

IN THE SUPREME COURT OF IOWA
SUPREME COURT NO. 20-0879

PATRICIA K. CARLSON,

Plaintiff-Appellant,

**SECOND SUCCESSION, LLC, IOWA
COMMERCIAL
ADVISORS, LLC d/b/a CUSHMAN
& WAKEFIELD IOWA COMMERCIAL
ADVISORS, and
JONES PROPERTY SERVICES, INC.,**

Defendants-Appellee.

Linn County No. LACV094700

APPEAL FROM THE DISTRICT COURT
IN AND FOR LINN COUNTY
THE HONORABLE FAE HOOVER GRINDE

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APPELLANT'S PROOF BRIEF

CERTIFICATE OF SERVICE

On this 9th day of October, 2020, I the undersigned, did file electronically this Appellant's Proof Brief with the Clerk of the Iowa Supreme Court, pursuant to Iowa R. App. P. 6.701.

PROOF OF SERVICE

On this 9th day of October, 2020, I the undersigned, did serve this Appellant's Proof Brief on the attorneys for the Appellee listed below via electronic service of the Electronic Document Management System. Upon information and belief, the attorneys for the Appellee are registered filers pursuant to Iowa R. Civ. P. 16.201.

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TABLE OF CONTENTS

Table of Authorities-----	4
Statement of Issues Presented for Review-----	6
Routing Statement-----	7
Statement of the Case-----	7
Statement of the Facts-----	10
Argument-----	12
I. THE DISTRICT COURT ERRED IN GRANTING THE MOTION TO DISMISS BECAUSE THE PETITION FILING OF JANUARY 9 th , 2020 SHOULD <i>RELATE BACK</i> TO THE ORIGINAL AND TIMELY FILING DATE OF JANUARY 3 rd , 2020-----	12
Conclusion-----	22
Request for Oral Argument-----	23
Certificate of Cost-----	23
Certificate of Compliance-----	23

TABLE OF AUTHORITIES

U.S. Supreme Court Cases:

Bounds v. Smith, 430 U.S 817 (1977)-----20

Iowa Supreme Court Cases:

Bowman v. City of Des Moines Mun. Hous. Agency, 805 N.W.2d 790
(Iowa 2011)-----17

Christiansen v. Iowa Bd. Of Educ. Exam’rs, 831 N.W.2d 179 (Iowa 2013)-----22

Concerned Citizens v. City Development Board, 872 N.W.2d 399 (Iowa 2015)----18

Dwyer v. Clerk of District Court for Scott County, 404 N.W.2d 167
(Iowa 1987)-----13, 18

Jacobs v. Iowa Dept. of Transp. Motor Vehicle Div., 887 N.W.2d 590
(Iowa 2016)-----9, 13, 14, 16, 18, 19, 20, 21, 22

Karon v. Elliot Aviation, 937 N.W.2d 334, 339 (Iowa 2020)-----12

Court of Appeals Cases:

Fishel v. Redenbaugh, No. 18-1715, 2019 WL 6358430, (Iowa Ct. App. November
27, 2019)-----17

Jones v. Great River Medical Center, 924 N.W.2d 535 (Table), 2018 WL
4360983 (Ct. App. Iowa)-----13, 17

Court Rules:

R.Civ. P. 1.301(2)-----14, 15

R.Civ. P. 1.904(2)-----10

R. App. P. 6.1101(2)(c)-----7

R. Elec. P. 16.308(d)(2)-----17

Interim Ct. R. 16.307(1)(a)-----15

Iowa Code:

I.C. §4.4(3)-----19

I.C. §602.8102(98)-----22

I.C. §602.6111-----15, 16, 17

Other Relevant Authorities:

1994 Iowa Op. Atty. Gen. 1994 WL 328337-----20

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. THE DISTRICT COURT ERRED IN GRANTING THE MOTION TO DISMISS BECAUSE THE PETITION FILING OF JANUARY 9th, 2020 SHOULD *RELATE BACK* TO THE ORIGINAL AND TIMELY FILING DATE OF JANUARY 3rd, 2020.

