

IN THE SUPREME COURT OF IOWA

No. 21-0556

Ringgold County No. EQCV506712

**RICHARD GROUT** as Trustee of the  
**HELEN SCHARDEIN 2018 REVOCABLE TRUST**

**Petitioner-Appellee,**

vs.

**DAN R. SICKELS,**

**Respondent-Appellee.**

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APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR RINGGOLD COUNTY  
THE HONORABLE MICHAEL JACOBSON, JUDGE

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**APPELLEE'S BRIEF**

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**Douglas D. Daggett AT0001801**

Douglas D. Daggett, P.C.

100 E Montgomery

Creston, IA 50801

Ph. 641-782-3170

FAX 641-782-3322

e-mail: [ddaggett@lawyer.com](mailto:ddaggett@lawyer.com)

ATTORNEY FOR PETITIONER-  
APPELLEE, RICHARD GROUT, as  
Trustee of the HELEN SCHARDEIN  
2018 REVOCABLE TRUST

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**STATEMENT OF ISSUES PRESENTED FOR REVIEW**

**I. WHETHER HELEN SCHARDEIN AND DAN R. SICKELS MAINTAINED THEIR MUTUAL INTERESTS AS JOINT TENANTS WITH FULL RIGHTS OF SURVIVORSHIP AT THE TIME OF THE DEATH OF HELEN SCHARDEIN**

*Brown v. Vonnahme*, 343 N.W.2d 445, 451 (Iowa 1984)

*In re Estate of Johnson*, 739 N.W.2d 493, 496 (Iowa 2007)

*In re Estate of Lamoureux*, 412 N.W.2d 628 (Iowa 1987)

*In re Estate of Thomann*, 649 N.W.2d 1 (Iowa 2002)

Iowa Code Section 9B.9 (2017)

Iowa Code Section 614.14(6) (2017)

Iowa R. App. P. 6.904(3)(g)

Iowa R. App. P. 6.907

**II. WHETHER DAN R. SICKELS SHOULD RECEIVE ONE-HALF OF THE NET SALE PROCEEDS AS A TENANT IN COMMON**

*Mahon v. Mahon*, 121 N.W.2d 103 (Iowa 1963)

*Scheppele v. Schulz*, Slip. Op. No. 6-687/05-1837  
(Iowa App. 11/30/2006)

*Williams v. Monzinger*, 16 N.W.2d 619 (Iowa 1944)

Iowa R. App. P. 6.904(3)(g)

Iowa R. App. P. 6.907

## **ROUTING STATEMENT**

This case should be routed to the Court of Appeals pursuant to Iowa Rule of Appellate Procedure 6.1101(3)(a) since this case involves application of existing legal principles.

## **STATEMENT OF THE CASE**

This case is a partition action governed by Iowa Code Chapter 651. The Petition for Partition was filed on May 20, 2020 (App. 4-5). Respondent's Appearance, Answer, and Affirmative Defenses was filed on July 15, 2020 (App. 6-7). Based upon the parties' Stipulation, the Court entered the Order to Waive Appraisal; to Waive Appointment of Referee; and to Approve Sale of Real Estate on September 4, 2020 (App. 8-15). Upon sale of the real estate, the net proceeds were paid to the Clerk of Court pursuant to this court Order.

The district court held a bench trial on March 4, 2021. The Findings of Fact, Conclusions of Law, Analysis and Ruling filed on March 26, 2021 ruled in favor of Petitioner, and awarded the net proceeds from the sale of real estate to Petitioner (App. 82-88). Respondent appealed on April 23, 2021 (App. 89-90).

## **STATEMENT OF THE FACTS**

*Identity of Ruth A. Daggett.* As a matter of importance to the undersigned and as a professional statement to the court, the court must note that Ruth A.

Daggett is not the wife of counsel for Petitioner. Rather, Ruth A. Daggett is the mother of counsel for Petitioner. This fact had been addressed directly to the court during the argument on the summary judgment motion. However, the transcript of testimony at trial does not identify any relationship between Ruth A. Daggett and counsel for Petitioner. Moreover, the relevance or importance of any such relationship is immaterial to the factual and legal issues before the appellate court.

