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IN THE SUPREME COURT OF IOWA

No. 25-0461

BETTY PEER,
Plaintiff-Appellant,
vs.
IRC II, Inc. d/b/a THE SHORES, THE SHORES AT PLEASANT HILL, PLEASANT HILL THE SHORES AN IMAMANUEL COMMUNITY (and related fictitious names), IMMANUEL, MYRA WALTERSDORF and UNKNOWN/UNNAMED STAFF PERSONAL,
Defendants-Appellees

APPEAL FROM THE DISTRICT COURT OF POLK COUNTY
NO. LACL156259
HON. HEATHER LAUBER

INITIAL BRIEF OF PLAINTIFF-APPELLANT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. **The district court erred in ruling that a certificate of merit affidavit was required in this negligence action, despite the fact that the alleged negligence was obvious and within the comprehension of a lay jury (Iowa Code § 147.140).**
2. **Whether the district court erred in concluding that Plaintiff's expert, Dr. Meyer, was not qualified under Iowa Code § 147.139 to offer a standard-of-care opinion, thereby invalidating the certificate of merit affidavit.**
3. **Whether the district court improperly granted summary judgment in favor of Defendants, warranting reversal so that the case may proceed to trial on the merits.**

ROUTING STATEMENT

This appeal should be transferred to the Court of Appeals of Iowa under Iowa Rule of Appellate Procedure 6.1101(3), as the issues presented can be resolved via application of existing legal principles.

STATEMENT OF THE CASE

Nature of the Case: This is an appeal from the district court's order granting summary judgment to Defendants in a negligence action arising from injuries sustained by Appellant Betty Peer at an assisted living facility. (D0001, Petition (7/27/2023)) Ms. Peer brought suit against The Shores, an assisted living facility (owned and operated by Defendants IRC II, Inc. and Immanuel), as well as the facility's administrator Myra Waltersdorf and

unnamed staff, alleging negligence in the care provided to her. *Id.* In their answer, Defendants asserted that this action was a "health care provider" malpractice claim requiring compliance with Iowa Code §§ 147.139–.140 (the expert qualification and certificate of merit affidavit statutes). (D0006, Answer (11/01/2023))

Timely, Ms. Peer served certificate of merit affidavits signed by her expert, Dr. Nathaniel Meyer, attesting to the applicable standard of care and Defendants' breach. (D0022, Ex. 2, Certificates of Merit (08/21/2024))

Defendants moved for summary judgment (and to strike Dr. Meyer's affidavits), arguing the certificates of merit were deficient because (1) this was a professional malpractice claim requiring an expert, yet in Defendants' view Plaintiff's claims were not supported by a proper certificate of merit, and (2) Dr. Meyer allegedly did not meet the statutory qualification requirements as an expert. (D0021, Motion to Dismiss/MSJ (8/21/2024)

Plaintiff resisted, contending that no certificate of merit was necessary because the negligence was obvious and within common knowledge, and alternatively that Dr. Meyer did satisfy all expert qualifications and supported the claim on the merits. (D0028, Resistance to Motion to Dismiss/MSJ (10/07/2024))

The district court granted dismissal for Defendants. (D0034, Ruling on Motion to Dismiss/MSJ (2/17/2025)). The Court held that the claims were professional negligence claims requiring expert testimony and a certificate of merit affidavit under Iowa Code § 147.140. *Id.* The court further found that Dr. Meyer's affidavit did not meet the statutory requirements – concluding that Dr. Meyer was not in the "same or a substantially similar field" as the Defendants under § 147.139 – and thus treated the certificate of merit as invalid. *Id.* This Court retained the appeal.

STATEMENT OF FACTS

In this proceeding, Appellant Betty Peer was a 92-year-old resident of The Shores assisted living facility in Ankeny, Iowa. (D0001, Petition (7/27/2023)) She moved into The Shores due to age-related frailty and the need for assistance with daily activities and mobility. *Id.*

In July, 2021, Plaintiff entered into a contract with Defendants wherein Defendants were to provide certain and specific assisted living services. *Id.* On or about July 9, 2021, Plaintiff moved into residence owned, operated, and controlled by the Defendants. *Id.* Defendants thereafter generated a care plan specific for Plaintiff. *Id.* The care plan generated for Plaintiff was done without input from or discussion with Plaintiff, her immediate family, or her primary medical care providers. *Id.* On July 9,

