IN THE SUPREME COURT OF IOWA

SUPREME COURT No. 21-0556

RINGGOLD COUNTY Case No. EQCV506712

DAN R. SICKELS,

Respondent/Appellant,

vs.

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

Petitioner/Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR RINGGOLD COUNTY
THE HONORABLE MICHAEL JACOBSEN, JUDGE

APPELLANT'S FINAL REPLY BRIEF

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Williams v. Mozingo, 16 N.W.2d 619, 620 (Iowa 1944).

REPLY TO APPELLEE'S STATEMENT OF THE FACTS

Appellee describes several scenarios that require additional clarification or do not otherwise align with the facts of the present matter, and require rebuttal, to wit:

1. "*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." (Appellee's Proof Brief p. 6-7).

   Rebuttal: Appellant concedes and accepts that Ruth A. Daggett is not the wife of counsel for Petitioner. The parties have previously agreed that Ruth A. Daggett is the mother of counsel for Petitioner.

2. "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 (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 (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 (App. 134)." (Appellee's Proof Brief p. 7-8).

Rebuttal: Richard Grout's opinions about the motivations for Helen Schardein's addition of Dan as a Joint Tenant to the property are mere speculation about perks synonymous with ownership. However, Helen Kimes' testimony at trial provided evidence of a statement that Helen Schardein made at the time such conveyance was made. At the time of the creation of the joint tenancy, Helen Schardein stated that she wanted the property to be held in joint tenancy with Dan. Helen Kimes asked her whether she understood what joint tenancy meant, to which Helen Schardein replied affirmatively twice. (App. 149-150).

3. "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",[sic] . . ." (Appellee's Proof Brief p. 8).

Rebuttal: The 2018 Warranty Deed referred to above does not contain the language as quoted by Appellee. The Warranty Deed on its face purports to convey all of Helen's "*undivided interest* in and to" the subject real estate. (Petitioner's Ex. 2, App. 61) (emphasis added). At no point does it mention her interest as being a *one-half interest* at all.

4. "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)." (Appellee's Proof Brief p.9).

Rebuttal: Appellant agrees that the Warranty Deed effectuated Helen's "estate planning intentions," and that the language of this Deed did not manifest any other form of Helen's intent, whether to sever the existing joint tenancy or otherwise.

ARGUMENT

Appellant Dan Sickels wholly disagrees with Appellee's assertion that not only was the joint tenancy severed by Helen Schardein's ambiguous Warranty Deed, but that Dan should receive none of the proceeds from its recent sale. There is no evidence in the 2018 Deed or in any of the statements made by Helen Schardein that she intended to sever the joint tenancy. Likewise, there is insufficient evidence to rebut the presumption of Dan's survivorship interest in the property, or in the alternative, his co-equal ownership of the property as a tenant in common if it is found that Helen severed the joint tenancy.

I. HELEN SCHARDEIN AND DAN SICKELS MAINTAINED THEIR MUTUAL INTERESTS AS JOINT TENANTS WITH FULL RIGHTS OF SURVIVORSHIP.

"The estate of joint tenancy is an estate held by two or more persons jointly with equal rights to share in its enjoyment during their lives and having as its distinguishing feature the right of survivorship. . . . Thus, a joint tenant owns an undivided interest in the entire estate to which is

attached the right of survivorship." *Estate of Bates v. Bates*, 492 N.W.2d 704, 706 (Iowa Ct. App. 1992). 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). When determining whether a joint tenancy exists, "the intent of the parties should prevail when possible." *In re Estate of Johnson*, 739 N.W.2d 493, 497 (Iowa 2007). Appellee stated correctly that "the relevant intent is not subjective intent, but rather the objective intent derived from the *instrument effecting the intent to sever* the joint tenancy." *Id.* at 498-99 (emphasis added).

