IN THE SUPREME COURT OF IOWA

Appeal No. 23-0093

GARY DEAN JANSSEN and LARRY DALE JANSSEN,
Plaintiffs/Appellants,

vs.

THE SECURITY NATIONAL BANK OF SIOUX CITY, IOWA, as Executor of the Estate of Richard D. Janssen, and SHERYL ANN COLLINS, Individually,
Defendants/Appellees

FINAL BRIEF OF APPELLEE THE SECURITY NATIONAL BANK OF SIOUX CITY, IOWA

Appeal from the Iowa District Court for Woodbury County
Case No. ESPR 055208

Honorable Zachary S. Hindman
District Court Judge, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL COURT & NON-IOWA CASES

IOWA SUPREME CASES

IOWA STATUTES

IOWA RULES OF CIVIL PROCEDURE

IOWA RULES OF APPELLATE PROCEDURE

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. PLAINTIFFS DID NOT COMPLY WITH IOWA CODE § 633.312.

Arnold v. Newhall Cnty. Water Dist., 89 Cal Rptr. 450 (Cal. Ct. App. 1970)
Best v. Yerkes, 77 N.W.2d 23 (Iowa 1956).
Department of General Services v. R.M. Boggs Co., 336 N.W.2d 408 (Iowa 1983)
Ditch v. Hess, 212 N.W.2d 442 (Iowa 1973)
Elmore v. Woudenberg, 728 N.W.2d 225 (Iowa Ct. Appl 2006)
Foggia v. Des Moines Bowl-O-Mat, Inc., 543 N.W.2d 889 (Iowa 1996)
Franckesen v. Miller, 297 N.W.2d 375 (Iowa 1980)
Glenn v. Farmland Foods, Inc., 344 N.W.2d 240 (Iowa 1984)
In re Detention of Fowler, 784 N.W.2d 184 (Iowa 2010))
In re Ditz Estate, 125 N.W.2d 814 (Iowa 1964)
In re Estate of Boyd, 634 N.W.2d 630 (Iowa 2001)
Lane v. Coe College, 581 N.W.2d 214 (Iowa Ct. App. 1998)
Magnusson Agency v. Public Entity Nat. Co. – Midwest, 560 N.W.2d 20 (Iowa 1997)
Rice v. Seventeen Twenty Associates, No. 99-0424, 2000 WL 278752 (Iowa Ct. App. March 15, 2000),
Sear v. Clayton Cnty. Zoning Bd., 590 N.W.2d 512 (Iowa 1999)
State v. Morrison, 323 N.W.2d 254 (Iowa 1982)

II. THE DISTRICT COURT DID NOT RETAIN AUTHORITY TO HEAR THE CASE EVEN IN THE ABSENCE OF STRICT COMPLIANCE WITH IOWA CODE § 633.312.

Estate of Strong, 791 N.W.2d 427 (Iowa Ct. App. 2010)
In re J.H., 697 N.W.2d 127 (Iowa 2005)
In re K.C.L., 662 N.W.2d 374 (Iowa Ct. App. 2003)
Metz v. Amoco Oil Co., 581 N.W.2d 597 (Iowa 1998)
Mitchell v. Cedar Rapids Cmty. Sch. Dist., 832 N.W.2d 689 (Iowa 2013)
Peters v. Burlington N. R.R., 492 N.W.2d 399 (Iowa 1992)
Turner v. CCRC of Cedar Rapids, LLC, No. 20-1210, 2021 WL 3075713 (Iowa Ct. App. July 21, 2021)

ROUTING STATEMENT

Pursuant to Iowa Rules of Appellate Procedure 6.903(2)(d) and 6.1101, this case should be retained by the Iowa Supreme Court as it contains "substantial issues of first impression."

STATEMENT OF THE CASE

This appeal involves a Will Contest which was originally filed on **October 3, 2018**, by Dean Charles Janssen (hereinafter "Dean"), Gary Dean Janssen (hereinafter "Gary"), Larry Dale Janssen (hereinafter "Larry"), and Jeffrey Lee Janssen (hereinafter "Jeff"), against their sisters, Sheryl Ann Collins (hereinafter "Sheryl") and Debra Lynn Shultz (hereinafter "Debra"), as well as against the Executor, The Security National Bank of Sioux City, Iowa (hereinafter "Security Bank"). (Appendix "hereinafter App." at 12). The first jury trial on the Will Contest concluded on **November 6, 2019**, and resulted in a hung jury (i.e, "mistrial"). The matter was ultimately scheduled for re-trial; however, due to the COVID mandates, the re-trial was unable to be held until **June 22, 2021**.

On May 28, 2021, nearly eighteen (18) months after the conclusion of Trial # 1, and twenty-five (25) days prior to the commencement of Trial # 2 on June 22, 2021, Jeff and Dean were suddenly, and without any advance notice, dismissed as Plaintiffs. (App. 543)

On June 21, 2021, with Jury Trial # 2 commencing the following morning at 8:30 a.m. on June 22, 2021, Plaintiffs suddenly and without advanced warning to the Defendants or to the District Court, dismissed Count 1 – Testamentary Capacity and dismissed Debra Shultz as a Defendant. (App. 790 - Dismissal of Count 1) and (App. 792 - Dismissal of Debra Shultz). In the Appellant's Brief, Plaintiffs mislead the Court by stating "*before the second trial*" they dismissed Dean, Jeff, and Debra. In fact, the dismissal of Count 1 – Testamentary Capacity was at 12:51 p.m. and the Dismissal of Deb Shultz was at 12:53 p.m., less than twenty (20) hours prior to the commencement of jury selection. (App. 790 and 792). These dismissals were also filed two (2) weeks after the parties and Court had held the pretrial conference on June 7, 2021, and filed all pretrial documents (i.e, Exhibit lists, Witness Lists, Motions in Limine, and Proposed Jury Instructions). (App. 603 - June 4, 2021, Order).

