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IN THE SUPREME COURT OF IOWA
No. 25–0760

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.

Appeal from the Iowa District Court for Bremer County
Case No. LACV006856
The Honorable Ashley Sparks, District Court Judge

DEFENDANTS–APPELLEES' RESISTANCE TO APPLICATION FOR FURTHER REVIEW

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QUESTION PRESENTED

Whether the Court of Appeals correctly followed the precedent of this Court in affirming the District Court's grant of summary judgment on Appellants' legal malpractice claim because Appellants failed to provide any evidence of proximate cause, specifically that Richard and Judy Buss would have agreed to the 2011 grain bin lease if it included an easement or other ownership interest in Scott and Julie Buss's favor?

STATEMENT IN RESISTANCE TO FURTHER REVIEW

The Court of Appeals decision upholding the District Court's grant of summary judgment in this case was correct for reasons founded in this Court's precedent. *Blackhawk Building Systems, Ltd. v. Law Firm of Aspelmeier, Fisch, Power, Warner & Engberg*, 428 N.W.2d 288 (Iowa 1988), which sets forth the firmly established elements of a legal malpractice claim in Iowa, applies today as it did when it was decided in 1988. This is not the first time a legal malpractice case has been appealed to the Iowa Supreme Court since its decision in *Thompson v. Kaczinski*, 774 N.W.2d 829 (Iowa 2009). The Iowa Supreme Court in numerous cases has applied the elements of legal malpractice set forth in *Blackhawk Building System*, including the proximate cause requirement, since it decided *Thompson* in 2009. *See, e.g.*, *Clark v. State*, 955 N.W.2d 459, 464 (Iowa 2021); *Skadburg v. Gately*, 911 N.W.2d 786, 792 (Iowa 2018); *Kraklio v. Simmons*, 909 N.W.2d 427, 434 (Iowa 2018); *Stender v. Blessum*, 897 N.W.2d 491, 502 (Iowa 2017); *Baker v. Capotosto*, 875 N.W.2d 157, 161 (Iowa 2016). Accordingly, the Court of Appeals' decision in the instant case affirming the District Court's conclusion that the Busses failed to generate a material issue of fact as to proximate cause is not in conflict with decisions of the Iowa Supreme Court. *See* Iowa R. App. P. 6.1103(1)(b)(1).

In addition, the facts in *Blackhawk Building Systems* are significantly similar to the facts in this case, specifically alleged harm caused by an attorney's alleged

negligent drafting of a contract. 428 N.W.2d at 289. In *Blackhawk Building Systems*, which the Busses failed to cite or discuss in their appellate brief, the law firm defendant did not include a non-compete clause in Blackhawk Building Systems president's employment agreement. *Id.* The president left Blackhawk Building Systems and formed his own company which became the competitor of his former employer. *Id.* at 290. Blackhawk Building Systems went out of business. *Id.* Blackhawk Building Systems brought a legal malpractice action against the law firm that drafted the employment contract. *Id.* at 289. It alleged that the law firm was negligent in failing to suggest and include a non-compete clause in the president' contract. *Id.*

The Iowa Supreme Court engaged in the same proximate cause analysis the Court of Appeals followed in this case, specifically whether, absent the lawyer's alleged negligence, the other contracting party would have signed a contract containing the specific language the client wanted. *See id.* at 290. The *Blackhawk Building Systems* Court, as the Court of Appeals here, concluded the record contained no evidence from which to infer that the president would have agreed to a non-complete clause. *Id.* at 290-91. The Court of Appeals correctly applied *Blackhawk Building Systems*, controlling Iowa Supreme Court precedent, in this significantly factually similar case.

