IN THE IOWA DISTRICT COURT FOR CARROLL COUNTY

SOFT LIGHTS FOUNDATION,
KRISTEN CAMPISI,

Plaintiffs,

v.

KARL PRE-OWNED GLIDDEN, LLC,

Defendant.

LACV040771

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter came before the court for hearing on the Defendant's Motion for Summary Judgment on July 15, 2024. Plaintiffs were represented by Diane Murphy Smith. Defendant was represented by Randy Wilharber.

In this case, in very brief summary, the Defendant built a car dealership across the highway from Campisi's house. The lot has LED lighting that the Campisi alleges has negatively affected her. She sought help from the Soft Lights Foundation, made demands of Defendant, and eventually filed suit on February 23, 2023. Plaintiffs' petition contained four counts: (I) Continuing Nuisance; (II) Public Nuisance; (III) Negligence; and (IV) Request for Injunctive Relief.

FACTS

There are a number of undisputed facts in this case.

1. Plaintiff Soft Lights Foundation is an activist nonprofit organization dedicated to matters concerning the alleged negative impact of visible electromagnetic radiation from Light Emitting Diodes ("LEDs") and light pollution. *See* Petition ¶ 1.
2. Plaintiff Kristen Campisi resides at 807 Colorado Street in Glidden, Iowa. *See* Petition ¶ 3.
3. Defendant Karl Pre-Owned Glidden, LLC operates a car dealership at 901 Colorado Street in Glidden, Iowa. *See* Petition ¶ 5.
4. Before Defendant built the dealership on the lot across the street from Plaintiff Campisi's residence, it obtained approval from the City to build on that particular lot. Exhibit A, p. 110. (Plaintiffs deny the first clause of this sentence, but one of their own exhibits is the City-issued building permit).
5. Defendant's property and Plaintiff Campisi's property are separated by State Highway 30; the Defendant to the north and Plaintiff to the south.
6. Plaintiff Campisi has lived at 807 Colorado Street in Glidden, Iowa since December 30, 2016. Exhibit A, p. 4. When she first moved into the home in 2016, she was renting the home. Exhibit A, p. 6.
7. When Plaintiff Campisi first began renting the home, the lot where Defendant's dealership now sits was an empty lot with an abandoned home surrounded by trees, bushes, and a hay field. Exhibit A, p. 5.

8. There are various commercial businesses around her house, including storage units and a Mexican restaurant directly to the west of her home and the Dairy Mart directly to the east. Further west of Plaintiff Campisi's home were other commercial businesses such as gas stations and convenience stores.
9. To the south of Plaintiff Campisi's home are two residential homes, followed by a baseball field and football field. Exhibit B.
10. In 2019, Plaintiff Campisi heard rumors that a car lot was going to be built on the then existing empty lot. Exhibit A, p. 15.
11. As soon as Plaintiff Campisi heard the rumor that there was going to be a dealership across the highway from her home, she anticipated that there would be "tons of lights." Exhibit C, pp. 42-43.
12. Plaintiff Campisi noticed the lot across the street being cleared in anticipation of construction in July 2020. Exhibit A, pp. 17-18.
13. At no time after hearing the rumors about Defendant's forthcoming dealership did Plaintiff Campisi reach out to the City of Glidden to address her concerns about the forthcoming car dealership. Exhibit C, p. 45.
14. In December 2020, Plaintiff Campisi entered into a contract to own the home. Exhibit A, p. 8.
15. Plaintiff Campisi has strong feelings about the use of LED lighting in general in the world, not just the LED lights in Defendant's parking lot. Exhibit A, p. 56.
16. Plaintiff Campisi also has issues with the LED headlights on vehicles and wears special tinted glasses to help her deal with LED lighting when she is out in the world. Exhibit A, p. 57.
17. Plaintiff Campisi joined a Facebook group called Ban Blinding LEDs, where she was introduced to Mark Baker, Founder and President of Plaintiff Soft Lights. Exhibit A, pp. 56-57, 69, 72.
18. Plaintiff Campisi has posted in the Facebook group upwards of 60 times, complaining about LED lighting in general. Exhibit A, pp. 56-57.
19. Plaintiff Campisi has made numerous posts about the LED headlights being cast onto her home from vehicles at other neighboring businesses to her home, such as the Dairy Mart and at the storage units. Exhibit D.
20. Mark Baker has filed pro se lawsuits against the FDA with regard to LED lighting. Exhibit A, p. 102. (Plaintiffs admit he filed suit, but deny it was "lawsuits", although Defendants exhibit of the FDA response indicates that he filed several petitions with them that were responded to in a singular decision, and plaintiffs admit the statement below).
21. On May 24, 2024, the FDA denied all four of Mark Baker's Citizen's Petitions in their entirety. Exhibit E.
22. Plaintiff Campisi has admitted that the Plaintiffs herein are trying to set precedent with this lawsuit with regard to "light trespass." Exhibit C, pp. 68-69 (Plaintiffs deny this assertion, but the words speak for themselves and no reasonable fact finder could come to any other conclusion than what is stated by Defendant about her testimony).
23. Plaintiffs have produced no medical evidence or expert opinions causally relating Plaintiff Campisi's perceived health ailments to the light emitted from Defendant's parking lot. (Plaintiffs deny this assertion and state that "Plaintiff is permitted to

testify regarding her own experiences, knowledge, and impact of the lights at issue in this case on her physical and mental health," but this does not work to actually refute the assertion. In addition, as explained below, Plaintiffs appear to overstate what Campisi can testify to in the absence of any expert medical testimony).

24. Plaintiffs have set forth no expert testimony establishing that any alleged decrease in her property value is in fact due to Defendant's dealership.(Plaintiffs deny this, but there is no plaintiff "expert" testimony in the record, the fact that there is limited testimony Campisi can give about the value of her property, as discussed below, does nothing to refute the statement that there is no expert testimony.)
25. Plaintiffs have failed to identify an expert to testify to the standard of care that would be owed by a car dealership to a neighboring residential property owner or regarding the breach of any owed duty.(Plaintiffs deny this assertion; again, they have no case-in-chief expert, whether they need one is really a legal issue which is discussed below.)

Plaintiffs dispute certain facts alleged by Defendant, including whether:

1. The land Defendant's car dealership was built on was zoned for commercial use.
2. Based on data from the Iowa Department of Transportation, approximately 6,000-7,000 cars per day pass by Plaintiff Campisi's residence every day on Highway 30. Exhibit A, p. 113 (Plaintiffs admit Spangler said this, but dispute whether it is accurate).
3. Plaintiffs have failed to prove that their perceived harm and/or annoyance with Defendant's lights are shared by objective, normal people in their community.

Plaintiff also allege several additional facts as undisputed:

1. Plaintiff Kristen Campisi ("Kristen") has resided at 807 Colorado Street in Glidden, Iowa since 2016. *See* Petition ¶¶ 3, 9.
2. Defendant Karl Pre-Owned Glidden LLC ("Karl Pre-Owned") constructed a car dealership at 901 Colorado Street in Glidden, Iowa in 2022. *See* Petition ¶¶ 5, 12.
3. In March 2022, Defendant installed tall LED light fixtures that emit bright light from Defendant's parking lot. *See* Petition ¶ 12
4. The LED light fixtures stay operational past business hours into the night with some staying operational throughout the whole night. *See* Petition ¶¶ 12-13
5. The LED light emitted from Defendant's light fixtures shine past Defendant's property onto Kristen's residence. *See* Petition ¶ 15
6. Kristen has been forced to change how she lives because of Defendant's lights. Pltf.'s Exhibit 2, p. 20.
7. Kristen hung multiple curtains on windows throughout her house and even taped some of them to the wall to try and block the light from Defendant's property. Pltf.'s Exhibit 2, p. 26, 29

8. Mark Baker, founder of Plaintiff Soft Lights Foundation, repeatedly reached out to Defendant asking for a change in the type of light used or hours the LED lights are operational. Pltf.'s Exhibit 2, p. 73
9. Defendant refuses to change the type of light used or use less bright LED lights to reduce interference with Kristen's residence. Pltf.'s Exhibit 1, pp. 33-36
10. Bryan Spangler, Managing Partner of Defendant Karl's Pre-Owned, cannot identify any harm that his business would suffer if changes to the lighting in the parking lot were made Pltf.'s Exhibit 1, pp. 37-8
11. Mr. Spangler readily acknowledges that he would be annoyed by the lights if he lived at Kristen's residence. Pltf.'s Exhibit 2, p. 127
12. Mr. Spangler also testified he has similar lights in his backyard from a baseball field that he finds annoying. Pltf.'s Exhibit 2, p. 128.

