

IN THE IOWA SUPREME COURT

NO. 23-1829

(Polk County No. LACL148935)

MARLENY RIVAS,

Plaintiff-Appellant,

v.

DEREK BROWNELL and LINDSEY WESSEL,

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY

THE HONORABLE SCOTT D. ROSENBERG, JUDGE

APPELLEE LINDSEY WESSEL'S BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did Plaintiff Preserve Error?
2. What is the Scope and Standard of Review?
3. Does the Iowa Supreme Court's May 22, 2020 Supervisory Order Violate the Separation of Powers Doctrine?
4. Are Authorities Plaintiff Cites Applicable and Justify Untimely Filing of Plaintiff's Petition?

ROUTING STATEMENT

This case involves a constitutional question as to the constitutional validity of an Iowa Supreme Court Supervisory Order tolling the statute of limitations. Iowa R. App. P. 6.1101(2)(a). Accordingly, the case should be routed to the Iowa Supreme Court.

NATURE OF THE CASE & COURSE OF PROCEEDINGS

Co-Appellee, Defendant Derek Brownell's Nature of the Case and Course of Proceedings are correct in his statements and clarifications. Defendant Lindsey Wessel relies on the same arguments that Defendant Brownell has made in his respective Brief. Defendant Brownell's Brief, including its statements of fact and arguments, are incorporated herein by reference.

STATEMENT OF THE FACTS

Plaintiff/Appellant Marleny Rivas claims she was injured in an automobile accident on August 4, 2018. (*See generally* D001, Petition, 10/16/20). In Iowa, the

personal injury statute of limitations is two years from the date of the injury. Iowa Code § 614.1(2). Pursuant to this statute, Plaintiff's two-year statute of limitations ran on August 4, 2020. Plaintiff did not file suit against Defendants Wessel and Brownell until October 16, 2020. (D001, Petition, 10/16/20).

As Defendant Brownell points out in his Brief, at the heart of the parties' dispute is the constitutionality and enforceability of an Iowa Supreme Court Supervisory Order. On May 22, 2020, Honorable Chief Justice Susan Christensen filed a Supervisory Order that attempted to toll the personal injury statute of limitations, Iowa Code section 614.1(2), by 76 days. Plaintiff contends that suit was timely filed pursuant to the Supervisory Order. Defendants contend that the May 22, 2020 Supervisory Order usurps legislative authority and that Iowa Code section 614.1(2) must be enforced as written, rendering Plaintiff's case time-barred.

ARGUMENT

Appellee Defendant Lindsey Wessel relies on the same arguments Defendant Derek Brownell makes in his Appeal Brief, which is incorporated herein by reference. Defendant Wessel's arguments, below, have been simplified for brevity and to avoid unnecessary duplication.

I. Preservation of Error

Plaintiff has not preserved error as to all specific arguments raised on appeal. In instances where Defendant Wessel contends error was not preserved, this is

specifically addressed within subsections responding to Plaintiff's pertinent arguments.

II. Scope and Standard of Review

When constitutional questions are raised on appeal, the standard of review is de novo. (Plaintiff's Brief, P. 16).

III. The Supreme Court Order Violates the Separation of Powers Doctrine

Of note, Plaintiff does not argue against the doctrine of separation of powers in her Appeal Brief. This doctrine is the foundation of the district court's decision to grant Defendants' Motion for Summary Judgment. (D0091, Order on Defendants' Motion for Summary Judgment at 4, 11/2/23). In *State v. Thompson*, 954 N.W.2d 402, 411 (Iowa 2021), the Court stated as follows regarding separation of powers:

“[T]he constitutional text reserves to the legislative [branch] authority to regulate the practice and procedure in all Iowa courts, including Iowa's appellate courts. Article V, section 4 of the Iowa Constitution grants the supreme court appellate jurisdiction “under such restrictions as the general assembly may, by law, prescribe.” Article V, section 6 provides the district court shall have jurisdiction “as shall be prescribed by law.” And article V, section 14 of the constitution provides it is “the duty of the general assembly . . . to provide for a general system of practice in all the courts of this state.” The judicial [branch]'s constitutional, statutory, inherent, and common law authority to regulate practice and procedure in its courts thus must give way where the legislative department has acted.”

