D0063 at 5–10. As with Sikora's other claims arising out of the same conduct, the district court concluded that Sikora's action-on-the-blanket-bond claim arose out of a false imprisonment and was thus barred by sovereign immunity. D0063 at 8–10. The district court also held that Sikora did not have a

right of action on the State's blanket bond because State officials are not required to obtain a bond. D0063 at 6–8.

Because the district court denied Sikora leave to amend based on sovereign immunity, the State did not raise a statute-of-limitations argument. The State does so now as an alternate ground of affirmance in case this Court disagrees with the district court regarding sovereign immunity. *See State v. Howard*, 509 N.W.2d 764, 768 (Iowa 1993) (allowing affirmance based on "any ground apparent in the record").

This Court reviews a district court's denial of a motion to amend for a "clear abuse of discretion." *Porter*, 505 N.W.2d at 180. When a proposed amendment is "legally ineffectual," leave to amend "is properly denied." *Midthun*, 420 N.W.2d at 468.

B. The State's blanket bond insures the State against employee misconduct.

Like other states, Iowa requires certain public officials to take an oath promising to faithfully and impartially discharge their duties. Iowa Code § 64.2. And, like other states, Iowa requires that some public officials secure that oath with bond that runs to the State. *Id*.

Iowa has two different public-official oaths. First, civil officers must take an oath swearing to "support the Constitution" of the United States and the State of Iowa and to "faithfully and impartially" discharge the duties of their office. Iowa Code § 63.10.

Second, some public officers must take an oath secured by a bond that promises to abstain from criminal and quasi-criminal conduct. Iowa Code § 64.2. "[E]xcept as otherwise specially provided," "public officers" "shall give bond with the conditions," laid out in an oath that includes an affirmation to "promptly pay over to the officer or person entitled thereto all moneys which may come into the officer's hands," "exercise all reasonable diligence and care in the preservation and lawful disposal of all money," and "faithfully and impartially, without fear, favor, fraud, or oppression, discharge all duties now or hereafter required of the office by law." *Id*. This requirement has existed since at least 1851. Iowa Code § 324 (1851).

This quasi-criminal oath-and-bond requirement in section 64.2 applies "except as otherwise specially provided." Iowa Code § 64.2. Later, section 64.6 provides that State officials are exempt: "State officials are not required to obtain bonds." Iowa Code § 64.6. Instead, they "*may* be covered under a blanket bond for state employees." *Id.* (emphasis added). Unlike a local public official's individual bond, a blanket bond is a bond "purchased by the governmental entity to protect the governmental entity," and "do[es] not protect the public or any other third party from the acts of public officials or employees." Jeffrey S. Price, et al., *The Public Officials Bond—A Statutory Obligation Requiring "Faithful Performance," "Fidelity," and Flexibility*, 12 Fidelity L.J. 151, 172 (2006).

In short, the State's blanket bond insures the State against losses caused by its employees' misconduct.

Finally, "[a]ll bonds of public officers shall run to the state" and are "for the use and benefit of any corporation, public or private, or person injured or sustaining loss, with a right of action in the name of the state for its or the corporation's or person's use." Iowa Code § 64.18. That means that the individual bonds of county officers, Iowa Code § 64.8, county treasurers, *id.* § 64.10, and municipal officers, *id.* § 64.13, are made for the benefit of the State. And the existence of an "action in the name of the state" means that the State is a party to any bond action. *Cf. United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 424 (2023) (explaining the similar structure of qui tam actions under the False Claims Act).

If all this discussion of bonds and oaths seems antiquated, that is because it is. Actions to recover on local or county officials' bonds are nonexistent nowadays. They were somewhat common in the late 1800s and early 1900s. A typical case would involve a suit by a municipality against a county treasurer based on the treasurer's failure to pay money, *Dist. Twp. of Taylor v. Morton*, 37 Iowa 550, 551 (1873), a suit by a citizen against a constable alleging wrongful attachment of property, *Strunk v. Ocheltree*, 11 Iowa 158, 159–60 (1860), or a suit by a citizen against a constable for wrongful imprisonment, *Clancy v. Kenworthy*, 35 N.W. 427, 427 (Iowa 1887); *see also* Iowa Code § 1183 note (1897) (collecting cases).

