

IN THE IOWA SUPREME COURT

**DOCKET NO. 20-0879
LINN COUNTY NO. LACV094700**

PATRICIA K. CARLSON,

Plaintiff/Appellant,

vs.

**SECOND SUCCESSION, LLC, IOWA COMMERCIAL ADVISORS,
LLC d/b/a CUSHMAN & WAKEFIELD IOWA COMMERCIAL
ADVISORS, and JONES PROPERTY SERVICES, INC.,**

Defendants/Appellees.

**APPEAL FROM THE IOWA DISTRICT COURT FOR LINN
COUNTY
HON. FAE HOOVER GRINDE**

**DEFENDANTS/APPELLEES' FINAL BRIEF
AND CONDITIONAL REQUEST FOR ORAL ARGUMENT**

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

**ISSUE I: THE DISTRICT COURT CORRECTLY DISMISSED
CARLSON’S PETITION BECAUSE IT VIOLATED
IOWA’S LIMITATIONS ON ACTIONS.**

Goedken v. Alliance Pipeline, L.P., No. 17—1066, 2018 WL 4360903 (Iowa Ct. App. Sep. 12, 2018)

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Hilkemann v. City of Carter Lake City Council, No. 18—0841, 2019 WL 4297242 (Iowa Ct. App. Sep. 11, 2019)

Hook v. Lippolt, 755 N.W.2d 514, 523 (Iowa 2008)

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Jones v. Great River Medical Center, No. 17—1646, 2018 WL 4360983 (Iowa Ct. App. Sep. 12, 2018)

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McCleary v. City of Des Moines Zoning Board of Adjustment, No. 16-0620, 2017 WL 1400870 (Iowa Ct. App. April 19, 2017)

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State v. Iowa District Court for Scott County, 889 N.W.2d 467 (Iowa 2017)

Trana v. Smith, No. 17—1913, 2018 WL 3471616 (Iowa Ct. App. July 18, 2018)

Statutes:

IOWA CODE §614.1(2)

ROUTING STATEMENT

The Appellees (“Second Succession”) dispute Appellant’s (“Carlson”) request to transfer this case to the Iowa Supreme Court because it involves the application of existing legal principles and is appropriate for summary disposition. IOWA R. APP. P. 6.1101(3).

STATEMENT OF THE CASE

Carlson’s Statement of the Case is correct. IOWA R. APP. P. 6.903(3).

STATEMENT OF FACTS

Carlson’s Statement of Facts is correct. IOWA R. APP. P. 6.903(3).

ARGUMENT

ISSUE I: THE DISTRICT COURT CORRECTLY DISMISSED CARLSON’S PETITION BECAUSE IT VIOLATED IOWA’S LIMITATIONS ON ACTIONS.

Preservation of Error

Carlson properly preserved error of this issue.

Standard of Review

Carlson correctly states that the standard of appellate review is for errors at law.

Argument

In two days, nine hours, and five minutes, Carlson’s potentially fruitful claim rotted. No view of the record, no standard on appeal, and no

argument to this Court can change how much time passed between two events; (1) January 6, 2020 at 2:54 p.m. – when the Clerk of Court rejected Carlson’s Petition, (App. 14—15, 20; Carlson’s Resistance to Motion to Dismiss (“Carlson’s Rsst.”), Exhibit (“Ex.”) B), and (2) January 8, 2020 at 11:59 p.m. – when Carlson’s deadline to file expired. IOWA CODE §614.1(2). No party disputes that Carlson filed her Petition on January 9, 2020 at 3:51 p.m., (App. 21; Carlson’s Rsst., Ex. C), but the parties disagree about the legal consequences of this undisputed fact.

Tasked with deciding whether a suit filed one day too late could survive the statute of limitations deadline, the District Court received evidence, heard argument, applied the law, and dismissed Carlson’s Petition. Controlling Iowa law compels this Court to affirm the dismissal.

a. Carlson missed Iowa’s deadline for timely filing.

