IN THE SUPREME COURT OF IOWA

NO. 17-0151

MICHELLE R. SKADBURG,
Plaintiff-Appellant,

vs.

GARY GATELY and WHITFIELD & EDDY, P.L.C.
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT IN AND FOR CERRO GORDO COUNTY
THE HONORABLE RUSTIN DAVENPORT, JUDGE

APPELLANT'S BRIEF

PETER C. RILEY AT0006611
TOM RILEY LAW FIRM, P.L.C.
4040 First Avenue NE
P.O. Box 998
Cedar Rapids, IA 52406-0998
Ph.: (319) 363-4040
Fax: (319) 363-9789
E-mail: peterr@trlf.com

ATTORNEY FOR APPELLANT,
MICHELLE R. SKADBURG

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Wilkinson v. Harrington
104 R.I. 224, 243 A.2d 745 (1968)

STATUTORY:

Iowa Code Section 614.1(4)

Iowa Code Section 633.433

Iowa R. App. P. 6.1101(2)(f)

ROUTING STATEMENT PER IOWA R. APP. P. 6.903(2)(d)

A number of legal and medical malpractice cases, most recently Vossoughi v. Polaschek, 859 N.W.2d 643 (Iowa 2015), have addressed when an injured plaintiff has actual or imputed knowledge of the elements of a cause of action. The impact of the continuous representation or treatment rule on Statutes of Limitations is uncertain in Iowa. Either could make this a case presenting substantial questions of enunciating or changing legal principles. Iowa R. App. P. 6.1101(2)(f). However, the facts of the case concerning Michelle Skadburg's lack of knowledge of any cause of action against her attorney during the course of representation, as shown by her email correspondence, is sufficiently clear under the principles enunciated in existing authorities that the case should be appropriate for retention.* Iowa R. App. P. 6.1101(3).

*Should have said "transfer."

STATEMENT OF THE CASE

NATURE OF THE CASE

Michelle Skadburg received $20,000.00 of life insurance and $87,054.65 from a 401k as designated beneficiary when her mother died. These funds passed to Skadburg outside of probate and were hers to keep regardless of her mother's debts. A personal representative has limited authority to pay a decedent's debts prior to the expiration of the claims period. However, Skadburg's attorney, Gary Gately of Whitfield & Eddy, P.L.C., not only failed to advise Skadburg of her limited authority, but told her to pay her mother's bills and keep the rest of the money, without determining the extent of Barbara Haffner's debts. Skadburg exhausted these funds paying her mother's debts.

Gately/Whitfield & Eddy assert Skadburg's claim is barred by the Statute of Limitations, and rely on email communications from Skadburg to Gately discussing the problems resulting from Skadburg paying her mother's debts. A careful review of the emails show they do not support the statute of limitations defense. It is clear Skadburg assumed she was at fault in paying the debts, and there is no evidence Gately ever advised Skadburg he was responsible.

RELEVANT PRIOR PROCEEDINGS

Plaintiff-Appellant Michelle Skadburg commenced this action against Defendants-Appellees Gary Gately and Whitfield & Eddy, P.L.C. on August 19, 2015. (August 19, 2015 Petition and Jury Demand, App. 1-2) Defendants-Appellees Gately and Whitfield & Eddy answered. (November 20, 2015 Answer, App. 3-5)

Gately/Whitfield & Eddy filed a Motion for Summary Judgment. (August 18, 2016 Motion for Summary Judgment As a Matter of Law, App. 6; August 18, 2016 Defendants' Statement of Undisputed Facts Supporting Motion for Summary Judgment (hereafter Gately Facts), App. 7-10; August 18, 2016 Brief and Argument in Support of Defendants' Motion for Summary Judgment) Skadburg resisted. (September 14, 2016 Resistance to Motion for Summary Judgment, App. 11-12; September 14, 2016 Response to Statement of Undisputed Facts and Statement of Additional Facts (hereafter Skadburg Response), App. 13-18; September 15, 2016 Supplemental Response to Defendants' Statement of Undisputed Facts and Plaintiff's Statement of Additional Facts (hereafter Skadburg Supplemental Response), App. 19-27; September 15, 2016 Plaintiff's Memorandum of Authorities In Support of Resistance to Motion for

Summary Judgment) Gately/Whitfield & Eddy replied. (October 3, 2016 Defendants' Reply Brief, App. 28-43, with Attachment A, App. 44, Attachment B, App. 45, Attachment C, App. 46, Attachment D, App. 47-48) Hearing on the Motion was held on October 10, 2016.* (October 10, 2016 Order, App. 49) The arguments were reported. (October 10, 2016 Court Reporter Memorandum and Certificate)