And the State is unaware of any action on a local or county official's bond brought in an Iowa court—successful or not—in at least the last 50 years. Sikora cites none. *See* Appellant's Br. 45–55 (citing cases from 1887 to 1948). To be sure, one plaintiff claiming to be a "sovereign citizen" recently filed an action on the bond against Travelers Insurance in federal court. *See* Complaint, *Tennant v. Iowa*, No. 3:22-cv-00067 (S.D. Iowa Sept. 23, 2023), Doc. 1. The court dismissed it as "frivolous." *Tennant v. Iowa*, No. 3:22-CV-00067, 2023 WL 3733909, at *2 (S.D. Iowa Apr. 25, 2023), *aff'd*, No. 23-2301, 2023 WL 8234592 (8th Cir. July 3, 2023).

Nor has there ever been, to the State's knowledge, any action on the State's blanket bond in Iowa court. That is telling, since the blanket bond has been around since 1985, Iowa Code § 64.6 (1985), and before that specific State officials needed to post individual bonds, Iowa Code §§ 677–78 (1873). One reason for this absence may be the Iowa Tort Claims Act's enactment in 1965, which "provides the exclusive means through which tort claimants may pursue claims to suit against the State." *Swanger v. State*, 445 N.W.2d 344, 351 (Iowa 1989).

C. Sikora's action-on-the-blanket-bond claim is governed by the ITCA and is thus barred by sovereign immunity.

The district court correctly concluded that Sikora's action-on-the-blanket-bond claim is the functional equivalent of a claim for false imprisonment and is thus barred by sovereign immunity. D0063 at 10.

Sikora describes his claim as alleging that "Defendants acted in excess of their authority when they held Sikora in prison for nearly five months more than they should have." Appellant's Br. 50. And in his proposed Second Amended Petition, Sikora alleged that the State officials "breached their duty to support the Constitution" by violating Sikora's constitutional rights. D0061 at ¶ 121; *see also id.* ¶ 122 (alleging that Defendants "materially breached the bond by failing to . . . properly and accurately credit Eugene Sikora's jail time").

These allegations are a textbook false-imprisonment claim. *See Nelson*, 619 N.W.2d at 388 (explaining that a false imprisonment claim involves a detention against a person's will and the unlawfulness of the detention). That is unsurprising, because the "gravamen" of Sikora's action-on-the-blanket-bond claim is the same as his claims for negligence, trespass-on-the-case, false imprisonment: an alleged false imprisonment. *See Hawkeye By-Prod.*, 419 N.W.2d at 411 (looking to the "gravamen" of the plaintiff's claims). The claim is thus barred by sovereign immunity. *See* Iowa Code § 669.14(4).

Sikora's counterarguments are unconvincing. Sikora first argues that an action on the State's blanket bond is "not the functional equivalent of false imprisonment" because "the gravamen of Sikora's Action on the Bond action is vindication for invasion of his constitutional rights." Appellant's Br. 52. This is the same argument Sikora made regarding his trespass-on-the-case claim. *See* Appellant's Br. 52 (Sikora

acknowledging this). And it fails for the same reasons. This Court looks to the "type of wrong inflicted," not to the specific constitutional right that a plaintiff seeks to vindicate. *Greene*, 406 N.W.2d at 436; *see Minor*, 819 N.W.2d at 406. Moreover, the constitutional right that Sikora seeks to vindicate depends on him proving a false imprisonment claim. Sikora cannot prove a constitutional violation "without reference to or reliance upon" conduct that constitutes false imprisonment. *Cubit*, 677 N.W.2d at 784. This shows that the gravamen of his claim is false imprisonment.