2021, Defendants were provided a copy of the Plaintiff's prescription for compression socks that was obtained by the Plaintiff's medical care providers at the Iowa Clinic. *Id.* Defendants did not obtain the prescribed compression socks until July 21, 2021. *Id.* It was communicated to Plaintiff and her immediate family that the delay in obtaining compression socks was due to the need to order a tape measure. *Id.* Plaintiff's care plan indicated that compression socks were to be worn daily and that Defendants were to assist Plaintiff in putting them on in the morning and removing them in the evening. *Id.* Defendants did not assist Plaintiff in applying the compression socks and removing them as indicated in the care plan. *Id.* Defendants did not communicate Plaintiff's lack of use of compression socks to any of the Plaintiff's other medical care providers. *Id.* Defendants did not communicate Plaintiff's lack of use of compression socks to any of Plaintiff's immediate family members. *Id.* On July 28, 2021, Plaintiff noted a new wound on the bottom of her left foot and red coloration and warmness of the big toe. *Id.* Defendants failed to respond to Plaintiff's cries for assistance with her newly discovered issue with her left foot/big toe. *Id.* On July 29, 2021, Plaintiff was sent to the hospital on am emergency basis for issues with her left foot and big toe. *Id.* On July 31, 2021, an operation was performed on Plaintiff's left foot in an effort to salvage her foot. *Id.* On August 2, 2021, Plaintiff had

to undergo an amputation of her left big toe. *Id.* Thereafter, Plaintiff suffered significant post-operative complications. *Id.* The Iowa Department of Inspections and Appeals opened an investigation into the care, treatment, and services provided to Plaintiff. *Id.* As a result of that investigation, it was determined that the Defendants failed to meet applicable law, were sanctioned, and fined. *Id.*

In support of her claims, Ms. Peer obtained the opinion of Dr. Meyer, who reviewed the records and opined that The Shores and its staff deviated from the standard of care in a manner that directly resulted in Ms. Peer's fall and injuries. (D0022, Ex. 1 (8/21/2024)) Dr. Meyer's certificate of merit affidavit detailed these opinions. *Id.* Despite this evidence, the district court concluded that the suit could not proceed due to non-compliance with the certificate-of-merit requirements. This appeal followed.

ARGUMENT

Preservation of Error Application to ALL Arguments

All of these matters were presented to the Court in Defendants' Motion to Dismiss/MSJ, resisted by Plaintiff, and ultimately ruled upon by the Court.

Scope of Review Applicable to ALL Arguments

The Supreme Court reviews summary judgment rulings for corrections of errors at law. *Matter of Estate of Workman*, 903 N.W.2d 170,

175 (Iowa 2017). In reviewing a grant of a summary judgment motion, the Supreme Court determines whether a material fact exists and whether the law was correctly applied. *Meylor v. Brown*, 281 N.W.2d 632, 634 (Iowa 1979) (citing *Frohwein v. Haesemeyer*, 264 N.W.2d 792, 795-96 (Iowa 1978)). The Court will reverse the grant of summary judgment if it appears from the record an unresolved issue of material fact. *Id.*

Under Iowa Code section 147.140, "[w]e review both a motion to dismiss and a district court's statutory construction for correction of errors at law." *Ronnfeldt v. Shelby Cnty. Chris A. Myrtue Mem'l Hosp.*, 984 N.W.2d 418, 421 (Iowa 2023) (citing *Struck v. Mercy Health Servs.-Iowa Corp.*, 973 N.W.2d 533, 538 (Iowa 2022)). Legal issues such as these are reviewed de novo for errors at law. The interpretation of the certificate-of-merit statute and the determination of its applicability to the facts are likewise legal questions reviewed without deference to the district court. Under Iowa Code section 147.140, “[w]e review both a motion to dismiss and a district court’s statutory construction for correction of errors at law.” *Ronnfeldt v. Shelby Cnty. Chris A. Myrtue Mem’l Hosp.*, 984 N.W.2d 418, 421 (Iowa 2023).

I. THE DISTRICT COURT ERRED IN RULING THAT A CERTIFICATE OF MERIT AFFIDAVIT WAS REQUIRED IN THIS NEGLIGENCE ACTION, DESPITE THE FACT THAT THE ALLEGED NEGLIGENCE WAS OBVIOUS AND WITHIN THE COMPREHENSION OF A LAY JURY (IOWA CODE § 147.140).

The district court erred in holding that this case required a certificate of merit affidavit under Iowa Code § 147.140. Under the plain language of § 147.140(1)(a), a certificate of merit is only mandated in a malpractice action "which includes a cause of action for which expert testimony is necessary to establish a prima facie case." In other words, if a plaintiff's claim can be established without expert testimony – for example, because the alleged negligence is so obvious that a lay jury can recognize it – then the statutory trigger for a certificate of merit is not met. That is exactly the situation here.

