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IN THE SUPREME COURT OF IOWA

No. 22–0759

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

Appellants,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Linn County
Ian K. Thornhill, District Judge

# APPELLEE'S FINAL BRIEF

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## ROUTING STATEMENT

This case should be transferred to the Court of Appeals. It presents the application of existing legal principles—and does not require treading new ground interpreting the Iowa Tort Claim Act's exhaustion requirement. *See* Iowa R. App. P. 6.1101(3)(a). The issues that the Andersons and the Estate suggest are of first impression are not substantial. *See* Iowa R. App. P. 6.1101(2)(c). And they are either not presented here or easily addressed by applying Iowa precedent to these facts.

## STATEMENT OF THE CASE

This is a suit under the Iowa Tort Claims Act. The district court dismissed it because Plaintiffs failed to properly exhaust their administrative remedies as required by that Act. The Estate's claim wasn't presented because Alexandria Anderson hadn't yet been appointed administrator when she tried to file a claim on the Estate's behalf. And Alexandria and Terry Anderson's loss-of-consortium claims were not presented at all because they never filed their own claims—either separately or with the Estate.

On May 10, 2020, Plaintiff Alexandria Anderson filed a tort claim—purportedly on behalf of the Estate of Carter Jay William Anderson—with the Iowa Department of Management. *See* App. 35–36 ¶ 3; App. 98–103. She withdrew the claim about six months later. *See* App. 36 ¶ 5; App. 42–43. And then Plaintiffs—Alexandria Anderson on behalf of the Estate and for herself individually and Terry Anderson—filed this suit. *See* App. 11–17.

Plaintiffs sue the State for medical malpractice arising from the death of Alexandria and Terry Anderson's son, Carter Anderson. *See* App. 38–39 ¶ 19. Alexandria Anderson brings a wrongful death claim for damages on behalf of the Estate. *See* App. 39–40 ¶¶ 20, 21(a)–(b), (d)–(g). Alexandria and Terry Anderson also bring loss-of-consortium claims for loss of their child. *See* App. 40 ¶ 21(c).

The State eventually moved to dismiss the case because the Andersons and the Estate had failed to exhaust their administrative remedies under the Iowa Tort Claims Act. *See* App. 92–106. The district court agreed with the State and dismissed the case. *See* App. 204–14.

The Andersons and the Estate moved for reconsideration of the dismissal based on alleged legal errors in the court's interpretation of the Act's exhaustion requirement. They also sought to submit an exhibit under seal. Because the court found that the exhibit would not affect its analysis, it denied their motion to seal, and the exhibit was never filed in the docket. *See* App. 321. The court also denied their motion to reconsider. App. 322.

The Andersons and the Estate then filed this timely appeal. *See* App. 324–25.

## STATEMENT OF THE FACTS

Carter Anderson was a disabled boy who used a feeding tube. *See* App. 36–37 ¶¶ 9, 14, 16. In May 2018, his feeding tube was dislodged and his parents—Alexandria and Terry Anderson—took him to the University of Iowa Hospitals and Clinics for medical care. *See* App. 37 ¶ 16. The next day, he passed away. *See id.* ¶ 17.

About two years later, Alexandria Anderson submitted a State Appeal Board Claim Form to the Department of Management as required by Iowa Code sections 669.5(1) and 669.3(2). She made a tort claim against the State of Iowa.[1] She alleged that employees of the State negligently "caus[ed] Carter Anderson's subsequent wrongful death." App. 99.

Where the claim form asked for the "NAME OF CLAIMANT (please print full name)," she typed: "Alexandria Anderson as Administrator of the Estate of Carter Anderson, deceased." App. 98. And where the form asked for the "DATE OF BIRTH," she put "Decedent, Carter Anderson: 4/10/08" instead of her own. *Id.* On a sheet attached to the form describing the basis of the claim, she included the allegation, "The Claimant further alleges that the Decedent's death caused a loss of companionship and society,

[1] Anderson also submitted separate claims against four individuals State employees. *See* App. 100–03. Those are not at issue. *See* App. 35–40 (naming only the State as Defendant); App. 58.

extreme grief, sorrow, sadness, and affection in addition to economic damages and loss." App. 99.

Alexandria Anderson signed and dated the form May 1, 2020. *See* App. 98. It was received by the Department of Management on May 8. *See id.* And the Department acknowledged receipt of the claim and referred it to the Attorney General's Office on May 15. App. 153. But she was not appointed administrator of the Estate of Carter Anderson until May 29, 2020—almost a month after she submitted the form. *See* App. 104.

