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 REPLY BRIEF

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

STATEMENT OF ISSUES

I. The State's arguments regarding alleged failure to exhaust require an incorrect reading of the ITCA and caselaw governing a real-party-in-interest

A. The State's argument requires interpreting the ITCA to defeat legitimate claims rather than "doing substantial justice".

McFadden v. Dep't of Transp., State, 877 N.W.2d 119, 123 (Iowa 2016)

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

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

Other:

Iowa Code 669.3

Iowa Code 669.5

1. The State combines the concepts of "claims-processing" rules and "presentment and exhaustion" in order to defeat legitimate claims.

Segura, 889 N.W.2d at 227

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)

Other:

Iowa Code 669.3. *Id. at 225*

Iowa Code 669.5

Iowa Admin. Code r. 543-1.4(3)(c)

Iowa Code 633.336

2. By defeating claims for claims-processing defects the prompt investigation and early settlement of claims is frustrated and the State's mandatory duty to investigate claims is nullified.

Matter of Estate of Voss 553 N.W.2d at 881.

Rivera v. Woodward Res. Ctr., 830 N.W.2d 724, 728 (Iowa 2013)

Segura v State, 889 N.W.2d at 228.

II. **The individual claims of Alexandria and Terry Anderson were presented and exhausted as they were alleged through the Administrator of the Estate.**

Madison v. Colby, 348 N.W.2d at 207

Segura v State, 889 N.W.2d at 228.

Other:

Iowa Code 669.5

Iowa Admin. Code 543-1.4(1)

A. The State confuses the party who may bring a claim with the party entitled to recovery in *Madison v. Colby*.

Madison v. Colby 348 N.W.2d at 207

Voss, 553 N.W.2d at 880

Wayne Cnty. Mut. Ins. Co. v. Grove, 318 N.W.2d 192, 193 (Iowa 1982),

Other:

Rule 1.206 or Iowa Code 615.15A

Iowa R. Civ. P. 2 n/k/a Rule 1.201

B. There is no controlling authority consortium claimants in the case of a wrongful death in the ITCA claims process must file separate claims.

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

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

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

Rucker v. U.S. Dep't of Lab or 798 F.2d 891 (6th Cir. 1986);

Other:

Iowa Admin. Code 543-1.4(1)

III. **Not only does the Administrator's claims relate back, but the State's arguments reveal the logical inconsistency and misapplication of Iowa law to the ITCA process.**

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

Other:

Iowa R. Civ. P. 1.201

A. *Voss* is distinguishable and contemplates relation back to a pending administrative proceeding.

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

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).

B. The inapplicability of the Iowa Rules of Civil Procedure is both inconsistent in the State's argument and unworkable in light of *Voss*.

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

Wayne Cnty. Mut. Ins. Co., 318 N.W.2d at 193.

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

ARGUMENT

I. The State's arguments regarding alleged failure to exhaust require an incorrect reading of the ITCA and caselaw governing a real-party-in-interest.

The State makes three primary arguments in opposition to Plaintiffs' arguments regarding dismissal: (1) Mrs. Anderson was not appointed at the time the tort claims forms were submitted and her later appointment cannot relate back; (2) Mr. and Mrs. Anderson didn't file separate tort claim forms from the Administrator and their claims cannot be joined to the Administrator's claims as loss of consortium claims by parents for the loss of a deceased minor child cannot be brought by a personal representative; and (3) exhaustion under Iowa Code section 669.5 cannot be waived.

There are two major issues with the State's arguments. First, the State largely brushes past the arguments regarding the purpose of the ITCA and blends together claims-processing rules under section 669.3 with presentment and exhaustion requirements under 669.5. This confuses the concepts of "presentment and exhaustion" with the concept of "claims-processing". Second, the State inconsistently and incorrectly applies Iowa law governing a real-party-in-interest in the case of consortium claims made on behalf of the parents for a deceased child.

A. The State's argument requires interpreting the ITCA to defeat legitimate claims rather than "doing substantial justice".

The State's arguments require flipping the purposes of the ITCA on its head and thwarts the idea of interpreting the ITCA with an eye towards doing "substantial justice" and the goal of prompt investigation and settlement.

