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IN THE SUPREME COURT OF IOWA

No. 25-0760
Bremer Co. No. LACV006856

SCOTT R. BUSS and JULIE S. BUSS,
Plaintiffs-Appellants,

vs.

LANA L. LUHRING, individually and
LANA LUHRING d/b/a LAIRD &
LUHRING LAW OFFICE,
Defendants-Appellees.

APPLICATION FOR FURTHER REVIEW

(Iowa Court of Appeals decision of May 13, 2026)

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QUESTIONS PRESENTED FOR REVIEW

1. As Judge Greer (joined by Judge Buller) questioned in her concurrence below: Is the causation analysis in a legal malpractice case, analyzed under the standard articulated in *Blackhawk*, [1] distinct from other negligence cases, including medical malpractice, articulated in cases such as *Thompson* and *Asher* [2]?

2. In a legal malpractice case alleging negligent contract drafting, did the Court of Appeals and District Court err when they limited the causation question to what the opposing parties would have agreed to or should they have also considered other factors - such as whether the clients would have acted differently and not been injured absent the negligence?

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[1] *Blackhawk Bldg. Sys., Ltd. v. Law Firm of Aspelmeier, Fisch, Power, Warner& Engberg*, 428 N.W.2d 288, 290 (Iowa 1988).

[2] *Thompson v. Kaczinski*, 774 N.W.2d 829, 837 (Iowa 2009); *Asher v. OB-Gyn Specialists, P.C.*, 846 N.W.2d 492, 498-99 (Iowa 2014).

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STATEMENT SUPPORTING FURTHER REVIEW

COMES NOW Plaintiffs-Appellants Scott R. Buss and Julie S. Buss, pursuant to Appellate Rule 6.1103, seeking further review of the Court of Appeals' decision in *Scott R. Buss and Julie S. Buss v. Lana Luhring, individually and Lana Luhring d/b/a Laird & Luhring Law Office*, No. 25-0760 (May 13, 2026).

This application offers the Court the opportunity to articulate an important question of potentially changing legal principles that address an issue of broad public importance, as well as to correct the Court of Appeals' erroneous decision that is in conflict with decisions of this Court. Iowa R. App. P. 6.1103(1)(b)(1), (3), (4).

The relevant issues are:

1. Is the causation standard for a legal malpractice claim different from other negligence actions, and if so, how?

2. In deciding the issue of causation in a legal malpractice action based on a poorly drawn contract, is it appropriate for a court to only consider whether the opposing party would have acted differently; or was the Court required to consider other factors, such as whether the client would have acted differently and not suffered injury?

BRIEF

Introduction

This is a legal malpractice case based on negligent contract drafting. The Busses hired Lana L. Luhring d/b/a Laird & Luhring Law Offices (Lawyers) to protect them from a specific risk they identified out loud. Seller Judy Buss had reservations, so the contract needed to be 'ironclad so that there is no way we lose.' Lana L. Luhring failed on both counts. She drafted a contract that didn't do what they asked, and she never told them it didn't. Under either the *Blackhawk* proximate cause standard or the *Thompson* general negligence standard, that failure caused every dollar of Purchasers' loss. Both courts below missed it by asking only what the Sellers would have done. The District Court erroneously ruled that Plaintiffs-Appellants Scott R. Buss and Julie S. Buss (Purchasers) could not demonstrate, as a matter of law, that Defendants-Appellees Lana L. Luhring, individually and Lana Luhring d/b/a Laird & Luhring Law Office (Lawyers) caused their injuries. (D0040 Order Granting Summary Judgment 4/24/25 at 11).

The Court of Appeals affirmed this judgment. (Decision 5/13/26 at 12). In her concurrence, Justice Greer (joined by Justice Buller) raised a significant question that requires resolution by this Court: are legal malpractice cases analyzed under a different standard from other negligence cases, and if so, what is it?

The next question involves whether both courts below erroneously limited the inquiry to whether the other party to that contract, Appellant Scott Buss' parents, Richard Buss and Judy Buss (Sellers) would have agreed to the material term that the Purchasers allege should have been included; i.e., "absent Luhring's alleged negligence, Scott's parents would have agreed to a transfer of the land." (Decision 5/13/26 at 2).

In coming to the conclusion that Purchasers could not prove this – and thereby that they could not prove that Lawyers' negligence caused their injuries, both Courts ignored the following: (1) had Lawyers properly drafted the contract as requested, and Sellers objected to the transfer of land, either the contract would not have been entered into or Purchasers would not have exercised a purchase option; either way, Purchasers would not have suffered their loss; and (2) had Lawyers advised Purchasers that the land did not transfer under the contract, Purchasers would either not have signed the contract or exercised a purchase option, and therefore, would not have suffered their loss.

Course of Proceedings and Disposition Below

Court involvement in this dispute began when Purchasers sued Sellers, and others, for quiet title and other relief, in 2020. *Scott R. Buss & Julie S. Buss v. Richard O & Judy A. Buss, et al.*, Bremer Co. No. EQCV006350 (D0001 Pet.

4/14/20; D0025 Amend. Pet. 6/28/21). On August 22, 2022, the Court granted Sellers' partial motion for summary judgment. (D0080 Ruling 8/22/22).

Purchasers filed this action against Lawyers on December 7, 2023. (D0003 Petition). Lawyers moved for summary judgment on March 6, 2025. (D0030-D0032 Motion, Memo & Facts). Purchasers resisted on March 21, 2025. (D0034-D0036 Resistance, Memo & Facts).