When the Attorney General had not disposed of the claim within six months, Alexandria Anderson withdrew the claim as permitted by section 669.5(1). *See* App. 36 ¶ 5; App. 42–43.

Then she sued. Not just as Administrator of the Estate, but also for herself individually. *See* App. 35; *see also* App. 36 ¶¶ 7, 12; App. 39–40 ¶ 21. So did her husband, Terry Anderson. *See* App. 35; *see also* App. 36 ¶ 8; App. 39–40 ¶ 21. They allege that employees of the State negligently caused the wrongful death of Carter Anderson. *See* App. 38–39 ¶ 19. The Estate seeks to recover various damages for the wrongful death. *See* App. 39–40 ¶¶ 20, 21(a)–(b), (d)–(g). And the Andersons bring loss-of-consortium claims for themselves individually. *See* App. 40 ¶ 21(c).

About seven months after the Estate and the Andersons amended their petition, the State moved to dismiss the case for lack

of subject matter jurisdiction. *See* App. 92–94. The State argued that neither the Estate nor the Andersons had exhausted their administrative remedies by filing their tort claims with the Department of Management as required by the Iowa Tort Claims Act. *See* App. 94–97.

The district court agreed that it lacked subject matter jurisdiction and dismissed the case. *See* App. 204–14. The court reasoned that under *Estate of Voss v. State,* 553 N.W.2d 877 (Iowa 1996), and *McFadden v. Department of Transportation*, 877 N.W.2d 119 (Iowa 2016), the Estate's tort claim wasn't presented because Alexandria Anderson had not yet been appointed Administrator of the Estate when she purported to act on the Estate's behalf. *See* App. 213–14. And it followed *Bloomquist v. Wapello County*, 500 N.W.2d 1 (Iowa 1993), to hold that the Andersons hadn't "properly filed loss of consortium claims." App. 209. The court explained that their argument for exhaustion was even "weaker" than the plaintiffs in *Bloomquist* because they only contended that loss-of-consortium claims would be sought by the Estate, which cannot pursue such claims for a parent who loses a child. App. 209; *see also* App. 210–11. Because neither the Estate nor the Anderson had properly exhausted their claims, the court held that it lacked subject matter jurisdiction under Iowa Code section 669.5(1) and dismissed the case. *See* App. 209, 214.

The Estate and the Andersons then asked the court to reconsider its ruling. In their motion, they mentioned "medical records, which will be provided to the Court as Exhibit B upon the Court's Order allowing said records to be sealed." App. 238. They described the records as information that was submitted with their tort claim form showing "that Carter Anderson had two surviving, married parents." *Id.* They also moved to seal the exhibit, asking "that the Court enter an Order sealing the Exhibit before it is filed with the Court and becomes part of the public record." App. 264.

The district court denied their motions. The court explained, "whether or not Carter Anderson's two surviving parents were listed on the medical records is not relevant to the Court's holding." App. 321. So because "Exhibit B would not be relevant," the court declined to "issue an order allowing said records to be sealed so that they may be presented to the Court." App. 321. And on the merits, the court was "not persuaded to reconsider its prior Dismissal Order." App. 322. This appeal followed.

## ARGUMENT

### I. The district court properly dismissed Plaintiffs' claims for failing to exhaust their administrative remedies.

The Estate and the Andersons argue that the district court erred in dismissing this suit for their failure to exhaust administrative remedies. *See* Appellants' Br. at 24–68. A district court's ruling granting a motion to dismiss for failure to exhaust under the Iowa Tort Claims Act is reviewed "for corrections of errors of law." *Est. of Voss v. State*, 553 N.W.2d 878, 880 (Iowa 1996). But here, the district court didn't err.

Neither the Andersons nor the Estate presented the claims they now assert in court to the Department of Management for consideration by the Attorney General. The Estate's claim wasn't presented because Alexandria Anderson hadn't yet been appointed administrator when she tried to file a claim on the Estate's behalf. *See Est. of Voss v. State*, 553 N.W.2d 877, 881 (Iowa 1996). And Alexandria and Terry Anderson's loss-of-consortium claims were not presented at all because they never filed their own claims—either separately or with the Estate. *See Bloomquist v. Wapello Cnty.*, 500 N.W.2d 1, 8 (Iowa 1993). Thus, they failed to exhaust as required by Iowa Code § 669.5(1), and the district court properly dismissed this suit for lack of subject matter jurisdiction.

