

IN THE SUPREME COURT OF IOWA

No. 21-1666

MARC HARDING d/b/a HARDING LAW OFFICES

Plaintiff-Appellee,

vs.

RICK SASSO, M.D. d/b/a INDIANA SPINE GROUP

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF POLK COUNTY

NO. LA CL150488

THE HONORABLE GEANIE VAUDT

**DEFENDANT-APPELLANT'S RESISTANCE TO APPELLEE'S
APPLICATION FOR FURTHER REVIEW OF IOWA COURT OF
APPEALS DECISION DATED DECEMBER 21, 2021**

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the Court of Appeals correctly followed the precedent of this Court and the United States Supreme Court holding that Defendant-Appellant Rick Sasso, M.D. d/b/a Indiana Spine Group, (“Sasso”) was not subject to the general and specific jurisdiction of Iowa’s courts when the uncontroverted facts are: (a) the plaintiff attorney Marc Harding (“Harding”) solicited Sasso, an Indiana-based spine surgeon, in Indiana, to review medical records for a potential medical malpractice case Harding had not filed and never did file; (b) Harding forwarded \$10,000 to Sasso, in Indiana, without any written agreement; (c) Harding forwarded medical records to Sasso, in Indiana; (d) Sasso reviewed the records, in Indiana; (e) Harding called Sasso, in Indiana, for Sasso’s opinion; (f) Sasso informed Harding that Sasso did not believe the medical records showed a breach of the standard of care; and (f) Harding demanded a refund of the funds Sasso had deposited in his bank, in Indiana.

STATEMENT RESISTING FURTHER REVIEW

The Court of Appeals’ decision was correct and well rooted in the precedents of this Court and the United States Supreme Court. The unanimous opinion of *Walden v. Fiore*, 571 U.S. 277, 134, S. Ct. 1115, 1122 (2014) requires that a “defendant himself” create sufficient jurisdictional contacts with Iowa to comply with the due process clause of the 14th Amendment of the United States

Constitution. That did not happen here. The uncontroverted facts demonstrate that plaintiff Harding solicited Sasso, a practicing spine surgeon, in Sasso's home state of Indiana seeking an expert opinion about a potential medical malpractice case Harding was investigating in Iowa. The Court of Appeals properly cited *Walden* for the proposition that a "defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction" and properly found that "the doctor's claim is constitutional at its core." (Opinion, page 6 of 14). Sasso does not have the "certain minimum contacts" with Iowa necessary to not offend "traditional notions of fair play and substantial justice." (Opinion, page 7 of 14).

STATEMENT OF FACTS

The Court of Appeals properly found the following uncontroverted facts controlled the Constitutional analysis at issue here:

Attorney Harding called Sasso in February 2021 to solicit Sasso's expertise relating to injuries suffered to his client's esophagus during cervical spine surgery in Iowa. (Opinion, p. 2 of 14). Harding had already shown the patient's records to a Florida doctor who recommend pursuing the case, based on that doctor's misperceived delay between the spine surgery and later repair surgery of the esophagus. (Opinion, footnote 2, page 2 of 14). After their phone call, Harding forwarded an electronic link to the patient's medical chart and sent Sasso a check for \$10,000. (Opinion, p. 2 of 14). There was no written contract. *Id.* In early

March 2021, after reviewing the medical chart, Sasso reported to Harding that there was “no case” for malpractice. *Id.* After the second call, Harding declined to bring any case in Iowa for medical malpractice. *Id.*

The Court of Appeals specifically noted that that Harding and Sasso “disagree on the critical details of the consultation” and spelled out the details of that disagreement. (Opinion, p. 3-4 of 14).

**WHY FURTHER REVIEW IS NOT NECESSARY OR
APPROPRIATE AND BRIEF IN SUPPORT OF RESISTANCE**

First, Harding appears to be claiming a right to further review pursuant to Iowa R. App. P. 6.1103(b)(2) asserting that this matter involves a substantial question of Constitutional law that has not been settled by this Court. While personal jurisdictional issues involve substantial questions of Constitutional law, these issues have been decided and settled by this Court and by the Court of Appeals, without further review, for decades. Iowa R. App. P. 6.1103(b) states “[a]n application for further review will not be granted in normal circumstances.” This case presents only the “normal circumstances” of a losing party seeking second level appellate review.

