

IN THE SUPREME COURT OF IOWA  
SUPREME COURT NO. 20-0879

---

**PATRICIA K. CARLSON,**

Plaintiff-Appellant,

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

Defendants-Appellee.

---

Linn County No. LACV094700

APPEAL FROM THE IOWA COURT OF APPEALS

---

PLAINTIFF/APPELLANT'S  
APPLICATION FOR FURTHER REVIEW

Iowa Court of Appeals Decision Dated June 16, 2021

---

JOHN C. WAGNER  
JOHN C. WAGNER LAW OFFICES, P.C.  
600 39<sup>th</sup> Avenue  
P.O. Box 262  
Amana, IA 52203  
Tel: 319-622-3357  
Fax: 319-622-3404  
Email: [john@jcwagnerlaw.com](mailto:john@jcwagnerlaw.com)

Attorneys for Appellant

## **QUESTIONS PRESENTED FOR REVIEW**

- I. **Did the Court of Appeals err in affirming the District Court’s dismissal of Paty’s Petition on the grounds the factors for relation-back did not “converge” because the clerk rejected the Petition two days before the statute of limitation deadline; the resubmission of the Petition was not “prompt”; and the omitted date of birth information for the electronic cover sheet violated Iowa Code section 602.6111(1)?**

**TABLE OF CONTENTS**

Question Presented for Review-----2

Table of Contents-----3

Statement Supporting Further Review-----4

Statement of the Case-----7

Argument-----10

I. **THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT’S DISMISSAL OF APPELLANT’S PETITION BECAUSE THE PROMPT REILING ON JANUARY 9<sup>th</sup>, 2020 SHOULD *RELATE BACK* TO THE ORIGINAL AND TIMELY FILING DATE OF JANUARY 3<sup>rd</sup>, 2020.**

Conclusion-----23

Certificate of Cost-----24

Certificate of Compliance-----24

Certificate of Service-----24

Proof of Service-----25

## STATEMENT SUPPORTING FURTHER REVIEW

Further review is sought of the Court of Appeals decision moving away from the Supreme Court's common-sense resolution of conflicts between technology and substantive rights. Appellant-Plaintiff Patricia K. Carlson seeks further review of the June 16, 2021 decision of the Iowa Court of Appeals (see attached Decision at Attachment "A") affirming district court Judge Fae Hoover-Grinde's Order entered April 7, 2020 dismissing Paty's personal injury claims.

Paty Carlson filed her petition **five days before the statute of limitations ran**. This Court should grant further review because the decision of the Court Appeals directly conflicts with Iowa Supreme Court and the Court of Appeals' precedent regarding electronic filing and the impact on statute of limitations. Iowa R. App. P. 6.1103(1)(b)(1). The Court of Appeals ruled Paty's refile of her Petition at Law, which occurred immediately after she became aware of a rejection notice from the clerk of court, was not "prompt" under Jacobs v. Iowa Department of Transportation, 887 N.W.2d 590 (Iowa 2016); Toney v. Parker, 958 N.W.2d 202, 208-11 (Iowa 2021); see also Jones v. Great River Med. Ctr., No. 17-1646, 2018 WL 4360983 (Iowa Ct. App. Sept. 12, 2018). The Court of Appeals further ruled the initial filing of Paty's cover sheet omitted identification information (her date of birth) that was required by Iowa Code section 602.6111(1) and which "could not

have been corrected or disregarded by the clerk.” Consequently, Paty’s Petition was deemed “filed” one day after the applicable statute of limitations.

Thus, the Court of Appeals has now created an “bright-line” rule establishing an arbitrary deadline as to the conditions for prompt refiling when a prior filing is rejected for failure to provide information set forth in section 602.6111(1). Such an opinion from the Court of Appeals is not in line with Jacobs nor is it allowed pursuant to section 602.6111(3)<sup>1</sup>, which expressly mandates it is the Iowa Supreme Court’s sole responsibility to determine, via “rules or directives” as to what “manner” a party shall provide the requested information. I.C § 602.6111(3). Accordingly, the Iowa Supreme Court by legislative mandate should take this case on further review and determine whether Paty’s refiled Petition should relate-back to her first timely filing. Iowa R. App. P. 6.1103(1)(b)(2); see also Toney, 958 N.W.2d at 204 (wherein this Court retained an appeal regarding the timeliness of resubmitted filings).