No party disputes Iowa’s statute of limitations; personal injury actions must be filed within two years of the injury. IOWA CODE §614.1(2). This deadline is no secret: whether crossing a bridge in 1860, Gustin v. Jefferson County, 15 Iowa 158, 159-160 (Iowa 1863), or navigating the paved road via combustion engine 150 years later in 2013, Trana v. Smith, No. 17—1913, 2018 WL 3471616 at *1—2 (Iowa Ct. App. July 18, 2018)¹, a litigant must

¹ Unpublished Iowa Court of Appeals decision, no known adverse authority.

file within two years of injury. Filing “one day too late” is fatal. See Lane v. Spencer Mun. Hosp., 836 N.W.2d 666, 666-667 (Iowa App. 2013). While the Iowa Supreme Court has recognized exceptions when administrative errors arise, Jacobs v. Iowa Dept. of Transp., Motor Vehicle Div., its intent was to “continue ... not change” the rules governing filing. 887 N.W.2d 590, 599 (Iowa 2016) (citations omitted).

Here, Carlson’s Petition alleges an injury on January 8, 2018, but the file-stamp on her Petition says January 9, 2020 at 3:51 p.m. (App. 8; Carlson’s Petition (“Pet.”) p. 2, ¶¶5—7). Carlson necessarily concedes she missed the two-year statute of limitations, (Carlson’s Appeal Brief (“App. Br.”), pp. 12—13), because the “relating back” allowed in Jacobs, 887 N.W.2d 590, can only apply to late filings. A proper reading of the case and its progeny, however, reveals that the District Court’s dismissal was free of any error at law.

b. Jacobs cannot revive Carlson’s Petition.

Basic logic dismantles Carlson’s reliance on Jacobs and vindicates the District Court’s dismissal of her Petition. True, the Jacobs decision allows a late filing to “relate back” to its original date of submission, but a litigant must first satisfy a three-part test to use this doctrine. Jacobs, 887 N.W. at 599. Read in parallel to an Iowa Court of Appeals decision, the District

Court correctly stated this controlling precedent in its analysis:

District Court Order	Iowa Court of Appeals
<p>“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.”</p>	<p>“The court held because the EDMS received the petition before the filing deadline, the clerk returned the submission because of ‘minor errors’ after the deadline, and the filer corrected the errors and promptly resubmitted the document, the resubmission related back to the original, timely filing.”</p>
<p>(App. 53, District Court’s Order, p. 2)</p>	<p><u>Jones v. Great River Medical Center</u>, No. 17—1646, 2018 WL 4360983 (Iowa Ct. App. Sep. 12, 2018)² (citing <u>Jacobs</u>, 887 N.W.2d at 597-599)</p>

No Iowa court has ever held that litigants can apply Jacobs without first satisfying the three-part test. The District Court correctly rejected Carlson’s attempted application of it because she could not satisfy the test.

Here, Jacobs cannot save Carlson’s delinquent Petition because the Clerk of District Court returned the filing before the statute of limitations deadline, not after. There is no dispute that Carlson initially filed her Petition before the deadline, i.e., on January 3, 2020. (App. 19, Carlson’s Rsst., Ex. A). Even if this Court assumes that Carlson “promptly” resubmitted her filing, she still cannot meet the Jacobs test. She refiled on

² Unpublished Iowa Court of Appeals decision, no known adverse authority.

January 9, 2020, i.e., after the limitations deadline passed. Using the three-part test, the District Court correctly distinguished this case from Jacobs:

“Patricia Carlson has submitted evidence that on January 3, 2020 at 6:53 p.m., she filed her Petition by way of EDMS prior to the January 8, 2020 deadline. However, the record shows that the clerk returned the filing two days before the deadline and further that Ms. Carlson filed her Petition on January 9, 2020, three days after January 6, 2020 when the clerk returned the January 3, 2020 filing.” (App. 53, District Court’s Order, p. 2).

In other words, the question is not how fast Carlson resubmitted, but when.

Carlson tacitly recognizes the fatal flaw in her argument because her attack of the District Court’s ruling rejects one of the three parts of the Jacobs test: “**Whether the proposed filing was returned by the clerk’s office before or after the deadline should be irrelevant.**” (Carlson’s App. Br., p. 22)(emphasis in original). This claim cannot co-exist with Jacobs:

We conclude that for purposes of meeting a deadline, a filing may relate back to the original date it was received by the electronic document management system (EDMS) when the filing party demonstrates the following three conditions are met. 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. Jacobs, 887 N.W.2d at 591 (emphasis added).

