IN THE IOWA SUPREME COURT

NO. 22-0288

IN THE MATTER OF THE ESTATE OF RUTH C. BISIGNANO,
Deceased.

EXILE BREWING COMPANY, LLC
Appellant/Cross-Appellee

vs.

ESTATE OF RUTH C. BISIGNANO
Appellee/Cross-Appellant

IN THE MATTER OF THE ESTATE OF FRANK J. BISIGNANO,
Deceased.

EXILE BREWING COMPANY, LLC
Appellant/Cross-Appellee

vs.

ESTATE OF FRANK J. BISIGNANO
Appellee/Cross-Appellant

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
THE HONORABLE CRAIG E. BLOCK, ASSOCIATE PROBATE JUDGE
FIFTH JUDICIAL DISTRICT
POLK COUNTY NOS. ESPR033730 | ESPR040450

FINAL REPLY BRIEF FOR APPELLANT/CROSS-APPELLANT/INTERESTED PARTY, EXILE BREWING COMPANY, LLC

ROBERT S. KEITH
rkeith@ekoklaw.com

KRISTINA J. KAMLER
kkamler@ekoklaw.com

ENGLES, KETCHAM, OLSON & KEITH, P.C.
1350 Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102

ATTORNEYS FOR INTERVENOR – APPELLANT/CROSS-APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Cases

Other Authority

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE PROBATE COURT ERRED IN HOLDING THAT A "POTENTIAL SHOWING OF NEW PROPERTY" OR "POTENTIAL PROCEEDS" PROVIDE A JURISDICTIONAL BASIS FOR REOPENING THESE ESTATES UNDER IOWA CODE § 633.489

Statutes

Iowa Code § 633.37
Iowa Code § 633.487
Iowa Code § 633.488
Iowa Code § 633.489

Cases

Estate of Randeris v. Randeris, 523 N.W.2d 600, 604 (Iowa 1994)
In re: Marriage of Bolson, 394 N.W.2d 361 (Iowa 1986)
In re Estate of English, 83 N.C. App. 359 (N.C.1986)
In re Estate of Kalwitz, 923 N.E 982 (Ind. Ct. App. 2010)
In re Estate of Martin, 860 N.W.2d 924 (Iowa App. 2014)
Lewis v. Lewis, 166 N.W. 107, 111 (Iowa 1918)
Matter of Guardianship of Matejski, 419 N.W.2d 576 (Iowa 1988)
Matter of Guardianship of Radda, 955 N.W.2d 203 (Iowa 2021)
Rand v. Security National Corporation, 974 N.W.2d 87 (Iowa 2022)
Reed v. Campbell, 476 U.S. 852, 855–56, 106 S.Ct. 2234, 90 L.Ed.2d 858 (1986)
Robinson v. Weaver, 550 S.W.2d 18, 20 (Tex. 1977)
State v. Mandicino, 509 N.W.2d 481 (Iowa 1993)
Valdez v. Hollenbeck, 465 S.W.3d 217 (Tex. 2015)
Youngblut v. Youngblut, 945 N.W.2d 25 (Iowa 2020)

II. WHETHER THE PROBATE COURT ERRED IN HOLDING HUNTSMAN HAS STANDING TO FILE A PETITION TO REOPEN

Statutes

Iowa Code § 633.3(24)
Iowa Code § 633.219
Iowa Code § 633.220
Iowa Code § 633.228
Iowa Code § 633.331
Iowa Code § 633.336
Iowa Code § 633.487
Iowa Code § 633.489

Cases

Alons v. Iowa Dist. Ct. for Woodbury Cnty., 698 N.W.2d 858 (Iowa 2005)
Birkofer ex. Rel. Johannsen v. Birkhofer, 610 N.W.2d 844 (Iowa 2000)
Gilbert v. Wenzel, 247 Iowa 1279 (1956)
Godfrey v. State, 752 N.W.2d 413 (Iowa 2008)
In re Kenny's Estate, 233 Iowa 600 (1943)
Matter of Estate of DeVoss, 474 N.W.2d 539 (Iowa 1991)
Matter of Guardianship of Radda, 955 N.W.2d 203 (Iowa 2021)
State v. DeGroot, 909 N.W.2d 442 (Iowa App. 2017)

III. WHETHER THE PROBATE COURT ERRED IN DENYING EXILE'S MOTION TO INTERVENE

Statutes

Iowa R. Civ. P. 1.407
Iowa Code § 633.37
Iowa Code § 633.543
Iowa Code § 633.544

Cases

In re Corbin's Estate, 17 N.W.2d 417 (Iowa 1945)
In re Lemke's Estate, 216 N.W.2d 186 (Iowa 1974)
Matter of Estate of DeVoss, 474 N.W.2d 539 (Iowa 1991)

McKeown v. Morrow, 183 Iowa 454 (Iowa 1918)
Rick v. Boegel, 205 N.W. 713 (Iowa 1973)
Savings Bank Primghar v. Kelley, 2022 WL 3440702 (Iowa App. 2022)
State v. Lasley, 705 N.W.2d 481 (Iowa 2005)

Other Authority

Black's Law Dictionary, 2nd Pocket Ed. "interloper" (2001)

IV. WHETHER HUNTSMAN'S CROSS APPEAL/REQUEST FOR ATTORNEY'S FEES SHOULD BE DENIED

Cases

Everly v. Knoxville Community School Dist., 774 N.W.2d 488 (Iowa 2009)
Matter of Guardianship of Radda, 955 N.W.2d 203 (Iowa 2021)
Rand v. Security National Corporation, 974 N.W.2d 87 (Iowa 2022)
Youngbult v. Youngblut, 945 N.W.2d 25 (Iowa 2020)

STATEMENT OF FACTS

I. MATTERS FROM THE COLLATERAL CIVIL CASE ARE GENERALLY NOT RELEVANT TO THE ISSUES IN THIS APPEAL

Huntsman argues that certain issues have already been decided in two collateral cases: a Civil Action that Huntsman filed with the Iowa District Court[1] and a Trademark Action filed by Huntsman with the U.S. PTO.[2] For example, Huntsman alleges that in the Civil Action and in response to Exile's Rule 12(b)(6) Motion to Dismiss, the District Court held that Frank's Estate is a proper plaintiff to bring claims for the invasion of Ruth's right of publicity. HRB[3], p. 20. The District Court's holding as to the proper party to bring the Civil Action does not address whether: (1) Huntsman is an "interested person" with standing to file the Petitions to Reopen these Estates or (2) the Petitions to Reopen articulate a permissible basis for reopening these Estates under Iowa Code § 633.487-9, both of which bare

---

[1] "Civil Action" refers to Iowa District Court for Polk County, Case No. CVCV 060249, which has since been removed to the U.S. District Court for the Southern District of Iowa, Case No. 4:22-CV-00121.
[2] "Trademark Action" refers to U.S. PTO Trademark Trial and Appeal Board Cancellation No. 92079178.
[3] "HRB" references Huntsman's Response Brief.

on the Probate Court's jurisdiction to reopen the Estates, at all. Although these are separate and distinct issues, they are related to each other because if the Probate Court does not have jurisdiction to reopen these Estates, there is no legal entity for Huntsman to use to pursue the Civil Action or Trademark Action.

Huntsman also argues that Exile waived the arguments presented in this appeal because it did not file for interlocutory appeal of the District Court's Rule 12(b)(6) Order wherein the District Court in the Civil Action held "the right of publicity is, like any other property descendible." HRB, p. 21-22. Again, the issue in this appeal is not "descendability" or whether the property is capable of descent. This issue is actual descent, meaning the actual transfer of intellectual property through the probate process to Huntsman.