Moreover, the Iowa Supreme Court's consistent application of and analysis of the proximate cause element of legal malpractice claims under the test set forth in *Blackhawk Building Systems*, as the Iowa Supreme Court has done throughout the last 17 years, demonstrates that the central issue in this case is not one of changing legal principles. *See* Iowa R. App. P. 6.1103(1)(b)(3). This conclusion is reinforced by the Busses' acknowledgment in their Appellants' Brief that the resolution of this case called for application of existing legal principles, and, as such, should be retained by the Court of Appeals. Appellants' Brief at 3.

Finally, the Busses have failed to preserve for appeal the issues they only now raise in their Application for Further Review. In fact, they failed to cite to, let alone discuss, in either their Memorandum of Authorities in Resistance to Motion for Summary Judgment or their Appellants' Brief why *Thompson* requires a different proximate cause analysis or how a different analysis would dictate a different result. Neither the District Court nor the Court of Appeals had the opportunity to consider the Busses' new arguments with the benefit of both parties' briefing of these issues. If this case presents a broad issue of public importance as contemplated by Iowa Rule of Appealete Procedure 6.1103(1)(b)(4) the parties should have had the opportunity to fully brief these new issues, and the District Court should have had the opportunity to consider them.

For these reasons, this case presents no grounds to support further consideration by the Iowa Supreme Court. *See* Iowa R. App. P. 6.1103(1)(b)(1)-(4).

BRIEF IN RESISTANCE TO APPLICATION FOR FURTHER REVIEW

Defendants-Appellees Lana L. Luhring, individually, and Lana Luhring d/b/a Laird & Luhring Law Office (collectively "Luhring"), pursuant to Iowa Rule of Appellate Procedure 6.1103(2), hereby resist Scott R. Buss and Julie S. Buss's Application for Further Review as follows:

Course of Proceedings and Disposition Below

Scott and Julie Buss ("the Busses") filed their Petition at Law and Jury Demand alleging that Luhring committed legal malpractice when, at their request, she drafted a 2011 lease with purchase option for grain bins located on the property owned by Scott's parents, Richard and Judy Buss ("Richard and Judy"), which did not include either an easement or ownership interest for them in the real estate on which the grains bins stood. D0015, Amended Pet. at 6-7 ¶¶ 31-37 (2/19/24). The Busses also alleged Laird & Luhring is vicariously liable for Luhring's alleged legal malpractice. *Id.* at 7-8 ¶¶ 38-42. The Busses contended that Luhring's alleged malpractice caused them economic and emotional damages. *Id.* Exh. A, Pet. at 6-8 ¶¶ 30-36, 37-41.

On March 6, 2025, Luhring filed a Motion for Summary Judgment, arguing both that the Busses' legal malpractice and emotional damages claims were barred by the applicable statutes of limitations and that any alleged malpractice by Luhring was not the proximate cause of their alleged damages. D0032, M.S.J. (3/6/26);

D0030, Memo. Auth. M.S.J at 4-15 (3/6/25). Luhring contended the Busses filed their legal malpractice claims beyond Iowa Code sections 614.1(4)'s five-year statute of limitations. D0032 at ¶¶ 5-9; D0030 at 4-11; D0040, S. J. Ruling at 11 (4/24/25). Luhring also argued that the Busses failed to present sufficient evidence that any allegedly negligent acts by Luhring were the proximate cause of the Busses' alleged damages, specifically their loss of any easement or ownership or possessory interest in the real estate on which the grain bins stood. D0032 at ¶ 10; D0030 at 11-14, D0040 at 11. The Busses resisted Luhring's Motion, arguing that proximate cause was a question of fact for the jury to decide and that *Blackhawk Bldg. Systems, Ltd. v. Law Firm of Aspelmeier, Fisch, Power, Warner & Engberg*, 428 N.W.2d 288 (Iowa 1988) was distinguishable from this case. D0034, Plf.'s Memo. Auth. Resist. to Defs.' Mot. S.J. at 8-9 (3/21/25). The Busses failed to argue to the District Court that *Thompson v. Kaczinski*, 774 N.W.2d 829 (Iowa 2009) applied to their legal malpractice claim and required a different outcome on the proximate cause issue.