The State frustrates the purpose of doing substantial justice by combining the concept of "claims-processing" under Iowa Code 669.3 and "presentment and exhaustion" under section 669.5. This blending of concepts elevates the idea that a claims-processing defect, no matter how minor, may be used to defeat a legitimate claim. In other words, according to the State it is appropriate to deny rights by too strict an application of mere legal formality in contrast to *McFadden v. Dep't of Transp., State*, 877 N.W.2d 119, 123 (Iowa 2016). However, if any claims-processing defect, no matter how minor, is sufficient to defeat a claim then it is clear the ITCA is being interpreted to defeat legitimate claims rather than to do "substantial justice" in light of *Segura v. State*, 889 N.W.2d 215, 227 (Iowa 2017).

The second way the State seeks to frustrate the ITCA is by rewarding the State for failing to investigate claims, which circumvents the purpose of a "prompt investigation of claims against the State and facilitate an early settlement when possible." *Matter of Est. of Voss*, 553 N.W.2d 878, 881 (Iowa 1996) The district court in this case differentiated between the types of exhaustion, finding it was favorable the State did *not* investigate and deny the

claim. By adopting this argument, the State seeks to avoid its mandatory duty to investigate claims. Rewarding the State for failing to investigate claims only incentivizes the State to refrain from investigating future claims, which defeats the purpose of prompt investigation and early settlement.

1. The State combines the concepts of "claims-processing" rules and "presentment and exhaustion" in order to defeat legitimate claims.

The purpose of the ITCA is to do "substantial justice" by providing a method to compensate those tortiously injured by an agent of the State. *Segura,* 889 N.W.2d at 227. However, the State seeks to elevate the idea of minor "claims-processing" defects as a way of defeating presentment and exhaustion, which requires the ITCA to be interpreted with an eye towards defeating legitimate claims.

It has been clearly established the method for bringing a claim under the ITCA is by first presenting a claim to the State Appeal Board. A claim is presented when it "discloses the amount of damages claimed and generally describes the legal theories asserted against the State". *Id.* Once a claim has been presented it must be administratively exhausted under section 669.5 by either withdrawing the claim after six months or by the board's denial of the claim.

In investigating and settling claims, the "legislature delegated some authority to allow the functioning of this investigation and settlement process" by promulgating claims-processing rules per Iowa Code 669.3. *Id. at 225* "However, 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 indicates the legislature only intended to delegate the authority to promulgate rules necessary to investigate and settle claims, not to govern their initial presentment for exhaustion under section 669.5." *Id.* In other words, the administrative rules under section 669.3 do not govern whether a claim has been presented and exhausted under section 669.5. Similarly, an error in claims-processing on the part of a claimant should not deprive the courts of jurisdiction. By blending these concepts, the State seeks to delegate authority to set the jurisdiction of Iowa's courts to the State Appeal Board.

The State's contention is seen in section I(C) of their brief below:

> The Andersons and the Estate contend that the State has "a statutory duty to investigate [tort] claims" and that if it "fails to exercise its mandatory duty, the State should be prohibited from **objecting to claim processing rule violations in a subsequent suit**." Appellants' Br. at 44. In other words, they suggest that lack of investigation could amount to a **waiver of the exhaustion requirement**.

(Appellee's Proof Brief p. 31)(emphasis added) By the State's own language there is no difference between "claims-processing" and "presentment and exhaustion." If this argument is made precedent and a claimant submits claim forms yet forgets to put the address of a person who took x-rays of the claimant pursuant to Iowa Admin. Code r. 543-1.4(3)(c), the entire claim could be dismissed because it was improperly presented. This hypothetical is not an exaggeration as the State's own arguments reveal it believes any alleged defect, even if it is not a defect under their own administrative rules but based upon the State's incorrect interpretation of the law, should be enough to defeat a claim.

a. **The State argues any alleged defect, no matter how minor, should be interpreted in hindsight to defeat a claim.**