The facts relevant to this partition action are as follows: Helen Schardein and Dan R. Sickels, as joint tenants, acquired title to the subject real estate by Warranty Deed recorded on May 6, 2014 in Book 408 at Page 308 in the Office of the Ringgold County Recorder (Ex. 1, App. 59-60). Helen Schardein provided all of the funds required to purchase the real estate in the amount of \$86,000 (Ex 6, App. 81; Tr. p. 22-23, App. 112-113). Dan R. Sickels admitted at trial that he did not contribute any funds to the purchase of the real estate (Tr. p.43, App. 133). Dan R. Sickels further admitted that Helen Schardein paid the HOA dues (Tr. p. 45-46, App. 135-136). During the time that Richard Grout was the Agent for Helen Shardein and later as Trustee of her trust, he paid the property taxes and expenses for the subject real estate on behalf of Helen Schardein and her trust (Tr. p. 23-24, App. 113-124).

Richard Grout testified that Helen Schardein had mentioned that the name of Dan R. Sickels was added to the deed of this real estate to enable him

to have boat and fishing access to the members-only, Sun Valley Lake (Tr. p. 21-22, App. 111-112). Dan R. Sickels admitted that he was in favor of acquiring the subject real estate in 2014 because he liked to fish (Tr. p. 41, App. 131). He also testified that as an owner he could get a sticker from the local HOA to take out his boat on the lake (Tr. p. 44, App. 134).

On November 13, 2018, Helen Schardein executed an Iowa Statutory Power of Attorney (Ex. 3, App. 63-67) and the Declaration of Trust establishing the Helen Schardein 2018 Revocable Trust (Ex 4, App. 68-79). Due to her physical inability to sign, these instruments were signed by Ruth A. Daggett at the direction of Helen Schardein (Ex 3 p. 3, App. 66; Ex. 4 p. 4, App. 71). The execution of each instrument was witnessed and acknowledged before a Notary Public (Ex 3 p. 3, App. 66; Ex. 4 p. 4, App. 71). Attachment A of the revocable trust identified the subject real estate, locally known as 3198 Overland Trail, Ellston, Iowa among the real estate properties to be subject to the trust (Ex. 4 p. 6, App. 73).

Richard Grout as Agent for Helen Schardein executed a Warranty Deed conveying all of her “undivided one-half interest in and to” the subject real estate “for estate planning purposes”, which deed was recorded on November 27, 2018 in Book 476 at Page 68 in the Office of the Ringgold County Recorder (Ex. 2, App. 61-62). This conveyance was made pursuant to the authority Helen Schardein granted to Richard Grout by the Iowa Statutory Power of Attorney,



which was later recorded on November 27, 2018 in Book 476 at Page 63 in the Office of the Ringgold County Recorder (Ex. 3, App. 63-67). This Warranty Deed was given to implement the estate planning intentions of Helen Schardein as expressed in the Helen Schardein 2018 Revocable Trust (Ex. 4, App. 68-79).

Helen Schardein died on March 30, 2019 (Ex. A, App. 55-56). Dan R. Sickels hired an attorney to draft an Affidavit of Surviving Joint Tenant (Tr. p. 48, App 138; and Ex. A, App. 55-56). Later, Mr. Sickels hired realtor, Helen Kimes to sell the real estate. When the abstract of title was read by the buyer's attorney, the title opinion found that the Helen Schardein 2018 Revocable Trust owned an undivided one-half interest in the subject real estate. (Tr. 61-62, App. 151-152). Based upon the stipulation of the parties and the district court order, the subject real estate was eventually sold by the agency of Helen Kimes (Tr. 62, App. 152). The net proceeds from the sale of the subject real estate were deposited with the Ringgold County Clerk of Court (Ex. B, App. 57-58)

## ARGUMENT

### **I. WHETHER HELEN SCHARDEIN AND DAN R. SICKELS MAINTAINED THEIR MUTUAL INTERESTS AS JOINT TENANTS WITH FULL RIGHTS OF SURVIVORSHIP AT THE TIME OF THE DEATH OF HELEN SHCHARDEIN.**

**Preservation of Error.** Ownership of the subject real estate was contested at trial. The district court made findings of fact, conclusions of law,

and rulings in favor of Petitioner (App. 82-88). Respondent appealed (App. 89-90).

**Scope and Standard of Review.** Actions to partition real property are equitable proceedings subject to de novo review by the appellate court. Iowa R. App. P. 6.907. In equity cases, the trial court’s findings of fact are not binding on the appellate court, but are given weight, especially when they concern witness credibility. Iowa R. App. P. 6.904(3)(g).

