

IN THE SUPREME COURT OF IOWA

MARLENY RIVAS,)

Plaintiff-Appellant,)

vs.)

S.C. NO. 23-1829

DEREK BROWNELL and)
LINDSEY WESSEL,)

POLK CO CASE NO. LACL148935

Defendants-Appellees.)

**APPEAL FROM THE
IOWA DISTRICT COURT FOR POLK COUNTY
THE HONORABLE SCOTT D. ROSENBERG, JUDGE**

**BRIEF FOR APPELLANT AND
REQUEST FOR ORAL ARGUMENT**

Christopher Johnston, AT0012625
LAW GROUP OF IOWA
A Johnston Martineau LLP Company
7900 Hickman Road, Suite 200
Windsor Heights, Iowa 50324
Phone: 515-493-4878
Email: CJohnston@JMLegal.com
ATTORNEY FOR APPELLANT

Table of Contents

Table of Authorities	4
Statement of Issues Presented for Review.....	8
Routing Statement.....	9
Statement of the Case.....	10
Nature of the case.....	10
Course of proceedings and disposition in district court.....	11
Statement of the Facts.....	13
Argument	14
1. Summary of argument.....	14
2. Standard of review and preservation of error raised in this appeal.	15
3. The Iowa Supreme Court’s Supervisory Orders do not violate the Iowa Constitution’s doctrine of separation- of-powers, so the tolling of the statutes of limitations was proper, Rivas’s petition was timely, and the district court erred by granting summary judgment in defendants’ favor on the basis that plaintiffs’ petition was time-barred.....	17
A. <i>Basquin</i> applies to this case, so this court should reverse the district court and remand for further proceedings.	24

B.	If <i>Basquin</i> does not apply to this case, the Supervisory Orders do not violate the separation-of-powers doctrine.....	25
C.	If this court holds the Supervisory Orders are invalid, this court should consider Rivas’s petition timely filed based upon the equitable tolling of the statute of limitations.....	36
	Conclusion.....	44
	Request for Oral Argument	45
	Certificate of Service.....	46
	Certificate of Compliance with Typeface Requirements and Type-Volume Limitation.....	46
	ATTACHMENTS	47

Table of Authorities

Page

Cases

<i>Askvig v. Snap-On Logistics Co.</i> , 967 N.W.2d 558 (Iowa 2021) ..	31, 41, 43
<i>Baratta v. Polk Co. Health Serv.</i> , 588 N.W.2d 107 (Iowa 1999)...	16
<i>Beeck v. Kapalis</i> , 302 N.W.2d 90 (Iowa 1981)	41
<i>Benskin, Inc. v. W. Bank</i> , 952 N.W.2d 292 (Iowa 2020) ...	15, 38, 39
<i>Cada v. Baxter Healthcare Corp.</i> , 920 F.2d 446 (7th Cir. 1990) ..	41
<i>Carter v. Carter</i> , 957 N.W.2d 623 (Iowa 2021)	38
<i>Chiodo v. Section 43.24 Panel</i> , 846 N.W.2d 845 (Iowa 2014)	35
<i>Clinton Nat'l Bank v. Saucier</i> , 580 N.W.2d 717 (Iowa 1998)	16
<i>Collier v. Smaltz</i> , 128 N.W. 396 (Iowa 1910)	36
<i>Dickey v. Hoff</i> , No. 21-0859, 2022 WL 12127101 (Iowa Oct. 21, 2022).....	10
<i>Dorsey v. Pinnacle Automation Co.</i> , 278 F.3d 830 (8th Cir. 2002)	43
<i>Fitzgerald v. Shinn</i> , No. CV-19-5219-PHX-MTL, 2020 WL 3414700 (D. Ariz. June 22, 2020)	44
<i>Franzen v. Deere & Co.</i> , 334 N.W.2d 730 (Iowa 1983)	39
<i>Hrbek v. State</i> , 958 N.W.2d 779 (Iowa 2021).....	17
<i>In re Judges of Mun. Ct. of City of Cedar Rapids</i> , 256 Iowa 1135, 130 N.W.2d 553 (1964)	35

<i>Iowa C.L. Union v. Critelli</i> , 244 N.W.2d 564 (Iowa 1976)	34, 35
<i>Kennedy v. Zimmerman</i> , 601 N.W.2d 61 (1999)	17
<i>Leach v. Commercial Sav. Bank of Des Moines</i> , 213 N.W. 517 (1927)	36
<i>Meier v. Senecaut</i> , 641 N.W.2d 532 (Iowa 2002)	18
<i>Mormann v. Iowa Workforce Dev.</i> , 913 N.W.2d 554 (Iowa 2018) 38, 39, 40, 41, 42, 43	
<i>Murphy v. Liberty Mut. Ins. Co.</i> , 274 A.3d 412 (Md. 2022).....	26
<i>O’Coin’s, Inc. v. Treasurer of County of Worcester</i> , 287 N.E.2d 608 (Mass. 1972)	23
<i>Raper v. State</i> , 688 N.W.2d 29 (Iowa 2004)	38
<i>Root v. Toney</i> , 841 N.W.2d 83 (Iowa 2013)	27, 28, 29, 37
<i>Schlueter v. Grinnell Mut. Reins.</i> , 553 N.W.2d 614 (Iowa Ct. App. 1996).....	16
<i>Schoff v. Combined Ins. Co.</i> , 604 N.W.2d 43 (Iowa 1999).....	16
<i>Sebelius v. Auburn Reg’l Med. Ctr.</i> , 568 U.S. 145 (2013)	41
<i>Skadburg v. Gately</i> , 911 N.W.2d 786 (Iowa 2018)	39
<i>State v. Basquin</i> , 970 N.W.2d 643 (Iowa 2022), <i>as amended</i> (Mar. 2, 2022)	25, 26, 34
<i>State v. Tesch</i> , No. 21-0343, 2022 WL 1100922 (Iowa Ct. App. Apr. 3, 2022)	26
<i>Swanson v. Pontralo</i> , 27 N.W.2d 21 (Iowa 1947)	36
<i>Webster Cnty. Bd. of Supervisors v. Flattery</i> , 268 N.W.2d 869 (Iowa 1978).....	17, 23