In 2014, a joint tenancy was explicitly created between Helen and Dan, and the real estate agent's testimony confirmed that Helen was fully aware of the implications of such ownership division when she confirmed her desire to hold the property in joint tenancy through the 2014 Deed. (App. 147-148). The intent of the 2014 Deed was that both Helen and Dan would share in the property until one passed away, in which case, the survivor would take absolute

ownership of the property. *See In re Estate of Kirk*, 591 N.W.2d 630, 634 (Iowa 1999).

Estate of Johnson is not distinguishable from this case merely because of the absence of a void deed: intent is the single most important factor in such an analysis. *See* 739 N.W.2d at 500. "Under an intent-based test, it is fundamental that the underlying instrument must effectuate the intent to sever." *Id.* In the case referenced, Mr. Johnson was deemed to have the wrong intent because "[h]e did not intend to sever the joint tenancy and create a tenancy in common with his wife; *his clear plan was to take everything for himself*. Thus, *absent a stated intent to sever and create a tenancy in common* manifested through a valid legal instrument," there can be no severance. *See Johnson*, 739 N.W.2d at 501-502 (emphasis added).

In the present case, the only intent that can be derived from the 2018 Deed is that the instrument was used "for estate planning purposes." (Ex. 2, App. 61). There was no indication of the joint tenancy's existence in the instrument. *See id.* The instrument did not even contemplate that Helen's

interest in the property was a partial one. *See id.* Appellee failed to provide any evidence at trial whatsoever that Helen specifically intended to sever her joint tenancy in the property with Dan. Without anything more, the instrument's intent deeding her interest to her trust is ambiguous at best, and it could have been that Helen intended her trust to take the entire property when Dan died, but most likely it was "for estate planning purposes" as stated on its face, to avoid having to probate the properties it was deeding to her trust, which included an additional property to this one jointly owned with Dan. Without the explicit intent required under Iowa's standard, such an instrument is ineffective to actually sever a valid joint tenancy. *See Johnson*, 739 N.W.2d at 501-502.

That is not to say, as Appellee has asserted, that Helen could have *never* decided to terminate the joint tenancy, it's simply not manifestly clear that she intended to do so here. (Appellee's Proof Brief p.12) (emphasis added). Neither do we believe that Helen needed to get permission from or provide notice to Dan before taking valid action if it were determined that she intended to sever the joint tenancy. *Id.* Our point

remains that the instrument Appellee solely relies on here did not satisfy the requirements of Iowa's intent-based standard. The 2018 Deed failed to manifest any intent whatsoever as to what Helen intended to do with her interest as a joint tenant, other than transferring her current interest, unchanged, with her other property into a revocable trust "for estate planning purposes." (Ex. 2, App. 61). The joint tenancy was therefore not severed, and Dan should be deemed to be the sole owner of the property, as originally intended by the original conveyance into joint tenancy with full rights of survivorship.

II. EVEN IF THE CONVEYANCE SEVERED THE JOINT TENANCY, DAN SICKELS RETAINED ONE-HALF OF THE PROPERTY AS A TENANT IN COMMON

Although a valid joint tenancy with full rights of survivorship exists, and Dan Sickels became the sole owner as a matter of law after Helen's passing, if this Court should determine that his interest was converted into that of a tenant in common, it should not preclude Dan from receiving any less than fifty percent (50%) of the property value. Appellee correctly states that the presumption of equal shares of

tenants in common is a rebuttable one, but not all consideration is able to be accounted for on a spreadsheet. *See Williams v. Mozingo*, 16 N.W.2d 619, 622-623 (Iowa 1944). Furthermore, Helen's intent when she created the joint tenancy, as well as her knowledge of its implications and alternatives, has not been overcome by any evidence Appellee has presented to date. *See In re Estate of Johnson*, 739 N.W.2d 493, 497 (Iowa 2007).

In her testimony, Helen Kimes stated that, at the real estate closing, she asked Helen Schardein: "Now, Helen, you understand that it goes automatically to the other party if something happens to either of you?" (App. 149). To this, Helen replied, "Yes." *Id.* Mrs. Kimes further confirmed this by asking "So that's the way you want it prepared?" (App. 149-150). Helen Schardein responded, "Yes." (App. 150). This evidence of Mrs. Kimes impressions is more than enough to validate the intent of the 2014 Deed.

