

**IN THE SUPREME COURT OF IOWA**

NO. 18-1545

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**BRIAN AND LISA TERRY,**  
*Appellants,*

v.

**MEGAN DOROTHY,**  
*Appellees.*

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DECISION OF THE IOWA COURT OF APPEALS  
FILED ON FEBRUARY 5, 2020

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**PLAINTIFFS/APPELLANTS RESISTANCE TO APPLICATION FOR  
FURTHER REVIEW**

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## **QUESTIONS PRESENTED FOR FURTHER REVIEW**

Whether the Court of Appeals abused its discretion by limiting its review of the District Court decision to the statutory theory and refusing to consider the contractual theory raised, and, whether the Court of Appeals' reversal of the grant of summary judgment in this case is in conflict with the decision in *Thornton v. Hubill, Inc.*, 571 N.W.2d 30 (Iowa Ct. App. 1997)

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Iowa Code § 85..... 5, 9, 10, 11

## **STATEMENT OPPOSING FURTHER REVIEW**

There is no basis for the Application for Further Review filed by Megan Dorothy. The February 5, 2020 decision issued by the Iowa Court of Appeals was well reasoned, and appropriate. Furthermore, this case does not meet any of the grounds identified for further review as outlined in Iowa Rule of Appellate Procedure 6.1103(1)(b).

Iowa Rule of Appellate Procedure 6.1103(1)(b) is not a right, rather it is based on judicial discretion, and is not granted in normal circumstances. Specifically, the four following reasons are when Further Review is appropriate:

- (1) The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter;
- (2) The court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court;
- (3) The court of appeals has decided a case where there is an important question of changing legal principles;

(4) The case presents an issue of broad public importance that the supreme court should ultimately determine.

Contained in their statement supporting further review, the Defendant-Appellee addresses none of the four reasons for granting further review. Rather they simply assert an “abuse of discretion” and “contrary to established evidence”—neither of which are accurate. Rather, it was the district court who erred as a matter of law when examining the settlement documents under section 85.35(9), and contract interpretation.

## **BRIEF RESISTING FURTHER REVIEW**

### **STATEMENT OF THE FACTS**

Brian Terry, a former employee of Lutheran Services in Iowa (“LSI”) was injured at work on October 14, 2015. The workers’ compensation case was then settled in a compromised settlement approved by the Iowa Workers’ Compensation Commissioner on July 27, 2017. App. 18. The workers’ compensation case was filed solely against LSI and its insurance carrier—no part of the workers’ compensation action was against Brian Terry’s supervisor, Megan Dorothy.

On October 12, 2017, Plaintiffs filed a gross negligence and loss of consortium claim against Brian Terry's supervisor at LSI, Megan Dorothy. Megan Dorothy. As stated in the Petition, the grounds for the gross negligence and loss of consortium case stemmed from an October 14, 2015 attack on Brian Terry by a client LSI. As a result of the attack, Brian has suffered from a traumatic brain injury and has been unable to return to work to date. In the Petition, Brian and Lisa Terry assert that Megan Dorothy was aware of the aggressive tendencies of the client, yet Brian Terry was sent to render services for the client without assistance. Megan Dorothy also failed to warn Brian Terry of the dangers associated with working with aggressive clients. App.4-8.

The defendant, through her attorneys then filed her first Motion for Summary Judgment on July 16, 2018 to which the plaintiffs resisted. A hearing was ultimately held and on August 27, 2018, the trial court dismissed the petition, finding in favor of the defendant's motion for summary judgment. The plaintiff timely appealed this decision by filing a Notice of Appeal on September 6, 2018. On February 5, 2020, the Iowa Court of Appeals reversed and remanded the District Court decision granting summary judgment in favor of Dorothy.

## **ARGUMENT**

### **I. The Court of Appeals Decision was proper in this matter.**

The Court of Appeals in this matter properly overturned the District Court's granting of summary judgment, and did not abuse their discretion in doing so.

The argument of the Defendant-Appellee largely rests on the assertion that the Court of Appeals completely failed to address the contractual theory as outlined by the District Court. As evident by the dissent, this is completely untrue. Rather the majority as issued by Mullins and Tabor evaluated both facets of this case, and just made determinations adverse to the arguments made by the defendant-appellee.

Moreover, when reaching the dissent as authored by May, it is clear that the contractual aspect of this case was the sole barrier in a unanimous decision. Disagreement amongst the panel of judges on the implications of the contractual portion does not mean an abuse of discretion. Rather, it indicates that Mullins and Tabor believe that the district court erred on all grounds, whereas May disagrees relating to one part of the decision.