This issue was not decided by the District Court in the Civil Action when it decided the Order on Exile's Rule 12(b)(6) Motion or Plaintiff's Motion for Summary Judgment. APP. 373, Order on Exile's Rule 12(b)(6) Motion to Dismiss (confirming that "at this stage of the proceedings, the Court must take as true the allegation in paragraph 6 of the proceedings that Ruthie Bisignano "died intestate, with her interest in claims passing to her

husband, Frank Bisignano")[4] and APP. 627, CVCV 60249, Order on Motion to Dismiss, fn. 1, Jan. 18, 2022 (noting that the Probate Court entered an order finding it had jurisdiction to reopen the Estates and found Huntsman had standing to reopen the Estates; therefore, the District Court would not decide the issue because it does not have appellate jurisdiction over the Probate Court). As noted by the District Court for the Civil Actions, the issues of actual decent are for the Probate Court to decide. It is also an issue that the Probate Court erroneously held should be decided by the District Court presiding over the Civil Action. APP. 160-1, RO, p. 7, fn. 22 Jan. 31, 2022.[5]

---

[4] Huntsman's counsel conceded during the hearing on Exile's Motion the Dismiss the Civil Action that factual issues are not decided in a Rule 12(b)(6) Motion to Dismiss. APP. 360, Aug. 10, 2020, Tr. p. 16 – 17 (continuing tort doctrine presents a fact question, not a question of law ripe for decision on a Rule 12(b)(6) Motion to Dismiss).

[5] Per Iowa R. App. P. § 6.904, intelligible abbreviations for the record are as follows: the first letter in each citation is either "F," referencing Frank's Estate, Case No. ESPR040450 or "R" referencing Ruth's Estate, Case No. ESPR0033730. The next letters represent the title of the pleading, such as "PR" for "Petition to Reopen," "O" for "Order," "MTD" for "Motion to Dismiss," "MTD Ex #" for "Motion to Dismiss Exhibit," "RB" for "Reply Brief," MTR" for Motion to Reconsider," "BMTR" for "Brief in support of Motion to Reconsider," and "ATE" for "Application to Employ." The date represents the date the document was filed in each respective case.

As discussed below, the transfer of property through intestate succession generally is an issue for the Probate Court to decide. However, certain requests for transfers of certain property can be (and in this case are) beyond the Probate Court's jurisdiction. For example, the Probate Court does not have jurisdiction if: (1) the property rights involved are too uncertain to be administered; (2) the property rights involved were disposed of and/or abandoned prior to the decedent's deaths, (3) the property was abandoned after the decedent's deaths such that the estates cannot own them, or (4) the person requesting the property does not have a direct, non-contingent interest in the property (i.e. lack of standing).

Huntsman also cites his own filings, such as a Motion for Summary Judgment from the Civil Action as support for factual allegations. For example, he argues that "Ruthie had this mass appeal." HRB, p. 18. These types of arguments ignore Exile's Response to the Motion. Exile has not and does not admit the vast majority of facts alleged by Huntsman in the collateral proceedings. APP. 529, CVCV 60249, Motion for Extension of Time ¶ 24- 40 (explaining that Huntsman cannot and does not have the personal knowledge to attest to the facts set forth in his Statement of Facts to support the Estates' Motion for Summary Judgment); APP. 548-64, CVCV

60249, Exile's Statement of Disputed Facts ¶ 1-40 (explaining the inadmissibility of Huntsman's proposed testimony and the historical nature of the information upon which Hunstman's claims are based). And, the District Court's Order on Huntsman's Motion for Summary Judgment in the Civil Action did not find this fact to be true. APP. 625-635, CVCV 60249, Order on Huntsman's Motions for Summary Judgment (making no determination as to the "appeal" of Ruthie at any relevant time).

Exile did file an Application for Interlocutory Appeal of the District Court's Order on the Parties Cross Motions for Summary Judgment in the Civile Action and sought to consolidate the Interlocutory Appeal with these appeals. This was done so that the adjudicated issues from the Collateral Action could be evaluated as part of this appeal. Huntsman resisted the Application. This Court denied the Application. Accordingly, this Court has already declined to analyze the Order from the Civil Action wherein the factual issue of whether "Ruthie had this mass appeal" was evaluated and decided in a manner unfavorable to Huntsman.[6] Huntsman should not be

---

[6] APP. 630-31, CVCV 60249, Order on Huntsman's Motions for Summary Judgment, p. 6, Jan. 18, 2022 (whether the Court looks at the conduct of

allowed to usurp the findings in that Order, by presenting his allegations from those proceedings as facts in this appeal.

Importantly, the Orders that are the subject of this appeal authorized the retention of counsel and, correspondingly, the filing of the two collateral litigations. APP. 14, 24, FATE, p. 2, Apr. 156, 2020; RATE, Sept. 22, 2020. It is no surprise that Huntsman acted on the Orders that he requested, submitted to the court as "Proposed Orders", and obtained from the Probate Court without any further hearing or questioning from the Probate Court. The point being, Huntsman's decision to act on the Orders he obtained does not insulate said Orders from judicial review. In fact, the plain terms of the Probate Code provide that "any order entered without notice or appearance are reviewable by the court at any time prior to the entry of the order approving the final report. Iowa Code § 633.37. Huntsman cannot now complain that the Orders to Reopen are subject to review. If he wanted to avoid review, Huntsman could have provided notice to all interested parties,

---

Ruthie or Plaintiffs, the Court can easily find fact issues…[it is possible] Plaintiffs abandoned any claim to the use of Ruthie's name and/or likeness when Ruthie and/or Frank's Estates were initially closed or when it failed to object to Exile's trademark application").

including Exile, and requested a hearing on the Petitions to Reopen so the matter could be fully and fairly adjudicated. To that end, even today, a review of the Orders to Reopen is appropriate and timely because no final report has been filed by Huntsman and no Order approving of any such final report has been entered in either of the reopened Estates.

Ultimately, the Orders to Reopen were procedurally and substantively defective because they were issued: (1) without giving notice to interested parties, such as Exile; (2) without providing Exile with a reasonable opportunity to object; and (3) without jurisdiction to reopen these Estates because: (a) the property rights involved are too uncertain to be administered; (b) the property rights involved were disposed of and/or abandoned prior to Ruth and Frank's deaths, (c) the property rights were abandoned due to non-use or lack of preservation after Ruth and Frank's deaths such that these Estates cannot own them, and (d) Huntsman lacked a direct, non-contingent interest in these Estates to establish standing to file the Petitions to Reopen. The filings from the Collateral Action have little to no impact on deciding these issues that are primarily governed by the Probate Code.

II. AMENDMENTS BASED UPON THIS COURT'S ORDER ON EXILE'S MOTION TO STRIKE MATERIALS FROM THE APPENDIX – TO THE EXTENT MATERIALS FROM THE CIVIL ACTION ARE RELEVANT, THEY SUPPORT EXILE'S ARGUMENTS

Exile reserved the right to amend its Proof Reply Brief based upon the Court's Order on Exile's Motion to Strike Materials from the Appendix. This Court granted, in part, and denied, in part, that Motion.[7] Based upon said Order (including ambiguity regarding whether Exile can amend this Reply Brief), and because this Court has agreed to take judicial notice of facts from the proceedings in the Collateral Action, Exile humbly requests that the Court also take notice of the following:

- When referencing the original administrator's Inventories, Huntsman classifies the intellectual property as "information", not a property right. APP. 579-80, CVCV 60249, Estate's Response to Exile's Statement of Facts ¶ 70, Aug. 30, 2021.[8]

---

[7] Exile also filed a Motion for an Extension of Time for filing the Proof Reply Brief based upon its counsel experiencing a death in the family; in an apparent oversight, said Motion has not yet been ruled upon.