While it is true that Helen contributed much to the property's ongoing expenses, Dan provided much to Helen as a companion in their years together. At the time the joint

tenancy was created, Helen believed that these noneconomic contributions from Dan were enough to justify her unilateral payment of the full value of the real estate, while still listing him as a joint tenant with full rights of survivorship. Furthermore, it is an equally valid presumption that Helen intended that Dan's interest as a joint tenant not require further future consideration, which would make any argument of unequal contribution to the property moot. *See Williams v. Mozingo*, 16 N.W.2d 619, 620 (Iowa 1944).

As stated previously, the intent of Helen cannot be interpreted to any extent from what Appellee has presented. Appellee takes a big leap here and states that Helen's intent was to give Dan a life estate solely so he could fish near the property. (Appellee's Proof Brief p.8). If that was the case, Helen could have specifically deeded Dan a life estate to the property. She was certainly aware of how joint tenancies worked when she created one, and explicitly stated that she wanted Dan to take full possession if she died first, according to testimony at trial. (App. 149-150). Appellee seems to rely on Dan's testimony at trial of his love for fishing more than

firsthand evidence showing what Helen actually intended when she created the joint tenancy.

Appellee also relies in part on an unreported decision, which should be given no binding weight in the present action. Regardless, *Scheppele v. Schulz* provides another moot point of analysis in that pure economic capital contribution to the property was not the basis for the original ownership interests of Helen and Dan. *See* No. 05-1837, 2006 WL 3436304 (Iowa Ct. App. Nov. 30, 2006). Helen provided the full purchase price of the property as well as ongoing expenses, but chose to hold the property as a joint tenant co-equally with Dan in consideration of his noneconomic contributions to this property specifically. The conveyance of her interest to a revocable trust was for estate planning purposes only, to avoid having to probate her properties, not for the purpose of taking the entire property for herself or her beneficiaries. *See Estate of Johnson*, 739 N.W.2d at 501-502.

As a result, even if the interests of Dan and Helen were converted to tenants in common without the requisite intent, as Appellee has argued, Dan should be the rightful owner of

fifty percent (50%) of the property and its proceeds. However, his original interest as a co-equal owner of the property with full rights of survivorship has not been rebutted by the evidence presented.

CONCLUSION

The explicit intent of Helen Schardein to create a joint tenancy with Dan Sickels was not revoked or converted by the subsequent instrument. Under the circumstances, any intent for the deed's use other than "for estate planning purposes" to avoid probate is not apparent from its contents, and without requisite intent, the joint tenancy has not been severed. Therefore, the trial court's ruling should therefore be overturned, and the proceeds of the sale of this property should be solely determined to belong to Dan.

REQUEST FOR ORAL ARGUMENT

Appellant Dan R. Sickels restates his request for the opportunity to present an oral argument in support of this appeal.

Respectfully Submitted,

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CERTIFICATE OF FILING

The undersigned hereby certifies that a copy of the final reply brief of Respondent-Appellant was filed via EDMS on the 7th day of October, 2021.

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CERTIFICATE OF SERVICE

It is hereby certified that on the 7th day of October, 2021, the undersigned party did file via EDMS the within final reply brief of Respondent-Appellant, which gives notice thereof to counsel for the other party at the following:

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/s/ David J. Hellstern

COST CERTIFICATE

I hereby certify that the true and actual cost of printing the foregoing proof reply brief of Respondent-Appellant was $0.00.

/s/ David J. Hellstern

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 2,167 words, excluding the parties of the brief exempted by Iowa R. App. Pr. 6.903(1)(g)(l).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(3) and the type-style requirements of the 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 Bookman Old Style.

/s/ David J. Hellstern — Signature
10/7/2021 — Date