IN THE SUPREME COURT OF IOWA
SUPREME COURT CASE NO. 22-0405
Pottawattamie County No. LACV121621

JAHN PATRICK KIRLIN and SARA KIRLIN,

Plaintiffs-Appellants,

vs.

BARCLAY A. MONASTER, M.D., CHRISTIAN WILLIAM JONES, M.D., and PHYSICIANS CLINIC, INC. d/b/a METHODIST PHYSICIANS CLINIC–COUNCIL BLUFFS,

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POTTAWATTAMIE COUNTY
HON. MICHAEL HOOPER

FINAL BRIEF OF DEFENDANTS/APPELLEES CHRISTIAN WILLIAM JONES, M.D., and PHYSICIANS CLINIC, INC. d/b/a METHODIST PHYSICIANS CLINIC-COUNCIL BLUFFS

Robert A. Mooney, AT0013181
Betsy Seeba-Walters, AT0013297
Mooney, Lenaghan Westberg Dorn, LLC
450 Regency Parkway, Suite 320
Omaha, Nebraska 68114
Telephone: 402.218.1168
rmooney@mlwdlaw.com
Attorneys for Defendants-Appellees Dr. Christian Jones and Physicians Clinic, Inc.

TABLE OF AUTHORITIES

Cases

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Did the District Court properly rule that Plaintiffs could not voluntarily dismiss their petition and re-file essentially the same claims in a second action to avoid the sanction of dismissal with prejudice for their prior failure to substantially comply with Iowa Code § 147.140?

A. *Venard v. Winter* is inapplicable to the motion for summary at issue on Defendants' motions and on appeal.

Cases:

McHugh v. Smith, 966 N.W.2d 285 (Iowa Ct. App. 2021)

Struck v. Mercy Health Servs.-Iowa Corp., No. 20-1228, 2022 WL 1194011, at *3 (Iowa Apr. 22, 2022)

Venard v. Winter, 534 N.W.2d 163 (Iowa 1994)

Statutes:

Iowa Code § 147.139

Iowa Code § 147.140

Iowa Code § 668.11

Court Rules:

Iowa R. Civ. P. 1.943

B. Contrary to Plaintiffs' argument, the voluntary dismissal right codified in Iowa R. Civ. P. 1.943 is, in practice, not absolute.

Cases:

Burlington & M.R. Co. v. Sater, 1 Iowa 421 (1855)

Darrah v. Des Moines Gen. Hosp., 436 N.W.2d 53 (1989)

Eclipse Lbr. Co. v. City of Waukon, 204 Iowa 278, 213 N.W. 804 (1927)

Kuhn v. Bone, 10 Iowa 392 (1860)

Lunt Farm Co. v. Hamilton, 217 Iowa 22, 250 N.W. 698 (1933)

Lyon v. Craig, 213 Iowa 36, 238 N.W. 452 (1931)

Ryan v. Phoenix Ins. Co., 204 Iowa 655, 215 N.W. 749 (1928);

Witt Mech. Contractors, Inc. v. United Bhd. of Carpenters & Joiners of Am., Loc. 772 (A.F.L.-C.I.O.), 237 N.W.2d 450 (1976)

Statutes:

Iowa Code § 147.140

Iowa Code § 668.11

Court Rules:

Iowa R. Civ. P. 80

Iowa R. Civ. P. 215

Iowa R. Civ. P. 1.413

Iowa R. Civ. P. 1.943

Secondary Sources:

24 *Am.Jur.2d, Dismissal, Discontinuance and Nonsuit*, § 6

27 *C.J.S. Dismissal & Nonsuits* 7.

ROUTING STATEMENT

This appeal should be retained by the Iowa Supreme Court pursuant to Iowa R. App. P. 6.1101(2)(c)-(d) as it presents substantial issues of first impression and fundamental and urgent issues of broad public import requiring ultimate determination by the Iowa Supreme Court.

STATEMENT OF THE CASE

The issue on appeal is whether a plaintiff may voluntarily dismiss a case without prejudice in the face of a dispositive motion which carries a statutory right to dismissal with prejudice during the pendency of the Defendants' motion. The trial court was confronted with two absolute rights – the substantive right of a defendant to dismissal prejudice countering a plaintiff's right to dismiss his or her case prior to ten days before trial. The Court correctly ruled that Defendants had no

meaningful way to secure their rights in the first case after Plaintiff dismissed, but that to allow dismissal to operate as an end-run around the unambiguous intent of § 147.140 would frustrate the intent of the legislature. The trial court's interpretation of the statute was correct and should be affirmed.

