IN THE SUPREME COURT OF IOWA

---

Supreme Court No. 22-0759

---

ALEXANDRIA M. ANDERSON, Individually and as Administrator of the ESTATE OF CARTER JAY WILLIAM ANDERSON, and TERRY ANDERSON, Individually,

Plaintiffs-Appellants,

v.

STATE OF IOWA,

Defendant-Appellee.

---

APPEAL FROM THE IOWA DISTRICT COURT FOR LINN COUNTY
LACV096914

---

# PLAINTIFFS-APPELLANTS' FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

---

Edward J. Prill AT#0012435
Andrew Mahoney AT#0012329
CROWLEY & PRILL
3012 Division Street
Burlington, Iowa 52601
Phone: 319.753.1330
Fax: 319.752.3934
Email: eprill@cbp-lawyers.com
amahoney@cbp-lawyers.com
**ATTORNEYS FOR PLAINTIFFS-APPELLANTS**

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases** **Page(s)**

**Other Authorities:** **Page(s)**

## STATEMENT OF ISSUES

### I. THE DISTRICT COURT ERRED WHEN IT GRANTED DEFENDANT'S MOTION TO DISMISS FOR FOUR REASONS

*U.S. Bank v. Barbour, 770 N.W.2d 350, 353 (Iowa 2009).*

*Rieff v. Evans, 630 N.W.2d 278, 284 (Iowa 2001).*

*Cincinnati Ins. Companies v. Kirk, 801 N.W.2d 856, 858 (Iowa Ct. App. 2011).*

*Weizberg v. City of Des Moines, 923 N.W.2d 200, 217 (Iowa 2018)*

*Riediger v. Marrland Development Corp., 253 N.W.2d 915, 916 (Iowa 1977)*

*Foodservice Distribution, Inc. v. Iowa Educators Corp., 812 N.W.2d 600, 604 (Iowa 2012).*

*Segura v. State, 889 N.W.2d 215, 227 (Iowa 2017);*

*Schneider v. State 789 N.W.2d*

Other:

Iowa Code 669.19

Iowa Admin. Code 543-1.7(25A)

Iowa R. Civ. P. 1.206

#### 1. THE DISTRICT COURT ERRED WHEN IT FOUND THAT MR. & MRS. ANDERSON'S LOSS OF CONSORTIUM CLAIMS WERE NOT SUFFICIENT FOR PRESENTMENT AND ADMINISTRATIVE EXHAUSTION.

*Swanger v. State, 445 N.W.2d 344, 349-350 (Iowa 1989)*

*Segura v. State, 889 N.W.2d 215, 226 (Iowa 2017)*

*Schneider v. State, 789 N.W.2d 138, 145 (Iowa 2010).*

*MC Holdings, L.L.C. v. Davis Cty. Bd. of Review, 830 N.W.2d 325, 328 (Iowa 2013).*

*McFadden v. Department of Transportation, 877 N.W.2d 119, 120 (Iowa 2016),*

*Gordon v. Doden, 261 Iowa 285, 288–89, 154 N.W.2d 146, 148 (1967)*

*Madison v. Colby, 348 N.W.2d 202 (Iowa 1984*

*Bloomquist v. Wapello Cnty., 500 N.W.2d 1 (Iowa 1993)*

*Est. of Miller v. United States, 157 F. Supp. 2d 1071 (S.D. Iowa 2001).*

*Kulish v. W. Side Unlimited Corp., 545 N.W.2d 860, 861–62 (Iowa 1996).*

*Rucker v. United States Dep't of Labor 798 F.2d 891 (6th Cir. 1986);*

*Conklin v. State, 863 N.W.2d 301 (Iowa Ct. App. 2015);*

*State v. Short, 851 N.W.2d 474, 481 (Iowa 2012).*

*Swizdor v. United States, 581 F.Supp. 10, 11 (S.D.Iowa 1983)*

*Bellecourt v. United States, 994 F.2d 427, 430 (8th Cir.1993)*

*Manko v. United States, 830 F.2d 831 (8th Cir. 1987);*

*Poynter v. United States, 55 F. Supp. 2d 558 (W.D. La. 1999),*

*DuPont v. United States, 980 F. Supp. 192 (S.D.W. Va. 1997).*

*Wojciechowicz v. United States, 474 F. Supp. 2d 283, 286 (D.P.R. 2007);*

*Carroll v. United States, 227 F. Supp. 3d 1242, 1245 (W.D. Okla. 2017)*

*Hiatt v. United States, 910 F.2d 737 (11th Cir. 1990)*

Other:

Iowa Code 669.19

Iowa Admin. Code 543-1.7(25A)

Iowa R. Civ. P. 1.206

**2. THE DISTRICT COURT ERRED WHEN IT FOUND THAT THE ATTORNEY GENERAL HAD NO DUTY TO INVESTIGATE PLAINTIFFS' CLAIM.**

*Schneider v. State*, 789 N.W.2d 138, 145 (2010)

Charles Gabus Ford, Inc. v. Iowa State Hwy. Comm'n, *224 N.W.2d 639, 648 (Iowa 1974).*
*Segura v. State, 889 N.W.2d 215, 226* (Iowa 2017)

*Welp v. Iowa Dep't of Revenue, 333 N.W.2d 481, 483 (Iowa 1983)*

Other:

Iowa Code 669.19

Iowa Admin. Code 543-1.7(25A)

Iowa R. Civ. P. 1.206

**3. THE DISTRICT COURT ERRED WHEN IT HELD THAT PARENTS *ALONE* HAVE THE RIGHT TO FILE A LOSS OF PARENTAL CONSORTIUM CLAIM DUE TO RULE 1.206.**

*Roth v. Evangelical Lutheran Good Samaritan Soc., 886 N.W.2d 601, 606 (Iowa 2016);*

*Madison v. Colby, 348 N.W.2d 202, 207 (Iowa 1984)*

*Roth v. Evangelical Lutheran Good Samaritan Soc., 886 N.W.2d 601, 608 (Iowa 2016);*

*Troester v. Sisters of Mercy Health Corp., 328 N.W.2d 308, 312 (Iowa 82)*

*State v. Izzolena, 609 N.W.2d 541, 546 n. 2 (Iowa 2000);*

*Matter of Estate of Voss, 553 N.W.2d 878, 881 (Iowa 1996).*

*Weitl v. Moes, 311 N.W.2d 259, 264 (Iowa 1981)*

*Ready Mix, Inc. v. Illinois Cent. Gulf R. Co., 335 N.W.2d 148 (Iowa 1983).*

Other:

Iowa Code 633.336

Iowa R. Civ. P. 1.206

Iowa Rules of Electronic Procedure

**4. THE DISTRICT COURT ERRED WHEN IT HELD THAT MRS. ANDERSON'S APPOINTMENT AS ADMINISTRATOR DID NOT RELATE BACK TO THE TIME OF FILING.**

*Drahaus v. State, 584 N.W.2d 270 (1998)*

*Matter of Est. of Voss, 553 N.W.2d at 880-81.*

*Est. of Butler ex rel. Butler v. Maharishi Univ. of Mgmt., 460 F. Supp. 2d 1030 (S.D. Iowa 2006)*

*Sioux City v. W. Asphalt Paving Corp., 223 Iowa 279, 271 N.W. 624, 631 (1937).*

*Pearson v. Anthony, 218 Iowa 697, 702–03, 254 N.W. 10, 13–14 (1934)*

*Est. of Dyer v. Krug, 533 N.W.2d 221, 223 (Iowa 1995)*

Other:

Iowa R. Civ. P. 1.206

Iowa Rules of Electronic Procedure Chapter 16.405(2);

§ 70:6. Motion to seal confidential materials, 8 Ia. Prac., Civil Litigation Handbook § 70:6.

## II. THE DISTRICT COURT ERRED WHEN IT DENIED AN UNRESISTED MOTION TO SEAL RECORD EXHIBIT

*Meier v. Senecaut, 641 N.W.2d 532, 537 (Iowa 2002)*

*Tamco Pork II, LLC v. Heartland Co-op, 876 N.W.2d 226, 231 (Iowa Ct. App. 2015)*

*Pexa v. Auto Owners Ins. Co., 686 N.W.2d 150, 159 (Iowa 2004)*

Other:

Iowa Rules of Electronic Procedure Chapter 16.405(2);

§ 70:6. Motion to seal confidential materials, 8 Ia. Prac., Civil Litigation Handbook § 70:6.

## ROUTING STATEMENT

The Iowa Supreme Court should retain this case because:

A. This appeal presents substantial issues of first impression as to whether presentment of a claim to the State Appeal Board under the ITCA requires more than disclosing the amount of damages and the general allegations and theories against the State;

B. This appeal presents substantial issues of first impression as to whether a claimant may achieve administrative exhaustion under Iowa Code 669.5(1) by withdrawing an ITCA claim from the State Appeal Board 6 months after it is filed when the State Appeal Board takes no action;

C. This appeal presents substantial issues of first impression as to whether the Iowa Attorney General has any duty at all to investigate ITCA claims;

D. This appeal presents substantial issues of first impression as to whether parents making loss of consortium claims due to the death of a minor child are the sole type of consortium claimants that are prohibited from having their claims brought by an administrator because of Iowa R. Civ. P. 1.206;

E. This appeal presents substantial issues of first impression as to whether the appointment of an administrator just weeks after a claim was

submitted relates back to the time of submission while the claim is still pending.

## STATEMENT OF THE CASE

### A. Nature of the Case.

This is an appeal from the Linn County District Court's grant of Defendant State of Iowa's Motion to Dismiss the Plaintiffs' claims of professional negligence for the treatment provided to Carter Anderson, a minor child, by the University of Iowa Hospitals and Clinics. Carter Anderson, the minor child and now deceased, is referred to as "decedent". Decedent's parents are Alexandria Anderson ("Mrs. Anderson") and Terry Anderson ("Mr. Anderson). Mrs. Anderson is the administrator of decedent's estate. Mrs. Anderson, individually and as administrator, and Mr. Anderson are referred to as "Plaintiffs".

