

IN THE COURT OF APPEALS OF IOWA

No. 7-749 / 96-2257

000221

**IN THE MATTER OF THE ESTATE
OF ANGELA M. MASON, Deceased,**

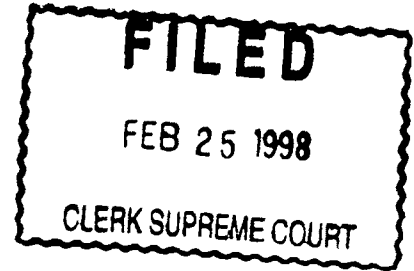
**CONSTANCE M. JOHNSON, Individually
and as Administrator of the Estate of ANGELA
M. MASON, Deceased; and as Next Friend for
ANGELA M. MASON, A Minor Child; and
JAMES D. JOHNSON, SR., Individually,**

Plaintiffs-Appellants,

vs.

WOLFE CLINIC, P.C., and MICHAEL W. HILL,

Defendants-Appellees.



Appeal from the Iowa District Court for Marshall County, William J. Pattinson, Judge.

The plaintiffs appeal from the ruling dismissing their medical malpractice claim pursuant to Iowa Code section 614.1(9) (1995). **AFFIRMED.**

Jeffrey L. Stein, Marshalltown, for appellants.

Robert C. Rouwenhorst of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, for appellees.

Considered by Cady, C.J., and Huitink, and Mahan, JJ.

CADY, C.J.

This appeal arises from the district court's dismissal of appellants' petition. The court concluded the claims were barred by the statute of limitations pertaining to medical malpractice, Iowa Code section 614.1(9). We affirm by memorandum opinion pursuant to Iowa Supreme Court rule 9.

Dr. Michael Hill treated Angela Mason for allergies from February, 1984, through November, 1988. On June 22, 1994, a different doctor diagnosed Angela as having cystic fibrosis. She died on May 19, 1995. Her estate and parents filed a medical malpractice suit on June 24, 1996, against Dr. Hill and his clinic. The defendants filed a motion to dismiss, alleging the action was brought more than six years after Dr. Hill's last treatment of Angela and thus was barred by Iowa Code section 614.1(9).

Appellants did not file a resistance or other response to the motion to dismiss. There is no record of the hearing on the motion to dismiss. Appellants did not file any other motion or pleading after the ruling dismissing their petition until this appeal. *See e.g.*, Iowa R. Civ. P. 179(b), 241(a). There is nothing in the record before us to show the issues raised by appellants on appeal were presented to the district court. Issues must ordinarily be presented to and passed upon by the trial court before they may be raised and adjudicated on appeal. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995); *Peters v. Burlington N. R.R.*, 492 N.W.2d 399, 401-02 (Iowa 1992). If the issues were argued at the hearing, a rule

179(b) motion is essential to preservation of error when a trial court fails to resolve an issue, claim, defense, or legal theory properly submitted to it for adjudication. *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206-07 (Iowa 1984); *Nowlin v. Scurr*, 331 N.W.2d 394, 396 (Iowa 1983); *Arnold v. Lang*, 259 N.W.2d 749, 753 (Iowa 1977). The appellants failed to preserve error for appeal.

Even if appellants had properly preserved error, Iowa Code section 614.1(9) would, as the district court ruled, bar their claims. See *Koppes v. Pearson*, 384 N.W.2d 381, 385 (Iowa 1986) (rejecting constitutional challenges to section 614.1(9)); *Schultze v. Landmark Hotel Corp.*, 463 N.W.2d 47, 50 (Iowa 1990) (rejecting a hardship or fairness argument based on the clear legislative intent to restrict malpractice claims).

AFFIRMED.