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

ESTATE OF KARA B. TORNELL, PRESTON H. TORNELL, Administrator, and PRESTON H. TORNELL, Individually,

Plaintiffs-Appellants,

vs.

TRINITY HEALTH CORPORATION; CATHOLIC HEALTH INITIATIVES – IOWA CORP. d/b/a MERCYONE 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.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HON. JEANIE VAUDT, PRESIDING

DEFENDANT-APPELLEES' JOINT RESISTANCE TO FURTHER REVIEW
COURT OF APPEALS DECISION: JULY 2, 2025

/s/ *Ryan P. Tunink*
Ryan P. Tunink AT0014964
Frederick T. Harris AT0003198
LAMSON DUGAN & MURRAY LLP
6400 Westown Parkway, Suite 280
West Des Moines, IA 50266
Phone: 515-513-5003
Fax: 515 298-6536
Email: rharris@ldmlaw.com
rtunink@ldmlaw.com

ATTORNEYS FOR DEFENDANTS-APPELLEES CATHOLIC HEALTH INITIATIVES—IOWA CORP.

/s/ *Eric P. Martin*

JENNIFER E. RINDEN AT0006606
VINCENT S. GEIS AT0013055
ERIC P. MARTIN AT0014859
SHUTTLEWORTH & INGERSOLL,P.L.C.
235 6th Street SE
P.O. Box 2107
Cedar Rapids, IA 52406
PHONE: (319) 365-9461
FAX: (319) 365-8443
E-mail: jer@shuttleworthlaw.com
vsg@shuttleworthlaw.com
epm@shuttleworthlaw.com

ATTORNEYS FOR DEFENDANTS-APPELLEES WILLIAM E. NOWYSZ, WILLIAM NOWYSZ, P.C., and DES MOINES RIVER PHYSICIANS, LLC.

/s/ *Peter R. Lapointe*

Stacie M. Codr AT0001502
Jeffrey R. Kappelman AT0012719
Peter R. Lapointe AT0014952
FINLEY LAW FIRM, P.C.
699 Walnut Street, Ste 1700
Des Moines, IA 50309
Telephone: 515-288-0145
Facsimile: 515-288-2724
E-mail: scodr@finleylaw.com
jkappelman@finleylaw.com
plapointe@finleylaw.com

ATTORNEYS FOR DEFENDANT-APPELLEES RYAN BRIMEYER, D.O. and THE IOWA CLINIC, P.C.

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STATEMENT OPPOSING FURTHER REVIEW

The Court should deny Plaintiffs' Application for Further Review because it does not meet any of the criteria for granting further review. *See* Iowa R. App. P. 6.1103(1)(b). Plaintiffs incorrectly assert the Court of Appeals decided an important question of law that has been left undecided by this Court. Rather, the Court of Appeals reached its decision by applying binding precedent from the Iowa Supreme Court and published Court of Appeals cases. *See, e.g.*, *Hawkeye Bank & Tr., Nat'l Ass'n v. Baugh*, 463 N.W.2d 22, 23 (Iowa 1990); *Yulin Li ex rel. Lee v. Rizzio*, 801 N.W.2d 351, 358 (Iowa Ct. App. 2011). Notably, Plaintiffs never contested that Mr. Tornell's conduct amounted to the practice of law, nor do Plaintiffs argue in their Application Further Review that, as a general matter, an administrator may not represent an estate pro se. In both those respects, the Court of Appeals' decision was simply reiterating existing law that need not be further elaborated upon by this Court. Indeed, the Court of Appeals was unanimous on those issues.

The two issues Plaintiffs raise in their Application were similarly resolved through the application of existing precedent. But whereas the issues explained above were resolved on the merits, Plaintiffs' arguments in their Application were decided on error preservation grounds. Plaintiffs' belated assertion that the district court should have granted him leave to obtain an attorney was only raised in a proposed order, which as a matter of law does not preserve error. *See, e.g.*, *Woods v.*

Charles Gabus Ford, Inc., 962 N.W.2d 1, 5-6 (Iowa 2021). And Plaintiffs simply failed to secure a ruling on their motion to amend the petition to include the necessary factual allegations to support their sole-beneficiary theory. As a result, even if that novel exception was supported by Iowa law, Plaintiffs' failure to present adequate factual allegations in their pleading left the Court of Appeals no choice but to rule against Plaintiffs.

Thus, both issues raised by Plaintiffs failed by virtue of longstanding error preservation principles. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). This Court has issued myriad decisions regarding error preservation and need not take on this case simply to opine on elementary and oft repeated legal principles.

