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IN THE IOWA SUPREME COURT
Supreme Court No. 23-2113

JENNA SONDAG,
Plaintiff-Appellant,

vs.

ORTHOPAEDIC SPECIALISTS, P.C. and JOHN HOFFMAN, M.D.,
Defendants-Appellees.

On appeal from Iowa District Court for Scott County
Order of The Honorable Stewart P. Werling
Law No. LACE131149

RESISTANCE TO PLAINTIFF-APPELLANT'S APPLICATION FOR FURTHER REVIEW OF COURT OF APPEALS DECISION OF JANUARY 23, 2025

Ian J. Russell, AT0006813
Alexander C. Barnett, AT0012641
LANE & WATERMAN LLP
220 North Main Street, Suite 600
Davenport, IA 52801
Telephone: 563-324-3246
Facsimile: 563-324-1616
Email: irussell@l-wlaw.com
Email: abarnett@l-wlaw.com
ATTORNEYS FOR DEFENDANTS-APPELLEES
ORTHOPAEDIC SPECIALISTS, P.C. and
JOHN HOFFMAN, M.D.

QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals properly find the district court acted within its discretion to correct an earlier interlocutory ruling denying Defendants summary judgment a week before trial?

II. Did the Court of Appeals properly find the district court acted within its discretion when it determined Plaintiff could not establish good cause for her untimely designation of an expert witness under Iowa Code section 668.11 when Plaintiff missed her initial certification and disclosure deadlines by more than four months?

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STATEMENT RESISTING FURTHER REVIEW

"Further review by the supreme court is not a matter of right, but of judicial discretion." Iowa R. App. P. 6.1103(1)(b). "An application for further review will not be granted in normal circumstances." *Id.* The circumstances in which further review is appropriate is a matter of the Supreme Court's discretion. *Id.* In this case, no special circumstances exist warranting further review of the unanimous Court of Appeals' decision affirming the district court's decision to correct an earlier ruling and dismiss Jenna Sondag's lawsuit on account of her inability to establish good cause for her untimely expert disclosures under Iowa Code section 668.11.

In rejecting Sondag's argument the district court abused its discretion when it revisited a prior summary judgment ruling a week before trial, the Court of Appeals relied on well-established precedent holding a district court has inherent authority to correct any perceived errors in interlocutory rulings prior to final judgment. *Sondag v. Orthopaedic Specialists, P.C.*, No. 23-2113, 2025 WL 271622, at *2 (Iowa Ct. App. Jan. 23, 2025) (citing *Madden v. City of Eldridge*, 661 N.W.2d 134, 137 (Iowa 2003) and *Kendall/Hunt Publ'g Co. v. Rowe*, 424 N.W.2d 235, 240 (Iowa 1988)). If the district court has jurisdiction over a case and the parties, it may revisit, review, and change an earlier summary judgment ruling at a later date. *See Madden,* 661 N.W.2d at 137. A district court may do so upon an untimely motion or even *sua sponte* the morning of trial. *Id.* This is because an interlocutory ruling "is not law of

the case," *Ahls v. Sherwood/Division of Harsco Corp.*, 473 N.W.2d 619, 624 (Iowa 1991) and litigants do not have "a 'vested right to require the court to perpetuate its mistake.'" *Hoefer v. Wis. Educ. Ass'n Ins. Tr.*, 470 N.W.2d 336, 339 (Iowa 1991) (quoting *Kuiken v. Garrett*, 51 N.W.2d 149, 154 (Iowa 1952)).

