DRAKE UNIVERSITY LAW SCHOOL
GENERAL PRACTICE REVIEW
REAL ESTATE

December 1, 2024

REAL ESTATE CASE LAW & LEGISLATIVE UPDATE

David M. Erickson
Dentons Davis Brown, P.C.
215 - 10th Street, Suite 1300
Des Moines, Iowa 50309

Case Law

A. U.S. Bank National Association as Successor by Merger of U.S. Bank National Association ND, Plaintiff v. Don W. Langmaid, Jr., et al.
Iowa Court of Appeals No. 23-0076. Filed December 26, 2023

This matter involves the foreclosure of property that was agricultural property. In a petition filed in 2019, U.S. Bank sought foreclosure of the Langmaid's real estate in Jasper County. The parties settled and the case was voluntarily dismissed by U.S. Bank. In June of 2022, a petition was filed by U.S. Bank for foreclosure on the same property. The Langmaid's filed a pre-answer motion to dismiss claiming the property was agricultural property and therefore subject to pre-foreclosure farm mediation pursuant to Iowa Code §654A.6(a)(1)(2022). The District Court granted the Langmaid's motion to dismiss. The dismissal was with prejudice and U.S. Bank appeals the dismissal with prejudice.

Iowa Code §654A.6(a)(1) reads

> "A creditor . . . desiring to initiate a proceeding to enforce a debt against agricultural property which is real estate under chapter 654 . . . shall file a request for mediation with the farm mediation service."

Both parties agree the Bank did not comply with Iowa Code §564A.6(a) and therefore the Court could not proceed with the foreclosure. The only issue in this case is whether the District Court erred when it dismissed the petition with prejudice for lack of subject matter jurisdiction. The district court relied upon Iowa Rule of Civil Procedure 1.943, titled "Voluntary Dismissal," which reads as follows:

> A party may, without order of Court, dismiss that party's own petition . . . at any time up until ten days before the trial is scheduled to begin. . . . A dismissal under this rule shall be without prejudice, unless otherwise stated; but if made by any party who has previously dismissed an action against the same defendant, in any Court of any state or of the United States, including or based on the same cause, unless otherwise ordered by the Court, such dismissal shall operate as an adjudication against that party on the merits, in the interests of justice

The District Court found that because the previous dismissal had been entered that this dismissal under Iowa Rule of Civil Procedure 1.943 had to be with prejudice. The Court also went on to find before they dismissed the matter that the property was protected as a homestead. The plaintiff did not have a signed homestead exemption in its mortgage; therefore, the matter should be dismissed with prejudice. The Iowa Court of Appeals determined that the District Court acted beyond its power in making the second part of the ruling regarding the homestead exemption waiver. After finding it lacked subject matter jurisdiction, the District Court impermissibly made findings of fact and conclusions of law on merits of the case.

The Iowa Court of Appeals found that the District Court's application of Rule 1.943 was incorrect. Since the District Court dismissed the U.S. Bank's petition and not U.S. Bank it could not be considered a voluntary dismissal as contemplated by Rule 1.943. Therefore, the proper analysis is under Iowa Rule of Civil Procedure 1.946, "All dismissals not governed by Rule 1.943 or *not for want of jurisdiction* or improper venue, shall operate as adjudications on the merits unless they specify otherwise." The Court found it was plain language of the rule that dismissals for lack of subject matter jurisdiction are to be without prejudice, as lack of jurisdiction is one of only two exceptions to a dismissal constituting a judgment on the merits.

The Langmaids tried to argue that *AAC Holdings LLC v. Rooney,* 973 N.W.2d 851, (Iowa 2022) was the controlling case; however, that case dealt with voluntary dismissals and not a voluntary dismissal and an involuntary dismissal. Therefore, the District Court Court's decision was reversed and remanded for entry of a dismissal without prejudice.

B. PennyMac Loan Services, LLC v. Pheasant Trail Seventh Owners Association, Inc.

Iowa Court of Appeals No. 23-0017. Filed January 24, 2024

Gregory Williams was an owner of a condominium unit in the complex. Pheasant Trail Seventh Owners Association, Inc. was the association for the complex. On March 1, 2019, Williams executed and delivered a promissory note and purchase money mortgage on the unit in question to Mortgage Electronic Registration Systems (MERS) as nominee for Veridian Credit Union. MERS assigned the note and mortgage to PennyMac on April 1, 2020. On July 6, 2021, PennyMac elected, in accordance with the terms and conditions of the note and mortgage, to declare the whole amount of the note due and payable and exercise the right to enforce payment and foreclose the mortgage by filing a petition of foreclosure. The Association was not a party to the foreclosure. On October 6, 2021, the District Court entered judgment in favor of PennyMac and ordered the real estate be foreclosed with PennyMac as the valid owner and holding a paramount lien.

On February 13, 2022, the Association attempted to assess PennyMac a "foreclosure fee" of $3,500 and demanded attorney fees in the amount of $3,000.

On June 3, 2022, PennyMac became the titleholder of the real estate by virtue of a sheriff's deed from the Sheriff of Linn County, Iowa. PennyMac and the Association attempted to mediate the issue involving "foreclosure fees" and attorney fees but were unsuccessful and on September 6, 2022, PennyMac filed a petition seeking a declaratory judgment pursuant to Iowa Code of Civil Procedure 1.1101 with respect to whether the Association's governing documents provided the authority to impose a "foreclosure fee" or collect attorney fees from PennyMac.

Both parties filed a summary judgment with the Association acknowledging "the governing documents admittedly do not refer to 'admission or transfer fees'" but arguing that its powers include those articulated in the governing documents and, by the very terms

of the governing documents, those powers further included those articulated in the statute and in particular Iowa Code §504.302(14). This code section grants the corporation the authority "to do all things necessary or convenient to carry out its affairs" including "imposing dues, assessments, and admission and transfer fees upon its members." The Association tried to argue in respect to the attorney fees that Article X, Section 11 of their Condominium Declaration states, "if the Association successfully brings an action to … otherwise enforce the terms of this Declaration, the Association may collect reasonable attorney fees." The Association also relied upon Article VII, Section 9 which states when the Association sues an owner to foreclose upon its lien they are entitled to attorney's fees.

PennyMac argued that the rights granted in sections 504 and 504A do not give the Association the right to impose a foreclosure fee and attorney's fees against PennyMac. The District Court granted PennyMac's motion to deny the Association's request finding there was no language in the governing documents that allowed for the Association to impose a foreclosure fee, transfer fee or attorneys' fees incident to a third-party foreclosure.

The District Court also found that there was nothing in the Bylaws or the Articles of Incorporation of the Association which allows them to impose a foreclosure fee or attorney's fees against an entity that acquires title through a foreclosure. The Court of Appeals affirmed the District Court in finding that PennyMac was not liable for any type of foreclosure fee and/or attorney's fees.

C. David A. Muhr and Christine L. Mickel v. Rachelle E. Willenborg
Iowa Court of Appeals No. 22-1780. Filed January 24, 2024

This case deals with a partition of farmland. The farmland is considered heirs property under Iowa Code §651. This case provides an excellent explanation regarding the history of the partition action in Iowa and the current status of partitions in Iowa. The plaintiffs and the defendants inherited their mother's property approximately 20 years ago along with two other siblings who are no longer involved in the ownership of the property. The property is approximately 273 acres of Carroll County farmland. They owned the property as tenants in common. The three parties discussed how to divide the property. No agreement was reached by the parties as to an amicable division. Based upon the lack of consensus, Muhr and Mickel petitioned the District Court to partition the farmland by sale in November of 2021. Willenborg answered the petition asking the Court to partition the land in kind. Both parties agree the land was heirs' property subject to subchapter III of Iowa Code §651. Neither party requested the opportunity to make a co-tenant buyout. The District Court appointed a referee to evaluate the farmland. The referee determined that there was no way to divide the property into three parcels because of two ditches on the property. The referee suggested dividing the property into two parcels – a north and south parcel – and having Willenborg take title to the south parcel and then make an owetly payment of $25,600 each to Muhr and Mickel. The north parcel then would be ordered to be sold by sale as requested by Muhr and Mickel. This resolution was a hybrid partition. Muhr and Mickel disagreed with the Court's interpretation and appealed to the Iowa Court of Appeals stating that a hybrid partition is not allowed under Iowa Code §651.