In addition, as part of the summary judgment record, Defendant asked the court to take notice of its Findings of Fact from its order on the request for a temporary injunction which was entered on March 1, 2024. Plaintiff did not object and plaintiff made part of the record the entire transcript of that hearing. The following were the Court's findings of fact after the temporary injunction hearing:

> Kristen Campisi owns the home located at 807 Colorado Street in Glidden, Iowa. She moved in at the end of 2016. She was renting at the time, but later purchased the home on contract in December of 2020.
>
> The home is located on State Highway 30. To the south and east of the home is a residential neighborhood. Across the road to the east is a business, the Dairy Mart. To the west are storage units and a Mexican restaurant. She is aware that further west are other commercial locations such as gas stations and convenience stores which have lights on at night. At the time she moved in, across the highway to the north was a house surrounded by trees, bushes, and a hay field. She enjoyed looking across to the lot and seeing all of the fireflies at night. This is the lot that Karl Pre-Owned is now located upon.
>
> There is a streetlight at her corner. The Dairy Mart has a light, as does the Mexican restaurant. These lights do not bother her. She has bedroom windows which face north (towards Karl Pre-Owned) and west.
>
> Between 2018 and 2020, Campisi began landscaping her yard and planting flowers that would attract pollinators and butterflies. The pollinators were not affected by the lights that were around before Karl Pre-Owned. Inspired by her grandmother, she enjoyed gardening and the feelings of nostalgia. She found it good for her mental health and peace of mind. She spent many hours developing the garden. She would take pictures and share them with her mother who was in a nursing home. She spent many hours watering and caring for the garden, but also just enjoying the view and relaxing, watching the birds and insects attracted to the plants. She went out on a daily basis when the weather was favorable.
>
> Prior to the pandemic, she had heard that there was going to be a car lot going in

across Highway 30 from her. In July of 2020 the trees across the highway began to be torn down. This upset her greatly and she worried where the birds that used them would go. The house that stood on the lot was moved, and the lot was emptied and cleared.

On March 2, 2022 the outside lights of the dealership came on. She had robins nesting in her yard, but they later moved. Birds would still visit her yard in the daytime, but not nest there any longer. The way she lived changed. She already had blackout curtains in her bedroom to block out the light from cars, semis, the streetlight, and other lights around her house (it should be noted that between 6,000 and 7,000 cars per day pass the intersection on which her house is located).

In addition to the blackout curtains that she already had, she added a shade, and another set of old curtains, that she taped to the wall so as to try and stop light from coming around the edges. Her cats will sometimes pull them open. The first night, she put old clothes and blankets over her window to try and keep out the light. She closes her bathroom door to prevent any light coming into the bathroom from spilling out to her bedroom.

A sleep schedule is important to Campisi as she works an early shift at a radio station. She usually goes to bed around 8:30 p.m. so that she can get up early in the morning, generally at 4:30 a.m. if she has to work. She feels the lights have diminished her sleep quality and that she never gets a good night's sleep anymore. She always feels timepressured that she must complete her outdoor tasks before the lights come on. The lights hurt her eyes and she tries not to look at them.

The first morning after the lights were on, she woke up with a bloody nose. She does not know if it was coincidental, but blames it on the stress that the lights cause her. The lights give her anxiety and she believes high blood pressure. She was diagnosed with lupus in 2010, and she feels the lights aggravate her condition. She asked her primary care physician if he would provide an opinion that the lights cause her medical issues, but he was not willing to do so.

With the lights, she can no longer look out her north window. It is too hard to open the curtains during the day as it would require taking off all the tape and then putting it back on (there is one curtain that is opened to give light to her house plants). She no longer wants to be outside on her property when the lights are on.

As soon as the lights came on in March of 2022, she was worried about the effect on her pollinators in her garden. She posted a question in a Facebook group and someone replied that she should contact the Soft Lights Foundation, which she did. Membership in the foundation is informal, and Campisi is a member.

Campisi began to keep a journal that she kept on a regular basis through May of 2022. The lights come on at sunset, and originally all stayed on all night. As soon

as March 14, 2022, Karl Pre-Owned began to shut the front row of lights directly across from Campisi off. On March 21, 2022 Karl had shields installed on the lights which are intended to direct the light more onto their own lot and keep it from spreading over to Campisi's property. Campisi said in her journal that she thought the shields made the lights seem brighter.

From March 24, 2022 through April 1, 2022 all of the lights were off. New shields were placed on the lights and they were turned back on. Again, Campisi felt this just made them brighter, and she again became anxious and her heart raced that night. In the first week of April 2022 Karl Pre-Owned began their practice of shutting off all of the outside lights with the exception of two starting at 10:30 p.m., and those two are the lights that stay on all night. Campisi journaled that she was at that time taking Tylenol every night so that she would not wake up from headaches. She has more headaches than before the lights, at least once a month, but her lupus can also cause headaches. She also complained in early 2022 of eye issues and body tingling. Campisi believes, based on information from Soft Lights, that she will eventually get cancer due to the lights.

Campisi believes she has had to completely change her way of life due to the dealership moving in. Campisi acknowledged that she has very strong feelings on LED lights in general. She has posted numerous times in the Facebook group run by Soft Lights. She does not think LED lights should be used at all, but acknowledged that the dealership is not the only business along Highway 30 in Glidden that uses them.

Soft Lights sent letters and emails to Karl Pre-Owned on behalf of Campisi on March 3, 2022; March 4, 2022; and March 5, 2022. In addition, counsel for Campisi sent a letter on April 6, 2022. This correspondence demanded changes that were in line with what Campisi testified to at trial. Campisi would like Karl Pre-Owned to:

1. Shut off their lights when they are not open, or alternately at least by 8:00 p.m.
2. Put in amber lights instead of blue LED lights.
3. Further shield the lights so that they do not spill on her property.

Mark Baker also testified. He is the founder and president of the Soft Lights Foundation. The foundation believes that LED light is harmful and seeks to limit the usage of LED lights. It also seeks to protect the "natural night" by reducing overall light usage at night. He noted that he and his organization are advocating on behalf of Campisi.

He indicated that he filed a lawsuit against the FDA in January of 2024 regarding LED lighting. He believes that the FDA is not complying with current law requiring them to do more study in the area. He says he has filed many regulatory agency petitions seeking for them to do more study on light emissions. He stated that he does not believe that LED lights can be made safe, and that they should be banned if they cannot be made safe.

By background, Baker has a Bachelor of Science degree in Electrical Engineering from the University of California at Santa Barbara. He acknowledged that he has no masters degree, no doctorate, is not a medical doctor, and has no peer reviewed publications. He self-published one article. He formerly worked as a math teacher and software developer.

He has been studying LED lights on his own for the past 8 years. He believes that LED lights have a more directed beam that is more laser-like than incandescent lights. In addition, there is much more blue light in the LED light spectrum, which he believes is harmful to humans. He acknowledged that he has his own adverse health conditions which he attributes to LED lights.