In rejecting Sondag's alternative argument that she has good cause for her delay in designating experts, the Court of Appeals similarly relied on well-established precedent from this Court and recent unpublished decisions from the Court of Appeals regarding the circumstances that support a finding of good cause for purposes of Iowa Code section 668.11. *Sondag*, 2025 WL 271622, at *2-3. After analyzing these authorities, the Court of Appeals determined the district court did not abuse its discretion when it ruled Sondag could not establish good cause for disclosing her experts "more than four months late" on account of "a calendaring error." *Id.* at *3. The Court of Appeals also emphasized the underlying district court ruling is subject to the most deferential standard of review on appeal—abuse of discretion. *See Hill v. McCartney*, 590 N.W.2d 52, 54-55 (Iowa Ct. App. 1998) ("Trial courts have broad discretion in ruling on whether to extend the time allowed for parties to designate expert witnesses under [section] 668.11, and the exercise of that discretion will not be disturbed unless it was exercised on clearly untenable grounds or to an extent clearly unreasonable."). Because the Court of Appeals relied upon well-established legal authorities, its decision does not "conflict with a decision

of the supreme court or the court appeals[,]" let alone "on an important matter." *See* Iowa R. App. 6.1103(b)(1) (identifying potential justifications for further review).

Sondag also claims further review is supported by rule 6.1103(b)(3) because this Court recently held a medical malpractice defendant waived its right to seek dismissal under Iowa's certificate of merit statute through its prolonged litigation conduct where the defendant litigated the entire case through a three-week jury trial and appellate briefing before filing a motion seeking dismissal under Iowa Code section 147.140(6). *See S.K. by and through Tarbox v. Obstetric & Gynecologic Assoc. of Iowa City and Coralville, P.C.*, 13 N.W.3d 546, 572 (Waterman, J., concurring opinion). Setting aside the procedural dissimilarities between this case and *Tarbox*, this is not even a proper consideration for further review because Sondag never raised this legal argument in the district court or her appellate briefing. *See Sondag*, 2025 WL 271622, at *3 fn. 1 (observing Sondag waived this argument); *see also Fed. Land Bank of Omaha v. Recker*, 460 N.W.2d 480, 482 (Iowa Ct. App. 1990) ("It is axiomatic that we will generally not consider issues raised for the first time on appeal."); Iowa R. App. 6.1103(d) ("On further review, the supreme court may review any or all of the issues **raised in the original appeal** or limit its review to just those issues brought to the court's attention by the application for further review." (emphasis added)).

Sondag similarly suggests rule 6.1103(b)(3) supports further review because in *Wilson v. Shenandoah Med. Ctr.*, No. 23-0509, 2024 WL 3519800 (Iowa Ct. App. July 24, 2024) the Iowa Court Appeals—in a split-decision—affirmed a district court's ruling denying a medical malpractice defendant summary judgment under Iowa Code section 668.11 where the plaintiffs missed their expert disclosure deadlines by three months. Sondag argues *Wilson* establishes the district court was not obligated to dismiss her lawsuit in October 2023, and therefore, Sondag reasons, the district court committed reversible error when it stated it felt "required" to dismiss her lawsuit when it granted Defendants' Motion in Limine No. 17. The *Wilson* decision is materially distinguishable from the case at hand; but, again, this is not even a proper consideration for further review because Sondag failed to raise this argument below too. *See Sondag*, 2025 WL 271622, at *3 fn. 1 ("Sondag does not argue in her brief that the district court mistakenly believed it lacked discretion, and we express no opinion on such a claim.").

In sum, a unanimous Court of Appeals correctly determined the district court acted within its discretion under well-established law. It properly affirmed the district court. Sondag's Application for Further Review should be denied because it presents no issue of broad public importance, no issue of changing legal principles, no undecided constitutional or legal question, and there is no conflict with existing case law on an important matter that would warrant further review by this Court.

BRIEF

I. STATEMENT OF FACTS

This is a medical malpractice lawsuit arising out of a left hip surgery Dr. Hoffman performed on Plaintiff, Sondag, on February 13, 2017 at Orthopaedic Specialists, P.C. (*See* Sondag's Responses to Defendants' Statement of Undisputed Material Facts, D0022, ¶¶2-7). Sondag acknowledges she requires expert testimony in this case to establish a *prima facie* case of medical malpractice. (D0135 Transcript from 10/26/23 Motion Hearing – Original (page 8 line 13 – page 9 line 4); *see also* Ruling on Defendants' Motion for Summary Judgment, D0030, p. 5).

