

IN THE SUPREME COURT OF IOWA
SUPREME COURT NO. 21-0953

KATINA M. LITTLE,

Plaintiff-Appellee,

vs.

KEITH A. DAVIS and DONALD J. DAVIS,
Co-Trustees of the DONALD K. AND
COLLEN DAVIS FAMILY TRUST,

Defendants-Appellants.

KEOKUK County No. TRPR038226

APPEAL FROM THE DISTRICT COURT
IN AND FOR KEOKUK COUNTY
THE HONORABLE CRYSTAL S. CRONK, DISTRICT COURT JUDGE

John G. Daufeldt AT0001944
JOHN C. WAGNER LAW OFFICES, P.C.
600 39th Avenue
P.O. Box 262
Amana, IA 52203
Tel: 319-622-3357
Fax: 319-622-3404
Email: johnd@jcwagnerlaw.com

Attorney for Appellants

APPELLANTS' FINAL BRIEF

CERTIFICATE OF SERVICE

On this _6th __ day of December, 2021, I the undersigned, did file electronically this Appellant's Final Brief with the Clerk of the Iowa Supreme Court, pursuant to Iowa R. App. P. 6.701.

PROOF OF SERVICE

On this _6th __ day of December, 2021, I the undersigned, did serve this Appellant's Proof Brief on the attorneys for the Appellee listed below via electronic service of the Electronic Document Management System. Upon information and belief, the attorneys for the Appellee are registered filers pursuant to Iowa R. Civ. P. 16.201.

Randall C. Stravers
STRAVERS LAW FIRM
110 North Market St.
Oskaloosa, IA 52577
Tel: 641-673-9451
Fax: 641-673-3502
Email: stravers@pcsia.net
ATTORNEY FOR APPELLEE

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. THE DISTRICT COURT ERRED IN FINDING AS A MATTER OF LAW THAT IOWA CODE SECTION 633A.1105 IS A COMPLETE BAR TO A MODIFICATION OF AN IRREVOCABLE TRUST PURSUANT TO SECTION 633A.2202.

Authorities:

Iowa Code section 633A.2202.

I. Routing Statement:

Retention of this appeal by the Iowa Supreme Court is appropriate because the issues raised herein are substantial questions enunciating significant legal principals and of first impression. See R. App. P. 6.1101(2)(c). The question of whether Iowa Code section 633A.1105 is a complete bar to a settlor modifying an irrevocable trust pursuant to section 633A.2202 is a question of first impression in Iowa, and given the interest in and the considerable impact of decisions affecting trusts and the ability of settlors to amend irrevocable trusts, the Iowa Supreme Court should, therefore, retain this appeal.

II. Statement of the Case:

This appeal concerns the ability of a settlor/trustee to modify an irrevocable trust with consent of all the living adult beneficiaries as established and allowed under Iowa Code section 633A.2202.

The underlying District Court case was initiated by Appellee, Katina Little (hereinafter, “Ms. Little”), through her filing a petition seeking the nullification of an amendment to an irrevocable trust (Ms. Little’s Petition; App. 6). Appellants, Keith A. Davis and Donald J. Davis, Co-Trustees of the Donald K. and Collen Davis Family Trust (hereinafter, “Keith”, “Donald J.”, or collectively, the “Trustees”), filed their Answer and Affirmative Defenses and Counterclaim generally denying the

amendment was unenforceable (Trustees' Answer, p. 1; App. 10). Ms. Little then subsequently filed an Amended Petition and Answer to Counterclaim (Ms. Little's Amended Petition, p. 1; App. 14). The Trustees filed their answer to the Amended Petition (Trustees' Amended Answer, p. 1; App. 19). Written discovery was exchanged, and Ms. Little's deposition was taken (Trustees' Exhibits B and C; App. 94-120). The parties then filed competing motions for summary judgment seeking an order from the District Court granting their respective positions concerning the enforceability of the amendment (Ms. Little's Motion for Summary Judgment, App. 22; Trustees' Motion for Summary Judgment, App. 57).