Sikora next argues that he can sue Travelers Insurance, the surety on the State's blanket bond, and avoid the ITCA and sovereign immunity altogether. Appellant's Br. 50–54. But if Sikora was right, then the Legislature accomplished nothing by passing the ITCA. If Sikora was right that plaintiffs such as himself or Mr. Tennant, the "sovereign citizen," could sue for money damages for alleged constitutional violations based on an official's violation or his or her oath to support the constitution, then there would be no reason for the Legislature to waive sovereign immunity in the ITCA. If Sikora was right that delicate balance of consent to suit and sovereign immunity struck by the ITCA "could be circumvented merely by a shift of legal theory" to suing on the State's blanket bond, then "[t]here would be little purpose in such a statutory scheme." *Hawkeye By-Prod.*, 419 N.W.2d at 412. Finally, if Sikora was right, then one would expect to see legions of suits on the State's blanket

bond, both before and after the passage of the ITCA—not just Sikora's and Mr. Tennant's.

Sikora is wrong. "[T]he legislature intended the Iowa Tort Claims Act to serve as the gateway for all tort litigation against the State." *Wagner*, 952 N.W.2d at 847. The ITCA is the "*exclusive* means through which tort claimants may pursue claims to suit against the State." *Swanger*, 445 N.W.2d at 351 (emphasis added). This includes constitutional tort claims like the one Sikora seeks to bring in his action-on-the-blanket-bond claim. *See Wagner*, 952 N.W.2d at 855 (explaining *Greene*'s holding that section 669.14(4) immunizes the State from constitutional claims arising out of certain enumerated actions).

And here, in substance, Sikora's suit against Travelers and the State to recover on the State's blanket bond is a "claim" for money damages against the State based on a constitutional violation, so the ITCA applies. *See* Iowa Code § 669.2(3)(*a*) (defining "claim" as "any claim against the state of Iowa for money only" based on a State employee's wrongful conduct).

After all, when an action on the bond concerns a public official, that public official is a "necessary part[y]" to the lawsuit. *See Harrison Cnty. v. Ogden*, 145 N.W. 681, 685 (Iowa 1914) (holding that a county treasurer was a "proper and necessary part[y]" to an action-on-the-bond suit). Indeed, Sikora's action-on-the-blanket-bond suit is against "All Defendants," which includes the State of Iowa. D0061 at 17; *see also* Iowa

Code § 669.5(2)(*a*) (providing that the State is substituted for State employee defendants). Even Sikora recognized that the "common" practice in the early 1900s was to name both the public official and the surety in a suit on the bond. Appellant's Br. 48.

Thus, Sikora's action-on-the-blanket-bond claim "must be brought, if at all, pursuant to chapter 669," the ITCA. *Dickerson v. Mertz*, 547 N.W.2d 208, 213 (Iowa 1996). And under section 669.14(4) of the ITCA, his claim is barred by sovereign immunity. The district court correctly rejected Sikora's attempt at avoiding the ITCA, D0063 at 8–10, and this Court should, too.

D. Even if the ITCA does not apply, Sikora does not have a cause of action on the State's blanket bond.

Even so, Sikora lacks a cause of action on the State's blanket bond. Sikora says that section 64.18 gives him a right to sue on the State's blanket bond. Appellant's Br. 44. Not so. That provision refers to "a right of action in the name of the state." Iowa Code § 64.18. Sikora recognizes this, captioning his action-on-the-blanket-bond claim "State of Iowa *Ex rel.* Eugene Sikora Against All Defendants." D0061 at 17; *see also* D0061 at 1 (Sikora's case caption naming the State of Iowa on both sides of the case). It makes no sense that Sikora would have a right of action in the name of the State against the State. After all, the same party cannot be on both sides of the case. *See Muskrat v. United States*, 219 U.S. 346, 357 (1911) (discussing the jurisdictional requirement of party adversity).