The Andersons and the Estate generally preserved the high-level issue that the tort claim submitted by Alexandria Anderson should satisfy the exhaustion requirement of section 669.5(1) in their resistance to the State's motion to dismiss. *See* App. 117–45. But they did not present all their specific claims of error that they asserted for the first time in the motion to reconsider or now on appeal. As explained further below, this Court should not consider these arguments that they failed to preserve. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."); *Clark v. State*, 955 N.W.2d 459, 466 n.6 (Iowa 2021) (declining to address on appeal discrete arguments not made to the district court in resisting a motion).

Before the enactment of the Iowa Tort Claims Act, the State was completely immune to tort suits. *See Wagner v. State*, 952 N.W.2d 843, 856 (Iowa 2020). The Act waives the State's sovereign immunity—but only "to the extent provided in" the Act. Iowa Code § 669.4(3); *see also Wagner*, 952 N.W.2d at 856. Among the Act's requirements is exhaustion of administrative remedies by filing a written tort claim with the Department of Management for possible disposition by the Attorney General. *See* Iowa Code § 669.5(1).

"[S]uit shall not be permitted for a claim under" the Iowa Tort Claims Act "unless the attorney general has made final disposition of the claim" or doesn't do so "within six months after the claim is made in writing to the director of the department of management" and the claimant "by notice in writing, withdraw[s] the claim from consideration." Iowa Code § 669.5(1); *see also* Iowa Code § 669.3(2) ("A claim made under this chapter shall be filed with the director of the department of management, who shall acknowledge receipt on behalf of the state."). "Exhaustion of the administrative process is jurisdictional, and a suit commenced without complying with this process is subject to dismissal." *Swanger v. State*, 455 N.W.2d 344, 347 (Iowa 1989).

### A. The Estate didn't exhaust its claims because Alexandria Anderson hadn't been appointed administrator at the time she purported to file a claim on the Estate's behalf.

The district court correctly dismissed the Estate's suit. At the time Alexandria Anderson filed a tort claim purportedly on behalf of the Estate, she was not its administrator. So she did not have the legal capacity to bring the claim. Because of this defect, the claim was never properly presented, and the Estate failed to exhaust its administrative remedies. Thus, the court lacked subject matter jurisdiction over this suit.

"A tort claim against the State must first be presented to the State Appeal Board pursuant to the procedures detailed in Iowa Code chapter 669, Iowa's Tort Claims Act." *Voss*, 553 N.W.2d at 880.[2] "[A] claim is defective if it is not made by a claimant to whom the State would be liable for the damages sought," and if a claim is defective it is not properly presented. *Id.* at 881. "Improper presentment of a claim, or not presenting one at all, has been considered a failure to exhaust one's administrative remedies, depriving the district court of subject matter jurisdiction." *Id*. at 880. "Thus, a suit commenced without complying with the Tort Claims Act is subject to dismissal." *Id*.

Here, there was never a valid claim made on behalf of the Estate for wrongful death because Alexandria Anderson did not have the legal capacity to make any claim on behalf of the Estate when she tried to do so. This case mirrors *Voss* almost exactly. And this Court's holding in *Voss* squarely resolves this issue.

The plaintiff in *Voss* filed a wrongful death claim against the State with the State Appeal Board following the death of her son.

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[2] Before 2006, section 669.5(1) required submission of claims to the State Appeal Board, and the Board was responsible for disposing of claims. *See* Iowa Code §§ 669.3, 669.5(1) (2005). The statute was then amended to its current form requiring submission to the Department of Management and disposition by the Attorney General. *See* Act of June 2, 2006, ch. 1185, 2006 Iowa Acts 677, 702 §§ 105, 107 (codified at Iowa Code §§ 669.3, 669.5).

*See Voss*, 553 N.W.2d at 879. The Court held that the "right to recover wrongful death damages vests exclusively in the personal representative of the estate," and the plaintiff was not the personal representative of the estate when she filed her tort claim. *Id.* at 881. Because she was not the personal representative of her son's estate, her claim was defective. *Id.* at 882. The Court concluded that the plaintiff "never submitted a claim to the Board in her capacity as administrator of the estate. Therefore, she failed to exhaust the estate's administrative remedies and consequently, the district court did not have subject matter jurisdiction of this suit." *Id.*

Alexandria Anderson did file a tort claim against the State, purportedly on behalf of the Estate. *See* App. 98. On the claim, she represented herself as "Alexandria Anderson as Administrator of the Estate of Carter Anderson, deceased." *Id.* She signed and dated the form May 1, 2020. *See id.* It was received by the Department of Management on May 8. *See id.* But she did not receive letters of appointment naming her as the administrator of the Estate until May 29, 2020—twenty-one days after filing her tort claims. And she did not file a tort claim on behalf of the Estate after she was named the administrator of the Estate, even though there was still time to do so under the statute of limitations. *See* App. 104; Iowa Code § 669.13.

