IN THE SUPREME COURT OF IOWA

No. 22-0101
Floyd County Iowa District Court Case No. LACV031539

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ESTATE OF ROBERTA ANN BUTTERFIELD by Bradley Dean Butterfield and Deanne Marie Rogers, Co-Administrators,

Plaintiff-Appellant,

v.

CHAUTAUQUA GUEST HOME, INC., d/b/a CHAUTAUQUA GUEST HOME #3 and CHAUTAUQUA GUEST HOMES,

Defendants-Appellees.

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Appeal from an order of the Iowa District Court for Floyd County,
The Honorable Colleen Weiland, Presiding District Court Judge

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# FINAL REPLY BRIEF OF APPELLANT

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

## ARGUMENT

Butterfield hereby presents the following arguments, in addition to the arguments presented in her Proof Brief as well as her filings at the district court level, in response to Chautauqua Appellee's Proof Brief.

### I. The district court erred in determining that expert testimony was required.

#### a. Butterfield's claims involve routine care, not medical judgment.

"No expert testimony is required when the lack of care is so obvious that it is within the comprehension of the average person, *see Cockerton v. Mercy Hosp. Med. Ctr.*, 490 N.W.2d 856, 859 (Iowa Ct. App. 1992), or when the complained of actions involve nonmedical, administrative, ministerial, or routine care by the [facility], *see Landes v. Women's Christian Ass'n*, 504 N.W.2d 139, 141 (Iowa Ct. App. 1993). *Johnson v. Genesis Med. Ctr. (In re Estate of Llewellyn)*, No. 4-413, 2004 Iowa App. LEXIS 1265, at *11-12 (Iowa Ct. App. Nov. 15, 2004). Put differently, when the actions are within the common understanding of the jury, expert testimony is not required. *Id.* To make such a determination, the Court must look to the specific facts of the case at hand. In order to do so, Butterfield must remind this Court that there are two claims that resulted in Butterfield's injury and death, both of which should be considered separately when determining whether expert testimony is required: (1) the May 19, 2018 unsafe moving/handling of Butterfield by Chautauqua staff from

bathroom to wheelchair; and (2) the development and infection of buttocks pressure wounds due to Chautauqua staff's failure to regularly reposition Butterfield.

Chautauqua alleges in its Proof Brief that "this case is not one simply of routine care and expert testimony is still needed." [Appellee's Proof Brief, p. 27]. However, there is well-established case law to assist this Court in its determination that ultimately concludes otherwise. Specifically, as it pertains to Butterfield's transfer (i.e. the movement from one place to another) and the staff handling her as they moved her from the bathroom to wheelchair that occurred on May 19, 2018. Iowa case law unequivocally has determined that expert testimony is not needed in such a situation. *See Davis v. Montgomery County Mem. Hosp.*, 2006 Iowa App. LEXIS 762 (Iowa Ct. App. 2006) (holding that expert testimony is not required in determining the issue of whether the assistance given to the patient in using the bathroom was adequate); *Landes v. Women's Christian Ass'n*, 504 N.W.2d 139 (Iowa Ct. App. 1993) (the defendant hospital's activity of taking plaintiff to the bathroom was nonmedical or routine and did not require expert testimony); *Cockerton v. Mercy Hospital Medical Center*, 490 N.W.2d 856 (Iowa Ct. App. 1992) (expert testimony was not required where the conduct involved the way an x-ray technician handled the plaintiff during an examination); *Kastler v. Iowa Methodist Hosp.*, 193 N.W.2d 98 (Iowa 1971) (determining that expert testimony was not

required because the activity of showers of patients was routine care). The unsafe moving/handling of a patient is routine care and expert testimony is not required.

Chautauqua indicates that the aforementioned Iowa precedent do not "involve compounding the effects of a fall with a pressure sore and wrongful death" and that those cases do not focus on "how should someone in Roberta Butterfield's condition have been transferred" or was she "a one-assist, two-assist." [Appellee's Proof Brief, p. 37]. However, this case does not involve compounding the effects of a fall with a pressure sore and wrongful death – the fall and the development of pressure wounds are two separate claims here and must be treated as such. Furthermore, it does not matter *how* Butterfield should have been transferred or what level of assistance she required when transferring. What matters here is if Butterfield was safely moved by Chautauqua staff, and the focus is how Chautauqua staff handled Butterfield during that transfer. Simply put, it involves the act of moving Butterfield from one place to another – the transfer from bathroom to wheelchair. It does not involve any medical judgment at all to safely move someone from one place to another, and Iowa precedent supports that expert testimony is not required during routine care of this nature.