The District Court granted Lawyers' motion on April 24, 2025. (D0040 Order at 8-11). In doing so, the District Court improperly limited the causation question to: "There is no evidence in the record that Scott's parents would have signed the 2011 grain bin lease if it included an easement or property interest. Drafting the grain bin lease differently would not have caused a different outcome." (D0040 Order at 8-11).

The Court of Appeals made the same mistake: "To succeed on their legal-malpractice claim under governing Iowa precedent, the Busses had to show that absent Luhring's alleged negligence, Scott's parents would have agreed to a purchase option that included a transfer of the land under the grain bins or an easement." (Decision 5/13/26 at 2).

Statement of the Facts

Purchasers were in the process of taking over the family farm of Sellers when they met with Luhring in 2011 to draft the contract that is the subject of this

dispute. (D0031 DSOF ¶¶ 2, 15). To this end, Purchasers wanted the grain bins that were on the property, so they approached Lawyers to draft a contract with a lease with option to purchase the seven large grain bins. (D0015 Amend. Pet. 2/19/24 at 2-3 ¶¶ 9, 13).

From Purchasers' point-of-view, everything that was exchanged between Purchasers and Sellers, and everything Lawyers drafted, all conveyed a transfer of land and an easement, to wit:

1. Given the nature of the large grain bins, the lease/purchase document ***had to*** include a possessory interest in the land, and an easement; otherwise, the grain bins would ultimately be worthless to them. (D0036 RSOF at 1-2 ¶ 4).
2. The parties had executed this agreement before contracting:

March 17, 2011

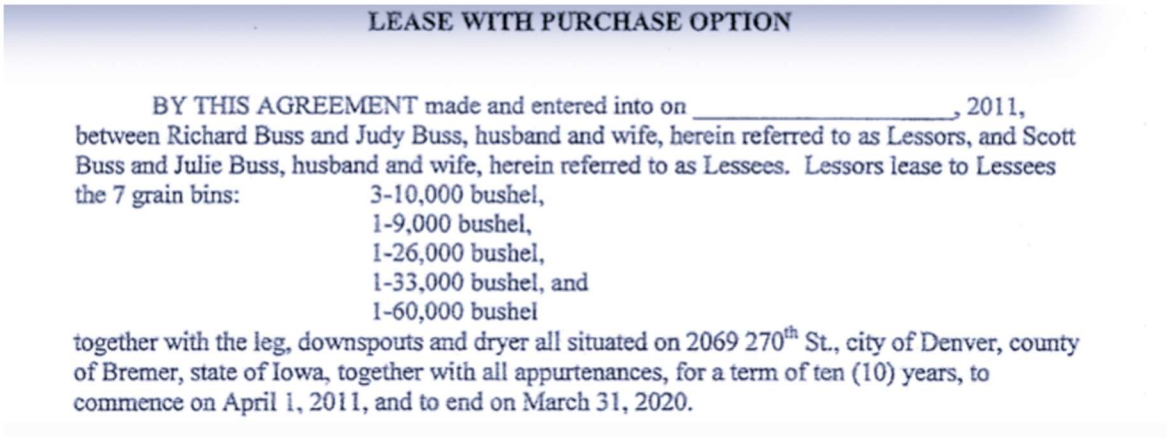
Scott and Julie Buss are taking over our family farming operation. All past rented ground that I had and all program payments should be turned over to them, all landlords are aware that I am retiring from farming. They are also renting the ground that Judy and I own.

Richard Buss Scott Buss

Judy Buss Julie Buss

(D0036 PSOF at 7 ¶ 7 Ex. 3a).

3. Purchasers had impressed upon Lawyer Luhring during the conference, after Sellers had left, that they knew Seller Judy had reservations, so they needed the contract "***ironclad so that there is no way we lose in this situation.***" (D0036 PSOF at 1-2 ¶ 4).
4. Purchasers had identified to Lawyer Luhring: "***you also heard them say once we paid that off, the ground would be ours…. we have to make sure that there's not a door left open that we're not going to lose this.***" (D0036 PSOF at 1-2 ¶ 4).
5. The contract, to lay people, appeared to convey the land along with the bins:



LEASE WITH PURCHASE OPTION

BY THIS AGREEMENT made and entered into on _____, 2011, between Richard Buss and Judy Buss, husband and wife, herein referred to as Lessors, and Scott Buss and Julie Buss, husband and wife, herein referred to as Lessees. Lessors lease to Lessees the 7 grain bins:

3-10,000 bushel,
1-9,000 bushel,
1-26,000 bushel,
1-33,000 bushel, and
1-60,000 bushel

together with the leg, downspouts and dryer all situated on 2069 270th St., city of Denver, county of Bremer, state of Iowa, together with all appurtenances, for a term of ten (10) years, to commence on April 1, 2011, and to end on March 31, 2020.

(D0031 DSOF Ex. C Lease p. 1). It identifies the address, and "all appurtenances," which to lay people, would include the land underneath. (D0036 PSOF Ex. 3 Affidavit ¶¶ 4-6). And, to lay people, this also appears to convey the land: "It is agreed that Lessees shall have the option to purchase the above-described property." (D0031 DSOF Ex. C Lease at 3).

