IN THE IOWA SUPREME COURT
NO. 23-1829
(Polk County No. LACL148935)

MARLENY RIVAS,

Plaintiff-Appellant,

v.

DEREK BROWNELL and LINDSEY WESSEL,

Defendants-Appellees.

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

APPELLEE DEREK BROWNELL'S BRIEF

CARMONEY LAW FIRM, PLLC
Jack W. Leverenz
Allison J. Frederick
2400 86th St., Suite 25
Des Moines, IA 50322
Phone: (515) 277.6550
Fax: (515) 277.6561
jack@carmoneylaw.com
allison@carmoneylaw.com
COUNSEL FOR DEREK BROWNELL

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ROUTING STATEMENT

This case involves a constitutional question as to the constitutional validity of an Iowa Supreme Court Supervisory Order purporting to toll a statute of

limitations. Iowa R. App. P. 6.1101(2)(a). Accordingly, the case should be routed to the Iowa Supreme Court.

NATURE OF THE CASE & COURSE OF PROCEEDINGS

Plaintiff's "Nature of the Case" (subsection under "Statement of the Case") is accurate, with the following clarification. The district court held only that the Iowa Supreme Court's May 22, 2020 Supervisory Order was unconstitutional. (D0091, Order on Defendants' Motion for Summary Judgment at 1 & 3, 11/2/23). The district court did not consider or make any decisions about Supervisory Orders dated April 2, 2020 or May 8, 2020. (D0091, Order on Defendants' Motion for Summary Judgment at 1 & 3, 11/2/23).

Plaintiff's "Course of Proceedings and Disposition in District Court" (subsection under "Statement of the Case") is also accurate, except as follows. Defendant Derek Brownell ("Defendant") disputes that Plaintiff was injured in the subject car accident and filed a Petition "based on her injuries." (D001, Petition at ¶ 24, 10/16/20; D0016, Brownell's Answer at ¶ 24, 8/6/21). Plaintiff has the burden of proving injuries. Iowa R. App. P. 6.904(3)(e). Proof of injuries was never admitted into evidence, due to the case's dismissal before the trial date. (D0091, Order on Defendants' Motion for Summary Judgment, 11/2/23). At any rate, whether Plaintiff was injured is not relevant to this appeal.

STATEMENT OF THE FACTS

The details of the accident, as set forth in Plaintiff's Statement of Facts, are generally not relevant to the parties' appellate dispute. Also, the Plaintiff bears the burden of proving allegations set forth in the Petition. Iowa R. App. P. 6.904(3)(e). Plaintiff overlooks the fact that Defendant Brownell has not admitted to the entirety of Plaintiff's allegations. (*See generally* D0016, Brownell's Answer, 8/6/21).

As it pertains to the present appeal, it is undisputed that Plaintiff, Marleny Rivas, claims she was injured in an automobile accident on August 4, 2018. (*See generally* D001, Petition, 10/16/20).

In Iowa, the personal injury statute of limitations is two years from the date of injury. Iowa Code § 614.1(2). Pursuant to this statute, Plaintiff's two-year statute of limitations ran on August 4, 2020. Plaintiff did not file suit on or before this date. Plaintiff filed suit against Mr. Brownell on October 16, 2020. (D001, Petition, 10/16/20).

At the heart of the parties' dispute is the constitutionality and enforceability of an Iowa Supreme Court Supervisory Order. On May 22, 2020, Honorable Chief Justice Susan Christensen filed a Supervisory Order that attempted to toll the personal injury statute of limitations, Iowa Code section 614.1(2), by 76 days. Plaintiff contends that suit was timely filed, due to the Supervisory Order.

Defendant contends that the May 22, 2020 Supervisory Order usurps legislative authority and that Iowa Code section 614.1(2) must be enforced as written, rendering Plaintiff's case time-barred.

ARGUMENT

I. Preservation of Error

There is no dispute that Plaintiff has preserved the right to appeal the district court's order granting Defendants' Motion for Summary Judgment. Plaintiff resisted Defendants' Motions. (D0073, Resistance, 4/7/23). By Order dated November 2, 2023, the district court granted Defendant Brownell's Motion for Summary Judgment. (D0091, Order on Defendants' Motion for Summary Judgment, 11/2/23). Plaintiff filed a timely Notice of Appeal. (D0093, Notice of Appeal, 11/8/23).