The better reading of section 64.18 is that it does not apply to the State's blanket bond. *Scott v. Feilschmidt* explains that "[o]ne suffering damage at the hands of one required to give bond by reason of the breach of the bond may bring action on the bond." 182 N.W. 382, 384 (Iowa 1921). But "State officials are not required to obtain bonds." Iowa Code § 64.6. Sikora's argument to the contrary, Appellant's Br. 54–55, is at odds with the plain text of this provision.

Section 64.18's reference to "bonds of public officers" is thus best read to cover the *required* bonds of non-State "public officers"—for example, those of county officers, *id.* § 64.8, county treasurers, *id.* § 64.10, and clerks, *id.* § 64.12—and not the State's discretionary blanket bond for State employees, which is essentially an insurance policy for the State. *See* Price, *The Public Officials Bond*, at 172. That this language has been around for over 100 years and the State has never been sued under this provision in Iowa court is telling. *See* Iowa Code § 1188 (1897) (materially similar language to section 64.18).

Lastly, even if section 64.18 allows Sikora to sue on the State's blanket bond, it does not provide an action for him to get what he is asking for: forfeiture of the State's blanket bond. Sikora asks that the blanket bond "be forfeited for the use and benefit of [himself]." D0061 at ¶ 113.

But this Court has rejected the principle that a plaintiff can seek forfeiture of a bond. In *State ex rel. Switzer v. Overturff*, the plaintiff

sought forfeiture of a sheriff's quasi-criminal bond based on misconduct. 33 N.W.2d 405, 406–07 (Iowa 1948). The court held that Iowa's bond scheme is "quite inconsistent with any intention of making the bonds forfeitable either for violation of the general requirement 'that he will faithfully and impartially, without fear, favor, fraud, or oppression, discharge' his duties." *Id.* at 408. It explained that it "has never been the procedure in Iowa" to "create liability for the full amount [of the bond] upon conditions broken." *Id.* at 409. Sikora thus cannot seek forfeiture of the State's blanket bond.

E. Even if Sikora has a cause of action, it would be barred by the statute of limitations.

Even if Sikora could avoid the ITCA and bring an action in the name of the State against the State, it would be barred by the two-year statute of limitations. Iowa Code § 614.1(2).

Originally, an action on a bond was subject to a three-year statute of limitations. Iowa Code § 2529(3) (1873) (providing that actions "growing out of a liability incurred by the doing of an act in an official capacity . . . , including the non-payment of money collected on execution," were subject to a three-year statute of limitations). But over time, the Legislature narrowed the scope of the three-year limitation, and it now applies only to actions "against a sheriff or other public officer for the nonpayment of money collected on execution." Iowa Code § 614.1(3). All other actions arising out of injuries to person are subject to a two-year

statute of limitations. Iowa Code § 614.1(2). Because Sikora's action-on-the-blanket-bond claim does not apply to nonpayment of money, it is subject to a two-year statute of limitations.

Sikora learned of an alleged miscalculation of his earned-time credit on or about March 25, 2019. *See* D0004 at ¶¶ 40–41 (discussing a March 25, 2019 discharge report that "indicates that the parole officer was informed by the Iowa Department of Corrections" that Sikora's sentence was supposed to be discharged on "February 19, 2019"); *Franzen v. Deere & Co.*, 377 N.W.2d 660, 662 (Iowa 1985) ("Under the discovery rule, the statute of limitations begins to run when the injured person discovers or in the exercise of reasonable care should have discovered the allegedly wrongful act."). Two years from that date is March 25, 2021.

Yet Sikora filed his lawsuit against the State defendants on May 26, 2022, more than three years after he was on notice. D0001. Further, Sikora first sought to add Travelers Insurance as a defendant on June 19, 2023—over four years since his cause of action accrued. D0046. Because Sikora's failure to add Travelers was not due to a "mistake concerning the identity" of Travelers, the amendment would not relate back to the date of the original complaint. Iowa R. Civ. P. 1.402(5). Sikora's action-on-the-blanket-bond claim is thus barred by the two-year statute of limitations. Though even if the three-year limitation did apply, Sikora's claim would still be too late.