Authorities:

Jacobs v. Iowa Dept. of Transp. Motor Vehicle Div., 887 N.W.2d 590 (Iowa 2016);

I. Routing Statement:

Retention of this appeal by the Iowa Supreme Court is appropriate because the issues raised herein are substantial questions enunciating significant legal principals and of first impression. See R. App. P. 6.1101(2)(c). Given the enormous interest in and the considerable impact of decisions affecting Electronic Document Management System (EDMS) and filing deadlines, to the public and the Bar, the Iowa Supreme Court should retain this appeal.

II. Statement of the Case:

This appeal concerns the denial of a plaintiff's access to the court system due to a timely filed pleading and its rejection by a clerk for a minor error on the Electronic Document Management System's (EDMS) electronic cover sheet. The District Court determined that

Plaintiff-Appellant, Paty Carlson (hereinafter, "Ms. Carlson"), through counsel timely filed her Petition at Law and Jury Demand (the "Petition") on January 3, 2020. App.____(Plaintiff's Exhibit "A"). The Petition asserted a personal injury—"slip and fall" claim that occurred on January 8, 2018. App. ____ (Petition at Law, p. 1-2). Counsel for Ms. Carlson received a notification on January 3rd at approximately 6:53 p.m., via email, from EDMS of the receipt of the Petition. App.____(Plaintiff's Exhibit "A"). On the same date, counsel for Ms. Carlson paid

the filing fee via the firm's credit card and received notification of accepted payment. App. ___ (Plaintiff's Resistance to Motion to Dismiss, p. 1).

On January 6, 2020 at 2:54 p.m., the Clerk of Court for Linn County improperly rejected the January 3rd filing of the Petition due to an alleged failure¹ to provide Ms. Carlson's social security number or her date of birth for the electronic cover sheet. App. ___ (Plaintiff's Exhibit "B"). Immediately upon learning that the January 3rd filing had been rejected, counsel telephoned the Linn County Clerk's office on January 9, 2020 and on that same day, counsel refiled the Petition. App. ___ (Plaintiff's Exhibit "C"). The January 9th filing was accepted later that day. Id.

After service of process was completed, Appellee-Defendant Jones Property Services, Inc. (hereinafter, "Jones Property") seizing an opportunity to extinguish the action without a trial on the merits, filed its Motion to Dismiss on January 27, 2020 (the "Motion to Dismiss"). App. ___ (Motion to Dismiss, p. 1). The Motion to Dismiss essentially argued that the Petition filed on January 9th was one (1) day past the statute of limitations, and accordingly, it should be summarily dismissed. App. ___ (Motion Dismiss, p. 2 ¶4). On February 3, 2020, the other Appellee-

¹ Appellant notes that this is reasonably disputable, because there is no proof that the required information was in fact omitted, other than the clerk's statement. Upon information and belief there is no practical way to re-enter the EDMS portal to confirm, because when the clerk rejected the Petition, she further declined to create a case thereby deleting the prior entry.

Defendants, Second Succession, LLC, Iowa Commercial Advisors, LLC d/b/a Cushman & Wakefield, and Iowa Commercial Advisors, filed their collective Joinder in Motion to Dismiss (the “Joinder”). App.__(Joinder in Motion to Dismiss, p. 1). The Joinder does not provide any additional arguments or authority and relies solely on the Motion to Dismiss. Id.

Appellees presented their Motion to Dismiss and Joinder based solely on the argument that Ms. Carlson, by virtue of the current date stamp to her Petition, dated January 9, 2020, missed the statute of limitations period set forth in Iowa Code section 614.1(2), by a single day. App.__(Motion to Dismiss, p). Ms. Carlson filed a Resistance to Motion to Dismiss and Joinder, with attached exhibits and citing relevant case law, including Jacobs v. Iowa Dept. of Transp. Motor Vehicle Div., 887 N.W.2d 590 (Iowa 2016) (the most recent Iowa Supreme Court case regarding e-filing issues and the statute of limitations). The Appellees filed replies to the resistance both objecting to the filing of the exhibits, as being outside the Petition and therefore inadmissible; and disputing the applicability of Ms. Carlson’s reliance on the *relation back doctrine* set forth in the Jacobs case.