On June 22, 2021, the morning of jury selection, one of the initial issues with the District Court were the dismissals of Count 1 and Debra Shultz and whether those dismissals should be granted pursuant to Iowa Rule of Civil Procedure 1.943. (App. 1070 - Trial Transcript (hereinafter "T.T.") at Volume 1 - 5:10-15). Ultimately, the Defendants did not object to the dismissals and the Court granted dismissal of Count 1 – Testamentary

Capacity and Debra as a Defendant, just minutes before jury selection commenced. (App. 1071-1072; T.T. at Volume 1 - 6:4 to 7:5). During this same period of preliminary pre-trial issues, the Defendant Security National Bank also filed an oral Motion for Sanctions against the Plaintiffs based upon their midnight filing of the Dismissal of Count 1 – Testamentary Capacity – alleging the failure of Plaintiff to conduct pretrial conference in good faith pursuant to Iowa Rule of Civil Procedure 1.602(5). (App. 1093-1100; T.T. at Volume 1 - 28:25 to 35:2. After lengthy discussion on the midnight dismissal, the Court denied the Motion of Security National Bank on the record, but never issued a written Ruling. (App. 1093-1115 and 1151-1152; T.T. Volume 1 - 28:25 to 50:11 and 86:10 to 87:21).

The Jury Trial # 2 ultimately resulted in a Plaintiffs' verdict. (App. 800 - Civil Verdict and 802 - Punitive Damages Verdict). On August 13, 2021, Defendant Sheryl filed a Motion for New Trial, raising numerous issues. (App. 804 - Motion; and App. 813 - Brief). On August 16, 2021, Defendant Sheryl also filed a Motion to Dismiss for Failure of Plaintiffs to include Indispensable Parties at Jury Trial # 2. (App. 821).

On May 20, 2022, the District Court ruled on the Motion for New Trial, but rather than addressing the plethora of Defendants' post-trial issues, the District Court ordered a New Trial based solely upon the irregularities of

Plaintiffs' dismissal of Defendant Debra on the eve of trial and the failure to include all indispensable parties in the Trial # 2 (namely Debra, Dean and Jeff), pursuant to Iowa Rule of Civil 1.234, Iowa Code § 633.312, and Iowa Code § 633.316. (App. 847).

On June 3, 2022, Plaintiffs filed a Motion for Reconsideration. (App. 888). On June 13, 2022, Security National Bank filed a resistance to the Motion for Reconsider, and Sheryl Collins filed a resistance on June 20, 2022. (App. 919 and App. 930). On December 21, 2022, the District Court entered its' Ruling denying the Motion to Reconsider. (App. 937). On January 13, 2023, Plaintiffs timely filed their Notice of Appeal. (App. 972).

STATEMENT OF FACTS

While this appeal does involve more legal/procedural review and interpretation, additional facts are necessary for the Supreme Court to get the full picture of how this case is before the Supreme Court over four and one-half (4 ½) years after the Will Contest petition was filed.

During his life, Richard Janssen (hereinafter "Richard") was married to Melva Janssen (hereinafter "Melva"), and the couple had six (6) children – Dean, Sheryl, Debra, Jeff, Larry, and Gary. (App. 36- Amended Report). In 2009, Richard and Melva decided to hire Attorney Barry Thompson to do their estate planning. (App. 1190; TT at Volume 4 – 65:7-9). On

September 3, 2009, Richard and Melva executed a Last Will & Testament, which were "mirror image" wills, and decided to leave their substantial farm properties, which were in three (3) separate sections, to each other, as a life estate, and remainder respectively to all six (6) children (i.e., two (2) children per section). (App. 1054 - Exhibit 601). Additionally, Larry and Gary had the right to buy the properties from Dean, Jeff, Debra, and Sheryl within sixty (60) days of Melva's death. Id. If Larry and Gary did not elect to buy out the land, they still had the right to rent the land. Id. Attorney Barry Thompson testified Richard and Melva's plan was to allow Larry and Gary to get the land to continue farming, but the other children would always get a cash equivalent based upon the appraised value of the land. (App. 1193; TT at Volume 4 - 113:15-24).

On September 5, 2012, Richard and Melva again meet with Attorney Barry Thompson to revise their 2009 Wills. (App. 1191; TT at Volume 4 – 66:2-5). Richard and Melva again executed "mirror image" wills and, on the 2012 Wills, again left their three (3) sections of land to each other, as a life estate, with remainder respectively to all six (6) children (i.e, two (2) children per section). (App. 1060; Exhibit 602). Again, Larry and Gary had the right to buy the property from Dean, Jeff, Debra and Sheryl within

ninety (90) days of Melva's death; however, the 2012 Will allowed them to purchase at a greatly reduced price of $4,000.00 per acre. Id.

Sometime after 2012, Melva became upset with her daughter, Sheryl, claiming Sheryl put "sticky stuff" on her counter, but never advised Sheryl as to why she was upset. (App. 1171-1172; Volume 2 – 212:7 to 213:5). Melva's concerns apparently continued to percolate until **May 2014** when Melva and Richard went back to Attorney Barry Thompson to amend their Wills a 3rd time. (App. 1192 and 1040; TT at Volume 4 – 67:6-8 and Exhibit 305).

Despite Melva's alleged anger towards Sheryl, the 3rd Will of Richard and Melva did not just disinherit Sheryl; rather, Richard and Melva basically disinherited four (4) children (Sheryl, Deb, Dean and Jeff) in favor of only two (2) children (Larry and Gary). (App. 1040; Exhibit 305). This time, Richard and Melva, while still leaving their respective one-half (1/2) interests to the surviving spouse, as a life estate, upon the death of the surviving spouse, 100% of the farm ground and assets went to **only** Larry and Gary. Id. This time, if there was no surviving spouse, Melva and Richard left only $60,000 to Dean, $60,000 to Jeff, $60,000 to Debra, and nothing to Sheryl. Id.

On **April 14, 2017**, Melva passed away, and Melva's 2014 Will was admitted to probate. (App. 974 - Exhibit 201). Richard was appointed the Executor of the Will. (App. 975 - Exhibit 202). Melva's one-half (1/2) interest in the farm was ultimately distributed by Court Officer to Richard for his life, then, upon Richard's death, automatically passes to Larry and Gary. (App. 1050 - Exhibit 313). As Richard survived Melva, no monetary bequests went under Melva's Will to Dean, Jeff, or Debra – and of course, Sheryl was disinherited anyway.