Simply put, Jacobs saves apples, but Carlson holds an orange. Even if Carlson’s argument about the relevance of when the filing was returned holds merit, the legislature should hear it, not the courts. This Court should reject Carlson’s offer to make new law and affirm the dismissal of her Petition because it cannot “relate back” under Jacobs.

c. Carlson’s blame-shifting distorts the record.

Carlson’s arguments, then and now, obscure her role in this dispute. Then, Carlson portrayed herself as a victim to “a wholly arbitrary” decision by a Clerk (App. 16; Carlson’s Rsst., p. 3), at risk of suffering “harsh statute of limitations repercussions” unless the District Court denied the Motion to Dismiss. (Carlson’s District Court Brief (“Dist. Ct. Br.”), p. 6). On appeal, Carlson sings the same song; the Iowa Supreme Court intended to spare her from the “harsh ... consequences of the unilateral decisions by a clerk...”, (Carlson’s App. Br., p. 13), and to protect her against losing her “day in court due to a simple, meaningless omission on the electronic cover sheet.” (Carlson’s App. Br., p. 22). These arguments collapse if this Court recognizes that Carlson – not the Clerk – decided when to file and when to refile after rejection.

First, no evidence explains the delay between the date of Carlson’s alleged injury, January 8, 2018, and the date she initially filed her Petition,

January 3, 2020. An injured party must investigate the nature and extent of their legal rights upon notice of their injury. Trana v. Smith, No. 17—1913, 2018 WL 3471616 at *1 (Iowa Ct. App. July 18, 2018)³(citing Hook v. Lippolt, 755 N.W.2d 514, 523 (Iowa 2008)). While suing the proper parties was the central issue in Trana and Hook, the overarching theme remains: once the two-year clock starts ticking, the injured party assumes the duty to shepherd their case to court before it stops. Here, the record shows that at least twenty three months passed before Carlson did any shepherding. Carlson refiled her Petition within three days of rejection. (App. 14—15; Carlson’s Rsst., pp. 1-2). Logically, if Carlson had initially filed her rejected Petition a few days earlier, and still refiled the Petition within three days of rejection, it is at least possible that she could have better shielded her claim from the statute of limitations.

Second, Carlson was better positioned to protect her claim than she admits. She received a rejection notice at 2:54 p.m. on January 6, 2020 (App. 20, Carlson’s Rsst., Ex. B), knowing that the statute of limitations was expiring on January 9, 2020. She did nothing for the rest of day on January 6th and nothing for the entire days of January 7th and 8th. Carlson’s arguments paste over these gaps of time, if they are mentioned at all. To the

³ Unpublished Iowa Court of Appeals decision, no known adverse authority.

District Court, Paragraphs 2 and 3 of her Resistance glided over her inaction without comment (App. 14—15, Carlson’s Rsst., pp. 1-2). To this Court, Carlson sews together the events of January 6th and 9th in a single paragraph, as if no time elapsed between the dates:

“On January 6, 2020 at 2:54 p.m., the Clerk of Court for Linn County improperly rejected the January 3rd filing of the Petition due to an alleged failure to provide Ms. Carlson’s social security number or her date of birth for the electronic cover sheet. Immediately upon learning that the January 3rd filing had been rejected, counsel telephoned the Linn County Clerk’s office on January 9, 2020 and on that same day, counsel refiled the Petition. The January 9th filing was accepted later that day.” (Carlson’s App. Br., p. 8)(citations and footnote omitted).

Carlson’s inaction is even more significant when viewed in the context of contemporary controlling authority.

As of January 3, 2020, six Iowa appellate courts had cited Jacobs, 887 N.W.2d 590. One cited it for reasons irrelevant to this appeal. See State v. Iowa District Court for Scott County, 889 N.W.2d 467, 473 (Iowa 2017)(citing Jacobs in holding goal of interpreting statutes is to be “reasonable and workable”). Three others cited it to hold that a petition or appeal can relate back if it was timely filed, but rejected by the Clerk after the deadline. See Goedken v. Alliance Pipeline, L.P., No. 17—1066, 2018