The District Court subsequently decided in favor of Ms. Little, finding, as a matter of law, the amendment to trust was "void for lack of authority" and basing the decision solely on statutory provisions set forth in section 633A.1105 (Ruling on Pending Motions for Summary Judgment, p. 4-5; App. 140). The Trustees then filed a Motion to Reconsider, Enlarge or Amend the Court's Ruling on Pending Motions for Summary Judgment pursuant to I.R.Civ.P. 1904(2) (Trustees' Motion to Reconsider, Enlarge or Amend; App. 146).

The District Court then entered a Ruling on Trustees' Motion to Reconsider, Enlarge, or Amend (Ruling on Motion to Reconsider; App. 149). While addressing issues not expressly determined by the court in the previous ruling, the District

Court, nevertheless, held to its prior conclusion and found section 633A.1105 “effectively nullified any provision of the trust code that is in contradiction to the language of the trust itself” (Ruling on Motion App. 150-51). Accordingly, the District Court determined section 633A.2202 would have no bearing on and was inapplicable to justifying the enforcement of the modification of trust (App. 151).

Trustees filed a Notice of Appeal on July 9, 2021, commencing this appellate case (Notice of Appeal; App. 154).

III. Statement of the Facts:

On February 9, 2016, Donald K. Davis (hereinafter “Donald”) and Collen Davis (hereinafter “Collen”), husband and wife, created a joint revocable trust via a Trust Agreement (the “Trust Agreement”), as co-grantors and co-trustees of the “Donald K. & Collen Davis Family Trust” (the “Trust”) (Trustees’ Defendants’ Exhibit A to Defendants’ Statement of Undisputed Material Facts (hereinafter “SUMF”) ¶ 1; App. 76). The intent behind the creation of the Trust was to protect the primary asset of the Trust, certain farmland acquired by Donald, from any claim of Collen or her children to the farmland in the event that Donald pre-deceased Collen (Ms. Davis’ Plaintiff’s Exhibit 2 to Statement of Material Facts, p. 1, App. 53-54; Trustees’ Defendants’ Exhibit B Transcript of Katina Little Deposition, p. 19, Lines 24-5, p. 20, Line 1-7; App. 98).

The Trust Agreement provided it would become irrevocable upon the death of one of the Grantors (Trustees' SUMF ¶ 4; App. 73). On September 5, 2017, Collen passed away and she was survived by Donald and the Trust thereby became "irrevocable" (Trustees' SUMF ¶ 3; App. 73, 53, 97).

On or about May 30, 2018, a First Amendment to Trust Agreement was executed by Donald which amended Article VI, B of the Trust (the "Amendment to Trust") (Trustees' SUMF ¶ 5; App. 73, 55-56). The original Article VI, B of the Trust Agreement stated the following:

"[d]istribution of Remainder of Trust Estate. Upon the death of the Surviving Spouse, the Trustee shall, after paying or reserving for all amounts payable, as provided in ARTICLE VIA A., shall distribute the remainder of the trust estate as follows:

1. An undivided one-fourth shall be distributed to KEITH A. DAVIS, and if he is deceased, his share shall be divided equally among his children, per stirpes;
2. An undivided one-fourth shall be distributed to JEFFREY D. DAVIS, and if he is deceased, his share shall be divided equally among his children, per stirpes;
3. An undivided one-fourth shall be distributed to KATINA M. LITTLE, and if she is deceased, her share shall be divided equally among her children, per stirpes;
4. An undivided one-fourth shall be distributed to DONALD J. DAVIS, and if he is deceased, his share shall be divided equally among his children, per stirpes; and[.]"

