IN THE SUPREME COURT OF IOWA
No. 24-0720
Polk County No. LACL157176

ESTATE OF KARA B. TORNELL,
PRESTON H. TORNELL, Administrator,
And PRESTON H. TORNELL, Individually,
Plaintiffs-Appellants,
v.

TRINITY HEALTH CARE CORPORATION; CATHOLIC HEALTH INITIATIVES-IOWA CORP., d/b/a MERCYONE WEST DES MOINES MEDICAL CARE (CHI); MERCY ONE WEST DES MOINES; WILLIAM E. NOWYSZ; WILLIAM NOWYSZ, P.C.; DES MOINES RIVER PHYSICIANS, LLC; RYAN BRIMEYER; And THE IOWA CLINIC, P.C.,
Defendants-Appellees.

ON APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY,
HONORABLE JEANIE VAUDT, PRESIDING

APPLICATION OF THE APPELLANT FOR FURTHER REVIEW

(Date of Filing of the Decision of the Court of Appeals: July 2, 2025)

/s/ S.P. DeVolder
S.P. DeVolder AT0001876
THE DeVOLDER LAW FIRM, P.L.L.C.
1228 Sunset Drive, Suite C
Norwalk, IA 50211
Tel: (515)981-5150
Fax: (515)981-5156
steven.devolder@devolderlawfirm.com
ATTORNEY FOR THE APPELLANT

QUESTIONS PRESENTED FOR REVIEW

1. Whether the courts erred in concluding—in a question of first impression in Iowa—that the surviving spouse and administrator of an estate, asserting claims for relief singularly belonging to that spouse and administrator, could not proceed pro se in a tort action against medical providers for medical malpractice (resulting in the death of the decedent spouse)?

2. Whether the courts erred in concluding that the case could be dismissed on a motion by the medical providers for pre-answer failure to state a claim upon which relief can be granted (because the plaintiff in the medical malpractice action proceeded pro se) without giving any time for the plaintiff to hire a lawyer in response to that motion (and assuming the plaintiff in that case, the surviving spouse and administrator, could not proceed pro se with the medical malpractice claim)?

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STATEMENT SUPPORTING FURTHER REVIEW

For necessary background in support of this application and the questions presented, a summary of the travel of this case is warranted. In this case, the plaintiff Preston Tornell (Tornell) in his individual (as spouse of the decedent) and administrator capacities sued the defendants (medical providers) on medical malpractice claims; Tornell avers that the medical negligence of the defendants, and each of them, resulted in the wrongful death of his spouse Kara B. Tornell. (D0001, Petition at 1-27 (11-14-2023).) Tornell in his claims seeks to recover damages in the name of the estate in his capacity as administrator (and which damages he claims belong to him individually) and damages on claims that directly belong to him in his individual capacity (such as loss of consortium); Tornell seeks no other damages in this action as amended (or as presently requested to be amended) that belong, or arguably belonging, to any other person (such as the children of Kara B. Tornell) or entity. ((D0001 at 26; D0048, Motion for Leave to Amend at 1 (01/31/2024).)

The defendant medical providers, principally led by the defendant CHI (with joinders by other defendants) moved to dismiss the claims, including those that solely involved damages ultimately belonging to or recoverable by Tornell only. (D0033, Motion to Dismiss at 1-7 (01-10-2024); D0035, Motion to Dismiss at 1-2 (01-15-2024); D0039, Motion to Dismiss at 1-5 (01-18-2024).) The basis for the dismissal motions was singularly that Tornell, for these claims, purportedly did not