The District Court held a hearing on the Motion for Summary Judgment on April 14, 2025. D0033, Order Setting Hrg. at 1 (3/6/25). On April 24, 2025, the District Court granted Luhring's Motion for Summary Judgment. D0040. The Court, foregoing the statute of limitations issue, concluded that any alleged malpractice by Luhring was not the proximate cause of the Busses' alleged damages, namely their loss of access to the grain bins as well as to Richard and Judy's farm. *Id.* at 9-11. The

Court recognized that while proximate cause is generally a question of fact, there are exceptional cases in which the relevant facts are clear and undisputed and the cause and effect relationship is so apparent that only one conclusion can be drawn. *Id.* at 8. Based on the complete deterioration of the Buss family's relationships from 2011 through 2020 and the complete lack of evidence that Richard and Judy would have signed the 2011 grain bin lease if it contained an easement or other property interest in the Busses' favor the District Court concluded that "a jury could not find Lana's alleged negligent drafting of the grain bin lease was the proximate cause of the Busses losing the grain bins or missing the opportunity to take over the family farm." *Id.* at 10. The District Court also rejected the Busses' assertion that the 2014 document granting them access to Richard and Judy's property on which the grain bins sat was evidence that the parties intended to have an easement or property interest in the original grain bin lease. *Id.* at 10-11.

Ultimately, the District Court found that even if Luhring included an easement or property interest in the 2011 grain bin lease there was no evidence that the Busses would be in a different position today. *Id.* at 11. The District Court concluded summary judgment was appropriate because the Busses could not generate a fact issue on the necessary proximate cause element. *Id.*

The Busses did not file any post-ruling motion pursuant to Iowa Rule of Civil Procedure 1.904(2) asking the District Court to consider the causation arguments they now raise.

On May 7, 2025, the Busses timely filed their Notice of Appeal. D0042, Not. of App. (5/7/25). In their Appellants Brief, the Busses affirmatively stated that the case should be transferred to the Court of Appeals because it called for application of existing legal principles. Appellants' Brief at 3. Moreover, the Busses failed to cite to *Thompson* in their appellate brief, let alone argue that *Thompson* should apply to their legal malpractice claim or that it compelled the conclusion that they generated a genuine issue of fact that Luhring's alleged negligence was a proximate cause of their alleged damages.

On May 13, 2026, the Court of Appeals filed its opinion affirming the District Court's grant of summary judgment. Ct. App. Dec. (5/13/26). The Court of Appeals, applying *Blackhawk Building Systems*, required the Busses to establish that absent Luhring's alleged negligence, Richard and Judy would have agreed to a purchase option that included an easement or an ownership or possessory interest in the land under the grain bins. *Id.* at 7-12. Like the District Court, the Court of Appeals concluded that neither the plain language of the lease nor the Joint Statement of Intent created a genuine issue of material fact on the proximate cause issue, particularly considering the evidence that Judy Buss affirmatively stated that she and

Richard did not intend to create an easement or ownership or possessory interest in the Busses' favor. *Id.* at 9-11. Judge Greer authored a special concurrence, joined by Judge Buller, in which she raised the issue, not briefed or argued at the District Court or the Court of Appeals, whether *Thompson* changed the causation analysis in a legal malpractice claim. *Id.* at 13-14.

The Busses filed their Application for Further Review on May 21, 2026. App. Fur. Review (5/21/26). In it, the Busses, for the *first time*, argue both that *Thompson*'s factual causation and scope of liability elements should apply to legal malpractice actions and the Supreme Court should consider other factors when deciding factual causation and scope of liability issues, specifically whether the Busses would have acted differently but for Luhring's alleged deficient drafting and failure to properly advise when she drafted the grain bin lease. *Id.* at 14-17.