Further, the electronic filing process to gain entry into the judicial system is undoubtedly of great and broad public importance and interest<sup>2</sup>. Iowa R. App. P.

---

<sup>1</sup> Section 602.6111(3) states in relevant part: “[a] party shall provide the information pursuant to this section in the manner required by rules or directives prescribed by the supreme court.” Iowa Code Ann. § 602.6111 (West).

<sup>2</sup> According to the “FY21 Judicial Branch Budget Presentation” the total filings for cases in Iowa in 2019 was **747,100**. See: [www.iowacourts.gov/static/media/cms/2020\\_Annual\\_Report\\_Draft\\_011221\\_98A981BC903E8.pdf](http://www.iowacourts.gov/static/media/cms/2020_Annual_Report_Draft_011221_98A981BC903E8.pdf) (emphasis added).

6.1103(1)(b)(4). A plaintiff's "day in court" is of such paramount concern that this Court has opined it should not be denied due to a "minor or technical mistake." See Furnald v. Hughes, 804 N.W.2d 273, 276 (Iowa 2011) (discussing within context of the purpose for savings statutes). Meaningful access to the court system must be something more than mere words particularly when denial of that day is predicated on a technicality, if corrected, "would [not] materially prejudice the rights of a defendant." Toney v. Parker, 958 N.W.2d 202, 210 (Iowa 2021) (quoting and citing Patten v. City of Waterloo, 260 N.W.2d 840, 841 (Iowa 1977)).

For all these reasons, this Court should grant further review and address the issues presented in this Application.

## STATEMENT OF THE CASE

This appeal concerns the denial of a plaintiff's access to the court system and justice due to a timely filed petition being rejected by a clerk of court for a minor error on the Electronic Document Management System's (EDMS) electronic cover sheet.

Plaintiff-Appellant, Paty Carlson (hereinafter, "Paty"), through counsel timely filed her Petition at Law and Jury Demand (the "Petition") on January 3, 2020. (Plaintiff's Exhibit "A", App. 19). The Petition asserted a personal injury—"slip and fall" claim that occurred on January 8, 2018. (Petition, App. 7-8). Counsel for Paty received a notification on January 3<sup>rd</sup> at approximately 6:53 p.m., via email, from EDMS of the receipt of the Petition. (Plaintiff's Exhibit "A", App. 19). On the same date, counsel for Paty paid the filing fee via the firm's credit card and received notification of accepted payment. (Plaintiff's Resistance to Motion to Dismiss, App. 14).

On January 6, 2020 at 2:54 p.m., the Clerk of Court for Linn County improperly rejected the January 3<sup>rd</sup> filing of the Petition due to an alleged failure<sup>3</sup> to provide Paty's social security number or her date of birth for the electronic cover

---

<sup>3</sup> Appellant notes that this is reasonably disputable, because there is no proof that the required information was in fact omitted, other than the clerk's statement. Upon information and belief there is no practical way to re-enter the EDMS portal to confirm, because when the clerk rejected the Petition, she further declined to create a case thereby deleting the prior entry.

sheet. (Plaintiff's Exhibit "B", App. 20). Immediately upon learning the January 3<sup>rd</sup> 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. (Plaintiff's Exhibit "C", App. 21). The January 9<sup>th</sup> filing was accepted later that day. Id.

After service of process was completed, Appellee-Defendant Jones Property Services, Inc. (hereinafter, "Jones Property") seizing an opportunity to extinguish the action without a trial on the merits, filed its Motion to Dismiss on January 27, 2020 (the "Motion to Dismiss"). (Motion to Dismiss, App. 5). The Motion to Dismiss essentially argued the Petition filed on January 9<sup>th</sup> was one (1) day past the statute of limitations, and accordingly, it should be summarily dismissed. (Motion Dismiss, ¶14, App. 6). On February 3, 2020, the other Appellee-Defendants, Second Succession, LLC, Iowa Commercial Advisors, LLC d/b/a Cushman & Wakefield, and Iowa Commercial Advisors, filed their collective Joinder in Motion to Dismiss (the "Joinder"). (Joinder in Motion to Dismiss, App. 33). The Joinder does not provide any additional arguments or authority and relies solely on the Motion to Dismiss. Id.