IV. The district court correctly dismissed Sikora's *Godfrey* claims.

A. Preservation and Standard of Review.

Sikora preserved his constitutional claims by bringing them in his original petition. D0001 at ¶¶ 44–59. After this Court decided *Burnett*, the State moved for judgment on the pleadings. D0050 at 1. In response, Sikora argued that *Burnett* is not retroactive, and that because he petitioned before *Burnett* was decided, his constitutional claims could go forward. D0044, Resistance to MJP at 2 (05/19/2023). The district court rejected Sikora's argument based on this Court's cases applying *Burnett* to pending *Godfrey* claims and dismissed the claims. D0050 at 2–3.

This Court "review[s] a district court's ruling on a motion for judgment on the pleadings for the correction of errors at law." *Griffioen v. Cedar Rapids & Iowa City Ry. Co.*, 914 N.W.2d 273, 280 (Iowa 2018).

B. The district court correctly concluded that *Burnett* applies retroactively.

Sikora argues that *Burnett* does not apply retroactively, and so his constitutional claims based on now-overruled *Godfrey* can still proceed. Appellant's Br. 57–63. Not so.

Start with this Court, which has held at least three times that *Burnett* applies to pending *Godfrey* claims. A week after *Burnett* was decided, this Court summarily affirmed the dismissal of a *Godfrey* claim that had been filed before *Burnett* was decided. *See Venckus v. City of Iowa City*, 990 N.W.2d 800, 806–07, 812 (Iowa 2023). Shortly after that,

this Court dismissed a pending appeal of a *Godfrey* claim because *Godfrey* had been "overruled . . . as demonstrably erroneous." *Carter v. State*, No. 21-0909, 2023 WL 3397451, at *1 (Iowa May 12, 2023). And again in *White v. Harkrider*, this Court summarily dismissed pending *Godfrey* claims following *Burnett*. 990 N.W.2d 647, 652 (Iowa 2023) ("For the reasons set forth in *Burnett* . . . Godfrey has been overruled. White's constitutional tort claims thus cannot proceed."); *see also Richardson v. Johnson*, No. 22-1727, 2023 WL 4036138, at *1 (Iowa June 16, 2023) (responding to a certified question from a federal district court regarding a pending *Godfrey* claim by stating that *Burnett* bars all such claims).

Every Court of Appeals decision to consider the issue has held that *Burnett* applies retroactively. *See Norris v. Paulson*, No. 23-0217, 2024 WL 2842317, at *3 (Iowa Ct. App. June 5, 2024) (reversing a pre-*Burnett* summary-judgment grant on a *Godfrey* claim); *Wagner v. State*, No. 22-1625, 2024 WL 1295494, at *2 (Iowa Ct. App. Mar. 27, 2024) (retained for review) (similar); *Christiansen v. Eral*, No. 22-1971, 2024 WL 108848, at *3 (Iowa Ct. App. Jan. 10, 2024) (applying *Burnett* retroactively); *Dishman v. State*, No. 22-1491, 2023 WL 8068563, at *3 (Iowa Ct. App. Nov. 21, 2023) ("Applying the holdings in *Burnett*, *Venckus*, and *Carter*, we conclude Iowa no longer recognizes *Godfrey* constitutional tort claims, whether on file before *Burnett* or not.").

Finally, as one federal district court has remarked, "[i]f the Iowa Supreme Court intended for *Burnett* not to have retroactive effect, it

should have overruled *Godfrey* but also allowed the plaintiff's claim to move forward. It did not do so." *Galanakis v. City of Newton, Iowa*, No. 4:23-CV-00044, 2024 WL 606235, at *12 (S.D. Iowa Feb. 8, 2024). "It is therefore self-evident that *Burnett* has retroactive effect." *Id.*

This Court should affirm the dismissal of Sikora's constitutional claims.

CONCLUSION

The judgment below should be affirmed.

REQUEST FOR ORAL SUBMISSION

The State requests oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*g*) and 6.903(1)(*i*)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 9,245 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 19th day of August, 2024, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

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