He developed the terms he used in his letters to the defendant in which he describes LED lights as a “flat” source light, while things like the sun, candles, and incandescent lights he describes as ”point” source light. He pointed to an AMA published report in 2012 that notes harmful effects on humans of blue light. A negative effect on the circadian rhythms could then increase the chance of cancer. He believed that Campisi’s trouble sleeping would be consistent with the research on blue light.

According to Baker, the AMA in 2016, and then later a UN commission, suggest a limit of 3000 and then 2200 Kelvin for lighting. Kelvin is a scale that can be used to describe the amount and color of light emitted from a source (based on the color glow that emanates from metal at different temperatures). He noted that the Illuminating Engineering Society disagreed with these findings. Baker testified that LED lights in general usually put out 5000 Kelvin. Incandescent lights would be around 2700 Kelvin and sodium lights would be about 2200 Kelvin.

Baker said that in following up to his letter and emails, he told Bryan Spangler at Karl Pre-Owned that the lights could lead Campisi to have a heart attack or seizure. He believes that blue light can cause blood pressure to rise. His sources for his initial letter to Karl Pre-Owned were Wikipedia and the Soft Lights website.

Baker believes that night lighting provides no benefit in reduction of crimes like vandalism and theft. He cites to a study regarding blackout crime in the UK during World War II. After an initial increase at the start of the blackout, the crime rate then went down. However, when asked about the law enforcement crackdown on those committing crimes during the blackout and its effect on the crime rate, he stated that there were “ambiguities” in the article.

Baker noted that there are no FDA regulations or guidelines on the use of artificial light outdoors at night. Baker believes that any amount of artificial light at night is a pollutant and harms human health. He thinks that lights used outdoors at night should be: turned off if no one is around, use amber light, use bollards which are shorter and therefore cast the light over a much smaller area.

As to Karl Pre-Owned, he believes that they should:

1. Fully shield their lights to keep them focused solely on their own property.

2. Only have their lights on when the business is open.

Bryan Spangler testified on behalf of the defendant. He is employed by defendant and manages their Glidden, Stuart, and Webster City, Iowa locations. He has 23 years of experience in the car dealership business, including ten years when he owned his own dealership.

He stated that all car lots have outdoor lighting. The lot at a car dealership is a retail showroom, and the place where dealers showcase their cars for sale. He says they have traditionally been illuminated at night. All of his competitors that he has observed have their lots lit up at night, and he must compete with them to sell the same cars. He noted that people want to be able to see the cars, but often come when the business is closed so that they can look at their leisure without yet having to deal with a salesperson.

The Glidden location had a general contractor to oversee all aspects of the construction. The city approved them to build at their location. The lighting was designed by D/R Electric, and he believes that they consulted with someone that their design was acceptable. He believes that they have photometrics of the dealership.

The Glidden location is open on Monday and Thursday from 8:00 a.m. until 7:00 p.m.; on Tuesday and Wednesday from 8:00 a.m. until 6:00 p.m.; on Friday from 8:00 a.m. until 5:00 p.m.; on Saturday from 8:00 a.m. until 3:00 p.m.; and closed on Sundays.

Spangler added that the lights are also to deter theft and vandalism. He has security cameras, and without the lights their night footage is not clear. He says vandalism occurs regularly. He noted three thefts at their Stuart location that resulted in insurance claims. These all occurred after hours when the lights were off. Not all incidents result in them making an insurance claim. They have had no claims out of their Glidden location. It was stated that most of the lights are turned off each night in their Stuart and Webster City locations from about 12:00 a.m. until about 5:00 or 6:00 a.m.

After receiving the complaint letter in regard to Campisi, he called and checked with the City of Glidden, the contractor, and the sheriff that he was not violating any laws. He said they used the lowest wattage lights possible to lower their brightness. They put on shields at their own expense to try and direct the light more onto their own property. They shut off all the outdoor lights with the exception of two at 10:30 p.m. The residential property owner to their east had asked at the beginning if they could turn down their lights, and he was happy with the steps that they took.

Spangler believed turning the lights off at 8:00 p.m. would lower his sales, but cannot give a specific quantification. He believes from the emails and phone messages that they receive when they are closed that a significant number of initial sales contacts are coming from after hour drive-bys, but there is no hour-

by-hour quantification that can be made. He indicated that he is aware of competitors who have lights on past 10:30 but did not know if they shut theirs off for periods or exactly when they might do so.

In regard to amber lights, Spangler noted that his competitors do not use them and he believes that the cars are not as visible with them. He thinks the cost to change to them would be significant, but he did not have any actual numbers.

Spangler acknowledged that if he lived next to the Glidden location he would find it annoying if all of the lights were on all of the night. He lives near the baseball field in Coon Rapids, Iowa, and they have bright lights on in the summer several times a week up until about 10:00 p.m. or later. He also has an LED streetlight in his front yard that is on all night. He noted that the Campisi residence has commercial buildings on three sides of it.

I. SUMMARY JUDGMENT STANDARD

A. Summary Judgment in General

Summary judgment is properly granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); Banwart v. 50th St. Sports, L.L.C., 910 N.W.2d 540, 544 (Iowa 2018). The record is viewed in the light most favorable to the nonmoving party. Id. at 545. "Even if facts are undisputed, summary judgment is not proper if reasonable minds could draw from them different inferences and reach different conclusions." Goodpaster v. Schwan's Home Serv., Inc., 849 N.W.2d 1, 6 (Iowa 2014). "The burden of showing undisputed facts entitling the moving party to summary judgment rests with the moving party." Morris v. Steffes Grp., Inc., 924 N.W.2d 491, 496 (Iowa 2019). A fact is material if it affects the outcome of the case, and a genuine issue exists when reasonable minds could disagree. See Banwart, 910 N.W.2d at 544.

"To obtain a grant of summary judgment on some issue in an action, the moving party must affirmatively establish the existence of undisputed facts entitling that party to a particular result under controlling law." Swainston v. Am. Family Mut. Ins. Co., 774 N.W.2d 478, 481 (Iowa 2009).

"Summary judgment is proper when the plaintiff's claim lacks evidence to support a jury question on an essential element of the claim." Ranes v. Adams Labs., Inc., 778 N.W.2d 677, 685 (Iowa 2010).

"A party resisting a motion for summary judgment cannot rely on the mere assertions in [their] pleadings but must come forward with evidence to demonstrate that a genuine issue of material fact is presented." Stevens v. Iowa Newspapers, Inc., 728 N.W.2d 823, 827 (Iowa 2007).

The Court views the record in the light most favorable to the resisting party, affording that party all reasonable inferences that the record will bear. Gannon v. Bd. of Regents, 692 N.W.2d 31, 37 (Iowa 2005). The Court should indulge in every legitimate inference that the evidence will bear in an effort to ascertain the existence of a fact question. Id.

An inference is legitimate if it is rational, reasonable, and otherwise permissible under the governing substantive law. Id. On the other hand, an inference is not legitimate if it is based upon speculation or conjecture. Id. The burden of showing the nonexistence of a fact question rests with the moving party. Id. If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists. Id. See also Bank of the W. v. Kline, 782 N.W.2d 453, 456– 57 (Iowa 2010) (quoting Hills Bank & Tr. Co. v. Converse, 772 N.W.2d 764, 771 (Iowa 2009)).

If there are disputed facts, the court does not weigh the evidence, but rather only inquires whether a reasonable jury faced with the evidence presented could return a verdict for the nonmoving party. Bitner v. Ottumwa Cmty. Sch. Dist., 549 N.W.2d 295, 300 (Iowa 1996). Mere skepticism of a plaintiff's claim is not a sufficient reason to prevent a jury from hearing the merits of a case. Clinkscales v. Nelson Sec., Inc., 697 N.W.2d 836, 841 (Iowa 2005).