state a claim upon which relief can be granted. (D0033 at 1-7; D0035 at 1-2; D0039 at 1-5.) Tornell resisted, and pointed out that the medical providers' dismissal argument was not premised on the ground that Tornell in his petition, as amended or attempted to be amended, did not actually state or plead appropriate wrongful death claims based on medical malpractice—that is, the medical providers in the dismissal motions did not contest the actual merits of the claims for pleading purposes; what they asserted was that these otherwise adequately pled claims must be dismissed because Tornell was pursuing them on his own behalf (known in legalese as proceeding *pro se*—that is, without a lawyer). (D0041, Resistance at 1-27 (01/20/2024); D0046, Resistance at 1-29 (01/24/2024).) Tornell in his extensive response briefing argued that he could proceed pro se to pursue these claims through his administrator capacity, as well as of course those claims that must be brought in his individual capacity, respecting damages flowing from those claims which he claims entirely belong to him and to him alone; for those claims, he is singularly sought an individual recovery and hence did not need to be represented by counsel. (D0041 at 1-27; D0046 at 1-29.) Finally, Tornell asserted that even if counsel was required, he should have been accorded time to hire counsel and have that counsel enter an appearance in the medical malpractice action. (D0053, Proposed Order Submitted by Tornell on Motions to Dismiss at 1-11 (02/13/2024).)

By order entered on April 2, 2024, the district court granted the medical providers' motions to dismiss, and on the basis of that court's conclusion that Tornell could not represent himself, let alone the estate, pro se in the medical malpractice action (like the medical providers, the district court analogized the estate to an artificial (nonpersonal) entity, such as a corporation, or at least cannot bring claims that belong to others). (D0054, Order Granting Dismissal at 1-6 (04/28/2024).) The district court further denied Tornell's motion for leave to amend that made it clear, if it had not been clear before, that he was the sole beneficiary and distributee of the estate and that any damages awarded in the medical malpractice action would accrue to him alone—that is, he should have been accorded time to show up with a lawyer if in fact he could not proceed pro se. (D0048 at 1.) The district court dismissed the action. (D0054 at 5-6.) A five-judge panel of the Iowa court of appeals affirmed the dismissal in a 3-2 ruling; with the dissenters asserting Tornell should have been accorded time to hire counsel and that error preservation (what the 3-judge majority relied on to basically avoid this question) was inappropriate on the merits. (Court of Appeals opinion attached).

The bases on which the Iowa supreme court should grant this application are predicated on Iowa Rs. of Civil P. 6.1103(1)(b)(2) and (4). First, the Iowa court of appeals, as well as the district court before it, have decided two important questions of law that that have not been, but should be, decided by the supreme court (the two

questions raised in this case; neither of which has previously been decided by the supreme court). Second, this case does present issues of broad public importance—specifically, when can an individual represent his own interest (pro se) in a civil legal action, and, if a district court determines that individual cannot, should the individual (not a lawyer skilled in legal procedure) be accorded any time at all—let alone a reasonable time—to obtain a lawyer when the district court says that individual's cause of action fails not on the merits but rather on a technical ground that he/she improperly engaged in the practice of law by proceeding on his/her own behalf?

BRIEF IN SUPPORT OF THE APPLICATION

For purposes of this application (decided on a motion to dismiss, or alternatively on a motion for judgment on the pleadings— each singularly that the applicant was not represented by counsel), the appellant Tornell set forth a detailed factual averment in his original petition—filed in his capacity as surviving spouse (i.e. individually) and administrator of his late wife's estate—setting forth the acts of medical malpractice that Tornell claimed caused his wife's wrongful death by medical malpractice and his right to recover monetary damages for that malpractice. (D0001 at 1-27.) In his requested motion to leave to amend that petition, Tornell underscored that he "is the only beneficiary and distributee" of his wife's estate and that any recovery from the medical malpractice action would go to him alone. (D0048 at 1.) These facts, combined with the facts set forth in the statement

supporting further review section of this application, are the essential facts for purposes of this application.

1. The courts erred in concluding—in a question of first impression in Iowa—that the surviving spouse and administrator of an estate, asserting claims for relief singularly belonging to that spouse and administrator, could not proceed pro se in a tort action against medical providers for medical malpractice (resulting in the death of the decedent spouse).