### B. Relevant Proceedings.

On May 6, 2020, Plaintiffs sent ITCA claim forms to the State Appeal Board. (APP.147) On May 15, 2020, the Board acknowledged receipt of the claims. (APP.159) On May 29, 2020, Mrs. Anderson was appointed as the Administrator of the Estate for her son, decedent. (APP.20-APP.21; APP.157)

On November 24, 2020, more than six months after the Plaintiffs submitted their claim forms, they withdrew the claims from consideration pursuant to 669.5 of the ITCA. (APP.174). Plaintiffs then filed suit in the district court in and for Linn County on January 28, 2021. (APP.11) Plaintiffs filed their Amended Petition on March 22, 2021. (APP.35) On April 12, 2021 Defendant answered the Amended Petition and on May 18, 2021, this matter was set for trial. (APP.46; APP.55)

Nearly nine months after the lawsuit was filed Defendant filed its 6-page Motion to Dismiss on October 22, 2021. (APP.92) Defendants' Motion alleged the district court did not have subject matter jurisdiction over the lawsuit due to alleged failures of Plaintiffs in complying with the Iowa Tort Claims Act ("ITCA"). Defendant specifically raised two arguments: (1) Plaintiffs alleged failure to comply with Iowa Admin. Code 543-1.4(1) as Mr. & Mrs. Anderson did not file separate tort claim forms as individuals for their loss of consortium claims; and (2) Mrs. Anderson had not been appointed at the time the claims forms were submitted so she lacked capacity to make claims and her later appointment did not relate back to the date Plaintiffs tort claim forms were submitted. (APP.92-APP.97)

Plaintiffs filed a 33-page resistance with five exhibits on November 15, 2021. (APP.114) Plaintiffs' resistance included a request for oral argument

and a proposed order setting oral argument. (APP.145) Defendant filed a 17-page reply on November 22, 2021, which raised a host of new and expanded arguments. (APP.179) Plaintiffs counsel prepared for oral argument in order to respond to these new arguments.

On January 19, 2022, finding oral argument was not necessary and denying Plaintiffs the opportunity to respond to Defendant's new and expanded arguments, the district court issued a 14-page ruling finding that Plaintiffs' claims should be dismissed in their entirety. (APP.202-APP.214)

On February 2, 2022, Plaintiffs filed a Motion to Reconsider the court's 1/19/2022 ruling and requested oral argument. (APP.216) Plaintiffs also filed a Motion to Seal Record Exhibits to the Motion to Reconsider, seeking to seal medical records that had been submitted to the Board. (APP.264) Plaintiffs argued that the district court erred by holding: (1) the incorrect standard for a motion to dismiss; (2) Plaintiffs' claims were not properly presented and exhausted; (3) the attorney general had no duty to investigate claims; (4) parents are prohibited from bringing loss of consortium claims for a minor child through an estate because of Iowa R. Civ. P. 1.206; and (5) the appointment of Mrs. Anderson as administrator during the pendency of the administrative claim (23 days after her claim was submitted and 14 days after it was acknowledged) did not relate back. (APP.216-APP.257)

The Motion to Seal Record Exhibits was filed to seal medical records that had been submitted to the State Appeals Board and had been referenced in Plaintiffs' Resistance to the State's Motion to Dismiss. (APP.115-APP.116; APP.137-APP.140). While these records had been referenced in Plaintiffs' earlier Resistance to the Motion to Dismiss, these were necessary to make a part of the record in order to respond to the new and expanded arguments by the State raised in its Reply to Plaintiffs' Resistance to the State's Motion to Dismiss. (APP.179)

On February 14, 2022, Defendant filed a resistance to the requested reconsideration. (APP.266) On February 24, 2022, Defendant filed an untimely resistance to Plaintiffs' Motion to Seal Record Exhibits, well after the required time for motion practice under Iowa R. Civ. P. 1.431(4). (APP.314) Plaintiffs filed a timely reply to Defendant's resistance to the requested reconsideration on February 18, 2022, and filed a timely reply to Defendant's untimely resistance to the Motion to Seal Record Exhibits on February 25, 2022 (APP.286; APP.317).

**C. Disposition in the District Court.**

Despite Defendant not timely resisting the Motion to Seal Record Exhibits the district court denied that motion (leaving the exhibits referenced as part of the record but not sealed) and denied Plaintiffs' Motion to

Reconsider on April 13, 2022, once again denying oral argument. (APP.321) This appeal followed on the basis that the district court erred by granting Defendant's Motion to Dismiss and denying Plaintiff's Motion to Seal Record Exhibit. (APP.324)

## STATEMENT OF THE FACTS

On June 1, 2018, Carter Anderson, a minor ("decedent"), died after receiving medical care on the day before at the University of Iowa Hospitals & Clinics ("UIHC"). (APP.36-APP.37) The minor's parents are Alexandria and Terry Anderson. (APP.36) Decedent was a young boy with disabilities that required him to have a feeding tube placed in his stomach. (APP.37) On May 31, 2018, the feeding tube became dislodged. (APP.37)

Mr. & Mrs. Anderson brought carter to UIHC and the tube was replaced by employees. (APP.37) Plaintiffs allege that the UIHC employees did not verify proper placement of the feeding tube and it was improperly placed in the peritoneal cavity. (APP.37) Now, when decedent ingested food it was deposited in the peritoneal cavity and, in layman's terms, poisoned him, leading to an acute and fatal reaction that caused decedent's death. (APP.37)

Plaintiffs submitted claims on May 6, 2020, listing five entities as having claims against them, UIHC, and four employees and submitted it

triplicate (15 total claim forms submitted for 5 entities). (APP.147) The name of claimant was listed as follows:

**1. NAME OF CLAIMANT** *(please print full name)*

Alexandria Anderson as Administrator of the Estate of Carter Anderson, deceased

(APP.147). Immediately beneath this, Mrs. Anderson was listed as the mother of decedent and a claimant:

**10. BASIS OF CLAIM** *(Please provide all the information required on t*

On May 31, 2018, the Decedent, Carter Anderson, was taken by his mother and claimant,

(APP.147) (highlights added). The general allegations and theories against the State were set out on the claim form itself by an attached sheet, which clearly set forth that the claimant and mother, Mrs. Anderson, was seeking wrongful death damages including "loss of companionship and society, extreme grief, sorrow, sadness, and affection in addition to economic damages and loss. (APP.148)

On each claim form Plaintiffs clearly set forth the amount of damages requested as well:

FOR TORT CLAIMS, INDICATE ONE OF THE FOLLOWING:

| | |
|---|---|
| PROPERTY DAMAGES | $ |
| PERSONAL INJURY | $ 5,000,000.00 |
| WRONGFUL DEATH | $ 10,000,000.00 |

(APP.147). Plaintiffs also submitted medical records to the Appeal Board, which mentioned decedent's father eight times in the records. (APP.157)

Following Plaintiffs' submission of claims forms on May 6, 2020, the Appeal Board responded with a letter dated May 15, 2020 acknowledging that they had received it. (APP.159) 14 days after the State acknowledged receipt, Mrs. Anderson was appointed as administrator of decedent's estate. (APP.169) Following this Plaintiffs heard nothing from the State on their claims and withdrew the claims on November 24, 2020. (APP.174). The Appeal Board noted Plaintiffs' claims were withdrawn on December 18, 2020. (APP.176).

Plaintiffs filed suit on January 28, 2021 and filed an amended petition on March 22, 2021. (APP.11-APP.17; APP.35-APP.41). Defendant filed an answer on April 12, 2021. (APP.46) The first time an objection was raised by the State to the sufficiency of the ITCA forms was by the State's Motion to Dismiss filed on October 22, 2021. (APP.92) In all of the subsequent motion practice the State never presented one shred of evidence or even implied that Plaintiffs' claims submitted to the Appeals Board were ever investigated nor that the alleged defects prejudiced the State's investigation.

## ARGUMENT

### I. THE DISTRICT COURT ERRED WHEN GRANTED DEFENDANT'S MOTION TO DISMISS

#### A. Preservation of Error on Appeal.

The district court granted Defendant's Motion to Dismiss on January 19, 2022. Plaintiffs filed a timely Motion to Reconsider pursuant to Iowa R. Civ. P. 1.904(2) on February 2, 2022. (APP.216-APP.258) The district court entered an order denying Plaintiffs' Motion to Reconsider on April 13, 2022. (APP.321) Plaintiffs then filed a notice of appeal on April 28, 2022, thereby preserving appeal.[1] (APP.324)

#### B. Scope and Standard of Review.

Iowa courts review motions to dismiss for corrections of error at law. *See U.S. Bank v. Barbour,* 770 N.W.2d 350, 353 (Iowa 2009).

#### C. Standards Governing Consideration of a Motion to Dismiss.

"A motion to dismiss tests the legal sufficiency of a plaintiff's petition . . .at issue is petitioner's right of access to the district court, not the merits of

[1] The district court stated that it was "not confident" Plaintiffs' Motion to Reconsider was proper and seemed to indicate that Rule 1.904(2) is not available to challenge a ruling that did not involve a factual issue. (Ruling on Motion to Reconsider, p. 1) Plaintiffs disagree with the district court that this matter involved a purely a legal question, however, the amendment of Rule 1.904 in 2017 (eff. March 1, 2017) obviated "controversies over whether a rule 1.904(2) motion tolls the time for appeal, the rule authorizes any timely rule 1.04(2) motion to extend the appeal deadline, subject to one exception in rule 1.904(4)." *See cmt. to Rule 1.904.* As there were no successive Rule 1.904(2) motions under 1.904(4), this matter was preserved for appeal.

his allegations." *Rieff v. Evans,* 630 N.W.2d 278, 284 (Iowa 2001). Thus, the motion to dismiss should be granted "only if the petition shows no right of recovery under any state of facts." *Rieff,* 630 N.W.2d at 284. *See e.g.*, *Cincinnati Ins. Companies v. Kirk,* 801 N.W.2d 856, 858 (Iowa Ct. App. 2011). "Generally, a motion to dismiss should not be granted. We have stated that nearly every case will survive a motion to dismiss under notice pleading. If a claim is at all debatable, we have advised against the filing or sustaining of a motion to dismiss." *Weizberg v. City of Des Moines,* 923 N.W.2d 200, 217 (Iowa 2018)(citations and quotations omitted)

When considering a motion to dismiss, the court must make its determination based on the *face* of the petition. *See e.g.*, *Riediger v. Marrland Development Corp.,* 253 N.W.2d 915, 916 (Iowa 1977) ("A motion to dismiss must stand or fall on the matter alleged in the petition."); *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.,* 812 N.W.2d 600, 604 (Iowa 2012).