Plaintiff has not, however, preserved error as to all specific arguments raised on appeal. In instances where Defendant Brownell contends error was not preserved, this is specifically addressed within subsections responding to Plaintiff's pertinent arguments.

II. Scope and Standard of Review

There is no dispute that when constitutional questions are raised on appeal, the standard of review is de novo. (Plaintiff's Brief, P. 16).

III. The Supreme Court Order Violates the Separation of Powers Doctrine.

On appeal, Plaintiff does not discuss the doctrine of separation of powers. This doctrine, however, is the foundation of the district court's decision to grant Defendants' Motion for Summary Judgment. (D0091, Order on Defendants' Motion for Summary Judgment at 4, 11/2/23).

In *State v. Thompson*, 954 N.W.2d 402, 411 (Iowa 2021), the Court stated as follows regarding separation of powers:

> [T]he constitutional text reserves to the legislative [branch] authority to regulate the practice and procedure in all Iowa courts, including Iowa's appellate courts. Article V, section 4 of the Iowa Constitution grants the supreme court appellate jurisdiction "under such restrictions as the general assembly may, by law, prescribe." Article V, section 6 provides the district court shall have jurisdiction "as shall be prescribed by law." And article V, section 14 of the constitution provides it is "the duty of the general assembly . . . to provide for a general system of practice in all the courts of this state." The judicial [branch]'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.

It is evident that under the doctrine of separation of powers, as generally discussed in *Thompson*, courts cannot alter a court procedure that has its source in statute passed by the legislature. *Root v. Tooney*, 841 N.W.2d 83, 89-90 (Iowa 2013) ("We may not change statutory terms . . . ."); *see also City of Waterloo v. Selden*, 251 N.W.2d 506 (Iowa 1977) ("Courts do not pass on the policy, wisdom, advisability, or justice of a statute. The remedy for those who contend legislation which is within constitutional bounds is unwise or oppressive is the legislature . . .

.”); *State v. Phillips*, 610, N.W.2d 840, 842 (Iowa 2000) (clarifying that the separation of powers doctrine is “violated if one branch of government purports to use powers that are clearly forbidden, or attempts to use powers granted by the constitution to another branch”); *De Berg v. Cty. Bd. of Ed.*, 82 N.W.2d 710, 717 (Iowa 1977) (“It is our function to interpret legislative enactments, but not to establish new legislative provisions by judicial procedure, nor to nullify the clear intention of such enactments.”).

As the time period for filing suit is governed by statute, the judicial branch cannot usurp legislative authority by Supervisory Order. As such, the May 22, 2020, Order (and all other Iowa Supreme Court Orders tolling statutes of limitations) are unconstitutional and do not alter the time limit to pursue claims.

IV. Plaintiff’s Authorities are Inapplicable.

Rather than squarely address the doctrine upon which the district court based its ruling, Plaintiff provides the Court with a smattering of arguments and authorities that ultimately do nothing to help Plaintiff’s case. Plaintiff’s points are discussed in turn below.

A. *Basquin* Is Inapplicable.

Plaintiff argues that *State v. Basquin*, 970 N.W.2d 643 (Iowa 2022), is dispositive. (Plaintiff’s Brief, P. 24). Plaintiff strategically omits the facts of the case. (Plaintiff’s Brief, P. 24). Plaintiff suggests that *Basquin* stands for the

proposition that all Covid-19 Iowa Supreme Court Supervisory Orders, even ones that conflict with legislation, are constitutional. (Plaintiff's Brief, P. 24). This is a misreading of *Basquin*.

State v. Basquin, 970 N.W.2d 643, 657 (Iowa 2002), is wholly inapplicable because it does not involve any statute enacted by the legislature. In *Basquin*, due to an Iowa Supreme Court Supervisory Order associated with the pandemic, Mr. Basquin filed a written Alford guilty plea in lieu of entering his plea in open court, and the Court accepted the plea. 970 N.W.2d at 650-651. Iowa Rule of Criminal Procedure 2.8(2)(b) says that, with regard to felonies, "[b]efore accepting a plea of guilty, the court must address the defendant personally in open court . . . ." The question in *Basquin* consequently was whether the Court had authority to issue a Supervisory Order that temporarily allowed felony guilty pleas to be submitted in writing, in lieu of through an in-person court hearing. 970 N.W.2d at 652-655. The Court held that it "had the constitutional authority to issue the supervisory orders that temporarily suspended our rules of criminal procedure governing guilty pleas." *Id*. at 654-55.