(Trustees' Defendants' Exhibit A, p. 3; App. 78). The Amendment to Trust modified the above section by setting forth the following:

“(a) All of the farmland that is owned by the trust on the date of death of DONALD K. DAVIS shall pass one-half to Keith A. Davis and one-half to Donald J. Davis. I request that the farmhouse not be sold off of the farm or that the farmhouse be rented unless agreed to by both owners.

(b) The sum of \$50,000.00 shall be paid to my son Jeffrey D. Davis

(c) The sum of \$25,000.00 shall be paid to my daughter Katina M. Little

(d) The remainder of the trust estate shall be divided as follows:

1. An undivided one-fourth shall be distributed to, KEITH A. DAVIS, and if he is deceased, his share shall be divided equally among his children, per stirpes;
2. An undivided one-fourth shall be distributed to, JEFFREY D. DAVIS, and if he is deceased, his share shall be divided equally among his children, per stirpes;
3. An undivided one-fourth shall be distributed to, KATINA M. LITTLE, and if she is deceased, her share shall be divided equally among her children, per stirpes;
4. An undivided one-fourth shall be distributed to, DONALD J. DAVIS, and is he is deceased, his share shall be divided equally among his children, per stirpes;

(Plaintiff’s Exhibit 3; App. 55-56). The Amendment to Trust, therefore, reduced significantly Ms. Little’s share in the trust proceeds.

The Amendment to Trust references an attached “written consent of the living adult beneficiaries who would have received a share if the surviving spouse was not living” (the “Consent to Modify Trust Agreement”) (Trustees’ SUMF ¶ 5; App. 55). This Consent to Modify Trust Agreement states in relevant part:

“[t]HEREFORE, the undersigned, being the current trustee, the current income beneficiary, and all the living adult beneficiaries who would receive a share of the trust if Donald K. Davis was not living, hereby agree that Donald K. Davis, as surviving Trustor and as surviving Trustee, shall have the power and authority to alter, amend, or revoke the DONALD K. & COLLEN DAVIS FAMILY TRUST.”

(Plaintiff’s Exhibit 2; App. 54). In support of this declaration, the Consent to Modify Trust Agreement was fully executed by the necessary parties from April 21st to May 21st, 2018 (Plaintiff’s Exhibit 2; App. 55). Keith and Donald J. signed on April 21st; Jeffrey D. Davis signed on April 23rd; Ms. Little signed on April 25th; and finally, Donald signed on May 21st, 2018 completing the necessary attestations.

On November 13, 2019, Donald passed away. On February 27, 2020, Ms. Little filed a Petition seeking nullification of the Trust Amendment. Trustees filed an Answer and Affirmative Defenses, and Counterclaim¹ on March 20, 2020. On March 24, 2020, Ms. Little filed an Amended Petition and Answer to Counterclaim, in which she asserted that the Amendment to Trust was invalid and unenforceable for the following reasons:

- (a) it lacked the signatures of all the settlors and beneficiaries of the Trust Agreement;
- (b) the Trust Agreement on its face prohibited Donald, as a surviving grantor, from having the power to amend, revoke or terminate the Trust;

¹ Trustees’ Counterclaim requested attorney fees and costs pursuant to I.C. § 633A.4507 in defending the Trust from Ms. Little’s petition and is not relevant to the facts and circumstances of this Appeal.

- (c) that pursuant to Iowa Code section 633A.2202 of the Iowa Trust Code, both Donald and Collen Davis were required to sign the Amendment and since that event did not occur the Amendment is void; and
- (d) that pursuant to Iowa Code section 633A.1105 of the Iowa Trust Code trust language takes precedence over any section of the Trust Code to the contrary.

(Ms. Little's Plaintiff's Amended Petition ¶ 9(a)-(d); App. 15-16).

Trustees' filed a Motion for Summary Judgment seeking an order from the District Court finding, as a matter of law, that Ms. Little's arguments to set aside the Amendment to Trust were without merit, and consequently, the terms of the Amendment to Trust should be followed. Ms. Little's Motion for Summary Judgment essentially argued that her Amended Petition should be granted as a matter of law because section 633A.1105 should be followed above and despite section 633A.2202.

