

IN THE IOWA DISTRICT COURT IN AND FOR LEE (SOUTH) COUNTY

GRACE FERGUSON HUNT,  
KODI DICK,  
MARIA ADELAIDA BROWN,  
AARON DICK, MICHELLE PALINSKY,  
ROGER PALINSKY,  
MATTHEW MEYER,  
CHERYL MEYER,  
ELIJAH MEYER,  
RADHI CHOUKAIER,  
Z.D., a minor, by his mother, Jenna  
Devereaux,  
JENNA DEVEREAUX,  
J.D., a minor, by her mother, Candice  
Graf,  
CANDICE GRAF

Plaintiffs,

vs.

MIDWEST ACADEMY, L.L.C.,  
MIDWEST TWISTER, L.L.C.,  
MIDWEST ACADEMY TREATMENT,  
L.L.C., MIDWEST ACADEMY  
SCHOLARSHIP FUND, INC.,  
BENJAMIN TRANE,

Defendants.

No. LALA 006303

**RULING RE:  
MIDWEST TWISTER L.L.C. MOTION  
FOR SUMMARY JUDGMENT**

Defendant Midwest Twister, L.L.C. (hereinafter Twister) filed a Motion for Summary Judgment on March 22, 2017. The Plaintiff's filed a resistance on April 11, 2017. Subsequent to that on April 27, 2017, the court entered an order staying proceedings in this case for 120 days. Twister filed a reply brief on September 4, 2017. The court scheduled submission of the Motion for Summary Judgement for October 2, 2017, without oral argument. The court then on October 29, 2017, entered an order

staying proceedings in this case, due to a criminal case pending against Defendant Benjamin Trane. Excepted from this stay were Motions for Summary Judgement and default. As a result, the Motion for Summary Judgment proceeded to submission as previously scheduled.

On November 30, 2017, the court entered its order after considering the Motion for Summary Judgment. The conclusion of the court at that time was to grant the Plaintiff's request for time to conduct additional discovery before the court finally ruled upon the Motion for Summary Judgement. After that, the court on numerous occasions scheduled the matter for submission. Because of discovery disputes and the criminal charges pending against Benjamin Trane, submission of the Motion for Summary Judgment was delayed several times. On December 18, 2018, Twister filed a motion asking the court to schedule submission of the motion. In that motion Twister notified the court that counsel for the Plaintiffs and Twister had communicated and agreed that the motion could be submitted to the court for ruling. This agreement included that after discovery had been pursued no further record would be made by either the Plaintiffs or Twister on the summary judgment motion filed on March 22, 2017. The Motion for Summary Judgment was submitted for ruling on January 22, 2019, without oral argument.

### **SUMMARY JUDGMENT STANDARD**

Summary judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment on the merits as a matter of law. Rule 1.981(3), Iowa R. Civ. P.; Behr v. Meredith Corp., 414 N.W.2d 339, 341 (Iowa

1987). The burden of demonstrating the nonexistence of a material fact is upon the moving party. *Willow Tree Investments, Inc. v. Wagner*, 453 N.W.2d 641, 642 (Iowa 1990). In determining whether a genuine issue of material fact exists which would preclude the granting of a motion for summary judgment, a court is required to view all material before it in the light most favorable to the non-moving party. *Bates v. Allied Mutual Ins. Co.*, 467 N.W.2d 255 (Iowa 1991); *Merriam v. Farm Bureau Ins. Co.*, 793 N.W.2d 520, 522 (Iowa 2011).

The requirement of a "genuine issue of fact" means the evidence is such that a reasonable trier of fact could find for the nonmoving party. *Fees v. Mutual Fire and Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992). An issue of fact is "material" only when the dispute is over facts that might affect the outcome of the suit, given the governing law. *Fees*, 490 N.W.2d at 57; *Junkins v. Branstad*, 421 N.W.2d 130, 132 (Iowa 1988). The materiality issue must be decided by reference to applicable substantive law, and only fact disputes that might affect the outcome of the suit under governing law will properly preclude the entry of judgment. *Behr*, 414 N.W.2d at 341. A fact issue is generated if reasonable minds could differ on how the issue should be resolved. *Hoefer v. Wisconsin Educational Association Insurance Trust*, 470 N.W.2d 336, 338 (Iowa 1991); *Scheckel v. Jackson County, Iowa*, 467 N.W.2d 286, 289 (Iowa App. 1991). With the foregoing in mind, the Court must view the entire record in the light most favorable to the nonmoving party. *Des Moines Register and Tribune Co. v. Dwyer*, 452 N.W.2d 491, 495 (Iowa 1996). However, once the movant satisfies the burden of production demonstrating no genuine issue of material fact exists, the burden shifts to the resisting party to produce specific facts showing that a genuine issue for trial

remains. Konz v. Ehly, 451 N.W.2d 504, 506 (Iowa App. 1989). Even if a material issue of fact exists, when "the conflict in the record consists only of the legal consequences flowing from the undisputed facts, entry of summary judgment is proper." Hoefer v. Wisconsin Educ. Assn. Ins. Trust, 470 N.W.2d 336, 338 (Iowa 1991).

### **STATEMENT OF ISSUES**

During a period of time of at least between 2010 and 2016, a boarding school type facility was operated in Lee County Iowa under the name of Midwest Academy, L.L.C. This lawsuit has been brought by former students or the parents of former students of Midwest Academy who attended the program between 2010 and 2015. The Plaintiffs have asserted numerous claims against all Defendants, including: fraud; negligent misrepresentations; false imprisonment; battery; assault; negligence; educational malpractice; intentional infliction of emotional distress; negligent hiring, supervision, and retention; respondeat superior; and violation of consumer fraud acts. The Plaintiffs are seeking both punitive and actual damages. The Defendants of course deny the claims.