[8] This demonstrates' the broad scope of rights Huntsman is attempting to gain ownership over through the probate proceedings – he argues that he can

- Huntsman has conceded and the District Court has decided that an element of the Estates' claims is proof of "ownership" for the information in dispute.[9] APP. 448-450 CVCV 60249 Estates' Memorandum in Support of Motion for Summary Judgment (overbroadly representing in conclusory fashion that because Huntsman has been able to reopen these Estates, ownership of all information concerning or related to Ruth has been vested with the Estates); APP. 630-3, CVCV 60249 Order on Motion for Summary Judgment.
- The issue as to whether Huntsman is a proper party (i.e. has some ownership interest) really is one of inheritance and application of Iowa probate law, which has not been decided. APP. 358, Aug. 10,

---

obtain property rights over all information concerning a person after the death of the person who created the information.

[9] This demonstrates the flaw in the current proceedings, Huntsman claims in the District Court that he has proven ownership by merely reopening these Estates and without actually proving the jurisdictional basis for reopening – the existence of actual property that existed at the time of Ruth's death and has not since been abandoned.

2020, Tr. p. 14, ln. 8-10 ("if the intellectual property or the right of publicity descended upon Frank and his heirs then…")

- Ultimately, Huntsman is claiming, but has not proven, the exclusive and never ending right to use the value and benefit of Ruth's name and likeness. APP. 630-3, CVCV 60249, Order on Motion for Summary Judgment (explaining that ownership has not been established due to consent, waiver, and abandonment issues; further confirming the Estates "have not established, as a matter of law, they have the exclusive right to the use of Ruthie's name and/or likeness").
- The vast majority of exhibits utilized by the Estates to support their claims are historical newspapers, magazines, and books; this demonstrates that the broad scope of information for which Huntsman seeks to own is already in the public domain. APP. 435-6, CVCV 60249, Estate's Motion for Summary Judgment ¶ 31-40, June 3, 2021; APP. 577 – 580, CVCV 60249, Estate's Response to Exile's Statement of Facts ¶ 57-73, Aug. 30, 2021; APP. 468, Historical Newspaper Articles.

- Three of these articles, upon which Hunstman relies, were articles discussing Ruth's life that Ruth and/or Ruth's heirs consented to placing in the newspaper and, thus, placed the information into the public domain. CONF. APP. 161-6, CVCV 60249, Huntsman Dep. 143:20 0 148:3; APP. 571, 1976 Article, Ruthie Recounts Her Big Moments; APP. 573, 1988 Article, Ruthie Ponders Her Life and Loves; APP. 575, 1993 Article, Beer-Serving Legend, 'Ruthie' Dies.
- Based upon his overly broad claim to own all information in any way related to Ruth Bisignano, even that which has previously been made public by Ruth and her heirs, Huntsman alleged three causes of action against Exile that are based upon Unfair Competition and that have never before been recognized under Iowa law:

  COUNT II: Unfair Competition – Appropriation of the Commercial Value of Ruthie's Identity and Infringement of the Right of Publicity Under Iowa Common Law.

  COUNT III: Unfair Competition – Misappropriation of Trade Values under Iowa Common Law

COUNT V: Deceptive Marketing – Misrepresentations Regarding Endorsement And/Or Approval Under Iowa Common Law. APP. 285-304, Petition, Counts II, III, and V, June 1, 2020; APP. 347, Aug. 10, 2020, Tr. p. 3, ln. 15-19; APP. 376-7, Order on Motion to Dismiss (declining to dismiss these claims because "[e]very cause of action has a first time that it is recognized in court" and predicting that the Iowa Court of Appeals and Supreme Court would recognize these "right of publicity" claims some day).

- The underlying principle for each of these causes of action is that there is some competing use or commercial value established in the name or image, hints the titling "Unfair Competition" and Marketing. APP. 376-7, Order on Motion to Dismiss (the III and V causes of action derive from the II cause of action).
- Huntsman is not aware of any value that was associated with Ruth's name or image at the time of her death. CONF. APP. 59-66, CVCV 60249, Huntsman Dep. 41:3 – 48:16.
- Huntsman had no conversations with Frank or Ruth regarding the value of Ruth's name and likeness at the time of her death; nor did

he have any conversations with Frank or Ruth regarding maintaining the value of Ruth's image upon her passing. CONF. APP. 65-7, CVCV 60249, Huntsman Dep. 47:12-49:5.

- None of Ruth or Frank's alleged heirs, including Huntsman, have ever developed a business plan that incorporates the use of Ruth's name or likeness. CONF. APP. 266-8, CVCV 60249, Frank's Answers to Interrogatory No. 14, 15, or 16, June 8, 2021; CONF. APP. 237-40, CVCV 60249, Ruth's Answers to Interrogatory No. 7, 9, 10 (refusing to identify any specific property or works of art owned by Ruth, the date the property or art was created or acquired, the creator or author of the work, the steps taken to protect it, or the date of any sale); CONF. APP. 171-2, CVCV 60249, Huntsman Dep. 153:3-154:7.
- The only damages being alleged by Huntsman are based solely upon allegations that Exile has made a profit selling a beer named "RUTHIE." The Estates have not identified a single commercial interest that they own and that has been damaged or diminished by Exile's conduct. CONF. APP. 275-279, CVCV 60249, Estates Initial Disclosures, p. 5 and 6.

- The District Court held that Huntsman has not even "alleged with any specificity how they would be damaged by a maintenance of the status quo, meaning Exile's continued use of Ruthie's name and likeness…" APP. 633, CVCV 60249, Order on Motion for Summary Judgment, p. 9, Jan. 18, 2022.
- Huntsman also included COUNT VI alleging Trade - and Service – Mark Infringement Under Iowa Common Law in his original Petition against Exile. APP. 301, Petition ¶¶ 89-102, June 1, 2020.
- The District Court held that Exile, not the Estates, is the owner of the trademark "RUTHIE". APP. 633, CVCV 60249, Order on Motion for Summary Judgment, Jan. 18, 2022 ("Exile is the holder of the 'Ruthie' trademark"); APP. 659, CVCV 60249, Order on Plaintiff's Motion to Reconsider, p. 2, Apr. 4, 2022 (Exile is the "holder of the "Ruthie" trademark).
- Huntsman has since amended his Petition in the Civil Action to exclude the trade or service mark infringement claim. APP. 662, CVCV 60249 Estates' Motion to Amend the Petition (confirming

that the Estates are removing the claim for trade – and service – mark infringement from the Second Amended Petition).

- In doing so, Huntsman conceded that Exile, not these Estates, owns a trade or service mark for the name "RUTHIE."

If anything, these holdings, admissions, and concessions in the Civil Action demonstrate the issues created by the Probate Court's hasty and vague decision to reopen these Estates and authorizing litigation for any claim potentially associated with Ruth's name and likeness without first defining the specific intellectual property right owned by the Estates, if any. Exile should not have to defend each and every claim that Huntsman and his counsel can dream up without first establishing: (1) Huntsman is a proper party to represent the interests of the Estates because he is an heir to these Estates; (2) at the time of their deaths, Ruth and Frank owned the specific property that forms the basis of property misappropriation/infringement claims; and (3) the property forming the basis of the misappropriation/ infringement claims has not been abandoned due to the Estate and/or Huntsman's more than 25 year delay in asserting any claim to the property identified.

These are issues for the Probate Court to decide; the Probate Court should not be allowed to pass off a decision on these issues by authorizing collateral actions against a third-party, such as Exile. But, as explained below, the Probate Court's jurisdiction to decide these issues is limited to the original probate proceedings, unless an exception to the Probate Court's jurisdictional limitations, as set forth in Iowa Code § 633.487-9, applies. For the reasons stated in Exile's Appellant Brief and discussed in more detail below, there is no exception to the jurisdictional bar that applies. Accordingly, no Iowa Court has jurisdiction to hear the claims being asserted by Huntsman at this time.