Alexandria Anderson's failure to file a claim as an authorized estate representative was a fatal defect to her claim because only a duly authorized estate representative may bring a wrongful death claim. *See Voss*, 553 N.W.2d at 881; *Est. of Dyer v. Krug*, 533 N.W.2d 221, 224 (Iowa 1995); *see also McFadden v. Dep't of Transp.*, 877 N.W.2d 119, 123 (Iowa 2016) ("[B]oth before and after the adoption of the ITCA, the claimant's authority to act as personal representative is an essential prerequisite in asserting wrongful death claims."); *Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 309, 313 (Iowa 1982) ("We have long recognized that a party plaintiff must have capacity to sue in order to commence and maintain a cause of action.").

Like the plaintiff in *Voss*, when the claim was filed, Alexandria Anderson lacked the legal capacity to bring a wrongful death claim on behalf of the Estate. This defect was never cured by filing a claim after she was named administrator of the Estate. As the district court properly reasoned, the *Voss* holding requires a finding here that when she tried to file a tort claim, her lack of capacity as the Estate representative resulted in improper presentment under the Iowa Tort Claims Act. *See* App. 214. Because the Estate never filed a valid tort claim, it failed to exhaust its administrative remedies under the Iowa Tort Claims Act.

In its ruling, the district court distinguished *McFadden* from *Voss* and this case. *See* App. 213. In *McFadden*, the claimant who brought a wrongful death claim was the appointed administrator of the estate, but she merely failed to designate as such on the claim form. 877 N.W.2d at 120. But because she did, in fact, have the legal capacity to make to claim as the estate representative, this omission was not fatal to her claim as she complied with all the other requirements of the Iowa Tort Claims Act. *Id.* at 123. Unlike *McFadden*, at the time of filing the claim, Alexandria Anderson *did not* have the legal capacity to file the claim and this resulted in the failure to present a wrongful death claim at all on behalf of the Estate.

The Estate attempts to cure its defective tort claim by arguing that Iowa Rule of Civil Procedure 1.201 saves its claim. Appellants' Br. at 65–68. But the district court correctly determined that it did not. *See* App. 212–13. Rule 1.201 states that:

> Every action must be prosecuted in the name of the real party in interest . . . 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, joiner, 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.

A plain textual reading shows this rule allowing for relation back only applies to suits (also called actions) in district court, not tort claims. *See* App. 212–13. The Iowa Tort Claims Act distinguishes between a "claim," which is filed with the Department of Management and a "suit," which is filed in the district court once administrative remedies are exhausted. *Compare* Iowa Code § 669.2(3) (defining a "claim"); *with* Iowa Code § 669.6 (providing that "*suits* under this chapter" are governed by "the rules of civil procedure" (emphasis added)). Thus, Iowa Rule of Civil Procedure 1.201 applies exclusively to actions, or suits, in district court.

The Iowa Supreme Court has affirmed this interpretation of the statutes when it said, "a *claim* with the appeal board is not equivalent to the filing of a civil *action*." *Drahaus v. State*, 584 N.W.2d 270, 275 (Iowa 1998). Simply put, rules of civil procedure that apply to suits in district court do not apply to claims under the Iowa Tort Claims Act. In *Drahaus*, the Court first determined that the rule at issue, by use of the term "action," like rule 1.201, only applied to proceedings brought in district court. *Id.* at 274. It also looked through multiple sections of the Iowa Tort Claims Act, concluding that it distinguished between claims filed with the State Appeal Board and suits filed in district court. *Id.* at 247–75. Here, no legal obstacle prevented the filing of the Estate's claim properly

and within the statute of limitations. *See id.* at 279. Under *Drahuas*, the rules of civil procedure do not allow her appointment at the time of filing a suit to relate back and cure the defective filing of a claim.

