

IN THE SUPREME COURT OF IOWA

Supreme Court No. 20-0879
Linn Cty. No. LACV094700

PATRICIA K. CARLSON,
Plaintiff-Appellant,

vs.

SECOND SUCCESSION, LLC; IOWA
COMMERCIAL ADVISORS, LLC; and
JONES PROPERTY SERVICES, INC.

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT
COURT IN AND FOR LINN COUNTY

THE HONORABLE FAE HOOVER-GRINDE, JUDGE

JONES PROPERTY SERVICES, INC.'S FINAL BRIEF

PICKENS, BARNES & ABERNATHY

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CERTIFICATE OF FILING AND SERVICE

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME REQUIREMENTS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in 14-point font and contains 3,053 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

January 13, 2021
DATE


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STATEMENT OF THE ISSUES

1. Whether the district court properly dismissed Carlson's Petition pursuant to the statute of limitations where Carlson filed it five days before the deadline, the clerk returned it as unfiled two days before the deadline due to Carlson's omission of required identifying information, and Carlson inexplicably failed to refile her Petition until one day after the deadline.

Iowa Code

Iowa Code § 602.6111(1)

Iowa Code § 614.1(2)

Iowa Court Rules

Iowa R. of Civ. P. 1.904(2)

Iowa R. Elec. P. 16.308(2)(d)

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ROUTING STATEMENT

Defendant–Appellee Jones Property Services, Inc. respectfully requests this case be transferred to the Iowa Court of Appeals given well-established legal principles support the dismissal of Plaintiff–Appellant Patricia Carlson’s Petition at Law. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Patricia Carlson filed her Petition at Law on January 9, 2020, alleging a personal injury she sustained on January 8, 2018. Jones Property Services, Inc. filed a Motion to Dismiss Carlson’s Petition pursuant to the statute of limitations. Second Succession, LLC and Cushman & Wakefield Iowa Commercial Advisors, LLC joined in the Motion to Dismiss. Carlson resisted the Motion to Dismiss and additionally filed a motion requesting an evidentiary hearing. The district court denied the motion for an evidentiary hearing, and Carlson submitted a supplemental brief in resistance to the Motion to Dismiss. After hearing, the district court granted the Motion to Dismiss and dismissed Carlson’s Petition pursuant to the statute of

limitations. Carlson filed a Motion to Reconsider which the district court denied.

STATEMENT OF FACTS

Patricia Carlson allegedly slipped and fell, causing her a personal injury, on January 8, 2018 in Cedar Rapids, Iowa. Carlson has submitted evidence she filed a Petition on January 3, 2020, a Friday, at 6:53 p.m. (Ex. A, App. 19.) The clerk of court returned Carlson's submission as unfiled on January 6, 2020—the following Monday—indicating it was returned “for clarification or correction in accordance with rule 16.308(2)(d).” (Ex. B, App. 20.) The clerk further indicated, “I am returning your filing back to you. Please add either the DOB or SS# for the plaintiff. We need one or the other not both.” (*Id.*) Carlson filed her Petition of record on January 9, 2020. (Petition, App. 7–13.) The Petition makes no mention of the January 3 filing or its return by the clerk of court. (*See generally, id.*) Carlson has not provided any evidence or explanation as to why she waited three days to resubmit her Petition after the clerk returned the filing.

ARGUMENT

1. The District Court Properly Dismissed Carlson's Petition, Filed Two Years and One Day After Her Alleged Personal Injury, Pursuant to the Statute of Limitations

Carlson filed her personal injury Petition two years and one day after her alleged injury, thus making it time-barred pursuant to the statute of limitations. The Petition fails to allege it should relate back to an earlier filing date. Given a motion to dismiss may not go beyond the pleadings, the Court should not consider any additional facts. If the Court does consider additional facts—as it has done in the past, seemingly by consent of the parties—Iowa Supreme Court precedent does not allow the relation back doctrine to apply where the pleading was appropriately returned by the clerk of court two days prior to the deadline and refiled one day after the deadline.

1.1 Error preservation and standard of review

With the exception of Carlson's constitutional arguments, first raised in a motion to reconsider, Carlson preserved error by resisting Jones Property Services' Motion to Dismiss. *Winger*

Contracting Co. v. Cargill, Inc., 926 N.W.2d 526, 543 (Iowa 2019) (holding a party did not preserve an issue first raised in a motion to reconsider a summary judgment ruling, noting “it is not surprising that the district court did not rule upon the unrepresented claim”). While Carlson did not raise her constitutional arguments in her appellate brief, Jones Property Services will address these matters so as to cover argument which Carlson may present in a reply brief. This Court reviews the district court’s grant of a motion to dismiss for errors at law. *Petro v. Palmer Coll. of Chiropractic*, 945 N.W.2d 763, 769 (Iowa 2020).