III. HUNTSMAN'S MISSTATEMENT OF FACT

Huntsman alleges that Exile "registered a trademark for the name "RUTHIE" while the Litigation was pending. HRB, p. 24. Exile filed an application to register a trademark for the name "RUTHIE" on December 5, 2019, before Huntsman made any attempt to reopen these Estates. APP. 278, Trademark Application. The U.S. PTO (not Exile) issued the registration for the mark "RUTHIE" on March 21, 2021. APP. 281, USPTO Trademark Registration. There was certainly no fraud committed by Exile on the U.S. PTO because it filed all documents truthfully based upon the information

known to them at the time the Application was filed. Huntsman's decision to not assert his claims until he believed it to be financially beneficial to do so, does not render Exile's conduct fraudulent.

ARGUMENTS

I. THE PROBATE COURT ERRED IN HOLDING THAT A "POTENTIAL SHOWING OF NEW PROPERTY" OR "POTENTIAL PROCEEDS" PROVIDES A JURISDICTIONAL BASIS FOR REOPENING THESE ESTATES UNDER IOWA CODE § 633.489

Attempting to draw a distinction between subject matter jurisdiction and the exercise of "statutory authority", Huntsman argues that reopening estates is a matter of the court's exercise of statutory authority, not subject matter jurisdiction. HRB, p. 29-30, fn 11. Citing *In re: Marriage of Bolson*, 394 N.W.2d 361 (1986) and *State v. Mandicino*, 509 N.W.2d 481, 483 (Iowa 1993), it is broadly asserted that subject matter jurisdiction involves solely determining whether the case before the court is within the "general class of cases" for which jurisdiction has been conferred upon the court; "where subject matter jurisdiction exists, an impediment to a court's authority can be obviated by consent, waiver, or estoppel." Thus, Huntsman broadly argues that the Probate Court has jurisdiction over all matters involving any "estate administration", including the reopening of an estate.

The scope of subject matter jurisdiction is an abstract inquiry unrelated and precedent to the rights of the parties to a particular case. *Matter of Guardianship of Matejski*, 419 N.W.2d 576, 579 (1988). "[J]urisdiction of the subject matter does not mean simply jurisdiction of the particular case then occupying the attention of the court." It involves an evaluation of the class to which that particular case belongs, the nature of the cause of action, and the relief sought." *Id.* (emphasis added). Huntsman's argument focuses on the first factor, ignoring the last two.

Bolson evaluated concurrent jurisdiction of the district court to oversee a claim involving grandparent rights when the grandparents' claim, to some extent, depended upon the juvenile court's determination of whether the grandparent's child would retain custodial or visitation rights for the minor children. The Iowa Supreme Court held proceedings in the district court must be stayed pending a resolution of the parental right issues pending before the juvenile court because Iowa Code § 232.3(1) prohibited the district court from concurrently litigating grandparent right issues with the parent-child custody issue pending. This was because the grandparents' visitation rights, to some extent, depended upon their child's visitation rights. In other words, it was held that a district court's general jurisdiction can be statutorily altered by the

legislature to create a procedural hierarchy for resolving issues dependent upon one another.

The Probate Code's jurisdictional limitations creates a similar hierarchy for deciding claims asserted by heirs to an estate. Mainly, it provides that the probate court must first timely adjudicate ownership over property before a claim for misappropriation or infringement of that property can be asserted by an heir in the district court. This is consistent with the last two years of decisions issued by the Iowa Supreme Court, which has discussed the jurisdictional limitations placed upon both the district court and probate court by the Probate Code on at least three occasions. See *Youngbult v. Youngblut*, 945 N.W.2d 25 (Iowa 2020); *Matter of Guardianship of Radda*, 955 N.W.2d 203 (Iowa 2021); *Rand v. Security National Corporation*, 974 N.W.2d 87, 91 (2022).

In *Youngbult,* it was noted that heirs of a decedent cannot bring a separate, stand-alone action against the executor or beneficiary of a will. *Id.* at 30. This is because the stand-alone action amounts to a collateral attack on the judgment or decree entered by the probate court. *Id.* at 32. Relying upon the Restatement (Third) of Torts: Liab. For Econ. Harm § 19(2) it was explained that there are limits on a plaintiff's ability to claim tortious

interference with an inheritance. *Id.* Any claim for tortious interference is not available to a plaintiff who had the right to seek a remedy for the same claim in a probate court.

> A proceeding in probate is considered available, for purposes of this Section, even if it offers less generous relief than would be attainable in tort. Nor does a probate court become unavailable because the limitations period has expired for pursuing a claim there. If a claim falls within a probate court's jurisdiction, or would have if timely, permitting a suit in tort is not appropriate.

The next year, the Iowa Supreme Court confirmed that *Youngblut*, precludes reading between the lines of the Probate Code to create new procedural mechanisms to contest wills. *Matter of Guardianship of Radda*, 955 N.W.2d 203, 213 (2021). The same logic applies to intestate proceedings. Court's should not read between the lines of the Probate Code, particularly Iowa Code § 633.487-9, to create a new procedural mechanism for Huntsman to contest his inheritance from Frank.

Next, in *Rand*, this Court held a probate court has special jurisdiction to oversee matters "essential to probate business before it." But, this special jurisdiction is also limited; probate jurisdiction does not include overseeing disputes over matters unrelated or nonessential to the administration of a decedent's estate. *Rand v. Security National Corporation*, 974 N.W.2d 87, 91

(2022). Overseeing disputes that could have been resolved in the first instances in the probate proceedings is not essential to the administration of a decedent's estate. *Id.* (citing *Lewis v. Lewis*, 166 N.W. 107, 111 (Iowa 1918) (a claim against the administrator alleging negligent collection of debts during the probate proceedings should have been brought in probate, not a separate action).

The jurisdiction of a probate court is also limited by the scope of the pleadings. *Estate of Randeris v. Randeris*, 523 N.W.2d 600, 604 (Iowa 1994) (the final report, combined with timely objections filed by interested parties frame the issues for trial in a probate matter). When there are disputes, the final report is treated like the complaint; with the objections treated as the answers for purpose of defining the issues for trial.[10] Where the pleadings disclose the dispute is in regard to pre-death transfers of property, the probate court has no jurisdiction to decide the dispute. *Id.* Similarly, a probate court abuses its discretion by dramatically enlarging the scope of Iowa Code §

---

[10] Nothing in the Orders that are the subject of this appeal indicate that the Probate Court did any analysis of the final report or whether Huntsman's claims could have or should have been made as part of the original proceedings.

633.489 to reopen a closed estate for purposes of administering property where the estate has no remaining interest in the subject property. *In re Estate of Martin*, 860 N.W.2d 924 (Iowa App. 2014).[11]

In sum, while *Youngbult* evaluated whether the tort of wrongful interference of a will could be filed as an action separate from the probate of the will, the same legal principles articulated therein apply to Huntsman's Petitions to Reopen these Estates. The nature of Huntsman's action is to attack the Probate Court's original orders to close these Estates. This is an attack on

---

[11] Limiting a probate court's jurisdiction to reopen closed estates is not unique to the state of Iowa. See *In re Estate of Kalwitz*, 923 N.E 982 (Ind. Ct. App. 2010) (to the extent that a petition to reopen an estate is a disguised attempt to modify the decree of distribution and discharge, the court must carefully analyze the decree of distribution and discharge in light of the petition to reopen); *In re Estate of English*, 83 N.C. App. 359 (1986) (interpreting a statute similar to Iowa Code § 633.489 and noting that because the claim was already barred it could not be asserted in the reopened administration); *Valdez v. Hollenbeck*, 465 S.W.3d 217 (Tex. 2015) (refusing to reopen an intestate estate at the request of heirs, even though the estate had been defrauded of nearly half a million dollars by a third-party); *Robinson v. Weaver,* 550 S.W.2d 18, 20 (Tex. 1977) ("[t]he fact that a meritorious claim might be rendered non-assertible is an unfortunate, occasional by-product of the operation of limitations."); *Reed v. Campbell,* 476 U.S. 852, 855–56, 106 S.Ct. 2234, 90 L.Ed.2d 858 (1986) (the interest in finality provides an additional, valid justification for barring the belated assertion of claims, "even though mistakes of law or fact may have occurred during the probate process").

the original Probate Court's determination as to: (1) the scope of property owned by the Estates and (2) identity of heirs to the Estates determined in those proceedings. The nature of the claims asserted by Huntsman in his Petition to Reopen and the relief sought is not mere "administration of an estate"; it is an attempt to completely abdicate the Probate Court's prior determinations concerning these issues. If timely filed, Huntsman could have presented his claims to own all information related to or regarding Ruth as an objection to the final reports filed in each Estate and the Probate Court could have adjudicated those issues as part of the original proceedings. Huntsman had a remedy during the original probate proceedings. It is not essential for the Probate Court to reopen these Estates to hear Huntsman's claims at this time and, thus, doing so exceeds the Probate Court's jurisdiction to reopen the Estates as articulated in Iowa Code § 633.487.