On **April 13, 2018**, Debra testified that she and Richard drove to Attorney Barry Thompson's office, so that Richard could obtain a copy of Richard's Last Will & Testament. (App. 1187-1188 - T.T. at Volume 4 - 4:4 to 5:11). Debra testified that upon obtaining the copy, they both reviewed the Will and realized Richard's Will was the same as Melva's 2014 Will -- basically that everything went to Larry and Gary, only $60,000.00 passed to Dean, Jeff and Debra, and Sheryl was disinherited. (App. 1045 - Exhibit 310). Debra testified that she and Richard were both very upset and crying, and she had to leave. (App. 1188-1189 - T.T. at Volume 4 – 5:17 to 6:11). Sheryl was contacted that same day, and testified she came over that night and met with her father about the 2014 Will. (App. 1168-1169 - T.T. at Volume 2 - 82:1 to 83:23).

On **April 16, 2018**, Sheryl and Richard had a further conversation about Richard's 2014 Will, which Sheryl recorded. (App. 1168 - T.T. at Volume 2 – 83:24-25). Unlike most situations of hearsay trial testimony and statements, the Judge and Jury were actually allowed to listen to the full conversation of Richard and Sheryl, as the recording was played during the Jury Trial # 2. (Exhibit 365). There was also a transcript of the conversation offered as Exhibit 304. (App. 980). Upon the conclusion of the conversation, Richard requested Sheryl assist him in contacting a lawyer. (App. 980 - Exhibit 304). Sheryl ultimately contacted Heidman Law Firm in Sioux City, Iowa, and an appointment was scheduled for Richard to meet with Attorney Joel Vos to discuss Richard's estate plan. (App. 1170 - T.T. at Volume 2 – 195:2-9).

On **April 20, 2018**, Attorney Joel Vos met with Richard individually, and Sheryl, who drove Richard to the appointment, remained in the lobby. (App. ___ - T.T. at Volume 3 – 91:17 to: 92:13). Vos testified that shortly into the meeting, Richard asked if Sheryl could come into the meeting, as he felt more comfortable with her being present. Id. Vos ultimately drafted a new Will for Richard, which left his one-half (1/2) interest in the 3 farm properties to Debra and Sheryl (as Larry/Garry were ultimately receiving the other one-half (1/2) interest through the Court Officer Deed from Melva's

Estate) and the remaining cash and assets (which were over $600,000.00) were divided equally between Larry, Gary, Sheryl and Deb. (App. 976; Exhibit 303). Jeff and Dean would still receive $60,000.00, just like under Melva's 2014 Will. Id. Upon Richard's death, the entire 500+ acre farm would equally be owned by Larry, Gary, Debra and Sheryl, as well as the combined accumulated joint cash assets from Melva/Richard would be equally divided between Larry, Gary, Debra and Sheryl. Id.

On or around **June 28, 2018**, Richard passed away and a Petition for Probate of Will was filed on **September 2, 2018**. (App. 7). On September 17, 2018, Richard's April 20, 2018 Will was admitted to probate and pursuant to Richard's testamentary wishes, Security National Bank was appointed Executor of the Estate. (App. 7). Pursuant to its' role as Executor, Security National Bank filed several Reports & Inventories, and on March 6, 2019, filed its' 3rd Amended Inventory, valuing the Gross Estate of Richard at $2,882,692.66. (App. 72-82 - March 6, 2019, 3rd Inventory).

On **October 3, 2018**, Dean, Larry, Gary and Jeff filed a Petition for Will Contest against Security National Bank, as Executor, and against Sheryl and Debra, as Defendants. (App. 12). The Petition alleged Count 1 – Testamentary Capacity; Count 2 – Undue Influence by Sheryl and Debra; and Count 3 – Intentional Interference with Inheritance by Sheryl and Debra.

Id. Security National Bank filed its Answer on October 10, 2018, and Debra/Sheryl filed their Answer on October 30, 2018. (App. 19 - SNB Answer, and App. 30 - Debra/Sheryl Answer). A review of the Court filings reflect this case involved substantial discovery and depositions, including a Summary Judgment Motion to Dismiss the Undue Influence claims against Debra and Sheryl, which Plaintiffs' resisted. (App. 37 - Defendants' Motion for Summary Judgment; App. 40 - Defendants' Index of Evidence; App. 304 - Defendants' Memorandum in Support of Summary Judgment; App. 340 - Defendants' Statement of Facts; App. 346 - Plaintiffs' Resistance to Summary Judgment; App. 355 - Plaintiffs' Brief; App. 386 - Security National Bank's Joinder in Motion for Summary Judgment; and App. 388 - October 23, 2019, Ruling Denying Motion for Summary Judgment). This matter was ultimately tried to a Woodbury County Jury commencing October 29, 2019, and concluding November 5, 2019; however, the Trial # 1 resulted in a "hung jury" (mistrial) and the matter was Ordered to be retried at a later rescheduled date. (App. 403 - November 6, 2019, Order).

Following Trial # 1, the original Plaintiffs' counsel, Kyle Irvin, withdrew from representation on January 24, 2020. (App. 399). Attorney Tyler Smith filed his appearance for Plaintiffs on January 27, 2020, and

Attorney Alex Wonio filed his co-appearance for Plaintiffs on June 8, 2020. (App. 401 and App. 408).

The Trial # 2 was originally scheduled to commence on July 14, 2020; however, due to COVID court closures, the Trial # 2 was continued to April 8, 2021, and later continued to June 22, 2021. (App. 409, 412, and 414 - Orders).

On May 27, 2021, the District Court entered an Order requiring all pretrial filings to be filed with the Court by May 28, 2021, and the pretrial conference would be held on June 7, 2021. (App. 414 - May 27, 2021, Order). Pursuant to the Court's May 27, 2021, Order, the following day, on May 28, 2021, the following was filed:

1) Security National Banks filed its' Witness List (App. 417), Exhibit List (App. 420), Proposed Jury Instructions (App. 423), 2nd Motion in Limine (App. 454); Objections to Depositions (App. 461); and Trial Brief (App. 464) at approximately **3:36 p.m**. on May 28, 2021.
2) Defendants' Sheryl Collins and Debra Shultz's filed their Witness List (App. 485), Exhibit List (App. 487), Proposed Jury Instructions (App. 500); Motion in Limine (App. 529), Proposed Verdict Form at **4:02 p.m**. on May 28, 2021.