The lease ran from April 1, 2012 to March 31, 2020, and on February 26, 2018, Purchasers exercised the option to purchase, paying $4,250. (D0036 PSOF at 7 ¶¶ 8, 10; D0031 DSOF Ex. E Grain Bin Bill of Sale). Purchasers only learned that the lease/purchase document potentially did not convey the property when the agreement terminated on March 31, 2020, at which time Sellers denied them access to the grain bins. (D0036 PSOF at 8 ¶¶ 15-16).

Sellers sold the property to third parties on October 18, 2020. (D0031 Ex. N Warranty Deed).

Argument

I. Is the causation standard for legal malpractice different from other negligence cases, and if so, how?

The Court of Appeals decided this case under the causation standard articulated in *Blackhawk*: "[B]ut for the attorney's negligence, the loss would not have occurred." *Blackhawk*, 428 N.W.2d at 290 (discussing only proximate cause). (Decision 5/13/26 at 8). In her concurrence, Justice Greer (with Justice Buller joining) identified what may be an incongruity between the articulation of causation in legal malpractice cases compared with other negligence cases:

> The majority correctly cites a quotation from current authority from a legal malpractice case: "The burden of proving *proximate cause* in a legal malpractice action is the same as any other negligence action." *Blackhawk*…. I am not sure that quote is still a correct statement of the law. *Thompson v. Kaczinski* changed the essential elements of a negligence action, moving away from the "confusion caused by the

> traditional vernacular" of proximate cause…. Yet even after *Thompson*, the supreme court has continued to repeatedly describe proximate cause as an element of a legal malpractice action…. Now, I am left wondering how to reconcile the use of the proximate cause analysis in the legal malpractice arena with other supreme court precedent.

(Decision 5/13/26 at 13) (Greer, J. concurring) *citing Blackhawk*, 428 N.W.2d at 290; *Thompson v. Kaczinski*, 774 N.W.2d 829, 837 (Iowa 2009); *Clark v. State*, 955 N.W.2d 459, 464 (Iowa 2021); *Stender v. Blessum*, 897 N.W.2d 491, 502 (Iowa 2017).

She continued:

> For example, I observe that in formulating the factors to establish legal malpractice our supreme court has discussed the Restatement (Third) of the Law Governing Lawyers § 53 as follows: "A lawyer is liable … only if the lawyer's breach of a duty of care or breach of fiduciary duty was a legal cause of injury, as determined under generally applicable principles of causation and damages….

(Decision 5/13/26 at 13) (Greer, J. concurring) *citing Kraklio v. Simmons*, 909 N.W.2d 427, 441 (Iowa 2018).

And continuing, Justice Greer discussed guidance regarding medical negligence:

> We began [in *Thompson*] by noting that a trial court instructing a jury on causation in accordance with the Restatement (Second) of Torts would instruct the jury that "the actor's negligent conduct is a legal cause of harm to another if (a) his conduct is a substantial factor in bringing about the harm, and (b) there is no rule of law relieving the actor from liability." We then noted this traditional approach caused

> "significant uncertainty and confusion." To eliminate the uncertainty and confusion, we observed that the drafters of the Restatement (Third) addressed factual cause and what was formerly known as proximate cause (and now called scope of liability) separately.
>
> Although sometimes labeled "medical malpractice" actions, a claim that a professional has failed to meet the applicable standard of care is essentially a negligence cause of action. Nothing in the Restatement (Third) suggests its approach to factual causation and scope of liability does not apply to a claim of medical negligence. The introduction of the Restatement (Third) indicates it generally covers negligence actions. Restatement (Third) section 26, comment *n* discusses the applicability of the loss of chance doctrine in medical malpractice actions. Restatement (Third) section 35 comment *a* uses an example of a negligent medical professional in discussing the medical professional's scope of liability. Further, we can discern no reason to except medical negligence actions from the factual cause and scope of liability approach of the Restatement (Third).

(Decision 5/13/26 at 13-14) (Greer, J. concurring) *citing Asher v. OB-Gyn Specialists, P.C.*, 846 N.W2d 492, 498-99 (Iowa 2014) (internal citations omitted), *overruled on other grounds by, Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699 (Iowa 2016).

Justice Greer concludes her concurrence:

> So, is the causation analysis in a legal malpractice case distinct from other negligence cases, including medical malpractice…. I cannot help but question if this legal malpractice distinction involving the use of proximate cause is intentional.

(Decision 5/13/26 at 14) (Greer, J. concurring).

Purchasers will analyze the second question presented for further review under both standards.

II. The Courts below erred in failing to consider causation issues other than whether Sellers would have transferred the land or granted an easement.

***Scope and standard of review*:** The standard of review of a motion for summary judgment is for correction of errors at law. *Konrady v. Vincent Angerer Trust, Dated March 27, 1998*, 925 N.W.2d 620, 623 (Iowa 2019). The scope of review considers whether "the moving party has shown there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id*. "A genuine issue concerning a fact exists when reasonable minds can differ as to how a factual question should be resolved, and the facts must be examined "in the light most favorable to the nonmoving party." *Id.*

Argument: "Although the standard for legal causation is a question of law, *proximate cause is a question of fact for the jury*." *Hagen v. Texaco Refining & Marketing, Inc.*, 526 N.W.2d 531, 538 (Iowa 1995) (emphasis added). Only in exceptional circumstances may the determination be taken away from the jury. *See Hedges v. Conder*, 166 N.W.2d 844, 854 (Iowa 1969) (where causation for a pedestrian plaintiff who purposely placed himself in traffic and failed to avail himself of opportunities to not get hit, remained a jury question).

In this matter, there are two distinct causational issues arise.