Huntsman claims Iowa Code § 633.489 applies as an exception to Iowa Code § 633.487 because he discovered "new property." The argument is misplaced. First and foremost, Iowa Code § 633.487 prohibits contests regarding the inventory or heirs. If a remote heir can usurp this bar by identifying a "misappropriation of property claim" without establishing ownership of the property upon which the claim is based, the purpose of the

jurisdictional bar, which is to encourage prompt filing of claims against an estate, is easily evaded.

Further, a "claim" or "choose in action" does not fall within the scope or type of property subject to the original probate court's jurisdiction. Specifically, Huntsman argues ad nauseam that a "choose in action" is "personal property". HRB p. 41-50. As explained in Exile's Appellant Brief, not all causes of action are property under the Probate Code. If they were, the legislature would not have carved out wrongful death claims, identifying them as the sole type of claim that should be disposed of "as personal property" belonging to the decedent. Iowa Code § 633.336.

Identifying an idea or concept (such as a "name and likeness") does not transform that concept into "personal property." Labelling a word or image as a "choose in action" also does not magically transform that word or image into a property right that is given recognition and effect under Iowa law. By Huntsman's logic, the undersigned can inherit Berkshire stock simply by articulating "the decedent owned all Birkshire stock ever created at some point in time and I am an heir to said decedent" in a probate proceeding. This could be done without producing any evidence to support the claims, such as evidence that the decedent had actual ownership interest over any Berkshire

stock in the first place, the decedent did not sell the stock, or that I am an actual heir to the decedent under Iowa law.

Huntsman still has not alleged facts, produced evidence, identified case law, or asserted arguments in his Response Brief that support a conclusion that Ruth or Frank owned, let alone perfected marketable title to intangible or intellectual property prior to their deaths. Instead, he seeks to squeeze a square peg (a claim for intellectual property misappropriation) into a round hole ("property ownership") through a reopened probate.

Doing so ignores the limited jurisdiction of the probate court and the legal tenants upon which intellectual property is formed. As in *Randeris* the Probate Court does not have jurisdiction over pre-death acquisitions or dispositions of intellectual property. Nor does the probate court have jurisdiction over property, such as trademarks, that have been abandoned due to non-use and the passage of extensive time. As explained in *Martin*, where the Estates have no remaining interest in the property, the Probate Court has no jurisdiction to administer claims regarding the property.

Moreover, the Probate Court abused its discretion by broadly granting Huntsman's Petition to Reopen and authorizing suit against a third-party, Exile. To ensure it acted within its limited jurisdiction, the Probate Court

should have first made a determination as to what "new property", if any, Huntsman discovered and could inherit under the Probate Code and intellectual property laws. Only after Huntsman demonstrated that Ruth or Frank owned intellectual property and did not abandon the same should Huntsman be allowed to employ litigation counsel to make a claim for misappropriation of that property.

II. THE PROBATE COURT ERRED IN HOLDING HUNTSMAN HAS STANDING TO FILE A PETITION TO REOPEN

Standing is a jurisdictional issue. *State v. DeGroot*, 909 N.W.2d 442 fn. 4 (Iowa App. 2017). Standing cannot be waived or vested by consent. *Id.* This is because standing exists to ensure that the people most concerned with an issue are in fact the litigants of the issue. *Godfrey v. State*, 752 N.W.2d 413, 425 (Iowa 2008). It exists to ensure that a real, concrete case exists to enable the court to feel, sense, and properly weigh the actual consequences of its decisions. *Id.* It exists to prevent advisory opinions by requiring the court to dispose of only those issues that affect the rights of the parties present. *Alons v. Iowa Dist. Ct. for Woodbury Cnty.*, 698 N.W.2d 858, 863-64 (Iowa 2005).

As far as Iowa law is concerned, this means "that a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Id.* Having a legal interest in the litigation and being injuriously affected are separate requirements for standing. *Id.* The focus of a standing inquiry is on the party, not on the claim. *Id.* Even if the claim could be meritorious, the court will not hear the claim if the party bringing it lacks standing. *Id.*

Standing is conferred under Iowa Code § 633.489 only upon an "interested person." An "interested person" is an heir, devisee, child, spouse, creditor, or any other person having a property right or claim against the estate of a decedent that may be affected by the proceeding. *Matter of Guardianship of Radda*, 955 N.W.2d 203 (Iowa 2021); *Birkhofer ex. Rel. Johannsen v. Birkhofer*, 610 N.W.2d 844, 847 (Iowa 2000)(the mere intestate claim of a daughter in the potential estate of her living mother is too contingent to constitute a legal interest sufficient to establish standing).

Citing *In re Kenny's Estate*, 233 Iowa 600, 602 (1943) and *Matter of Estate of DeVoss*, 474 N.W.2d 539, 542 (1991) Huntsman acknowledges the law of Iowa in that "no one has any standing to object to the probate …, unless he has a non-contingent interest in property owned at the time of the

decedent's death." HRB, p. 27, fn. 8 and 32. In *DeVoss*, the Iowa Supreme Court confirmed "contingent interests" in an estate are too indirect, remote, and conjectural to allow remote heirs to intervene in probate proceedings. It was specifically explained:

> [o]ne interested in an action is one who is interested in the outcome or result thereof because he has a legal right which will be directly affected thereby or a legal liability which will be directly enlarged or diminished by the judgment or decree therein."

A showing of indirect, inconsequential, or contingent interest is wholly inadequate. *Id.*

By definition an "heir" is "any person, except a surviving spouse, who is entitled to property of a decedent under the statutes of intestate succession. Iowa Code § 633.3(24). Iowa Code § 633.219 further provides that if there is no issue for the decedent and no parents for the decedent, the property passes to the "issue of the decedent's mother per stirpes" and "the issue of the decedent's father per stirpes." See also *Gilbert v. Wenzel,* 247 Iowa 1279 (1956) (explaining "per stirpes" is where those of more remote kinship to a decedent take by right of representation). The next section, Iowa Code § 633.220 confirms that intestate succession shall be determined by the relationships existing at the time of the death. Accordingly, whether a person

is an "heir" under Iowa's intestate succession laws can never be determined based upon evolving relationships or changes in facts that occur after the decedent's death.

Huntsman acknowledges the concepts of standing, direct, and non-contingent interests because he attempts to enforce them against Exile, arguing that Exile does not have standing to intervene in the probate proceedings. At the same time, Huntsman fails to satisfy the same rule on his own accord. On the face of his Petition, Huntsman claims he is an "surviving heir" but he admits that Frank's heirs at the time of his death were his brother (Alfonso Bisignano) and two sisters (Barbara Hamand and Rose Medici). HPB, p. 18. Appellee Brief, p. 18 and 65; APP. 10, 20, FPO ¶ 5 and 6, Mar. 9, 2020; RPO ¶ 5 and 6, Sept. 18, 2020.