The Iowa Court of Appeals went through an analysis of the history of partition law in Iowa. Initially there was a preference for partition in kind in Iowa but in 1943 the Iowa Rules of Civil Procedure were changed and there was a preference for a partition by sale. Then in 2018 when the General Assembly enacted partition legislation now codified at Iowa Code §651 there was a presumption for partition in kind if the property is an heir's property. The co-tenants who desire partition in kind have forty-five days to "buy out" the property interest of their adverse interests. If no buyout, the court must partition in kind unless doing so would result in great prejudice to the co-tenants as a group. They argued that if you cannot partition in kind then partition by sale is the only option. There is no hybrid partition.

The Iowa Court of Appeals went through an analysis of the history of partitions in Iowa and determined that a partition that is hybrid in nature can be allowed on heir's property because it was never disallowed by the Iowa legislature. The legislation from 2018 was intended to protect family farms from forced traditional sale and a hybrid type of partition accomplished the goal. The Court went through an analysis of the great prejudice inquiry and determined there was great prejudice in this case if the property was exclusively portioned in kind. A partition in kind for the whole parcel would not be feasible. A hybrid partition where Willenborg got a portion of the property in kind and the remainder was sold by partition by sale was equitable and practicable and allowed by the statute. The decision of the District Court was affirmed.

D. Witting v. Schinstock-McConnell

Iowa Court of Appeals No. 22-1301. Filed August 9, 2023

This case deals with a boundary by acquiescence. Witting owned a property that was a farm and included a house lot that was enclosed by a fence. The Wittings bought the farm in 1959 and in 1976 they separated the house lot from the farm, with the intent of selling the house lot, and moving to West Pointe, Iowa. They developed a legal description for the lot. There was a fence that divided the lot from the farm. After several years the fence on the eastern portion of the lot was no longer in existence. However, the fence post was still visible on the property. The individuals who owned the house lot had a survey completed. The survey showed the existing lot line to be 35 feet west of where the previous fence was located. This action was brought by the Wittings seeking to establish the true boundary of the house lot where the previous fence line was located. The District Court as well as the Iowa Court of Appeals reviewed the legal theories behind boundary by acquiescence. A claim of boundary by acquiescence requires that both parties and their predecessors "acknowledge and treat the line as a boundary" and "the acquiescence persists for ten years." There is no question in this case that from 1976 to 1986 the boundary was where the fence line was located. It was visible, known and definite and the owners of both properties treated the fence as the eastern boundary of the house lot for at least ten years. Even though the fence was where the boundary was for ten years, there still must be a definitive line currently existing to succeed on a boundary by acquiescence claim. The Court relied upon the fact that there was still a fence post that existed and they determined that the Wittings' boundary along the fence line was a true

boundary and ruled in favor of the Wittings. The Iowa Court of Appeals agreed, finding there was substantial evidence supporting the District Court's ruling of a boundary by acquiescence. The Court of Appeals is bound by the facts found by the District Court in reaching that conclusion.

E. Amy Eileen Guiter v. Diane Lee Meinecke, Personally and as Executor of the Estate of Hal Dean Meinecke
Iowa Court of Appeals No. 23-0773. Filed November 21, 2023

George Meinecke, Jr. died testate on July 8, 2003. In his will, he left his wife, Roberta Meinecke, a life estate in his farm real estate with a remainder interest to their children, per stirpes. Article IV of the will provided that "the farm was given to the wife to hold for her life, and upon her death, to my descendants who survive me, per stirpes, together with the power to sell, at public or private sale, mortgage or in any other manner dispose of such property during her life for the purpose of acquiring money for her health, support and maintenance." It went on to say his wife may exercise the power of sale given to her under this Article without court order or the consent of any person having a remainder interest in the property. Roberta survived her husband and took ownership of the property shortly after his death. Roberta in 2021 conveyed her life estate interest in the farm to a trust and the trust then sold the property to John Dawley. The Plaintiff in this action, Ms. Guiter, was the child of one of the heirs of George Meinecke. She argued that there was nothing in the sale which indicated that the transfer was made for the purposes of supporting the health or maintenance of Roberta Meinecke. The District Court found that Roberta had the unrestricted right to sell the farm and that Article IV of the will unambiguously does not require evidence that the property was being sold for the health and maintenance of Roberta as a condition of exercising the power to sell and conveying clear title to a third party. The language regarding whether the property was sold for the health and maintenance of Roberta was not for the purposes of benefiting the remaindermen, but any purchaser of the property could ask for that certification. The District Court's decision in favor of the sale was affirmed by the Iowa Court of Appeals.

F. Concerned Citizens for Grand Avenue Development v. City of West Des Moines, et al.
Iowa Court of Appeals No. 22-1342. Filed July 13, 2023

Concerned Citizens for Grand Avenue Development were opposed to the placing of a golf entertainment facility in West Des Moines. In order for the golf entertainment facility to be constructed, there had to be an amendment to the City of West Des Moines comprehensive plan and a corresponding plan unit development or PUD. This group challenged the city on how they processed the amendments to the comprehensive plan including the fact that they did not hold a development review team meeting and by not considering "smart planning principles" as required by Iowa Code chapters 18B and 414. This group filed an action for mandamus and writ of certiorari. The only issue before the Court is whether an act of mandamus is appropriate in this type of action. The Iowa Court of Appeals determined that mandamus is a special action enforced by an extraordinary writ pursuant to Iowa Code §661. The actions' purpose is "to obtain an order commanding

an inferior tribunal, board, corporation, or person to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station." Mandamus is not available to establish legal rights but only to enforce legal rights that are clear and certain. However, "mandamus shall not be issued in any case whether there is a plain, speedy and adequate remedy in the ordinary course of the law, save as herein provided." The issue before the District Court as well as the Iowa Court of Appeals, is whether mandamus is appropriate in this action. The Court relied upon several Supreme Court decisions which indicate that certiorari is the exclusive remedy to review "decisions of city councils or county boards of supervisors acting in a quasi-judicial capacity when the claimant alleges illegality of the action taken." The Court determined that the zoning action was quasi-judicial and was subject to a certiorari action rather than mandamus. The Iowa Court of Appeals affirmed the dismissal of the petition requesting a writ of mandamus.

G. Gent v. Gent

Iowa Court of Appeals No. 22-1065. Filed October 25, 2023

Thomas Gent was the son of Shirley and Dennis Gent. He purchased a portion of their farm on contract and as part of that contract purchase, he had an option to purchase an additional 70 acres from Dennis and Shirley. The option provided that the amount of the purchase price would be $1,800 an acre and described the legal description of the property. Dennis and Shirely, in 2014, entered a long-term farm lease with Thomas' other brother John, and his wife, Beth. That long-term lease was for 20 years. Thomas got a divorce from his wife and as part of the divorce settlement he was required to "exercise their option rights to purchase the 70-acre tract." Thomas paid his parents the sum of $126,000 for the 70 acres of farmland and they conveyed the property by a special warranty deed. The special warranty deed contained a provision that it was subject to the 20-year farm lease with his brother John and provided for the recording information regarding that lease. After the deed was executed and recorded, Thomas brought this action against his parents alleging they breached the option of purchase in the real estate contract by failing to convey title to the 70 acres free and clear of encumbrances and because of the impact of the farm lease, his parents were unjustly enriched. The District Court found that the special warranty deed merged the option contract into the deed. There was no ability to collect under an unjust enrichment theory because there was a written contract not an implied contract. An implied contract is required for unjust enrichment. The Court of Appeals went through an analysis of the merger doctrine and noted, in general, absent any showing to the contrary, the contract of conveyance is deemed to have merged into the subsequent deed. There are some exceptions, but the court found that there were no exceptions in this case that would prevent the contract from merging into the deed. The Court of Appeals also found that there was no unjust enrichment because there was an actual written contract, no implied contract, and unjust enrichment can only be found to be a valid legal theory if there was an implied contract. The decision of the District Court was affirmed.