A. Causation Based on Deficient Drafting

It is undisputed Lawyers drafted a lease with a purchase option that would not transfer the land or grant an easement, rendering the purchase option worthless. (D0031 DSOF Ex. C Lease). But this begs two questions: (1) why did Lawyers draft a document that did not do what their clients requested; and (2) why did Lawyers not advise their clients that the purchase option on the grain bin lease would be worthless because they would get neither land nor access?

"[A] lawyer shall abide by a client's decisions concerning the objectives of representation and … shall consult with the client as to the means by which they are to be pursued." Iowa R. Prof. Conduct 32:1.2(a). It is not reasonably disputed that Purchasers requested that the purchase option include title to the land and an easement, as the purchase option is worthless without access.

Furthermore, had Lawyers included transfer of the land and an easement in the lease, one of two things would have occurred, and neither would have resulted in injury to Purchaser: (1) Sellers would not have signed, so Purchasers never would have paid $4,250 for worthless grain bins; or (2) the parties would have signed, but Purchasers would not have exercised the purchase option.

As for the general negligence standard, as identified above, this requires both factual causation and scope of liability. *Asher*, 846 N.W.2d at 498. Factual causation involves a "but for" test; that is "but-for the defendant's conduct, that harm would not have occurred." *Berte v. Bode*, 692 N.W.2d 368, 372 (Iowa 2005).

Here, there is more than sufficient evidence to show that "but-for" the poor drafting, Purchasers either: (1) would not have entered the lease; or (2) would have entered the lease, but would not have exercised the purchase option. (D0036 RSOF 3/21/25 at 1-2 ¶ 4; D0036 PSOF 3/21/25 at 7 ¶ 7 Ex. 3a). In fact, this factor alone, is sufficient to create a jury question: the grain bins are worthless without access, and this harm was not only foreseeable, but known to Lawyers at the time of drafting. (D0036 3/21/25 RSOF at 1-2 ¶ 4).

B. Causation Based on Failure to Advise

As for Lawyers' failure to properly advise their clients, this, too, is negligence. "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice," including "considerations … economic … that may be relevant to the client's situation." Iowa R. Prof. Conduct 32:2.1. When a client stated objective cannot be achieved, or when the lawyer knows the opposing party may not agree to its terms, the professional rules require disclosure. Silence in the face of that knowledge is not just an ethical breach; it is the act that kept Purchasers in a contract that was costing them their money and their land. Had Lawyers advised Purchasers that the lease with purchase option did not include the land and an easement, Purchasers would not have paid $4,250 for the worthless grain bins, and, again, would not have been injured. *Stanwood v. Wishard*, 128 F. 499, 503 (S.D. Iowa 1902) ("It is the duty of an attorney to report to his client and keep him advised of

the facts."); *Diaz v. State*, 896 N.W.2d 723, 728 (Iowa 2017)("An attorney fails to fulfill this duty when the attorney fails to advise client of the … consequences" discussing the effects of a plea on immigration status).

"In determining the scope of the attorney's duty, courts must give effect to the fiduciary role of the attorney and the heavy responsibilities this imposes on him to represent and protect the client's interests." *Kurtenbach v. TeKippe*, 260 N.W.2d 53, 56 (Iowa 1977).

Once again, the general negligence standard, as identified above, requires both factual causation and scope of liability. *Asher*, 846 N.W.2d at 498. Factual causation involves a "but for" test; that is "but-for the defendant's conduct, that harm would not have occurred." *Berte v. Bode*, 692 N.W.2d 368, 372 (Iowa 2005).

There is more than sufficient evidence to show that "but-for" the poor advice as well. Again, Purchasers either: (1) would not have entered the lease; or (2) would have entered the lease, but would not have exercised the purchase option. (D0036 RSOF 3/21/25 at 1-2 ¶ 4; D0036 PSOF 3/21/25 at 7 ¶ 7 Ex. 3a). Mirroring the causation for deficient drafting, the failure to advise alone is sufficient to create a jury question: the grain bins are worthless without access, and this harm was not only foreseeable, but known to Lana L. Luhring at the time of giving advice to Purchasers. (D0036 3/21/25 RSOF at 1-2 ¶ 4).

A. Conclusion

Thus, that Purchasers were injured due to Lawyers' deficient drafting and advice is the epitome of causation under the *Blackhawk* standard: either action by Lawyers (proper drafting or advice) would have caused Purchasers to either not enter the lease or enter the lease but not exercise the purchase option. The failure to take either action, therefore, demonstrates proximate cause for Purchasers' injuries. *Blackhawk,* 428 N.W.2d at 290.

The second part of the general negligence test, scope of liability, "is fact-intensive as it requires consideration of the risks that made the actor's conduct tortious and a determination of whether the harm at issue is a result of any of those risks." *Thompson*, 774 N.W.2d at 838. For this factor, the court considers the "range of harms risked by the defendant's conduct," and then compares this to "plaintiffs' harm" and whether it is within that range. *Id*.

Here, it is clear that the risk of harm was precisely that which Purchaser Julie identified to Lawyers in 2011: a ***non-ironclad*** contract that caused Purchasers to "***lose in this situation.***" (D0036 3/21/25 PSOF at 1-2 ¶ 4). Therefore, as a reasonable jury could easily find that plaintiffs' harm was among those risked by Lawyers, causation was a question for the jury and should not have been decided by the courts below. *Thompson*, 774 N.W.2d at 838 ("An injury that is the natural and probable consequence of an act of negligence is actionable," when it "could … have been foreseen or reasonably anticipated as the probable result of an act of negligence.").

