

**IN THE SUPREME COURT OF
IOWA**

No 21-0859

**Pottawattamie County No.
LACV121204**

**REED DICKEY, MICHAEL
DICKEY, and ANDREA DICKEY,
Plaintiffs-Appellants,**

vs.

**JEREMY JOFF, JENNIE
EDMUNDSON MEMORIAL
HOSPITAL, METHODIST JENNIE
EDMUNDSON HOSPITAL, LOESS
HILLS BEHAVIORAL HEALTH, JEFF
RUTLEDGE, THE SCHOOL
DISTRICT OF LINCOLN a/k/a
LINCOLN PUBLIC SCHOOLS and
EMILY GORMAN,
Defendants-Appellees.**

PLAINTIFFS-APPELLANTS' FINAL BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. DID THE DISTRICT COURT ERR IN DISMISSING PLAINTIFFS' CLAIMS ON THE GROUNDS THAT THE IOWA SUPREME COURT ACTED UNCONSTITUTIONALLY IN TOLLING THE STATUTE OF LIMITATIONS THROUGH ITS SUPERVISORY ORDER?

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2. DID THE DISTRICT COURT ERR IN DISMISSING DEFENDANTS LINCOLN PUBLIC SCHOOLS AND JEFF RUTLEDGE FOR LACK OF PERSONAL JURISDICTION?

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)

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3. DID THE DISTRICT COURT ERR IN DISMISSING DEFENDANTS JENNIE EDMUNDSEN HOSPITAL AND EMILY GORMAN ON THE GROUNDS OF NONCOMPLIANCE WITH IOWA CODE § 147.140?

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ROUTING STATEMENT

This appeal should be retained. This appeal involves a substantial issue of first impression, requiring enunciation of legal and constitutional issues (i.e., the proper scope of authority of the Iowa Supreme Court to make and modify rules in response to a global health emergency). This appeal presents an issue of first impression (regarding the authority of the Iowa Supreme Court to make such a Supervisory Order). This appeal also involves issues of broad public importance that will require ultimate determination by the Iowa Supreme Court, *See*, Iowa Rs.App. P. 6.1101(2)(a), (c-d).

STATEMENT OF THE CASE

This case is an appeal from the Iowa District Court for Pottawattamie County in the matter of case number LACV121204, *Reed Dickey, et al. vs. Jeremy Hoff*, et al. The case involves claims for injuries by Plaintiffs Reed Dickey, Michael Dickey, and Andrea Dickey arising out of (a wrestling match) which took place in Council Bluffs, Iowa on December 7, 2018.

On December 6, 2019, Reed filed suit against Defendants Jennie Edmundson and Hoff for claims arising out the subject incident in the Iowa District Court for Pottawattamie County, case number LACV120033.

On May 22, 2020, in response to the global Covid-19 Pandemic, the Iowa Supreme Court issued an Omnibus Order, Paragraph 45 of which tolled the

statutes of limitations, statutes of repose, or similar deadlines from by 76 days for any deadline which would expire between March 17, 2020 and December 31, 2020. On November 20, 2020, Reed filed a Dismissal Without Prejudice of his initial claim (LACV120033).

On December 11, 2020, Plaintiffs filed a second petition in the Iowa District Court for Pottawattamie County, case number LACV121204, making similar claims to those in the prior suit. Pursuant to the Iowa Supreme Court's Supervisory Orders tolling the statutes of limitations in Iowa, this suit was timely filed.

On January 18, 2021, Defendant Jennie Edmundson filed a Motion for Additional Time to Move or Plead. On January 20, 2021, this Motion was granted. On January 21, 2021, Defendants the School District of Lincoln and Jeff Rutledge filed a Motion for Additional Time to Move or Plead. On January 21, 2021, this Motion was granted. On January 22, 2021, Defendant Jeremy Hoff filed a Motion for Additional Time to Move or Plead. On January 22, 2021, this Motion was granted. On February 15, 2021, Defendants Jennie Edmundson and Emily Gorman filed a pre-Answer Motion to Dismiss Plaintiffs' Claims on, among other grounds, the grounds that a) Plaintiff filed to timely file a Certificate of Merit affidavit in the previous lawsuit (LACV120033), and that Plaintiff's claims were barred because the Statute of Limitations on these claims

would have run on December 7, 2020 absent the Iowa Supreme Court's Supervisory Orders, and these Supervisory Orders were unconstitutional, therefore barring Plaintiffs' claims. On February 15, 2021, Defendants the School District of Lincoln and Jeff Rutledge filed a pre- Answer Motion to Dismiss, or, in the Alternative, to Stay Proceedings against Plaintiffs' claims. In support of this Motion, Defendants the School District of Lincoln and Jeff Rutledge on, among other grounds, the grounds that Plaintiffs' claims were barred by the Statute of Limitations (because the Iowa Supreme Court's Supervisory Orders were unconstitutional), and the grounds that Iowa did not have personal jurisdiction over out-of-state (Nebraska) Defendants Lincoln Public Schools and Jeff Rutledge.