1.2 Strict interpretation of the statute of limitations precludes a personal injury claim filed two years and one day after the injury

Actions founded upon personal injury must be filed within two years of the injury. Iowa Code § 614.1(2). “A defendant may raise the statute of limitations by a motion to dismiss if it is obvious from the uncontroverted facts contained in the petition that the applicable statute of limitations bars the plaintiff’s claim for relief.” *Turner v. Iowa State Bank & Tr. Co. of Fairfield*, 743 N.W.2d 1, 5 (Iowa 2007). Iowa courts strictly construe the two-year statute of

limitations for personal injury actions. *E.g.*, *Lane v. Spencer Mun. Hosp.*, 836 N.W.2d 666 (Iowa Ct. App. 2013). In *Lane*, a plaintiff fell in a hospital bathroom on February 28, 2010 but did not file her petition against the hospital until February 29, 2012. *Id.* at 666. Despite the involvement of a leap year, the Iowa Court of Appeals held that the petition filed two years and one day after the injury was untimely. *Id.* at 666–67.

In this case, Carlson’s Petition—filed January 9, 2020—alleges an injury to her person on January 8, 2020. (Petition, App. 7–13.) As such, her Petition was filed two years and one day after the claim accrued, making it untimely and subject to dismissal pursuant to the statute of limitations. Iowa Code § 614.1(2).

1.3 The Court’s consideration of a motion to dismiss should not go beyond the face of Carlson’s Petition

Carlson submitted evidence of a Petition submitted on January 3, 2020 and returned as unfiled by the clerk of court on January 6, 2020. “[A] motion to dismiss is directed to the pleadings and therefore, facts outside the pleadings should not be considered.” *Estate of Dyer v. Krug*, 533 N.W.2d 221, 223 (Iowa

1995) (citing *Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 308, 310 (Iowa 1982)) (emphasis in original). Carlson's Petition itself does not allege it should relate back to the date of a previous filing, nor does it specify there even was a previous filing. (See generally, Petition at Law, App. 7–13.) The Petition merely alleges Carlson suffered an injury to her person on January 8, 2018. (*Id.* at ¶ 5.) This same Petition plainly bears a file stamp of January 9, 2020. (See generally, *id.*) The Court should not consider the additional facts Carlson submitted in resistance to the Motion to Dismiss and should accordingly affirm the district court's dismissal of Carlson's Petition pursuant to the statute of limitations.

1.4 Controlling Iowa Supreme Court precedent in *Jacobs* does not allow Carlson's Petition to relate back to her earlier filing

The Iowa Supreme Court addressed the limited circumstances under which a pleading may relate back to an earlier electronic filing date in *Jacobs v. Iowa Dep't of Transp., Motor Vehicle Div.*, 887 N.W.2d 590 (Iowa 2016). In *Jacobs*, "the proposed filing was returned by the clerk's office after the deadline [and] the party promptly resubmitted the filing after correcting the errors"

the same day it had been returned. *Id.* at 591 (emphases added).

The *Jacobs* Court enumerated three prerequisites for allowing an electronic filing to relate back to an earlier returned filing:

First, the party submitted an electronic document that was received by EDMS prior to the deadline and was otherwise proper except for minor errors in the electronic cover sheet.

Second, the proposed filing was returned by the clerk's office after the deadline because of these minor errors.

Third, the party promptly resubmitted the filing after correcting the errors.

Id. Under the facts presented in *Jacobs*, which met all three prerequisites, the Court found the filing related back. *Id.*

The Iowa Court of Appeals has applied *Jacobs* on two occasions. *Jones v. Great River Med. Ctr.*, No. 17-1646, 2018 WL 4360983 (Iowa Ct. App. Sept. 12, 2018); *Goedken v. All. Pipeline, L.P.*, No. 17-1066, 2018 WL 4360903 (Iowa Ct. App. Sept. 12, 2018). As was the case in *Jacobs*, the filing in *Jones* was returned by the clerk after the deadline had passed. 2018 WL 4360983 at *1. After it was returned, the plaintiff promptly refiled her petition the next day. *Id.* In *Goedken*, a notice of appeal in a small claims matter was returned by the clerk the day after the deadline, and the defendant

promptly resubmitted the notice the same day. 2018 WL 4360903 at *1.