Weizberg v. City of Des Moines, 923 N.W.2d 200 (Iowa 2018)..... 17

Young v. United States, 535 U.S. 43 (2002)..... 38

Statutes

Iowa Code § 4.1(34) (2023)..... 28, 29, 30

Iowa Code § 602.4107 (2022) 10

Iowa Code § 602.4201(1) (2023)..... 23

Iowa Const. art. I, § 9 32

Iowa Const. art. V, § 1 22

Iowa Const. art. V, § 4 23, 31

Iowa R. App. P. 6.101(1) 28

Iowa R. App. P. 6.1101..... 10

Iowa R. Civ. P. 1.301(1) 27

Other Authorities

Iowa Jury Instr. 700.1-750.3 39

Iowa Sup. Ct. Supervisory Order, In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (April 2, 2020)..... 10, 18

Iowa Sup. Ct. Supervisory Order, In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (May 22, 2020) 10, 19

Iowa Sup. Ct. Supervisory Order, In the Matter of Ongoing
Provisions for Coronavirus/COVID-19 Impact on Court
Services (May 8, 2020)..... 10, 14, 20

Statement of Issues Presented for Review

1. Summary of argument
2. Standard of review and preservation of error raised in this appeal.
3. The Iowa Supreme Court's Supervisory Orders do not violate the Iowa Constitution's doctrine of separation-of-powers, so the tolling of the statutes of limitations was proper, Rivas's petition was timely, and the district court erred by granting summary judgment in defendants' favor on the basis that plaintiffs' petition was time-barred.
 - A. *State v. Basquin* applies to this case, so this court should reverse the district court and remand for further proceedings.
 - B. If *Basquin* does not apply to this case, the Supervisory Orders do not violate the separation-of-powers doctrine.
 - C. If this court holds the Supervisory Orders are invalid, this court should consider Rivas's petition timely filed based upon the equitable tolling of the statute of limitations.

Routing Statement

This appeal concerns whether the Iowa Supreme Court had the authority to toll statutes of limitations through a supervisory order in response to a global health crisis. Based on that issue, the supreme court should retain this case rather than transfer it to the court of appeals for the following reasons. *See* Iowa R. App. P. 6.1101. First, this case “presents substantial constitutional questions as to the validity of a ... court ... rule.” R. 6.1101(2)(a). Second, this appeal presents an issue of first impression.¹ R. 6.1101(2)(c). Finally, this appeal also involves “fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court.” R. 6.1101(2)(a)(d).

¹ The Iowa Supreme Court previously faced this issue. *See Dickey v. Hoff*, No. 21-0859, 2022 WL 12127101 (Iowa Oct. 21, 2022). However, because that court was evenly divided, the lower court’s ruling was affirmed by operation of law. *Id.* (citing Iowa Code § 602.4107 (2022)). That affirmation “is of no further force or authority.” § 602.4107.

Statement of the Case

Nature of the case

This appeal derives from the district court's ruling granting the defendants' summary judgment motion. Specifically, the district court held that the Iowa Supreme Court's Supervisory Order concerning the COVID-19 pandemic filed on April 2, 2020, and supplemented on May 8, 2020, and confirmed on May 22, 2020 (hereinafter referred collectively as "Supervisory Orders")², which tolled the statute of limitations applicable to the action, was unconstitutional as a violation the separation-of-powers doctrine. *See* Iowa Const. art. III, § 3. With the district court declaring the Supervisory Order invalid, Plaintiffs' petition was time-barred by the statute of limitations, so the district court dismissed the action.

² *See* Iowa Sup. Ct. Supervisory Order, In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (May 22, 2020); Iowa Sup. Ct. Supervisory Order, In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (May 8, 2020); Iowa Sup. Ct. Supervisory Order, In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (April 2, 2020).

Plaintiffs appeal. This appeal is from a final order. *See Iowa R. App. P. 6.103(1)*.

Course of proceedings and disposition in district court

Marleny Rivas alleged that she was injured in an automobile accident involving two other vehicles, one driven by Derek Brownell and the other driven by Lindsey Wessel (hereinafter cumulatively referred to as “Defendants”). (D0001, Pet. ¶¶1-14 (10/16/2020).) The accident occurred on August 4, 2018. (*Id.* ¶¶8-11.) Based on her injuries, Rivas filed her petition against Defendants on October 16, 2020. (*See generally id.*)

On February 8, 2023, Brownell filed a motion for summary judgment arguing that Rivas’s claims were time-barred under the statute of limitations in Iowa Code section 614.1(2) (2017). (D0059, Def. Brownell MSJ (02/08/2023); D0060, Def. Brownell’s Memo. of Auth. in Supp. of MSJ (02/08/2023); D0061, Def. Brownell’s Stmt. of Undisp. Facts in Supp. of MSJ (02/08/2023); D0061 – Attachment Ex. A (Rivas’s Pet, *see* D0001) (02/08/2023); D0061 – Attachment Ex. B (Iowa Sup. Ct. Supervisory Order, In the Matter of Ongoing

Provisions for Coronavirus/COVID-19 Impact on Court Services
(May 22, 2020)) (02/08/2023).)

On March 14, 2023, Wessel filed a separate motion for summary judgment making the same argument as Brownell. (D0067, Def. Wessell MSJ (03/14/2023); D0068, Def. Wessell Memo. in Supp. of MSJ (03/14/2023); D0069, Def. Wessel Stmt. of Undisp. Facts in Supp. of MSJ (03/14/2023); D0070, Def. Wessel App. in Supp. of MSJ (03/14/2023)).