On February 23, 2021, Plaintiffs filed an Unresisted Motion for Enlargement of Time to File Responsive Pleadings to Defendants' Motions to Dismiss, seeking an additional fourteen days in which to file Resistances and supporting materials in responses to Defendants' Motions to Dismiss. On February 23, 2021, this Motion was granted.

On March 3, 2021, Defendant Jeremy Hoff filed a Motion to Dismiss on, among other grounds, the grounds that 1) Plaintiff failed to timely file and serve Defendant Hoff with a Certificate of Merit affidavit pursuant to Iowa Code 147.140(1)(a); that Plaintiffs' claims were barred by claim preclusion

due to Plaintiff's dismissal without prejudice of the first lawsuit; and that Plaintiffs' claims were barred because the statute of limitations ran on Plaintiffs' claims on December 7, 2020 and the Iowa Supreme Court's Supervisory Order Tolling the Statute of Limitations was unconstitutional. On March 5, 2021, Defendant Emily Gorman filed a pre-Answer Motion to Dismiss alleging that's Plaintiff's dismissal of the first suit should be treated as having been a dismissal with prejudice because Plaintiff had not timely filed a Certificate of Merit Affidavit in the first suit; and that the Statute of Limitations had run on Plaintiffs' claims because the Iowa Supreme Court's May 22, 2020 Order was unconstitutional.

On March 10, 2021, Plaintiffs timely Resisted the Motions to Dismiss of Defendants Jennie Edmundson and Emily Gorman. On March 10, 2021, Plaintiff timely Resisted the Motion to Dismiss of Defendant Jeremy Hoff. On March 10, 2021, Plaintiffs timely Resisted the Motions to Dismiss of Defendants the School District of Lincoln and Jeff Rutledge.

On March 31, 2021, a hearing was held on Defendants' various Motions to Dismiss. This hearing was not transcribed. On May 14, 2021, the District Court issued an Order providing as follows: (1) Plaintiffs' claims against Defendants Lincoln Public Schools and Coach Rutledge were dismissed because Iowa lacked personal jurisdiction over Plaintiffs' claims against these two out-

of-state Defendants; (2) Plaintiffs' claims against Defendants Jennie Edmundson and Emily Gorman were dismissed because Plaintiff had not complied with Iowa Code § 147.140, and therefore they were prohibited from voluntarily dismissing and then re-filing their claims; and, (3) that Plaintiffs' claims against all Defendants were dismissed because the statute of limitations on Plaintiffs' claims had run on December 7, 2020, and the Iowa Supreme Court's supervisory orders tolling statutes of limitations in the state of Iowa by 76 days were unconstitutional under the Iowa constitution. On May 21, 2021, Plaintiffs timely filed a Motion for the Court to Reconsider, Enlarge, or Amend its May 14, 2021 Order dismissing Plaintiffs' claims. On May 28, 2021, Defendants the School District of Lincoln and Jeff Rutledge filed a Resistance to Plaintiffs' Motion to Reconsider, Enlarge, or Amend. On June 2, 2021 the District Court filed an Order denying Plaintiffs' Motion to Reconsider, Enlarge, or Amend.

STATEMENT OF THE FACTS

As this Appeal was made from a District Court Order granting Pre-Answer Motions to Dismiss, there has been a limited record generated in this matter and the Statement of Facts which follow largely derive from Plaintiff's Petition.

As of December 7, 2018, Plaintiff Reed Dickey was a minor residing in

Lancaster County, Nebraska. (Petition, App. p. 5). Plaintiffs Andrea Dickey and Michael Dickey are the natural and legal parents of Plaintiff Reed Dickey.

(Petition, App. pp. 5-6). As of December 7, 2018, they were residents of Lancaster County, Nebraska. (Petition, App. pp. 5-6).

As of December 7, 2018, Defendant Jeremy Hoff was an individual believed to be a resident of Iowa. (Petition, App. p. 6). Defendant Hoff was believed to be holding himself out to be licensed and/or certified to referee high school wrestling matches in Iowa. (Petition, App. p. 6). As of December 7, 2018, Defendant Emily Gorman was an individual believed to be a resident of Iowa. (Petition, App. p. 6). Defendant Gorman was believed to be licensed as an athletic trainer in Iowa. (Petition, App. p. 6).

As of December 7, 2018, Defendant Jeff Rutledge was an adult resident of Nebraska who was employed by Defendant Lincoln Public Schools in relevant part as a paid wrestling coach at Lincoln East High School, where he was Plaintiff Reed Dickey's wrestling coach. (Petition, App. p. 6).