Second, the Court of Appeals analyzed the extensive body of personal jurisdiction case law correctly. *Walden v. Fiore*, 571 U.S. 277, 134 S.Ct. 1115 (2014) and this Court’s prior decision of *Ostrem v. Prideco Secure Loan Fund, LP*, 841 N.W.2d 882 (Iowa 2014) are consistent. It is well established that, by itself, a

contract between an Iowa plaintiff and an out-of-state defendant does not establish sufficient minimum contacts to permit Iowa courts to exercise specific personal jurisdiction. *Ostrem*, 841 N.W.2d at 892, citing *Burger King Corp., v. Rudzewicz*, 471 U.S. 462, 478, 105 S. Ct. 2174, 2185, 85 L. Ed. 2d 528, 544-45(1985), *Ross v. First Saving Bank of Arlington*, 675 N.W.2d 812, 815 (Iowa 2004); *Cascade Lumber Co. Edward Rose Bldg. Co.*, 596 N.W.2d 90, 92 (Iowa 1999). Instead, it is essential to examine (1) the terms of the contract, (2) the parties' actual course of dealings, (3) their prior negotiations, and (4) contemplated future consequences.

Id.

The Court of Appeals properly found that all four prongs supported dismissal here. (Opinion 9-11 of 14). There was no written contract. There was no malpractice case already filed, or even ultimately filed. Sasso's assignment was to review records he had not yet seen and inform Harding if Sasso believed there was a case for medical malpractice. The consequences of Sasso's analysis while in Indiana helped Harding decide it was prudent to not file any case at all.

The Court of Appeals then properly found that *Walden* compelled dismissal. (Opinion, page 12 of 14) ("*Walden* forecloses Harding's claim that their oral agreements was sufficient to subject Dr. Sasso to personal jurisdiction in Iowa."). In *Walden*, Justice Thomas reviewed prior minimum contacts decisions of the Court, including *Worldwide Volkswagen Corp. v. Woodson*, and held:

For a State to exercise jurisdiction consistent with due process, the defendant's suit related conduct must create a substantial connection with the forum State. Two related aspects of this necessary relationship are relevant in this case.

First, the relationship must arise out of contacts that the "defendant *himself*" creates with the forum State. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). Due process limits the State's adjudicative authority principally protect the liberty of the non-resident defendant – not the convenience of plaintiffs or third parties. *See Worldwide Volkswagen., supra*, at 291-292, 100 S.Ct. 559. We have consistently rejected attempts to satisfy the defendant-focused "minimum contacts" inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

Walden, 134 S.Ct. at 1122 (emphasis in original).

In his brief, pages 22 to 24, Harding cited four eighth circuit federal cases analyzing *Walden*: (a) *Morningside Church, Inc. v. Rutledge*, 9 F.4th 615 (8th Cir. 2021); (b) *Pederson v. Frost*, 951 F.3d 977 (8th Cir. 2020); (c) *Deloney v. Chase*, 755 Fed. Appx 592 (8th Cir. 2018); and (d) *Fastpath, Inc. v. Arbela Techs. Corp.*, 760 F.3d 816 (8th Cir. 2014). Citing *Walden* with approval, all four cases affirmed dismissal for lack of personal jurisdiction. *Morningside Church*, 9 F.4th at 620; *Pederson*, 951 F.3d at 979; *Deloney*, 755 Fed. Appx at 595; *Fastpath*, 760 F.3d at 820. These facts of these cases are not distinguishable from what took place here.

CONCLUSION

Harding has presented no grounds that would merit granting further review. The Court of Appeals thoroughly reviewed binding precedent of the United States Supreme Court and the minimum contact cases of this Court to reach the outcome compelled by the 14th Amendment. Personal jurisdiction for this dispute does not exist in Iowa.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
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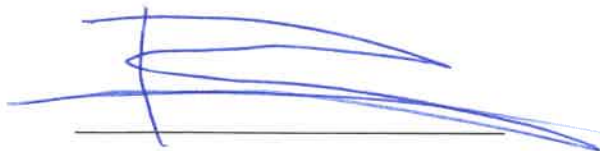
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January 17, 2023

CERTIFICATE OF SERVICE AND FILING

I certify that on January 17th, 2023 the foregoing document was electronically filed with the Court using the EDMS system and served to the parties listed by electronic means through the EDMS system.

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