3) Plaintiffs' did not file their Witness list (App. 532), Exhibit List (535), Motion in Limine (App. 545), Proposed Jury Instructions (App. 577), and Trial Brief (App. ____) until **after 9:40 p.m**. on May 28, 2021.

Also, on May 28, 2021, at **9:57 p.m**., after all pretrial filings were submitted by the parties, Plaintiffs surprisingly filed a dismissal of Dean and Jeff as Plaintiffs. (App. 543).

Over the course of the next two (2) weeks, there were substantial court filings concerning jury instructions, objections to exhibits, responses to motions in limine and responses to jury instructions. (App. 603, 606, and 670).

The Final Pretrial Conference was held on June 7, 2021. (App. 603 - June 4, 2021, Order). The Court ruled on the pre-trial motions on June 9, 2021 (App. 606 - June 9, 2021, Ruling), and further entered an Order concerning jury instructions on June 9, 2021. (App. 670 - June 9, 2021, Order).

Despite the extensive filings and pretrial hearings, at no time did the Plaintiffs advise or suggest to the Court or Defendants of their intentions to dismiss Count 1 – Testamentary Capacity or dismiss Debra as a Defendant prior to Trial. Instead, on the eve of trial, at **12:51 p.m. and 12:53 p.m.**,

respectively, the Plaintiffs filed both dismissals. (App. 790 - Dismissal of Count 1 (12:51 p.m.) and 792 - Dismissal of Debra (12:53 p.m.)).

On June 22, 2021, the morning of jury selection, one of the initial issues with the District Court were the dismissals of Count 1 and Debra and whether those dismissals should be granted pursuant to Iowa Rule of Civil Procedure 1.943. (App. 1070 - Trial Transcript (hereinafter "T.T.") at Volume 1 - 5:10-15). Ultimately, the Defendants did not object to the dismissals and the Court granted dismissal of Count 1 – Testamentary Capacity and dismissal of Debra as a Defendant, just minutes before jury selection commenced. (App. 1071-1072; T.T. at Volume 1 - 6:4 to 7:5). During this same period of preliminary pre-trial deliberations, Security National Bank also raised an oral Motion for Sanctions against the Plaintiffs based upon their midnight filings of the Dismissal of Count 1 – Testamentary Capacity – alleging Plaintiffs failed to conduct the pretrial conference in good faith pursuant to Iowa Rule of Civil Procedure 1.602(5). (App. 1093-1100; T.T. at Volume 1 - 28:25 to 35:2). After lengthy discussion on the midnight dismissal, the Court denied the Motion of Security National Bank on the record, but never issued a written Ruling. (App. 1093-1115 and 1151-1152; T.T. at Volume 1 - 28:25 to 50:11 and 86:10 to 87:21).

The Jury Trial # 2 ultimately resulted in a Plaintiffs' verdict. (App. 800 - Civil Verdict and 802 - Punitive Damages Verdict). On August 13, 2021, Sheryl filed a Motion for New Trial, raising numerous issues. (App. 804 - August 13, 2021, Motion and App. 813 - Brief). On August 16, 2021, Sheryl also filed a Motion to Dismiss for Failure of Plaintiffs to include Indispensable Parties at Jury Trial # 2. (App. 821).

On May 20, 2022, the District Court ruled on the Motion for New Trial, but rather than addressing the plethora of post-trial issues raised by Defendants, the District Court order a New Trial based solely upon the irregularities of Plaintiffs' dismissals on the eve of trial and the failure of Plaintiff to include all indispensible parties (Dean, Jeff, and Debra) in Trial # 2 pursuant to Iowa rule of Civil Procedure 1.234, Iowa Code § 633.312, and Iowa Code § 633.316. (App. 847-Ruling).

On June 3, 2022, Plaintiffs filed a Motion for Reconsideration. (App. 888 - Motion). On June 13, 2022, Security National Bank filed a resistance to the Motion for Reconsider, and Sheryl filed a resistance on June 20, 2022. (App. 919 - SNB Resistance, and App. 930 - Sheryl Resistance). On December 21, 2022, the District Court entered its' Ruling denying the Motion to Reconsider. (App. 937 - Ruling). On January 13, 2023,

Plaintiffs timely filed their Notice of Appeal. (App. 972 - Notice of Appeal).

ARGUMENT

I. PLAINTIFFS DID NOT COMPLY WITH IOWA CODE § 633.312.

a. Preservation of Error.

It should be initially noted Appellant's Brief violates the Iowa Supreme Court briefing requirements, as set forth in Iowa Rules of Appellate Procedure 6.903(2)(g)(1), as Plaintiffs do not identify "how the issue was preserved for appellate review, with references to the places in the record where the issue was raised and decided.

It is the position of Security National Bank that Plaintiffs argued on September 15, 2021, in their Resistance to Motion to Dismiss, that Plaintiffs complied with Iowa Code § 633.312. (App. 838). Plaintiffs again argued in their June 3, 2022, Motion for Reconsideration, that Plaintiffs complied with Iowa Code § 633.312 (App. 888); however, Plaintiffs added a new argument, that Plaintiffs' substantially complied with the requirements of Iowa Code § 633.312.

b. Standard of Review.

It should be initially noted that Appellant's Brief violates the Iowa Supreme Court briefing requirements, as set forth in Iowa Rules of Appellate Procedure 6.903(2)(g)(2), as Plaintiffs do not identify "the scope and standard of appellate review." Furthermore, Plaintiffs' Appellant Brief is completely devoid of any argument as to how the District Court's Rulings violated any applicable standard of review.

Security National Bank contends the standard of review regarding a trial court's granting of a Motion for New Trial is for abuse of discretion. See Elmore v. Woudenberg, 728 N.W.2d 225 (Iowa Ct. Appl 2006) (citing Foggia v. Des Moines Bowl-O-Mat, Inc., 543 N.W.2d 889, 891 (Iowa 1996) and Magnusson Agency v. Public Entity Nat. Co. – Midwest, 560 N.W.2d 20, 30 (Iowa 1997), and Lane v. Coe College, 581 N.W.2d 214, 216 (Iowa Ct. App. 1998)).