On December 7, 2018, Defendant The School District of Lincoln (also known as Lincoln Public Schools) was the public school district for the Lincoln, Nebraska area.

On December 7, 2018, Plaintiff Reed Dickey participated in the Council Bluffs Wrestling Classic (hereinafter, "the tournament"), in Council Bluffs,

Pottawattamie County, Iowa. (Petition, App. p. 7). This was a wrestling tournament hosted by Lewis Central High School, Abraham Lincoln High School, St. Albert Catholic High School, and Thomas Jefferson High School. (Petition, App. p. 7). As of December 7, 2018, Reed was enrolled as a student at Lincoln East High School in Lincoln, Nebraska, and was a member of the Lincoln East High School varsity wrestling team. (Petition, App. p. 8). Reed went to the tournament for the purpose of wrestling in the tournament on behalf of Lincoln East High School. (Petition, App. p. 8). Prior to the start of the tournament, Lincoln Public Schools and Jeff Rutledge knew that the tournament would be held in Iowa. (Petition, App. p. 8). In the tournament, Reed wrestled against a Lewis Central High School wrestler in a match on behalf of Lincoln East High School. (Petition, App. p. 8). On December 7, 2018, Rutledge was a co-head coach of the Lincoln East High School varsity wrestling team, was present and coached Reed in the match. (Petition, App. p. 9). As a co-head coach of the Lincoln East High School varsity wrestling team, Rutledge was LPS's agent. (Petition, App. p. 9). Hoff was the match's referee. (Petition, App. p. 9). During the match against the Lewis Central wrestler, Reed sustained multiple blows to the head resulting in temporary and permanent brain injuries. (Petition, App. p. 9). With approximately 49 seconds remaining in the first period of the match (scheduled to last 3 periods), Reed's head collided with the

other wrestler's head. Reed was on his knees when the heads collided, and immediately of the heads collided Reed stopped wrestling, rolled over, and sat on the mat and clutched his head with his back to the other wrestler. (Petition, App. p. 9). If the referee has not stopped the match, unless the wrestler sustained an injury, it is not typical for a wrestler to stop competing, turn his back on his opponent and sit on the mat clutching his head. Doing so is a sign of potential injury. (Petition, App. p. 9). When Reed stopped wrestling and instead turned his back on the other wrestler, sat on the mat, and clutched his head, Reed was exhibiting signs and/or symptoms, and/or behaviors consistent with a concussion or brain injury. (Petition, App. p. 9). Recognizing something was wrong with Reed, Rutledge left the sideline, which was slightly more than one-half of the width of the mat away from where Reed was sitting, and tried to get Hoff to stop the match. (Petition, App. p. 9).

Notwithstanding the facts that Reed was sitting on the mat holding his head with his back to the other wrestler, that Rutledge was trying to get Hoff to stop the match, and that Hoff was looking directly at Reed and the Lewis Central wrestler and therefore aware that Reed has stopped wrestling and was instead sitting on the mat holding his head, Hoff allowed the match to continue at which time the Lewis Central wrestler pounced on Reed from behind and drove Reed down to the mat. (Petition, App. pp. 9-10). At that point Hoff raised his right

hand while holding two fingers in the air, signaling to the scorers' table that the Lewis Central wrestler should be awarded 2 points for a takedown of Reed who had been sitting on the mat holding his head. (Petition, App. p. 10). Hoff then temporarily stopped the match for an injury time out while Reed was writhing on the mat holding his head. (Petition, App. p. 10). At that point Reed continued exhibiting signs and/or symptoms, and/or behaviors consistent with a concussion or brain injury, including, without limitation: being observed to be clutching his head and writhing on the ground. (Petition, App. p. 10).

Upon information and belief, Reed sustained a concussion or other type of brain injury due to his head colliding with the other wrestler's head. (Petition, App. p. 10). Rutledge arrived at the spot on the mat where Reed was lying, clutching his head, and writhing on the mat. (Petition, App. p. 10). For approximately 10 seconds Hoff and Rutledge conversed, with Hoff at sometimes instructing Rutledge to return to the sideline. (Petition, App. p. 10). After approximately 10 seconds, Hoff left the spot where Reed was on the mat, and walked over towards the scorers' table, leaving Rutledge with Reed. (Petition, App. p. 10). As Hoff was walking away, Rutledge knelt down on the mat next to Reed and talked with him. (Petition, App. p. 10). Gorman was within a few yards of Reed and was watching the match when the wrestler's heads collided. She continued watching Reed while he lied on the ground.

(Petition, App. p. 10). Approximately 15 seconds after Hoff stopped the match, Gorman walked over to Reed and while Reed was lying on his back, still clutching his head, and writhing on the mat, Gorman knelt down beside him. (Petition, App. p. 10).