Telephonic Hearing on the Motion to Dismiss was set for April 3, 2020. App.__(Order Setting Hearing).

Concerned that the Court may Hearing on the Motion to Dismiss was held on was set for Therefore, there were two issues essentially before the Court at the time are: (1) the extent, if any, the Court will allow and consider evidence, including any testimony, affidavits, and exhibits provided by Plaintiff; and (2) after considering all the evidence, is the “relation back doctrine” applicable to Plaintiff’s January 3, 2020 filing of her Petition.

On April 3rd, a telephonic hearing was held and the District Court heard oral arguments regarding the parties’ respective positions. The District Court entered an Order on April 7, 2020, dismissing Ms. Carlson’s Petition. She filed a Motion to Reconsider, Enlarge or Amend Re: Order Filed April 7, 2020 pursuant to Iowa Rules of Civil Procedure 1.904(2) (the “Motion to Reconsider”). The Motion to Reconsider was denied on June 7, 2020. App.__(Order Re: Motion Reconsider). Ms. Carlson timely filed her Notice of Appeal on June 22, 2020, commencing this appeal. App.__(Notice of Appeal).

III. Statement of the Facts:

Because nearly all the facts in this matter can be fairly characterized as procedural, Ms. Carlson relies on the above Statements of the Case. Additionally, however, the underlying allegations against the Appellee’s can be summarized for context as follows.

On or about January 8, 2018 at approximately 10:00 a.m., Ms. Carlson parked her vehicle at the 3rd Avenue Parking Ramp located at 333 3rd Ave., SE, Cedar Rapids, Iowa. App. ___ (Petition, p. 2). She then promptly exited the 3rd Avenue Parking Ramp and proceeded to walk west on 3rd Avenue, crossing 3rd Street and then turning south, walking on the sidewalk adjacent to 3rd Street. Id. She continued walking south on the 3rd Street sidewalk, when she unexpectedly slipped on a patch of unseen ice in an area that was approximately at the mid-way point of the Town Center Building located between 3rd Avenue and 4th Avenue whose address is 221 3rd Avenue, SE, Linn County, Cedar Rapids, Iowa. As a result of her slipping, Ms. Carlson completely lost her balance with both of her feet suddenly coming out from underneath her, resulting in her falling, and her left knee impacting hard against the concrete. Id. Ms. Carlson then cautiously attempted to get herself upright, but was unable to do so because of the excruciating pain she was experiencing in her left knee, and as a result, she continued lying on the sidewalk in pain for several minutes. Id. at 2-3.

Ms. Carlson's injuries sustained from the fall warranted her being transported by ambulance to Mercy Hospital in Cedar Rapids; and included, but were not limited to: a fracture of her left kneecap, and the complete tear of her left knee tendons and ligaments. App. ___ (Petition, p. 3). Due to these injuries,

Ms. Carlson required nearly immediate surgical intervention. Id. Ms. Carlson also had to undergo substantial follow-up care, including physical therapy. Id.

IV. Argument:

I. **THE DISTRICT COURT ERRED IN GRANTING THE MOTION TO DISMISS BECAUSE THE PETITION FILING OF JANUARY 9th, 2020 SHOULD *RELATE BACK* TO THE ORIGINAL AND TIMELY FILING DATE OF JANUARY 3rd, 2020.**

Preservation of Error. Error was preserved through Ms. Carlson's Resistance to Motion to Dismiss. App.__(Resistance to Motion to Dismiss). Counsel for Ms. Carlson also preserved error by way of oral arguments on her behalf at the Hearing on the Motion to Dismiss held on April 3, 2020. App.__(Order, p. 1; Tr.__). Ms. Carlson's Motion to Reconsider and her Notice of Appeal further preserved error in this appeal. App.__(Motion to Reconsider); App.__(Notice of Appeal).