Additionally, this case does not present an issue of broad public importance. As the dissenting decision pointed out, the Court of Appeals' decision "is a narrow one." *Est. of Tornell v. Trinity Health Corp.*, No. 24-0720, 2025 WL 1824298, at *8 n. 17 (Iowa Ct. App. July 2, 2025) (Langholz, J., dissenting). The Court of Appeals' holding is indeed very limited. The Court never ruled on whether, had the issues been preserved, Plaintiffs' arguments had any merit under Iowa law. Instead, the holding was shaped by the procedural complexities created by Plaintiffs' failure to preserve error, providing several significant limitations to the scope of its holding.

In short, the Court of Appeals merely held dismissal *without* prejudice is appropriate when a pro se litigant represents his deceased wife's estate (1) in an action at law, (2) when the plaintiffs acquiesce to an adjudication on the pleadings to determine whether the pro se litigant's conduct amounted to the unauthorized practice of law, and (3) the plaintiffs fail to adequately plead facts upon which a court could determine whether the pro se litigant would be the sole recipient of any damages, and (4) the plaintiffs further fail to secure a ruling by the court when they attempts to amend their petition to introduce such factual allegations—which also contradicted prior averments they made in motions, and (5) the plaintiffs fail to request additional time to obtain an attorney. The Court need not and should not utilize its scarce judicial resources to opine on a matter that will have such limited value to the bench and bar.

In the absence of any of the criteria supporting further review, this Court should let the Iowa Court of Appeals' well-reasoned and narrowly decided opinion stand.

ARGUMENT

III. THE COURT OF APPEALS CORRECTLY CONCLUDED PLAINTIFFS FAILED TO PLEAD ADEQUATE ALLEGATIONS TO SUPPORT HIS CLAIM THAT HE IS SOLE BENEFICIARY OF THE ESTATE.

Plaintiffs' argument that Mr. Tornell's unauthorized practice of law should be excused because he was the sole beneficiary of his late-wife's estate fails factually, procedurally, and legally. Plaintiffs allege the Court of Appeals erred in two respects: (1) failing to apply the proper standard for a motion to dismiss and (2) misinterpreting the law "of when a surviving spouse and administrator of an estate can proceed pro se." *See* Pltfs. App. for Further Rev., at p. 8. In fact, the Court of Appeals committed neither error.

As an initial matter, Plaintiffs concede the Court of Appeals' application of the judgment on the pleadings standard "made no practical difference." *Id.* Thus, the first assignment of error is, by Plaintiffs' own admission, entirely without merit. *See Stanton v. City of Des Moines*, 420 N.W.2d 480, 482 (Iowa 1988) ("In many respects a motion for a judgment on the pleadings is reviewed in a similar manner to a motion to dismiss…"). And while Plaintiffs quibbled with the title of Defendants' motion to dismiss before the Court of Appeals, they never argued that the district court could not decide the propriety of his representation of the Estate based purely on the pleadings. *See* D0043, Plts. Rest. to CHI's M.T.D., at p. 3-7 (1/23/2024). If Plaintiffs

thought the procedural posture precluded the district court from considering Mr. Tornell's pro se representation, they should have argued as much to the district court. Instead, Plaintiffs' arguments amount to little more than hair-splitting over how Defendants could have captioned their motion—an issue that has *no* legal significance. *See Toney v. Parker*, 958 N.W.2d 202, 210 (Iowa 2021) (quoting *Meier*, 641 N.W.2d at 539) ("We treat a motion by its contents, not its caption.").

More importantly, Plaintiffs fundamentally misunderstand the procedural posture of the case, which was critical to the Court of Appeals' holding. Plaintiffs incorrectly assert that "[t]he only operative pleading was the petition, *as amended* . . ." D0043 at p. 8-9 (emphasis added). But as the Court of Appeals correctly found, the district court did not grant Plaintiffs leave to file the amended petition. Instead, the court declined to rule on the pending motion to amend after the motion was mooted following the court's dismissal of the original petition. *See* D0054, Order In Re Dismissal, at p. 5 (4/2/2024); *see also Tornell*, 2025 WL 1824298, at *4. Plaintiffs never sought to obtain a ruling on the merits of the motion to amend through a motion to reconsider under Iowa Rule of Civil Procedure 1.904. *Tornell*, 2025 WL 1824298, at *4.[1] As such, Plaintiffs did not preserve error on any argument that the district court erred in failing to consider matters contained within the amended

[1] Plaintiffs have never put forth authority suggesting the district court needed to rule on the motion to amend prior to addressing the motion to dismiss.

petition itself. Based on that failure to secure a ruling, the only petition the Court of Appeals could consider was Plaintiffs' initial petition, which was silent on the amount of creditors the Estate had. *See Meek v. State*, No. 01-1334, 2002 WL 31882881, at *1 (Iowa Ct. App. Dec. 30, 2002) (providing that under either a motion to dismiss for failure to state a claim or judgment on the pleadings, the court must accept the facts set forth in a plaintiff's operative petition).