[A]t the summary judgment stage the court should *not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter.* Rather, the court's function is to determine whether a dispute about a material fact is genuine, that is, whether a reasonable jury could return a verdict for the nonmoving party based on the evidence. Wyngarden v. State Judicial Branch, 2014 WL 4230192 at *8, 856 N.W.2d 2 (Iowa Ct. App. 2014).

When a motion for summary judgment is made and supported as provided in the rule, an adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in the rule, must set forth specific facts showing that there is a genuine issue for trial. Iowa R. Civ. P. 1.981(5). “Speculation is not sufficient to generate a genuine issue of fact.” Nelson v. Lindaman, 867 N.W.2d 1, 7 (Iowa 2015) (quoting Hlubek v. Pelecky, 701 N.W.2d 93, 96 (Iowa 2005)).

While recognizing that a nonmoving party is entitled to all reasonable inferences in a motion for summary judgment, the requirement to identify specific facts in response to a summary judgment motion includes the requirement to identify those facts that support the inference sought to be drawn. Green v. Racing Ass'n of Cent. Iowa, 713 N.W.2d 234, 246 (Iowa 2006).

“Summary judgment is proper when the plaintiff’s claim lacks evidence to support a jury question on an essential element of the claim.” Ranes v. Adams Labs., Inc., 778 N.W.2d 677, 685 (Iowa 2010). The method by which a trial court is to ascertain whether a genuine material fact issue exists is similar in theory to the motion for directed verdict. Meyer v. Nottger, 241 N.W.2d 911, 917 (Iowa 1976). If, upon the basis of such material before the court as would be competent proof at trial, the court would be compelled to direct a verdict for the movant, then it is proper to render summary judgment. Id. Summary judgment is not a dress rehearsal or practice run; “it is the put up or shut up moment in a lawsuit, when a [nonmoving] party must show what evidence it has that would convince a trier of fact to accept its version of the events.” Slaughter v. Des Moines Univ. Coll. of Osteopathic Med., 925 N.W.2d 793, 808 (Iowa 2019).

B. **Summary Judgment and Negligence**

A person is negligent by failing to exercise reasonable care under the circumstances. See Hoyt v. Gutterz Bowl & Lounge, L.L.C., 829 N.W.2d 772, 777 (Iowa 2013). Ordinary care is the care which a reasonably careful person would use under similar circumstances. Bartlett v. Chebuhar, 479 N.W.2d 321 (Iowa 1992); Schalk v. Smith, 277 N.W. 303 (Iowa 1938). "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances. Id.

To be actionable, a claim of negligence must satisfy four elements:
(1) existence of a duty, (2) failure to conform to that duty, (3) causation, and (4) damages. Stotts v. Eveleth, 688 N.W.2d 803, 807 (Iowa 2004); See also Vossoughi v. Polascheck, 859 N.W.2d 643, 654 n.6 (Iowa 2015).

A jury ordinarily decides questions of negligence and proximate cause; only in exceptional cases should they be decided as a matter of law. Thompson v. Kaczinski, 774 N.W.2d 829, 832 (Iowa 2009). But if a plaintiff cannot provide sufficient evidence to generate a fact question on each element of negligence, the district court need not submit the case to the jury. Garr v. City of Ottumwa, 846 N.W.2d 865, 869 (Iowa 2014).

The plaintiff must prove a duty of care was owed to him or her . . . ." Shivvers v. Hertz Farm Mgmt., Inc., 595 N.W.2d 476, 480 (Iowa 1999). Because the existence of a duty under a given set of facts is a question of law for the court, it is properly resolvable by summary judgment. Thompson v. Kaczinski, 774 N.W.2d 829, 834 (Iowa 2009); see also Overturff v. Raddatz Funeral Servs., Inc., 757 N.W.2d 241, 245 (Iowa 2008) (citing Kolbe v. State, 625 N.W.2d 721, 725 (Iowa 2001); and Sankey v. Richenberger, 456 N.W.2d 206, 209 (Iowa 1990) ("An actionable duty is defined by the relationship between individuals; it is a legal obligation imposed upon one individual for the benefit of another person or particularized class of persons.")).

Negligence means a failure to use ordinary care. Schalk, 277 N.W. at 305. As a general rule, a party claiming negligence must identify specifically the acts or omissions constituting negligence. Rinkleff v. Knox, 375 N.W.2d 262, 266 (Iowa 1985). The purpose of requiring specification of negligence is to limit the determination of the factual questions arising in a negligence claim to only those acts or omissions upon which a particular claim is in fact based. Id.

Generally, when the ordinary care of a licensed professional is an issue, only experts in the profession can testify and establish the standard of care and the skill required. Perin v. Hayne, 210 N.W.2d 609, 613 (Iowa 1973); Welte v. Bello, 482 N.W.2d 437, 439 (Iowa 1992); Stender v. Blessum, 897 N.W.2d 491, 505 (Iowa 2017) (citing Barker v. Capotosto, 875 N.W.2d 157, 167 (Iowa 2016); Crookham v. Riley, 584 N.W.2d 258, 266 (Iowa 1998). There are exceptions to the need for an expert witness when lack of care is so obvious as to be within comprehension of a layman. Perin v. Hayne, 210 N.W.2d 609, 613 (Iowa 1973).

Negligence claims are generally ill-suited for summary judgment:

> It is the court's view the general rule that issues of negligence, contributory negligence and proximate cause, the resolution of which requires determination of the reasonableness of the acts and conduct of the parties under all the facts and circumstances of the case, are ordinarily not susceptible of summary adjudication either for or against the claimant but should be resolved by trial in the ordinary manner....

Steinkuehler v. Brotherson, 443 N.W.2d 698, 700 (Iowa 1989) (quoting Daboll v. Hoden, 222 N.W.2d 727, 734 (Iowa 1974).

However, as mentioned above, since "The existence of a legal duty is a question of law" it is properly resolvable on summary judgment. Kolbe v. State, 661 N.W.2d 142, 146 (Iowa 2003).

II. NEGLIGENCE

Defendant argues that without expert testimony, Plaintiffs cannot show the violation of any standard creating a duty by Defendant. Only defendant has an expert report regarding industry standards for commercial lighting. Plaintiffs argue that Defendant breached the duty of any property owner not to injure the rights of a neighboring property owner. It should be noted that in their petition, the plaintiffs alleged that the defendant was negligent in emitting excessively bright light, which interfered with Plaintiff's use and enjoyment of her property, and was a proximate cause of damage to Campisi.

It appears to the court that Plaintiffs have conflated the duty standard of their negligence claim with the elements of their nuisance claim.

A recent Iowa Supreme Court case discussed in detail the relationship of nuisance and negligence. It is not unusual for both claims to be brought in the same case. In *Vagts*, the defendant argued that the jury instructions on nuisance required there to be some finding of negligence. Vagts v. N. Nat. Gas Co., No. 23-0537, 2024 WL 3075432 (Iowa June 21, 2024).

The Court stated that:

> Iowa law distinguishes between negligence and nuisance. "Negligence is a type of liability-forming conduct, for example, a failure to act reasonably to prevent harm. In contrast, nuisance is a liability-producing condition." While negligence may accompany a nuisance, it "is not an essential element of nuisance." "If the condition constituting the nuisance exists, the person responsible for it is liable for resulting damages to others even though the person acted reasonably to prevent or minimize the deleterious effect of the nuisance."

Vagts v. N. Nat. Gas Co., No. 23-0537, 2024 WL 3075432, at *4 (Iowa June 21, 2024) (internal citations omitted).

The Court held that it was clear that an action for nuisance does not require proof of negligence. Id. at *6. Instead, nuisance is "a condition, and not an act or failure to act on part of the person responsible for the condition." Id. (internal citations omitted). A finding of nuisance is based upon the plaintiff's harm and not necessarily upon the defendant's conduct." Id. Under the Code, "[i]f the wrongful condition exists, and the person charged therewith is responsible for its existence, he is liable for the resulting damages to others, though he may have used the highest possible degree of care to prevent or minimize the deleterious effects." Id.