The risk that made the lawyer's conduct tortious was the risk that the grain bins would become worthless. The Purchasers told Lawyers that exact risk in the 2011 meeting. Under *Thompson*, the harm that occurred with the grain bins rendered worthless is indisputably within the range of risks that made both the inadequate drafting and the failure to advise tortious. This is a textbook scope-of-liability case and should be argued as one.

Conclusion

As demonstrated above, causation in a legal malpractice case should be evaluated under the same *Thompson* framework as all other negligence cases; this includes what the client, not just the opposing party, would have done absent the negligence. The facts here satisfy that standard as a matter of law are sufficient to reach a jury. The Court of Appeals erred when it affirmed the Bremer County District Court's grant of summary judgment. Its decision, and the District Court's judgment, should both be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because it has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains **3,537** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Marc S. Harding May 21, 2026

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on May 21, 2026.

By: ☐ US Mail ☐ Fax
☐ Hand Delivered X EDMS
☐ Federal Express ☐ Email

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ELECTRONICALLY FILED MAY 13, 2026 CLERK OF SUPREME COURT

APPENDIX

IN THE COURT OF APPEALS OF IOWA

No. 25-0760
Filed May 13, 2026

Scott R. Buss and Julie S. Buss,

Plaintiffs- Appellants

v.

Lana L. Luhring, individually and Lana Luhring d/b/a Laird & Luhring Law Office,

Defendants–Appellees.

Appeal from the Iowa District Court for Bremer County, The Honorable Ashley Sparks, Judge.

AFFIRMED

Marc S. Harding (argued) and Christian J. Crocker (until withdrawal) of Harding Law Office, Des Moines, attorneys for appellants.

Gregory M. Lederer (argued) and Meredith Rich-Chappell of Lederer Weston Craig PLC, Cedar Rapids, attorneys for appellees.

Heard at oral argument
by Greer, P.J., and Buller and Langholz, JJ.
Opinion by Langholz, J. Special concurrence by Greer, P.J.

LANGHOLZ, Judge.

Scott and Julie Buss hired Lana Luhring to draft a ten-year lease with a purchase option for seven grain bins on a farm owned by Scott's parents. The purchase option that Luhring drafted—and the Busses exercised in 2018—did not include any transfer of the land under the grain bins or any easement permitting use of the grain bins. So when the relationship between the Busses and Scott's parents deteriorated, Scott's parents stopped permitting the Busses to access the grain bins in early 2020 and later sold the land to a third party. The Busses unsuccessfully sued Scott's parents and the new landowner seeking an easement for use of the grain bins. And then they filed this suit against Luhring for legal malpractice. [1] They claimed that Luhring was negligent in advising on and drafting the purchase option because she failed to include a transfer of the land under the grain bins or an easement permitting use of the grain bins.

The district court granted Luhring summary judgment. And the Busses appeal, arguing that the court erred in holding that they failed to present any evidence from which the jury could find that Luhring proximately caused their damages. To succeed on their legal-malpractice claim under governing Iowa precedent, the Busses had to show that absent Luhring's alleged negligence, Scott's parents would have agreed to a purchase option that included a transfer of the land under the grain bins or an easement. The summary-judgment record lacks any evidence from which a jury could make that finding without speculation. Julie Buss's conclusory claim in her affidavit that Scott's parents intended the agreement to include a land transfer and easement is not enough. We thus affirm the grant of summary judgment.

---

[1] The Busses also sued Luhring's law office, claiming vicariously liability. For readability, we refer to Luhring and her law office collectively as "Luhring."

I.

At the Busses' request, Luhring met with the Busses and Scott's parents in 2011 to draft a lease with purchase option for seven large grain bins located on Scott's parents' farmland. The grain-bin lease provided, in part:

> BY THIS AGREEMENT made and entered into on_____, 2011, between Richard Buss and Judy Buss, husband and wife, herein referred to as Lessors, and Scott Buss and Julie Buss, husband and wife, herein referred to as Lessees. Lessors lease to Lessees the 7 grain bins:
>
> 3-10,000 bushel,
> 1-9,000 bushel,
> 1-26,000 bushel,
> 1-33,000 bushel, and
> 1-60,000 bushel
>
> together with the leg, downspouts and dryer all situated on [a particular street address], city of Denver, county of Bremer, state of Iowa, together with all appurtenances, for a term of ten (10) years, to commence on April 1, 2011, and to end on March 31, 2020.

The grain-bin lease also included a purchase option:

> PURCHASE OPTION. It is agreed that Lessees shall have the option to purchase the above described property for the purchase price of $20,000. Lessees shall be given credit for 100% of the rental payments made hereunder as a down payment of the purchase price. This purchase shall be exercised in writing no later than February 1, 2020, but shall not be effective should the Lessees be in default under any terms of this lease or upon any termination of this lease.

Scott's wife, Julie, submitted an affidavit in this case attesting: "All parties to the lease with purchase option intended the real property beneath the grain bins, and an easement to access the grain bins, would be included in the lease with purchase option." But according to Scott's mother, Judy:

> [Scott's father] Richard and I did not intend to grant an easement to [the Busses]. Richard did not intend to create an easement when he entered into

> the Lease with Scott. ..... At no point in time did Richard nor I ever actually or intend to grant [the Busses] an easement.

And Luhring testified in her deposition that the Busses never "discuss[ed] a desire to have [an] underlying property interest in the grain bins in case they did exercise the purchase option" in the lease.