The court must "review the petition in its most favorable light," and resolve all ambiguities in favor of the petition. *Rieff, 630 N.W.2d at 284*. Further, the court must accept all well-plead allegations in the petition as true. *See Rieff, 630 N.W.2d at 284*. However, "facts not alleged cannot be relied on to aid a motion to dismiss nor may evidence be taken to support it." *Rieff, 630 N.W.2d*

*at 284.* A Court should grant a Motion to Dismiss, only if the Petition, on its face, shows no right of recovery under any state of facts. *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009).

**D. Argument**

The district court erred when it held that Plaintiffs' claims were not properly presented to the Board and thereby did not exhaust their administrative remedies. In ruling on Defendant's Motion to Dismiss, the court did not review the Plaintiffs' Petition in the light most favorable for Plaintiffs nor construe the facts in the same manner.

The district court's ruling was incorrect for four reasons. The first reason is Plaintiffs' ITCA claims met the requirements for presentment and Plaintiffs withdrew them after 6 months, which satisfied the exhaustion requirement. *Segura v. State*, 889 N.W.2d 215, 227 (Iowa 2017); *See also Schneider v. State*, 789 N.W.2d 138 (Iowa 2010). The district court's error is highlighted by its holding that exhaustion is truly achieved by disposition or denial, not by withdrawal.

The second area in which the court erred was by holding that the State had absolutely no duty to investigate Plaintiffs' ITCA claim. This ignores the clear statutory mandate requiring the State investigate claims under Iowa Code 669.19 and incentivizes the State not to investigate claims.

The third area in which the district court erred was by holding that parents making claims for loss of consortium for the death of minor children are the sole type of consortium claimants that are prohibited from having those claims brought through an estate because of Iowa R. Civ. P. 1.206. This is in direct contract to *Madison v. Colby,* which clearly states that such claims *should* be joined to the claims of an estate unless the claimant shows a compelling reason not to. 348 N.W.2d 202, 207 (Iowa 1984)

The final error made by the district court was when it held that the appointment of Mrs. Anderson as administrator did not relate back to the time that Plaintiffs submitted their tort claim forms 23 days prior to her appointment pursuant to real-party-in-interest law in Iowa. This is incorrect as Plaintiffs' claims related back as the administrative process was still pending.

1. **The district court erred when it found that Mr. & Mrs. Anderson's loss of consortium claims were not sufficient for presentment and administrative exhaustion.**

The district court's erred by holding that presentment of a claim to the Appeal Board requires more than the amount of damages claimed and the general theories against the State and that Plaintiffs did not exhaust their administrative remedies. The district court's basis for its holding is the claims processing rule Iowa Admin. Code §543-1.4(25A), which requires separate

claims to be filed by separate claimants. The district court interpreted this to mean that Mr. & Mrs. Anderson's loss of consortium claims for the death of their minor child required each parent file their own, separate claim forms. The district court also erred by holding that denial of a claim by the Board would exhaust an administrative remedy but withdrawal of a claim would not pursuant to Iowa Code §669.5.

The district court erred on this point for four reasons. First, all that is required under the ITCA for a claimant to present a claim to the Board is for the claimant to disclose the amount of damages claimed and generally describe the legal theories asserted against the State. Then, if the claim is denied or withdrawn after six months, it is considered exhausted. Plaintiffs satisfied this requirement in this case. Second, the purpose of the ITCA was construed to defeat Plaintiffs' claim rather than do substantial justice and resolve disputes on the merits. Third, the sole reason for dismissing Plaintiffs' claims was alleged failure to follow claims processing rules, not failure to follow presentment requirements under firmly established precedent. Fourth, the primary cases relied on by the district court are outdated and easily distinguishable.

**a. Plaintiffs satisfied the requirement for presentment under the ITCA by disclosing the amount of damages claimed and generally described the legal theories asserted against the State.**

Plaintiffs satisfied the requirement for presentment and exhaustion under the ITCA. The procedural requirements under the ITCA are jurisdictional. *Swanger v. State*, 445 N.W.2d 344, 349-350 (Iowa 1989). In order to sue the State in tort, it is necessary as a jurisdictional prerequisite to exhaust the administrative remedies before resorting to the district court. *Id.* The process of administrative exhaustion under section 669 has two steps, first a claim must be presented to the Board. Then, in order to achieve exhaustion, the claim must be disposed of by the attorney general or withdrawn after six months.

i. **Plaintiffs met the requirements for presentment**

There are only two requirements in order for presentment of a claim under the ITCA and section 669.3. "[A] claim is properly presented when it, in writing, identifies sufficient information for the board to investigate the claim and discloses the amount of damages claimed." *Segura*, 889 N.W.2d at 226; *See also Schneider*, 789 N.W.2d at 145–46. The *Segura* court would elaborate, stating that "sufficient information for the board to investigate the claim" meant to "generally describe[s] the legal theories asserted against the State." *Id.* at 227. The Supreme Court continued, stating "[t]his information

gives the Board the necessary information to investigate the claim and that is all that is required for the administrative process to run its course." *Id.*

*Segura* is the most recent controlling case that delves into the idea of presentment, exhaustion, and the applicability of administrative rules. In *Segura* the plaintiffs made a tort claim under the ITCA and submitted it to the Board. *Id. at 218*. Nine months after receiving the claim, the claimants received a letter from the Board rejecting their claims. *Id.* Following this the claimants filed suit in district court and the State moved to dismiss on the basis that claimants had not personally signed the claim forms, their attorney had. *Id.* The basis for this the State's motion to dismiss was that the Board had adopted administrative regulations requiring that claims be personally signed. *Id.* The district court denied the motion to dismiss, finding the matter would be more appropriately brought as a motion for summary judgment. *Id.*

Litigation continued and the State moved for summary judgment and the district court dismissed the suit for failure to comply with administrative rules for the missing signatures. *Id.* at 218-19. Plaintiffs appealed and the case reached the Supreme Court. *Id.* at 219.

The *Segura* court examined the stringent regulations promulgated by the Board and specifically rejected the formalistic approach requiring absolute and strict adherence to administrative regulations. *Id.* at 222. The Supreme

Court held that there was "no question" that claimants failed to comply with the administrative rules. *Id.* at 223. However, the *Segura* court noted that the State did not assert that the failure hindered its ability to investigate the claim. *Id.* The *Segura* court examined *Schneider* and held that the legislature did not vest the Board with the authority to deprive the courts of jurisdiction based on a failure to follow an administrative technicality as the only criteria for presentment was to disclose the amount of damages and the general allegations and theories against the State. *Id.* at 224-228.

Plaintiffs undoubtedly met both of these factors. In the present case Plaintiffs presented evidence to the Board that: (1) the administrator was bringing claims for wrongful death damages for decedent's (a minor's) death, including loss of consortium (which under Iowa law can only be the parents of a minor child); (2) that the administrator was decedent's mother; (3) medical records attached to the claims forms repeatedly mention decedent's father; (4) that Plaintiffs were claiming $15,000,000 in damages; and (5) that the claim was regarding the death of decedent arising from care provided as UIHC, the physicians involved, the alleged negligence, etc. (APP.147) This satisfies the dual requirements set forth in *Segura* and *Schneider* as the sole requirements of claim presentment. Nonetheless, these facts supporting presentment were construed in the light most favorable to the Defendant and

the district court ruled that the Board did not have sufficient notice of the consortium claims.

### ii. **Requirements for exhaustion**

The *Segura* court held that exhaustion of administrative remedies is a jurisdictional prerequisite under the ITCA. *Id. 224.* Once a claim is presented, there are two ways in which a claim may be exhausted, as set forth by Iowa Code 669.5(1):

> 1. A suit shall not be permitted for a claim under this chapter unless the attorney general has made final disposition of the claim. However, if the attorney general does not make final disposition of a claim within six months after the claim is made in writing to the director of the department of management, the claimant may, by notice in writing, withdraw the claim from consideration and begin suit under this chapter. Disposition of or offer to settle any claim made under this chapter shall not be competent evidence of liability or amount of damages in any suit under this chapter.

Therefore, a suit may be commenced (and the administrative remedies are exhausted) if *either* the attorney general makes a final disposition of the claim *or* the attorney general does not make a final disposition of the claim and the claim is withdrawn in writing. *Segura.* 889 N.W.2d at 227-28.

The district court distinguished exhaustion in the present case from *Segura* by noting that the claims in *Segura* were exhausted as those claims were actually reviewed and denied by the State, while in the present case they were withdrawn. (APP.207-APP.208). The district court found it favorable

for the State's arguments that the State didn't even bother to investigate Plaintiffs' claim at all rather than deny it. In other words, exhaustion may have been achieved by denial here, but it was not achieved by withdrawal.

Section 669.5(1) does not distinguish between methods for exhaustion nor is there any caselaw that supports this holding by the district court. The *Segura* court tackled this exact point, stating "administrative rules prescribing the form and content of claims do not operate as a jurisdictional bar to suit if the claim is properly presented *and six months pass* ***or*** *the attorney general makes a final disposition*." *Id.* at 227(emphasis added). This holding shows that the *Segura* court even contemplated this distinction and found it meaningless.

Exhaustion requires a claim be presented in writing so that the attorney general has the opportunity to make a final disposition of the claim and the administrative process cannot run its course absent ***key*** information. *Id.* at 225. All key information was presented here and there is no support that the method of exhaustion under section 669.5, either through withdrawal or denial, affects the requirements for presentment or exhaustion. Nonetheless, the fact there was no evidence of investigation was construed in the light most favorable to Defendant, cutting against the spirit in which a motion to dismiss should be viewed. For these reasons the district court erred.

b. **The purpose of the ITCA supports doing substantial justice, resolving disputes on the merits, and to facilitate swift investigation and settlement of claims, which run contrary to the district court's holdings.**

The purpose underlying the ITCA supports Plaintiffs' arguments that the district court erred and the district court interpreted the facts and law in favor of Defendant. First, the ITCA should be interpreted with an eye towards doing substantial justice. Second, our legal processes seek to resolve disputes on the merits. Third, the ITCA was intended to facilitate the prompt investigation and, if possible, settlement of claims.