Additionally, Chautauqua uses *Thompson* to allege that "the need for expert testimony in pressure ulcer cases is well established and has been in Iowa for the past 20 years." [Appellee's Proof Brief, p. 31-32]. However, Chautauqua

misconstrues the analysis of and factual differences in *Thompson*. In *Thompson*, the Court had to consider the special circumstances of Thompson's refusal to be repositioned and whether the facility violated a standard of care when the issue became one of forced repositioning. *Thompson v. Embassy Rehab. & Care Ctr.*, 604 N.W.2d 643, 646 (Iowa 2000). The Court indicated that it "believes *that under these circumstances* [the forced repositioning and refusal] the proper course of action was not a matter that would be within the common understand of the jury." *Id.* at 646. (emphasis added). However, the *Thompson* Court recognized that the act of not regularly repositioning a patient appears on the surface to have been ministerial and subject to a standard of proof not requiring expert testimony. *Id.*

Chautauqua has cited to the *Thompson* case throughout its briefs at both the district court and appellate court levels and has failed to mention each time that *Thompson* indicates that not regularly repositioning a patient is routine, ministerial care, and expert testimony is not required. Further, Chautauqua has failed to show that Butterfield has similar "special circumstances" as *Thompson*, i.e. that Butterfield also refused repositioning and the issue became one of forced repositioning, which cannot be shown here. However, Chautauqua *has* recognized that *Thompson* is "exactly on point" and has, therefore, conceded that all the conclusions in *Thompson* are on point, including that not regularly repositioning a patient is ministerial care that does not require expert testimony.

Had the *Thompson* case merely involved the nursing home facility's failure to reposition Thompson, without any indication of Thompson's refusal or forced repositioning, failure to regularly reposition a nursing home resident is an act that involved ministerial care and, therefore, it would not require expert testimony. *Id.* Butterfield did not refuse and there were no concerns of forced repositioning. There have been no allegations from Butterfield nor from Chautauqua that Butterfield refused to be repositioned and that the issue involves one of forced repositioning. The *only* allegation is that Chautauqua failed to regularly reposition Butterfield, which resulted in foul-smelling, infected pressure wounds with bone visualization and, therefore, this claim involves ministerial, routine care that does not require expert testimony.

Chautauqua would like this Court to determine that simply because Butterfield filed expert reports that she admitted that expert testimony would be needed. [Appellee's Proof Brief, p. 27]. However, that argument is misplaced and simply unfounded by the plethora of Iowa precedent on whether expert testimony is required here. The issue is whether based on the allegations in the Petition a certificate of merit affidavit on the standard of care and breach of the standard of care is required. Chautauqua further argued that "the question in this case is whether the precautionary measures implemented for Roberta Butterfield were appropriate and within the standard of care." [Appellee's Proof Brief, p. 33]. But Chautauqua is

attempting to make this case more complex than it is and read into Butterfield's Petition what does not exist. Butterfield specifically alleges that the improper handling on May 19, 2018 resulted in a popping noise, pain, fracture, surgery, and death. [Appellant's Proof Brief, p. 29]. Post-surgery, Butterfield remained bedbound; Chautauqua did nothing, including failing to reposition Butterfield, which resulted in the development of a pressure injury that worsened due to Chautauqua's inaction. *Id.* The pressure injury led to infection, bone visualization, surgical intervention, and death. *Id.* Chautauqua even cites to Butterfield's Petition ¶ 47 that states Chautauqua "failed to provide **necessary** care . . .and treatment to Roberta." [Appellee's Proof Brief, p. 33] (emphasis added), which is further proof that Butterfield has alleged her injuries and wrongful death occurred as a direct result of Chautauqua's failure to provide routine care to Butterfield, not their failure to provide appropriate precautionary measures. In fact, Butterfield does not even use the term "precautionary measures" in her Petition at all. *See generally* Appx., p. 8-24. The question in this case is not whether the precautionary measures implemented were appropriate and within the standard of care. The issue is whether the staff involved in the routine act of moving and handling Butterfield were negligent. This is not the complex medical case involving "medical judgment" that Chautauqua would like this Court to believe. This case involves the routine act of safely moving

someone and regularly repositioning someone to prevent pressure sores. Precedent shows that expert testimony is not required as to both of Butterfield's claims.