Rivas resisted Defendants' motions for summary judgment. (D0073, Pl's Resist to MSJ (04/07/2022); D0073 – Attachment (Pl's Memo. of Auth. in Supp. of Resist to MSJ (04/07/2023)); In response, Wessel filed a reply. (D0074, Def. Wessel's Reply to Pl's Resist to MSJ (04/13/2023); D0075, Def. Wessel's Brief in Reply to Pl's Resist to MSJ (04/13/2023).)

The district court entered its dispositive ruling on November 2, 2023. (D0091, Ruling & Order on Defs' MSJ (11/02/2023).) In that ruling, the court concluded: "the petition was not timely filed, and

this action should be, and is, dismissed with prejudice.” (D0091 at 3.) Plaintiffs timely appealed. (D0093, Not. of Appeal (11/08/2023).)

Statement of the Facts

On August 4, 2018, Rivas was sitting westbound at a red stoplight at the intersection of Diehl and SE 14th Street, in Des Moines, Iowa. (D0001 at ¶9.) At the same time and place, Wessel, who was driving a 2010 Chevrolet Malibu, was southbound on SE 14th street going through the intersection to turn eastbound onto Diehl Avenue. (*Id.* at ¶12.) At the same time and place, Brownell, who was driving a 2006 Dodge Grand Caravan, travelled through the intersection and collided with Wessel causing Brownell’s vehicle to roll on its side and collide with Rivas’s vehicle. (*Id.* at ¶13.) As a result of the collision, Rivas and her three minor children, who were passengers in Rivas’s vehicle, sustained injuries. (*Id.* at ¶10, ¶14.) Based on this incident, Rivas filed a petition against the Defendants on October 16, 2020. (*See generally id.*)

Argument

1. Summary of argument

Rivas suffered her injuries in an automobile accident that occurred on August 4, 2018. Iowa Code section 614.2 (2018) mandates that Rivas had to bring her action against the defendants within two years “after their causes accrue, and not afterwards”, i.e., by August 4, 2020. *See Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 300 (Iowa 2020) (applying “the period of limitation that is in effect when the plaintiff sues”). However, the Iowa Supreme Court extended that deadline by its Supervisory Orders. *See Supervisory Orders*. As such, Rivas timely filed her petition on October 19, 2020. (*See generally* D0001). The supreme court’s extension was a constitutional use of its authority and not a violation of the doctrine of separation-of-powers. The district court erred by concluding otherwise. The supreme court should reverse the district court’s grant of summary judgment in defendants’ favor and remand for further proceedings.

2. Standard of review and preservation of error raised in this appeal.

Rivas appeals the district court's grant of summary judgment in the defendants' favor which disposed of Rivas' entire case. (*See* D0091.) Summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Schoff v. Combined Ins. Co.*, 604 N.W.2d 43, 45 (Iowa 1999); *see* Iowa R. Civ. P. 1.981. An issue is material when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law. *Baratta v. Polk Co. Health Serv.*, 588 N.W.2d 107, 109 (Iowa 1999). That determination is made by examining the pleadings, depositions, answers to interrogatories, admissions, and affidavits incorporated in the motion and any resistance. R. 1.981(3); *Clinton Nat'l Bank v. Saucier*, 580 N.W.2d 717, 719 (Iowa 1998). A fact issue is developed only if reasonable minds can differ on how the issue can be resolved. *Schlueter v. Grinnell Mut. Reins.*, 553 N.W.2d 614, 616 (Iowa Ct. App. 1996). When the facts are undisputed and the only issue is

what legal consequence flows from the facts, summary judgment should be granted. *Kennedy v. Zimmerman*, 601 N.W.2d 61, 63 (1999).

Generally, the Iowa Supreme Court reviews “a district court’s ruling on summary judgment for correction of errors at law.” *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 211 (Iowa 2018) (citations omitted). However, when the summary judgment was based on a constitutional issue, as it is in this case, “review is de novo.” *Id.* When invoking the separation-of-powers doctrine, the supreme court “shall make its own evaluation, based on the totality of circumstances, to determine whether th[e questioned] power has been exercised appropriately.” *Hrbek v. State*, 958 N.W.2d 779, 784 (Iowa 2021) (quoting *Webster Cnty. Bd. of Supervisors v. Flattery*, 268 N.W.2d 869, 872 (Iowa 1978) (en banc)).

Rivas preserved the issues and arguments raised in this appeal by resisting the defendants’ motion for summary judgment on whether her claim is time-barred by Iowa Code section 614.1(2). (*See generally* D0091.) Specifically, the parties litigated the

constitutionality of the supreme court's Supervisory Orders. (*See* D0059; D0060; D0061; D0061 – Attachment Ex. A; D0061 – Attachment Ex. B; D0067; D0068; D0069; D0070; D0073; D0073 – Attachment; D0074; D0075.) The district court then granted summary judgment in defendants' favor on that point. (D0091.) Thus, the issue is preserved for appellate review. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

3. The Iowa Supreme Court's Supervisory Orders do not violate the Iowa Constitution's doctrine of separation-of-powers, so the tolling of the statutes of limitations was proper, Rivas's petition was timely, and the district court erred by granting summary judgment in defendants' favor on the basis that plaintiffs' petition was time-barred.

On March 17, 2020, Governor Reynolds declared a state of public health disaster emergency in response to the outbreak of COVID-19 and mounting global pandemic. State of Iowa Exec. Dep't, Proclamation of Disaster Emergency (Mar. 17, 2020), <https://perma.cc/ZBZ4-QBNM>. In doing so, Governor Reynolds recognized that the federal government and international

organizations had taken similar action. *Id.* Starting on April 2, 2020, the Iowa Supreme Court a series supervisory orders that “balanc[e] the need to take measures to reduce the spread of the virus with [the Iowa Judicial Branch’s] commitment to conduct[] business as necessary.” Supervisory Order at 1, filed May 22, 2020.