Appellees presented their Motion to Dismiss and Joinder based solely on the argument that Paty, by virtue of the current date stamp to her Petition, dated January 9, 2020, missed the statute of limitations period set forth in Iowa Code



section 614.1(2), by a single day. (Motion to Dismiss, App. 6). Paty filed a Resistance to Motion to Dismiss and Joinder, with attached exhibits and citing relevant case law, including Jacobs v. Iowa Dept. of Transp. Motor Vehicle Div., 887 N.W.2d 590 (Iowa 2016) (the most recent Iowa Supreme Court case regarding e-filing issues and the statute of limitations). The Appellees filed replies to the resistance both objecting to the filing of the exhibits, as being outside the Petition and therefore inadmissible; and disputing the applicability of Paty's reliance on the *relation back doctrine* set forth in the Jacobs case.

Telephonic Hearing on the Motion to Dismiss was set for April 2, 2020. (Order Setting Hearing, App. 38). The District Court entered an Order on April 7, 2020, dismissing Paty's Petition (Order, App. 52). She filed a Motion to Reconsider, Enlarge or Amend Re: Order Filed April 7, 2020 pursuant to Iowa Rules of Civil Procedure 1.904(2) (the "Motion to Reconsider", App. 40). The Motion to Reconsider was denied on June 7, 2020. (Order Re: Motion Reconsider, App. 85). Paty timely filed her Notice of Appeal on June 22, 2020, commencing case No. 20-0879. (Notice of Appeal, App. 55).

On June 16, 2021, the Court of Appeals rendered its opinion affirming the District Court. Attachment "A", p. 1. The Court of Appeals determined the facts in Paty's case did not warrant applying the Jacobs "relation back" doctrine because:

(1) the clerk of court rejected the Petition two-days before the statute of limitations deadline; (2) the resubmitted Petition was not promptly filed; and (3) her failure to provide her date of birth on the original cover sheet violated Iowa Code section 602.6111(1) and such an error could not be corrected or disregarded by the Clerk. Attachment "A", p. 3-4.

## **ARGUMENT**

### **I. THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT'S DISMISSAL OF APPELLANT'S PETITION BECAUSE THE PROMPT REILING ON JANUARY 9<sup>th</sup>, 2020 SHOULD *RELATE BACK* TO THE ORIGINAL AND TIMELY FILING DATE OF JANUARY 3<sup>rd</sup>, 2020.**

#### **A. Standard of Review.**

Rulings on motions to dismiss are reviewed for correction of errors at law. Karon v. Elliot Aviation, 937 N.W.2d 334, 339 (Iowa 2020). To the extent the Court undertakes statutory interpretation the review is likewise for correction of errors at law. DuTrac Cnty Credit Union v. Hefel, 893 N.W.2d 282, 289 (Iowa 2017).

#### **B. The Relation-Back Doctrine Should Apply in this Case.**

The Relation-Back Doctrine is a judicial remedy which allows a pleading that is rejected by the clerk of court due to a "minor error" or for some other administrative omission and is subsequently refiled past a deadline, to nevertheless be deemed timely by *relating* the late filing *back* to the original filing date. Jacobs

v. Iowa Dept. of Transp. Motor Vehicle Div., 887 N.W.2d 590, 597-98 (Iowa 2016); Toney v. Parker, 958 N.W.2d 202, 208-11 (Iowa 2021) (applying the Jacobs factors); see also Jones v. Great River Medical Center, 924 N.W.2d 535 (Table), 2018 WL 4360983 \*2-3 (Ct. App. Iowa). The doctrine is intended to ameliorate the harsh legal consequences of the unilateral decisions by a clerk regarding the sufficiency of information for the electronic cover sheet or other request for information, whose sufficiency has no actual legal effect on a case. Jacob, 887 N.W.2d at 597-98. It practically allows for oversight of decision making by clerks that have severe legal consequences; and supports the express statutory duty of a clerk of court to “file and note all documents presented. . . for filing.” See Jones, 924 N.W.2d 535 (Table), 2018 WL 4360983 at \*3; see also Dwyer v. Clerk of District Court for Scott County, 404 N.W.2d 167, 170 (Iowa 1987) (citing I.C. §602.8102(98)).