Thompson clearly shows that under the doctrine of separation of powers, courts cannot alter a court procedure that was created by the legislature in a statute.

Because the time period for filing suit is governed by statute, the judicial branch cannot usurp legislative authority by Supervisory Order. As such, the May 22, 2020, Order (and all other Iowa Supreme Court Orders tolling statutes of limitations) are unconstitutional and do not alter the time limit to pursue claims.

IV. Plaintiff's Authorities are Inapplicable

A. *Basquin* is inapplicable

Plaintiff argues that *State v. Basquin*, 970 N.W.2d 643 (Iowa 2022), is dispositive. (Plaintiff's Brief, P. 24). Plaintiff strategically omits the facts of the case. (Plaintiff's Brief, P. 24). Plaintiff suggests that *Basquin* means all COVID-19 Iowa Supreme Court Supervisory Orders, even ones that conflict with legislation, are constitutional. (Plaintiff's Brief, P. 24). This is a misreading of *Basquin*. As Defendant Brownell correctly states in his Brief, the question in *Basquin* was whether the Court had authority to issue a Supervisory Order that temporarily allowed felony guilty pleas to be submitted in writing, in lieu of through an in-person court hearing. 970 N.W.2d at 652-655. The Court held that it "had the constitutional authority to issue the supervisory orders that temporarily suspended our rules of criminal procedure governing guilty pleas" and authority to regulate "court practice and procedure." *Id.* at 654-55; Iowa Code § 602.4201.

The issue in this appeal is the Iowa Supreme Court's authority to toll a statute of limitations prescribed by the legislature in Iowa Code section 614.1, and not the

Iowa Supreme Court's regulation of the judicial branch's procedural rules. Of note, the Court in *Basquin* implied the result would be different if the legislature had enacted a statute relating in any way to the issue of how felony guilty pleas were to be entered. *See Basquin*, 970 N.W.2d at 656. Here, there can be no question that the legislature enacted a statute that the Iowa Supreme Court chose to override through a Supervisory Order, and therefore, *Basquin* is inapplicable to the facts and issues in this Appeal.

B. *Root* is inapplicable

Plaintiff cites *Root v. Toney*, 841 N.W.2d 83, 87 (Iowa 2013) in her argument (Plaintiff's Brief, P.25-29). *Root* involves straightforward application of a statute and is inapplicable to her arguments. *See id.* at 87-88.

In *Root*, the Iowa Supreme Court applied Iowa Code section 4.1(34), which states that when the last day for filing an appeal falls on a day when the Iowa Supreme Court has closed a clerk's office, then the time for filing is to be extended to the next day the clerk's office is open. *Id.*; Iowa Code § 4.1(34). Toney did not file his notice of appeal on the thirtieth day from the date of judgment (the normal deadline for filing an appeal, per court rules) because the clerk's office closed early, per a cost-saving closure order of the Iowa Supreme Court. *Root*, 841 N.W.2d at 84. He then filed the appeal on the next day the clerk's office was open, which was thirty-one days from the date of judgment. *Id.* at 85. The Court held that per the plain

language of Iowa Code section 4.1(34), Toney's notice of appeal was timely filed and that the Court could not change statutory terms under the guise of judicial construction, and the Court had to apply plain statutory language. *Id.* at 89.

Because *Root* involves application of plain statutory language, *Root* actually supports Defendant Wessel's position, not Plaintiff's. *Root* supports Wessel's position that the Court should apply the statute of limitations as written, and find Plaintiff's Petition is time-barred.

Plaintiff argues that *Root* generally supports extending deadlines, as this "guarantees due process." (Plaintiff's Brief, P. 28). This argument overlooks how extending the statute of limitations would impact the constitutional due process rights of Defendants. The Supervisory Orders infringed on that right in violation of substantive due process of law. *See Thorp v. Casey's General Stores, Inc.*, 446 N.W.2d 457 (Iowa 1989) (finding due process violation). Procedural due process requires notice and an opportunity to be heard. *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 691 (Iowa 2002).