**Argument.**

The district court correctly identified the controlling precedents of Iowa law in its final order. Joint tenancy is a form of ownership where two or more parties share in the enjoyment of the property during their lives and the right of survivorship that enables the survivor to enjoy the entire estate. *In re Estate of Thomann*, 649 N.W.2d 1, 5-6 (Iowa 2002). During life, each joint tenant’s ownership is described as an undivided interest in the whole estate. *Brown v. Vonnahme*, 343 N.W.2d 445, 451 (Iowa 1984). During the duration of joint ownership, the undivided interest is a “proportional interest” while the right of survivorship is the “accretive interest.” *Thomann*, 649 N.W.2d at 6. Any joint tenant, whether individually or collectively, may take action to sever the joint tenancy to create tenancy in common. *Id.*

Prior to 2007 Iowa followed the traditional common law test that looked for the four unities of title to create a joint tenancy: unity of interest, title, time,

and possession. *In re Estate of Johnson*, 739 N.W.2d 493, 496 (Iowa 2007). Under the traditional common law, a joint tenancy was severed and terminated when one joint tenant took action to destroy one of the four unities. *Id.* at 496-97. The *Johnson* court replaced the four unities test with an intent based approach. *Id.* at 498. Importantly, the relevant intent is not a subjective intent, but rather the objective intent derived from the instrument effecting the intent to sever the joint tenancy. *Id.* at 498-99. Moreover, the *Johnson* court expressly recognized that one joint tenant may unilaterally convert a joint tenancy into a tenancy in common. *Id.* at 498 fn 7 and at 501. This result must be legally possible for every joint tenant, because each joint tenant retains the authority to convey, sell, transfer, or otherwise dispose of his or her interest in the jointly owned property. *In re Estate of Lamoureux*, 412 N.W.2d 628, 633 (Iowa 1987).

In this case, the district court correctly found that the instruments executed on November 13, 2018 were signed and notarized pursuant to Iowa Code Section 9B.9 (2017). Thus, the Warranty Deed conveying all of Helen Schardein's undivided interest in the subject real estate to the trustee of her trust to be owned subject to the terms of the Helen Schardein 2018 Revocable Trust objectively operated to unilaterally sever the joint tenancy. Ergo, at the time of Helen Schardein's death, her undivided half remained in the ownership of the trustee subject to the terms of the trust. Iowa Code Section 614.14(6) (2017)

(“An interest in real estate held of record at any time by a trust shall be deemed to be held of record by the trustee of such trust.”).

In this way, this case is easily distinguishable from the *Johnson* case which turned on the fact that the person who tried to sever the joint tenancy executed a void deed. *See Johnson*, 739 N.W.2d at 501.

Moreover, Respondent’s emphasis on the facts and circumstances surrounding the creation of the joint tenancy in 2014 leads him to two false propositions 1) Helen Schardein could never decide to terminate the joint tenancy; and 2) Helen Schardein could act to terminate the joint tenancy only if she directly told Dan R. Sickels beforehand. Clearly, Iowa law holds that every joint tenant retains power and authority to sever and terminate a joint tenancy at her will at any time. Iowa law does not have any case or statute that says a co-owner must notify or otherwise obtain the permission of another co-owner before conveying her own undivided interest in real estate to another (in this case to the trustee of her revocable trust).

Therefore, upon the death of Helen Schardein Dan R. Sickels was not a joint tenant, and he had no right of survivorship upon which to claim sole ownership of the subject real estate. The district court corrected ruled that the Mr. Sickels was a tenant in common with the Helen Schardein 2018 Revocable Trust at the time of the death of Helen Schardein. This is consistent with the testimony of Richard Grout who explained that the Helen Schardein 2018

Revocable Trust did not die with Helen Schardein in March 2019 and the Trust continued in ownership of the subject real estate after her death (Tr. p. 37, App. 127).

## II. WHETHER DAN R. SICKELS SHOULD RECEIVE ONE-HALF OF THE NET SALE PROCEEDS AS A TENANT IN COMMON

**Preservation of Error.** Distribution of the net proceeds from the sale of the subject real estate was contested at trial. The district court made findings of fact, conclusions of law, and rulings in favor of Petitioner (App. 82-88). Respondent appealed (App. 89-90).

**Scope and Standard of Review.** Actions to partition real property are equitable proceedings subject to de novo review by the appellate court. Iowa R. App. P. 6.907. In equity cases, the trial court's findings of fact are not binding on the appellate court, but are given weight, especially when they concern witness credibility. Iowa R. App. P. 6.904(3)(g).