While the discussion in *Vagts* focused on there not being a need to prove negligence to prove nuisance, an analysis of that discussion also makes clear that negligence is something separate, distinct, and more than nuisance. A nuisance can exist even where the defendant used the highest possible degree of care. That is clearly not true for negligence. Thus, the duty or standard of care for negligence has to be something more or different than the nuisance "duty" not to injure a neighbor's enjoyment of their property. Plaintiffs seemed to recognize this in their petition when they alleged that the negligence was a failure by Defendant to keep their lights from being excessively bright. This articulates a standard that is alleged to be violated.

When considering negligence cases, in order to prove whether a business' lights were too bright would require comparing them to a uniform standard, in other words, an industry standard. Defendants have a report from an expert that the Defendant's lights meet industry standards. Plaintiffs do not have an expert or report that the lights were excessively bright compared to any industry, scientific, or other objective standard.

Related to this standard, there would also have to be proof that the violation of the standard was the proximate cause of the damage to the Plaintiffs. In the context of an industry standard, such causation evidence also generally requires an expert.

The Plaintiffs cite a number of cases that they say articulate a duty standard, and thus indicate that their negligence claim should survive summary judgment. However, the court does not believe that any of them actually support that position.

Plaintiffs point to language in *Hughes* that businesses owe a duty to neighbors "to respect such person's right to the comfortable enjoyment of his own property." Hughes v. Scheurman Bros., 112 N.W. 198, 199 (Iowa 1907). This is a nuisance case, there is no discussion of a negligence claim in the case, in fact, a search shows that the word negligence does not appear in the case. This indicates a conflation of the nuisance standard with the negligence standard by the Plaintiffs.

Plaintiffs next cite to *Garrison*, and its language that there is "an overriding requirement that one must exercise ordinary care in the use of his property so as not to injure the rights of neighboring landowners." Garrison v. New Fashion Pork LLP, 977 N.W.2d 67, 90 (Iowa 2022). However, this language is in reference to the general rule for drainage, that the dominant owner is entitled to drain surface water in a natural watercourse from his land over the servient owner's land and if any damage results the servient owner is without remedy. Id. at 89 (analyzing the claim for water trespass in the case).

To the extent that the water trespass dealt with any negligent actions the Court upheld a summary judgment ruling that dismissed the Plaintiff's negligence related claim:

> *The district court correctly granted summary judgment based on Garrison's lack of evidence on causation*. "Generally questions of negligence, contributory negligence, and proximate cause are for the jury; it is only in exceptional cases that they may be decided as matters of law." The court determined that Garrison lacked evidence to prove causation:
>
> Plaintiff has yet to provide any analysis as to how the results of the water tests establish any violation on the part of Defendants. *No expert has been disclosed [to] give an opinion as to what the results of the water tests mean. Plaintiff has offered no expert evidence as to how any resulting inference can be correlated or attributed to Defendants*. The water test results do not create a genuine issue of material fact on any issue. This is a subject that is beyond the ordinary intelligence of a layperson and must be supported by expert testimony ....
>
> We agree. Garrison's failure to present expert testimony is fatal.
>
> The defendants' properly supported motion for summary judgment required Garrison to "set forth specific facts showing that there is a genuine issue for trial." He failed to do so. Garrison lacked evidence showing the defendants' actions caused any recoverable damage to his property. Without accompanying expert testimony, his water tests do not show an increase in nitrate levels nor a spike in nitrate levels that would correlate with manure spreading. And even assuming an increase in nitrate levels, Garrison lacked expert testimony to attribute or correlate any increase in nitrate levels in the stream to the defendants' actions.
>
> We agree with the district court that "[w]ithout expert testimony tying Defendants' alleged misapplication or over-application of manure to the nitrate levels in the Plaintiff's stream, Plaintiff cannot, as a matter of law, meet his burden of proving that any trespass or drainage violation proximately caused any damage to the Plaintiff." Further, the record contains no evidence showing Garrison's property was damaged by any increased drainage or by any excess nitrate in the water flowing through his property. The defendants were entitled to summary judgment on this record.

Id. at 90 (internal citations omitted) (emphasis added).

As in *Garrison*, in this case the plaintiffs lack of expert testimony to establish the violation of a standard of care, and proximate cause of that violation to claimed damages, is fatal to their negligence claim.

Plaintiffs also cite to *Weinhold's* language that "Parties must use their own property in such a manner that they will not unreasonably interfere with or disturb their neighbor's reasonable use and enjoyment of the neighbors property." Weinhold v. Wolff, 555 N.W.2d 454, 459 (Iowa 1996). However, in that case the plaintiff's negligence claim was withdrawn at trial, and the trial, and the quoted language, were in regards to the

nuisance claim. Again, plaintiffs conflate the nuisance standard with a negligence standard.

In Oak Leaf Country Club, Inc. v. Wilson, 257 N.W.2d 739, 744 (Iowa 1977), the court found that the evidence was insufficient to generate a jury question as to the existence of the foundational fact of exclusive control that was essential to the claim of negligence per se. The court found that it was the water rights claim of plaintiff that should have been submitted to the jury, but that dismissal of the negligence claim was proper.

Finally, in Bates v. Quality Ready-Mix Co., 154 N.W.2d 852, 857 (Iowa 1967), Plaintiffs point to the language that "One must use his own property so that his neighbor's comfortable and reasonable use and enjoyment of his estate will not be unreasonably interfered with or disturbed." However, the case makes no reference to a negligence claim and the language again relates to a nuisance claim.

For these reasons, the negligence claim should not survive summary judgment. In addition, the court does not believe that there is evidence in the summary judgment record to show that the plaintiffs had provable negligence damages, which would also be fatal the negligence claim.

III. NEGLIGENCE DAMAGES

Special rules related to damages in negligence cases also call for summary judgment on the negligence claim, as the summary judgment record does not show enough proof of allowable damages in negligence.

First, Campisi has no expert testimony to show medical causation for any alleged physical impairments or medical diagnoses that she attributes to the lights. An expert would be necessary to both make the diagnosis and show its causal relation to the lights, and Campisi does not have evidence admissible in her case in chief that she can point to in the summary judgment record. She claims the lights gave her nose bleeds, high blood pressure, the medical condition of anxiety, and aggravate her lupus, but these are technical scientific issues outside the understanding of a lay person, and she would need an expert to make these diagnoses and show causation.

Second, Campisi claims to have emotional distress caused to her by the lights. When there is not medical causation evidence, this is commonly referred to as garden variety emotional distress.

However, it is the general rule in Iowa, with recognized exceptions, that there can be no recovery for emotional distress "absent intentional conduct by a defendant or some physical injury to the plaintiff." Mills v. Guthrie County Rural Elec. Coop. Ass'n, 454 N.W.2d 846, 852 (Iowa 1990). As a general rule, Iowa has refused to recognize an independent claim for emotional distress based on negligence without some physical harm. Clark v. Estate of Rice ex rel. Rice, 653 N.W.2d 166, 170 (Iowa 2002). Iowa has recognized two exceptions, first being the bystander rule, which is not applicable here. Id.

A second exception has been carved out for direct victims of emotional distress where the nature of the relationship between the plaintiff and the defendant is such that it supports the imposition of a duty of care on the defendant to avoid causing emotional harm to the plaintiff. Id. at 170-171. Where the parties assume a relationship that is contractual in nature and which deals with services or acts that involve deep emotional responses in the event of a breach, the Iowa courts have recognized a duty of care to protect against emotional distress, as an exception to the general rule. Id. at 171. There must be both the emotional situation, and a contract. Millington v. Kuba, 532 N.W.2d 787, 793 (Iowa 1995). Cases have included contracts for funeral services or a claim for legal malpractice that resulted in the plaintiff being barred from reentering the United States.