Plaintiffs' Petition asserts that Dr. Jones and Dr. Monaster committed medical malpractice in their treatment (or failure to treat) Plaintiff Jahn Kirlin. After the filing of their initial complaint, Plaintiffs had 60 days to file and serve an affidavit signed by an expert witness demonstrating that their case had colorable merit. *See,* Iowa Code § 147.140(1)(a). Plaintiffs failed to substantially comply with this section, then dismissed their case after Defendants filed dispositive motions but before the trial court could rule on Defendants' motions. Plaintiffs re-filed exactly the same case, and the court was confronted with reconciling Defendants' substantive right to dismissal with prejudice based upon Plaintiffs' wrongful conduct in the first case, versus Plaintiffs' right to dismiss without prejudice under Iowa Court Rules. The Court properly dismissed Plaintiffs' re-filed case consistent with the legislative mandate found in Iowa Code § 147.140, and this Court should affirm that decision.

STATEMENT OF FACTS

1. Plaintiffs Jahn Patrick Kirlin and Sara Louise Kirlin (hereinafter "Plaintiffs") filed a lawsuit, Case No. LACV120936 (hereinafter "first case"), on

September 11, 2020 against Defendants Dr. Barclay A. Monaster, M.D. (hereinafter "Dr. Monaster"), Dr. Jones, and Physicians Clinic, Dr. Dan C. Kjeldgaard (hereinafter "Dr. Kjeldgaard") and Advanced Chiropractic Care, Inc. (hereinafter "Advanced Chiropractic"). App. 468-472.

2. Plaintiffs alleged Defendant Dr. Jones was negligent by failing to use the care, skill, and knowledge ordinarily possessed and used by family physicians, was negligent in his care and treatment of Jahn, resulting in compensatory damages and loss of consortium. App. 471.

3. Plaintiffs alleged similar claims of negligence against Dr. Monaster and Dr. Kjeldgaard. App. 471.

4. Plaintiffs' claims in the first case against Physicians Clinic alleged common law vicarious negligence arising from the acts or omissions of its employed physicians, Dr. Monaster and Dr. Jones. App. 470-472.

5. Plaintiffs' claims in the first case against Advanced Chiropractic alleged similar claims of common law vicarious negligence arising from the acts or omissions of its employed physician, Dr. Kjeldgaard. App. 471-472

6. Plaintiffs filed an Amended Petition on September 14, 2020. App. 462-466.

7. Plaintiffs' Amended Petition alleged identical claims of negligence and vicarious negligence against Dr. Jones, Dr. Monaster, Physicians Clinic, Dr. Kjeldgaard, and Advanced Chiropractic. App. 462-466.

8. On October 2, 2020, Plaintiffs filed a Certificate of Merit Affidavit in the first case signed by Dr. David Segal relating to the claim against Dr. Jones. App. 444-450.

9. Dr. Segal is board certified in neurological surgery, not chiropractic care or family practice. App. 446.

10. The record from the trial court does not indicate that Dr. Segal's affidavit alleging negligence by Dr. Jones or Physicians Clinic was properly served on either Dr. Jones' and Physicians Clinic's counsel or on Dr. Jones or Physicians Clinic directly. App. 445; App. 458-459.

11. Dr. Kjeldgaard is a chiropractor, and both Dr. Jones and Dr. Monaster are family practice physicians. App. 462-463; App. 367; App. 339; App. 481-485.

12. Plaintiffs failed to file any supplemental or additional Certificate of Merit Affidavit in the first case by the statutory deadline of December 6, 2020. App. 386-387.

13. Defendants Dr. Jones and Physicians Clinic filed a Motion for Summary Judgment in the first case as a result of Plaintiffs' failure to file and

properly serve a Certificate of Merit Affidavit which complied with Iowa Code § 147.140 and §147.139. App. 380-385.

14. Dr. Monaster, Dr. Kjeldgaard, and Advanced Chiropractic filed similar Motions on December 22, 2020. App. 333-338; App. 368-374.

15. Plaintiffs filed a voluntary dismissal of the first case on December 28, 2020, prior to the trial court holding a hearing on Defendants' motions. App. 332.

16. On April 14, 2021, Plaintiffs filed this lawsuit, a second case asserting ostensibly the same claims against Dr. Jones, Dr. Monaster and Physicians Clinic as were previously asserted in the first case. App. 7-10.