Statement of Facts

Lana Luhring, a licensed Iowa attorney, is a sole practitioner doing business as Laird & Luhring Law Offices. Attachment to D0031, Exh. B, Amended Pet. at 1 ¶¶ 3-4 (3/6/25). In 2011, Luhring, representing the Busses, met with her clients and Scott's parents, Richard and Judy, ("the 2011 meeting") to discuss the Busses entering into a lease with purchase option with Richard and Judy of seven grain bins located on Richard and Judy's real estate located at 2069 270th Street, Denver, Iowa ("grain bin lease"). *Id.*, Exh. B at 1 ¶¶ 2-3; *Id.*, Exh. I, Luhring Depo. at 4 (15:3-5).

Luhring, at the Busses' request, drafted a lease with purchase option for the grain bins under the specific terms provided by them, including that "Lessors [Richard and Judy] lease to Lessees [Scott and Julie] the 7 grain bins . . . together with the leg, downspouts and dryer [located at 2069 270th Street, Denver, Iowa] . . . for a term of 10 years, to commence on April 1, 2011, and to end on March 31, 2020." *Id.*, Exh. C 2011 Grain Bin Lease with Purchase Option at 1. The lease provided the Busses access to the seven grain bins located on Richard and Judy's real estate. *Id.*, Exh. C at 1 ¶ 2; *Id.*, Exh. I at 5 (19:2-12). In addition, "Lessees [Scott and Julie] agree to pay, without demand, to Lessors [Richard and Judy] as rent for the said property the sum of Two Thousand Dollars ($2,250) per year on the 1st day of December, beginning December 1, 2011 . . . ." *Id.*, Exh. C at 1 ¶ 1; *Id.*, Exh. I at 3 (11:8-14); at 4 (14:24–15:8). The grain bin lease gave the Busses the option to purchase the seven grain bins as personal property, stating:

> It is agreed that Lessees shall have the option to purchase the above described property [seven grain bins] 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.

Id., Exh. C at 3 ¶ 16. Luhring never received back a signed lease, and while the Busses have not produced a signed copy of the grain bin lease, Scott believes the

document was signed by him, Julie, and his parents. *Id.*, Exh. K, S. Buss Depo. at 3 (36:6-17).

Also in 2011 Luhring, on behalf of the Busses, drafted a 10-year lease with purchase option for some farm equipment owned by Richard and Judy ("farm equipment lease"), including combines, tractors, machinery, trailers and other items listed in an attached Exhibit A, beginning on April 1, 2011 and ending on March 31, 2021. *Id.*, Exh. D 2011 Farm Equipment Lease with Purchase Option at 1; *Id.*, Exh. K at 7 (63:14-21). The Busses agreed to pay $15,000 per year as rent for use of the listed farm equipment. *Id.*, Exh. D at 1 ¶ 1.

During the 2011 grain-bin-lease meeting, Richard and Judy told the Busses that as long as they were purchasing farm equipment from them, Richard and Judy would not take away the ground on which the grain bins stood. *Id.*, Exh. J. Buss Depo. at 5 (23:1-23). The Busses considered Richard and Judy's statement important because they knew they were not going to be able to purchase Richard and Judy's farmland. *Id.*, Exh. J at 5 (23:24-24:2). Judy also told the Busses during this meeting that she did not want to the sell the farmland, including her home, because she did not want to live in a house owned by someone else. *Id.*, Exh. J at 4 (19:24-20:16, 21:16-17). The Busses knew at the 2011 meeting there was no written document that guaranteed Richard and Judy's oral statements insuring access to the real estate on which the grain bins stood. *Id.*, Exh. J at 5 (25:19-21, 25:25-26:3).