The district and appeals courts granted the medical providers' dismissal motions on the ground, analogizing to entity law (that does not permit pro se representation), that there could be other persons whose interests were impacted by the medical malpractice action other than Tornell's interests standing alone, and that as such Tornell (in both his individual and executor capacities) could not proceed pro se in the medical malpractice lawsuit. These courts committed a two-fold error in their respective analyses—first, they did not apply the demanding dismissal standard in the correct matter (specifically, at this point in the proceedings these courts had to accept as true the pleaded and proposed amended facts in the petition that Tornell singularly was entitled to the recovery in the medical malpractice case); and secondly they misinterpreted the law of when a surviving spouse and administrator of an estate can proceed pro se. The first point is easy enough to dispatch—the courts applied judgment on the pleadings standard; but because there were no pleadings (just a pre-answer motion to dismiss), the standards made no practical difference. The only operative pleading was the petition, as amended, filed

by Tornell. So those facts had to be taken as true (indeed, the singular operative fact as to the merits of the dismissal that both courts hung their respective hats on was that Tornell was not represented by counsel.) So on to the substantive argument as to why Tornell could properly represent his own interests in this civil case seeking damages only for himself.

Tornell has pled that any recovery in the medical malpractice action is ultimately his and his alone—and under the dismissal standard that pleading must be taken as true. Perhaps it may be the case that others also could be entitled to recovery—but that is a question for a later time (not the dismissal or judgment on the pleadings stage) and in any case Tornell is not required at this point in the proceedings to raise such claims on behalf of other potential persons he does not represent (it is, after all, up to the plaintiff to control the claims against whom he is seeking recovery); Tornell has pled that he seeks recovery in the medical malpractice action for damages that ultimately will singularly belong to him. Under this stage of the case, that is enough for Tornell to survive a motion to dismiss grounded on the assertion that he cannot proceed pro se but rather must be represented by counsel.

Rather than actually attack the claims for failing to state a claim on which relief can be granted for dismissal purposes (the avowed basis of the dismissal motions), the medical providers actually sought dismissal on a ground not recognized in the relied-upon dismissal rule—that Tornell cannot proceed pro se in

prosecuting his claims as plaintiff (both in his individual and administrator capacities). But even assuming the dismissal motions for failure to state a claim upon which relief can be granted are properly predicated on this basis (or judgment on the pleadings for that matter), the medical providers' dismissal motions still should have failed. The medical providers relied on case law that provided corporate entities cannot be represented pro se—such as by an officer or stockholder—unless that person (such as the corporate officer) is herself a licensed attorney. The medical providers' principal case citation is to *Yulin Li ex rel. Lee v. Rizzio,* 801 N.W.2d 351 (Iowa Ct. App. 2011). But that case simply stands for the proposition that an individual who has the right to the recovery of all or some of the claims presented can pursue those claims in a pro se capacity but cannot at the same time represent pro se other parties on claims to which the right of relief belongs to those parties (in *Rizzo,* those other parties were children whom had the right of recovery (the right of "legal relief") resulting from those claims as opposed to their parents representing themselves pro se; *id.* at 362).

In this case, and as the pending amended petition makes clear, Tornell pursues claims singularly for which he is the sole party entitled to obtain the legal relief. Tornell is not seeking relief (damages) for an artificial entity (such as a corporation) or for third-persons—the pending amended petition shows he seeks relief (as administrator and in his own capacity) to which he is singularly and solely entitled.

And that permits him to proceed pro se in this matter. The district and appellate courts erred in concluding otherwise, particularly at this beginning stage of this litigation.

The law supports Tornell's position that he can properly proceed pro se in the medical malpractice lawsuit to recover damages that would solely belong to him individually and through his deceased spouse's estate. Iowa Code section 633.350 provides that "when a person dies, the title to the person's property, real and personal, passes … to the persons who succeed to the estate as provided in this probate code." *Id*. Because Mrs. Tornell (who was Tornell's spouse at the time of her death) died without a will, Tornell inherits all of his deceased spouse's personal property. Iowa Code §§ 633.211(2) and (3) ("If the decedent dies intestate leaving a surviving spouse and … leaving issue all of whom are the issue of the surviving spouse, the surviving spouse shall receive … (2) [a]ll personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution [and] (3) [a]ll other personal property of the decedent ….").