Along with the grain-bin lease, Luhring drafted a ten-year lease—again with a purchase option—for much of Scott's parents' farming equipment. Luhring did not provide any further legal advice or services to the Busses after she drafted the grain-bin and equipment leases for them in 2011.

At the time they entered the grain-bin lease,[2] the Busses were preparing to take over Scott's parents' farming operation. The Busses had a year-to-year lease agreement[3] with Scott's parents to farm 70 acres of their tillable land. In July 2014, Scott's father signed a document titled "Permission to Access Property" which stated: "Scott Buss has control of the site at the following location [the street address of the grain bins, same as in the lease], Denver, IA for the useful life of technology, which is 30 years." And in February 2018, Scott exercised the purchase option in the grain-bin lease when he and his father executed a "Bill of Sale" for the seven grain bins for "the sum of $4250"—equal to the remaining rent payments owed on that lease. Luhring did not prepare the "Bill of Sale," nor did the Busses consult her for advice before purchasing the grain bins.

Scott's relationship with his parents started to deteriorate sometime between 2018 and 2019. In late 2019, Scott's parents terminated the Busses'

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[2] The copy of the grain-bin lease in the summary judgment record is not signed, but Scott testified at his deposition that he, Julie, and his parents signed it.

[3] According to Scott's deposition testimony, unlike the grain-bin and equipment leases drafted by Luhring, that lease did not include a purchase option.

year-to-year farming lease agreement. Then, the grain-bin lease expired by its terms in March 2020. According to Scott's mother, when that lease expired, she and Scott's father "offered Scott a chance to enter into a new written lease or at least to become a month-to-month tenant, like the Lease provided, but he refused, instead stating that he wanted an access easement instead of another lease." At that point, Scott's parents refused the Busses access to the grain bins.

In April 2020, the Busses sued Scott's parents for quiet title for a perpetual easement to access the grain bins.[4] While that suit was pending, Scott's parents conveyed a portion of their farmland including their house, several outbuildings, and the road accessing the grain bins to another couple by warranty deed.[5] In August 2022, the district court granted partial summary judgment to Scott's parents, concluding as a matter of law that the Busses "may own the grain bins, but there is nothing in the [grain-bin] lease/purchase agreement which creates an easement," and the Busses did not otherwise establish an easement to access the grain bins. The court thus dismissed the Busses' quiet title claim. In March 2023, the parties reached a settlement agreement providing that the Busses would remove the grain bins from the property. The Busses ultimately sold most of the grain bins at auction.

The Busses then sued Luhring in December 2023. In this suit, they alleged Luhring committed legal malpractice by negligently drafting the grain-bin lease without including "terms in the Purchase Option guaranteeing and/or protecting a possessory or legal interest in the property

[4] Luhring did not represent the Busses in that lawsuit.

[5] The Busses amended their petition in June 2021 to add that couple and their bank as defendants.

underlying the Grain Facility"; "terms in the Purchase Option guaranteeing and/or protecting a right-of-way easement through which [the Busses] could maintain access to the property on which the Grain Facility is situated"; or "terms necessary to carry out [the Busses'] goals—to wit preservation of [their] possessory or legal interest in the property underlying the Grain Facility." The Busses also alleged that Luhring was negligent for "[f]ailing to inform [them] that the Purchase Option did not include [those] terms." They claimed that as "a direct and proximate result" of Luhring's negligence, they suffered injuries including "[p]ast and future economic loss" and "[p]ast and future pain and suffering." And they claimed that Luhring's law office was vicariously liable for Luhring's negligence.

Luhring moved for summary judgment, contending that the Busses' claims were barred by the applicable statutes of limitations and that any alleged malpractice by Luhring was not the proximate cause of the Busses' claimed injuries. After a hearing, the district court granted Luhring's motion on the proximate-cause ground and did not address the alternative statute-of-limitations ground. The court acknowledged that "[p]roximate cause is usually a question of fact for the jury." But it concluded that "this [is] a case where the issue of proximate cause can be resolved on summary judgment." The court reasoned in part that there was "no evidence in the record that Scott's parents would have signed the 2011 grain bin lease if it included an easement or property interest." Thus, the court concluded: "Drafting the grain bin lease differently would not have caused a different outcome." And so, the court granted summary judgment for Luhring.

The Busses now appeal.

II.

We review the district court's summary-judgment ruling for correction of errors at law. *Vossoughi v. Polaschek*, 859 N.W.2d 643, 649 (Iowa 2015). "Summary judgment is appropriate when the moving party demonstrates that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law." *Id.*; *see* Iowa R. Civ. P. 1.981(3). The nonmoving "party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 1.981(5).

On our review, we "afford the nonmoving party every legitimate inference that can be reasonably deduced from the evidence." *Vossoughi*, 859 N.W.2d at 649 (cleaned up). But even so, "[s]ummary judgment is not a dress rehearsal or practice run for trial but rather the put up or shut up moment in a lawsuit, when a nonmoving party must show what evidence it has that would convince a trier of fact to accept its version of the events." *Buboltz v. Birusingh*, 962 N.W.2d 747, 754–55 (Iowa 2021) (cleaned up). "And if, after considering all that evidence in the light most favorable to the nonmoving party, no reasonable mind could differ on how the factual issues should be resolved—and the law applied to those facts compels judgment for the moving party—summary judgment must be granted." *In re Est. of River*, 6 N.W.3d 13, 17–18 (Iowa Ct. App. 2024).