In this case, while Carlson has submitted evidence she filed her Petition prior to the deadline, she fails to satisfy the second or third requirements of *Jacobs* for her Petition to relate back. The filing was returned by the clerk on January 6—two days prior to the expiration of the actionable period. (Ex. B, App. 20.) While Carlson attacks the clerk’s act of returning of her Petition, Carlson indeed omitted identification information required by statute. *See* Iowa Code § 602.6111(1) (stating a party filing a petition shall provide the clerk with a date of birth and social security number). Iowa Rule of Electronic Procedure 16.308(2)(d)(2) provided the clerk with explicit authority to “return the submission to the filer with an explanation of the error and instructions to correct the filing.” The clerk properly did so, identifying the specific omission, citing the rule which provided the clerk with such authority, and directing Carlson to provide the required identifying information. (Ex. B, App. 20.) After the filing was returned, Carlson inexplicably failed to resubmit the filing. Three days after her original filing was

returned, after the statute of limitations had run, Carlson filed her Petition of record.

Plaintiff effectively asks this Court to abrogate *Jacobs* and hold a filing returned two days prior to the deadline and resubmitted three days later relates back to the original filing date. Carlson, however, presents no argument in support of abrogating *Jacobs*. Cf. *Kiesau v. Bantz*, 686 N.W.2d 164, 180 n.1 (Iowa 2004) (Cady, J., dissenting) (“From the very beginnings of this court, we have guarded the venerable doctrine of *stare decisis* and required the highest possible showing that a precedent should be overruled before taking such a step.”). There has not been any Iowa appellate ruling which has allowed a filing returned by the clerk prior to the deadline to relate back to the original filing date. Additionally, in every appellate decision allowing the filing to relate back, it was refiled the same day or the day after it was returned by the clerk. Allowing Carlson’s Petition to relate back would lead to arbitrary results and a slippery slope:

How many days prior to the deadline may a filing be returned by the clerk, be resubmitted after the deadline, and still relate back to the earlier filing? One? Two, as in Carlson’s case? Ten?

How many days may a party wait to resubmit the filing after it was returned by the clerk, and still have it relate back to the earlier filing? One? Three, as in Carlson's case? Seven?

How many days may a filing relate back? Three? Six, as in Carlson's case? Ten?

In the body of law which considers whether electronic filings may relate back to an earlier date, the line must be drawn somewhere, and the *Jacobs* Court drew that line by requiring "the [original] proposed filing [be] returned by the clerk's office after the [filing] deadline." 887 N.W.2d at 591 (emphasis added). In such cases, the filer lacks the opportunity to correct the error and submit a timely filing. This, however, is not the case presented. Reversing the district court would create a new and indefinite standard by which to determine if an electronic filing relates back. Public policy benefits from definitive standards by which to judge the timeliness of filings. *See Concerned Citizens of Se. Polk Sch. Dist. v. City Dev. Bd. of State*, 872 N.W.2d 399, 403 (Iowa 2015) ("This is a date that needs to be clear and unmistakable in the law so that all litigants and attorneys know the parameters of the jurisdictional time period to pursue an appeal.").

1.5 Carlson failed to preserve error on her constitutional arguments, which nonetheless fail on their merits

After the district court dismissed Carlson's Petition, she filed a procedurally improper Motion to Reconsider which, for the first time, raised constitutional arguments. Carlson did not include these arguments in her appellate brief. This Brief addresses those arguments in anticipation Carlson may raise them in a reply brief.

As a threshold matter, while Carlson made her motion pursuant to Iowa Rules of Civil Procedure 1.904(2), such a motion was not available to her. "[A] rule [1.904(2)] motion lies only when addressed to a ruling made upon trial of an issue of fact without a jury." *Kunau v. Miller*, 328 N.W.2d 529, 530 (Iowa 1983). Rule 1.904(2) "does not apply to rulings on motions to dismiss a petition" given "[n]o issue of fact is raised by a motion to dismiss." *Id.* (citing *Union Trust & Savings Bank v. Stanwood Feed & Grain, Inc.*, 158 N.W.2d 1, 3 (Iowa 1968)).