The term "personal property of the decedent" under § 633.211 includes Mrs. Tornell's (i.e., the Estate's) claims (a) that arose prior to her death, i.e., those that survived her death, and (b) claims attributable to her wrongful death. Iowa Code §§ 611.20 ("All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same."); 633.336 ("When a wrongful act

produces death, damages recovered as a result of the wrongful act shall be disposed of as personal property belonging to the estate of the deceased"); *Troester v. Sisters of Mercy Health Corp*., 328 N.W.2d 308, 312 (Iowa 1982) (Iowa Code section 611.20 is a "survival statute" which "keeps alive for the benefit of the decedent's estate the cause of action which the deceased prior to [her] death could have brought had [she] survived the injury…."); *Egan v. Naylor*, 208 N.W.2d 915, 917 (Iowa 1973) ("wrongful death damages are distributed like personal property in the estate").

Tornell's claims for loss of consortium, pre- and post-death, are his property regardless of his status of as sole beneficiary of the Estate. *Matter of Est. of Sylvester*, 559 N.W.2d 285, 288 (Iowa 1997) (In a wrongful death action, a loss of consortium claim is not subject to a claim by the deceased estate because it "is the separate property right" of the deprived spouse, "an independent, nonderivative claim.") (quoting *Huber v. Hovey*, 501 N.W.2d 53, 57 (Iowa 1993)); *Madison v. Colby*, 348 N.W.2d 202, 209 (Iowa 1984) (a spouse of an injured person has the right to sue for pre-death loss of consortium; recovery for a spouse's post-death loss of consortium goes to the spouse).

These claims involve the Estate only in the sense that Tornell, as the personal administrator, takes possession of them for purposes of administration. Iowa Code § 633.350 ("all of the property shall be subject to the possession of the personal

representative … and to the control of the court for the purposes of administration, sale, or other disposition under the provisions of law….”); *DeLong v. Scott*, 217 N.W.2d 635, 637 (Iowa 1974) (Iowa Code section 633.350 codifies the law that the decedent’s property is only “subject to possession by the decedent’s personal representative during probate proceedings for purposes of administration, sale, or other disposition under provisions of law.”) (citations omitted). Neither Tornell as the personal administrator nor the Estate own these claims and particularly the right of relief associated with those claims; the right of relief (damages) is the property right of Tornell individually. *Thompson Fam. Holdings, LLC v. Martin*, 876 N.W.2d 814 (Table), 2015 WL 9451085, *2 n. 4 (Iowa Ct. App. 2015) (an estate cannot own property); *Troester*, 328 N.W.2d at 312 (“In maintaining the wrongful death action the personal representative acts in the capacity of a trustee for the benefit of the recipient of the damages.”).

Tornell’s capacity as the personal administrator of the Estate is “distinguished from [his] cause[s] of action for wrongful death.” *Id*., at 313. Tornell’s claims are joined and prosecuted by the Estate by reason of a statute; they are brought by Tornell as the personal administrator, but not because the claims are owned by the Estate, rather because of the “feasible joinder” rule of Iowa Code section 613.15. *See Christy v. Miulli*, 692 N.W.2d 694, 705 (Iowa 2005) (“The ‘feasible joinder’ principle requires that consortium claims be brought with the primary injury or death

claim unless the plaintiff can show it was not feasible for the consortium claim to be joined with the primary claim."). The feasible joinder principle under the statute recognizes that requiring claims to be brought by the personal administrator is "not based on the idea that the executor or administrator … owns the cause of action." *Id*. It is therefore not mandatory. *Id.*, at 706; *Madison*, 348 N.W.2d at 209 (A spouse's loss of consortium claim may be brought separately if joinder under Iowa Code section 613.15 is not feasible). Similarly, irrespective of the statute, "an estate representative may assign a wrongful death claim," which may then "be pursued in the name of the assignee." *Estate of Dyer v. Krug*, 533 N.W.2d 221, 224 (Iowa 1995). Iowa law recognizes other situations where a claim is owned by someone other than the plaintiff, whereby that person, like the personal administrator in the instant petition, is "the plaintiff 'in name only." *See e.g, Des Moines Bank & Trust Co. v. George M. Bechtel & Co*., 51 N.W.2d 174, 217 (Iowa 1952) ("a stockholder's suit or derivative action [is brought] by one or more stockholders of a corporation in their name as plaintiffs, but as representatives of the corporation, and for its benefit. They are plaintiffs in name only, and … the corporation … is the real plaintiff in interest, and the beneficiary of any judgment recovered. Its basis is a damage done to the corporation ….").