The Court granted the Gately/Whitfield & Eddy Motion and dismissed Skadburg's claim. (November 28, 2016 Ruling on Motion for Summary Judgment, App. 53-58) Skadburg filed a Motion for Enlargement of Findings. (December 13, 2016 Motion for Enlargement of Findings, App. 59-61) Gately/Whitfield & Eddy resisted. (December 23, 2016 Defendants' Resistance to Plaintiff's Motion to Enlarge, App. 62-63) The Court denied the Motion. (December 27, 2016 Order, App. 64-65) Skadburg filed Notice of Appeal. (January 26, 2017 Notice of Appeal, App. 66-67)

*The Proof Brief erroneously said September 19, 2016.

STATEMENT OF FACTS

Barbara Haffner died August 20, 2008. Michelle Skadburg is her daughter and sole heir. (Petition ¶s 1 and 2, App. 1; Answer, App. 3; Gately Facts, No. 2, App. 8) Gary Gately is an attorney licensed to practice law in the State of Iowa and practiced law with the firm of Whitfield & Eddy, P.L.C., a professional limited liability company licensed to engage in the practice of law in the State of Iowa. (Petition, ¶s 4, 5 and 6, App. 1; Answer, App. 3-4) On November 6, 2008, Skadburg was appointed Administrator of the estate of Barbara Haffner and designated Gary Gately of Whitfield & Eddy as her attorney. (Petition, ¶s 8, 9, App. 4; Answer, App. 9-10) On December 7, 2008, the Clerk of Court issued Letters of Appointment to Skadburg. (Gately Facts, ¶ 2, App. 8; Skadburg Response, App. 13) On November 7, 2008, Skadburg signed the Notice of Appointment and Notice to Creditors. (Gately Facts, No. 4, App. 8; Skadburg Response, App. 13)

The Haffner Estate was insolvent and Barbara Haffner's debts substantially exceeded her probate assets. Michelle Skadburg received $20,000.00 as the designated beneficiary of a life insurance policy and $87,054.65 as a designated beneficiary of her mother's

401k. Skadburg used these funds to pay her mother's debts. Gately did not advise Skadburg that her ability to pay debts until four months after the second publication were very limited. In fact, Gately told Skadburg to pay all the debts and keep the money that was left. Gately never told Skadburg the proceeds from the 401k and life insurance were exempt from any claims against the estate and that Skadburg could keep the life insurance and 401k proceeds. Gately never asked Skadburg to find out what the bills were or what assets her mother had that would be subject to estate claims. (Skadburg Supplemental Response, ¶ 14, incorporating Skadburg's Answers to Interrogatories, App. 19, 21-24)

Gately/Whitfield & Eddy rely on three email communications to support their position Skadburg had actual or inquiry notice of Gately's negligence more than five years before Skadburg filed suit. Two of the emails are attached to the Gately/Whitfield & Eddy Reply and one was referred to in the Gately Facts.

The January 30, 2009 email from Skadburg to Gately is attached to the Gately Reply Brief, Attachment A, App. 44, but was

not referenced in the initial Statement of Facts.[1] The verbatim contents of this email are as follows:

Gary Gately

From: Rod and Michelle Skadburg [mskadburg@jumpgate.net]
Sent: Friday, January 30, 2009 5:53 PM
To: Gary Gately
Subject: Barbara Haffner Estate

Gary, I apologize if I sounded down today on the phone. I know it may seem minor to you to worry about our tax liability, but it is just the last straw in a long list of things. My husband had a kidney transplant last year after spending several years very sick and off work. He is also waiting for another transplant. We just found out today that his lupus is acting up and attacking the new kidney which means more chemo for him in the upcoming months. My daughter was hit in a hit and run accident on Friday (thankfully not hurt) that totaled her car so we have to replace that now. We are doing ok, but financially things are tight for us. Medical bills for my husband and my son. We are paying off my oldest son's funeral as he didn't have life insurance when he died. (this is the case that Tom is working on for us – and also incurring large expenses as we move ahead on that). (sic)

Anyway, this news today was kind of sickening for me. I would like to think I would have done the right thing and paid off her debts even if I wasn't legally obligated to, but for just a moment I imagined a life without financial worry – paying off our medical debts and catching up for the first time in 4 years would have been a huge burden off our shoulders. Just the thought of the difference between getting a few thousand in tax refund to possibly owing some was just a downer today.