Sondag's deadline for certifying the identity of her expert(s), the subject matter of their testimony and their qualifications was July 24, 2019, and the accompanying disclosures required by Iowa R. Civ. P. 1.500(2)(b), *i.e.*, written expert opinions, were due by August 26, 2019. (Sondag's Responses to Defendants' Statement of Undisputed Material Facts, D0022, ¶14). Prior to these deadlines expiring, Defendants served written discovery on May 2nd requesting Sondag to identify each expert she expects to call and each expert's qualifications and opinions. (D0022, ¶25-27). Sondag's attorney requested and received an extension of time to respond to said discovery through July 19th. (D0022, ¶28).

Sondag, however, failed to respond to Defendants' written discovery requests as agreed and failed to designate any expert witnesses as required under Iowa Code

Section 668.11 and the parties' Trial Scheduling and Discovery Plan. (Sondag's Responses to Defendants' Statement of Undisputed Material Facts, D0022, ¶29). On September 6, 2019, Defendants moved for summary judgment requesting the Court to bar Sondag from certifying an expert witness. (Defendants' Motion for Summary Judgment, D0014).

The Honorable Stuart Werling heard oral argument on Defendants' Motion for Summary Judgment on November 5, 2019. (*See* Order Setting Hearing, D0025; Ruling on Defendants' Motion for Summary Judgment, D0030). On the date of oral argument, Sondag still had not designated an expert witness—or even prepared a partial designation of an expert witness—nor had she responded to Defendants' written discovery requests despite having more than six months to do so. (*See* Plaintiffs' Notice of Discovery Response, filed on December 18, 2019, D0032). Notwithstanding, on November 12, 2019, the district court denied Defendants summary judgment. (*See* Ruling on Defendants' Motion for Summary Judgment, D0030). In doing so, the district court held: "Plaintiffs satisfy the good cause test. First, the deviation has not been severe since the delay for disclosure has been minimal (less than 3 months since the deadline to certify experts and less than 2 months since Rule 1.500(2) were due)." (*Id.* at p. 5). In finding good cause, the district court stated further: "Plaintiffs' Counsel also provides multiple legitimate

reasons for the missed deadline, including the scheduling software error and her hospitalization." (*Id.* at p. 6).

Sondag certified Dr. Bal as an expert witness in December 2019 and disclosed his written expert opinions in January 2020. (D0031, D0033). That is, Sondag certified her expert and disclosed his opinions more than four months past her original deadlines to do so under Iowa Code section 668.11 and the parties' Trial Scheduling and Discovery Plan.

Defendants moved in limine to exclude Dr. Bal from testifying at trial based upon his untimely designation as an expert witness. (Defendants' Motion in Limine No. 17, D0110). Defendants' motion in limine cited case law issued after the district court denied Defendants summary judgment. (*Id.*). The newly decided case law confirms Sondag could not and did not satisfy her burden of establishing good cause for her untimely designation of Dr. Bal. (*Id.*). The Honorable Stuart Werling, who was also the assigned trial judge, correctly analyzed these newly decided authorities and granted Defendants' Motion in Limine No. 17. (Order of Dismissal, D0120). As a result, the district court correctly decertified Dr. Bal as an expert witness and dismissed Sondag's lawsuit. (*Id.*).

Sondag filed a timely Motion to Reconsider under Iowa Rule of Civil Procedure 1.904 requesting the district court to reverse its decision to decertify Dr. Bal as an expert witness. (Sondag's Motion to Reconsider, D0122; Sondag's Brief

in Support of Her Motion to Reconsider, D0124). Defendants filed a written resistance to Sondag's Motion to Reconsider. (Defendants' Resistance to Plaintiff's Motion to Reconsider, D0127). The district court, "after careful consideration" of the parties' respective briefs, denied Sondag's Motion to Reconsider "for the reasons set forth in Defendant's resistance and brief in support of their resistance thereto." (Order Denying Sondag's Motion to Reconsider, D0128). The Iowa Court of Appeals unanimously affirmed the district court's rulings.