In response to global pandemic COVID-19, the Iowa Supreme Court first issued its “In the Matter of Ongoing Provisions For Coronavirus/COVID-198 Impact On Court Services” on April 2, 2020.³ Specifically, the court ordered:

33. Tolloed. Any statute of limitations, statute of repose, or similar deadline for commencing an action in district court is hereby tolled from March 17 to June 1 (76 days). Tolling means that amount of time to the statute of limitations or similar deadline. So, for example, if the statute would run on April 8, 2020, it now runs on June 23, 2020 (76 days later).

³ Iowa Sup. Ct. Supervisory Order, In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (Apr. 2, 2020) [hereinafter Apr. 2 Order]. <https://www.iowacourts.gov/collections/485/files/1076/embedDocument/> ; <https://perma.cc/P9L3-H3HZ> .

(Supervisory Order p9 ¶33, filed April 2, 2020 (emphasis in original)).

On May 8, 2020,⁴ the Iowa Supreme Court expanded its April 2 Order, stating:

3. Statute of Limitations Tolling. As previously ordered on April 2, 2020, any statute of limitations, statute of repose, or similar deadline for commencing an action in district court is tolled from March 17 to June 1 (76 days). Tolling means that amount of time is added to the statute of limitations or similar deadline.

4. Expansion of Prior Supervisory Order. The court now expands on the earlier supervisory order to direct that the 76 days of tolling will apply if the deadline for commencing the action would otherwise expire any time from March 17, 2020 to December 31, 2020. In other words, if the statute would otherwise run on July 7, 2020, it now runs on September 21, 2020 (76 days later). However, after December 31, 2020, any tolling will be phased out and eliminated. Thus, if the deadline for commencing the action would otherwise expire on any date from December 31, 2020 to March 16, 2020 (the 76th day of 2020), inclusive, that deadline would become

⁴ Iowa Sup. Ct. Supervisory Order, In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (May 8, 2020) [hereinafter May 8 Order], <https://www.iowacourts.gov/collections/497/files/1091/embedDocument/> ; <https://perma.cc/P2TZ-QMFM>

March 17, 2020, and thereafter there would be no tolling at all.

(Supervisory Order p2 ¶¶3-4, May 8, 2020 (emphasis in original)).

On May 22, 2020, the supreme court issued another supervisory order⁵ that replaced the April 2 and May 8 orders:

STATUTE OF LIMITATIONS

45. **Tolling.***^[6] Any statute of limitations, statute of repose, or similar deadline for commencing an action in district court is hereby tolled from March 17, 2020 to June 1, 2020 (76 days). Tolling means that amount of time to the statute of limitations or similar deadline. The 76 days of tolling will apply if the deadline for

⁵ On March 12, 2021, the supreme court issued a final supervisory order that affected the tolling of statutes of limitations; however, the 2021 Order confirmed and made no changes to the May 22, 2020 order. Because the May 22 Order is the order that ultimately affects this action, Appellants will refer to that order. Iowa Sup. Ct. Supervisory Order, In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (May 22, 2020) [hereinafter May 22 Order],

<https://www.iowacourts.gov/collections/499/files/1093/embedDocument/>

⁶ Regarding the asterisk, the order stated: “For the convenience of the reader, paragraphs that are substantively identical to provisions in prior supervisory orders are marked with a single asterisk *.” (May 22 Order p2.)

commencing the action would otherwise expire *any time from March 17, 2020 to December 31, 2020*. In other words, if the statute would otherwise run on July 7, 2020, it now runs on September 21, 2020 (76 days later). However, after December 31, 2020, any tolling will be phased out and eliminated. Thus, if the deadline for commencing the action would otherwise expire on any date from December 31, 2020 to March 16, 2021 (the 76th day of 2021), inclusive, that deadline would become March 17, 2021, and thereafter there would be no tolling at all.

(Supervisory Order p14 ¶45, filed May 22, 2020 (emphasis in original).)

The Supervisor Orders were issued pursuant to the authority granted to the judicial branch. Specifically, the Iowa Constitution provides: “The judicial power shall be vested in a supreme court, district courts, and such other courts, inferior to the supreme court, as the general assembly may, from time to time, establish.” Iowa Const. art. V, § 1. The Iowa Constitution further provides: “The supreme court ... shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a

supervisory and administrative control over all inferior judicial tribunals throughout the state.” Iowa Const. art. V, § 4.

By statute, the Iowa Legislature authorized the judicial department to “prescribe all rules of pleading, practice, evidence, and procedure, and the forms of process, writs, and notices, for all proceedings in all courts of this state, for the purposes of simplifying the proceedings and promoting the speedy determination of litigation upon its merits.” Iowa Code § 602.4201(1) (2023). Considering its authority in previous cases, the Iowa Supreme Court wrote:

[T]he judiciary is vested with inherent power to do whatever is essential to the performance of its constitutional functions. ... “It was certainly never intended that any one department, through the exercise of its acknowledged powers, should be able to prevent another department from fulfilling its responsibilities to the people under the Constitution.”

Webster County, 268 N.W.2d at 874 (quoting *O’Coin’s, Inc. v. Treasurer of County of Worcester*, 287 N.E.2d 608, 612 (Mass. 1972)).