Here, the Iowa Supreme Court acted unilaterally and did not give Defendants any notice or opportunity to be heard when it altered the statute of limitations. While the government possibly has a legitimate interest in reducing the spread of COVID-19, tolling all statutes of limitations in civil cases does not bear a rational relationship

to that interest. *Morrissey v. Brewer*, 408 U.S. 471 (1972) (outlining due process considerations). In light of electronic filing requirements, simply filing a Petition does not risk COVID-19 exposure. Should the Court find that Plaintiff's case is not time-barred, Defendants will be denied both substantive and procedural due process.

C. Article V of the Iowa Constitution is inapplicable

Plaintiff argues the Iowa Supreme Court's May 2020 Supervisory Order was authorized by Iowa Constitution Article V, section 4. (Plaintiff's Brief, P. 30). This constitutional provision says the Supreme Court "shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state." Iowa Const. Art. V § 4. However, the Iowa Supreme Court went beyond exercising supervisory and administrative control over judicial tribunals. The Court instead acted where the legislature had already acted. Therefore, Article V of the Iowa Constitution does not provide the Iowa Supreme Court with authority to toll the statute of limitations.

There is also no evidence or law supporting the theory that the legislature "abdicated [a] responsibility" to toll the statute of limitations. (Plaintiff's Brief, P. 32). No such responsibility existed in the first place. The legislature is not required to take action simply because Plaintiff wishes it would.

Further, Plaintiff claims *Iowa C.L. Union v. Critelli*, 244 N.W.2d 564, 568 (Iowa 1976) states that “where the legislature fails to act, the [S]upreme [C]ourt *must* act” (Plaintiff’s Brief, P. 33)(emphasis added). This reading of *Critelli* would suggest the Supreme Court is tasked with regulating any aspects of our lives that the legislature has not touched. This is not a reasonable reading of *Critelli*. *Critelli* simply discusses the “inherent common-law power of the courts to adopt rules for the management of cases on their dockets *in the absence of statute*.” 244 N.W.2d at 568-69 (emphasis added). Again, in this case, we have a statute that governs the statute of limitations. Where the legislature has spoken, Courts do not have any inherent authority to override legislative enactment. *See id.* at 569.

D. Either Plaintiffs waived the issue of equitable tolling or it does not even apply.

Plaintiff argues that the Court should consider whether there was “equitable” authority to toll the statute of limitations, yet Plaintiff never presented any argument or authorities relating to equitable tolling of the statute of limitations to the district court. (Plaintiff’s Brief, P. 29-30); (D0073, Resistance, 4/7/23). The district court never ruled on the issue of equitable tolling of the statute of limitations. (D0091, Order on Defendants’ Motion for Summary Judgment, 11/2/23). Therefore, arguments relating to “equitable tolling” have been waived. *Meier*, 641 N.W.2d at 537.

In *Mormann v. Iowa Workforce Dev.*, 913 N.W.2d 554 (Iowa 2018), the Court applied the Iowa Administrative Code Rule 161-3.3(3), stating “[w]hether the filing period shall be equitably tolled in favor of a complainant depends upon the facts and circumstances of the particular case,” and “[e]quitable tolling suspends the running of the filing period during the period of time in which the grounds for equitable tolling exist.” *Mormann*, 913 N.W.2d at 558-59. The Court stated that the doctrine of equitable tolling incorporates the discovery rule and equitable estoppel: the discovery rule involves considering what the Plaintiff knew and when she knew it. *Id.* at 570. Equitable estoppel involves consideration of whether the Defendant engaged in conduct that would reasonably deter the filing of a claim. *Id.*

Here, Plaintiff has never argued that there was any delay in her knowledge of injury, nor argued that Defendants did anything to deter her from filing a claim. The doctrine of equitable tolling simply has no application to this matter.

CONCLUSION

Appellee/Defendant Wessel respectfully requests that the Court affirm the district court’s Order granting Defendants’ Motion for Summary Judgment. The Iowa Supreme Court’s May 2020 Supervisory Order violates the separation of powers doctrine and is unenforceable. Therefore, Iowa Code section 614.1(2) renders the Plaintiff’s case time-barred.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on April 29, 2024, the foregoing Brief was filed via the appellate e-filing system and additionally served on counsel of record via the e-filing system.

By: /s/ Nicholas P. Moreland

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND
TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

This brief has been prepared in a proportionally spaced typeface using Times New Roman in font size 14 and contains 3,424 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

By: /s/ Nicholas P. Moreland