The State's argument reveals their position is truly that *any* alleged defect in administrative claims processing should defeat a claim. To the State, it doesn't matter whether it is a minor defect or even a perceived defect based on the State's misinterpretation of its own administrative rules. To the State, any argument regarding defects may be raised once litigation is filed in order to argue the administrative remedies have not been exhausted. The State could not possibly crystallize this any better than its argument Plaintiffs failed to properly present the claimed damages on the tort claim form. (Appellee's Proof Brief p. 26-28)

The State argues consortium damages claimed by Mr. and Mrs. Anderson for decedent are property damages and Plaintiffs incorrectly filled out the following section:

FOR TORT CLAIMS, INDICATE ONE OF THE FOLLOWING:

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

(APP.160) The State argues Plaintiffs should have separated all other wrongful death damages from consortium damages and listed the consortium damages under the "property damages" section. There is no legal precedent for this and is in opposition to the administrative regulations promulgated by the board.

Consortium damages for the loss of decedent are a wrongful death damage brought by the personal representative of an estate. 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) Iowa Code 633.336 reads as follows:

> 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) Iowa Code 633.336 states wrongful death damages shall be disposed of as personal property. What is abundantly clear is *all* wrongful death damages are disposed of as property and *all* consortium damages are a subset of wrongful death damages. The form is in the exclusive control of the State and, if the State prefers further delineation of the damages, especially in a manner contrary to the Iowa law, then at the very least the form or the administrative rules should reflect that.

What truly undoes the State's own argument regarding "wrongful death" versus "property damages" is their own regulations promulgated by the board in section 543—1.4(4), which is entitled "*In connection with* ***property damage*** *or loss*":

> *a.* Motor vehicle.
> (1) Make, model, year.
> (2) Date of purchase and purchase price.
> …
>
> *b.* Other property.
> (1) Nature and description of such other property or items of property separately listed.
> (2) Method by which such property was acquired. If purchased, then the name of the person or place from which purchased, the price, date and usage made of the property.
> (3) Depreciated value at date of damage or loss.
> …

Plaintiffs do not understand how the State can claim consortium is a "property" damage for ITCA claims when their own regulations governing the claims process clearly contemplate "property" damage as something like a car or tangible personal property that was affected. Plaintiff cannot give the "depreciated value" of consortium for the loss of their child. "Depreciation" does not apply to something like loss of support and affection.

The State's further complains they could not possibly ascertain what of the $15,000,000 was for consortium and what was for the remaining damages and Plaintiffs failed presentment under section 669.5 for this reason. There is absolutely *no a*uthority supporting the idea Plaintiffs have to break down damages down in such a way. "Presentment" under section 669.5 does not require categorizing damages with such specificity nor do the claims processing rules such as Iowa Admin. Code 543-1.5, which states "[a]ll claims shall state the amount of compensation requested from the state appeal board."

These arguments reveal how the State views these claims. Rather than investigate a claim as they are required to do while it is pending, it is acceptable to ignore a claim entirely, wait until it is withdrawn and filed, and then object to an alleged defect in a tort claim form during the suit. In seeking to defeat claims the State goes so far as to manufacture new requirements or flip the meaning of the forms and rules the State itself promulgated in order

to defeat legitimate claims. This is not interpreting the ITCA with an eye towards doing "substantial justice".

2. By defeating claims for claims-processing defects the prompt investigation and early settlement of claims is frustrated and the State's mandatory duty to investigate claims is nullified.

The State's arguments that claims-processing defects are enough to frustrate presentment and exhaustion and the State was prejudiced by an alleged claims-processing defect runs contrary to the ITCA as the "administrative process set forth in chapter 669 is intended to allow a prompt investigation of claims against the State and facilitate an early settlement when possible." *Voss*, 553 N.W.2d at 881. One of the central purposes of presentment is to "give the state an opportunity to investigate and resolve the claim before making the courts available to resolve the claim. If a claim is resolved by the attorney general, a court action is unnecessary" *Rivera v. Woodward Res. Ctr.,* 830 N.W.2d 724, 728 (Iowa 2013)(citations omitted).