Due to Plaintiffs' failure to secure a ruling on his motion to amend, the Court of Appeals correctly concluded Plaintiffs failed to plead the necessary allegations to support their argument that Mr. Tornell was a sole beneficiary of the estate, the necessary factual predicate for their legal arguments on appeal and here in their Application for Further Review. *Id.* The Court of Appeals appears to have assumed without deciding that a sole beneficiary could present claims on behalf of an estate. *See Tornell*, 2025 WL 182498, at *5 (noting Plaintiffs offered only "non-binding federal authority in support of his position that he can proceed pro se because any damages recovered in the medical malpractice suit would 'solely belong to him'"). But, as the Court of Appeals aptly explained, "those authorities do not advance [Plaintiffs'] position when he did not plead the facts necessary to show that he was the estate's sole interested party." *Id.* And that is certainly correct: Plaintiffs' Petition

does not provide any indication the Estate was operating free of any creditors.[2] Plaintiffs' claims failed not due to a misinterpretation of the law by the Court of Appeals, but due to the fact that even accepting Plaintiffs' novel theories as law, Plaintiff failed to adequately plead their case—something the dissenting judges agreed was the proper conclusion. *See Tornell*, 2025 WL 1824298, at *7 (agreeing with the majority that Mr. Tornell engaged in the unauthorized practice of law but disagreeing on the remedy).

Finally, the remainder of the Court of Appeals' analysis correctly applied existing precedent to affirm the district court's order dismissing Plaintiffs' claims without prejudice based on Mr. Tornell's unauthorized practice of law. The Court of Appeals correctly determined that the claims Plaintiffs asserted could generally only be brought by Kara Tornell's Estate. *See, e.g.*, *Roth v. Evangelical Lutheran Good Samaritan Society*, 886 N.W.2d 601, 605 (Iowa 2016); *Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 308, 312 (Iowa 1982). Mr. Tornell is a separate entity from the Estate. *See Condon v. Employers Mut. Cas. Co.*, 529 N.W.2d 630, 632 (Iowa Ct. App. 1995) (citing *McClure v. Employers Mut. Cas. Co.*, 238 N.W.2d 321 (Iowa 1976)) ("[E]ven though the widow and the administrator are the same person, they

[2] In fact, Plaintiffs themselves conceded in their Resistance to the pending motions to dismiss that there were creditors to Kara's Estate. *See* D0043, p. 6 (admitting the Estate had at least one creditor). As such, the sole beneficiary exception advocated by Plaintiffs would not apply to this case even if Iowa recognized such an exception. *Iriele v. Griffin*, 65 F.4th 1280, 1284-85 (11th Cir. 2023).

are two distinct entities."). As such, Mr. Tornell was practicing law on behalf of someone other than his "natural person," meaning he was engaged in the unauthorized practice of law. *Hawkeye Bank*, 463 N.W.2d at 23; *see also Rizzio*, 801 N.W.2d at 361 ("The authority to represent another as a party . . . does not equal the authority to practice law on their behalf."). The Court of Appeals correctly applied the law and its decision should not be disturbed.

IV. THE COURT OF APPEALS CORRECTLY CONCLUDED PLAINTIFFS FAILED TO PRESERVE ERROR ON WHETHER THEY COULD BE GRANTED TIME TO OBTAIN AN ATTORNEY.

The Court of Appeals, relying on elementary principles of error preservation, correctly concluded Plaintiffs failed to preserve error on their belated request for time to obtain an attorney. *See Tornell*, 2025 WL 1824298, at *4. Plaintiffs claim to have preserved error solely through their proposed order, but Iowa law clearly provides that proposed orders fail to preserve error. *See Woods*, 962 N.W.2d at 5-6 (finding that an appellant failed to preserve error on issue raised after bench trial through a proposed order); *Est. of Grossman v. McCreary*, 373 N.W.2d 113, 114 (Iowa 1985) (expressly concluding that proposed orders do not obviate the need to preserve error).[3] This Court need to expend its limited resources explaining, once again, that proposed orders do not preserve error.