ARGUMENT

I. THE DISTRICT COURT ERRED IN FINDING AS A MATTER OF LAW THAT IOWA CODE SECTION 633A.1105 IS A COMPLETE BAR TO A MODIFICATION OF AN IRREVOCABLE TRUST PURSUANT TO SECTION 633A.2202.

A. Standard of Review and Preservation of Error.

1. Standard of Review:

This Court examines "the record before the district court to decide whether

a genuine issue of material fact exists and whether the court correctly applied the law.” *Dickson v. Hubbell Really Co.*, 567 N.W.2d 427, 430 (Iowa 1997). Iowa Rule of Civil Procedure 1.981 allows for summary judgment when (1) there is no genuine issue as to any material fact; and (2) the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *see also Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 201 (Iowa 1997). A court examines the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits on file to determine whether there is a genuine issue of material fact, and reviews the record in the light most favorable to the party opposing summary judgment. I.R.C.P. 1.981(3). The avoidance of “trials where no factual issue exists” is the purpose behind summary judgment. *Neoco, Inc., v. Christenson*, 312 N.W. 2d, 559, 560 (Iowa 1981).

An issue of fact is “material” only when the dispute is over facts that might affect the outcome of the litigation, given the applicable governing law. *Smith v. CRST International Inc.*, 553 N.W.2d 890, 893 (Iowa 1996). The burden is on the party moving for summary judgment to prove the facts are undisputed. *Kolarik v. Cory Intern. Corp.*, 721 N.W.2d 159, 162 (Iowa 2006). If the motion for summary judgment is made and supported by evidentiary materials, the non-moving party may no longer rely on its allegations, but must set forth specific facts establishing

a genuine issue of fact for trial. *Hlubek v. Pelecky*, 701 N.W.2d 93, 94-95 (Iowa 2005).

Summary judgment is appropriate when the facts are undisputed, and the only issue is what legal consequences are derived from those facts. *CRST*, 553 N.W.2d at 893. Further, where issues of statutory interpretation are implicated, summary judgment is likewise appropriate. *Hegeman v. Kelch*, 666 N.W.2d 531, 533 (Iowa 2003).

2. Preservation of Error:

Error was preserved by virtue of Trustees' Motion for Summary Judgment and their Resistance to Ms. Little's Motion for Summary Judgment. A timely notice of appeal was filed on July 9, 2021 (Docket; App. 154).

B. Interpreting Iowa Code section 633A.1105 as a Complete Bar to Modifying an Irrevocable Trust Pursuant 633A.2202 Contradicts the Common Law.

Litigation in this case essentially focused on presenting the question of whether section 633A.1105, as asserted by Ms. Little and determined by the District Court, is a complete bar to the modification of an irrevocable trust pursuant to section 633A.2202. To rule in favor of Ms. Little in such manner, however, required the District Court to render section 633A.2202 meaningless and of no

effect. Such an outcome is contrary to the interplay between the statutes and the common law.

The Relevant Code Sections and Authorities:

Iowa Code section 633A.1105, entitled “Trust terms control” states in whole:

“[t]he terms of a trust shall always control and take precedence over any section of this trust code to the contrary. If a term of the trust modifies or makes any section of this trust code inapplicable to the trust, the common law shall apply to any issues raised by such term.”

Iowa Code Ann. § 633A.1105 (West). Conversely, Iowa Code section 633A.2202(1), entitled “Modification or termination by settlor and all beneficiaries,” states in relevant part:

1. An irrevocable trust **may be modified** or terminated upon the consent of the settlor and all of the beneficiaries.

Iowa Code Ann. § 633A.2202(1) (West) (emphasis added). Section 633A.1102(18) defines “Settlor” as “a person, including a testator, who creates a trust.” Iowa Code Ann. § 633A.1102(18). Section 633A.1102(18) defines “Settlor” as “a person, including a testator, who creates a trust.” Iowa Code § 633A.1102(18) (West). Reading section 633A.2202 and .1102(18) together plainly indicates that a person who is a “Settlor” may modify an irrevocable trust with consent of all the beneficiaries.