The parties here have no contractual relationship with each other. Campisi could therefore not establish any emotional distress damages for a negligence claim, because she has no medical proof of physical injury.

Third, Campisi claims a diminution in the value of her real property. However, as a general proposition, the "economic loss rule" bars recovery in negligence when the plaintiff has suffered only economic loss (as opposed to physical injury or damage arising from sudden and dangerous injuries or claims for negligent misrepresentation); a plaintiff who has suffered only economic loss due to another's negligence has not been injured in a manner which is legally cognizable or compensable. Annett Holdings, Inc. v. Kum & Go, L.C., 801 N.W.2d 499 (Iowa 2011).

In Iowa, under the economic loss doctrine, a plaintiff cannot maintain a claim for purely economic damages arising out of a defendant's alleged negligence. Determan v. Johnson, 613 N.W.2d 259, 261 (Iowa 2000) (citing *Nebraska Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.*, 345 N.W.2d 124 (Iowa 1984); *Nelson v. Todd's Ltd.*, 426 N.W.2d 120, 123 (Iowa 1988); *Richards v. Midland Brick Sales Co., Inc.*, 551N.W.2d 649, 650 (Iowa Ct. App. 1996)). "The well-established general rule is that a plaintiff who has suffered only economic loss due to another's negligence has not been injured in a manner which is legally cognizable or compensable." Nebraska Innkeepers, 345 N.W.2d at 126.

This again ties to the fact that Campisi has no provable physical injuries without expert testimony on diagnosis and causation. She thus appears to have no types of damages that would be recoverable under negligence. Summary judgment is properly granted as to the negligence claim for this reason as well.

IV. NUISANCE

Statutory nuisance is defined under Iowa Code Section 657.1(1):

> Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere unreasonably with the comfortable enjoyment of life or property, is a

> nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the nuisance and to recover damages sustained on account of the nuisance...

Iowa code Section 657.2 then provides certain situations which can qualify as a nuisance, which includes "The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public."

The Iowa Code provisions are mirrored in the City of Glidden ordinances at Chapter 50.

These statutory provisions do not modify the common-law's application to nuisances. Bates v. Quality Ready–Mix Co., 261 Iowa 696, 703, 154 N.W.2d 852, 857 (1967). These provisions are skeletal in form, and the courts look to common law to fill in the gaps. Weinhold v. Wolff, 555 N.W.2d 454, 459 (Iowa 1996)

A private nuisance is "an actionable interference with a person's interest in the private use and enjoyment of the person's land." Id. Parties must use their own property in such a manner that they will not unreasonably interfere with or disturb their neighbor's reasonable use and enjoyment of the neighbor's property. Id.

Whether a lawful business is a nuisance depends on the reasonableness of conducting the business in the manner, at the place, and under the circumstances in question. Id. Thus the existence of a nuisance does not depend on the intention of the party who created it. Id. (citing Patz v. Farmegg Prods., Inc., 196 N.W.2d 557, 561 (Iowa 1972)). Rather, it depends on the following three factors: priority of location, the nature of the neighborhood, and the wrong complained of. Id. Whether a party has created and maintained a nuisance is ordinarily a factual question. Id.

Priority of location is examined in reference to the challenged activity. Perkins v. Madison Cnty. Livestock & Fair Ass'n, 613 N.W.2d 264, 272 (Iowa 2000).

The fact finder uses the normal person standard to determine whether a nuisance involving personal discomfort or annoyance is significant enough to constitute a nuisance. Weinhold, 555 N.W.2d at 459. The normal-person standard is an objective standard and is explained in comment d to section 821F of the Restatement (Second) of Torts (1977):

> When [an invasion] involves ... personal discomfort or annoyance, it is sometimes difficult to determine whether the invasion is significant [enough to constitute a nuisance]. The standard for the determination of significant character is the standard of normal persons or property in the particular locality. If normal persons living in the community would regard the invasion in question as definitely offensive, seriously annoying or intolerable, then the invasion is significant. If normal persons in that locality would not be substantially annoyed or disturbed by the situation, then the invasion is not a significant one, even

> though the idiosyncracies of the particular plaintiff may make it unendurable to him.

Id.

A lawful business, properly conducted, may still constitute a nuisance if the business interferes with another's use of his own property. Id.

The standard used in determining whether an invasion involving personal discomfort or annoyance is substantial, is the standard of normal persons in a particular locality. Patz v. Farmegg Prod., Inc., 196 N.W.2d 557, 561 (Iowa 1972). Expert testimony is received in order to throw light on the normal person's standard and not to supplant the standard itself. Id. at 561-62.

The Court in *Patz* approved the following comment which follows section 822, Restatement of Torts 230:

> If normal persons living in the locality would regard the particular situation as definitely offensive or annoying, then the invasion is substantial, * * * Rights and privileges in respect to the use and enjoyment of land are based on the general standards of normal person.

Id., at 562.

The court has held that noises may be of such a character and intensity as to so unreasonably interfere with the comfort and enjoyment of private property as to constitute a nuisance, and, in such cases, injury to health of the complaining party need not be shown. Bates v. Quality Ready-Mix Co., 261 Iowa 696, 703, 154 N.W.2d 852, 857 (1967). It would seem reasonable then that lights of such a character and intensity to do the same would be analyzed similarly.

A Plaintiff can legitimately expect that their residence would be subject to the normal uses permitted in residential and agricultural areas, but not to uses that are not authorized in those districts, even by special permit. Perkins v. Madison Cnty. Livestock & Fair Ass'n, 613 N.W.2d 264, 272 (Iowa 2000) (Stating, “Thus, the character of the neighborhood is not one in which figure-eight racetracks would typically be found. Consequently, this factor weighs in favor of the plaintiffs.”)

As mentioned above, the Iowa Supreme Court has recently discussed how nuisance is different from a claim for negligence.

“The term nuisance signifies anything that causes loss, inconvenience, annoyance, or damage.” Vagts v. N. Nat. Gas Co., No. 23-0537, 2024 WL 3075432, at *6 (Iowa June 21, 2024) (quoting 3 Petersdorf's Com. Law, 550). If the thing complained of causes neither of these, it is no nuisance. But if it causes either in the least degree, the person complained of must be held answerable, no matter how small the damage may be.” Id.

The court noted that it has long rejected the contentions that nuisance required proof of negligence and that compliance with the law was a defense. Id. at *7. Liability for nuisance, unlike liability for negligence, exists regardless of the degree of care exercised to avoid injury." Id. at *9. While a properly delineated and proven claim of negligence can form the basis of a nuisance, negligence is not an essential or material element of a cause of action for nuisance and generally need not be pleaded or proven." Id.

Thus, a lawful business, properly conducted, may still constitute a nuisance if it interferes with another's use of his own property; and a person responsible for a harmful condition found to be a nuisance may be liable even though that person has used the highest possible degree of care to prevent or minimize the effect. Id. "An action for damages from nuisance is not predicated on negligence. It is a condition, not an act or failure to act. If the wrongful condition exists, the person responsible for its existence is liable for resulting damage to others." Id.

In *Vagts*, the court approved of the jury instructions used for the nuisance claim, finding them to be a correct statement of the law:

> A "nuisance" is whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as to unreasonably interfere with the comfortable enjoyment of life or property. It is a non-trespassory invasion of another's interest in the private use and enjoyment of land. A private use is a use of land that a person is privileged to make as an owner. The existence of a nuisance does not depend on the intention of the party creating it. A condition resulting from lawfully conducted business may constitute a nuisance.
>
> One creating a nuisance is subject to liability if: (1) the nuisance is a proximate cause of damages to another whose interest in the private use and enjoyment of land is invaded, (2) the invasion is unreasonable and (3) the degree of harm is significant under the circumstances.
>
> In determining whether an invasion is "unreasonable" you shall consider:
> (a) the extent of the harm involved;
> (b) the character of the harm involved;
> (c) the type of use or enjoyment invaded;
> (d) the suitability of the particular use or enjoyment invaded to the character of the locality;
> (e) the burden on the person harmed of avoiding the harm;
> (f) the historic use of the land and whether the use precedes the nuisance;
> (g) the suitability of the invading conduct to the character of the locality; and,

> (h) the reasonableness of conducting the defendant's business in the manner, at the place and under the circumstances in question.
>
> The degree of harm is "significant" if normal persons in the community would regard the invasion as definitely offensive, seriously annoying or intolerable. If normal persons in the community would not regard the invasion as such, the invasion is not a significant one, even though the idiosyncrasies of the Vagts may make it unendurable to them.