H. Binneboese v. Binneboese

Iowa Court of Appeals No. 23-0260. Filed January 10, 2024

James Binneboese farmed the family farm of nearly 400 areas in Plymouth County for his parents, Eugene and Mildred Binneboese. Eugene and Mildred Binneboese provided in their wills that the real estate would pass to their six children. There was an option to purchase granted to James to purchase the farmland at fair-market value. This property option to purchase had to be exercised within five years after the death of his parents, whoever was the last to die. In July of 2020, James exercised his option to purchase but the parties were not able to agree upon a fair-market value for the property. The issue before the Court of Appeals was when was the fair-market value to be determined. The District Court applied the doctrine of equitable conversion to provide that when James exercised his option in 2020, the property essentially became his under the equitable conversion doctrine. That date was the date to determine the market value of the property. The Court eventually determined the market value and found that the market value would be on the date that he exercised the option rather than a later date. The decision of the District Court was affirmed.

I. Wallin v. Hurtig, et al.

Iowa Court of Appeals No. 23-0267. Filed October 11, 2023

A property in O'Brien County consisting of approximately 316.59 acres with 272.8 being tillable was owned as follows: Jane Bjork owned a sixty-percent interest in the property in fee simple and a life estate in forty percent of the property with the remainder in her four living children who were Susan Wallin, Kimberly Hurtig, Sherri Larkin and Kathy Edwards. On January 23, 2015, Bjork entered a 15-year cash rent farm lease with Jeff Hurtig, Inc. Jeff Hurtig, Inc. was owned by the husband of Kim Hurtig.

Bjork passed away on January 7, 2021, and her estate went into probate administration. When Bjork died, the siblings became owners as tenants in common in an undivided forty-percent interest in the property because of the remainder interest and the remaining sixty percent because of the death of Ms. Bjork who left the entire estate to her children.

Prior to September 1, 2021, Wallin, individually and a co-executor of the estate of Ms. Bjork, sent a notice of termination of the farm lease to Jeff Hurtig, Inc. The other co-executors as well as the other owners of the forty-percent interest in the property dispute the validity of the notice of termination.

Wallin then filed this action for a declaratory judgment seeking an order and judgment declaring the farm lease unenforceable, invalid or terminated with respect to 100 percent of the real estate as of March 1, 2022.

Wallin states the question presented is the enforceability of the farm lease respectively following Wallin's termination notice.

Wallin argued that the siblings are owners as tenants in common in the real estate on the date of Bjork's death. Thus, it is Wallin's position that this termination notice terminated the farm lease with respect to 100 percent of the real estate.

The District Court concluded that where a valid lease existed and fewer than all tenants in common wanted to terminate the lease, Iowa's precedent holds the individual co-tenant cannot do so. The District Court held that because the other tenants in common did not agree with the notice of termination of the farm lease, that the notice was not a valid termination notice.

On appeal, Wallin argued that if the lease is allowed to continue, then it would be a restraint on alienation. The Iowa Court of Appeals held leases are not restraints on alienation and that all the co-tenants must agree to terminate the lease to have a valid termination notice. The Court held as far as the remainder interest of the vested forty percent of the farm the statute requires that all of the co-tenants agree to the termination notice; and as to the remaining sixty percent interest, all of the co-executors must agree to the termination of the lease.

The Court of Appeals affirmed the District Court finding that because not all of the tenants in common agree to the termination notice being sent to the tenant, the notice was invalid.

J. Conservatorship of Janice Geerdes by Laura Jenkins, Conservator v. Albert Gomez Cruz
Iowa Court of Appeals No. 22-1905. Filed December 6, 2023

This case deals with the invalidation of a quit claim deed because of undue influence and lack of mental capacity. Janice Geerdes was a 79-year-old widow who owned a farm in Kossuth County, Iowa. She had developed a business relationship with a gentleman named Albert Cruz. He would help her with her farming operation as well as with her personal matters after her husband died in 1999. A part of the farmland was set apart to develop a hog operation. The hog operation was called Blue Acres Pork and was operated by both Ms. Geerdes as well as Mr. Cruz. It was a 9.64-acre parcel. As part of the arrangement, in September of 2004, Geerdes executed a warranty deed conveying a one-half interest in the 9.64 acres parcel to Mr. Cruz. This first deed is not challenged by any party to this case. Over the years, Ms. Geerdes developed some cognitive issues and in April of 2017, had a cognitive assessment. The therapist who completed the cognitive assessment concluded Ms. Geerdes had underlying dementia and needed frequent support and assistance with daily life. Later that same year in 2017, Geerdes was injured in a vehicle accident which affected her mental capabilities. Family members, as well as neighbors and other people who encountered Ms. Geerdes felt that she was never the same after this automobile accident. In January of 2019, Geerdes transferred the other one-half interest in the 9.64-acre property to Cruz. This transfer was made by a quit claim deed. When she had the deed executed and transferred to Cruz, she talked to an attorney, but the attorney was not one she worked with on a regular basis. In May of 2020 after Geerdes had a conservator and guardian appointed, a Ms. Jenkins, who is her daughter,

brought this action to set aside the quit claim deed. After a bench trial two years later, the district found that Geerdes lacked mental capacity to execute the deed and Cruz executed undue influence over Geerdes. The Court set aside the deed that was executed in 2019.

The Iowa Court of Appeals indicated that to set aside a deed because of lack of mental capacity the conservator "had the burden to show by clear, satisfactory and convincing evidence that at the time [Geerdes] made the deed she was incapable of understanding in any reasonable manner the nature of the transaction and its consequences and effects upon her rights and interests."

At the District Court level there was no expert testimony provided regarding Ms. Geerdes' mental capability, but the Court relied upon testimony from neighbors and family regarding Geerdes' cognitive abilities at the time she executed deed in 2019. The Court also looked at the influence that Mr. Cruz had upon Ms. Geerdes and whether that was to be considered an undue influence that made Ms. Geerdes sign the deed .

The Iowa Court of Appeals affirmed the District Court stating that "considering the heightened mental capacity required for an inter vivos transfer and the record as a whole – especially Geerdes' mental state in the months before and after signing the deed, the Court of Appeals agrees the conservator carried her burden to prove Geerdes did not understand the effect of the deed when she signed them."

There was a strong dissent by Judge Buller who indicated that there were no experts who testified at the District Court level regarding her mental capabilities. The burden of proof was clear and convincing evidence. The conservator did not meet this burden of proof. Judge Buller stated that the main reason the District Court set aside the deed was the undue influence by Mr. Cruz on Ms. Geerdes.

K. Estate of Sena J. Wiebke, by Monte Keller, Special Executor v. Keith Wiebke
Iowa Court of Appeals No. 23-0186. Filed January 24, 2024

Sena Wiebke owned a home as well as roughly 95 acres of farmland in the county of Butler. Wiebke had two children, Keith and Joan. In 2010, Wiebke executed a general power of attorney, naming Keith as her attorney-in-fact. This power of attorney remained in effect until Wiebke's death.

In 2016, Wiebke began having health issues. She managed to remain in her home until 2019, with help from Ketih and his ex-wife, who assisted her with finances, groceries, and medication. Wiebke's relationship with Joan deteriorated, culminating in Wiebke requesting in the fall of 2016 that Joan no longer contact Ms. Wiebke.