Standard of Review. Rulings on motions to dismiss are reviewed for correction of errors at law. Karon v. Elliot Aviation, 937 N.W.2d 334, 339 (Iowa 2020).

A. Jacobs Provides the Legal Authority for Allowing Ms. Carlson's Petition to Relate Back to the Timely January 3rd Filing.

The Relation-Back Doctrine is a judicial remedy which allows a pleading that

is rejected by the clerk of court due to a “minor error” or for some other administrative omission; and that is subsequently refiled past a deadline, to nevertheless be deemed timely by *relating* the late filing *back* to the original filing date. Jacobs v. Iowa Dept. of Transp. Motor Vehicle Div., 887 N.W.2d 590, 597-98 (Iowa 2016); see also Jones v. Great River Medical Center, 924 N.W.2d 535 (Table), 2018 WL 4360983 *2-3 (Ct. App. Iowa). The doctrine is intended to ameliorate the harsh legal consequences of the unilateral decisions by a clerk regarding the sufficiency of information for the electronic cover sheet or other request for information, whose sufficiency has no actual legal effect on a case. Jacob, 887 N.W.2d at 597-98. It practically allows for oversight of decision making by clerks that have severe legal consequences; and supports the express statutory duty of a clerk of court to “file and note all documents presented. . . for filing.” See Jones, 924 N.W.2d 535 (Table), 2018 WL 4360983 at *3; see also Dwyer v. Clerk of District Court for Scott County, 404 N.W.2d 167, 170 (Iowa 1987) (citing I.C. §602.8102(98)).

In Jacobs, plaintiff’s counsel filed a petition for judicial review on the deadline date to file. Jacobs, 887 N.W.2d at 591. Counsel inadvertently failed to provide plaintiff’s address and the correct case designation. Id. The clerk court unilaterally rejected the filing. Id. Upon discovery of the rejection, counsel for

Jacobs promptly resubmitted the petition with the additional information; and it was accepted by the clerk. Id. The Iowa Supreme Court determined that the corrected filing should relating back to the original date it was received by EMDS. Jacobs, 887 N.W.2d at 598-99.

In its ruling, the Jacobs' Court articulated three important and instructive principals to guide courts in deciding similar issues regarding the context of a clerk's rejection of a pleading due to a cover sheet error². Jacobs, 887 N.W.2d at 598.

B. Information on the Cover Sheet Should Have No Legal Effect on a Case:

First, the information provided on the electronic cover sheet should have no legal effect on a case, because the information provided on it is “solely for administrative purposes.” See Id. (citing Iowa R.Civ.P. 1.301(2))³. Errors in a cover sheet, therefore, should not form the basis for such a dramatic legal consequence

² Appellant would point out that the facts in Jacobs are not mirror image of the facts in this appeal, but seldom are the facts in appellate cases and the decisions made by courts in subsequent cases point-by-point identical. It is, therefore, important to understand the legal analysis and principals that generate the decision.

³ Rule 1.301 states in relevant part: **1.301(1)** For all purposes, a civil action is commenced by filing a petition with the court. The date of filing shall determine whether an action has been commenced within the time allowed by statutes for limitation of actions, even though the limitation may inhere in the statute creating the remedy. **1.301(2) A cover sheet** available from the clerk of court or from the judicial branch web site (www.iowacourts.gov) **must be completed** and accompany every civil petition except in small claims, probate, and mental health commitment actions. **This requirement is solely for administrative purposes, and matters appearing on the civil cover sheet have no legal effect in the action.** (emphasis added).

as the granting of a motion to dismiss. Further supportive of this statement, is the fact that there is nothing stated in the Rule 1.301,⁴ which would negate a “substantial compliance in completing the cover sheet. . .so long as the case can be ‘correctly docketed and routed.’” Id. (quoting and citing Interim Ct. R. 16.307(1)(a)). To find otherwise, would again, create an onerous result and in contradiction to the mandate that information included on a cover sheet should have no legal effect in the action. Id.