The Supreme Court has repeatedly and consistently defined "abuse of discretion" as "an erroneous conclusion and judgment, one clearly against logic and effect of facts and circumstances before the court, or the reasonable, probable and actual deductions to be drawn therefrom." See Glenn v. Farmland Foods, Inc., 344 N.W.2d 240, 243 (Iowa 1984) (citing Department of General Services v. R.M. Boggs Co., 336 N.W.2d 408, 410

(Iowa 1983); State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982), Best v. Yerkes, 77 N.W.2d 23, 32 (Iowa 1956))

c. **Argument.**

The statute at issue in this appeal is Iowa Code § 633.312, which provides:

> In all actions to contest or set aside a will, all known interested parties who have not joined with the contestants as plaintiffs in the action, shall be joined with proponents as defendants. When additional interested parties become known, the court shall order them brought in as party defendants. All such defendants shall be brought in by serving them with notice pursuant to the rules of civil procedure.

Of critical relevance to this appeal issue is the requirement that "all known interested parties" who are not Plaintiffs "**shall be joined with proponents as defendants.**" Id. The interpretation of this statute is of first impression with the Iowa Supreme Court.

In the present case, it is undisputed Richard had six (6) children, Dean, Sheryl, Debra, Jeff, Larry, and Gary, and all said children were living at the time of Richard's death. It is further undisputed that on October 3, 2018, the Petition to Contest Will included Dean, Jeff, Larry, and Gary as Plaintiffs, and the remaining two (2) children, Debra and Sheryl were Defendants. (App. 36). All six (6) children were represented by counsel as either Plaintiffs or Defendants, as mandated by Iowa Code § 633.312, for

Jury Trial # 1. The problem arose, however, when Plaintiffs NEW counsel elected to dismiss Dean and Jeff on May 28, 2021 (a weeks before trial), and, on 12:51 p.m., the day before commencement of Jury Trial # 2, dismissed Debra as a Defendant. It is undisputed that Jury Trial # 2 did not have all of Richard's six (6) children as either Plaintiff or Defendant, as mandated by Iowa Code § 633.312.

Plaintiffs attempted to correct their mistaken legal trial tactic on appeal by spinning Iowa Code § 633.312 and claiming all interested parties were originally part of the litigation, but the statute does not require an interested party to remain a defendant through the completion of the Will Contest Trial. See Appellant Brief at 16-17.

In reviewing the District Court's initial **May 19, 2022, Ruling**, it extensively and exhaustively addressed whether Debra was an indispensable party, whether Debra's non-joinder was waived due to the Defendants consenting to her dismissal, and what is the proper and equitable remedy for Debra's non-joinder at Jury Trial # 2. (App. 851 - Ruling p. 5). The Court's correct analysis and interpretation of Iowa Code § 633.312 will be outlined below.

First, the District Court concluded Iowa Code § 633.312 does not define "interested parties"; however, the Supreme Court has previously

defined "interested person" as "one whose 'interests are directly affected by a diminution of the [estate] assets.'" (App. 852-853 - Ruling p. 6-7 (citing In re Estate of Boyd, 634 N.W.2d 630, 638-39 (Iowa 2001) (quotations omitted)). The District Court correctly concluded that, based upon Debra's inheritance rights under the 2018 Will, and the effect on Debra's rights should the 2018 Will be set aside, Debra was clearly an "interested party" for purposes of Iowa Code § 633.312. (App. 853 - Ruling p. 7).

Second, the District Court analyzed the requirements of Iowa Code § 633.312 that all interested parties be joined as defendants and concluded the interested parties are "indispensable parties" to resolution of a Will Contest claim. (App. 853 - Ruling p. 7). The District Court, in parsing through the wording of the statute, noted the statue states "shall" be joined – "the word 'shall' generally connotes a mandatory duty." (App. 853 - Ruling p. 7 (citing In re Detention of Fowler, 784 N.W.2d 184, 187 (Iowa 2010)). The second sentence of Iowa Code § 633.312 further places a duty on the District Court as "[w]hen additional interested parties become known, **the court shall order** them brought in as party defendants." Id. (Emphasis added). The District Court concluded, based upon the mandatory requirement of "shall" and the duty of the Court to bring in additional interested parties, the failure to include all "interested parties" renders all subsequent proceedings

invalid. (App. 853 - Ruling p. 7 "(citing In re Ditz Estate, 125 N.W.2d 814, 818 (Iowa 1964) (siting in *dicta* that the effect of what is now § 633.312 is to codify, in the will contest context, the property application of the indispensable party rule set froth in what is now Rule 1.234)". (App. 854 - Ruling p. 8).

The Court further noted, in reviewing Iowa Rule of Civil Procedure 1.234, there are two (2) different types of indispensable parties: "(1) a party whose 'interest is not severable, and [whose] absence will prevent the court from rendering any judgment between the parties before it'; and (2) a party whose 'interest would necessarily be inequitably affected by a judgment rendered between those before the court,' notwithstanding the party's absence from the case." (App. 855 - Ruling p. 9 (citing Sear v. Clayton Cnty. Zoning Bd., 590 N.W.2d 512, 517 (Iowa 1999)). Debra clearly met both of these requirements as Debra's interest was not severable from the interests of the other beneficiaries, and Debra's absence prevents the District Court from rending a judgment between the interested parties remaining in the litigation. (App. 855 - Ruling p. 9). The District Court further opined that "generally 'a determination in a will contest . . . that a will is invalid [] has the effect of invalidating the will in toto and as to everyone interested therein.'" (App. 855 - Ruling p. 9 (citing In re Ditz Estate, 125 N.W.2d at).

If the Will Contest claims of Plaintiffs are resolved in Plaintiffs' favor, this would result in an adjudication of Debra's rights and interests under the contested Will, thus making her claims, rights and interests unseverable. (App. 855-856 - Ruling p. 9-10).

Third, the District Court reviewed whether it can render judgment between the parties, in absence of Debra at trial. (App. 856 - Ruling p. 10). The District Court initially noted the Iowa Supreme Court has previously opined "a person's 'rights cannot be adjudicated unless [the person] is made a party to the action' wherein adjudication of those rights is sought." (App. 856 - Ruling p. 10 (citing Franckesen v. Miller, 297 N.W.2d 375, 378 (Iowa 1980) (citations omitted)). As Debra was an indispensable party whose inheritance rights were being adjudicated in the Will Contest action, the District Court could not proceed with resolving the issues without Debra being part of the action. (App. 857 - Ruling p. 11).