In June 2017, Keith contacted attorney Ethan Epley on Wiebke's behalf to prepare two quitclaim deeds transferring ownership of her properties to Keith. Wiebke hoped to avoid having probate and qualify Ms. Wiebke for Medicaid benefits. Epley discusses the matter with Wiebke, and it was clear Wiebke wanted to transfer these properties to her son Keith because of the care she had received from Keith. Thereafter, Wiebke moved to

a nursing facility. During that time, it was clear she did not want Joan to visit her and was also clear that Wiebke had the mental capacity of a normal person during her stay at the nursing facility. Wiebke died in 2019. Wiebke's will provided that her home was to go to her five grandchildren in equal parts, half of her real property to Keith and the remaining half equally to Keith and Joan. Joan died one year later, survived by three children. One of her children, Monte Keller, sought appointment as a special executor of the Wiebke estate to investigate whether the transfer of property to Keith was the result of undue influence.

Following a hearing, the District Court entered an order finding there was a confidential relationship between Keith and Wiebke. Keith's efforts to care for Wiebke, "belie an intention to wrongfully procure an improper favor." The District Corut found that "Wiebke knew what she was doing and had legitimate, rational reasons for doing it." The Court dismissed Keller's petition.

The claim of undue influence consists of four elements:

> (1) The [grantor] must be susceptible to undue influence, (2) opportunity [on the part of the grantee] to exercise such influence and effect the wrongful purpose must exist, (3) a disposition [on the part of the grantee] to influence unduly for the purpose of procuring an improper favor must be present, and (4) the result must clearly appear to be the effect of undue influence."

If a party challenging the transfer of property can show a fiduciary or confidential relationship existed, the transfer was considered presumptively fraudulent. The burden of proof then shifts to the grantee to negate a presumption of undue influence by clear, convincing and satisfactory evidence. The grantee must show he acted in good faith throughout the transaction and the grantor acted freely, intelligently, and voluntarily.

There is no question in this case that Keith had a confidential relationship with Wiebke because he was her attorney-in-fact. Therefore, the Court of Appeals had to review the transfer as presumptively fraudulent absent clear and convincing evidence to the contrary. The Court of Appeals relied upon testimony from long-time family friends, the local deputy sheriff, neighbors, and other long-time friends as well as attorney, Epley regarding the transfer of the properties to Keith. The Court found that "undue influence is seldom capable of direct proof and that Keith was able to exercise undue influence if that were his intent. However, the help he was providing Wiebke went above and beyond what most would do in similar circumstances. His efforts belie an intention to wrongfully procure an improper favor. When the transfers were made Wiebke knew what she was doing and had legitimate rationale reasons for doing it. The Iowa Court of Appeals affirmed the District Court finding that Keith had established by clear and convincing evidence, the transfer of properties were not a result of undue influence.

L. Shad Baltimore v. Dallas County and Alternate Route Properties, LLC

Iowa Court of Appeals No. 23-0142. Filed February 7, 2024

Shad Baltimore appeals the District Court decision finding that the Dallas County Board of Supervisors did not act illegally by rezoning a portion of the property owned by Alternate Route Properties, LLC from agricultural to light industry. This case involves a parcel of about 2.5 acres of land in Dallas County. The property abuts a county highway. In 1970 the property was owned by John Penick. He sought to have the property rezoned from agricultural to industrial for the purpose of manufacturing concrete products. The Board approved Penick's request but specified there should be a 150-foot agricultural buffer around the perimeter of the property. There is no evidence that this agricultural buffer was ever constructed when Penick owned the property.

In 2021, Penick sold the property to Alternate Route, which intended to operate a commercial landscaping business at that location. Alternate Route filed a request with the Dallas County Planning and Zoning Commission asking to have the entire property rezoned to an industrial classification, thereby eliminating the 150-foot agricultural buffer. Alternate Route installed a six-foot privacy fence between its property and that of Baltimore.

Baltimore objected to the rezoning request. He noted that several properties in the area were zoned residential. Baltimore stated the proposed rezoning did not comply with the Dallas County Comprehensive Plan and constituted illegal spot zoning. Despite these objections, the Commission recommended approval of the rezoning. It found the 150-foot agricultural buffer area was "excessive and does little to minimize adverse impacts."

The matter proceeded to a public hearing before the Board on November 30. This hearing was delayed until the January meeting when the Board found that the rezoning of the property was consistent with the Comprehensive Plan and approved the petition to make the entire parcel light industrial.

Baltimore then filed a petition for writ of certiorari, claiming that the Board's action was illegal, arbitrary and capricious and it was not supported by substantial evidence. He also asserted the Board failed to comply with the Comprehensive Plan and engaged in illegal spot zoning.

The District Court concluded the Board's decision was supported by substantial evidence and was not illegal, arbitrary or capricious and was not an abuse of discretion. Baltimore appealed that decision to the Iowa Court of Appeals. The Iowa Court of Appeals reviewed Iowa Rules of Civil Procedure 1.1401 which states "An inferior tribunal commits an illegality if the decision violates a statute, is not supported by substantial evidence, or is unreasonable, arbitrary, or capricious." The Iowa Court of Appeals will review a District Court's ruling on the petition for writ of certiorari for the correction of errors at law. The Iowa Court of Appeals is bound by the District Court's findings if it is supported by substantial evidence.

The Iowa Court of Appeals found that rezoning of the Alternate Routes individual property to eliminate the 150-foot agricultural buffer is a change that would not require an amendment to the Dallas County Comprehensive Plan. The court determined that amending the Comprehensive Plan is only required when there is major changes and not to a minimal change in a property's character.

The contention that the change was not in accordance it the Comprehensive Plan, the Court found that there was substantial evidence in the record to support the District Court decisions that the board acted consistent with the Comprehensive Plan.

Baltimore challenged the elimination of the 150-foot barrier as an illegal spot zoning. The Court indicated that to determine if spot zoning is valid, the Court considers (1) whether the new zoning is germane to an object within the police power; (2) whether there is a reasonable basis for making a distinction between the spot zoned land and the surrounding property; and (3) whether the rezoning is consistent with the comprehensive plan. Each case is dependent on its own particular facts.

The Court concluded that the reasonableness of the Board's decision was debatable, as it was supported by competent and substantial evidence. The rezoning of the 150-foot agricultural barrier to light industrial did not create a small island of property with a use different than that of surrounding area. The majority of the property had been zoned light industrial since 1970 and the rezoned area was attached to the light industrial area. The Court found that this was not an illegal spot zoning.

The Court concluded that on the rezoning of the property the Court would not substitute its judgment for that of the board when the reasonableness of the board's decision is debatable.

The Court of Appeals affirmed the District Court's decision.

M. Rochon Corporation of Iowa, Inc. n/k/a Graphite Construction Group, Inc. v. Des Moines Area Community College
Iowa Court of Appeals No. 22-2098. Filed February 7, 2024

This is a case dealing with a public construction project owned by Des Moines Area Community College (DMACC). DMACC employed Graphite Construction Group, Inc. as a principal contractor on the public construction project. In a public construction project, there is always a retainage held by the owner pursuant to Iowa Code §573. In this case there was a subcontractor's claim that was filed before the project was completed. Graphite Construction, Inc. filed a bond in an amount twice the amount of the subcontractor's claim. Graphite requested the bond amount from the retainage in the amount of $434,442.64 pursuant to Iowa Code §573.16.

Graphite Construction relied on Iowa Code §573.16(2) maintaining that once it bonded off the claim filed by Metro Concrete, DMACC was statutorily required to release to Graphite an amount equal to the full amount the bond. DMACC responded that

§573.28(2)(c) provides it with authority to withhold certain retainage funds for the value of uncompleted work and materials while still complying with Iowa Code §573.16(2). There was also the question as to whether Iowa Code §573.21 allows a principal contractor to recover attorney's fees if successful in obtaining the release of retainage funds.