Thus, except for any claims for relief that does not belong not to Tornell (e.g., the relief—monetary damages—that may belong to minor or adult children), all of

the claims and recoveries in this action, derived from injuries suffered by Tornell, are owned by Tornell and he has the exclusive right to the recovery (damages) for those claims in his individual capacity—and these are the singular claims submitted in the pending amended petition (and these claims further were stated in the earlier version of the petition). The fact that Tornell may have the option, by Iowa Code § 613.15, to pursue some or all of those claims as the personal administrator of the Estate does not change the fact that the relief for those causes of action belong to him as an individual. And this distinguishes the cases relied on by the medical providers and the district and appeals courts, principally the previously discussed case of *Li v. Rizzio*, 801 N.W.2d 351 (Iowa Ct. App. 2011), which involved a father representing the interests of his son (this was not an estate case)—the distinguishing feature here is that Tornell in this medical malpractice lawsuit is not representing anyone else's interests other than his own.

While neither the medical providers nor the district court cited an Iowa case precisely on point, there are such cases from other jurisdictions that follow the law as explained above by Tornell—specifically, a surviving spouse and executor/administrator of an estate can represent himself or herself pro se in a third-party tort action for the wrongful death of the deceased spouse where the surviving spouse is seeking recovery purely for himself or herself. Let's focus on federal appellate court cases to keep this discussion concise. As far as Tornell can

determine, the first in point case was *Reshard v. Britt,* 819 F.2d 1573 (11th Cir. 1987). There, a three-judge panel split 2-1 in overturning the federal district court's ruling that co-executors of the estate could not proceed pro se on a tort claim for wrongful death against third-parties as that suit involved claims with right to recovery for other persons than the named executor plaintiffs. The appeal then was heard by the full court, and the Eleventh Circuit evenly split on the question, leaving the panel's ruling in place. *Reshard v. Britt,* 839 F.2d 1499 (11th Cir. 1988) (per curiam) (en banc). In dissent, one of the judges wrote that an executor could proceed pro se in such a case where the claims in the tort action were limited to recovery for that executor only (such as a surviving spouse of the decedent) but not where recovery was also sought for other beneficiaries of the estate. *Id.* at 1583 (Roney, C.J., dissenting). The other federal circuit cases that Tornell has found follows the *Reshard* dissenting opinion when it comes to pro se representation on a tort claim arising from a decedent's estate. *Pridgen v. Andresen,* 113 F.3d 391 (2nd Cir. 1997); *Iannaccone v. Law,* 142 F.3rd 553 (2nd Cir. 1998).

Even assuming Iowa law would follow the Second Circuit line of authority as opposed to the Eleventh Circuit—and that may be at least the predictive implication of *Li*—the district court erred in dismissing Tornell's medical wrongful death case. For at this stage of the proceedings, we must take the pleaded fact that Tornell seeks relief in the tort action that will singularly belong to him and to no other beneficiaries

of the estate. Tornell does not sue to recover for the monetary benefit of others, including any other potential beneficiary of his deceased wife's estate. Under this circumstance, he can lawfully proceed pro se to pursue his own interests. At the minimum, the Iowa supreme court should grant this application to determine this here-to-fore undecided legal issue in this State.

2. The courts erred in concluding that the case could be dismissed on a motion by the medical providers for pre-answer failure to state a claim upon which relief can be granted (because the plaintiff in the medical malpractice action proceeded pro se) without giving any time for the plaintiff to hire a lawyer in response to that motion (and assuming the plaintiff in that case, the surviving spouse and administrator, could not proceed pro se with the medical malpractice claim).