Fourth, the District Court further analyzed Iowa Rule of Civil Procedure 1.234 and whether the "indispensable party would be necessarily *inequitably* affected by a judgment between the parties before the court, despite the absence of the purported indispensable party." (App. 858 - Ruling p. 12). The District Court concluded that based upon the various rights of Debra, as previously discussed, entering a judgment as a result of

trial at which Debra is absent would be "inequitable." (App. 859 - Ruling p. 13). The District Court highlighted and emphasized that Debra's dismissal was filed by Plaintiffs "only hours before the trial in this matter was scheduled to commence", which "left Debra very little time to consider the implications of her dismissal." Id. Furthermore, to additionally complicate matters, Debra's attorney, who was the same attorney as Sheryl, had to "revamp his planned presentation of Sheryl's case to account for Debra's dismissal as well as the Plaintiffs' last-minute dismissal of their lack-of-testamentary capacity claim." Id. Given these last-minute events, after a case had been "pending for years", the District Court noted "it would not be at all surprising if Debra failed even to consider whether she is an indispensable party, or how her dismissal from the will contest portion of this case might affect her ability to protect her interests – e.g., her opportunity to litigation any claim of partial validity of Richard's 2018 Will." (App. 859-860 - Ruling p. 13-14). The Court concluded these facts added to its' opinion that resolving the trial without Debra's presence would be "inequitable." (App. 860 - Ruling p. 14).

Fifth, the District Court looked at whether the application of Iowa Code § 633.312 was waived by Sheryl, as Sheryl consented to the dismissal and proceeding with the Will Contest Trial in Debra's absence. (App. 863 -

Ruling p. 17.) The District Court concluded the case of Ditch v. Hess, 212 N.W.2d 442, 449-50 (Iowa 1973) was instructive on the issue as it stated "an indispensable party issue may be raised for the first time on appeal, and that when a valid indispensable party issue is so raised, the proper disposition of the appeal is reversal of the underlying judgment or decree, and remand to the trial court with directions to allow the plaintiff to bring in the missing indispensable party." (App. 863 - Ruling p. 17 (additional citations omitted)).

Additionally, the Iowa Court of Appeals also applied the Ditch rule in Rice v. Seventeen Twenty Associates, No. 99-0424, 2000 WL 278752 (Iowa Ct. App. March 15, 2000), and stated, despite its' uneasiness that the indispensable party issue was not raised before the appeal, "under the Ditch rule, it was 'constrained … to address the issue." (App. 864 - Ruling p. 18). The Court of Appeals concluded that the absent landowner was an indispensable party and reversed and remanded the case back to the District Court with instruction to Plaintiff to add the missing indispensable party. (App. 864 - Ruling p. 18).

The District Court opined, based upon the aforementioned cases, the "absence of an indispensable party is not waivable, and so may be raised at any time, regardless of the procedural history of the case in which the issue

is raised. And under such a rule, the Plaintiffs' waiver arguments all would fail." (App. 865 - Ruling p. 19).

Finally, the District Court also addressed Plaintiffs' claims that Debra's interests were protected through the defense and litigation by Security National Bank and/or Sheryl Collins. The District Court, in addressing this issue, noted that "neither Sheryl nor Security National Bank actually pursued at trial Debra's interest in the partial-validity argument. Accordingly, the Court concluded that Debra's interests were not sufficiently protected by either Sheryl or Security National Bank to excuse Debra's absence during trial." (App. 875 - Ruling p. 29).

The District Court further noted that "[d]espite her pre-trial presence as a party to the Plaintiffs' lawsuit, once the Plaintiffs dismissed Debra as a party, she had no remaining right to participate in this case." (App. 877 - Ruling p. 31). The District Court further added, to the extent Plaintiffs contend they were only dismissing the tortious interference claim against Debra, but not Debra's right to participate in the Will Contest trial, the District Court was not persuaded by that argument. (App. 878 - Ruling p. 32). The District Court noted:

> Plaintiffs' written dismissal is not in any way limited to the tortious-interference claim. The Plaintiffs' oral argument in support of that dismissal, on the first day of trial, did not even suggest that the dismissal was so

> limited. And ***most significantly of all, the Plaintiffs, in a motion in limine, sought and obtained an in limine order prohibiting the remaining Defendants from mentioning Debra's prior status as a party, which in the Court's view conclusively shows that the Plaintiffs intended to and did dismiss Debra altogether from their lawsuit, including from the will contest.***

(App. 878 - Ruling p. 32 (emphasis added)).

In conclusion, based upon the District Court's determination that Debra Shultz was an indispensable party, and that said issue can be raised at any time, even on appeal, the District Court concluded the matter should be set for new trial and the Plaintiffs add back in all the indispensable parties. (App. 880-885 - Ruling p. 34-39). Of particular importance, the District Court weighted the equities of the case and concluded:

> But to the extent that this Court, in applying Iowa's indispensable party law, must consider the equities in deciding on the remedy here, the Court concludes that those equities weigh in favor of a new trial. In particular, although both Sheryl and Debra failed to object to Debra's dismissal from the will contest, although Sheryl only filed her instant motion after trial, although the Plaintiffs have an interest in the preservation of the jury verdict, and although the public interest will be burdened by a second trial, the manner in which the indispensable party issue became an issue here — by the Plaintiffs' decision to dismiss Debra only hours before trial was scheduled to begin. Again, this left very little time for Debra or Sheryl to consider the effects of the dismissal on Debra's interest, and on the Court's ability to grant complete relief to the remaining parties. Further, both Debra's dismissal and the timing of that dismissal obviously were tactical decisions by the Plaintiffs — to

> avoid the jury sitting eye-to-eye, for the duration of the trial, with a party who stood to lose if the will contest succeeded, and whom the evidence at trial suggested had not engaged in any wrongful conduct; and to upend at the last second the trial preparations of the remaining defendants. The Court does not mean to imply that the Plaintiffs' actions were unethical. But the Court has no doubt that the Plaintiffs' actions were designed in an effort to obtain, through procedural mechanisms, an advantage at trial. **Such efforts to use procedural shenanigans to affect the outcome of the substantive questions at trial, while not prohibited, should not be rewarded when they must be taken into consideration as part of an inquiry into the equities of this case. In short, then, even if this Court must consider the equities of the case in deciding on a remedy, in the manner required under federal law, the Court still concludes that a new trial is warranted.**

(App. 882-883 - Ruling p. 36-37 (Emphasis added)). The District Court, in addition to finding Debra as an indispensable party to be added on remand, also concluded that Dean and Jeff, who were also dismissed as Plaintiffs, were required to be readded as Plaintiffs, as they too were indispensable parties under Iowa Code § 633.312. (App. 884-885 - Ruling p. 38-39).