17. Plaintiffs' Petition in this second case alleges common law medical negligence, and vicarious liability against Dr. Jones and Physicians Clinic, the same claims raised in the first case. App. 8-9.

18. Defendants moved to dismiss the Plaintiffs' claim prior to answering [App. 11-15; App. 47-56]; however, the trial court denied these motions as the Court was confined to the four corners of the Plaintiffs' Petition. App. 127-130.

19. Defendants filed an answer [App. 131-135], then swiftly moved the Court for an Order granting Summary Judgment, asserting that they had a substantive right to dismissal with prejudice of Plaintiffs' Medical Malpractice claims as asserted. App. 168-170.

20. On January 18, 2022, the trial court entered an Order granting Summary Judgment in Defendants' favor and dismissing Plaintiffs' Petition with prejudice. App. 288-294.

21. Plaintiffs timely filed a motion to reconsider before the trial court [App. 295-304], which Defendants resisted. App. 305-311; App. 312-318. On February 23, 2022, the trial court denied Plaintiffs' motion to reconsider and Plaintiffs timely filed this appeal. App. 325-326.

ARGUMENT

I. Issue Preservation

These Defendants agree that Plaintiffs' arguments have been preserved.

II. Scope and Standard of Review

These Defendants agree with Plaintiffs' statement of the scope and standard of review.

III. The District Court properly ruled that Plaintiffs could not voluntarily dismiss a petition and re-file essentially the same claims in a second action to avoid the sanction of dismissal for failing to substantially comply with Iowa Code § 147.140.

A. *Venard v. Winter* is inapplicable to the motion for summary at issue on Defendants' motions and on appeal.

Plaintiffs' citation to *Venard v. Winter*, 534 N.W.2d 163 (Iowa 1994) is misplaced, and the District Court properly found that this Court's reasoning in applying Iowa Code § 668.11 was not instructive on a case involving Iowa Code §

147.140. Plaintiffs continue to rely on the misplaced notion that § 668.11 (concerning the timing of expert designation in malpractice cases) is analogous to §147.140; however, the General Assembly was deliberate in its drafting of § 147.140 to create substantive rights for healthcare defendants and penalties for Plaintiffs who fail to comply with its mandates. The trial court recognized the distinctions in the plain language of Sections 147.140 and 668.11 and found the reasoning in *Venard* inapplicable to the case at bar given those plain distinctions coupled with the rules of statutory construction.

This Court recently addressed § 147.140 for the first time in *Struck v. Mercy Health Servs.-Iowa Corp.*, No. 20-1228, 2022 WL 1194011, at *3 (Iowa Apr. 22, 2022), concluding "that the legislature enacted section 147.140 to provide a mechanism for early dismissal with prejudice of professional liability claims against healthcare providers when supporting expert testimony is lacking." *Id.* In *Struck*, this Court addressed the situation wherein a plaintiff failed to timely file and serve a certificate of merit affidavit, resulting in the dismissal by the district court of plaintiff's claims of professional negligence and negligent hiring and supervision of professional staff. The "fighting issue" was whether the dismissal of those claims based upon § 147.140, resulted in dismissal of Plaintiff's entire case. At a crucial point in the *Struck* opinion, this Court addressed the interplay between Iowa Code Sections 668.11, and 147.140 relating to expert disclosures in

professional negligence cases. This Court specifically favored the Court of Appeals' holding in *McHugh v. Smith*, 966 N.W.2d 285, (Iowa Ct. App. 2021), stating:

> while section 668.11 allows the exclusion of untimely expert testimony, section 147.140 provides an earlier and more complete remedy when the plaintiff lacks an expert: dismissal with prejudice. We agree with the court of appeals' observation that "[s]ection 147.140 gives the defending health professional a chance to arrest a baseless action early in the process if a qualified expert does not certify that the defendant breached the standard of care."