Iowa law has long recognized that not every case against a healthcare provider or facility requires expert evidence. While medical malpractice claims ordinarily demand expert testimony to establish the professional standard of care and its breach, there is a critical exception "where the [defendant's] lack of care is so obvious as to be within the comprehension of a lay person and requires only common knowledge and experience to understand." *Struck*, 973 N.W.2d at 542. In such cases, often referred to as

the “common knowledge” or res ipsa loquitur exceptions, no expert testimony is needed to prove negligence. For example, Iowa courts have held that a surgeon operating on the wrong body part or leaving a surgical instrument inside a patient’s body is negligent as a matter of common knowledge, without expert proof. As the Iowa Supreme Court explained, “if a doctor operates on the wrong patient or amputates the wrong limb, a plaintiff would not have to introduce expert testimony to establish that the doctor was negligent.” *Id.*

We have previously explained that section 147.140 "is meant to end cases early (sixty days after the answer) when expert testimony is required." *Struck*, 973 N.W.2d at 542. The statute is also designed "to 'identify and weed non-meritorious malpractice claims from the judicial system efficiently and promptly,'" id. (quoting Womer v. Hilliker, 908 A.2d 269, 275 (Pa. 2006)), and "deter . . . frivolous actions . . . to thereby reduce the cost of medical malpractice litigation and medical malpractice insurance premiums," id. (quoting Rabinovich v. Maimonides Med. Ctr., 113 N.Y.S.3d 198, 201 (App. Div. 2019)).

In *Estate of Butterfield v. Chautauqua Guest Home*, a case involving injuries in a nursing home setting, the Supreme Court held that the § 147.140 requirement “does not apply to plaintiffs who need experts solely for

causation, as opposed to the standard of care or breach." In other words, when expert testimony is not needed on the core issue of whether the defendant's conduct fell below the standard of care, the certificate-of-merit mandate is inapplicable. By reversing dismissal in *Butterfield*, the Court made clear that plaintiffs may proceed without a certificate of merit on **any claims that a lay jury can evaluate unaided by expert opinion**. *Id.* (emphasis added)

Here, Ms. Peer's claim falls squarely within the common-knowledge and routine-care category. The negligence alleged is not a matter of complex medical judgment but a failure of basic, nonmedical care that any lay person can readily understand.

In *Thompson v. Embassy Rehab. & Care Center*, the Court noted that while decisions involving medical judgment (such as whether to force a patient to reposition or when to perform surgery) required expert testimony, "nonmedical, administrative, ministerial, or routine care" – such as assisting with bathing or preventing pressure sores through regular turns – did **not** require an expert. See *Kastler v. Iowa Methodist Hosp.*, 193 N.W.2d 98, 102 (Iowa 1971) (expert testimony not required to establish the standard for ministerial or routine care); *Landes v. Women's Christian Ass'n*, 504 N.W.2d 139, 141 (Iowa App.1993) (same)

Under the test reaffirmed in *Struck v. Mercy Health Services-Iowa Corp.*, the question is whether "all the primary facts can be accurately and intelligibly described to the jury" and whether the jury is "as capable of comprehending the primary facts and of drawing correct conclusions from them as are [expert] witnesses". If so, then expert testimony – and by extension a certificate of merit – is not required. In Ms. Peer's case, the facts are straightforward: an elderly woman, a lackluster or non-existent care plan, the care plan devised was not followed, the lack of compliance with the care plan was not communicated to the providers, and injury followed. These facts can be easily presented to a jury. Jurors using common sense and life experience are fully capable of deciding whether those failing were negligent. No esoteric medical standard or complex treatment decision is at issue.

II. THE DISTRICT COURT ERRED IN CONCLUDING THAT PLAINTIFF'S EXPERT, DR. MEYER, WAS NOT QUALIFIED UNDER IOWA CODE § 147.139 TO OFFER A STANDARD-OF-CARE OPINION, THEREBY INVALIDATING THE CERTIFICATE OF MERIT AFFIDAVIT.

Even assuming, arguendo, that a certificate of merit was required, the district court erred in ruling that Ms. Peer's expert, Dr. Meyer, did not meet the statutory qualifications. Dr. Meyer plainly satisfies Iowa Code

§ 147.139, which sets forth the standards for experts who provide opinions on standard of care in malpractice cases. Under § 147.139(1), the expert must be "licensed to practice in the same or a substantially similar field as the defendant" and be in good standing, without recent license revocations. Under § 147.139(2), the expert must also have "actively practiced in the same or a substantially similar field as the defendant" (or been a qualified instructor in that field) within the five years preceding the alleged negligence. Dr. Meyer's qualifications fulfill these requirements, and the district court's contrary conclusion reflects a misapplication of the law.