The State has a mandatory duty to investigate these claims and Plaintiffs argue the State should not be permitted to raise objections and cry foul regarding *claims-processing* defects after exhaustion. Nowhere in the State's arguments do they deny they have a *mandatory* duty to investigate claims. Also missing from the State's brief is *any* evidence the State took *any* actions to investigate Plaintiffs' claims. Nonetheless, this has not stopped the

State from crying foul and stating how they were prejudiced due to the alleged claims-processing defects in Plaintiffs' forms. Contrary to what the State asserts, Plaintiffs are not seeking a waiver of exhaustion. It is seeking a waiver of claiming prejudice to imagined or even true claims-processing defects when a claim has satisfied the requirements for presentment and exhaustion under section 669.5.

The State argues this issue was not preserved by Plaintiffs as it was not raised in their Resistance to the Motion to Dismiss. (Appellee's Proof Brief p. 31) However, Plaintiffs did not anticipate the district court distinguishing between types of exhaustion. The district court found it favorable in this case for the State that there was no investigation of Plaintiffs' claims rather than a denial. (APP.207-APP.208) In other words, the type of exhaustion carried weight in the district court's ruling. Had the State actually followed their mandatory duty to investigate the claim and denied it, this would have been favorable in the eyes of the State and district court. This was a new issue raised in the district court's ruling and therefore could not have been raised by Plaintiffs. Therefore this matter was preserved for appeal.

Plaintiffs argue the correct time for the State to object or claim prejudice over a claims-processing defect is during the time the administrative claim is pending. If more information is needed to comply with a claims-

processing rule the words of the *Segura* court apply and the board "can request it during the six months it has exclusive jurisdiction. This approach accommodates the board's right to obtain relevant information and verification without barring potentially meritorious claims based on initial noncompliance." *Segura,* 889 N.W.2d at 228.

If minor claims-processing defects defeat presentment and exhaustion this delegates the authority to set jurisdiction of Iowa courts to the board. This also makes it difficult to properly present a claim as there are a plethora of rules and any slight deviation, whether imagined or not, is enough to defeat a claim in the mind of the State. Combine this with the idea there is a benefit to the State in a subsequent suit if a claim is withdrawn by a claimant rather than denied and you are left with an improper incentive structure.

A way to illustrate this improper incentive would be to take the present case where the State argues Plaintiffs didn't sufficiently break down damages and should have incorrectly included consortium damages in property damages. Assuming *arguendo* the State had investigated Plaintiffs' claims then one option the board would have upon discovering this would be to take five minutes to send a letter asking Plaintiffs for clarification. Another option would be to do nothing, hope claimants never figure it out, withdraw and then file suit. From there the State knows it has an alleged defect in which to base

a motion to dismiss on. To uphold the State's arguments would be to send a clear message that, not only is this type of approach to processing claims acceptable, there is a benefit in a subsequent motion to dismiss if a claim is withdrawn without an alleged defect ever being discovered. Where the problem could have been resolved in five minutes during the time the claim is pending the alleged defect then becomes the subject of lengthy motion practice and an appeal, all wasting the precious time of Iowa courts. This disincentivizes the prompt investigation and early settlement of claims, which is contrary to the ITCA.

II. The individual claims of Alexandria and Terry Anderson were presented and exhausted as they were alleged through the Administrator of the Estate.

The State argues Mr. and Mrs. Anderson never properly presented their claims as individuals. However, the individual claims of Mr. and Mrs. Anderson were properly presented by the Administrator. First, the State confuses the concepts of a person who brings a claim with a person who is entitled to recover under *Madison,* 348 N.W.2d at 207. *Madison* unequivocally states consortium claims for a wrongful death claim "must" be joined unless there is a "compelling reason" not to.

Second, the State provides no authority that, in the context of consortium claimants in a wrongful death claim, consortium claimants must

file separate claims. There is nothing in Iowa Code 669.5 or the cases governing "presentment and exhaustion" setting forth consortium claimants in wrongful death cases must file separate claims forms. The only authority the State raises is Iowa Admin. Code 543-1.4(1) stating separate claims "shall be filed for each type by each claimant". This demonstrates the alleged defect by Plaintiffs in filing one set of claims forms is not even a defect as the proper claimant is still the personal representative. Even if it were to be considered a defect, it is necessarily a claims-processing defect and should not defeat Plaintiffs' legitimate claims under the analysis set forth in *Segura*.