(emphasis supplied) *Struck v. Mercy Health Servs.-Iowa Corp*., No. 20-1228, 2022 WL 1194011, at *5 (Iowa Apr. 22, 2022), *citing*, *McHugh v. Smith*, 966 N.W.2d 285, 289–90 (Iowa Ct. App. 2021). Perhaps anticipating this Court's ruling in *Struck*, the trial court in the case at bar cited to *McHugh* for the distinction between the sanctions a court must impose for a Plaintiff's non-compliance with the provisions of 668.11 and 147.140:

> In comparison with the more general Section 668 for expert witnesses, the Court of Appeals in *McHugh* emphasized, "Section 147.140 is more narrowly tailored to simply require the certificate of one expert

> ... to show that the plaintiff's claim at least has colorable merit…[a]nd it is consistent with the provision allowing dismissal with prejudice, a remedy our courts have traditionally considered a 'harsh' consequence for noncompliance." *Id.* at 289. The purpose of this harsh consequence is to give the defending health professional a chance to arrest a baseless action early in the process if a qualified expert does not certify that the defendant breached the standard of care. *Id*. (internal citation omitted). Furthermore, this qualifying expert who signs the certificate has to "meet the qualifying standards of section 147.139," including licensure, practice field, board certification in a specialty, and other criteria. *Id.* at 290.

[Trial Court Order and Judgment at 3-4 of 7] Certainly, the General Assembly intended for sanctions to be imposed for a party's failure to timely file expert witness designations under 668.11; however, the potential sanction available is substantially different than the sanction available under § 147.140. The clear intent of the General Assembly with respect to § 147.140 was to vest in healthcare defendants the substantive right to dismissal with prejudice upon the occurrence of two things: 1) Plaintiff's failure to timely file an affidavit signed by a qualified expert; and 2) Defendant's filing of a dispositive motion.

In the present case, Plaintiffs failed to substantially comply with § 147.140 by timely filing and serving an affidavit signed by a qualified expert witness. The record in the first case established that although Plaintiffs filed with the court certificate of merit affidavits signed by Dr. David H. Segal, M.D., J.D., the record is devoid of evidence that these affidavits – in particular that which suggested a breach of the standard of care by Dr. Jones – were served on either Dr. Jones or Physicians Clinic or their counsel. More important, the record in the first case demonstrated clearly that Dr. Segal did not meet "the qualifying standards of § 147.139" as required by § 147.140, in that he is a board-certified neurosurgeon, while Dr. Jones and Dr. Monaster are board-certified in Family Practice. Section 147.140 has a mandatory service element requiring a Plaintiff in a malpractice case to serve their certificate of merit affidavit upon the healthcare provider or counsel within the deadline provided. Plaintiffs did not do so here. The failure to serve an affidavit of a qualified healthcare provider meeting the statutory elements is not substantial compliance with the statute as that term has been interpreted by the appeals courts previously. Upon the filing of motions to dismiss by Dr. Jones, Dr. Monaster, and Physicians Clinic, their substantive right to dismissal attached. Certainly, if Iowa Code § 668.11 had anything to do with the issue before the trial court and before this Court, then *Venard*, might have some application. It does not. The General Assembly was unambiguous in the disparate sanctions it imposed for

a plaintiff's noncompliance with § 668.11 and § 147.140. Defendants in the present case had affirmatively sought enforcement of their legislatively directed, substantive right to dismissal with prejudice, and Plaintiffs' dismissal was nothing more than an effort to avoid the harsh sanction the statute imposes. The trial court appropriately enforced the statute's unambiguous mandate and correctly dismissed Plaintiffs' claims with prejudice.

Defendants were absolutely entitled to dismissal with prejudice of Plaintiffs' medical malpractice claims against them as a sanction for Plaintiffs' clear non-compliance with §147.140 in the first case. Plaintiffs' sole means to avoid such dismissal with prejudice was to attempt to subvert the authority of the Court to enforce the legislatively mandated sanction by dismissing the case without prejudice after Defendants' substantive rights attached. As will be shown below, Plaintiffs' Rule 1.943 dismissal right was not absolute and the trial court appropriately weighed Defendants' substantive right to dismissal with prejudice against the Plaintiffs' right to dismiss and properly granted Defendants summary judgment.

B. Contrary to Plaintiffs' argument, the voluntary dismissal right codified in Iowa R. Civ. P. 1.943 is, in practice, not absolute.

Plaintiffs argued to the court below and to this Court that their right to dismiss without leave of the Court pursuant to Rule 1.943 is "absolute." Certainly, this Court has used the word "absolute" to describe a plaintiff's right to voluntarily dismiss; however, deeper analysis shows that the Court has frequently qualified the purportedly "absolute" right afforded by the former Rule 215, now § 1.943. For example, in *Witt Mech. Contractors, Inc. v. United Bhd. of Carpenters & Joiners of Am., Loc. 772 (A.F.L.-C.I.O.),* 237 N.W.2d 450 (Iowa 1976), the Plaintiff voluntarily dismissed its petition shortly after filing and securing a request for a restraining order. Defendant filed a motion seeking to vacate Plaintiff's dismissal and essentially seeking to force Plaintiff to try its claims as pled. The trial court denied defendant's motion, and defendant appealed. In affirming the trial court's denial of defendant's motion to reinstate, this Court stated:

> "It is well settled a plaintiff has an absolute right to dismiss his cause of action at any time before final submission thereof to the jury, or the court when the trial is without a jury. The effect of such dismissal when defendant's pleadings are solely defensive is final and terminates the jurisdiction of the court thereof."