In reviewing the District Court's December 21, 2022, Ruling on the Motion to Reconsider, many of the same arguments were made to the Court concerning whether Iowa Code § 633.312 was complied with, and whether substantial compliance with the statute was possible. (App. 937 - December 21, 2022, Ruling p. 1). The District Court's December 21, 2022, Ruling

was, like the May 18, 2022, Ruling, a thirty-four (34) page well-reasoned and through analysis.

In again addressing whether Iowa Code § 633.312 was complied with, the District Court opined that Iowa Code § 633.312 requires "not only the 'known interested parties' to be joined as parties to a will contest, but that all such interested parties must remain joined as parties through the duration of the will contest action." (App. 938 - Ruling p. 2). The District Court further broke down its' analysis into four (4) distinct reasons:

First, the District Court analyzed the legal and general meaning of "joinder" and concluded the concept of joinder to be a "unification of parties suggests an ongoing (as opposed to a fleeting) condition." (App. 938 - Ruling p. 2).

Second, the statute must be read as a whole, and not just the first and third sentences, as Plaintiffs contended. (App. 939 - Ruling p. 3). The second sentence must be considered as well, which provides "[w]hen additional interested parties become known, the court shall order them brought in as party defendants." (App. 939 - Ruling p. 3 (citing Iowa Code § 633.312)). Given this second sentence, the Court would be required to bring in interested parties, even if Plaintiffs dismissed them previously in the litigation. (App. 939 - Ruling p. 3).

Third, Iowa Rule of Civil Procedure 1.234 "requires not only that indispensable parties to an action be joined to that action, but that they remain joined for the duration of the action." (App. 939 - Ruling p. 3).

Fourth, Plaintiffs' proposed reading of Iowa Code § 633.312 is "inconsistent with the principal . . . that a court may not adjudicate the rights of a party not before it." (App. 939 - Ruling p. 3 (citing Arnold v. Newhall Cnty. Water Dist., 89 Cal Rptr. 450 (Cal. Ct. App. 1970)).

The District Court next analyzed the Plaintiffs' argument of "substantial compliance" with Iowa Code § 633.312. (App. 940 - Ruling p. 4). The District Court noted **"Plaintiffs have not cited any cases from any jurisdictions applying the principal of substantial compliance in the indispensable party context**, and the Court's own research has not uncovered any such cases." (App. 940 - Ruling p. 4 (emphasis added)). Furthermore, Plaintiffs claim that the joinder requirement under Iowa Code § 633.312 was directory, not mandatory, was rejected, as Iowa Code § 633.312 states "shall be joined" – language that is clearly mandatory. (App. 940 - Ruling p. 4). The District Court again emphasized Debra was clearly an indispensable party and that under the Ditch and Rice cases, "the failure to join an indispensable party is not waivable under Iowa law, and may be [raised][sic] at any time." (App. 943 - Ruling p. 7).

d. **Conclusion.**

The District Court correctly analyzed the applicability of Iowa Code § 633.312 for over forty-one (41) pages in its May 19, 2022, Ruling, and thirty-five (35) pages in its December 21, 2022, Ruling. The summarization of those 76 pages is that Debra was an indispensable party, the statute requires Debra ("shall") be joined as party (as well as the other two (2) previously submitted Plaintiffs, Dean and Jeff), the indispensable party issue can be raised at any time (even on appeal), the only equitable remedy for the lack of joinder is a new trial, and that clearly Plaintiffs were attempting legal shenanigans to gain an advantage within hours of the trial starting, and such conduct will not be rewarded when the court is weighing the equities of the case.

The Appellant's three (3) page brief on this issue, versus the District Court's 76 pages, contains no scintilla of applicable legal argument or case law, only the Appellant's personal and unsupported opinion that Iowa Code § 633.312 "does not require a party to remain a defendant through trial." See Appellant Brief at 17. Plaintiffs' argument has no legal merit, no supporting case law, and was thoroughly analyzed and crushed by the District Court's extensive previous Rulings. Of critical importance, there is absolutely no argument by the Appellants as to how the District Court

abused its' discretion in granting a new trial, or how the District Court reached "an erroneous conclusion and judgment, one clearly against logic and effect of facts and circumstances before the court, or the reasonable, probable and actual deductions to be drawn therefrom." See Glenn, 344 N.W.2d at 243 (citing Department of General Services, 336 N.W.2d at 410; Morrison, 323 N.W.2d at 256; and Best, 77 N.W.2d at 32.

The District Court did not abuse its' discretion in ordering a New Trial, as its' ruling was clearly supported by logic, facts, and law, and the Ruling should be AFFIRMED.

II. The District Court did not Retain Authority to Hear the Case Even in the Absence of Strict Compliance with Iowa Code § 633.312.

a. Preservation of Error.

It should be initially noted that Appellant's Brief violates the Iowa Supreme Court briefing requirements, as set forth in Iowa Rules of Appellate Procedure 6.903(2)(g)(1), as Plaintiffs do not identify "how the issue was preserved for appellate review, with references to the places in the record where the issue was raised and decided.