Weighing the Supervisory Orders against the supreme court's constitutional and statutory authority, the district court accepted NNI's argument that Supervisory Orders' tolling the statute of limitations is an unconstitutional usurpation by the supreme court of the legislature's power to set statutes of limitations. (D0078 at p4-5.) In summary, Iowa Code section 614.1(2) enacted by the legislature provides that a personal injury tort claim must be brought within two years of the date of injury. Iowa Code § 6.14(1)(2) (2018). The district court wrote:

In response to the COVID-19 epidemic the Iowa Supreme Court issued a supervisory order tolling the statute of limitations set out in Iowa Code § 614.1(2) by 76 days. § 614.1(2) provides that actions based upon injuries to persons or reputation must be brought within two years from the date of the alleged acts leading to such injuries. An exception is allowed regarding medical malpractice cases known as the discovery rule. (See §614.1(9), Code of Iowa). The Iowa Supreme Court has stated that the tolling of the statute of limitations is "purely statutory," and the Iowa Supreme Court is "not free to expand the concept to avoid hardships." *Harrington v. Toshiba Machine Co., Ltd.*, 562 N.W.2d 190, 192 (Iowa 1997), citing *Boyle v. Boyle*, 126 Iowa 167, 168, 101 N.W. 748, 748 (1904). Thus, the Iowa Supreme Court supervisory order extending the time for

filing petitions such as the one at bar is beyond the power of the Iowa Supreme Court.

The petition filed in this matter was filed 62 days after the statute of limitations period had expired. Therefore, the petition was not timely filed, and this action should be, and is, dismissed with prejudice.

(D0091 at 3.) The district court erred accepting that argument. This court should reverse.

A. *Basquin* applies to this case, so this court should reverse the district court and remand for further proceedings.

Recently, the Iowa Supreme Court directly addressed the constitutionality of the Supervisory Orders and held them valid.

State v. Basquin, 970 N.W.2d 643, 657 (Iowa 2022), *as amended*

(Mar. 2, 2022). The *Basquin* Court held:

Our COVID-19 supervisory orders providing for temporary procedural measures in response to a global pandemic fall well within this grant of constitutional authority dedicated to the judicial branch. We also can rely on our inherent, statutory, and common law authority, as discussed above, as a source of power for the COVID-19 supervisory orders. We likewise did not use any power granted exclusively to another branch of government.

Id. at 657. “The legislature has not attempted to countermand the supervisory orders at issue.” *Id.* at 658. The court also rejected a due process challenge. *Id.* at 658–60. Thus, as it did in *Basquin*, defendants’ separation-of-powers argument in this case fails. *Id.*; *see also State v. Tesch*, No. 21-0343, 2022 WL 1100922, at *3-*4 (Iowa Ct. App. Apr. 3, 2022) (citing *Basquin* and concluding “the pandemic-related orders were “valid reasons” for the delays” and did not violate a criminal defendant’s constitutional right to a speedy trial); *Murphy v. Liberty Mut. Ins. Co.*, 274 A.3d 412, 433-41 (Md. 2022) (holding that Chief Judge had authority under State Constitution and Maryland Rules to issue administrative tolling order in emergency).

B. If *Basquin* does not apply to this case, the Supervisory Orders do not violate the separation-of-powers doctrine.

If *Basquin* is distinguishable from this case, other precedent supports the constitutionality of the Supervisory Orders. The Supreme Court had other authority legislatively granted to the Supreme Court – the authority to open and close courthouses. Thus,

the Supervisory Order is part of the Supreme Court's authority to control and operate the judicial branch.

The period for commencing an action is statutory, and as a result the province of the legislative branch. *See* § 6.14(1)(9) (legislatively establishing the time allotted for injured persons to bring actions in Iowa's courts or recover for those injuries); *see also* Iowa R. Civ. P. 1.301(1) (whether action is commenced within time allowed by statute of limitation is determined by date of filing). However, "Article V, section 4 of the Iowa Constitution expressly empowers our court to exercise 'supervisory and administrative control over all inferior judicial tribunals throughout the state.'" *Root v. Toney*, 841 N.W.2d 83, 87 (Iowa 2013).

Directly related to the Supreme Court's authority is Iowa Code section 4.1(34), which provides:

[W]hen by the provisions of a statute or rule prescribed under authority of a statute, the last day for the commencement of an action or proceedings, ... falls on ... a day on which the office of the clerk of the district court is closed in whole or in part pursuant to the authority of the supreme court, ... the time shall be

extended to include the next day which the office of the clerk of the court ... is open to receive the filing of a commencement of an action

Iowa Code § 4.1(34) (2023). In *Root*, the appellant missed the deadline to file his notice of appeal by one day because the clerk's office had closed early on the thirtieth day due to the Supreme Court's previously issued supervisory order. *Id.* at 87-88; *see* Iowa R. App. P. 6.101(1) (time to file notice of appeal is no later than 30 days after ruling being appeal was filed). Though the *Root* Court found that its supervisory order requiring the clerk's office to close early was constitutional, its effect could not *shorten* the time period to file a notice of appeal, so section 4.1(34), which extended the filing deadline to "the next day which the office of the clerk of the court ... is open to receive the filing", governed the appellant's time period to file a notice of appeal, and the appellant's filing was timely. *Root* at 89-90. As *Root* confirms, the Iowa Supreme Court has the authority to set the times when a clerk's office is open or closed. If the office is closed, that prevents filing with the clerk. If a statute

of limitations expires when a clerk's office is closed, it is extended to when the clerk's office opens. *See* § 4.1(34).

Root applies here. First, *Root* extended the right to appeal, not shorten it. *Id.* at 90 (“Specifically, the time allowed to file a notice of appeal cannot be *reduced* without legislative approval.” (emphasis added)). Here, the Supervisory Orders extended all plaintiffs’ right to file an action by tolling the statute of limitations. Extending deadlines guarantees due process in contrast to shortening deadlines. Missing a shortened deadline would bar an entire action and deny a litigant’s right to have her case heard in court. Extending a filing deadline opens the door to litigation, discovery, and adjudication – a far cry from locking the courthouse doors before a case is even filed. A defendant’s right to defend herself through discovery and adjudicating her rights to a judge and jury are preserved and protected when a filing deadline is extended.