Importantly, in *Basquin*, the Court found that the Iowa Supreme Court has constitutional authority to regulate "court practice and procedure." *Id*. at 655. The Court further observed the Iowa Supreme Court has inherent, statutory and

common law authority to prescribe court rules of practice and procedure. *Id*.; Iowa Code § 602.4201.

By contrast, in this case, we are not dealing simply with the Iowa Supreme Court's regulation of the judicial branch's procedural rules. Rather, we are dealing with the Iowa Supreme Court's authority to toll a statute of limitations prescribed by the legislature in Iowa Code section 614.1. In *Basquin*, the Court implied the result would be different if the legislature had enacted a statute relating in any way to the issue of how felony guilty pleas were to be entered. The Court observed: "In the instant case, the legislature has not enacted a statute prohibiting written guilty pleas to felonies." *Basquin*, 970 N.W.2d at 656. Here, there can be no question that the legislature enacted a statute that the Iowa Supreme Court chose to override through a Supervisory Order.

In connection with arguing that *Basquin* is applicable, Plaintiff cites two other cases. (Plaintiff's Brief, P. 25). More specifically, Plaintiff cites *State v. Tesch*, No. 21-0343, 2022 WL 1100922, at *3-*4 (Iowa Ct. App. Apr. 3, 2022). (Plaintiff's Brief, P. 25). Plaintiff also cites *Murphy v. Liberty Mut. Ins. Co.*, 274 A.3d 412, 433-41 (Md. 2022). (Plaintiff's Brief, P. 25). Plaintiff has waived reliance on these cases, as arguments relating thereto were neither raised before the district court nor decided by the district court. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

Even if the Court were to consider these cases, they are not favorable to Plaintiff. *State v. Tesch* involved a criminal defendant's contention that a Supervisory Order, which modified a criminal procedural court rule, violated his right to a speedy trial. No. 21-0343, 2022 WL 1100922, at *3-*4 (Iowa Ct. App. Apr. 3, 2022). *Tesch* did not involve a conflict between legislation and a Supreme Court Supervisory Order, like the case at hand. *Id*. As for *Murphy*, the analysis and outcome was governed by law unique to Maryland that has not been enacted here in Iowa. 274 A.3d at 433-41. In Iowa, the law set forth in *State v. Thompson* is dispositive. 954 N.W.2d at 411.

B. *Root* Is Inapplicable.

Subsection B of Plaintiff's Brief (PP. 25-29) focuses on *Root v. Toney*, 841 N.W.2d 83, 87 (Iowa 2013). *Root* involves straightforward application of a statute. *See id.* at 87-88. As such, *Root* does not support Plaintiff's position.

In *Root*, the Iowa Supreme Court applied Iowa Code section 4.1(34). *See id*. This Code section says that when the last day for filing an appeal falls on a day when the Iowa Supreme Court has closed a clerk's office, then the time for filing is to be extended to the next day the clerk's office is open. *Id.*; Iowa Code § 4.1(34). Mr. Toney did not file his notice of appeal on the thirtieth day from the date of judgment (the normal deadline for filing an appeal, per court rules) because the clerk's office closed early, per a cost-saving closure order of the Iowa Supreme

Court. *Root*, 841 N.W.2d at 84. So, he filed the appeal on the next day the clerk's office was open, which was thirty-one days from the date of judgment. *Id*. at 85.

The Court held that per the plain language of Iowa Code section 4.1(34), Mr. Toney's notice of appeal was timely filed. *Id*. at 89. The Court said that it could not change statutory terms under the guise of judicial construction, and the Court had to apply plain statutory language. *Id*. Given that *Root* involves application of plain statutory language, *Root* actually supports Defendant Brownell's position, not Plaintiff's. *Root* supports Mr. Brownell's position that the Court should apply the statute of limitations, as written, and find Plaintiff's Petition is time-barred.