More specifically, the Iowa Court of Appeals opinion goes on to address the common law natures of the claims against Dorothy—claims that the Iowa Workers’ Compensation Commissioner does not have authority or jurisdiction to resolve claims that would be beyond the scope of any contract that would require approval by the commissioner. Claims that would require a separate agreement and separate consideration in order to be settled by contract law. Claims that would be illegal for a workers’ compensation order to prohibit.

Ultimately, making it clear that Brian Terry’s compromise settlement before the Iowa Workers’ Compensation Commission does not bar a claim against gross negligence. As correctly stated by the Iowa Court of Appeals;

Dorothy has not asked us to affirm based on any argument that a nonchapter 85 claim—i.e., a common law claim—was released by the terms of the settlement agreement. In fact, her argument that the release was a release of a chapter 85 claim is to the contrary. We need not and cannot decide whether a release contained as part and parcel of a compromise settlement of a workers’ compensation case approved by the commissioner could release a claim that is beyond the jurisdiction and authority of the commissioner. That

issue is not before us. It was not briefed and no authority was cited in support of any such proposition. *Decision, page 11.*

Again, this is important based on the fact that despite the contractual argument raised by Dorothy, she also acknowledges the release contained within the contract is limited to the contents of Chapter 85—which is the entire scope of the contract allowed under Chapter 85. A release that can only be subject to the approval of the commissioner if limited to chapter 85.

## **II. *Thornton v. Hubill* does not change the outcome in this matter.**

The *Thornton v. Hubill* case dealt with a lawsuit of previously released parties under a settlement agreement. 571 N.W. 2d 30 (Iowa Ct. App. 1997). In this case, the release was a result of a personal injury action—which wholly distinguishes it from the matter at hand, which is based on an underlying workers' compensation claim.

The fact that this matter is distinguishable due to the fact it is a workers' compensation claim is clearly outlined in the majority opinion of the Iowa Court of Appeals. Again, the Iowa Workers' Compensation Commissioner only has jurisdiction over Section 85 and does not have the authority beyond that. More simply put, these are not just “settlement” documents but rather proposed orders of the agency, and

thus subject to the subject matter jurisdiction of the workers' compensation commissioner. Just as a commissioner cannot order punitive damages in workplace injury case decisions, a commissioner cannot approve an order barring a claimant from seeking remedies outside of Iowa Code chapters 85, 85A, and 86. Therefore, making this contractual assertion more complex, and meaning efforts to make it apply to other claims are efforts to make the contract unenforceable as being contrary to statute. For example, this was seen in the case *Mincks v. Bell* where the Court concluded that a contract was unenforceable due to being illegal. 611 N.W.2d 270 (Iowa 2000).

However, even had Mullins and Tabor spent more time discussing the contractual aspect, it would not have been enough for the Terry's claims to fail. After all, if it was the intention of the parties to waive all claims against Ms. Dorothy, she would have been specifically listed in the settlement documents—and the original workers' compensation filing. Again, bringing light to the fact that there are two separate causes of action available to Mr. Terry relating to his October 2015 injuries—the first being his settled workers' compensation claim and the second being a claim of gross negligence brought against Megan Dorothy. This point has

been repeatedly pointed out and discussed, along with the contents that can be found contained within a workers' compensation settlement.

Had the settlement documents stemmed from a personal injury claim, such as the *Thornton* case—meaning the judge was not limited to 85, 85A, and 86—the Court of Appeals decision would have been contradictory. However, that is not what is dealt with in the matter at hand, and accordingly the Application for Further Review must be denied.

### **CONCLUSION**

Ultimately, as established by the Iowa Court of Appeals, the district court erred in dismissing not only Brian Terry's gross negligence claim against Megan Dorothy, but also Lisa Terry's loss of consortium claim. While Mr. Terry did enter a compromise workers' compensation settlement against his previous employer, LSI, this compromise settlement in no way involved his co-employee Megan Dorothy directly. Moreover, the defendants have no basis on which their Application for Further Review should be granted. Therefore, the Dorothy's Application for Further Review should be denied.

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,  
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1), because this brief contains 1,513 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Cambria 14 point font.



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Sarah M. Baumgartner, AT0012177

March 6, 2020

Date

**CERTIFICATE OF FILING**

The undersigned hereby certifies that she or a person acting on her behalf will electronically file the attached Brief and Request on March 6, 2020.



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Sarah M. Baumgartner, AT0012177

**PROOF OF SERVICE**

I certify that on March 6, 2020 I electronically filed Appellant's Resistance to Application for Further Review.



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Sarah M. Baumgartner, AT0012177