In our matter, the electronic cover sheet at issue and the one first submitted to the clerk on January 3rd, apparently failed to provide the Plaintiff’s date of birth or her social security number. The absence of the Plaintiff’s birth date aside, other information, including her name, address, telephone number, and her attorney’s name and contact information, was included to properly identify the Plaintiff (or else the clerk would have noted that on the rejection email). App.__(Plaintiff’s Exhibit “B”). The provided information was more than

⁴ Nor, is there any such express limitation in Iowa Code section 602.6111., which is entitled: “Identification on documents filed with the clerk” and states in relevant part: “1. Any party, other than the state or a political subdivision of the state, filing a petition or complaint, answer, appearance, first motion, or any document filed with the clerk of the district court which brings a new party into a proceeding shall provide the clerk of the district court with the following information when applicable:
a. An employer identification number if a number has been assigned. b. The birth date of the party.
c. The social security number of the party. 3. **A party shall provide the information pursuant to this section in the manner required by rules or directives prescribed by the supreme court.** The clerk of the district court shall keep a social security number provided pursuant to this section confidential in accordance with the rules and directives prescribed by the supreme court. (emphasis added).

sufficient to allow the case to be docketed and no one would dispute that the Petition itself had any associated errors. See Jacobs, 887 N.W.2d at 597-98. App__ (Motion to Dismiss). As the Jacob Court noted, regarding a filer’s completion of the coversheet and the inherently vague requirements as to what information is actually mandatory:

“[t]he online form to “add a party,” which is part of the electronic cover sheet, has approximately twenty entries to be completed by the filing party.⁴ These entries include first name, middle name, last name, social security number, date of birth, driver’s license, work phone, *598 cell phone, and home phone. The screen does not indicate which entries *must* be filled in. **The only entries with asterisks next to them are for first name and last name, which might lead a filer to conclude these are the only entries that have to be filled in.** On the prior screen, the following appears in red text: **“Warning: Have you entered all Parties on this case? In accordance with Iowa Code section 602.6111, your filing will be returned if all parties are not listed in this section.” This might suggest that merely *listing* the party is sufficient to avoid a returned filing.** The “add a party” screen itself contains no prompt—as occurs with many web-based programs— notifying the user if he or she has tried to submit the form without some required information.”

Id. (emphasis added).

It is certainly reasonable to conclude that a filer would deem a cover sheet accurately completed if only the names of the parties were provided.

Iowa Code section 602.6111 does require that a party provide the birth date or the social security number of a party new to case, which would include a petitioner.

The statute, however, is silent as to whether such a failure creates a mandatory

obligation on a clerk to reject the associated filing. I.C. §602.6111. See Jacobs, 887 N.W.2d at 598, fn. 5. Iowa Rules of Electronic Procedure, Rule 16.308 is likewise silent as to whether an error discovered by a clerk warrants a mandatory rejection. In fact, Rule 16.308(d)(2) expressly states that when an error is discovered the “clerk of court *may* return the submission to the filer with an explanation of the error and instructions to correct the filing” (emphasis added). Our Supreme Court has understood the word “may” to be permissive and not mandatory. Bowman v. City of Des Moines Mun. Hous. Agency, 805 N.W.2d 790, 796 (Iowa 2011). The word may “authorizes but does not require.” Fishel v. Redenbaugh, No. 18-1715, 2019 WL 6358430, *3 (Iowa Ct. App. November 27, 2019) (citing I.C. §4.1(30)). Moreover, the word “may” signifies discretion. Bowman, 805 N.W.2d at 796.