In Jacobs, plaintiff’s counsel filed a petition for judicial review on the deadline date to file. Jacobs, 887 N.W.2d at 591. Counsel inadvertently failed to provide plaintiff’s address and the correct case designation. Id. The clerk court unilaterally rejected the filing. Id. Upon discovery of the rejection, counsel for *Jacobs* promptly resubmitted the petition with the additional information; and it was accepted by the clerk. Id. This Court determined that the corrected filing should relate back to

the original date it was received by EMDS. Jacobs, 887 N.W.2d at 598-99. The precise holding in Jacobs is the following:

“we hold today that a resubmitted filing can relate back to the original submission date **for purposes of meeting an appeal deadline** when the following circumstances converge. **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—i.e., errors that could have been corrected or disregarded by the clerk. **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 599; see also Toney, 958 N.W.2d 208-11 (wherein this Court once again found facts similar to Jacobs warranting the relation-back doctrine to apply).

The Court of Appeals and the District Court both followed an unwarranted, very strict and harsh interpretation of the Jacobs' factors in finding they did not apply in Paty's case.

**C. The Court of Appeals Misapplied Jacobs with Respect to the Relevance of the Clerk's Rejection Notice Date and Promptness of the Refiling Date.**

In its very brief opinion, the Court of Appeals found none of the Jacobs' factors applied in Paty's case and consequently, the denial of her day in court on a technicality was appropriate. Attachment “A”, p. 2-4. First, it

determined that because the Clerk had returned the Petition *before* the statute of limitations deadline and this fact was dissimilar to the rejection in Jacobs, which occurred *after* the appeal deadline, the second factor in Jacobs was not met. The Court of Appeals also questioned whether Paty’s refiled Petition was, in fact, filed promptly. Id. Such strict conclusions are in contradiction to the intent and purpose behind Jacobs.

In the allowing of an otherwise late filed pleading to *relate back*, the Jacobs Court placed great significance on maintaining sound policy. Jacobs, 887 N.W2d at 599. The Court opined that to not allow a refiled pleading to relate back would otherwise be subject to “multiple flaws.” Id. Specifically, “[i]t would give no effect to the language of the rule [Rule 16.308(2)] requiring the filer to keep track of the date and time of the original submission.” Id. The Rule states in relevant part:

“(2) The clerk of court may return the submission to the filer with an explanation of the error and instructions to correct the filing. In such instances, it is the responsibility of the filer to keep a record of the notice EDMS generated to verify the date and time of the original submission.”

Iowa R. Civ. P. 16.308(2). Ignoring such language would be contrary to the Court’s duty to “interpret our statutes and rules so they effectuate just and reasonable results, not arbitrary ones.” Jacobs, 887 N.W2d at 597 (citing Iowa Code § 4.4(3))

(setting forth the presumption that in enacting a statute, “[a] just and reasonable result is intended”).

In addition, if the filing was not found to relate back to the original filing, the Jacobs Court indicated the “district court[’s] jurisdiction [would] be dependent on how a clerk exercised his or her discretion.” “It would [also] erode the clarity of existing deadlines to appeal to district court[; a]nd it would provide no protection to the filer if the original submission was returned erroneously or if the clerk's office took a long time to process and then ultimately return a filing.” Id.

In our case **whether the proposed filing was returned by the clerk's office before or after the deadline should be irrelevant.** Indeed, Paty actually filed her Petition, **five days before the deadline**, which is significantly earlier in time than did the plaintiffs in Jacobs and in Toney. See Jacobs, 887 N.W.2d at 593 (filed on last day of deadline); Toney, 958 N.W.2d at 206 (resistance to summary judgement motion filed on last day of deadline). Under the Court of Appeals and the District Court’s logic, it would be far more advantageous for a plaintiff facing a statute of limitations deadline to file on the last day, thereby preserving an argument for *relating back*, if, for some reason, the filing would be rejected. This is an absurd result.

