IN THE COURT OF APPEALS OF IOWA

No. 0-168 / 89-1152

FILED
NOV 29 1990
CLERK SUPREME COURT

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ROBERT BAKKEN,

Appellee,

vs.

CITY OF COUNCIL BLUFFS,

Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Leo Connolly and J. C. Irvin, Judges.

City of Council Bluffs appeals from a jury verdict awarding plaintiff damages on his claim. **AFFIRMED BY OPERATION OF LAW.**

Mark W. Bennett of Babich, Bennett, Nickerson and Newlin, Des Moines, and Robert L. O'Brien, Assistant City Attorney, Council Bluffs for appellant.

Lyle A. Rodenburg, Council Bluffs, for appellee.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ., but considered en banc.

PER CURIAM

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1987).

AFFIRMED.

For affirmance: Schlegel, Hayden, and Habhab, JJ.

For reversal: Oxberger, C.J., and Donielson and Sackett, JJ.