WL 4360903 at *2—3 (Iowa Ct. App. Sep. 12, 2018)⁴(notice of appeal relates back when timely filed but rejected by Clerk after deadline), Paris v. Alliance Pipeline, L.P., No. 17—1067, 2018 WL 4360905 at *2 (Iowa Ct. App. Sep. 12, 2018)⁵(same result as in Goedken), and Jones v. Great River Medical Center, No. 17—1646, 2018 WL 4360983 at *2—3 (Iowa Ct. App. Sep. 12, 2018)⁶(holding plaintiff could have related delinquent petition back to timely filing, but affirming dismissal for other reasons). The remaining two held that Jacobs could not save a petition if it was refiled after the limitations period expired, McCleary v. City of Des Moines Zoning Board of Adjustment, No. 16-0620, 2017 WL 1400870 (Iowa Ct. App. April 19, 2017)⁷, and that an attempt to add a new party was not an “inadvertent mistake” that could justify relating back the untimely filing. Hilkemann v. City of Carter Lake City Council, No. 18—0841, 2019 WL 4297242 at *2—3 (Iowa Ct. App. Sep. 11, 2019)⁸.

These cases capture the state of Iowa law when Carlson refiled her Petition after the two-year limitations period ended: (1) the three-part test in Jacobs was controlling and (2) no court had ever applied it where a filing had been rejected before the limitations period ended, but the litigant refiled

4 Unpublished Iowa Court of Appeals decision, no known adverse authority.

5 Unpublished Iowa Court of Appeals decision, no known adverse authority.

6 Unpublished Iowa Court of Appeals decision, no known adverse authority.

7 Unpublished Iowa Court of Appeals decision, no known adverse authority.

8 Unpublished Iowa Court of Appeals decision, no known adverse authority.

after the deadline. Citing Carlson’s inaction between rejection and refiling (App. 53; District Court’s Order, p. 2), the District Court made no errors when it applied Iowa law and dismissed her Petition.

d. Policy considerations favor the District Court.

The Iowa Supreme Court did not have this record in mind when it carved out an exception to the two-year statute of limitations. The Jacobs opinion feared “muddying of deadlines” and “erod[ing] the clarity of existing deadlines.” 887 N.W.2d at 597-599. Critically, this worry arose when a litigant had filed before the deadline, but the Clerk rejected the filing after the deadline had passed. Jacobs, 887 N.W.2d at 592-593 (describing sequence of filing events). Even if this Court held the power to make new law and further erode the legislature’s deadline, no policy argument favors reversing the District Court’s dismissal.

While adopting Carlson’s view may simplify the three-party Jacobs test, it would create statewide headaches for trial courts. Carlson reduces the Jacobs test to two prongs:

“(1) 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—i.e., errors that could have been corrected or disregarded by the clerk ... [and] (2) the party promptly resubmitted the filing after correcting the errors.” 887 N.W.2d at 599.

Removing the question of whether the rejection occurred before or after the deadline essentially creates a new policy without any limiting principles. It would create mini-trials over the words “minor errors” and “promptly”. True, some, many, or most defendants may win disputes about whether a refiling was “prompt”, but it would shift the focus from whether or not the plaintiff obeyed the statute of limitations to whether or not the opposing parties and the trial/appellate courts share the same definition of “promptly”.

Affirming the District Court would maintain the integrity of Iowa law regarding deadlines. Allowing litigants to relate back their corrected filings – where the litigant filed pre-deadline, but the Clerk rejected post-deadline – makes sense, because it provides a remedy for a Clerk’s discretion. See Jacobs, 887 N.W.2d at 599 (holding that excluding the possibility of a corrected filing relating back to the original would provide no protection to the filer if a clerk’s office rejected it erroneously or took a long time to process before rejecting). The District Court did not deprive Carlson of any remedy; rather, her inaction in the two days, nine hours, and five minutes between the Clerk’s rejection and the deadline passing did.

CONCLUSION

This Court should affirm the dismissal of Carlson’s Petition.

CONDITIONAL REQUEST FOR ORAL ARGUMENT

Pursuant to IOWA R. APP. P. 6.908(1), Second Succession requests to be heard orally, but only if oral argument is granted to Carlson.

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CERTIFICATE OF COMPLIANCE

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 Times New Roman in size 14 and contains 2,665 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(G)(1).

 /s/ Alex E. Grasso
Alex E. Grasso

CERTIFICATE OF SERVICE

I, Alex E. Grasso, member of the Bar of Iowa, hereby certify that on the 12th day of January, 2021, I electronically filed the above Appellee’s Final Brief with the Iowa EDMS and served a copy by email to Appellant’s attorneys of