To succeed on a legal-malpractice claim, a plaintiff must establish four elements:

> (1) an attorney-client relationship existed giving rise to a duty; (2) the attorney violated or breached the duty, either by an overt act or a failure to act; (3) the breach of duty proximately caused injury to the client; and
> (4) the client did sustain an actual injury, loss, or damage.

Stender v. Blessum, 897 N.W.2d 491, 502 (Iowa 2017). Only the third element—proximate cause—is at issue here. "The burden of proving proximate cause in a legal malpractice action is the same as any other negligence action." *Blackhawk Bldg. Sys., Ltd. v. Law Firm of Aspelmeier, Fisch, Power, Warner & Engberg*, 428 N.W.2d 288, 290 (Iowa 1988). "To recover, the injured [party] must show that, but for the attorney's negligence, the loss would not have occurred." *Id.*

While "questions of proximate cause are generally for the jury and only in exceptional cases may they be decided as matters of law," the "jury cannot be left to speculate, but rather, must be provided with facts affording a reasonable basis for ascertaining the loss." *Id.* at 291; *see also Benton v. Nelsen*, 502 N.W.2d 288, 291–92 (Iowa Ct. App. 1993) (affirming grant of summary judgment on legal-malpractice claims where the plaintiffs "failed to show substantial evidence to support a finding [the attorney's] negligence, if any, was a proximate cause of their being damaged").

In *Blackhawk Building Systems*, our supreme court considered the evidence required to create a jury question on proximate cause for a claim of legal malpractice in advising on and drafting a contract much like the Busses' claim here. There, a corporation sued a law firm and one of its attorneys alleging that they were negligent in drafting an employment agreement between the corporation and its president by failing to include a non-compete clause in the agreement. *Id.* at 289. After the corporation's president resigned, he formed his own company, obtained a franchise the corporation previously held, and became a competitor of the corporation. *Id.* at 290. A short time later, the corporation went out of business. *Id.* A jury returned a verdict for the corporation in its legal-malpractice suit against the law firm,

and the firm appealed, contending there was insufficient evidence to submit the proximate-cause question to the jury. *Id.* at 289.

Analyzing that proximate-cause issue, our supreme court explained:

> As applied to this situation, plaintiff would be required to show that absent the lawyer's negligence, [the president] would have signed a contract containing a covenant not to compete which would have effectively prevented the . . . subsequent demise of [the corporation]. Essential to this chain of events, the plaintiff must show that [the president] would have agreed to a covenant not to compete.

Id. at 290. The court reasoned that the "record [was] devoid of any evidence that would allow the jury to infer that [the president] would have agreed to a non-compete clause." *Id.* at 290–91. And so, the court held that "a jury issue was not engendered on causation," and the "trial court should have directed a verdict for the defendant." *Id.* at 291–92.

We agree with the district court and Luhring that *Blackhawk Building Systems* governs here. To establish the proximate-cause element of their legal-malpractice claim, the Busses must show that absent Luhring's alleged negligence, Scott's parents would have agreed to a purchase option that included a transfer of the land under the grain bins or an easement. *Cf. id.* at 290 ("Essential to this chain of events, the plaintiff must show that Parsons would have agreed to a covenant not to compete."). And at this "put up or shut up moment," they failed to put up any evidence from which a reasonable jury could find that they met that burden. *Buboltz*, 962 N.W.2d at 755 (cleaned up).

The only evidence the Busses produced to possibly support such a finding was the conclusory statement in the affidavit of Scott's wife, Julie, that "[a]ll parties to the lease with purchase option intended the real property beneath the grain bins, and an easement to access the grain bins, would be

included in the lease with purchase option." But while that statement is evidence of Julie's willingness to enter into an agreement with those terms and *her* belief about the intent of each of Scott's parents, it does not give a reasonable jury any basis to find that Scott's parents would have agreed to include those terms without engaging in pure speculation or conjecture.

We are also unpersuaded by the Busses' argument that the "plain language of the lease" is evidence that Scott's parents would have agreed to create an easement or convey an ownership interest in the land beneath the grain bins. Nothing in the lease's purchase option mentioned an easement or landownership interest—the "above described property" it referenced was "the 7 grain bins … together with the leg, downspouts and dryer all situated on [a particular street address], city of Denver, county of Bremer, state of Iowa, together with all appurtenances." Neither did the "Bill of Sale" Scott used to exercise the purchase option mention an easement or landownership interest. And the Busses do not dispute that the grain-bin lease with purchase option did not, in fact, include such an interest. So these documents give no basis for the jury to infer that Scott's parents would have agreed to a purchase option that actually included the transfer of land or an easement.

Nor could the jury infer that agreement from the "Joint Statement of Intent" for the Busses to take over the family farming operation signed by the Busses and Scott's parents in March 2011 or the "Permission to Access Property" signed by only Scott's father in July 2014. Neither of those documents created easements or conveyed landownership. Likewise, the Busses' year-to-year farming lease agreement with Scott's parents did not include an option for the Busses to purchase the farmland. And while the "Permission to Access Property" might suggest that at least Scott's father was open to granting a temporary easement, it does not move the needle on

whether his mother would have agreed—and she alone could have prevented an agreement by refusing—or on whether either parent would have agreed to a transfer of land or a permanent easement.