Plaintiff argues that *Root* generally supports extending deadlines, as this "guarantees due process." (Plaintiff's Brief, P. 28). This argument overlooks how extending the statute of limitations would impact the constitutional due process rights of Defendant Brownell. Due process prevents the government from interfering with rights implicit in the concept of liberty. Iowa Const. art. I, § 1; Iowa Const. art I, § 9; *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005) (superseded by statute on other grounds). Defendant has a right to dispose of stale claims per legislative enactment. The Supervisory Orders infringed on that right in violation of substantive due process of law. *See Thorp v. Casey's General Stores, Inc.*, 446 N.W.2d 457 (Iowa1989) (finding due process violation).

Procedural due process requires notice and an opportunity to be heard. *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 691 (Iowa 2002). The Iowa Supreme Court acted unilaterally and did not give Defendant any notice or opportunity to be heard when it altered the statute of limitations. While the government possibly has a legitimate interest in reducing the spread of Covid, tolling all statutes of limitations in civil cases does not bear a rational relationship to that interest. *Morrissey v. Brewer*, 408 U.S. 471 (1972) (outlining due process considerations). In light of electronic filing requirements, simply filing a Petition does not risk Covid exposure. Should the Court find that Plaintiff's case is not time-barred, Defendant will be denied not only substantive, but also procedural, due process.

C. Iowa Constitution, Article V Is Inapplicable.

Plaintiff argues the Iowa Supreme Court's May 2020 Supervisory Order was authorized by Iowa Constitution article V, section 4. (Plaintiff's Brief, P. 30). This constitutional provision says 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

The problem, however, is the Iowa Supreme Court went beyond exercising supervisory and administrative control over judicial tribunals. The Court infringed

on legislative authority. Therefore, article V of the Iowa Constitution did not provide the Iowa Supreme Court with authority to toll the statute of limitations.

Seemingly in connection with the argument that the Iowa Constitution provided authority for the Supervisory Order, Plaintiff argues that the Iowa Supreme Court had to act, to stop the "spread of disease, suffering and death." (Plaintiff's Brief, P. 31). Whether the Supreme Court needed to act to stop the spread of Covid is a matter of conjecture, as there is no evidence one way or the other on this point. (Plaintiff's Brief, PP. 31-32). Plaintiff states the pandemic impacted her access to medical treatment, medical records, experts, and her attorney, even though there is no evidence in the record to support the statement. (Plaintiff's Brief, PP. 31-32).

There is also no evidence or law supporting the theory that the legislature "abdicated [a] responsibility" to toll the statute of limitations. (Plaintiff's Brief, P. 32). No such responsibility existed in the first place. The legislature is not required to take action because one particular group wants it to do so.

Plaintiff cites *Iowa C.L. Union v. Critelli,* 244 N.W.2d 564, 568 (Iowa 1976), for the proposition that "where the legislature fails to act, the [S]upreme [C]ourt ***must*** act . . . ." (Plaintiff's Brief, P. 33)(emphasis added). This reading of *Critelli* would suggest the Supreme Court is tasked with the extreme workload of regulating all aspects of our lives that the legislature has neglected to mention. This

is not a reasonable, practical reading of *Critelli*. Not all aspects of our lives are regulated by the legislature, nor should they be.

Critelli discusses the "inherent common-law power of the courts to adopt rules for the management of cases on their dockets ***in the absence of statute***." 244 N.W.2d at 568-69 (emphasis added). Again, in this case, we have a statute that governs the statute of limitations. Where the legislature has spoken, Courts do not have any inherent authority to override legislative enactment. *See id*. at 569 (explaining that "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").

D. Plaintiffs Waived the Issue of Equitable Tolling or, Alternatively, The Doctrine Does Not Apply.

Plaintiff argues that the Court should consider whether there was "equitable" authority to toll the statute of limitations. (Plaintiff's Brief, PP. 29-30). Plaintiff did not preserve error as to equitable tolling of the statute of limitations. (Plaintiff's Brief, PP. 36-44). Plaintiff never presented any argument or authorities relating to equitable tolling of the statute of limitations to the district court. (D0073, Resistance, 4/7/23). The district court never ruled on the issue of equitable tolling of the statute of limitations. (D0091, Order on Defendants' Motion for Summary Judgment, 11/2/23). As such, arguments relating to "equitable tolling" have been waived. *Meier*, 641 N.W.2d at 537.