Id. at *3–4 (Iowa June 21, 2024)

As noted in the discussion on negligence above, it is rarely suitable for summary judgment, outside questions that are of a legal nature, because the claim depends on the reasonableness of actions.

Nearly every element of nuisance incorporates concepts of reasonableness. If there is offense to the senses, is it reasonable or unreasonable? If there is interference with the comfortable enjoyment of one's property, is it reasonable or unreasonable? Is the claimed invasion reasonable or unreasonable? In determining whether the invasion is unreasonable, a factor is whether the running of the business is reasonable in the manner, place and circumstances in question.

In determining if the degree of harm is significant, the standard is that of a normal person in the community, which brings in concepts of reasonableness.

Each of the various findings of reasonableness would be a finding of fact in and of itself. At each point where there is a question of reasonableness as to the nuisance, the parties dispute that reasonableness. This is why nuisance claims are stated to not generally be well-suited for summary judgment.

Each party argues in detail regarding priority of location, the nature of the neighborhood, and the wrong complained of, but within these categories, not only are there some disputed material facts, there are also disputed reasonable inferences to be made based of those facts. All those inferences must at this time be seen in the light most favorable to the plaintiffs. The making of those decisions on reasonableness should be left to the fact-finder. To decide them, and all the issues of reasonableness within them, on summary judgment would call for the court to take the competing facts and positions and weigh the evidence, make credibility determinations, and attempt to determine the truth of the matter. That is not the function of the court at summary judgment.

That still leaves some aspects of the required elements of nuisance that need further examination.

A. Provable Damages for Nuisance

First, the defendant argues that the Plaintiffs cannot prove any damages for nuisance.

The court believes that Campisi cannot prove "medical" damages related to nuisance for the same reasons noted above in the negligence discussion. She does not have a medical expert that would be needed to prove diagnosis and causation.

Campisi also points to an alleged diminution in the value of her property, by offering several county property assessments of herself and others in Glidden. Her latest assessment is lower, while the other owners have assessments that are higher.

A diminution in property value is a recognized form of damages for nuisance. When the nuisance is permanent, the proper measure of damages is the diminution in the market value of the property. Weinhold v. Wolff, 555 N.W.2d 454, 465 (Iowa 1996). The diminution in value refers to "the diminution of the market value of the property for any use to which it might be appropriated, and not merely its diminution in value for the purpose to which the plaintiff dedicated it." Id. This measure of damages compensates the injured landowner for an interference that is tantamount to a permanent taking. Id.

Plaintiffs argue that the assessments and Campisi's testimony would be enough to show the value of her property. The court examines these ideas.

In the absence of more persuasive evidence, the assessed value, placed on a property by the neutral third-party of the county assessor, can be used as persuasive evidence of the value of real property. In re Marriage of Tunink, No. 21-1194, 2022 WL 3418020, at *2 (Iowa Ct. App. Aug. 17, 2022) (citing In re Marriage of Lukowicz, 2015 WL 162089 at *3, 862 N.W.2d 413 (Table) (Iowa Ct. App. 2015) (approving of the court's use of assessed value in the absence of more persuasive evidence). However, these are marriage cases where what is at issue is the current value of the property, not an attempt to prove a reason for a lower or higher change in value.

In addition, a property owner generally is allowed to testify as to the value of their property. Matter of Condemnation of Certain Rts. in Land for Extension of Armar Drive Project By City of Marion, 974 N.W.2d 103, 115 (Iowa 2022). Their valuation can be a *lay* opinion under rule 5.701, which is permissible because the owner is presumed to know their own property. Id. (noting that lay owners cannot expand their testimony beyond their lay opinion of the value of their property by testifying about what they believe to be comparable sales and how to make adjustments to them in order to apply them to the valuation of the subject property, as this has moved into the realm of expert testimony, and they must then qualify as such because to compare comparable sales requires technical or specialized knowledge). See also In re Marriage of Hansen, 733 N.W.2d 683, 703 (Iowa 2007) ("In ascertaining the value of property, its owner is a competent witness to testify to its market value."); Holcomb v. Hoffschneider, 297 N.W.2d 210, 213 (Iowa 1980) (in a fraudulent misreprentation claim against real estate company by purchasers, the Court stated, "In ascertaining the value of property, its owner is a competent witness to testify as to its market value. Likewise, he is competent

to give his opinion on what the property would have been worth if it had been as represented. He may also state his opinion on the difference between the two values. *Christy v. Heil*, 255 Iowa 602, 612, 123 N.W.2d 408, 414 (1963) (analogous situation of difference in value of property with or without a good well)."

Plaintiff cites to Putman v. Walther, 973 N.W.2d 857, 864 (Iowa 2022), which is in accord with the above, and stated that, "There is authority, however, for the proposition that Putman could have offered her own testimony on the decreased value of the property. *John Thurmond & Assocs., Inc. v. Kennedy*, 284 Ga. 469, 668 S.E.2d 666, 669 (2008); *Kimmel v. Iowa Realty Co.*, 339 N.W.2d 374, 380–81 (Iowa 1983); *Holcomb v. Hoffschneider*, 297 N.W.2d 210, 213 (Iowa 1980) (en banc)."

Putnam goes on to offer some limits on the parameters of such lay testimony, noting that a homeowner could testify to the cost of repairs where the issues were not technical or complex, but could not do so if they were extensive or technical in nature. Putman v. Walther, 973 N.W.2d at 865.

In sum, the authorities support that Campisi could give a lay opinion about a diminution in the value of her real property. However, there is nothing to indicate that she is qualified to give an opinion about the cause of the change in her assessed value compared to the assessed values of other properties. Property assessments are multi-factorial, technical, based on formulas required by law, and have lapses in time between when the assessments are done and actually changed in the county's records. While the cases support that she could give her lay opinion on a change in value of her own property under the right circumstances, they do not support that she could give her opinion as to why her assessment changed or why others have different assessments, as that would require technical and specialized knowledge.

Finally, defendant's argument that there are no provable damages in nuisance ignores that there are special damages available for nuisance.

Where the nuisance is permanent, the landowner may also recover such other *special damages* the landowner can prove. Weinhold v. Wolff, 555 N.W.2d 454, 465 (Iowa 1996) (emphasis added). The rule is that in addition to depreciation in the market ... value of the realty, the plaintiff may recover the damages he himself suffers from deprivation of the comfortable enjoyment of his property, and the inconvenience and discomfort suffered by himself and his family, or other affected persons. Id.

The personal inconvenience, annoyance, and discomfort to a property owner or occupant caused by a nuisance is a separate and distinct element of damage, and thus, damages for personal inconvenience, annoyance, and discomfort caused by the existence of a nuisance are separately and independently recoverable in a nuisance action in addition to, or separate from, damages suffered in respect of the market value

of the premises, or injuries to or destruction of buildings and crops resulting from a permanent nuisance. Id.

Special damages in nuisance cases are not subject to any precise rule for ascertaining damages because these damages are not susceptible of exact measurement. Id. Like the intangible damages in personal injury cases, the factfinder must use its sound judgment based upon an impartial consideration of the evidence. Id.