Plaintiffs also misconstrue the holding in *Segura v. State*, 889 N.W.2d 215 (Iowa 2017), when they argue that all that is necessary to satisfy the exhaustion requirement is to have the attorney general make a final disposition of the claim or withdraw it after at least six months. Appellants' Br. at 25, 27–28, 30–32; *see also* Iowa Code § 669.5(1). In *Segura*, the Court held that the lack of a proper signature from the claimant was not a fatal flaw to the presentment of their claim. 889 N.W.2d at 227–28. Unlike here, it was undisputed in *Segura* that the party bringing the claim had the legal capacity to do so. *Id.* at 226.

But in citing *Segura*, Plaintiffs are putting the cart before the horse. The issue here is not whether the attorney general made a final disposition of the claim or Plaintiffs waited the requisite six months before withdrawing their claim and suing. The issue here is whether a proper claim was ever submitted for consideration by the Attorney General at all. Because the party bringing the claim did not have the legal capacity to bring it, the answer is no. *See Segura*, 889 N.W.2d at 223 (stating that in *Voss* the Court "reiterated a point [it] had applied elsewhere, that the plaintiff's capacity

to sue must exist at the time of filing"). It's this failure that caused the district court to conclude that the Estate failed to exhaust its administrative remedies.

Because Alexandria Anderson did not have the legal capacity to file a claim on behalf of the Estate, the Estate's purported tort claim was defective and not presented. The Estate thus didn't exhaust its administrative remedies before suing here. And that deprived the district court of subject matter jurisdiction. The court properly dismissed the Estate's claim.

### B. The Andersons didn't exhaust their loss-of-consortium claims because they never filed the claims on their own behalf—indeed, Terry Anderson never filed *any* claims—and the claims for the loss of consortium of their child can't be brought by the Estate.

The district court also correctly ruled that Alexandria and Terry Anderson failed to properly present their loss-of-consortium tort claims because they did not file claims individually. App. 204.

Before filing a suit in district court, a plaintiff must first file a tort claim to the Department of Management because part of exhaustion of administrative remedies is presentment. *See Segura*, 889 N.W.2d at 221; Iowa Code § 669.5. "[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. A properly presented claim

also "generally describe[s] the legal theories asserted against the State." *Id*. at 227 (quoting *Schneider v. State*, 789 N.W.2d 138, 144 (Iowa 2010).

Here, the Andersons failed to present claims for loss of consortium that provided enough information to allow an investigation of the claims, general legal theory of their claim, or the amount of damages sought for their claim. Indeed, the Andersons filed *no* claims on their own behalf—the only claim filed was one purportedly on behalf of the Estate for wrongful death. They thus didn't exhaust their administrative remedies for their loss-of-consortium claims.

Again, the issue has already been decided by this Court. In *Bloomquist v. Wapello Co.*, 500 N.W.2d 1, 8 (Iowa 1993), the Court held that loss-of-consortium claims under the Iowa Tort Claim Act need to be submitted by the individuals making them. There, the plaintiff's two children sued asserting loss-of-consortium claims. And a jury returned a verdict in their favor. But they had not filed their own tort claims. *See id.*

The Court rejected the children's arguments that the practical purpose of the notice under the Act is to give the State an opportunity to meet the claim, and because the State denied any liability it would not have done any good to identify separate claims. *Id*. Rather, it held 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, even if as a practical matter it would not have changed the State's approach to the case." *Id*. Thus, when a tort claim has not been filed, a court in a subsequent suit lacks subject matter jurisdiction. *Id*. Because the Andersons did not submit their own claims—whether on separate claim forms or on the same claim form—they didn't exhaust their administrative remedies for *their* loss-of-consortium claims.

The Andersons argue that they properly presented their individual claims for loss of consortium because they disclosed the amount of money damages and generally described their legal theory against the State. *See* Appellants' Br. at 27. Even if they did not need to file separate claims for their loss of consortium, looking at the tort claims filed here, the Andersons cannot show that they meet the factors showing they presented a loss of consortium claim, thereby failing to exhaust their administrative remedies.

First, the claims do not disclose the amount of damages sought for the loss-of-consortium claims. *See Segura*, 889 N.W.2d at 226. For the section that discloses the amount of damages claimed, the claim only shows five million dollars for personal injury and ten million dollars for wrongful death. The section for property damages is left blank. The damages described in the claims are only for losses suitable for a wrongful death claim. Loss of consortium,

however, is a property right. *Gail v. Clark*, 410 N.W.2d 662, 669 (Iowa 1987) ("We have recognized that a parent's right to a child's consortium and a child's reciprocal right to parental consortium are valuable property rights entitled to protection."). If any amount of damages is claimed for loss of consortium, the Andersons should have described the amount of damages in the section for "property damages." Even if it's argued their consortium damages are subsumed within the section for personal injury or wrongful death, or both, this is not a proper description of the amount of damages for the consortium claim because the State cannot consider the claim when it is unclear what part of the fifteen-million-dollar claim is for loss of consortium.