What is far more significant is the resubmission was filed one day late, the same as the resubmitted filing in Jacobs. Id. The Court of Appeals held Paty's refiling, one day after the deadline, was not filed "promptly" and therefore the third Jacobs' factor was "questionably" not met. Yet, the Court of Appeals has defined "promptly" as meaning "at once; immediately, quickly.'" Cook v. State, No. 17-1245, 2019 WL 719163, at \*4 n.6 (Iowa Ct. App. Feb. 20, 2019) (quoting *Promptly*, *Webster's Third New Int'l Dictionary* 1816 (unabr. ed. 2002)). Similarly, this Court has noted the word "promptly" means "immediately" or "quickly". Walker v. State, 801 N.W.2d 548, 561 (Iowa 2011).

The Iowa Appellate Courts have consistently maintained "where the electronic filer **promptly** signed the petition after the clerk brought the omission to his attention, the civil action should be considered commenced at the time of the original, timely submission." Jones v. Great River Med. Ctr., 924 N.W.2d 535 (Iowa Ct. App. 2018) (citing Critchlow v. Reliance Mut. Ins. Ass'n, 197 N.W. 318, 319 (Iowa 1924) (explaining if filing is construed as "mere amendment to the original cause of action" then "it relates back to the filing of such original petition, and clearly the plea of the statute of limitations is not available to appellee"))).

The Jacobs Court cited the case of Christiansen v. Iowa Bd. Of Educ. Exam'rs, 831 N.W.2d 179 (Iowa 2013) which allowed the relation back rule to a case filed **30**

**days late.** Jacobs, 887 N.W.2d at 599 (emphasis added). Thereby establishing a “cut-off” date for the time to refile and what constitutes “promptly.” Equally compelling is this Court’s history in allowing late filed pleadings with jurisdictional significance to be deemed timely filed when substantial compliance occurs and no prejudice to the other party is shown. See Monson v. Iowa Civil Rights Com’n., 467 N.W.2d 230, 232 (Iowa 1991) (citing Brown v. John Deere Waterloo Tractor Works, 423 N.W.2d 193, 194 (Iowa 1988) and quoting: “we have repeatedly held that ‘substantial—not literal—compliance with [the statute] is all that is necessary to invoke jurisdiction’”).

In Paty’s case, it is irrefutable that upon discovery of the rejection the Petition was immediately resubmitted after the correcting the error to the cover sheet. (Plaintiff’s Exhibit “C”, App. 21). Plaintiff refiled her Petition just one day after the deadline. Id. Nowhere in the record is any suggestion made the Defendants to the case were in any way prejudiced by one, single day.

Allowing Paty’s Petition to relate back to the initial January 3<sup>rd</sup> filing is more than appropriate.

**D. The Court of Appeals Misapplied Jacobs with Respect to the Significance of the Information on the Electronic Cover Sheet**



This Court has also articulated that information provided on the electronic cover sheet should have no legal effect on a case, because the information provided on it is “solely for administrative purposes.” See Id. (citing Iowa R.Civ.P. 1.301(2))<sup>4</sup>. Errors in a cover sheet, therefore, should not form the basis for such a dramatic legal consequence as the granting of a motion to dismiss. Further supportive of this statement, is the fact there is nothing stated in the Rule 1.301,<sup>5</sup> which would negate a “substantial compliance in completing the cover sheet. . .so long as the case can be ‘correctly docketed and routed.’” Id. (quoting and citing Interim Ct. R. 16.307(1)(a)). To find otherwise, would again, create an onerous result and in contradiction to the mandate information included on a cover sheet should have no legal effect in the action. Id.

---

<sup>4</sup> Rule 1.301 states in relevant part: **1.301(1)** For all purposes, a civil action is commenced by filing a petition with the court. The date of filing shall determine whether an action has been commenced within the time allowed by statutes for limitation of actions, even though the limitation may inhere in the statute creating the remedy. **1.301(2) A cover sheet** available from the clerk of court or from the judicial branch web site ([www.iowacourts.gov](http://www.iowacourts.gov)) **must be completed** and accompany every civil petition except in small claims, probate, and mental health commitment actions. **This requirement is solely for administrative purposes, and matters appearing on the civil cover sheet have no legal effect in the action.** (emphasis added).