First, the ITCA should be interpreted with an eye towards "doing substantial justice". The *Segura* court noted that the overriding consideration is legislative intent and that "[i]n construing a statute, we look to the object to be accomplished and give the statute a meaning that will effectuate, rather than defeat, that object". *Id.* at 224. The Iowa Supreme Court would continue, stating that the holding in *Segura* was "consistent with the ITCA's text and its purpose of "doing substantial Justice"", citing section 669.9, which stated "[w]ith a view to doing substantial justice, the attorney general is authorized to compromise or settle any suit permitted under this chapter. *Segura,* 889 N.W.2d at 227. In the present case Plaintiffs properly presented the claim, providing more than enough information needed by the State to investigate the claim, and then the attorney general did nothing. Now, due to a minor

alleged claims processing defect, the State seeks to escape liability for the conduct of one of its institutions and its employees. There is no evidence as to how the presence of separate claims forms would have assisted the State or how the State was prejudiced by not having separate claims forms. Substantial justice was not done in this case.

The second point overlaps heavily with the first, which is that "[o]ur legal processes normally strive to resolve disputes on their merits." *Id. at 223 quoting MC Holdings, L.L.C. v. Davis Cty. Bd. of Review*, 830 N.W.2d 325, 328 (Iowa 2013). In *Segura,* the court noted that the Supreme Court had recently visited a similar situation in *McFadden v. Department of Transportation*, 877 N.W.2d 119, 120 (Iowa 2016), where the court balanced this principle of resolving disputes on the merits against the principle that "[r]ules, especially those which fix jurisdictional matters, are…vital to the proper conduct of court business. *Segura,* 889 N.W.2d at 223; *quoting Gordon v. Doden*, 261 Iowa 285, 288–89, 154 N.W.2d 146, 148 (1967)(alteration in original). The Supreme Court noted that in *McFadden* the principle of resolving disputes on their merits prevailed, finding that "rights must not be denied by too strict an application of mere legal formality." *Segura,* 889 N.W.2d at 223. *quoting Mcfadden,* 877 N.W.2d at 123. This principle prevailed in *Segura* and it should prevail in the present case as well.

To uphold the district court's dismissal of Mr. & Mrs. Anderson's claims would support the idea that the ITCA claims process values form above substance, which is simply not true.

Third is the idea that the ITCA is to facilitate swift investigation and disposition of claims. It is a well-established precedent that the "legislative intent in creating the administrative process under chapter 669 was to allow a prompt investigation of claims against the State and facilitate an early settlement when possible." *Segura,* 889 N.W.2d at 223(citations omitted) The *Segura* Court would continue, stating "while exhaustion of administrative remedies is a jurisdictional prerequisite, and our legislature clearly intended this process be governed by administrative rule, we have not held the legislature intended to delegate the authority to set the jurisdiction of our courts." *Id.* This concept is dealt with in more depth below, but the State's arguments were viewed with favor precisely because they failed to investigate Plaintiffs' claims at all, which is against the spirit and purpose of the ITCA.

c. **The sole reason the district court denied the Andersons' claims for loss of consortium was for claims-processing rules, which is improper under *Segura* and *Schneider*.**

Plaintiffs unquestionably presented, in writing, the amount of damages sought and the general theories and allegations against the State, which is all that is required. (APP.147) Plaintiffs then exhausted their administrative

remedies as they withdrew their claim six months after submitting it. (APP.18)

The district court's sole reasoning that the claim was not properly presented was Mr. & Mrs. Anderson was alleged failure to follow the administrative rules, i.e. that each claimant file their own claims form as set forth in §543-1.4(25A). Inherent in this idea is that a parent seeking loss of consortium over a deceased child is made a separate *claimant* from the estate either by the administrative rules or by Iowa law. This is incorrect under Iowa law per *Madison v. Colby* which is addressed later on in more depth. 348 N.W.2d 202 (Iowa 1984)

There are no administrative rules specifically setting forth that consortium claimants in estates must make a redundant filing and this stands in direct contrast to Iowa law. The State and district court contend this is set forth in §543-1.4(25A). (APP.184) Even assuming the regulations did specifically split consortium claimants and estate claims as completely separate claimants, this is still a claims processing rule, not a requirement for presentment as set forth in *Segura* and *Schneider*.

*Segura* stated that the claims processing rules such as a signature "made in the presence of a notary and filed in triplicate, is not key information to the disposition of a claim." 889 N.W.2d at 225. The *Segura* court classified these

as "claims-processing rules", not "rules governing presentment. The failure to comply with these administrative rules alone should not deprive a district court of jurisdiction." *Id.* In the present case Plaintiffs provided all the ***key*** information needed for presentment. The attorney general had all the information it needed to investigate the claims and separate claims forms added no ***key*** information.

In the present case, much like in *Segura*, to hold such an administrative rule is necessary would have denied the claimants in *Segura* "the right to be heard solely because of a state appeal board rule the board never attempted to enforce." *Id.* at 228. If the Board requires additional administrative compliance, "it can request it during the six months in which it has exclusive jurisdiction. *Id.* This approach accommodates the board's right to obtain relevant information and verification without barring potentially meritorious claims based on initial noncompliance." *Id.*

The sole reason for dismissing Plaintiffs' consortium claims was an administrative requirement and pursuant to *Segura* and *Schneider* this should not defeat a claim. Therefore, the district court erred.

d. **The district court relied primarily upon two cases that are outdated in light of *Segura* and *Schneider* and are highly distinguishable.**

The district court relied upon two cases to support its ruling that claims processing rules trump presentment requirements set forth in *Segura* and *Schneider.* These cases were *Bloomquist v. Wapello Cnty*., 500 N.W.2d 1 (Iowa 1993), as amended on denial of reh'g (May 14, 1993) and *Est. of Miller v. United States,* 157 F. Supp. 2d 1071 (S.D. Iowa 2001). Both cases were decided prior to *Segura* (2017) and *Schneider* (2010) and are highly distinguishable.

*Bloomquist* involved five DHS workers that became ill from a contaminated atmosphere at work. 500 N.W.2d at 2. After a jury rendered a verdict for the plaintiffs/DHS workers the court entered a motion for judgment notwithstanding the verdict reasoning there was no subject-matter jurisdiction in the loss-of-consortium claims filed by one of the plaintiff's children. *Id.* In reviewing *Bloomquist*, there are three critical differences from the present case that were ignored by the district court.

First, *Bloomquist* court didn't specifically require that the children file separate claim forms. *Bloomquist* stated that the children didn't file ITCA claims either individually *or* with the mother's claims:

> Linda Owens' tort claim was filed with the Appeal Board on December 16, 1987; however, ***her claim*** *did not mention a claim*

> *of loss of consortium for her children*. When Linda sued the State, ***she did not mention a loss-of-consortium claim by her children***, although her petition did mention that the children had suffered a loss of consortium. No separate damages were requested, and no separate claim was asserted on their behalf.
> …
>
> We believe that in view of the fact that consortium claims are separate claims under Iowa law it is incumbent on the claimant to first file a claim before the proper administrative agency...

*Id.* at 8. The Supreme Court unequivocally stated that plaintiff's claim forms didn't mention the loss of consortium claim for the children *and* there was no separate claim asserted on their behalf. There is an open question in *Bloomquist* as to whether the children's claims could have been put on the mother's claim form.

The second critical distinction is the primary injured plaintiff was *still alive*, i.e. *not* an estate. As is dealt with in more depth below, loss of consortium damages are properly recovered by the administrator of an estate of a deceased person. *Kulish v. W. Side Unlimited Corp.,* 545 N.W.2d 860, 861–62 (Iowa 1996). The estate is the entity that brings claims for loss of consortium damages are recovered. The children in *Bloomquist* could not have filed their consortium claims without opening an estate had their parent died.[2] *Bloomquist* relied upon *Rucker v. United States Dep't of Labor,* which

[2] This concept of "ownership" and the proper party to "bring" a claim is dealt with in more detail below. In the event of a death, loss of consortium claims must be joined to

was also based on a case where claimants failed to file claims regarding a still-living plaintiff. 798 F.2d 891, 893 (6th Cir.1986). Additional distinguishing federal authority on this point is included in the distinguishment of *Miller* below.

The third critical difference is loss of consortium claims were only made in the petition. The petition was the first time the *Bloomquist* claimants ever gave notice of *any* consortium claims. In the present case, Plaintiffs did mention the estate would be seeking claims for loss of consortium for the death of decedent, a minor child, on the claim forms, along with disclosing the identity of both parents, including that the administrator was decedent's mother and a claimant. For these reasons, *Bloomquist* is not applicable authority to the present case.

The district court also relied on *Miller* in its decision. In analyzing *Miller,* it is important to point out that federal district court decisions are not binding authority on Iowa courts. *See Conklin v. State*, 863 N.W.2d 301 (Iowa Ct. App. 2015); *citing to State v. Short,* 851 N.W.2d 474, 481 (Iowa 2012). However, if *Miller* was binding, it is highly distinguishable for four reasons. First, the ITCA and FTCA have different requirements for compliance.

---

the administrator's wrongful death claim unless there is a compelling reason why it should not be.

Second, the *Miller* court did not address or discuss whether or not individual parents alleging loss of consortium and wrongful death damages can even be separate claimants for purposes of making a claim. Third, the *Miller* court erroneously interpreted the holdings in *Bloomquist.* And fourth, the reliance upon *Miller* is outdated following the Iowa Supreme Court's holding in *Schneider* and *Segura.*

First, the ITCA and FTCA have many similarities but are markedly different. In *Miller*, the court heavily relied upon 28 U.S.C.A. 2675 and the language contained therein said in part "the claimant shall have first presented the claim to the appropriate Federal agency". This administrative prerequisite "has been ***strictly*** construed and is considered an absolute and unwaivable jurisdictional requirement." *Estate of Miller, 157 F. Supp.2d at 1073 citing to Swizdor v. United States,* 581 F.Supp. 10, 11 (S.D.Iowa 1983); *See also Bellecourt v. United States,* 994 F.2d 427, 430 (8th Cir.1993) (FTCA is a limited waiver of sovereign immunity ***requiring strict compliance***).

The ITCA does not have the same rigid requirements for compliance. In its holding, the *Segura* court stated that the finding that the district court had jurisdiction "is consistent with the ITCA's text and its purpose of doing substantial justice." *Segura,* 889 N.W.2d at 227. *Segura* also cited to *McFadden*, which held "rights must not be denied by too strict an application

of mere legal formality." *McFadden*, 877 N.W.2d at 123. Furthermore, the most important holdings in *Segura* were that: (1) administrative regulations do not govern presentment; and (2) the failure to follow administrative rules governing claims processing will not serve to divest Iowa courts of jurisdiction. This is a far cry from the strict rigidity of the FTCA.