II. ARGUMENT

A. None Of The Alleged Errors In The Application Warrant Further Review.

Sondag's application provides no compelling grounds for further review, and in any event, as discussed below, the Court of Appeals correctly rejected each ground raised for reversal in Sondag's appeal. Sondag's Application should be denied.

There is no dispute Sondag failed to comply with her expert disclosure deadlines under Iowa Code section 668.11 in a serious and significant way. In *Nedved v. Welch*, this Court held a three-month delay in designating an expert witness warranted dismissal even where the prejudice to the defendant was limited to that "which might be presumed to occur when experts are not designated by the statutory deadline." 585 N.W.2d 238, 241 (Iowa 1998). In addition, the Court of Appeals has more recently described comparable and even shorter deviations from the expert disclosure deadlines under Iowa Code section 668.11 as "significant" and

"substantial," and has determined such deviations warrant dismissal. *Tamayo v. Debrah*, No. 17-0971, 2018 WL 4922993, at *2 (Iowa Ct. App. Oct. 10, 2018) (describing plaintiff's two-month delay "to designate her experts" and having "waited even longer to provide a complete summary of their opinions" as a "significant" deviation from Iowa Code section 668.11); *Stanton v. Knoxville Cmty. Hosp., Inc.*, No. 19-1277, 2020 WL 4498884 at *3 (Iowa Ct. App. Aug. 5, 2020) (stating the plaintiff "'seriously deviated' from the deadlines" under Iowa Code section 668.11 when she certified an expert and provided an accompanying expert report respectively three and four months beyond her deadlines to do so).

Prior to Sondag's expert deadlines expiring, she made no effort to request an extension. Nor did she make a partial designation of any expert. She also failed to respond to Defendants' outstanding written discovery requests. Against this backdrop, Sondag does not even try to argue she substantially complied with the requirements of Iowa Code section 668.11. Nor could she.

The only issue in this case with respect to Iowa Code section 668.11 is whether Sondag can establish good cause to allow her untimely disclosed expert testify at trial. The more recently decided Iowa Court of Appeals decisions the district court relied upon granting Defendants' Motion in Limine No. 17 confirm Sondag cannot establish good cause for her failure to timely certify an expert. The district court did

not abuse its discretion when it revisited this narrow and discrete legal issue prior to trial.

B. The Court Of Appeals Correctly Determined The District Court Acted Within Its Discretion When It Corrected An Earlier Erroneous Ruling Denying Defendants' Summary Judgment.

Sondag criticizes the district court for decertifying Dr. Bal through a motion in limine. However, prior rulings on summary judgment are not final and binding. "The trial court's action in reconsidering a motion for summary judgment is discretionary." *Madden*, 661 N.W.2d at 137 (holding the district court did not abuse its discretion when it *sua sponte* reversed an earlier ruling denying defendants summary judgment the first morning of trial).

The district court's decision to decertify Dr. Bal was entirely appropriate and in the interests of justice. Sondag emphasizes the prejudice the district court's rulings caused her, but Iowa Code section 668.11 was enacted for the benefit of medical providers and their insurers, not medical malpractice plaintiffs. This Court has specifically recognized the legislature enacted Iowa Code section 668.11 to address "problems surrounding medical liability, liability insurance, and the attendant availability and cost of medical services to the public…." *Thomas v. Fellows*, 456 N.W.2d 170, 173 (Iowa 1990). The district court's ruling avoided an unnecessary two-week jury trial for the named Defendant, Dr. Hoffman, and the Defendants' insurers who intended to appeal the denial of summary judgment in the

event of an adverse judgment at trial. The Iowa Court of Appeals astutely recognized this point and Sondag also conceded it during oral argument. *See Sondag*, 2025 WL 271622, at *2 ("Sondag acknowledges…the good-cause question would also come before us after trial and adverse final judgment."). Accordingly, the district court's rulings below, which removed burdens on Dr. Hoffman and helped minimize defense costs, advanced several fundamental purposes of Iowa Code section 668.11.