A. The State's confuses the party who may bring a claim with the party entitled to recovery in *Madison v. Colby*.

The State's analysis of *Madison v. Colby* confuses the party with the right to recover damages and who has the right to bring a claim. The State cites a quote from *Madison,* which states the parents had "both authority to sue and the right to recovery of the entire loss." *Madison,* 348 N.W.2d at 209. However, this quote is in the beginning part of the opinion citing the history of Iowa law *up until this case*. The State continues, alleging *Madison* contains a "charting [of] the same rights after the decision too". (Appellee's Proof Brief p. 28) This is incorrect. The chart refers to the "right of <u>recovery</u> [for consortium damages] in each relationship category can be charted as follows…" *Madison,* 348 N.W.2d *at 209*(emphasis added). The State

confuses the party with the right to *recovery* with the party who can *bring a claim*, which is key to the analysis. Immediately after the chart displaying a deprived parent has the right of *recovery* the *Madison* Court states:

> To 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 jurisdictions joinder is mandatory while in others it is required when feasible. *See Weitl,*311 N.W.2d at 268. Based on the considerations explored in *Weitl,* 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.*** *See id.* at 270.

Madison, 348 N.W.2d at 209 (emphasis added). Consortium claims "*must*" be joined with the administrator's action *"whenever feasible*". *Id.* If there are separate claims the consortium claimant has a burden to show "joinder was not feasible". *Id.* There is no unique distinction for consortium claims by parents for the death of their child as the State argues.

In the present case there is no evidence showing joinder was not feasible for Mr. and Mrs. Anderson. Not only that, joinder makes sense. Mrs. Anderson as administrator raised certain categories of damages such as pre-death pain and suffering, which are not recoverable by the parents as set forth in Rule 1.206 or Iowa Code 615.15A. That is why probate of an estate was brought in this case and why the consortium claims were joined to the estate. The splitting of claims makes no sense and *Madison* supports the idea of

joinder unless there is a compelling reason not to. 348 N.W.2d 202 (1984) As such, the proper *claimant* is Mrs. Anderson as administrator. This is because individual consortium claims (not the right to recovery, the right to bring the action) *must* be joined unless there is a compelling reason not to.

The State argues *Madison* is truly guidance for the eventual *suit*, not for the administrative claims process. However, Iowa courts look to case law and statutes for interpreting and giving effect to the ITCA. *Voss,* 553 N.W.2d at 880 (in construing section 669 the court looked to real party in interest principles set forth in *Wayne Cnty. Mut. Ins. Co. v. Grove,* 318 N.W.2d 192, 193 (Iowa 1982), which cited Iowa R. Civ. P. 2 n/k/a Rule 1.201 as requiring suits be brought by the real party in interest). The *Voss* Court found even though section 669 does not state the real-party-in-interest must file a claim, it comports with the purpose of the ITCA and it should be viewed through the lens of examining "the object to be accomplished and give the statute a meaning that will effectuate, rather than defeat, that object". *Voss,* 553 N.W.2d at 880. Using similar methodology, the analysis must turn to whether section 669 contains any requirement parents seeking consortium for the death of a child must file separate claim forms from the personal representative.

B. There is no controlling authority consortium claimants in the case of a wrongful death in the ITCA claims process must file separate claims.

The State argues a parent making a consortium claim for the loss of a minor child is a separate claimant for administrative purposes from a personal representative. However, there is no precedent under the ITCA, caselaw, or administrative rules that supports the idea parents filing consortium claims are to be considered different claimants from the estate. The principles in *Madison* suggest the exact opposite. So where does the authority come from that "claimants" under Iowa Admin. Code 543-1.4(1) requires the bifurcation of parents seeking consortium for death of a minor child?