Second, the claims do not provide enough information for the State to investigate their loss of consortium or describe the legal theory they assert against the State. *See Segura*,889 N.W.2d at 226–27. The name of the claimant on the form is "Alexandria Anderson as Administrator of the Estate of Carter Anderson, deceased." App. 98. It does not list Terry Anderson or Alexandria Anderson as additional claimants. Nor does the form ever mention that Terry or Alexandria Anderson were pursuing their own individual claims for loss of consortium damages. *See* App. 209. The only mention of damages that resemble loss of consortium is in the second page of the claim. It says, "[t]he claimant," here Alexandria

Anderson as administrator of the estate, "further alleges that the decedent's death caused a loss of companionship and society, extreme grief, sorrow, sadness, and affection in addition to economic damages and loss." App. 99. But this language does not state that either of the Andersons are making individual claims for loss of consortium separate from the Estate's claims. Thus, even if the Andersons weren't required to make a claim separate from the Estate for their individual loss of consortium claims per *Bloomquist*, they still have not satisfied the requirements of presentment under *Segura*.

Not only did the Estate fail to present a claim for loss of consortium in its defective tort claim, under Iowa law, the Estate *cannot* bring a loss of consortium claim on behalf of individual parents for the loss their child. Only a parent has a right to sue and recover for loss of consortium due to the injury or death of their minor child. *See* Iowa R. Civ. P. 1.206 ("A parent, or the parents, may sue for the expenses and actual loss of services, companionship and society resulting from injury to or death of a minor child"); Iowa Code § 613.15A ("A parent or the parents of a child may recover for the expense and actual loss of services, companionship, and society resulting from injury to or death of a minor child.").

In *Madison v. Colby*, 348 N.W.2d 202, 207 (1984), this Court explained that in a parent–child relationship, Iowa law "gave a parent the right to recover for loss of consortium, including services,

for the period before and after the child's death" giving the parent "both authority to sue and the right to recovery of the entire loss." *See also id.* at 209 (charting the same rights after the decision too). This is distinguishable from other loss-of-consortium claims, such as child–parent claims brought by a child who has an injured or deceased parent. *See id.* Based on this, the district court correctly held here that:

> Consequently, the parent alone owns both the right to sue for loss of consortium, and the right to recover for loss of consortium of his or her deceased child. As this is the case, Mr. and Mrs. Anderson alone as individuals had the right to bring their claim for loss of consortium, and the Estate could not make the claim for them.

App. 210–11 (internal citation omitted).

Plaintiffs point to other guidance in *Madison v. Colby* that "it is desirable that consortium actions be joined with the action for the injury or death of the injured person." *Madison*, 348 N.W.2d at 209; *see* Appellants' Br. at 55. As an initial matter, it's not clear that this guidance applies to the parent–child consortium claims where double recovery doesn't have the same concern—since the parent retains authority for recovery both before and after death. *See Madison*, 348 N.W.2d at 207, 209.

But even if the guidance does apply, it's guidance for an eventual *suit*. The individual loss-of-consortium claims would be

required, when feasible, to be brought in the same suit with the Estate. But the claims would still have to be brought by the parent—not the estate. And the Court's guidance in *Madison* says nothing about the requirement to exhaust each of the claims by each of the parties under the Iowa Tort Claims Act.

Of course, Iowa Rule of Civil Procedure 1.232 allows for the joinder of multiple plaintiffs "in a single action" when the case involves common issues of facts or law. But, as argued above, this rule only applies to actions, or suits, filed in district court. It does not apply to claims filed at the administrative stage. While a joinder may be appropriate for an Estate's wrongful death claim and an individual parent's loss of consortium claim when they involve common issues of facts and law, they are still separate claims. The rule is not a workaround to the requirement that claimants exhaust their administrative remedies under Iowa Code Chapter 669 before they file, and potentially, join their claims in a suit in district court.

Because the Andersons failed to present their own individual loss of consortium claims to the Department of Management, they did not exhaust their administrative remedies. This failure deprived the court of subject matter jurisdiction over their suit. The district court was thus correct to dismiss the Andersons' loss-of-consortium claims.

