

**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
IOWA COURT OF APPEALS DECISION FILED JUNE 16, 2021**

**DEFENDANTS/APPELLEES' RESISTANCE TO APPLICATION
FOR FURTHER REVIEW**

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RESISTANCE TO APPLICATION FOR FURTHER REVIEW

This Court should uphold the Iowa Court of Appeals' decision because there was no error in the District Court's holding. The Appellant ("Carlson") cannot rely on Jacobs to relate back her untimely Petition and the Court of Appeals did not create any conflict in Iowa law.

ARGUMENT

I. JACOBS DOES NOT SAVE CARLSON'S LATE FILING.

No Iowa party can rely on Jacobs to relate back a late filing unless the party first meets three conditions. Jacobs v. Iowa Department of Transportation, 887 N.W.2d 590, 599 (Iowa 2016). Dispositive here is that Carlson could not meet the second, i.e., could not show that the clerk rejected her filing after the deadline. (Carlson's App. for Further Rev., Att. A at *3). While the parties disagree about the resulting legal consequences, all parties agree to the facts: Carlson filed her Petition on January 3, 2020, the clerk rejected it on January 6, 2020, and Carlson refiled it on January 9, 2020. (App. 14—15). Since Carlson's Petition alleged personal injury arising from a January 8, 2018 event, (App. 8), her deadline to file was two years later, or, January 8, 2020. See IOWA CODE §614.1(2). She cannot rely on Jacobs because the clerk rejected her Petition before January 8, 2020.

II. THE COURT OF APPEALS DID NOT CREATE ANY CONFLICT IN IOWA LAW.

The Court of Appeals did not muddy the waters here. Iowa’s statute of limitations for personal injury – two years – remains intact, and parties in the future who can meet all three conditions of Jacobs need not worry that this case has created a moving target in the law.

Deadlines matter. 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) and (2) January 8, 2020 at 11:59 p.m. – when Carlson’s statute of limitations expired. IOWA CODE §614.1(2). The Iowa Court of Appeals questioned whether this delay of three business days between rejection and refiling showed “prompt” resubmission – the third Jacobs factor. (Carlson’s App. for Further Rev., Att. A at *3-4). Carlson reduces this to a question of whether or not any Defendant suffered prejudice, but this ignores the legislative mandate in IOWA CODE §614.1(2).

Carlson essentially seeks relief under theories of “extra credit” – for filing close, but not too close to the statute of limitations deadline – and “substantial compliance” – for being close enough to the statutory requirements. Neither theory passes muster. There is no record about how or why Carlson waited more than twenty-three months after her alleged

injury to make her first filing attempt, nor is this case about judicial review under IOWA CODE CHAPTER 17A. See Monson v. Iowa Civil Rights Com'n., 467 N.W.2d 230, 232 (Iowa 1991).

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. The Iowa Court of Appeals examined the District Court's decision, did not find any error, and affirmed.

CONCLUSION

This Court should reject Carlson's Application for Further Review and let stand the Iowa Court of Appeals' decision.

By____/s/Alex Grasso____
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CERTIFICATE OF COMPLIANCE

This Resistance complies with the typeface and type-volume requirements of IOWA RS. APP. P. 6.1103(4) because this Resistance has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 546 words, excluding the parts of the Resistance exempted by Iowa R. App. P. 6.1103(4)(A).

 /s/ Alex E. Grasso
Alex E. Grasso

CERTIFICATE OF SEVICE

I, Alex E. Grasso, member of the Bar of Iowa, hereby certify that on the 8th day of July, 2021, I served a copy via EDMS to counsel of record, John C. Wagner, John C. Wagner Law Office,s P.C., 600 39th Avenue, Amana, Iowa 52203 (email: john@jcwagnerlaw.com) and Matthew G. Novak and Bradley J. Kaspar, Pickens, Barnes & Abernathey, 1800 First Avenue NE, Suite 200, Cedar Rapids, Iowa 52407 (email: mnovak@pbalawfirm.com and bkaspar@pbalawfirm.com), in full compliance with the Rules of Appellate Procedure.

 /s/ Alex E. Grasso
Alex E. Grasso