Second, the issue was not raised before the *Miller* court as to whether it was even appropriate for an individual claimant to file a separate claim under Iowa laws governing estate administration. As is argued, later on, there must be a compelling reason under *Madison v. Colby* for a loss of consortium claim to be bifurcated from a claim by the estate for wrongful death damages. As this issue was not raised with or analyzed by the court, it is distinguishable as it would have changed the outcome.

Third, the *Miller* court relied heavily upon *Bloomquist* in rendering its decision. However, as set forth above, *Bloomquist* neither stands for the proposition that separate tort claim forms must be filed nor stands for the proposition that loss of consortium actions brought through an estate must be filed separately. *Miller* relied heavily upon *Swizdor v. United States*, 581 F. Supp. 10, 11 (S.D. Iowa 1983) in its ruling. *Swizdor,* much like *Bloomquist*, dealt with an individual filing for loss of consortium claims regarding injury to a still-living person. *Swizdor, 581 F.Supp. at 11*. This common thread of

consortium claims for injury to a still-living person runs through every decision noted by the court in *Miller* including *Manko v. United States*, 830 F.2d 831 (8th Cir. 1987); *Rucker v. U.S. Dep't of Lab*., 798 F.2d 891 (6th Cir. 1986); *Poynter v. United States*, 55 F. Supp. 2d 558 (W.D. La. 1999), and *DuPont v. United States*, 980 F. Supp. 192 (S.D.W. Va. 1997). None of these are loss of consortium cases regarding deceased individuals.

In fact, *Miller* stands in contrast to more applicable federal court cases holding that FTCA claims made on behalf of personal representatives that failed to name all individuals seeking consortium or file separate claims forms but sought "all appropriate wrongful death damages including…loss of care, guidance, and companionship" were appropriate. *See Wojciechowicz v. United States,* 474 F. Supp. 2d 283, 286 (D.P.R. 2007); *See also Carroll v. United States,* 227 F. Supp. 3d 1242, 1245 (W.D. Okla. 2017)(holding the personal representative's claim for wrongful death damages, which included loss of consortium under Oklahoma law, without listing individual claimants or separate claims forms, was sufficient for notice under FTCA); *Hiatt v. United States*, 910 F.2d 737 (11th Cir. 1990)(held the omission of name of one of decedent's children from administrative claim filed by personal representative did not deprive court of jurisdiction).

The fourth reason the district court's reliance upon *Miller* is misplaced is *Miller* was decided without the guidance of the Iowa Supreme Court in *Schneider* and *Segura*. *Miller* is a 2001 case. *Schneider* is a 2010 case decided by the Iowa Supreme Court that was affirmed by the holding in *Segura* in 2017, stating that for presentment ITCA claims forms needed only provided the amount of damage claimed and a general statement of the legal theories supporting the claims was sufficient. *Schneider v. State*, 789 N.W.2d 138, 145 (Iowa 2010). This information is all that was required for the administrative process to run its course. *Id. at 146*.

The court erred in its reliance upon *Bloomquist* and *Miller*. These cases are highly distinguishable and do not serve to defeat the clear Iowa precedent regarding presentment and exhaustion in *Schneider* and *Segura*.

**2. The district court erred when it found that the Attorney General had no duty to investigate Plaintiffs' claim.**

The district court erred when it held that the State had no duty to investigate claims. In the State's Reply to Plaintiffs' Resistance to the State's Motion to Dismiss, the State raised for the first time the idea the State had *no duty* to investigate claims, an argument adopted by the district court. (APP.188)

In a question of first impression, Plaintiffs argue that the State does have a statutory duty to investigate claims. Plaintiffs make two arguments

here, first that section 669.19 sets forth a duty to investigate. Second, by relieving the State of its duty or even rewarding the State for failing to fulfill its duty as the district court did creates improper incentives. Plaintiffs further argue if the State fails to exercise its mandatory duty, the State should be prohibited from objecting to claim processing rule violations in a subsequent suit.

**a. The State has a statutory duty to investigate ITCA claims.**

The State has a clear, statutory duty to investigate a presented claim. Iowa Code 669.19 states:

> "The Attorney General ***shall fully investigate each claim*** *under this chapter* and exercise the authority provided in Section 25.5 in performing the investigation."

(emphasis mine). Iowa Code 4.1(30)(a) reads as follows:

> 30. Shall, must, and may. Unless otherwise specifically provided by the general assembly, whenever the following words are used in a statute enacted after July 1, 1971, their meaning and application shall be:
>
> **a. The word "shall" imposes a duty.**
>
> b. The word "must" states a requirement.
>
> c. The word "may" confers a power.

(emphasis added). The statutory construction cannot be any clearer, yet the State maintains argues that the assertion of any duty is 'shifting the burden' and displays a "lack[] of personal accountability" on the part of Plaintiffs. (APP.188) This is incredulous given the plain language of section 669.19 and

the inescapable fact that there is no evidence or implication by the State that it did *anything* to investigate this claim during the six months the Board had sole jurisdiction.

This statutory duty is echoed by Iowa Admin. Code 543-1.7(25A), which states that upon receipt of a claim, "the special assistant attorney general ***shall*** investigate the claim."(emphasis added). Under this same rule the attorney general is given investigatory powers "to administer oaths or may take testimony in the form of affidavits, depositions or oral or written interrogatories or otherwise. The special assistant attorney general may compel the attendance of witnesses and certify to any district court for contempt."

It has already been established that the concept of presentment must be satisfied and the administrative remedies must be exhausted in order to file suit. *Schneider*, 789 N.W.2d at 145. Similarly, it has been established that this process "is intended to allow a prompt investigation of claims against the State and facilitate an early settlement when possible. *Id.* The doctrine requiring the exhaustion of administrative remedies "is designed to promote orderly procedures within the judicial system by requiring a preliminary administrative sifting process." *Id.* quoting *Charles Gabus Ford, Inc. v. Iowa State Hwy. Comm'n,* 224 N.W.2d 639, 648 (Iowa 1974). The State has not

answered how a process intended to allow prompt investigation and early settlement is effectuated when there is no duty to investigate.

*Schneider* involved claims by landowners against the State. *Id. at 141*. The State filed a motion for summary judgment in the suit alleging defects in the ITCA claims filed by the landowners as some landowners had failed to respond to requests for more information before the claims were denied by the State. *Id. at 143.*

*Schneider* held that, although some plaintiffs failed to respond to requests for more information, they exhausted their administrative remedies and the court had subject matter jurisdiction. *Id. at 145-46*. Each plaintiff in *Schneider* had submitted a claim form that disclosed the amount of damage claimed and the general legal theories against the State. *Id. at 146*. *Schneider* stated that "[i]f the board believed evaluation of any of the claims could not be completed without access to additional documentation *mandated* by the appeal board's rule, the board had a remedy readily available to it. Under appeal board's rule 543-1.7, a special assistant attorney general is *directed* to investigate claims filed with the board." *Id.*(emphasis added) The *Schneider* court would continue on, stating "[i]f the board or its representatives believed they could not approve or deny any of the plaintiffs' claims on the information

supplied, they could have sought to compel the production of the documentation under the board's rule." *Id.*

These same investigative powers were recognized in *Segura,* where the Supreme Court stated if the "board finds the claim lacks a signature, verification, or any other piece of information it ***requires under its regulations***, it can demand it." *Segura,* 889 N.W.2d at 227-28. *Schneider* recognized that if the State had an issue with something, it had a duty and the requisite power to investigate. Statutory language and the vesting of investigative powers supports the finding of a duty.

**b. Releasing the State from its statutory duty to investigate claims creates improper incentives.**

The district court's holding that the State has no duty or responsibility to investigate claims creates proper incentives, which were made evident in the present case. First, it rewards the State for "hiding in the weeds" for potentially defective claims and incentivizes them not to investigate claims altogether. Second, it incentivizes the Board to create more administrative pitfalls.

First, the abandonment of the State's statutory duty by Iowa courts would reward the State for "hiding in the weeds" and incentivize them not to investigate claims. Assuming that an ITCA claim is submitted to the Board the end result is binary; either the Board investigates the claim or they don't.

Starting with the former, if an ITCA claim is submitted with a minor claims processing defect and the Board discovers the violation in reviewing the cover page of the ITCA form, how should the State respond? The State's position is that minor administrative claim defects warrant dismissal. Logically, it is in the State's best interest to set the file aside or deny the claim and challenge the claim in a suit. Why investigate the claim if you believe you have a silver bullet to defeat the following suit? By investigating the claim all the State does is gives a claimant the opportunity to cure the potential defect. There is no benefit to the State to investigate the claim, however, there is immense benefit to the State to ignore or deny the claim based on the face of the form, not the substance.

This incentive structure becomes particularly dangerous when combined with the district court's ruling that exhaustion is truly achieved through denial of a claim, not withdrawal after six months. As set forth above, the district court found it favorable for the State's position that they had simply not investigated or responded to Plaintiffs' claim as, had the State denied it, it would have been less favorable to Defendant.

If the district court is correct, this drastically increases the incentive to fail to investigate claims. After all, denial of a claim weakens the argument for whether administrative exhaustion is achieved and if the State anticipates

raising such an argument, the State would be incentivized to sit on claims until they are withdrawn. As the investor Charlie Munger once said, "[s]how me the incentive and I will show you the outcome".

Rewarding the State for failing to investigate claims is incredibly wasteful of judicial resources. By incentivizing failure to investigate claims leads to one inescapable fact – more suits. Such a backward incentive structure means that more and more claims will not be resolved by the Board and these claims will turn into suits. This means more time spent by judges, clerks, court attendants, and more in an already overburdened judicial system.

The final improper incentive of dismissing claims due to alleged minor claims processing defects would be the incentivization of the Board to adopt *more* regulatory pitfalls for potential claimants and is wasteful of administrative resources. The State argues that both parents, in addition to the administrator of the estate, should have had to file separate sets of claim forms, which means that Plaintiffs should have submitted 45 total tort claim forms (15 in triplicate as require by Iowa Admin. Code r. 543-1.3(25A)). In a case where a spouse and four children file a claim for wrongful death and loss of consortium the estate, the spouse, and each of the four children should file their own sets of claim forms. In a professional malpractice case involving 5 entities with one claim against them, this would mean 90 tort claim forms

are filed (30 separate forms filed in triplicate). Assuming there were two categories of claims this would require 180 tort claim forms (60 in triplicate) be filed for what amounts to one underlying event.