### C. The exhaustion requirement of the Iowa Tort Claims Act is jurisdictional and cannot be waived by the Attorney General; the extent of any investigation of a tort claim is irrelevant.

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. *See* Appellants' Br. at 51.[3]

But the exhaustion requirement of the Iowa Tort Claims Act is a matter of subject matter jurisdiction. *See Swanger v. State*, 455 N.W.2d 344, 347 (Iowa 1989). It cannot be waived by a party. That's why the failure to exhaust can be raised at any time—even in a posttrial motion after an adverse jury verdict. *See Bloomquist*, 500 N.W.2d at 8. Nor can a party's conduct before trial waive it. *See Swanger*, 455 N.W.2d at 349 (holding that state agency couldn't waive jurisdictional exhaustion requirements of Iowa Tort Claims Acts by its conduct seeking an insurance policy endorsement). So the actions of the State or one of its officers—the Attorney

[3] Plaintiffs did not preserve this argument because it wasn't raised in their resistance to the motion to dismiss. *See* App. 114–45. So this Court can reject this argument for that reason alone.

General—in investigating or failing to investigate a tort claim can't waive the jurisdictional exhaustion requirement.

Chapter 669's structure also supports this interpretation. The statute contemplates that the Attorney General might not take any action on a tort claims or may not do so as fast as claimants desire. That's why it sets a six-month timeframe, after which a "claimant may, by notice in writing, withdraw the claim from consideration and begin suit." Iowa Code § 669.5(1). But nothing in chapter 669 excuses claimants from its exhaustion requirements. Thus, the extent of any investigation conducted is irrelevant to considering the dismissal of Plaintiffs' suit. The district court did not err in holding that it lacked subject matter jurisdiction and dismissing the Andersons' and Estate's claims.

## II. The district court properly denied Plaintiffs' motion to seal—and refused to accept into evidence—an exhibit irrelevant to reconsideration of its dismissal order.

After the district court granted the State's motion to dismiss, the Andersons and the Estate moved for reconsideration. In their motion, they mentioned "medical records, which will be provided to the Court as Exhibit B upon the Court's Order allowing said records to be sealed." App. 238. They described the records as information that was submitted with the tort claim form showing "that Carter Anderson had two surviving, married parents." *Id.* They also moved

to seal the exhibit, asking "that the Court enter an Order sealing the Exhibit before it is filed with the Court and becomes part of the public record." App. 264. The court denied both motions, explaining that it was unnecessary to receive and seal Exhibit B because "whether or not Carter Anderson's two surviving parents were listed on the medical records is not relevant to the Court's holding." App. 321.

Plaintiffs now challenge the district court's refusal to seal Exhibit B for two contradictory reasons: "the record has unsealed medical records as part of it" and "the record is missing an exhibit" that they contend was relevant. They also contend the court's ruling was wrong because their motion wasn't asking permission to present their proposed confidential exhibit and their motion was unresisted. A district court's ruling on a motion to seal is reviewed for abuse of discretion. *See Est. of Cox v. Dunakey & Klatt, P.C.*, 893 N.W. 2d 295, 302 (Iowa 2017).

Plaintiffs preserved error generally on whether the court should have sealed their proposed exhibit. But they are limited to arguing for sealing based on their description of Exhibit B given to the district court—and cannot claim error about the exhibit's absence from the record—because they never submitted the actual Exhibit B to the court. And it's not filed in the district court docket. So it is not properly in the record for review.

Plaintiffs' two core—and contradictory—arguments can't both be true. Indeed, neither is. Exhibit B was never submitted to the district court. *See* App. 238 (describing "medical records, which *will be provided* to the Court as Exhibit B upon the Court's Order allowing said records to be sealed" (emphasis added)); App. 264 (asking "that the Court enter an Order sealing the Exhibit *before it is filed with the Court and becomes part of the public record*" (emphasis added)); D. Ct. Docket. So the exhibit isn't in the record unsealed. They cannot claim that they are harmed in any way by confidential unsealed medical records being in the public domain. Because they're not. So the district court did not err in permitting confidential information to remain unsealed in the public district court docket.