What is less clear, is to what extent, if any, does section 633A.1105 impinge on that settlor's right to modify an irrevocable trust? There appears to be no Iowa case law directly on point in addressing this issue. Iowa Secondary Authorities, however, are in agreement with the Trustees' position that a modification of an irrevocable trust is lawful under the common law. *See Martin D. Begleiter*, In the Code We Trust—Some Trust Law for Iowa At Last, 49 Drake L.Rev. 165, 183 (2001)) (the "*Begleiter Article*"); *The Iowa Practice Series – Probate* (the Iowa "*Probate Manual*") § 12:19, entitled "Trustees—Modification of trust". With respect to section 633A.1105 and .2202(1), the *Probate Manual* and the *Beglieter Article* actually support the view that section 633A.1105 cannot bar the amending of an irrevocable trust, because to construe the statute otherwise would subvert the common law. The *Probate Manual* states with respect to 633A.1105:

"[a]n attorney preparing a trust document should realize that the terms of the trust as created shall always control and take precedence over any section of the Trust Code to the contrary, and **if a term of the instrument modifies or makes any section of the Iowa Trust Code inapplicable to the trust, the common law shall apply to any issues raised by such term.** The common law of trusts shall supplement the Trust Code except as modified by the Trust Code."

§ 12:2. Nature and function of a trust—Creation of trust, 13 Ia. Prac., Probate § 12:2(emphasis added). The *Beglieter Article* expressly provides that "[s]ubsection 1 of 633.2202" (now 633A.2202(1)) is "**the traditional rule** that an irrevocable trust

may be modified or terminated on consent of all the beneficiaries” (emphasis added). As the “traditional rule”, section 633A.2202(1) is the common law and therefore cannot be ignored and must be applied in this case.

Uniform Trust Code § 411, entitled “Modification or Termination of Noncharitable Irrevocable Trust by Consent”, and other jurisdictions’ case law further support this approach that modification of irrevocable trust is permissible. Section 411(a) unequivocally states: “[a] noncharitable irrevocable trust **may be modified** or terminated upon the consent of the settlor and all the beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust” (emphasis added). The common law in Florida allows for modification of an irrevocable trust if a settlor and all the beneficiaries consent to the modification. *Peck v. Peck*, 133 So. 3d 587, 588 (Fla. App. 2 Dist. 2014). Kansas Supreme Court has also recognized that modification of an irrevocable trust is permitted if all qualified beneficiaries’ consent and the modification is not inconsistent with the material purpose of the trust. *In re Trust D Created Under Last Will and Testament of Darby*, 234 P.3d 793, 799 (Kan. 2012).

C. Interpreting Iowa Code section 633A.1105 as a Complete Bar to Modifying an Irrevocable Trust Renders section 633A.2202 Meaningless and Contradicts Statutory Interpretation.

In the absence of Iowa case law directly on point, this Court should apply statutory interpretation doctrine and in conjunction with the intent of the creation of a trust, to find that an irrevocable trust may be modified. When interpreting statutes, the Iowa Supreme Court has articulated the following well-settled principals:

“[t]he purpose of statutory interpretation is to determine the legislature's intent. We give words their ordinary and common meaning by considering the context within which they are used, absent a statutory definition or an established meaning in the law. We also consider the legislative history of a statute, including prior enactments, when ascertaining legislative intent. When we interpret a statute, we assess the statute in its entirety, not just isolated words or phrases. We may not extend, enlarge, or otherwise change the meaning of a statute under the guise of construction.”