The Plaintiffs seek recovery against Twister by asserting that Twister was the alter ego of Midwest Academy, L.L.C. The Plaintiffs assert that Twister is therefore liable for the actions of Midwest Academy, L.L.C. Twister denies this claim. Twister claims that it is a separate corporate entity and that it only owned the buildings and real estate where Midwest Academy, L.L.C. operated the boarding school. Twister denies that it was involved in the operation of the programs at the facility. Twister asserts that because it had nothing to do with the operation of the programs attended by the

Plaintiffs, the Plaintiffs have failed to state a claim upon which relief can be granted and it is entitled to judgment against the Plaintiffs, as a matter of law. In response to this, the Plaintiffs argue that there is a material fact in dispute as to whether Twister is the alter ego of the Midwest Academy, L.L.C. business and its programs.

### **STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

There are undoubtedly a huge number of factual disputes between the Plaintiffs and the Defendants in this matter. For the purposes of this proceeding, a minimal number of facts are relevant. Both parties have filed documents in support of their positions that are not supported by affidavit nor are they certified. Regardless of this, the parties agreed to the validity of some of these documents by submitting some of the same records. Those facts which are agreed to, that are material to the determination of whether summary judgment should be granted are as follows:

1. The corporate entity of Midwest Twister, L.L.C. is the owner of the real estate and buildings that housed the boarding school involved in this litigation. Lee County Iowa conveyed this property to Litchfield Family LTD Partnership on February 18, 2003. This real estate was then transferred to Midwest Twister, L.L.C. on October 17, 2006.
2. Twister is incorporated in the state of Utah.
3. Benjamin Trane administered or managed the boarding school known as Midwest Academy, which is the subject of this litigation. Midwest Academy, L.L.C. was incorporated in the state of Iowa. Based upon the affidavit of banker Scott Piper, Midwest Academy, L.L.C., by Benjamin Trane, was conducting business in Lee County

at least since September of 2003.

4. Lee County Assessor's records are available to the public via the web-based Beacon report. The Beacon records for the real estate owned by Twister, L.L.C. is divided into two separate parcels. On one of the parcels, the Beacon report includes a heading "Doing Business As" under this heading the record for this parcel indicates Twister was doing business as Midwest Academy. For the other parcel there is not a subheading on the Beacon records of "Doing Business As."

### **CONCLUSIONS OF LAW AND RULING**

There are other factual allegations made by both the Plaintiffs and Twister. One of these is that a specific lease was entered into between Twister and Midwest Academy, L.L.C. This allegation was not supported by affidavit or certified documents, nor was it stipulated to by both parties. As a result, this court cannot find that a material fact in dispute. It is also interesting to note that nowhere is there an affidavit from a representative of Twister indicating that Twister was not the alter ego of Midwest Academy. Instead Twister offered a document with a notary signature, purported to be signed by Benjamin Trane indicating that Twister, L.L.C. was not the alter ego of Midwest Academy or Midwest Academy, L.L.C. This document was not in the form of an affidavit. There is nothing to indicate that it was sworn to or had been verified by Benjamin Trane. Neither did either of the parties provide the court with any information as to how the assessor's Beacon site would contain information about "doing business as" for one parcel of land owned by Twister and not for another parcel of land owned by Twister. Neither party advised the court as to who supplied that information to the

assessor or whether it was supplied to the assessor by any of the parties involved. Even though this Motion for Summary Judgment has been pending for almost two years, neither one of the parties saw fit to clean up the records that they submitted, to provide the court with a clearer record to evaluate the Motion for Summary Judgment and the resistance thereto. Regardless of that, the bare minimum facts that are not disputed by the parties are sufficient for the court to make a determination herein.

When a party has met the initial burden required for summary judgment, the opposing party must then establish the existence of a triable issue of fact. Bitner v. Ottumwa Community School Dist. 549 N.W. 2d 295, 299 (Iowa 1996) "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered." Iowa Rule of Civil procedure 1.918(5).

In this case the undisputed record before the court is there are two completely separate corporate entities, incorporated in two separate states, Midwest Twister, L.L.C. and Midwest Academy, L.L.C. That fact alone is enough to establish that Twister should not be liable for the actions or wrongs of Midwest Academy, L.L.C. Consequently, the burden falls on the Plaintiffs to provide information to show otherwise. That means the Plaintiffs must present facts which would indicate these two corporate entities were acting as one. All the court has from the Plaintiffs on this point are allegations and argument. No facts have been presented to counter the fact that there are two distinct corporate entities involved. Because of the Plaintiffs' failure to

challenge that basic undisputed material fact, the court is left to determine that Twister is entitled to judgment as a matter of law and that this action as to Twister should be dismissed.

**ORDER**

IT IS THEREFORE ORDERED that Twister's Motion for Summary Judgment is granted. This action as to Midwest Twister, L.L.C. is dismissed. Any cost associated with that portion of the litigation are assessed to the Plaintiffs.

Copies to:

Counsel of Record

Self-Represented Litigants.



State of Iowa Courts

**Type:** OTHER ORDER

<b>Case Number</b>	<b>Case Title</b>
LALA006303	HUNT, DICK, BROWN, & ET AL VS MIDWEST ACADEMY LLC & ET AL

So Ordered

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Mary Ann Brown, Chief District Judge,  
Eighth Judicial District of Iowa