Simply put, a clerk of court is not legally obligated to reject a filing for an error to the cover sheet, but rather, he or she has discretion in how to proceed in alleviating the error. Such discretion to reject a filing, particularly when such a decision may cause a significant legal effect, must be tempered by the courts’ ability to nevertheless allow a filing to be deemed timely. It also supports the express statutory duty of a clerk of court to “file and note **all** documents presented. . . for filing.” See Jones, 924 N.W.2d 535 (Table), 2018 WL 4360983 at

*3; see also Dwyer v. Clerk of District Court for Scott County, 404 N.W.2d 167, 170 (Iowa 1987) (citing I.C. §602.8102(98)) (emphasis added).

C. Errors to the Cover Sheet Easily Corrected and Accepted Under the Paper Filing Process Should Likewise be Easily Corrected and Accepted with Electronic Filing:

The second instructive point set forth in the Jacobs analysis is an inherent acknowledgment that the electronic rules were enacted with the intent of “continu[ing] the court practices that governed paper filing, not to change them.” Jacobs, 887 N.W.2d at 599 (quoting and citing Concerned Citizens v. City Development Board, 872 N.W.2d 399, 401 (Iowa 2015)). The Jacobs’ Court specifically noted the advantages of the prior in-person filing process regarding errors to the cover sheet:

“[i]n the paper world, it is likely that any deficiencies in the cover sheet **would have been recognized at the counter** of the clerk's office **and fixed before the close of business that day.**”

Id. (emphasis added). In other words, if an error with a cover sheet would have been easily mitigated and thereby avoiding harsh deadline consideration with in-person paper filing, then such errors should be easily correctable and mitigated with electronic filing as well⁵.

⁵ This is not to say that all statute of limitation questions should be addressed similarly. For example, if, under the in-person paper filing practice, the Plaintiff’s attorney had arrived at the court house late in the day on the last day to toll the statute of limitations and found the doors to the clerk’s office locked; in that case certainly there would be little question as to the correct status of the late filing.

Under the old “paper” filing practices, Plaintiff’s counsel or a legal assistant, would have physically hand delivered the Petition, with the cover sheet and the original notice. If any errors to the cover sheet were discovered by the clerk, such concerns would have immediately (or soon thereafter) been corrected at the clerk’s window located at the Linn County courthouse. See Id. The error would have been noted, addressed and corrected very likely through a simple telephone call to Plaintiff, and immediately filed, thereby avoiding any harsh statute of limitations repercussions.

D. Allowing a Corrected Filing to Relate Back to the Original Filing is Sound Policy:

In rendering its opinion to allow the relating back, the Jacobs Court placed great significance on maintaining sound policy. Jacobs, 887 N.W2d at 599. The Court opined that to do otherwise would be subject to “multiple flaws.” Id. Specifically, “[i]t would give no effect to the language of the rule requiring the filer to keep track of the date and time of the original submission.” Id. Ignoring such language would be contrary to the Court’s duty to “interpret our statutes and rules so they effectuate just and reasonable results, not arbitrary ones.” Jacobs, 887 N.W2d at 597 (citing Iowa Code § 4.4(3) (setting forth the presumption that in enacting a statute, “[a] just and reasonable result is

intended”). In addition, if the filing was not found to relate back to the original filing, the Jacobs Court indicated that the “district court[‘s] jurisdiction [would] be dependent on how a clerk exercised his or her discretion.” “It would [also] erode the clarity of existing deadlines to appeal to district court[; a]nd it would provide no protection to the filer if the original submission was returned erroneously or if the clerk's office took a long time to process and then ultimately return a filing.”

Id.