DuTrac Cmty. Credit Union v. Hefel, 893 N.W.2d 282, 294 (Iowa 2017) (citing *State v. Howse*, 875 N.W.2d 684, 691 (Iowa 2016) (quoting *Schaefer v. Putnam*, 841 N.W.2d 68, 75 (Iowa 2013))).

Moreover, the Iowa Supreme Court has articulated that statutory interpretation should “construe statutes that relate to the same or a closely allied subject together so as **to produce a harmonious and consistent body of legislation**” and it is “presume[d] the legislature intended **a reasonable result, not an absurd one**” to “**avoid interpreting** a statute so as **to render a portion** of it

redundant or irrelevant.” *In re Estate of Thomann*, 649 N.W.2d 1, 4 (Iowa 2002) (emphasis added).

With those principals in mind, this Court should engage in statutory interpretation and find that section 633A.1105 did not preclude Donald from amending the Trust Agreement pursuant to section 633A.2202(1) and consequently the Trust Amendment is valid and enforceable. The rationale for this is both logical and practical—if a trust was able to be amended or revoked only by its own terms, then no irrevocable trust could ever be terminated or modified using section 633A.2202(1).

It should be noted that an irrevocable trust must **by definition** include language expressly providing that the trust is irrevocable. “Unless the terms of the trust expressly provide that the trust is irrevocable, the settlor may revoke or modify the trust.” Iowa Code § 633A.3102(1)(West). Moreover, applying Iowa Code Section 633A.1105 to an irrevocable trust containing the necessary irrevocability language, in the manner that the District Court did, would imply that the terms of the irrevocable trust “take precedence” over “any section of this trust code to the contrary”, including code section 633A.2202(1).

The purpose of Iowa Code section 633A.2202 is to define the conditions for how an irrevocable trust may be modified or terminated. If 633A.1105 barred

modification of any trust stating that it is irrevocable, then it is difficult to see the viability or point of 633A.2202 *as a code section*. The Iowa legislature could not have possibly intended for .1105 to take precedence over .2201(1) in the creation of an irrevocable trust. If the legislature intended so, the latter would never apply. The only way that section .2202(1) has any use is for it to apply to trusts that are not otherwise subject to amendment by their own terms. Such an interpretation provides harmony and consistency between the statutes, and protects .2202(1) from becoming redundant, and more importantly, irrelevant. *See Vivian v. Madison*, 601 N.W.2d 872, 878 (Iowa 1999) (stating the “maxim of statutory evaluation that laws are not to be construed in such a way as to render words superfluous”).

This Court should rule accordingly, and find, as a matter of law, that the Trust although irrevocable was nevertheless subject to modification pursuant to section 633A.2202(1).

D. The Consent to Modify Trust Agreement is Valid and Enforceable Because it was Executed by All Necessary Living Parties Including Ms. Little and is in Accord with the Intent of the Trust.

Further supportive of this Court finding the Trust was lawfully subject to amendment through section 633A.2202 is the fact the Amendment to Trust was lawfully executed and therefore enforceable. It is undisputed that all living settlors

and beneficiaries signed the Consent to Modify (Trustees' SUMF ¶¶ 6-9; App. 53-54, 108, 102, 107, 119-20). Ms. Little **admitted** under oath that **she read** the first paragraph of the Consent to Modify at the time of her signing and **she understood** her signing was for **the purpose** of providing authority **to amend the Trust** (Trustees' SUMF ¶ 10; App. 107) (emphasis added). The key paragraph states in whole:

“[t]herefore, the undersigned, being **the current trustee**, the current income beneficiary **and all of the adult beneficiaries** who would receive a share of the trust if Donald K. Davis was not living, **hereby agree** that Donald K. Davis, as surviving Trustor and as surviving Trustee, **shall have the power and authority to alter, amend**, or revoke the DONALD K. & COLLEN DAVIS FAMILY TRUST.”

(Trustees' SUMF ¶ 9; App. 91). Accordingly, Ms. Little agreed in writing with the other adult beneficiaries that Donald, as the “current trustee”, “shall have the power and authority to the alter, amend, or revoke” the Trust. Id.