Gorman briefly examined Reed, but did not conduct an exam which would be consistent with an exam done for purposes of assessing potential brain injury and/or concussions. (Petition, App. p. 11). Approximately 12 seconds after Gorman knelt down next to Reed, Hoff returned to the spot on the mat where Reed was being assessed by Gorman, with Rutledge still present. Hoff did not engage in discussion with Gorman at this point. (Petition, App. p. 11). Approximately 16 seconds after Hoff got back to the spot on the mat where Reed was being assessed, Hoff escorted and accompanied Rutledge away from that area and over to an area near the scorer's table. (Petition, App. p. 11). For approximately another 20 seconds after Hoff and Rutledge left the area, Gorman continued speaking with Reed. (Petition, App. p. 11). Gorman and Reed finished speaking, and Gorman walked back to the spot where she was standing when the match was stopped. Reed walked to the center of the mat. (Petition, App. p. 11). Hoff and Rutledge continued speaking for approximately 35 seconds after Gorman and Reed stopped their discussion. (Petition, App. p. 11). Rutledge then returned to the sideline. (Petition, App. p. 11). Hoff then returned to the center

of the mat, where both Reed and the Lewis Central wrestler were standing, and instructed the Reed and the Lewis Central wrestler to resume the match.

(Petition, App. p. 11). After Hoff first walked away from the spot where Gorman was speaking with Reed, Hoff and Gorman did not speak with each other about Reed's condition before the match resumed. (Petition, App. p. 11). Gorman did not speak to Rutledge after Hoff escorted Rutledge away from the area and before the match resumed. (Petition, App. p. 12). After the match resumed and as it continued, Reed exhibited worsening and/or more signs, symptoms, and or behaviors consistent with a concussion or brain injury, including: Appearing dazed; Having a vacant expression; Appearing uncoordinated; Uncharacteristically lethargic behavior; and Other uncharacteristic behavior. (Petition, App. p. 12).

Moreover, as the match continued, Reed sustained additional blows to the head, exacerbating any injuries he sustained prior to the injury timeout. (Petition, App. p. 12). As the match's referee, Hoff was considered at "contest official" as the term is used in Iowa Code § 280.13C. (Petition, App. p. 12). He received compensation for his services as a referee. (Petition, App. p. 12). Notwithstanding the fact that Gorman allowed Reed to continue wrestling after the injury time-out, with her knowledge that Reed had exhibited signs, symptoms, and/or behaviors consistent with a concussion or brain injury, she

had an ongoing obligation to observe Reed and stop the match upon further observation of Reed's exhibiting signs and/or symptoms, and/or behaviors consistent with a concussion or brain injury. (Petition, App. p. 12). Prior to this wrestling match, Reed had not sustained any concussion or other brain injury. (Petition, App. p. 12).

Iowa Code § 280.13C requires that if a student's coach, contest official, or licensed health care provider or an emergency medical care provider observes a student who is participating in an extracurricular interscholastic activity exhibiting signs, symptoms, or behaviors consistent with a concussion or brain injury in an extracurricular interscholastic activity, the student shall be immediately removed from participation. (Petition, App. pp. 12-13). As a result of the failure of Hoff, Gorman, and/or Rutledge to stop the match, Reed was permitted to continue wrestling, sustaining injuries above and beyond those which he sustained due to the original blow to the head. (Petition, App. p. 13).

ANALYSIS

1. THE DISTRICT COURT ERRED IN DISMISSING PLAINTIFFS' CLAIMS AGAINST ALL DEFENDANTS ON THE GROUNDS THAT THE IOWA SUPREME COURT ACTED UNCONSTITUTIONALLY IN TOLLING THE STATUTE OF LIMITATIONS THROUGH ITS SUPERVISORY ORDERS

A. Preservation of Error

Error is preserved in that Plaintiffs timely resisted Defendants' Pre-Answer Motions to Dismiss, and timely moved under Iowa R. Civ. P. 1.904(3) for the Court to reconsider, enlarge, or amend its May 14, 2021 ruling dismissing Plaintiffs' claims.

B. Scope and Standard of Review

Because this is a constitutional issue, the standard of review for this issue is de novo. "On a motion to dismiss, we review for corrections of errors of law, unless the motion to dismiss is on a constitutional issue, in which case our review is de novo." *Weizberg v. City of Des Moines*, 923 N.W.2d. 200 (Iowa 2018), citing *Godfrey v. State*, 898 N.W.2d 844, 847 (Iowa 2017), *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016).

C. Argument

The matters giving rise to the present lawsuit occurred on December 7,

2018. The two-year statute of limitations would have expired on December 7,

2020. However, on April 2, 2020, the Supreme Court of Iowa Ordered:

Any statute of limitations, statute of repose, or similar deadline for commencing an action in district court is hereby tolled from March 17 to June 1 (76 days). Tolling means that amount of time to the statute of limitations or similar deadline. So, for example, if the statute would run on April 8, 2020, it now runs on June 23, 2020 (76 days later).

