

IN THE IOWA SUPREME COURT

No. 21-0348

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

A Minor Child

AUGUST 3rd, 2022

APPELLANT’S RESISTANCE TO APPELLEE’S APPLICATION

FOR FURTHER REVIEW

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STATEMENT OF CASE

The Appellant, Jacob van Cleaf, agrees with the statement of facts set out by the Iowa Court of Appeals.

ARGUMENT

APPELLEE’S APPLICATION IS NOT SUPPORTED BY IOWA

RULE OF APPELLATE PROCEDURE 6.1103(1)(b).

The Appellate court’s ruling did not decide an important question of law, but merely acknowledged a that Iowa’s well settled law in the area does not support the Appellee’s position. In attempting to make her argument, Appellee relies on the Appellate Court’s statement that “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...” to argue that that the Appellate Court not only decided an important question of law, but did so incorrectly.

However, the statement cited by Appellee makes it clear by its own terms that the Appellate Court came to its decisions by examining long standing precedent and determining no authority supported dismissal was intended to be available as a remedy under these circumstances. Appellee’s argument presumes that the Supreme Court’s guidance would dictate a different result, but offers no authority, argument, or evidence to support such a conclusion.

While it is true that Iowa Code §232D was recently promulgated and has had limited time for interpretation, this action, at this point in proceedings, offers no opportunity to exploring the changing legal principals

at play under said code section. The thrust of Appellee's argument is that she believes the Appellant has violated the Iowa Rules of Professional Conduct in bringing the underlying action, and that the remedy for such a violation is dismissal of the action. Whether or not the Iowa Rules of Professional Conduct are violated, and whether such a violation would warrant dismissal does not clarify the terms or principals the Iowa legislature was intending to address by adoption of Iowa Code §232D.

By Appellee's own admission, this case does not present an issue of broad public importance. While Appellee initially argues that allowing this case to proceed and a record to be made before seeking a review of the final order, she points to no facts or arguments as to why that would be, before eventually conceding the scope of the arguments at play in this case are limited to the highly idiosyncratic facts of this situation. Application for Further Review, Pg. 13 ("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."). The situation posed by this case are so unusual that rulings based thereupon are unlikely to have general application outside this particular situation, and are certainly not so common as to be of broad public importance.

**THE APPELLATE COURT CORRECTLY INTERPRETED
APPELLEE’S ENUMARATION AS A MOTION TO DISMISS**

Appellee’s Enumeration was substantively a motion to dismiss. A motion to dismiss seeks to end a proceeding by demonstrating the moving 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). Appellee’s Enumeration states that it seeks the remedy of dismissal, and list grounds for which Appellee believed she was entitled to said relief. App. 55 (“The undersigned, on behalf of the Mother, requests the following remedies: 1. Dismissal of this Petition action in its entirety.”). Appellee is in essence alleging that even if all Appellant’s allegations are true, Appellant has failed to state a claim on which relief could be granted, and seeks the remedy of dismissal. As such, while the label may state otherwise, the substance of Appellee’s Enumeration is that of a motion to dismiss, and it is proper to analyze said motion accordingly.

**IF APPELLEE’S ENUMERATION WERE INTERPRETED AS AN
INVOLUNTARY DISMISSAL UNDER IOWA RULE OF CIVIL
PROCEDURE 1.945 THE RESULT WOULD BE THE SAME**

Even Appellee's Enumeration were interpreted as an Involuntary Dismissal under Iowa Rule of Civil Procedure 1.945, it would still fail. A dismissal pursuant Iowa Rule of Civil Procedure 1.945 would require that you demonstrate that the proponent of a claim, action, or order has failed to comply with the Iowa Rules of Civil Procedure or a court order. *See* Iowa R. Civ. P. 1.945. Appellee has not previously asserted Appellant to have violated any Court Order or Rule of Civil Procedure, meaning dismissal would be inappropriate.

**SEVERAL APPELLEE'S ARGUMENTS EXCEED THE
APPROPRIATE SCOPE OF REVIEW**

Appellee attempts several times in her Application, to argue the merits of this action. As argued previously, Appellee's argument is largely analogous to, and thus properly analyzed as, a motion to dismiss. 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 v. City Council of Cedar Falls*, 769 N.W.2d 162, 165 (Iowa 2009) (citing Iowa R. Civ. P. 1.421(1)(f)). As the allegations of the petition are to be taken as true, any

argument about their veracity, or the likely outcome of allegations contained in the position would go to the merits of the case, and thus should be reserved for hearing or trial. Despite this, Appellee makes argument, either directly or implicitly, concerning matters such as whether Appellee inconsistently preventing Appellant or others from acting to the proposed ward's benefit constitutes an exercise of the power the court could grant to a guardian if one were to be appointed, within the meaning of Iowa Code §232D.204(2)(a). Application for Further Review Pg. 10. Similarly, she makes argument concerning Appellant's fitness to serve as a guardian to the proposed ward, and whether Appellant is the type of individual the legislature contemplated as a potential guardian when passing Iowa Code §232D. Application for Further Review Pgs. 6, 11, 12. Such an argument goes to the weight of evidence, and not whether the allegations establish a prima facie cause of action, which is the relevant question under a motion to dismiss, and thus the scope to which review should be limited.

CONCLUSION

For all the reasons previously argued, Appellee's Application for Further Review should be denied, and the Appellate Court's Opinion and Ruling should be allowed to stand.

Respectfully Submitted,

/s/ Jacob van Cleaf

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CERTIFICATE OF FILING

I hereby certify that I did file the within Appellant's Resistance to Appellee's Application for Further Review with the Clerk of the Supreme Court, Des Moines, Iowa, by electronic filing through EDMS on the 2nd day of September, 2022.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appellant's Resistance to Appellee's Application for Further Review was served upon the below listed parties via the Iowa Courts EDMS system on or about September 2nd, 2022.

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CERTIFICATE OF COMPLIANCE

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