The *Weinhold* court made clear that the annoyance, discomfort, and loss of full enjoyment of the property are elements of a nuisance action warranting compensation. Id. at 466. The court stated that Iowa case law is clear that these are elements of damages to be separately compensated. Id.

These special damages for nuisance would be available to Campisi.

B . **Normal Person in the Community Standard**

Second, the defendant has argued that Campisi cannot prove that her alleged harm is significant, because this must be determined from the perspective of a normal person in the community. There is certainly evidence in the record that would indicate that she is much more sensitive to LED lights and the issues surrounding LED lights than the average person.

What facts can be used to prove the normal person standard, and what material disputed facts or inferences are in the record?

Expert testimony can be used to help explain the normal person standard. Patz v. Farmegg Prod., Inc., 196 N.W.2d 557, 561-562 (Iowa 1972).There is no plaintiff expert testimony that would establish the standard in the locality. While Baker testified as an expert in the temporary injunction hearing, there was nothing about his testimony that indicated it was analyzing the standards of the community locale where the lights at issue are located.

Another way to prove that a normal person in the community would find the alleged harm significant is through the testimony of others in the community. See Freeman v. Grain Processing Corp., 895 N.W.2d 105, 121 (Iowa 2017); Weinhold, 555 N.W.2d at 459. The record only indicates one other community resident who had a complaint about the lights, however it also indicates that he was satisfied by the mitigation steps taken by defendant. While the record is devoid of other community residents' testimony or affidavits, the record does contain testimony from a community business owner, Spangler, who himself acknowledged that if lived at Campisi's property he would find the lights "annoying."

This testimony is in addition to there being a presumption that the plaintiff is a person of ordinary sensibilities. Pauly v. Montgomery, 209 Iowa 699, 228 N.W. 648, 650–51 (1930). There is certainly information in the record to rebut this presumption, but

whether it is rebutted requires the fact finder to weigh the evidence, make credibility determinations, and attempt to determine the truth of the matter. At this time all inferences are to be cut in the light most favorable to Plaintiffs.

It is generally "for the jury to determine, as a question of fact, whether the defendant's acts were the proximate cause of the plaintiff's injury, whether the extent or degree of injury or annoyance is such as to constitute a nuisance, whether the plaintiff suffered the loss of the ordinary use and enjoyment of his home, so as to entitle him to damages, whether a nuisance is permanent or temporary, and where exemplary damages are sought, whether the defendant acted with malice or in reckless disregard of the rights of others." Hartzler v. Town of Kalona, 218 N.W.2d 608, 610 (Iowa 1974).

It may be that a fact finder looks at Campisi's sensitivities, opinions about, and reactions to the LED lights of defendant, and finds that the harm that she perceives as significant is not actually significant when compared to the standard of a normal person in the locality. However, the fact that a sensitive person perceives a harm does not exclude the possibility that a reasonable fact finder could find that it would also bother normal persons in the locality. Whether the harm would be considered significant by a normal member of the community is itself a finding of fact or disputed inference to be made from a finding of fact, that is both material and disputed, and prevents summary judgment. Summary judgment is not appropriate if reasonable minds could draw from even undisputed facts different inferences and reach different conclusions. In addition, at the time of summary judgment, the court views the record in the light most favorable to the resisting party, affording that party all reasonable inferences that the record will bear, and indulging in every legitimate inference that the evidence will bear.

The court therefore finds that the claim for nuisance should survive summary judgment.

V. PUBLIC NUISANCE

Plaintiffs' petition contains a claim for public nuisance in Count II. Defendant argues that summary judgment is appropriate on this count, and plaintiff did not resist at the hearing on the motion for summary judgment. This count should be dismissed.

VI. PARTICIPATION AT TRIAL – STANDING

Defendants argue that Soft Lights should not participate at the trial on the legal issues, as they would only have a direct interest in any equitable relief. Plaintiffs argue that it is the "law of the case" that Soft Lights have standing due to the court's earlier ruling on the matter, and that no further inquiry should be made.

Plaintiffs misstate the law of the case doctrine. The law of the case doctrine "represents the practice of courts to refuse to reconsider what has once been decided." State v. Grosvenor, 402 N.W.2d 402, 405 (Iowa 1987). It stems from "a public policy against reopening matters which have already been decided." Bahl v. City of Asbury, 725 N.W.2d 317, 321 (Iowa 2006). Under the law of the case doctrine, "the legal principles announced and the views expressed *by a reviewing court* in an opinion, right or wrong,

are binding throughout further progress of the case upon the litigants*, the trial court and this court in later appeals*." Grosvenor*,* 402 N.W.2d at 405 (emphasis added). Therefore, under the doctrine, " '*an appellate decision* becomes the law of the case and is controlling on both the trial court and on any further appeals in the same case.' " Bahl*,* 725 N.W.2d at 321 (quoting *United Fire & Cas. Co. v. Iowa Dist. Ct.,* 612 N.W.2d 101, 103 (Iowa 2000) (emphasis added)).

The law of the case doctrine applies to the effect of an appellate decision on subsequent proceedings in the matter. It does not apply to this court's earlier decision on standing.

However, as it is common practice to try legal and equitable claims at the same time, this would provide grounds for Soft Lights to not be excluded from the jury trial. See Johanik v. Des Moines Drug Co., 17 N.W.2d 385, 388 (Iowa 1945) (approving of the practice in federal courts when confronted with combined legal and equitable claims for there to be "but one trial in which the jury is empaneled to hear and determine the jury issues and the court then proceeds to hear and determine the nonjury issues"); See Pisny v. Chicago & N.W. Ry. Co., 221 N.W. 205, 208 (1928) (in the event of a recovery of damages by a plaintiff trying a nuisance at law, it is in the discretion of the court whether to also grant any equitable injunctive relief); Friedman v. Forest City, 30 N.W.2d 752 (1948) (discussing that plaintiff in nuisance can seek both legal damages and equitable injunctive relief, which injunctive relief may or may not be appropriate even if damages were awarded).

The legal conclusion reached by the jury will be the deciding factor as to whether equitable relief is even available. If the jury finds a nuisance, then further equitable relief can be considered by the court. If they do not find a nuisance, then no equitable relief will be available. The record for these decisions should be made at the same time, but if there was any evidence that was only applicable to the equitable relief requested, then that evidence should be received outside the presence of the jury.

As the availability of equitable relief will hinge on whether there is a finding of nuisance, Soft Lights would be prejudiced if they could not participate in the trial where that finding is made. The court therefore finds no grounds to exclude them. That being said, as the legal damage of the nuisance is entirely alleged to be to Campisi, it is not clear what relevant and material participation there could be from Soft Lights at the jury trial outside of observing (other than Baker as a fact witness regarding his demand communications). Any disputed matters in this regard can be dealt with in limine and by evidentiary objections at trial. In addition, there is no request for relief that Soft Lights could make for itself at the jury trial on nuisance as they have no direct, compensable legal damages.

IT IS THEREFORE ORDERED that the Defendants' Motion for Summary Judgment is granted in part and denied in part:

1. Denied as to Count I, Continuing Nuisance, which will proceed to trial.
2. Granted as to Count II, Public Nuisance, and this count is dismissed.
3. Granted as to Count III, Negligence, and this count is dismissed.
4. The application for injunctive relief is equitable in nature. There would be no reason to consider equitable relief unless the jury finds that there was a nuisance. Equitable issues will be tried at the same time as the legal claim in the interests of judicial economy (issues not pertaining to the legal claim will be presented outside the presence of the jury). To the extent that defendant requested that plaintiff Soft Lights not be allowed to participate at the jury trial, that request is denied.

State of Iowa Courts

Case Number	**Case Title**
LACV040771	(CCP)SOFT LIGHTS & KRISTIN CAMPISI V. KARL PRE-OWNED
Type:	OTHER ORDER

So Ordered

Christopher C. Polking, District Court Judge
Second Judicial District of Iowa

Electronically signed on 2024-07-23 08:58:18