**b. Section 147.140 does not require a certificate of merit affidavit regarding causation.**

Butterfield asserts that the district court erred in its interpretation of Iowa Code § 147.140 based upon the plain language of the statute and the undisputable legislative history of the statute. Nowhere in § 147.140 does it state that a certificate of merit affidavit is required regarding causation. The word cause or causation is not in the statute. That is because the legislature deleted the requirement for an affidavit regarding causation when it passed this statute. Specifically, based upon the series of revisions by the legislature, it is clear that the legislature intended to allow causation experts regardless of whether a plaintiff filed a certificate of merit as to standard of care and breach of standard of care. The revisions of § 147.140 include House Study Bill 105, House File 487, and Senate Study Bill 1087, which all originally included the following language: ". . .the plaintiff shall . . . serve upon the defendant a certificate of merit affidavit for each expert witness . . .**who will testify with respect to the issues of standard of care, breach of standard of care, or causation**. [Appx., p. 251, 457-89] (emphasis added). When Senate Bill 1087 became Senate File 465 (later renamed Iowa Code Section 147.140), the legislature only required certificates of merit as to standard of care and breach of care experts, and intentionally excluded one for causation experts. In its final form, § 147.140

required plaintiffs to file a certificate of merit affidavit on standard of care and breach of standard of care and only focused on these requirements as it related to dismissal. Section 147.140 does not require a certificate of merit affidavit regarding causation. Iowa Code § 147.140(1)(a). The intentional omission of "causation" shows that Iowa legislatures intended for dismissal of plaintiff's claims only when plaintiff fails to file a certificate of merit affidavit as to standard of care and breach of standard of care and only as it pertains to standard of care experts. The plain language of the statute is clear as well as the legislative history.

However, Chautauqua disregards the plain language of §147.140 and relies on *Schmitt v. Floyd Valley Healthcare*, No. 20-0985, 2021 Iowa App. LEXIS 560 (Iowa Ct. App. July 21, 2021) to allege that an expert is needed as to causation [Appellee's Proof Brief, p. 19]. But there is no indication that the parties in *Schmitt* argued the plain language and the legislative history and intent and no indication the *Schmitt* Court fully considered the legislative history and omission of "causation" from the original House and Senate filings. Respectfully, *Schmitt* is broader than it needs to be and reads causation into the statute despite the plain language of the statute and the legislatures eliminating "causation" prior to finalizing Section 147.140. *Schmitt* failed to raise or consider the statutory history. If the Court of Appeals in *Schmitt* would have done so, it would have been clear that, by omitting "causation," the legislature concluded that a certificate of merit is only necessary

when expert testimony is required as to standard of care and breach of standard of care. Thus, if a court determines that the incidents/acts involve routine, ministerial care that do not require expert testimony as to standard of care and breach of standard of care, then the analysis stops there, and § 147.140 does not apply.

Chautauqua's argument on this issue stops short because it admits that "§ 147.140 does not require that a certificate of merit affidavit address the issue of causation," yet argues contrary to the statute, that a certificate of merit affidavit must be filed if expert testimony is required to establish a causal relationship. [Appellee's Proof Brief, p. 20]. Chautauqua cannot have it both ways. Either the plain language of the statute requires a certificate of merit affidavit regarding causation, or it does not. Clearly, as Chautauqua admits, it does not. The first portion of § 147.140(1)(a) states "[i]n any action for personal injury or wrongful death against a health care provider based upon the alleged negligence **in the practice of that profession or occupation or in patient care**…" § 147.140(1)(a). This language coupled with the legislative history does not contemplate when actions by health care providers involve routine care or ordinary negligence, rather than professional negligence. In *Struck v. Mercy Health Servs., Iowa Corp.,* No. 20-1228, 2022 Iowa Sup. LEXIS 44, at *n.6 (Iowa Apr. 22, 2022), the Iowa Supreme Court concluded that "any claim for negligence in patient care requires the certificate of merit, as long as expert testimony is required to prove up the claim" when it was specifically analyzing that

portion of Section 147.140(1)(a). This analysis read with the other portions of § 147.140 further solidifies that, if the actions or inactions by the health care provider are considered routine care rather than professional negligence, then § 147.140 does not apply, and the case can proceed as to ordinary negligence.