Therein lies the problem. Huntsman is not and cannot be an heir within the meaning of Iowa's intestate succession laws because heirs are determined by the relationships existing at the time of the death. Huntsman was not Frank's heir at the time of Frank's death, Barbara Hamand ("Hamand"), Huntsman's mother was the heir. On the date of Frank's death, Huntsman had no right to take from Frank's Estate "per stirpes" (i.e. by representation) because his mother was still alive. Accordingly, Huntsman

has never been and can never be considered an heir to Franke's Estate. It was an error and abuse of discretion for the Probate Court to hold that Huntsman is an "interested party" with a "direct interest in reopening the Estates" when at all times that interest has been contingent upon multiple factors, such as his mother not devising her assets (including Ruth's name and likeness) to charity. APP. 84, RO p. 9, Nov. 16, 2021.

Nothing in the Iowa Probate Code (or Huntsman's Response Brief) identifies any statutory or other legal basis for "heirs" under Iowa's intestate succession laws to be determined based upon the circumstances that come to bare at some date after the decedent's death such as the subsequent death of the decedent's heir or taking possession of a decedent's scrapbooks. HRB, p. 65. There certainly is no law within Iowa's Probate Code that allows for heirship to be determined based upon conduct of a third party, such as Exile.

The only case cited by Huntsman as support for this theory of evolving "surviving heirship" is *Ritz v. Selma United Methodist Church*, 467 N.W.2d 266 (1991). The case is distinguishable from the facts of this case. First and foremost, the deceased in *Ritz*, Opal, died testate with a will that bequeathed percentages of her estate to specific legatees; the estates could be reopened because the identities of the legatees was known and not subject to

dispute. Further, the property at issue in *Ritz* was coins and paper money, not intangible property that by operation of law can be abandoned if not used or otherwise preserved. Comparably, in *Ritz*, the Iowa Supreme Court evaluated the status of the paper money and coins, determining that the money and coins had not been abandoned because it was buried in jars and tin cans indicating an intent to preserve ownership by the decedent who buried it.

The fact that *Ritz* involves paper money and coins should not go unnoticed because it is consistent with the probate court's jurisdictional limits based upon the scope or type of property at issue (discussed above). Because it involves paper money and coins, ownership can be based upon tracking the chain of physical possession for the property. The same is not true for intellectual or intangible property unless the right is reduced to tangible form such as through a mark, a written license, or a claim made on a probate inventory. Again, Huntsman has not presented the Probate Court with evidence to establish that Ruth or Frank ever intended to preserve ownership over Ruth's name and likeness so that it could descend to Huntsman.

Moreover, unlike the legatees in *Ritz*, Huntsman has not presented the Probate Court with any evidence whatsoever to confirm that he is entitled to an inheritance from his mother. It is entirely possible that Hamand bequeathed all property she had to charity upon her death. It is equally possible that Hamand died intestate and never had an estate go through probate such that the time for opening a probate estate for Hamand has lapsed and is now barred under Iowa Code § 633.228 (a petition for intestate succession must be filed by a surviving spouse within twenty days, each subsequent class has an additional 10 days to file a petition) and Iowa Code § 633.331 (original administration of an intestate estate shall not be granted after five years from the death of the decedent). If either of those scenarios is true, Huntsman would never be able to inherit anything from Frank through his mother. Accordingly, Huntsman's interest in these Estates is too contingent, remote, and speculative to confer standing upon Huntsman to reopen these Estates or jurisdiction upon the Probate Court to hear his claims.

Further, Iowa Code § 633.487 prohibits any person who had notice of the final report from contesting the correctness or the legality of the inventory or "the list of heirs set forth in the final report of the personal

representative…" If Huntsman wanted to be considered a "heir" of Frank, he or his mother, Hamond, were required by Iowa Code § 633.487 to make that claim when Frank's Estate was originally opened and closed. Under *DeVoss*, Huntsman would not even have been allowed to intervene in Frank's original probate proceedings due to the contingent nature of his interests. It strains credulity to suggest that he can do so now, through Iowa Code § 633.489, merely because Frank's actual heirs have now passed away. By that logic, disgruntled heirs can avoid the original probate process in any intestate proceeding by simply passing their dispute on to more remote heirs, their children, to be further litigated after the heir's death. That certainly does not serve the purpose sought to be achieved by probate courts or the Probate Code.

III. THE PROBATE COURT ERRED IN DENYING EXILE'S MOTION TO INTERVENE

Contrary to Huntsman's assertion (HRB, p. 26), through this appeal Exile asserts intervention of right and permissive intervention should have been granted by the Probate Court. The Probate Court erred and abused its discretion by finding Exile was an "interloper", without providing Exile with notice and a reasonable opportunity to intervene and be heard on the issues

before the Probate Court. APP. 85-88, RO, p. 4-6, Nov. 16, 2021.

The Probate Court and Huntsman made much ado of the fact that Exile did not file separate Application to Intervene before filing its Motion to Vacate, Dismiss, and Close these Estates. Huntsman argued and the Probate held that this made Exile a mere interloper and completely deprived Exile of all right to intervene in the probate proceedings or protect its registered trademark for the name "RUTHIE". HRB, p. 30; APP. 85-88, RO, p. 4-6, Nov. 16, 2021. In doing so, the Probate Court relied on form over substance, in contradiction of the directives from this Court concerning the importance of deciding jurisdictional issues, regardless of how the issue is presented. As explained in *State v. Lasley*, 705 N.W.2d 481, 486 (2005):

> The general theme of Iowa cases provides that, when a court is confronted with a question of its own authority to proceed, it should take charge of the proceedings affirmatively, regardless of the vehicle used to raise the issue. The court should utilize the most efficient method at its disposal to determine the true facts and then decide the issue promptly. When the court's power to proceed is at issue, the court has the power and the duty to determine whether it has jurisdiction of the matter presented. Subject matter jurisdiction should be considered before the court looks at other matters involved in the case and before it determines whether the parties are entitled to a jury trial. The court should be less concerned about the form in which the question of subject matter jurisdiction reaches it and more concerned about establishing an efficient, prompt, trustworthy solution, even if innovative and unusual approaches are required

to reach the issue.

Even though Exile used an unusual approach to raise the issue of subject matter jurisdiction, the issues should not have been avoided by the Probate Court on procedural grounds.

This is what the Probate Court did. It declined Exile's Motion to intervene based upon a host of defective, unsupported, and contradictory findings. APP. 85-88, RO, Nov. 16, 2021. First, the process and reasoning employed by the Probate Court was defective because all orders entered by the Probate Court without notice and prior to approval of the final report are reviewable. Iowa Code § 633.37. Thus, the jurisdictional findings of the Probate Court as set forth in its Orders to Reopen were subject to review. Yet in its November 16, 2021 Order, the Probate Court gave little consideration to the jurisdictional issues finding: "the petitioner is a proper person to present such Petition and good cause has been shown for to reopen the administration of said decedent's estates." APP. 86-7, RO, p. 4-5, Nov. 16, 2021. This is an abuse of discretion because there is a lack of factual support articulated in the Order to support the conclusion, as well as erroneous conclusions of law concerning the finding of "new property" in a property misappropriation claim and Huntsman's status as an heir (all of which is discussed above).

It was also an error for the Probate Court to refuse Exile's Motion to Intervene based upon the erroneous finding that Exile was not an interested party and was a mere interloper. APP. 85-8, RO p. 3 – 6.