Metro Concrete submitted a claim alleging Graphite Construction owed Metro $217,221.32 at the completion of its subcontractor work. Metro initiated the current lawsuit. Graphite Construction made an early request of retainage funds relying on Iowa Code §573.16(2) for the authority that DMACC was required to release twice the amount of Metro Concrete's claim from retainage once Graphite Construction bonded off the claim. The issue was whether Graphite Construction was entitled to immediately have the retainage released for the Metro Concrete claim in the amount of $434,442.64 or whether or not it must wait for a portion of the retainage needed until the project was completed and accepted by DMACC. The District Court denied the request of Graphite based upon timing of the request by Graphite.

Rather than a simple yes or no regarding whether §573.16(2) applies at this point in the construction project, it could be both §573.16(2) applies and DMACC's release of the retainage funds are simultaneously governed by another statute §573.28(2)(c). If the third option is correct, the Court of Appeals had to decide what happens when as here, there is not enough retainage funds for the public owner to both release the full bonded off amount for a subcontractor's claim and retain the value of 200% of the unfinished work and unprovided materials as provided by statue. DMACC released the retainage funds up the amount which allowed them to retain monies to pay for the uncompleted work on the project as required by Iowa Code §573.28. The Iowa Court of Appeals reversed the District Court finding that Graphite Construction's request for release of the full value of the surety bond from the retainage funds is timely and appropriate under §573.16(2) and because DMACC cannot rely on §573.28 to withhold some retainage based on the value of uncompleted labor and materials, the court reversed the decision of the District Court and remanded for an order granting payment from the retainage fund in the amount of $82,627.78, plus interest as provided in §573.16(2) to make Graphite Construction whole for bonding off the claim of Metro Concrete. The Court of Appeals found there was no interplay between Iowa Code Sections 573.16(2) and 573.28.

The court did not award attorney's fees.

N. Pettett v. Krughel
Iowa Court of Appeals No. 23-0448. Filed March 6, 2024

This case deals with an interpretation of restrictive covenants in a subdivision. The restrictive covenants provided for a subdivision building committee that had to approve all structures that would be constructed in the development until all lots had structures located on the lots. There were also specific provisions regarding what is required if you wanted to build a storage building on your property. In this case, the Krughels built a 1,496 square foot metal building on the residential lot in the Prairie Woods Estates Subdivision of the City

of Blue Grass. They did not seek approval from the subdivision's building committee. The structure violated several covenants governing the design and placement of a storage building on the property. The Krughels built this building during the pendency of a lawsuit to try to prevent the construction of the storage building on the Krughels' lot. The Krughels went ahead and built the building prior to the trial and the District Court ordered the demolition of the storage building. The Krughels argued at District Court as well as on appeal that the building committee did not exist and because the nonexistent committee compliance with the covenant would have been impossible or impractical. The covenants were clear that there was a building committee for construction of dwellings on the property. The building committee would have no more than three members and would approve any structures constructed on the lots. There were also various restrictive covenants regarding a storage building if it was to be built on one of the lots. The storage building had to be (1) placed in the rear of the single-family residence and no closer than 20 feet from any lot line; (2) constructed of wood with a shingle type roof; (3) limited in size to no more than 180 square feet in area and in height to a single story; (4) matching in exterior design, color and placement to the single-family residence; and (5) reviewed and approved by the Building Committee prior to the installation. In this case the structure built by the Krughels was 1,496 square feet in size which was over eight times the maximum size allowed. It had steel siding and a steel roof rather than shingles. It was located on the street rather than in the back yard and placed eight feet from the property line rather than 20 feet. The Krughels tried to rely upon a case from the Iowa Supreme Court, *DuTrac Community Credit Union v. Radiology Group Real Esatte LLC* 891 N.W.2d at 210 (Iowa 2017) where compliance with a requirement for approval by a building committee is excused by the doctrines of impossibility or supervening impracticability. In that case, the building committee was composed of two people specifically appointed by the developer. Certain individuals were named for the building committee and there was no indication that anyone else could serve on the building committee. The individuals either died or were not available any longer so the Court held that approval by the building committee was not necessary because of the doctrine of impossibility or supervening impracticability. Here, there was no such requirement. The restrictive covenant named two members who did not have to be anyone specific.

The Krughels were aware they were violating the covenants as the neighbors complained about the location of the material on the property and advised the Krughels not to build the building. The Krughels went ahead and built the building prior to trial and the District Court ordered that the building be demolished. The Iowa Court of Appeals affirmed the District Court holding that the Krughels built a building on their lot in violation of the lot's restrictive covenants.

O. Country View Acres Homeowners v. Dickinson County, Iowa and Dickinson County Board of Adjustment
Iowa Court of Appeals No. 23-0772. Filed March 27, 2024

Woodlyn Hills Estates, LLC owned approximately 88 acres of real estate in rural Dickinson County. It applied for a conditional use permit with the Dickinson County Board of Adjustment to develop an RV park with 174 spots. Following public hearings the Dickinson County Board of Adjustment voted 3-2 to grant the permit. Country View Acres Homeowners Association, a nonprofit association of individuals who owns homes in Dickinson County near the proposed RV park, petitioned for a writ of certiorari to challenge the Board's decision. The District Court allowed Woodlyn Hills to intervene and following the admission of some additional evidence, the District Court annulled the writ. The homeowner's association appealed. Woodlyn Hills acquired this parcel to develop an RV park. Apparently, there have been many RV parks constructed in the area in recent years. There was opposition from residents in the area to RV parks because RV parks affect the quality of life in the Dickinson County area. Many of the RV parks relied upon a private sewage system which could damage the water in the lakes. RV parking caused congestion on the lakes, and they did not support the services provided to the parks through taxes. There was a hearing on April 25, 2022, to consider the conditional use permit. The procedures of the Dickinson County Board of Adjustment required that all testimony be included in the public hearing. Any written testimony received by the Board had to be read at the Board of Adjustment hearing. Woodlyn Hills presented its request for the conditional use permit and questions were asked by the Board. After the Board members had no more questions for the developer, some 69 letters and emails that were sent in support of or opposition to the granting of the permit were read aloud by an assistant of the Dickinson County Zoning and Environmental Health Department. She identified the authors of each letter and email but not their addresses. There was some objection by members of the audience that they had not heard anyting new in these objections and asked if the reading of the items be stopped. The Assistant County Attorney who was present responded that "They all have to be read because everybody gets their voice if they took the time to write an email or letter."

At the meeting in April there were some questions regarding the private sewer of the RV park. There was some discussion with a gentleman named Steven Anderson who was the mayor of the City of Milford. He indicated there might be a possibility that the sewers of the city could be used and connected to the RV park. There was discussion on this issue and the Board decided to continue the hearing to June 6 to allow some investigation as to whether the RV park could be connected to the sewer of the City of Milford. The Board would not accept any additional letters or public comments because the hearing was being continued and the portion for public comments was already closed. At the June 6 hearing the developer was allowed to present its case but no additional comments or discussion was allowed by the opposition to the RV park. The Dickinson County Board of Adjustment approved the request on a 3-2 vote.

After the hearing in June, it became clear that some items that had been received by the Board prior to the April meeting in either support or opposition of the development

had not been read at the public hearing. One email from a William Van Orsdel who wrote on behalf of the Iowa Great Lakes Association was of concern. The email from William Van Orsdel expressed concern regarding the development of the RV park noting that there had been a large influx of RV parks in the area in recent years. There was also concern regarding no sanitary sewer connection and that septic systems would leak fluids into the lake causing pollution and damaging water quality. There was also concern regarding boat congestion on the lakes and car congestion on the roads. Property values would be lowered and there was general opposition by this Association to the development of the RV park.

The email had attached to it letters that were not signed. This email as well as a couple of the other items in support of the development were not read into the record at the April meeting.

The Iowa Court of Appeals in reviewing a writ of certiorari determined that it could set aside a decision by the Board of Adjustment if procedural rules were not substantially followed. There is no technical requirement of compliance but only substantial compliance. The Court indicated with a certiorari proceeding the District Court finds the facts anew only to determine if there was illegality not appearing in the record made before the Board.