However, based upon the legislative history and intent, even if the matter involves professional negligence, only a certificate of merit is needed as to standard of care and breach of standard of care for dismissal of the case. Since only a certificate of merit affidavit is needed for standard of care and breach experts, then causation experts should still be allowed to testify if the court determines the incidents involve routine care. Moreover, the Iowa Supreme Court in *Struck* could have taken the opportunity to reiterate *Schmitt* and state that a case requiring expert testimony for causation must be dismissed if no certificate of merit affidavit is filed as to standard of care and breach; but the Court did not do so despite their extensive discussion regarding their interpretation of § 147.140 and expert testimony. *See generally Struck*, 2022 Iowa Sup. LEXIS 44. Ultimately, the legislative history guides this Court in finding error in the district court's ruling since § 147.140 is silent as to causation and one cannot read into the statute what does not exist.

**c. Expert testimony is not required to prove a causal relationship.**

In the alternative, if this Court determines that § 147.140 requires a certificate of merit affidavit regarding causation to avoid dismissal, then Butterfield contends

that her claims are within the comprehension of a layperson and do not require expert testimony. Chautauqua argues in its Proof Brief that it would be beyond a layperson's knowledge to determine causation in this case. [Appellee's Proof Brief, p. 20]. Chautauqua's Proof Brief lists concepts that jurors would "have to know" to make a determination on causation, including medical industry standards for supervision, what is acceptable in the supervision of medical professionals, an understanding of Butterfield's condition, and an understanding of how actions and procedures affect a resident's condition. [Appellee's Proof Brief, p. 21]. Chautauqua's laundry list of what a potential juror would need to know to make a determination as to whether Chautauqua's failures and inactions caused the injuries and death of Butterfield are misplaced. This case is much simpler than what Chautauqua would like this Court to believe.

Chautauqua conflates the standard of care and a breach of the standard of care with causation. Cause is defined as whether the conduct of a party is a cause of damage when the damage would not have happened except for the conduct. *See City of Cedar Rapids v. Municipal Fire & Police Retirement Sys.*, 526 N.W.2d 284, 288 (Iowa 1995). A layperson, using common sense and their own knowledge, can determine that the act of handling and moving someone from the bathroom to a wheelchair should not create a popping noise in someone's leg and a leg bone

fracture. That is, the leg fracture would not have happened except for the unsafe and improper transfer of Butterfield.

Additionally, a layperson can determine that spending significant time in bed without any care such as being turned and repositioned can lead to unrelieved pressure causing skin to breakdown. Every person has experienced sitting in the same position for too long and experiencing discomfort. For example, resting one's elbow or arm on a table for an extended period of time can lead to an imprint from the table, or sitting with crossed legs for too long could lead to one's leg going numb. A layperson can understand those actions using common knowledge and then multiply the amount of time one stays in the same position – i.e. staying in the same position with no repositioning leads to additional pressure on those areas and additional pressure could lead to discomfort, skin breakdown and injury. A layperson could determine that, if nothing is done about the pressure injury, it could worsen and, when an open wound worsens, it could lead to infection, grow in size, and require surgical intervention. Thompson has made clear that a facility's failure to regularly reposition a resident is within the purview of a layperson and does not require expert testimony. *Thompson v. Embassy Rehabilitation and Care Center*, 604 N.W.2d 643, 646 (Iowa 2000). A layperson could determine that death can result when injuries are ignored. *See generally* Appellant's Proof Brief and Appx., p. 8-24.

Therefore, expert testimony is not required to prove the element of causation, and the district court's decision must be overturned.

## II. The Supreme Court of Iowa vacating *Struck* does not change that the district court erred in concluding that expert testimony was required.