(emphasis supplied) *Witt Mech. Contractors, Inc. v. United Bhd. of Carpenters & Joiners of Am., Loc. 772 (A.F.L.-C.I.O.)*, 237 N.W.2d 450, 451 (Iowa 1976), *citing,*

Lunt Farm Co. v. Hamilton, 217 Iowa 22, 27, 250 N.W. 698, 701; *Lyon v. Craig*, 213 Iowa 36, 40, 238 N.W. 452, 454; *Ryan v. Phoenix Ins. Co.*, 204 Iowa 655, 656, 215 N.W. 749, 750 (1928); *Eclipse Lbr. Co. v. City of Waukon*, 204 Iowa 278, 283, 213 N.W. 804, 807 (1927). *See also,* 24 *Am.Jur.2d, Dismissal, Discontinuance and Nonsuit*, § 6; 27 *C.J.S. Dismissal & Nonsuits* 7, p. 325. This Court again stressed the "absolute" nature of Plaintiff's right to dismiss as it has in cases as far back as 1860 (*See, Kuhn v. Bone,* 10 Iowa 392, 392 (1860)); however, in *Witt*, the Court qualified the right in the second sentence noting "when defendant's pleadings are solely defensive."

Certainly, where a defendant has filed a responsive cross-petition, or counterclaim, Plaintiff's voluntary dismissal of her claim does not result in dismissal of the defendant's claims. *See, Burlington & M.R. Co. v. Sater*, 1 Iowa 421, 421 (1855)("When a defendant claims a set-off, or sets up a cross claim, or demand, the suit cannot be dismissed, so as to deprive him of his right to be heard in his cross action."). In the present case, Defendants positions had moved from solely defensive denials of Plaintiffs' claims as pled, to the affirmative assertion of substantive rights to dismissal with prejudice, upon the filing of their motions to dismiss under § 147.140(6). The affirmative assertion of substantive rights changes the stance of the pleadings from merely defending against Plaintiffs' claims to asserting an affirmative right to substantive relief.

This Court recognized a similar exception to the "absolute" right of plaintiffs to dismiss without prejudice in *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d 53 (1989). In *Darrah* this Court held that even though Plaintiff could dismiss her cause of action without prejudice under Rule 1.943, the trial court retained jurisdiction to address a motion filed by the defendant after the dismissal, seeking sanctions under Rule 1.413, the successor to Rule 80. The *Darrah* Court recognized a Plaintiff's absolute right to dismiss an action without prejudice; however, the Court recognized the need for an exception "that retains the court's authority to adjudicate the collateral problem created by prior wrongful conduct of the dismissing party warranting rule 80(a) sanctions." *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d 53, 55 (1989). Where the dismissing party's prior wrongful conduct warranted action by the Court, the *Darrah* Court created an exception allowing the Court to remedy the substantive right of the defendant to secure redress, even though the plaintiff is allowed to dismiss her case.

As the trial court addressed in its Order, once Plaintiffs herein dismissed their case, the Defendants were left with no remedy to address their substantive right to dismissal with prejudice due to Plaintiffs' failure to comply with the mandates of § 147.140. As this Court has noted, "grants of voluntary dismissal pursuant to rule 215 (now §1.943) are inherently unreviewable." *Montgomery Ward Dev. Corp. by Ad Valorem Tax v. Cedar Rapids Bd. of Rev.*, 488 N.W.2d

436, 444 (Iowa 1992), *overruled on other grounds by, Transform, Ltd. v. Assessor of Polk Cnty., Iowa*, 543 N.W.2d 614 (1996). Once Plaintiffs dismissed, there was no final appealable Order for Defendants to appeal to seek the enforcement of their substantive right to dismissal with prejudice found in § 147.140. Likewise, the trial court no longer had a case in which Defendants could file a motion to seek enforcement of their right to dismissal with prejudice. Furthermore, there would be no reason for Defendants to file a motion in the first case, for as far as they knew Plaintiffs had simply abandoned their claim and no further lawsuit was forthcoming.