Sondag also emphasizes the district court's summary judgment ruling remained unchanged for 1,441 days. (*See, e.g.,* Application for Further Review, p. 9). However, neither "law of the case" nor "issue preclusion" doctrines alter the general principle that a trial court retains authority to modify or correct any of its prior rulings. *See City of Davenport v. Shewry Corp.,* 674 N.W.2d 79, 86 n.4 (Iowa 2004); *see also Ahls,* 473 N.W.2d at 624 ("An interlocutory order is not the law of the case because the court is free to change it at a later time."); *Iowa Elec. Light & Power Co. v. Lagle*, 430 N.W.2d 393, 395-96 (Iowa 1988) (gathering cases discussing the court's inherent authority to reconsider a prior ruling). Under these well-established authorities, the district court had inherent authority to correct any of its own perceived errors so long as it retained jurisdiction over the case.

Further, Defendants did not challenge Dr. Bal's designation as an expert for the first time on the "eve of trial." Defendants timely moved for summary judgment in 2019 when Sondag initially missed her expert deadline. There is no evidence in

the appellate record to suggest the Defendants ever agreed Dr. Bal should be allowed to testify at trial. And nothing Defendants did after the district court's summary judgment ruling contributed to Sondag's initial failure to meet her expert disclosure deadlines. Therefore, Sondag knew, or should have known, the denial of Defendants' Motion for Summary Judgment was an interlocutory ruling subject to further review by the district court at any time prior to final judgment or on appeal if she prevailed at trial.

The out-of-state authorities cited by Sondag also recognize a district court may consider a summary judgment argument at the motion in limine stage. In *Hebrink*, the Minnesota Court of Appeals recognized a district court's consideration of a motion in limine that functionally serves as a motion for summary judgment does not require automatic reversal. *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 419 (Minn. Ct. App. 2003). Specifically, if the district court could have granted summary judgment *sua sponte*, then there is no reversible error if the district court grants a motion in limine that is the functional equivalent of a motion for summary judgment. *Id.* The *Hebrink* Court stated a district court may grant summary judgment *sua sponte* when: "(a) no genuine issues of material fact remain, (b) one of the parties deserves judgment as a matter of law, and (c) the absence of a formal motion creates no prejudice to the party against whom summary judgment is

granted." *Id.* As to the prejudice factor, the focus is on whether the nonmoving party had "a meaningful opportunity to oppose" summary judgment. *Id.*

All of those factors are readily satisfied here. First, there is no factual dispute regarding the relevant procedural timeline. Second, more recently decided Court of Appeals cases confirm Sondag cannot establish good cause for her failure to timely designate an expert. Whether good cause exists for failing to comply with section 668.11 is a legal question for the Court and Defendants deserved judgment as a matter of law. *See Hantsbarger v. Coffin*, 501 N.W.2d 501, 505 (Iowa 1993). Third, Sondag had a meaningful opportunity to oppose Defendants' argument that she cannot establish good cause for her failure to comply with her expert deadlines. The parties fully briefed and argued the issue in 2019. Sondag received Defendants' Motion in Limine 17 in advance of the motion in limine hearing, and she prepared and filed a written resistance to the motion. (D0115, Sondag's Response to Defendants' Motions in Limine, pp. 16-17). Sondag presented argument in resistance to Defendants' Motions in Limine No. 17 and the district court specifically provided Sondag's counsel an opportunity to make "whatever record you need" before granting Defendants' Motion in Limine No. 17. (D0135 Transcript from 10/26/23 Motion Hearing – Original (page 3 line 3 – page 11 line 23); *id.* page 9 line 12 – page 9 line 20). Sondag also submitted an 11-page brief with supporting affidavits for her motion to reconsider the district court's decision to decertify her

expert. (D0124). The district court, "after careful consideration" of the parties' respective briefs denied Sondag's Motion to Reconsider. (Order Denying Sondag's Motion to Reconsider, D0128). Sondag had a meaningful opportunity to be heard and oppose Defendants' Motion in Limine No. 17 in the district court.