This is absurd and wasteful. Iowa courts seek to "avoid strained, impractical, or absurd results" in interpreting laws. *Welp v. Iowa Dep't of Revenue,* 333 N.W.2d 481, 483 (Iowa 1983) Not only is this wasteful, but the state argues it only needs *one* minor claims processing defect in order to achieve dismissal of one or more claims or claimants. Simple statistics would dictate that the more hurdles an organization puts up, the more likely a claimant is going to trip over it. Therefore, why not make more regulatory rules?

**c. Failing to investigate a claim should cause the state to waive objections to any administrative claims processing defects in a subsequent suit.**

The State's failure to fulfill its mandatory duty by investigating a claim should lead to waiver of any objection of such alleged technical defects in a subsequent suit. This is not to say that the requirements of presentment under *Segura* and *Schneider* are moot or any objections under those requirements would be waived. However, much as dealt with in *Segura* and *Schneider*, if a minor claims processing defect is not addressed by the Board because they

failed to investigate the claim, the State should be prohibited from "crying foul" in subsequent litigation.

The State should not be able to receive a claim, fail to investigate it, and then object over a minor technicality in a subsequent suit, arguing that "if only the administrative rules had been followed perfectly, we may have been able to swiftly investigate and settle this claim". If the State was overburdened with claims, short staffed, or for whatever reason was unable to investigate the claim in time they could simply contact the claimant and obtain an extension. This concept was dealt with in *Segura* and *Schneider* and should apply to the present case as well.

For the above reasons, the district court erred when it found that the State has absolutely no duty to investigate claims under the ITCA.

**3. The district court erred when it held that parents *alone* have the right to file a loss of parental consortium claim due to Rule 1.206.**

The district court erred when held that parents alone, and not an estate, may bring an action for loss of consortium for loss of a minor child due to Rule 1.206. The district court erred for three reasons. The first reason is loss of consortium is a type of wrongful death damage, which is governed by Iowa Code 633.336 and includes loss of consortium for spouses, parents, or children. The second reason is that recovery of wrongful death damages, such as loss of consortium, are vested with the administrator of the estate. The third

reason is the district court has erred in applying the statutory language of Iowa R. Civ. P. 1.206 to be *mandatory* rather than *permissive*.

**a. Loss of consortium is a type of wrongful death damage, which is governed by Iowa Code 633.336 and contemplates the loss of consortium for spouses, parents, and children.**

Loss of consortium, including loss of consortium claims by parents for the death of their children, are wrongful death damages that are contemplated under Iowa Code 633.336. Our Supreme Court has held that the term "services" means consortium damages and that in a consortium cause of action damages are to be distributed by the trial court under Iowa Code 633.336. *Roth v. Evangelical Lutheran Good Samaritan Soc*., 886 N.W.2d 601, 606 (Iowa 2016); *See also Madison v. Colby,* 348 N.W.2d 202, 207 (Iowa 1984)(the recovery for lost services is apportioned pursuant to section 633.336).

Iowa Code 633.336 clearly does not generate some distinction between parents claiming loss of consortium for a child, as it states in part:

> When a wrongful act produces death, damages recovered as a result of the wrongful act shall be disposed of as personal property belonging to the estate of the deceased; however, if the damages include damages for loss of services and support of a deceased spouse, parent, ***or child***, the damages shall be apportioned by the court among the surviving spouse, children, ***and parents*** of the decedent in a manner as the court may deem equitable consistent with the loss of services and support

> sustained by the surviving spouse, children, and parents respectively.

(emphasis added). Therefore, it is clear in a case such as the present one, when Mr. & Mrs. Anderson are seeking loss of consortium arising out of the death of their child, it is a category of wrongful death damages contemplated under Iowa Code 633.336.

**b. Wrongful death damages are vested with the administrator of the estate.**

Iowa courts have consistently held that the "right to recover wrongful-death damages in Iowa is vested ***exclusively*** in the estate representative, and the recovery belongs to the estate" and "[w]rongful death damages are damages the administrator of the estate can recover on behalf of the estate." *Roth v. Evangelical Lutheran Good Samaritan Soc.,* 886 N.W.2d 601, 608 (Iowa 2016); quoting *Troester v. Sisters of Mercy Health Corp.,* 328 N.W.2d 308, 312 (Iowa 1982) in the former and *State v. Izzolena,* 609 N.W.2d 541, 546 n. 2 (Iowa 2000); *See also Matter of Estate of Voss*, 553 N.W.2d 878, 881 (Iowa 1996).

The important distinction here, as set forth in *Roth,* is that the difference between ownership of the claims versus the right to bring the claims. It is true that *ownership* of the consortium claim is the individual, but the cause of action is to be commenced by the estate. *Roth,* 886 N.W.2d at 606-7. This has

been the case since the seminal case of *Madison v. Colby*, 348 N.W.2d 202, 203 (Iowa 1984). *Madison* involved a lawsuit by a wife and husband against owners of a parking lot for negligence, alleging that as a result of the negligence the wife sustained injuries and the husband suffered a loss of consortium. *Id. at 203*. The jury returned a verdict for the wife but denied damages to her husband as the trial court refused to include instructions on loss of consortium. *Id. at 203-4*.

The Supreme Court in *Madison* examined three types of loss of consortium claims: (1) a deprived spouse seeking loss of consortium for injury or death for their spouse; (2) a deprived parent seeking loss of consortium for injury or death to a child; and (3) a deprived child seeking loss of consortium for injury or death to their parent. *Id. at 209.* In each of these circumstances, the *Madison* court examined the right of "recovery" and held that for a deprived parent, both the pre-death and post-death claim for *recovery* belonged to the parent. However, for *each* type of these claims that *Madison* examined (death of spouse, death of child, death of parent), the court held that "[t]o assure further against double recovery, it is desirable that consortium actions be joined with the action for the injury or death of the injured person. In some jurisdiction, joinder is mandatory while in others it is required when feasible. Based on the considerations explored in *[Weitl v. Moes,* 311 N.W.2d

259, 264 (Iowa 1981)], *we hold that consortium claims* ***must be joined with the injured person's or administrator's action whenever feasible***. *If brought separately, the burden will be on the consortium claimant* ***to show joinder was not feasible***." *Id.*

In the present case the district court carved out an exception to the precedent set forth in *Madison*, holding that *only* in cases regarding the death of a minor child, a claim by the parent for loss of consortium is unique and is *prohibited* from being brought by an estate. This holding has no basis in Iowa law and is error.

**c. Iowa R. Civ. P. 1.206 merely creates a potential cause of action for a parent to bring a loss of consortium action for injury or death to their child.**

The district court erred in relying on Rule 1.206 to hold that the estate is prohibited from filing a loss of consortium claim on behalf of a parent for the death of a minor child. The statutory language of Rule 1.206 is clear, which states "[a] parent, or the parents, ***may*** sue for the expense and actual loss of services, companionship and society resulting from injury to or death of a minor child." As set forth above, Iowa Code 4.1(30)(a) states the word "may" confers a power. All Rule 1.206 does is provide that parent *may* bring cause of action for loss of consortium for their children, it says *nothing* about

how the action *must* be brought. This makes sense in light of its historical context.

Iowa R. Civ. P. 1.206 was formerly Iowa R. Civ. P. 8 and was based upon the common law rule that a father was entitled to wages earned by a minor child and the economic value of the child's services. Timothy D. Ament, Parents' Loss of Consortium Claims for Adult Children in Iowa: The Magical Age of Eighteen, 41 Drake L. Rev. 247, 249 (1992); citing to *Weitl v. Moes*, 311 N.W.2d 259, 265 (Iowa 1981), overruled by *Audubon-Exira Ready Mix, Inc. v. Illinois Cent. Gulf R. Co.*, 335 N.W.2d 148 (Iowa 1983). In its historical context all Rule 1.206 did was create a cause of action. This is confirmed by *Roth*, which states "Iowa recognizes a cause of action for loss of consortium. When a minor child suffers injury or death, [Rule 1.206] provides" the parent or parents may sue for loss of consortium. *Roth, 886 N.W.2d 601*. However, neither *Roth* nor Rule 1.206 ever changes the *vehicle* in which to bring a loss of consortium to *only* the parents of a minor child while prohibiting the estate from doing so. This distinction by the district court has no basis on the law and is error.

It is also worth pointing out the inherent contradictions set forth within the district court's rulings at this point. The district court was careful to set forth the idea that the Iowa Rules of Civil Procedure do *not* apply to state tort

claims made to the Board based on *Drahaus v. State,* 584 N.W.2d 270, 274 (Iowa 1998). (APP.205). The district court held that concepts of relation back under Iowa R. Civ. P. 1.201 and notice pleading under Iowa R. Civ. P. 1.402(2) do not apply based on the supposed non-applicability of the Rules. However, within this very same argument, the district court held that the estate lacked the capacity (i.e. was not the real party in interest), which is a concept codified and long recognized in Iowa R. Civ. P. 1.201 and in the holdings of *Voss*. Therefore, the district court is holding that the Rules do not apply except in the case of Rule 1.206 and Rule 1.201 (but not the section of Rule 1.201 that allows relation back). This is contradictory and flawed analysis. As such the district court erred and this case should be reversed and remanded.

**4. The district court erred when it held that Mrs. Anderson's appointment as administrator did not relate back to the time of filing.**

The appointment of Ms. Anderson as administrator of decedent's estate on May 29, 2020 relates back to the time, she filed the claim on May 6, 2020, for three reasons. (APP.20) First, claims under the ITCA do look to the Iowa Rules of Civil Procedure and case law for guidance. Second, the concept of a real party in interest clearly applies in the administrative context and is bound by Rule 1.201. Third, relation back in a pending *claim* is different than relation back from a pending *suit* to an already withdrawn or denied *claim*.