It is well settled in Iowa that “a party is usually bound by the documents he [or she] signs even though. . . not expressly accept[ing] all of the contract provisions or is even aware of them.” *Joseph L. Wilmotte & Co. v. Rosenman Bros.*, 258 N.W.2d 317, 323 (Iowa 1977) (citing and quoting *Preston v. Howell*, 257 N.W. 415, 418, (Iowa 1934)). “It is also the settled rule of law that if a party to a contract is able to read (the contract), has the opportunity to do so, and fails to read the

contract [s]he cannot thereafter be heard to say that [s]he was ignorant of its terms and conditions for the purpose of relieving h[er]self from its obligation.” Id. All that was required for Donald to Amend the Trust was his consent and the living beneficiaries’ consent to the amending. See I.C. § 633A.2202(1). It is undisputed that this occurred (Trustees’ SUMF ¶¶ 6-10; App. 53-54, 108, 102, 107, 119-20). The Consent to Modify Trust Agreement is therefore valid and enforceable and by extension the Amendment to Trust is likewise.

The Intent of the Trust:

In addition, the intent behind the Trust warrants finding the Consent to Modify Trust Agreement and the Amendment to Trust are valid and enforceable. In construing trusts the primary consideration is the intention of the settlor. *In re Steinberg Family Living Trust*, 894 N.W.2d 463, 468 (Iowa 2017). “The overarching principle guiding [a court’s] interpretation of the language used in trusts is the intent of the testator.” Id. (citing *In re Trust Known as Spencer Mem’l Fund*, 641 N.W.2d, 771, 774–75 (Iowa 2002)). Intent is determined based on the language of the trust itself, utilizing the ordinary and usual meaning of the words included. Id. at 775; see also *In re Trust of Killian*, 459 N.W.2d 497, 499 (Iowa 1990).

In this case, Donald, as the surviving settlor was aware of the intent of both himself and Collen when they created the Trust (Trustee’s SUMF ¶ 2; App. 53-54,

173, 192, 98). The Consent to Amendment, which is the most compelling evidence of intent, sets forth the Trust was implemented to prevent the children of Collen Davis from making a claim to any farmland placed in the Trust. Id. Ms. Little agreed that this was the intent when she signed the Consent to Amend (Trustees' SUMF ¶ 2; App. 54).

The Amendment to Trust did not thwart the original intent of the Trust and "but for" the potential claim of the children of Collen, the Trust would have likely remained amendable by the surviving grantor after the death of a grantor.

Iowa Code §633A.2202(1) is designed and intended to permit a settlor and beneficiaries to revise trust agreements. The Amendment to Trust did just that.

CONCLUSION

The Amendment to Trust is enforceable because the Consent to Amend was lawfully executed pursuant to Iowa Code section 633A.2202. The District Court's order to the contrary should be overruled and this Court should find, as a matter of law, that the Trustees' Motion for Summary Judgment should be granted.

REQUEST FOR ORAL ARGUMENT

The Trustees respectfully requests that this appeal be heard in oral argument.

CERTIFICATION OF COST

I, the undersigned, do hereby certify that the actual cost of printing the Appellants' Proof Brief herein was zero dollars, because this appeal has been converted to electronic filing per the Iowa Supreme Court.

CERTIFICATE OF COMPLIANCE

This Proof Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2), because it contains 4,901, including the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). In addition, this Final Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(f), because this brief has been prepared with Microsoft Word for Mac version 16.36, using proportionally spaced typeface Calibri in 14-pint size.

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By: /s/ John G. Daufeldt AT0001944
JOHN C. WAGNER LAW OFFICES, P.C.
600 39th Avenue; P.O. Box 262
Amana, IA 52203
Tel: 319-622-3357
Fax: 319-622-3404
Email: johnd@jcwagnerlaw.com
Attorneys for Appellants