The Busses also understood at the time of the 2011 meeting that they would farm Richard and Judy's 70 acres of tillable farmland, which they had begun leasing in approximately 2008-2011, pursuant to a separate written year-to-year farm lease. *Id.*, Exh. J at 4 (22:22-25); *Id.*, Exh. K at 6 (56:5-17, 57:12). The year-to-year farm lease did not contain an option for the Busses to purchase the farmland. *Id.*, Exh. K at 9 (83:9-11). During the life of the 2011 grain bin lease, the Busses rented and farmed Richard and Judy's land and had access to the grain bins. *Id.*, Exh. K at 7 (64:16-65:3). Richard and Judy never at any time intended to grant the Busses an easement interest to allow them to access the seven grain bins, including when they entered into the grain bin lease in 2011. *Id.*, Exh. L, Aff. J. Buss, Iowa Dist. Ct. Bremer Cty. EQCV006350 at 3 ¶ 12.

Luhring did not have any further discussions with the Busses about the 2011 grain bin lease after she prepared it in 2011. *Id.*, Exh. I at 6 (22:23-23:2). She did not provide legal services to the Busses after 2011 outside of "the occasional phone call asking questions about something" for which Scott could not provide dates. *Id.*, Exh. K at 7 (63:22-25). Luhring did not provide any paid legal services regarding the grain bins to the Busses after 2011. *Id.*, Exh. K at 7 (64:1).

Following the 2011 grain bin lease, the Busses and Scott's parents executed additional agreements without Luhring's advice or assistance. On July 21, 2014, Richard (but not Judy) signed a form titled "Permission to Access Property" which

stated "Scott Buss has control of the site at the following location 2069 270th Street Denver, IA for the use life of the technology, which is 30 years." *Id.*, Exh. P, 7/21/14 Permission to Access Property at 1. In 2018, Richard and Scott executed a Bill of Sale to facilitate the Busses' purchase of the seven grain bins as described in the 2011 grain bin lease in exchange for their $4250 payment, the amount remaining after the Busses made yearly $2250 lease payments from December 1, 2011. *Id.*, Exh. E, 2/28/18 Grain Bin Bill of Sale at 1. Luhring did not prepare this bill of sale. *Id.*, Exh. K at 4, 5 (42:6-7, 43:11-16). Luhring did not provide the Busses with any legal advice or services before Scott signed the bill of sale and before the Busses purchased the seven grain bins. *Id.*, Exh. K at 7 (64:5-8).

On February 26, 2018 the Busses wrote a $4250 check to Richard and Judy, which was deposited on March 1, 2018. *Id.*, Exh. F 2/26/18 S. and J. Buss Check for Grain Bin Purchase at 1. Luhring did not provide the Busses with any advice or legal services before they purchased the seven grain bins. *Id.*, Exh. K at 7 (64:9-10). Attorney Bruce Toenjes worked with and provided advice to the Busses before they paid off the remaining lease amounts to purchase the grain bins. *Id.*, Exh. K at 10, 11 (88:17-89:22, 92:18-21).

On March 31, 2019, the Busses and Richard and Judy modified the farm equipment lease, executing a Modification of Lease with Purchase Option that removed a 1961 John Deere 3010 tractor from the equipment the Busses leased with

the option to purchase. *Id.*, Exh. G 3/31/19 Modification of Lease with Purchase Option at 1. Again, Luhring did not provide the Busses with any advice or legal services before they modified the farm equipment lease. *Id.*, Exh. K at 7 (64:11-15).

In late 2019, Scott began to believe that his parents were not going to enter into a new one-year renewable farm lease that allowed him to continue to farm their land. *Id.*, Exh. K at 8 (69:4-8). Scott did not make any effort to contact Luhring at this time to discuss his concern about the farm lease or any other issues. *Id.*, Exh. K at 9, 11 (85:23-86:19, 91:1-17).

On November 10, 2019, Luhring received a Facebook message from Julie stating they had a "brewing situation" with Scott's parents with which she hoped Luhring could help. *Id.*, Exh. H, J. Buss to Luhring Facebook Msgs. 11/2019-4/2020 at 1; *Id.*, Exh. I at 7 (26:9-14). Luhring responded to this Facebook message later on November 10, 2019, but she and Julie never discussed the "brewing situation" with Scott's parents. *Id.*, Exh. H at 1; *Id.*, Exh. I at 7 (26:22-25, 27:14-17).