Overall, the district court's decision to revisit the previous denial of summary judgment complied with well-established Iowa law and even the nonbinding out-of-state authorities cited by Sondag. There is no factual dispute in this record, good cause determinations under section 668.11 are questions of law, and the district court's rulings advanced several fundamental purposes of Iowa Code section 668.11. The district court did not abuse its discretion when considered a narrow, discrete, and outcome determinative legal issue prior to trial.

C. The Court Of Appeals Correctly Determined Good Cause Did Not Exist To Excuse Sondag's Untimely Expert Witness Designation.

Section 668.11 provides that if a party fails to timely designate his or her expert, "the expert *shall* be prohibited from testifying in the action unless leave for the expert's testimony is given by the court for good cause shown." IOWA CODE § 668.11(2) (emphasis added). To establish good cause for her failure to timely certify her experts and opinions, Sondag must demonstrate there was a:

> sound, effective, truthful, reason something more than an excuse, a plea, apology, extenuation, or some justification for the resulting effect. [Sondag] must show that [her] failure [to designate an expert] was not due to [her] negligence or want of ordinary care or attention, or to [her]

> carelessness or inattention. [She] must show affirmatively [she] did intend to [designate an expert] but because of some misunderstanding, accident, mistake or excusable neglect failed to do so.

Donovan v. State, 445 N.W.2d 763, 766 (Iowa 1989) (quoting *Dealers Warehouse Co. v. Wahl & Assocs.*, 216 N.W.2d 391, 394-95 (Iowa 1974)). In determining whether good cause exists, "the court considers three factors: (1) the seriousness of the deviation; (2) the prejudice to the defendant; and (3) the defendant's counsel's actions." *Hill v. McCartney*, 590 N.W.2d 52, 55 (Iowa Ct. App. 1998). Under these factors, Sondag cannot establish good cause for her failure to timely certify Dr. Bal and his opinions.

The cases the district court relied upon granting Defendants' Motion in Limine No. 17, and cited in Sondag's Application for Further Review, confirm Sondag cannot establish good cause for her failure to meet her expert disclosure deadlines. In *Stanton* the Court of Appeals reversed a district court's ruling denying the defendants' motion for summary judgment and held the district court abused its discretion when it agreed plaintiff had good cause for his failure to comply with Iowa Code section 668.11. The *Stanton* Court summarized its conclusion as follows:

> In light of these principles, we believe defense lawyers are fully justified in moving forward with motions for summary judgment where, as here, (1) the plaintiff's case cannot proceed without a retained expert; (2) the plaintiff's deadline to designate an expert is clear; **(3) more than three months have already passed since plaintiff's deadline; (4) even so, the plaintiff has *still* failed to timely designate an expert; and (5) the plaintiff has not otherwise disclosed an expert**

> **by, for example (a) providing information about an expert through discovery responses, as was the case in *Hantsbarger*, or (b) filing at least a partial expert designation, as was the case in *Hantsbarger.***

Stanton, 2020 WL 4498884 at * 5-6 (bold font added) (italics originally added by the Iowa Court of Appeals).

The same salient facts were present in this case when the district court denied Defendants summary judgment in November 2019. It is undisputed Sondag requires expert testimony to set forth a *prima facie* claim against Defendants. It is also undisputed that when the district court denied Defendants summary judgment, it had been nearly four months since Sondag's deadline to certify an expert had expired and nearly three months since Sondag's Rule 1.500(2) disclosures were due. Likewise, even though Sondag had retained Dr. Bal months prior to her expert designation deadline, she failed to provide any information about him either through discovery responses or a partial expert designation when the district court denied Defendants summary judgment.

Stanton makes clear that Sondag's approximate four-month delay in complying with her obligations under Iowa Code section 668.11 was far from "minimal" when the district denied Defendants summary judgment. (*See* District Court Ruling Denying Defendants' Motion for Summary Judgment, D0030, p. 5). The district court correctly analyzed *Stanton* when it granted Defendants' Motion in Limine No. 17 and decertified Dr. Bal.