It is the position of Security National Bank that Plaintiffs argued on September 15, 2021, in their Resistance to Motion to Dismiss, that Plaintiffs complied with Iowa Code § 633.312. (App. 838). Plaintiffs again argued in

their June 3, 2022, Motion for Reconsideration, that Plaintiffs complied with Iowa Code § 633.312 (App. 888); however, Plaintiffs added a new argument, that Plaintiffs substantially complied with the requirements of Iowa Code § 633.312. **This issue, however, addressing *subject matter jurisdiction*,** was never argued previously to the District Court in the underlying post-trial motions. It is well-settled that a "party fails to preserve error on new arguments or theories raised for the first time in a [post-trial] motion."). See Turner v. CCRC of Cedar Rapids, LLC, No. 20-1210, 2021 WL 3075713, at *2 (Iowa Ct. App. July 21, 2021) quoting Mitchell v. Cedar Rapids Cmty. Sch. Dist., 832 N.W.2d 689, 695 (Iowa 2013). Furthermore, new issues cannot be raised for the first time in an appeal. See e.g. Estate of Strong, 791 N.W.2d 427 (Iowa Ct. App. 2010) (citing Metz v. Amoco Oil Co., 581 N.W.2d 597, 600 (Iowa 1998) and Peters v. Burlington N. R.R., 492 N.W.2d 399, 401 (Iowa 1992)) (noting "[i]t is a fundamental doctrine of appellate review that issues must ordinarily be raised and decided by the district court before we will decide them on appeal"); In re J.H., 697 N.W.2d 127 (Iowa 2005) (noting "generally, a party is required to object or take exception to the courts actions in order to preserve error" and if an "issue was not raised before or ruled on by the district court, it will not be addressed on appeal"); and In re K.C.L., 662 N.W.2d 374 (Iowa Ct. App.

2003) (noting "issues raised for the first time on appeal . . . will not be considered"). **The Plaintiffs failed to preserve this issue in the underlying District Court matter, as they did not argue this position in either their initial Resistance, or in their Motion for Reconsideration.**

b. Standard of Review.

It should be initially noted that Appellant's Brief again violates the Iowa Supreme Court briefing requirements, as set forth in Iowa Rules of Appellate Procedure 6.903(2)(g)(2), as Plaintiffs do not identify "the scope and standard of appellate review." Furthermore, Plaintiffs' Appellant Brief is completely devoid of any argument as to how the District Court's Rulings violated any standard of review.

Security National Bank contends the standard of review regarding a Trial Court's granting of a Motion for New Trial is for abuse of discretion. See Elmore, 728 N.W.2d 225 (citing Foggia, 543 N.W.2d at 891, Magnusson, 560 N.W.2d at 30, and Lane, 581 N.W.2d at 216).

The Supreme Court has repeatedly and consistently defined "abuse of discretion" as "an erroneous conclusion and judgment, one clearly against logic and effect of facts and circumstances before the court, or the reasonable, probable and actual deductions to be drawn therefrom." See

Glenn, 344 N.W.2d at 243 (citing Department of General Services, 336 N.W.2d at 410, Morrison, 323 N.W.2d at 256, Best, 77 N.W.2d at 32).

c. **Argument.**

Appellants argue in issue two (2) that the District Court always retained *subject matter jurisdiction* and the failure to comply with Iowa Code § 633.312 "does not deprive the district court of subject matter jurisdiction to hear the will contest." Appellants' Brief at 20. The Appellant's raised this issue for the first time on appeal, to try to salvage their prior "waiver" argument, which the District Court rejected. Id. at 21. As discussed at length in issue one (1), the indispensable party argument cannot be "waived", despite the consent of Debra and Sheryl to dismissal within thirty (30) minutes of the commencement of jury selection, and that said "indispensable party" argument can be raised at any time, even on appeal. The Plaintiffs, as they apparently did not consider the legal ramifications of their prior three (3) dismissals *before making the dismissals*, now try to recreate their prior "waiver" argument to not be "waiving the joinder requirement of Iowa Code § 633.312", but now, a "waiver of subject matter jurisdiction."

This issue was never raised to the District Court in either of the responses to post-trial Motion, or in the Motion for Reconsideration, and, as

such, new issues cannot be raised on appeal. To the extent the Supreme Court reviews this issue, the District Court thoroughly analyzed the requirements of Iowa Code § 633.312, that "joinder" is required to protect the interests of all interested parties, and that Debra Shultz's rights were not fully and adequately protected during trial as no party made a partial-validity argument. (App. 851-884).

The Plaintiffs' argument that despite the joinder requirement, the District Court still has *subject matter jurisdiction* to complete the Will Contest Trial without Debra's presence is completely nonsensical. The District Court could not have an "indispensable party" and complete the jury trial without the "indispensable party" – Debra is, by definition, "indispensable". The District Court's prior seventy-six (76) pages, as well as the outline of relevant arguments previously set forth in Issue # 1 of this brief, clearly show the District Court did not abuse its' discretion in Ordering a new trial. Finally, as argued in Issue # 1, the Appellants make no argument as to how the District Court abused its discretion – the District Court clearly did not abuse its' discretion and, as such, its' granting of a new trial should be AFFIRMED.

CONCLUSION

In conclusion, Appellants provided no argument to support how they preserved error, or the appropriate standard of review for the Supreme Court in this Appeal. Appellants provided no case law or valid legal argument as to how they complied with Iowa Code § 633.312, or how they substantially complied with Iowa Code § 633.312, or how the District Court abused its' discretion in granting a new trial based upon Plaintiffs' failure to have all "indispensable parties" in the Jury Trial # 2, as mandated by Iowa Code § 633.312. The District Court provided seventy-six (76) pages of well-reasoned analysis to support granting a new trial, and said Ruling should be AFFIRMED.

REQUEST FOR ORAL ARGUMENT

Defendant/Appellee, Security National Bank, requests oral argument upon submission of this case.

Respectfully submitted this 14th day of September, 2023.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 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 **Font Size 14** and contains **7,795**words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

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COST CERTIFICATE

I, Colby M. Lessmann, hereby certify that, *as this brief was electronically filed pursuant to EDMS Appellate Rules,* the actual cost of reproducing the necessary copies of the preceding Appellee's Proof Brief consisting of **44** pages (including Cover Page) was **$0.00** and that amount has been actually paid in full by Appellant.

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CERTIFICATE OF FILING

I, Colby M. Lessmann, hereby certify that on September 14, 2023, I filed one (1) copy of Appellee's FINAL Brief by electronic filing into the Iowa Supreme Court EDMS online filing system.

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CERTIFICATE OF SERVICE

I, Colby M. Lessmann, hereby certify that on September 14, 2023, I served the attached Appellee's FINAL Brief by filing said brief in the Iowa Supreme Court EDMS online filing system, and no additional service is required upon Appellee.

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