Iowa R. Civ. P. 1.407(1)(b) provides intervention of right upon timely application to anyone who "claims an interest relating to the property or transaction with is the subject of the action" and the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest. And, Iowa R. Civ. P. 1.407(2) allows for permissive intervention where an applicant's claim or defense and the main action have a question of law or fact in common. Comparably, an interloper is one who interferes without justification. Black's Law Dictionary, 2nd Pocket Ed. "interloper" (2001).

The test of right of intervention is "interest", not necessity. *Savings Bank Primghar v. Kelley*, 2022 WL 3440702 (Iowa App. 2022) (citing *Rick v. Boegel*, 205 N.W. 713, 717 (1973)). An interested party may intervene at any time prior to trial. *Id.* Similar to evaluating a Motion to Dismiss, all allegations of a petition to intervene are assumed true to test the legal sufficiency of the Petition. *Id.*; see also *Matter of Estate of DeVoss*, 474 N.W.2d 539 (1991).

Through its Motion to Dismiss, Exile alleged that it was "an interested party." APP. 31, EMTD, Aug. 8, 2019. The Probate Court overlooked Exile's written motion to intervene, which was set forth in Exile's Response to Huntsman's Motion to Strike. APP. 140, ERMTS, p. 23, Sept. 13, 2021. In said Response, Exile requested:

> If the Court disagrees and finds it is necessary to follow the procedure for intervention, Exile alternatively and humbly request leave to file a Motion to Intervene in these probate proceedings.

As noted by the Probate Court, Exile's lack of filing a Motion to Intervene was "an oversight by Exile as to the procedural requirements" for bringing Motions in these proceedings. APP. 95, FO, p. 13, Nov. 16, 2021. Thus, with its Motion to Reconsider, Exile also filed a Proposed Petition to Intervene. APP. 100, Ex. A to Exile's Motion to Reconsider.

Exile's Motion to Intervene explained that Huntsman seeks to utilize these probate proceedings to "claw-back" and redistribute intellectual property rights that passed into the public domain. APP. 97-100 EMR, Ex. A, Nov. 24, 2021. Exile rightfully acquired the right to use the name "RUTHIE" in association with its goods and services by registering a trademark for the name "RUTHIE" and using said trademark in conjunction with its goods and

services. *Id.* The District Court in the Civil Action actually confirmed this fact in two Orders. APP. 633, CVCV 60249, Order on Motion for Summary Judgment, Jan. 18, 2022 ("Exile is the holder of the 'Ruthie' trademark"); APP. 659, CVCV 60249, Order on Plaintiff's Motion to Reconsider, p. 2, Apr. 4, 2022 (Exile is the "holder of the "Ruthie" trademark).

The remainder of the record reflects that Exile moved to intervene for purposes of defining the property rights that Huntsman actually inherited through intestate succession (rights which he should not be entitled to for the reasons discussed above) and ensuring that Huntsman is not granted, through the probate proceedings, rights that encroach upon the trademark rights that Exile was already vested with, via its use and registration of the trademark "RUTHIE." The District Court's holding in the Civil Action and Huntsman's concession that he has no trademark demonstrates the point. Exile has a registered trademark for the name "RUTHIE". Huntsman is attempting to utilize these probate proceedings to encroach upon Exile's trademark and other intellectual property rights by his filing the collateral Civil Action and Trademark Action. As such, Exile has a clear interest in the property that is the subject to of the probate proceedings, at least until the property Huntsman seeks through these probate proceedings is sufficiently defined and no longer

encroaches upon Exile's established and priority use of a trademark – "RUTHIE".

Pursuant to *Rick*, the Probate Court should have assumed the allegations from Exile's Petition to Intervene were true and determined whether Exile was entitled to intervention as of right or permissively. In its Order on Exile's Motion to Intervene, the Probate Court acknowledged that Exile is an interested party and "could attempt to intervene", but held Exile's Motion to Intervene would be "ineffectual" because it was untimely. APP. 157-59, FO p. 5-6, Jan. 31, 2022. In doing so, the Probate Court ignored extensive precedent providing that intervention should be allowed any time prior to trial (or in probate proceedings prior to the order approving the final report), choosing, again, procedure over substance in resolving the issues.

Even today, no inventory (or corresponding final report) has been filed by Huntsman in these probate proceedings, making it difficult to see how any orders from the Probate Court could be considered "written in stone" and not subject to review or modification. And, under *Savings Bank Primghar*, intervention prior to the final order being entered is timely. See also *Estate of Randeris v. Randeris*, 523 N.W.2d 600, 604 (Iowa 1994) (trial in a probate case consists of evaluating the final report and any objections thereto).

Because there has been no final report entered in these cases and, correspondingly, no trial, it was erroneous for the Probate Court to deny Exile's Motion to Intervene on timeliness grounds.

Further, the timeliness of Exile's Motions is explained throughout the record. During the hearing on its Motion to Vacate, Dismiss, and Close, Exile argued that the property that is the subject of this appeal escheated to the state. APP. 39, Transcript 7:7-19 (explaining that Exile was trying to investigate the factual underpinnings of the action such as whether Ruth consented to the public's use of her name and likeness prior to her death). Iowa Code § 633.544 provides that when the probate court has reason to believe that any property of the estate of a decedent should by law escheat, the court must inform the attorney general and appoint a personal representative to take charge of such property. Iowa Code § 633.543. The personal representative must then give notice of the amount and kind of property; said notice "shall be best calculated to notify those interested or supposed to be interested in the property." This allows claimants six months to establish heirship. *In re Corbin's Estate*, 17 N.W.2d 417 (1945) (holding a jury trial as between the state, which claimed the property by escheat and the alleged heirs on whether they presented sufficient evidence of heirship).

The point being twofold: (1) property does not descend through intestate succession for all of eternity because the concept of escheat is well established and recognized under Iowa's Probate Code; (2) the procedure for evaluating the potential escheatment of the property at issue was not followed by the Probate Court, who did not require Huntsman to give notice to the attorney general or Exile of the amount or kind of property at issue. Upon notification of the attorney general and notice to all interested parties, including Exile, Huntsman should then be required to establish his right as an heir to the property. See *McKeown v. Morrow,* 183 Iowa 454 (1918) (property to which no heirship has been established escheats to the state); *In re Corbin's Estate*, 17 N.W.2d 417 (1945); *In re Lemke's Estate,* 216 N.W.2d 186 (1974) (a petition to reopen under Iowa code 633.489 must be paired with notifications that meet constitutional muster). This means there must be notice reasonably calculated, under all the circumstances, to apprise interested parties, such as Exile, of the pendency of the action. Moreover, interested parties, such as Exile, must be afforded an opportunity to present their objections.

The record is void of any evidence that the Probate Court issued any notice to Exile concerning the reopening of these Estates. Exile was not

provided prompt notice of Huntsman's Petition to Reopen. Nor was Exile provided a reasonable opportunity to evaluate Huntsman's Petition to Reopen, a matter that cannot be disputed because the Order granting the Petition to Reopen Frank's Estate was granted by the Probate Court within one day of the Petition being filed. At best, Exile was notified of Huntsman's Petitions to Reopen when served with pleadings in the Civil Action. There is no evidence that the Probate Court advised Exile that it was required to voice its objections to the Petitions within a certain period of time. And, Iowa Code § 633.37 provides that all orders issued by the probate court without notice are reviewable at any time. Exile's Motion to Dismiss was exactly that, a request that the Probate Court review its Orders to Reopen these Estates, orders that were issued without any notice to Exile.

The Probate Court admonished Exile for waiting 10 months to evaluate the claims made by Huntsman in the Petitions to Reopen. Granting Exile 10 months to evaluate Huntsman's claims and conduct discovery regarding those claims is not an unreasonable period of time, particularly in light of Huntsman's twenty-five-year delay in presenting his claims to the Probate Court in the first place, as well as Huntsman's ongoing refusal to file an inventory to itemize the property he claims as the basis for his Petition to

Reopen.

