

IN THE COURT OF APPEALS OF IOWA

No. 0-053 / 08-1792
Filed February 10, 2010

**JESSICA L. CEDAR, a Minor by
RANDALL B. CEDAR and
KARIN L. CEDAR, her Parents
and Next Friends,**
Plaintiffs-Appellants,

vs.

**CHEROKEE COMMUNITY
SCHOOL DISTRICT,**
Defendant-Appellee.

Appeal from the Iowa District Court for Cherokee County, Nancy L.
Whittenberg, Judge.

Plaintiffs appeal from dismissal of their personal injury action.

AFFIRMED.

Daniel A. Meloy of Sayre, Wittgraf & Meloy, Cherokee, for appellants.

Stephen G. Kersten of Kersten Brownlee Hendricks L.L.P., Fort Dodge, for
appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

Plaintiffs' petition alleges Jessica Cedar, the minor child of Randall and Karin Cedar, sustained injuries on November 16, 2005, when she slipped and fell on ice on school property. Plaintiffs, seeking compensatory damages, alleged the school district was negligent in allowing snow and ice to accumulate on the steps near the school building. The petition was filed June 6, 2008, almost two and a half years after the date of the incident. The school district moved to dismiss, arguing plaintiffs' suit was not timely filed within the two-year statute of limitations applicable to actions filed against municipalities under Iowa Code section 670.5 (2007). Plaintiffs resisted, arguing that section 614.8, a general statute of limitations provision that tolls the statute of limitations in favor of a minor until expiration of one year after attaining majority, applies to their action filed under section 670.5.¹ Citing *Rucker v. Humboldt Community School District*, 737 N.W.2d 292, 295 (2007), the district court held "the tolling provision for minors under [section] 614.8 is not applicable to extend the statute of limitations provided by [section] 670.5 for suits against municipalities." After finding the plaintiffs failed to give any notice to the defendant as required under section 670.5, and failed to file suit within the applicable two-year statute of limitations, the court concluded plaintiffs' claims were barred and dismissed their suit.

¹ The tolling provision for minors is not applicable to the parents' claims for medical expenses and loss of consortium under Iowa Rule of Civil Procedure 1.206. See *Gookin v. Norris*, 261 N.W.2d 692, 693 (Iowa 1978). Their claims were time-barred under the two-year statute of limitations. Iowa Code § 614.1(2).

On appeal, plaintiffs claim section 670.5² is unconstitutional. Although they asserted in their resistance to the motion to dismiss that the statute was unconstitutional, they failed to cite to any constitutional provision or case law. The district court did not address or rule on the issue. The issue is therefore waived. *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002). Additionally, plaintiffs failed in their appellate brief to cite any authority in support of the issue. Again, the issue is waived. Iowa R. App. P. 6.903(2)(g)(3); *Baker v. City of Iowa City*, 750 N.W.2d 93, 103 (Iowa 2008).

Plaintiffs further argue they are “unfairly prejudiced by the Iowa Supreme Court’s interpretation and allowance of an unfair law,” citing *Rucker*, 737 N.W.2d at 295, and *Perkins v. Dallas Center Grimes Community School District*, 727 N.W.2d 377, 380 (Iowa 2007). That may or may not be true, but we are nevertheless bound by Iowa Supreme Court pronouncements. *State v. Hughes*, 457 N.W.2d 25, 28 (Iowa Ct. App. 1990) (citing *State v. Eichler*, 248 Iowa 1267, 1270, 83 N.W.2d 576, 578 (1957) (“If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves.”)). In any event, plaintiffs cite no authority in support of their argument and have therefore waived it. Iowa R. App. P. 6.903(2)(g)(3).

² In response to *Rucker*, 737 N.W.2d at 295, and *Perkins v. Dallas Center Grimes Community School District*, 727 N.W.2d 377, 380 (Iowa 2007), section 670.5 was amended by the Iowa legislature in 2007 to read:

Except as provided in section 614.8, a person who claims damages from any municipality or any officer, employee or agent of a municipality for or on account of any wrongful death, loss, or injury within the scope of section 670.2 or section 670.8 or under common law shall commence an action therefor within two years after the alleged wrongful death, loss, or injury.

2007 Iowa Acts, Chapter 110 § 5 (now Iowa Code § 670.5 (2009)). The 2007 amendment to this section applies to complaints, claims, and actions arising out of an alleged death, loss, or injury occurring on or after July 1, 2007. See *id.* at § 6.

We accordingly affirm the district court's dismissal ruling.

AFFIRMED.