Butterfield asserts that expert testimony is not required to prove routine care, and the Supreme Court decision in *Struck* further supports Butterfield's claims. Chautauqua's attempt to use the fact that the Iowa Supreme Court overturned the Court of Appeals' decision in *Struck* against Butterfield by alleging that Butterfield's "reliance on Struck is a major argument in [her] appeal brief" is unfounded. Unlike in this case, Struck failed to preserve her "ordinary negligence" argument on appeal, and the facts in *Struck* are distinguishable from Butterfield's claims. Struck actually supports Butterfield's claims. It is important to note in *Struck* that the Iowa Supreme Court concluded that Struck exclusively alleged professional negligence claims and claimed for the *first time on appeal* that her claims also included ordinary negligence. *Struck v. Mercy Health Servs., Iowa Corp.,* No. 20-1228, 2022 Iowa Sup. LEXIS 44, at *2-3 (Iowa Apr. 22, 2022). Butterfield asserted ordinary and routine care in her Petition and that expert testimony was not required in Chautauqua's motion to dismiss at the district court level and again on appeal. Chautauqua does not dispute that error was properly preserved for appeal on this issue. [Appellee's Proof Brief, p. 11]. Thus, unlike *Struck*, Butterfield pled ordinary and routine negligence in her Petition and has preserved this issue for appeal.

Moreover, the facts in *Struck* are distinguishable to the incidents alleged by Butterfield. Significantly, Struck claimed that the medications prescribed and provided by the defendant healthcare providers "were contraindicated with the medications she was already taking" and that the improper medication caused her to fall. *Struck*, 2022 Iowa Sup. LEXIS at *4, 18. In *Struck*, the Iowa Supreme Court found in part that the prescription of medication involved medical judgment and beyond the understanding of ordinary jurors. *Struck*, 2022 Iowa Sup. LEXIS at *11, 20.

Contrary to what Chautauqua insinuated in its proof brief, the Iowa Supreme Court in *Struck* is not holding that there are no circumstances in which plaintiffs can prove their negligence claims without expert testimony. In citing *Oswald v. LeGrand,* 453 N.W.2d 634 (Iowa 1990), the *Struck* Court recognized that there are exceptions to the requirement for expert testimony in proving standard of care and its breach, including when the "lack of care is so obvious as to be within the comprehension of a lay[person] and requires only common knowledge and experience to understand." *Struck,* 2022 Iowa Sup. LEXIS at *8, n.4. The *Struck* Court concluded that Struck failed to allege any ordinary negligence claims in her petition and that she is bound by "the four corners of her petition." *Id.* at *13.

Unlike in *Struck*, Butterfield is not relabeling a professional negligence claim as one of ordinary negligence to evade statutory requirements as Chautauqua may

suggest. Since Butterfield's Petition, Butterfield has asserted in her Petition two separate incidents that ultimately resulted in her injury and wrongful death that involve routine care: (1) that on May 19, 2018, Chautauqua staff transferred Butterfield and heard a pop from her left leg that Butterfield immediately then complained of left leg pain [Appx., p. 13]; and (2) that Butterfield developed a pressure injury that significantly grew in size over a four-month period to the point of bone visualization, infection, and a foul odor. [Appx., p. 15-17].

Chautauqua fails to consider both of Butterfield's claims when it asserted that the Iowa Supreme Court vacated the Court of Appeals' decision in *Struck*. Chautauqua only points to Butterfield's allegations regarding the development of the pressure injuries and infection [Appellee's Proof Brief, p. 25] but fails to consider Butterfield's claims regarding the routine care of safely transferring and moving someone from the bathroom to a chair without causing a leg fracture. However, the Iowa Supreme Court in *Struck* focused heavily on the fact that Struck was alleging that her fall resulted from improper medication distribution and not allegations of "a hospital employee dropp[ing] her or knock[ing] her over." *Struck*, 2022 Iowa Sup. LEXIS at *19-20. That distinction is critical in this Court's decision here because Butterfield is alleging that Chautauqua staff improperly moved her, resulting in a popping noise and immediate pain that was determined to be a left hip fracture that required extensive treatment, surgical intervention, and ultimately led to