**a. Claims under the ITCA look to the Iowa Rules of Civil Procedure and Iowa caselaw for guidance and the concept of a real party in interest under Iowa R. Civ. P. 1.201 clearly applies.**

The district court erred when it found that the Iowa Rules of Civil Procedure do not apply to the claims process involving the Board, by stating "Plaintiffs have provided no case law to counter [*Drauhaus's*] clear message that the Iowa Rules of Civil procedure related to matters of *suits* will not dictate whether a *claim* to the Board is sufficient under the ITCA." (APP.205)[3] The district court is incorrect for three reasons. First, the holdings of *Drahaus* are applied in a relatively limited fashion as it involves specific issues with the unique statute of limitations for ITCA claims. Second, there is clear precedent that the ITCA claims process *does* look to the Iowa Rules of Civil Procedure. Third, as has been discussed above, the district court arbitrarily applied some of the Iowa Rules of Civil Procedure but not others for claim presentment. This in itself injects reversible error.

First, the holdings of *Drahaus* applied in a limited fashion for a specific set of facts interwoven with the unique statute of limitations for ITCA claims. The case of *Drahaus* involved a minor who was placed in temporary legal

[3] This was used by the district court to hold that notice pleading does not apply to ITCA claims. While Plaintiffs disagree with this contention as there are many similarities between presentment and notice pleading, that matter is not addressed here. Nonetheless, the applicability of the Iowa Rules of Civil Procedure is important for real party in interest principles.

custody of the Drahauses through juvenile court proceedings while the State had legal guardianship of the minor. *Drahaus,* 789 N.W.2d at 271. The minor had a cause of action against the state that accrued on March 5, 1992, but was not adopted by the Drahauses until May 31, 1994, at which point the statute of limitations had run, all the while the minor's legal guardian had been the State. *Id.* The Drahauses then filed a claim and a subsequent suit, both after the statute of limitations had run as set forth by Iowa Code 669.13. *Id. at 271-72*.

The Drahauses argued that they were not able to file a claim as they were not the guardians of the minor, the state was, and were therefore precluded from filing by Rule 1.210 (f/k/a Rule 12). *Id. Drahaus* held as follows:

> Upon our reading of rule 12, **the relevant provisions of chapter 669, and other Iowa Code provisions**, we conclude that rule 12's restriction concerning who may file a civil action on behalf of a minor ward applies only to *actions* brought in district court and does not apply to the filing of a claim with the appeal board under Iowa Code chapter 669.

*Id. at 274*.(emphasis added) However, the *Drahaus* court found that, while the tolling provision for minors in section 614.8 tolled the statute of limitations for 614 actions, it did not toll the statute of limitations for ITCA claims under Iowa Code 669.13. *Id. at 273*.

*Drahaus* did not stand for the wholesale abandonment of the Iowa Rules of Civil Procedure and relevant caselaw for claims under the ITCA. This was a specific finding regarding this particular rule of civil procedure that worked *in concert* with the unique statute of limitations applicable to the ITCA. After all, if *Drahaus* did stand for wholesale abandonment of the Iowa Rules of Civil Procedure, then concepts such as the real party in interest under Rule 1.201 would be meaningless. Furthermore, *Drahaus* would stand as contrary authority to *Voss* as set forth below. However, that is not the case and the concepts of real-party-in-interest work in concert with the claims process of the ITCA.

Second, there is clear Iowa precedent that the claims process looks to the Iowa Rules of Civil Procedure and caselaw for guidance. The case of *Voss* dealt with a claimant who was not appointed as administrator of the estate who then filed a claim with the State Appeal Board. *Matter of Est. of Voss*, 553 N.W.2d at 879. Then, *before* being appointed as administrator, the claimant withdrew her claim and filed suit. *Id.* After claimant filed suit she sought to be appointed as administrator and argued that her appointment as administrator *after* the suit was filed related back to the time she filed the *claim*. *Id. at 880-881*.

The Supreme Court in *Voss* held that it is "an elementary rule of law" that a plaintiff must have the capacity to sue in order to commence and maintain an action in district court. One reason we require that a lawsuit be brought by the real party in interest is to protect the defendant from multiple suits." *Id.* 880 (Iowa 1996) *Voss* held that the "requirement the **claimant possess the capacity to sue** is consistent with the purpose of the administrative procedures of the Act." *Id*. at 880. The *Voss* court would continue, stating that "the same reason underlying our capacity-to-sue requirement in district court supports an identical requirement in this administrative context: the avoidance of multiple suits". *Id*. at 881. The State should not have to consider the merits of persons with only tenuous connections to the deceased nor delay disposition waiting for the possible appearance of other claimants with "equal or superior connection to the decedent. **The filing of multiple claims for the same death needlessly complicates and burdens the system and wastes precious governmental resources**."[4] *Id.*(emphasis added)

Therefore, under *Voss,* a claimant under the ITCA must be the real party in interest applied to claims under the ITCA. *Id.* at 880-81. This is because

[4] This concept of multiple claimants also cuts against the State's argument that every consortium claimant must file multiple claims.

the statutory language of the ITCA contemplates that the person making the claim is the "real party in interest, that is, the one to whom the state would be liable if it were sued in court as a private person." *Id.* As a real party in interest is governed by Rule 1.201, the Rules clearly apply in some respect to the administrative process and Rule 1.201 clearly applies in its entirety.

Third, the district court's holding was inherently inconsistent as to its application of the Iowa Rules of Civil Procedure. The district court held that the Rules do not apply per *Drahaus* while simultaneously holding that: (1) the estate was not the real party in interest/proper claimant to bring loss of consortium claims for any consortium claimant; (2) that Rule 1.206 creates a procedural exclusion for administrators of estates to file ITCA claims with the board for loss of consortium claims by parents for the death of their minor children; and (3) that Mrs. Anderson was not the real party in interest as she had not yet been appointed as administrator of the estate. The district court's inconsistent approach reveals the sheer unworkability of the abandonment of the Rules wholesale for administrative claims. As such, the district court's holding was in error.

**b. As claims under the ITCA incorporate the Iowa Rules of Civil Procedure and caselaw, the concept of relation back under Iowa R. Civ. P. 1.201 applies to claims.**

As *Voss* establishes, courts have found that the ITCA incorporates the Iowa Rules of Civil Procedure in part and these apply in reviewing the sufficiency of claims submitted to the Board under the ITCA. The procedural lodestar for a real party in interest under Iowa's district courts is Iowa R. Civ. P. 1.201, which states as follows:

> Every action must be prosecuted in the name of the real party in interest. But an executor, administrator, conservator, guardian, trustee of an express trust, or a party with whom or in whose name a contract is made for another's benefit, or a party specially authorized by statute may sue in that person's own name without joining the party for whose benefit the action is prosecuted. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Iowa R. Civ. P. 1.201 contains a provision stating that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest.

Rule 1.201 mirrors Fed. R. Civ. P. 17(a), which was utilized in *Est. of Butler ex rel. Butler v. Maharishi Univ. of Mgmt.,* 460 F. Supp. 2d 1030 (S.D. Iowa 2006). The *Butler* court dealt with an administrator that was appointed after the statute of limitations ran on a claim. *Id. at 1038*. The court found that under Rule 17(a) that the real-party-in-interest defect had been cured

within a reasonable time after an objection had been made and, as such, the appointment of the administrator related back to the time the suit was filed. *Id.*

*Butler* is applicable authority as, although it was a federal case, the court applied Iowa law governing capacity to sue, holding that the right to recover wrongful death damages is vested exclusively in the personal representative of the estate. *Id. at 1037*; citing to *Voss, 553 N.W.2d at 881*.

The holding in *Butler* is appropriate in light of longstanding Iowa precedent regarding a real-party-in-interest. The courts of Iowa have recognized, since 1860, that the real-party-in-interest rule has been liberally construed, in the interests of justice, and in accordance with the underlying principle, spirit, and purpose for which it was enacted. *Sioux City v. W. Asphalt Paving Corp.,* 223 Iowa 279, 271 N.W. 624, 631 (1937).

This same liberal construction should be applied here. In the present case, Mrs. Anderson was appointed as administrator on May 29, 2020, just 23 days after her tort claim forms were submitted on May 6, 2020. Mrs. Anderson's relation back would be mere weeks after Plaintiffs state tort claims were submitted to the Board and would be a far shorter time than what was contemplated in *Butler*. Nonetheless, the district court construed the short

time frame unfavorably and surrounding facts unfavorably against Plaintiffs and this led to error.

**c. Relation back in a pending claim is different than relation back from a pending suit to an already withdrawn or denied claim.**

The district court erred when it found Mrs. Anderson's appointment as administrator of decedent's estate while the administrator's ITCA claim was pending with the Board. The district court relied upon an erroneous interpretation of *Voss* to conclude Mrs. Anderson's appointment did not relate back. 553 N.W.2d 878. *Voss* involved a mother, Aliccia Voss, seeking compensation for the death of her adult son, Bryan Voss, which occurred in February 1993. *Id. at 879.* Four months after his death Voss submitted an ITCA claim to the board, which was denied. *Id.* After the denial of her claim, on January 12, 1995, Voss was appointed as administrator and filed suit. *Id.* The State filed a motion to dismiss, which was granted and Voss appealed. *Id.*

The district court examined Voss's capacity as the real-party-in-interest, which has been discussed above, holding that an individual must be the real party in interest in order to bring a claim to the Board under the ITCA. *Id. at 880-81*. *Voss* relied on *Pearson v. Anthony,* 218 Iowa 697, 702–03, 254 N.W. 10, 13–14 (1934) and *Est. of Dyer v. Krug*, 533 N.W.2d 221, 223 (Iowa

1995) in finding that the appointment as administrator during the suit did not relate back to the already withdrawn claim. However, there are critical differences in these cases and the *Voss* case that distinguish them from the present case.

The first and most obvious distinguishing factor is that *Voss* dealt with a plaintiff who was appointed as administrator *after* the ITCA claim had been denied by the Board and *after* the suit had been filed. *Id. at 882*. The *Voss* court even recognized this, stating that the "Board denied her claim prior to her appointment as the administrator of the estate. Because there was ***no pending claim at the time of her appointment***, there was no administrative proceeding in which her appointment could relate back." *Id.*(emphasis added). This specifically contemplates relation back of a pending claim. The *Voss* court continued that appointment of Voss as administrator would not be permitted to revive "a defective claim almost two years after it has been administratively closed." *Id.*

This is a far cry from the present case where Plaintiffs submitted their tort claim forms on May 6, 2020. (APP.147) The State acknowledged receipt on May 15, 2020. (APP.153) Mrs. Anderson was appointed as administrator on May 29, 2020. (APP.20-APP.21) On November 24, 2020, Plaintiffs withdrew their tort claim and on December 18, 2020, the State acknowledged

the withdrawal. (APP.259-APP.260; APP.261) Mrs. Anderson was appointed as administrator 14 days after the State acknowledged receipt of the claim forms, not two years after the claim was withdrawn from the Board.