Additionally, even if Carlson's rule 1.904(2) motion was procedurally proper, a new issue may not be raised in a motion to reconsider. *Winger Contracting Co.*, 926 N.W.2d at 543. In her

Motion to Reconsider, for the first time, Carlson asserted the dismissal of her Petition violated due process and equal protection under the United States Constitution and the Iowa Constitution. Because these issues were not raised in her resistance, hearing brief, or during the hearing, they could not be raised in a motion to reconsider, nor may this Court consider these issues on appeal. *Id.*

Regardless, Carlson's constitutional arguments lack any merit. Statutes of limitations are a building block of our judicial system. It is for this Court to interpret and apply Iowa's statute of limitations. If Plaintiff wanted her day in court, all that was required was for her to timely file her Petition together with information required by Iowa law.

1.6 Carlson waived her opportunity to present more evidence by failing to submit it by affidavit or an offer of proof

It is elementary to appellate review that reversal requires not merely legal error but also proof of prejudice to the appellant. *E.g.*, *Cole v. Laucamp*, 213 N.W.2d 532, 534 (Iowa 1973). In the context of excluded evidence, this requires an offer of proof by the appellant. *Id.* Without an offer of proof, it is not possible for an appellate court

to determine if the exclusion of evidence, if found improper, prejudiced the appellant.

Here, however, the district court did not exclude or otherwise prevent Carlson from presenting evidence. Instead, during the hearing on the Motion to Dismiss, Carlson made several allusions to additional information she wanted the district court to consider, but she inexplicably withheld this alleged information.

So I think we would ask the Court to make a decision on how we move forward, because there may be some affidavits. I would say there are affidavits we want to file. We do want to be able to have a complete record if, for some reason, the Court decides that, yes, you missed the deadline.

(Tr. 14:8–13.)

And that's one of the things that we're unable to put in this record other than by, simply, counsel's representation to the Court. I think that needs to be — at minimum, we need to be able to place that type of information in affidavit format for the Court to create a record upon which the Court can rule. And that's why there was a request for an evidentiary hearing and — or a summary judgment format would allow for affidavits as well, Judge. But I don't think this should be or can be effectively handled by way of motion to dismiss.

(Tr. 19:5–14.)

There are affidavits that could be filed. One of the issues that was raised by Defendants — I can't remember in

which pleading, but they asked two questions. Why did it take so long? Why did Plaintiff wait 23 months to actually file their case? That could be in an affidavit. Why did it take three days after the rejection notice? That could be in an affidavit. There may be others.

The fact that we didn't submit anything was, in part, Your Honor, because we didn't know how the Court was going to address this case. And as we reviewed more and more case law about how these things are handled, it became clear that we needed to know how the Court was going to address this matter.

(Tr. 23:16–24:4.) Having intentionally withheld the alleged information, Carlson instead relied upon a fallacy the district court should have denied the Motion to Dismiss because it was “conceivable” such information would support allowing Carlson’s Petition to relate back. (Tr. 24:5–20.)

Carlson additionally asserts the district court should have been afforded her evidentiary hearing. There is no basis upon which Carlson was entitled to an evidentiary hearing, and the lack of an evidentiary hearing did not prevent her from submitting affidavits. Jones Property Services filed its Motion to Dismiss on January 27, 2020, and the district court held its hearing on April 3, 2020. This left Carlson 67 days to gather any affidavits or other factual information to present to the district court. Carlson clearly believed

the district court should consider evidence beyond her Petition itself, as she submitted proof of the returned filing. Instead of submitting affidavits, however, she attempted to manufacture another appeal point. Reversal may not be premised on hypothetical evidence Carlson could have presented. *See Cole*, 213 N.W.2d at 534. As with the rest of her appeal, Carlson's argument fails.

CONCLUSION

The facts presented in case are the corollary to the facts presented in *Jacobs*. In *Jacobs*, a timely filing was returned after the deadline, thus making it impossible to resubmit prior to the deadline. Through due diligence, the party promptly resubmitted the filing the same day it was returned. In both Court of Appeals cases applying *Jacobs*, the filing was resubmitted the day after it was rejected. Here, however, Carlson's filing was returned two days prior to the deadline, and she inexplicably waited three days before resubmitting the filing. The holding in *Jacobs* explicitly prevents Carlson's Petition from relating back. Moreover, allowing an electronic filing to relate back under these circumstances would

lead to an indefinite standard and a slippery slope, eroding certainty and equal application of the law. This Court should accordingly affirm the district court's dismissal of Carlson's Petition.

REQUEST FOR NON-ORAL SUBMISSION

Jones Property Services does not believe oral argument to be necessary, given the limited summary judgment record and the well-settled legal issues in question.

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