(April 2, 2020 Order, p. 9).

The Iowa Constitution states that “The judicial power shall be vested in a supreme court, district courts, and such other courts, inferior to the supreme court, as the general assembly may, from time to time, establish.” Constitution of Iowa, Article V, Section 1. The Iowa Constitution further provides that “The supreme court shall...exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.” Constitution of Iowa, Article V, Section 4.

The Iowa Supreme Court has not subsequently reconsidered its position. In fact, on May 8, 2020, the Iowa Supreme Court specifically expanded on its ruling.

At that time, the Court Ordered:

3. Statute of Limitations Tolling. As previously ordered on April 2, 2020, any statute of limitations, statute of repose, or similar deadline for commencing an action in district court is tolled from March 17 to June 1 (76 days). Tolling means that amount of time is added to the statute of limitations or similar deadline.

4. Expansion of Prior Supervisory Order. The court now

expandson the earlier supervisory order to direct that the 76 days of tolling will apply if the deadline for commencing the action would otherwise expire any time from March 17, 2020 to December 31, 2020. In otherwords, if the statute would otherwise run on July 7, 2020, it now runs on September 21, 2020 (76 days later). However, after December 31,2020, any tolling will be phased out and eliminated. Thus, if the deadline for commencing the action would otherwise expire on any date from December 31, 2020 to March 16, 2020 (the 76th day of 2020), inclusive, that deadline would become March 17, 2020, and thereafter there would be no tolling at all.

(May 8, 2020 Order, p. 2).

Based on the Iowa Supreme Court’s Orders, Plaintiffs would have had until February 24, 2021 to file. Instead, the Petition was filed months earlier, on December 11, 2020. Based on the Orders of the Iowa Supreme Court, the petition was clearly timely. The District Court acknowledged that Plaintiffs’ filing was timely under the deadlines established by the Supervisory Order; however, the District Court held that the Supervisory Order itself was unconstitutional on separation of powers grounds.

The District Court, in its Order granting Defendants’ Motions to Dismiss, cited *Iowa Civil Liberties Union v. Critelli* for the following proposition:

“Where the legislature *has not acted*, courts possess a residuum of inherent common-law power to adopt rules to enable them to meet their independent constitutional and statutory responsibilities. *Iowa Civil Liberties Union v.*

Critelli, 244 N.W.2d 564, 569 (Iowa 1976) (en banc). In the District Court’s reading of this proposition, the Iowa legislature had acted when it adopted Iowa

Code Sections 614.1(2) and 6.14.1(9). While it is true that the legislature had acted (decades prior) in setting the general rules regarding statutes of limitation for civil actions in Iowa, the legislature had not acted specifically to adjust statutes of limitations for civil actions in response to the global Covid-19 pandemic (nor did it act to state that statutes of limitations should be held firm and not tolled in response to the global Covid-19 pandemic).

In fact, the Iowa Legislature suspended its legislative session for “at least 30 days” on March 15, 2020¹. On April 2, 2020, the Iowa Legislature again suspended its legislative session through at least April 30².

Therefore, at the time that the Iowa Supreme Court issued its April 2, 2020 Order, not only had the Iowa legislature not acted to adjust statute of limitation requirements in light of the global Covid-19 pandemic, it *could not have acted* because it was not in session (due to that very pandemic). The Iowa Supreme Court’s Supervisory Order was a necessary and proper exercise of the judicial branch’s constitutional authority over Iowa’s court system to do its part to slow the person-to-person transmission of a deadly virus in the state.

It should be noted that at least 22 states extended statute of limitations

¹ David Pitt, *Iowa Legislature suspends session for 30 days*, ASSOCIATED PRESS (Mar. 15, 2020), <https://apnews.com/article/14d4533d89c3c88009f6ca6f4148ae68>

² Stephen Gruber-Miller, *Iowa Legislature to extend suspension of session through April 30 as coronavirus spreads*, DES MOINES REGISTER (April 2, 2020), <https://www.desmoinesregister.com/story/news/politics/2020/04/02/iowa-legislature-extends-suspension-session-coronavirus-covid-19-kim-reynolds/5113954002/>

during the pandemic. In addition to Iowa, California, Connecticut, Delaware, Indiana, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, Tennessee, Texas, Virginia, and West Virginia all tolled or extended statutes of limitations in the spring of 2020³.

To give just one specific example, on March 18, 2020, the Kansas Supreme Court issued Administrative Order 2020-PR-016, which suspended “all statutes of limitations and statutes and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings...under further order. During the effective dates of this Administrative Order, no action shall be dismissed for lack of prosecution.” *See*, Administrative Order 2020-PR-016, In the Supreme Court of the State of Kansas.