The appointment of Mrs. Anderson as administrator mere weeks after the tort claim forms were sent to the Board also serves to distinguish it from *Pearson* and *Dyer*. *Pearson* held although the suit had commenced, the statute of limitations expired prior to the plaintiff's appointment as administrator, which was a defect that could not be cured. *Pearson v. Anthony*, 218 Iowa 697, 254 N.W. 10, 13 (1934). *Dyer* involved the dismissal of a petition where the plaintiff bringing suit had no capacity to sue on behalf of the estate and did not become the legal representative before the statute of limitations expired. *Est. of Dyer v. Krug*, 533 N.W.2d 221, 222 (Iowa 1995) The principle underlying these two cases is identical, the appointment of an administrator *after* the limitations period has expired was a defect that could not be cured and, even then, *Butler* stands as distinguishing authority.

In the present case Mrs. Anderson was appointed before the limitations period for filing her claim expired. Furthermore, Mrs. Anderson was the administrator for five days short of six months during the period the Plaintiffs' claims were pending with the Board. To uphold the district court's ruling that

Mrs. Anderson's appointment would not relate back would eviscerate the entire concept of relation back under Rule 1.201.

The fact that Plaintiffs' claim was pending in the administrative process rather than litigation makes no difference as to the applicability of the Rules here. To hold that the concept of capacity and the necessity for a real party in interest apply for an ITCA claim submitted to the Board *but* the concept of relation back (that is integral to the procedural rule governing real party in interest) does not apply is cherry-picking legal concepts and facts in order to defeat Plaintiffs' claim, which runs contrary to the spirit and purpose of the ITCA, which prefers to resolve disputes on the merits. This also runs contrary to the standard governing a motion to dismiss. As such, the district court erred in holding Mrs. Anderson's appointment does not relate back.

## II. THE DISTRICT COURT ERRED WHEN IT DENIED PLAINTIFFS' MOTION TO SEAL RECORD EXHIBIT

### A. Preservation of Error on Appeal.

The district court denied Plaintiffs' unresisted Motion to Seal Record Exhibit on April 13, 2022. (APP.321-APP.322) Plaintiffs then filed a notice of appeal on April 28, 2022, thereby preserving appeal. (APP.324) As the issue was raised and decided by the district court it has been preserved for appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002)

**B. Scope and Standard of Review.**

The Motion to Seal Record Exhibit was denied by discretion of the trial court. *Tamco Pork II, LLC v. Heartland Co-op*, 876 N.W.2d 226, 231 (Iowa Ct. App. 2015)

**C. Standards Governing Abuse of Discretion.**

The precedent in the area of reviewing district court decisions for abuse of discretion is "not surefooted". *Tamco Pork II, LLC*, 876 N.W.2d at 231. An abuse of discretion standard acknowledges a decision "is a judgment call on the part of the trial court." *Id. quoting State v. Rodriquez,* 636 N.W.2d 234, 240 (Iowa 2001). "In other words, there is some play in the joints, and the reviewing court generally will not disturb the district court's decision unless it "is based on a ground or reason that is clearly untenable or when the court's discretion is exercised to a clearly unreasonable degree."" *Tamco Pork II, LLC*, 876 N.W.2d at 231 *quoting Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 159 (Iowa 2004)

**D. Argument**

The court abused its discretion when it failed to grant Plaintiffs' Motion to Seal Record Exhibit, which means it did not have the facts necessary before it in order to interpret those facts in Plaintiffs' favor. The district court erred for three reasons. First, the Motion to Seal Record Exhibit only sought to seal

an exhibit that was part of Plaintiffs' Motion to Reconsider. Second, the actual Motion to Seal Record Exhibit was unresisted and the responsive filing by Defendant was past the deadline given to them under Iowa motion practice. Third, by denying Plaintiffs' unresisted motion the record was not properly preserved for appeal and now the record on appeal has unsealed medical records as part of it.

**1. The Motion to Seal Record Exhibit simply sought to seal an exhibit for an exhibit of record that contained confidential medical information.**

The district court abused its discretion by failing to permit the sealing of confidential medical information for a record exhibit. Evidence that should not be part of the public domain or are confidential should be sealed. Iowa Rules of Electronic Procedure Chapter 16.604(2) states that a filer may redact information concerning medical treatment or diagnosis. Procedurally, a motion to seal should be made in writing setting forth the grounds for confidentiality. Iowa Rules of Electronic Procedure Chapter 16.405(2); *See also* § 70:6. Motion to seal confidential materials, 8 Ia. Prac., Civil Litigation Handbook § 70:6.

Plaintiffs were simply following proper procedure in this case by asking the court to seal a document that had been submitted as an exhibit and referenced in the Motion to Reconsider. (APP.216) However, the district

court held that the records were not relevant so the court would not "issue an order allowing said records to be sealed so that they may be presented to the Court." (APP.321) First of all, this statement reveals that the district court was interpreting facts incorrectly in the Motion to Dismiss by failing to consider and give weight to relevant evidence. The court should have considered these records and interpreted it in the light most favorable to Plaintiffs. Second of all, the motion wasn't regarding the presentment of medical records, it was regarding the *sealing* of records.

**2. Defendant did not resist the Motion to Seal Record Exhibit and filed a late response.**

Defendant did not resist sealing the requested medical records and, as a result, the district court denied an unresisted motion to seal a confidential part of the record. Plaintiffs filed their Motion to Seal Record Exhibit on February 2, 2022. (APP.264-APP.265) Defendant filed a response to the Motion to Seal on February 24, 2022, twenty-three days after the Motion to Seal. (APP.314) The next day Plaintiffs filed a reply. (APP.317-APP.319)

In Defendant's response Defendant admitted that the records should be sealed but that the medical records should not be accepted by the court and submitted supplemental arguments to its Resistance to Plaintiffs' Motion to Reconsider. (APP.314-APP.315). This Motion was untimely under Iowa R. Civ. P. 1.431. This response was untimely and not responsive to the

underlying motion, as Plaintiffs pointed out in their Reply. (APP.317-APP.319) Defendant also missed the point of the Motion. The records had been incorporated by reference and the judge reviewed said Motion. Rather, Defendant simply used this as a chance to make additional, untimely arguments.

**3. The court abused its discretion in denying the Motion to Seal as now the record is missing an exhibit.**

The district court abused its discretion in denying the Motion to Seal as now the appellate record includes unsealed medical records. Plaintiffs referred to the medical records in their Resistance to Defendant's Motion to Dismiss. (APP.115-APP.116; APP.137-APP.140). Then Plaintiffs sought to present the actual medical records to the court and referenced them heavily in Plaintiffs' Motion to Reconsider. (APP.216-APP.257) This is where Defendant and the district court's reasoning strayed. The medical records were referenced and made a part of the record as they were referenced in the Motion to Reconsider, Plaintiffs simply weren't permitted to submit them as sealed records. (APP.321) The reason given by the district court for refusing to seal the medical records is because the district court, without reviewing them, stated they would not have made a difference. (APP.321) However, whether or not they would have made a difference does not remove the fact that they were made a part of the record by reference and they are, as admitted

by the State, confidential and should have been sealed. Rather, by denying Plaintiffs uncontested Motion in the same ruling that dismissed the case, this disrupted the record as while the records are referenced in Plaintiffs' Motion, they are not sealed and were not filed. (APP.216-APP.257)

The court erred in failing to grant Plaintiffs' Motion to Seal Record Exhibit, which shows that the court did not have all the pertinent facts before it in ruling on Defendant's Motion to Dismiss. Furthermore, Plaintiffs request that this part of the appendix be sealed in its submission.

## CONCLUSIONS AND REQUESTED RELIEF

The district court erred in granting Defendant's Motion to dismiss. Plaintiffs' claims were properly presented under the requirements of *Segura* and *Schneider* and Plaintiffs exhausted their administrative remedies as well. The district court also erred in holding that the State has no duty to investigate ITCA claims. The district court further erred in holding that consortium claims for parents over the death of minor children cannot be brought through an estate and that the administrator's appointment did not relate back.

Furthermore, the district court erred in refusing the grant Plaintiffs' unresisted Motion to Seal Record Exhibit.

Plaintiffs request that the court reverse the holdings of the district court and enter an order denying Defendant's Motion to Dismiss and enter an order

finding that Plaintiffs' tort claim forms were properly submitted and the claims of Mr. Anderson & Mrs. Anderson, individually and as administrator of the Estate of Carter Anderson, are remanded for trial.

Plaintiffs further request that the medical records be sealed.

## REQUEST FOR ORAL ARGUMENT

Plaintiffs-Appellants request to be heard in oral argument.

Respectfully submitted,

/s/ Edward J. Prill
Edward J. Prill AT0012435
Andrew Mahoney AT0012329
**CROWLEY & PRILL**
3012 Division Street,
Burlington, IA 52601
Telephone: 319.753.1330
Facsimile: 319.752.3934
eprill@cbs-lawyers.com
amahoney@cbp-lawyers.com

**ATTORNEYS FOR APPELLANT**

## CERTIFICATE OF COST

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was n/a (e-filed), exclusive of sales tax, delivery, and postage.

BY: /s/ Edward J. Prill
Edward J. Prill AT0012435

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this final brief contains 13,750 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point, Times New Roman.

BY: /s/ Edward J. Prill
Edward J. Prill AT0012435

## CERTIFICATE OF SERVICE

The undersigned certifies a copy of Plaintiff-Appellant's Final Brief was filed with the Clerk of the Iowa Court of Appeals via EDMS and served upon the following persons by EDMS on the 2nd day of December 2022:

Pope Yamada
PHELAN TUCKER LAW L.L.P.
321 E. Market Street
Iowa City, IA 52240
yamada@phelantuckerlaw.com
Attorney for THE STATE OF IOWA

Samuel. P. Langholz
Job Mukkada
Attorney General
Dept of Justice Hoover State Office Building Des Moines, Iowa 50319
Sam.langhola@ag.iowa.gov
Job.mukkada@ag.iowa.gov

BY: /s/ Edward J. Prill
Edward J. Prill AT0012435