The bylaws of the Board of Adjustment provide that oral or written statements can be tendered to the Board by anyone interested in particular items at issue. Here the Board of Adjustment did not read all of the letters including the letter from William Van Orsdel or other letters that were from individuals who supported the development. The Court was concerned that Woodlyn Acres was allowed to present new evidence and information at the June 6 hearing without the Board allowing public comment on the new evidence. The Board's rules provide that the applicant will likely have the last word – giving them an opportunity to present final summaries and arguments after closing the public comments. Woodlyn Acres was allowed to go well beyond just summary arguments here – and the public was barred from responding. This was an error.

The Court of Appeals stated that "considering all the procedural issues discussed, we conclude the Board failed to substantially comply with its procedural requirements and thus acted illegally." A remand of the case for reinstatement of the writ and for further proceedings, during which the Board shall reopen the record for public comment. The Board shall receive Van Orsdel's April 21 email and any correspondence submitted as attachment 4170 that have identifiable authors which were not read at the April 25 meeting, and the letters from Megan Skalicky and Seth Skalicky, before conducting another vote on whether to grant the conditional use permit. The Court took no position on whether the conditional use permit for the RV park should be granted.

P. Blue Verbrugge Family Farms, LLC v. Hamilton County Board of Supervisors as Trustees of Drainage District No. 71
Iowa Court of Appeals No. 22-1797. Filed March 27, 2024

The Hamilton County Board of Supervisors were the trustees of Drainage District No. 71. Drainage District No. 71 was established in 1908 and contains 10,375 acres of land. It was originally formed to drain Mud Lake, which no longer exists. DD71 contains a main open ditch and 7 lateral branches. The drainage ditches are used for watersheds by landowners within the drainage district.

In 2019, a landowner within DD71 petitioned the Board to investigate the need to clean out the main open ditch. The Board appointed an engineering firm, and a particular engineer named Jacob Hagen who determined the repairs to the drainage system would cost approximately $2,457,800. The report recommended the annexation of additional land into DD71. Hagen certified an annexation report which recommended the annexation of another 30,538 acres into DD71. At a public hearing held on May 2, 2021, several landowners filed written objections to the proposed annexation. Additional objections were heard at the hearing. In the meantime, the landowners retained an engineer, a Mr. Gallentine, to evaluate the proposed annexation. His findings recommended that the proposed annexation be rejected because the land would not receive a material benefit from inclusion in DD71.

The Board approved the proposed annexation and 125 plus landowners appealed. Following a three-day trial, the court determined that Hagen's annexation report did not meet the requirements of Iowa Code §468.119 (2021) because it did not specify the material benefit received by the land sought to be annexed. The Court concluded that none of the Plaintiffs' lands are materially benefited by DD71's facilities, and therefore may not be annexed into DD71 under the applicable statutory framework. The District Court reversed the Board's decision and vacated the annexation of the property. The Board now appeals that decision.

The case was tried in equity and a review of equity cases is de novo. In equity cases, especially when considering the credibility of witnesses, the Court gives weight to the fact findings of the District Court but is not bound by them. The issue in this case is whether the annexation report complied with Iowa Code §468.119 which must specify the character of the benefits received and that the benefits must be material. The report by Hagen did not indicate the material benefits to each landowner by inclusion in the drainage district but only that it would generally benefit the area because of the way the water naturally flowed. The Court of Appeals found that the Board showed some benefit to the landowners, but it has not met its burden of proof to show a material benefit – that is, it has not shown the improvements to the quality of the soil of the landowners in the proposed annexation area is better based upon the drainage into the drainage ditch. The Court of Appeals therefore affirmed the decision of the District Court.

Q. Vaudt v. Wells Fargo Bank, et al.
Iowa Supreme Court No. 23-0482. Filed March 8, 2024

The Vaudts own property in West Des Moines, Iowa. They purchased the property in August of 1991. Approximately 23 years ago, the Vaudts cultivated a landscape barrier along the east border of their property that is marked by trees, bushes and mulch. The Enamorados purchased the neighboring property in May of 2021 and had the property surveyed in July with the intention of installing a swimming pool and a fence. When they received the survey results, they discovered the landscaped area bordering the Vaudts' property was encroaching onto their property. Based on those results, the Enamorados disputed the landscaped area as beyond the true western boundary line, and the Vaudts filed their petition to quiet title on June 27, 2022. Count I alleged a claim of boundary by acquiescence and Count II brought an action for adverse possession. The District Court relied upon the decision of *Heer v. Thola*, 613 N.W.2d 658, which held that the one-year statute of limitations in 614.15(5)(b) applicable to a trustee's deed barred a boundary-by-acquiescence claim as well as the claim for adverse possession. On appeal, the Vaudts asked to overrule *Heer* because its interpretation of Section 614.14(5) constitutes manifest error. Wells Fargo who is the lender on the Enamorados' property urged the Court to reaffirm *Heer* asserting that the general assembly intended to provide special protection to property transferred from a trust. Iowa Code §614.15(b) provides, in part, as follows:

> "An action based upon an adverse claim arising on or after January 1, 2009, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not be maintained either at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record title to the real estate, legal or equitable, more than one year after the date of recording of the instrument from which such claim may arise."

The statute in question is directed at actions based upon adverse claims arising on or after January 1, 2009, by reason of a transfer of an interest in real estate by a trustee. The *Heer* decision determined that that section of the code was appliable to a claim for boundary-by-acquiescence. The Iowa Supreme Court held that special treatment afforded by this particular section of the Iowa Code does not mean the statute of limitation in subsection (5) is a title-clearing statute barring all prior claims against the property. It was a question of whether or not overruling *Heer* would cause an issue regarding stare decisis, suggesting that the Court limit *Heer's* application to boundary-by-acquiescence claims and allow only the Vaudts' claim for adverse possession to proceed. The Iowa Supreme Court overruled *Heer* to the extent it held the statute of limitations in Iowa Code Section 614.14(5)(b) applies to claims like the Vaudts which arise from events unrelated to the neighboring property's transfer by trustee's deed.

The Supreme Court held that that section was only applicable to issues regarding the transfer of the property by a trustee's deed. These issues would be related to the authority of the trustee, whether the trustee was appointed properly, and other issues regarding the actual transfer of the deed by a trustee's deed. There was a dissent filed by

Justice McDonald who concurred in part and dissented in part. He felt that because of stare decisis they could not overrule *Heer* and therefore *Heer*'s decision regarding the applicability of Iowa Code Section 614.15(1) was applicable to the claim of the Vaudt's boundaries by acquiescence claim. However, he believed that the claim by the Vaudts based upon adverse possession could proceed and it would not be barred by Iowa Code Section 614.14(5)(b).