<sup>5</sup> Nor, is there any such express limitation in Iowa Code section 602.6111., which is entitled: “Identification on documents filed with the clerk” and states in relevant part: “1. Any party, other than the state or a political subdivision of the state, filing a petition or complaint, answer, appearance, first motion, or any document filed with the clerk of the district court which brings a new party into a proceeding shall provide the clerk of the district court with the following information when applicable:  
a. An employer identification number if a number has been assigned. b. The birth date of the party.  
c. The social security number of the party. 3. **A party shall provide the information pursuant to this section in the manner required by rules or directives prescribed by the supreme court.** The clerk of the district court shall keep a social security number provided pursuant to this section confidential in accordance with the rules and directives prescribed by the supreme court. (emphasis added).

In our matter, the electronic cover sheet at issue and the one first submitted to the clerk on January 3<sup>rd</sup>, apparently failed to provide the Plaintiff's date of birth or her social security number. The absence of the Plaintiff's birth date aside, other information, including her name, address, telephone number, and her attorney's name and contact information, was included to properly identify the Plaintiff (or else the clerk would have noted that on the rejection email). (Plaintiff's Exhibit "B", App. 20). The provided information was more than sufficient to allow the case to be docketed and no one would dispute that the Petition itself had any associated errors. See Jacobs, 887 N.W.2d at 597-98. (Motion to Dismiss, App. 5-6). As the Jacobs Court noted, regarding a filer's completion of the coversheet and the inherently vague requirements as to what information is actually mandatory:

"[t]he online form to "add a party," which is part of the electronic cover sheet, has approximately twenty entries to be completed by the filing party.<sup>4</sup> These entries include first name, middle name, last name, social security number, date of birth, driver's license, work phone, \*598 cell phone, and home phone. The screen does not indicate which entries *must* be filled in. **The only entries with asterisks next to them are for first name and last name, which might lead a filer to conclude these are the only entries that have to be filled in.** On the prior screen, the following appears in red text: "**Warning: Have you entered all Parties on this case? In accordance with Iowa Code section 602.6111, your filing will be returned if all parties are not listed in this section.**" This might suggest that merely *listing* the party

**is sufficient to avoid a returned filing.** The “add a party” screen itself contains no prompt—as occurs with many web-based programs—notifying the user if he or she has tried to submit the form without some required information.”

Id. (emphasis added). It is certainly reasonable to conclude that a filer would deem a cover sheet accurately completed if only the names of the parties were provided.

Iowa Code section 602.6111 does require a party provide the birth date or the social security number of a party new to case, which would include a petition. The statute, however, is silent as to whether such a failure creates a mandatory obligation on a clerk to reject the associated filing. I.C. §602.6111. See Jacobs, 887 N.W.2d at 598, fn. 5. Iowa Rules of Electronic Procedure, Rule 16.308 is likewise silent as to whether an error discovered by a clerk warrants a mandatory rejection. In fact, Rule 16.308(d)(2) expressly states when an error is discovered the “clerk of court *may* return the submission to the filer with an explanation of the error and instructions to correct the filing” (emphasis added). Our Supreme Court has understood the word “may” to be permissive and not mandatory. Bowman v. City of Des Moines Mun. Hous. Agency, 805 N.W.2d 790, 796 (Iowa 2011). The word may “authorizes but does not require.” Fishel v. Redenbaugh, No. 18-1715, 2019 WL 6358430, \*3 (Iowa Ct. App. November 27, 2019) (citing I.C. §4.1(30)). Moreover, the word “may” signifies discretion. Bowman, 805 N.W.2d at 796.