I should have given you the entire list of debts and asked for more specific advice on what to do, but I just took you at your

[1] While not referenced in the initial Statement of Facts, it was disclosed in the litigation and its genuineness is not disputed.

word to pay the debts and did that. Anyway, it was her money and her debt and no use second guessing now as they have been paid and that is that. We will figure out who has to claim what on what taxes and go from there. I came home and had a good cry and I hope that things will seem better tomorrow.

I just wanted you to understand that I wasn't trying to be...I don't even know what the word is, but I am sure worrying about my tax liability seemed silly to you, but I just have a lot of worry and that was one more thing.

I appreciate all of your help with this estate and like I said, hopefully things will seem better tomorrow. Hopefully, Tom will be successful with our lawsuit and that will ease some of our burden. I did just want you to know that I know you have done the best you could for us and all of my issues piling up are not your fault so I apologize if I seemed out of sorts about all this!

Have a good weekend. Michelle Skadburg

App. 44.

Gately/Whitfield & Eddy also rely on a December 30, 2009 email. This is Attachment B to the Gately Reply, App. 45, and referenced in Gately Facts, No. 5, App. 8-9. The verbatim contents of this email are as follows:

Gary Gately

From: Rod and Michelle Skadburg [mskadburg@jumpgate.net]
Sent: Wednesday, December 30, 2009 5:03 PM
To: Tom Reavely; Gary Gately
Subject: Barbara Haffner estate

Hello! Just wondered where we are at with things.

Gary – I emailed you that I did not receive the tax forms, but haven't heard in response or new forms. Have you sent those?

What else do we need to do to close this estate?

Tom – Dianna had mentioned that you wanted a conference call, but I didn't hear back as to when.

I would really like to get this estate closed as I am sure you would. Please advise what needs to be done – email is best way to reach me probably. I check it every evening.

As far as the fees, Tom had told me when this started that he would charge me $200 - $300 to do this. I do realize there has been more work involved so I am willing to negogiate on this, but I will be honest, not willing to pay the usual fee. The reduced rate is why we decided to handle this with your firm and not stay local. We really needed just an estate opened to close her bank account and to handle Disney. We hired a Florida attorney to handle the Disney stuff. It seems there has been miscommunication in all of this. Paying off mom's debt with money that should not have been part of the estate was one of the issues that has arisen. Gary and I have talked through this and what is done is done, but please take these kinds of things into consideration when setting the fee.

Again, I just want to get this done and completed. Please advise what is needed to get this closed!

Thanks so very much to both of you in advance for your assistance in getting this closed up.

Michelle Skadburg

Finally, Gately/Whitfield & Eddy rely on a March 22, 2010 email. This was not attached, but was referenced as Gately Facts, No. 6, App. 9. Skadburg's Statement of Facts, paragraph 6, disputed it was the document that was produced as page 387, and attach the page

387 that was produced. However, Skadburg does not dispute she sent the email and it was accurately quoted.

In the March 26, 2010 email, Skadburg asked Gately:

> -is any of the money paid to other creditors refundable since those should not have been paid out of the estate assets? Please advise if there is a process to get those Debt written off and pursue a refund of that money paid.

There is nothing to show Gately ever responded to any of the statements or inquiries in Skadburg's emails.

The Court entered an Order August 18, 2010 approving the Final Report and discharging the Administrator. (Reply, Attachment D, App. 47) Billing records show Gately provided services for the estate through at least August 30, 2010 and forwarded the Order approving the Final Report and discharging the Administrator by letter of August 31, 2010. (Skadburg's Response, ¶ 12 and attachments, App. 14, 17-18)

On February 12, 2014, Skadburg signed an authorization to her present counsel to obtain Whitfield & Eddy records. (Gately Facts No. 8, App. 9) On March 13, 2014, Skadburg, through counsel, requested the file. (Gately Facts No. 9, App. 10) The Clerk of Court filed Skadburg's Petition against Gately/Whitfield & Eddy on Wednesday, August 19, 2015. (Gately Facts No. 11, App. 10) The

Petition was submitted August 18, 2015. (Skadburg Facts, ¶ 13, App. 14)

Skadburg learned after retaining new counsel that claims against the estate should not be paid until four months after the second publication of the estate notice except, under certain circumstances, debts for funeral, burial and last illness or other claims a Judge orders can be paid. (Skadburg Supplemental Response, incorporating Answer to Interrogatory No. 2, App. 22-23)