Defendants argue that the Orders of the Iowa Supreme Court, which specifically cite and rely on to the state Constitution, were in fact unconstitutional. But the Iowa Supreme Court, who is generally the final arbiter of whether an Iowa state governmental action is constitutional under the Iowa Constitution, *see Varnum v. Brien*, 763 N.W.2d 862, 877 (Iowa 2009), obviously believed that it was appropriate and constitutional to extend the

³ US Law Network, *Statute of Limitations Quick Guide (During Covid-19 Pandemic)*, US LAW NETWORK (December 2020), https://www.uslaw.org/files/Compendiums2020/COVID-10_Statute%20of%20Limitations/2020_USLAW_NETWORK_COVID_19_Statute_of_Limitations_Quick_Guide_COMPILATION_version.pdf

statute of limitations.⁴ Otherwise it would not have done so once, and the Court certainly would not have expanded the ruling a month later. It is also important to keep in mind that if the legislature disagreed with the actions of the Iowa Supreme Court, taken over eleven months ago, the legislature could have, and presumably would have intervened. The silence of the legislature speaks volumes.

It is important to keep in mind that over the last year and a half, we have dealt with unprecedented occurrences. On March 9, 2020, Governor Reynolds declared an emergency as a result of the Coronavirus. On March 11, 2020, the World Health Organization declared a pandemic. On Thursday, March 12, 2020, President Trump declared a national emergency related to the pandemic. Then on Sunday, March 15, 2020, Governor Reynolds closed schools in Iowa. On Monday, March 16, 2020, the White House announced “15 Days to Slow the Spread” which advised, in part that it was critical that that people work at home whenever possible, avoid social gatherings in groups of more than 10 people, and avoid discretionary travel, shopping trips and social visits.

On Tuesday, March 17, 2020, Governor Reynolds ordered that Iowa

⁴ At the end of the day, the Defendants disagree with the Supreme Court’s constitutional interpretation in the present case regarding the Court’s authority under the cited portions of the Constitution to extend the statute of limitations during a global pandemic. Likewise, some people disagree with the Court’s constitutional interpretation in Varnum regarding whether same-sex marriage is mandated by the constitution. But ultimately, the Court has spoken in both cases.

restaurants and bars could only serve customers on a to-go basis. President Trump invoked the Defense Production Act, a wartime authority that allows the President to direct industry to produce critical equipment. Things shut down virtually overnight.

The Iowa Judicial system was not spared. In addition to extending the statute of limitations on civil matters, the Supreme Court took a number of other steps to address ramifications of the pandemic. On Saturday, March 14, 2020, the Supreme Court ordered that all criminal jury trials that had not commenced as of March 13, 2020 that were scheduled to begin before April 20, 2020, were continued. The Court found that the COVID-19 outbreak constituted good cause within the meaning of Iowa R. Crim P. 2.33 to impact with criminal defendants' constitutional right to a speedy trial. The crisis we faced was so grave that it provided good cause to delay by months the fundamental right of an accused sitting in prison to obtain a speedy trial. The Supreme Court also ordered that all civil jury trials that had not commenced as of March 13, 2020 that were scheduled to begin before May 4, 2020, were continued. On March 17, the Court extended the criminal and civil trial continuances to bench trials. In a March 31, 2020 Order, the Court extended the deadline to serve an Original Notice due between March 23, 2020 and April 16, 2020 to May 18, 2020.

In the Court's April 2, 2020 Order, Criminal nonjury trials scheduled to

begin before June 1, 2020 were continued as were criminal jury trial set to begin before July 13, 2020. The Court again found good cause to continue criminal trials for speedy trial purposes. Grand jury proceedings were suspended until July 13, 2020. Non-jury civil trial set to begin before June 15 were continued as were jury trials set to begin before August 3, 2020. The deadline for Original Notices that were to be served between March 23, 2020 and June 15, 2020 was extended through June 15, 2020.

On May 8, 2020, noting the unusual circumstance of the COVID-19 pandemic, the Court ordered that all cases currently subject to dismissal under Rule 1.944(2) for want of prosecution if not tried before January 1, 2021 were provided a one-time, one-year automatic extension of the deadline for the commencement of trial.

Like most Americans, our firm was not spared from the impacts of COVID-19. Our firm was largely closed for multiple days throughout late March and early April, and through May we were largely working part time remotely. Most of the attorneys in our Decorah office were diagnosed with COVID-19 in September, 2020. All attorneys spent weeks in isolation and/or quarantine during that time frame.

The extension of the statute of limitations by 76 days was a reasonable response to these unprecedented times, and we only needed an extension of

three days for the petition to be timely.