In her Application, Sondag draws several distinctions between this case and *Stanton*, but those distinctions are immaterial. Sondag notes the plaintiff in *Stanton* did not start looking for an expert witness until approximately a year and half after filing his lawsuit whereas she contacted Dr. Bal within two of months of filing the above-captioned lawsuit. (Application p. 15). This fact, however, actually cuts against a finding of good cause in this case. The plaintiff in *Stanton* was able to designate an expert witness approximately one month after he started looking for an expert, and he provided the accompanying expert report shortly thereafter. *See Stanton*, 2020 WL 4498884 at **1, 3. Here, Sondag inexplicably failed to provide any information about Dr. Bal, even after Defendants moved for summary judgment. *see Tamayo*, 2018 WL 4922993 at *2 (holding a plaintiff's "retention of experts months before the original statutory deadline" is irrelevant if the plaintiff "fail[s] to transmit their names to the defense before the deadline.").

Further, even though the plaintiff in *Stanton* waited a year and half after filing suit to begin searching for an expert, he was able to designate an expert witness and produce an expert report prior to the hearing on the defendants' motion for summary judgment. Here, it is undisputed Sondag failed to provide any information regarding her retained expert witness, much less an expert report, by the time the district court denied Defendants summary judgment.

More recently, in *Reyes v. Smith*, the Iowa Court of Appeals held "a delay of sixty-days is substantial" when analyzing a plaintiff's failure to comply with Iowa Code section 668.11. No. 21-0303, 2022 WL 1656238, at *2 (Iowa Ct. App. May 25, 2022) (citing cases). The *Reyes* Court also rejected the plaintiff's argument that "the extraordinary COVID-19 pandemic led to their calendar error that caused them to miss the expert-designation deadline." *Id.* In doing so, the *Reyes* Court stated in pertinent part:

> Even accepting [plaintiffs'] arguments as factually true, they never explain exactly how the pandemic interfered with counsels' work or their ability to timely file an expert designation beyond attributing the late filing to their error in calendaring the deadline….Reyes [had] sufficient time to properly calendar the expert-designation deadline before the impact of the pandemic. Reyes has shown little more than want of ordinary care or attention in missing the expert-designation deadline, and the district court did not abuse its discretion in denying their motion for additional time to designate an expert witness.

Id. Just like in *Reyes*, there is nothing in this record that prevented Sondag from properly calendaring the expert disclosure deadlines at the outset of this lawsuit. Based on these newly decided authorities, the district court correctly granted Defendants' Motion in Limine No. 17, decertified Dr. Bal as an expert witness, and dismissed Sondag's lawsuit.

D. Sondag's Remaining Arguments Are Waived And Unpersuasive.

Sondag's reliance on *Tarbox* is misplaced and inappropriate. This Court decided *Tarbox* on November 8, 2024. The Court of Appeals heard oral argument

in this case on December 11, 2024. If Sondag thought *Tarbox* was important to her appeal, she should have filed a notice of additional authorities under rule 6.908(5) with respect to *Tarbox*. She failed to do so, and therefore her reliance on *Tarbox* to seek further review is inappropriate.

However, even if Sondag had filed a notice of additional authority for *Tarbox*, it would provide her no assistance. *Tarbox* has no bearing on any issue presented in this appeal. Sondag never argued below or in her appellate briefing that Defendants impliedly waived their right to seek dismissal under Iowa Code section 668.11. *See Sondag*, 2025 WL 271622, at *3 fn. 1; *see also Morris v. Steffes Group, Inc.*, 924 N.W.2d 491, 498 (Iowa 2019) (observing issues are waived for appellate review when the trial court does not rule on the issue or a party fails to meaningfully brief the issue on appeal (gathering cases)). *Tarbox* did not change the law on waiver either; instead, *Tarbox* provides guidance as to how the waiver doctrine applies under a particular set of facts. Therefore, nothing prevented Sondag from arguing Defendants waived their rights under 668.11 prior to this Court deciding *Tarbox*. This is made clear by Sondag citing three cases from this Court, which were decided between the years 1959 and 1982, to support her new argument that Defendants waived their rights. (*See* Application p. 21 (citations omitted)). By failing to argue Defendants waived their rights under section 668.11 below and in her appeal, Sondag waived the issue.