What's more, there is much evidence in the summary-judgment record supporting the contrary conclusion that Scott's parents—or at least his mother—would not have agreed to a purchase option that included a transfer of land or an easement. Scott's mother said in her affidavit that she and Scott's father "did not intend to create an easement when [they] entered into the [grain-bin lease] with Scott," nor did they "ever actually or intend to grant [the Busses] an easement." As Julie herself testified, during the 2011 meeting with Luhring, Scott's mother did not want to "let [the Busses] buy the farm" because "she didn't want to live in a house with somebody else's name on it," and the Busses knew they "weren't going to get to buy the land." And the year-to-year farm lease, which existed at the time the parties executed the grain-bin lease with purchase option and continued until the relationship deteriorated, further shows that Scott's parents were not interested in transferring any ownership of the land in 2011.

Like the district court, we recognize that proximate cause is usually a fact question for the jury. *See Hagen v. Texaco Refin. & Mktg., Inc.*, 526 N.W.2d 531, 538 (Iowa 1995); *Hedges v. Conder*, 166 N.W.2d 844, 854 (Iowa 1969). But even viewing the record in the light most favorable to the Busses—and assuming Luhring was negligent for failing to include an easement or landownership interest in the grain-bin lease's purchase option—no reasonable jury could find that Luhring's negligence proximately caused the Busses' alleged injuries because there is insufficient evidence to show that Scott's parents would have agreed to the lease in 2011 if it had included those terms. *Cf. Blackhawk Bldg. Sys.*, 428 N.W.2d at 290–92 (holding "that a jury

issue was not engendered on causation" because the "record [was] devoid of any evidence that would allow the jury to infer that Parsons would have agreed to a non-compete clause"). So the Busses' legal-malpractice claim fails as a matter of law. *See id.* at 290 ("Even though negligence has been established, proximate cause must be determined separately.").

We thus affirm the district court's grant of summary judgment for Luhring because the Busses did not generate a genuine issue of material fact as to the proximate-cause element of their legal-malpractice claim.

AFFIRMED.

Greer, P.J., specially concurs with Buller, J., joining.

GREER, Presiding Judge (specially concurring).

I concur in the opinion in full but write to draw focus to a question that occurred to me in my review of this case. The majority correctly cites a quotation from current authority from a legal malpractice case: "The burden of proving *proximate cause* in a legal malpractice action is the same as any other negligence action." *Blackhawk Bldg. Sys., Ltd. v. Law Firm of Aspelmeier, Fisch, Power, Warner & Engberg*, 428 N.W.2d 288, 290 (Iowa 1988) (emphasis added). I am not sure that quote is still a correct statement of the law. *Thompson v. Kaczinski* changed the essential elements of a negligence action, moving away from the "confusion caused by the traditional vernacular" of proximate cause. 774 N.W.2d 829, 837 (Iowa 2009). Yet even after *Thompson*, the supreme court has continued to repeatedly describe proximate cause as an element of a legal malpractice action. *See, e.g.*, *Clark v. State*, 955 N.W.2d 459, 464 (Iowa 2021); *Stender v. Blessum*, 897 N.W.2d 491, 502 (Iowa 2017). Now, I am left wondering how to reconcile the use of the proximate cause analysis in the legal malpractice arena with other supreme court precedent.

For example, I observe that in formulating the factors to establish legal malpractice our supreme court has discussed the Restatement (Third) of the Law Governing Lawyers § 53 as follows: "A lawyer is liable . . . only if the lawyer's breach of a duty of care or breach of fiduciary duty was a legal cause of injury, as determined under generally applicable principles of causation and damages." *Kraklio v. Simmons*, 909 N.W.2d 427, 441 (Iowa 2018) (specifically adopting this section). Moving from that shift in language, I note that in the medical negligence cases, our supreme court has said:

> We began [in *Thompson*] by noting that a trial court instructing a jury on causation in accordance with the Restatement (Second) of Torts would instruct the jury that "'[t]he actor's negligent conduct is a legal cause of

> harm to another if (a) his conduct is a substantial factor in bringing about the harm, and (b) there is no rule of law relieving the actor from liability.'" We then noted this traditional approach caused "significant uncertainty and confusion." To eliminate the uncertainty and confusion, we observed that the drafters of the Restatement (Third) addressed factual cause and what was formerly known as proximate cause (and now called scope of liability) separately.
>
> Although sometimes labeled "medical malpractice" actions, a claim that a professional has failed to meet the applicable standard of care is essentially a negligence cause of action. Nothing in the Restatement (Third) suggests its approach to factual causation and scope of liability does not apply to a claim of medical negligence. The introduction to the Restatement (Third) indicates it generally covers negligence actions. Restatement (Third) section 26, comment *n* discusses the applicability of the loss of chance doctrine in medical malpractice actions. Restatement (Third) section 35, comment *a* uses an example of a negligent medical professional in discussing the medical professional's scope of liability. Further, we can discern no reason to except medical negligence actions from the factual cause and scope of liability approach of the Restatement (Third).

Asher v. OB-Gyn Specialists, P.C., 846 N.W.2d 492, 498–99 (Iowa 2014) (internal citations omitted), *overruled on other grounds by*, *Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699 (Iowa 2016). So, is the causation analysis in a legal malpractice case distinct from other negligence cases, including medical malpractice? While I agree with the analysis of the majority and its correct application of our current supreme court precedent to the case at hand, I cannot help but question if this legal malpractice distinction involving the use of proximate cause is intentional.

Buller, J., joins this special concurrence.



State of Iowa Courts

Case Number	**Case Title**
25-0760	Buss v. Luhring

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