

IN THE SUPREME COURT OF IOWA

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Supreme Court No. 20-0879

Linn Cty. No. LACV094700

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PATRICIA K. CARLSON,

Plaintiff-Appellant,

vs.

SECOND SUCCESSION, LLC; IOWA  
COMMERCIAL ADVISORS, LLC; and  
JONES PROPERTY SERVICES, INC.

Defendants-Appellees.

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APPEAL FROM THE IOWA DISTRICT  
COURT IN AND FOR LINN COUNTY  
THE HONORABLE FAE HOOVER-GRINDE, JUDGE

IOWA COURT OF APPEALS DECISION  
FILED JUNE 16, 2021

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JONES PROPERTY SERVICES, INC.'S  
RESISTANCE TO APPLICATION FOR FURTHER REVIEW

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PICKENS, BARNES & ABERNATHY

By 

Matthew G. Novak AT0005897

Bradley J. Kaspar AT0012308

1800 First Avenue NE, Suite 200

P.O. Box 74170

Cedar Rapids, Iowa 52407-4170

PHONE: (319) 366-7621

FAX: (319) 366-3158

EMAIL: mnovak@pbalawfirm.com

EMAIL: bkaspar@pbalawfirm.com

ATTORNEYS FOR DEFENDANT  
JONES PROPERTY SERVICES, INC.

## ARGUMENT

Iowa Rule of Appellate Procedure 6.1103(1)(b) sets forth the factors this Court considers in connection with an application for further review. Plaintiff–Appellant Patricia K. Carlson (hereinafter “Carlson”) argues “[t]his Court should grant further review because the decision of the Court Appeals directly conflicts with Iowa Supreme Court and the Court of Appeals’ precedent regarding electronic filing and the impact on statute of limitations.” (Application, p. 4 (citing Iowa R. App. P. 6.1103(1)(b)(1)).) Contrary to Carlson’s argument, however, the Court of Appeals’ decision in this case is consistent with this Court’s precedent and prior Court of Appeals decisions applying this Court’s precedent.

### A. Consistency with Iowa Supreme Court precedent

In *Jacobs v. Iowa Department of Transportation, Motor Vehicle Division*, this Court enumerated three concrete, measurable, and reasonable prerequisites for allowing an electronic filing to relate back to an earlier returned filing:

First, the party submitted an electronic document that was received by EDMS prior to the deadline and was

otherwise proper except for minor errors in the electronic cover sheet.

Second, the proposed filing was returned by the clerk's office after the deadline because of these minor errors.

Third, the party promptly resubmitted the filing after correcting the errors.

887 N.W.2d 590, 591 (Iowa 2016).

The dispositive facts in this case are simple. Carlson allegedly slipped and fell, causing her a personal injury, on January 8, 2018 in Cedar Rapids, Iowa. Carlson has submitted evidence she filed a Petition on January 3, 2020, a Friday, at 6:53 p.m. The clerk of court returned Carlson's submission as unfiled on January 6, 2020—the following Monday—indicating it was returned “for clarification or correction in accordance with rule 16.308(2)(d).” The clerk further indicated, “I am returning your filing back to you. Please add either the DOB or SS# for the plaintiff. We need one or the other not both.” Carlson filed her Petition of record on January 9, 2020. Carlson has not provided any evidence or explanation as to why she waited three days to resubmit her Petition after the clerk returned the filing.

Under the first *Jacobs* factor, the Court of Appeals found the omission of identification information required by statute “arguably could not have been corrected or disregarded by the clerk.” (Court of Appeals Decision, p. 4 (citing Iowa Code § 602.6111(1)).) The Court of Appeals accurately found Carlson failed to meet the second *Jacobs* factor because her filing was returned two days before the deadline. As to the third *Jacobs* factor, the Court of Appeals questioned whether Carlson’s failure to resubmit the filing for three days qualified as “prompt” under the guidance of *Jacobs*. In sum, the Court of Appeals found Carlson may satisfy the first factor, unquestionably does not satisfy the second factor, and likely does not satisfy the third factor.

Under *Jacobs*, all three prerequisites must be met in order for an electronic filing to relate back to the date of an earlier rejected filing. *See* 887 N.W.2d at 599 (stating “we hold today that a resubmitted filing can relate back to the original submission date for purposes of meeting an appeal deadline when the following circumstances converge”) (emphasis added). Plainly, the *Jacobs* factors did not converge, Carlson’s late filing may not relate back to

her earlier filing, and the Court of Appeals decision is entirely consistent with this Court's opinion in *Jacobs*.

B. Consistency with Iowa Court of Appeals precedent

The Iowa Court of Appeals has applied *Jacobs* on two prior occasions. *Jones v. Great River Med. Ctr.*, No. 17-1646, 2018 WL 4360983 (Iowa Ct. App. Sept. 12, 2018); *Goedken v. All. Pipeline, L.P.*, No. 17-1066, 2018 WL 4360903 (Iowa Ct. App. Sept. 12, 2018). As was the case in *Jacobs*, the filing in *Jones* was returned by the clerk after the deadline had passed. 2018 WL 4360983 at \*1. After it was returned, the plaintiff promptly refiled her petition the next day. *Id.* In *Goedken*, a notice of appeal in a small claims matter was returned by the clerk the day after the deadline, and the defendant promptly resubmitted the notice the same day. 2018 WL 4360903 at \*1. Carlson fails to establish any inconsistency between the Court of Appeals ruling in her case and its rulings in *Jones* and *Goedken*.

C. Conclusion

Carlson does not argue her Application satisfies any of the other enumerated considerations in rule 6.1103(1)(b) for the grant of further review. Because the Court of Appeals' decision is consistent with this Court's opinion in *Jacobs* and prior Court of Appeals precedent applying *Jacobs*, further review is not warranted and should accordingly be denied.

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1800 First Avenue NE, Suite 200

P.O. Box 74170

Cedar Rapids, Iowa 52407-4170

PHONE: (319) 366-7621

FAX: (319) 366-3158

EMAIL: mnovak@pbalawfirm.com

EMAIL: bkaspar@pbalawfirm.com

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JONES PROPERTY SERVICES, INC.

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies a copy of this Resistance was filed with the Clerk of the Iowa Supreme Court via EDMS and was served upon the following person(s) and upon the Clerk of the Iowa Supreme Court on July 13, 2021 via EDMS:

John C. Wagner  
John Daufeldt  
John C. Wagner Law  
Offices, PC  
600 39th Avenue  
P.O. Box 262  
Amana, Iowa 52203

ATTORNEY FOR  
PLAINTIFF

Alex E. Grasso  
HOPKINS & HUEBNER, P.C.  
2700 Grand Avenue, Suite 111  
Des Moines, IA 50312

ATTORNEY FOR  
DEFENDANTS SECOND  
SUCCESSION, LLC and  
IOWA COMMERCIAL  
ADVISORS, LLC

July 13, 2021  
DATE

  
SIGNATURE

CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
REQUIREMENTS AND TYPE-VOLUME REQUIREMENTS

This Resistance complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this Resistance has been prepared in a proportionally spaced typeface using Century Schoolbook in 14-point font and contains 806 words, excluding parts exempted by Iowa R. App. P. 6.903(1)(g)(1).

July 13, 2021  
DATE

  
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