Leave to amend is to be freely and liberally granted. Iowa R. Civ. P. 1.402 ("Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires."). Leave to amend generally is granted when there is no substantial change in the defense or issue of the case. *Chao v. City of Waterloo*, 346 N.W.2d 822 (Iowa 1984). The Iowa supreme court consistently has held that the grant of leave to amend should be the rule and its denial the exception. *See, e.g., Ackerman v. Lauver*, 242 N.W.2d 342, 345 (Iowa 1976); *Atlantic Veneer Corp. v. Sears*, 232 N.W.2d 499, 503 (Iowa 1975). And this is again particularly the case where the amendment will cause no substantial change in the defense or issues of the case. *Chao,* 346 N.W.2d at 825-26.

Tornell in his dismissal resistance papers further requested that the district court grant him thirty days to cure the technical pleading defect (and in the event

Tornell's position was rejected as to pro se representation) by hiring counsel to appear on his behalf in the medical malpractice action. (D0053, Proposed Order on Dismissal Motion at 10-11 (02/13/2024).) That amendment request—for counsel for file an amended petition with counsel appearing for Tornell—would have cured any technical defect that might otherwise have supported the early and perfunctory dismissal of the Tornell's claims (and even assuming other persons had a beneficial interest in those limited claims). And this has long been the preferred remedy for curing such pleading defects or deficiencies in this State. *Nitta v. Kuda,* 249 Iowa 853, 89 N.W.2d 149, 151-152 (1958) ("Courts favor trials and decisions upon the merits of causes rather than upon technicalities."). And this is assuming such a request even had to have been made; as the dissenters in the Iowa court of appeals pointed out, there is no statutory let alone case law authority that prohibits a district court from sensibly granting a claimant time to hire counsel in this circumstance (again, the dismissal (either on failure to state a claim or on the basis of the pleadings) was not predicated on any substantive defect in the pleadings filed by Tornell. And the dissenters in the Iowa court of appeals' opinion set forth persuasive authority and reasoning as to why this is so. Repeating that analysis, with the decision attached hereto, would add nothing further to this application.

CONCLUSION

For the reasons stated and authorities cited herein, this further review application should be granted. In addition, the applicant Tornell raised another issue in his appeal briefs—concerning leave to amend to further make clear that the only relief he seeks in this case belongs to him alone—and the Iowa supreme court can grant this application and rule on issues not raised in the application but otherwise preserved for appellate review; the court should do so here. Iowa R. App. Proc. 6.1103(1)(d) ("On further review the supreme court may review any or all of the issues raised in the original appeal or limit its review to just those issues brought to the court's attention by the application for further review."); *Solland v. Second Injury Fund of Iowa*, 786 N.W.2d 248, 248 49 (Iowa 2010) (same).

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This Application for Further Review complies with the length limitations, typeface requirements and type-volume limitations of Iowa Rs. App. P. 6.1103(4)(a), (b) and 6.1401 form 10 because this application has been prepared in proportionally spaced typeface using Time New Roman in 14 font size and contains 4,784 words, excluding the parts of the application exempted by the cited rule.

/s/ S.P. DeVolder
S.P. DeVolder

July 22, 2025
Date

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on July 22, 2025, a copy of this Application for Further Review was filed electronically with the Clerk of the Iowa Supreme Court through the EDMS system, and which system further will provide access to and service of the application on that same date to:

Ryan P. Tunink, Esq.
Frederick T. Harris, Esq.
LAMSON DUGAN & MURRAY, LLP
1045 76th Street, Suite 3000
West Des Moines, IA 50266

Jennifer E. Rinden, Esq.
Vincent S. Geis, Esq.
Eric P. Martin, Esq.
SHUTTLEWORTH & INGERSOLL, P.L.C.
500 U.S. Bank Building, P.O. Box 2107
Cedar Rapids, IA 52406-2107

Stacie M. Codr, Esq.
Jeffrey R. Kappelman, Esq.
Peter R. Lapointe, Esq.
FINLEY LAW FIRM, P.C.
699 Walnut Street, Suite 1700
Des Moines, IA 50309

/s/ S.P. DeVolder
S.P. DeVolder