Section 669 does not require consortium claimants to file separate, individual tort claim forms when wrongful death is involved. The caselaw governing presentment and exhaustion does not establish this either. Furthermore, there is no part of the administrative code requiring consortium claimants in the case of a wrongful death file separate claims. The State simply makes the self-conclusory argument that "claimants" under section 543-1.4(1) means consortium claims cannot be brought with the claim of the personal representative, who is the correct claimant in suits. If the State wishes to make "claimants" distinguish between persons entitled to recovery of consortium claims in wrongful death cases they should set that forth. In the present case the State is receiving the benefit of interpreting all ambiguous laws and rules in their favor in order to defeat Plaintiffs' ITCA claims, which is improper in

a motion to dismiss and under the ITCA. Instead, the law should be interpreted towards accomplishing the purpose of the ITCA.

The State and the district court citied to *Bloomquist v. Wapello Co.*, 500 N.W.2d 1 (Iowa 1993). However, it speaks volumes the State does not try to address the clear distinguishing factors already addressed by Plaintiffs. *Bloomquist* dealt with claimants making consortium claims for a *still-living* person, not through a personal representative of an estate. *Id. Bloomquist* did not have the overriding considerations of *Madison* and joinder of claims to a personal representative. Furthermore, there was no mention of consortium *at all* in the claim forms filed in *Bloomquist*. In other words, an entire general legal theory of recovery had never even been presented under 669.5 or in light of the guidance provided by *Segura*.

Bloomquist also relied on *Rucker v. U.S. Dep't of Lab.* in its findings. 798 F.2d 891, 893 (6th Cir. 1986). *Rucker* was an FTCA claims case that also did not involve a deceased claimant. *Id.* In *Rucker*, claimants' wife was identified on the form 95 and his children were not. *Id.* However, the form did not specify a claim was being made for consortium. *Id.* While this case is not precedent here, it shows even the rationale relied upon for *Bloomquist* is distinguishable from the present case.

Bloomquist is radically different from the present case where the claims forms set forth: (1) the general theories of negligence causing the death of the minor child; (2) Mrs. Anderson was the mother and claimant of the decedent; (3) the administrator was making a claim for loss of consortium; and (4) the medical records repeatedly mentioned decedent's father. In other words, Plaintiffs did present their claims for consortium through the Administrator pursuant to section 669.5.

In addition to *Bloomquist*, the State continues to raise the argument that Rule 1.206 prohibits the personal representative of an estate from bringing consortium claims on behalf of parents of a deceased minor child. Once again, the rationale here is truly confusing as it undoes every argument the State makes about the rules of civil procedure not applying to ITCA claims. Rule 1.206 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.

(emphasis added). Plaintiffs have already distinguished the fact the word "may" is permissive and the State's interpretation runs contrary to basic Iowa law in *Madison* regarding joinder of claims for wrongful death cases. One additional point is the word "sue" is used in Rule 1.206, which clearly references *suits* and not *claims*. The State has repeatedly argued Iowa civil

procedure is completely inapplicable to ITCA claims. However, the State has carved out an exception in the case of Rule 1.206 based on a perceived benefit.

The State's arguments reveal the sheer unworkability and inconsistency of their position. According to the State all Iowa civil procedural rules and caselaw regarding suits don't apply to the ITCA claims process (such as *Madison* and Rule 1.201) except when they do (*Voss* and Rule 1.206). This is illustrated in their arguments regarding relation back.

III. Not only does the Administrator's claims relate back, but the State's arguments reveal the logical inconsistency and misapplication of Iowa law to the ITCA process.

The State argues Mrs. Anderson was not appointed as administrator at the time the tort claim forms were filed and, as such, there is no possible way to cure this defect at any point and, therefore, the claims of Mrs. Anderson as Administrator must be dismissed. The State's arguments rely on an inconsistent application of Iowa caselaw and civil procedure. The State's primary authority is an erroneous interpretation and application of Iowa R. Civ. P. 1.201 and *Voss,* 553 N.W.2d 878.

The analysis by the State perfectly captures the State's approach to the rules of civil procedure. Within the same brief the State argues the idea that no aspect of civil procedure applies to ITCA claims processing as justification for the inapplicability of Rule 1.201 (State's brief p. 21-22) but Rule 1.206

does apply to bar the Estate from bringing an administrative claim for loss of consortium. (State's brief p. 28) In other words, the claim doesn't relate back because the Iowa Rules of Civil Procedure don't apply and the Administrator can't bring a claim because of the Iowa Rules of Civil Procedure do apply.[1] As the old idiom goes, "rules for thee and not for me."

