

NO. **22-5266**

**ORIGINAL**

**IN THE  
SUPREME COURT OF THE UNITED STATES**

**FILED  
JUL 11 2022**

**OFFICE OF THE CLERK  
SUPREME COURT, U.S.**

**ELIZABETH DOWNING AND MARCELLA BERRY, AS  
CO-ADMINISTRATRIX OF THE ESTATE OF LINDA BERRY,  
PLAINTIFFS**

**VS.**

**PAUL GROSSMAN, M.D., AND CATHOLIC HEALTH INITIATIVES IOWA  
CORP D/B/A MERCY MEDICAL CENTER, MERCY MEDICAL  
CENTER-WEST LAKES AND MERCY SURGICAL AFFILIATES  
RESPONDENT**

**ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT  
OF IOWA  
NO. 20-1124**

**PETITION FOR A WRIT OF CERTIORARI**

**ELIZABETH A. DOWNING  
1401 SANDRA CIRCLE  
ADEL, IOWA 50003  
515-240-1416  
LIZANDMARKPLUS4@AOL.COM**

## **QUESTIONS PRESENTED**

- 1.) How is it not viable that all the care Linda Berry received from October 1, 2009 until December 31, 2009 not be considered fraudulent concealment?**
  
- 2.) Why was the focus of this case set on Iowa's six year statute of repose law, when there is no evidence Linda Berry was informed of her kidney tumor?**
  
- 3.) Why did Mercy Hospital and Paul Grossman fail to inform Linda Berry of the major medical negligence that occurred in 2004 and 2006 by failing to inform her or her primary care doctor of her kidney mass in 2009 after reviewing and signing multiple comparative ct scans, months shy of Iowa's six year statute of repose law in 2009?**
  
- 4.) Shouldn't a doctor who commits homicidal care be held accountable without a time limit?**

**LIST OF PARTIES**

**[X] ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.**

**[ ] ALL PARTIES DO NOT APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE. A LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS THE SUBJECT OF THIS PETITION IS AS FOLLOWS:**

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**Appendix 2 IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY**

**CASE# LACI340875**

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**Iowa six year statute of repose**

**Chapter 614.1(9),614.1 (9)(a).**

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **INTRODUCTION**

I stand before you alone, defeated and exhausted. Over the last six years I've listened to lawyers and judges speak of my mom and her death as a docket next in line. I sat quietly with no voice as my mom lay dying. On her deathbed I told her, "mom I can't do this, I'm afraid to do this alone" she said," stand up for what you believe in even if you stand alone. Don't let this keep happening to others, I'm dying sissy, I love you." -Linda Berry 1/27/1951-06/22/2019.

I do not have a legal background. I come before you as a daughter seeking justice, as a patient looking for protection, and a mother afraid for her children's healthcare future. I believe the Iowa Supreme Court failed Linda Berry. As I stand before you, I ask that you see Linda Berry as a person. I plead that you see the truth in this case, and ask you to forgive my lack of knowledge in preparing the petition. The Iowa Supreme Court opinion being overturned would allow this case to become a "Joan of Arc" in healthcare.

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment  
below.

**OPINIONS BELOW**

For cases from state courts

The opinion of the highest state court to review the merits appears at  
Appendix \_\_\_\_\_ to the petition and is

reported at the Iowa Supreme Court No. 20-1124

The opinion of the IOWA DISTRICT COURT IN AND FOR POLK COUNTY court  
appears at Appendix \_\_\_\_\_ to the petition and is

reported at the Iowa District court in and for Polk County CASE No.

**LACL140875**

## **STATEMENT OF THE CASE**

I argue that the care Linda Berry received in 2004 and again in 2006 is medical negligence. The care Linda Berry received from October 1,2009 until December 31,2009 is fraudulent concealment! Several Physicians in this time period knew of the kidney mass and failed to inform Linda Berry or her primary care physician. Looking at Linda Berry as a person in this case is vital to see she was a major advocate in her own health care. She did every procedure and every yearly physical no matter how intrusive or painful they were. Linda Berry was afraid of dying. No one in this case has taken the time to look at Linda Berry as a person. Failing her in this case. The evidence is in Linda Berrys medical records.

The opinion of the Iowa Supreme Court sided with the six year statute of repose when there is no evidence proving Linda Berry was ever informed. The six year statute of repose does not apply to this case. Evidence proves that after the medical negligence in 2004 and 2006, all of Linda Berrys medical care from October 1st 2009 until December 31,2009 is fraudulent concealment. The Iowa Supreme Court opinion should be void and this case should proceed to jury trial.

## **REASONS FOR GRANTING THE PETITION**

- 1.) LINDA BERRY HAS DIED FROM FRAUDULENT CONCEALMENT**
- 2.) LINDA BERRY WAS A UNITED STATES CITIZEN PROTECTED BY THE CONSTITUTION OF THE UNITED STATES OF AMERICA.**
- 3.) LINDA BERRY'S CHRISTIAN BELIEFS WERE VIOLATED.**
- 4.) THE IOWA SUPREME COURT FAILED TO ACKNOWLEDGE FRAUDULENT CONCEALMENT IN THIS CASE.**
- 5.) THIS CASE WILL RAISE THE STANDARD OF CARE WE HOLD PHYSICIANS AT IN THE UNITED STATES.**
- 6.) LINDA BERRY'S FAMILY DESERVES JUSTICE FOR THE DEATH OF THEIR MOTHER.**

## CONCLUSION

Berry Vs Grossman is like no other case, and allowing it to advance to jury trial would nationally challenge the standard of care we hold physicians at. Patients have no choice but to trust a physician and submit vulnerability to a fiduciary relationship. A relationship built on a hippocratic oath of "do no harm". A relationship built on trust. We go to our physicians when we are most vulnerable, lacking the knowledge that medical professionals trained for. My mom Linda Berry relied on physicians for her care but was left consistently ignorant of her kidney tumor, as I have relied on lawyers but alone I am left ignorant in preparing this petition. This proves how vital relationships built on trust are; and that they will and do condemn people like Linda Berry, who was failed by many physicians and for myself preparing this Writ of Certiorari without the knowledge of that of council.

Physicians are protected by a repose law from the time of misconduct, The patient then is left with no ability to fight if they become aware of the misconduct only after the repose has passed. We need laws protecting the patient and the fact that there are none is a major misuse of the legal system. As disheartening as this is for patients relying on honest healthcare, it is not the heart of this case. Fraudulent

concealment is. This is my last hope as I grieve not only my mother but also the lack of humanity in the legal system. Now I lay this in your hands and pray truth, honor and justice still exists.

The Petition For Writ of Certiorari should be granted.

Respectfully Submitted,

Elizabeth N Downing July 11, 2022      Elizabeth Downing July 11,  
2022