Butterfield's death. [Appx., p. 13-14, 17]. *Struck* looked at persuasive authority to determine expert testimony was required and held that "[w]hether Struck was improperly medicated and supervised in light of her condition without measures to better monitor or restrain her is beyond the understanding of ordinary jurors." *Struck*, 2022 Iowa Sup. LEXIS at *20. Butterfield does not allege that improper medication resulted in her fall – this case is not about whether Butterfield was a high fall risk or Butterfield's susceptibility to falling – it is about the way Chautauqua handled Butterfield that resulted in a popping noise to her left leg and immediate pain. *See Cockerton v. Mercy Hospital Medical Center*, 490 N.W.2d 856, 859 (Iowa Ct. App. 1992) (concluding that expert testimony was not required where the conduct involved the way an x-ray technician handled the plaintiff during an examination); *Davis v. Montgomery County Mem'l Hosp*., No. 05-0865, 2006 Iowa App. LEXIS 762, at *14-15 (Iowa Ct. App. July 12, 2006) (concluding that assisting a patient in ambulation without the use of a gait belt does not require expert testimony because the issue is whether the assistance given was adequate and is nonmedical, routine care). Defendants have failed to consider that Butterfield has two claims that ultimately resulted in her injuries and death, and Butterfield would urge this Court to look at those claims separately when determining whether expert testimony is required.

Moreover, *Struck* did not involve a pressure injury, and therefore, is factually inapplicable. An Iowa case that did involve a pressure injury that Butterfield has cited numerous times throughout her various briefs is *Thompson v. Embassy Rehab. & Care Ctr.*, 604 N.W.2d 643 (Iowa 2000). *Struck* briefly discussed *Thompson* by stating that "failure to designate an expert witness precluded liability against a skilled nursing facility that allegedly failed to reposition the plaintiff to avoid bedsores, rejecting the argument that no expert was required because the nursing care was routine or ministerial." *Struck*, 2022 Iowa Sup. LEXIS at *18-19; citing *Thompson*, 604 N.W.2d at 646. Ultimately, *Struck*'s reasoning for citing to *Thompson* was to lay out the specific test used for determining whether expert testimony is required and to indicate that Struck only pled professional negligence claims. *Id.* at *19. However, like *Struck*, *Thompson* too was fact-specific and involved forced repositioning since Thompson had initially refused repositioning by staff [*Thompson*, 604 N.W.2d at 646], a fact that is not present here. Butterfield's foul-smelling pressure sore with bone visualization does not occur with regular repositioning and monitoring of the wound, and there is no indication throughout Butterfield's Petition that Butterfield's refusal to be repositioned resulted in the worsening of that wound. Instead, the *inaction* of Chautauqua staff to regularly reposition Butterfield at all is what resulted in the foul-smelling, infected pressure sore, and a layperson can easily understand that inaction can result in worsening of

that wound and infection of that wound and that infections can spread and lead to death. Therefore, the Iowa Supreme Court decision in *Struck* to vacate the decision of the Court of Appeals is understandable as to those specific facts and only further supports the claims brought before this Court by Butterfield.

Finally, it is important to note that the Iowa Supreme Court did not interpret § 147.140 to require a certificate of merit affidavit regarding causation. This further supports Butterfield's position that § 147.140 does not require a certificate of merit affidavit from an expert regarding causation.

## CONCLUSION

For the foregoing reasons as well as the reasons stated in Butterfield's prior filings, the Court should reverse the district court's order of dismissal and allow the case to proceed with trial at the district court level.

## CERTIFICATE OF COST

It is hereby certified by the undersigned in accordance with Iowa R. App. P. 6.903(4)(j) that the actual amount paid for printing or duplicating paper copies of proof and final reply briefs required by the Rules of Appellate Procedure was $0.00.

/s/ Jeffrey A. Pitman
PITMAN, KALKHOFF, SICULA, & DENTICE, S.C.

## CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(e) and (f) and 6.903(1)(g)(1) and (2) because:

This brief has been prepared in a proportionally spaced typeface using Times New Roman typeface in 14-point font size and contains 4,523 number of words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

__/s/Jeffrey A. Pitman_____ __05/26/2022_____
Signature Date

## CERTIFICATE OF FILING AND PROOF OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the above and foregoing was filed electronically with the Clerk of the Iowa Supreme Court via EDMS on May 26, 2022.

The undersigned hereby certifies that a true and accurate copy of the above and foregoing was served on the other parties to this appeal via EDMS on May 26, 2022.

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