Even if the Court were to reach the issue of equitable tolling, there is no authority to apply it under the circumstances of the present case. One authority that the Plaintiff cites for "equitable principles" is *Askvig v. Snap-On*, 967 N.W.2d 558 (Iowa 2021). (Plaintiff's Brief, PP. 29-30). In *Askvig*, the Iowa Supreme Court held that Iowa Code section 17A.19(3) (imposing a deadline for filing a petition for judicial review) is not a statute of limitations. 967 N.W.2d at 561-63. As such, the Court's Supervisory Orders relating to tolling of statutes of limitations had no impact on Iowa Code section 17A.19(3). Here, unlike in *Askvig*, the Court needs to resolve an issue involving a statute of limitations.

Plaintiff extensively cites *Mormann v. Iowa Workforce Dev*., 913 N.W.2d 554 (Iowa 2018). Per *Mormann*, Iowa Code section 216.15(13) required Plaintiff to file a complaint with the Iowa Civil Rights Commission no more than 300 days after the alleged discriminatory practice. 913 N.W.2d at 558. Plaintiff argued he did not know about the discriminatory practice until the 300 days had passed, however. *Id.* The Iowa Civil Rights Act authorized the Iowa Civil Rights Commission to establish rules, and the Commission adopted Iowa Administrative Code Rule 161-3.3(3), stating that the filing period was "subject to waiver, estoppel and equitable tolling." *Id.* The Rule further stated that "[w]hether the filing period shall be equitably tolled in favor of a complainant depends upon the facts and circumstances of the particular case," and "[e]quitable tolling suspends

the running of the filing period during the period of time in which the grounds for equitable tolling exist." *Id*. at 558-59. The Rule has remained on the books since 1993, with no legislative action to overrule it, despite numerous amendments to the Iowa Civil Rights Act. *Id.* at 570.

The Court stated that the doctrine of equitable tolling incorporates two doctrines, the discovery rule and equitable estoppel. *Id*. The discovery rule involves considering what the Plaintiff knew and when she knew it. *Id*. Equitable estoppel involves consideration of whether the Defendant engaged in conduct that would reasonably deter the filing of a claim. *Id*.

This case obviously does not implicate the discovery rule. Plaintiff has never argued that there was any delay in her knowledge of injury. Moreover, Plaintiff has never argued that Defendant did anything to deter her from filing a claim. The doctrine of equitable tolling, as set forth in *Mormann*, simply has no application to the present case.

Also, in *Mormann*, the Supreme Court expressly held that the doctrine of equitable tolling was "available" for claims filed under the Iowa Civil Rights Act. *Id*. at 566. The Court analyzed, at length, why the doctrine applied in this unique context. *Id*. at 566-570. This case, of course, does not involve civil rights. As such, it is questionable whether equitable tolling applies in the present context, and

Plaintiff provides no legal authority supporting application in the context of a car accident.

Plaintiff argues that she and her attorneys "reasonably relied" on the Supervisory Order tolling the statute of limitations. (Plaintiff's Brief, P. 43). Plaintiff cites no law indicating reasonable reliance has any relevance to the tolling of a statute of limitations. Moreover, whether reliance was "reasonable" is debatable. Given that the statute of limitations is two years, Plaintiff ran a risk in filing her Petition when she did.

CONCLUSION

Defendant respectfully requests that the Court affirm the district court's Order granting Defendants' Motion for Summary Judgment. The Iowa Supreme Court's May 2020 Supervisory Order violates the separation of powers doctrine and is unenforceable. Therefore, Iowa Code section 614.1(2) renders the Plaintiff's case time-barred.

REQUEST FOR ORAL SUBMISSION

Defendant respectfully requests oral argument.

Respectfully Submitted,

CARMONEY LAW FIRM, PLLC

By: */s/ Allison J. Frederick*
Allison J. Frederick
Jack W. Leverenz

2400 86th St., Suite 25
Des Moines, IA 50322
Phone: (515) 277.6550
Fax: (515) 277.6561
allison@carmoneylaw.com
jack@carmoneylaw.com
ATTORNEYS FOR DEREK BROWNELL

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on April 18, 2024, the foregoing Brief was filed via the appellate e-filing system and additionally served on counsel of record via the e-filing system.

By /s/ *Allison J. Frederick*

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)(d) and 6.903(1)(g)(1) or (2) because:
This brief has been prepared in a proportionally spaced typeface using Times New Roman in font size 14 and contains 3,424 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

By /s/ *Allison J. Frederick*