And nothing is "missing" from the district court record, Appellants' Br. at 72, because the district court properly concluded that the exhibit was irrelevant. Courts in other jurisdictions have regularly held that when irrelevant confidential documents are submitted—or proposed to be submitted—one of the appropriate remedies is to strike—or refuse to accept—the documents so they aren't unnecessarily in the public court record. *See Overstock.com, Inc. v. Goldman Sachs Grp., Inc.*, 180 Cal. Rptr.3d 234, 264–68 (Cal. Ct. App. 2014) (analyzing many confidential documents that "were irrelevant and should have been struck and either removed from

the record or sealed"); *Martin v. Giordano*, 185 F. Supp. 3d 339, 352–53 (E.D.N.Y. 2016) (discussing prior order denying as moot a motion seal proposed exhibits that the court found had no bearing on the issue before it); *see also* Iowa R. Elec. P. 16.405(2)(e) cmt. ("[T]he court may deny the application and either order that the material be filed with public access or order that the material not be filed.").

In the reconsideration motion, Plaintiffs described the exhibit as medical records that were submitted with the State Appeal Board claim form showing "that Carter Anderson had two surviving, married parents." App. 238. But this fact had no bearing on the district court's ruling that the Andersons failed to exhaust their loss-of-consortium claims. The court had recognized that the claim form had mentioned "loss of companionship and society," App. 202, and that they argued in their briefing that "'the *estate* would be seeking loss of consortium damages.'" App. 209 (quoting Pltfs' Resist. to Mtn. to Dismiss at 10 (App. 123)). Showing that the claim form had a reference to the Andersons in its attachments, doesn't advance their cause any further. The Andersons still didn't submit tort claims of their own. Or even list themselves as individual claimants on the same claim form. Or even include a statement that *they* rather than the Estate were making loss-of-consortium claims. These were the bases for the district court's decision that they failed

to exhaust. So it's no wonder that the court concluded "whether or not Carter Anderson's two surviving parents were listed on the medical records is not relevant to the Court's holding." App. 321. The exhibit, as described to the court—and that description is all that's properly before this Court—isn't relevant to the motion to dismiss. The court didn't abuse its discretion.

What's more, even if the exhibit *had* some relevance to the court's exhaustion analysis, it would have been improper to add new evidence on a motion to reconsider. *See In re Marriage of Bolick*, 539 N.W. 357, 361 (Iowa 1995) (explaining that motions to reconsider are so "courts may enlarge or modify findings based on evidence already in the record" and "are not vehicles for parties to retry issues based on new facts"). If it were relevant, it could have—and should have—been presented to the court in Plaintiffs' resistance to the motion to dismiss. *See In re Marriage of Bolick*, 539 N.W. at 360–61 (affirming district court's refusal to require additional discovery for evidence to submit on a pending motion to reconsider); *St. John's Gospel Baptist Church v. Tax 207*, No. 11-0553, 2012 WL 1860667, at *5 (Iowa Ct. App. May 23, 2012) (reversing district court that improperly considered new evidence submitted with reconsideration motion in granting summary judgment). This is thus another basis to affirm the court's refusal to approve sealing the exhibit.

It matters not that the State didn't resist the motion to seal. A motion to seal implicates public interests that should be considered by the court regardless of the parties' positions on the motion. Those include the public's right to access court records. *See Est. of Cox*, 893 N.W. 2d at 304–05 (citing cases applying the Iowa Open Records Act to judicial branch records); *Nixon v. Warner Commc'n, Inc.*, 435 U.S. 589, 597–99 (1978) (discussing the common-law right to inspect and copy judicial records). And the court's interest in not having unnecessary irrelevant filing in its electronic filing system, taking up storage space for all time. *Cf.* Iowa R. Civ. P. 1.502 (prohibiting filing of discovery materials absent court order); Iowa R. App. P. 6.905(1) (prohibiting "unnecessary" inclusion of materials in the appendix). Those other interests are especially strong where the record would be sealed and unavailable to the public and where inadvertent disclosure could cause harm by disclosing confidential medical information. The district court did not abuse its discretion in denying the Estate and the Andersons' motion to seal their irrelevant proposed exhibit to their motion to reconsider.

## CONCLUSION

For these reasons, the district court's thorough and well-reasoned decision should be affirmed. Neither the Estate nor the Andersons properly presented their claims as required to exhaust their administrative remedies under the Iowa Tort Claims Act. The district court correctly dismissed this case for lack of jurisdiction.

## REQUEST FOR ORAL SUBMISSION

The State requests to be heard in oral argument.

Respectfully submitted,

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## CERTIFICATE OF COST

No costs were incurred to print or duplicate paper copies of this brief because the brief is only being filed electronically.

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## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and contains 6,864 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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## CERTIFICATE OF FILING AND SERVICE

I certify that on December 2, 2022, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

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