IN THE IOWA SUPREME COURT

NO. 21-0348

IN THE MATTER OF THE GUARDIANSHIP OF J.W.,

J.W., Mother,
Appellee

APPLICATION FOR FURTHER REVIEW FROM THE COURT OF APPEALS OF IOWA DECISION DATED AUGUST 3, 2022, REVERSING AND REMANDING DECISION OF IOWA DISTRICT COURT FOR POLK COUNTY DISMISSING APPELLANTS PETITION TO ESTABLISH AN INVOLUNTARY GUARDIANSHIP

APPELLEES APPLICATION FOR FURTHER REVIEW

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PROOF OF SERVICE

I, the undersigned, hereby certify that I did file Appellees Application for Further Review with the Clerk of the Iowa Supreme Court and did serve Appellee's counsel by electronically filing the same on the 23rd day of August 2022.

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QUESTIONS PRESENTED FOR REVIEW

DID THE IOWA COURT OF APPEALS ERR WHEN IT (1) CONSTRUED FILINGS AS A PRE-ANSWER MOTION TO DISMISS; (2) FOUND DISMISSAL OF THE PETITION FOR INVOLUNTARY GUARDIANSHIP WAS INAPPROPRIATE?

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STATEMENT SUPPORTING FURTHER REVIEW

This Court should grant further review in this matter because the court of appeals came to an incorrect conclusion regarding an issue that is (1) an important question of law that has not been, but should be, settled by the Supreme Court; (2) a question of new and changing legal principles; (3) and an issue of broad public importance that the Supreme Court should decide pursuant to Iowa Rules of Appellate Procedure 6.1103(1)(b)(2), (3) and (4).

Whether to allow Appellant van Cleaf to proceed in an action that is not only directly adverse to his client but also is substantially related to previous representation is a crucial question of law. The appellate court erred in remanding this case to the district court. Senior Judge Potterfield says "Dismissal of the guardianship action was inappropriate; neither Iowa Rule of Civil Procedure 1.42(1)(f), the Iowa Rules of Professional Conduct, nor case law support it. Therefore, we reverse the dismissal…" Thus, it must be interpreted that this case was reversed and remanded based, at least in part, from a *lack* of guidance on this question of law.

The Iowa Code section on Minor Guardianships (Iowa Code §232D) went into effect under three years ago. Given the newness of the code section there is a lack of case law to provide guidance on it. It is a section that is still developing as issues arise and questions come up. Minor guardianships a prime example of

changing legal principles and this case brings a question that is critical to the further development of this code section.

Most importantly, this court should review this case due to the massive issue of public importance. One of the fundamental pillars of an attorney-client relationship is confidentiality. In remanding this case back to the district court, the appellate court essentially disregards a person's ability to expect confidentially from their attorneys. What this precedent sets out is that there is no method to dismiss a petition to establish an involuntary minor guardianship even when (1) there would be doubtless harm to a parent; (2) there is so obviously a lack of a suitable proposed guardian, and therefore a lack of standing; and (3) dismissal is an option available to the district court. The detriment that the decision the appellate court rendered would be long-lasting. One argument the appellate court, specifically Judge Greer, correctly made is that "the optics are bad here."

STATEMENT OF THE CASE

The Appellee, J.W. agrees with the statement of facts set out by the Iowa Court of Appeals. It is worth also emphasizing that there is information in the file and in the transcript that Appellant van Cleaf continuously violated the rules of ethics, even after the undersigned "enumerated" the concerns.

ARGUMENT

The appellate court, in their decision, states "[G]eneral concerns about concluding the court can bar certain persons from being a party to or initiating a lawsuit." But that is an oversimplification and misrepresentation of what happened. A person must have standing to bring a case and frivolous claims are not allowed. Here, the district court evaluated and determined that van Cleaf was inappropriate to file pro se for involuntary guardianship and thus lacked standing.

I. THE COURT OF APPEALS ERRED IN CONSTRUING ANY FILINGS IN THE DISTRICT COURT CASE AS A MOTION TO DISMISS

1. Law Regarding Motion to Dismiss

Iowa Rule 1.421 of Civil Procedure…A Motion to Dismiss is a pre-answer motion that "must be asserted in the pleading response." It goes on to say that Rule 1.421(1)(f) says "'[a] court should ant a motion to dismiss if the petition fails to state a claim upon which any relief may be granted.' *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009). In considering the motion, "the court considers all well-pleaded facts to be true.' *Id*."

2. There Is No Evidence To Support There Being a Motion To Dismiss

Nowhere in the pleadings, filings, or on the record was there a Motion to Dismiss. The court of appeals acknowledges that mother – through her attorney –

further expressed that that merely to bring ethical violations to the attention of the court, as required under the Iowa Rules of Professional Conduct, when van Cleaf requested mother's Attorney enumerate with the alleged violations and the requested remedy.. Simply because mother's Attorney complied with that request does not mean that van Cleaf gets to now claim that it was a motion to dismiss to benefit his position.

3. If Anything, It Should Have Been Construed as An Involuntary Dismissal under Rule 1.945 of Civil Procedure.

Iowa Rule of Civil Procedure 1.945 discusses Involuntary dismissal. It says "A party may move for dismissal of any action or claim against the party or for any appropriate order of court, if the party asserting it fails to comply with the rules of this chapter or any order of court. After a party has rested, the adverse party may move for dismissal because no right to relief has been shown, under the law or facts, without waiving the right to offer evidence thereafter."