R. Lime Lounge, LLC v. City of Des Moines, Iowa
Iowa Supreme Court No. 22-0473. Filed March 22, 2024

This case deals with a liquor license issued to the Lime Lounge by the State of Iowa. The City of Des Moines provided the Lounge with a conditional use permit for a bar in the East Village. That conditional use permit was revoked by the City of Des Moines and the City asked the state to revoke the liquor license of Lime Lounge, LLC. The bar challenged the ordinance arguing it was preempted by Iowa Code chapter 123 and also that the enforcement of the ordinance violated the equal protection and spot zoning prohibitions. The Iowa District Court as well as the Iowa Court of Appeals and the Iowa Supreme Court determined the bar's challenges to the CUP ordinance lacked merit. Iowa Code §123 allows municipalities to regulate bars through zoning, noise restrictions and other health and safety measures within their local police power. The Des Moines CUP ordinance is not preempted by state law and it easily survives the bar's constitutional challenge under rational basis review. The city did not engage in illegal spot zoning. The Iowa Supreme Court therefore affirmed the decision of the Iowa Court of Appeals as well as the Iowa District Court. Lime Lounge, LLC is located in the East Village. They had obtained their liquor license along with a conditional use permit from the City of Des Moines. The conditional use permit regulated certain aspects of a bar, including noise, parking and other uses that are specific to a bar. The lounge had issues regarding the noise that emanated from the patio. The Zoning Board of Adjustments voted to revoke Lime Lounge's CUP. The City then filed a complaint with the Alcohol and Beverage Division of the State of Iowa seeking to revoke Lime Lounge's liquor license pursuant to Iowa Code §123.39 because Lime Lounge did not meet the City's zoning ordinance which requires a valid CUP. Lime Lounge then filed this declaratory judgment action in district court alleging that the City's CUP requirement runs contrary to the regulatory scheme enacted by the Iowa legislature governing distribution of liquor license and is preempted by state statute. A temporary injunction was issued. At trial the District Court determined that Iowa Code §123 does not preempt the City's ordinance to validly regulate the premises of liquor control licensed establishments in Des Moines to ensure premises where alcoholic beverages are served are safe and proper. The District Court also determined that the ordinance did not violate the equal protection clause of the United States and Iowa Constitutions. Lime Lounge LLC failed to prove any type of illegal spot zoning. The Iowa Court of Appeals as well as the Iowa Supreme Court agreed with analysis of the District Court and rejected the assertions of Lime Lounge, LLC.

S. Sheetz v. County of El Dorado
601 U.S. _____, 2024

In April of 2024, the United States Supreme Court decided *Sheetz v. County of El Dorado*, holding that legislative imposed fees on development are subject to the same constitutional scrutiny as fees imposed by administrative bodies. George Sheetz applied for a permit to build a manufactured home. The county conditioned the permit on payment of a $23,420 traffic impact fee. The fees were not individually negotiated, and it was derived from a rate schedule legislative enacted by the County's elected Board of Supervisors. *Sheetz* paid the fee under protest and when the County ignored his request for refund, he brought suit containing that the fee was invalid under *Nollan* and *Dolan* because the fee was not roughly proportional to the impact of his proposed home on traffic. The California Court dismissed the challenge concluding that *Nollan* and *Dolan* did not apply to legislative imposed fees. In reversing, the U.S. Supreme Court in an opinion by Justice Barrett, held that there was no basis for affording property rights less protection in the hands of legislators than administrators. The Takings Clause applies equally to both – which means that it prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits. The Supreme Court refrained from deciding whether scrutiny of legislatively imposed exemptions must be tailored with the same degree of specificity as permit condition that targets a particular development.

The line of U.S. Supreme Court cases from *Nollan* through *Sheetz* is designed to restrain government from imposing conditions on developers when those conditions are not justified.

T. Conservatorship of Janice Geerdes by Laura Jenkins Conservator v. Albert Gomez Cruz
Iowa Supreme Court No. 22-1905. Filed May 17, 2024

Janice Geerdes owned farmland in Kossuth County with her husband, Marlin. Marlin passed away in 1999. Prior to his death, Janice and Marlin were friends with Albert Cruz who had worked on their farm and also had rented a house from them. Over the years, Albert and Janice became good friends. They started a pork operation called Blue Acres Pork on one of the farms. Janice conveyed one-half interest in approximately nine acres to Albert for the operation of the hog facility. This event occurred in 2004. Thereafter, Janice and Cruz continued to be good friends and in 2019 Janice executed a quit claim deed to Cruz conveying the remaining interest in the nine-acre hog site parcel to Cruz for no consideration. Prior to the execution of this deed, Janice had certain cognitive tests completed which indicated she may have dementia. The deed was executed in front of Janice's accountant and was prepared by an attorney. After the deed had been executed by Janice to Albert a conservatorship and guardianship was set up with Laura Jenkins serving as a conservator. Laura then brought this action challenging the validity of the quit claim deed based upon undue influence and lack of capacity. After a bench trial the District Court set the deed aside finding there as undue influence in confidential relationship and even if no undue influence, the woman lacked necessary capacity to deed her interest in the land. The Court of Appeals in a 2-1 decision affirmed on the basis of

lack of capacity. The Supreme Court went through an analysis of the requirements to show undue influence and lack of capacity. In order to show undue influence, four elements are necessary. (1) the Grantor must be susceptible to undue influence; (2) there was an opportunity to exercise such influence and effect the wrongful purpose; (3) a disposition to influence unduly for the purpose of procuring an improper favor must be present; and (4) the result must clearly appear to be the effect of undue influence. Once undue influence is shown, which must be by clear, convincing and satisfactory evidence, the burden of proof then shifts to the party alleged to have committed the undue influence to show otherwise. Here, the Court went through an extensive analysis of cases, and they determined that, in this case, the evidence was not clear and convincing to establish undue influence.

On the issue of lack of capacity, the Court found to establish lack of capacity the burden is upon the Plaintiffs to establish by clear, satisfactory and convincing testimony that the Grantor, at the time he executed the deed, did not understand in any reasonable manner the nature of the particular transaction in which he was engaged and the consequences and effects upon his rights and interests. The mere fact that she had cognitive tests that showed some issues regarding her mental weakness, mere mental weakness in a Grantor would not invalidate a deed. To have that effect, the mental powers must be so far deteriorated or destroyed that the Grantor is incapable of understanding the nature and consequences of the instrument he or she executes. Here, the Court found there was not clear and convincing evidence established to show that she lacked mental capacity, and the decision of the Court of Appeals and District Court were reversed. The case was remanded to the District Court.

U. Mitch Robeoltman and Sabrina Risley v. Timothy Hartkopp
Iowa Court of Appeals No. 23-1513. Filed May 22, 2024

In this case, Mitch Robeoltman and Sabrina Risley purchased a 71-year-old house from Timothy Hartkopp. Hartkopp was not the original owner of the home but was a person who flipped houses - meaning he intended to update the house and then resell it for a profit. On the seller's disclosure statement required by Iowa Code §558A, he stated that the heating system and central cooling system had no known problems and had been replaced roughly one month before the sale. He also wrote that the refrigerator that was included in the sale was working and was included in the sale of the property. The standard purchase agreement had a provision that allowed the buyers to inspect the property. They elected not to inspect, and the agreement stated if they did not do so, they agreed to accept the property in its present condition.

After the sale had been completed, Robeoltman and Risley discovered that the heating, ventilation and air conditioning system was faulty. To repair the system, it cost them approximately $5,000. They also found that the refrigerator was not working, Hartkopp replaced the refrigerator, but they felt the refrigerator replacement was not the same type as was originally sold to them and they had it replaced for the sum of $4,000. Hartkopp refused to cover the cost of the HVAC repairs or the refrigerator. Robeoltman and Risley brough this action against Hartkopp alleging multiple claims including a

breach of the implied warranty of workmanlike construction and a failure to disclose defects. The District Court dismissed the case finding that the theory of implied warranty of workmanlike construction only applied to a builder vendor and not to an individual that sold a property. The Court also found that there was no evidence shown that Mr. Hartkopp had reason to believe that the HVAC system was not working properly, or the refrigerator was not working properly. Robeoltman and Risley appealed. The Iowa Court of Appeals affirmed the District Court's finding that the implied warranty of workmanlike construction was only applicable to a builder vendor. The Supreme Court has extended the implied warranty of workmanlike construction to cover claims of third-party purchasers against the builder, but it declined to extend the implied warranty of workmanlike construction to non-builder vendors. The issue of failure to disclose defects was not proven by Robeoltman and Risley and that they failed to show any knowledge on the part of Hartkopp as to the defects in the HVAC system or the refrigerator. Case law has indicated that the transferor shall not be liable for any error, inaccuracy or omission and the information required in a disclosure statement unless that person has actual knowledge of the inaccuracy or fails to exercise ordinary care in obtaining the information. The District Court's decision was affirmed.