### **Argument.**

The relative interests of tenants in common are based upon their capital contribution to the property. In a partition action involving tenants in common, the Iowa Supreme Court has long held:

[W]e find the rule to be that where a conveyance to purchasers of a tenancy in common is silent these purchasers are presumed to take equal shares. However, this presumption is a rebuttable one

and does not prevent proof from being introduced that the respective holdings and the interests of the parties are unequal. In a showing of unequal contribution, in the absence of further proof the prior presumption is overcome and another presumption arises; that is, that the parties intended to share in proportion to the amount contributed by each to the purchase price.

*Williams v. Monzingo*, 16 N.W.2d 619, 622-623 (Iowa 1944); accord *Mahon v. Mahon*, 121 N.W.2d 103, 106 (Iowa 1963) (holding that a co-owner is entitled to reimbursement for contribution to the property).

In this case the evidence is undisputed, Helen Schardein provided all of the capital contribution in the amount of \$86,000.00 to fund the purchase of the subject real estate. Helen Schardein also paid all of the ongoing expenses such as property taxes, insurance, and HOA dues. Thus, the Helen Schardein 2018 Revocable Trust, as the successor in interest to Helen Schardein, is entitled to all of the net proceeds from the sale of the subject real estate in the amount of \$73,312.54 since these net proceeds are less than Helen Schardein's initial capital contribution to fund the purchase of the subject real estate.

In an unreported decision, the Iowa Court of Appeals clearly held that each co-owner is entitled to return of her or his capital contribution from a partition sale before the any surplus of the sale proceeds could be divided proportionally. *Scheppele v. Schulz*, Slip. Op. No. 6-687/05-1837 at page 6 (Iowa App. 11/30/2006). One co-owner's capital contribution was \$303,000 and the other co-owner's capital contribution was \$146,800. The *Scheppele* court held that

the net proceeds from the sale of the subject property should be first allocated to reimburse the relative capital contribution of each co-owner, and then any remaining balance should be divided equally between the co-owners. *Id.* at page 8.

Again, under the *Scheppele* analysis the result is the same, the net proceeds from the sale of the subject real estate in the amount of \$73,312.54 was rightly awarded to Petitioner because the net proceeds were less than the original purchase price of \$86,000, which was entirely paid by Helen Schardein.

### **CONCLUSION**

For these reasons, Petitioner-Appellee requests that the court affirm the district court decision in all respects.

### **REQUEST FOR ORAL ARGUMENT**

Petitioner-Appellee, by and through counsel, requests to be heard in oral argument of this appeal.

Respectfully Submitted,

/s/ Douglas D. Daggett

Douglas D. Daggett AT0001801

Douglas D. Daggett, P.C.

100 E Montgomery

Creston, IA 50801

Ph. 641-782-3170  
FAX 641-782-3322

e-mail: ddaggett@lawyer.com

ATTORNEY FOR PETITIONER-  
APPELLEE, RICHARD GROUT, as  
Trustee of the HELEN SCHARDEIN  
2018 REVOCABLE TRUST

**CERTIFICATE OF FILING**

I, Douglas D. Daggett, hereby certify that a copy of the foregoing Appellee's Brief was filed via EDMS on October 7, 2021.

*/s/ Douglas D. Daggett*  
Douglas D. Daggett AT0001801  
Douglas D. Daggett, P.C.  
100 E Montgomery  
Creston, IA 50801

**CERTIFICATE OF SERVICE**

I, Douglas D. Daggett, hereby certify that the foregoing Appellee's Brief was filed via EDMS on October 7, 2021, which gives notice to counsel for the opposing party as follows:

David J. Hellstern  
Sullivan & Ward, PC  
6601 Westown Parkway, Suite 200  
West Des Moines, IA 50266  
mbump@sullivan-ward.com  
dhellstern@sullivan-ward.com  
Attorneys for Respondent-Appellant

*/s/ Douglas D. Daggett*  
Douglas D. Daggett AT0001801  
Douglas D. Daggett, P.C.  
100 E Montgomery  
Creston, IA 50801



## COST CERTIFICATE

I, Douglas D. Daggett, hereby certify that the actual cost of printing the foregoing Appellee's Brief is \$0.00.

*/s/ Douglas D. Daggett*  
Douglas D. Daggett AT0001801  
Douglas D. Daggett, P.C.  
100 E Montgomery  
Creston, IA 50801

## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 3,122 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Garamond font.

*/s/ Douglas D. Daggett*  
Douglas D. Dagget AT0001801  
Douglas D. Daggett, P.C.  
100 E Montgomery  
Creston, IA 50801

DDD:a18962