III. THE DISTRICT COURT IMPROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS, WARRANTING REVERSAL SO THAT THE CASE MAY PROCEED TO TRIAL ON THE MERITS.

Because the district court's grounds for dismissal were legally flawed, the grant of summary judgment must be reversed. Once Dr. Meyer's affidavit and testimony are admitted (or once it is determined that no affidavit was necessary in the first place), it is clear that genuine issues of material fact exist regarding Defendants' negligence. Summary judgment is a drastic remedy and is seldom appropriate in negligence cases, which so often turn on fact-intensive questions of reasonableness and causation. It is the role of the jury to weigh the evidence and determine whether Defendants

breached their duty of care to Ms. Peer and caused her injuries. On the summary judgment record, Ms. Peer presented ample evidence to create a triable fact question on these issues.

The district court did not analyze the merits of the negligence claim beyond the certificate of merit technicality. It never found that Defendants met their summary judgment burden on the substance of the claim. If the case is restored to its proper footing – with the certificate of merit issue resolved in Plaintiff's favor – then it is apparent that Defendants are *not* entitled to judgment as a matter of law. Those are classic jury questions. Under Iowa Rule of Civil Procedure 1.981, summary judgment is only appropriate when no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law.

It is also important to consider the larger purpose of the summary judgment and certificate-of-merit rules. Section 147.140 was designed to **weed out baseless malpractice claims early** – cases where the plaintiff has no expert support and thus no viable claim. This is not such a case. Ms. Peer's claim is far from baseless: it involves a readily understandable act of negligence, serious injury, and an expert who stands ready to support the claim if needed. Dismissing her lawsuit on a procedural technicality perverts the intent of the law, which was never to shield obvious negligence from

scrutiny. Granting summary judgment here did not serve the legislative goal of eliminating "meritless" cases; instead, it prematurely terminated a meritorious case that should be decided on the facts. The Iowa Supreme Court cautioned in *Struck* that § 147.140 should not be used to evade legitimate claims by recharacterizing them or exploiting procedural missteps. The district court's ruling, if upheld, would do just that – it would impose an unjust forfeiture of Ms. Peer's rights despite her substantial compliance with the statute's purpose (obtaining an expert opinion) and despite the common-sense viability of her claim.

Finally, fundamental fairness and Iowa's preference for resolving cases on their merits counsel that Ms. Peer be given her day in court. She suffered a significant injury, allegedly due to Defendants' negligence, and she promptly pursued legal action. The record reflects factual contentions that deserve to be evaluated by a jury. There is no danger of a frivolous claim proceeding; there is an expert backing it and a straightforward factual theory. In Iowa, "[i]n only exceptional cases should the issue of negligence be taken from the jury"; generally, if reasonable minds could differ, the question must go to trial. This case is not an "exceptional" one warranting judgment as a matter of law against the plaintiff. It is a case that cries out for a full factual airing and a jury determination.

Accordingly, the summary judgment should be reversed. The Court should remand this matter for further proceedings and ultimately for trial, so that a jury can decide whether Defendants were negligent and responsible for the harm to Ms. Peer. Dismissing the case at this juncture was improper given the disputed facts and the errors in the legal analysis below

CONCLUSION

For the reasons stated above, this Court should reverse the orders of the District Court granting dismissal.

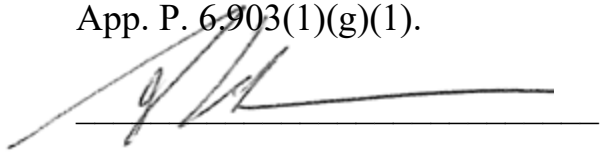
REQUEST FOR ORAL ARGUMENT

Pursuant to Iowa Rule of Appellate Procedure 6.903(2)(i), Plaintiffs request the opportunity to present oral argument.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

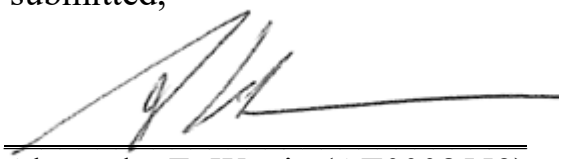
This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 609(1)(g)(1) because:

__**X**__ this brief has been prepared in a proportionally spaced typeface using Microsoft Word 1997-2004 in size 14 Times New Roman font and contains 2,876 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



Dated this 18th day of August, 2025.

Respectfully submitted,



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