Even if the Iowa Supreme Court ultimately revisits its determination, and decides that its actions were not constitutional after all, courts are allowed to consider equitable considerations in the application of a statute of limitations. It was reasonable for Plaintiffs to rely on the Iowa Supreme Court's pronouncement that the statute of limitations was extended. If an Iowa attorney cannot rely on a set of Iowa Supreme Court Orders, what can the attorney rely upon? Equitable considerations mandate that Plaintiffs' petition be deemed as having been timely filed.

2. THE DISTRICT COURT ERRED IN DISMISSING DEFENDANTS LINCOLN PUBLIC SCHOOLS AND JEFF RUTLEDGE FOR LACK OF PERSONAL JURISDICTION

A. Preservation of Error

Error is preserved in that Plaintiffs timely resisted Defendants' Pre-Answer Motions to Dismiss, and timely moved under Iowa R. Civ. P. 1.904(3) for the Court to reconsider, enlarge, or amend its May 14, 2021 ruling dismissing Plaintiffs' claims against Defendants Lincoln Public Schools and Jeff Rutledge.

B. Scope and Standard of Review

The standard of review for a District Court's decision on a motion to dismiss

for lack of personal jurisdiction is for correction of errors of law. *Ostrem v. PridecoSecure Loan Fund, LP*, 841 N.W.2d 882 (Iowa 2014).

C. Argument

Defendants Lincoln Public Schools and Rutledge also moved to dismiss claiming that they did not have sufficient minimum contacts with Iowa to subject them to personal jurisdiction in Iowa. Defendants acknowledge that “may have had some minimal contact with Iowa due to the December 7, 2018 wrestling match, and the alleged injuries arise out of the that wrestling match... “(Defendants’ Brief p. 8).

In fact, on December 7, 2018, Plaintiff participated in the Council Bluffs Wrestling Classic, in Council Bluffs, Pottawattamie County, Iowa as a member of the Lincoln East High School varsity wrestling team. (Petition ¶ 13, App. p. 7). Lincoln East High School’s varsity wrestling team participated in the tournament and Plaintiff went to the tournament for purposes of wrestling in the tournament on behalf of Lincoln East High School. (Petition ¶¶ 21, 22, App. p. 8).

At all times relevant, Defendant Jeff Rutledge, was an adult resident of Nebraska who was employed by Defendant LPS in relevant part as a paid wrestling coach at Lincoln East High School, where he was Plaintiff’s wrestling coach. (Petition ¶¶ 8, 20 App. pp. 6-8). At the meet, Rutledge was a co-head

coach of the Lincoln East High School varsity wrestling team, was present and coached Plaintiff in his match. (Petition ¶ 26, App. p. 9). As a co-head coach of the Lincoln East High School varsity wrestling team, Rutledge was LPS's agent. (Petition ¶ 26, App. p. 9). Prior to the start of the tournament, LPS and Rutledge knew the tournament was being held in Iowa. (Petition ¶¶ 23, 24, App. p. 9).

In the tournament, Plaintiff wrestled against a Lewis Central High School wrestler in a match on behalf of Lincoln East High School. (Petition ¶ 25, App. p. 8). During the match Plaintiff began exhibiting signs, symptoms, and/or behaviors consistent with a concussion or brain injury and which necessitated stopping the match for an injury time out. (Petition ¶ 64, App. p. 15).

Even though an injury timeout was necessary, and even though Defendants, including Rutledge had knowledge Plaintiff was exhibiting signs, symptoms, and/or behaviors consistent with a head injury, Rutledge and the others permitted Plaintiff to continue wrestling where he sustained additional blows to the head and additional brain injury which he would not have sustained but for the Defendants' failure to remove Plaintiff from participation in the activity. (Petition ¶ 65, App. p. 15).

“The touchstone of the due-process analysis remains whether the defendant has sufficient ‘minimum contacts with [the forum state] such that the maintenance of the suit does not offend “traditional notions of fair play and

substantial justice.”” *Ostrem v. Prideco Secure Loan Fund, LP*, 841 N.W.2d 882, 891 (Iowa 2014). A defendant's “minimum contacts must show ‘a sufficient connection between the defendant and the forum state so as to make it fair’ and reasonable to require the defendant to come to the state and defend the action.” Id. Random or attenuated contacts with the forum state do not satisfy the minimum contacts test. Id. A defendant, rather, “should reasonably anticipate being haled into court” in the forum state. *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). No one should be surprised about be haled into court in a state after acting tortiously while physically in such state.