Moreover, *Tarbox* is readily distinguishable. Defendants timely and properly moved for summary judgment in 2019. Defendants were entitled to persist in their argument that Dr. Bal should be decertified based upon his untimely designation. Sondag has no authority to support her theory a party can waive error in an interlocutory ruling "by pleading over or proceeding to trial." Iowa R. App. P. 6.103(4). Defendants timely notified Sondag of their belief that she should not be allowed to certify expert witnesses in this case. Therefore, this is not a case where the ground suddenly shifted under Sondag's feet; instead, Sondag was standing on non-solid ground ever since the district court denied Defendants summary judgment.

Sondag's reliance on *Wilson* is also misplaced. First, Sondag waived her argument that remand is required because the district court "mistakenly believed it lacked discretion." *Sondag*, 2025 WL 271622, at *3 fn. 1. Nothing prevented Sondag from citing criminal sentencing cases, which she cites for the first time in her Application for Further Review, to argue the district court abused its discretion because the Honorable Stuart Werling stated he felt "required" to dismiss Sondag's lawsuit at the motion in limine hearing. (*See* Application pp. 24-25).

Next, because Sondag failed to provide any information about her expert witnesses in this case, *Wilson* is readily distinguishable. Facts from *Wilson* that distinguish it from this case are below:

- Before plaintiffs' expert designation deadline expired, the defendants extended the standard processing deadlines *over Plaintiff's objection*. 2024 WL 3519800, at *4.

- Before defendants moved for summary judgment, plaintiffs served a certificate of merit identifying a potential expert. *Id.* at *4.

- Less than 6 months into the case, plaintiffs had fully responded to defendants' interrogatories under oath asking plaintiffs to identify their experts and the subject matter of their opinions. *Id.* at **4-5.

- Plaintiffs missed their deadline under 668.11 by approximately 3 months; however, after the defendants filed for summary judgment, plaintiffs served their expert-witness disclosure within two days disclosing the same individual identified in the plaintiffs' certificate of merit and discovery responses. *Id.* at *1.

Unlike Sondag, the plaintiffs in *Wilson* actively participated in discovery directed at their expert witnesses, and they did so early on, not belatedly. Because of that, the plaintiffs in *Wilson* provided partial disclosures of their expert witness before the defendants sought summary judgment and finalized their disclosures promptly thereafter, just like the plaintiffs in *Hantsbarger*. *Cf. Stanton*, 2020 WL 4498884 at *5 (distinguishing *Hantsbarger* based on the plaintiff's failure to provide any information relating to his retained expert witness in a timely manner).

CONCLUSION

WHEREFORE, Defendants respectfully request that this Court deny the Application for Further Review and affirm the decision of the Iowa Court of Appeals in this case.

LANE & WATERMAN LLP

By: */s/ Alexander C. Barnett*
Ian J. Russell, AT0006813
Alexander C. Barnett, AT0012641
220 North Main Street, Suite 600
Davenport, IA 52801
Telephone: 563-324-3246
Facsimile: 563-324-1616
Email: irussell@l-wlaw.com
Email: abarnett@l-wlaw.com

ATTORNEYS FOR DEFENDANTS ORTHOPAEDIC SPECIALISTS, P.C. and JOHN HOFFMAN, M.D.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903 (1)(i)(1) or (2) because:

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/s/Alexander C. Barnett
Signature

February 21, 2025
Date

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The undersigned certifies Defendants-Appellees' Brief was electronically filed and served on the 21st day of February, 2025, upon the following persons and upon the Clerk of the Supreme Court using the Electronic Document Management System, which will send notification of electronic filing:

Roxanne Conlin
Devin Kelly
Roxanne Conlin & Associates, P.C.
3721 SW 61st Street, Suite C
Des Moines, IA 50321-2418
Email: roxanne@roxanneconlinlaw.com
Email: dkelly@roxanneconlinlaw.com

Clerk of the Iowa Supreme Court
Iowa Judicial Branch Building
1111 East Court Avenue, 4th Floor
Des Moines, IA 50319

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/s/ Alexander C. Barnett