Second, if the supreme court had the legal and constitutional authority to close a clerk’s office, then it is logical that the supreme

court also had the authority to extend statutes of limitation and other filing deadlines. Had the supreme court ordered clerk's offices closed, or restricted their hours of operation as it did in *Root*, the statute of limitations would have extended to the next day the clerk's office reopened. *See* § 4.1(34).

The tolling of the statute of limitations is a logical extension of the supreme court's constitutional authority. The pandemic required drastic measures including restricting and reducing judicial personnel, restricting litigants' and attorneys' access to the judicial system, etc. In a recent case, the supreme court unanimously recognized and agreed with the district court's evaluation of the need to consider equitable principles to avoid strict adherence to arbitrary deadlines writing:

The coronavirus crisis created real obstacles to filing and serving original actions. Attorneys had more difficulty meeting with clients and potential witnesses before filing an action. Service is complicated because process services may need to come into personal contact with defendants.

Askvig v. Snap-On Logistics Co., 967 N.W.2d 558, 561–62 (Iowa 2021). The supreme court recognized the consequence that, due to restrictions instituted on the court system by the Supervisory Orders, statutes of limitations may expire. *See id.* Avoiding a mountain of controversy created by restricting a plaintiff’s access to the court system, the supreme court solved the problem by tolling the statutes of limitations. *Cf. id.* at 562 (noting that extending the statute of limitations by 76 days would have little impact on civil litigation because such statute “are typically calculated in years”).

The supreme court issued the Supervisory Orders pursuant to Iowa Constitution article V, section 4. In the Supervisory Orders, the supreme court restricted litigants and their attorneys’ access to the judicial system, as well as delaying adjudication, e.g., delaying nonjury and jury trials, suspending grand jury proceedings, extending speedy indictment deadlines, extending time to complete personal service, extending time to avoid Rule 1.944 dismissal (Supervisory Orders ¶¶ 6, 7, 10, 32, 33.)

By restricting access to the judicial system and slowing adjudication, the supreme court acted in a way that arguably violated Iowa's constitutional mandate that "no person shall be deprived of life, liberty, or property, without due process of law." Iowa Const. art. I, § 9. So, a difficult choice arose – take no action which could promote the spread of the disease, suffering, and death; or inhibit the citizenry's unfettered access to the judicial system which would impede the due process of law.

The supreme court acknowledged the pandemic's effects outside the courthouse when it prefaced the Supervisory Orders with: "The Iowa Judicial Branch continues to carefully monitor the public health situation, balancing the need to take measures to reduce the spread of the virus with its commitment to conducting business as necessary." (Supervisory Orders p1.) That "public health situation" affected nearly every aspect of civilized life. Particular to this case, the pandemic impacted an injured plaintiff's access to medical treatment, medical records, access to experts due

to travel restrictions, access to their own attorney due to the attorney limiting office hours, office staff, etc.

The Supervisory Orders reflected the serious and extraordinary situation facing Iowa's citizens and its government. By issuing the Supervisory Orders, the supreme court responded to that crisis by following the fundamentally best way to stop the pandemic – prevent the transmission of the disease from person to person by limiting person-to-person contact. To slow the spread, the supreme court, through the Supervisory Orders, refined criminal process, civil process, court personnel, and how trials, hearings, and the basic administration of justice would continue. In contrast to the supreme court's action, the Iowa Legislature responded to the health emergency by adjourning and going home.

By doing nothing, the legislature abdicated its responsibility. The Iowa Legislature suspended its legislative session for “at least 30 days” on March 15, 2020. On April 2, 2020, the Iowa Legislature again suspended its legislative session through at least April 30.

Reacting to the legislature's inaction, the Iowa Supreme Court acted in accordance with its constitutional authority granted by Article V of the Iowa Constitution to administer the judicial system. *See Iowa C.L. Union v. Critelli*, 244 N.W.2d 564, 568 (Iowa 1976).

In *Critelli*, the Supreme Court held: "The judicial department's constitutional, statutory, inherent, and common law authority to regulate practice and procedure in its courts thus must give way where the legislative department has acted." *Id.* So the inverse must be true – when the legislature fails to act, the supreme court must act in order to protect the citizens' right to a functioning judiciary and to fulfil its constitutional obligation to the administration of justice.

The Supreme Court considered the foregoing in *Basquin* and held the Supervisory Orders constitutional. *Basquin*, 970 N.W.2d at 657-58.

To decide if the judiciary exercised forbidden powers or powers committed to another branch, "we first look to the words used by our framers to ascertain intent and the meaning of our constitution and to the common

understanding of those words.” [*Thompson*, 954 N.W.2d at 410] (quoting *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 851 (Iowa 2014)). Article V, section 4 of the Iowa Constitution grants the judiciary supervisory and administrative power, which necessarily “must apply to something beyond the ordinary appellate procedure and correction of errors of law.” [*In re Judges of Mun. Ct. of City of Cedar Rapids*, 256 Iowa 1135, 130 N.W.2d 553, 554 (1964)].

Basquin, 970 N.W.2d at 657. “At common law, the inherent power of courts to make rules governing practice and procedure and admission to the bar was firmly established.” *Critelli*, 244 N.W.2d at 568.

Where *the legislature has not acted*, courts possess a residuum of inherent common-law power to adopt rules to enable them to meet their independent constitutional and statutory responsibilities. We find Article V, s 14, of the Constitution, read with the separation-of-powers clause, Article III, s 1, does not manifest a plain intention to abrogate the inherent common-law power of courts to adopt rules of practice.

