

IN THE IOWA SUPREME COURT

Supreme Court No. 21-0348

Polk County No. JGJV248693

IN THE GUARDIANSHIP OF

J.W.

A Minor Child

APPEAL FROM THE IOWA JUVENILE COURT OF POLK COUNTY

REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I - THE DISTRICT COURT LACKED JURISDICTION TO MAKE FINDINGS WITH REGARD TO WHETHER THERE WAS A VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT:

Iowa Cases

Dier v. Peters, 815 N.W.2d 1 (Iowa 2012)

Geisler v. City Council of Cedar Falls, 769 N.W.2d 162 (Iowa 2009)

II – PETITIONER HAS ESTABLISHED BOTH A PRIMA FACIE CASE AND CLAIM FOR CONSIDERATION AT A POTENTIAL GUARDIAN:

Iowa Cases

Geisler v. City Council of Cedar Falls, 769 N.W.2d 162 (Iowa 2009)

Rules of Court

Iowa Rule of Civil Procedure 1.421(1)(f)

III – THE COURT ERRED BY LIMITING CONSIDERATION OF EXHIBITS “A”–“H” TO EVALUATION OF WHETHER PETITIONER HAD A CLAIM UNDER RULE OF PROFESSIONAL CONDUCT 1.6(b)(5):

Iowa Cases

In the Matter of the Guardianships of JW, No. 19-0904. (Iowa App. 2020)

Matter of LY, No. 20-1034. (Iowa App. 2021)

Statutes

Iowa Code § 633

Iowa Code § 633.559

Iowa Code § 232D

Iowa Code § 232D.103

IV – MOTHER’S MOTION SHOULD HAVE BEEN CONSTRUED AS A MOTION TO DISMISS AND BEEN DENIED AS SUCH:

Iowa Cases

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

Schreiner v. Scoville, 410 N.W.2d 679 (Iowa 1987)

Murphy v. First Nat'l Bank, 228 N.W.2d 372 (Iowa 1975)

US Bank v. Barbour, 770 N.W.2d 350, 352-53 (Iowa 2009)

Bottoms v. Stapleton 706 N.W.2d 411 (Iowa 2005).

Rules of Court

Iowa Rule of Civil Procedure 1.421(1)(f)

ARGUMENT

I - THE STANDARD OF REVIEW FOR A DETERMINATION OF WHETHER A PARTY HAS A PRIMA FACIE CAUSE OF ACTION IS FOR CORRECTION OF ERRORS AT LAW AND APPELLANT HAS PRESERVED ERROR

The standard of review for a determination of whether a party has a prima facie case of action is correction of errors at law, as such a consideration is substantially similar to the considerations normally undertaken in a motion to dismiss. When reviewing a motion to dismiss, the court must determine if, presuming the petition's allegations to be true, the petitioner has failed to state a claim upon which relief may be granted.

Geisler v. City Council of Cedar Falls, 769 N.W.2d 162, 165 (Iowa 2009) (citing Iowa R. Civ. P. 1.421(1)(f)). When asking a court to determine if a prima facie cause of action, we are essentially asking the court to undertake identical considerations. As such, the same standard of review should apply to such claims. The standard of review applied to a motion to dismiss is correction of errors at law. *Dier v. Peters*, 815 N.W.2d 1, 4 (Iowa 2012). We accept as true the facts alleged in the petition and typically do not consider facts contained in either the motion to dismiss or any of its accompanying attachments. *Geisler*, 769 N.W.2d at 165.

Appellant has preserved error through the evidence and arguments presented on the record and Petitioner's brief in this matter

II – APPELLEE'S ARGUMENTS EXCEED THE SCOPE OF CONSIDERATION

Argument

Appellee attempts several times, in her brief, to argue the merits of this action. As argued previously, Mother's motion is largely analogous to a motion to dismiss, and thus should be judged as such. In ruling on a motion to dismiss, the court accept as true the facts alleged in the petition and typically do not consider facts contained in either the motion to dismiss or any of its accompanying attachments. *Geisler*, 769 N.W.2d at 165. As the allegations of the motion are to be taken as true, any argument about their veracity would go to the merits of the case, and thus should be reserved for hearing or trial. Despite this, Appellee makes argument concerning matters outside the petition, such as asserting that the proposed ward has been in the Appellee's care full time since November of 2020. Appellee's Brief, Pg. 12. Similarly, she makes argument concerning Appellant's ability to overcome a presumption in favor of the of the parent. Appellee's Brief, Pg. 12. Such an argument goes to the weight of evidence, and not whether the allegations establish a prima facie cause of action.

III – THERE IS NO LONGER A PREFERENCE FOR PARENTAL PLACEMENT IN MINOR GUARDIANSHIPS.