Although mother's attorney would argue that it was not a motion or movement of any sort, short of fulfilling her ethical obligation to inform the court of perceived ethical violations, if it was anything it could be perceived as anything it would be moving for an involuntary dismissal.

4. **Regardless of All Else, the Petition Still Fails in the Light Most Favorable to Appellant**

A review of the Petition for involuntary guardianship, as filed by Mr. van Cleaf would still fall short, even under the standard principles. The appellate court correctly cites Iowa Code §232D.204, which discusses the requirements for establishing an involuntary guardianship. *All* of the cited elements must be met to establish a guardianship.

This includes §232D.204(1)(b) which states "there has been a demonstrated lack of consistent parental participation in the life of the minor…" and §232D.204(2)(a) "No parent having legal custody of the minor is willing or able to exercise the power the court will grant to the guardian if the court appoints a guardian." Yet, Appellants own petition mentions several times "except when prevented from doing so by mom." According to that pleading, mom does exercise parental power, to the great frustration of Appellant.

The court of appeals cites the Iowa Rules of Professional Conduct preamble to Chapter 32, discussing that a "nondisciplinary remedy, such as disqualification" may not be necessary if the intention of opposing parties is to "invoke[]…as procedural weapons." Mother's attorney did not seek to use Appellants many ethical violations as a weapon because that wouldn't be necessary. The Appellee is not concerned with the Petition or having a hearing on the merits of such, as she knows

it to be meritless. The concerns are (1) the other attorneys in the case, as well as the court, fulfilling their own ethical obligations; (2) the accountability of Appellant, and any attorney, to not weaponize knowledge garnered through representation; and (3) the vulnerability of J.W. To have confidential information exposed.

II. THE COURT OF APPEALS ERRED IN FINDING DISMISSAL OF THE PETITION FOR INVOLUNTARY GUARDIANSHIP CASE TO BE INAPPROPRIATE

1. If It *is* a Motion to Dismiss, dismissal is still appropriate.

What the appellate court here disregards is that there was a hearing to get some factual information. While it may not have been a hearing on the merits of the petition, it was on the validity of the claim and the standing to file the petition. Van Cleaf testified to the fact and it was confirmed by the court that he represented the mother - on no less than five occasions, some quite recently. There is documentation of other violations. Although the district court cannot discipline an attorney for ethical violations, they must acknowledge when they see them. There was overwhelming factual evidence that van Cleaf represented mother, J.W., in gaining custody of her child. The court, having heard this based on evidence presented *to the court*, can consider it as a ground for dismissal under rule 1.421(1)(f). The court,

correctly, found that there was no way forward with van Cleaf and this petition. Without a valid petition, the court had no choice but to dismiss.

Therefore, under Iowa Rule 1.421(1)(f) there is failure to state a claim upon which relief may be granted. Van Cleaf cannot be guardian and that the only "relief" requested, so his claim is moot. Dismissal is proper.

2. Laws Regarding Juvenile Guardianship

Iowa Code § 232D.301(1) states that guardianship proceedings can be "initiated by the filing of a petition by any person with an interest in the welfare of the child." What it is unlikely that the drafters of §232D.301(1) could have foreseen is an unrelated attorney - who knew a child only through the representation of the child's mother – would have the gumption to forcibly seek guardianship against the will of said mother and child. As previously mentioned, not every situation can be foreseen. This petition for further review seeks to clarify and remedy that oversight.

CONCLUSION

Except as otherwise stated, even 232D is governed by the Iowa Rules of Civil Procedure. Those rules state "The purpose of all rules for court administration shall be to provide for the administration of justice in an orderly, efficient and effective manner, in accordance with the highest standards of justice and judicial service" (Iowa R. Civ. P. 1.1807)

No list of rules can be all-encompassing. It cannot be reasonably argued that because the Rules of Civil Procedure doesn't have a dismissal clause regarding lawyers suing clients to force involuntary custody of their daughters that it makes that proper. Nor would it be an argument for orderliness, efficiency, effectiveness or high standards to have something so egregiously inappropriate remanded to the district court, where it will ultimately still be dismissed, based on the appellate courts interpreting a technicality in the method by which dismissal was achieved.

The argument here is not whether an attorney can bring a claim against a former client. The argument is whether *this* attorney can bring *this* claim against *this* client.

Even though the appellate court mentions that there may have been other available remedies – though this is disputed – may be does not mean must be. Two of the available judicial remedies for "a lawyers breach of duty owed to the lawyer's client…" are

- § 6 (2) – allowing specific performance (i.e. maintain confidentiality
- § 6 (8) – disqualifying a lawyer from representation (Van Cleaf himself states that disqualification is a proper remedy – if he is disqualified then there is no Petition left. If there is no Petition for Guardianship, there is no longer a case. It *must* be dismissed).
- § 6 (11) – dismissing the claim. Restatement (Third) of the Law Governing Lawyers § 6 (Am. Law. Inst. 2000).

The Court used a proper and available remedy.

WHEREFORE, Appellee respectfully requests this Court grant further review of the decision rendered by court of appeals, reverse the rulings of the court of appeals, and reinstate the district court order dismissing.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.1103(4) because this brief contains 2,347 words, excluding the parts of the brief exempted by Rule 6.903(1)(*g)*(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

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. 14, 6.903(1)(*f*) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in font size 14, Times New Roman.

/s/ *Alexis R. Dahlhauser* Dated: 8/23/22
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ATTORNEY'S COST CERTIFICATE

This brief was electronically submitted with an e-mail copy provided to Appellant. I hereby certify that the cost to print this brief was the sum of $0.00.

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