[3] The holdings of *Woods* and *McCreary* are supported by sound policy considerations. As another court has explained:

Plaintiffs are not simply faulting the district court—and now the Court of Appeals—for failing to consider an argument they never made. *See State v. Pickett*, 671 N.W.2d 866, 869 (Iowa 2003) ("It is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider."). In fact, Plaintiffs now fault the district court for failing to consider an argument that Plaintiffs themselves expressly disavowed in their Resistance. In that filing, Plaintiffs appear to offer alternatives to dismissal—notably, never asking for time to obtain counsel—but go on to instruct the court not to consider those alternatives: "Of course, it is premature to determine such matters at this juncture." *See* D0043, at p. 25-26. Instead, Plaintiffs' sole request was that the Defendants' "motion[s] to dismiss should be denied in its entirety." *Id.* Plaintiffs requested relief was entirely consistent with the substance of their arguments—throughout their briefing and at oral argument, Plaintiffs unequivocally argued that Mr. Tornell was

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> A motion affords the trial court an opportunity to make a specific ruling, thereby preserving any alleged error on the part of the trial court for appellate review. A proposed order on the other hand is nothing more than a suggested order, which the trial court can either sign or reject by drafting a completely different order—which is precisely what occurred in this case. But, rejecting a proposed order is not the same as denying a motion, nor does the failure of a trial court to adopt a proposed order give rise to a right to appellate review or provide grounds to place a trial court in error.

Ex parte Harbor Freight Tools USA, Inc., 331 So.3d 88, 99 (Ala. 2021) (Sellers, J., concurring).

allowed represent the Estate pro se. *See, e.g.*, D0052, Tr. Hearing M.T.D. at 7:1-3 (2/6/2024). Thus, Plaintiffs' claims on appeal are faulting the district court for error they invited. *See McCracken v. Edward D. Jones & Co.,* 445 N.W.2d 375, 378 (Iowa Ct. App. 1989)

Notably, many of Plaintiffs' filings resisting the motions to dismiss were completed with the assistance of counsel. *See, e.g.*, D0043, at p. 27. Yet, Plaintiffs continued to assert that Mr. Tornell was able to present the claims right up until the district court ruled on the motions to dismiss, almost five months after CHI first alerted Plaintiffs to their unauthorized practice of law through CHI's Answer. *See* D0020, CHI's Answer, at p. 6 (12/11/2024); D0054, Order in re Dismissal (4/02/2025). Plaintiffs' ability, but refusal, to obtain counsel during the district court proceedings only to turn around and fault the district court's failure to rule upon a request they never made amounts to the very conduct Iowa's error preservation rules are intended to prevent. *See Olson v. BNSF Railway Co.*, 999 N.W.2d 289, 296 (Iowa 2023) (noting one purpose of error preservation is prevent "a party [from] choos[ing] to remain silent in the trial court in the face of error, tak[ing] a chance on a favorable outcome, and subsequently assert[ing] error on appeal if the outcome in the trial court is unfavorable"). Plaintiffs' regret over their tactical decision on how to resist the Defendants' motions does not provide a basis for further review.

Further, Plaintiffs effectively concede they did not preserve error by asserting, for the first time, that the district court should have provided a remedy they never asked for.[4] Pltfs. App., at p. 18 (questioning whether Plaintiffs even needed to request time to obtain a lawyer). That request is unsupported by Iowa law, which does not require a district court to be clairvoyant as to what remedy a party would prefer in the absence of any request. *State v. Struve*, 956 N.W.2d 90, 99 n. 2 (Iowa 2021) (quoting *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020)) ("'Courts are essentially passive instruments of government.' They 'do not, or should not, sally forth each day looking for wrongs to right. They wait for cases to come to them, and when cases arise, courts normally decide only questions presented by the parties.'"). The Court of Appeals properly concluded Plaintiffs' belated argument for an alternative remedy on appeal was facially unpreserved.

Moreover, this case's posture raises additional practical difficulties for the Court to resolve in the event further review is granted. Plaintiffs did not provide any authority in their appellate briefing to suggest a court can, let alone should or must, provide leave to obtain an attorney prior to dismissing an action. *See generally*, Appellant's Brief, at p. 27. As such, the argument was waived on appeal and cannot

[4] Plaintiffs' attempt to incorporate by reference the rationale and legal authority contained in the dissenting opinion from the Iowa Court of Appeals is facially improper. *See* Iowa R. App. P. 6.1103(1)(c)(4) ("No authorities or argument may be incorporated into the application by reference to another document").

be considered by the Supreme Court. Iowa R. App. P. 6.903(2)(a)(8)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue"); *State v. Chawech*, 15 N.W.3d 78, 82 (Iowa 2024) (noting the Court may only consider "some or all of the issues that were properly raised in the appeal"). Indeed, considering Plaintiffs' arguments would force this Court to undertake significant time and effort to bolster Plaintiffs' research and advocacy, a position this Court has routinely declined to take on in the past. *See State v. Lange*, 831 N.W.2d 844, 847 (Iowa 2013) ("[W]e refuse to assume a partisan role and undertake a party's research and advocacy when a party's failure to follow the rules would require us to do so to reach the merits of the case."). As such, this case is inappropriate for further review.