The 2011 grain bin lease expired by its terms on March 30, 2020. *Id.*, Exh. C at 1. At that time, Richard and Judy offered the Busses the chance to enter into a new written lease, but the Busses declined, stating they wanted an access easement over Richard and Judy's real estate. *Id.*, Exh. L at 2 ¶ 8. The Busses did not consult with Luhring before they declined this option to enter into a new lease. *Id.*, Exh. I at 7 (25:17-27:17).

On April 8, 2020, Julie sent Luhring a Facebook message saying "I need to bend your ear" and asking for a good time to talk. *Id.*, Exh. H at 1. Luhring did not respond to Julie's Facebook message and did not have a conversation with Julie about Julie's issues with Richard and Judy in April 2020. *Id.*, Exh. H at 1; *Id.*, Exh. I at 7 (27:6-13).

In 2020, Richard and Judy did not renew the Busses' year-to-year farm lease, and denied them access to the grain bins. *Id.*, Exh. K at 7 (66:5-12). Luhring had no independent knowledge of these events and was not involved when the Busses were denied access to the grain bins, when they later sold the grain bins, and when they stopped farming. *Id.*, Exh. I at 6-7 (24:14-25:2). Richard and Judy sold their home, several farm buildings, and the road accessing the grain bins to Justin and Stacy Douglas on October 18, 2020. *Id.*, Exh. N, 10/18/20 Warranty Deed at 1.

On June 28, 2021, the Busses commenced an action to establish an access easement allowing them to travel over and use Richard and Judy's former property to allow them to access the grain bins. *See generally id.*, Exh. M Second Amended Pet., Iowa Dist. Ct. Bremer Cty. EQCV006350. The Court on August 22, 2022, granted Richard and Judy's motion for partial summary judgment, concluding as a matter of law that Richard and Judy did not grant, provide, or otherwise allow for an easement in favor of the Busses to access the seven grain bins. *Id.*, Exh. O, S.J. Ruling Iowa Dist. Ct. Bremer Cty. EQCV006350 at 4-6. The Court found that the

Busses chose not to renew the grain bin lease when it expired on March 31, 2020. *Id.*, Exh. O at 3.

Argument

II. The Busses Failed to Preserve Error on their New Causation Argument Because They Failed in Both the District Court and in their Appellate Brief to Identify and Argue that *Thompson v. Kaczinski* Applied to Create a Different Causation Standard for Legal Malpractice Claims.

Iowa's appellate courts will generally not review issues on appeal unless those issues were properly preserved in the district court. *Bill Grunder's Sons Constr., Inc. v. Ganzer*, 696 N.W.2d 193, 197 (Iowa 2004); *Wilson v. Liberty Mut. Group*, 666 N.W.2d 163, 167 (Iowa 2003) ("'It is a fundamental doctrine of appellate procedure that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.'") (citation and emphasis omitted). Issues not raised before the district court cannot be raised for the first time on appeal, as appellate courts do not review issues the district court did not have the opportunity to consider. *Vincent v. Four M Paper Corp.*, 589 N.W.2d 55, 64 (Iowa 1999) (citing *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 642 (Iowa 1996)). It is "fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider" as well as to allow parties to remain silent in the district court, take a chance on a favorable outcome and then assert a specific ground for error if the trial court rules against them. *Sorci v. Iowa Dist. Ct.*,