LEGAL ARGUMENT

I. WHETHER THE TRIAL COURT ERRED IN DISMISSING SKADBURG'S MALPRACTICE CLAIM BASED ON THE STATUTE OF LIMITATIONS?

PRESERVATION OF ERROR

Skadburg preserved error by resisting the Motion for Summary Judgment and specifically by responding to and disputing the movants' Statement of Facts, and by stating additional facts. (Resistance to Motion for Summary Judgment, App. 11-12; Skadburg Response, App. 13-18; Skadburg Supplemental Response, App. 19-27) Skadburg further preserved error by filing a Motion for Enlargement of Findings, App. 59-61, prior to filing a Notice of Appeal, App. 66-67.

STANDARD OF REVIEW

The grant of summary judgment is reviewed to correct errors at law. Summary judgment is appropriate when the moving party demonstrates that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. We afford the nonmoving party "every legitimate inference that can be reasonably deduced from the evidence"—and if the review of the evidence pertaining to a particular issue shows "reasonable minds can differ on how the issue should be resolved," an order entering summary judgment on the issue must be vacated or reversed. Vossoughi v. Polaschek, 859 N.W.2d 643, 649 (Iowa 2015). Absent stipulations by the parties, a statement of uncontroverted facts by the moving party does not constitute part of the record, and the moving party's factual allegations rise or fall on the actual contents of the evidentiary material filed. McVey v. National Organization Service, Inc., 719 N.W.2d 801, 803 (Iowa 2006).

ARGUMENT

A claim for legal malpractice is governed by the five-year statute of limitations set forth in Iowa Code Section 614.1(4). Venard v. Winter, 524 N.W.2d 163, 166 (Iowa 1994). Claims based on

negligence do not accrue, and the statute of limitations does not begin to run until the injured plaintiff "has actual or imputed knowledge of all the elements of the action." Vossoughi v. Polaschek, 859 N.W.2d 643, 649 (Iowa 2015)

Skadburg does not dispute that Gately's negligence occurred from the time of her appointment on November 6, 2008 through December of 2008 when Skadburg and Gately discussed the US Bank credit card, Gately told her to pay that bill and refer all creditors to him, and Skadburg told Gately all bills were paid. Skadburg admits her Petition was filed more than five years after the acts of negligence. However, Skadburg does not believe the Statute of Limitations bars her claim because of the discovery rule, fraudulent concealment and Gately's continued representation.

A. Skadburg Did Not Have Actual or Inquiry Notice of the Elements of Her Claim Until After The Representation Ended.

Vossoughi v. Polaschek, 859 N.W.2d 643 (Iowa 2015) recognized legal malpractice is a negligence claim and the Statute of Limitations does not begin to run:

> until the injured party "has actual or imputed knowledge of all the elements of the action."

859 N.W.2d at 649. The Court concluded:

> Accordingly, we reaffirm the statute of limitations does not begin to run on a legal malpractice claim until the cause of action accrues. The cause of action accrues when the client sustains an actual, nonspeculative injury and has actual or imputed knowledge[4] of the other elements of the claim.
>
> [4] Knowledge could be imputed through the doctrine of inquiry notice. We have said "[t]he [limitations] period begins at the time the [plaintiff] is on inquiry notice." *Franzen,* 377 N.W.2d at 662. "A person is placed on inquiry notice when a person gains sufficient knowledge of facts that would put that person on notice of the existence of a problem or potential problem."

859 N.W.2d at 652.

Vossoughi v. Polaschek relied on Franzen v. Deere & Co., 377 N.W.2d 660, 662 (Iowa 1985). In Franzen, a farmer was injured while working inside a forage wagon manufactured by Deere. Franzen knew he was injured and asserted a claim against the owner of the wagon. Later, more than two years after the injury, Franzen tried to assert a claim against Deere & Co. Franzen stated:

> The person charged with knowing on the date of the accident what a reasonable investigation would have disclosed.
>
> . . .
>
> Moreover, the duty to investigate does not depend on the exact knowledge of the nature of the problem that caused the injury. It is sufficient that the person be aware that a problem existed. One purpose of inquiry is to ascertain its exact nature.

377 N.W.2d at 662.

It is significant Franzen v. Deere & Co. involved a physical injury occurring at a discreet date. Franzen v. Deere & Co.,

distinguished Baines v. Blenderman, 223 N.W.2d 199, 202 (Iowa 1974) which found the plaintiff diligent in investigating loss of vision after surgery where he was assured by his physician the condition was a normal and temporary side effect:

> A trier of fact could find the patient had no reasonable means of knowing the doctor's advice was wrong.