Simply put, a clerk of court is not legally obligated to reject a filing for an error to the cover sheet, but rather, he or she has discretion in how to proceed in alleviating the error. Such discretion to reject a filing, particularly when such a decision may cause a significant legal effect, must be tempered by the courts' ability to nevertheless allow a filing to be deemed timely. It also supports the express statutory duty of a clerk of court to "file and note **all** documents presented. . . for filing." See Jones, 924 N.W.2d 535 (Table), 2018 WL 4360983 at \*3; see also Dwyer v. Clerk of District Court for Scott County, 404 N.W.2d 167, 170 (Iowa 1987) (citing I.C. §602.8102(98)) (emphasis added).

Finally, the Court of Appeals' surmised, without any analysis, the failure to provide Paty's date of birth was such a profound error "that arguably could not have been corrected or disregarded by the clerk, as envisioned under the first Jacobs factor." Attachment "A", p. 4 (citing and quoting Jacobs, 887 N.W.2d at 599). Such a conclusion completely ignores the purpose behind the electronic rules and process of filing documents in the pre-e-filing world.

The Jacobs Court's rationale for ameliorating the otherwise harsh effects of a rejection was substantiated by the inherent acknowledgment the electronic rules were enacted with the intent of "'continu[ing] the court practices that governed

paper filing, not to change them.” Jacobs, 887 N.W.2d at 599 (quoting and citing Concerned Citizens v. City Development Board, 872 N.W.2d 399, 401 (Iowa 2015)).

The Jacobs’ Court specifically noted the advantages of the prior **in-person filing** process regarding errors to the cover sheet:

“[i]n the paper world, it is likely that **any deficiencies** in the cover sheet **would have been recognized at the counter** of the clerk's office **and fixed before the close of business that day.**”

Id. (emphasis added). In other words, if an error with a cover sheet would have been easily mitigated and thereby avoiding harsh deadline consideration with in-person paper filing, then such errors should be easily correctable and mitigated with electronic filing as well<sup>6</sup>.

Under the old “paper” filing practices, Plaintiff’s counsel or a legal assistant, would have physically hand delivered the Petition, with the cover sheet and the original notice. If any errors to the cover sheet were discovered by the clerk, such concerns would have immediately (or soon thereafter) been corrected at the clerk’s window located at the Linn County courthouse. See Id. The error would have been noted, addressed and corrected very likely through either an in-person

---

<sup>6</sup> This is not to say that all statute of limitation questions should be addressed similarly. For example, if, under the in-person paper filing practice, the Plaintiff’s attorney had arrived at the court house late in the day on the last day to toll the statute of limitations and found the doors to the clerk’s office locked; in that case certainly there would be little question as to the correct status of the late filing.

discussion or by a simple telephone call to counsel and thereby immediately having the issue dealt with.

To summarize with respect to Jacobs:

a. an EDMS electronic cover sheet fails to indicate what information is sufficient to avoid a rejected filing and in fact, the only information clearly indicated as “required”<sup>7</sup> is the first and last name of the party (Jacobs, 887 N.W.2d at 597-98);

b. a clerk does not have the unilateral discretion to reject a filing, particularly for the failure to provide all information on the electronic cover sheet, but rather, a clerk is mandated “to file and note all documents presented for filing”, because “[i]t is not the clerk’s duty or function to rule on the validity or legal effect of the document so received” (Jacobs, 887 N.W.2d at 597);

c. it is within the purview of the clerk to have corrected or disregarded the cover sheet error under the rules (Id.);

d. it was within the purview of the clerk to have simply telephoned

---

<sup>7</sup> The Iowa Attorney General in it is May 2, 1994 opinion to the State Court Administrator’s Office has opined that the State could not mandatorily request a party’s social security number, because doing so violates the Privacy Act of 1974 and would condition a party’s access to the court system based on adhering to such a disclosure; and therefore a clerk of court could not “refuse to file a pleading or other documents if a party does not provide his or her social security number.” 1994 Iowa Op. Atty. Gen. (Iowa A.G.) 1994 WL 328337 \*2 (citing Bounds v. Smith, 430 U.S. 817 (1977)).

a plaintiff's attorney to provide notice of the cover sheet error consistent with the practice in the time of paper filings (Id.); and

e. statutes and rules should be effectuated to provide just and reasonable results, not arbitrary ones (Id.).