It was only once Plaintiffs filed this second that Defendants became aware that Plaintiffs had attempted an "end-run" around the legislative mandate imposing the sanction of dismissal with prejudice upon Plaintiffs' failure to timely file and serve a certificate of merit affidavit and would attempt to pursue the same claims against them that were subject to dismissal with prejudice. Once Plaintiffs re-filed, Defendants sought dismissal at the first opportunity. However, on their pre-answer motion to dismiss, the trial court could not take judicial notice of the pleadings in the first case. Upon filing their answer, the Defendants took their first opportunity to seek dismissal by moving for summary judgment based upon the earlier wrongful conduct of Plaintiffs. As stated above, after the *Darrah* decision, this Court had the opportunity to overturn *Darrah* in *Venard*. However, the Court noted

the distinction between a statute like § 668.11 - which creates only procedural rights and has a very limited remedy of striking the non-disclosed expert - versus those which create substantive rights and sanctions, such as Rule 1.413 and § 147.140. As stated previously, the legislature did not intend § 668.11 to convey to defendants substantive rights of dismissal with prejudice upon the plaintiff's failure to act timely or properly. On the other hand, § 147.140 conveys the legislature's plain intent that upon conduct by the plaintiff not in compliance with the section, dismissal of plaintiff's action with prejudice is mandatory and conveys a substantive right to dismissal upon the defendant.

In the present case, the trial court appropriately followed the precent set in *Darrah* and addressed the issue of Plaintiffs' failure to substantially comply with § 147.140 in the first case. The legislature was not ambiguous in drafting § 147.140 to impose burdens on Plaintiffs to promptly support their plead malpractice claim with an expert from the same field as the defendants they've sued. The legislature also unambiguously imposed a sanction upon plaintiffs who fail to comply with the provisions of this section; a sanction which is not merely procedural, but substantive and punitive. Where - as here – Plaintiffs fail to substantially comply, upon the filing of a dispositive motion, the defendants have met all the requirements to acquire a substantive right to dismissal with prejudice. Allowing Plaintiff to dismiss without prejudice works to frustrate the legislative purpose

behind § 147.140. Plaintiffs' motivation behind dismissal is irrelevant; but the *Darrah* Court's holding makes clear that even after such a dismissal as this, the Court retains jurisdiction to impose sanctions for wrongful conduct prior to the dismissal.

The trial court did not err in addressing the conflict between Plaintiffs' right to dismiss their case, and Defendants' substantive right to dismissal with prejudice stemming from Plaintiff's prior wrongful conduct. The trial court relied on this court's precedent found in *Darrah* to enforce the legislative mandate that Plaintiffs' wrongful conduct results in dismissal with prejudice to the filing of a new action. The trial court's grant of summary judgment to defendants must be affirmed.

CONCLUSION

Plaintiffs' prior failure to comply with § 147.140 required dismissal with prejudice and the court did not err in granting Defendants' motions for summary judgment. Dr. Jones and Physicians Clinic respectfully request that this Court affirm the trial court's judgment in Defendants' favor and for such other relief as the Court deems just and equitable.

REQUEST FOR ORAL ARGUMENT

Defendants/Appellees Dr. Christian William Jones and Physicians Clinic hereby request oral argument on the case before the Court.

CHRISTIAN WILLIAM JONES, M.D.,
AND PHYSICIANS CLINIC, INC.,
Defendants/Appellees.

By: */s/ Robert A. Mooney*
Robert A. Mooney, AT0013181
Betsy Seeba-Walters, AT0013297
Mooney, Lenaghan Westberg Dorn, LLC
450 Regency Parkway, Suite 320
Omaha, Nebraska 68114
Telephone: 402.218.1168
rmooney@mlwdlaw.com

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 point type and contains 3,675 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ *Robert A. Mooney* — June 13, 2022
Signature — Date

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies this brief was electronically filed and served on the 16th day of May, 2022, upon the following persons and upon the Clerk of the Supreme Court using the Electronic Document Management System, which will send notification of electronic filing (constituting service):

/s/ Robert A. Mooney

ATTORNEY COST CERTIFICATE

I hereby certify the cost of printing the foregoing Final Brief of Defendant/Appellees Dr. Christian William Jones and Physicians Clinic was the sum of $0.00.

/s/ Robert A. Mooney
Signature

June 13, 2022
Date