Id. at 569 (emphasis added).

The Iowa Legislature, by enacting section 614.1(9), does not have exclusive authority on when Iowa courts may entertain an action asserting injuries to a person. Years ago, the legislature

acted by establishing the general rules regarding statutes of limitation for civil actions. *See Leach v. Commercial Sav. Bank of Des Moines*, 213 N.W. 517, 522 (1927). “The statutes of limitation ... are founded in public needs and public policy — are *arbitrary* enactments by law-making power.” *Id.* (emphasis added). However, these arbitrary time limitations cannot offend a person’s constitutional right to the due process of law. *See Swanson v. Pontralo*, 27 N.W.2d 21, 24 (Iowa 1947); *Collier v. Smaltz*, 128 N.W. 396, 399–400 (Iowa 1910). So, the clock is ticking on a personal injury action due to the statute of limitations. However, a global pandemic curtails the administration of justice. To promote justice and fairness, plaintiffs should not lose their right to due process – to have their petitions heard – because the supreme court acted to preserve their right by tolling the statute when faced with the legislature’s failure to act. Plaintiffs relied on the supreme court’s authority in the Supervisory Orders to toll the statute of limitations. Now, using the unfair lens of perfect hindsight, the

supreme court should not deny those citizens the right to litigate their personal injury claims because, years later, it was a mistake to toll statutes of limitations.

Based on the foregoing principles, the Supervisory Order's tolling the statutes of limitations is not a violation of the supreme court's constitutional authority or a usurpation of authority granted exclusively to the legislative branch. The supreme court's action was constitutionally permissible as granted by Iowa's Constitution Article V, section 4, that expressly empowered the Iowa Supreme Court to exercise "supervisory and administrative control over all inferior judicial tribunals throughout the state." *Root*, 841 N.W.2d at 87. This court should reverse the district court.

C. If this court holds the Supervisory Orders are invalid, this court should consider Rivas's petition timely filed based upon the equitable tolling of the statute of limitations.

If the appellate court finds that the Supervisory Orders are unconstitutional, Rivas' petition should be allowed to proceed under the doctrine of equitable tolling. *See Mormann v. Iowa Workforce*

Dev., 913 N.W.2d 554, 566-78 (Iowa 2018) (discussing the doctrine at length but holding that it did not save the untimely filed complaint under the Iowa Civil Rights Act (ICRA)). In limited circumstances, the Iowa Supreme Court recognizes the general principles of equitable tolling which is the Court's authority to toll the statute of limitations as justice requires. *See Mormann*, 913 N.W.2d at 566-67; *Benskin, Inc. v. W. Bank*, 952 N.W.2d 292 (Iowa 2020); *see also Carter v. Carter*, 957 N.W.2d 623, 645 (Iowa 2021); *Raper v. State*, 688 N.W.2d 29 (Iowa 2004) (applying the federal equitable tolling doctrine). "It is hornbook law that limitations periods are customarily subject to equitable tolling[.]" *Young v. United States*, 535 U.S. 43, 49 (2002) (citations and internal quotations omitted).

"[W]hether tolling is available is often a fact-intensive inquiry for which a ruling on a motion to dismiss or at the summary judgment stage is often inappropriate." *Mormann*, 913 N.W.2d at 575. The "contours of equitable tolling' ... 'generally involve[] two

doctrines, the discovery rule and equitable estoppel.” *Benskin, Inc.*, 952 N.W.2d 302 (quoting *Mormann* at 570).

Importantly, “[i]n order to invoke either theory of equitable tolling, the asserting party must show reasonable diligence in enforcing the claim.” *Id.* “The party pleading an exception to the normal limitations period has the burden to plead and prove the exceptions.” *Franzen v. Deere & Co.*, 334 N.W.2d 730, 732 (Iowa 1983); *see also Skadburg v. Gately*, 911 N.W.2d 786, 793 (Iowa 2018) (“Although [defendant] has the burden of establishing the statute-of-limitations defense, [plaintiff], as the party attempting to avoid the limitations period, has the burden of demonstrating any exception.”).

Benskin, 952 N.W.2d at 302. Here, Rivas filed her claim within the extended period permitted by the Supervisory Orders, thus she met her burden to “plead[] an exception to the normal limitations period” by relying on the Supervisory Orders. *See id.*

In *Mormann*, the supreme court articulated four bases to determine whether equitable tolling was available to a particular case. *Mormann*, 913 N.W.2d 566–70 (coming “to the firm conclusion that equitable tolling doctrines are available for a number of reasons” under ICRA). “First, equitable exceptions to limitations

statutes are common in Iowa.” *Mormann*, 913 N.W.2d at 566 (discussing the “discovery rule”). Further, as “early as 1875, [the Iowa Supreme Court] recognized equitable estoppel as providing a vehicle to toll a statute of limitations.” *Mormann* at 567. So, when equity and justice demand, Iowa courts have equitably tolled the harsh reality of a statute of limitations.

“Second, the remedial purposes of the ICRA are best served by doctrines of equitable tolling.” *Mormann* at 567. This case is based upon negligence, not the ICRA, but the remedial purposes of the action are similar – to redress injuries caused by others. *See, e.g.*, Iowa Jury Instr. 700.1-750.3 (regarding negligence and supporting legal authority for those types of actions).

