

**IN THE COURT OF APPEALS OF IOWA**

No. 9-092 / 08-0555  
Filed March 26, 2009

**HELEN READING and FRANK READING,**  
Plaintiffs-Appellees,

**vs.**

**BILL PETERSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Tama County, Douglas S. Russell,  
Judge.

Peterson appeals the district court's denial of his motion for summary  
judgment. **REVERSED.**

Sharon Soorholtz Greer and Melinda G. Young of Cartwright, Druker, &  
Ryden, Marshalltown, for appellant.

George W. Appleby of Carney & Appleby, P.L.C., Des Moines, for  
appellees.

Considered by Eisenhauer, P.J., and Doyle and Mansfield, JJ.

**MANSFIELD, J.****I. Background Facts and Procedural History.**

Because this is a review of a denial of a motion for summary judgment, we recite the facts as set forth in the plaintiffs' evidence, construing it in the light most favorable to them. *Weddum v. Davenport Cmty. Sch. Dist.*, 750 N.W.2d 114, 117 (Iowa 2008).

On January 20, 2003, the Readings, who are New Jersey residents, were visiting a Sandals Resort in Jamaica. Helen Reading was sitting in a beach chair. A flag football game took place, in which another guest, William Peterson, was participating. During the course of the game Peterson collided into Helen, causing injuries to her.

The Readings tried to ascertain the name of the guest who had collided with Helen, making inquiries of the resort manager and a nurse, but Sandals steadfastly refused to reveal this information. Another guest (whose identity was also unknown to the Readings) told Frank Reading that the person who collided into his wife had left the Sandals Resort the day after the incident.

Sandals had obtained an incident report dated January 20, 2003, and signed by Peterson. Thus, Sandals was at all times aware of Peterson's identity.

On January 10, 2005, not having learned Peterson's identity, the Readings sued Sandals and various "John Does" in New Jersey state court. Sandals' counsel refused informal requests to identify the person who had collided with Helen Reading, but eventually Sandals answered an interrogatory and thereby disclosed Peterson's identity and home town. On June 6, 2006, the Readings moved to amend their New Jersey complaint to add Peterson as a

defendant. On November 20, 2006, the Readings also filed a petition against Peterson in the Iowa District Court for Tama County.

Initially, Peterson moved to dismiss this petition based on the statute of limitations. The district court denied the motion, and Peterson sought an interlocutory appeal. Peterson's application was denied by the supreme court without prejudice to his right to assert the statute of limitations issue in subsequent district court proceedings. Thereafter, at the close of discovery, Peterson filed a motion for summary judgment based on the statute of limitations. The district court denied that motion as well. This time, Peterson's application for interlocutory appeal was granted by the supreme court. His appeal is now before us.

## **II. Analysis.**

Peterson argues that the district court erred in finding a genuine issue of material fact as to whether the two-year statute of limitations in Iowa Code section 614.1(2) (2007) had been tolled due to equitable estoppel or fraudulent concealment. We agree with Peterson.

The related doctrines of equitable estoppel and fraudulent concealment require a showing of affirmative misconduct by the defendant, on which the plaintiff relied to his or her prejudice. *Hook v. Lippolt*, 755 N.W.2d 514, 525 (Iowa 2008).

In this case, there is no evidence Peterson himself did anything to deter the Readings from filing a lawsuit against him. Although the Readings argue in their briefing that he "fled" the resort to avoid being identified by them, there is no evidence of this. At most, the record contains inadmissible hearsay to the effect

that Peterson left the resort the day after the incident. However, even accepting this assertion at face value, the record does not indicate why he left the resort, or that he left the resort ahead of schedule.

The summary judgment record does show that Sandals was not responsive to the Readings' requests for Peterson's identity. However, Sandals was not Peterson, or Peterson's employer. *Cf. id.* at 525-26 (considering the conduct of both the employee and the employer in holding that the employer was not estopped from raising the statute of limitations). We do not believe Sandals' refusal to identify Peterson can be attributed to Peterson here, even assuming (without deciding) that a mere refusal to provide identifying information can serve as the basis for an estoppel that would toll the running of the statute of limitations.

For the foregoing reasons, we reverse the decision of the district court denying Peterson's motion for summary judgment and direct the entry of summary judgment in Peterson's favor.

**REVERSED.**