In light of these circumstance, Exile proceeded to conduct discovery in the Civil Action. APP. 553, CVCV 60249, Ex 21, Affidavit. As part of that investigation, Exile's counsel evaluated the claims being asserted by both the Estates in the Civil Action and Huntsman in these probate proceedings. *Id.* To do so, Exile took the deposition of Huntsman on July 30, 2022. CONF. APP. 19, FMTD Ex. 1, Huntsman Dep. P. 1, Aug. 13, 2021. Less than 30 days after that deposition was completed, Exile filed its Motion to Vacate, Dismiss, and Close these Estates in the Probate Court that is the subject of this appeal, as well as a Cross Motion for Summary Judgment in the Civil Action. This was a reasonable process and a timely challenge to Huntsman's Petition to Reopen these Estates, particularly when neither Huntsman nor the Probate Court communicated to Exile an expectation that a challenge be lodged within a certain period of time. Finally, there is no prejudice to Huntsman by implementing this procedure. Given these circumstances, it was an error and abuse of discretion for the Probate Court to hold that Exile's Motion to Intervene was "untimely" or that Exile was unjustified in the filing of its Motion to Dismiss prior to its Motion to Intervene. Exile simply did what is expected of counsel in every litigation – investigate claims before filing

motions or pleadings based upon those claims.

IV. HUNTSMAN'S CROSS APPEAL/REQUEST FOR ATTORNEY'S FEES SHOULD BE DENIED

a. Preservation of Error

Exile, as Cross Appellee, disagrees with Huntsman's allegation that he preserved error in a request for attorney's fees. Huntsman has not cited any part of the record where the error is preserved. Accordingly, Huntsman's Brief on Cross Appeal does not meet the requirements of Iowa R. App. P. 6.903(2)(g)(1).

b. Standard of Review

Exile, as Cross Appellee, agrees that review of a district court's denial of a request for sanctions is for an abuse of discretion. *Everly v. Knoxville Community School Dist.*, 774 N.W.2d 488, 492 (2009). Abuse is only found where the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

c. Argument

Through his cross appeal, Huntsman alleges that attorney's fees should be assessed against Exile. He provides no examples of cases where attorney's fees were awarded under Iowa R. Civ. P. 1.413(1) due to

arguments or appeals being "frivolous." And, Huntsman's arguments ignore abundant case law discussing Iowa's rules for imposing attorney's fees as a sanction.

Specifically, Iowa follows the American rule: "the losing litigant does not normally pay the victor's attorney's fees." *Matter of Guardianship of Radda*, 955 N.W.2d 203 (2021). "Generally, attorney fees are recoverable only by statute or under a contract." *Id.* "There is a 'rare' common law exception to this rule, permitting recovery of attorney fees when the [party] 'has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* This is because fee-shifting awards can "chill vigorous advocacy." *Id.* Thus, where the appellant presents questions of first impression, the claims are not frivolous within the meaning of Iowa R. Civ. P. 1.413(1).

Through the entirety of his Appellee Brief, Huntsman has not cited a single statute or case directly on point with issues and facts presented in this appeal. For example, Huntsman cited a criminal case and a juvenile case to support his argument that the probate court's jurisdiction to over see administration of estates is unlimited. HRB, p. 27-28 (citing *Marriage of* Bolson, 394 N.W.2d 361, 363 (Iowa 1986) and *State v. Mandicino*, 509 N.W.2d 481, 486 (Iowa 1993)). He cites to more than thirteen cases from

other jurisdictions and more than a dozen secondary sources to make his arguments, many of which have never been identified or adopted by this Court. He then ignores the more recent and relevant case law on the issue of the Probate Court's jurisdiction and his standing such as *Youngbult v. Youngblut*, 945 N.W.2d 25 (Iowa 2020); *Matter of Guardianship of Radda*, 955 N.W.2d 203 (Iowa 2021); *Rand v. Security National Corporation*, 974 N.W.2d 87, 91 (2022). The authorities relied upon by Huntsman, himself, and those he chooses to ignore demonstrate that many of the issues on this appeal are matters of first impression. Because this appeal presents questions of first impression, neither this appeal nor the proceedings from which the appeal derives are frivolous within the meaning of Iowa R. Civ. P. 1.413(1).

The District Court acknowledged the same when it held that Exile's Motion to Vacate, Dismiss, and Close was not unreasonable under the circumstances. Exile "had a reasonable basis for their arguments." APP. 94, RO, p. 13, Nov. 16, 2021. Although unsuccessful, Exile presented "rational argument based upon facts and case law in support of it" in the proceedings before the Probate Court. APP. 94, RO, p. 13, Nov. 16, 2021.

As demonstrated through Exile's Appellant Brief and this Reply Brief Exile continues to present "rational argument based upon facts and case law"

in support of its appeal. Accordingly, the Probate Court did not abuse its discretion when it declined to award attorney's fees. Nor is there a basis to support a finding that this appeal is frivolous such that imposing sanctions in the first instance as a result of this appeal would be appropriate. Accordingly, Exile requests that Huntsman's Cross Appeal for attorney's fees be denied in its entirety.

CONCLUSION

This case presents unique and complicated issues concerning what court is responsible for deciding substantive issues of property law, intestate descent of property, and the procedure to decide those issues. Because Huntsman's claim arises from an alleged right to inherit from these Estates, the first issue that must be resolved is whether the Probate Court has jurisdiction to reopen these Estates under Iowa Code 633.487-9 to grant Huntsman the rights he seeks to enforce against Exile. The analysis should then focus on whether these Estates have a right to title for intangible property and the scope of any such title. Because the Probate Court has no jurisdiction to hear Huntsman's claims or jurisdiction over any property at this time, Exile reiterates its request that the Orders Reopening these Estates be reversed and the Probate Court instructed to close these Estates. Alternatively, Exile

reiterates its request that the Orders to Reopen, Orders granting Leave to Employ Litigation Counsel, and the Orders on Exile's Motion to Vacate, Dismiss, and Close be reversed and remanded to the Probate Court with instructions to:

1. Hold a trial to decide the substantive issue of whether and to what extent Ruth's intellectual property actually did descend to her heirs,
2. Hold trial to decide whether Huntsman is an heir to confer upon him standing to reopen these Estates, and
3. Grant Exile's Motion to Intervene for purposes of participating in the aforementioned trial.

Exile further requests any other relief the Court deems just.

CERTIFICATE OF COST

Counsel for the Defendants-Appellees certifies that the actual cost of printing Defendants-Appellees' Reply Proof Brief is $0.00.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using **Times New Roman** in **14-point font** and contains less than 10,987 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

By: /s/ Kristina J. Kamler — November 29, 2022
Kristina J. Kamler, AT#0009772 — Date

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 29, 2022, this Final Reply Brief was electronically filed with the Clerk of Court for the Supreme Court of Iowa using the EDMS system, service being made by EDMS upon the following:

Clerk of the Supreme Court of Iowa
Judicial Branch Building
1111East Court Avenue
Des Moines, Iowa 50319

Matthew G. Sease, #AT0010484
Scott M. Wadding, #AT0010447
Sease & Wadding
104 S.W. 4 St., Suite A
Des Moines, IA 50309
(515) 883-2222 Fax (515) 883-2233
msease@seasewadding.com
ATTORNEYS FOR ESTATE OF FRANK BISIGNANO AND ESTATE OF RUTH BISIGNANO, APPELLEES/CROSS-APPELLANTS

Amanda Green
Takekawa @ Green, PLLC
1610 SW Main St., Suite 207
Ankeny, IA 50023
515-964-2000
amanda@ankenylawyer.com
ATTORNEY FOR ESTATE OF FRANK BISIGNANO AND ESTATE OF RUTH BISIGNANO, APPELLEES/CROSS-APPELLANTS

/s/ Kristina J. Kamler