The preference for parental placement of a minor child when considering guardianship no longer exist, as it was a statutory creation, and the relevant statute no longer governs. Prior to Iowa Code §232D taking effect January 1st, 2020, guardianships were generally governed by Iowa Code §633. Iowa Code §633.559 provided, in relevant part, that:

“Except for a minor child for whom the court’s jurisdiction over the child’s guardianship was established pursuant to transfer of the child’s case in accordance with section 232.104, the parents of a minor child, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian.”

The cases cited by Appellee in her brief all concern guardianships which were brought under Iowa Code §633, and thus reference the preference created under Iowa Code § 633.559. Iowa Code §232D lacks any reference to such a presumption. Cases decided since Iowa Code §232D went into effect, have had to determine whether there was still a parental preference under the new statutory scheme, and thus far have both softly (*In the Matter of the Guardianships of JW*, No. 19-0904. (Iowa App. 2020),

“Effective January 1, 2020, the juvenile court has exclusive jurisdiction over minor guardianships. Iowa Code § 232D.103 (2020). This action was governed by the 2018 Iowa Code, which includes a presumption that a parent is the preferred guardian for a child. See Iowa Code § 633.559.”

), and forcefully (*Matter of LY*, No. 20-1034. (Iowa App. 2021)

“Still she contends that because our caselaw recognized a parental preference prior to codification, *see Risting v. Sparboe*,

162 N.W. 592, 594 (Iowa 1917), the parental preference lives on through caselaw in spite of the recent statutory changes eliminating the preference. We disagree. Chapter 232D governs these proceedings. It does not include a parental preference.”

) that the preference, being the product of a statute that no longer exist, is no longer applicable.

**IV - APPELLANT’S REQUEST THAT MOTHER’S ATTORNEY
ENUMERATE HER ALLEGATIONS DOES NOT RENDER THE
PROCEEDINGS WHICH GIVE RISE TO THIS APPEAL
APPELLANT’S MOTION.**

Appellant’s filing of his Notice to the Court of Alleged Ethical Issue and Request for Enumeration of the same was not equivocal to asking the court to consider dismissal of his action or qualification. A motion to dismiss seeks to end a proceeding by demonstrating a party has failed to state a claim upon which relief can be granted. *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001), citing *Schreiner v. Scoville*, 410 N.W.2d 679, 680 (Iowa 1987), citing *Murphy v. First Nat’l Bank*, 228 N.W.2d 372, 375 (Iowa 1975). Appellant’s motion sought only to make transparent Appellee’s clandestine communications, and to have have Appellee clearly state what was being alleged and the remedy sought. App. Pg. 53 Appellant’s motion was most analogous to a motion to recast; it sought to have the opposing party state more clearly the basis under which they sought relief and the

relief sought. See *US Bank v. Barbour*, 770 N.W.2d 350, 352-53 (Iowa 2009) (Demonstrating the use of a motion to recast and the considerations there involved). While Appellee had not yet made her motion, that doesn't change that Appellant's motion was in response to a demand from Appellee, or that Appellee, in responding, stated her desire for a dismissal, and a basis for which she believed it should be granted. App. Pg. 55.

Appellant's filing of his Notice to the Court of Alleged Ethical Issue and Request for Enumeration of the same was not equivocal to asking the court to consider his disqualification. A motion to disqualify seeks to have an attorney barred from providing representation in a matter based on a violation of the rules of governing the practice of law. *Bottoms v. Stapleton* 706 N.W.2d 411, 415 (Iowa 2005). Appellant's Notice alleges no violation of any rule, nor requests that anyone be enjoined from representing any party, instead seeking, as detailed above, only a specific statement of that to which Appellee alluded. App. Pg. 53.

Appellee's Enumeration was substantively a motion to dismiss. The Enumeration states that it seeks the remedy of dismissal, and lists grounds for which Appellee believed she was entitled to said relief. App. 55. Appellee is in essence alleging that even if all Appellant's allegations are true, he is not entitled to relief, and seeks the remedy of dismissal.

CONCLUSION AND RELIEF REQUESTED

Due to the error made by the district Court in ruling on Mother's Motion, the Court's decision to dismiss Jacob van Cleaf Petition should be reversed and remanded for further proceedings, and all findings concerning alleged ethical violations should be vacated for lack of subject matter jurisdiction.

Respectfully Submitted,

/s/ Jacob van Cleaf

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COST CERTIFICATE

The undersigned hereby certifies that the cost of printing the foregoing Appellant's Reply Brief was nothing, as the brief was submitted digitally.

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CERTIFICATE OF FILING

I hereby certify that I did file the within Appellant's Reply Brief with the Clerk of the Supreme Court, Des Moines, Iowa, by electronic filing through EDMS on the 28th day of September, 2021.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App.

P. 6.903(1)(g)(1) or (2) because:

[X] this brief contains 1,169 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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