Even on the merits, the Court of Appeals correctly concluded dismissal without prejudice was the proper remedy. Several Iowa cases have reached the same conclusion. *See Rizzio*, 801 N.W.2d at 363; *Est. of Steensma v. Buysman, Inc.*, No. 17-0693, 2018 WL 2725320, at *6 (Iowa Ct. App. June 6, 2018) (finding "any pleadings or motions filed . . . should have been stricken and considered void"); *Liberko v. Rath*, No. 21-0899, 2022 WL 2348159, at *1 n.1 (Iowa Ct. App. June 29, 2022) (noting the Iowa Supreme Court struck an appeal due to the notice of appeal being filed pro se on behalf of another entity); *Locher & Davis PLC v. Ruth F. Woller Rev. Tr.*, No. 23-0944, 2024 WL 4761531 (Iowa Ct. App. Nov. 13, 2024) (Vogel, J., dissenting) (sua sponte finding non-lawyer trustee engaged in the unauthorized

practice of law by pursuing civil lawsuit on trust's behalf). Other jurisdictions have similarly found such practice voids any filings made by the unlicensed litigant. *See Jones v. Correctional Medical Services,* 401 F.3d 950, 952 (8th Cir. 2005) (quoting *Davenport v. Lee*, 72 S.W.3d 85, 94 (Ark. 2002)); *see also id*. (quoting C.*E. Pope Equity Tr. v. United States*, 818 F.2d 696, 698 (9th Cir. 1987)).

Plaintiffs' proposed remedy encourages pro se litigants to take a stab at playing lawyer with the knowledge that any errors could be fixed later on, driving up the time and cost of litigation for parties, the courts, and the general public, undermining the very purpose of the prohibition on the unauthorized practice of law.[5] *See Hawkeye Bank*, 463 N.W.2d at 24 (noting the "rule protects the court and the public from ineptitude and delay at the hands of persons who are unskilled as well as unlicensed in the practice of law"). The Court should not take further review of the Court of Appeal's well-reasoned decision.

[5] Those issues are of particular concern in the realm of medical malpractice litigation, where the Iowa Legislature has demonstrated an intent to ensure cases are well supported early on in litigation. *See, e.g.*, *Struck v. Mercy Health Servs.—Iowa Corp.*, 973 N.W.2d 533, 541 (Iowa 2022).

CONCLUSION

In affirming the district court's order dismissing Plaintiffs' claims, the Court of Appeals correctly applied longstanding precedent to conclude Mr. Tornell's conduct amounted to the unauthorized practice of law. Further, the Court of Appeals correctly concluded Plaintiffs failed to preserve error on the arguments they raise in their Application for Further Review. The Court of Appeals' analysis, limited as it was to the unique factual and procedural record before it, should not be disturbed.

CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Iowa R. App. P. 6.1103(5) because this brief contains 3346 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.1103(5). This Brief complies with the typeface and type-style requirements of Iowa R. App. P. 6.1103(4) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point, Times New Roman.

By: /s/ *Ryan P. Tunink*

CERTIFICATE OF SERVICE

The undersigned certifies a copy of Defendants-Appellees' Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon the following persons by EDMS on the 31st day of July, 2025:

By: /s/ *Ryan P. Tunink*

S.P. Devolder
The Devolder Law Firm, PLLC
1228 Sunset Drive, Ste. C
Norwalk, IA 50211
Steven.devolder@devolderlawfirm.com

Jennifer E. Rinden
Vincent S. Geis
Eric P. Martin
SHUTTLEWORTH & INGERSOLL, P.L.C.
235 6th Street SE
P.O. Box 2107
Cedar Rapids, IA 52406
PHONE: (319) 365-9461
FAX: (319) 365-8443
jer@shuttleworthlaw.com
vsg@shuttlworthlaw.com
epm@shuttleworthlaw.com

Stacie M. Codr
Jeffrey R. Kappelman
Peter R. Lapointe
FINLEY LAW FIRM, P.C.
699 Walnut Street, Ste 1700
Des Moines, IA 50309
Telephone: 515-288-0145
Facsimile: 515-288-2724
scodr@finleylaw.com
jkappelman@finleylaw.com

plapointe@finleylaw.com

4906-1536-9305, v. 2