377 N.W.2d at 633.

Dudden v. Goodman, 543 N.W.2d 624, 626 (Iowa App. 1995) recognized this distinction in the context of a legal malpractice case:

> But we are not convinced Franzen applies to this case. In Franzen, Franzen knew he was injured when his arm was caught in the revolving beater mechanism. He had a duty to investigate once he knew he had been injured. Id. However, the executor in the present case did not know the estate had been injured when the taxes were paid in 1983. There was nothing to put her on notice. The executor had a right to rely on the superior skill and knowledge of her attorney Goodman. *See* Millwright v. Romer, 322 N.W.2d 30, 34 (Iowa 1982). In this respect, and as discussed in subsequent paragraphs, we conclude the rule set out in Franzen is not applicable to this case.

Differences between the nature of the injury is important in determining whether there was implied notice. If a person sustains a physical injury, the person knows they have been injured. That person has a duty to investigate all potential parties who may be responsible for their physical injury. An administrator represented by

an attorney in connection with probating an estate may suffer adverse economical consequences which may have nothing to do with their lawyer's advice. That fact a loss or injury is sustained does not put the person on inquiry notice that the reason for the injury is the lawyer's breach of duty, one of the elements the injured party must know for implied notice.

Here, Skadburg knew that there was a problem because she had paid her mother's debts. However, she did not know the critical element of her claim, specifically that her lawyer breached his duty when he failed to advise her that she could not pay debts during the claim period, and instead advised Skadburg to pay her mother's debts.

Iowa Code Section 633.433 makes very clear what debts can be paid and when:

> As soon as the personal representative is possessed of sufficient means over and above the other costs of administration, the personal representative shall pay any allowance made by the court for the surviving spouse and children of the decedent, and may pay the expenses of funeral, burial, and last illness. Prior to the expiration of four months after the date of the second publication of notice to creditors, the personal representative shall pay other debts and charges against the estate as the court orders, and the court may require bond or other security to be given by the creditor to refund such part of the payment as may be necessary to make payment in accordance with this probate code. All payments

> made by the personal representative without order of court are at the personal representative's own peril.

It is important to read the January 30, 2009 email, App. 44, in its entirety. Skadburg first apologized to her attorney for sounding down in their prior phone conference:

> I know it may seem minor to you to worry about our tax liability, but it is just the last straw in a long list of things.

Skadburg then recite all of the financial difficulties that were affecting her family, concluding:

> We are still paying off my oldest son's funeral as he didn't have life insurance when he died. (this is the case that Tom is working on for us – and also incurring large expenses as we move ahead on that).

Skadburg's concern was the tax liability, which would be the taxes she owed for the 401k money she received, but spent paying her mother's bills.

An examination of Skadburg's emails makes clear she thought she was to blame for the problem and did not blame Gately. The January 30, 2009 email makes this clear:

> I should have given you the entire list of debts and asked for more specific advice on what to do, but I just took you at your word to pay the debts and did that.
>
> . . .
>
> I did just want you to know that I know you have done the best you could for us and all of my issues piling up are not your fault so I apologize if I seemed out of sorts about all that.

App. 44.

Skadburg did not know the nature of the lawyer's duty or that he breached it. She thought it was her fault and Gately was doing his best. Skadburg did not learn that until she later sought legal counsel after Gately quit representing her. She did not know all the elements of the cause of action while Gately represented her. Gately never told her he had responsibility. Therefore, the Statute of Limitations did not begin to run.

B. Attorney Gately Concealed from Skadburg His Failure to Advise Her of Her Duties With Respect to Paying Estate Claims.

Gately's failure to advise Skadburg she was not at fault, but that he was, would toll the running of the statute of limitations under the doctrine of fraudulent concealment. Pride v. Peterson, 173 N.W.2d 549, 555 (Iowa 1970), recognized the general rule that the plaintiff must show (1) the defendant did some affirmative act to conceal the cause of action, and (2) the plaintiff exercised diligence to discover the cause of action. Pride v. Peterson then recognized a duty of disclosure on the part of an attorney because of the fiduciary relationship:

> An exception exists, however, where a confidential or fiduciary relationship is present. The requirement that affirmative acts of

> concealment be alleged and proven is applied* by mere silence and diligence in discovering the fraud complained of is, likewise, greatly relaxed.