A. *Voss* is distinguishable and contemplates relation back to a pending administrative proceeding.

The State's interpretation of *Voss* is erroneous and the present case is distinguishable. *Voss* dealt with an administrator who had not been appointed during the time the administrative claim was pending. The claim was then denied prior to appointment and, after denial, the administrator filed suit. It was only after the administrator filed suit that she was appointed as administrator. In fact, the *Voss* court *specifically contemplated* this exact situation stating:

> 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. at 882. In the present case there *was* a pending administrative proceeding in which her appointment could relate back.

[1] Plaintiffs-Appellants do not agree that Rule 1.206 bars the bringing of a claim by the estate.

In the present case Plaintiffs submitted tort claim forms on May 6, 2020. (APP.42) The State acknowledged receipt on May 15, 2020. (APP.159) Mrs. Anderson was appointed as administrator on May 29, 2020. (APP.44-APP.45) That is the reason the appointment relates back in this case, because the defect was cured before it was ever noticed by the State, which as far as the record shows was not until well over a year and a half after the fact well after the suit had been filed. In the present case the appointment related back to the pending administrative action as contemplated by *Voss*. Furthermore, the appointment occurred on May 29, 2020, which was before the statute of limitations ran on the ITCA claim on June 1, 2020. (APP.45) This timing remedies the concerns set forth in the cases *Voss* relied upon in *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). Both of these cases were concerned with an appointment after the statute of limitations relating back to an action filed prior to the statute of limitations, which is not an issue here.

B. The inapplicability of the Iowa Rules of Civil Procedure is both inconsistent in the State's argument and unworkable in light of *Voss*.

The argument rule 1.201 has absolutely no application to the ITCA administrative process is inconsistent in both the State's arguments and it is unworkable in light of *Voss.* The entire premise of the State's arguments are

based in real-party-in-interest principles, which are based upon Rule 1.201. *Voss* stated:

> The necessity of liability to the claimant is highlighted by the requirement the claimant sign a written release before any payment will be made by the State. *See id.* § 669.11. These statutory provisions ***clearly contemplate 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.

Voss, 553 N.W.2d at 880 (emphasis added) The requirement a suit must be brought by a real-party-in-interest is in Rule 1.201 (formerly Rule 2). *Wayne Cnty. Mut. Ins. Co.*, 318 N.W.2d at 193[2]. *Voss* explicitly deals with the concept of a real party in interest and contemplates relating back within an administrative proceeding. To say that the concept of relation back cannot apply because Rule 1.201 contains the word "action" requires such a selective reading of *Voss* that it defeats the entire rationale of the case.

This selective application of the law highlights why the district court's order should be overturned and why the State's reasoning is erroneous. Everything is interpreted with an eye towards defeating legitimate claims and not with an eye towards doing substantial justice as set forth in *Segura*. Naturally the State takes issue with the application of *Segura*. The State

[2] *Wayne County* is cited by *Voss* as authority for real-party-in-interest principles. *See Voss, 553 N.W.2d at 880*.

argues *Segura* doesn't apply as the issue in this case is "whether a proper claim was ever submitted for consideration by the Attorney General at all." (Appellee's Proof Brief, p. 23) However, the State forgets the entire opinion of *Segura*. *Segura* dealt with whether an attorney signing claims forms satisfied the technicalities of claims submission process and whether the failure to meet this technicality defeated presentment and exhaustion. *Segura,* 889 N.W.2d at 227. This was a claims defect as contained in the present case.

Naturally, it benefits the State to read the ITCA with an eye towards defeating legitimate claims. This greatly heightens the likelihood legitimate claims will be dismissed in a subsequent suit and creates an incentive not to investigate claims and simply wait for them to be withdrawn. However, as stated earlier, this runs contrary to the purpose of the ITCA in doing "substantial justice" and the swift resolution of claims and undoubtedly leads to more suits filed and more motion practice in an already overburdened court system.

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, Iowa 52601
Telephone: 319.753.1330
Facsimile: 319.752.3934
eprill@cbp-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 brief contains 5567 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 Reply 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