There are two grounds for personal jurisdiction, general jurisdiction and specific jurisdiction. *Ostrem*, 841 N.W.2d at 891. “Specific jurisdiction refers to jurisdiction over causes of action arising from or related to a defendant's actions within the forum state.” *Id.* “General jurisdiction, on the other hand, refers to the power of a state to adjudicate any cause of action involving a particular defendant, regardless of where the cause of action arose.” *Id.*

To determine whether a court’s exercise of specific personal jurisdiction over a party is constitutional, “the critical focus is on the relationship among the defendant, the forum and the litigation.” *Id.* Although the application of the test will “vary with the quality and nature of the defendant's activity,” in every case there must be “some act by which the defendant purposefully avails itself of the

privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Id.*

This is not a case where Defendants manufactured something in Nebraska and the product ended up in Iowa. In this case, Defendants knowingly and intentionally went to the State of Iowa to participate in a wrestling tournament. While in the state of Iowa, while participating in the wrestling tournament, Defendants acted negligently. Iowa did have personal jurisdiction over Plaintiffs’ claims against Defendants Lincoln Public Schools and Rutledge, and the District Court erred in granting their Motion to Dismiss for lack of personal jurisdiction.

3. THE DISTRICT COURT ERRED IN DISMISSING DEFENDANTS JENNIE EDMUNDSEN HOSPITAL AND EMILY GORMAN ON THE GROUNDS OF NONCOMPLIANCE WITH IOWA CODE § 147.140?

A. Preservation of Error

Error is preserved in that Plaintiffs timely resisted Defendants’ Pre-Answer Motions to Dismiss.

B. Scope and Standard of Review

A district court’s ruling on a motion to dismiss is reviewed for correction of errors at law. *Shumate v. Drake University*, 846 N.W.2d 503 (Iowa 2014).

C. Argument

In *Venard v. Winter*, 524 N.W.2d 163, 164 (Iowa 1994), the Iowa Supreme Court was presented with the question of:

can a plaintiff avoid the consequences of not designating experts within the time requirements of Iowa Code section 668.11 (1989) by voluntarily dismissing the action and refileing an identical one?

The answer reached by the Iowa Supreme Court was an unqualified “Yes.” Id.

In *Venard*, the plaintiff filed a legal malpractice action in June 1992. The Defendant answered in September, but the Plaintiff did not timely designate an expert pursuant to Iowa Code § 668.11. The Defendant ultimately filed for summary judgment alleging that the Plaintiff could not prove its claim because plaintiff had not timely designated an expert. Id. Before the district court ruled on the summary judgment motion, plaintiff voluntarily dismissed the action, and five days later filed a nearly identical petition. Id. at 164-65.

On appeal, plaintiff argued that he had had an absolute right to dismiss the first action, and that the dismissal should have no preclusive effect under section 668.11 on a subsequently file action. Id. at 166. The Iowa Supreme Court agreed. Id. (noting that “a party has an absolute right to dismiss an action at any time ‘up until ten days before the trial is scheduled to begin’” and that a dismissal under Iowa R. Civ. P. 215 (now 1.943) is without prejudice). The Supreme Court noted that “A dismissal without prejudice

leaves the parties as if no action had been instituted. It ends the particular case but it is not such an adjudication itself as to bar a new action between the parties.” Id.

The Court also noted that section 668.11 allows a designation beyond the deadlines for good cause and that Section 668.11 “does not suggest that a dismissal of a subsequent suit is the required outcome when (1) a plaintiff does not designate expert witnesses within 180 days of the defendant's answer in an original action, and then (2) voluntarily dismisses the original action. Id. at 167.

The Court noted in fact that:

Even if we were to accept [defendant’s] contention that [plaintiff] dismissed his first action to escape the consequences of a failure to designate experts in time, it would not matter. The motive of the dismissing party plays no part in a voluntary dismissal under [Rule 1.943]. Under the rule, [plaintiff] was entitled to dismiss the first action without prejudice for any reason. The district court erred in concluding otherwise.

Id. at 168.

In conclusion the Court stated

We also hold that [plaintiff] had an absolute right under [rule 1.943] to dismiss without prejudice his first legal malpractice action against [defendant] despite [plaintiff's] failure to designate expert witnesses within the time allowed under section 668.11.

Plaintiffs here had an absolute right to dismiss their claim without prejudice, and doing so left it as if an action had never been filed. The District

Court thus erred in granting Defendants' Jennie Edmundsen Hospital and Emily Gorman's Motion's to Dismiss based on failure to comply with Iowa Code § 147.140 in the first lawsuit.

CONCLUSION

For the reasons stated above, the District Court erred in granting Defendants' several Motions to Dismiss. This decision by the District Court should be reversed and remanded to the District Court for

REQUEST FOR ORAL ARGUMENT

Counsel requests oral argument.

PROOF OF FILING AND SERVICE

The undersigned hereby certifies that he, or a person acting on his behalf, electronically filed the Appellee's Brief on the 11th day of January, 2022, and further certifies that he, or a person acting on his behalf, served the Appellant/Cross-Appellee's Brief on all other parties to this appeal via EDMS.

By: /s/ Dominic F. Pechota
Dominic F. Pechota

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