In our case the initial filing of Paty's Petition was clearly made prior to the deadline and it was in proper form except for minor error in the electronic cover sheet. (Plaintiff's Exhibit "B", App. 20). As in Jacobs, no one claims the errors in the electronic sheet were anything but "minor" and the petition itself did not contain any errors. As in Jacobs, the electronic cover sheet screen for Plaintiff's filing did not indicate which entries *must* be filled in<sup>8</sup>. As in Jacobs, no one contends in this case the information provided by the Plaintiff's counsel was insufficient to uniquely identify the Plaintiff.

## **CONCLUSION**

Accordingly, the District Court's Order granting of the Motion to Dismiss and thereby denying Paty her *day-in-court* due to a simple meaningless omission on the electronic cover sheet should be reversed and the case remanded back to the District Court for ultimate adjudication on the merits.

---

<sup>8</sup> Paty requests the Court take judicial notice of this fact. A review of an EDMS cover sheet page for filing a new case reveals clearly that the only entries delineated with the \* (asterisk symbol) indicating a mandatory response, is limited to first and last names of individuals or the name of the business.

To rule otherwise would nullify Iowa Code section 602.8102(98), which requires a clerk of court to “file and note all documents presented. . . for filing” and would unwarrantedly elevate section 602.6111(1). Such an outcome cannot be construed as a just and reasonable result. Jacobs, 887 N.W.2d at 597.

#### **CERTIFICATION OF COST**

I, the undersigned, do hereby certify the actual cost of printing the Appellant’s Proof Brief herein was zero dollars, because this appeal has been converted to electronic filing per the Iowa Supreme Court.

#### **CERTIFICATE OF COMPLIANCE**

This Proof Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2), because it contains 4,788, including the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). In addition, this Proof Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(f), because this brief has been prepared with Microsoft Word for Mac version 16.36, using proportionally spaced typeface Calibri in 14-pint size.

#### **CERTIFICATE OF SERVICE**

On this 6<sup>th</sup> day of July, 2021, I the undersigned, did file electronically this Appellant’s Proof Brief with the Clerk of the Iowa Supreme Court, pursuant to Iowa R. App. P. 6.701.



## PROOF OF SERVICE

On this 6<sup>th</sup> day of July, 2021, I the undersigned, did serve this Appellant's Proof Brief on the attorneys for the Appellee listed below via electronic service of the Electronic Document Management System. Upon information and belief, the attorneys for the Appellee are registered filers pursuant to Iowa R. Civ. P. 16.201.

Alex E. Grasso, AT0011862

HOPKINS & HUEBNER, P.C.

2700 Grand Avenue, Suite 111

Des Moines, IA 50312

Telephone: 515-244-0111

Facsimile: 515-697-4299

[agrasso@hhlawpc.com](mailto:agrasso@hhlawpc.com)

ATTORNEYS FOR DEFENDANTS SECOND SUCCESSION, LLC, AND IOWA  
COMMERCIAL ADVISORS, LLC D/B/A CUSHMAN & WAKEFIELD IOWA  
COMMERCIAL ADVISORS

Matthew G. Novak AT0005897

Bradley J. Kaspar AT0012308

PICKENS, BARNES & ABERNATHY

1800 First Avenue NE, Suite 200 P.O. Box 74170

Cedar Rapids, Iowa 52407-4170

PHONE: (319) 366-7621

FAX: (319) 366-3158

EMAIL: [mnovak@pbalawfirm.com](mailto:mnovak@pbalawfirm.com)

EMAIL: [bkaspar@pbalawfirm.com](mailto:bkaspar@pbalawfirm.com)

ATTORNEYS FOR DEFENDANT JONES PROPERTY SERVICES, INC.

Submitted this 6<sup>th</sup> day of July, 2021.

By: /s/ John C. Wagner  
JOHN C. WAGNER LAW OFFICES, P.C.  
600 39<sup>th</sup> Avenue; P.O. Box 262  
Amana, IA 52203  
Tel: 319-622-3357  
Fax: 319-622-3404  
Email: [john@jcwagnerlaw.com](mailto:john@jcwagnerlaw.com)  
Attorneys for Appellant