V. Carter v. Fricke

Iowa Court of Appeals No. 23-0612. Filed May 22, 2024

Carter owned certain property in the town of Melrose, Iowa. Carter owned Lot 1 and his neighbors, the Wilcoxons owned Lots 2 and 3. Subsequent to the death of the Wilcoxons, Lot 3 was conveyed by their daughter to the Frickes. Carter brought this action alleging that he owned the property by adverse possession. The District Court, after reviewing the evidence, found that Carter had not shown by clear and positive proof of hostile, exclusive possession of Lot 3 for 10 years and dismissed the petition of Carter. Carter was unsure as to when he improved the property over the years and started paying taxes. Carter eventually acted as sole possessor of Lot 3 – accumulating property, housing horses, paying taxes, and maintaining the land – but the Court could not find proof of 10 straight years of hostile, exclusive possession. The Iowa Court of Appeals indicated law favors regular title and Carter has not shown clear and positive proof of hostile, exclusive possession of Lot 3 for 10 years. Therefore, they affirmed the District Court's judgment that the Frickes are the sole lawful owners of Lot 3 and its dismissal of Carter's trespass claim.

Acquiring ownership by adverse possession is difficult with usually no equities in favor of one who claims property of another by adverse possession and his acts are to be strictly construed. To prevail, an aspiring owner must show "hostile, actual, open, exclusive and continuous possession, under claim of right or color of title for at least 10 years. The Court found that inferences are not enough and there has to be clear and positive proof.

In this case, under the heavy burden of proof of adverse possession the Court did not find clear and positive evidence to support 10 continuous years of hostile possession and therefore ruled in favor of the Frickes.

W. Rivera v. Clear Channel Outdoor, LLC, et al.
Iowa Supreme Court No. 23-0679. Filed June 7, 2024

Rivera purchased certain property on contract from an entity known as On the Wall Painting, Inc. The date of the contract was February 11, 2008, and the contract was recorded on February 20, 2008. On February 11 or February 12, 2008, On the Wall granted a billboard easement to Clear Channel. This grant occurred through the execution of a document entitled "Grant of Perpetual Easements and Declaration of Restrictions" which will be referred to simply as "the easement." The easement purports to grant "a perpetual, exclusive easement." for construction, maintenance, repair, operation, illumination, and use of "outdoor advertising sign structures: and related equipment "over, under, upon and across" portions of the parcel. The easement was recorded on February 20, 2008.

On February 11, 2008, On the Wall's president executed an "affidavit of possession." Rivera brought this action to quiet the title to the property to eliminate Clear Channel's interest in the property. The District Court relying upon Iowa Code §614.17A granted a Moton for Summary Judgment for the holders of the easement based upon the one limitation provisions – that of §614.17A. It also raised other alternative arguments under §614.1(4) and §614.(5).

The Iowa Supreme Court went through an analysis of Iowa Code §614.17A and determined that this section of the code could only be used by the holder of the record title to the real estate in possession. They went on to determine that an easement holder is not an individual who is in possession of the property. An easement is an interest in land which entitles the owner of the easement to use or enjoy land in the possession of another. The Court went on to say the most recent Restatement of Property says that "an easement creates a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the users authorized by the easement."

The holder of the easement tried to argue that because it was such a large structure on the property being a billboard, that the billboard amounts to possession under every sense of the word. The Iowa Supreme Court disagreed holding that an easement is a nonpossessory interest in the property and could not be utilized as a holder of record title in possession that could use §614.17A to cut off other interests in the property. The case was reversed and remanded to the district court for further proceedings.

X. Sundance Land Company, LLC v. Phillip Remmark and Bobbie Remmark
Iowa Supreme Court No. 22-0848. Filed June 14, 2024

This is a case of first impression by the Iowa Supreme Court. The Court states that good fences make good neighbors. Sometimes they make good boundaries as well. Under Iowa law when neighbors have treated a fence or other marker as a dividing line between their respective properties for 10 consecutive years, or even if the legal line of demarcation is located elsewhere, either of them can go to court to seek a judicial decree

that a boundary by acquiescence has been established. But what if the properties are acquired by the same owner before anyone has gone to Court? Does that mean that the process of recognizing some boundary other than the legal one has to start over if the properties later go back into separate ownership? After all, when there is only one owner of the two properties, there is no need to recognize a boundary. No one is their own neighbor. The Iowa Supreme Court joined with other jurisdictions in holding that a boundary by acquiescence determination contemplates the properties have been in separate ownership during the required 10-year period leading up to the present controversy. This rule is consistent with the texts of Iowa Code §650 and it is generally the reasonable and fair outcome. The Supreme Court disagreed with the reasoning of the lower courts that allow a party to seize upon any past tenured period of de facto boundary recognition by two neighbors, regardless of intervening events, and have that boundary declare the actual boundary line. The Iowa Supreme Court held that boundary by acquiescence is not self-executing.

In this particular case, there were two parcels of property in Wapello County. The north property was approximately 80 acres. The south property was approximately 60 acres. Access to both properties is from Lake Road, which lies to the east and runs north and south. The county at one time had an easement for road that ran west from Lake Road. The road's east-west path ran slightly north of the legal boundary between the two properties. At some time, a fence was put up along the north edge of the right of way for the road. There are rows of trees on either side, and it was not clear as to when the old road ceased to exist, but the county abandoned the easement in 1980. The two parcels were owned separately for many years with both parties recognizing the fence line as the boundary between the two properties. Eventually, both properties became owned by Scott Hubbell in 2014. In 2014 he acquired both properties. In 2014 or 2015 Scott Hubbell installed a grain bin south of the old fence line. Again, he believed this was on the south property. However, Hubbell was not concerned about the boundary line as he owned both parcels. He also installed a shed on the south property that he believed was on the south property line, but it was not. The Remmarks' purchased the south property in April of 2017 and Sundance purchased the north property in September of 2018. Sundance, prior to the purchase of the property, had a survey done which revealed that the actual legal boundary of the north property was south of the fence line and included part of the area where the machine shed, and the grain bin existed. Sundance went ahead and purchased the property believing that the two parties could reach an agreement over the boundary dispute. This did not occur, and Sundance filed a Petition seeking the Court to quiet title according to the surveyed property lines alleging that the Remmarks' were trespassing on the north property and requesting a temporary injunction against the Remmarks entry on the north property. The Remmarks filed a counterclaim asserting boundary by acquiescence. The trial was a bench trial, and the District Court concluded that a boundary line by acquiescence had been established by the old fence line. The District Court also held that common ownership did not eradicate a boundary by acquiescence once it had been recognized by the parties.

The Iowa Supreme Court had to decide whether common ownership of two properties where there had been a previous boundary by acquiescence destroy the

boundary by acquiescence and require that a new period of time be started to have a boundary by acquiescence agreement. The Court relied upon a case from Colorado entitled *Salazar v. Terry*, 911 P.2d 1086 (Colo. 1996) that common ownership of a parcel will destroy any boundary by acquiescence that had previously been established and where the 10-year period had been completed. In Colorado it was 20 years. The Colorado Supreme Court relied on the doctrine of merger of easements where if a party owns two properties where there had previously been easements granting access or other types of easements, those easements would be merged into the title and the easements would no longer exist. The Iowa Supreme Court held, in this case, that common ownership eradicates potentially acquiesced boundaries between the two properties other than the legally established ones. There was a strong dissent by Justice Oxley.

Legislation

Senate File No. 2204 – Restrictions on foreign ownership of agricultural land.

Senate File No. 2268 – Assistance animals and service animals as a reasonable accommodation for housing and requirements for findings of disability.

Senate File No. 2291 – An act relating to real estate brokers and brokerages.

House File No. 2276 – An act relating to the zoning of maternity group homes.

House File No. 2388 – An act relating to the regulation of styles and materials used for residential building exteriors.

House File No. 2485 – An act relating to the regulation of watercraft and equipment on public lakes by common interest communities and certain nonprofit corporations.