“Third, this case does not involve an exceptional statute where the underlying policy rationale strongly cuts against the application of equitable tolling.” *Mormann*, 913 N.W.2d at 569. The statute of limitations in this case is not a statute of repose nor jurisdictional. *Id.* (citing *Cada v. Baxter Healthcare Corp.*, 920 F.2d

446, 451 (7th Cir. 1990)); *see Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154 (2013) (holding “that filing deadlines ordinarily are not jurisdictional; indeed, [they are] ‘quintessential claim-processing rules.’”); *Askvig*, 967 N.W.2d at 562 (noting that non-jurisdictional deadlines like statutes of limitation can be waived and are subject to equitable tolling doctrines like estoppel); *cf. In re W.T.*, 967 N.W.2d 315, 321–22 (Iowa 2021) (granting appellant a “delayed appeal” even though failure to timely file a notice of appeal should result in dismissal). As such, the parties could waive the time-barred defense. *Beeck v. Kapalis*, 302 N.W.2d 90, 93 (Iowa 1981) (“The defense that an action is barred by the running of the statute of limitations is personal and may be asserted or waived.”). So, there is no “underlying policy rationale [that] strongly cuts against the application of equitable tolling”. *See Mormann*, 913 N.W.2d at 569.

Fourth, whether there is an absence of legislative action. *Mormann v. Iowa Workforce Dev.*, 913 N.W.2d 554, 570 (Iowa

2018). The *Mormann* Court noted that “the ICRC long ago promulgated a rule under the legislature’s grant of rulemaking authority in Iowa Code section 216.5(1) that embraced equitable tolling.” *Mormann v. Iowa Workforce Dev.*, 913 N.W.2d 554, 569–70 (Iowa 2018) (citing Iowa Admin. Code r. 161—3.3(3) & n.1–2)). In response to that rule, the “legislature, however, took no action to override the rule, which has remained on the books for more than twenty years. During those years, the legislature amended the ICRA several times without overturning the rule.” *Mormann*, 913 N.W.2d at 570. Here, the Iowa Supreme Court, faced with a global pandemic, acted when the Iowa Legislature did nothing.

Rivas should not have her claim dismissed based on that reliance of the supreme court’s Supervisory Orders.

The answer in the caselaw seems to be that equitable estoppel may still apply if the plaintiff can show that reliance on the misrepresentations was reasonable, the misrepresentations caused the delay in the filing of a complaint, and the employee exercised reasonable diligence under all the facts and circumstances. For instance, in *Dorsey*, the Eighth Circuit stated that in order for equitable estoppel to apply, the plaintiff must

have been aware of a prior claim and then have been lulled by employer misrepresentations into delaying the filing of a claim.

Mormann, 913 N.W.2d at 574 (citing *Dorsey v. Pinnacle Automation Co.*, 278 F.3d 830, 835–36 (8th Cir. 2002)); see *Askvig*, 967 N.W.2d at 562 (noting statutes of limitations are subject to equitable tolling). Here, the defendants did not misrepresent the situation to Rivas. However, the logic of equitable estoppel would extend to this case because of the extraordinary circumstances. For the first time in 100 years, arguably not since the Spanish Flu Pandemic that ravaged the globe from 1918-1920 and killed 25-50 million people worldwide, our planet encountered a potentially catastrophic and lethal biological crisis. World Health Organization, *Pandemic Influenza Risk Management WHO Interim Guidance*, p19 (2013)⁷. The supreme court took action to

7

https://web.archive.org/web/20210121225326/https://www.who.int/influenza/preparedness/pandemic/GIP_PandemicInfluenzaRiskManagementInterimGuidance_Jun2013.pdf?ua=1

address that pandemic. Rivas relied on that action by following the express terms of the Supervisory Orders that her statute of limitations was extended. Rivas did nothing wrong except follow the supreme court's orders. Extending the doctrine of equitable tolling to this situation is warranted. *See Fitzgerald v. Shinn*, No. CV-19-5219-PHX-MTL, 2020 WL 3414700, at *4 (D. Ariz. June 22, 2020) (“There is little doubt that ultimately, the COVID-19 pandemic will be considered an extraordinary circumstance meriting tolling for some period of time[.]”).

Based on the foregoing, the doctrine of equitable tolling is applicable when Rivas relied on a supreme court order tolling the statute of limitations that the supreme court later found unconstitutional. Rivas and her attorneys reasonably relied on the Iowa Supreme Court's Supervisory order explicitly stating that the statute of limitations was extended 76 days. With that extension, Rivas had until October 30, 2020, to timely file this action. By filing suit on October 16, 2020, Rivas complied. Equitable considerations

justify holding that Rivas's petition was timely filed. This court should reverse the district court.

Conclusion

The Iowa Supreme Court, and its inferior courts, hold residual powers to act as justice requires. Based upon the extraordinary circumstances that led to this case now before the court, the Supervisory Orders are not a usurpation of legislative authority. The supreme court acted within its constitutional and statutory authority to extend statutes of limitations. Finally, Iowa courts have long recognized its doctrine of equitable tolling that, when circumstances dictate and justice requires, courts can toll the statute of limitations without usurping the legislature's power. Implementing its Supervisory Order, the Iowa Supreme Court acted as justice required. This court should reverse the district court and remand for further proceedings.

Request for Oral Argument

Counsel for Appellant respectfully requests to be heard in oral argument upon submission of this case.

Respectfully submitted,

/s/ Christopher Johnston

Christopher Johnston, AT0012625

LAW GROUP OF IOWA

A Johnston Martineau LLP Company

7900 Hickman Road, Suite 200

Windsor Heights, Iowa 50324

Phone: 515-493-4878

Email: CJohnston@JMLegal.com

ATTORNEY FOR APPELLANT

Certificate of Service

Pursuant to Iowa Appellate Procedure 6.701 and 6.901, the undersigned hereby certifies that on the 22nd day of March 2024, the Brief was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Christopher Johnston
Christopher Johnston

Certificate of Compliance with Typeface Requirements and Type-Volume Limitation

This brief complies with the typeface requirements and type-volume limitation of Iowa R. 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 in 14 point font and contains 6057 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

this brief has been prepared in a monospaced typeface using _____ in 14 point font and contains ____ lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

/s/ Christopher Johnston

March 22, 2024