Van Overbeke v. Youberg, 540 N.W.2d 273, 276 (Iowa 1995), a medical malpractice case, citing Pride v. Peterson, noted the acts of concealment must nevertheless be independent of the acts establishing liability. Here, Gately's acts of negligence were failing to advise Skadburg she could not pay bills until after the claims deadline passed and telling Skadburg she could pay her mother's bills with the 401k and life insurance proceeds, even though they were exempt from claims against the estate. Gately's concealment came after he learned Skadburg had paid all of the bills, and after receiving the email where Skadburg said she was to blame and Gately was doing "the best that you could for us..." Gately should have told Skadburg her problems were the result of his bad advice. Instead, Gately stood mute, hoping this client would continue to believe she was the cause of her economic loss. A lawyer, as a fiduciary, has a higher duty than that. Gately's silence is a basis for finding fraudulent concealment.

C. Skadburg Filed Her Claim Within Five Years of the End of the Representation.

*Should be "supplied" in the quotation.

Gately's representation did not end until August 31, 2010. The statute of limitations would not begin to run until after the representation terminated. Dudden v. Goodman, 543 N.W.2d 624, 627-8 (Iowa App. 1995); Neylan v. Moser, 400 N.W.2d 538, 542 (Iowa 1987) and Vossoughi v. Polaschek, 859 N.W.2d 643, 650 (Iowa 2015) all discuss the principle of continuous representation. In Dudden v. Goodman, 543 N.W.2d 624, 628 (Iowa App. 1995), the Court cited Baines v. Blenderman, 223 N.W.2d 199 (Iowa 1974). Baines stated:

> A physician owes his patient a fiduciary duty. Mutual confidence is essential to proper care of the patient. (Citation omitted) A rule which would invariably charge a patient with knowledge of malpractice at the time the injury was first perceived would "punish the patient who relies on the doctor's advice and [place] a premium on skepticism and distrust.

223 N.W.2d at 202-203.

Dudden v. Goodman, concluded

> Where, as here, there is a continuous attorney-client relationship, it would be palpably unjust and quite unreasonable to require a client of a lawyer to obtain a second opinion on every professional decision the lawyer makes.

543 N.W.2d at 629.

A party who believes they may have been injured through their attorney's negligence should not be forced to choose between

sabotaging their relationship and waiving the opportunity to bring the claim.

CONCLUSION

Skadburg did not know her lawyer's breach of duty was to blame for her loss. Therefore, she did not know all elements of her cause of action when she learned she had sustained an economic loss. Furthermore, because of the fiduciary nature of the attorney-client relationship, Gately could not stand mute, but was obligated to tell Skadburg that Gately bore responsibility for her loss, particularly when she blamed herself, and told Gately she thought he was doing his best. Finally, Gately continued to represent her through the administration of the estate, and she hoped for a financial recoupment from litigation his partner was handling.

REQUEST FOR ORAL SUBMISSION

COMES NOW Plaintiff-Appellant Michelle Skadburg, requests oral argument and believes it would be appropriate to the extent the Court has questions concerning the underlying facts or applicable law.

TOM RILEY LAW FIRM, P.L.C.

By: _____

PETER C. RILEY AT0006611
4040 First Avenue NE
P.O. Box 998
Cedar Rapids, IA 52406-0998
Ph.: (319) 363-4040
Fax: (319) 363-9789
E-mail: peterr@trlf.com

ATTORNEY FOR APPELLANT,
MICHELLE SKADBURG

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

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Dated this 10th day of August, 2017.

Peter C. Riley

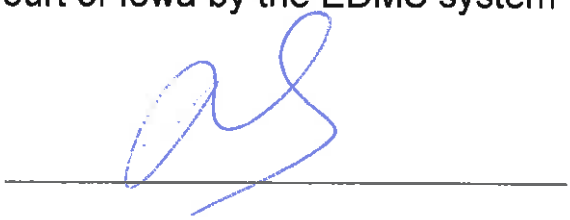
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the preceding Appellants' Brief was served on the 10th day of August, 2017, upon the Clerk of the Supreme Court and the following by electronic filing:

Nick Critelli
Lylea Dodson Critelli
317 Sixth Avenue, Ste. 950
Des Moines, IA 50309

CERTIFICATE OF FILING

The undersigned hereby certifies that the preceding Appellants' Brief was filed with the Supreme Court of Iowa by the EDMS system on the 10th day of August, 2017.



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The undersigned hereby certifies that the preceding Appellant's Brief was produced at a cost of $ -0-.