671 N.W.2d 482, 489 (Iowa 2003) (quoting *DeVoss v. State*, 648 N.W.2d 56, 60 (Iowa 2002)).

While the Busses in their Resistance to the Motion for Summary Judgment argued that they generated an issue of fact on proximate cause, which they emphasized is usually a jury question, they failed to argue both why *Thompson* mandated a different causation standard and how such a standard compelled a different outcome on Luhring's Motion for Summary Judgment. Prompted by Judge Greer's special concurrence, they now argue for the first time that a court must consider whether there is a genuine issue of material fact both on factual causation and scope of liability, echoing the language of *Thompson*. However, they utterly failed to argue both at the District Court and in their appellate brief why *Thompson* required consideration of these elements, and how this consideration would require a different ruling on Luhring's Motion for Summary Judgment, rather than the proximate cause element as identified in *Blackhawk Building Systems*. The Busses deprived the District Court from considering both parties' developed arguments on imposing a new causation standard for legal malpractice claims when the elements for such claims, including the proximate cause element, have been well defined for decades. Likewise, they deprived the Court of Appeals of the District Court's reasoned consideration of and ruling on such arguments. The Busses cite no case law that allows Iowa appellate courts to ignore error preservation rules when an appellate

judge raises in a concurrence an issue that could have been, but was not, raised in and ruled upon by the District Court or in the appellate briefing and argument. This is because there is none. The Busses have failed to preserve error on their new contention that *Thompson* requires a wholesale change to the legal malpractice causation standard. Accordingly, the Court should deny their Application for Further Review.

II. The Court of Appeals Correctly Concluded that the Busses Failed to Generate a Material Issue of Fact that Luhring's Alleged Negligence Proximately Caused Their Alleged Damages.

The Busses improperly focus on their intentions, not what they and Scott's parents would have agreed to if Luhring included an easement or ownership or possessory interest to the real estate under the grain bins in the lease, when assessing whether Luhring's alleged failure to include language conveying such an interest caused them to lose access to the grain bins. *Blackhawk Building Systems* is clear on the relevant showing that must be made in considering causation in a legal malpractice claim where the alleged negligence is an attorney's failure to include a contract provision: absent Luhring's alleged failure to include an easement or ownership or possessory interest in the real estate under the grain bins, "Scott's parents would have agreed to a purchase option that included a transfer of the land under the grain bins or an easement." Ct. App. Dec. at 9. As the Court of Appeals recognized, Julie Buss's testimony that all parties to the lease intended that the real

property under the grain bins would be included in the lease with purchase option is merely speculation and conjecture about what Scott's parents would have agreed to. *Id.* at 9-10. Judy Buss's affidavit directly contradicts Julie's statement about her in-law's intentions. Judy clearly stated that neither she nor Richard intended to create an easement when they entered into the grain bin lease agreement. *Id.* Julie likewise testified that she knew that "they weren't going to get to buy the land." *Id.* This evidence is clearly insufficient to create anything more than speculation or conjecture that Scott's parents would have agreed to language creating an easement or ownership or possessory interest in the Busses' favor in the grain bin lease with purchase option.

III. Conclusion

The Court of Appeals committed no error in concluding the District Court properly granted summary judgment on the Busses' legal malpractice claim because they failed to generate a fact issue that absent Luhring's alleged negligence Richard and Judy Buss would have agreed to a grain bin lease with purchase option that included language granting them an ownership interest in or an access easement to the real estate under the grain bins. The Busses also failed to preserve their newly claimed error that *Thompson v. v. Kaczinski* changes the proximate cause element of legal malpractice claims, and that their evidence generated a genuine issue of fact on causation, because they failed to raise or argue these issues in the District Court

and in its appellate brief and argument. The Iowa Supreme Court should not consider these new issues for the first time on further review of the Court of Appeals' well-reasoned decision which is supported by this Court's continued application of proximate cause as an element of a legal malpractice claims in the 17 years following *Thompson*. Accordingly, the Court should deny the Busses' Application for Further Review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*e*) and 6.903(1)(*g*)(1) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 4,803 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

Date: June 1, 2026 */s/Gregory M. Lederer*

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies a copy of Defendants-Appellees' Resistance to Application for Further Review served on the 1st day of June, 2026, upon the following persons and upon the Clerk of the Supreme Court, by electronically filing the resistance using EDMS:

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