To summarize with respect to Jacobs:

a. an EDMS electronic cover sheet fails to indicate what information is sufficient to avoid a rejected filing and in fact, the only information clearly indicated as “required”⁶ is the first and last name of the party (Jacobs, 887 N.W.2d at 597-98);

b. a clerk does not have the unilateral discretion to reject a filing, particularly for the failure to provide all information on the electronic cover sheet, but rather, a clerk is mandated “to file and note all documents presented for filing”, because “[i]t is not the clerk’s duty or function to rule

⁶ The Iowa Attorney General in its May 2, 1994 opinion to the State Court Administrator’s Office has opined that the State could not mandatorily request a party’s social security number, because doing so violates the Privacy Act of 1974 and would condition a party’s access to the court system based on adhering to such a disclosure; and therefore a clerk of court could not “refuse to file a pleading or other documents if a party does not provide his or her social security number.” 1994 Iowa Op. Atty. Gen. (Iowa A.G.) 1994 WL 328337 *2 (citing Bounds v. Smith, 430 U.S. 817 (1977)).

on the validity or legal effect of the document so received” (Jacobs, 887 N.W2d at 597);

c. it is within the purview of the clerk to have corrected or disregarded the cover sheet error under the rules (Id.);

d. it was within the purview of the clerk to have simply telephoned a plaintiff's attorney to provide notice of the cover sheet error consistent with the practice in the time of paper filings (Id.); and

e. statutes and rules should be effectuated to provide just and reasonable results, not arbitrary ones (Id.).

In our case the initial filing of Ms. Carlson’s Petition was clearly made prior to the deadline and it was in proper form except for minor error in the electronic cover sheet. App.____. (Plaintiff’s Exhibit “B”). As in Jacobs, no one claims that the errors in the electronic sheet were anything but "minor" and the petition itself did not contain any errors. App.____. (). As in Jacobs, the electronic cover sheet screen for Plaintiff’s filing did not indicate which entries *must* be filled in⁷. As in Jacobs, no one contends in this case that the

⁷ Ms. Carlson requests the Court take judicial notice of this fact. A review of an EDMS cover sheet page for filing a new case reveals clearly that the only entries delineated with the * (asterisk symbol) indicating a mandatory response, is limited to first and last names of individuals or the name of the business.

information provided by the Plaintiff's counsel was insufficient to uniquely identify the Plaintiff.

Further, it is irrefutable that the Petition was promptly resubmitted after correcting the error to the cover sheet. App.____(Plaintiff's Exhibit "C"). **Whether the proposed filing was returned by the clerk's office before or after the deadline should be irrelevant.** Indeed, Ms. Carlson actually filed her Petition earlier in time than did the plaintiff in Jacobs. See Jacobs, 887 N.W.2d at 593. The resubmission was filed one day late, the same as the resubmitted filing in Jacobs. Id. The Jacobs Court cites Christiansen v. Iowa Bd. Of Educ. Exam'rs, 831 N.W.2d 179 (Iowa 2013) which allowed the relation back rule to a case filed 30 days late. Jacobs, 887 N.W.2d at 599. Thereby establishing a "cut-off" date for the time to refile. Plaintiff refiled her Petition one day after the deadline.

CONCLUSION

Accordingly, the District Court's Order granting the Motion to Dismiss and thereby denying Ms. Carlson her *day-in-court* due to a simple meaningless omission on the electronic cover sheet should be reversed and the case remanded back to the District Court for ultimate adjudication on the merits.

To rule otherwise would nullify Iowa Code section 602.8102(98), which requires a clerk of court to "file and note all documents presented. . . for filing"

and would unwarrantedly elevate section 602.6111(1). Such an outcome cannot be construed as a just and reasonable result. Jacobs, 887 N.W.2d at 597.

REQUEST FOR ORAL ARGUMENT

Ms. Carlson respectfully requests that this appeal be heard in oral argument.

CERTIFICATION OF COST

I, the undersigned, do hereby certify that the actual cost of printing the Appellant's Proof Brief herein was zero dollars, because this appeal has been converted to electronic filing per the Iowa Supreme Court.

CERTIFICATE OF COMPLIANCE

This Proof Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2), because it contains 4,788, including the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). In addition, this Proof Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(f), because this brief has been prepared with Microsoft Word for Mac version 16.36, using proportionally spaced typeface Calibri in 14-pint size.

Submitted this 9th day of October, 2020.

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